IN THE SUPREME COURT OF MISSOURI

No. SC100045

JOHNATHAN BYRD, *et al.*,

Plaintiffs-Appellants,

v.

STATE OF MISSOURI, *et al.*,

Defendants-Respondents.

On Appeal from the Circuit Court of Cole County, Missouri
Division Number III
Hon. S. Cotton Walker
Circuit Court Case Nos. 22AC-CC05079 & 22AC-CC04252

BRIEF OF *AMICI CURIAE* THE NATIONAL HOMELESSNESS LAW CENTER, ARCHCITY DEFENDERS, INC., GREATER KANSAS CITY COALITION TO END HOMELESSNESS, EMPOWER MISSOURI, NATIONAL LOW INCOME HOUSING COALITION, NATIONAL COALITION FOR THE HOMELESS, AND NATIONAL ALLIANCE TO END HOMELESSNESS

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IDENTITY OF *AMICI CURIAE* AND STATEMENTS OF INTEREST[1]

The National Homelessness Law Center ("Law Center")[2] is a national 501(c)(3) nonprofit legal organization that was founded in 1989 with the mission to end and prevent homelessness. In connection with this objective, the Law Center gathers information about state and local laws from across the country that impact homeless people, identifies best practices to address root causes of homelessness, and litigates across the country to safeguard the rights of homeless people. For example, the Law Center was the counsel of record in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir.), *cert. denied*, 140 S.Ct. 674 (2019), which remains the leading case on protecting the rights of homeless people in the face of government action.

ArchCity Defenders, Inc. ("ACD") is a 501(c)(3) holistic legal advocacy nonprofit that fights against the criminalization of poverty and state violence, particularly in low-income communities and communities of color. ACD uses civil and criminal legal representation, social services, impact litigation, policy and media advocacy, and community collaboration to achieve justice and equitable outcomes for people throughout the St. Louis region and across the State of Missouri. To fulfill its mission, ACD developed a municipal, criminal, and housing defense practice that provides comprehensive legal

[1] Pursuant to Missouri Supreme Court Rule 84.05(f)(2), *amici* certify that all parties have consented to the filing of this brief.

[2] The Law Center was formerly known as the National Law Center on Homelessness & Poverty.

representation for clients at no cost with the explicit aim of promoting housing security and preventing homelessness.

The Greater Kansas City Coalition to End Homelessness ("GKCCEH") is a 501(c)(3) nonprofit organization that seeks to eradicate homelessness in the greater Kansas City metro area. GKCCEH uses research, coalition building, and community networking to address the concerns and represent the interests of the homeless community. GKCCEH seeks to ensure that no one goes homeless in Kansas City by expanding access to fair and equitable housing, resources, and care. In addition, GKCCEH acts as the U.S. Department of Housing and Urban Development's Continuum of Care Lead Agency and Homeless Management Information System Lead Agency for certain Missouri counties.

Empower Missouri, which has also been known as Missouri Association for Social Welfare, was founded in 1901 and has spent its history engaging in nonpartisan anti-poverty work at the local, state, and federal level. Empower Missouri's mission is to secure basic human needs and equal justice for every person in Missouri. It does this through coalition building, advocacy, and public awareness. Empower Missouri's reach statewide is over 8,000 individuals. Empower Missouri convenes a statewide Affordable Housing Coalition with approximately 400 individuals, including government agencies, nonprofit organizations, people with lived experience, and others. This coalition focuses on passing evidence-based policies to end housing insecurity and homelessness in Missouri.

The National Low Income Housing Coalition ("NLIHC") is a national non-profit membership-based organization with over 1,000 organizational members across the United

States, including housing developers and landlords, public housing agencies, state and local government bodies, nonprofit organizations, and individuals. NLIHC is dedicated to achieving racially and socially equitable public policy that ensures people with the lowest incomes have quality homes that are accessible and affordable in communities of their choice.

The National Coalition for the Homeless ("NCH") is a network of individuals and organizations united by a commitment to end homelessness. Founded in 1982, NCH has helped draft federal, state, and local legislation, and works through policy advocacy, grassroots organizing, and public education. NCH has authored numerous reports on the causes and consequences of homelessness, including a report entitled *20 Years of Hate: Reporting on Bias-Motivated Violence against People Experiencing Homelessness in 2018-2019*.

The National Alliance to End Homelessness ("NAEH") is a nonprofit organization founded in the 1980s by a bipartisan group of national leaders concerned about the rise of homelessness across the country. Its mission is incorporated in its name: to end homelessness in the United States. NAEH pursues this goal by analyzing and encouraging research and data collection to better understand the causes of and solutions to homelessness; working with a network of thousands of local leaders to understand how effective practices can be carried out; and advising leaders through local, state, and federal advocacy efforts.

INTRODUCTION

MO. REV. STAT. § 67.2300 dramatically and negatively impacts the lives of Missouri's most vulnerable residents—its unsheltered homeless citizens. To ensure that laws of such significance do not pass without careful consideration, the Missouri Constitution guarantees that all legislation addresses a single subject, has a clear title, and retains its original purpose. Those constitutional safeguards were disregarded here: The language of two languishing predecessor bills—both inspired by a non-Missouri think tank's template legislation—were appended to the completely unrelated House Bill 1606 ("H.B. 1606"). The result? Legislation of staggering importance, pushed by non-Missouri interests, passed without adequate debate and public scrutiny. The offending provisions should be severed from the remainder of H.B. 1606 and invalidated.

Section 67.2300 was initially introduced as a standalone bill in the Missouri Senate on January 27, 2022, and in the Missouri House of Representatives on February 1, 2022. *See* S.B. 1106, 101st Gen. Assemb., 2d Reg. Sess. (Mo. 2022); H.B. 2614, 101st Gen. Assemb., 2d Reg. Sess. (Mo. 2022). Those bills were not the product of negotiation between Missouri lawmakers—instead they were copies of template legislation advanced nationwide by a Texas-based think tank, the Cicero Institute, to push its new homelessness agenda to various states across America. *Compare* MO. REV. STAT. § 67.2300, *with* Cicero Inst., *Model Bill: Reducing Street Homelessness Act* (Dec. 22, 2022), https://ciceroinstitute.org/wp-content/uploads/2023/02/Homelessness-Policy-Model-

Language-.pdf.[3] The Cicero Institute claims that its template solves the "homelessness problem" by rerouting funds for long-term housing toward short-term shelters. But the Cicero Template provides no hint for what to do when the two-year time limit on staying in those shelters expires—other than to eventually replace that temporary shelter with jail cells at great expense to Missouri taxpayers. This criminalization of the most vulnerable Missourians helps no one. Quite the opposite: it hurts the very people the bill was purportedly designed to protect.

Unsurprisingly then, the earlier standalone bills failed to make it to the floor after two months in committee. So, changing tack, Senator Holly Rehder (the sponsor of the standalone bill in the Senate) decided to offer the Cicero Template's provisions as the Senate's *nineteenth* amendment to the Senate's substitution for H.B. 1606 on April 27, 2022. *See* S. Journal, 101st Gen. Assemb. 2d Reg. Sess. 1900–02 (Mo. Apr. 27, 2022). As H.B. 1606 had already been in the works for three and a half months and the legislative session was coming to an end, things moved quickly. With minimal further debate on the merits of section 67.2300, the Missouri General Assembly passed H.B. 1606 (with those provisions included) on May 12, 2022, just over two weeks later. Governor Parson signed H.B. 1606 into law later that summer.

[3] The Institute has met with success in only four other states: Utah, Texas, Tennessee, Georgia. *See Emerging Threats: State Level Criminalization*, HOUSING NOT HANDCUFFS (last accessed June 14, 2023), https://housingnothandcuffs.org/emergent-threats-state-level-criminalization/.

Inserting section 67.2300 into an unrelated bill transgressed three crucial constitutional boundaries: the single-subject, clear-title, and original-purpose requirements of the Missouri Constitution (the "constitutional requirements"). The relevant constitutional provisions state that "[n]o bill shall contain more than one subject which shall be clearly expressed in its title," and that "no bill shall be amended in its passage . . . as to change its original purpose." MO. CONST. art. III, §§ 21, 23 (1945). Together, the constitutional requirements serve to protect legislative transparency both for legislators and the public, as well as to prevent riders, logrolling, and legislative game playing.

The addition of section 67.2300 to H.B. 1606 contravened those purposes. Rolling that section into H.B. 1606 as the legislative session was ending allowed supporters both to minimize legislative debate on it and to insist in response to that limited discussion that the rest of the bill justified passing the entire legislation. The public was left unaware, too: None of the few witness statements submitted for H.B. 1606 even discussed section 67.2300, and no news articles were written about it.

Had the legislature considered the Cicero Template's provisions on its own—as it was constitutionally required to do—it would have been forced to confront the substantial and well-established failings of similar laws and their considerable negative impacts on the very population they are purportedly meant to protect. Criminalizing camping and sleeping in public areas, as in section 67.2300, fails to address the root cause of homelessness: the lack of affordable housing. It also leads to worse outcomes for homeless individuals and, cyclically, to more homelessness. Finally, criminalizing homelessness, along with

encouraging the sweeping of homeless encampments, deprives homeless individuals of their basic American right to property. Yet because it bypassed the constitutional requirements, the General Assembly never had to consider these ramifications.

