

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

RONALD J. CALZONE)	
Plaintiff,)	
)	
v.)	CASE NO. 17AC-CC00250
)	
MARGIE VANDEVEN, et al.)	
Defendants)	
)	
)	

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Ronald J. Calzone respectfully submits this memorandum in support of his motion for summary judgment.

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INTRODUCTION

This case presents a simple and straightforward question of law relating to a fairly small set of indisputable facts: Did the Missouri General Assembly exceed the constitutional limits on their legislative powers when they passed Senate Bill 638 (2016)?

Specifically, did the final version of SB 638 include any amendments that effectively changed its *original* purpose? Or, did the final version of SB 638 contain any subjects outside the purpose expressed in the bill's *original* title?

To answer those questions, we really need to look no further than the original, as-filed, bill, and the final “truly agreed to” bill. The Senate's committee on legislative research will help us do this evaluation with their summary of the bill.

The importance of this case, and the systemic problem at its core, is as significant as any issue this court will ever see. The real issue is whether the People of Missouri have an effective constitutional check on the men and women who make the laws they must live under. Is Missouri a constitutional republic or not?

STANDARD OF REVIEW

“The burden on a summary judgment movant is to show a right to judgment flowing from facts about which there is no genuine dispute. Summary judgment tests simply for the existence, not the extent, of these genuine disputes. Therefore, where the trial court, in order to grant summary judgment, must overlook material in the record that raises a genuine dispute as to the facts underlying the movant's right to judgment, summary judgment is not proper”. *ITT Commercial Finance v. Mid-Am. Marine*, 854

SW 2d 371, 378 – Mo. Banc 1993

“Additionally, where the defendant has raised an affirmative defense, a claimant's right to judgment depends just as much on the non-viability of that affirmative defense as it does on the viability of the claimant's claim”. *Id.* at 381.

“A 'genuine issue' is a dispute that is real, not merely argumentative, imaginary or frivolous. Where the 'genuine issues' raised by the non-movant are merely argumentative, imaginary or frivolous, summary judgment is proper”. *Id.* at 382.

LEGAL STANDARD FOR EVALUATING BILLS FOR CHANGED PURPOSE AND MULTIPLE SUBJECTS

Section 516.500, RSMo 2014 anticipates legal challenges to bills passed outside the constitutional limitations on the legislative power and places some limitations on such challenges:

No action **alleging a procedural defect in the enactment of a bill into law** shall be commenced, had or maintained by any party **later than the adjournment of the next full regular legislative session following the effective date of the bill as law**, unless it can be shown that there was no party aggrieved who could have raised the claim within that time. In the latter circumstance, the complaining party must establish that he or she was the first person aggrieved or in the class of first persons aggrieved, and that the claim was raised not later than the adjournment of the next full regular legislative session following any person being aggrieved. In no event shall an action alleging a procedural defect in the enactment of a bill into law be allowed later than five years after the bill or the pertinent section of the bill which is challenged becomes effective. Emphasis added. Section 516.500, RSMo 2014.

Although the Missouri Constitution's Article III includes numerous restrictions on the power of the legislature, the case at bar need only consider §§ 21 and 23. Both sections are simple and straightforward, and much opined on by the Missouri Supreme Court. The application of these two sections overlap and one must be understood in light of the other.

Original Purpose

Section 21 states:

“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. Mo. Const. Article III Section 21.

The Missouri Supreme Court has ruled that the original purpose of a bill should be 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 (1994) at 103.

The General Assembly often amends the title as a bill progresses through the process. Such amendments are of no use in a determination of a bill's original purpose – **the only title that matters is the original, as-filed, title.**

“The original purpose of a bill must be measured at the time of the bill's introduction”. *Missouri Ass'n of Club Executives v. State*, 208 SW 3d 885 – Mo. Banc

2006.

