

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

)	
RONALD J. CALZONE)	
Plaintiff,)	
)	
)	vs.
)	CASE NO. 15AC-CC00247
)	
Chris Koster, Missouri Attorney General, et. al)	
)	
Respondents.)	

**PLAINTIFF’S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER AND JUDGMENT**

COMES NOW Plaintiff Ronald J. Calzone, pursuant to Missouri Rule of Civil Procedure 73.01, and asks the Court to prepare a brief opinion containing the grounds for its decision and findings on the following controverted material fact issues:

1. Does the evidence show that Plaintiff, Ronald J. Calzone, by virtue of his status as a “citizen activist” and “watchdog” of the legislative process, has incurred a special injury, distinct from any injury to the population as a whole, as a result of the General Assembly's failure to adhere to constitutional procedural requirements relating to SB 672?
2. Is there evidence of the prospect or likelihood that state expenditures would result from SB 672?
3. Does the evidence show that the purpose of SB 672 was changed by amendments subsequent to the introduction of the bill?
4. Does the evidence show that the finally passed version of SB 672 contains

multiple subjects?

5. Does the evidence show that the title for SB 672 underwent a substantive change during the legislative process?

6. Did Respondents provide evidence that SB 672 was read by title on three separate days in both the House and Senate?

7. Does the evidence show that SB 672 includes any provisions which are Local or Special Laws relative to Missouri Constitution Article III Section 40(30)?

8. Does the evidence show that for each Local or Special Law contained in SB 672, notice was published in the locality where the matter or thing to be affected is situated at least thirty days prior to the introduction of the bill, pursuant to Missouri Constitution Article III Section 42?

9. Does the evidence show that for each Local or Special Law contained in SB 672, proof of publication of notice was filed with the general assembly before the act was passed, and that the notice was recited in the act, pursuant to Missouri Constitution Article III Section 42?

10. Does the evidence show that there is, at times, a disregard among members of the General Assembly for the constitutional limits on their power?

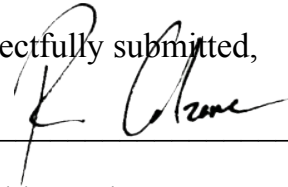
11. Does the evidence show that judicially applied severance undermines disincentives to violating the constitutional prohibitions of creating bills with multiple subjects or changing a bill's purpose?

12. Does the evidence show that the court could or could not determine whether

the General Assembly would have passed SB 672 if it did not include portions of the bill?

The plaintiff also files herewith the attached as his proposed Findings of Fact,
Conclusions of Law.

Respectfully submitted,

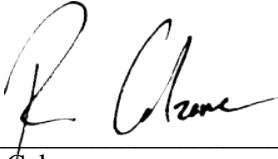


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PLAINTIFF

Certificate of Service

I, Ronald J. Calzone, do hereby certify that a true and correct copy of the foregoing petition was provided to the Respondents by email on, January 20, 2016.

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,
ORDER AND JUDGMENT**

This action was brought before the court by Plaintiff, Ronald J. Calzone. He is seeking a declaratory judgment that Senate Bill 672, enacted by the 97th Missouri General Assembly during the 2014 legislative session, violates the constitutional limitation the people imposed on the General Assembly's powers declared in Article III § 21, 23 and 40(30).

FINDINGS OF FACT

1. Plaintiff Ronald J. Calzone is a citizen and taxpayer of the State of Missouri.
2. The Plaintiff is an unpaid citizen activist and legislative watchdog with an interest and involvement in legislative procedures significantly beyond the typical Missourian.
3. The Plaintiff's ability to be fairly apprised of the development of the laws he would be subject to was significantly affected by changes to the title and purpose as well as the addition of subjects to the original bill.

4. Former legislators who served at the time of the passage of Senate Bill 672 testified of a general disregard for constitutional limitations on the powers of the General Assembly by their colleagues in the House of Representatives.

