

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

))
RONALD J. CALZONE))
Plaintiff,))
))
vs.))
))
ROBERT TODD RICHARDSON, Missouri))
House of Representatives Speaker))
and))
)) CASE NO. _____
RONALD F RICHARD, Missouri Senate))
President pro tem))
and))
))
MIKE CIERPIOT, Missouri House of))
Representatives Majority Floor Leader))
and))
))
MICHAEL L KEHOE, Missouri Senate))
Majority Floor Leader))
and))
))
MARGIE VANDEVEN, Commissioner,))
Department of Elementary and Secondary))
Education))
and))
))
JENNIFER TIDBALL, Acting Director of the))
Department of Social Services))
and))
))
JOSHUA D. HAWLEY, Mo. Attorney General))

COME NOW, the Plaintiff, Ronald J. Calzone, and states as follows:

- 1) This Action is a challenge to the constitutionality of Senate Bill 638 (2016)

based on procedural infirmities, including an illegal change to the original purpose of the bill and violations of the single subject clause in the Missouri Constitution. Exhibits A and B.

2) Plaintiff Ron Calzone is a taxpayer and citizen of Missouri.

3) Plaintiff is regularly engaged as an uncompensated citizen activist in an effort to promote constitutional governance, including efforts to ensure that legislation passed by the General Assembly adheres to constitutional requirements both substantively and procedurally. Such activities include educating legislators about *constitutional limitations on their legislative powers* as well as their affirmative duties.

HOW PLAINTIFF IS IMPACTED

4) The Plaintiff is directly impacted by the unconstitutional passage of SB 638 by virtue of his position as one of the Missouri citizens in whom “all political power is vested in and derived from.” (*Mo. Const. Article I § 1*) When the government established by the citizens of Missouri enacts laws which those people must live under, and does so outside the limits the people put on their authority to enact such laws, the citizens, including the Plaintiff, are greatly insulted.

5) The Plaintiff is particularly impacted by the unconstitutional passage of SB 638 in light of the many hours he spends virtually every week of the legislative session in an effort to keep legislation constitutional – he is much more than a casual observer of the legislative process.

6) The Plaintiff is also directly impacted by virtue of his position as a *Missouri*

taxpayer, since SB 638 results in the expenditure of state funds in numerous ways by various state agencies.

STANDING

7) Plaintiff has standing because he is a citizen of the state of Missouri.

8) Plaintiff also enjoys standing as a *taxpaying* citizen of Missouri. “This Court has repeatedly held that taxpayers do, in fact, have a legally protectable interest in the proper use and expenditure of tax dollars.” *Lebeau v. Commissioners Of Franklin County*, 422 SW 3d 284 (2014) Based on the fiscal note prepared by the General Assembly, the projected costs to state agencies resulting from implementing SB 638 include:

FISCAL SUMMARY ESTIMATED NET EFFECT ON GENERAL REVENUE FUND (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				

EXHIBIT C

DEFENDANTS

9) Robert Todd Richardson, in his official capacity as Speaker of the Missouri House of Representatives. Representative Richardson is an appropriate defendant because in his official capacity he oversees the process by which the subject bill was passed and, additionally, if the Plaintiff prevails the General Assembly will have to pass another bill to remove SB 638 from the statute books.

10) Ronald F. Richard, in his official capacity as Missouri Senate President pro tem. Senator Richard is an appropriate defendant because in his official capacity he oversees the process by which the subject bill was passed and, additionally, if the Plaintiff prevails the General Assembly will have to pass another bill to remove SB 638 from the statute books.

11) Mike Cierpiot, in his official capacity as Majority Floor Leader of the Missouri House of Representatives. Representative Cierpiot is an appropriate defendant because in his official capacity he oversees the process by which the subject bill was passed and, additionally, if the Plaintiff prevails the General Assembly will have to pass another bill to remove SB 638 from the statute books.

12) Michael L. Kehoe, in his official capacity as Missouri Senate Majority Floor Leader. Senator Kehoe is an appropriate defendant because in his official capacity he oversees the process by which the subject bill was passed and, additionally, if the Plaintiff prevails the General Assembly will have to pass another bill to remove SB 638 from the statute books.

13) Margie Vandeven, in her official capacity as commissioner of the Department of Elementary and Secondary Education.

14) Jennifer Tidball, in her official capacity as Acting Director of the Department

of Social Services.

15) Joshua D. Hawley, in his official capacity as the Attorney General of Missouri.

LEGAL BASIS AND TIMELINESS OF ACTION

16) This action is brought pursuant to Section 516.500, RSMo 2014 which states:

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.

17) This action is brought before the adjournment of the next full regular legislative session following the enactment of SB 638.

VENUE

18) Cole County Circuit Court is the proper venue since the seat of Missouri government and the various departments named as defendants reside in Cole County.

