

IN THE SUPREME COURT OF MISSOURI

CITY OF KANSAS CITY,)
MISSOURI,)
Respondent)
v.)
KANSAS CITY BOARD OF)
ELECTION COMMISSIONERS,)
ET AL.,)
Defendants,)
REV. SAMUEL E. MANN, ET AL.,)
Appellants.)

No. SC95368

Appeal from the Sixteenth Judicial Circuit Court
Jackson County, Missouri
The Honorable Justine E. Del Muro

APPELLANTS' BRIEF

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JURISDICTIONAL STATEMENT

The instant appeal is taken from the trial court's Judgment entered on September 22, 2015, by the Honorable Justine E. Del Muro, Circuit Court of Jackson County, Missouri, Division 4, which granted Plaintiff City of Kansas City, Missouri's "Petition for Removal of Ballot Question Pursuant to §115.127.3 RSMo for the November 3, 2015, Election." The trial court held that allowing the ballot question to go forward would violate Missouri statutory law. Defendants alleged that the statutory law relied on by the trial court was unconstitutional. The trial court subsequently denied Defendants' Motion for New Trial/Reconsideration, and the Judgment became final on November 9, 2015. Defendant's Notice of Appeal and the required supporting documents were timely filed within ten days after the Judgment became final, under Mo. R. Civ. P. 81.04(a), on November 18, 2015.

This Court has exclusive jurisdiction over this appeal pursuant to Article V, §3 of the Missouri Constitution because it involves the validity of a statute of this state. *Rentschler v. Nixon*, 311 S.W.3d 783, 786 (Mo. banc 2010).

STATEMENT OF FACTS

On or about September 18, 2015, Plaintiff/Respondent the City of Kansas City, Missouri (hereafter “Plaintiff”) filed a Petition in the Circuit Court of Jackson County, seeking an order of the trial court to remove a ballot question previously certified to be voted on by the registered voters of Kansas City, Missouri in the November 3, 2015, election, pursuant to §115.127.3 RSMo. *See*, Legal File (“L.F.”) 5-26; Appendix (“A”) A 3-5. As a result of allegations in the Petition that were admitted by Defendants/Appellants Samuel E. Mann, Lloyd Fields, Rodney Williams, Tex Sample, and Wallace S. Hartsfield’s (hereinafter “Defendants”) in their Answer or at trial, the following facts were not in dispute.

Defendants were a committee of petitioners that submitted an initiative petition seeking the adoption of a local minimum wage ordinance in the City of Kansas City, Missouri. *See*, L.F 7 ¶8; 32 ¶8. Sufficient signatures were collected and certified to engage Plaintiff’s City Charter initiative process. *See*, L.F 7 ¶9; 32 ¶9. Plaintiff subsequently enacted an alternative local minimum wage ordinance that was different from the local minimum wage ordinance urged by Defendants’ initiative. Because the alternate ordinance did not meet with their approval, Defendants, pursuant to Plaintiff’s City Charter, asked that their ordinance (No. 150660- hereafter “proposed ordinance”) be placed before the voters. *See*, L.F 7 ¶¶ 10, 11; 32¶¶ 10, 11. The proposed ordinance would have raised the minimum wage of individuals working in the City of Kansas City,

Missouri above the rate set in Missouri's Minimum Wage Law. *See*, L.F. 7 ¶¶ 12, 13, 16-20, 32 ¶¶ 12, 13; T.R. 13,14, and §290.502 RSMo; A 70.

The Petition further asserts that during the 2015 session, and subsequent to certification of the proposed ordinance, the Missouri Legislature passed Senate Substitute for House Committee Substitute for House Bill 722 (hereafter "House Bill 722"), which, among other things, enacted prohibitions against the passage of local minimum or living wage laws that exceeded the requirements of state or federal law. *See*, L.F. 7 ¶14; Transcript ("T.R.") 9; A 7-11. However, on July 7, 2015, Missouri Governor Jay Nixon vetoed the House Bill 722. *See*, L.F. 8 ¶15; 32 ¶15. Thereafter, on August 20, 2015, Plaintiff's City Council passed Committee Substitute for Ordinance No. 150660, placing Defendant's proposed ordinance on the ballot of the November 3, 2015, special election. *See*, L.F. 8 ¶16; 32 ¶16. Included within the language was a provision that allowed Plaintiff to take action to remove the proposed ordinance from the ballot if the Governor's veto was overridden and House Bill 722 was enacted. *See*, L.F. 8 ¶17; 14, T.R. 14, 15; A 7-11. Presumably, Plaintiff had concluded that §67.1571 RSMo was unconstitutional, and its only reservation to allowing the proposed ordinance to be voted upon was if House Bill 722 became law. *See*, L.F. 8 ¶17; A 62, 7-11.