“The original purpose of a bill is established by the bill's **earliest title and contents at the time the bill is introduced**. The original purpose requirement does not prohibit subsequent additions or changes to legislation. Instead, the restriction is against the introduction of a matter that is not germane to the object of the legislation or that is unrelated to its original subject”. Emphasis added. Internal citations and quotation marks omitted. *Legends Bank v. State*, 361 SW 3d 383, 386 – Mo. Banc 2012. (Citing *Club Executives*.)

One Subject

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.

A bill contains one subject if all provisions of the bill "fairly relate to the same subject, have natural connection therewith or are incidents or means to accomplish its purpose." *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 6 (Mo. Banc 1984). But that would be an incomplete analysis if that one subject was not germane to the purpose expressed in the title.

The test to determine whether a provision of a bill violates the single subject rule is “not whether individual provisions of a bill relate to each other . . . **[but] whether [the challenged provision] fairly relates to the**

subject described in the title of the bill, has a natural connection to the subject, or is a means to accomplish the law's purpose." Emphasis added. *Fust v. Attorney Gen.*, 947 S.W.2d 424, 428 (Mo. 1997) (en banc).

The Supreme Court has repeatedly underscored the importance of the title of a bill in a procedural analysis.

The test to determine if a bill contains more than one subject is whether all provisions of the bill fairly relate to the same subject, have a natural connection therewith or are incidents or means to accomplish its purpose. From these consistent precedents we conclude that a "subject" within the meaning of article III, section 23, includes all matters that fall within or reasonably relate to the general core purpose of the proposed legislation. To 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. Internal quotation marks omitted. *Hammerschmidt*, at 102.

Of course, the only title that matters in an analysis of the bill's subject is the original title.

To the extent that the subject(s) included in various versions of a single bill are truly reflected in those versions' titles, a comparison of the pre-amendment title to the post-amendment title(s) is a clear indicator whether the bill has been so amended as to change its purpose or add to the original subject. **Stated more succinctly, if changes to the content of a bill (i.e. amendments) require a change in the title to meet the clear title requirement of Section 23, those changes have changed the original purpose of the bill.**

Specificity of Title Language

The Missouri Supreme Court has explained that a bill title must be examined carefully to determine exactly how specific the statement of purpose is. Not to be confused with a “clear title” question, this determination of specificity should take into consideration which portion of a title is the operative declaration of purpose.

The original purpose of a bill must, of course, be measured at the time of the bill's introduction. At this time a bill's sponsor is faced with a double-edged strategic choice. A title that is broadly worded as to purpose will accommodate many amendments that may garner sufficient support for the bill's passage. Alternatively, a title that is more limited as to purpose may protect the bill from undesired amendments, but may lessen the ability of the bill to garner sufficient support for passage. Because we are required to uphold the constitutionality of a statute against attack unless the statute clearly and undoubtedly violates the constitution, **only clear and undoubted language limiting purpose** will support an article III, section 21 challenge.

Emphasis added. *Stroh Brewery Co. v. State*, 954 SW 2d 323, 327 (1997)

At issue in *Stroh Brewery* was Senate Bill 933 (1996), which was entitled "an act to amend chapter 311, RSMo, **by** adding one new section relating to the auction of vintage wine, with penalty provisions." Emphasis added.

The Court acknowledged that the word “by” could convey exclusivity, or it could simply explain *one way* the bill accomplished its actual purpose, that is, “*to amend chapter 311*”. The Court chose the more generous interpretation of the use of “by.”

The use of the word "by" in the title of S.B. 933 is admittedly troublesome. While it might have been meant to convey exclusivity, such a construction is not clearly and undoubtedly so. When alternative readings of a statute are possible, we must choose the reading that is constitutional. *Spradlin v. City*

of Fulton, 924 S.W.2d 259, 263 (Mo. banc 1996). By including the words, "an act to amend chapter 311, RSMo," without any further language of specific limitation, such as "for the sole purpose of," S.B. 933 gave fair notice to all concerned that the amendment of Missouri's liquor control law, chapter 311, was the purpose of S.B. 933.

