

**IN THE
SUPREME COURT OF MISSOURI**

No. SC92455

STATE OF MISSOURI, et al.,

APPELLANT,

v.

**MISSOURI ROUNDTABLE FOR LIFE, INC., FREDERIC N. SAUER
MISSOURI RIGHT TO LIFE, and PAM FICHTER**

RESPONDENT.

**Appeal from the Circuit Court of Cole County, Missouri
The Honorable Daniel R. Green**

**BRIEF OF AMICUS CURIAE
MISSOURI BIOTECHNOLOGY ASSOCIATION**

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JURISDICTIONAL STATEMENT, STANDARD OF REVIEW, AND**STATEMENT OF FACTS**

Amicus Curiae Missouri Biotechnology Association (hereinafter “MOBIO”) files this Brief pursuant to Missouri Supreme Court Rule 84.05(f)(2). MOBIO has received consent from Appellant to file a brief in this matter, but did not receive consent to file a brief from Respondent. Therefore, Amicus has filed a Motion for Leave to file a Brief of Amicus Curiae with the Court. Amicus adopts the jurisdictional statement, standard of review, and statement of facts contained in the brief of Appellant State of Missouri as its jurisdictional statement, standard of review, and statement of facts.

INTEREST OF AMICUS CURIAE

MOBIO is a non-profit trade association that serves all Missouri organizations interested in the life sciences. MOBIO's members are companies, professional service firms, universities, research institutions, economic development organizations, and civic leaders who are joined together through MOBIO to promote economic development in Missouri by supporting life sciences research benefitting the general population. A small sample of MOBIO's members include the Academy of Science of St. Louis, Blue Springs Economic Development Corporation, Center for Emerging Technologies, Donald Danforth Plant Science Center, Eli Lilly and Company, Greater Kansas City Chamber of Commerce, HOK, Heartland Health Systems, Institute for Industrial and Applied Life Sciences, Johnson & Johnson, Liberty Economic Development Corporation, Missouri Department of Agriculture, Missouri Farm Bureau, Monsanto Company, Pharmaceutical Research & Manufacturers of America, Springfield Area Chamber of Commerce, the University of Central Missouri and the University of Missouri.

MOBIO is committed to helping entrepreneurs find the financial and intellectual capital needed to establish new companies and commercialize new products originating from life sciences research. MOBIO's mission is to advance and champion the life sciences across Missouri, by accelerating bioscience comprehension throughout the state's elected leadership and citizenry through:

- Providing professional state governmental relations for biotechnology impacted healthcare and agriculture;

- Enabling world class research, scientific and technological innovation within a welcoming environment;
- Developing a superior work force; and,
- Stimulating a favorable environment for business expansion, attraction and entrepreneurship.

It has long been the policy of the State of Missouri to foster innovation and entrepreneurship in technology-based Missouri businesses. In order to create a mechanism whereby public investments by the State of Missouri are used to set the path for Missouri to cultivate a 21st Century economy, the Missouri General Assembly enacted SB 7 during the 2011 special legislative session, which included the Missouri Science and Innovation Reinvestment Act (MOSIRA). MOSIRA reflects the most significant attempt by the Missouri General Assembly to elevate the competitiveness of Missouri nationally and internationally in technology and innovation. MOSIRA represents Missouri's first, concentrated, long term strategy for attracting, developing and growing coveted and successful innovators, entrepreneurs and skilled workers. It establishes both the governance structure and funding formula to implement this strategy, and allows the state to prioritize new revenue growth from the high-tech sector and invest it in a strategic infrastructure designed to help accelerate the growth of private sector employers.

The economic benefits of MOSIRA to Missouri were touted in a press release from Governor Jay Nixon on October 21, 2011 following the signing of the legislation, which stated in part:

“Many of the jobs and careers of the future will be created by emerging high-tech companies, and we need to encourage investment in these businesses here in Missouri. The MOSIRA bill will be a valuable tool to encourage more start-up companies in science and technology to join what is an already growing area for the Show-Me State and our economy. Through MOSIRA, that continued growth will generate even more expansion in research and technology.”

The enactment of MOSIRA was an acknowledgement by the General Assembly of the growing concern that Missouri’s economy cannot become diversified and modernized without the state initiating some supportive role. MOSIRA leverages Missouri’s existing research base and puts the state in a position to pivot towards the commercialization opportunities available from that strong research base.

