IN THE SUPREME COURT OF MISSOURI

Appeal No. SC 91228

St. Louis County, Missouri, *et al.*,

Appellants

v.

Prestige Travel, Inc., *et al.*,

Respondents.

Respondents' Brief

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SUMMARY OF ARGUMENT

Appellants' brief raises five constitutional challenges to H.B. 1442. Appellants argue the bill:

(1) violates Article III, Section 39(5) of the Missouri Constitution by extinguishing Hotel and Tourism Tax debts the OTCs allegedly owed to Appellants prior to the enactment of H.B. 1442;

(2) violates the "original purpose" requirement of Article III, Section 21 because Sections 67.2000, 70.220, 137.1040, and 138.431 of H.B. 1442 (the "challenged provisions") (which are not even relevant to the underlying dispute) allegedly do not concern the bill's original purpose;

(3) violates the "single subject" requirement of Article III, Section 23 because the challenged provisions allegedly do not relate to the bill's subject;

(4) is underinclusive in violation of the "clear title" requirement of Article III, Section 23 in that the challenged provisions allegedly fall outside of the bill's scope; and

(5) is overinclusive in violation of the "clear title" requirement of Article III, Section 23 in that the bill's title, "relating to taxes," allegedly does not fairly apprise legislators and the public of the bill's contents.

Appellants' arguments are without merit. First, Appellants waived their Article III, Section 39(5) challenge to H.B. 1442 by failing to raise that issue in the proceedings below. In addition, even if Appellants had not waived such challenge, the plain language of the Hotel and Tourism Taxes evidences that such taxes apply only to hotel and motel owners and operators, not to online travel companies, therefore, Appellants have failed to

demonstrate that the Hotel and Tourism Taxes as they existed prior to H.B. 1442's enactment "clearly and undoubtedly" imposed a tax liability on the OTCs.

Appellants' Article III, Section 21 and Section 23 challenges also fail. Importantly, Appellants do not even allege that Section 1 of H.B. 1442—the only section relevant to Appellants' claims in this lawsuit—violates Article III, Sections 21 and 23; rather, Appellants challenge provisions of H.B. 1442 that are completely irrelevant to the instant dispute. Because such provisions do not adversely affect Appellants, Appellants lack standing to challenge those provisions in this proceeding. Moreover, even if such provisions did violate Article III, Section 21 and 23 (which they do not), they are severable from the remainder of H.B. 1442, leaving Section 1—the only section relevant to this case—intact. Finally, because each of H.B. 1442's provisions relate to its broad, overarching purpose and single subject of taxes, which is clearly expressed in the bill's title, "relating to taxes," Appellants cannot show that Section 1 of H.B. 1442 or any other provision "clearly and undoubtedly" violates the Missouri Constitution. Therefore, as Appellants conceded in their response to the OTCs' *Motion for Reconsideration*, H.B. 1442 "eviscerates" their claims. The Circuit Court did not err in dismissing this case.

STATEMENT OF FACTS

Appellees Expedia, Inc. (DE); Expedia Inc. (WA); Hotels.com; Hotels.com, L.P.; Hotels.com GP, LLC; Hotwire, Inc.; TravelNow.com, Inc. (d/b/a TravelNow.com); Lowestfare.com Incorporated; Priceline.com, Inc.; Travelweb, LLC; Travelocity.com, LP; Travelocity.com, Inc.; Site59.com, LLC; Travelport Inc. (f/k/a Cendant Travel Distribution Services Group, Inc.); Trip Network, Inc. (d/b/a Cheaptickets.com); Orbitz,

LLC; Orbitz, Inc.; and Internetwork Publishing Corp. (d/b/a Lodging.com) are online travel companies (collectively, "OTCs") who facilitate the booking of reservations of hotel and motel rooms via the internet.[1]

In July 2009, Appellants St. Louis County, Missouri ("County") and St. Louis Convention and Visitors Commission ("CVC") (collectively, "Appellants") filed suit against the OTCs in the Circuit Court of St. Louis County alleging that the OTCs "each contract with hotel/motel operators for Hotel Rooms at negotiated discounted room rates" (the "Discount Price") and, after booking a reservation for a transient guest at a "Marked Up Price," "remit only the Discount Price to the hotel/motel operator and keep the difference." [LF 17, ¶ 38]. Appellants further alleged that by "not collecting taxes on the . . . difference between the Marked Up Price and the Discount Price," [LF 17, ¶ 39], the OTCs are in violation of Sections 502.500–502.550 of the Revised Ordinances of St. Louis County (the "Hotel Tax") and Sections 67.601–67.626 of the Revised Statutes of Missouri (the "Tourism Tax") [LF 14-23], each of which impose taxes on "sales or charges for all sleeping rooms paid by the transient guests of hotels and motels." *See* §§ 67.619, 67.657, RSMo; Rev. Ordinances of St. Louis County § 502.500.

[1] Not all Appellees are online travel companies, as some are simply holding or related companies. For ease of reference, however, all Appellees are discussed together because the distinctions among some of them do not matter for the purposes of this appeal.

The plain language of the Hotel and Tourism Taxes evidences that such taxes do not apply to travel intermediaries such as the OTCs, who merely facilitate the booking of room reservations, but instead impose tax liability on the "person, firm or corporation *engaged in the business of operating a hotel or motel*," *see* Rev. Ordinances of St. Louis County § 502.530,[2] and the "person *operating or managing* the business," *see* § 67.624.2, RSMo. Thus, on November 30, 2009, the OTCs moved to dismiss Appellants' petition. [LF 25-30]. The Circuit Court denied the OTCs' *Motion to Dismiss* on July 12, 2010. [LF 100].

Meanwhile, on July 8, 2010, Missouri Governor Jay Nixon signed into law House Bill No. 1442 ("H.B. 1442"). The bill, entitled "An Act to repeal [eleven statutory sections] and to enact in lieu thereof nineteen new sections relating to taxes, with an emergency clause for a certain section," [LF 111] enacted nine statutory sections concerning room taxes, including Section 1, which provides:

> Notwithstanding any other provisions of law to the contrary, any tax imposed or collected by any municipality, any county, or any local taxing entity on or related to any transient accommodations, whether imposed as a hotel tax, occupancy tax, or otherwise, shall apply solely to amounts actually received by the operator of a hotel, motel, tavern, inn, tourist cabin, tourist camp, or other place in which rooms are furnished to the public.

[2] Unless otherwise indicated, all emphasis to quoted material has been added, and all internal citations have been removed.

> Under no circumstances shall a travel agent or intermediary be deemed an operator of a hotel, motel, tavern, inn, tourist cabin, tourist camp, or other place in which rooms are furnished to the public unless such travel agent or intermediary actually operates such a facility. This section shall not apply if the purchaser of such rooms is an entity which is exempt from payment of such tax. This section is intended to clarify that taxes imposed as a hotel tax, occupancy tax, or otherwise, shall apply solely to amounts received by operators, as enacted in the statutes authorizing such taxes.

[LF 151].

In addition to Section 1, House Bill 1442 enacted eighteen other statutes "relating to taxes" [LF 111], including eight other sections concerning room taxes (67.1000, 67.1018, 67.1360, 67.1361, 94.271, 94.832, 94.840, 94.1011), four sections concerning city sales taxes (Sections 94.510, 94.577, 94.900, and 94.902), two sections concerning sales tax exemptions (Sections 144.019 and 144.030), one section concerning county sales taxes (Section 67.2000), one section concerning shared revenues from real property taxes (Section 70.220), one section a concerning a specific type of real property tax (Section 137.1040), and one section governing the procedure for appeal to the state tax commission of taxes assessed on real and tangible personal property (Section 138.431). [LF 111-52].

Section 1 of H.B. 1442, enacted as an explicit clarification of Missouri's existing Hotel and Tourism Taxes, resolved any doubts as to whether such statutes and ordinances impose tax liability on travel intermediaries such as the OTCs—they do not. Thus, on

August 23, 2010, the OTCs filed their *Notice of Supplemental Authority and Motion for Reconsideration* ("*Motion for Reconsideration*"), requesting that the Circuit Court reconsider its ruling on the OTCs' *Motion to Dismiss*. [LF 101-10].

