

**Summary of SC91742, *Legends Bank and John Klebba v. State of Missouri, et al.***

Appeal from the Cole County circuit court, Judge Daniel R. Green  
Argued and submitted Nov. 10, 2011; opinion issued Feb. 14, 2012

**Attorneys:** The state was represented by General Counsel Ronald R. Holliger and Solicitor General James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321; and the bank and Klebba were represented by Charles W. Hatfield and Khristine A. Heisinger of Stinson Morrison Hecker LLP in Jefferson City, (573) 636-6263.

*This summary is not part of the opinion of the Court. It has been prepared by the 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:** The state appeals a circuit court's determination that a bill ultimately titled as relating to ethics is unconstitutional, severing and leaving standing only two sections relating to the bill's original purpose of procurement. In a 7-0 decision written by Chief Justice Richard B. Teitelman, the Supreme Court of Missouri affirms the circuit court's decision. The bill violates the original purpose clause of the state constitution. Because this issue is dispositive, the Court does not reach other points on appeal. The Court severs the portions of the bill enacted in violation of this constitutional provision, leaving intact only the two sections relating to the bill's original purpose of procurement.

In a concurring opinion, Judge Zel M. Fischer agrees with the principal opinion that the bill violates the original purpose clause. He also agrees with the circuit court that the bill also violates the single subject requirement of the state constitution. He writes separately to explain why the Court should discontinue the judicially created doctrine of severance, which permits the adoption of procedurally unconstitutional legislation to be upheld against the clear will of the people as expressed in the Missouri Constitution.

**Facts:** Senate Bill No. 844 originally was introduced as an "act to amend chapter 37, RSMo, by adding one new section relating to contracts for purchasing, printing, and services for statewide elected officials." The section added was section 37.900, allowing statewide elected officials to use the office of administration for determining the lowest bidder during procurement. The senate added two amendments to the bill before perfecting it. One dealt with the purchase of supplies; the other required that each legislator be provided with keys to the capitol dome. The house adopted a substitute for the bill, removing the provision relating to keys to the capitol dome, retaining the sections related to procurement, repealed 29 sections of law, enacted 49 sections of law in three statutory chapters and changed the bill's title to "relating to the ethical administration of public institutions and officials, with penalty provisions and a contingent effective date for certain sections." On the last day of the legislative session, a conference committee substitute – submitted after the house refused to accept the senate version – was truly agreed to and finally passed. This final version, titled an "act ... relating to ethics, with penalty provisions," retained section 37.900 regarding procurement, included the provision relating to keys to the capitol dome, repealed and enacted a number of sections in three statutory chapters, and added a new section in a fourth chapter making it a misdemeanor to obstruct an ethics investigation. Legends Bank and John Klebba filed a declaratory judgment action asserting that SB 844 violated the single subject requirement of article III, section 23 of the Missouri

Constitution; the original purpose requirement of article III, section 21 of the Missouri Constitution; and the First Amendment to the United States Constitution insofar as the bill bars political action committees from receiving money from Missouri state chartered banks. The circuit court sustained their motion for judgment on the pleadings and voided the bill except for the procurement provisions of sections 37.900 and 34.048, RSMo. The state appeals.

**AFFIRMED.**

**Court en banc holds:** (1) The circuit court properly determined that SB 844 violates the original purpose requirement of article III, section 21. This section prohibits any bill from being “so amended in its passage ... as to change its original purpose,” which is determined at the time the bill is introduced. The title and earliest contents of SB 844, as introduced, demonstrate its original purpose pertained to the procurement of necessary goods and services for elected officials. The final version of the bill, however, contains numerous provisions that pertain to ethics, campaign finance restrictions and keys to the capitol dome, which are not germane to the bill’s original purpose at the time it was introduced. Because this issue is dispositive, it is unnecessary to address the state’s remaining points on appeal.

(2) The provisions of SB 844 relating to procurement, sections 37.900 and 34.048, are severed from the remainder of the bill and left intact. When the procedure by which the legislature enacts a bill violates the constitution, severance is appropriate if this Court is convinced beyond a reasonable doubt that the specific provisions in question are not essential to the efficacy of the bill. Severance is inappropriate, however, if the statute’s valid provisions are so essentially and inseparably connected with, and so dependent on, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one. Severance also is inappropriate if the valid provisions, standing alone, are incomplete and incapable of being executed in accordance with legislative intent. Here, the Court is convinced beyond a reasonable doubt that the sections relating to campaign finance, ethics and keys to the capitol dome are not essential to the efficacy of the properly enacted provisions pertaining to procurement, which are complete and capable of being executed in accordance with legislative intent.

**Concurring opinion by Judge Fischer:** The author agrees with the principal opinion that SB 844 violates the original purpose clause, article III, section 21, as well as with the circuit court that the bill also violates the single subject clause, article III, section 23. Both provisions have been in Missouri’s constitution since the late 1800s. These provisions provide necessary and valuable legislative accountability and transparency by keeping individual members of the legislature and the public fairly apprised of the subject matter of pending laws, insulating the governor from “take it or leave it” choices when contemplating the use of the veto power; and facilitate orderly procedure, serve to defeat surprise and prevent logrolling. The original purpose of a bill must be measured at the time of its introduction. Here, no reasonable person would be “fairly apprised” by the title of SB 844 that its final version would contain provisions giving each legislator a key to the capitol dome and campaign finance limits. The test for determining whether a bill violates the single subject rule, as laid out in *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994), is whether the subject, as set out in the title, includes all matters that fall within or are reasonably related to the general core purpose of the proposed legislation. Here, SB 844 was amended to include the additional subjects of campaign finance

limits and who should have keys to the capitol dome, which do not fairly relate to or have a natural connection to the original subject of “contracts for purchasing, printing, and services for statewide elected officials.” The original purpose and single subject provisions “provide the citizens of Missouri with necessary and valuable legislative accountability and transparency.”

The author writes separately to explain why the Court should discontinue the judicially created doctrine of severance, which permits the adoption of procedurally unconstitutional legislation to be upheld against the clear will of the people as expressed in the Missouri Constitution.

Several states, including Missouri, adopted those procedural requirements in their state constitutions to prevent their legislature from engaging in the same misbehavior of early Congresses, which was to harness unpopular legislation to popular legislation to get majority approval of unpopular legislation.

Under the current law as developed in *Hammerschmidt*, severance is appropriate only when the circuit court or this Court “is convinced beyond a reasonable doubt” that the specific provisions in question are not essential to the efficacy of the bill and that the legislature would have passed the bill without the additional provisions. *Hammerschmidt*, 877 S.W.2d at 103-04. This Court developed a preference to sever bills and uphold some provisions because “attacks against legislative action founded on constitutionally imposed procedural limitations are not favored.” *Id.* at 102. The author demonstrates that continuing to use the severance doctrine to save legislation enacted in clear violation of the state constitution, however, will give legislators no incentive to follow the express procedural mandates of the constitution. Further, abolishing the judicially created severance doctrine also would encourage the majority of legislators supporting a popular bill to guard against adding unrelated amendments that, by themselves, do not garner majority support. Additionally, the author points out that severance effectively violates the separation of powers protected by the state and federal constitution because, by invalidating only part of a bill when the entire bill was enacted in violation of the state constitution, a court may be subverting the legislative process and the governor’s veto by allowing legislation to survive that might not have received enough votes to become law or been vetoed.

Finally, the author strongly suggests that abolition of the judicially created doctrine of severance in these cases would encourage principled constitutional behavior on the part of every legislator and preserve the separation of powers, which is a key component of our democracy and necessary to the proper function of our government.