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The Meaning and Purposes of State Constitutional Single Subject Rules: A Survey of States and the Indiana Example

Justin W. Evans

Mark C. Bannister

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THE MEANING AND PURPOSES OF STATE CONSTITUTIONAL SINGLE SUBJECT RULES: A SURVEY OF STATES AND THE INDIANA EXAMPLE

Justin W. Evans & Mark C. Bannister*

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* Justin W. Evans is the International Coordinator for the College of Business & Entrepreneurship at Fort Hays State University (juwevans@alumni.iu.edu) and Mark C. Bannister is the Dean for the College of Business & Entrepreneurship at Fort Hays State University (markbannister@fhsu.edu). Justin Evans thanks Justice Brent E. Dickson (Indiana Supreme Court) for his mentorship, and for inspiring the author’s interest in this subject.

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I. INTRODUCTION

Single subject rules are—theoretically—a fundamental parameter of the legislative process in most states.¹ Forty-one of the fifty state constitutions, or eighty-two percent, contain a general single subject rule.² However, observers have long noted that in most states, single subject rules effectively have been rendered dormant, in large measure due to the courts’ refusal to enforce the rule.³ More recently, some state courts have disapprovingly observed the same trend of the single subject rule devolving to a defunct constitutional letter.⁴ This is significant since the

¹ The single subject rule commands that acts passed by a state’s legislature must be limited to one subject. Indiana’s version of the single subject rule is representative: “[a]n act, except an act for the codification, revision or rearrangement of laws, shall be confined to one subject and matters properly connected therewith.” IND. CONST. of 1851, art. IV, § 19, amended Nov. 5, 1974. Some states, such as Indiana, create exceptions to the rule (most often for statutory codifications and for appropriations bills). THE HISTORY OF INDIANA LAW 374 (Daniel J. Bodenhamer & Randall T. Sheppard eds., 2006). Other states tie the single subject rule to the added requirement that an act’s title must express the subject. See, e.g., ALA. CONST. art. IV, § 45 (“Each law shall contain but one subject, which shall be clearly expressed in its title . . .”). Such a provision is known as the “title requirement.” Marcia J. Oddi, *Enforcing Indiana’s Constitutional Requirement that Laws be Limited to One Subject*, 44 RES GESTÆ 18 (March 2001).

² In re A.B. v. Indiana, 949 N.E.2d 1204, 1221 & n.1 (Ind. 2011) (Dickson, J., concurring) (listing and citing to the forty-one provisions, and noting that only “[t]he constitutions of Arkansas, Connecticut, Maine, Massachusetts, Mississippi, New Hampshire, North Carolina, Rhode Island, and Vermont lack a general single subject rule”). The constitutions of Arkansas and Mississippi apply a narrow single subject restriction to most appropriations bills. ARK. CONST. art. V, § 30; MISS. CONST. art. IV, § 69.

³ See, e.g., THOMAS C. MARKS, JR. & JOHN F. COOPER, STATE CONSTITUTIONAL LAW IN A NUTSHELL 108 (2d ed. 2003) (“In general, it seems that legislatures are given a great deal of leeway in the application of . . . the single subject rule.”); M. Albert Figinski, *Maryland’s Constitutional One-Subject Rule: Neither a Dead Letter Nor an Undue Restriction*, 27 U. BALT. L. REV. 363, 367–68 (1998) (contending that Maryland’s courts ought not to continue the trend of absolute judicial deference to the legislature on single subject matters); Jeffrey G. Knowles, Note, *Enforcing the One-Subject Rule: The Case for a Subject Veto*, 38 HASTINGS L.J. 563, 564 (1987) (“As a practical matter . . . [the single subject rule and gubernatorial veto] do not prevent state legislatures from engaging in logrolling or using riders. Political pressure and judicial deference to the legislature combine to limit the efficacy of the one-subject rule in curbing these activities.”).

⁴ For example, the Indiana Court of Appeals has noted, with some frustration, that Indiana’s single subject rule is essentially a void constitutional letter despite a robust body of precedent solemnizing its significance. Ind. State Teachers Ass’n v. Bd. of Sch. Comm’rs

regular enforcement of state single subject rules would very likely encourage the improved legislative process envisioned by the rules' proponents, and would also restore the vision of checks and balances that motivated many states' framers to include the single subject rule in their respective constitutions.

Most states' jurisprudence gives at least some weight—and in many states, *substantial* weight—to the intent of the constitution's authors and ratifiers in determining the meaning of constitutional language.⁵ Curiously, however, very few states appear to have relied upon their framers' and ratifiers' intent in determining the single subject rule's meaning.⁶ Most states' case law has *inferred* a variety of meanings and purposes underlying the single subject rule.⁷ But the critical omission of the framers' and ratifiers' intent from these analyses has led many states astray. In most states, the single subject rule is enforced by the courts haphazardly or, equally as bad, not at all.⁸ A generalizable test would thus be helpful. Before a reliable framework can be fashioned to guide the enforcement of the single subject rule, however, it is necessary that the rule's true meaning be ascertained. To articulate that meaning, we must first have a thorough command of what the framers and ratifiers of the rule intended. Yet the rule's meaning remains obscured in the historical record.⁹ Of all the provisions common to state constitutions, the single subject rule is unique because it presents an inviting opportunity for legitimate judicial reanimation.¹⁰

of the City of Indianapolis, 679 N.E.2d 933, 935 (Ind. Ct. App. 1997) (“Notwithstanding [the many] pronouncements of the importance of the purposes underlying [the single subject rule], our [S]upreme [C]ourt has taken a laissez-faire approach to determining whether a violation of the single-subject requirement has occurred.”)

⁵ Embry v. O'Bannon, 798 N.E.2d 157, 160 (Ind. 2003). In Indiana, for example, “[t]he intent of the framers of the Constitution is paramount in determining the meaning of a provision.” *Id.* (quoting City Chapel Evangelical Free Inc. v. City of S. Bend, 744 N.E.2d 443, 447 (Ind. 2001)).

⁶ See *infra* Part VI (discussing the meanings that other states attach to their single subject rules).

⁷ See *infra* Part VI (discussing the inferential means employed in other states in the interpretation of their single subject rules).

⁸ See *Ind. State Teachers Ass'n*, 679 N.E.2d at 935 (observing that in Indiana, the Supreme Court has resisted the active enforcement of the single subject rule).

⁹ See *infra* Parts III–IV (discussing first the origins of the single subject rule, followed by the ratification of Indiana's rule in 1851).

¹⁰ See, e.g., *In re A.B. v. Indiana*, 949 N.E.2d 1204, 1224–25 (Ind. 2011) (Dickson, J., concurring) (urging that Indiana's courts have an affirmative duty to enforce the state's single subject rule).

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In fairness to the courts, the historical record surrounding this provision is relatively scant.¹¹ This is surprising in light of how frequently the single subject rule appears throughout state constitutions.¹² Of course, the paucity of historical evidence does not imply that the rule's framers and ratifiers lacked an intent; rather, it means only that, for varying reasons, their intent was not well documented or preserved.¹³ Consequently, many courts have guessed as to the intent behind, and therefore as to the actual meaning of, the single subject rule. Even where the courts have correctly identified the rule's purposes, they seldom capture the rationale that motivated the framers and ratifiers. Without the benefit of this rationale, various conjectural interpretations of the rule have arisen to rationalize its lax enforcement.¹⁴ Weak enforcement does not make for sound constitutional law, particularly at a time when the single subject rule is sorely needed – as it was intended – in the defense of the public welfare.

As a result, it is difficult to understand the framers' intent for the single subject rule. One method is pure inference or guesswork. Another possibility is to identify a state that enjoys an extensive and clear record of its framers' and ratifiers' thinking as a source of persuasive authority for other states. While we cannot unconditionally impute the thinking of one state's framers and ratifiers to those of other states, it does seem reasonable to presume some commonalities among them, especially where later states fashioned similar language for their respective single subject rules.¹⁵ Understanding one state in depth can help us to arrive at a deeper understanding of this provision. For the reasons discussed next, one state, Indiana, stands alone in its potential to reveal the full purpose of the single subject rule, and the depth to which the framers and ratifiers were committed to its robust judicial enforcement.¹⁶

¹¹ See *infra* Part IV (discussing the Indiana Convention of 1851 and the comparatively robust convention debates surrounding the adoption of Indiana's rule).

¹² See *supra* note 2 (noting the rule's commonality among state constitutions).

¹³ One possibility is that the rule had become so common by the late nineteenth century that new constitutional conventions included it in their constitutions as a matter of course. Another likely explanation is that some states produced only journals that described the general procedural events of their constitutional conventions, neglecting to record the actual substance of the debates that took place.

¹⁴ See, e.g., *Ind. State Teachers Ass'n v. Bd. of Sch. Comm'rs of the City of Indianapolis*, 679 N.E.2d 933, 935 (Ind. Ct. App. 1997) (noting the courts' "laissez-faire" approach).

¹⁵ N.Y. CONST. art. III, § 15 ("[n]o private or local bill, which may be passed by the legislature, shall embrace more than one subject").

¹⁶ See *infra* Part II (demonstrating the framers' and ratifiers' desire to have the single subject rule implemented).

