CONSTITUTIONAL RESTRAINTS ON STATE LEGISLATIVE PROCEDURE:

THE APPLICATION OF SINGLE SUBJECT RULES

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Abstract

State constitutions typically require that a bill relate to only one subject. State legislatures, however, frequently combined unrelated matters, some of which may not have passed on their own, into single enactments near a session's end. The only comprehensive study of judicial application of the single subject rule, published four decades ago, indicates that state high courts historically have been reluctant to enforce this requirement, even in the most flagrant instances of legislative abuse. In this paper, I update the earlier survey and contrast its findings with contemporary practices. While most state courts continue the traditional practice of deference to the legislative branch, some state courts are more assertive in deciding whether state assemblies have complied with the constitutional single subject requirement.

Prepared for presentation at the
State Politics and Policy Conference
University of Wisconsin-Milwaukee

May 24-25, 2002

State constitutions routinely contain restraints on legislative authority stemming from lawmakers' abuses of power in the Nineteenth Century. Some are substantive limitations, such as general prohibitions against special legislation or specific restrictions banning legislation on listed topics. Others are procedural limitations, including the bill format, the reading of a bill on three separate days in each chamber, the method of voting on final passage, and the "single subject rule"--language that requires the content of a bill pertain to a "single subject or object" or "be confined to one subject and matters properly connected therewith."

The single subject provision is intended primarily to prevent the combining of unrelated measures into one bill when no individual proposal might pass on its own. Labeling this practice "logrolling," a Michigan court in 1865 described it as "both corruptive of the legislator and dangerous to the State" (*People ex rel. Drake v. Mahaney*, 494-95). Such a restriction on state legislative procedure stands in sharp contrast to the relatively unchecked congressional lawmaking approach. Members of Congress may attach nongermane provisions to virtually any measure unless restrained by application of a chamber's rules.

Observers of the state legislative process are well aware that much of the more significant, often controversial legislation is the product of logrolling during a session. Further, most state legislatures operate within relatively short time frames, either constitutionally-required or self-imposed. Lawmakers in these bodies may cobble together seemingly lost measures into

omnibus conference committee reports at session's end to meet adjournment deadlines. Jack Van Der Slik and Kent Redfield found in Illinois, for example, that "conference committees have become the arena of negotiation for major legislation late in the session. Major legislation that failed to pass at an earlier stage of the session is inserted into minor bills" (1989, 149).

Alan Rosenthal provided a telling commentary on tactics used in Florida. In the "mad scramble" that occurs as legislators try to get their bills passed during the end-of-session rush, lawmakers hold back some bills for strategic or tactical reasons and offer them as amendments "during the confusion of the session's close." An admitted supporter of state legislatures, Rosenthal nonetheless concedes that legislators operating in this manner have little incentive to tighten the procedures and abandon this practice: they take advantage of the end-of-session "frenzy" because "they do not want to surrender the benefits they derive from it" (1998, 148-49).

State courts traditionally were reluctant, perhaps with reason, to conclude that legislatures engaged in logrolling, but for the most egregious instances. Walter Dodd declared in 1920 that courts failed to implement the single subject clause because the requirement was so "narrow in character" and "indefinite" that it did not "present an objective standard by which the validity of legislation may be tested" (1920, 635). Millard Ruud provided a comprehensive review of single subject rules in 1958 that remains the prevailing scholarship on this topic.

In his extensive investigation, Ruud found that courts interpreted the single subject rule liberally "so as not to hamper the legislature nor to embarrass honest legislation" (1958, 393-94), and that a bill may contain any number of subjects "so long as they are all germane to each other or so long as they all fall under one general heading" (411). Indeed, Ruud concluded that while litigants brought suits under the single-subject rule "hundreds of times," state courts decided an

act embraced more than one subject "in only a handful of cases" (447). He also found no decision voiding an act because of logrolling.

The single subject rule has attracted limited scholarly attention since Ruud's extended survey. Robert Williams (1987) examined this provision and other constitutional limits on legislative procedure in Pennsylvania. Law review articles on the single subject rule in individual states include those of Deborah Bartell (1994) on Oklahoma, M. Albert Figinski (1998) on Maryland, Jeffrey Knowles (1987) on California, and John J. Kulewicz (1997) on Ohio. Consequently, Ruud's findings remain the authoritative source, frequently cited by contemporary courts in single subject cases and widely accepted as the definitive statement on the topic by the academic community.

However, state legislatures, state courts, and the roles of these institutions in the federal system have undergone substantial transformations since Ruud conducted his study. Observers view modern legislatures as materially enhancing their capacity to perform (Rosenthal 1998, Hamm and Moncrief 1999). They also perceive the devolution of numerous domestic programs from the national level to the states as escalating the responsibilities of state lawmakers, whether they serve in a "full-time, professional legislature," a "part-time, citizen assembly," or an in-between "hybrid" body.

Wherever today's legislatures fall along the "legislative professionalism" continuum, many

continue to function much as lawmaking bodies did prior to reform and modernization. At that time, as George Braden and Rubin Cohn phrased it, the practice was "what gets passed is legislation that the legislature thinks, and hopes the courts will think, is embraced in one subject" (1969, 164). In present-day legislatures, large numbers of bills still await final action as sessions

approach adjournment. These "legislative logjams" invite the possibility of logrolling or, as Rosenthal tactfully expresses it, "the incentive to leave the procedure loose" (1998, 149).

Contemporary state high courts, however, are increasingly important participants in the public policy process and more "activist" in interpreting and applying provisions of their own state constitutions (Wenzel et al. 1997, Glick 1999). As state legislatures can be classified along a "professionalism" continuum, state high courts can also be ordered along an "activity" continuum. The involvement level of these courts ranges from those that essentially refuse to invoke the single subject rule or go to great lengths to avoid doing so, through a group of reluctantly-involved courts, to a set of courts that recently became more assertive in requiring legislatures to adhere to this constitutional restriction.

