IN THE SUPREME COURT
STATE OF MISSOURI

No. SC 84107

MISSOURI HOTEL AND MOTEL
ASSOCIATION, et al.,

Appellants,

v.

CITY OF ST. LOUIS, et al.,

Respondents

Appeal from the Circuit Court of the City of St. Louis, Missouri
The Honorable Robert H. Dierker
Division 3

BRIEF OF RESPONDENTS
CITY OF ST. LOUIS and ST. LOUIS LIVING WAGE CAMPAIGN, *et al.*

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JURISDICTIONAL STATEMENT

It is Respondents' position that this Court lacks jurisdiction over this appeal because no actual controversy exists. We respectfully refer the Court to our briefs in support of Respondents' motion to dismiss the appeal, discussed *infra* at 4.

STATEMENT OF FACTS

This appeal is unusual in that it is taken by the party that prevailed below.[1] The appeal arises out of Appellant Associated Industries of Missouri's efforts to invalidate and enjoin enforcement of the St. Louis Living Wage Ordinance (the "Ordinance"), which the voters of St. Louis enacted on August 8, 2000.

The Ordinance, among other things, requires entities with service contracts with the city or receiving grants under the City's economic development assistance programs to pay no less than a specified wage to employees on such contracts or on projects subsidized by such grants. In adopting the Ordinance, St. Louis joined the ranks of more than eighty cities and counties across the United States that have enacted similar legislation over the past decade. Such ordinances help cities by assuring that workers employed on projects subsidized by the cities receive family-supporting wages that keep them from relying on the public safety net; by providing more reliable city services due to increased workforce stability and lower employee turnover produced by such wages; and by yielding benefits to the local economy by steering subsidies to employers that agree to create better-than-average jobs for their communities. For these reasons, the voters of the City of St. Louis approved the Ordinance by a 77% to 23% margin.

Appellant challenged the Ordinance, and obtained the relief it sought: the circuit court invalidated the Ordinance and enjoined its enforcement,

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[1] Although initially filing Notices of Cross-Appeal, both Respondents subsequently withdrew their cross-appeals. Accordingly, we refer to Appellant/Cross-Respondent as "Appellant," and to Respondents/Cross-Appellants as "Respondents."

holding that several provisions were defective on various grounds and were not severable from the remainder of the Ordinance. Appellant nevertheless appeals to this Court because the circuit court rejected one of the several grounds Appellant advanced below – Appellant's contention that the Ordinance was also rendered invalid by Mo. Rev. Stat. § 67.1571, which purports to forbid most major municipalities from enacting minimum wage legislation.

Section 67.1571 was enacted as a late amendment to the third of four substitute bills whose subject, as reflected in their title, was Community Improvement Districts. This title was never changed to reflect the new anti-minimum wage subject matter, which concededly was to have statewide application to Missouri municipalities, and which had nothing to do with Community Improvement Districts. (*See* Affidavit of Charles Pryor dated Jan. 3, 2001 ("Pryor Aff.") ¶ 6 Supplemental Legal File ("Supp. L.F.") 7.)) The circuit court ruled that Appellant could not rely on Section 67.1571 because its enactment violated two sections of Article III of the Missouri Constitution: Section 23, which requires that a bill have a single subject reflected in its title, and Section 21, which forbids amendments that change a bill's original purpose. (Legal File ("L.F.") 114-17.)

As the record before the circuit court disclosed, these procedural defects were no mere technical violations. The enactment of Section 67.1571 as a late amendment to the Community Improvement District bill followed earlier unsuccessful efforts to enact virtually identical anti-minimum wage provisions – first as a stand-alone bill and then as part of other, unrelated pieces of legislation. (*See* House Bill No. 1346 (1998), Attach. 14 to Van Amburg Aff., Supp. L.F. 231; Foley Aff. ¶ 4, Supp. L.F. 1.) According to one of its sponsors, the provisions of Section 67.1571 were tacked on to the Community Improvement District bill

merely because it was an "available vehicle" for enactment of that section. (Pryor Aff. ¶ 6, Supp. L.F. 7.)

In this appeal, Appellant raises two narrow issues: whether the circuit court should have considered the constitutionality of Section 67.1571 at all, because the issue was either barred by the applicable statute of limitations or otherwise untimely raised, and whether the circuit court correctly concluded that Section 67.1571 violated the above provisions of the Missouri Constitution.

While recognizing that the St. Louis Living Wage Ordinance was enjoined, Appellant seeks to establish that Section 67.1571 is constitutional and bars future living wage ordinances that are not before this Court, and are not the subject of this litigation. (Appellant's Sugg. in Opp. to Intervenor Appellees' Mot. to Dismiss App. at 9-10.) Respondents moved to dismiss the appeal on the grounds that Appellant is not aggrieved by the circuit court's decision and therefore lacks standing to appeal, and that this Court accordingly lacks jurisdiction over the appeal because no actual controversy is before it. That motion was taken with the case. We respectfully refer the Court to our briefs on that motion. We address here the issues of timeliness and constitutionality raised by Appellant.

Procedural History

On November 16, 2000, the circuit court granted a temporary restraining order enjoining enforcement of the Ordinance pending the hearing and determination of Appellant's petition for preliminary and permanent injunctions. (L.F. 39.) On December 13, 2000, the St. Louis Living Wage Campaign, the Association of Community Organizations for Reform Now (ACORN), two labor union locals, and two individual workers moved for leave to intervene. The circuit court granted that motion on January 4, 2001 – on the condition that the

intervenors agree to commence with the trial on Appellant's petition that very day.[2] Later that morning, Appellant submitted evidence concerning the legislative history of Section 67.1571 – one of its causes of action – by introducing an affidavit from the sponsor of the statutory provision in the Missouri legislature, Representative Charles Pryor. (Pryor Aff., Supp. L.F. 7.)

