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The Single-Subject Rule: A State Constitutional Dilemma

Richard Briffault

I. Introduction

Critics of the proliferation of omnibus legislation in Congress have pointed to the constitutions of the American states as providing an alternative, and potentially superior, model for lawmaking.¹ Forty-three state constitutions include some sort of “single-subject” rule, that is, the requirement that each act of the legislature be limited to a single subject. Many of these provisions date back to the second quarter of the nineteenth century, and, collectively, they have been the subject of literally thousands of court decisions.² Nor is the rule a relic from a bygone era; one recent study found the rule at stake in 102 cases in 2016 alone.³ Many of these decisions have involved controversial, hot-button issues. In the last two decades, state courts have used single-subject rules to invalidate laws dealing with, *inter alia*, firearms regulation,⁴ abortion,⁵ tort reform,⁶ immigration,⁷ local

¹ See, e.g., Brannon P. Denning & Brooks R. Smith, The Truth-in-Legislation Amendment: An Idea Whose Time has Come, 78 Tenn. L. Rev. 831 (2011); Brannon P. Denning & Brooks R. Smith, Uneasy Riders: The Case for a Truth-in-Legislation Amendment, 1999 Utah L. Rev. 957 (1999); M. Albert Figinski, Maryland’s Constitutional One-Subject Rule: Neither a Dead Letter nor an Undue Restriction, 27 U. Balt. L. Rev. 363, 390-94 (1998).

² See, e.g., Michael D. Gilbert, Single Subject Rules and the Legislative Process, 67 U. Pitt. L. Rev. 803, 818-22 (2006). Gilbert’s count includes cases dealing with voter initiatives. Twenty-four states provide for the voter initiative process, and eighteen of those states require voter initiatives to comply with a single-subject requirement. See generally Rachel Downey, Michelle Hargrove and Vanessa Locklin, A Survey of the Single Subject Rule as Applied to Statewide Initiatives, 13 J. Contemp. Legal Issues 579 (2004). As voter initiatives pose distinctive issues with respect to the potential value of a single-subject requirement, see, e.g., Kurt G. Kastorf, Logrolling Gets Logrolled: Same-Sex Marriage, Direct Democracy, and the Single Subject Rule, 54 Emory L.J. 1633 (2005), this article focuses largely on cases that apply single-subject requirements to acts of state legislatures, and addresses analyses of the single-subject rule that focus on legislative enactments rather than initiatives.

³ See Daniel N. Boger, 103 Va. L. Rev. 1247, 1249 (2017).

⁴ See, e.g., *Leach v. Commonwealth*, 141 A.3d 426 (Pa. 2016); *Unity Church of St. Paul v. State*, 694 N.W.2d 585 (Minn. 2005).

⁵ See, e.g., *Burns v. Cline*, 382 P.3d 1048 (Ok. 2016).

⁶ See, e.g., *Douglas v. Cox Retirement Properties, Inc.*, 302 P.3d 789 (Ok. 2013). *State ex rel Ohio Academy of Trial Lawyers v. Sheward*, 715 N.E.2d 1062 (Ohio 1999)

⁷ See, e.g., *Thomas v. Henry*, 260 P.3d 1251 (Ok. 2011).

minimum wage laws,⁸ sex offenders,⁹ enhanced criminal penalties,¹⁰ and school vouchers.¹¹

Yet, despite having long been a part of the constitutional law of most states,¹² the single-subject rule is deeply problematic. Courts and commentators have been unable to come up with a clear and consistent definition of what constitutes a “single subject.” Instead, a persistent theme in the single-subject jurisprudence has been the inevitable “indeterminacy” of “subject”¹³ and a recognition that whether a measure consists of one subject or many will frequently be “in the eye of the beholder.”¹⁴ On the one hand, as the Michigan Supreme Court once explained, “[t]here is virtually no statute that could not be subdivided and enacted as several bills”¹⁵ On the other hand, as an older Pennsylvania Supreme Court case put it, “no two subjects are so wide apart that they may not be brought into a common focus, if the point of view be carried back far enough.”¹⁶

In practice, the meaning and enforcement of the rule has usually turned on how deferential the court thinks it ought to be to the legislature or, conversely, how much it sees the combination of topics in a new law as reflecting the legislature’s defiance of the norms of proper law-making. Over the past century and a half, state courts for the most

⁸ See, e.g., *Cooperative Home Care, Inc. v. City of St. Louis*, 514 S.W.2d 571 (Mo. 2017).

⁹ See, e.g., *Commonwealth v. Neiman*, 84 A.3d 603 (Pa. 2013).

¹⁰ See, e.g., *People v. Cervantes*, 723 N.E.2d 265 (Ill. 1999).

¹¹ See, e.g., *Simmons-Harris v. Goff*, 715 N.E.2d 1062 (Ohio 1999).

¹² State constitutions and state courts are a vital but understudied component of the American legal system. Moreover, even when scholars turn their attentions to state constitutionalism, they tend to focus on state analogues to federal constitutional provisions, such as those involving free speech, equality, due process, or criminal procedure, see, e.g., Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* (Oxford U. Press 2018). rather than on the legislative process restrictions that are a truly distinctive feature of state constitutionalism.

¹³ See *Ore. Educ. Ass’n v. Phillips*, 727 P.2d 602, 612 (Ore. 1986) (Linde, J. concurring).

¹⁴ See Daniel H. Lowenstein, *California Initiative and the Single-Subject Rule*, 39 U.C.L.A. L. Rev. 936, 938 (1983).

¹⁵ *People v. Kevorkian*, 527 N.W.2d 714, 722 (Mich. 1994).

¹⁶ *Payne v. School Dist. Of Borough of Coudersport*, 31 A. 1072, 1074 (Pa. 1895).

part appear to have given a liberal interpretation to the concept of “single subject” and have rejected most single-subject challenges to state legislation.¹⁷ Even with the uptick in findings of violations in recent decades,¹⁸ the meaning of the rule remains murky, with the case law consisting of a mix of unpredictable “I know it when I see it” decisions.¹⁹

Due to the slipperiness of subject, many analyses have focused on what are regularly said to be the primary purposes of the rule – the prevention of legislative logrolling and riders, and the promotion of a more orderly and informed legislative process -- and have called for reframing the enforcement of the rule around the advancement of these goals. But determining whether a law is the product of logrolling, or whether a provision should be treated as a rider, will often be difficult. Moreover, it is far from clear that logrolls and riders are as pernicious as proponents of more vigorous enforcement of the single subject rule assume. So, too, the more aggressive use of the single-subject rule urged by advocates as a means of thwarting “legislative chicanery”²⁰ and “backroom politics”²¹ could also undo the cooperation and compromise necessary to get difficult but important legislation enacted.

¹⁷ The leading study of the first century of the single-subject rule is Millard H. Ruud, *No Law Shall Embrace More than One Subject*, 42 *Minn. L. Rev.* 389 (1958). Professor Ruud concluded that “the one-subject rule . . . appears as a weak and undependable arrow in [the] quiver” of anyone challenging state legislation. *Id.* at 447. Nearly sixty years later, another comprehensive study similarly concluded that “most states have . . . given little weight to their respective single subject rules. Justin W. Evans & Mark. C. Bannister, *Reanimating the States’ Single Subject Jurisprudence: A New Constitutional Test*, 39 *So. Ill. U.L.J.* 163, 163 (2015). See also *Unity Church of St. Paul*, *supra*, 694 N.W.2d at 592 (noting that Minnesota had found only five single-subject violations 148 years); *Porten Sullivan*, *supra*, 568 A.2d at 402 (only two violations in 139 years).

¹⁸ See Martha J. Dragich, *State Constitutional Restrictions on Legislative Procedure: Rethinking the Analysis of Original Purpose, Single Subject, and Clear Title Challenges*, 38 *Harv. J. Legis.* 103, 106 (2001), Denning & Smith, *supra*, 1999 *Utah L. Rev.* at 996-97.

¹⁹ Cf. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

²⁰ Denning & Smith, *supra*, 78 *Tenn. L. Rev.* at 832.

²¹ Note, *Tipping Point: Missouri’s Single Subject Provision*, 72 *Mo. L. Rev.* 1387, 1389 (2007).

Part II of this article briefly reviews the history and purposes behind the single-subject rule. Part III examines how state courts have applied the single-subject rule, with particular attention to some recent state supreme court single-subject cases interpreting the rule. Part IV focuses on arguments for reframing enforcement of the rule more tightly around its purposes, particular the goals of preventing logrolling or riders. Part V concludes by reflecting of the significance of the failure of the rule to achieve its goal of reforming state legislative processes.

II. The History and Purposes of the Single-Subject Rule

A. History

Scholars have traced concerns about omnibus legislation and the norm of requiring laws to be limited to a single subject to the *Lex Cecilia Didia* of the Roman Republic.²² Early instances of single-subject requirements in the American setting include a complaint by the Privy Council about the practices of the legislature of the Massachusetts Bay Colony,²³ and a 1702 directive of Queen Anne to the royal governor of the New Jersey colony against the adoption of laws “intermixing in one Act” unrelated subjects.²⁴ The constitutions -- federal and state -- adopted after the Revolution did not include a single-subject requirement. But that soon changed. The early nineteenth century witnessed growing popular discontent with the performance of state legislatures, including such abuses as “[l]ast-minute consideration of important measures, logrolling, mixing substantive provisions in omnibus bills, low visibility and hasty enactment of important,

²² See, e.g., Robert Luce, *Legislative Procedure: Parliamentary Practices and the Course of Business in the Framing of Statutes* 548 (Houghton Mifflin Co. 1922).

²³ *Id.* at 549.

