

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

RONALD J. CALZONE	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 17AC-CC00250
	)	
INTERIM COMMISSIONER OF THE	)	
DEPARTMENT OF ELEMENTARY AND	)	
SECONDARY EDUCATION	)	
ROGER DORSON, in his official capacity,	)	
et. al.	)	
	)	
Defendants..	)	
	)	

**(Plaintif's Proposed) 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 638, enacted by the 98<sup>th</sup> Missouri General Assembly during the 2016 legislative session, violates the constitutional limits the people imposed on the General Assembly's powers declared in Article III, § 21 and § 23 of the Missouri Constitution.

**FINDINGS OF FACT**

1. Plaintiff Ronald J. Calzone is a beef cattle rancher, taxpayer, and citizen of the State of Missouri.
  
2. The Plaintiff is an unpaid citizen activist and legislative watchdog, with a special interest and unusual level of involvement in the legislative process that reaches

significantly beyond the typical Missourian. Among other things, he built and maintains a sophisticated, database-driven website designed to track legislative activity, including the adherence, or lack thereof, to the constitutional limits placed on such activity. He has filed other procedural challenges, including Case No. 15AC-CC00247, in which he prevailed, and two other cases pending in this Court. His efforts to restrain what he considers to be abuse of governmental powers include a 2008 petition drive for a constitutional amendment relating to eminent domain, for which he was the proponent and collected 218,445 valid signatures from Missouri voters. Additionally, judicial notice has been taken of two pending federal cases he filed, *Calzone v. Hawley* (No. 16-3650), a case relating to warrantless searches, and *Calzone v. Hagan* (No. 17-2654), a case relating to citizen lobbying and free speech.

3. Four citizen activists, who are similarly situated to the Plaintiff, validated Plaintiff's claims of the sort of harm he incurs as the result of the violations he alleges in his petition. Anne Gassel, Bev Ehlen, Stacy Shore, and Jill Carter provided affidavits explaining the harm done to their efforts to be "fairly apprised" of the development of the laws when there are changes to the title and purpose of a bill or the addition of subjects to a bill. This Court finds their uncontroverted testimony to be relevant and credible.

4. Former Missouri state Representative Melissa Leach, J.D., also provided testimony of "frequent disregard of what the Constitution says as it would pertain to legislation" among her colleagues.

5. Senate Bill 638 was introduced and First Read in the Missouri Senate on January 6, 2016, as a bill less than 3 pages in length with the title,

“AN ACT To repeal section 170.011, RSMo, and to enact in lieu thereof two new sections relating to civics education.”

The text of the bill related solely to “civics education.”

6. On April 12, 2016, a Senate Committee Substitute for SB 638 was adopted and then perfected by the entire Senate. That version was less than 7 pages long and titled,

“AN ACT To repeal section 170.011, RSMo, and to enact in lieu thereof four new sections relating to civics education.”

The text of the bill still related solely to “civics education.”

7. On April 14, 2016, the Senate third read and passed the perfected version.

8. On May 4, 2016, SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 638, with floor amendments 1 through 10 was Third Read and Passed by the House. Amendment 1 changed the title “by deleting the phrase 'civics education' and inserting in lieu thereof the phrase 'elementary and secondary education';” It read, in part, “AMEND Senate Committee Substitute for Senate Bill No. 638, Page 1, In the Title, Line 3, by deleting the phrase 'civics education' and inserting in lieu thereof the phrase 'elementary and secondary education'; and...”

9. The Senate refused to adopt the bill with all the House amendments, so a conference committee made up of House and Senate members drafted a compromise bill. On May 11, 2016, the Senate adopted and third read and passed Conference Committee Substitute for Senate Committee Substitute for Senate Bill 638 . The bill's title read,

“AN ACT To repeal sections 160.400, 160.403, 160.405, 160.410, 160.415, 160.417, 160.545, 161.216, 162.073, 162.261, 162.531, 162.541, 162.720, 163.031, 167.131, 167.241, 170.011, 170.310, 171.021, and 173.750, RSMo, and to enact in lieu thereof twenty-nine new sections relating to

elementary and secondary education, with an effective date for a certain section.”

