

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

CITY OF LIBERTY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 13AC-CC00505
)	
STATE OF MISSOURI,)	Div. No. 4
)	
Defendant.)	

JUDGMENT AND ORDER

On October 1, 2013, Plaintiffs, Cities of Liberty, Gladstone, Lee’s Summit, Cameron, Butler, and Independence, and taxpayer individuals Don H. Malan and Mark Gaugh, filed their Motion for Judgment on the Pleadings. Contemporaneously, Defendant State of Missouri filed its Motion to Dismiss In Part and for Judgment on the Pleadings. There are no factual issues in dispute, and the only issues as to the parties’ respective Motions are strictly legal in nature.

Because the Plaintiffs’ Motion and all pleadings establish that the Ninety-Seventh General Assembly, First Regular Session, “clearly and undoubtedly” enacted House Bills 331 and 345 in violation of the procedural requirements of the Missouri Constitution, specifically Article III, §§ 21 & 23 (Single Subject/Clear Title and Original Purpose requirements), the preliminary injunction is made permanent for the following reasons.

Standard of Review

A motion for judgment on the pleadings “should be sustained if, from the face of the pleadings, the moving party is entitled to judgment as a matter of law.” *Angelo v. City of Hazelwood*, 810 S.W.2d 706, 707 (Mo. App. 1991); *see Legends Bank v. State*, 361 S.W.3d 383 (Mo. banc 2012) (affirming judgment on the pleadings on legislation violating constitutional procedural rules).

HB 331- Single Subject/Clear Title

The Missouri Constitution requires that “No bill shall contain more than one subject which shall be clearly expressed in its title. . .” Mo. Const., Art. III § 23. This section contains what are commonly known as the “Single Subject” and the “Clear Title” rules of the Missouri Constitution. House Bill 331 violates these provisions in that its title, “An Act ... relating to telecommunications,” is underinclusive and therefore fails to encompass numerous provisions in HB 331 such as amendments to §§ 67.1830, 67.1836, 67.1838, 67.1842 (Regulation of Public Rights-of-Way as to All Utilities) and HB 331’s new §§ 389.585, 389.586, 389.587, 389.588, 389.589, 389.591 (Regulation of Railroad Crossings as to All Utilities). As such, HB 331 contains provisions that clearly exceed the scope of the single subject expressed in the title – “relating to telecommunications.” *See Rizzo v. State*, 189 S.W.3d 576 (Mo. banc 2006) (bill with title “relating to political subdivisions” violated single subject by including provisions for qualifications for candidates for all public offices therefore including provisions outside scope of the title); *National Solid Waste Mgmt. Ass’n v. Dir. of Dep’t of Natural Res.*, 964 S.W.2d 818 (Mo. banc 1998) (title “relating to solid waste management” underinclusive by including provisions pertaining to hazardous waste management in bill (emphasis added)). Specifically, the provisions of HB 331 regulate all types of public utilities and facilities. Telecommunications is only incidentally included within the multiple subjects of the bill created by such broad regulation. For example, a bill that regulates the use of rights-of-way for water, sewer, gas and other utilities cannot reasonably be said to be a bill “relating to telecommunications.” Such incidental inclusion of the topic of telecommunications in changes actually about all public utilities is not sufficient to bring these provisions within the “umbrella” cast by HB 331’s limited

title of “An Act ... relating to telecommunications.” *See Rizzo*, 189 S.W.3d at 579-80; *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 103 (Mo. banc 1994).

HB 331- Original Purpose

The Missouri Constitution prohibits any bill from being “so amended in its passage through either house as to change its original purpose.” Mo. Const., Art. III § 21. “The original purpose requirement does not prohibit subsequent additions or changes to legislation. Instead, the restriction is against the introduction of a matter that is not germane to the object of the legislation.” *Legends Bank v. State*, 361 S.W.3d 383, 386 (Mo. banc 2012). “The original purpose of a bill is established by the bill’s ‘earliest title and contents’ at the time the bill is introduced.” *Id.* (quoting *Missouri Ass'n of Club Executives v. State*, 208 S.W.3d 885, 888 (Mo. banc 2006)).

HB 331 was introduced and enacted as a bill “relating to telecommunications.” However, as introduced, it was only a seven-word change to § 392.420 RSMo., requiring waiver of specified tariff regulations as to certain Public Service Commission (PSC)-regulated local exchange telecommunication companies (certain local landline companies). HB 331 changed from this limited purpose to include all of the rights-of-way provisions and railroad crossing provisions discussed above as well new provisions set forth as §§ 67.5090, 67.5092, 67.5094, 67.5096, 67.5098, 67.5100, 67.5102, and 67.5103 regulating local zoning and control of wireless facilities. These numerous additions regulating wireless facilities and other non-telecommunications utilities are not germane to the original purpose of HB 331 of amending one section relating to specific companies subject to PSC tariff regulation. *See Missouri Ass'n of Club Executives*, 208 S.W.3d at 885 (bill that violated the Original Purpose where title and content “relating to intoxication-related traffic offenses” was amended to include provisions

relating to the adult entertainment industry). For example, Missouri statutes expressly exempt from PSC regulation wireless services described as “commercial mobile radio services” regulated in HB 331’s new §§ 67.5090 – 67.5103. *See* §§ 386.020(54)(c), 144.010(14)(c) RSMo. Such statutory exclusion renders the final provisions of HB 331 regulating Local Regulation of Wireless Facilities not germane to HB 331’s original purpose of amending the law governing specific waivers of tariffs as to services and companies actually regulated by the PSC, in violation of the Original Purpose requirement.