Stroh Brewery at 327.

Thus, when a bill title addressing what *could* otherwise be a broad subject includes a specific limitation, or qualifier, that narrows that broad subject, an Article III section 21 challenge is supported.

Purpose of Article III Sections 21 & 23

The Missouri Supreme Court has correctly identified the core purposes for §§ 21 & 23:

Together, "these constitutional limitations function in the legislative process to facilitate orderly procedure, avoid surprise, and prevent 'logrolling,' in which several matters that would not individually command a majority vote are rounded up into a single bill to ensure passage."

Stroh Brewery Co., 954 S.W.2d at 325.

and,

These constitutional limitations additionally serve "to defeat surprise within the legislative process. [They prohibit] a clever legislator from taking advantage of his or her unsuspecting colleagues by surreptitiously inserting unrelated amendments into the body of a pending bill."

Hammerschmidt v. Boone Cnty., 877 S.W.2d 98, 101 (Mo. banc 1994).

and,

"These two provisions provide **the citizens of Missouri** with necessary and valuable legislative accountability and transparency." Emphasis added.

Legends Bank v. State, 361 SW 3d 383 – Mo. Banc 2012.

and,

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...."

Emphasis added. *Hammerschmidt v. Boone County*, 877 SW 2d 98, 102 (Mo. Banc. 1994) quoting *State v. Small*, 356 SW 2d 864 (Mo. Banc. 1962)

The Supreme Court has clearly, and properly, **considered the interests of the engaged citizen** who has heeded the age-old adage, 'eternal vigilance is the price of liberty.'¹

"The tyranny of a principal in an oligarchy is not so dangerous to the public welfare as the apathy of a citizen in a democracy." – Montesquieu, 1748

ARGUMENT

I. Count 1: The Purpose of SB 638 Was Changed By Amendments 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

"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..." *Legends Bank v. State*, 361 SW 3d 383, 386 - Mo: Supreme Court 2012

¹ Often attributed to Thomas Jefferson, but of questionable origin.

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:²

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

Emphasis added. Plaintiff's Exhibit A.

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.

Emphasis added. Plaintiff's Exhibit B.

So, the purpose of SB 638 was changed from the specific “civics education” to the more general purpose of “elementary and secondary education.”³ The inclusion of the word “civics” is exactly the sort of limitation on the general subject of “education” that the Supreme Court said was “**clear and undoubted language limiting [the] purpose**”,

² SB 638 passed the Senate with the original title intact. The first amendment offered on the House floor (May 4th) changed the title “by deleting the phrase 'civics education' and inserting in lieu thereof the phrase 'elementary and secondary education';” Exh. D.

³ It could also be argued that “relating to elementary and secondary education” is too general to meet the “clearly expressed” requirement of Section 23, considering it is nearly one-fourth of the state budget.

that will support an article III, section 21 challenge. Emphasis added. *Stroh Brewery* at 327.

“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, *Citing Hunt v. Armour*, 345 Mo. 677, 681-682, 136 S.W.2d 312, 314 (1939).

An analysis of each of the components of the final bill might reveal that they all “fairly relate” to or “have a natural connection” with “elementary and secondary education”, but that analysis would be fruitless, since the original purpose was relating to “civics education.”

The Senate Committee on Legislative Research summarized the final version of SB 638 with an outline of 12 distinct elements. Plaintiff's Exhibit E.

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

Of those twelve elements (subjects?), only (1) CIVICS EDUCATION, and perhaps (2) PLEDGE OF ALLEGIANCE IN SCHOOLS, are “fairly relate[d]” to or “have a natural connection” with the original, controlling title “relating to civics education.”

The point at which the purpose of SB 638 was changed is easy to pinpoint. It was Amendment 1, on the House floor on May 4th. That amendment expressly changed the title “by deleting the phrase 'civics education' and inserting in lieu thereof the phrase 'elementary and secondary education';”

“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”

Plaintiff's Exhibit D, page 1.

