IN THE SUPREME COURT OF MISSOURI

MISSOURI COALITION FOR THE ENVIRONMENT	)	
	)	
and THOMAS J. SAGER,	)	
	)	
Appellants,	)	
	)	
vs.	)	No. SC97913
	)	
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. 18AC-CC00188

APPELLANTS' BRIEF

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JURISDICTIONAL STATEMENT

This action for declaratory judgment and injunctive relief challenges the validity of Section 34.030, RSMo, as amended by Senate Bill 35 of 2017, to impose additional requirements of notice and hearing on the Department of Natural Resource for purchases of land. The Circuit Court denied summary judgment to Plaintiffs and granted judgment to the state.

The petition raised five issues within the exclusive appellate jurisdiction of the Supreme Court under Article V, Section 3 of the Constitution for challenging the validity of the statute: SB 35 was a special law in violation of Article III, section 40(30) of the Missouri Constitution; SB 35 contained more than one subject and lacked a clear title in violation of Missouri Constitution, Article III, § 23; deviated from its original purpose in violation of the Missouri Constitution, Article III, § 21; and its passage violated the amendment requirement of the Missouri Constitution, Article III, § 28.

STATEMENT OF FACTS

The Missouri Coalition for the Environment ("MCE") and one of its members, Thomas J. Sager, brought a petition for declaratory judgment and injunctive relief against the State over the legislature's enactment of Senate Bill 35 of 2017, for unconstitutionally imposing new requirements on the Department of Natural Resources when purchasing land (L.F. D2).

Background

As introduced, SB 35 was titled an act "To repeal section 34.030, RSMo, and to enact in lieu thereof one new section relating to land purchases made on behalf of departments of the state" (L.F. D8; App 12). Both before and after SB 35, § 34.030 gave the commissioner of administration the duty of purchasing "all supplies for all departments of the state, except as in this chapter otherwise provided," and also to "purchase all lands, except for such departments as derive their power to acquire lands from the constitution of the state." (This is now § 34.030.1, RSMo.; App 12)

The Department of Natural Resources ("DNR") derives its power to purchase land from the constitution of the state. Article IV, § 47(a) of the Constitution levies a sales tax ("Parks, Soils and Water Sales Tax") of 0.10% to be used in part "by the department of natural resources through the division responsible for the State park system for the acquisition, development, maintenance and operation of state parks and state historic sites" (App 30). Fifty percent of the proceeds of this sales tax "shall be deposited in the State Park Sales Tax Fund…and used by…the department of natural resources for the purposes set forth in Section 47(a), and for no other purpose." Art. IV, § 47(b). (App 31)

Section 253.040, RSMo, grants DNR the specific authority "to accept or acquire by purchase, lease, donation, agreement or eminent domain, any lands, or rights in lands, sites, objects or facilities which in its opinion should be held, preserved, improved and maintained for park or parkway purposes." (App 18)

SB 35 did not purport to amend § 253.040. Rather, it altered DNR's purchasing authority in the statute applicable only to the commissioner of administration on behalf of departments. But even with the addition of DNR it does not cover two other departments that have their own constitutional authority to purchase land.

Passage of SB 35

The original version of SB 35 added a new subsection 2 to § 34.030 (L.F. D8; App 12). It imposed two new requirements on departments for which the commissioner of administration did the purchasing, that when buying land they must:

> (1) Provide public notice on its departmental website and to each publicly elected official that represents all or part of the county in which the land is to be purchased at least sixty days prior to the commissioner of administration purchasing such land on behalf of such state department;
>
> (2) Hold a public hearing in every county in which the commissioner of administration intends to purchase private land on behalf of such state department. The department shall provide public notice of the public hearing on its departmental website and to each publicly elected official that represents all or part of the county in which the land is to be purchased at least fourteen calendar days prior to the hearing.

On March 29 and 30, 2017, the Senate took up and perfected Senate Substitute for SB 35, which added the requirement to give public notice in newspapers. (L.F. D9, App 16; D10, pp. 5–6, 11; D11, p. 9)

On May 10 the bill was assigned to a conference committee over a House amendment that would have instructed DNR to sell certain properties in Jackson County. The Senate did not concur in this amendment. (L.F. D12, pp. 49–51, 248–9; D13, pp. 206–7).

