

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

MISSOURI ROUNDTABLE FOR)	
LIFE, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No. 08AC-CC00517
SARAH STEELMAN, <i>et al.</i>)	
)	
Defendants.)	

Final Judgment and Order

Now on this 15th day of January, 2008, the Court again takes up this matter for the purpose of entering its final Order and Judgment.

The Plaintiffs in this case seek a declaratory judgment that because of the voters' approval in 2006 of § 38(d) of Article III to the Missouri Constitution, the Life Sciences Research Board and the Life Sciences Research Trust Fund are no longer constitutional, and therefore, that the life sciences research appropriation contained in § 7.020 of House Bill 2007 is void. For the reasons hereinafter stated, the Court finds in favor of Defendants and against Plaintiffs.

Background

Plaintiffs, a Missouri taxpayer and an entity representing Missouri taxpayers, filed a petition under the Declaratory Judgment Act, suing the State Treasurer, the Office of Administration and its Commissioner, the Department of Economic Development and its Director, the Life Sciences Research Trust Fund, the Life Sciences Research Board (LSRB), the Missouri Technology Corporation (MTC) and its executive director Robert

Monsees. Plaintiffs' original petition requested that the Court issue several declarations regarding restrictions on life sciences research funding contained within HB 2007 and restrictions within § 196.1127, RSMo., Supp. 2007. On November 12, 2008, the Court dismissed Plaintiffs' original petition because of the failure to plead a justiciable controversy. However, on December 8, 2008, the Court granted Plaintiffs leave to file an amended petition. It is the amended petition that is the subject of Defendants' current motion for judgment on the pleadings.

Plaintiffs' amended petition requests that the Court issue a declaratory judgment that:

(1) Article III, § 38(d) of the Missouri Constitution renders the [HB 2007] appropriation of \$21 million to the LSRTF 'void, invalid, and unenforceable[.]' by virtue of RSMo § 196.1127.6; or

(2) Article III, § 38(d) of the Missouri Constitution nullifies the entire LSRTF statute, i.e., HB 688 from the 92nd General Assembly (2003), codified at RSMo. §§ 196.1000 to 196.1130, and thus the Life Sciences Research Trust Fund and LSRB, rendering any action of the LSRB, since the passage of Amendment 2, null and void *ab initio*.

Am. Pet., p. 12.

Analysis

A motion for judgment on the pleadings should be granted when the facts pled and the reasonable inferences from those facts demonstrate that the plaintiffs cannot prevail under any legal theory or when the facts pled and assumed to be true are insufficient as a

matter of law. *Joseph v. Marriott Int'l. Inc.*, 967 S.W.2d 624, 627 (Mo. App. W.D. 1998).

Plaintiffs' arguments begin with an affidavit by Dr. Frederic G. Sauer to the effect that § 196.1127 prohibits public funding from being used for certain stem cell related activities that would be permissible under Article III, § 38(d). For purposes of deciding Defendants' motion, the Court assumes the truth of Dr. Sauer's averments regarding the type of conduct allowed by Article III, § 38(d) and the type of conduct disqualified for public funding under § 196.1127. Plaintiffs claim that because § 196.1127 prohibits public funding of certain stem cell research that is allowed by Article III, § 38(d), § 196.1127 runs afoul of Article III, § 38(d)(7). Article III, § 38(d)(7) provides that:

No state or local law, regulation, rule, charter, ordinance, or other governmental action shall (i) prevent, restrict, obstruct, or discourage any stem cell research or stem cell therapies and cures that are permitted by this section to be conducted or provided, or (ii) create disincentives for any person to engage in or otherwise associate with such research therapies and cures.

Plaintiffs then reason that if Article III, § 38(d) renders § 196.1127 invalid, one of two consequences results: Either

- (1) The \$21 million appropriation in HB 2007 is rendered invalid, or
- (2) House Bill 688 (2003) relating to the Life Sciences Research Trust Fund and the Life Sciences Research Board is invalidated and the legal entities created by the Bill are legal nullities.

A. \$21 Million Dollar Appropriation in House Bill 2007 (2008).

Under the Missouri Constitution's Article IV, § 23, a provision that has been in place since 1875, "[e]very appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law to fix the amount or purpose." In other words, when the legislature makes an appropriation, it must specify in that appropriation bill what the appropriated money may be used for. Here, that means that the limitations on the purpose for which the HB 2007 funds may be used must be stated within the four corners of the appropriations bill, and cannot referentially incorporate the limitations in § 196.1127.