This Article examines the Indiana example in detail, as well as the meanings that other states have attached to their single subject rules.¹⁷ Part II discusses Indiana's single subject rule as the example upon which this paper's discussion will most heavily rely.¹⁸ Part III then considers the circumstances prevailing in Indiana around 1850, when the present constitution was drafted.¹⁹ In light of this historical context, Part IV examines the framers' intent with respect to the single subject rule, as demonstrated by their own words at the 1850 Constitutional Convention, and establishes a definitive intent on the part of the framers—an intent not only that the single subject rule should prevent legislative logrolling, but also that the provision would receive unwavering judicial enforcement.²⁰ Then, Part V considers the evolution of Section 19's language and demonstrates that the original intent of the framers survives by virtue of the continuity of the single subject rule over time.²¹ Following, Part VI considers the purposes that other states have attached to their single subject rules, and the resulting meanings ascribed to the rule.²² Finally, Part VII concludes that a test for the single subject rule is a plausible idea.²³

II. THE HOOSIER EXAMPLE

Indiana's experience with the single subject rule is noteworthy for at least two reasons. First, Indiana appears to have the most extensive historical record surrounding the debate and adoption of the rule.²⁴ Thus, the Indiana framers' thinking can be articulated with high degrees of precision and confidence. States in which the historical record is quiet on the single subject rule may find the thinking of Indiana's framers and ratifiers highly persuasive. Second, Indiana's case law is relatively voluminous and vibrantly illustrates the many barriers to the single subject rule's enforcement today.²⁵ By studying the Indiana example, we can arrive at a very clear understanding of the extent to which the rule's

¹⁷ See *supra* Part I (introducing the Article).

¹⁸ See *infra* Parts II-V (discussing Indiana's single subject rule).

¹⁹ See *infra* Part III (introducing the origins of Indiana's single subject rule).

²⁰ See *infra* Part IV (describing in detail the Convention and how both the 1851 Indiana Constitution was ratified along with Section 19's single subject rule).

²¹ See *infra* Part V (explaining the linguistic changes to Section 19).

²² See *infra* Part VI (examining how other states have applied and used the single subject rule).

²³ See *infra* Part VII (concluding the Article).

²⁴ See *infra* Part IV (introducing the history of the Constitutional Convention of 1850 and the involved discussion surrounding the creation and ratification of the single subject rule).

²⁵ See *supra* Part I (noting the barriers to the rule's enforcement in Indiana today).

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treatment in modern decisional law deviates from what its framers and ratifiers intended.²⁶

Indiana's constitutional history consists of two successive documents.²⁷ The 1816 Constitution suffered from a variety of defects.²⁸ Demand for reform, particularly of the legislative branch, culminated in the late 1840s and a convention was held in 1850-51.²⁹ The 1850 Convention produced a new constitution, which the voters of Indiana ratified in 1851.³⁰ The 1851 Constitution, with its subsequent amendments, remains in force today.³¹

Crafting Article 4 of the new Constitution—the legislative article—commanded the Convention delegates' disproportionate attention.³² The Convention's final product introduced myriad reforms to the legislative branch, which more precisely should be labeled "myriad restrictions." These restrictions, both procedural and substantive in nature, curtailed the latitude with which the General Assembly could make law. Virtually no restrictions had been placed upon the General Assembly by the 1816 Constitution, so the new document represented a substantial departure from its predecessor.³³ As we will see, the most significant of these

²⁶ IND. CONST. of 1851, art. IV, § 19. Indiana itself is not exempt from this trend. The case law interpreting Section 19 not only neglects original intent, but arrives at a construction that is, in most respects, deeply conflicted with the intent of the framers and ratifiers. See *supra* Parts II-III (providing the framers' intent for implementing the single subject provision).

²⁷ IND. CONST. of 1851; IND. CONST. of 1816.

²⁸ CHARLES KETTLEBOROUGH, CONSTITUTION MAKING IN INDIANA 72-73 (1916) [hereinafter CONSTITUTION MAKING IN INDIANA].

²⁹ See *infra* Part IV (detailing the events of the 1850 Convention and ratification).

³⁰ See *infra id.* (highlighting the events that led to the ratification of the 1851 Constitution).

³¹ See *infra id.* (discussing the ratification of the 1851 Constitution).

³² 1 CHARLES KETTLEBOROUGH, CONSTITUTION MAKING IN INDIANA: A SOURCE BOOK OF CONSTITUTIONAL DOCUMENTS WITH HISTORICAL INTRODUCTION AND CRITICAL NOTES 310 (1916) [hereinafter SOURCE BOOK OF CONSTITUTIONAL DOCUMENTS] (discussing Article 4 of the 1851 Constitution).

³³ Compare IND. CONST. of 1851, art. IV, §§ 9-25 (demonstrating the change from the Indiana Constitution of 1816), with IND. CONST. of 1816, art. III (providing the text of the original Constitution). Moreover:

In drafting the Constitution of 1851, the delegates responded to widespread demand for major limitations on the General Assembly. Among them were . . . restrictions on how laws were enacted . . . Although the delegates agreed, by a vote of 124 to 0, that the "legislative authority" of the state was vested in the General Assembly they hemmed in and limited this authority with sundry restrictions and prohibitions. [One delegate] declared: "Almost the entire weight of this Convention seems to be directed against the legislative department, as if, in that department alone, originated all the evils of government."

2 DONALD F. CARMONY, INDIANA, 1816-1850: THE PIONEER ERA 410 (1998) [hereinafter INDIANA, THE PIONEER ERA].

restrictions—Indiana's version of the single subject rule—is found in Section 19 of Article 4 (“Section 19”).³⁴

III. ORIGINS OF INDIANA'S SINGLE SUBJECT RULE: CONDITIONS IN 1850

Indiana was granted statehood in 1816.³⁵ For a time, the 1816 Constitution was a popular instrument.³⁶ However, by the 1840s the demand for a new constitution reached a crescendo.³⁷ Esteemed Indiana historian David Carmony suggests that four factors produced the sentiment of the 1840s.³⁸ First, Indiana was facing a fiscal crisis arising from its financing of the Wabash and Erie Canals.³⁹ Roughly two million dollars had been embezzled by state officers and agents related to the Canals in the 1840–42 timeframe, the project was over-budget, and it failed to produce revenue.⁴⁰ As a result, there existed a “strong and persistent demand that the constitution be amended to add severe restrictions against the power of the legislature to create a state debt.”⁴¹ Second, many citizens desired to end the monopoly of the Second State Bank.⁴² Third, the political culture of the state was changing.⁴³ In “the 1840s, Indiana came increasingly under the sway of Jacksonian Democracy with its emphasis upon individual rights, popular election, *restrictions of legislative bodies*, and private enterprise.”⁴⁴ Carmony's final factor reflected a desire to reduce the cost of state government.⁴⁵ Since 1816, many frugal Hoosiers had urged that the legislature meet once every other year, instead of once each year.⁴⁶ The other major cost-savings initiative called for “strict limitations against . . . passage of local and special laws.”⁴⁷

Unsurprisingly, these factors were synergistic. For instance, although the Canals' financing had been a bipartisan measure, the then-minority

³⁴ IND. CONST. of 1851, art. IV, § 19; CONSTITUTION MAKING IN INDIANA, *supra* note 28, at 88 (introducing the new 1851 Constitution).

³⁵ IND. CONST. of 1816 (stating in the preface that Indiana joined the Union in 1816).

³⁶ DONALD F. CARMONY, THE INDIANA CONSTITUTIONAL CONVENTION OF 1850–51, 10 (discussing the 1816 Constitution) [hereinafter CONSTITUTIONAL CONVENTION OF 1850].

³⁷ *Id.* at 10 (demonstrating the unrest by the General Assembly submitting referendum proposals to the people three times during the 1840s).

³⁸ INDIANA, THE PIONEER ERA, *supra* note 33, at 405.

³⁹ GEORGE S. COTTMAN, CENTENNIAL HISTORY AND HANDBOOK OF INDIANA 111 (1915).

⁴⁰ CONSTITUTIONAL CONVENTION OF 1850, *supra* note 36, at 405; COTTMAN, *supra* note 39, at 111.

⁴¹ CONSTITUTIONAL CONVENTION OF 1850, *supra* note 36, at 405.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* (emphasis added).

⁴⁵ *Id.*

⁴⁶ *Id.*; CONSTITUTION MAKING IN INDIANA, *supra* note 28, at 60–62.

⁴⁷ CONSTITUTIONAL CONVENTION OF 1850, *supra* note 36, at 405.

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Democrats blamed the then-majority Whigs for the disastrous consequences, and by the mid-1840s the Democrats had taken the governor's chair and the majority in the state legislature.⁴⁸ By the close of the 1840s, "the Democrats were in control of both branches of the General Assembly, and [were] capable, therefore, of carrying to fruition the constitutional measures which they had inaugurated in 1849 and which had been approved by the electorate at the ensuing general election."⁴⁹

A constitutional referendum was held in 1846, and although it did not garner enough support for the calling of a constitutional convention, it foreshadowed the growing wave of displeasure, leading to the success of a later referendum in 1849.⁵⁰ By the 1846 referendum, many citizens, journalists, and public officials had become vocal in proposing changes to the 1816 Constitution.⁵¹ The fact that the 1816 document also contained some insufficiently democratic provisions did not help its case in the face of the rising populist movement.⁵² A dominant motive is discernable from the public's proposals—restraint of the legislature by limiting its discretion.⁵³ In contrast to the product of the 1850 Convention, the 1816

⁴⁸ *Id.*; see also LOGAN ESAREY, A HISTORY OF INDIANA FROM ITS EXPLORATION TO 1850, 462–75 (1915) [hereinafter ESAREY, EXPLORATION TO 1850] (noting Indiana's poor financial state and the resulting partisan maneuvering).

