
Case No. SC88476

IN THE
SUPREME COURT OF MISSOURI

James Trout,

Appellant/Cross-Respondent,

v.

State of Missouri, the Missouri Ethics Commission, and its
Commissioners, Warren Nieburg, Michael Dunard, Robert Simpson,
Brad Mitchell, John King, and Michael Kilgore,

Respondents/Cross-Appellants.

Appeal from the Circuit Court of Cole County, Missouri
The Honorable Richard Callahan, Judge

Respondents'/Cross-Appellants' Brief

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Jurisdictional Statement

This case involves procedural challenges to the validity of HB1900, brought under MO. CONST. art. III, §§21 and 23. Among other things, the trial court severed two statutes enacted by the bill – MO. REV. STAT. §115.342 (Supp. 2006) (disqualifying persons who are delinquent on certain taxes from running for office) and MO. REV. STAT. §115.350 (Supp. 2006) (disqualifying felons from running for office) – under multiple-subject and change-in-original purpose theories, and enjoined their enforcement.

Because the validity of Missouri statutes is at issue, this Court has original appellate jurisdiction. MO. CONST. art. V, §3.

Statement of Facts

The facts are simple and undisputed. LF 489.

House Bill 1900 was introduced by Representative Tom Dempsey and read for the first time on February 28, 2006. LF 489; LF 233-279 (Exhibit 1, HB 1900).

On April 18, 2006, the Missouri House of Representatives took up and adopted, or perfected, HCS HB 1900. LF 490; LF 280-303 (Exhibit 2, HCS HB 1900).

The Senate took up HCS HB 1900 on May 10, 2006 and a Senate Substitute (SS HCS HB 1900) was offered. LF 490; LF 304-381 (Exhibit 3, SS HCS HB 1900); LF 425-487 (Exhibit D, Senate Journal).

Once SS HCS HB 1900 was adopted, the House refused to concur and the two Houses agreed to a conference on the bill. LF 491. A conference committee report, CCS SS HCS HB 1900, was truly agreed to and finally passed by the General Assembly on May 11, 2006. *Id.* Governor Matt Blunt signed CCS SS HCS HB 1900 on July 12, 2006. *Id.*; LF 382-420 (Exhibit 4, CCS SS HCS HB 1900).

James Trout, who intends to be a candidate for the General Assembly in 2008, LF 489-490, filed a three-count petition below, primarily seeking invalidation of the bill in its entirety by way of a procedural challenge to the bill's passage under MO. CONST. art. III, §§ 21 and 23, LF 5-13. He named as defendants the State of Missouri,

the Missouri Ethics Commission, and the Commissioners, in their official capacities.

LF 5-6.¹

The trial court rejected his clear-title challenge, in which he claimed that the title of the bill was amorphous and overly broad. LF 9, 491-494. The trial court partially sustained his change-in-purpose and multiple-subject challenges, severing §115.342 (disqualifying persons who are delinquent on certain taxes from running for office), and §115.350 (disqualifying felons from running for office) from HB1900, and enjoining their enforcement. LF 9-10, 494-496.

The trial court sustained his Count II, First Amendment challenge to §130.032.2, which prohibits candidates for statewide office, state representative, or state senator from accepting contributions during legislative session. LF 10-12, 496-498. The court enjoined enforcement of §130.032.2. LF 499.

Finally, the trial court rejected his Count III, equal protection and candidate qualifications challenge to §115.342 (the delinquent taxpayer provision), because Mr. Trout lacked standing. LF 12-13, 498-499.

¹ The defendants, who are the respondents/cross-appellants in this appeal, will be referred to collectively as the State.

Both sides appealed. LF 501, 522.²

² The State will use “HB1900” herein to refer to the bill, as enacted, unless otherwise specified.

Respondents'/Cross-Appellants' Points Relied On

II. The trial court erred in severing §115.342 (disqualifying persons who are delinquent on certain taxes from running for office) and §115.350 (disqualifying felons from running for office) from HB1900 for a multiple-subject violation of MO. CONST. art. III, §23, because the sections fall within or are fairly related to its general, core purpose. All sections of HB1900 fall within or are fairly related to regulating and promoting the ethical conduct of lobbyists, officials, and candidates. *[Also responds to Appellant's Point II and, in part, Point III.]*

Missouri State Medical Ass'n v. Missouri Dept. of Health,

39 S.W.3d 837 (Mo. 2001) (en banc)

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

Etling v. Westport Heating & Cooling Sys., Inc., 92 S.W.3d 771

(Mo. 2003) (en banc)

MO. CONST. art. III, §23

MO. REV. STAT. §1.140 (2000)

III. The trial court erred in severing §115.342 (disqualifying persons who are delinquent on certain taxes from running for office) and §115.350 (disqualifying felons from running for office) from HB1900 for a MO. CONST. art. III, §21 change-in-purpose violation, because the sections are germane to its original, general purpose. In its passage, the bill maintained its original, general purpose of regulating and promoting the ethical conduct of lobbyists, officials, and candidates. [Also responds to Appellant's Points IV and V.]

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

City of St. Charles v. State, 165 S.W.3d 149 (Mo. 2005) (en banc)

Missouri State Medical Ass'n v. Missouri Dept. of Health,

39 S.W.3d 837 (Mo. 2001) (en banc)

MO. CONST. art. III, §21

MO. REV. STAT. §1.140 (2000)

Argument

I. The bill's title was clear and not overly inclusive. [*Responds to Appellant's Point I and, in part, to Point III.*]

Clear-title challenges generally fail, for good reason: Challengers bear an extremely heavy burden of proof, and the clear-title standard is not exacting. A title may be a broad umbrella, and need only indicate in a general way the kind of legislation that was being enacted.

While the State disagrees in some respects with the trial court's legal analysis of Mr. Trout's clear-title challenge here, the State agrees with the trial court's rejection of the challenge. The bill's title was more than sufficient.

A. The standard of review and Mr. Trout's heavy burden of proof.

When the issue is the constitutionality of a statute, this Court's review is *de novo*. *Rizzo v. State*, 189 S.W.3d 576, 578 (Mo. 2006)(en banc).

Mr. Trout, the statute's challenger, bore the burden of proof below. *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 5 (Mo. 1984) (en banc). And it was "an extremely heavy burden." *Linton v. Missouri Veterinary Medical Board*, 988 S.W.2d 513, 515 (Mo. 1999) (en banc) (citations omitted). "Laws enacted by the legislature and approved by the governor have a strong presumption of constitutionality."

Missouri State Medical Ass'n v. Missouri Dept. of Health, 39 S.W.3d 837, 840 (Mo. 2001) (en banc).

To overcome the presumption, whether for purposes of his procedural challenges to the bill as a whole, or other constitutional challenges to portions of it, Mr. Trout had to show that the law “clearly and undoubtedly contravenes the constitution” and “plainly and palpably affronts fundamental law embodied in the constitution.” *Etling v. Westport Heating & Cooling Svs., Inc.*, 92 S.W.3d 771, 773 (Mo. 2003) (en banc).

Moreover, the “use of ... procedural limitations to attack the constitutionality of statutes is not favored.” *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 326 (Mo. 1997) (en banc). A court should “ascribe to the General Assembly the same good and praiseworthy motivations as inform[] [a court’s] decision-making process.” *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. 1994) (en banc). Therefore, a court must interpret “procedural limitations liberally and ... uphold the constitutionality of a statute against such an attack unless the act clearly and undoubtedly violates the constitutional limitation.” *Id.*

B. The bill's title comports with Article III, § 23.

For purposes of an Article III, §23 clear-title challenge, a court considers only the enacted version of the bill. *Missouri State Medical Ass'n*, 39 S.W.3d at 841. The title of HB1900, as enacted, was:

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

LF 384. The title amply meets the Article III, § 23 threshold.