The impetus for this study originated with the politically contentious 1995 legislative sessions in Illinois and Indiana that enacted controversial legislation by adopting omnibus conference committee reports just prior to adjournment. The manner of these enactments provoked public criticism and prompted legal challenges on the basis of the states' respective (and almost identical) single subject clauses. Despite the comparable circumstances, the two states' supreme courts responded in opposite fashion. The Illinois court ruled its legislature's actions breached the single subject rule; the Indiana court held that its legislature's efforts did not violate the single subject provision.

The differing judicial interpretations of single subject provisions in Illinois and Indiana prompted this examination of the extent state legislatures complied with single subject requirements in recent years. This time-frame 1980-2000 reflects the period during which both state legislatures and state courts functioned under the comprehensive constitutional revisions of the 1970s and dealt with the extended devolution of domestic responsibilities since the 1980s. Using

the Lexis-Nexis electronic data base, I identified applicable state supreme courts decisions on single subject rules; supplemented this information with a library survey of related state cases; and obtained additional data through contacts with state attorneys general and state court officers. By observing the levels of judicial activity involving single subject cases, I examine whether Ruud's conclusions of four decades ago remain valid, consider the proposition that a more active state judiciary may be less deferential to traditional state lawmaking procedures, and determine a link between legislative type and judicial consent that all parts of a bill are "germane to each other."

The Basis and Application of Single Subject Provisions

Single subject restrictions in state constitutions stem from the infamous Yazoo land fraud in Georgia in 1795. In that year, the Georgia legislature enacted a measure ostensibly "for the protection and support of its frontier settlements." This law disposed of some 35 million acres of the state's western lands (now the states of Alabama and Mississippi) for $500,000, or less than two cents per acre. Reaction to this incident, from which nearly all members of the legislature benefitted financially, resulted in the Georgia Constitution of 1798 including a provision that "no bill shall pass which refers to more than one subject or contains matter different from what is expressed in the title thereof." Designed to prevent "smuggling" of undesirable or surreptitious legislation and to provide the people with due notice of the content of proposed laws, this provision was noted in 1937 as "distinctly a Georgia contribution to constitutional law" (*Cady v. Jardine*, 870).

Forty-one states currently have constitutional language that substantially requires a bill relate to only one subject or to matters properly related to that subject. The majority of states

adopted these restrictions, along with other restraints on lawmaking procedure, during the Nineteenth Century, in response to perceived abuses of the legislative process. Several states have modified their original provisions, some several times, but no state has deleted this rule once imposed. Thirty-two state constitutions declare that no bill may embrace more than one "subject" while five other states employ the word "object." These 37 states generally exclude appropriations, budget, and codification bills from the requirement. Single-subject provisions in New York and Wisconsin apply only to private or local laws. This rule pertains only to appropriations bills in Arkansas and Mississippi.

Despite the widespread existence of single-subject restrictions, state courts of last resort historically read "subject" or "object" broadly so the legislature would not be restricted in what content it might include in a single bill. A 1921 Utah decision expressed this principle well in holding that the single subject provision should be applied "so as not to hamper the law-making power in framing and adopting comprehensive measures covering the whole subject" but rather "to guard against real evil which it was intended to meet." Thus, the court concluded, "no hard and fast rule can be formulated which is applicable to all cases, but each case must to very large extent be determined in accordance with peculiar circumstances and conditions thereof" (*State v. McCornish*, 638-39).

State high courts continued this approach. The Wyoming court in 1963 held that "objections should be grave . . . before the judiciary should disregard or annul a legislative enactment on the sole ground that it embraces more than one subject" (*Morrow v. Diefenderfer*, 603). Hawaii's supreme court noted in 1977 that "the infraction should be plain, clear, manifest, and unmistakable" (*Schwab v. Ariyoshi*, 139). The Kansas Supreme Court reiterated this judicial approach in 1983, holding that an act may contain several "minor" subjects but still be constitu-

tional "if all are capable of being so combined and united as to form only one grand and comprehensive subject " (*State v. Reeves*, 1194). State courts were aware of this legislative practice and the constitutional prohibition against it, but they largely remained deferential to the legislature's technique of enacting laws. Further, the issues usually contested in the courts as violating the single subject rule are rarely clear-cut. As Braden and Cohn expressed it, "The case of multiple subjects which no one would disagree with--e.g., an act to regulate roller coasters and to establish a state-wide system of junior colleges--just does not arise" (1969, 163).

State courts also adhered to the separation of powers doctrine, being unwilling to interfere in the workings of a co-equal branch of government. Typical of their position is the Illinois high court's statement in 1926 that "the judicial department had no jurisdiction . . . against a coordinate department of state government" (*Fergus v. Marks*, 560). The Ohio Supreme Court took this stance in 1984, noting that "this court has been emphatic about its reluctance to interfere or become entangled with the legislative process" (*State ex rel. Dix v. Celeste*, 157). As G. Alan Tarr noted, state courts usually allowed legislatures "to police their own observance" of restrictions like the single subject rule, so that this provision "seldom impeded the legislative process" (1998, 17).

Ruud observed that the single subject rule "has been invoked in hundreds of cases" (1958, 447) but, in fact, this provision was rarely at issue in many state high courts. For example, this provision has not been litigated in Louisiana since 1871. Texas has held only three statutes in violation of the single subject rule, the last in 1953, and has avoided employing the single subject clause since 1957, declaring that year it would not reach the constitutional question "unless absolutely required to do so to resolve the appeal" (*San Antonio General Drivers v. Thornton*, 915). The West Virginia high court stated in 1993 it had "not often had the opportu-

nity to address the one-subject rule," having visited the issue only twice since 1919 (*Kincaid v. Mangum,* 79). In 1998, Colorado's high court jurists noted that "we have not been frequently presented with the issue of whether proposed legislation contains more than one subject" (*Outcelt v. Bruce*, 461).

