

IN THE SUPREME COURT OF MISSOURI

No. SC101308

STATE OF MISSOURI; ANDREW BAILEY, ATTORNEY GENERAL OF THE
STATE OF MISSOURI; DENNY HOSKINS, SECRETARY OF STATE OF THE
STATE OF MISSOURI

Respondents/Cross-Appellants,

v.

SEAN SOENDKER NICHOLSON,

Appellant/Cross-Respondent.

Appeal from the Circuit Court of Cole County

The Honorable Judge Daniel R. Green

APPELLANT/CROSS-RESPONDENT'S BRIEF

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JURISDICTIONAL STATEMENT

This appeal presents the issue of whether the General Assembly enacted Senate Bill 22 (“SB 22”)¹ in violation of the constitutional procedural mandates for enactment of a bill. Mo. Const. art. III, §§ 21, 23. Because the appeal involves the validity of several “statutes of this state,” exclusive appellate jurisdiction lies with this Court. Mo. Const. art. V, § 3. Appellant raised the claims of constitutionality, properly preserved them in the circuit court (as discussed herein), and properly presents those claims in this appeal. *Comprehensive Health of Planned Parenthood Great Plains v. State*, 2025 WL 2346611, at *2 (Mo. Aug. 12, 2025).

¹ Senate Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 22, 103rd General Assembly, First Regular Session (2025).

STATEMENT OF FACTS

In January 2025, SB 22 was introduced in the Senate. A4-5; D3; D19; D18:P2 (¶ 8). The bill’s original title was “[t]o repeal section 116.160, RSMo, and to enact in lieu thereof one new section relating to ballot summaries prepared by the general assembly.” A4; D3; D19. The contents of the bill added one new subsection to the existing Section 116.160, RSMo. *Id.* The effect of the proposed changes was to limit courts’ authority to rewrite summary statements for ballot measures referred to the people by the General Assembly. *Id.*

A. Amendments to and enactment of SB 22

A Senate committee heard the bill in late January and adopted a Senate Committee Substitute. D18:P2 (¶ 9). The committee substitute amended the title of the bill: “To repeal sections 116.155, 116.160, and 116.190, RSMo, and to enact in lieu thereof three new sections relating to ballot summaries.” D6; D20. During Senate floor debate, SB 22’s sponsor offered a Senate Substitute which was later withdrawn. D18:P2 (¶¶ 10-11). The second time the Senate brought SB 22 up for debate, its sponsor offered Senate Substitute No. 2. D21; D18:P2 (¶¶ 11-12). This substitute incorporated additional changes. D21.

In addition to Senate Substitute No. 2, the Senate also adopted two amendments. D22; D23; D18:P2 (¶ 12). The first modified Section 116.334, RSMo, to specify that signatures gathered during the pendency of ballot-title litigation are not invalid solely because they are gathered before a final alteration of the official ballot title but did not amend the title of the bill itself. D22.

The second amendment incorporated changes to Section 526.010, RSMo, amended the title, and added an emergency clause. D23. Substantively, the contents of the second amendment permit the Attorney General to appeal any preliminary injunction that enjoins the state or a statewide official from implementing or enforcing any provision of Missouri law, including injunctions against the enforcement of agency regulations. *Id.* This amendment changed the title from “relating to ballot summaries” to “relating to judicial proceedings” and added an emergency clause applicable to the changes in Section 526.010, RSMo. *Id.* The Senate voted to perfect Senate Substitute No. 2 for Senate Committee Substitute for Senate Bill 22, as amended by Senate Amendment Nos. 1 and 2. D18:P2 (§ 12); D24.

After perfection, the Senate passed this amended version of SB 22 and adopted the emergency clause, applicable to Section 526.010, RSMo. D18:P2 (§§ 13, 14). The bill then proceeded to the House. D18:P2 (§§ 15-16); D25. The House made no further changes, voted to truly agree to and finally pass SB 22, and adopted the emergency clause. A6-14; D18:P2 (§§ 17-18); D11; D12; D27. The Governor signed SB 22 on April 24, 2025. D18:P2 (§ 20); D28.

B. SB 22, as finally enacted

In its final form (A6-14; D12; D27), the bill was entitled “relating to judicial proceedings” and modified five statutes:

- Section 116.155: Under prior law, when the General Assembly prepared an official summary statement or a fiscal note summary in a statewide ballot measure that it

refers to voters, the summary was limited to fifty words. SB 22 allows the General Assembly up to 100 words for the summary statement.

