IN THE SUPREME COURT OF MISSOURI

MISSOURI COALITION FOR THE ENVIRONMENT	)	
	)	
and CAROLYN JACKSON,	)	
	)	
Appellants,	)	
	)	
vs.	)	No. SC97591
	)	
STATE OF MISSOURI et al.,	)	
	)	
Respondents.	)	

On Appeal from the Circuit Court of Cole County
Nineteenth Judicial Circuit, Division IV
The Hon. Patricia Joyce
No. 17AC-CC00062

APPELLANTS' BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Missouri Constitution

JURISDICTIONAL STATEMENT

This action for declaratory judgment and injunctive relief challenges the validity of Section 644.021.1, RSMo, as amended by House Bill 1713 of 2016. The bill was passed by the General Assembly in disregard of Article III, Section 23, of the Missouri Constitution, limiting a bill to one subject, and Article III, Section 21, for having deviated from the bill's original purpose during the course of passage. The validity of a statute is therefore in issue, and Article V, Section 3 of the Constitution confers exclusive appellate jurisdiction on the Supreme Court. The Circuit Court dismissed the case for lack of standing but addressed the constitutional issues in its judgment.

STATEMENT OF FACTS

This is a "Hammerschmidt case." The Missouri Coalition for the Environment ("MCE") and one of its members, Carolyn Jackson, brought a petition for declaratory judgment and injunctive relief against the State and the Clean Water Commission ("CWC" or "Commission") to vindicate Plaintiffs' interests in clean water and in participating in the proceedings of the Commission (L.F. D2, pp. 1, 2–3; D7 and D8).[1]

Background

The Clean Water Commission of the State of Missouri is created by § 644.021, RSMo, as a "water contaminant control agency" domiciled with the Department of Natural Resources. Its seven members are appointed for four-year terms by the Governor with the advice and consent of the Senate (App 27). The 2016 General Assembly enacted House Bill 1713 ("HB 1713"), changing the requirements for the composition of the Clean Water Commission by amending § 644.021.1, RSMo. Formerly the statute had provided that, of the members of the Commission, "**Two such members, but no more than two**, shall be knowledgeable concerning the needs of agriculture, industry or mining and interested in protecting these needs… **Four** members shall represent the public." HB 1713 changed this language to read, "**At least two members** shall be knowledgeable concerning the needs of agriculture, industry or mining and interested in protecting these needs… **No more than four** members shall represent the public." (L.F. D 17, pp. 4–5; App 23–4, 27; emphasis added.)

[1] The Commission moved to be dismissed as a party (L.F. D1, p. 6). In its judgment of dismissal the trial court ruled that this motion was moot (L.F. D29, p. 16; A16).

The result is that as many as six of the Commission's members may represent agriculture, industry or mining, and as few as none of the members need represent the general public, with the seventh member required to be "knowledgeable concerning the needs of publicly owned wastewater treatment works."

Passage of HB 1713

The subject of HB 1713 as originally introduced was "wastewater treatment systems." It consisted of a single new section 644.200 allowing new options for the upgrading or expansion of wastewater treatment systems serving municipalities or communities (L.F. D9; App 19).

The House of Representatives passed a House Committee Substitute with the addition of a short § 644.180 on construction and operating permits under the Missouri Clean Water Law (L.F. D10, p. 1; D11, p. 13; D12, pp. 6–8). That section was stripped out in the Senate Committee Substitute for the House Committee Substitute, which added five sections to Chapter 256, RSMo, dealing with the Multipurpose Water Resource Program Fund. At this point the title was changed to make the subject of the bill "relating to the regulation of water systems" (L.F. D14, p. 1).

On May 5, the amendment to § 644.021 concerning the makeup of the Commission was adopted as Senate Amendment 1 (L.F. D15, pp. 115–6).

The Senate passed the bill on May 6, 2016, with two further amendments that added § 67.5070 concerning design-build contracts for water treatment systems, and § 640.136 concerning fluoridation of public water supplies (L.F. D16, pp. 3–5).