On August 23, 2015, Plaintiff's City Clerk provided notice to the election authorities of the special election for the proposed ordinance. *See* L.F. 9 ¶18. However, on September 16, 2015, the Missouri Legislature overrode the Governor's veto of House Bill 722. *See*, L.F. 9 ¶18; 32 ¶19; A 7-11. As a result, Plaintiff subsequently filed the

instant Petition, and requested an expedited trial setting in advance of any of the named defendants serving an Answer. *See*, L.F. 2, 9 ¶19. Although Defendants were not initially named in the Petition, upon application, they were allowed to intervene as a party defendant and file an Answer. *See*, L.F. 2, 27, 35. Based on Plaintiff's representation that House Bill 722 was the sole basis for its decision to remove the proposed ordinance from the November 3, 2015, election ballot, Defendants asserted as an affirmative defense that House Bill 722 was unconstitutional. *See*, L.F. 31-34; a 7-11.

The matter was heard without a jury on September 22, 2015. *See* L.F. 2-3. In light of the facts which were largely not in dispute and in spite of Defendants' arguments, the trial court's Judgment granted the relief requested in Plaintiff's Petition, and allowed the proposed ordinance to be removed from the November 3, 2015, special election. *See*, L.F. 62-63; T.R. 13-21, 27-31; A 1-2. The trial court cited two Missouri statutes in support of its decision, §67.1571 RSMo and House Bill 722 (§285.055 RSMo). *See*, A 7-11, 63-64. In this regard, the trial court held that these two "provisions clearly and unequivocally prohibit Plaintiff from establishing a minimum wage." Finally, the trial court held that the "Committee Substitute for Ordinance No. 150660 is inconsistent with the above state statutes and is therefore unconstitutional on its face." *See*, L.F. 62-63.

POINT RELIED ON

- I. THE TRIAL COURT ERRED IN GRANTING THE RELIEF REQUESTED IN PLAINTIFF’S PETITION WHEN IT REMOVED DEFENDANTS’ PROPOSED LOCAL MINIMUM WAGE ORDINANCE FROM THE NOVEMBER 3, 2015 ELECTION BALLOT BECAUSE IT HELD THAT PLAINTIFF COULD NOT ENACT A LOCAL WAGE ORDINANCE WITHOUT VIOLATING §67.1571 RSMO AND HOUSE BILL 722 (§285.055 RSMO), IN THAT: (1) §67.1571 RSMO IS UNCONSTITUTIONAL; AND (2) HOUSE BILL 722 (§285.055 RSMO) IS UNCONSTITUTIONAL.**

Hammerschmidt v. Boone Cnty., 877 S.W.2d 98 (Mo. banc 1994)

Legends Bank v. State, 361 S.W.3d 383 (Mo. 2012)

Lincoln Credit Co. v. Peach, 636 S.W.2d 31, 38, 39 (Mo. banc 1982)

ARGUMENT

Standard of Review

In bench tried cases, the judgment of the trial court will be affirmed “unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law.” *White v. Director of Revenue*, 321 S.W.3d 298, 307-08 (Mo. banc 2010); (citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)). The application of this standard of review varies depending on the burden of proof applicable at trial and the error claimed on appeal to challenge the judgment. *See, In re Adoption of W.B.L.*, 681 S.W.2d 452, 454 (Mo. banc 1984). When litigation involves a challenge to the constitutional validity of a Missouri statute, the trial court presumes its validity unless it “clearly and undoubtedly” contravenes a constitutional provision. *Id.*; *Mo. Prosecuting Attorneys v. Barton City*, 311 S.W.3d 737, 740 (Mo. banc 2010); *Missouri Ass’n of Club Executives v. State*, 208 S.W.3d 885, 888 (Mo. banc 2006). The purpose of this presumption is to allocate the burden of proof to the party challenging constitutionality. *St. Louis Cnty. v. Prestige Travel, Inc.*, 344 S.W.3d 708, 712 (Mo. banc 2011).

In addition to reviewing the burden of proof, the appellate court also must apply the proper standard of review for the error claimed on appeal. A claim that the judgment erroneously declares or applies the law involves review of the propriety of the trial court’s construction and application of the law. *White*, 321 S.W.3d at 308. However, reviewing courts are required to apply *de novo* review to questions regarding construction

and application of law decided in bench tried cases. Determining if a statute is constitutional involves contraction and application of law subject to *de novo* review. *StopAquila.org v. City of Peculiar*, 208 S.W.3d 895, 899 (Mo. banc 2006). With respect to such *de novo* questions, “the appellate court reviews the trial court’s determination independently, without deference to that court’s conclusions.” *Moore v. Bi-State Dev. Agency*, 132 S.W.3d 241, 242 (Mo. banc 2004).

I. THE TRIAL COURT ERRED IN GRANTING THE RELIEF REQUESTED IN PLAINTIFF’S PETITION WHEN IT REMOVED DEFENDANTS’ PROPOSED LOCAL MINIMUM WAGE ORDINANCE FROM THE NOVEMBER 3, 2015 ELECTION BALLOT BECAUSE PLAINTIFF COULD NOT ENACT A LOCAL WAGE ORDINANCE WITHOUT VIOLATING §67.1571 RSMO AND HOUSE BILL 722 (§285.055 RSMO), IN THAT: (1) §67.1571 RSMO IS UNCONSTITUTIONAL; AND (2) HOUSE BILL 722 (§285.055 RSMO) IS UNCONSTITUTIONAL.