Because inclusion of section 67.2300 as part of H.B. 1606 violated three important constitutional protections, this Court should sever that section from the rest of H.B. 1606 and invalidate it.

ARGUMENT

I. THE PASSAGE OF H.B. 1606 AND SECTION 67.2300 DEMONSTRATES THE PITFALLS OF CONTRAVENING THE SINGLE-SUBJECT, CLEAR-TITLE, AND ORIGINAL-PURPOSE REQUIREMENTS

The constitutional requirements here have long served as procedural protections against legislative overreach in Missouri. Missouri's single-subject and clear-title requirements were passed in 1865 as part of a broader national movement in the mid-nineteenth century. *See* Millard H. Ruud, *"No Law Shall Embrace More Than One Subject"*, 42 MINN. L. REV. 389, 390 (1958); *see also Hammerschmidt v. Boone Cnty.*, 877 S.W.2d 98, 101 (Mo. banc 1994) (quoting MO. CONST. art. IV, § 32 (1865)).[4] These provisions were passed in the wake of concerns that state legislatures were obscuring "substantial grants to private persons" with deceptively innocent titles. *See* Rudd, *supra*, at 391–92. The original-purpose requirement, which is a "corollary" to the single-subject and clear-title requirements, was added to the Missouri Constitution just 10 years later.

[4] The origins of the single-subject requirement can be traced back as far as ancient Rome, and some scholars believe it was a contributing factor to the start of the Roman Civil Wars. *See* Ruud, *supra*, at 389; Robert Luce, *Legislative Procedure* 549 (1922).

Hammerschmidt, 877 S.W.2d at 101 (quoting MO. CONST. art. III, § 21 (1945)); MO. CONST. art. IV, § 25 (1875).

Today, the single-subject and clear-title requirements find their home in Article III, section 23 of the Missouri Constitution, and the original-purpose requirement resides in Article III, section 21. Except for appropriations bills, "[n]o bill shall contain more than one subject which shall be clearly expressed in its title." MO. CONST. art. III, § 23 (1945). And "no bill shall be so amended in its passage through either house as to change its original purpose." MO. CONST. art. III, § 21 (1945). As explained in Appellants' briefing below and in brief here, H.B. 1606 contravenes all of these "obligatory and mandatory" constitutional requirements. *State v. Miller*, 45 Mo. 495, 498 (1870).

As introduced, H.B. 1606 was a mere seven pages long and addressed "county financial statements." H.B. 1606, 101st Gen. Assemb., 2d Reg. Sess. (Mo. 2022) (as introduced in House, Jan. 5, 2022). In particular, it allowed more counties to publish shorter financial statements (as opposed to the long-form ones they were previously required to publish), while also mandating that those shorter financial statements include the name, office, and current gross annual salary of each county official. *Id.* H.B. 1606, in that form, was passed unanimously by the House. *See* H. Journal, 101st Gen. Assemb. 2d Reg. Sess. 1445 (Mo. Mar. 24, 2022). Then, the Senate added 23 provisions to H.B. 1606 over the course of a few hours, including Senate Amendment No. 1, which changed the title of H.B. 1606 from "An Act . . . relating to county financial statements" to "An Act . . . relating to political subdivisions," and Senate Amendment No. 19, proposed by Senator

Rehder, which added the Cicero Template's provisions to H.B. 1606 as section 67.2300. *See* S. Journal, 101st Gen. Assemb. 2d Reg. Sess. 1834, 1900–02 (Mo. Apr. 27, 2022).

As Appellants aptly explained below, the inclusion of the Cicero Template provisions in H.B. 1606 violates the single-subject, clear-title, and original-purpose requirements of the Missouri Constitution. To determine whether a bill violates the single-subject requirement, the Court must ask whether "the bill's provisions fairly relate to, have a connection with, or are a means to accomplish the subject of the bill as expressed in the title." *Giudicy v. Mercy Hosps. E. Communities*, 645 S.W.3d 492, 499 (Mo. banc 2022). Section 67.2300's provision criminalizing "sleeping [and] camping" on state-owned lands, *see* MO. REV. STAT. § 67.2300(5), as well as many of its other provisions, do not "relate to" or "have [any] connection with" the regulation of political subdivisions, *Giudicy*, 645 S.W.3d at 499. But more importantly, section 67.2300 addresses a topic distinct from political subdivisions—homelessness. As this Court explained in *Hammerschmidt*, where the "subject of [an] amendment—*its raison d'etre*"—is entirely distinct from the subject of the bill as a whole, it did not matter that some of its provisions loosely relate to that subject. 877 S.W.2d at 103. Whatever loose connection the State contends that certain pieces of section 67.2300 have to regulating "political subdivisions," it cannot overcome the fact that section 67.2300 has nothing to do with that subject and everything to do with homelessness.

For many of the same reasons, H.B. 1606 violates the clear-title requirement. A bill violates the clear-title requirement where the title is "so . . . underinclusive that some

provisions fall outside of it." *Home Builders Ass'n of Greater St. Louis v. State*, 75 S.W.3d 267, 270 (Mo. banc 2002). As explained above, the various provisions of section 67.2300 do not themselves relate to political subdivisions. Nor does section 67.2300 considered as a whole relate to that title. Someone reading the title "An Act . . . relating to political subdivisions" would certainly not expect to find a law criminalizing camping or sleeping on state-owned lands, *see* MO. REV. STAT. § 67.2300(5), or more generally a law pertaining to housing and homelessness. The title is therefore underinclusive and does not accurately describe the contents of H.B. 1606. H.B. 1606 is therefore unconstitutional.

Finally, H.B. 1606 violates the original-purpose requirement. To determine whether a bill violates that requirement, the Court must: (1) "identify the original purpose" of the bill, as evidenced by "its earliest title and contents"; and (2) "compare the original purpose with the final version" of the bill to determine whether the provisions of the final bill are "logically connected or germane" to the original purpose. *Legends Bank v. State*, 361 S.W.3d 383, 386 (Mo. banc 2012). As introduced, H.B. 1606 altered four sections of the Missouri code "relating to county financial statements." H.B. 1606, 101st Gen. Assemb., 2d Reg. Sess. (Mo. 2022) (as introduced in House, Jan. 5, 2022). Its purpose was limited: According to the bill's sponsor, Representative Peggy McGaugh, the purpose of H.B. 1606 was "simply to save the counties," "not the state," "money" in preparing their county financial statements and make county officials' salaries accessible to the public. *See* Mo. H. Local Government Debate, 101st Gen. Assemb., 2d Reg. Sess. at 9:16:07–9:16:09,

9:18:20–9:18:43, 9:21:05–9:21:07 (Feb. 10, 2022).[5] Even if section 67.2300 has something to do with "political subdivisions" (it does not), the criminalization of camping or sleeping, delineating how state funds may be used in relation to homelessness, and its other homelessness-related provisions have nothing to do with saving counties money in preparing financial statements or with disclosing county officials' salaries.

Given that the eleventh-hour inclusion of the Cicero Template's provisions in H.B. 1606 violated all three of Missouri's constitutional requirements, it is no surprise that H.B. 1606's passage was plagued by the very ills the constitutional requirements were meant to alleviate. The constitutional requirements serve three primary functions: (1) to prevent "logrolling" and the addition of unpopular riders to otherwise passable bills; (2) prevent legislative game-playing; and (3) to improve legislative transparency for both legislators and the public. *Hammerschmidt*, 877 S.W.2d at 101–02.[6] The late-breaking addition of

[5] Video of these statements can be viewed at https://house.mo.gov/MediaCenter.aspx?selected=VideoFeeds, by clicking "Archive Video," searching videos for February 10, 2022, and clicking the link for "Local Government [HR7]."

[6] Article III, section 23 also serves to protect the separation of powers by ensuring that the legislature cannot "forc[e] the governor into a take-it-or-leave-it choice when a bill addresses one subject in an odious manner and another subject in a way the governor finds meritorious." *Hammerschmidt*, 877 S.W.2d at 102. At least one member of Governor Parson's administration expressed concerns over H.B. 1606's homelessness provisions, lending some credence to the theory that Governor Parson may have been forced into such a choice. Kurt Erickson, *Missouri's Top Mental Health Official Balked at New Homeless Law. The Governor Signed It Anyway*, ST. LOUIS POST-DISPATCH (July 16, 2022), https://www.stltoday.com/news/local/crime-and-courts/missouri-s-top-mental-health-official-balked-at-new-homeless-law-the-governor-signed-it/article_99bde92c-03bf-54f0-b27a-e40a2fa586a8.html?utm_medium=social&utm_source=twitter_stltoday.

section 67.2300 to H.B. 1606 shows clear signs of logrolling, legislators taking advantage of their unsuspecting colleagues, stunted legislative discussion, and opacity to the public.