²⁴ *Id.*

and sometimes corrupt legislation, and the attachment of unrelated provisions in the amendment process.”²⁵ In response, the states amended their constitutions to impose new constraints on their legislatures. Some of these were substantive, such as limits on state spending, lending, and borrowing intended to prevent the practices that got many states into fiscal difficulties in the 1830s and 1840s.²⁶ Others were procedural, and were intended to promote legislative accountability and deliberation. These included, *inter alia*, requirements that votes be reflected in the legislature’s journal; that no bill be altered during the legislative process so as to change its legislative purpose; that bills must “age” a certain number of days before they can be voted on; that each bill have a title clearly disclosing its subject – and that each bill be limited to a single subject.²⁷

Illinois was the first to adopt a single-subject requirement when it amended its constitution in 1818 to direct that bills appropriating salaries for government officials be limited to that subject. Michigan in 1843 limited laws authorizing the borrowing of money or the issuance of state stock to a single object. In 1844, New Jersey adopted the first general single-subject requirement.²⁸ Thereafter, the idea spread quickly. Today, forty-three states, including every state entering the Union after 1844, includes some version of the single-subject rule in its constitution, almost always in the same sentence as the clear title requirement.²⁹

²⁵ Robert F. Williams, *State Constitutional Limits on Legislative Procedure: Legislative Compliance and Judicial Enforcement*, 48 U. Pitt. L. Rev. 797, 798 (1987).

²⁶ See Richard Briffault & Laurie Reynolds, *State and Local Government Law* 639-641, 817-18 (8th ed. 2016).

²⁷ Williams, *supra*, 48 U. Pitt. L. Rev. at 798-99.

²⁸ See Millard H. Ruud, “No Law Shall Embrace More Than One Subject,” 42 Minn. L. Rev. 389, 389-90 (1958).

²⁹ See, e.g., Michael W. Catalano, *The Single Subject Rule: A Check on Anti-Majoritarian Logrolling*, 3 *Emerging Issues in State Constitutional Law* 77, 80 (1990).

There are some variations across the states' constitutions in the language and scope of the rule. Two states apply the requirement only to appropriations bills, and another two states limit it to bills adopting special or local laws.³⁰ Conversely, a few states exempt appropriations bills from the single-subject requirement,³¹ and some states exclude bills "for the codification, revision, or rearrangement of laws."³² A handful of states use the term "object" rather than "subject," although that does not appear to have had any legal significance.³³ Notwithstanding these variations, some version of the single-subject requirement is widespread, with roughly three-quarters of state legislatures subject to the rule for most enactments. It is probably the "most significant and most litigated procedural requirement" in state constitutions.³⁴ The language of the Ohio Constitution is typical: "No bill shall contain more than one subject, which shall be clearly expressed in its title."³⁵

B. Purposes

The purposes of the single-subject rule are briefly stated and often repeated: the prevention of logrolling and riders; orderly legislative procedure that promotes informed legislative decision-making and public accountability;³⁶ and, less frequently, the protection of the governor's veto power.³⁷ Logrolling and riders, in particular, have been

³⁰ *Id.*

³¹ See Ruud, *supra*, 42 Minn. L. Rev. at 416.

³² See, e.g., Ill. Const., art IV., §8(d).

³³ See Ruud, *supra*, 42 Minn. L. Rev. at 394-96.

³⁴ Michael J. Kasper, Using Article IV of the Illinois Constitution to Attack Legislation Passed by the General Assembly, 40 Loy. U. Chi. L.J. 847, 848 (2009).

³⁵ Ohio Const. Art II, § 15(D).

³⁶ See generally Ruud, *supra*, 42 Minn. L. Rev. at 390-91.

³⁷ See, e.g., Justin W. Evans & Mark C. Bannister, The Meaning and Purpose of State Constitutional Single Subject Rules: A Survey of States and the Indiana Example, 49 Val. U. L. Rev. 87, 151-52 (2014); *In re Initiative Petition No. 382*, 142 P.3d 400, 405 n. 11 (Okla. 2006); Dragich, *supra*, 38 Harv. J. Legis. at 114-15; *Migdal v. State*, 747 A.2d 1225, 1229 (Md. 2000); *Hammerschmidt v. Boone Co.*, 877 S.W.2d 98, 102 (Mo. 1994); Figginski, *supra*, 27 U. Balt. L. Rev. at 366.

most frequently cited as the “evils” against which the single-subject rule” is aimed.³⁸ The two terms are sometimes blurred together,³⁹ but they refer to somewhat different forms of legislative action. “Logrolling” is used to describe what occurs when two or more separate proposals, none of which is able to command majority support, are combined so that the minorities behind each measure aggregate to a majority capable of passing the resulting bill.⁴⁰ A “rider” is a provision which could not pass on its own but is then attached to a bill considered likely to pass and so “rides” on that more popular measure to enactment.⁴¹

Both logrolling and riders have been sharply criticized because they lead to the adoption of measures that do not enjoy true majority support within the legislature, and, to the extent that legislators accurately represent the views of their constituents, within the state as a whole. Some courts have also emphasized the degree to which logrolls and riders interfere with the freedom of legislators by presenting them with the “Hobson’s choice” of being “forced to assent to an unfavorable provision to secure passage of a

³⁸ See, e.g., Ruud, *supra*, 42 Minn. L. Rev. at 398 (“log-rolling is the evil at which the one-subject rule is aimed”); Stephanie Hoffer & Travis McDade, *Of Disunity and Logrolling: Ohio’s One-Subject Rule and the Very Evils it was Designed to Prevent*, 51 Clev. St. L. Rev. 557 (2004). Cf. *In re Title, Ballot Title and Submission Clause for 2005-2006 #74*, 136 P.3d 237, 243 (Coats, J., dissenting) (“both case law and legislative history make clear that this provision must be understood as directed against two specific evils: 1) increasing voting power by combining measures that could not be carried on their individual merits, . . . and 2) surprising voters by surreptitiously including unknown and alien subjects ‘coiled up in the folds’ of the proposal”) (application of single-subject rule to ballot proposition).

³⁹ See, e.g., *Fent v. State*, 214 P.3d 799, 804 (Okla. 2009); Porten Sullivan, *supra*, 568 A.2d at 1116; *State ex rel Ohio AFL-CIO v. Voinovich*, 631 N.E.2d 582, 604 (Ohio 1994) (Francis E. Sweeney, Sr., J., dissenting in part and concurring in part); Dragich, *supra*, 38 Harv. J. Legis. at 161 (analyzing a case in which it was “hard to say” whether a single-subject violation involved a logroll or a rider).

⁴⁰ See, e.g., *Comm. v. Neiman*, *supra*, 84 A.3d at 612.

⁴¹ See, e.g., James Preston Schuck, *Returning the One to Ohio’s One-Subject Rule*, 28 Cap. L. Rev. 899, 901 (2000).

favorable one, or conversely, forced to vote against a favorable provision to ensure that an unfavorable provision is not enacted.”⁴²

Beyond the prevention of logrolling and riders, many courts and commentators cite improved legislative deliberation, greater transparency, and the resulting greater accountability to the public as purposes of the single-subject rule.⁴³ As the Illinois Supreme Court recently explained, one reason for the single-subject rule “is to promote an orderly legislative process. . . . ‘By limiting each bill to a single subject, the issues presented by each bill can be better grasped and more intelligently discussed.’”⁴⁴ The Missouri Supreme Court similarly asserted that by limiting each bill to a single subject, the rule enables bills to “be easily understood and intelligently discussed, both by legislators and the general public.”⁴⁵ So, too, the Pennsylvania Supreme Court has urged that the general aim of the rule is to “place restraints on the legislative process and encourage an open, deliberative, and accountable government.”⁴⁶ The intuition is that when a bill is limited to a single subject, it is easier for legislators to more fully understand the ramifications of enactment and for the public to know what their legislators are up to. That can facilitate public input while the measure is pending, or voter efforts to hold legislators accountable after enactment. Supporters of the rule have also expressed the hopeful assumption that it will “prevent surprise and fraud upon the people and the

⁴² In re Initiative Petition No. 382, *supra*, 142 P.3d at 405. Accord, Porten Sullivan, *supra*, 568 A.2d at 1121 (“to avoid the necessity for a legislator to acquiesce in a bill he or she opposes in order to secure useful and necessary legislation”).

⁴³ See, e.g., Kasper, *supra*, 40 Loy. U. Chi. L.J. at 848-49; Schuck, *supra*, 28 Cap. L. Rev. at 903; Ruud, *supra*, 42 Minn. L. Rev. at 391, 449-50.

⁴⁴ Wirtz v. Quinn, 953 N.E.2d 899, 905 (Ill. 2011), quoting Johnson v. Edgar, 680 N.E.2d 1372 (Ill. 1997).

⁴⁵ Rizzo v. State, 189 S.W.3d 576, 578 (Mo. 2006). See also Missouri Roundtable for Life, Inc. v. State, 396 S.W.3d 348, 351 (Mo. 2013) (the rule “ensures that members of the legislature and the public are aware of the subject matter of pending laws”).

⁴⁶ Pennsylvanians Against Gambling Expansion Fund (“PAGE”) v. Commonwealth, 877 A.2d 383, 395 (Pa. 2005).

legislature⁴⁷ by barring special interest groups from hiding deals or giveaways in long and complex multi-subject measures.

