

**IN THE SUPREME COURT OF MISSOURI**

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**No. SC88476**

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**JAMES TROUT**

**Plaintiff/Appellant**

**v.**

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

**Defendants/Respondents**

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

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**APPELLANT'S RESPONSE AND REPLY BRIEF**

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## ARGUMENT

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

Among the issues before this Court is the proper analysis to be applied to a clear title challenge under Article III, §23. Trout asks this Court to continue its precedent and apply a “plain meaning” analysis to the narrative in the title of H.B.1900. *See St. Louis Health Care Network v. State*, 968 S.W.2d 145 (Mo. banc 1998); *Home Builders Ass’n of Greater St. Louis v. State*, 75 S.W.3d 267 (Mo. banc 2002). The State asks the Court to deviate from this precedent in favor of an analysis that looks instead to the content of the bill to explain its title. If this Court adopts the State’s logic, it will essentially nullify the Constitution’s clear title requirement.

**A. According To It’s Plain Meaning, The Title “Relating To Ethics” Is Overly Broad.**

The State concedes that words in the title of a bill must be construed in their plain and ordinary sense. Resp.Br. at 18, 24. The State agrees that the plain meaning of the word “ethics” is found in the dictionary. *Id.* at 24. The State takes issue with the

dictionary definition cited by Trout, but offers an equally generic meaning of its own: “principles of conduct of individuals or a profession: standards of behavior.” Resp.Br. at 24. Trout does not “pluck out” one meaning over another, but uses the same dictionary definition as the State. *See* App.Br. at 25.<sup>1</sup> No meaning found in the dictionary is less generic than another. The meaning proposed by the State -- “principles of conduct” -- may relate to either “individuals or a profession.” Resp.Br. at 24, *citing* WEBSTER’S THIRD NEW INT’L DICTIONARY at 780. An individual can be anyone. A “profession” can be any “calling, vocation or employment.” WEBSTER’S THIRD NEW INT’L DICTIONARY at 1811. Under any definition, the plain meaning of “ethics” includes any person or group, and any code of conduct, set of values, or standards of behavior. The State’s attempt to quibble about the words to use in defining the word “ethics” is not material. No matter which ordinary, dictionary meaning is applied, the result is the same. Under either definition, the title of H.B.1900 is broad enough to include any and all legislation.

Trout does not dispute that a title can be general. *See* App.Br. at 24; *Fust v. Attorney General*, 947 S.W.2d 424, 429 (Mo. banc 1997). But a title cannot be so general as to lack meaning or obscure the subject matter of the act. *Home Builders Ass’n*,

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<sup>1</sup> Neither does Trout “bootstrap” the definition of “ethics” into the definition of “laws,” which is “a rule or mode of conduct or action that is prescribed or formally recognized as binding.” App.Br. at 26 (*citing* WEBSTER’S THIRD NEW INT’L DICTIONARY at 1279). Under any definition, “ethics” is a code of conduct that may or may not be binding, and thus, has an even more expansive meaning than “laws.”

75 S.W.3d at 269; *St. Louis Health Care Network*, 968 S.W.2d at 147. As Trout pointed out in his opening brief, the general “umbrella” titles approved by this Court were all descriptive of a discrete subject matter. *See* App.Br. at 31; *see also Brown-Forman Distillers Corp. v. McHenry*, 566 S.W.2d 194 (Mo. banc 1978)(relating to “certain merchandising practices”); *Missouri State Med. Ass’n v. Missouri Dep’t of Health*, 39 S.W.3d 837 (Mo. banc 2001)(“relating to health services”); *Corvera Abatement Tech. v. Air Conservation Comm’n*, 973 S.W.2d 851 (Mo. banc 1998)(“relating to environmental control”); *C.C. Dillon v. City of Eureka*, 12 S.W.3d 322 (Mo. banc 2000)(“relating to transportation”).

By contrast, “relating to ethics” does not describe any subject matter at all, or to whom or what it relates. Just as this Court found of the phrase “relating to certain incorporated and non-incorporated entities,” the phrase “relating to ethics” could refer to anything. *St. Louis Health Care Network*, 968 S.W.2d at 147. *See also Home Builders*, 75 S.W.3d at 271-72 (“relating to property ownership” not clear); *Carmack v. Director, Missouri Dep’t of Agric.*, 945 S.W.2d 956, 960 (Mo. banc 1997)(“relating to economic development” not clear). The State has no response to this point.

As it did before the trial court, the State says that because the text of H.B.1900 pertains to standards of behavior or the conduct of *certain* individuals or professions—lobbyists, officials, and candidates—the title of H.B.1900 is clear. Resp.Br. at 24. There are at least two immediate problems with this rationale. First, it improperly looks past the title into the content of H.B.1900, contrary to the constitutional requirement that the title itself be clear. *See* Mo. Const. Art. III, §23. Second, it is self-fulfilling. Under the

State's argument, "relating to ethics" is an acceptable title so long as the bill proposes some kind of standard for someone's behavior. Accuracy is not the same thing as clarity as required by Article III, §23. If it were, "relating to laws" would be a good title for every bill. Moreover, the state's argument makes the clear title requirement of the Constitution meaningless. The Constitution might as well say "every bill shall state its subject somewhere in the bill." Of course, it does not.

Unable to avoid the ambiguity and over-breadth of the phrase "relating to ethics," the State tries another tack focused on the numeric organization of Missouri's statutes. The State first urges that readers are on notice that H.B.1900 "would relate to the ethical conduct of lobbyists, officials, and candidates," even though none of those words appear in the title, because laws regulating the conduct of these persons "are organized in but three" chapters of the Missouri Revised Statutes, *i.e.*, Chapters 105, 115, and 130. Resp.Br. at 26.