A. Plaintiff has the Power to Enact the Proposed Ordinance.

Although Defendants would naturally presume Plaintiff would argue in support of its enumerated powers, Plaintiff has taken an opposite view in the present case. Nevertheless, Plaintiff is organized under Article VI, §19 of the Missouri Constitution as a constitutional charter city. *State ex rel. Chastain v. City of Kansas City*, 289 S.W.3d 759, 761 (Mo. App. W.D. 2009). Under Article VI, §19(a), Plaintiff has: “all powers which the general assembly of the state of Missouri has authority to confer upon any city,

provided such powers are consistent with the constitution of this state and are not limited or denied either by the charter so adopted or by statute. Such a city shall, in addition to its home rule powers, have all powers conferred by law.” *See, Cape Motor Lodge, Inc. v. City of Cape Girardeau*, 706 S.W.2d 208, 210 (Mo. banc 1986).

The powers conferred by Plaintiff’s Charter include Article I, §102, which states that “The City shall have all powers which the General Assembly of the State of Missouri has authority to confer upon any City, provided such powers are consistent with the Constitution of this State and are not limited or denied either by this Charter or by statute. The City shall, in addition to its home rule powers, have all powers conferred by law.” *See, A 67*. In addition, Plaintiff’s Charter provides, pursuant to Article VI, §38-200-203, that within its city limits a living wage can be enacted based on the fact that “(a) The city council finds that the public welfare, health, safety and prosperity of citizens of the city requires that citizens be paid a living wage sufficient to ensure a decent and healthy life; (b) The city council finds that establishing a mandatory minimum hourly wage will promote the public welfare, health, safety and prosperity by ensuring that citizens can better support and care for their families through their own efforts; (c) The city council finds that when businesses do not pay adequate wages, the community bears the cost in the form of increased demand for taxpayer-funded social services; (d) The city council finds that it is in the public interest to require that employers benefiting from the opportunity to do business in the city pay employees a living wage that is adequate to

meet the basic needs of living in the city.” *See*, A 68-69. As a result, Plaintiff’s Charter provides the power to enact the proposed ordinance.

The intent behind Article VI, §19(a) of the Missouri Constitution was to “insure the supremacy of the legislature while at the same time putting only minimal and necessary limitations on the power of municipalities.” *City Of Kansas City v. Carlson*, 292 S.W.3d 368, 371 (Mo. Ct. App. 2009); *See*, A 65-66. Thus, “[u]nder Missouri’s new model of home rule . . . the municipality possesses all powers which are not limited or denied by the constitution, by statute, or by the charter itself.” *See, Yellow Freight Sys., Inc. v. Mayor’s Comm’n on Human Rights*, 791 S.W.2d 382, 385 (Mo. banc 1990). As such, Plaintiff is empowered to enact all ordinances that promote the health, safety, peace, comfort, and the general welfare of those who live and work here. *Bezayiff v. City of St. Louis*, 963 S.W.2d 225, 229 (Mo. App. 1997). Moreover, Plaintiff may enact ordinances within this scope of authority without enabling legislation at the state level, and any such ordinance will be presumed to be valid and lawful. *City of St. John v. Brockus*, 434 S.W.3d 90, 93 (Mo. App. 2014).

In this regard, courts in Missouri have long recognized that ordinances addressing issues similar to that addressed by the proposed ordinance are incidental to the affairs of a municipality and therefore within the proper exercise of city authority. *See, e.g., Howe v. City of St. Louis*, 512 S.W.2d 127 (Mo. 1974) (upholding City “anti-blockbusting” ordinance, even though it was challenged, inter alia, on grounds it violated the First Amendment); *Marshall v. Kansas City*, 355 S.W.2d 877, 885 (Mo. banc 1962)

(upholding Kansas City’s anti-discrimination ordinance covering private hotels and restaurants). Similar to the circumstances in the referenced cases, the crisis concerning a minimum living wage for employees working in the City of Kansas City, Missouri unquestionably raises a distinctly local concern, especially given the high cost of living in comparison to the smaller cities and rural portions of the State.

Because Plaintiff’s power is derived from Article VI, §19(a), in the instant case, the threshold issue is not whether Plaintiff had the authority to enact the proposed ordinance (because it clearly did), but whether its authority to enact the proposed ordinance was denied by other law. *See, Cape Motor Lodge, Inc.*, 706 S.W.2d at 210 W. *Coast Hotel Co. v. Parrish*, 300 U.S. 379, 400 (1937); *Marshall*, 355 S.W.2d at 882; *Carlson*, 292 S.W.3d at 372.