On May 11 the Senate Committee Substitute was truly agreed to and finally

passed by the House (L.F. D17, D18, pp. 66–8; App 20).[2]

On May 25 the bill was signed by the President Pro Tem of the Senate and the Speaker of the House, and delivered to the Governor by the Chief Clerk of the House, together with Representative Moon's objection that HB 1713 violated the Missouri Constitution, Article III, section 21 (original purpose requirement) "and/or" section 23 (single subject requirement)(L.F. D19, p. 3; D20, pp. 2–3).

On June 28 the Governor returned the bill with his disapproval owing to the manner in which the amendment to § 644.021 gave regulated interests increased control over the Commission. (L.F. D21; D22, p. 7).

At a veto session on September 14, the House and then the Senate overrode the Governor's veto. (L.F. D22, pp. 23–4; D23, pp. 18–9).

Motion for Summary Judgment, Standing and Dismissal

MCE and Ms. Jackson filed a Motion for Summary Judgment (L.F. D4). The State's "Answer to Plaintiffs' Statement of Uncontroverted Material Facts" admitted all facts alleged in the Petition with the qualification that those facts did not establish standing and that Defendant Clean Water Commission did not waive its motion to be dismissed as a party (L.F. D25, *passim*). In a motion to dismiss the case, the State specified that Plaintiffs had not shown taxpayer standing (L.F. D26, pp. 3, 6–9).

In their Reply Memorandum, the MCE and Ms. Jackson conceded that they did not have taxpayer standing (L.F. D27, pp. 3–4). They appended the appropriations for the

[2] There was an emergency clause that applied only to § 644.200 (L.F. D17, p.6; D18, pp. 68–9).

Department of Natural Resources for the current year (L.F. D28, pp. 12–28) showing that the General Revenue Fund accounted for $12 million out of a total appropriation of $582 million (L.F. D28, p. 28). Plaintiffs argued the theory of standing that they present here.

The trial court dismissed the case with prejudice, finding that MCE and Ms. Jackson had no standing and the court therefore lacked subject matter jurisdiction, and that Plaintiffs, for lack of standing, failed to state a claim on which relief could be granted (L.F. D29, pp. 10, 16; App. 10, 16). The court addressed the merits based on the summary judgment motion, the uncontested facts and the complete record, and also to avoid an unnecessary remand in the event of reversal (L.F. D29, pp. 10–11; App. 12–13), finding that HB 1713 dealt with a single subject and did not deviate from its original purpose (L.F. D29, pp. 11–16; App. 13–18).

POINTS RELIED ON

I

The trial court erred in dismissing the case for want of standing because the Plaintiffs had standing under Section 516.500, RSMo, in that they filed their suit based on procedural defects in the enactment of HB 1713 before the adjournment of the next legislative session following the effective date of the bill, and no further "aggrieved" status was required to confer standing within that time.

Section 516.500, RSMo

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

II

The trial court erred in dismissing Count I because the amendment to § 644.021 in HB 1713 concerning the interests represented by members of the Clean Water Commission violated Article III, § 23 of the Constitution of Missouri by stepping outside the single subject defined by the title "regulation of water systems," in that the Commission's jurisdiction is at most tangentially germane to water systems but extends to the regulation of water contamination and the naturally occurring waters of the state in ways that go far beyond the subject of constructed water systems.

Rizzo v. State, 189 S.W.3d 576 (Mo. banc 2006)

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

United Brotherhood of Carpenters and Joiners v. Industrial Commission, 352 S.W.2d 633 (Mo. 1962)

III

The trial court erred in dismissing Count II because the amendment to § 644.021 in HB 1713 concerning the interests represented by members of the Clean Water Commission violated Article III, § 21 of the Constitution of Missouri by departing from the original purpose of the bill, in that the purpose of regulating water treatment systems or water systems is too narrow to accommodate the much broader regulatory and supervisory role of the Clean Water Commission over water pollution and naturally occurring waters of the state.

Missouri Ass'n of Club Executives v. State, 208 S.W.3d 885 (Mo. banc 2006)

Legends Bank v. State, 361 S.W.3d 383 (Mo. banc 2012)

Allied Mutual Insurance Co. v. Bell, 353 Mo. 891, 185 S.W.2d 4 (1945)

State v. Hurley, 258 Mo. 275, 167 S.W. 965 (1914)

ARGUMENT

I

The trial court erred in dismissing the case for want of standing because the Plaintiffs had standing under Section 516.500, RSMo, in that they filed their suit based on procedural defects in the enactment of HB 1713 before the adjournment of the next legislative session following the effective date of the bill, and no further "aggrieved" status was required to confer standing within that time.