Appellants filed a six-sentence response to the OTCs' *Motion for Reconsideration*, expressly admitting that Section 1 of H.B. 1442 "eviscerates plaintiffs' claims." [LF 153-54]. In addition, without argument or supporting authority, Appellants proclaimed that they were "preserv[ing] their right to challenge" H.B. 1442 and made the conclusory assertion that H.B. 1442 violates Article III, Sections 21, 23, and 40 of the Missouri Constitution. [*Id.*] Appellants' response, however, made no mention of Article III, Section 39(5), notwithstanding that Section 39(5) is the centerpiece of Appellants' constitutional attack in this appeal. [*Id.*]

On September 8, 2010, the Circuit Court conducted a hearing on the OTCs' *Motion for Reconsideration*. Following the hearing, the court signed a written order granting the OTCs' *Motion for Reconsideration* and *Motion to Dismiss*, dismissing Appellants' petition with prejudice. [LF 155]. Then, on September 27, 2010, the Circuit Court signed a final judgment concluding the case. [LF 156].

On September 30, 2010, Appellants filed their *Notice of Appeal* in the Circuit Court, appealing the judgment to this Court. [LF 157-60]. In accordance with Rule 81.08(b), Appellants filed a jurisdictional statement as part of their *Notice of Appeal*. [LF 159]. Notably, Appellants' jurisdictional statement fails to mention Appellants' constitutional challenge to H.B. 1442 pursuant to Article III, Sections 21, 23, and 39(5).

[*Id.*] Instead, Appellants' jurisdictional statement alleges that H.B. 1442 violates Article III, Section 40. [*Id.*].

After receiving a three-week extension, Appellants filed their brief with this Court on January 21, 2011. Despite failing to raise a constitutional challenge to H.B. 1442 pursuant to Article III, Section 39(5) in the proceedings below, failing to support the conclusory constitutional challenges to H.B. 1442 raised in their response to the OTCs' *Motion for Reconsideration*, and abandoning their constitutional challenges to H.B. 1442 pursuant to Article III, Sections 21 and 23 in their jurisdictional statement, Appellants' brief to this Court now asserts that H.B. 1442 violates Article III, Sections 21, 23, and 39(5). Appellants are wrong.

ARGUMENT

I. Standard of Review.

"[S]tatutes are presumed to be constitutional, and this Court is to construe any doubts regarding a statute in favor of its constitutionality." *McEuen v. Mo. State Board of Educ.*, 120 S.W.3d 207, 209 (Mo. banc 2003); s*ee also Rentschler v. Nixon*, 311 S.W.3d 783, 786 (Mo. banc 2010) ("A statute is presumed valid and will not be held unconstitutional unless it clearly contravenes a constitutional provision."); *Jackson County Sports Complex Auth. v. State*, 226 S.W.3d 156, 160 (Mo. banc 2007) ("laws enacted by the legislature and approved by the governor have a strong presumption of constitutionality").

"[T]he use of procedural limitations to attack the constitutionality of statutes is not favored." *Jackson County Sports Complex Auth.*, 226 S.W.3d at 160; *see also C.C.*

Dillon Co. v. City of Eureka, 12 S.W.3d 322, 327 (Mo. banc 2000). "Instead, this Court 'interprets procedural limitations liberally and will uphold the constitutionality of a statute against such an attack unless the act clearly and undoubtedly violates the constitutional limitation.'" *Jackson County Sports Complex Auth.*, 226 S.W.3d at 160 (quoting *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 326 (Mo. banc 1997)); *see also City of Jefferson v. Mo. Dept. of Nat. Res.*, 863 S.W.2d 844, 848 (Mo. banc 1993) ("A statute is presumed constitutional and must not be held otherwise unless clearly and undoubtedly contravening the constitution."). Moreover, the burden of proving a clear and undoubted constitutional violation rests heavily on "[t]he person challenging the act . . . ." *Rentschler*, 311 S.W.3d at 786; *see also State v. Salter*, 250 S.W.3d 705, 709 (Mo. banc 2008).

II. Response to Appellants' first point: Appellants' challenge to H.B. 1442 based on Article III, Section 39(5) of the Missouri Constitution fails because Appellants waived their right to bring a Section 39(5) challenge and because the Hotel and Tourism Taxes as they existed prior to the enactment of H.B. 1442 did not clearly and undoubtedly impose tax liability on the OTCs.

Appellants begin their brief by arguing that the Circuit Court erred in dismissing Appellants' petition because H.B. 1442 violates Article III, Section 39(5) of the Missouri Constitution inasmuch as it "attempts to extinguish without consideration the

indebtedness, liability and obligation" of the OTCs for the Hotel and Tourism Taxes.[3] [Appellants' Br. 10-29]. This argument has no merit.

A. Appellants waived their right to challenge H.B. 1442 under Article III, Section 39(5).

"It is firmly established that a constitutional question must be presented at the earliest possible moment 'that good pleading and orderly procedure will admit under the circumstances of the given case, otherwise it will be waived.'" *Callier v. Dir. of Revenue*, 780 S.W.2d 639, 641 (Mo. banc 1989) (quoting *Meadowbrook Country Club v. Davis*, 384 S.W.2d 611, 612 (Mo. 1964)); *see also City of Chesterfield v. Dir. of Revenue*, 811 S.W.2d 375, 378 (Mo. banc 1991); *S.A. v. Miller*, 248 S.W.3d 96, 101 (Mo. App. W.D. 2008). To prevent waiver of a constitutional question, a party must: "(1) raise the constitutional question at the first available opportunity; (2) designate specifically the constitutional provision claimed to have been violated, such as by explicit reference to the article and section or by quotation of the provision itself; (3) state the facts showing the violation; and (4) preserve the constitutional question throughout for appellate review." *United C.O.D. v. State*, 150 S.W.3d 311, 313 (Mo. banc 2004); *see also City of*

[3] Missouri Constitution Article III, Section 39(5) provides: "The general assembly shall not have power . . . [t]o release or extinguish or to authorize the releasing or extinguishing, in whole or in part, without consideration, the indebtedness, liability or obligation of any corporation or individual due this state or any county or municipal corporation . . . ." Mo. Const. art. III, § 39(5).

St. Louis v. Butler Co., 219 S.W.2d 372, 380 (Mo. banc 1949) ("[I]f a party fails to observe the four requirements a constitutional question will be deemed not to have been raised, and the constitutional right waived."); *Strong v. Am. Cyanamid Co.*, 261 S.W.3d 493, 525 (Mo. App. E.D. 2007) (listing requirements necessary to prevent waiver). In addition, the constitutional point raised on appeal must be identical to the constitutional argument advanced in the trial court; otherwise, such point is waived. *State v. Bowens*, 964 S.W.2d 232, 236 (Mo. App. E.D. 1998).

In *City of Chesterfield v. Director of Revenue*, this Court held that the appellant, the City of Chesterfield ("City"), waived its constitutional challenge to the validity of a disputed sales tax statute because it failed to raise such argument with specificity in the proceedings below. 811 S.W.2d 375, 378 (Mo. banc 1991). In that case, the City sought review of an adverse decision of the Administrative Hearing Commission, and argued that Section 66.620 RSMo, which prescribed the method for distribution of sales taxes collected in St. Louis County, violated Article VI, Section 15 of the Missouri Constitution. *Id.* at 376-77. In addressing the City's allegation, this Court noted that "the specific constitutional provision was not mentioned in the City's petition before the Administrative Hearing Commission"; rather, "[t]he first mention of Missouri Constitution Article VI, Section 15 is in the appellant's brief." *Id.* at 377-78. As a result, this Court held that the City "failed to preserve its [constitutional] claim . . . ." *Id.* at 378.

Similarly, in *S.A.S. v. B.P.*, 314 S.W.3d 348, 352-53 (Mo. App. E.D. 2010), an action to adjudicate parental rights, the plaintiff, the child's putative father, filed suit against the child's mother, seeking custody and visitation. *Id.* at 350. The child's mother

filed a motion to dismiss the suit pursuant to Section 210.834, RSMo. *Id.* at 350, 352. Although the plaintiff failed to challenge the constitutionality of Section 201.834 in his response to the motion to dismiss, he subsequently filed a motion to declare Section 210.834 unconstitutional, which the trial court denied. *Id.* at 351-53. When the plaintiff appealed the trial court's ruling, the Court of Appeals held that "[t]o have properly preserved the constitutional issue, [the plaintiff] should have raised it at the first opportunity, on March 18, 2008, as soon as Mother filed her Motion to Dismiss based on Section 210.834." *Id.* Thus, the court held, "[b]ecause [the plaintiff] failed to raise the constitutionality of Section 210.834 at the first available opportunity, he has not preserved this issue for appellate review." *Id.* at 353.

