

IN THE SUPREME COURT OF MISSOURI

NO. SC 83863

HOME BUILDERS ASSOCIATION OF GREATER ST. LOUIS

Respondent,

v.

STATE OF MISSOURI, et al.

Appellants.

Appeal from the Cole County Circuit Court
The Honorable Thomas J. Brown, III, Judge

RESPONDENT'S BRIEF

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HOME BUILDERS ASSOCIATION OF GREATER ST. LOUIS

TABLE OF CONTENTS

JURISDICTIONAL STATEMENT 5

STATEMENT OF FACTS 6

POINTS RELIED ON 12

- I. THE TRIAL COURT DID NOT ERR IN FINDING SB894 VIOLATED THE MULTIPLE SUBJECT PROHIBITION IN ARTICLE III, SECTION 23, MISSOURI CONSTITUTION, BECAUSE THE AMENDMENTS TO SB894 WERE NOT RELATED TO THE CENTRAL PURPOSE OF THE BILL IN THAT THE MULTIPLE AMENDMENTS ADDRESSED DIVERSE SUBJECTS, FROM ECONOMIC DEVELOPMENT TO TITLE INSURANCE REGULATION TO SALES TAXES, NONE OF WHICH RELATE TO THE CENTRAL PURPOSE WHICH IS CHAPTER 141, RSMo (DELINQUENT TAXES - FIRST CLASS COUNTIES AND THE CITY OF ST. LOUIS); AND BECAUSE RESPONDENT HAS STANDING TO CHALLENGE THE BILL AS A WHOLE AND IS NOT LIMITED TO ANY SINGLE AMENDMENT 12

- II. THE TRIAL COURT DID NOT ERR IN FINDING SB894 VIOLATED THE CLEAR TITLE MANDATE OF ARTICLE III, SECTION 23, MISSOURI CONSTITUTION, BECAUSE THE TITLE “RELATING TO PROPERTY OWNERSHIP” IS NOT A CLEAR TITLE IN THAT THE TITLE IS OVERLY BROAD AND AMORPHOUS AS IT RELATES TO EVERYTHING THAT CAN OR MAY BE OWNED, WHICH IS NOT A PERMISSIBLE LEGISLATIVE

SUBJECT	13
III. THE TRIAL COURT DID NOT ERR IN FINDING SB894 VIOLATED THE ORIGINAL PURPOSE PROVISION OF ARTICLE III, SECTION 21, MISSOURI CONSTITUTION, BECAUSE THE PURPOSE OF SB894 WAS CHANGED BY THE MULTIPLE AMENDMENTS TO IT IN THAT THE ORIGINAL PURPOSE RELATED SOLELY TO CHAPTER 141 (DELINQUENT TAXES - FIRST CLASS COUNTIES AND ST. LOUIS CITY) AND THE FINALLY PASSED SB894 AMENDED STATUTES IN FIFTEEN DIFFERENT CHAPTERS, ENCOMPASSING AT LEAST THIRTEEN SUBJECTS, ALL OF WHICH WERE UNRELATED TO THE ORIGINAL PURPOSE OF SB894	14
ARGUMENT	15
POINT I	18
POINT II	33
POINT III	41
CONCLUSION	51
CERTIFICATE OF ATTORNEY	53
CERTIFICATE OF SERVICE	54

TABLE OF AUTHORITIES

<i>Alexander v. State</i> , 756 S.W.2d 539 (Mo. banc 1988)	35
<i>Allied Mutual Insurance Co. v. Bell</i> , 185 S.W.2d 4 (Mo. 1945)	43, 44
<i>Barket v. City of St. Louis</i> , 903 S.W.2d 269 (Mo. App. E.D. 1995)	36

C. C. Dillon Company v. City of Eureka, 12 S.W.3d 322 (Mo. banc 2000) 21, 42

Carmack v. Director, Missouri Department of Agriculture, 945 S.W.2d 956 (Mo. banc 1997)
. 22, 23, 24, 27, 31, 32, 33, 34, 35, 39

City of Excelsior Springs v. Elms Redevelopment Corporation, 984 S.W.2d 887 (Mo. App.
W.D. 1999) 36

Hammerschmidt v. Boone County, 877 S.W.2d 98 (Mo. banc 1994)
. 19, 21, 23, 25, 31, 32, 48

Hoffmann v. Kinealy, 389 S.W.2d 745 (Mo. banc 1965) 35

In Re Marriage of Null, 608 S.W.2d 568 (Mo. App. S.D. 1980) 36

ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371
(Mo. banc 1993) 17

Lincoln Credit Company v. Peach, 636 S.W.2d 31 (Mo. banc 1982) 34, 42

McCall v. Goldbaum, 863 S.W.2d 640 (Mo. App. E.D. 1993) 36

Missouri Health Care Association v. Attorney General of the State of Missouri, 953 S.W.2d
617 (Mo. banc 1997) 15, 25, 26

<i>Missouri State Medical Association v. Missouri Department of Health</i> , 39 S.W.3d 837 (Mo. banc 2001)	39, 40
<i>Premier Property Management, Inc. v. Chavez</i> , 728 N.E.2d 476 (Il. 2000)	37, 38
<i>St. Louis Health Care Network v. State</i> , 968 S.W.2d 145 (Mo. banc 1998) ..	26, 34, 35, 40
<i>Stroh Brewery Company v. State</i> , 954 S.W.2d 323 (Mo. banc 1997)	42, 44
<i>Westin Crown Plaza Hotel v. King</i> , 664 S.W.2d 2 (Mo. banc 1984)	20, 30
Section 64.337, SB894, Laws 2000	47
Section 141.710, RSMo 2000	47
Article IV, Section 8 of the Illinois Constitution	37
Article III, Section 23 of the Missouri Constitution	10, 16, 18, 19, 20, 21, 22, 23, 25, 27, 30, 31, 32, 33, 34, 35, 37, 40, 45, 51, 52
Article III, Section 21 of the Missouri Constitution	10, 16, 41, 42, 44, 46, 50
Article IV, Section 36(b) of the Missouri Constitution	27
<u>American Heritage Dictionary of the English Language</u> , 1049 (1973)	35
<u>American Heritage College Dictionary</u> , 1097 (3 rd Ed. 1993)	37

JURISDICTIONAL STATEMENT

Respondent adopts Appellants' Jurisdictional Statement.

STATEMENT OF FACTS

Plaintiff, Home Builders Association of Greater St. Louis, Inc. (hereinafter Home Builders), is a not-for-profit corporation representing the interests of its constituent members who are engaged in building construction and real estate development throughout the Greater St. Louis, Missouri area. (L.F. 189). Home Builders' members purchase title insurance in the course of purchasing, subdividing, developing and selling property. (L.F. 194). As purchasers of title insurance, Home Builders' members have an interest in the availability, sale and marketing of title insurance in Missouri, and in particular, in the pricing of title insurance coverage. (L.F. 194).

Defendant State of Missouri by and through the Honorable Bob Holden, Governor, is a party in his official capacity and as representative of the State of Missouri and all its executive departments and divisions, which are responsible for the administration and enforcement of the laws of the State of Missouri, subject to the provisions of the Constitution of Missouri 1945, as amended. (L.F. 189 and 194).

On January 20, 2000, Senate Bill 894, introduced by Senator Quick, was read for the first time. (L.F. 189). The original, officially printed SB 894 consisted of 15 pages. (L.F. 189 and 17-23). Senate Bill 894 amended thirteen sections, all contained in Chapter 141, RSMo. (L.F. 17).

On January 31, 2000, SB 894 was referred to the Senate Committee on Local Government and Economic Development. (L.F. 189). On February 21, 2000, the Senate Committee on Local Government and Economic Development reported "Senate Committee

Substitute for Senate Bill 894,” with recommendation that the Senate Committee Substitute do pass and that the substitute be placed on the consent calendar. The title was unchanged. (L.F. 190 and 29).

