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' REPLY BRIEF

Henry B. Robertson (No. 29502)
Bruce A. Morrison (No. 38359)
Great Rivers Environmental Law Center
319 North Fourth Street, Suite 800
St. Louis, MO 63102
Phone: (314) 231-4181
Fax: (314) 231-4184
hrobertson@greatriverslaw.org
bamorrison@greatriverslaw.org
Attorneys for Appellants

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STATEMENT OF ADDITIONAL FACTS

Throughout its brief respondent pretends that the subject of SB 35 was transparency in government, or at least in government purchases of land. That certainly was a feature of the bill as introduced. The issue raised by the bill as passed is why DNR was added, considering that the amended § 34.030, RSMo, did not apply to it. Public notice was not the whole story.

The sponsor of SB 35, Senator Cunningham (App. A12), introduced bills in 2016 (SB 683, Supp. App. A3) and again in 2017 (SB 36, Supp. App. A5) attempting to repeal the Department of Natural Resources' property tax exemption.

A House bill introduced in 2017, HB 553, would have created a "Land Reclamation Legal Settlement Commission" to be tasked with planning restoration projects on land affected by lead mining, using funds from a settlement with mining companies (§ 444.1000, Supp. App. A7). It also would have required DNR and other state agencies to sell certain land in Oregon County (Supp. App. A10) with the condition that it never pass to the state or federal government (proposed § 640.780, Supp. App A8). None of these bills passed.

Amicus curiae Missouri Press Association stepped outside the record to inform the Court that representatives of the Association testified in favor of the bill, arguing that it would give "additional opportunities for the citizens…to be aware when land was going to be purchased by the State" and that such purchases often removed land from the local tax rolls (Amicus Br. 11).

MCE and Mr. Sager consider this as opening the door for them to identify the

motive behind adding DNR to SB 35. As one member of the Missouri press, The Missouri Times, reported, it was a dispute between Governor Nixon and the legislature over DNR's use of lead settlement money to purchase land for four new state parks (Supp. App. A11), a move that some legislators considered a "land grab" (Supp. App. A14).

It may be inferred that without this retaliatory motive lawmakers would not have precipitately added DNR to the terms of SB 35. No one disputes the value of government transparency, but the value of state parks is controversial.

ARGUMENT

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 state argues that "where a bill has a clear legislative title, it is unnecessary to look to the bill's original contents or the subjects of the Missouri Constitution to determine whether the bill has a single subject" (Resp. Br. 17–8), relying on *Calzone v. Interim Director, DESE,* SC97132, 2019 WL 4784803 (Mo. banc Oct. 1, 2019).

Calzone is one of those cases in which the petitioner brought a single-subject challenge but did not raise a clear title issue. "Hence, this Court need not examine the subjects of the constitution or the bills' original contents to determine their subject." (*Id.* slip op. 19)

In cases where the challenger raises both clear title and single-subject claims, as here,

> the single subject test is not whether individual provisions of a bill relate to each other. The constitutional test focuses on the subject set out in the title. We judge whether a particular provision violates the single subject rule by examining the individual provision under consideration to determine if it fairly relates to the subject described in the title of the bill, has a natural connection to the subject, or is a means to accomplish the law's purpose.

Fust v. Attorney General, 947 S.W.2d 424, 428 (Mo. banc 1997). The Court's inquiry starts with the bill's title. *Missouri State Medical Ass'n v. Dept of Health,* 39 S.W.3d 837, 840 (Mo. 2001). This includes the chapters and sections being amended. *Rizzo v. State,* 189 S.W.3d 576, 580–81 (Mo. banc 2006).

SB 35 as truly agreed and finally passed was titled 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). 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). The legislature may add chapters and sections as a bill progresses, as in *Calzone* and other cases, but here they did not. DNR is not part of "the subject described in the title," which

is purchase of land by the commissioner of administration for other agencies. The legislature broadened the wording to "state purchases of land," but since it did not expand the numeric part of the title, the bill was still limited to the original subject, "land purchases made on behalf of departments of the state" (L.F. D8; App 12).

In *National Solid Waste Management Ass'n v. Director of DNR,* 964 S.W.2d 818 (Mo. banc 1998), the Court held that solid waste and hazardous waste were separate subjects. "In fact, as part of the solid waste management scheme, the legislature has expressly defined "solid waste" to *exclude* hazardous waste. Section 260.200(34), RSMo Supp.1996." *Id.,* 964 S.W.2d at 820 (emphasis in original). Just so, § 34.030 excludes DNR. If constitutional and statutory boundaries are not observed, bills become misleading even assuming it would be all right for the legislature to make hash of the statute book by amending § 34.030 instead of the statute pertaining to DNR, § 253.040.

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.

