No. SC92851

IN THE SUPREME COURT OF MISSOURI

HUMANE SOCIETY OF THE UNITED STATES, et al.,

Plaintiffs-Appellants

v.

STATE OF MISSOURI, et al.,

Defendants-Respondents.

Appeal from the Circuit Court of Cole County, Missouri
Case No. 11AC-CC00300

APPELLANTS' BRIEF

COSGROVE LAW GROUP, LLC
David B. Cosgrove, MBE No. 40980
Kurt J. Schafers, MBE No. 57849
8021 Forsyth Blvd.
St. Louis, MO 63104
Telephone: (314) 563-2490
Facsimile: (314) 968-7371
E-mail: dcosgrove@cosgrovelawllc.com
kschafers@cosgrovelawllc.com

Attorneys for Appellants

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INTRODUCTION

This case involves a blatant violation of the state constitution by the legislature that has had far-reaching effects on a distinct species of community charitable organization: the animal shelter. The bill in question, Senate Bill No. 795 ("SB 795"), strayed far from its original purpose—blasting safety—to, among other things, remove animal shelters from the list of entities exempt from paying annual license fees to the state department of agriculture, in direct contravention of the "original purpose" provision of the Missouri Constitution. This removal of the license fee exemption for animal shelters has placed a serious financial burden on many of the animal shelters that provide important services for the community, including the rescue and care of homeless or abandoned dogs and cats.

Because of the economic downturn, many humane organizations are struggling to make ends meet, and the removal of the licensing fee exemption for shelters means that, with the recent increases to the license fees, they may each be required to pay as much as $2,500 every year. Every dollar these charitable groups are forced to spend on this new increased license fee means fewer resources to care for animals and to place them in new homes. Moreover, if nonprofit animal shelters are unable to perform services for the community—sheltering animals, facilitating adoptions, and reducing pet overpopulation through spaying and neutering—a greater burden will fall on the shoulders of other organizations like Appellant the Humane Society of the United States, Missouri taxpayers, and public animal care and control agencies. With no one to care for stray dogs and cats, the demands on law enforcement, county health

officials, and animal control will grow. Animal shelters are performing a service for all Missouri citizens. Because of the unconstitutional manner in which the exemption was removed from the law, there was no legitimate opportunity to debate the importance of keeping costs down for animal shelters, and of continuing the fee exemption.

Article III, section 21 of the Missouri Constitution provides, in relevant part, that "No law shall be passed except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose." The original purpose of SB 795 concerned an amendment to the Missouri Blasting Safety Act, with the bill making changes only to Section 319.306 of the Missouri Blasting Safety Act so that "individuals using explosive materials along with a well screen cleaning device for the purpose of unblocking clogged screens of agricultural irrigation wells" no longer needed to secure a blaster's license.. **Legal File ("L.F.")** at 17, 129. However, during the legislative process that led to the final passage of SB 795 by the 95th General Assembly, the bill was changed so dramatically that it lost its focus on blasting safety, instead being concerned the enactment of several statutory sections relating to animals and agriculture. **L.F.** at 78. Among other things, the bill repealed and reenacted section 273.327, RSMo, which effectively removed an exemption for an "animal shelter" from the fee required to obtain a license to operate an animal facility. **L.F.** at 83, 130. Appellants assert that the repeal and reenactment of Section 273.327, RSMo, by SB 795 was not germane to the original object of the bill—blasting safety—and, therefore, the passage of SB 795 violated Article III, Section 21 of the Missouri Constitution.

The trial court denied Appellants' request for declaratory judgment finding that

the constitutional challenge became "moot" when Senate Bill No. 161 ("SB 161") again repealed and reenacted Section 273.327, RSMo, this time increasing the maximum license fee from $500 to $2,500. **L.F.** at 177-78. The court based this decision on Missouri Supreme Court precedent which stands for the proposition that "[t]he repeal of a law means its complete abrogation by the enactment of a subsequent statute" and the "basis for deciding the constitutionality of that statute evaporated" upon its repeal and reenactment. C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322, 325 (Mo. banc 2000).

For reasons set forth below, Appellants implore this Honorable Court to reconsider the rationale behind its holding in C.C. Dillon in light of the unintended consequences the case has had on the legislative process, Article III, section 21, and persons, such as Appellants, adversely affected by the passage of unconstitutional bills.

JURISDICTIONAL STATEMENT

This appeal concerns whether Senate Bill No. 795 as Truly Agreed to and Finally Passed by the General Assembly on May 14, 2010, and signed into law by Governor Jeremiah W. Nixon on July 9, 2010 was amended in its passage so as to change its original purpose in violation of Article III, section 21 of the Missouri Constitution.

On August 21, 2012 the Circuit Court of Cole County, Missouri entered its judgment finding that Plaintiffs' cause of action is moot because the 96th Missouri General Assembly repealed and reenacted § 273.327, RSMo, as part of Senate Bill 161. The circuit court relied on C.C. Dillon Company v. City of Eureka, 12. S.W.3d 322 (Mo. banc 2000).

Notices of Appeal were timely filed on September 10, 2012.

Because this appeal involves the constitutionality of one or more statutes, it is within the exclusive jurisdiction of this Court. MO. CONST. ART. V, §3.