5. A former legislator who served at the time of the passage of Senate Bill 672 testified that leadership encouraged House members to “load up” bills that had already passed the senate with legislation they could not otherwise move.

6. Former legislators who served at the time of the passage of Senate Bill 672 testified of diminished incentive for legislators to be diligent to adhere to constitutional limitations on their powers resulting from the knowledge of the unlikelihood of successful challenges that would ultimately strike down the entire bill.

7. Senate Bill 672 was introduced and First Read in the Missouri Senate on January 8, 2014, as a bill less than 3 pages in length with the title,

“AN ACT To repeal section 56.363, RSMo, and to enact in lieu thereof one new section relating to county prosecutors.”

Plaintiff's Trial Exhibit 1.

8. On March 10, 2014, a Senate Committee Substitute for SB 672 was adopted by the entire Senate. That version was approximately 11 pages long and titled,

“AN ACT To repeal sections 56.067, 56.265, 56.363, 56.807, and 56.816, RSMo, and to enact in lieu thereof five new sections relating to county prosecutors.

Plaintiff's Trial Exhibit 2.

9. SB 672 was further amended on March 10, 2014, during the perfection process

on the Senate floor. The bill had grown to nearly 17 pages, but it still pertained exclusively to prosecutors. The title was amended to read,

“AN ACT To repeal sections 1.020, 56.010, 56.060, 56.067, 56.265, 56.363, 56.430, 56.805, 56.807, 56.816, and 211.411, RSMo, and to enact in lieu thereof thirteen new sections relating to county prosecutors.

Plaintiff's Trial Exhibit 3.

10. On May 13, 2014, the perfected version, SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 672 was Third Read and Passed by a vote of 32 yeas, 1 Absent with leave, and 1 vacancy.

Plaintiff's Trial Exhibit 4.

11. On April 17, 2014, the House Committee on General Laws reported Senate Committee Substitute for Senate Bill 672 “Do Pass with House Committee Substitute”. The bill's title now read,

“AN ACT To repeal sections 37.020, 49.266, 56.010, 56.060, 56.067, 56.265, 56.363, 56.800, 56.805, 56.807, 56.811, 56.816, 56.827, 56.833, 56.840, 67.281, 77.030, 79.050, 79.130, 105.684, 105.687, 105.688, 105.690, 192.310, 321.130, 321.210, 321.322, 408.040, 488.026, 488.305, 525.040, 525.070, 525.080, 525.230, 525.310, and 578.120, RSMo, and to enact in lieu thereof forty-five new sections relating to political subdivisions.”

Plaintiff's Trial Exhibit 5.

12. On April 30, 2014, in House floor actions, House amendments 1 through 17, with an amendment to amendment 17, were adopted. House Journal pages 1431- 1458 detail those amendments.

13. On April 30, 2014, the House of Representatives adopted House Committee

Substitute for Senate Committee Substitute for Senate Bill 672 by voice vote.

14. On April 30, 2014, the House of Representatives Third Read and Passed House Committee Substitute for Senate Committee Substitute for Senate Bill 672 by a vote of 88 ayes, 61 noes, 10 absent with leave, and 3 vacancies. House Journal page 1462.

15. On May 1, 2014, the Senate refused to concur on the House Committee Substitute passed by the House.

16. On May 8, 2014, the Senate adopted Conference Committee Report #1 by a vote of 27 yeas, 5 noes, and 2 vacancies.

17. On May 12, 2014, the House refused to adopt Conference Committee Report #1 and requested further conference.

18. On May 13, 2014, the Senate adopted Conference Committee Report #2 and then Third Read and Passed CONFERENCE COMMITTEE SUBSTITUTE NO. 2 FOR HOUSE COMMITTEE SUBSTITUTE FOR SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 672, by a vote of 29 yeas, 3 noes, 2 vacancies.

Plaintiff's Trial Exhibit 6.

