SC97913

IN THE SUPREME COURT OF MISSOURI

MISSOURI COALITION FOR THE ENVIRONMENT, et al.,

Appellants,

v.

STATE OF MISSOURI,

Respondent.

Appeal from the Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Circuit Judge

BRIEF OF RESPONDENT

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JURISDICTIONAL STATEMENT

This appeal challenges the constitutionality of the statutes in Senate Bill 35 (2017). Thus, this appeal falls within the scope of the Supreme Court's exclusive jurisdiction. Mo. Const. Art. V, § 3.

STANDARD OF REVIEW

As the Circuit Court issued a judgment after argument and briefing on Appellants' Motion for Summary Judgment and Respondent's Motion for Judgment on the Pleadings, the Supreme Court's review of the case is de novo. "The propriety of summary judgment is purely an issue of law." *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993); *Missouri Mun. League v. State*, 489 S.W.3d 765, 767 (Mo. banc 2016) (standard of review for motion for judgment on the pleadings).

The validity of Senate Bill 35's amendments to § 34.030, RSMo, under Article III of the Missouri Constitution raises questions of law to which this Court applies de novo review. *Williams v. Mercy Clinic Springfield Communities*, 568 S.W.3d 396, 406 (Mo. banc 2019). Because constitutional claims against a bill's passage are strongly disfavored by the courts, courts are to "interpret[] procedural limitations liberally and will uphold the constitutionality of a statute against such an attack unless the act clearly and undoubtedly violates the constitutional limitation." *Hammerschmidt v. Boone Cty.*, 877 S.W.2d 98, 102 (Mo. banc 1994).

STATEMENT OF FACTS

Senate Bill 35 was introduced on January 4, 2017, in the Missouri Senate with the title "An Act to repeal section 34.030, RSMo[1], and to enact in lieu thereof one new section relating to land purchases made on behalf of departments of the state." The bill proposed to add a new subsection to § 34.030 that required most Missouri state executive agencies to provide notice to the public before buying land. (L.F. D8). When the Office of Administration purchases land on behalf of Missouri state agencies, the bill required the respective agency to include a statement on the agency's website of the agency's intent to purchase land and send communication to all elected officials representing the counties containing the land. (L.F. D8). The bill also required the agency to hold a public hearing in every county where the prospective land is situated and publicize the hearing to both the public and the appropriate elected officials representing the county. (L.F. D8).

On March 30, 2017, the Senate third read and passed Senate Substitute for SB 35. (L.F. D9). The Senate Substitute retained the same public-notice requirements as the bill contained upon its introduction. It also contained an amendment that increased the information given to the public by requiring state agencies to publish a notice in one newspaper in each county where the prospective land is situated. (L.F. D9).

On May 10, 2017, after the Senate refused to concur with an amended version of the bill introduced in the House of Representatives, both chambers appointed members to

[1] Unless otherwise noted, all statutory references are to RSMo (2000) as supplemented and as amended by SB 35.

a conference committee to reconcile differences between the two chambers' versions of the bill. (L.F. D12, D13). The next day, the conference committee released the Conference Committee Substitute for SB 35. (L.F. D12, D13).

The Conference Committee Substitute retained the same provisions contained in the Senate Substitute, including the same public-notice provisions contained in SB 35 when originally introduced in January 2017. (L.F. D8, D16). The Conference Committee Substitute also made two changes to the bill. First, it narrowed the bill's scope to purchases of land larger than 60 acres and purchases exceeding $250,000. (L.F. D16). Second, it added the Missouri Department of Natural Resources, on top of the numerous state agencies already subject to the bill's public-notice requirements, as a state agency required to follow the new notice requirements. (L.F. D16). The Conference Committee Substitute contained the following legislative title: "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. D16).

On May 11, 2017, the House of Representatives third read and passed the Conference Committee Substitute. (L.F. D14). On May 12, 2017, the Senate did the same. (L.F. D15). The Governor signed the bill into law on July 10, 2017.

On May 17, 2018, Appellants the Missouri Coalition for the Environment and an individual citizen sued in the Circuit Court of Cole County alleging that SB 35 as finally passed violated several of the Missouri Constitution's procedural limitations on legislation. They alleged taxpayer standing, and they claimed that 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." (App. Br. at p. 12). Throughout this litigation, the only part of SB 35 that Appellants have claimed is unconstitutional is the addition of the DNR to the bill's notice provisions. The parties each filed dispositive motions, and on April 11, 2019, the Circuit Court granted judgment for the State. (L.F. D21). Appellants filed their appeal on May 21, 2019. (L.F. D22).

SUMMARY OF THE ARGUMENT

A bill designed to promote governmental transparency does not clearly and undoubtedly violate the Missouri Constitution's procedural limitations on legislation when the bill is amended to increase governmental transparency even further. Senate Bill 35, from its introduction to its passage, aimed to ensure that Missourians have critical information before state executive agencies purchase property. The bill accomplishes this purpose by requiring virtually all state agencies to publish notices in newspapers, conduct public hearings, and inform elected representatives about large proposed purchases. During the legislative process, the General Assembly adopted limited amendments consistent with the bill's original purpose of increasing public awareness of state land purchases.

Appellants oppose only the amendment in the Conference Committee Substitute that added the Department of Natural Resources as another agency subject to the bill's public-notice requirements. Appellants' attacks on this amendment only demonstrate why this Court must affirm SB 35's constitutionality. Removing the DNR from SB 35 would lead to less governmental transparency, as fewer state agencies would be required to inform the public before making large land purchases. Severing a portion of a statute that advances a bill's purpose illustrates that Appellants' attacks are outside the scope of challenges intended by Article III.

This Court should reject Appellants' challenges and find that SB 35 is constitutional for five reasons. First, the bill's purpose of promoting governmental transparency in state agency land purchases remained consistent from the time the bill was introduced to the time of passage. Second, the bill contains one subject because all of its provisions relate to

the bill's core purpose of providing the public with greater information about state land purchases. Third, by bearing the legislative title "relating to state purchases of land," the bill's title clearly informs citizens of the bill's content; SB 35 is a limited, one-and-a-half page bill that lacks any provisions unrelated to state agency land purchases. Fourth, SB 35 conforms to Article III, § 28's amendment requirement because it set forth, in full, what the bill would say if it were enacted.

Fifth and finally, SB 35 is not an impermissible special law under Article III, § 40 because it does not exclude any entity based on historical facts, geography, or constitutional status. Appellants urge this Court to apply the Constitution's ban on special laws to legislation that pertains to only state agencies. Essentially, they claim that SB 35 is deficient because it does not apply to *every* Missouri state agency. These arguments are unprecedented and unsupported. The plain text and history of Article III, § 40, this Court's special-law jurisprudence, and the prerogative of the General Assembly to regulate state government, compel the conclusion that SB 35 is not an unconstitutional special law. Any other interpretation of the ban on special laws will substantially hinder the General Assembly's ability to enact legislation addressing matters of statewide concern.

This Court should reject Appellants' attempt to diminish governmental transparency about important matters of statewide concern. Appellants have failed to show that the claimed offending provision of SB 35 does not relate to the bill's overall purpose of increasing public awareness of state agency land purchases. This Court should affirm the Circuit Court's judgment and hold that SB 35 does not clearly and undoubtedly violate the Missouri Constitution's procedural limitations on legislation.