HB 345 - Single Subject/Clear Title

House Bill 345 similarly violates the Single Subject/Clear Title requirement in that HB 345’s title of “An Act ... relating to telecommunications” is underinclusive of HB 345’s new § 67.5104 (Non-Wireless Municipal Pole Attachments), and such provisions exceed the scope of the single subject expressed in the title. *See Rizzo*, 189 S.W.3d at 580; *National Solid Waste Mgmt. Ass’n.*, 964 S.W.2d at 821. Specifically, existing Missouri statutes establish that the video service/cable services to which the pole attachment provisions in HB 345’s new § 67.5104 apply are specifically excluded from being considered “telecommunication services.” *See* §§ 386.020(54)(f), 144.010(14)(d), and 67.2677(14) RSMo. Such statutory exclusion renders provisions of HB 345 regulating attachments by cable services/video services outside the “umbrella” cast by HB 345’s title of “An Act ... relating to telecommunications” just as HB 331 did in regulating water, sewer, and other utility services. Indeed, the express application of the law to “other communication service[s]” regulated in HB 345’s new § 67.5104 are by the plain language of the term, broader than the “relating to telecommunications” title, which must be given its meaning ascribed by statute, rather than by generic dictionary definitions that would make the titles meaningless. *See Carmack v. Director, Mo. Dept. of Ag.*, 945 S.W.2d 956 (Mo.

banc 1997)(bill “relating to economic development” could not be interpreted to refer to broad common meaning).

HB 345 – Original Purpose

Under the applicable standards, HB 345 also violates the Original Purpose requirement in that its new § 67.5104 exclusively regulates only wired communication pole attachments and is therefore not germane to the original purpose of HB 345 of promoting only wireless broadband deployment. *See* HB 345-§ 67.5104.1 (“[P]ole attachment” regulated by final version defined to expressly exclude “wireless antenna attachment or an attachment by a wireless communications provider to a pole.”). Specifically, HB 345 was introduced as a bill titled “relating to broadband and wireless deployment” and contained only provisions relating to local zoning and control of wireless facilities. Thus, HB 345 went from an introduced bill whose purpose was to regulate local zoning of only *wireless* communication structures to a final bill that regulated the leasing of public facilities only as to *non-wireless* attachments – making the two subjects not only different but mutually exclusive. Because of the final bill’s provisions that contain an express exclusion as to “wireless” facilities, it is clear HB 345 has strayed from its original purpose of promoting wireless facilities through restrictions on local zoning of wireless facilities.

Severability

When a bill is found to have been enacted in violation of the Single Subject/Clear Title or Original Purpose rules of Missouri Constitution Article III, §§ 21 or 23, the entire bill must be invalidated unless the State proves beyond a reasonable doubt that (1) any non-offending provisions of the bill would have been passed without the offending provisions of the bill, and (2) the provisions in question are not essential to the efficacy of the bill. *See Missouri*

Roundtable for Life, Inc. v. State, 396 S.W.3d 348, 353-55 (Mo. banc 2013). Having determined that HB 331 and HB 345 were both enacted in violation of Missouri Constitution Article III, §§ 21 & 23, the State has not met its burden of showing beyond a reasonable doubt that the provisions of the Bills are severable. In fact, the Court notes wholesale movements of provisions from one bill to another, the repetitive adoption of certain sections in each bill, the interrelation between the two bills whereby HB 345 repealed not an existing statute, but instead provisions of HB 331, eleventh hour amendments and additions without public hearings, and the interplay between provisions where one set of provisions used terms defined in another set of provisions. All of these facts provide this Court reasonable doubt that (1) any non-offending provisions of HB 331 or HB 345 would have been passed without the offending provisions of the respective bills, and (2) the provisions in question are not essential to the efficacy of either HB 331 or HB 345. Furthermore, the multiple *substantive* constitutional deficiencies of both bills articulated in the Plaintiff's Verified Petition provide this Court reasonable doubt that either of the bills "would have become law—and would remain law—even absent the procedural violation." *Missouri Roundtable for Life, Inc.*, 396 S.W.3d at 353-54.

Because this Court finds HB 331 and 345 to be unconstitutionally enacted and invalid in their entirety, the remaining constitutional procedural or substantive arguments for finding invalidity need not be reached.

Conclusion

For the foregoing reasons, this Court ORDERS, ADJUDGES, AND DECREES as follows:

1. Plaintiffs' Motion for Judgment on the Pleadings is GRANTED.

2. House Bill 331 (2013) is hereby determined and decreed to be invalid, unenforceable, and unconstitutional and of no force and effect in its entirety.

3. House Bill 345 (2013) is hereby determined and decreed to be invalid, unenforceable, and unconstitutional and of no force and effect in its entirety.

4. The Order of Preliminary Injunction entered on August 27, 2013 is hereby MADE PERMANENT. The injunction bond entered on such Order is hereby released to Plaintiffs.

5. Defendant's Motion for Judgment on the Pleadings on Plaintiffs' procedural claims under the Missouri Constitution is DENIED.

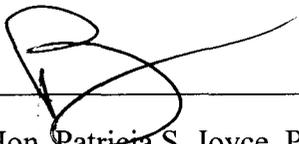
6. Defendant's Motion to Dismiss In Part on Plaintiffs' substantive claims under the Missouri Constitution is DENIED AS MOOT.

7. This Court need not consider Plaintiffs' assertions of other constitutional bases for the relief granted. They are moot and therefore DISMISSED without prejudice.

8. All other motions pending before this Court are DENIED.

9. Costs are awarded to Plaintiffs.

SO ORDERED THIS 11th DAY OF Oct, 2013.



Hon. Patricia S. Joyce, Presiding Judge
Division IV, Cole County Circuit Court