As in *City of Chesterfield* and *S.A.S.*, Appellants in this case wholly failed to preserve their Article III, Section 39(5) challenge to H.B. 1442. Foremost, Appellants failed to raise their Article III, Section 39(5) challenge at the first "available opportunity"—in response to the OTCs' *Motion for Reconsideration* [LF 152-54]. *See S.A.S.*, 314 S.W.3d at 352-53. Moreover, Appellants never referenced Article III, Section 39(5)—explicitly or otherwise—in the proceedings below [LF 152-54]; nor did they mention such provision in their *Notice of Appeal* [LF 157-60]. *See City of Chesterfield*, 811 S.W.2d at 377-78. Rather, Appellants first mentioned such provision in their brief to this Court. *See id.* at 378. As a result, Appellants failed to preserve the constitutional

question and waived their right to challenge H.B. 1442 pursuant to Article III, Section 39(5).[4]

B. Appellants cannot show that the Hotel and Tourism Taxes, as they existed prior to the enactment of H.B. 1442, clearly and undoubtedly imposed tax liability on the OTCs.

Even if Appellants had not waived their challenge to H.B. 1442 under Article III, Section 39(5), the Hotel and Tourism Taxes as they existed prior to H.B. 1442's enactment did not "clearly and undoubtedly" impose tax liability on the OTCs. Far from it.

As Appellants admit, "[t]o establish that House Bill 1442 violates Article III, Section 39(5) . . . [A]ppellants must show that the bill did not clarify [the Hotel and Tourism Taxes], but instead changed them so as to release [the OTCs] from an existing indebtedness to the taxing authorities for rooms sold before the effective date of the bill's enactment into law." [Appellants' Br. 13]. This requires Appellants to demonstrate that

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[4] *See id.*; *see also City of St. Louis v. Butler Co.*, 219 S.W.2d 372, 380 (Mo. 1949) ("if a party fails to observe the four requirements a constitutional question will be deemed not to have been raised, and the constitutional right waived"); *S.A.S.*, 314 S.W.3d at 352-53; *Strong v. Am. Cyanamid Co.*, 261 S.W.3d 493, 525 (Mo. App. E.D. 2007). Moreover, no exception to waiver applies. *See City of Chesterfield*, 811 S.W.2d at 378 (holding that "[t]he doctrine of inherency has been abolished" and that "the viability of the 'public interest' exception is highly doubtful.").

the Hotel and Tourism Taxes as they existed prior to H.B. 1442's enactment "clearly and undoubtedly" imposed a tax liability on the OTCs. *See Rentschler*, 311 S.W.3d at 786; *Salter*, 250 S.W.3d at 709; *Jackson County Sports Complex Auth.*, 226 S.W.3d at 160; *Stroh Brewery*, 954 S.W.2d at 326; *City of Jefferson*, 863 S.W.2d at 848. Appellants cannot make this showing.

1. Applicable rules for construction of tax statutes and ordinances.

"Statutes imposing taxes are to be construed against the taxing authority and in favor of the taxpayer." *Am. Healthcare Mgmt. Inc. v. Dir. of Revenue*, 984 S.W.2d 496, 498 (Mo. banc 1999); *see also United States v. Merriam*, 263 U.S. 179, 187-88 (1923) ("If the words [of a taxing statute] are doubtful, the doubt must be resolved against the government and in favor of the taxpayer."); *Gould v. Gould*, 245 U.S. 151, 153 (1917) (holding that any ambiguity in a taxing statute or ordinance must be "construed most strongly against the Government, and in favor of the citizen."); *Delta Air Lines, Inc. v. Dir. of Revenue*, 908 S.W.2d 353, 355 (Mo. 1995) (stating that tax statutes must be construed "in favor of the taxpayer and against the taxing authority").

When interpreting a statute or ordinance, a court's analysis begins with the statute's plain language. *United States v. Ron Pair Enters.*, 489 U.S. 235, 241 (1989). "[W]here . . . the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *Id.; see also Merriam*, 263 U.S. at 187-88 ("in statutes levying taxes the literal meaning of the words employed is most important . . . ."). Such statutes must be read as a whole. *J.S. v. Beaird*, 28 S.W.3d 875, 876 (Mo. 2000). In addition, when statutes or ordinances contain words that are not defined by the

legislature, the plain meaning of the words supply their statutory definition. *Delta Air Lines*, 908 S.W.2d at 356. That plain meaning is found in the dictionary. *Id.*

Further, when construing a statute, it is axiomatic that its provisions must be read in relation to each other. *See Lane v. Lensmeyer*, 158 S.W.3d 218, 226 (Mo. banc 2005) ("Statutes involving the assessment, levy and payment of taxes should be construed in context with each other."); *Staley v. Missouri Director of Revenue*, 623 S.W.2d 246, 250 (Mo. banc 1981) ("All provisions of a statute must be harmonized and every word, clause, sentence, and section thereof must be given some meaning."). "It will not be presumed that the legislature inserted idle verbiage or superfluous language in a statute." *State v. Smith*, 591 S.W.2d 263, 266 (Mo. App. W.D. 1979).

2. The plain language of the Hotel and Tourism Taxes demonstrates that the OTCs were never liable for such taxes.

a. The OTCs are not hotel or motel owners, operators, or managers.

Section 67.657, RSMo authorizes the governing body of a county to impose a "tax not to exceed three and one-half percent on the amount of sales or charges for all sleeping rooms paid by the transient guests" of hotels and motels within the county. § 67.657, RSMo 2010.[5] The tax applies to hotels and motels "situated within the county involved, and doing business within such county. . . ." *Id.*

[5] All subsequent statutory citations are to RSMo 2010 unless otherwise indicated.

In accordance with the enabling statute, the County imposed the Hotel Tax. *See* Rev. Ordinances of St. Louis County §§ 502.500–502.550. The Hotel Tax imposes a tax of three and one-half percent on "the amount of sales or charges for all sleeping rooms paid by the transient guests of hotels and motels situated within St. Louis County, Missouri." *Id.* § 502.500.

By its plain language, the tax only applies "within the boundaries of St. Louis County." *Id*. Moreover, application of the tax is limited to owners and operators of hotels and motels. For example, the obligation to make and file a return of the Hotel Tax is imposed on operators of hotels or motels:

> Every person, firm or corporation engaged in the business of *operating a hotel or motel* shall, on forms designed and furnished by the Director, make and file a verified quarterly return with the Director . . . .[6]

Id. § 502.530. The frequency of filing tax returns can be changed "upon request of the person, firm or corporation *doing business as a hotel or motel*." *Id*. In the event Hotel

[6] The Hotel Tax Return form clearly indicates that the Hotel Tax applies to owners and operators of hotels and motels. [LF 54]. For example, the form requests the "Operator's Name, Address, and Telephone Number" and requests information about the operator's hotel/motel or "facility," including the "Phone No. of Hotel/Motel," the "Name of Hotel/Motel," the "No. of Hotel/Motel Rooms," and the "Address of the Hotel/Motel." [*Id.*]

Taxes are not paid, the ordinance authorizes the Director of Revenue to file a lien in the city or county in which the "*owner(s) of the hotel or motel reside(s).*" *Id*. § 502.545.

Separately, Section 67.619 authorizes the City and County of St. Louis to impose a convention and tourism tax of three and three-fourths percent. § 67.619.1, RSMo. Like the Hotel Tax, the Tourism Tax states that the tax shall be collected by "*[t]he person operating or managing the business . . .*" that receives payment for "*the use of any sleeping room . . . .*" § 67.624.1–2 RSMo. Further, Sections 67.624.1–2 place the burden to file a tax return on "*[t]he person operating or managing the business,*" providing that such person "shall, on or before the last day of the month following each calendar quarterly period of three months, make a return to the commission or its designated collector . . . and shall remit with such return, the tax so levied."[7] *Id.* Additionally, if the tax is unpaid, the commission may file a lien in the county where the business is located, or where the person owing the tax resides. *See id.* § 67.626.1.

