

**IN THE 19TH CIRCUIT COURT
COLE COUNTY, MISSOURI**

CITY OF ST. LOUIS, and

HEATHER TAYLOR,

Plaintiffs,

v.

STATE OF MISSOURI,

Serve: Eric Schmitt

Office of the Attorney General

207 High Street

Jefferson City, Missouri 65102, and

ERIC SCHMITT, Attorney General

For the State of Missouri

Serve: Office of the Attorney General

207 High Street

Jefferson City, Missouri 65102

Defendants.

Cause No.

Division No.

PETITION FOR DECLARATORY JUDGMENT

Come now plaintiffs and for their claim for declaratory relief state as follows

PARTIES

1. Plaintiff City of St. Louis ("City") is a constitutional charter city organized and existing under law.
2. Plaintiff Heather Taylor is an employee of the City of St. Louis, is not a law enforcement officer, and is a resident taxpayer of the City of St. Louis.

3. Defendant State of Missouri, is a political body organized and existing under the Missouri Constitution and the United States Constitution, acting by and through the General Assembly and Governor, and enacts and enforces statutes of the State.

4. Defendant Hon. Eric Schmitt is the Attorney General of Missouri and represents the State of Missouri in actions against it. He is amenable to service under Rule 87.04.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to the Declaratory Judgment Act, §§ 527.010 et seq., and Mo. Const. Art. X, § 23, inasmuch as plaintiffs seek a declaration of their rights and obligations under provisions 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 except as otherwise noted), and specifically §590.502 of SB 26.

6. Venue is proper in this Court pursuant to § 508.010(2), RSMo because the Attorney General's office is located in Cole County and the capital for the State of Missouri is located in Cole County.

7. Plaintiffs present a ripe and justiciable controversy, as hereinafter set forth, in that plaintiff City will be required to increase its level of activity, expenditures, and services in order to comply with the requirements of SB 26, and, further, plaintiff City's Department of Personnel and Division of Police will be required to follow procedures in disciplining police officer employees different than and in addition to procedures prescribed by the Charter of plaintiff City, thereby affecting the powers

and duties of officers of the City, including its Commissioner of Police and Director of Personnel, and requiring the City to treat police officer employees differently than all other civil service employees, without rational basis. Under the Declaratory Judgment Act, § 527.020, RSMo, 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.

8. Plaintiffs have no adequate alternative remedy. Plaintiff 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. Defending such actions will not enable plaintiff City to raise its claims for declaratory relief in such manner as to provide a declaration of all of the City's rights and obligations under SB 26 in the future.

9. Plaintiffs also present a ripe and justiciable claim in that, if enforced, SB 26 will require expenditure of public funds to discharge private obligations of individual police officers employed or formerly employed by the City.

**COUNT I—DECLARATORY JUDGMENT THAT SB 26 VIOLATES
ARTICLE III §§ 21 and 23 OF THE MISSOURI CONSTITUTION**

10. Plaintiffs incorporate and reallege each and every allegation contained in the foregoing paragraphs of this Petition, as though fully set forth herein.

11. The title of SB 26 was always an act “relating to public safety.” When SB 26 was introduced in December 2020, it was adding two new sections "relating to public

safety, with penalty provisions." The two new sections were a new criminal offense of "unlawful traffic interference" and the so-called "police officers' bill of rights," relating to procedures for imposing discipline on law enforcement officers. However, SB 26 as enacted retained the same title and original statutory provisions, but amended 14 separate titles within the Revised Missouri Statutes, and only one of those titles (Title XXI, under which Chapter 313 is amended by SB 26) is identified as concerning public safety. Additionally, SB 26 grew from seven sections to 88 sections, with the same title "relating to public safety."

12. The provisions of SB 26 are not germane to the general subject of "public safety," contrary to Mo. Const. art. III, §23. 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. In particular, § 590.502, RSMo, part of SB 26, contains an indemnity mandate of subsection 7, having nothing to do with public safety. In short, §590.502 is actually a public employee labor relations law and not a public safety measure.

13. Additionally, SB 26 violates the single-subject provisions of the Missouri Constitution. The stated subject or purpose of the bill is "public safety." However, SB 26 includes a miscellany of provisions as outlined above, ranging from circuit attorney payments, lotteries, pesticide regulations, electric fences and taxation to parole eligibility of certified juvenile convicts and the budgetary authority of local governments regarding law enforcement expenditures. The wide range of subjects, bearing little or no relationship to "public safety," is fatal to the validity of SB 26.