On May 11 a Conference Committee Substitute for House Committee Substitute for Senate Substitute was passed by the Senate. The title was changed from "relating to land purchases made on behalf of departments of the state" to an act "To repeal section 34.030, RSMo, and to enact in lieu thereof one new section relating to state purchases of land." (L.F. D14, pp. 41–2) On May 12, the final day of the session (L.F. D15, p. 120), this version was truly agreed to and finally passed by the House. (L.F. D16, App 14; D. 15, pp. 75–6). The new § 34.030.2 now read (with emphasis added):

> 2. When the commissioner of administration contracts to purchase lands on behalf of any department of the state that will be owned and managed by such department **or when the department of natural resources contracts to purchase lands that will be owned or managed by the department of natural resources,** and such lands exceed sixty or more acres in a single transaction or such purchase price exceeds two hundred fifty thousand dollars in a single transaction, the respective department shall:
>
> (1) Provide public notice on its departmental website and to each publicly

elected official that represents all or part of the county in which the land to be purchased is located at least sixty days **prior to the department of natural resources purchasing such land or the commissioner of administration purchasing such land on behalf of a department;**

(2) Provide public notice in one newspaper with a circulation of more than five hundred customers and qualified under § 493.050 in every county in which **the department of natural resources intends to purchase land or the commissioner of administration intends to purchase private land on behalf of a department**. Such public notice shall be published once per week in such newspaper for a minimum of two weeks prior to such land purchase; and

(3) **Hold a public hearing in every county in which the department of natural resources intends to purchase land or the commissioner of administration intends to purchase land on behalf of a department**. The department shall provide public notice of the public hearing on its departmental website and in writing to each publicly elected official who represents all or part of the county in which the land to be purchased is located at least fourteen calendar days prior to the hearing. The department shall also publish public notice of the public hearing in at least one newspaper with a circulation of more than five hundred customers and qualified under § 493.050 in the county in which the land to be purchased is located. The public notice shall be published once per week in such newspaper or newspapers for a minimum of two weeks prior to the public hearing. (App 14)

Other departments with constitutional authority to purchase land

The Conservation Commission "may acquire by purchase, gift, eminent domain, or otherwise, all property necessary, useful or convenient for its purposes, and shall exercise the right of eminent domain as provided by law for the highway commission." Article IV, § 41, Constitution of Missouri (App 29).

The Constitution recognizes that the Highway and Transportation Commission has the power of eminent domain, Article IV, § 30(b)(App 23), to be exercised according to statute, § 227.120, RSMo. *See State ex rel. Mo. Highway and Transportation Commission v. Keeven,* 895 S.W.2d 587, 590 (Mo. banc 1995). The Commission has authority to make expenditures from the state road fund, in its discretion, to "locate, relocate, establish, acquire, construct and maintain" highways, bridges and tunnels. Art. IV, § 30(b).1(3)(App 24–5).

Motion for Summary Judgment, Standing and Judgment

MCE and Mr. Sager filed a Motion for Summary Judgment (L.F. D4). The State's Response to Plaintiffs' Statement of Uncontroverted Material Facts admitted all facts alleged in the Petition except for those allegations it characterized as legal conclusions (L.F. D18, *passim*).

Plaintiff Missouri Coalition for the Environment brought this action on behalf of its members as a not-for-profit organization that advocates for the preservation of natural open space as state parks (L.F. D6). Thomas J. Sager is a member of MCE and a Missouri resident and taxpayer who has taxpayer standing to challenge the enactment of SB 35 because he pays the Parks, Soils and Water Sales Tax which is dedicated to

purchasing lands for state parks by DNR (L.F. D7). The requirements for publishing notice in newspapers and holding public hearings (perhaps in multiple counties) will increase the expenses payable from these tax funds whenever DNR acquires new park land. Plaintiffs have shown that taxes will in future be spent, if they haven't already been, as a result of the challenged action. This confers standing. *O'Reilly v. City of Hazelwood,* 850 S.W.2d 96, 98 (Mo. 1993).

The trial court heard argument on the motion for summary judgment and granted judgment on the merits to the state (L.F. D21, pp. 1, 9).

POINTS RELIED ON

I

The trial court erred in granting summary judgment to the state because the amendment that added DNR to SB 35 violated Article III, § 23 of the Constitution of Missouri by adding a second subject not germane to the first in that the subject of purchases by the Commissioner of Administration on behalf of other agencies is, by virtue of constitutional and statutory classification of agencies, different from the purchase of land by an agency constitutionally empowered to purchase land on its own account.

City of Kansas v. Payne, 71 Mo. 159 (1879)

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

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

II

The trial court erred in granting summary judgment to the state because the amendment that added DNR to SB 35 violated Article III, § 23 of the Constitution of Missouri because its title was unclear and misleading in that it gave no notice that its terms would apply to the Department of Natural Resources but only to agencies for which the Office of Administration purchased land.

State ex rel. Town of Kirkwood v. Heege, 135 Mo. 112, 36 S.W.614 (1896)

State ex rel. Greene County v. Gideon, 277 Mo. 356, 210 S.W. 358 (Mo. banc 1919)

National Solid Waste Management Ass'n v. Director of DNR, 964 S.W.2d 818 (Mo. banc 1998)

III

The trial court erred in granting summary judgment to the State because the amendment to SB 35 affecting the Department of Natural Resources violated Article III, § 21 of the Constitution of Missouri by departing from the original purpose of the bill, in that the original purpose of amending § 34.030, RSMo, concerning land purchases by the commissioner of administration on behalf of other departments of the state, excluded DNR, which is constitutionally empowered to purchase land on its own account.

