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## Pulling the Taxpayer's Sword from the Stone: The Appropriation Requirement of Missouri's Hancock Amendment

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## LAW SUMMARY

# **Pulling the Taxpayer's Sword from the Stone: The Appropriation Requirement of Missouri's Hancock Amendment**

JONATHAN G. BREMER\*

### I. INTRODUCTION

On November 4, 1980, Missouri voters approved the Hancock Amendment (Hancock) to Missouri's Constitution.<sup>1</sup> Hancock addressed voter concerns as to whether state and local governments could keep their taxing and spending in check.<sup>2</sup> The amendment contains two principle aspects. First, Hancock limits state and local governments in their ability to increase taxation, revenue, and spending without voter approval.<sup>3</sup> Second, Hancock prohibits the state from imposing "unfunded mandates" upon its political subdivisions – closing a loophole that would otherwise allow the state to circumvent its duty not to raise taxes or spending above a certain level without a vote of the people.<sup>4</sup> According to Hancock, new state mandates require that a "state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs."<sup>5</sup> This "appropriation requirement" is the focus of this Law Summary.

As one of, if not the most, fiscally conservative states in the nation, the history and future of Missouri's Hancock Amendment – arguably the most restrictive tax and expenditure limitation in the nation – is critical to understand, not only for Missourians, but for many other Americans, as our state and national elected representatives consider how, if at all, to approach spiraling deficits in the wake of the 2008 financial crisis.

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1. MO. CONST. art. X, §§ 16-24.

2. *Beatty v. Metro. St. Louis Sewer Dist.*, 867 S.W.2d 217, 221 (Mo. 1993) (en banc).

3. MO. CONST. art. X, § 16.

4. MO. CONST. art. X, § 21; *see Brooks v. State*, 128 S.W.3d 844, 848 (Mo. 2004) (en banc); *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 13 (Mo. 1981) (en banc) (Hancock "further seeks to prohibit the state from avoiding the defined limit or limits by the shifting of governmental responsibilities or the shifting of responsibility for payment for either existing or newly created governmental responsibilities.").

5. MO. CONST. art. X, § 21.

Part II of this Summary will briefly trace the history of self-imposed fiscal restraints among the various states. Missouri's unique tradition of fiscal conservatism and the birth of Hancock will be part of the historical discussion, which also includes a description of the Hancock's key provisions and how the courts have interpreted Hancock's provisions over time. Part III will focus on the 2004 case of *Brooks v. State* that appears to open the door for avoidance of the seemingly unambiguous Hancock appropriation requirement. This Part will also describe the pending case of *Turner v. School District of Clayton*, which may bring this question of interpretation before the Supreme Court of Missouri. Part IV provides two examples of recently proposed and enacted legislation that could violate the Hancock appropriation requirement in an effort to show the potential broad reach of the provision. It also suggests that the Supreme Court of Missouri has become increasingly deferential to the legislature in Hancock cases. Lastly, it applies the interpretive methods used by the court in Hancock cases to the appropriations requirement and concludes that regardless of method, the court is likely to uphold the provision's broad reach. This section ends with a policy-based argument supporting such a holding.

## II. LEGAL BACKGROUND

### A. A Brief History of Self-Imposed Fiscal Discipline Among the States

Unlike the federal government, states have developed tools promoting fiscal responsibility.<sup>6</sup> Most state constitutions, for example, place limits on spending<sup>7</sup> and borrowing.<sup>8</sup> Almost all states have balanced budget requirements,<sup>9</sup> and most have some restrictions on taxation.<sup>10</sup> These tools were often developed in response to serious economic crises.<sup>11</sup> While generally effective following such crises, state and local governments characteristically find ways to evade self-imposed limitations in the long run through either subse-

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6. See Daphne A. Kenyon & Karen M. Benker, *Fiscal Discipline: Lessons from the State Experience*, 37 NAT'L TAX J. 433, 433 (1984).

7. See, e.g., Dale F. Rubin, *Constitutional Aid Limitation Provisions and the Public Purpose Doctrine*, 12 ST. LOUIS U. PUB. L. REV. 143, 143 n.1 (1993).

8. See, e.g., Stewart E. Sterk & Elizabeth S. Goldman, *Controlling Legislative Shortsightedness: The Effectiveness of Constitutional Debt Limitations*, 1991 WIS. L. REV. 1301, 1315-16 (1991).

9. Kenyon & Benker, *supra* note 6, at 433. Conversely, the federal government has no such requirement and routinely runs deficits. *Id.*

10. See, e.g., 1 U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, SIGNIFICANT FEATURES OF FISCAL FEDERALISM, BUDGET PROCESSES AND TAX SYSTEMS 18-24 (1992).

11. See Justin J. T. Hughes & Garth B. Rieman, Comment, *A New Generation of State Tax and Expenditure Limitations*, 22 HARV. J. ON LEGIS. 269, 269 (1985).

quent legislative action or judicial interpretations.<sup>12</sup> As one scholar points out, an important lesson to be learned from state fiscal devices is the “enormous gap” between the language of such provisions and actual practice of state and local governments today.<sup>13</sup> The history of two state fiscal controls – public purpose requirements and state debt limitations – highlights this phenomenon.<sup>14</sup>

During the 1820s and 1830s, public support for private enterprises was widespread.<sup>15</sup> After the Erie Canal opened in 1825, New York’s economy boomed.<sup>16</sup> Other states supported their own large-scale infrastructure projects in order to remain competitive.<sup>17</sup> States invested heavily in private companies, providing grants, loans, and other forms of assistance, often with borrowed money.<sup>18</sup> Mismanagement, waste, and overbuilding were common.<sup>19</sup> When the economy crashed following the Panic of 1837, private firms struggled to repay state loans, and massive infrastructure projects generated less revenue for states than expected.<sup>20</sup> As a result, nine states defaulted on interest payments and four states disclaimed all or part of their debts.<sup>21</sup> A wave of state constitutional amendments soon followed.<sup>22</sup> States added debt limitations of various forms<sup>23</sup> and required state expenditures and lending to be for “public purpose[s],” thereby restricting state and/or local governments in their ability to provide financial support for private endeavors.<sup>24</sup> These requirements initially applied only to state governments, allowing states to circumvent them by assisting private firms through local governments.<sup>25</sup> Waste, overbuilding, and economic crisis ensued all over again, leading to further constitutional amendments applying public purpose requirements to local governments.<sup>26</sup>

Today, the vast majority of state constitutions contain debt limitations and public purpose requirements,<sup>27</sup> but few have practical significance.

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12. *See infra* notes 13–42 and accompanying text.

13. Richard Briffault, *Foreword: The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, 34 RUTGERS L.J. 907, 909 (2003).

14. *Id.* at 909–10.

15. *Id.* at 911.

16. *Id.*

17. *See id.*

18. *Id.*

19. *Id.* at 911, 917.

20. *Id.* at 911.

21. *Id.*

22. *Id.*

23. *Id.* at 911–12.

24. *Id.*

25. *Id.* at 912.

26. *Id.*

27. *Id.* at 910, 915. By the end of the 20th century, forty-six state constitutions contained so-called “public purpose” requirements. *Id.* at 910. A great majority of

Courts broadened the definition of “public purpose” in the 1930s as state efforts to stimulate the economy became more popular in the wake of the Great Depression.<sup>28</sup> By the end of the 20th century, courts in nearly all states had upheld some form of an economic development program directly assisting private firms.<sup>29</sup> State constitutional debt limitations encountered a similar fate. Over time, states developed creative ways to avoid incurring debt directly, while achieving the same purpose indirectly.<sup>30</sup> As of 1996, creative “non-debt debts” accounted for almost three-quarters of total state debt and two-thirds of total local debt.<sup>31</sup>

Increasing tax burdens<sup>32</sup> and historic stagflation set the stage for different kinds of state fiscal reforms in the mid-to-late 1970s and early 1980s.<sup>33</sup> The reforms arose, in part, because existing public purpose requirements failed to constrain government expenditures and limit tax burdens on state citizens.<sup>34</sup> In 1976, New Jersey adopted a statute fixing total state expenditures to per capita personal income.<sup>35</sup> This statute became known as the first tax and expenditure limit (TEL).<sup>36</sup> Two years later, Californians approved Proposition 13, a grassroots ballot measure amending the state’s constitution to address soaring property taxes (resulting from inflation) and to restrict future tax increases of all types.<sup>37</sup> This voter-led movement had a “catalytic effect” and spread across the country.<sup>38</sup> By 1986, twenty states, including Missouri, had adopted TELs.<sup>39</sup> By 2003, more than half of the states’ consti-

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state constitutions today also impose “some limitation on the ability of their state and local governments to incur debt.” *Id.* at 915.

28. *Id.* at 912.

29. *Id.* at 913. Examples include low-interest loans, tax breaks, and cash grants. *Id.*

30. *Id.* at 918-25. To avoid constitutional limits on their ability to borrow, state and local governments look to “revenue bonds,” “lease-financing,” and “subject-to-appropriation debt.” *Id.*

31. *Id.* at 925.

32. *Id.* at 929.

33. See Kenneth H. Winn, *It All Adds Up: Reform and the Erosion of Representative Government in Missouri, 1900-2000*, in OFFICIAL MANUAL, STATE OF MISSOURI 28, 48 (Krista S. Myer ed. 1999-2000), available at <http://cdm.sos.mo.gov/cdm4/document.php?CISOROOT=/statepub&CISOPTR=96610&REC=20>.

34. Charles W. Goldner, Jr., *State and Local Government Fiscal Responsibility: An Integrated Approach*, 26 WAKE FOREST L. REV. 925, 931-32 (1991). In addition to limiting what public funds may be used for, “public purpose” doctrines required taxes be levied exclusively for “public purposes.” *Id.* at 931.

35. Kenyon & Benker, *supra* note 6, at 436. This statute has since expired. *Id.*

36. See *id.*

37. Briffault, *supra* note 13, at 929-30.

38. *Id.* at 930.