At the end of that first day of trial, the circuit court agreed that, as intervenors new to the case, the St. Louis Living Wage Campaign should have until February 1, 2001 to conduct discovery and prepare and submit evidence in

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[2] Initially, the circuit court permitted the St. Louis Living Wage Campaign, ACORN, and Service Employees International Union (SEIU) Local 880 and Local 2000 (formerly SEIU Local 1001) to join the case as defendant-intervenors to participate with the City of St. Louis in defending the Ordinance. Throughout the trial court proceedings, defendant-intervenors have been identified as the St. Louis Living Wage Campaign, *et al*., and Appellant's brief continues to refer to them as such. The circuit court subsequently concluded that it had erred in granting intervention to the St. Louis Living Wage Campaign and the two union locals because it believed – erroneously – that they were unincorporated associations that could not bring actions without naming members as representative parties pursuant to Rule 52.10, Mo. R. Civ. P. (L.F. 100.) However, the court permitted ACORN, a not-for-profit corporation and a member of the St. Louis Living Wage Campaign, to remain in the case. (*Id.*) Hence, the only remaining defendant-intervenor/respondent is ACORN. In the interest of consistency, however, this brief continues to refer to defendant-intervenor/respondent as the St. Louis Living Wage Campaign (of which ACORN is a member).

support of their position. The court adjourned the proceedings until February 1. (L.F. 64). In the intervening month, Respondents investigated the legislative history raised by Appellant and Representative Pryor at the January 1 trial. During that period they spoke with Missouri Representative James Foley and learned more information about the legislative history of Section 67.1571. Based on that evidence, and prior to the resumption of proceedings, on January 31, 2001, the Respondent St. Louis Living Wage Campaign moved to file an amended answer in which it raised as an additional affirmative defense to Appellant's 67.1571 claim the contention that Section 67.1571 was enacted in violation of the procedural protections of Article III, Sections 21 and 23 of the Missouri Constitution.[3] (L.F. 66.)

Respondent's motion to file an amended answer was argued when the trial resumed on February 1, 2001, and the circuit court granted the motion on February 9, 2001. The court ordered:

> Plaintiffs may file a reply within 5 days, if they deem a reply to the pleaded affirmative defenses to be necessary. The Court perceives no need to entertain additional evidence based on the amended answer. The issue of the constitutionality of § 67.1571, RSMo, shall be addressed by the parties in their briefs.

(L.F. 86.) Appellant elected not to file any response within the five days specified.

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[3] Inasmuch as the City of St. Louis did not raise this defense, references to "Respondent" in this brief refer to Respondent St. Louis Living Wage Campaign.

The trial was concluded on February 1, 2001. On March 6, 2001, Appellant moved to strike the affirmative defense that challenged the constitutionality of Section 67.1571 on the grounds that it stated no facts to support its allegation and that it was brought later than the adjournment of the next legislative session of the Missouri legislature, in violation of Section 516.500. (L.F. 87). Section 516.500 states: "No action alleging a procedural defect in the enactment of a bill into law shall be commenced, had or maintained by any party later than the adjournment of the next full regular legislative session following the effective date of the bill as law, *unless it can be shown that there was no party aggrieved who could have raised the claim within that time*." Mo. Ann. Stat. § 516.500 (emphasis added). Appellant elected not to file a motion seeking a more definite statement of the affirmative defense raised in the amended answer.

Subsequently, the parties submitted extensive post-trial briefs on the merits in which, among other things, they addressed the constitutional validity of Section 67.1571 and the legal objections raised by Appellant in its motion to strike.

As noted, on July 18, 2001, the circuit court held that certain provisions of the Ordinance were invalid and were not severable from the remainder of the Ordinance and, accordingly, invalidated and enjoined the enforcement of the Ordinance in its entirety.[4] (L.F. 89-143.) The court thus awarded Appellant all of the relief that it sought.

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[4] The circuit court held that certain portions were unconstitutionally vague; that a portion of one provision conflicted with a state minimum wage law; and that another provision unlawfully attempted to create a private right of action enforceable in the circuit court. (L.F. 89-139.)

The court, however, did not agree with Appellant that the Ordinance was invalidated by Mo. Rev. Stat. § 67.1571, which purports to forbid municipalities from enacting minimum wage ordinances. As noted (at 3, *supra*), the court held Section 67.1571 unconstitutional, finding that it was enacted in violation of the procedural protections of Article III, Sections 21 and 23 of the Missouri Constitution.

The circuit court also denied Appellant's motion to strike the affirmative defense challenging the constitutionality of Section 67.1571. It held that the constitutional challenge was not time-barred because Respondent "[was] the first person[] aggrieved by an application of 67.1571, and that [its] challenge to the statute was raised within the time permitted by 516.500." (L.F. 119). The court also held that it was well within its discretion to permit Respondent to amend its pleadings to assert the affirmative defense challenging Section 67.1571's constitutionality. (L.F. 118).

On August 17, 2001, the City of St. Louis filed a Motion to Amend the Judgment. That Motion was not ruled on by the circuit court and was thereafter deemed denied. Mo. Sup. Ct. R. 81.05(2)(A). On November 20, 2001, Appellant filed its Notice of Appeal to this Court. On November 30, 2001, Respondents City of St. Louis and St. Louis Living Wage Campaign filed their separate Notices of Cross-Appeal. Both Respondents subsequently voluntarily withdrew those Cross-Appeals, with the consent of Appellant, in motions filed with this Court on June 26 and 21, 2002 respectively.

POINTS RELIED ON

I.

The circuit court did not err in declaring that Section 67.1571 violated the procedural enactment provisions of Sections 21 and 23 of Article III of the Missouri Constitution, because the statute of limitations in Section 516.500 did not bar Respondent's challenge to Section 67.1571, as no person was aggrieved until the St. Louis Living Wage Ordinance was enacted in 2000 and Appellant sought to invoke Section 67.1571 to block enforcement of the Ordinance; Respondent's members then became part of a class of the first persons aggrieved under Section 516.500, which exempts from the otherwise-applicable statute of limitations those constitutional challenges in which no party was aggrieved by the challenged provision within the limitations period.

POINTS RELIED ON

II.

The circuit court did not err in granting Respondent's motion to amend its pleading to add the affirmative defense challenging the constitutionality of Section 67.1571, and acted well within its discretion to reject Appellant's Motion to Strike the Affirmative Defense, because Respondent's defense was raised at the earliest possible moment in this procedurally unusual case, and Appellant had fair notice and opportunity to respond and to contend – unsuccessfully – that Section 67.1571 was not constitutionally defective.

POINTS RELIED ON

III.

The circuit court did not err in concluding that Section 67.1571 violated the procedural enactment requirements of Sections 21 and 23 of Article III of the Missouri Constitution, because Section 67.1571 added provisions outside the scope of the title, subject, and purpose of the bill to which it was added as a late amendment; Section 67.1571, which purports to forbid municipalities from enacting minimum wage legislation, was a last-minute addition to a bill establishing and regulating community improvement districts, and its enactment thus violated Article III, Section 23, which requires that a bill have a single subject and that that subject be reflected in its title; it also violated Article III Section 21, which forbids amendments that change a bill's original purpose.

