

Summary of SC92455, Missouri Roundtable for Life, Inc., Frederic N. Sauer, Missouri Right to Life, Pam Fichter, and Lawyers for Life, Inc.

Appeal from Cole County circuit court, Judge Daniel R. Green

Argued and submitted September 19, 2012; opinion issued March 19, 2013

Attorneys: The state was represented during arguments by Solicitor General James Layton of the attorney general's office in Jefferson City, (573) 751-332; the Missouri taxpayers were represented by Stephen Clark of The Clark Law Firm LLC in St. Louis, (314) 814-8880; and the Missouri Biotechnology Association was represented by Patrick C. Woolley, Michael A. Moorefield, Adam R. Troutwine and Susan B. Henderson-Moore of Polsinelli Shughart PC, (816) 753-1000.

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: Missouri Roundtable seeks to enjoin implementation of Missouri Senate Bill No. 7 and to reverse any actions already taken to execute its provisions. In a per curiam opinion, joined by all judges participating, the Supreme Court of Missouri holds that SB 7 is unconstitutional in its entirety as a violation of the single subject provision of article III, section 23. The Court also holds section B of SB 7 cannot be severed from the remainder of the bill under the facts of this case.

In a concurring opinion, Judge Zel M. Fischer agrees with the principal opinion that SB 7 is unconstitutional in its entirety. He writes separately to express his view that the doctrine of severance in cases of procedural unconstitutionality should be abolished.

Facts: SB 7 was passed in the first extraordinary session of the 96th Missouri General Assembly and signed into law Oct. 21, 2011. Section A of the bill was designed to repeal section 196.1109 regarding money appropriated from the life sciences research trust fund, along with several other statutes relating to science and innovation. Section B contained only one provision, which conditioned the passing of SB 7 on the passing of another bill, Senate Bill No. 8, relating to taxation. SB 8 did not pass, but several agencies began implementing section A of SB 7. Roundtable filed to prevent implementation of SB 7 and reverse steps already taken by the agencies. The circuit court found SB 7 was unconstitutional in its entirety as a violation of the single subject provision of article III, section 23. The state appealed the decision.

AFFIRMED.

Court en banc holds: SB 7 is unconstitutional in its entirety as a violation of the single subject provision of article III, section 23. Article III, section 23 states that, "no bill shall contain more than one subject which shall be clearly expressed in its title." A bill may be conditioned on the happening of a future event, however the Court has not yet addressed the issue of whether that event can be the passing of future legislation. Conditioning the effectiveness of the science and innovation provisions of SB 7 on the passing of the taxation provisions of SB 8 clearly injects at least one additional subject into SB 7. Section B of SB 7 cannot be severed from section A and the remainder of the bill upheld. When considering severance for a procedural constitutional

violation, the Court will find severance appropriate only when it is convinced beyond a reasonable doubt that the legislature would have passed a bill without the additional provisions. The circuit court correctly noted that the contingency clause of section B was a portion of SB 7's title and subject, which was sufficient to cast reasonable doubt on the legislature's passing of SB 7 without section B.

Concurring opinion by Judge Fischer: The author agrees with the principal opinion that SB 7 in its entirety is an unconstitutional violation of article III, section 23. However, considering severance in cases where the Court has determined the General Assembly violated mandatory procedures of the state constitution encourages improper behavior in the legislature. The application of the judicially created doctrine of severance to procedural constitutional violations violates the separation of powers provisions of the United States and Missouri constitutions, as evidenced by the governor signing a bill he knew was contingent on the passing of another bill relating to a different subject. The doctrine of severance should not be used to save legislation enacted in violation of the procedural mandates of the state constitution.