Article III, §23 imposes two procedural limitations – a single-subject rule and a clear-title rule. *C.C. Dillon v. City of Eureka*, 12 S.W.3d 322, 328 (Mo. 2000) (en banc). These limitations are distinct but related, because, in the words of the provision, a bill's single "subject ... shall be clearly expressed in its title." And the words in a title are not construed in a hyper-technical manner, but in their "plain and ordinary sense." *Missouri State Med. Ass'n*, 39 S.W.3d at 841. See also *Corvera Abatement Technologies, Inc. v. Air Conservation Com'n*, 973 S.W.2d 851, 862 (Mo. 1998)(en banc) (en banc) (same); *Stroh*, 954 S.W.2d at 326 (same). Thus, "[i]f alternative readings

exist, this Court chooses the reading that is constitutional.” *Id.* Mo. Const. Art. III, §23.

The purpose of the clear-title provision is to keep “legislators and the public fairly apprised of the subject matter of pending laws.” *Home Builders Ass’n v. State*, 75 S.W.3d 267, 269-270, 271 (Mo. 2002) (en banc) (internal quotations omitted); *McEuen v. Mo. State Bd. of Educ.*, 120 S.W.3d 207, 210-211 (Mo. 2003) (en banc). To accomplish its purpose, then, a title need only “indicate in a general way the kind of legislation that was being enacted.” *Fust v. Attorney General*, 947 S.W.2d 424, 429 (Mo. 1997) (en banc). *See also Blue Cross Hospital Svc., Inc. v. Frappier*, 681 S.W.2d 925, 929 (Mo. 1984) (en banc) (en banc) (clear title requirement “is satisfied if the title is sufficient to alert persons interested in the subject matter”).

Thus, Article III, § 23 permits broad titles. When a bill has “multiple and diverse topics” within a single, overarching subject, that subject may be “clearly expressed by ... stating some broad umbrella category that includes all the topics within its cover.” *Missouri State Med. Ass’n*, 39 S.W.3d at 841. *C.f. Westin*, 664 S.W.2d at 7 (title, “fees relating to the Division of Health,” was sufficiently and permissibly broad to cover amendments to four chapters).

The corollary to the permissibility of a broad, umbrella category is that a “title may omit particular details of the bill, so long as neither the legislature nor the public was misled.” *Id.* See also *Fust*, 947 S.W.2d at 429 (“The title need not describe every detail contained in the bill.”); *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 39 (Mo. 1982) (en banc) (“Mere generality of title will not prevent the act from being valid, where the title does not tend to cover up or obscure legislation which is itself incongruous and has not necessary or proper connection with the rest of the act.”).

In a related vein, the court has “consistently approved” titles that were expanded from their original versions, so as “to reflect the commonality of all the subjects contained” in a bill, and “accommodate amendments to a bill.” *Nat’l Solid Waste Mgmt. Assoc., Inc. v. Director of the Dep’t of Natural Resources*, 964 S.W.2d 818, 821 (Mo. 1998) (en banc). *C.f.* *Lincoln Credit*, 636 S.W.2d at 38 (title of original bill “rightly changed to reflect the real scope of subject matter in” bill).

In short, if a title is neither under-inclusive, nor so broad and amorphous as to lack meaning, then the clear-title rule is satisfied. *Home Builders*, 75 S.W.3d at 270.

* * * * *

As noted above, this Court routinely rejects clear-title challenges. In *Brown-Forman Distillers Corp. v. McHenry*, 566 S.W.2d 194, 198 (Mo. 1978) (en banc), the

Court approved what it described as a “very broad and general title,” relating to “certain merchandising practices.” The title was sufficiently indicative of the subject of the act. *Id.*

In *Missouri State Medical Association*, 39 S.W.3d at 841, the Court found no clear-title violation in a bill broadly titled “relating to health services.”

The Court likewise approved the title of a bill “relating to environmental control” in *Corvera Abatement Tech. v. Air Conservation Comm’n*, 973 S.W.2d 851, 861-62 (Mo. 1998) (en banc). The bill included substantive provisions directly regulating environmental hazards, and administrative provisions allowing for enforcement of those, and other, provisions to protect the environment. *Id.*

The Court held that the title “relating to transportation” comported with the clear-title rule in *C.C. Dillon*, 12 S.W.3d at 329-330.

In *St. John’s Mercy Health Care v. Neill*, 95 S.W.3d 103, 106 (Mo. 2003) (en banc), the Court examined a title that listed the repeal of virtually all sections of Chapter 355, stated that the bill related to “general not for profit corporations, and reinstatement of other corporations,” and contained one section not found in chapter 355. The Court had little trouble finding that the bill complied with the clear-title rule, despite its seeming breadth:

Those reading the title to House Bill 1095 would recognize that the bill purports to substantially revise chapter 355, which relates to not-for-profit corporations. Under these circumstances, the title indicates the general contents of the act, is not so obscure and amorphous as to tend to cover up the contents of the act, and is valid.

Id.

The Court has occasionally found titles over-inclusive or amorphous. For example, in *St. Louis Health Care Network v. State*, 968 S.W.2d 145, 147 (Mo. 1998) (en banc), the Court found a violation where a bill's title identified the subject as "relating to certain incorporated and non-incorporated entities." The phrase "incorporated and non-incorporated entities" could "refer to anything." *Id.*

And in *Home Builders*, the Court concluded that the title "relating to property ownership" was not a clear title for a bill that included provisions concerning such far-flung topics as

removal of persons from participation in public water supply districts because of the district's failure to provide services; establishing a fund to promote marketing of

agricultural products, tax credits for research expenses to be applied against income taxes or taxes on financial institutions; the Missouri Title Insurance Act...; and joint contracting of local districts to form municipal utility commissions that can purchase fuels and personal as well as real property.

75 S.W.3d at 271-72 (internal citations omitted). As to “*this* legislation,” the Court concluded, the phrase “relating to property ownership” was not clear, because it could “describe the contents of the bill only by interpreting the phrase ‘relating to property ownership’ so broadly that it obscure[d] the contents of the act.” 75 S.W.3d at 272 (internal quotations omitted) (emphasis in original).³

³ While *Carmack* was not a clear-title case, the Supreme Court in *Home Builders*, 75 S.W.3d at 270 n.1, looked to *Carmack*’s single-subject discussion as useful in clear-title analysis. In *Carmack*, the Court held that the title “relating to economic development” violated the single-subject mandate because the bill’s contents swept “within its meaning any direct or indirect benefit that flows to the state’s economy,” rather than being limited to programs of the department of economic development,

* * * * *

Here, the descriptive portion of HB1900's title – "relating to ethics" – is not misleading or deceptive. In the plain and ordinary sense, "ethics" means "the principles of conduct of individuals or a profession: standards of behavior." WEBSTER'S 3RD NEW INTERNAT'L DICTIONARY, UNABRIDGED, at 780 (1993). That is precisely what HB1900 pertains to: regulation of the conduct governing individuals or a profession – lobbyists, officials, and candidates – and addressing their standards of behavior. The word choice is entirely accurate.

Nor is the title amorphous or overly broad. It does not describe virtually all legislation passed by the General Assembly, nor include nearly every activity that the State undertakes. At most, it is a permissibly broad umbrella category, that "indicates in a general way the kind of legislation that was being enacted." It is no more broad than descriptive portions of titles – "certain merchandising practices," "relating to health services," "relating to environmental control," "relating to transportation," and "general not for profit corporations, and reinstatement of other corporations" – approved in the cases discussed above, *Brown-Forman Distillers*, 566

or some other single subject. 945 S.W.2d at 960.

