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Case No. SC97211

CLERK, SUPREME COURT

IN THE SUPREME COURT OF MISSOURI

Ronald J. Calzone,
Plaintiff - Appellant

v.

Chris Chinn, et. al.
Defendants – Respondents

APPEAL FROM COLE COUNTY CIRCUIT COURT
The Honorable Jon E. Beetem, Judge

APPELLANTS' INITIAL BRIEF

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JURISDICTIONAL STATEMENT

This action questions the constitutionality of the *procedures* by which the Missouri General Assembly passed Senate Bill 665 in 2016 (SB 665), specifically, whether what Plaintiff/ Appellant claims was clear and undoubted language limiting the bill's purpose in its original title precluded changing the purpose to something broader, and whether amendments to the bill, in fact, violated the original purpose and single subject clauses of the Missouri Constitution's Article III, Sections 21 and 23, rendering the resulting bill and actions ordered by the bill void and ineffectual.

Since the constitutionality of the statutes enacted by Senate Bill 665 are in question, original jurisdiction lies in the Supreme Court. See Article V, Section 3 of the Missouri Constitution.

The trial court properly found that enactment of SB 665 results in expenditures of state revenue which the Plaintiff, as a taxpayer, alleges are unlawful, giving rise to standing¹.

¹ “The taxpayer's interest in the litigation ultimately derives from the need to ensure that government officials conform to the law.” *Lebeau v. Commissioners of Franklin County*, 422 S.W.3d 294 (Mo. banc 2014)

STATEMENT OF FACTS

Procedural Background. Ronald J. Calzone, a Missouri citizen and taxpayer, commenced this action on May 30, 2017, seeking a declaratory judgment and injunction based on his claims that SB 665 was passed by the Missouri General Assembly in violation of the limits on their power codified in Article III, Sections 21 and 23 of the Missouri Constitution. Those claims allege violation of the Original Purpose clause in Article III, Section 21, and the Single Subject and Clear Title clauses in Article III, Section 23. LF-20-23.

Margie Vandeven, in her official capacity as commissioner of the Department of Elementary and Secondary Education, Joel Walters, in his official capacity as Director of the Department of Revenue, and Chris Chinn, in her official capacity as Director of the Department of Agriculture, were named as defendants, along with certain officials of the General Assembly and the Attorney General. The trial court, later, dismissed all but the Commissioner of D.E.S.E. and Directors of the Departments of Revenue, and Agriculture in favor of Defendants' Motion to Dismiss certain defendants.

The trial court, pursuant to Pursuant to Rule 52.13(d) and due to changes in office, substituted Roger Dorson, in his official capacity as Interim Commissioner of the Missouri Department of Elementary and Secondary Education, in place of former Defendant Margie Vandeven. LF-181.

The trial court heard oral arguments on Defendants' Motion to Dismiss and Motion for Judgment on the Pleadings, and on Plaintiffs Motion for Summary Judgment on

January 23, 2018.

On March 27, 2018, Judge Jon E. Beetem entered judgment in favor of Defendant's Motion for Judgment on the Pleadings with respect to Counts I and II of Plaintiffs' Petition, and in favor of Defendant's Motion to Dismiss with respect to Count III of Plaintiffs' petition. LF-180.

Plaintiffs filed this appeal May 3, 2018. LF-191.

BILL HISTORY

1. Senate Bill 665² was introduced and First Read in the Missouri Senate on January 6, 2016, as a bill less than 5 pages in length with the title,

"An Act To repeal section 261.235, RSMo, and to enact in lieu thereof one new section relating to the establishment of a fee structure for sellers electing to use the AgriMissouri trademark associated with Missouri agricultural products."

Plaintiffs alleged that all the elements of the bill related to the "fee structure for sellers electing to use the AgriMissouri trademark." Exhibit A, LF-29.

2. On May 5, 2016, the Missouri Senate truly agreed to and finally passed SB 665, as amended.

3. On May 23, 2016, the Missouri House of Representatives truly agreed to and finally passed SB 665, as amended.

2 Bill URL: https://www.senate.mo.gov/16info/BTS_Web/Bill.aspx?SessionType=R&BillID=22246458 Last visited October 5, 2018.

4. On June 24,2016, the Governor signed S.B. 665 into law.

5. SB 665's final title, as enacted, is

"An Act to repeal sections 135.679, 261.235, 262.960, 262.962, 348.407, 348.430, 348.432, 348.436, and 414.082, RSMo, and to enact in lieu thereof ten new sections relating to agriculture."

6. S.B. 665, as truly agreed and finally passed, will result in an expenditure of state funds. LF-182.

POINTS RELIED ON

Point Relied on I.

The trial court erred in its ruling against Count I, finding that the purpose of Senate Bill 665 was not changed by amendment in violation of Article III, Section 21 of the Missouri Constitution, *because* the court used the wrong standard for establishing the original purpose, *in that* it ignored a plethora of authorities that say the “original purpose of a bill is established by the bill's earliest *title* and *contents* at the time the bill is introduced,” and “[w]here the title of an act descends to particulars, the particulars stated ordinarily become the subject of the act and the act must conform to the title as expressed by the particulars.”

Legends Bank v. State, 361 SW 3d 383, 386 – Mo. Banc 2012

Fire District of Lemay v. Smith, 353 Mo. 807, 184 S.W.2d 593, 596 (Mo. 1945),

State Ex Rel. School District V. Hackmann, 237 S.W. 742 (Mo. 1922)

Fust v. Attorney General, 947 SW 2d 424 (Mo. 1997)

Count I: The Purpose of SB 665 Was Changed By Amendments And the Purpose of the Finally Passed Version Was Not the Same as the Introduced Version in 'Violation of Missouri Constitution Article III, Section 21.

Point Relied on II.

The trial court erred in its ruling against Count II, finding that the final version of Senate Bill 665 did not contain more than one subject in violation of Article III, Section 23 of the Missouri Constitution, *because* it incorrectly identified the controlling subject, *in that it* improperly relied on authorities that did not take into account situations in which the purpose or subject of a bill had been changed, and did not rely on authorities that say the controlling subject of a bill is determined by the introduced version of the bill.

Hammerschmidt v. Boone County, 877 S.W.2d 98, 102 (Mo. Banc 1994)

Legends Bank v. State, 361 SW 3d 383, 390 (Mo. 2012)

State Ex Rel. School District V. Hackmann, 237 S.W. 742 (Mo. 1922)

Count II: The Finally Passed Version of SB 665 Violates The Single Subject Rule in Missouri Constitution Article III, Section 23.

Point Relied on III.

The trial court erred in dismissing Count III, saying that a claim that a bill's title was changed unconstitutionally is not a recognized claim under Missouri law, *because* there is no prohibition against raising a novel claim, and it relied on faulty authorities, *in that* the Supreme Court has been mistaken about what components are part of a bill.

