No. SC90867

In the
Supreme Court of Missouri

STATE OF MISSOURI ex rel. SCOTT FRAVELL,

Relator,

v.

THE HONORABLE WILLIAM C. SEAY,

Respondent.

Original Proceeding in Prohibition from
Crawford County Circuit Court, Forty-Second Judicial Circuit
The Honorable William C. Seay, Judge

RESPONDENT'S BRIEF

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JURISDICTIONAL STATEMENT

This is an original proceeding in prohibition from the Circuit Court of Crawford County, seeking to prevent Respondent from imposing on Relator the lifetime supervision requirements of section 559.106.1, RSMo Supp. 2006. Jurisdiction is invoked through the Supreme Court of Missouri's authority to issue and determine original remedial writs. Mo. Const. art. V, § 4.

STATEMENT OF FACTS[1]

Relator Scott Fravell was charged by information in the Circuit Court of Crawford County on December 4, 2007, with one count of statutory rape in the first degree, section 566.032, RSMo Supp. 2006. (Resp.'s Ex. 1, attached to Return). The information alleged that on or about April 24, 2007, Fravell had sexual intercourse with a child who was less than fourteen years of age. (Resp.'s Ex. 1).

Fravell pled guilty to the charged offense on April 1, 2008. Respondent Judge Seay sentenced Fravell to a term of ten years imprisonment, suspended execution of sentence, and placed Fravell on five years supervised probation. (Pet.'s Ex. A, attached to Writ Pet.). The prosecuting attorney of Crawford County advised Judge Seay on October 28, 2008, that section 559.016, RSMo, required that Appellant be placed on lifetime supervision following his guilty plea to statutory rape in the first degree. (Pet.'s Exs. B, E). The prosecuting attorney filed a Motion to Revoke Probation on April 29,

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[1] When a preliminary writ is issued, "briefs shall be filed as required on appeals . . . ." Supreme Court Rule 84.24(i). Respondent is compelled to note that Relator's statement of facts does not contain any citations to the record as required by Rule 84.04(i), *see* Supreme Court Rule 84.24(g) (stating that the record on appeal consists of the pleadings, accompanying exhibits and all other papers, documents, orders, and records filed in the appellate court). Also, the points relied on do not comply with the requirements of Rule 84.04(d), and the argument section of the brief does not set out the applicable standard of review as required by Rule 84.04(e).

2009, alleging that Fravell had violated the conditions of probation. (Pet.'s Ex. C). A hearing on the motion was conducted on July 7, 2009. (Pet.'s Ex. D). Subsequent hearings were conducted where the prosecutor and defense attorney apparently argued the issue of whether Fravell should be placed on lifetime supervision. (Pet.'s Ex. D). Judge Seay issued an order on January 5, 2010, finding that the statutory provisions requiring lifetime supervision are constitutional, and ordering that Fravell be maintained on lifetime supervision by the Board of Probation and Parole. (Pet.'s Ex. D).

Fravell filed a petition for a writ of prohibition in the Missouri Court of Appeals, Southern District (case no. SD30414) on March 15, 2010. (Pet.'s Writ Summary). The petition was denied on March 30, 2010. (Pet.'s Writ Summary). Fravell then filed a petition for a writ of prohibition in this Court on May 6, 2010.[2] On June 29, 2010, the Court issued its preliminary writ. Respondent filed a Return to the Writ on July 29, 2010.

[2] Respondent asks this Court to take judicial notice of its files regarding the procedural history in this Court.

ARGUMENT

I.

Section 559.106.1, RSMo is unambiguous, and its lifetime supervision requirement clearly applies to Relator (responds to Relator's points I and II).

Relator Scott Fravell claims that the trial court erroneously placed him on lifetime supervision under section 559.106.1, RSMo, because the statute limits lifetime supervision to prior sex offenders, and he had no prior sex offenses. But the trial court did not err because Fravell pleaded guilty to statutory rape in the first degree, and the plain language of the statute shows that persons placed on probation following convictions or guilty pleas to statutory rape or statutory sodomy in the first degree are to be subject to lifetime supervision regardless of whether they are prior sex offenders.

Fravell argues in a separate point (Point II of his brief) that the rule of lenity should apply to construe the statute in the manner that he suggests. But the rule of lenity does not apply because the statute is not ambiguous, and even if it were, other rules of construction can be used to resolve that ambiguity, so that this Court need not reach the last resort of applying the rule of lenity. Because the two points are interrelated, Respondent will address them in a single point.

