Winter 1996

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Recommended Citation
Christopher L. Thompson, Special Legislation Analysis in Missouri and the Need for Constitutional Flexibility, 61 Mo. L. Rev. (1996)
Available at: https://scholarship.law.missouri.edu/mlr/vol61/iss1/13

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Special Legislation Analysis in Missouri and the Need for Constitutional Flexibility

O’Reilly v. City of Hazelwood\(^1\)

and

State ex rel. City of Ellisville v. St. Louis County Board of Election Commissioners\(^2\)

I. INTRODUCTION

Missouri statutes reportedly contain over 500 laws which may be deemed special laws.\(^3\) Special laws are laws made applicable to a particular person, group, or thing within a specified class which are not applicable to the entire class.\(^4\) Special laws in Missouri found in the context of municipal or county government are referred to as local laws.\(^5\) The Missouri Constitution prohibits the use of special laws in a number of circumstances including where general laws could be made applicable.\(^6\) In 1993 and 1994 the Missouri Supreme Court decided two cases, O’Reilly v. City of Hazelwood and State ex rel. City of Ellisville v. St. Louis County Board of Election Commissioners,\(^8\) regarding special laws in relation to St. Louis County annexation procedures. In both of these cases the supreme court invalidated the applicable annexation laws as being contrary to the dictates of the Missouri Constitution.\(^9\) The court, however, applied two drastically different analyses

1. 850 S.W.2d 96 (Mo. 1993).
2. 877 S.W.2d 620 (Mo. 1994).
4. State ex rel. Lionberger v. Tolle, 71 Mo. 645, 650 (Mo. 1880); School Dist. of Riverview Gardens v. St. Louis County, 816 S.W.2d 219 (Mo. 1991).
5. MO. CONST. art. III, § 40(30). The terms local and special laws are deemed interchangeable. MCQUILLIN, MUNICIPAL CORPORATIONS § 4.35 (3d revised ed. 1988). In this Note, the generic term "special law(s)" will be used to connote special legislation concerning a specific region of the state, although "local law" would equally apply.
7. 850 S.W.2d 96 (Mo. 1993).
8. 877 S.W.2d 620 (Mo. 1994).
9. See infra notes 16-56 and accompanying text.
in these two cases to invalidate the annexation laws at issue. In *O'Reilly* the court used a rational basis analysis. In *City of Ellisville*, the court used a per se approach to invalidate the annexation law at issue. These decisions subjected the voluminous amount of suspect special laws to constitutional scrutiny and possible invalidity. In response to these supreme court decisions, the General Assembly initiated the passage of an amendment to Article VI, section 8 to immunize the special laws in existence from such scrutiny.

The purpose of this note is to analyze the *City of Ellisville* decision, the *O'Reilly* decision, and the Article VI amendment in the context of Missouri's historical position concerning special legislation.

II. FACTS AND HOLDING

The statute at issue in both *O'Reilly v. City of Hazelwood* and *State ex rel. City of Ellisville v. St. Louis Board of Election Commissioners* was the boundary commission law for St. Louis County, found in sections 72.400-72.420 of the Revised Statutes of Missouri. The boundary commission law created a procedure by which the boundary commission would review annexation and incorporation proposals before placing them on a ballot for election by the voters of the proposed annexation or incorporation area.

A. *O'Reilly v. City of Hazelwood*

The original version of the boundary commission law applied to "any first class county with a charter form of government which adjoins a city not

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10. See infra notes 16-56 and accompanying text.
11. See infra notes 16-33 and accompanying text.
12. See infra notes 34-56 and accompanying text.
13. Keller, supra note 3, at 1A.
14. The duty of the boundary commission was to review all proposed boundary changes of any area wholly or partially within St. Louis County. Mo. Rev. Stat. § 72.403 (1994). Once proposals were submitted, the boundary commission was required to hold a hearing to determine if the proposal was in the best interest of the community or communities involved. Mo. Rev. Stat. § 72.403 (1994). If a boundary change was accepted, then it was sent to the voters for final determination, generally. Mo. Rev. Stat. § 72.407 (1994).
15. See supra note 14.
16. 850 S.W.2d 96 (Mo. 1993).
This language made the statute applicable to St. Louis County only.\textsuperscript{18}

In 1990, both the City of Hazelwood and the City of Bridgeton proposed annexations.\textsuperscript{19} Hazelwood’s annexation proposal contained an area of land in St. Louis County which overlapped an area in Bridgeton’s proposal.\textsuperscript{20} The boundary commission ultimately approved a revised version of the Hazelwood annexation proposal, which the voters passed.\textsuperscript{21} Bridgeton, along with several of its residents, sued Hazelwood and the County Board of Election Commissioners\textsuperscript{22} claiming that the boundary commission law was special legislation prohibited by Article III, section 40(30) of the Missouri Constitution.\textsuperscript{23} Article III, section 40(30) provided that no special law could be passed where a general law could be made applicable.\textsuperscript{24}

The trial court upheld the statute.\textsuperscript{25} In 1993, the Missouri Supreme Court reversed, holding the boundary commission law unconstitutional in its entirety because it violated Article III, section 40(30)’s prohibitions against special laws.\textsuperscript{26}

