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Sunnier Days Ahead? Missouri's Outlook After Missouri Supreme Court Finds Solar Panel Property Tax Unconstitutional

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NOTE

Sunnier Days Ahead? Missouri's Outlook After Missouri Supreme Court Finds Solar Panel Property Tax Unconstitutional

Johnson v. Springfield Solar 1, LLC, 648 S.W.3d 101 (Mo. 2022).

*Maura Corrigan**

I. INTRODUCTION

Many are aware of the inherent power that a constitution holds. Whether it be the timeless federal document signed in 1787, or a state constitution adopted decades later, a “constitution” in the United States comes with an authoritative voice that instructs the very principles and values the government has long established. Constitutions, by nature, stand the test of time; they create guidelines, structure, and, above all, a sense of justice that lies in the backdrop of every legal argument presented and every court decision rendered.

As the governing document in Missouri, the Missouri Constitution has the power to establish rights and ensure freedoms. It is intended to promote the general welfare of Missourians, instructing that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry.¹ Like the United States Constitution, the Missouri Constitution creates a separation of powers: the Missouri General Assembly makes the laws, and the Supreme Court of Missouri examines the laws' constitutional soundness.²

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¹ MO. CONST. art. I, § 2.

² *Supreme Court of Missouri*, MISSOURI COURTS, <https://www.courts.mo.gov/page.jsp?id=27> (last visited Mar. 19, 2023).

Under the Missouri Constitution, Missourians are entitled to personal property tax exemptions.³ Personal property taxes have a large economic impact on Missouri counties, which rely on these taxes for important infrastructural needs.⁴ Section 137.100(10) of the Missouri Revised Statutes granted an exemption for “solar panels not held for resale.”⁵ In an exercise of its power of judicial review, the Missouri Supreme Court recently analyzed the constitutionality of section 137.100(10).⁶ In *Johnson v. Springfield Solar*, the court held that solar systems not held for resale should not be exempt from personal property taxes and struck down section 137.100(10).⁷

This Note explores the constitutional, legislative, and economic impact of *Springfield Solar* on the world of solar development and beyond. Part II summarizes the facts and procedural background of Springfield Solar’s claim that the Missouri General Assembly had the authority to enact a tax exemption for solar equipment not held for resale. Part III explains the Missouri Constitution’s organization of personal property tax exemptions and how personal property taxes impact the economic health of Missouri counties. Part IV details the Missouri Supreme Court’s unanimous ruling, which held that section 137.100(10) is unconstitutional. And finally, Part V discusses the resounding impact of the court’s decision on the interpretation of future personal property tax exemptions, the economic structure of Missouri counties, and solar developers and rural communities at large.

II. FACTS AND HOLDING

Springfield Solar owns a solar energy system (the “Equipment”)⁸ located on property owned by City Utilities of Springfield (“City Utilities”).⁹ Springfield Solar and City Utilities entered into an agreement,

³ MO. CONST. art. X, § 6.

⁴ Jason Rosenbaum, *Curious Louis: Why do Missourians Have to Pay Personal Property Taxes?*, ST. LOUIS PUBLIC RADIO (Dec. 27, 2016, 10:06 AM), <https://news.stlpublicradio.org/government-politics-issues/2016-12-27/curious-louis-why-do-missourians-have-to-pay-personal-property-taxes> [https://perma.cc/S5JU-D94F].

⁵ MO. REV. STAT. § 137.100(10) (2022).

⁶ *Johnson v. Springfield Solar I, LLC*, 648 S.W.3d 101, 102 (Mo. 2022).

⁷ *Id.* at 105.

⁸ The Equipment is comprised of photovoltaic solar panels, mounting poles, inverters, and a concrete slab for the inverters. Respondent’s Brief at *3, *Johnson v. Springfield Solar I, LLC*, 648 S.W.3d 101 (Mo. 2022) (No. SC99441).

⁹ See *Springfield Solar I*, 648 S.W.3d at 102. A solar farm is a facility that produces electricity from harvesting the sun’s rays and delivering the electricity in a useable form to a point of use. *Solar Farms: What Are They & How Do They Work?*, CHARIOT ENERGY, <https://chariotenergy.com/chariot-university/solar-farms/>

giving City Utilities the option to purchase the Equipment at the end of (1) the seventh contract year, (2) any subsequent contract year, or (3) the term of the agreement.¹⁰ The agreement also required that City Utilities purchase all energy the Equipment generated during the term of the contract.¹¹

In 2017, the Greene County Assessor began assessing the Equipment for personal property taxes.¹² The Assessor denied Springfield Solar's requested exemption under section 137.100(10), because he believed that the Equipment fell outside the scope of section 137.100(10) and, even if the statute did cover the Equipment, the statute's language itself did not clearly and unambiguously apply to a valuation Springfield Solar's Equipment.¹³ Springfield Solar appealed the Equipment's assessment to the Missouri State Tax Commission (the "Commission"), challenging the Equipment's classification and valuation.¹⁴

Both the Assessor and Springfield Solar filed cross-motions for summary judgment on the issue of whether the Equipment was tax-exempt under the statute.¹⁵ Springfield Solar argued that the Equipment was exempt from taxation as a "solar energy system not held for resale," pursuant to section 137.100(10), whereas the Assessor contended the section 137.100(10) was unconstitutional and void pursuant to article X, section 6 of the Missouri Constitution.¹⁶ The senior hearing officer granted Springfield Solar's motion for summary judgment and denied the Assessor's motion for summary judgment.¹⁷ While the senior hearing officer ruled that the Equipment was exempt from taxation pursuant to section 137.100(10), she also noted that she lacked the authority to decide the constitutional question, as the scope of that question lies entirely within the purview of the Missouri courts.¹⁸

The Assessor appealed the senior hearing officer's Decision and Order to the Commission.¹⁹ The Commission affirmed the senior hearing

[<https://perma.cc/6597-SXQM>] (last visited Mar. 21, 2023). A solar facility can also be utilized as a utility solar farm. *Id.* A utility solar farm is a solar facility that produces electricity sell to utility customers through a power purchase agreement or public utility rates for revenue. *Id.* In order for a solar farm to operate, it needs to be situated on land that has a great exposure to sunlight. *Id.*

¹⁰ *Springfield Solar I*, 648 S.W.3d at 102.

