

SC97132

IN THE SUPREME COURT OF MISSOURI

RONALD J. CALZONE,

Appellant,

v.

**INTERIM COMMISSIONER OF THE DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION ROGER DORSON, et al.,**

Respondents.

Appeal from the Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Circuit Judge

BRIEF OF RESPONDENTS

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JURISDICTIONAL STATEMENT

This appeal challenges the constitutionality of the statutes contained in Senate Bill 638 (2016). Thus, this appeal falls within the scope of the Supreme Court's exclusive jurisdiction. Mo. Const. Art. V., § 3.

STANDARD OF REVIEW

As the Circuit Court granted Respondents' Motion for Judgment on the Pleadings and Motion to Dismiss, the Supreme Court's review of the case is *de novo*. See *Claudia Lee & Assocs. v. Kansas City Bd. of Zoning Adjustment*, 489 S.W.3d 802, 809 (Mo. App. W.D. 2016) (holding that a grant of judgment on the pleadings is reviewed *de novo*); *Reynolds v. Diamond Foods & Poultry, Inc.*, 79 S.W.3d 907, 909 (Mo. banc 2002) (holding that a grant of a motion to dismiss is reviewed *de novo*). Furthermore, because this case involves the constitutionality of statutes, this Court "applies *de novo* review to questions of law decided in court-tried cases." *Pearson v. Koster*, 367 S.W.3d 36, 43 (Mo. banc 2012).

In addition, constitutional claims against a bill's passage are strongly disfavored by the courts, and therefore courts are to "interpret[] procedural limitations liberally and will uphold the constitutionality of a statute against such an attack unless the act clearly and undoubtedly violates the constitutional limitation." *Hammerschmidt v. Boone Cty.*, 877 S.W.2d 98, 102 (Mo. banc 1994).

STATEMENT OF FACTS

Respondents supplement Appellant’s Statement of Facts pursuant to Rule 84.04(f) for the purpose of completeness.

Senate Bill 638 was introduced on January 6, 2016, in the Missouri Senate with the title “An Act to repeal section 170.011, RSMo¹, and to enact in lieu thereof two new sections relating to civics education.” (LF 28). The bill proposed to amend § 170.011 and create a new § 170.345.

On April 14, 2016, the Senate third read and passed the Senate Committee Substitute for S.B. 638 (“S.C.S.”), which included two Senate amendments. (LF 270). The S.C.S., with its two Senate amendments, was then perfected by the Senate and sent to the House of Representatives. On May 4, 2016, the House third read and passed the bill, which included several House amendments. (LF 119-54, 270).

On May 5 and 6, 2016, each chamber appointed members of a conference committee to reconcile the differences between the Senate and House versions of S.B. 638. (LF 270). On May 11, 2016, the conference committee approved a Conference Committee Substitute for S.B. 638 (“C.C.S.”). (LF 35, 271). The committee gave the C.C.S. the title “An Act to repeal sections 160.400, 160.403, 160.405, 160.410, 160.415, 160.417, 160.545, 161.216, 162.073, 162.261, 162.531, 162.541, 162.720, 163.031, 167.131, 167.241, 170.011, 170.310, 171.021, 173.750, RSMo, and to enact in lieu thereof twenty-nine new sections

¹ Unless otherwise noted, all statutory references are to RSMo (2000) as supplemented and as amended by S.B. 638.

relating to elementary and secondary education, with an effective date for a certain section.” (LF 35, 271). The C.C.S. contained modified versions of the two statutes originally included in the introduced version of the bill: §§ 170.011 and 170.345. (LF 35). The House third read and passed the C.C.S. that same day. (LF 271).

The next day, on May 12, 2016, the Senate truly agreed to and finally passed the bill as amended by the C.C.S. (LF 35, 271). The Governor signed S.B. 638 into law on June 22, 2016. (LF 271).

On May 7, 2017, Calzone filed suit in the Circuit Court alleging that the bill as finally passed violated the Missouri Constitution’s original-purpose and single-subject requirements and that the General Assembly impermissibly and substantively changed the bill’s title. (LF 11). The parties filed dispositive motions, and on March 27, 2018, the Circuit Court granted Respondents’ Motion to Dismiss and Motion for Judgment on the Pleadings. (LF 269). Calzone filed his appeal on May 3, 2018. (LF 281).

SUMMARY OF THE ARGUMENT

This case presents a variety of procedural constitutional challenges against the General Assembly's passage of S.B. 638 in 2016, which relates to elementary and secondary education. Specifically, Calzone claims that S.B. 638 violates Article III, § 21 because the enacted version of the bill differs from its original purpose when introduced in the General Assembly; that it violates Article III, § 23 because it contains more than one subject; and that it violates both §§ 21 and 23 of Article III because the General Assembly substantively changed the bill's title during the legislative process. The Circuit Court correctly applied this Court's jurisprudence to hold that S.B. 638 does not clearly and undoubtedly violate the Missouri Constitution's procedural limitations on legislation.

