

SC88476

IN THE SUPREME COURT OF MISSOURI

JAMES TROUT

Plaintiff/Appellant

vs.

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

Defendants/Respondents

**Appeal from the Circuit Court of Cole County, Missouri
The Honorable Richard G. Callahan**

**BRIEF FOR *AMICUS CURIAE* MISSOURI SOCIETY OF GOVERNMENTAL
CONSULTANTS IN SUPPORT OF APPELLANT TROUT**

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STATEMENT OF INTEREST

The Missouri Society of Governmental Consultants is a nonpartisan, not for profit entity which supports education, regulation and compliance training for professionals engaged in the profession of serving clients as governmental consultants. Many of the Society's members could fairly be described as lobbyists, while others are attorneys, public relations professionals or community organizers. The Society works with these Governmental Consultants to support proper and predictable regulation of the profession and to provide research and training to ensure proper compliance with applicable laws.

CONSENT OF THE PARTIES

James Trout and the State of Missouri Respondents/Cross Appellants have consented to the filing of this brief.

JURISDICTIONAL STATEMENT

The Missouri Society of Governmental Consultants adopts the jurisdictional statement of Appellant Trout.

STATEMENT OF FACTS

The Society adopts the statement of facts of Appellant Trout. In particular, this *amicus* brief will focus on the aspects of House Bill 1900 which created a new class of lobbyists and regulations related thereto. These provisions are found in sections 105.470, 105.473, 105.485, 105.957 and 105.959, RSMo Supp. 2006.

ARGUMENT

Appellant's brief provides a thorough analysis of the law concerning clear title requirements. *Amicus* Society supports and adopts these arguments and urges the Court to find that House Bill 1900's final title "relating to ethics" was not sufficiently clear to provide notice of what was contained in the bill itself. As such, House Bill 1900 was an unconstitutional act and it was not proper for the trial court to attempt to sever out various provisions of the bill.

But this *Amicus* brief is provided to the Court to address the issue of severability should this Court determine that a severability analysis is appropriate. In such a case, the Court should reverse the trial court's decision concerning the subject and original purpose of the bill and find that the provisions in the bill that were not related to the subject of campaign finance reform must be stricken.

As discussed in Appellant's brief, the original purpose analysis and the multiple subject analysis are similar endeavors. Both require the courts to first determine the original core purpose. In this case, House Bill 1900's original purpose was campaign finance.

An original purpose analysis under Article III section 21 of the Missouri Constitution requires the Court to begin with the bill as introduced in order to determine the bill's first purpose. *Missouri State Medical Ass'n v. Missouri Dep't of Health*, 39 S.W.3d 837, 839 (Mo. banc 2001)(citing *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 326 (Mo. banc 1997)). Although the constitution does not require that a bill's original purpose be stated anywhere, including in the title of the bill, *Missouri State Medical*

Ass'n, 39 S.W.3d at 839, it is appropriate to look at the title of the bill as introduced in conducting the original purpose analysis, *see Stroh Brewery*, 954 S.W.2d at 326. The original title of House Bill 1900 was “relating to campaign finance.” Although the bill did contain a minor second subject in that it amended Chapter 105, RSMo, changing the way lobbyists report expenses for caucuses of the General Assembly, a fair reading of the bill reveals that its original title was an accurate expression of its purpose and therefore that the bill’s original purpose was campaign finance.

A multiple subject analysis under Article III section 23 of the Missouri Constitution is similar. “A single ‘subject’ can include ‘all matters that fall within or reasonably relate to the general core purpose of the proposed legislation.’” *Rizzo v. State*, 189 S.W.3d 576, 579 (Mo. banc 2006)(quoting *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994)). The analysis therefore begins with determining the general core purpose, but looks at the legislation as finally enacted. To the extent the bill’s original purpose is expressed in the title, the Court need not look beyond the title to determine the subject of the bill. *Hammerschmidt* 877 S.W.2d at 102. As already set forth above, a reading of the bill makes clear that the title as introduced “relating to campaign finance” was the original purpose; therefore, campaign finance is also the subject of the bill. As finally enacted, House Bill 1900 enacted sixteen sections into law. Of those sixteen sections, nine are easily identified as dealing with campaign finance (seven sections in Chapter 130, RSMo; section 105.963, RSMo, dealing with fines imposed on those who operate campaign committees; and Section 1 which had to do with political phone solicitations). Six sections dealt with regulation of lobbyists and lobbying