19. On May 16, 2014, the House adopted and then Third Read and Passed CCS#2 HCS SCS SB 672, by a vote of 98 yeas, 43 noes, 18 absent with leave, 4 vacancies.

Plaintiff's Trial Exhibit 7.

20. The final title for SB 672 read,

“AN ACT To repeal sections 49.266, 56.067, 56.265, 56.363, 56.807, 56.816, 67.281, 67.320, 79.130, 94.270, 182.802, 192.310, 304.190, 321.322, 339.507, 348.407, 408.040, 488.305, 525.040, 525.070, 525.080, 525.230, and 525.310, RSMo, and to enact in lieu thereof thirty-three new sections relating to political subdivisions, with an existing penalty provision, and an effective date for certain sections.”

Plaintiff's Trial Exhibit 8.

21. The subject bill was delivered to the Governor on May 30, 2014, whereupon he signed it on July 8, 2014.

22. The official fiscal note prepared by Senate Research for the final version of SB 672 included estimates of net effects on state funds in the following chart.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS

FUND AFFECTED	FY 2015	FY 2016	FY 2017
Agriculture Protection Fund	(\$60,269)	(\$70,316)	(\$71,205)
MO Real Estate Appraiser Commission Fund	(Unknown)	(Unknown)	(Unknown)
Road Fund	(Greater than \$100,000)	(Greater than \$100,000)	(Greater than \$100,000)
Total Estimated Net Effect on <u>Other</u> State Funds	(Greater than \$160,269)	(Greater than \$170,316)	(Greater than \$171,205)

Plaintiff's Trial Exhibit 9.

23. Senate Research's summary of the final bill included nineteen elements of varying relationship and identified four geographic locations targeted by specific sections of the bill and two more locations targeted by another section, as follows.

- COUNTY PROPERTY – § 49.266
- PROSECUTING ATTORNEYS - §§ 56.067, 56.363, 56.807, & 56.816
- LAW ENFORCEMENT OFFICER IMMUNITY - § 57.095
- INSTALLATION OF FIRE SPRINKLERS - § 67.281

JEFFERSON COUNTY MUNICIPAL COURTS - § 67.320
INITIATIVE PETITION IN SAVANNAH- §§ 79.130 & 79.135
CITY FEES IN FLORELL HILLS AND EDMUNDSON - § 94.270
COURT VOLUNTEERS - § 105.1415
PUBLIC FINANCIAL INCENTIVES - § 135.980
PUBLIC LIBRARY DISTRICT - § 182.802
AMBULANCE DISTRICT DETACHMENT - § 190.088
HEALTH OFFICERS IN ST. CHARLES - § 192.310
LATERAL SEWER SERVICE LINE REPAIR PROGRAM - § 249.424
FARM-TO-SCHOOL PROGRAM - §§ 262.960, 262.962, & 348.407
MOTOR VEHICLE HEIGHT AND WEIGHT LIMITS - § 304.190
ANNEXATION PROCEDURES IN HARRISONVILLE - § 321.322
MISSOURI REAL ESTATE APPRAISERS COMMISSION - §§ 339.507
& 339.531
SPECULATIVE ACCUMULATION OF ASPHALT SHINGLES - §
407.1610
GARNISHMENTS - §§ 408.040, 488.305, 525.040 to 525.310

Plaintiff's Trial Exhibit 10.

ISSUES

24. The Plaintiff makes four claims:

1) SB 672 violates Missouri Constitution Article III Section 21 because the purpose was changed by amendments subsequent to the introduction of the bill, and the purpose of the Finally Passed version was not the same as the Introduced Version.

The state presented no arguments against this claim.

2) SB 672 violates Missouri Constitution Article III Section 23 because it contained multiple subjects. The state presented no arguments against this claim.

3) SB 672 violates Missouri Constitution Article III Section 21 because its title was substantially changed multiple times and versions of those titles were read three times in each chamber of the General Assembly on three separate days. The state presented no arguments against this claim.