Senate Committee Substitute for Senate Bill 894 contained the repeal of the same thirteen sections identified in the original Senate Bill 894, and the enactment of the same thirteen new sections as did the originally introduced Senate Bill 894. (L.F. 190 and 29-40). On March 6, 2000, the Senate Committee Substitute for Senate Bill 894 was taken up, third read and passed (perfected) by the Senate. (L.F. 190). The perfected Senate Committee Substitute for Senate Bill 894, as third read and passed by the Senate, still contained only the repeal of the same thirteen original sections in Chapter 141, and enacted the same thirteen new sections in Chapter 141. (L.F. 190).

On March 7, 2000, SCS SB 894 was first read in the House of Representatives. (L.F. 190). On March 27, 2000, SCS SB 894 was referred to the House Committee on Local Government and Related Matters. (L.F. 190). On April 26, 2000, the House Committee on Local Government and Related Matters reported House Committee Substitute for Senate Committee Substitute for Senate Bill 894 with the recommendation of do pass. (L.F. 190). House Committee Substitute for Senate Committee Substitute for Senate Bill 894 contained 19 pages, made provision to repeal fourteen sections, only two of which were repealed in the original Senate Bill 894. (L.F. 190 and 41-56). Only four sections affected Chapter 141, RSMo. (L.F. 41).

May 11, 2000 was the second last day of business in the second regular session of the

90th General Assembly. On the afternoon of May 11, 2000, House Committee Substitute for Senate Committee Substitute for Senate Bill 894 was brought up for debate on the floor of the Missouri House of Representatives. (L.F. 191 and 57-58). Representative Hoppe introduced a House Substitute to which nineteen House amendments were added. (L.F. 191 and 58). Subsequently, on May 11, 2000, House Amendment 2, introduced by Representative Smith, added 37 sections to HS HCS SCS SB 894, encompassing 22 pages in the House Journal. This amendment added a new “Title Insurance Act” to the bill. (L.F. 191 and 62-84). On May 11, 2000, the House third read and passed, with an emergency clause, House Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill 894. (L.F. 191). All of the foregoing House Amendments were in this bill.

May 12, 2000, was the final day of business in the second regular session of the 90th General Assembly. (L.F. 191). On May 12, 2000, the Senate refused to concur in HS HCS SCS SB 894 and House and Senate conferees were appointed. (L.F. 191 and 108-110). The Conference Committee adopted a Conference Committee Substitute for HS HCS SCS SB 894, which was third read and finally passed by the Senate, and third read and finally passed by the House, and was thereby truly agreed to and finally passed by the General Assembly on May 12, 2000. (L.F. 191 and 111-181). CCS HS HCS SCS SB 894 was the next to the last bill finally passed by the second regular session of the 90th General Assembly. (L.F. 191).

The title to the truly agreed and finally passed HS HCS SCS SB 894 stated “relating to property ownership,” which remained unchanged from the original bill. (L.F. 192, 111 and 17). Conference Committee Substitute for House Substitute for House Committee Substitute for

Senate Committee Substitute for Senate Bill 894, as truly agreed to and finally passed, consisted of 90 pages. (L.F. 192). It contained 70 new or amended sections. (L.F. 111-181). The statutes repealed, amended or enacted by CCS HS HCS SB 894 fell within fifteen different chapters of the Revised Missouri Statutes:

Chapter 32 - State Department of Revenue

Chapter 53 - County Assessors

Chapter 64 - County Planning - Zoning - Recreation - Natural Streams &
Waterways

Chapter 67 - Political Subdivisions, Miscellaneous Powers

Chapter 71 - Provisions Relative to all Cities and Towns

Chapter 82 - Constitutional Charter Cities

Chapter 135 - Tax Relief

Chapter 137 - Assessment and Levy of Property Taxes

Chapter 139 - Payment and Collection of Current Taxes

Chapter 140 - Collection of Delinquent Taxes Generally

Chapter 141 - Delinquent Taxes - First Class Counties and Cities St. Louis City

Chapter 178 - Special Schools and Instruction in Special Districts

Chapter 381 - Title Insurance Regulation by the Department of Insurance

Chapter 393 - Gas, Electric, Water, Heating and Sewer Companies

Chapter 620 - Department of Economic Development

(L.F. 192 and 111-181).

On July 13, 2000, CCS HS HCS SCS SB 894 was signed by the late Governor Carnahan. (L.F. 192).

Plaintiff commenced this action prior to the adjournment of the next full regular legislative session following the effective date of CCS HS HCS SCS SB 894. (L.F. 193).

On December 8, 2000 Home Builders filed a Petition for Declaratory Judgment alleging that truly agreed to and finally passed CCS HS HCS SCS SB 894 violated the Missouri Constitution. (L.F. 6-181). The Petition asserts that the truly agreed to and finally passed version of the bill violated Article III, Section 21 (changing original purpose); Article III, Section 23 (multiple subjects); and Article III, Section (clear title requirement). (L.F. 6-16).

Home Builders and the state executed Joint Stipulations of Fact on February 22, 2001 and a Supplemental Joint Stipulation was subsequently entered into on March 9, 2001. (L.F. 189-195).

On March 23, 2001, Home Builders filed a Motion for Summary Judgment. (L.F. 196). On April 23, 2001 the state filed its Motion for Summary Judgment. (L.F. 220).

The Motions for Summary Judgment were taken up by the Circuit Court on June 11, 2001. (L.F. 4). The final judgment of the Circuit Court was entered on June 28, 2001. (L.F. 248). The final judgment of the Circuit Court ruled all claims and counts in favor of Home Builders and against the state. (L.F. 248-264).

On August 3, 2001, the state filed its timely Notice of Appeal to this Court. (L.F. 265).

POINTS RELIED ON

I.

THE TRIAL COURT DID NOT ERR IN FINDING SB894 VIOLATED THE MULTIPLE SUBJECT PROHIBITION IN ARTICLE III, SECTION 23, MISSOURI CONSTITUTION, BECAUSE THE AMENDMENTS TO SB894 WERE NOT RELATED TO THE CENTRAL PURPOSE OF THE BILL IN THAT THE MULTIPLE AMENDMENTS ADDRESSED DIVERSE SUBJECTS, FROM ECONOMIC DEVELOPMENT TO TITLE INSURANCE REGULATION TO SALES TAXES, NONE OF WHICH RELATE TO THE CENTRAL PURPOSE WHICH IS CHAPTER 141, RSMo (DELINQUENT TAXES - FIRST CLASS COUNTIES AND THE CITY OF ST. LOUIS); AND BECAUSE RESPONDENT HAS STANDING TO CHALLENGE THE BILL AS A WHOLE AND IS NOT LIMITED TO ANY SINGLE AMENDMENT.

Article III, Section 23 of the Missouri Constitution

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

Carmack v. Director, Missouri Department of Agriculture, 945 S.W.2d 956 (Mo. banc 1997)

II.

THE TRIAL COURT DID NOT ERR IN FINDING SB894 VIOLATED THE CLEAR TITLE MANDATE OF ARTICLE III, SECTION 23, MISSOURI CONSTITUTION, BECAUSE THE TITLE “RELATING TO PROPERTY OWNERSHIP” IS NOT A CLEAR TITLE IN THAT THE TITLE IS OVERLY BROAD AND AMORPHOUS AS IT RELATES TO EVERYTHING THAT CAN OR MAY BE OWNED, WHICH IS NOT A PERMISSIBLE LEGISLATIVE SUBJECT.

Article III, Section 23 of the Missouri Constitution

Carmack v. Director, Missouri Department of Agriculture, 945 S.W.2d 956 (Mo. banc 1997)

St. Louis Health Care Network v. State, 968 S.W.2d 145 (Mo. banc 1998)

III.

THE TRIAL COURT DID NOT ERR IN FINDING SB894 VIOLATED THE ORIGINAL PURPOSE PROVISION OF ARTICLE III, SECTION 21, MISSOURI CONSTITUTION, BECAUSE THE PURPOSE OF SB894 WAS CHANGED BY THE MULTIPLE AMENDMENTS TO IT IN THAT THE ORIGINAL PURPOSE RELATED SOLELY TO CHAPTER 141 (DELINQUENT TAXES - FIRST CLASS COUNTIES AND ST. LOUIS CITY) AND THE FINALLY PASSED SB894 AMENDED STATUTES IN FIFTEEN DIFFERENT CHAPTERS, ENCOMPASSING AT LEAST THIRTEEN SUBJECTS, ALL OF WHICH WERE UNRELATED TO THE ORIGINAL PURPOSE OF SB894.