However, the erroneous application of the law of severance by the Trial Court in this case threatens to undermine the legislature’s intention to complete this essential pivot in the state’s economy toward innovation and modernization. This case presents an issue of great importance to MOBIO and its members, and the Trial Court’s decision on the principal point on appeal will have a direct effect not only on those involved in bioscience research and innovation, but also on the economy in Missouri as a whole.

Amicus MOBIO files this brief in support of the position that the unconstitutional provisions of SB 7 should be severed from the constitutional provisions of the bill containing MOSIRA in accordance with this Court's long-standing and well-established practice as set out in *Hammerschmidt v. Boone County*, 877 S.W.2d 98 (Mo. banc 1994) and most recently articulated in *Legends Bank v. State*, 361 S.W.3d 383 (Mo. Banc 2012).

ARGUMENT

The Trial Court erred in entering judgment on the pleadings finding that Section B of SB 7 could not be severed and that SB 7 is therefore unconstitutional in its entirety, because the Trial Court erroneously interpreted and applied the law in finding that the Trial Court was “convinced beyond a reasonable doubt that the legislature would not have passed SB 7 without Section B” in that: (1) Section B is not essential to the efficacy of the properly enacted provisions in SB 7; (2) Section A is not so inseparably and dependent upon Section B that it could not be presumed the legislature would not have enacted Section A without the inclusion of Section B; and, (3) SB 7, with the inclusion only of the valid provisions, is complete and capable of being executed in accordance with legislative intent.

The Current State of the Law Concerning Severance was Not Properly Applied in the Trial Court’s Opinion

The Current State of the Law - *Legends*

In *Legends Bank v. State*, 361 S.W.3d 383 (Mo. Banc 2012), this Court articulated its current severability analysis. The *Legends* court heard an appeal from the Cole County Circuit Court, which ruled that with the exception of the provisions related to state procurement policy, all other sections of Senate Bill 844 (SB 844) were unconstitutional because they violated the single subject limitation of Article III, Section 23 of the Missouri Constitution. *Id.* at 385. The Truly Agreed to and Finally Passed version of SB 844 contained three different provisions: (1) a provision that allowed for statewide elected officials to use the office of administration for procurement; (2) a

provision concerning keys to the capitol dome; and (3) numerous amendments to the law concerning ethics and campaign finances. *Id.* The title of SB 844's Truly Agreed to and Finally Passed version was: "An Act...relating to ethics, with penalty provisions." *Id.*

This Court held that SB 844 violated the original purpose requirement of Article III, Section 21 of the Missouri Constitution and then undertook an analysis of whether unconstitutional portions of the bill could be severed. *Id.* at 387.

First, this Court stated that: "[w]hen the procedure by which the legislature enacted 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." *Id.*, (citing *St. Louis County v. Prestige Travel, Inc.*, 344 S.W.3d 708, 716 (Mo. banc 2011) and *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 103-104 (Mo. banc 1994)). Second, this Court stated that severance is inappropriate in two instances. Severance "is inappropriate if the valid provisions of the statute 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." *Legends*, 361 S.W.3d at 387, (citing *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885,889 (Mo. banc 2006)). "Severance is also inappropriate if the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent." *Id.* (citing *Club Executives*, 208 S.W.3d at 889). Thus, this Court holds that severance is appropriate when the unconstitutional provisions of a bill are not essential to the efficacy of the bill, when the valid provisions of a bill are not so essential to and inseparable from the void provisions

that it can be presumed the legislature would have enacted the valid provisions without the void ones, and when the valid provisions, standing alone, are capable of being executed in accordance with legislative intent. *Id.* (*St. Louis County v. Prestige Travel, Inc.*, 344 S.W.3d 708, 716 (Mo. banc 2011); *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 103-104 (Mo. banc 1994); and *Missouri Ass’n of Club Executives v. State*, 208 S.W.3d 885,889 (Mo. banc 2006)).

The Trial Court’s Erroneous Application of *Legends*

The Trial Court’s ruling that Section B of SB 7 cannot be severed from the remainder of the bill is not supported by this Court’s current severability analysis. In this case, the Trial Court declined to follow the analysis presented in the majority opinion of *Legends*. Specifically, the Trial Court erroneously applied the “beyond a reasonable doubt” standard by focusing on the multiple amendments to SB 7 and the change to its title and finding that together, they created a reasonable inference that SB 7 would not have passed but for the unconstitutional provision.

