

No. ED104432

IN THE
MISSOURI COURT OF APPEALS
EASTERN DISTRICT

City of Olivette, et al.
Petitioners-Respondents

v.

St. Louis County, et al.,
Defendants-Appellants.

Appeal from the Circuit Court of St. Louis County, Missouri
Case No. 15SL-CC04142

Brief of American Civil Liberties Union of Missouri Foundation as *Amicus Curiae*
in Support of Appellants

ANTHONY E. ROTHERT, #44827
JESSIE STEFFAN, #64861
ACLU of Missouri Foundation
454 Whittier Street
St. Louis, Missouri 63108
(314) 652-3114 telephone
(314) 652-3112 facsimile

GILLIAN R. WILCOX, #61278
ACLU of Missouri Foundation
406 West 34th Street, Suite 420
Kansas City, Missouri 64111
(816) 470-9933 telephone
(816) 652-3112 facsimile

Attorneys for Amicus Curiae

Table of Contents

Table of Authorities.....	2
Jurisdictional Statement.....	6
Interests of Amicus Curiae	7
Statement of Facts	8
Argument.....	9
Introduction	9
I. There is a problem with municipal policing in St. Louis County.	9
II. Article VI, § 18 of the Missouri Constitution grants St. Louis County the authority to enact prophylactic measure establishing minimum standards for policing within the County so it can provide effective police services and safeguard the rights of its residents.....	21
III. St. Louis County has the authority to set minimum standards for municipal police departments through its constitutional grant of police power.....	25
Conclusion.....	27
Certificate of Service and Compliance.....	29

Table of Authorities

Cases

Barber v. Jackson Cty. Ethics Comm’n, 935 S.W.2d 62 (Mo. App. W.D. 1996)..... 21, 26

Caesar’s Health Club v. St. Louis Cty., 565 S.W.2d 783 (Mo. App. E.D. 1978)..... 27

Chesterfield Fire Prot. Dist. v. St. Louis Cty., 645 S.W.2d 367 (Mo. 1983) 22

Doe v. Phillips, 194 S.W.3d 833 (Mo. banc 2006) 25

Flower Valley Shopping Ctr., Inc. v. St. Louis Cty., 528 S.W.2d 749 (Mo. banc 1975) .22,
 24

Hellman v. St. Louis Cty., 302 S.W.2d 911 (Mo. 1957)..... 22, 26

Home Builders Ass’n of Greater St. Louis, Inc. v. City of Wildwood, 107 S.W.3d 235
 (Mo. banc 2003) 23

Marshall v. Kansas City, 355 S.W.2d 877 (Mo. banc 1962) 26

Mo. Bankers Ass’n, Inc. v. St. Louis Cty., 448 S.W.3d 267 (Mo. banc 2014) 22, 23, 24, 27

State ex rel. Shepley v. Gamble, 280 S.W.2d 656 (Mo. banc 1955) 21

State v. Rushing, 935 S.W.2d 30 (Mo. banc 1996) 25

Statutes

Section 192.300, RSMo..... 21

Section 590.650, RSMo..... 16

Section 590.020.4, RSMo..... 24

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<http://raceandpolicing.issuelab.org/resources/25206/25206.pdf> 14

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 14

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Court*, July 31, 2015,
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Constitutional Provisions

Article VI, § 18 of the Missouri Constitution..... 21, 22, 23, 24

Jurisdictional Statement

Amicus adopts the jurisdictional statement as set forth in Appellants' brief.

Interests of Amicus Curiae

The American Civil Liberties Union (ACLU) is a nonprofit, nonpartisan membership organization founded in 1920 to protect and advance civil liberties throughout the United States. The ACLU has more than 500,000 members nationwide. The ACLU of Missouri Foundation, whose forerunner was also founded in 1920, is an affiliate of the national ACLU. The ACLU of Missouri has more than 4,500 members. In furtherance of its mission, the ACLU engages in litigation, by direct representation and as *amicus curiae*, to encourage the protection of all rights guaranteed by the federal and state constitutions.

Statement of Facts

Amicus adopts the statement of facts as set forth in Appellants' brief.