14. Similarly, § 590.502 RSMo, cannot be properly severed from the unrelated provisions of SB 26. SB 26 would not have been enacted if the circuit attorney payments, lotteries, pesticide regulations, and taxation provisions had not been injected.

15. Plaintiffs seek a declaration that SB 26 is unconstitutional, in that it violates Mo. Const. Art. III, §§ 23 because it only states that its sections are “related to public safety.” However, SB 26 affects some 14 different titles of the Revised Statutes of Missouri, and most of its provisions have little or nothing to do with public safety.

16. Plaintiffs seek a declaration that SB 26 is unconstitutional, in that it 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.

**COUNT II—DECLARATORY JUDGMENT THAT SB 26 VIOLATES
ARTICLE X, §21 (“THE HANCOCK AMENDMENT”) OF THE MISSOURI
CONSTITUTION**

17. Plaintiffs incorporate and reallege each and every allegation contained in the foregoing paragraphs of this Petition, as though fully set forth herein.

18. Section 590.502.7 of SB 26 mandates that Plaintiff City expend funds to defend, represent and indemnify law enforcement employees on account of liability incurred “in the course and scope of their obligations and duties as law enforcement officers.” Section 590.502.7 of SB 26 further provides that “[t]his includes any actions taken off duty if such actions were taken under color of law.” The obligation of indemnity includes an obligation to reimburse police officer employees for lost earnings from secondary employment in addition to other losses.

19. Plaintiff 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 of SB 26.

20. In 1980, when the Hancock Amendment was adopted, neither plaintiff City--nor its predecessor in interest, the Board of Police Commissioners of the City of St. Louis--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. In addition, to the extent that plaintiff City or said 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 (November 4, 1980).

21. Section 590.502 also encompasses numerous provisions which impose additional duties in the matter of disciplining law enforcement officers, including the requirement to allow depositions, deadlines for completion of internal affairs investigations, and to make certain evidence and information available to law enforcement 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 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.

22. 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, Plaintiff 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 Plaintiff 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 Plaintiff City when the Hancock Amendment was enacted.

23. The Hancock Amendment provides, in part that: “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...for any increased costs.” Mo. Const., Art. X, § 21.

24. Plaintiffs seek a declaration that SB 26, is unconstitutional, in that it violates the Hancock Amendment of the Mo. Const. Art. X, §21, by requiring Plaintiff City to engage in new activities and services without any appropriation to pay Plaintiff City for the increased costs. As of the filing of this action, no State appropriation has been made to pay plaintiff City for any increased costs as alleged herein.

COUNT III—DECLARATORY JUDGMENT THAT SB 26, § 590.502 RSMo VIOLATES, ARTICLE VI, § 22 OF THE MISSOURI CONSTITUTION

25. Plaintiffs incorporate and reallege each and every allegation contained in the foregoing paragraphs of this Petition, as though fully set forth herein.

26. Section 590.502 fixes the powers and duties of Plaintiff City in the matters of disciplinary processes for law enforcement officers, i.e., powers and duties of internal affairs investigators, the Civil Service Commission, and the Civil Law Department.

27. Section 590.502 imposes duties upon internal affairs investigators in complying with the provision's timelines and additional requirements to comply with in the event discipline is recommended.

28. Plaintiff City, specifically, the City's Civil Law Department, will have to defend and represent police officers that are sued, including where officers are sued because of actions they took while they were off duty but working secondary employment. This additional duty imposed upon City's attorneys, who are municipal officers employed by City, is creating duties for Plaintiff City to represent officers while working secondary employment, which was not previously the case. Further, additional duties are imposed upon the City's Civil Law Department that will necessitate the hiring of additional attorneys, outside counsel and paralegals to assist in representing law

enforcement officers that were accused of misconduct in their individual capacities, including while working secondary employment. This includes, among other things, additional duties requiring attorneys to review litigation, take or defend depositions, prepare discovery, draft motions, and conduct a jury or bench trial.