The Trial Court’s opinion states that the court is “...convinced beyond a reasonable doubt that the legislature would not have passed SB 7 without Section B.” LF0010. To support that assertion, the Trial Court first refers to Plaintiff’s Amended Petition paragraphs 29-32, which – collectively – seek to assert that when looking at each predecessor bill and SB 7 as they moved through the legislative process, neither “...SB 7 nor any of its predecessor bills would have passed but for the addition of the contingency clause.” LF0010. Additionally, the Trial Court cites the bill’s title when it was Truly Agreed to and Finally Passed as the clearest support for its position, asserting that the

express inclusion of the “contingent effective date” provides evidence that it cannot be said beyond a reasonable doubt that SB 7 would have passed without Section B. LF1095.

However, the Trial Court’s opinion ignores this Court’s decision in *Legends*, the similarity of *Legends* to the instant case, and this Court’s application of its established severance jurisprudence. It has never been the Court’s practice to examine different versions of the bill and predecessor bills, while also considering the bill’s title at passage, as the sole factors in the beyond a reasonable doubt analysis.

As in this case, *Legends* involved a bill that violated a procedural requirement found in Article III of the Missouri Constitution. Whereas in *Legends*, SB 844 violated Article III, Section 21 of the Missouri Constitution, in the instant case, the Trial Court found SB 7 to violate Article III, Section 23 of the Missouri Constitution. LF1097. A review of case law reveals that this court proceeds with its severance analysis in the same manner irrespective of whether it is an Article III, Section 21 violation or an Article III, Section 23 violation. Thus, the *Legends* analysis serves as the precedent for the analysis in the instant case.

As in this case, *Legends* involved a bill that was amended repeatedly. The Truly Agreed to and Finally Passed bill was different from the original version and original bill title. The *Legends* court was confronted with a bill that, as originally introduced, amended one statutory chapter. *Legends*, 261 S.W.3d at 385. The Senate perfected SB 844 with two amendments, but the bill was subsequently further amended in the House, with one Senate amendment removed and a new amendment relating to ethics added. *Id.* Then, the Senate refused to accept the House version and the bill was amended in

Conference – now with multiple amendments to multiple chapters - and subsequently Truly Agreed to and Finally Passed. *Id.*

However, unlike in the Trial Court’s decision, the fact that SB 844 in *Legends* was amended several times *did not* create an inference for the *Legends* court to hold that it could not be convinced beyond a reasonable doubt that the ethics, campaign finance, and keys to the dome provisions were not essential to the efficacy of the bill. *Legends*, 361 S.W. 3d at 387. Just as in the instant case, the bill was amended through the process and unconstitutional provisions were included. The *Legends* court and the Trial Court were presented with essentially the same fact pattern - a bill that was amended numerous times - yet they reached opposite conclusions. The Trial Court considered the amendments dispositive, finding they created a situation where the Trial Court was not convinced beyond a reasonable doubt as to whether Section B was not essential to the efficacy of SB 7. The *Legends* court did not reach this same conclusion.

Additionally, as in the instant case, SB 844 in *Legends* had its title changed throughout the process, so that the title of the bill as introduced was different than the title of the version that was Truly Agreed to and Finally Passed. *Legends*, 361 S.W.3d at 385-386. The title of SB 844 as passed by the legislature included a reference to the provisions found unconstitutional, as was the case in SB 7. *Id.* But again, when the two respective courts were presented with the same fact pattern – a bill with a title that was changed to include an unconstitutional provision – they reached an opposite conclusion. The Trial Court held that the title change created a situation where the Court could not be convinced beyond a reasonable doubt that the bill would have passed but for the addition

of the unconstitutional provisions, as the opinion argues that the title change shows “most clearly” that the legislature would not have passed SB 7 without Section B. LF1095.

The *Legends* court did not reach this same conclusion.

