
**IN THE
SUPREME COURT OF MISSOURI**

No. SC87934

STATE OF MISSOURI, et al.,

Appellants,

v.

JACKSON COUNTY SPORTS COMPLEX AUTHORITY,

Respondent.

**Appeal From The Cole County Circuit Court,
The Honorable Byron L. Kinder**

APPELLANTS' BRIEF

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Introduction

In 2005, the 93rd General Assembly enacted, via two bills, a new § 64.940.3, RSMo Cum. Supp. 2005,¹ which provides as follows:

Any expenditure made by the [county sports complex] authority located in a county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants, that is over five thousand dollars, including professional service contracts, must be competitively bid.

The Jackson County Sports Complex Authority filed suit in the Circuit Court of Cole County, seeking to have § 64.940.3 to both bills changes their original purpose and that both bills' titles were unclear.

On appeal, the Court should reverse. The trial court's original purpose holdings are simply wrong and a patent misapplication of settled Article III, § 21 precedent. Moreover, neither bill violates Article III, § 23. Both have titles that are adequately clear. And § 64.940.3 as enacted in House Bill 58 (H.B. 58) and Senate Bill 210 (S.B. 210), violates Article § 23 of the Missouri Constitution.

Because this appeal involves "the validity of ... a statute ... of this state," it is

¹ All citations are to the most recent edition of, or supplement to, RSMo, unless otherwise indicated.

within the exclusive jurisdiction of this Supreme Court of Missouri. Mo. Const. Art. V, §

3.

Statement of Facts

A. The enactment of § 64.920, RSMo 2000§ 64.920; *Waris v. Carnes*, 760 S.W.2d 573, 574 (Mo. App. W.D. 1988), citing § 64.940.3.

B. The Authority’s lawsuit challenging § 64.920, filed suit in the Circuit Court of Cole County, seeking a declaration that the inclusion of § 23’s single subject mandate. L.F. 13. On May 4, 2006, the Authority filed an amended petition that added the claims that the titles to H.B. 58 and S.B. 210 did not comply with Article III, §§ 64.940.3 to both bills violated Article§ **21 and § 64.940.3 to H.B. 58 or S.B. 210 violated Article III,§ 21, and that both bills had titles that were too amorphous to meet Article III, 64.940.3 applied to the Authority) worked to change the bill’s “original purpose” in violation of Article 64.940.3 applied to the Authority) was in derogation of S.B. 210’s “original purpose.” L.F. 1808.**

On the “clear title” issue, the court likened the title “relating to political subdivisions” to the titles “relating to property ownership” and “relating to economic development,” which were discussed in *Home Builders Association of Greater St. Louis v. State*, 75 S.W.3d 267, 272 (Mo. banc 2002), and *Carmack v. Director, Missouri Department of Agriculture*, 945 S.W.2d 956, 960 (Mo. banc 1997), respectively. The court mentioned three other points as significant to its clear title decision: (1) that the “term ‘political subdivision’ [was] defined differently in no fewer than 15 sections of the Revised Statutes of Missouri” (L.F. 1808, *citing* §§ 44.010(14), 67.1830 & 70.120(3));

(2) that “[n]either HB 58 nor SB 210 establishes that its respective title is limited to any particular definition of political subdivision” (*id.*, *citing* St. Louis Health Care Network v. State, 968 S.W.2d 145, 147 (Mo. banc 1998)); and (3) that another provision in H.B. 58 § 115.013(19) contained a definition of “political subdivision” that did “not include the Plaintiff” (*id.*).

D. The State’s appeal

The State timely appealed to this Court. L.F. 1810.

Points Relied On

I.

The circuit court erred in concluding that § 21 and § 64.940.3 was enacted by at least one bill – H.B. 58 – that met the procedural requirements of Article III, § 23 in that (1) the addition of § 64.940.3 was germane to H.B. 58’s original purpose; (2) H.B. 58’s title “relating to political subdivisions” is not so amorphous that it does not meaningfully express the bill’s subject of regulating political subdivisions; and (3) § 21.