¹¹ *Id.*

¹² *Id.*

¹³ Brief of Appellants at *17–18, *Johnson v. Springfield Solar 1, LLC*, 648 S.W.3d 101 (Mo. 2022) (No. SC99441).

¹⁴ *Springfield Solar I*, 648 S.W.3d at 102.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 103.

officer's decision.²⁰ The Assessor filed his petition for judicial review of the Commission's decision with the Greene County Circuit Court.²¹ Both Springfield Solar and the Assessor filed motions for summary judgment.²² Finding no genuine issue of material fact, the trial court determined that summary judgment was appropriate and granted Springfield Solar's motion.²³ The court denied the Assessor's motion for summary judgment and held that section 137.100(10) was not unconstitutional and, even if it was, the Assessor lacked the authority to ignore the exemption unless and until a court declared the statute unconstitutional.²⁴

The Assessor appealed the trial court's judgment directly to the Missouri Supreme Court, as the Missouri Supreme Court has exclusive jurisdiction over the issue, being a matter of Missouri statute and constitutional provision.²⁵ The issue before the court was whether section 137.100(10) was constitutionally valid.²⁶ The court ultimately held that the tax exemption was unconstitutional because the Missouri Constitution does not grant the General Assembly the power to exempt from taxation "solar energy systems not held for resale."²⁷ As a result, the court vacated the circuit court's judgment and declined to address the Assessor's other claims.²⁸

III. LEGAL BACKGROUND

Personal property tax is a levy based on the value of taxable personal property.²⁹ Personal property consists of all property that is not real property, or not real estate.³⁰ On the first day of January, every individual who holds taxable personal property in Missouri becomes liable for property taxes during the same calendar year.³¹ On January 1, a tax assessor determines the market value of the personal property and then calculates a percentage of that value to arrive at the assessed value.³² The percentage is based on the classification of the property, which is

²⁰ *Id.* at 102.

²¹ *Id.* at 102–03.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 105.

²⁸ *Id.* at 105 n.7.

²⁹ *Frequently Asked Questions*, STATE OF MISSOURI TAX COMMISSION, <https://stc.mo.gov/frequently-asked-questions/> [https://perma.cc/7VGP-KYHX] (last visited Mar. 20, 2023).

³⁰ *See id.*

³¹ MO. REV. STAT. § 137.075 (2022).

³² *See id.*; STATE OF MISSOURI TAX COMMISSION, *supra* note 29.

determined by the type of property or how it is used.³³ Classifications of personal property include manufactured homes, farm machinery, historic cars or planes, crops, vehicles, and more.³⁴ Business personal property receives the same tax treatment as individual personal property.³⁵ After the assessed value is calculated, the tax rate is applied to determine the total amount of personal property tax liability.³⁶

Missouri counties utilize most of the tax revenue collected from personal property taxes to fund various avenues of public service throughout the state.³⁷ The tax revenue goes toward the maintenance and improvement of schools, fire districts, dispatch, libraries, and critical infrastructure.³⁸ Personal property tax rates vary from county to county in Missouri.³⁹ For policy reasons, such as easing the burden on certain nonprofit, religious, and government properties, the Missouri Constitution and the Missouri General Assembly created property tax exemptions to assist individuals or organizations with lowering or eliminating property taxes.⁴⁰ It is through these personal property tax exemptions that individuals and organizations can install, build, and maintain personal property in a more economically feasible way.⁴¹

³³ *Id.*

³⁴ STATE TAX COMMISSION OF MISSOURI MANUAL 5 (2016), https://www.lincolnst.edu/sites/default/files/gwipp/upload/sources/Missouri/2016/MO_Assessor%20Manual_State%20Tax%20Commission_November%202016.pdf [https://perma.cc/75CY-G2FX].

³⁵ *What Every Business Needs to Know About Personal Property*, REAL PROPERTY TAX ADVISORS, <https://www.realpropertytaxadvisors.com/blog/what-every-business-needs-to-know-about-personal-property> [https://perma.cc/9ZAN-6XP8] (last visited Mar. 20, 2023).

³⁶ STATE OF MISSOURI TAX COMMISSION, *supra* note 29.

³⁷ *Missouri Property Tax*, H&R BLOCK, <https://www.hrblock.com/tax-center/filing/states/missouri-property-tax/> [https://perma.cc/WKL9-XYB6] (last visited Mar. 20, 2023).

³⁸ Jason Rosenbaum, *Curious Louis: Why do Missourians Have to Pay Personal Property Taxes?*, ST. LOUIS PUBLIC RADIO (Dec. 27, 2016, 10:26 AM) <https://news.stlpublicradio.org/government-politics-issues/2016-12-27/curious-louis-why-do-missourians-have-to-pay-personal-property-taxes> [https://perma.cc/H8JL-3GBL].

³⁹ STATE OF MISSOURI TAX COMMISSION, *supra* note 29.

⁴⁰ Victoria Araj, *Property Tax Exemptions: Seniors, Veterans And Others Who Qualify*, ROCKET MORTGAGE (Mar. 20, 2023) <https://www.rocketmortgage.com/learn/property-tax-exemptions> [https://perma.cc/9WU6-88MV].

⁴¹ *25 States Offer Sales Tax Exemptions For Solar Energy*, SOLAR ENERGY INDUSTRIES ASS'N, <https://www.seia.org/initiatives/solar-tax-exemptions> [https://perma.cc/2H35-RPTP] (last visited Mar. 20, 2023).

