

IN THE MISSOURI SUPREME COURT

No. SC95368

CITY OF KANSAS CITY, MISSOURI,

Respondent,

v.

KANSAS CITY BOARD OF ELECTION COMMISSIONERS, ET AL.,

Respondent,

SAMUEL E. MANN, ET AL.,

Intervenors/Appellants

Appeal from the Circuit Court of Jackson County, Hon. Justine E. Del Muro

**BRIEF OF AMICI CURIAE
FILED WITH CONSENT OF ALL PARTIES**

**CITY OF UNIVERSITY CITY, CITY OF FLORISSANT,
SENATOR JILL SCHUPP, SENATOR JAMILAH NASHEED,
REPRESENTATIVE TRACY MCCREERY, AND EMPOWER MISSOURI**

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CONSENT OF ALL PARTIES TO THE FILING OF THE
AMICI CURIAE BRIEF

Pursuant to Missouri Supreme Court Rule 84.05(f)(2), the Elected Officials and Empower Missouri, referred herein as the Elected Officials *Amici*, certify that all parties have consented to the filing of this Brief.

JURISDICTIONAL STATEMENT

The Elected Officials *Amici* adopt the Jurisdictional Statements in the Brief of the Intervenors/Appellants and in the Brief of the Municipal and Labor Law Scholars (hereinafter “Scholars” Brief).

PURPOSE AND INTEREST OF THE ELECTED OFFICIALS AND
NONPROFIT AMICI AND STATEMENT OF FACTS

The Elected Officials and Nonprofit *Amici Curiae* are two municipalities in Missouri, the City of University and the City of Florissant, State Senators Jill Schupp and Jamilah Nasheed, State Representative Tracy McCreery, and Empower Missouri (hereinafter the Elected Officials and Nonprofit *Amici*, or simply “Elected Officials *Amici*”). The Elected Officials *Amici* appreciate the opportunity to share with the Court their view that municipalities in Missouri are best situated to address the particular needs of their communities through local control. In the case of much regulation, like the minimum wage, they appreciate that the Legislature might set a minimum statewide, but believe that municipalities must have the ability to set higher standards to address local needs and concerns. The Elected Officials *Amici* adopt the arguments of the Appellants’ here, as well as the arguments of the Scholars’ *Amicus* Brief in their entirety, including the argument that “[a]ny fair reading of the Minimum Wage Law shows that it sets a floor.” Scholars’ Brief, p. 9.

University City is a Constitutional Charter City of approximately six square miles located in St. Louis County, directly adjacent to the City of St. Louis. It was originally incorporated in 1906. Its population in 2014 was 35,115, and included 15,837 households. The median household income is \$53,667. About 18% of its residents live in poverty. It has more than 3,000 companies located within its boundaries. It is a very diverse community with about 51% White residents and about 41% African American residents. It is a well-educated community, with

more than 50% of its residents age 25 and over having a Bachelor's degree or higher, with 92% of residents having graduate from high school. *See generally*, web site of University City, <http://www.ucitymo.org/570/About-the-City>, last visited April 1, 2016.

University City adopted a home rule charter in 1947 pursuant to Article VI, Section 19 of the Missouri Constitution, which authorizes any city having more than five thousand inhabitants or any other incorporated city as may be provided by law to frame and adopt a charter for its own government. University City is a council-manager form of government.

The City of Florissant was founded in 1786, therefore is older than the State of Missouri and the U.S. Constitution. Florissant predates and is in the northwestern part of what is now St. Louis County. Saint Philippine Duchesne told Jesuit Pioneer Fr. DeSmet that she loved Florissant because of its hospitality which it still has and is why its diverse population of 52,000 enjoys each other. The 12th largest city in the State of Missouri, Florissant's population is about 65 percent White and 28 percent African American. The median household income is \$51,415. Its poverty rate is 8.2%. The median age is 38.5 years. Its proximity to Lambert International Airport and to major interstate highways provides a unique location for economic development which recently resulted in well-known big-box superstores to locate in Florissant without public assistance. Florissant was recently ranked as one of the best locations in the U.S. in which to retire and was

ranked in the top 100 Best Places to live by Money Magazine in 2012. *See generally*, City of Florissant web site, <http://www.florissantmo.com/>, last visited April 1, 2016.

