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 REPLY BRIEF

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Table of Contents

Table of Authorities

Cases

Statutes

Other Authorities

Rules

Introduction

Respondents would move this court from its limited role of applying constitutional provisions, to playing referee to the legislative maneuvering within the General Assembly. This is clear from a reading of their brief. Instead of relying on the history of the bill at issue as reflected in its various versions, Respondents discuss other legislative actions beyond the scope of the review that this court has traditionally relied upon. Respondents' reliance on these extraneous matters is understandable, as the history of the bill and the history of this court's decisions in this area do not provide adequate support for their position.

The original purpose of HB 818 was to increase the availability of health care, using the means of health insurance. That original purpose never changed, although the means for increasing the availability of health care were broadened. Legislators understood the scope of HB 818 changed when its title changed from "relating to portability and accessibility of health insurance," to "relating to health insurance." This understanding is demonstrated by the types of amendments made in the Senate, many of which, although not directly affecting health insurance, relate to health insurance. Legislators had good reason to reach this understanding. This court previously held that health care and health insurance are related subjects. *Missouri State Medical Ass'n v. Missouri Dept. of Health*, 39 S.W.3d 837 (Mo. banc 2001). Legislators appear to have relied on this court's holding in determining the scope of the amendments to HB 818. Even if we cannot conclude that this court's holding was the basis for adding the amendments, we can see that the Senate amendments are consistent with that holding.

The challenged statute has a direct relationship to health insurance. Health insurance coverage of midwife services cannot be expanded unless the services themselves are legal. Section 376.1753, RSMo, is entirely consistent with the original purpose and final subject and consistent with the title, "relating to health insurance." In addition, Respondents have no harm from this statute and, therefore, no standing.

Reply to Respondents' Statement of Facts

The addition of § 376.1753, RSMo, was consistent with the change in title and the legislative history of HB 818. Respondents' suggestions to the contrary are not born out by an examination of the bills history following the change in title. When the bill's title changed from "relating to portability and accessibility of health insurance" to "relating to health insurance," the legislature added topics that relate to health insurance but do not directly affect insurance. These additional statutes, which relate to topics such as medical bill collection and genetic counseling, are most definitely relevant to the court's consideration of this challenge. These provisions demonstrate that legislators were well aware of the scope of the topics that could be added to this bill. All these added statutes relate in one way or another to the original purpose of increasing the availability of health care and are consistent with this Court's holding that health insurance and health care are related subjects for purposes of single subject analysis under Art. III, § 23. *Missouri State Medical Ass'n v. Missouri Dept. of Health*, 39 S.W.3d 837 (Mo. 2001).

Respondents claim that when the second substitute bill was submitted on the floor of the Senate, the Senate "received no notice of a change in the scope of the bill's subject." Respondent's brief at 15. Actually, the scope of the bill was changed in Senate committee,

not on the floor. The Senate Health and Mental Health Committee broadened the bill from an act "relating to portability and accessibility of health insurance" to an act "relating to health insurance." J. Ex. 4. The provisions added in the Senate committee and in the first floor substitute demonstrate that the Senators were well aware that the scope of the title, and thus of the bill, had broadened. In addition, as each change was made, the number of repealed and enacted sections changed within the title, alerting legislators that the bill was being altered.

Respondents also complain that § 376.1753, RSMo, was not specifically identified in the title of the bill. Respondent's brief at 15. The fact that the title has no reference to this new section has no bearing on the court's decision. General Assembly has long had the practice of specifically listing those provisions that are being repealed, but only indicating the total number of provisions being added to a bill. This court has never suggested that this method for stating the title was itself defective.

Respondents included factual material that this court has held to be irrelevant to its consideration of a procedural challenge to legislation. *See* Statement of Facts, Section D, of Respondents' brief at 16-17. As discussed at length on pages 27-29 of the State's merit brief, this court only looks at the various versions of the challenged bill, not the other maneuvers and counter-maneuvers that go on regularly in the legislature. Section D of Respondents' Statement of Facts is best ignored, as it attempts to have this Court decide the case based on matters outside the scope of review, as established by a long line of precedent.