The Hotel Tax defines "hotel" and "motel" as "any structure or building which contains rooms furnished for accommodation or lodging of guests. . . ." Rev. Ordinances

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[7] Like the Hotel Tax Return Form, the Tourism Tax Return Form evidences that such tax applies only to owners and operators of hotels and motels. [LF 55]. The form is nearly identical to the Hotel Tax Return form, requesting the "Operator's Name, Address, and Telephone Number" and information about the operator's hotel/motel or "facility," including the "Phone No. of Hotel/Motel," the "Name of Hotel/Motel," the "No. of Hotel/Motel Rooms," and the "Address of the Hotel/Motel." [*Id.*]

of St. Louis County § 502.510(1). The Tourism Tax does not define "hotel" or "motel," but defines "[h]otel and [m]otel industry" as "the group of enterprises actively engaged in the business of operating lodging facilities for transient guests." § 67.604(6), RSMo. The Hotel and Tourism Taxes do not define the term "operator." However, The American Heritage Dictionary defines "operator" in this context as "the owner or director of a business or industrial concern." *See* THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 921 (1969). The term "manager" is likewise undefined in the ordinances, but "to manage" is defined in the dictionary as "to direct, supervise, or carry on business affairs." *Id*. at 792.

Read in relation to one another—as required by the applicable rules of statutory construction, *see e.g., Lane v. Lensmeyer*, 158 S.W.3d 218, 226 (Mo. banc 2005) ("Statutes involving the assessment, levy and payment of taxes should be construed in context with each other."); *Staley v. Missouri Director of Revenue*, 623 S.W.2d 246, 250 (Mo. banc 1981) ("All provisions of a statute must be harmonized and every word, clause, sentence, and section thereof must be given some meaning.")—each ordinance's provisions clearly indicate that the Hotel and Tourism Taxes were intended to apply to actual hotels and motels, not to the OTCs.

Appellants have not and cannot allege that the OTCs own, operate, or manage a hotel or motel and, as such, are required to make returns of tax to the Director. Indeed, there is no allegation that the OTCs operate any "structure or building" within St. Louis County or "operate" or "own[] or direct[]" a hotel or motel. Likewise, there is no allegation that the OTCs "manage" or "direct, supervise, or carry on [the] business

affairs" of a hotel or motel. A hotel guest cannot stay a night with Expedia or receive a room key from Travelocity. In fact, by Appellants' own admission, the OTCs collect funds from the transient guest and remit funds to the "operators" of the hotel or motel, who then remits the applicable taxes to Appellants. [LF 18, ¶ 44]. Because it is clear that the OTCs do not own, operate, or manage a hotel or motel, its is axiomatic that they are not "engaged in the business of operating a hotel or motel." Instead, the OTCs are engaged in the business of running travel websites over the Internet, not operating hotels in St. Louis County.

In short, as Appellants acknowledge, the OTCs conduct business "online over the internet." [LF 17, ¶ 36]. They do not own, manage or operate hotels in St. Louis, Missouri, or anywhere else. [LF 18, ¶ 44]. Instead, they facilitate the booking of travel reservations over the internet between customers and the actual owners and operators of hotels and motels. [*Id.*] As a result, the OTC's were never subject to the Hotel or Tourism Taxes.

b. The OTCs are not located in St. Louis, Missouri.

Appellants cannot prove that tax liability ever "clearly and undoubtedly" rested on the OTCs for the additional reason that the Hotel Tax and Tourism Taxes apply only to those businesses located within the City and County of St. Louis. The first sentence of the Hotel Tax expressly states that the tax is "levied within the boundaries of St. Louis County, Missouri . . . ." Rev. Ordinances of St. Louis County § 502.500. Likewise, the Tourism Tax is only imposed on those "situated within" and "doing business within [St. Louis] city and county. . . ." § 67.619.1, RSMo.

Appellants do not allege that the OTCs are located within the boundaries of the County of St. Louis or are doing business within the City and County of St. Louis. The OTCs are non-local companies who facilitate room reservations "over the internet." [LF 17, ¶ 36]. Because the OTCs do not maintain any place of business within the County, and do not own, manage, or operate any hotels or other sleeping accommodations in the County, they were never subject to the Hotel Tax or the Tourism Tax.

c. The OTCs do not "sell or charge for" sleeping rooms.

As set forth above, the Hotel and Tourism Taxes impose tax liability on the "sales or charges for" sleeping rooms. *See* Rev. Ordinances of St. Louis County § 502.500 (imposing a tax of "three and one-half (3 1/2) percent on the amount of *sales or charges for* all sleeping rooms paid by the transient guests of hotels and motels situated within St. Louis County, Missouri."); *see also* § 67.619.1, RSMo (imposing a tax of "three and three-fourths percent on the amount of *sales or charges for* all sleeping rooms . . . ."). As discussed above, Plaintiffs do not allege (and in fact cannot allege) that the amounts the OTCs receive for their services are for "sleeping rooms." The OTCs are internet companies [LF 17, ¶ 36] who facilitate reservations of hotel and motel rooms between hotels and motels (who do provide sleeping rooms) and the transient guests who seek sleeping accommodations from hotels and motels. Thus, only the hotels and motels, not the OTCs, receive "sales or charges for" sleeping rooms. For this additional reason, no tax liability rested with the OTCs prior to the enactment of H.B. 1442.

d. The Missouri Department of Revenue's interpretation of similar taxes supports the OTCs' interpretation of the Hotel and Tourism Taxes.

The OTCs' position is consistent with letter rulings by the Missouri Department of Revenue. In interpreting the applicability of Branson's tourist tax to outside vendors who contract with tourist attractions to sell group tickets to Branson amusement parks (just as Plaintiffs allege that the OTCs do with local hotels), the Department of Revenue ("DOR") has repeatedly ruled that it is the amusement parks themselves and not the third-party vendors who are responsible for collection and remittance of the tourist taxes. *See* Letter Ruling No. LR 2326, 2005 Mo. Tax. Ltr. Rul. LEXIS 7 (Mo. Dept. of Rev. Feb. 17, 2005); Letter Ruling No. LR 2785, 2001 Mo. Tax. Ltr. Rul. LEXIS 23 (Mo. Dept. of Rev. April 16, 2001); Letter Ruling No. LR 2808, 2001 Mo. Tax. Ltr. Rul. LEXIS 25 (Mo. Dept. of Rev. Apr. 16, 2001). "The outside vendors are providing a nontaxable service in assisting the groups to obtain a taxable service provided by the tourist attractions. Since the outside vendors are providing a nontaxable service . . . , they are not required to collect sales tax on their sales . . . ." 2001 Mo. Tax. Ltr. Rul. LEXIS 23, at *4. Thus, the applicable amount of tax is that received by the attractions themselves, regardless of the price subsequently paid by the consumer. *See id.* The DOR's reasoning applies equally to the OTCs and their lack of liability under the Hotel Tax and Tourism Tax.

* * * *

In sum, because the Hotel and Tourism Taxes as they existed prior to H.B. 1442's enactment were, at the very best, ambiguous as to whether the OTCs were subject to tax liability and "are to be construed against the taxing authority and in favor of the taxpayer," *see e.g., Am. Healthcare Mgmt. Inc. v. Dir. of Revenue*, 984 S.W.2d 496, 498 (Mo. banc 1999), Appellants have failed to demonstrate that such statutes and ordinances "clearly and undoubtedly" imposed tax liability on the OTCs. As a result, Appellants' Article III, Section 39(5) challenge to H.B. 1442 fails.

III. Response to Appellants' second point: Appellants' Article III, Section 21 and 23 challenges to H.B. 1442 fail because Appellants challenge irrelevant sections of H.B. 1442 and cannot show that Section 1 of H.B. 1442 (or any other provision) clearly and undoubtedly violates the "original purpose," "single subject," or "clear title" requirements of the Missouri Constitution.

