

**IN THE
SUPREME COURT OF MISSOURI**

No. SC83692

**SSM CARDINAL GLENNON CHILDREN'S HOSPITAL, F/K/A
CARDINAL GLENNON CHILDREN'S HOSPITAL, ET AL.**

Appellants,

v.

STATE OF MISSOURI, ET AL.,

Respondents.

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

RESPONDENTS' BRIEF

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JURISDICTIONAL STATEMENT

Respondents agree with Appellants that this case concerns the validity of a statute of the state of Missouri and that the Supreme Court of Missouri has exclusive jurisdiction to hear this appeal under MO. CONST. art. V, § 3. Appellants included within its jurisdictional statement argumentative recitals inappropriate and unnecessary for inclusion in a jurisdictional statement.

STATEMENT OF FACTS

Respondents concur with the Statement of Facts appearing at pages 15-30 of Appellants' brief.

POINTS RELIED ON

I

The circuit court did not err in ruling that its review of HB 343 should be limited to those provisions of HB 343 regarding the hospital lien law in that those were the only provisions challenged and those changes to HB 343 regarding the hospital lien law did not violate MO. CONST. art. III, § 21 or § 23.

Section 516.500, RSMo 2000

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Stroh Brewery Company v. State, 954 S.W.2d 323 (Mo. banc 1997)

MO. CONST. art. III, §21

MO. CONST. art. III, §23

Section 430.225, RSMo

II

Even if the circuit court should have reviewed all the provisions of HB 343 as enacted in comparison to the provisions of HB 343 as introduced, the court did not err in granting summary judgment to the state because HB 343 has a single purpose, that purpose did not change during its enactment and it has a clear title and, therefore, does not violate either MO. CONST. art. III, § 21 or § 23; and, therefore, this Court should reject the Hospitals' Points Relied On II, III, and IV.

Westin Crown Plaza Hotel Company v. King, 664 S.W.2d 2 (Mo. banc 1984)

Blue Cross Hospital Service, Inc. of Missouri v. Frappier, 681 S.W.2d 925

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973 S.W.2d 851 (Mo. banc 1998)

MO. CONST. art. III, §21

MO. CONST. art. III, §23

STANDARD OF REVIEW

Appellants are hospitals that challenge the constitutionality of HB 343, alleging that when the legislature amended HB 343 during the 1999 session it changed the bill's original purpose (MO. CONST. art. III, § 21), resulted in the bill having multiple subjects (MO. CONST. art. III, § 23), and resulted in an “unclear” title (MO. CONST. art. III, § 23) and will be referred to hereinafter collectively as “Hospitals.”

Statutes are presumed to be constitutional. *Westin Crown Plaza Hotel Company v. King*, 664 S.W.2d 2, 5 (Mo. banc 1984). In reviewing a statute against a constitutional challenge, this Court is to construe any doubts regarding that statute in favor of its constitutionality. *Id.* Unless an act “clearly and undoubtedly” violates any of the above constitutional limitations, that act shall be upheld. *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994).

ARGUMENT

I

The circuit court did not err in ruling that its review of HB 343 should be limited to those provisions of HB 343 regarding the hospital lien law in that those were the only provisions challenged and those changes to HB 343 regarding the hospital lien law did not violate MO. CONST. art. III, § 21 or § 23.

The Hospitals' challenge to HB 343 was limited to those portions of the bill relating to the hospital lien law, § 430.225, RSMo. See L.F. 9-24. Neither the Hospitals nor anyone else challenged those portions of HB 343 relating to failure to pay for private design or construction work, prohibiting health carriers from discriminating against eye care providers, emergency transportation other than in ambulances, or the sale and storage of fireworks. By operation of law, those provisions cannot be challenged for a procedural defect in their enactment because there has been adjournment of the next full regular legislative session after its passage. See § 516.500, RSMo 2000.

An examination of the Hospitals' petition reveals that they only challenged the provisions of HB 343 that affected the hospital lien law and such challenge was timely. The petition contains a challenge that the inclusion of the changes to the hospital lien law in HB 343 violated the single subject, clear title, and change of original purpose restrictions of the Missouri Constitution. See Counts I, II, and III, L.F. 18-23. The only provision of HB 343 that the Hospitals challenge is the adding of a new § 430.225 and the only relief they seek is

the severing of that portion from the remainder of HB 343. *See*, for example, paragraphs 42 and 44 and the prayer for relief in Count I. L.F. 19.