Mo. Const. Art. III, *Missouri State Medical Ass’n v. Missouri Dept. of Health*,

39 S.W.3d 837 (Mo. banc 2001) *C.C. Dillon Co. v. City of Eureka*,

12 S.W.3d 322 (Mo. banc 2000) *Home Builders Ass’n of Greater St. Louis v. State*,

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Rizzo v. State, 189 S.W.3d 576 (Mo. banc 2006).

II.

Even if Point I were not considered, the circuit court nonetheless erred in concluding that 64.940.3 was enacted by a second bill – S.B. 210 – that met the

procedural requirements of Article III, 23 in that (1) the addition of § 64.940.3 falls within S.B. 210’s core subject of regulating political subdivisions because it imposes a competitive bidding requirement on a political subdivision of this State.

Mo. Const. Art. III, § 23.

Lincoln Credit Co. v. Peach, 636 S.W.2d 31 (Mo. banc 1982)*Westin Crown Plaza Hotel Co. v. King*,

664 S.W.2d 2 (Mo. banc 1984)*Murphy v. Carron*, 536 S.W.2d 30 (Mo. banc 1976)
Murphy, the Court must reverse the trial court’s judgment if there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *Missouri State Medical Ass’n v. Missouri Dept. of Health*, 39 S.W.3d 837, 840 (Mo. banc 2001). 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. banc 1997). This “Court interprets procedural limitations liberally and will uphold the constitutionality of a statute against such an attack unless the act clearly and undoubtedly violates the constitutional limitation.” *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994). The burden of proof rests on the statute’s challenger. **§ 64.940.3 must be set aside under Article III, 23 of the Missouri Constitution because § 21 and § 64.940.3 falls within H.B. 58’s core subject of regulating political subdivisions because it imposes a competitive bidding requirement on a political subdivision of this State.**

The trial court erred in setting 21 precedents, which require courts to view a bill's original purpose broadly and to accept all amendments that are "germane" to that purpose. Under the correct standard, the addition of § 64.940.3 furthers H.B. 58's original purpose of regulating political subdivisions, inasmuch as § 64.940.3, that directly regulates an entity expressly defined as a political subdivision might be included in the bill.

Third, as shown in part C, § 23's single subject mandate because it falls comfortably within what this Court has already concluded in **§ 64.940.3 was germane to the original purpose of H.B. 58 and did not violate Article III, III, § 21** prohibits any bill from being "so amended in its passage through either house as to change its original purpose."² This limitation, like the single subject limitation in Article III, *State v. Ludwig*, 322 S.W.2d 841 (Mo. banc 1955)§ 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 prohibition does not restrict legislators from making "[a]lterations that bring about an extension or limitation of the scope of [a] bill ... even new matter." *Missouri State*

² This provision first appeared in the State's 1875 constitution. *See* Mo. Const. 1875, art. IV, § 25Mo. Const. 1875, art. IV, § 25.

Medical Ass'n, 39 S.W.3d at 839; *State ex rel. McCaffery v. Mason*, 55 S.W. 636 (Mo. 1900)*McEuen ex rel. McEuen v. Missouri State Bd. of Educ.*,

120 S.W.3d 207 (Mo. banc 2003) III, § 21. *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 38 (Mo. banc 1982).

In the approximate 130 years since this State first adopted the original purpose prohibition, this Court has concluded only once that an act did not comply with its requirements. *See Allied Mutual Insurance Co. v. Bell*, 185 S.W.2d 4 (Mo. banc 1945)*Missouri State Med. Ass'n*, 39 S.W.3d at 840 (internal citations omitted).