In reaching this decision, the \textit{O'Reilly} court discussed the meaning of special legislation.\textsuperscript{27} The court stated that legislation based on a population or land valuation classification was open-ended and, as such, was not special legislation subject to Article III prohibitions if rationally related to a legitimate legislative purpose.\textsuperscript{28} The court explained that legislation that was not open-ended was special legislation subject to Article III section 40 prohibitions.\textsuperscript{29}

\begin{itemize}
\item \textsuperscript{17} Id. at 98. H. B. 487, Laws of Missouri 1989 at 459, 465-66 (emphasis added).
\item \textsuperscript{18} \textit{O'Reilly}, 850 S.W.2d at 99.
\item \textsuperscript{19} Id. at 98.
\item \textsuperscript{20} Id. at 98.
\item \textsuperscript{21} Id. at 98.
\item \textsuperscript{22} The board of election commissioners oversees all county elections. \textsc{Mo. Rev. Stat.} § 115.023 (1994).
\item \textsuperscript{23} \textit{O'Reilly}, 850 S.W.2d at 97.
\item \textsuperscript{24} \textsc{Mo. Const.} art. III, § 40(30) (1945). The exact language of this provision provides:
\begin{quote}
The general assembly shall not pass any local or special law:
(30) where a general law can be made applicable, whether a general law could have been made applicable is a judicial question to be judicially determined without regard to any legislative assertion on that subject.
\end{quote}
\item \textsuperscript{25} \textit{O'Reilly}, 850 S.W.2d at 97.
\item \textsuperscript{26} Id. at 99.
\item \textsuperscript{27} Id.
\item \textsuperscript{28} Id.
\item \textsuperscript{29} Id.
\end{itemize}
The court recognized that the Missouri Constitution granted the judiciary the power to determine whether a special law was necessary or, instead, whether a general law could have been made applicable.\textsuperscript{30} The court emphasized that if a law was not open-ended (i.e. based on land valuation or population), it was presumptively unconstitutional.\textsuperscript{31} Proponents of such "closed" legislation could then rebut this presumption by showing a substantial justification for excluding other counties or groups from the law's application.\textsuperscript{32} The court concluded that the need for the annexation law at issue existed in other counties around St. Louis besides St. Louis County, that exclusion of these counties was unjustified, and that, therefore, the law was unconstitutional in its entirety under Article III, section 40.\textsuperscript{33}

B. \textit{State ex rel. City of Ellisville v. St. Louis County Board of Election Commissioners}\textsuperscript{34}

In 1992, Missouri amended the boundary commission law, making the law applicable to "any first class county with a charter form of government which contains a population in excess of nine hundred thousand."\textsuperscript{35} Once again, the legislation subjected only St. Louis County to the boundary commission law, as only St. Louis County fit this legislative description.\textsuperscript{36} However, the amended language was open-ended, i.e. based on population, and was, arguably, consistent with the \textit{O'Reilly} decision.\textsuperscript{37} The appeal resulting in the Missouri Supreme Court's decision in \textit{State ex rel. City of Ellisville v. St. Louis County Board of Election Commissioners} concerned the constitutionality of the boundary commission law as amended.\textsuperscript{38}

Prior to March 1993, both the City of Ellisville ("city") and the Committee for the Incorporation of Wildwood ("committee") sought to acquire land in St. Louis County.\textsuperscript{39} These plans were approved in March 1993 and were to be placed on the August 1993 ballot for consideration by voters in St. Louis County.\textsuperscript{40}

\begin{flushleft}
\begin{footnotesize}
\begin{enumerate}
\item Id.; Mo. Const. art. III, § 40(30). See supra note 24.
\item \textit{O'Reilly}, 850 S.W.2d at 99.
\item Id.
\item Id.
\item 877 S.W.2d 620 (Mo. 1994).
\item Id. at 621; see Mo. Rev. Stat. § 72.400.2 (Supp. 1993) (emphasis added).
\item \textit{City of Ellisville}, 877 S.W.2d at 623.
\item \textit{See supra} notes 27-29 and accompanying text.
\item \textit{City of Ellisville}, 877 S.W.2d at 622-23.
\item Id. at 621.
\item Id.
\end{enumerate}
\end{footnotesize}
\end{flushleft}
However, in this same month the *O'Reilly* decision invalidated the boundary commission law as it stood prior to the adoption of the amended language set forth above. Both the city and the committee filed new proposals for land acquisition with both proposals containing land known as Tartan Green subdivision. Both the city and the committee bypassed the boundary commission as a result of the *O'Reilly* decision. The St. Louis Board of Election Commissioners ("board") refused to hear these proposals believing that the amended boundary commission law authorized the boundary commission to certify all land annexation and incorporation proposals in St. Louis County.

The city brought an action in mandamus to require the board, without the approval of the boundary commission, to place the city's proposals on the August ballot instead of its prior proposals. The committee intervened, alleging that the boundary commission law violated Article I, section 10 and Article VI, section 8 of the Missouri Constitution. Article I, section 10 provided Missouri due process protections. Article VI, section 8 prohibited passage of any law applicable to less than all counties in a given class.

