

IN THE SUPREME COURT OF MISSOURI

No. SC88476

JAMES TROUT

Plaintiff/Appellant

v.

**STATE OF MISSOURI, MISSOURI
ETHICS COMMISSION and WARREN I. NIEBURG,
MICHAEL E. DUNARD, ROBERT L. SIMPSON, BRAD
MITCHELL, JOHN KING, MICHAEL KILGORE, in their official
Capacities as Commissioners of the Ethics Commission**

Defendants/Respondents

**Appeal From Cole County Circuit Court
The Honorable Richard G. Callahan, Judge**

APPELLANT'S BRIEF

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INTRODUCTION

The constitutional requirement that legislation contain only one subject which shall be clearly expressed in its title dates to the earliest days of Missouri's statehood. From its first appearance in our Constitution, the purpose of this requirement has been well understood:

The general scope of the inhibition may well be inferred when we glance at the history of legislation and scan the character of many of the bills that have been passed in legislative bodies. It was intended to prevent surprise or fraud upon the members of the legislature by means often resorted to in the provisions of bills, of inserting matters of which the title gave no intimation; and also to effectually stop the vicious and corruptive system familiarly known as 'log-rolling.'

The practice of comprising in one bill subjects of a diverse and antagonistic nature, in order to combine in its support neither of which measures could command the requisite majority on its own merits, was found to be not only a corrupting influence in the legislature itself, but destructive of the best interests of the State. But this was not more detrimental than that other pernicious practice by which, through dexterous and unscrupulous management, designing men inserted clauses in the bodies of bills, of the true meaning of which the titles gave no indication, and by skillful maneuvering urged them on to their passage. These things led to fraud, surprise, and injury, and it was found necessary to apply a corrective in the shape of a constitutional provision.

City of St. Louis v. Tiefel, 42 Mo. 578, 590 (Mo. 1868). The single subject requirement

of Article III, §23, and the original purpose restriction in Article III, §21,"serve to facilitate orderly legislative procedure." *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 101 (Mo. banc 1994). Throughout the years, this Court has consistently enforced the "corrective" adopted by the Constitution's framers to prevent practices that are "destructive of the best interests of the State." *Tiefel*, 42 Mo. at 590. This appeal again asks the Court to enforce the Constitution's protections.

House Bill 1900 ("H.B.1900") began as a bill that purported to be "relating to campaign finance." Even from the outset, however, H.B.1900 contained more than one subject, addressing both lobbyist reporting and campaign finance. As to the latter, the most significant provision was to raise the limit on campaign contributions to \$2,000. From this beginning, H.B.1900 turned into a multi-headed deception entitled "relating to ethics." Among other subjects, the bill eliminated campaign contribution limits altogether, banned contributions during the legislative session, superseded local government ordinances to create an entire new class of lobbyists, and banned certain individuals from being candidates for office. H.B.1900 provides a tutorial in the various ways the legislature runs afoul of the constitutional process for enacting a law. The result is dictated by this Court's precedent – H.B.1900 must be declared invalid *in toto*. *Home Builders Ass'n of Greater St. Louis v. State*, 75 S.W.3d 267, 269 (Mo. banc 2002); *St. Louis Health Care Network v. State*, 968 S.W.2d 145, 147-48 (Mo. banc 1998). Any other outcome would require this Court to ignore its own analytical framework, and abandon the powerful policies behind the Constitution's corrective provisions.

JURISDICTIONAL STATEMENT

Appellant challenges the constitutionality of H.B.1900 under Article III, §23 and Article III, §21 of the Missouri Constitution, as well as the trial court's determinations regarding severability in regard thereto and in regard to the unconstitutionality of Mo. Rev. Stat. §130.032, as enacted by H.B.1900, under the First and Fourteenth amendments to the United States Constitution and Article I, §8 of the Missouri Constitution. Because this appeal involves the validity of one or more statutes of this State, it is within the exclusive jurisdiction of this Court. Mo. Const. Art. V, §3.

STATEMENT OF FACTS

The Parties

Plaintiff/Appellant James Trout is a resident and taxpayer of the State of Missouri. L.F. 525. Trout was a candidate for the General Assembly in 2006 and intends to be a candidate again in 2008. *Id.* Trout also contributes to political candidates. He desires and intends to contribute to political candidates, including spending his own money in support of his candidacy, during the legislative session. L.F. 525. Defendants are the State of Missouri, the Missouri Ethics Commission, and its individual Commissioners who direct and control the Ethics Commission. The Ethics Commission is responsible for enforcing Missouri laws related to campaign finance, ethics and lobbying. *Id.*

Legislative Background

H.B.1900 was introduced by Representative Tom Dempsey and read the first time on February 28, 2006. L.F. 234. As originally proposed, H.B.1900:

- Was titled “An Act to repeal sections 105.473, 105.963, 130.011, 130.016, 130.032, 130.046 and 130.056, RSMo, and to enact in lieu thereof seven new sections relating to campaign finance.”
- Repealed and reenacted Section 105.473 relating to lobbyist reporting of expenditures on members of a caucus of the general assembly, requiring such expenditures to be reported for caucuses of the two parties rather than for smaller caucuses of the bodies. L.F. 238.
- Repealed and reenacted Section 105.963 to shift responsibility for paying fines from candidates to treasurers when a campaign committee does not

properly file its campaign finance reports. L.F. 241. This provision also changed the way notice is sent in cases where reports are not properly filed. L.F. 242-243.

- Repealed and reenacted Section 130.011 to require “continuing committees” to be formed at least 60, rather than 30, days before an election. L.F. 250.
- Repealed and reenacted Section 130.016 to prohibit candidate committees for the office of speaker of the house of representatives or president pro tem of the senate. L.F. 262.
- Repealed and reenacted Section 130.032 to repeal the prior gradations of limitations on the monetary amount of contributions to various candidates for public office in Missouri and to replace those limits with a flat \$2,000 limit with an inflation adjustment for each year after 2006. L.F. 262-263. This provision also eliminated restrictions on donations to continuing committees, repealed a subsection 4 that allowed for party contributions in excess of individual limits and repealed “debt service” committees. L.F. 263-265.
- Repealed and reenacted Section 130.046 to require candidates for state office to file electronic reports and to “establish Microsoft products as the standard for use with electronic filings.” L.F. 273.

- Repealed and reenacted Section 130.056 to require audits of campaign finance reports and lobbying reports and to provide that non-conforming contributions escheat to the state. L.F. 275-276.

H.B.1900 was then assigned to the House Committee on Elections, which passed a House Committee Substitute. This Committee Substitute was adopted by the full House of Representatives. L.F 281-303. The House Committee Substitute:

- Contained virtually the same title as the original bill, except for the reference to Section 130.032 related to contribution limits, thus repealing and reenacting six sections instead of seven. L.F. 281.
- Retained the original version’s changes to Sections 105.473, 105.963, 130.011 and 130.016.
- Did not repeal Section 130.032, leaving gradational contribution limitations in place.
- Repealed and reenacted Section 130.046 to delete the original reference to “Microsoft products” while continuing to require electronic filings. L.F. 299.
- Retained the original language regarding Section 130.056.