- Section 116.160: Under prior law, this section required the Secretary to prepare a summary statement if the General Assembly adopted a joint resolution proposing a constitutional amendment but did not include its own. SB 22 added new language to specify that if the General Assembly includes an official summary statement in an adopted joint resolution, that summary statement must appear on the ballot unless challenged pursuant to Section 116.190. SB 22 also updates this section to specify that the General Assembly may use 100 words in its summary statement.
- Section 116.190: Under prior law, any citizen could challenge a ballot title or fiscal note for any statewide ballot measure by bringing an action within ten days of the Secretary certifying the official ballot title. SB 22 still permits challenges to ballot summaries for initiative petitions if brought within ten days of certification, but it requires challenges to all other statewide ballot measures to be brought no later than the twenty-second Tuesday before the general election at which the measure will appear. SB 22 also requires that in any ballot summary litigation, the court must engage in back-and-forth exchanges with the Secretary (who is granted authority to rewrite the summary statement multiple times) if the court finds the original summary statement is insufficient or unfair. Finally, SB 22 requires that any challenge brought under this section be fully resolved within 180 days of filing and seventy days (currently, fifty-six) prior to the election.

- Section 116.334: SB 22 alters this section to provide that signatures collected while ballot summary litigation is pending shall not be invalidated solely on that basis.
- Section 526.010: Under prior law, this section provided only that injunctions may be granted by a circuit or associate circuit judge. SB 22 added language empowering the Attorney General to appeal any preliminary injunction in which the state or a statewide official is enjoined from implementing, enforcing, or effectuating any provision of “the Constitution of Missouri, any Missouri statute, or any Missouri regulations.” It also allows the Attorney General to appeal a preliminary injunction that existed prior to August 28, 2025.

See A6-14; D12; D27.

C. The litigation in the circuit court

Appellant Sean Nicholson is a Missouri resident and taxpayer. Tr. 7:21-8:24, 25:9-15. Nicholson testified at the hearing and his testimony is summarized herein.

Nicholson testified that he “work[s] on ballot campaigns for a living.” Tr. 9:5. Sometimes he is “working to pass them” other times Nicholson is “working with citizens to do first amendment activity to say we shouldn’t pass this particular ballot initiative.” Tr. 9:6-12. Nicholson also has current plans to file initiative petitions. Tr. 10:2-5 (“I have reason to believe that Missouri may be ripe for non-partisan redistricting proposals...I’m actively working on that as an example and expect to file a petition soon.”). Nicholson also testified that he began paying attention to SB 22 “when it was first introduced.” Tr. 10:22-23. He testified that the changes made by SB 22 harm him because “it costs a

whole lot more money if you have to engage in litigation for multiple rounds...to get ballot language that is honest and fair and sufficient.” Tr. 11:16-19.

Nicholson sued Attorney General Andrew Bailey and Secretary of State Denny Hoskins in their official capacities, alleging six counts. D2. The first three counts of Nicholson’s petition involved constitutional procedural violations. *Id.* Two counts involved specific challenges to Section 526.010, RSMo. *Id.* The final count challenged the validity of the bill’s emergency clause. *Id.*

The Circuit Court tried the matter on stipulated facts and testimony from Nicholson. D18; Tr. 7:21-14:24. Nicholson also introduced three exhibits. *See* D15; D16; D17. Two of those exhibits were stand-alone pieces of legislation (Senate Bill 730 (D15) and House Bill 839 (D16)) substantially similar to the provisions incorporated through Senate Amendment No. 2 to add Section 526.010, RSMo, to SB 22. Nicholson’s third exhibit was the notice of appeal filed by the Attorney General immediately following passage of SB 22, which sought reconsideration of a preliminary injunction entered against the state. D17. The state called no witnesses and introduced no additional evidence. The Circuit Court ruled against Nicholson on his three procedural challenges but held in favor of Nicholson on his fourth Count, which concerned whether allowing the Attorney General to appeal preliminary injunctions violates Article I, Section 2 of the Missouri Constitution (the equal rights and opportunity clause). A1-3; D30. Timely cross-appeals followed.

POINTS RELIED ON

I. The trial court erred in holding that Senate Bill 22 did not violate Article III, Section 21 of the Missouri Constitution because the bill was amended in its passage to change its original purpose in that Senate Bill 22's original purpose was to alter the law regarding ballot summaries prepared by the General Assembly, but was amended to also alter the right to appeal preliminary injunctions against statutes and regulations, which was not germane to or related to the bill's original purpose.