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)

IV

The trial court erred in granting summary judgment to the State because the amendment to SB 35 affecting the Department of Natural Resources violated Article III, § 28 of the Constitution of Missouri because it failed to set forth the act or section amended in that, with respect to DNR, § 34.030, RSMo, was not the section to be amended since by its original terms and its placement in the revised statutes it could not apply to DNR.

State ex rel. Town of Kirkwood v. Heege, 135 Mo. 112, 36 S.W.614 (1896)

State ex rel. Harmony Drainage District v. Hackmann, 305 Mo. 685, 267 S.W. 608 (Mo. banc 1924)

State ex rel. McNary v. Stussie, 518 S.W.2d 630 (Mo. banc 1974)

V

The trial court erred in granting summary judgment to the State because SB 35 is invalid under the Missouri Constitution, Article III, § 40(30) as a special law where a general law could be made applicable in that it fails to apply to all entities similarly situated but instead applies new requirements on purchases of land to all state agencies except, without substantial basis, the Department of Conservation and Highway and Transportation Commission, which are in the same class as DNR as departments empowered to purchase land themselves.

School District of Riverview Gardens v. St. Louis County, 816 S.W.2d 219 (Mo. banc 1991)

O'Reilly v. City of Hazelwood, 850 S.W.2d 96 (Mo. 1993)

ARGUMENT

SB 35 began as a bill affecting land purchases by the Office of Administration ("OA") on behalf of other state agencies. At the end of the legislative session, a conference committee added the Department of Natural Resources to these agencies. The reason for this is a mystery concealed by the paucity of legislative history in Missouri and the nature of the record in a case like this.

The State argued that the bill is about government transparency, which is generally a good thing (L.F. D19 p. 21, Response to MSJ). Notice and public hearings give local officials and residents a chance to weigh in. The new law applies only to plots of more than 60 acres or a price in excess of $250,000 in a single transaction (App 14). Such a large parcel could become, say, a park. Such large transactions attract more attention, and notice and hearing could become means for generating opposition to a transaction between DNR and a willing seller. MCE and Mr. Sager offer this scenario as a caution against assuming a purpose of transparency that is nowhere stated; "some underlying motive not expressed or disclosed in a legislative act cannot be treated as the subject of the act." *Thomas v. Buchanan County,* 330 Mo. 627, 51 S.W.2d 95, 97 (Mo. banc 1932).

The conference committee, having reached the end of the session, could not have introduced a new bill specific to DNR. New bills cannot be introduced after the sixtieth legislative day except in extraordinary circumstances, Art. III, § 25. They must be read on three consecutive days in each house, Art. III, § 21; and must be referred to committees in both houses, Art. III, § 22. The legislature adopted the expedient of grafting DNR onto SB 35. In its haste the legislature violated multiple procedural limitations.

I

The trial court erred in granting summary judgment to the state because the amendment that added DNR to SB 35 violated Article III, § 23 of the Constitution of Missouri by adding a second subject not germane to the first in that the subject of purchases by the Commissioner of Administration on behalf of other agencies is, by virtue of constitutional and statutory classification of agencies, different from the purchase of land by an agency constitutionally empowered to purchase land on its own account.

The Missouri Constitution, Article III, § 23, provides in relevant part, "No bill shall contain more than one subject which shall be clearly expressed in its title…"

As originally filed, SB 35 was titled an act "To repeal section 34.030, RSMo, and to enact in lieu thereof one new section relating to land purchases made on behalf of departments of the state" (L.F. D8; App 12). The title was later broadened to "state purchases of land" (L.F. D16, App 14), but this change obscured rather than clarified the effect of the bill.

Standard of review and preservation of error

Appellants raised this issue in their petition (L.F. D2 p. 8), by motion for summary judgment on which judgment was entered (L.F. D4 p. 2), and in the memorandum in support of summary judgment (L.F. D17 pp. 9–10).

The Court reviews a summary judgment *de novo,* in the light most favorable to the party against whom it was entered and giving the non-moving party the benefit of all

reasonable inferences from the record. *City of St. Louis v. State,* 382 S.W.3d 905, 910 (Mo. banc 2012). The validity of a statute is a question of law reviewed *de novo.* Laws are presumed constitutional, and the courts resolve doubts in favor of the procedural and substantive validity of bills. Nevertheless, an amendment must be within the "general core purpose" of the bill as expressed in its title. *Hammerschmidt v. Boone County,* 877 S.W.2d 98, 102 (Mo. banc 1994). The court asks whether the bill's provisions "fairly relate to, have a natural connection with, or are a means to accomplish the subject of the bill as expressed in the title." *Id.*

The single-subject rule 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. *Hammerschmidt,* 877 S.W.2d at 101–2.

Purchases by DNR and the Commissioner of Administration are different subjects.