The elected officials of University City and Florissant desire to retain local control of their municipal regulatory authority to address their unique demographics, including the ability to set a local minimum wage.

State Senator Jill Schupp was elected to the Missouri Senate in 2014. She represents the 24th District in St. Louis County. She previously served as a State Representative for the 82nd and 88th Districts. She served six years on the Ladue School Board, including two terms as President, and also served on the Creve Coeur City Council. Senator Schupp is the founding member of the Missouri Veterans History Project (MVHP). She spent two decades as an executive in the small business community. *See generally*, Biography of Senator Jill Schupp, <http://www.senate.mo.gov/mem24/>, last visited April 1, 2016.

State Senator Jamilah Nasheed represents the 5th Senatorial District, having been elected in 2012. She served from 2005 until 2012 in the House of Representatives, serving as chair of the Urban Issue Committee. She is also a member of the A+ Schools Program, and is a founder of the “In It 2 Win” Coalition which finds and returns students who have dropped of our school and assists them in returning to the classroom. She also founded the Urban Academy for Political Development, a nonprofit organization whose mission is to empower African American youth through education. *See generally*, biography of Senator Nasheed,

<http://www.senate.mo.gov/13info/Members/D05/bio.htm>, last visited April 1, 2016.

State Representative Tracy McCreery represents the 88th District in St. Louis County. She was elected to her first two-year term in November 2014. She previously served one year in the House after being elected in the 2011 Special Election. Prior to serving in the Legislature, she was a district aide for State Senator Joan Bray and served in the administration of Governor Bob Holden. She has also served in various positions in sales, telecommunications and health care industries. She is a founding member of the Consumers Council of Missouri. *See generally*, <http://www.house.mo.gov/member.aspx?year=2015&district=088>, last visited April 1, 2016.

In this case, Senators Schupp and Nasheed and Representative McCreery seek to preserve the ability of municipal governments to govern affairs that affect each of them differently, while allowing the state to set minimal standards for various regulatory matters. They want the Court to know that preemption bills in the nature of H.B. 722 are being circulated in other states with the goal of making it easier to get an agenda passed by sidestepping the many elected officials at the local level. Senators Schupp and Nasheed and Representative McCreery understand the important role that City Councils play in responding quickly and directly to the needs of their communities.

Empower Missouri is a citizen membership organization founded in 1901 as the Missouri Conference on Corrections and Charities, later known as Missouri Association for Social Welfare. Empower Missouri advocates for the well-being of all Missourians through civil leadership, education, and research. Empower

Missouri envisions Missouri becoming a more just, equitable and democratic society that assures every person's health, safety, security, independence, human rights, dignity and the opportunity to reach full potential. It has task forces on Affordable Housing and Homelessness, Criminal Justice, Economic Justice, Health and Mental Health, Human Rights and Hunger. Empower Missouri's accomplishments include helping advocate for the creation of the Missouri Commission on Human Rights, the Missouri Public Defender Commission, the School Nutrition Program, the Missouri Housing Trust Fund, repeal of the state sales tax on food, and the creation of the Missouri Foundation for Health. *See generally*, web site of Empower Missouri, <http://empowermissouri.org/>, last visited April 1, 2016.

Empower Missouri seeks to ensure that local government can respond to the unique needs of each community by having local control to set standards for wages and other matters.

The *Amici* will also discuss in their argument that local economies are vastly different from one another. For example, the unemployment rate in Ozark County is 7.8%. The unemployment rate in Boone County is 2.6%. Missouri Department of Labor, Unemployment Data, <http://labor.mo.gov/data>, last visited April 1, 2016. The poverty rate in Platte County is only 6.9%. In Mississippi County it is 32.2%. U.S. Census Quick Facts, Poverty Rate, <http://www.census.gov/quickfacts/map/IPE120214/29>, last visited April 1, 2016. In St. Louis County, 41.4% of people age 25 and older have a Bachelor's Degree or higher level of education. In Reynolds County only 6.2% of adults have a college

education. U.S. Census Quick Facts, Educational Level,
<http://www.census.gov/quickfacts/map/EDU685214/29105,29>, last visited April 1,
2016.