⁴⁹ CONSTITUTION MAKING IN INDIANA, *supra* note 28, at 72–73; see also SOURCE BOOK OF CONSTITUTIONAL DOCUMENTS, *supra* note 32, at clxxv (noting the Democrats' contributions to the Constitution of 1851). The introduction to the *Source Book* observes that:

The Constitution of 1851 was considered as the handiwork of the Democrats since that party commanded a large majority in the Convention. This sentiment is clearly in evidence from the tenor of an editorial comment of the Indianapolis Journal (Whig) on March 7, 1853. In this State a Convention to amend the Constitution was held. The Democrats had a large majority. They could do just as they pleased."

Id. (internal quotation marks omitted).

⁵⁰ CONSTITUTION MAKING IN INDIANA, *supra* note 28, at 68.

⁵¹ See *id.* at 60–62 (listing proposed reforms).

⁵² *Id.* at 18–19. For example, Article VIII of the 1816 Constitution was criticized for "[p]rohibiting the calling of a constitutional convention to alter, revise or amend the Constitution until the expiration of a full period of [twelve] years. This unwise prohibition was neither a legislative act nor a legitimate exercise of power by a Convention, but an unalienable power which resides solely in the people." *Id.*

⁵³ See, e.g., JOHN D. BARNHART & DONALD F. CARMONY, INDIANA'S CENTURY OLD CONSTITUTION 6–7 (1951) (noting that the Legislature was the main target of criticism); CONSTITUTIONAL CONVENTION OF 1850, *supra* note 36, at 11 ("The worst evil of these practices was the impetus it gave to logrolling, lobbying, and trading of votes"); 1 LOGAN ESAREY, HISTORY OF INDIANA: FROM ITS EXPLORATION TO 1922, 510 (1918) [hereinafter ESAREY, EXPLORATION TO 1922] ("[T]he chief ground of complaint was the working of the General Assembly" which "was neglecting the affairs of the State and giving its time and attention to hundreds of petty private affairs. A reading of the titles of the special laws of any session will give one an idea of the petty jobbery that was carried on by means of special laws."); WILLIAM S. HOLMAN, THE CONSTITUTIONAL CONVENTION OF INDIANA OF 1850-'51: THE

Constitution “was a concise document, emphasizing basic principles with few restrictive details, thus leaving the legislature much discretion in adapting laws to changing circumstances.”⁵⁴ It was against this expansive legislative discretion that the majority Democrats were sent by voters to the 1850 Convention.

Leading the desired legislative restraints was the prohibition of special and local legislation, “one of the evils most frequently complained of.”⁵⁵ In Jacksonian fashion, the Democrats embraced these populist sentiments in their campaigns of the late 1840s. The Indiana Democrats’ commitment to placing constitutional restraints upon the legislature was cemented when Governor James Whitcomb—a popular leader and the first Democrat elected to the Indiana governorship—formally proposed the calling of a constitutional convention.⁵⁶ Of particular significance is that Whitcomb explicitly named special and local legislation as the principal problem to be addressed—“[l]ocal and special legislation had increased 350% during the preceding five years,” and “[t]he calling of a constitutional convention would be ‘abundantly justified’ if it produced no other result than to furnish ‘an effectual remedy for this growing evil.’”⁵⁷

The significance of this historical context is unmistakable.⁵⁸ The *substantive* prohibition of special and local legislation was incorporated into the 1851 Constitution under its own headings.⁵⁹ However, the *procedural* phenomenon for creating special and local legislation—

REFORMS IT ACCOMPLISHED 4 (Gibson Bros. 1886) (“During this period of 34 years [between 1816 and 1850], the people of Indiana had . . . seen the authority of the State broken into fragments in countless forms of special laws and local institutions”); 2 CHARLES ROLL, INDIANA: ONE HUNDRED AND FIFTY YEARS OF AMERICAN DEVELOPMENT 118 (1931) (“Others complained of the constant effort of the Convention to weaken the State Legislature[]” but “[t]he sentiment in favor of restricting the legislative branch of the government was too strong to be overborne by arguments however plausible they might be.”).

⁵⁴ INDIANA, THE PIONEER ERA, *supra* note 38, at 403.

⁵⁵ CONSTITUTION MAKING IN INDIANA, *supra* note 28, at 142; *see also* COTTMAN, *supra* note 39, at 119 (“The argument for supplanting the old constitution was that under it certain conditions had sprung up that in time became evils. Chief of these was legislation of a purely local or even personal character.”).

⁵⁶ CONSTITUTION MAKING IN INDIANA, *supra* note 28, at 68.

⁵⁷ *Id.* at 69.

⁵⁸ *See* Richardson v. State, 717 N.E.2d 32, 38 (Ind. 1999) (“Because the ‘intent of the framers of the Constitution is paramount in determining the meaning of a provision’, [the Indiana Supreme] Court will consider the purpose which induced the adoption, in order that we may ascertain what the particular constitutional provision was designed to prevent.” (citations omitted)).

⁵⁹ *See* IND. CONST. of 1851, art. IV, §§ 22–23 (treating local and special laws in their own sections).

logrolling—was also an evil to be corrected.⁶⁰ Because the 1816 Constitution offered no institutional resistance to logrolling, the vast majority of legislation passed under the former Constitution consisted of special and local acts, each beneficial to only a handful of legislators.⁶¹ Consequently, it is not an overstatement to say that *the major* impetus for a new constitution—the 1851 Constitution—was not simply a “better-regulated” legislature, but in particular a legislature *restrained from logrolling special and local legislation into existence*. However, the public’s resentment—and that of their delegates—was not satiated by a mere prohibition against the hated special or local legislation.⁶² The substantive problem—private legislation—and its procedural enabler—logrolling—were twin evils, *both* of which were to be curtailed under the new order. The circumstances surrounding the introduction of the special or local prohibition and the single subject rule at the 1850 Convention further corroborate this observation.⁶³

Logrolling was viewed by the public not simply as a means to the end of special or local legislation; it was also a discrete evil in itself. Two strong pieces of circumstantial evidence demonstrate this. First, the 1851 Constitution included the single subject rule partly as a procedural check against the legislature, despite the substantive restrictions against special or local legislation.⁶⁴ If the framers and ratifiers were concerned exclusively with the substantive evil of special or local legislation, it would seem unnecessary to include a procedural prohibition against logrolling

⁶⁰ See generally *infra* Part IV (examining the framers’ intent with respect to the single subject rule preventing legislative logrolling, and the rule’s justiciability). The framers’ primary intentions for the single subject rule were to prohibit logrolling and the joining together of insufficiently related items in the same act.

⁶¹ JUSTIN E. WALSH, THE CENTENNIAL HISTORY OF THE INDIANA GENERAL ASSEMBLY 1816–1978, 100–01 (1987). In its thirty-four years under the 1816 Constitution, the legislature produced 9094 laws. *Id.* In contrast, in the forty years from 1850–1890, fewer than 2700 bills were passed. *Id.* at 240. Walsh suggests that “[t]he volume was reduced because the new [1851] Constitution prohibited local and special legislation. The change from special to general laws meant that a system that had been fragmented and piecemeal gave way to ‘generalized’ policy based on universally applied rules.” *Id.*

⁶² See *infra* Part IV.A–D (examining the framers’ and ratifiers’ intent in adopting the proposed constitution and the lack of support for the rule among some delegates, respectively).

⁶³ H. FOWLER, 1 REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF INDIANA 40 (1850) [hereinafter 1 DEBATES]. The two propositions were introduced in the same resolution at the Convention, declaring “[t]hat special legislation shall be prohibited. No act shall embrace more than one subject” *Id.*; see also *infra* Part IV.F (indicating that the purpose of the single subject rule was to prohibit the twin evils of private legislation and logrolling).

⁶⁴ 1 DEBATES, *supra* note 63, at 40.

in the form of the single subject rule.⁶⁵ Second, the single subject rule's prohibition is absolute.⁶⁶ In contrast to some of the rule's iterations elsewhere, Indiana's version was made applicable to *all* acts passed, and not simply to those that might be "special" or "local."⁶⁷

It was in this environment—of displeasure with the results of excessive legislative discretion generally and of outright hostility toward special and local legislation and their enabling stratagem of logrolling—that the delegates to the 1850 Indiana Constitutional Convention began their work.⁶⁸

IV. THE 1850 CONVENTION AND 1851 RATIFICATION: WINNERS, LOSERS, AND ORIGINAL INTENT

We turn now to the question of what meaning the framers and ratifiers of the Indiana Constitution attached to Section 19.⁶⁹ Constitutional interpretation in Indiana is a business similar to that of other states. The Indiana Supreme Court recently explained:

Interpreting our Constitution involves a search for the common understanding of both those who framed it and those who ratified it. In construing the Indiana Constitution . . . [we] look to the language of the text in the context of the history surrounding its drafting and ratification, the purpose and structure of our constitution, and case law interpreting the specific provisions. The actual language, however, is particularly valuable because it tells us how the voters who approved the Constitution understood it, whatever the expressed intent of the framers in debates or other clues.⁷⁰

Additionally:

[W]e look to the history of the times, and examine the state of things existing when the [c]onstitution or any part

⁶⁵ See *infra* Part IV.D (discussing those delegates opposed to the single subject provision). Indeed, several Constitutional Convention delegates opposed to the single subject rule argued that the rule would be superfluous.

⁶⁶ 1 DEBATES, *supra* note 63, at 40.

⁶⁷ See *infra* Part VI (examining other states' single subject rules).

⁶⁸ CONSTITUTION MAKING IN INDIANA, *supra* note 28, at 69 (noting the call for a constitutional convention to solve the issues that were in drastic need of amendment).

⁶⁹ IND. CONST. of 1851, art. IV, § 19.