39. Winn, *supra* note 33, at 48.

tutions had either substantive or procedural limits on state and local taxation or spending.<sup>40</sup>

But, as with public purpose requirements and debt limitations, states have found ways to circumvent TEL restrictions.<sup>41</sup> For example, the proliferation of state and local tax limitations through TEL provisions coincided with an “explosion” of “non-tax taxes” (e.g., fees and user charges).<sup>42</sup> This dramatic increase is due in part to a desire to evade TEL restrictions, although other factors contributed to it as well.<sup>43</sup>

TEs have raised fundamental questions. In addition to kicking off the “tax revolt,” the passage of Proposition 13 in 1978 ushered in an “era of popular distrust in representative government.”<sup>44</sup> Instead of allowing legislators to make fiscal decisions, most TELs put this responsibility in the hands of voters.<sup>45</sup> TEL proponents consider this an important check on shortsighted politicians looking to purchase votes with tax dollars.<sup>46</sup> Opponents of TELs counter that such measures hamstring state governments, foreclosing legislative options.<sup>47</sup>

### B. Missouri Traditions and the Hancock Amendment

Missourians distrusted politicians with taxpayer money long before Californians sparked a new era of government cynicism in 1978.<sup>48</sup> The Missouri constitution from 1875 to 1945 was “best understood as a fiscal document aimed at controlling the vices of post-Civil War Missouri government.”<sup>49</sup> Missouri’s current (1945) constitution, as of 1991, was the nation’s fourth

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40. Briffault, *supra* note 13, at 928. TELs vary in design. *See id.* at 927. Some tightly restrict government spending, allowing legislatures little to no flexibility. Goldner, *supra* note 34, at 932. Others afford considerable legislative discretion with regard to spending, making them “almost meaningless.” *Id.* Some states have “partial TEL[s]” aimed only at taxes. *Id.* (such TELs “are not necessarily going to reduce total expenditures or even decrease the rate of growth of total expenditures”).

41. Hughes & Rieman, *supra* note 11, at 271. This is particularly true of Hawaii, Colorado, and Michigan. *Id.*

42. Briffault, *supra* note 13, at 932-33.

43. *Id.* at 933.

44. Dennis W. Arrow, *Representative Government and Popular Distrust: The Obstruction/Facilitation Conundrum Regarding State Constitutional Amendment by Initiative Petition*, 17 OKLA. CITY U. L. REV. 3, 8-9 (1992).

45. *See* Hughes & Rieman, *supra* note 11, at 271.

46. *See id.*; *see also* Winn, *supra* note 33, at 48. *But see* Hughes & Rieman, *supra* note 11, at 271 (opponents also describing TELs as “meaningless exercises designed solely to placate a disgruntled public”).

47. Hughes & Rieman, *supra* note 11, at 271.

48. Winn, *supra* note 33, at 48.

49. *Id.*

longest state constitution, with 39,300 words.<sup>50</sup> By 2005, it had close to 65,000 words.<sup>51</sup> A typical reason for such a lengthy state constitution is “continuing popular distrust of the state legislature, based on past abuses, which results in detailed restrictions on governmental activity.”<sup>52</sup> Fiscal conservatism in Missouri has endured through most of the state’s history, regardless of which political party is in power.<sup>53</sup>

Unsurprisingly, Missouri’s TEL, the Hancock Amendment, is among the nation’s most restrictive.<sup>54</sup> It is a “true TEL,” providing “both tax and expenditure limitations.”<sup>55</sup> Its “principal clause” is section 16.<sup>56</sup> This section provides that “direct voter approval” is required should “[p]roperty taxes and other local taxes and state taxation and spending” exceed limitations established in following sections of the amendment.<sup>57</sup> It also prohibits the state “from shifting the tax burden to counties and other political subdivisions” or from requiring them to undertake “new or expanded activities” without “full state financing.”<sup>58</sup> The section concludes by saying that “[i]mplementation of this section is specified in sections 17 through 24.”<sup>59</sup>

Section 18 establishes limits on state taxation and spending.<sup>60</sup> It prohibits the general assembly from imposing “taxes of any kind which, together with all other revenues of the state, federal funds excluded,” exceeding an amount established by formula.<sup>61</sup> This formula takes into account personal income of Missouri, among other things.<sup>62</sup> Should this limit be exceeded, taxpayers receive refunds,<sup>63</sup> unless there is an emergency pursuant to section

50. Paul E. Parker, Commentary, *Salus Populi Suprema Lex Esto: Gambling, Taxes, the Court, and Citizen Amendments in Missouri*, 59 ALB. L. REV. 1675, 1682 (1996) (citing Donald S. Lutz, *Towards a Theory of Constitutional Amendment*, 88 AM. POL. SCI. REV. 355, 367 tbl.A-1 (1994)).

51. Michael A. Wolff, *Law Matters: A Celebration of Two Constitutions*, MO. COURTS (Sept. 9, 2005), <http://www.courts.mo.gov/page.jsp?id=1085>. For comparison, there are about 7500 words in the United States Constitution. *Id.*

52. Parker, *supra* note 50, at 1682 (quoting Lutz, *supra* note 50, at 358).

53. See Winn, *supra* note 33, at 48.

54. See Briffault, *supra* note 13, at 931.

55. Goldner, *supra* note 34, at 959.

56. Keller v. Marion Cnty. Ambulance Dist., 820 S.W.2d 301, 302 (Mo. 1991) (en banc).

57. MO. CONST. art. X, § 16.

58. *Id.*

59. *Id.* This section also notes that “[a] provision for emergency conditions is established and the repayment of voter approved bonded indebtedness is guaranteed.” *Id.*

60. See *id.* § 18(a). Section 18(e) was added in 1996, which, among other things, further limits the state’s power to tax. See *id.* § 18(e).

61. *Id.* § 18(a).

62. *Id.*

63. *Id.* § 18(b). This occurred several times in the late 1990s when the economy was booming. Dale Singer, ‘Simple’ Hancock Amendment Spawned Complex State

19.<sup>64</sup> That section requires the governor to certify that an emergency exists and the legislature to approve a specific funding request of the governor by a two-thirds vote.<sup>65</sup>

Similar to these limitations upon the state, section 22 sets restrictions upon local governments.<sup>66</sup> It prohibits counties and other political subdivisions from “levying any tax, license or fee[.]” without local voter approval.<sup>67</sup> It also prevents the total amount of property tax revenue received by counties and political subdivisions from increasing faster than a specific measure of the consumer price index.<sup>68</sup>

Section 21 provides further detail as to how the state may not shift its responsibilities onto local governments.<sup>69</sup> It prohibits the state from subsequently “reducing the state financed proportion of the costs” of state mandates required of counties and other political subdivisions at the time Hancock was implemented.<sup>70</sup> This section also prevents the state from imposing “[a] new activity or service or an increase in the level of any activity or service beyond that required by existing law . . . unless a state appropriation is made and disbursed to pay . . . any increased costs.”<sup>71</sup> These new mandates require “full state financing” pursuant to section 16,<sup>72</sup> and “a state appropriation . . . made and disbursed” pursuant to section 21.<sup>73</sup>

Finally, Hancock makes clear that it is the affected taxpayers who have standing to enforce its provisions.<sup>74</sup> In furtherance of such enforcement, the amendment specifically provides that attorney’s fees are recoverable if the taxpayer prevails.<sup>75</sup> This provision directly addresses a fundamental purpose of Hancock – the protection of taxpayers.<sup>76</sup>

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*Finances*, ST. LOUIS BEACON (Apr. 8, 2011, 7:00 AM), [http://stlbeacon.org/issues-politics/176-Missouri\\_Issues/108917-simple-hancock-amendment-spawned-complex-state-finances-](http://stlbeacon.org/issues-politics/176-Missouri_Issues/108917-simple-hancock-amendment-spawned-complex-state-finances-) [hereinafter Singer I].

64. MO. CONST. art. X, § 19.

65. *Id.*

66. *Id.* § 22.

67. *Id.* § 22(a).

68. *See id.* Section 22(a) calls for adjustments to local property tax rates based on changes in the “general price level.” *Id.* The “general price level” is defined in section 17(3) as “the Consumer Price Index for All Urban Consumers for the United States, or its successor publications, as defined and officially reported by the United States Department of Labor, or its successor agency.” *Id.* § 17(3).

69. *Id.* § 21.

70. *Id.*

71. *Id.*

72. *Id.* § 16.

73. *Id.* § 21.

74. *Id.* § 23.

75. *Id.*

76. *See, e.g.,* *Thompson v. Hunter*, 119 S.W.3d 95, 98 (Mo. 2003) (en banc).



The Hancock Amendment fits within Missouri's historical traditions. It has been touted as one of many reasons Missouri enjoys "a AAA bond rating from all three rating agencies," making it one of the few "triple-triple" states in the nation.<sup>77</sup> Missouri also has among the lowest per capita state and local taxes and spending rates.<sup>78</sup> Controversies, however, abound. Without a vote of the people, Hancock's stringent limitations, in the views of some, "make it virtually impossible" to expand existing programs or add new ones even if changing times and conditions demand such expansions.<sup>79</sup> State and local elections are costly, time-consuming, and cumbersome.<sup>80</sup> Proponents, conversely, point across the Mississippi to demonstrate Hancock's effectiveness.<sup>81</sup> Illinois recently increased its state income tax rate by 66% in order to fulfill its financial obligations.<sup>82</sup> Other commentators express a middle approach. Tom Kruckemeyer, chief economist for the Missouri Budget Project, believes the legislature should have greater flexibility, but notes that Missourians don't seem to want it that way.<sup>83</sup> "The Hancock amendment was voted in by the people, and who's to say they are wrong?"<sup>84</sup>

### C. Hancock Interpretation in the Courts

As Missourians have debated the merits of the Hancock Amendment, the Supreme Court of Missouri has wrestled with its provisions. Within the first few years of its adoption, Hancock began generating lawsuits aimed at discovering its parameters and determining a judicial framework for its operation.<sup>85</sup>

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77. Dale Singer, *Low taxes? Low services? Hancock Contributed to Legacy*, ST. LOUIS BEACON (Apr. 13, 2011, 10:40 AM), [http://stlbeacon.org/issues-politics/176-Missouri\\_Issues/109207-low-taxes-low-services-hancock-contributed-to-legacy-\[hereinafter Singer III\]](http://stlbeacon.org/issues-politics/176-Missouri_Issues/109207-low-taxes-low-services-hancock-contributed-to-legacy-[hereinafter Singer III]).