A. Section 67.2300 Shows Clear Signs of Logrolling

In its most traditional sense, logrolling is the process of combining provisions that alone do not command majority support but which together can do so because different legislators have some "vital interest" in the disparate provisions. *Hammerschmidt*, 877 S.W.2d at 101. Yet logrolling does not only refer to combining matters which do not carry majority support: logrolling also includes a provision's use of an unrelated bill as a vehicle to surmount legislative roadblocks. *See* Michael D. Gilbert, *Single Subject Rules and the Legislative Process*, 67 U. PITT. L. REV. 803, 808 n.29 (2006).[7]

As discussed above, the Cicero Template was introduced as section 67.2300 in both the Senate and the House as a standalone bill. *See* S.B. 1106, 101st Gen. Assemb., 2d Reg. Sess. (Mo. 2022); H.B. 2614, 101st Gen. Assemb., 2d Reg. Sess. (Mo. 2022). Neither standalone bill made it to the floor of their respective houses to be debated and honed, whether because the sponsors thought their respective bills would not command majority support, would not command enough support to be perfected before the end of the legislative session, or otherwise would not complete the legislative gauntlet. Either way, after seeing that a freestanding section 67.2300 was incapable of making it to the floor of

[7] Such provisions are sometimes called "riders." The addition of riders is just as odious as traditional logrolling and may be even more insidious—the addition of riders manipulates the legislative process in a manner that benefits no one. *Schaefer v. Koster*, 342 S.W.3d 299, 306 n.9 (Mo. banc 2011) (Fischer, J., dissenting); Gilbert, *supra*, at 858–65.

either the Senate or the House, Senator Rehder added section 67.2300 to H.B. 1606 as Senate Amendment No. 19, one of 23 amendments made that day to H.B. 1606. *See* S. Journal, 101st Gen. Assemb. 2d Reg. Sess. 1900–02 (Mo. Apr. 27, 2022). But opting for this easier route is precisely the sort of manipulation the single-subject provision was meant to protect against.

This Court has invalidated other bills where there was similar evidence of logrolling. In *Cooperative Home Care, Inc. v. City of St. Louis*, 514 S.W.3d 571 (Mo. banc 2017), the Court explained that section 67.1571, which addressed minimum wage in Missouri, was attached as an amendment to H.B. 1636 after it had failed to pass out of committee when part of H.B. 1346. *Id.* at 577. This was, as the Court explained, "a clear example of the legislative logrolling that article III, section 23 is intended to prevent." *Id.* at 580–81. The Court thus found that the inclusion of section 67.1571 in H.B. 1636 violated the single-subject requirement: the original purpose of the bill was to address "the establishment, proper governance, and operation of community improvement districts," not minimum wage. *Id.* at 577. Similarly, section 67.2300 as a standalone bill did not make it to the floor of either the Senate or the House. It was added to H.B. 1606 thereafter. And, having to do with homelessness, section 67.2300 has nothing to do with H.B. 1606's original purpose (county financial statements).

Both senators and representatives recognized that section 67.2300 commanded reduced support compared to the rest of H.B. 1606, another sign of legislative logrolling. Senator Karla May explained that while there were "a lot of things in [H.B. 1606] that [she]

love[d]" and that the Senate "need[ed] to get across the finish line," she was concerned over the "homeless piece" and that she wanted to "come back next year and make corrections" if needed. Mo. S. Floor Debate, 101st Gen. Assemb., 2d Reg. Sess. at 4:03:30–4:03:50 (May 11, 2022) ("May 11 S. Floor Debate").[8] In addition, during a debate regarding H.B. 1606 on the House floor, Representative Peter Merideth said that he could not "support [the bill] with [section 67.2300] in" it, even though "there [were] some other good things in" the bill. Mo. H. Floor Debate, 101st Gen. Assemb., 2d Reg. Sess. at 3:12:43–3:13:06, 3:13:52–3:14:00 (May 12, 2022 Afternoon Sess.) ("May 12 H. Floor Debate").[9] And even Representative McGaugh, H.B. 1606's sponsor, explained that although she "certainly [could not] disagree with" Representative Merideth, she thought there were "so many good things in this bill that" she did not "want another year to go by without [ ] having got [those provisions] into law." *Id.* at 3:13:06–3:13:52.

Thus, even Representative McGaugh inadvertently acknowledged facts establishing that H.B. 1606 meets the definition of logrolling: putting into one bill several disparate provisions that separately may not garner support, but which collectively contain "so many good things" that legislators will vote to pass the bill as a whole. When even those in the Missouri General Assembly recognized that logrolling was taking place but barreled ahead

[8] Audio of the statements referenced in this paragraph can be accessed at https://media.senate.mo.gov/DebateArchive/2022/051222/051222.mp3.

[9] Video of these statements can be viewed at https://house.mo.gov/MediaCenter.aspx?selected=VideoFeeds, by clicking "Archive Video," searching videos for May 12, 2022, and clicking the link for "2022 Legislative Session - Day Seventy - Thursday, May 12 – Afternoon [Chamber]."

anyway, it should come as no surprise that the requirements of Missouri's constitutional protections were violated.

B. Section 67.2300's Proponents Engaged in Legislative Game-Playing

The addition of section 67.2300 to H.B. 1606 shows exactly the sort of legislative game-playing that the Missouri Constitution is meant to prevent. The relevant constitutional requirements "prohibit[ ] a clever legislator from taking advantage of his or her unsuspecting colleagues by surreptitiously inserting unrelated amendments into the body of a pending bill." *Hammerschmidt*, 877 S.W.2d at 101 (citation omitted).[10] Section 67.2300 was added to H.B. 1606 as Senate Amendment No. 19, one of the 23 amendments proposed to H.B. 1606 that day. *See* S. Journal, 101st Gen. Assemb. 2d Reg. Sess. 1834–1906 (Mo. Apr. 27, 2022). These amendments ran the gamut: one prohibited sales tax on tickets to 2026 FIFA World Cup matches; another prohibited COVID-vaccination requirements for public employees; still another prohibited election authorities from accepting funding from sources other than governmental entities. *See id.* at 1843–44, 1868–69. By the time Senate Amendment No. 19 to H.B. 1606 was heard, S.B. 1106's sponsor, Senator Rehder, gave a brief summary of the amendment and a vote was taken; no other senator made a comment. *See* Mo. S. Floor Debate, 101st Gen. Assemb., 2d Reg.

[10] This Court also explained, shortly after the addition of the single-subject and clear-title requirement to the Missouri Constitution, that those requirements prevent "unscrupulous . . . interested parties from dexterously inserting matters in the body of a bill, of which the title gave no intimation of the true character." *Miller*, 45 Mo. at 498. The Cicero Institute, who came into Missouri and "dexterously insert[ed]" section 67.2300 into H.B. 1606, is exactly the kind of "unscrupulous . . . interested part[y]" this Court was worried about. *Id.*

Sess. at 5:18:42–5:23:10 (Apr. 27, 2022) ("Apr. 27 S. Floor Debate").[11] Importantly, the Senator's summary did not explain that her amendment banned and criminalized camping, nor that it authorized the attorney general to bring an action against cities or counties that did not make enforcement of that ban a priority. In burying Senate Amendment No. 19 among 23 unrelated amendments and failing to provide a complete and accurate description, the sponsor practically ensured that some senators would be voting on H.B. 1606 without knowledge of the precise contours of section 67.2300.[12]

This Court has invalidated provisions of other bills whose legislative history trod a similar path. For example, in *Rizzo v. State*, 189 S.W.3d 576 (Mo. banc 2006), this Court struck down section 115.348 of H.B. 58. *Id.* at 581; *see also* H.B. 58, 93d Gen. Assemb., 1st Reg. Sess. (Mo. 2005). H.B. 58, as originally introduced, included "seven [ ] sections relating to political subdivisions." *Id.* at 578. By the time it passed, it included 165 sections. *Id.* In the last days of the Missouri legislative session, the Senate added section

[11] Audio of the statements by Senator Rehder referenced in this paragraph can be accessed at https://media.senate.mo.gov/DebateArchive/2022/042722/042722.mp3.

[12] When the bill went back to the House, Representative Don Mayhew expressed concern that someone had "figured out a loophole to circumvent the process that" has been "established [ ] from time immemorial on how laws are passed in" the Missouri General Assembly. Mo. H. Floor Debate, 101st Gen. Assemb., 2d Reg. Sess. at 3:46:25–3:46:37 (May 5, 2022 Evening Sess.) ("May 5 H. Floor Debate"). The representative then "implore[d]" the sponsor to "do what [she could] to remove" the amendments that the House had "never even . . . seen" and "let them come back through the system next year." *Id.* at 3:46:42–3:46:53. Video of the representative's statements can be viewed at https://house.mo.gov/MediaCenter.aspx?selected=VideoFeeds, by clicking "Archive Video," searching videos for May 5, 2022, and clicking the link for "2022 Legislative Session - Day Sixty-Five – Thursday, May 5 – Evening [Chamber]."

115.348 to H.B. 58 as Senate Amendment No. 13 in a series of 39 amendments made to H.B. 58. *See* S. Journal, 93d Gen. Assemb., 1st Reg. Sess. 951 (Mo. May 3, 2005); *see also id.* at 921–74. Section 115.348, this Court found, was not properly encompassed within the bill's title, and was thus invalid. *Rizzo*, 189 S.W. at 579–81.

