
IN THE SUPREME COURT OF MISSOURI

No. SC85537

**UNITED C.O.D.
Appellant,**

v.

**STATE OF MISSOURI, et al.,
Respondents.**

**Appeal from the Circuit Court of the City of St. Louis,
The Honorable Thomas C. Grady**

**Joint Brief of Respondents State of Missouri and Regional Taxicab Commission of
St. Louis City and St. Louis County**

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Jurisdictional Statement

This appeal arises from Plaintiff/Appellant's claims that §§ 67.1800 through 67.1822, RSMo (Cum. Supp. 2003),¹ which create a regional taxicab district comprised of the City of St. Louis and St. Louis County and a commission to govern the district, and the Vehicles for Hire Code promulgated by the commission violate its rights under the federal and Missouri Constitutions. Petition, Legal File ("LF") 150-158.

While Plaintiff/Appellant invokes this Court's jurisdiction under Article V, § 3, of the Missouri Constitution in one breath, *see* Appellant's Brief at 3, Plaintiff/Appellant, in another breath, questions this Court's jurisdiction by purporting that the trial court's judgment is not final because the trial court did not rule on certain issues, *see* Appellant's Brief at 25.

A final appealable judgment is ordinarily one which disposes of all the parties and all the issues in the case and leaves nothing for future determination. *In re Marriage of Werths*, 33 S.W.3d 541 (Mo. banc 2000). This means a disposition of all issues raised by the pleadings. *Anderson v. Metcalf*, 300 S.W.2d 377 (Mo. 1957). While United C.O.D. claims that "the trial court did not address the issues that were presented to it by the

¹All references to "RSMo" herein are to "RSMo (Cum. Supp. 2003)" unless otherwise stated.

Appellants,” Appellant’s Brief at 25, in fact the trial court found that United C.O.D. “failed in its burden to demonstrate that the statutes creating the Regional Taxicab Commission are unconstitutional” and “in its burden of proof with regard to the ... provisions of the Vehicles for Hire Code.” *See* LF 476, ¶ 5; 476, ¶ 6 through 477, ¶7. United C.O.D. does not specifically identify a single issue that was not disposed of in the trial court’s judgment. *See* Appellant’s Brief at 25-26. There are no unresolved issues; the trial court’s July 31, 2003, Findings of Fact, Conclusions of Law and Judgment is final for the purposes of appeal.

Assuming this Court finds the judgment below to be final for the purposes of appeal, this appeal is within the exclusive jurisdiction of this Court because it involves the “validity of . . . a statute or provision of the constitution of this state.” MO. CONST. art. V, sec. 3; *Rodriguez v. Suzuki Motor Corp.*, 996 S.W.2d 47 (Mo. banc 1999). However, as discussed below in more detail, certain of the assertions in United C.O.D.’s brief are asserted on appeal for the first time. Such assertions, including United C.O.D.’s arguments that §§ 67.1800 through 67.1822, RSMo, violate the equal protection clauses of the federal and Missouri Constitutions and Article III, § 23, of the Missouri Constitution, are not properly before the Court and, thus, not within its exercise of jurisdiction. *See Callier v. Director of Revenue*, 780 S.W.2d 639, 641 (1989).

Similarly, United C.O.D.’s challenge to the Metropolitan Taxi Commission Vehicles for Hire Code’s requirement that drivers “[b]e able to speak and understand directions, oral and written, in the English language[,]” (Vehicles for Hire Code, § 401(2)(b), LF 310) is not

properly before this Court. *See* Subpart II, *infra*. United C.O.D. does not have standing to make this argument. *See Id.*

Statement of Facts

On June 2, 2003, Plaintiff/Appellant United C.O.D. filed suit seeking a declaration that the creation of Defendant/Respondent Regional Taxicab Commission (“Commission”) is unconstitutional, and an injunction prohibiting Defendant/Respondent State of Missouri and the Commission from adopting and implementing House Bill 1041, §§ 67.1800 through 67.1822, RSMo. Petition, LF 158.

United C.O.D. is a collective group of independent cab drivers, owners, and drivers operating within the city of St. Louis and St. Louis County. Petition, LF 150. By memorandum dated July 8, 2003, LF 184-190, United C.O.D. submitted the names of the individuals who comprise United C.O.D. United C.O.D. designated three members to represent itself as an unincorporated association on July 8, 2003. Rule 52.10; T at 229, 241.

