

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

RONALD J. CALZONE)))
)	PLAINTIFF,)
))
)	vs.)
))
CHRIS KOSTER, et al.))
))
)	RESPONDENTS.)

CASE NO. 15AC-CC00247

ORDER, JUDGMENT AND PERMANENT INJUNCTION

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 Honorable Christopher Kelly a former legislator 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. This Court finds his uncontroverted testimony to be relevant and credible.
3. Ron Siebert, another 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. This Court finds his uncontroverted testimony to be relevant and credible.

4. 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.”

5. 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.

6. SB 672 was further amended on March 10, 2014, during the perfection process on the Senate floor. The bill was now nearly 17 pages, but 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.

7. 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.

8. 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.”

9. 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.

10. On April 30, 2014, the House of Representatives adopted House Committee Substitute for Senate Committee Substitute for Senate Bill 672 by voice vote.

11. 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.

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

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

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

15. 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.

16. 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.

17. 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.”

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

19. 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)

20. 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 FLORDELL 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

ISSUES

20. 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.

21. Respondents 's only defense in this entire action was that this 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”.

22. Plaintiff presented evidence that he did meet the threshold requirements for

“taxpayer standing.” This Court finds Plaintiff’s evidence on this issue to be uncontroverted and credible. Plaintiff has standing to bring this cause.¹

23. 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

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, this Court is mandated to presume a statute to be valid and may not find a statute unconstitutional unless it clearly contravenes a constitutional provision. *Legends Bank v. State*, 361 S.W.3d 383, 386 (Mo. banc. 2012). Challenges to legislation based on constitutionally imposed procedural limitations are not favored. as in *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo.banc 1994). However, if the act “clearly and undoubtedly violates the constitutional limitation,” this Court will hold it unconstitutional *Id.*

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

¹ Plaintiff alleges and seeks an Order from this Court that he has some sort of “citizen-activist standing” because he is intimately involved in following proposed legislation. Plaintiff conflates this proposition concerning his unique standing with the evils that the original purpose rule, single subject rule and the clear title rule are designed to prevent.

section 37 of this article and general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated.” (Emphasis Added.)

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 different components, nearly all with descriptions that are in no way "germane, connected and congruous," *State v. Mathews*, 44 Mo. 523, 527 (1869)

Even the most sympathetic reading of this bill leads to the inescapable conclusion that the single subject rule has been violated. Since this Court’s findings on the “single subject rule” violation is dispositive, it is not necessary to proceed as to whether the “original purpose rule” and “clear title rule” have also been violated. Likewise, whether portions of the bill constitute a special or local law is also moot.

SEVERANCE

Having determined that SB 672 is unconstitutional, this Court now must determine whether the first subject of the bill, to wit: the portion concerning Prosecuting Attorneys should be severed from the other 16 subjects and allowed to become law. It is important to note that this Court has been directed to apply a different severance analysis for procedurally unconstitutional statutes than it does for substantively unconstitutional statutes. **The statutory severability provision, section 1.140, RSMo Supp.2011, applies only when a provision is unconstitutional in substance.** Section 1.140 applies only when severance of **substantively** unconstitutional provisions is appropriate, it does not support the doctrine of severability of bills enacted in violation of the **procedural** mandates of the

constitution.

As Hammerschmidt indicates, when “the procedure by which the legislature enacted a bill violates the Constitution, severance is a more difficult issue.” 877 S.W.2d at 103. In fact, as stated above, the severance analysis is also different. Because of the difference between substantive constitutional violations and procedural constitutional violations, this Court has been directed to use different standards when evaluating whether invalid provisions may be severed.² Again, for substantive violations, this Court applies section 1.140 to analyze whether severance is appropriate. **In this case and others like it where a procedural constitutional violation is found, the doctrine of judicial severance is applied and severance is only appropriate 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.** *Missouri Roundtable For Life, et. al. v. State of Missouri*, 396 S.W.3d 348, 353 (Mo.banc. 2013) quoting , *Hammerschmidt*, at 103–104.4 Both of these inquiries seek to assure the Court that, beyond a reasonable doubt, the bill would have become law—and would remain law—even absent the procedural violation. **If the Court is not convinced beyond a reasonable doubt, then the bill as a whole was passed in violation of the constitution and the challenged provisions cannot be severed.**

In the instant cause, it is not even a close call, the four corners of the bill, the legislative history and the credible unrebutted testimony of all witnesses provide no doubt

² In *dicta*, this Court believes that severance for procedurally unconstitutional provisions effectively violates the separation of powers protected by both the United States Constitution and article II, section 1 of the Missouri Constitution. *Legends Bank*, 361 S.W.3d at 392–93 (Fischer, J., concurring).

that the bill as a whole was passed in violation of the constitution.

While it is difficult, if not impossible, to divine the motives of every legislator merely by looking at the legislative history, that is not the goal of this Court's severance analysis. Under the "reasonable doubt" standard, the evidence concerning SB 672 is sufficient to create reasonable doubt as to whether it would have passed without the other 16 sections. **Under binding precedent, this Court need not be convinced that SB 672 would not have passed; it need only have reasonable doubt that SB 672 would have been able to garner sufficient support to pass without the procedurally invalid provision(s).**

It is this Court determination that the State failed to meet its burden to prove beyond a reasonable doubt that SB 672 would have passed in a constitutional manner. The legislative history, text of SB672 and the uncontroverted credible testimony provide reasonable doubt that it would have passed absent the offending section(s).

CONCLUSION AND PERMANENT INJUNCTION

For all of the reasons stated above, the Court GRANTS Plaintiff's Petition and:

- (1) Declares that SB 672 violates article III, § 23, of the Missouri Constitution, cannot be severed under the facts of this case, and therefore SB 672 is unconstitutional in its entirety;
- (2) Permanently enjoins Defendants, and each of them, and all those in active concert or participation with them, from taking any action, including but not limited to the use of public funds, to implement or otherwise effectuate any provision of SB 672;
- (3) Orders Defendants, and each of them, to rescind all actions taken to implement or otherwise effectuate any provision of SB 672; and

(4) Each party to bear their own costs.

Dated: 2/9/2016

A handwritten signature in black ink, appearing to read "D. Green", written in a cursive style.

Daniel R. Green

Cole County Circuit Judge