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

RESPONDENTS' BRIEF

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Statement of Facts

On January 19, 2010, Senate Bill No. 795 (SB 795) was introduced and read in the Missouri Senate for the first time. As introduced, SB 795 was titled "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." (LF 17, 129). Other than a few grammatical corrections, the substantive changes to section 319.306 RSMo included the addition of a new exemption for the circumstances under which a blaster's license is required under the Missouri Blasting Safety Act. (*Id.*). The new exemption was for "individuals using explosive materials along with a well screen cleaning devise for the purpose of unblocking clogged screens of **agricultural irrigation wells**." (*Id.*) (emphasis added).

On May 14, 2010, the 95th General Assembly truly agreed to and finally passed SB 795. (LF 78, 130). As passed, the title of SB 795 was "AN ACT To repeal sections 196.316, 266.355, 2703260, 270.400, 273.327, 273.329, 274.180, 281.260, 344.550, 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." (LF at 78). The new statutes enacted in each section affected or applied to agricultural

industries in Missouri. (*Id.*). In fact, the bill passed through both the Senate and House Committees on agriculture before it was finally passed. (LF 120).

SB 795 eliminated the exemption previously enjoyed by Missouri animal shelters from paying licensing and per capita fees under the Missouri Animal Care Facilities Act section 273.327 RSMo. (LF 57). On July 9, 2010, the Hon. Governor Jeremiah W. Nixon signed SB 795 into law. (LF 78, 130).

The following year, the 96th General Assembly truly agreed to and finally passed Senate Bill No. 161 (SB 161). (LF 131, 177). On April 27, 2011, the Hon. Governor Jeremiah W. Nixon signed SB 161 into law. (*Id.*). SB 161, among other things, repealed and reenacted in lieu thereof a new section 273.327. (LF 177—178). The new section 273.327 increased the licensing and per capita fee cap for animal shelters from $500.00 to $2,500.00. (*Id.*).

One month later, Appellants filed their petition for declaratory judgment with the Circuit Court of Cole County on May 13, 2011, seeking a declaration that SB 795 had been unconstitutionally enacted. (LF 1, 6). On August 21, 2012, the trial court upheld the constitutionality of section 273.327 RSMo. (A1). The trial court declared that Appellants' cause of action was moot under *C.C. Dillon*

Co. v. City of Eureka, 12 S.W.3d 322 (Mo banc 2000) because the 96th General Assembly repealed section 273.327 and enacted a new statute as part of SB 161. (A5).

Argument

I. Appellants' challenge to section 273.327 as enacted in 2010 in SB 795 is moot, because in 2011, SB 161 repealed and enacted in lieu thereof a new section 273.327.

Appellants Human Society of the United States, Dogwood Animal shelter, and Stray Rescue of St. Louis (collectively "HSUS") challenge the version of section 273.327 RSMo that was enacted in 2010 in SB 795. The key question before the Court is whether that challenge is moot. Because the General Assembly chose in 2011 in SB 161 to repeal the 2010 version and replace it with the current version, the HSUS challenge to the prior version is moot.

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 Co. v. City of Eureka*, 12 S.W.3d 322, 325 (Mo. banc 2000) (citing *Bank of Washington v. McAuliffe*, 676 S.W.2d 483, 487 (Mo. banc 1984)). We look, then, to what is the "existing controversy" between HSUS and the State, and whether its resolution would have any "practical effect."

HSUS makes no argument concerning the substance of section 273.327, in either its 2010 or its 2011 form. The only "controversy" is whether the enactment of section 273.327 in SB 795 in 2010 violated a procedural requirement of Article III, Section 21 of the Missouri Constitution: that the bill not change purpose en route to passage. The first question before the Court, then, is whether resolving that controversy over legislative procedure in 2010 would have any "practical effect" today. It would not.

According to this Court, the repeal of a law means the "complete abrogation [of the law] by the enactment of a subsequent statute." *C.C. Dillon*, 12 S.W.3d at 325 (citing *State ex rel. Peebles v. Moore,* 99 S.W.2d 17, 19 (1936)). Indeed, once the General Assembly repeals the former version of a statute and enacts a new section in lieu thereof, this Court's basis for deciding the constitutionality of the former statute "evaporates." *Id.* In other words, a claimant fails to allege an actual case or controversy where a new statute "supersedes the statute on which the litigants rely to define their rights." *Id.*

HSUS's claim here, whatever merit it might have had in 2010, "evaporated" in 2011. As noted above, in 2011 the General Assembly repealed and reenacted section 273.327. Section 273.327, as it existed in 2010 no longer exists. Thus, this Court's basis for determining the

constitutionality of SB 795 has "evaporated." Because no controversy exists as to the former version of section 273.327, HSUS's claim is moot.