H.C.S.H.B.1900 moved to the Senate where a Senate Substitute was offered by Senator Shields, which was amended and adopted. L.F. 443, 525. This Senate Substitute:

- Changed the title of the bill to “An Act to repeal sections 105.470, 105.473, 105.485, 105.487, 105.957, 105.959, 105.963, 130.011, 130.016, 130.032, 130.046, 130.050 and 130.054 and enact in lieu thereof [sic] sixteen new sections relating to ethics, with an effective date.”
- Repealed and reenacted Section 105.470 to create an “elected local government official lobbyist.” L.F. 306, 313.
- Repealed and reenacted Section 105.473 retaining the House version’s language concerning caucus reporting, but also adding new language to require all lobbyists to file reports not later than January 5th of each year, L.F. 314, to include local government official lobbyists in various requirements, to require more specificity in the way lobbyist expenses are reported to the ethics commission, L.F. 315, to prohibit expenditures on behalf of legislators, their relatives and staff for unapproved travel outside the state, L.F. 317-318, and to supersede any local ordinances contradicting state law. L.F. 320.
- Repealed and reenacted Section 105.485 to require that financial statements include the name and address of political committees from which the filer received payment. L.F. 325.
- Repealed and reenacted Section 105.487 to require that financial interest statements be filed electronically. L.F. 329.

- Repealed and reenacted Section 105.957 to add language concerning filing of complaints with the Ethics Commission and to create liability for "actual and compensatory damages" against persons filing "frivolous complaints." L.F. 330-331.
- Repealed and reenacted Section 105.959 to add language relating to complaints and investigations with the Ethics Commission. L.F. 332.
- Repealed and reenacted Section 105.963 in the same way as the House.
- Enacted a new Section 115.342 disqualifying any candidate for office who has not paid certain taxes. L.F. 336-338.
- Enacted a new Section 115.350 disqualifying any candidate who has been convicted of a felony. L.F. 338.
- Repealed and reenacted Section 130.011 in the same way as the House. L.F. 338-351.
- Repealed and reenacted Section 130.016 in the same way as the House.
- Repealed and reenacted Section 130.032 to completely remove all limitations on contributions to candidates from individuals. L.F. 356-359. In place of these limits, new language was added that: 1) prohibited contributions from political parties to other committees; and 2) prohibited any candidate for statewide office from accepting any contributions of any kind or in any amount during the legislative session (unless such person was a candidate in a special election). L.F. 359-360.

- Enacted a new Section 130.042 requiring the Ethics Commission to report expenditures by candidates on its website. L.F. 360.
- Repealed and reenacted Section 130.046 in essentially the same way as the House.
- Repealed and reenacted Section 130.050 to require “late contributions” to be reported within 24, rather than 48, hours. L.F. 370.
- Repealed and reenacted Section 130.054 to prohibit filing a complaint with the Ethics Commission later than 15 days before an election. L.F. 372.
- Added an effective date of January 1, 2007. *Id.*

Multiple amendments to the Senate Substitute were proposed on the Senate floor, some of which passed and some of which did not. The Senate Substitute, as amended:

- Senate Amendment No. 2 added a completely new “Section 1,” which required the Ethics Commission to study “political telephone solicitations” and report to the General Assembly. L.F. 447.
- Senate Amendment No. 3 changed the due date for campaign finance reports for the April quarter. *Id.*
- Senate Amendment No. 4 changed the language in the new Section 115.342, relating to candidates who had not paid taxes. L.F. 447-448.
- Senate Amendment No. 5 prohibited members of the General Assembly from having a contract with a lobbying firm. L.F. 449.

- Senate Amendment No. 10 amended Section 130.046 to change the threshold amounts to be included on a campaign finance report. L.F. 453.

Because the House and the Senate versions of the bill were different, a Conference Committee Report was prepared and adopted by both bodies. This version was signed by the Governor. L.F. 382. The Truly Agreed and Finally Passed Conference Committee Substitute for Senate Substitute for House Committee Substitute for House Bill 1900:

- Contained essentially the same title as the Senate Substitute, “relating to ethics” but did not repeal and reenact Section 105.487.
- Followed the Senate version of the bill except that it did not repeal and reenact Section 105.487 relating to electronic filing of financial interest statements.

The final bill repeals twelve sections of the statutes, sections 105.470, 150.473, 105.485, 105.957, 105.959, 105.963, 130.011, 130.016, 130.032, 130.046, 130.050 and 130.054, and enacts sixteen new sections. L.F. 384. It became effective January 1, 2007.

Procedural Background

Trout filed a petition for declaratory judgment and injunctive relief, asserting that: H.B.1900 violates the clear title requirement, and also the multiple subject and change in original purpose prohibitions of Article III, §§21 and 23 of the Missouri Constitution (Count I); Mo. Rev. Stat. §130.032.2, as enacted by H.B.1900 imposing a contribution ban, violates the First and Fourteenth amendments to the United States Constitution and Article I, §8 of the Missouri Constitution (Count II); Mo. Rev. Stat. §115.432, as enacted by H.B.1900 disqualifying tax delinquents from candidacy, violates the First and

Fourteenth amendments to the United States Constitution and the equal protection clause of the Missouri Constitution, Article I, §§2 and 8 (Count III). L.F. 5-13. On January 8, 2007, the trial court issued a temporary restraining order and directed the parties to appear and present evidence, briefs and argument on all matters presented by the pleadings. L.F. 2.

The case was submitted upon stipulated facts. After briefing and argument, the trial court rendered its judgment on March 28, 2007, finding, *inter alia*: a) the title of H.B.1900 is clear and not in violation of Mo. Const. Art. III, §23; b) H.B.1900, as enacted, suffered a change in original purpose in violation of Mo. Const. Art. III, §21 by adding provisions to Chapter 115 dealing with candidate disqualification; c) the Chapter 115 provisions (§§115.342, 115.350) are severable from the remainder of H.B.1900; d) the Chapter 115 provisions constitute a second subject in violation of Mo. Const. Art. III, §23; e) these Chapter 115 provisions, again, are severable; and f) Section 130.032.2 as enacted by H.B.1900 containing the contribution ban, violates the First Amendment. L.F. 526-533. The court enjoined enforcement of Sections 115.342, 115.350 and 130.032.2, but upheld the validity of the remainder of H.B.1900. L.F. 534.

On April 19, 2007, Trout timely filed his notice of appeal. L.F. 501-521. On April 20, 2007, Defendants filed their notice of cross-appeal. L.F. 522-536. Based on the request of both parties, this Court expedited the appeal.

POINTS RELIED ON

I. THE TRIAL COURT ERRED IN UPHOLDING THE VALIDITY OF H.B. 1900 BECAUSE THE TITLE "RELATING TO ETHICS" VIOLATES MO. CONST. ART. III, §23 IN THAT THE PLAIN MEANING OF THE WORD "ETHICS" IS SO BROAD AND AMORPHOUS THAT IT OBSCURES THE CONTENT OF THE ACT AND RENDERS THE SINGLE-SUBJECT REQUIREMENT MEANINGLESS, AND THE TITLE CANNOT BE REFORMULATED BY REFERENCE TO THE BILL'S CONTENT OR BY JUDICIAL INTERPRETATION.

Mo. Const. Art. III, §23; *Home Builders Ass'n of Greater St. Louis v. State*, 75 S.W.3d 267 (Mo. banc 2002); *St. Louis Heath Care Network v. State*, 968 S.W.2d 145 (Mo. banc 1998); WEBSTER'S THIRD NEW INT'L DICTIONARY 780 (2002).

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Mo. Const. Art. III, §23; *Missourians To Protect The Initiative Process v. Blunt*, 799 S.W.2d 824 (Mo. banc 1990).

III. THE TRIAL COURT ERRED BY UPHOLDING PORTIONS OF H.B.1900, SEVERING ONLY THE PROVISIONS RELATING TO CANDIDATE DISQUALIFICATION IN CHAPTER 115 BECAUSE H.B.1900 VIOLATES ARTICLE III, §23 AS A WHOLE IN THAT AN ORIGINAL CONTROLLING PURPOSE CANNOT BE IDENTIFIED AND THERE IS NOTHING TO SEVER.