78. *Id.*

79. Goldner, *supra* note 34, at 959.

80. Rhonda C. Thomas, *Recent Developments in Missouri: Local Government Taxation*, 49 UMKC L. Rev. 491, 503 (1981).

81. Singer III, *supra* note 77.

82. See Dale Singer, *Power to the People? Hancock Amendment Worked Both Ways*, ST. LOUIS BEACON (Apr. 10, 2011, 11:26 PM), [http://stlbeacon.org/issues-politics/176-Missouri\\_Issues/109202-power-to-the-people-hancock-amendment-worked-both-ways-](http://stlbeacon.org/issues-politics/176-Missouri_Issues/109202-power-to-the-people-hancock-amendment-worked-both-ways-).

83. *Id.*

84. *Id.* (internal quotation marks omitted).

85. See, e.g., *Pace v. City of Hannibal*, 680 S.W.2d 944, 944 (Mo. 1984) (en banc), *overruled by* *Kuyper v. Stone County Comm'n*, 838 S.W.2d 436 (Mo. 1992) (en banc); *Wenzlaff v. Lawton*, 653 S.W.2d 215, 216 (Mo. 1983) (en banc); *Buechner v. Bond*, 650 S.W.2d 611, 621 (Mo. 1983) (en banc); *Roberts v. McNary*, 636 S.W.2d 332, 334 (Mo. 1982) (en banc), *overruled in part by* *Keller v. Marion Cnty. Ambulance Dist.*, 820 S.W.2d 301 (Mo. 1991) (en banc); *Oswald v. City of Blue Springs*, 635 S.W.2d 332, 332 (Mo. 1982) (en banc); *Boone Cnty. Court v. State*, 631 S.W.2d

One reason for these lawsuits is the General Assembly's steadfast refusal to adopt implementing legislation.<sup>86</sup> Hancock proponents assumed the state legislature would define key terms and resolve ambiguities after the amendment passed.<sup>87</sup> This was done in Michigan after the passage of the Headlee Amendment,<sup>88</sup> upon which Hancock is modeled.<sup>89</sup> After the adoption of Headlee, Michigan's General Assembly immediately passed legislation<sup>90</sup> defining such terms as "activity,"<sup>91</sup> "[n]ew activity or service or increase in the level of an existing activity or service,"<sup>92</sup> "service,"<sup>93</sup> "state agency,"<sup>94</sup> and others to resolve potential disputes in advance.<sup>95</sup> Missouri's legislature took no such action; as a result, the courts have become the only available forum for determining the amendment's scope and limitations.<sup>96</sup>

Over the past three decades, the Supreme Court of Missouri has used two different methods for interpreting Hancock provisions: "plain meaning" and "context."<sup>97</sup> Both methods aim to establish the adopting voters' intent.<sup>98</sup> Under the "plain meaning" approach, words in a constitutional provision

321, 322-23 (Mo. 1982) (en banc), *superseded by constitutional amendment*, MO. CONST. art. VI, § 11, *as recognized in* Mo. Prosecuting Attorneys v. Barton Cnty., 311 S.W.3d 737 (Mo. 2010) (en banc); Buchanan v. Kirkpatrick, 615 S.W.2d 6, 8 (Mo. 1981) (en banc).

86. See Edward D. Robertson, Jr. & Duncan E. Kincheloe, III, *Missouri's Tax Limitation Amendment: Ad Astra Per Aspera*, 52 UMKC L. Rev. 1, 19 (1983). Hancock allows the legislature to enact laws implementing its provisions so long as they are not inconsistent with the amendment's overall purpose. MO. CONST. art. X, § 24(b).

87. Robertson & Kincheloe, *supra* note 86, at 4-5, 19.

88. MICH. CONST. art., IX, §§ 25-34 (amended 1979).

89. Robertson & Kincheloe, *supra* note 86, at 19.

90. *Id.* at 19-20.

91. *Id.* at 20 (citing MICH. COMP. LAWS § 21.232 (1979)).

92. *Id.* (quoting MICH. COMP. LAWS § 21.233(7) (1979)) (internal quotation marks omitted).

93. *Id.* (citing MICH. COMP. LAWS § 21.234(1) (1979)).

94. *Id.* (citing MICH. COMP. LAWS § 21.234(2) (1979)).

95. See *id.* at 19-20. Although the Michigan legislature defined some terms, it has balked at defining others. See, e.g., Kevin C. Kennedy, *The First Twenty Years of the Headlee Amendment*, 76 U. DET. MERCY L. REV. 1031, 1066 (1999) (noting that the legislature's failure to define "tax" despite considerable controversy as to its meaning). Complicating matters further, any definition passed by the legislature is not binding on the courts of Michigan. *Id.* at 1036.

96. See Robertson & Kincheloe, *supra* note 86, at 20. Mel Hancock recently lamented in 2011 that elected officials in Missouri "never did try to implement it." Singer I, *supra* note 63 (internal quotation marks omitted).

97. See Michael Atchinson, Note, *The Hancock Amendment, User Fees, the Plain Meaning Rule, and an Invitation to Challenge Buechner v. Bond*, 57 MO. L. REV. 1373, 1383-84 (1992) (differentiating between "plain meaning" and "context" methods of interpretation used by the court in Hancock cases).

98. See *infra* notes 109, 152 and accompanying text.

must be given their “plain, natural and ordinary meaning,” often by reference to the dictionary definition.<sup>99</sup> The “context” approach, in contrast, posits that the same word “may have a different meaning depending on the statute or constitutional provision in which it appears.”<sup>100</sup> Under the latter approach, a Hancock provision has been interpreted in apparent derogation of the ordinary meaning of the provision’s words.<sup>101</sup>

### 1. Plain Meaning

In *Boone County Court v. State*, the Supreme Court of Missouri wrestled with an issue the Michigan legislature addressed in advance<sup>102</sup>: the meaning of the word “activity.”<sup>103</sup> Less than a year after voters approved the Hancock amendment, the Missouri legislature enacted a new law<sup>104</sup> increasing the salary of collectors in second-class counties by one hundred dollars.<sup>105</sup> Filing as individual taxpayers, local authorities in Boone County (a second-class county) sought a declaratory judgment action, claiming the new law violated Hancock.<sup>106</sup> They argued the state must pay the additional salary because Hancock required, pursuant to section 21, that the state pay for “any increase in activity or services which the General Assembly requires of a county beyond those required of the county as of the time of the adoption of [Hancock].”<sup>107</sup> The state argued, in response, that the level of “activity” of Boone County had not been increased because the new law did not impose any additional duties upon the collectors.<sup>108</sup>

To determine whether increased “activity” included higher salaries for county collectors, the court began with the premise that the “fundamental purpose” of judicial interpretation is “to give effect to the intent of the voters

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99. *Boone Cnty. Court v. State*, 631 S.W.2d 321, 324 (Mo. 1982) (en banc) (“The ordinary, usual and commonly understood meaning is, in turn, derived from the dictionary.”), *superseded by constitutional amendment*, MO. CONST. art. VI, § 11, *as recognized in* *Mo. Prosecuting Attorneys v. Barton Cnty.*, 311 S.W.3d 737 (Mo. 2010) (en banc); *see also* *Barton Cnty.*, 311 S.W.3d at 741 (“*Boone County* sets out a clear statement of the principles governing construction of a constitutional provision”); *City of Hazelwood v. Peterson*, 48 S.W.3d 36, 39 (Mo. 2001) (en banc) (in applying Hancock, “the plain language of the constitutional amendment is controlling”).

100. *Barton Cnty.*, 311 S.W.3d at 742; *see infra* Part II.C.2.

101. *See infra* Part II.C.2.

102. *See supra* notes 90-91 and accompanying text.

103. *Boone Cnty.*, 631 S.W.2d at 322.

104. *Id.* at 323.

105. *Id.* The statute otherwise imposed no additional duties upon the collectors or counties. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* at 324.

who adopted the amendment.”<sup>109</sup> Ascertaining voter intent required determining what voters understood the words of a constitutional provision to mean at the time it was adopted.<sup>110</sup> Presumptively, this was the “ordinary, usual and commonly understood meaning” as it appeared in the dictionary.<sup>111</sup> The court considered the words “activity” and “service” in the phrase “an increase in the level of any activity or service” of section 21, and defined both words as they appeared in Webster’s Third New International Dictionary (1965).<sup>112</sup> Considering the juxtaposition of “service” with “activity” and the dictionary definitions of both, the court found that “activity” referred to “the general functioning and operation of county government in performing services.”<sup>113</sup> Adding the word “any”<sup>114</sup> meant the phrase “any activity” encompassed “every increase in the level of operation” of a county or political subdivision.<sup>115</sup> The state-mandated increase of the salary of county collectors therefore constituted an increase in “activity” of a political subdivision.<sup>116</sup> The court added that such a conclusion fit with an objective of the amendment “clearly understood by the voters,” which was “to control and limit governmental revenue and expenditure increases.”<sup>117</sup> In further support, the court referenced section 16, which prohibits the state from “requiring any new or expanded activities by counties and other political subdivisions without full state financing.”<sup>118</sup> “[T]he salary increase,” the court held, “is directed to be paid from state funds” by section 21.<sup>119</sup>

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109. *Id.* (citing *Rathjen v. Reorganized Sch. Dist. R-II*, 284 S.W.2d 516 (Mo. 1955) (en banc)). Constitutional provisions are interpreted the same way as statutes, although constitutions are given broader construction due to their greater permanence. *Id.* (citing *State ex rel. Martin v. City of Independence*, 518 S.W.2d 63 (Mo. 1974) (en banc)).

110. *Id.* (citing *State ex rel. Danforth v. Cason*, 507 S.W.2d 405, 408 (Mo. 1973) (en banc)).

111. *Id.* (citing *State ex rel. Danforth*, 507 S.W.2d at 409).

112. *Id.* at 325. The court defined “activity” as “natural or normal function or operation . . . an occupation, pursuit, or recreation in which a person is active . . . an organizational unit for performing a specific function; also its duties or function.” *Id.* (internal quotation marks omitted). The court defined “service” as “the performance of work commanded or paid for by another . . . an act done for the benefit or at the command of another.” *Id.* (internal quotation marks omitted).

113. *Id.* “Service,” conversely, referred to “governmental action performed for the benefit of its residents.” *Id.*

114. “Any” in a constitutional provision means “all-comprehensive, and [is] equivalent to ‘every’.” *Id.* (quoting *State ex rel. Randolph Cnty. v. Walden*, 206 S.W.2d 979, 983 (Mo. 1947)) (internal quotation marks omitted).