The trial court severed portions of the boundary commission law, left the remainder of the law intact, and refused the city's request to have its new annexation proposals placed on the August ballot. The city, the committee,

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41. *Id.* See supra notes 16-33 and accompanying text.
42. *City of Ellisville*, 877 S.W.2d at 621.
43. *Id.*
44. *Id.*
45. *Id.* at 621-22.
46. *Id.* at 622. Article I, section 10 provides that "no person shall be deprived of life, liberty, or property without due process of law." *Mo. Const.* art. I, § 10.
47. *Mo. Const.* art. VI, § 8. (1945). The full text of Article VI, section 8 provides:

> Provision shall be made by general laws for the organization and classification of counties except as provided in this constitution. The number of classes shall not exceed four and the organization and powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions. A law applicable to any county shall apply to all in the class to which such county belongs.

48. *Id.* The specific portions severed were sections 72.405.7(1) and 72.405.8 of the Revised Statutes of Missouri. These sections were severed for violating the due process clause of the Missouri constitution. *Mo. Const.* art. I, § 10. The supreme court has the power to sever portions of statutes under section 1.140 of the Revised Statutes of Missouri.
49. *City of Ellisville*, 877 S.W.2d at 622.
and the board all appealed the decision to the Missouri Supreme Court.\textsuperscript{50} The court, pursuant to its Article V, section 3 power to review the constitutionality of Missouri statutes, held the statute violated Article VI, section 8 of the Missouri Constitution.\textsuperscript{51}

The court, in invalidating the statute, relied on the plain language of Article VI, section 8, and explained that since the boundary commission law applied only to St. Louis County and no other first class county, the law violated this particular section of the constitution.\textsuperscript{52}

The court further explained that the Article VI, section 8 requirement against special legislation applied to charter counties even though the constitution defined and authorized charter counties in provisions unrelated to Article VI, section 8.\textsuperscript{53} The court concluded, in effect, that charter counties did not belong to a separate class of counties but were subject to the classification system established under Article VI, section 8.\textsuperscript{54}

In finding the boundary commission law unconstitutional, the court refused to sever the portion of the statute making it applicable to St. Louis County only.\textsuperscript{55} The court stated such a severance would alter the intent of the legislature in passing the law.\textsuperscript{56}

III. LEGAL BACKGROUND

There are two legal histories concerning county special legislation in Missouri. The first legal history concerns the Article III, section 40 special legislation prohibition.\textsuperscript{57} This prohibition served the basis for the supreme court’s opinion in \textit{O'Reilly}.\textsuperscript{58} The second legal history involves the Article VI, section 8 special legislation prohibition concerning counties exclusively.\textsuperscript{59} This prohibition served the basis for the \textit{City of Ellisville} decision.\textsuperscript{60}

\begin{itemize}
\item \textsuperscript{50} \textit{Id.}
\item \textsuperscript{51} \textit{Id.} at 624.
\item \textsuperscript{52} \textit{City of Ellisville}, 877 S.W.2d at 623. The court explained it would invalidate a statute whenever a statute clearly contravenes the constitution. \textit{Id.}
\item \textsuperscript{53} \textit{Id.} Article VI, chapter 18 of the Missouri Constitution defines the powers and duties of charter counties.
\item \textsuperscript{54} \textit{Id.}
\item \textsuperscript{55} \textit{Id.}
\item \textsuperscript{56} \textit{Id.}
\item \textsuperscript{57} \textit{See infra} notes 61-102 and accompanying text.
\item \textsuperscript{58} \textit{See supra} notes 16-33 and accompanying text.
\item \textsuperscript{59} \textit{See infra} notes 103-116 and accompanying text.
\item \textsuperscript{60} \textit{See supra} notes 34-56 and accompanying text.
\end{itemize}
A. Article III, section 40(30)

The United States Supreme Court has never held special legislation violates the Equal Protection Clause of the 14th Amendment.\(^{61}\) Despite this fact, most states, including Missouri, have historically provided for special law prohibitions in some form.\(^{62}\) Such provisions began appearing in state constitutions in the second half of the 19th century.\(^{63}\) Early explanations for special legislation prohibitions provided that special legislation was ignoble and improper.\(^{64}\) Commentators have spoken of various evils associated with special legislation including violations of equal protection principles, possibility of discrimination, detraction from the general welfare of the state, complexity, expense, and corruption.\(^{65}\) Despite these "evils," special

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\(^{61}\) MCQUILLIN, \textit{supra} note 5, § 4.31. See Hayes \textit{v.} Missouri 120 U.S. 68, 71 (1887) (stating in dicta that "[t]he Fourteenth Amendment . . . does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate."). In another early Supreme Court decision, the Court stated,

From the very necessities of society, legislation of a special character . . . must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits. Regulations for these provisions . . . are designed not to impose unequal or unnecessary restrictions upon any one, but to promote, with as little inconvenience as possible, the general good.

