

Case No. SC100045

IN THE SUPREME COURT OF MISSOURI

THE GATHERING TREE D/B/A EDEN VILLAGE, et al.,

APPELLANTS

vs.

STATE OF MISSOURI, *et al.*,

RESPONDENTS

**On Appeal from the Nineteenth Judicial Circuit in Cole County, Missouri
Hon. S. Cotton Walker, Case Circuit Court No. 22AC-CC05079 consolidated with
No. 22AC-CC04252**

**BRIEF OF APPELLANT THE GATHERING TREE D/B/A
EDEN VILLAGE**

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JURISDICTIONAL STATEMENT

This is an appeal by THE GATHERING TREE d/b/a EDEN VILLAGE, *et al.*, from the entry of Judgment in favor of the STATE OF MISSOURI, *et al.*

In this action The Gathering Tree d/b/a Eden Village (“Eden Village”) alleges that § 67.2300, RSMo. passed as part of House Bill 1606 (“HB 1606”), should be held invalid because its enactment violated the Missouri Constitution in that the bill creating § 67.2300: 1) had more than a single subject in violation of Mo. Const. art. III, § 23; and/or 2) did not adhere to its original purpose in violation of Mo. Const. art. III, § 21.

Eden Village asked the trial court to find that HB 1606 was passed in violation of the Missouri Constitution, that it declare § 67.2300 invalid, and that it enjoin Defendants-Respondents from implementing or enforcing it. The trial court concluded that HB 1606 did not violate the Missouri Constitution and granted Defendants-Respondents judgement on the pleadings. See (D23). This is an appeal from said Judgment.

This appeal involves the constitutionality of a statute of the state of Missouri, and it is therefore within the matters reserved for the exclusive jurisdiction of the Missouri Supreme Court under art. V, § 3 of the Missouri Constitution.

STATEMENT OF FACTS

A. Eden Village

Eden Village is a Missouri not-for-profit corporation organized and existing under the laws of the State of Missouri. (D18 p.5, ¶ 25). Eden Village is registered with the Missouri Secretary of State. (*Id.* p. 5, ¶ 26). Eden Village has sought in the past, and may seek in the future, state and federal funds in order to provide housing assistance to the homeless. (*Id.* p.5, ¶ 27).

B. HB 1606 and its passage

HB 1606 was introduced in the Missouri House of Representatives by Representative Peggy McGaugh on January 5, 2022. (*Id.* p.1-2, ¶ 1). A copy of the original version of HB 1606 was part of the trial court's record. (*See generally* D19). In its original form, HB 1606 was titled: "AN ACT to repeal section 50.800, 50.810, 50.815, and 50.820, RSMo., and to enact in lieu thereof two new sections relating to county financial statements." (D31 p. 7, ¶ 33; D17 p. 4, ¶ 33). The Bill Summary for HB 1606 (as it was originally introduced) provided:

HB 1606 -- COUNTY FINANCIAL STATEMENTS

SPONSOR: McGaugh

This bill requires all non-charter counties, by the first Monday in March, to prepare and publish in a qualified newspaper a financial statement for the previous year.

The financial statement shall include the name, office, and current gross annual salary of each elected or appointed county official.

The county clerk or other officer responsible for the preparation of the financial statement must preserve the documents relied upon in the making of the financial statements and shall provide an electronic copy

free of charge to any newspaper requesting a copy of the data.

Currently, these requirements only apply to counties of the first classification.

This bill is similar to HB 381 (2021).

(D31 p. 7-8, ¶ 34; D17 p. 5, ¶ 34). The House Local Government Committee recommended that HB 1606 pass in the form of the House Committee Substitute to HB 1606. (D18, p. 2, ¶ 3). The original version of HB 1606 required county financial statements to be published by the first Monday in March of each year while the House Committee Substitute required financial statements to be published by June thirtieth (30th) each year. (*Id.* p. 2, ¶ 4). The House Committee Substitute made no further changes to HB 1606. (*Id.*). The House of Representatives passed the House Committee Substitute to HB 1606 on March 24, 2022. (*Id.* p. 2, ¶ 5).