“In all actions in which there is no count alleging a tort, venue shall be determined as follows: (1) When the defendant is a resident of the state, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and the defendant may be found;”
508.010 RSMO 2014

CONTROLLING LAWS

19) 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.

20) 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.

BILL HISTORY

21) 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.”

A true and accurate copy of the Introduced version of SB 638 is provided, herein, as Exhibit A.

22) 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.”

A copy of the perfected Senate Committee Substitute can be found at

<http://www.senate.mo.gov/16info/pdf-bill/perf/SB638.pdf> (Last visited May, 7, 2017)

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

24) 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';”

A true and accurate copy of the May 4, 2016, House Journal pages 2918-2953 relating to the amendments and that vote are attached as Exhibit D. (See page 2918 for the change to the title.)

25) 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.”

A copy of Conference Committee Substitute for Senate Committee Substitute for Senate Bill 638 can be found at

www.senate.mo.gov/16info/BTS_web/amendments/4478S.05S.pdf (Last visited May 8, 2017).

26) 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.

Exhibit B.

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

28) The official fiscal note for the final version of SB 638 included forecasts of numerous expenditures by the state as well as local entities. See Exhibit C.

NATURE OF THIS ACTION

29) This action is for a declaratory judgment that Senate Bill 638 is unconstitutional due to procedural infirmities and is therefore void, and an injunction to prevent the enforcement of any of its provisions, and an order that the General Assembly properly remove its provisions from the Missouri Revised Statutes.

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

30) Plaintiff hereby restates and incorporates paragraphs 1 through 29, above, as if set forth fully herein.

31) Missouri Constitution Article III Section 21 is clear and concise with its mandate that every bill must remain true to its original purpose, that is, the bill's purpose at the point it was filed or introduced. Any bill whose purpose has changed is, therefore, constitutionally infirm.

“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.
Missouri Constitution Article III Section 21

32) With the exception of the provisions of Section 37 in Article III and general appropriation bills, the one “purpose” of a bill is correspondent to its one “subject” and the subject must be clearly expressed in its title, per Article III Section 23: 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.

33) 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 (1994) at 103.

34) The official title for the **introduced version** of SB 638 was significantly different than the official title for the **finally passed version**.

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

Exhibit A.

“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.”

Exhibit B.

35) The introduced version of SB 638, and the version originally passed by the Senate, related only to the narrow purpose of “civics education.” By the reckoning of Senate Research, the final bill encompassed approximately twelve distinct elements, most of which were not related to the original, controlling purpose of “civics education.” See 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

36) While the purpose of the introduced version of SB 638 was clear and concise and *focused on one narrow subject*, the purpose of the finally agreed to and passed version was much broader. Although the *original purpose* might be considered a subset of the *new, expanded purpose*, it is indisputably **not the same purpose as the original purpose.**

37) A bill whose purpose is declared in its original title to be narrowly focused 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 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)

38) The altering of the purpose of SB 638 does great harm to the integrity of the legislative process, was an obstacle to the ability of legislators to grasp and intelligently

discuss the bill, placed legislators and the Governor in a position of having to accept some matters which they do not support in order to enact that which they earnestly support. See *Hammerschmidt v. Boone County*, 877 SW 2d 98 (1994) at 101. And, of greatest concern to the Plaintiff, the changed purpose **made it virtually impossible for him and fellow citizen activists to be “fairly appraised” of the legislation, and thereby violated his personal rights.** Ibid at 102.

WHEREFORE, Plaintiff prays that the Court, pursuant to § 516.500, RSMo, hear this action: that the Court issue a declaratory judgment that the procedure by which SB 638 was passed, that is, changing its purpose, violated the Missouri Constitution Article III Section 21, and that Senate Bill 638 is void, and because it is impossible for this court to know how legislators would have voted for any severed portion of this bill, issue an injunction to prevent the enforcement of any of its provisions, as well as provide for any other remedies the Court determines support the Constitution and further justice.

Count 2

The Finally Passed Version of SB 638 Violates The Single Subject Rule in Missouri Constitution Article III Section 23

37) Plaintiff hereby restates and incorporates paragraphs 1 through 38, above, as if set forth fully herein.

39) Any claim that all the provisions of the final version of SB 638 all reasonably relate to one another is of no use in a single subject evaluation *if the original purpose of the bill, as expressed in the original title, is narrower than the commonality of those provisions.* As the Supreme Court has pointed out, rather than comparing the various

provisions to one another, a proper analysis *compares each provision to the “general core purpose” of the bill.* As discussed above, *that purpose must be determined from the original title*, not a title that has been revised to suit a new, broader subject matter.