Lincoln Credit Co. v. Peach, 636 SW 2d 31, 38 (banc 1982)

State ex rel. Aull v. Field, 24 S.W. at 755 (Mo.banc 1894)

Fust v. Attorney General, 947 SW 2d 424 (Mo. 1997)

***Count III: The Title for SB 665 Was Changed in Violation of Missouri
Constitution Article III, Sections 21 and 23.***

INTRODUCTION

“It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood;” James Madison, The Federalist Papers No. 62, February 27, 1788.

Perhaps the framers of the Missouri Constitution had Madison's words in mind when they drafted what is now Article III, Sections 21 and 23. No doubt, they were committed to the idea that each piece of legislation be focused on one subject, but perhaps they also realized that, once elected, some “representatives” are not committed to implementing the will of a *majority* of the people³ and are not above logrolling legislation, or otherwise subverting the legislative process in ways that result in laws that, by themselves, would have never made it to the statute books.

In any event, it's obvious that the intent of Article III, Sections 21 and 23 is to foster a **legislative process that is measured, deliberate, transparent** and comes as close as possible to truly **representing the will of the *majority***. In a sense, Article III, Sections 21 and 23 are intended to be a throttle, or better stated, a governor, on the legislative process.

The Revised Statutes of Missouri consists of over sixteen large volumes – over thirty inches of laws. There are over 11,000 ways one can commit a felony based on Missouri law⁴. One must ask just how well the “governor” is working.

3 “Enlightened statesmen will not always be at the helm.” James Madison, Federalist 10.

4 Based on a count of the individual charge codes.

Frankly, the courts, including the Missouri Supreme Court, have damaged the legislative “governor” the people put in place – they have practically reduced Article III, Sections 21 and 23 to a nullity⁵. Ambiguous and seemingly contradictory opinions have made it difficult for legislators to understand the constitutional limits on their powers and even harder, for those who do understand, to hold them accountable.

For instance, the Missouri Supreme Court opined, in *Missouri State Med. Ass'n v. Missouri Dep't of Health*, 39 S.W.3d 837 (Mo. Banc 2001), “True, original purpose is measured at the time of the bill's introduction. However, the 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.” Emphasis added. Internal citation and quote marks omitted. *Id.* at 839-840.

But the Court also has said, “The first step in the original purpose analysis is to identify the original purpose. According to its earliest title and contents...” *Legends Bank v. State*, 361 SW 3d 383, 386 - Mo: Supreme Court 2012. And, “The original purpose of a bill is established by the bill's earliest title and contents at the time the bill is introduced.” Emphasis added. *Id.* at 386.

And, the Supreme Court has further said, “Where the title of an act **descends to particulars, the particulars stated ordinarily become the subject of the act and the**

5 “Sections 21 and 23 promise to remain neutered under the approach taken by the principal opinion.” Judge Welliver's dissent in *Westin Crown Plaza Hotel Co. v. King*, 664 SW 2d 2, 7-9 (Mo. Banc 1984).

act must conform to the title as expressed by the particulars... Any such matter beyond the title is void.” *Fire District of Lemay v. Smith*, 353 Mo. 807, 184 S.W.2d 593, 596 (Mo. 1945)

Well, which is it?

In a leap of logic, Respondents argue that “S.B. 665's purpose is *not limited to the words* affixed to the bill's title; any legislation's purpose is, instead, *divined* from the overall goals that the bill's provisions seek to accomplish.” (Emphasis added. LF-158) But not being limited “*to*” words in the bill title is not to say that the purpose is not limited “*by*” the words in the title in favor of new material added in the body of the bill.

To thus discount the limiting words in a bill's *original* title in favor of amendments is to fly in the face of this Court's declaration that “where the title of an act descends to particulars and details, the act must conform to the title as thus **limited by** the particulars and details.” Emphasis added. *City Of Columbia v. Publ. Serv. Commission* 43 S.W.2d 813 (Mo. 1931) at paragraph 45.

To be fair, the confusion may not be so much the fault of this Court as it is incomplete and inconsistent application of what this Court has written. In any event, it is long past time for some clarity⁶. **Some simple guiding principles and “tests” are sorely**

⁶ “It is time this Court developed meaningful standards to evaluate legislation challenged under , Sections 21 and 23. Both other legislators and the general public have a right to notice regarding laws to be enacted by the legislature. The reconsideration of these fee and license increases is a small price to pay for maintaining the integrity of and public confidence in both the legislative process and our system of judicial review.” *Westin Crown Plaza Hotel Co. v. King*, 664 SW 2d 2,

needed, tests that restore meaning to Article III, Sections 21 and 23, and result in a better *guarantee that each and every statute only made it to the books because it was truly the will of the majority.*

Summary of the Case

This case questions the constitutionality of the procedures by which the Missouri General Assembly passed Senate Bill 665 in 2016, specifically, whether the clear and undoubted language limiting the bill's purpose in its original title precluded changing the purpose to something broader, and whether such change violated the original purpose and single subject clauses of the Missouri Constitution's Article III, Sections 21 and 23, rendering the resulting statutes unconstitutional. Additionally, the case questions whether *substantive* changes to a bill title is tantamount to changing the purpose of a bill.

At issue is a question critical to the operation of our constitutional republic: Can the people place meaningful, objective limits on the process by which the laws affecting their lives and liberties are made, or should legislators and citizens be left to arbitrary and subjective application of the Constitution and attendant uncertainty?

This Court explained the purpose of Article III, Sections 21 and 23, and it is reasonable to assume that any evaluation of a bill that thwarts that purpose is faulty. This Court provided principles that should be of primary consideration when evaluating procedural challenges to bills:

These constitutional limitations additionally serve "to defeat surprise within the legislative process. [They prohibit] a clever legislator from taking

7-9 (Mo. Banc 1984).

advantage of his or her unsuspecting colleagues by surreptitiously inserting unrelated amendments into the body of a pending bill."

Hammerschmidt v. Boone County, 877 S.W.2d 98, 101 (Mo. Banc 1994).

This Court recognized that the people, not just legislators, are protected by Article III, Sections 21 and 23:

These two provisions provide **the citizens of Missouri** with necessary and valuable legislative accountability and transparency. Emphasis added.

Legends Bank v. State, 361 SW 3d 383 – Mo. Banc 2012.

The trial court's approach to evaluating the challenge to Senate Bill 665 violated these and other precedents and principles clearly established by the Constitution and this Court, and is, therefore, in error.

SUMMARY OF ARGUMENT

The arguments against the constitutionality of SB 665 are simple:

1) The *original* title of Senate Bill 665 clearly declared a purpose that was controlled by "limitation[s]" and "restriction[s]" that "descend[] to particulars," and since "the particulars stated ordinarily become the subject of the act... the act must conform to the title as expressed by the particulars." Although the *title and content* in SB 665 was laser-focused on those particulars before any amendments, the language added by amendments did *not* conform to the original purpose, as limited by the particulars.