STATEMENT OF FACTS

On January 19, 2010, SB 795 was introduced and read in the Missouri Senate for the first time. As introduced, SB 795 was entitled "AN ACT To repeal section 319.306, RSMo, and to enact in lieu thereof one new section relating to blasting safety, with a penalty provision." **L.F** at 17, 129. As introduced, SB 795 would only amend the Missouri Blasting Safety Act, Section 319.300, *et seq.*, RSMo., so that "individuals using explosive materials along with a well screen cleaning device for the purpose of unblocking clogged screens of agricultural irrigation wells" did not need to secure a blaster's license. **L.F.** at 17, 129.

On February 23, 2010, SB 795 was taken up for Perfection. That same day, SB 795 was declared Perfected and Ordered Printed, as amended. **L.F.** at 129. As Perfected by the Senate, SB 795 was entitled "AN ACT To repeal sections 319.306 and 319.321, RSMo, and to enact in lieu thereof two new sections relating to blasting safety, with a penalty provision." **L.F.** at 26, 129. SB 795 was then sent to the House of Representatives. On April 13, 2010, the House passed a substitute bill for SB 795. **L.F.** at 130. On May 5, 2010, House Committee Substitute ("HCS") SB 795 was read a third time and passed in the House. It was then sent back to the Senate. **L.F.** at 130.

HCS SB 795 significantly altered SB 795, in that it changed the title of the bill to read "AN ACT To repeal sections 196.316, 265.300, 266.355, 267.600, 270.260, 270.400, 273.327, 273.329, 281.260, 311.297, 311.550, 319.306, and 319.321, RSMo, and to enact in lieu thereof fifty-seven new sections relating to animals and agriculture, with penalty provisions." **L.F.** at 36, 130. In addition to other new provisions, HCS SB 795 now included a provision related to a section of the Animal Care Facilities Act, § 273.327, RSMo. **L.F.** at 57, 130. Specifically, HCS SB 795 removed the exemption for animal shelter from the payment of the license fee. **L.F.** at 57, 130. The Senate refused to concur in HCS SB 795, and ultimately the House and Senate convened a joint committee conference. **L.F.** at 130.

The joint committee conference adopted a Conference Committee Substitute ("CCS") for HCS SB 795 on May 14, 2010. On that same day, the 95th General Assembly truly agreed to and finally passed SB 795. **L.F.** at 78, 130. CCS HCS SB 795 was titled "AN ACT To repeal sections 196.316, 266.355, 270.260, 270.400, 273.327, 273.329, 274.180, 281.260, 311.550, 319.306, 319.321, 393.1025, and 393.1030, RSMo, and to enact in lieu thereof thirty new sections relating to animals and agriculture, with penalty provisions, and an emergency clause for a certain section." **L.F.** at 78. The repeal and reenactment of Section 273.327, RSMo, remained a part of CCS HCS SB 795. **L.F.** at 83, 130. On July 9, 2010, Governor Jeremiah W. Nixon signed SB 795 into law. **L.F.** at 78, 130.

On January 24, 2011, Senate Bill No. 161 ("SB 161") was introduced and read in the Missouri Senate for the first time. **L.F.** at 130, 172. As introduced, SB 161 was

called AN ACT "To repeal sections 348.400, 348.407, and 348.412, RSMo, and to enact in lieu thereof three new sections relating to business development loans for agribusinesses." **L.F.** at 130, 172. On April 27, 2011, the 96th General Assembly truly agreed to and finally passed SB 161. **L.F.** at 131, 177. SB 161 repealed and reenacted Section 273.327, RSMo, increasing the maximum license fee for entities requiring licensing from $500 to $2,500. **L.F.** at 177-78. On April 27, 2011, Governor Jeremiah W. Nixon signed SB 161 into law, with an emergency clause. **L.F.** at 131.

Prior to the enactment of SB 795, an "animal shelter" was exempt from the license fee required to obtain a license to operate certain animal-related entities under Section 273.327, RSMo. **L.F.** at 10. After the enactment of SB 795, an "animal shelter" was no longer exempt from such license fee. **L.F.** at 57, 130. The Department of Agriculture administers the Animal Care Facilities Act, § 273.327, RSMo. **L.F.** at 10, 108. Animal shelters play an important role in Missouri and contribute to overseeing the welfare, protection, and humane treatment of animals throughout the state. **L.F.** at 9, 107-08.

Dogwood Animal Shelter, Inc. ("Dogwood Shelter") is a not-for-profit organization located at 1075 Runabout Drive (Lake Road 54-63) in Osage Beach, Missouri. Founded in 1976, Dogwood Shelter has continually operated as an animal shelter and maintains a license under the Animal Care Facilities Act ("ACFA), § 273.327, RSMo. **L.F.** at 129. As such, Dogwood Shelter must pay the licensing fee on an annual basis. Dogwood Shelter provides critical animal sheltering services to the community that would fall to others or the government if it were to fold.

Stray Rescue of St. Louis, Inc., ("Stray Rescue") is a not-for-profit organization located at 2320 Pine Street in St. Louis, Missouri. Incorporated in 1998, Stray Rescue has continually operated as an animal shelter and has continually maintained a license under the ACFA, § 273.327, RSMo., since 2001. **L.F.** at 129. Stray Rescue is on the street rescuing homeless or abused animals throughout the year, providing a tremendous service to the St. Louis community. Each dollar that Stray Rescue must pay for its licensing fee represents one less dollar that can go toward the rescue and re-homing of stray animals.