B. The Enactment of the Proposed Ordinance would Not Violate Missouri’s Minimum Wage Law.

In summary, the enactment of Defendants’ proposed ordinance would not violate Missouri’s Minimum Wage Law (“MMWL”) because the two pieces of legislation are not inconsistent. *See* §290.502 RSMo.; A 70. An ordinance only conflicts with state law when it “prohibits what the statute permits” or “permits what the statute prohibits.” *Cape Motor Lodge, Inc.*, 706 S.W.2d at 211. Additionally, if a statute does not specifically grant a right, but is silent on the question, then it may be permissible for the local government to establish prohibitions in that area.” *See, Miller v. City of Town & Country*, 62 S.W.3d 431, 438 (Mo. App. 2001). Moreover, “[w]hen an ordinance simply

adds to the statute, absent express language in the statute prohibiting such additional requirements, the ordinance is valid.” See *Babb v. Missouri Public Service Com'n*, 414 S.W. 3d 64, 70 (Mo. App. 2013); *State ex inf. Barrett ex rel. Callaghan v. Maitland*, 246 S.W. 267, 270-71 (Mo. 1922) (“simply going beyond [state law] minimums does not make [a] conflict”); *Glasnapp v. State Banking Bd.*, 545 S.W.2d 382, 389 (Mo. App. 1976) (statute requiring a minimum bank capitalization “creates a floor, not a ceiling, for capitalization” such that local authority can require greater capitalization without a conflict).

There are multiple justifications for finding that the MMWL is a law of prohibition that seeks only to place a floor under which employers cannot compensate employees. In fact, the relevant the enforcement provisions of the MMWL provide as follows:

“Any employer who pays any employee *less wages* than the wages to which the employee is entitled under or by virtue of sections 290.500 to 290.530 shall be liable to the employee affected for the full amount of the wage rate and an additional equal amount as liquidated damages, less any amount actually paid to the employee by the employer and for costs and such reasonable attorney fees as may be allowed by the court or jury...”

See §290.527 RSMo. (emphasis added); See, A 71.

“Paying or agreeing to pay wages at a rate *less* than the rate applicable under sections 290.500 to 290.530. Payment at such rate for any week or portion of a week constitutes a separate offense as to each employee.”

See §290.525(8) RSMo (emphasis added); *See*, A 72.

Accordingly, a violation of the MMWL occurs when there is payment of wages below the established floor. Violations are not defined as the payment of wages that are merely inconsistent because they are above the floor. *See* §290.502(2) RSMo; A 70. The purpose of the MMWL, as recognized by this Court in *Tolentino v. Starwood Hotels & Resorts Worldwide Inc.*, 437 S.W.3d 754, 761 (Mo. banc 2014), is to impose obligations upon employers in order to protect employees. In complete similarity, the proposed ordinance protects employees by setting a wage floor above that required in the MMWL. Therefore, the proposed ordinance simply adds to the MMWL’s floor, and neither “prohibits what the statute allows” nor “permits what the statute prohibits.” Moreover, because Plaintiff sought to enact an alternative local wage ordinance which exceeded the MMWL floor, violating the MMWL was never a concern. *See*, L.F. 7 ¶10.

C. Defendants Raised the Unconstitutionality of the Statutes Relied on By the Court at the First Opportunity.

The initial basis of Defendants’ claim that §67.1571 RSMo and House Bill 722 (§285.055 RSMo) are unconstitutional begins with an assessment of the requirements set forth in Article III, §21, of the Missouri Constitution. *See*, A 7-11, 62, 75. This provision prohibits amending any bill through its passage in a manner that changes its original

purpose. Specifically, the provision states in pertinent part, “No law shall be passed except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose” This Court has opined that the meaning of the term “purpose” in Article III, §21, is the general purpose of the bill, “not the mere details through which and by which that purpose is manifested and effectuated” and “[t]he restriction is against introduction of matter which is not germane to the object of the legislation or which is unrelated to its original subject.” *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 38 (Mo. banc 1982).

In *Missouri Ass’n of Club Executives v. State*, 208 S.W.3d at 888, this Court recognized that although subsequent additions or changes may be made to legislation, they could not change the legislation’s original purpose. In this regard, the term “original purpose” refers to the general purpose of the bill which is established by the “earliest title and contents” at the time the bill is introduced. The Court ultimately found that subsequent provisions to a bill regarding adult entertainment were not remotely within its original purpose of regulating alcohol-related offenses, and were a textbook example of log-rolling. *Id.*; *See also, Legends Bank v. State*, 361 S.W.3d 383, 387 (Mo. 2012) (original purpose was violated when bill that began with purpose of procurement of goods and then morphed into bill with provisions on ethics, campaign finances restrictions, and keys to the capitol dome).

The second basis asserted by Defendants for finding that §67.1571 RSMo and House Bill 722 (§285.055 RSMo) are unconstitutional is Article III, §23, of the Missouri

Constitution. That provision states in the pertinent part, “No bill shall contain more than one subject which shall be clearly expressed in its title” *See*, A 74. 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, and not whether individual provisions of a bill relate to each other”. *See, Hammerschmidt v. Boone Cnty.*, 877 S.W.2d 98, 102 (Mo. banc 1994). The dispositive question in determining whether 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.” *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 329 (Mo. banc 2000). The determination of whether a bill violates the single subject requirement is made concerning the bill “as it is finally passed.” *See, Stroh Brewery Co. v. State*, 954 S.W.2d 323, 327 (Mo. banc 1997).