By adding such amendments, Missouri Constitution Article III, Sections 21 and / or 23 were violated.

The original title specifically stated that the purpose of the bill was “relating to the establishment of a fee structure for sellers electing to use the AgriMissouri trademark associated with Missouri agricultural products” and the content of SB 665 arguably conformed to that purpose until a House Committee Substitute made significant changes, including provisions for transferable tax credits, inspection fees for fuel, and a substantive change to the bill title that substituted the “particulars” in the bill title with a broad and general statement of purpose: “relating to agriculture.”

SB 665 was further amended on the House floor.

According to the Senate bill summary, after the House amendments, the bill included:

1. QUALIFIED BEEF TAX CREDIT Section 135.679. LF-37.
2. MEAT PROCESSING FACILITY INVESTMENT TAX CREDIT
Section 135.686. LF-41.
3. AGRIMISSOURI TRADEMARK Section 261.235. LF-44.
4. FARM-TO-TABLE PROGRAM Sections 262.960, 262.962, & 348.407.
LF-47.
5. AGRICULTURAL PRODUCT UTILIZATION CONTRIBUTOR TAX
CREDIT & NEW GENERATION COOPERATIVE INCENTIVE TAX
CREDIT Sections 348.430, 348.432, and 348.436. LF-52.

6. PER BARREL MOTOR FUEL INSPECTION FEE Section 414.082.

LF-57.

2) The final version of SB 665 included incongruent *subjects*, listed above, that both differed from the original, *controlling subject* of the bill and from one another in the final version of the bill.

3) Plaintiffs maintain that any amendment that *requires* a substantive change to the title *in order for it* to “fit” under that title, must have changed the purpose of the bill. In other words, the very action of changing the title *to fit an amendment* is a de facto admission by the legislature that they have changed the purpose of a bill.

ARGUMENT

I. Point Relied on I, Count I.

Count I: *The Purpose of SB 665 Was Changed By Amendments And the Purpose of the Finally Passed Version Was Not the Same as the Introduced Version in 'Violation of Missouri Constitution Article III, Section 21.*

The trial court erred in its ruling against Count I, finding that the purpose of SB 665 was not changed by amendment in violation of Article III, Section 21 of the Missouri Constitution, *because* the court used the wrong standard for establishing the original purpose, *in that* it ignored a plethora of authorities that say the “original purpose of a bill is established by the bill's earliest *title* and *contents* at the

time the bill is introduced,” and “[w]here the title of an act descends to particulars, the particulars stated ordinarily become the subject of the act and the act must conform to the title as expressed by the particulars.”

Legends Bank v. State, 361 SW 3d 383, 386 – Mo. Banc 2012

Fire District of Lemay v. Smith, 353 Mo. 807, 184 S.W.2d 593, 596 (Mo. 1945),

State Ex Rel. School District V. Hackmann, 237 S.W. 742 (Mo. 1922)

Fust v. Attorney General, 947 SW 2d 424 (Mo. 1997)

Standard of Review.

Resolution of the issues in this case requires interpretation of Article III, Sections 21 and 23 of the Missouri Constitution. Constitutional interpretation is a question of law and is subject to de novo review. *Farmer v. Kinder*, 89 S.W.3d 447, 449 (Mo. Banc 2002). Article III, Section 23, and presumably, Section 21, are mandatory, not directory. *State v. Miller*, 45 Mo. 495, 498 (1870). Under Rule 55.27(b), a party "moving for judgment on the pleadings admits, for purposes of the motion, the truth of all well-pleaded facts in the opposing party's pleadings." *Craig v. Missouri Department of Health*, 80 S.W.3d 457, 459 (Mo. Banc 2002). "An act of the legislature carries a strong presumption of constitutionality." *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885, 888 (Mo. Banc 2006). Challenges to legislation based on constitutionally imposed procedural limitations are not favored, as in *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994). However, if the act “clearly and undoubtedly violates the constitutional

limitation,” this Court should hold it unconstitutional. *Id.*

Error Preserved for Appellate Review

The Appellants argued to the trial court that the legislature violated Article III, Section 21 of the Missouri Constitution by amending SB 665's title and adding extraneous content in ways that changed the bill's purpose. The Respondents responded that the amendments did not change the bill's purpose. The Trial Court cited deference to the General Assembly, and that 1) “A bill's original purpose can be ascertained without reference to the original title itself,” (LF-184) and 2) erroneously declared the original purpose to be “to promote Missouri's agricultural industry and amend programs administered by the Missouri Department of Agriculture.” (LF-186) 3) The trial Court also failed to address the authorities presented by the Plaintiff that clearly declare the limiting effect of a bill title that descends into particulars and details. Consequently, the Court, below, ruled that the purpose of SB 665 had not been changed. The Appellants timely filed this appeal.

Analysis

A. Missouri Constitution Article III, Section 21 prohibits the legislature from changing the original purpose of a bill.

Missouri Constitution Article III, Section 21 is clear and concise with its mandate that every bill must remain true to its *original* purpose, that is, the bill's purpose *at the point it was filed or introduced*. Any bill whose purpose has changed is, therefore, constitutionally infirm.

“The style of the laws of this state shall be: 'Be it enacted by the General Assembly of the State of Missouri, as follows.' No law shall be passed except by bill, and **no bill shall be so amended in its passage through either house as to change its original purpose**. Bills may originate in either house and may be amended or rejected by the other. Every bill shall be read by title on three different days in each house.” Emphasis added. Missouri Constitution Article III, Section 21.

A bill can constitutionally be introduced with one *general* purpose or subject, as has been made clear by ample authorities. But equally weighty authorities have said that a sponsor may also choose to introduce a bill that has a *narrow purpose or subject*, in which case the title in the bill can “*descend into particulars*” in order to clearly express the *limiting* narrow purpose and prevent straying from it to the general.

What the people *have prohibited* the legislator from doing is having it both ways – he must choose *at the time of the introduction* of his bill whether he will give it a broad, general purpose, or constrain that purpose with particulars expressed in the title.

The reason a legislator might choose one approach over the other was explained by the this Court in 1997:

The original purpose of a bill must, of course, be measured at the time of the bill's introduction. 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.

Emphasis added. *Stroh Brewery Co. v. State*, 954 SW 2d 323, 327 (1997)

Plaintiff would also suggest that there are a number of other motivations for choosing one approach over the other, not the least of which is to *avoid attracting opposition*, as is more likely with a broad purpose. Many hundreds of bills are filed each session, and early, strong, opposition tends to stagnate a bill. Naturally, the best of both worlds, from the point of view of the bill sponsor, would be to introduce a narrowly focused bill on some benign topic and then expand it once it “breaks from the pack” and has legislative momentum.