Taxpayer status is the usual vehicle for standing in *Hammerschmidt* cases. It is not really a pecuniary interest, however. "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 284, 288 (Mo. 2014). Taxpayer standing "permits challenges in areas where no one individual otherwise would be able to allege a violation of the law." *Id*. at 289.

Taxpayer standing is representational. The plaintiff represents both her- or himself and all other similarly situated taxpayers. *Eastern Missouri Laborers District Council v. St. Louis County,* 781 S.W.2d 43, 46 (Mo. 1989). The principle is not one of private wrong but of "*public interests*." *Id.* at 47 (emphasis in opinion). "'It is the primary rights of citizens that are violated by invalid statutes…'" *Preisler v. Doherty,* 364 Mo. 596, 265 S.W.2d 404, 409 (Mo. banc 1954), quoting *Stiglitz v. Schardien,* 239 Ky. 799, 40 S.W.2d 315 (1931).

Every Missouri citizen has an interest in a legislature that observes the state constitution, but not every law passed by the General Assembly results in "a direct expenditure of funds generated through taxation," defined as "a sum paid out, without any intervening agency or step, of money or other liquid assets that come into existence through the means by which the state obtains the revenue required for its activities." *Manzara v. State,* 343 S.W.3d 656, 660 (Mo. 2011). That is the case here, where the expenses of the Clean Water Commissioners are paid by an agency, DNR, that is funded almost entirely by permit fees and federal grants (L.F. D28, pp. 12–26, 28).

"Taxpayers must have some mechanism of enforcing the law." *Lebeau,* 422 S.W.3d at 289. Is this true when direct expenditures of tax revenue are not in issue?

Standard of review and preservation of error

Standing is a question of law reviewed de novo. The Court assumes the truth of plaintiffs' averments and liberally grants them all reasonable inferences therefrom. *Lebeau* at 288.

Standing is a jurisdictional matter that can be raised at any time. *Chastain v. Geary,* 539 S.W.3d 841, 848 (Mo.App. W.D. 2017). The State asserted lack of standing in very general terms in the Answer (L.F. D3, p. 8) and argued it in the Motion to Dismiss filed in response to Plaintiffs' Motion for Summary Judgment (L.F. D26). MCE and Ms. Jackson preserved the issue in their Reply Memorandum in Support of Summary Judgment (L.F. D27, pp. 3–7). Defendant did not contest the facts alleged by Plaintiffs to establish standing.

Section 516.500 and the *Hammerschmidt* concurrence

Suits against violations of legislative procedure are often called "Hammerschmidt challenges." Though it was far from being the first case on the subject, *Hammerschmidt v. Boone County,* 877 S.W.2d 98 (Mo. banc 1994), is seen as marking a new era for single-subject and original purpose challenges.

A concurring opinion by Judge Holstein was joined by three other members of the court. 877 S.W.2d at 105. It is not part of the opinion of the Court presumably because it was not necessary to the decision of the case. In this majority concurrence Judge Holstein proposed "time limits to avoid expensive and, I believe, unnecessary litigation that is sure to follow the holding in this case."

The majority concurrence says that "A defect in the form of a bill does not impact on an individual's substantive rights." Nevertheless, it is "the citizen's right to insist that the legislature comply with constitutional procedural safeguards." Since every citizen's right is equal, the way to limit the number of lawsuits is to impose a deadline on filing "no later than the adjournment of the next full regular legislative session following a bill's effective date" (with exceptions for aggrieved parties who file later). 877 S.W.2d at 105. This accomplishes the aim that "Where no individual substantive rights are at stake, a claim that the bill is defective in form should be raised at the first opportunity." *Id.*

The principal opinion in *Hammerschmidt* contains no holding on standing. It merely notes that "Bob Hammerschmidt is a resident and taxpayer of Boone County." 877 S.W.2d at 100. The majority concurrence does not require taxpayer status. In this narrow class of cases, "the citizen's right to insist that the legislature comply with

constitutional procedural safeguards" supplies the stake in the litigation that is the essence of standing. ("Standing, at its most basic level, simply means that the party or parties seeking relief must have some stake in the litigation." *Lebeau v. Commissioners of Franklin County,* 422 S.W.3d at 288.)