- *Legends Bank v. State*, 361 S.W.3d 383 (Mo. banc 2012)
- *Mo. Ass'n of Club Execs v. State*, 208 S.W.3d 855 (Mo. banc 2006)
- Mo. Const. art. III, § 21

II. The trial court erred in holding that Senate Bill 22 did not violate Article III, Section 23 of the Missouri Constitution because the bill contained more than one subject in that Senate Bill 22 included both the subject of ballot summaries and a second, unrelated subject of the state's right to appeal preliminary injunctions.

- *Byrd v. State*, 679 S.W.3d 492 (Mo. banc 2023)
- *Hammerschmidt v. Boone Cnty.*, 877 S.W.2d 98 (Mo. banc 1994)
- Mo. Const. art. III, § 23

III. The trial court erred in holding that Senate Bill 22 did not violate Article III, Section 23 of the Missouri Constitution because the bill’s title did not clearly express its subject in that the final title “relating to judicial proceedings” was underinclusive where most provisions concern ballot summaries (Sections 116.155, 116.160, 116.190, 116.334, RSMo) while the only judicial proceedings item is Section 526.010, RSMo.

- *State v. Salter*, 250 S.W.3d 705 (Mo. banc 2008)
- *Mo. Coalition for Env’t v. State*, 593 S.W. 3d, 534 (Mo. banc 2020)
- Mo. Const. art. III, § 23

IV. The trial court erred in failing to declare the bill unconstitutional in its entirety after finding no violation because judicial severance is unavailable absent an extraordinary showing by the proponent, in that there is no record evidence the legislature would have passed Senate Bill 22 without the offending provision.

- *Byrd v. State*, 679 S.W.3d 492 (Mo. banc 2023)
- *City of De Soto v. Parson*, 625 S.W.3d 412 (Mo. banc 2021)

ARGUMENT

This appeal presents a familiar group of Constitutional challenges to the enactment of a piece of legislation. Appellant Nicholson claims the General Assembly enacted a bill (A6-14; D12; D27) in violation of three procedural requirements found in Article III for passage of a bill: a bill (i) may not be altered to change its original purpose, (ii) should contain only one subject, and (iii) must have a clear title. Mo. Const. art. III, §§ 21 and 23. Those requirements all support the same important principle—“preventing the legislature from employing tactics that mislead fellow legislators or the public regarding the purpose, subject, or effect of the proposed legislation.” *Calzone v. Interim Comm’r of DESE*, 584 S.W.3d 310, 316 (Mo. banc 2019). Because the goal is so important, these procedural requirements are “mandatory, not directory.” *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994).²

Although this Court’s cases sometimes use “interchangeable language” in the analysis, there are “three distinct requirements.” *Calzone*, 584 S.W.3d at 316. And while the requirements serve similar purposes, they each focus on different elements. *Drury v. City of Cape Girardeau*, 66 S.W.3d 733, 738 (Mo. 2002). *Calzone* “endeavor[ed] to provide clearer delineations among” the three requirements and provided a bird’s eye view of the analyses. 584 S.W.3d at 316.

² In a slightly different context, this Court has called the practice of including two different matters in a proposal urged to be adopted as law, also known as “doubleness in submission,” “a kind of legal fraud because it may compel the voter in order to get what he earnestly wants to vote for something which he does not want, or vice versa.” *State ex rel. Phelps County v. Holman*, 461 S.W.2d 689, 690 (Mo. banc 1971).

Original purpose analysis starts with the bill as introduced. *See* A4-52; D3; D19.

The Court looks to the original title and contents of the bill to determine its original purpose. Then, “compares the purpose of the original bill as introduced with the bill as passed to determine whether it violates” the original purpose requirements. *Calzone*, 584 S.W.3d at 318. Here the Court compares the introduced bill to the finally passed version. That examination reveals that the titles and contents of those two versions of the bill reflect different purposes. That’s a violation.

Single-subject analysis does not bother with the original bill, so there is no need to do any comparisons. Instead, single-subject analysis simply examines the bill as finally enacted. *See* A6-14; D12; D27. The Court looks to the bill’s title to determine its subject, unless the title fails to disclose the subject, in which case the Court looks to the individual provisions (contents) of the bill to see whether they reveal a single subject. The Court then looks to see if the actual provisions of the bill are reasonably related to the stated subject. *Calzone*, 584 S.W.3d at 322. When the Court does that here, it will see that several provisions of SB 22 fall outside the stated subject of “judicial proceedings.” Focusing on SB 22’s contents likewise shows that there are two different subjects within the bill—ballot summaries and judicial proceedings that are unrelated to ballot summaries.