Argument

Introduction

St. Louis County contains some ninety municipalities, and—after a few consolidations in 2016—fifty-seven municipal police departments. Some of those municipalities are home to police departments with troubling records. While Ferguson is known worldwide for its sustained practice of misconduct against citizens, other municipalities in St. Louis County are equally at fault for the so-called “muni shuffle” and rank among the most abusive in the state at policing for profit and disproportionately stopping minority drivers.

The authority of municipal police departments derives from the people they police. They can maintain effectiveness only to the extent they have the trust of the people. Their ability to maintain that trust—and the ability of the St. Louis County government to maintain that trust—is damaged by the perception that municipal policing in St. Louis County has run amuck. St. Louis County is not impotent to address this local problem by ensuring that police departments within its borders satisfy minimum standards to safeguard the constitutional rights of residents. Such prophylactic legislation serves to halt the erosion of trust between St. Louis County law enforcement and the communities they police.

I. There is a problem with municipal policing in St. Louis County.

The ordinance allowing St. Louis County to set minimum standards for municipal police departments addresses peculiar needs of a local concern that are manifold and unique in St. Louis County. After Ferguson police officer Darren Wilson shot and killed

Michael Brown in August 2014, the nation became more aware of the problematic aspects of policing in St. Louis County.

For instance, the United States Department of Justice began an investigation into the practices of the Ferguson Police Department. *See Investigation of the Ferguson Police Department*, U.S. DEP'T OF JUSTICE, Civil Rights Division, March 4, 2015, https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [hereinafter *Ferguson Report*]. That investigation “revealed a pattern or practice of unlawful conduct within the Ferguson Police Department that violates the First, Fourth, and Fourteenth Amendments to the United States Constitution, and federal statutory law.” *Id.* The investigation uncovered significant problems relating to the police department’s focus on generating revenue over public safety needs, an approach to law enforcement that “reflects and reinforces racial bias, including stereotyping,” and a lack of trust between the police department and “a significant portion of Ferguson’s residents, especially African Americans.” *Id.* at 2–6. Although the Department of Justice focused on Ferguson, its conclusions implicated other municipal police departments in St. Louis County as well. *See id.* at 22–23 (describing the “wanted” system used by “FPD and other law enforcement agencies in St. Louis County” to purposefully circumvent the court system and finding evidence that the use of wanted “has resulted in numerous unconstitutional arrests in Ferguson”), 79 n.54 (“Although beyond the scope of this investigation, it appears clear that individuals’ experiences with other law enforcement agencies in St. Louis County, including with the police departments in surrounding municipalities and

the County Police, in many instances have contributed to a general distrust of law enforcement.”).

Analysis of the aftermath of Ferguson demonstrated that reforms throughout St. Louis County would have a direct benefit to administration and law enforcement. When the U.S. Department of Justice’s Office of Community Oriented Policing Services (COPS) undertook an after-action review of the regional police response to the mass demonstrations in Ferguson, one of its six key findings was that “[c]omplicating factors were presented by the response of smaller municipal law enforcement agencies in the region, each with disparate missions, policies, training, equipment, and policing cultures.” Institute for Intergovernmental Research, *After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri* at xiv, COPS OFFICE, U.S. DEP’T OF JUSTICE (2015), <http://ric-zai-inc.com/ric.php?page=detail&id=COPS-P317> [hereinafter COPS After-Action Review].

The report concludes that St. Louis County’s chief mechanism for cooperation and deployment following large-scale situations, the Code 1000 plan, had “proved to be an ineffective response mechanism.” *Id.* at xvi. Further, the researchers found, Code 1000 might not ever work because the disparities among “the many municipalities and small police departments in St. Louis County” lead to “tactical inconsistencies” and “organizational control issues.” *Id.* at 32. The “lack of consistency in policy led to unclear arrest decisions, ambiguous authority on tactical orders, and a confusing citizen complaint process.” *Id.* at 72.

The police on the ground, including officers from St. Louis County itself, recognized that the varying standards and policies of municipal departments had impeded their effectiveness: “Law enforcement personnel interviewed consistently stated that the number of police departments from small municipalities made the Ferguson response more difficult. Interviewees perceived that some officers from the small agencies did not appear to have the knowledge and skills generally developed through experience and training beyond the required minimum POST¹ standards.” *Id.* at 66.