Similarly, in *Missouri Association of Club Executives v. State*, 208 S.W.3d 885 (Mo. banc 2006), three provisions related to adult entertainment were added to H.B. 972, which addressed "alcohol-related traffic offenses." *Id.* at 888. The Court recognized that these provisions were added on the next-to-last day of the legislative session and their addition to the bill "constitute[d] a textbook example of the legislative log-rolling that" the constitutional provisions were "intended to prevent." *Id.*

Section 67.2300's inclusion in H.B. 1606 follows the same trend: Section 67.2300 was added amidst a flurry of other amendments as the legislative session was winding down. *See* May 5 H. Floor Debate at 3:47:43–3:47:51 (Representative Donna Baringer explaining, in relation to H.B. 1606, that the end of the legislative session is where senators "put things into bills that [the representatives] have not seen"). Such a tactic has a clear and demonstrated relation to violating the single-subject requirement. This Court should not sanction it.

C. There Was a Lack of Transparency in Section 67.2300's Passage

The expedited and irregular way section 67.2300 was rolled into H.B. 1606 deprived both legislators and members of the public the opportunity to understand and seriously consider what was being proposed. The single-subject requirement is meant to "facilitate orderly [legislative] procedure" and ensure that the subject of the bill can be "better grasped

and more intelligently discussed." *Hammerschmidt*, 877 S.W.2d at 101. It is also meant "to keep individual members of . . . the public fairly apprised of the subject matter of pending laws." *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 325–26 (Mo. banc 1997).

1. The lack of legislative transparency in the passage of H.B. 1606 stymied informed and orderly legislative debate on section 67.2300. As discussed above, when section 67.2300 was proposed as an amendment in the Senate, Senator Rehder summarized the amendment and no discussion followed. *See supra*, at 24–25. This was one of 23 amendments made to H.B. 1606 that day. That array of amendments does not evidence an "orderly [legislative] procedure," *Stroh*, 954 S.W.2d at 325, but rather one that was hurried and haphazard.

When H.B. 1606 was later presented to the Senate on a final reading, Senator Karla Eslinger explained that it was originally about "reporting of county financial statements" and briefly explained the amendments that had been added. May 11 S. Floor Debate at 3:53:02–4:03:20. In that process, she introduced section 67.2300 as addressing "homelessness programs." *Id.* at 3:58:48–3:59:18. And as discussed above, Senator May expressed concerns about over the "homeless piece." *Id.* at 4:03:30–4:03:50. However, at no point that day were specifics given about section 67.2300; nor were the criminalization and attorney-general enforcement provisions ever specifically mentioned. This is not the type of "focus[ed] legislative debate" that the single-subject requirement was meant to protect. *City of De Soto v. Parson*, 625 S.W.3d 412, 416 (Mo. banc 2021). Indeed, the vague references to the "homeless piece" of this legislation obfuscated the exact impacts

of section 67.2300, something that the sponsor could not have done if presenting the bill on its own.

This is in stark contrast to the House Committee on the Judiciary's discussion on H.B. 2614, during which the representatives on that committee voiced some serious concerns over the Cicero Template. For example, Representative John Black expressed concern with respect to the language of the Cicero Template and how it might be interpreted in Missouri given that the template was proposed by an out-of-state think tank. Mo. H. Judiciary Debate, 101st Gen. Assemb., 2d Reg. Sess. at 5:32:14–5:32:25, 5:48:29–5:48:36 (Mar. 23, 2022) ("Mar. 23 H. Judiciary Debate").[13] Representative Black remarked that the bill appeared to be "drafted with regard to application of another state or other states" and was "not sure how some of [the] language, particularly with regard to the funding or some of the definitions, appl[ied] to Missouri." Mar. 23 H. Judiciary Debate at 5:32:14–5:32:25. Among other things, Representative Black was worried about whether Missouri has "state funds used for the construction of permanent housing for the homelessness [sic]." *Id.* at 5:48:29–5:48:36. That concern was never addressed; the discussed language remained in the final bill. MO. REV. STAT. § 67.2300(4)(1). Yet if one representative in committee had significant concerns over how section 67.2300 was to be interpreted, surely others in the rest of the House would as well. But we never got to find

[13] Even the H.B. 2614's sponsor, Representative Bruce DeGroot, called the language of section 67.2300 imperfect. Mar. 23 H. Judiciary Debate at 5:20:45–5:20:51. Video of the referenced statements can be viewed at https://house.mo.gov/MediaCenter.aspx?selected=VideoFeeds, by clicking "Archive Video," searching videos for March 23, 2022, and clicking the link for "Judiciary [HR1]."

out, since rolling section 67.2300's into H.B. 1606 made sure that such concerns were not aired—much less addressed.

In that committee debate, other representatives expressed concerns about the substance of H.B. 2614 and the Cicero Template. Representative Rudy Veit was troubled about criminalizing camping, abrogating local control over enforcement, and kicking the can down the road on where homeless individuals may live long term (by funneling funding from permanent housing to short-term shelter). Mar. 23 H. Judiciary Debate at 5:27:58–5:28:21, 5:29:21–5:30:53. He later asked about additional funding for mental health—something omitted by the final version of section 67.2300. *Id.* at 5:45:30–5:45:40. Each of these concerns would have been the topic of more active debate on the floor but for the General Assembly rolling section 67.2300 into the omnibus H.B. 1606.

It is true that section 67.2300 was discussed on the House floor as part of that body's discussion of H.B. 1606 for approximately 18 minutes. May 12 H. Floor Debate at 3:12:10–3:30:20. Yet two important factors demonstrate why this brief conversation does not qualify as the "focus[ed] legislative debate" that the Missouri Constitution protects. *De Soto*, 625 S.W.3d at 416.

First, various representatives kept minimizing concerns over parts of section 67.2300 because it was part of a larger bill that contained other important items. The representative from Jefferson County, Representative Shane Roden, questioned why someone would vote "against the rest of [the] bill" over "a class C misdemeanor," which he likened to "not paying a library book fee." May 12 H. Floor Debate at 3:15:55–

3:17:01.[14] And, as discussed above, Representative McGaugh herself explained that "there [were] so many good things in this bill that" the House did not "want another year to go by without [ ] having got [the bill] into law." *Id.* at 3:13:06–3:13:51.

Second, Representative McGaugh herself could not speak to the specifics of section 67.2300 during that debate. For example, when Representative McGaugh was discussing the Senate's changes to H.B. 1606, she gave few specifics on section 67.2300, ambiguously calling it "a provision . . . that regarded [ ] homelessness, used in certain facilities, camping facilities, and [ ] allows the owners to be immune from liability." May 12 H. Floor Debate at 3:08:55–3:09:10. Later, when Representative McGaugh was pressed for specifics on funding and how section 67.2300 actually worked, she said that while she could "speak to the funding part," she was "not sure [she could] speak to the other" parts, remarking that section 67.2300 "was added to [her] bill" and that she was "coming in kind of fresh on" it. *Id.* at 3:25:54–3:26:00, 3:26:55–3:26:59.

Due to the disparate nature of the provisions in H.B. 1606, representatives could shut down debate on section 67.2300 both by referencing other parts of the bill and by candidly admitting that they knew nothing about section 67.2300. Had the Cicero

[14] Needless to say, library fines and class C misdemeanors are miles apart. Class C misdemeanors may result in up to 15 days in prison, MO. REV. STAT. § 558.011(1)(8), and a fine of up to $750, MO. REV. STAT. § 558.002(1)(4). Jefferson County libraries generally do not charge overdue fines until an item is 28 days past due, at which point patrons are charged a "replacement fee." Library Card Rule, Jefferson County Library (last accessed May 29, 2023), https://jeffcolibrary.org/library-card-rules. A patron's account is only suspended when their replacement fees exceed $50. *Id.* But no one sees the inside of a jail for overdue library books.

Template been presented on its own and not among unrelated matters, as the Constitution requires, such diversions would be impossible and ignorance about the bill would be inexcusable. The provision would then have received the focused attention and individual consideration guaranteed by the Missouri constitutional requirements. Thus, representatives prevented "orderly legislative procedure" and section 67.2300 from being easily "grasped and [ ] intelligently discussed." *Hammerschmidt*, 877 S.W.2d at 101.

2. On top of being opaque to legislators, H.B. 1606 was neither transparent nor accessible to the public. As discussed above, the constitutional requirements are meant to keep "the public fairly apprised of the subject matter of pending laws." *Stroh*, 954 S.W.2d at 325–26. Evidence shows that the wool was pulled over the public's eyes in the passage of H.B. 1606.