III. The Single-Subject Rule in the Courts

A. Subject

Courts have regularly recognized the intrinsic difficulty of defining “subject” for purposes of enforcing the single-subject requirement. As the Utah Supreme Court recently acknowledged, a “precise formula may well be impossible to craft.”⁴⁸ Other courts have agreed that “[f]or purposes of legislation, ‘subjects’ are not absolute existences to be discovered by some sort of a priori reasoning, but are the result of classification for convenience of treatment and for greater effectiveness in attaining the general purpose of the particular legislative act.”⁴⁹ As Professor Daniel Hays Lowenstein has emphasized a central problem is the level of specificity required or generality permitted in defining what constitutes a subject as “any collection of items, no matter how diverse and comprehensive will fall ‘within’ a single (broad) subject if one goes high enough up . . . and, on the other hand, the most simple and specific idea can always be broken down into parts, which may in turn plausibly be regarded as separate (narrow) subjects.”⁵⁰

Some courts have emphasized the need to take a broad approach to defining “subject.” The Utah Supreme Court has emphasized that “there is no constitutional restriction as to the scope or magnitude of the single subject of a legislative act.”⁵¹ The

⁴⁷ *Otto v. Wright Co.*, 920 N.W.2d 446, 456 (Minn. 2018); *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 325 (Mo. 1997) (the rule serves to “facilitate orderly procedure, avoid surprise, and prevent ‘logrolling’”).

⁴⁸ *Gregory v. Shurtleff*, 299 P.3d 1098, 1112 (Utah 2013).

⁴⁹ *Washington Ass’n for Substance Abuse and Violence Prevention v. State*, 278 P.2d 632, 642 (Wash. 2012) (quoting earlier Washington and Indiana courts)

⁵⁰ See Lowenstein, *supra*, 39 U.C.L.A. L. Rev. at 941.

⁵¹ *Gregory v. Shurtleff*, *supra* 299 P.3d at 1112.

Illinois Supreme Court agreed that “[t]he subject may be as broad as the legislature chooses,”⁵² albeit not “so broad that the rule is evaded as a meaningful constitutional check on the legislature’s actions”⁵³ – perhaps not the most helpful formula. Indeed, some state courts have approved as constitutionally permissible subjects such broad topics as “land,”⁵⁴ “education,”⁵⁵ “transportation,”⁵⁶ “utilities,”⁵⁷ “state taxation,”⁵⁸ “public safety,”⁵⁹ “capital projects,”⁶⁰ and “operations of state government.”⁶¹

On the other hand, some state high courts have rejected “any broad, expansive, approach,”⁶² and have ruled out certain relatively broad topics. The Maryland Court of Appeals concluded that the purpose of “generally regulating corporations is too broad and too tenuous” to satisfy the single-subject requirement.⁶³ The Pennsylvania Supreme Court has held that “municipalities” is “too broad to qualify for single-subject status”⁶⁴ and, similarly, that “refining civil remedies or relief” and “judicial remedies and sanctions” are “far too expansive” to satisfy the single-subject requirement⁶⁵ -- although the same court

⁵² *Wirtz v. Quinn*, supra, 953 N.E.2d at 905.

⁵³ *Id.*

⁵⁴ *State v. First Nat’l Bank of Anchorage*, 660 P.2d 406 (Alaska 1982).

⁵⁵ *Kansas NEA*, supra, 387 P.3d at 808-09.

⁵⁶ See, e.g., *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1181 (Alaska 1985); *Wass v. Anderson*, 2452 N.W.2d 131, 137 (Minn. 1977); *C.C. Dillon v. City of Eureka*, 12 S.W.3d 322 (Mo. 2000).

⁵⁷ *Kansas One-Call Sys. v. State*, 274 P.3d 625 (Kan. 2012).

⁵⁸ *North Slope Borough v. SOHIO Petroleum Corp.*, 585 P.2d 534 (Alaska 1978).

⁵⁹ *Townsend v. State*, 767 N.W.2d 11, 13-14 (Minn. 2009).

⁶⁰ *Wirtz v. Quinn*, supra, 953 N.E.2d at 907 (“capital projects is a legitimate single subject”).

⁶¹ *Otto v. Wright Co.*, supra, 910 N.W.2d at 457 (“the operation of state government’ – is not too broad to pass constitutional muster”). But see *People v. Reedy*, 708 N.E.2d 1114 (Ill. 1999) (rejecting subject of “governmental matters”).

⁶² *Fent v. State ex rel. Okla. Cap. Imp. Auth. (“OCIA”)*, 214 P.3d 799, 806 (Ok. 2009).

⁶³ *Migdal v. State*, supra, 747 A.2d at 1231.

⁶⁴ *City of Philadelphia v. Comm.*, 838 A.2d 566, 589 (Pa. 2003).

⁶⁵ *Comm. v. Neiman*, supra, 84 A.3d at 613.

also held that the “regulating of gaming” was sufficiently narrow as to be a constitutionally permissible subject.⁶⁶

Some state constitutional provisions authorize acceptance of some inherently broad measures, like appropriations and budget bills, codifications, and comprehensive revisions, and some courts similarly recognized that such sweeping multi-part measures can constitute a single subject. However, difficulties have arisen when substantive law provisions are attached to appropriations bills⁶⁷ and also in defining what constitutes a permissible comprehensive approach. Thus, state courts have divided over whether comprehensive tort reform constitutes a single subject. The Alaska Supreme Court, which has generally accepted a broad definition of subject, upheld a single tort reform law that imposed caps on noneconomic and punitive damages, required payment of half of all punitive damages awards to the state, created a statute of repose, adopted a comparative allocation of fault between parties and nonparties, provided for a revised offer of judgment procedure, and gave hospitals partial immunity from vicarious liability for some physicians’ actions.⁶⁸ The court acknowledged that the law’s provisions “concern different matters” but concluded that “they are all within the single subject of ‘civil action.’”⁶⁹ The Ohio and Oklahoma Supreme Courts, however, rejected similar measures, finding, respectively that “tort and other civil actions,”⁷⁰ and “lawsuit reform”⁷¹ could not be sustained as constitutionally permissible single subjects of legislation. Courts have

⁶⁶ PAGE, *supra*, 877 A.3d at 396.

⁶⁷ See, e.g., Rudd, *supra*, 42 Minn. L. Rev. at 413-47; State ex rel Ohio CSEA v. State, 56 N.E.3d 913, 919 (Ohio 2016) (“Biennial appropriations bills, which fund the state’s programs and departments, necessarily address wide-ranging topics”); Unity Church of St. Paul v. State, 694 N.W.2d 585,

⁶⁸ Evans v. State, 56 P.3d 1046 (Alaska 2002).

⁶⁹ *Id.* at 1070.

⁷⁰ State ex rel Ohio Academy of Trial lawyers v. Sheward, 715 N.E.2d 1062, 1101 (Ohio 1999).

⁷¹ Douglas v. Cox Retirement Props., Inc., 302 P.3d 789, 793 (Okla. 2013).

similarly struggled over the significance of the length or number of sections of a bill or the number of articles or titles of the state code that the measure amends. Although longer, more complex bills are certainly more likely to be found to violate the single-subject constraint, the fact that the bill amends only a single article or title will not save it,⁷² and the fact that it runs over one hundred pages, with dozens of chapters and multiple sections, need not be fatal.⁷³

Courts frequently acknowledge the lack of clarity in their single-subject jurisprudence. The Pennsylvania Supreme Court has candidly written that its cases indicate that “the line between what is constitutionally acceptable and what is not is often blurred.”⁷⁴ Many of the most prominent recent cases in Pennsylvania and Ohio – two states which have witnessed considerable single-subject rule litigation -- have been marked by sharp dissents,⁷⁵ with one Ohio dissenter pointing out that in one case each state supreme court justice authored a separate opinion demonstrating “that there was little consensus among the justices on the rule’s meaning.”⁷⁶ A dissenting justice of the Colorado Supreme Court similarly lamented “an unmistakable lack of uniformity in our treatment of the single-subject requirement.”⁷⁷ Even when there are no dissents, it is

⁷² See, e.g., *Comm. v. Neiman*, supra, 84 A.3d at 612-13; *Migdal v. State*, supra, 747 A.2d at 1230.

⁷³ See, e.g. *Wirtz v. Quinn*, supra, 953 N.E.2d at 905-07, *Arangold v. Zehnder*, 718 N.E.2d 191 (Ill. 1999) (amending twenty-one separate laws): *PAGE*, supra, 877 A.2d at 392 (bill was 145 pages and included seven chapters and 86 sections). See also *Dragich*, supra, 38 Harv. J. Legis. at 144-45.

⁷⁴ *PAGE*, supra, 877 A.2d at 400.

⁷⁵ See, e.g., *Comm. v. Neiman*, supra; *Penn. State Ass’n of Jury Comm’rs v. Comm.*, 64 A.2d3d 611 (Pa. 2013); *Spahn v. Zoning Bd. of Adjustment*, 977 A.2d 1132 (Pa. 2009); *CSEA*, supra; *State ex rel Ohio Civ. Serv. Emp. Ass’n v. State Emp. Rel. Bd. (“CSEA v. SERB”)*, 818 N.E.2d 688 (Ohio 2004); *Simmons-Harris v. Goff*, 711 N.E.2d 203 (Ohio 1999); *Sheward*, supra; *Voinovich*, supra.

⁷⁶ *CSEA v SERB*, supra, 818 N.E.2d at 705 (dissenting opinion of Lundberg Stratton, J., joined by O’Connor, J.).

⁷⁷ *In re Title, Ballot Title and Submission Clause for No 2005-2006 No, 74*, 136 P.3d 237, 244 (Colo. 2006) (Coats, J., dissenting).

sometimes difficult to find consistency in a court's treatment of "subject." The Oklahoma Supreme Court, which has had a heavy docket of single-subject cases in recent years,⁷⁸ has both invalidated a law authorizing a single state agency to incur debt to finance three different projects,⁷⁹ while a few years later upholding a law authorizing a different state agency to issue bonds to finance four different projects⁸⁰ -- both times without dissent. Although the second decision sought to distinguish the first by finding the common theme of turnpike construction and maintenance linked the multiple projects,⁸¹ the tension between the decisions remains.