Article III, §23 of the Missouri Constitution also requires that the subject be “clearly expressed” in a bill's title. The “clear title” provision was designed to prevent fraudulent, misleading, and improper legislation, by providing that the title should indicate in a general way the kind of legislation that was being enacted.” *See, Fust v. Attorney General*, 947 S.W.2d 424, 429 (Mo. banc 1997); *See*, A 74. The title may omit particular details of the bill, so long as neither the legislature nor the public is misled. *See, Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 39 (Mo. banc 1982). The bill as enacted is the only version relevant to the clear title requirement. *See, C.C. Dillon Co.*, 12 S.W.3d at 329.

This Court has held that the intent of these procedural requirements is to keep individual members of the legislature and the public fairly apprised of the subject matter of pending laws and to insulate the governor from take-it-or-leave-it choices when contemplating the use of the veto power.” *Id.* at 326. Moreover, they serve to facilitate orderly procedure, avoid surprise, and prevent logrolling, in which several matters that would not individually command a majority vote are rounded up into a single bill to ensure passage. *Id.* A violation of these procedural requirements mandates that any offending provision, and potentially the entire bill, be deemed unconstitutional. *See, Hammerschmidt*, 877 S.W.2d at 102.

Finally, as a collateral issue respecting the timeliness by which the constitutionality of the above-referenced statutes was raised, Plaintiff filed its Petition on September 18, 2015 (a Friday), and received an expedited hearing on September 21, 2015 (the following Monday). Defendants were allowed to intervene, and they filed an Answer on September 21, 2015. The only concern expressed in Plaintiff’s Petition, with the proposed ordinance, was the prohibition set forth in House Bill 722 (§285.055 RSMo). *See*, A 7-11, 63-64. Plaintiff never claimed that the procedure and form of Defendant’s initiative petition failed to comply with the law. In fact, Plaintiff admitted that Defendants had fully complied with the initiative petition process. *See* L.F 8, 9, 18. In response to Plaintiff’s purported concern, Defendants asserted that House Bill 722 (§285.055 RSMo) was unconstitutional. This assertion was raised in their Answer as an

affirmative defense. L.F. 5-11; 31-34. The hearing was held the following day, on September 22, 2015.

It was not until the case was being tried that Plaintiff raised the possible prohibition set forth in §67.1571 RSMo as another justification for not allowing the election to proceed (and was later memorialized in its post-trial brief). *See* L.F. 5-23; T.R. 15-17, 22-24; A 62. Similar to its lack of concern with violating MMWL prior to that time of trial, Plaintiff had no concern with violating §67.1571 RSMo when it sought to enact its own local wage ordinance. *See*, L.F. 7 ¶10. As a result, it was not until trial that Defendants asserted an additional affirmative defense that §67.1571 RSMo was also unconstitutional. *See* T.R. 15-25, 42, 42, 47-49. A party may raise the unconstitutionality of a statute as an affirmative defense, even on the basis of procedural objections, at any time. *See Boone Nat. Sav. & Loan Ass'n, F.A. v. Crouch*, 47 S.W.3d 371, 375 (Mo. 2001); *Lebeau v. Commissioners of Franklin Cnty., Missouri*, 422 S.W.3d 284, 291 (Mo. banc 2014). Therefore, Defendants properly raised the issue of each statute's constitutionality with the trial court at the first possible opportunity.

During the post-trial briefing, Plaintiff alleged for the first time that Defendants had not properly raised the issue of whether each statute was unconstitutional. Specifically, Plaintiff contended that the Attorney General should have been served or made a party to the action or a declaratory judgment action should have been filed. Given the expedited circumstances and the introduction of issues for the first time during trial, it was impossible to provide the Attorney General with the notice requested by Plaintiffs.

Because Defendants raised the issue of each referenced statute's unconstitutionality at the first opportunity, these issues are preserved for purposes of appeal.

D. §67.1571 RSMo Violates the Original Purpose Requirement and Single Subject Requirement and is Therefore Unconstitutional.

In summary, §67.1571 RSMo states, *inter alia*: “No municipality as defined in section 1, paragraph 2, subsection (9) shall establish, mandate or otherwise require a minimum wage that exceeds the state minimum wage.” *See*, A 62. The basis of the statute is 1998 Mo. HB 1636, which stated that it was an “ACT To repeal sections 67.1400, 67.1410, 67.1420, 67.1430, 67.1440, 67.1450, 67.1460, 67.1470, 67.1480, 67.1490, 67.1500, 67.1510, 67.1520, 67.1530, 67.1540, 67.1550 and 67.1560, RSMo Supp. 1997, relating to community improvement districts, and to enact in lieu thereof eighteen new sections relating to the same subject.” (hereinafter “CID Act,” emphasis added). *See*, A 12-58. It is clear that in original presentation the purpose of §67.1571 RSMo was to regulate community improvement districts. That was its singular purpose. All seventeen provisions of the Bill, in its original form, dealt exclusively with the formation, operation, and regulation of community improvement districts. In fact, the final provision of 67.1571 RSMo, §18 of the CID Act, was added as a late amendment and dealt with an entirely different subject matter , i.e. a prohibition on municipalities establishing local minimum wages. *See*, House Journal, Second Reg. Session, 89th General Assembly, p.

812 (House Amendment No. 6 to HS HCS HB 1636) (Mar. 31, 1998).¹ *See*, A 12-58. Thus, the passage of a new statute, §67.1571 RSMo, as part of the CID Act necessarily entailed that it have an underlying purpose tied directly to forming and regulating community improvement districts.