There was a notable discrepancy in public engagement with section 67.2300 when it was presented on its own, as opposed to when it was jammed into H.B. 1606. The Missouri General Assembly receives public comments (called "Witness Appearance Forms") on the bills they are considering to ensure that the public has a voice in the legislative process. For H.B. 2614, titled "relating to funding for housing programs," the public submitted 16 comments, including 2 in support, 12 in opposition, and 2 for information purposes. Witness Appearance Forms for H.B. 2614, 101st Gen. Assemb., 2d Reg. Sess. (Mo. 2022), https://house.mo.gov/billtracking/bills221/witnesses/HB2614Testimony.pdf; H.B. 2614, 101st Gen. Assemb., 2d Reg. Sess. (Mo. 2022). Many of the 12 comments in opposition to H.B. 2614 contained extensive criticisms of section

67.2300. *Id.* at 3–16. For example, Ms. Winchester, appearing on behalf of Finding Grace Ministries, expressed concern that her organization would be penalized by this bill and would be unable to help people experiencing homelessness if this bill was put into effect. *Id.* at 6.[15]

By contrast, all of H.B. 1606 received only four public comments, with three comments in support and one in opposition. Witness Appearance Forms for H.B. 1606, 101st Gen. Assemb., 2d Reg. Sess. (Mo. 2022), https://house.mo.gov/billtracking/bills221/witnesses/HB1606Testimony.pdf. The one comment in opposition did not address section 67.2300, but instead addressed the original subject of the bill: county financial statements. *Id.* at 4. After section 67.2300 was slipped into H.B. 1606, the public's engagement was non-existent. Perhaps that has to do with the fact that H.B. 1606's title generically referenced "political subdivisions" rather than clearly laying out that it was addressing homelessness.

Also indicative of a lack of public engagement is that between Apr. 27, 2022 (when section 67.2300 was added to H.B. 1606) and May 18, 2022 (when H.B. 1606 was passed by both the House and the Senate) not a single news article was written addressing section 67.2300. This left the public with very few ways to learn that the Missouri General Assembly was considering a criminal ban on camping or was otherwise considering a bill

[15] Counsel sampled approximately 100 bills introduced in the Missouri House of Representatives in the 2022 session, and the median number of witness appearance forms submitted for a bill was 3. H.B. 2614, based on that sample, appears in the top 25% of bills by number of witness appearance forms submitted.

related to homelessness. While members of the public could theoretically contact their senator or representative and ask whether a bill regarding homelessness was being considered, that presumes the public carefully tracks each legislative amendment on a wide-ranging bill. Of course, there is also no guarantee that the senator or representative would even know that section 67.2300 was tucked away in H.B. 1606—much less know section 67.2300's contents with any specificity. And without a clear title, it is similarly unlikely that the public would have found H.B. 1606 when searching for bills regarding homelessness. In fact, searching "homeless" on the Missouri General Assembly's "House and Senate Joint Bill Tracking" webpage turns up five bills from the 2022 Regular Session—none of which is H.B. 1606.[16] And searching "homelessness" only turns up H.B. 2614. In short, the public had very few—if any—reliable means to discover that the Missouri General Assembly was considering legislation regarding the homeless in H.B. 1606.

Of particular concern is that the very population that section 67.2300 impacts is one that may have the most difficulty engaging with the political system. Those experiencing homelessness generally do not have the stable living situations that allow them to register to vote. *See* Ann M. Burkhart, *The Constitutional Underpinnings of Homelessness*, 40

[16] The "House and Senate Joint Bill Tracking" webpage can be accessed at https://house.mo.gov/billcentral.aspx, or by clicking the "Track a bill" page at https://www.mo.gov/government/legislative-branch/#:~:text=The%20Missouri%20General%20Assembly%20is,governing%20the%20State%20of%20Missouri. The same results obtain if one types in "homeless" or "homelessness" into the "Bill Search" text box on https://house.mo.gov/.

HOUS. L. REV. 211, 215–16 (2003). As such, it may be difficult for those experiencing homelessness to influence their state legislators. *Id.* at 216. And it may be even more difficult for someone to find the resources to be able to look past the title of a bill and examine the many provisions therein to determine whether a law about "political subdivisions" will affect their rights as a homeless individual.

* * *

In sum, the passage of H.B. 1606 contravenes the fundamental purposes of the single-subject, clear-title, and original-purpose requirements of the Missouri Constitution. In pushing section 67.2300 through in the final days of the legislative session, the Cicero Institute and the sponsors for section 67.2300's standalone bills engaged in logrolling and legislative gameplaying, stifling legislative debate and public engagement. Given these red flags, it is no surprise that section 67.2300's inclusion in H.B. 1606 fails to meet the applicable legal test established under those constitutional provisions. This Court should therefore invalidate section 67.2300 in its entirety.

II. HAD THE MISSOURI GENERAL ASSEMBLY FULLY CONSIDERED SECTION 67.2300, IT WOULD HAVE HAD TO CONSIDER ITS SEVERE NEGATIVE IMPACTS ON HOMELESS POPULATIONS

As discussed, sneaking section 67.2300 into H.B. 1606 prevented full consideration of section 67.2300 and its deleterious impacts on the homeless population in Missouri. Had the Missouri General Assembly adhered to the Missouri Constitution, the legislature would have needed to reckon with the negative impacts this bill has on those citizens experiencing homelessness.

Unsheltered homelessness is a national crisis. The U.S. Department of Housing and Urban Development ("HUD") found that 582,462 people (or about 0.17% of the population) were experiencing homelessness nationwide as of January 2022. *See* U.S. Dep't of Hous. & Urban Dev., *The 2022 Annual Homelessness Assessment Report (AHAR) to Congress* at 11 (Dec. 2022), https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf.[17] Forty percent of these individuals were "unsheltered," meaning that the individual's "primary nighttime location is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for people (for example, the streets, vehicles, or parks)." *Id.* at 5. The numbers in Missouri, as of January 2022, were lower than the national average: approximately 5,992 people (or about 0.1% of the population) were experiencing homelessness and 26.7% of that population was unsheltered. *Id.* at 100. St. Louis and Kansas City, which did not have camping bans, had lower rates of unsheltered homelessness (approximately 10.6% and 17.3% respectively) than Springfield (approximately 41.4%), which had a camping ban. *See* SPRINGFIELD, MO., Code § 98-4; Homebase for the Mo. Hous. Dev. Comm'n, *2019 Missouri Statewide*

[17] While more than half a million Americans homeless is certainly a crisis, some researchers estimate the true number may be 2.5 to 10.2 times greater than what is typically obtained using HUD's point-in-time count. See Stephen Metraux *et al., Assessing Homeless Population Size Through the Use of Emergency and Transitional Shelter Services in 1998: Results from the Analysis of Administrative Data from Nine US Jurisdictions*, 116 PUB. HEALTH REP. 344 (2001), https://www.researchgate.net/publication/11335917_Assessing_Homeless_Population_Size_Through_the_Use_of_Emergency_and_Transitional_Shelter_Services_in_1998_Results_from_the_Analysis_of_Administrative_Data_from_Nine_US_Jurisdictions.

Homelessness Study (Oct. 2019), https://mhdc.com/media/k5xjhp5u/missouri-homelessness-study_final_111819.pdf.

Section 67.2300 is not the answer to addressing homelessness. The Cicero Institute and the bills' sponsors blamed mental health and substance abuse for causing homelessness, but ignored that the real problem is affordable housing and offered no real mental-health or substance-abuse solutions in the bill. And in the process, they tried to justify criminalizing homelessness as a method of improving outcomes for homeless individuals. But in doing so, they ignored the evidence that criminalization erodes public safety, diverts funds away from solving the homelessness crisis, and leads to the destruction of homeless individuals' limited private property. The Cicero Template is premised on a faulty understanding of the causes of and solutions to homelessness—considerations that the General Assembly was never compelled to consider as a result of the process by which section 67.2300 was enacted.

A. Homelessness Is a Structural Issue

1. Homelessness Is Caused by Unaffordable Housing

Inadequate affordable housing is the primary cause of the homelessness crisis. *See* Gary Warth, *Cause of Homelessness? It's Not Drugs or Mental Illness, Researchers Say*, L.A. TIMES (July 11, 2022) ("*Cause of Homelessness*"), https://www.latimes.com/california/story/2022-07-11/new-book-links-homelessness-city-prosperity. Research shows that the biggest predictors of homelessness in a community are rental costs and vacancy rates, not mental illness or substance abuse. *Id.* For this reason, addressing the homelessness crisis requires significant increases in investment in affordable, long-term

housing. *Id.*; Nat'l Low Income Hous. Coal., *Out of Reach: The High Cost of Housing* at 2 (2022) ("*Out of Reach*"), https://nlihc.org/sites/default/files/2022_OOR.pdf.

When minimum wage and average earnings are compared to the average cost of housing in the United States, it is abundantly clear that many people in the United States simply cannot afford a place to live. The average cost of housing in the United States far exceeds what a worker can afford working a minimum-wage job. In fact, while the federal minimum wage remains at $7.25 an hour, NLIHC found that the wage needed for a full-time worker to afford a modest one-bedroom rental in 2022 was almost *three times higher* than the minimum wage at $21.25; a modest two-bedroom rental clocked in at $25.82 (over three-and-a-half times higher). *Out of Reach* at 1.[18] These numbers mean that 40% of wage earners across the country cannot afford a modest one-bedroom rental working one full-time job, and almost 60% cannot afford a modest two-bedroom rental with one full-time job. *Id.* at 4.