Because of the licensing fee that Missouri shelters and rescue operations will now be required to pay as a result of SB 795 (and the fee increases wrought by SB 161), animal shelters such as Dogwood Shelter and Stray Rescue will be impacted in several ways. **L.F.** at 196. First, because Dogwood Shelter, Stray Rescue and other shelters will have to spend scarce resources on paying the fee, they will have fewer resources available for assisting animals in need. **L.F.** at 196. In fact, the least financially stable among them may be forced to close their doors and cease operations as a result of the license fees, which may not appear exorbitant on paper but will and do have devastating effects on the low bottom lines of small animal shelters. In turn, the shelters that survive will be called upon more often to pick up the slack created by the closure of other shelters in rescuing and caring for animals in crisis situations, such as abusive puppy mills, thereby stretching the scarce resources of the surviving shelters even more. **L.F.** at 196. This may cause increased strain on additional shelters, further devastating the animal care

network in Missouri and depriving the community and its animals of the important services provided by local animal shelters.

The Humane Society of the United States ("HSUS") is the nation's largest animal protection organization. **L.F.** at 195. HSUS is supported by 11 million Americans, including nearly 300,000 in the State of Missouri. **L.F.** at 195. Since its founding in 1954, HSUS has worked to promote the humane treatment of all animals through grant-making, field work, law enforcement assistance, emergency rescue missions, and the provision of direct care for thousands of animals at its sanctuaries, emergency shelters, wildlife rehabilitation centers, and mobile veterinary clinics. **L.F.** at 195. HSUS supports the work of independent animal shelters, including the many shelters in Missouri, through, among other things, grant-making, training programs, evaluations, campaigns to boost pet adoptions, funding to support spay/neuter clinics, and expert assistance in animal-related emergencies. **L.F.** at 195.

HSUS devotes numerous resources to rescuing animals in peril, and has an entire Animal Rescue Team ready to deploy in the event of emergency situations resulting in significant numbers of animals in crisis. **L.F.** at 196. At times, HSUS's experts also come to the rescue of animals left without adequate care when well-intentioned shelters or rescues are no longer able to afford to take care of them. **L.F.** at 196. Because of the significant impact the removal of the license fee exemption is having, and will continue to have, on Missouri shelters and rescue operations, some smaller and/or less financially stable organizations may not be able to survive at all in the face of the licensing fees, and may need to close their doors entirely due to the additional financial pressure. **L.F.** at

196-97. If and when shelters fold, the HSUS Animal Rescue Team may be called upon to assist and care for the animals left homeless by the closing of the shelter's doors, again expending critical resources that can then not be spent on other urgent matters. **L.F.** at 197. As a result, HSUS will expend more resources on rescues and animal care in Missouri, and will have fewer resources to devote to other animals in need around the country, including animals suffering in the wake of flooding, hurricanes, and tornadoes like those recently experienced in Missouri and the Northeast. **L.F.** at 196.

POINTS RELIED ON

I. The Trial Court erred in finding that Appellants' request for declaratory judgment challenging the constitutional validity of SB 795 was moot because the repeal and reenactment of Section 273.327 RSMo through SB 161 did not eliminate the constitutional defects or the existing controversy.

II. The Trial Court erred in denying Appellants' request for declaratory judgment because Senate Bill 795 as amended and enacted conflicts with the bill's original purpose in violation of Article III, section 21 of the Missouri Constitution.

STANDARD OF REVIEW

The Missouri Supreme Court "has exclusive jurisdiction to determine the validity of a state statute." Hodges v. City of St. Louis, 217 S.W.3d 278, 279 (Mo. banc 2007)(citing MO. CONST. ART. V, SEC. 3). The standard of review for constitutional challenges to a statute is *de novo*. Id.; Planned Parenthood of Kansas v. Nixon, 220 S.W.3d 732, 737 (Mo. banc 2007)("The constitutionality of a statute is a question of law, the review of which is de novo."). Normally, where the constitutionality of a statute has been challenged the statute enjoys a presumption of validity unless it "clearly contravenes some constitutional provision." Doe v. Phillips, 194 S.W.3d 833, 841 (Mo. banc 2006); State v. Richard, 298 S.W.3d 529, 531 (Mo. banc 2009).

ARGUMENT

I. The Trial Court erred in finding that Appellants' request for declaratory judgment challenging the constitutional validity of SB 795 was moot because the repeal and reenactment of Section 273.327, RSMo, through SB 161 did not eliminate the constitutional defects or the existing controversy.

The circuit court denied Appellants' request for declaratory judgment based upon this court's holding in C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322 (Mo. 2000). In C.C. Dillon, the plaintiff filed a declaratory judgment action seeking a ruling that the bills which created and amended Section 71.288, RSMo were constitutionally invalid. 12 S.W.3d at 324–25. The bills at issue were 1997 House Bill 831, 1998 Senate Bill 883, and 1998 House Bills 1681 & 134. Id. at 325.

The court found that the plaintiff's challenge to House Bill 831, which created section 71.288, was moot. Id. This was because Senate Bill 883 repealed "former" section 71.288 and enacted in lieu thereof a "new" section 71.288. Id. The court stated that "'[t]he repeal of a law means its complete abrogation by the enactment of a subsequent statute.'" Id. (quoting State ex rel. Peebles v. Moore, 339 Mo. 492, 99 S.W.2d 17, 19 (1936)). This court concluded that once the General Assembly repealed "former" section 71.288, its basis for deciding the constitutionality of that statute "evaporated." 12 S.W.3d at 325.