29. Section 590.502 requires indemnification and requires the City's Civil Law Department and its attorneys to defend officers in their individual capacities which means additional duties in settlement negotiations and potential judgments on behalf of the Police Division, and City. Additional duties are fixed upon the City's Civil Law Department to hire outside counsel to engage in settlement negotiations for law enforcement officers.

30. Section 590.502 imposes duties on the Civil Service Commission, which is authorized under the City Charter to hear appeals of law enforcement officers. These additional duties include fixing the procedures, extensive hearing timelines, right to appeal for probationary officers and hearings for transfers before the Civil Service Commission.

31. Section 590.502 fixes the duties of the Police Commissioner by impacting his power to make transfers, and regulation and authority to deny secondary employment.

32. Mo. Const. Article VI, § 22 provides, in relevant part, “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...”

33. Plaintiffs seek a declaration that § 590.502 RSMo is unconstitutional, in that it violates Mo. Const. Art. VI, § 22 because, as outlined above, it is “a law creating or fixing the powers, duties or compensation of” officers and employees of Plaintiff, a constitutional charter city.

COUNT IV—DECLARATORY JUDGMENT THAT SB 26, § 590.502.7 RSMo VIOLATES ARTICLE III, § 38(a) OF THE MISSOURI CONSTITUTION

34. Plaintiffs incorporate and reallege each and every allegation contained in the foregoing paragraphs of this Petition, as though fully set forth herein.

35. Section 590.502.7 of SB 26, mandates that Plaintiff City defend and indemnify law enforcement officer employees against liabilities incurred while acting “under color of law.” “Under color of law,” also includes when officers are working secondary employment as security for private companies or other public institutions but not for City. Lawsuits brought against law enforcement officers in their individual capacities are lawsuits against private persons.

36. Mo. Const. Art. III, § 38(a) forbids the provision of public funds for private purposes and § 590.502.7 explicitly mandates expenditures of public funds to discharge obligations of police officer employees in their private, individual capacities, and to reimburse police officer employees for lost income from sources unrelated to the City.

37. Based upon the enactment of § 590.502.7, Plaintiff is subject to demands by present and former law enforcement officers to indemnify them against liabilities incurred while they are off duty but are working secondary employment as security. This expense of City funds for law enforcement officers in their individual capacities,

is not aligned with City's interest. Section 590.502.7 exposes plaintiff City to liability for conduct of a private individual that could be acting outside of the policies enforced by the City.

38. Plaintiff will be forced to represent present and former law enforcement officers in their private, individual capacities, and to pay for their liabilities and reimbursement for lost income from private sources, in direct conflict with Mo. Const. Art. III, § 38(a).

39. Section 590.502.7 RSMo. mandates that City represent, defend, and indemnify officers accused of misconduct, including criminal misconduct, up to and until "the law enforcement officer is convicted of, or pleads guilty to, criminal charges arising out of the same conduct." Where civil cases precede or run concurrently with criminal cases against individual officers, which often occurs, the effect of this provision is to require the expenditure of public funds to defend individuals even where they are ultimately convicted of or plead guilty to a crime arising out of the same conduct underlying the civil case against them.

40. § 590.502.7 RSMo. mandates that City represent, defend, and indemnify officers even where they are accused of, disciplined, or fired for misconduct that was not taken in furtherance of City's or the public's interest.

41. Plaintiffs seek a declaration that § 590.502 RSMo is unconstitutional, in that it violates Mo. Const. Art. III, § 38(a) because it explicitly mandates the expenditure of public funds to represent, defend, reimburse, and indemnify law enforcement

officers in their private, individual capacities. Thus, the mandate of § 590.502 is unconstitutional.

**COUNT V--DECLARATORY JUDGMENT THAT SB 26 VIOLATES
PLAINTIFF TAYLOR'S RIGHTS TO EQUAL PROTECTION**

42. Plaintiffs incorporate and reallege each and every allegation contained in the foregoing paragraphs of this Petition, as though fully set forth herein

43. Article I, § 2 of the Missouri Constitution, provides, in relevant part, “that all persons are created equal and are entitled to equal rights and opportunity under the law...” Mo. Const. art. I, § 2 (“Art. I, § 2”).