Asking the Court to reach a contrary conclusion, HSUS asks the Court to reevaluate its holding in *C.C. Dillon*. (Appellants' Brief, p. 11). In *C.C. Dillon*, this Court upheld decades of precedent and decided that constitutional challenges based on procedural defects are moot after the enactment of replacement statutes. 12 S.W.3d at 325 (citing *Bank of Washington v. McAuliffe,* 676 S.W.2d 483, 487 (Mo. banc 1984); *State ex rel. Peebles v. Moore,* 99 S.W.2d 17, 19 (Mo. banc 1936)). In 1997, the *C.C. Dillon* plaintiffs filed a declaratory judgment action challenging the constitutionality of a 1997 statute regulating billboards, asserting violations of Article III, sections 20 and 21 of the Missouri Constitution. *Id.* But in 1998, the General Assembly repealed and reenacted the statutory billboard regulation. *Id.* This Court held that the plaintiffs' constitutional challenge to the 1997 statute had evaporated when the statute was repealed and reenacted in 1998. *Id.*

In *C.C. Dillon,* this Court specifically relied on two of its prior decisions: *Bank of Washington v. McAuliffe,* 676 S.W.2d 483, 487 (Mo.

banc 1984) and *State ex rel. Peebles v. Moore,* 99 S.W.2d 17, 19 (Mo. banc 1936).

In *Bank of Washington,* the General Assembly had repealed and reenacted a statute regulating the appellant's conduct while the appellant's appeal was pending. *Bank of Washington,* 676 S.W.2d at 485. The new legislation clarified the regulation of banking in Missouri and directly affected the appellant's conduct. *Id.* This Court held that while the repeal and reenactment of the statute did not render the entire case moot, to issue an opinion inconsistent with the General Assembly's intent would be judicially inefficient and would ignore an expressed intent of the legislature to clarify the regulation of banks in Missouri. *Id*. Ultimately, the enactment of the new statute "supersed[ed] the statute on which the litigants [had] relied to define their rights" and mooted their case. *Id.*

Like the appellant in *Bank of Washington*, HSUS has challenged the constitutionality of a statute that has been repealed and reenacted with substantially similar language. Here, too, the General Assembly spoke twice: once in 2010, when it eliminated the licensing fee exemption for animal shelters in SB 795, and again in 2011 in SB 161, when it reenacted much of the law but also increased the fee from $500.00 to $2,500.00 per year. If the General Assembly spoke in the

wrong fashion in 2010, HSUS identifies no problem with how the General Assembly spoke in 2011. Indeed, the purposes of the procedural requirement imposed by the Constitution that HSUS cites were well served in 2011. HSUS had ample opportunity to review, comment, debate, and lobby their legislators before and during consideration of SB 161.

This Court's 1936 decision in *Peebles* is similar to this case and to *C.C. Dillon*. There, the plaintiffs filed a declaratory judgment action challenging the constitutionality of the statute creating the offices of county recorders of deeds. *Peebles,* 99 S.W.2d at 19. The General Assembly repealed and reenacted the subject statute the following year, with the addition of the phrase "containing 20,000 inhabitants or more." *Id.* The plaintiffs argued that the statute violated Article III, sections 20 and 21 of the Missouri Constitution and that the addition of the phrase constituted an amendment, rather than repeal and reenactment. *Id.* This Court found that the plaintiffs/appellants' argument did not even "call for an extended discussion." *Id.* The repeal of a law means its complete abrogation by the enactment of a subsequent statute. *Id.* (citing 59 C. J. § 498, p. 899; *St. Louis v. Kellman*, 139 S.W. 443, 445 (1911)). The same is true here. Section

273.327 as enacted in 2010 was "complete[ly] abrogate[ed]" by SB 161 in 2011.

To attack *C.C. Dillon* and the cases—and logic—on which the Court there relied, HSUS turns to three cases dealing with substantive challenges to repealed and reenacted statutes. None of HSUS's cases deal with the question HSUS poses to this Court: whether statutes with procedural defects can be lawfully repealed and reenacted to cure those defects. And HSUS never poses to this Court the question that is addressed in those cases: whether a substantive problem in a statute persists when it is repealed and reenacted.

