Summary of SC98891, *City of De Soto and James Acres v. Michael L. Parson, Governor of the State of Missouri, et al.*

Appeal from the Cole County circuit court, Judge Jon E. Beetem
Argued and submitted May 12, 2021; opinion issued July 22, 2021

Attorneys: De Soto and James Acres were represented by James M. Kreitler and Andrew J. Bauman of the Wegmann Law Firm in Hillsboro, (636) 797-2665. The state was represented by Jason K. Lewis of the attorney general's office in St. Louis, (573) 751-3321. The fire protection district was represented by James Layton of Tueth Keeney Cooper Mohan Jackstadt PC in St. Louis, (314) 880-3600.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A city and one of its residents appeal from a judgment finding a statute regarding fire protection districts and annexation in counties within particular population parameters and the bill enacting the statute were not constitutionally invalid. In a 6-0 decision by Chief Justice Paul C. Wilson, the Supreme Court of Missouri vacates the judgment and remands the cause to the circuit court. The house bill enacting the statute violates the prohibition against multiple subjects in article III, section 23 of the state constitution because not all provisions relate to the subject of elections. Additionally, the entire bill is invalid and cannot be enforced because the invalid portions that do not relate to elections cannot be judicially severed from the remaining valid portions of the bill.

Facts: In 2018, the house of representatives passed and sent to the senate House Bill No. 1446. At that time, the bill sought only to amend section 115.124, RSMo, to allow certain political subdivisions, special districts, and municipalities to forego elections where the number of candidates is equal to the number of offices to be voted upon. In the senate, three new provisions were added to the bill. First, section 32.315, RSMo, was added to require the department of revenue to issue an annual report listing all sales and use tax levies that had been authorized by state law, approved by local voters, and collected by the department of revenue. Second, section 115.157, RSMo, was amended to require the secretary of state to provide authorized individuals with certain information about voters who requested absentee ballot applications. Finally, section 321.370, RSMo, was amended to add an introductory phrase to subsection 1 and to add new subsections 2 through 5. The effect of these changes was to provide an exception to the ordinary consequences of a city annexing land that had been part of a fire protection district. This new exception, however, did not apply everywhere such an annexation might occur. Instead, it applied only to one defined region and, even then, three identified groups of cities were excluded from that region. The house adopted the senate's changes, and the governor signed HB 1446 into law. The bill's final title was: "AN ACT to repeal sections 115.124, 115.157, and 321.320, RSMo, and to enact in lieu thereof four new sections relating to elections, with an emergency clause for a certain section." In 2020, De Soto and one of its residents (collectively, De Soto) sued the governor and attorney general (collectively, the state), alleging section 321.320 was an unconstitutional special law and HB 1446 violated the single subject and clear title provisions of the state constitution. De Soto alleged Jefferson County is the only

county that fits within section 321.320's defined region and that De Soto was treated differently under the statute, which excepted out all other similarly situated cities in the county. The parties filed competing motions for summary judgment (judgment on the court filings, without a trial). Following a hearing, the circuit court entered summary judgment in the state's favor. De Soto appeals.

VACATED and REMANDED.

Court en banc holds: (1) HB 1446 violates the prohibition against multiple subjects in article III, section 23, which limits bills to containing no more than one subject, which must be expressed clearly in the bill's title. The test for whether a bill addresses a single subject is not how the provisions relate to each other but whether the provisions are germane to the general subject of the bill. The provisions of the bill will be found germane to a single subject if 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. The subject of HB 1446 is elections; however, the bill contains provisions that do not fairly relate to, have a natural connection with, or serve as an incident to or means of accomplishing that subject. The mere fact that section 321.320.2, RSMo, references the possibility (but not even the necessity) of an election does not render the amendments to section 321.320 in HB 1446 germane to the subject of elections.

(2) The invalid portions of HB 1446 that are not germane to the subject of elections cannot be severed from the remaining valid portions of the bill. When evaluating a procedural constitutional violation such as a violation of article III, section 23, the doctrine of judicial severance is applied. Severance is appropriate only when this Court is convinced beyond a reasonable doubt that the legislature would have passed the bill without the additional provisions and that the provisions in question are not essential to the efficacy of the bill. Given the number of changes the bill underwent prior to its enactment, there is no basis for concluding beyond a reasonable doubt that the general assembly would have passed HB 1446 without the amendments to section 321.320, RSMo, and the creation of section 32.315, RSMo. Accordingly, HB 1446 is invalid in its entirety and may not be enforced.