Table 1 lists the extent of reported considerations of the single-subject rule by state high

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courts from 1980 through 2000. Of the 41 states with this constitutional provision, this investigation found no cases reported in 16 states, limited activity (one to three cases) in 14 states, moderate activity (four to six cases) in five states, and high activity (seven or more cases) in six states. Table 2 compares the level of judicial activity with a state's legislative classification, that is,

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professional, hybrid or citizen. Both Tables 1 and 2 confirm Ruud's declaration that "the one-subject rule does not invite much litigation" (1958, 452). Over the two-decade period under review, 19 states had either limited or moderate judicial activity. All but two of these states–California and Michigan–have hybrid or citizen legislatures that appear less likely to pass bills provoking single subject challenges. In those states with limited or moderate judicial activity, the high courts generally continued to grant considerable latitude to the legislative operation. When these courts did overturn statutes, they usually invalidated clear-cut examples of laws containing "multiple subjects which no one would disagree with." Also, while it is not the focus of the present study, it is worth noting that several state supreme courts (notably those of Alaska, Arizona, California, Colorado, Oklahoma, and Oregon) with limited or moderate judicial activity apply the single subject rule primarily to constitutional initiatives, not legislative enactments.

Although the Oregon high court heard "at least 90 cases" involving the single-subject rule from 1857-1996, it did not invalidate an act under this constitutional provision in 140 years. Most of the cases dealt primarily with single subject challenges to initiative petitions, but Oregon provides an excellent example of a clear-cut, multiple subject case. The Oregon court in 1996 had no difficulty overturning a measure funding light rail systems because the law also included such diverse subjects as regulating confined animal feeding, adopting new timber harvesting rules, granting immunity to target ranges for "noise pollution," and protecting salmon from cormorants. The Oregon high court could neither "discern a principle unifying" these disparate topics nor find "some logical connection relating each to the others" (*Dennehy v. Forbes*, 857).

The California Supreme Court carefully scrutinizes initiative petitions for violations of the single subject rule, but it defers to the legislature's judgment in determining a bill's content. It has held in various decisions that an act may contain numerous provisions having one general object or that provisions with "necessary and natural connections" are germane within the scope of the single subject rule. However, the California court in 1987 could find no apparent relationship among sections of a bill enacting, amending, and repealing various provisions in numerous codes "except that they would have some effect on the state's expenditures" (*Harbor v. Deukmejian*, 1304).

Colorado's high court dealt with only two single subject cases during this period. It overturned a state revenue bill seeking "to accomplish numerous goals" in 1987. The legislature argued that the bill dealt with only one subject--"the increase in moneys available to the state"--but the court held "it would strain logic to conclude that the matters encompassed by [the act] are necessarily or properly connected to each other" (*In re House Bill No. 1353*, 373). The following

year the court upheld a law dealing with both the business practices of health care providers and the abuse of health insurance as containing properly connected topics (*Parrish v. Lamm*).

West Virginia invalidated two acts in 1993. The state supreme court threw out an omnibus bill authorizing all state administrative agencies to adopt proposed rules because such a practice could "lead to logrolling or other deceiving tactics" (*Kincaid v. Mangum*, 82). However, the West Virginia court allowed the rules to stand because it recognized "chaos would result" if governmental agencies were unable to carry out their functions. The court ordered the legislature to treat each agency's proposed rules and regulations separately in the future. The same year, the West Virginia court overturned the legislature's attempt to amend and reenact three separate provisions of the state's code in a single bill (*State ex rel. Public Ser. Comm'n v. Gainer*).

Finally, there is the instance of Michigan which traditionally operated under the approach that a statute should be afforded all possible presumption of constitutionality, and that the state's "title-object" clause is breached only when the subjects embraced are so diverse there could be no necessary connection. The state high court, which last overturned an act on"title-object" grounds in 1976, became involved in a series of cases involving the assisted-suicide activities of Dr. Jack Kevorkian. The appellate court had invalidated a statute creating a commission to study issues related to voluntary termination of life and making "assisted suicide" a criminal act. The Michigan Supreme Court, however, ruled in 1994 that the act fell "squarely within the category of permissible joining of statutory provisions" (*State v. Kevorkian*, 722).

Differing Levels of Court Involvement in Single Subject Cases

State high courts with limited or moderate judicial activity generally defer to the legislatures. They continue predisposed to accept a legislative enactment as constitutional in all but the

most extreme instances and are most permissive in their interpretation of germaneness. But the number of cases considered by state high courts does not sufficiently indicate the approaches they take in applying the single subject rule. Even among those states with a relatively high level of judicial activity that might be expected to impose more stringent judicial scrutiny over legislative action, there is a wide range of judicial involvement. As indicated in Table 3, this survey indicates

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that state high courts may be classified as adamantly opposed, reluctantly acquiescent, or actively involved in applying the single subject rule.

Adamantly opposed states. These state courts essentially refuse to invoke the single subject rule and grant extremely wide latitude to legislative action. They go to great lengths to find that logrolling did not occur; construe the rule so narrowly that only blatantly demonstrated logrolling is unconstitutional; or avoid invoking the single subject rule if a decision can be reached on any other grounds. Examples of these states include Alaska, Indiana, Iowa, Kansas, Pennsylvania, and Washington. But for Pennsylvania, all states have hybrid legislatures.

Adopting Ruud's approach that the primary aim of single subject provisions is to restrain logrolling in the legislative process, the Alaska Supreme Court has not found any legislative enactment in violation of this rule. This court continues to operate under the position stated in 1974 that it would construe this constitutional provision "with considerable breadth," that it would "resolve doubts in favor of validity," and that violations "must be substantial and plain" (*Gellert v. State*, 1123). Thus, the Alaska court held a bill providing both for flood control and small boat harbor projects not in violation of the single subject rule. This court has consistently

ruled that bills need only embrace, fairly relate to, or have a natural connection with some one general subject.

