No. SC97913

MISSOURI COALITION FOR THE ENVIRONMENT AND THOMAS J. SAGER,

APPELLANTS,

vs.

THE STATE OF MISSOURI, et al,
RESPONDENTS.

On Appeal from the Circuit Court of Cole County, Missouri
Nineteenth Judicial Circuit, Division IV
The Hon. Patricia Joyce
No 18AC-CC00188

BRIEF OF AMICUS CURIAE THE MISSOURI PRESS ASSOCIATION IN SUPPORT OF THE RESPONDENT

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INTEREST OF AMICUS CURIAE

Amicus Curiae The Missouri Press Association represents approximately 250 newspapers, print and digital, throughout Missouri. The organization was formed in 1867 for the purpose of furthering efficiency and morality in the newspaper field, promoting and strengthening the journalism profession, and to make the profession of journalism more beneficial to the people of Missouri. The Association itself was incorporated in 1922 as a not-for-profit corporation. Since inception, the Association has served as a spokesman on journalism activities for those in the newspaper field in Missouri.

Its members cover news on a local, regional, statewide and national basis on a daily or weekly cycle, but just as importantly, the member newspapers regularly inform the public about important governmental or legal matters through the publication of legal notices in their newspapers. Newspapers are, unquestionably, the "go-to" source for the depth and breadth of coverage of activities within a community and, as part of this coverage, they have long served as the primary source for important information about real estate foreclosures, probate and circuit court hearings, changes of boundaries of governmental districts, bank closures or shareholder matters relating to bank stock, delinquent tax sales of real property ... the list runs literally from A ("Abandoned property") to Z ("Zoos").

Obviously, this Amicus has a longstanding interest in preserving the right of the public to receive news about important public activities through legal notices. Involvement in such activities allows citizens to participate in their community. Newspapers play a key role in bringing these public notices to citizens, as further set out in this Amicus Brief for the Court. Neither Appellants or Respondents are in a position to present this issue to the Court from the perspective that this Association offers and, for that reason, it seeks to provide the information contained in this Brief for the Court's consideration.

STATEMENT OF FACTS

The Amicus Curiae hereby adopt the statement of facts submitted by the Respondents in this matter.

POINT RELIED ON

The trial court did not err in holding Senate Bill 35 as valid under the Missouri Constitution, Article III, Section 21, because its original purpose was not changed during passage, in that its original purpose was to promote transparency in government and allow Missourians to be informed in advance before state agencies purchase land.

Westin v. Crown Plaza Hotel Co., v King, 664 S.W.2d 2 (Mo. banc 1984)

ARGUMENT

> *"The people are the only censors of their governors: and even their errors will tend to keep these to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people is to give them full information of their affairs thro' the channel of the public papers...."* Statement of Thomas Jefferson[1]

The trial court did not err in holding Senate Bill 35 as valid under the Missouri Constitution, Article III, Section 21, because its original purpose was not changed during passage, in that its original purpose was to promote transparency in government and allow Missourians to be informed in advance before state agencies purchase land.

As the Trial Court recognized, the version of Senate Bill 35 as introduced required the Commissioner of Administration "to provide notice to the public before purchasing land on behald of the state agencies for which the Office of Administration purchases land." This brief will focus on the importance to the public of receiving such notice and why such a purpose is a critical function of government before it takes land off the tax rolls in local counties and cities, among other important purposes.

However, an understanding of the importance of public notices in this Country necessitates a look back at the original creation of the public notice concept and its role in government operations. Having that background leads to a clear focus on the role such a requirement plays today and its importance in this Bill before the Court.

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[1]Statement of Thomas Jefferson taken from THE WORKS, vol. 5 (Correspondence 1786-1789) (Thomas Jefferson), as cited on *https://oll.libertyfund.org/quotes/302*, last visited October 1, 2019.

1. The Historical Significance of Public Notices

The concept of public notices began long before newspapers existed, according to research from the Public Notice Resource Center[2] (hereinafter referred to as "the PNRC"), which points to posted notices in public squares as the origin of such notices.

The PNRC lists on its website a number of types of public notices that are encountered today. It is obvious that Senate Bill 35 falls within the category of "government accountability." The language contained in Senate Bill 35 is designed to provide citizens with notice of governmental actions that would remove land from ownership within the county or other governmental unit and would impact the local ownership by changing that ownership from "local" or citizen ownership to governmental ownership.

Local ownership of land creates a number of benefits to the community, such as owner-input and interest in local activities, which are lost when state government becomes the absent landowner – a landowner which may have little, if any interest in the activities of the local community. The revenue which may be generated from that land is no longer necessarily and primarily reinvested into the community but instead becomes statewide revenue. It means decisions about the land are not made at the local level and it means maintenance of that land is often not conducted by persons within the community. Such decisions and changes can have a significant impact, often negative, to the local community.