United C.O.D. claims that §§ 67.1800 through 67.1822, RSMo and the Metropolitan Taxi Commission Vehicles for Hire Code (“Vehicles for Hire Code” or “Code”), LF 299-323, violate United C.O.D.’s rights under the 1st, 5th, 6th, 13th and 14th Amendments of the United States Constitution and comparable provisions in the Missouri Constitution. Petition, LF 157, ¶5.

As United C.O.D. concedes, Senate Substitute for Senate Committee Substitute for House Bill No. 1041, as truly agreed and finally passed (“House Bull 1041”), *see*

Respondents' Appendix ("A"), 1-13, was signed into law on July 11, 2002, prior to the filing of this lawsuit. *See* United C.O.D.'s Memorandum in Support of Motion for Temporary Restraining Order, LF 132. Similarly, the Commission was created before this suit was filed. *See* §§ 67.1804, RSMo, A 15, and Testimony of Thomas W. McCarthy at Transcript ("T") for June 13, 2003, 147-148.

The Commission was created "for the public purposes of recognizing taxicab service as a public transportation system, improving the quality of the system, and exercising primary authority over the provision of licensing, control and regulation of taxicab services within the district." §§ 67.1804, RSMo, A 15. The "district" encompasses the City of St. Louis and St. Louis County. § 67.1802, RSMo, A 15. Of the nine Commission members, only four may have a direct material or financial interest in the taxicab industry. § 67.1806, RSMo, A 15. The Chairman of the Commission is Thomas W. McCarthy. T for June 13, 2003, 147.

The Commission's Vehicles for Hire Code, which is mandated by § 67.1812, RSMo, A 17, supercedes codes in the City of St. Louis and St. Louis County that governed taxicabs. § 67.1816, RSMo, A 17-18. Many of the provisions of the Vehicles for Hire Code, LF 299-323, are the same as or similar to provisions in the City and County codes. *See* St. Louis County Ordinance No. 19,878, LF 253-270 and Chapter 8.98 of the Revised Code of the City of St. Louis, LF 271- 283.

On July 31, 2003, after two hearings on United C.O.D.'s request for a temporary restraining order, *see* T for June 5, 2003, and June 13, 2003, 1-221, and a two day hearing

on United C.O.D.'s request for a preliminary and permanent injunction, *see* T for July 1[0], 2003, 222-401; July 10, 2003 (cont.), 402-487; and T for July 11, 2003, 5-77,² the Circuit Court entered judgment in favor of the Commission and the State of Missouri on United C.O.D.'s claim for a declaration that §§ 67.1800 through 67.1822, RSMo, are unconstitutional. LF 480. The Circuit Court enjoined the Commission from applying the Vehicles for Hire Code's dress code provisions to persons who certify that they are subject to a religious mandate that prohibits or conflicts with full compliance. *Id.* In all other respects, the Circuit Court denied United C.O.D.'s claim for a permanent injunction, *id.*, finding that:

- _ United C.O.D. failed to demonstrate that the statutes creating the Commission are unconstitutional, LF 475 at ¶ 6;
- _ United C.O.D. did not present persuasive evidence or argument that the rules in the Vehicles for Hire Code do not bear a substantial and rational relationship to public health, safety, comfort and general welfare or that the application of such rules will be unduly oppressive to the cab drivers and owners who are members of United

²Two court reporters recorded the proceedings. One recorded the proceedings on June 5, June 13, and July 10, 2003; another recorded the proceedings on July 11, 2003.