The Indiana Supreme Court has not held a law in violation of the single subject clause since 1971 when it determined the legislature's attempt to codify the state's statutes contained "a multitude of widely varying subjects" (*State ex rel. Pearcy v. Criminal Court of Marion County*, 522). This court appeared to have a prime opportunity to enforce the single subject restriction in 1995 when a legislative conference committee combined repeal of the state's prevailing wage law, property tax controls, the allocation of lottery revenues, and motor vehicle excise tax reductions into a bill that originally had been an environmental measure dealing with "local clean air standards." A state labor federation argued that the legislature engaged in logrolling, but the state court disagreed. In a unanimous decision, the high court held in 1996 that "it is settled law in this state [since 1909] that, when an enrolled act is authenticated by the signatures of the presiding officers of the two houses, it will be *conclusively presumed* that the same was enacted in conformity with all the requirements of the Constitution." Further, the Indiana court held that "it is not allowable to look to the journals of the two houses, or to other extrinsic sources, for the purpose of attacking [an act's] validity *or the manner of its enactment* (*Bayh v. Indiana State Building and Construction Trades Council*, 179; emphasis in original).

The Iowa Supreme Court also did not invoke the single-subject rule during this time-frame. In 1990 the court held it would not "interfere" with the legislature if the constitutionality of an act was "merely doubtful or fairly debatable"; that it would not hold legislation unconstitutional on the basis of a single subject challenge "unless clearly, plainly and palpably so"; and that it would act "only in extreme cases, where unconstitutionality appears beyond a reasonable doubt" (*State v. Mabry*, 474). Further, the Iowa court provided that an act becomes "valid law on

its adoption by the legislature and incorporation into a general revision or code" (*Id*, 475). Under this "codification rule" as restated by the court in 1998, opponents "must raise a timely challenge" to a law but may do so only in the time period between the date an act is passed and its date of official publication. Otherwise, any defect concerning the subject matter of a law is "cured upon codification" (*Iowa DOT v. Iowa Dist. Court for Linn County*, 375).

Kansas threw out two statutes in 1981 for including nongermane items in appropriations bills, but its high court has not overturned a law since. The Kansas Supreme Court has consistently operated under the approach that the state constitution should not be construed narrowly or technically to invalidate "proper and needful legislation" (*State v. Reeves*, 1195). The Kansas court restated its belief in 1998 that "it is the court's duty to uphold a statute under attack rather than defeat it, and if there is any reasonable way to construe the statute as constitutionally valid, that should be done" (*State ex rel. Tomasic v. Unified Gov't. of Wyandotte Cty*, 1136).

Pennsylvania's high court adopted "almost an irrebuttable presumption of constitutionality" by creating "broadly defined categories in which to classify bills containing subjects with seemingly tenuous relationships" (Williams 1987, 101). Three examples from among at least seven cases from the 1980s illustrate this point. The court noted in 1984 that "the strong presumption of constitutionality enjoyed by acts of the General Assembly and the heavy burden of persuasion on the party challenging an act have been so often stated as to now be axiomatic" (*Pennsylvania Liquor Control Board v. The Spa Athletic Club*, 735). In 1986, the court again reminded litigants that it placed virtually no restrictions on the legislative process but exercised "restraint to avoid an intrusion upon the prerogatives of a sister branch of government" (*Consumer Party of Pa. v. Commonwealth*, 177). In 1988, therefore, Pennsylvania's high court had "no problem in concluding" that an act containing "penalties for underage drinking and sale of

alcohol and drugs to minors; penalties for improper rubbish disposal; [and] penalties for the improper reporting and performance of abortions" embraced a single subject and fit into the broadly defined category of "amendments to the Penal Code" (*Ritter v. Commonwealth*, 1321).

The Washington Supreme Court has a long history of deference to the legislative branch. As it stated in 1986, the judiciary "must respect the decisions of an also independent and coequal branch [of state government], which the legislature is." In that decision, this court upheld a bill authorizing the state to issue bonds for a wide range of capital projects with separate and distinct purposes. It ruled that absent a clear violation of the constitution, "the legislature is entitled to determine what is within the 'subject' of a bill" (*State Fin. Comm. v. O'Brien*, 996). Under this approach, the Washington high court in 1996 approved a wide-ranging "act relating to violence prevention" on the basis of "rational unity": each provision of the law furthered the legislative purpose of counteracting drug problems in society. The court ruled that the legislature "found it necessary to combine diverse provisions into a single omnibus act to address a single problem in a comprehensive way" (*In re Boot*, 971).

Similarly, the Washington Supreme Court in 1997 turned down a single subject challenge to the "Hard Time for Armed Crimes Act" which increased penalties for a variety of offenses committed while armed (*State v. Broadaway*). In 1998, the court upheld legislation for construction (approved by the legislature) and financing (approved by referendum) of a new stadium for the Seattle Seahawks professional football team over opponents' contention that the law contained two subjects--construction and financing--and two separate methods of approval (*Brower v. State*). The Washington high court did invalidate disparate sections of a law in 1998, but it did not invoke the single subject rule. Instead, it held that "last minute 'logrolling'" of a

bill providing for interpreters for the hearing impaired into a bill relating to court costs had "resulted in a bill containing subjects at odds with its title" (*Patrice v. Murphy*, 1275).

Reluctantly acquiescent states. The predisposition of state high courts to grant extensive leeway to legislative judgment has not prevented them from implementing the single subject rule on occasion. These courts do not appear eager to intervene and have acted only when legislatures conspicuously abused the single-subject prohibition. Maryland, Minnesota, Missouri, and Oklahoma, all states with hybrid legislatures, are examples of this category.

The Maryland Supreme Court consistently adopted the approach, dating from the 1850s and restated in a 1971 decision, that "every presumption favors the validity of the statute and reasonable doubt is enough to sustain it" (*Madison Nat'l Bank v. Newrath*, 503). However, in the 1990s, the Maryland court dealt with several legislative attempts to incorporate completely different functions in the same entity. In doing so, it reluctantly applied the single subject clause. The court struck down a bill in 1990 that began as a measure to extend two local taxes but ended up as part of a greatly amended measure that enacted extensive ethical regulations pertaining to the Prince George's County Council. Invoking the single subject rule for only the third time in the state's history, the court held the Maryland legislature had engaged in logrolling, which it defined as "the engrafting of foreign matter on a bill, which foreign matter might not be supported if offered independently" (*Porten Sullivan Corp. v. State*, 1121).