ARGUMENT

I. SB 35's core subject is state purchases of land, and all of SB 35's provisions relate to that subject. (Responding to Appellants' Point Relied On I).

Constitutional claims against a bill's passage are strongly disfavored by the courts, and therefore courts "interpret[] procedural limitations liberally and will uphold the constitutionality of a statute against such an attack unless the act clearly and undoubtedly violates the constitutional limitation." *Hammerschmidt v. Boone Cty.*, 877 S.W.2d 98, 102 (Mo. banc 1994). Courts will presume that the legislature enacted a constitutional bill and show a great deal of deference towards the legislative process. *Id.*

Article III, § 23, provides that "[n]o bill shall contain more than one subject which shall be clearly expressed in its title[.]" This Court avoids interpreting the single-subject requirement in a manner that would require the General Assembly to pass "many separate acts relating to the general subject." *State ex rel. Attorney Gen. v. Miller*, 13 S.W. 677, 678 (Mo. 1890); *Am. Eagle Waste Indus., LLC v. St. Louis Cty.*, 379 S.W.3d 813, 826 (Mo. banc 2012).

The "bill as enacted is the only version relevant to the single subject requirement." *Missouri State Med. Ass'n v. Missouri Dep't of Health*, 39 S.W.3d 837, 839 (Mo. banc 2001). Courts look "to the bill's title in order to determine its subject." *Id.* at 840. Focusing on the final title of the bill, the test 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." *Hammerschmidt v. Boone Cty.*, 877 S.W.2d 98, 102 (Mo. banc 1994). As the Missouri Supreme Court has expressed in cases dating back 150 years, the "'subject' within

the meaning of Article III, § 23, includes all matters that fall within or reasonably relate to the general core purpose of the proposed legislation." *Id.* (citing *State v. Mathews*, 44 Mo. 523, 527 (1869)). "The subject of a bill may be 'clearly expressed by . . . stating some broad umbrella category' when a bill has 'multiple and diverse topics' within a single, overarching subject." *Am. Eagle Waste Indus.*, 379 S.W.3d at 826 (citing *Jackson Cty. Sports Complex Auth. v. State*, 226 S.W.3d 156, 161 (Mo. banc 2007)). So long as all provisions in a bill are "germane, connected and congruous" to that subject, the will satisfy the single-subject requirement. *American Eagle Waste Indust.*, 379 S.W.3d at 826.

For example, in *Missouri State Med. Ass'n*, where the bill's title was "relating to health care," the Court did *not* consider whether the bill's provisions—which amended statutes addressing health insurance, confidentiality of healthcare records, and pre-operation information for certain medical procedures—related to each other. 39 S.W.3d at 840-41. Instead, this Court found that the bill's provisions "are (at least) incidents or means to" the subject of the bill as expressed in the title, "relating to health care services."

In *Corvera Abatement Techs., Inc. v. Air Conservation Comm'n*, 973 S.W.2d 851 (Mo. banc 1998), this Court held that statutory provisions relating to release of hazardous substances, underground storage tanks, and asbestos abatement projects all related to the subject of "environmental control." *Id.* at 862. Time and again this Court has emphasized that so long as a bill's provisions relate to one subject or are ways to accomplish the bill's purpose, the bill will pass muster under the single-subject test. *E.g.*, *Am. Eagle Waste Indus.*, 379 S.W.3d at 826 (holding that a bill whose provisions included fixing a fee for surface mining, imposing penalties for improper waste disposal, and dividing contracts

between political subdivisions for solid waste collection and disposal, all related to the bill's purpose of environmental regulation); *Akin v. Dir. of Revenue*, 934 S.W.2d 295, 301 (Mo. banc 1996) (holding that the single subject of "education" included educational matters and a tax increase that would ultimately fund Missouri public schools).

Here, it is easy to extract SB 35's "core subject," because it comes directly from the bill's title—state purchases of land. SB 35 amended only one statute, § 34.030, and all of the statute's subsections are in service of that single subject. Each relate to one component of a land purchase: providing notice to the public before the purchase. The bill requires virtually all state agencies to publish notices in newspapers, conduct public hearings, and notify elected representatives. Adding the DNR to the bill directly advances the bill's goal of promoting governmental transparency in state agency land purchases. Because of the amendment, more state agencies will provide notice to the public. Thus, under *Hammerschmidt*, all of SB 35's provisions have a natural connection to the bill's subject, and they are a way to accomplish the bill's purpose.

Appellants have not offered an alternative subject for SB 35, if it is not state purchases of land. Instead, they argue that land purchases by two different agencies are two different subjects simply because the agencies may derive their authority to purchase land from different legal sources. Appellants' argument fails for at least four reasons.

First, their argument conflicts with the deep-rooted principle that a bill's provisions need only relate to an identifiable subject or that they are a means of accomplishing the bill's purpose; a bill's individual provisions need not relate to each other. *See, e.g.*, *Hammerschmidt*, 877 S.W.2d at 102. Thus, the test is not whether the DNR and the Office

of Administration relate to each other. The test is whether SB 35's provisions have a natural connection to an identifiable subject or whether the provisions are a way to accomplish the bill's purpose.

SB 35's subject is not land purchases by only the DNR, nor is it land purchases only by the Office of the Administration. Even if the original bill as introduced included land purchases only by the Office of Administration, the "bill as enacted is the only version relevant to the single subject requirement." *Missouri State Med. Ass'n*, 39 S.W.3d at 839. By the plain text of SB 35 as enacted by the General Assembly, each of SB 35's provisions have a natural connection to the single subject of state agency land purchases. And each is a means of accomplishing the bill's purpose of promoting governmental transparency in state land purchases.

Second, it is not reasonable to construe the subject of the enacted version of SB 35—the only relevant version of the bill in a single-subject analysis—as the source from which the agency derives its legal authority to purchase land. SB 35's subject is not, nor was it ever, regulating only those state agencies who derive their land-purchasing authority from either statute or the Missouri Constitution. Instead, SB 35's subject is state agency purchases of land generally, whatever the source of the agency's land-purchasing authority. This subject comes directly from the bill's title. *See Missouri State Med. Ass'n*, 39 S.W.3d at 840.

Third, this Court has often stated, even as recently as this month, 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.

Calzone v. Interim Comm'r of Dep't of Elementary & Secondary Educ., No. SC 97132, 2019 WL 4784803, at *8 (Mo. banc Oct. 1, 2019) (holding that where bills have a clear legislative title, "this Court need not examine the subjects of the constitution or the bills' original contents to determine their subject"); *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 326 (Mo. banc 1997) ("We need not look to either the subjects of the Constitution or the contents of the bill in this case because the title of the challenged bill is clear and certain."). As discussed in Part II *infra*, SB 35 bore a clear legislative title that informed voters of the bill's subject matter—state purchases of land.

Fourth and finally, Appellants' construction of the single-subject requirement would constrain the General Assembly's powers. Under Appellants' interpretation of the single-subject requirement, the legislature should have passed two bills that address public notice of land purchases: one bill about the Office of Administration and all the agencies on behalf of which that department purchases land; and a separate bill about the DNR and two other agencies that also supposedly derive their authority to purchase land from the Constitution. But this Court has made clear it will not sustain a single-subject challenge if doing so would require the General Assembly to pass multiple bills relating to the same general subject. *State ex rel. Attorney Gen. v. Miller*, 13 S.W. 677, 678 (Mo. 1890); *Am. Eagle Waste Indus.*, 379 S.W.3d at 825. The plain text of Article III, § 23 and this Court's jurisprudence do not compel the General Assembly to pass two otherwise identical bills.