The clear title requirement³ is separate and distinct. That analysis looks at the final title of the bill (*see* A6-14; D12; D27), not the one that was introduced. *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 330 (Mo. banc 2000). The analysis is distinct from the single-subject analysis. Just because “two subjects can be reconciled as part of a broader subject” does not mean the subject is clearly expressed in the title. *Nat’l Solid Waste Mgmt. Ass’n v. Dir. of Dep’t of Nat. Res.*, 964 S.W.2d 818, 821 (Mo. banc 1988). Instead, the title must announce the true and single subject of the bill and can be neither “so broad as to obscure the contents . . . or so narrow or underinclusive that it describes certain . . . details of the act rather than its broader subject with the result that some provisions of the act do not conform to the restrictions listed in its title.” *Mo. Coalition for Env’t v. State*, 593 S.W.3d 534, 542 (Mo. banc 2020).

When the Court examines the final bill here, it will see that the title is underinclusive. The bill’s final title is judicial proceedings, which does not apprise its reader that SB 22 includes provisions wholly *unrelated* to judicial proceedings. The real purpose, subjects, and intent of the final bill improperly combined two subjects together. That, the Constitution commands, the legislature may not do.

³ Although the *Calzone* case mentions the clear-title requirement and discusses its role in single-subject and original-purpose analysis, it does not specifically lay out the elements of a clear title challenge.

I. The trial court erred in holding that Senate Bill 22 did not violate Article III, Section 21 of the Missouri Constitution because the bill was amended in its passage to change its original purpose in that Senate Bill 22’s original purpose was to alter the law regarding ballot summaries prepared by the General Assembly, but was amended to also alter the right to appeal preliminary injunctions against statutes and regulations, which was not germane to or related to the bill’s original purpose.

Nicholson’s original-purpose challenge was included in his petition. D2. He maintained the claim and urged application of the correct legal standard, including in his trial brief. D14; Tr. 16:3-21:23 The case was tried on stipulated facts. D18. Where there is no factual dispute, and the issue simply turns on an interpretation of the law, the Court reviews the trial court’s judgment *de novo*. *Brown v. Carnahan*, 370 S.W.3d 637, 653 (Mo. banc 2012). *De novo* review is similarly appropriate because this matter presents constitutional challenges to statutes. *Byrd*, 679 S.W.3d 492, 494 (Mo. banc 2023).

Original-purpose analysis and single-subject analysis have some overlap. *Calzone* 584 S.W.3d at 316. As with single subject, there have been several original-purpose challenges throughout Missouri history, as discussed in *Calzone*, 584 S.W.3d at 316-17. Nicholson suggests that, for purposes of this case, *Legends Bank v. State*, 361 S.W.3d 383 (Mo. banc 2012), properly describes the core principle of original-purpose jurisprudence: “[T]he 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.” *Id.* at 386.

While single subject and clear title look only at the bill as finally passed, there are two steps in an original-purpose analysis. First, the Court must determine the bill’s original purpose by looking at the bill as initially filed. *Id.*; A4-5; D3; D19. Next, the Court compares the original purpose with the final version of the bill. *Id.*; A6-14; D12; D27. To pass constitutional muster, there must be a logical connection between the original purpose and the provisions included in the finally passed version. *Legends Bank*, 361 S.W.3d at 387.

A. SB 22’s original purpose was to change the law related to ballot summaries prepared by the General Assembly

A bill’s original purpose “refers to the general purpose of the bill.” *Id.* at 386. That original purpose is divined from the “earliest title and contents at the time the bill is introduced.” *Id.*⁴

The original purpose of SB 22 had to do with ballot summaries prepared by the General Assembly. As required by *Legends*, we find that purpose first in SB22’s earliest title – “relating to ballot summaries prepared by the general assembly.” A4-5; D3; D19. The contents of the original bill confirm the original purpose. As filed, the bill only amended Section 116.160, RSMo, dictating that ballot summaries prepared by the legislature must appear on the ballot and that no court has authority to rewrite the language. *Id.* The bill further provided that if a court concluded the ballot language was

⁴ This is a key difference between single-subject analysis (which looks at the final version of the bill) and original purpose analysis which compares the *original* version of the bill with the final version.

“legally flawed” only the Secretary or the General Assembly could rewrite the summary.
Id.

B. The original purpose of SB 22 was changed

In its final form, however, SB 22 purports to relate *exclusively* to “judicial proceedings,” not ballot summaries prepared by the General Assembly—or ballot summaries at all. A6-14; D12; D27. By review of the title, the announced subject of the bill is “judicial proceedings,” which expressly deviates from its original purpose of “ballot summaries prepared by the general assembly.” The two titles deal with two different branches of government and two different and distinct processes. To the extent one finds the purpose or subject of the bill solely in the title, that should be end of it.