To bolster its argument, the State refers to the chapters by the name given them by the revisor of statutes: "Chapter 105, 'Public Officers and Employees-Miscellaneous Provisions' . . . Chapter 115, 'Election Authorities and the Conduct of Elections'; and Chapter 130, 'Campaign Finance Disclosure Law'." Resp.Br. at 26-27. First, however, the descriptive words added by the revisor of statutes are not part of the title of H.B.1900, and cannot be read into it *sub silencio*. Second, and if this Court were to give weight to the opinions of the revisor, the Court should also take note that the revisor organizes the chapters of the statutes into titles. Chapter 105 is included with Chapters 103 through 110 in Title VIII. The revisor has named title VIII "Public Officers and Employees,

Bonds and Records.” On the other hand, Chapters 115 and 130 are included with Chapters 116, 122 and 128 in Title IX, which the revisor has named “Suffrage and Elections.” If the State is urging this Court to rely on the revisor’s decisions about what to call and how to group enactments of the General Assembly, the State has conceded that the bill contains multiple subjects. Using the state’s logic, the fact that the chapters appear in different titles makes it impossible for a bill addressing those three chapters to have a single subject which is clearly expressed in its title.

The State’s argument also presumes: first, that readers would somehow divine that Chapters 105, 115 and 130 are the ones to be affected; second, that readers are so familiar with Missouri statutes as to recognize the topics of, and persons subject to, those chapters; and third that those three chapters relate only to the topics in the State’s newly proposed title. As to the first two assumptions, such intimate familiarity cannot be attributed to legislators, much less to members of the general public. One of the very purposes of the clear title requirement is to apprise legislators and the public of what legislation is under submission. *Home Builders*, 75 S.W.3d at 269. The state’s argument that a list of numbers informs the general public of the single subject of a bill is simply not consistent with the requirements of Article III, §23, the purpose of those requirements, or this Court’s precedent. As to the third assumption, the State is incorrect that the three chapters listed in the title of H.B.1900 are somehow limited in their focus.

Chapter 105, for example, contains many different subjects including State Legal Expense Fund coverage, workers’ compensation rules for state employees, bargaining rights for state employees and rules governing facsimile signatures of state officials.

When the State argues that the listing of a chapter puts a reader on notice of the subject in the chapter, it makes a mockery of the Constitution. There is no requirement that each chapter of the statutes contain only one subject. Indeed, many chapters do contain multiple subjects. But in the *enactment* of legislation, Article III, §23 requires that a *single subject be expressed clearly in the title*. The State interprets Article III, §23 to say that a bill's *purpose* be expressed in the title. That interpretation sanctions a title with multiple subjects contrary to the plain language of the Constitution.

The State also contends that citation to certain statutes in the title of H.B.1900 aids its clarity, but does not explain how this is so. The fundamental problem with this argument is that the repeal and enactment language is simply procedural and does not describe the “subject” of the enactment at all. Moreover, the numeric citations in H.B.1900 are to statutes to be *repealed*, not statutes to be *enacted*.<sup>2</sup> To further confuse the argument, the State asserts that the “in lieu thereof” language in H.B.1900’s title does not connote a provision-to-provision replacement, and thus, does not tie what is being repealed to what is being proposed. *See* Resp.Br. at 31.<sup>3</sup> The State makes no attempt to

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<sup>2</sup> The State counters that Article III, §23 does not require a title to list the sections to be enacted. Resp.Br. at 31. The State misperceives Trout’s point, which is that the appearance of citations in the title of H.B.1900 does not aid its clarity.

<sup>3</sup> Of course, the State must take these positions because, although the bill enacts new sections in Chapter 115, the title of H.B.1900 nowhere mentions Chapter 115 or any statute within it.

reconcile its conflicting positions that a listing of statutes to be repealed should alert the reader to the subject of the bill even though that listing is untethered to the laws being enacted. At the end of the day, the only portion of the title that describes the “subject” -- what is being proposed by the bill – is the narrative “relating to ethics” and it is on that phrase that the analysis properly should focus. *Home Builders*, 75 S.W.3d at 271-72; *St. Louis Health Care Network*, 968 S.W.2d at 147. *See also Carmack*, 945 S.W.2d at 960. Furthermore, if the “subject” of the bill is contained in the numeric citations, a bill would need to be limited to repealing and reenacting a single statute to ensure compliance with the Constitution. The only logical conclusion is that a narrative statement of the purpose of the Act is required. Because “relating to ethics” does not describe anything, let alone a single subject, the title is unclear.

The State cites to various cases for the proposition that statutory references support clarity of title, asserting *ipse dixit* that a statutory reference standing alone, “without a description of any sort, can compose a sufficiently clear title.” Resp.Br. at 28-30. The point is rhetorical only, because in this case there is a narrative statement as well as a listing of statutes to be repealed in the title of H.B.1900, neither of which renders it the least bit clear. Moreover, most of the cases cited by the State do not stand for the proposition it advances since there was a narrative statement in the bill’s title describing what was being repealed or amended along with citations. *See State v. Mullinix*, 257 S.W. 121, 122 (Mo. 1923)(“An act to amend article 7, of chapter 52 . . . relating to prohibition by amending section 6588 thereof, by adding certain words and by adding new sections to said chapter to be known as sections 6590a, 6592a, 6594a, 6594b,

and 6594c . . . ); *Ex Parte Hutchins*, 246 S.W. 186, 187 (Mo. banc 1922)(“An act to amend Sections 3247 and 3248 . . . by striking out certain words and inserting certain words in lieu thereof, relating to age of consent of females”); *State ex rel. Town of Kirkwood v. Heege*, 36 S.W. 614, 614 (Mo. 1896)(“An act to amend section 8553 of article 14, of chapter 162 . . . relating to the exemption of citizens of incorporated cities and towns, and of the property within said cities and towns, from taxation for county road purposes”); *State ex rel. Halsey v. Clayton*, 126 S.W. 506 (Mo. 1910)(“An act to repeal all of article 2 of chapter 91 . . . relating to cities of the first class and to enact a new article to be known as article 2, chapter 91”).