Respondents and *amici* American Medical Association ("AMA") attack the merits of § 376.1753, RSMo. *See* Respondents' brief at 13; AMA brief at 7-17. That attack is neither

relevant nor well-founded. The merits of the bill are a matter for the legislature, not the courts.

Whether by error or in an effort to confuse the issues, Respondents fail to use the correct meaning of "ministerial." This term has many definitions and the appropriate meaning must be determined from its context. For example, in certain contexts, "ministerial" refers to an action that must be taken by government office holders in response to a given set of facts. *See State ex rel. Folkers v. Welsch*, 124 S.W.2d 636, 639 - 640 (Mo.App. 1939) ("A ministerial act, as applied to a public officer, is an act or thing which he is required to perform by direction of legal authority upon a given state of facts being shown to exist, regardless of his own opinion as to the propriety or impropriety of doing the act in the particular case."). That definition would make no sense here. Likewise, Respondents' suggestion on page 13 of their brief that "ministerial" refers to ministers, in a religious or parliamentary sense, also makes no sense in this context.

The appropriate definition comes from a different meaning of the root word "minister," meaning "to attend to the wants and comforts of someone." Webster's Third New International Dictionary of the English Language 1439 (Philip Babcock Gove, Ph.D. ed., Mirriam-Webster Inc. 1993). For example, a person may minister to the sick without holding the title of "minister." The statute uses this broader meaning. Ministerial certification, in the context of the statute, means a certification for attending to the wants and comforts of someone during pregnancy and childbirth, i.e. while delivering the pregnancy-related services that are identified by reference to federal regulations. In determining whether a particular certification authorizes a person to perform pregnancy-related services

in Missouri, we are to look at the services for which the certification was received rather than a specific title given by the certification. Regardless of the title, if a person receives a certification to provide those pregnancy-related services, or, in other words, to minister to someone in need of pregnancy-related services, that person is authorized by the statute to deliver those services in Missouri.

Respondents claim that midwives are unregulated. Respondents' brief at 56. This is not accurate. Section 376.1753, RSMo, itself, contains a regulatory requirement that midwives must obtain certification. In addition, the Missouri Revised Statutes contain other regulations that, by their terms, apply to midwives. Section 210.030, RSMo, requires that midwives conduct certain blood tests on consenting pregnant women. Section 210.030, RSMo, requires midwives to keep the results of such tests confidential. Section 210.070, RSMo, requires midwives to give certain prophylactic eye drops upon the birth of a child. Midwives are required to file birth certificates within seven days, 19 CSR 10-10.040, and request certain corrections to birth certificates on file with the Bureau of Vital Records. 19 CSR 10-10.110. It is true that the statute did not establish a licensing board, but that is irrelevant to the legal issues presented here.

Argument

This court noted twice this past year that it will uphold the constitutionality of a statute against a procedural attack unless the act clearly and undoubtedly violates a constitutional provision. *Trout v. State of Missouri*, 231 S.W.3d 140, 144 (Mo. banc 2007); *Jackson County Sports Complex Authority v. State*, 226 S.W.3d 156, 160 (Mo. banc 2007). Respondents have failed to demonstrate that the act clearly and undoubtedly violates the constitution, so the statute must be upheld.

I. As a threshold matter, Respondents lack standing; Respondents have failed to prove any harm to themselves, or their members, and instead base their arguments on assumptions and speculation.

While Respondents have chosen to address standing last in their brief, it remains the threshold issue in this case. This court may not proceed to the merits unless satisfied that Respondents have standing. They do not.

While Respondents' standing claim suffers from several deficiencies, the most notable is that any threat of harm remains speculative. Indeed, Respondents have confirmed, rather than contradicted, that point.

In an effort to bolster the threat of harm, Respondents say that if their members coordinate with midwives, these physicians will be subject to discipline. Respondents' brief at 55. This is not the case. The statute regarding coordination does, indeed, use the word shall, but only in the context of saying when a physician shall not be subject to discipline: "**No physician** or pharmacist licensed in this state **shall be subject to discipline** for authorizing, assisting or cooperating with other health care professionals licensed by this

state who are practicing their profession within the scope of their license." § 191.228, RSMo (emphasis added). This statute does not say that a physician will be disciplined for coordinating care with medical personnel who have a form of state authorization other than a license. Indeed, it bars discipline when a physician is working with a certified midwife.

