IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

ST. LOUIS COUNTY, MISSOURI, and CHARLIE A. DOOLEY, individually and in his capacity as County Executive of St. Louis County, Missouri, Plaintiffs, v. STATE OF MISSOURI, Defendant.	Cause No. 04CV32913 Division No. I

SUGGESTIONS OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COME NOW Plaintiffs St. Louis County, Missouri and Charlie A. Dooley, and in support of their Motion for Summary Judgment, offer the following suggestions of law:

This lawsuit involves the Plaintiffs' claims that Missouri's concealed carry law violates the Missouri Constitution for two different, but related reasons. First, as alleged in Count I of the Petition, Section 571.101 R.S.Mo. (Supp. 2003) requires the expenditure of County funds for the new activities related to processing applications and issuing concealed carry endorsements. The State of Missouri has failed to provide full financing for this new activity, and has failed to make an appropriation and disburse funds to pay the County for its increased costs. The lack of full state financing and lack of a state appropriation and disbursement of funds, coupled with the costs stemming from the statutorily-required new activity, operate to render Section 571.101 violative of the Hancock Amendment, Mo. Const. Article X, Sections 16 and 21. Second, as alleged in Count II, while Sec. 571.101.10 authorizes a fee of up to one hundred dollars for

processing an application for a concealed carry endorsement, this fee does not cover the County's costs, insofar as Sec. 50.535 mandates that the fee be deposited in a fund which may be used only for law enforcement training and purchase of equipment, and not for other costs associated with application processing. The County is left to pay for the costs of the new activities with its own funds, exactly what the Hancock Amendment is designed to prevent.

This lawsuit is entirely controlled by the Supreme Court's decision in Brooks v. State, 128 S.W.3d 844 (Mo. banc 2004). From Brooks, we learn that a Hancock case is not ripe "without specific proof of new or increased duties and increased expenses." Id. at 849. However, while some proof of increased costs resulting from increased mandated activities is needed, "plaintiffs need only show that the increased costs will be more than *de minimis*." Id. In the present case, there is no dispute as to the fact that the law enforcement official authorized to process applications for concealed carry endorsements will incur processing costs that are not for training and equipment, and that such costs will be more than *de minimis*. See *Joint Stipulation of Facts No. 3*. According to Brooks, then, Plaintiffs' case is ripe. Further, "the same evidence that makes the case ripe for adjudication ... is the same evidence that proves the Hancock violation on the merits of the case." Id. at 850.

The required evidence is undisputed. First, as outlined above, the County will incur costs other than for training and equipment that are more than *de minimis*. Second, the activity required by Sec. 571.101 is new and expanded: prior to the enactment of Sec. 571.101, the County has never before had to process concealed carry applications. See Sec. 571.101. Third, the State of Missouri has neither funded nor made an appropriation to fund the cost, apart from authorizing the fee described in Sections 50.535 and 571.101.10-11. See *Joint Stipulation of Facts No. 4*. This fee, though, does nothing to help the County with the new expense. The fee is

to be deposited in a Revolving Fund to be used only "for the purchase of equipment and to provide training." See Sec. 50.535.2. It may not be used for the more-than-*de minimis* costs of application processing that are not related to training and purchase of equipment. With direct reference to exactly this same situation, the Brooks court, id. at 850, held that "Although some of the increased costs may be incurred for training and equipment and properly reimbursed from the fund, substantial costs may be incurred for other purposes, as well. *If so, there is an unfunded mandate* (emphasis added)." In any event, even if the application fee could be used to reimburse every cent of the County's costs, that would not alleviate the Hancock violation because the State would only have made provisions for recovery of costs. But that is not what is required of the State when it foists new activities on local government. The State still would not have made the appropriation required by the Constitution. "The road to compliance with Art. X, Sec. 21, cannot be paved with good intentions. Rather, the constitution requires the legislature to pass a specific appropriation to cover the costs of the increased activity it demands of a political subdivision." City of Jefferson v. Missouri DNR, 863 S.W.2d 844 (Mo. banc 1993). See also Rolla 31 School Dist. v. State, 837 S.W.2d 1, 7 (Mo. 1992) ("We believe this means what it (Art. X, Sec. 21) says; it requires that the legislature make a specific appropriation which specifies that the purpose of the appropriation is the mandated program.") Stated simply, if the State fails to appropriate and disburse its own funds to pay for a new activity, it cannot require that new activity of a local government.

In light of the unfunded mandate, this court should grant summary judgment to Plaintiffs, and, reflective of Brooks, id. at 850, issue its order that St. Louis County is not required to comply with the concealed carry law to the extent it mandates the County to expend its funds for that purpose.

Respectfully submitted,

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A copy of the foregoing was faxed this 9th day of August, 2004 to Jeremiah W. (Jay) Nixon, Attorney General, and to Paul C. Wilson, Deputy Chief of Staff and Assistant Attorney General, and to Alana M. Barragan-Scott, Chief Counsel and Assistant Attorney General, at fax number 573-751-8796.

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