In those cases where the title contained statutory references only, the bill was an amendatory act. In that situation, “a numerical reference . . . to the section sought to be amended . . . is a sufficient title to an act which deals exclusively with the subject of the section to be amended.” *St. Francis Levee Dist. v. Dorroh*, 289 S.W. 925, 932 (Mo. 1926); *see also State ex rel. Consol. Sch. Dist. No. 3 v. Miller*, 33 S.W.2d 122, 124 (Mo. banc 1930). These cases state an old rule that has no application here. H.B.1900 is not an “amendatory” act. The statutes it effects are repealed and enacted. And if the effect of H.B.1900 were to revise only one section, it might be necessary to dust off volumes of South Western Reporter and dig into their reasoning. But here twelve statutes (in two different chapters) are repealed, and sixteen (unnamed) statutes (in three different chapters) are enacted. The old rule does not apply.

The State also cites *St. John’s Mercy Health Care v. Neill*, 95 S.W.3d 103 (Mo. banc 2003), which also is inapposite. There, the challenged statute, Section 355.176.4,

was originally contained in a bill whose title “note[d] the repeal of virtually all sections of Chapter 355” and stated that the bill related to “general not for profit corporations and reinstatement of other corporations.” *Id.* at 106. All but one provision in the bill was contained in Chapter 355. *See id.* In this circumstance, the Court found that readers “would recognize that the bill purports to substantially revise chapter 355, which relates to not-for-profit corporations.” *Id.* Here, by contrast, H.B.1900 is not limited to a single chapter, or single group of persons, entities, or other single subject. And the narrative statement “relating to ethics” does not describe a single subject or indeed, any discernible subject at all.

The State’s position boils down to the argument that “related to ethics” means the conduct of persons governed by the statutes listed in the title of H.B.1900 and that, as so limited, the title expresses a single subject. The “single subject” the State identifies is: “regulating and promoting the ethical conduct of lobbyists, officials and candidates.” *See Resp.Br.* at Point II, Point III, 1-2, 14-15, 26-27. This is the same argument that the State made—and lost—in *St. Louis Health Care Network*, 968 S.W.2d 145.

In *St. Louis Health Care Network*, the bill at issue was House Substitute for Senate Bill 768 (HSSB 768). The title of the bill was:

An Act to repeal sections 355.176, 355.331, 402.215 and 473.657, RSMo 1994, relating to certain incorporated and non-incorporated entities, and to enact in lieu thereof eleven new sections relating to the same subject.

*Id.* at 146. This Court held that the phrase “relating to certain incorporated and non-incorporated entities” was too broad and amorphous because (like the phrase “related to ethics”) it could describe almost any legislation. *Id.* at 148. The State, however, urged that “the sections enumerated in the title of HSSB 768 limit the scope of the words used in the title to describe the bill’s contents.” *Id.* Specifically, the State argued that the phrase “certain incorporated and non-incorporated entities” was limited to those entities described in the statutory sections listed in the title of HSSB 768 and that, as so limited, the title expressed a single subject. *Id.* This Court observed that it “need not determine the broad question of whether a listing of statutory sections in the title of a bill can operate to produce a clear title” because even considering the sections listed, “the title of the bill fails to express a single subject within the meaning of article III, §23.” *Id.* The same is true here.

The title of H.B.1900 cites twelve statutes to be repealed: Sections 105.470, 105.473, 105.485, 105.957, 105.959, 105.963, 130.011, 130.016, 130.032, 130.046, 130.050, and 130.054 and states that sixteen statutes will be enacted. The first section addressed by H.B.1900 adds a new category of “elected local government official lobbyist” within the definitions in Section 105.470. In the next section, H.B.1900 adds information that must be contained in lobbyist reports (Section 105.473.3(b)), and provides that no expenditure shall be made on behalf of a state senator or representative (or their staff, employees, spouses or children) for travel or lodging outside Missouri (Section 105.473.4). The next section (Section 105.485) concerns financial interest statements filed by judges and multiple other public officials and employees. Sections

105.957 and 130.054 pertain to the filing of complaints with the Ethics Commission. H.B.1900 adds provisions to Section 105.957 that requires a copy of a complaint, along with the name of the complainant, be delivered to the alleged violator (Section 105.957.2) and also creates a civil action for damages against any person who files a “frivolous” complaint (Section 105.957.4). Section 105.959 provides that the executive director of the Ethics Commission is to review reports and statements for completeness, investigate and audit, and provide audit reports to the Commission. Section 105.963 authorizes the assessment of fees for late filing. Section 130.011 contains definitions applicable to the campaign finance disclosure law. Section 130.016 contains exemptions from contribution disclosure requirements and addresses exemption statements. As reenacted by H.B.1900, Section 130.016 contains a new subsection .8 which prohibits a member of or candidate for the general assembly from forming a candidate committee for the office of speaker of the house of president pro tem of the senate. Section 130.032 previously set forth campaign contribution limits. Under H.B.1900, Section 130.032 removes limits on the amount of contribution, but provides that candidates for state representative, state senator or a statewide elected office may not accept contributions during a specified period. Section 130.046 addresses the due dates for filing disclosure reports by candidates and committee treasurers. Section 130.050 deals with reporting by out-of-state committees (Section 130.050.1), reporting dates and periods for committee nominees for public office (Section 130.050.2), and reporting of late contributions and loans (Section 130.050.3).