115. *Id.*

116. *Id.*

117. *Id.* at 325.

118. *Id.* (quoting MO. CONST. art. X, § 16). The court also referenced *Buchanan v. Kirkpatrick*:

The case of *Rolla 31 School District v. State* also demonstrates the weight the Supreme Court of Missouri places on “plain meaning” when interpreting Hancock provisions.<sup>120</sup> The court was not explicit in its method of interpretation, but it engaged in a process equivalent to “plain meaning,” focusing on the ordinary meaning of words within a sentence.<sup>121</sup> In 1990, the Missouri General Assembly enacted a law<sup>122</sup> requiring school districts to “provide special education services to handicapped preschoolers [starting] at age three.”<sup>123</sup> Previously, Missouri school districts were not obliged to provide services to handicapped children until the age of five.<sup>124</sup> The Missouri State Board of Education also promulgated a rule in conjunction with the new law requiring school districts to fund ten percent of the new program costs.<sup>125</sup> A number of school districts and taxpayers brought suit claiming this violated sections 16 and 21 of Hancock, which required “full state financing”<sup>126</sup> in the form of a “state appropriation . . . made and disbursed”<sup>127</sup> to cover increased costs incurred by political subdivisions as a result of new mandates.<sup>128</sup> The State, in opposition, argued that unallocated funds already distributed to

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(T)he central purpose of (the Hancock) Amendment . . . is to limit taxes by establishing tax and revenue limits and expenditure limits for the state and other political subdivision which may not be exceeded without voter approval. (The) Amendment . . . is popularly described as ‘the tax and spending lid’ amendment, words which also reflect its central purpose.

*Id.* (quoting *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 13 (Mo. 1981) (en banc)). The dissent argued that when section 21 is considered at face value and word-for-word, there was “no curtailment of the legislature’s constitutional power to act pursuant to [another constitutional provision (art. VI, § 11)] prescribing the compensation for county officers” shall be set by the state. *Id.* at 327 (Bardgett, J., dissenting). In the dissent’s view,

the amendment should be viewed as a restriction on existing powers of the [G]eneral [A]ssembly[,] and that restriction should . . . be given a narrow construction in order that the restriction on the power of the people acting through the [G]eneral [A]ssembly will not be curtailed more than the Hancock Amendment specifically provides.

*Id.*

In response to this case, the people of Missouri adopted an amendment that held that compensation of county officers was not an “activity” for purposes of the Hancock Amendment. *See infra* note 253.

119. *Boone Cnty.*, 631 S.W.2d at 326 (majority opinion).

120. 837 S.W.2d 1 (Mo. 1992) (en banc).

121. *See id.* at 7.

122. Extended Day Child Care Program Act, 1990 Mo. Legis. Serv. S.B. 740 (Vernon).

123. *Rolla 31*, 837 S.W.2d at 1.

124. *Id.*

125. *Id.* at 6.

126. *Id.* (quoting MO. CONST. art. X, § 16) (internal quotation marks omitted).

127. *Id.* (quoting MO. CONST. art. X, § 21) (internal quotation marks omitted).

128. *Id.* at 2.

school districts from Missouri's so-called "School Foundation Fund" were properly used to defray the increased costs of newly mandated programs.<sup>129</sup>

The Supreme Court of Missouri addressed whether, as the State urged, existing unallocated school funding was an appropriate source to defray the school district's portion of the cost of the newly mandated program.<sup>130</sup> Allowing such a maneuver, the court reasoned, would "essentially eliminate [Hancock] as a factor in public school financing."<sup>131</sup> The court juxtaposed the cost of the new program (\$1 million to \$4 million in 1991-92) with the total amount of unallocated money school districts received from the state each year (more than \$170 million) and concluded that "treating all of the unrestricted funds as available to support mandated programs" resulted in Hancock providing little to no restriction on the state.<sup>132</sup> Further, the court concluded that the use of unallocated funds to pay the costs of new state mandates would "defeat one of the primary purposes of the Hancock Amendment."<sup>133</sup> Hancock gave taxpayers the power to determine both "increases in government service and raising taxes to pay for those increased services."<sup>134</sup> At the same time, taxpayers were protected from local tax increases as a result of new state mandates "by the requirement that the state pay for such new programs."<sup>135</sup> If a political subdivision must use unallocated funds to pay for a new mandate, it would be "forced to raise additional tax money to pay for the program previously supported by the unrestricted funds."<sup>136</sup> The court reasoned that "allowing the state to use unrestricted funds to support mandated programs [was] essentially the same as requiring local school districts to raise money to support a state mandated program," in contravention of Hancock.<sup>137</sup>

Holding the newly mandated program to be violative of Hancock, the court reiterated the express language of section 21, which requires "a state appropriation [be] made . . . to pay the county or other political subdivisions for any increased costs" of a new state mandate.<sup>138</sup> "*We believe this means what it says*; it requires that the legislature make a specific appropriation which specifies that the purpose of the appropriation is the mandated program."<sup>139</sup> This is a paradigmatic example of the "plain meaning" approach.

129. *Id.* at 6.

130. *Id.* at 2.

131. *Id.* at 6.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.* at 6-7.

137. *Id.* at 7.

138. *Id.* (quoting MO. CONST. art. X, § 21).

139. *Id.* (emphasis added).

## 2. Context

The words “tax, license, or fee” as they appear in section 22 of Hancock have created considerable controversy in the courts and among academics.<sup>140</sup> The controversy has focused upon whether so called “user fees” (fees imposed only to defray the cost of a particular service for which they are collected) fall within the phrase “tax, license or fees” of section 22, therefore requiring local voter approval before they may be increased.<sup>141</sup> The Supreme Court of Missouri initially held, using a “plain meaning” approach, that user fees fell within the meaning of this phrase.<sup>142</sup> However, almost a decade later the court used a “context” approach to conclude that such fees were outside the scope of section 22.<sup>143</sup>

In 1982, in the initial case of *Roberts v. McNary*, a group of taxpayers sued St. Louis County after it raised the rates of numerous county fees without voter approval.<sup>144</sup> The Supreme Court of Missouri used a “plain meaning” approach and looked to the dictionary definition of “fees” to determine whether user fees were included in the phrase “tax, license or fees.”<sup>145</sup> Webster’s Third New International Dictionary (1965) defined a “fee” as “a fixed charge for admission; a charge fixed by law or by an institution for certain privileges or services; a charge fixed by law for services of a public officer.”<sup>146</sup> Based on this definition, the court concluded that voters intended user fees to be subject to their approval.<sup>147</sup> This was consistent, the court added, with what voters understood one objective of Hancock to be: “prohibit[ing] local tax or fee increases without popular vote.”<sup>148</sup>

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140. See Rhonda C. Thomas, *The Hancock Amendment: The Limits Imposed on Local Governments*, 52 UMKC L. REV. 22, 38-41 (1983); Thomas, *supra* note 80, at 495-505; *infra* notes 141-74 and accompanying text; see generally Atchinson, *supra* note 97; Joanne L. Graham, Comment, *Toward a Workable Definition of “Tax, License or Fees”: Local Governments in Missouri and the Hancock Amendment*, 62 UMKC L. REV. 821 (1994).

141. See *Roberts v. McNary*, 636 S.W.2d 332, 334-35 (Mo. 1982) (en banc), *overruled in part by* *Keller v. Marion Cnty. Ambulance Dist.*, 820 S.W.2d 301, 305 (Mo. 1991) (en banc).

142. See *id.* at 336.

143. *Keller*, 820 S.W.2d at 305.

144. *Roberts*, 636 S.W.2d at 334.

145. *Id.* at 335-36.

146. *Id.* at 335 (internal quotation marks omitted). The court also referred to a recent decision in which it had defined a “fee” as something “to be paid by certain individuals to public officers for services rendered in connection with a specific purpose.” *Id.* at 336 (quoting *Craig v. City of Macon*, 543 S.W.2d 772, 774 (Mo. 1976) (en banc)).

147. *Id.*

148. *Id.* (citing Hancock’s “official ballot title”).

Nine years later, in *Keller v. Marion County Ambulance District*, a majority of the Supreme Court of Missouri determined that, as used in section 22, the word “fees” meant something else.<sup>149</sup> In *Keller*, the Marion County Ambulance District (a political subdivision) increased a number of fees for services rendered.<sup>150</sup> A group of taxpayers brought suit, arguing that these new fees violated Hancock because they had not been subjected to voter approval.<sup>151</sup>

In determining whether “tax, license or fees” included user fees, the court reiterated that its “fundamental purpose” was to “give effect to the intent of the voters who adopted the Amendment.”<sup>152</sup> Noting that “[t]raditional rules of construction” required considering “words in the context of both the particular provision in which they are located and the entire amendment in which the provision is located,”<sup>153</sup> the court provided this graphically straightforward explanation:

Context determines meaning. Consider this sentence: The batter flew out. Without knowing context, one cannot determine whether that sentence describes what happened when the cook tripped while carrying a bowl of cake mix, or the final act of a baseball game.<sup>154</sup>

Proceeding with its analysis of “context,” so defined, the court began with section 16 – characterized by the court as the amendment’s “principal clause.”<sup>155</sup> This section provides that “property taxes and other local taxes and state taxes and spending” may not be increased without voter approval.<sup>156</sup> This language, the court observed, particularly when read in light of other provisions, showed that the *spending* limitations are imposed only on the state and not on local governments.<sup>157</sup> Given the equivalence between spending and total revenue (“[s]pending – in the context of total revenue”), the court concluded that “not all revenue increases by local governments [were] subject to the Hancock Amendment,” citing two Supreme Court of Missouri cases in further support.<sup>158</sup>

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149. *See* 820 S.W.2d 301, 303 (Mo. 1991) (en banc).

150. *Id.* at 302.

151. *Id.*

152. *Id.*

153. *Id.* (citing *McDermott v. Nations*, 580 S.W.2d 249, 253 (Mo. 1979) (en banc)).

154. *Id.*

155. *Id.*

156. *Id.* (quoting MO. CONST. art X, § 16) (internal quotation marks omitted).

157. *Id.* at 302-03.