C.O.D., other than persons subject to a religious mandate that conflicts with the dress code. LF 477 at ¶ 7;

– United C.O.D. did not show that the insurance requirement in the Vehicles for Hire Code, which calls for coverage in excess of the minimum requirement of the Motor Vehicle Financial Responsibility Law, Chapter 303 RSMo, is not rationally related to the purposes for which the Commission and the Vehicles for Hire Code were created, LF 478 at ¶ 8;

– United C.O.D. presented no evidence from mechanics or other competent witnesses in support of United C.O.D.’s assertion that independent drivers and owners will be forced out of business because they will be required to replace cars that are “in perfectly good condition,” LF 478 at ¶ 9;

– United C.O.D. made no showing of the cost of a six year old car, which may be used in service for five years beginning in 2004, versus the cost of a seven year old car, which may not be entered into service, or the relative cost of fixing up and maintaining cars of various ages, LF 478 at ¶ 9;

– United C.O.D. did not show that the requirement that cab drivers be able to understand directions in the English language is not reasonably related to the ability to perform the job and is not a valid exercise of the police power, LF 479 at ¶ 10;

– United C.O.D. did not demonstrate that the fees to be charged pursuant to the Vehicles for Hire Code are unreasonable or oppressive or that such fees are not authorized, LF 479 at ¶ 12.

On August 4, 2003, United C.O.D. filed a notice of appeal to the Missouri Court of Appeals, Eastern District, claiming that §§ 67.1800 through 68.1822, RSMo, are unconstitutional. LF 481. By order dated August 28, 2004, the Eastern District transferred United C.O.D.'s appeal to this Court.

Argument

Standard of Review

In a court-tried case, this Court must sustain the trial court's judgment unless there is not substantial evidence to support it, unless the decision is contrary to the weight of the evidence, or unless the trial court erroneously declares or applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). This Court "defers to the trial court as the finder of fact in determinations as to whether there is substantial evidence to support the judgment and whether that judgment is against the weight of the evidence, even where those facts are derived from pleadings, stipulations, exhibits and depositions." *Business Men's Assur. Co. v. Graham*, 984 S.W.2d 501, 506 (Mo. banc 1999).

The power to set aside a trial court's judgment on the grounds that it is against the weight of the evidence should be exercised with caution and with a firm belief that the decree or judgment is wrong. ... In reviewing a contention that the evidence is insufficient, the evidence is viewed in the light most favorable

to the verdict, and deference is accorded to the trial court's assessment of credibility.

Brizendine v. Conrad, 71 S.W.3d 587, 590 (Mo. banc 2002) (quoting *Searcy v. Seedorff*, 8 S.W.3d 113, 115-116 (Mo. banc 1999)). Constitutional interpretation, however, is an issue of law that the Court reviews *de novo*. *Farmer v. Kinder*, 89 S.W.3d 447, 449 (Mo. banc 2002).

I. United C.O.D.'s equal protection challenge to §§ 67.1800 through 67.1822, RSMo., was not pleaded and, thus, should not be considered by this Court; moreover, even if considered, United C.O.D.'s equal protection challenge fails because these statutes do not violate the equal protection clauses of the federal or Missouri Constitutions. [Response to Appellant's Point I].

In point I of its appellate brief, United C.O.D. claims that §§ 67.1800 through 67.1822, RSMo., A 14-18, violate the equal protection clauses of the federal and Missouri Constitutions. *See* Appellant's Brief at 9-14. However, this argument is not pleaded in United C.O.D.'s Petition. The equal protection clause of the Missouri Constitution, MO. CONST. Art. I, sec. 2, is not even mentioned in the Petition. While United C.O.D.'s Petition generally refers to the 14th Amendment of the United States Constitution, it does not cite to the equal protection clause of that Amendment or plead facts showing the statutes to violate the equal protection clause. *See* Petition, LF 151-152 (setting forth claims against the statutes); such specificity is required. *Callier*, 780 S.W.2d at 641 (requiring a party to, among other things, "designate specifically the constitutional

provision claimed to have been violated, such as by explicit reference to the article and section or by quotation of the provision itself ...[and] state the facts showing the violation.”). The closest United C.O.D. gets to suggesting an equal protection issue is in an allegation that the English language requirement in the Commission’s Vehicles for Hire Code³ “invidiously discriminates against those not natively born in the United States[.]” LF 154. Not only is this allegation without merit, *see* subpart II, *infra*, it is lodged against the Vehicles for Hire Code and not §§ 67.1800 through 67.1822, RSMo. Having not pleaded this theory, United C.O.D. cannot now assert this theory for the first time on appeal. *See Callier*, 780 S.W.2d at 641; *Brizendine*, 71 S.W.3d at 593.