One of the report’s “lessons learned” was that “[l]aw enforcement agencies responding to a mutual aid situation must understand that they inherit the relationships established by the requesting agency.” *Id.* at 129. This is a theme repeated over and over in every investigation of the County. *See* R. Balko, *St. Louis County, a year later*, WASH. POST, Aug. 10, 2015, https://www.washingtonpost.com/news/the-watch/wp/2015/08/10/st-louis-county-a-year-later/?utm_term=.1a97fe35b64d (noting examples of why reform in the County was “necessary” by referencing issues in St. Ann, Edmundson, and Bellefontaine Neighbors, as well as Ferguson). Data-based research commissioned after the Michael Brown shooting shows that radically fragmented policing in St. Louis County has a direct, negative impact on the quality and cost of police services day to day. *See Public Safety Study: Police Officer Certification & Requirements*, BETTER TOGETHER, Apr. 15, 2015, [---

¹ Peace Officer Standards and Training \(POST\) Commission](http://www.bettertogetherstl.com/wp-content/uploads/2015/04/BT-Police-Report-2-Licensure-and-Accreditation-Full-Report-</p></div><div data-bbox=)

FINAL1.pdf (collecting data on how policing services are provided in St. Louis County, reporting that 75% of the police departments in St. Louis County are not accredited, and concluding that “[s]ignificant disparities exist” in the training requirements of “St. Louis County’s 60 police departments”); *Overcoming the Challenges and Creating a Regional Approach to Policing in St. Louis City and County*, POLICE EXEC. RESEARCH FORUM (PERF), Apr. 30, 2015, <http://www.policeforum.org/assets/stlouis.pdf> [hereinafter 2015 PERF Report] (summarizing its research and concluding, among other things, that “police standards vary dramatically from agency to agency,” that the St. Louis County policing structure “undermines police operations” and fosters “confusion and distrust among residents,” and recommending that a set of hiring and training standards be implemented in St. Louis County); *Report of the Municipal Division Work Group to the Supreme Court of Missouri*, March 1, 2016, at 79, 81, <http://www.courts.mo.gov/file.jsp?id=98093> (noting that “St. Louis County presents unique circumstances,” that “these must be considered as problems of supervision and/or governance that should be addressed locally,” and that, though the work group focused on municipal court practices, “[m]any specific complaints have been made about police practices . . . particularly in St. Louis County”).

The problems in law enforcement in the County are directly reflected in the revenue-driven practices of the municipal courts. *See, e.g.*, 2015 PERF Report (concluding that many St. Louis County municipalities have a “grossly inappropriate mission” of “generating large portions of the operating revenue for the local government”); Missourians Organizing for Reform and Empowerment, *Transforming St.*

Louis County's Racist Municipal Courts,

<http://raceandpolicing.issuelab.org/resources/25206/25206.pdf> (compiling resources and

noting that, “[i]n the wake of the Ferguson uprising, numerous media outlets,

organizations, have pointed to the municipal courts as a prime example of entrenched

structural racism in the St. Louis region.”); U.S. DEP’T OF JUSTICE, *Ferguson Report* 49

(“Our investigation shows that other municipalities in the area have engaged in a number of practices that have the effect of discouraging people from attending court sessions.”);

S. Weich, *Municipal court judges in St. Louis County are told to open doors*, ST. LOUIS

POST-DISP., July 1, 2014, [http://www.stltoday.com/news/local/crime-and-](http://www.stltoday.com/news/local/crime-and-courts/municipal-court-judges-in-st-louis-county-are-told-to/article_e965d081-758d-500a-abb7-a054916edad2.html)

[courts/municipal-court-judges-in-st-louis-county-are-told-to/article_e965d081-758d-](http://www.stltoday.com/news/local/crime-and-courts/municipal-court-judges-in-st-louis-county-are-told-to/article_e965d081-758d-500a-abb7-a054916edad2.html)

[500a-abb7-a054916edad2.html](http://www.stltoday.com/news/local/crime-and-courts/municipal-court-judges-in-st-louis-county-are-told-to/article_e965d081-758d-500a-abb7-a054916edad2.html) (reporting that the presiding judge of the St. Louis County