A. Personal Property Taxes in the Missouri Constitution

The Missouri Constitution sets forth the universe of personal property that the Missouri General Assembly may exempt from taxation.⁴² It expresses the people's intent that only certain personal property may receive an exemption.⁴³ Section 137.100, which tracks with article X, section 6 of the Missouri Constitution, controls such personal property tax exemptions within the state.⁴⁴

Article X, section 6 of the Missouri Constitution specifically exempts the following property from taxation:

All property, real and personal, of the state, counties and other political subdivisions, and nonprofit cemeteries, and all real property used as a homestead as defined by law of any citizen of this state. . . shall be exempt from taxation; all personal property held as industrial inventories, including raw materials, work in progress and finished work on hand, by manufacturers and refiners, and all personal property held as goods, wares, merchandise, stock in trade or inventory for resale by distributors, wholesalers, or retail merchants or establishments shall be exempt from taxation. . . .⁴⁵

In addition to this exempted property, article X, section 6 permits the Missouri General Assembly to exempt certain other property.⁴⁶ Specifically, it includes a catchall for the Missouri legislature by providing that “. . . [personal property] may be exempted from taxation by general law.”⁴⁷ Through the legislature's use of this provision, the list of personal property exempted from taxation expanded in 1972, 1982, and 2010.⁴⁸

Article X includes additional provisions that, after interpretation, allow the legislature to establish tax exemptions beyond those listed in section 6.⁴⁹ For example, section 4(c) allows the Missouri General Assembly to substitute “another form of tax, probably an excise tax,” for the property tax on bank shares and “constitutes an exemption from personal property taxation in addition to those enumerated in [section] 6.”⁵⁰ Furthermore, section 7 permits the Missouri General

⁴² MO. CONST. art. X; *St. Charles Cnty. v. Curators of Univ. of Mo.*, 25 S.W.3d 159, 162 (Mo. 2000) (en banc).

⁴³ *Arsenal Credit Union v. Giles*, 715 S.W.2d 918, 919–20 (Mo. 1986) (en banc).

⁴⁴ See MO. REV. STAT. § 137.100.

⁴⁵ MO. CONST. art. X, § 6.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Arsenal Credit Union*, 715 S.W.2d at 921–22.

⁴⁹ MO. CONST. art. X, § 6.

⁵⁰ *Mercantile Bank Nat'l Ass'n v. Berra*, 796 S.W.2d 22, 26 (Mo. 1990) (en banc).

Assembly to provide “partial relief from taxation” for lands devoted to the purpose of “encouraging forestry . . . and the reconstruction, redevelopment, and rehabilitation of obsolete, decadent, or blighted areas[.]”⁵¹ Sections 4(a) and 4(b) also contain language that seems to give the legislature the ability to grant a tax exemption.⁵²

When faced with a question of whether personal property may qualify for an exemption, courts have held that taxation is the rule and exemptions are the exception.⁵³ In other words, the law places a substantial burden on those claiming exemptions to establish that their property falls squarely within an exempted class.⁵⁴ However, even where a taxpayer demonstrates that his personal property is clearly covered by a statutory exemption, there is still a risk that the statute may be found to violate the Missouri Constitution’s limitations on personal property tax exemptions.⁵⁵

B. Violating the Missouri Constitution

A statute that “clearly and undoubtedly violates the constitution” is deemed to be unconstitutional by nature.⁵⁶ In Missouri, if a statute conflicts with a provision of the Missouri Constitution, the courts must invalidate the statute and render it void. The party challenging the statute’s constitutional validity bears the burden of proving the violation by demonstrating that the constitution did not allow for the specific exercise of that power.⁵⁷ A common violation occurs when the Missouri General Assembly passes a statute that is contradictory to, or not upheld by, the scope of power outlined in the Missouri Constitution.

In *Arsenal Credit Union v. Giles*, the Missouri Supreme Court examined whether section 148.620.3 violated article X, sections 4(a) and 6 of the Missouri Constitution.⁵⁸ Section 148.620.3 imposed a net income-based corporate franchise tax on credit unions and savings and loan associations.⁵⁹ Ten credit unions brought suit against the tax assessor and

⁵¹ MO. CONST. art. X, § 7; *Land Clearance for Redev. Auth. of City of St. Louis v. City of St. Louis*, 270 S.W.2d 58, 64–65 (Mo. 1954) (en banc).

⁵² See MO. CONST. art. X, § 4. Section 4(a) relates to the classification of taxable property—taxes on franchises, incomes, excises, and licenses, while section 4(b) includes basis of assessment of tangible property tax—real property—taxation of intangibles—limitations. *Id.*

⁵³ *Mo. Church of Scientology v. State Tax Comm’n*, 560 S.W.2d 837, 844 (Mo. 1977) (en banc).

⁵⁴ *Id.*

⁵⁵ See generally MO. CONST. art. X, § 3.

⁵⁶ *Williams v. Mercy Clinic Springfield Cmty.*, 568 S.W.3d 396, 406 (Mo. 2019) (en banc).

⁵⁷ *Id.*

⁵⁸ *Arsenal Credit Union*, 715 S.W.2d at 919.