In all other cases, the Court has “consistently rejected” arguments that amendments to various bills were not germane, particularly where the content of the original bill “remained substantially intact” in the final version of the bill, as distinguished from *Id.* For example, in 39 S.W.3d at 839. And that an amendment that added a requirement that persons receiving breast implants receive standard pre-operation information on the advantages, disadvantages, and risks, including cancer, of breast implantation “logically relat[ed]” to that purpose and did not violate Article *Id.* at 840.

Similarly, in 12 S.W.3d at 325. And the Court rejected the argument that an amendment adding a provision giving cities and counties the authority to adopt outdoor advertizing regulations impermissibly veered from that purpose, in view of the fact that state and federal legislation often tied together the regulation of billboards and highway transportation. *State v. Ludwig*, the Court concluded that the General Assembly did not

violate Article III, 322 S.W.2d at 846-47 (holding that the purpose of the bill as introduced was “Collectors and the Collection of Taxes,” not a narrower subset of collectors, as plaintiffs had argued).³

This case presents circumstances much more closely akin to those at issue in *C.C. Dillon*, and *Ludwig*, than to those at issue in *Rizzo*, 189 S.W.3d at 580-81 (observing that chapters affected by the introduced version of H.B. 58 “relate exclusively to political subdivisions”). Under this Court’s original purpose jurisprudence, the general, or

³ 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 (Mo. banc 1996) *Akin v. Director of Revenue*, 934 S.W.2d 295, 302 (Mo. banc 1996) (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); *Westin*, 664 S.W.2d at 6 (bill that would have changed fee and compensation rates for registrars had original purpose of changing fees charged by the Division of Health; amendment increasing license fee for hotels consistent with that purpose); *Lincoln Credit*, 636 S.W.2d at 38 (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).

overarching, purpose of the introduced version of H.B. 58 was thus the regulation of political subdivisions, and was not limited to the “mere details” of those original provisions, as the trial court believed. *See McEuen*, 120 S.W.3d at 210; § 64.940.3 is self-evidently “germane” to H.B. 58’s original purpose, because § 64.940.3; *C.C. Dillon* and *Missouri State Medical Association*. Unlike the amendments in those cases, § 64.940.3, deal with competitive bidding requirements for political subdivisions. *See* L.F. 378-83.

In short, the trial court’s conclusion that **64.940.3 is not void for a clear-title violation.**

Article III, *C.C. Dillon*, 12 S.W.3d at 328. Although these limitations are distinct, they are also related. That is because, in Article III, § 23.

As this Court has explained, Article III, *Home Builders Ass’n v. State*, 75 S.W.3d 267, 269-770; 271 (Mo. banc 2002) (internal quotations omitted); *Fust v. Attorney General*, 947 S.W.2d 424 (Mo. banc 1997) *Missouri State Med. Ass’n*, 39 S.W.3d at 841. In addition, the “title may omit particular details of the bill, so long as neither the legislature nor the public was misled.” *Id.*⁵ But if the title is (1) underinclusive or (2) too

⁴ Article III, § 23’s limitations have “been a part of every Missouri constitution since 1865.” *Carmack v. Director, Missouri Dept. of Agriculture*, 945 S.W.2d 956, 959 (Mo. banc 1997).

⁵ *See also Fust*, 947 S.W.2d at 429 (“The title need not describe every detail

broad and amorphous to be meaningful, the clear-title requirement is infringed. § 23, this Court considers only the enacted version of the bill. *Id.* “If alternative readings exist, this Court chooses the reading that is constitutional.” § 64.940.3. The few cases in which this Court has found a bill’s title to be overly-inclusive involved titles that could describe virtually all legislation passed by the General Assembly. For example, in 968 S.W.2d 145, 147 (Mo. banc 1998). As the Court observed, this “portion of the title could be reduced to say ‘An act relating to entities,’” because the phrase “incorporated and non-incorporated entities” could “refer to anything.” § 355.066(14), RSMo 2000 *Id.* at 148.

