

IN THE
SUPREME COURT OF MISSOURI

No. SC100045

JOHNATHAN BYRD, ET AL.,

Plaintiff/Appellant,

vs.

STATE OF MISSOURI, ET AL.,

Defendant/Respondent.

Appeal from the Circuit Court of Cole County
The Honorable Christopher S. Cotton Walker, Circuit Judge

Brief of the Missouri Budget Project
as Amicus Curiae in Support of Appellant,
with consent of the parties

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INTEREST OF AMICUS CURIAE

The mission of amicus curiae the Missouri Budget Project¹ is to improve the quality of life for all Missourians by informing public policy decisions through objective research and analysis of state budget, tax, and economic issues. See <https://www.mobudget.org/>. The Project accomplishes that purpose by providing independent, objective research and analysis of state budget and tax issues. The Project advocates transparent and accountable decision-making regarding the expenditure of state funds to enhance public trust.

The Project staff watches legislation that affects the state budget – not just appropriations bills, but also other legislation that affects how state funds are collected and spent and how state assets are managed (or, in this instance, sold or given away). In doing so, the Project must cull among hundreds of bills introduced each year to determine which ones merit its attention. In choosing the bills to watch, the Project is constitutionally entitled to rely on bill titles.

The Project is thus interested in ensuring that each bill moving through and enacted by the Missouri General Assembly *really does* contain just “one subject which [is] clearly expressed in its title” (Art. III, § 23), and that the one subject/clear title rule is enforced to prevent surprise – the surprise that comes when a provision addressing one topic (here, provisions addressing *state* grants, *state* property, and *state* tax) is found in a bill addressing another (here, “relating to political subdivisions”).

¹ The Missouri Budget Project received consent from the parties to file this brief, transmitted by their counsel to amicus counsel via email on May 30, 2023.

ARGUMENT

I. The one subject/clear title rule of Art. III, § 23 requires that a title “fairly apprise” those watching legislation of the entire content of each bill.

On June 1, 2023, the United States Congress passed a bill, H.R.3746, that raised the nation’s debt limit. But H.R. 3746 did more than that. As summarized by the U.S. Senate on its website:

The bill also includes provisions that:

- rescind certain unobligated funds that were provided to address COVID-19 and to the Internal Revenue Service;
- provide funding for the Department of Veterans Affairs Cost of War Toxic Exposure Fund;
- provide funding for the Department of Commerce Nonrecurring Expenses Fund;
- provide statutory authority through 2024 for the requirement for agencies that propose certain administrative actions that will increase direct spending to also propose at least one administrative action that will decrease direct spending by at least the same amount (commonly known as administrative pay-as-you-go rules);
- terminate the suspension of federal student loan payments;
- expand the work requirements for the Supplemental Nutrition Assistance Program (SNAP) and the Temporary Assistance for Needy Families (TANF) program; and
- expedite the permitting process for certain energy projects.

See <https://www.congress.gov/bill/118th-congress/house-bill/3746> (viewed June 2, 2023). Hopefully, *someone* knew before H.R.3746 was enacted what all those changes were. But certainly not everyone did, nor could: even “[a]s of 06/02/2023,” the day *after* passage, the “text ha[d] not been received for

H.R.3746 - Fiscal Responsibility Act of 2023” so that the complete text could be posted for public view. <https://www.congress.gov/bill/118th-congress/house-bill/3746/text> (viewed June 2, 2023).

Our Missouri constitution bars such an enactment. It does so with a series of procedural requirements:

- Art. III, § 21: “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.” This bars:
 - The use of resolutions, not signed by the governor, to change the law; and
 - A change of the purpose of the bill from the purpose of the bill as introduced.
- Art. III, § 21: “Every bill shall be read by title on three different days in each house.” This means that the fastest that any bill can be considered is five days.
- Art. III, § 22: “Every bill shall be referred to a committee of the house in which it is pending.” This bars bills from being introduced and immediately taken up on the floor of the originating house. (Contrast H.R.3746, which was referred to a committee in the House of Representatives but not in the Senate. *Id.*)
- Art. III, § 23: “No bill shall contain more than one subject which shall be clearly expressed in its title....” This both requires a “clear title” and bars the inclusion of topics that do not fall within the scope of that title.
- Art. III, § 25: “No bill other than an appropriation bill shall be introduced in either house after the sixtieth legislative day” This ensures that bills (with rare, difficult exceptions) are introduced early

enough in the session for members and citizens to learn about them before the end of session.