B. Germaneness

As the Oklahoma turnpike decision indicates, the question in many single subject cases is not the definition of "subject" per se, but whether the different topics, sections, or parts of a bill are sufficiently closely connected that they can be treated as dealing with a single subject. As the Ohio Supreme Court put it, the rule "allows a plurality of topics" even as it bars a "disunity of subjects."⁸² Indeed, most single-subject disputes involve laws that, as enacted, consist of multiple provisions. Courts have developed a range of tests for determining whether the multiple parts of a bill are sufficiently related so that when combined they constitute but a single subject, including whether they are "rationally

⁷⁸ See, e.g., *Matter Oklahoma Turnpike Auth.*, 389 P.3d 318 (Okla. 2017); *Burns v. Cline*, 382 P.3d 1048 Okla. 2016); *Fent v. Fallin*, 315 P.3d 1023 (Okla. 2013); *Douglas*, supra; *Thomas v. Henry*, 260 P.3d 1251 (Okla. 2011); *Nova Health Sys. v. Edmondson*, 233 P.3d 380 (Okla. 2010); *O CIA*, supra; *In re Petition No. 382*, 142 P.3d 400 (Okla. 2006).

⁷⁹ *O CIA*, supra, 214 P.3d

⁸⁰ *Matter of Okla Tpke Auth.*, supra.

⁸¹ *Id.* at 320-21.

⁸² *State ex rel Hinkle v. Franklin Co. Bd. of Elec.* 580 N.E.2d 767, 770 (Ohio 1991).

related;⁸³ whether there is a “unifying principle,”⁸⁴ “natural and logical connection,”⁸⁵ or a “common purpose or relationship . . . between the topics;”⁸⁶ “whether they have a nexus to a common purpose;”⁸⁷ whether they “fairly relate to the same subject”⁸⁸ or “relate, directly or indirectly, to the same general subject and have a mutual connection;”⁸⁹ whether there is a “common thread”⁹⁰ or “filament”⁹¹ linking them to each other, or – from the opposite perspective – whether they are “distinct and incongruous”⁹² or “dissimilar and discordant.”⁹³ The most commonly used judicial standard is whether they are “germane” or “reasonably germane” to each other or to some general subject.⁹⁴

Of course, as other commentators have recognized, “reasonable germaneness” is not much more precise or determinate than “subject” itself.⁹⁵ The body of law the courts have produced as they have grappled with the question of whether the different parts of a bill are germane to each other or to some overarching subject is not much more consistent than the jurisprudence concerning permissible subjects.

Thus, courts have found sufficient germaneness in laws that combine a tax on motor vehicle fuels with authorization of bonds to finance highway construction;⁹⁶ add an

⁸³ State ex rel Ohio Civ. Serv. Emp. Ass’n v. State, 56 N.E.3d 913, 922 (Ohio 2016).

⁸⁴ McIntire v. Forbes, 909 P.2d 846, 855-56 (Pre. 1996).

⁸⁵ People v. Cervantes, 723 N.E.2d 265, 267 (Ill. 1999).

⁸⁶ Hoover v. Bd. of Franklin Co. Comm’rs, 482 N.E.2d 575, 580 (Ohio 1985).

⁸⁷ Neiman, supra, 84 A.3d at 612.

⁸⁸ Hammerschmidt v. Boone Co., 877 S.W.2d 98, 102 (Mo. 1994)

⁸⁹ Ex parte Jones, 440 S.W.3d 628, 632 (Tex. 2014).

⁹⁰ Beagle v. Walden, 676 N.E.2d 506, 507 (Ohio 1997).

⁹¹ Blanch v. Suburban Hennepin Reg. Park Dist., 449 N.W.2d 150, 154-55 (Minn. 1989).

⁹² Porten Sullivan Corp. v. State, 568 A.2d 1111, 1121 (Md. 1990)

⁹³ Kansas Nat’l Educ. Ass’n v. State, 387 P.3d 795, 805 (Kans. 2017).

⁹⁴ Unity Church of St. Paul, supra, 694 N.W.2d at 593. See generally Kastorf, supra, 54 Emory L.J. at 1661 (reasonable germaneness most common test for compliance with single subject rule)

⁹⁵ See, e.g., Robert D. Cooter & Michael D. Gilbert, A Theory of Direct Democracy and the Single Subject Rule, 110 Colum. L. Rev. 687, 710 (“[g]ermaneness provides no clear guidance to the level of abstraction”).

⁹⁶ Wass v. Anderson, 252 N.W.2d 131, 135-36 (Minn. 1977).

authorization of a park district to acquire land to a bill making appropriations for state government;⁹⁷ combine an authorization of the privatization of liquor sales with funding for public safety;⁹⁸ combine provisions dealing with asbestos abatement, leaking underground storage tanks, and water well drilling under the rubric of “environmental control;”⁹⁹ combine local regulation of billboards with funding for the state transportation department;¹⁰⁰ add a program for the privatization of child support enforcement to a bill dealing with welfare reform;¹⁰¹ add an authorization for counties to hire private accounting firms to audit their books to the state government finance omnibus bill;¹⁰² include provisions regulating the sale of prisons to private operators in the state budget bill;¹⁰³ and combine funding for emergency medical services with a prohibition on the use of tax increment financing in flood plains (on the theory that the financing restriction would reduce the need for emergency services).¹⁰⁴

On the other hand, courts have rejected on single-subject grounds measures that sought to combine: regulation of long-term care with authorization of the state attorney general to enforce regulation of advertising by nursing homes;¹⁰⁵ multiple anti-crime and neighborhood safety provisions with provisions regulating (including but not limited to criminal punishments for fraud) private providers of public welfare services;¹⁰⁶ payment of prevailing wage requirements for both publicly and nonpublicly financed school

⁹⁷ *Blanc v. Suburban Hennepin Reg. Park Dist.*, 449 N.W.2d 150 (Minn. 1989).

⁹⁸ *Washington Ass’n for Substance Abuse v. State*, 278 P.3d 632 (Wash. 2012).

⁹⁹ *Corvera Abatement Tech. v. Air Conservation Com’n*, 973 S.W.2d 851 (Mo. 1998).

¹⁰⁰ *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 327-29 (Mo. 2000).

¹⁰¹ *Maryland Classified Emp. Ass’n v. State*, 694 A.2d 937, 942-46 (Md. 1997).

¹⁰² *Otto v. Wright Co.*, 910 N.W.2d 446, 455-57 (Minn. 2018).

¹⁰³ *State ex rel Ohio CSEA v. State*, 56 N.E.3d 913 (Ohio 2016).

¹⁰⁴ *City of St. Charles v. State*, 165 S.W.3d 149, 151-52 (Mo. 2005).

¹⁰⁵ *Missouri Health Care Ass’n v. Attorney General*, 953 S.W.2d 617 (Mo. 1997).

¹⁰⁶ *People v. Cervantes*, 723 N.E.2d 265 Ill. 1999).

construction and remodeling projects added to an omnibus tax relief bill;¹⁰⁷ a ban on persons convicted of a felony from running for elected office in the state with a general regulation of political subdivisions including local elections;¹⁰⁸ changes to a state's public utilities regulatory fund with changes in the public service commission's rule-making process;¹⁰⁹ a provision relating to resident agents of corporations and a provision governing directors of investment companies;¹¹⁰ and changes to the state's workers' compensation system with an exemption from the state's child labor laws and provision for an intentional workplace tort.¹¹¹ There may be a principle that explains the different findings of connection or germaneness across the cases, but it is not easy to discern.

C. Judicial Deference

Most courts have declared that they will take a deferential approach to the legislature, adopting a "liberal interpretation" of the meaning of "subject" and of the degree of connectedness among a bill's parts necessary to satisfy the germaneness standard. Reviewing the state's case law, the Pennsylvania Supreme Court observed that "[i]n more recent decisions . . . Pennsylvania courts have become extremely deferential toward the General Assembly in [single-subject] challenges" and have upheld laws as long as "the court can fashion a single, over-arching topic to loosely relate the various subjects

¹⁰⁷ *Assoc. Bldrs & Contrs. v. Ventura*, 610 N.W.2d 293 (Minn. 2000).

¹⁰⁸ *Rizzo v. State*, 189 S.W.3d 576 (Mo. 2006). See also *Hammerschmidt v. Boone*, 877 S.W.2d 98 (Mo. 1994) (rejecting a bill that combined a provision allowing certain counties to adopt, by election, a county constitution with a generally relating to local elections); *State ex rel Hinkle v. Franklin Co. Bd. of Elec.* 580 N.E.2d 767 (Ohio 1991) (rejecting combination of provisions dealing with judicial elections and local option elections).

¹⁰⁹ *Delmarva Power & Light Co. v. Public Service Comm.*, 809 A.2d 640 (Md. 2002).

¹¹⁰ *Migdal v. State*, 747 A.2d 1225 (Md. 2000).

¹¹¹ *State ex rel Ohio AFL-CIO v. Voinovich*, 631 N.E.2d 582 (Ohio 1994).

included in the statute under review.”¹¹² High courts in Alaska,¹¹³ Illinois,¹¹⁴ Kansas,¹¹⁵ Maryland,¹¹⁶ Missouri,¹¹⁷ Minnesota,¹¹⁸ Ohio¹¹⁹ and other states have similarly taken the position that they will strike down laws on single subject grounds only if the violation is “clearly, plainly, and palpably so,” “manifestly gross and fraudulent,” or shown “beyond a reasonable doubt.”¹²⁰

The case for such a liberal, deferential approach is clear. It demonstrates respect for a coordinate branch of government. If few, if any, laws are struck down on single-subject grounds, it minimizes the need for the court to articulate a clear and consistent standard for determining the meaning of “subject” or “germaneness” or to rationalize the different treatment of different cases. And it avoids the extremely knotty question of what to do when a law is determined to violate the rule – strike the whole law down; or sever the section or sections not germane to the other provisions, strike those down, and sustain the rest.¹²¹ On the other hand, judicial deference, with the resulting expansive definitions

¹¹² City of Philadelphia, supra, 838 A.2d at 576-77.