Circuit Court had “sent a strongly worded letter” to County municipal courts for

unconstitutionally prohibiting members of the public, including children of municipal

defendants, from attending court, which causes defendants “to be saddled with additional

charges for missing their court dates”); B. Piper, “Edmunson officers write more traffic

tickets,” KSDK, May 7, 2014,

<https://phxux.ksdk.com/story/news/local/2014/05/07/edmundson-ticket-surge/8835243/>

(reporting that, in April 2014, the mayor of Edmunson wrote to the police force

reminding them that ticket revenues paid their salaries and, in May 2014, ticket issuances

doubled); J. Wolff *et al.*, Letter to Bill Thompson, Clerk of the Supreme Court of

Missouri, Sept. 3, 2014,

<http://www.slu.edu/Documents/law/News/Scanned%20document.pdf> (requesting

amendment to Supreme Court rule to “clarify the obligation of municipal courts to proportion fines to the resources of offenders”); *Report of the Municipal Division Work Group to the Supreme Court of Missouri*, March 1, 2016, at 15, 20, <http://www.courts.mo.gov/file.jsp?id=98093> (noting in the introduction that, “[i]n the scrutiny of Ferguson’s municipal policing and municipal court system that followed, questions arose about the operation of municipal courts generally in St. Louis County”; “the most serious concerns, operational deficiencies, and resulting loss of public confidence” in the municipal courts is “largely limited” to municipalities within St. Louis County; and “abuses and poor practices” in the County had “been well-documented and thoroughly substantiated in many cases”).

The fact is that, in St. Louis County, “poor minorities are pulled-over more frequently, they are let go without a ticket less frequently, and they are in all likelihood the only group to see the inside of a jail cell for minor ordinance violations.” *Municipal Courts White Paper*, ARCHCITY DEFENDERS 2014, <http://www.archcitydefenders.org/wp-content/uploads/2014/11/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf>. Moreover, “the poor, particularly poor minorities, suffer significantly in their forced dealings with St. Louis’ municipal court system.” *Id.* at 3; *see also* U.S. DEP’T OF JUSTICE, *Investigation of the St. Louis County Family Court*, July 31, 2015, https://www.justice.gov/sites/default/files/crt/legacy/2015/07/31/stlouis_findings_7-31-15.pdf (concluding that the disparate outcomes for Black children and white children who encounter the juvenile justice system “cannot be explained by factors other than race”); COPS After-Action Review at 116 (finding that the Ferguson protests were in part “a

manifestation of the long-standing tension between the Ferguson PD and the African-American community” and recommending that officers receive training on “procedural justice, implicit bias, cultural diversity, and related topics”).

Traffic stops provide one snapshot of how racial disparities in interactions with police affect individuals in St. Louis County. For each of the previous sixteen years, the Attorney General has issued a report with data related to racial profiling in Missouri. *See* § 590.650.² In 2016, as in previous years, “[b]oth African-Americans and Hispanics continue to have search and arrest rates significantly higher than white drivers even though white drivers are more frequently found to have contraband.” *2015 Vehicle Stops Executive Summary*, MO. ATT’Y GENERAL, <https://ago.mo.gov/home/vehicle-stops-report/2015-executive-summary>. St. Louis County stands out as part of the state where the disparities are especially stark. *See id.* at App’x A (listing local traffic stops and showing disproportionate stop rates for African Americans inconsistent with state demographics in both majority-Black municipalities, such as Bel-Ridge, Flordell Hills, Hillside, Moline Acres, Northwoods, Pagedale, Pine Lawn, Riverview, Velda City, Vinita Park, Wellston, and Woodson Terrace, and majority-white municipalities, such as Bel-Nor, Breckenridge Hills, Bridgeton, Clayton, Florissant, Hazelwood, Ladue, Maplewood, Maryland Heights, Olivette, Overland, Shrewsbury, St. Ann, St. John, Town and Country, University City, and Webster Groves).

² All statutory citations are to the Missouri Revised Statutes (2000), as updated, unless otherwise noted.