Respondents' claim that physicians are restricted from coordinating with midwives is inconsistent with the current medical system. Physicians work with other health professionals who are not given a document titled a "license," but are instead either certified, registered or wholly unregulated. For example, skilled nursing facilities use certified medical technicians. Like certified midwives, these certified medical technicians are certified by non-governmental agencies. *See* 19 CSR Chapter 30-84. If Respondents' arguments were correct, Respondents' members could never coordinate care with certified medical technicians without being subject to discipline. As a practical matter, this would prevent skilled nursing facilities from functioning, because these homes are required to coordinate with physicians. 19 CSR 30-85.042(12) ("A supervising physician shall be available to assist the facility in coordinating the overall program of medical care offered in the facility.").

Similarly, optometrists receive a certificate of registration rather than a license. Chapter 336, RSMo. A speech-language pathologist must be licensed, but a speech-language pathology assistant or aid only needs to register. § 345.015, RSMo. Athletic trainers are required to be registered. § 334.704, RSMo. Other medical professionals appear to have no state regulation. The State has no statutory registration, certification, or licensing requirements for medical imagining personnel, commonly known as radiographers or

radiation technicians, and one web site indicates that Missouri is one of the few states that have no such requirements. *See* Medhunters.com, *Licensing: Medical Imaging & Radiation Therapy – USA*.[1] By Respondents' reasoning, physicians would never be able to coordinate with any of these health professionals or assist nursing homes with coordinating their programs.

Moreover, to classify midwives as unlicensed is premature. The Board of Registration of the Healing Arts ("Board of Healing Arts") may view the term "license," as used in § 191.228, RSMo, as encompassing a certification received by a midwife and, therefore, view coordination with certified midwives as specifically authorized under § 191.228, RSMo. The term "license" is undefined in Chapter 345, RSMo and Chapter 191, RSMo. In certain instances, the term license and registration appear interchangeably in statutes. *See* § 336.110, RSMo. Even where the General Assembly has given the Board of Healing Arts authority to issue registrations, the board has instead issued licenses, suggesting the Board views the terms "registration" and "license" as interchangeable. Specifically, § 334.704, RSMo, says the Board of Healing Arts may register athletic trainers, § 334.706, RSMo, and may suspend, revoke or refuse to renew the registration of a trainer, § 334.715 RSMo. In its regulations, the Board of Healing Arts uses the term "license." 20 CSR 2150-6.010. The Board uses this term even though it indicates that the authority comes from the statutes that use the term "registration." *See* statement of authority following 20 CSR 2150-

[1] http://www.medhunters.com/articles/licensingMedicalImagingUsa.html#M. Medhunters appears to be a job-placement website for medical professionals.

6.010. For Respondents to conclude that the Board of Healing Arts will not allow coordination with certified midwives is pure speculation.

Although cited in Respondents' brief, *Ferguson Police Officers Ass'n v. City of Ferguson*, 670 S.W.2d 921, 924 (Mo. App. 1984), undermines Respondents' claim of standing. In *Ferguson*, the agency enforcing the regulation acknowledged on the record that it would take disciplinary action if it was aware of a violation of the regulation. *Id.* at 924 ("The city manager indicated that all of the acts proposed by the resident members violated § 29, and that some disciplinary action would be taken for an 'overt' violation."). Here, Respondents have provided no such evidence. Only the Board of Healing Arts has the authority to pursue discipline. *See* § 334.100, RSMo. Unlike the plaintiffs in *Ferguson*, Respondents have no evidence from the Board that it would seek any disciplinary action. As a practical matter, this court cannot know whether enforcement is at all likely, as enforcement is a matter of discretion. *See State on inf. McKittrick v. Wallach*, 353 Mo. 312, 182 S.W.2d 313 (1944).