Given the high cost of rent in the country, it is also no surprise that there is a lack of affordable and available units for households at or below the extremely low income ("ELI") threshold. The ELI threshold is set at either the federally established poverty guideline or at 30% of the median income for a particular area, whichever is higher. *See* Nat'l Low Income Hous. Coal., *The Gap: A Shortage of Affordable Homes* at 2 (Mar. 2018) ("*The Gap*"), https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2018.pdf. Nationwide,

[18] These numbers assume that an individual works 40 hours per week and 52 weeks per year, and spends the 30% of their income on rent. *Out of Reach* at 154.

only 35 affordable and available rental homes exist for every 100 ELI renter households. *Id.* So even when individuals look diligently for low-income housing, they often cannot find it.

To make up the difference between the price of available units and the full-time earnings of a minimum-wage worker, individuals with minimum-wage jobs can either work more hours or spend more on housing. Taking into account states with a higher minimum wage than the federal minimum wage, a minimum-wage worker must work on average *79 hours* per week to afford a one-bedroom rental, or *96 hours* per week to afford a two-bedroom rental. *Out of Reach* at 1. But permanently maintaining such hours, with no vacation, is neither realistic nor humane. So people instead spend more than they can sustainably afford on housing costs. In 2020, nearly half of renter households in the United States were cost-burdened, paying more than 30% of their incomes towards housing costs. *See* Joint Ctr. for Hous. Stud. of Harvard Univ., *The State of The Nation's Housing* at 6 (2022), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf. Half of those individuals were severely cost-burdened, meaning they spent more than half their incomes on shelter. *Id.* Cost-burdened households do not have sufficient income for other necessities or any financial cushion for destabilizing life events. See Nat'l Law Center on Homelessness & Poverty, *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities* at 30 (Dec. 2019), http://nlchp.org/w-pcontent/uploads/2019/12/housing-not-handcuffs-2019-final.pdf

("*Housing Not Handcuffs*"). Such events can therefore result in those individuals losing their homes.

While Missouri's housing scheme is somewhat more affordable than other states, it is still not sustainable for a minimum-wage worker to live in the state without working many additional hours or becoming cost-burdened by their living situation. Even with Missouri's $11.15 an hour minimum wage at the time of the report, the wage necessary for a full-time worker to afford a modest one-bedroom rental was 1.2 times higher than the state minimum wage, and about 1.5 times higher than the state minimum wage for a modest two-bedroom rental. *Out of Reach* at 154. In Kansas City, those numbers rise significantly, with a two-bedroom rental coming in at nearly 1.8 times state minimum wage. *Id.* These numbers assume that low-income individuals can find such housing. But low-income individuals in Missouri do not have access to sufficient low-income housing; though better than the national average, Missouri still has only 42 affordable and available rental homes for every 100 ELI renter households. *The Gap* at 19. As such, Missouri's cost-burdened population matches the nationwide numbers: approximately 50% of renter households in the Missouri were cost-burdened in 2018. *Housing-Cost-Burdened Households Across Missouri*, MO. CENSUS DATA CTR. (Apr. 5, 2018), https://mcdc.missouri.edu/news/housing-cost-burdened-households-across-missouri/.

All these issues are compounded by the limits on federal housing assistance, which is unequipped to meet the crisis at hand. Research has shown that housing vouchers are "highly effective at reducing homelessness, housing instability, and overcrowding, and at

improving other outcomes for families and children." Ann Oliva, *Why Expanding Housing Choice Vouchers Is Essential to Ending Homelessness, Testimony Before the House Financial Services Committee* at 7, CTR. ON BUDGET & POL'Y PRIORITIES (June 9, 2021), https://www.cbpp.org/research/housing/why-expanding-housing-choice-vouchers-is-essential-to-ending-homelessness. But current funding limitations mean that only one in four income-eligible households can receive federal housing assistance. *Out of Reach* at 2. In 2019, "2 million households used vouchers to rent housing but more than 16 million unassisted renter households" were cost burdened "or lived in substandard or overcrowded homes." Sonya Acosta & Erik Gartland, *Families Wait Years for Housing Vouchers Due to Inadequate Funding* at 1, CTR. ON BUDGET & POL'Y PRIORITIES (July 22, 2021), https://www.cbpp.org/sites/default/files/7-22-21hous.pdf. Families that receive vouchers spend, on average, almost two-and-a-half years on housing placement waitlists first; but some housing agencies have wait times of up to eight years. *Id.* Federal housing assistance, as currently funded, cannot close the gap between income and housing costs.

2. Homelessness Is Not Caused by Mental Illness or Substance Abuse

It is a common but damaging misconception that mental illness and substance abuse are the root causes of homelessness. In fact, the Cicero Institute and section 67.2300's sponsors, Representative DeGroot and Senator Rehder, all bought into that misconception. *See* PragerU, *Homelessness: The Reality and the Solution* at 3:10–3:27, YOUTUBE (Mar. 18, 2022), https://youtu.be/sfC-BsSm6Ew; Mar. 23 H. Judiciary Debate at 5:18:06–5:18:29 (statement by Representative DeGroot); Apr. 27 S. Floor Debate at 5:21:46–5:21:51

(statement by Senator Rehder). But as discussed, the key driver of homelessness is a lack of affordable housing.

Studies show that high rates of substance abuse and mental illness in an area do not correlate with high rates of homelessness in that area. In a 2019 study, researchers reviewed per capita rates of homelessness in communities around the country and compared that information with data on housing costs, drug addiction, and mental illness. *Cause of Homelessness.* The communities with higher per capita rates of homelessness had one thing in common: a lack of affordable housing. *Id.* Conversely, West Virginia and Arkansas, two of the states that have been hit hardest by the contemporaneous opioid epidemic, did not have high rates of homelessness; instead, their lowered homelessness rates were specifically attributed to their comparatively lower housing costs. *Id.* So disproportionately high substance abuse and mental illness do not correlate with a higher rate of homelessness—housing prices do. *Id.*

Studies actually show that, often, it is the other way around: homelessness causes mental illness and substance abuse. Placed in the proper light, substance abuse and mental illness are enmeshed consequences of the multifaceted trauma that individuals experience *after* becoming homeless. *See* Nat'l All. to End Homelessness, *Addressing Post-Traumatic Stress Disorder Caused by Homelessness*, https://housingmatterssc.org/wp-content/uploads/2018/11/PTSD-and-Homelessness.pdf; Guy Johnson & Chris Chamberlain, *Homelessness and Substance Abuse: Which Comes First?*, 61 AUSTRALIAN SOC. WORK 342 (2008) ("*Homelessness and Substance Abuse*"),

https://www.researchgate.net/publication/233885377_Homelessness_and_Substance_Abuse_Which_Comes_First. According to one study, nearly two-thirds of homeless individuals with substance-abuse problems developed those problems to cope with becoming homeless. *Homelessness and Substance Abuse* at 349–50. Researchers have also identified homelessness as a cause of posttraumatic stress disorder, noting that "the rates of traumatic stress are extremely high, and may even be normative, among those experiencing homelessness." Elizabeth Hopper *et al., Shelter from the Storm: Trauma-Informed Care in Homelessness Service Settings*, 3 THE OPEN HEALTH SERVS. & POL'Y J. 80, 96 (2010), https://www.homelesshub.ca/sites/default/files/cenfdthy.pdf. These studies suggest that lack of affordable housing is the root cause of homelessness; mental health and substance abuse are actually the results.

B. Section 67.2300 Is Ineffective and Harmful to Homeless Individuals and Neighboring Communities

When Representative DeGroot, H.B. 2614's sponsor, introduced the Cicero Template in its own standalone bill, he concocted a false dichotomy in arguing for the need to criminalize and punish those experiencing homelessness. He described H.B. 2614 as necessary to protect businesses from homeless people camping outside their stores and to stop violence among homeless people in these various encampments. Mar. 23 H. Judiciary Debate at 5:15:45–5:17:45. But enforcing laws that punish people because they are homeless and have no other place to go are not only ineffective at achieving those goals; they are affirmatively harmful to all. Such laws—sometimes referred to as "quality of life laws"—do nothing more than worsen the quality of life for everyone, whether homeless or

not. *See* Joshua Howard *et al.*, *At What Cost: The Minimum Cost of Criminalizing Homelessness in Seattle and Spokane*, SEATTLE UNIV. SCH. OF LAW, HOMELESS RTS. ADVOC. PROJECT (2015), https://digitalcommons.law.seattleu.edu/hrap/10; *see also Pottinger v. City of Miami*, 359 F. Supp. 3d 1177, 1180–81 (S.D. Fla. 2019) ("[B]oth sides agree that arresting the homeless is never a solution because, apart from the constitutional impediments, it is expensive, not rehabilitating, inhumane, and not the way to deal with the 'chronic' homeless."), *aff'd*, 977 F.3d 1061 (11th Cir. 2020). These laws undermine public safety, impact homeless individuals' access to justice, and waste limited public resources.

1. Section 67.2300 Criminalizes Homelessness

Section 67.2300(5) makes the "use [or] state-owned lands for unauthorized sleeping [or] camping" a class C misdemeanor, which carries with it up to 15 days in jail and a potential $750 fine. MO. REV. STAT. §§ 558.011(1)(8), 558.002(1)(4). Criminalizing camping and sleeping may appear to be criminalizing specific acts. Yet in reality, it criminalizes unsheltered homelessness, a status that many individuals cannot control.

