IN THE
SUPREME COURT OF MISSOURI

SC88783

STATE OF MISSOURI,

Appellants

v.

MISSOURI STATE MEDICAL ASSOCIATION, et al.,

Respondents.

Appeal from the Circuit Court of Cole County
The Honorable Patricia S. Joyce, Judge

APPELLANT'S BRIEF

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Introduction

This case is before the Court on a procedural challenge to HB 818 under Art. III, Sec. 21 and 23 of the Missouri Constitution. The overarching purpose of HB 818, both as originally drafted and ultimately passed, was to increase affordability and access to health services. The General Assembly sought to achieve that purpose through changes in health insurance laws and through several changes in other laws that, although not directly affecting health insurance laws, relate to health insurance. Thus, the title of the final bill included the phrase "relating to health insurance."

Appellees challenge § 376.1753, RSMo, which is one of the provisions in the bill that relates to health insurance but does not directly affect health insurance laws. Section 376.1753, RSMo, legalizes services provided by certified midwives outside the direct supervision of a physician. Health insurance coverage of midwife services cannot be expanded unless the services themselves are legal. Thus, § 376.1753, RSMo, is entirely consistent with the original purpose and final subject, increasing the affordability and access to health services, and the title, "relating to health insurance."

Jurisdictional Statement

This case involves a constitutional challenge to the validity of a statute, so this Court has jurisdiction on appeal pursuant to Art. V, § 3 of the Missouri Constitution.

Facts

A. The House passed Perfected HCS HB 818, which increases access to health care through changes in health insurance laws.

When introduced on February 8, 2007, HB 818 was titled as an act "relating to portability and accessibility of health insurance," repealing four sections and enacting nineteen new sections. Joint Exhibit (J. Ex.) 1. The original bill proposed amendments to the high risk health insurance pool and proposed enactment of the "Missouri Health Insurance Portability and Accessibility Act" ("Missouri HIPAA"). All versions of the Missouri HIPAA make specific reference to the federal Health Insurance Portability and Accountability Act of 1996[1] ("federal HIPAA"), P.L. 104-191, first using a reference to the statute by title and ultimately changing to a reference to the public law number. *See* J. Ex. 1 at p. 9; J. Ex. 6 at p. 34 (page numbers for all bills reference the page number of the bill as given within the exhibit).

After introduction, HB 818 was referred to the House Special Committee on Health Insurance, which passed a substitute version of the bill on March 15, 2007. J. Ex. 2. This

[1] The term "Accessibility" in the statute was eventually changed to "Accountability," presumably to be consistent with the title for the federal HIPAA. *See* J. Ex. 6 at p. 28. However, the title of the bill while in the House always included the term "Accessibility," indicating an emphasis on accessibility to health insurance, rather than accountability of insurers.

second version, the House Committee Substitute for House Bill No. 818 ("HCS HB 818"), was titled as an act "relating to portability and accessibility of health insurance," repealing fourteen sections and enacting seventeen new sections. *See* J. Ex. 2. HCS HB 818 made some changes to the original two topics in HB 818 and also added a third topic by making amendments to the "Small Employer Health Insurance Availability Act," found at § 379.930, RSMo, et seq. J. Ex. 2 at p. 27.

The third version of the bill, perfected House Committee Substitute for House Bill No. 818 ("perfected HCS HB 818"), was titled as an act "relating to portability and accessibility of health insurance," repealing thirteen sections and enacting seventeen new sections. The House passed perfected HCS HB 818 on April 10, 2007. *See* J. Ex. 3. Perfected HCS HB 818 made some changes to the three topics of the previous version and also added new provisions requiring insurers to provide 30-day notice before dropping drugs from prescription plans and requiring insurers to provide employers with certain records on request. J. Ex. 3 at pp. 1-2.

B. The Senate broadened the title and added provisions, such as providing state assistance to health providers for collections, requiring genetic counseling, and regulating health care cost-sharing and discount plans, that, while not directly affecting health insurance laws, relate to health insurance.

After passage by the House, the Senate referred the bill to the Senate Health and Mental Health Committee. *See* J. Ex. 4. On May 2, 2007, the Senate Health and Mental

Health Committee passed the Senate Committee Substitute for HCS HB 818 ("SCS HCS HB 818"). J. Ex. 4. The title of SCS HCS HB 818 was broadened to indicate that it now included all matters "relating to health insurance," repealing fifteen sections and enacting twenty new sections. J. Ex. 4. The bill kept the provisions of perfected HCS HB 818 but added yet another topic. The new topic did not directly affect any insurance laws. Instead, the new provisions:

- Allow health care providers to get money from the State by seeking an offset against the tax refunds and lottery winnings of those who fail to pay health service bills. *See* J. Ex. 4 at pp. 1-5.

On the Senate floor, two substitutes were presented. The first, Senate Substitute for SCS HCS HB 818 ("SS SCS HCS HB 818), was titled "relating to health insurance," repealing nineteen sections and enacting forty-five new sections. The bill was offered on May 8, 2007, but did not go up for a vote. *See* J. Ex. 5. SS SCS HCS HB 818 had provisions relating to all matters that were included in the previous versions, but also added language on a number of new matters, some of which directly affected health insurance laws and some of which did not. These added provisions, all of which became law, include:

- A requirement that parents receive counseling if prenatal testing shows the presence of genetic defects, including counseling on support programs for parents and alternatives to abortion. *See* J. Ex. 5 at pp. 12-14.
- A tax deduction for health care sharing ministries, which are faith-based medical cost-sharing organizations that the bill specifically identifies as not

being insurance or subject to state insurance laws. *See* J. Ex. 5 at pp. 2 and 76-77.

- The regulation of discount medical plans, which the bill specifically indicates are not insurance. *See* J. Ex. 5 at pp. 65-78.
- Tax deductions and tax credits relating to health insurance costs. *See* J. Ex. 5 at pp. 2-3.
- A requirement for HMOs that dependent care coverage extend until age 25 and further if the dependent person is incapable of self-support due to mental or physical disability. *See* J. Ex. 5 at pp. 16-17.
- A requirement for individual policies that dependent care coverage extend until age 23 and further if the dependent person is dependent upon the parent. *See* J. Ex. 5 at p. 48.
- A requirement for group policies that dependent care coverage extend until age 25. *See* J. Ex. 5 at p. 24.