Even if, *arguendo*, this claim were properly before the Court, §§ 67.1800 through 67.1822, RSMo, do not violate the equal protection clauses of the federal or Missouri Constitutions. A Missouri statute is presumed constitutional. *Blakely v. Blakely*, 83 S.W.3d 537, 540-41 (Mo. banc 2002). United C.O.D. “bears the extremely heavy burden” of overcoming the strong presumption of constitutionality. *Etling v. Westport Heating & Cooling Services, Inc.*, 92 S.W.3d 771, 773 (Mo. banc 2003); *Westin Crown Plaza Hotel*

³The Code requires taxicab drivers to “[b]e able to speak and understand directions, oral and written, in the English language[.]” Vehicles for Hire Code, § 401(2)(b), LF 310.

Co. v. King, 664 S.W.2d 2, 5 (Mo. banc 1984) (courts resolve “all doubt” in favor of validity). Courts are not to second-guess the legislature concerning the wisdom of its enactment, *Myer v. St. Louis County*, 602 S.W.2d 728, 733-34 (Mo. App. E.D. 1980), and will not invalidate a statute “unless it clearly and undoubtedly contravenes the constitution and plainly and palpably affronts fundamental law embodied” therein. *Etling*, 92 S.W.3d at 773 (citations omitted). In fact, in a strikingly similar case, this Court recognized that “[t]he streets belong to the public and are primarily for the use of the public in the ordinary way. Their use for the purposes of gain is special and extraordinary and, generally at least, may be prohibited or conditioned as the Legislature deems proper” *Ex parte Lockhart*, 171 S.W.2d 660, 664 (Mo. 1943) (quoting *Packard v. Banton*, 264 U.S. 140 (1924) (emphasis added)). United C.O.D. cannot overcome this strong presumption of constitutionality.

First, nowhere in point I of its brief does United C.O.D. identify any similarly situated individuals which it claims are treated differently under §§ 67.1800 through 67.1822, RSMo. Point I of its brief fails for this reason alone. *See City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432,439 (1985) (explaining that equal protection clause requires that all persons who are “similarly situated” be treated alike).

Next, there are no fundamental rights or suspect classifications involved. Taxicab drivers are not a suspect class, *see Etling*, 92 S.W.3d at 775 (defining suspect classes as those based on race, national origin, or illegitimacy), and driving a taxicab is not a fundamental right, but a privilege. *See City of New Orleans v. Dukes*, 427 U.S. 297, 303-

304 (1976) (right to pursue a business is not a fundamental right for purposes of equal protection analysis); *Lockhart*, 171 S.W.2d at 664 (“We have already ruled that no one has any inherent right to use streets or highways as a place of business.”). As such, “review is limited to determining whether the classification is rationally related to a legitimate state interest.” *Etling*, 92 S.W.3d at 775. Because the Court need only find the existence of a conceivably rational basis to uphold the regulatory scheme, the Court may determine this without making any findings regarding the legislature’s actual reasoning. *See FCC v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993); *Etling*, 92 S.W.3d at 775.

The legislation at issue is for the public purposes of recognizing taxicab service as a public transportation system and improving the quality of the system. § 67.1804, RSMo. This is clearly a legitimate interest. The statutory scheme set forth in §§ 67.1800 through 67.1822, RSMo., including the creation of a commission to oversee the regional taxicab district, is a rational means to that end. *See* Trial Court’s July 31, 2003, Judgment, A 22 n.2, L.F. 475 n.2 (“The Court has been presented with evidence of the growing presence in other communities of ordinances and codes governing taxicabs, as witnessed by the Exhibits (A-4 and A-5) [*see* LF 328-398] and testimony of the Chairman of the Commission [*see* July 10, 2003, (cont.) T at 422-23].”).

Point I of United C.O.D.'s brief presents no basis for reversing the trial court's finding that §§ 67.1800 through 67.1822, RSMo., are constitutional. Point I should be denied.⁴

⁴In point II of its appellate brief, United C.O.D. again claims an equal protection violation, this time alleging that taxicab drivers are treated differently than individuals who do not drive taxicabs for a living. Appellant's Brief at 15. These two groups are not similarly situated. And similarity is required since taxicab drivers are not a suspect class, *see Etling*, 92 S.W.3d at 775 (defining suspect class). Thus, such a distinction between taxicab and other drivers is presumptively valid

because it is rational and related to a legitimate state interest. *City of Cleburne*, 473 U.S. at 440. The Vehicles for Hire Code with which United C.O.D. takes issue bears a substantial and rational relationship to public health, safety, comfort, and general welfare. See discussion of the Vehicles for Hire Code in subpart II, *infra*.