Homeless individuals often do not have the option to sleep in a shelter. Empirical research shows that "shortcomings in the shelter system" are one of the primary explanations for the sudden increase in homelessness and, accordingly, homeless encampments. U.S. Dep't of Hous. & Urb. Dev., Off. of Pol'y & Dev. & Rsch., *Understanding Encampments of People Experiencing Homelessness and Community Responses: Emerging Evidence as of Late 2018* (Jan. 7, 2019), https://www.huduser.gov/portal/publications/Understanding-Encampments.html. This is partially because emergency shelters routinely turn people away—even when there are available shelter

beds—due to admission criteria that render them practicably inaccessible. Suzanne Skinner & Sara Rankin, *Shut Out: How Barriers Often Prevent Meaningful Access to Emergency Shelter* ("*Shut Out*"), SEATTLE UNIV. SCH. OF LAW, HOMELESS RTS. ADVOC. PROJECT (2016), https://digitalcommons.law.seattleu.edu/hrap/6/. For example, certain types of shelters have strict entry and exit times that are incompatible with people's daily routines, including work schedules, medical appointments, job interviews, and other necessary activities for those trying to get back on their feet. *Id.* Many shelters also impose restrictions which effectively require homeless individuals to be separated from their partners, family members, and pets. Ruby Aliment *et al.*, *No Pets Allowed: Discrimination, Homelessness, and Pet Ownership*, SEATTLE UNIV. SCH. OF LAW, HOMELESS RTS. ADVOC. PROJECT (2016), http://digitalcommons.law.seattleu.edu/hrap/3. These types of criteria render many shelters inaccessible for people in need—even though they technically have available space.

One admission criterion is particularly concerning with respect to section 67.2300: sobriety requirements, which shut out many of those hardest hit by homelessness. *See Shut Out* at 21–23. As discussed above, homelessness often causes mental illness and results in substance abuse. *See supra*, at 41–42. Undoubtedly, aiding homeless persons with substance-abuse issues or mental-illness concerns is a laudatory goal. But that goal does not find its way into the text of the bill. While section 67.2300 provides for "a mental health and substance use evaluation" at state-funded homeless facilities, *see* MO. REV. STAT. § 67.2300(2)(2)(b), it does not prohibit those state-funded shelters from imposing

sobriety requirements in their shelters. And although section 67.2300 *allows* funding that was previously used for permanent housing to be used for substance-abuse or mental-health treatment, *see id.* § 67.2300(4)(1), it provides no additional substance-abuse or mental-health funding nor do any of its success measurements for additional "performance payments" consider positive mental-health or substance-abuse outcomes, *see id.* § 67.2300(4)(1)(a)-(c). Section 67.2300 thus does not in fact help the most vulnerable homeless individuals, as various proponents suggest. Instead, it may prevent access to housing for such individuals.

When there is not shelter space for homeless individuals or homeless individuals are otherwise unsheltered, camping or sleeping outside are life-sustaining activities. In criminalizing those activities, section 67.2300 "criminalize[s] conduct that is an unavoidable consequence of being homeless." *Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir. 2019). Criminalizing camping is particularly vindictive, as it punishes homeless individuals for "tak[ing] even the most rudimentary precautions to protect themselves from the elements." *Id.* at 618. Thus, what might appear as a law regulating specific, limited acts is, in reality, criminalizing the very condition of being homeless.[19]

[19] As the Ninth Circuit recognized, criminalizing homelessness violates the Eighth Amendment's ban on cruel and unusual punishment. *See Martin*, 920 F.3d at 615. The Ninth Circuit reasoned that punishing a homeless individual for camping or sleeping in a public place, where there was nowhere else for the individual to go, punished them for "an involuntary act or condition" that was "the unavoidable consequence of [their] status or being." *See id.* at 616 (quoting *Jones v. City of Los Angeles*, 444 F.2d 1118, 1135 (9th Cir. 2006)). Other jurisdictions have found that similar laws violate the U.S. Constitution. *See Pottinger v. City of Miami*, 810 F. Supp. 1551, 1565 (S.D. Fla. 1992); *Johnson v. City of Dallas*, 860 F.Supp. 344, 350 (N.D. Tex. 1994), *rev'd on other grounds*, 61 F.3d 442 (5th Cir. 1995). And a recent Supreme Court decision suggests that a fine may be excessive

2. Criminalizing Homelessness Undermines Public Safety and Impedes Homeless Individuals' Access To Justice

Laws that criminalize homelessness, like the Cicero Template, undermine public safety in several ways. *First*, they contribute to a cycle of recidivism by prolonging and worsening the problem of homelessness and increasing homeless individuals' contact with the criminal justice system. *See Housing Not Handcuffs* at 65; Chris Herring *et al.*, *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness* ("*Pervasive Penalty*") at 9–10, 16, SOC'Y FOR STUDY SOC. PROBS. (2019), https://pdfs.semanticscholar.org/c84a/d5d7c016b7167f653d33ee75ba5e345fceb6.pdf; U.S. Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives To The Criminalization Of Homelessness* 1 (2012), https://www.usich.gov/tools-for-action/searching-out-solutions. Individuals leaving jails and prisons are 10 times more likely than the general population to experience homelessness. *Housing Not Handcuffs* at 65. Indeed, employers often refuse to hire individuals with criminal convictions and Missouri has made no legislative effort to provide a pathway to expungement and economic stability to the nearly two million Missourians with criminal records. *See* MO. BUDGET PROJECT, *Economic Impact Analysis of Clean Slate in Missouri* (2023), https://www.mobudget.org/economic-impact-analysis-of-clean-slate-in-missouri/. Likewise, landlords often refuse to rent to individuals with criminal histories. *Housing Not Handcuffs* at 31. For example, a nationwide study found that 79% of "returning prisoners

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under the Eighth Amendment where it is larger than an individual's "circumstances or personal estate will bear." *Timbs v. Indiana*, 139 S. Ct. 682, 688 (2019).

were denied housing or [were] deemed ineligible for it at some point upon [their] re-entry." *Id.* at 51.[20] Incarceration can also result in the suspension of social security benefits. *Id.* at 64. And regardless of the severity of the crime, criminal convictions can render people ineligible for federally subsidized housing programs. *Id.* Incarceration under section 67.2300 will therefore make it more difficult to find housing, perpetuating a vicious cycle: more homeless individuals are forced into (and ex-offenders back into) jails and prisons, leading to even more homelessness.

Second, section 67.2300's fines can impose significant criminal penalties on homeless individuals, which can contribute to the harmful cycle of homelessness. *See* MO. REV. STAT. § 558.002(1)(4) (authorizing fines of up to $750 for class C misdemeanors). For one, criminal penalties can impose significant financial hardships on people who already struggle to pay for their basic needs. And unpaid fines can also ruin a person's credit history and thus become a direct bar to housing access where credit history is a factor in tenant selection. *Housing Not Handcuffs* at 52; *see generally* Jessica Mogk *et al.*, *Court-Imposed Fines as a Feature of the Homelessness-Incarceration Nexus: A Cross-Sectional Study of the Relationship Between Legal Debt and Duration of Homelessness in Seattle,*

[20] Although HUD limits the extent to which an individual's criminal history can be a factor in denying a housing application, discriminatory practices continue. Helen R. Kanovsky, *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, U.S. DEP'T OF HOUS. AND URB. DEV. (2016), https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.

Washington, USA, 42 J. PUB. HEALTH e107 (2020), https://doi.org/10.1093/pubmed/fdz062.

Third, arresting or citing individuals for engaging in life-sustaining activities, such as camping or sleeping outside, gives rise to serious access-to-justice concerns. Such individuals are often unable to physically appear in court because of a lack of funds and a lack of transportation, and they are certainly unable to afford representation. Without a mailing address or access to computers and the Internet, it is also exceedingly difficult for unhoused individuals to find their case information, pay their fees, or discern the date and time of their scheduled court appearances. *Id.* As a result, homeless individuals are less likely to be able to fight a charge and therefore are more likely to incur heavier fines or jail time. For the thousands of unsheltered Missouri residents who are subject to criminalization under section 67.2300, the jeopardization of their already tenuous access to justice is of the utmost importance.

Fourth, so-called "quality of life" laws erode the small amount of trust that remains between homeless individuals and law enforcement officials. This erosion of trust not only increases the risk of confrontations between law enforcement and homeless individuals, but it also makes it less likely that homeless individuals—who are often the only witnesses to actual street crime—will cooperate with law enforcement. *Housing Not Handcuffs* at 66. And the mere threat of enforcement creates distrust, breeds hostility, and limits the effectiveness of police departments across the country.

Fifth, by preventing homeless individuals from engaging in life-sustaining activities, "quality of life" laws inculcate and perpetuate the notion that the lives of homeless individuals are less important than the lives of the general population. This dehumanization, in turn, makes homeless individuals more vulnerable to violence. For example, after Denver enacted an "urban camping ban," it saw a 42% increase in the number of reported crimes against homeless individuals. *Id.* at 65; Tom McGhee, *Crimes Against Homeless People Up 42 Percent in Denver and Suburban Cops Say That's Pushing Transients into Their Towns*, DENVER POST (Jan. 15, 2018), https://www.denverpost.com/2018/01/14/crimes-against-homeless-people-up-42-percent-in-denver-and-suburban-cops-say-thats-pushing-transients-into-their-towns/. Missouri's state-wide camping and sleeping ban carries the same risks.