Appellants allege that certain sections of H.B. 1442 violate the "original purpose," "single subject," and "clear title" requirements of Article III, Sections 21 and 23 and thus that H.B. 1442 should be invalidated in its entirety. [Appellants' Br. 30-45]. However, Section 1 of H.B. 1442 (codified at Section 67.662, RSMo)—the only section of H.B. 1442 relevant to the proceedings below—is conspicuously absent from Appellants' constitutional challenge under Sections 21 and 23.[8] Instead, Appellants divert the Court's

[8] *See e.g.*, Appellants' Br. Part "II.C." at pp. 43-45 (containing no mention of Section 1 of H.B. 1442 and instead challenging Sections 67.2000 and 70.220, RSMo).

attention to four provisions of H.B. 1442 that are completely irrelevant to the underlying dispute—Sections 67.2000, 70.220, 137.1040, and 138.431 RSMo (the "challenged provisions")—and contend those sections invalidate H.B. 1442 *in toto*. Appellants attack on these provisions is misplaced.

First, Appellants lack standing to attack the challenged provisions.

Second, even if enacted in violation of Sections 21 and 23, the challenged provisions are severable from H.B. 1442, leaving Section 1—the only provision relevant to this case—intact.

Third, because each of H.B. 1442's provisions relates to its broad, overarching purpose and single subject of taxes, which is clearly expressed in its title, "relating to taxes," Appellants cannot show that Section 1 of H.B. 1442 or any other provision "clearly and undoubtedly" violates the "original purpose," "single subject," or "clear title" requirements of Article III, Section 21 and 23.

A. The "original purpose," "single subject," and "clear title" requirements of Article III, Sections 21 and 23.

Missouri Constitution Article III, Section 21 provides 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." Mo. Const. art. III, § 21. Such provision, often cited as the "original purpose" requirement, "is not intended to inhibit the normal legislative processes, in which bills are combined and additions necessary to comply with the legislative intent are made." *McEuen v. Mo. State Bd. of Educ.*, 120 S.W.3d 207, 209 (Mo. banc 2003). Rather, the "original purpose" requirement prohibits only

"amendments that are clearly and undoubtedly not 'germane'; that is, [amendments which] are not 'relevant to or closely allied' with a bill's original purpose." *Jackson County Sports Complex Auth. v. State*, 226 S.W.3d 156, 161 (Mo. banc 2007) (quoting *Mo. State Med. Ass'n v. Mo. Dep't of Health*, 39 S.W.3d 837, 840 (Mo. banc 2001)).

An additional restraint on the General Assembly is found in Missouri Constitution Article III, Section 23, which provides that "[n]o bill shall contain more than one subject which shall be clearly expressed in its title . . . ." Mo. Const. art. III, § 23. Such section has been held to impose two distinct restraints on the legislature, often cited as the "single subject" and "clear title" requirements. *See e.g.*, *Trout v. State*, 231 S.W.3d 140, 143 (Mo. banc 2007). The "single subject" requirement provides that all sections in a bill must relate to the "general core purpose of the proposed legislation" as expressed in the bill's title. *Jackson County Sports Complex Auth.*, 226 S.W.3d at 160; *Mo. State Med. Ass'n*, 39 S.W.3d at 840.

Separately, the "clear title" requirement, "intended to keep legislators and the public fairly apprised of the subject matter of pending laws," prohibits a bill from containing an underinclusive or overinclusive title. *Jackson County Sports Complex Auth.*, 226 S.W.3d at 161. A bill's title is underinclusive when some of the bill's provisions fall outside of its scope. *Mo. State Med. Ass'n v. Mo. Dep't of Health*, 39 S.W.3d at 841. Conversely, a bill's title is overinclusive when it "could define most, if not all, legislation passed by the General Assembly." *Id.*

B. Appellants lack standing to challenge Sections 67.2000, 70.220, 137.1040, and 138.431, RSMo.

"A person does not have standing to challenge a statute simply because the statute may be subject to the charge of invalidity." *State v. Stottlemyre*, 35 S.W.3d 854, 861 (Mo. App. W.D. 2001) (quoting *State v. Pizella*, 723 S.W.2d 384, 387 (Mo. banc 1987). "In order to acquire standing, a litigant must be adversely affected by the statute he challenges." *Id.*; *see also Moore v. State*, 288 S.W.3d 810, 812 (Mo. App. S.D. 2009).

In *State v. Stottlemyre*, the Court of Appeals, Western District held that the appellant lacked standing to raise an Article III, Section 23 challenge to a newly-enacted bill because he was unable to demonstrate that the "amendments to the statute contained in [the disputed bill] ha[d] application to the facts of his case, and thus, adversely affected him." 35 S.W.3d at 861-62. While *Stottlemyre* concerned an appeal of the appellants' conviction for driving while intoxicated, the standing principles espoused therein are applicable here.

Sections 67.2000, 70.220, 137.1040, and 138.431 RSMo, the provisions Appellants rely on in an effort to invalidate H.B. 1442, do not concern room taxes and therefore have no application to the facts of this case. *See* § 67.2000 (concerning county sales taxes); § 70.220 (concerning shared revenues from real property taxes); § 137.1040 (concerning real property taxes); § 138.431 (governing the procedure for appeal to the state tax commission of taxes assessed on real and tangible personal property). As a result, such provisions do not "adversely affect" Appellants. *See Stottlemyre* 35 S.W.3d at 861-62. Thus, like the appellant in *Stottlemyre*, Appellants lack standing challenge

these provisions. *See id.* On this ground alone, the Court should reject Appellants' attempts to invalidate H.B. 1442 by claiming that the challenged provisions violate Article III, Sections 21 and 23 of the Missouri Constitution.

C. Sections 67.2000, 70.220, 137.1040, and 138.431, RSMo are clearly severable from the remainder of H.B. 1442.

There is no authority for Appellants' contention that H.B. 1442 "should be invalidated" in its entirety based on the challenged provisions. This Court rejected just such an argument in *Jackson County v. State*, 207 S.W.3d 608 (Mo. banc 2006), holding:

> In *Rizzo v. State*, 189 S.W.3d 576 (Mo. banc 2006), this Court found that a different section in HB 58 violated the single subject clause of the Missouri Constitution . . . . Although HB 58's inclusion of section 115.348 violated the single subject requirement, this Court did not strike down HB 58 in its entirety. Rather, section 115.348 was severed and the rest of HB 58 was left intact. [Appellants] see[m] to argue that because this Court found that HB 58's inclusion of section 115.348 violated the single subject rule, the theory of collateral estoppel should apply and all of the sections in HB should be stricken, including section 67.2555. This argument completely disregards the severance analysis in *Rizzo* in which section 115.348 was severed and the remainder of HB 58 was left intact.

Jackson County, 207 S.W.3d at 618.

Moreover, the General Assembly has expressly mandated severance of any constitutionally offensive provisions found in a bill:

> The provisions of every statute are severable. If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid unless the court finds the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

§ 1.140, RSMo. Interpreting Section 1.140, this Court held, "Section 1.140 requires courts to *presume* severability. . . ." *Akin v. Dir. of Revenue*, 934 S.W.2d 295, 301 (Mo. banc 1996) (emphasis in original); *see also Mo. Ass'n of Club Execs. v. State*, 208 S.W.3d 885, 889 (Mo. banc 2006) (holding that when a bill contains a provision violating the "original purpose" requirement of Article III, Section 21, "[t]his Court has an obligation to sever" the offending provision from the remainder of the bill); *Rizzo v. State*, 189 S.W.3d 576, 581 (Mo. banc 2006) (holding that when a bill contains a provision that is contrary to the "single subject" requirement of Article III, Section 23, "th[is] Court will sever the portion of the bill containing the additional subject(s) and permit the bill to stand with its primary, core subject intact."); *Nat'l Solid Waste Mgmt. Ass'n v. Dir. of the Dep't of Natural Res.*, 964 S.W.2d 818, 822 (Mo. banc 1998) (severing by application the offending portion of a bill whose title was underinclusive in violation of the "clear title" requirement of Article III, Section 23).