It is initially worth noting that the Missouri Legislature has implicitly acknowledged that §67.1571RSMo is unconstitutional. As subsequently discussed, the Missouri Legislature’s 2015 enactment of House Bill 722 attempted to do precisely what §67.1571 RSMo would have already prohibited. Specifically, House Bill 722’s express provision “[to] not preempt any state law or local minimum wage requirements in effect on August 28, 2015” would permit precisely what §67.1571 RSMo already prohibited, if it were constitutional. *See*, A 7-11, 62. In other words, under House Bill 722, if a municipality enacted a minimum wage law on or before August 28, 2015, presumably it would be valid, even though such minimum wage law was in conflict with an existing law, §67.1571 RSMo. A fundamental principle of statutory construction in Missouri is that “the legislature is not presumed to have intended a meaningless act.” *Murray v. Missouri Highway and Transp. Com’n*, 37 S.W.3d 228, 233 (Mo. banc 2001). As a result,

¹ The Court may take judicial notice of the bill, its various versions, and portions of the Journals of the House and Senate relating to its enactment. *See Schweich v. Nixon*, 408 S.W.3d 769, 778 (Mo. banc 2013); *Brown v. Morris*, 290 S.W.2d 160, 167-68 (Mo. banc 1956).

the Missouri Legislature has implicitly acknowledged that §67.1571 RSMo is unconstitutional.

Moreover, §67.1571 RSMo violates the original purpose requirement set forth in Article III, §21, of the Missouri Constitution. *See A*, 62, 75. Analysis of this issue begins with a comparison between the purpose of the bill as introduced and the bill as actually passed. *See, Lincoln Credit Co.*, 636 S.W.2d at 38. Undoubtedly, the original purpose of the bill forming the CID Act related solely to forming and regulating community improvement districts. The inclusion of §67.1571 RSMo, which prevents municipalities (on a state-wide basis) from establishing, mandating or otherwise requiring a minimum wage that exceeds the state minimum wage, had absolutely nothing to do with the Bill's original purpose.

An early example of a case where the court found an Article III, §21 violation is *Allied Mut. Ins. Co. v. Bell*, 185 S.W.2d 4 (Mo. 1945) in which the purpose of the bill, as introduced, was a reduction in deductions of specified insurance premiums. The bill was subsequently amended in a manner that imposed a tax on insurance premiums. This Court found the change to be a clear deviation from the bill's original purpose, and declared it unconstitutional. *Id.* at 19. In contrast, the court found no violation of the "original purpose" requirement in *St. Louis County v. Prestige Travel, Inc.*, because the original purpose was regulating taxes, and the subsequent provisions to the bill (exhibition center, recreational facility district, and a sales tax within the district) were germane to the original purpose. 344 S.W.3d at 715; *See also, Stroh Brewery Co.* 954 S.W.2d at 325-26

(amendment adding malt liquor labeling requirements was permissible to bill's original purpose of amending liquor control law).

Simply put, Article III, §21 of the Missouri Constitution is a prohibition "against the introduction of matter that is not germane to the object of the legislation or that is unrelated to its original subject." *Id.* at 326; *See*, A 75. Given the fact that §67.1571 RSMo's state-wide prohibition against municipalities establishing local minimum wages in no way relates to community improvement districts, it violates the original purpose requirement. *See*, A 62.

Moreover, §67.1571 RSMo also violates the single subject requirement set forth in Article III, §23 of the Missouri Constitution. *See*, A 62, 74. The single subject requirement provides that all matters within the legislation must fall within or reasonably relate to the legislation's general core purpose, as initially tested by reviewing its title. *See Hammerschmidt*, 877 S.W.2d at 102; *C.C. Dillon Co.*, 12 S.W.3d at 328. Moreover, all matters must have a natural connection therewith, or are incidents or means to accomplish the purpose of the legislation. *Id.*

A review of the subjects covered by the CID Act unmistakably shows, with the exception of §67.1571 RSMo, they all regard the formation of and regulation of community improvement districts. *See*, A 12-58. In comparison, §67.1571 RSMo prevents municipalities from establishing or requiring minimum wages that exceed state and federal law. As a result, §67.1571 RSMo does not fairly relate to, have a natural connection with, or provide a means to accomplish the subject of the bill, and a new or

second subject is created. This is a blatant violation of the single subject requirement set forth in Article III, §23 of the Missouri Constitution. *See*, A 74.

E. House Bill 722 (§285.055 RSMo) Violates the Original Purpose Requirement, Single Subject Requirement, and Clear Title Requirement and is Therefore Unconstitutional.