Article III, Section 21 of the Missouri Constitution

Allied Mutual Insurance Co. v. Bell, 185 S.W.2d 4 (Mo. 1945)

ARGUMENT

Introduction

Respondent brought the underlying action in a representational capacity under associational standing. See *Missouri Health Care Association v. Attorney General of the State of Missouri*, 953 S.W.2d 617, 620 (Mo. banc 1997). The individual members of the Home Builders Association of Greater St. Louis have an interest in the availability, sale, marketing and price of title insurance in Missouri. (Supplemental Joint Stipulation of Facts, paragraph 1.) As the Supreme Court has stated, members of an association may be represented by their association in a declaratory judgment action if there is a justiciable controversy such as that here presented, because “the interest in doing business free from constraints of an unconstitutional law is entitled to legal protection.” *Id.* Just as in *Missouri Health Care Association*, the enactment of the Title Insurance Act in Senate Bill 894 was unconstitutional and the effects of the Act impact the businesses of the members of the Home Builders Association of Greater St. Louis. Thus, there is a legally protectable interest of Plaintiff at issue. *Id.*

This action presents a controversy ripe for judicial determination, since Senate Bill 894 and the Title Insurance Act therein, is being challenged solely under constitutional provisions related to the procedures to pass the bill in the General Assembly.

There were three counts presented in the Petition, all of which relate to the constitutional provisions regarding the proper enactment of legislation and were sustained by the trial court. By enactment of Senate Bill 894, Article III, Section 23 is violated in that the

amendments to Senate Bill 894 create multiple subjects within the bill (Point I); and Article III, Section 23 is violated in that the bill does not have a clear title (Point II); and Article III, Section 21 is violated in that the amendments to the original Senate Bill 894 changed its original purpose (Point III).

STANDARD OF REVIEW

This case involves no factual issues and arises out of Cross-Motions for Summary Judgment. Accordingly, this Court reviews the issues de novo, in a manner no different than the trial courts. *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993).

POINT I

THE TRIAL COURT DID NOT ERR IN FINDING SB894 VIOLATED THE MULTIPLE SUBJECT PROHIBITION IN ARTICLE III, SECTION 23, MISSOURI CONSTITUTION, BECAUSE THE AMENDMENTS TO SB894 WERE NOT RELATED TO THE CENTRAL PURPOSE OF THE BILL IN THAT THE MULTIPLE AMENDMENTS ADDRESSED DIVERSE SUBJECTS, FROM ECONOMIC DEVELOPMENT TO TITLE INSURANCE REGULATION TO SALES TAXES, NONE OF WHICH RELATE TO THE CENTRAL PURPOSE WHICH IS CHAPTER 141, RSMo (DELINQUENT TAXES - FIRST CLASS COUNTIES AND THE CITY OF ST. LOUIS); AND BECAUSE RESPONDENT HAS STANDING TO CHALLENGE THE BILL AS A WHOLE AND IS NOT LIMITED TO ANY SINGLE AMENDMENT.

Article III, Section 23 of the Missouri Constitution states:

No bill shall contain more than one subject which shall be clearly expressed in its title, except bills enacted under the third exception in section 27 of this article and general appropriation bills, which may embrace the various subjects and accounts for which monies are appropriated.

Mo. Const. Art. III, Section 23. (Emphasis supplied).

The first clause of Article III, Section 23 prohibits a bill from having more than one subject. The finally passed Senate Bill 894 violates Article III, Section 23 because it contains

multiple subjects. This provision has been interpreted by this Court a number of times during the 90's, especially since *Hammerschmidt v. Boone County*, 877 S.W.2d 98 (Mo. banc 1994).

In *Hammerschmidt*, a suit was brought on a bill which started out as relating to elections. *Id.* at 100. At a later date a provision was added allowing certain counties in Missouri to adopt county constitutions. *Id.* This Court started its analysis by looking at the purpose of Article III, Section 23 and finding that it:

Is to prevent 'logrolling' - - the practice of combining a number of unrelated amendments in a bill, none of which alone could command a majority but which, taken together, combine the votes of a sufficient number of legislators having a vital interest in one portion of the amended bill to muster a majority for its entirety.

Id. at 101. This Court went beyond this analysis to point out that the provision also operates to ensure that the purpose of the bill is not changed, that there is no surprise in the legislative process, and that people are apprised of the subjects of legislation being considered. *Id.* at 101-102. This Court also found it important to note the distinction between appropriation bills and other types of legislation.

The Governor's line item veto over appropriation exists precisely because the Constitution expressly permits the General Assembly to include multiple subjects in appropriation bills. ...thus, by limiting the subjects a bill may address to one, the Constitution

maintains appropriate checks by the Governor over legislative action and effectively provides a line item analog for general legislation.

Id. at 102.

While this Court agreed that procedural limitations should be liberally interpreted and the constitutionality of a statute should be presumed, this Court also found that if an act “clearly and undoubtedly violates constitutional limitation,” it must fall. *Id.* In reviewing Article III, Section 23, this Court found that the test to determine “if a bill contains more than one subject is whether all provisions of the bill fairly relate to the same subject, have a natural connection therewith or are incidents or means to accomplish its purpose.” *Id.* quoting *Westin Crown Plaza Hotel v. King*, 664 S.W.2d 2, 6 (Mo. banc 1984).

This Court then went on to analyze the specific bill in question in a manner pertinent here:

It is true that the amendment added to the bill as section 2 contained provisions requiring voter approval of the proposition through an election. Nevertheless, the subject of the amendment - - its *raison d’etre* - - was to authorize a new form of county governance previously unknown in Missouri.

Id. at 103. This Court concluded that the bill contained two subjects (elections and county governance) and thus found that the bill violated Article III, Section 23 as having multiple

subjects. *Id.*¹

As this Court in *Hammerschmidt* indicated, the General Assembly is prohibited by Article III, Section 23, from “logrolling,” and Senate Bill 894 is a classic example of the exactly what was addressed in *Hammerschmidt*. *Id.* at 101. *Hammerschmidt* outlined a list of evils that Article III, Section 23, is designed to prevent: logrolling, surprise in the legislative process, denial of public notice and knowledge of subjects of pending legislation, and forcing the Governor to “take-it-or-leave-it” on unrelated subjects. *Id.* at 102. All of these evils exist in Senate Bill 894. The huge volume of last minute amendments, and the obviously unrelated nature of the amendments to each other and to the subject of the bill, almost guaranteed that every evil that this Court in *Hammerschmidt* found to be prohibited by Article III, Section 23 would be included in this bill.

Perhaps the seminal case on the multiple subject prohibition contained in Article III, Section 23 of the Missouri Constitution was handed down by this Court in 1997. *Carmack v.*

¹ *Hammerschmidt* gave rise to a long line of cases in the 90's, all of which reviewed the multiple subject provision of the Missouri Constitution for the purpose of upholding the Constitution and the legislature's adherence to its requirements. The most recent case, *C. C. Dillon Company v. City of Eureka*, 12 S.W.3d 322 (Mo. banc 2000), listed the large number of lawsuits which came before this Court specifically concerning the question of Article III, Section 23. *Id.* at 326, fn.3. One need not argue the possibility that the General Assembly has shown a propensity to ignore constitutional provisions.

Director, Missouri Department of Agriculture, 945 S.W.2d 956 (Mo. banc 1997), addressed a challenge to a statute involving compensation paid to owners of livestock which were destroyed, adopted in House Bill 566 by the General Assembly in 1993. Not only is *Carmack* the seminal case on the multiple subject prohibition, it has a distinct resemblance to the issues presented in the current action.