But review of SB 22’s *contents* also reveals a change to the bill’s original purpose. While the final bill amends several sections dealing with the original purpose of ballot summaries (although going beyond just those prepared by the General Assembly), the bill also amends Section 526.010, RSMo. The changes to this section permit the Attorney General to appeal preliminary injunctions that enjoin the enforcement of any provision of the state Constitution, state statutes, or even administrative regulations. This new language has *nothing* to do with ballot summaries.

Indeed, preliminary injunctions are not available in ballot title litigation. The statutes on ballot titles limit the remedies which are available (re-write of the ballot title) and do not allow for preliminary injunctions. *See* § 116.190, RSMo. Nicholson has searched high and low and can find no Missouri case where a preliminary injunction was entered (or even requested) in a ballot title case. SB 22’s unrelated preliminary injunction

provision authorizes appeals when an injunction prevents implementation of *state law*. There is simply no implementation of state law at issue in ballot summary litigation. Ballot title litigation involves something that is *not yet a law* and therefore cannot be enjoined within the meaning of Section 526.010, RSMo. In those cases, the challenging party is only asking the court to determine if the summary statement properly summarizes the measure.

What happened here is quite clear: SB 22 started with one purpose and then the legislature determined that appealing preliminary injunctions would become the bill's new purpose. Simultaneous with incorporating the changes to Section 526.010, RSMo, the Senate also amended the bill's title from "relating to ballot summaries" to "relating to judicial proceedings." D23. Such deviation in purpose is impermissible.

In *Legends Bank*, the challenged bill started as legislation about "purchasing, printing, and services for statewide elected officials." 361 S.W.3d at 385. As it progressed, it was amended to include provisions related to "ethics, campaign finance restrictions and keys to the capitol dome." *Id.* at 386. Those provisions were not "logically connected or germane to" the original purpose, which violated Article III, Section 21 of the Constitution. *Id.* at 387. As in *Legends Bank*, the provision of SB 22 related to preliminary injunctions against all manner of state laws—even including administrative regulations—is not "logically connected or germane to" ballot summaries prepared by the General Assembly or ballot titles whatsoever.

II. The trial court erred in holding that Senate Bill 22 did not violate Article III, Section 23 of the Missouri Constitution because the bill contained more than one subject in that Senate Bill 22 included both the subject of ballot summaries and a second, unrelated subject of the state’s right to appeal preliminary injunctions.

Nicholson’s single-subject challenge was included in his petition. D2. He maintained the claim and urged application of the correct legal standard, including in his trial brief. D14; Tr. 21:24-24:21. The case was tried on stipulated facts. D18. Where there is no factual dispute, and the issue simply turns on an interpretation of the law, the Court reviews the trial court’s judgment *de novo*. *Brown*, 370 S.W.3d at 653. *De novo* review is similarly appropriate because this matter presents constitutional challenges to statutes. *Byrd*, 679 S.W.3d at 494.

The single subject analysis, required by Article III, Section 23, is straightforward. Many cases have applied the constitutional limitations over time, but the single-subject test “has remained virtually the same since 1869.” *Id.* This Court’s most recent decision appears to be *Byrd*. The Court should follow that same analysis here. *Byrd* is the word on single-subject analysis.

The Court looks at the final version of the bill (A6-143; D12; D27), determines its subject, and then decides whether the provisions of the bill “fairly relate to, have a natural connection with, or are a means to accomplish the subject of the bill” *Byrd*, 679 S.W.3d at 494.

A. A bill's subject should usually be gleaned by reference to its title

Byrd and other cases⁵ instruct the Court to begin its single-subject analysis by looking at the title of the bill. That is because the Constitution says that a bill may contain only one subject “which shall be clearly expressed in its title.” Mo. Const. art. III, § 23. Thus, the Constitution envisions that the subject of a bill will be revealed in the title. Here, the bill’s final title is “relating to judicial proceedings.” *See* A6-14; D12; D27.

If the Court looks solely at the title of the bill and believes the bill’s subject is gleaned by review of a clear and certain title, the analysis can proceed on that basis. *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 327 (Mo. banc 1997). That was the case in *Byrd*. Nicholson does not agree that the final title of SB 22 satisfies the clear-title requirement, as discussed in point three below. But assuming *arguendo* that it does, the issue next becomes “whether the provisions of the bill are germane to the general subject of the bill.” *Mo. Coal. for Env’t*, 593 S.W.3d at 541. The *only* provision of SB 22 that is clearly germane to its purported subject of “judicial proceedings” is Section 526.010, RSMo, which was added as an amendment during Senate floor debate. D23. All other provisions do not bear a natural connection with judicial proceedings.