SB 35 is nothing like the bills considered by this Court in the few cases Appellants cite in support of their argument that land purchases by the DNR and the Office of Administration are impermissible multiple subjects. In these cases, the provisions at issue

were entirely unrelated to the bills' subjects. For example, in *City of Kansas v. Payne*, 71 Mo. 159 (1879), this Court held that a bill containing provisions relating to both city and state sales taxes violated sections of the 1875 Missouri Constitution that are in Article III, § 23 today. The *Payne* court did not make clear whether it analyzed the bill under the Constitution's clear-title or single-subject requirement. But to the extent that *Payne* is a single-subject case, the legislation in that case dealt with two different tiers of government—state and local governments. SB 35, on the other hand, deals only with state entities. Moreover, more recent caselaw from this Court suggests that a bill with provisions about multiple types of governmental entities may not inherently violate Article III. *See Am. Eagle Waste Indus.*, 379 S.W.3d at 826; *see also St. Louis Cty. v. Prestige Travel, Inc.*, 344 S.W.3d 708 (Mo. banc 2011) (a bill whose purpose was to regulate taxes generally, but included provisions related only to city sales taxes upon the bill's introduction, did not violate Article III, § 21's original purpose requirement when it was broadened to include provisions that concerned different political subdivisions).

In addition, this Court in *Hammerschmidt* and *Rizzo v. State*, 189 S.W.3d 576 (Mo. banc 2006), struck bills for violating the single-subject rule because the bills included extraneous statutes unrelated to the bill's core subject. In *Hammerschmidt*, this Court found that statutes of a bill authorizing counties to create a new form of government were extraneous to the bill's core subject of amending laws relating to elections. 877 S.W.2d at 99–103. And in *Rizzo*, this Court found that the "*raison d'etre*" of an amendment to a bill "was to create a restriction on all persons of convicted of federal crimes on running for public office," and therefore the amendment was extraneous to the bill's declared subject

of legislation relating to political subdivisions. 189 S.W.3d at 5. Here, unlike the bills in *Hammerschmidt* and *Rizzo*, SB 35 amends just one statute. And SB 35 does not include provisions extraneous to the bill's identifiable purpose of promoting public awareness in state agency land purchases. Under this Court's well-established framework, SB 35 contains one subject under Article III, § 23.

II. SB 35's bears a clear legislative title because "state purchases of land" identifies the bill's subject and all of the bill's provisions pertain to requirements that certain state agencies must follow when purchasing land. (Responding to Appellants' Point Relied On II).

Article III, § 23, also requires legislation to have a clear legislative title. This flows from the goal of Article III, § 23: "to prevent fraudulent, misleading, and improper legislation[.]" *Fust v. Atty. General for the State of Mo.*, 947 S.W.2d 424, 429 (Mo. banc 1997). "Requiring bill titles to be clear is thus a way of keeping individual members of the legislature and the public fairly apprised of the subject matter of pending laws." *Home Builders Ass'n of Greater St. Louis v. State*, 75 S.W. 3d 267, 269 (Mo. banc 2002) (internal citations and quotations omitted). The general rule is that a "title is constitutionally clear where it indicates in a general way the kind of legislation that was being enacted." *American Eagle Waste Indust.*, 379 S.W.3d at 826 (internal citations and quotations omitted).

In making the clear-title determination, courts review whether the title is too broad or too narrow. In both cases, courts look to the bill's final title as enacted, *not* its title upon introduction. *See, e.g.*, *Missouri State Med. Ass'n*, 39 S.W.3d at 841 ("The bill as enacted

is the only version relevant to the clear title requirement."). Courts will strike down legislation for having an excessively broad title if the title "fails to identify a single subject." *American Eagle Waste Indust.*, 379 S.W.3d at 826. This happens when the legislative title "could define most, if not all, legislation passed by the General Assembly." *St. Louis Health Care Network v. State*, 968 S.W.2d 145, 148 (Mo. banc 1998). In judging whether a bill's title is too narrow, "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*, 947 S.W.2d at 428.

The clear-title question over SB 35, then, is whether its title as enacted is so broad that it fails to identify a single subject or so narrow that it affirmatively misleads the reader. As passed, SB 35 bears the final title "an act . . . relating to state purchases of land." This title closely parallels legislative titles upheld by this Court. For example, in *Missouri State Med. Ass'n*, this Court upheld the title "relating to health services" against a clear-title attack. The Court held that "*health services* is not too broad or amorphous, because it does not describe most, if not all, legislation enacted." 39 S.W.3d at 841 (emphasis in original). The Court contrasted the title with one the Court rejected in *St. Louis Health Care Network*, the "textbook example of a broad and amorphous title." *Id.* In that case, the Court reasoned that the title "certain incorporated and non-incorporated entities" is impermissibly broad, because it could describe any legislation that "affects, in any way, businesses, charities, organizations, governments, and government agencies." *St. Louis Health Care Network*, 968 S.W.2d at 148; *see also Corvera*, 973 S.W.2d at 862 (upholding the title "relating to

environmental control"); *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322 (Mo. banc 2000) (upholding the title "relating to transportation").

SB 35's "relating to state purchases of land" title is similar to the titles upheld in *Missouri State Med. Ass'n*, *Corvera*, and *C.C. Dillon*. It is not broad enough to encompass any piece of legislation that may concern legislators and the public, an issue which doomed the bill in *St. Louis Health Care Network*. Rather, SB 35's title is specific enough to apprise parties interested in one limited area of the activities of state government—land purchases by state agencies.

On the other end of the constitutional spectrum, SB 35's title is not impermissibly underinclusive. Every provision of SB 35 pertains to requirements that certain state agencies must follow when buying land. There are no provisions in SB 35 that do not relate to state purchase of land. The bill does not pertain to purchases of other assets, and it does not pertain to purchases of land by local political subdivisions. SB 35's title does not mislead individuals by disguising content not encompassed by the phrase "state purchases of land." SB 35's title "generally indicates what the act contains," and it is thus not underinclusive of its provisions. *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 39 (Mo. banc 1982).

Appellants claim that SB 35's title is impermissibly underinclusive because it does not reference the DNR. This Court has rarely struck down bills for bearing an underinclusive title, and when it has it has done so only when the bill includes provisions outside the scope of the title's content. In *National Solid Waste Management Ass'n v. Director of DNR*, 964 S.W.2d 818 (Mo. banc 1998), this Court held that the legislative title

"solid waste management" was misleading because the bill also amended statutes related to hazardous waste management. *Id.* at 820. The Revised Statutes separately define those terms, and thus Missourians would not know from looking at the legislative title that the bill also regulated more than just solid waste management. *Id.* The Court stressed that the bill's title would have been clear if it identified a broader subject, such as "environmental control or perhaps all types of waste management." *Id.* at 821.

Unlike the bill in *National Solid Waste Management Ass'n*, SB 35 identifies the bill's single subject of state agency land purchases. 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.