Similarly, in 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 “as it can be held to describe the contents of the bill only by interpreting the phrase ‘relating to property ownership’ so broadly that it obscur[ed] the contents of the act.” *id.* (noting that while “creative arguments could be made that each of these amendments ... could be interpreted to apply in some way to property ownership . . . then it is hard to imagine any statute which would not have some arguable relation to ownership of either

contained in the bill.”); *Lincoln Credit*, 636 S.W.2d at 39 (“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.”).

tangible or intangible property”) (internal quotation omitted).⁶

In all other cases in which the bill’s title “does not describe most, if not all, legislation enacted” or “include nearly every activity the state undertakes,” the Court has rejected arguments that a title was over-inclusive. *See, e.g., Corvera Abatement Tech. v. Air Conservation Comm’n*,

973 S.W.2d 851 (Mo. banc 1998)Black’s Law Dictionary (6th ed. 1991)*Fust*, 947 S.W.2d at 429. And it also goes against the principle that a bill’s subject may be “clearly expressed by ... stating some broad umbrella category that includes all the topics within its cover,” omitting “particular details.” *St. Louis Health Care Network*. The trial court’s opinion (and the Authority’s trial brief) cited six statutory definitions of the term “political subdivision.” *See* L.F. 1808, citing §67.1830; § 70.600(19), RSMo 200070.600(19), 105.145.1(2), and 105.300(8). But as the Court will note, each of these definitions are chapter-specific and tailored to the object of the particular statutory

⁶ While not a clear-title case, the Court has looked to the discussion of the single subject requirement in *Carmack* as helpful to clear title analysis. *See, e.g., Home Builders*, 75 S.W.3d at 270 n.1. In *Carmack*, the title “relating to economic development” was held to violate 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 or some other single subject. 945 S.W.2d at 960.

scheme of which they are a part, while at the same time largely consistent with each other. For example, § 67.1830(7) defines “political subdivision” for purposes of “sections 67.1830 to 67.1846” (which pertain to authority over, and regulation of, public rights of way) as a “city, town, village, county of the first classification or county of the second classification.” Again, this definition is chapter-specific, and reasonable given that § 70.120(3) defines “political subdivision” only for purposes of “sections 70.120 to 70.200” (regarding rural resettlement or rehabilitation agreements) as “any agency or unit of this state which now, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied.” And § 105.145.1(2) defines “political subdivision” insofar as it is used in § 105.300(8) defines “political subdivision” for purposes of “sections 105.300 to 105.440” (concerning old age and survivors insurance) as “any county, township,

⁷ Section 70.600(19) defines political subdivision for this limited purpose as: any governmental subdivision of this state created pursuant to the laws of this state, and having the power to tax, except public school districts; a board of public works which is required by charter or ordinance to establish the compensation of employees to establish the compensation of employees separate from the compensation of other employees of the city may be considered a political subdivision for purposes of sections 70.600 to 70.755; a joint municipality utility commission may be considered a political subdivision for purposes of sections 70.600 to 70.755.

municipal corporation, school district, or other governmental entity of equivalent rank.”

There are a few other definitions of the term “political subdivision” scattered throughout the Revised Statutes, but again, each is section-specific and largely consistent with general understandings of the term.⁸ *See, e.g.*, § 393.298 (defining the term for purposes of “sections 393.299, 393.301 and 393.302” – pertaining to the provision of retail energy services – as “any county, municipality or village in the state of Missouri”); § 414.350 (defining the term for purposes of “sections 414.350 to 414.359” – regarding the alternative fuel vehicle loan program – as “any county, township, municipal corporation, school district or other governmental unit in this state, but not including any ‘state agency’ as such term is defined in section 536.010, RSMo”).