HB 2007 passes muster under Article IV § 23 because it specifies the amount of money it appropriates to the Life Sciences Research Board, and it specifies within its four corners the purposes for which the money may be used – namely, that the funds (other than those allowed for administrative expenses) “shall be used exclusively on animal science, plant science, medical devices, biomaterials and composite research, diagnostics, nanotechnology related to drug development and delivery, clinical imaging, and information technology related to human health.” *Cf. State ex rel. Danforth v. Merrell*, 530 S.W.2d 209, 213 (Mo. banc 1975) (appropriations bill complied with Article IV, § 23's requirements when it designated separate amounts of money for separate general purposes and included subpurposes with specified amounts for those subpurposes).

These funding limitations stated in HB 2007 are effective and binding. They do not contravene Article III, § 38(d), because Article III, § 38(d) does not prevent the legislature from deciding how to prioritize the use of scarce governmental funding.

Article III, § 38(d)'s only funding restriction appears in Article III, § 38(d)(5), which says nothing about requiring the legislature to fund any stem cell activities. Article III, § 38(d)(5) prohibits the legislature from eliminating, reducing, denying, or withholding from a person who is lawfully engaged in stem cell related activities *funds that the person would otherwise be entitled to receive for non stem cell activities*, for the purpose of creating disincentives for that person to engage in the lawful stem cell activities or from being associated with someone who engaged in lawful stem cell activities. In other words, Article III, § 38(d)(5) might prohibit the legislature from withholding, for example, Medicaid reimbursements to university hospitals that were associated with researchers doing lawful stem cell research as an attempt to prevent the hospitals from associating with those researchers or to prevent the researchers from conducting their research. As intriguing as that issue may be however, it is not present in this lawsuit.

Because HB 2007's appropriation purposes and limitations do not contradict or include by reference the limitations in § 196.1127, HB 2007 is not an "appropriation subject to" § 196.1127 within the meaning of § 196.1127's severability provision. And so, by its terms, the severability provision in § 196.1127.6 would not invalidate the appropriation even if § 196.1127 were to be declared unconstitutional.

B. Legal Viability of the Life Sciences Research Trust Fund and the Life Sciences Research Board.

Plaintiffs' second argument regarding the consequence of an unconstitutional § 196.1127 is a general nonseverability argument.¹ They claim that the General Assembly would not have passed HB 688 creating the Life Sciences Research Trust Fund and the Life Sciences Research Board if the prohibitions in § 196.1127 were not included. And so, they say argue that if § 196.1127 is unconstitutional, the entire Bill must be struck, relying on *City of Springfield v. Sprint Spectrum, L.P.*, 203 S.W.3d 177, 187-88 (Mo. banc 2006).

§ 1.140, RSMo., provides that all statutes are presumed to be severable, and courts are directed to uphold any constitutional portion of a statute “unless the court finds the valid provisions in the statute 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 legislative intent.” § 1.140, RSMo.

In *City of Springfield*, the legislature had passed a “Municipal Telecommunications Business License Tax Simplification Act,” codified at § 92.074 to § 92.095, RSMo Supp. 2005. The plaintiffs in the case challenged one provision – § 92.086.10 – as invalid as a special law, and the Missouri Supreme Court agreed that that provision was invalid. When it came to the question of whether only § 92.086.10 or a broader range of sections should be struck down, the Court looked to an express

¹ While not addressed by the parties, this is a case of first impression in that the perceived unconstitutionality is not the result of the law as it existed at the time of the legislative passage but rather the result of a constitutional amendment passed years after the law's effective date.

nonseverability provision contained in § 92.092. In that provision, the General Assembly stated that if “any provision or part of sections 92.074 to 92.089 [were held] unconstitutional or unenforceable then sections 92.074 to 92.089, in their collective entirety, [would be] invalid and shall have no legal effect as of the date of [the court’s] judgment.” The Court concluded that this express nonseverability provision overcame § 1.140’s presumption of severability, and the Court therefore ordered that § 92.074 through § 92.089 had to be struck down along with § 92.086.10. *Id.* at 187-88.

Here, unlike the Municipal Telecommunications Business License Tax Simplification Act, HB 688 does not contain an express nonseverability provision providing that if § 196.1127 is held unconstitutional, then § 196.1100 through § 196.1130 also must be deemed invalid; the only nonseverability provision in HB 688 appears in § 196.1127.6. That provision would invalidate only “any appropriation subject to [§ 196.1127] or any appropriation declared by any court to be subject to this section” – not the entire Bill – if a part of § 196.1127 is deemed invalid.