S.B. 638's original purpose of promoting and regulating elementary and secondary education in Missouri did not change during its journey through the General Assembly. That overarching purpose is evident from a plain reading of the statutes originally included in S.B. 638 at the time of its introduction. Calzone's original-purpose argument turns on the words contained in the bill's original title. However, this Court has repeatedly held that a bill's title upon introduction does not define a bill's purpose. *See McEuen ex rel. McEuen v. Missouri State Bd. of Educ.*, 120 S.W.3d 207, 210 (Mo. banc 2003). Rather, the General Assembly may amend bills during the normal legislative process, so long as the amendments advance the bill's broader, "overarching purpose." *Id.* The Circuit Court correctly held that all of S.B. 638's education-related amendments are germane to the bill's original purpose.

S.B. 638 also has one permissible core subject—elementary and secondary education—which can easily be found in the bill’s final title. In addition, all of the bill’s provisions relate to elementary and secondary education. This Court in *Akin v. Dir. of Revenue* confirmed that “education” is a permissible single subject under Article III, § 23. 934 S.W.2d 295, 301 (Mo. banc 1996). In that same case, this Court held that changes to Missouri’s tax code did not violate the single-subject rule because at least some revenue generated from the tax increases would fund education programs. *Id.* A plain reading of S.B. 638 reveals that each of the bill’s provisions relate to elementary and secondary education.

Finally, the Circuit Court correctly dismissed Count III of Calzone’s Petition, which on appeal Calzone acknowledges is a novel claim that seeks to prohibit the General Assembly from making substantive changes to a bill’s legislative title. This Court has repeatedly affirmed that a bill’s title is not part of the bill itself. *See, e.g., Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 38 (Mo. banc 1982). And nothing in the plain text of the Missouri Constitution authorizes a cause of action based only on changes to a bill’s title.

The Circuit Court carefully applied this Court’s Article III jurisprudence, correctly holding that S.B. 638 does not clearly and undoubtedly violate the Missouri Constitution’s procedural limitations. This Court should affirm the judgment below.

ARGUMENT

I. S.B. 638’s original purpose of promoting and regulating elementary and secondary education did not change during the bill’s passage through the General Assembly, and the Circuit Court correctly analyzed the bill using the proper standard of review for original-purpose challenges. (Responding to Appellant’s Point Relied On I).

Calzone’s challenge asks this Court to establish a new test for determining a bill’s original purpose—that it be limited and defined by the words in the bill’s original title. But adopting this test would not only overturn the Circuit Court’s careful analysis of S.B. 638, it would destabilize this Court’s established Article III jurisprudence. This Court has squarely addressed Calzone’s argument in previous cases, holding that “[a] bill’s original purpose is not limited to what is stated in the bill’s original title.” *Jackson Cty. Sports Complex Auth. v. State*, 226 S.W.3d 156, 160 (Mo. banc 2007). Moreover, this Court has time and again held that the General Assembly can extend or limit the scope of a bill during the legislative process and can even include entirely new matter so long as it is germane to the bill’s overarching purpose. *See McEuen*, 120 S.W.3d at 210; *Missouri State Medical Ass’n v. Missouri Dept. of Health*, 39 S.W.3d 837, 840 (Mo. banc 2001). This Court should apply the well-established framework from its original-purpose caselaw and hold that S.B. 638’s amendments are germane to the bill’s original purpose of promoting and regulating elementary and secondary education in Missouri.

- A. A bill’s original purpose is determined from a broad inquiry into the overarching objectives of the bill, and it is not limited and defined by the words in its initial legislative title.**

Article III, § 21 states that “no bill shall be amended in its passage . . . as to change its original purpose.” Constitutional claims against a bill’s passage are strongly disfavored by the courts, and therefore courts are to “interpret[] procedural limitations liberally and will uphold the constitutionality of a statute against such an attack unless the act clearly and undoubtedly violates the constitutional limitation.” *Hammerschmidt v. Boone Cty.*, 877 S.W.2d 98, 102 (Mo. banc 1994). Courts must presume that the legislature enacted a constitutional bill and show a great deal of deference towards the legislative process. *Id.*

Courts determine a bill’s original purpose by looking to the bill at the time of its introduction in the General Assembly. *Missouri State Med. Ass’n*, 39 S.W.3d at 839. The original purpose may be ascertained without referring to the bill’s original title. As this Court has held, “the Constitution does not require that the original purpose be stated anywhere, let alone in the title as introduced.” *Id.* In fact, even when a bill’s original title includes the specific statutes to be amended or repealed, the bill’s original purpose is “not necessarily limited by specific statutes referred to in the bill’s original title or text.” *McEuen*, 120 S.W.3d at 210 (Mo. banc 2003).

Under this Court’s precedent, the proper inquiry goes beyond the words in a bill’s title. And it goes beyond even the subject matter included in the statutes of the bill at introduction. The original purpose of a given bill is “not narrowly limited . . . to the subject matter of the specific statutes referenced in the original text.” *Jackson Cty. Sports Complex*

Auth., 226 S.W.3d at 161. This Court instead focuses on the larger objectives that the bill endeavored to accomplish. *See, e.g., Stroh Brewery Co. v. State*, 954 S.W.2d 323, 325-26 (Mo. banc 1997). A bill’s “[o]riginal purpose is the general purpose, not the mere details through which and by which that purpose is manifested and effectuated.” *Missouri State Med. Ass’n*, 39 S.W.3d at 839 (internal quotations and citations omitted).