Appellants' reliance on two century-old cases from this Court as their primary authority is unavailing. In *State ex rel. Town of Kirkwood v. Heege*, 36 S.W. 614 (Mo. 1896), this Court struck a bill on a clear-title challenge because *both* the phrases and the statutes in the bill's title did not refer a specific type of county government. The bill's title descended into particulars about which cities, towns, and counties would be covered by the bill's provision. *Id.* at 614-16. Under this Court's more recent precedence, a bill might lack a clear title when "the title descends into details and particulars" and the provisions go beyond those details and particulars. *Calzone v. Interim Comm'r of Dep't of Elementary & Secondary Educ.*, No. SC 97132, 2019 WL 4784803, at *6 (Mo. banc Oct. 1, 2019) (citing older cases). Here, SB 35's title is more general than the title in *Heege*, and it cannot be said that SB 35's provisions are outside the scope of state agency land purchases.

State ex rel. Greene County v. Gideon, 210 S.W. 358 (Mo. banc 1919) is also irrelevant. In that case, this Court considered a 1917 bill whose legislative title was rather lengthy and expressly referred to two previous bills passed by the General Assembly in 1913 and 1915. *Id.* at 359. The 1913 bill gave second-class cities exclusive powers to license and tax dramshops, but it included no provisions requiring those cities to remit fees back to the county. This Court held that requiring a city to pay fees to a county was "so far a departure from and an ingrafting upon the original act of matters not germane thereto." *Id.* at 360. Thus, by referencing the subjects of the bills and referencing matters "not germane" to the subject of the bill, the Court may have engaged in a single-subject analysis and not a clear-title analysis. But to the extent that *Gideon* is a clear-title case, it is nothing like SB 35, because none of the provisions or agencies added to SB 35 in the amendment process are so far afield from the bill's title of "state purchases of land" that they must be mentioned in the bill's title.

Appellants also claim that SB 35's title is underinclusive because it identifies only § 34.030, which before SB 35 was enacted did not pertain to the DNR. This argument fails on its face, because SB 35's title clearly identifies the only statute that the bill amended. The clear-title requirement in Article III, § 23 does not require the General Assembly to identify statutes not repealed, amended, or enacted by the bill. Nor does Article III, § 23 require the General Assembly to include certain content in certain statutes. Rather, it requires a legislative title to indicate generally what the act contains. *E.g.*, *Lincoln Credit Co.*, 636 S.W.2d at 39.

This Court has rejected arguments like Appellants' arguments in other clear-title challenges. In *Lincoln Credit Co.* this Court held that "[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." *Lincoln Credit Co.*, 636 S.W.2d at 40. Similarly, in *Westin Crown Plaza Hotel v. King*, this Court rejected the challengers' argument that "it is not possible to determine the application of some of the sections in the bill's title except by reference to existing statutes." 664 S.W.2d 2, 6 (Mo. banc 1984). SB 35's title accurately identifies the general contents of the bill, and it therefore satisfies Article III, § 23's clear-title requirement.

III. SB 35's original purpose of promoting governmental transparency in state agency land purchases did not change during its passage through the General Assembly. (Responding to Appellants' Point Relied On III).

Article III, § 21, states that "no bill shall be amended in its passage . . . as to change its original purpose." A bill's original purpose is determined as of the date of introduction. *Missouri State Med. Ass'n*, 39 S.W.3d at 839. A bill's original purpose can be determined without reference to the original title itself. *Id.* (holding that "the Constitution does not require that the original purpose be stated anywhere, let alone in the title as introduced."). The inquiry focuses on what broader *purpose* does the bill, as introduced, accomplish. *See Westin Crown Plaza Hotel Co.*, 664 S.W.2d at 5–6; *see also McEuen ex rel. McEuen v. Missouri State Bd. of Educ.*, 120 S.W.3d 207, 210 (Mo. banc 2003) (holding that the original purpose is "not necessarily limited by specific statutes referred to in the bill's original title or text."). SB 35's purpose did not change during the legislative process,

because its purpose has always been to promote public awareness of state agency land purchases.

Article III, § 21, "was not designed to inhibit the normal legislative processes, in which bills are combined and additions necessary to comply with the legislative intent are made." *Blue Cross Hosp. Service, Inc. of Missouri v. Frappier*, 681 S.W.2d 925, 929 (Mo. banc 1984). Rather, the "restriction is against the introduction of matter that is not germane to the object of the legislation or that is unrelated to its original subject. Alterations that bring about an extension or limitation of the scope of the bill are not prohibited; even new matter is not excluded if germane." *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 325-26 (Mo. banc 1997).

In *McEuen*, this Court considered legislation originally introduced as a bill repealing two statutes and enacting "two new sections relating to resolution conferences." 120 S.W.3d at 209. Those two statutes addressed only the discipline of students with disabilities and judicial review processes for parents to challenge the assignment of their children to special education programs. Before passage, the bill's title had been amended to repeal four statutes and enact "four new sections relating to the appropriate educational placement of students." *Id.* These new provisions addressed a broader range of educational services and standards for students with disabilities. *Id.* The Court reasoned that changing the title and adding new provisions did not change the bill's original purpose, which "was to address the educational placement of special education students, which is the very thing at issue in that judicial review." *Id.* at 210.

Many other decisions from this Court endorse giving a broad construction to a bill's original purpose. For example, in *Stroh*, this Court held that the original purpose of a bill first introduced to amend a single statute "relating to the auction of vintage wine" also encompassed several later amendments regulating the sale and labeling of beer and malt liquor. 954 S.W.2d at 324-25. Construing the bill's purpose broadly, the Count found that the original purpose was "the amendment of Missouri's liquor control law." *Id.* at 326; *see also Missouri State Med. Ass'n*, 39 S.W. 39 at 839 (despite words in the bill's original title, the bill's original purpose was not just a mandate to insurers to provide a co-payment for certain cancer screenings, but a mandate to insurers to provide health care services in general); *Jackson County Sports Complex Auth. v. State*, 226 S.W.3d 156, 160-61 (Mo. banc 2007) (bill with original title of "relating to county government" and 16 provisions was not rendered constitutionally deficient by later legislative amendments addressing other political subdivisions outside the county level and including over 100 different provisions). These cases affirm the principle that courts interpret a bill's original purpose with an eye towards finding no constitutional violation. *See also Hammerschmidt*, 877 S.W.2d at 102.

SB 35's original purpose was to promote transparency in government and allow Missourians to be informed about a proposed state agency land purchase. The terms in SB 35's title as introduced—amending one statute "relating to land purchases made on behalf of departments of the state," (L.F. D8)—serve that broader purpose. As with the legislation considered in *McEuen*, *Missouri State Med. Ass'n*, and *Jackson County Sports Complex Authority*, SB 35 was amended during its journey through the General Assembly.

The amendment process, and resulting changes to the bill's title, is not only constitutionally permissible, it is standard legislative activity. *See Westin Crown Plaza Hotel Co.*, 664 S.W.2d at 5–6.

Adding new subsections to § 34.030 during the amendment process advances the bill's original, general purpose. The new provisions added the DNR to SB 35's scope as well as additional public-notice requirements. These promote transparency in government and public awareness of land purchases. As the Missouri Supreme Court held in *Westin Crown Plaza Hotel Co.*, "these later amendments merely changed the details through which the original purpose was to be manifested and effectuated. The additions, therefore, were not unconstitutional." 664 S.W.2d at 6.