"No bill shall contain more than one subject which shall be clearly expressed in its title...." Mo. Const. art. III, § 23. The main test for determining if a bill violates the single subject rule is laid out in *Hammerschmidt*: "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." 877 S.W.2d at 102. "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). "The dispositive question in determining whether 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." *Id.* (internal quotations omitted). Further, "The determination of whether a bill violates the article III, section 23 single subject requirement is made concerning the bill as it is finally passed." *Stroh Brewery Co.*, 954 S.W.2d at 327. (Emphasis added.)

Legends Bank v. State, 361 SW 3d 383, 390 (2012 Judge Fischer, concurring)

40) "If the title of a bill contains a particular limitation or restriction, a provision that goes beyond the limitation in the title is invalid because such title affirmatively misleads the reader". *Fust v. Attorney General*, 947 SW 2d 424, 429 (1997) citing *Hunt v. Armour & Co.*, 345 Mo. 677, 679-80, 136 S.W.2d 312, 314 (1940).

WHEREFORE, Plaintiff prays that the Court, pursuant to § 516.500, RSMo, hear this action: that the Court issue a declaratory judgment that the procedure by which SB 638 was passed, namely, incorporating multiple subjects or subjects outside the scope of the original purpose, violated the Missouri Constitution Article III Section 23, and that

Senate Bill 638 is void, and because it is impossible for this court to know how legislators would have voted for any severed portion of this bill, issue an injunction to prevent the enforcement of any of its provisions, as well as provide for any other remedies the Court determines support the Constitution and further justice.

Count 3

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

41) Plaintiff hereby restates and incorporates paragraphs 1 through 40, above, as if set forth fully herein.

42) Since Article III Section 23 requires that the subject or *purpose* of a bill be “clearly expressed in its title”, and Article III Section 21 requires that no amendment to a bill can change its *original* subject or purpose, and since the title of SB 638, itself, was amended in a way that expanded (changed) its original purpose, that amendment to the title violated the Constitution. The Constitution does not anticipate substantive changes to bill titles.

43) That the title of a bill properly notify the purpose and scope of a bill was important enough to the people of Missouri for them to include a constitutional mandate that titles be properly applied to every bill. Properly used, the title allows the people's representatives, and sometimes the people themselves, as is the case with the Plaintiff, to keep a watchful eye over the legislative process when they don't have the means to hire an army of lobbyists to protect their interests.

44) If the title applied to bills is made to be more or less static and truly reflects

the *potential* scope of a bill – what it is and what it might possibly become – then an observer of legislation can perform a sort of “legislative triage,” and sort out what bills could and could not possibly affect his interests.

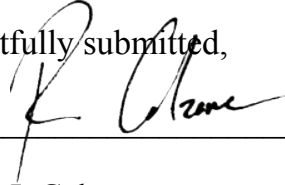
45) If, on the other hand, the title of a bill can be elastic – molded by amendments that would otherwise be beyond the scope of the original title and purpose – then a bill the citizen could have otherwise marked off as inconsequential to his interests might still evolve into a threat. Put more succinctly, allowing legislators to change the title of bills to fit the evolving bill, rather than requiring the evolution of the bill to remain true to the original title, defeats a major portion of the purpose for the Article III Section 23 requirement that, “No bill shall contain more than one subject which shall be clearly expressed in its title”, and the Section 21 requirement that “ Every bill shall be read by title on three different days in each house.” (A changed title could make it hard to identify a bill of interest.)

46) The significant change in the title of SB 638 and other bills does injury to the Plaintiff and other citizens who, then, experience a diminished opportunity to influence the laws they must live under. Such disenfranchisement violates the provisions of Article III Sections 21 and 23.

WHEREFORE, Plaintiff prays that the Court, pursuant to § 516.500, RSMo, hear this action: that the Court issue a declaratory judgment that the procedure by which SB 638 was passed, specifically, the title was changed in a substantive way, violated the Missouri Constitution Article III Section 21, 23, and that Senate Bill 638 is void, and because this infirmity relates to the entire bill and it is impossible to know how any

legislator would have voted for some portion of the bill, issue an injunction to prevent the enforcement of any of its provisions, as well as provide for any other remedies the Court determines support the Constitution and further justice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Calzone", written over a horizontal line.

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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 Cole County Sheriff on, May 09, 2017, to be served on each of the following defendants.

Robert Todd Richardson, Speaker
Missouri House of Representatives
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PLAINTIFF

Table of Exhibits

Exhibit A. Introduced version of Senate Bill 638

Exhibit B. Finally Agreed to and Passed version of Senate Bill 638

Exhibit C. Fiscal Note for the final version of Senate Bill 638


Exhibit D. House Journal from May 4, 2016 -- amendments and vote on Senate Bill 638

Exhibit E. Senate Summary of the final version of Senate Bill 638

Exhibit F. Senate Summary of the introduced version of Senate Bill 638

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the labeled disk simultaneously filed and served with the hard copy of this petition has been scanned for viruses and is virus free.



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