⁵⁹ *Id.* at 918–19.

collector of revenue for the City of St. Louis to contest personal property taxes the city collected.⁶⁰ Specifically, the taxpayers argued that section 148.620.3 created a tax exemption for the intangible property of credit unions.⁶¹ For support, the credit unions pointed to article X, section 6, which expressly exempts from taxation the property of some entities and permits exemption by the legislature for a limited number of other entities.⁶² The court determined that section 148.620.3 effectively created an arrangement in which personal property could be exempt but, because article X, section 6, did not authorize such an exemption for intangible personal property, held that the exemption was unconstitutional.⁶³ The Missouri Supreme Court held that section 148.620.3 was void, because the statute “clearly and undoubtedly violate[d] the constitution” by going outside the framework of article X, section 6.⁶⁴

C. Dealmaking With Solar Developers

While the origin of personal property tax exemptions is rooted in the Missouri Constitution, the tax exemptions themselves have a resounding impact on the counties, municipalities, and communities that bear the benefits and burdens of such exemptions. One such area of impact is the rural and agricultural lands of Missouri. Therefore, although the Missouri Constitution and the Missouri General Assembly hold the power to create tax exemptions, individuals and companies involved with the affected industries feel the economic ramifications.

Personal property tax exemptions can leave Missouri counties little incentive to contract with businesses that enjoy such exemptions.⁶⁵ Prior to 2013, Missouri had no statewide policy addressing the assessment and taxation of solar panel systems.⁶⁶ After the Missouri General Assembly adopted section 137.100(10), however, “solar energy systems not held for resale [were] exempt from taxation for state, county or local purposes.”⁶⁷ Because solar project developers were not required to pay property taxes as a result of this statute, Missouri counties had no incentive to contract

⁶⁰ *Id.* at 919.

⁶¹ *Id.* at 919–20.

⁶² *Id.* at 924.

⁶³ *Id.*

⁶⁴ *Id.* at 923–25.

⁶⁵ Telephone Interview with James Owen, Executive Director, Renew Mo. (Oct. 7, 2022).

⁶⁶ Justin Barnes et al., *Property Taxes and Solar PV Systems: Policies, Practices, and Issues*, NORTH CAROLINA SOLAR CENTER 1, 76 (Jul. 2013) <https://ncsolarcenter-prod.s3.amazonaws.com/wp-content/uploads/2015/06/Property-Taxes-and-Solar-PV-Systems-Policies-Practices-and-Issues.pdf> [<https://perma.cc/EUR3-TKKC>].

⁶⁷ MO. REV. STAT. § 137.100(10).

with them.⁶⁸ This is because Missouri counties would not receive any property tax revenue from the equipment, and the solar developers could use Missouri land without much cost. To entice Missouri counties to allow development on their land, solar developers started bargaining for a negotiated payment in lieu of taxes.⁶⁹ These deals—typically resulting from negotiations between Missouri government officials and individual solar developers—consisted of tax-exempt solar developers making voluntary payments as a substitute for property taxes.⁷⁰ Many deals resulted in long-term contracts, including routine annual payments, or sometimes irregular one-time payments.⁷¹ But, the payments lacked uniformity and were often conducted on a case-by-case or county-by-county basis.⁷²

Historically, Missouri counties are not the only group affected by solar equipment tax exemptions. Agricultural landowners are also impacted by this type of tax legislation. Oftentimes, solar farms lease land from an owner of real property.⁷³ The agreement between a real estate owner and the solar farm represents a solar land lease agreement which contains defining terms and conditions for operating said facility on the property.⁷⁴ Solar developers typically require landowners to sign multiple documents during the land lease process, including a letter of intent, option to lease, and the actual lease or purchase agreement.⁷⁵ The letter of intent reserves the land for a particular energy developer,⁷⁶ which may limit the landowner's right to negotiate with other developers.⁷⁷ In comparison, the option to lease is a legally binding agreement in which the landowner grants the developer the right to lease the land during a time period

⁶⁸ Telephone Interview with James Owen, *supra* note 65.

⁶⁹ Kurt Erickson, *Opponents of Planned Solar Energy Project Cheer Missouri Supreme Court Decision*, ST. LOUIS POST-DISPATCH (Aug. 31, 2022), https://www.stltoday.com/news/local/govt-and-politics/opponents-of-planned-solar-energy-project-cheer-missouri-supreme-court-decision/article_a0d633fc-2141-5986-95ef-2a28b5659cb1.html?utm_medium=social&utm_source=email&utm_campaign=user-share [https://perma.cc/2FS3-T4P6].

⁷⁰ Telephone Interview with James Owen, *supra* note 65.

⁷¹ Daphne A. Kenyon & Adam H. Langley, *Payments in Lieu of Taxes By Nonprofits: Case Studies*, LINCOLN INSTITUTE OF LAND POLICY 171, 171 (Jul. 18, 2011) https://www.lincolninst.edu/sites/default/files/Case_Studies_on_Nonprofit_PILOTs.pdf [https://perma.cc/AA2U-ZMBK].

⁷² Telephone Interview with James Owen, *supra* note 65.

⁷³ Ryan Milhollin et al., *Leasing Land for Solar Energy Development*, EXTENSION UNIV. OF MISSOURI (Jun. 2022) <https://extension.missouri.edu/publications/g431> [https://perma.cc/CV4N-JLZ6].

⁷⁴ *Real Property Value and Solar Energy*, NORTH CAROLINA DEP'T OF REV. 1, 5 (2018) <https://www.ncdor.gov/media/10020/open> [https://perma.cc/554M-XTW8].

⁷⁵ Milhollin et al., *supra* note 73.

⁷⁶ *Real Property Value and Solar Energy*, *supra* note 74.