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Mo. Const. Art. III, §21; *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885 (Mo. banc 2006); *Hammerschmidt v. Boone County*, 877 S.W.2d 98 (Mo. banc 1994).

V. THE TRIAL COURT ERRED BY UPHOLDING PORTIONS OF H.B.1900 AND SEVERING THE PROVISIONS RELATING TO CANDIDATE DISQUALIFICATION IN CHAPTER 115 BECAUSE NO PORTION OF H.B.1900 CAN BE SEVERED IN THAT AN ORIGINAL PURPOSE

CANNOT BE ISOLATED AND IT CANNOT BE PRESUMED THAT THE LEGISLATURE WOULD HAVE ENACTED ONE PORTION OF H.B.1900 WITHOUT THE OTHERS.

Mo. Const. Art. III, §21; Mo. Rev. Stat. §1.140); *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885 (Mo. banc 2006); *State on Inf. of McKittrick v. Cameron*, 117 S.W.2d 1078 (Mo. 1938).

VI. THE TRIAL COURT ERRED WHEN IT FAILED TO INVALIDATE ALL OF SECTION 130.032 BECAUSE IT MISAPPLIED THE LAW RELATED TO SEVERABILITY OF UNCONSTITUTIONAL SECTIONS OF A BILL IN THAT SUBSECTION 130.032.2 IS NOT SEVERABLE FROM THE REMAINDER OF SECTION 130.032 IN H.B.1900 NOR IS IT SEVERABLE FROM THE REPEALING CLAUSE IN H.B.1900.

Mo. Rev. Stat. §1.140; *State v. Neill*, 78 S.W.3d 140 (Mo. banc 2002); *Missouri Ins. Co. v. Morris* 255 S.W.2d 781 (Mo. banc 1953).

STANDARD OF REVIEW

This Court conducts *de novo* review of constitutional challenges to a statute. *See Rizzo v. State*, 189 S.W.3d 576, 578 (Mo. banc 2006).

ARGUMENT

I. THE TRIAL COURT ERRED IN UPHOLDING THE VALIDITY OF H.B. 1900 BECAUSE THE TITLE "RELATING TO ETHICS" VIOLATES MO. CONST. ART. III, §23 IN THAT THE PLAIN MEANING OF THE WORD "ETHICS" IS SO BROAD AND AMORPHOUS THAT IT OBSCURES THE CONTENT OF THE ACT AND RENDERS THE SINGLE-SUBJECT REQUIREMENT MEANINGLESS, AND THE TITLE CANNOT BE REFORMULATED BY REFERENCE TO THE BILL'S CONTENT OR BY JUDICIAL INTERPRETATION.

The Missouri Constitution provides that "no bill shall contain more than one subject which shall be clearly expressed in its title." Mo. Const. Art. III, §23. This provision contains two distinct limitations on bills passed by the General Assembly: the bill must contain a single subject; and that subject must be clearly expressed in the title. *Carmack v. Director, Missouri Dep't of Agriculture*, 945 S.W.2d 956, 959 (Mo. banc 1997). Article III, §23 is a mandatory, not directory, constitutional provision. *Id.* at 959. The clear title requirement has been part of Missouri's constitution since at least 1865.¹

¹ The 1865 version of Article III, §23 provided that no law should relate to more than one subject, which should be expressed in its title. This version also provided that if a provision was not expressed in the title, "such act should be void only as to so much

The purpose of this requirement is to prevent surprise or "fraudulent, misleading, and improper legislation" and to fairly apprise legislators and the public of the subject matter of the legislation being considered. *Home Builders Ass'n of Greater St. Louis v. State*, 75 S.W.3d 267, 269 (Mo. banc 2002); *Fust v. Attorney General*, 947 S.W.2d 424, 429 (Mo. banc 1997).

While the title of a bill may be general, it cannot be so general that it tends to obscure the content of the act. Not only does an overly generalized title defy the purpose of Article III, §23 in terms of informing legislators and the public as to what is under submission, it also defeats the single subject mandate. A title cannot be so broad as to render the single subject mandate meaningless. *St. Louis Heath Care Network v. State*, 968 S.W.2d 145, 147 (Mo. banc 1998). If a title is amorphous and over-inclusive in violation of the clear title requirement, the entire bill is invalid. *Home Builders*, 75 S.W.3d at 272. That is the situation here.

A. According To It's Plain Meaning, The Title "Relating To Ethics" Is Overly Broad.

The title of H.B.1900, as enacted, is:

An Act to repeal sections 105.470, 105.473, 105.485, 105.957, 105.959, 105.963, 130.011, 130.016, 130.032, 130.046, 130.050, and 130.054, RSMo, and to enact in lieu thereof sixteen new sections *relating to ethics*, with an

thereof as was not so expressed." Const. 1865 Art. IV, §32. The current Article III, §23 requires that the subject be "clearly" expressed in the title, and does not include the savings clause to preserve all but that portion of a bill not expressed in the title.

effective date.

L.F. 384 (emphasis added). The title of H.B.1900 "relating to ethics" could hardly be more broad. In analyzing whether the title of a bill is constitutionally clear, this Court looks at the common, ordinary meaning of the words used to determine what the title describes. *Home Builders*, 75 S.W.3d at 271. The ordinary meaning of words is found in the dictionary. *St. Louis Heath Care Network*, 968 S.W.2d at 147. The definition of "ethics" is "a group of moral principals or set of values ... a particular theory or system of moral values," or "standards of behavior." WEBSTER'S THIRD NEW INT'L DICTIONARY 780 (2002). A bill "relating to ethics" embraces any code of conduct relating to any societal segment, profession, group, or individual regarding any activity whatsoever. Quite literally, "ethics" could include every code of conduct for everyone from accountants to zookeepers. *See, e.g.*, Accountants-Mo. Rev. Stat. §326.110.1(2), §326.130.2, §375.1037.2; Acupuncturist-Mo. Rev. Stat. §324.481.4(2)(a), §324.496.2; Architects-Mo. Rev. Stat. §327.041.2; Athletic Trainers-Mo. Rev. Stat. §334.715.1(2); Barbers-Mo. Rev. Stat. §328.060.2, §328.080.2, §328.150.2; Chiropractors-Mo. Rev. Stat. §331.060.2; Clinical Perfusionists-Mo. Rev. Stat. §§324.159(1),(3); Cosmetologists, Hairdressers and Manicurists-Mo. Rev. Stat. §329.140.2; Counselors-Mo. Rev. Stat. §337.520.1(12), §337.525.2(15); Dentists-Mo. Rev. Stat. §332.031.2, §332.321.2; Embalmers/Funeral Directors-Mo. Rev. Stat. §333.041.3, §333.111, §333.121.2; Employees of Executive Branch-Mo. Rev. Stat. §105.969; Engineers and Land Surveyors-Mo. Rev. Stat. §327.441.2; Gaming Commission Employees-Mo. Rev. Stat. §313.004.4; Hearing Aid Fitters and Dealers-Mo. Rev. Stat. §346.125; Interior

Designers-Mo. Rev. Stat. §324.436.2; Landscape Architects-Mo. Rev. Stat. §327.631.2; Marital and Family Therapists-Mo. Rev. Stat. §337.715.1(3); Massage Therapists-Mo. Rev. Stat. §324.265.1(2); Nurses-Mo. Rev. Stat. §335.066.2); Occupational Therapists-Mo. Rev. Stat. §324.065.2, §324.083.1; Occupational Therapy Board Members-Mo. Rev. Stat. 324.063.5; Physical Therapists-Mo. Rev. Stat. §334.530.6; Physicians and Surgeons-Mo. Rev. Stat. §334.100.2; Podiatrists-Mo. Rev. Stat. §330.160.2; Public Adjusters-Mo. Rev. Stat. §325.035; Respiratory Care Therapists-Mo. Rev. Stat. §334.920.2; Social Workers-Mo. Rev. Stat. §337.630.2, §337.680.2; Tattoo Artists-Mo. Rev. Stat. §324.522.2; Zoo facilities/Animal Welfare Act-Mo. Rev. Stat. §578.007, §578.012.1.