S.W.2d at 198; *Missouri State Medical Association*, 39 S.W.3d at 841; *Corvera*, 973 S.W.2d at 861-62; *C.C. Dillon*, 12 S.W.3d at 329-330; and *St. John's*, 95 S.W.3d at 106, respectively.

Moreover, the Senate Journal entry in evidence affirmatively demonstrates that the members were mindful of the procedural limitations under which they labored. Amendments were offered, addressing the director of revenue's authority to appoint agents, and the bidding process for revenue fee office contracts. LF 450-452 (Exhibit D, Journal of Senate, pp. 1244-1246). A senator raised a point of order, on the grounds that "both amendments go beyond the scope and purpose of the original bill." LF 452. Those amendments were not added. *Id.* Similarly, a different amendment addressing the director of revenue's authority to appoint agents, with the advice and consent of the senate, was rejected after a senator raised a point of order that the amendment "goes beyond the title and scope of the bill." LF 454.

In a related vein, the absence of a constitutional objection, MO. CONST. art. III, §30, also lends support to the propriety of the passage of the bill. *C.f. Allied Mut. Ins. Co. v. Bell*, 185 S.W.4 (Mo. 1945) (en banc) (though of limited weight, lack of protest or objection may be persuasive).

To define “ethics,” Mr. Trout also turns to the dictionary but eschews the definition, set out above, that squarely supports constitutionality, and instead plucks out more general concepts. Appellant’s Brief, p. 25. Then he bootstraps those general concepts to the definition of “law,” *id.*, at p. 26, a word that the legislature did not use in the narrative portion of its title for HB1900. Of course, whether a title that uses the word “law” in its narrative description of a bill can pass muster under Article III, §23 is not at issue here.

And of course, Mr. Trout’s approach is precisely the opposite of the approach that this Court must take in assessing the constitutionality of a measure: The Court cannot search out an unconstitutional definition or reading, as Mr. Trout does. Rather, the Court must endeavor to apply a definition that supports constitutionality. *Missouri State Medical Ass’n*, 39 S.W.3d at 841 (“If alternative readings exist, this Court chooses the reading that is constitutional.”), *citing Stroh*, 954 S.W.2d at 326.

Mr. Trout also suggests that an interested reader, *e.g.*, a legislator, could not be expected to know that laws “relating to ethics” would relate to the ethical conduct of lobbyists, officials, and candidates. But laws regulating the conduct of such persons are primarily organized in but three, aptly named and composed chapters of the

Missouri Revised Statutes: Chapter 105, “Public Officers and Employees – Miscellaneous Provisions,” which includes the sections relating to conflict of interest and lobbying, and the Ethics Commission; Chapter 115, “Election Authorities and the Conduct of Elections”; and Chapter 130, “Campaign Finance Disclosure Law.”

Indeed, the inter-relationship of the three chapters is well manifested by the authority vested in the Ethics Commission under MO. REV. STAT. §105.957 (2000 and Supp. 2006), to receive complaints relating to lobbyist conduct; financial interest disclosures; campaign finance disclosures; codes of conduct promulgated by any department, division or agency of state government, or state institutions of higher education, or executive order; conflict of interest laws; and laws relating to the official conduct of officials or employees of the state and political subdivisions. The legislature echoed that inter-relationship in enacting the provision prohibiting tax delinquents from being candidates, §115.342, which is analogous to a provision in Chapter 105 prohibiting the candidacy of persons who do not file their financial disclosure statements, MO. REV. STAT. §105.492.2 (2000).

Thus any bill title that includes a description of a bill as “relating to ethics” should immediately cue the interested reader to that area of the law, rather than divert or confuse the reader.

Mr. Trout even lists, “A-Z”, professions with codes of conduct. Appellant’s Brief, pp. 25-26. But his list proves too much. The title of HB1900 is more than the narrative description on which Mr. Trout focuses. It also cites the sections of law – located in Chapters 105 and 130 – being repealed. LF 384. Mr. Trout’s cited statutes are conspicuously absent. Had HB1900 affected the profusion of chapters, “A-Z,” that Mr. Trout lists, it might have been more akin to the bill struck in *Home Builders*, 75 S.W.3d at 271-72, which involved 70 amendments to 15 chapters. But HB1900 was relatively limited.

And HB1900’s specific statutory references *support* clarity of the title. In recent years, the Court has not routinely addressed whether statutory citations within a title can support a clear-title holding. In *St. Louis Health Care*, 968 S.W.2d at 148, the Court held that it “need not determine [that] broad question.” *Id.* But under the facts there presented, “[e]ven considering the [statutory] sections listed in the [bill’s] title,” along with the narrative description – “relating to certain incorporated and unincorporated entities” – the title obscured the contents of the bill. *Id.* at 148-149. In other words, the listed sections referred to such a profusion of “entities” that “no single subject could be discerned” even considering the specified sections. *Id.* at 149.

There is a significant, albeit older, line of case law in which the Court held that specific statutory references do support clarity of title. For example, in *State ex rel. Faust v. Thomas*, 282 S.W. 34, 36 (Mo. 1926) (en banc), the Court examined a title that offered little description beyond citation to the affected statutes:

An act to repeal section 5089 of article 15 of chapter 30 of the Revised Statutes Missouri 1919, relating to registration in cities with 25,000 and less than 100,000 inhabitants, and enacting in lieu thereof a new section relating to the same subject-matter, to be known as section 5089.

The Court explained that the clear-title provision of the Constitution “should be wisely and liberally construed so as not to thwart the efficiency of salutary legislation.” *Id.* And unless a title “fails to clearly indicate the legislative will,” the Court would approve it. *Id.* In that context, the Court noted, it had

frequently held that a numerical reference to the section sought to be amended without a statement of the subject-matter of the amendatory act is a sufficient title to an act which deals exclusively with the subject of the section to be amended.

Id., citing *State v. Mullinix*, 257 S.W. 121, 301 (Mo. 1924). Thus, the Court upheld the challenged title there. *Id.* See also *State ex rel. Consol. Sch. Dist. No. 3 v. Miller*, 33 S.W.2d 122 (Mo. 1930) (en banc)(numerical reference to section sought to be amended without statement of subject matter of amendment was sufficient title to act that dealt exclusively with subject of section to be amended); *St. Francis Levee Dist. v. Dorroh*, 289 S.W. 925 (Mo. 1927) (same); *State ex rel. Halsey v. Clayton*, 126 S.W. 506 (Mo. 1910)(same); *State ex rel. Town of Kirkwood v. Hegee*, 36 S.W. 614 (Mo. 1896)(same).

The point is, if statutory citation of the affected section, without a description of any sort, can compose a sufficiently clear title, there is no reason to ignore statutory citations when a title includes both statutory citations and a narrative description. More fundamentally, there is no reason to ignore *any* portion of a bill's title in favor of another portion – all portions are expressions of the legislative will. The defendants agree with Mr. Trout that a court cannot effectively “rewrite” a bill's title. Appellant's Brief, p. 28. But Mr. Trout fails to appreciate that to ignore portions of a title is, indeed, to effectively “rewrite” it.

Inconsistent with his over-breadth theory, Mr. Trout also argues that the title omits something. That is, he complains that the title does not cite the new sections

that the bill enacts “in replacement of” the repealed sections of Chapters 105 and 130. Appellant’s Brief, pp. 30-31. He is wrong in two ways. First, the title states that the bill repeals certain specified sections, and “enact[s] in lieu thereof sixteen new sections relating to ethics.” LF 384. “In lieu thereof,” or “in lieu of,” does not limit the bill to measure-for-measure replacements. The phrase is more general and simply signifies that new sections are being enacted “instead of” those repealed. See WEBSTER’S 3RD NEW INTERNAT’L DICTIONARY, UNABRIDGED, at 1306 (1993) (defining “in lieu” as “instead”; defining “in lieu of” as “in the place of: instead of”).