Appellants do not state what SB 35's original purpose was, if it was not to promote public awareness of state agency land purchases. Instead, their argument is limited to what SB 35's purpose allegedly was *not*. They contend that SB 35's original purpose, whatever it was, "excluded DNR." (App. Br. at p. 24). This argument misses the point of an original-purpose analysis, which is to identify the broader goals of a bill and determine whether those goals were changed during the amendment process.

This is not a case in which there is no logical or remote connection between SB 35's original purpose and the amendment adding the DNR. Thus, SB 35 does not resemble the few bills which this Court declared violate the original-purpose requirement. *See Legends Bank v. State*, 361 S.W.3d 383 (Mo. banc 2012) (provisions related to ethics and giving legislators keys to the Capitol dome "are not logically connected or germane to procurement"); *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885, 888 (Mo. banc

2006) (adult entertainment provisions "were not remotely within the original purpose" of alcohol-related traffic offenses); *Allied Mut. Ins. Co. v. Bell*, 185 S.W.2d 4, 8 (Mo. 1945) (taxation definitions were unrelated to elimination of certain taxation deductions).

Instead, SB 35 closely resembles the bills upheld by the Court in *McEuen*, *Missouri State Med. Ass'n*, and *Jackson County Sports Complex Authority*, among many others. There is a logical connection between the goal of promoting public transparency in state agency land purchases whether the agency is the DNR, the Office of Administration, or any agency on behalf of which the Office of Administration purchases land. The agencies subject to SB 35's public-notice provisions are simply details to accomplish the bill's overall purpose of promoting public awareness of state agency land purchases. This Court should therefore find that SB 35 was passed in accordance with the original-purpose requirement of Article III, § 21.

IV. SB 35 did not violate Article III, § 28 because that constitutional provision does not require the General Assembly to amend a specific statute, and SB 35 set forth, in full, how the bill would read if enacted. (Responding to Appellants' Point Relied On IV).

The Circuit Court properly rejected Appellants' claim that SB 35 violated the Missouri Constitution's amendment requirement in Article III, § 28. Article III, § 28 states:

> No act shall be revived or reenacted unless it shall be set forth at length as if it were an original act. 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.

Id. The amendment requirement was designed to ensure that a person reading a bill can see what the law, as amended, would say. Courts have rarely struck down legislation for violating this provision, historically limiting its scope to legislation stating that a term used in one statute is replaced with another term without setting forth, in full, the statutes as amended. *See State ex rel. McNary v. Stussie*, 518 S.W.2d 630, 636 (Mo. banc 1974). SB 35 comports with that requirement for several reasons.

First, Article III, § 28 "does not apply to the express repeal of a section and the enactment of new sections which are in lieu of the repealed section." *State ex rel. K.D. v. Saitz*, 718 S.W.2d 237, 240 (Mo. App. E.D. 1986). Here, SB 35 "repealed" § 34.030 as it formerly stood and enacted new subsections in lieu of the former statute. As a result, this case does not even implicate Article III, § 28 as threshold matter.

Second, even if SB 35 does implicate Article III, § 28, there can be no serious dispute that SB 35 failed to "set forth at length" how the law would read if enacted. SB 35 showed the "words to be inserted . . . together with the act or section amended" as commanded by Article III, § 28. Mo. Const. Art. III, § 28. The bill included the former text of § 34.030. And the bill emphasized in bold text the new subsections of § 34.030, as is customary by the General Assembly. SB 35 therefore set forth, in full, what § 34.030 would say if the bill were enacted.

Finally, contrary to what Appellants claim throughout their brief, SB 35 amended no other statute besides § 34.030, nor did it need to. Appellants argue that "[t]he proper place to apply the notice and hearing requirements of SB 35 to DNR is in a new section of

Chapter 253 . . . or in an amended § 253.040 on 'acquisition of land' by DNR." (App. Br. at p. 28). Section 253.040 addresses certain powers and duties of the DNR when buying land. They thus claim that people will be confused by including DNR in this section.

But SB 35 did not amend § 253.040. Section 253.040 is neither referenced nor mentioned in SB 35, nor did it need to be. *See Fisher v. Waste Mgmt. of Missouri*, 58 S.W.3d 523 (Mo. banc 2001) ("The legislature adopted a definition of 'statement' in SB 127 in 1989, but we cannot infer that SB 127 purports to change or modify section 287.215, since SB 127 makes no reference to that section."); *State v. Rollen*, 133 S.W.3d 57 (Mo. App. E.D. 2003) ("Thus, using the definition of a 'person' in Section 1.205 to assist in interpreting Section 565.021.1(2) is not an amendment to the latter statute, and accordingly, not a violation of Article III, Section 28."). Furthermore, simply because a bill might or does have "consequences for other statutes does not bring it into conflict with Art. III, § 28." *Boyd-Richardson Co. v. Leachman*, 615 S.W.2d 46, 53 (Mo. banc 1981). For these reasons, the Circuit Court correctly concluded that SB 35 did not violate Article III, § 28.

V. SB 35 is not an unconstitutional special law because increasing public awareness of state agency land purchases is a matter of statewide concern, and the General Assembly was substantially justified to include the DNR in the bill's provisions. (Responding to Appellants' Point Relied On V).

The Missouri Constitution, in Article III, § 40, provides that "[t]he general assembly shall not pass any local or special law: . . . (30) where a general law can be made applicable." It further provides that the issue of "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." *City of DeSoto v. Nixon*, 476 S.W.3d 282, 286 (Mo. banc 2016). To determine whether a law is an impermissible special law, this Court has adopted a two-part test: "First, is the law a special or local law? Second, if so, is the vice that is sought to be corrected, the duty imposed, or the permission granted by the statute so unique to the persons, places, or things classified by the law that a law of general applicability could not achieve the same result?" *Sch. Dist. of Riverview Gardens v. St. Louis Cty.*, 816 S.W.2d 219, 221 (Mo. banc 1991).

In *City of DeSoto*, this Court clarified that there is little, if any, practical difference between special laws and local laws:

> Although recent cases use the terms "local law" and "special law" almost interchangeably, historically these terms referred to different but related types of non-general laws. "Local law" traditionally was the term used to describe a law "which relates or operates over a particular locality instead of over the whole territory of the state." BLACK'S LAW DICTIONARY 939 (6th ed. 1990). By contrast, a "special law" referred to a law "relating to particular persons or things; one made for individual cases or for particular places or districts; one operating upon a selected class, rather than upon the public generally." *Id.* at 1397–98. A special law was also sometimes called a "private law," that is, a law relating to a particular individual, association or corporation, rather than a particular locale. *Id.* at 1398, 1196. Black's second definition for local laws is for all practical purposes, however, the same as that for special laws.

476 S.W.3d at 286. This Court noted that, over time, the two terms have become "effectively merged" into the fused term "special law," which encompasses both subtypes. *Id.* at 287. When a law deals with problems affecting a region of the state or matters of statewide concern, Missouri courts have consistently declined to declare the law

unconstitutional. *See Murray v. Mo. Highway & Transp. Comm'n*, 37 S.W.3d 228 (Mo. banc 2001); *Treadway v. State*, 988 S.W.2d 508, 511 (Mo. banc 1999). Therefore, many of the cases Appellants cite in their brief that struck down special laws are patently inapplicable, including *O'Reilly v. City of Hazelwood*, 850 S.W.2d 96 (Mo. banc 1993), as they deal with local matters.