The sections listed in the title of H.B.1900 do not relate to a single subject of either persons or conduct, but instead concern: lobbyists; judges and other public officials who file financial interest statements; members and treasurers of candidate committees; persons running for office; persons who contribute to campaigns; the executive director and members of the Ethics Commission who accept and investigate complaints; and any person desiring to file a complaint with the Ethics Commission. The sections enacted but not listed at all in the title of H.B.1900 (115.342 and 115.350) pertain to disqualifications of persons wishing to run for office. “Even if a legislator or the public could be required to read, or could be assumed to know, the contents of the sections listed in the title of [H.B.1900] . . . no single subject [can] be discerned from the sections [listed in the title].” *St. Louis Health Care Network*, 968 S.W.2d at 149.

The provisions in Chapters 105, 115 and 130 address different subjects “and cannot lawfully be incorporated in the same bill.” *State ex rel. Dep’t of Penal Inst. v. Becker*, 47 S.W. 2d 781, 783 (Mo. banc 1932). *See infra*, Section II. But even if the State is correct and these matters can be said to constitute one subject, *the title of H.B.1900 does not clearly express it*. The title of H.B.1900 *is not* “relating to the ethical conduct of lobbyists, officials and candidates.” The title of H.B.1900 is “relating to ethics.” There is no way around the over-breadth and ambiguity of that phrase, and the State offers none.

Notable for its level of desperation is the State’s attempt to attach significance to a point of order raised by one senator that proposed amendments relating to fee offices go beyond the scope and purpose of the original bill. Resp.Br. at 25. This has nothing to do

with clear title. Nor does the absence of objection to the title of H.B.1900 mean that it is constitutionally acceptable. The State cites *Allied Mut. Ins. Co. v. Bell*, 185 S.W.2d 4 (Mo. 1945). There, the Court addressed an original purpose challenge. The challenger cited language from another case that “inasmuch as no member of either house interposed an objection . . . it must needs follow that . . . no unwarranted amendment . . . occurred during the passage of the bill.” *Id.* at 7. The Court responded that this language “must be limited in its application to those provisions of [the constitution] setting forth the formulae incident to the passage of a bill, which are directory only.” *Id.* at 8.

Article III, §23 is mandatory, not directory. *Carmack*, 945 S.W.2d at 959. And “[s]urely the framers of the Constitution of Missouri did not contemplate that this court could not declare a statute unconstitutional . . . although no member of the legislature had made objection. [Otherwise] . . . the people could be victimized by unintended or illy considered legislation from which there could be no relief . . . afforded.” *Allied Mut. Ins. Co.*, 185 S.W.2d at 8.

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

The State suggests that upon finding a clear title violation, this Court should conduct a severability analysis to preserve as much of H.B.1900 as possible. Resp.Br. at 32-34. The State proposes that this Court apply the severability analysis employed by the trial court under the multiple subject and change in purpose theories, even while it complains that “the trial court did not reach correct, let alone necessary, legal conclusions in that regard.” Resp.Br. at 33. We are here dealing with a clear title challenge. The trial

court did not adhere to the applicable analysis, *i.e.*, the plain meaning of the words used. *See Home Builders*, 75 S.W.3d at 271; *St. Louis Health Care Network*, 968 S.W.2d at 147. The trial court expressly acknowledged that had the analysis stopped there, as it should have, it would have found the title of H.B.1900 impermissibly broad. L.F. 493.

The trial court, however, undertook to determine a core purpose of H.B.1900, from which it generated a title. The court revised the title of H.B.1900 from “relating to ethics” to “relating to matters regulated by the Ethics Commission.” By so doing, the trial court then—but only then—cleared a path to sever provisions relating to matters not regulated by the Ethics Commission (Sections 115.342 and 115.350). This result-driven methodology takes “core subject” principles applicable to multiple subject and original purpose challenges, and misapplies them to a clear title challenge. The result is to bypass the clear title requirement altogether. *See also infra* Point II. The title of H.B.1900 cannot be re-written, and it is manifestly improper to avoid the clear title requirement--or the consequence of its violation--by such manipulation.

The State offers no other suggestions as to how a severability analysis would be accomplished or which provisions could be severed. *Id.* at 34. That silence is meaningful. In situations where a title is under-inclusive, provisions in the bill that are not expressed in the title might be segregated out and invalidated under a severability analysis. *Home Builders*, 75 S.W.3d at 272 (citing *National Solid Waste Mgmt. Ass’n v. Dir. of the Dep’t of Natural Res.*, 964 S.W.2d 818, 822 (Mo. banc 1998)). When a title is over-inclusive, however, “the title’s lack of notice as to the subject matter applies to the bill as a whole.” *Home Builders*, 75 S.W.3d at 272 (citing *St. Louis Health Care*

*Network*, 968 S.W.2d at 147-49). The State cites no case in which the Court has severed portions of a bill with an over-inclusive title and Appellant has located none. The reason is simple: there is no logical way to sever an over-inclusive title without impermissibly re-writing the title adopted by the General Assembly.

**C. The Unconstitutionality Of H.B.1900 Cannot Be Resolved By Interpretation.**

The State relies heavily upon the general rule of liberal construction to preserve legislative enactments. *See* Resp.Br. at 17. Commitment to that rule, however, does not override the Court’s “duty of giving effect to the commands of the people, expressed in the Constitution” and “the cogent reasons of public policy which led to [their] adoption.” *Becker*, 47 S.W.2d at 783. The public policies behind the requirements of Article III, §23 have been consistently recognized for decades in this State: to prevent logrolling legislation; to prevent surprise or fraud upon the legislature; and to fairly apprise the public of legislation being considered. *See Missouri Ass’n of Club Executives, Inc. v. State*, 208 S.W.3d 885, 888 (Mo. banc 2006)(quoting *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 325-26 (Mo. banc 1997); *Rizzo v. State*, 189 S.W.3d 576, 578-79 (Mo. banc 2006). “The title [of a bill] must express the subject of the act in such terms that the members of the general assembly and the people may not be left in doubt as to what matter is treated of.” *State v. Burgdoerfer*, 17 S.W. 646, 654 (Mo. 1891). “Relating to ethics” is not a clear title and is therefore in violation of Article III, §23. This issue is dispositive. H.B.1900 is invalid as a whole. *Home Builders*, 75 S.W.3d at 272; *St. Louis*

*Health Care Network*, 968 S.W.2d at 147-49. This Court has not hesitated to find a violation of the clear title requirement when appropriate, and should do so again here.