An obvious reaction to the fact that §67.1571 RSMo was unconstitutional was the Missouri Legislature's passage of House Bill 722. As an example, in *Missouri Hotel and Motel Association v. City Of St. Louis*, 146 DLR E-1 (2001), the circuit court held that §67.1571 RSMo was unconstitutional. However, the Legislature's recognition of the problem and attempted correction did not occur until well after House Bill 722 was initially proposed. The original version of House Bill 722 was an amendment to Chapter 260, RSMo (the precise subject was environmental control), by adding one new section "relating to the provision of paper and plastic bags" (by merchants, itinerate vendors, and peddlers). The core purpose of the Bill was environmentally directed. The Bill contained two subsections: (1) giving merchants and vendors the opportunity to provide customers the option of paper or plastic bags, and (2) prohibiting political subdivisions from banning or taxing paper or plastic bags. *See*, A 7-11. The bill's *raison d'être* was the freedom to use paper and plastic bags, and the portion of the bill relating to political subdivisions was not overarching. Rather, the language was in service to the bill's narrow and limited purpose of giving merchants and vendors the option to use paper or plastic

bags. The taxing language was a detail by which the general purpose, the option to use either paper or plastic bags, was effectuated.

As the Bill evolved, an amendment to Chapter 285, RSMo (which regards employers and employees) was included. The new section was directed solely to a different group, political subdivisions, and dealt with an entirely different subject, i.e., the passage of ordinances regarding employee wages and benefits. *See*, A 7-11. In effect, the Missouri Legislature believed it could address two distinctly different subject matters in two different statutes masquerading under the alleged common title “Prohibited Ordinances by Political Subdivisions.” As ultimately enacted, House Bill 722 read as follows:

“All merchants, itinerant vendors, and peddlers doing business in this state shall have the option to provide customers either a paper or a plastic bag for the packaging of any item or good purchased, provided such purchase is of a size and manner commensurate with the use of paper and plastic bags. Notwithstanding any other provision of law, no political subdivision shall impose any ban, fee, or tax upon the use of either paper or plastic bags for packaging of any item or good purchased from a merchant, itinerant vendor, or peddler. No political subdivision shall prohibit a consumer from using a reusable bag for the packaging of any item or good purchased from a merchant, itinerant vendor, or peddler.”

The Bill further provided: “No political subdivision shall establish, mandate, or otherwise require an employer to provide to an employee: (1) A minimum or living wage

rate; or (2) Employment benefits; that exceed the requirements of federal or state laws, rules, or regulations. The provisions of this subsection shall not preempt any state law or local minimum wage ordinance requirements in effect on August 28, 2015.” *See*, A 7-11.

Article III, §21, of the Missouri Constitution prohibits amending any bill through its passage in a manner that change’s its original purpose. *See*, A 75. Although subsequent provisions may alter the scope of an original bill, they cannot change its original purpose. *Allied Mut. Ins. Co*, 185 S.W.2d at 19. The test to determine if a bill’s original purpose has been changed is whether the provisions at issue are logically connected or germane to its original purpose. *Legends Bank*, 361 S.W.3d at 387. In the present case, if the Missouri Legislature had included a new provision in House Bill 722 that gave merchants and vendors the option to provide reusable bags, such an addition could be “logically connected” to the bill’s original purpose.

The provisions that were added to House Bill 722 (§285.055 RSMo) are neither “germane” nor “logically connected” to the original purpose. *Id.* The added provisions, which prohibit political subdivisions from enacting ordinances requiring employers to provide employees with benefits or increased minimum wages bear no logical relation whatsoever to the use of paper and plastic bags or the environment. Further proof in this regard can be found from the fact that the Missouri Legislature had to place the added provisions in an entirely different Chapter of the Revised Statutes. Instead of being placed within Chapter 260’s “Environmental Controls,” §285.055 RSMo was placed within Chapter 285, which covers “Employers and Employees Generally.” In summary,

because the added provisions to House Bill 722, as set forth in §285.055 RSMo, have absolutely nothing to do with the original purpose of the bill, the statute violates Article VI, §21 of the Missouri Constitution. *See*, A 75.

Similarly, House Bill 722 (§285.055 RSMo) violates the single subject requirements set forth in Article VI, §23 of the Missouri Constitution. *See*, A 12-58, 63. Because the Bill amended two separate Chapters of the Missouri Statutes dealing with entirely different subject matters, there is an obvious single subject question. Chapter 260 deals exclusively with “Environmental Controls.” Chapter 285 deals with “Employers and Employees Generally.” The subjects dealt with in House Bill 722 are neither related nor connected in such a way that one is designed to assist in effectuating the other. Moreover, use of the broad title “Prohibited Ordinances by Political Subdivisions” does not meet the single purpose test. Theoretically, the Missouri Legislature could incorporate a plethora of totally unrelated subject matters under that title as long as they are aimed at prohibiting a political subdivision from acting. Clearly, use of such a procedure would run afoul of the Constitution.

The Missouri Legislature added provisions to House Bill 722, after it was originally written, that dealt with different subjects, different entities, and different people. In this regard, it is worth noting that a separate bill, SB455, was introduced in the Senate by Senator Kehoe on February 18, 2015, prohibiting political subdivisions from requiring any employer to provide to an employee an employment benefits, minimum wage rate, or living wage rate. *See*, A 78. That bill was entitled a section “relating to

employer-employee relations.” Notably, it was Senator Kehoe who, on April 29, 2015, subsequently offered the Senate Substitute to House Bill 722 that contained the provisions on political subdivisions and minimum wage rates. The Senate Substitute tracked the language of SB 455 almost word for word, and would be a classic case of logrolling.