SB 22’s final title “relating to judicial proceedings” communicates that the bill *only* embraces matters related to judicial proceedings. But this is inaccurate. Section 116.155, RSMo, has *nothing* to do with judicial proceedings. That section *never* mentions the courts or any type of judicial proceeding at all. It simply permits the General

⁵ *See e.g. Hammerschmidt*, 877 S.W.2d at 102-03.

Assembly to use up to 100 words when preparing an official summary statement when it refers a proposal to a vote of the people. The changes in Section 116.155, RSMo, regarding ballot summaries do not relate to judicial proceedings “at all,” and the connection, therefore, is “completely missing.” *Byrd*, 679 S.W.3d at 496. Other sections make only passing reference to court challenges but do not adopt changes that impact such proceedings. As a result, their inclusion results in separate violations of the single-subject requirement because their connection to the subject stated in the title is “remote at best.” *Id.*

Section 116.160, RSMo, increases the number of words the legislature may use in a ballot summary statement and then makes only a glancing reference to challenges under Section 116.190, RSMo. But nothing in Section 116.160, RSMo, *affects* judicial proceedings *in any way*. Similarly, SB 22’s changes to Section 116.334, RSMo, simply specify when signatures on a ballot measure may be counted. Although there is a reference to court proceedings, nothing in that section could be fairly characterized as *affecting* or being germane to judicial proceedings.

Those two provisions—116.160 and 116.334, RSMo—make passing reference to judicial proceedings but only make substantive changes to ballot title laws. Glancing references to court challenges that remain unaffected cannot be “fairly relate[d] to or have a natural connection with” judicial proceedings. *Id.* Instead, those sections “fairly relate to and have a natural connection with the wholly different subject” of ballot summaries. *Id.* The fact that *all* other provisions in the bill are in Chapter 116—save Section 526.010, RSMo—is another data point supporting this conclusion.

The only two sections that conceivably relate to judicial proceedings are Sections 116.190 and 526.010, RSMo. But by including provisions that have nothing to do with (Section 116.155, RSMo) or are at best remotely connected to (Sections 116.160 and 116.334, RSMo) the subject stated in the title, SB 22 impermissibly embraces multiple subjects and violates Article III, Section 23's single-subject requirement.

B. Where the title is unclear, the bill's subject should be determined from its contents

Though the title of SB 22 proclaims that the bill's subject is "judicial proceedings," reading the bill reveals that is not true. As noted, only one provision (Section 526.010, RSMo) clearly pertains to judicial proceedings. *All other sections* relate to ballot summaries. Review of the title alone does not reveal the true subject of the bill. Where the legislature's title is "too broad or amorphous to identify the single subject of the bill" the Court should "examine the subjects of the constitution or the bill's original contents to determine [its] subject." *Calzone*, 584 S.W.3d at 322 (citing *Carmack v. Dir., Mo. Dep't of Agric.*, 945 S.W.2d 956, 960 (Mo. banc 1997)). Should the Court agree that SB 22's title is unclear, the analysis ends up the same as that provided above. Either way, the bill impermissibly contains multiple subjects.

Each section of SB 22 pertains to ballot summaries, save Section 526.010, RSMo. The legislature admitted that ballot summaries was the true subject until the very last amendment to the bill, when it changed the title to remove the reference to ballot summaries and replace it with a title about judicial proceedings. And discerning the subject from the actual contents of the bill reveals that the general subject of the bill is

ballot summaries, *not* judicial proceedings. Subjects included in the bill that are *unrelated* to ballot summaries run afoul of the single-subject requirement. *Byrd*, 679 S.W.3d at 496. That means Section 526.010, RSMo, which has absolutely nothing to do with ballot summaries, makes the bill violate the single subject requirement. That section allows appeal of preliminary injunctions against *any* state law, not just those related to ballot summaries.

Importantly, none of the changes to Section 526.010, RSMo, could pertain to ballot summary litigation because parties cannot seek a preliminary injunction in those actions. The only relief authorized is a new ballot title. *See* § 116.190, RSMo. As noted above, even if there were some argument that a preliminary injunction might be appropriate in such cases, Section 526.010, RSMo, would *still* not apply. That section only applies to appeals of preliminary injunctions against “provisions of the Constitution . . . statute[s], or any Missouri regulation.” A13; D12:P9; D27:P8. A ballot summary and title are none of those things—they are *proposed* constitutional or statutory amendments. Nothing in the express language or the context of Section 526.010, RSMo, makes it in any way connected to ballot summaries.⁶ Either way, when this Court applies the basic principles of *Byrd*, SB 22 won’t fly.