A. Standard of Review.

Prohibition is an original proceeding brought to confine a lower court to the proper exercise of its jurisdiction. *State ex rel. Lebanon Sch. Dist. R-III v. Winfrey*, 183 S.W.3d 232, 234 (Mo. banc 2006). It is a discretionary writ that only issues to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent exercise of extra-

jurisdictional power. *Id.* A writ of prohibition is also appropriate to preserve the orderly and economical administration of justice, or where there is an important question of law decided erroneously that would otherwise escape review by this Court, and the aggrieved party may suffer considerable hardship and expense as a consequence of the erroneous decision. *State ex rel. C.F. White Family P'ship, et al. v. Roldan*, 271 S.W.3d 569, 572 (Mo. banc 2008).

B. Analysis.

1. Plain language of section 559.106.1, RSMo shows that Fravell is subject to lifetime supervision by the Board of Probation and Parole.

Fravell claims that he is not subject to the lifetime supervision requirement of section 559.106, RSMo because he is a first-time offender and the statute only applies to prior sex offenders. The relevant portion of the statute reads as follows:

> Notwithstanding any statutory provision to the contrary, when a court grants probation to an offender who has pleaded guilty to or has been found guilty of an offense in section 566.030, 566.032, 566.060, or 566.062, RSMo, based on an act committed on or after August 28, 2006, or the offender has pleaded guilty to or been found guilty of an offense under section 566.067, 566.083, 566.100, 566.151, 566.212, 566.213, 568.020, 568.080, or 568.090, RSMo, based on an act committed on or after August 28, 2006, against a victim who was less than fourteen years old and the offender is a prior sex offender as defined in subsection 2 of this section,

the court shall order that the offender be supervised by the board of probation or parole for the duration of his or her natural life.

§ 559.106.1, RSMo Supp. 2006. Fravell argues that the statute should be interpreted as requiring that a person granted probation for any of the listed offenses must be a prior sex offender before they can be subjected to lifetime probation.

This Court's primary goal in interpreting a statute is to give effect to legislative intent as reflected in the plain language of the statute. *State v. Moore*, 303 S.W.3d 515, 520 (Mo. banc 2010). Courts have a duty to read statutes in their plain, ordinary, and usual sense. *M.C. Dev. Co., LLC v. Central R-3 Sch. Dist.*, 299 S.W.3d 600, 604 (Mo. banc 2009). Where there is no ambiguity in the statute, this Court does not apply any other rule of statutory construction. *Id.*

Breaking the statute down, a plain reading shows that it applies to two separate classes of offenders:

> [A]n offender who has pleaded guilty to or has been found guilty of an offense in section 566.030, 566.032, 566.060, or 566.062,[3] RSMo, based on an act committed on or after August 28, 2006,
>
> **OR**
>
> [An] offender [who] has pleaded guilty to or has been found guilty of an offense under section 566.067, 566.083, 566.100, 566.151, 566.212,

[3] Those statutes create the respective offenses of forcible rape, statutory rape in the first degree, forcible sodomy, and statutory sodomy in the first degree.

566.213, 568.020, 568.080, or 568.090, RSMo,[4] based on an act committed on or after August 28, 2006, against a victim who was less than fourteen years old and the offender is a prior sex offender . . . .

That reading, splitting the offenses into two categories, is buttressed by comparing the current version of the statute to the prior version. Section 559.106 was first enacted in 2005, and that original version read as follows:

> Notwithstanding any statutory provision to the contrary, when a court grants probation to an offender who has pleaded guilty to or has been found guilty of an offense in section 566.030, 566.032, 566.060, 566.062, 566.067, 566.083, 566.100, 566.151, 566.212, 568.020, 568.080, or 568.090, RSMo, based on an act committed on or after August 28, 2005, against a victim who was less than fourteen years old and the offender is a prior sex offender as defined in subsection 2 of this section, the court shall order that the offender be supervised by the board of probation and parole for the duration of his or her natural life.

§ 559.106.1, RSMo Supp. 2005.

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[4] Those statutes create the respective offenses of child molestation in the first degree, sexual misconduct involving a child, sexual abuse, enticement of a child, sexual trafficking of a child, sexual trafficking of a child under the age of twelve, incest, child used in [a] sexual performance, and promoting sexual performance by a child.