An analysis that probes the objectives of a bill is consistent with the original understanding of Article III, § 21. Article III, § 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 Hospital Service, Inc. of Missouri v. Frappier*, 681 S.W.2d 925, 929 (Mo. banc 1984). Rather, the goal of Article III, § 21 is to prevent “the introduction of matter that is not germane to ***the object of the legislation*** or that is unrelated to its original subject. Alterations that bring about an extension or limitation of the scope of the bill are not prohibited; even new matter is not excluded if germane.” *Stroh*, 954 S.W.2d at 325-26 (emphasis added).

Courts may use a bill’s original title as an aid in determining the title, but the analysis does not start and end there, as Calzone advocates. *See App. Br.* at 10-11. This Court in *Legends Bank v. State* did state that a bill’s original purpose is “established by the bill’s earliest title and contents,” 361 S.W. 3d 383, 386 (Mo. banc 2012), but the Court was merely referring to the focus on the version of the bill in the analysis—the introduced version, not the enacted version. Nothing in the *Legends Bank* opinion suggests that this Court overruled decades of precedent of engaging in a deeper analysis of a bill’s purpose. Indeed, the original-purpose analysis in *Legends Bank* focused on the addition of content

that was clearly not germane to the bill's overarching purpose, such as the memorable keys-to-the-Capitol-Dome provision. *Id.* at 386-87. Calzone takes *Legends Bank* a step too far by limiting a bill's original purpose to the words that a legislator chose to place in the bill's title.

B. Each of S.B. 638's provisions relate to the bill's original purpose of promoting and regulating elementary and secondary education in Missouri.

Each statute amended by S.B. 638 relates to the bill's overarching original purpose, which is to promote and regulate elementary and secondary education in Missouri. Calzone does not identify a specific statute in S.B. 638 that he claims violates the change-of-purpose rule. It is not perfectly clear whether Calzone contends that all statutes other than the two included in the as-introduced version violate the rule, given that his argument turns on defining and limiting the bill's purpose by the words included in the first legislative title—"civics education." *See* App. Br. at 26-27, 35. This Court should apply its well-established Article III jurisprudence and properly determine S.B. 638's original purpose by considering the overarching objectives of the bill and not by limiting the purpose to two words that appeared in the initial legislative title.

S.B. 638's original purpose can be reasonably characterized as promoting and regulating education in Missouri. The terms in S.B. 638's title as introduced—repealing one statute and enacting two new statutes relating to civics education—serve that broader purpose. And so, too, do each of the 29 statutes ultimately created or amended by S.B. 638. Each provision in the bill is an additional way to promote and regulate elementary

and secondary education in Missouri. These provisions serve the bill's overarching purpose by focusing on three key areas: curriculum offerings and quality of educational services; charter schools; and school board governance.

First, the enacted bill contained 15 new or amended statutes related to curriculum offerings and quality of educational services. These statutes concern plans to assist students unprepared to enter college or the workforce (§§ 167.903 and 167.905); requirements concerning a state report that addresses remedial education and the preparedness of students entering college (§ 173.750); guidelines and resources for supporting students with dyslexia and related learning disabilities (§§ 167.950 and 633.420); a requirement that secondary schools teach cardiopulmonary resuscitation training (§ 170.310); school district requirements for maintaining programs for gifted students (§§ 162.720 and 163.031); school district requirements for promoting civics in the classroom (§§ 170.011, 170.345, 170.350, and 171.021); requirements for DESE to provide resources to school districts regarding trauma-informed approaches to understanding symptoms of trauma (§§ 161.1050 and 161.1055); and a requirement that DESE develop a quality assurance report for early learning programs (§ 161.217).

Second, the enacted bill contained 10 new or amended statutes regarding charter schools. These statutes concerned charter school curriculum offerings (§ 160.545), funding and state-aid requirements (§§ 160.415 and 160.417), and certification and application requirements (§§ 160.400, 160.403, 160.405, 160.408, 160.410, 167.131, and 167.241).

Third, as to school board governance, the enacted bill amended four existing statutes. Two of these statutes concern filling school board vacancies (§§ 162.073 and

162.261) and two concern requirements for the secretary of a school board to execute a surety bond (§§ 162.531 and 162.541).

The promotion and regulation of elementary and secondary education in Missouri is imbued throughout the original and final versions of S.B. 638. By amending requirements for the civics examination, the original bill promotes and regulates elementary and secondary education in Missouri. And by new curriculum offerings, programs to assist students, reports that monitor educational quality in schools across the state, certification and funding requirements for charter schools, and the governance of local school boards, promoting and regulating of elementary and secondary education in Missouri pervades the enacted version of S.B. 638. As this Court held in *Westin Crown Plaza Hotel*, “these later amendments merely changed the details through which the original purpose was to be manifested and effectuated. The additions, therefore, were not unconstitutional.” 664 S.W.2d at 6. The General Assembly’s amendments to S.B. 638 do not clearly and undoubtedly violate the constitutional limitation on changes to a bill’s original purpose.