To discern the subject the Court looks first at the title of the bill as enacted. *Missouri State Medical Ass'n v. Dep't of Health,* 39 S.W.3d 837, 840 (Mo. banc 2001). But if the title is amorphous, the Court may look at the contents of the bill as originally filed to determine its subject. *Carmack v. Director, Dep't of Agriculture,* 945 S.W.2d 956, 960 (Mo. banc 1997).

There are other guideposts for determining the subject. The number of the section being amended is part of the title and may be sufficient title in itself to an act that deals exclusively with the subject of the act amended. *State ex rel. Taylor v. Wade,* 360 Mo.

895, 231 S.W.2d 179, 184 (Mo. banc 1950). Also, "the constitution itself is organized around subjects to which we can refer in determining the meaning of the single subject requirement." *Carmack,* 945 S.W.2d at 960. These rules of construction converge on the conclusion that SB 35 contains two subjects.

The Constitution gives DNR power to buy land without the aid of the commissioner of administration, while § 34.030 by its very terms excludes DNR from its subject for that reason. It was deceptive and misleading to legislate on DNR's purchasing practices in a section that expressly did not apply to it. Generalizing the title to "state purchases of land" did not cure the deception but only covered it up since the wrong statute, §34.030, was still part of the title. The logical place to look for land purchases by DNR is § 253.040, "Acquisition of land — eminent domain" in the chapter on state parks (App 18).

City of Kansas v. Payne, 71 Mo. 159 (1879), may be read as both a one-subject and clear-title case. The Court struck down, as it applied to Kansas City, an 1879 bill that amended two earlier acts "to provide for the collection of delinquent taxes due the State." Kansas City, by virtue of its 1875 charter, had a lien for delinquent real estate taxes, which were consequently no longer state taxes. "The subject of the collection of taxes imposed by a city which had a right, and a remedy, to collect them by suit, in its own name is not embraced in the phrase 'State taxes.' It is another and a different subject, and it is doubtful if the two could be included in the same act." 71 Mo. at 162. Including DNR in § 34.030 was similarly a different subject, adding an entity that did not belong.

In *Hammerschmidt,* a bill on "elections" dealing primarily with voting by mail

was amended during passage to add a new section authorizing first-class counties to hold elections for the purpose of adopting a new form of government by "county constitution." 877 S.W.2d at 99–100. The Court found that this was a new subject, notwithstanding that the title still said "elections," because elections merely furthered the new subject of county governance. *Id.* at 103. It is less clear in this case what purpose was being served by adding a new entity to § 34.030, but it was not the one defined by that statute.

The Court has found one-subject violations in provisions that were superfluous but not so affirmatively misleading as this. 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.

At the end of the 2017 legislative session a bill was in conference that modified the land purchasing requirements on the OA. For some unstated reason, SB 35 seemed a convenient vehicle for the conference committee to impose the same requirements on DNR. This handy expedient violated the Constitution.

II

The trial court erred in granting summary judgment to the state because the amendment that added DNR to SB 35 violated Article III, § 23 of the Constitution of Missouri because its title was unclear and misleading in that it gave no notice that its terms would apply to the Department of Natural Resources but only to agencies for which the Office of Administration purchased land.

The Missouri Constitution, Article III, § 23, provides in relevant part, "No bill shall contain more than one subject which shall be clearly expressed in its title…"

The title of SB 35 as enacted was misleading and failed to keep legislators and the public fairly apprised that the bill as it related to DNR exceeded the original purpose of amending a statute that related only to purchases by the Commissioner of Administration acting on behalf of other departments.

Standard of review and preservation of error

The Court reviews grants of summary judgment and the validity of statutes de novo, presuming statutes to be valid and imposing the burden on the challenger to show that the act clearly and undoubtedly violates constitutional limitations. *City of St. Louis v. State,* 382 S.W.3d 905, 910 (Mo. banc 2012).

Appellants raised this issue in their petition (L.F. D2 pp. 9), by motion for summary judgment on which judgment was entered (L.F. D4 p. 2), and in the memorandum in support of summary judgment (L.F. D17 pp. 10–2).

The purpose of the clear title requirement is to prevent fraudulent, misleading

legislation by keeping individual legislators and the public fairly apprised of the subject matter. The title must describe in a general way the kind of legislation being enacted. The title of the bill as enacted is the only relevant version. A title may be violative if it is either underinclusive so that some provisions fall outside the scope of the bill, or so broad and amorphous that it fails to give notice of the bill's content. *Missouri State Medical Ass'n v. Dep't of Health,* 39 S.W.3d 837, 841 (Mo. banc 2001).

The title of SB 35 is underinclusive by omitting reference to DNR.

The title of SB 35 is underinclusive in that it names only one statute to be amended, and that statute is not related to purchases of land by DNR. "If the title of a bill contains a particular limitation or restriction, a provision that goes beyond the limitation in the title is invalid because such title affirmatively misleads the reader." *Fust v. Attorney General,* 947 S.W.2d 424, 429 (Mo. 1997). The number of the section being amended is part of the title. *State ex rel. Taylor v. Wade,* 360 Mo. 895, 231 S.W.2d 179, 184 (Mo. banc 1950).