In either instance, legislators and the public tend to be **caught by surprise or are otherwise mislead** – the very things this Court has stated Article III, Sections 21 and 23 are designed to prevent. Any application of Article III, Sections 21 and 23 must not nullify the people's intent for those sections.

B. Determining the Original Purpose

"[T]o the extent the bill's original purpose is properly expressed in the title to the bill, we need not look beyond the title to determine the bill's subject." *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. Banc 1994)

"We need not look to either the subjects of the Constitution or the contents of the bill in this case because the title of the challenged bill is clear and certain." *Stroh Brewery Co. v. State*, 954 SW 2d 323, 327 (Mo. banc 1997)

The original, introduced, title of SB 665 read,

"AN ACT To repeal section 261.235, RSMo, and to enact in lieu thereof one new section relating to the establishment of a **fee structure** for sellers electing to use the **AgriMissouri trademark** associated with Missouri agricultural products."

Emphasis added. Exhibit A. LF-31.

As with the title, the *contents* of the introduced bill were, appropriately, laser-focused on a **fee structure for sellers electing to use the AgriMissouri trademark**.

"The first step in the original purpose analysis is to identify the original purpose. According to its earliest title and contents..." *Legends Bank v. State*, 361 SW 3d 383, 386 - Mo: Supreme Court 2012.

"The original purpose of a bill is established by the bill's **earliest title and contents at the time the bill is introduced**. The original purpose requirement does not prohibit subsequent additions or changes to legislation. Instead, the restriction is against the introduction of a matter that is not germane to the object of the legislation or that is

unrelated to its original subject”. Emphasis added. Internal citations and quotation marks omitted. *Legends Bank v. State*, 361 SW 3d 383, 386 – Mo. Banc 2012. (Citing *Club Executives*.)

“The second analytical step is to compare the original purpose with the final version...” *Id.* at 386.

Approximately a century of Missouri Supreme Court precedent make the same point: A bill title with language that **descends into specifics and particulars**, *is limited by those specifics and particulars*.⁷

The foundation of these many generations of precedent is the basic principle in statutory construction: *expressio unius est exclusio alterius*: That is, when one or more things of a class are expressly mentioned, others of the same class are excluded.

The original title for SB 665 undoubtedly descended into details and particulars which preclude amendments that are not consistent with those details and particulars. **Any amendment to the title or contents of the bill that goes beyond “a fee structure for sellers electing to use the AgriMissouri trademark” changed the purpose of that bill.**

⁷ An exception might be applied when the bill title is clear about a general purpose and the specifics “are merely descriptive of some of the instrumentalities or means to be employed in effectuating the general purpose of the bill.” See *Graves v. Purcell* 85 S.W.2d 543, 583-584 (Mo. 1935)

C. A century of precedents support that common sense application of Article III, Sections 21 and 23 to SB 665.

Lengthy narrative from the Appellant is not needed. The following five authorities (with many additional internal citations) speak for themselves:

1. *State Ex Rel. School District V. Hackmann*, 237 S.W. 742 (Mo. 1922)

The question is whether the subject, as clearly expressed in the title, is not thereby **confined and restricted by its statement of particulars** so as to exclude the substance of the proviso. The title must not mislead. [*State ex inf. v. Borden*, 164 Mo. l.c. 236, 237; *State v. Great Western* Particulars. [sic] *Coffee Tea Co.*, 171 Mo. l.c. 643.] Though subject-matter in an act be such as might constitutionally be enacted under one title, it cannot be so enacted in a particular act unless it be within the subject "clearly expressed in the title" of such act. [*St. Louis v. Weitzel*, 130 Mo. 616.] **It follows that if the title of an act "descends to particulars" and states such particulars as the subject of the act, then *not* the general subject within which such particulars fall *but* the particulars stated become the subject stated in the title.** In such a case the provisions of the act enactable under such a title must be such as fairly relate to and have a natural connection with, ***not* the general subject which might have been stated *but* the subject which is stated, i.e. the particulars set out in the title.** [*State v. Rawlings*, 232 Mo. l.c. 557, 558; *State v. Sloan*, 258 Mo. l.c. 313, 314; *Booth v. Scott*, 276 Mo. l.c. 22, 23; *Hardware Co. v. Fisher*, 269 Mo. l.c. 278; *State v. Crites*, 277 Mo. 194. An examination of these decisions and authorities, generally, discloses that the rule is but an application of the maxim, *expressio unius exclusio alterius est*; Emphasis added. *Id.* Page 32.

2. *City Of Columbia v. Publ. Serv. Commission* 43 S.W.2d 813 (Mo. 1931)

The general rule of construction is thus stated in 36 Cyc. p. 1029, n. 27:

"The title need not express limitations in the body of the act, **but where the title is restrictive the act must be also.**" *In State ex rel. v. Edwards*, 241 S.W. 945, 950 (Mo. Sup.), we have said that "where the title of an act descends to particulars and details, **the act must conform to the title as thus limited by the particulars and details.**" Emphasis added. *Id.* at Page 45.

3. *Graves v. Purcell* 85 S.W.2d 543, 583-584 (Mo. 1935)

"Where the title to a bill contains comprehensive language followed by particulars of less comprehensive scope there can be no question that as to all details within the scope of the narrower language employed the provisions of **the bill must be confined to the limits of the narrower language contained in the title.** [*State ex rel. v. Hackmann*, 292 Mo. 27, 237 S.W. 742; *State v. Crites*, 277 Mo. 194, 209 S.W. 863.] In some instances the particulars set forth in the title expressly or by necessary implication restrict the meaning and scope of more comprehensive language contained in the title and in such instances **it is clear both upon principle and authority that the provisions of the bill must be confined within the limits of the particulars specified.** [*State ex rel. v. Hackmann*, supra; *Vice v. Kirksville*, 280 Mo. 348, 217 S.W. 77; *Woodward Hardware Co. v. Fisher*, 269 Mo. 271, 190 S.W. 576.] But in instances where the title to the bill descends into particulars which are neither expressly nor by necessary implication restrictive of the general purpose of the bill as set forth in its title, **but are merely descriptive of some of the instrumentalities or means to be employed in effectuating the general purpose** of the bill as declared in its title, there is no constitutional barrier

to the inclusion in the bill of provisions which are germane to and within the scope of the general purpose of the bill as declared in its title and which, although not set forth in the particulars expressed in the title, are not out of harmony with them. [*State ex rel. v. Buckner*, 308 Mo. 390, 272 S.W. 940; *State ex rel. v. Terte*, 324 Mo. 402, 23 S.W.2d 120; *State ex rel. v. Williams*, 232 Mo. 56, 133 S.W. 1; *State ex rel. v. Miller*, 100 Mo. 439, 13 S.W. 677.] Emphasis added. *Id.* at 583-584

Application of the “instrumentalities” logic expressed in *Graves*, which is an *exception to the general rule of particulars*, in some cases may confuse the issue, resulting in misapplication of authorities. For instance, that logic was applied in *Stroh Brewery Co. v. State*, 954 SW 2d 323 (Mo. 1997) by the Supreme Court when it analyzed the title for S.B. 933, “an act to amend chapter 311, RSMo, *by* adding one new section relating to the auction of vintage wine, with penalty provisions.” Emphasis added.

