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WEEKLY

Court doesn't get to *Hammerschmidt*

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Hammerschmidt is safe ... for now.

Last week's ruling by the Missouri Supreme Court on the state's ethics law had been touted as a legal referendum on the seminal 1994 case *Hammerschmidt v. Boone County*, which established that a law can be thrown out if the bill that passed it violates the Missouri Constitution's requirement that bills have a single subject.

At oral arguments last August, the attorney general's general counsel, Ron Holliger, argued that the "single subject" argument has, over the years, turned into a "judicial veto" over legislation. He urged the court to re-examine the case and the cases that follow it, arguing that the court ought to look at the title of the final version of the bill and retain the language that fits it.

The high court, however, did nothing of the sort. The majority ruling, written by Chief Justice Richard Teitelman, makes only passing references to *Hammerschmidt*. In fact, the ruling disposed of the case based on a clause in the Missouri Constitution that prohibits a bill from being amended "to change its original purpose" — a provision that was not the focus of *Hammerschmidt*.

(For that matter, "original purpose" wasn't the focus of the trial judge's earlier ruling in the case. Cole County Circuit Judge Daniel R. Green had said the ethics law violated the single subject provision, but the Supreme Court noted that it could affirm his ruling "on any grounds support-

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Chuck Hatfield, attorney for the plaintiffs

ed by the law and evidence.”)

The Attorney General's Office declined to comment on the ruling. Chuck Hatfield, an attorney for the plaintiffs in the case, said it made sense for the court to rule on narrow grounds.

"I think the court was pretty wise to not open a can of worms they don't need to open," he said.

Hammerschmidt also had been attacked, less pointedly, by the plaintiffs in the case. The 1994 case had allowed judges to "sever" the unconstitutional portions of bills while allowing other portions to go into effect.

In this case, that meant the ethics law, which had been tacked on to a bill that originally dealt only with contracts for government purchasing. The court threw out the ethics measures but kept the purchasing laws. Hatfield had argued that the entire bill was unconstitutional, so all the provisions should be thrown out.

Hatfield won support from Judge Zel Fischer, who wrote a concurrence urging the court to do away with severability be-

cause it encourages lawmakers to tack on extraneous provisions, knowing that the underlying bill still will go into effect if it is challenged in court.

Saving pieces of legislation that were improperly enacted only encourages legislators to violate the original purpose, single subject or clear title provisions of the state constitution, he asserted.

"If our circuit courts or this Court are willing to continue to employ the severance doctrine to save legislation enacted in violation of our state Constitution, then individual legislators responding to special interest groups or their own self interest (for example, in this case for a set of keys to the [Capitol] dome) will have no incentive to follow the clear and express procedural mandates of the Missouri Constitution," Fischer wrote.

He also asserted the doctrine of severance violates the separation of powers.

"In essence, severance, which presumably legislators favor because it allows a portion of their legislation to survive, amounts to judges being allowed to draft legislation, which presumably legislators do not favor," he wrote.

Fischer has made a similar argument in several other cases, yet he has not persuaded any of his colleagues to join him. The majority of the court appears to be content to let some portions of unconstitutionally passed laws stay and others go.

"I think that debate's over," Hatfield said. "Judge Fischer and I lost that argument."

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