Indeed, "ethics" – a system of values or principles of conduct – embraces "nearly every activity the state undertakes." *Carmack*, 945 S.W.2d at 960. A "law" is "a binding custom or practice of a community; a rule or mode of conduct or action that is prescribed or formally recognized as binding ... the whole body of such customs, practices or rules." WEBSTER'S THIRD NEW INT'L DICTIONARY 1279 (2002). So, laws – codes of conduct that are formally recognized as binding – are actually a subset of ethics. Using the common definition of ethics, the title of H.B.1900 describes an Act "relating to the law and other codes of conduct not in the law." There is virtually no legislation proposed that does *not* involve a set of values or principles of conduct to be codified into a set of binding practices – tax, environment, education, traffic safety, economic development, criminal laws, tort reform – the list goes on and on. Because the title "relating to ethics" is "so broad that it could refer to almost any act the legislature passes," H.B.1900 is

unconstitutional as a matter of law. *Home Builders*, 75 S.W.3d at 270.

The phrase "relating to ethics" is even more broad, and less clear, than other titles found by this Court to violate Article III, §23 such as "relating to property ownership," *Home Builders*, 75 S.W.3d at 271-72, and "relating to certain incorporated and non-incorporated entities." *St. Louis Health Care Network*, 968 S.W.2d at 147-48. *See also Carmack*, 945 S.W.2d at 960 ("relating to economic development" is too broad to describe bill's content). "Relating to ethics" is so general that it "could describe any legislation that affects, in any way, [individuals,] businesses, charities, civic organizations, governments, and government agencies." *St. Louis Health Care Network*, 968 S.W.2d at 148. To say that the title of H.B.1900 "could define most, if not all, legislation passed by the General Assembly" is an understatement.

Before the trial court, the State agreed that the plain meaning of "ethics" broadly describes principles of conduct or standards of behavior that govern an individual or profession. The State argued, however, that because H.B.1900 pertains to the conduct of *a particular* group or profession (i.e., "lobbyists, officials and candidates") the title "relating to ethics" is sufficiently clear. Under this reasoning, a title "relating to conduct" or "relating to behavior" is constitutionally clear because someone or something is regulated. That test is no test at all.

Likewise, the trial court acknowledged that "in its plain and ordinary sense," the term "ethics" is impermissibly broad. L.F. 493. But inexplicably, the trial court then ignored years of case law holding the plain meaning controlling and undertook to itself supply the missing "what and who" to the title of H.B.1900.

B. The Trial Court Ignored The Plain Meaning Of "Ethics" And Impermissibly Re-Wrote The Title Of H.B. 1900.

The trial court found that because "Missouri has an Ethics Commission which generally regulates matters contained in Chapter 105 and 130," the title "relating to ethics" is sufficiently descriptive. *See* L.F.492-493. This is no different than saying that because there is a General Assembly, a title "relating to laws" is descriptively limited. Of course it is not.

Moreover, it is fundamentally impermissible for the trial court to re-write the title of H.B.1900 from "relating to ethics" to "relating to the Ethics Commission" or "relating to matters regulated by the Ethics Commission." The title of a bill is the designation prefixed by the legislature. It does not include "attempted additional indicia" added by others, which is "not to be considered in determining the validity of the act." *State v. Thomas*, 256 S.W. 1028, 1030 (Mo. 1924). Statutes contain the words the legislature sees fit to include and no more. The general rule of interpreting a statute to uphold its constitutionality does not permit adding words that are not there. *See, e.g., State v. Beine*, 2005 WL 1274393 *5 (Mo. banc 2005); *Emery v. Wal-Mart Stores*, 976 S.W.2d 439, 449 (Mo. banc 1998). The title of H.B.1900 is what it is. The title was chosen by the legislature and cannot be re-written.

Perhaps even more troubling, the trial court reformed the title of H.B.1900 by reference to its content. If one must resort to the content of a bill to determine the meaning of its title, then the title is hardly clear. The constitution is unambiguous and demands that the title *itself* be clear. Mo. Const. Art. III, §23. The approach of the State

and the trial court is analytically backward. The title must describe the subject, not vice versa. If a bill's content is used to inform the title, then there is little, if any, meaning to the constitutional clear title requirement. Moreover, it is the title, not the content, that drives the single subject analysis. See *Carmack*, 945 S.W.2d at 959; *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 328-29 (Mo. banc 2000). The trial court's analysis virtually does away with any clear title or single subject requirement at all.

C. The Unconstitutionality Of H.B.1900's Title Cannot Be Resolved By Interpretation.

H.B.1900's title problem cannot be fixed by interpretation. No matter how one looks at it, the title of H.B.1900 is constitutionally infirm. If taken at its plain meaning, the term "ethics" is "too broad and amorphous to describe the subject of the pending bill with the precision necessary to provide notice of its contents." *Carmack*, 945 S.W.2d at 960, and "effectively renders the single subject requirement meaningless or obscures the actual subject of the legislation." *Home Builders*, 75 S.W.3d at 270 (quoting *Drury v. City of Cape Girardeau*, 66 S.W.3d 733, 739 (Mo. banc 2002)). Even if re-written to contain the description added by the trial court – "relating to the Ethics Commission" or "relating to matters regulated by the Ethics Commission" – the title is still amorphous and misleading. A bill "relating to the Ethics Commission" might describe, for example, legislation dealing with the authorities or responsibilities of that body, procedures for contested cases before it, or other matters relating to its constitution, powers or procedures. A bill "relating to matters regulated by the Ethics Commission" might relate to anything within the purview of that body. The Ethics Commission has jurisdiction

over conduct that includes not only conduct and reporting obligations of lobbyists and campaign finance disclosure requirements (*see* Sections 105.957.1, 105.959), but also alleged violations of "[a]ny code of conduct promulgated by any department, division or agency of state government or by state institutions of higher education, or by executive order" and the provisions of the constitution, or any "state statute or order, ordinance or resolution of any political subdivision relating to the official conduct of officials or employees of the state and political subdivisions." Mo. Rev. Stat. §§105.957.1(4) and (6). Even as re-written by the trial court, the title of H.B.1900 is far too broad to provide fair notice to legislators or the public, *see St. Louis Health Care Network*, 968 S.W.2d at 148, or to identify a single subject, *see Missouri Health Care Association v. Attorney General*, 953 S.W.2d 617, 623 (Mo. banc 1997). *See also, infra*, Section II. Also, as finally enacted, H.B.1900 contained provisions that do not relate to the Ethics Commission or to matters regulated by the Ethics Commission, including, *inter alia*, revisions to Chapter 115 imposing additional duties on the Department of Revenue, provisions affecting county clerk duties to place candidates on the ballot and superseding local ordinances, and a provision concerning political telephone solicitations not currently regulated by the Ethics Commission.