The second substitute, SS#2 SCS HCS HB 818, was titled "relating to health insurance," repealing twenty sections and enacting forty-nine new sections. This final version, which the full Senate voted to adopt on May 11, 2007, also added language on some new matters, although not as many as SS SCS HCS HC 818. *See* J. Ex. 6. The added provisions in SS#2 SCS HCS HB 818 included increasing the age limit for dependent coverage in individual policies to 25, requiring the availability of high deductible policies and health care savings accounts for state employees, and legalizing the services of certified midwives. *See* J. Ex. 6 at pp. 2-3, 51 and 83.

Regarding certified midwives, SS#2 SCS HCS HB 818 included § 376.1753, RSMo, which reads as follows:

> 376.1753. Notwithstanding any law to the contrary, any person who holds current ministerial or tocological certification by an organization accredited by the National Organization for Competency Assurance (NOCA) may provide services as defined in 42 U.S.C. 1396r-6(b)(4)(E)(ii)(I).

Section 376.1753, RSMo, legalizes services of certified midwives who had, until the passage of this provision, been prohibited from practicing in this state outside the direct supervision of a licensed physician.[2] *See* § 334.010, RSMo, and § 334.250, RSMo.

On May 11, 2007, a majority of the representatives in the House consented to SS#2 SCS HCS HB 818. Governor Blunt signed the bill on June 1, 2007.

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[2] The circuit court's decision says the term "tocological" is "an obscure Greek reference." Decision, Appendix at p.8. The term is neither Greek nor obscure, although, like many scientific terms, it has a Greek root. "Tocology" appears in both the unabridged Webster's Third New International Dictionary of the English Language (Philip Babcock Gove, Ph.D. ed., Mirriam-Webster Inc. 1993) and, perhaps more significantly, in the Webster's New World Dictionary of the American Language, Second College Edition (David B. Guralnik ed, William Collins + World Publishing Co., Inc. 1978), which is much more limited than the unabridged Mirriam-Webster dictionary.

Points Relied On

The circuit court erred in its decision dated August 8, 2007, as indicated below.

First Point Relied On:

The circuit court erred by holding that Plaintiff/Appellee Medical Associations had standing to challenge the constitutionality of HB 818 because:

A. Standing cannot be based on a claim of harm to the general public, and, in that the Medical Associations claim to be pursuing the interests of the public, the Medical Associations have no basis for standing.

B. The Medical Associations and their members cannot assert standing on behalf of patients in that HB 818 does not restrict a fundamental constitutional right, the interests of the physician and the patients are not aligned and no obstacles exist to the patient pursuing their own action.

C. The Medical Associations cannot claim associational standing in that the harm to the members of the Medical Associations is nonexistent or speculative, there is no evidence that the interests that the organization is attempting to protect are germane to its purpose and there appears to be a possible conflict of interest between the members that requires the individual members' participation.

- *Missouri Health Care Association v. Attorney General of the State of Missouri*, 953 S.W.2d 617, 620 (Mo. banc 1997).
- *Singleton v. Wulff*, 428 U.S. 106, 96 S.Ct. 2868 (1976).
- *Phillips v. Missouri Dept. of Social Services Child Support Enforcement Div.*, 723 S.W.2d 2, 4 (Mo. banc 1987).

- *Henderson v. Stalder*, 287 F.3d 374, 380 (5th Cir., 2002).

Second Point Relied On:

The circuit court erred because it improperly considered matters beyond the legislative history of HB 818, in that only the text of the various versions of HB 818 are relevant to a procedural challenge under Art. III, Sec 21 and 23.

Support:

- *Jackson County Sports Complex Authority v. State*, 226 S.W.3d 156 (Mo. banc 2007).
- *Corvera Abatement Technologies, Inc. v. Air Conservation Com'n*, 973 S.W.2d 851 (Mo. banc 1998).
- *Missouri State Medical Ass'n v. Missouri Dept. of Health*, 39 S.W.3d 837 (Mo. banc 2001).
- *McEuen v. Missouri State Bd. Of Education*, 120 S.W.3d 207 (Mo. banc 2003).

Third Point Relied On:

The circuit court erred because it held that the passage of HB 818 violated Art. III, Sec. 21, in that the original purpose of H.B. 818 was to increase public access to health services through the means of increasing health insurance coverage, and increasing midwife services is consistent with the purpose.

- Art. III, Sec. 21 of the Missouri Constitution.
- *Jackson County Sports Complex Authority v. State*, 226 S.W.3d 156 (Mo. banc 2007).
- *Missouri State Medical Ass'n v. Missouri Dept. of Health*, 39 S.W.3d 837 (Mo. banc 2001).

Fourth Point Relied On:

The circuit court erred because it held that the passage of HB 818 violated the single subject requirement of Art. III, Sec. 23, in that this court has held that health services and health insurance constitute a single subject for purposes of Art. III, Sec. 23 of the Constitution.

- Art. III, Sec. 23 of the Missouri Constitution.
- *Missouri State Medical Ass'n v. Missouri Dept. of Health*, 39 S.W.3d 837 (Mo. banc 2001).
- *Trout v. State of Missouri*, 231 S.W.3d 140 (Mo. banc 2007).

Fifth Point Relied On:

The circuit court erred because it held that the passage of HB 818 violated the clear title requirement of Art. III, Sec. 23, in that:

A. This Court has held that health services and health insurance are related.

B. The title of the final version of HB 818, "relating to health insurance," is broad enough to include a statute increasing certified midwife services because increasing the availability of certified midwife services promotes the availability of health insurance for those services.

- Art. III, Sec. 23 of the Missouri Constitution.
- *Jackson County Sports Complex Authority v. State*, 226 S.W.3d 156 (Mo. banc 2007).
- *Missouri State Medical Ass'n v. Missouri Dept. of Health*, 39 S.W.3d 837 (Mo. banc 2001).

- *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 326 (Mo. banc 1997).

Law and Argument

First Point Relied On:

The circuit court erred by holding that Plaintiff/Appellee Medical Associations had standing to challenge the constitutionality of HB 818 because:

A. Standing cannot be based on a claim of harm to the general public, and, in that the Medical Associations claim to be pursuing the interests of the public, the Medical Associations have no basis for standing.

B. The Medical Associations and their members cannot assert standing on behalf of patients in that HB 818 does not restrict a fundamental constitutional right, the interests of the physician and the patients are not aligned and no obstacles exist to the patient pursuing their own action.

C. The Medical Associations cannot claim associational standing in that the harm to the members of the Medical Associations is nonexistent or speculative, there is no evidence that the interests that the organization is attempting to protect are germane to its purpose and there appears to be a possible conflict of interest between the members that requires the individual members' participation.