Barbiero \textit{v.} Connolley, 113 U.S. 27, 31 (1885).

\(^{62}\) See MCQUILLIN, \textit{supra} note 5, § 4.35.


\(^{64}\) See infra note 65 and accompanying text.


One early author referred quite bluntly to the impropriety of special laws when he suggested:

\[P\]ersons of high standards and more than average intelligence are not willing to waste their life trying to get a bridge over Duck Creek in Posey township or working for a highway through the town of Bad Angel. Business of this kind appeals to men of small caliber, sometimes to men deficient in integrity.


Reportedly, prior to special legislative provisions, certain legislatures devoted much of their time to frivolous special matters, such as, establishing official county birds for certain counties. See Cloe and Marcus, \textit{supra} note 63, at 356-57 n.60.

Then Governor Grover Cleveland of New York held similar views in denouncing special legislation when he submitted that local legislation or special laws should not "upon any pretext . . . be permitted to encumber the statutes of the state." Green, \textit{supra}, at 381 (quoting from Grover Cleveland's 1884 Governor's Message to the New
legislation apparently flourished during the early 19th Century, at least in Missouri.\textsuperscript{66} It has been reported that in Missouri, alone, special legislation accounted for eighty-seven percent of state legislation passed before 1859.\textsuperscript{67}

In Missouri, special legislation prohibitions first appeared in 1865 with a general prohibition against special laws.\textsuperscript{68} In the Missouri Constitution of 1875, a more extensive special legislation provision was ratified, resembling the provision currently in existence in Article III, section 40(30).\textsuperscript{69} This provision provided that special laws were forbidden where general laws could be made applicable.\textsuperscript{70}

In 1880, the Missouri Supreme Court first adopted its definition of special law.\textsuperscript{71} The definition provided "a statute which relates to persons, or things, as a class is a general law, while a statute which relates to particular persons or things of a class is special."\textsuperscript{72} Another early decision held, "If in its practical operations, the law can only apply to particular persons or things of a class, then it will be a special or local law, however carefully the character may be concealed by form of words."\textsuperscript{73}

The supreme court backed away from this early harsh stance on special legislation when, in 1942, the court held if a law is reasonable and necessary it will usually succeed, even where it would mean splitting a classification created by the Missouri constitution.\textsuperscript{74} In Reals v. Courson, decided in 1942,

\begin{itemize}
  \item York Legislature).
  \item 66. Cloe and Marcus, supra note 63, at 356.
  \item 67. Cloe and Marcus, supra note 63, at 356.
  \item 68. See Earl Q. Smith, Recent Cases-Constitutional Law (Missouri)—Local or Special Laws, 2 ST. LOUIS U. L.J. 403, 404 (1953).
  \item 69. Id.; MO. CONST. art. 4, § 53 (1875).
  \item 70. See Reals v. Courson, 164 S.W.2d 306 (Mo. 1942); State v. Smith, 184 S.W.2d 593, 598 (Mo. 1945).
  \item 71. See State v. Tolle, 71 Mo. 645 (1880).
  \item 72. Id. at 650 (quoting Wheeler v. Philadelphia, 77 Pa. St. 338, 348 (1875)).
  \item 74. Lebanon v. Schneider, 163 S.W.2d 588, 592 (Mo. 1942). See also Reals v. Courson, 164 S.W.2d 306, 307 (Mo. 1942) (involving a statute applying to "the Board of Directors of school districts formed of cities and towns in counties having more than 200,000 inhabitants and less than 450,000 inhabitants ... "). The Missouri Supreme Court held the statute was a special law because it was arbitrary and unreasonable as well as being not open-ended. Id. at 308-09. The supreme court in Walters v. City of St. Louis, discussed infra notes 85-87 and accompanying text, held the statute in Reals was in fact open-ended. Walters, 259 S.W.2d at 382-83.
  \item The Missouri Constitution currently provides for four general classes of counties not including one class of charter counties. MO. CONST. art. VI, § 8. Article VI, section 15 limits the number of classes of municipalities to four. MO. CONST. art. VI, § 15.
\end{itemize}
the court provided a test to determine if population could serve as a proper basis for dividing a constitutionally created class of counties or municipalities.\(^{75}\)

The court held that a law classifying by population was proper only when other cities, towns, or other political subdivisions could come within the terms of the law at some time in the future.\(^{76}\) The court explained, however, that classifying by population, alone, did not prevent legislation from being labelled "special."\(^{77}\) Legislation still needed to be reasonable and not arbitrarily based on population.\(^{78}\) According to the court, if a law was based on an unreasonable or arbitrary population division, then the law was special and not general for special legislation analysis purposes.\(^{79}\) The court observed that "[t]he test of a special law is the appropriateness of its provisions to the objects that it excludes."\(^{80}\) Similarly, in State v. Smith, the court observed that a classification based on population was sufficient for special legislation analysis purposes if the "classification [was] reasonable and germane to the purpose of the law."\(^{81}\) In Smith, the burden was on the opponent of the suspect legislation to show that the classification was unreasonable.\(^{82}\)