In their brief, Appellants argue that SB 35 is an unconstitutional special law because 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." (App. Br. at p. 31). They argue that the law unconstitutionally includes the DNR while excluding the Conservation Commission and the Highways and Transportation Commission. (*Id.*). For several reasons, SB 35 is not an unconstitutional special law.

A. Because SB 35 addresses matters of statewide concern, the bill does not implicate the vices typically found in special legislation.

In *Jefferson County Fire Protection Districts Ass'n v. Blunt*, the Missouri Supreme Court chronicled the history of local and special laws and the reasons for the Constitution's ban on this legislation. 205 S.W. 3d 866, 868-70. "Prior to the mid to late 1800s, state legislatures primarily enacted special legislation and very little general legislation. Special legislation made up 87% of state legislation passed in Missouri before 1859." *Id.* at 868 (internal citations omitted). For example,

> [l]aws were enacted to divorce couples, to validate invalid marriages, to control certain animals in certain places, to change interest rates at individual banks, to grant charters incorporating businesses, to provide for special punishments (e.g., whipping wife beaters) in specific counties, to create

> special local courts and judges, to change the terms in wills and trusts, to alter the course of judicial proceedings in individual cases, to create local tax laws and special tax exemptions, to authorize cities and counties to sell bonds to fund railroads that were never built, and more.

Id. at 868-69 (citing Christopher L. Thompson, Note, *Special Legislation Analysis in Missouri and the Need for Constitutional Flexibility*, 61 Mo. L. Rev. 185, 192 (1996)).

As a result of those vices, the Missouri Constitutional Convention in 1875 adopted the state's first ban on local and special legislation. It has remained in the state Constitution ever since. However, none of those historical vices are present in SB 35. Appellants' challenge is unique in that it seeks to declare as unconstitutional a law that does not target individual citizens, municipalities, or counties. Rather, they challenge a law that applies to purchases of land by multiple state agencies—a matter of pure statewide concern.

In the few instances in which Missouri courts have considered special-law challenges against legislation with statewide impact, the courts have consistently upheld the legislation. For example, in *State ex inf. Barrett ex rel. Bradshaw v. Hedrick*, the Court affirmed as constitutional legislation that enacted for-cause removal provisions for the state grain warehouse commissioner. 241 S.W. 402, 407–08 (Mo. banc 1922). The Court reasoned that "the General Assembly has passed laws relative to separate, distinct, special subjects, and creating separate and distinct offices." *Id.* at 408. Such laws do not violate the Constitution's ban on special legislation even though theoretically "a general law applicable to all appointive state officers could easily have been passed." *Id.* The legislation in *Hedrick* applied "to every person who may hold the office of warehouse commissioner. No incumbent of this office is excluded from its operation." *Id.* The Court noted that the

law "is no more a special act than that creating the office of inspector of oils, bank commissioner, or any of the other offices mentioned above." *Id.* If under *Hedrick* the General Assembly may direct legislation at a specific state officeholder or agency, it surely can exclude one or more agencies.

This Court has applied this reasoning in more recent cases that considered bills addressing state agencies and statewide concerns. In *Murray v. Mo. Highway & Transp. Comm'n*, the state Highways and Transportation Commission challenged a law that required negligence claims against the Commission be submitted to arbitration. 37 S.W.3d 228 (Mo. banc 2001). This Court upheld the legislation, reasoning that the Commission has the unique "authority over all state transportation programs and related facilities as provided by law" and "there is no other entity similarly situated to the commission." *Id.* at 237. And in *Treadway v. State*, this Court held that the General Assembly can pass legislation in order to solve problems affecting particular regions of the state, such as pollution control. 988 S.W.2d 508, 512 (Mo. banc 1999).

At least one Missouri appellate court has recognized the outer bounds of the special-law ban. In *Kasch v. Director of Revenue, State of Mo.*, 18 S.W.3d 97 (Mo. App. E.D. 2000), the plaintiff argued that a law governing the admissibility of records filed with the "department of revenue and bureau of vital records of the department of health" in court proceedings was an impermissible "special law" because it applied to DOR records but not to records kept by the other executive departments established by Article IV of the Missouri constitution. *Id.* at 99. The Eastern District Court of Appeals rejected the argument that the law was facially special "[b]ecause neither the Bureau of Vital Records nor its parent

Department of Health is mentioned in the Missouri Constitution." *Id.* at 100. Thus, the Court held that any "contention that section 302.312.1 is a 'facially special law' based on the immutable characteristic of constitutional status is clearly erroneous." *Id.* at 99. Similarly here, SB 35 pertains to the DNR as well as other agencies that are not mentioned in the Constitution. Thus, the law does not exclude agencies based on constitutional status.

The common thread in these cases is a recognition that the General Assembly can legislate on matters of statewide concern. Here, SB 35 does not defy the ban on special laws any more than did the legislation in *Hedrick*, *Murray*, and *Treadway*. Like the issue of pollution in *Treadway*, SB 35 applies to an issue—state agency purchases of land—that affects more than a single individual, group, municipality, or county. State land purchases can actually span multiple counties. Moreover, like the legislation upheld in *Hedrick* and *Murray*, SB 35 specifically regulates the activities of state agencies. If anything, SB 35 is more "general" than the legislation upheld in *Hedrick* and *Murray* because SB 35 pertains to multiple state agencies, while the legislation in those cases identified and regulated a single state agency or official. SB 35 does not target one state agency or officeholder; it regulates nearly all Missouri agencies.

The purpose of the ban on local and special laws in Article III, § 40(30), is not to prevent legislation dealing with matters of statewide concern. *See Jefferson County*, 205 S.W. 3d at 868-70; *see also State ex inf. Danforth ex rel. Farmers' Elec. Co-op., Inc. v. State Envtl. Improvement Auth.*, 518 S.W.2d 68, 75 (Mo. banc 1975) (Under Article III, § 40(28), "a law, being statewide in application, is neither local nor special."). SB 35 addressed matters of statewide concern and it did not implicate the vices that led to the

Missouri Constitution's ban on special legislation. This Court should not disrupt either the historical understanding or the contemporary interpretations of Article III, § 40.

In their brief, Appellants claim that the ban on special laws in Article III, § 40(30) should apply to public corporations, including state agencies. (App. Br. at pp. 33-35). Appellants concede that the DNR, along with the Conservation Commission and the Highways and Transportation Commission, are public corporations, citing *Cain v. Missouri Highways and Transportation Commission*, 239 S.W.3d 590 (Mo. banc 2007). Appellants correctly note that in *Casualty Reciprocal Exchange v. Missouri Employers Mutual Insurance Co.*, 956 S.W.2d 249 (Mo. banc 1997) (the "*MEM*" case), this Court specifically held that the ban on special laws in Article III, §§ 40(28) and 40(30) did not apply to public corporations. This Court's analysis in the *MEM* case seemed to focus on Article III, § 40(28), but the Court's opinion notes that the parties addressed Article III, § 40(30), and the issue was squarely raised on appeal. 956 S.W.2d at 251, 253.