- *Missouri Health Care Association v. Attorney General of the State of Missouri*, 953 S.W.2d 617, 620 (Mo. banc 1997).
- *Singleton v. Wulff*, 428 U.S. 106, 96 S.Ct. 2868 (1976).
- *Phillips v. Missouri Dept. of Social Services Child Support Enforcement Div.*, 723 S.W.2d 2, 4 (Mo. banc 1987).
- *Henderson v. Stalder*, 287 F.3d 374, 380 (5th Cir., 2002).

I. The Medical Associations lack standing because they failed to identify any concrete, particularized, actual or imminent harm to anyone, failed to establish association standing and have no basis to the assert the rights of the public or the patients of their members.

Standing must be addressed as a preliminary issue. If the Medical Associations lack standing then this court lacks subject matter jurisdiction. *Farmer v. Kinder,* 89 S.W.3d 447, 451 (Mo. banc 2002) ("Where, as here, a question is raised about a party's standing, courts have a duty to determine the question of their jurisdiction before reaching substantive issues, for if a party lacks standing, the court must dismiss the case because it does not have jurisdiction of the substantive issues presented.").

An association has standing to sue if: 1) its members would have standing to institute the action; 2) the interests that the organization is attempting to protect are germane to its purpose; and 3) neither the asserted action nor the requested relief requires the individual members' participation. *Missouri Health Care Association v. Attorney General of the State of Missouri*, 953 S.W.2d 617, 620 (Mo. banc 1997) *citing Missouri Outdoor Advertising Ass'n. v. Missouri State Highways & Transp. Comm'n*, 826 S.W.2d 342, 344 (Mo. banc 1992) (adopting the test for standing of associations enumerated in *Hunt v. Washington State Apple Advertising Commission,* 432 U.S. 333, 97 S.Ct. 2434 (1977)).

With respect to the first prong of the test, the Medical Associations must prove that their individual members would have standing, which requires that they have a pecuniary or personal interest directly at issue.

> In an action for declaratory judgment or one of injunctive relief, the criteria for standing is whether the plaintiff has a legally protectable interest at stake. *Schweig v. City of St. Louis*, 569 S.W.2d 215, 223 (Mo.App. E.D. 1978). "**A legally protectible interest contemplates a pecuniary or personal interest directly in issue or jeopardy** which is subject to some consequential relief, immediate or prospective." *Absher v. Cooper*, 495 S.W.2d 696, 698 (Mo.App. S.D. 1973).

Phillips v. Missouri Dept. of Social Services Child Support Enforcement Div., 723 S.W.2d 4 (Mo. banc 1987) (emphasis added). Here, the Medical Associations do not claim that their members are motivated by a pecuniary interest in the outcome of the case, so the question is whether they have some other personal interest directly in issue or jeopardy.

The Medical Associations assert two bases for the claim of standing by the individual members. They assert first that the public and their patients generally would be harmed under HB 818 and, second, that the individual physicians might be subject to discipline for working with midwives. Pls. Pet., ¶¶ 8-9; the Medical Associations' Exhibit (P. Ex.) 1 through 8.

The claim of standing must relate to a personal interest. Interests of the public in general will not support a claim of standing.

> Generally, **an individual does not have standing to seek redress of a public wrong**, or of a breach of public duty, if such individual's interest does not differ from that of the public generally, even though the

> complainant's loss is greater in degree than that of other members of the public. 59 Am.Jur.2d *Parties* § 33 (1987). *Hinton v. City of St. Joseph*, 889 S.W.2d 854, 859 (Mo.App. W.D. 1994).)

Ours v. City of Rolla, 965 S.W.2d 343 (Mo.App. S.D. 1998) (emphasis added). *See also*, *Patton v. Forgey*, 153 S.W. 575, 577 (Mo.App. 1913) ("No one can doubt that individuals are not permitted to maintain separate actions or suits such as this one to redress a wrong that is public in its nature, unless the individual so complaining suffers or is threatened with some special, particular, or peculiar injury growing out of the public wrong.") Thus, the claim to protect the interests of the public in general must fail.

Nor, in this case, can the Medical Associations claim that the physicians represent their patients. Physicians have, at times, been able to assert the interests of their patients in abortion cases. *See Singleton v. Wulff*, 428 U.S. 106, 96 S.Ct. 2868 (1976). However, in *Singleton*, the U.S. Supreme Court recognized that abortion cases represent a rare exception to the general rule that one person cannot present claims on behalf of another.

> Federal courts must hesitate before resolving a controversy, even one within their constitutional power to resolve, on the basis of the rights of third persons not parties to the litigation.

Id, 428 U.S. at 113-114, 96 S.Ct. at 2874. Physicians have been allowed to base their standing on that of their patients in cases where a law restricts a fundamental constitutional right specific to the patient, but only if the interests of the physician and the patient are

necessarily aligned and if obstacles exist to the patient pursuing their own action. *Id*, 428 U.S. at 114-116, 96 S.Ct. at 2874. In *Singleton*, these factors were met. The Court acknowledged that a woman cannot have an abortion without a physician and recognized that the nature of pregnancy and the abortion issue were obstacles to the patient representing their own interests. *Id*, 428 U.S. at 117, 96 S.Ct. at 2875.

Here, the physicians have failed to meet any of the prerequisites for representing patients. First, the law at issue here involves the expansion of a woman's options rather than a restriction, so no fundamental constitutional right, in fact no right of any kind, is being restricted. In that regard, this case presents a clear contrast to *Singleton*. While the Supreme Court in *Singleton* preserved the reproductive choices a woman could make, the Medical Associations seek to limit a woman's birthing options.

Second, the woman's situation is not bound inextricably to the physician. While an abortion must, of necessity, involve a medical procedure requiring the participation of a physician, birth will occur regardless of whether a physician is involved. Also, there are no obstacles to the patients' participation in this litigation. This is demonstrated by the fact that two couples have intervened in this action and have done so in support of the law. Economically, these couples have an interest at odds with physicians, because § 376.1753 creates an alternative to service by a physician. In sum, the associations cannot claim that their members have standing to represent the interests of patients.

This leaves only the claim that the members might be subject to disciplinary action. This claim has two weaknesses. First, it assumes that the members would not conform their behavior to the law. In the court below, the Medical Associations suggested that newness of

this change in the law would make it unclear as to how the law would be applied, but this could be said for every new law. Not every physician has this concern, as Dr. Elizabeth Allemann, M.D. has intervened in defense of the statute. If the physicians have concerns about how they may interact with certified midwives, they are entirely free to defer coordinating with certified midwives until they receive sufficient legal and regulatory guidance. They could also seek a declaratory judgment on how the law will be applied. Thus, the physicians have the means to obtain guidance on compliance with the new law and conform their actions to the law.