Section 516.500 was enacted in 1994, in response to the suggestion made in the concurring opinion of Judge Holstein in *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 105 (Mo. banc 1994). The statute as adopted follows with precision that suggestion.

The Hospitals assert that the impact of § 516.500, RSMo 2000, had to be an affirmative defense. *See* page 46 of their brief. The Hospitals did not allege any other amendment to HB 343 violated the Constitution nor did they assert HB 343 as introduced was flawed. Therefore, because the challenge was initiated within the time frame of the statute, it would have been inappropriate to raise § 516.500 as an affirmative defense.

Because the Hospitals filed a timely challenge of § 430.225 as enacted in HB 343, an affirmative defense would not lie. The purpose of the requirement of pleading an affirmative defense is to give notice to the parties. *Schimmel Fur Company v. American Indemnity Company*, 440 S.W.2d 932 (Mo. 1969). In this instance, the Hospitals determined that the only provision they would challenge was that involving hospital liens. By choosing to challenge only those provisions, they cannot now claim the other provisions of HB 343 added after its introduction violate any of these procedural provisions of the Missouri Constitution. Therefore, the analysis by the circuit court properly limited the inquiry to the section they challenged.

The purpose of limitations such as contained in § 516.500 is to allow those affected by the new provisions to rely upon their validity in order to comport their activity to those

provisions. Limitations are favored in law, *Langendoerfer v. Hazel*, 601 S.W.2d 290 (Mo. App. 1980). The purpose of a statute of limitations is to encourage citizens to file in a timely fashion their claims, and the public interest is best served by the certainty of prohibiting state claims. *State ex rel. and to Use of Collector of Revenue of City of St. Louis v. Robertson*, 417 S.W.2d 699 (Mo. App. 1967). Had the Hospitals challenged other portions of HB 343, parties with an interest in affirming those provisions would have had an opportunity to intervene to participate in this litigation. During the 17 months this case has been pending, those individuals and entities affected by those provisions have comported their activities to the requirements of those provisions.

Having established that the circuit court properly found that the applicability of § 516.500 did not have to be raised as an affirmative defense, the salient issue then becomes whether the hospital lien law provisions were added in derogation of the Constitution. A review of HB 343 with the hospital lien law provisions as compared to it as originally introduced reveals no constitutional violation. The additions regarding liens on judgments and settlements of patients apply to health care practitioners licensed by the professional boards within the Division of Professional Registration. Those health care licensees are chiropractors, podiatrists, dentists, physicians, surgeons, and optometrists. All those health care practitioners are subject to discipline for a variety of reasons, including obtaining a fee by fraud, deceit, or misrepresentation. They are also subject to discipline for fraud or dishonesty in the performance of their functions or duties as a licensed health care practitioner. See e.g., § 330.160.2(4), (5), RSMo 1994; § 331.060.2(4), (5), RSMo 1994;

§ 332.321.2(4), (5), RSMo Supp. 1999; § 334.100.2(4) RSMo Supp. 1999; and § 336.110.2(4), (5), RSMo 1994. Submitting a fraudulent claim under the hospital lien law would subject those professionals to discipline, thereby tying the amendment to the original bill, which involved the Division of Professional Registration, and having a natural connection with that original bill.

The Hospitals take the incongruous position that the original bill met constitutional muster when the subject matter included provisions involving endowed care cemeteries, employment agencies, dietitians, message therapists, interior designers, acupuncturists, chiropractors, tattoo practitioners, respiratory care therapists, and pharmacists; but they assert that when it was amended to include provisions that certain health care practitioners, including chiropractors, could file liens against patients and participate in recovery in a personal injury claim, the legislature somehow violated the constitutional provisions regarding bill title and purposes.