The Court concluded that the word “by” indicated that the particulars following “by” were just an example of what could be a number of means (instrumentalities) for accomplishing the bill's true purpose, that of “amend[ing] chapter 311, RSMo.”

4. *Fire District of Lemay v. Smith*, 353 Mo. 807, 184 S.W.2d 593 (Mo. 1945)

Where the title of an act **descends to particulars, the particulars stated ordinarily become the subject of the act and the act must conform to the title as expressed by the particulars.** Where the title goes into such detail as would reasonably lead to the belief that nothing was included except that which is specified then any matter not specified is not within the title. **Any such matter beyond the title is void** because of Section 28, Article IV of the Constitution. *Hunt v. Armour Co.*, 345 Mo. 677, 136

S.W.2d 312; *Fidelity Adjustment Co. v. Cook*, 339 Mo. 45, 95 S.W.2d 1162; *Graves v. Purcell*, 337 Mo. 574, 85 S.W.2d 543. Emphasis added. *Id.* at 596.

In another case involving fire districts, seventeen years later, the Court found that where the title of a bill describes, specifically, the establishment and incorporation of fire districts, a provision prohibiting any city or village from annexing any part of a fire district is void as outside the title. *State ex rel. Normandy School Dist. v. Small*, 356 S.W.2d 864, 870 (Mo. banc 1962)⁸

5. *Fust v. Attorney General*, 947 SW 2d 424 (Mo. 1997)

Article III, sec. 23 also requires that the subject be "clearly expressed" in a bill's title. This provision may be violated in two ways. **First**, the subject may be **so general or amorphous** as to violate the single subject requirement. See *Hammerschmidt*, 877 S.W.2d at 102 n. 3. Second, the subject may be **so restrictive** that a particular provision is **rejected** because it falls outside the scope of the subject. See *Carmack v. Dir., Missouri Dept. of Agriculture*, 945 S.W.2d 956 (Mo. banc 1997). Emphasis added. *Id.* at 428.

The "clear title" provision, like the "single subject" restriction, was designed to prevent fraudulent, misleading, and improper legislation, by providing that the title should indicate in a general way the kind of legislation that was being enacted. *Vice v. City of Kirksville*, 280 Mo. 348, 358, 217 S.W. 77, 79 (1920). If the title of a bill **contains a particular**

⁸ This example of a violation is from footnote [2] in *Hammerschmidt v. Boone County*, 877 SW 2d 98 (Mo. Banc 1994).

limitation or restriction, a provision that goes beyond the limitation in the title is invalid because such title affirmatively misleads the reader.

Hunt v. Armour & Co., 345 Mo. 677, 679-80, 136 S.W.2d 312, 314 (1940).

Emphasis added. *Id.* at 429.

D. Application of the *Legends* two-step analysis to SB 665.

Again, the original, as filed, title of SB 665 read,

“AN ACT To repeal section 261.235, RSMo, and to enact in lieu thereof one new section relating to the establishment of a **fee structure** for sellers electing to use the **AgriMissouri trademark** associated with Missouri agricultural products.”

Emphasis added. Exhibit A. LF-31.

Applying the common sense reading of Article III, Sections 21 and 23, and a century of precedents, the only conclusion one can draw is that whatever might be claimed to be the “general purpose” of SB 665, it is limited to particulars that must be naturally connected to “a fee structure for sellers electing to use the AgriMissouri trademark.” Such is the controlling purpose of SB 665.

Using the *Legends* analysis, one should simply ask the following questions:

1. Do the various provisions in SB 665 relating to a QUALIFIED BEEF TAX CREDIT “**go beyond** establishment of a **fee structure** for sellers electing to use the **AgriMissouri trademark**”? Section 135.679. LF-37.

2. Do the various provisions in SB 665 relating to a MEAT PROCESSING FACILITY INVESTMENT TAX CREDIT “**go beyond** establishment of a **fee structure**

for sellers electing to use the **AgriMissouri trademark**”? Section 135.686. LF-41.

3. Do the various provisions in SB 665 relating to a FARM-TO-TABLE PROGRAM “**go beyond** establishment of a **fee structure** for sellers electing to use the **AgriMissouri trademark**”? Sections 262.960, 262.962, & 348.407. LF-47.

4. Do the various provisions in SB 665 relating to a AGRICULTURAL PRODUCT UTILIZATION CONTRIBUTOR TAX CREDIT & NEW GENERATION COOPERATIVE INCENTIVE TAX CREDIT “**go beyond** establishment of a **fee structure** for sellers electing to use the **AgriMissouri trademark**”? Sections 348.430, 348.432, and 348.436. LF-52.

5. Do the various provisions in SB 665 relating to a PER BARREL MOTOR FUEL INSPECTION FEE “**go beyond** establishment of a **fee structure** for sellers electing to use the **AgriMissouri trademark**”? Section 414.082. LF-57.

The answer to each of those questions is: Of course they do! The only way to make those various subjects fit in one bill is to craft a very broad purpose for the bill. The Constitution requires that such a purpose be declared when the bill is *introduced*, not “divined” *after* the bill has gone through a legislative make-over.

To argue that those subjects, instead of fitting the *original* title, fit under the *amended* title for SB 665 is to admit that **such amended title changed the original purpose** of the bill.

The only logical conclusion one can draw is that the purpose of the final version of

SB 665, as determined by the title and content of the *final* version, is NOT the same as the purpose of the *introduced* version of that same bill. **The purpose of the bill was changed, which violated Article III, Section 21, and the bill is unconstitutional.**

E. Trial Court Errors

1. The trial court erred by determining the controlling purpose of SB 665 from a source other than the the bill's original title and contents. As proven above, *Hammerschmidt*, and *Stroh* make it clear that when the “original purpose is properly expressed in the title” and when the title is “clear and certain,” the title should be used. *Legends* makes it abundantly clear that it is the original title that should be used to determine the original and controlling purpose of a bill. Contrary to the Trial Court's opinion, SB 665's purpose need not be “divined,” in the words of the Respondents, or otherwise conjured up from some other source, including the final, changed title.