The Maryland high court also could find nothing in favor of an act that "married" planning and zoning provisions for Montgomery County with revised ethics and election standards for Prince George's County. The court in 1993 held these to be "distinct and separate" items in a single bill and, consequently, in violation of the single subject mandate (*State v. Prince Georgians for Glendening*). In 2000, the Maryland court again found that legislators "engrafted

foreign matter" on a bill by adding material "containing a separate and distinct function" that "had already been voted down by the Senate Judicial Proceedings Committee" (*Migdal v. State*, 323). However, in 1997, the Maryland court allowed the addition of a privatized child support collection system to a welfare reform act. In this instance, the court ruled, the law demonstrated the interdependence between effective enforcement of child support laws and the reduction of AFDC dependency (*Maryland Classified Employees Assn. v. State*).

Two Minnesota decisions illustrate both the extent of judicial compliance and judicial frustration with that state's lawmaking process. While the Minnesota Supreme Court did not overturn any statutes on single subject grounds, the court found its "long-standing tradition of deference to the legislature" severely tested in 1989. In a case involving the acquisition of property for a public park under authorization contained in "a bill of many parts directed to the organization and operation of state government," the court declared that "the common thread which runs through the various sections [of the challenged act] is indeed a mere filament" (*Blanch v. Suburban Hennepin Reg. Park Dist.*, 449). However, the court would not declare this act or any act unconstitutional "if the legislature has not been given proper warning of the consequences of its actions." It noted, however, that "the legislature hereafter has full notice of the consequences of overstepping constitutional limitations in its drafting of omnibus bills" (*Id.*, 155).

In 1991, therefore, the Minnesota court upheld a "miscellaneous" section of an omnibus fiscal bill that granted two private organizations, the Minnesota Twins and Minnesota Vikings professional sports franchises, tax exemptions on property leased within the Metrodome, a publicly-financed sports facility. The court noted that the bill might have been drafted "with more careful attention to the single-subject requirement," but it did not invalidate the law

because it had been enacted prior to the 1989 warning about the constitutional vulnerability of "garbage bills" (*Metro Sports Fac. v. Hennepin County*, 491).

Missouri's supreme court has overturned three laws on single subject grounds since 1994. That year the court struck down a portion of an act creating a new form of county government from a bill amending elections' laws as not fairly relating to elections nor having a natural connection to that subject (*Hammerschmidt v. Boone County*). In 1997, the court ruled that an act on "economic development" could not contain provisions for "livestock indemnification" (*Carmack* v. *Director, Dept. of Agriculture*). That year the Missouri high court also held as "too diverse" a statute based on a conference committee report that combined provisions for the state's social services department with a section relating to consumer fraud (*Missouri Health Care Ass'n. v. AG of Missouri*). However, the Missouri court in 1997 upheld a tort reform bill, ruling that the assorted topics were "not only naturally and reasonably related . . . but are inextricably intertwined as elements of our tort liability system" (*Fust v. AG for Missouri*, 623).

The Oklahoma Supreme Court, like the highest courts of California and Oregon, was more involved from 1980-2000 with determining the single subject validity of initiatives than of legislative enactments. However, in overturning two statutes in the 1990s, the Oklahoma court directed blunt language at the state legislature. In 1991, the court held the legislature in "flagrant violation" of the state's one subject rule for an act combining "general legislative provisions which bear no relationship to each other." The bill in question allocated space in the state capitol building and sold water from a state reservoir to out-of-state interests. The court ruled the legislative action could not be justified by the assertion that each provision related to "state government" (*Johnson v. Walters*, 698). In 1993, the Oklahoma court invalidated several special

appropriations bills because they contained "a multiplicity of provisions unrelated to a common theme or purpose" (*Campbell v. White*, 263).

Actively involved states. The foregoing summaries of state judicial applications of the single subject rule mostly confirm Ruud's findings that the determination of what constitutes a bill's "subject" remains a legislative prerogative and that courts are reluctant to intervene in the workings of the legislative branch except in extreme cases. In sharp contrast to the approaches of these states, however, the high courts of Florida, Illinois and Ohio in the 1990s established distinct boundaries that lawmakers must not cross and became actively involved to ensure that their legislatures did not disregard these limits.

The Florida Supreme Court had the greatest reported workload involving single subject issues of any state high court from 1980-2000. This court not only decided a variety of cases involving single subject challenges to statutes and constitutional initiatives, but it also provided numerous advisory opinions on the topic to the state attorney general. In dealing with its substantial agenda, the Florida court adopted a pragmatic approach. As it stated in 1987, "The test to determine whether legislation meets the single-subject requirement is common sense" (*Smith v. Dept. of Ins.*, 1087). Most of the statutes the Florida court overturned were unmistakable violations of the single subject rule. For example, in 1984 the court found unconstitutional a law that prohibited the obstruction of justice by providing false information and reduced the membership of the state's criminal justice council (*Bunnell v. State*). In 1991, the supreme court voided a statute addressing both workers' compensation issues and international trade (*Martinez v. Scanlan*).

In a 1993 case involving a habitual offender statute, the Florida high court found it "difficult to discern a logical or natural connection between career criminal sentencing and

repossession of motor vehicles by private investigators." Rejecting the state's claim that both sections "controlled crime," the court further stated, "These two concerns have absolutely no cogent connection; nor or they reasonably related to any crisis the legislature intended to address" (*State v. Johnson*, 11). Similarly, in 1999, the Florida Supreme Court overturned another habitual criminal law because it also contained domestic violence provisions that did not pass as a separate measure. The court suggested that legislators had engaged in logrolling, noting that the domestic violence provisions were added to the main bill "very near the end of the regular legislative session." The court recognized its decision would require the resentencing of a number of persons but maintained "had the legislature complied with the single subject rule, this case would not be before us" (*State v. Thompson*).