The originally introduced House Bill 566, at issue in *Carmack*, contained the repeal of 12 sections and the enactment of 17 new sections relating to “economic development.” *Id.* at 958. When finally passed, Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 566, the final version of House Bill 566, repealed 88 sections and enacted 102 new sections. *Id.* This Court went through a detailed analysis of each chapter of the Revised Statutes of Missouri which were effected by the final version of House Bill 566. *Id.* As this Court noted, there were 25 different chapters that had been amended by the final version of House Bill 566. *Id.* This Court found that the title, “relating to economic development,” was too broad and amorphous, and it therefore had to look beyond the title to determine what the original purpose of the bill was. First, the Constitution itself is organized around subjects to which we can refer in determining the meaning of the single subject requirement. *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 831 (Mo. banc 1990); *Hammerschmidt*, 877 S.W.2d at 102, n.3. Second, the court may examine the contents of the bill originally filed to determine its subject. *Id.* at 960. This Court looked at the provision of the Missouri Constitution entitled “economic

development” and found that it only dealt with the Department of Economic Development. *Id.* Then this Court found that the original bill related only to programs administered by the Department of Economic Development. *Id.* at 961. This Court therefore concluded that any provision in the bill not related to programs administered by the Department of Economic Development violated Article III, Section 23. *Id.*

Carmack is nearly identical to the current case. Senate Bill 894, as originally introduced, repealed 13 sections in Chapter 141, RSMo. (L.F. 17 to 23.) Chapter 141, RSMo, is titled “Delinquent Taxes - First Class Counties and St. Louis City.” Chapter 141, RSMo 2000. Through the course of the 2000 legislative session, Senate Bill 894 was amended in committee and on the floor of the House and the Senate to eventually consist of 90 pages. (L.F. 192.) In *Carmack*, House Bill 566 was expanded from 23 pages up to 179 pages; in the current case Senate Bill 894 was expanded from 15 pages to 90 pages. Senate Bill 894 originally repealed and enacted statutes solely in Chapter 141; as finally passed Senate Bill 894 enacted statutes in 15 different chapters of the Revised Missouri Statutes. (L.F. 192.) One of those 14 new chapters added to Senate Bill 894, Chapter 381, contained the Title Insurance Act.

The second leg of the *Carmack* analysis reviews the original bill’s contents. The original contents of Senate Bill 894 related to Chapter 141, RSMo, and specifically to sheriff sales and land trusts for the collection of delinquent property taxes. (L.F. 17 to 26.) The provisions of the finally passed Senate Bill 894 related to subjects as unrelated as the Department of Revenue, county assessors, county planning and zoning, political subdivisions,

including all cities and towns and constitutional charter cities, tax relief, assessment/levy of property taxes, payment and collection of current taxes, collection of delinquent taxes, delinquent taxes in first class counties (the chapter included in the original SB894), special schools, title insurance, gas, electric, water, heating and sewer companies, and the Department of Economic Development. (L.F. 192.) (Emphasis supplied.) It is clear from looking at this extensive list that even with the most liberal reading, the finally passed SB894 violates the multiple subject prohibition under the analysis defined in *Carmack*.

Appellants put forth a novel but desperate argument against Home Builders' standing to challenge the entirety of SB894 on procedural constitutional grounds, asserting that only the inclusion of the Title Insurance Act may be challenged because that is the provision most objectionable to Respondent, and that all the other subjects of the bill must be excluded from consideration. Appellants do not cite any case law to support this position. They cannot do so because none exists. In reality, this Court has never prohibited a party bringing a procedural constitutional challenge from questioning the validity of a "log-rolled" statute as a whole.

Such argument is contrary to the decisions of this Court and to logic and common sense. Indeed, to accept Appellant's limitation on the constitutional protections granted by Article III, Section 23, Mo. Const., effectively reads those protections out of existence. The purpose of the constitutional provision is to prevent log-rolling. *Hammerschmidt* at 101. If a bill is "log-rolled," it will have multiple subjects by agreement of the majority - - the more the better. According to Appellant, only a person with standing to attack all unrelated subjects can have sufficient standing to enforce the Constitution; the unconstitutional law is therefore

virtually immune from a challenge based upon the very defect causing the unconstitutionality. The notion propounded by Appellant is absurd.

Appellant's contention that procedural constitutional challenges to legislation under Article III, Section 23, Mo. Const., are limited by a plaintiff's standing on multiple unrelated subjects is also contrary to the Constitution itself. Article III, Section 23 says that "No bill shall contain more than one subject." It does not say unrelated amendments may only be separately challenged, nor does it state or imply that anything other than the "bill" in its entirety is required to comply with its provisions. Appellant's argument limiting the scope of a constitutional challenge by a qualified plaintiff to less than the "bill" itself is specious.

The most recent example of the lack of merit of Appellants' argument can be found in the 1997 decision of this Court in *Missouri Health Care Association v. Attorney General*, 953 S.W.2d 617 (Mo. banc 1997). The Missouri Health Care Association (MHCA) alleged that amendments to Section 407.020 violated the multiple subject prohibition by being included in HB409 which related to "the Department of Social Services" and contained two other statutes (Sections 660.050 and 660.546) which relates to Social Services programs. This Court found that Section 407.020 (Merchandising Practices) did not relate to the Department of Social Services. *Id.* at 623. The trial court voided all of HB409 in *Missouri Health Care Association*, and this Court affirmed the trial court's decision, stating "the enactment contains more than one subject." *Id.* This Court did not restrict the Plaintiff solely to a challenge of Section 407.020, but reviewed and voided the entire bill. *Id.* at 622.

Similarly, in *St. Louis Health Care Network v. State*, 968 S.W.2d 145 (Mo. banc

1998), this Court also considered a multiple subject challenge. While this Court ultimately ruled the case on the clear title challenge, there was no prohibition imposed on a party challenging the entire bill under a multiple subject challenge. *Id.* at 147. As seen from these and other multiple subject cases, parties can, always have, and indeed must challenge an entire bill on the procedural defect of multiple subjects, since “every provision” of a bill must comply with the single subject requirement. *MHCA, supra* at 622. In the current case, Appellants’ unsupported assertion of a limited scope of review of SB894 should be rejected by this Court.

However, even if the review were limited to solely the Title Insurance Act, proper analysis would clearly reflect that SB894 still violates the multiple subject prohibition, because the Title Insurance Act does not relate to the central purpose of SB894 under even this limited analysis.

The analysis of single subjects under Article III, Section 23 review begins by looking at the subjects in the Constitution. *Id.* at 690. There is no heading in the Constitution entitled “property ownership.”² Insurance, including title insurance, is under the exclusive purview of

² There are a number of provisions in the Constitution which refer to “property.” See e.g., Article I, Section 28, Article X, Section 4(a) and Article X, Section 9. These provisions do not relate solely to real property as Appellants allege. The provisions having more than a mere reference to “property” discuss multiple types of property, including real, personal, agricultural and numerous other types of property. Additionally, “ownership” is not

the Missouri Department of Insurance, which is contained in Article IV, Section 36(b) of the Missouri Constitution. Accordingly, any title insurance legislation at a minimum should be in a title “relating to insurance.” *Id.* On this basis, it is clear that *Carmack* controls and that “title insurance” is not a subject germane to “property ownership.”

The inquiry into violations of Article III, Section 23 does not end simply with looking at one provision of a bill. All of the provisions of SB 894 need to be reviewed. Appellants choose to simply ignore the fact that the Petition filed in this case challenges the constitutionality of not just the Title Insurance Regulatory Act but the numerous other amendments to Senate Bill 894, all of which have added unrelated subjects and rendered SB 894 unconstitutional, as the trial court found in its Final Judgment.

SB 894 undeniably contains more than a dozen separate subjects which are not germane to any single subject of the bill. The original contents of Senate Bill 894 related solely to provisions in one chapter of the revised statutes. The following chart graphically illustrates a comparison between the original Senate Bill 894 and Senate Bill 894 as truly agreed and finally passed, and removes any doubt of the multiplicity of subjects in SB 894:

a limiting but an expanding concept when applied to “property,” as it relates to all forms and types of ownership, including leaseholds, life estates, and other interests hardly capable of being foreseen.