It should be noted that the House of Representative identified **the title as component part** of “Senate Bill No. 638” when they changed the title.⁴

Subsequent amendments added insult to injury.

A bill whose purpose is declared in its original title to be narrowly focused with some qualifier, “civics” in SB 638, can not be broadened through the amendment process. The Missouri Supreme Court provides an example to illustrate:

“The restriction is against the introduction of matters not germane to the object of the legislation or unrelated to its original subject. An example of

4 e.g. They amended the “bill” “by deleting” part of the title and “inserting in lieu” something else.

a case where this provision [Article III § 21] was violated is *Allied Mut. Ins. Co. v. Bell*, 353 Mo. 891, 185 S.W.2d 4 (1945). There a bill was introduced having as its **original purpose a reduction in certain insurance premiums**. However, during legislative process, it was amended so as to impose a **tax on insurance premiums**. The court found this to be a clear deviation from the bill's original purpose, declaring it unconstitutional. *Id.* At 8.”

Akin v. Director of Revenue, 934 SW 2d 295, 302 (1996)

The fact that both the original and amended purpose had to do with insurance was not enough to preserve the bill referenced in *Akin*. **SB 638 not only possessed a limiting title, the language of the original bill, itself, was laser-focused. It was exclusively enacting the "Missouri Civics Education Initiative".**

II. Count 2 – The Finally Passed Version of SB 638 Violates The Single Subject Rule in Missouri Constitution Article III Section 23

"However, the 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." *Fust v. Attorney Gen. for the State of Mo.*, 947 S.W.2d 424, 428 (Mo. Banc 1997)

Once we have established that the controlling purpose and subject of SB 638 was “civics education” from the original title, it is a simple matter to compare the 12 elements of that bill the Senate Committee on Legislative Research identified, listed above.

Plaintiff's Exhibit E.

Again, with the exception of (1) CIVICS EDUCATION, and perhaps (2) PLEDGE OF ALLEGIANCE IN SCHOOLS, the amendments that added these other

“elements” *added* to the one controlling purpose of the original bill.

Including even one additional purpose is fatal in an Article III section 23 analysis.

III. Count 3 – The Title for SB 638 Was Changed in Violation of Missouri Constitution Article III Sections 21 and 23

Although the Missouri Constitution does not expressly prohibit any and all changes to a bill's title, it DOES prohibit amendments that change the *purpose* of a bill.

The Supreme Court has rightly pointed out that it is the *original* title that establishes the purpose of a bill, and that a bill's title must clearly express the one subject (or purpose) of a bill.

Logic (including the most basic of algebraic equations) dictates that any substantive change (one that affects a clear expression of the bill's one *original* subject and purpose) is prohibited.

If “Bill Purpose = Purpose in Original Bill Title”,

then, “Purpose in Original Bill Title + 1 = Bill Purpose + 1” is also true.

Note that, even without amendments that add additional *subjects*, a bill's *purpose* can be changed with a change to the title.

As discussed above, the House of Representatives considered the title *part of the bill* when it amended it⁵ with House Amendment 1:

5 An “act” and a “bill” are not necessarily the same thing. The “bill” is the implementing agent of an “act.” The Constitution prohibits changing the purpose of a “bill.”

“**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”

Emphasis added. Plaintiff's Exhibit D, page 1.

The constitutional importance of preserving the clear meaning of the original title should not be understated. A clear title, perhaps more than anything, gives effect to one of the primary purposes of Article III sections 21 and 23 – that is, to “assure that the people are fairly apprised” of proposed laws that affect their lives and liberty.

Hammerschmidt v. Boone County, at 102.

Affidavits (Exhibits H, I, J, K, & L) from several ordinary Missouri citizens, each of whom have determined to heed the adage, ‘eternal vigilance is the price of liberty’, is real world evidence of the wisdom of the Framers and ratifiers, who were, after all, also ordinary Missouri citizens.

