

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

JAMES TROUT, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 07AC-CC00002  
 )  
 STATE OF MISSOURI, )  
 MISSOURI ETHICS COMMISSION )  
 AND ITS COMMISSIONERS: )  
 WARREN I. NIEBURG, )  
 MICHAEL E. DUNARD, )  
 ROBERT L. SIMPSON, )  
 BRAD MITCHELL, )  
 JOHN KING, and MICHAEL KILGORE, )  
 IN THEIR OFFICIAL CAPACITY, )  
 )  
 Defendants. )

**JUDGMENT**

Now on this 28<sup>th</sup> day of March, 2007, the Court again takes up this matter for final decision and issuance of a judgment. For reasons hereinafter explained, on Count I Plaintiff's clear-title challenge is denied and Plaintiff's change-in-original purpose and multiple-subject challenges are sustained as to §§115.342 and 115.350; As to Count II Plaintiff's 1<sup>st</sup> amendment challenge to §1130.032.2 is sustained; as to Count III Plaintiff's challenge is denied.

This case was submitted on stipulated facts and exhibits. Accordingly, the court makes the following findings of fact, conclusion of law and orders.

**Findings of Fact**

1. Plaintiff James Trout is a resident and taxpayer of Missouri. Trout was a candidate for the General Assembly in 2006 and intends to be a candidate again in 2008. Plaintiff Trout contributes to political candidates. He desires and intends to contribute to political candidates,

including spending his own money in support of his candidacy, in January, February, March or April of 2007 including candidates for statewide office.

2. Trout did not assert, or offer any evidence, that he was delinquent on any tax obligation to the State of Missouri or on any real property tax, nor that he would become delinquent at any time relevant to the instant case.

3. Defendant State of Missouri, through Defendants and other officers has enacted and, absent an injunction, intends to comply with the provisions of law at issue in this case.

4. Defendant Missouri Ethics Commission is charged with enforcing Missouri laws related to campaign finance, ethics and lobbying and is located in Cole County, Missouri.

5. Defendant Missouri Ethics Commission operates at the direction of Defendant Commissioners, Warren E. Nieburg, Michael E. Dunard, Robert L. Simpson, Brad Mitchell, John King and Michael S. Kilgore (“Commissioners”).

6. House Bill 1900 (HB 1900) was introduced by Representative Tom Dempsey and read the first time on February 28, 2006. A true and accurate certified copy of the bill is in evidence as Exhibit 1.

7. On April 18, 2006, the Missouri House of Representatives took up and adopted, or perfected, HCS HB 1900. A true and accurate certified copy of the perfected, House adopted, version of HCS HB 1900 is in evidence as Exhibit 2.

8. The Senate took up HCS HB 1900 on May 10, 2006 and a Senate Substitute (“SS HCS HB 1900”) was offered. A true and accurate certified copy of the Senate Substitute as amended is in evidence as Exhibit 3. The Senate Journal reflecting the amendments to and adoption

of SS HCS HB 1900, was exhibit D to the Petition and was admitted into evidence without objection.

9. Once SS HCS HB 1900 was adopted, the House refused to and the two Houses agreed to a conference on the bill. A conference committee report, CCS SS HCS HB 1900, was truly agreed to and finally passed by the General Assembly on May 11, 2006. Governor Matt Blunt signed CCS SS HCS HB 1900 on July 12, 2006. A copy of the final version of the bill as passed by the General Assembly and signed into law by the Governor is in evidence as Exhibit 4.

### **Conclusions of Law**

Mr. Trout challenges the validity of HB 1900 as a whole, and two individual portions thereof. Count I is a procedural challenge to HB1900, under MO. CONST. art. III, §§ 21 and 23, involving claims of change in original purpose; lack of clear title; and multiple subjects. Count II is a free speech and equal protection challenge to the contribution black-out during session, §130.032.2. And Count III is an equal protection and constitutional qualification challenge to the delinquent-taxpayer prohibition, §115.342. As the challenger, Mr. Trout bears the extremely heavy burden of overcoming the presumptive constitutionality of the bill and its individual provisions.

#### ***Count I***

##### **A. clear title**

1. The “use of ... procedural limitations to attack the constitutionality of statutes is not favored.” *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 326 (Mo. banc 1997). This court must interpret “procedural limitations liberally and ... uphold the constitutionality of a statute against such an attack unless the act clearly and undoubtedly violates the constitutional limitation.” *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994).