158. *Id.*



The court then turned to the question of which revenue increases were subject to Hancock.<sup>159</sup> “[L]icense” and “fees” (both sources of government revenue) appear twice in the amendment, once as “alternatives to ‘general and special revenues’” (section 17(1)) and once as “alternatives to a ‘tax’ in the list of prohibited increases by localities” (section 22(a)).<sup>160</sup> “The difference between these two sections implie[d] a narrower definition for the term ‘fees’ in [section] 22(a).”<sup>161</sup> Instead of using general terms like “revenue” or “revenue increase” to restrict all local revenue increases, the people of Missouri “characterized ‘fees’ in § 22(a) as an alternative to a ‘tax.’”<sup>162</sup> This suggested to the court that “what is prohibited are fee increases that are taxes in everything but name.”<sup>163</sup> Additionally, a “‘fee’ [was] actually a tax,” because the verb “levy” is used in conjunction with the noun “fees” in section 22(a) and “[i]n ordinary usage, a tax is levied, but a fee is charged.”<sup>164</sup> Further, the “history and logic” of Hancock, according to the majority, supported this proposition.<sup>165</sup> Fees were generally imposed by “special districts,” which were set up during the Great Depression “to fulfill purposes inadequately served by private organizations.”<sup>166</sup> In order to minimize the total tax burden imposed by “special districts,” Hancock “does not prohibit these organizations from shifting the burden to the private users.”<sup>167</sup> Thus, the majority held, “fees” in section 22(a) did not include “user fees,” obviating the need for voter approval of increases.<sup>168</sup>

In a lengthy dissent, Judge John C. Holstein contended that the majority overlooked “more fundamental principles” of interpretation described in *Boone County*.<sup>169</sup> The majority made no attempt, he observed, to “examine the word ‘fees’ to give it the commonly understood, dictionary meaning.”<sup>170</sup> It had also failed to show “in what way the word ‘fees’ [was] ambiguous.”<sup>171</sup> Under “well established principles . . . rules of construction [were] not to be resorted to where a constitutional provision [was] clear and unambiguous.”<sup>172</sup>

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159. *Id.* at 303.

160. *Id.* (quoting MO. CONST. art X, §§ 17(1), 22(a)).

161. *Id.*

162. *Id.*

163. *Id.* Fee increases that are “‘general and special revenues’ but not a ‘tax’” would be allowed. *Id.*

164. *Id.* Section 22 prevents the “levying [of] any tax, license or fees” without voter approval. MO. CONST. art. X, § 22(a) (emphasis added).

165. *Keller*, 820 S.W.2d at 304.

166. *Id.* at 304 n.6.

167. *Id.* at 304.

168. *Id.*

169. *Id.* at 306 (Holstein, J., dissenting).

170. *Id.*

171. *Id.*

172. *Id.* (citing *E.B. Jones Motor Co. v. Indus. Comm’n*, 298 S.W.2d 407, 410 (Mo. 1957) (en banc)).

To deny the words “taxes, licenses and fees” their plain meaning, as Judge Holstein concluded, was “to thwart the intent and will of the people from whom all constitutional authority is derived . . . endanger[ing] the entire constitutional fabric upon which we all rely.”<sup>173</sup>

A comparison of the rulings in *Keller* and *Roberts* suggests that, despite the Hancock’s uniquely restrictive provisions, the Supreme Court of Missouri may reduce the amendment’s scope by its choice of interpretive method.<sup>174</sup> A more recent case raises the question of whether a Hancock provision, seemingly immune to circumvention by either theory of interpretation, may nonetheless be added to an increasing list of judicially engrafted exceptions to Hancock’s stringent fiscal controls.<sup>175</sup>

### III. RECENT DEVELOPMENTS

#### A. Brooks v. State

Twelve years after holding in *Rolla 31* that Hancock’s state appropriation requirement for new mandates “means what it says,”<sup>176</sup> the supreme court in the 2004 case of *Brooks v. State* may have opened the door to an alternative interpretation.<sup>177</sup> On September 11, 2003, the Missouri General Assembly enacted the “Concealed Carry Act,” which allowed Missourians “to carry concealed firearms provided they met certain . . . qualifications” and obtained a permit.<sup>178</sup> The Act required county sheriffs to fingerprint appli-

173. *Id.* at 311.

174. The court may also increase the amendment’s scope by its choice of interpretive method, as it did soon after the amendment’s passage in the 1983 case of *Buechner v. Bond*, 650 S.W.2d 611, 615-616 (Mo. 1983) (en banc) (Rendlen, C.J., dissenting). See Robertson & Kincheloe, *supra* note 86, at 7 (describing the court’s interpretive method as a “sleight of hand”). In *Buechner*, the court relied on the dictionary definition of the word “revenue” as it appears in the phrase “total state revenues” in holding that the state’s revenue limit should be lower than the state calculated initially. *Buechner*, 650 S.W.2d at 613. The phrase “total state revenues,” however, was already defined in section 17(1) of Hancock. MO. CONST. art. X, § 17(1). In a footnote, the majority in *Keller* explained that *Buechner* “partakes of [an] error of reasoning, lifting the word ‘revenues’ for [sic] the constitutional phrase ‘total state revenues’ to interpret the Hancock Amendment in the most government-constricting manner possible.” *Keller*, 820 S.W.2d at 305 n.11 (citation omitted); *c.f.* Atchinson, *supra* note 97, at 1387-88.

175. See discussion *infra* Parts III, IV.

176. *Rolla 31 Sch. Dist. v. State*, 837 S.W.2d 1, 7 (Mo. 1992) (en banc).

177. 128 S.W.3d 844, 848 (Mo. 2004) (en banc) (“Plaintiffs do not challenge, and therefore this Court does not address, the issue raised by the dissent, that is, whether a fee can satisfy or obviate the requirement of article X, sections 16 and 21, that state mandates be funded by ‘full state financing.’”).

178. *Id.* at 846.

cants and conduct criminal background checks before issuing permits.<sup>179</sup> Applicants would be charged a fee of not more than one hundred dollars, paid “to the credit of the sheriff’s revolving fund.”<sup>180</sup> Sheriffs used this fund “for the purchase of equipment and to provide training.”<sup>181</sup> A group of taxpayers filed suit, claiming the Act constituted a new state mandate violating sections 16 and 21 of Hancock.<sup>182</sup>

The taxpayers argued that the Act imposed a “partially unfunded” mandate upon the sheriffs because processing applications would “necessarily require expenditures other than those for equipment and training.”<sup>183</sup> According to the majority, the taxpayers did not specifically raise the further issue of “whether a fee can satisfy or obviate the requirement of article X, sections 16 and 21, that state mandates be funded by ‘full state financing,’” and the majority therefore did not address it.<sup>184</sup> The court did, however, address a question of Hancock ripeness.<sup>185</sup>

“Under Hancock,” the court explained, “a case is not ripe without specific proof of new or increased duties and increased expenses,” which “cannot be established by mere ‘common sense’ or ‘speculation and conjecture.’”<sup>186</sup> The court would “not presume increased costs resulting from increased mandated activity.”<sup>187</sup> However, if plaintiffs could show more than a “de minimis” increase of costs, their claim would be ripe for adjudication.<sup>188</sup>

A representative from the Jackson County Sheriff’s office<sup>189</sup> testified the office would incur approximately \$150,000 in additional personnel costs as a result of the Act, based on an estimated five to six thousand applications.<sup>190</sup>

179. *Id.*

180. *Id.* at 848 (quoting MO. REV. STAT. § 571.094.10) (internal quotation marks omitted).

181. *Id.* (quoting MO. REV. STAT. § 50.535.2) (internal quotation marks omitted).

182. *Id.* at 846. The taxpayers also argued that the Act contravened article I, section 23 of the Missouri Constitution. *Id.* This provision states that “the right of every [Missouri] citizen to keep and bear arms . . . shall not be questioned[,] but this shall not justify the wearing of concealed weapons.” MO. CONST. art I, § 23. The court used a “plain meaning” analysis, looking to the dictionary definition of the word “justify” in its holding that the Concealed-Carry Act did not violate article I, section 23. *Brooks*, 128 S.W.3d at 847-48.

183. *Id.* at 848.

184. *Id.*

185. *Id.* at 849 (citing *Miller v. Dir. of Revenue*, 719 S.W.2d 787, 789 (Mo. 1986) (en banc)).

186. *Id.* (quoting *Miller*, 719 S.W.2d at 789) (internal quotation marks omitted).

187. *Id.* (quoting *City of Jefferson v. Mo. Dep’t of Natural Res.*, 863 S.W.2d 844, 848 (Mo. 1993) (en banc)) (internal quotation marks omitted).

188. *Id.* (citing *City of Jefferson v. Mo. Dep’t of Natural Res.*, 916 S.W.2d 794, 795 (Mo. 1996) (en banc)) (internal quotation marks omitted).

189. *Id.* at 847.

190. *Id.* at 849. This figure was based on evidence showing, under existing law, sheriffs in that county issued approximately 5000 firearm permits per year. *Id.*

Each application would also cost the office an additional thirty-eight dollars as a result of the necessity to send fingerprints to the Missouri State Highway Patrol for analysis.<sup>191</sup> Sheriffs testified from three other counties as well,<sup>192</sup> establishing that each application would cost at least thirty-eight dollars, and the court acknowledged the applications in each such county would be “more than a few.”<sup>193</sup> Based on the testimony, the court found the case was ripe for adjudication only with respect to these four counties.<sup>194</sup> However, “in the absence of specific proof of increased costs in the remaining Missouri counties, disposition of the case as to those counties [was] premature.”<sup>195</sup>

On the merits, the court reasoned that the same evidence making the case ripe for adjudication in the four counties also proved Hancock violations in those counties.<sup>196</sup> The court therefore concluded that the Act constituted an unfunded mandate in violation of Hancock with respect to those four counties, but the court upheld the Act as to all the remaining counties because of “lack of ripeness.”<sup>197</sup>

Chief Justice Ronnie L. White dissented, arguing the Concealed-Carry Act was “clearly unconstitutional” in all counties for violating Hancock.<sup>198</sup> He maintained that sections 16 and 21 required “the State, and *only the State*” to “*fully finance*” the costs incurred by counties in processing applications.<sup>199</sup> The one hundred dollar fee was therefore “totally irrelevant.”<sup>200</sup> Also, nothing in sections 16 or 21 required taxpayers to show more than a “*de minimis*” cost increase to establish ripeness.<sup>201</sup> “Hancock requires full state funding period.”<sup>202</sup> Taxpayers would inevitably pay the costs of implementing the Act as well as the cost of additional litigation.<sup>203</sup> Further, the majority had “mischaracterize[d]” the taxpayers’ claims, according to Chief Justice White, “in order to avoid the issue of the State’s responsibility to fully fund its newly

191. *Id.* This evidence was uncontroverted. *Id.*

192. *Id.* at 847.

