IN THE
SUPREME COURT OF MISSOURI

SC91228

ST. LOUIS COUNTY, MISSOURI, et al., Appellants,

v.

PRESTIGE TRAVEL, INC., et al., Respondents.

Appeal from St. Louis County Circuit Court

The Honorable John F. Kintz, Judge

AMICUS BRIEF OF ATTORNEY GENERAL

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St. Louis County contends that section 559.106, RSMo is invalid because it violates the "clear title" and "single purpose" requirements of Art. III, § 23, Mo. Const. and the "change of purpose" requirement of Art. III, § 21, Mo. Const. This Court has recently spoken of the burden on plaintiffs asserting such challenges:

> "The use of these procedural limitations [secs. 21 through 23] to attack the constitutionality of statutes is not favored." *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 326 (Mo. banc 1997). "This Court will resolve doubts in favor of the procedural and substantive validity of an act of the legislature." *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994).

Rentschler v. Nixon, 311 S.W.3d 783, 786 (Mo. banc 2010). Because the County did not and cannot meet that burden, all three arguments fail.

A. Clear title.

The first two bases for the County's challenge are found in Art. III, § 23: "Section 23. No bill shall contain more than one subject which shall be clearly expressed in its title …."

"The clear title provision requires that the title indicate, in a general way, the kind of legislation being enacted." *Missouri State Medical Ass'n v. State*, 256 S.W.3d 85, 91 (Mo. banc 2008) (Price, J. dissenting). "[A] title may give adequate notice merely by referring to the bill's general subject matter and need not give specific details." *McEuen ex rel. McEuen v. Missouri State Bd. of Educ.*, 120 S.W.3d 207, 211 (Mo. banc 2003). This Court has defined two tests: the "requirement is violated when the title is underinclusive or too broad and amorphous to be meaningful." *State v. Salter*, 250 S.W.3d 705, 709 (Mo. banc 2008).

As to the second, "too broad and amorphous" test, this Court has upheld bills that in addition to specific statutory references described the contents as: "relating to workers' compensation" (*id.*); "relating to ethics" (*Trout v. State*, 231 S.W.3d 140 (Mo. banc 2007)); "relating to political subdivisions" (*Jackson County Sports Complex Authority v. State*, 226 S.W.3d 156, 158 (Mo. banc 2007)); and "relating to political subdivisions" (*Rizzo v. State*, 189 S.W.3d 576 (Mo. banc 2006)). The titles the Court has found to be "too broad and amorphous to be meaningful" and thus constitutionally infirm are those that "could refer to almost any act the legislature passes," such as "relating to property ownership," *Home Builders Ass'n of Greater St. Louis v. State*, 75 S.W.3d 267, 270 (Mo. banc 2002), and "relating to certain

incorporated and non-incorporated entities," *St. Louis Health Care Network v. State*, 968 S.W.2d 145, 148 (Mo. banc 1998).

The County summarizes its "title" challenge as that "the title of House Bill 1442 is so general that it did not fairly advise the legislature, or the public, what was contained therein." App. Br. at 45. The County seems to invoke only the "too broad and amorphous" test. The title of H.B. 1442 was: "To repeal sections 67.1000, 67.1360, 67.1361, 67.2000, 70.220, 94.510, 94.577, 94.900, 94.902, 138.431, and 144.030, RSMo, and to enact in lieu thereof nineteen new sections relating to taxes." "Relating to taxes" was sufficient to give notice of the contents of H.B. 1442. That is particularly true as to items, such as the tax provision the County attacks, that are not just germane to "taxes," but are also squarely described by that title.

The County's citation of *Carmack v. Director, Missouri Dept. of Agriculture*, 945 S.W.2d 956 (Mo banc 1997) (*see* App. Br. at 43) does not support a "too broad and amorphous" claim. Though the Court there found that the division of topics among articles of our constitution can provide some guidance, the Court neither held nor intimated that if a bill addresses something other than "taxes" as that subject is addressed in Article X of the constitution, it "clearly and undoubtedly" violates the Art. III, § 23 requirement (App. Br. at 43). After all, even the constitution does not limit

discussion of taxes to Article X. *See* Art. III, § 39; Art. IV, §§ 30(a), 34, 43(a), 47(a), 47(b), 47(c); Art. VI, § 26(f); Art. IX, § 4.

The County does not clearly argue that the title of H.B. 1442 violates the alternative, "underinclusive," test for a "clear title." Analytically, that test asks whether the bill, as passed, includes provisions that cannot be placed under "the broad umbrella category expressed in the title." *Jackson County Sports Complex Authority v. State*, 226 S.W.3d 161.