The actual matter that the Hospitals contested is the legislative decision to expand those who can make claims to individual health care practitioners because it reduces the pool of money against which the Hospitals can make claim. *See* L.F. 18. However, there is great deference to be given to legislative enactments and a strong presumption that the legislation is constitutional. *Spradlin v. City of Fulton*, 924 S.W.2d 259, 262-63 (Mo. banc 1996) and *Hammerschmidt, supra* at 102.

A. Clear Title/Single Subject

MO. CONST. art. III, §23, states: “No bill shall contain more than one subject which shall be clearly expressed in its title.” The requirements of this provision are designed to facilitate an orderly legislative procedure and prevent abuses. *See Hammerschmidt, supra*. Attacks against legislative action founded on constitutionally-imposed procedural limitations are not favored, and such limitations are interpreted liberally to uphold the action, unless it clearly and undoubtedly violates such limitations and courts have consistently avoided interpretations that will limit or cripple legislative enactments any further than is made necessary by the absolute requirements of the law. *Hammerschmidt, supra* at 102.

The amendments to § 430.225, coupled with the title change to an act relating to professional licensing, did not violate the clear title instructions. It is appropriate to change the title of an act during the legislative process when additional provisions are added to the act, particularly when the title reflects the general contents of the bill. *Westin Crown Plaza Hotel Company v. King*, 664 S.W.2d 2, 6-7 (Mo. banc 1984). The title of HB 343, “relating to professional licensing,” did indicate the general contents of HB 343 because the relevant additions involve the duties and responsibilities of medical professionals regarding their filing of liens against patients to recover payment for services rendered by those professionals.

B. Single Purpose and Change of Purposes

MO. CONST. art. III, § 21 provides that no bill can be passed in which its original purpose has been changed. As reviewed by the circuit court, HB 343 did not have a change in purpose nor did it have more than one purpose and, therefore, did not violate this constitutional provision. This Court has recognized that a liberal interpretation of the limitations of both

MO. CONST. art. III, §§ 21 and 23 is necessary to prevent them from inhibiting the normal legislative processes, in which bills are combined and additions reflecting the legislative intent are made. *Blue Cross Hospital Service, Inc. of Missouri v. Frappier*, 681 S.W.2d 925, 929 (Mo. banc 1984); *Westin, supra* at 6 (citing *State v. Williams*, 652 S.W.2d 102, 108 (Mo. banc 1983)).

This Court has held that only clear and undoubted language limiting the purpose will support a MO. CONST. art. III, § 21 challenge. *Stroh Brewery Company v. State*, 954 S.W.2d 323 (Mo. banc 1997). The Hospitals challenge HB 343 because the title was changed from a reference to the Division of Professional Registration to a reference to professional licensing. See L.F. 12-13, Count II of their petition. However, the original title did not contain the type of limiting language such as “for the sole purpose of” that was noted by the Court in *Stroh, supra* at 326 and, therefore, the additions to the bill did not change its purpose. “When alternative readings of a statute are possible, we must choose the reading that is constitutional.” *Id.*

Alterations that bring about an extension or limitation of the scope of the bill or even introduce new matter are not prohibited as long as they are germane. *Westin, supra* at 6 (citing *State v. Ludwig*, 322 S.W.2d 841, 847 (Mo. banc 1959)). The title of a bill can provide some guidance as to its subject. In fact, to the extent a bill’s purpose is properly expressed in its title, a court need not look beyond the title to determine the bill’s subject. *Hammerschmidt, supra* at 102. The test for compliance is whether the provisions of a bill fairly relate to the subject expressed in its title, have natural connections therewith, or are “incidents or means

to accomplish” the expressed purpose. *Blue Cross, supra* at 930; *Hammerschmidt, supra* at 102; *Fust v. Attorney General for the State of Missouri*, 947 S.W.2d 424, 428 (Mo. banc 1997).

The subject of the bill “includes all matters that fall within or reasonably relate to the general core purpose of the proposed legislation.” *Hammerschmidt, supra*. To determine whether there is a “single subject” violation, the court will first identify the general, core purpose of the bill and then look at the challenged provision to determine if it is related or connected to the bill’s subject. If they are fairly related or naturally connected, the court will find no violation of the single subject requirement.