HSUS first turns to *In re Shaver*, 140 F.2d 180, 181 (7th Cir.1944). There, the federal court upheld enforcement of the Nationality Act of 1940, notwithstanding the fact that portions of the act's predecessor had been repealed and reenacted during the defendant's petition for citizenship. The court held that "[w]here Congress passes a repealing act . . . where the law on a particular subject is revised and rewritten, all provisions of the old law which are retained in the new act are regarded as having been continuously in force and not as having been repealed." *Id.* In other words, the substantive provisions of a law remain in effect until the implementing statute is repealed in its entirety. *Shaver* does not deal with procedural

defects in a predecessor statute—nor could it, because there is no federal parallel to the procedural requirements that HSUS claims doomed section 273.327 as enacted in SB 795.

Next, HSUS turns to *State v. Ward,* 40 S.W.2d 1074, 1078 (Mo. banc 1931)—a case that did include a legislative procedure claim. The statute at issue there allowed the hunting of quail under certain conditions. *Id.* at 1075. It was first enacted in 1919 and included a "local option proviso" that gave counties the authority to close the quail season for two years by referendum. *Id.* In 1928, the people of Harrison County exercised the local option proviso and enacted a referendum to close quail season. *Id.* In 1929, the General Assembly repealed the statute and reenacted a new statute in lieu thereof, which included the same local option proviso language. *Id.* Mr. Ward was convicted of a misdemeanor in 1929 for illegally hunting quail during the closed season. *Id.* Mr. Ward appealed his conviction, arguing that the 1929 repeal and reenactment of the statute operated to eliminate Harrison County's exercise of the local option proviso in 1928. *Id.* Mr. Ward also alleged that the 1929 statute offended Missouri's single-subject rule. *Id.* This Court upheld the enforcement of Mr. Ward's conviction because Mr. Ward's contention that the 1929 repeal and reenactment eliminated the 1928 proviso was "without merit." *Id.* at

1078. This Court held that substantive provisions of laws remain in effect through repeal and reenactment, and this is true even when the new sections contain modifications. *Id.* at 1079. This Court further held that the 1929 statute's title contained a single subject. *Id.* at 1076. There was no question about the survival of a procedural defect through repeal and reenactment—which would be required to make *Ward* pertinent here.

Finally, HSUS cites a California state case, *Haines v. Dept. of Employment*, 270 P.2d 72 (Cal. Dist. Ct. App. 1954). There, the court held that the legislature's repeal and reenactment of a statute authorizing the Department of Employment to make arbitrary assessments for unemployment insurance contributions against employers did not divest the Department of jurisdiction to make assessments that came due before the applicable statute was repealed and reenacted. *Id.* *Haines* does not deal with the question of whether procedural defects follow a statute through its repeal and reenactment.

That leaves *C.C. Dillon*, and the cases cited therein, as the pertinent authority. And the logic of the *C.C. Dillon* holding stands in stark contrast with the position taken by HSUS. According to HSUS, a statute's procedural unconstitutionality cannot be corrected by repealing and reenacting the offensive provision. Under the HSUS

proposed rule, the General Assembly could not immediately repeal and reenact statutory language it *knows* to contain an unconstitutional, procedural defect. Such a proposition is not supported by Missouri law and would lead to an absurd result. The Court should reiterate its holding *C.C. Dillon* and uphold the circuit court's judgment.

II. Even Appellants' claim regarding the enactment of section 273.327 as enacted in SB 795 were appropriate for judicial review, SB 795 does not violate Article III, Section 21 of the Missouri Constitution.

Article III, Section 21 of the Missouri Constitution provides, in pertinent part, "no bill shall be so amended in its passage through either house as to change its original purpose." Original purpose is measured at the time of the bill's introduction. *Stroh Brewery Co. v. State of Missouri, et al.*, 954 S.W.2d 323, 326 (1997). Section 21 functions 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 included in a single bill to secure passage. *Id.* (citing *Hammerschmidt*, 877 S.W.2d at 98; *Carmack v. Director, Missouri Dept. of Agriculture*, 945 S.W.2d 956 (Mo. banc 1997); *Missouri Health Care Assoc. v. Attorney General*, 953 S.W.2d 617 (Mo. banc 1997)). Section 21 also serves to keep individual

members of the General Assembly and the public fairly apprised of the subject matter of pending laws. *Id.* If this Court determines that the HSUS claim is ripe for judicial review, then this Court must look to well-established Missouri precedent for the circumstances under which a statute can be rendered unconstitutional for violating Article III, Section 21 of the Missouri Constitution. Because Missouri statutes enjoy a presumption of constitutionality and because the amendments to SB 795 were germane to the original purpose, SB 795 was constitutional.