The County's omission may be because success on such a claim would not justify the relief the County seeks. Where this Court has found that a title was "underinclusive," it has stricken those provisions that do not fit under the "umbrella"; it has not held the entire statute to be invalid. Thus in *National Solid Waste Management Ass'n v. Director of Dept. of Natural Resources*, 964 S.W.2d 818, 822 (Mo. banc 1998), the Court struck only those provisions that addressed "hazardous" rather than "solid waste." The Court explained that the plaintiffs' much broader request was "contrary to the mandate of the severance statute, section 1.140, RSMo, that 'all statutes ... should be upheld to the fullest extent possible.'" *Id.*, quoting *Associated Indus. v. Director of Revenue*, 918 S.W.2d 780, 784 (Mo. banc 1996). "Stated another way, the statute must, in effect, be rewritten to accommodate the constitutionally imposed limitation, and this will be done as long as it is consistent with legislative intent." *Associated Industries*, 918 S.W.2d at 784.

The Court explained that the answer to the severance question was "obvious":

> The question of legislative intent, in this context, is whether the legislature would have enacted SB 60 without section 260.003's application to hazardous waste management. The answer is rather obvious. The legislative intent behind SB 60, indeed the very purpose of the bill, was to regulate solid waste management. After all, 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. On the other hand, the application of the bill to hazardous waste management-an application that appears only in section 260.003-seems to be incidental and perhaps even unintentional. Consistent with legislative intent, this Court declines to sever section 260.003 in its entirety.

More recently, Judge Price urged application of that same test:

> Because the midwife provision is not essential to the efficacy of the bill, the omission of this provision

> would not make the other portions of the bill incomplete or unworkable, and the provision is not one without which the legislators would not have adopted the bill, this provision should be severed from the remainder of HB 818.

Missouri State Medical Ass'n v. State, 256 S.W.3d 85, 91-92 (Mo. banc 2008) (Price, J. dissenting), citing *Hammerschmidt*, 877 S.W.2d at 103. *See also Trout v. State*, 231 S.W.3d at 149-150 ("On the other hand, it has been clear since suit was filed that if the clear title challenge was successful, the entire *section* would be invalid, including the provision removing campaign limits." (emphasis added)).

Here, as in *National Solid Waste*, the answer to the severance question (if the County were to pose it) would be "rather obvious." Were someone to come to this Court objecting to a provision that the Court could legitimately find was not "relating to taxes," it might be possible for the Court, consistent with its precedents, to strike that provision. But the County cannot claim that the language to which it objects falls even near the edge of "the broad umbrella category expressed in the title" of H.B. 1442.

B. Single subject.

As to whether a bill "contain[s] more than one subject," this Court has

recently reiterated the test:

> 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.

Stroh Brewery, 954 S.W.2d at 327, *Hammerschmidt*, 877 S.W.2d at 102, and *Akin v. Director of Revenue*, 934 S.W.2d 295, 301 (Mo. banc 1996), quoted with approval in *Rentschler*, 311 S.W.3d at 787. The Court also stated where to begin the analysis: "To determine the purpose, the Court looks first to the title of the bill." *Renstchler*, 311 S.W.3d at 787, citing *Stroh Brewery*, 954 S.W.2d at 327; *Carmack*, 945 S.W.2d at 959. As the Court had previously explained, "[t]he single subject of a bill is its 'general core purpose,' which is discerned, whenever possible, from the bill's title." *Jackson County v. State*, 207 S.W.3d 608, 613 (Mo. banc 2006).

As noted above, the narrative portion of the title of H.B. 1442 was "relating to taxes." The question, then, is whether the provisions of H.B. 1442 "fairly relate" or "have a natural connection" to "taxes" (or, if it were necessary to move beyond the narrative portion of the title, to one of the sections listed in the title). The two sections of the bill addressed by the County have such a connection.

The first is § 70.220, which addresses "cooperation by local governments with other governmental units." *See* App. Br. at 44. All of the facilities or services that governments would cooperatively plan, develop, construct, acquire, or operate cost money. One purpose of cooperation is to eliminate redundancy in facilities or services. Another is to pool resources to permit the creation of facilities or provision of services that otherwise a single government could not afford. Though the provision itself does not allow joint taxation schemes, it does permit shared use of tax revenues (§ 70.220.5), and is thus germane to the purpose of taxation.

The other is § 67.2000. That is even more clearly germane to "taxes." That section, called the "Exhibition Center and Recreational Facility District Act," permits the creation of a new form of political subdivision – and, most notably, provides for the imposition of a sales tax to fund that subdivision. § 67.2000.4 (3), .11-.13. It is hard to imagine that a person who pays additional sales tax as a result of the creation of such a district would find the creation of the district not to be germane to the subject of taxes.

Moreover, a finding that H.B. 1442 included more than one subject, whether because of the cooperation, the exhibition center district, or some other provision, would not justify the relief that the County seeks. As with "clear title" challenges, this Court has not simply thrown out entire bills because the legislature tacked on a provision addressing a second subject.

Rather, when this Court has found that a particular provision is extraneous to the subject of a bill, its practice has been to strike only that portion.