2. The Trial Court erred by declaring the purpose of SB 665 to be “to promote Missouri's agricultural industry and amend programs administered by the Missouri Department of Agriculture.” (LF-186). As shown above in *Hackmann, City Of Columbia, Graves, Lemay, Fust, and Legends*, the controlling purpose of a bill is affected by particulars stated in the *original* title when *particulars and details* are expressed in the title. “[T]he act must conform to the title as thus limited by the particulars and details.” *Fire District of Lemay v. Smith*, 353 Mo. 807, 184 S.W.2d 593 at 596.

3. The Trial Court erred when it applied the “means” or “instrumentalities”

exception from *Stroh* to SB 665 and concluded that its purpose was “to promote Missouri's agricultural industry and amend programs administered by the Missouri Department of Agriculture,” since the title at issue in *Stroh* and that of SB 665 have differing constructions. There is no “by” in the title for SB 665. Furthermore, applying the “instrumentalities” logic to SB 665 consistent with its application in *Stroh* should conclude that the purpose of SB 665 was to “repeal section 261.235,, RSMo,” or arguably amend that section, which deals exclusively with The AgriMissouri Fund, NOT open to amendment an *entire chapter*, as was the case in *Stroh*.

Compare the titles from Senate Bill 933 in *Stroh* to that of SB 665:

“AN ACT to amend **chapter 311**, RSMo, **by** adding one new section relating to the auction of vintage wine, with penalty provisions.”

Emphasis added. S.B.933 from *Stroh*.

"An Act To repeal section 261.235, RSMo, and to enact in lieu thereof one new section relating to the establishment of a fee structure for sellers electing to use the AgriMissouri trademark associated with Missouri agricultural products."

Introduced version of SB 638.

Note that, by the *Stroh* Court's logic, the title gives notice that all of Chapter 311 (Missouri's liquor control law) is targeted for amendment, but SB 665 stipulates a specific section to repeal and replace, not a whole chapter. The *Stroh* Court explained:

The use of the word "by" in the title of S.B. 933 is admittedly troublesome. While it might have been meant to convey exclusivity, such a construction

is not clearly and undoubtedly so. When alternative readings of a statute are possible, we must choose the reading that is constitutional. *Spradlin v. City of Fulton*, 924 S.W.2d 259, 263 (Mo. banc 1996). By including the words, "an act to amend chapter 311, RSMo," without any further language of specific limitation, such as "for the sole purpose of," S.B. 933 gave fair notice to all concerned that the amendment of Missouri's liquor control law, chapter 311, was the purpose of S.B. 933.

Stroh at 326.

If one is inclined to use *Stroh* as an excuse to nullify numerous of authorities about particulars and details in bill titles handed down over numerous generations, then ALL of the *Stroh* logic should apply. As applied to SB 665, the purpose of the bill would only relate to "The AgriMissouri Fund", since that is the exclusive subject of section 261.235, RSMo,"

Of course, the many other amendments to SB 665 fall outside that purpose.

II. Point Relied on II, Count II.

Count II: The Finally Passed Version of SB 665 Violates The Single Subject Rule in Missouri Constitution Article III, Section 23.

The trial court erred in its ruling against Count II, finding that the final version of Senate Bill 665 did not contain more than one subject in violation of Article III, Section 23 of the Missouri Constitution, *because* it incorrectly identified the controlling subject, *in that it* improperly relied on authorities that did not take into account situations in which the purpose or subject of a bill had been changed, and did not rely on authorities that say the controlling subject of a bill is determined by the introduced version of the bill.

Hammerschmidt v. Boone County, 877 S.W.2d 98, 102 (Mo. Banc 1994)

Legends Bank v. State, 361 SW 3d 383, 390 (Mo. 2012).

State Ex Rel. School District V. Hackmann, 237 S.W. 742 (Mo. 1922)

Standard of Review.

Resolution of the issues in this case requires interpretation of Article III, Sections 21 and 23 of the Missouri Constitution. Constitutional interpretation is a question of law and is subject to de novo review. *Farmer v. Kinder*, 89 S.W.3d 447, 449 (Mo. Banc 2002). Article III, Section 23, and presumably, Section 21, are mandatory, not directory. *State v. Miller*, 45 Mo. 495, 498 (1870). Under Rule 55.27(b), a party "moving for judgment on

the pleadings admits, for purposes of the motion, the truth of all well-pleaded facts in the opposing party's pleadings." *Craig v. Missouri Department of Health*, 80 S.W.3d 457, 459 (Mo. Banc 2002). "An act of the legislature carries a strong presumption of constitutionality." *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885, 888 (Mo. Banc 2006). Challenges to legislation based on constitutionally imposed procedural limitations are not favored, as in *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994). However, if the act "clearly and undoubtedly violates the constitutional limitation," this Court should hold it unconstitutional. *Id.*

Error Preserved for Appellate Review

The Appellants argued to the trial court that the legislature violated Article III, Section 23 of the Missouri Constitution by adding subject-matter that was not "fairly relate[d]" to or had a "natural connection" with the controlling subject, and that the additions were not "incidents or means to accomplish [Senate Bill 665's] purpose." The Respondents responded that the final bill contained only one subject. The trial court ruled in favor of the Respondents, erroneously saying the single core subject of the bill was "relating to agriculture," (LF-188) and that each of the provisions in SB 665 "are geared towards promoting Missouri's agricultural industry and modifying certain programs administered by the Department of Agriculture." The Appellants timely filed this appeal.

Analysis

“No bill shall contain more than one subject which shall be clearly expressed in its title, except bills enacted under the third exception in section 37 of this article and general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated.” Emphasis Added. Missouri Constitution Article III, Section 23.

"The dispositive question in determining whether a bill contains more than one subject is whether all provisions of the bill fairly relate to the **same subject, have a natural connection therewith, or are incidents or means to accomplish its purpose**." Further, "The determination of whether a bill violates the Article III, Section 23 single subject requirement is made concerning the bill **as it is finally passed**." Emphasis Added. *Stroh Brewery Co.*, 954 S.W.2d at 327.

A. All the elements in the final version of a bill must conform to the subject or purpose established by the *introduced* version of a bill to comply with Article III, Section 23.

As this Court has pointed out, rather than comparing the various provisions of the final bill to one another, a proper analysis **compares each provision to the “general core purpose” of the bill, as set out in the title.** *Legends Bank v. State*, 361 SW 3d 383, 390 (Mo. 2012) As discussed above, especially when the original bill title descends into “particulars and details” and was subsequently changed by amendments, **that core**

purpose must be determined from the original title and content, not a title that has been revised to suit a *new*, broader subject.