10. On May 12, 2016, the House of Representatives Truly Agreed to and Finally Passed Conference Committee Substitute for Senate Committee Substitute for Senate Bill 638 with a final bill title reading,

AN ACT To repeal sections 160.400, 160.403, 160.405, 160.410, 160.415, 160.417, 160.545, 161.216, 162.073, 162.261, 162.531, 162.541, 162.720, 163.031, 167.131, 167.241, 170.011, 170.310, 171.021, and 173.750, RSMo, and to enact in lieu thereof twenty-nine new sections relating to elementary and secondary education, with an effective date for a certain section.

11. The subject bill was delivered to the Governor on May 25, 2016, whereupon he signed it on June 22, 2016.

12. The official fiscal note for the final version of SB 638 included forecasts of expenditures by the state and local entities. The official Fiscal Summary prepared by Senate Research included the following table:

<b>FISCAL SUMMARY</b> <b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b> (Truly Agreed To and Finally Passed)				
FUND AFFECTED	FY 2017	FY 2018	FY 2019	Fully Implemented (FY 2020)
General Revenue*	(Could exceed \$6,778,837)	(Could exceed \$9,369,861)	(Could exceed \$14,087,443 to over \$19,273,046)	(Could exceed \$13,905,270 to over \$17,541,894)
Total Estimated Net Effect on General Revenue	(Could exceed \$6,778,837)	(Could exceed \$9,369,861)	(Could exceed \$14,087,443 to over \$19,273,046)	(Could exceed \$13,905,270 to over \$17,541,894)
Numbers within parentheses: ( ) indicate costs or losses. From Senate COMMITTEE ON LEGISLATIVE RESEARCH OVERSIGHT DIVISION				

13. Senate Research projected many millions in expenditures of public dollars which were not tax credits.

14. Senate Research's summary of the final bill included twelve elements of varying relationship, as follows.

1. CIVICS EDUCATION § 170.011, § 170.345
2. DYSLEXIA § 167.950
3. REMEDIAL EDUCATION AND PERSONAL PLANS OF STUDY § 167.905, § 173.750, § 167.903
4. BONDING REQUIREMENTS FOR SCHOOL DISTRICT OFFICERS § 162.541
5. SCHOOL BOARD VACANCIES § 162.073, § 162.261
6. CPR INSTRUCTION IN SCHOOLS § 170.310
7. PLEDGE OF ALLEGIANCE IN SCHOOLS § 171.021
8. CHARTER SCHOOLS § 160.400, § 160.403, § 160.405, § 160.408, § 160.410, § 160.415, § 160.417, § 167.131, § 167.241
9. EARLY LEARNING QUALITY ASSURANCE REPORT §161.216, § 161.217
10. GIFTED EDUCATION § 162.720, § 163.031
11. A+ SCHOOLS PROGRAM § 160.545
12. TRAUMA-INFORMED SCHOOLS INITIATIVE § 161.1050

15. The legislature considers the title to be part of the “bill”, even though distinct from the “act”. When the title to this bill was amended, the motion for amendment spoke of amending the “bill.” It read, in part, “AMEND Senate Committee Substitute for Senate Bill No. 638, Page 1, In the Title, Line 3, by deleting the phrase 'civics education' and inserting in lieu thereof the phrase 'elementary and secondary education'; and...”

### ISSUES

16. The Plaintiff claims standing as a matter of constitutional right and makes three claims:

1) The purpose of SB 638 was changed by amendments to the title and bill text, and the purpose of the finally passed version was not the same as the introduced version in violation of Missouri Constitution Article III, Section 21.

2) The finally passed version of SB 638 violates the single subject rule in Missouri Constitution Article III, Section 23 because ten or eleven of the twelve elements in the bill did not relate to the official subject, “civics education.”

3) The Title for SB 638 was changed in violation of Missouri Constitution Article III, Sections 21 and 23 because the title, along with the text of the bill, is used to determine the purpose of a bill and the purpose expressed in the changed title was not the same as the purpose of the original title.

17. The Plaintiff also claims that, since it is impossible to be convinced beyond reasonable doubt that some portion of SB 638 would have passed without the offending

matter, the bill should not be severed and that it ought be declared void in its entirety.

18. Defendants claim that Mr. Calzone lacks standing to bring suit in this case, particularly absent “special injury” – that his “interest does not differ from that of the public generally.”