Per the *Legends* analysis, it is clear that the Trial Court erroneously applied the standard, as Amicus MOBIO advocates that it was beyond a reasonable doubt that Section B was not essential to the efficacy of the bill. Section B is not essential to the efficacy of SB 7, rather it concerns Senate Bill 8 (SB 8), which was a bill to enact “eighty-two new sections” - or more precisely a tax credit reform bill - and has nothing to do with any of the provisions in SB 7. LF0227. Additionally, neither of the situations outlined in *Legends*, which describe when severance is inappropriate, is applicable in the instant case. The valid provisions of SB 7 are not so essentially and inseparably connected with, and so dependent on, Section B that it could not be presumed that the legislature would have enacted the valid provisions without Section B. Section B has no connection and is not dependent upon the subject matter of SB 7, its connection actually lies, and is dependent upon, the subject matter and passage of SB 8. LF0226. SB 7 – with its valid provisions – can stand alone without the presence of Section B, as Section B had no legislative function to SB 7 except for attempting to tie SB 7 to SB 8. SB 7, with its valid provisions, is also capable of being executed in accordance with the legislative intent, which was to enact “sections relating to science and innovation.” LF 0201.

Therefore, severance is appropriate in the instant case. The invalid provisions of the bill at issue are not essential to the efficacy of SB 7, the valid portions of SB 7 are not

so connected with or dependent upon the invalid portions that it cannot be presumed the legislature would not have enacted the valid portions of the bill without the invalid ones, and the valid provisions of SB 7 are capable of being executed in accordance with the legislative intent of enacting legislation relating to science and innovation.

There is Ample Precedent to Support the Position Articulated in *Legends*

The analysis presented in *Legends* has its roots in *Hammerschmidt*, which has guided Missouri Supreme Court precedent concerning severance since the issuance of the decision in 1994. In each of this Court’s decisions cited herein involving severance, the bill at issue: (1) was amended during the legislative process so that an unconstitutional provision was added; (2) had its title changed so that the title in the bill’s introduced version was different from the Truly Agreed to and Finally Passed version; and (3) had provisions that were found to be in violation of either Article III, Section 21 or Article III, Section 23.

For the purpose of analysis of the instant case, the *Hammerschmidt* Court considered two issues: (1) whether the bill at issue violated Article III, Section 23 of the Missouri Constitution (the “one subject” rule); and (2) if the procedure to enact the bill was ruled unconstitutional, whether the bill could be severed. *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 103 (Mo. banc 1994).

In determining the bill violated the one subject rule, the Court then undertook a severability analysis. *Id.* at 103. The Court first distinguished different analyses to be used when the Court bears an obligation to sever unconstitutional provisions of a statute –

in situations where it is proper to use Section 1.140, RSMo¹ - and in situations when the Court attempts to sever a bill by which the procedure to enact the bill violated the Missouri Constitution. *Id.*

Where the procedure by which legislation was enacted was unconstitutional, as is the case here, the *Hammerschmidt* court stated severance is a “more difficult issue.” *Id.* In those instances, and where the issue is presented to the Court concerning a piece of legislation containing more than one subject, the *Hammerschmidt* court stated “...the entire bill is unconstitutional unless the Court is convinced beyond a reasonable doubt that one of the bill’s multiple subjects is its original, controlling purpose and that the other subject is not.” *Id.* The Court then applied the analysis found in *Missourians to Protect the Initiative Process v. Blunt* and stated to reach that:

“determination, the Court will consider whether the [additional subject] ... is essential to the efficacy of the ... [bill], whether it is a provision without which the ... [bill] would be incomplete and unworkable, and whether the

¹ In situations where the Court encountered unconstitutional provisions in statute, the “Court bears an obligation to sever unconstitutional provisions of a statute unless the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are in-complete and are incapable of being executed in accordance with the legislative intent.” Section 1.140, RSMo 1986.

provision is one without which the ... [legislators] would not have adopted the ... [bill].” *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 832 (Mo. banc 1990).” *Id.*

Further, when the Court is convinced the bill contains a single purpose, the Court will sever the provisions in the bill that contain the additional purpose so that the primary purpose remains. *Id.*

Numerous Missouri Supreme Court decisions have followed the precedent set in *Hammerschmidt*. For example, in *Carmack v. Director, Missouri Dept. of Agriculture*, 945 S.W.2d 956 (Mo. banc 1997), the Court undertook an analysis of whether to sever portions of a bill found to violate Article III, Section 23 of the Missouri Constitution. *Carmack*, 945 S.W.2d 956 at 961. The Court stated:

“Hammerschmidt teaches that the entire bill is unconstitutional ‘unless the Court is convinced beyond a reasonable doubt that one of the bill’s multiple subjects is its original, controlling purpose and that the other subjects are not.’ *Id.* (referencing *Hammerschmidt*, 877 S.W.2d at 103)... Applying section 1.140, RSMo 1994, which requires the Court to sever unconstitutional provisions of statutes where possible, and *Hammerschmidt*, we hold that the amendment to section 267.610 contained in H.B. 566 may be severed from the unchallenged portions of the bill.” *Carmack*, 945 S.W.2d 956 at 961.