The Respondents and Trial Court say that, “In analyzing a single-subject constitutional claim, the 'bill as enacted is the only version relevant to the single subject requirement.'" *Missouri State Med. Ass'n v. Missouri Dep't of Health*, 39 S.W.3d 837 at 840. They fail, however, to take into account that the final bill's title does not *properly express* SB 665's **original** purpose. "[T]o **the extent** the bill's *original* purpose is **properly expressed** in the title to the bill, we need not look beyond the title to determine the bill's subject." Emphasis added. *Hammerschmidt* at 102. But the converse must be accepted as true, too, that is, **if bill's original purpose is not properly expressed in the final title to the bill, we do need to look beyond the final title to determine the bill's subject.**

It should be noted that this Court often makes it clear that “purpose” and “subject” are virtually interchangeable terms for Article III analysis purposes, as is the case in the authorities cited, above.

Although the *final* bill title read, “AN ACT To repeal sections 135.679, 261.235, 262.960, 262.962, 348.407, 348.430, 348.432, 348.436, and 414.082, RSMo, and to enact in lieu thereof ten new sections relating to agriculture.”, “agriculture” is NOT the appropriate subject to which each matter of the final bill should be compared.

As was amply demonstrated above, “[i]t follows that if the title of an act 'descends to particulars' and states such particulars as the subject of the act, then not the general

subject within which such particulars fall but the particulars stated become the subject stated in the title.” *Hackmann* at 32. The **“particulars” expressed in the *original* title dictate the controlling subject for SB 665.**

That leaves us with a similar set of questions as those posed in the original title evaluation: Do all of the following provisions bill fairly relate to the the *controlling* subject and purpose of SB 665 – **“the establishment of a fee structure for sellers electing to use the AgriMissouri trademark,”** or have a natural connection therewith, or are the following provisions incidents or means to accomplish that purpose?

1. QUALIFIED BEEF TAX CREDIT Section 135.679. LF-37.
2. MEAT PROCESSING FACILITY INVESTMENT TAX CREDIT
Section 135.686. LF-41.
3. FARM-TO-TABLE PROGRAM Sections 262.960, 262.962, &
348.407. LF-47.
4. AGRICULTURAL PRODUCT UTILIZATION CONTRIBUTOR
TAX CREDIT & NEW GENERATION COOPERATIVE
INCENTIVE TAX CREDIT Sections 348.430, 348.432, and
348.436. LF-52.
5. PER BARREL MOTOR FUEL INSPECTION FEE “ Section
414.082. LF-57.

The obvious answer is “no.”

They are, in fact, subjects distinct from the controlling subject of SB 665, making that bill a violation of Article III, Section 23.

B. Trial Court Errors on Count 2.

The Trial Court erred by misidentifying the controlling core subject in SB 665 and using it as the basis for comparison to the various subjects of the bill. As demonstrated above, because the original title “descend[ed] [in]to particulars,” those particulars are the appropriate core and controlling subject of the act. The Trial Court should have measured each element of the bill against **“the establishment of a fee structure for sellers electing to use the AgriMissouri trademark,”** and then found that most of the matters added through amendment were not the same subject or purpose as the controlling subject.

III. Point Relied on III, Count III.

Count III: The Title for SB 665 Was Changed in Violation of Missouri Constitution Article III, Sections 21 and 23.

The trial court erred in dismissing Count III, saying that a claim that a bill's title was changed unconstitutionally is not a recognized claim under Missouri law, *because* there is no prohibition against raising a novel claim, and it relied on faulty authorities, *in that* the Supreme Court has been mistaken about what components are part of a bill.

Lincoln Credit Co. v. Peach, 636 SW 2d 31, 38 (banc 1982)

State ex rel. Aull v. Field, 24 S.W. at 755 (Mo.banc 1894).” *Id.* at 38.

Fust v. Attorney General, 947 SW 2d 424 (Mo. 1997)

Standard of Review.

On information and belief, the claim raised in Count III is one of first impression.

Resolution of the issues in this case requires interpretation of Article III, Sections 21 and 23 of the Missouri Constitution. Constitutional interpretation is a question of law and is subject to de novo review. *Farmer v. Kinder*, 89 S.W.3d 447, 449 (Mo. Banc 2002). Article III, Section 23, and presumably, Section 21, are mandatory, not directory. *State v. Miller*, 45 Mo. 495, 498 (1870). Under Rule 55.27(b), a party "moving for judgment on the pleadings admits, for purposes of the motion, the truth of all well-pleaded facts in the

opposing party's pleadings." *Craig v. Missouri Department of Health*, 80 S.W.3d 457, 459 (Mo. Banc 2002). "For the purposes of reviewing a motion to dismiss, this Court assumes that all of the plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom." *Weber v. St. Louis Cnty.*, 342 S.W.3d 318, 321 (Mo. Banc 2011). "An act of the legislature carries a strong presumption of constitutionality." *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885, 888 (Mo. Banc 2006). Challenges to legislation based on constitutionally imposed procedural limitations are not favored, as in *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994). However, if the act "clearly and undoubtedly violates the constitutional limitation," this Court should hold it unconstitutional. *Id.*

Error Preserved for Appellate Review

The Appellants argued to the trial court that the legislature violated Article III, Sections 21 and 23 of the Missouri Constitution by making *substantive* changes to the original title. The Respondents responded that there is no prohibition to changing the title and that the claim was not recognized under Missouri law. The trial court ruled in favor of the Respondents, saying that "The Missouri Constitution does not prohibit the General Assembly from changing a bill's title during the legislative process. Moreover, the title of an act, though performing a most important function, is still not strictly a part of the act proper." Internal quote marks and citations omitted. The Appellants timely filed this appeal.

Analysis

A. In Missouri, in 2018, the title is, indeed, part of the bill.

The terms “act” and “bill” are sometimes confused. A bill is a vehicle used to implement an act – the act is a *component* of the bill. “Act” and “bill” can not always be used interchangeably.

Like the act, the *title* of the act is a *component* of the bill, **but confusion exists as the result of improper citations from old Supreme Court opinions.**

The Missouri Supreme Court, in *Lincoln Credit Co. v. Peach*, 636 SW 2d 31, 38 (Banc 1982), accurately explained, “It is noteworthy that the title of an act, 'though performing a most important function, is still not strictly a part of the *act* proper.' *State ex rel. Aull v. Field*, 119 Mo. 593, 609, 24 S.W. 752, 755 (Mo. Banc 1982.)” Emphasis added, internal quotes in original.

But, in the same opinion, the *Lincoln Credit* court, citing the same authority (but not quoting it this time), also stated, “The title is not a part of the *bill* and so can be changed without violating Art. III, Section 21. See, *State ex rel. Aull v. Field*, 24 S.W. at 755 (Mo. Banc 1894).” *Id.* at 38.

The *Lincoln Credit* court misapplied the words of the *Aull* court – in *Aull* they accurately said that the title is not part of the act, NOT that the title is not part of the bill. That error has been propagated in some subsequent opinions.

Of course, it could be possible that in 1894 bills were constructed differently than they are now. Perhaps, in 1894, the title *wasn't* part of the bill.