Judge Holstein's suggestion was promptly enacted by that year's legislature in the form of § 516.500, RSMo, as noted in *Rentschler v. Nixon,* 311 S.W.3d 783, 787 fn. 3 (Mo. 2010). The statute reads (App 26):

> No action alleging a procedural defect in the enactment of a bill into law shall be commenced, had or maintained by any party later than the adjournment of the next full regular legislative session following the effective date of the bill as law, unless it can be shown that there was no party aggrieved who could have raised the claim within that time. In the latter circumstance, the complaining party must establish that he or she was the first person aggrieved or in the class of first persons aggrieved, and that the claim was raised not later than the adjournment of the next full regular legislative session following any person being aggrieved. In no event shall an action alleging a procedural defect in the enactment of a bill into law be allowed later than five years after the bill or the pertinent section of the bill which is challenged becomes effective.

The majority concurrence is the legislative history of the law.

The statute sets the deadline at the end of the next legislative session. If no one files within that time, the first party aggrieved may file by the end of the next session "following any person being aggrieved," but no more than five years after the effective

date of the bill. The first deadline does not depend on a party being aggrieved. Indeed, the law contemplates that an aggrieved party can file later only if there was no aggrieved party within the first legislative session. This is consistent with the majority concurrence's view that it is any citizen's right to enforce the legislative process without being specially aggrieved.

To analyze the statute more minutely, there is no requirement on "any party" to demonstrate being aggrieved unless no one files within the first legislative session after passage of the bill. If there was such a requirement the statute would simply say "any aggrieved party may file." The need to find an aggrieved party does not arise unless no one files within that time. Only in that "latter circumstance" must the first complaining party establish his or her priority as a person aggrieved. This narrows the class of potential complainants after the favored first legislative session. It is consistent with the majority concurrence's intent that, "Where no individual substantive rights are at stake, a claim that the bill is defective in form should be raised at the first opportunity."

If the first person to file at any time must be aggrieved, then there is no need to single out the "latter circumstance," and the statute would simply say, "the first person aggrieved or in the class of first persons aggrieved" must commence an action "not later than the adjournment of the next full regular legislative session following any person being aggrieved." "Aggrieved party" would replace "any party."

An "aggrieved party" is most often encountered as one claiming a right to appeal under § 512.020, RSMo, where "[t]he judgment in question must operate directly and prejudicially on the party's personal or property rights or interests and such effect must

be immediate and not merely a possible remote consequence." *Rocking H. Trucking, LLC v. H.B.I.C., LLC,* 463 S.W.3d 1, 10–1 (Mo.App. W.D. 2015). Under § 516.500, this is an alternative form of standing.

The statute is one of limitation but it is also a statute of standing. It says who may file as well as when. Judge Holstein was concerned with "articulating time limits to avoid excessive and, I believe, unnecessary litigation" rather than requiring an additional pecuniary or other personal interest in the subject matter of the case. Only after the initial deadline does the "aggrieved" standard for standing apply.

Plaintiffs have standing, and the courts have jurisdiction to grant effectual relief.

II

The trial court erred in dismissing Count I because the amendment to § 644.021 in HB 1713 concerning the interests represented by members of the Clean Water Commission violated Article III, § 23 of the Constitution of Missouri by stepping outside the single subject defined by the title "regulation of water systems," in that the Commission's jurisdiction is at most tangentially germane to water systems but extends to the regulation of water contamination and the naturally occurring waters of the state in ways that go far beyond the subject of constructed water systems.

HB 1713 began as a one-page bill "To amend chapter 644, RSMo, by adding thereto one new section [644.200] relating to wastewater treatment systems" (App 19). As finally passed its subject was "the regulation of water systems." It included a new § 67.5070 on design-build contracts for "wastewater or water treatment projects;" five sections in Chapter 256 on the Multipurpose Water Resource Program; and a new § 640.021 on fluoridation of public water supplies (App 20). The only section that had anything to do with the Clean Water Commission was § 644.021, which now allows representatives of particular interests to replace "members [who] shall represent the public."

