

## Mack's Creek Partially Dammed By Supreme Court

In a follow-up to the 2014, 2015 and 2016 articles in the *MML Review*, we report that the Missouri Supreme Court has upheld the finding of invalidity of Senate Bill 5 in the case of *Normandy v. Greitens*, SC 95624 (May 16, 2017). The Circuit Court of Cole County had struck down portions of Senate Bill 5 (Macks Creek II) that generally went into effect in 2015. A lawsuit was filed by 12 communities and two individuals as plaintiffs. The circuit judge ruled that portions of SB 5 were a special law designed solely for St. Louis County and therefore unconstitutional. SB 5 imposed certain minimum standards that must be met in St. Louis County within three years, including a balanced budget; an annual audit; accounting; insurance; six years for police certification by the Commission on Accreditation for Law Enforcement Agencies or the Missouri Police Chief's Association; certain written policies for police; construction code review; and website publication.

The plaintiffs argued that portions of SB 5 should be stricken as being unfunded mandates in violation of the Hancock Amendment. The Supreme Court reversed in part, holding that the unfunded mandate argument was premature since the legislature could provide funding in the future. The Court held that the unfunded mandate as to additional reporting was de minimis, apparently engrafting a new exception to the Hancock Amendment, even though the Court did not say how much de minimis.

SB 5 reduced the percentage of traffic violation revenue statewide from 30 percent to 20 percent. However, it was attacked as a special law because it reduced the revenue cap from 30 percent to 12.5 percent only in St. Louis County. The Supreme Court upheld the Circuit Court decision of invalidity. The Court made a lengthy examination of prior decisions on special laws. It concluded that this was a special law since no other county could meet the minimum population requirement. This was the first such decision on purely minimum population. The Supreme Court expressly limited the applicability of its decision to future special laws. This will be an important decision to keep in mind when confronted with such laws.

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The Supreme Court also left in effect the portion of SB 5 that required an addendum to the annual financial report with calculations regarding the total minor traffic violations revenue; the 20 percent cap statewide; and the requirement for every city to annually calculate the costs for minor traffic violations as a percentage of annual general operating revenue and pay over any excess.

Other provisions of SB 5, such as limiting minor traffic violations to \$300 for fine and costs; limiting confinement for minor traffic violations; checking for indigency; custody hearings; barring failure to appear charges for minor traffic violations, income tax setoff for fines; etc., were unchallenged and unaffected by the ruling.

The Missouri legislature amended SB 5 in 2016 to meet certain legal objections, lowering the maximum fine and costs to \$225 and addressing housing code violations.

It will be interesting to see if the legislature will provide funding for many of the activities and standards set by SB 5. Due to the time required for certain of

these obligations, municipalities may be faced with a dilemma as to whether to begin now to comply or wait perhaps years to see if there will be funding.

What began as a law to protect against alleged speed traps such as in Mack's Creek has evolved into a wholesale legislative weapon against municipalities in Missouri, especially in St. Louis County, regardless of whether a municipality has done anything wrong. This Supreme Court decision will have profound effects on this and other areas of the law.

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Learn more about SB 5 from the July 2015 issue of the *Missouri Municipal Review* magazine at [http://c.ymcdn.com/sites/www.mocities.com/resource\\_resmgr/JulyReview/Macks\\_Creek\\_SB5\\_Analysis.pdf](http://c.ymcdn.com/sites/www.mocities.com/resource_resmgr/JulyReview/Macks_Creek_SB5_Analysis.pdf).