In *State ex rel. Town of Kirkwood v. Heege,* 135 Mo. 112, 36 S.W.614 (1896), the bill purported by its title to amend a single section 8553 dealing solely with cities in counties governed by township organization. The body of the bill amended this section by extending its reach to "all counties contemplated in the provisions of section 7895, of article 4, of chapter 140," which had the effect of applying it to St. Louis County. The Court found a clear title violation: "From the mere reading of the title it would be impossible to even conjecture that there was an intention to amend the law relating to counties of the class into which St. Louis falls. If the act was intended to apply to the

county of St. Louis, then the title not only does not clearly express its subject, but it is affirmatively deceptive and misleading." 36 S.W. at 166. The analogy to this case is exact. One title was misleading by failing to mention St. Louis County, the other by failing to mention DNR.

In *State ex rel. Greene County v. Gideon,* 277 Mo. 356, 210 S.W. 358 (Mo. banc 1919), the legislature amended § 40 of an act on the subject of cities of the second class, a section that originally gave such cities exclusive power to license and tax dram shops. The 1917 amendatory act added no description other than "by repealing subdivision fortieth of said act and enacting a new subdivision in lieu thereof," yet the effect was to require second-class cities to make payments to the state, their respective counties, and special road districts for each dram shop license they granted. Compared to the exclusive authority originally granted to the cities, the Court found that placing this liability on second class cities was "so far a departure from and an ingrafting upon the original act of matters not germane thereto as to require specific mention of such a purpose in the title of the act." 210 S.W. at 360. In this case too it was incumbent on the legislature to specifically mention the change of purpose.

The Court struck down a bill for a clear title violation in *National Solid Waste Management Ass'n v. Director of DNR,* 964 S.W.2d 818 (Mo. banc 1998). The bill in question amended a number of sections in Chapter 260 of the revised statutes, "Environmental Control." The subject of the bill was "solid waste management," but chapter 260 includes hazardous waste management as well as solid waste management, and the two subjects have different regulatory schemes. *Id.* at 820. The Court found the

bill underinclusive to the extent that one section in it pertained to hazardous waste management. *Id.* at 821–2.

The cases relied on by the State and the trial court concern overinclusive titles and so are not germane (L.F. D21 pp. 7–8). DNR lay outside the title of SB 35.

Broadening the title to "state purchases of land" did not cure the deception but only covered it up since the wrong statute, §34.030, was still part of the title, as in *Heege*. "State purchases of land" may still be said to describe part of what § 34.030 does, but it completely fails to indicate the change wrought by the final bill (L.F. D16, App 14).

III

The trial court erred in granting summary judgment to the State because the amendment to SB 35 affecting the Department of Natural Resources violated Article III, § 21 of the Constitution of Missouri by departing from the original purpose of the bill, in that the original purpose of amending § 34.030, RSMo, concerning land purchases by the commissioner of administration on behalf of other departments of the state, excluded DNR, which is constitutionally empowered to purchase land on its own account.

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." In this case the purpose was crystal clear, to amend "section 34.030, RSMo, … relating to land purchases made on behalf of

departments of the state" (L.F. D8; App 12). This purpose excluded DNR, which purchases land on its own behalf.

Standard of review and preservation of error

The Court reviews grants of summary judgment and the validity of statutes de novo, presuming statutes to be valid and assigning the burden to the challenger to show that the act clearly and undoubtedly violates constitutional limitations. *City of St. Louis v. State,* 382 S.W.3d 905, 910 (Mo. banc 2012).

Appellants raised this issue in their petition (L.F. D2 pp. 7–8), by motion for summary judgment on which judgment was entered (L.F. D4 p. 2), and in the memorandum in support of summary judgment (L.F. D17 pp. 7–8).

The original purpose excluded DNR.

"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); but the court first focuses on the title. *Cooperative Home Care v. St. Louis,* 514 S.W.3d 571, 580 (Mo. banc 2017). The restriction serves

> to facilitate orderly procedure, avoid surprise, and prevent "logrolling," in which several matters that would not individually command a majority vote are rounded up into a single bill to ensure passage. Sections 21 and 23 also serve to keep

> individual members of the legislature and the public fairly apprised of the subject matter of pending laws and to insulate the governor from "take-it-or-leave-it" choices when contemplating the use of the veto power.

Stroh Brewing Co. v. State, 954 S.W.2d 323, 325–6 (Mo. 1997); *Missouri Ass'n of Club Executives v. State,* 208 S.W.3d 885, 888 (Mo. banc 2006). The original purpose is the general purpose, not the mere details of how that purpose is effectuated. *Missouri State Medical Ass'n v. Dept of Health,* 39 S.W.3d 837, 840 (Mo. 2001).

The addition of DNR to SB 35 was incompatible with its original purpose.