Additionally, the Elected Officials *Amici* adopt the Statement of Facts in the
Brief of Intervenor/Appellants.

POINT RELIED UPON

The Trial Court erred in concluding that H.B. 722 was applicable and thus constitutionally enacted because such a conclusion was contrary to law pursuant to Article III Section 21 and Article III Section 23 of the Missouri Constitution in that H.B. 722's original purpose of regulating paper and plastic bags is not related to the employer-employee relationship and the bill addresses more than one subject.

Cases

Hammerschmidt v. Boone County, 877 S.W.2d 98 (Mo. 1994)

Mo. Roundtable for Life, Inc. v. State, 396 S.W.3d 348 (Mo. banc 2013)

Missouri Constitution

Mo. Const. Art., §21

Mo. Const. Art. III, §23

Mo. Const. Art. VI, §19(a)

Legislation

House Bill 722 (2015)

ARGUMENT

The Trial Court erred in concluding that H.B. 722 was applicable and thus constitutionally enacted because such a conclusion was contrary to law pursuant to Article III Section 21 and Article III Section 23 of the Missouri Constitution in that H.B. 722's original purpose of regulating paper and plastic bags is not related to the employer-employee relationship and the bill addresses more than one subject.

A. Introduction and Standard of Review

The issue before the Court is one of great concern to municipal governments throughout Missouri and of great concern to their citizens who desire to be able to support their families through hard work for reasonable wages. Specifically before this Court is the validity of House Bill 722 and whether it violates the original purpose, single subject and clear title provisions of the Missouri Constitution as it attempts to ban local minimum wage requirements and benefit standards. By holding it unconstitutional as the Appellants and the Elected Officials *Amici* request, this Court would allow cities in Missouri to retain the ability to locally control important functions of government.

The *Amici* ask this Court to review the constitutionality of H.B. 722 through the lens of the important issue of local control. This is not the case where the Court is reviewing a statute regulating one industry, like insurance, for compliance with the original purpose and single subject rules. See e.g. *Allied Mut. Ins. Co. v.*

Bell, 185 S.W.2d 4 (Mo. 1945). The bill here attempts to take away the rights of municipal governments to regulate affairs that affect them directly and uniquely. The *Amici* asks this Court to apply a higher standard in allowing a statute to stand when it addresses directly the balance of power between state and local government.

As this case involves purely a construction of statutes, and the constitutionality thereof, the issue is a matter of law and the standard of review is *de novo*. *Mo. Roundtable for Life, Inc. v. State*, 396 S.W.3d 348, 350 (Mo. banc 2013). *Kansas City v. Chastain*, 420 S.W.3d 550, 554 (Mo. Banc 2014).

B. Kansas City's stated policy on local control

Kansas City's position before this Court in this case, which would result in the loss of local control, is curious in light of the policies it has stated in recent resolutions it has adopted. The City Council has indicated, through its actions, its intent to enact its own local minimum wage, and originally adopted such a local minimum wage. L.F. 13. But later, feeling it was unable to adopt a local minimum wage in light of H.B. 722, the City Council voted on October 22, 2105, to adopt Resolution No. 150908 supporting a higher minimum wage statewide. L.F. 100-101. The City Council appears to desire to raise its minimum wage for its workers and residents, but believes the only way it can do it now is if everyone in the state has the same higher minimum wage.

In Resolution No. 150908, the City Council stated that “if workers being paid the minimum wage of \$7.65 per hour are not provided an increase in pay, the workers will continue to be forced to live in poverty, even though working multiple minimum wage jobs.” L.F. 101. The Resolution also states that “the failure to pay workers a responsible wage also imposes costs upon the public as working people must access limited government programs.” *Id.* The Resolution ends with support for an increase in the minimum wage throughout Missouri, but concludes with this telling statement:

Section 2. That should an appellate court find the Missouri Minimum Wage Law does not preempt local action, the Mayor and City Council may again consider adoption of a local minimum wage.