The Illinois Supreme Court has long embraced a liberal attitude toward the term "subject" which, as it noted in a 1934 decision, "may be as broad as the legislature chooses to make it so that a single act may include all matters which have a logical or natural connection. Provisions of an act which relate, directly or indirectly, to its general subject, do not render the act vulnerable" (*People v. Board of County Commissioners*, 27). Using this approach, the Illinois court rejected single subject challenges on various occasions. For example, it ruled in 1992 that all provisions of an act re-routing Lake Shore Drive was necessary to expansion of Chicago's McCormick Place convention center, although the law added a second subject to a statute already in effect (*Geja's Café v. Metropolitan Pier*). In 1994, the high court held that all sections of a challenged act related to the general subject of transportation (*Cutinello v. Whitley*). In 1995, the court demonstrated its tolerant approach toward the legislature by upholding a habitual criminal act although those provisions, along with restrictions on residential picketing, had been amended

into a bill that originally addressed feticide. The court ruled the act embraced but one subject, that of amending the state's criminal code (*People v. Dunigan*).

However, the Illinois Supreme Court changed direction on the single subject rule in 1997. The Illinois court continued to hold that the single subject rule did not impose an onerous restriction on legislative actions and provided the legislature with wide latitude to determine the content of bills. Moreover, it stated its position as "the legislature must indeed go very far to cross the line to a violation of the single subject rule" (*Johnson v. Edgar*, 1379-80). But that year the court determined the 1995 legislature had "clearly crossed that line . . . no matter how liberally the single subject rule is construed" with its method of adopting a massive "tough on crime" statute (*Id.*, 1380).

A measure that began its legislative life as an eight-page Senate bill on the specific subject of reimbursement by prisoners for the costs of their incarceration was amended extensively in the House to include "an array of different subjects." The resulting conference committee produced a bill of more than 200 pages that embraced subjects as diverse as community notification of child sex offenders, employer eavesdropping on employees' telephone calls, and environmental impact fees imposed on gasoline distributors to fund the cleanup of leaking underground tanks. As the court noted, after reviewing the legislative journals, this bill "became so voluminous that not even the broad title of 'An Act in relation to crime' could cover all the subjects contained in the bill" (*Id.*, 1374). The court refused to accept the state's argument that all provisions related to the single subject of "public safety," but held that "under no interpretation of the single subject rule" could it reasonably be concluded that the "many discordant provisions be considered to possess a natural and logical connection" (*Id.*, 1380).

The Illinois high court further examined legislative motives and tactics in 1999, declaring three measures in violation of the single subject rule. The first instance involved a "truth-in-sentencing" law that initially addressed the burden of proof in an insanity defense. In examining the legislative history of the act, the Illinois court found the original Senate bill "underwent a substantial metamorphosis" and "multifaceted expansion" in the House of Representatives. As finally enacted, the bill dealt with "at least five separate legislative subjects involving both civil and criminal topics," including both truth-in-sentencing provisions and rules for satisfying hospital liens. The high court found this connection "strains credulity" and held that "even the most liberal attempt to reconcile these various subjects is unavailing" (*People v. Reedy*, 12).

Also in 1999, the court overturned "An Act in relation to crime" because the measure combined criminal and civil provisions into a single law. While the bill contained several sections with a "logical and natural connection to the single subject of 'crime,'" it also included changes in mortgage foreclosure rules that the court considered "unrelated to crime." In the court's opinion, the legislature's attempt to link these provisions served "as an example of the very evil the single subject rule is intended to prevent" (*People v. Wooters*).

In 1999, the court overturned a "safe neighborhoods law" as the product of logrolling. A bill that initially concerned the imposition of community service for certain crimes emerged from conference committee as a 157-page measure amending 55 laws and creating 10 new statutes. The main thrust of the bill was a variety of anti-crime measures, but it also included penalties for welfare fraud as "a tool against neighborhood crime." The Illinois court could find "no natural and logical connection" between the goal of enhancing neighborhood safety and welfare fraud and concluded that the legislature's action illustrated the "disfavored practice of 'logrolling,'

wherein less popular legislation was bundled with more palatable bills, so that the well-received bills would carry the unpopular ones to passage" (*People v. Cervantes*).

The Ohio Supreme Court had a long history of virtually total deference to the legislative branch. As it noted in 1984, the court had held "in a long line of unbroken cases" that the one subject rule of its constitution was "directory rather than mandatory" (*State ex rel. Dix v. Celeste*, 156). The court relied upon the legislature's judgment as to a bill's constitutionality, and the one subject rule was used only to disallow "unnatural combinations of provisions in acts." Only "a manifestly gross and fraudulent violation" of the rule caused an act to be deemed invalid (*Id.*, 157). The Ohio court expanded on its position in 1991, ruling that the one subject rule would not be directed at the plurality of topics in an act but at disunity in the subject (*ComTech Systems, Inc. v. Limbach*).

Since that year, however, the Ohio Supreme Court found several "gross and fraudulent" violations. In 1991, the court struck down a bill mainly relating to state judicial officials but also containing a provision concerning local option elections for the sale of alcoholic beverages. The court found "no rational relationship or common purpose" between these matters (*State ex rel. Hinkle v. Franklin Cty. Bd. of Elections*). In 1994, the court held that exempting minors working as actors from child labor laws was unrelated to provisions restructuring the state's workers' compensation agencies and in violation of the one subject rule (*State ex rel. Ohio AFL-CIO v. Voinovich*). In 1999, the Ohio court revoked a school voucher system in Cleveland, holding that this "leading-edge legislation was in essence little more than a rider attached to an appropriations bill." Noting "blatant disunity" between the school voucher program and most other items in the bill, the court found "no rational reason for their combination" (*Simmons-Harris v. Goff*, 215-16).