Both singly and together, these Missouri provisions act to prevent surprise – to ensure that not just legislators but “the public is fairly apprised of a bill’s contents” (*Fox v. State*, 640 S.W.3d 744 (Mo. 2022)) in time to insist that their representatives in the General Assembly do something about it.

This case demands the application of the one subject/clear title provision of Art. III, § 23. The promise of the one subject/clear title provision is that legislators and the public will be “fairly apprised” of the content of each bill before enactment. The words “fairly apprised” were used by this Court, accurately and appropriately, just last year when the Court addressed what Art. III, § 23 promises to both legislators and the public:

The single subject requirement improves discussion by ensuring the matters covered by bills are more clearly defined, prevents logrolling as well as surprise in the legislative process, and ensures the public is *fairly apprised* of a bill’s contents.

Fox v. State, 640 S.W.3d at 756 (emphasis added), citing *Hammerschmidt v. Boone Cnty.*, 877 S.W.2d 98, 101-02 (Mo. 1994).

For the constitutional promise of the one subject/clear title clause of Art. III, § 23 to be fulfilled, courts must effectively police, after the fact, what the legislature does. Courts must, when asked through litigation, ensure that a person watching for legislation on a particular subject is “fairly apprised” by each bill’s title whether that bill contains (or by negative inference, does not contain) one or more provisions on the person’s subject of interest.

The application of the one subject/clear title provision of Art. III, § 23 can be analogized to a person searching for someone covered by one umbrella among a sea of umbrellas in a crowd outdoors on a rainy day. For purposes of

the analogy, each umbrella is the title of a bill. And each umbrella is decorated with a name or words that identify the group of people standing under it. Our searcher is looking for an umbrella protecting a particular person – perhaps her child. Our searcher looks at each umbrella in turn, having been promised that the words on each umbrella will tell the searcher whether to look under that umbrella to find the child they seek. Our searcher knows they can ignore umbrellas that have names, descriptions, words, or phrases that do not alert them to the possible presence of the child. That allows the searcher to limit their search to the space under those (hopefully few) umbrellas whose decoration merits attention.

Or, the one subject/clear title provision can be analogized to a huge Jeopardy™ game board, one with dozens of categories. Each bill is like a single Jeopardy™ category, and each contestant knows, when they choose a column, that the answer to which they must provide the question will fit within the topic specified for that column.

To include in a Jeopardy™ column an answer whose question falls outside the topic is unfair to the contestants. So is requiring the person searching among those milling about with umbrellas to look under all of them to find any umbrella that might cover the child sought. But to include in a Missouri bill something that would surprise the contestant, the searcher, a legislator, or a citizen is not just unfair, it is unconstitutional.

Missouri's one subject/clear title rule is neither new nor novel. "Many scholars have traced the origins of the single-subject prohibition to the Romans and followed its development through colonial times to the constitutions of the states." G. Eddington, "The Oklahoma Constitution's Single Subject Rule: The Oklahoma Supreme Court's Application to Acts of the legislature," 44 OKLA.CITY L. REV. 265 (2020) (footnotes omitted).

One purpose of the one subject/clear title requirement is to prevent “logrolling” – adding to a bill, one-by-one, particular provisions to secure individual legislator’s votes until the number of legislators supporting the bill is sufficient to ensure passage. *See id.* at 270; *Fox v. State*, 640 S.W.3d 744, 756 (Mo. 2022). Or put another way, “the practice of combining in a single bill multiple unrelated provisions that could not muster a majority individually but which can do so collectively.” *City of De Soto v. Parson*, 625 S.W.3d 412, 416 (Mo. 2021).

Another purpose of the single subject rule (albeit one that is sometimes wrapped into the concept of “logrolling”) is to prevent “surreptitious or manipulative insertion of foreign matters, sometimes called riding.” *Eddington* at 270. To use this Court’s words from *Fox*, 640 S.W.3d at 756, the purpose of barring “riding” is to prevent “surprise in the legislative process” – even surprises that have widespread support among legislators.

H.B.1606 (2022) includes such surprises. It was used for the “surreptitious or manipulative insertion of foreign matters.” It includes at least six provisions that fall outside the scope of the bill’s title, read in its entirety. Among them is the section that affects the appellants – and others who are not, nor tied to political subdivisions – § 67.2300.

To preserve the impact that the voters in 1945 intended and were promised by Art. III, § 23, this court must hold H.B.1606, and particularly § 67.2300, to have been unconstitutionally enacted. And the Court should do so in a way that clearly states – once again – that when the constitution promises legislators and citizens that bills can only be passed with “one subject” and that the “one subject” will be “clearly expressed in [the bill’s] title,” legislation that fails the test will fall.