II. The State’s authority to delegate powers to the Commission is well-settled; furthermore, the challenged provisions in the Commission’s Vehicles for Hire Code are fairly referable to its public purpose and are constitutional. [Response to Appellant’s Point II].

United C.O.D.’s second point includes a challenge to the legislature’s authority, a First Amendment claim, an equal protection claim,⁵ a multiple subject claim, and a Title VII claim. Most of those claims exceed the scope of the “point relied on.” Rule 84.04(e) (requiring arguments of a brief to be limited to only those errors asserted in the point relied on). Certain others are not only beyond the scope of the “point relied on,” but are also raised for the first time on appeal. But all lack merit regardless.

The taxicab commission was created “for the public purposes of recognizing taxicab service as a public transportation system, improving the quality of the system, and exercising primary authority over the provision of licensing, control and regulation of taxicab services within the district.” § 67.1804, RSMo. The power of the state to delegate such authority is well-settled. *See ABC Security Service, Inc. v. Miller*, 514 S.W.2d 521, 524 (Mo. 1974) (involving delegation of authority to St. Louis Metropolitan Police Commission); *Ruggeri v. City of St. Louis*, 441 S.W.2d 361 (Mo. 1969) (involving delegation of authority to

⁵***See footnote 2, supra, for a discussion of the equal protection claim contained in point II.***

Convention and Tourism Bureau); *Lockhart*, 171 S.W.2d at 664 (delegation of authority to Board of Public Service). United C.O.D.'s citation to *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936), a case involving the delegation of congressional authority under the federal constitution, does not alter this well-settled principle.

Rather:

[t]he state constitution, unlike the federal constitution, is not a grant of power, but as to legislative power, it is only a limitation; and, therefore, except for the restrictions imposed by the state constitution, the power of the state legislature is unlimited and practically absolute. An act of the legislature is presumed to be valid and will not be declared unconstitutional unless it clearly and undoubtedly contravenes some constitutional provision. Legislative enactments should be recognized and enforced by the courts as embodying the will of the people unless they are plainly and palpably a violation of the fundamental law of the constitution.

State ex. Inf. Danforth v. State Environmental Improvement Authority, 518 S.W.2d 68, 72 (Mo. banc 1975) (internal citations omitted).

To support a valid challenge to the statute's delegation of authority to the Commission, United C.O.D. would have to show that the provisions in the Commission's Vehicles for Hire Code are not fairly referable to its public purpose. *See City of Blue Springs v. Gregory*, 764 S.W.2d 101, 102 (Mo. App. W.D. 1988) United C.O.D. cannot do so.

Courts have previously rejected the type of challenge that United C.O.D. raises in relation to the Code's requirement that drivers "[b]e able to speak and understand directions, oral and written, in the English language[.]" (Vehicle for Hire Code, § 401(2)(b), LF 310). *See Stephen v. PGA Sheraton Resort, Ltd.*, 873 F.2d 276, 280 (11th Cir. 1989) ("Clearly, the requirement that [United C.O.D.'s members] be able to speak and understand English with sufficient facility to adequately perform [their] assigned tasks ha[s] a 'manifest relationship to the employment in question.'" (citing cases).

Importantly, moreover, United C.O.D. offered no evidence at trial that any of its members are adversely affected by the English requirement. Notably, instead, United C.O.D. offered member testimony unequivocally in favor of the requirement. *See* Testimony of Carl Lucas, T for July 10, 2003, 345; *see also id.* at 339 (trial court expressly finding that it could understand the witness testifying against the English requirement without any difficulty). As such, United C.O.D. does not have standing to challenge the Code's English language requirement. "Similarly to Article III, [§] 2 of the Federal Constitution, Article V, [§] 14(a) [of the Missouri Constitution] requires a case to be justiciable in order for the trial court to have subject matter jurisdiction." *In re B.S. v. State*, 966 S.W.2d 343, 344 (Mo. App. E.D. 1998).