The title of H.B.1900 not only is amorphous and latently misleading, but contains an affirmative misstatement. It cites to twelve statutes—all in Chapters 105 and 130—that will be repealed,² and states that the Act will "enact in lieu thereof sixteen new

² This is not the situation of an amendatory act whose title contains a citation to the

sections relating to ethics." The sixteen new sections are unnamed. According to the title, these sixteen new sections are all in lieu, or replacement, of the repealed Chapter 105 and 130 sections. They are not. Rather than just replacing statutes, H.B.1900 enacts completely new sections contained in a wholly different chapter, which are not "in lieu" of any repealed provision, but are in addition to provisions within Chapter 115. Nothing in the title of H.B.1900 alerts the reader of the involvement of Chapter 115. Nothing in the title of H.B.1900 alerts the reader of the other diverse subjects contained within its provisions. The title of H.B.1900 does exactly what Article III, §23 seeks to prevent. It is so broad that it lacks meaning, and also covers up or obscures the legislation under submission.

In cases where this Court has found an "umbrella" title sufficiently clear, the term or phrase at issue, while broad, still captured a discrete subject matter. *See Corvera Abatement Tech. v. Air Conservation Comm'n*, 973 S.W.2d 851, 861-62 (Mo. banc 1998) ("relating to environmental control"); *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322 (Mo. banc 2000) ("relating to transportation"); *Missouri State Medical Assn. v. Missouri Dept. of Health*, 39 S.W.3d 837 (Mo. banc 2001) ("relating to health services"). By contrast, an Act "relating to ethics" might relate to anything. If the title of H.B.1900 does not violate Article III, §23, it is hard to imagine any title that would. The trial court erred by finding the title clear. It is not, and H.B.1900 is an invalid act.

section to be amended. Statutes in Missouri no longer are amended but repealed and reenacted. Old cases dealing with amending acts are inapplicable.

II. THE TRIAL COURT ERRED BY FINDING THAT H.B.1900 VIOLATES MO. CONST. ART. III, §23 ONLY IN REGARD TO PROVISIONS RELATING TO CANDIDATE DISQUALIFICATION IN CHAPTER 115 BECAUSE H.B.1900 VIOLATES MO. CONST. ART. III, §23 AS A WHOLE IN THAT H.B.1900 CONTAINS MULTIPLE SUBJECTS THAT CANNOT BE COMBINED UNDER A SINGLE BROAD HEADING WITHOUT RENDERING THE SINGLE SUBJECT REQUIREMENT MEANINGLESS.

"The single subject limitation requires [that] the contents of the bill . . . fairly relate to the subject expressed in the title of the act." *SSM Cardinal Glennon Children's Hospital*, 68 S.W.3d 412, 417 (Mo. banc 2002). The test "does not concern the relationship between individual provisions [of a bill], but between the individual provision and the *subject as expressed in the title*." *C.C. Dillon Co.*, 12 S.W.3d at 328 (emphasis added). Here, there is no subject discernible from the title "relating to ethics." To what, then, are the provisions of H.B.1900 compared?

Without the foundation of a clear title, there is no framework to analyze the single subject requirement without begging the question. The trial court's conclusion that H.B.1900 contains more than one subject was correct, but its analysis and conclusions as to the scope of that subject was not. In fact, H.B.1900 contained several subjects from the outset. The analysis utilized by the trial court not only was incorrect, but produced a catch-all "subject" that renders the single subject restriction meaningless. The trial court's error affects not only the scope of the Article III, §23 violation, but also the determination as to severability, which in the end only speculates as to which of the

multiple subjects in H.B.1900 was actually its core. *See infra*, Section III.

A. The Trial Court Used An Incorrect Analysis To Determine Whether H.B.1900 Violates Article III, §23.

According to both the trial court and the State, the "subject" of H.B.1900 is the conglomerate of all matters within their respective views of H.B.1900's general purpose. *See* L.F. at 511. As an initial matter, the "general purpose" analysis applies to an original purpose challenge, not to a single-subject challenge where clear title also is at issue. The original purpose analysis of Article III, §21 deals with alterations to a bill "that bring about an extension or limitation" to its scope. *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 326 (Mo. banc 1997). The first step is to identify the bill's "general purpose" as originally introduced. *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885, 888 (Mo. banc 2006). Because the constitution "does not require that the purpose be stated anywhere," the original purpose analysis does not rely on the title of a bill, but rather, looks to the "earliest title and contents" of the legislation in order to derive an "overarching purpose." *McEuen v. Missouri State Board of Education*, 120 S.W.3d 207, 210 (Mo. banc 2003). Once that overarching purpose is determined, matters subsequently introduced are scrutinized to see if they are "logically connected with" or are "germane to" that object of the legislation. *Missouri Ass'n of Club Executives*, 208 S.W.3d at 888. By contrast, the single-subject requirement of Article III, §23 pertains to a bill as enacted. *Stroh*, 954 S.W.2d at 327. And importantly, Article III, §23 *does* require that a subject be stated somewhere. It requires that the subject be stated in *the title*. The single-subject analysis is not a provision-to-provision comparison, but rather,

seeks to determine whether each provision falls within the subject as expressed in the title. *Missouri Health Ass'n*, 953 S.W.2d at 622; *Fust*, 947 S.W.2d at 428; *C.C. Dillon*, 12 S.W.3d at 328.

In *Carmack*, this Court explained that if an amorphous title renders the subject of a bill uncertain, the subject may be determined from sources including the content of the bill as originally filed. This rule, however, applies only when the clear title requirement is not in issue. *See Carmack*, 945 S.W.2d at 960. Here, the title is at issue, and does not express an identifiable subject, much less a single subject. Both the trial court and the State simply create a title – and a subject – out of their respective views on the bill's "overarching purpose." Formulating both title and subject in the same breath, however, is no more than a tautological exercise that avoids Article III, §23 altogether.

B. Multiple Subjects Cannot Be Combined Under A Single Broad Rubric Without Rendering The Single Subject Requirement Meaningless.

The "general purpose" analysis utilized by the trial court also produced an overly broad, catch-all "subject" that renders the single subject requirement meaningless.

In *Missourians To Protect The Initiative Process v. Blunt*, 799 S.W.2d 824 (Mo. banc 1990), this Court dealt with an initiative petition to amend the constitution that was challenged as violating the single-subject requirement of Mo. Const. Art. III, §50. This case has been often cited for its principles, which also are applicable to legislative enactments and Article III, §23. *See, e.g., Hammerschmidt v. Boone County*, 877 S.W.2d 98, 101-102 (Mo. banc 1994); *SSM Cardinal Glennon Children's Hospital v. State*, 68 S.W.3d 412, 417 (Mo. banc 2002); *St. Louis Health Care Network*, 968 S.W.2d at 147;

Missouri Health Care Ass'n, 953 S.W.2d at 622; *Carmack*, 945 S.W.2d at 960.

In *Missourians to Protect The Initiative Process*, the proposed amendment dealt with regulation of the General Assembly on such matters as the number of its members, the length of the legislative session, and committee appointments. The proposal also dealt with regulation of public officials' conduct by, *inter alia*, creation of an Ethics Commission. *Id.* at 831. Single subjects suggested by the appellants included "legislative matters" and "the regulation of public officials' conduct." *Id.* at 831-32. As recognized by this Court, both constructions were "extremely broad." *Id.* at 832.

Significant to this case, the Court also found:

If multiple matters may be lumped together under excessively general headings, the single subject restriction . . . would be rendered meaningless. Even though specific provisions of a proposal are given a liberal and non-restrictive construction in determining what matters are connected to a particular subject, the Court will not adopt a construction of the words 'one subject' that renders the constitutional prohibition against multiple subjects meaningless.

