IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

CITY OF CHESTERFIELD, et al.,	)	
	)	
Plaintiffs,	)	
	)	Cause No. 14AC-CC00643
vs.	)	
	)	
STATE OF MISSOURI, et al.,	)	
	)	
Defendants.	)	

JUDGMENT

The Court takes up the pending cross-motions for summary judgment of Plaintiffs City of Chesterfield and Bob Nations (together, "Chesterfield") as to Counts I and II; Defendants State of Missouri and Director of Revenue as to Counts I-IV; and Intervenor-Defendants St. Louis County, Missouri and the Cities of Ballwin, Florissant, Manchester, University City, Webster Groves, and Wildwood as to Counts I-IV.

At issue is whether or not the County Sales Tax Law (the "Law"), as set forth in Sections 66.600 (Counts I and II) and 66.620 (Counts III and IV), violates the Missouri Constitution's prohibitions on certain special laws. *See* MO. CONST. ART. III, § 40(21) and (30). Having fully considered the briefs and the arguments of counsel, the Court finds that there are no material disputed facts and that the matter is ripe for ruling. As discussed below, the Court concludes that the Law is constitutional.

A. <u>Section 66.600 Is Not a Special Law (Counts I and II)</u>

First, as to Section 66.600, Chesterfield contends that the population-based classification of Section 66.600 is an unconstitutional special law in that it lacks substantial justification, which Chesterfield contends is required based on *Jefferson County Fire Protection District Association v. Blunt*, 205 S.W.3d 866 (Mo. banc 2006). However, the population-based classification in Section 66.600 was enacted in 1977 and amended once in 1991. As such, the *Jefferson County*

test does not apply. *See* 205 S.W.3d at 871 ("Because of the General Assembly's possible reliance on previous cases not articulating this presumption, only statutes passed after the date of this opinion are subject to this analysis."). Though Chesterfield argues that the tax revenue distribution mechanism contained in Section 66.620 was amended in 2016, such amendment would not trigger the application of the *Jefferson County* test to Section 66.600, which was untouched. *See* Mo. Rev. Stat. § 1.120 ("The provisions of any law or statute which is reenacted, amended or revised, so far as they are the same as those of a prior law, shall be construed as a continuation of such law and not as a new enactment.").

Regardless, even if Section 66.600 had been first enacted in 2016, *Jefferson County* would still not apply because *Jefferson County* applies only to statutes with population ranges and was not extended to statutes with a population minimum or maximum, such as Section 66.600, until *City of Normandy v. Greitens*, which applies only "prospectively to statutes passed after the date of" that May 16, 2017 decision. No. SC 95624, at p. 17. As such, Section 66.600 is not subject to the *Jefferson County* test. Only a rational basis is, therefore, required to uphold Section 66.600 of the Law, given that its population-based classification is open-ended. *See, e.g., Treadway v. State*, 988 S.W.2d 508, 510-11 (Mo. banc 1999).

"When a law is based on open-ended characteristics, it is not facially special and is presumed to be constitutional." *Labrayere v. Bohr Farms, LLC*, 458 S.W.3d 319, 334 (Mo. banc 2015). "The burden is on the party challenging the constitutionality of the statute to show that the law has an arbitrary classification that lacks a rational relationship to a legislative purpose." *Id.* Chesterfield has failed to meet its burden.

Although Chesterfield alternatively pled that Section 66.600 lacks a rational basis, Chesterfield appears to concede in its papers that there is a rational basis. Regardless, the

undisputed facts clearly establish that Section 66.600 does not have an arbitrary classification lacking a rational relationship to a legislative purpose, but rather, is supported by a rational basis. The undisputed facts establish that, unlike any other county in Missouri, St. Louis County lacks a central city, it has 90 separate municipalities within its borders, and it has a large "unincorporated" area with a population approaching 350,000 (which would make that area one of the largest "cities" in the State of Missouri). Moreover, St. Louis County is responsible for providing municipal-type services, such as police, street maintenance, and zoning, to the unincorporated areas within its borders, while at the same time providing services that benefit all residents of St. Louis County, including those living within municipalities (such as a court system, jail, and roads). Prior to the enactment of the Law in 1977, St. Louis County lacked the authority to collect a sales tax on sales in the unincorporated area. That authority belonged only to certain cities within St. Louis County pursuant to the City Sales Tax Act (1969). Under the City Sales Tax Act, cities with less retail activity received substantially less tax revenues than cities with high retail activity, as all sales tax revenues stayed with the "point of sale" city. This tax revenue scheme disproportionately benefited those cities with large retail centers, to the detriment of high-population, low-retail cities.