STANDARD OF REVIEW

An appeal on the issue of a lower court's granting leave to amend a pleading is reviewed for abuse of discretion. *Cady v. Hartford Accident & Indem. Co.*, 439 S.W.2d 483, 486 (Mo. 1969). *See also Andes v. Paden, Welch, Martin & Albano, P.C.*, 897 S.W.2d 19, 20 (Mo. Ct. App. 1995) (standard on appeal is "obvious and palpable" abuse of discretion); *Curnutt v. Scott Melvin Transport, Inc.*, 903 S.W.2d 184, 193 (Mo. App.1995) (same). An appeal on the issue of constitutionality or interpretation of a statute is a question of law and this Court reviews the circuit court's judgment de novo. *Baldwin* v. *Dir. of Revenue*, 38 S.W.3d 401, 405 (Mo. banc 2001) (citing *Cox* v. *Tyson Foods, Inc.*, 920 S.W.2d 534, 535 (Mo. banc 1996)); *In re T.A.S.*, 62 S.W.3d 650, 658 (Mo. App. 2001).

ARGUMENT

I.

The circuit court did not err in declaring that Section 67.1571 violated the procedural enactment provisions of Sections 21 and 23 of Article III of the Missouri Constitution, because the statute of limitations in Section 516.500 did not bar Respondent's challenge to Section 67.1571, as no person was aggrieved until the St. Louis Living Wage Ordinance was enacted in 2000 and Appellant sought to invoke Section 67.1571 to block enforcement of the Ordinance; Respondent's members then became part of a class of the first persons aggrieved under Section 516.500, which exempts from the otherwise-applicable statute of limitations those constitutional challenges in which no party was aggrieved by the challenged provision within the limitations period.

Section 516.500 sets forth the statute of limitations for challenging a statute's validity based on a procedural defect in its enactment:

> No action alleging a procedural defect in the enactment of a bill into law shall be commenced, had or maintained by any party later than the adjournment of the next full regular legislative session following the effective date of the bill as law, *unless it can be shown*

> *that there was no party aggrieved who could have raised the claim within that time*.

Mo. Ann. Stat. § 516.500[5] (emphasis added). The statute proceeds to delineate the circumstances under which this exception applies:

> In the latter circumstance, the complaining party must establish that he or she was the first person aggrieved or in the class of first persons aggrieved, and that the claim was raised not later than the adjournment of the next full regular legislative session following any person being aggrieved.

Id. Finally, the statute concludes by requiring that "[i]n no event shall an action alleging a procedural defect in the enactment of a bill into law be allowed later than five years after the bill or the pertinent section of the bill which is challenged becomes effective." *Id*.[6]

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[5] Section 516.500 is also known as the "*Hammerschmidt* Rule," because it codifies in relevant part the concurring opinion in *Hammerschmidt v. Boone Cty*., 877 S.W.2d 98 (Mo. banc 1994) – a case that, like the one at bar, involved a challenge to a state statute under Article III, Section 23 of the Missouri Constitution.

[6] The circuit court noted that the validity of Section 516.500 is a matter of substantial debate in light of the "open courts" provision of Mo. Const. art. I, § 14. (L.F. 118-19.) The court's ruling that Section 516.500 did not apply to bar Respondent's challenge to the constitutionality of Section 67.1571,

Under the plain terms of this statutory exception to the otherwise-applicable statute of limitations, Respondent's defense challenging Section 67.1571 was timely because Respondent's members were "in the class of first persons aggrieved" by Section 67.1571 since its enactment, and the claim was raised "not later than the adjournment of the next full regular legislative session following any person being aggrieved."

No person was aggrieved until after the Ordinance was enacted and challenged by the Appellant. Respondent represents members of the class that most immediately would have benefited from the Ordinance – workers whose employers contract with the City. These workers would have received higher wages under the Ordinance, which Appellant enjoined by invoking Section 67.1571. This class first became "aggrieved" by Section 67.1571 when Appellant raised this statute to challenge the validity of the Ordinance in November 2000.

The Living Wage Ordinance was enacted on August 8, 2000. Respondent could not possibly have been aggrieved prior to that date because it would have had no rights to enforce, and there was no Ordinance that could have conflicted with Section 67.1571. But Respondent was not "aggrieved" by the mere enactment of the Ordinance because its mere enactment did not give rise to a dispute that was ripe, immediate, and concrete. Accordingly, Respondent did not have standing to challenge Section 67.1571 at that time.

At the time of the enactment of the Ordinance, it was far from evident that Section 67.1571 would even apply to it. The Ordinance established wage standards for government contractors and grant recipients, while

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however, was not based on its questioning of Section 516.500's validity, but rather on its holding that Respondents' challenge falls within the section's express exception to the applicability of the statute of limitations.

Section 67.1571 applied specifically to "minimum wage" laws. Statutes applying to government contractors have long been recognized as quite distinct from those setting a minimum wage because a city generally has the right to enter into, and set the terms of, its own contracts. *See, e.g., City of Kansas City v. Southwest Tracor, Inc.*, 71 S.W.3d 211, 215 (Mo. Ct. App. 2002). While minimum wage laws apply across the board to mandate minimum wage levels in an entire labor market, government contractor and grant recipient wage standards, such as prevailing wage and living wage laws, apply only to employers that choose to seek and accept government contracts or grants.

Until Section 67.1571 was invoked against the Ordinance, Respondent was not adversely affected or "aggrieved" by it, and therefore would have had no standing to raise a challenge. *See Arsenal Credit Union v. Giles*, 715 S.W.2d 918, 920 (Mo. banc 1986) (to have standing to challenge the constitutionality of a procedurally defective state statute, a litigant "must demonstrate he is 'adversely affected by the statute in question'") (quoting *Ryder v. County of St. Charles*, 552 S.W.2d 705, 707 (Mo. banc 1977)). *See also Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 4 (Mo. banc 1984) (hotel operator plaintiffs challenged Senate Bill 575 under Article III, Sections 21 and 23, on ground that it "directly affected them by increasing the license fees charged for hotels generally and plaintiffs in particular"); *SSM Cardinal Glennon Children's Hosp. v. State*, 68 S.W.3d 412 (Mo. 2002) (privately maintained hospitals challenged constitutionality of House Bill 343 because it would directly affect amount the hospitals could recover for unpaid fees).

Any challenge by Respondent to Section 67.1571 prior to November 2000 would not have been ripe for adjudication. A ripe controversy exists "if the parties' dispute is developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict that is presently existing, and to

grant specific relief of a conclusive character." *Missouri Health Care Ass'n v. Attorney Gen. of the State of Missouri*, 953 S.W. 2d 617, 621 (Mo. banc 1997); *see also Buechner v. Bond*, 650 S.W.2d 611, 614 (Mo. banc 1983) (cases are ripe for adjudication when "sufficient immediacy" is established, and when the question does not rest "solely on a probability that an event will occur."). In the context of a constitutional challenge to a statute, a ripe controversy generally exists "when the state attempts to enforce the statute." *Missouri Health Care Ass'n*, 953 S.W.2d at 621.

