

Case No. SC97132

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IN THE SUPREME COURT OF MISSOURI

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Ronald J. Calzone,  
Plaintiff - Appellant

v.

Roger Dorson, et. al.  
Defendants – Respondents

**FILED**

**DEC 19 2018**

**CLERK, SUPREME COURT**

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

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**APPELLANT'S REPLY BRIEF**

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**SCANNED**

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## REPLY

Appellant Calzone offers this Reply to the state's Response Brief.

### INTRODUCTION

Respondents would have the court forsake, or at least ignore, the very purpose of the limits Article III, Sections 21 and 23 place on the legislative powers, and do so to the detriment of the People, who established our Constitution. This Court correctly pointed out that:

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

This Court must ask whether the Respondents' analysis of Senate Bill 638 *complements or defeats* the intent of Sections 21 and 23.

Respondents imply that a legislator's "unsuspecting colleagues" and "the citizens of Missouri" should understand – before any amendments – that the overarching purpose of SB 638 was "promoting and regulating elementary and secondary education," to

include subjects as disparate as filling school board vacancies; CPR instruction, bonding requirements for school district officers, charter schools, dyslexia, AND an expansion of the A+ program to include nonpublic schools and monetary benefits to students in postsecondary education. See Chapter 160.545.3, LF-65 or Exhibit B.

All of that in spite of an original title that read, "**An Act to repeal section 170.011, RSMo, and to enact in lieu thereof two new sections relating to civics education.**" and original bill contents that related *solely* to civics education. Exhibit A, LF-28.

Respondents' primary argument for such a *broad* application of a *specific* bill title is that some past opinions by this Court dealt with challenges to bills that are analogous to the instant case.

We must ask if it is reasonable to expect every legislator and every citizen watching the legislative process to know the history of procedural challenges so they can compare rulings on past bills to the bills before them. The question is complicated by what has sometimes been a subjective determination of a bill's original purpose and controlling subject by this Court.

A common sense reading of the Constitution should rule the day, as should easy-to-apply principles – principles that this Court, fortunately, has had in place for several generations, but has not always included in opinions on procedural challenges to bills.

THE STATE'S RESPONSE DID NOT ADDRESS DECADES OF NEARLY BLACK  
AND WHITE PRINCIPLE-BASED AUTHORITIES ABOUT A BILL TITLE THAT  
“DESCENDS TO PARTICULARS AND DETAILS.”

Respondents have presented “authorities” best characterized as *anecdotal* and not necessarily analogous to the instant case, while totally ignoring long-standing *principles* this court has established for bills with titles that descend into “details and particulars.” And they have provided too little information about the bills, and challenges to those bills, considered in past court cases to determine whether or not they are truly analogous to the instant case. Were, for instance, the many authorities about bill titles that descend to particulars and details even argued in those cases? None of the opinions cited by Respondents, except *Stroh Brewery Co. v. State*, 954 SW 2d 323, touch on the details and particulars principle.<sup>1</sup>

What could be more plain than what this court said in 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... 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)

Appellant provided many similar citations in his initial brief, but Respondents understandably ignored them, since they are so dispositive. **This court *must not* ignore the many “details and particulars” authorities in the appellant brief.**

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<sup>1</sup> Appellant's initial brief, on page 24 and 29, explained why *Stroh* supports his contention that the details and particulars of SB 638's title limit the scope of the bill.

## RESPONDENTS' APPROACH TO SECTIONS 21 AND 23 NEGATE

### A LEGISLATOR'S ABILITY TO LIMIT HER OWN BILL

Respondents claim the sponsor of SB 638 intended from the beginning a purpose as general as “promoting and regulating elementary and secondary education,” in spite of her choice of a bill title, one that descends to details and particulars.

What if they are wrong?

With Respondents eschewing the “details and particulars” test this Court established many decades ago, *how does a bill sponsor protect her bill from unwanted amendments* that are not consistent with *her* original intended purpose?