Id. at 832. The Court went on to note, on the one hand, that "legislative matters" was not connected to ethical restrictions on executive department officials, and on the other hand, that "regulation of public officials' conduct" was not connected to matters such as the length of legislative sessions. As such, the proposal was not limited to a single subject even "under the broad rubrics suggested." *Id.* The Court determined that the proposal contained more than a single subject, and as to severability, it was impossible to say

which of the subjects was actually the core. *See infra*, Section III. All of the problems identified in *Missourians To Protect The Initiative Process* are at work here.

According to the trial court, the subject of H.B.1900 is "matters under the jurisdiction of the Missouri Ethics Commission: conduct of lobbyists, officials and candidates, by affecting financial disclosures, campaign contributions and audits performed by the Ethics Commission." L.F. 511.³ This description is remarkably similar to the headings "legislative matters", and "the regulation of public officials' conduct" found excessively broad in *Missourians To Protect The Initiative Process*. It purports to include everything within a broad regulatory sphere regardless of the actual subject matter addressed in the bill's provisions. Such is not, and cannot be, the law. If multiple matters can be lumped together under this sort of heading, the single subject restriction is meaningless.

C. As Introduced And Finally Passed, H.B.1900 Did And Does Contain Multiple Subjects In Violation Of Article III, §23.

Moreover, and even if a "general purpose" analysis is appropriate, it is clear that H.B.1900 contained multiple subjects from its very inception. As originally introduced, the bill would have repealed seven sections and re-enacted the same seven sections with

³ The State also took an expansive view of the bill's subject as "regulating and promoting the ethical conduct of lobbyists, officials and candidates" vis-à-vis professional integrity, ethical standards and public confidence. The very fact that the State and the trial court disagree on a central purpose is itself "a strong indicator of [H.B.1900's] multiplicity."

Missourians To Protect The Initiative Process, 799 S.W.2d at 832.

certain revisions: Sections 105.473, 105.963, 130.011, 130.016, 130.032, 130.046 and 130.056, RSMo. L.F. 234. Certain revisions to the Chapter 130 sections dealt with campaign finance. *See* Sections 130.011, 130.016, 130.032, and 130.046. Other revisions, however, did not. The original version of H.B.1900 also revised Section 105.473.3 to change lobbyist reporting of expenditures made for occasions at which certain caucus members are invited. L.F. 238. It also revised Section 130.056 to add auditing of selected lobbyist reports "to determine compliance with all lobbyist reporting laws", an annual report, and an Internet posting of errors. L.F. 275-276. So, as originally proposed, H.B.1900 contained at least two unrelated subjects—campaign finance and lobbyist reporting of non-campaign expenditures. The legislature treats the two as separate subjects by placing them in different chapters of the statutes and by making clear that lobbying activity is not subject to campaign finance laws and vice versa. *See* Mo. Rev. Stat. §105.470.3 (the definition of lobbying expenditures does not include contributions to political campaigns). Because there were two distinct subjects from the outset, it is not possible to identify a single purpose of H.B.1900 as originally proposed. Was it campaign finance, or was it lobbyist reporting? One can speculate, but not choose one over the other.

It also is not possible to isolate a single subject of H.B.1900 as ultimately enacted. To the contrary, the multiplicity of subjects only grew as the Bill progressed through the system. As finally passed, H.B.1900 contains numerous provisions addressing: campaign finance (Chapter 130); establishment of a new category of local government lobbyist (Chapter 105); lobbyist reporting requirements (Chapter 105); and candidate

disqualification (Chapter 115). H.B.1900 also contains other provisions that are not related to even these subjects, including:

- A new requirement to Section 105.957 that persons receive notice of a complaint filed against them with the Ethics Commission, which include alleged violations regarding the conduct of *any* person employed by any department, division or agency of state government, state institutions of higher education, local government subdivisions, or who are officials of the state or political subdivisions.
- A new subsection 6 to Section 130.054 that prohibits the Ethics Commission from accepting a complaint within fifteen days prior to the primary or general election at which a candidate is running for office. This provision does not purport to regulate "ethical" or any other conduct of lobbyists, candidates or public officials, but rather, limits the right of any natural person to file a complaint.
- A new subsection 4 to Section 105.957 that creates a private right of action for "actual and compensatory" damages by persons against whom a "frivolous" complaint has been filed. While the Ethics Commission makes the finding that a complaint is "frivolous," it does not have jurisdiction over and cannot "regulate" petitions for an award of damages.
- A new Section 1 directing the Ethics Commission to study methods to improve the regulation of persons and organizations that conduct or utilize political telephone solicitations.

The act relates to a variety of subjects, some related to lobbyists, some related to campaign finance, some related to committee formation, some meant to discourage the filing of complaints, some related to telephone solicitations, some related to other matters entirely. Perhaps that is the reason why the title was made so amorphous. Regardless, H.B.1900 contains multiple subjects in violation of Article III, §23. Those constitutionally prohibited subjects are not limited to the Chapter 115 candidate disqualification provisions as found by the trial court. It was error for the trial court to find such a limited violation of the Constitution when the magnitude of the violation was much greater.

III. THE TRIAL COURT ERRED BY UPHOLDING PORTIONS OF H.B.1900, SEVERING ONLY THE PROVISIONS RELATING TO CANDIDATE DISQUALIFICATION IN CHAPTER 115 BECAUSE H.B.1900 VIOLATES ARTICLE III, §23 AS A WHOLE IN THAT AN ORIGINAL CONTROLLING PURPOSE CANNOT BE IDENTIFIED AND THERE IS NOTHING TO SEVER.

When a bill violates the single subject provision of Article III, §23, the entire bill is unconstitutional and void. The only exception is where "the Court is convinced beyond a reasonable doubt that one of the bill's multiple subjects is its original, controlling purpose and that the other subjects are not [in which case, the Court] . . . will sever that portion of the bill containing the additional subject(s) and permit the bill to stand with its primary, core subject intact." *Carmack*, 945 S.W.2d at 961; *Hammerschmidt*, 877 S.W.2d at 103; *Rizzo v. State*, 189 S.W.3d 576, 581 (Mo. banc

2006). *Cf.* Mo. Rev. Stat. §1.140 (if a provision of a statute is unconstitutional, the remaining provisions are valid unless they are "so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one"). Severability thus depends upon the initial conviction – to a degree that leaves *no reasonable doubt* – that the bill does have a "single, central purpose" from which additional subjects may be severed. *Carmack*, 945 S.W.2d at 961. "In determining the original, controlling purpose of a bill for purposes of determining severance issues, a title that 'clearly' expresses the bill's single subject is exceedingly important." *Hammerschmidt*, 877 S.W.2d at 103. Here, of course, there is no such title.

Based upon the excessively broad "subject" it identified ("matters under the jurisdiction of the Ethics Commission"), the trial court severed only the Chapter 115 provisions relating to candidate disqualification, which are not regulated by the Ethics Commission. L.F. 496. As discussed above, the trial court's analysis virtually destroys any single subject requirement. Moreover, as originally proposed, H.B.1900 contained at least two subjects – campaign finance, and lobbyist reporting of non-campaign expenditures. At bottom, rather than conducting the proper analysis, the trial court simply speculates as to which of the subjects expressed in H.B.1900 was actually the core purpose.