L.F. 101.

Prior to Resolution No. 150908, the City Council on September 10, 2015, adopted Resolution No. 150754 addressing directly its desire to keep local control of issues like the minimum wage. L.F. 96. That earlier resolution criticized state laws that “strip away areas of authority that are best left to local control by those closest to, and selected by, the local voters.” L.F. 97. The Resolution also states that “the City Council hereby states and reaffirms its support for the right to self-determination in all areas of local concern for the voters and residents of Kansas City, a Constitutional Charter City.” L.F. 98. *Id.* That Resolution also asked the Missouri Legislature not to override H.B. 722, stating that “H.B. 722 broadly restricts local policies that could dramatically decrease poverty and improve the

quality of life for families.” *Id.* The Legislature did not listen, and overrode the veto of a constitutionally defective law.

The Elected Officials *Amici* here agree with all of these stated policy positions of the City Council of Kansas City. The City Council, as evidenced by its Resolutions cited here, feels strongly that it should have local control of local issues, including a local minimum wage, and the Elected Officials *Amici* agree. But the Council it feels its hands are tied by H.B. 722.

C. The importance of local control

Municipalities in Missouri must have the ability to respond to local needs. Local economies are vastly different from one another. For example, the unemployment rate in Ozark County is 7.8%. The unemployment rate in Boone County is 2.6%. Missouri Department of Labor, Unemployment Data, <http://labor.mo.gov/data>, last visited April 1, 2016. The poverty rate in Platte County is only 6.9%. In Mississippi County it is 32.2%. U.S. Census Quick Facts, Poverty Rate, <http://www.census.gov/quickfacts/map/IPE120214/29>, last visited April 1, 2016. In St. Louis County, 41.4% of people age 25 and old have a Bachelor’s Degree or higher level of education. In Reynolds County only 6.2% of adults have a college education. U.S. Census Quick Facts, Educational Level, <http://www.census.gov/quickfacts/map/EDU685214/29105,29>, last visited April 1, 2016. Such differences clearly call for municipalities to set policies specific for their needs. For example, certain municipalities might need to require a higher minimum wage to attract workers to meet the demand.

Governor Nixon, in his veto message when he vetoed H.B. 722, called Missouri “a diverse state” where in “many instances, local elected officials may be best suited to determine the appropriate – and local – priorities for the citizens who elected them. And, it is important that local governments have the ability to build on the minimum standards that are set at the state level. House Bill No. 722 usurps local control and supplants it with edicts emanating from Jefferson City.”

Governor Nixon Veto Message for H.B. 722, July 10, 2015, L.F. 24-25.

The Governor further stated: “Proponents of this legislation believe that their views should supplant the decisions of elected local officeholders on matters traditionally within the purview of local government, ranging from policies affecting the local standard of living to the more granular question of ‘paper’ or ‘plastic’.... How is St. Robert affected if St. Louis passes a minimum wage higher than that required by state law? What difference does it make in Cabool if Columbia bans plastic bags?” *Id.*

The *Amici* asks this Court to factor into its decision that local governments, and the Governor believe the matters addressed by H.B. 722 are required by law and practical concerns, to be handled at the local level.

Under Article VI, Section 19(a) of the Missouri Constitution, the City of Kansas City has “all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers are consistent with the constitution . . . and are not limited or denied either by the charter . . . or by

statute.” Mo. Const. Art. VI, § 19(a). When a party challenges a constitutional charter city’s power to pass an ordinance, or proposed ordinance, under Section 19(a), the dispositive question for the Court “[is] *not* whether the City had authority for its ordinance, but whether its authority to enact the [ordinance] was denied by other law.” *City of Kansas City v. Carlson*, 292 S.W.3d 368, 371 (Mo. App. W.D. 2009) (emphasis added).