193. *Id.* at 849.

194. *See id.*

195. *Id.*

196. *Id.* at 850.

197. *Id.* at 851.

198. *Id.* at 851 (White, C.J., dissenting).

199. *Id.* at 852. According to Chief Justice White, Hancock required “full state funding,” which meant “funding from state revenue.” *Id.* Money not paid into the treasury does not count as being a part of “total state revenues” for any given fiscal year. *Id.* at 852 n.2 (citing *Missourians for Tax Justice Educ. Project v. Holden*, 959 S.W.2d 100, 106 (Mo. 1997) (en banc)).

200. *Id.* at 852.

201. *Id.* Chief Justice White further argued that the case from which the *de minimis* language originated included the phrase only in dicta. *Id.*

202. *Id.*

203. *Id.* at 854 n.7.

created mandate.”<sup>204</sup> He cited numerous portions of the taxpayers’ briefs where they appeared to have raised this very claim.<sup>205</sup> Justice White concluded by quoting Mel Hancock, who said months before the trial, “[i]t’s pretty obvious that it [the concealed weapons law] is an unfunded mandate . . . unless the state provides the money to do it, then that’s an unfunded mandate.”<sup>206</sup>

### B. *Turner v. School District of Clayton*

The state appropriations requirement has recently arisen in *Turner v. School District of Clayton*, a lawsuit with major implications for public education in Missouri.<sup>207</sup> The outcome of this case, which is currently on remand from the Supreme Court of Missouri, may provide a strong indication of how the court intends to treat Hancock provisions in the future.

As presented to the Supreme Court of Missouri, *Turner* focused upon the interpretation of Missouri Revised Statutes section 167.131.<sup>208</sup> Section 167.131 requires unaccredited school districts in Missouri to pay the tuition and transportation costs of students living in those districts who “attend[] an accredited school in another district of the same or an adjoining county.”<sup>209</sup> Parents of children living in the City of St. Louis brought the suit against the St. Louis Public School District (SLPSD), which had recently become unaccredited, and the School District of Clayton (Clayton), an accredited district in the adjoining St. Louis County.<sup>210</sup> Plaintiffs contended that Clayton was required to enroll their children pursuant to section 167.131 and that SLPSD, also pursuant to the statute, was required to pay tuition to Clayton for the children’s education.<sup>211</sup> Rejecting the contention that the accredited district has discretion as to whether to enroll such non-resident students, and reversing the trial court’s entry of summary judgment in favor of the school districts, the Supreme Court of Missouri interpreted the statute to be mandatory and to require accredited school districts to enroll such students residing in an

204. *Id.* at 853.

205. *Id.* at 853 & n.6. Plaintiffs concluded one portion of their brief with the argument that “[b]ecause the General Assembly failed to appropriate funds that can be used to pay for such new and increased activities and services, the Act is clearly unconstitutional.” *Id.* (quoting Brief of Respondents Brooks, et al. at 90, *Brooks v. State*, 128 S.W.3d 844 (Mo. 2004) (en banc) (No. SC 85674)).

206. *Id.* at 854 (internal quotation marks omitted).

207. See generally Missy McCoy, Note, *Unconditional Acceptance: The Missouri Supreme Court’s Interpretation of Missouri Revised Statutes Section 167.131*, 76 MO. L. REV. 941 (2011).

208. *Turner v. Sch. Dist. of Clayton*, 318 S.W.3d 660, 662 (Mo. 2010) (en banc) (per curiam); see MO. REV. STAT. § 167.131 (2000).

209. MO. REV. STAT. § 167.131.1.

210. *Turner*, 318 S.W.3d at 663.

211. *Id.*

unaccredited district.<sup>212</sup> The court, however, remanded the case to the circuit court for evidentiary proceedings, allowing the school districts to assert defenses to compliance with the statute so interpreted.<sup>213</sup>

On remand, SLPSD and its taxpayers argued in pleadings that the statute, as interpreted, violated Hancock for two reasons.<sup>214</sup> First, “there is no State funding or State appropriation whatsoever made for the purpose of covering the costs of compliance with the tuition mandate.”<sup>215</sup> Second, the state funding received by the SLPSD will be insufficient to cover the total cost of tuition in adjoining districts, such as the Clayton School District.<sup>216</sup> Likewise, Clayton and its taxpayers, faced with receiving an influx of SLPSD students, argued that the statute imposed an unfunded mandate because it did not provide a state appropriation to cover Clayton’s costs of compliance.<sup>217</sup> Further, because, as Clayton argues, the method of payment provided by the

212. *Id.*

213. *See id.* at 667 nn.7, 10 (Breckenridge, J., concurring in part and dissenting in part); Court Order and Judgment at 4-5, *Turner v. Sch. Dist. of Clayton*, No. 07SL-CC00605 (St. Louis Cnty. Cir. Ct. Oct. 21, 2010), available at [http://www.clayton.k12.mo.us/clayton/lib/clayton/\\_shared/pdf/Turner/TurnerOrder\\_Oct2010.pdf](http://www.clayton.k12.mo.us/clayton/lib/clayton/_shared/pdf/Turner/TurnerOrder_Oct2010.pdf). As of the writing of this Summary, the case is in the hands of St. Louis County Circuit Court Judge David Lee Vincent III following a three-day trial that began on March 5, 2012. Elisa Crouch, *School Transfer Case Is in Judge's Hands Again*, STLTODAY.COM (Mar. 8, 2012, 12:05 AM), [http://www.stltoday.com/news/local/education/school-transfer-case-is-in-judge-s-hands-again/article\\_a12ebdfc-af65-5809-a318-d21faa36a2fc.html?mode=story](http://www.stltoday.com/news/local/education/school-transfer-case-is-in-judge-s-hands-again/article_a12ebdfc-af65-5809-a318-d21faa36a2fc.html?mode=story).

214. Intervening St. Louis Public School District’s Taxpayer’s Pleading Pursuant to Rule 52.12(c) at 4, *Turner v. Sch. Dist. of Clayton*, No. 07SL-CC00605 (St. Louis Cnty. Cir. Ct. July 19, 2011) [hereinafter SLPSD Taxpayer’s Pleading], available at [http://www.clayton.k12.mo.us/cms/lib/MO01000419/Centricity/Shared/pdf/Turner/S\\_LPS\\_InterveningTaxpayersPleading.pdf](http://www.clayton.k12.mo.us/cms/lib/MO01000419/Centricity/Shared/pdf/Turner/S_LPS_InterveningTaxpayersPleading.pdf).

215. *Id.* at 4. Evidence presented at trial suggested that SLPSD could be responsible for \$283.8 million in tuition costs should section 167.131 be upheld. Crouch, *supra* note 213.

216. SLPSD Taxpayers’ Pleading, *supra* note 214, at 3-4.

217. *See* Intervening School District of Clayton Taxpayers’ Pleading Pursuant to Rule 52.12(c) at 4, *Turner v. Sch. Dist. of Clayton*, No. 07SL-CC00605 (St. Louis Cnty. Cir. Ct. July 19, 2011) [hereinafter Clayton Taxpayers’ Pleading], available at <http://www.clayton.k12.mo.us/cms/lib/MO01000419/Centricity/Shared/pdf/Turner/ClaytonTaxpayersPleading.PDF>. The Clayton Taxpayers and Clayton also argued unenforceability in terms of impossibility, because the Clayton School District simply lacks the space and resources to accommodate school-age children living in the City of St. Louis, who number more than 50,000. *See id.* at 5. In a subsequent trial brief, Clayton estimated its cost to educate projected SLPSD transfers to be well in excess of \$100 million. Trial Brief of School District of Clayton and Its Taxpayers, *Turner v. Sch. Dist. of Clayton*, Case No. 12SL-CC00411, 9-10 (St. Louis Cnty. Cir. Ct. Mar. 2, 2012) [hereinafter Clayton Trial Brief], available at [http://www.clayton.k12.mo.us/cms/lib/MO01000419/Centricity/Shared/pdf/Turner/Trialbrief\\_03022012.pdf](http://www.clayton.k12.mo.us/cms/lib/MO01000419/Centricity/Shared/pdf/Turner/Trialbrief_03022012.pdf).

statute (SLPSD's payment of tuition costs) is unconstitutional, Clayton will be "left with no funding whatsoever to pay for the transfer mandate, in further clear violation of Hancock."<sup>218</sup>

The defendant school districts invoked a plain meaning analysis of the "state appropriation . . . made and disbursed" requirement.<sup>219</sup> The districts explained that pursuant to previous Supreme Court of Missouri cases, "[a]n 'appropriation' is . . . 'the legal authorization to expend funds from the treasury,' . . . requir[ing] approval from [both] houses of the legislature and the Governor."<sup>220</sup> Black's Law Dictionary defines "appropriation" as "[a] legislative body's act of setting aside a sum of money for a public purpose."<sup>221</sup> The Missouri Constitution also uses this term consistently with these two definitions.<sup>222</sup> Because, argued the districts, no "appropriation" so-defined was ever made to cover their increased costs of complying with section 167.131's mandate, the statute is facially unconstitutional.<sup>223</sup>

The defendant school districts also considered the word "disbursed" as it appears in section 21, arguing it "emphasizes that, in order to ensure the fulfillment of Hancock's purpose, the State must *actually pay* the money it appropriates to fund its new mandates."<sup>224</sup> This requirement, they argued, was "totally unmet."<sup>225</sup> The new state mandate imposed by section 167.131 upon school districts "is thus unfunded under the unambiguous express requirements of the Hancock Amendment, and is therefore unconstitutional and unenforceable."<sup>226</sup>

218. Clayton Taxpayers' Pleading, *supra* note 217, at 4.

219. School District of Clayton's Combined Memo (1) in Support of its Motion to Dismiss and for Summary Judgment, (2) in Opposition to Plaintiffs' "Motion" for Declaratory Judgment and (3) in Support of Its Alternative Request for a Full Trial on the Merits at 4-7, *Turner v. Sch. Dist. of Clayton*, No. 07SL-CC00605 (St. Louis Cnty. Cir. Ct. Sept. 27, 2010) [hereinafter Combined Memo] (joined by SLPSD).