In *Missouri Association of Club Executives v. State*, this Court found that certain portions of a bill in violation of the "original purpose" requirement were severable from the remainder of the bill because they would not impact the bill's remaining provisions. 208 S.W.3d at 886-89. As originally introduced, the bill at issue in *Club Executives* concerned "intoxication-related traffic offenses," but was subsequently amended to include sections relating to the sale of alcohol to minors, voluntary manslaughter, and endangering the welfare of a child. *Id.* at 887. Thereafter, the legislature amended the bill for a final time, adding three provisions relating to the adult entertainment industry, Sections 67.2540, 67.2546, and 67.2552. *Id.* In analyzing an "original purpose" challenge to such sections, this Court held that "[s]ubsequent revisions in the title and content 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. With respect to the adult entertainment provisions, however, this Court found a violation of the "original purpose" requirement of Article III, Section 21. *Id.* Nonetheless, because "severance of the challenged sections from the remainder of the bill would not impact its other provisions," this Court affirmed the Circuit Court's severance of Sections 67.2540, 67.2546, and 67.2552 from the remainder of the bill. *Id.* at 889.

Likewise, in *Rizzo v. State*, this Court, after finding a "single subject" violation in Section 115.348 of House Bill 58 ("H.B. 58"), severed Section 115.348 from the remainder of the bill because such section did not concern the bill's central purpose. 189 S.W.3d at 577-81. In analyzing a "single subject" challenge pursuant to Article III,

Section 23, this Court found H.B. 58's central purpose and subject, as evidenced by its title, "relating to political subdivisions," to be the regulation of political subdivisions. *Id.* at 579. This Court then held that Section 115.348 of H.B. 58, which prohibited federal criminals from running for any state office, violated the "single subject" requirement of Article III, Section 23 because it "affect[ed] candidates in all elections," not simply those elections "relating to political subdivisions." *Id.* at 578-81. This Court further held that because the "core subject of H.B. 58 is legislation relating to political subdivisions" and "the provisions of the bill that relate to political subdivisions are not so dependent upon section 115.348, prohibiting federal criminals from running for office, that it cannot be presumed the legislature would have passed the bill without it[,] section 115.348 may be severed from the unchallenged portions of the bill." *Id.* at 581.

Finally, in *National Solid Waste Management Association v. Director of the Department of Natural Resources*, this Court severed a section of a bill containing an underinclusive "clear title" violation of Article III, Section 23 because the remaining portions of the bill related to the bill's title. 964 S.W.2d at 822. The bill at issue, titled "relating to solid waste management," contained provisions governing solid waste and hazardous waste. *Id.* at 819-20. This Court held that the bill's title was underinclusive in that it did not encompass hazardous waste management. *Id.* at 821. Nonetheless, this Court did not invalidate the entirety of the bill but instead severed the portion of the bill governing hazardous waste by restricting its application. *Id.* at 822. This Court held that severance was appropriate because "[t]he legislative intent behind SB 60, indeed the very purpose of the bill, was to regulate solid waste management," especially considering that

"the bill's title stated expressly that the bill related to solid waste management, and all other provisions of the bill do, in fact, relate to solid waste management." *Id.*

As discussed in detail below (*see infra* Parts "III.D-E") and evidenced by H.B 1442's title, "relating to taxes," H.B. 1442's broad, overall original purpose and single subject is the regulation of taxes. Because all provisions of H.B. 1442 relate to taxes, no provision of H.B 1442 results in an "original purpose," "single subject" or underinclusive "clear title" violation of Article III, Sections 21 and 23. Nevertheless, even if Appellants could demonstrate that the challenged provisions violate the Missouri Constitution, the remaining provisions of H.B. 1442, concerning sales taxes and taxes on sleeping rooms, "are not so dependent upon [Sections 67.2000, 70.220, 137.1040, and 138.431 (each involving <u>independent</u> tax-related sections)] that it cannot be presumed that the legislature would have passed the bill without [such sections]." Therefore, in such a circumstance, this Court would have an "obligation" to sever such provisions from the remainder of H.B. 1442, and Section 1, which is applicable to this case, would remain intact.

D. Appellants cannot show that Section 1 of H.B. 1442 (or any other provision) clearly and undoubtedly violates the "original purpose" requirement of Missouri Constitution Article III, Section 21.[9]

Appellants cannot show that Section 1 of H.B. 1442 (or any other section) violates the "original purpose" requirement because the bill's "general" or "overarching" purpose was clearly the regulation of taxes and each of the bill's provisions are "relevant to or closely allied with" the regulation of taxes.

The "original purpose" requirement of Article III, Section 21 "does not restrict legislators from making alterations that bring about an extension or limitation of the scope of a bill and even new matter is not excluded if germane." *Jackson County Sports Complex Auth. v. State*, 226 S.W.3d 156, 160 (Mo. banc 2007) (quoting *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 326 (Mo. banc 1997)); *see also C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 327 (Mo. banc 2000). Instead, the original purpose requirement prohibits "amendments that are clearly and undoubtedly not 'germane;' that is, [amendments which] "are not 'relevant to or closely allied' with a bill's original

[9] Even though Appellants failed to allege an "original purpose," "single subject" or underinclusive "clear title" violation of Article III, Sections 21 and 23 with respect to any section of H.B. 1442 other than Sections 67.2000, 70.220, 137.1040, and 138.431, Respondents nonetheless demonstrate that no part of H.B. 1442 violates these constitutional requirements. *See infra* Parts "III.D-E."

purpose." *Jackson County Sports Complex Auth.*, 226 S.W.3d at 160 (quoting *Mo. State Med. Ass'n v. Mo. Dep't of Health*, 39 S.W.3d 837, 840 (Mo. banc 2001)).

"[A]s this Court has repeatedly observed, '[t]he Constitution does not require that the original purpose be stated anywhere, let alone in the [bill's] title as introduced.'" *McEuen v. Mo. State Board of Educ.*, 120 S.W.3d 207, 210 (Mo. banc 2003) (quoting *Mo. State Med. Ass'n*, 39 S.W.3d at 839). Thus, in determining a bill's original purpose, courts are "not necessarily limited by specific statutes referred to in the bill's original title or text." *McEuen*, 120 S.W.3d at 210; *see also Jackson County Sports Complex Auth.*, 226 S.W.3d at 160 ("a bill's original purpose is not limited to what is stated in the bill's original title, which can be changed without violating Article III, section 21."). Rather, a bill's original purpose is viewed in the "general sense," *McEuen*, 120 S.W.3d at 210, and "is often interpreted as [the bill's] overarching" or "general purpose," *Jackson County Sports Complex Auth.*, 226 S.W.3d at 160, "not the mere details through which and by which that purpose is manifested and effectuated," *Mo. State Med. Ass'n*, 39 S.W.3d at 839. Therefore, a bill as originally introduced may concern a very narrow topic and yet have an extremely broad original purpose. *See e.g.*, *Trout v. State*, 231 S.W.3d 140, 143-46 (Mo. banc 2007) (holding that original bill enacting "seven new sections relating to campaign finance" had broad original purpose of "ethics"); *Jackson County Sports Complex Auth.*, 226 S.W.3d at 158-61 (holding that original bill "relating to county government," which focused primarily on salaries of county officials, had overarching original purpose of "regulating political subdivisions"); *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 325-26 (Mo. banc 1997) (holding that original bill enacting one section

"relating to the auction of vintage wine" had broad original purpose of amending Missouri's liquor control laws).

In *Trout v. State*, this Court held that a bill originally introduced as an act "relating to campaign finance" did not violate Section 21's original purpose requirement—notwithstanding substantial subsequent amendments—because such amendments did not alter the bill's original, overarching purpose of regulating "ethics." 231 S.W.3d at 143-46. The bill as originally introduced repealed seven statutory sections and enacted seven new sections "relating to campaign finance." *Id.* at 143. The bill was subsequently amended on several occasions, and its final version was entitled "An Act to repeal [twelve statutory sections] and to enact in lieu thereof sixteen new sections relating to ethics." *Id.* The final version of the bill contained two new sections providing that felons and persons delinquent on certain taxes may not run for state office. *Id.* In deciding a constitutional challenge to these sections under Article III, Section 21, this Court concluded that although the original version of the bill concerned only campaign finance, "the regulation of the ethical conduct of lobbyists, public officials, and candidates is indeed the general or overarching purpose of the campaign finance provisions that were set out in the original version of the bill." *Id.* at 145. Thus, this Court held that the disputed portions of the bill did not violate the original purpose requirement because they were "germane" or "related to" the bill's broad, original purpose of "ethics." *Id.* at 146; *see also Jackson County Sports Complex Authority v. State*, 226 S.W.3d at 158-61 (holding that original bill "relating to county government," which focused primarily on

salaries of county officials, did not violate the original purpose rule when ultimately expanded to include 104 provisions broadly "relating to political subdivisions").