Even could United C.O.D.'s arguments regarding the English language requirement be considered, these arguments are without merit. United C.O.D. attempts to argue that the English language requirement discriminates on the basis of national origin. But the statute is neutral on its face, and United C.O.D. has not proven any discriminatory purpose behind the

requirement. *See Washington v. Davis*, 426 U.S. 229, 241-42 (1976) (plaintiffs must prove a discriminatory purpose by the legislature in order for a facially race-neutral law to be treated as a racial or national origin classification). By contrast, United C.O.D. concedes that “it is obvious that what the Code intended in this provision was to ensure communication between patron and driver[.]” Appellant’s Brief at 18.

United C.O.D. further attempts to argue, without support, that the English language rule violates its members First Amendment rights. Appellant’s Brief at 18. This argument bears no relation to the point relied on and, therefore, is in violation of Rule 84.04(e). Also, United C.O.D. has cited no authority for the argument nor explained why there is no authority. Thus, this argument is properly deemed abandoned. *See Thummel v. King*, 570 S.W.2d 679, 687 (Mo. banc 1978); *Flavin v. Cundiff*, 83 S.W.3d 18, 27-28 (Mo. App. E.D. 2002). Even if considered, United C.O.D.’s First Amendment challenge fails because the Code’s rule does not prohibit United C.O.D. members from communicating in any language, it merely requires cab drivers to have the ability to speak and understand oral and written directions in English. Given the specific nature of the requirement, namely the ability to speak and understand oral and written directions in English, United C.O.D.’s unsupported claim that the requirement is unduly vague is without basis. *See* Appellant’s Brief at 19.

As for United C.O.D.’s challenges to the Code requirements regarding the age of taxicabs in service and entering into service (Vehicle for Hire Code, § 602, LF 317), insurance requirements (Vehicle for Hire Code, § 208, LF 306), and fees, Appellant’s Brief at 17-18, 19-20, United C.O.D. cannot establish that these requirements are not fairly

referable to the Commission's public purpose of improving the taxicab industry. *See City of Blue Springs*, 764 S.W.2d at 102; *Kelly v. Johnson*, 425 U.S. 238, 247 (1976) (placing burden on United C.O.D. to show no rational connection).

As for vehicle age, testimony from the Chairman of the Commission, Tom McCarthy, established a connection between vehicle age restrictions and the Commission's purpose. *See* T for July 10, 2003 (cont.), 427-434. As for insurance, "the insurance exposure of a taxicab is, by its nature, greater than that for a private citizen. [United C.O.D.] ... presented no evidence of any difference in cost between the statutory minimum and the amount called for by the Code." Trial Court's July 31, 2003, Judgment, A 25, L.F. 478. These findings by the trial court are entitled to deference by this Court. *Business Men's Assur. Co.*, 984 S.W.2d at 506. As for fees, these are a proper exercise of police power. *Myer*, 602 S.W.2d at 733-34 (upholding the enactment of fees pursuant to police powers).⁶

United C.O.D.'s challenge to the Vehicles for Hire Code's "cleanliness and general operational fitness" requirement, Appellant's Brief at 16, is asserted for the first time on appeal and, thus, not properly before this Court.

While United C.O.D. claims that certain provisions in the Vehicles for Hire Code are burdensome, this Court has previously explained “[t]he fact that, because of circumstances peculiar to him, [United C.O.D.’s members] may be unable to comply with the requirement . . . without assuming a burden greater than that generally borne, or excessive in itself, does not militate against the constitutionality of the statute” *Lockhart*, 171 S.W.2d at 664. On this issue, the trial court expressly found that United C.O.D. presented “no persuasive evidence or argument that the rules in the Vehicles for Hire Code ... will be unduly oppressive to the cab drivers and owners who are members of [United C.O.D.]. [United C.O.D.] submitted no significant economic evidence[.]” Trial Court’s July 31, 2003, Judgment, A 24, LF 477. United C.O.D. presented no evidence to support its assertion that independent owners and drivers will be forced out of business. *Id.*, LF 478. These findings by the trial court are entitled to deference by this Court. *Business Men’s Assur. Co.*, 984 S.W.2d at 506.