Ferguson differs from this case in another respect as well. In *Ferguson*, the regulation at issue applied directly to the actions of the plaintiffs, restricting political activity of the police officers. The regulation had a direct impact on a constitutionally protected right of the officers. Here, the regulation does not directly regulate any conduct of Respondents and Respondents have no constitutional right at issue. Respondents attempt to manufacture a constitutional impact by claiming physicians have a property right in their medical license that is impacted by the threat of discipline. This argument is flawed because there is no impact to the license. It is entirely speculative, and most likely wrong, to assume that the

Board of Healing Arts will pursue discipline if doctors choose to coordinate with certified midwives who are conducting activity specifically authorized by law. And regardless of whether the Board would pursue discipline, doctors can choose not to coordinate with certified midwives, avoiding any threat entirely. In other words, Doctors are entirely free to do precisely what they have long been doing: refusing to work with midwives. Even if Respondents are correct that the members have a protected property interest in their license, they do not have a constitutional right to keep certified midwives from providing pregnancy services.

Respondents even acknowledge that any threat of discipline could occur only if physicians choose to coordinate with certified midwives. Respondents' brief at 55. Again, nothing requires coordination. As a practical matter, a doctor can simply choose not to work with midwives.

Contrary to Respondents' assertions, the State has expressly denied that Respondents and their members have a personal interest in the outcome of the case. The only claim of personal interest raised by respondents is the threat of discipline. The State explained at length in its merit brief and in this reply that Respondents have no basis for such a claim. The State has acknowledged that Respondents may have a basis to pursue an entirely different claim, that being a claim to determine how the law will be applied with respect to coordination. However, having standing for one claim does not impute standing for another. To have a basis to challenge the statute, Respondents must demonstrate an impact that is direct and not speculative. *Nations v. Ramsey*, 387 S.W.2d 276, 279 (Mo.App. 1965) ("As a general proposition one may not seek a declaration to determine future rights or

controversies … merely because he fears the defendant may assert a claim against him"). *Allen v. Wright*, 468 U.S. 737, 104 S.Ct. 3315 (1984); *Henderson v. Stalder*, 287 F.3d 374, 380 (5th Cir. 2002). Further, Respondents cannot simply assume that their members will violate the law, where conformity with the law is possible and does not cause the members to forego the exercise of a constitutional right. *Henderson*, 287 F.3d at 380.

Respondents claim that the affidavits of their members support their claim of standing. Even if these affidavits indicate that the members have a fear about their license, the affidavits provide no basis for concluding that the fear is justified. Respondents have offered no proof that any physician faces 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 depart from their present practice and coordinate with certified midwives; and third, if doctors coordinate with midwives, then they might be subject to disciplinary action. Again, this is speculation that provides no basis for standing.

Respondents again claim to be representing their patients. Respondents' brief at 56. As noted in the state's merit brief, physicians have been held to have standing to represent their patients only if the interests of the physician and the patient are necessarily aligned, obstacles exist to the patient pursuing his or her own action, and the challenged law restricts a fundamental constitutional right specific to the patient. State's brief at 21-22. None of those elements are present here.

II. Legalization of midwifery is a necessary first step in encouraging the availability of health insurance for these services. In addition, this court has recognized the relationship between health services and health insurance. Therefore, § 376.1753, RSMo, is related to health insurance.

As explained in the State's opening brief, pp. 42-43, 47, the first step in increasing the availability of health coverage for midwife services is to legalize the service. Even if this step is not sufficient in and of itself, it is necessary. Consequently, the legalization of midwifery is related to health insurance. To hold otherwise would amount to second guessing the legislature on how to address the issue of increasing coverage for midwife services and increasing the availability of those services.

This case is easily distinguished from *National Solid Waste Management Ass'n v. Director of Dept. of Natural Resources*, 964 S.W.2d 818 (Mo. banc 1998). Unlike the provisions challenged in *National Solid Waste*, the challenged provision is related to the title. Insurance coverage may only be extended to the service if midwifery is legal. Again, this is a necessary step for providing insurance.