⁷⁷ Milhollin et al., *supra* note 73.

specified within the option.⁷⁸ Finally, the lease is a longer-term agreement between the landowner and the solar developer.⁷⁹ The lease oftentimes includes negotiated payment terms, liability and tax responsibilities, and renewal terms.⁸⁰

Missouri landowners are now increasingly interested in solar development because of the potential profit associated with leasing their land.⁸¹ Solar farm developers and utility-scale solar energy farms propose leases to Missouri farmland owners to develop and utilize their land for solar purposes.⁸² Both utilities, which directly offer solar energy leases, and lesser-known renewable energy development companies, which generally plan to sell power under contract to a utility, are common players.⁸³ Missouri farmers are particularly interested in solar development because returns per acre from a utility-scale solar energy lease have the potential to far exceed farm enterprise returns or farmland cash rents.⁸⁴ Historically, rental rates of land for solar farmers were reported within a range of \$750 to \$1,400 per acre per year.⁸⁵ These rents generate “ordinary” income, likewise reported on federal and state income tax returns.⁸⁶ Farmers find that these rents are generally greater than cash rent values for agricultural production of crops such as cotton, tobacco, and other commodity crops.⁸⁷

Missouri landowners and solar companies remain invested in tax exemption developments, and they are particularly cognizant of the evolution of section 137.100(10). *Johnson v. Springfield Solar* illustrated the intersection of the constitutional implications and practical ramifications of tax exemptions for solar equipment. A decision in favor of Springfield Solar would continue to completely reshape the markets for purchasing and leasing solar equipment in Missouri. A decision in favor of the Assessor would serve as a rare exercise of judicial review, with the body of unelected judges dismissing the laws passed by elected legislators. As a result, the consequence of the court’s decision would impact not only the narrow legality of a statute, but it could also leave a ripple effect on broad economic and capital market landscapes.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Justin Moore, *Solar and Wind Energy Development Opportunities: Tax Implications*, NORTH CAROLINA STATE UNIV. EXTENSION (last updated 2016), <https://www.ces.ncsu.edu/solar-and-wind-energy-development-opportunities-tax-implications/> [https://perma.cc/ED77-E46Q].

⁸⁶ *Id.*

⁸⁷ *Id.*

IV. INSTANT DECISION

The *Springfield Solar* court faced one ultimate issue: whether section 137.100(10) was constitutionally valid.⁸⁸ *Springfield Solar* acknowledged that “solar energy systems not held for resale” did not fall within the enumerated exemptions created by article X, section 6, but it contended that the General Assembly had the implied authority to create such an exemption through article X, sections 4(a) and 4(b).⁸⁹ The court disagreed and explained that such a reading of sections 4(a) and 4(b) would ignore the explicit language in article X, section 6—which indicates that all property tax exemptions not expressly listed in article X shall be void.⁹⁰ Additionally, the court noted that such an interpretation would completely undermine the purpose of section 6 by effectively creating a backdoor for tax exemptions not enumerated in the constitution.⁹¹

Therefore, the court held that section 137.100(10)'s exemption for “solar energy systems not held for resale” was unconstitutional and void.⁹² From the date of its enactment, an unconstitutional statute is not law and confers no rights.⁹³ Because the statute was deemed void, the court held that it never had the authority to create any legal rights or responsibilities whatsoever.⁹⁴

V. COMMENT

The Missouri Supreme Court correctly analyzed the structure of section 137.100(10) and distinguished its exemption from those permitted under the Missouri Constitution. In doing so, the court successfully upheld the state's goals and initiatives of personal property tax exemptions. Through its determination that section 137.100(10) was unconstitutional, the Missouri Supreme Court has limited the slippery slope for business entities or individuals to argue that tax exemptions can and should apply to their personal properties.⁹⁵ The *Springfield Solar* decision has sparked development and discussion in the Missouri General Assembly regarding a reasonable personal property tax that could apply to the solar energy systems not held for resale.⁹⁶ These changes will leave a resounding

⁸⁸ *Johnson v. Springfield Solar 1, LLC*, 648 S.W.3d 101, 103 (Mo. 2022).

⁸⁹ *Id.* at 104.

⁹⁰ *Id.*

⁹¹ *Id.* at 105.

⁹² *Id.*

⁹³ *Trout v. State*, 231 S.W.3d 140, 148 (Mo. 2007) (en banc).

⁹⁴ *Mo. Bankers Ass'n, Inc. v. St. Louis Cnty.*, 448 S.W.3d 267, 274 (Mo. 2014) (en banc).

⁹⁵ *Springfield Solar I*, 648 S.W.3d at 105.

⁹⁶ S.B. 745, 101st Gen. Assemb., Reg. Sess. (Mo. 2022).

positive economic impact on Missouri counties and solar developers, with the potential to spur environmental growth efforts in Missouri.

A. *Confronting the Constitutional Dilemma*

Personal property tax exemptions in Missouri may arise in one of two ways: (1) the exemption is specifically enumerated in article X, section 6, of the Missouri Constitution or (2) the exemption falls within the Missouri Constitution's permissive grant of limited authority to the Missouri General Assembly.⁹⁷ The structure of the Missouri Constitution prevents abuse of personal property tax exemptions and protects the interests of Missouri's economy, communities, and business organizations.⁹⁸ Its construction places certain limitations and restrictions on the Missouri General Assembly's authority to create personal property tax exemptions.⁹⁹ Its strict statutory language makes the Missouri Constitution a self-regulating document. Therefore, statutes created by the Missouri General Assembly but not found to be covered by the Missouri Constitution are held unconstitutional.

As discussed in *Arsenal Credit Union v. Giles*, article X, section 6, lists a few entities whose property is specifically exempt from taxation but provides that only a *limited* number of other entities may be exempted from taxation by general law.¹⁰⁰ In other words, the citizens of Missouri, through the Missouri Constitution, did not intend for the Missouri General Assembly to create a limitless amount of personal property tax exemptions. Both *Giles* and *Springfield Solar* recognized this notion.¹⁰¹ In both cases, the Missouri Supreme Court limited backdoor tax exemptions to sustain the drafters' intent and prevent an "open season" on property taxes.¹⁰² These safeguards ensure that any lobbyist who wants an exemption must do more than merely gauge the political winds of the time and request one.¹⁰³

If the Missouri Supreme Court regularly recognized backdoor exemptions for personal property tax breaks, as *Springfield Solar* hoped it would do, the court would swing the door wide open for other individuals, companies, and industries to creatively circumvent Missouri tax law. This would create a slippery slope for Missouri courts. Stocked with more

⁹⁷ MO. CONST. art. X, § 6.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Arsenal Credit Union v. Giles*, 715 S.W.2d 918, 924 (Mo. 1986).