These early decisions were interpretations of the 1875 Missouri constitution.\(^{83}\) However, subsequent to the adoption of the 1945 Missouri constitution, Missouri courts continued to define and analyze special legislation in similar fashion.\(^{84}\)

An important post-1945 decision concerning special laws was Walters v. City of St. Louis.\(^{85}\) The court in Walters held legislation was not special "so long as it applies to all within, or that may come within, the enumerated class"

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75. Reals v. Courson, 164 S.W.2d 306, 308 (Mo. 1942).
76. Id. at 308.
77. Id.
78. Id.
79. Id.
80. Id.
81. State v. Smith, 184 S.W.2d 593, 595 (Mo. 1945).
82. "An act of the legislature carries the presumption of constitutionality. The court will not declare an act unconstitutional unless it plainly contravenes the Constitution." Id. at 594-95.
83. The current constitution was not ratified until 1945.
84. See, e.g., Walters v. City of St. Louis, 259 S.W.2d 377 (Mo. 1953); School Dist. of Riverview Gardens v. St. Louis County, 816 S.W.2d 219, 221 (Mo. 1991) (referring to State v. Tolle); O'Reilly v. City of Hazelwood, 850 S.W.2d 96 (Mo. 1993) (determining that special laws would be allowed if substantial justification exists even though such laws would split the classification).
during the legislation's effective period.\textsuperscript{86} The court referred to this concept as open-endedness.\textsuperscript{87}

Precedents, therefore, established that an open-ended statute that was germane to the purpose of the statute in which the classification was found was beyond the reach of the special legislation prohibitions in Article III, section 40.\textsuperscript{88}

Historically, closed-class statutes, i.e. statutes defining a class by some unalterably distinguishing feature other than population, such as geographic location, also have been upheld under special legislation scrutiny. The Missouri Supreme Court has upheld such closed statutes when the court has found the suspect classifications appropriate to the objects (persons, locations) that they excluded.\textsuperscript{89} If exclusion of others was appropriate under the circumstances, the law was validated despite the fact others might have been excluded.\textsuperscript{90} To this general rule, the \textit{O'Reilly} court established a heightened burden for proponents of closed class legislation.\textsuperscript{91} The court in \textit{O'Reilly} held a special law required "substantial justification" in order to overcome a

\begin{itemize}
\item \textsuperscript{86} \textit{Id.} at 383 (emphasis added). The statute at issue in \textit{Walters} applied to "any constitutional charter city in this state that now has or may hereafter acquire a population of 700,000 prior to its expiration date of April 1, 1954." \textit{Id.} (emphasis added). The court explained the theoretical possibility of other counties coming within the description provided in the statute made the statute open-ended. \textit{Id.}

\textit{See also} Collector of Revenue v. Parcels of Land Encumbered with Delinquent Tax Liens serial #s 1-047 and 1-048, 517 S.W.2d 49 (Mo. 1974). The court in \textit{Collector of Revenue} stated it was permissible to classify counties or other political subdivisions according to population provided the laws are drawn so as to allow other counties or political subdivision to come within the terms of the law in the future. \textit{Id.} at 54. The court stated this was so despite the fact the act may apply to only one county, city, etc. at the time of its enactment. \textit{Id.} The court furthered declared the likelihood or unlikelihood of other cities coming within the special class was not important. \textit{Id.}

\item \textsuperscript{87} \textit{Walters}, 259 S.W.2d at 381. Currently, the concept of open-endedness encompasses classifications based on population or land valuation as these classes are subject to change, as allowed in \textit{Walters}. \textit{O'Reilly}, 850 S.W.2d at 99.

\item \textsuperscript{88} \textit{See supra} notes 74-87 and accompanying text.

\item \textsuperscript{89} \textit{Collector of Revenue}, 517 S.W.2d at 53. \textit{See also} State v. Smith, 184 S.W.2d 593, 595 (Mo. 1945).

\item \textsuperscript{90} \textit{Smith}, 184 S.W.2d at 595; City of Kirkwood v. Allen, 399 S.W.2d 30 (Mo. 1966). The law at issue applied to any municipality within a county having a charter form of government. The court held there was no Article III violation and stated, "any county qualifying as a first class county has problems due to its population and relating to police protection, sanitation . . . ." which would not necessarily exist in other counties. The court believed the legislature was aware of this and had a right to remedy the situation. \textit{City of Kirkwood}, 399 S.W.2d at 37.

\item \textsuperscript{91} \textit{O'Reilly}, 850 S.W.2d at 99.
\end{itemize}
presumption of unconstitutionality. As the court presumed closed classes to be unconstitutional, the burden shifted to the proponents of the closed class to substantially justify the creation of the closed class.

School District of Riverview Gardens v. St. Louis County best summarizes current special legislation analysis in Missouri under Article III. In Riverview Gardens, the supreme court explained there were two questions to answer concerning the constitutionality of a statute under Article III, section 40. First, was the law a special or local law? Second, if the law was a special law was "the vice ... sought to be corrected, the duty imposed, or the permission granted by the statute so unique to the persons, places, or things classified by the law that a law of general applicability could not achieve the same result?"