19. Defendants also claim that the purpose of SB 638 was not changed, and that its purpose from the beginning to the end was to “promote education in Missouri through amending programs administered by DESE.”

20. Defendants claim that since the one subject was to “promote education in Missouri through amending programs administered by DESE,” and that the various elements in final bill all relate to that subject, there is no Article III, § 23 single subject violation. Citing *Missouri State Med. Ass’n*, 39 S.W.3d at 840, defendants claim that only the final, as enacted, bill should be considered in a single subject analysis.

21. Finally, the Defendants claim there is no constitutional prohibition to changing bill titles, that the Plaintiff conflates an original purpose evaluation with a clear title analysis without basis in law.

### **STANDING**

The Plaintiff claims that standing is inherent in his right to petition the government for a redress of grievances, among other things, while the Defendants say he must show a particularized injury. The judicial doctrine of standing is in tension with the constitutionally protected right to petition the government for a redress of grievances and the right to access to the courts. But tension is not always bad – it can work-harden that which is authentic and test the counterfeit to the point of breakage.

The judicial doctrine of standing, however, can also at times be in tension with one of the most fundamental features of our republic – that of checks and balances between the branches of government. The judiciary can't perform its critical role as a “check” on the legislature if no one can secure standing to bring claims of that body's abuse of power to the bench. Thus, denying standing has the potential not only to unduly prejudice the individual citizen, but also to undermine the fabric of our system of governance at the expense of all of society by disarming the courts, which are designed to protect the people's liberty by ensuring government operates within its constitutional limits.

For this Court to preclude a challenge like the instant one, there must be *some way* for particular acts of the legislature to be tested against the constitutional limits on their power, otherwise those limits are meaningless. There must be some way for the people to hold the legislature accountable to the Constitution. <sup>1</sup>

The Missouri Supreme Court recognized the need for that sort of accountability in *LeBeau V. Commissioners Of Franklin County*, 422 SW 3d 284 - Mo: Supreme Court 2014. There, the court said, “The taxpayer's interest does not arise from any direct, personal loss. It is the public interests which are involved in preventing the unlawful expenditure of money raised by taxation that give rise to taxpayer standing.” Internal

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1 Some would suggest that dealing with an over-reaching legislature is exclusively a political matter to be handled at the ballot box, but there are at least four problems with that theory, in practice. First, that remedy only avails itself every two or four years and much damage can be done in the interim. Second, when a large body of officials are guilty of the same abuses, they are greatly insulated from the people, each of whom who can only vote for one of them. Third, decisions on points of order are decided by House and Senate leadership – individuals that the people outside their districts don't get to vote for or against. Fourth, there are a number of reasons voters choose one candidate over another, and they should not have to face the choice of voting for a legislator who ignores the Constitution just because the other candidate is worse, in his mind, for other reasons.



quotes and citations omitted. *Id.* at 288.

The court further explained, “Taxpayer standing gives taxpayers the opportunity to challenge certain actions of government officials that the taxpayer alleges are unauthorized by law, and it permits challenges in areas where no one individual otherwise would be able to allege a violation of the law.” *Id.* at 289.

But what if the expenditure of taxes is not a significant factor, as the Defendants imply in the instant case? There are unlimited ways the legislature can greatly affect the lives and liberty of all Missourians, equally, without expenditure of money or levying of taxes – are the people to be left defenseless because no one person can claim a “special injury” that is “different than the injuries which would be suffered by the public as a whole?”

The *LeBeau* court seems to be sensitive to these concerns, issuing statements like, “Giving taxpayers a mechanism for enforcing the procedural provisions of Missouri's constitution is of particular importance because these provisions are designed to assist the citizens of Missouri by providing legislative accountability and transparency.” *Id.* at 289.

Ultimately, the Court found that Mr. LeBeau enjoyed traditional taxpayer's standing, but it also opened the door for a broader analysis of standing in other cases, like the one at bar.