And second, Article III, §23 does not require a title to list the sections enacted at all. For example, in *St. John’s Mercy Health Care*, 95 S.W.3d at 106, the narrative portion of the bill’s title stated that bill related to “general not for profit corporations, and reinstatement of other corporations.” The title also listed the repeal of most sections of Chapter 355, but did not cite the provisions to be enacted by the bill, which included one section not found in Chapter 355, *i.e.*, disclosures by charitable organizations, located in Chapter 407. *Id.* at 106 n.1. The Court easily rejected a clear-title challenge, holding that “the title indicates the general contents of the act, [and] is not so obscure and amorphous as to tend to cover up the contents of the act[.]” *Id.* at 106.

But even if the bill were limited by its “in lieu thereof” language, as Mr. Trout suggests, that reading does not yield the result that he desires (striking the entire bill), only striking the portions not contained in Chapters 105 and 130, which is what the trial court did. *See* Section I.C., below (discussing severability).

The bill had a clear title. The trial court reached the correct result in rejecting Mr. Trout’s challenge in this respect.

C. Mr. Trout misstates the severability analysis, in any event.

Because the clear-title challenge fails, the Court need not reach Mr. Trout’s severability analysis, Appellant’s Point III, with regard to that challenge at all. But if the Court did, Mr. Trout’s argument – that the whole bill would have to be struck – still fails, for a few reasons.

By law, the “provisions of every statute are severable.” MO. REV. STAT. §1.140 (2000). HB 1900 does not itself provide to the contrary. Therefore, even if this Court were to find the bill’s title over-inclusive, §1.140 directs that the Court endeavor to preserve so much of the bill as it can, “unless the court finds the valid provisions ... 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.”

Admittedly, an over-inclusive title “normally” leads to invalidation of the entire bill “because 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*, 968 S.W.2d at 147-149. And in both *Home Builders* and *St. Louis Health Care*, the appellants did not appear even to have offered any argument as to how the Court could strike only a portion of the bills at issue.

The Court could do so here, applying the severability analyses that the trial court employed with regard to the multiple-subject and change-in-purpose theories. LF 494-496. As discussed below, the trial court did not reach correct, let alone necessary, legal conclusions in that regard. In short, whether the trial court’s conclusions and remedies were logical, the court did not correctly apply the presumption of constitutionality to begin with. *E.g., Etling*, 92 S.W.3d at 773 (to fail on constitutional grounds, a law must “clearly and undoubtedly contravene the constitution” and “plainly and palpably affront [] fundamental law embodied in the constitution”).

But the trial court's reading would preserve the constitutionality of as much of the bill as possible, if this Court were to find a clear-title violation. And such a reading is what this Court must apply in such a scenario. *Missouri State Medical Ass'n*, 39 S.W.3d at 841 (court must choose reading of law that preserves constitutionality).

Mr. Trout drops a short footnote, Appellant's Brief, pp. 23-24 n.1, observing that the original version of Article III, §23 contained a "savings" clause: "No law enacted by the general assembly shall relate to more than one subject, and that shall be expressed in the title; but if any subject embraced in an act be not expressed in the title, such act shall be void only as to so much thereof as is not so expressed." MO. CONST. art. IV, §32 (1865). That version was in place for only ten years; it was amended in 1875 to delete the savings clause. MO. CONST. art. III, §28. Counsel has been unable to locate any discussion of the reason for the change in the constitutional debates or the case law. Whatever the reason, though, this Court proceeded, after the amendment and without fanfare, to void only provisions not expressed in the title, where appropriate. *E.g., Witzman v. So. Ry. Co.*, 33 S.W. 181 (Mo. 1895) (applying Article IV, §32, affirming trial court's decision to strike a section of law not expressed in title).

If the Court finds a clear-title violation, which it should not, the Court should sever provisions from the bill, rather than strike the bill in its entirety.

II. The trial court erred in severing §115.342 (disqualifying persons who are delinquent on certain taxes from running for office) and §115.350 (disqualifying felons from running for office) from HB1900 for a multiple-subject violation of MO. CONST. art. III, §23, because the sections fall within or are fairly related to its general, core purpose. All sections of HB1900 fall within or are fairly related to regulating and promoting the ethical conduct of lobbyists, officials, and candidates. [Also responds to Appellant's Point II and, in part, Point III.]

The trial court took too narrow a view of HB1900's general, core purpose, which was regulating and promoting the ethical conduct of lobbyists, officials, and candidates. The two provisions that the court severed, §115.342 (disqualifying tax delinquents from running for office) and §115.350 (disqualifying felons), were fairly related to that purpose. Indeed, the interested reader of the bill might be surprised to be told that the two provisions are not "related to ethics," as the phrase was used in HB1900's title.

The trial court's decision to strike and sever the two provisions must be reversed.

A. The standard of review and Mr. Trout's heavy burden of proof.

See Section I.A., above.

B. The bill had a single subject.

To determine whether a bill violates the single-subject rule, the test is “not whether individual provisions of a bill relate to each other ... [but] whether [the challenged provision] fairly relates to the subject described in the title of the bill, has a natural connection to the subject, or is a means to accomplish the law’s purpose.” *City of St. Charles v. State*, 165 S.W.3d 149, 151 (Mo. 2005) (en banc) . “Said another way, the subject of a bill, within the meaning of article III, section 23, ‘includes all matters that fall within or reasonably relate to the general core purpose of the proposed legislation.’” *Id.*, quoting *Hammerschmidt*, 877 S.W.2d at 102. “Whether a bill violates the single-subject requirement is a determination made as to the bill as finally passed.” *Stroh*, 954 S.W.2d at 327.

In one of this Court’s earliest single-subject cases, *Ewing v. Hoblitzelle*, 85 Mo. 64 (1884), the Court held that a bill concerning the registration of voters and the governing of elections did not contain two separate and distinct subjects of legislation. Rather, elections “fairly relate to the registration of voters, and have not only a material, but necessary connection with it.” *Id.*

More recently, the Court rejected a multiple-subject challenge in *Missouri Medical Association*, where the bill contained provisions relating to health insurance,

medical records, and pre-operative information on breast implants, HIV confidentiality, and insurance for treatment of mental illness and chemical dependency. 39 S.W.3d at 840-841. The Court held that the provisions were “(at least) incidents or means to” the purpose or subject of the bill as expressed in the title, *i.e.*, “health services.” *Id.*

In *Corvera*, 973 S.W.2d at 861-62, the bill included substantive provisions directly regulating environmental hazards, and administrative provisions allowing for enforcement of those, and other, provisions to protect the environment. The Court held that both types fairly related to environmental control, and were in fact necessary for effective environmental regulation; to conclude that substantive provisions and provisions that allow for their enforcement are “two separate subjects of legislation would unnecessarily restrict the legitimate legislative process.” *Id.*

The Court rejected a similar challenge in *City of St. Charles*, 165 S.W.3d at 151-152. A bill relating to the core subject of emergency services contained a single subject, though it also included a provision that prohibited tax-increment-financing districts in flood plains. *Id.* The Court held that while at first blush, the provision appeared unrelated, prohibiting TIFs in flood plains was fairly related to

discouraging development in flood plains, and thereby decreasing the need for the development of emergency services in such areas. *Id.* The Court also discussed *C.C. Dillon*, as an example of an analogous case. *Id.* at 152.

In *C.C. Dillon*, a bill “relating to transportation” permissibly included billboard regulation, and did not violate the single-subject prohibition. 12 S.W.3d at 329-330.

