

Journal of the Senate

SECOND REGULAR SESSION

SEVENTY-THIRD DAY—WEDNESDAY, MAY 17, 2006

The Senate met pursuant to adjournment.

President Pro Tem Gibbons in the Chair.

RESOLUTIONS

On behalf of Senator Stouffer, Senator Gibbons offered Senate Resolution No. 3136, regarding the death of Alva Gaylord, Carrollton, which was adopted.

On behalf of Senator Stouffer, Senator Gibbons offered Senate Resolution No. 3137, regarding Rita K. Bales, which was adopted.

On behalf of Senator Mayer, Senator Gibbons offered Senate Resolution No. 3138, regarding Linda Fowler, New Madrid, which was adopted.

On behalf of Senator Barnitz, Senator Gibbons offered Senate Resolution No. 3139, regarding Richland High School Academic Team, which was adopted.

On behalf of Senator Coleman, Senator Gibbons offered Senate Resolution No. 3140, regarding Andrea L. Walker, which was adopted.

On behalf of Senator Alter, Senator Gibbons offered Senate Resolution No. 3141, regarding Evan Thomas Summers, High Ridge, which was adopted.

On behalf of Senator Alter, Senator Gibbons offered Senate Resolution No. 3142, regarding Eagle Scout Evan Thomas Summers, High Ridge,

which was adopted.

On behalf of Senator Dougherty, Senator Gibbons offered Senate Resolution No. 3143, regarding Father Jack Gavin, which was adopted.

On behalf of Senator Vogel, Senator Gibbons offered Senate Resolution No. 3144, regarding the death of Rose Marie Perry, Jefferson City, which was adopted.

On behalf of Senator Vogel, Senator Gibbons offered Senate Resolution No. 3145, regarding Donald R. Perry, Jefferson City, which was adopted.

On behalf of Senator Clemens, Senator Gibbons offered Senate Resolution No. 3146, regarding Austin Michael Owens, which was adopted.

On behalf of Senator Crowell, Senator Gibbons offered Senate Resolution No. 3147, regarding Alex Eftink, Marble Hill, which was adopted.

REPORTS OF STANDING COMMITTEES

Senator Gibbons, on behalf of Senator Shields, Chairman of the Committee on Rules, Joint Rules, Resolutions and Ethics, submitted the following reports:

Mr. President: Your Committee on Rules,

Joint Rules, Resolutions and Ethics, to which were referred **SB 558; SB 559; SB 561; HCS for SCS for SBs 567 and 792; SCS for SB 580; HCS for SS No. 2 for SCS for SB 583; SB 612; HCS for SCS for SB 614; CCS for HCS for SCS for SB 616; SB 618; SCS for SB 630; SB 641; SB 645; SB 648; SCS for SB 650; SCS for SBs 667, 704, 941, 956 and 987; SB 677; SB 678; SCS for SBs 701 and 948; SS for SCS for SB 718; HCS for SB 725; SCS for SB 747; SCS for SB 749; SCS for SB 751; CCS for HCS for SCS for SB 756; HCS for SCS for SB 765; HCS for SCS for SB 769; SB 778; SB 785; SCS for SB 802; HCS for SB 809; HCS for SB 819; SB 822; HCS for SS for SCS for SB 825; SB 828; SCS for SB 830; HCS for SB 834; HCS for SB 837; HCS for SB 840; SB 845; SB 863; SCS for SB 870; SB 871; HCS for SS for SCS for SBs 872, 754 and 669; SB 881; HCS for SS for SCS for SB 892; HCS for SB 893; CCS for HCS for SS for SCS for SB 894; SB 900; SS for SCS for SB 912; SB 919; SB 931; CCS No. 2 for HCS for SCS for SB 932; SB 933; SCS for SB 934; SB 936; SB 964; SB 974; HCS for SB 980; HCS for SB 981; SB 990; CCS for HCS for SCS for SBs 1001, 896 and 761; HCS for SB 1002; SCS No. 2 for SB 1003; SCS for SB 1008; CCS No. 2 for HCS for SS No. 2 for SCS for SBs 1014 and 730; SB 1016; CCS for HCS for SB 1017; SB 1020; HCS for SB 1023; SCS for SB 1026; HCS for SB 1045; SB 1056; SB 1057; SCS for SB 1059; SCS for SB 1060; SS for SB 1066; HCS for SB 1084; HCS for SCS for SB 1086; SB 1094; SCS for SB 1117; HCS for SCS for SB 1122; SB 1139; SB 1146; SB 1155; HCS for SB 1165; SB 1177; SB 1189; SB 1197; SB 1207; SB 1208; SB 1216; HCS for SS for SCS for SB 1229; and **SJR 26**, begs leave to report that it has examined the same and finds that the bills and joint resolution have been duly enrolled and that the printed copies furnished the Senators are correct.**