2. The title of HB1900, as enacted, was:

An Act to repeal sections 105.470, 104.473, 105.485, 105.957, 105.959, 105.963, 130.011, 130.016, 130.032, 130.046, 130.050, and 130.054, RSMo, and to enact in lieu thereof sixteen new sections relating to ethics, with an effective date.

3. The clear-title mandate is intended to keep “legislators and the public fairly apprised of the subject matter of pending laws.” *Home Builders Ass’n v. State*, 75 S.W.3d 267, 269-270, 271 (Mo. banc 2002). But to accomplish its purpose, a title need only “indicate in a general way the kind of legislation...being enacted.” *Fust v. Attorney General*, 947 S.W.2d 424, 429 (Mo. banc 1997). Thus, a “broad, umbrella category that includes all topics within its cover” is permissible, *Missouri State Medial Ass’n v. Missouri Dept. of Health*, 39 S.W.3d 837, 841 (Mo. banc 2001), and a title need not describe every detail in a bill, *Fust*, 947 S.W.2d at 429.

4. The words in a title are construed in their plain and ordinary sense. *Home Builders*, 75 S.W.3d at 270. If “alternative readings exist, [a] court chooses the reading that is constitutional.” *Id.*

5. The Supreme Court has upheld, against clear-title challenges, titles such as: relating to “certain merchandising practices,” *Brown-Forman Distillers Corp. v. McHenry*, 566 S.W.2d 194, 198 (Mo. banc 1978); “relating to health services,” *Missouri State Medical Ass’n*, 39 S.W.3d at 841; “relating to environmental control,” *Corvera Abatement Tech. v. Air Conservation Comm’n*, 973 S.W.2d 851, 861-62 (Mo. banc 1998); “relating to transportation,” *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 329-330 (Mo. banc 2000); and relating to “general not for profit corporations, and reinstatement of other corporations,” *St. John’s Mercy Health Care v. Neill*, 95 S.W.3d 103, 106 (Mo. banc 2003).

6. The Supreme Court has sustained a clear-title challenge to the title “relating to certain incorporated and non-incorporated entities,” reasoning that the title was over-inclusive and amorphous – the title could “refer to anything.” *St. Louis Health Care Network v. State*, 968 S.W.2d 145, 147 (Mo. banc 1998). The Court also sustained a clear-title challenge to the title “relating to property ownership,” because the phrase “property ownership” would have to be construed so broadly as to actually obscure the content of the act. *Home Builders*, 75 S.W.3d at 271-72.

7. In its plain or ordinary sense the term “ethics” might be impermissibly broad were it not for the fact that Missouri has an Ethics Commission which generally regulates matters contained in Chapter 105 and 130. Viewed in that context however, the descriptive portion of H.B. 1900’s title – “relating to ethics” – is a permissibly broad umbrella category, that indicates in a general way the kind of legislation that was being enacted, and is no more broad than “certain merchandising practices,” “relating to health services,” “relating to environmental control,” “relating to transportation,” and “general not for profit corporations, and reinstatement of other corporations.” This title addresses matters associated with and regulated by the Missouri Ethics Commission. The title does not describe virtually all legislation passed by the General Assembly, nor include nearly every activity that the State undertakes, and is therefore unlike the titles “relating to certain incorporated and non-incorporated entities,” and “relating to property ownership,” that have been rejected for clear-title violations.

8. In addition, the Court finds that the title’s explicit reference to the statutes being repealed, all in Chapter 105 (“Public Officers and Employees – Miscellaneous Provisions,” and including the sections relating to conflict of interest and lobbying, and the Ethics Commission) and Chapter 130 (“Campaign Finance Disclosure Law”) of the Missouri Revised Statutes, and recitation

that new sections were being enacted in lieu thereof, further bolsters the clarity of the bill's title and intent to address matters regulated by the Ethics Commission.

9. HB1900's title was sufficient to keep legislators and the public fairly apprised of the subject matter of the bill. The Court finds that HB1900 had a clear title for purposes of the plaintiff's challenge under MO. CONST. art. III, §23.

#### B. original purpose

10. Article III, §21 of the Missouri Constitution prohibits a bill from being "so amended in its passage through either house as to change its original purpose." The section does not restrict legislators from making "[a]lterations that bring about an extension or limitation of the scope of [a] bill ... even new matter." *Stroh*, 954 S.W.2d at 326. Thus, "original purpose" means a bill's *general purpose*, and not "the mere details through which and by which that purpose is manifested and effectuated." *State ex rel. McCaffery v. Mason*, 55 S.W. 636, 640 (Mo. 1900). A bill's original purpose is not limited to what was stated in its original title – a title can be changed without running afoul of Article III, §21. *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 38 (Mo. banc 1982).