This Court has, however, allowed pre-enforcement challenges "where the facts necessary to adjudicate the underlying claims were fully developed and the laws at issue were affecting the plaintiffs in a manner that gave rise to an immediate, concrete dispute." *Missouri Health Care Ass'n*, 953 S.W.2d at 621 (allowing pre-enforcement challenge to statute governing unlawful trade practices where individuals were restrained from making representations in course of their business for fear of triggering statute's disclosure requirements and enforcement provisions). *See also Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 34 (Mo. banc 1982) (allowing pre-enforcement challenge to a statute that prohibited fees to be earned on loans of certain size and purposes, where corporations that earned fees on such loans sought to avoid being prosecuted under statute); *Borden Co. v. Thomason*, 353 S.W.2d 735, 741 (Mo. banc 1962) (allowing pre-enforcement challenge to statute that set standards for milk pricing, and imposed penalties for violations, where milk seller sought to enjoin enforcement before violating statute's provisions).

Respondent could not have brought a pre-enforcement challenge against Section 67.1571 because, unlike the statutes at issue in *Missouri Health Care Ass'n*, *Lincoln Credit Co.*, and *Borden*, Section 67.1571 did not affect Respondent "in a manner that gave rise to an immediate, concrete dispute."

Missouri Health Care Ass'n, 953 S.W.2d at 621. First, as noted, it was unclear that Section 67.1571 would even apply to the government contractor wage standards prescribed by the Ordinance. Second, Respondent's members risked no financial or criminal penalties levied against them for violation of the statute because it applies to "municipalities," not individuals. Because there was no immediate dispute, such claims would not have fallen into the exception to the rule prohibiting pre-enforcement challenges. The statute of limitations for challenging a statute's validity does not begin to run until there is a "party aggrieved who could have raised the claim" against the statute. Mo. Ann. Stat. § 516.500. Because there was no adjudicable dispute based on the mere existence of Section 67.1571, Respondent was not aggrieved by the existence of Section 67.1571 until it was invoked to strike down the Ordinance in November 2000.

Nor was any other party aggrieved by Section 67.1571 until Appellant brought suit attempting to enjoin the Ordinance. Cities with wage ordinances in place at the time of Section 67.1571's enactment were not aggrieved by the statute because Section 67.1571 was not invoked to challenge them. For example, since 1990, Kansas City has had an ordinance establishing wage standards for city service contractors. *See* Kansas City (Mo.) Admin. Code § 2-1651 (requiring city contractors to pay janitorial employees no less than "the Minimum Wage plus $.075 per hour."). St. Louis itself also has had an ordinance since 1990 establishing prevailing wage standards for firms receiving city service contracts. *See* St. Louis City Code Rev. § 6.20.020 (requiring that city service contracts specify "the minimum prevailing wages to be paid by the service contractor [to any] service employee").

As explained above, a lawsuit for a declaratory judgment by St. Louis or Kansas City against Section 67.1571 would not have been ripe for adjudication. *Missouri Health Care Ass'n*, 953 S.W. 2d at 621. Because, as

noted, a city generally has the freedom to enter into, and set the terms of its own contracts, *see Southwest Tracor,* 71 S.W.3d at 215, it was far from evident that these ordinances, which set government contractor wage standards, actually conflicted with 67.1571. Furthermore, the St. Louis and Kansas City laws remained in effect after 1998 notwithstanding the enactment of Section 67.1571. Respondent knows of no instance – nor has Appellant offered a single example – in which Section 67.1571 was invoked in an effort to block enforcement of any city ordinance in Missouri, until this litigation (and the other events following the enactment of the St. Louis Living Wage Law). This fact is confirmed by review of the reported case law, which reveals no decisions involving attempted enforcement of Section 67.1571.

Courts would not allow municipalities to bring a lawsuit every time their lawyers were concerned that an Ordinance might have a hypothetical conflict with a state statute, because such suits would not be ripe, and would lead to a flood of unnecessary litigation. St. Louis and Kansas City could not, therefore, have initiated a challenge to Section 67.1571 as the first parties aggrieved based on Kansas City (Mo.) Admin. Code § 2-1651 and St. Louis City Code Rev. § 6.20.020 because no party ever sought to enforce Section 67.1571 against them.

Appellant's observation that certain Missouri state representatives knew that Section 67.1571 violated the State Constitution in 1998 is of no consequence because such legislators also were not the first parties aggrieved by the statute's enactment. Legislators do not have institutional standing to challenge a statute unless they show that their votes were effectively nullified, *Coleman v. Miller*, 307 U.S. 433 (1939) (holding that state senators had standing to challenge ratification of amendment to U.S. Constitution where amendment was deemed ratified despite 20-20 tie in Senate), or that state law expressly authorized legislative standing. *Planned Parenthood of Mid-Missouri and E. Kansas, Inc. v.*

Ehlmann, 137 F.3d 573 (8th Cir. 1998) (applying *Coleman* and concluding that Missouri representatives who voted for statute lacked standing to intervene when statute was struck down by U.S. District Court because Missouri state law did not authorize legislative standing). In the present case, Appellant does not contend that the vote of any legislator was nullified, nor does any express statutory provision grant Missouri legislators standing to sue to enforce Article III, Sections 21 or 23.

Moreover, if a legislator could be "aggrieved" by the procedurally-defective enactment of a state statute, then the applicable exception to the statute of limitations for challenging such statutes would serve no purpose. Section 516.500 states that a challenge to a statute under Article III, Section 21 or 23 must be brought before the adjournment of the next legislative session, "unless it can be shown that there was no party aggrieved who could have raised the claim within that time." If a legislator were "aggrieved" by a violation of Article III, Section 21 or 23, then there would be no circumstance in which there was "no party aggrieved" at the time of the enactment. On such a reading, the provision would therefore have no meaning. Statutory language should not be interpreted in a way that would render its provisions meaningless. *In re Estate of Jones*, 376 S.W.2d 210, 216 (Mo. banc 1964). It is clear that the legislature did not intend to include legislators among the class of "first person aggrieved."