The Riverview Gardens court believed open-endedness based on population allowed the legislature to focus on problems associated with size and growth in urban areas, and thus considered open-endedness, alone, to be determinative of whether a law was special or general. The O'Reilly court held similarly that open-endedness, alone, made a statute a "general" law for Article III, section 40 purposes, with such a law needing to be only rationally related to a legitimate legislative purpose.

The O'Reilly court cited extensively to Riverview Gardens in invalidating a statute which was neither open-ended nor "so unique to the persons, places, or things classified by the law ... that a law of general applicability could not achieve the same result."

The special legislation analysis stated above has been likened to 14th Amendment equal protection analysis. Judge Lowenstein, in his concurrence in Riverview Gardens, stated there was "little difference in analysis for an equal protection violation and legislation deemed special." According to Judge Lowenstein, the court essentially asks if the law "bears some rational basis to a legitimate state purpose."

92. Id.
93. Id.
94. Riverview Gardens, 816 S.W.2d at 221.
95. Id.
96. Id.; see State v. Smith, 184 S.W.2d 593, 595 (Mo. 1945) (providing that a special law should be reasonable and germane to a particular purpose to be valid).
97. Riverview Gardens, 816 S.W.2d at 222.
98. O'Reilly, 850 S.W.2d at 99.
99. Riverview Gardens, 816 S.W.2d at 221; see supra notes 16-33 and accompanying text.
100. See infra notes 101-02 and accompanying text.
101. Riverview Gardens, 816 S.W.2d at 225.
102. Id.; see also Blaske v. Smith & Entzeroth, Inc., 821 S.W.2d 822, 831-32
B. Article VI, Section 8

Article VI, section 8's history provides a different judicial approach to special legislation, more akin to a per se analysis.\(^{103}\) The pre-1995 version of Article VI, section 8 provided that no law could apply to less than all counties within a given class.\(^{104}\)

Early cases considering special laws in this area tended to analyze the case under Article III and to ignore or dismiss Article VI per se arguments.\(^{105}\) These cases tended to narrow the application of Article VI to laws concerning the organization and structure of county government.\(^{106}\)

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Bopp v. Spainhower, 519 S.W.2d 281 (1975).

The relevant statute in Bopp applied to:

any city not within a county, any first class county operating under a charter form of government and not containing a city or part of a city of over 400,000 inhabitants, and any city of over 400,000 inhabitants wholly or partially within a first class county, may by a majority vote of its governing body . . . .

The court held a reasonable basis existed for enacting the statute, and the state's action was not arbitrary or unreasonable, was open ended, and was rational, therefore overcoming any equal protection claims. \textit{Id.} at 287-89.

103. \textit{See infra} notes 109-115 and accompanying text.


105. Inter-city Fire Protection Dist. v. Gambrell, 231 S.W.2d 193 (Mo. 1950). The statute provided for fire district organization of "class one counties now or hereafter having a population of 450,000 inhabitants or more." \textit{Id.} at 198. The court held this language was not violative of Article VI because it applied to a different type of political subdivision than a county—here a fire district and therefore did not deal with the organization and powers of counties. \textit{Id.} at 197; City of Kirkwood v. Allen, 399 S.W.2d 30, 32, 38 (Mo. 1966) (The relevant statute referred to all cities, towns, villages located in any first class county which has adopted a charter. The court concluded this statute was applicable to cities and not to counties and was therefore beyond Article VI, section 8.); State \textit{ex rel.} Stevenson v. Kirkpatrick, 536 S.W.2d 740, 741 (Mo. 1976) (The court simply dismissed the Article VI, section 8 argument even though the applicable statute dealt with election of prosecutors for certain classes of counties.); Collector of Revenue v. Parcels of Land Encumbered with Delinquent Taxes, 247 S.W.2d 83, 92 (1952) (The court held the land trust created by relevant act did not "deal with the organization and powers of counties and therefore did not violate [Article VI, section 8].

106. \textit{See supra} note 105. \textit{See also} Chaffin v. County of Christian, 359 S.W.2d 730, 734 (Mo. 1962) (describing the purpose of Article VI, section 8, the court said the reason for its existence "was to simplify and make more effective the organization and operation of the counties."). \textit{See also} Taylor v. Kibburz, 208 S.W.2d 285, 287 (Mo. 1947) ("§ 8, Art. VI of the 1945 Constitution introduced into the organic law a
Laws that merely affected a given county, but not the organization of county government, itself, were deemed to fall outside of Article VI consideration. Such laws were analyzed under Article III, as mentioned above.

In 1980, however, the Missouri Supreme Court decided Gramex Corporation v. E. VonRomer. In Gramex, the court held the "Sunday Sales Law" exemption procedure for certain areas and counties violated Article VI, section 8. The court concluded that a law aimed at a certain class of counties must apply to all counties within the class, as explicitly provided by Article VI, section 8. The court so held despite the fact the law did not involve the structure, organization, or duties of the county government specifically. The court then severed the unconstitutional portions of the law, leaving the remainder of the law intact.