Appellants respectfully disagree with the court's analysis in C.C. Dillon as applied to the circumstances of this case. The "repeal of a law means its complete abrogation" language in C.C. Dillon fails to consider the following statement of Missouri law:

> "A subsequent act of the Legislature repealing and re-enacting, at the same time, a pre-existing statute, is but a continuation of the latter, and the law dates from the passage of the first statute and not the latter." State ex rel. Hawes v. Mason, 153 Mo. 23, 54 S.W. 524 (Mo. 1899) [other citations omitted]. And this is true even though the new section contained modifications of the repealed sections.

State v. Ward, 40 S.W.2d 1074, 1078 (Mo. 1931); see also In re Shaver, 140 F.2d 180, 181 (7th Cir. 1944)(finding that repealed and reenacted statutes are regarded as having been continuously in force); see also Haines v. Dept. of Employment, 270 P.2d 72, 73 (Cal. Dist. Ct. App. 1954)("[T]he reenactment neutralizes the repeal, and the provisions of the repealed act which are thus reenacted continue in force without interruption[.]").

While Appellants acknowledge that the above stated rule from the Ward case does not address whether procedural defects follow a statute though repeal and reenactment, the logic and reasoning from the rule in Ward remains especially pertinent and persuasive in a case such as this. Because SB 161 merely repealed and reenacted the version of Section 273.327 created by SB 795, it is merely a continuation of the constitutional deficiencies contained in SB 795. Importantly, SB 795, as discussed below in Section II, was "log-rolled" into passage. As a result, there is a *substantial* risk that the legislators and the public were not provided adequate notice of the repeal and reenactment of Section 273.327 in SB 795, and in particular of the removal of the exemption from the licensing fee for animal shelters from that section. Therefore, SB 795 unconstitutionally removed the exemption for animal shelters contained in the prior version of Section

273.327.

As a result, when SB 161 proposed a subsequent repeal and reenactment of Section 273.327, members of the legislature and the public were faced with an unconstitutionally modified version of that section. The only visible change in SB 161 from the version of Section 273.327 created by SB 795 is a change in the *amount* of the maximum licensing fee from $500 to $2,500 for all licensees and the addition of a $25 annual fee for Operation Bark Alert. **L.F.** at 131, 164, 177-78. There was no attention called to, no proposed change to, and no legislative or public consideration of the unconstitutional removal by SB 795 of the animal shelter fee exemption which was undetectably embedded in the reinstated text of SB 161. As such, SB 161 is merely a continuation of the constitutional deficiencies contained in SB 795.

In essence, C.C. Dillon fails to take into account the important concept, announced in State v. Ward and other cases, that a simultaneous repeal and reenactment of a statute means that the statute was in fact continuously in force. Accordingly, Appellants respectfully urge the Court to reconsider the holding in C.C. Dillon in light of the circumstances of this case, and hold that the unconstitutional defect created by SB 795 was uninterrupted and unaffected by SB 161's simultaneous repeal and reenactment of Section 273.327, RSMo.

A. The Principle of Mootness Does Not Apply Under the Circumstances of This Case.

"A cause of action is moot when the question presented for decision seeks a judgment upon some matter which would not have any practical effect upon any then-

existing controversy." C.C. Dillon, 12 S.W.3d at 325 (citing Bank of Washington v. McAuliffe, 676 S.W.2d 483, 487 (Mo. banc 1984)). "The existence of an actual and vital controversy susceptible of some relief is essential to appellate jurisdiction." Armstrong v Elmore, 990 S.W.2d 62, 64 (Mo. App. 1999) (quoting State ex rel. Wilson v. Murray, 955 S.W.2d 811, 812–13 (Mo. App. 1997) (citation omitted)). "When an event occurs that makes a court's decision unnecessary or makes granting effectual relief by the court impossible, the case is moot and generally should be dismissed." Armstrong, 990 S.W.2d at 64; In re C.A.D., 995 S.W.2d 21, 28 (Mo. App. 1999). "Even a case vital at inception of the appeal may be mooted by an intervenient event which so alters the position of the parties that any judgment rendered [merely becomes] a hypothetical opinion." Armstrong, 990 S.W.2d at 64 (quoting Gilroy–Sims and Assocs. v. City of St. Louis, 697 S.W.2d 567, 569 (Mo. App. 1985)).

Respondents' Memorandum in Support of its Cross Motion for Summary Judgment relied on a passage from Bank of Washington, 676 S.W.2d at 487, that states, "[W]here an enactment supersedes the statute on which the litigants rely to define their rights, the appeal no longer represents an actual controversy, and the case will be dismissed as moot." **L.F.** at 122. Respondents have taken this statement out of context to support the misguided proposition that the repeal and reenactment of essentially the same statute renders a challenge to the original statute moot.

However, Bank of Washington did not involve a challenge to the constitutionality of a statute. The case involved an appeal from the affirmance of a grant of certificate of incorporation to the First Missouri Bank of Washington. Id. at 484. The Bank of

Washington argued that the charter was void under Sections 362.015 RSMo (1978) and 362.020 RSMo (1978) because the incorporators were acting on behalf of a holding company, which was prohibited. Id. at 484–85. The day before oral arguments in the Missouri Supreme Court, the governor signed into law HB 1373 which repealed and reenacted Sections 362.015 RSMo and 362.020 RSMo and now permitted incorporators of a proposed bank to act on behalf of a holding company. Id. at 485. Therefore, the issue became moot. Id. at 487.