⁷⁰ *Bonner v. Daniels*, 907 N.E.2d 516, 519–20 (Ind. 2009) (internal quotation marks omitted) (citations omitted).

thereof was framed and adopted, to ascertain the old law, the mischief, and the remedy. The language of each provision of the Constitution must be treated with particular deference, as though every word had been hammered into place.⁷¹

Each of these sources will be considered. Part IV.A begins by analyzing the intent of those delegates who favored the addition of the single subject provision.⁷² Next, Part IV.B considers the influence that other states had on the provision's inclusion in the Indiana Constitution.⁷³ Part IV.C assesses how the rule's language evolved during the Convention.⁷⁴ Part IV.D describes the opposition's viewpoints, while Part IV.E expresses the Ratifiers' intent.⁷⁵ Part IV.F describes the "dual prongs" of the single subject provision.⁷⁶ Finally, Part IV.G considers the single subject rule in a constitutional context.⁷⁷ Emerging from these sources is a clear and uniform intent to engineer a rigorously—and *judicially*—enforced prohibition against logrolling and the joining of different subjects.

A. *The Winners' Intent: Delegates in Support*

Like most other provisions of the 1851 Constitution, the single subject rule did not command universal support amongst the delegates. What the Convention majority said about Section 19 is the single most important key to accurately interpreting its meaning.⁷⁸ Part IV.A.1 considers the

⁷¹ City Chapel Evangelical Free Inc. v. S. Bend, 744 N.E.2d 443, 447 (Ind. 2001).

⁷² See *infra* Part IV.A (discussing the single subject rule's introduction at the Convention, those who supported it, and the evolution of the rule's language).

⁷³ See *infra* Part IV.B (providing others states' influences on the Indiana Constitution).

⁷⁴ See *infra* Part IV.C (concerning the drafting and ratification of the language, the purpose and structure of the Constitution, and the language itself).

⁷⁵ See *infra* Part IV.D (reviewing the opposition's arguments to the proposed single subject provision in the Indiana Constitution); *infra* Part IV.E (assessing the views of the ratifiers of the 1851 Constitution).

⁷⁶ See *infra* Part IV.F (explaining the "dual prongs" of the single subject rule).

⁷⁷ See *infra* Part IV.G (addressing the language itself). The case law interpreting Section 19 will be considered in a future Article.

⁷⁸ The Indiana Historical Society maintains a large collection of papers from William H. English, a distinguished Hoosier of the day and secretary to the 1850 Convention. See 1 DEBATES, *supra* note 63, at 89 (documenting English's election as secretary). Contemporaneous historical resources reflect scant commentary on the single subject rule. See Indiana Historical Society, William Henry Smith Mem. Lib., William H. English Manuscript Collection (family papers, 1741-1928, *specifically* Box 1, Folders 8-11; Box 31, Folder 16; Box 61, Folder 3; Box 69, Folder 1; Box 71, Folder 4; Box 95, Folders 1-6). The English Collection is likely the largest collection of Convention documents. These papers do not appear to record any comments specifically concerning the single subject rule.

single subject rule's introduction.⁷⁹ Next, Part IV.A.2 analyzes the support that was given to the provision by its sponsor, Dr. Alexander C. Stevenson.⁸⁰ Finally, Part IV.A.3 examines how the supporters of the single subject rule fought for its inclusion at the 1850 Convention.⁸¹

1. The Single Subject Rule Introduced

Charles Test, Indiana's Secretary of State, was charged by the legislature to call the Convention to order, and he did so on the morning of Monday, October 7, 1850.⁸² Soon thereafter, one of Indiana's most celebrated jurists, Judge Isaac Blackford of the Supreme Court, swore the delegates in.⁸³ The Convention then proceeded to address basic organizational issues.⁸⁴

Two days later, on Wednesday, October 9, 1850, Gibson County's Samuel Hall offered the first substantive resolutions of the Convention.⁸⁵ The ten October 9 resolutions are noteworthy for several reasons.⁸⁶ Their cumulative character reflected the populist sentiment of the majority Democratic coalition.⁸⁷ More particularly, *all ten* resolutions aimed to *curtail the legislative branch* by either limiting its discretion or removing its authority altogether.⁸⁸ The framers' intent was now displayed with resolute clarity: to craft constitutional regulations—*compulsory* regulations—upon both the substance and the internal mechanics of the law-making process.⁸⁹ Finally, the third October 9 resolution explicitly

⁷⁹ See *infra* Part IV.A.1 (introducing the idea and concepts behind the single subject provision).

⁸⁰ See *infra* Part IV.A.2 (providing the background of Dr. Alexander C. Stevenson and the influence he had on the rule's ultimate adoption).

⁸¹ See *infra* Part IV.A.3 (reviewing the arguments posed at the 1850 Convention for the inclusion of the single subject provision).

⁸² 1 DEBATES, *supra* note 63, at 3.

⁸³ *Id.*

⁸⁴ *Id.* at 4.

⁸⁵ See *id.* at 22, 34 (citing numerous resolutions preceding these that addressed the business of the Convention, including the election of officers, selection of stenographers, and the creation of various committees).

⁸⁶ See *id.* at 40 (listing the ten resolutions). The third resolution read as follows:
That special legislation shall be prohibited. No act shall embrace more than one subject – and that shall be expressed in the title. Upon the final passage of every bill in either House, the “yeas” and “nays” shall be entered upon the journals, and no act of the General Assembly shall be in force until after its publication in print and distribution among the people.

Id. (emphasis added).

⁸⁷ See *supra* Part III (addressing the historical context).

⁸⁸ 1 DEBATES, *supra* note 63, at 40 (highlighting the ten resolutions from October 9, 1850).

⁸⁹ See *id.* at 40 (providing a summary of the proposed ten resolutions). Even the resolutions that did not expressly mention the General Assembly aimed to reduce its discretion. *Id.* For example, the first resolution proposed to elect all judges, whereas under

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juxtaposed the single subject rule with the prohibition against special legislation, reflecting society's view of private legislation and logrolling as twin evils.⁹⁰ Hoosier newspapers reported extensively on the Convention, a large number of which printed the October 9 resolutions verbatim, including the nascent version of the single subject rule.⁹¹ Hence, the rule made its public debut at the same time it was unveiled at the Convention.

The origin of the October 9 resolutions is not apparent from the Debates.⁹² It is doubtful that Hall himself authored them, as many were included in the constitutions of other states.⁹³ And because Hall's involvement in promoting these ideas was extremely limited throughout the Convention, they were more likely the product of collaboration amongst like-minded delegates. The burden of advancing each proposal—taking ownership for each and championing it, defining its purposes, and persuading other delegates to vote in its favor—fell to others. One such like-minded delegate—at least on the principle of restraining the legislature—was, ironically, a member of the minority Whig party, a delegate from Putnam County, and a celebrated leader in his day—a man by the name of Alexander Stevenson.⁹⁴

2. Dr. Alexander C. Stevenson: Sponsor and Spokesman

Conceived as part of the third October 9 resolution, the single subject rule was not revived until the morning of December 11, 1850.⁹⁵ Neither Samuel Hall nor any other delegate mentioned the single subject proposal between October 9 and December 11. For a time it appeared as though the Convention had forgotten about the idea. The delegates seemed

the 1816 Constitution, the judges were appointed by the governor and approved by the Senate; the presidents of the circuit courts were appointed by joint vote of the General Assembly. *Id.* The second resolution proposed to limit legislative discretion with respect to corporations and banks. *Id.* The seventh would limit the General Assembly's appropriations authority, and the eighth, its authority to regulate the courts. IND. CONST. of 1816, art. V, § 7.

⁹⁰ See 1 DEBATES, *supra* note 63 (introducing the special/local prohibition and single subject rule at the 1850 Convention to address the evils of logrolling and private legislation).

⁹¹ See *The Convention*, GOSHEN DEMOCRAT (Ind.), Oct. 16, 1850 (“[N]o act shall embrace more than one subject”); *Proceedings of the Constitutional Convention*, WEEKLY IND. STATE JOURNAL, Oct. 12, 1850 (reporting on the introduction of the single subject rule at the convention).

⁹² 1 DEBATES, *supra* note 63, at 40.

⁹³ See *infra* note 142 and accompanying text (discussing other state constitutions that contain a single subject provision).

⁹⁴ JESSE W. WEIK, WEIK'S HISTORY OF PUTNAM COUNTY INDIANA 696 (B.F. Bowen & Co., 1910) (recounting Stevenson's life).

⁹⁵ 1 DEBATES, *supra* note 63, at 40; H. FOWLER, 2 REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF INDIANA 1078, 1189–98 (Offset Process 1935) (1850) [hereinafter 2 DEBATES].

preoccupied by other pressing matters of organic law, debating finances, education, and other controversial topics—that is, until Alexander Stevenson rescued this critical building block of the new constitutional order, to make it his own cause.