Analytically, the Court proceeds with regard to multiple subjects much as it does when it finds an "underinclusive" title. When the Court concludes that a bill contains more than one subject, it then determines whether one of the bill's multiple subjects is its original and controlling purpose. *Hammerschmidt*, 877 S.W.2d at 103. The Court then considers whether the additional subject is essential to the efficacy of the bill, whether it is a provision without which the bill would be unworkable, and whether the provision is one without which the legislature would not have adopted the bill. *Id.* If the bill contains a single central remaining purpose, the Court will sever that portion of the bill containing the additional subjects and permit the bill to stand with its primary, core subject intact. *Id.*, *see also*, § 1.140, RSMo 2000 (setting forth standards for the severability of statutes). The Court most recently applied that approach in *Rizzo*, 189 S.W.3d at 581, refusing to strike a bill in its entirety. *See also Jackson County*, 207 S.W.3d at 613.

The County does not and cannot credibly argue that the lodging tax changes fall outside of the core subject of H.B. 1442. That the bill also included (in the County's view) a couple of allegedly non-tax provisions does

not justify striking all of the tax provisions and by doing so invalidating taxes imposed across the State of Missouri.

C. Change of purpose.

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. The test, this Court has said, is germaneness: "Even changes 'that bring about an extension or limitation of the scope of the bill are not prohibited,' provided, as noted, that the changes are germane." *McEuen*, 120 S.W.3d at 210, quoting *Stroh Brewery*, 954 S.W.2d at 326. "This Court has long held that the original purpose prohibition does not restrict legislators from making '[a]lterations 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 Authority*, 226 S.W.3d at 160, quoting *Stroh Brewery*, 954 S.W.2d at 326.

This court has also explained the method of analysis: "A proper claim requires comparison between the purpose of the bill as introduced and the bill as actually passed." *Rentschler*, 311 S.W.3d at 787. And "[o]riginal purpose is the general purpose, 'not the mere details through which and by which that purpose is manifested and effectuated.'" *Missouri State Medical Ass'n v. Missouri Dep't of Health*, 39 S.W.3d 837, 839 (Mo. banc 2001). "As

the cases illustrate, the general purpose is often interpreted as an overarching purpose, not necessarily limited by specific statutes referred to in the bill's original title or text." *McEuen*, 120 S.W.3d at 210.

The County argues that § 67.662 violates the Art. III, § 21 because the purpose of H.B. 1442 changed between introduction and passage. Where the County errs is in stating "the purpose of the bill as introduced."

As originally introduced, the title of H.B. 1442 was, "To repeal sections 94.510, 94.550, and 94.577, RSMo, and to enact in lieu thereof three new sections relating to city sales taxes." (App. at A13). At that stage, the bill addressed a number of issues with regard to the funding of political subdivisions – *i.e.*, local taxes. All of the taxes specifically addressed were sales or *ad valorem* taxes, but nothing in the original bill suggests that the general purpose of the bill was limited to a particular type of local tax. To read the statute so narrow as to address only sales or *ad valorem* taxes would mean that if the legislature decided that a different local tax – a real or personal property tax, perhaps – would better serve the needs of the affected local governments, Art. III, § 21 would bar the amendment of the bill to change the revenue source to a different tax. And it would mean that the legislature could not amend H.B. 1442 to extend authority for new taxes or tax rates beyond the boundaries of cities to include counties or other political subdivisions. Such a narrow reading would be contrary to the requirement

that the court identify and apply in its analysis the "general purpose" of the original bill.

The County never even discusses "the general, or overarching purpose" (*Jackson County Sports Complex Authority*, 226 S.W.3d at 161) of H.B. 1442 as introduced. The County merely describes the "the original purpose [as] 'city sales tax,'" using a phrase from the title of the original bill. App. Br. at 43. But in analyzing change of purpose claims, this Court has rejected exclusive reliance on the title:

> [T]his Court has repeatedly observed, "[T]he Constitution does not require that the original purpose be stated anywhere, let alone in the title as introduced. Original purpose is the general purpose, 'not the mere details through which and by which that purpose is manifested and effectuated."

McEuen, 120 S.W.3d at 210, quoting *Missouri State Medical Ass'n*, 39 S.W.3d at 839.

The question, again, is whether the changes made to H.B. 1442 were "germane" to a bill whose original purpose is to address revenue sources for local government operations. Such a bill was not just an appropriate but an ideal vehicle for adding the provisions to which the County objects. H.B. 1442 as introduced dealt specifically with taxes imposed by political

subdivisions; the lodging tax is imposed by political subdivisions. The taxes addressed in H.B. 1442 were all *ad valorem* taxes; the lodging tax is an *ad valorem* tax. The addition of the lodging tax provision to H.B. 1442 is not remotely like the changes made to the statute at issue in *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885 (Mo. banc 2006) – the only instance in many years in which this Court has held that a bill violated the "change of purpose" rule. Even adding provisions such as authority for local governments to create exhibition and recreational facility districts, to be funded by their own local sales taxes, and the other provisions referenced by the County (App. Br. pp. 41-42) are very similar to the extensions upheld in *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 327-328 (Mo. banc 2000).

A bill that starts and ends as a bill relating to the authority of political subdivisions – existing or new – to raise revenue through taxation has not had a "change of purpose" so as to violate the constitutional rule.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

The undersigned hereby certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b), and that the brief contains 3,291 words.

The undersigned further certifies that the labeled disk simultaneously filed with the hard copies of the brief has been scanned for viruses and is virus-free.

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