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

The single subject requirement of Article III, §23 concerns itself with whether each provision of a bill falls within the single subject as expressed in the title. *Missouri Health Care Ass'n v. Attorney General*, 953 S.W.2d 617, 622 (Mo. banc 1997); *Fust*, 947 S.W.2d at 428; *C.C. Dillon Co.*, 12 S.W.3d at 328. Accordingly, the single subject analysis relies in the first instance on a clear title. If the title of the bill itself does not clearly express a single subject, there is no reference point to which provisions of the bill can be compared, and there is no framework for analysis. The lack of a clear title is, and should be, dispositive. *St. Louis Health Care Network*, 968 S.W.2d at 149. But even if this court finds a clear title, the inclusion of multiple subjects in the same bill renders the entire bill unconstitutional in this case.

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

The title of H.B.1900 identifies twelve statutes to be repealed and states that sixteen unidentified statutes “relating to ethics” will be enacted. This does not describe any identifiable subject at all, much less a single subject. The trial court and the State say that the title is clear, but neither of them purport to analyze whether any provision of H.B.1900 relates to “ethics” as the subject expressed in its title. Rather, both supply a “subject” of their own creation in the title of H.B.1900.

But the trial court and the State do not agree on what that subject is. The trial court found it to be “matters under the jurisdiction of the Missouri Ethics Commission: conduct of lobbyists, officials and candidates, by affecting financial disclosures, campaign contributions and audits performed by the Ethics Commission.” L.F. 511. The State contends that this “subject” is too narrow, and proposes an even broader heading of its own: “regulating and promoting the ethical conduct of lobbyists, officials and candidates.” *See* Resp.Br. at Point II, Point III, 1-2, 14-15, 26-27, 38.<sup>4</sup> It is significant that a learned jurist and counsel well acquainted with legislative enactments fail to agree

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<sup>4</sup> The State does not identify the trial court’s interpretation as an error in its Point Relied On as required by Rule 84.04 (*see* Resp.Br. at Point II) and does not properly present this issue for review. *See Kierst v. D.D.H.*, 965 S.W.2d 932, 939 n.4 (Mo.App. 1998) (“Arguments raised only in the argument portion of the brief and not included in the point relied on are not preserved for appeal.”)

on the subject both say the general public should immediately grasp. That aside, however, the descriptors added by the State and the trial court, respectively, are simply not in the title of H.B.1900. The title of a bill is the designation prefixed by the legislature, and not “attempted additional indicia” added by others. *State v. Thomas*, 256 S.W. 1028, 1030 (Mo. 1923).

In this case, the “additional indicia” annexed onto the title of H.B.1900 by the State and the trial court was generated through their misapplication of an original purpose, single-subject and/or severability analysis which seeks to determine the general core purpose of a bill. *See* App.Br. at 33-34. The State does not dispute that such an analysis is improper for purposes of the clear title requirement. The language of Article III, §23 is unambiguous. The subject of a bill must be clearly stated in its title, not created after the fact via interpretation of its content. Otherwise, the title of a bill is superfluous and the clear title requirement has no meaning. The very fact that the State and the trial court resort to an undisciplined analysis to “clarify” the title of H.B.1900 is the best illustration of why the title is constitutionally infirm and H.B.1900 must be stricken as a whole.

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

According to the trial court, all of the provisions in H.B.1900 to be enacted and organized into Chapters 105 and 130 of the Missouri Revised Statutes constitute one big subject. According to the State, the provisions to be added to Chapter 115 can also be included within an even bigger subject. The trial court’s formulation is focused on the

regulating body: matters “under the jurisdiction of the Missouri Ethics Commission.”<sup>5</sup> L.F. 511. The State’s proposal is focused on persons regulated: “regulating and promoting the ethical conduct of lobbyists, officials and candidates.” Resp.Br. at 38. Both proposals seek to embrace within one “subject” matters pertaining to at least three distinct categories of conduct and three distinct categories of persons. The single subject limitation, however, “requires that the *contents* of a bill, not the *[persons] affected* by the bill, fairly relate to the subject expressed in the title.” *SSM Cardinal Glennon Children’s Hosp. v. State*, 68 S.W.3d 412, 417 (Mo. banc 2002)(quoting *Missouri Health Care Ass’n*, 953 S.W.2d at 623)(emphasis added); *see also St. Louis Health Care Network*, 968 S.W.2d at 149 (title of HSSB 768 not related to a single subject of entities and thus violated Article III, §23).

Matters may be said to be within the same subject if they are “germane, connected and congruous ... provisions ... fairly relate to the same subject, have a natural connection therewith or [be] incidents or means to accomplish its purpose.”

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<sup>5</sup> Under this rubric, anything within the regulatory sphere of that body falls within one “subject”, including lobbyist activity, campaign contributions, and also “[a]ny code of conduct promulgated by any department, division or agency of state government or by state institutions of higher education, or by executive order” and the provisions of the constitution, or any “state statute or order, ordinance or resolution of any political subdivision relating to the official conduct of officials or employees of the state and political subdivisions.” Mo. Rev. Stat. §105.957.1(4) and (6).

*Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994)(citations omitted). The provisions of H.B.1900, however, relate to the conduct of different people and different activities. For example, there is no relationship between the creation of a new category of “elected local government official lobbyist” (Section 105.470) or what information is contained in lobbyist reports (Section 105.473.3(2)(b)), and other provisions within H.B.1900 that: prohibit formation of a candidate committee for the office of speaker of the house or president pro tem of the senate (Section 130.016.8); eliminate campaign contribution limits and impose a temporal ban on campaign contributions (Section 130.032); or require candidates to file disclosure statements electronically (Section 130.046.9).

The State and the trial court simply “lump together” these and other provisions within H.B.1900 into one overly generalized “subject.” *Missourians To Protect The Initiative Process v. Blunt*, 799 S.W.2d 824, 831-32 (Mo. banc 1990). The only thread connecting these provisions is that they generally pertain to persons in, or associated with, public service. That thread is too attenuated to meet the single subject test. To the contrary, the construction proffered by the State and the trial court “would define single subject so broadly as to render it meaningless.” *Missouri Health Care Ass’n*, 953 S.W.2d at 623 (citing *Missourians To Protect The Initiative Process*, 799 S.W.3d at 832). In fact, the catch-all “subject” each proposes is all but identical to “regulation of public officials’ conduct,” already found by this Court to be overly broad. *Missourians To Protect The Initiative Process*, 799 S.W.2d at 831-32.

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

For all the reasons addressed above and in Appellant’s opening brief, H.B.1900 contains multiple subjects in violation of Article III, §23. It did so from the time of first introduction when the bill was titled “relating to campaign finance” but contained provisions relating to both that subject and lobbyist reporting. *See* App.Br. at 36-39. The State does not attempt, and cannot, unite the provisions of H.B.1900 except by loose connection of public service. The State attempts to reinforce that position by reference to the federal Ethics Reform Act, which it says is to protect public confidence in the integrity of public officials, and “contains provisions of a scope comparable to that of H.B.1900.” Resp.Br. at 39 n.4. There is no single subject limitation in the United States Constitution akin to Article III, §23 of the Missouri Constitution. The scope of the Ethics Reform Act also has no bearing on this case.

Unable to find any other foothold, the State represents that that “the legislature has . . . addressed Chapters 105, 115 and 130 together in at least two bills prior to 2006” and this “now 15-year-old practice demonstrates the legislature’s view of the inter-relationship between the chapters.” Resp.Br. at 39. The State cites to bills enacted during the legislative sessions of 1991, 1994 and 1995. Assuming that the passage of these bills over the course of at least 15 years can be said to establish a “practice” of the General Assembly, it has no relevance to the issue before this Court.

*Hammerschmidt*, the seminal case regarding multiple subject challenges, was not decided until 1994. 877 S.W.2d 98. And unfortunately, even clear judicial guidance

does not have the effect of bringing an end to unconstitutional multiple subjects in legislation. *See, e.g., Missouri Health Care Ass’n*, 953 S.W.2d 617 (Mo. banc 1997); *Carmack*, 945 S.W.2d 956 (Mo. banc 1997); *Rizzo*, 189 S.W.3d 576 (Mo. banc 2000); *SSM Cardinal Glennon Children’s Hosp.*, 68 S.W.3d 412 (Mo. banc 2002). Whether the legislature previously disregarded the Constitution carries no weight, nor can weight be given to the fact that previous enactments were not challenged. The single subject limitation of Article III, §23 is a constitutional mandate, not a matter of legislative “practice” to which this Court defers. *Allied Mut. Ins. Co.*, 185 S.W.2d at 8. Enactment of one hundred bills violating Article III, §23 would not make Bill No. 101 constitutional.

The trial court was correct that H.B.1900 contains multiple subjects, but was incorrect that the only subject multiple to the others is candidate disqualification in Sections 115.342 and 115.350. The State’s position is even further afield of any reasonable construction of “subject” within the meaning of Article III, §23.

Only by interpreting single subject so broadly that it loses any meaning can H.B.1900 survive in any part. The entire bill is unconstitutional.

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

This Court has consistently held that when a bill violates the single subject requirement of Article III, §23, the entire bill is unconstitutional and void unless “the Court is convinced beyond a reasonable doubt that one of the bill’s multiple subjects is its original, controlling purpose and that the other subjects are not.” Only then will the Court “sever that portion of the bill containing the additional subject(s) and permit the bill to stand with its primary, core subject intact.” *Hammerschmidt*, 877 S.W.2d at 103; *Carmack*, 945 S.W.2d at 961; *SSM Cardinal Glennon Children’s Hosp.*, 68 S.W.3d at 417; *Rizzo*, 189 S.W.3d at 581. *See also Missourians To Protect The Initiative Process*, 799 S.W.3d at 832. Citing to Section 1.140, the State asserts that “the provisions of every statute are presumed by law to be severable,” Resp.Br. at 41, and says this Court is wrong regarding the effect of an Article III, §23 violation. *Id.* at 41-46. It is not.

At one time, litigants argued that without a savings clause, the invalidity of one portion of a statute caused the remainder to fall. *See, e.g., St. Louis County v. City of Florissant*, 406 S.W.2d 281, 285 (Mo. banc 1966). Section 1.140 permits the Court to assume that the legislature intended to give effect to those portions of a statute that are not invalidated. When the challenge is to a subsection, single section, or group of sections within a single chapter of the Missouri Revised Statutes, the severability question addresses whether *valid* portions of the statute should be preserved. *See, e.g., General Motors Corp. v. Director of Revenue*, 981 S.W.2d 561, 568 (Mo. banc 1998). The presumption, then, is that the legislature intended that the valid portions of a statute be given effect “unless” certain conditions are present, *i.e.*, that “the valid portions of the statute” are “essentially and inseparably connected with, and so dependent upon, the void

provision that it cannot be presumed that 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.” Mo. Rev. Stat. §1.140.