C. This Court has regularly affirmed the constitutionality of bills similar to S.B. 638 against original-purpose attacks.

S.B. 638 is similar to the bills upheld as constitutional in this Court’s original-purpose jurisprudence. For example, in *St. Louis Cty. v. Prestige Travel, Inc.*, 344 S.W.3d 708 (Mo. banc 2011), this Court considered a bill related to taxation. When introduced in the General Assembly, the bill’s title read, “relating to city sales taxes.” *Id.* at 715. During the legislative process, the bill expanded to include provisions that created a new political

subdivision taxing district, authorized the district to impose new taxes to fund the district, and granted certain political subdivisions the authority to contract with each other to share tax revenue. *Id.* Reflecting these new provisions, the bill’s final title was broadened to read, “relating to taxes.” *Id.* This Court did not strike down the bill even though the new provisions did not strictly relate to *city sales taxes*. Rather, this Court held that the changes were permissible because the bill’s original purpose was to regulate taxes generally, and the “[r]egulation of taxes was also the purpose of the final version of the bill.” *Id.*

Similarly, in *McEuen*, this Court considered education-related legislation that was originally introduced as a bill “relating to resolution conferences.” 120 S.W.3d at 209. New statutes in the bill addressed only the discipline of students with disabilities and the rights of parents to challenge through judicial review the assignment of their children to special education programs. Before its passage, the bill was amended to include new provisions addressing a much broader range of educational services for students with disabilities. Accordingly, the General Assembly amended the title to “relating to the appropriate educational placement of students.” *Id.* This Court reasoned that the General Assembly’s amendments to the bill’s content and title did not change the bill’s original purpose, which this Court determined was “to address the educational placement of special education students[.]” *Id.* at 210.

And in *Jackson County Sports Complex Authority* this Court made clear that courts should search beyond the words in the bill’s original title and provisions to find the bill’s overarching purpose. The bill in *Jackson County Sports Complex Authority* originally included 16 provisions mostly dealing with the duties and salaries of county officials and

an original title of “relating to county government.” 226 S.W.3d at 160-61. Though the bill’s original provisions were limited to the salaries and duties of county officials, this Court found that the original purpose was broader—regulating “political subdivisions” in a larger sense. This Court emphasized *McEuen*’s holding that the bill’s original purpose was not defined by the words in the bill’s initial title and reasoned that the bill’s “purpose was not narrowly limited, as the trial court held, to the subject matter of the specific statutes referenced in the original text.” *Id.* at 161. Hence, this Court upheld an amendment that imposed competitive bidding requirements on sports complex authorities, which is one type of political subdivision in Missouri. *Id.*

Prestige Travel, McEuen, and Jackson County Sports Complex Authority are not alone. Numerous other cases from this Court endorse giving a broad construction to a bill’s original purpose. *See Missouri State Med. Ass’n*, 39 S.W. 39 at 839 (reasoning that notwithstanding words in the bill’s original title, the bill’s general purpose was not just a mandate to health insurance companies to provide a co-payment for certain cancer screenings, but a mandate to insurers to provide a variety of health care services in general); *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 325 (Mo. banc 2000) (upholding a bill with the title “related to transportation” despite an amendment that gave cities and counties the authority to adopt outdoor advertising regulations for highway billboards); *Stroh Brewery*, 954 S.W.2d at 326 (holding that a bill initially introduced to enact a single statute “relating to the auction of vintage wine” also encompassed a number of later amendments regulating the sale and labeling of beer and malt liquor). And these cases affirm this

Court's instruction that a bill's original purpose is to be interpreted liberally with the aim of finding no constitutional violation. *See also Hammerschmidt*, 877 S.W.2d at 102.

S.B. 638 is analogous to the bills that this Court has upheld as constitutional in these cases. Like the bill considered in *Jackson County Sports Complex Authority*, when S.B. 638 was introduced it bore a legislative title that included one noun with one adjectival modifier. S.B. 638 included the phrase "civics education," and the bill in *Jackson County Sports Complex Authority* included the phrase "county government." 226 S.W.3d at 159. If anything, this Court in *Jackson County Sports Complex Authority* engaged in a more probing analysis than is needed for S.B. 638. Here, S.B. 638's original purpose can be limited to regulating and promoting elementary and secondary "education" in Missouri, a term that is actually found in the bill's original title. Upholding the bill in *Jackson County Sports Complex Authority* required this Court to determine that the bill's original purpose was broader than just "government."

Similarly, the purpose of the bill in *Prestige Travel* was not merely to regulate the funding of local political subdivisions through city sales taxes, despite the original bill's title and limited contents. Thus, creating an exhibition center and recreational facility district—a new political subdivision—and authorizing the district to impose taxes was germane to the bill's true, broader purpose of regulating taxes. *Prestige Travel*, 344 S.W.3d at 715. Taxation pervaded the contents of the original and final versions of the bill in *Prestige Travel*, just as education pervaded the content of the original and final versions of S.B. 638.