This Court has acknowledged the importance of local control by local government such as municipalities and school boards. As far back as 1899, this Court acknowledged the “the benefit of home rule.” *State ex rel. Crow v. Lindell R. Co.*, 151 Mo. 162, 182 (Mo. 1899). See also *Rolla 31 School Dist. v. State*, 837 S.W.2d 1 (Mo. banc 1992)(finding the public policy of Missouri places the control of the public schools in local school boards). And this Court has acknowledged that in many areas of regulation the Legislature sets minimum standards, but municipalities can enhance those standards. See *Raytown v. Danforth*, 560 S.W.2d 846 (Mo. banc 1977) (confirming city’s right to operate ambulance service but requiring it to meet state licensing standards).

The need for local control of important issues that affect local governments differently has never been more evident. Recent events in the Missouri Legislature have displayed the gridlock that exists at the state level. “Governor Nixon Hopes to End Current Gridlock in Missouri Senate,” KOLR News, March 16, 2016, <http://www.ozarksfirst.com/news/ozarks-politics/governor-nixon-hopes-to-bring-end-to-current-gridlock-in-missouri-senate>, last visited April 1, 2016.

D. HB722 Violates the Original Purpose Rule¹

H.B. 722 violates the Missouri Constitution's prohibition on bills from veering from their original purpose. Article III, Section 21 prohibits any bill from being "so amended in its passage through either house as to change its original purpose." Mo. Const. Art III, §21. In *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885 (Mo. Banc 2006), this Court held that original purpose is established by the bill's "earliest title and contents" at the time the bill is introduced. *Id.* This Court has recognized that "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." *Legends Bank v. State*, 361 S.W.3d 383, 386 (Mo. banc 2012) (provisions on ethics and campaign finance and keys to the capitol dome are not related to original purpose of bill, which was to change method by which state bid for printing services). "Original purpose is the general purpose, 'not the mere details through which and by which that purpose is

¹ This brief does not address the constitutionality of Section 67.1571, RSMo, sometimes called the "old preemption bill." Amici agree with Intervenor/Appellants that Section 67.1571 was also enacted in violation of the Missouri Constitution. It appears that the General Assembly even recognizes that Section 67.1571 is void as it would not have enacted HB722's prohibition on local minimum wage ordinances if it believed Section 67.1571 was still valid.

manifested and effectuated.”” *Missouri State Med. Ass’n v. Missouri Dep’t of Health*, 39 S.W.3d 887, 839-40 (Mo. banc 2001).

“Alterations that bring about an extension or limitation of the scope of the bill are not prohibited; even new matter is not excluded if germane.” *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 22, 327 (Mo. banc 2000). *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994). The title of a bill may also be changed as it progresses through the legislature, but the purpose may not. *Compare Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 38 (Mo. banc 1982).

H.B. 722 was introduced in the Missouri Legislature on January 28, 2015. Its original purpose, as evidenced by its title and contents, was to protect the right of shoppers to choose paper or plastic bags for taking home their purchases. The proposal attempted to protect a shopper’s choice of which bag to use from interference by local control. The title of H.B. 722 when introduced was: “To amend chapter 260, RSMo, by adding thereto one new section related to the *provision of paper and plastic bags*.” (Emphasis added). House Bill 722, in its entirety at introduction, read as follows:

[Title] To amend chapter 260, RSMo, by adding thereto one new section relating to the provision of paper and plastic bags.

260.283. 1. All merchants, itinerant vendors, and peddlers doing business in this state shall have the opportunity to provide

customers the option to choose either a paper or plastic bag for the packaging of any item or good purchased, provided such purchase is of a size and manner commensurate with the use of paper and plastic bags.

2. Notwithstanding any other provision of law, no political subdivision shall impose any ban, fee, or tax upon the use of either paper or plastic bags for packaging of any item or good purchased from a merchant, itinerant vendor, or peddler.

Nowhere in the original bill is there any reference to local minimum wage laws, living wage laws, or employment benefits. In addition, the reference to chapter 260 is telling. Chapter 260 of the Missouri Revised Statutes concerns environmental controls, to which regulation of paper and plastic bags would relate, but Chapter 260 has nothing to do with employer-employee relations.