It would follow that the holding in C.C. Dillon should be limited to circumstances where the repeal and reenactment of a statute would render a challenge to the original statute moot because the "new" reenacted section changed the language of the statute so that the challenge or controversy no longer exists, rendering relief by the court impossible. For instance, in In re B.T., 186 S.W.3d 276 (Mo. banc 2006), a father challenged the validity of Section 210.177, RSMo (2004), that was in effect because his criminal conviction in another state precluded him from being reunited which his child. Id. However, Section 210.177, RSMo, was repealed and reenacted in 2005. Id. at 277. The "new" Section 210.177, RSMo (2005), permitted a court to exercise discretion as to placement of a child notwithstanding one's prior criminal convictions. Id. Using C.C. Dillon for guidance, the court found the father's challenge to the validity of the 2004 version of Section 210.177 was moot because the 2005 repeal and reenactment eliminated the portion of the statute at issue. Id.

In other words, the repeal and reenactment of the statute at issue in In re B.T. altered the language of the statute so that the reason for challenging the statute in the first

place no longer existed. Whereas in this case, the reason for challenging SB 795 is the unconstitutional "logrolling" that eliminated the exemption for animal shelters from paying licensing fees in Section 273.327. This was not cured by SB 161's subsequent repeal and reenactment of Section 273.327. In fact, not only did SB 161's repeal and reenactment of Section 273.327 carry forward the unconstitutional removal of the animal shelter exemption, it imposed a maximum licensing fee that was five times higher, making the removal of the license fee exemption for animal shelters of much greater importance. As such, because the relief requested by Appellants still exists in this case, the doctrine of mootness does not apply.

B. C.C. Dillon is Factually Distinguishable from the Present Case.

The circumstances in C.C. Dillon can be distinguished from the present case because the original House Bill at issue in C.C. Dillon was likely constitutional when passed. The plaintiff in C.C. Dillon challenged House Bill 831 under Sections 21, 23, and 28 of the Missouri Constitution. 12 S.W.3d at 324–325. House Bill 831, when originally introduced on March 12, 1997, was titled "AN ACT to repeal section 89.320, RSMo 1994, relating to planning commissions, and to enact in lieu thereof one new section relating to the same subject." The purpose of the bill was to designate the minimum and maximum number of members on any municipalities planning commission. HB 831 as originally introduced also gave each city council the option to include the city engineer on the planning commission.

By the time HB 831 was truly agreed to and passed on July 14, 1997 it was titled, "AN ACT to repeal section 70.385, 70.390 and 89.320 RSMo 1994, relating to planning

commissions, and to enact in lieu thereof four new sections relating to the same subject." HB 831 as passed provided that any city that maintains a city engineer on its planning commission shall have authority to place any restriction "upon the height, spacing and lighting of outdoor advertising placed within the view of any highway within the city." As such, legitimate reasons existed to uphold the constitutional validity of House Bill 831 against a challenge under Sections 21, 23, and 28.

With regard to the Section 21 attack, the opinion in C.C. Dillon seemed to quickly dismiss Dillon's challenge to HB 831 as moot due to the repeal and reenactment of the statute in question. 12 S.W.3d at 325. The opinion spends more time discussing whether SB 883 as enacted was germane to the original purpose of the bill, which related to transportation. The court ultimately found that outdoor advertising is closely related to transportation, such that the original purpose was not violated. 12 S.W.3d at 327–28. However, as will be demonstrated below, the changes to Section 273.327 implemented by SB 795 were clearly effected in an unconstitutional manner. Had the court in C.C. Dillon been faced with an obviously unconstitutional statute prior to repeal and reenactment, as is the case here, it may not have so easily dismissed the constitutional challenge as moot.

II. The Trial Court erred in denying Appellants' request for declaratory judgment because Senate Bill 795 as amended and enacted conflicts with the bill's original purpose in violation of Article III, section 21 of the Missouri Constitution.

Article III, section 21, of the Missouri Constitution provides, in relevant part, that "[n]o law shall be passed except by bill, and no bill shall be so amended in its passage

through either house as to change its original purpose." As the Supreme Court of Missouri has explained:

> [T]he constitutional limitations [of Article III, sections 21 and 23] function in the legislative process to facilitate orderly procedure, avoid surprise, and prevent "logrolling," in which several matters that would not individually command a majority vote are rounded up into a single bill to ensure passage. Sections 21 and 23 also serve to keep individual members of the legislature and the public fairly apprised of the subject matter of pending laws and to insulate the governor from "take-it-or-leave-it" choices when contemplating the use of the veto power.

Missouri Ass'n of Club Executives v. State, 208 S.W.3d 885, 888 (Mo. banc 2006) (quoting Stroh Brewery Co. v. State, 954 S.W.2d 323, 325–326 (Mo. banc 1997)).

Original purpose refers to the general purpose of the bill. Missouri Ass'n of Club Executives, 208 S.W.3d at 888 (citing McEuen v. Missouri State Board of Education, 120 S.W.3d 207, 210 (Mo. banc 2003)). The restriction in Article III, Section 21 is against the introduction of matter that is "not germane to the object of the legislation or that is unrelated to its original subject." Missouri Ass'n of Club Executives, 208 S.W.3d at 888 (citing Stroh Brewery Co., 954 S.W.2d at 326). "Germane" is defined as: "in close relationship, appropriate, relative, pertinent. Relevant to or closely allied." C.C. Dillon, 12 S.W.3d at. 327 (citing Black's Law Dictionary 687 (6th ed.)). The original purpose of a bill must be measured at the time of the bill's introduction. Missouri Ass'n of Club Executives, 208 S.W.3d at 888 (emphasis added).