The *MEM* case was correctly decided, and the ban on special laws in Article III, § 40(30) does not apply to public corporations like the DNR. Appellants appear to ask this Court to either disregard the *MEM* case or to abandon its holding, despite the issue having been squarely presented to the *MEM* court and despite Appellants conceding that the DNR is a public corporation. As discussed throughout this brief, Appellants have not clearly and undoubtedly established that SB 35 is a special law, and so there is no reason for this Court to revisit *MEM*. Moreover, this is the first time that Appellants have raised the public corporation issue or cited the *MEM* case. Appellants did not raise this issue or cite to the *MEM* case in their submissions to the trial court. This may well be a dispositive issue and

question of law, and Appellants have therefore waived it by raising it for the first time on appeal to the Supreme Court. *State v. Fassero*, 256 S.W.3d 109, 117 (Mo. banc 2008) ("Generally, a party on appeal 'must stand or fall' by the theory on which he tried and submitted his case in the court below.").

B. SB 35 does not classify state agencies based on the source of their power to purchase land.

Appellants contend that SB 35 is unconstitutional because it includes only one state agency that derives its authority to purchase land from the Constitution. But this classification is simply not found in the plain text of SB 35. The General Assembly is free to create classes in legislation, so long as the class applies to all members. *See State ex rel. Evans v. Gordon*, 149 S.W. 638, 642 (Mo. 1912) ("The power of the Legislature to designate a class and legislate with regard to the class so created cannot be doubted. It must be a natural class, and the law must apply to all members thereof.").

In most cases challenging legislation under the special-law ban, courts consider whether the classification is open-ended or closed-ended. *See City of Normandy v. Greitens*, 518 S.W.3d 183, 191 (Mo. banc 2017). "Open-ended characteristics are those where new members can come into the group, and existing members can leave it." *City of DeSoto*, 476 S.W.3d at 287. Closed-ended characteristics are impermissible, and include characteristics such as "historical facts, physical facts, local geography, or constitutional status." *Id*. Presumably, Appellants contend that SB 35 includes a closed-ended classification. (App. Br. at p. 35). But the traditional closed-ended classification analysis

is necessarily inapplicable when the challenged legislation does not include a classification, let alone the particular classification that Appellants contend exists.

The Missouri Supreme Court has addressed what types of legislation trigger classification-based analysis:

> A law is special in a constitutional sense when, by force of an ***inherent limitation***, it arbitrarily separates some persons, places or things from others upon which, but for such limitation, it would operate. The test of a special law is the appropriateness of its provisions to the objects that it excludes. It is not, therefore, what a law includes, that makes it special, but what it excludes. If nothing be excluded that should be contained the law is general. Within this distinction between a special and a general law the question in every case is whether any appropriate object is excluded to which the law, but for its limitations, would apply.

Hedrick, 241 S.W. at 407–08 (Mo. banc 1922) (emphasis added, quoting *Budd v. Hancock*, 48 A. 1023 (N.J. Sup. Ct. 1901)).

SB 35 is not an unconstitutional special law because there no "inherent limitation" separating the class of state entities included in the bill from a class of state entities excluded from the bill. *Id.* SB 35 enacted new public-notice requirements for the DNR as well as every agency on behalf of which the Office of Administration purchases land. By its plain text, SB 35 neither created nor implied a limitation that is the cause for some classes being included and others being excluded.

Assuming that Appellants are correct and the DNR does derive its land-purchasing authority from the Constitution and the Office of Administration derives its authority from statute—a question that is unnecessary for this Court to decide because SB 35 is not a special law—the power to purchase land is not a cleaver that divides agencies from being

covered or not by SB 35. The bill imposes the same public-notice requirements upon multiple state entities deriving land-purchasing authority from different sources. Members of both of these "incommensurable classes" (App. Br. at p. 28) are included in the bill. Appellants have not met their burden to clearly and undoubtedly show that SB 35 uses this classification to separate included agencies from excluded agencies.

SB 35 does not include or exclude state entities based on historical facts, geography, or constitutional status. *See City of DeSoto*, 476 S.W.3d at 287. No inherent limitation causes some agencies to be subject to SB 35 and others be excluded. Because SB 35 is not classification-based legislation, it does not implicate the analytical framework commonly used in Article III, § 40(30) challenges.

C. SB 35 is a general law that does not implicate any fundamental rights or legislate against any suspect class, and all of its provisions are rationally related to the legitimate governmental purpose of promoting public awareness of state agency land purchases.

If this Court finds that SB 35 is a general law, it should also find that the bill is not unconstitutional under other tests. "If a statute is held to be a general law, courts use the rational-basis test and the burden is on the party contesting the statute's constitutional validity to show the statutory classification is arbitrary and lacks a rational relationship to a legitimate legislative purpose." *City of Normandy v. Greitens*, 518 S.W.3d 183, n.18 (Mo. banc 2017). This test invokes "the same principles and considerations that are involved in determining whether the statute violates equal protection in a situation where neither a

fundamental right nor a suspect class is involved, *i.e.*, where a rational basis test applies." *Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 832 (Mo. banc 1991).

Here, SB 35 passes the rational basis test. SB 35 does not implicate any fundamental rights or legislate against any recognized suspect class. "Suspect classes include such classes as race, national origin or illegitimacy." *In re Care & Treatment of Norton*, 123 S.W.3d 170, 173 (Mo. banc 2003). And even were there a classification evident in the plain text of SB 35, the classification does not lack a rational relationship to a legitimate legislative purpose.[2]

SB 35 requires most Missouri state agencies to provide public notice before purchasing land larger than 60 acres or exceeding $250,000. Between the DNR and the Office of Administration, these agencies purchase most land on behalf of the State of Missouri and its agencies. For its part, the DNR has the authority to purchase land for the state park system. *See* § 253.040. The DNR's constitutional mission is to promote "environmental control and the conservation and management of natural resources." Mo. Const. Art. IV, § 47. Additionally, the General Assembly has specifically tasked the DNR, through Chapter 253, with the responsibility of administering the State Parks and Historic Preservation Act, and the National Historic Preservation Act. § 253.010 –.022.

[2] Appellants have failed to preserve any argument that SB 35 is a general law that has an arbitrary or irrational classification. Under Rule 84.04(f), Respondent raises these points as an alternative basis to support the judgment below.

The State Parks and Historic Preservation Act and the National Historic Preservation Act serve a distinct legislative mission under DNR's control, a mission not completely shared by the Conservation Commission and the Highways and Transportation Commission. The Conservation Commission manages lands of different sizes, and for different purposes, than the DNR. Its constitutional mission is to promote the "control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wildlife resources of the state, including hatcheries, sanctuaries, refuges, reservations and all other property owned, acquired or used for such purposes." Mo. Const. Art. IV, § 40(a). As for the Highways and Transportation Commission, its mission is limited to transportation. *See* Mo. Const. Art. IV, § 29; *See Murray*, 37 S.W.3d at 237 (holding that the Highways and Transportation Commission has the unique "authority over all state transportation programs and related facilities as provided by law" and "there is no other entity similarly situated to the commission.").