What makes clear title a distinct limitation from single subject is that, "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).

Here there is a limitation. 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). The state tries to escape this by omitting the section number 34.030 when quoting the title (*e. g.* Resp. Br. 21, 22, 23) and claiming that the title comprises land purchases by all state "agencies," a word the title does not use (Resp. Br. 24). Really the title applies to only one state agency, OA as purchasing agent for most of the other agencies but not for DNR, which is not within the scope of the title.

"In more simple terms, the rule is that the title to a bill cannot be underinclusive." *National Solid Waste Management Ass'n v. Director of DNR,* 964 S.W.2d 818 (Mo. banc 1998). Respondent says, "This case might be like *National Solid Waste Management Ass'n* if SB 35's title specifically identified only the Office of Administration. But SB 35's title as enacted is not limited to one state agency" (Resp. Br. 23). But SB 35 is limited to OA by citation of the statute, § 34.030.

Respondent relies on two cases that are not on point (Resp. Br. 25), quoting *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 40 (Mo. banc 1982), "[t]he fact Missouri has never before had, as law, the specific provisions of [a statute] does not mean that the statute violates Art. III, § 23." By itself this only means that Art. III, § 23 does not make it impossible ever to amend a statute. The section at issue there was comprised in the title by the phrase, "to enact in lieu thereof forty new sections relating to the same subject," that subject being "credit transactions." 636 S.W.2d at 37. It did not, unlike this case,

purport to amend only a single section on a different subject.

In *Westin Crown Plaza Hotel v. King*, 664 S.W.2d 2, 6–7 (Mo. banc 1984), the Court upheld the legislature's authority to amend multiple sections from different chapters of the statutes in a single bill. That is not the case here, where the single section amended was underinclusive.

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 purpose of a bill may be general. It need not be stated anywhere. The legislature may extract a broad purpose from an originally narrow bill. *Calzone,* slip op. 9–10, 13–4. Still, there are standards that the state violates with its persistent claim that the purpose of SB 35 is transparency in government. This throws a soft blanket around the rather hard-nosed original purpose to amend "section 34.030, RSMo, … relating to land purchases made on behalf of departments of the state" (L.F. D8; App 12).

"Original purpose" is established by the title and contents of the bill 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). And

specific limiting language will restrict flights of fancy about an unstated purpose. *Calzone* at 14.

The presence of § 34.030 as the sole statute amended by SB 35 is a limitation of purpose. The agencies to which the bill applies are not mere "details" as the state contends (Resp. Br. 28–9) but are of the essence. DNR is more than a detail.

Stroh Brewing Co. v. State, 954 S.W.2d 323 (Mo. 1997), proves the point. Of the bill in issue there the Court said, "By including the words, 'an act to amend chapter 311, RSMo,' without any further language of specific limitation, such as 'for the sole purpose of,' S.B. 933 gave fair notice to all concerned that the amendment of Missouri's liquor control law, chapter 311, was the purpose of S.B. 933." 954 S.W.2d at 326. Here the purpose did not extend to a full chapter but was limited to a single section. There is no further language of limitation, but the citation of § 34.030 is a limitation in itself.

That single statute could not carry the whole burden of government transparency, even for the wider subject of "state purchases of land." In that context, DNR is not "germane," defined as "in close relationship, appropriate, relative, pertinent. Relevant or closely allied." *Calzone*, p. 9. It is diametrically opposed, being an agency excluded from § 34.030 by its terms as one for which the commissioner of administration does not purchase land.

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.

The state continues its quest to establish a rule that any law of statewide impact cannot be a local or special law (Resp Br. 32–6).

"The prohibition of 'local laws' refers to legislative acts that single out a particular unit of local government in a certain location." *Blaske v. Smith & Entzeroth,* 821 S.W.2d 822, 831 (Mo. banc 1991). But as the Court noted in *City of DeSoto v. Nixon,* 476 S.W.3d 282, 286–7 (Mo. banc 2016), this definition has become subsumed in the broader definition of special laws. General laws deal with persons or things as a class while a special law deals with particular persons or things but does not embrace all members of the class to which the classification naturally relates; geography is just one kind of arbitrary classification. *City of Springfield v. Sprint Spectrum, LP,* 203 S.W.3d 177, 184 (Mo. 2006). Nowadays the most common statement of the test is that a general law is open-ended while a special law is closed. *DeSoto,* 476 S.W.3d at 287.

"[W]hether an act be local or special must be determined by the generality with which it affects the people as a whole, rather than the extent of the territory over which it operates." *State ex rel. Mueller Baking Co. v. Calvird,* 338 Mo. 601, 92 S.W.2d 184, 187 (1936). A law certainly could be general by virtue of being statewide, but it could be special despite having statewide impact depending on the classification it creates. The Court looks at the particular classification to see, as the Court once whimsically put it, whether it would be "a mere arbitrary classification, without any basis of reason on which to rest, and would resemble a classification of men by the color of their hair or other individual peculiarities, something not competent for the legislature to do." *City of Cape Girardeau v. Fred A. Groves Motor Co.,* 346 Mo. 762, 142 S.W.2d 1040, 1045 (1940).