¹¹³ See, e.g., Evans v. Kutch, supra, 56 P.3d at 1069 (“only a ‘substantial and plain’ violation of the one subject rule will lead us to strike down legislation on this basis”).

¹¹⁴ Wirtz v. Quinn, supra, 953 N.E.2d at 905 (“we construe the word ‘subject’ liberally in favor of upholding the legislation;” a law violates the rule only “when it contains unrelated provision that by no fair interpretation have any legitimate relation to the single subject”).

¹¹⁵ Kansas NEA, supra, 387 P.3d at 808 (“the underlying policy of liberally construing the one-subject rule”).

¹¹⁶ Porten Sullivan, supra, 568 A.2d at 1118 (“the ‘general disposition of [this] Court has been to give the section a liberal construction, so as not to interfere with or impede legislative action”).

¹¹⁷ C.C. Dillon Co., supra, 12 S.W.3d at 327 (no violation unless the act “clearly and undoubtedly violates” the rule).

¹¹⁸ Unity Church, supra, 694 N.W.2d at 594 (“because of the liberal deference given to the legislature, Minnesota courts have rarely invalidated laws for a lack of germaneness”).

¹¹⁹ Ohio CSEA, supra, 56 N.E.3d at 919 (“To accord deference to the General Assembly’s law-making function, we must liberally construe the term ‘subject’ for purposes of the rule”).

¹²⁰ See Dragich, supra, 38 Harv. J. Legis., supra, at 105-06, citing and quoting cases.

¹²¹ On the difficulty of the severability question, see Ruud, supra, 42 Minn. L. Rev. at 396-400; Dragich, supra, 38 Harv. J. Legis. at 154-63; Voinovich, supra, 631 N.E.2d at 587 (ordering severance); id. at 599-600 and 600-604 (opinions concurring in finding of single-subject violation, dissenting from remedy of severance); Comm. v. Neiman, supra, 84 A.3d at 613-15 (generally rejecting severance because of “the reality that discerning the ‘main’ purpose of a piece of legislation becomes an untenable exercise in conjecture when the legislation has metamorphosed during the legislative process to include a panoply of additional and disparate subjects”); Ohio

of subject and germaneness threaten to undermine the single-subject principle and to render a provision of the state constitution a “dead letter.”¹²² If the purpose of the single-subject requirement is to reform the operations of the state legislature, it may be odd to leave enforcement of the requirement to the legislature itself. Nor is it clear that enforcement of the rule would be so disrespectful of the legislature. Like other process reforms, the single-subject requirement does not limit the objects of state legislation or the goals of state policy, but only the form of the legislation used to achieve those ends. There would be no restriction on the legislature enacting separately those measures it could not enact together, and many findings of single-subject violations have been followed by just such separate enactments.¹²³

In any event, nearly all the courts that have declared themselves committed to a deferential, liberal interpretation of subject have at one time or another struck down laws on single-subject grounds.¹²⁴ “There must be limits”¹²⁵ -- “[t]here comes a point”¹²⁶ – the courts complain, but the rule of liberal-interpretation-up-to-a-point fails to provide a very

CSEA v. State, *supra*, 56 N.E.3d at 920 (“the appropriate remedy when a legislative act violates the one-subject rule is generally to sever the offending portion of the act ;’to cure the defect and save the portions” of the act do relate to a single subject”).

¹²² Porten Sullivan, *supra*, 568 A.2d 1118.

¹²³ See, e.g., Rev. Stat. Mo. 290.528 (H.B. 1194 of Laws of 2017), preempting local minimum wage laws, adopted in response to the invalidation of a similar preemptive measure invalidated on single-subject grounds in *Cooperative Home Care, Inc. v. City of St. Louis*, 514 S.W.2d 571 (Mo. 2017); Comment, It’s Still a Peanut Butter Cookie: A Comment on *Douglas v. Cox Retirement Properties, Inc.*, 39 Okla. City U. L. Rev. 243, 262-63 (2014) (following Oklahoma Supreme Court’s invalidation of tort reform law on single-subject grounds, governor called a special session of the legislature which passed 23 separate bills which had been part of the invalid comprehensive measure).

¹²⁴ See, e.g., for Illinois, *People v. Cervantes*, *supra*; *People v. Reedy*, *supra*; *Johnson v. Edgar*, 680 N.E.2d 1372; for Maryland, Porten Sullivan, *supra*; *Migdal v. State*; *Delmarva Power & Light*, *supra*; for Minnesota, *Unity Church*; *supra*; for Missouri, *Cooperative Home Care*, *supra*; *Missouri Roundtable for Life, Inc.*, *supra*; for Ohio, *Sheward*, *supra*; *Simmons-Harris v. Goff*, *supra*; for Pennsylvania, *Comm. v. Leach*, *supra*, *Comm. v. Neiman*, *supra*; *Penn. State Ass’n of Jury Comm’rs*, *supra*; *Spahn v. Zoning Bd. of Adjustment*, *supra*; *City of Philadelphia v. Comm.*, *supra*.

¹²⁵ *City of Philadelphia*, *supra*, 838 A.2d at 578;

¹²⁶ *Sheward*, *supra*, 715 N.E.2d 1101.

predictable or neutral principle, and contributes to concerns that application of the rule is driven by the policy or political views of the judges.¹²⁷

D. Some Recent Cases

A brief review of recent cases – all from the current decade – from a half-dozen state supreme courts around the country may give a fuller sense of the difficulty inherent in applying the rule. Although some readers – and this author – may conclude that in some of the cases the “single-subject” question was pretty easy and that the court got it right,¹²⁸ in others the issue was far more difficult and the wisdom of the decision far more debatable.

To begin, there are at least two cases involving what seem to be easy violations of the rule. In 2016, in *Leach v. Commonwealth*,¹²⁹ the Pennsylvania Supreme Court struck down a law that consisted of four substantive sections addressing: trespass for the purpose of unlawfully taking secondary metal¹³⁰ from a premises; theft of secondary metal as an independent offense; state police disclosure of records; and standing for individuals or organizations to challenge local gun regulations. The provisions could be linked only if, as the legislative leaders contended, they addressed “the subject of amending the Crimes Code.”¹³¹ Such a “subject” would pass constitutional muster only at a very high

¹²⁷ See, e.g., Michael D. Gilbert, Does Law Matter? Theory and Evidence from Single-Subject Adjudication, 40 J. Leg. Stud. 333, 355 (2011) (finding that judicial ideology had a “consistent, statistically significant relationship with judges’ votes” particularly in cases implicating “fundamental values”); Survey of the Single-Subject Rule as Applied to Statewide Initiatives, 13 J. Contemp. Leg. Issues 579, 593-96 (2004); Hoffer & McDade, *supra*, 51 Clev. St. L. Rev. at 569 (Ohio Supreme Court’s *Sheward* decision “as much a political shake-up as a judicial pronouncement”).

¹²⁸ Professor Gilbert found that student coders frequently agreed with judges’ categorization of the number of subjects in a measure. See Gilbert, Does Law Matter?, *supra*, 40 J. Leg. Stud. at 346, 354.

¹²⁹ 141 A.3d 426 (Pa. 2016).

¹³⁰ “Secondary metal” refers to metal such as copper and aluminum or wire and cable used by utilities and transportation agencies. *Id.* at 427.

¹³¹ *Id.* at 431.

level of abstraction, which conceivably might have sufficed if the law was a comprehensive revision of the criminal code, which it wasn't. Similarly, in 2017, the Missouri Supreme Court held in *Cooperative Home Care, Inc. v. City of St. Louis*¹³² that a law combining "the establishment, proper governance, and operation of community improvement districts" with a prohibition on municipalities setting a minimum wage higher than that set by the state violated Missouri's single-subject rule. It's not clear what "single subject" could have held these two parts together since the party defending the local minimum wage ban argued only that collateral estoppel from an earlier decision barred the city from raising the statute's invalidity as a defense, and the court simply declared without analysis that the minimum wage preemption was "not connected to, related to, or germane to" the regulation of community improvement districts.¹³³

On the other hand, two cases from Kansas and Utah dealing with laws broadly addressing education issues reached the seemingly reasonable conclusion that they dealt with a single subject, education. The Utah law addressed a number of education issues ranging from the state's school aid formula, to the funding of charter schools, requirements regarding educational materials, teacher salaries, a number of pilot programs, and appropriations for the pilot programs, pupil transportation, classroom supplies, and arts education.¹³⁴ Not only could many of these measures have been enacted as separate laws, but in fact the bill was an amalgamation of what had originally been fourteen separate bills.¹³⁵ It is possible that some legislators supported some of

¹³² 514 S.W.3d 571 (Mo. 2017).

¹³³ *Id.* at 580-81.

¹³⁴ *Gregory v. Shurtleff*, 299 P.3d 1098, 118 (Utah 2013).