After HB 1606 passed the House of Representatives, the bill went to the Senate – which sent the bill to the Local Government and Elections Committee. (*Id.* p. 2-3, ¶ 7). The Senate Local Government and Elections Committee recommended that HB 1606 pass in the form of a Senate Committee Substitute. (*Id.* p. 3, ¶ 8). This substitute included additional provisions and was titled: “AN ACT to repeal [eleven sections of the Revised Statutes of Missouri] and to enact in lieu thereof nine new sections relating to county officials, with penalty provisions.” (*Id.* p. 3, ¶ 9; *see also* D31 p. 8, ¶ 36; D17 p. 5, ¶ 36).

On April 27, 2022, the full Senate adopted a Senate Substitute to the Senate Committee Substitute, with 19 further amendments, including amendments that replaced “county officials” in the title of the bill with “political subdivisions.” (D18 p.3, ¶ 10).

Among the amendments adopted by the Senate on April 27, 2022, was Amendment No. 19, which added section 67.2300 to the Revised Statutes of Missouri. (*Id.*). The nine subsections of 67.2300 had been included, with minor variations, in the House Committee Substitute to HB 2614 and in the Senate Committee Substitute to Senate Bill (SB) 1106. (*See* D20 and D21). Neither HB 2614 nor SB 1106 was ever voted on for final passage by the full House of Representatives or Senate. (D18 p. 4, ¶ 15).

On May 4, 2022, the Senate read for the third time and passed the Senate Substitute to HB 1606, as amended, which included section 67.2300. (*Id.* p. 4, ¶ 16). The House refused to pass the Senate Substitute to HB 1606 and requested that the Senate recede or grant a conference. (*Id.* p. 4, ¶ 17). The Senate refused to concede, and the bill went to a conference committee. (*Id.* p.4, ¶ 18). The conference committee proposed a Conference Committee Substitute to HB 1606, which included Section 67.2300. (*Id.* p.4, ¶ 19). The Senate and House passed the Conference Committee Substitute on May 11 and 12, 2022. (*Id.* p.4-5, ¶ 20). The legislative session was scheduled to end on May 13, 2022. (*Id.* p. 5, ¶ 21). On May 18, 2022, the bill was delivered to the Governor, who approved it on June 29, 2022. (*Id.* p.5, ¶ 22).

The final version of HB 1606 passed by the legislature and signed by the governor is titled: “AN ACT To repeal sections 50.327, 50.800, 50.810, 50.815, 50.820, 55.160, 57.317, 58.095, 58.200, 59.310, 67.457, 67.461, 67.1421, 67.1431, 67.1471, 70.631, 92.720, 92.740, 92.750, 92.760, 92.765, 92.770, 92.775, 92.810, 92.815, 92.825, 92.835, 92.840, 92.852, 92.855, 99.825, 99.830, 99.865, 105.145, 140.170, 140.190, 238.212, 238.222, 304.022, 442.130, 473.742, and 523.061, RSMo, and to enact in lieu thereof fifty

new sections relating to political subdivisions, with a delayed effective date for a certain section and with penalty provisions.” (D31 p. 3, ¶ 14; D17 p. 2, ¶ 14). HB 1606 generally became effective on August 28, 2022. (D31 p. 3, ¶ 15; D17 p. 2, ¶ 15). HB 1606 indicated that § 67.2300, RSMo. became effective on January 1, 2023. (D31 p. 4, ¶ 16; D17 p. 3, ¶ 16).

A true and correct copy of HB 1606 was before the trial court as Exhibit A to the Petition (D31 p.1, ¶ 1; D32; D17 p.1, ¶ 1) and as Exhibit D to the Joint Stipulation (D18 p. 5, ¶ 23).

C. Procedural history

Eden Village filed a Petition in the Circuit Court of Cole County on August 19, 2022 as Case No. 22AC-CC04252. (*See generally* D31). The Petition claimed that HB 1606 violated the single subject and original purpose provisions of the Missouri Constitution. (*See generally* D31 at Counts I and II). Case No. 22AC-CC04252 was later consolidated into Case No. 22AC-CC05079. The parties filed a Joint Stipulation of facts and exhibits after the cases were consolidated. (D18). The parties to the consolidated case all moved for judgment on the pleadings. (*See generally* D23). The trial court entered a judgment in favor of Defendants finding HB 1606 was constitutional. (D23). Eden Village and the other Plaintiffs filed timely notices of appeal. (D24 and D28). This appeal follows.