II. H.B.1606 contains six provisions as to which the bill’s title does not “fairly apprise” legislators and citizens.

A. The title and content of H.B.1606.

Like most Missouri bills, the title of H.B.1606 has two parts: a list of affected sections; and a narrative statement of the subject matter of the bill.

The title in its entirety is:

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.

H.B.1606 has a long list of provisions. Most of those are amendments to sections in the Revised Statutes of Missouri that only address the authority or operation of political subdivisions and their officers. In that respect, H.B.1606 is much like many Missouri bills that include in their titles the phrase “relating to political subdivisions” or “relating to local government.” *See, e.g.*, S.B.724 (enacted 2022); H.B.271 (enacted 2021); S.B. 724 (considered 2020); S.B. 725 (considered 2020). Thus H.B.1606 contains provisions that directly and exclusively (or nearly so) address actions by political subdivisions, provisions that our searcher (looking at umbrellas) or contestant (choosing among Jeopardy™ categories) would expect to find under a “political subdivisions” umbrella or in a “political subdivisions” category. Those provisions address:

- Salaries for county officials. §§ 50.327, 57.317, 58.095, and 58.200
- County financial statements. §§ 50.800, 50.810, 50.815, and 50.820

- Authority of county auditors. § 55.160
- Instructions for county recorders of deeds. §§ 59.310 and 442.130
- Matters regarding special districts. (§§ 67.457, 67.461, 67.1421, 67.1431, and 67.1471)
- The Local Government Employees Retirement System. § 70.631.
- Administration of land and taxation by the City of St. Louis. (§§ 92.720, 92.740, 92.750, 92.760, 92.765, 92.770, 92.775, 92.810, 92.815, 92.817, 92.825, 92.835, 92.840, 92.852, and 92.855.
- Actions of tax increment finance (TIF) commissions. (§§ 99.825, 99.830 and 99.865.
- Financial statements submitted by political subdivisions to the state auditor. § 105.145.
- Tax auctions by county collectors. (§§ 140.170 and 140.190.
- Regulation of transportation development districts. (§§ 238.212 and 238.222.
- Restrictions on building codes by cities and counties. § 260.295.
- County and municipal park ranger vehicles. § 304.022.
- Actions by county public administrators. § 473.742.
- The imposition of vaccination requirements by political subdivisions on their employees. H.B.1606 § 6, codified by the Revisor as § 67.308.

Each of those “relates to political subdivisions” (though for reasons explained in II(C) below, the last one, codified as § 67.308 is outside the scope of the title when the title is read in its entirety).

But H.B.1606 doesn’t stop with the provisions directed to political subdivisions. It has two other types of provisions: ones that only tangentially relate to political subdivisions; and ones that do not relate to political subdivisions at all.

The tangential category includes the provision that prompted this suit, the one designated by the legislature as § 67.2300. That provision addresses, as the Revisor correctly labelled it, “Homelessness, Use of State Funds.” Most of the subsections of new § 67.2300 relate primarily or exclusively to persons or entities other than political subdivisions, though some portions of some subsections do relate to such public entities.

The tangential category also includes a new sales tax exemption, found in § 144.051, for tickets to 2026 FIFA World Cup matches. Principally that section exempts purchases from state sales taxes. But because state sales tax exemptions are generally applied to local sales tax, it has an impact there, too.

The second category, provisions that do not address political subdivisions at all, begins with a change to § 523.061, which addresses procedural aspects of condemnation “by any road, railroad, street railway, telephone, telegraph or any electrical corporation organized for the manufacture or transmission of electric current for light, heat or power” (§ 523.010).

That category also includes provisions at the end of the bill, not given section numbers and not intended to be codified, that authorize the sale, transfer, or grant of state property. Legislature staff summarized that portion of the bill:

LAND CONVEYANCES (Sections 1, 2, 3, 4, 5)

The bill authorizes the Governor to sell, transfer, grant, convey, remise, release, and forever quitclaim all interest of the state of Missouri in land:

- (1) Located in the City of Kirksville, Adair County, to the Kirksville R-III School District;
- (2) Located in City of Kirksville, Adair County, to Truman State University;

(3) Located in the City of Rolla, Phelps County, to Edgewood Investments;

(4) Located in the City of St. Louis; and

(5) Located in St. Louis County.

The land to be conveyed is described in the bill. The Commissioner of Administration shall set the terms and conditions for the conveyance. The Attorney General shall approve the form of the instrument of conveyance.