¹⁰¹ *Johnson v. Springfield Solar 1, LLC*, 648 S.W.3d 101, 104 (Mo. 2022); *Arsenal Credit Union v. Giles*, 715 S.W.2d 918 (Mo. 1986).

¹⁰² Reply Brief of Appellants at 22, *Johnson v. Springfield Solar 1, LLC*, 648 S.W.3d 101 (Mo. 2022) (No. SC 99441).

¹⁰³ *Id.*

leverage, Missouri companies may negotiate contracts or manage operations differently under the assumption that they too qualified for a personal property tax exemption. As a result, if the Missouri Supreme Court gave credence to Springfield Solar's argument, organizations looking to manufacture similar personal property tax exemptions would attempt parallel arguments to that of Springfield Solar's claims.¹⁰⁴

B. Economic and Environmental Effects

Upon first glance, halting a solar energy tax break that was mistakenly on the books for nearly a decade could appear to be a step backwards for the Missouri economy and environmental solar development.¹⁰⁵ Some have argued that the ruling will have a chilling effect on solar energy in Missouri, and therefore relay a contradictory approach to the nation's push to combat climate change.¹⁰⁶ The decision specifically makes Missouri an outlier in the global initiative intended to combat climate change, as the federal government has *expanded* tax breaks for the production of clean energy and installation of solar panels in recent years.¹⁰⁷ Before the ruling in *Springfield Solar*, Missouri was one of thirty-eight states to offer some sort of property tax break for solar energy systems.¹⁰⁸ Critics of the decision argue that Missouri now risks losing solar development to other states that offer better tax incentives and benefits.¹⁰⁹

As renewable energy grows in popularity and solar farms look to strategically expand, states across the country are competing to lead the charge in the dawn of a new energy era.¹¹⁰ Flat, undeveloped parcels that enjoy plenty of sun are in growing demand, and individual states are eager to reap the benefits.¹¹¹ Missouri currently ranks 34th on the list of the best

¹⁰⁴ *Id.*

¹⁰⁵ David A. Lieb, *Missouri Halts Solar Tax Break as Federal Incentives Expand*, ASSOCIATED PRESS (Aug. 16, 2022), <https://apnews.com/article/biden-technology-solar-power-climate-and-environment-government-politics-2926087466d35771b7183973651f027f> [<https://perma.cc/4XMK-ZYWR>].

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ David Lieb, *Missouri Halts Solar Tax Break as Federal Incentives Expand*, KSDK (Aug. 16, 2022), <https://www.ksdk.com/article/news/local/missouri-halts-solar-tax-break-federal-incentives-expand/63-c1a263c2-a2ef-4c16-8859-77520c4ee54d> [<https://perma.cc/H3K5-WWHT>].

¹¹⁰ Lisa Iscrupe, *Best and Worst States Ranked For Solar Industry Growth*, CHOOSE ENERGY <https://www.chooseenergy.com/solar-energy/best-and-worst-ranked-states-for-solar-industry-growth/> [<https://perma.cc/63GV-Z9NC>] (last visited Mar. 20, 2023).

¹¹¹ Carey L. Biron, *When Harrow Met Solar: U.S. Land-Use Competition Heats Up*, REUTERS (Jan. 28, 2019), <https://www.reuters.com/article/us-usa-energy->

states in which to own solar panels, with a total solar investment of \$774 million.¹¹² These rankings are assessed based on six factors: (1) megawatts of solar installed per state, (2) how many solar jobs are available, (3) number of homes powered by solar, (4) percentage of energy run by solar, (5) how many clear days each state averages per year, and (6) the average cost of installation after the federal solar tax incentive.¹¹³ Given that other states offer competitive property tax exemptions and credits, some Missourians worry that the state is now in danger of falling behind the race for solar expansion.¹¹⁴

While all of these concerns are reasonable, the *Springfield Solar* decision will ultimately have a positive economic and environmental effect in Missouri. In response to the decision, the legislature established the Task Force on Fair, Nondiscriminatory Local Taxation Concerning Solar Energy Systems, which began its work in August 2022.¹¹⁵ After the court concluded that solar equipment not held for resale is *not* subject to tax exemptions, the Missouri General Assembly saw the need to address the lack of personal property tax placed on solar equipment.¹¹⁶ Thus, the task force's purpose is to examine a fair and standardized assessment and taxation of solar energy systems and their connected equipment.¹¹⁷

The task force delivered a report of its findings, including potential legislation to provide a uniform assessment and taxation methodology for solar energy systems and their connected equipment, to the Missouri General Assembly in December 2022.¹¹⁸ Executive Director of the Missouri Solar Energy Industries Association, Jon Dolan, was hopeful that the task force could mirror other states and build a reasonable taxation formula based on input from Missouri tax assessors.¹¹⁹ A committee of state legislators, regional tax assessors, and renewable energy corporations

agriculture-feature/when-harrow-met-solar-u-s-land-use-competition-heats-up-idUSKCN1PM185 [https://perma.cc/M74E-UEGC].

¹¹² Iscrupe, *supra* note 110.

¹¹³ Emily Glover, *The Best And Worst States For Solar Energy 2023*, FORBES, <https://www.forbes.com/home-improvement/solar/best-worst-states-solar/> [https://perma.cc/H2A3-BLQV] (last visited May 6, 2023).

¹¹⁴ Lieb, *supra* note 109.