The Law addressed these issues by authorizing certain counties to adopt an ordinance imposing a countywide sales tax of one percent to benefit both the incorporated and the unincorporated areas of the county. The voters of St. Louis County subsequently approved the sales tax. With the new countywide sales tax in place, those cities that had enacted a City Sales Tax continued to receive the taxes generated within their boundaries, while those cities that had not, along with the unincorporated areas of St. Louis County, would share taxes on a per-capita basis. This system provided necessary resources for St. Louis County to fund services provided

to the uniquely large unincorporated areas, as well as those services provided countywide. This system also provided revenue to those cities that did not previously have a City Sales Tax.

For all these reasons, Section 66.600 is supported by a rational basis and, therefore, is constitutional.

B. Section 66.620 Is Not a Special Law (Counts III and IV)

Second, as to Section 66.620, Chesterfield argues that the Group A / Group B tax revenue distribution mechanism is an unconstitutional special law in that it lacks substantial justification. This distinction relates to the method by which sales tax revenues are distributed; either using a population and point of sale formula (Group A) or higher-weighted population-only formula (Group B). Chesterfield's argument is primarily directed to the 1984 amendment to Section 66.620, which effectively foreclosed Chesterfield's ability to become a Group A city because cities incorporated after 1984 were placed in Group B.

The Group A / Group B tax revenue distribution section, however, does not implicate (or violate) Article III, Section 40(21) or (30) of the Missouri Constitution. "A 'special law' is a law that 'includes less than all who are similarly situated[.]'" *Fust v. Attorney Gen. for the State of Mo.*, 947 S.W.2d 424, 432 (Mo. banc 1997) (quoting *Batek v. Curators of the Univ. of Mo.*, 920 S.W.2d 895, 899 (Mo. banc 1996)). "[B]ut a law is not special if it applies to all of a given class alike and the classification is made on a reasonable basis." *Id.* (quoting *Batek*, 920 S.W.2d at 899). Under Section 66.620, the countywide sales tax is distributed to every city in St. Louis County and the unincorporated area. New incorporations and annexations in St. Louis County would receive tax revenues in accordance with Section 66.620. If another county falls within the open-ended population classification of Section 66.600 and its voters elect to authorize the countywide tax, the cities and areas within that county would similarly receive tax revenues in accordance with Section

66.620. In other words, Section 66.620 does not "include[] less than all who are similarly situated" and could not "be made more applicable." *See* Mo. Const. Art. III, § 40(30). Nor does Section 66.620's tax revenue distribution mechanism "regulat[e] the affairs of counties, cities, townships, election or school districts." *See* Mo. Const. Art. III, § 40(21). The Group A / Group B tax revenue distribution scheme of Section 66.620 is therefore not subject to a special law challenge pursuant to Article III, Section 40(21) or (30) of the Missouri Constitution. *See also Berry v. State of Missouri*, 908 S.W.2d 682, 684 (Mo. banc 1995) ("The legislature thus has authority to designate, by general law, the distribution of a county sales tax for local government purposes.").

Nevertheless, if Section 66.620 (specifically, the 1984 amendment) were subject to a special law challenge for which substantial justification were required, the undisputed facts demonstrate that substantial justification exists. Following the Missouri Supreme Court's 1983 ruling in *City of Town & Country v. St. Louis County*, 657 S.W. 2d 598 (Mo. banc 1983), the door opened for annexations of unincorporated areas of St. Louis County without the need for St. Louis County's approval. As annexation activity picked-up post-*Town & Country*, St. Louis County leaders and mayors of many Group B cities became concerned that Group A cities were targeting strong retail areas for annexation. There were also groups targeting large areas of the unincorporated County for incorporation. In both scenarios, the effect would be to shrink the population in Group B and reduce the amount of revenue from the County Sales Tax that goes to St. Louis County and the Group B cities. The 1984 amendment to Section 66.620 was the product of the recommendation of the St. Louis County Municipal League and, later, approved by the General Assembly. The 1984 amendment halted annexations aimed solely at acquiring increased sales tax revenues (at the expense of Group B) by providing that taxes generated in an annexed Group B area would continue to be distributed within the pool (Group B) while the pre-annexation

Group A area would continue as point of sale. The 1984 amendment also addressed the incorporation of unincorporated areas within St. Louis County by requiring that all newly incorporated cities be part of Group B, with no option to move to Group A. This amendment has stood for 32 years.