Nonetheless, that broader analysis must take into account what might be the most important reason for the judicial doctrine of standing, the gist of which was concisely explained by the United States Supreme Court 56 years ago. “Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely

depends for illumination of difficult constitutional questions? This is the gist of the question of standing.” *Baker v. Carr*, 369 U.S. 186, 204 (1962)

The requirement for that “concrete adverseness” is closely related to the rule that courts will not entertain friendly suits or those which are feigned or collusive in nature – *counterfeits*. Preventing that sort of abuse of the judicial system justifies the tension created by judicial standing doctrine and the right to petition the government for a redress of grievances.

### *The Standing Doctrine Applied*

The record in the instant case is clear – the Plaintiff’s long-standing history applying what he calls his “avocation”, at his own expense, assures “concrete adverseness” and a sharp presentation of the issues this Court needs to decide this case. Call it “citizens” standing, or “activists’ standing”, or by any other name, the Plaintiff does enjoy it in this case.

What is even more obvious is that the Plaintiff also enjoys traditional taxpayer’s standing. Defendants offered no argument against Plaintiff’s claim to taxpayer’s standing, other than to claim he didn’t “meet his burden demonstrate standing.” Such claim is contrary to the facts. Plaintiff presented ample evidence from a credible source (Senate Research’s own Fiscal Note) that bill would result in state and local expenditures that give rise to standing by long tradition in Missouri courts.

By both accounts, Plaintiff has standing in the instant case.

## CONCLUSIONS OF LAW

At the beginning of an analysis of SB 638 is the understanding that the provisions of Article III, § 23 are mandatory, not directory. *State v. Miller*, 45 Mo. 495, 498 (1870) The same is true of Article III, § 21. They are the people's check on the power they conveyed to their representatives for the making of the laws that affect their lives and liberty. Nevertheless, this Court is obligated to resolve doubts in favor of the procedural validity of an act of the legislature in light of the arguable assertion that “an act of the legislature approved by the governor carries with it a strong presumption of constitutionality.” *Hammerschmidt v. Boone County*, 877 SW 2d 98 (1994) at 102., citing *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 5 (Mo. banc 1984). This Court is equally obligated, though, to find a bill to have been passed unconstitutionally if the act “clearly and undoubtedly violates the constitutional limitation.” *Id.*

This Court, indeed, finds that Senate Bill 638 was passed unconstitutionally for the following reasons.

### *Changed Purpose*

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 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.

“The first step in the original purpose analysis is to identify the original purpose. According to its earliest title and contents...” *Legends Bank v. State*, 361 SW 3d 383, 386 - Mo: Supreme Court 2012 “The second analytical step is to compare the original purpose with the final version...” *Id.*

Senate Bill 638 was introduced and First Read in the Missouri Senate as a bill less than 3 pages in length with the title:

“AN ACT To repeal section 170.011, RSMo, and to enact in lieu thereof two new sections relating to civics education.” Emphasis added.

All the content of the first version of the bill related exclusively to civics education. The original title includes “**clear and undoubted language limiting [the] purpose**” that supports an Article III, § 21 challenge. Emphasis added. *Stroh Brewery Co. v. State*, 954 SW 2d 323, 327 (1997)

The title for the enacted version of the bill read,

AN ACT To repeal sections 160.400, 160.403, 160.405, 160.410, 160.415, 160.417, 160.545, 161.216, 162.073, 162.261, 162.531, 162.541, 162.720, 163.031, 167.131, 167.241, 170.011, 170.310, 171.021, and 173.750, RSMo, and to enact in lieu thereof twenty-nine new sections relating to elementary and secondary education, with an effective date for a certain section. Emphasis added.

The elimination of the title language that limited the purpose of SB 638, along with the addition of at least ten or eleven of the twelve subjects listed by Senate Research in their summary of the bill, constitute an undoubted change to the purpose of the bill.

This Court finds no merit in the Defendants' claim that the original and consistent purpose of the bill was to “promote education in Missouri through amending programs

administered by DESE.” If the legislature intended that to be the original purpose, they would not have included the limiting verbiage in the original title. “The title need not express the limitations in the body of the act, but where the title of an act descends to particulars and details, the act must conform to the title as thus limited by the particulars and details”. *Lincoln Credit Co. v. Peach*, 636 SW 2d 31 - Mo: Supreme Court 1982,

Credible, unrefuted affidavit testimony from four witnesses backed up the Plaintiff's claim that this sort of change to the purpose of bill undermines the intent of Article III, § § 21 and 23. “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)

During the legislative process, the General Assembly changed the original purpose of Senate Bill 638 in violation of Article III, § 21; it is, therefore, unconstitutional.