Original Senate Bill 894

Chapter 141, RSMo - Delinquent
taxes - First Class Counties and St.
Louis City.

**Truly Agreed Finally Passed
Senate Bill 894**

Chapter 32 - Department of
Revenue
Chapter 53 - County Assessors
Chapter 64 - County Planning,
Zoning Recreation; Natural Streams
and Waterways
Chapter 67 - Political subdivisions,
miscellaneous powers
Chapter 71 - Provisions relating to
all cities and towns
Chapter 82 - Constitutional charter
cit- ies
Chapter 135 - Tax relief
Chapter 137 - Assessment and levy
of property taxes
Chapter 139 - Payment and
collection of current taxes
Chapter 140 - Collection of
delinquent taxes generally
Chapter 141 - Delinquent taxes -
First Class Counties and St. Louis
City
Chapter 178 - Special schools and
instructions; special districts
Chapter 381 - Title Insurance Law
Chapter 393 - Gas, electric, water,
heating and sewer companies
Chapter 620 - Department of
Economic Development

This case is not simply a question of more than one subject by inclusion of the Title Insurance Regulatory Act, but of the effect of multiple unrelated subjects (approximately 15) that were combined in the finally passed version of Senate Bill 894. In light of the numerous

subjects added in, Appellants' assertion that there is but one subject to Senate Bill 894 is laughable and cannot be sustained.

The Appellant flatly rejects the assertion that the finally passed version of Senate Bill 894 contains multiple subjects. However, we note that the Appellant carefully limits discussion of this issue in its Brief to protecting the Title Insurance Regulatory Act, which is but one of numerous unrelated amendments intentionally log-rolled in Senate Bill 894. Appellant is not serious and is insincere: The multiplicity of unrelated subjects in SB894 is obvious.

Appellants' general reference to *Westin Crown Plaza Hotel v. King*, 664 S.W.2d 2 (Mo. banc 1984), is of no assistance in defense of Senate Bill 894. Appellant asserts that there is no constitutional violation where the title indicates the general contents of the bill. In *Westin*, this Court found that a title "fees related to the Department of Health" encompassed the contents of the bill in question. *Id.* at 7. However, unlike the current case, all the statutes contained in the bill in *Westin* actually did change the fee structures of the Division of Health. *Id.* at 6. In the current case, the title "relating to property ownership" cannot reflect what the "general contents" of Senate Bill 894 are, unless the contents include (as it ultimately did) almost any imaginable subject. This is not the single subject requirement set forth in Article III, Section 23, Mo. Const. In light of the narrow title contained in the bill in *Westin*, as compared to the broad and amorphous title in the current case, *Westin* is inapplicable as authority to the facts of the current case.

However, Respondent does agree that if this Court should somehow determine that only

the Title Insurance Act violates the prohibition in Article III, Section 23, then the Title Insurance Act should be severed from the remainder of Senate Bill 894.

Where the court is convinced “that the bill contains a ‘single, central purpose,” [citation omitted], we will sever that portion of the bill containing the additional subject(s) and permit the bill to stand with its primary, core subject intact. *Id.*

Carmack at 961 citing *Hammerschmidt* at 103. Since the original, primary, core subject of Senate Bill 894 relates to sheriff sales and land trusts for the collection of delinquent property taxes, however, the offending Title Insurance Regulatory Act should be severed from the finally passed Senate Bill 894.³

The Title Insurance Regulatory Act is not merely an innocuous amendment relating to “property” or to “ownership;” it instead implements a brand new full-blown government system for regulating the sale of title insurance by licensed title insurance companies and agents. The Title Insurance Regulatory Act has NO relation to property ownership; it is a regulatory bill related to regulation of licensees and insurance rates by the Department of Insurance, and NOT to any matter affecting property owners or their interests. Senate Bill 894 originally related to sheriff’s sales in First Class Counties and St. Louis; title insurance is not at all implicated or related to sheriff’s sales and thus, even using Appellants’ tortured logic to limit the

³ In reality, however, there is none of the original central purpose remaining in SB894, making severance an incomplete cure for the constitutional infirmities of SB894.

protections of the Constitution, there is a violation of the ban on multiple subjects in SB894 under Article III, Section 23.

However, arguments for severance are purely academic. the vast number of unrelated subjects contained in Senate Bill 894 precludes any argument for severing a subject not within the subject contained in Senate Bill 894, and upholding whatever may be left as valid. While the Title Insurance Regulatory Act could be severed as an unrelated subject, Respondent strongly asserts that the entire Bill should be determined to be unconstitutional based on the sheer proliferation of multiple subjects contained therein. Appellants cannot be serious in asking this Court to ignore such a blatant and cynical violation of procedural constitutional protections. Nor can they in good faith ask this Court to uphold this legislative curiosity. The question to be asked by this Court is: would any provision of this finally passed bill have become law on its own and without the support of more than a dozen other bills to gather votes? The answer is quite obviously no. Every principle which this Court has found to underlie the single subject requirement of Article III, Section 23, Mo. Const., requires affirmance of the decision of the Circuit Court below.

Therefore, Plaintiff respectfully suggests that this Court should follow the rulings in *Hammerschmidt, Carmack* and their progeny, and affirm the trial court's judgment that Senate Bill 894 unconstitutionally violates the ban on multiple subjects contained in Article III, Section 23 of the Missouri Constitution.

POINT II

THE TRIAL COURT DID NOT ERR IN FINDING SB894 VIOLATED THE

CLEAR TITLE MANDATE OF ARTICLE III, SECTION 23, MISSOURI CONSTITUTION, BECAUSE THE TITLE “RELATING TO PROPERTY OWNERSHIP” IS NOT A CLEAR TITLE IN THAT THE TITLE IS OVERLY BROAD AND AMORPHOUS AS IT RELATES TO EVERYTHING THAT CAN OR MAY BE OWNED, WHICH IS NOT A PERMISSIBLE LEGISLATIVE SUBJECT.

The clear title requirement is contained in Article III, Section 23 of the Missouri Constitution which states:

No bill shall contain more than one subject which shall be clearly expressed in its title, except bills enacted under the third exception in section 27 of this article and general appropriation bills, which may embrace the various subjects and accounts for which monies are appropriated.

Mo. Const. Art. III, Section 23. (Emphasis supplied).

This Court in *Carmack v. Director of the Department of Agriculture*, 945 S.W.2d 956 (Mo. banc 1997), was not presented with a clear title challenge, but did conduct an analysis of a clear title challenge. The title of House Bill 566, in *Carmack*, was “relating to economic development.” *Carmack* at 959. The state urged a broad definition consisting of “any activity ‘that promotes and protects the important sector of the Missouri economy.’” *Id.* This Court rejected the state’s argument and concluded, “that the words ‘economic development’ are too broad and amorphous to describe the subject of a pending bill with the precision necessary to provide notice of its contents.” *Id.* at 960.

A year after *Carmack*, this Court expressly addressed a clear title challenge. In *St. Louis Health Care Network v. State*, 968 S.W.2d 145 (Mo. banc 1998), the Court addressed Senate Bill 768 which was entitled “relating to certain incorporated and non-incorporated entities.” *Id.* at 146. This Court set forth the analysis of a clear title challenge:

In order to survive a clear title challenge, a bill’s title need not give specific details of the bill, but need indicate only generally what the act contains. See *Lincoln Credit Company v. Peach*, 636 S.W.2d 31, 39 (Mo. banc 1982). The title cannot, however, be so general that it tends to obscure the contents of the act. *Fust v. Attorney General*, 947 S.W.2d 424, 429 (Mo. banc 1997). In addition, the title cannot be so broad as to render the single subject mandate meaningless. See *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 832 (Mo. banc 1990). If the title of a bill is too broad or amorphous to identify a single subject within the meaning of article III, section 23, then the bill’s title violates the mandate that bills contain a single subject clearly expressed in its title.