Exacerbating the policing problems in St. Louis County, the police forces in the County are uniquely Balkanized. Jackson County, for instance, “is geographically larger than St. Louis County and has about two-thirds the population.” R. Balko, *How municipalities in St. Louis County, Mo., profit from poverty*, WASH. POST, Sept. 3, 2014, https://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty/?utm_term=.c4da3b11faa1. “Yet Jackson County has just 19 municipalities, and just 15 municipal courts—less than a quarter of municipalities and courts in St. Louis County.” *Id.*; see also 2015 PERF Report, at 2, 41, 43–46 (noting that about one-third of St. Louis County municipalities with police departments “occupy less than one square mile”; different jurisdictions have different ordinances, enforcement strategies, fine and fee structures, and policies on use of force, de-escalation, and interactions with persons with mental health problems; jurisdictions inefficiently bear costs individually for equipment, vehicles, and training; and the departments have “dramatic variations in the quality and professionalism of police services”); B. Norton *et al.*, CMTY. ORIENTED POLICING SERVS. (COPS), U.S. DEP’T OF JUSTICE, *Collaborative Reform Initiative: An Assessment of the St. Louis County Police Department* 20 (2015), <http://ric-zai-inc.com/Publications/cops-p316-pub.pdf> (“The close proximity and fragmented nature of policing in the St. Louis region coupled with heavy enforcement by some municipalities in the region has created an environment of distrust and difficulty for the SLCPD [St. Louis County Police Department] and the community it serves.”); COPS After-Action Review at 136 (“Even though many of the municipal police departments are

small, virtually all of the communities are contiguous; in many ways, there is a similar effect of policing a major city yet being part of a much-smaller governmental structure.”).

The radical fragmentation of St. Louis County has enabled a practice now popularly known as the “muni shuffle.” The Police Executive Research Forum described the practice this way:

“Muni shuffle” describes a two-step process in which 1) a police department separates a problem officer before completing a formal disciplinary proceeding that might cost the officer his or her state-issued police certificate; and then 2) another department, eager to find an already trained and certified officer at a low cost, hires the officer without fully investigating his or her background.

2015 PERF Report at 46. This practice has been universally condemned but—likely because of the obvious financial incentives—remains a “common occurrence.” *Id.*; see also T. Howard & H. Radcliffe, *Bad cops bounce from city to city*, ST. LOUIS POST-DISP., Dec. 1, 2003, http://www.stltoday.com/news/local/crime-and-courts/part-ii-bad-cops-bounce-from-city-to-city/article_e9dd169a-2cba-5d17-8c29-395bf5716b64.html (collecting a dozen case studies and reporting that “[o]fficials are broadly aware of the muni shuffle”); R. Goldman, *Importance of State Law in Police Reform*, 60 ST. LOUIS U. LAW J. 2016, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2817551 (“Although it is generally assumed that police departments will not knowingly hire officers who have been fired or resigned under fire from other departments, there are many reasons why such officers are, in fact, hired.”).

The minimum standards for municipal police departments in St. Louis County are not burdensome. Moreover, they directly address the deficits in certain municipal police departments that have a detrimental effect of the rights of residents, as well as on the effectiveness of policing, across St. Louis County. The standards include: police departments may utilize only peace officers with POST training and a POST-conferred Class-A license (which is what St. Louis County officers already must possess by law) and must submit lists of all such officers working in the departments; all officers must comply with POST continuing education requirements and such compliance and training records must be reported and submitted; background investigations must be conducted on all newly hired officers; the Missouri Department of Public Safety Director must be notified when an officer is hired or leaves a department; police departments must operate 24 hours a day with the ability of at least one officer to respond to emergency calls for service; departments must have policies for use of force, pursuits, accidents involving an officers, firearm discharges, lawsuits and complaints, and the records of these events must be kept for three years and available for review; departments must take citizen complaints and must receive anonymous complaints; departments must have policies prohibiting discriminatory contacts and/or detentions; all actions of police must comply with the Fourth Amendment; traffic stop information must be reported; crime data must be reported; departments must have the ability to accept and bond-out prisoners twenty-four hours a day, seven days a week (i.e., warrants cannot be kept active because of a department's inability to process a prisoner); any contractual agreement between departments must include language as to who assumes responsibility for workers

compensation and tort liability; and departments may be subject to audit and review upon reasonable cause. St. Louis County, Mo., *Minimum Standards for Police Departments in St. Louis County* (Dec. 1, 2015),

<http://www.stlouisco.com/Portals/8/Department%20Standards%20.pdf>. These standards are so basic that municipalities who cannot satisfy them have no business operating police departments. *See* Goldman, *Police Reform*, at 385 n.132 (calling the standards “*minimal*”). Continuing to have municipal police departments incapable or unwilling to meet such minimal standards perpetuates the inequities experienced in St. Louis County and contributes to the deterioration of police-community relations county-wide.