Second, the claim is too speculative to provide a basis for standing. Standing cannot be based on speculation. *Allen v. Wright*, 468 U.S. 737, 104 S.Ct. 3315 (1984).

> We have consistently recognized that the injury alleged by a plaintiff for standing purposes must be " 'concrete and particularized and ... actual or imminent, not conjectural or hypothetical' to pass constitutional muster." *Association of Cmty. Orgs. for Reform v. Fowler*, 178 F.3d 350, 358 (5th Cir.1999) (quoting Lujan, 504 U.S. at 560-61, 112 S.Ct. at 2136).

Henderson v. Stalder, 287 F.3d 374, 380 (5th Cir., 2002). Even if the members' fears are real, the cause of those fears must, itself, be something real and not hypothetical or speculative.

The Medical Associations have offered no proof that physicians face any real threat of disciplinary action. Instead, the alleged harm is conjectural and hypothetical, based on one inference stacked on another: First, doctors might not learn how the law applies; second, doctors might coordinate with certified midwives; and third, if doctors coordinate with

midwives, then they might be subject to disciplinary action. Standing cannot be based on speculation that in the future some unlawful conduct may occur. *Henderson*, 287 F.3d at 380("At best, the focus of the alleged injury complained of by these plaintiffs arises because of an appearance of future impropriety, which we have found insufficient to confer standing. *Bomer*, 274 F.3d at 218."). The Medical Associations have failed to demonstrate any actual or imminent harm to any doctors.

In sum, the members of the Medical Associations have no individual standing because they cannot represent the public or their patients and they have no "pecuniary or personal interest directly in issue or jeopardy." *Phillips v. Missouri Dept. of Social Services*, 723 S.W.2d at 4.

The Medical Associations also failed to satisfy the second prong of the test for organizational standing. The Medical Associations failed to demonstrate that the interests the organization is attempting to protect are germane to its purpose. None of the affidavits submitted from the organizational officers speaks to the issue of organizational purpose in any specific way. Rather, the affidavits make only the most broad and vague claims that each organization "represents its members' interests before the state legislature, state agencies, and state courts." *See* Affidavits, Legal File, Vol. III, pp. 578-588. As a result, it is impossible for this court to reach a conclusion on the issue of whether the purported interests being protected were germane to the organizations' purposes. The Medical Associations cannot claim they represent every interest of every member in every aspect of their lives. The organizations must present actual proof that a specific organizational purpose exists that is germane to the purported interest at stake. See *Missouri Growth Ass'n*

v. Metropolitan St. Louis Sewer Dist., 941 S.W.2d 615, 621 (Mo.App. E.D.,1997) ("Furthermore, the paying of sewer bills is not 'germane' to the general and vague purpose of promoting the interests of real estate dealers.").[3]

Finally, this is a case that requires the participation of individual members. The reason for this is clear from the identity of the actual parties to this case. When conflicts among members are possible, those interests require individual representation. *Maryland Highways Contractors Association, Inc. v. State of Maryland*, 933 F.3d 1246, 1252-1253 (1991), *citing Associated General Contractors of North Dakota v. Otter Tail Power Co.*, 611 F.2d 684, 691 (8th Cir. 1979). Here, the only physician who is actually a party to the action has taken a position that contrary to the Medical Associations. Dr. Elizabeth Allemann, M.D. has intervened supporting the constitutionality of the statute. There is no evidence that Dr. Allemann would be barred from being a member of the Plaintiff organizations because of her views on this issue. There is no evidence of any organizational referendum that might show that the membership has taken a position on this issue. There is no evidence that the bylaws of the organizations require them to address the issue in this case in any particular manner. In short, the Medical Associations have presented no evidence that they are representing a unified membership or even a majority of their members. Because there is the potential for conflict, the Medical associations lack standing.

[3] In addition, the vague statements in the affidavits further undercut the Medical Associations claims to represent patients because the organizations claim to represent only their members, not the members' patients.

The court below relies on *Missouri Health Care Association*, 953 S.W.2d 617, as support for its finding of association standing. While that case lays out the test, the facts are substantially different and do not support standing in this case. The basis for standing in that case was direct; the challenged statute directly regulated the actions of, and compelled the behavior of, the members of the association that filed the action. Here, the statute at issue imposes no direct regulation on the members of the Medical Associations.

Second Point Relied On:

The circuit court erred because it improperly considered matters beyond the legislative history of HB 818, in that only the text of the various versions of HB 818 are relevant to a procedural challenge under Art. III, Sec 21 and 23.

Support:

- *Jackson County Sports Complex Authority v. State*, 226 S.W.3d 156 (Mo. banc 2007).
- *Corvera Abatement Technologies, Inc. v. Air Conservation Com'n*, 973 S.W.2d 851 (Mo. banc 1998).
- *Missouri State Medical Ass'n v. Missouri Dept. of Health*, 39 S.W.3d 837 (Mo. banc 2001).
- *McEuen v. Missouri State Bd. Of Education*, 120 S.W.3d 207 (Mo. banc 2003).

II. In a procedural challenge, this Court reviews the legislative history of a bill, as contained in the text of the various versions, and resolves all doubt in favor of upholding acts passed by both Houses of the General Assembly and signed by the Governor.

This Court reviews de novo whether a statute is constitutional. *Jackson County v. State*, 207 S.W.3d 608 (Mo. banc 2006). In reviewing this type of case, the Supreme Court limits itself to an examination of the legislative history of the bill in question. *See Jackson County Sports Complex Authority v. State*, 226 S.W.3d 156 (Mo. banc 2007); see also *Corvera Abatement Technologies, Inc. v. Air Conservation Com'n*, 973 S.W.2d 851 (Mo. banc 1998); *Missouri State Medical Ass'n v. Missouri Dept. of Health*, 39 S.W.3d 837 (Mo.

banc 2001). Even in examining that history, this Court limits its inquiry. In *Corvera*, the Court considered clear title and single subject challenges to a statute under Art. III, Sec. 21. Covera's complaints regarding the manner of passage are almost identical to those raised by the Medical Associations. For a copy of the relevant portion of Covera's brief, *see* Attachment A. The Court held that the manner in which a bill is passed was of no consequence to its review.

