

Case No. SC97211

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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' REPLY BRIEF

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SCANNED

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REPLY FROM APPELLANT

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

INTRODUCTION

Respondents would have this Court believe that it is appropriate to conjure up an “original purpose” for a bill once the bill has been finalized and the title of the bill has been stripped of evidence that indicates quite a different purpose.

Respondents are fast to point out that “the Constitution does not *require* that the original purpose be stated anywhere, let alone in the title as introduced,” citing *Mo. State Med. Ass’n*, 39 S.W.3d at 839, but SB 665 *does* state the purpose of the bill in its original title, and that purpose is *not* the purpose they divined from the final version.

Respondents would also have this Court believe that the infamous “keys to the Capitol dome” from *Legends Bank v. State*, 361 SW 3d 383 sets a dumbed-down standard for a change-of-purpose ruling in place of what this Court has identified as the Constitution's intent to prohibit *any* unrelated amendments to bills that undermine “accountability and transparency” in the legislative process, *Legends Bank v. State*, 361 SW 3d 383 – Mo. Banc 2012, or “surprise” “unsuspecting colleagues.” *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 101

In other words, Respondents seem to think there should be a smoking gun on par with “keys to the Capitol dome.”

The fact is, SB 665 *does* include at least one unrelated provision comparable to “keys to the Capitol dome,” **specifically, the provision in § 414.082 relating to the**

petroleum inspection fund. LF-57.

SECTION 414.082 IN SB 665 DOES NOT FIT EITHER THE ORIGINAL PURPOSE STATED IN THE ORIGINAL

TITLE OR WHAT RESPONDENTS CLAIM TO BE THE ORIGINAL PURPOSE

Respondents state, “First, S.B. 665’s original purpose—promoting and regulating agriculture in Missouri—did not change throughout the legislative process.” Resp. Br. at 7. They go on to claim, “Like the fees collected for the AgriMissouri fund, the fees¹ collected for the petroleum inspection fund relate to the *regulation and promotion of Missouri agriculture.*” Emphasis added. Resp. Br. at 13.

They are wrong.

Respondents do a good job explaining how the Agri-Missouri trademark and attendant fees, and how the Farm-to-Table program promote or regulate Missouri agriculture, but they don't even attempt to do the same for the **fuel inspection fees** portion of SB 665 – and for good reason, since the changes to the fees collected for the inspection of fuel under Chapter 414 are not even remotely related to “the regulation and promotion of Missouri agriculture.”

Respondents *do* claim, “Petroleum inspections are a safety measure relating to

¹The fees section in SB 665 are fixed by the *director of revenue* (not agriculture) and are stipulated to “approximately yield revenue equal to the expenses of administering this chapter.” No claim can be made that such fees benefit the department that promote agriculture – the fuel inspection process is supposed to be revenue neutral from the department of agriculture's perspective.

Missouri farms. § 414.082, RSMo.,” Resp. Br. At 21, but *none* of the provisions for inspections in Chapter 414 relate to farms or agriculture. Instead, the inspections provided for are of “premises in this state at or on which gasoline, gasoline-alcohol blends, diesel fuel, heating oil, kerosene and aviation turbine fuel is kept and *sold at retail*” (§ 414.052.3 RSMo.) Furthermore, “the director shall test and inspect the measuring devices used by any person selling an average of two hundred or more gallons of gasoline, gasoline-alcohol blends, diesel fuel, heating oil, kerosene, or aviation turbine fuel per month *at either retail or wholesale* in this state.” § 414.062.1 RSMo. See, also § 414.073, relating to retail marketers.

The “Missouri Alternative Fuel Commission” is defined in Chapter 414.420, but bears no relationship to the fuel inspection process or fund.

Chapter 414 only mentions "agriculture" when referencing the Department and defining “Fuel ethanol-blended gasoline” (414.255)

Nothing in § 414.082 promotes or regulates agriculture in Missouri.

More importantly, nothing in § 414.082 of SB 665 relates to the *actual original purpose*, that is, “a fee structure for sellers electing to use the AgriMissouri trademark.”

LF-31.

There are only two possible conclusions for this Court to draw:

- 1) Respondents have failed to identify the *actual* original-purpose of SB 665, or
- 2) At least one of the provisions of SB 665 exceed the original-purpose and

controlling subject² Respondents claim for that bill.

RESPONDENTS' RED HERRINGS

Respondents throw out a few red herrings the Court should be aware of before continuing with an evaluation of this bill. They said:

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.

Resp. Br. At 10.

And:

Under this Court's precedent, the proper inquiry goes beyond the words in a bill's title. And it goes beyond the particulars included in 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. v. State*, 226 S.W.3d 156, 161 (Mo. Banc 2007).