11. Despite the title of campaign finance, the original purpose of HB1900, as measured by its title **and contents**, purported to address subjects regulated by the Missouri Ethics Commission. As enacted, the bill retained its original purpose, but also gained another – adding candidate-disqualification provisions to Chapter 115, i.e., §115.342 (persons who are delinquent on taxes) and §115.350 (felons) – matters which are overseen by election authorities and the Secretary of State, not the Ethics Commission.

12. HB1900, as enacted, suffered a change in purpose, in violation of Article III, §21.

13. The Chapter 115 provisions are presumed severable. MO. REV. STAT. §1.140 (2000). *C.f., Allied Mutual Ins. Co. v. Bell*, 185 S.W.2d 4, 8 (Mo. 1945) (noting that only non-germane section of bill should be struck for original-purpose violation). The “remaining provisions of the [bill] are valid unless the court finds the valid provisions ... are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.” § 1.140. The Chapter 115 provisions are not essentially and inseparably connected with, or otherwise dependent upon, the remaining, valid provisions of the bill. And the valid provisions can be executed without the Chapter 115 provisions relating to qualifications for seeking elective office. Thus, the Court finds that the plaintiff has not overcome the presumption, and therefore severs the Chapter 115 sections, in light of the original-purpose violation.

### C. single subject

14. To determine whether a bill violates the single-subject requirement of Article III, §23, the test is “not whether individual provisions of a bill relate to each other ... [but] whether [the challenged provision] fairly relates to the subject described in the title of the bill, has a natural connection to the subject, or is a means to accomplish the law’s purpose.” *City of St. Charles v. State*, 165 S.W.3d 149, 151 (Mo. banc 2005). For purposes of Article III, section 23, then, the subject “includes all matters that fall within or reasonably relate to the general core purpose of the ...legislation.” *Id.*, quoting *Hammerschmidt*, 877 S.W.2d at 102. “Whether a bill violates the single-subject requirement is a determination made as to the bill as finally passed.” *Stroh*, 954 S.W.2d at 327.

15. The Court finds that HB1900, as enacted, contained a second subject, specifically, the candidate disqualification provisions under Chapter 115, i.e., §115.342 (persons who are delinquent on taxes) and §115.350 (felons). The general, core purpose of HB1900 was matters under the jurisdiction of the Missouri Ethics Commission: conduct of lobbyists, officials, and candidates, by affecting financial disclosures, campaign contributions, and audits performed by the Ethics Commission. The Chapter 115 provisions lie outside that general, core purpose.

16. Again, the Chapter 115 provisions are presumed severable. §1.140. *C.f.*, *Rizzo v. State*, 189 S.W.3d 576, 581 (Mo. banc 2006)(where bill has a single, core subject, only portions of bill containing additional subjects should be struck for single-subject violation). The Court finds that the plaintiff has not overcome the presumption, and therefore severs the provisions in light of the single-subject violation.

### ***Count II***

17. The plaintiff claims that §130.032.2, prohibiting candidates for statewide office, state representative, or state senator from accepting contributions during the legislative session, is a violation of his First Amendment rights under the federal constitution and the corresponding provision under the state constitution. He asserts the federal claim via 42 U.S.C. §1983.

18. Just over a decade ago, a prior General Assembly passed a substantially identical version of the challenged statute, and a federal court declared it unconstitutional as a matter of federal law. *Shrink Missouri Gov't PAC v. Maupin*, 922 F.Supp. 1413 (E.D. Mo. 1996)(Limbaugh, J.).

19. In enacting HB1900, the General Assembly did not address the deficiencies identified by the federal court in *Maupin*, but enacted a contribution ban that is in all substantive respects identical to that prior law.

20. Due to the broad definition of “contribution” located elsewhere in existing Missouri law, i.e., §130.011(12), candidates are prohibited by new §130.032.2 from spending their own money, in support of their own campaigns, during session.