Where a single, central purpose cannot be identified, "it is necessarily impossible to identify those provisions that are essential to the efficacy of the [proposal] so that they may be segregated out." *Missourians to Protect The Initiative Process*, 799 S.W.2d at

832. Here, H.B.1900 began with at least two subjects – campaign finance and lobbyist reporting – and ended up with at least three, if not more, subjects. A single, central purpose cannot be identified. There is nothing to sever and the whole bill must fall.

IV. THE TRIAL COURT ERRED BY FINDING THAT H.B.1900 VIOLATES MO. CONST. ART. III, §21 ONLY IN REGARD TO THE PROVISIONS RELATING TO CANDIDATE DISQUALIFICATION IN CHAPTER 115 BECAUSE H.B.1900 VIOLATES MO. CONST. ART. III, §21 AS A WHOLE IN THAT H.B.1900 CONTAINED MULTIPLE SUBJECTS FROM ITS INCEPTION AND ADDED MULTIPLE OTHER PROVISIONS NOT RELATED OR GERMANE TO THE ORIGINAL PURPOSE(S).

Article III, §21 of the Missouri Constitution prohibits a bill from being "so amended in its passage through either house as to change its original purpose." The original purpose restriction in Article III, §21, and the single subject requirement of Article III, §23 "serve to facilitate orderly legislative procedure. By limiting each bill to a single subject and requiring that amendments not change a bill's original purpose, the issues presented by each bill can be better grasped and more intelligently discussed." *Hammerschmidt*, 877 S.W.2d at 101. The original purpose is the general purpose of a bill. "The restriction is against the introduction of matter that is not germane to the object of the legislation or that is unrelated to its original subject." *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885, 888 (Mo. banc 2006). A bill's original purpose must be measured at the time of its introduction, as gleaned from both its "earliest title and contents." *Id*; see also *McEuen v. Missouri State Board of Education*, 120 S.W.3d

207, 210 (Mo. banc 2003).

The original title of H.B.1900 was "relating to campaign finance." As originally introduced, the Bill dealt with campaign finance, but also dealt with non-campaign finance related reports filed by lobbyists. *See* Section 105.473 and Section 130.056(13), L.F. 238, 276. Thus, while a general purpose of "campaign finance" was expressed in the original title of H.B.1900, and was addressed within its body, the disparate subject of lobbyist reporting also was addressed.

Regardless of whether the original purpose of the bill was "campaign finance" as indicated in the original title or the multiple subjects of "campaign finance and reporting of lobbyist expenditures" as found in the text, H.B.1900's amendments deviated substantially from one or both original purpose(s). The deviation from the original purpose is obvious from the title of the final bill, which was: an Act "[t]o repeal sections 105.470, 105.473, 105.485, 105.957, 105.959, 105.963, 130.011, 130.016, 130.032, 130.046, 130.050 and 130.054, RSMo, and to enact in lieu thereof sixteen new sections relating to ethics, with an effective date." The bill's title changed from "relating to campaign finance" to the amorphous "relating to ethics." The final bill included provisions related to campaign finance, but also:

- Created a whole new category of "elected local government official" lobbyist by amending Section 105.470, a section not addressed in the original bill;
- Banned expenditures by lobbyists on out of state travel by revising Section 105.473;

- Superseded local laws and ordinances relating to the newly created local government official lobbyist by revising Section 105.473;
- Made changes related to complaints filed with the Ethics Commission, specifically creating a cause of action for "frivolous" complaints by revising Section 105.957, a section not addressed in the original bill;
- Regulated who may run for office, disqualifying delinquent taxpayers and those convicted of a felony by enacting two completely new sections in Chapter 115, which was not addressed by the original bill; and
- Added a completely new, non-numbered section, requiring the ethics commission to study political telephone "solicitations" (without specifying what was meant by the term solicitations), a subject not dealt with in the original bill.

L.F. 382-420.

The trial court determined that the original purpose was "to address subjects regulated by the Missouri Ethics Commission." L.F. 494. According to the State, the bill's original purpose "related to regulating and promoting the ethical conduct of lobbyists, officials and candidates." Both characterizations are excessively general (*see supra*, Section II) and neither is supported by the original title ("relating to campaign finance") or the original content of H.B.1900. For example, as originally proposed, H.B.1900 revised Section 130.016 to prohibit a member of or candidate for the general assembly from forming a candidate committee for the office of the speaker of the house or president pro tem of the senate. L.F. 262. This is a substantive prohibition that calls for no regulation by the Ethics Commission. H.B.1900 also revised Section 130.011(10)

to change the deadline for forming a continuing committee from thirty (30) to sixty (60) days prior to an election, revised Section 130.046 to add an electronic filing requirement, and deleted a requirement in Section 105.963.2(2) and .3 that certain notices be sent by certified mail. None of these provisions have anything to do with professionalism or the integrity of public officials' conduct.

H.B.1900 has always contained multiple subjects. They cannot be combined into a single, original purpose without violating other provisions of the Constitution. Even if a broader purpose could be articulated consistent with the single subject requirement, provisions creating a new category of lobbyist, creating a private right of action to recover civil damages for "frivolous" complaints, regulating who can run for office, and other provisions are not connected with or germane to either campaign finance or lobbyist reporting. In its final form, H.B.1900 changed its original purpose in violation of Article III, §21 far beyond the simple addition of candidate disqualification provisions to Chapter 115 as found by the trial court. There is no way to sever offending provisions. H.B.1900 is a wholly unconstitutional act.

V. THE TRIAL COURT ERRED BY UPHOLDING PORTIONS OF H.B.1900 AND SEVERING THE PROVISIONS RELATING TO CANDIDATE DISQUALIFICATION IN CHAPTER 115 BECAUSE NO PORTION OF H.B.1900 CAN BE SEVERED IN THAT AN ORIGINAL PURPOSE CANNOT BE ISOLATED AND IT CANNOT BE PRESUMED THAT THE LEGISLATURE WOULD HAVE ENACTED ONE PORTION OF H.B.1900 WITHOUT THE OTHERS.

Where a bill has been found to violate the original purpose requirement of Article III, §21, the bill is unconstitutional. This Court has applied the severability test of Section 1.140, under which the unconstitutional portions of a statute are severed "unless the valid provisions . . . are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislative would have enacted the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent." *Missouri Ass'n of Club Executives*, 208 S.W.3d at 889. The mere fact that the portion of an act remaining after another portion has been declared invalid may be complete in itself "is not alone sufficient to sustain it." *State on Inf. of McKittrick v. Cameron*, 117 S.W.2d 1078, 1082 (Mo. 1938). If the part held invalid "is so connected with the residue of the act as to furnish the inducement . . . or consideration for the enactment of the residue and as to warrant the belief that the legislature intended them as a whole and would not have passed the part remaining had it

known that the other part would be held invalid, then the entire act must fall." *Id.*; see also *City of Charleston v. McCutcheon*, 227 S.W.2d 736, 740 (Mo. 1950).

As measured by its earliest title and contents, H.B.1900 had at least two subjects, neither of which can be isolated as the central purpose. Indeed, the audit and internet posting provisions in the first version of H.B.1900 pertain to both campaign disclosure reports and lobbyist reports. See L.F. 40-41. These two subjects continued to appear, in modified form, throughout the process and remained in the bill as passed. The provisions relating to candidate disqualification (Chapter 115) were added in the first Senate Substitute for H.B.1900 (L.F. 304, *et seq.*) and also continued in the bill until its final passage (L.F. 384, *et seq.*). To select one original purpose over another merely speculates as to which part of H.B.1900 constitutes the central legislative intent. Would the legislature have enacted the campaign finance portions of H.B.1900 had it known that the lobbyist reporting provisions would be found invalid, or vice versa? The provisions are not severable, but stand or fall as a whole. The trial court erred by severing sections of the bill when no core purpose can be discerned.