Standard of review and preservation of error

On a judgment of dismissal this Court reviews the validity of statutes de novo, presuming them to be valid and assigning the burden to the challenger to show that the

act clearly and undoubtedly violates constitutional limitations. *Rentschler v. Nixon,* 311 S.W.3d 783, 786 (Mo. banc 2010).

Article III, § 23 of the Constitution provides, "No bill shall contain more than one subject which shall be clearly expressed in its title…" The test to determine if 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. Such a procedural challenge is not favored. *Rentschler, loc. cit.*

This issue was presented as Count I of the Petition (L.F. D2, p. 7) and advanced in a motion for summary judgment with supporting exhibits and memoranda (L.F. D4–D28). The trial court in its judgment ruled on the merits of the issue, noting the motion for summary judgment and the absence of disputed facts. "If Plaintiffs had standing, this Court could rule the merits as a pure question of law on a complete record. Therefore the Court considers the constitutional claims in the interest of judicial economy, to avoid an unnecessary remand in the event that this judgment on standing is appealed and reversed" (L.F. D33, pp. 10–11).

The interests of the Commissioners are not within the subject of the bill.

Article III, § 23 is a procedural limitation on legislative action, but it serves important substantive functions. *Hammerschmidt v. Boone County,* 877 S.W.2d 98, 101 (Mo. banc 1994). It prevents "logrolling," the practice of attaching a bill that would not command a majority by itself to a bill that is assured of passage. It prevents one legislator from deceiving his colleagues by surreptitiously attaching unrelated amendments to a bill, and it serves to keep the public fairly apprised of pending legislation. *Id.* at 101–2. The

subject "includes all matters that fall within or reasonably relate to the general core purpose of the proposed legislation." *Id.* at 102.

The Court looks at the contents of the bill as originally filed to determine its subject. *Rizzo v. State,* 189 S.W.3d 576, 580 (Mo. banc 2006). Neither the original nor the amended title of HB 1713 hinted that the bill redefined eligibility for membership on the Commission.

Section 644.021.1, RSMo, creates the Clean Water Commission as a "water contaminant control agency" domiciled with the Department of Natural Resources (App. 27). The Commission does not regulate water systems.

Section 640.102(6) defines "Public water system" as "a system for the provision to the public of water for human consumption through pipes or other constructed conveyances." There is a separate body, the Safe Drinking Water Commission created by § 640.105, to regulate public water systems. Section 640.105.1 uses "water systems" as shorthand for public water systems; otherwise "water systems" is not a statutory term.

The composition of the CWC affects much more than water systems. The CWC's jurisdiction includes the "waters of the state," defined as "all waters within the jurisdiction of this state, including all rivers, streams, lakes and other bodies of surface and subsurface water," not pipes for transporting water. § 644.016(27).

The Commission enforces the Missouri Clean Water Law, § 644.026(1–2)(App. 29), and supervises enforcement in Missouri of the federal Clean Water Act. §§ 644.026(26)(App 35) and 644.036.5. It prescribes water quality standards for the waters of the state, § 644.026(7)(App 29–30); issues or denies "permits for the discharge of

water contaminants into the waters of this state, and for the installation, modification or operation of treatment facilities, sewer systems or any parts thereof," § 644.026(13)(App 31); is charged with storm water control, § 644.031, RSMo; groundwater remediation, § 644.143, RSMo; and with developing "a plan for a gradual, long-range, comprehensive statewide program for the conservation, development, management and use of the water resources of the state," § 256.200, RSMo.

Nothing in HB 1713 assigns any role to the CWC with regard to water systems. The CWC's oversight extends to waters of the state, water contaminants, water pollution, "treatment facilities and sewer systems" (*e.g.* § 644.026(15), RSMo (App 32)), "wastewater treatment plants," § 644.053.1(1), and "water supply for drinking water," § 644.143(1), (*i.e.* the water that goes into drinking water systems), but not "water systems" or "public water systems" as defined in Chapter 640 and made subject to the Safe Drinking Water Commission.