SIGNING OF BILLS

The President Pro Tem announced that all other business would be suspended and **SB 558;**

SB 559; SB 561; HCS for SCS for SBs 567 and 792; SCS for SB 580; HCS for SS No. 2 for SCS for SB 583; SB 612; HCS for SCS for SB 614; CCS for HCS for SCS for SB 616; SB 618; SCS for SB 630; SB 641; SB 645; SB 648; SCS for SB 650; SCS for SBs 667, 704, 941, 956 and 987; SB 677; SB 678; SCS for SBs 701 and 948; SS for SCS for SB 718; HCS for SB 725; SCS for SB 747; SCS for SB 749; SCS for SB 751; CCS for HCS for SCS for SB 756; HCS for SCS for SB 765; HCS for SCS for SB 769; SB 778; SB 785; SCS for SB 802; HCS for SB 809; HCS for SB 819; SB 822; HCS for SS for SCS for SB 825; SB 828; SCS for SB 830; HCS for SB 834; HCS for SB 837; HCS for SB 840; SB 845; SB 863; SCS for SB 870; SB 871; HCS for SS for SCS for SBs 872, 754 and 669; SB 881; HCS for SS for SCS for SB 892; HCS for SB 893; CCS for HCS for SS for SCS for SB 894; SB 900; SS for SCS for SB 912; SB 919; SB 931; CCS No. 2 for HCS for SCS for SB 932; SB 933; SCS for SB 934; SB 936; SB 964; SB 974; HCS for SB 980; HCS for SB 981; SB 990; CCS for HCS for SCS for SBs 1001, 896 and 761; HCS for SB 1002; SCS No. 2 for SB 1003; SCS for SB 1008; SB 1016; CCS for HCS for SB 1017; SB 1020; HCS for SB 1023; SCS for SB 1026; HCS for SB 1045; SB 1056; SB 1057; SCS for SB 1059; SCS for SB 1060; SS for SB 1066; HCS for SB 1084; HCS for SCS for SB 1086; SB 1094; SCS for SB 1117; HCS for SCS for SB 1122; SB 1139; SB 1146; SB 1155; HCS for SB 1165; SB 1177; SB 1189; SB 1197; SB 1207; SB 1208; SB 1216; HCS for SS for SCS for SB 1229; and **SJR 26, having passed both branches of the General Assembly, would be read at length by the Secretary, and if no objections be made, the bills and joint resolution would be signed by the President Pro Tem to the end that they may become law. No objections being made, the bills and joint resolution were so read by the Secretary and signed by the President Pro Tem.**

OBJECTIONS

Senator Coleman submitted the following

constitutional objection:

May 17, 2006

Terry L. Spieler – Secretary of the Missouri Senate
Missouri State Capitol, Room 325
Jefferson City, Missouri 65101

**RE: *Constitutional Objections to be Included in the
Senate Journal of this Date.***

Dear Terry:

Pursuant to Senate Rule 68, please let this serve as my written objections to the signing of CCS/HCS/SS#2/SCS/SB 1014 & 730. I ask that this letter be printed in the journal. My objections are as follows:

Objections based on the substance of the legislation.

- Section 115.427 of this bill, which requires voters to have photographic identification to vote, violates the Fourteenth Amendment to the United States Constitution. Since the United States Supreme Court handed down the decision of *Harper v. Virginia Board of Elections* in 1966, it has been considered unconstitutional to require a poll tax.

While this bill makes provisions that the photographic identifications be free, the bill does not address section 302.171 of the Missouri Revised Statutes. Section 302.171 requires proof of lawful presence in order to obtain a driver's license. For natural born citizens, the two forms of proof of lawful residence required in order to get a driver's license are a birth certificate or a United States passport. Both of these forms of proof require payment to the state of Missouri or to the government of the United States respectively.

In *Harper*, the United States Supreme Court stated,

We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth *nor to paying or not paying this or any other tax.*

383 U.S. 663, 666, 86 S.Ct. 1079, 1081 (1966)(emphasis added).

Because a voter would be required to pay the government in order to obtain forms of proof that satisfy the requirements to obtain a photographic identification, this provision is in fact a poll tax and therefore violates the Fourteenth Amendment to the United States Constitution.