¹³⁵ *Id.* at 1115.

these measures and not others and, as a result, had to cast votes inconsistent with their topic-by-topic preferences. Nonetheless, if the single-subject rule is to permit comprehensive approaches to legislative subjects, this would appear to be such a case. The Kansas education case, *Kansas NEA v. State*,¹³⁶ arguably pushes the envelope a bit more. Adopted in response to a state supreme court decision invalidating portions of the state's public school finance laws, the challenged law "had a sweeping scope" including the appropriation of new state school aid, the cancellation of prior appropriations for non-education purposes to fund the new school aid, "substantive and technical changes to the state's public school financing statutes," appropriations and transfer of land to state universities, a tax credit for businesses that contribute to organizations that provide scholarships to low-income students, changes to high school teacher licensing requirements, "performance-based incentives for GED and career education matriculation and enrollment at state universities," and most controversially, changes to the Teacher Due Process Act to remove protections from many elementary and secondary public school teachers concerning the termination or nonrenewal of their contracts.¹³⁷ As the court acknowledged, the law contained multiple topics affecting the operations of public schools, benefits for students, state universities, and touched many different government agencies.¹³⁸ As the lawsuit by the NEA suggests, there could easily have been opposition to the elimination of teacher due process protections from legislators who favor increased funding for schools. Yet, applying the "policy of liberally construing the one-subject rule,"¹³⁹ all the measures seemed germane to education and

¹³⁶ 387 P.3d 795 (Kans. 2017).

¹³⁷ *Id.* at 798, 803-04.

¹³⁸ *Id.* at 808-09.

¹³⁹ *Id.* at 808.

“the term ‘education’ is not so broad that it fails to limit the area in which the legislature may operate.”¹⁴⁰

Turning to some arguably closer cases, in *Wirtz v. Quinn*,¹⁴¹ the Illinois Supreme Court sustained a complex, multi-part law intended to authorize and fund a massive capital projects program. Its provisions included, inter alia, raising and reallocating the proceeds of a range of different taxes and fees; authorizing a pilot program allowing individuals to purchase state lottery tickets on the internet, reallocating the proceeds of the state lottery, and directing a named state university to conduct a study of the effects on Illinois families of purchasing lottery tickets; increasing the weight limits for vehicles and loads, and authorizing, regulating, and taxing video gaming. On its face this would seem to include multiple subjects. But the Illinois court rationalized that they were all related to financing the capital program. The authorization of video gaming and of the on-line purchase of lottery tickets was intended to generate funds for the capital program, and the study of the impact of the lottery on families was a response to the expansion of the lottery program. The increased weight and load limits for motor vehicles was an offset to the increase in motor vehicle fees and fines for overweight vehicles – which was one of the many sources of funds for the capital program.¹⁴² The court made a plausible case that it all hangs together, although other commentators have sharply disagreed.¹⁴³

¹⁴⁰ Id. at 809.

¹⁴¹ 953 N.E.2d 899 (Ill. 2011).

¹⁴² Id. at 904-11.

¹⁴³ See, e.g., Block, *Broke: The Pocketbook of Illinois and the Single Subject Rule After Wirtz v. Quinn*, 953 N.E.2d 899 (Ill. 2011), 37 So. I. L.J. 237, 246 (2012) (“wrongly decided,” “increased uncertainty in an already uncertain area of law, undermined the principles underlying the single subject rule”); Apadula, *State Constitutional Law – Single Subject Rule – The Illinois Supreme Court Adopts an Irrebutable Presumption of Constitutionality for Legislation Challenged by the Single Subject Rule*, *Wirtz v. Quinn*, 953 N.E.2d 899 (Ill. 2011), 43 Rutgers L.J. 617, 634 (2013) (“render[s] the single subject rule a dead letter”).

Less persuasive – to this author, at least -- are two other state court decisions that found that substantive policy provisions tucked into budget bills satisfied the single-subject requirement. In 2016 in *State ex rel Ohio Civil Service Employees Ass'n v. State*,¹⁴⁴ the Ohio Supreme Court held that the inclusion in the biennial budget bill of provisions changing the law governing the terms for the privatizing of prison operations and authorizing the operation, management, and sale of five prison facilities did not violate the single-subject rule. The privatization of prison operations and the sale of prison facilities would save costs and generate revenue for the state and thus fell within the subject of “budgeting for the operation of the state government.”¹⁴⁵ But on that theory, of course, any law with state fiscal implications could be considered as part of the subject of budgeting for the operation of state government – certainly, an enormous subject. Similarly, in *Otto v. Wright County*,¹⁴⁶ the Minnesota Supreme Court in 2018 determined that including in the State Government Omnibus Finance Act a provision enabling counties to choose to have their required annual audit performed by a CPA firm instead of by the state auditor did not violate the single-subject rule because that was “clearly germane to the subject of state government operations,” which was the subject of the Act.¹⁴⁷ Although the county audit option could potentially reduce the workload of the state auditor, the amendment seems to be really far more about the powers and duties of counties than the operations of state government.¹⁴⁸

¹⁴⁴ 56 N.E.3d 913 (Ohio 2016).

¹⁴⁵ *Id.* at 922.

¹⁴⁶ 910 N.W.2d 446 (Minn. 2018).

¹⁴⁷ *Id.* at 457.

¹⁴⁸ Cf. *Rizzo v. State*, 189 S.W.3d 576, 580-81 (Mo. 2006) (invalidating provision of a law dealing primarily with local governments that also applied to state elections).

Finally, there is the divided Oklahoma Supreme Court's decision in *Douglas v. Retirement Properties, Inc.*,¹⁴⁹ invalidating that state's Comprehensive Lawsuit Reform Act. The majority stressed that the law contained ninety sections that included multiple amendments to the civil procedure code plus many new acts dealing with, *inter alia* emergency volunteer health practitioners, asbestos and silica claims, mandatory seat belt use, livestock activities liability, firearm manufacturers liability, and school discipline.¹⁵⁰ Without much analysis¹⁵¹ the majority simply concluded that the multiple provisions were "unrelated" to each other and that "[m]any . . . have nothing in common."¹⁵² By contrast, the two dissenters emphasized there was a common theme: "the legislature and the public understood the common themes and purposes understood in the legislation; it was tort reform."¹⁵³ They also pointed out the legislature had previously enacted, without successful single-subject objection, such broad measures as the ten-article and 368-section Uniform Commercial Code, and a 78-section Evidence Code, and that the majority's treatment of the tort reform law would create "substantial difficulty" for the legislature to pass "comprehensive legislation including any uniform codes that are generally adopted among the states."¹⁵⁴ In their view, the "majority opinion gives little

¹⁴⁹ 302 P.3d 789 (Ok. 2013).

¹⁵⁰ *Id.* at 793-94.

¹⁵¹ The majority devoted five paragraphs to the discussion of the law and the application of the single-subject rule to it, including one that focused solely on whether severance rather than complete invalidation was a possible remedy. *Id.*

¹⁵² *Id.* For a critical assessment of the decision and an argument that it is inconsistent with Oklahoma single-subject precedents, see Comment, It's Still a Peanut Butter Cookie: A Comment on *Douglas v. Cox Retirement Properties, Inc.*, 39 Okla. City U. L. Rev. 243 (2014).

¹⁵³ 302 P.2d at 802.

¹⁵⁴ *Id.* at 802-03.

guidance”¹⁵⁵ for distinguishing between impermissibly sweeping multi-part laws and acceptable comprehensive ones.

A striking feature of the dueling opinions in *Douglas* was the Oklahoma justices’ focus on the anti-logrolling purpose often invoked to explain and justify the single-subject rule. The majority expressly framed its analysis in light the rule’s anti-logrolling purpose.¹⁵⁶ Without citing any specific instances of logrolling in the legislative history, the majority concluded that in a bill with so many different sections and topics, legislators were inevitably “faced with an all-or-nothing choice” which would require them to vote for provisions they did not want “to ensure the passage of favorable legislation.”¹⁵⁷ The dissent, however, saw the range of multiple provisions in the bill as evidence of legislative compromise. In any complex measure, “[i]t is likely that some of the legislators who voted in favor of the bill compromised to secure its passage.”¹⁵⁸ But in the dissent’s view that is a feature and not a bug as “[l]egislation requires some compromise.”¹⁵⁹

The division in *Douglas* points to the possibility of anti-logrolling and the other purposes behind the single-subject rule in providing a more workable standard than the text of the rule itself for applying the rule, as well as the difficulties in doing so. That is the focus of the next Part.

IV. From Text to Purpose: Anti-Logrolling and Anti-Riders as Standards for Enforcement

¹⁵⁵ Id. at 802

¹⁵⁶ Id. at 792.

¹⁵⁷ Id. at 793.

¹⁵⁸ Id. at 803.

¹⁵⁹ Id.

Like the Oklahoma judges in *Douglas*, many courts and commentators have sought to resolve the intractable question of how to define “subject” by turning to the purposes long seen as explaining and justifying the single-subject rule: prevention of logrolling and riders, and more generally protection of the legislative process from are often characterized as improper manipulations.¹⁶⁰ Logrolling, in particular, has long been condemned. Indeed, “in the United States at least, . . . this word has always had pejorative connotations.”¹⁶¹ By definition, an act put together by logrolling consists of measures which, considered individually, lacked majority support. Hence, its enactment is often seen as inconsistent with majority rule. Logrolling has been particularly criticized for facilitating the passage of wasteful “Christmas tree” bills and pork-barrel legislation, that is, laws that provide concentrated benefits – typically, subsidies; tax breaks; restrictive licensing requirements; tariffs; and roads, harbors and other highly targeted infrastructure investments – to a small number of interests but impose broader costs on consumers and taxpayers.¹⁶² The notorious Smoot-Hawley Tariff of 1930 is often cited as an example of how logrolling enables the coalition backing the law to win benefits for its benefits for the special interest groups promoting the tariff, at a cost to the nation as a whole.¹⁶³ Some courts, like the Oklahoma Supreme Court and the Maryland Court of Appeals, have also emphasized the way in which such a logroll coerces legislators to vote for provisions they

¹⁶⁰ See, e.g., *Comm. v. Heiman*, supra, 84 A.3d at 611-12; *Wirtz v. Quinn*, supra, 953 N.E.2d at 905-05; *Rizzo v. State*, supra, 189 S.W.3d at 578.; *Simmons-Harris v. Goff*, supra, 711 N.E.2d at 214 (“logrolling . . . was the very evil the one-subject rule was designed to prevent”); *Denning & Smith*, supra, 1999 Utah L. Rev. at 968; *Schuck*, supra, 28 Cap. L. Rev. at 901 (prevention of logrolling as the “primary and generally recognized purpose” for the single-subject rule); *Hoffer & McDade*, supra, 51 Clev. St. L. Rev. at 558.