Id. at 147. This Court declared that the title “relating to incorporated and non-incorporated entities” was excessively broad. *Id.* at 148. As this Court concluded, “the title of HSSB 768

[the bill] could define most, if not all, legislation passed by the General Assembly.” *Id.*⁴ Since the title was so broad and amorphous, this Court declared that the bill violated the clear title mandate of Article III, Section 23. *Id.* at 149.

Senate Bill 894 is nearly a carbon copy of the bill in *St. Louis Health Care Network*. Senate Bill 894 is titled “relating to property ownership.” To determine the scope of the title in a bill, this Court in *St. Louis Health Care Network* looked to the dictionary. *Id.* at 147.

The American Heritage Dictionary of the English Language defines “property” as:

1. Ownership.
2. A possession or possessions collectively.
3. Something tangible or intangible to which its owner has legal title.

American Heritage Dictionary of the English Language, 1049 (1973).

It is clear from this dictionary definition that anything tangible or intangible is “property.” This Court and the Missouri Courts of Appeals have also defined “property” in a broad, all encompassing manner. See e.g., *Alexander v. State*, 756 S.W.2d 539, 541 (Mo. banc 1988) (holding that “property” includes both real and personal property); *Hoffmann v. Kinealy*, 389 S.W.2d 745, 752 (Mo. banc 1965) (“property” includes ownership and possession and also right of use and enjoyment for lawful purposes); *Barket v. City of St. Louis*, 903 S.W.2d 269, 271 (Mo. App. E.D. 1995) (mortgagee’s interest in real estate is

⁴ This Court referred to *Carmack* for the finding that “economic development” was also too broad and amorphous. *Id.*

“property”); *McCall v. Goldbaum*, 863 S.W.2d 640, 642 (Mo. App. E.D. 1993) (regular non-probationary employees of the state have a “property” interest in their jobs); *In Re Marriage of Null*, 608 S.W.2d 568, 570 (Mo. App. S.D. 1980) (“property” includes inchoate interest).

The Western District Court of Appeals defined “property” in a 1999 case:

Property is not merely real property. It encompasses ‘everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal [-] everything that has an exchangeable value or which goes to make up wealth or estate.’ Black’s Law Dictionary, 1216 (6th Ed. 1990). ‘It extends to every species of valuable right and interest, and includes real and personal property, easements, franchises, and incorporeal hereditaments, and includes every invasion of one’s property rights by actionable wrong.’ *Id.*

City of Excelsior Springs v. Elms Redevelopment Corporation, 984 S.W.2d 887, 891 (Mo. App. W.D. 1999).⁵

⁵ Appellants’ sole authority, that “property” means “real property” consists of an Illinois case in which the sole issue addressed, with respect to “property,” was a single subject challenge; no reference was made to a clear title challenge. *Premier Property Management, Inc. v. Chavez*, 728 N.E.2d 476, 482-483 (Il. 2000). The Illinois Supreme Court simply held that changes to the joint tenancy law and the property tax code did not consist of multiple

To summarize, under the dictionary definition of “property” and the definition adopted by the Courts of this state, “property” includes everything. Thus, the title of a bill “relating to property ownership” relates to everything that can, has or could be owned by any kind of entity.

Appellant deals with the title “relating to property ownership” in the context of a challenge under Article III, Section 23 for violation of the clear title provision by simply restricting the plain meaning of the words. Appellant argues that “property” means only “a piece of real estate.” Appellants’ Brief, pp. 18-20. Such a definition of “property” is the most narrow and restrictive definition found, and is not even a primary definition in any dictionary.⁶ Based upon Appellants’ definition of “property” there is no longer intellectual property, personal property, intangible property, or a host of other properties previously recognized by the Missouri courts. None of those definitions relied upon by Appellants, nor any primary definition in any dictionary, limits “property” to “a piece of real estate.”⁷ Quite simply, the

subjects. *Id.* There is no application of this case to a clear title challenge and the court’s discussion of the title was solely whether the two provisions fit under “property.” *Id.* at 483. Additionally, the Illinois Constitution does not contain the same “clear title” provisions of the Missouri Constitution. IL Const., Article IV, Section 8.

⁶ See, e.g. *American Heritage College Dictionary*, 1097 (3rd Ed. 1993): **“property”** **1. a.** Something owned; a possession. **b.** A piece of real estate. **c.** Something tangible or intangible to which its owner has legal title. **d.** Possessions considered as a group.

⁷ Nor does the sole case relied upon by Appellants. *Premier Property, supra.*

problem with the title “relating to property ownership” under the law is that property relates to everything and “ownership” is applicable to any type of property.

By restricting the meaning of the words of the title, Appellant manages to, of course, make all of the varying provisions of SB894 arguably related. Even a quick review of the finally passed Senate Bill 894, however, indicates the unconstitutionally broad and amorphous nature of the title “relating to property ownership” when used to confine a subject. The finally passed Senate Bill 894 contains sections relating to farmer’s markets and other agricultural related programs; tax credits for farmer’s markets; mileage reimbursement for county assessors; park rangers in first class counties; marinas in parks in first class counties; planning and zoning in townships; authorization to have a 1/8 of one percent sales tax levy in counties and that revenue to go in a special trust fund for law enforcement facilities; trash abatement in cities; violations of city building or occupancy code registration; the number of commissioners on an industrial expansion commission in St. Louis City; small business tax credits; tax credits for distressed community residences; tax rate calculations in political subdivisions; assessor fees in first class counties; delinquent real property taxes; sales of land for delinquent taxes; definitional changes and sheriff sale provisions under the Land Tax Collection Law; rules and regulations for the agri-Missouri marketing program; creation of the Missouri Agricultural Products Marketing Development Fund and implementation and use of that fund; definitional changes and implementation regarding water and sewer districts; tax credits for research expenses; water supply districts in first class counties; corrective action plans with the Department of Natural Resources; junior college district tax rates; and the Title

Insurance Act. Clearly, this title must relate to everything in order to shelter this array of subjects.

Appellants' argument that each one of these various topics is related to "property ownership" is the same argument rejected by this Court in *Carmack*. *Carmack* at 960-961. It is hard to imagine any statute which would not have some impact upon either tangible or intangible property. The title "property ownership" could literally relate to any proposed piece of legislation that could be dreamed up by a member of the General Assembly.⁸

Defendants rely on *Missouri State Medical Association v. Missouri Department of Health*, 39 S.W.3d 837 (Mo. banc 2001) to argue that vague titles like this one are permissible. In *MSMA* the title of the Bill approved by the Court was "relating to health services." *Id.* at 839. That case is obviously unhelpful to defendants because the title clearly expresses the ascertainable subject of that bill. This Supreme Court's decision in *Missouri State Medical Association* dealt with a more restricted and limited title in a Bill "relating to health services" which expressed an identifiable subject. That case is not on point with this one.

The title of SB894 is much more like that which was disapproved in *St. Louis Health Care Network*, and accordingly *St. Louis Health Care Network* should control the decision in this case. Senate Bill 894 is violative of Article III, Section 23 for failure to have a clear

⁸ Appellants DO argue that all of these provisions relate to "property ownership," evidencing just how broad and amorphous the title really is. See footnote 9, *infra*.

title, and for that reason the judgment of the trial court should be affirmed.

POINT III

THE TRIAL COURT DID NOT ERR IN FINDING SB894 VIOLATED THE ORIGINAL PURPOSE PROVISION OF ARTICLE III, SECTION 21, MISSOURI CONSTITUTION, BECAUSE THE PURPOSE OF SB894 WAS CHANGED BY THE MULTIPLE AMENDMENTS TO IT IN THAT THE ORIGINAL PURPOSE RELATED SOLELY TO CHAPTER 141 (DELINQUENT TAXES - FIRST CLASS COUNTIES AND ST. LOUIS CITY) AND THE FINALLY PASSED SB894 AMENDED STATUTES IN FIFTEEN DIFFERENT CHAPTERS, ENCOMPASSING AT LEAST THIRTEEN SUBJECTS, ALL OF WHICH WERE UNRELATED TO THE ORIGINAL PURPOSE OF SB894.