> **Corvera concentrates on the manner in which CCSHB 77 was passed and speculates that the passage of CCSHB 77 violates the purposes of article III, section 23** as enumerated in *Hammerschmidt*, 877 S.W.2d at 101-02[(Mo banc 1994)]. Because CCSHB 77 has one subject clearly expressed in its title as required by the constitution, **the process by which the bill was passed is of no consequence** for this point.

Corvera at 862, footnote 8 (emphasis added). In *McEuen v. Missouri State Bd. of Education*, 120 S.W.3d 207 (Mo. banc 2003), this Court took the same approach in an original purpose challenge under Art. III, Sec. 21. In *McEuen*, the challengers to the law argued that "legislators were unaware of what they were voting for." *Id.* at 209 (internal quotes omitted). This Court saw no need to even discuss the claims regarding the legislative process, which is understandable in light of how the Court analyzes an original purpose challenge. In an original purpose challenge, the Court determines the overarching purpose of the original bill, as introduced, and then determines if the provisions of the bill that were added during the legislative process are consistent with that purpose. *Id*. Thus, for

procedural challenges under Article III, Sec 21 and 23, the focus is on the language of the bill and the process by which the bill was passed can be of no consequence.

This limitation on the review is understandable. It is not this Court's role to oversee the legislative process beyond what is required by the constitution. For the court to review evidence outside the language of the specific bill at issue would open the door to the court intervening in the legislative process in any bill that was not passed unanimously in both houses.

The Circuit Court's decision contains findings that go beyond the content of the bills and that are, therefore, irrelevant. These include allegations about both the manner of passage and other actions taken by the General Assembly. Decision, Appendix at pp. 8-10. The only relevant facts are the contents of the various versions of HB 818, and those are only relevant to the extent they bear on a review of the purpose, subject and title, not the manner of enactment.[4]

[4] Should this Court choose to go beyond the language in the actual bill in considering the legislative history, then the State asks the Court to take notice that on each occasion that the subject of expanding services of certified midwives came up for a vote in the 2007 legislative session, the measure containing that expansion passed. Both the House and the Senate voted to pass SS#2 SCS HCS HB 818. In addition, Senate Bill 303 was passed by the Senate Veterans' Affairs and General Laws Committee and recommended "Do Pass." Mo. Senate Journal, 94th General Assembly, First Regular Session, at 379 (March 1, 2007). SB

Footnote continued to next page

This Court also stated the substantive standard of review in *Jackson County Sports Complex Authority*. Relying on established precedent, this Court pronounced a strong reluctance to interfere with the prerogatives of the other coequal branches of government, imposing a strong presumption of constitutionality and disfavoring procedural attacks such as the one in this case. In reviewing the applicability of Art. III, §§ 21 and 23 of the Missouri Constitution, the Court concluded:

> This Court's review must begin with the recognition that **laws enacted by the legislature and approved by the governor have a strong presumption of constitutionality**. *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 326 (Mo. banc 1997). Moreover, **the "use of ... procedural limitations to attack the constitutionality of statutes is not favored."** *Id.*

Jackson County Sports Complex Authority, 226 S.W.3d at 160 (emphasis added). After § 376.1753, RSMo was added to H.B. 818, both the House and the Senate had the opportunity to vote on the H.B. 818 and both houses passed the legislation by overwhelming majorities. After both houses passed the bill with the midwife provision, the Governor signed the bill. The judiciary must give great deference to the lawfulness of the actions of these two branches of government.

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303 also passed out of the Senate Rules Committee. Mo. Senate Journal, 94th General Assembly, First Regular Session, at 876 (April 17, 2007).

> **[T]his Court** "interprets procedural limitations liberally and **will uphold** the constitutionality of **a statute** against such [a procedural] attack **unless the act clearly and undoubtedly violates the constitutional limitation**." *Id*. The burden of proof rests on the statute's challenger. *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 5 (Mo. banc 1984).

Jackson County Sports Complex Authority (emphasis added). "This Court resolves all doubts in favor of the procedural and substantive validity of legislative acts." *Carmack v. Director, Missouri Dept. of Agriculture*, 945 S.W.2d 956, 959 (Mo. banc 1997). Thus, this Court's review encompasses the text of the bill as found in the legislative history and all doubts must be resolved in favor of upholding the challenged statute.

The reason for this high standard is clear from the constitutional role of the legislature, which has been recognized by the Supreme Court as the primary representatives of the people.

> [I]t is a basic principle that the General Assembly, unless restrained by the constitution, is vested in its representative capacity with all the primary power of the people.

Three Rivers Junior College Dist. of Poplar Bluff v. Statler, 421 S.W.2d 235, 238 (Mo. banc 1967). As the representatives of the people, the actions of the legislature, a coequal branch of government, must be given the greatest possible respect and deference. Accordingly, the high standard this Court established for procedural challenges is both understandable and appropriate.

Third Point Relied On:

The circuit court erred because it held that the passage of HB 818 violated Art. III, Sec. 21, in that the original purpose of H.B. 818 was to increase public access to health services through the means of increasing health insurance coverage, and increasing midwife services is consistent with the purpose.

- Art. III, Sec. 21 of the Missouri Constitution.
- *Jackson County Sports Complex Authority v. State*, 226 S.W.3d 156 (Mo. banc 2007).
- *Missouri State Medical Ass'n v. Missouri Dept. of Health*, 39 S.W.3d 837 (Mo. banc 2001).

Fourth Point Relied On:

The circuit court erred because it held that the passage of HB 818 violated the single subject requirement of Art. III, Sec. 23, in that this court has held that health services and health insurance constitute a single subject for purposes of Art. III, Sec. 23 of the Constitution.

- Art. III, Sec. 23 of the Missouri Constitution.
- *Missouri State Medical Ass'n v. Missouri Dept. of Health*, 39 S.W.3d 837 (Mo. banc 2001).
- *Trout v. State of Missouri*, 231 S.W.3d 140 (Mo. banc 2007).

Fifth Point Relied On:

The circuit court erred because it held that the passage of HB 818 violated the clear title requirement of Art. III, Sec. 23, in that:

A. This Court has held that health services and health insurance are related.

B. The title of the final version of HB 818, "relating to health insurance," is broad enough to include a statute increasing certified midwife services because increasing the availability of certified midwife services promotes the availability of health insurance for those services.

- Art. III, Sec. 23 of the Missouri Constitution.
- *Jackson County Sports Complex Authority v. State*, 226 S.W.3d 156 (Mo. banc 2007).
- *Missouri State Medical Ass'n v. Missouri Dept. of Health*, 39 S.W.3d 837 (Mo. banc 2001).
- *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 326 (Mo. banc 1997).