Also, the legal context of the two situations is different. The court in *National Solid Waste* relied on the fact that the statutory definition of solid waste specifically excluded hazardous waste. *National Solid Waste*, 964 S.W. 2d at 820. The legislature itself established solid waste and hazardous waste as separate subjects. But health care and health insurance, this court has held, are related topics. *Missouri State Medical Ass'n*, 39 S.W.3d 837. The history of HB 818 demonstrates that the legislature understood that health care and

health insurance are related because the Senate added topics to the bill that, while not directly affecting health insurance laws, were related to health insurance.

In *National Solid Waste*, the court also pointed out that the title of the bill could have been expanded to include both solid waste and hazardous waste. *National Solid Waste*, 964 S.W. 2d at 821. Here, the legislature did expand the scope of the title. The legislature changed the title from an act "relating to portability and accessibility of health insurance," to include all matters "relating to health insurance." *Compare* Joint Exhibit (J. Ex.)3 and J. Ex. 4. When that change was made in committee, the Senate began to add a broader range of statutes to the bill, including statutes on collections on medical bills, genetic counseling and a tax deduction for health care sharing ministries. J. Ex. 4 and J. Ex. 5.

In an apparent effort to create a straw man, Respondents mischaracterize the State's arguments. The State does not suggest that the bill is, or needs to be, "an omnibus health care bill." Respondents' brief at 22. Respondents use this phrase in connection with their "clear title" analysis. The State, consistent with this court's decisions, pointed out that the original purpose of the original bill and the overarching subject of the final bill are not as limited as Respondents argue. Original purpose and single subject will be discussed in the sections below. To the extent that the State discussed health services in the context of its "clear title" discussion, the State was pointing out that increasing the availability of certified midwife services promotes the availability of health insurance for those services. *See* State's brief at 44-47. This is undoubtedly a true statement. What was once illegal is now legal and therefore insurable. The State also pointed out that this court has held that health services and health insurance are related.

The State does not argue, as Respondents contend, that the terms "health insurance," "health services" and "health" are synonymous. Respondents' brief at 22. Although not synonymous, these three terms are certainly related. This court recognized that relationship in *Missouri State Medical Ass'n*, 39 S.W.3d 837, and, based on the history of this bill, the legislature appears to have recognized the relationship as well. Respondents attempt to bolster this straw man argument by quoting the State's brief out of context. The state does not say that "health services and health insurance constitute a single subject." Respondents' brief at 23. Rather, the State's brief restates the holding of *Missouri State Medical Ass'n* that "health services and health insurance constitute a single subject **for purposes of Art. III, Sec. 23 of the Constitution**." State's brief at 32 and 40 (emphasis added). This holding is taken from *Missouri State Medical Ass'n*, 39 S.W.3d at 841: "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."

Respondents raise matters that have no bearing on the constitutionality of the statute. Respondents go on at length complaining of terms used in § 376.1753, apparently with the view that certain legislators, who may have opposed the measure, were confused about the meaning of the language. Respondents went so far as to call the language a "red herring" and a "disguise." Respondents brief at 29-30.

This court would be venturing into dangerous waters if it were to determine procedural challenges based on whether legislators actually understood the language they were voting on. Such considerations would move this court away from it long-held approach of examining the language in the various versions of a bill, toward a factual inquiry into the

subjective understanding of every legislator in the general assembly. In addition to being dangerous, such an approach would be inconsistent with this court's decisions that the manner of passage is irrelevant to a determination of a procedural challenge. *Corvera Abatement Technologies, Inc. v. Air Conservation Com'n*, 973 S.W.2d 851 (Mo. 1998); *McEuen v. Missouri State Bd. of Education*, 120 S.W.3d 207 (Mo. 2003). *See* also State's merit brief at 28. In addition, aspersions on the character or methods of the bill's proponents have no place in this proceeding. *Missouri Health Care Ass'n v. Attorney General of the State of Mo.*, 953 S.W.2d 617, 622 (Mo. 1997) ("This Court ascribes to the general assembly the same good and praiseworthy motivations that inform our own decision-making process, liberally construing the constitution's procedural limitations on the legislature.").

III. The Constitution does not require that the original purpose of a bill be expressed in the original title; HB 818 had an overarching purpose of improving the delivery of health care that captured the purpose of the original bill, and the contents of the final bill related to that purpose.