In its most far-reaching decision to date, the Ohio Supreme Court in 1999 invalidated an act creating "laws pertaining to tort and other civil actions." Having pointed out in the school voucher case that "recent decisions of this court make it clear that we no longer view the one-subject rule as toothless" (*Id.*, 215), the Ohio high court noted that "any suggestion of unity of subject matter [in the tort reform act] is illusionary." In reviewing this law, which affected 18 different titles and more than 100 sections of the state code, the court pointed out that even broad and extensive application of the one subject rule could not extend to combining such obviously unconnected matters as the wearing of seat belts and employment discrimination claims. The court went on to say, "With all due respect and deference to the General Assembly, it is simply impossible to uphold the constitutionality of [this act] under the one-subject provision. . . . The various provisions in this bill are so blatantly unrelated that, if allowed to stand as a single subject, this court would be forever left with no basis upon which to invalidate any bill, no matter how flawed" (*State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 1100).

These examples from Florida, Illinois and Ohio demonstrate that at least some state courts will apply the single subject rule more rigorously and hold their lawmakers more accountable to constitutional restrictions on legislative procedure. These state courts have reduced both the long-established deference to the legislative branch and the traditional practice of logrolling. However, during this period, the high courts of these three states also granted their legislatures greater latitude in some instances, appearing to consider the overall policy consequences involved in upholding some significant statutes against single subject challenges.

In Florida, for example, the high court ruled a sweeping tort reform measure "entirely within constitutional parameters" in 1987 despite its varied provisions. Although the court struck down a specific dollar cap on certain types of damages, it held the law provided a rational

solution to a commercial insurance liability crisis (*Smith v. Dept. of Ins.*). Possibly the Florida court's most meaningful decision came in 1990 when it upheld an act dealing with three distinct topics--money laundering, comprehensive criminal proceedings, and safe neighborhoods. In this instance, the court ruled that "each of these areas bear a logical relationship to the single subject of controlling crime" and went on to say, "It would have been awkward and unreasonable to attempt to enact many of the provisions of this act in separate legislation" (*Burch v. State*, 8).

In 1999, the Illinois Supreme Court rejected the contention that the topic "state budget" was "too overly broad" to be considered a single subject. Although the law in question amended 21 different sections of the state code and added a new tobacco tax, the court ruled that the contents had "a natural and logical connection with each other" in that they embraced the single subject of implementing the state budget (*Arangold Corp. v. Zehnder*). Ohio's supreme court also granted its legislature some latitude in a 1997 decision. While conceding that a complex automobile insurance act addressed multiple topics, the court decided there was "a common thread" tying each of the topics together as part of an overall legislative plan to reduce the dangers posed by uninsured and underinsured motorists (*Beagle v. Walden*).

Summary and Conclusion

The single subject rule, one of several provisions designed to regulate the lawmaking process, is generally presented in relatively clear and unambiguous language in state constitutions. However, state high courts tend not to interpret and apply these rules literally and strictly. The pronouncements by Ruud (1958) that "the primary and universally recognized purpose of the one-subject rule is to prevent log-rolling in the enactment of laws" (391), that most state high courts define "subject" broadly "so as not to hamper the legislature nor to embarrass honest

legislation" (393-34), and that he found no case "which held an act void because it was found that log-rolling was practiced in its passage" (448) had a lasting impact on state high courts in their decision-making. Many state high courts not only continue to cite his conclusions in their decisions but also take the approach that a violation of the single subject rule occurs only if logrolling has unquestionably been practiced in the legislative process.

Academic observers also accepted Ruud's findings as conclusive in the absence of additional investigation of the topic. In the four-plus decades since Ruud's study, however, state political systems have changed dramatically. Constitutional change and internal reforms of the 1970s enhanced the operating capabilities of both state legislatures and state courts. However, the devolution of significant domestic policies from the national level since the 1980s enlarged both legislative agendas and responsibilities. These increased duties of state lawmakers, who now must deal with more complicated and controversial issues, on occasion results in their relying on traditional legislative techniques of late-session logrolling and omnibus conference committee reports to enact needed legislation. Consequently, this lawmaking approach extends the obligations of state high courts to protect the rights of individuals against actions beyond the scope of legislative power. Given these considerations, this investigation sought to determine whether Ruud's findings remain valid at the close of the Twentieth Century.

This examination of recent applications of the single subject rule indicates that some of Ruud's conclusions remain germane to any discussion of this topic. Most evident is his finding that "the one-subject rule does not invite much litigation" (1958, 452). During the time frame under review, there were no single-subject cases reported in 16 states and three or fewer cases reported in 14 states. Thus, in 30 of the 41 states with single-subject provisions, judicial activity in this area was negligible or extremely limited. Observers generally classify all but four of these

states as having "hybrid" or "citizen" legislatures. The exceptions are the "professional" legislature states of New York and Wisconsin, whose single subject rules apply only to private or local legislation; Michigan, whose high court affords legislation all possible presumption of constitutionality; and New Jersey with no reported litigation.

In the 11 states with moderate or high judicial activity, Ruud's observation that "courts will read 'subject' or 'object' broadly and not narrowly so that the legislature will not be severely limited in what it may include in a single bill" (Ibid., 389) also remains relevant. The high courts of Alaska, Iowa, Kansas, Pennsylvania and Washington maintain this position. Even when courts determined that legislatures violated the single subject rule, as in California and Missouri, the high courts preferred to uphold a statute under attack if there was any reasonable way to construe the law as valid. Also confirming Ruud's observations, most state high courts remain deferential to legislative practices. A few state courts, notably the Maryland Supreme Court, overturned statutes but only when their legislatures so blatantly abused the single subject rule in enacting legislation that they produced laws like the Braden-Cohn hypothetical "roller coaster-junior college" example.

However, this investigation found that the state supreme courts of Florida, Illinois and Ohio forthrightly expressed new positions toward legislative adherence to the single-subject rule. It is only fair to note that these instances in all three states stemmed from cases involving controversial topics, including laws getting "tough on crime" and providing for "tort reform." Nevertheless, the courts' decisions indicate that Ruud's findings can no longer be considered applicable across the board.

The Illinois court in 1997 candidly announced that "it is this court's duty to interpret the law and to protect the rights of individuals against acts beyond the scope of the legislative power.