220. *Id.* at 5-6 (quoting *State ex rel. Sikeston R-VI Sch. Dist. v. Ashcroft*, 828 S.W.2d 372, 375 (Mo. 1992) (en banc)).

221. *Id.* at 6 (quoting BLACK'S LAW DICTIONARY 117 (9th ed. 2009)).

222. *Id.* at 5-6 & n.1 ("All revenue collected and money received by the state shall go into the treasury and the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law." (quoting MO. CONST. art. III, § 36) (internal quotation marks omitted)); *id.* ("No appropriation bill shall be taken up for consideration after 6:00 p.m. on the first Friday following the first Monday in May of each year." (quoting MO. CONST. art. III, § 25) (internal quotation marks omitted)); *id.* ("The initiative shall not be used for the appropriation of money other than of new revenues created and provided for thereby . . .") (quoting MO. CONST. art. III, § 51) (internal quotation marks omitted)).

223. *Id.* at 6.

224. *Id.*

225. *Id.*

226. *Id.*

The school districts' Hancock contentions have been squarely presented in the trial court, and they hold the prospect that the Supreme Court of Missouri might ultimately speak to these important issues on appeal.<sup>227</sup> The potential effects of such a further decision could be legion, not only for many thousand Missouri schoolchildren, but also for the ultimate effectiveness of Hancock as a check on the state legislature.

#### IV. DISCUSSION

##### A. Examples of Proposed Legislation Potentially Violative of Hancock

Missouri Revised Statutes section 167.131 (discussed above in relation to the *Turner* case) is an example of an existing Missouri law potentially at odds with Hancock's state appropriation requirement. Other proposed and enacted legislation (also within the context of public education) may give rise to Hancock concerns as well.

Missouri Senator Jane Cunningham, for example, has proposed an "open-enrollment" bill<sup>228</sup> that has been described as being, in part, a "*Turner* fix."<sup>229</sup> She hopes her bill will avoid a "mass exodus" of students and resources from unaccredited school districts in Missouri (such as SLPSD and, more recently, the Kansas City School District) to accredited school districts that would be forced to accept them despite a lack of space.<sup>230</sup> However, like section 167.131, Senator Cunningham's proposal may run afoul of the state appropriation requirement of section 21 of Hancock. Among other things, the bill requires certain schools (including approved nonpublic schools, charter schools, and virtual schools) in the same or adjoining district as the unaccredited school district to admit and educate transferring students in certain circumstances.<sup>231</sup> Funding comes in the form of a "scholarship" paid by the unaccredited district.<sup>232</sup> The amount of the scholarship depends on the district, but with regard to SLPSD, it would be either the per-pupil expenditure of the receiving school or two-thirds of the per-pupil expenditure of SLPSD, whichever is less.<sup>233</sup> As in the case of section 167.131, however, the proposed "open enrollment" bill is unsupported by any state appropriation "made

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227. See Clayton Trial Brief, *supra* note 217, at i.

228. S.B. 369, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011).

229. *School Choice "Turner Fix" Passes Senate Committee*, CHILD. EDUC. COUNCIL MISSOURI (Mar. 30, 2011), <http://www.cec-mo.org/missouri-legislation/school-choice-options--turner>; see also Virginia Young, *Bill Opens Door for Open Enrollment, Private School Funding*, STLTODAY POLITICAL FIX (Mar. 29, 2011, 4:16 PM), [http://www.stltoday.com/news/local/govt-and-politics/political-fix/article\\_ffc77d1c-5a53-11e0-a391-0017a4a78c22.html](http://www.stltoday.com/news/local/govt-and-politics/political-fix/article_ffc77d1c-5a53-11e0-a391-0017a4a78c22.html).

230. Young, *supra* note 229.

231. Mo. S.B. 369; S.B. 370, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011).

232. Mo. S.B. 369.

233. *Id.*



and disbursed” to cover the costs of either the unaccredited district or the receiving district. This bill therefore appears to violate Hancock.

The Amy Hestir Child Protection Act (Facebook Law), which has been controversial for prohibiting teachers from messaging students over the internet in forums that cannot be monitored by both parents and school administrators, may also facially violate Hancock.<sup>234</sup> The legislature reworked the Facebook Law after a circuit judge granted an injunction prohibiting its enforcement because of free speech concerns.<sup>235</sup> Notwithstanding these revisions,<sup>236</sup> the new law requires, among other things, that school districts conduct criminal background checks on bus drivers they employ.<sup>237</sup> These background checks must be conducted through the Missouri State Highway Patrol and fingerprints for each applicant must be submitted for analysis.<sup>238</sup> Such requirements resemble those of the Concealed-Carry law at issue in *Brooks*.<sup>239</sup> Conceivably, as the Supreme Court of Missouri found with regard to the four counties in *Brooks*, school districts will incur costs associated with fingerprinting and conducting background checks on new bus drivers. Pursuant to section 21, as the dissent in *Brooks* points out, “any increase” in costs imposed by the state upon political subdivisions requires full state funding.<sup>240</sup> Because this new law provides no such funding, it may therefore be held unconstitutional should a taxpayer choose to challenge it.

### *B. Hancock Jurisprudence: Trending Towards Deference*

Considering the Supreme Court of Missouri Hancock cases discussed above, and a few others yet to be discussed, a trend appears in Missouri over the past three decades: restrictions on state and local governments initially enforced by the courts under Hancock have gradually been loosened. As

234. S.B. 54, 96th Gen. Assemb., 1st Reg. Sess. (Mo. 2011).

235. See Jwmartinez, *Possible First Amendment Rights Violations: Teachers Association Concerned About Districts Enforcing New Policies*, KC EDUC. ENTERPRISE (Mar. 16, 2012), <http://kceducationenterprise.org/2012/03/16/possible-first-amendment-rights-violations-teachers-association-concerned-about-districts-enforcing-new-policies/>.

236. See S.B. 1, 96th Gen. Assemb., 1st Ex. Sess. (Mo. 2011). The governor signed this modifying bill on October 21, 2011. *Id.*

237. Mo. S.B. 54. It also will require school districts to develop and promulgate written policies on teacher-student and employee-student communications by a certain date. Mo. S.B. 1. Additionally, it requires that districts provide teacher and employee training on how to identify the signs of sexual abuse in children and potentially abusive relationships between children and adults, emphasizing an obligation to report suspected abuse. Mo. S.B. 54.

238. Mo. S.B. 54.

239. See *supra* Part III.A.

240. See *supra* notes 194-202 and accompanying text.

noted above, this parallels national historic trends for public purpose requirements and debt limitations, as well as trends for TELs in other states.<sup>241</sup>

In the earlier years of Hancock's implementation, taxpayers won many major Supreme Court of Missouri cases involving Hancock. Examples of this include *Boone County, Rolla 31*, and *Roberts*, discussed above,<sup>242</sup> as well as other cases.<sup>243</sup> In the 1982 case of *Boone County*, the court struck down a state mandate requiring counties to pay their officials more money, finding that "any activity" as used in section 21 included "every increase in the level of operation" of a county or political subdivision.<sup>244</sup> In another 1982 case, *Roberts*, the court relied upon the plain meaning of the word "fees" as it appears in section 22(a) and held that "user fees" were subject to Hancock's voter approval requirement.<sup>245</sup> In the 1992 case of *Rolla 31*, the court explained that Hancock's state appropriation requirement "means what it says" and struck down a new mandate because the state had made no appropriation to cover the increased costs imposed by that mandate upon political subdivisions.<sup>246</sup>

Subsequent cases, however, have expanded state control or made it more difficult for taxpayers to prevail.<sup>247</sup> For example, *Keller* in 1991 represented a major departure from *Roberts*, allowing local governments to raise revenues through the use of "user fees" without a vote of the people.<sup>248</sup> The 2004 case of *Brooks*, at least from the dissent's perspective, calls into question the court's holding in *Rolla 31*, as the majority "avoided" striking down the entire concealed Carry Act as a facially unconstitutional unfunded mandate.<sup>249</sup> The 1995 case of *Fort Zumwalt School District v. State* is also illustrative.<sup>250</sup> In this case, the Supreme Court of Missouri established a high burden of proof for taxpayers who claimed the state had reduced its proportion of funding for an existing mandate imposed upon a political subdivision in violation

241. See *supra* notes 27-43 and accompanying text.

242. See *supra* Parts II.C., III.

243. See also *Wenzlaff v. Lawton*, 653 S.W.2d 215, 216 (Mo. 1983) (en banc) (local tax increases authorized by existing statute nevertheless required voter approval); *Buechner v. Bond*, 650 S.W.2d 611, 613 (Mo. 1983) (en banc) (state revenues carried over from previous fiscal year would not be considered in calculating state's revenue limit, which lowered limit); *State ex rel. Sayad v. Zych*, 642 S.W.2d 907, 910-11 (Mo. 1982) (en banc) (holding that the St. Louis Board of Police was a "state agency" and therefore could not require the City of St. Louis to give the board more money than was required when Hancock was first enacted).