Chesterfield offers no evidence disputing these facts. Chesterfield's evidence of other counties sharing some (but not all) of the traits of St. Louis County does not undermine the substantial justification articulated by Defendants and Intervenor-Defendants in defense of Section 66.620's tax revenue distribution mechanism, as set forth above. For all these reasons, the tax revenue distribution scheme found in Section 66.620 is supported by substantial justification, and is constitutional. *See, e.g., City of Sullivan v. Sites*, 329 S.W.3d 691, 694-95 (Mo. banc 2010) (substantial justification supported higher sewer connection fees for areas that did not previously have access to the sewer system because the higher fees were "an important component of the City [of Sullivan]'s overall efforts to implement its sewer improvement project"); *Union Elec. Co. v. Mexico Plastic Co.*, 973 S.W.2d 170, 171-7 (Mo. Ct. App. 1998) (substantial justification supported tax exemption available only to manufacturers who had not previously enjoyed an exemption because the purpose of the exemption "was both to encourage manufactures to locate in [the City of Mexico] and to generally benefit the community at large," which required "balance[ing] the economic enticements offered to prospective business with sound municipal revenue").

C. <u>Plaintiffs' Claims Are Barred by *Res Judicata* and Related Estoppel Principles (Counts I-IV)</u>

Moreover, Chesterfield's challenges to the constitutionality of Section 66.600 and Section 66.620 are foreclosed by *res judicata*, judicial estoppel, equitable estoppel, and laches based upon

Chesterfield's previous litigation in the *Chesterfield v. Director of Revenue*, 811 S.W.2d 375 (Mo. banc 1991) ("*Chesterfield I*") and *Berry* cases.

Res judicata bars the same parties from re-litigating the same cause of action that has been previously adjudicated by a final judgment on the merits, or from later raising a claim stemming from the same set of facts that should have been raised in the first suit. *Johnson Controls, Inc. v. Trimmer*, 466 S.W.3d 585, 591 (Mo. Ct. App. 2015). "The doctrine precludes not only those issues on which the court in the former case was required to pronounce judgment, but to every point properly belonging to the subject matter of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time." *Id.* (quotation omitted).

Res judicata applies when four "identities" occur: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of the person and parties to the action; and (4) identity of the quality of the person for or against whom the claim is made. *Johnson Controls,* 466 S.W.3d at 590 (citing *King General Contractors,* 821 S.W. 2d at 501); *State ex rel. City of Blue Springs, Missouri v. Schieber*, 343 S.W. 3d 686, 689 (Mo. Ct. App. 2011); *Chadd v. City of Lake Ozark*, 326 S.W. 3d 98, 102 (Mo. Ct. App. 2010). So long as the underlying facts are the same, *res judicata* bars re-litigation of the matter "whether upon the same or different cause of action, claim, demand, ground or theory." *Schieber*, 343 S.W. 3d at 689.

Here, all four identities are met based on *Chesterfield I*. *Chesterfield I* involved a challenge to the Law, including the Group A / Group B classification scheme of Section 66.620. Chesterfield requested that it be treated as a Group A city. That request was denied by the Administrative Hearing Commission, whose decision was ultimately affirmed by the Missouri Supreme Court. Though Chesterfield's challenges in *Chesterfield I* were based on different legal theories (constitutional Due Process and Equal Protection claims, which the Court held Chesterfield lacked

standing to bring, and a challenge based on Article VI, Section 15 of the Missouri Constitution, which the Court held Chesterfield had failed to properly preserve), Chesterfield could have raised the same challenges then, as it does now. *See Chesterfield Village, Inc. v. City of Chesterfield*, 64 S.W.3d 315, 321 (Mo. banc 2002) ("A somewhat altered legal theory, or even a new legal theory, does not support a new claim based on the same operative facts as the first claim."). Although Chesterfield contends that its economic injury has changed over the years as its retail centers have expanded, the "ultimate facts" upon which Chesterfield's challenge rests—Section 66.600's population-based classification and Chesterfield's inability to join Group A per Section 66.620—have remained the same since Chesterfield incorporated in 1988, with the latter being the basis of Chesterfield's challenge in *Chesterfield I*. *See, e.g.*, *Kesler v. Curators of the Univ. of Missouri,* 516 S.W.3d 884, 891 (Mo. Ct. App. 2017) ("To constitute 'new' ultimate facts, those facts that form the basis of a new claim for relief must be unknown to plaintiff or yet-to-occur at the time of the first action." (quotation omitted)). The parties in *Chesterfield I* (the City of Chesterfield and the Director or Revenue) were the same as in this case, and in *Chesterfield I*, the City of Chesterfield brought suit against the Director of Revenue. For all these reasons, all four identifies are met, and *res judicata* bars Chesterfield's claims.