### *Multiple Subjects*

The importance of the bill title can not be understated in a single subject analysis. "... [T]he single subject test is not whether individual provisions of a bill relate to each other. The constitutional test focuses on the subject set out in the title." Emphasis added. *Fust v. Attorney Gen. for the State of Mo.*, 947 S.W.2d 424, 428 (Mo. Banc 1997)

Defendants claim that a multiple subject analysis is limited to evaluating the title and content of the *final*, enacted, bill, citing *Missouri State Med. Ass'n*, 39 S.W.3d at 840. But that is true only, “[t]o the extent the bill's original purpose is properly expressed in the title to the bill, we need not look beyond the title to determine the bill's subject.” Emphasis added. *Hammerschmidt*, at 102. Defendants fail to take into account the fact

that the final title of SB 638, as declared above, was illegitimate and not a true indicator of the base subject to which additions to the bill should be compared – the base subject must be extracted from the original title.

Ten or eleven of the twelve subjects identified by Senate Research clearly do not fairly relate to the original subject (civics education), have a natural connection therewith, or are incidents or means to accomplish its original purpose. Senate Bill 638, therefore, includes multiple subjects in violation of Article III, § 23, and is, thereby, unconstitutional.

#### *Substantively Changed Title*

The foregoing discussion underscores the constitutional importance of a bill's title. The title plays *a*, if not *the*, major role in establishing the purpose of a bill. It is also used to help identify a bill by distinguishing it from simple bill numbers, which are recycled every two years, particularly when considering the constitutional requirement to read the bill “by title” on at least three separate days in each chamber of the legislature.

Although *incidental* changes to a bill title that reflect germane amendments are clearly allowed, *substantive* changes that undermine the constitutional role of the title are unacceptable.

The change to the title of Senate Bill 638 was substantive. It not only had the effect of changing the purpose of the bill, it also had the effect of disguising the bill, thwarting legislators' and citizens' ability to be appraised of the legislation that affects their lives and liberty. The substantive change to the title of Senate Bill 638 was an unconstitutional act.

## SEVERANCE

*(NOTE: Defendants requested an opportunity to brief the severance issue separately in the event the Plaintiff prevails. Plaintiff does not object, but may request another evidentiary hearing, including an opportunity to call witnesses. The following is offered in the event the Court denies Defendants' request.)*

It should be noted that the determination of severability of a *procedurally* unconstitutional bill is not the same as *substantively* unconstitutional statutes. Section 1.140, RSMo, provides that, absent a non-severability clause, the provisions in every *statute* are severable. It 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. Section 1.140 presumes that one or more provisions in the statute in question are substantively unconstitutional even though properly enacted.

Section 1.140 does not, however, apply to a *bill* when the bill was passed using unconstitutional procedures. In *Hammerschmidt*, the Court laid out a different standard to determine the severability of procedurally infirm bills.

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.

Defendants have presented no evidence that any portion of Senate Bill 638 would have passed independent of the entire bill or that any portion is essential to the efficacy of

the bill. Binding precedent indicates that this Court need not be convinced that SB 638 would not have passed; it need only have *reasonable doubt* that SB 638 would have had sufficient support to pass without the procedurally unconstitutional provisions.

It is this Court's determination that the State failed to meet its burden to prove beyond a reasonable doubt that portions of SB 638 would have passed in a constitutional manner and the bill shall not be severed.

### **CONCLUSION AND PERMANENT INJUNCTION**

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

(1) Declares that SB 638 violates Article III, § 21 and § 23, of the Missouri Constitution, cannot be severed under the facts of this case, and therefore SB 638 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 638;

(3) Orders Defendants, and each of them, to rescind all actions taken to implement or otherwise effectuate any provision of SB 638; and

(4) Each party to bear their own costs.

Dated: \_\_\_\_\_

Jon Beetem

Cole County Circuit Judge



## Certificate of Service

I, Ronald J. Calzone, do hereby certify that on February 26, 2018 a true and accurate copy of this motion was delivered to Defendants' attorney, listed below, via electronic mail.

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PLAINTIFF