As in *Trout*, where "the regulation of the ethical conduct of lobbyists, public officials, and candidates was indeed the general or overarching purpose of the campaign finance provisions that were set out in the original version of the bill," the regulation of taxes was clearly the general or overarching purpose of the city sales tax provisions included in the original version of H.B. 1442. *See Trout*, 231 S.W.3d at 143-46. Similarly, as in *Jackson County Sports Complex Authority*, where the original bill concerned amendments to specific county activities but ultimately included broader amendments to political subdivisions in general, the original purpose of H.B. 1442 was clearly the regulation of taxes even though the original version of the bill started with references to specific city taxes. *See Jackson County Sports Complex Auth.*, 226 S.W.3d at 158-61.

Further, while Appellants devote much attention to the number of statutory sections affected by subsequent amendments to H.B. 1442, a bill's original purpose may be left intact even when subsequent amendments affect hundreds of statutory sections that were untouched in the bill's original version. *See id.* Indeed, the bills at issue in *Jackson County Sports Complex Authority* originally affected a total of 23 statutory provisions, while the final versions of such bills affected 269 provisions. *Id.* Thus, considering that the number of sections repealed by H.B. 1442 increased by only eight and the number of new sections enacted increased by only sixteen, Appellants' focus on such matters is misplaced.

Last, it is beyond dispute that Section 1 of H.B. 1442, which regulates "any tax imposed or collected by any municipality, any county, or any local taxing entity on or related to any transient accommodations," [LF 151] is "germane" or "related" to H.B. 1442's broad, overall purpose of regulating taxes.[10] As a result, Appellants have failed to meet their burden prove that Section 1 of H.B. 1442, or any other provision, clearly and undoubtedly violates the original purpose requirement of Article III, Section 21.

E. Appellants cannot show that Section 1 of H.B. 1442 (or any other provision) clearly and undoubtedly violates the "single subject" or "clear title" requirements of Article III, Section 23.

Article III, Section 23 of Missouri's Constitution provides, "No bill shall contain more than one subject which shall be clearly expressed in its title . . . ." Mo. Const. art. III, § 23. Such provisions are often cited as the "single subject" and "clear title" requirements. *See e.g., Trout*, 231 S.W.3d at 143.

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[10] Moreover, all other provisions of H.B. 1442, including the challenged provisions, are clearly "germane" or "related" to the regulation of taxes. *See* §§ 67.1000, 67.1018, 67.1360, 67.1361, 94.271, 94.832, 94.840, and 94.1011 (concerning room taxes); §§ 94.510, 94.577, 94.900, and 94.902 (concerning city sales taxes); §§ 144.019 and 144.030 (concerning sales tax exemptions); § 67.2000 (concerning county sales taxes); § 70.220 (concerning shared revenues from real property taxes); § 137.1040 (concerning real property taxes); § 138.431 (governing the procedure for appeal to the state tax commission of taxes assessed on real and tangible personal property).

Appellants cannot show that H.B. 1442 violates these requirements. First, no "single subject" violation has occurred because each of the bill's provisions are "fairly related" the bill's subject as stated in its title—the regulation of "taxes." Second, no "clear title" violation exists because the bill's title, "relating to taxes," "references everything included in the bill" and does not describe "most, if not all, legislation passed by the General Assembly."

1. Appellants cannot show that H.B. 1442, Section 1 (or any other provision) clearly and undoubtedly violates the "single subject" requirement of Article III, Section 23.

"[S]ingle subject analysis is similar to original purpose analysis." *Id.* at 146. "Like the emphasis on a general, overarching purpose in original purpose analysis, single subject analysis turns on the 'general core purpose of the proposed legislation.'" *Id.* (quoting *City of St. Charles v. State*, 165 S.W.3d 149, 151 (Mo. banc 2005)). "More specifically, Article III, Section 23 dictates that the subject of a bill include 'all matters that fall within or reasonably relate to [that] general core purpose.'" *Id.*

"This Court looks first at the bill's title in order to determine its subject." *Mo. State Med. Ass'n v. Mo. Dep't of Health*, 39 S.W.3d 837, 840 (Mo. banc 2001) "The test to determine if a bill contains more than one subject is whether all provisions of the bill fairly relate to the same subject, have a natural connection therewith or are incidents or means to accomplish its purpose." *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 328 (Mo. banc 2000) (quoting *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 327 (Mo. banc 1997)). Importantly, "[t]his test does not concern the relationship between

individual provisions, but between the individual provision and the subject as expressed in the title." *C.C. Dillon Co.*, 12 S.W.3d at 327.

In *City of St. Charles v. State* this Court held that a provision in a bill prohibiting areas of certain counties "designated as flood plain by the Federal Emergency Management Agency" from engaging in public financing of private redevelopment projects, or "tax increment financing" ("TIF"), did not violate Article III, Section 23's single subject requirement because such provision related to the bill's subject of "emergency services." 165 S.W.3d at 150-52. This Court first concluded that the bill's title, "An Act To repeal [certain sections], and to enact in lieu thereof forty-three new sections relating to emergency services, with penalty provisions," clearly stated the bill's subject of "emergency services." *Id.* at 151. Further, this Court reasoned:

> Although in the abstract there seems to be no connection at all between emergency services and tax increment financing, in the context of the TIF amendments—the newly amended section 99.847—there is a direct connection. The obvious and significant goal of the TIF amendments is to ensure that adequate emergency services are available in certain areas that need them most—areas designated as flood plain by the Federal Emergency Management Agency. That goal is sought to be achieved by prohibiting new TIF districts in flood plain areas and eliminating the corresponding public-financing incentives for private re-development, so that there is less likelihood that development will occur, thus less need for emergency services.

Id. at 151-52. Therefore, this Court concluded, "it is the opinion of this Court that the TIF amendments fairly relate to the provision of emergency services, the subject of S.B. 1107." *Id.* at 152.

Similarly, in *C.C. Dillon Co. v. City of Eureka*, this Court held that Section 71.288 RSMo, which authorizes cities and counties to regulate billboard advertisements, did not violate Article III, Section 23's single subject requirement because the regulation of billboard advertisements is related to "transportation," the subject of the bill enacting Section 71.288. 12 S.W.3d at 325-29. This Court concluded that the bill's title, "An Act to repeal [five statutory sections], relating to transportation, and to enact in lieu thereof seven new sections relating to the same subject," demonstrated that the subject of the bill was "transportation." *Id.* at 329. This Court then reasoned that "billboards fairly relate to, or are naturally connected with, transportation" because "the transportation system . . . is impacted by the effective control of outdoor advertising structures." *Id.* at 328-29.

As the foregoing cases illustrate, even in situations where provisions appear to have scant connection to a bill's subject, such provisions are often "are fairly related" thereto, "have a natural connection therewith," or "are incidents or means to accomplish its purpose" and therefore do not violate the single subject requirement of Article III, Section 23. *See City of St. Charles*, 165 S.W.3d at 150-52; *C.C. Dillon Co.*, 12 S.W.3d at 325-29. Section 1 of H.B. 1442, which regulates room taxes—and all other provisions of

H.B. 1442, each clearly regulating taxes[11]—easily meet this standard and are, at a minimum, "natural[ly] connected" with and "fairly relate[d] to" the bill's stated subject of "taxes" [LF 111]. *See id.*

2. Appellants cannot show that H.B. 1442, Section 1 (or any other provision) clearly and undoubtedly violates the "clear title" requirement of Article III, Section 23.