This Court has repeatedly observed that statutes enjoy a presumption of constitutionality. *Stroh,* 954 S.W.2d at 326. Thus the Court interprets procedural limitations "liberally" and upholds an act against a procedural attack unless the act "clearly and undoubtedly violates the constitutional limitation." *Id.* (citing *Hammerschmidt v. Boone County*, 877 S.W.29 98, 102 (Mo. banc 1994)). The burden of establishing a statute's unconstitutionality rests upon the party questioning it. *Id.* at 327.

This Court has heard constitutional challenges based on Section 21 several times. For example, in *Stroh*, the defendant challenged the General Assembly's enactment of certain liquor control statutes because it argued the General Assembly changed the original purpose

of the legislation through the amendment process. *Id.* at 326. The title of the bill was "AN ACT To amend chapter 311 RSMo, by adding one new section relating to the auction of vintage wine, with a penalty provision." *Id.* The Court held that, as originally passed, the bill did not convey such clear and undoubtedly exclusive language so as to render it unconstitutional in the event of foreseeable amendments. *Id.* To convey the exclusivity envisioned by the Court, the bill's sponsor would have had to use language, such as "for the sole purpose of" in the title. *Id.*

SB 795, as originally introduced, repealed and reenacted a section of the Missouri Blasting Safety Act in order to add a specific exemption for agriculture. Members of the General Assembly could not have been surprised by the agricultural nature of the amendments to SB 795, as the bill then passed through both the Senate and House Committees on agriculture before it was finally passed.

HSUS and Amicus Curiae challenge the constitutionality of SB 795 because they believe the "sole" original purpose of SB 795 when introduced was to amend the Missouri Blasting Safety Act. (Appellants' Brief, p. 2; Brief of Amicus Curia, p. 10). Based on this articulated original purpose, any and all amendments to SB 795 that did not amend the Missouri Blasting Safety Act were unconstitutional.

Such an extreme outcome is contrary to the General Assembly's intent and established Missouri case law. HSUS and Amicus Curiae have failed to show that the amendments to SB 795 "clearly and undoubtedly" violate Article III, Section 21 of the Missouri Constitution. But the requirements of Section 21 have not been applied so strictly.

Article III, Section 21 was not designed to "inhibit the normal legislative processes, in which bills are combined and additions necessary to comply with the legislative intent made." *Stroh*, 954 S.W.2d at 326 (1997) (holding that amendments to chapter 311 were germane to the bill's original purpose to "amend chapter 311") (citations omitted). The introduction of subject matter that is germane to the object of the legislation or that is related to its original subject will be accepted. *C.C. Dillon*, 12 S.W.3d at 327. This Court has defined "germane" as "in close relationship, appropriate, relative, pertinent; relevant to or closely allied." *Stroh,* 954 S.W.2d at 326 (citing BLACK'S LAW DICTIONARY 687 (6th ed.) (holding that amendments to a bill for transportation amendments that involved billboard restrictions did not violate the test for germaneness)).

SB 795 as originally introduced included an exemption for agriculture purposes to the Missouri Blasting Safety Act. Each of the

thirty new sections truly agreed to and finally passed in SB 795 involved pertinent changes to statutes that also affect agriculture. Such foreseeable amendments are appropriate and relevant—and therefore germane—to the original purpose of the bill. The General Assembly did not violate the Missouri Constitution when it enacted SB 795, as SB 795 meets this Court's test for germane amendments.

Conclusion

The State respectfully requests this Court to uphold the constitutionality of SB 795 because Appellants' claim was rendered moot by the passage of SB 161.

Respectfully submitted,

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Certificate of Compliance

I hereby certify:

1. That the attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 and contains 3,486 words, excluding the cover, certification and appendix, as determined by Microsoft Word 2007 software; and

2. That a true and correct copy of the attached brief, was sent through the eFiling system on this 17th day of January, 2013, to:

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