3. Criminalizing Homelessness Serves No Legitimate Policy Goal

Enforcing "quality of life" laws that actually criminalize homelessness is a staggeringly expensive endeavor that diverts already scarce resources from efforts that provide services to homeless individuals and that reduce unsheltered homelessness. As of 2015, for example, Los Angeles spent approximately $100 million annually on homelessness. Gale Holland, *L.A. Spends $100 Million a Year on Homelessness, City Report Finds*, L.A. TIMES (Apr. 16, 2015) ("*$100 Million a Year*"), https://www.latimes.com/local/lanow/la-me-ln-homeless-cao-report-20150416-story.html; *Housing Not Handcuffs* at 71. Yet nearly $87 million of that amount went towards policing criminal and civil quality of life laws, while only $13 million went towards providing housing and services to the country's largest unsheltered population.

$100 Million a Year; *Housing Not Handcuffs* at 71. This problem is not just limited to California. Between 2010 and 2014, Denver spent over $3.23 million enforcing five of its anti-homelessness ordinances. Rachel A. Adcock *et al.*, *Too High A Price: What Criminalizing Homelessness Costs Colorado* at 27, UNIV. OF DENVER, STURM COLL. OF L.: HOMELESS ADVOC. POL'Y PROJECT (Feb. 16, 2016), https://www.law.du.edu/documents/homeless-advocacy-policy-project/2-16-16-Final-Report.pdf. Likewise, Operation Rio Grande, a large-scale homeless arrest campaign in Salt Lake City, cost taxpayers an estimated $55.3 million, nearly 80% of which was spent on law enforcement activities. Bethany Rodgers & Taylor Stevens, *Nearly 80% of the Money Budgeted for Operation Rio Grande Was Used for Policing, Jail Beds and Court Costs*, THE SALT LAKE TRIBUNE (Dec. 14, 2020), https://www.sltrib.com/news/politics/2020/12/13/nearly-money-budgeted/. Less than $10 million went towards more permanent solutions such as housing, social services, and shelter. *Id.*

Although section 67.2300 does not directly authorize clearances of homeless encampments (often referred to as "sweeps" or "clean-ups"), they are an inevitable enforcement mechanism for a law that prohibits sleeping and camping. Such sweeps are expensive. Indeed, sweeps drain millions of dollars from governments across the country each year. Los Angeles, for example, spends over $30 million per year on sweeps. *Housing Not Handcuffs* at 71. Sweeps also waste precious public resources. Because they cannot afford housing, or even access temporary emergency shelter in most instances, homeless people subject to an encampment sweep simply move to other public spaces,

inevitably leading to yet another sweep. Sweeps perpetuate a relentless cycle: cities expend resources for no long-term gain and leave many homeless persons worse off through the loss both of their personal property and of their connection to outreach workers, social service providers, and protective social networks. In fact, studies have shown that homeless people who are simply displaced from their encampments without being directed to housing are often driven into more dangerous environments and situations. *Pervasive Penalty* at 10 (noting that "[m]any of those interviewed reported experiencing violence and insecurity directly related to a camp eviction" and that multiple women "reported being sexually assaulted immediately following a police move-along order."). Far from solving the alleged violence section 67.2300 was meant to combat, *see* Mar. 23 H. Judiciary Debate at 5:15:45–5:17:45, section 67.2300 will simply perpetuate it. Section 67.2300 serves no legitimate public policy goal.

C. Section 67.2300 Will Cause the Loss of Homeless Individuals' Limited and Vital Property

Sweeps have the additional result of causing the permanent loss of an unsheltered homeless individual's personal property, often through summary destruction of that property at the moment of seizure. For many unsheltered homeless people, property loss is "the greatest threat" to their survival. Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, 84 AM. SOCIO. REV. 769, 790 (2019) ("*Complaint-Oriented Policing*"). Because homeless people have heightened risks of serious illness, hospitalization, and early morbidity compared with the general population, they are especially vulnerable to serious harm flowing from seizure and destruction of their

survival gear, such as warm clothing, blankets, tarps, and tents. Nat'l Health Care for the Homeless Council, *Homelessness & Health: What's The Connection?* (2019), https://nhchc.org/wp-content/uploads/2019/08/homelessness-and-health.pdf.

For example, without their property to protect them from rain and cold, unsheltered homeless people may suffer frostbite, the amputation of extremities, or even death from hypothermia.[21] Adding to the serious health risks flowing from property seizure is the loss of medications and even necessary medical equipment that similarly place already vulnerable people at heightened risk of needing an emergency room or hospitalization.

The loss of photo identification and legal documents to prove identity, citizenship, and military service is also devastating to homeless individuals, who may struggle to replace those documents and, consequently, be unable to vote, gain employment, or even become housed.

Avoiding the seizure and loss of essential personal property, as well as sentimental and often irreplaceable items, is a central feature of an unsheltered homeless person's life. Rather than risk seizure and destruction of their property—a risk that is heightened if property is temporarily unattended—unsheltered homeless people will avoid separating from their property, even at the expense of missing social-service appointments, employment opportunities, or medical treatment. *Complaint-Oriented Policing* at 791. "In

[21] Hypothermia can set in when temperatures are as high as 50 degrees. Wet clothing (from exposure to rain after a person's shelter has been seized, for example) can significantly intensify body heat loss and hypothermia risk. For example, despite its relatively warmer climate, Los Angeles had more hypothermia deaths in 2018 than New York City. *Housing Not Handcuffs* at 69.

these ways, the criminalization of homelessness undermined other state efforts of socialization and medicalization, as well as individuals' personal efforts to pull themselves out of homelessness." *Id.*

The constant threat of property loss is not only threatening to health, safety, and constructive efforts to end homelessness; it is also traumatizing and demeaning to unsheltered homeless people. Unsheltered individuals, like anyone else, have "a compelling ownership interest in their personal property." *Acosta v. City of Salinas*, No. 15-cv-05415, 2016 WL 1446781, at *8 (N.D. Cal. Apr. 13, 2016). Indeed, dominion over personal property is core to American identity and dignity. Nestor M. Davidson, *Property and Identity: Vulnerability and Insecurity in the Housing Crisis*, 47 HARV. C.R.-C.L. L. REV. 119, 119 (2012) ("*Property and Identity*"); *see also* Sara K. Rankin, *Civilly Criminalizing Homelessness*, 56 HARV. C.R.-C.L. L. REV. 367, 389 (2021) ("*Civilly Criminalizing Homelessness*"). "'[W]e feel and act about certain things that are ours very much as we feel and act about ourselves,' and thus 'between what a man calls me and what he simply calls mine the line is difficult to draw.'" *Property and Identity* at 119 (quoting William James, *The Principles of Psychology* 291-92 (1890)). When people lack property, or the ability to protect their property from unreasonable governmental seizure and destruction, their identity and stability are fundamentally threatened. *Id.* This stigma is reinforced through policies that punish homelessness. *Civilly Criminalizing Homelessness* at 405. Section 67.2300 threatens to strike at these foundational property rights.

CONCLUSION

Section 67.2300 was buried in the legislative process. When the Cicero Template could not make it on its own, it got rolled into H.B. 1606, an unrelated bill relating to "county financial statements." After that, section 67.2300 did not receive the full consideration of the Missouri General Assembly. And its negative impacts were concealed from the public at large. As such, it did not receive the sort of orderly debate that the Missouri Constitution mandates.

Nor was there meaningful consideration of the impacts that the section would have on those experiencing homelessness in Missouri. Had the Missouri General Assembly considered the goals and actual impacts of section 67.2300, they would have been met with overwhelming evidence that this approach to addressing homelessness does not work. Section 67.2300's sponsors focused on mental health and substance abuse as the factors causing homelessness; yet studies show it is a lack of affordable housing that leads to homelessness. The House sponsor of the standalone bill focused on violence within the homeless community and a desire to get people off the streets as a driving factor behind the bill; yet criminalizing homelessness subverts those goals. And the House sponsor hoped to give dignity to those experiencing homelessness; yet laws like section 67.2300 take dignity away from homeless individuals by depriving them of their rights over property, one of the tentpoles of American identity and dignity. Indeed, these failings may be why proposing section 67.2300 as a standalone bill drew criticism from within the legislature and from the public.

Because the inclusion of section 67.2300 in H.B. 1606 contravened the Missouri Constitution and for the foregoing reasons, this Court should reverse the Circuit Court's judgment, find section 67.2300's inclusion in H.B. 1606 improper, and sever and invalidate that provision.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the limitations contained in Mo. R. Civ. P. 84.06(b), and contains 13,521 words, not including the cover, signature block, and this certification as determined by the word-processing system used to prepare the brief.

/s/ Lee R. Camp
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CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that on this 20th day of June, 2023, the foregoing instrument was electronically filed with the Clerk of Court to be served on registered attorneys of record and relevant parties by operation of the Court's electronic filing system in accordance with Rule 103.08 and that he has signed and retained the original pursuant to Rule 55.03(a).

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