Thus, the DNR's concerns are not necessarily shared by the Conservation Commission or the Highways and Transportation Commission. If the issue here is narrowly defined to be the DNR's inclusion in SB 35 to the exclusion of the Conservation Commission and Highways and Transportation Commission, the unique mission of the DNR makes it dissimilar from those other agencies. The General Assembly recognized an issue statewide concern—lack of public notice in advance of state agency land purchases—and saw fit to solve it by regulating the process by which most agencies purchase land. The constitutional mission of an agency is not an arbitrary or irrational classification to use in deciding which agencies will be tasked to implement the General Assembly's solutions to

this issue of statewide concern. Thus, the General Assembly's inclusion of one state agency with a unique constitutional mission over others with different missions is rationally related to the legitimate legislative interest of promoting public awareness of state agency land purchases.

D. If SB 35 were declared an unconstitutional special law, countless laws would be jeopardized and the General Assembly would be burdened in its ability to manage the operations of state government.

Appellants' largest concern with SB 35 is that the bill unfairly imposes public-notice requirements on the DNR but on not the State Highways Commission or Conservation Commission. Appellants have not offered a workable legislative solution to this perceived problem. And their brief fails to fully tackle the palpable consequences to the legislative process if SB 35 is declared an unconstitutional special law. Each consequence will impose tremendous burdens on the General Assembly's ability to regulate the operations of state government.

This Court has affirmed the legislature's prerogative to "control the executive branch by passing amendatory or supplemental legislation and presenting such legislation to the governor for signature or veto, or, by the power of appropriation." *Missouri Coal. for Env't v. Joint Comm. on Admin. Rules*, 948 S.W.2d 125, 134 (Mo. banc 1997). This Court traditionally avoids broadly applying a rule to strike down legislation when such broad application would invalidate many other laws. In an early case, this Court upheld against a special-law attack legislation about damages to property on railroads, reasoning that

> if the construction contended for by the learned counsel should obtain, laws giving mechanic's liens would be interdicted. And we might add, so would the act giving liens to contractors, laborers, etc., against railroads, liens of agisters and keepers of horses, inn and boarding house keepers, as also landlord's liens. This character of legislation as already shown has long prevailed in this State.

Humes v. Missouri Pac. Ry. Co., 82 Mo. 221, 231 (Mo. 1884).

The General Assembly passes dozens of bills each year that specifically mention one or more state agencies. These state agencies often share characteristics with other agencies not included in a given bill. For example, a few state agencies are supervised by a multi-member commission as opposed to a single director. *See, e.g.*, Mo. Const. Art. IV, § 29 (Highways and Transportation Commission); § 49 (Labor and Industrial Relations Commission); § 52 (Coordinating Board for Higher Education). But it cannot be the case that the General Assembly is prohibited from enacting statutes about the responsibilities of one or more constitutionally-created commissions without enacting the same responsibilities for all other such agencies. *See, e.g.*, § 226.020 (Powers of the State Highways and Transportation Commission); § 286.060 (Powers of the Labor and Industrial Relations Commission); § 173.030 (Powers of the Coordinating Board for Higher Education). It makes sense that the legislature has greater flexibility with passing bills regulating state agencies. Missouri's state agencies are uniquely situated to solve particular statewide problems.

Declaring SB 35 unconstitutional would cast doubt on the constitutionality of other bills that regulate particular state agencies, even bills that regulate the vast majority of state agencies. SB 35 already regulates the many state agencies on behalf of which the Office of

Administration purchases land. If SB 35 is constitutionally deficient for excluding two state agencies that may derive their authority to purchase land from the Constitution, there are two likely ways to cure the deficiency. Neither fix is constitutionally or practically viable.

First, the General Assembly may have to pass a new version of the bill that applies to *every* state agency. Thus, the General Assembly would be prohibited from considering the appreciable differences and distinct constitutional and statutory missions of the agency members of the executive branch; all agencies must be treated identically in all respects with land purchasing.

Second, the General Assembly may have to pass two identical bills: one bill pertaining to the Office of Administration and all the agencies on behalf of which it purchases land, and one bill pertaining only to the DNR, the Conservation Commission, and the Highways and Transportation Commission. This shares all the disadvantages of the first consequence, and it would lead to a multitude of bills dealing with the same subject matter. This Court has held Article III should not be interpreted so narrowly as to require passing many bills that address similar subjects. *State ex rel. Attorney Gen. v. Miller*, 13 S.W. 677, 678 (Mo. 1890); *Am. Eagle Waste Indus.*, 379 S.W.3d at 825.

Appellants have suggested no other fix to SB 35, let alone a reasonable fix. Any legislation regulating state agencies could exclude some members of a hypothetical, narrowly drawn class proposed by a challenger. But when the hypothetical class is not actually found in the challenged law, the law cannot be unconstitutional. *See Hedrick*, 241 S.W. at 408 (reasoning that the legislation must have an "inherent limitation" that "arbitrarily separates some persons, places, or things from others" to have an impermissible

classification). Were it otherwise, the General Assembly would be all but prohibited from regulating the operations of state government agencies and solving matters of statewide concern. This Court should affirm the General Assembly's prerogative to enact legislation that solves issues of statewide concern.

E. Even if SB 35 were a special law, it was substantially justified.

Although this Court should reject Appellants' claim that SB 35 is a special law, a finding that it is a special law does not automatically render the bill unconstitutional. "If a statute is held to be a special law . . . the party defending the statute must demonstrate a substantial justification for the special treatment." *City of Normandy*, 518 S.W.3d at n.18.

Assuming that SB 35 is a special law, the General Assembly was substantially justified in excluding other state agencies. The DNR's unique mission makes it dissimilar from other agencies. *See Murray*, 37 S.W.3d at 237 (holding that the Highways and Transportation Commission has the unique "authority over all state transportation programs and related facilities as provided by law" and "there is no other entity similarly situated to the commission."). The legislature recognized an issue statewide concern—little public notice before state agencies purchase land—and saw fit to solve it by increasing the amount of notice the public has before state agencies purchase land. The General Assembly was therefore substantially justified in including one state agency with a unique constitutional mission over others with different missions.

VI. Severability.

As discussed in this brief, Appellants have not established that SB 35 clearly and undoubtedly violates the Missouri Constitution's procedural limitations on legislation. To begin with, this Court need not consider the "Severance" argument in Appellants' brief, because Appellants did not raise it separately in a Point Relied On or as an allegation of reversible error, in contravention of Rule 84.04(d). But Respondent addresses the issue of severance here for preservation purposes and to promote the strong public policy that some provisions in SB 35 should survive if Appellants should succeed on any of their claims.

If Appellants prevail on any of their constitutional claims, this Court should sever any portion of SB 35 that violated the particular constitutional limitation. This Court has employed a severability analysis in the few cases in which it determined that a bill violated Article III, §§ 21 or 23. *See, e.g.*, *Missouri Roundtable for Life, Inc. v. State*, 396 S.W.3d at 353-55; *Hammerschmidt*, 877 S.W.2d at 103-04. This Court should do the same if it reverses the Circuit Court and concludes that SB 35 violates any provision of Article III.

CONCLUSION

For these reasons, this Court should affirm the judgment of the Circuit Court of Cole County.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above was filed electronically under Rule 103 through Missouri Case Net, on this 2nd day of October, 2019.

/s/ Jason K. Lewis

CERTIFICATION OF COMPLIANCE

The undersigned hereby certifies that the above brief complies with the limitations in Rule 84.06(b) in that excluding the cover, certificates of service and compliance, and signature blocks, the brief contains 12,447 words.

/s/ Jason K. Lewis