The arguments in Points I–IV of this brief are variations on a theme: looking primarily at the title, SB 35 gave no notice that the last-minute amendment to the bill would affect DNR; indeed, the title positively concealed that purpose. The revised purpose should not have been effected by amending § 34.030, a statute that excluded DNR by its terms; and broadening the title to "state purchases of land" left it too vague to give notice of the change (L.F. D16, App 14).

The trial court ruled that the original purpose was "to promote transparency in government," and that the amendment to the bill dealt merely with details (L.F. D21 p. 5, App.). The details of the bill consisted in the procedural requirements of notice and hearing that it imposed. Adding a new agency that the original law excluded by its terms was depositing a cuckoo's egg in another bird's nest.

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. Ostensibly this was a more blatant violation than SB 35, except that the title of SB 35 named a single statute that became deceptive in the final version of the bill.

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.

SB 35 as enacted departed from its original purpose by ignoring the constitutional distinction between agencies that may and may not purchase land on their own account. It did not give notice to the public or other legislators that it was going to add requirements to DNR's land acquisition process.

IV

The trial court erred in granting summary judgment to the State because the amendment to SB 35 affecting the Department of Natural Resources violated Article III, § 28 of the Constitution of Missouri because it failed to set forth the act or section amended in that, with respect to DNR, § 34.030, RSMo, was not the section to be amended since by its original terms and its placement in the revised statutes it could not apply to DNR.

Article III, § 28 of the Missouri Constitution provides, in relevant part, "No act shall be amended by providing that words be stricken out or inserted, but the words to be stricken out, or the words to be inserted, or the words to be stricken out and those inserted in lieu thereof, together with the act or section amended, shall be set forth in full as amended."

This limitation ensures that interested persons won't have to rummage through the statutes looking for the amended act and comparing it minutely to discover what the amendatory act did to it. *McCue v. Peery,* 293 Mo. 225, 238 S.W. 798, 799–800 (1922).

The easy rejoinder is that SB 35 did set out in full the section being amended, which was § 34.030. But that was not the correct section because DNR had no place in it.

Standard of review and preservation of error

The Court reviews grants of summary judgment and the validity of statutes de novo, presuming statutes to be valid and assigning the burden to the challenger to show

that the act clearly and undoubtedly violates constitutional limitations. *City of St. Louis v. State,* 382 S.W.3d 905, 910 (Mo. banc 2012).

Appellants raised this issue in their petition (L.F. D2 pp. 9–10), by motion for summary judgment on which judgment was entered (L.F. D4 p. 2), and in the memorandum in support of summary judgment (L.F. D17 pp. 12–13).

SB 35 violated Art. III, § 28 by amending the wrong statute.

The practice of amending statutes by reference to the section numbers in the revised statutes is settled law. *State ex rel. Harmony Drainage District v. Hackmann,* 305 Mo. 685, 267 S.W. 608, 611 (Mo. banc 1924); *Burge v. Wabash Railroad,* 244 Mo. 76, 148 S.W. 925, 927 (1912). If statutes are not put in their appointed places, seekers of the law will be left at sea. Revisions of the statutes may change the codification, but some order must be preserved. A bill that amends multiple statutes must set out each amended section in full. *Sours v. State,* 603 S.W.2d 592, 599 (Mo. banc 1980); *State ex rel. McNary v. Stussie,* 518 S.W.2d 630, 635–6 (Mo. banc 1974).

A bill does not violate Art. III, § 28, merely because it has "consequences" for other statutes or "may in some manner impact other areas of the law." *Century 21 v. City of Jennings,* 700 S.W.2d 809, 812 (Mo. banc 1985). Here the damage was not so collateral. Nothing could be more misleading than to mislay a statutory amendment to a place where no one would think to look for it.

The proper place to apply the notice and hearing requirements of SB 35 to DNR is in a new section of Chapter 253, "State Parks and Historic Preservation," or in an amended § 253.040 on "acquisition of land" by DNR. *State ex rel. Town of Kirkwood v.*

Heege, 135 Mo. 112, 36 S.W.614 (1896), though a clear title case, is directly pertinent on the effect of embedding an amendment to one statute in a different section. The section number is part of the title, and "[i]f the act was intended to apply to [DNR], then the title not only does not clearly express its subject, but it is affirmatively deceptive and misleading." 36 S.W. at 166.

V

The trial court erred in granting summary judgment to the State because SB 35 is invalid under the Missouri Constitution, Article III, § 40(30) as a special law where a general law could be made applicable in that it fails to apply to all entities similarly situated but instead applies new requirements on purchases of land to all state agencies except, without substantial basis, the Department of Conservation and Highway and Transportation Commission, which are in the same class as DNR as departments empowered to purchase land themselves.

SB 35 mingles two incommensurable classes: agencies whose purchasing is done for them by the OA; and the three agencies constitutionally authorized to buy land themselves — DNR, the Conservation Commission and the Highways and Transportation Commission. Even if it was proper to add DNR, there was no justification for singling it out from the other two.