III. H.B. 818 complies with the procedural requirements in Art. III, Sec. 21 and 23 of the Missouri Constitution.

Art. III, Sec. 21 states "… no bill shall be amended in its passage … as to change its original purpose." Section 23 states "[n]o bill shall contain more than one subject which shall be clearly expressed in its title." These articles place restrictions on the legislative process that, while related, have been treated as three separate issues by the Supreme Court, each with its own test. Do the provisions of the final bill relate to the purpose the bill had at the time it was originally introduced? Does the bill, upon final passage, contain one subject or multiple subjects? Is the subject of the final bill clearly expressed in the final title?

A. The original purpose of H.B. 818 was increasing public access to health services, and increasing midwife services is consistent with the purpose.

The original purpose of a bill is the purpose the bill had at the time it was introduced. *Jackson County Sports Complex Authority*, 226 S.W.3d 156.

> Because we are required to uphold the constitutionality of a statute against attack unless the statute clearly and undoubtedly violates the constitution, **only clear and undoubted language limiting purpose will support an article III, section 21 challenge**.

Stroh Brewery Co. v. State, 954 S.W.2d 323, 326 (Mo. banc 1997) (emphasis added). *See also Jackson County Sports Complex Authority*, 226 S.W.3d 156. So in order to succeed, the Medical Associations must point to clear language in the original bill that leaves no doubt that the purpose was intended to be limited.

The purpose is construed to be consistent with the original provisions, but not limited to those provisions.

> "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 ex rel. McEuen v. Missouri State Bd. of Educ.*, 120 S.W.3d 207, 210 (Mo. banc 2003).

Jackson County Sports Complex Authority, 226 S.W.3d 156, 160. In particular, the original title does not define the original purpose.

> [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." *State ex rel. McCaffery v. Mason*, 155 Mo. 486, 55 S.W. 636, 640, aff'd, 179 U.S. 328, 21 S.Ct. 125, 45 L.Ed. 214 (1900).

Missouri State Medical Ass'n, 39 S.W.3d at 839-840. Thus, it is only through an examination of the actual goal of the legislation, rather than a rote review of the title, that the original purpose can be deduced.

Art. III, Sec. 21 does not prevent the amendment of a bill as it progresses through the General Assembly, even if amendments include new provisions that are different from the original provisions but still related to the original purpose.

> Extensions or limitations of a bill's scope--even new matter--are not categorically prohibited. *Lincoln Credit*, 636 S.W.2d at 38. "Article III, section 21 was not designed to inhibit the normal legislative processes, in which bills are combined and additions necessary to comply with the legislative intent are made." *Blue Cross Hosp. Service v. Frappier*, 681 S.W.2d 925, 929 (Mo. banc 1984). Germane amendments do not change a bill's original purpose. *State v. Ludwig*, 322 S.W.2d 841, 847 (Mo. banc 1959).

Missouri State Medical Ass'n, 39 S.W.3d at 840. As a consequence, amendments that establish new methods and means of accomplishing the overarching goal must be upheld.

H.B. 818, even as introduced, was no mere tweaking of insurance laws. The real purpose was increasing the availability and affordability of health services. This is reflected

in the fact that the original version of the bill included the word "health" in the title, clearly establishing that this was not a bill primarily about insurance in general, to which provisions on car insurance, homeowners insurance, or other forms of insurance might be appended. "Health" remained at all times the operative word in this legislation. Health was the subject, while health insurance was the "details through which and by which that purpose is manifested and effectuated." *Missouri State Medical Ass'n*, 39 S.W.3d at 840 (citation omitted). In fact, this Court has already held that "**[h]ealth insurance**, medical records, and standard information are (at least) **incidents or means to health services**." *Missouri State Medical Ass'n*, 39 S.W.3d at 841 (emphasis added).

The relationship between health services and health insurance is also evident from the scope of the original bill. The bill began as the state implementation of the federal HIPAA. By its terms, the federal HIPAA is:

> An Act to amend the Internal Revenue Code of 1986 to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and **health care delivery,** to promote the use of medical savings accounts, to improve **access to long-term care services** and coverage, to simplify the administration of health insurance, and for other purposes.

PL 104-191, 110 Stat 193 (1996) at 1 (emphasis added). Thus, the purpose of the federal HIPAA was not limited to health insurance. The Congressional statement of purpose

specifically recognized improvement of health services as one of the goals and recognized the connection between health insurance and improved access to health services.

This connection between availability of health services and health insurance is also evident in the Missouri HIPAA. The provisions of the Missouri HIPAA – the original HB 818 – allow people to keep and carry their insurance as they move from job to job, as companies reduce contributions to health coverage or as group coverage is dropped altogether. The provisions address a perception on the part of legislators that changes in health insurance availability were limiting the affordability and accessibility of health services. Thus, the original purpose was to increase the availability and affordability of health services. Increasing health insurance availability was the means, not the defining purpose of the bill.

The purpose of the bill is also evident from the scope of the provisions that were added to the bill as it progressed, each of which deals with accessibility and affordability of health services. For example, hospitals and health care providers, such as the physicians who are members of the Medical Associations, can seek a set-off from tax refunds and lottery winnings for people who fail to pay their health care bills. Section § 143.790, RSMo; J. Ex. 6 at pp.12-15. Parents who receive prenatal genetic testing must be given counseling if test results indicate genetic abnormalities. Section § 191.912, RSMo; J. Ex. 6 at p. 15. Members of certain non-insurance based health care cost-sharing programs can deduct contributions to such programs from their taxes. Section § 143.118, RSMo; J. Ex. 6 at p. 4. All these provisions increase the accessibility and availability of health services by holding down costs, by making certain services available or by encouraging assistance to those who

lack other means to pay for health services, but none of these provisions directly affect insurance.