⁶ No amount of context here can make these two subjects related. *See e.g., Fox v. State*, 640 S.W.3d 744, 758 (Mo. banc 2022) (context of word “survivor” limits it to survivors of sexual assault, which was the bill’s subject).

III. The trial court erred in holding that Senate Bill 22 did not violate Article III, Section 23 of the Missouri Constitution because the bill’s title did not clearly express its subject in that the final title “relating to judicial proceedings” was underinclusive where most provisions concern ballot summaries (Sections 116.155, 116.160, 116.190, 116.334, RSMo) while the only judicial proceedings item is Section 526.010, RSMo.

Nicholson’s clear title challenge was included in his petition. D2. He maintained the claim and urged application of the correct legal standard, including in his trial brief. D14; Tr. 24:22-25:13. The case was tried on stipulated facts. D18. Where there is no factual dispute, and the issue simply turns on an interpretation of the law, the Court reviews the trial court’s judgment *de novo*. *Brown*, 370 S.W.3d at 653. *De novo* review is similarly appropriate because this matter presents constitutional challenges to statutes. *Byrd*, 679 S.W.3d at 494.

Even if SB 22 complied with single-subject and original-purpose requirements (it does not), Article III, Section 23 also imposes a clear-title requirement. SB 22’s final title fails that test too.

“The ‘clear title’ provision, like the ‘single subject’ restriction, was designed to prevent fraudulent, misleading, and improper legislation, by providing that the title indicate in a general way the kind of legislation . . . being enacted.” *Fust v. Att’y Gen. for the State of Mo.*, 947 S.W.2d 424, 429 (Mo. banc 1997) (citing *Vice v. City of Kirksville*, 217 S.W. 77, 79 (Mo. 1920)). Where the title “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.” *Id.* (citing *Hunt v. Armour & Co.*, 136 S.W.2d 312, 314 (Mo. 1940)). The Court has consistently ruled that an underinclusive title could “mislead the reader into believing the bill covered only those particulars listed.” *Mo. Coal. for Env’t*, 593 S.W.3d at 542. The clear-title requirement is “violated when the title is underinclusive or too broad and amorphous to be meaningful.” *State v. Salter*, 250 S.W.3d 705, 709 (Mo. banc 2008). SB 22’s final title is unclear for multiple reasons.

SB 22’s final title is “relating to judicial proceedings,” even though most provisions (like its subject and original purpose) have nothing to do with that subject. Only two sections of SB 22 even address judicial proceedings—portions of Section 116.190, RSMo, and all of Section 526.010, RSMo. By contrast, *every* section, except for Section 526.010, RSMo, relates to ballot summaries. The title fails to alert its reader that the bill impacts ballot summaries. Review of the title alone would not offer its reader any insight as to the bill’s actual contents and is therefore affirmatively misleading. SB 22’s title is under-inclusive and does not state the bill’s general subject. SB 22 violates the clear-title requirement of Article III, Section 23.

The clear-title analysis demonstrates that SB 22 is unconstitutional for all the procedural reasons discussed in this brief (single subject, original purpose, and clear title). As introduced, SB 22 amended one section in Chapter 116 and included a bill title referring to ballot summaries. A4-5; D3; D19. A Senate Committee added more changes to Chapter 116, with a title that still referred to ballot summaries. D6; D20. But during Senate debate, after adopting another Chapter 116 amendment that did not change the

title, the Senate accepted an amendment that added a completely unrelated revision to Chapter 526. D23.

The Senate, or at least the amendment sponsor, realized the last amendment was not germane to the subject of ballot summaries. Undoubtedly aware that this Court has endorsed the process of “expanding the title of a bill to reflect the commonality of all the subjects contained in the bill,” the sponsor attempted to come up with a title that covered the wholly unrelated subjects of ballot summaries drafted by one branch of government and preliminary injunctions granted by another. *Nat’l Solid Waste Mgmt. Ass’n*, 964 S.W.2d at 821-22. Realizing there could be no such reconciliation, the legislature settled on “judicial proceedings” as the broadest possible title for a bill with these contents. But there is no title that would be specific enough to satisfy clear-title requirements while also providing coverage for all the statutory sections amended in the bill. Had the legislature wanted to pass the revisions to Section 526.010, RSMo, incorporated into SB 22, it could have done so. Indeed, there were other bills introduced that made substantially similar revisions (D15; D16) but failed to gain traction. Including such revisions to Section 526.010, RSMo, in a bill on its way to final passage is precisely the type of legislative logrolling the Constitution prohibits.⁷ The final title remains underinclusive in violation of this Court’s clear-title jurisprudence.