In any event, in 2018 it is clear that the General Assembly considers the title of an act in a bill to be part of the bill. Proof can be found in many amendments to bills in which the title is clearly referred to as part of the bill. House Amendment 1 for SB 638, which was passed in the same legislative session as SB 665, is one such example:

AMEND Senate Committee Substitute for **Senate Bill** No. 638, Page 1, In the Title, Line 3, by deleting the "civics education" and inserting in lieu thereof the phrase "elementary and secondary education"; and

Further amend **said bill** and page. Section A, Line 3, by inserting after all of said section and line the following:

<body of amendment omitted>

Further amend **said bill** by amending the title, enacting clause, and intersectional references accordingly.

The title, enacting clause, and intersectional references, as well as the act, itself, are undoubtedly *component parts* of the "bill."

It should be noted that Article III, Section 21, prohibits changing the purpose of a "bill," and Article III, Section 23, says the one subject of a "bill" must be clearly expressed in "its" title. As part of the "bill" those things must apply to the title as much as the other components of the bill.

B. A change to the title's expressed purpose IS a change to the bill's purpose.

Logic dictates that, if the determination of the purpose of a bill results all or in part *from an evaluation of the title*, any change to the title *significant enough to alter the conclusion of such an evaluation* can not be permitted under Article III, Section 21.

When an amendment within the body of an act will only fit the act's title if the title is changed, that amendment changes the purpose of the bill or falls outside the controlling subject of the bill.

Court opinions have, at times, been confusing and difficult to apply to newly drafted legislation. A more objective test of legislative procedures is needed, especially for the benefit of the average legislator and the citizen watching over his or her representatives.

Plaintiff maintains that any amendment that *requires* a substantive change to the title, *in order for it to* “fit” under that title, must have changed the purpose of the bill. In other words, the very action of changing the title *to fit an amendment* is a de facto admission by the legislature that they have changed the purpose of a bill.

The very act of changing the title of SB 665 was changing its purpose, in violation of Article III, Section 21, and changing the purpose of a bill is clearly recognized as an unconstitutional act of the legislature.

Count III has, from the beginning of this lawsuit, averred an Article III, Section 23 violation resulting from a substantive change to SB 665's title. On further reflection, though, perhaps the Appellant should have characterized that as a “clear title” violation.

That seems to be what this Court did in *Fust v. Attorney General*, 947 SW 2d 424 (Mo. 1997), that is call the sort of provisions that **“goes beyond the limitation in the title is invalid** because such title affirmatively misleads the reader.”

Article III, sec. 23 also requires that the subject be “clearly expressed” in a

bill's title. This provision may be violated in two ways. **First**, the subject may be **so general or amorphous** as to violate the single subject requirement. See *Hammerschmidt*, 877 S.W.2d at 102 n. 3. Second, the subject may be **so restrictive** that a particular provision is **rejected** because it falls outside the scope of the subject. See *Carmack v. Dir., Missouri Dept. of Agriculture*, 945 S.W.2d 956 (Mo. banc 1997). Emphasis added. *Id.* at 428.

The "clear title" provision, like the "single subject" restriction, was designed to prevent fraudulent, misleading, and improper legislation, by providing that the title should indicate in a general way the kind of legislation that was being enacted. *Vice v. City of Kirksville*, 280 Mo. 348, 358, 217 S.W. 77, 79 (1920). If the title of a bill **contains a particular limitation or restriction, a provision that goes beyond the limitation in the title is invalid** because such title affirmatively misleads the reader.

Hunt v. Armour & Co., 345 Mo. 677, 679-80, 136 S.W.2d 312, 314 (1940). Emphasis added. *Id.* at 429.

D. Trial Court Errors on Count III.

The Trial Court erred by refusing to recognize Appellants' claim that a substantive change to a bill's title, one which effectively changed the stated purpose or core subject definition of the bill, is actually a claim of a change of purpose, which is clearly justiciable. The claim should not have been dismissed, but instead given full consideration.

SEVERANCE

The statutory severability provision, section 1.140, RSMo Supp. 2011, applies only when a provision within a bill is unconstitutional in substance. See *Legends Bank v. State* footnote 5.

Section 1.140 severance does not apply to this action, nor should the judicially created doctrine of severance sometimes applied to procedural challenges.

Legislators, especially bill sponsors, have much to gain and little to lose by allowing their colleagues to “load up” bills with non-germane amendments if they are confident that at least the original bill will survive a procedural challenge. So, in addition to the separation of powers issues presented when a court presumes to know how the legislature *would* have voted on SB 665 without the unconstitutional amendments, the court is actually “enabling” mischief when it practices judicial severance.

Because the Defendants, below, have neither alleged nor “proven beyond a reasonable doubt” the the legislature would have passed the bill without the unconstitutional amendments, the entire bill must be struck.

Because of the difference between substantive constitutional violations and procedural constitutional violations, this Court uses different standards when evaluating whether invalid provisions may be severed. For substantive violations, this Court applies section 1.140 to analyze whether severance is appropriate. On the other hand, when evaluating a procedural constitutional violation, **the doctrine of judicial severance is applied and severance is only appropriate when this Court is "convinced beyond a reasonable doubt" that the legislature would have passed the bill without**

the additional provisions and that the provisions in question are not essential to the efficacy of the bill.

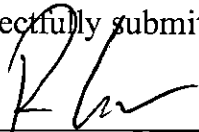
Emphasis added. *Missouri Roundtable For Life, et. al. v. State of Missouri*, 396 S.W.3d 348, 353 (Mo.banc. 2013) quoting, *Hammerschmidt*, at 103-104.

CONCLUSION

In the words of Judge Welliver, “is time this Court developed meaningful standards to evaluate legislation challenged under, Article III, Sections 21 and 23. Both other legislators and the general public have a right to notice regarding laws to be enacted by the legislature. The reconsideration of these fee and license increases is a small price to pay for maintaining the integrity of and public confidence in both the legislative process and our system of judicial review.” *Westin Crown Plaza Hotel Co. v. King*, 664 SW 2d 2, 7-9 (Mo. Banc 1984).

Progress has been made with *Hammerschmidt*, *Legends*, and even *LeBeau* (on standing), but there is more work to do. Appellants ask the Court to reverse the trial court, order that Senate Bill 665 be declared unconstitutional in its entirety, and to also establish some clear, bright-line, objective tests that inform legislators and the public about the limits on legislative power. For instance, a presumption that any amendment that will not fit under the original, introduced bill title is not germane to the bill.

Respectfully submitted,



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PLAINTIFF / APPELLANT

CERTIFICATE OF COMPLIANCE AND CERTIFICATE OF SERVICE

I certify that a copy of the above Initial Brief of Appellants was served by email on October 5, 2018, to all parties of record.

I also certify that the foregoing brief complies with the limitations in Rule Nos. 55.03, 84.06(b) and that the brief contains 9733 words.



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