Because Respondent thus represents members of the "class of first persons aggrieved" by an attempt to enforce Section 67.1571, under the terms of Section 516.500, they challenged the constitutional defects that infected the section's enactment in a timely fashion. Respondent became aggrieved only in November 2000, when Section 67.1571 was invoked to challenge the Ordinance, and Respondent "raised [the challenge] not later than the adjournment of the next full regular legislative session following any person being aggrieved," *see* Mo.

Ann. Stat. § 516.500, and less than five years after the challenged statute's effective date.[7] *Id.*

[7] The "next full regular legislative session following [the date Respondent was] aggrieved" was adjourned in May 2001. Respondent filed its motion seeking to challenge the defective statute months earlier, in January 2001. That date was less than five years after Section 67.1571's enactment in 1998.

ARGUMENT

II.

The circuit court did not err in granting Respondent's motion to amend its pleading to add the affirmative defense challenging the constitutionality of Section 67.1571, and acted well within its discretion to reject Appellant's Motion to Strike the Affirmative Defense, because Respondent's defense was raised at the earliest possible moment in this procedurally unusual case, and Appellant had fair notice and opportunity to respond and to contend – unsuccessfully – that Section 67.1571 was not constitutionally defective.

An appeal on the issue of a lower court's granting leave to amend a pleading is reviewed for abuse of discretion. *Cady v. Hartford Accident & Indem. Co.*, 439 S.W.2d 483, 486 (Mo. 1969). *See also Andes v. Paden, Welch, Martin & Albano, P.C.*, 897 S.W.2d 19, 20 (Mo. Ct. App. 1995) (standard on appeal is "obvious and palpable" abuse of discretion); *Curnutt v. Scott Melvin Transport, Inc.*, 903 S.W.2d 184, 193 (Mo. Ct. App.1995) (same). Appellate courts in this state therefore rarely reverse lower courts for allowing an amendment to a pleading.

The purpose of the rule requiring constitutional issues to be raised at the earliest possible opportunity is "to prevent surprise to the opposing party and permit the trial court an opportunity to fairly identify and rule on the issue." *Winston v. Reorganized Sch. Dist. R-2*, 636 S.W.2d 324, 327 (Mo. banc 1982) (holding that plaintiff's "Reply to Defendant's Answer and Motion for Summary Judgment" and subsequent "Reply Memorandum" supplied underlying facts with sufficient particularity to inform trial court of plaintiff's intentions). *See also McCarthy v. Community Fire Prot. Dist. of St. Louis Cty.*, 876 S.W.2d 700, 703

(Mo. App. 1994) (holding that it was not necessary to raise specific constitutional provision in the answer where constitutional defense was raised days later in Defendant's suggestions in support of its summary judgment motion).

Appellant suffered no prejudice or surprise from the addition of the constitutional claim. Respondent moved to amend its answer just four weeks after their motion to intervene was granted – thus giving Appellant ample opportunity to brief its argument that Section 67.1571 was not unconstitutional. Appellant had from the conclusion of the trial on February 1, 2001 until March 8, 2001 to brief the merits of this issue. Any suggestion that the amended pleading did not give Appellant adequate notice of the substance of the affirmative defense is further undercut by Appellant's extensive briefing of the issue of Section 67.1571's constitutionality in its merits brief to the circuit court. In that brief, Appellant set forth fully and completely its arguments that the section was enacted in accordance with Article III, Sections 21 and 23 of the Missouri Constitution, and explained in detail how the House Bill 1636 became law. (App. Merits Br. at 24-31.) In fact, in its merits brief, Appellant dedicated seven full pages (out of 31) to the question of the constitutionality of Section 67.1571. (*Id.*)

Appellant's full and adequate opportunity to address the merits of the constitutional issue in the circuit court is further confirmed by the fact that the substance of Appellant's argument in its merits brief below is almost identical to that which it makes to this Court. (*See id.*; App. Br. at 24-33). Appellant claims that it was prejudiced because the amended pleading was conclusory, forcing Appellant to "literally guess as to what specific facts were being relied upon."[8]

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[8] Appellant invokes Missouri Supreme Court Rule 55.08, which requires that an answer "contain a short and plain statement of the facts showing that the pleader is entitled to the defense or avoidance."

(App Br. at 22). The fact that Appellant came up with no new arguments to present to this Court between March 2001 and April 2002 belies the argument that Appellant had to "literally guess" about the nature of the claim, or that it did not have notice of the substance of Respondent's affirmative defense.[9]

The procedural posture of this case is wholly distinguishable from *Christiansen v. Fulton State Hosp.*, 536 S.W.2d 159 (Mo. banc 1976), the case upon which Appellant relies. (App. Br. at 17.) In *Christiansen*, the appellant was an imprisoned "criminal sexual psychopath" who petitioned for release under Mo. Rev. Stat. § 202.700, alleging that he had improved to the extent that his release would not be incompatible with the welfare of society. *Id.* at 159-60. The

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[9] Any suggestion that Appellant was prejudiced by the circuit court's allowing the amended answer is further belied by the fact that the court invited Appellant to submit a reply to the amended answer, but Appellant declined to do so. *See* February 9, 2001 Order ("Plaintiffs may file a reply within 5 days, if they deem a reply to the pleaded affirmative defenses to be necessary. The Court perceives no need to entertain additional evidence based on the amended answer. The issue of the constitutionality of § 67.1571, RS Mo, shall be addressed by the parties in their briefs.") (L.F. 86.) Furthermore, Appellant waived its objections to the filing of the amended answer by failing to submit a "Motion for More Definite Statement" as required by Missouri Supreme Court Rule 55.27(d). *State ex rel. Harvey v. Wells*, 955 S.W.2d 546, 547 (Mo. banc 1997). *Accord Clark v. Olson*, 726 S.W.2d 718, 719 (Mo. banc 1987). Failure to file such a motion results in waiver of any such objections. *See Business Men's Assurance Co. of Am. v. Graham*, 891 S.W.2d 438, 448 (Mo. App. 1994).

appellant's petition raised no constitutional issues. *Id.* at 160. The "first reference" to any constitutional issue was in his counsel's closing argument, in which he said that a mental patient had a "right" to treatment that appellant was not receiving. *Id.* It was not until his motion for a new trial that appellant claimed that extended incarceration without adequate treatment constituted a violation of the eighth and fourteenth amendments to the U.S. Constitution. *Id.*

This Court determined that it was not proper to "resolve a constitutional issue on that kind of a record." *Id.* It added: "If these issues were to be litigated, the State was entitled to notice thereof so as to prepare and present evidence pertinent thereto. Such notice was not given." *Id.* As explained above, unlike Christiansen, who first raised his constitutional issues in a motion for a new trial, Respondent moved to amend its answer to include the constitutional defense a mere four weeks after its motion to intervene was granted. Consistent with this Court's purpose of "prevent[ing] surprise to the opposing party," *Winston,* 636 S.W.2d at 327, the lower court gave Appellant an opportunity to file a reply to the court's February 9 order (which it did not do), and then gave it a full opportunity to brief the issue (which it did).