An excellent example of the operation of an Article III, section 21 challenge can be found in the Missouri Ass'n of Club Executives case. There, House Bill 972 was first introduced in the House of Representatives with its purpose and title stated as follows: "An Act to repeal sections 577.001, 577.023, RSMo, and 302.309 RSMo . . . , and to enact in lieu thereof four new sections relating to *intoxication-related traffic offenses*, with penalty provisions." Missouri Ass'n of Club Executives, 208 S.W.3d at 887 (emphasis in original). After being passed by the House on May 3, HB 972 was revised in the Senate. Id. When passed out of committee in the Senate on May 10, only one of the original sections of the bill was repealed and replaced; the others were eliminated, and new sections were substituted related to the sale of alcohol to minors, voluntary manslaughter, and endangering the welfare of a child. Id. This version of the bill was titled "An Act to repeal sections 311.310, 565.024, 568.050, and 577.023, RSMo, and to enact in lieu thereof four new sections relating to *alcohol-related offenses, with penalty provisions.*" Id. (emphasis in original).

On May 12, with the legislative session ending the next day, a final substitute bill was introduced repealing six sections, again only one of which was in the original version, and enacting thirteen new sections, of which only six originated from some earlier version of the bill. Id. The other seven were new and unrelated to traffic or alcohol offenses. Id. Three of the seven purported to regulate the adult entertainment industry. Missouri Ass'n of Club Executives, 208 S.W.3d at 887. This fourth and final version of HB 972 containing the seven new sections was passed May 13, the last day of the legislative session, bearing the title "An Act to repeal sections 311.310, 565.024,

566.083, 568.050, 577.001, and 577.023, RSMo, and to enact in lieu thereof thirteen new sections relating to *crime*, with penalty provisions and an emergency clause for certain sections." Id. (emphasis in original).

The Missouri Association of Club Executives ("MACE") sought a declaratory judgment that HB 972 violated Article III, sections 21 and 23 of the Constitution. Id. The circuit court ruled in MACE's favor. Id. at 887–88. On appeal, the Missouri Supreme Court found that subsequent revisions in the title and content of HB 972 to include certain non-traffic related *alcohol offenses*, such as the sale of alcohol to minors, could be viewed as logically connected and germane to the original purpose of the bill. Id. at 888 (emphasis added).

However, the three provisions regulating adult entertainment added to the fourth version of the bill "were not remotely within the original purpose of the bill, but rather constitute a textbook example of the legislative log-rolling that section 21 is intended to prevent." Id. Because the valid provisions of the statute were not so essential and inseparably connected with, and so dependent upon, the void provisions, the court affirmed the circuit court's decision to sever the unconstitutional provisions from the remainder of the bill. Id. at 889.

Another more recent example of the application of Article III, section 21 can be found in Legends Bank, et al., v. State of Missouri, et al., 361 S.W.3d 383 (Mo. banc 2012). Legends Bank and John Klebba ("Challengers") filed a declaratory judgment action asserting that SB 844 violated the single subject requirement of Article III, section 23, the original purpose requirement of Article III, section 21, and the First Amendment.

Id. at 385. The trial court sustained the Challengers' motion for judgment on the pleadings. The state appealed. Id. at 386.

Senate Bill 844 as introduced was titled "An Act to amend chapter 37, RSMo, by adding one new section relating to contracts for purchasing, printing, and services for statewide elected officials." Id. at 385. SB 844 only added section 37.900, allowing statewide elected officials to use the office of administration for determining the lowest bidder during procurement. Id.

Eventually, after the Senate refused to accept House Committee Substitute No. 2 for SB 844, a House and Senate conference committee submitted Conference Committee Substitute No. 3 for SB 844. Legends Bank, 361 S.W.3d at 385. On May 14, 2010, the last day of the legislative session, this version of SB 844 was truly agreed to and finally passed. Id. This version of SB 844 was titled "An Act . . . relating to ethics, with penalty provisions." Id. As passed, SB 844 retained section 37.900 allowing statewide elected officials to use the office of administration for procurement, included a keys to the capitol dome provision. Id. SB 844 also repealed and enacted a number of sections in chapters 105, 115 and 130, and added a new section in chapter 575 making it a misdemeanor to obstruct an ethics investigation. Id.

The Missouri Supreme Court resolved the case based strictly on Article III, section 21. Id. at 386–87. It noted that Section 21 prohibits any bill from being "so amended in its passage through either house as to change its original purpose." Legends Bank, 361 S.W.3d at 386. Citing to Missouri Ass'n of Club Executives, 208 S.W.3d at 888, the court stated that original purpose refers to the general purpose of the bill, and that the

original purpose of a bill is established by the bill's "earliest title and contents" at the time the bill is introduced. Legends Bank, 361 S.W.3d at 386. The court noted that original purpose requirement does not prohibit subsequent additions or changes to legislation. Id. Rather, the restriction is against the introduction of a matter that is not "germane to the object of the legislation or that is unrelated to its original subject." Id.

The Missouri Supreme Court stated that the first step in an Article III, section 21 analysis is to identify the original purpose. Id. The court noted that according to its earliest title and contents, SB 844's original purpose was to add "one new section relating to contracts for purchasing, printing, and services for statewide elected officials." Id. Consistent with this purpose, the court noted that the original version of SB 844 added only section 37.900, which allowed statewide elected officials to use the office of administration for determining the lowest bidder during procurement. Legends Bank, 361 S.W.3d at 386. The court found that the title and earliest contents of SB 844 demonstrated that the original purpose pertained to procurement of necessary goods and services for elected officials. Id.