<https://house.mo.gov/billtracking/bills221/sumpdf/HB1606T.pdf> (viewed June 2, 2023). Such provisions are commonly found in bills titled, “To authorize the conveyance of certain state property.” See, e.g., H.B. 802, 807 & 886 (2023); H.B.1330 (2020) (same).

We next compare those sections to the title of H.B.1606 – a title that has, again, two parts: a narrative, and a list of affected statutes. We address those two parts of the title separately.

B. Certain provisions fall outside the narrative portion of the bill’s title: “relating to political subdivisions.”

The narrative part of the title of H.B.1606 – the part that has (incorrectly, in our view) been the *exclusive* point for analysis by this Court in past cases – is, “relating to political subdivisions.” As noted above, that is not an unusual narrative description of a bill’s contents. And most of the provisions of H.B.1606 fit within that narrative title (though, again, some fail because of the rest of the title, as discussed in II(C)). But as to some of the provisions, “relating to political subdivisions” does not “fairly apprise” anyone of the bill’s contents.

§ 67.2300

Appellant’s focus below (and the only provision addressed by the court below, see Legal File Doc. 10, pp. 9-10) was on § 67.2300. That is an entirely new

section addressing programs to assist the homeless. That section mentions aspects of how political subdivisions can use state grants (and federal grants that flow through the state government) to address issues of homelessness. But it consists mostly of provisions that relate to private recipients and to state agencies involved in allocating and distributing funds – provisions that do not “relate to” political subdivisions.

Section 67.2300 is an example of the mischief that tangential connections can allow. If such a section can be included in a bill “relating to political subdivisions” merely because political subdivisions are *among* those it affects, then so can:

- A change to the Missouri Human Rights Act or the Workers Compensation Act, because political subdivisions are among the covered “employers.”
- A change to hazardous waste laws, because political subdivisions may create or possess hazardous waste.
- A change to tort law because political subdivisions may be sued in tort.

In other words, if § 67.2300 may be included in a bill whose narrative title is “relating to political subdivisions,” *any* law to which a political subdivision is now subject – or would become subject, through the new law – can be changed in a law with the words “relating to political subdivisions” in its title.

That the legislature placed § 67.2300 in Chapter 67, which really is dedicated to laws regulating political subdivisions, does not make the new section a “political subdivision” provision.² Those watching for legislation addressing the eligibility of private entities and persons for state grants and

² In fact, given the consistent nature of the other sections in Chapter 67, for the legislature to place the homelessness section in Chapter 67 is affirmatively misleading, a further problem with the H.B.1606 content and title.

the regulation of use of those grants were not “fairly apprised” of changes in such grant programs when those changes appeared in a bill “relating to political subdivisions” merely because cities or other political subdivisions may also qualify for the same grants, and their involvement might justify some specific-to-them clauses within the section.

§ 144.051

Those interested in the collection of state sales taxes know they must watch taxation and revenue bills for the creation of new sales tax exceptions. But that an exception will apply to local as well as state sales tax is not sufficient to “fairly apprise” them that a “political subdivision” bill could include changes to Chapter 144.

§ 523.061

Neither utilities that may use condemnation nor landowners whose land may be taken by such entities are “fairly apprised” that a “political subdivision” bill would include changes in condemnation procedures to be used by utilities when the condemnation does not involve political subdivisions.

Sections 1-5.

Finally, those who watch state real property disposition generally – or even more problematic, those who fear or hope for the sale or transfer of a particular piece of state property, perhaps in their neighborhood or town, or even next door – are not apprised at all, much less “fairly apprised,” that a bill “relating to political subdivisions” would include authority to sell off or convey property, especially when the sale or transfer will not be to a political subdivision, like three (or four, depending on whether Truman State

University can be characterized as a political subdivision – an unusual use of the label) of the five transfers authorized by S.B. 1606. Neighbors, town leaders, and those who watch for inappropriate deals on the disposition of state property (like amicus Missouri Budget Project) are entitled to monitor bills that state that their purpose is to authorize the conveyance of property out of state hands, such as H.B. 802, 807 & 886 (2023) (“To authorize the conveyance of certain state property”) and H.B.1330 (2020) (same). They are not constitutionally required to watch a bill “relating to political subdivisions” to see if the legislature tacks onto that bill provisions authorizing the sale of state-owned parcels to someone like “Edgewood Investments” (actually named in H.B.1606!) or others.

Each one of these falls outside the scope of “relating to political subdivisions.” So the presence of any one of them establishes that H.B.1606 was unconstitutionally passed.