S.B. 638’s original purpose—its overarching objective—encompassed more than merely changing the details of a mandatory civics examination; it was to promote and regulate elementary and secondary education in Missouri. A civics examination is but one way to accomplish that purpose, as is supporting students with learning disabilities, reporting on the quality of early learning programs in Missouri, improving the charter school certification and application process, and regulating school board governance requirements. Each of the 29 statutes amended or created by S.B. 638 is germane to the bill’s original purpose.

The amendments to S.B. 638 are not remotely like the changes made to the few bills that this Court has struck down for violating Article III, § 21, such as the bill in *Legends Bank*. The bill in *Legends Bank* began as a procurement bill containing provisions related to bidding procedures applicable to the Office of Administration. *Legends Bank*, 361 S.W.3d at 386. During the legislative process, it morphed into an omnibus campaign finance and ethics bill, and it included a provision granting legislators keys to the capitol dome. *Id.* Those disparate provisions (procurement and elected officials, to name two) are nothing like the straightforward amendments to S.B. 638, which are germane to promoting and regulating elementary and secondary education in Missouri. And neither *Legends Bank* nor any other case holds that the words in the bill’s original title *state* the bill’s overarching purpose.

S.B. 638’s purpose remained consistent throughout the bill’s journey through the legislature, similar to the bills in *Prestige Travel*, *McEuen*, *Jackson County Sports Complex Authority*, and others. For these reasons, the amendments to S.B. 638 do not clearly and

undoubtedly violate Article III, § 21's original-purpose requirement. This Court should affirm the Circuit Court's decision.

II. S.B. 638 does not violate Article III, § 23's single-subject requirement because each of its provisions fairly relates to elementary and secondary education in Missouri. (Responding to Appellant's Point Relied On II).

A. The final, enacted version of a bill is the only relevant version when determining a bill's core subject.

Article III, § 23 provides that “[n]o bill shall contain more than one subject which shall be clearly expressed in its title[.]” Unlike an original-purpose analysis, the “bill as enacted is the only version relevant to the single subject requirement.” *Missouri State Med. Ass’n*, 39 S.W.3d at 840. Focusing on the final title of the bill, *not* the relationship between the individual provisions, the test 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.” *Hammerschmidt*, 877 S.W.2d at 102.

As this Court has expressed in cases for 150 years, the “‘subject’ within the meaning of Article III, § 23, includes all matters that fall within or reasonably relate to the general core purpose of the proposed legislation.” *Id.* (citing *State v. Mathews*, 44 Mo. 523, 527 (1869)). “The subject of a bill may be ‘clearly expressed by . . . stating some broad umbrella category’ when a bill has ‘multiple and diverse topics’ within a single, overarching subject.” *American Eagle Waste Indust. v. St. Louis County*, 379 S.W.3d 813, 826 (Mo. banc 2012) (citing *Jackson Cty. Sports Complex Auth.*, 226 S.W.3d at 161).

Thus, courts must first identify the “single subject core of the bill.” *Missouri Roundtable for Life, Inc. v. State*, 396 S.W.3d 348, 351 (Mo. banc 2013). Courts do this by first looking to the enacted bill’s final legislative title. Where the core subject is not expressed in the final title, only then may courts look elsewhere—such as to the arrangement of the subjects in the Constitution or to the contents of the bill itself. *Stroh*, 954 S.W.2d at 327. After determining the core subject, courts then consider whether the bill impermissibly contains provisions not “germane, connected and congruous” to that subject. *American Eagle Waste Indust.*, 379 S.W.3d at 826. This Court has recognized that this standard is “a most liberal standard for reviewing [a bill’s] challenged provisions.” *Akin*, 934 S.W.2d at 301.

Calzone’s brief shoehorns elements of the original-purpose test into the single-subject test. Calzone claims that S.B. 638’s true subject comes from the bill’s original title—“civics education.” *See* App. Br. at 34. Citing *Hammerschmidt*, Calzone claims that when the title of a bill does not properly express the bill’s original purpose, courts should look back to the bill’s initial legislative title to determine the bill’s subject. *Id.* (citing *Hammerschmidt*, 877 S.W.2d at 102). But when this Court in *Hammerschmidt* noted that “[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,” this Court was referring to the final title of the bill. *Id.* at 102. This Court later clarified the test in *Stroh*, holding that “[w]here an amorphous title to a bill renders its subject uncertain, but the party challenging the bill claims a ‘one subject’ violation and not a ‘clear title’ violation, the Court may

determine the subject of the bill from either reference to the subjects of the Constitution, or the contents of the bill itself.” 954 S.W.2d at 327.²

This Court has unequivocally stated that the “bill as enacted is the only version relevant to the single subject requirement.” *Missouri State Med. Ass’n*, 39 S.W.3d at 840. In a single-subject analysis, courts consider whether the enacted legislation is impermissibly broad such that its provisions do not relate to a common subject. *See id.* One source for the bill’s subject is the final legislative title. *See, e.g., Missouri State Med. Ass’n*, 39 S.W.3d at 840; *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 327 (Mo. banc 1997). If the final title does not articulate the single subject, it defies logic to repeat an original-purpose analysis—comparing the final version of the bill with the original version—to find the bill’s core subject. And no case from this Court suggests that this would be the proper framework.