4) SB 672 violates Missouri Constitution Article III Section 40(30) because it contains numerous local and special laws that were not enacted in accordance with the provisions of Article III Section 42. The state presented no arguments against this claim.

25. The state claimed that the Plaintiff lacked standing, based on a lack of proof that there was, “(1) a direct expenditure of funds generated through taxation; (2) an increased levy in taxes; or (3) a pecuniary loss attributable to the challenged transaction of a municipality”.

26. The state also claimed that there is no such thing as “citizen standing” outside of “taxpayer standing”.

27. The state's remaining claim was that, should it be found that any provision of

SB 672 is unconstitutional, the rest of the bill is severable pursuant to Section 1.140, RSMo.

CONCLUSIONS OF LAW

28. At the beginning of an analysis of SB 672 is the understanding that the provisions of Article III, section 23 are mandatory, not directory. *State v. Miller*, 45 Mo. 495, 498 (1870) The same is true of Article III, sections 21, 40(30) and 42. They are the people's check on the power their representatives wield while making the laws that affect their lives and liberty. Nevertheless, as in *Hammerschmidt*, this Court will resolve doubts in favor of the procedural and substantive validity of an act of the legislature in light of the questionable assertion that “an act of the legislature approved by the governor carries with it a strong presumption of constitutionality.”¹ *Hammerschmidt*, at 102, citing *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 5 (Mo. banc 1984). There is, however, no doubt whatsoever that SB 672 violated the provisions of Article III, sections 21, 23, 40(30) and 42 in numerous ways. It takes only one violation to be fatal to the bill.

Changed Purpose

29. Missouri Constitution Article III § 21 states that,

“The style of the laws of this state shall be: 'Be it enacted by the General Assembly of the State of Missouri, as follows.' No law shall be passed

¹ Testimony from former legislators provided ample reason to believe that concerns about the constitutionality of the legislative actions are, at times, lacking among the General Assembly, as a whole. It may be time to reconsider the presumption of constitutionality doctrine, especially in light of the fact that it is the very people who give legislators their jobs who are prejudiced when they pass unconstitutional bills.

except by bill, and **no bill shall be so amended in its passage through either house as to change its original purpose.** Bills may originate in either house and may be amended or rejected by the other. Every bill shall be read by title on three different days in each house.” Emphasis added.

Missouri Constitution Article III Section 21

The Missouri Supreme Court has ruled that the purpose of a bill can be fairly ascertained from its title. “ In determining the original, controlling purpose of the bill for purposes of determining severance issues, a title that 'clearly' expresses the bill's single subject is exceedingly important.” *Hammerschmidt v. Boone County*, 877 SW 2d 98, 103 & 104 (Mo. Banc 1994) . The original title for SB 672 was

“AN ACT To repeal section 56.363, RSMo, and to enact in lieu thereof one new section relating to county prosecutors”.

After various iterations, the final title was

“AN ACT To repeal sections 49.266, 56.067, 56.265, 56.363, 56.807, 56.816, 67.281, 67.320, 79.130, 94.270, 182.802, 192.310, 304.190, 321.322, 339.507, 348.407, 408.040, 488.305, 525.040, 525.070, 525.080, 525.230, and 525.310, RSMo, and to enact in lieu thereof thirty-three new sections relating to political subdivisions, with an existing penalty provision, and an effective date for certain sections.”

The original purpose “relating to county prosecutor” is clearly different than the final purpose of “relating to political subdivisions,” and the state offered no arguments to the contrary.

30. This Court concludes that SB 672 is undoubtedly unconstitutional based on

the General Assembly's lack of adherence to the procedures prescribed in Article III § 21.

Multiple Subjects

31. Missouri Constitution Article III § 23 states that,

“No bill shall contain more than one subject which shall be **clearly expressed in its title**, except bills enacted under the third exception in section 37 of this article and general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated.” Emphasis Added.