- Section 115.427 of the bill also violates Article VIII, Section 2 of the Missouri Constitution. This constitutional provision sets out the qualifications for voters. The General Assembly has no authority to require

qualifications – including a qualification that voter have a photographic identification – that exceed the qualifications set out in the Missouri Constitution.

- The bill violates Article X, Section 21 of the Missouri Constitution – colloquially known as the Hancock Amendment. The bill burdens local election authorities with several new requirements beyond existing law and – as was noted several times in floor debate on this bill – the General Assembly has utterly and completely failed to provide any appropriation for these new burdensome requirements.
- The bill violates Article I, Section 14 of the Missouri Constitution – colloquially known as the Open Courts provision. This bill removes all ability for a citizen to petition a state Court for either a legal or equitable remedy connected with the citizen's right to vote. The bill allows for an election authority – and only an election authority – to petition the court for a remedy. As such, the bill closes the courts of justice to every person seeking to enforce his or her right to vote other than an election authority.

Objections based on the process through which the legislation was passed.

- The process through which this bill was passed violated Article III, Section 18 of the Missouri Constitution. This constitutional provision allows the Senate to determine the rules for its proceedings. Implicit within that constitutional authorization is that the Senate must actually follow its own rules. Indeed, in the case of *State ex rel Danforth v. Cason*, the Missouri Supreme Court acknowledged that even the Lieutenant Governor, when presiding over the body, was bound under the Missouri Constitution to follow the rules of the Senate. 507 S.W.2d 405, 413-414 (Mo. 1974).

The process through which this bill passed violated Rule 51 of the Senate Rules relating to committee votes. The conference committee on this bill specifically voted not to include the repeal of straight party ticket voting. Nevertheless, the version of the bill that passed the Senate contained such a repeal.

The sponsor of this bill and the majority party are not emperors on high free to include provisions in a bill that were specifically rejected by a conference committee. This shocking breach of rules and protocol exhibited extreme arrogance on the part of the majority party and the sponsor.

In addition to their flagrant disregard for the Senate Rule and the Missouri Constitution in bringing to the floor a CCS that contained provisions specifically rejected by

the conference committee, the sponsor and the majority party leadership also violated sections 610.015 and 610.020 of the Missouri Revised Statutes. These sections require open meetings and public votes. Instead of a process that was open to let the sun shine in as the spirit of the sunshine law requires, the process through which this legislation passed smacked of secret back-room deals that the People of Missouri have clearly rejected.

- The process through which this bill passed violated section 23.140 of the Missouri Revised Statutes. This section requires that a hearing be held by the Joint Committee on Legislative Research when there is a challenge to a fiscal note. On May 9, 2006, Senator Green served on the chair of the Joint Committee on Legislative Research, Senator Nodler, a challenge to the fiscal note on this bill. Under section 23.140, the committee was required to hold a hearing on the challenge. Nevertheless, in another flagrant disregard for constitutional requirements, statutes, and rules, Senator Nodler did not hold such a hearing.
- Finally, and perhaps the most shocking of all the breaches of either the United States or Missouri constitution, is the fact that the proceedings on this bill on the legislative day of May 11, 2006 violated Article III, Section 5 of the Missouri Constitution. This constitutional provision states that the senate shall consist of *thirty-four members*. When Senator Koster was presiding during these proceedings and blatantly refused to recognize me to raise a point of order – a matter which is *always* in order – the constitution was violated by rendering the Senate to have only thirty-three members. I reiterate that the sponsor of the bill and the leadership of the majority party are not emperors on high free to rule with a reign of tyranny in this chamber.

I would add that when my party controlled the chamber, the kind of tyrannical tactics that were used on this bill were not employed. I can only hope that when my party returns to power, I am able to convince our membership not to employ the same tactics that have been used on this piece of legislation. My disappointment in how several members of the majority party have behaved during this process could not be greater.

I ask that these objections be attached to the bill and considered by the Governor. I ask the Governor to veto this bill due to its blatant lack of regard for the United States Constitution and the Missouri Constitution which the members of the Senate have taken an oath to support.

Thank you.

Sincerely,

/s/ Maida J. Coleman

Maida J. Coleman

Minority Floor Leader

SIGNING OF BILLS

The President Pro Tem announced that all other business would be suspended and **CCS No. 2** for **HCS** for **SS No. 2** for **SCS** for **SBs 1014** and **730**, having passed both branches of the General Assembly, would be read at length by the Secretary, and the bill would be signed by the President Pro Tem to the end that it may become law. The bill was so read by the Secretary and signed by the President Pro Tem.

On motion of Senator Gibbons, the Senate adjourned until 10:00 a.m., Friday, May 26, 2006.

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