POINTS RELIED ON

I.

THE TRIAL COURT ERRED IN GRANTING JUDGMENT ON THE PLEADINGS FOR DEFENDANT BECAUSE HB 1606 VIOLATES ART. III, § 23 OF THE MISSOURI CONSTITUTION AND IS, THEREFORE, UNCONSTITUTIONAL IN THAT THE BILL CONTAINS MORE THAN A SINGLE SUBJECT.

Mo. Const. art. III, § 23

City of De Soto v. Parson, 625 S.W.3d 412 (Mo. banc 2021)

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

Rizzo v. State, 189 S.W.3d 576 (Mo. banc 2006)

POINTS RELIED ON

II.

THE TRIAL COURT ERRED IN GRANTING JUDGMENT ON THE PLEADINGS FOR DEFENDANT BECAUSE HB 1606 VIOLATES ART. III, § 21 OF THE MISSOURI CONSTITUTION AND IS, THEREFORE, UNCONSTITUTIONAL IN THAT THE BILL WAS CHANGED DURING THE LEGISLATIVE PROCESS FROM ITS ORIGINAL PURPOSE RELATED TO COUNTY FINANCIAL STATEMENTS.

Mo. Const. art. III, § 21

Club Executives v. State, 208 S.W.3d 885 (Mo. banc 2006)

Legends Bank v. State, 361 S.W.3d 383 (Mo. banc 2012)

ARGUMENT

I.

THE TRIAL COURT ERRED IN GRANTING JUDGMENT ON THE PLEADINGS FOR DEFENDANT BECAUSE HB 1606 VIOLATES ART. III, § 23 OF THE MISSOURI CONSTITUTION AND IS, THEREFORE, UNCONSTITUTIONAL IN THAT THE BILL CONTAINS MORE THAN A SINGLE SUBJECT.

This Court conducts a *de novo* review of constitutional challenges to a statute. *Rizzo v. State*, 189 S.W.3d 576, 578 (Mo. banc 2006). Eden Village preserved this issue by contesting the constitutionality of HB 1606 under art. III, § 23 of the Missouri Constitution in the original Petition (D31 at Count I), in its Motion for Judgment on the Pleadings, and in response to Defendants' Motion for Judgment on the Pleadings.

Eden Village, not Respondent, was entitled to judgment based on the pleadings and stipulated facts because HB 1606 violates Article III, § 23 of the Missouri Constitution as it contains more than a single subject. Article III, § 23 of the Missouri Constitution provides that “[n]o 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.” Missouri law requires a bill’s title to clearly express the subject of the bill so as “to keep individual members of the legislature and the public apprised of the subject matter of pending laws.” *St. Louis Health Care Network v. State*, 968 S.W.2d 145, 147 (Mo. banc 1998).

This constitutional provision imposes two distinct procedural limitations when the General Assembly attempts to pass any legislation: 1) a bill cannot contain more than one subject (single subject requirement); and 2) the subject of the bill must be clearly expressed in its title (clear title requirement). *Carmack v. Director, Missouri Dept. of Agriculture*, 945 S.W.2d 956, 959 (Mo. banc 1997). The legislature’s compliance with these constitutional requirements is mandatory. *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994).

An act satisfies the “single subject requirements if all its provisions fairly relate to the same subject, have a natural connection therewith or are incidents or means to accomplish its purpose.” *Rizzo v. State*, 189 S.W.3d 576, 579 (Mo. banc 2006). “A single subject can include all matters that fall within or reasonably relate to the general core purpose of the proposed legislation.” *Id.*