This case is more similar to *Akin v. Director of Revenue*, 934 S.W.2d 295 (Mo. banc 1996), than it is to *City of Springfield*. In *Akin*, the Missouri Supreme Court had before it Senate Bill 380 (SB380), passed in 1993. SB 380 was divided into four sections. Section A contained various sections pertaining to education, the school foundation formula, and corporate tax rates and income tax deductions. Section B provided for changes to the corporate tax rate and income tax deduction provisions in Section A if, as provided for in and Sections C and D, a referendum contingent on the outcome of a pending lawsuit took place. *Akin*, 934 S.W.2d at 297. The Missouri

Supreme Court determined that the contingent referendum provisions in Sections B, C, and D were unconstitutional.

But the Court did not strike down any of the provisions in Section A, concluding that they were severable from the void provisions in Sections B, C, and D. In reaching this conclusion, the Court discussed § 1.140's presumption in favor of severability. *Id.* at 300, 301. It also observed that "Section A "was complete and capable of enforcement without reference to sections B, C and D." *Akin*, 934 SW.2d at 301. The Court also observed that "the legislature was undoubtedly aware of the constitutional problems lurking in the contingent referendum provisions" of Sections B, C, and D, yet nonetheless enacted the bill. This, the Court concluded, as well as the fact that Section A was in a separate section from Sections B, C, and D, favored upholding Section A, despite the fact that Sections A through D were enacted as part of the same bill:

Arguably, there are those legislators who may have voted against adopting SB 380 had it not been for the provisions found in B, C and D. In addition, there is an interplay between section A and sections B, C and D. ... However, § 1.140 requires courts to *presume* severability of the valid provisions unless the invalid provision is inseparably connected with and dependent upon an invalid provision. It cannot be said that section A is 'so essentially and inseparably connected with, *and* so dependent upon' sections B, C and D that it *cannot* be presumed that the legislature would not have enacted section A without sections B, C and D.

Akin, 934 S.W.2d at 301 (emphasis in original) (internal citations omitted).

Here, like the statutes at issue in *Akin*, no words would need to be inserted into any remaining subsection or provision of HB 688 to give them complete meaning if § 196.1127 were struck down as unconstitutional. Also like the *Akin* case, the legislature is presumed to have been aware when it adopted HB 688 in 2003 of the limitations on enforceability of § 196.1127's restrictions as they pertain to appropriations.²

There are also indications that the legislature, when it passed HB 688 in 2003, in fact recognized that § 196.1127's restrictions were not integral parts of future appropriations to the Life Sciences Research Board. For example, in § 196.1100, the legislature stated that "Moneys in the [LSRTF] shall not be subject to appropriation for purposes other than those provided in sections 196.1100 to 196.1130 without a majority vote in each house of the general assembly." Of course, every appropriation bill requires a majority vote in each house of the General Assembly – so anytime an appropriation bill is passed, the General Assembly has an ability to select "other" purposes for which appropriated money may be used, even under the LSRTF statutes as they were passed and are currently written.

In short, it cannot be said that all provisions in HB 688 are "so essentially and inseparably connected with, and so dependent upon" § 196.1127 that it cannot be presumed that the legislature would not have enacted them without § 196.1127. Those

² The Court notes that if § 196.1127 were read as a limitation on future legislative appropriation authority rather than as a limitation on the Life Sciences Research Board's authority, this section might be problematic as to appropriations under the longstanding principle that one General Assembly cannot statutorily bind another's appropriation authority by, for example, directing that money be appropriated by a future General Assembly for a specified purpose. See, e.g., *State ex rel. Fath v. Henderson*, 60 S.W. 1093 (Mo. 1901) & *State ex rel. The Kansas City Symphony v. State*, No. 06AC-CC01155 (Judgment entered Oct. 20, 2008).

provisions would thus be severable from § 196.1127 if § 196.1127 were declared invalid.

§ 1.140.³

Order

For the foregoing reasons, the Court hereby enters Judgment for Defendants as to all of Plaintiffs' requests for relief.

So ordered this 15th day of January, 2009.

Richard G. Callahan
Circuit Court Judge, Division II

³ Because of the Court's decision, it does not address Defendants challenges to standing.