The provisions of HB 343 as originally proposed dealt with licensing issues involving a variety of professions within the Division of Professional Registration, including health care professions. *See, e.g.* L.F. 63-65. The title of the bill passed, “relating to professional licensing,” reflects the contents of HB 343 as introduced and as passed in that the new provisions involve individuals and corporations with professional licenses that can now make claims under the hospital lien law provisions and are limited like hospitals to recovery under that procedure. The purpose of HB 343 is clear and unambiguous, to impose certain obligations on those who have professional licenses issued by the state and that purpose never changed. Accordingly, the court did not err in finding no violation of either MO. CONST., art. III, § 21 or MO. CONST., art. III, § 23 when comparing the provisions of HB 343 involving § 430.225 and to the originally introduced HB 343.

II

Even if the circuit court should have reviewed all the provisions of HB 343 as enacted in comparison to the provisions of HB 343 as introduced, the court did not err in granting summary judgment to the state because HB 343 has a single purpose, that purpose did not change during its enactment and it has a clear title and, therefore, does not violate either MO. CONST. art. III, § 21 or § 23; and, therefore, this Court should reject the Hospitals' Points Relied On II, III, and IV.

It is fundamental that statutes are presumed constitutional, *State v. Newlon*, 627 S.W.2d 606 (Mo. banc 1982), and that statutes are to be construed to comply with MO. CONST. art. III, § 21 and MO. CONST. art. III, § 23 if at all possible. *Blue Cross Hospital Service, Inc. v. Frappier*, 681 S.W.2d 925 (Mo. banc 1984). All doubt is to be resolved in favor of constitutionality, *State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4 (Mo. banc 1975), and every reasonable effort should be made to sustain the statute. *Allied Mut. Ins. Co. v. Bell*, 185 S.W.2d 4 (Mo. 1945). This argument addresses Points Relied On II, III, and IV in the Hospitals' initial brief.

All of the provisions that were added to HB 343 relate to individuals or entities licensed by the state of Missouri. Design work is provided by engineers and architects, eye care providers are physicians and optometrists, while ambulances and fireworks are also licensed by the state. *See* Chapters 327, 334, and 336, RSMo 2000, and Chapter 190, RSMo 2000, and §§ 320.106 through 320.161, RSMo 2000.

The constitutional restrictions on clear title, change of purpose, and single purpose for legislation are to avoid surprise and to prevent misleading members of the legislature. *C.C.*

Dillon Company v. City of Eureka, 12 S.W.3d 322, 326 (Mo. banc 2000) and *Westin Crown Plaza Hotel Company v. King*, 664 S.W.2d 2, 5 (Mo. banc 1984). The fact that the provisions regarding hospital liens were adopted through an amendment several weeks before the end of the session belies Hospitals' claims. In fact, the petition and the joint stipulation of facts reflect that the provisions adopted as part of HB 343 were introduced in February 1999 and were reported out of committee. Petition, paragraphs 22 and 24, L.F. 15 and Joint Stipulation of Facts, paragraphs 8 and 10, L.F. 244-245. The provisions relating to hospital liens were added to HB 343 on April 27, 1999, in the Senate and became part of the truly agreed to and finally passed legislation after referral to a conference committee. See paragraphs 13 and 15 of Joint Stipulation of Facts, L.F. 245-246. Hospitals' petition is silent as to the additions other than to § 430.225, and Hospitals provided no evidence that the legislature was misled or surprised by the amendments relating to engineers and architects, eye care providers, ambulances, or fireworks. There was no misleading of the legislature or surprise in adopting the final version of HB 343. It is certainly not unusual given the nature of the legislative process to have a combination of measures that relate to one another that also results in a change in the title. The method of how HB 343 was adopted is surely no more spectacular than that in *Stroh Brewery Company v. State*, 954 S.W.2d 323 (Mo. banc 1997) or *Missouri State Medical Association v. Missouri Department of Health*, 39 S.W.3d 837 (Mo. banc 2001).

The single subject rule of MO. CONST. art. III, § 23 is intimately bound up with the MO. CONST. art. III, § 21 ban on amending bills so as to change their original purposes. Thus, challenges under §§ 21 and 23 frequently go hand in hand. See *Westin, supra* at 5.