Resp. Br. At 10-11.

Appellant has never claimed that the *statutes listed in the bill title* limit the purpose of the bill. His claim has always been that the "*particulars and details*" specified in the original bill title were limiting. In the case of SB 665 "a fee structure for sellers electing to use the AgriMissouri trademark" are such particulars and details.

Appellant has also recognized that this court uses the *original content* of a bill,

² Respondents claim, "S.B. 665's single core subject is Missouri agriculture, and each of its provisions fairly relates to that single subject." Resp. Br. At 18.

along with the original title, to determine the original purpose. *Legends Bank v. State*, 361 SW 3d 383, 386 - Mo: Supreme Court 2012.

THE RESPONDENTS' APPROACH TO AN ARTICLE III EVALUATION OF SB 665 FORSAKES WHAT THIS COURT SAYS IS THE PURPOSE OF THOSE CONSTITUTIONAL PROVISIONS

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 665 *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 665 was “promoting and regulating agriculture,” to include subjects as disparate as various tax credits, the Farm-to-Table Program, and a fuel inspection fee. Exhibit E & LF-77.

All of that, in spite of an original title that 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.” and original bill contents that related *solely* to the AgriMissouri trademark. Exhibit A, LF-31.

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 “particulars and details.” 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.³

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 “particulars and details” authorities in the appellant brief.**

³ Appellant's initial brief, on page 23 and 27-28, explained why *Stroh* supports his contention that the details and particulars of SB 665's title limit the scope of the bill.

RESPONDENTS' APPROACH TO SECTIONS 21 AND 23 NEGATE

A LEGISLATOR'S ABILITY TO LIMIT HIS OWN BILL

Respondents claim the sponsor of SB 665 intended from the beginning a purpose as general as “promoting and regulating agriculture,” in spite of his choice of a bill title, one that descends to details and particulars.

What if they are wrong?

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

Should the sponsor draft a bill title that read, “**relating to a fee structure for the AgriMissouri trademark, and nothing else**”? What about, “**relating exclusively to a fee structure for the AgriMissouri trademark**”? Even those bill titles would not protect his 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 the 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 665 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. Br. at 18. They say, “Calzone’s brief improperly shoehorns elements of the original-purpose test into the single-subject test. Calzone claims that S.B. 665’s true subject comes from the bill’s original title—amending the AgriMissouri program.” Resp. Br. at 19.

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 665 must be compared to the *original* subject, “relating to the establishment of a fee structure for sellers electing to use the AgriMissouri trademark associated with Missouri agricultural products.” 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 665 WAS “PROMOTING AND REGULATING AGRICULTURE” AND ITS “SINGLE, CORE SUBJECT” IS “AGRICULTURE” IS BELIED BY THE CONTENTS OF THE FINAL VERSION WHICH AFFECTS FUEL INSPECTIONS THAT IN NO WAY RELATE TO THE AGRICULTURE INDUSTRY

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 changes to the fuel inspection fee go beyond the Respondents’ purported purpose of “promoting and regulating agriculture” and a “single, core subject” of “Missouri agriculture” See Resp. Br. at 9 and 18.

Chapter 414.082.1 of SB 665 (LF-57) goes beyond both what Appellants and Respondents claim to be the original purpose of SB 665. From Appellant’s perspective,

the fuel inspection fee bears no relationship to “the AgriMissouri trademark,” and from the Respondents' perspective, inclusion of fuel inspections at the facilities of retailers and wholesalers creates a new subject that is distinct from “Missouri agriculture,” and beyond their claimed purpose of “promoting and regulating agriculture.”

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 665 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 665 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 665 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 665 **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 in the heat of the legislative process.

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 *particulars and details*, those particulars and details *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 assisting.

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*:

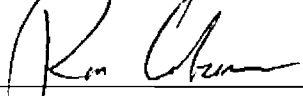
“...in matters involving the meaning and integrity of the constitution, I never can consent that the text of that instrument shall be overlaid and smothered by the glosses of essay-writers, lecturers, and commentators. Nor will I abide the decisions of judges, believed by me to be invasions of the great *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 poet⁴, — '*Stat magni nominis umbra.*'⁵” *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.

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

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

Respectfully submitted,



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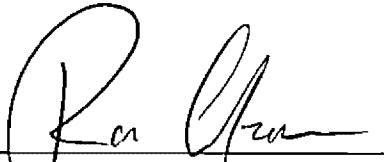
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PLAINTIFF / APPELLANT

CERTIFICATE OF COMPLIANCE AND CERTIFICATE OF SERVICE

I certify that a copy of the above Reply Brief of Appellants was served by email on January 2, 2019, 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 3325 words.



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