On the other hand, when *a bill* is passed in violation of the single subject requirement, there is no valid “portion.” Article III, §23 provides that “no bill shall contain more than one subject.” If the bill contains more than one subject, the bill *itself* violates Article III, §23 and the bill itself is invalid. Here, the Court is not addressing a valid statutory provision, but an invalid bill. In this circumstance, the Court asks whether the bill has an original controlling purpose that can be isolated and given effect.

*Hammerschmidt*, 877 S.W.2d at 103. In other words, the severability analysis does not uphold validity, but confers it. As such, the Court appropriately must be “convinced beyond a reasonable doubt” that there is such an original controlling purpose that is separable and capable of effectuating.

The State readily concedes that a “fatal problem” in this analysis occurs when the Court cannot “identify a single, central purpose, and so [cannot] identify provisions that might be severed while preserving other portions of the bill,” Resp.Br. at 44, citing *Missourians To Protect The Initiative Process*, 799 S.W.2d at 832. Just so.

This is where the State’s analysis ends. As discussed in Trout’s opening brief, H.B.1900 began with at least two subjects—campaign finance and lobbyist reporting of non-campaign expenditures, and grew from there. App.Br. at 36-41. As originally introduced, the bill was entitled “relating to campaign finance,” and would have repealed

seven sections and re-enacted the same seven sections with certain revisions: Sections 105.473, 105.963, 130.011, 130.016, 130.032, 130.046 and 130.056. L.F. 234. Certain revisions to the Chapter 130 sections dealt with campaign finance. *See* Sections 130.011, 130.016, 130.032, and 130.046. Other revisions did not. The original version of H.B.1900 also revised Section 105.473.3 to change lobbyist reporting of expenditures made for occasions at which certain caucus members are invited. L.F. 238. It also revised Section 130.056 to add auditing of selected lobbyist reports “to determine compliance with all lobbyist reporting laws”, an annual report, and an Internet posting of errors. L.F. 275-276. The legislature itself has made clear that lobbying activity and campaign finance are two separate subjects. *See* Mo. Rev. Stat. §105.470.3 (definition of lobbying expenditures does not include contributions to political campaigns). Because there were two distinct subjects from the outset, it is not possible to identify a single purpose of H.B.1900 as originally proposed. The multiplicity of subjects only grew as the Bill progressed through the system, and as finally passed, H.B.1900 contains at least three subjects if not more. App.Br. at 37-39.

At bottom, which of the subjects expressed in H.B.1900 was actually the core purpose is only a matter of speculation. Where a single, central purpose cannot be identified, "it is necessarily impossible to identify those provisions that are essential to the efficacy of the [proposal] so that they may be segregated out." *Missourians to Protect The Initiative Process*, 799 S.W.2d at 832. The single, central purpose of H.B.1900 cannot be identified. There is nothing to sever and the whole bill must fall.

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

Article III, §21 prohibits a bill from being “so amended in its passage through either house as to change its original purpose.” The original purpose of H.B.1900 is gleaned from its “earliest title and contents.” *Missouri Ass’n of Club Executives*, 208 S.W.3d at 888; *McEuen v. Missouri State Bd. of Educ.*, 120 S.W.3d 207, 120 (Mo. banc 2003). As already addressed, the original title of H.B.1900 was “relating to campaign finance,” and its original contents addressed but campaign finance and non-campaign finance related reports filed by lobbyists. As finally enacted, the bill’s title changed to “relating to ethics” and included provisions covering other subjects that relate to neither campaign finance nor lobbyist reporting. *See App.Br.* at 41-45. The deviation from one or both of H.B.1900’s original subject(s) violates Article III, §21.

The trial court found an Article III, §21 violation, but severed the provisions added to Chapter 115 based on its incorrect determination that H.B.1900’s original purpose was “to address subjects regulated by the Missouri Ethics Commission.” L.F. 494. Once again, the State urges that the trial court’s finding of original purpose was too narrow, and asks this Court to find that the bill’s original purpose “related to regulating and

promoting the ethical conduct of lobbyists, officials and candidates.” Resp.Br. at 54.<sup>6</sup> The characterizations of both the trial court and the State are excessively general (*see supra*, Section II) and neither is supported by the original title ("relating to campaign finance") or the original content of H.B.1900. *See* App.Br. at 41-44. H.B.1900 has always contained multiple subjects. They cannot be combined into a single, original purpose without violating other provisions of the Constitution. The State’s argument adds nothing to the analysis. The trial court’s finding should be reversed, and the State’s position should be rejected.

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

The question as to severability is whether a central purpose of H.B.1900 can be identified and isolated from its remainder, or whether the legislature would not have passed the part remaining had it known that the other part would be held invalid. *See*

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<sup>6</sup> Again, the State does not identify the trial court’s interpretation as an error in its Point Relied On (*see* Resp.Br. at Point III), and again has not properly presented this issue for review as required by Rule 84.04. *Kierst*, 965 S.W.2d at 939 n.4.

*Missouri Ass'n of Club Executives*, 208 S.W.3d at 889; *City of Charleston v. McCutcheon*, 227 S.W.2d 736, 740 (Mo. 1950); *State on Inf. of McKittrick v. Cameron*, 117 S.W.2d 1078, 1082 (Mo. 1938). As measured by its earliest title and contents, H.B.1900 had at least two subjects, neither of which can be isolated as the central purpose. App.Br. at 45-46. H.B.1900 must fall as a whole.

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

When the trial court found that the black-out period in Section 130.032.2 violated free speech rights, it should have stricken the repeal and enactment of Section 130.032 in its entirety.<sup>7</sup> See Mo. Rev. Stat. §1.140; *State v. Neill*, 78 S.W.3d 140, 143 (Mo. banc 2002); *Missouri Ins. Co. v. Morris*, 255 S.W.2d 781, 782 (Mo. banc 1953);

The State argues first that had the legislature intended for the sections and subsections of Section 130.032 to be non-severable, it could have included a non-severability clause in the statute. Resp.Br. at 61. This argument is a non-starter. The lack of a severability clause in an enactment is accorded no significance. *Barhorst v. City*

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<sup>7</sup> The State does not appeal the trial court's decision that H.B.1900's black out period violated the First Amendment to the United States Constitution.