Hammerschmidt is instructive as it relates to the present case. In *Hammerschmidt*, the title of the bill in question stated it was repealing eight (8) statutory provisions relating to elections and enacting eleven new sections “relating to the same subject.” 877 S.W.2d at 103. This Court held that the title indicated the bill was meant to amend laws relating to elections. *Id.* at 103. The bill, however, did not simply address elections, but also purported to authorize a county to adopt a county constitution. *Id.* The fact that this “county constitution” provision required voter approval did not make it a statute dealing with elections. *Id.* Instead, the statutory impact was to authorize a new form of county government – which did not conform to the mandate of a single subject clear title. *Id.*

In *City of De Soto v. Parson*, 625 S.W.3d 412 (Mo. banc 2021), the bill at issue had a title that described its subject as “elections” but also included provisions requiring the “department of revenue to issue an annual report listing all sales and use tax levies that had been authorized by state law, approved by local voters, and collected by the department of revenue” and that “provide[d] an exception to the ordinary consequences of a city annexing land that had been part of a fire protection district.” *Id.* at 414 This Court ruled the underlying bill violated the single subject requirement because it contained provisions that did not “fairly relate to, have a natural connection with, or serve as an incident to or means of accomplishing th[e] subject” of elections. *Id.* at 417.

Perhaps most on point with the facts and issues before this Court is *Rizzo v. State*, 189 S.W.3d 576 (Mo. banc 2006). In *Rizzo*, the General Assembly passed a law which included a section that provided that “no person shall qualify as a candidate for elective office in the State of Missouri who has been found guilty or pled guilty to a felony or misdemeanor under the federal laws of the United States of America.” *Id.* at 578. The bill was originally “introduced as ‘[a]n Act to repeal [seven sections, RSMo.], and to enact in lieu thereof, seven new sections relating to political subdivisions, with penalty provisions.’” *Id.* The bill that was ultimately passed repealed some 130 sections and added 165 new sections to Missouri’s statutes. *Id.* *Rizzo* challenged the bill as violating the single subject requirements.

This Court distilled the issue raised in *Rizzo* down to the following question: “does . . . prohibiting federal criminals from running for elective office reasonably relate to the stated purpose of ‘relating to political subdivisions?’” *Id.* In answering this question, the

Supreme Court looked to the definition of a “political subdivision.” According to this Court:

The term “political subdivision” is defined as “any agency or unit of this state which is now, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied...” Section 70.120.3, RSMo 2000. While section 115.348 applies to persons, such as Rizzo, running for elective office *in a political subdivision*, it is not so limited. Rather, it applies equally to candidates in statewide elections. Indeed, the section would apply to candidates for the highest elective offices in the state, including candidates for Governor and the General Assembly. It stretches logic to suggest that laws “relating to political subdivisions” would have any impact on *statewide* governmental functions.

Id. (emphasis in original). Thus, the provision relating to statewide candidates violated the constitution in that it exceeded the scope of the title and dealt with more than a single subject. *Id.* at 581.

Here, as in *Rizzo*, the title of HB 1606 indicates that the bill is meant to repeal and create new sections of the Revised Statutes of Missouri as they relate to “political subdivisions.” (D32, p.1). Subsection 2 specifies how state funds for the homeless may be used by all entities that receive such funds, including by not-for-profit organizations, private campground owners, and developers. (*Id.* p. 20-21). Subsection 3 provides private campgrounds immunity from liability for injury, death, or property damage resulting from an inherent risk of camping by bringing campgrounds under the ambit of § 537.328. (*Id.* p. 21). Subsection 4 specifies how state funds otherwise used for the construction of permanent housing are to be used, requires the department allocating funds to provide up to a certain amount as performance payments to political subdivisions or not-for-profit organizations, and allows political subdivisions and not-for-profit organizations to use state

grants otherwise used for permanent housing to conduct certain surveys. (*Id.*). Subsection 5 makes it a Class “C” misdemeanor for people to sleep, camp, or build long-term structures on state-owned land without authority. (*Id.*).

Like *Rizzo*, the newly created statute in this case, § 67.2300, RSMo., goes beyond the regulation of political subdivisions. The language of §67.2300 regulates a number of things outside of political subdivisions, including: the use of all state funds for the homeless (§ 67.2300.2), campgrounds (§ 67.2300.3), eliminating permanent housing for the unsheltered (§ 67.2300.4), and criminalizing the unauthorized use of state-owned lands (§ 67.2300.5). With the exception of subsection (4), which refers to not-for-profit entities and political subdivisions, the first five sections of the statute have nothing to do with political subdivisions at all.