That SB 672 's title was changed, in itself, is prima facie evidence that the bill's purpose was changed or that additional subjects were added. Why change the title with each set of amendments unless the original title didn't properly reflect the bill's new or expanded purpose after those amendments? Additional overwhelming evidence supports the conclusion that both the purpose was changed and provisions with varying subjects were added during the amendment process. Senate Research provides an analysis of SB 672 in their Bill Summary that is helpful in determining the various subjects in the bill. Their summary breaks the bill into nineteen components, nearly all with descriptions that are not "germane, connected and congruous," *State v. Mathews*, 44 Mo. 523, 527 (1869)

31. Although the evidence suggests that SB 672 contains several subjects, the addition of only one to the original controlling single-subject purpose of “pertaining to county prosecutors” is fatal to the bill. The state offered no arguments that the various provisions were in fact part of one subject and this Court concludes that neither a LATERAL SEWER SERVICE LINE REPAIR PROGRAM (§ 249.424), nor a FARM-

TO-SCHOOL PROGRAM (§§ 262.960, 262.962, & 348.407), nor SPECULATIVE ACCUMULATION OF ASPHALT SHINGLES (§ 407.1610), are "germane, connected and congruous," with a bill whose purpose is "relating to county prosecutors," or with one another, for that matter.

32. This Court concludes that SB 672 is undoubtedly unconstitutional based on the General Assembly's lack of adherence to the requirement that bill contain only one subject in Article III § 23.

Changed Title

33. One of the underlying purposes of Article III § 21 and 23 is to ensure that the people can be informed about the existence and the movement of legislation that affects their interests, *Hammerschmidt* at 102, and for the sake of legislators, that bills are "better grasped and more intelligently discussed." *Hammerschmidt* at 101. And, "These two provisions provide the citizens of Missouri with necessary and valuable legislative accountability and transparency." *Legends Bank v. State*, 361 SW 3d 383, 389 (2012) When a bill's title does not remain static, these purposes are thwarted.

34. In addition to the requirement that bills adhere to their original purpose, Article III § 21, requires that "Every bill shall be read by title on three different days in each house", further providing for legislative transparency. A changed title with a changed purpose is not the bill's legitimate title, so such title's reading does not count toward the required six times a bill must be read by title. The state offered no argument or evidence that the title requirement of Article III sec 21 was met.

35. This Court concludes that SB 672 is unconstitutional based on fact that the

title was changed and that the General Assembly failed to read the bill “by title on three different days in each house.”

Local and Special Laws

36. Article III § 40(30) does not totally prohibit local and special laws. It clearly allows for them when a general law can NOT be made applicable. That section charges this Court with the task of determining “whether a general law could have been made applicable,” since it calls such a determination “a judicial question to be judicially determined without regard to any legislative assertion on that subject.” The unconstitutionality of a special law is presumed. *City of Blue Springs v. Rice*, 853 S.W.2d at 921; *State ex rel. Public Defender Commission v. County Court of Greene County*, 667 S.W.2d 409, 413 (Mo. banc 1984). The party defending the facially special statute must demonstrate a "substantial justification" for the special treatment. *City of Blue Springs*, 853 S.W.2d at 921; See also *State ex rel. Bunker Resource Recycling and Reclamation, Inc. v. Mehan*, 782 S.W.2d 381, 385 (Mo. Banc 1990). In the case at bar, the state provided no arguments to justify any special laws.

37. Even if the state had successfully demonstrated substantial justification for special treatment, SB 672 would fall. When the General Assembly intends to enact a special law, it has a responsibility to **provide notice of their intention**. Such notice is for the benefit of the people affected by the proposed law as well as anyone watching the bill. Article III § 42 reads:

No local or special law shall be passed unless a **notice**, setting forth the intention to apply therefor and the substance of the contemplated law, **shall have been published in the locality** where the matter or

thing to be affected is situated at least thirty days prior to the introduction of the bill into the general assembly and in the manner provided by law. Proof of publication shall be filed with the general assembly before the act shall be passed and the notice **shall be recited in the act.**

Emphasis added. *Mo. Const. Article III § 42.*

38. The state provided no evidence that notice of any special laws were published and **no such notice is recited in the act**, itself, as required by § 42. If, therefore, even one local or special law exists in SB 672, regardless of whether a general law could have been made applicable, the bill is unconstitutional.