⁷ *Stroh Brewery Co.*, 954 S.W.2d at 325-26 (“[T]he constitutional limitations [of Article III, sections 21 and 23] 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. Sections 21 and 23 also serve to keep individual members of the legislature and the public fairly apprised of the subject matter of pending laws and to insulate the governor

IV. The trial court erred in failing to declare the bill unconstitutional in its entirety after finding no violation because judicial severance is unavailable absent an extraordinary showing by the proponent, in that there is no record evidence the legislature would have passed Senate Bill 22 without the offending provision.

Nicholson's request to invalidate SB 22 was included in his petition. D2. He maintained this request and urged application of the correct legal standard, including in his trial brief. D14; Tr. 24:2-21. The case was tried on stipulated facts. D18. Where there is no factual dispute, and the issue simply turns on an interpretation of the law, the Court reviews the trial court's judgment *de novo*. *Brown*, 370 S.W.3d at 653. *De novo* review is similarly appropriate because this matter presents constitutional challenges to statutes. *Byrd*, 679 S.W.3d at 494.

This Court may enter the judgment the trial court should have entered. Rule 84.14. Had the trial court conducted the substantive analysis correctly, it would have been required to invalidate SB 22 in its entirety. Nicholson has never sought to sever the invalid provisions of the bill and the "burden of establishing grounds for judicial severance rests with the party seeking severance." *City of Desoto v. Parson*, 625 S.W.3d 412 n.7 (Mo. banc 2021). The state did not attempt to meet that burden below and has arguably failed to preserve an argument for severance. Nicholson suggests "severance" is a matter of remedy, not an actual claim and this Court can fashion the appropriate remedy

from take-it-or-leave-it choices when contemplating the use of the veto power.") (internal quotes omitted).

based on the record below. In any event, if the Court agrees with any of Nicholson’s preceding Points Relied On, invalidation of SB 22 is mandated by this Court’s precedents.

Despite warnings that severance should not be used to save any legislation passed in violation of the procedural requirements,⁸ this Court has, at times, found procedural violations but then severed offending sections. *See Legends Bank*, 361 S.W.3d at 387. But *Byrd* helped the severance analysis straighten up and fly right. Under that analysis, SB 22 is not severable, and the entire bill is invalid. “[W]hen the legislature violates one of the constitution’s procedural bill passage requirements, judicial severance will be appropriate only 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.’” *Byrd*, 679 S.W.3d at 496 (quoting *Mo. Roundtable for Life v. State*, 396 S.W.3d 348, 353 (Mo. banc 2013)). This two-pronged inquiry seeks to provide near absolute assurance that the bill would have become and would remain law absent the procedural violations. *Id.* There is no such assurance here.

The party seeking to protect the bill, or portions thereof, must make “an extraordinary showing to convince the Court to engage in judicial surgery to save a bill

⁸ *See St. Louis Cnty. v. Prestige Travel, Inc.*, 344 S.W.3d 708, 716 n. 6 (Mo. banc 2011); *Schaefer v. Koster*, 342 S.W.3d 299, 306 n. 9 (Mo. banc 2011); *Legends Bank*, 361 S.W.3d at 393 (J. Fischer dissenting) (“The presumption of self-motivation on the part of the legislature to follow the constitutional procedural provisions to enact legislation is no longer justified and, accordingly, neither is severance.”).

infected with the otherwise fatal constitutional disease of multiple subjects[.]” *Byrd*, 679 S.W.3d at 497. State Respondents offered no evidence and made no argument on this point. That is because they cannot satisfy *Byrd*’s exacting requirements.

There is nothing in the record that could plausibly show the legislature *would have* passed SB 22 without Section 526.010, RSMo. What was true in *Byrd* (and its ancestors) remains true here: “It is certainly possible the General Assembly would have passed” the bill without the offending provision, but concluding so would be “mere speculation and falls short” of the rigorous standard. 679 S.W.3d at 497. This Court should again decline the invitation to make such a speculative inference. SB 22 violates numerous constitutional procedural provisions and should be declared invalid in its entirety.

CONCLUSION

This Court should reverse the Circuit Court and give the judgment that court ought to have given. Rule 84.14. Senate Bill 22 is “invalid in its entirety.” *Byrd*, 679 S.W.3d at 497.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was served electronically via the Court's electronic filing system on the 20th day of October, 2025, to all counsel of record.

I also certify that the foregoing brief complies with the limitations in Rule 84.06(b) and that the brief contains 7,244 words.

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