Article III, Section 21 of the Missouri Constitution states:

The style of the laws of the state shall be: ‘Be it enacted by the General Assembly of the State of Missouri, as follows.’ 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.** Bills may originate in either house and may be amended or rejected by the other. Every bill shall be read by title on three different days in each house.

Mo. Const. Art. III, Section 21. (Emphasis supplied.)

The emphasized language in Article III, Section 21 was violated by the General Assembly in the passage of finally passed SB894. The original purpose of a bill must be

determined at the time of introduction. *C. C. Dillon Company v. City of Eureka*, 12 S.W.3d 322 (Mo. banc 2000) citing *Stroh Brewery Company v. State*, 954 S.W.2d 323, 326 (Mo. banc 1997). The original purpose of Senate Bill 894, as originally introduced, related exclusively to Chapter 141, RSMo, which is titled “Delinquent Taxes - First Class Counties and St. Louis City.” (L.F. 17, et seq.) Every statute repealed or enacted in the originally introduced Senate Bill 894 was contained in Chapter 141. Accordingly, the purpose of Senate Bill 894 is easy to ascertain: It is relating to delinquent tax collection in first class counties and the City of St. Louis. A review of the provisions amended into the original Senate Bill 894, and enacted in the finally passed Senate Bill 894, demonstrates that the bill has been dramatically changed in the course of the legislative process.

This Court has consistently held that the original purpose of a bill requires analysis beyond the mere title to determine the actual original purpose, and that the purpose may be expanded only so long as the expansions are germane to the original purpose. *Lincoln Credit Company v. Peach*, 636 S.W.2d 31, 38 (Mo. banc 1982); *Stroh Brewery*; and *C. C. Dillon*. Senate Bill 894 as originally introduced related only to sheriff’s sales, and none of the other multiple subjects finally contained in Senate Bill 894, including title insurance, have even a logical nexus with the original subject and purpose, much less the required direct connection. Although Appellants’ analysis attempts to persuade the Court that the original purpose of Senate Bill 894 was not changed in its course of passage through the General Assembly, the “reality” is that fifteen different chapters of the revised statutes have been included in the finally passed version of Senate Bill 894! While inclusion of the Title Insurance Regulatory

Act alone would change the original purpose of Senate Bill 894, the additional fourteen chapters amended into the final bill make it abundantly clear that SB894 became a legislative vehicle intended to be used for every left-over, half baked legislative proposal that previously did not, and late in the legislative session could not, become law on its own merits.

This Court has held regarding the importance of a bill's purpose that:

This purpose means the general purpose of the bill, not the mere details through which and by which that purpose is manifested and effectuated. State ex rel. McCafferey v. Mason, 155 Mo. 486, 55 S.W.2d 636.

Allied Mutual Insurance Col. v. Bell, 185 S.W.2d 4, 6 (Mo. 1945).

In *Allied Mutual*, this Court was presented with a bill, the “only effect” of which as introduced was “to eliminate the deduction of premiums for reinsurance.” *Id.* The Court noted “the effect of the bill as introduced should have some weight in determining its general purpose.” *Id.* (Emphasis supplied.) In the course of passage, the bill in *Allied Mutual* was amended to add a tax upon premiums and premium receipts. In invalidating the measure, the Court found that this was a different purpose than the originally introduced bill:

The purpose of a bill to eliminate the deductions of premiums paid for reinsurance from a statute defining taxable premiums or premium receipts for the purpose of taxation under any law of this state seems different from the effect of a law (Section 5968, R.S.1939) providing a tax upon taxable premiums or premium

receipts, although the law providing the tax contained no provision for deductions of premiums paid for reinsurance.

Id.

Allied Mutual presents an even less egregious example of a change in the original purpose than the current case. Here, the original purpose was to effect changes in procedures relating to sheriff's sales in first class counties and the City of St. Louis. Now, SB894 has been amended to contain a multitude of other purposes, as discussed and identified throughout this Brief. This Court should therefore follow *Allied Mutual* and find SB894 violative of Article III, Section 21 for the change of its original purpose.

Appellants refer to *Stroh Brewery Company v. State*, 954 S.W.2d 323 (Mo. banc 1997) for the assertion that Article III, section 21 is only violated if there is language "limiting" the purpose of the original bill. *Stroh* arose after the General Assembly expanded the title of an original bill in the course of passage from "vintage wines" to "intoxicating liquors." *Id.* at 324-5. This Court focused its analysis of the original purpose on a portion of the title indicating that the original amendments were to Chapter 311, RSMo. *Id.* at 326. Chapter 311 contains Missouri's liquor control law, and thus all the amendments, which were also to Chapter 311 and were therefore related to the subject of "intoxicating liquors," were deemed not to be a violation of the original purpose doctrine. *Id.* Change of a title to one still within the original purpose is permissible. This is certainly not the case in the current matter. The original Senate Bill 894 only changed statutes in Chapter 141. The Title Insurance Regulatory Act changed entirely Chapter 381, RSMo, and the other amendments cover

fourteen different chapters of the revised statutes. Thus the basis for the Court’s decision in *Stroh* is not present in the current case.⁹

Appellants next create their own “purpose,” although it is a purpose that is not reflected in the original Senate Bill 894, or even in the finally passed version of Senate Bill 894. The reasoning employed is curious. Appellants have conceded that the purpose of originally introduced Senate Bill 894 “dealt with procedures for sheriff’s sales” (L.F. 223), but then admit that this purpose was changed in finally passed Senate Bill 894, by concluding that: “The purpose of the finally enacted legislation regarding title insurance is to ensure property buyers and sellers are protected when they rely upon companies issuing title insurance.” (L.F. 227).¹⁰ Appellants, it would seem, are hoist on their own petard; they have admitted that the finally passed version of Senate Bill 894 has a different purpose than the original purpose of the bill.

⁹ This Court also found that the expansion of the title in *Stroh* was necessary to encompass the later amendments. The title in the current matter is so broad and amorphous from the beginning that the Appellants are attempting to argue that the enormous variety of statutes included in the final Senate Bill 894 fit under the title. Such an argument cuts one way or the other, but not both; either the title is sufficiently limiting, such that the amendments exceed its scope, or the title is so broad that the title itself is violative of Article III, Section 23. Defendants clearly want to have it both ways. They cannot under the Missouri Constitution.

¹⁰ Appellants’ carefully avoid this discussion in their Brief before this Court, seeking instead to avoid any in depth discussion of the original purpose of SB894 and the changes to that purpose.

And so it does. Article III, Section 21 doesn't allow for two purposes, or fifteen purposes: Only one purpose is allowed--and that original purpose must not be changed. Senate Bill 894 clearly, and even admittedly, violated the original purpose provision and it therefore must fall.

Appellants next abandon this argument to instead refocus on another flawed position. Perhaps recognizing that their various positions on separate constitutional provisions are contradictory and inconsistent, Appellants attempt to convince this Court that the "broad purpose" of "protecting the interests of potential buyers and sellers" was included in both the original and the finally passed Senate Bill 894. Such insincere assertion collapses upon a simple reading of the original Senate Bill 894. There is no aspect of the original Senate Bill 894 which relates to "protecting the interests of potential buyers and sellers." Sheriff's sales, the only matter contained in the original Senate Bill 894, have nothing whatsoever to do with protecting potential buyers and sellers of real estate through a completely new regulatory statute for title insurance. Sheriff's sales of property under Chapter 141, RSMo, are solely to collect delinquent tax owed to the City of St. Louis and First Class Counties. The statutory scheme does not include, does not reference, and makes no mention of title insurance or of protecting any rights of buyers or sellers, beyond what is provided in Sections 141.520 through 141.610, RSMo 2000. Title insurance is not even available for such foreclosure sales performed under supervision of the Courts. By law, the only beneficiaries of sheriff's sales are the taxing authorities. Section 141.710, RSMo 2000. The original purpose of Senate Bill 894 undeniably relates to sheriff's sales and county land trusts which **ONLY** protect and benefit the rights of taxing entities. Defendants' argument for any other original purpose is

an illusion.¹¹ There is no purpose in the original bill to protect any rights of buyers or sellers of property involving regulation of title insurance.