The 2005 version of the statute grouped offenders who violated sections 566.030, 566.032, 566.060, and 566.062 with offenders who violated the remaining sections listed in the statute. Under that version of the statute, all the listed offenses had to involve a victim under the age of fourteen, and all offenders had to be prior sex offenders before the lifetime supervision requirement was triggered.

But the 2006 amendment separated offenders who violated sections 566.030, 566.032, 566.060, and 566.062 from offenders who violated the remaining statutes, by placing the word "or" between the two groups of statutes. § 559.106.1, RSMo Supp. 2006. When the legislature changed the statute in 2006, that change was deemed to have an intended effect. *State ex rel. Dir. of Revenue v. Gaertner*, 32 S.W.3d 564, 567 (Mo. banc 2000). That intended effect was to require lifetime supervision for all defendants placed on probation for committing the offenses of forcible rape, statutory rape in the first degree, forcible sodomy, and statutory sodomy in the first degree, while those placed on probation for committing the remaining offenses listed in the statute would only be subject to lifetime supervision if they were prior sex offenders whose offense involved a victim under the age of fourteen.

That change represents a reasonable policy determination by the legislature that the offenses of forcible rape, forcible sodomy, statutory rape in the first degree, and statutory sodomy in the first degree are so serious that lifetime supervision is appropriate for anyone placed on probation for committing those crimes, even a first time offender. The legislature could reasonably determine that the remaining offenses subject to the lifetime supervision statute, while still serious, are nonetheless qualitatively different

from forcible and statutory rape and sodomy so that lifetime supervision will be reserved for only the worst offenders – namely repeat offenders who target very young victims.

Appellant's reading of the statute to limit lifetime supervision for violations of section 566.032 to defendants who are prior sex offenders would render meaningless the 2006 changes to section 559.106.1, RSMo. But the legislature will not be charged with a meaningless act when it alters an existing statute. *Gaertner*, 32 S.W.3d at 567. Fravell's reading should thus be rejected.

2. Applying lifetime supervision to a first time offender convicted of statutory rape does not create an absurd result.

Fravell nonetheless contends that applying the lifetime supervision requirements to first-time offenders who violate sections 566.032 and 566.062 would create an absurd result. Fravel advances several theories for this argument, none of which withstand scrutiny.

a. Inclusion of forcible rape and forcible sodomy statutes even though those offenses are not probation-eligible.

Fravell's first theory of an absurd result is based on the inclusion in section 559.106.1 of the forcible rape and forcible sodomy statutes (sections 566.030 and 566.060), even though those offenses are no longer probation-eligible.[5] While keeping

[5] The statutes for forcible rape and forcible sodomy were also amended in 2006 to provide that no person found guilty of those offenses by plea or conviction shall be granted a suspended imposition of sentence or suspended execution of sentence. §§

the references to the forcible rape and forcible sodomy statutes in section 559.106.1 does not, at first blush, appear to make sense given that probation cannot be granted for those offenses, that has nothing to do with whether section 559.106.1 should be construed to make first time offenders placed on probation for statutory rape in the first degree subject to lifetime supervision.

In any event, the legislative history of section 559.106 sheds light on why section 559.106.1 still contains the reference to the forcible rape and forcible sodomy statutes. As noted above, the original version of section 559.106.1 listed all the qualifying offenses together. § 559.106.1 RSMo Supp. 2005. In 2006, the legislature amended section 559.106.1 through House Bill 1698 (App. at A5, A11-A12). As originally introduced, the bill added the language that separated the qualifying offenses of forcible rape, statutory rape, forcible sodomy, and statutory sodomy from the remainder of the qualifying offenses. (App. at A11). The original version of the bill also amended the authorized sentences for forcible rape and forcible sodomy, but did not include language barring eligibility for a suspended imposition or suspended execution of sentence. (App. at A12-A13). That language was not added to the bill until after it had passed the House and was taken up by the Senate Committee on the Judiciary and Civil and Criminal Jurisprudence. (App. at A93-95). Section 559.106 was not part of that Senate committee

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566.030.3, RSMo Supp. 2006; 566.060.3, RSMo Supp. 2006. Those provisions are currently codified as section 566.030.4, RSMo Supp. 2009 and section 566.060.4, RSMo Supp. 2009.

bill. (App. at A81). The bill that passed the full Senate did repeal and re-enact section 559.106 in substantially the same form as the bill that finally passed the House. (App. at A61-A62, A127, A147-A148).