But in *Rizzo v. State*, 189 S.W.3d 576, 579-580 (Mo. banc 2006), a bill contained a provision beyond its core subject, “relating to political subdivisions.” The Court severed a more-expansive provision, one that related to candidacy for statewide elective office. *Id.*

Here, HB1900 contained a single subject: regulating and promoting the ethical conduct of lobbyists, officials, and candidates. All of its provisions are as fairly related thereto as the provisions in the analogous cases discussed above. Indeed, the provisions – affecting their various disclosure requirements, fundraising, and penalties for failure to comply with the law – are necessary components of the subject. This Court has had little difficulty upholding, against a multiple-subject challenge, a bill that effected both substantive and enforcement provisions. *Corvera*, 973 S.W.2d at 861-862.

Moreover, in the history of amendments to laws relating to regulating and promoting the ethical conduct of lobbyists, officials, and candidates, the legislature has in fact addressed Chapters 105, 115, and 130 together in at least two bills prior to 2006. *See* 1991 MO. LEGISL. SERV. S.B. 262 (Chapters 105 and 130); 1994 MO. LEGISL. SERV. S.B. 650 (Chapters 105, 115, and 130); 1995 MO. LEGISL. SERV. H.B. 484, 199 & 72 (Chapters 105, 115, and 130, among others). The now 15-year-old practice demonstrates the legislature's view of the inter-relationship between the chapters.⁴

⁴ Relatively recently, the federal government also passed the Ethics Reform Act of 1989, Pub. L. No. 101-194, 103 Stat. 1760 (1989). The Act's stated purpose was to restore public confidence in the integrity of governmental officials by promoting the highest professional and ethical standards in public service and reinforcing standards of public integrity within the federal government, "both in fact and in the public's perception." *See Nat'l Treas. Employees' Union v. U.S.*, 788 F. Supp. 4 (D.D.C. 1992) (discussing the Act). The Act addressed a number of areas, including honoraria, outside income, gifts, ethics committee procedures, financial disclosure, use of official resources, and restrictions for off-payroll money-making activities of federal office-holders in all three branches. *Id.* In other words, the law

Amicus, the Missouri Society of Governmental Consultants, makes a slightly different argument on the multiple-subject challenge. They apply the wrong test, *i.e.*, they essentially attempt to demonstrate that the bill founders because its provisions are not related to each other. The single-subject test does not ask whether the provisions are related to each other, but whether they are related to the subject described in the title, have a natural connection to the subject, or are a means to accomplish the laws purpose. *City of St. Charles*, 165 S.W.3d at 151.

The bill has a single subject and Mr. Trout's multiple-subject challenge should have been rejected altogether.

contains provisions of a scope comparable to that of HB1900.

In *C.C. Dillon*, this Court noted that the decision of the United States Congress to treat subjects together, in a manner similar to the Missouri legislature's treatment thereof, supports the conclusion that the subjects are germane to one another, for purpose of a change-in-purpose challenge, and fairly related, for purposes of a multiple-subject challenge. 12 S.W.3d at 328-329 (an act "relating to transportation" permissibly included billboard regulation).

C. Again, Mr. Trout misstates the severability analysis.

Because the bill has a single subject, the trial court should not have severed any of its provisions. But Mr. Trout – who wants the entire bill struck – again misstates the severability analysis.

As discussed in Section I.C., above, the provisions of every statute are presumed, by law, to be severable. §1.140. Severing only fails in two scenarios: (1) when “the valid provisions ... 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 (2) when “the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.” *Id.*

In view of the statutory presumption of severability, *id.*, and in accordance with the presumption that legislation is constitutional, *Missouri State Medical Ass’n*, 39 S.W.3d at 840, this Court has long favored severing offending provisions in procedural-challenge cases, rather than striking entire bills, including cases involving single-subject challenges. *E.g., Rizzo v. State*, 189 S.W.3d 576, 581 (Mo. 2006) (en banc)(where bill has a single core subject, only portions of bill containing additional subjects should be struck for single-subject violation).

Mr. Trout presumes the opposite, *i.e.*, that if a provision violates the single-subject rule, then the whole bill is presumed invalid. Appellant's Brief, pp. 39-41. He seizes upon some language repeated in a handful of this Court's procedural-challenge cases. That language bears further examination.

Mr. Trout argues that if a bill contains multiple subjects in violation of Article III, §23, then "the entire bill is unconstitutional and void," with only one exception, *i.e.*, when

the Court is convinced beyond a reasonable doubt that one of the bill's multiple subjects is its original, controlling purpose and that the other subjects are not [in which case, the Court] ... will sever that portion of the bill containing the additional subject(s) and permit the bill to stand with its primary, core subject intact.

Appellant's Brief p. 39. Though not in this same order, he cites *Rizzo v. State*, 189 S.W.3d 576, 581 (Mo. 2006)(en banc), for the proposition, which in turn cited *Carmack v. Director, Missouri Dep't of Agriculture*, 945 S.W.2d 956, 961 (Mo. 1997)(en banc). The Court in *Carmack* in turn cited *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 103 (Mo. 1994)(en banc), for the same. See Appellant's Brief pp. 39-40.

This language concerning the presumption of constitutional *invalidity* and the requirement that the Court be convinced “beyond a reasonable doubt” that a bill is constitutionally *valid* appears, as far as the State can determine, for the first time in *Hammerschmidt*. But the *Hammerschmidt* opinion does not cite authority for that proposition. Instead, immediately after stating it, 877 S.W.2d at 103, the opinion continues:

In reaching this determination, the Court will consider[:] whether the [additional subject]...is essential to the efficacy of the...[bill], whether it is a provision without which the ...[bill] would be incomplete and unworkable, and whether the provision is one without which the...[legislators] would not have adopted the...[bill]. *Missourians to Protect the Initiative Process [v. Blunt]*, 799 S.W.2d [824,] 832 [(Mo. 1990)(en banc)]. *C.f.* Section 1.140.

Id. In essence, that test is very similar to §1.140.

The language of the *Missourians to Protect the Initiative Process* case is also very similar to that of §1.140, though the Court did not cite the statute in that case. Rather, the Court explained:

The factors that make a provision severable are set out in footnote 8 of [*Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 13 n.8 (Mo. 1981)(en banc)]...[including] whether the provision is essential to the efficacy of the amendment, whether it is a provision without which the amendment would be incomplete and unworkable, and whether the provision is one without which the voters would not have adopted the amendment.

799 S.W.2d at 832. And the fatal problem with the bill in *Missourians to Protect the Initiative Process* was that the Court simply could not identify a single, central purpose, and so could not identify provisions that might be severed while preserving other portions of the bill. 799 S.W.2d at 832. Thus, the whole bill had to be struck. *Id.*⁵

⁵ As noted, the Court in *Missourians to Protect the Initiative Process* cited footnote 8 of the *Buchanan* case. In the *Buchanan* footnote, the Court looked to whether, if a provision of a bill was eliminated, the part remaining would be complete in itself and capable of accomplishing the purpose for which it was

That analysis, of course, fits hand-in-glove with analysis under §1.140, and is entirely consistent with the presumption of constitutionality that the courts must afford challenged laws. *E.g., Missouri State Medical Ass'n*, 39 S.W.3d at 840.

In short, Mr. Trout's severability argument begins in the wrong place. The trial court's analysis, in contrast, began in the right place, with the constitutional presumption that the remaining portions of the bill could be preserved. LF 496.