"The clear title requirement is intended to keep legislators and the public fairly apprised of the subject matter of pending laws." *Jackson County Sports Complex Auth. v. State*, 226 S.W.3d 156, 161 (Mo. banc 2007). "To do this, the title need only 'indicate in a general way the kind of legislation that was being enacted.'" *Id.* (quoting *Fust v. Attorney General*, 947 S.W.2d 424, 428 (Mo. banc 1997)); *see also C.C. Dillon Co.*, 12 S.W.3d at 329 ("The title to a bill need only indicate the general contents of the act."). "Only if the title is (1) underinclusive or (2) too broad and amorphous to be meaningful is

[11] *See* §§ 67.1000, 67.1018, 67.1360, 67.1361, 94.271, 94.832, 94.840, and 94.1011 (concerning room taxes); §§ 94.510, 94.577, 94.900, and 94.902 (concerning city sales taxes); §§ 144.019 and 144.030 (concerning sales tax exemptions); § 67.2000 (concerning county sales taxes); § 70.220 (concerning shared revenues from real property taxes); § 137.1040 (concerning real property taxes); § 138.431 (governing the procedure for appeal to the state tax commission of taxes assessed on real and tangible personal property).

the clear title requirement infringed." *Jackson County Sports Complex Auth.*, 226 S.W.3d at 161. No such circumstances exist in this case.

a. H.B. 1442's title is not underinclusive.

A bill's title is underinclusive when some of the bill's provisions fall outside of its scope. *Mo. State Med. Ass'n v. Mo. Dep't of Health*, 39 S.W.3d 837, 841 (Mo. banc 2001) (citing *Fust*, 947 S.W.2d at 428). In *McEuen v. Missouri State Board of Education*, this Court rejected an underinclusive clear title challenge to a bill because its title "reference[d] everything included in the bill." 120 S.W.3d 207, 210-11 (Mo. banc 2003). The challengers to the bill at issue in *McEuen*, titled "An Act To repeal [four sections] and to enact in lieu thereof four new sections relating to the appropriate educational placement of students," alleged that such title was underinclusive because "it did not fairly apprise legislators that the bill repealed Missouri's declared policy to maximize the capabilities of handicapped students." *Id.* This Court reasoned that the title was not underinclusive because it "reference[d] everything included in the bill" by "refer[ing] to the [bill's] general subject matter—'the appropriate educational placement of students' . . . ." *Id.* at 211.

In the same way, H.B. 1442's title, "relating to taxes" is not underinclusive because it "refers to the [bill's] general subject matter"—the regulation of taxes. *See id.* Further, because Section 1 regulates "any tax imposed or collected by any municipality, any county, or any local taxing entity on or related to any transient accommodations,"

[LF 151] Section 1 clearly does not fall outside of the bill's scope.[12] *See id.*; *see also Mo. State Med. Ass'n*, 39 S.W.3d at 841. Therefore, Appellants have failed to meet their burden to prove that H.B. 1442's title is underinclusive.

b. H.B. 1442's title is not overinclusive.

A bill's title is too broad or "overinclusive" when it "could define most, if not all, legislation passed by the General Assembly." *Mo. State Med. Ass'n v. Mo. Dep't of Health*, 39 S.W.3d 837, 841 (Mo. banc 2001). Nonetheless, because "[a] bill's multiple and diverse topics, absent specific itemization, can only be clearly expressed by their commonality—by stating some broad umbrella category that includes all the topics within its cover"—a title that expresses such "broad umbrella category" is not overinclusive in violation Article III, Section 23. *Id.*; *see also Jackson County Sports Complex Auth.*, 226 S.W.3d at 161. Thus, "[t]he only cases where this Court has found a title to be too broad and amorphous are those in which the title could describe the

[12] Moreover, each of H.B. 1442's provisions fall within the bill's stated scope of "taxes." *See* §§ 67.1000, 67.1018, 67.1360, 67.1361, 94.271, 94.832, 94.840, and 94.1011 (concerning room taxes); §§ 94.510, 94.577, 94.900, and 94.902 (concerning city sales taxes); §§ 144.019 and 144.030 (concerning sales tax exemptions); § 67.2000 (concerning county sales taxes); § 70.220 (concerning shared revenues from real property taxes); § 137.1040 (concerning real property taxes); § 138.431 (governing the procedure for appeal to the state tax commission of taxes assessed on real and tangible personal property).

majority of all the legislation that the General Assembly passes." *State v. Salter*, 250 S.W.3d 705, 709 (Mo. banc 2008) (citing *Jackson County Sports Complex Auth.*, 226 S.W.3d at 161)). "In all other cases in which the bill's title does not describe most, if not all, legislation enacted or include nearly every activity the state undertakes, the Court has rejected arguments that a title was overinclusive." *Id.*

In *Trout v. State*, this Court held that a bill titled "relating to ethics" was not overinclusive because such title is "not so broad and amorphous that it describes most, if not all, legislation passed by the General Assembly." 231 S.W.3d 140, 143-46 (Mo. banc 2007). The bill at issue contained several diverse provisions, including sections regulating campaign finance and prohibiting felons from running for state office. *Id.* In addressing an overinclusive title challenge, this Court reasoned that the bill's title, "relating to ethics," "fairly identifies the contents of the bill" and "is the same kind of broad, umbrella category this Court has approved not only in *Sports Complex Authority* but in other relatively recent cases as well." *Id.* at 145.

Likewise, in *Jackson County Sports Complex Authority v. State*, a case on which the *Trout* Court relied, this Court held that two bills titled "relating to political subdivisions" were not overinclusive because such title clearly described the bills' "overarching subject [of] regulation of political subdivisions." *Jackson County Sports Complex Auth.*, 226 S.W.3d at 161. The bills in question concerned diverse topics spanning 57 statutory chapters and 269 provisions. *Id.* at 158-59. Nonetheless, this Court reasoned that the trial court's concerns regarding the bills' broad title "disregards the . . . principle that a bill's subject may be clearly expressed by stating some broad

umbrella category that includes all the topics within its cover." *Id.* at 162. Thus, this Court held that because the bill's "single, overarching subject is [the] regulation of political subdivisions" and such "broad umbrella category [is] expressed in the title," such title is not overinclusive and does not violate Article III, Section 23's clear title requirement. *Id.* at 161-62.

H.B. 1442's title, "relating to taxes," certainly does not describe "most, if not all, legislation passed by the General Assembly." *See Trout*, 231 S.W.3d at 143-46. Not even close. Indeed, the title of "taxes" is less broad than the more nebulous titles of "ethics" and "relating to political subdivisions" which this Court approved in *Trout* and *Jackson County Sports Complex Authority*. H.B. 1442's title fairly apprised legislators and the public of its contents because each of the its sections fall under the bill's "single, overarching subject" of taxes. *See id.*

CONCLUSION

In conclusion, Appellants waived their contention that H.B. 1442 violates Article III, Section 39(5) of the Missouri Constitution by failing to raise such argument in the proceedings below, and cannot demonstrate that the Hotel and Tourism Taxes as they existed prior to H.B. 1442's enactment "clearly and undoubtedly" imposed tax liability on the OTCs.

Appellants contention that H.B. 1442 violates Article III, Sections 21 and 23 of the Missouri Constitution also falls flat. Not only do Appellants lack standing to challenge sections of H.B. 1442 that are completely irrelevant to this case, such provisions, if they were violative of the Missouri Constitution, must simply be severed from the remainder

of H.B. 1442. Finally, because each of H.B. 1442's provisions relate to its overarching purpose and single subject of taxes, as clearly expressed in its title, "relating to taxes," Appellants cannot show that Section 1 of H.B. 1442 or any other provision "clearly and undoubtedly" violates Article III, Section 21 or 23 of the Missouri Constitution.

The Circuit Court's decision should be affirmed.

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ATTORNEY'S RULE 84.06 CERTIFICATE

The undersigned hereby certifies:

1. The foregoing Respondents' Brief complies with the limitations contained in Rule 84.06(b) in that the brief contains 12,450 words, excluding the material contained in the cover, certificate of service, signature block, appendix, and this certificate.

2. In addition to the filing required by Rule 84.05(a), pursuant to Rule 84.06(g), Respondents have enclosed an electronic copy of the foregoing brief, in Microsoft Word for Windows format, on a CD-ROM. Such copy has been scanned for viruses and is virus-free.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 22, 2011, a true and correct copy of the foregoing brief in the standard form specified by Rule 84.06(a) was served on the persons identified below via certified mail, return receipt requested. The undersigned further certifies that on February 22, 2011, pursuant to Rule 84.06(g), an electronic copy of the foregoing brief contained on a CD-ROM was served on the persons identified below via certified mail, return receipt requested.

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