Respondents misstate the test for determining the original purpose of a bill. In discussing the original purpose challenge to the statute, Respondents claim "[w]hile the Missouri legislature might have generally passed a bill to address 'health' or 'health services,' it would have been required to state those subjects in the bill's title." Respondents' brief at 44. In other words, according to Respondents, the original purpose must be expressed in the title. One of these Respondents, Missouri State Medical Association, raised this same argument in an earlier case and this court held exactly the opposite. "[T]he Constitution does not require that the original purpose be stated anywhere, let alone in the title as introduced." *Missouri State Medical Ass'n*, 39 S.W.3d at 839.

Respondents make a second error in their discussion of original purpose. Respondents seem to suggest this court should consider whether the original title was amended: "House Bill 818's title was never amended to identify it as a general health bill and its scope was required to be much more limited than the HIPAA by the Missouri Constitution." Respondents' brief at 44. Again, this was addressed in the earlier case involving the Missouri State Medical Association. This court held that the original purpose is determined from the bill as introduced, so an amendment to the title will not affect an analysis of whether all provisions of a bill relate to the original purpose. *Missouri State*

Medical Ass'n, 39 S.W.3d at 839 ("[O]riginal purpose is measured at the time of introduction."). *See* also *Trout v. State of Missouri*, 231 S.W.3d 140.

Overall, Respondents seek to limit the the examination of original purpose in a manner inconsistent with this court's actual test. While that test is discussed in detail in the State's opening brief, one quote bears repeating:

> "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 at 160. HB 818's original purpose was to address concerns about health care delivery through the means of health insurance. *See Missouri State Medical Ass'n*, 39 S.W.3d at 839-840 ("Original purpose is the general purpose, 'not the mere details through which and by which that purpose is manifested and effectuated.'" (Citations omitted)).

Respondents' analysis of the federal Health Insurance Portability and Accountability Act (HIPAA) reinforces, rather than undermines, the conclusion that the implementation of the state HIPAA required a broad original purpose. If, as Respondents suggest, the federal HIPAA had more than one topic, such as health insurance and health services, then state lawmakers would need to have a broad umbrella purpose in the original version of HB 818 in order to implement the state equivalent of the federal HIPAA. That broader umbrella would be, as suggested above, improving health care delivery. All the contents of the final version of HB 818 relate to this purpose and therefore withstand an original purpose challenge.

IV. HB 818 has a single subject and 376.1753, § RSMo, relates to that subject.

All parties have phrased the single subject test in essentially the same terms, i.e.:

> [T]he test is … 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.

As noted above, this court has already held in the context of single subject analysis that health insurance relates to health services. *Missouri State Medical Ass'n*, 39 S.W.3d at 841. Respondents attempt to argue, in essence, that even though health insurance relates to health services, health services do not relate to health insurance. The State does not suggest that "health services" and "health insurance" may be used interchangeably. Again, we do not contend that they are synonymous terms. The State does, however, point out that they are related, and that is the test. Had the General Assembly wanted to limit the scope of the bill, the legislature could have retained the more limiting title given to the original version of the bill. Instead, the Senate broadened the title and the scope of the bill and the House consented to this change.

Respondents imply that to be acceptable under the single subject test, the bill needed to do more than legalize the use of midwives and should have required coverage of midwife services or otherwise regulated insurance for those services. Respondents' brief at 37-42. As noted in the State's opening brief, by expanding the availability of services from certified midwives, the bill allows for an increase in coverage that otherwise would not have been possible. It is for the General Assembly, not Respondents or this court, to choose the means

to accomplishing a particular goal. Legislators may, at some future time, decide to mandate or regulate coverage of these services. The very fact that they may do so demonstrates the relationship between legalization and insurance. The General Assembly could not mandate or regulate coverage if the services were illegal. At this point, the legislature has chosen the least intrusive method of increasing insurance coverage while opening the door to further action in the future.