In *SSM Cardinal Glennon Children’s Hospital v. State*, 68 S.W.3d 412 (Mo.banc 2002), the Court –when confronted with a bill that violated Article III, Section 23 of the

Missouri Constitution – cited *Hammerschmidt*’s “beyond a reasonable doubt language” and laid out the factors for analysis of whether a provision is severable, citing *Blunt*:

“[f]actors to examine when discussing whether a provision is severable include whether the provision is essential to the efficacy of the amendment, whether it is a provision without which the amendment would be incomplete and unworkable, and whether the provision is one without which the bill may not have been adopted.” *SSM Cardinal Glennon*, 68 S.W.3d. at 417, (citing *Blunt*, 799 S.W.2d at 832).

In *Rizzo v. State*, 189 S.W.3d, 576, 581 (Mo. banc 2006), the Court again cited *Hammerschmidt*. *Rizzo* concerned a violation of the “single subject” rule in the Missouri Constitution. The Court, in holding that the unconstitutional portions could be severed, stated: “[a]pplying [S]ection 1.140, RSMo 2000, and *Hammerschmidt*, section 115.348 may be severed from the unchallenged portions of the bill.” *Id.*

In *St. Louis County v. Prestige Travel*, 344 S.W.3d 708 (Mo. banc 2011), the Missouri Supreme Court’s previous severance analysis case before *Legends*, the Court utilized the same “beyond a reasonable doubt” standard *Hammerschmidt* articulated in its discussion of the proper severance analysis. *Prestige Travel*, 344 S.W.3d at 716, (citing *Hammerschmidt*, 877 S.W.2d at 103-104).

The *Legends* Severance Analysis – and the Court’s Practice of Severance - Creates Certainty for the Business Community

The Court has laid out two central tenets that are of importance to anyone whose interests are affected by legislation challenged in court on constitutional grounds. In *Rentschler v. Nixon*, the Court stated that:

“[t]he use of these procedural limitations [secs. 21 through 23] to attack the constitutionality of statutes is not favored. *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 326 (Mo. banc 1997). This Court will resolve doubts in favor of the procedural and substantive validity of an act of the legislature.”

Hammerschmidt v. Boone County, 877 S.W.2d 98, 102 (Mo. banc 1994).”

Rentschler v. Nixon – 311 S.W.3d 783, 787 (Mo. banc 2010).

The Court is stating – in essence – that: (1) the Court does not favor the use of procedural limitations to attack the constitutionality of bills, but; (2) if these suits occur, the Court presumes constitutionality and looks to resolve the suit so that the bill - or portions of the bill - will stand. This is important to the business community, because they are able to derive certainty in knowing that the Court’s precedent supports validating the provisions of a bill when resolving a suit if the rule of law permits. Additionally, and importantly, the Court’s use of severance further ensures certainty in the public policy process and the creation of laws that govern Missouri citizens.

Although there are notable arguments² against the doctrine of severance, the Court's established precedent and the current severance analysis creates certainty for Missouri citizens and the business community. The legislative process is full of uncertainty, which can often negatively or positively impact an interest in a profound manner. However, the process is a cornerstone of government and democracy, as the majority of legislators in a given legislative body – citizens elected by the will of the people to serve their constituents – must agree on the bill's contents upon final passage. The doctrine of severance ensures that the legislative process – already inherently uncertain – is not made further so by the prospect of any bill being thrown out if even a minor provision is ruled unconstitutional.

Without the doctrine of severance, entities that have worked to help secure successful passage of a bill would have to additionally be concerned that the bill might not be successfully passed after all, as a procedural defect makes the bill liable to be overturned in its entirety. The procedural defect could have been unintentional or even intentional, as one or a group of legislators could have been seeking to derail the process.

² Judge Fischer has repeatedly advocated for abolition the doctrine of the severance in certain instances: "...the judicially created doctrine of severance should no longer be used to save any legislation enacted in contravention of article III, section 21, or article III, section 23, of the Missouri Constitution." *Legends*, 361 S.W.3d at 393, (J. Fischer, concurring) see also *Prestige Travel, Inc.*, 344 S.W.3d at 716 n.6 and *Schaefer v. Koster*, 342 S.W.3d 299, 306 n. 9 (Mo. banc 2011) (J. Fischer dissenting).