Stevenson was arguably Indiana's first bona-fide Renaissance man and rose to become a celebrated civil servant, "one of the most famous residents of Putnam County in the nineteenth century."⁹⁶ Born in 1802 in Kentucky, Stevenson trained to become a doctor at Transylvania University in Lexington.⁹⁷ He relocated to Indiana in his twenties, settling ultimately in the town of Greencastle—the county seat of Putnam County.⁹⁸ It was in Greencastle, and on a farm just outside of Greencastle, that Stevenson would spend the remainder of his life.⁹⁹

Although Stevenson "rose rapidly to eminence in his profession and as a surgeon was without a peer," his interest in agriculture eventually overran his interest in medicine, and in 1843 he began focusing on agriculture full-time.¹⁰⁰ Stevenson quickly became a leader in the field.¹⁰¹ He wrote for a variety of agriculture periodicals and newspapers.¹⁰² He organized the Putnam County Agricultural Society.¹⁰³ In 1847, Governor Whitcomb named Stevenson to the newly created State Board of Agriculture, and he served there for several years, including three as Board President.¹⁰⁴ "[H]e was instrumental in creating the Indiana State Fair" in the 1850s.¹⁰⁵

Stevenson was also business-savvy. Helping to organize one of Indiana's earliest chambers of commerce, he was a director of the local Board of Trade, "designed to call the attention of outside capital to our natural advantages for manufacturing purposes."¹⁰⁶ Stevenson demonstrated an entrepreneurial inclination in his own business dealings as well. At one point when he was unable to import English thoroughbred cattle into Indiana, Stevenson traveled to England and brought them back

⁹⁶ JOHN J. BAUGHMAN, *OUR PAST, THEIR PRESENT: HISTORICAL ESSAYS ON PUTNAM COUNTY, INDIANA* 61 (2008).

⁹⁷ WEIK, *supra* note 94, at 696–97.

⁹⁸ *Id.* at 697–98.

⁹⁹ *Id.* at 697.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² BAUGHMAN, *supra* note 96, at 61–62.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ WEIK, *supra* note 94, at 239 (internal quotation marks omitted).

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himself.¹⁰⁷ He was a leading voice in calling for the Indiana Shorthorn Breeders Convention to meet in Indianapolis in May 1872, and became its first president.¹⁰⁸ He was also a leader in the American Shorthorn Convention, the National Swine-Breeders Convention, the Indiana Dairyman's Association, and the State Wool-Growers Association.¹⁰⁹

In his spare time, Stevenson contributed to his community. Stevenson's humanitarian impulses began with his well-known opposition to slavery—largely responsible for his decision to settle in Indiana—and while still practicing medicine, he cared for his parents' elderly former slaves when they moved from Kentucky to Indiana.¹¹⁰ Stevenson was also a fervent supporter of free public schools—he was “convinced . . . that [democratic] institutions were wholly dependent on morality, integrity[,] and intelligence.”¹¹¹ Putting these interests into action, Stevenson was a founder of Indiana Asbury University in Greencastle—what is today DePauw University—and was named the first president of its Board of Trustees.¹¹² Stevenson's commitment extended to the Constitutional Convention, too, where he served on the education committee.¹¹³

Politically, Stevenson became a Whig and “an advocate of the American system of [Henry] Clay.”¹¹⁴ His prominence in other fields enabled Stevenson to become a political leader. He served in the Indiana House from 1831–32, the Indiana Senate from 1839–42, and again in the House from 1844–45.¹¹⁵ During his last term, Stevenson was elected Speaker of the House.¹¹⁶

¹⁰⁷ *Id.* at 699 (“he went to England, inspected the principal Short-horn herds of that kingdom and bought for himself a small herd of the best and brought them to Putnam county”).

¹⁰⁸ *Id.*

¹⁰⁹ BAUGHMAN, *supra* note 96, at 62; WEIK, *supra* note 94, at 699.

¹¹⁰ *See* WEIK, *supra* note 94, at 200, 696 (stating Stevenson “was strongly opposed to slavery and the injustice of that institution made strong impressions on his mind, and he determined to seek a home in a land of free institutions, where to labor was honorable”).

¹¹¹ *Id.* at 698.

¹¹² BAUGHMAN, *supra* note 96, at 61.

¹¹³ *Id.*

¹¹⁴ WEIK, *supra* note 94, at 698.

¹¹⁵ *Id.*

¹¹⁶ *Id.*; BAUGHMAN, *supra* note 96, at 61. Stevenson was also the Whig candidate for Lieutenant Governor of Indiana in several elections in the 1840s. WEIK, *supra* note 94, at 698. Had the Whig party been stronger statewide, Stevenson almost assuredly would have been elected. ESAREY, EXPLORATION TO 1850, *supra* note 48, at 475. As was noted, however, the 1840s saw the rise and eventual dominance of the Democrats. *See id.* (noting the circumstances surrounding Stevenson's 1844 election as Speaker); *see also supra* Part III (addressing the historical political context).

Stevenson's political background is of considerable interest. His comments at the 1850 Convention were informed by first-hand experience with the government as it existed under the 1816 Constitution. Early in the Convention, in October 1850, Stevenson submitted several resolutions designed to reform the legislative branch—the branch that he had led—by requiring a majority to pass a bill, and by mandating single-district elections.¹¹⁷ Stevenson's resolutions, together with his Whig background and comments throughout the Convention, demonstrate an unwavering intent to *limit the legislative branch under the new constitution by proscribing and regulating certain dimensions of its internal mechanics.*

Stevenson does not appear to have been a radical Whig, as his colleagues in the majority were receptive to his thinking.¹¹⁸ With his reputation of courtesy and thoughtfulness, experience as a leader in the existing legislature, and unwavering commitment to check future legislatures, Stevenson took up yet another cause of leadership—the single subject rule's inclusion in the new Constitution. He chose the morning of December 11, 1850, to make his move by proposing the single subject rule as an amendment to a provision on the introduction of bills in either chamber.¹¹⁹ While his purpose and strategy in advancing the single subject rule are considered below, it is noteworthy here that Stevenson was publicly credited with leadership surrounding the single subject rule.¹²⁰ Thus, the Constitution's ratifiers—the voters of Indiana—were aware that it was Stevenson who was responsible for the single subject rule. The ratifiers undoubtedly appreciated his reputation as an advocate of legislative restrictions, as well as the significance of his sponsorship for the rule's meaning.

3. The Supporters Make Their Case at the Convention

On the afternoon of December 11, 1850, the delegates, in the midst of deliberating various provisions on the legislature, resumed consideration of a previously introduced section:

¹¹⁷ See JOURNAL OF THE CONVENTION OF THE PEOPLE OF THE STATE OF INDIANA TO AMEND THE CONSTITUTION 64, 78 (Offset Process Indianapolis, 1936) (1851) [hereinafter JOURNAL OF THE CONVENTION] (showing the text of the resolutions); see also INDIANA, THE PIONEER ERA, *supra* note 33, at 414–15 (noting Stevenson's opinion that “[o]ne of the greatest evils which had oppressed the State was too much legislation”) (internal quotation marks omitted).

¹¹⁸ See WEIK, *supra* note 94, at 201–02 (opining that while he does not appear to have been a war hawk during the antebellum period, Stevenson wrote a series of calm and lucid articles for the *Putnam County Banner* in opposition to secession).

¹¹⁹ See 2 DEBATES, *supra* note 95, at 1078, 1085.

¹²⁰ See EVANSVILLE DAILY J. (Ind.), Dec. 17, 1850 (“Mr. Stevenson moved to amend the next section so as to provide every bill shall embrace but one subject . . .”); see also *infra* Part IV.A.3 (describing the motion to amend and adopt the “one subject” rule).

Bills may originate in either House, but may be altered, amended, or rejected in the other; except that bills for raising the revenue shall originate in the House of Representatives.¹²¹

The time had come for Stevenson to make his most lasting contribution to the Convention and to Indiana law, to make his move—literally. “Mr. STEVENSON,” the Debates record stated, “moved to amend the section by adding the following: ‘Every law shall embrace but one object, which shall be expressed in the title.’”¹²² Stevenson then explained his intent behind the amendment:

The object of this amendment is to obviate a difficulty that frequently occurs in the Legislature. When a bill is presented and its friends are not numerous enough to pass it, and they enter into a coalition with gentlemen who desire the passage of some other measure to mutually assist each other in the passage of both combined under one head; and it is intended to prevent another difficulty, which often arises when only a part of the character of the bill is expressed in the title.¹²³

Hence, the sponsor of this language stated two distinct purposes for its inclusion: the prevention of logrolling, and the expression of a bill’s full character in its title.¹²⁴ Significantly, Stevenson correlated each phrase in his amendment with each of its two purposes: the title requirement was to prevent the difficulty arising from insufficient titles, whereas the single subject rule was intended to prevent logrolling.¹²⁵ This was the intent of

¹²¹ 2 DEBATES, *supra* note 95, at 1078, 1084.

¹²² *Id.* at 1085. The requirement of expressing a bill’s subject in its title is known as the title requirement. *See supra* note 1 (discussing the title requirement).

¹²³ 2 DEBATES, *supra* note 95, at 1085.