Appellant is also wrong to suggest that the circuit court should have disregarded the question of Section 67.1571's constitutionality because the issue was not raised in the initial answer that Respondent filed with the circuit court together with its motion to intervene. (App. Br. at 16.) Missouri Supreme Court Rule 55.33(a) provides that "leave [to file an amended pleading] shall be freely given when justice so requires" and this Court has explicitly "reject[ed] the suggestion that a constitutional point not set out in an initial pleading cannot be added by amendment." *Dye v. Div. of Child Support Enforcement*, 811 S.W.2d 355, 358 (Mo. banc 1991). As the case on which the circuit court relied in granting the motion indicates, *see* February 9 Order (citing *Lester v. Sayles*, 850

S.W.2d 858 (Mo. banc 1993)) (L.F. 86), it can be an abuse of discretion for a trial court to deny even a relatively late motion to amend a pleading to add an affirmative defense. *See Lester*, 850 S.W.2d at 869-70.[10]

Moreover, in exercising its discretion, the circuit court could appropriately consider that the question of Section 67.1571's constitutionality was an important issue of public policy to the citizens of St. Louis and the State of Missouri. Appellant sought to strike down the Ordinance – an anti-poverty measure enacted overwhelmingly by the voters of the City of St. Louis – by invoking a statutory provision whose constitutionality was subject to serious question. The circuit court was acting within its discretion when it refused to accept Appellant's invitation to strike down the Ordinance based on Section 67.1571 without considering its constitutionality.

Finally, the full force of the constitutional infirmity of the statute was not brought home to Respondent until it received the affidavit of Charles Pryor on January 4, 2001. (Pryor Aff., Supp. L.F. 7.) Representative Pryor's affidavit stressed the fact that the Section 67.1571 anti-minimum wage amendment was completely unconnected to CIDs and was added to the CID bill simply because it offered an "available vehicle." (Pryor Aff. ¶ 6, Supp. L.F. 7.)

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[10] Appellant's remaining contention, that the lower court did not give it five days to respond to the motion to amend required by Missouri Supreme Court Rule 44.01, App. Br. at 23, is undermined by the rule itself. Rule 44.01(d) provides that a "written motion … shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by law or court rule *or by order of the court*" (emphasis added). The lower court properly invoked its power to fix a different period to hear the motion.

Thereafter, Respondent then sought out other legislators with direct knowledge of those events and learned further detail from Representative James Michael Foley confirming the fact that the Section 67.1571 amendment was understood by all as completely unrelated to the remainder of the CID bill. (Foley Aff. ¶¶ 3-5, Supp. L.F. 1.) Promptly after learning these facts, Respondent filed, on January 31, 2001, its amended answer seeking to add as a defense the unconstitutionality of Section 67.1571 (L.F. 66), and also notified the Missouri Attorney General's Office that the constitutionality of a state statute had been called into question. (Attach. 2 to Van Amburg Aff., Supp. L.F. 14.) All of this occurred just four weeks after Respondent was admitted into the case and Representative Pryor's affidavit was disclosed to it.

In short, because Appellant had a full and fair opportunity to address the issue of Section 67.1571's constitutionality, and because Respondent raised the issue of the section's constitutionality at the earliest possible opportunity, the court below was well within its discretion in allowing the amended pleading.

ARGUMENT

III.

The circuit court did not err in concluding that Section 67.1571 violated the procedural enactment requirements of Sections 21 and 23 of Article III of the Missouri Constitution, because Section 67.1571 added provisions outside the scope of the title, subject, and purpose of the bill to which it was added as a late amendment; Section 67.1571, which purports to forbid municipalities from enacting minimum wage legislation, was a last-minute addition to a bill establishing and regulating community improvement districts, and its enactment thus violated Article III, Section 23, which requires that a bill have a single subject and that that subject be reflected in its title; it also violated Article III, Section 21, which forbids amendments that change a bill's original purpose.

Mo. Rev. Stat. § 67.1571 provides that "[n]o municipality as defined in section 1, paragraph 2, subsection (9) [of the 1998 Missouri Community Improvement District Act] shall establish, mandate or otherwise require a minimum wage that exceeds the state minimum wage." Section 67.1571 was adopted as a late amendment to the 1998 Missouri Community Improvement District Act ("CID Act" or "CID bill"), House Bill 1636 – a piece of legislation that broadened and modified the powers of municipalities in Missouri to establish Community Improvement Districts ("CIDs"). The other provisions of the CID bill set forth various procedures relating to the establishment and proper governance and operation of CIDs, addressing such issues as the type of notice and hearing required before a municipality may establish a CID; the permissible size and composition of a CID board of directors; and the ability of a CID to institute public improvements such as pedestrian malls, parks, and murals. (*See* House

Bill 1636 (1998), Attach. 10 to Van Amburg Aff., Supp. L.F. 72; Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1636 (1998) (substitute version of bill ultimately enacted), Attach. 13 to Van Amburg Aff., Supp. L.F. 191.)

Section 67.1571's unrelated anti-minimum wage provision was added as the eighteenth section of the third of four substitute versions of the bill, without any alteration to the bill's title to reflect its new subject matter. (Foley Aff. ¶ 3, Supp. L.F. 1.)[11] The language of this late amendment was previously proposed to the Missouri legislature by Representative Charles Pryor as a separate bill, House Bill No. 1346 (1998), and was rejected. (*See* Attach. 14 to Van Amburg Aff., Supp. L.F. 231.) Representative Pryor then offered the proposal as

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[11] The provision was not contained in the original CID Bill that Representative Thomas Hoppe introduced in the House Committee on Local Government and Related Matters. (*See* Attach. 14 to Van Amberg Aff., Supp. L.F. 231.) Nor was it contained in the House Committee Substitute version of the CID Act bill which was voted out of the Committee on Local Government and Related Matters. (*See* Attach. 11 to Van Amburg Aff., Supp. L.F. 112.) It was not until the bill reached the House floor and was replaced yet again by a House Substitute version that the anti-minimum wage amendment was added by Representative Pryor. (*See* Attach. 12 to Van Amburg Aff., Supp. L.F. 151.) Representative Pryor's amendment, which became Section 18 of the bill, was retained in the Senate Committee Substitute version of the bill that was ultimately enacted by both houses of the Missouri legislature and signed into law by the governor. (*See* Attach. 13 to Van Amburg Aff., Supp. L.F. 191; Foley Aff. ¶ 3, Supp. L.F. 1.)

an amendment to various pieces of legislation pending in the Missouri House of Representatives at that time, including the CID bill. (Foley Aff. ¶ 4, Supp. L.F. 1.) Only when the same language was tacked on as a late amendment to the unrelated CID bill was he able to muster the votes necessary for enactment. It is clear that its enactment in these circumstances violated both the terms and the central purpose of Article III, Sections 21 and 23.