Recognizing this prospect, and the chilling effect it could have on citizens' engagement in the legislative process, the Court has had a reliable precedent of severing unconstitutional provisions and using a consistent analysis.

Essentially, the three part *Legends* test requires the Court to examine: (1) whether the unconstitutional provision is necessary to achieve the bill's public policy aim; (2) whether the unconstitutional provision is so essential to the valid provision that the legislature would not have included one without the other; and (3) whether the valid provisions can stand alone and still accomplish the legislature's intended public policy goal. This analysis creates certainty, as whomever may be analyzing any given bill – whether it be a citizen, the business community, the legislature, or the courts – knows that the analysis focuses on: (1) only the bill at issue; and (2) how essential the offending provision is to the bill. The analysis creates certainty, which encourages engagement in the legislative process, which creates the possibility for good public policy.

The Trial Court's Application of the Severance Analysis Creates Uncertainty in the Legislative and Judicial Process

In guiding its beyond a reasonable doubt analysis, the Trial Court looked to SB 7's title and other versions of the legislation. Not only is this analysis inconsistent with precedent, discussed *supra*, but it is also an unworkable standard that if adopted as the beyond a reasonable doubt analysis, would create uncertainty in the judicial decision-making process and would chill the creation of public policy.

The Trial Court's reliance on looking at "...every single version of SB 7 before the version [that contained Section B] finally passed" and "...every predecessor version

of the bill” creates an unrealistic and unmanageable basis for a beyond a reasonable doubt standard. LF1095. There are a multitude of reasons why different versions of a respective bill, similar legislation found in different bills, or even different bills with identical contents meet dissimilar fates. The legislative process is inherently political, and politics can play into why certain bills - even identical bills - move through the process and others do not, both within a given chamber and also between chambers. Factions between: (1) the majority and minority party; (2) interests within the majority party; and (3) the majority party of one chamber and the majority party of the other chamber, all emerge during the legislative process, including when certain bills are identified as the chosen bill for a certain public policy goal and/or the chosen bill where various amendments are to be made. Thus, there are not always easily identifiable reasons why certain bills are Truly Agreed to and Finally Passed and why others “die” on a chamber’s calendar or in a committee.

If a court were to attempt to utilize the Trial Court’s analysis, for any given bill that is before the body with an unconstitutional provision, to determine if that bill would not have passed but for the unconstitutional provision, the court would have to look at every version of the respective bill, all predecessor bills, and all bills with the same subject matter and/or the same or similar language. In addition to the court’s task of analyzing all of these bills, the court must also make a determination of where a “cut-off” line is for the analysis, as some bills have the exact same language, other bills have different versions of the language, and still other bills have some form of the subject matter language, but also included other provisions. This would require the Court to

utilize a single subject standard in its severance analysis, but structure this standard so subsequent courts would have guidance as to the proportion of any bill's wording that must be identical in order for that bill to be included in the court's analysis. Presumably, this analysis would determine whether the bill at issue is sufficiently distinct so that the distinct provisions must have been the reason that the bill at issue passed and the other bills failed.

The Trial Court's analysis could fundamentally alter the legislative process and create great uncertainty, as citizens, the business community, and the legislature would be uncertain when advocating for or filing a bill, whether such bill could be part of an analysis – or the subject of analysis - to determine why another bill did or did not move through the legislative process and was passed by the General Assembly or failed. The much more manageable analysis – and the analysis that creates certainty – is the current state of the law concerning severance found in *Legends*. The *Legends* Court was united in finding the unconstitutional provisions of a bill can be severed when the constitutional provisions of that bill are workable and complete without the unconstitutional amendment, and that severance in such situations preserves the intent of the legislature. The same result should occur here.

CONCLUSION

Based on the foregoing, *amicus* MOBIO urges this Court to overrule the Trial Court's decision and find that Section B of SB 7 can be severed from the properly enacted provisions.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that pursuant to Rule 84.06 (c), this brief: (1) complies with 55.03; (2) complies with the limitations in Rule 84.06(b); and (3) contains 5,163 words, exclusive of the section exempted by Rule 84.06(b), determined using the word count program in Microsoft® Office Word 2003.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically via Missouri CaseNet and served, this 21st day of June, 2012 to:

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