Although the individual provisions of a bill do not need to relate to each other for purposes of meeting the single subject requirement, they must relate to the subjects set out in the title. The dispositive question in determining whether 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. *See, Fust*, 947 S.W.2d at 428. The fact that the Missouri Legislature sought to implement legislation regarding plastic bags and minimum wages masquerading under the broad category of “Prohibited Ordinances by Political Subdivisions” is a facade. If such an approach was viable, the single subject rule would be meaningless. By this standard, the Missouri Legislature could pass a bill under the broad category of “Prohibitions,” and insert a myriad of laws, such as sexual orientation, guns, and religious organizations, that have little or no relation to each other, without fear that that the bill would violate the single subject requirement. For these reasons, House Bill 722 (§285.055 RSMo.) violates the single subject requirement and is unconstitutional.

House Bill 722 also violates the clear title requirement set forth in Article VI, §23 of the Missouri Constitution. *See*, A 7-11, 74. The title of House Bill 722, as enacted, was

“Prohibited Ordinances by Political Subdivisions.” In order to survive a clear title challenge, a bill's title need not give specific details of a bill, but need indicate only generally what the act contains. See, *Lincoln Credit Co.*, 636 S.W.2d at 39. However, the title cannot be so general that it tends to obscure the contents of the act or be so broad that render the single subject mandate meaningless. See, *Carmack v. Director, Missouri Dept. of Agric.*, 945 S.W.2d 956, 960 (Mo. banc 1997); *Missourians to Protect the Initiative Process*, 799 S.W.2d 824, 832 (Mo. banc 1990).

In the present case, the title of House Bill 722, “Prohibited Ordinances by Political Subdivisions,” is far too general and is also too broad. By reviewing the general title one would never know that provisions of the Bill cover the use of paper and plastic bags. Moreover, one would never know that the provisions of the Bill cover the minimum wages an employer can pay an employee. For similar reasons, the title is too broad. See, A 74. A textbook example of a broad and amorphous title is when it uses language that could define most, if not all, legislation passed by the General Assembly. See *St. Louis Health Care Network v. State*, 968 S.W.2d 145, 148 (Mo. banc 1998); *Carmack*, 945 S.W.2d at 960 (activity that indirectly promotes or protects portions of the Missouri economy, includes nearly every activity the state undertakes). House Bill 722's title allows it to include so many activities that it would render the single subject requirement meaningless. For these reasons, House Bill 722 violates the clear title requirement and is unconstitutional.

F. §67.1571 RSMo and House Bill 722 (§285.055 RSMo) Cannot be Saved.

This Court has struggled with whether to invalidate an unconstitutionally enacted law in its entirety or to sever the offending provisions. *See, Legends Bank*, 361 S.W.3d at 387 (Fisher, J., concurring). Severance is appropriate if the Court is convinced beyond a reasonable doubt that the specific provisions in question are not essential to the efficacy of the bill. *Id.* at 386. Given the manner in which §67.1571 RSMo and House Bill 722 (§285.055 RSMo) were enacted, the Court cannot use the severability provision of §1.140, RSMo to save them. *See*, A 80. While §1.140 RSMo delineates when severance of substantively unconstitutional provisions is appropriate, it does not support the doctrine of severability of bills enacted in violation of the procedural mandates of the Missouri Constitution. Specifically, §1.140, RSMo provides that invalid provisions should be severed from otherwise valid provisions unless:

“the valid provisions of the statute 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 the legislative intent.”

As *Hammerschmidt* indicates, when “the procedure by which the legislature enacted a bill violates the Constitution, severance is a more difficult issue.” 877 S.W.2d at 103. In fact, the severance analysis is different. For substantive violations, courts apply §1.140 to analyze whether severance is appropriate. On the other hand, when

evaluating a procedural constitutional violation, the doctrine of judicial severance is applied and severance is only appropriate when the court is “convinced beyond a reasonable doubt” that the legislature would have passed the bill without the additional provisions and that the provisions in question are not essential to the efficacy of the bill. *Hammerschmidt*, at 103-104; *Mo. Roundtable for Life, Inc. v. State*, 396 S.W.3d 348,353 (Mo. 2013). Clearly, in the present case, neither challenged pieces of legislation would have passed without the offending provisions.

CONCLUSION

This Court should reverse the trial court’s Judgment, remand this case for further proceedings, and declare that §67.1571 RSMo and House Bill 722 (§285.055 RSMo) are unconstitutional.

Respectfully submitted

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing brief complies with the limitations contained in Missouri Supreme Court Rule 84.06(b), and according to the word count function of Word, by which the Appellant’s Brief was prepared, it contains 8,013 words, exclusive of the cover, the Certificate of Compliance, the Certificate of Service and the signature block.

The undersigned further certifies that the electronic copy of the Appellant’s Brief filed with the Court is in PDF format, complies with the Missouri Supreme Court Rules, and is virus free.

/s/Taylor Fields

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April 2016, a copy of the Appellant's Brief was filed electronically with the Clerk of Court by operation of the Court's electronic filing system and served upon the following:

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