We turn first to Article III, Section 23, which states that, with one exception not here relevant, "[n]o bill shall contain more than one subject which shall be clearly expressed in its title." As the Missouri Supreme Court has explained in construing Section 23,

> *The test for whether a bill contains a single subject focuses on the title of the bill*. If the bill's title is not too broad or amorphous to identify the single subject of the bill, then the bill's title serves as the touchstone for the constitutional analysis. This Court examines whether a bill violates the single subject rule by first determining whether the bill's provisions fairly relate to, have a natural connection with, or are a means to accomplish the subject of the bill *as expressed in the title*.

Missouri Health Care Ass'n, 953 S.W.2d at 622 (emphasis added) (citations omitted).

Section 67.1571 blatantly violates this requirement. The bill ultimately enacted bore the title "An Act to repeal [certain specified code sections]

relating to community improvement districts, and to enact in lieu thereof eighteen new sections relating to the same subject." (Attach. 13 to Van Amburg Aff., Supp. L.F. 191.) This title clearly identifies a single subject for the bill: community improvement districts ("CIDs"). Accordingly, Section 67.1571 can be constitutionally sound only if it, too, concerns the subject of CIDs. It does not. Instead, Section 67.1571 by its plain terms purports to forbid municipalities to "establish, mandate or otherwise require a minimum wage that exceeds the state minimum wage." Mo. Rev. Stat. § 67.1571. The Section's applicability is nowhere limited even to those municipalities that have elected to establish CIDs – much less to the geographic areas designated as CIDs within those municipalities.

In fact, Appellant itself concedes that Section 67.1571 was not in any way linked to or limited by CIDs. As Representative Pryor candidly explains in the affidavit submitted by Appellant:

> Because the available vehicle of House Bill 1636 dealt with economic development and with Community Improvement Districts, this state wide ban on municipal and local minimum wage laws set higher than the State Minimum Wage Law was incorporated into Chapter 67 by the Revisor of Statutes. However, *such location of this provision was understood by the majority voting for the measure to have no effect upon its scope as a state wide prohibition against municipal and local Minimum Wage Ordinances*, as clearly

> stated in the terms of Section 18 [the Section now codified at Mo. Rev. Stat. § 67.1571.

(Pryor Aff. ¶ 6, Supp. L.F. 7 (emphasis added).) In short, Section 67.1571 – in Representative Pryor's own words – was a "state wide prohibition" in no way affected by the fact that the "available vehicle" of the CID Act (then House Bill 1636) concerned CIDs.

Appellant attempts to evade this analysis by arguing that the CID Act does not contain more than one subject because all of its provisions are a means to accomplish its purpose, and that this purpose was not the establishment and regulation of CIDs, but rather job creation. (App. Br. 31-32). Thus, according to Appellant, Section 67.1571 is related to the bill's purpose because it represents a legislative attempt to ensure that municipalities do not limit the bill's effectiveness in creating new jobs by restricting the wages paid for those jobs. (*Id*).

This argument is wrong because the subject reflected in the title of the CID Act is not "job creation" – it is "community improvement districts." *See* Attach. 13 to Van Amburg Aff., Supp. L.F. 191). As discussed above, the common subject to which all provisions of the bill must relate *is the one that is expressed in its title*. *Missouri Health Care Ass'n*, 953 S.W.2d at 622; *see also C.C. Dillon Co.* v. *City of Eureka*, 12 S.W.3d 322, 328 (Mo. banc 2000) ("We look first to the title of the bill to determine its subject.") (internal citation omitted); *Fust* v. *Atty Gen.*, 947 S.W.2d 424, 428 (Mo. banc 1997) ("[T]he single subject test is not whether individual provisions of a bill relate to each other. The constitutional test focuses on the subject set out in the title."). This Court has expressly rejected attempts to remedy Section 23 defects by positing a subject or purpose broad enough to embrace the various provisions of the bill if that subject

is not expressed in the bill's title, on the ground that such reconceptualization of the subject would lead in turn to a violation of Section 23's "clear title" requirement:

> The mere fact that two subjects in a bill can be reconciled as part of a broader subject, and thus satisfy original purpose or single subject challenges, does not, in itself, mean that the broader subject has been clearly expressed in the title of the bill.

Nat'l Solid Waste Mgmt. Ass'n v. *Director of the Dep't of Natural Resources*, 964 S.W.2d 818, 821 (Mo. banc 1998) (footnotes omitted). On this basis, the Court concluded that "[t]he title's failure to refer also to … an all-encompassing category [that would embrace the subjects of all of its provisions] is a fatal [clear title] defect," because "[i]t forces the reader to search out the commonality of the subjects … from some source extrinsic to the title itself." *Id.* at 820-21. *See also Missouri Health Care Ass'n*, 953 S.W.2d at 623 n.2 ("Although the parties have not done so, one could posit that the subject of [the challenged bill] is long-term care. If this were the subject [of the bill], however, it would not be clearly expressed by the title 'department of social services.'") (citation omitted).

Therefore, even if one could ignore the subject stated in the CID Act's title (*i.e.*, CIDs) and engraft onto the bill an expanded subject that might somehow encompass both CIDs and the Section 67.1571 anti-minimum wage provision, such an interpretation would then render the bill a violation of Section 23's "clear title" requirement. This emphasis on the need for a bill's title to accurately reflect its contents is not surprising, as otherwise neither legislators nor the public have notice of the bill's contents. *See Hammerschmidt*, 877 S.W.2d at

101-02 (Mo. banc 1994) (discussed *infra* at 34-35); *House Builders Ass'n* v. *Missouri*, No. SC 83863, 2002 WL 1051989 (Mo. May 28, 2002) ("[T]he purpose of the 'clear title' provision is to apprise legislators and the public of the subject matter of pending laws.") (citation omitted). As the circuit court in this case observed with respect to Section 67.1571, "[n]o one reading the title of the original or substitute H.B. 1636 would have any idea that minimum wage legislation is included." (L.F. 117).