¹²⁴ *Id.*

¹²⁵ *See id.* at 1086–87 (remarking Mr. Dobson, Mr. Owen, and Mr. Maguire); *id.* at 1114 (quoting Mr. Gibson, “if a law would be unconstitutional, because all the subjects in it were not embraced in the title, it would also be void for another reason, that the body of the law embraced more than one subject . . .”). Still, even opponents of the single subject rule recognized that Section 19 would provide two discrete grounds for nullifying an act: the title requirement, and the single subject requirement. *Id.* at 1118–19. Mr. Kilgore stated: “if a law was passed embracing more than one subject, it would be . . . declared unconstitutional by the Supreme Court.” *Id.* Additionally, Mr. Pettit posed two questions that could be presented in a Section 19 challenge: (1) whether the act contains more than one subject; and (2) if so, which, if any, was contemplated in the title. 2 DEBATES, *supra* note 95, at 1119–20; *see also infra* Part V.B (exploring the 1974 amendment). Though both the single subject rule and the title requirement were adopted in the original version of the 1851 Constitution, a

the most definitive framer—the sponsor of what would become “Section 19.”¹²⁶ The goal of preventing logrolling would be furthered by a substantive limitation upon the contents of bills.¹²⁷

Stevenson was not alone in the meaning that he attached to his proposal. The next speaker, James Borden, declared that:

We have, sir, a precedent for such a provision. I have in my hand the Constitution of California which contains this provision, ‘Every law shall contain but one subject, and that shall be expressed in the title.’ *I suppose the object of it is to prevent the practice of log-rolling*, as it has been termed by the Legislature. I am satisfied that the correct course is to adopt the provision. Almost every State Convention that has been called . . . has inserted a provision of this kind.¹²⁸

Other delegates offered similar praise for the section, some simply stating support, and others going further to refute the objections of opposing delegates.¹²⁹ Thomas Smith, for example, responded to the concern that the single subject rule would make compromises difficult, since it is sometimes convenient as a political matter to group disparate subjects under the same bill.¹³⁰ Smith replied that the Indiana General Assembly would remain at liberty to do what Congress had accomplished earlier that year in the Compromise of 1850—legislators could, when making deals, pass each side’s proposed legislation *as separate bills*.¹³¹ This would simultaneously ensure that separate subjects would *each receive consideration* as discrete, stand-alone acts, and would also enable the legislature to function in the context of practical political realities where deal-making is often necessary. From the perspective of the legislature, of

1974 amendment to Section 19 removed the title requirement for reasons unrelated to the single subject rule. IND. CONST. of 1851, art. IV, § 19, *amended* Nov. 5, 1974; *see also infra* Parts V.B–C (discussing the legislature’s motive for the 1974 amendment).

¹²⁶ IND. CONST. of 1851, art. IV, § 19.

¹²⁷ *See infra* Part IV.F (exploring the single subject rule’s dual prongs).

¹²⁸ 2 DEBATES, *supra* note 95, at 1085 (emphasis added); *see also infra* Part IV.B (exploring how the constitutions of other states influenced the delegates’ decision concerning the single subject rule). The fact that Borden spoke next, and so definitively in favor of Stevenson’s amendment, is further evidence of Stevenson’s bipartisan appeal and of the widespread support that the single subject rule enjoyed among the delegates. 1 DEBATES, *supra* note 63, at 4–5. It is likely that Borden was a member of the majority (Democrats’) coalition, as he formally nominated George Carr to be president of the Convention, who was then elected by acclamation. *Id.*

¹²⁹ 2 DEBATES, *supra* note 95, at 1085.

¹³⁰ *Id.*

¹³¹ *See id.* at 1085, 1113 (including the remarks of both Mr. Smith and Mr. Stevenson).

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course, this methodology would risk a gubernatorial veto of one act and not the other. But the governor's veto in Indiana is exceedingly weak because only a simple majority – the same majority required to pass a bill in the first place – is necessary to override a veto.¹³² Perhaps this concern contributed to the distillation of the governor's veto in Indiana. In any event, the option remains to pass disparate subjects in separate acts. For Indiana's framers, the rule's theoretical inconvenience would not excuse the combination of multiple subjects in the same bill.

James Ritchey similarly defended the single subject rule against its detractors, stating that no significant "difficulty" would result in practice.¹³³ David Dobson and Daniel Read found appeal in the title requirement's potential to help combat logrolling, while Samuel Hall – the delegate who originally submitted the single subject rule in the October 9 resolutions – commented on the section's role in the broader constitutional fabric.¹³⁴ Two delegates in support offered examples from their experiences in the legislature, one of whom bluntly corroborated Stevenson's assessment that the single subject rule "will, without doubt, prevent incongruous subjects being grouped together in the same bill."¹³⁵

Following the debate over Stevenson's amendment, "the yeas and nays were demanded."¹³⁶ Thomas Gibson – who voted against the single subject rule's inclusion – asked to postpone the vote on grounds that it was "an important matter," but this request was rejected and Stevenson's amendment prevailed by a decisive 105-21 vote.¹³⁷

Alexander Stevenson had made his most significant contribution to the Indiana Constitution, and had done so with overwhelming support.

¹³² IND. CONST. of 1851, art. V, § 14.

¹³³ See 2 DEBATES, *supra* note 95, at 1085 (providing the remarks of Mr. Ritchey).

¹³⁴ See *id.* at 1086 (providing the remarks of Mr. Hall, Mr. Dobson, and Mr. Reed.); see also *supra* Part IV.A.1 (discussing the introduction and importance of the October 9 resolutions); *infra* Part IV.F (discussing the single subject rule's dual prongs to embody both a procedural prohibition against logrolling as well as a substantive restriction to prohibit acts from containing more than one subject).

¹³⁵ 2 DEBATES, *supra* note 95, at 1086-87 (quoting Mr. Owen and providing the remarks of Mr. Maguire). Mr. Maguire, drawing on his legislative experience, discusses how Owen recounted a bill that was read only by its title, an appropriation to a certain county "and for other purposes." *Id.* at 1086. Owen recounted that, when on its third reading a legislator asked what "other purposes" were involved, "it came out that the last section contained a provision divorcing a man from his wife." *Id.* (internal quotation marks omitted). Maguire similarly recounted a story in which a tremendous sum of money was appropriated for "a private and local purpose," passing both chambers of the legislature "most probably without having been read through in either." *Id.* Only Governor Noble's vigilance discovered the offending provision and he vetoed the bill, which was passed again, this time without the appropriation. *Id.*

¹³⁶ *Id.* at 1087.

¹³⁷ 2 DEBATES, *supra* note 95, at 1087.

While some of his fellow delegates in support of the provision focused their remarks on the title requirement, others focused on the virtue of the single subject rule itself.¹³⁸ Nearly all commentators in support of the provision acknowledged its purpose of preventing logrolling and it was with this purpose in mind that the delegates, beginning with its sponsor, approved of the single subject rule.¹³⁹

B. A Study in Contrasts: The Influence of Other States

The first person to speak for Stevenson's amendment, after Stevenson himself, was delegate James Borden.¹⁴⁰ Borden specifically cited to the new California constitution, as well as to "[a]lmost every State Convention that has been called," in support of the single subject rule's inclusion in the new Indiana Constitution.¹⁴¹ Indiana's delegates studied the debates and outcomes of other states' conventions.¹⁴² Shortly after the start of the Indiana Convention, multiple copies of "[t]he Debates or Journals of the New York, Kentucky, and Wisconsin Conventions" were ordered "for the use of the members of this Convention."¹⁴³ Many delegates also referenced the constitutions and conventions of additional states beyond these three throughout the debates.¹⁴⁴

New York adopted a new constitution in 1846; Wisconsin, in 1848; and Kentucky, in 1850.¹⁴⁵ Why copies of these states' convention proceedings were selected, as opposed to others, is unresolved in the historical record. Wisconsin was a nearby northern state; Kentucky, a nearby southern state; and New York remained a political and economic leader among the states. All three states had adopted their constitutions recently, and all three had included some version of the single subject rule (and the title requirement)

¹³⁸ See *id.* at 1085 (noting the remarks of Mr. Smith).

¹³⁹ See *id.* at 1085–87 (providing the remarks of Mr. Borden and his statement that "I suppose the object of [the single subject rule] is to prevent the practice of log-rolling").

¹⁴⁰ *Id.* at 1085.

¹⁴¹ *Id.*; see *infra* note 142 and accompanying text (discussing the need for a single subject rule in Indiana, as other states that had recently held constitutional conventions had done).

¹⁴² See, e.g., 1 DEBATES, *supra* note 63, at 17, 38, 54, 229, 293, 446, 583, 748, 1005 (providing references to Illinois, Michigan, and Ohio). These states adopted single subject rules. See OHIO CONST. of 1851, art. II, § 16 ("[n]o bill shall contain more than one subject"); MICH. CONST. of 1850, art. IV, § 20 (providing "no law shall embrace more than one object"); ILL. CONST. of 1848, art. III, § 23 (stating "no private or local law which may be passed by the generally assembly shall embrace more than one subject").

¹⁴³ 1 DEBATES, *supra* note 63, at 41.

¹⁴⁴ See *supra* note 142 and accompanying text (referencing Ohio, Illinois, and Michigan and their single subject rules).

¹⁴⁵ See KY. CONST. of 1850 (providing the new Kentucky Constitution); WIS. CONST. of 1848 (providing the new Wisconsin Constitution); N.Y. CONST. of 1846 (providing the new Constitution of New York).

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in their new constitutions.¹⁴⁶ Regrettably, however, these states' convention records reflect little of the thinking behind their respective single subject rules.¹⁴⁷ Delegate Borden made reference to California's new constitution, adopted in 1849, and while the language ultimately adopted by the Indiana Convention was similar to that of California's, its convention also adopted the single subject rule without debate and with no clues as to the intent behind the provision.¹⁴⁸

Older versions of the single subject rule—the earliest of which, predating the American Revolution, was mandated by Queen Anne to her colony of New Jersey—are also mostly silent with respect to purpose or intent.¹⁴⁹ It is telling that Indiana's framers crafted their single subject rule

¹⁴⁶ See KY. CONST. of 1850, art. II, § 37 ("No law, enacted by the General Assembly, shall embrace more than one object, and that shall be expressed in the title."); WIS. CONST. of 1848, art. IV, § 18 ("No private or local bill, which may be passed by the legislature shall embrace more than one subject and that shall be expressed in the title."); N.Y. CONST. of 1846, art. III, § 16 ("No private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title.").