C. Certain provisions fall outside the portion of the title identifying sections to be repealed and replaced.

The title of H.B.1606 was not just “relating to political subdivisions.” That may be what the argument below was about, since this Court’s precedents focus exclusively on the narrative portion of bill titles. But narrative titles do not comprise the entirety of the titles of most Missouri bills – and certainly not the entirety of this one. The other portion is equally important, whether considered on its own, or considered as an explanation of or limitation on the meaning of “relating to political subdivisions.”

As noted above, the words “relating to political subdivisions” are preceded and limited by this language:

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

On its face, this portion of the title “fairly apprises” the person reading it that (1) the current version of certain sections will be repealed and (2) new versions will be enacted instead of the listed those sections – that is, to address, in a new way, the topics addressed in the listed sections. After all, “in lieu” means “instead,” not “in addition to.” See <https://www.merriam-webster.com/dictionary/in%20lieu> (visited June 19, 2023).

There does not have to be a one-to-one correlation between the listed sections and the replacements. The phrase “in lieu thereof” may also be enough to include a new section that addresses a topic covered in one of the listed sections. But to give “in lieu thereof” its plain meaning – in fact, to give those words any import at all – the title as a whole cannot be read to “fairly apprise” the searcher, contestant, or legislator that the bill goes beyond enacting new sections instead of (*i.e.*, replacing) the listed ones. The list of sections and the words “in lieu thereof” modify and limit the words “relating to political subdivisions.”

Anything in H.B.1606 that doesn’t replace, revise, or at least address the topic of one of the listed sections is *not* a section enacted “in lieu of” a listed section. So anything beyond the scope of the listed sections falls outside the scope of the title *even if the new section is relating to political subdivisions*. Put another way, the title of

H.B.1606, read in its entirety, does not say, or even hint, that the bill would address something beyond the topics of the listed subsections.

So how does this analysis impact the proper application of the one subject/clear title clause of Art. III, § 23 to H.B.1606? Various sections of H.B.1606 fall outside the title when read as a whole.

We start with the portions of H.B.1606 that do fit within the full title of the bill: the revisions of

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, [and] 473.742...

fall within the title of H.B.1606. In each instance, the section contained in H.B.1606 is not just one “relating to political subdivisions,” but one that is enacted “in lieu” – instead – of the listed section.

The other listed provision, § 523.061, fails because though it is enacted “in lieu” of the existing, listed section, it is not a section “relating to political subdivisions,” as discussed in II(B) above.

One new and thus unlisted provision, § 92.817, may fit under the umbrella or category that bears the full H.B.1606 title. The list in the title includes § 92.815, which addresses the same topic as § 92.817. H.B.1606 reenacted subsection .815 and enacted new .817 both “in lieu” of existing § 92.815, so the searcher, contestant, or legislator might be “fairly apprised” of the possible inclusion of the new section.

But the “in lieu thereof” language in the H.B.1606 title excludes the other provisions of the bill. None of those provisions is “in lieu” of any provision “relating to political subdivisions.” Rather, each is entirely new. Each is beyond the bounds of the title of H.B.1606.

So among the sections that fall outside the title of H.B.1606, when all parts of that title are given their plain meaning are:

- § 144.051, dealing with sales tax;
- §§ 1, 2, 3, 4, 5, authorizing the sale, transfer, or grant of state land; and
- § 6, addressing vaccination requirements.

And, of course, § 67.2300, dealing with homelessness. None of the provisions listed to be replaced or revised addressed homelessness. None of those regulated a state grant program. Section 67.2300 is entirely new, and thus cannot be found to be “enact[ed] in lieu” of any of the sections “relating to political subdivisions” that the searcher, contestant, or legislator was told by the title would be affected, any one of them establishes that H.B.1606 was unconstitutionally passed.

CONCLUSION

For the reasons stated above, the Court should declare that the title to H.B.1606 means what it says in its entirety, that § 67.2300 and other sections of the bill fall outside the scope of that title, and that H.B.1606 thus violates the requirement in Art. III, § 23 that “[n]o bill shall contain more than “one subject” that is “clearly expressed in [the bill’s] title.” By doing so, the Court will protect not just the Missouri Budget Project but those observers of the legislative process who must act with fewer resources and less experience. The Missouri Budget Project and those other observers are constitutionally entitled to be “fairly apprised” of the full scope of each bill that is passed, and protected from surprise provisions.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Supreme Court Rule 84.06(c), that the foregoing Brief of Amici complies with Rule 55.03 and with the limitations contained in Rule 84.06(b). I further certify that this Brief contains 4723 words, as determined by the Microsoft Word 2010 word-counting system.

/s/ James R. Layton