Under these circumstances, it is reasonable for the St. Louis County government to enact prophylactic measures to ensure that it can serve its population effectively and that its residents are not subjected to abusive police practices. Minimum standards for the municipal police departments in St. Louis County will help address the problems faced by residents who suffer because of unfair police practices and who are then forced to face unfair practices in municipal court systems. By passing the ordinance at issue, St. Louis County is addressing an area of local concern, one that it is best suited to regulate given the peculiar needs of the County and its municipalities, and the ordinance at issue does not conflict with the general public policy of the state.

II. Article VI, § 18 of the Missouri Constitution grants St. Louis County the authority to enact prophylactic measure establishing minimum standards for policing within the County so it can provide effective police services and safeguard the rights of its residents.

St. Louis County argues that it has the authority to pass the minimum standards ordinance pursuant to § 192.300 in that the ordinance protects public health. While the County is correct, its public health power is not the sole basis for its authority to enact legislation to safeguard the rights of its residents. The County also has power pursuant to article VI, section 18 of the Missouri Constitution to address municipal policing problems within its borders. These standards are necessary for the County to exercise its constitutionally granted legislative power because its ability to govern effectively—including its ability to enforce its own laws—depends directly on its residents’ trust.

Article VI, section 18 sets out the constitutional conveyance of powers to charter counties. *Barber v. Jackson Cty. Ethics Comm’n*, 935 S.W.2d 62, 66 (Mo. App. W.D. 1996). Section 18(a) gives a county the power to “frame and adopt and amend a charter for its own government.” *State ex rel. Shepley v. Gamble*, 280 S.W.2d 656, 659 (Mo. banc 1955). Pursuant to this section, St. Louis County exercised its authority to adopt a county charter in 1950. *Id.*

While Section 18(a) conveys to the county the power to adopt a charter, Section 18(b) announces what that charter might constitutionally include. As a charter county and subdivision of the state, St. Louis County is “charged with the performance of the state functions just as other counties are.” *Id.* The declaration of power found in §18(b)

“carries with it an implied grant of such powers as are reasonably necessary to the exercise of the powers and are not contrary to the public policy of the state.” *Hellman v. St. Louis Cty.*, 302 S.W.2d 911, 916 (Mo. 1957). The powers granted to counties through § 18(b) is limited only “in that ‘a charter or ordinance enacted under [section] 18(b), may not invade the province of general legislation involving the public policy of the state as a whole.’” *Mo. Bankers Ass’n, Inc. v. St. Louis Cty.*, 448 S.W.3d 267, 271 (Mo. banc 2014) (quoting *Flower Valley Shopping Ctr., Inc. v. St. Louis Cty.*, 528 S.W.2d 749, 754 (Mo. banc 1975)).

Finally, Section 18(c) “authorizes a charter county to ‘provide for the vesting and exercise of legislative power pertaining to all services and function³ of any municipality or political subdivision, except school districts, through the *entire county* within as well

³ “By definition, ‘function’ includes all activity appropriate to the nature of a thing.” *Chesterfield Fire Prot. Dist. of St. Louis Cty. v. St. Louis Cty.*, 645 S.W.2d 367, 371 (Mo. 1983). “‘Service’ is a narrow term referring to a specific act or goal.” *Id.* “Therefore, functions are those activities appropriate to the nature of a thing which combine to produce an act or goal.” *Id.* “In the context of [a charter] amendment, a ‘function’ is all of the activity appropriate to the nature of political subdivisions or municipalities which combine to produce services, those specific acts performed by political subdivisions or municipalities for the benefit of the general public.” *Id.*

as outside incorporated municipalities” *Id.* at 272 (quoting Mo. Const., art. VI, § 18(c) (emphasis added)). Importantly, a “charter county is not required to exercise the powers and duties granted to it in precisely the same manner as prescribed by the general law of the state.” *Id.*