As for United C.O.D.’s argument based on Article III, § 23, of the Missouri Constitution, it is not properly before this Court because it was not pleaded. The Petition, LF 150-158, does not allege that the bill creating the Commission violates Article III, § 23, nor does it allege that the Commission was created by Senate Bill 1108 or House Bill 1868, as stated on page 20 of Appellant's brief. *See* Petition at LF 151 and 158 (alleging that the Commission was created by House Bill 1041).

Appellant did not include House Bill 1041 in its appendix or make any attempt to explain how House Bill 1041 violates Article III, §23. Even if considered, United C.O.D.’s

challenge based on Article III, § 23, fails. Article III, § 23 provides that “no bill shall contain more than one subject which shall be clearly expressed in its title.” The test to determine if a bill contains more than one subject is whether all provisions of the bill fairly relate to the same subject, have a natural connection therewith or are incidents or means to accomplish its purpose. *Hammerschmidt v. Boone County*, 877 S.W. 2d 98, 102 (Mo. banc. 1994) (quoting *Westin Crown Plaza Hotel Co.*, 664 S.W. 2d at 5). A “subject” within the meaning of Article III, § 23, includes all matters that fall within or reasonably relate to the general core purpose of the proposed legislation. *Id.* To the extent the bill’s original purpose is properly expressed in the title to the bill, the Court need not look beyond the title to determine the bill's subject. *Id.* All provisions in House Bill 1041, A 1-13, fairly relate to the purpose expressed in the title of the bill, which is tourism.

Point II of United C.O.D.’s brief presents no basis for reversing the trial court’s finding that §§ 67.1800 through 67.1822, RSMo., and the Commission’s Vehicles for Hire Code are constitutional.⁷ Point II should be denied.

⁷**Point II of United C.O.D.’s brief also contains a Title VII claim. As Title VII prohibits unlawful employment practices committed by an “employer,” 42 U.S.C. §**

III. The trial court's July 31, 2003, Findings of Fact, Conclusions of Law and Judgment is final for purposes of appeal. [Response to Appellant's Point III].

2000e-2(a), such a claim is inapplicable against Respondents, who are not sued as employers.

In point III of its brief, United C.O.D. claims that the trial court’s July 31, 2003, judgment is not final for purposes of appeal. Appellant’s Brief at 25. Notably, however, United C.O.D. does not specifically identify any issue that the trial court failed to address. Instead, United C.O.D. requests Respondents and the Court to sift through thirty-four pages of single-spaced affidavits⁸ and over twenty pages of documents located at Tabs 3 and 4 of the legal file to seek support for its contention. The trial court found that United C.O.D. “failed in its burden to demonstrate that the statutes creating the Regional Taxicab Commission are unconstitutional” and “in its burden of proof with regard to the ... provisions of the Vehicles for Hire Code.” LF 476, at ¶ 5; 476, at ¶ 6, through 477, at ¶7. The trial court’s ruling seemingly encompasses all of the issues in United C.O.D.’s Petition. United C.O.D. has provided no meaningful support to find otherwise.

To the extent United C.O.D. attempts to challenge the State’s delegation of authority to the Commission and the Commission’s Vehicles for Hire Code in point III of its brief, Respondents incorporate by this reference their response in subpart II, *supra*.

⁸Moreover, the affidavits referenced by United C.O.D. are grounded in inadmissible hearsay, speculation, legal conclusions, and hyperbole, in contravention of Rule 74.04(e) (“**Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.**”).

As set forth in Respondents' Jurisdictional Statement, Respondents believe that the trial court's July 31, 2003, Findings of Fact, Conclusions of Law and Judgment is final for the purposes of appeal. Point III of United C.O.D.'s brief should be denied.

IV. There is no impermissible conflict of interest relative to the composition of the Commission's board. [Response to Appellant's Point IV].