¹⁶¹ William H. Riker and Steven J. Brams, *The Paradox of Vote Trading*, 67 A.P.S.R. 1235, 1235 (1973)

¹⁶² See, e.g., Dennis C. Mueller, *Public Choice* 51 (Cambridge U. Press 1979)

¹⁶³ See, e.g., Riker and Brams, supra, 67 A.P.S.R. at 1235, citing the classic study by E.E. Schattschneider, *Politics, Pressures and the Tariff* (Prentice-Hall 1935).

do not actually support or against a provision they would otherwise support because it has been combined with measures they oppose.¹⁶⁴

An early application of the single-subject rule by the Michigan Supreme Court to strike down an act that appropriated state funds for the improvement of three different state roads is a classic example of the anti-logrolling philosophy at work. As Chief Justice Thomas Cooley explained, the roads were

“distinct objects of legislation which might, with entire propriety, have been provided for by separate acts, and indeed, ought to have been, in view of the care which is taken by the Constitution to compel each distinct object of legislation to be considered separately. These objects have certainly no necessary connection, and being grouped together in one bill, legislators are not only preclude[d] from expressing by their votes their opinion on each separately; but they are so united, as to invite a combination of interests among the friends of each, in order to secure the success of all, when, perhaps, neither could be passed separately. The evils of that species of omnibus legislation which the constitution designed to prohibit, are all invited by acts thus framed.”¹⁶⁵

Despite this longstanding hostility to legislation by logrolling, modern scholarship has recognized that logrolling – or, less pejoratively, vote-trading – may actually be socially desirable because it recognizes that legislators have different intensities of preference for different measures. A proposal may enjoy only minority support not so much because the majority is actively hostile to it but rather because the majority is largely indifferent or only weakly opposed. Logrolling allows legislators to obtain passage of the measures they more strongly support at the modest price of voting for measures they are apathetic about or only mildly oppose. As a result, logrolling can make more legislators better off. To the extent legislators accurately represent the interests of their constituents, logrolling can

¹⁶⁴ See, e.g., *Thomas v. Henry*, 260 P.3d 1251, 1260 (Ok. 2011) (expressing concern that with logrolling “many of those voting on the law would be faced with an unpalatable all-or-nothing choice”); Porten Sullivan, *supra*, 568 A.2d at 1121.

¹⁶⁵ *People ex rel Estes v. Denahy*, 20 Mich. 349, 351-52 (1870).

enhance the overall well-being of the community. Moreover, logrolling may be particularly beneficial to certain legislative groups, particularly weaker parties or representatives of minority ethnic groups, that ordinarily lack the votes to get the measures they care most about passed. By being able to make vote-trading deals with some members of the majority, there is at least some prospect they can advance some items of their legislative agenda. Moreover, as some commentators have noted, logrolling need not involve only pork-barrel legislation but may embrace “what are truly pure public goods, e.g., defense, education, and the environment.”¹⁶⁶

To be sure, there is no guarantee that logrolling will be welfare-enhancing. The ability of a legislative minority to advance its goals through logrolling will depend on the skills, information, and resources of the legislators.¹⁶⁷ And the majority put together by logrolling might still impose costs on the community as a whole that are greater than the benefits to the logrolling coalition. But it is fair to say that there is no reason to assume that majorities put together by logrolling categorically impose net social costs or that they are more net costly than majorities composed of a single group.¹⁶⁸ It is even more unlikely that courts will be able to tell the difference.¹⁶⁹

Of course, even if the prejudice against logrolling is mistaken, that alone might not matter for challenging the role of a concern about logrolling in applying the single-subject rule. The real difficulty is distinguishing improper logrolling from the deal-making and compromises that are “pervasive” in collective bodies and “normally characteristic of

¹⁶⁶ See Mueller, *supra*, at 51-52.

¹⁶⁷ See Hardy Lee Wieting, Jr., *Philosophical problems in Majority Rule and the Logrolling Solution*, 76 *Ethics* 85. 93 (1966).

¹⁶⁸ See, e.g., Riker & Brams, *supra*, 67 *A.P.S.R.* at 1246.

¹⁶⁹ See, e.g., Kastorp, *supra*, 54 *Emory L.J.* at 1663-65.

representative assemblies.”¹⁷⁰ Such deal-making is often a critical means for contending groups to compromise their differences and reach a collective decision.¹⁷¹ Although the Illinois Supreme Court once asserted “there is a difference between impermissible logrolling and the normal compromise which is inherent in the legislative process,”¹⁷² it is not clear that’s correct. Even a close review of the legislative history behind a bill¹⁷³ may not help as the question is less one of fact and more of interpretation and acceptance of legislative practices.

As the Utah Supreme Court explained, “the line between forbidden log-rolling and mere horse-trading may be a fine one.”¹⁷⁴ The Minnesota Court of Appeals went further in defending a challenged bill against the claim that it was the result of impermissible logrolling: “If the historical nature of legislation was that every single provision of a larger bill had to be able to pass both houses of the legislature and obtain the governor’s signature on its own merits, little if any legislation would ever be signed into law. . . . The practice of bundling controversial, volatile provisions with germane and less-controversial laws is not impermissible logrolling. Rather it is the nature of the democratic process. . . . The negotiations and the constant give and take are historical, purely legal, and purely permissible.”¹⁷⁵ Indeed, courts have defended the “liberal” approach to interpreting the single-subject rule as essential “to accommodate a significant range and degree of

¹⁷⁰ James M. Buchanan & Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* 134 (U. Mich. Press 1962). Cf. Frank Easterbrook, *Statutes’ Domain*, 50 *U. Chi. L. Rev.* 533, 548 (1983) (treating logrolling as an “accepted part[] of the legislative process”).

¹⁷¹ See, e.g., *Kastorf*, supra, 54 *Emory L.J.* at 1647 (describing logrolling as “the necessary lubrication to overcome collective action problems”).

¹⁷² *Wirtz v. Quinn*, supra, 953 *N.E.2d* at 911.

¹⁷³ The *Wirtz* court engaged in such a close review. See *id.* at 909-11.

¹⁷⁴ *Gregory v. Shurtleff*, supra, 299 *P.3d* at 1116.

¹⁷⁵ *Defenders of Wildlife v. Ventura*, 632 *N.W.2d* 707, 714-15 (Minn. App. 2001), rev. den.

political compromise that necessarily attends the legislative process in a healthy, robust democracy.”¹⁷⁶

The concern that bills that result from logrolling somehow coerce legislators into voting against their preferences seems even weaker than the claim that bills composed of provisions that might not have passed on their own violates proper legislative norms. Compromise necessarily involves votes at odds with one’s ideal position. As Professor Dan Lowenstein crisply put it: “Most choices in life involve trade-offs.”¹⁷⁷ Or as one member of Congress noted in early February 2019 in explaining his vote for the bill that prevented the recurrence of a second partial government shutdown, “When you strike a deal you get some things you want and you get some things that you don’t like.”¹⁷⁸

In theory, the case against riders may be stronger than the case against logrolling. By definition, a rider is attached to a bill that already enjoys majority support so that its backers should not have had to vote for the rider in order to get their measure enacted. Michael Gilbert speculates that riders are more likely to result from the ability of powerful individual legislators to manipulate rules and procedures to get their particular proposals attached to a popular bill and to block efforts to strip the rider out.¹⁷⁹ In his view, riders are always anti-majoritarian and, by definition, leave a majority of legislators worse off as they would have preferred to vote for the bill in question without the rider.¹⁸⁰ He would

¹⁷⁶ MCEA, *supra*, 694 A.2d at 943.

¹⁷⁷ Daniel Hays Lowenstein, *California Initiatives and the Single-Subject Rule*, 30 U.C.L.A. L. Rev. 936, 958 (1983).

¹⁷⁸ Paul Kane, “The bill to avert a shutdown has few eager to claim parentage,” *Wash. Post*, Feb. 13, 2019 (quoting Rep. Gregory Meeks (D-NY)).

¹⁷⁹ See Gilbert, *supra*, 67 U. Pitt. L. Rev. at 836-43.

¹⁸⁰ See also Daniel A. Farber & Philip P. Frickey, *The Jurisprudence of Public Choice*, 65 *Tex. L. Rev.* 873, 923 (1987) (enforcement of the single-subject rule “is particularly appropriate when substantive riders have been established to appropriations legislation”).

reframe the single-subject rule exclusively around the prevention of riders.¹⁸¹ Yet, in practice, it may be difficult to distinguish a rider from a logroll. As the earliest study of the single-subject rule found, determining whether a provision is a rider is a “troublesome question.”¹⁸² Before enactment, a bill’s proponents may be unsure whether the measure actually enjoys majority support or is, instead, a few votes short of passage and so is willing to accept an amendment that brings along a few more votes. Is such a provision a logroll or a rider?¹⁸³ Assessing the provisions of an act after enactment, a court trying to distinguish a logroll from a rider “would have to make unseemly, and possibly difficult judgments about the relative popularity of various provisions and the motivations of the sponsors.”¹⁸⁴ Indeed, a close assessment of Illinois’s *Wirtz* decision concluded that “the attempt to distinguish between the two [logrolling and riders] may be futile.”¹⁸⁵ The fact that a provision, subsequently folded into a bigger bill, did not pass on its own does not make it a rider.¹⁸⁶ And even critics of riders recognize that, like logrolls, they can be socially beneficial and make net contributions to social well-being.¹⁸⁷

Several judges taking a legislative-process-focused approach to the single-subject rule have emphasized that the troublesome sections of a bill – whether logroll or rider –

¹⁸¹ Gilbert, *supra*, 67 U. Pitt. L. Rev. at 836-43.