Midwifery is itself a health service, which is enough to bring it within the overarching purpose of the bill. In addition, the midwife provision, § 376.1753, RSMo, is also a means to expanding the affordability and accessibility to health services and health insurance coverage. Currently, the use of certified midwives in Missouri is severely restricted. The unlawful practice of medicine is a class C felony in Missouri. *See* § 334.010, RSMo, and § 334.250, RSMo. Midwifery is the only health service identified by name in these two sections. The specific inclusion of this service is certain to limit both the availability of that service and the insurance available for that service. In contrast, other states allow health services by midwives to a far greater extent than Missouri.[5] Given the range of practice in

[5] Several states have established subdivided administrative bodies to regulate the practice of midwifery. *See* TN ST § 63-29-103 (2000) (Establishing a council of certified professional midwifery in Tennessee); AK ST § 08.65.010 (1997) (Establishing a Board of Certified Direct-Entry Midwives in Alaska); West's F.S.A. § 467.004 (2002) (Creating The Council of Licensed Midwifery in Florida); McKinney's Education Law § 6954 (1992) (Establishing a state board of midwifery in New York); V.T.C.A. Occupations Code § 203.052 (1999) (Creating a Midwifery Board in Texas). Other states have chosen to allocate the regulation of the practice of midwifery to previously established administrative bodies. *See* Va. Code Ann. § 54.1-2957.8 (Making the practice of midwifery unlawful in the Commonwealth of Virginia without the Certified Professional Midwife credential from the

Footnote continued to next page

other states, the General Assembly could reasonably conclude that loosening restrictions on certified midwives in Missouri would increase the availability of those services. Once legal barriers are eliminated, health insurance can be expanded to cover these services.

The circuit court took an overly narrow view of original purpose that is at odds with this Court's prior decisions. The circuit court acknowledged that the bill's content must be considered, but then failed to devote even a single sentence to an analysis of the purpose of the bill's contents. Instead the circuit court simply referred back, in a circular fashion, to the title. *See* Decision, Appendix at 16-17. In direct contradiction to this court's instructions in *Missouri State Medical Ass'n*, the circuit court held that "increasing accessibility and

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VA Board of Healing Arts); Ga. Code Ann., § 31-26-2 (Declaring the practice of midwifery in the state of Georgia unlawful without first receiving from the Department of Human Resources a certificate of authority…and registering his or her name, address, and occupation with the county board of health and the local registar…in which he or she lives). Still other states rely on statutory inference to provide for the regulation of the practice of midwifery. *See* MS ST § 73-25-33 (Interpreted by MS AGO to allow persons not otherwise licensed as nurses to legally engage in the practice of midwifery without license as a physician and for compensation, Sara E. DeLoach, *MS AGO Opinion Board of Nurse Examiners*, http://www.mana.org/laws/laws_ms.htm (last updated Aug. 28, 2003)). For additional information on laws relating to midwifery, see Midwives Association of North America, *Direct-Entry Midwifery State-By-State Legal Status*, http://www.mana.org/statechart.html (last updated Apr. 25, 2007).

portability of health insurance," was the original purpose. Decision, Appendix at 17. If such a narrow approach to the original purpose were taken in this case, then other provisions, too, would be barred; the final bill contained several provisions that have a purpose other than portability and accessibility to health insurance. But again, the original purpose is not as limited as the circuit court concluded. Notably, the circuit court fails to even mention this Court's most recent cases, *Jackson County Sports Complex Authority* and *Trout v. State of Missouri*, 231 S.W.3d 140 (Mo. banc 2007).

Again, the overarching goal of the original bill was health and increasing the availability of health services. The provision allowing the use of certified midwives expands the availability, affordability and accessibility of health services and health insurance coverage, so the provision is germane to the original purpose of the bill and satisfies the requirements of Art. III, § 21 of the Constitution. Therefore, the circuit court erred in holding that § 376.1753, RSMo, violated Art. III, § 21.

B. Health services and health insurance constitute a single subject for purposes of Art. III, Sec. 23 of the Constitution.

In considering whether a bill violates the single subject rule, only the language of the final version is considered. *Missouri State Medical Ass'n,* 39 S.W.3d 837 at 840 ("The bill as enacted is the only version relevant to the single subject requirement."). The test is broad and not intended to overly limit the legislature in the performance of its duties.

> The test is whether all provisions of H.B. 191 "fairly relate to the same subject, have a natural connection therewith or are incidents or means to

> accomplish its purpose." *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994).

Missouri State Medical Ass'n, 39 S.W.3d at 840. The Court went even further in addressing this issue in its recent decision in *Trout*.

> 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.**" 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." *City of St. Charles v. State*, 165 S.W.3d 149, 151 (Mo. banc 2005). To determine, then, whether a bill violates the single-subject rule, **the test is "not whether individual provisions of a bill relate to each other . . . [but] whether [the challenged provision] fairly relates to the subject described in the title of the bill, has a natural connection to the subject, or is a means to accomplish the law's purpose.**" *Id*. Further, "[w]hether a bill violates the single-subject requirement is a determination made as to the bill as finally passed." *Stroh Brewery Co*., 954 S.W.2d at 327.

Trout, 231 S.W.3d at 146 (emphasis added).

Again, the overarching purpose was health and increasing the availability and affordability of health services. This Court has already concluded that health services and

health insurance are related to each other and that the inclusion of statutes relating to health insurance and health services in a single bill does not violate the single subject requirement.

> From H.B. 191's provisions--outlined in part I above--MSMA identifies at least three different subjects--insurance, health records, and pre-operation information on breast implantation. MSMA fails to show "clearly and undoubtedly" that H.B. 191 has multiple subjects. Hammerschmidt, 877 S.W.2d at 102. **Health insurance, medical records, and standard information are (at least) incidents or means to health services. H.B. 191 has but one subject, in compliance with Article III, Section 23.**

Missouri State Medical Ass'n, 39 S.W.3d 837 at 841. Therefore, the circuit court erred in holding that § 376.1753, RSMo, violated Art. III, § 23.

Both the *Missouri State Medical Ass'n* decision and § 376.1753, RSMo, recognize the natural connection between medical services and health insurance coverage. With respect to § 376.1753, RSMo, it is unlikely that an insurer will provide coverage for a service that is unlawful. The first step in increasing the availability of health coverage for the services of certified midwives is to expand the extent that the services are legally available.

It remains to be seen whether removing legal barriers to the services of certified midwives is sufficient to get insurers to cover the service. Insurance companies may decide that coverage of those services will, overall, reduce the cost of health care, and therefore include coverage of those services in insurance contracts. But this Court cannot hinge its decision on whether insurers, freed to cover midwifery, will actually do so without a

legislative mandate. By expanding the availability of services from certified midwives, the bill allows for an increase in coverage that otherwise would not have been possible. This approach by the General Assembly has the affect of directly increasing the availability of a medical service, regardless of whether it is insured, and will likely increase the availability further through the indirect means of allowing the service to be covered by health insurance. Thus, expanding midwife services "fairly relates to" health services and health insurance, "has a natural connection to" health services and health insurance, and "is a means to accomplish the law's purpose." *Trout*, 231 S.W.3d at 146 (internal quote marks omitted).