44. SB 26, § 590.502, violates Art. I, §2 by impermissibly and arbitrarily creating two classes of employees that are subject to wildly different due process rights. The favored new classification of “law enforcement officers” is given more due process rights during disciplinary investigations than all 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 an employee and conduct while working in secondary employment, perquisites that are not accorded to plaintiff Taylor or any other civil service employees of plaintiff City.

45. There is no conceivable permissible justification for this new legal distinction between favored “law enforcement officers” and other government employees. It cannot be justified with reference to any purported special characteristic of public safety employment, as it is not based on either the identity of the public employees or the type of work they perform. Instead, this pervasive favoritism in the exercise of

employee's constitutionally protected rights turns solely on the type of job title an employee has. Thus, even units of public employees who are indisputably public safety employees—like fire fighters, emergency first responders, corrections officers—are not subject to the due process protections contained in § 590.502.

46. Plaintiff Taylor and plaintiff City's non-law enforcement employees will be irreparably harmed if the invidiously discriminatory distinctions drawn by §590.502 are allowed to remain in force.

47. Plaintiffs seeks a declaration that §590.502 impairs plaintiff Taylor's constitutional right to equal protection and is therefore unconstitutional. Plaintiffs and their employees will have no adequate remedy at law to compensate for the discriminatory burdens and chill on the exercise of constitutionally protected rights caused by the enforcement of §590.502 of SB 26.

COUNT VI—DECLARATORY JUDGMENT THAT PLAINTIFF CITY IS IN COMPLIANCE WITH SB 26, AS PROVIDED BY § 590.502.12 RSMo

48. Plaintiffs incorporate and reallege each and every allegation contained in the foregoing paragraphs of this Petition, as though fully set forth herein.

49. In the alternative to a declaration of unconstitutionality as to §590.502 insofar as it prescribes procedures other than the indemnity required by §590.502.7, Plaintiffs seek a declaration that Plaintiff City is in compliance with §590.502 RSMo.

50. As a constitutional charter City, Plaintiff has adopted a comprehensive civil service system in Article XVIII of the City's Charter. The Charter contains numerous provisions relating to discipline and discharge of civil service employees, including police officers. The Charter creates a Civil Service Commission and a Department of

Personnel with authority to implement the Charter's civil service scheme. Additional regulations applicable to discipline of police officer employees are prescribed by regulations of the Civil Service Commission and of the City's Department of Personnel. Further, police officer employees are accorded a predisciplinary review under the practices of the City's Division of Police. Under the City's Charter and rules and regulations, police officer employees subject to discipline are entitled to notice, a pretermination 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.

51. Section 590.502.12 of SB 26 provides: "A law enforcement agency that has substantially similar or greater procedures shall be deemed in compliance with this section." Plaintiff City seeks a declaration that it is in compliance with §590.502 (other than §590.502.7), in that its existing civil service procedures are substantially similar to the procedures prescribed by §590.502 of SB 26.

CONCLUSION

WHEREFORE, Plaintiffs request this court:

1. Award Plaintiffs such preliminary injunctive and ancillary relief as may be necessary to avert irreparable injury during the pendency of this action and to preserve the possibility of effective final relief.

2. Enter judgment declaring SB 26, as enacted, violates Articles III, § 21 and §23 of the Missouri Constitution, and, further, that these violations render invalid all of SB 26's provisions, none of which are severable.
3. Enter judgment declaring that the §590.502 of SB 26 violates Article X, § 21 of the Missouri Constitution.
4. Enter a judgment declaring that § 590.502 of SB 26 violates Article VI, § 22, of the Missouri Constitution.
5. Enter a judgment declaring § 590.502.7 of SB 26 violates Article III, § 38(a) of the Missouri Constitution.
6. Enter a judgment declaring § 590.502 of SB 26 violates Article I, § 2 of the Missouri Constitution.
7. Enter a judgment declaring that the entirety of SB 26 is void because the unconstitutional provisions of the legislation are inseparably connected with the remaining provisions and it cannot be presumed the legislature would have enacted the remaining provisions without the unconstitutional ones.
8. In the alternative, declare that Plaintiff City is in compliance with §590.502, other than §590.502.7.
9. Award Plaintiffs their attorney fees and costs herein.
10. Grant any other and further relief the Court deems just and proper.

Dated: December 3, 2021

Respectfully submitted,

**SHEENA HAMILTON
CITY COUNSELOR**

By: /s/ Robert H. Dierker

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