244. See *supra* notes 113-17 and accompanying text.

245. See *supra* notes 140-47 and accompanying text.

246. See *supra* notes 138-39 and accompanying text.

247. See discussion *supra* Parts II.C.2., III.

248. See *supra* notes 142-66 and accompanying text.

249. See *supra* note 204 and accompanying text.

250. 896 S.W.2d 918 (Mo. 1995) (en banc).

of section 21.<sup>251</sup> Additionally, in the 2010 case of *Missouri Prosecuting Attorneys v. Barton County*, the court held that an unfunded state mandate increasing the amount counties were required to contribute to their prosecuting attorneys' pension plans did not violate section 21.<sup>252</sup> Such pension payments, the majority reasoned, fell within the phrase "compensation of county officers," which voters decided through constitutional amendment in 1986 would no longer be subject to Hancock's restrictions.<sup>253</sup> In dissent, Judge Richard B. Teitelman argued that neither the "plain language" of the amendment nor its context within the Missouri Constitution supported this conclusion.<sup>254</sup> "For well more than 100 years, and continuing to this day," he wrote, "the Missouri Constitution, without exception, has classified compensation and pensions as separate items."<sup>255</sup>

Section 21's state appropriation requirement for new state mandates may well be an emerging Hancock battleground. Should the Supreme Court of Missouri hear *Turner* on the merits of the Hancock challenges, its decision

251. See *id.* at 922-23. Plaintiffs must first show the percentage of state to local funding in the 1980-81 fiscal year for the state-mandated political subdivision activity at stake. *Id.* at 922. Plaintiffs must then present evidence showing the costs of the program in each subsequent year and the ratio of state to local spending in each subsequent year. *Id.* Unless the political subdivisions allocated costs and expenditures in a "highly segmented manner," clearly distinguishing resources directly committed to the state required activity "from those not so dedicated, it may be impossible to prove the correct proportions." *Id.* The court further cautioned plaintiffs not to believe "that establishment of [s]ection 21 proportions require[d] no more than comparing 1980-81 percentages" with the percentages of subsequent years. *Id.* at 923-24. Conversely, plaintiffs must not include any discretionary expenditure undertaken by a political subdivision going beyond the state mandated activity. *Id.* at 922. Further, any expanded activity required of political subdivisions for which the state bears full responsibility must not be included. *Id.* at 923. In sum, proving these factors for 1980-81 and each subsequent year requires "sophisticated budgetary evidence and economic expertise." *Id.* One might infer that this burden grows higher as each year passes since with each year comes another set of budgetary data to be amassed. The School District of Kansas City recently failed to meet this stringent burden in attempting to show that a state law affecting charter schools decreased the state's portion of funding for public education. *Sch. Dist. of Kansas City v. State*, 317 S.W.3d 599, 612-13 (Mo. 2010) (en banc) (citing *Fort Zumwalt*, 896 S.W.2d at 922).

252. 311 S.W.3d 737, 747 (Mo. 2010) (en banc).

253. See *id.* In 1986, voters approved a constitutional amendment providing that "a law which would authorize an increase in the compensation of county officers shall not be construed as requiring a new activity or service or an increase in the level of any activity or service within the meaning of this constitution." *Id.* at 745 (quoting MO. CONST. art. VI, § 11) (internal quotation marks omitted). The legislature approved submission of this amendment to voters in response to the Supreme Court of Missouri's ruling in *Boone County Court v. State*, 631 S.W.2d 312 (Mo. 1982) (en banc). See *Barton Cnty.*, 311 S.W.3d at 741.

254. *Barton Cnty.*, 311 S.W.3d at 749 (Teitelman, J., dissenting).

255. *Id.*

may have considerable influence upon what appears to be an emerging trend – the court's deference to the legislature on Hancock issues. If section 167.131 is struck down on the grounds that it does not satisfy the Hancock's appropriation requirement, conceivably much existing and proposed Missouri legislation may also be constitutionally suspect under Hancock. Senator Jane Cunningham's "open enrollment bill" and the controversial Facebook Law are but two better-known legislative undertakings within the educational context that may fit into this category.<sup>256</sup>

A number of important questions thus remain unanswered. *Turner* considers whether funding from another political subdivision (e.g., another school district) may satisfy the Hancock appropriation requirement.<sup>257</sup> The majority in *Brooks* mentioned but did not discuss "whether a fee can satisfy or obviate the requirement of article X, sections 16 and 21, that state mandates be funded by 'full state financing.'"<sup>258</sup> Additionally, the answer given in *Rolla 31* to the question whether unallocated state funds may be used to pay for new mandates (holding they may not)<sup>259</sup> now appears less certain after the court in *Brooks* expressly avoided reaching the question.<sup>260</sup>

### C. Interpreting and Evaluating the Appropriation Requirement

Based on existing Supreme Court of Missouri precedent interpreting Hancock provisions, it would appear that the taxpayer challenger has the best of the argument on these Hancock new-mandate, appropriation-requirement issues. Applying either the "plain meaning" or "context" method of interpretation to the state appropriation requirement would seem to result in a victory for taxpayers.

A "plain meaning" analysis is straightforward. Section 21 prohibits new state mandates "unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs."<sup>261</sup> Turning to the dictionary, as the school districts have done on remand in *Turner*, an "appropriation" means that the legislature must set aside a sum of money for a particular purpose, and "disbursed" means the money must actually be paid for that purpose.<sup>262</sup> With this in mind, neither funding from another political subdivision (*Turner*), nor a user fee (*Brooks*), nor an existing state appropriation for an unspecified purpose (*Rolla 31*) would seem to be permissible to fund new state mandates.

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256. See *supra* Part IV.A.

257. See *supra* Part III.B.

258. *Brooks v. State*, 128 S.W.3d 844, 848 (Mo. 2004) (en banc) (quoting MO. CONST. art. X, § 16).

259. See *supra* notes 120-37 and accompanying text.

260. See *supra* note 260 and accompanying text.

261. MO. CONST. art. X, § 21.

262. See *supra* notes 220-24 and accompanying text.

Should a court turn to a “context” method of interpretation, it appears the outcome would be the same. In *Keller*, the court looked to Hancock’s “principal” provision, section 16, to assess the adopting voters’ intent.<sup>263</sup> Unlike with respect to the phrase “tax, license and fees” in section 22(a),<sup>264</sup> the purpose behind the state appropriation requirement in section 21 is clearly spelled out in section 16, which says that the “state is prohibited from requiring any new or expanded activities by counties and other political subdivisions *without full state financing*.”<sup>265</sup> Given this express prohibition in section 16, and the *Keller* court’s emphasis on section 16 as a marker of Hancock “context,” it seems likely that a “context” interpretation would square with a “plain meaning” interpretation with respect to the new-mandate, state-appropriation requirement.

In further support of this conclusion, section 16 also prohibits the state “from shifting the tax burden to counties and other political subdivisions.”<sup>266</sup> When a political subdivision is required to use existing money from its budget to cover the cost of a new state mandate, it would presumably have to increase its own taxes in order to maintain its existing (pre-mandate) level of services.<sup>267</sup> This is a quintessential shifting of the tax burden expressly proscribed by section 16. That was the case in *Rolla 31*, where the state urged the use of unallocated existing state funds to pay the cost of a new mandate.<sup>268</sup> This may also be the case in *Turner*, particularly from the perspective of the unaccredited district, which may need to pay more in tuition per student than is available to it to educate its own students.<sup>269</sup> Further, unlike Hancock provisions requiring voter approval of tax increases,<sup>270</sup> sections 16 and 21 are the only sections of Hancock dealing with the shifting of state responsibility onto local subdivisions,<sup>271</sup> so any “context” interpretation would likely be limited to a comparison of sections 16 and 21, which both explicitly require state level funding.<sup>272</sup> Lastly, the word “appropriation” is

263. See *supra* note 155 and accompanying text.

264. See *supra* notes 152-64 and accompanying text.

265. MO. CONST. art. X, § 16 (emphasis added). In further support of voter intent, Hancock’s official ballot title plainly prohibited “state expansion of local responsibility without state funding.” *Boone Cnty. Court v. State*, 631 S.W.2d 321, 325 (Mo. 1982) (en banc) (citing *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 13 (Mo. 1981) (en banc)). Missouri courts have held that ballot titles may be considered in assessing voter intent. *Id.* (citing *Rathjen v. Reorganized Sch. Dist. R-II of Shelby Cnty.*, 284 S.W.2d 516, 524 (Mo. 1955) (en banc)).

266. MO. CONST. art. X, § 16.

267. See *Rolla 31 Sch. Dist. v. State*, 837 S.W.2d 1, 6-7 (Mo. 1992) (en banc); see *supra* notes 134-37 and accompanying text.

268. *Rolla 31*, 837 S.W.2d at 6-7.

269. See *supra* note 216 and accompanying text.

270. See *supra* notes 159-62 and accompanying text.

271. See MO. CONST. art. X, §§ 16, 21.

272. *Id.* §§ 16, 21.

used consistently with its dictionary definition in all instances in which it appears in the state constitution as a whole.<sup>273</sup> For all these reasons, taxpayers would seemingly prevail should the court apply either a “plain meaning” or a “context” method of interpretation to Hancock’s appropriation requirement.

Methods of interpretation aside, taxpayers also have substantial policy arguments in their favor. The current economic realities and attendant political climate are much like the circumstances when Hancock was first adopted.<sup>274</sup> Fiscal responsibility and debt reduction are important at both state and national levels. States like Illinois have taken drastic measures to repair ballooning budget gaps.<sup>275</sup> Missouri is on sounder fiscal footing, in part because of Hancock.<sup>276</sup> It has required legislators to think carefully about which new programs to fund.<sup>277</sup> In requiring that new mandates be funded with a dedicated state appropriation for that purpose, legislators are forced to prioritize what programs are worthy of implementation in an era of limited resources, and are deterred from succumbing to the temptation to win votes by providing services and benefits to their constituents without first ensuring a way to pay for them.<sup>278</sup> Especially in light of recent developments at the state, national, and even international levels, the Hancock Amendment generally, and the new-mandate, state-appropriation requirement in particular, appear to provide timely and effective tools to ensure much-needed fiscal restraint.

## V. CONCLUSION

The future treatment of Hancock’s state appropriation requirement by the Supreme Court of Missouri will affect the amendment’s overall potency and provide an indication of whether the amendment, like so many other state tools for fiscal restraint nationally and historically, will eventually lose its practical significance. But in light of the “plain meaning” and “context” analysis discussed above in conjunction with salient policy considerations, it is conceivable that the court may put a halt to a trend that has plagued state fiscal measures for many decades. *Turner* just might be the case to pull this sword from the stone.

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273. See *supra* note 222 and accompanying text.

274. See Singer I, *supra* note 63. Jim Moody, former state budget director, recently described Mel Hancock as “one of the original tea party guys. He was a populist with a populist message, and it obviously resonated enough with the voters to pass the limitation. But I think the state as a whole is more conservative now than it was at the time.” *Id.* (internal quotation marks omitted).

275. See *supra* notes 81-82 and accompanying text.

276. See *supra* note 77 and accompanying text.

277. Robertson & Kincheloe, *supra* note 86, at 20.

278. See *supra* note 46 and accompanying text.