The second analytical step undertaken by the Missouri Supreme Court was to compare the original purpose with the final version of SB 844. Id. The original purpose of SB 844 related to procurement. Id. However, the vast majority of the provisions in the final version of SB 844 related to ethics and campaign finance. Id. The Missouri Supreme Court found that ethics, campaign finance restrictions, and keys to the capitol dome are not germane to the original purpose of SB 844, which was to change the method by which statewide elected officials bid for printing services, paper and similar

items. Id. The final version of SB 844 contained numerous provisions that were not germane to the original purpose of the bill at the time it was introduced. Legends Bank, 361 S.W.3d at 386. Therefore, the Missouri Supreme Court affirmed the decision of the trial court based on a violation of Article III, section 21. Id. at 387.

The circumstances in the present case are substantially similar to those found in both the Missouri Ass'n of Club Executives and Legends Bank case. Here, SB 795 was first introduced on January 19, 2010, and its purpose and title were stated as follows: "AN ACT To repeal section 319.306, RSMo, and to enact in lieu thereof one new section *relating to blasting safety*, with a penalty provision." **L.F.** at 17, 129, 162 (emphasis added). Consistent with this purpose, as introduced SB 795 would only amend the Missouri Blasting Safety Act, Section 319.300, *et seq.*, RSMo., so that "individuals using explosive materials along with a well screen cleaning device for the purpose of unblocking clogged screens of agricultural irrigation wells" did not need not secure a blaster's license. **L.F.** at 17-25, 129, 162.

As Perfected by the Senate, SB 795 was entitled "AN ACT To repeal sections 319.306 and 319.321, RSMo, and to enact in lieu thereof two new sections relating to blasting safety, with a penalty provision." **L.F.** at 26, 129, 162. SB 795 was then sent to the House of Representatives, and on April 13, 2010, the House passed a substitute bill for SB 795. **L.F.** at 130, 163. On May 5, 2010, House Committee Substitute ("HCS") SB 795 was read a third time and passed in the House. **L.F.** at 130. 163. It was then sent back to the Senate. **L.F.** at 130, 163.

HCS SB 795 significantly altered SB 795, in that it changed the title and purpose

of the bill to "AN ACT To repeal sections 196.316, 265.300, 266.355, 267.600, 270.260, 270.400, 273.327, 273.329, 281.260, 311.297, 311.550, 319.306, and 319.321, RSMo, and to enact in lieu thereof fifty-seven new sections *relating to animals and agriculture*, with penalty provisions." **L.F.** at 36, 130, 163 (emphasis added). In addition to other new provisions, HCS SB 795 now included a provision related to the Animal Care Facilities Act, § 273.327, RSMo. **L.F.** at 57, 130, 163. Specifically, HCS SB 795 removed the animal shelter exemption for the payment of the license fee contained in Section 273.327. **L.F.** at 57, 130, 163.

The Senate refused to concur in HCS SB 795, and ultimately the House and Senate convened a joint committee conference. **L.F.** at 130, 163. The joint committee conference adopted a Conference Committee Substitute ("CCS") for HCS SB 795 on May 14, 2010. **L.F.** at 78, 130, 163. On that same day, the 95th General Assembly truly agreed to and finally passed SB 795. **L.F.** at 78, 130, 163. CCS HCS SB 795 was titled "AN ACT To repeal sections 196.316, 266.355, 270.260, 270.400, 2736.327, 273.329, 274.180, 281.260, 311.550, 319.306, 319.321, 393.1025, and 393.1030, RSMo, and to enact in lieu thereof thirty new sections relating to animals and agriculture, with penalty provisions, and an emergency clause for a certain section." **L.F.** at 78, 130, 163. The repeal and reenactment of Section 273.327, RSMo, remained as a part of CCS HCS SB 795. **L.F.** at 83, 130, 163-64. On July 9, 2010, Governor Jeremiah W. Nixon signed SB 795 into law. **L.F.** at 78, 130, 164.

Based on a review of the foregoing, the original purpose of SB 795 was changed by amendment in violation of Article III, section 21. According to its earliest title and

contents, SB 795's original purpose was to repeal and replace *one statute* relating to *blasting safety*. As introduced, SB 795 would only amend Section 319.306 of the Missouri Blasting Safety Act by adding Subsection 319.306.18(15). After the amendment, "Individuals using explosive materials along with a well screen cleaning device for the purpose of unblocking clogged screens of agricultural irrigation wells" would no longer be required to obtain a "blaster's license." The original bill's single, three-line substantive change to the Missouri Blasting Safety Act, § 319.300, *et seq.*, shows that the sole original purpose of SB 795 when introduced was to change how the Missouri Division of Fire Safety monitored the use of explosives in certain circumstances.

As set forth in Legends Bank, the second analytical step is to compare the original purpose with the final version of SB 795. The original purpose of SB 795 related to blasting safety. However, the vast majority of the provisions in the final version of SB 795 related to animals and agriculture. Changes to statutes relating to animals and agriculture are not "germane" to the original purpose of SB 795 at the time it was introduced, which was to change one statute meant to foster health and morals through the governance and regulation of blasting safety.

There is no doubt that the repeal and reenactment of a statute related animal shelters, dog pounds, kennels, and pet shops regulated by the Animal Care Facilities Act, was not logically connected or germane to the original purpose of SB 795. As in Missouri Ass'n of Club Executives and Legends Bank, this case constitutes a textbook example of legislative log-rolling that section 21 is intended to prevent.