*of St. Louis*, 423 S.W.2d 843, 851 (Mo. banc 1967)(citing Section 1.140). Just as the lack of a severability clause in any given statute does not indicate a legislative intent that the statute be non-severable, the lack of a non-severability clause does not mean that the legislature intends that the statute be severable.

Where the legislature wants to make a special point that provisions of a particular statute are intended to be severable or non-severable, it can do so. *See, e.g.*, Mo. Rev. Stat. §105.711.9 (legal expense fund rulemaking). But the lack of such a special provision cannot be viewed as indicative of the legislature's intention. Were it otherwise, the legislature would be forced to affirmatively state its intention in each and every statute rather than rely on the standard in Section 1.140. The legislature is presumed to know its own severability statute. *General Motors Corp.*, 981 S.W.2d at 568. The standard for determining severability of a statute or portions of a statute, as articulated in §1.140, is clear:

The provisions of every statute are severable. If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid unless the court finds 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.

The State argues that the General Assembly would have abolished campaign contribution limits even in the absence of the unconstitutional black-out period. To adopt this argument, the Court must find that the General Assembly intended to undo previous efforts at campaign finance reform, and to take Missouri back to the time before campaign finance reform measures were first enacted.

The State's rationale is that an increase in contribution limits is comparable to a total elimination of limits, and because H.B.1900 as introduced had no black-out period but did increase contribution limits, this shows the legislature's comfort with no black-out period in combination with no limits whatsoever. Resp.Br. at 64. But raising contribution limits is not equivalent to the complete elimination of campaign finance limits. The State is comparing apples to oranges. An increase of contribution limits to a stated cap is vastly different than removing contribution limits altogether, which gives candidates the ability to solicit and accept huge sums of money from a single contributor. Moreover, the legislative proceedings concerning H.B.1900 make clear that the legislature would not eliminate contribution limits completely, but were willing to consider such a drastic move only if the period to accept contributions was limited.

Legislative intent can be ascertained from "the proceedings of the legislature in reference to the passage of an act." *Ex Parte Helton*, 93 S.W. 913, 915 (Mo.App. 1906)(citing 2 Sutherland on Construction of Statutes, §470); *accord State ex rel. Danforth v. European Health Spa, Inc.*, 611 S.W.2d 259, 264 (Mo.App. 1980). The official journals, original bill and amendments may be referred to. *European Health Spa*, 611 S.W.2d at 264. "Amendments made or proposed and defeated may also throw light

on the construction of the act as finally passed and may properly be taken into consideration.” *Helton*, 93 S.W. at 915 (quoting Sutherland at §470).

The House removed all campaign contribution changes from the H.C.S.H.B.1900, which was perfected without amendments. L.F. 280-303. So the bill went to the Senate without any changes to Section 130.032 and monetary contribution limits intact.

S.S.H.C.S.H.B.1900 was offered and adopted on the senate floor. L.F. 443.

S.S.H.C.S.H.B.1900 included a black-out period and eliminated campaign contribution limits. L.F. 304-06, 351-55. On the floor, a senator offered Senate Amendment No. 1 to strike the black-out period from the bill. The effect of that amendment would have been to allow unlimited contributions without any time limit, -- the very result of the trial court’s decision, which the State says the legislature would have intended. But the motion failed. L.F. 443. As such, the body of the Senate refused to remove campaign contribution limits without also imposing the black-out period.

The bill went on to conference committee and the House and Senate passed the bill without any changes from the senate substitute version of the changes to Section 130.032. *Cf.* L.F. 356-60 and L.F. 411-13. This history demonstrates the legislative intent that the removal of limits and the black-out period be coterminous. The Senate’s intention is clear from the rejection of Senate Amendment No. 1. The House’s intention is evident by its removal of any changes to the contribution limits from the introduced version (that decision being in the version sent to the Senate), and in the adoption of the removal/blackout period combination in C.C.S.S.S.H.C.S.H.B. 1900. As this legislative history reveals, the campaign contribution limits would not have been repealed without

the black-out period also being enacted. The trial court erred in finding H.B.1900's enactment of subsection 2 of Section 130.032 severable from H.B.1900's repeal of subsections 1 through 7 of Section 130.032.

**CONCLUSION**

For all the reasons addressed herein and in Appellant's opening brief, the judgment of the trial court should be reversed, H.B.1900 should be declared in violation of the Missouri Constitution and invalid as a whole. Alternatively, this Court should find that the provisions of Section 130.032 (as reenacted by H.B.1900) which have been found unconstitutional, may not be severed from the remainder of Section 130.032. All of the newly enacted Section 130.032 is unconstitutional, returning that section to its pre-H.B.1900 form.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

The undersigned counsel hereby certifies that pursuant to Mo. S. Ct. Rule 84.06(c), this brief: (1) contains the information required by Mo. S. Ct. Rule 55.03; (2) complies with the limitations in Mo. S. Ct. Rule 84.06(b); and (3) contains 9,957 words, exclusive of the sections exempted by Mo. S. Ct. Rule 84.06(b), determined using the word count program in Microsoft Word 2003. The undersigned counsel further certifies that the accompanying floppy disk has been scanned and was found to be free of viruses.

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**CERTIFICATE OF SERVICE**

I certify that one hard copy of this brief and one copy on floppy disk, as required by Mo. S. Ct. Rule 84.06(g), were served by hand-delivery on this 11<sup>th</sup> day of June 2007, to:

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