Should the sponsor draft a bill title that read, “**relating to civics education, and nothing else**”? What about, “**relating exclusively to civics education**”? Even those bill titles would not protect her intent if Respondents' approach is used.

It should be noted that this Court never sees cases about bills that were killed by the addition of “poison pill” amendments that go beyond the sponsor's original intended purpose, so it is difficult to measure how often Respondents' approach unfairly prejudices bill sponsors.

### RESPONDENTS MISREPRESENT THE ORIGINAL PURPOSE ANALYSIS

Respondents would have this Court believe the bill title is meaningless in an original purpose analysis. They said, “And neither *Legends Bank* nor any other case holds that the words in the bill’s original title state the bill’s overarching purpose.”

Respondents' Response at 20.

But this Court clearly stated otherwise, “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. *Legends* at 386.

#### RESPONDENTS MISREPRESENT THE SINGLE SUBJECT ANALYSIS

Appellant believes there is little to no difference in the term “purpose” of Article III, Section 21 and term “subject” of Section 23. Indeed, this court has seemed to use them interchangeably over the years. It stands to reason that if the purpose of a bill must remain true to the maxim, the “original purpose of a bill is *established* by the bill's *earliest title and contents* at the time the bill is introduced,” the subject must also remain true to the subject stated in the *original* title, not a different subject expressed in the final title.

Respondents, however, want this Court to ignore the *original* title for SB 638 when doing a single subject analysis, and focus only on the *final* title. In their Response they said, “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. See Resp. Brief at 21. They say, “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.’” Resp. Brief at 22.

They would be correct about using only the enacted version of the bill if the



subject specified by the final title was faithful to the original subject in the original title.

The *Hammerschmidt* court used similar terms as those used in *Missouri State Med. Ass'n*, but with one critical proviso: They made it clear that the final title had to be faithful to 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."

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

Obviously, the converse is true. When a bill's *final* title is NOT true to the original purpose, the *original* title must be the standard for determining the single controlling subject. Judge Fisher made that VERY clear in his concurring opinion in *Legends*:

Here, as finally passed, SB 844 carried the title "An Act ... relating to ethics, with penalty provisions." The original purpose and single subject core of this bill, as reflected in the **original title**, was to add "one new section relating to contracts for purchasing, printing, and services for statewide elected officials." Like in *Hammerschmidt*, SB 844 was amended to include additional subjects, namely campaign finance, ethics, and who should have keys to the capital dome. **These subjects do not fairly relate to "contracts for purchasing, printing, and services for statewide elected officials,"** nor does it have a natural connection to that subject.

Emphasis added. *Legends Bank v. State*, 361, 390 SW 3d 383

Accordingly, each of the subjects included in the final version of SB 638 must be compared to the *original* subject, "relating to civics education." All but one or two fail that test. Appellant's brief "shoehorns elements of the original-purpose test into the

single-subject test” only to the extent that Judge Fisher did in *Legends*.

RESPONDENTS CLAIM THAT THE ORIGINAL PURPOSE OF SB 638 WAS “PROMOTING AND REGULATING ELEMENTARY AND SECONDARY EDUCATION” AND ITS “SINGLE, CORE SUBJECT” IS “ELEMENTARY AND SECONDARY EDUCATION” IS BELIED BY THE CONTENTS OF THE FINAL VERSION WHICH AFFECTS NONPUBLIC SCHOOLS AND POSTSECONDARY EDUCATION

Where does a changed purpose violation end and a multiple subject violation begin? Can you have an unclear title without also having a multiple subject bill?

This pro se litigant will leave those questions to the professionals, but what should be clear to the average Missourian is that expanding the A+ program to include *nonpublic* schools and *postsecondary* education is BEYOND the Respondents' purported purpose of “promoting and regulating elementary and secondary education” and a “single, core subject” of “elementary and secondary education.” See Resp. Brief at 14 and 23.