The witness of Anne Gassel is especially poignant, since SB 638 ended up directly affecting her interests, even though she had marked it as inconsequential based on her belief that the bill's title, purpose, and subject would remain static:

Because of this [the fact that she is an unpaid volunteer with limited time] I must rely on the original title of bills, as they have been filed, counting on the legislature to keep bills true to the purpose stated in their original title, and narrowing the number of bills that I must spend time and energy watching. The year that SB638 (2016) was passed, for instance, 128 bills were tagged as relating to education. The organizations I represented were tracking 22 of them.

The subject of SB638 was deemed of interest to one of the groups I represented and viewed as primarily unnecessary legislation, but ultimately not harmful enough to warrant action. That determination was made based on the fact that the bill title and language were very narrowly focused on a

single subject. Had we known that it could be broadly expanded as it was to include topics we had opposed in other bills, we might have made greater effort to oppose it in the first place.

Affidavit of Anne Gassel. Plaintiff's Exhibit H

Bev Ehlen (state director of Concerned Women for America and mentor of many of her members who engage in the legislative process):

We place a great deal of reliance on the title of bills as part of what could be characterized as “legislative triage”, which allows us to decrease the number of bills we must watch to protect our interests.

The legislature's practice of making substantive changes to titles and amending bills with material that would not have fit under the original title makes it virtually impossible for us to stay apprised of the legislation that affects our interests, especially in the final weeks of the legislative session, when most of the bills are passed and bills are in a constant state of flux.

Affidavit of Bev Ehlen. Plaintiff's Exhibit I

Stacy Shore:

Because the legislature has been in the habit of amending failed bills to other bills that are continuing to move through the process, and because of what I believe to be their loose interpretation of what they consider to be germane amendments, I am sometimes surprised by the addition of what I consider to be problematic amendments to bills with original titles that describe a purpose not related to the amendment.

Affidavit of Stacy Shore. Plaintiff's Exhibit J

Jill Carter:

The legislature has a proclivity of amending and/or attaching bills that have failed as stand alone bills and only fit because the title of the underlying bill has been changed. I am at times, caught off guard by the addition of what I consider amendments that threaten my family's interests to bills with original titles that describe a purpose not related to the amendment – bills

that I would never have thought could evolve into a threat.

Through my legislative investments I have found the amendment process to be a greater threat than independent, stand-alone bills.

Affidavit of Jill Carter. Plaintiff's Exhibit K

Former legislators have also expressed similar concerns about the legislative process. Judge Daniel Green, in his Order, Judgment and Permanent Injunction in another procedural challenge, *Calzone v. Koster*, CASE NO. 15AC-CC00247, wrote:

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.

Plaintiff's Exhibit G Page 1.

Referencing another witness from the bench trial, Judge Green also wrote:

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.

Plaintiff's Exhibit G Page 1.

It can not be presumed that elected representatives **are actually representing the will of the people**. The framers and ratifiers of the Missouri Constitution certainly made no such presumption – that's why the Constitution includes term limits AND limits on the legislative process, like Article III sections 21 and 23.

And it can not be presumed that legislators act only after due consideration of

those constitutional limits on their powers. The affidavit of former Missouri State Representative Melissa Leech, J.D., is evidence that legislators, at least some of the time, “pass the buck” on constitutional analysis to the courts:

During my service in the Missouri House of Representatives I witnessed frequent disregard of what the Constitution says as it would pertain to legislation. Although some members took their oath to support the Constitution very seriously and expended great personal energy evaluating bills against their understanding of the Constitution, many had the attitude that it was merely their job to expedite the passage of bills and then let the courts decide whether the bills would pass muster in the courts.

Plaintiff's Exhibit L.