¹⁴⁷ See R. SUTTON, REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF KENTUCKY 628 (A.G. Hodges & Co., 1849) (recording that the single subject rule was "read and adopted" without debate); JOURNAL OF THE CONVENTION TO FORM A CONSTITUTION FOR THE STATE OF WISCONSIN 118, 606 (Tenney, Smith & Holt 1848) (providing the section was reported and read without debate); WILLIAM G. BISHOP & WILLIAM H. ATTREE, REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF NEW YORK 1068 (1846) (noting three attempted amendments to the language, each of which was rejected without discussion, and the language's subsequent adoption without debate).

¹⁴⁸ 2 DEBATES, *supra* note 95, at 1085; see also CAL. CONST. of 1849, art. IV, § 25 ("Every law enacted by the legislature, shall embrace but one object, and that shall be expressed in the title; and no law shall be revised, or amended, by reference to its title; but in such case, the act revised, or section amended shall be re-enacted and published at length."); J. ROSS BROWNE, REPORT OF THE DEBATES IN THE CONVENTION OF CALIFORNIA, ON THE FORMATION OF THE STATE CONSTITUTION, IN SEPTEMBER AND OCTOBER 1849, 90 (1850) (discussing the California convention's adoption of the single subject rule).

¹⁴⁹ See PROCEEDINGS OF THE NEW JERSEY STATE CONSTITUTIONAL CONVENTION OF 1844, xcvi (New Jersey Writers' Project ed., 1942) ("For one provision in the new [1844] [C]onstitution the Convention reached back over the [C]onstitution of 1776 to Queen Anne's Instructions to Lord Cornbury. This is the provision that 'every law shall embrace but one object and that shall be expressed in the title.'"); see also SAMUEL SMITH, THE HISTORY OF THE COLONY OF NOVA-CAESARIA, OR NEW-JERSEY: CONTAINING, AN ACCOUNT OF ITS FIRST SETTLEMENT, PROGRESSIVE IMPROVEMENTS, THE ORIGINAL AND PRESENT CONSTITUTION, AND OTHER EVENTS, TO THE YEAR 1721. WITH SOME PARTICULARS SINCE; AND A SHORT VIEW OF ITS PRESENT STATE 236-37 (2d ed. 1877) (1765) (stating the original language from the Queen). The Queen wrote:

You [Lord Cornbury] are also as much as possible to observe, in the passing of all laws, that whatever may be requisite upon each different matter, be accordingly provided for by a different law, without intermixing in one and the same act, such things as have no proper relation to each other; and you are especially to take care that no clause

consistent with three distinctive features of Queen Anne's version. First, the royal version distinguished its single subject requirement from its title requirement—while the two provisions were to work in tandem, they were severable, distinct provisions.¹⁵⁰ The same approach would prove significant to Indiana's single subject rule in the twentieth century, when its language was amended to remove the title requirement entirely.¹⁵¹ Second, the Queen's version did not limit its applicability to certain types of laws; instead, it was applicable to all laws passed by the colonial council.¹⁵² This is distinguishable from some states' versions of the single subject rule in the 1840s and 1850s.¹⁵³ Like Queen Anne's original version, Indiana's single subject rule was to apply globally, irrespective of the nature of the legislative act in question.¹⁵⁴ Finally, the notion of "having no proper relation to each other" would be cited by one of the first Indiana Supreme Court cases to interpret the single subject rule.¹⁵⁵

One noteworthy contrast between these versions was their respective degrees of mandate. Whereas the royal version applied "as much as possible," Indiana's single subject rule was clothed with the mandatory

or clauses be inserted in, or annexed to any act, which shall be foreign to what the title of such respective act imports.

SMITH, *supra*, at 236–37.

¹⁵⁰ SMITH, *supra* note 149, at 236–37.

¹⁵¹ See *infra* Part V.B (discussing the 1974 amendment in response to the decision in *State ex rel. Percy v. Criminal Court of Marion Co.*, 274 N.E.2d 519, 521 (Ind. 1971), as the amendment eliminated the title requirement, created an exemption for codifications from the single subject rule, and retained the single subject rule, thereby simplifying the amendment).

¹⁵² SMITH, *supra* note 149, at 236.

¹⁵³ See *supra* notes 142–44 (discussing the single subject rules of Wisconsin and New York which limited the single subject restriction to "private" or "local" legislative acts). The Convention *specifically rejected* a proposal to limit Indiana's single subject rule to private and local bills. See 2 DEBATES, *supra* note 95, at 1121–23 (providing where the proposal was made and the results of the vote). Indiana, of course, went further than rejecting the private or local limitation. *Id.* The framers included a prohibition of local or private bills where general laws could suffice and an absolute prohibition against special legislation in certain areas. IND. CONST. of 1851, art. IV, § 23. Indiana's single subject rule is applicable to all acts other than codifications that the General Assembly may pass. *Id.* § 19. Of the three other states' journals kept by the Indiana Convention, only Kentucky's shared the feature of global applicability, and like Indiana's framers, those at the Kentucky Convention were particularly distrustful of legislative power. See PENNY M. MILLER & AMANDA L. COOPER, *Constitutionalism in Kentucky: Adapting an Archaic Charter*, in THE CONSTITUTIONALISM OF AMERICAN STATES 189 (George E. Conner & Christopher W. Hammons, 2008) (providing a discussion on the Kentucky Convention and its distrust of legislative power).

¹⁵⁴ IND. CONST. of 1851, art. IV, § 19.

¹⁵⁵ See *Madison & Indianapolis R.R. Co. v. Whiteneck*, 8 Ind. 217, 245–46 (1856) (quoting the Convention's Address to the Electors, which explained that "[t]wo provisions having no proper connection with each other, may, under the present [1816] [C]onstitution, be embraced in the same bill, and be carried by a combination of their respective friends").

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verbiage of “shall.”¹⁵⁶ Unlike the royal version, Indiana’s single subject rule was intended to be literal and non-negotiable, affording no discretion—no authority at all with respect to logrolling.

Some states have found that their single subject rules were intended for purposes other than, or in addition to, the prevention of logrolling.¹⁵⁷ Most of these states’ conventions, however, were silent as to purpose, simply including the single subject mandate without any elaboration.¹⁵⁸ By demonstrating what Indiana’s framers did *not* intend, we come to appreciate the depth of the framers’ commitment to the purpose that *was* stated at the 1850 Convention.¹⁵⁹ In sum, Indiana’s single subject rule was intended to preclude logrolling, to apply to all legislative acts, and to apply always—not simply when convenient or “as much as possible.”¹⁶⁰ In contrast to Queen Anne’s version, the Indiana framers allowed for no discretion with respect to the single subject requirement.¹⁶¹ The framers’ message of restraint to future Indiana legislatures was clear.¹⁶²

C. Changes in Convention: From Introduction to Final Product

Four noteworthy alterations were made to the single subject rule between its introduction and final engrossment at the Convention.¹⁶³ These concerned the use of the term “subject,” a provision limiting the portion of a bill to be voided in the event of a single subject violation, a provision allowing for properly connected matters, and endowing the

¹⁵⁶ Compare SMITH, *supra* note 149, with IND. CONST. of 1851, art. IV, § 19 (“An act . . . shall be confined to one subject and matters properly connected therewith.”) (emphasis added).

¹⁵⁷ See, e.g., JACK STARK, THE WISCONSIN STATE CONSTITUTION: A REFERENCE GUIDE 95 (G. Alan Tarr ed., 1997) (“This section’s purposes are to encourage the legislature to devote its time to matters that affect the entire state, to preclude favoritism and discrimination, and to alert the members of the legislature to the subject matter of the legislation that they consider.” (citation omitted)); see also *infra* Part VI (examining the evolution of Section 19’s language over time, and discussing how the single subject rule retains the original intent of the framers).

¹⁵⁸ See *supra* note 147 and accompanying text (examining other states’ conventions which addressed the single subject rule).

¹⁵⁹ See 2 DEBATES, *supra* note 95, at 1085–88 (introducing the idea of the single subject rule and the discussion surrounding its ratification and approval).

¹⁶⁰ See IND. CONST. of 1851, art. IV, § 19 (providing the specific language of the provision); 2 DEBATES, *supra* note 95, at 1085 (stating the thoughts of Mr. Borden, who indicated that the purpose was to prevent logrolling).

¹⁶¹ See IND. CONST. of 1851, art. IV, § 19 (reading the language as unambiguously limiting acts to one subject only).

¹⁶² See 2 DEBATES, *supra* note 95, at 1114 (providing the remarks of Mr. Stevenson). Stevenson even went so far as to explicitly state that the Convention was not adopting the single subject rule simply because other states had done so. *Id.* Rather, Indiana had its own compelling reasons for including the rule. *Id.*

¹⁶³ IND. CONST. of 1851, art. IV, § 19; 2 DEBATES, *supra* note 95, at 1085–87, 1118; JOURNAL OF THE CONVENTION, *supra* note 118, at 942.

single subject rule with its own section in the new constitution.¹⁶⁴ All of these issues played a role in creating the single subject rule which was eventually adopted into the Indiana Constitution.¹⁶⁵

Part IV.C.1 analyzes the discussions between the delegates for choosing between “object” and “subject.”¹⁶⁶ Next, Part IV.C.2 examines the proposed amendment by Mr. Dunn that would void an entire act if it violated the single subject provision.¹⁶⁷ Finally, Part IV.C.3 addresses the “properly connected” phrase.¹⁶⁸

1. “Subject” versus “Object”

Immediately before the Convention’s first vote on the single subject rule, Thomas Gibson moved to replace the word “object” with the word “subject.”¹⁶⁹ Another delegate “presume[d] the gentleman from Putnam, [Mr. Stevenson], will accept the proposed amendment as a modification.”¹⁷⁰ Stevenson having no objection, “[t]he question was taken on the amendment to the amendment, and it was agreed to” without a recorded vote.¹⁷¹ The language of the rule was thus modified from its original form, “[e]very law shall embrace but one object” to “[e]very law shall embrace but one subject.”¹⁷²

No discussion was had on the rationale for this change. Gibson declared only that “it makes a very material difference. I will venture to say if the word ‘object’ be retained, there will not be a law passed within a dozen years, that will be constitutional.”¹⁷³ Gibson did not explain why he believed the difference between the terms was meaningful, nor did any other delegate comment on his proposal. Several possible explanations account for Gibson’s change. First, most delegates were already using the two terms interchangeably, with most preferring “subject.”¹⁷⁴ While this explains why Stevenson and his majority were inclined to accept the

¹⁶⁴ See IND. CONST. of 1851, art. IV, § 19 (providing the final version of the single subject rule); 2 DEBATES, *supra* note 95, at 1085–87, 1118 (discussing Mr. Bright’s, Mr. Gibson’s, and Mr. Dunn’s proposals during the Convention); JOURNAL OF THE CONVENTION, *supra* note 118, at 942 (giving the original version of the single subject rule).