If a statute is unconstitutional, this court is obligated to declare it invalid. This duty cannot be evaded or neglected, no matter how desirable or beneficial the legislation may appear to be" (*Best v. Taylor Machine Works, Inc.*, 1064). In 1999, both the Florida and Ohio high courts chastised their state legislatures in uncharacteristically blunt language. In overturning a habitual criminal statute, the Florida court pointed out that "had the legislature complied with the single subject rule, this case would not be before us" (*State v. Thompson)*. The Ohio court was even more direct in throwing out a tort reform act, maintaining that "the various provisions in this bill are so blatantly unrelated that, if allowed to stand as a single subject, this court would be forever left with no basis upon which to invalidate any bill, no matter how flawed" (*State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 1100)

In this decision, the Ohio Supreme Court also noted that laws involved in single subject cases "can be perceived as points along a spectrum." At one end of this spectrum, laws include closely related topics united under a narrow subject. As topics in an act become more diverse and their connection to each other decreases, the statement of subject necessarily broadens and expands. Finally, there comes a point on this spectrum past which a law "becomes so strained in its effort to cohere diverse matter as to lose its legitimacy" (*Id*., 1101). In the same manner, the approach of state high courts that have applied the single subject rule can be considered as points along a spectrum. The range extends from those courts that essentially refuse or go to great lengths to avoid invoking the single-subject rule (Alaska, Indiana, Iowa, Kansas, Michigan, Pennsylvania, and Washington) through a group of reluctantly involved courts (California, Maryland, Minnesota, Missouri, and Oklahoma) to a set of courts that recently have become more assertive in requiring legislatures to adhere to single-subject requirements (Florida, Illinois and Ohio).

There is an explanation for this shifting judicial approach. For all of the activism demonstrated by these courts, the particular legislative tactics employed in Florida, Illinois and Ohio may have more to do with the changing approach of these states' high courts than any judicial desire to become more involved in the policymaking process. The legislatures of Florida, Illinois and Ohio are professionalized lawmaking bodies. But despite their increased capabilities, they continue to employ traditional legislative tactics, relying on conference committees to resolve significant policy conflicts between chambers or holding back measures until the widespread confusion that is typical approaching adjournment. As these legislatures have become more professionalized like Congress, they function more like Congress, whose lawmaking procedure is relatively unrestrained. The high courts of Florida, Illinois and Ohio have long demonstrated their willingness to support legislative actions. In the language of the Illinois court, "the legislature must indeed go very far to cross the line to a violation of the single subject rule" (*Johnson v. Edgar*, 1379-80). Recent legislative actions in these states proved sufficiently flagrant to convince these high courts that legislatures indeed strayed across that line.

The findings reported here should not be considered the final word on the topic of state high court interpretation and application of single subject rules. They do, however, indicate that neither should Ruud's findings from 1958 serve unquestionably as the definitive statement on the matter. This investigation demonstrates that, whatever their motivations, at least some state high courts modified their approach to this subject in recent years. In doing so, this study lays the groundwork for additional inquiry into the factors that influence judicial decision-making on single subject questions. Given the wider range of controversial issues now on their agendas, state legislatures may necessarily continue to flaunt the single subject rule in producing public policy. State courts can expect more instances of aggrieved parties seeking judicial relief as a

result of such dubious legislative tactics. Likewise, researchers can expect a fertile field for investigation should these conditions develop.

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TABLE 1

SINGLE SUBJECT CASES HEARD BY STATE HIGH COURTS, 1980-2000

A. No Cases Reported

Arizona	New Jersey	Tennessee
Kentucky	New Mexico	Texas
Louisiana	New York	Utah
Nebraska	North Dakota	Virginia
Nevada	South Carolina	Wisconsin
		Wyoming

B. Limited Activity (1-3 cases)

	Total Cases	Single Subject Violations
Alabama	1	1
Colorado	2	1
Delaware	1	0
Georgia	2	0
Hawaii	1	0

Idaho*	1	1
Indiana	2	0
Michigan	1	0
Minnesota	2	0
Montana*	1	1
Oklahoma	3	2
Oregon	1	1
South Dakota	1	1
West Virginia	2	2

TABLE 2
(continued)

C. Moderate Activity (4-6 cases)

Alaska	6	0
California	4	1
Iowa	6	0
Maryland	4	3
Missouri	5	3

D. High Activity (7 or more cases)

Florida	18	7
Illinois	9	5
Kansas	10	2
Ohio	10	7
Pennsylvania	7	0
Washington	29**	0

*Cases in Idaho and Montana involved single subject challenges to proposed constitutional amendments submitted by the respective state legislatures.

**The Washington Supreme Court caseload is inflated due to its denial of several appeals of criminal convictions on single subject grounds in the wake of its decision in *In re Boot*, 130 Wash.2d 553, 925 P.2d 964 (1996).

TABLE 2

STATES COMPARED BY LEVEL OF JUDICIAL ACTIVITY

AND DEGREE OF LEGISLATIVE PROFESSIONALISM

	No Activity	Limited Activity (1-3 cases)	Moderate Activity (4-6 cases)	High Activity (7 or more cases)
Professional Legislatures	New Jersey New York Wisconsin	Michigan	California	Illinois Ohio Pennsylvania
Hybrid Legislatures	Arizona Kentucky Louisiana Nebraska South Carolina Tennessee Texas Virginia	Alabama Colorado Delaware Hawaii Minnesota Oklahoma Oregon	Alaska Iowa Maryland Missouri	Florida Kansas Washington

Citizen Legislatures	Nevada New Mexico North Dakota Utah Wyoming	Georgia Idaho Indiana Montana South Dakota West Virginia		

TABLE 3

STATES COMPARED BY LEVEL OF JUDICIAL ACTIVITY

AND JUDICIAL APPROACH

	Limited Activity (1-3 cases)	Moderate Activity (4-6 cases)	High Activity (7 or more cases)
Adamant States	Indiana Michigan	Alaska Iowa	Kansas Pennsylvania Washington

Acquiescent States	Colorado Minnesota Oklahoma Oregon West Virginia	California Maryland Missouri	
Activist States			Florida Illinois Ohio