¹¹⁵ MISSOURI STATE TAX COMMISSION, <https://stc.mo.gov/wp-content/uploads/sites/5/2022/08/Information-for-Website-Assessment-of-Solar-Property-Post-Supreme-Court-Decision.pdf> [https://perma.cc/LGB7-NJ6M] (last visited Mar. 20, 2023).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Emily Manley, *Tax Force Discusses How to Resolve Tax Issues on Missouri Solar Farms*, FOX 2 NOW (Oct. 19, 2022), <https://fox2now.com/news/missouri/task-force-discusses-how-to-resolve-tax-issues-on-missouri-solar-farms/> [https://perma.cc/X6UQ-GH2H].

convened to review the findings from the joint report.¹²⁰ In the report, the task force strongly suggested that Missouri adopt one uniform approach to evaluating solar property across the state rather than allowing each of its 114 counties and St. Louis City to independently negotiate contracts with solar businesses.¹²¹ The report argued that, by developing a reasonable personal property tax for this equipment, the solar taxation process would be greatly simplified while also ensuring there is a consistent evaluation system for all stakeholders involved.¹²² In its conclusion, the report stated that it was reasonable for solar companies to contribute their fair share of taxes to counties, school districts, and other governing bodies.¹²³ While the task force's chairman is not optimistic that results will come soon, many members remain hopeful that the upcoming legislative sessions will ultimately settle the controversial debate of how Missouri should impose taxes on massive solar energy farms.¹²⁴

With section 137.100(10) in place, Missouri counties would continue to feel a resounding frustration and strain on their communities, and solar corporations would continue to have a difficult time negotiating with counties to utilize their land.¹²⁵ Because solar corporations were not required to pay personal property taxes, Missouri counties were reluctant to allow solar farms onto their land.¹²⁶ Many individuals view solar farms as a nuisance and, as such, they actively participate in protests to prevent solar companies from building solar developments.¹²⁷ These protests can reach the magnitude of politicized social-media campaigns, effectively preventing solar developers from constructing new sites in rural Missouri.¹²⁸ Protestors cite a variety of anti-solar reasons, ranging from aesthetics that would harm property values to fears about health, safety, loss of land, and destruction of wildlife.¹²⁹ Facebook pages collect such concerns, and they oftentimes spout misinformation about climate change

¹²⁰ Jonas Muthoni, *Missouri Legislators Are Unlikely to Address the Solar Energy Tax Issue During the Upcoming Year*, MICROGRID MEDIA (Dec. 27, 2022), <http://microgridmedia.com/missouri-legislators-are-unlikely-to-address-the-solar-energy-tax-issue-during-the-upcoming-year/> [https://perma.cc/54ZM-ZPVR].

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Telephone Interview with James Owen, *supra* note 65.

¹²⁶ *Id.*

¹²⁷ Sarah Maslin Nir, *He Set Up a Big Solar Farm. His Neighbors Hated It.*, N.Y. TIMES (Mar. 18, 2020), <https://www.nytimes.com/2020/03/18/nyregion/solar-energy-farms-ny.html> [https://perma.cc/FF2Z-RP73].

¹²⁸ John Fitzgerald Weaver, *Missouri Town Declares Solar Farm a Nuisance*, PV MAGAZINE (Apr. 27, 2022), <https://pv-magazine-usa.com/2022/04/27/missouri-town-declares-solar-farm-a-nuisance/> [https://perma.cc/73KD-MEDL].

¹²⁹ Nir, *supra* note 127.

and alleged health hazards from solar electricity.¹³⁰ Protests often occur in politically conservative regions—i.e., where most of the farmland ripe for solar development is located—because citizens are generally less concerned about climate change and more supportive of agricultural jobs.¹³¹ These community concerns make it hard for solar developers to scale solar projects. Additionally, it is difficult to sell to rural communities because the governing bodies see little economic benefit as compared to the aesthetic downsides of the large installations.¹³² Through the creation of a reasonable personal property tax on solar equipment, counties may be more encouraged to contract with solar companies to focus on fostering economic stimulation rather than highlighting the aesthetic concerns of solar energy production.¹³³

As a result of enjoying personal property tax exemptions, solar farms have historically not contributed to the schools, fire departments, and surrounding infrastructure of the land that they inhabit. For this reason, they have negotiated payments in lieu of taxes to help their presence look more attractive to surrounding counties.¹³⁴ These negotiated payments lead to inconsistent bargaining from county to county.¹³⁵ Rather than having a flat personal property tax rate, solar companies were forced to engage in costly and time-consuming negotiations with a multitude of counties. These individualized negotiations led to frustration for both solar companies looking for consistency and Missouri counties looking for high payments.¹³⁶ For example, in gathering plans to construct a solar development in Callaway County in July of 2022, two solar companies, Ranger Power and NextEra Energy, faced resistance from the citizens of the surrounding county.¹³⁷ The citizens were concerned with the lack of tax revenue that would go to the schools, libraries, and public spaces in

¹³⁰ Nichola Groom Reuters, *U.S. Solar Expansion Stalled By Rural Land-Use Protests*, STL TODAY (Apr. 7, 2022), https://www.stltoday.com/business/local/u-s-solar-expansion-stalled-by-rural-land-use-protests/article_7790c853-ec05-535c-8c50-195dee0429e1.html [https://perma.cc/G7QZ-2XXN].

¹³¹ *Id.*

¹³² *Id.*

¹³³ Kurt Erickson, *Opponents of Planned Solar Energy Project Cheer Missouri Supreme Court Decision*, STL TODAY (Aug. 31, 2022), https://www.stltoday.com/news/local/govt-and-politics/opponents-of-planned-solar-energy-project-cheer-missouri-supreme-court-decision/article_a0d633fc-2141-5986-95ef-2a28b5659cb1.html?utm_medium=social&utm_source=email&utm_campaign=user-share [https://perma.cc/9Y8N-BF77].

¹³⁴ *Id.*

¹³⁵ Telephone Interview with James Owen, *supra* note 65.