Finally, – and perhaps most important here – it makes no sense to invalidate § 23’s

⁸ The State constitution uses the term “political subdivision” in several provisions. *E.g.*, Mo. Const. art. IV, § 37; Mo. Const. Art. IV, § 37; Mo. Const. art. VI, § 23; Mo. Const. Art. VI, § 23; Mo. Const. art. X, § 1; Mo. Const. Art. X, § 1. Mo. Const. art. X, § 15. Article X, § 15 does have a definition for the phrase “other political subdivision” for purposes of Article X (on taxation), but it is not intended to be an overarching definition for the term. *See* Mo. Const. Art. X, § 15 (defining the term “other political subdivision” for purposes of Article X to “include townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax.”).

clear title requirement is to put legislators and the public – specifically entities that might be affected by legislation – on notice about the general contents of a bill, so that they can be apprised of contemplated changes and have an opportunity to review and comment on them before final passage. *See* **64.940.3 falls within H.B. 58’s “core subject” of**

legislation relating to political subdivisions.

Although the circuit court did not address the Authority’s single-subject challenge, it is appropriate for this Court to do so since the Court is “primarily concerned with the correctness of the trial court’s result, not the route taken by the trial court to reach that result.” *Business Men’s Assur. Co. of America v. Graham*, 984 S.W.2d 501, 506 (Mo. banc 1999).

“The test in determining whether a provision of a bill violates the single subject rule 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. banc 2005). “Said another way, the subject of a bill, within the meaning of article III, *Id.*, quoting *Stroh*, 954 S.W.2d at 327.

In 189 S.W.3d at 581. Section 64.940.3; § 23’s single subject mandate is thus no basis for declaring § **64.940.3 must be set aside because § 64.940.3 was enacted by a second bill – S.B. 210 – that met the procedural requirements of Article III, 23 in that (1) the addition of § 64.940.3 falls within S.B. 210’s core subject of regulating**

political subdivisions because it imposes a competitive bidding requirement on a political subdivision of this State.

Point I is dispositive of this appeal. However, even if Point I were not considered, the trial court's judgment must be reversed. This is because § 21 and § **64.940.3 is**

germane to S.B. 210's original purpose.

The trial court's conclusion that §64.940.3 was added, was "relating to county government." *See* L.F. 1822 (noting that the Authority is "**an entity separate from the county ... [and that] its commissioners are not county officers**") (emphasis in original). But as this Court's cases have already held, a bill's original purpose is not dictated by what is stated in the title. § 21." *Westin*, 664 S.W.2d at 6 (title changed from "relating to fees and compensation of state and local registrars of vital statistics" to "relating to certain fees related to the division of health").

And so, as with other cases in which a bill's title has changed, the Court should not conclude that S.B. 210's original purpose was limited to what was stated in its title as introduced. Because, as with those cases, it "is more compelling to reason that [S.B. 210's] title was changed to more accurately reflect a broader purpose which the original bill was intended to accomplish" – legislation relating to political subdivisions – than it is to reason that the bill's original title "was reflective of a desire to restrict the bill's original purpose" to matters relating to counties only. 64.940.3 it did not unconstitutionally change S.B. 210's original purpose because it is germane to that

purpose in that it regulates a type of political subdivision – sports complex authorities in counties of a particular population range. *See* § 64.940.3; § 64.920. And so, the trial court was wrong to believe that including §, § 21.

B. S.B. 210’s title is adequately clear.

For the same reasons as those stated in Part I.B, *supra*, S.B. 210’s title is not grounds for voiding § 64.940.3, that directly regulates an entity expressly defined as a political subdivision might be included in the bill whose title states that it relates to “political subdivisions.”⁹

C. Section *Rizzo*, 189 S.W.3d at 581. And it should also conclude that § 64.940.3 imposes a competitive bidding requirement on the Authority, a political subdivision of this State.

Accordingly, even if Point I is not considered, Point II provides independent grounds for reversing the judgment below.

⁹ As noted *supra*, only the enacted version of the bill is relevant to the clear title issue. *Missouri State Med. Ass’n*, 39 S.W.3d at 841.

Conclusion

For the foregoing reasons, the circuit court's judgment declaring