B. Each of S.B. 638’s provisions fairly relate to the bill’s single, core subject of elementary and secondary education.

First, it is easy to determine S.B. 638’s core subject, because under this Court’s teachings it can be extracted from the bill’s final title—“elementary and secondary education.” (LF 34). In *Akin*, this Court held that “education” is a permissible single subject under Article III, § 23. *Akin*, 934 S.W.2d at 301. Consistent with *Akin*, elementary and secondary education is therefore a permissible umbrella category that can encompass multiple and diverse topics. The question, then, becomes whether S.B. 638’s provisions

² Here, Calzone did not raise a clear-title claim under Article III, § 23.

fairly relate to, or are germane, connected, and congruous to, elementary and secondary education. *See American Eagle Waste Indust.*, 379 S.W.3d at 826.

As with his original-purpose challenge, Calzone does not identify the particular statutes in S.B. 638 he claims are too far afield from the bill's single core subject. It is unclear if he contends that every statute not included in the original bill violates the single-subject rule given his heavy reliance on the bill's original title of "civics education" to determine the bill's core subject. *See App. Br.* at 35. Therefore, Calzone's brief on appeal does not aid this Court or Respondents in reviewing the constitutionality of S.B. 638 from a single-subject perspective. However, this Court need only engage in a plain-text reading of S.B. 638 to determine that each of the enacted bill's provisions relate to elementary and secondary education.

As discussed in Part I above, S.B. 638 creates or amends 29 statutes. Whether a provision concerns curriculum offerings or the quality of educational services, or charter schools, or school board governance, each provision undoubtedly has a natural connection to elementary and secondary education in Missouri. Under *Hammerschmidt*, the bill's provisions do not have to relate to each other. Rather, the provisions must relate to the core subject of elementary and secondary education. *See Hammerschmidt*, 877 S.W.2d at 102. That is the case with each of the provisions in S.B. 638.

First, the bill's provisions concerning curriculum offerings and educational quality have a natural connection to elementary and secondary education. For example, school district requirements for promoting civics relate to elementary and secondary education, because those programs—such as a civics examination and recitation of the pledge of

allegiance—take place in the classrooms in Missouri’s elementary and secondary schools (§§ 170.011, 170.345, 170.350, and 171.021). So, too, does CPR training, which secondary schools must teach to students before their graduation (§ 170.310). School district requirements for maintaining programs for gifted students relate to elementary and secondary education because those requirements pertain directly to the administering of education to students (§§ 162.720 and 163.031). The bill’s provisions that amend requirements for existing remedial education reports, require DESE to develop early-learning quality assurance reports, and require DESE to implement a trauma-informed schools initiative for students experiencing trauma, all relate to the provision of elementary and secondary education (§§ 161.1050, 161.1055, 161.217, and 173.750). And the bill’s provisions concerning students with learning disabilities and students unprepared to enter the workforce directly relate to the educational services provided to those students (§§ 167.903, 167.905, 167.950 and 633.420).

Next, charter schools administer education at the elementary and secondary school level. Therefore, the statutes in S.B. 638 pertaining to charter schools’ application, certification, funding, and curriculum requirements have a natural connection with elementary and secondary education (§§ 160.545, 160.415, 160.417, 160.400, 160.403, 160.405, 160.408, 160.410, 167.131, and 167.241).

Finally, the statutes that regulate school board governance have a natural connection with elementary and secondary education (§§ 162.073, 162.261, 162.531 and 162.541). School boards have a direct role in managing the elementary and secondary schools in their district and promoting student achievement in their schools.

Therefore, this Court need not look beyond S.B. 638's final title to determine its core subject. But even if this Court were to depart from the final title, the next place to look for S.B. 638's core subject is not the bill's initial legislative title. The appropriate place to look is the content of the bill itself, which, as discussed above, includes provisions that share the common subject of elementary and secondary education. *See Stroh*, 954 S.W.2d at 327 (holding that if a bill's final title does not accurately express the single subject, courts can determine the single subject by examining a bill's content).

C. This Court has regularly affirmed the constitutionality of bills similar to S.B. 638 against single-subject attacks.

S.B. 638 closely parallels bills that this Court has upheld in single-subject challenges. For example, in *Akin*, this Court held that "education" is a permissible single subject for legislation, drawing that title directly from the bill's final title. *Akin*, 934 S.W.2d at 301. In *Akin*, the challenger asserted that the bill violated the single-subject rule because it included provisions related to taxation and to education.³ *Id.* The taxation provisions were far-reaching: it increased corporate tax rates and limited the standard Missouri tax deductions for individual and corporate filers. *Id.* at 297. One of the taxation