39. The Senate Research bill summary is a good place to begin a search for any special laws that might exist in this forty page bill. It identifies six separate localities targeted by the bill: JEFFERSON COUNTY (§ 67.320), SAVANNAH (§§ 79.130 & 79.135), ST. CHARLES (§ 192.310), HARRISONVILLE (§ 321.322), and, together, FLORELL HILLS AND EDMUNDSON (§ 94.270). Although none of these locations are referenced by name in the bill, Senate Research has apparently already determined that the bill language is closed ended enough to mention them as the places the bill affects.

40. An evaluation whether a statute is a special law under § 40(30) depends on whether it is "open-ended." *State ex rel. City of Blue Springs v. Rice*, 853 S.W.2d 918, 920-21 (Mo. banc 1993); *O'Reilly v. City of Hazelwood*, 850 S.W.2d 96, 99 (Mo. Banc 1993). A Missouri Supreme Court opinion handed down the very day the instant case was being argued sheds some additional light on the extent to which a local or special law can hide behind what might be an open-ended verbiage:

But, the legislature may not defeat the purpose of the prohibition against special laws by adopting a provision that on its face appears general and open-ended, **but which realistically applies only to a specific or narrow group of subjects**. For that reason, “[t]he rationale for holding that population classifications are open-ended fails ... where the classification is so narrow that as a practical matter others could not fall into that classification.” (*Citing Jefferson County Fire Protection v. Blunt*, 205 SW 3d 866 - Mo: Supreme Court 2006)

Emphasis added. *City of DeSoto v. Nixon*, (Mo. banc 2016)

41. For this analysis, we'll focus on two more localities referenced by the bill, but not identified by name in the bill summary. St. Louis is referenced in § 135.980.2 by the phrase “city not within a county.” St. Louis has been the only “city not within a county” since August 22, 1876, and there is no reasonable likelihood that any other city will join it.

42. Section 135.980.2 reads, “No city not within a county shall by ballot measure impose any restriction on any public financial incentive authorized by statute for a business with a NAICS code of 212111.”² This Court finds no reason that the same restriction on ballot measures could not be made by a general law that applied to ALL cities which have the power to place such measures on the ballot. Section 135.980.2 fails all three tests required to be in compliance with Article III §§ 40(30) and 42: 1) It is not reasonably open-ended, so it is a local or special law, 2) As a local or special law, the notice required in § 42 was not recited in the act, and 3) Its provisions could have been applied as a general law.

² NAICS code 212111 is “Bituminous coal and lignite surface mining.” See: <https://www.census.gov/econ/isp/sampler.php?naicscode=212111&naicslevel=6>

43. Another suspect special law not mentioned by name in the Senate Research bill summary can be found in § 304.190.3(4) RSMo. That section seeks to carve out an exception to vehicle height limits by defining an exempt commercial zone. The bill's language reads:

“(4) The commercial zone of a home rule city with more than one hundred eight thousand but fewer than one hundred sixteen thousand inhabitants shall extend north from the city limits along U.S. Highway 63 for eight miles, and shall extend east from the city limits along State Route WW to the intersection of State Route J and continue south on State Route J for four miles.”

This court finds that such a description could only possibly apply to one place in the world, so it is clearly not open-ended. No argument to the contrary was offered by the state, nor were any claims that these provisions could not have been applied as a general law, but we need not make that determination, since there is no evidence that notice was provided in the locality, pursuant to Article III § 42, and no recitation of such notice was included in the act, itself. Section 304.190.3(4) in SB 672 is yet another reason that the bill is unconstitutional.