There are thus two reasonable explanations for why section 559.106 continues to refer to the forcible rape and forcible sodomy statutes – sections 566.030 and 566.060. One is that the Senate, in amending sections 566.030 and 566.060 to make violators ineligible for probation, did not recognize the need to delete those sections from subsection one of section 559.106. The other explanation is that the references to sections 566.030 and 566.060 were left in section 559.106.1 so that the latter section would not have to be amended in the event that the ban on suspended imposition or execution of sentence contained in sections 566.030 and 566.060 is later repealed or invalidated.

Far from reaching an absurd result, a clear and reasonable policy choice by the legislature becomes apparent when the statutes are read together and read correctly. Forcible rape and forcible sodomy are violent offenses and the legislature has reasonably determined that some amount of prison time should be required for a conviction or guilty plea for those crimes. And as will be noted in the next section below, offenders sent to prison for those offenses will still be subject to lifetime parole supervision upon their release. First degree statutory rape and first degree statutory sodomy may or may not involve violence, so probation might be appropriate in some cases. But those offenses are still sufficiently serious that any person given probation for those crimes must be subjected to lifetime supervision. The remaining offenses named in section 559.106.1,

while still serious offenses, are nonetheless deemed less serious than first degree statutory rape and first degree statutory sodomy in that they do not automatically trigger lifetime probation supervision. That remedy is instead reserved for the most serious offenders under those statutes, namely repeat sexual offenders who have targeted younger victims.

b. Allegedly differential treatment between offenders sentenced to prison and those placed on probation.

Fravell also claims an absurd result because a first-time offender convicted of forcible rape could serve his prison sentence and upon release not be subject to supervision, while a first time offender granted probation following a conviction for statutory rape would be subject to lifetime supervision. That argument overlooks section 217.735.1, RSMo, which is identical to section 559.106.1, RSMo. § 217.735.1, RSMo Supp. 2006. (App. at A3). The lifetime supervision requirement of section 217.735:

> . . . **applies to offenders** who have been granted probation and to offenders who have been released on parole, conditional release, or **upon serving their full sentence without early release. Supervision of an offender who was released after serving his or her full sentence will be considered as supervision on parole**.

§ 217.735.3, RSMo Supp. 2006 (emphasis added). The disparity that Fravell complains of does not exist and therefore cannot lead to an absurd result.

c. Alleged failure to give full effect to the statute.

Fravell's argument that applying the "prior sex offender" modifier to all the offenses listed in the statute is necessary to give full effect to the statute also fails to

withstand scrutiny. Fravell appears to suggest that his construction is necessary to ensure that repeat offenders of rape and sodomy are subject to lifetime supervision.

Any person with a prior conviction for forcible rape or forcible sodomy would qualify as a prior sex offender under the lifetime supervision statute. § 559.106.2, RSMo Supp. 2006. If the subsequent conviction again involves either forcible rape or forcible sodomy, then probation will not be an option and the question of lifetime probation supervision never arises, though they would be subject to lifetime parole supervision if released from prison. *See* §§ 217.735, RSMo Supp. 2006; 566.030.4, RSMo Supp. 2009; 566.060.4, RSMo Supp. 2009.

If the subsequent conviction is for first degree statutory rape or first degree statutory sodomy, then lifetime supervision will be mandated upon the granting of probation regardless of the prior offense. § 559.106.1, RSMo Supp. 2006.

And if the subsequent conviction is for any of the other offenses listed in section 559.106.1, then lifetime supervision will be required upon a granting of probation due to the offender's status as a prior sex offender. § 559.106.1 and .2, RSMo Supp. 2006.

So applying the "prior sex offender" language to all the offenses listed in section 559.106.1 is not required to ensure that persons with previous convictions for forcible rape and forcible sodomy are subjected to lifetime supervision when granted probation for subsequent violations of the remaining offenses listed in the statute.

3. Rule of lenity does not apply.

Fravell concedes that the statute is not ambiguous, but nonetheless argues that any ambiguity should be resolved in his favor under the rule of lenity. Respondent agrees

that the statute is not ambiguous and that the rule of lenity thus does not apply. *State v. Rowe*, 63 S.W.3d 647, 650 (Mo. banc 2002). Even where a statute is ambiguous, this Court does not resort to the rule of lenity unless it is unable to resolve the ambiguity and determine legislative intent through other canons of statutory construction. *State v. Turner*, 245 S.W.3d 826, 828 (Mo. banc 2008). There is another canon of statutory construction that can be used to resolve any ambiguity in the statute, if one is deemed to exist. There is thus no need to resort to the rule of lenity to correctly interpret the statute.