³ The education bill in *Akin* include a variety of education-related provisions, including provisions relating to "reduced class size, the A+ schools program, funding for parents as teachers and early childhood development, teacher training, the upgrading of vocational and technical education, measures to promote accountability and other provisions[.]" *See* S.B. 380 (1993); § 160.500.

statutes provided that the revenue collected from the tax increases would partly be transferred to the Missouri outstanding schools trust fund. *Id.* at 302; *see also* § 160.500. Because “the tax increases are a means of funding the education programs provided for elsewhere in” the statute, the Court held that the corporate and individual tax provisions were means of accomplishing the bill’s purpose. *Id.*

In *Missouri State Medical Association*, this Court considered a bill with wide-ranging health care provisions. 39 S.W.3d at 840-41. The bill’s final title read “relating to health services,” and Court did not consider whether the bill’s provisions—which amended statutes addressing health care insurance, confidentiality of health care records, and pre-operation information for certain medical procedures—related to each other. *Id.* Instead, this Court found that the bill’s provisions “are (at least) incidents or means to” the bill’s core subject of health services. *Id.*

Akin and *Missouri State Medical Association* are not the only cases where this Court has upheld bills with a similar scope as S.B. 638 against single-subject attacks. *See, e.g., C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 328-29 (Mo. banc 2000) (reasoning that provisions related to billboard regulation relates the subject of “transportation”); *Corvera Abatement Techs., Inc. v. Air Conservation Comm’n*, 973 S.W.2d 851 (Mo. banc 1998) (holding that a permissible single subject was “environmental control” when the bill’s provisions created a state commission to respond to the release of hazardous substances, established procedures and penalties relating to the use of underground storage tanks, and enacted provisions related to asbestos abatement projects); *Fust v. Attorney Gen. for the State of Mo.*, 947 S.W.2d 424 (Mo. banc 1997) (holding that each of a bill’s provisions

“purport to do the same thing—promote compensation for certain tort victims,” and therefore the bill satisfied the single-subject rule, when the bill regulated the insurance industry, created a new state fund for tort victims, and modified common law rules for tort liability).

Here, the Circuit Court correctly held that S.B. 638’s single subject is elementary and secondary education. Elementary and secondary education pervades every provision contained in S.B. 638. Just as corporate and individual tax provisions can relate to education as in *Akin*; just as the confidentiality of health care records relates to health care as in *Missouri State Medical Association*; and just as asbestos abatement projects relate to environmental control as in *Fust*, each of S.B. 638’s provisions relate to elementary and secondary education. S.B. 638 satisfies this Court’s liberal standard that a bill’s provisions must fairly relate to the same subject, have a natural connection therewith, or are incidents or means to accomplish its purpose. *See, e.g., Hammerschmidt*, 877 S.W.2d at 102.

This case is nothing like the few cases where this Court has struck down bills for violating the single-subject rule. For example, in *Coop. Home Care, Inc. v. City of St. Louis*, this Court recently held that a statute prohibiting municipalities from increasing their minimum wage above the state minimum wage violated the single-subject rule because the bill’s single subject was the regulation of community improvement districts. 514 S.W.3d 571, 579 (Mo. banc 2017). And in *SSM Cardinal Glennon Children's Hospital v. State*, this Court held that a statute related to hospital liens violated the single-subject rule because the bill’s core subject was professional licensing. 68 S.W.3d 412, 416-17 (Mo. banc 2002).

Because S.B. 638's core subject can be found in the bill's final legislative title, there is no need to look beyond the title. But even if this Court were to depart from the bill's final legislative title, a plain reading of S.B. 638's provisions make clear that each provision is comfortably covered by the umbrella category of elementary and secondary education. Therefore, this Court should affirm the Circuit Court and find that S.B. 638 has one subject. The bill does not clearly and undoubtedly violate Article III, § 23.

III. The Circuit Court did not err by dismissing Count III of the Petition because neither the Missouri Constitution nor this Court's jurisprudence recognize the novel claim of prohibiting substantive changes to a bill's legislative title. (Responding to Appellant's Point Relied On III).

In Count III of the Petition, Calzone alleged that S.B. 638's title was substantively changed during the amendment process in violation of both Article III, §§ 21 and 23. (LF 24). He argues that a bill's title is part of the legislation itself, and so it must independently follow the commands of Article III, §§ 21 and 23. *See* App. Br. at 39-40. In support of this claim, Calzone alleged in the Petition that "allowing legislators to change the title of bills to fit the evolving bill, rather than requiring the evolution of the bill to remain true to the original title, defeats [the requirements of Article III, §§ 21 and 23]." (LF 25). The Circuit Court properly dismissed this claim because it is not recognized under the Missouri Constitution.

This Court has often stated that changing a bill's title is an ordinary and proper act of the General Assembly done to reflect amendments to a bill. *See, e.g., Westin Crown Plaza Hotel Co.*, 664 S.W.2d at 5-6. Of course, the final bill as passed must not violate the

original-purpose, clear-title, and single-subject commands of the Missouri Constitution, but there is no provision that forecloses “substantive” changes to a bill’s title. Respondents have not located any Missouri case that has permitted a single cause of action for a “combined,” hybrid violation of Article III, §§ 21 and 23. *See Missouri Roundtable for Life*, 396 S.W.3d at n.3 (noting that the Missouri Constitution imposes only three relevant procedural requirements on a bill’s passage: the original-purpose, single-subject, and clear-title requirements).