The CWC's jurisdiction arguably intersects with water systems at a few points. The Commission may authorize state assistance to local bodies "to assist them in the construction of public drinking water and water pollution control projects," § 644.101, RSMo; and it "shall implement the intended use plan developed by the safe drinking water commission pursuant to section 640.107." § 644.116, RSMo. The Commission administers the Water and Wastewater Loan Fund, which it can use to finance projects under both the federal Safe Drinking Water Act and the Clean Water Act. § 644.122, RSMo.

Not even a suspicious or cynical eye would have discerned from the title of HB

1713 that it was going to redefine the qualifications of the commissioners.

The trial court relied on *Corvera Abatement Technologies, Inc. v. Air Conservation Commission,* 973 S.W.2d 851 (Mo. banc 1998)(App 13–4, 16), which may be taken to stand for the proposition that a subject may be broad indeed ("environmental control" in that case), but the subjects "wastewater treatment systems" and "water systems" are not nearly broad enough to give notice of how HB 1713 altered the Commission whose jurisdiction encompasses primarily water pollution and natural "waters of the state."

The original HB 1713 added a section to the Clean Water Law concerning "wastewater treatment systems" (App 19), but if "it is arguable that some overlap exists" between the title and contents of the bill, that is not enough to save it. *National Solid Waste Management Ass'n v. Director of DNR,* 964 S.W.2d 818, 820 (Mo. banc 1988).

Hammerschmidt holds that a bill "relating to elections" did not properly include a new form of county governance even though it would take an election to establish a county constitution. 877 S.W.2d at 103. From the earliest case on the subject, a tangential relation to a bill's topic has been insufficient to bring wider provisions within that topic: in *State ex rel. Hixon v. Schofield,* 41 Mo. 39, 41 (1867), the Court struck a section on appeals in all civil cases from a bill "to provide for appeals in contested election cases."

In *State v. Hurley,* 258 Mo. 275, 167 S.W. 965 (1914), a bill for the "protection and preservation of fish" became the vehicle for an act the Court described as "in fact, a general statute regulating the dealing in and use of explosives." The Court held that the latter act violated the single subject prohibition. It was not enough that the explosives act

required an affidavit that the applicant would not use or allow others to use explosives to destroy fish, or that the original bill forbade such use. 167 S.W. at 966.

In *United Brotherhood of Carpenters and Joiners v. Industrial Commission,* 352 S.W.2d 633 (Mo. 1962), the Court held that a provision creating a new class of cases within the Court's exclusive appellate jurisdiction was not within the subject of a bill regulating wages on public works projects even though the appeals were from prevailing wage determinations.

In *Rizzo v. State,* 189 S.W.3d 576 (Mo. banc 2006), a bill originally "relating to political subdivisions" was amended by adding a provision that barred persons with federal criminal convictions from running for public office. The Court found a single-subject violation because, while the amendment applied to candidates for office in political subdivisions, it also applied to candidates for statewide office. 189 S.W.3d at 579. It was therefore "far more expansive" than the subject of the bill. *Id.* at 580.

The Clean Water Commission's jurisdiction is too broad for the eligibility of commissioners to be redefined in a bill on water treatment systems or even water systems. The core subject of the bill gave no notice that it would amend the Commission's foundational statute, affecting the composition of the Commission and therefore all the many other subjects within its mission.

Severability

The Court is called upon to decide if the offending provision may be severed and the rest of the bill be allowed to stand. Plaintiffs offer an opinion in hope it will aid the Court.

If the Court is convinced beyond reasonable doubt that part of the bill is unrelated to its original, controlling purpose, it will sever that part and let the core subject stand. If, on the other hand, the extraneous provision is necessary to make the bill a complete and workable whole, the Court must strike down the entire bill. *Hammerschmidt,* 877 S.W.2d at 103. Section 644.021 as amended by HB 1713 may be severed. The rest of the bill has nothing directly to do with the CWC, and the legislature would in all probability have passed it without the addition.

III

The trial court erred in dismissing Count II because the amendment to § 644.021 in HB 1713 concerning the interests represented by members of the Clean Water Commission violated Article III, § 21 of the Constitution of Missouri by departing from the original purpose of the bill, in that the purpose of regulating water treatment systems or water systems is too narrow to accommodate the much broader regulatory and supervisory role of the Clean Water Commission over water pollution and naturally occurring waters of the state.