In reaching a contrary conclusion in its single subject analysis, the circuit court, following the pattern in its original purpose analysis, took an overly narrow approach. The court cited *Carmack v. Director, Mo. Dept. of Agriculture*, 945 S.W. 2d 956 (Mo. banc 1997) for the proposition that the subject is determined from the bill's "title and/or the constitutional department to which it is assigned." Decision, Appendix p. 17. This proposition misstates the holding in *Carmack* and ignores the court's other decisions in this area. In *Carmack*, this Court was faced with a title, "relating to economic development," that was so broad that it was amorphous and provided no guidance to legislators and the public on the possible contents of the bill. The Court indicated that where a title was amorphous, it would attempt to rescue the bill from this infirmity by looking to the constitution and the bill's contents. *Id.* at 960. The final title of HB 818 is not in any sense amorphous, so *Carmack* has no application to the single subject analysis in this case.

The Circuit Court also ignored this Court's holding in *Trout* that the true test was "whether [the challenged provision] fairly relates to the subject described in the title of the

bill, has a natural connection to the subject, or is a means to accomplish the law's purpose." *Trout*, 231 S.W.3d at 146 (internal quote marks omitted). HB 818 and § 376.1753, RSMo, satisfy the test in *Trout* and do not violate the single subject requirement in Art. III, Sec. 23.

C. Increasing the availability of certified midwife services promotes the availability of health insurance for those services, so the subject expressed in the title of the final version of HB 818 is broad enough to include a statute increasing certified midwife services.

1. This Court has held that a relationship exists between health insurance and health services, and the legislature could reasonably rely on this holding in adding the midwife provision to a bill "relating to health insurance."

As with the single subject rule, when examining whether the subject is clearly stated in the title, only the language of the final version is considered. *Missouri State Medical Ass'n*, 39 S.W.3d 837 at 841 ("The bill as enacted is the only version relevant to the clear title requirement."). The title is not intended to act as a limit on the type of legislation the General Assembly can pass, but rather is a guide to the subject of the pending law.

> The clear title requirement is intended to keep "legislators and the public fairly apprised of the subject matter of pending laws." *Home Builders Ass'n v. State*, 75 S.W.3d 267, 269 (Mo. banc 2002). To do this, **the title need only "indicate in a general way the kind of legislation that was**

> **being enacted.**" *Fust v. Attorney General*, 947 S.W.2d 424, 429 (Mo. banc 1997). Only if the title is (1) underinclusive or (2) too broad and amorphous to be meaningful is the clear title requirement infringed. *Home Builders Ass'n*, 75 S.W.3d at 270. Furthermore, **for bills that have "multiple and diverse topics" within a single, overarching subject, that subject may be "clearly expressed by ... stating some broad umbrella category that includes all the topics within its cover**."

Jackson County Sports Complex Authority at 161 (emphasis added). The Medical Associations do not allege that the title is overly broad. So the question is, does the title of the final version of HB 818 state a broad umbrella category that indicates in a general way a topic that includes the challenged provision?

Apprising legislators has a duel purpose. One purpose is to let legislators know what legislation they are voting for or against. The second purpose is in a sense a corollary to the first and stems from the fact that bills are subject to amendment and substitution right up to the moment of final passage by both houses. The title lets legislators know what matters may be appended to a particular bill. As the Supreme Court noted in the context of Art. III, § 21, the title can substantially influence the extent to which amendments occur and the potential for ultimate passage.

> At this time a bill's sponsor is faced with a double-edged strategic choice. A title that is broadly worded as to purpose will accommodate many amendments that may garner sufficient support for the bill's passage.

> Alternatively, a title that is more limited as to purpose may protect the bill from undesired amendments, but may lessen the ability of the bill to garner sufficient support for passage.

Stroh Brewery, at 326. While originally made in the context of § 21, this statement is even more applicable to § 23, which imposes constitutional weight to the selection of the title. By examining the title of the bill and determining if it contains expansive or limiting language, a legislator can determine whether it is a proper vehicle for accomplishing a particular legislative aim that may not yet be contained in the bill.

The title of the final version indicates that it is enacting laws "relating to health insurance." J. Ex . 6 at p. 1. Webster's Third New International Dictionary of the English Language, *supra*, defines "related," in the sense used in the bill, as "connected by reason of an established or discoverable relationship."

As it happens, this Court has already recognized the relationship between health insurance and health services. *Missouri State Medical Ass'n*, 39 S.W.3d 837. Thus, the relationship is an established one. Because the relationship was already recognized, legislators would be on notice that health services are related to health insurance.

The title did not need to specify all the matters that General Assembly viewed as relating to health insurance. This Court has repeatedly held that "[t]he title need not describe every detail contained in the bill." *Fust v. Attorney General for the State of Mo.*, 947 S.W.2d 424, 429 (Mo. banc 1997); *see also C.C. Dillon Co. v. City of Eureka*, 12 S.W.2d 322, 329 (Mo. banc 2000). Having already received guidance from the Supreme Court that health

services and health insurance are related, the legislature could rely on that decision and "indicate in a general way the kind of legislation that was being enacted." *Fust*, 947 S.W.2d at 429. Because health services and health insurance are related, any citizen with an interest in health-related legislation would have been on notice that this is a bill that might be of interest to them.

2. Expanding the availability of midwife services is a necessary step in assuring health insurance coverage for those services, so the midwife provision in the final version of HB 818 is related to health insurance.

As discussed in Section III.C, above, the first step in increasing the availability of health coverage for the services of certified midwives is to expand the extent that the services are legally available. Health services are tied directly to the availability of health insurance, and an increase in the availability of any service, particularly those of certified midwives, will encourage the coverage of those services by insurers. SS#2 SCS HCS HB 818, according to its title, includes matters relating to health insurance. Because health services and health insurance are related, and because expanding the availability of services from certified midwives increases the potential for health insurance coverage for those services, § 376.1753, RSMo, falls within the subject expressed within the title to SS#2 HB 818 and the circuit court erred in holding that § 376.1753, RSMo, violated Art. III, Sec. 23.

Conclusion

Therefore, for the reasons stated herein, the decision of the circuit court should be reversed and the statute held to be constitutional.

Respectfully submitted,

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Certification of Service and of Compliance with Rule 84.06(b) and (c)

The undersigned hereby certifies that on this 26th day of November, 2007, one true and correct copy of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b), and that the brief contains 10,334 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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