And while the trial court should not have reached the conclusion on the single-subject challenge that it did, the trial appropriately determined that the remaining portions of the bill survived. The provisions that it struck, §115.342 (disqualifying persons who are delinquent on certain taxes from running for office)

adopted; whether the voters would have adopted the amendment without the severed provision; and whether the amendment would be incomplete and unworkable if the provision was severed. 615 S.W.2d at 13 n.8, *citing Labor's Educational & Political Club-Independent v. Danforth*, 561 S.W.2d 339, 350 (Mo. 1978)(en banc), and *State ex rel. Bd. of Mediation v. Pigg*, 244 S.W.2d 75 (Mo. 1951)(en banc). The *Danforth* and *Pigg* cases contain language very similar to that recited in *Buchanan*; neither states a presumption of invalidity or non-severability.

and §115.350 (disqualifying felons from running for office), are discrete and capable of being separated from the others. They are not, for example, definitional statutes upon which other statutes depend for meaning. Manifestly, the two provisions are not “so essentially and inseparably connected with the remaining portions of the bill” as to defy the presumption that “the legislature would have enacted the valid provisions without” them. §1.140. And “the [remaining] provisions, standing alone,” are certainly “[complete and capable] of being executed in accordance with the legislative intent.” *Id.*

The amicus supports Mr. Trout’s argument in favor of striking the entire bill, but argues that at least the revisions to the lobbying laws in Chapter 105 must be severed and struck for a multiple-subject violation. Amicus Brief, p. 9. Mr. Trout did not press that argument in the trial court. But the argument fails for the same reasons that Mr. Trout’s does.

III. The trial court erred in severing §115.342 (disqualifying persons who are delinquent on certain taxes from running for office) and §115.350 (disqualifying felons from running for office) from HB1900 for a MO. CONST. art. III, §21 change-in-purpose violation, because the sections are germane to its original, general purpose. In its passage, the bill maintained its original, general purpose of regulating and promoting the ethical conduct of lobbyists, officials, and candidates. [*Also responds to Appellant's Points IV and V.*]

The trial court took too narrow a view of HB1900's original, general purpose. As introduced, the bill sought to regulate and promote the ethical conduct of lobbyists, officials, and candidates. Amendments to the bill in its legislative course at most expanded upon that purpose. Certainly, provisions prohibiting tax delinquents and felons from running for office, §§115.342 and 115.350, are germane to that original, general purpose.

The trial court's decision to strike and sever the two sections must be reversed.

A. The standard of review and Mr. Trout's heavy burden of proof.

See Section I.A., above.

B. The bill, as enacted, maintained its original purpose.

Article III, §21 of the Missouri Constitution prohibits any bill from being “so amended in its passage through either house as to change its original purpose.”

This Court has always reviewed legislative compliance with Article III, §21 with a realistic view. The original-purpose limitation, like the single-subject limitation in Article III, §23, is

designed to prevent “the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effects, and the public, from difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the law.”

Lincoln Credit Co. v. Peach, 636 S.W.2d 31, 38 (Mo. banc 1982), quoting *State v. Ludwig*, 322 S.W.2d 841, 847 (Mo. 1955) (en banc). But at the same time, the framers of Article III, §21 and its precursors did not wish to “inhibit the normal legislative processes in which bills are combined and additions necessary to comply with the legislative intent are made.” *Blue Cross Hosp. Service, Inc. of Missouri v. Frappier*, 681 S.W.2d 925, 929 (Mo. banc 1984).

Accordingly, this Court has long held that the Constitution’s original-purpose provision does not restrict legislators from making “[a]lterations that bring about an extension or limitation of the scope of [a] bill ... even new matter.” *Stroh*, 954 S.W.2d at 326. Rather, the prohibition is against amendments that are clearly and undoubtedly not “germane” – *i.e.*, pertinent or relevant to – to a bill’s “original purpose.” *Missouri State Medical Ass’n*, 39 S.W.3d at 839; *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 327 (Mo. banc 2000).

“Original purpose” means a bill’s *general purpose*, and not “the mere details through which and by which that purpose is manifested and effectuated.” *State ex rel. McCaffery v. Mason*, 55 S.W. 636, 640 (Mo. 1900). Quite logically, then,

the general purpose is often interpreted as an overarching purpose, [and is] not necessarily limited by specific statutes referred to in the bill’s original title or test.

McEuen ex rel. McEuen v. Mo. State Bd. of Educ., 120 S.W.3d 207, 210 (Mo. banc 2003)(emphasis added).

To be clear, original-purpose analysis is separate from clear-title analysis under MO. CONST. ART. III, §23, discussed in Section I.B., above. A bill’s title can be changed without violating Article III, §21. *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31,

38 (Mo. banc 1982). In other words, a bill's original purpose is not limited to what is stated in its title, because "the Constitution does not require that the original purpose be stated anywhere, let alone in the title as introduced." *Missouri State Medical Ass'n*, 39 S.W.3d at 839. Concomitantly, this Court has typically rejected claims that changes to bills were not germane, particularly where the content of the original bill "remained substantially intact" in the final version of the bill. *Id.*, at 840.

For example, in *Missouri State Medical Association*, 39 S.W.3d at 840, the bill as introduced would have enacted a new section of law requiring that health insurers cover pelvic, prostate, and colorectal examinations and other cancer screenings, and had the original purpose of "mandat[ing] health services for serious illnesses, including cancer." As enacted, the bill also included requirements that persons receiving breast implants receive standard pre-operative information on the advantages, disadvantages, and risks of the treatment, "including cancer"; confidentiality of HIV-related information; and insurance for mental illness and chemical dependency. *Id.* at 839. These additions are a classic example of a permissible extension of a bill's scope, by the addition of germane matter. The extensions "logically relat[ed]" to the bill's original purpose – health services for serious illnesses, including cancer – and did not violate Article III, §21. *Id.* at 840.

In *C.C. Dillon*, 12 S.W.3d at 325, the bill as introduced pertained to the position of the head of the state highway and transportation commission. As enacted, the bill also included provisions pertaining to a permanent joint committee on transportation oversight; highway patrol member salaries; organizational and salary issues of the state department of transportation; audits of the highway and transportation commission; and billboard regulation by cities and counties. *Id.* The Court held that the original purpose of the bill related to transportation, and that billboard regulation was germane to that purpose. *Id.* at 327. “The very function of billboards is to capture the attention of the traveling public. Billboards have been inextricably linked to highway transportation by federal and state legislation.” *Id.* The bill did not violate the change-in-purpose prohibition of Article III, §21. *Id.* at 328. *See also Stroh*, 954 S.W.2d at 325-26 (bill that provided for the auction of vintage wine had “original purpose” of amending the State’s liquor control law; amendment adding malt liquor labeling requirements was permissible); *Akin v. Director of Revenue*, 934 S.W.2d 295, 302 (Mo. 1996) (en banc) (addition of taxation provisions to bill pertaining to education did not change the bill’s purpose, where tax increases were a means for funding education programs); *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 38 (Mo. banc 1982)(addition of provision imposing fee cap on certain

loans for personal, family, or household purposes, did not change bill's original purpose of regulating credit transactions, even though the bill's original provisions – and title – dealt with interest regulation).

In the approximately 130 years since this State first adopted the original-purpose provision, this Court has concluded only twice that a bill ran afoul of it, in *Allied Mut. Ins. Co. v. Bell*, 185 S.W.2d 4 (Mo. 1945) (en banc), and *Club Executives, Inc. v. State*, 208 S.W.3d 885 (Mo. 2006) (en banc).

In *Allied Mutual*, the bill as introduced amended an existing statute, to eliminate one of several tax deductions. As enacted, the bill repealed it, and enacted a statute that created a new tax. 185 S.W.2d at 189.

In *Club Executives*, “[a]ccording to its earliest title and contents, [the challenged bill]’s original purpose was to repeal and replace certain statutes relating to alcohol-related traffic offenses.” 208 S.W.3d at 888. Subsequent amendments to the bill, *e.g.*, amendments adding non-traffic related alcohol offenses, such as selling alcohol to minors, might have been “viewed as logically connected and germane to the original purpose of the bill,” but additions of provisions relating to adult entertainment “were not remotely within” its original purpose. *Id.* The Court severed the adult entertainment provisions. *Id.* at 888-889.