¹³⁶ Erickson, *supra* note 133.

¹³⁷ Nate Brenner, *Callaway County Residents Reckon With Proposed Solar Expansion*, KOMU (Jul. 12, 2022), https://www.komu.com/news/midmissourinews/callaway-county-residents-reckon-with-proposed-solar-expansion/article_b859a71a-013c-11ed-b3da-53e2e50057b2.html [https://perma.cc/T9Z9-48L9].

Callaway County.¹³⁸ Thus, the solar companies negotiated payments with Callaway County to offer a greater financial incentive to contract.¹³⁹

After the court struck down section 137.100(10), the need for individualized, negotiated payments was eliminated. As a result, both Missouri counties and solar companies will benefit from simpler and efficient dealmaking. Both tax assessors and solar developers will be able to develop a uniform approach, consisting of a standardized formula that is able to specify numbers and rates upfront, rather than in hindsight. Accordingly, the risk of potential back-taxes from tax exemptions will be reduced, and solar developers will approach landowners and counties with a more reliable framework.

If the Missouri legislature is able to derive a reasonable personal property tax approach based on the task force's recommendation, solar developers will benefit from less resistance when expanding into farmland. Rural communities are resistant to allow solar farms to overtake farmland in Missouri.¹⁴⁰ Farmland has always been sacred; the idea of the family farm is central to America's identity and the American spirit. Those in agricultural communities are wary of allowing technology to disturb this national identity which has withstood the test of time. In addition, individuals in rural communities who take pride in their agricultural terrain have viewed solar panels as an eye sore.¹⁴¹ But despite the opinions of rural communities at large, farmers themselves are surprisingly interested in the possibility of leasing their land to solar companies.¹⁴² By encouraging solar companies' presence in Missouri through a standard personal property tax approach, farmers have the potential for an additional source of income without the risk that comes with farming.¹⁴³ Farmers' net income may be significantly higher from solar farm revenue than any crop yield.¹⁴⁴ In addition, this transition of farmland to commercial property increases tax revenue for Missouri counties.¹⁴⁵ With the presence of solar farms, farmland income and tax

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Reuters, *supra* note 130.

¹⁴¹ Nir, *supra* note 127.

¹⁴² *How Do Farmers Lease Land for Solar Farm Income?*, UNBOUND SOLAR (Oct. 27, 2021), <https://unboundsolar.com/blog/how-do-farmers-lease-land-for-solar-farm-income> [<https://perma.cc/PJ3P-522D>].

¹⁴³ *Id.*

¹⁴⁴ Mike Carroll, *Considerations for Transferring Agricultural Land to Solar Panel Energy Production*, NC COOPERATIVE EXTENSION, <https://craven.ces.ncsu.edu/considerations-for-transferring-agricultural-land-to-solar-panel-energy-production/> [<https://perma.cc/K4YQ-PEHX>] (last updated Feb. 2023).

¹⁴⁵ *Id.*

revenue generated could thus add value to the landowner himself and the surrounding Missouri county.¹⁴⁶

By making it easier for solar companies to reach deals with Missouri counties, and by encouraging the development of solar energy on farmland, solar energy will ideally continue to grow and expand in Missouri. Solar energy is a renewable, sustainable, and clean energy source for the state and it creates an environment where fewer natural resources are consumed.¹⁴⁷ Solar energy can also improve air quality and reduce water use for energy production.¹⁴⁸ Through the increase of solar energy's presence on Missouri land, Missouri may become a leading state in renewable energy and energy efficiency efforts.¹⁴⁹ The Missouri Supreme Court's decision in *Springfield Solar* will help achieve these state-wide initiatives by providing economic incentives, consistency, and stability to properly encourage the growth of solar development in Missouri.

VI. CONCLUSION

The Missouri Constitution sets forth the universe of personal property that the Missouri General Assembly may exempt from taxation, and the Missouri Supreme Court acts as the gatekeeper to ensure the constitutional validity of those laws. In doing so, the Missouri Supreme Court ensures that Missouri citizens abide by constitutionally valid personal property tax exemptions while safeguarding against under-the-table tax breaks. Through the court's robust analysis of section 137.100(10) in *Springfield Solar*, the court limited the slippery slope of organizational tax exemptions. In doing so, the court upheld the true goals and initiative of the Missouri Constitution.

Springfield Solar not only illustrates the importance of the Missouri Constitution's tax exemption framework, but it also highlights the potential solar industry growth between Missouri solar developers, counties, landowners, and environmentalists alike. With the pending legislation before the Missouri General Assembly, Missouri can provide a uniform personal property tax and resolve the economic, environmental,

¹⁴⁶ *Id.*

¹⁴⁷ *5 Advantages of Solar Power in Missouri*, SUN SOLAR, <https://ussun.solar.com/2020/05/19/5-advantages-solar-in-missouri/> [https://perma.cc/PDT4-6A8S] (last visited Mar. 20, 2023).

¹⁴⁸ *Solar Energy, Wildlife, and the Environment*, OFFICE OF ENERGY EFFICIENCY & RENEWABLE ENERGY, <https://www.energy.gov/eere/solar/solar-energy-wildlife-and-environment#:~:text=As%20a%20renewable%20source%20of,water%20use%20from%20energy%20production> [https://perma.cc/CDW7-VU8C] (last visited Mar. 20, 2023).

¹⁴⁹ *Our Advocacy*, RENEW MISSOURI, <https://renewmo.org/our-advocacy/> [https://perma.cc/K4RN-85NP] (last visited Mar. 20, 2023).

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and agricultural disputes now associated with solar development. After this case and the findings of the task force, solar developers and Missouri counties alike will be armed with greater predictability and a greater incentive to build. With increased solar development on Missouri's horizon, and greater relationships among landowners, cities, and businesses, one can only conclude that sunnier days might in fact be ahead.