¹⁸² Ruud, *supra*, 42 Minn. L. Rev. at 400.

¹⁸³ See, e.g., Kastorf, *supra*, 54 Emory L.J. at 1646. See also Richard Briffault, *The Item Veto in State Courts*, 66 Temp. L. Rev. 1171, 1189-94 (1993) (considering the difficulties courts have distinguishing between improper riders and acceptable conditions in item veto cases).

¹⁸⁴ Lowenstein, *supra*, 30 U.C.L.A. L. Rev. at 963. Cf. Martha J. Dragich, *State Constitutional Restrictions on Legislative Procedure: Rethinking the Analysis of Original Purpose, Single Subject, and Clear Title Challenges*, 38 Harv. J. Legis. 103, 161-62 (2001) (analyzing two Missouri single-subject cases and finding it “hard to say” whether the laws at issue involved logrolls or riders).

¹⁸⁵ Block, *supra*, 37 So. Ill. U. L. Rev. at 250.

¹⁸⁶ See, e.g., *Gregory v. Shurtleff*, *supra*, 294 P.3d at 1112; *Ex parte Jones*, 440 S.W.3d 628, 634 (Tex. 2014); Cf. *Defenders of Wildlife*, *supra*, 632 N.W.2d at 714 (“the fact that a controversial bill could not pass as a stand-alone bill, while not irrelevant, is not conclusive proof of impermissible logrolling”).

¹⁸⁷ See Gilbert, *supra*, 67 U. Pitt. L. Rev. at 839.

were added at the “last minute” or the “eleventh hour.”¹⁸⁸ This underscores the single-subject rule’s purposes of making sure that legislators are able to understand and deliberate what they are voting on measures and that the legislative process is transparent to the broader the public to keep track of legislative action. This emphasis on surprising late in the process additions also implies some kind of legislative chicanery that would support a judicial decision to strike down a measure. However, many state legislatures operate under requirements of time-limited legislative sessions.¹⁸⁹ Some of these are as short as twenty to thirty legislative days or sixty to ninety calendar days;¹⁹⁰ in four states, the legislature meets only for a limited number of days every other year.¹⁹¹ Frequent amendments to pending legislation are surely a part of the legislative process to begin with.¹⁹² But tight session limits put a lot of pressure to get the legislative business done in a very short period and make it even more likely that there will be a rush of amendments, combinations of previously separate measures into bigger bills, and a surge of deal-making as the end of the legislative session approaches. From the perspective of an idealized, orderly and deliberative legislative process, this is surely unfortunate. But, as one Ohio Supreme Court justice observed, however “distasteful” and “ugly” the process may be, that does not make it unconstitutional.¹⁹³

¹⁸⁸ See, e.g., Delmarva, supra, 809 A.2d at 645-46; Porten Sullivan, supra, 568 A.2d at 1114-15; Voinovich, supra, 631 N.E.2d at 601-02 (concurring opinion); Leach, supra, 141 A.3d at 430; Spahn, supra, 977 A.2d at 1146.

¹⁸⁹ See Nat’l Conf. of State Legs., “Legislative Session Length,” <http://www.ncsl.org/research/about-state-legislatures/legislative-session-length.aspx> (noting that 39 state legislatures are under state constitutional, statutory, or other restrictions on the length of the legislative session).

¹⁹⁰ Id.

¹⁹¹ See Nat’l Conf. of State Legs., “Annual vs. Biennial Legislative Sessions,” <http://www.ncsl.org/research/about-state-legislatures/annual-vs-biennial-legislative-sessions.aspx>.

¹⁹² See, e.g., PAGE, supra, 877 A.2d at 395.

¹⁹³ Beagle v. Walden, 676 N.E.2d 506, 510 (Ohio 1997) (Pfeifer, J., concurring in part).

It is difficult – probably impossible – to quarrel with the goals of improved deliberation, transparency, and accountability norms. The real issues are whether attention to those concerns, and the logrolls and riders said to violate them, helps determine what is a subject and when is the single-subject rule violated. There can be logrolls and riders within a single subject, and omnibus or multi-part bills which are put together for convenience or for the comprehensive treatment of a subject. Indeed, in at least some circumstances, legislative deliberation, effective law-making, transparency and public accountability may be better served by multi-part bills that comprehensively address a complex or multifaceted problem¹⁹⁴ as by narrower measures that address the issues piecemeal. Improper manipulations of the legislative process – if they can be judicially identified – may be evidence that a new law goes beyond a single subject, but it is not clear that even a close review of the legislative process can resolve the meaning of “subject.”

V. Conclusion

The single-subject rule presents a paradox. It is “part of the fundamental structure of legislative power articulated in [the] constitution”¹⁹⁵ of the vast majority of states, and it reflects and seeks to promote a noble vision of deliberative, majoritarian, and accountable law-making. But it has proven all but impossible to consistently implement, or even to

¹⁹⁴ See, e.g., *State ex rel Ohio CSEA v. State*, supra, 56 N.E.3d at 919 (a large number of topics may be combined “for the purposes of bringing greater order and cohesion to the law”); *Wirtz v. Quinn*, 953 N.E.2d 899, 911 (Ill. 2011) (rejecting single-subject challenge to a “diverse and complex” enactment); *Maryland Classified Employees Ass’n, Inc. v. State*, 694 A.2d 937, 943 (Md. 1997); *Kastorf*, supra, 54 Emory L.J. at 1666. Cf. *Gellert v. State*, 522 P.2d 1120, 1122 (Alaska 1974) (if the rule were interpreted too narrowly, “statutes might be restricted unduly in scope and permissible subject matter, thereby multiplying and complicating the number of necessary enactment[s] and their interrelationships”)

¹⁹⁵ *Gregory v. Shurtleff*, supra, 299 P.3d at 1108.

consistently define. Although some commentators have criticized the courts for excessive deference to the legislatures and have urged that more aggressive enforcement will improve legislative performance, that seems unlikely to occur. The problems of subject definition and consistent application would only get worse with more aggressive enforcement efforts. Nor is it clear that more aggressive enforcement would affect legislative behavior. The Oklahoma Supreme Court has taken a more stringent approach than many other state courts and has frequently struck down laws on single-subject grounds but the legislature continues to pass laws the court finds objectionable, leading the court to complain of “growing weary of admonishing the Legislature for so flagrantly violating the Oklahoma Constitution.”¹⁹⁶

The single-subject rule’s view of relatively tidy, separate topic-by-topic deliberation and enactment is often in tension with the coalition-building and deal-making necessary for the legislative process to work in practice. Comprehensive, multi-topic legislation will often be necessary, if not desirable, in order for the legislature to act at all, and a proliferation of small, piecemeal measures that would result from the strict construction of the single-subject rule would not improve legislative efficiency or, given the time limits many legislatures are under, legislative deliberation.

Having been a part of the constitutions of most states for roughly a century and a half, the single-subject rule is likely here to stay, and as a part of a state’s constitution it deserves some respect if not active enforcement. It may be that the best approach to the

¹⁹⁶ *Nova Health Systems v. Edmondson*, 233 P.3d 380, 382 (Ok. 2010). At the time of the *Nova Health* decision, the Oklahoma court had found seven violations of the rule over the preceding two decades. Since then, the court has found at least four more violations. See *Thomas v. Henry*, *supra*; *Douglas v. Cox Retirement Properties*, *supra*; *Fent v. Fallin*, *supra*; and *Burns v. Cline*, *supra*. The court also sustained at least one law in the face of a single-subject attack. *Matter of Okla Tpke Auth*, *supra*.

rule is the one most states take most of the time – broad definitions of subject and deference to the legislature, with occasional invalidation of the most egregious combinations of seemingly unrelated subjects. This seems more justified and more likely to occur, paradoxically, not in the large, complex omnibus measures that advocates of the rule decry, but which may be desirable for coalition-building and for comprehensive treatment of a subject, but in smaller laws, combining just a handful of laws or amendments on discrete topics, which can be claimed as single subject at only the highest level of abstraction, likely “amending the crimes code”¹⁹⁷ or “judicial remedies and sanctions.”¹⁹⁸

In the end, the paradox posed by the single-subject rule is probably unsolvable. More aggressive enforcement would disrupt the legislative process for uncertain gains, and probably still would not generate a consistent definition of “subject” or a predictable body of law. Complete non-enforcement would fly in the face of the requirements of state constitutions. General deference with intermittent enforcement in the most egregious cases – with the meaning of “egregious” left open – is what we have now and is in tension with the rule of law values of consistency and predictability. It is probably the least bad approach, but still unsatisfactory.

The purposes of the single-subject rule – majority rule, deliberation, transparency, orderly procedure, public accountability – are surely desirable legislative process goals, if not essential to legislative legitimacy. But the experience of the single-subject rule

¹⁹⁷ See, e.g., *Leach v. Comm.*, *supra*.

¹⁹⁸ See, e.g., *Comm. v. Heiman*, *supra*.

suggests that a judicially-enforceable constitutional requirement may not be the best way to achieve those ends.