* * * * *

Here, HB1900, as introduced, would have repealed various sections in MO. REV. STAT. Ch. 105 (Public Officers and Employees – Miscellaneous Provisions) and Ch. 130 (Campaign Finance Disclosure Law), and enacted seven new sections. LF 14-35. That version:

- affected disclosure of lobbyist expenditures, §105.473.3(2)(c)d, LF 15;
- affected assessment of committee treasurers for failure to file campaign disclosure reports, §105.963.1, LF 17;
- deleted a requirement that certain notices be sent by certified mail, §105.963.2(2) and .3, *id.*;
- changed the deadline for forming a continuing committee from 30 days prior to an election, to 60 days prior, §130.011(10), LF 20-21;
- removed a reference to “subsection 2 of section 130.051”, §130.011(16)(e)b, LF 23;
- added the prohibition that no member of, or candidate for, general assembly may form a candidate committee for the office of speaker of the house or president pro tem of the senate, §130.016.8, LF 27;

- changed the limits prescribed for the “base year amount” for calculating contribution limits from 1995 limits to 2006 limits, §130.032.2, *id.*;
- raised contribution limits, §130.032.1, LF 27;
- deleted certain contribution-reporting requirements, §130.032.6, LF 28;
- required the electronic filing of disclosure reports by certain candidates and required the ethics commission to promulgate rules therefor, §130.046.9, LF 32;
- required the ethics commission to audit all campaign disclosure reports and selected lobbyist disclosure reports, §130.056.1(12)-(13), LF 33; and
- required the ethics commission to electronically post certain letters sent to the committee treasurer or candidate, and for certain contributions or expenditures to escheat to the state or to be forwarded to the treasurer, if errors are not timely corrected, §130.056.1(14), LF 33-34.

In sum, the bill’s original purpose related to regulating and promoting the ethical conduct of lobbyists, officials, and candidates. The bill addressed that conduct in various ways, including mandating certain disclosures, prohibiting the formation of certain committees, and raising contribution limits. The bill did so

through laws in Chapter 105, titled “Public Officers and Employees – Miscellaneous Provisions” (including laws pertaining to the regulation of conflict of interest and lobbying, and the Missouri Ethics Commission), and Chapter 130, the “Campaign Finance Disclosure Law.”

Like the bill that this Court approved in *Missouri State Medical Ass’n*, 39 S.W.3d at 846, the provisions originally contained in HB1900 “remained substantially intact” in the version as enacted, CCS SS HCS HB1900. LF 384-420. The enacted version contained most of the provisions of the original,⁶ and modified some provisions of the original.

And all provisions of the enacted version were germane to the bill’s original purpose of regulating and promoting the ethical conduct of lobbyists, officials, and candidates. The enacted version, in addition to containing substantially all original provisions, included like provisions:

⁶ The only provisions removed altogether from the original were: reference to “subsection 2 of section 130.051”, §130.011(16)(e)b, LF 23; the audit provision, §130.056.1(12)-(13), LF 33; and the provision relating to the electronic posting of certain letters, §130.056.1(14).

- defining “elected local government official lobbyist,” §105.470(1), LF 384;
- notifying persons who have been the subject of an ethics complaint which, among other chapters, may include violations of Chapters 105 and 130, §105.957.2, LF 396-397;
- regulating investigations performed by the ethics commission, §105.959.1, LF 397-398;
- prohibiting persons who are delinquent on their taxes from being candidates, §115.342, LF 400-401;
- prohibiting the candidacy of certain felons, §115.350, LF 401;
- removing contribution limits, LF 411-412;
- addressing contributions by political party committees, LF 412;
- prohibiting contributions during legislative session, §130.032.2, LF 412-413;
- requiring the ethics commission website to post expenditures within seven days, §130.042, LF 413;

- prohibiting the ethics commission from accepting a complaint in the 15 days prior to the election for which a candidate seeks office, §130.054.6; LF 419; and
- requiring the ethics commission to study methods to regulate political telephone solicitations, *id.*

As discussed above, Article III, §21 permits the “extension or limitation of the scope of [a] bill,” and even permits “new matter” to be added. *Stroh*, 954 S.W.2d at 326. Here, the new provisions did not exceed the bill’s original purpose of regulating and promoting the ethical conduct of lobbyists, officials, and candidates. The new provisions at most extended the scope of the bill, or added new but related matter, if that. For example, the bill as introduced raised contribution limit caps, in some cases by 400%. LF 27 (from \$250 for the office of state representative and certain other offices, including judicial offices, to \$2,000). The bill as enacted expanded the provision, eliminating contribution limits. LF 411-412.

Addressing the resolution of ethics complaints, prohibiting persons who are in violation of the tax laws from being candidates, changing contribution limits, prohibiting contributions during session, and requiring the ethics commission to post certain information, are matters that are pertinent or relevant to the bill’s

original purpose. *Missouri State Medical Ass'n*, 39 S.W.3d at 839; *C.C. Dillon*, 12 S.W.3d at 327.

And as discussed in Section II.C., above, the Senate Journal entries demonstrate that the members were mindful of the limitations under which they labored concerning the scope, purpose, and title of the bill as amendments to it were offered. Certain amendments were rejected as beyond the procedural limitations. And in the end, no member offered a constitutional objection.

In short, the legislature and public could not have been deceived by the bill as enacted, and were not. The bill underwent no change in purpose and the trial court's decision to the contrary must be reversed.

C. Again, Mr. Trout misstates the severability analysis.

When a bill violates the original-purpose provision, the Court strikes only non-germane sections of a bill. *Allied Mutual Ins. Co. v. Bell*, 185 S.W.2d 4, 8 (Mo. 1945). The State will not repeat its previous arguments concerning severability, and incorporates Sections I.C. and II.C., above.

Amicus in support of Mr. Trout argues that the trial court should have struck at least the lobbyist provisions contained in Chapter 105, because of the claimed change-in-purpose violation. Amicus Brief, p. 9. The bill as introduced directly

affected lobbyists' activities. LF 15. The bill underwent no change in purpose, even if it expanded upon or extended its original purpose.

The trial court at least correctly determined that the remaining portions of the bill fairly related to the bill's original purpose and therefore survived, but incorrectly determined that it must strike §§115.342 and 115.350. The trial court's judgment enjoining any portions of the bill must be reversed.

IV. Once the trial court sustained Mr. Trout's Count II, free speech challenge to §130.032.2, the trial court properly selected a narrow remedy, i.e., striking §130.032.2, only. [*Responds to Appellant's Point VI.*]

Mr. Trout prevailed below on his Count II, free speech challenge to §130.032.2, the ban on contributions during legislative session. LF 10-12 (petition); LF 2 (docket entry reflecting temporary restraining order); LF 496-498 (judgment). But, he argues, the trial court should have declared a broader remedy than enjoining enforcement of the only section that he challenged under that theory – it should have enjoined enforcement of the entire bill. Appellant's Brief, p. 47. He overreaches.

A. Standard of Review.

On review of the trial court's decision to enjoin enforcement of §130.032.2, this Court affirms, unless there is no substantial evidence to support the injunction, it is against the weight of the evidence, or it erroneously declares or applies the law. 44 *Plaza, Inc. v. Gray-Pac Land Co.*, 845 S.W.2d 576, 578 (Mo. App. E.D. 1992), citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. 1976)(en banc).

B. The trial court selected an appropriate remedy.

The trial court was not asked to and did not find that the entire bill violated Mr. Trout's free speech rights; it was asked only to find that §130.032.2 did. Mr.

Trout was not entitled to the broadest conceivable remedy for his free-speech theory, enjoining statutory provisions beyond §130.032.2, for a number of reasons.