Respondents' reliance on *Missouri Health Care Ass'n v. Attorney General of the State of Mo.*, 953 S.W.2d 617, and *SSM Cardinal Glennon Children's Hosp. v. State*, 68 S.W.3d 412 (Mo. banc 2002), is misplaced. As Respondents acknowledge, these cases stand for the proposition that "[t]he single subject limitation requires that the contents of the bill, not the entities affected by the bill, fairly relate to the subject expressed in the title of the act." *Missouri Health Care Ass'n*, 953 S.W. 2d at 623. Respondents' brief at 36. Thus, it is irrelevant that the bill does not directly affect insurance companies if the contents relate to insurance.

V. The circuit court relied upon evidence that was beyond the scope of review as established by this court.

As noted in the State's opening brief, the circuit court included matters in its findings that were outside the scope of review established by this court. This irrelevant information, and other irrelevant information, has now found its way into Respondents' brief.

Paragraphs 42 and 43 of the decision do not relate to the legislative history of the bill in question. This court addressed this very issue in *Corvera Abatement Technologies, Inc.*, 973 S.W.2d 851, and concluded that only those matters relevant to the constitutional test are of any consequence. This court has held that original purpose is determined based on the bill as introduced, *Jackson County Sports Complex Authority*, 226 S.W.3d at 160-161, and that single subject and clear title review is based on the bill as passed. *Missouri State Medical Ass'n*, 39 S.W.3d at 840-841. These tests leave no room for consideration of other matters. The State was explicit in its opening brief that "[t]he only relevant facts in are the contents of the various versions of HB 818." State's opening brief at 29. Anything beyond that is improper. In addition, the State made clear that it was appealing the circuit court's reliance on "allegations about both the manner of passage and other actions taken by the General Assembly." Thus, contrary to Respondents' assertions, the State was explicit as to the exact nature of its point relied on.

Respondents point to cases in which other bills have been considered in this court's decisions. This court has expressly held that "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). Thus, other bills may be examined to the extent that they have been combined into the bill at issue. That is not the situation here. Rather, the court below considered the very type of wrangling that this court held to be irrelevant in *Corvera*, 973 S.W.2d 851.

This case demonstrates the risk if the record is opened in this manner. In their brief, Respondents now cite a bill that was not even introduced in the same session, pointing out that Senator Louden introduced SB 870, which would repeal 376.1753, RSMo. In fact, the political wrangling in the General Assembly could be endless. As of the date of this brief, Senator Louden has been reinstated as chair of the Small Business, Insurance and Industrial Relations Committee and has introduced SB 1021, which would keep certified midwives legal. *See* http://www.senate.mo.gov/08info/comm/sbir.htm and http://www.senate.mo.gov/08info/BTS_Web/Bill.aspx?SessionType=R&BillID=50641. This type of maneuvering indicates the importance of establishing clear standards for the determining constitutional procedural challenges. The alternative opens the door to legislative activity that may be done more for the purpose of influencing the courts than actually passing legislation.

Respondents also seem to be arguing that the State failed to properly preserve an objection to evidence submitted by Respondent. This is neither relevant nor accurate. It is not the admission of the improper evidence that the State has raised in its brief, but the circuit court's reliance on that information in reaching its decision that violates this court's earlier cases. However, even if it was only the admission of the evidence that the State was appealing, the State has laid a proper foundation for appealing that issue. The record of this

case demonstrates that the objection to the contested information was preserved. The Joint Stipulation of Fact expressly reserved objections. The Joint Stipulation of Fact was a part of the Stipulation in Lieu of Transcript that was filed in this court by the parties. The circuit court addressed relevance in paragraphs 42 and 43 of its findings because of the State's objection to this evidence.

Even if Respondents were correct that the objection was not preserved, the plain error standard in Rule 84.13(c) applies. To the extent the circuit court relied upon the findings in paragraph 42 and 43 of its decisions, the admission of the irrelevant evidence created a miscarriage of justice by causing the court to strike down, on inappropriate grounds, a law passed by the legislature.

Conclusion

The decision of the circuit court should be reversed and the statute held to be constitutional.

Respectfully submitted,

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The undersigned hereby certifies that on this 14th day of February, 2008, 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 6,320 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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Assistant Attorney General