2. Missouri Newspapers' Role In Publishing Legal Notices

Missouri newspapers have a long, rich history publishing public notices. For example, a reference to "public notices" regarding a corporate matter is noted in the case of *State ex rel. Donnell Mfg. Co. v. McGrath,* 86 Mo. 239, 243, 1885 WL 7910, at *3 (Mo. 1885). Similarly, the case of *St. John v. Montgomery Min. Co.,* 68 Mo.App. 420, 421, 1897 WL 1964, at *1 (Mo.App. 1897), points out that the general public is entitled to notice about a certain matter in the case. A few years later, a case cited that the owner of hogs running loose on city streets would be given notice "by one week's publication in some newspaper of general circulation in the city...." *Sherrell v. Murray,* 49 Mo.App. 233, 234, 1892 WL 1555, at *1 (Mo.App. 1892).

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[2]Information in this paragraph from the Public Notice Resource Center can be found at *https://www.pnrc.net/about-2/about-public-notice/* (last referenced September 26, 2019).

Not all references to public notices and their importance are found in antiquated case law. Missouri courts have continued to focus on the importance of legal notices in print. "It is the purpose of legal notices and advertisements to give notice of legal and public events and proceedings," said the court in *Press-Journal Pub. Co. v. St. Peters Courier-Post,* 607 S.W.2d 453, 458 (Mo.App. E.D. 1980). And that case delves deeply into why publishing such notices in the newspaper in the county was so important. Speaking specifically about Section 493.050, R.S.Mo.,[3] the court noted, "We think it may be reasonably deduced that the primary and basic purpose of the act is to require publication in a 'going' regularly published and well established newspaper. This, upon the theory that, by reason of long establishment of the newspaper in which it is published, **the notice will more likely come to the attention of a greater number of citizens in the county**." *Press-Journal Pub. Co. v. St. Peters Courier-Post,* 607 S.W.2d 453, 459 (Mo.App. E.D. 1980) (emphasis added).

For example, when considering Section 493.100, the court considered the specific language in the statute regarding foreclosure notices of real property in large cities. There, the court pointed out, "The statute sets out minimum circulation and duration qualifications necessary to publish real estate foreclosure notices. **The goal of the statute is to give notice to the widest audience possible.** In order to ensure that each newspaper that publishes these notices can reach the entire audience, the statute mandates the duration and circulation requirements." *Legal Communications Corp. v. St. Louis County Printing & Pub. Co., Inc.,* 24 S.W.3d 744, 748 (Mo.App. E.D., 2000) (emphasis added).

3. The Significance Of Senate Bill No. 35

One of the unfortunate aspects of the Missouri legislative process is that, other than the official journal of proceedings in the Missouri House of Representatives and the Missouri Senate, there are not official journals of proceedings of the committees of each house and

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[3]All references to section numbers are to the Revised Statutes of Missouri. Statutory citations herein refer to the Revised Statutes of Missouri 2016 as updated through the 2018 Cumulative Supplement, except for these references to Sections 493.050 and 493.100, referring to the statute form as of the time the facts occurred giving rise to that litigation.

therefore there is not an official "legislative history" of bills as they go through the process of being heard at committee, where bill drafters talk about the purpose behind which individual bills were created.

However, representatives of the Association did attend those various hearings regarding this bill and did offer testimony in support of the language contained in Senate Bill No. 35, pointing out to the committee members that the public notice created by the bill would provide additional opportunities for the citizens in a county or other smaller political subdivision to be aware when land was going to be purchased by the State on behalf of any State department. Such a purchase is of great significance to citizens in a community because it often removes such land from the tax rolls of that community, reducing funds available for schools, libraries and other publicly-funded institutions in that community.

One need not consult the history of this bill to see that its sole purpose is to create a new requirement related to the purchase of land by the State, requiring that when the purchase is of land of 60 acres or more in a single transaction, or where the purchase price exceeds the value of two hundred fifty thousand dollars ($250,000.00) in a single transaction, then there must be a notice posted on a department website, a notice in newspapers of the county/counties affected by the land purchase and a public hearing before the land is purchased. Given the effect on a county when land is removed from its tax rolls, this is an absolute requirement meant to "give the public notice" of the event which is anticipated as a result of the proposed purchase. As the circuit court held, the changes to the bill during the legislative process included adding additional notice requirements which "merely changed the details through which the original purpose was to be manifested and effectuated." *Westin Crown Plaza Hotel Co. v. King,* 664 S.W.2d 2, 6 (Mo.,1984).

4. The Provisions That Are Included In Chapter 89, RSMo.

Arguably, the intent of Senate Bill No. 35 is in many ways akin to the purposes that exist for the public notices mandated in particular sections in Chapter 89 of the Missouri Statutes, which deal with zoning ordinances. Those ordinances, covering a variety of entities in the State, include public notices so that the public has knowledge of specific provisions in the zoning and planning laws.

For example, Section 89.050 sets out how city legislative bodies implement their district boundaries, regulations and restrictions, among other provisions. "However, no such

regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality." Section 89.050.