Chapter 160.545.3 of SB 638 (LF-65) goes beyond both what Appellants and Respondents claim to be the original purpose of SB 638. From Appellant's perspective, the A+ program is not “civics education,” and from the Respondents' perspective inclusion of nonpublic schools and *postsecondary* education creates a new subject that is distinct from “elementary and secondary education,” and beyond their claimed purpose of “promoting and regulating elementary and secondary education” public education.

Note that Plaintiff / Appellant did not make a conventional “clear title” claim because neither the original nor final titles were unclear or amorphous. Their meanings were clear, the problem is with amendments that simply don't fit either title.

RESPONDENTS MISAPPLY RULE 84.04 IN ATTEMPT TO

DERAIL PROPER APPLICATION OF THE SEVERANCE DOCTRINE

Respondents beseech the Court to ignore Appellant's argument that SB 638 should be struck down in its entirety rather than sever the bill and allow some portion to stand "because he does not raise it separately in a Point Relied On or as an allegation of reversible error."

Rule 84.04 instructs appellants to draft Points Relied On for each of "appellant's claim of reversible error." The trial court did not address severance, so there was no error to reverse. Severance will not be an issue until this Court declares the procedures by which SB 638 was passed to be unconstitutional. Including an argument for non-severance in a Point Relied On would have been misplaced.

Whether or not the appellant brief included discussion about severance, this court will have to address it in the event it finds SB 638 to include provisions that go beyond the original purpose of the bill or add to its single controlling subject. The bottom line is the fact that **no evidence** has been presented to support a contention that the legislature would have passed SB 638 **without the additional provisions**, let alone enough evidence to convince so beyond a reasonable doubt.

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

Admittedly, this case is complicated by seemingly contradictory past rulings from this Court. Respondents, however, offer only authorities with dubious application since there will, naturally, be differences in the bills under consideration, the arguments offered, and circumstances under which the legislative process occurred. To determine exactly how analogous the bills cited by the Respondents are would require an exhausting study – one that none of the parties have undertaken. Certainly, it would unreasonable to expect that legislators and citizens should do such a study when comparing new legislation against old precedents.

On the other hand, the principles this Court has laid out are easy to apply and based on a plain reading of the Constitution. The *original* purpose and controlling subject of a bill should be determined from the *original title and contents* of the bill. When that title descends into *details and particulars*, those details and particulars *limit the bill*. Those principles can be applied to any and all bills by anyone of average intelligence – without a room full of lawyers and judges.

The Constitution is the Peoples' document. It was written so that anyone of

average intelligence can understand and apply it, even to the point of holding their elected officials accountable to it and ensuring legislative accountability and transparency. This Court's first responsibility is to the People and their Constitution, and that means fidelity to the ratifier's original intent – even when such fidelity flies in the face of apparent court precedent. As Justice Daniel declared in the *License Cases*:

“...in matters involving the meaning and integrity of the constitution, I never can consent that the text of that instrument shall be overlaid and smothered by the glosses of essay-writers, lecturers, and commentators. Nor will I abide the decisions of judges, believed by me to be invasions of the great *lex legum*. I, too, have been sworn to observe and maintain the constitution. I possess no sovereign prerogative by which I can put my conscience into commission. I must interpret exclusively as that conscience shall dictate. Could I, in cases of minor consequence, consent, in deference to others, to pursue a different course, I should, in instances like the present, be especially reluctant to place myself within the description of the poet<sup>2</sup>, — ‘*Stat magni nominis umbra.*’<sup>3</sup>” *Thurlow v. Massachusetts*, 46 US 504, 612 (1847) (*License Cases*)

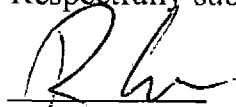
Appellant implores this Court not to complicate matters, as the Respondents arguments would if they are allowed to prevail.

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2 Marcus Annaeus Lucanus (November 3, A.D. 39 – April 30, A.D. 65)

3 *Stat magni nominis umbra*: “The mere shadow of a mighty name he stood.”

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE AND CERTIFICATE OF SERVICE

I certify that a copy of the above <sup>Reply</sup> ~~Initial~~ Brief of Appellants was served by email on December 19, 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 2829 words.



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