Chesterfield's claims are also barred by judicial estoppel and collateral estoppel based upon Chesterfield's litigation in *Berry*. "Judicial estoppel applies to prevent litigants from taking a position in one judicial proceeding, thereby obtaining benefits from that position in that instance and later, in a second proceeding, taking a contrary position in order to obtain benefits from such a contrary position at that time." *Imler v. First Bank of Missouri*, 451 S.W. 3d 282 (Mo. Ct. App. 2014) (quotation omitted). Judicial estoppel generally requires consideration of three factors: "First, a party's later position must be clearly inconsistent with its earlier position. Second, courts

regularly inquire whether the party has succeeded in persuading a court to accept the party's earlier position.... A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *Id.* Similarly, equitable estoppel requires: (1) an admission, statement, or act inconsistent with a claim afterwards asserted and sued upon; (2) action by other party on faith of such admission, statement, or act; and (3) injury to such party, resulting from allowing first party to contradict or repudiate admission, statement, or act. *Jackson v. City of Blue Springs*, 904 S.W.2d 322, 336 (Mo. Ct. App. 1995) (rehearing and/or transfer denied).

Chesterfield's current challenges to the Law are inconsistent with Chesterfield's position in *Berry*. In *Berry*, Chesterfield successfully argued for a ruling that the Law is valid and constitutional based in part upon the unique nature of St. Louis County. Since the implementation of the 1993 amendment to the tax revenue distribution formula, which Chesterfield successfully fought to preserve in *Berry*, Chesterfield has received more than $16 million in additional sales tax revenue than it would have received without the 1993 amendment. Moreover, voiding the County Sales Tax Law, or parts of it, would cause a major disruption in the fiscal affairs of St. Louis County and the political subdivisions that rely on the sales tax distribution formula when promoting commercial development within their boundaries, issuing revenue bonds, and making other financial commitments and fiscal decisions. Chesterfield was incorporated in 1988 and could have raised a special law challenge upon incorporation. Chesterfield later challenged the constitutionality of the Law in *Chesterfield I* before successfully defending the Law in *Berry* over two decades ago. For all these reasons, Chesterfield's current challenges to the Law are barred by judicial estoppel and equitable estoppel.

Finally, Chesterfield's claims are also barred by laches. Chesterfield could have raised these claims in 1988 but did not, and has instead accepted millions of dollars under the statute it now challenges. This works to the disadvantage and prejudice of St. Louis County and the Group B cities that relied on the County Sales Tax Law when they promoted commercial development within their boundaries, issued revenue bonds, and made other financial commitments and fiscal decisions. *See, e.g., State ex rel. City of Monett v. Lawrence Cnty.*, 407 S.W.3d 635, 637 (Mo. Ct. App. 2013) (affirming grant of summary judgment on the basis of laches and estoppel where county challenged validity of city's TIF districts because the TIF districts were adopted four and thirteen years earlier, county representatives were participating members of the TIF commission, the county accepted significant increased tax revenues from the TIF districts, the original city TIF commission members' memories had faded thereby prejudicing the City's ability to justify its earlier actions, and the county's challenge would disrupt settled expectations).

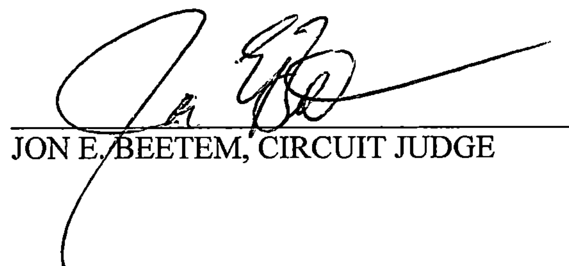
For the foregoing reasons,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs City of Chesterfield and Bob Nation's Motion for Partial Summary Judgment on Counts I and II is denied;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants State of Missouri and Director of Revenue's Motion for Summary Judgment on Counts I-IV is sustained;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Intervenor-Defendants St. Louis County, Missouri and the Cities of Ballwin, Florissant, Manchester, University City, Webster Groves, and Wildwood's Motion for Summary Judgment on Counts I-IV is sustained.

SO ORDERED this 29 day of November, 2017.



JON E. BEETEM, CIRCUIT JUDGE