"The purpose of the notice and public hearing requirements in sections 89.050 and 89.060 is to afford interested persons an opportunity to be heard regarding a proposed zoning ordinance." *Moore v. City Of Parkville,* 156 S.W.3d 384, 389 (Mo.App. W.D., 2005). In fact, it is important to note that State laws regarding the creation of a district boundary requires a two-step notice, including a published legal notice, whereas an amendment to an existing district requires only a meeting notice, and not the two-tiered published legal notice required when an significant land issue is being discussed. Such a process seems to bear a distinct similarity to the reason that Senate Bill No. 35 contained a special legal notice where land was being removed from tax records in a city or county.

In 1937, Missouri had a case focused on an error in a published notice about amending a zoning ordinance. In that case, the court held that the notice was insufficient due to the error. *Wippler v. Hohn, et al.,* 341 Mo. 780, 110 S.W.2d 409, 411 (1937). This same case was cited again in the matter of *State ex rel. Freeze v. City of Cape Girardeau,* 523 S.W.2d 123, (Mo.App. 1975), where the court held that if the city intended to change existing zoning ordinances relating to the entire city, it should have so declared in the published notice. These cases reinforce the importance of a published notice in zoning matters and the critical role it plays in giving the public necessary information.

Similarly, a court in Illinois held that a legal notice with an erroneous legal description of the land to be affected by the zoning change was insufficient to support the amendment. "The notice is mandatory, jurisdictional and must correctly describe the subject property, otherwise any attempted amendment will be invalid." *Kirk v. Village of Hillcrest,* 304 N.E.2d 452, 454, 15 Ill.App.3d 415, 417 (Ill.App. 1973).

The *Freeze* case also pointed out that a similar requirement to the Illinois case could be found in New York.

> "The notice has been described as a 'warning' to those to be affected, and such notice should be unambiguous 'to the end that adequate warning be given to all persons whose rights may be affected by (the) action of the local board.' *Brachfeld v. Sforza,* 114 N.Y.S.2d 722, 725 (Sup.1952). 'Changes in zoning

> ordinances affect property rights, and the provisions as to a notice of hearing must be strictly complied with.' *Brachfeld,* supra at 725. Similarly, the New York court in *Palmer v. Mann,* 206 App.Div. 484, 201 N.Y.S. 525, 528 (1923), affirmed at 237 N.Y. 616, 143 N.E. 765 (1923), stated: '(W)hen a statute requires a notice to be given to the public, such a notice should fairly be given the meaning it would reflect upon the mind of the ordinary layman, and not as it would be construed by one familiar with the technicalities solely applicable to the laws and rules of the zoning commission. Otherwise such a notice, instead of informing, would actually mislead, the public, including the persons immediately interested. . . . It is, at least, not too much to ask that any ambiguity in the notice to the public of so important a change, which is the only notice that the public has, should be resolved against the notice.' (Emphasis ours.) 201 N.Y.S. at 528.

State ex rel. Freeze, at 126.

5. Other states have placed similar importance on the publication of legal notices

Other states have similarly addressed the importance of legal notices. In California, for example, the court in one case set out a lengthy statement in support of public notices:

> As stated by our Supreme Court: "The very purpose of requiring the publication of official notices is to inform the people concerning proceedings of a public nature for their general welfare. It appears reasonable to require such notices to be published in newspapers having a fixed and permanent domicile and a substantial circulation at the city or place where the inhabitants live who are most vitally interested in the transactions respecting which notices are required. At least, it is not unreasonable to expect the citizens of a particular community to rely upon their local newspaper primarily to inform them of the proceedings of their own local officers and the affairs of local public importance. No doubt it is on this theory that the legislature has seen fit to require such official advertising to be done only in newspapers of general circulation, both printed and published in the place where such notices are given or made." (*Application of Monrovia Evening Post* (1926) 199 Cal. 263, 269, 248 P. 1017.) As later restated by the court, the purpose of the law

> restricting publication of official notices to newspapers qualifying as "newspapers of general circulation" is "to assure that the published material will come to the attention of a substantial number of persons in the area affected...." (*In re Norwalk Call* (1964) 62 Cal.2d 185, 190, 41 Cal.Rptr. 666, 397 P.2d 426.)

Tri-Valley Herald, In re, 215 Cal.Rptr. 529, 169 Cal.App.3d 865 (Cal. App., 1985).

6. Conclusion

For the reasons set out above, this Amicus respectfully urges this Court to uphold the Judgment of the trial court, and for such other and further relief as this Court deems just and proper in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that on this 2nd day of October, 2019, a copy of the foregoing document was served electronically upon the counsel for Appellant and Respondent pursuant to Supreme Court Rule 105.08 via the Missouri eFiling system and that the original pleading was signed by the attorney for the Amicus.

Further, the undersigned certifies that the brief above contains 3,422 words (no lines in the brief are single spaced), has been scanned for viruses and is virus-free, and complies with the provisions contained in Supreme Court Rule 84.06 (b).

/s/ Jean Maneke
Jean Maneke