4. Last Antecedent Rule supports construction that Fravell is subject to lifetime supervision.

While it is not necessary to resort to rules of statutory construction because section 559.106.1 is unambiguous, application of the "last antecedent rule" further supports the conclusion that persons convicted of or pleading guilty to first degree statutory rape or first degree statutory sodomy need not be prior offenders to be subject to lifetime probation supervision. The rule, which has long been recognized in Missouri, states that relative or qualifying words, phrases, or clauses are to be applied to the words or phrase immediately preceding and are not to be construed as extending to or including others more remote. *Citizens Bank & Trust Co. v. Director of Revenue*, 639 S.W.2d 833, 835 (Mo. 1982).

Applying that rule, the phrase "and is a prior sex offender" qualifies the immediately preceding phrase, "has pleaded guilty to or has been found guilty of an offense under section 566.067, 566.083, 566.100, 566.151, 566.212, 566.213, 568.020, 568.080, or 568.090, RSMo, based on an act committed on or after August 28, 2006,

against a victim who was less than fourteen years old . . . ." The phrase "and is a prior sex offender" should not be construed to extend to the more remote phrase "has pleaded guilty to or has been found guilty of an offense in section 566.030, 566.32, 566.060, or 566.062, RSMo . . . ."

That construction is further buttressed by the placement of a comma before the word "or" as highlighted below:

> Notwithstanding any statutory provision to the contrary, when a court grants probation to an offender who has pleaded guilty to or has been found guilty of an offense in section 566.030, 566.032, 566.060, or 566.062, RSMo, based on an act committed on or after August 28, 2006**, or** the offender has pleaded guilty to or been found guilty of an offense under section 566.067, 566.083, 566.100, 566.151, 566.212, 566.213, 568.020, 568.080, 568.090, RSMo, based on an act committed on or after August 28, 2006, against a victim who was less than fourteen years old and the offender is a prior sex offender as defined in subsection 2 of this section, the court shall order that the offender be supervised by the board of probation or parole for the duration of his or her natural life.

§ 559.106.1, RSMo Supp. 2006 (emphasis added).

The word "or" in that context is considered a disjunctive conjunction. *Application of Graham*, 239 Mo. App. 1036, 1046-47, 199 S.W.2d 68, 74, 75 (K.C.D. 1946). When a conjunction connects two coordinate clauses or phrases, a comma should precede the conjunction if it is intended to prevent following qualifying phrases from

modifying the clause or phrase which precedes the conjunction. *Graham*, 239 Mo. App. at 1047, 199 S.W.2d at 74; *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 829 n.3 (Mo. banc 1990).

Following that rule, placement of the comma before the word "or" as highlighted above demonstrates that the language following "or" was not intended to modify the language preceding the conjunction. In other words, the phrase "against a victim who was less than fourteen years old and the offender is a prior sex offender" does not modify the phrase "an offender who has pled guilty to or has been found guilty of an offense in section 566.030, 566.032, 566.060, or 566.062, RSMo, based on an act committed on or after August 28, 2006[.]" The requirement that the victim be less than fourteen years old and the offender be a prior sex offender only modifies (or put another way, only applies to) the phrase immediately following the word "or", which describes offenders who have pled guilty to or been found guilty of offenses under sections 566.067, 566.083, 566.100, 566.151, 566.212, 566.213, 568.020, 568.080, or 568.090.

The lifetime supervision requirements of section 559.106.1, RSMo Supp. 2006 plainly apply to first time offenders who were convicted of or pled guilty to violating section 566.032, RSMo for acts occurring on or after August 28, 2006. The statute was properly applied to Fravell, and his claim should be denied, and the preliminary writ should be quashed.

II.

The 2006 version of section 559.106.1, RSMo that was applied to Relator does not violate the constitutional prohibition against changing the original purpose of legislation (responds to Relator's Point III).

Fravell contends that section 559.106, RSMo is invalid because it violates the "original purpose" requirement of Article III, section 21 of the Missouri Constitution. But his argument is moot since it is based on the original enacting legislation passed in 2005. But section 559.106, RSMo was repealed and re-enacted in 2006, before Fravell committed the crimes for which he was placed on probation. Fravell was thus sentenced under the 2006 version of the statute that was enacted as part of a bill whose purpose was to enact statutes relating to sexual offenders, with penalty provisions.