H.B. 722's original contents related only into what type of bag shoppers put their groceries and other items. Citizens would be surprised to find provisions related to minimum wages in the same statute. A person looking for law on minimum wages would be hard-pressed to find an immensely important aspect of labor law buried under paper and plastic bags. The procedural safeguards of the Constitution ensures "that members of the legislature and the public are aware of

the subject matter of pending laws.” *Mo. Roundtable for Life, Inc. v. State*, 396 S.W.3d 348, 351 (Mo. banc 2013). That principle is violated here by H.B. 722.

A citizen might ask how one’s freedom to choose paper or plastic in his or her hometown relates to whether workers in a city on the other side of the state will be covered by a local minimum wage. Meanwhile, the language in H.B. 722 about banning ordinances about bags was narrowly drawn to only address that issue.

The Truly Agreed To and Finally Passed version of H.B. 722 changed the original purpose of the bill in violation of the Missouri Constitution. The original purpose of the introduced H.B. 722 was to protect a consumer’s right to choose paper or plastic bags while shopping. The provisions of the Truly Agreed To and Finally Passed House Bill 722 are not germane or logically connected to shopping bags or the protection of consumer rights. The General Assembly took a bill with a narrow, specific purpose and morphed it into a grab bag preemption bill with far reaching provisions and restrictions on wages and benefits. It turned the bill into one purportedly protecting consumers into one that harms employees.

In the present case, the issue of paper or plastic bags is not even in the same category of government regulation as employee wages and benefits. This Court has struck down statutes even where a bill, in both its original form and amended form, dealt with the same category of regulation. In *Allied Mut. Ins. Co. v. Bell*,

185 S.W.2d 4 (Mo. 1945), the bill at issue had an original purpose of reducing certain insurance premiums. It was later amended to impose a tax on some insurance premiums. This Court struck down the bill as violating the original purpose clause, even though the bill generally regulated insurance.

The Court will sometimes stretch or give a broad reading to terms in the title of a bill, as introduced, to save it. But, the Court stays within logical boundaries, a nexus between the bill's contents and the time it is introduced and the added provision at issue. For example, in *St. Louis County v. Prestige Travel, Inc.*, 344 S.W.3d 708 (Mo. banc 2011), the original purpose of the bill in that case -- H.B. 1442 -- was regulating taxes, even though the original title stated "relating to city sales taxes." The Court held that subsequent provisions which created an exhibition center and recreational facility district and which authorized a sales tax within that district were germane to the original purpose - to regulate taxes. *See also C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 325-26 (Mo. 2000) (holding that a bill that "related to transportation" did not lose its original purpose by an amendment adding a provision giving cities and counties the authority to adopt outdoor advertising regulations for highway billboards); *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 325-26 (Mo. 1997) (holding that a bill that provided for the auction of vintage wine had an "original purpose" of amending the State's liquor control law and that an amendment adding malt liquor labeling requirements

was permissible); *Akin v. Dir. of Revenue*, 934 S.W.2d 295, 302 (Mo. banc 1996) (holding that the addition of taxation provisions to a bill pertaining to education did not change the bill's purpose, where tax increases were a means for funding education programs).

However, here, the provisions that were added to the original version of H.B.722 are not germane or logically connected to and share no reasonable nexus with the original purpose of the bill. The added provisions prohibit political subdivisions from enacting ordinances requiring an employer to provide to an employee any employment benefit, minimum wage rate, or living wage rate. They fall under a different chapter in the revised statutes, Chapter 285, RSMo., and relate to a different subject, employer-employee relations. These provisions do not seek to regulate merchants and itinerant vendors on a state-wide basis, do not relate to environmental controls, and prohibit ordinances on subjects unrelated to paper and plastic bags. There is no link between employment benefits and minimum wage rates, on the one hand, and paper and plastic bags, on the other. The provisions deal with different subjects, different entities, and different rights. No reasonable person could read or interpret the phrase “provision of paper and plastic bags” and think it to encompass local minimum wage and benefit standards.

The City may claim the bill’s original provisions on paper and plastic bags and the new provisions on employment benefits and minimum wages are

connected because both deal with ordinances. But, this blatantly re-writes the original purpose of H.B. 722. The ban of ordinances was an incidental mechanism to deal with the core provision on paper and plastic bags. In fact, the original title made no mention of ordinances. It centered on paper and plastic bags.