In *Missouri State Medical Association*, this Court upheld a statute which had a title “relating to health services,” even though the original title was “relating to insurance coverage for cancer early detection.” *Missouri State Medical Association, supra* at 839. Added to the original provisions requiring insurance coverage for early detection of cancer, the enacted bill requires:

- confidentiality of HIV-related information;
- insurance for mental illness and chemical dependency;
- standard “explanation of benefits” by health insurers;
- standard “referral” information by health insurers and providers;
- standard (pre-operation) information on the advantages, disadvantages, and risks including cancer, of breast implantation; and,
- establishment of a health insurance advisory committee.

Id. This Court rejected the same trio of arguments made herein reaffirming the proposition that laws have a strong presumption of validity. *Missouri State Medical Association, supra* at 839-41.

A. Clear Title/Single Subject

As the *Hammerschmidt v. Boone County*, 877 S.W.2d 98 (Mo. banc 1994) court noted, so long as a disputed matter is germane, connected, and congruous with the rest of the bill, the bill does not violate the single subject rule. The court held that the title test enunciated in *Westin* also applies to determining whether a bill contains a single subject. “The test to determine if ‘a bill contains more than one subject’ is whether all provisions of the bill fairly

relate to the same subject, have a natural connection therewith or are incidents or means to accomplish its purpose.” *Id.* (quoting *Westin, supra* at 6); *see also State ex rel. Wagner v. St. Louis County Port Authority*, 604 S.W.2d 592, 601 (Mo. banc 1980). Changes in a bill’s title are necessary to accurately reflect the real scope of the legislation. *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 36 (Mo. banc 1982).

A title of the bill can be amended during the legislative process so as to reflect the inclusion of other material, and where the title indicates the general contents of the act, it does not violate the Constitution. *Westin, supra* at 6, 7. This analysis holds true in this case. The title of HB 343, “relating to professional licensing,” states the general contents of the bill and therefore meets the requirements of the Constitution. Additions and changes to types of licenses issued by the state were within the original bill, including changes involving chiropractors. *See* L.F. 63-64, 64-166, and 222. All the amendments to HB 343 relate to licensing and, therefore, the title reflects the general contents and the subject of the bill. This is all that is required under the Constitution.

B. Single Purpose and Change of Purposes

The legislative practice of including amendments which concern related new matters has previously been approved. In *Blue Cross*, amendments added 94 new sections. Since these new sections related to the subject matter of the original bill, the court found that the bill complied with MO. CONST. art. III, § 21. *Blue Cross, supra* at 929-30. *See also Westin, supra* at 6, wherein the court reiterated that extending the scope of a bill to include new matter is not prohibited as long as the changes are germane to the broad purpose of the bill. This is

precisely what happened when HB 343 was amended during the 1999 legislative session. The issue is whether HB 343 with its different title “relating to professional licensing” offended the policy reasons for the original purpose requirement of MO. CONST. art. III, § 21. The changes to HB 343 were just as germane, connected, and congruous to the original bill as the subparts of the original bill that dealt with diverse subjects such as endowed cemeteries, massage therapists, and pharmacists, which the Hospitals concede were constitutional. The Hospitals failed their heavy burden to show that the changes “clearly and undoubtedly” were not germane to professional licensing. *C.C. Dillon Company, supra* at 327.

This Court has not made a practice of declaring legislation unconstitutional because a bill’s provisions may not seem to intimately relate to one another. In *Corvera Abatement Technologies, Inc. v. Air Conservation Commission*, 973 S.W.2d 851, 860 (Mo. banc 1998), this Court considered a bill that arose out of three introduced bills relating to asbestos abatement, underground storage tanks, and water well drillers. The title of the resulting bill was “relating to environmental control.” *Id.* Despite the expansion of each of the original bills into a broader one, this Court held that the legislature did not violate MO. CONST. art. III, § 23 because each of the final bill’s provisions fairly related to and were a means of accomplishing environmental control, the stated purpose of the bill. *Id.* at 862.