A. Standard of Review.

Prohibition is an original proceeding brought to confine a lower court to the proper exercise of its jurisdiction. *State ex rel. Lebanon Sch. Dist. R-III*, 183 S.W.3d at 234. It is a discretionary writ that only issues to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent exercise of extra-jurisdictional power. *Id.* A writ of prohibition is also appropriate to preserve the orderly and economical administration of justice, or where there is an important question of law decided erroneously that would otherwise escape review by this Court, and the aggrieved party may suffer considerable hardship and expense as a consequence of the erroneous decision. *State ex rel. C.F. White Family P'ship*, 271 S.W.3d at 572.

B. Analysis.

Article III, section 21 of the Missouri Constitution reads, in pertinent 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." Mo. Const. art. III, § 21. Fravell's argument that section 559.106 violates that provision is misplaced because that argument is based on House Bill 972, the original enacting legislation passed in 2005. But in 2006, the General Assembly passed, and the Governor signed, House Bill 1698. 2006 Mo. Laws 330-36. That bill repealed the former section 559.106 that was enacted the previous year in House Bill 972, and enacted in lieu thereof a new section 559.106. *Id.* at 330, 340. The 2006 version of the statute is the one that applies to Fravell, because his guilty plea and sentence were for crimes committed on or about April 24, 2007. (Resp.'s Ex. 1). § 559.106.1, RSMo Supp. 2006.

The repeal of a law means its complete abrogation by the enactment of a subsequent statute. *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 325 (Mo. banc 2000). Once the General Assembly repealed the former section 559.106, this Court's basis for deciding the constitutionality of that statute evaporated, and no relief can be granted concerning the validity of that statute. *Id.* Accordingly, Fravell's challenge to the version of the statute that was enacted in House Bill 972 is moot. *Id.*; *State v. Salter*, 250 S.W.3d 705, 709 n.4 (Mo. banc 2008).

Though Fravell does not address the constitutionality of House Bill 1698, an examination of that legislation shows that it does not violate the original purpose requirement of Article III, section 21. Original purpose refers to the general purpose of

the bill. *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885, 888 (Mo. banc 2006). The restriction is against the introduction of matter that is not germane to the object of the legislation or that is unrelated to its original subject. *Id.* The original purpose of the bill must be measured at the time of the bill's introduction. *Id.*

As originally introduced, the title of House Bill 1698 was, "To repeal [nineteen] sections . . . and to enact in lieu thereof twenty-five new sections relating to sexual offenders, with penalty provisions."[6] (App. at A5). Each subsequent version of the bill, including the version that was finally passed and signed into law, kept that title. (App. at A23, A55, A81, A127-A128, A200-A201); 2006 Mo. Laws at 330. The number of statutes repealed and the number of new statutes enacted increased, to where the final version of the bill repealed thirty-nine sections and enacted fifty-three new sections. (App. at A200-A201); 2006 Mo. Laws at 330. Examination of the titles of the newly enacted sections reveals that each of them is germane to the object of the legislation and is related to the subject of the bill. 2006 Mo. Laws at 330-32. The only new section that does not seem like an obvious fit based on its title is section 351.609, which deals with records possessed by corporations providing certain services to the public. *Id.* at 334. But an examination of the provisions of the statute show that it is designed to assist law enforcement in combatting internet-related sex offenses by enhancing the ability of law enforcement to obtain subpoenas or search warrants for records maintained by

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[6] The various versions of the bill can be accessed through the bill tracking feature at http://www.house.mo.gov.

corporations that provide electronic or remote computing services to the general public. *Id.* at 334-35; (App. at A203-A205).

Section 559.106, RSMo Supp. 2006, as enacted in House Bill 1698, does not violate Article III, section 21 of the Missouri Constitution because that section and all remaining sections of the bill relate to the bill's original purpose of dealing with sexual offenders. The statute is thus valid and constititutional as applied to Fravell. His point should be denied.

CONCLUSION

In view of the foregoing, Respondent submits that Relator's petition for writ of prohibition should be denied and the preliminary writ should be quashed.

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 5,215 words as calculated pursuant to the requirements of Missouri Supreme Court Rule 84.06, as determined by Microsoft Word 2007 software; and

2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and

3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed this 15th day of September, 2010, to:

Mr. Joel J. Schwartz Ms. Erin R. Griebel 120 S. Central Ave., Ste. 130 Clayton, MO 63105	The Hon. William C. Seay Crawford County Courthouse 302 Main Street Steelville, MO 65565

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