activities and have no connection whatsoever to the financing of political campaigns. There is no way to analyze House Bill 1900 on a qualitative basis as there is no way to amass competent evidence on the intent of a legislature made up of so many different individuals with so many different interests. *See Commerce Bank of Kansas City, N.A. v. Missouri Div. of Finance*, 762 S.W.2d 431, 435 (Mo.App.W.D. 1988)(“Statements of representatives concerning the intention of the statute, although entitled to some weight where they are consistent with the statute and other legislative history, are not controlling in determining legislative intent.”); *see also Lute v. Missouri Bd. of Probation and Parole*, No. SC88026, slip op. at n.5 (Mo. banc April 17, 2007)(a governor’s affidavit is appropriate to discern his intent as to commutations but legislators’ affidavits “are not admissible to show legislative intent because an affidavit from a legislator only reflects the intent of one legislator out of 197 that voted on a particular bill”). All we are left with is a quantitative analysis which reveals that the majority of the sections dealt with campaign finance, which supports that the original title expressed the single subject.

Regardless of whether the court looks to the original title of House Bill 1900 or the majority of its text, campaign finance and lobbying are two distinct subjects that may not be included in the same piece of legislation. Indeed, a comparison of Chapter 105’s provisions concerning lobbying activity and Chapter 130’s provisions on campaign finance reveal that those chapters contain two very distinct subjects. This brief will not detail all of the specific requirements on lobbying activity that are separate and distinct from campaign finance activity. Perhaps the simplest point to make is that there are no sections of Missouri law which regulate lobbyist campaign finance or campaign finance

lobbying. One of the clearest examples of the bright line between lobbying activity and campaign activity is found in the treatment of expenditures. The definition of lobbying expenditure and the definition of a campaign contribution are in many ways similar. Both definitions use the terms “payment” “gift” and “loan.” § 105.470.3 and §130.011(12), RSMo, but those definitions are included in different chapters of the statutes and the legislature has drawn a clear distinction between the two. A lobbying expenditure may include a “gift” or “payment,” but as a matter of law a “gift” or “payment” that is a campaign contribution is not a “lobbying expenditure.” § 105.470.3, RSMo. Nor would a lobbying expenditure ever be considered a campaign contribution because it may be made in lobbying an official who is not even elected to office and therefore cannot be made in support of a campaign, *i.e.*, judicial lobbying activity. This is but one example of the ways in which the legislature has made clear that lobbying activities are not campaign finance activities. Once the legislature has drawn that distinction and established lobbying and campaign finance as two separate subjects, it cannot later include those two subjects in the same legislation. They must be dealt with in separate bills.

As well-articulated in Appellant Trout’s brief, the constitutional provisions at issue in this case serve, among other things, to ensure that legislators and the public had proper notice of legislation pending in the General Assembly. As stated in Appellant’s brief, these provisions were intended to address the problem of “designing men insert[ing] clauses in the bodies of bills, of the true meaning of which the titles gave no indication.” *City of St. Louis v. Tiefel*, 42 Mo. 578, 590 (Mo. 1868). House Bill 1900 did

not put people on notice that lobbying provisions were included in the bill. And not every lobbyist would have reason to review a bill titled “relating to campaign finance.” Many lobbyists work for nonprofit organizations that qualify as 26 U.S.C. § 501(c)(3) tax-exempt organizations. These organizations can lobby within the restrictions of 26 U.S.C. §501(h) but are absolutely prohibited from participating in candidate campaigns, 26 U.S.C. §501(c)(3). Also, there are contract lobbyists who themselves may not make campaign contributions even though their clients might. Because of this, many who are lobbyists or who are interested in following legislation relating to lobbyists, would not have known that House Bill 1900 contained provisions regarding lobbying and would not have another reason to have looked at the bill. This is precisely the situation the constitutional limitations at issue in this case were intended to address.

The trial court erred when it found that House Bill 1900 had an original purpose and single subject that included the two distinct subjects of lobbying and campaign finance. Such a holding is simply a legal impossibility that must be overturned. Once that conclusion is reached, this Court must find that – to the extent House Bill 1900 had a single original purpose and subject at all – that purpose was campaign finance reform. Any of House Bill 1900’s purported attempts to address statutes that were not related to campaign finance were unconstitutional. As such this Court should declare that all of House Bill 1900’s revisions to Chapter 105, RSMo, (except the revision to 105.963, RSMo) are void and unenforceable.

CONCLUSION

Amicus respectfully requests this Court overrule the trial court's judgment as set forth in Appellant's brief and herein.

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 1,837 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.

Attorney for *Amicus* Missouri Society of
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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 4th day of May 2007, to:

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