IV. About the Defendants' Affirmative Defenses

Defendants offer two unresolved affirmative defenses:

1. Plaintiff's Petition fails to state a claim upon which relief can be granted in that SB 638 does not violate Sections 21 and 23 of Article III of the Missouri Constitution.
2. Plaintiff lacks standing to bring this lawsuit in his capacity as a citizen and/or taxpayer of the State of Missouri.

The forgoing discussion is ample proof that the Plaintiff's petition's claims that SB 638 violated Article III sections 21 and 23 are meritorious.

Taxpayer Standing is also supported by the fiscal note the Senate prepared. It clearly forecasts at least the “prospect” of state expenditures which trigger taxpayer standing. “Allegations and proof of the illegal expenditure of public funds or the prospect of such illegal expenditures is an essential element to grant taxpayer standing”. *Ours v. City of Rolla*, 965 SW 2d 343, 346.

Plaintiff also enjoys standing as part of a citizen's right to petition for a redress of grievances and access to the courts.

IV. Request for non-severance.

The statutory severability provision, section 1.140, RSMo Supp. 2011, applies only when a provision within a bill is unconstitutional in substance. See *Legends Bank v. State* footnote 5.

Section 1.140 severance does not apply to this action, nor should the judicially created doctrine of severance sometimes applied to procedural challenges.

As the evidence from the affidavits and *Calzone v. Koster* points out, legislators, especially bill sponsors, have much to gain and little to lose by allowing their colleagues to “load up” bills with non-germane amendments if they are confident that at least the original bill will survive a procedural challenge. In addition to the separation of powers issues presented when a court presumes to know how the legislature *would* have voted on SB 638 without the unconstitutional amendments, the court is actually “enabling” mischief when it practices judicial severance.

For a good discussion of this topic, see Judge Fischer's concurring opinion in *Legends Bank v. State*, and also take judicial notice of Judge Green's judgment in *Calzone v. Koster* at page 8 and the footnote on page 9. Plaintiff's Exhibit G.

This Court need not buck the Supreme Court, however. **Because the Defendants have neither alleged nor “proven beyond a reasonable doubt” the the legislature**

would have passed the bill without the unconstitutional amendments, the entire bill must be struck.

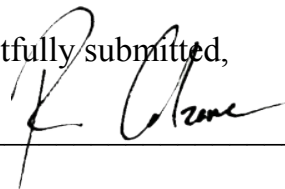
Because of the difference between substantive constitutional violations and procedural constitutional violations, this Court uses different standards when evaluating whether invalid provisions may be severed. For substantive violations, this Court applies section 1.140 to analyze whether severance is appropriate. On the other hand, when evaluating a procedural constitutional violation, **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.

Emphasis added. *Missouri Roundtable For Life, et. al. v. State of Missouri*, 396 S.W.3d 348, 353 (Mo.banc. 2013) quoting, *Hammerschmidt*, at 103-104.

Conclusion

WHEREFORE, for the foregoing reasons Plaintiff prays this Court will grant his motion for summary judgment and find in favor of his petition.

Respectfully submitted,




Ronald J. Calzone, pro se
33867 Highway E
Dixon, MO 65459
Telephone: (573) 368-1344
Fax: (573) 759-2147
ron@mofirst.org
PLAINTIFF

Certificate of Service

I, Ronald J. Calzone, do hereby certify that on October 31, 2017 I served Defendants' attorneys, listed below, via electronic mail.

Jason K. Lewis, #66725
Assistant Attorney General
P.O. Box 861
St. Louis, MO 63188
Telephone: (314) 340-7832
Facsimile: (314) 340-7891
jason.lewis@ago.mo.gov

Michael Martinich-Sauter, #66065
Deputy Attorney General
P.O. Box 861
St. Louis, MO 63188
Telephone: (314) 340-7832
Facsimile: (314) 340-7891
michael.martinich-sauter@ago.mo.gov

By 

Ronald J. Calzone, pro se
33867 Highway E
Dixon, MO 65459
ron@mofirst.org
Telephone: (573) 368-1344
Fax: (573) 759-2147
PLAINTIFF