The court in City of Ellisville relied upon Gramex' strict interpretation of Article VI, section 8 to hold the boundary commission law at issue in the case unconstitutional. The City of Ellisville decision in combination with the Gramex decision created a per se rule of invalidity, under Article VI, section 8, for all laws not applicable to all counties within a given class.

C. Constitutional Amendment to Article VI, Section 8

In 1995, the Missouri General Assembly initiated a proposal to amend Article VI, section 8. The proposed amendment was placed on a special election ballot in April, 1995 and passed in a statewide vote. According

new requirement with respect to legislation governing the structure of county government . . . ".

107. See supra notes 105-06.
108. See supra notes 105-06.
109. 603 S.W.2d 521 (Mo. 1980).
110. Id. at 521.
111. Id. at 526.
112. Id. The court refuted the argument that the Article VI prohibition applied only to laws concerning the organization and powers of county government. The court declared instead there was no indication in the history of the provision to indicate such a purpose. Id. at 524-26.
113. Id.
114. City of Ellisville, 877 S.W.2d at 622-23.
115. See supra notes 34-56 and accompanying text and supra notes 109-114 and accompanying text.
116. S.J. Res. 4, 88th Leg., 1995 Mo. Sess. Law Serv., Joint Resolution Briefs 1 (1-13-95); see Keller, supra note 3, at 1A.
to the language of the amendment, itself, the General Assembly intended for
the amendment to apply retroactively to immunize all laws from the per se
special law prohibition found under the original 1945 version of Article VI,
section 8. The amendment provides,

The revisions to this article . . . are intended to be applied retroactively and
no law adopted by the general assembly or ordinance or order . . . shall be
declared unconstitutional if such law . . . would have been unconstitutional
had this section, as amended, been in effect at the time the law was passed,
unless the law is declared unconstitutional pursuant to a different provision
of this constitution.

Now, only those laws pertaining to county organization and powers must
apply to all counties within a given class. All other laws must satisfy
Article VI, section 40 prohibitions.

IV. COMMENT

The O'Reilly and City of Ellisville decisions are illustrative of the
dichotomous views historically expounded regarding special legislation. As
previously mentioned, early commentators expressed views condemning the
evils associated with special legislation. The City of Ellisville decision
and the Article VI, section 8 prohibition underlying that decision both
represent this view.

Other authors, however, have posited that state constitutional flexibility
is needed in solving localized problems. Two authors have expressed,
specifically, the view that the legislature "must impose special burdens upon
or grant special benefits to special groups or classes of individuals" if the
legislature is to act effectively at all. Even the United States Supreme
Court has expressed the view that special legislation not only is allowable but
also needed in certain situations. The O'Reilly decision and the Article III special legislation prohibitions are indicative of this attitude of flexibility and reasonableness. The Missouri Supreme Court has identified the inherent need for special legislation when dealing with diversified regions of this state. In City of Ellisville, the court recognized the boundary commission law at issue was designed to stem the "chaos" resulting from annexation and land acquisition problems unique to St. Louis County. The court in Riverview Gardens identified similar needs when it stated open-endedness in statutes based on population allowed legislatures to focus on problems associated with size and growth within urban areas. Like the court, the Missouri General Assembly has recognized the need to treat regions of the state specially, as evidenced by the multitude of special laws currently in existence and by the legislature's prompt reaction to City of Ellisville through its revision of Article VI, section 8.

Therefore there appears to be agreement that special laws generally should be prohibited unless a particular need is shown that could not have been addressed by general legislation. Article VI, section 8's per se prohibition, as interpreted in City of Ellisville, did not effectively balance the need for uniformity in laws with the need for flexibility in resolving problems unique to specific regions of the state.

Whatever the approach taken by the State to correct Article VI, section 8 harshness, some method of abrogation was necessary to remedy this section's effect on reasonable and necessary efforts to handle localized problems throughout the state. No such per se language applied to cities or other localized population centers and such language is unnecessary given the similar, yet more flexible, special law prohibitions found in Article III, section 40.

126. See supra note 61. The United States Supreme Court has observed that, "From the very necessities of society legislation of a special character . . . must often be had." Barbiero v. Connolly, 113 U.S. 27, 31 (1885).
127. See supra notes 75-102 and accompanying text.
128. See supra note 90; see infra notes 129-130 and accompanying text.
129. City of Ellisville, 877 S.W.2d at 620.
130. Riverview Gardens, 816 S.W.2d at 222.
131. Keller, supra note 3, at 1A.
132. See supra notes 122-131 and accompanying text.
133. Mo. Const. art. VI, § 15. See City of Ellisville, 877 S.W.2d at 622.
134. Both Article III, section 40(21) and Article VI, section 8 proscribe special legislation relating to counties and both place importance of enacting general legislation where possible.
The legislature, through revision of Article VI, section 8, arguably sought to remedy the difficulties created by the per se rule of City of Ellisville by retroactively immunizing suspect county laws from City of Ellisville's effect. The amendment, however, only partially immunizes suspect laws affecting less than all counties within a given class. First, the amendment proscribes, per se, laws concerning county organization and formation that apply to less than all counties within a class. Second, all other laws distinguishing counties within the same class must still satisfy Article III, section 40, as the revised Article VI, section 8 requires constitutional special legislation review under other provisions of the Constitution. Furthermore, under Article III, section 40, the judiciary maintains its authority to determine whether a law is general or special.