Respondents argued that SB 795 does not violate the Missouri Constitution because the amendments to SB 795 are germane to the bill's original purpose. Specifically, according to the Respondents the original purpose of SB 795 was to include an exemption for agricultural purposes to the Missouri Blasting Safety Act. **L.F.** at 226. Therefore, the Respondents conclude that the amendments to SB 795 were all germane because "[e]ach of the thirty new sections" passed in SB 795 "involved pertinent changes to statutes that affect agricultural industries." **L.F.** at 226. However, Respondents cite no authority for their unlikely interpretation of the original purpose of SB 795, and in fact, a review of the legislative history reveals that this interpretation could not be further from the truth. Furthermore, Respondents' argument fails in light of Legends Bank. The two-part analysis taken by the Missouri Supreme Court in Legends Bank looked specifically to the original bill's stated purpose and the provisions added to the statute rather than a generalized view of the bill's subject matter. 361 S.W.3d at 386–87.

Simply put, changes to Section 273.327, a statute related to animal shelters, dog pounds, kennels, and pet shops regulated by the Animal Care Facilities Act, were not logically connected or germane to the original purpose of SB 795, which was to make changes to a statute meant to foster health and morals through the governance and regulation of blasting safety. Because of this unconstitutional legislative logrolling, the public and the legislators voting were not properly apprised of the proposed amendments, which are having a tremendous and unfortunate impact on the state's cash-strapped animal shelters and rescues. As such, Appellants respectfully request that this Court find SB 795 unconstitutional.

CONCLUSION

The consequences of allowing a subsequent repeal and reenactment to cure a previous unconstitutional "logrolling" must be taken into consideration. Suppose that the legislature "logrolls" wholesale changes to a statute in clear violation of Article III, section 21. Despite this clear constitutional violation, perhaps intentionally accomplished to avoid public scrutiny, this hypothetical statute is subsequently repealed and reenacted once again, this time with only minor changes to different and remote sections of the statute. The constitutional attack is therefore cleverly avoided by a repeal and reenactment strategy. This method of avoidance does not satisfy the previously violated purpose behind Article III, section 21, which is to prevent such "logrolling," and to keep individual members of the legislature and the public fairly apprised of the subject matter of pending laws. Indeed, allowing such a repeal and reenactment strategy to avoid a constitutional attack would seriously damage the stated purpose behind Article III, section 21.

Therefore, since SB 795's amendment to Section 273.327 was implemented unconstitutionally, SB 161 is also potentially unconstitutional in that the legislature merely adopted verbatim the former unconstitutional statute (other than to add a new fee provision). The legislature cannot cure the constitutional defect in Section 273.327 as implemented by SB 795 by merely restating it in the amending statute, because by doing so it did not notify the legislators or the public of the unconstitutional change effected by SB 795.

The doctrine of *stare decisis* promotes security in the law by encouraging adherence to previously decided cases. Independence-Nat. Educ. Ass'n v. Independence School Dist., 223 S.W.3d 131, 137 (Mo. banc 2007) (citing Medicine Shoppe Int'l, Inc. v. Director of Revenue, 156 S.W.3d 333, 334–35 (Mo. banc 2005)). *Stare decisis*, however, "is not absolute, and the passage of time and the experience of enforcing a purportedly incorrect precedent may demonstrate a compelling case for changing course." Id. (citing Medicine Shoppe Int'l, 156 S.W.3d at 334). Because there is a "compelling case" for change under the circumstances presented in this case, this Honorable Court should reject the trial court's finding of mootness based on the holding in C.C. Dillon.

In addition, it is critical to remember the real world impacts that this unconstitutionally-passed law is having and will continue to have. By way of the legislature's violation of the original purpose section of the state constitution, a key exemption for animal shelters from state licensing fees was able to be removed without much of anyone noticing. As a result, these local charitable organizations that provide vital services for the community's people and animals have been hit with crippling licensing fees that are threatening their continued existence. A decision on the merits of this action would rectify this injustice and allow the state's animal shelters to serve their local communities for years to come.

Based on the foregoing, Appellants urge this Honorable Court to find that Appellants' challenge to SB 795 is not moot and that SB 795 as Agreed to and Truly Passed is unconstitutional.

Respectfully Submitted,

COSGROVE LAW GROUP, LLC

/s/Kurt J. Schafers
David B. Cosgrove, MBE No. 40980
Kurt J. Schafers, MBE No. 57849
8021 Forsyth Blvd.
St. Louis, MO 63105
Telephone: (314) 563-2490
Facsimile: (314) 968-7371
E-mail: dcosgrove@cosgrovelawllc.com
kschafers@cosgrovelawllc.com

RULE 84.06(c) CERTIFICATION AND CERTIFICATE OF SERVICE

I hereby certify that this brief complies with the type-volume limitation of Rule 84.06(b) of the Missouri Rules of Appellate Procedure. This brief was prepared in Microsoft Word 2007 and contains no more than 8,219 words, excluding those portions of the brief listed in Rule 84.06(b) of the Missouri Rules of Civil Procedure (less than the 31,000 limit in the rules). The font is Times New Roman, double-spaced, 13-point type.

I hereby certify that a true and correct copy of the foregoing was served via the Missouri e-Filing System this 18th day of December, 2012, to:

James R. Layton
Solicitor General
Jessica L. Blome
Assistant Attorney General
P.O. Box 899
Jefferson City, MO 65102

/s/Kurt J. Schafers