Mirroring the constitutional grant of powers set forth in section 18 of the Missouri Constitution, the St. Louis County Charter provides that, among other specified powers, “the council shall have, by ordinance, the power to: Exercise all powers and duties now or hereafter conferred upon counties, county courts, county government bodies and county officers by the constitution, by law and by this charter and determine and make provision for any matter of county government not otherwise provided herein.” St. Louis County Charter, Art. II, Part 2.180.14. In other words, the Missouri Constitution grants a charter county the ability to exercise certain powers, and through its charter, St. Louis County has decided to exercise all the powers the constitution has made available to it.

Under this authority, any ordinance passed by the County is “presumed to be valid and lawful.” *Mo. Bankers Ass’n*, 448 S.W.3d at 271. “An ordinance must be construed to uphold its validity unless it is ‘expressly inconsistent or in irreconcilable conflict’ with a statute or provision of the Missouri Constitution.” *Id.* (quoting *Home Builders Ass’n of Greater St. Louis, Inc. v. City of Wildwood*, 107 S.W.3d 235, 238 (Mo. banc 2003)).

The ordinance at issue addresses problems unique to St. Louis County, where wildly divergent municipal practices have serious consequences for residents, who bear the harms of the “muni shuffle” and must learn to navigate a jurisdictional maze where, depending on the municipality they serve, police officers will have different types of

training, different enforcement priorities, and—most importantly—different expectations of an interaction with a resident.

Just as importantly, the unique fragmentation of the county also has serious consequences for St. Louis County government, including law enforcement officers and court personnel, who must not only figure out how to work together with municipal police departments for major investigations, emergency management, and mutual aid, but who also must contend with the “general distrust of law enforcement” that municipal police practices has fostered. U.S. DEP’T OF JUSTICE, Ferguson Report, at 79 n.54; *see also* U.S. DEP’T OF JUSTICE, COPS SLCPD Analysis, at 20 (“The community’s lack of trust attributed to abusive and at times unconstitutional enforcement practices of a municipal police department is then transferred to the SLCPD.”). Because the varying standards of St. Louis County municipal police is reasonably necessary to its exercise of legislative power and directly harms its ability to govern, the County’s establishment of minimum police standards is valid under the County’s authority to enact ordinances pursuant to section 18 of the Missouri Constitution.

The ordinance does not “invade the province of general legislation involving the public policy of the state as a whole.” *Mo. Bankers Ass’n*, 448 S.W.3d at 271 (quoting *Flower Valley Shopping Ctr.*, 528 S.W.2d at 754). While there are a few state laws related to municipal policing and a statewide policy related to the POST Commission, nothing in these laws prohibits the County from imposing minimum standards for the police forces within its boundaries. In fact, § 590.020.4 specifically provides: “Any political subdivision or law enforcement agency may require its peace officers to meet

standards more stringent than those required for licensure pursuant to this chapter.”⁴

Although St. Louis County’s power to enact this ordinance derives from its constitutional authority and not this statute, the statute nonetheless makes clear that the General Assembly anticipated that local problems could necessitate law enforcement training or practices beyond POST certification.

III. St. Louis County has the authority to set minimum standards for municipal police departments through its constitutional grant of police power.

Just as the federal constitution provides the floor, not the ceiling, for the rights guaranteed to citizens against state governments, state law provides the floor for the rights guaranteed to citizens within a state, and a county may provide *greater* protection to safeguard the rights of its residents from government intrusion. More localized governments are bound to provide the protection of individual rights proscribed by superior governments, but they may always provide a greater protection to rights of citizens. *See State v. Rushing*, 935 S.W.2d 30, 34 (Mo. banc 1996) (“Provisions of our state constitution may be construed to provide more expansive protections than comparable federal constitutional provisions.”); *see also Doe v. Phillips*, 194 S.W.3d 833, 841 (Mo. banc 2006). Thus, the federal constitution sets the minimum protection for any right, and a state constitution can set forth greater protection for that right. Likewise,