While in point IV of its brief United C.O.D. apparently attempts to challenge the constitutionality of the composition of the Commission, United C.O.D does not identify any constitutional provision that has been violated or meaningful authority for its contentions. *See Callier*, 780 S.W.2d at 641; *Thummel*, 570 S.W.2d at 687. Moreover, there is no impermissible conflict of interest relative to the composition of the Commission's board. United C.O.D.'s aspersions to the contrary are without merit and most are made without references to the record in violation of Rule 84.04(i).⁹

⁹For example, United C.O.D. does not cite any page references to support its assertion on page 30 of its brief that Commissioner Louis Hamilton is the registered business agent for Vigilant Communications or that Vigilant Communications is a consulting firm dealing with politics and lobbying. In fact, the record is devoid of any such evidence. United C.O.D. also fails to cite any support for its assertion on

Section 67.1806.2, RSMo, provides for the chief executive of the county and the chief executive of the city to:

collectively select four representatives of the taxicab industry. Such four representatives of the taxicab industry shall include at least one from each of the following:

- (1) An owner or designated assignee of a taxicab company which holds at least one but no more than one hundred taxicab licenses;
- (2) An owner or designated assignee of a taxicab company which holds at least one hundred one taxicab licences or more;
- (3) A taxicab driver, excluding any employee or independent contractor of a company currently represented on the commission.

The remaining five commission members shall be designated 'at large' and shall not be a representative of the taxicab industry or the spouse of any such person nor be an individual who has a direct material or financial interest in such industry. ...

The statute, therefore, provides for owner representation, both of small and large taxicab companies, and driver representation on the Commission. Furthermore, § 67.1810.1(4),

page 30 that one member owns a company that provides taximeters for the taxicabs.

In fact, there is no such evidence in the record.

RSMo, provides for the nine member Commission to “[m]ake decisions by affirmative vote of the *majority of the commission*[.]” (emphasis added). Accordingly, on its face the statute would appear to prevent the very kind of “conflicts” United C.O.D. alleges.

As to United C.O.D.’s assertions that three individual members of the Commission have impermissible conflicts of interest, there is no valid support. United C.O.D. has neither pleaded nor shown that any member will personally benefit from any acts of the Commission. Even if there were evidence in the record to support United C.O.D.’s claim that Commissioner Hamilton is associated with a consulting firm that deals with politics and lobbying, United C.O.D. fails to explain how such a business relationship would be a prohibited conflict of interest. United C.O.D.’s argument that certain members of the Commission will personally benefit from the age of the car rule is without merit, since United C.O.D. has not shown that any member of United C.O.D. will be forced to purchase anything from anyone on the Commission. In addition, United C.O.D. has not shown that any of its members will be “forced” out of business. Indeed, the trial court found there was no such evidence. Trial Court’s July 31, 2003, judgment, A 25-25, LF 477-478. This finding is entitled to deference by this Court. *Business Men’s Assur. Co.*, 984 S.W.2d at 506. United C.O.D. also fails to explain how Commissioner McNutt’s business relationship with the President Casino, *see* Appellant’s brief at 31, which has no relationship to his membership on the Commission, violates any antitrust laws or creates any prohibited conflict of interest.

United C.O.D. simply has not shown that anyone on the Commission has an impermissible conflict of interest. Moreover, United C.O.D.'s argument fails to consider that the commissioners are subject to the State's conflict of interest law and, thus, are prohibited from acting in a manner that would directly benefit them. § 105.452, RSMo (2000). Should a conflict arise on a particular question, a commissioner with a conflict should recuse, but that does not invalidate the statute. Could the Commission be invalidated merely because it contains certain members from the industry, the ethics commission for the Missouri Bar, and other analogous commissions, could be charged with having an impermissible conflict of interest because it contains members from the Missouri Bar. When taken to its logical conclusion, United C.O.D.'s argument would lead to illogical results.

Point IV of United C.O.D.'s brief provides no valid reason to reverse the trial court's judgment upholding the validity of the statutes and Vehicles for Hire Code.

Conclusion

For the above reasons, this Court should affirm the July 31, 2003, Findings of Fact, Conclusions of Law and Judgment of the Circuit Court of St. Louis County.

Respectfully submitted,

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Certification of Service and Compliance with Rule 84.06(b) and (c)

The undersigned hereby certifies that on this 15th day of March, 2004, one true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were hand-delivered to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b), and that the brief contains 6762 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

Maureen C. Beekley

Appendix

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