Standing

44. The one argument the state offered against Plaintiff Calzone's action related to standing. The state denied the existence of standing outside of taxpayer's standing and argued that the Plaintiff supplied insufficient evidence to prove taxpayer standing. This Court disagrees.

45. In fact, the Plaintiff claims standing on three separate bases: 1) Constitutionally inferred “citizen standing”, much like that which is *statutorily* conferred in section 116.190 RSMo, in which any citizen can challenge a ballot title, 2) Constitutionally inferred “activist standing” resulting from his inordinate involvement in the legislative process as a legislative watchdog, and 3) traditional taxpayer standing. Although a somewhat novel claim, “citizen standing” is the easiest claim to evaluate. Applying citizen standing does not require any complicated analysis of the Plaintiff's activities, or existence of or potential for state expenditures, or questions like whether transferable tax-credits constitute an expenditure of state funds.

46. The state cites *Hinson*: "Generally, an individual does not have standing to seek redress of a public wrong, or of a breach of public duty, if such individual's interest does not differ from that of the public generally, even though the complainant's loss is greater in degree than that of other members of the public." *Hinton v. City of St. Joseph*, 889 S.W.2d 854, 859 (Mo. App. 1994). The operative word, there is “generally.” The case at bar cuts to the core of our very system of governance – the most basic principles are at stake, namely that government exists at the consent of the people in whom all political power resides. *Missouri Const. Article I § 1*. This action is outside the realm of “generally.”

47. To say that the only way for an individual to achieve standing is to have an interest that differs from the rest of the public is to say that, under some circumstances, no one has standing to correct an obvious wrong. Such a contention would create a system in which the legislature can be unaccountable for certain

laws that clearly exceed the authority the people loaned them through the Constitution. For instance, a law that applied to everyone equally but required no expenditure of state resources, like a mandate for every citizen to undergo some invasive medical procedure and pay for it himself, would leave no one with standing to challenge the law, by the state's reckoning.

48. The state seems to fail to understand the nature of the plaintiff's case. His interest goes beyond the particular effects of any of the many aspects of SB 672; his concern is with the *process* by which that bill was passed and the prospect that the General Assembly could ignore the people's declared limits on their legislative powers with impunity. As recently as 2014, the Supreme Court laid the groundwork for the concept of "citizen standing".

In Missouri's seminal case about taxpayer standing, *Eastern Missouri Laborers District Council v. St. Louis County*, this Court held that a taxpayer has a direct interest in **"the proper use and allocation of tax receipts"** that gives the taxpayer a "sufficient stake in the outcome of the suit to allow him to challenge improper uses of tax funds." *Id.* at 47. **The taxpayer's interest does not arise from any direct, personal loss.** "[I]t is the public interests which are involved in preventing the unlawful expenditure of money raised by taxation" that give rise to taxpayer standing.

Emphasis added. *Lebeau V. Commissioners Of Franklin County*, 422 SW 3d 284, 288 - Mo: Supreme Court 2014 If a citizen's interest in "the proper use and allocation of tax receipts" is sufficient to establish standing, how much more would be his interest in ensuring the General Assembly's respect for the constitutional

limits on their power – power that is regularly used in ways that affect his life and liberty?

49. The oft cited purposes of Article III §§ 21, 23, and 40(30) speak to the idea that each and every citizen has a constitutional right to hold the General Assembly's to the limits of those clauses.

Fourth, article III, section 23, is designed to assure that the people are fairly apprised, "through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered in order that they have [an] opportunity of being heard thereon...." Small, 356 S.W.2d at 868.

Hammerschmidt v. Boone County, 877 SW 2d 98 (1994)

If the Constitution ensures the people's right to be “fairly apprised” of legislative proceedings, certainly they have a constitutional right to use the courts in defense of that right to be fairly apprised.

