

LITIGATION PRACTICE GROUP

MAY 2008

THOSE IMPACTED BY 2008 LEGISLATION MAY HAVE TO ACT QUICKLY TO MOUNT A CHALLENGE

The Missouri Legislature passed approximately 140 pieces of legislation during the 2008 session that ended on May 16. In recent years, an increasing number of persons, organizations and companies adversely affected by legislation have successfully challenged the constitutionality of statutes on the basis that the bill in which they were included contained more than one subject, the title of the bill was misleading, or that matters were introduced to a bill that were not germane or were unrelated to the bill's original purpose. These challenges are called Hammerschmidt cases, after a seminal case in which such a challenge was successfully made in *Hammerschmidt v. Boone County*, 877 S.W.2d 98 (Mo. 1994) (en banc). Two examples of such legislative challenges that yielded positive results in the Missouri Supreme Court are *SSM Cardinal Glennon Children's Hospital vs. State of Missouri*, 68 S.W.3d 412 (Mo. 2002) (en banc), and *St. Louis Health Care Network v. State of Missouri*, 968 S.W.2d 145 (Mo. 1998) (en banc).



Businesses or persons adversely affected by a new piece of legislation may have to act quickly. Generally, Hammerschmidt cases must be brought no later than the adjournment of the next full regular legislative session following the effective date of the bill as law. As a practical matter, adversely affected businesses or entities would want to bring them as soon as possible after they become law. In 2008, bills passed by the Legislature must be signed by the Governor by July to become law. The effective date of most 2008 legislation without an emergency clause is August 28.

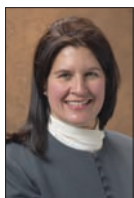
A Hammerschmidt challenge is based on Article III, Sections 21 and 23, of the Missouri Constitution, which place procedural limitations on the legislative process. Article 21 states that “no bill shall be so amended in its passage through either house as to change its original purpose.” Article 23 states (with certain exceptions) that “no bill shall contain more than one subject which shall be clearly expressed

in its title” The Missouri Supreme Court has recognized that these limitations serve to keep the public and legislature apprised of the subject matter of pending laws and to prevent “logrolling” in which several matters that would not individually garner a majority vote are put into a single bill to ensure passage.

Cases typically proceed straight from the trial court to the Missouri Supreme Court with no intermediate appellate review because of the Supreme Court’s exclusive jurisdiction to consider issues relating to the constitutionality of legislation. Some cases are disposed of by the Supreme Court the following year after a bill becomes law.

Greensfelder’s Hammerschmidt team includes Dawn Johnson, Appellate Practice Group Co-Leader, who has briefed and argued these types of cases, and Erwin Switzer, former Chief Counsel from the Missouri Attorney General’s Office who has briefed and argued numerous cases in the Missouri Supreme Court and is a Co-Leader of the Appellate Practice and Constitutional Law Groups at Greensfelder.

Businesses and trade associations adversely impacted by 2008 legislation should give careful consideration to whether the legislation may be subject to a Hammerschmidt challenge.



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