A review of Senate Bill 894 shows it cannot pass this constitutional test. The title of Senate Bill 894 states it relates to “property ownership.” This, of course, is not the final determination of the original purpose, especially in light of the overly broad and amorphous nature of such title.¹² The statutes contained in the originally introduced Senate Bill 894 all are included in Chapter 141, dealing with delinquent property taxes. While expansion of this purpose is authorized, expansion to include an entire new Title Insurance Act cannot fit within the original purpose. Title insurance simply cannot be construed as germane in any way to the collection of delinquent property taxes in first class counties and the City of St. Louis. If the only amendment were the inclusion of the Title Insurance Act, this case would be identical to *Hammerschmidt v. Boone County*, 877 S.W.2d 98 (Mo. banc 1994). However, Senate Bill 894 was amended to change its purpose not from one purpose to two, but was actually amended to change the purpose from one purpose to as many as fifteen new purposes. As finally passed,

¹¹ Defendants’ hollow assertion of an “original purpose to protect potential buyers and sellers” fails to recognize many of the new provisions contained in the finally passed Senate Bill 894. For instance, Section 64.337, contained in the finally passed Senate Bill 894, solely addresses county park rangers; how that provision “protects the interests of potential buyers and sellers” is unexplained. Defendants’ own “purpose” does not match the final provisions contained in Senate Bill 894.

¹² This issue was addressed in more detail in Point II supra.

Senate Bill 894 does not even come close to passing constitutional muster.

More than 15 different chapters in the Revised Missouri Statutes were amended by the single vehicle of the finally passed Senate Bill 894.¹³ It is not itself constitutionally questionable that 15 different chapters were amended, for it is possible for 15 different chapters of the Revised Statutes relate to delinquent taxation; however, the 15 different chapters and their statutes relate to a vast and unrelated number of purposes. The finally passed Senate Bill 894, originally having as its purpose delinquent real property taxes, includes statutes that relate to (1) farmer's markets and other agricultural related programs; (2) tax credits for farmer's markets; (3) mileage reimbursement for county assessors; (4) park rangers in first class counties; (5) marinas in parks in first class counties; (6) planning and zoning in townships; (7) authorization to have a 1/8 of one percent sales tax levy in counties and that the revenue to go in a special trust fund for law enforcement facilities; (8) trash abatement in cities; (9) violations of city building or occupancy code registration; (10) the number of commissioners in an industrial expansion commission in St. Louis City; (11) small business tax credits; (12) tax credits for distressed community residences; (13) tax rate calculations in political subdivisions; (14) assessor fees in first class counties; (15) delinquent real property taxes; (16) sales of land for delinquent taxes; (17) definitional changes and sheriff's sales

¹³ Chapters 32, 53, 64, 67, 71, 82, 135, 137, 139, 140, 141, 178, 381, 393 and 620, RSMo were all amended in the final version of Senate Bill 894 passed by the General Assembly. (L.F. 192).

provisions under the Land Tax Collection Law; (18) rules and regulations for the agri-Missouri marketing program; (19) creation of the Missouri Agricultural Products Marketing Development Fund and implementation and use of that fund; (20) definitional changes and implementation regarding water and sewer districts; (21) tax credits for research expenses; (22) water supply districts in first class counties; (23) corrective action plans with the Department of Natural Resources; (24) and junior college district tax rates; and (25) the Title Insurance Act.

It is clear from review of the chapters covered, the statutes included, and the effect of those statutes that the amendments to Senate Bill 894 changed the original purpose from dealing with delinquent real property tax collection in first class counties and the City of St. Louis to a veritable cornucopia of new purposes with new laws.

The Title Insurance Act, amended into Senate Bill 894, is a particularly egregious example of how the original purpose of Senate Bill 894 was changed by the General Assembly in the course of passage. The Title Insurance Act is an amendment to Chapter 381, RSMo, while the original purpose of SB894 was entirely within Chapter 141. The Title Insurance Act makes no reference at all to local delinquent real property taxes, but instead deals with state regulation of insurance. While the original provisions of Senate Bill 894 related to local governments, the Title Insurance Act is administered and controlled by the State Department of Insurance. There is no local government connection or involvement at any point in the Title Insurance Act. There is nothing even remotely germane between collection of delinquent taxes in first class counties and the City of St. Louis and the new regulatory Title Insurance Act

amended into Senate Bill 894.

Based upon the plain language of Article III, Section 21, the Supreme Court cases interpreting that provision, and upon a simple review of the text of the original Senate Bill 894 and the finally passed Senate Bill 894, it is unalterably clear that the original purpose of the bill was changed in the course of passage through the General Assembly. Senate Bill 894 violates Article III, Section 21, and the trial court's so holding judgment should be affirmed.

CONCLUSION

The finally passed SB 894 is a textbook example of how legislation ought NOT be passed. It is audacious in its contempt for the procedural restrictions of the Missouri Constitution and demonstrates the General Assembly's breathtaking disregard for this Court's precedents.

The General Assembly expanded SB894 from 15 to 90 pages; from 13 sections all within Chapter 141, RSMo to 70 sections in 15 different chapters. It did so at the 11th hour, when most such log-rolling occurs. The originally introduced version solely related to delinquent taxes in first class counties in the City of St. Louis, but as finally passed, SB894 contained statutory changes related to such diverse areas as the Department of Revenue, county assessors, county planning and zoning, political subdivisions, including all cities and towns and constitutional charter cities, tax relief, assessment and levy of property taxes, payment and collection of current taxes, collection of delinquent taxes, delinquent taxes in first class counties (the chapter included in the original SB894), special schools, title insurance, gas, electric, water, heating and sewer companies, and the Department of Economic Development.

Simply put, SB894 has a multitude of subjects in violation of Article III, Section 23 of the Missouri Constitution. These provisions cannot be severed from the original SB894 because only one original section survived the legislative process. It cannot be concluded that this one section could have gained passage without all of the others. The trial court's judgment that SB894 was invalid as violating the multiple subject prohibition of Article III, Section 23 of the Missouri Constitution should be affirmed.

The title to SB894, “relating to property ownership,” is so broad and amorphous that it violates the clear title mandate of Article III, Section 23, of the Missouri Constitution. Appellants concede as much by arguing that all the diverse and unrelated statutes amended in SB894 relate to “property ownership.” As this Court has explained, “property” can relate to nearly anything tangible or intangible. Such an all encompassing title cannot be a clear title, and thus the trial court’s judgment that SB894 was invalid as violating the clear title requirements of Article III, Section 23 of the Missouri Constitution should be affirmed.

Finally, the original purpose of SB894 has not been changed just once, but perhaps 14 times in the course of its passage. The original purpose related to delinquent taxes in first class counties and the City of St. Louis. Yet, the purposes of the finally passed SB894 cover 15 different areas. These provisions and the history of SB894 clearly demonstrate that the original purpose of SB894 was changed by the General Assembly in the course of its passage. Accordingly, the trial court’s judgment that SB894 violates the original purpose mandate of Article III, Section 23 of the Missouri Constitution should be affirmed.

A flagrant disregard of and disrespect for the Missouri Constitution is manifested in SB894. The trial court’s judgment that SB894 violates Article III, Sections 21 and 23 recognized the fatal flaws inherent in this bill. That judgment should be affirmed by this Court.

Respectfully submitted,

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CERTIFICATE OF ATTORNEY

I hereby certify that the foregoing Brief complies with the provisions of Special Rule No. 1(b), and that:

- (A) It contains 11,300 words, as calculated by counsel's word processing program;
- (B) A copy of this Brief is on the attached 3 1/2" disk; and that
- (C) The disk has been scanned for viruses by counsel's anti-virus program and is free of any virus.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Respondent's Brief and a 3 1/2" disk containing this Brief were sent U.S. Mail, postage prepaid, to Mr. Curtis F. Thompson, Assistant Attorney General, Broadway Building, 7th Floor, P.O. Box 899, Jefferson City, Missouri 65102-0899, on this 27th day of December, 2001.

(KW4785.WPD;1)