Finally, the Court should consider that the public had little opportunity to learn of, or comment on, the final version of H.B. 722. The public hearings that were held came before the Senate Substitute H.B. 722 was offered. The hearings were held on February 10 and April 14. That means the public had little opportunity to hear evidence on and give input about the provisions on minimum wage, living wage and employment benefits. In *National Solid Waste Mgmt. Ass'n v. Director of the Dept. of Natural Resources*, 964 S.W.2d 818 (Mo. banc 1998), this Court found that “[t]he section pertaining to hazardous waste management was part of a last-minute amendment about which even the most wary legislators could hardly have given their considered attention and about which concerned citizens likely had no input.” *Id.*, at 820. Similarly here, H.B. 722, at the time of the hearings, related only to provision of paper and plastic bags. The public would not have known at that the time of the hearings that the bill would be used as a vehicle to prohibit other ordinances on other subjects.

E. H.B. 722 violates the single subject and clear title rules

H.B. 722 also violates the Missouri Constitution’s requirements for a single subject and clear title. Article III, Section 23 states: “No bill shall contain more than one subject which shall be clearly expressed in the title.” Article III, §23. This provisions contains two distinct but related procedural limitations – a single subject rule and a clear title requirement.

On the single subject rule, courts try to identify the central purpose of bill. The test 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.” *Hammerschmidt v. Boone County*, 977 S.W.2d 98, 101 (Mo. 1994). A “subject” includes all matters that “fall within or reasonably relate to the general core purpose of the proposed legislation.” *Id.* Provisions incongruous in their subject-matter may not be enacted in the same act. There must be a single subject. *State ex rel. Niedermeyer v. Hackmann*, 292 Mo. 27, 31 (Mo. 1922). *See also Fust v. Attorney General for State of Mo.*, 947 S.W.2d 424, 428 (Mo. 1997) (The “single subject test is not whether individual provisions of a bill relate to each other. The constitutional test focuses on the subject set out in the title. We judge whether a particular provision violates the single subject rule by examining the individual provision under consideration to determine if it fairly relates to the

subject described in the title of the bill, has a natural connection to the subject, or is a means to accomplish the law's purpose.”).

The determination of whether a bill violates the single subject requirement is made concerning the bill as it is finally passed. *C. C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322 (Mo. 2000). “To determine the core purpose of the bill, the Supreme Court first looks to the title of the bill.” *Id.*, at 328-29. “To the extent the bill’s original purpose is properly expressed in the title to the bill,” the court need not look beyond the title. *Hammerschmidt*, 977 S.W.2d at 101.

The title of the Truly Agreed To and Finally Passed version of HB722 states: ““To amend chapters 260 and 285, RSMo, by adding thereto two new sections relating to prohibited ordinances by political subdivisions.” This title does not specify which ordinances are prohibited, so the title is by no means clear. The title would lead one to believe there would be a whole list of prohibited ordinances, or that this statute contained all of the ordinances prohibited by state law. Neither is true.

Where an amorphous title to a bill renders its subject uncertain, but the party challenging the bill claims a "one subject" violation and not a “clear title” violation, the Court may determine the subject of the bill from two sources. *Carmack v. Director, Mo. Dep't of Agric.*, 945 S.W.2d 956 (Mo. 1997). First, the constitution itself is organized around subjects to which the Court can refer in

determining the meaning of the single subject requirement. *Id.* Second, the Court may examine the contents of the bill originally filed to determine its subject. *Id.*

The purpose of the single subject provision is to ensure that all of the provisions of a bill “fall within or reasonable relate to the core purpose of the proposed legislation.” *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. 1994).

A provision of a bill violates the single subject provision if it is not germane, connected and congruous to the core purpose of the statute. *Hammerschmidt*, 877 S.S. 2d at 102. The Court must determine “if all provisions of a bill fairly relate to the same subject, have a natural connection therewith or are incidents to means to accomplish its purpose.” *Westin Crown Plaza Hotel Co. v. King*, 664, S.W.2d 2, 6 (Mo. 1984).