Appellant has identified no case in which a bill containing an amendment unrelated to the bill's title was upheld against a Section 23 challenge based on the positing of a new, broader subject – different from the one stated in the title – that might conceivably embrace the otherwise unrelated amendment. Indeed, the post-*Hammerschmidt* cases rejecting Section 23 "single subject" challenges do so based on a conclusion that the bill's diverse provisions do, in fact, relate to the subject stated in the title. *See*, *e.g*., *Fust* v. *Attorney Gen*., 947 S.W.2d 424, 428 (Mo. banc 1997) (no Section 23 violation where all provisions relate to subject "of assuring just compensation for certain person's damages" stated in bill's title, as "[t]he constitutional test focuses on the subject set out in the title"); *Akin* v. *Director of Revenue*, 934 S.W.2d 295 (Mo. banc 1996) (no Section 23 violation where all provisions relate to subject of "education" stated in bill's title).

The cases on which plaintiffs rely, *C.C. Dillon Co.*, 12 S.W.3d 322, and *Stroh Brewery Co*. v. *State*, 954 S.W.2d 323 (Mo. banc 1997), are precisely such cases. In *C.C. Dillon Co.*, the broad subject – transportation – to which all of the provisions of the bill were found to relate was, in fact, the subject specified in the bill's title, "[a]n act to repeal [certain sections] … relating to transportation, and to enact in lieu thereof seven new sections relating to the same subject." 12 S.W.3d at 329. Similarly, in *Stroh Brewery Co.*, this Court rejected the argument

that provisions relating to liquor labeling were unrelated to provisions relating to the auction of vintage wine, on the ground that all of the challenged bill's provisions related to intoxicating beverages – a subject reflected in its title, "an act to repeal [certain sections]… relating to intoxicating beverages, and to enact in lieu thereof nine new sections relating to the same subject." 954 S.W.2d at 325.

By contrast, in the instant action the only acknowledged subject of the CID Act was, as stated in its title, "community improvement districts." (*See* Attach. 13 to Van Amburg Aff., Supp. L.F. 191.) Appellant cannot escape the consequences of the lack of relation between this subject – CIDs – and a "state wide prohibition against municipal and local Minimum Wage Ordinances" that was specifically intended not to relate to CIDs, (*see* Pryor Aff. ¶ 6, Supp. L.F. 7), by positing a broader subject not reflected in the title of H.B. 1636.

Section 67.1571 fares no better under Section 23's companion provision, Section 21, which states that "no bill shall be so amended in its passage through either house as to change its original purpose." The late addition of Section 67.1571 to a bill that previously had nothing to do with a municipality's ability to pass a minimum wage legislation violated this provision. As the circuit court concluded, and Appellant does not seriously contest, House Bill 1636 as originally introduced was "devoted exclusively to community improvement districts, their creation, powers and governance, until it reached the Senate, whereupon Proteus worked his magic and there emerged Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1636" – which, as the circuit court observed, contained a "new tail,'" Section 67.1571, that "ha[d] nothing to do with community improvement districts" and thus "ha[d] absolutely nothing to do with the original purpose of H.B. 1636." (L.F. 115-117).

Notably, the late addition of Section 16.1571 to H.B. 1636 exemplifies exactly the evils against which Sections 21 and 23 are intended to protect. First, Sections 21 and 23 are meant to prevent "logrolling" – the practice of combining unrelated amendments in a bill that would not otherwise command a majority on their own, but which when taken together will command a sufficient number of votes because some portions of the bill are of vital importance to a sufficient number of legislators. *See Hammerschmidt*, 877 S.W.2d at 101-02; *Stroh Brewery Co*., 954 S.W.2d at 325-26. They thus protect legislators from being put in the position – as they were in the case of House Bill 1636 – "of having to vote for some [unrelated] matter which they do not support in order to enact that which they earnestly support." *Hammerschmidt*, 877 S.W.2d at 101 (citation omitted).

Second, both Section 21 and Section 23 ensure that legislators and the public have full notice of the subject of proposed legislation, and guard against provisions that might not otherwise muster support being enacted into law as low-profile amendments to otherwise popular and unobjectionable bills. *See generally Hammerschmidt*, 877 S.W.2d at 101-02; *Nat'l Solid Waste Mgmt Ass'n*, 964 S.W.2d at 820; *C.C. Dillon Co*., 12 S.W.3d at 326.

The enactment of Section 67.1571 is a textbook example of these risks of logrolling and stealth amendment. The language comprising Section 67.1571 was drawn from a legislative proposal that Representative Pryor had tried unsuccessfully to enact both as a separate piece of legislation and as an amendment to other pending legislation. (Foley Aff. ¶ 4, Supp. L.F. 1.) Only when the language was inserted as a late addition to the third of four substitute versions of an unrelated piece of legislation was Representative Pryor able to muster the votes necessary to enact it.

CONCLUSION

The circuit court did not err in its holding that Section 67.1571 violated the procedural protections in Article III, Sections 21 and 23 of the Missouri Constitution. The circuit court correctly held that the enactment of Section 67.1571 violated Sections 21 and 23, because Section 67.1571 fell outside the scope of the subject, purpose, and title of the bill to which it was added as a late amendment. In fact, the section's enactment was a textbook example of the evils of logrolling and surreptitious amendment against which these constitutional provisions protect.

Respondent's constitutional challenge was not barred by the expiration of the statute of limitations codified in Section 516.500, which expressly exempts from the otherwise-applicable statute of limitations those challenges in which no party was aggrieved by the challenged provision within the limitations period. The statute of limitations thus did not begin to run until Appellant invoked the procedurally-flawed Section 67.1571 to enjoin enforcement of the St. Louis Living Wage Ordinance.

Further, Respondent raised this affirmative defense at the earliest possible opportunity in this procedurally unusual case, providing Appellant with fair notice and full opportunity to respond and to contend – unsuccessfully – that Section 67.1571 was in fact constitutional. The circuit court thus acted well within its discretion in allowing Respondent to amend its pleading.

For these reasons, we respectfully ask that the Court affirm the holdings of the circuit court that Respondent timely challenged the

constitutionality of Section 67.1571, and that the section is void as unconstitutional.

Respectfully submitted,

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CERTIFICATE OF ATTORNEY

I hereby certify that:

(A) The foregoing brief contains 8586 words, as calculated by counsel's word processing program;

(B) A copy of this Brief is on the attached 3½" disk; and that

(C) The disk has been scanned for viruses by counsel's anti-virus program and is free of any virus.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been sent by U.S. Mail on this June 27, 2002, addressed to the following counsel for the parties to this action:

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