21. The Court is aware of only one temporal ban that has been upheld elsewhere in the country, and that ban was more narrow than the ban challenged here. *See North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705 (4<sup>th</sup> Cir. 1999)(upholding ban on lobbyist contributions during session). Elsewhere, temporal bans have been held unconstitutional. *Ark. Right to Life Political Action Committee v. Butler*, 29 F. Supp. 2d 540, 551 (W.D. Ark. 1998)(Ark. Code. Ann. §7-6-203(g) – statute prohibited incumbent legislators and statewide officeholders from accepting contributions 30 days before session, during session, or 30 days after session, and prohibited the “promise” of a contribution during that time); *Emison v. Catalano*, 951 F. Supp. 714, 723 (E.D. Tenn. 1996)(Tenn. Code Ann. §2-10-31(a) – statute prohibited candidate for general assembly or governor from accepting or soliciting contributions during session, and prohibited multi-candidate political campaign committees not controlled by a political party or caucus from contributing in the last 10 days of a campaign); and *State of Fla. v. Dodd*, 561 So.2d 263, 264-265 (Fla. 1990)(Fla. Stat. §106.08(.8) – statute prohibited candidate for legislative or statewide office from accepting or soliciting contribution during session).

22. The Court finds that HB1900 is overly broad and not sufficiently tailored to addressing the State’s interest in regulating the appearance of impropriety, and therefore violates the

plaintiff's First Amendment rights under the federal constitution and the corresponding provision of the state constitution. The Court finds for the plaintiff on Count II.

### *Count III*

23. In Count III, the plaintiff claims that the delinquent-taxpayer prohibition, §115.342, violates equal protection guarantees under the state and federal constitutions, and violates the candidate qualification provisions of the state constitution.

24. The parties agree that Mr. Trout is a resident and taxpayer of Missouri, and that he was a candidate for the General Assembly in 2006 and intends to be one again in 2008. For purposes of HB1900's delinquent-taxpayer prohibition, §115.342, Mr. Trout does not claim to be delinquent on any of the specified taxes, nor that he will become delinquent at any time relevant to the instant case, nor even that he wishes to support some other person whose candidacy will be affected by §115.342.

25. A party has standing to bring a claim when the party demonstrates a personal interest at stake in the dispute. *Moynihan v. Gunn*, 204 S.W.3d 230, 233 (Mo. App. E.D. 2006), *citing Ste. Genevieve School District R-II v. Board of Alderman*, 66 S.W.3d 6, 10 (Mo. banc 2002). The party does so by showing "a threatened or actual injury resulting from the challenged action." *Moynihan*, 204 S.W.3d at 233-234, *citing Bender v. Forrest Park Forever, Inc.*, 142 S.W.3d 772, 773 (Mo. App. E.D. 2004). The same is true with respect to an equal protection claim asserted via 42 U.S.C. §1983: A challenger "generally must assert his own legal rights and interests and cannot base a claim for relief on the legal rights of third parties." *Bannum, Inc. v. City of St. Louis*, 195 S.W.3d 541, 545 (Mo. App. E.D. 2006), *citing Warth v. Seldin*, 422 U.S. 490 (1975).

26. The Court is also mindful that it must "avoid [deciding] a constitutional question if

[a] case can be fully determined without reaching it.” *State ex rel. Union Electric Co. v. Public Service Comm’n*, 687 S.W.2d 162, 165 (Mo. banc 1985).

27. At most, Mr. Trout bases his claim for relief on the legal rights of unspecified, and perhaps non-existent, third parties. This he cannot do.

IN VIEW OF THE FOREGOING, the Court orders as follows:

- As to Count I, the Court rejects the plaintiff’s clear-title challenge under Mo. Const. art. III, §23. But the Court declares that §115.342 and §115.350 of HB1900 violate the multiple-subject and change-in-original purpose prohibitions of Mo. Const. art. III, §21 and §23, and enjoins the enforcement of those sections.

- As to Count II, the Court declares that §130.032.2, the ban on contributions during the legislative session, violates the plaintiff’s First Amendment rights under the federal constitution and the corresponding provision under the state constitution, and enjoins the enforcement of that section.

- And the Court rejects Count III, because the plaintiff lacks standing.

- Finally, because the plaintiff has prevailed under Count II on his 42 U.S.C. §1983 claim, the Court finds that the plaintiff may recover appropriate attorney fees therefor under 42 U.S.C. §1988. But the Court reserves jurisdiction to make such an award at a later date. As to all other claims, the Court has rendered final judgment, and expressly finds and certifies that there is no just reason for delay, for purposes of Mo. Sup. Ct. Rule 74.01.

SO ORDERED this 28<sup>th</sup> day of March, 2007.

Richard G. Callahan  
Circuit Court Judge, Division II