Therefore, statutory classifications must still meet basic judicially created Article III requirements. For instance, if a statutory classification is closed, i.e. based on some distinguishing feature other than population or land valuation, the statute is presumed to be unconstitutional. In such situations, the burden lies with the proponent of closed class legislation, generally the legislature, to prove "substantial justification" for the creation of a closed class. The existence of excluded parties having similar needs has proven detrimental to meeting this burden of substantial justification. To illustrate, a statute applying to "all counties bordering a city not within a county" is fatally closed, unless a party can show that no other excluded county would have needs similar to those addressed in the statute. The supreme court reached this result in O'Reilly.

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Article III, section 40(21) provides that no special law shall be passed "creating offices, prescribing the powers and duties of officers in, or regulating the affairs of counties, cities, townships, election or school districts. MO. CONST. art. III, § 40(21).

135. See supra notes 116-121 and accompanying text.

136. "The number of classes shall not exceed four, and the organization and powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions." MO. CONST. art. VI, § 8 (1995).

137. "No law . . . shall be declared unconstitutional . . . unless the law is declared unconstitutional pursuant to a different provision of this constitution." MO. CONST. art. VI, § 8 (1995).


139. See supra notes 75-102 and accompanying text.

140. See supra note 92 and accompanying text.

141. See supra note 92 and accompanying text.

142. O'Reilly, 850 S.W.2d at 90.

143. Id. at 99; see supra notes 17-33 and accompanying text.

144. See supra notes 17-33 and accompanying text.
If legislation is based on population or land valuation, then it is open-ended, and as such, requires no showing of substantial justification.\textsuperscript{145} Court decisions suggest different approaches in analyzing open-endedness. Recent court decisions including \textit{O'Reilly} provide that open-ended legislation is not special, and therefore, needs only be rationally related to legitimate legislative purposes to satisfy Article III, section 40.\textsuperscript{146} Earlier opinions differed from this approach in that the court did not consider a law to be general until the court could conclude that the classification was germane to the purposes of the statute at issue.\textsuperscript{147} Either way, a statute declared to be open-ended need only be reasonable, even if others might be excluded from the class.\textsuperscript{148} The burden appears to lie with the opponent of open-ended legislation as open-ended legislation is presumed constitutional.\textsuperscript{149}

Although per se prohibitions concerning special legislation appear to have been voted out of the Missouri constitution,\textsuperscript{150} legislators should remain cognizant of Article III restrictions, as provided above, in drafting or amending legislation aimed at particular localized needs. Despite the efforts made by the legislature to eradicate per se special legislation prohibitions, two concerns still remain. First, closed class statutes currently in existence may be unjustifiable and, thus, violative of Article III requirements under the test provided in \textit{O'Reilly}.\textsuperscript{151} Second, legislators must not assume that open-endedness is dispositive of whether a statutes satisfies Article III, section 40 special legislation restrictions. Although later decisions seem to differ, early opinions suggested that open-endedness and germaneness are both required to satisfy Article III, section 40.\textsuperscript{152} Therefore, a statutory classification must still be reasonable, appropriate, or germane to the purpose of the statute, depending on the terminology applied by the court at any given time.\textsuperscript{153} Arbitrary population or land valuation classifications arguably violate Article III, section 40.

\textsuperscript{145} \textit{O'Reilly}, 850 S.W.2d at 99.
\textsuperscript{146} See supra note 98 and accompanying text.
\textsuperscript{147} See supra notes 75-82 and accompanying text.
\textsuperscript{148} See supra notes 75-102 and accompanying text.
\textsuperscript{149} See supra note 82 and accompanying text.
\textsuperscript{150} MO. CONST. art. VI, § 8 (as amended by special legislation on April 4, 1995).
\textsuperscript{151} See supra notes 89-93 and accompanying text.
\textsuperscript{152} See supra notes 75-82 and accompanying text.
\textsuperscript{153} See supra notes 75-152 and accompanying text.
The decision in *City of Ellisville* was correctly decided given the language of the Constitution existing at the time. The effect of its holding undoubtedly did much to change the views regarding special legislation as it provided an unavoidably harsh result with respect to existing special laws.\(^\text{154}\) The special needs of counties within the state should be considered in appropriate circumstances in light of the state's interest in providing uniform laws. Unlike the *City of Ellisville* opinion, the O'Reilly opinion seemed to provide such a result by allowing for appropriate and justifiable special laws. *City of Ellisville* and the harshness of its Constitutional interpretation, however, provided the impetus to amend the constitution to allow legislation concerning important localized needs.

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\(^\text{154}\) See, Keller supra note 3, at 1A. See also *State Amendment Designed to Uphold Breaks For Counties*, St. Louis Post-Dispatch, Mar. 30, 1995, at 7n-8n.