The trial court found that Subsection 2 relates to political subdivisions as it identifies which facilities qualify for “[s]tate funds for the homeless,” requires “the local continuum of care” to maintain homelessness management information systems that track usage of those facilities and requires political subdivisions to participate in the continuum of care. Therefore, the court reasoned, the regulations in Subsection 2 relate to political subdivisions (because they include matters in which political subdivisions participate). (D23, p. 6-7). There is nothing in the record to indicate that continuums of care are required to include political subdivisions. State funds could be allocated in another manner. In fact, 24 C.F.R. 578.5(a) includes many entities that are not in any way tied to political subdivisions. The regulation defines the continuum of care to include: “nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments,

businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals.”

Further, [a]ny qualifying state Department that awards State funds, as defined in § 67.2300.1(2), might do so to a variety of entities” which could include funds that are not channeled through a political subdivision. Therefore, as in *Rizzo*, this regulation goes well beyond the regulation of political subdivisions. It regulates all state funds used for the care of the homeless population and would affect a variety of entities that could receive state funding for service and care to the unsheltered.

The trial court also found that Subsection 3, regulating campgrounds, pertained to political subdivisions as it “is only applicable to campgrounds corroborating with political subdivisions...” (D23, p. 7). This reasoning is also flawed. The wording of the statute goes beyond the regulation of political subdivisions as any campgrounds receiving state funds (or federal funds) for homelessness would be subject to the law - even if those funds were not received through a “political subdivision.” This regulation therefore exceeds the scope of the bill’s title and concerns multiple subjects (outside of political subdivisions).

Put simply, HB 1606 goes beyond the single subject of political subdivisions. It relates to the use of state funds, privately owned campgrounds, not-for-profits, and state property. The legislature has attempted the exact type of logrolling cases like *Hammerschmidt* and *Rizzo* have held is unconstitutional. As such, HB 1606 is unconstitutional and should be held for naught.

II.

THE TRIAL COURT ERRED IN GRANTING JUDGMENT ON THE PLEADINGS FOR DEFENDANT BECAUSE HB 1606 VIOLATES ART. III, § 21 OF THE MISSOURI CONSTITUTION AND IS, THEREFORE, UNCONSTITUTIONAL IN THAT THE BILL WAS CHANGED DURING THE LEGISLATIVE PROCESS FROM ITS ORIGINAL PURPOSE RELATED TO COUNTY FINANCIAL STATEMENTS.

This Court conducts a *de novo* review of constitutional challenges to a statute. *Rizzo v. State*, 189 S.W.3d 576, 578 (Mo. banc 2006). Eden Village preserved this issue as it raised the issues surrounding constitutionality of HB 1606 under art. III, § 21 of the Missouri Constitution in the original Petition (D31 at Count II), in its Motion for Judgment on the Pleadings, and in response to Defendants' Motion for Judgment on the Pleadings.

Article III, § 21 of the Missouri Constitution states that “no bill shall be amended in its passage... as to change its original purpose.” Courts determine a bill's original purpose by looking to the bill at the time of its introduction in the General Assembly. *Mo. State Med. Ass'n v. Missouri Dept. of Health*, 39 S.W.3d 837, 839 (Mo. banc 2001). A court evaluating the original purpose requirement must focus on the “bill’s general, or overarching, purpose, not details that simply manifest and effectuate the purpose.” *Fox v. State*, 640 S.W.3d 744, 754 (Mo. banc 2022). “The introduction of amendments germane to the original purpose are permissible.” *Id.* “Material is germane when it is clearly related or pertinent to the initial legislation.” *Id.* Missouri’s constitutional prohibition on deviations from an original title is not “designed to inhibit the normal legislative processes,

in which bills are combined and additions necessary to comply with the legislative intent are made.” *Calzone v. Interim Commissioner of Department of Elementary and Secondary Education*, 584 S.W.3d 310, 317 (Mo. banc 2019).