Standard of review and preservation of error

The Court reviews a summary judgment *de novo,* in the light most favorable to the party against whom it was entered and giving the non-moving party the benefit of all

reasonable inferences from the record. *City of St. Louis v. State,* 382 S.W.3d 905, 910 (Mo. banc 2012). The validity of a statute is a question of law reviewed *de novo.* A statute is presumed to be constitutional and should be enforced by the courts unless it plainly affronts the constitution. *City of Springfield v. Sprint Spectrum, LP,* 203 S.W.3d 177, 182 (Mo. 2006).

Appellants raised this issue in their petition (L.F. D2 pp. 6–7), by motion for summary judgment on which judgment was entered, (L.F. D4 p. 1), and in the memorandum in support of summary judgment (L.F. D17 pp. 5–7).

SB 35 is a special law.

Article III, section 40(30) of the Missouri Constitution forbids the general assembly to pass any special law "where a general law can be made applicable, and whether a general law could have been made applicable is a judicial question to be judicially determined without regard to any legislative assertion on that subject." (App 22)

Special laws are class legislation that does not embrace all entities to which the classification is naturally related. *Id.* at 184. A law is not special if it is based on a classification that is open-ended, *i.e.* subject to change. It is special if it uses a classification based on immutable characteristics such as historical facts, geography or constitutional status. *Id.* at 184; *Harris v. Gaming Commission,* 869 S.W.2d 58, 65 (Mo. banc 1994). A facially special law is presumed unconstitutional, and the burden is on the party defending it to make a substantial justification. *Id.; Sprint Spectrum,* 203 S.W.3d at 186.

The classification here is one of constitutional status. This is explicit in the statute. Before SB 35, § 34.030 applied only to state agencies for which land purchasing is done by the Office of Administration, excluding the three agencies constitutionally empowered to make such purchases for themselves (App 12). The Department of Natural Resources is the only entity with constitutional power to purchase land that is subject to the new notice and hearing requirements of SB 35. Because DNR is singled out, and the Highway and Conservation departments are excluded, SB 35 is a special law.

An example of such an invalid classification is *School District of Riverview Gardens v. St. Louis County,* 816 S.W.2d 219 (Mo. banc 1991), which struck down a law that prevented political subdivisions in St. Louis City and County, but not the rest of the state, from adjusting property taxes without a public vote. The court found that the classification

> is neither open-ended nor rationally related to a legitimate legislative purpose; it is founded on a unique, constitutionally-sanctioned form of government recognized for the City of St. Louis by Missouri Constitution Article VI, section 31… [W]e do not believe that a classification open to other political subdivisions only upon a change in the constitution is open-ended in the same sense as a classification based on population or assessed valuation.

816 S.W.2d at 222. The court added, "there is no rational argument which explains the conspicuous absence of the Kansas City metropolitan area from the statute's exclusions." *Id.* The court reached the same result in *O'Reilly v. City of Hazelwood,* 850 S.W.2d 96,

99 (Mo. 1993), striking down a law that gave St. Louis County, but no other county, authority to create a Boundary Commission with oversight over municipal annexations.

The trial court's judgment asserts that laws addressing matters of statewide concern are not special (L.F. D21 pp. 3–4). There is no such rule. Local and special laws are defined alike, as "laws that relate to 'certain persons or things of a class ... instead of all of the class.'" *City of DeSoto v. Nixon,* 476 S.W.3d 282, 286–7 (Mo. banc 2016)(internal citation omitted). Geography is only one kind of immutable characteristic that may distinguish a special from a general law, depending on whether the classification is open-ended or closed.

There is no substantial justification.

SB 35's addition of DNR to the statute is a misclassification based on immutable constitutional status and is therefore facially special and will fall unless the state can advance a substantial justification. *Sprint Spectrum,* 203 S.W.3d at 186.

The state argued that SB 35 comprises most land purchases by state agencies (L.F. D19, Response to MSJ, pp. 16–7). This is not a defense but a reaffirmation that the class in § 34.030.1 consists of less than all agencies that belong to it.

Respondent argued that the Conservation and Highway Commissions are not in the same class because their "missions are different" (L.F. D19 pp. 16–7), but these differences are irrelevant to the matter at hand, which is the purchase of land.

The argument that "countless laws would be jeopardized" (L.F. D19 at 14–16) has no merit. Plaintiffs are not arguing that laws cannot be made about individual agencies. In this case it would have been better if they had. It is mystifying why the legislature

thought it was a good idea to add to the duties of DNR by amending a statute that expressly did not apply to it.

There is no rational basis or substantial justification for imposing the notice and hearing requirements on the Department of Natural Resources while exempting the other departments that have constitutional power to purchase land. This is especially true of the Conservation Department, which has constitutional power to purchase land for the similar purpose of creating "hatcheries, sanctuaries, refuges, reservations and all other property owned, acquired or used for such purposes…" Mo. Const. Art. IV, § 41 (App 29). Like parks, these conservation areas are set aside to remain in a largely undisturbed, natural state.