The statutory presumption of severability that §1.140 establishes is thoroughly addressed elsewhere in this brief, *see* Sections I.C., II.C., and III.C., and will not be repeated here. But it bears noting that §130.032 as amended contains no direction that its subsections are non-severable. Simply put, had the legislature intended that the viability of §130.032.2, or other laws relating to ethics, be dependent on one another, then the legislature could have so indicated in to §130.032.2, or elsewhere. But it did not.

That the legislature failed to provide for non-severability is significant. The legislature is presumed to have been aware of the state of the law at the time that it passed the black-out provision – including statutes, such as §1.140, and case law, such as *Shrink Missouri Gov't PAC v. Maupin*, 922 F. Supp. 1413 (E.D. Mo. 1996), the federal-court decision striking a virtually identical version of §130.032.2 on First Amendment grounds ten years prior. *See Nunn v. C.C. Midwest*, 151 S.W.3d 388, 397 (Mo. App. W.D. 2004)(legislature presumed to be aware of the state of the law when it enacts a statute). *C.f. Burns v. Elk River Ambulance, Inc.*, 55 S.W.3d 466, 486 (Mo. App. S.D. 2001)(at time legislature enacted changes to Chapter 538, Tort Actions

Relating to Improper Health Care, legislature was presumed to be aware of extant Missouri Supreme Court case law regarding construction of state's wrongful death statute).

Mr. Trout also argues, in multi-step fashion, that the prior version of §130.032 was required to become effective once new subsection 2 was struck, and if the prior version of §130.032 goes back into effect, then no other change that HB1900 effected makes any sense, and the whole bill should be struck. Appellant's Brief, pp. 47-49. The analysis unravels in at least a few places.

The authority he cites for his argument that the prior version of a law goes into effect once a new version is struck is no support for the overly broad remedy that he urges here. See Appellant's Brief, pp. 49-50, citing *State v. Neill*, 78 S.W.3d 140, 143 (Mo. 2002)(en banc), and *Missouri Ins. Co. v. Morris*, 255 S.W.2d 781, 782 (Mo. 1953) (en banc)(en banc). In *Neill*, the Court held that where the bill at issue violated the clear-title rule of Article III, §23, not only were its amendments ineffective, it could not operate to have repealed the old law, either. 78 S.W.3d at 143. Therefore, the old law was still effective. *Id.*

Here, of course, the trial court did not invalidate the entirety of HB1900 on a free-speech theory (nor did Mr. Trout seek such a ruling), nor on any other theory.

HB1900's repealing clause, and the rest of the bill except for §130.032.2, therefore remain intact under the *Neill* analysis.

And the Court in *Morris* simply applied a test similar to that established by §1.140. But Mr. Trout's argument fails under that test, too. *Morris* concerned an amended tax statute that required insurance companies to pay a tax on direct insurance premiums in lieu of all taxes on the companies' intangible personal property. 255 S.W.2d at 782. The Court had held, in an earlier case, that the portion exempting personal property tax violated a constitutional provision limiting tax exemptions, and struck it. *Id.*, citing *Gen. Am. Life Ins. Co. v. Bates*, 249 S.W.2d 458, 497 (Mo. 1952)(en banc). In *Morris*, the Court clarified that the purpose of the new section had been to substitute for the prior version, and that the repeal of the prior version was so dependent on the effectiveness of the new – but stricken – section that the repealing clause must fail, too. 255 S.W.2d at 782-783.

Section 130.032.2 is no such provision. Mr. Trout suggests that a change to contribution limits only came about in the Senate, and only then because the black-out provision was also proposed. Appellant's Brief, p. 48. Not quite. As originally introduced in the House, HB1900 repealed existing contribution limits, then adopted new – ones that were higher in some cases by 400%, LF 27 (from \$250 for the office of

state representative and certain other offices, including judicial offices, to \$2,000), but the bill contained no black-out provision. Contrary to Mr. Trout's suggestion, the legislature was, from the outset, willing to consider raising contribution limits without a black-out period.

Moreover, unlimited contributions, with mandatory financial disclosures and no black-out period, are not novel. That was in fact state of the law in Missouri for years, beginning in 1978. 1978 MO. LEGIS. SERV. S.B. 839. Campaign finance limits and the original black-out provision were enacted in Missouri some 16 years later. 1994 MO. LEGIS. SERV. S.B. 650; L. 1994 (adopted by Initiative, Proposition A); MO. REV. STAT. §130.032.4 (1994). Limits and the black-out were struck by about 1996, in a spate of litigation. The trial court's judgment here essentially reinstated the landscape that had existed for years prior to that litigation.⁷

⁷ Even today, black-out periods on contributions during session remain the exception nation-wide. Moreover, there are a few cases – all decided in the 1990's – from other jurisdictions in which black-out provisions similar to Missouri's were successfully challenged on constitutional grounds, and struck. *See Ark. Right to Life Political Action Committee v. Butler*, 29 F. Supp. 2d 540, 551 (W.D. Ark. 1998) (ARK.

CODE. ANN. §7-6-203(g) – statute prohibited incumbent legislators and statewide officeholders from accepting contributions 30 days before session, during session, or 30 days after session, and prohibited the “promise” of a contribution during that time); *Emison v. Catalano*, 951 F. Supp. 714, 723 (E.D. Tenn. 1996) (TENN. CODE ANN. §2-10-31(a) – statute prohibited candidate for general assembly or governor from accepting or soliciting contributions during session, and prohibited multi-candidate political campaign committees not controlled by a political party or caucus from contributing in the last 10 days of a campaign); and *State of Fla. v. Dodd*, 561 So.2d 263, 264-265 (Fla. 1990)(FLA. STAT. §106.08(.8) – statute prohibited candidate for legislative or statewide office from accepting or soliciting contributions during session).

The State is aware of only one case in which a black-out provision survived a constitutional challenge, but that provision was significantly narrower than Missouri’s. See *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705 (4th Cir. 1999)(N.C. GEN. STAT. §163-278.13B(c) – upholding ban on lobbyist contributions during session).

And the black-out provision has nothing to do with the operation of the rest of the laws enacted by HB1900. Section 130.032.2 is not a definitional section, for example, upon which other, new sections depend for meaning. Section 130.032.2 was a discrete provision, that by its plain language, operated independently of other provisions in the bill.

In view, then, of the legislative history of HB1900; the history of prior legislation concerning contribution limits in Missouri; Missouri's experience with a constitutional challenge to an identical provision ten years ago; and the limited nature of §130.032.2, Mr. Trout's argument that the legislature would not have repealed contribution limits without the black-out during session hangs on the most slender of threads.

That thread certainly breaks upon application of the severability standard of §1.140. To go as far as Mr. Trout suggests, the trial court was required to find that the remaining, "valid provisions ... are so essentially and inseparably connected with, and so dependent upon, [§130.032.2] that it cannot be presumed the legislature would have enacted the valid provisions without [§130.032.2]; 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.” §1.140 (emphasis added).

That the trial court simply could not, and appropriately did not, do.

The trial court did not erroneously declare or apply the law, and Mr. Trout’s request for the broadest conceivable remedy for his Count II should be rejected.

Conclusion

The portions of the trial court's judgment denying the clear-title challenge to HB1900, and imposing a narrow remedy with respect to §130.032.2, should be affirmed.

The portions of the trial court's judgment severing MO. REV. STAT. §115.342 and §115.350 from HB1900 and enjoining their enforcement should be reversed, such that those provisions immediately become effective.

Respectfully submitted,

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**Certification of Service
and of Compliance with Rule 84.06(b) and (c)**

The undersigned hereby certifies that on this 23rd day of May, 2007, one true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were hand-delivered to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b), and that the brief contains 11,613 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

Assistant Attorney General

Appendix

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