⁴ Chapter 590 of the Revised Missouri Statutes sets forth the state minimum standards for police officer selection, training, and discipline.

political subdivisions can provide an additional layer of protection to citizens' rights. And that is precisely what St. Louis County has done here.⁵

“Little purpose would be served in authorizing the adoption of charters of local self-government in the more populous counties if such counties could not adopt reasonable means and methods of carrying out their governmental functions in such a manner as to meet the peculiar needs of such counties.” *Hellman*, 302 S.W.2d at 916. It cannot be disputed that the problems surrounding municipal police departments within the County are “manifold and unique.” *Id.*

In addition to the legislative power conveyed by Article IV, section 18, the Missouri Constitution grants police power to counties. *Barber*, 935 S.W.2d at 66 (“One of the powers granted to charter counties by the constitution is the police power.”). A county’s police power is its sovereign right “to promote order, safety, health, morals, and the general welfare of society, within constitutional limits.” *Id.* (quoting *Marshall v. Kansas City*, 355 S.W.2d 877, 883 (Mo. banc 1962)). “The test for determining the

⁵ It follows that municipalities can themselves establish even greater safeguards for the protection of their residents. Many municipalities in St. Louis County have done so by policy or entering into consent decrees that affect policing or municipal court practices. Unfortunately, however, in St. Louis County it is the police departments with a *better* record of respecting the rights of the public that commit to stricter standards, and the troublesome departments that are recalcitrant to the County’s more modest standards.

validity of a county's exercise of police power is whether it is reasonable," with the burden of proving unreasonableness on the challenging party. *Id.*; see also *Caesar's Health Club v. St. Louis Cty.*, 565 S.W.2d 783, 786 (Mo. App. E.D. 1978).

As noted throughout, St. Louis County faces unique and troublesome issues with its municipal police departments. There is a clear history of racism, constitutional violations, and revenue-generating practices that take priority over public safety. Setting minimum standards related to licensing, training, hiring, accountability, and transparency is not only reasonable but necessary in light of the serious problems these departments face daily and the way those problems affect St. Louis County law enforcement and court personnel.

In some cases, "the police powers delegated to a charter county are constitutional grants of authority that are not subject to, but take precedence over, the legislative power." *Mo. Bankers Ass'n*, 448 S.W.3d at 272. In such cases, "the question becomes whether the area the County intends to regulate pursuant to its police power is a matter of purely local concern." *Id.* In other words, a charter county has plenary authority over matters of purely local concern. When a county regulates an area of purely local concern pursuant to its police power, those procedures can supersede state statutes. *See id.* So even if there were a contrary state statute—which there is not—St. Louis County's control over this issue of local concern could take precedence.

Conclusion

This Court should find that St. Louis County has the authority to safeguard the rights of its residents and ensure its ability to govern effectively by establishing minimum

police standards stricter than those set forth by state law for the municipalities within the County. Because the County has not acted beyond its powers in responding to localized policing problems, the ordinance at issue is not void and the judgment of the circuit court should be reversed.

Respectfully submitted,

/s/ Anthony E. Rothert
Anthony E. Rothert, #44827
Jessie Steffan, #64861
ACLU of Missouri Foundation
454 Whittier Street
St. Louis, Missouri 63108
(314) 652-3114
arothert@aclu-mo.org
jsteffan@aclu-mo.org

Gillian R. Wilcox, #61278
ACLU of Missouri Foundation
406 West 34th Street, Suite 420
Kansas City, Missouri 64111
(816) 470-9933
gwilcox@aclu-mo.org

Attorneys for Amicus Curiae

Certificate of Service and Compliance

The undersigned hereby certifies that on August 25, 2016, the foregoing amicus brief was filed electronically and served automatically on counsel for all parties.

The undersigned further certifies that pursuant to Rule 84.06(c), this brief: (1) contains the information required by Rule 55.03; (2) complies with the limitations in Rule 84.06 and Local Rule XLI; (3) contains 4,868 words, as determined using the word-count feature of Microsoft Office Word. Finally, the undersigned certifies that electronically filed brief was scanned and found to be virus-free.

/s/ Anthony E. Rothert