DNR as a public corporation

Article III, § 40(28) of the Constitution prohibits special laws giving privileges, rights or immunities to corporations (App 21). The Court held in *Casualty Reciprocal Exchange v. Missouri Employers Mutual Insurance Co.,* 956 S.W.2d 249 (Mo. banc 1997)("*MEM*"), that this does not apply to public corporations. Without explanation the opinion, at 253, said the same of § 40(30) even though cases before and since have applied it to public corporations. "Section 40 sets out 29 separate subject matters about which the legislature may not pass local or special laws and then provides a catch-all provision in subdivision (30) prohibiting the passage of local or special laws as to other matters to which a general law may be made applicable." *City of St. Louis v. State,* 382 S.W.3d 905, 913 (Mo. banc 2012). Section 40(28) is specific to corporations, 40(30) is not.

The *MEM* case applies the test for "public entities" under sovereign immunity law in determining what is a public corporation. 956 S.W.2d at 254–5. "A public entity encompasses any state agency," and specifically the Highways and Transportation Commission. *Cain v. Missouri Highways and Transportation Commission,* 239 S.W.3d 590, 595 (Mo. banc 2007). There is little doubt that DNR and the Conservation Commission also meet that test.

MEM, at 253, looked at *City of Webster Groves v. Smith,* 340 Mo. 798, 801, 102 S.W.2d 618, 619 (1937), which held that a municipal corporation is not a corporation in the usual sense of a private corporation. Nonetheless, a municipal corporation is a public corporation. *City of Springfield v. Clouse,* 206 S.W.2d 539, 546 (Mo. banc 1947)(overruled on other grounds, *Independence-National Education Ass'n v. Independence School District,* 223 S.W.3d 131 (Mo. banc 2007)); *Laret Inv. Co. v. Dickmann,* 345 Mo. 449, 134 S.W.2d 65, 68 (Mo. banc 1939). "Accordingly, a 'municipal corporation,' in the broader sense includes public corporations created to implement necessary public services and is applied to any public municipal corporation employing some function of government," and it includes such entities as road and sewer districts and redevelopment authorities. *Rail Switching Services v. Marquis-Missouri Terminal,* 533 S.W.3d 245, 256 (Mo.App. E.D. 2017). Returning to the sovereign immunity context, "All corporations intended as agencies in the administration of civil government are public, as distinguished from private, corporations." *D'Arcourt v. Little River Drainage District,* 212 Mo.App. 610, 245 S.W. 394, 396 (Mo.App. E.D. 1922).

Both before and since *MEM,* cases concerning such units of government and political subdivisions in general have been adjudicated under § 40(30). *City of St. Louis v. State,* 382 S.W.3d 905, 913–5; *Board of Education of St. Louis v. State Board of Educ.,* 271 S.W.3d 1, 10 (Mo. banc 2008); *Jackson County v. State;* 207 S.W.3d 608, 611–2 (Mo. banc 2006); *Sprint Spectrum, LP,* 203 S.W.3d 177; *School District of Riverview Gardens v. St. Louis County,* 816 S.W.2d 219.

Constitutional status is one kind of immutable, closed-ended classification that denotes a special law. *Sprint Spectrum,* 203 S.W.3d at 184. Some agencies, particularly DNR, the Conservation Commission and the Highways Commission, are created by the Constitution, as are certain specific charter cities and the classification of local governments in Article VI. Article III, § 40(30) does not ask about corporate status but only whether a special law has been passed when a general law could have been made applicable. Appellants have relied on cases that preceded *MEM* or, if later, seem to have applied § 40(30) as serving a different function from § 40(28) and therefore being applicable to public corporations.

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.

"The provisions of every statute are severable…unless the court finds the valid provisions of the statute are so essentially and inseparably connected with, and so

dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one…" § 1.140, RSMo.

Appellants' arguments assume severability, but the unrelated parts of the final bill cannot be easily untangled (App 14, pp. 9–10, *supra*). Arguably, the legislative intent could be accomplished by recognizing the perfected senate substitute, which applied the three new notice and hearing requirements to OA but not DNR (L.F. D9, MSJ Exhibit 5; App 16). If the Court were to perform severance, that is what the law would look like. The two houses never reached agreement on the bill in that form but went to conference over a different issue (L.F. D12, pp. 49–51, 248–9; D13, pp. 206–7). However, the Court seeks to determine if the legislature would have enacted the final bill without the invalid provision. *Home Builders Ass'n v. State,* 75 S.W.3d 267, 272 (Mo. banc 2002).

CONCLUSION

WHEREFORE, Missouri Coalition for the Environment and Mr. Sager 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 9,051 words.

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Certificate of Service

Counsel for Appellants has made service of this brief on all other counsel of record by way of electronic filing on this 19th day of August, 2019.

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