Courts must engage in a two-step inquiry to determine whether a bill violates the original purpose provision of the Constitution. *Legends Bank v. State*, 361 S.W.3d 383, 386 (Mo. banc 2012). First, the court must identify the original purpose of the provision. *Id.* This purpose is established by the earliest title when the bill was introduced. *Id.* Second, a court must compare the original purpose with the final version of the bill. *Id.* The restriction is against the introduction of material that is not germane to the original object of the legislation or that is unrelated to the original subject. *Id.*

The original purpose of the bill is discernable from its title as well as comments from the Representative introducing the bill. In its original form, HB 1606’s title read as follows: “AN ACT to repeal section 50.800, 50.810, 50.815, and 50.820, RSMo., and to enact in lieu thereof two new sections relating to county financial statements.” Clearly, the original title of the bill, as summarized in the Bill Summary, related to county financial statements. (D31, ¶ 34; D17, ¶ 34). However, § 67.2300, does not relate to county financial statements or reducing county publication costs, or even to the reduction of county costs or administrative burdens more broadly. A comparison of the original purpose, as determined above, with the final version of the bill, which contains Section 67.2300, confirms that section is not “clearly related or pertinent to the initial legislation.” *Fox v. State*, 640 S.W.3d at 754 (Mo. banc 2022).

In *Legends Bank*, the Missouri Supreme Court determined a bill's original purpose “pertained to procurement of necessary goods and services for elected officials” and held “[e]thics, campaign finance restrictions[,] and keys to the capitol dome are not germane to” that purpose. 361 S.W.3d 383, 386 (Mo. banc 2012). Similarly, in *Club Executives v. State*, 208 S.W.3d 885 (Mo. banc 2006), the bill's original purpose involved alcohol-related traffic offenses. *Id.* at 888. This Court determined subsequent revisions which addressed non-traffic related alcohol offenses, like the sale of alcohol to minors, were permissible; however, the same holding found three provisions regulating adult entertainment did not fall under the original purpose of the bill. *Id.*

The Defendants contend the original purpose of HB 1606 was not county financial statements, but the operation and regulation of political subdivisions more generally. Although generally regulating political subdivisions can be the original purpose of a bill, HB 1606’s “title and earliest contents” do not demonstrate that regulating political subdivisions generally was its original purpose. *Legends Bank*, 361 S.W.3d at 386 (determining from its earliest title and contents that the original purpose of a bill was the “procurement of necessary goods and services for elected officials,” not regulating elected officials more generally). Here, the original bill had a title dealing with county financial statements. (*See generally* Doc. 19). From this original purpose, the bill morphed to include various provisions related to political subdivisions. However, the last iteration included the disputed provisions relating to state property, the division of state funds for homelessness, and the regulation of campgrounds. (D32, p. 20-22). These provisions have nothing to do with county financial statements, county finances, or political subdivisions.

As in *Legends* and *Club Executive*, HB 1606 was changed from its original purpose and, as enacted, it violates the Missouri Constitution.

CONCLUSION

As passed HB 1606 violates the two separate provisions of the Missouri Constitution. Because HB 1606 violates the Constitution it should be held for naught, and enforcement of the bill should be enjoined.

WHEREFORE, Eden Village prays that this Court reverse the decision of the trial court and remand the case for entry of judgement in Eden Village’s favor.

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06(c)

COMES NOW Benjamin A. Stringer, of the law firm of HALL ANSLEY, P.C., of lawful age and having been duly sworn, states that this Brief complies with the limitations contained in Supreme Court Rule 84.06(c).

I further state that the number of words contained in this Brief are 4048 and that this Brief was prepared and formatted in Microsoft Word.

/s/ Benjamin A. Stringer
BENJAMIN A. STRINGER

CERTIFICATE OF SERVICE

COMES NOW Benjamin A. Stringer, of the law firm of HALL ANSLEY, P.C., of lawful age and having been duly sworn, states that Appellant's Brief in the within cause was filed with the Clerk of the Court using Missouri's e-filing system on June 16, 2023, which sent notification of such filing to the attorneys of record for each party to the above action.

/s/ Benjamin A. Stringer _____
BENJAMIN A. STRINGER