The Missouri Constitution, Article III, § 21, provides in relevant part, "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."

HB 1713 was amended in a way that changed its original purpose; § 644.021, concerning the interests to be represented by the members of the Clean Water Commission, was not germane to the stated purpose of "regulation of water systems" because it greatly exceeded the scope of that purpose.

Standard of review and preservation of error

The Court reviews the validity of statutes de novo, presuming them to be valid and assigning the burden to the challenger to show that the act clearly and undoubtedly violates constitutional limitations. *Rentschler v. Nixon,* 311 S.W.3d 783, 786 (Mo. banc 2010).

This issue was presented as Count II of the Petition (L.F. D2, pp. 7–8) and

preserved in a motion for summary judgment with supporting exhibits and memoranda (L.F. D4–D28). The trial court in its judgment ruled on the merits of the issue, noting the motion for summary judgment, the absence of disputed facts, and the complete record (L.F. D33, pp. 10–11).

The original purpose was too narrow to include the Commission's full scope.

"Original purpose" refers to the general purpose of the bill as established by its title and contents at the time it was introduced. The restriction is on the addition of new content not germane to the original subject. *Legends Bank v. State,* 361 S.W.3d 383, 386 (Mo. banc 2012). The title can be changed on the theory that purpose and title are not the same thing; the purpose of a bill need not be stated anywhere. *St Louis County v. Prestige Travel,* 344 S.W.3d 708, 715 (Mo. banc 2011).

The single-subject and original purpose provisions are corollaries serving to protect the integrity of legislative procedure. *Hammerschmidt v. Boone County,* 877 S.W.2d 98, 101 (Mo. banc 1994). In both cases, "germane" has been used to define the test for whether new matter is permissible, *e.g.* in *Legends Bank, loc. cit.,* for original purpose and in *United Brotherhood of Carpenters and Joiners v. Industrial Commission,* 352 S.W.2d 633, 635 (Mo. 1962), for single subject.

The original purpose of HB 1713 was narrow. It was to enact a new § 644.200 on wastewater treatment systems. We will assume that the expanded bill with the title "water systems" adhered to the original purpose except for § 644.021. The other added sections concerned wastewater treatment systems, fluoridation of water supplies, and amendments to the Multipurpose Water Resource Act, §§ 256.435–256.445, RSMo, concerning

"treatment or transmission facilities for public water supplies" (App 20–25).

In *Missouri Ass'n of Club Executives v. State,* 208 S.W.3d 885, 888–9 (Mo. banc 2006), the Court held that sections on adult entertainment in a bill originally titled to address "alcohol related traffic offenses" violated the original purpose rule. The Court further found that the offending provisions could be severed and the rest of the bill preserved. In *Legends Bank, supra,* a bill with the original subject of procurement was swamped with sections on campaign finance and ethics plus one on keys to the Capitol dome. There the Court also found an original purpose violation and severed the offending sections. 361 S.W.3d at 386–7.

The Court found a violation in another case involving a narrow title, *Allied Mutual Insurance Co. v. Bell,* 353 Mo. 891, 185 S.W.2d 4 (1945). There the original bill was limited to ending deductions of premiums paid for reinsurance. The Court found that the bill in its final form diverged impermissibly by substituting the more general purpose of "defining taxable premiums or premium receipts for the purpose of taxation under any law of this state." 185 S.W.2d at 6.

Section 644.021 takes up a little more than one page of a four-and-one-half-page bill, but its consequences spill well beyond the general purpose evinced by the title and the rest of the contents. The core purpose of regulating conveyance of water by engineered systems cannot contain the rivers and lakes of the Commission's wider purpose.

CONCLUSION

WHEREFORE, Missouri Coalition for the Environment and Ms. Jackson pray the Court to reverse the decision of the trial court and remand the case for entry of judgment in their favor.

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CERTIFICATION

This brief complies with the limitations of Rule 84.06(b), containing 5,852 words.

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Certificate of Service

Counsel for Intervenors has made service of this brief on all other counsel of record by way of electronic filing on this 1st day of March, 2019.

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