50. In addition to the right to standing afforded the public at large, the Plaintiff has a particular claim to standing as a result of what the evidence shows to be a particular involvement in the legislative process which is not typical to the vast majority of Missourians. He deserves standing in the instant case, even under the *Hinton* analysis.

51. Taxpayer standing is also due the Plaintiff. Contrary to the state's claim, he need not prove that state expenditures *have* been made, or that they *will* be made. All he needs to demonstrate is that there exists the prospect of expenditures resulting from SB 672. Senate Research's Fiscal Note is ample proof of such a prospect.

SEVERANCE

52. The second of the state's two affirmative pleadings related to severance. It appealed to Section 1.140, RSMo, asserting that “Should it be found that any provision of SB 672 is unconstitutional; the rest of the bill is severable...” The state misunderstands the purpose and meaning of § 1.140, which says, in part, “ If any *provision* of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid...” Emphasis added. If the Plaintiff's claims were that an unconstitutional “provision” existed within an otherwise constitutionally enacted law, then § 1.140 would apply. That's not the case, here. The claims are not against “provisions” but the entire bill. *Hammerschmidt* at 103.

53. In *Hammerschmidt*, the Court laid out a different standard to determine the severability of procedurally infirm bills.

Where the Court is convinced that the bill contains a "single central [remaining] purpose", *id.*, we will sever that portion of the bill containing the additional subject(s) and permit the bill to stand with its primary, core subject intact. In determining the original, controlling purpose of the bill for purposes of determining severance issues, **a title that "clearly" expresses the bill's single subject is exceedingly important.**

Emphasis added. *Hammerschmidt* at 103.

54. Although the original title for SB 672 was clear enough, and although it did reflect the original purpose of the bill (county prosecutors), the bill's “title” did not clearly indicate the original controlling purpose for *most* of the bill's legislative life or when it was finally passed. From the time SB 672 left the House General Laws Committee, the

published title no longer read a bill pertaining to “ county prosecutors”, but, rather that it was about “political subdivisions”.

55. There is a second element to the *Hammerschmidt* severance test that also comes into play – a determination of what the legislature would have done without unconstitutional amendments.

Pursuant to *Hammerschmidt*, when the procedure by which the legislature enacted a bill violates the constitution, 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.**

Legends Bank v. State, 361 SW 3d 383, 391 – Mo. Supreme Court 2012.

56. Two witnesses in this case, former legislators, one who voted for SB 672 and the other against, testified that they don't know how they would have voted on portions of SB 672, rather than the whole bill. One, a former judge, said it would “be impossible to determine” if the bill would have failed or passed with any part of the bill missing. He went on to say it would take a “brave judge to look into the minds” of legislators. If legislators who were there at the time have “reasonable doubt”, certainly this Court can not assume anything about the outcome “beyond reasonable doubt.” Applying the *Hammerschmidt* standard, the entirety of of SB 672 must fall.

55. We've also learned a lot since *Hammerschmidt*. The former legislator witnesses in this case also testified of the problems the Court creates when it severs the underlying bill from unrelated amendments. They verified what was postulated in the concurring opinion in *Legends*, that is, the constitutional incentives to constitutional

behavior are undermined when legislators know there is very little chance of the underlying, original, bill being struck down in court even when unrelated amendments are piled on.

In addition to encouraging principled, constitutional behavior on the part of each sponsoring legislator, the abolition of the judicially created doctrine of severance would also encourage principled, constitutional behavior on the part of the majority of legislators supporting a popular bill to guard against the adding of unrelated amendments that, by themselves, do not garner majority support for fear that the provisions of the legislation that did have majority support would be invalidated.

Legends at 392.

ORDER AND JUDGMENT

The Court declares that the Plaintiff has prevailed on all counts in this matter and enjoins the enforcement of the entirety of SB 672 as enacted by the 97th Missouri General Assembly, and awards the Plaintiff the costs of this lawsuit.

So Ordered, adjudged and decreed, this ___ day of _____, 2015.

The Honorable Daniel Green,
Circuit Judge, Cole County