VI. THE TRIAL COURT ERRED WHEN IT FAILED TO INVALIDATE ALL OF SECTION 130.032 BECAUSE IT MISAPPLIED THE LAW RELATED TO SEVERABILITY OF UNCONSTITUTIONAL SECTIONS OF A BILL IN THAT SUBSECTION 130.032.2 IS NOT SEVERABLE FROM THE REMAINDER OF SECTION 130.032 IN H.B.1900 NOR IS IT SEVERABLE FROM THE REPEALING CLAUSE IN H.B.1900.

As discussed *infra*, Trout urges this Court to find that H.B.1900 was passed in an

unconstitutional manner and is therefore void *in toto*. In the event the Court engages in a severability analysis, however, it should consider how much of the bill to sever in light of the trial court's holding that Section 130.032.2 of H.B.1900 (banning any political contributions for 5 months out of the year) violates both the United States and Missouri Constitutions. While the trial court's holding that Section 132.032.2 is unconstitutional, as alleged in Count II of the Petition, is correct, the trial court's severability analysis flowing from that decision is incorrect.

Although severability usually arises in a challenge to original purposes or multiple subject violations, the legislature has made clear that *any time* a statutory provision is found to be unconstitutional, the court must conduct a severability analysis to determine how much of the statute is constitutionally infirm. Mo. Rev. Stat. §1.140. Upon a finding that a provision of a statute is unconstitutional, remaining provisions are valid *unless* they are "so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with legislative intent." Had the trial court conducted this statutorily mandated severability analysis, it would have found that the void provision banning campaign contributions is inseparably connected with other provisions of H.B.1900 which repeal and reenact Section 130.032 in its entirety. Also, the other provisions of the bill which repealed and reenacted Section 130.032.2, standing alone, are incomplete and incapable of being executed in accordance with legislative intent. As such, the repeal and reenactment of all

of Section 130.032 is void.

Before the enactment of H.B.1900, Section 130.032 contained seven subsections dealing with campaign contributions. The general affect was to limit the amount of campaign contributions that could be made or accepted by candidates for public office. H.B.1900's original language repealed portions of Section 130.032. L.F. 262-266. When the House approved H.C.S.H.B.1900, it did not approve a repeal of Section 130.032 at all, leaving the contribution limits intact. L.F. 281.

The Senate, however, did repeal the old Section 130.032 and replaced it with new language, and that decision became the final version of the bill. The question, then, is whether it can be presumed that the legislature would have enacted the valid provisions without the void one. The answer is no.

An analysis of the procedural progress of H.B.1900 leads to the conclusion that Section 130.032 would not have been repealed and reenacted without the unconstitutional subsection 2. The House of Representatives had an opportunity to repeal contribution limits as H.B.1900 passed through that body, but the members declined to do so. It was only after the Senate added language banning contributions during the legislative session that the House was willing to accept a repeal and reenactment of Section 130.032.

Likewise, the Senate combined the repeal of Section 130.032 with the reenactment of a section that imposed a ban on contributions during the legislative session. The repeal and reenactment of new language was all accomplished by way of a Senate Substitute in one vote on the floor of the Senate rather than by separate amendments. L.F. 306 *et seq.*

Thus, the procedural history makes clear that the legislature was only willing to repeal

the limits on the amount of political contributions if there was a limit on the period of time in which contributions could be accepted. Because this history rebuts any presumption that the legislature would have repealed and reenacted Section 130.032 without the time limit in the new Section 130.032.2, the latter provision cannot be severed from the remainder of the section and the repealing clause.

Nor can it be presumed as a matter of logic or policy that the legislature would have repealed campaign contribution limits without a provision that banned contributions during the legislative session. Prior to H.B.1900, contributions could be made 12 months out of the year, but the amount of the contribution was limited. H.B.1900 limited the amount of time during which contributions could be accepted to approximately seven months out of the year and then removed the limit on the amount of each contribution. It cannot be presumed that the legislature would have authorized unlimited campaign contributions without limiting the time during which the contributions could be made. The legislative intent was clearly to provide some limitation on the solicitation of contributions. Without the void provision, the law allows a wide open 365-day-a-year solicitation period for unlimited contributions. Because this is clearly not what the legislature intended, the repeal and reenactment of Section 130.032 cannot be severed from the unconstitutional provision. The trial court should have held that the repeal of Section 130.032 was void and of no effect.

Moreover, Section 130.032 is incomplete, nonsensical and incapable of being executed consistent with legislative intent once subsection 2 is removed as void. It is well settled law that “where the evident purpose of repealing and reenacting a statute was

to substitute the new section for the old . . . if the new section is unconstitutional, the repealing clause is likewise invalid and the old section remains in effect.” *State v. Neill*, 78 S.W.3d 140, 143 (Mo. banc 2002); *Missouri Ins. Co. v. Morris* 255 S.W.2d 781, 782 (Mo. banc 1953). Therefore, the trial court should have struck the entire section and the repealing clause.

At the very least, the trial court should have acknowledged that because new subsection 2 of Section 130.032 is unconstitutional, the old subsection 2 was not repealed and remains in place. That recognition required the court to strike the entire section and the repealing clause as well because Section 130.032 is now unworkable. Old subsection 2 – back in place as a result of the trial court’s ruling – contains a discussion of “base year amounts” that are “the contribution limits prescribed in this section.” The subsection goes on to provide an inflation adjustment to increase “such [contribution] limits.” But, as a result of the trial court’s ruling, there are no contribution limits at all. Therefore, Section 130.032 makes no sense and cannot be implemented consistent with legislative intent. After the trial court’s ruling, Section 130.032 contains base amounts and an inflation adjustment for contribution limits that do not exist. Because there is no way to implement the inflation factor, “the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.” Mo. Rev. Stat. §1.140. The only way to complete the section and execute legislative intent is to invalidate the provision of H.B.1900 that repealed Section 130.032, thereby restoring the contribution limits to which subsection 2 refers.

CONCLUSION

For all the foregoing reasons, Appellant respectfully requests this Court to reverse the trial court's finding that the title of H.B.1900 is sufficiently clear, declare that because title is overly broad in violation of Mo. Const. Art. III, §23, H.B.1900 is void *in toto*. In addition or in the alternative, Appellant requests that the Court declare that H.B.1900 contains multiple subjects in violation of Mo. Const. Art. III, §23, none of which can be identified as the central subject of the legislation, rendering H.B.1900 void *in toto*. In addition or in the alternative, Appellant requests that the Court declare that H.B.1900 violates the original purpose limitation in Mo. Const. Art. III, §21 and is void *in toto* or to the entire extent that it deviates from either or both of its original subjects. Appellant also requests this Court to declare that the repeal and reenactment of Section 130.032 are void such that the prior version of Section 130.032 is still in effect.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that pursuant to Mo. S. Ct. Rule 84.06(c), this brief: (1) contains the information required by Mo. S. Ct. Rule 55.03; (2) complies with the limitations in Mo. S. Ct. Rule 84.06(b) and Local Rule 360; and (3) contains 11,509 words, exclusive of the sections exempted by Mo. S. Ct. Rule 84.06(b) and Local Rule 360(c), determined using the word count program in Microsoft Word 2003. The undersigned counsel further certifies that the accompanying floppy disk has been scanned and was found to be free of viruses.

Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that one hard copy of this brief and one copy on floppy disk, as required by Mo. S. Ct. Rule 84.06(g), were served by hand-delivery on this 4th day of May, 2007, to:

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