H.B. 722, as Truly Agreed To and Finally Passed, contains more than one subject. The first and original subject was the protection of the right of consumers to be able to choose paper or plastic bags when shopping. The bill in its final form now also eliminates the right of local governments to adopt ordinances that set minimum wages, living wages, or employment benefits that exceed what is required by federal and state law. The subject of shopping bags is not the same subject as the regulation of minimum wages and benefits, which are the essence of every employment relationship.

House Bill 722, in its final form, goes deep into the employer-employee relationship in the following definition: “Employment benefits’, anything of value that an employee may receive from an employer in addition to wages and salary. The term includes, but is not limited to, “health, disability, retirement, profit-sharing, and death benefits; group accident death and dismemberment benefits; paid or unpaid days off from work for holidays, sick leave, vacation, and personal necessity, and terms of employment, attendance, or leave policies.”

By attempting to regulate the entire range of employment benefits, House Bill 722 attempts to regulate an important subject for Missouri’s citizens, that of the employer-employee relationship. The subject of this relationship is so important and so complicated that it cannot be said to the same subject as shopping bags.

In *Hammerschmidt*, this Court held that a provision in a law authorizing a county to adopt a county constitution did not relate to an original bill dealing with elections. “The amendment authorizing a county to adopt a county constitution does not fairly relate to elections, nor does it have a natural connection to that subject.” *Id.*, at 103. Likewise here, the subject of regulating the employer-employee relationship has no natural connection to what type of bags a shopper can use. While the shopping bag provision included language about the scope of local control, those provisions only relate to shopping bags and nothing else. This

provision did not open the door for amendments addressing any other type of limit on local control. *Id.*

In addition, the title of H.B. 722 is not clear. As enacted, the title does not alert those affected by the law to the subjects of ordinances which are prohibited and could include ordinances on any subject and many subjects, when in fact it is limited to ordinances on a few specific subjects -- plastic bags, employment benefits, the minimum wage, and a living wage. The title covers up the contents of the bill. *Compare Carmack*, 945 S.W.2d at 960 (words "economic development" are too broad and amorphous to describe the subject of a pending bill with the precision necessary to provide notice of its contents) *with Jackson County Sports Complex Auth.*, 226 S.W.3d 156, 161 (Mo. Banc 2007) (the term, "political subdivision" in the larger sense, is a broad umbrella category).

For these reasons, H.B. 722 should be found to be invalid as violating the original purpose, single subject and clear title provisions of the Missouri Constitution.

CONCLUSION

The Elected Officials and Empower Missouri appreciate the Court's generosity in allowing them to file this Brief. They believe that local government can most quickly and most efficiently respond to the needs of their citizens, while the Legislature should set minimum standards.

The law at issue here attempts to take away the rights of municipal governments to regulate affairs that affect them directly and uniquely. The *Amici* ask this Court to consider the impact on the balance of power in Missouri between state and local governments when it analyzes the constitutionality of H.B. 722.

H.B.722 violates the original purpose and single subject and clear title provisions of the Missouri Constitution and should be declared invalid, which will put back in place the power granted to local government by that same Constitution.

The *Amici* agree with the City of Kansas City, when it stated in its resolution, that "H.B. 722 broadly restricts local policies that could dramatically decrease poverty and improve the quality of life for families."

For these reasons, the Elected Officials and Empower Missouri respectfully requests this Court reverse the judgment of the Circuit Court of Jackson County and declare H.B. 722 unconstitutional.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

The undersigned hereby certifies:

1. The attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) and contains 6,828 words, including this certification and all other parts, as performed by Microsoft Word software; and
2. The attached brief includes all of the information required by Supreme Court Rule 55,.03; and
3. The attached brief was served by means of the electronic filing system this 4th day of April 2016, upon Counsel of Record, including: Sarah Baxter, Counsel for the City of Kansas City; David Raymond, Counsel for the Board of Election Commissioners; Taylor Fields and J. David Bowers, Counsel for Appellants; Christopher Grant, Counsel for the Scholars *Amici*.

/s/ John J. Ammann
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