Calzone’s claim contravenes the plain text of the Constitution and this Court’s precedents. Calzone’s brief acknowledges the novel nature of this claim, correctly noting this Court’s holding in *Lincoln Credit* that a bill’s “title is not a part of the bill and so [it] can be changed without violating Art. III, s 21.” *See* App. Br. at 39 (citing *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 38 (Mo. banc 1982)). *Lincoln Credit* is not the only case where this Court has ruled that a bill’s title is merely an introduction to the legislation contained therein and that it does not form part of the bill itself. *See, e.g., Akin*, 934 S.W.2d at 302.

This Court’s decisions properly hold that a bill’s title is not part of the bill. A bill’s legislative title does not become part of the Revised Statutes when the governor signs the bill. The title is prefatory language to aid legislators and citizens when reviewing a bill’s content. Indeed, this Court often recognizes the importance of a bill’s original and final titles when it looks to them in the three recognized procedural challenges to legislation.

Even if the title were part of the bill, nothing in the plain text of §§ 21 and 23 of Article III creates a new cause of action for “substantive” changes to the bill’s title. And

this Court seems to have interpreted Article III, § 21 to encourage the General Assembly to revise a bill's title to reflect its true objectives and purpose. *See Westin Crown Plaza Hotel*, 664 S.W.2d at 6 (reasoning that “it may be appropriate for the legislature to change the title of a bill as it proceeds through the legislature to more accurately reflect the real scope of the subject matter in the bill.”). Creating a new cause of action for substantive title changes would discourage the legislature from amending a bill's title to better reflect its actual contents and objectives.

Calzone is not without remedies here. He has already raised original-purpose and single-subject violations against S.B. 638. And he could have asserted a traditional clear-title claim under Article III, § 23, but he did not.⁴ Moreover, it would be difficult to imagine a “successful” claim for a substantive title change like the one Calzone raised in Count III of his Petition without a court also finding an independent violation of the original-purpose, single-subject, or clear-title rules. The Missouri Constitution and this Court's jurisprudence provide numerous mechanisms to challenge the General Assembly's enactment of laws. Those mechanisms do not include the challenge asserted in Count III of Calzone's Petition. The Circuit Court properly dismissed that claim, and this Court should affirm.

⁴ As the Circuit Court noted in its Judgment, “both in his written submissions and in his oral argument at the hearing, [Calzone] has made clear that he is asserting a different claim altogether.” (LF 280).

IV. If this Court finds that S.B. 638 violated any of the Constitution’s procedural requirements, severance of the unconstitutional provisions is appropriate. (Responding to each of Appellant’s Points Relied On).

As discussed in this brief, Calzone has not established that S.B. 638 clearly and undoubtedly violates the Missouri Constitution’s procedural limitations on legislation. Nevertheless, if this Court reverses the Circuit Court’s judgment and Calzone prevails on any of his constitutional claims, this Court should sever any portion of S.B. 638 that violated the constitutional limitation.

As a threshold matter, this Court need not consider the “Severance” argument in Calzone’s brief, because he does not raise it separately in a Point Relied On or as an allegation of reversible error, in contravention of Rule 84.04(d). Respondents address the issue of severance here for preservation purposes and to promote the strong public policy that at least some provisions in S.B. 638 should survive if Calzone should succeed on any of claims.

The Circuit Court below did not engage in a severability analysis because the Court upheld the constitutionality of S.B. 638. Respondents also note that nowhere in Calzone’s brief does he identify the specific statutes that he claims violate the original-purpose or single-subject rules. It is unclear whether he contends that every statute other than the two originally included in S.B. 638 violate each of these two constitutional limitations. And in the final pages of his brief beginning with the heading “Severance,” Calzone does not assist the Court by identifying the statutes that should be severed. To the contrary, Calzone

waives the issue by arguing that “the judicially created doctrine of severance” should not apply to this action at all. *See* App. Br. at 43.

However, this Court has employed a severability analysis in the few cases where it determined that a bill violated Article III, §§ 21 or 23. *See, e.g., Missouri Roundtable for Life, Inc. v. State*, 396 S.W.3d at 353-55; *Hammerschmidt*, 877 S.W.2d at 103-04. This Court should do the same if it reverses the Circuit Court and concludes that S.B. 638 violates Article III, §§ 21 or 23.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Circuit Court of Cole County.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed electronically pursuant to Rule 103 through Missouri Case Net, on this 4th day of December, 2018. In addition, the undersigned certifies that a copy of the same was served via e-mail to Appellant, who has given his consent to service by e-mail.

/s/ Jason K. Lewis

CERTIFICATION OF COMPLIANCE

The undersigned hereby certifies that the foregoing brief complies with the limitations contained in Rule 84.06(b) in that excluding the cover, certificates of service and compliance, and signature blocks, the brief contains 8,125 words.

/s/ Jason K. Lewis