Respondent's reliance on *State ex inf. Danforth v. State Envtl. Improvement Auth.*, 518 S.W.2d 68, 75 (Mo. banc 1975), depends on significant omissions from the opinion (Resp. Br. 36). In context, it is clear that statewide application was only one factor in a finding that the classification was open-ended and therefore general:

> We reject the argument and adopt the reasoning of respondent, to-wit: 'The public purposes of the act may be extended to any public body, political subdivision, municipal corporation, private person or corporation . . . The act does not exclude any person or class of persons from its intended scope of activity. The law, being statewide in application, is neither local nor special . . . There is no limitation as to the entities which may contract with the authority for pollution control projects. No special privilege has been conferred upon one group to the exclusion of others.'

Kasch v. Director of Revenue, State of Mo., 18 S.W.3d 97 (Mo. App. E.D. 2000), relied on by Respondent (Resp. Br. 35–6), does not help the state. First, the case treats statewide impact as the standard only for local laws: "Driver does not contend that section 302.312.1 is a local law. It plainly has statewide application. Rather, Driver contends that section 302.312.1 is a special law because it is based on a status set out in the Missouri Constitution." The court then rejected this special law argument because neither the Bureau of Vital Statistics nor the Department of Health was named in the Constitution. 18 S.W.3d at 100. In this case, by contrast, DNR, OA, the Highway Commission and the Conservation Commission are all established by the Constitution.

SB 35 as originally introduced was not a special law. It comprised the complete class of state agencies for which the OA is the purchasing agent. The addition of DNR broke the integrity of that classification. The incomplete classification is one of constitutional status. The Department of Natural Resources derives its existence and its power to purchase land from Article IV, §§ 47, 47(a) and 47(b). The Office of Administration is created by Article IV, § 50 and has powers over the public purse through Art. IV, §§ 27(a).2–.3, .7, and 28. 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. If the legislative intent was to expand the class to include all state agencies, it failed because two members of that expanded class, the Highway and Conservation departments, were excluded.

Respondent's alarm that "countless laws would be jeopardized" (Resp. Br. 43–6) is misconceived. The legislature is free to make laws for individual agencies or groups of agencies as long as these laws rest on valid classifications.

DNR as a public corporation

On further consideration of *Casualty Reciprocal Exchange v. Missouri Employers Mutual Insurance Co.,* 956 S.W.2d 249 (Mo. banc 1997)("MEM"), Appellants venture a different reading than they at first conceived.

In citing both Art. III, § 40(28) and (30), the opinion says, "The constitutional prohibitions against creating corporations by special law and against granting corporations special or exclusive privileges and exemptions where a general law can be made applicable do not apply to public corporations." 956 S.W.2d at 253. The law at issue was the statute creating MEM, *id.* at 251, so the prohibition was inapplicable.

By combining the language of the two subsections — "against creating corporations by special law and against granting corporations special or exclusive privileges and exemptions [§ 40(28)] where a general law can be made applicable [§ 40(30)]" — the holding makes the § 40(30) catch-all prohibition inapplicable only when a law has the effect of creating a public corporation or granting it some privilege or exemption. It does not have the sweeping effect of allowing special laws to be made on behalf of state agencies, municipal corporations and other political subdivisions. These entities are, as they have always been, subject to the strictures against arbitrary classifications.

SB 35 did not create or grant any privilege or exemption to any public corporation. The prohibition of Art. III, § 40(30) against special laws where general laws can be made applicable still applies.

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.

/s/ Henry B. Robertson
Henry B. Robertson, Bar No. 29502
Bruce A. Morrison (No. 38359)
Great Rivers Environmental Law Center
319 North Fourth Street, Ste. 800
St. Louis, MO 63102
Phone: (314) 231-4181
Fax: (314) 231-4184
hrobertson@greatriverslaw.org
Attorney for Appellants

CERTIFICATION

This brief complies with the limitations of Rule 84.06(b), containing 3,612 words.

/s/ Henry B. Robertson
Henry B. Robertson, Bar No. 29502
Bruce A. Morrison (No. 38359)
Great Rivers Environmental Law Center
319 North Fourth Street, Ste. 800
St. Louis, MO 63102
Tel: (314)231-4181; Fax (314)231-4184
E-mail: hrobertson@greatriverslaw.org
Attorney for Appellants

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 17th day of October, 2019.

/s/ Henry B. Robertson