In cases similar to this case, this Court has declined to overturn legislation based upon a challenge that the original purpose of the legislation was changed. In *Stroh Brewery Company, supra*, this Court considered a bill that as introduced contained one section “relating to the auction of vintage wine, with penalty provisions.” *Id.* at 325. During the

legislative process, this bill took on additional amendments and eventually grew to nine sections, including the original section relating to vintage wine and other topics such as marketing of alcohol, Sunday licenses for sale of alcohol, age requirements for sellers of alcohol, labeling requirements for malt liquor, and additional penalties for violations of the liquor control law. HCS/SB 933 (1996). The bill as truly agreed to was entitled “an act . . . relating to intoxicating beverages.” *Stroh* at 325.

This Court recognized that the original purpose of a bill must be determined at the time of introduction. *Id.* at 326. Even though the original bill dealt only with the auction of vintage wine, *Stroh* held that other sections relating to liquor control may be added without changing its original purpose, even if the title is expanded, when those sections are generally consistent with the overarching purpose of liquor control. *Id.*

The stipulation reflects that HB 343 was not amended beyond its core purpose. The amendments to the bill involve licensing, the original bill related to licensing within the Division of Professional Registration, and therefore the amendments “fairly relate to the subject expressed in the title, [or] have natural connections therewith.” *Blue Cross, supra* at 930.

Plaintiffs assert that the title of HB 343 is like the title “relating to economic development” found too broad in *Carmack v. Director, Missouri Department of Agriculture*, 945 S.W.2d 956 (Mo. banc 1997). In *Carmack* the added provisions “related to economic development” were to be administered by the Department of Agriculture, not by the Department of Economic Development. *Carmack, supra*, is a case that dealt with a clear title

challenge to a bill and found that the entire bill failed because the term “economic development” was too amorphous to describe any of its contents. In fact, the *Carmack* decision turned on a “single subject” challenge to an amendment that added to the economic development bill a provision for compensating livestock owners when the state destroys their animals for disease control. The court held that the amendment dealing with livestock under the auspices of the Department of Agriculture violated MO. CONST. art. III, § 23 because it introduced a subject that was different than the primary, core subject of the original bill, which related, properly, to programs administered by the Department of Economic Development. Here, the provisions are related to individuals and entities licensed by the state and, therefore, do not fall within the type of legislation found unconstitutional in *Carmack*.

Although MO. CONST. art. III, § 23 requires that all parts of a bill relate to a single subject, this does not mean that they must relate to each other, so long as they are within the core purpose of the bill as expressed by the title. *Fust v. Attorney General for the State of Missouri*, 947 S.W.2d 424, 428 (Mo. banc 1997). Similarly, for purposes of a “clear title” analysis, the title need not describe every detail contained in the bill, and mere generality of title will not prevent the act from being valid, so long as the title does not tend to cover up the contents of the act or promote fraudulent, misleading, and improper legislation. *Id.* at 429. The title of HB 343 does not hide the contents of the bill, nor does it mislead anyone regarding its provisions.

The Hospitals claim at page 39 of their brief that Senator Singleton’s objection to HB 343 should be considered “persuasive in determining the constitutionality of a bill,” citing

Allied Mut., supra at 7-8. In *Allied Mut.*, defenders of the challenged bill attempted to use the fact that no legislator objected to the bill as dispositive of the constitutional challenge. The court held that the failure of any legislator to object was not conclusive as to the claim. *Allied Mut., supra* at 8. That is far different than what the Hospitals assert.

CONCLUSION

The circuit court ruled properly that HB 343 did not violate either MO. CONST. art. III, § 21 or MO. CONST. art. III, § 23 by comparing the provisions of the bill as originally enacted with those challenged by Hospitals involving the hospital lien law. Even if the circuit court should have considered all the provisions of HB 343 added after its introduction, the bill as enacted does not violate the single subject, change of purpose, or clear title restrictions of the Missouri Constitution. Therefore, Respondents respectfully request that this Court affirm the circuit court and hold HB 343 constitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned assistant attorney general hereby certifies that:

(1) The attached brief complies with the limitations contained in Special Rule 1(b) of this Court in that it contains 5,001 words, excluding the cover, this certification, and any appendix, as determined by WordPerfect 9 software; and

(2) The floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and

(3) Two true and correct copies of the attached brief and a floppy disk containing a copy of this brief, were mailed, postage prepaid, this 22nd day of October 2001 to:

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