¹⁶⁵ IND. CONST. of 1851, art. IV, § 19.

¹⁶⁶ See *infra* Part III.C.1 (providing the reasoning for the delegates’ decision to choose one word over the other).

¹⁶⁷ See *infra* Part III.C.2 (reviewing Mr. Dunn’s proposed amendment).

¹⁶⁸ 2 DEBATES, *supra* note 95, at 1115; see *infra* Part III.C.3 (expanding on the discussion which ensued between the delegates over the phrasing).

¹⁶⁹ 2 DEBATES, *supra* note 95, at 1087.

¹⁷⁰ *Id.*

¹⁷¹ IND. CONST. of 1851, art. IV, § 19; 2 DEBATES, *supra* note 95, at 1087.

¹⁷² 2 DEBATES, *supra* note 95, at 1087.

¹⁷³ *Id.*

¹⁷⁴ See *id.* at 1085–87 (providing the principal single subject rule discussion).

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change without a roll call and without discussion—there would be no legal impact in the change, as logrolling would be prohibited using either term—it does not explain why Gibson felt the change so important.¹⁷⁵

A second explanation is that Gibson read the term “object” to comprehend a unique dimension that would raise unintended problems for future legislatures. As of 1850, “object” could, for example, refer to “[t]hat about which any power or faculty is employed, or something apprehended or presented to the mind by sensation or imagination.”¹⁷⁶ Read thusly, Gibson might have feared that any single “item” within a bill would be deemed a separate “object” by the courts, thereby precluding the combination of legitimately related items under one heading. This, for example, would make the passage of a single appropriations bill impossible because each appropriation representing a separate “object” would be in violation of the single “object” prohibition. Alternatively, Gibson may have read “object” to refer to “purpose or intent.”¹⁷⁷ In this case, a single, cogent legislative intent would have to be expressed in every title of every act—a very difficult mandate, if not impossible, as both a political and etymological matter. A “purpose,” too, could be phrased misleadingly, contravening Stevenson’s rationale for a title requirement.¹⁷⁸ In either sense of the word, Gibson may have found an insurmountable hurdle to the legislature’s business, one beyond simply the suppression of logrolling.

¹⁷⁵ See JAMES RAWSON, A DICTIONARY OF SYNONYMICAL TERMS OF THE ENGLISH LANGUAGE 195 (Lindsay & Blackston eds., 1850) (listing “object” as a synonym of “subject”). At least one American authority of the day explicitly equated the terms “subject” and “object.” *Id.*; see also, e.g., Carl H. Manson, *The Drafting of Statute Titles*, 10 IND. L.J. 155, 157–58 n.4 (1934) (providing examples of how other commentators have noted the general equivalence of the two phrases during this time in the context of single subject limitations across varying jurisdictions); accord WILLIAM CARPENTER, A COMPREHENSIVE DICTIONARY OF ENGLISH SYNONYMS 158 (Thomas Tegg ed., 3d ed. 1842). At least some delegates to the Kentucky Convention did the same. See SUTTON, *supra* note 147, at 128 (noting section four of the legislative committee minority report, which proposed that “[n]o law passed by the legislature shall embrace more than one distinct object, or subject matter, which shall be expressed in the title.”).

¹⁷⁶ NOAH WEBSTER, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 564 (1846).

¹⁷⁷ *Id.* (defining “object” in a second sense as “[t]hat to which the mind is directed for accomplishment or attainment; end; ultimate purpose”). Plainly, this sense of the word was common in Indiana at the time of the Convention. 2 DEBATES, *supra* note 95, at 1085 (emphasis added) (explaining the “purpose” of his single subject proposal, Stevenson himself stated that “[t]he object of this amendment is to obviate a difficulty that frequently occurs in the Legislature.”)

¹⁷⁸ See *supra* text accompanying note 125 (discussing the two main purposes of Section 19 as proposed at the Convention—to prevent logrolling and problems arising from insufficient titles, and how the proposed amendment embodied these purposes).

A third possibility is that the influence of other states motivated Gibson's change.¹⁷⁹ For example, Michigan's 1848 Convention rejected combining the terms "object" and "subject" out of concern that the amalgam would preclude future codifications of the statutory law.¹⁸⁰ Neither Gibson nor any other delegate expressed a concern about codification during the Convention; it would not rise to the level of constitutional concern in Indiana until the 1960s.¹⁸¹

Gibson's imported phrase, "subject," was defined by the leading authority of the day in a roundabout manner—"[t]hat on which any mental operation is performed; that which is treated or handled . . . [t]hat in which any thing inheres or exists."¹⁸² Other conventions understood the term similarly. As one delegate to Michigan's convention put it, "[t]he subject is the thing treated of; the object is the motive."¹⁸³ Another delegate remarked:

"Object," means the thing struck at—aimed at—the thing hit. "Subject," means the thing controlled—brought under—embraced. The subject is one thing, the object another. Object embraces the motive and design, and oftentimes both the promoters and makers of laws have a very different object from what the title would propose.¹⁸⁴

While a majority of the Indiana delegates thus believed that both terms would be effective barriers to logrolling, it can also be said that the majority must not have opposed the unique connotations then inherent in the term "subject."¹⁸⁵ Indiana's single subject rule thus prohibits *both* the

¹⁷⁹ See *infra* note 180 and accompanying text (discussing Michigan's 1848 convention).

¹⁸⁰ See REPORT OF THE PROCEEDINGS AND DEBATES IN THE CONVENTION TO REVISE THE CONSTITUTION OF THE STATE OF MICHIGAN 148 (1850) [hereinafter MICHIGAN DEBATES] (noting the amendment of Mr. Bagg and the remarks of Mr. Cray particularly).

¹⁸¹ See *infra* Part V.B (discussing the two concerns that led to the 1960 amendment of Section 19, which were the need for an exception to the single subject rule for codifications and an effort to simplify the title requirement).

¹⁸² WEBSTER, *supra* note 176, at 803; accord JOSEPH E. WORCESTER, A UNIVERSAL AND CRITICAL DICTIONARY OF THE ENGLISH LANGUAGE 705 (Wilkins, Carter, and Co., 1850) ("that on which any operation, either mental or material, is performed"); ALEXANDER REID, A DICTIONARY OF THE ENGLISH LANGUAGE 395 (D. Appleton & Co., 1814) ("that on which any operation is performed; that concerning which something is affirmed or denied"); CHARLES RICHARDSON, A NEW DICTIONARY OF THE ENGLISH LANGUAGE 766 (William Pickering, London, 2d ed. 1844) ("any thing put or placed under, sc. view of the mind, act of the body").

¹⁸³ See MICHIGAN DEBATES, *supra* note 180, at 148 (noting the remarks of Mr. Bush).

¹⁸⁴ *Id.* (quoting the remarks of Mr. Williams).

¹⁸⁵ See 2 DEBATES, *supra* note 95, at 1087 (demonstrating that the amendment was adopted by a majority vote).

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procedure of logrolling *and* the substantive combination of two or more “subjects.”¹⁸⁶

2. Limitation of Voided Portion

Immediately following the vote to accept Stevenson’s amendment, William Dunn—a delegate who had voted against the single subject rule—moved to amend it “by providing that if any subject is embraced in a law, and not expressed in the title, the law shall only be void so far as such provision is concerned.”¹⁸⁷ As it stood before the Dunn amendment, the rule’s language necessitated the voiding of an entire act if it contained more than one subject.¹⁸⁸ There would be no basis for the judiciary to void one portion of the law while preserving and upholding the validity of another part of the same act.¹⁸⁹ With Dunn’s amendment an additional constitutional test emerged.¹⁹⁰ Now, in addition to the question of whether the act contained more than one subject, the courts were obliged to determine *which* portion of the act was void—a question resolved by deciding which subjects went unexpressed in the title of the act.¹⁹¹

Dunn’s reason for his amendment was simple—he feared that without this language the opponents of a given bill would heap amendments upon it, deliberately diversifying the subjects contained in the act, and inviting the courts to find the entire act void.¹⁹² By adding this security measure, a legislative majority could designate the true subject. Whatever subject was expressed in the title of the act would be shielded from constitutional infirmity, at least under Section 19.¹⁹³ Dunn’s amendment was approved,¹⁹⁴ and the single subject rule assumed the next phase of its evolution:

Bills may originate in either House, but may be altered[,] amended, or rejected in the other except that bills for

¹⁸⁶ See *infra* Part IV.F (exploring the single subject rule’s dual prongs).

¹⁸⁷ 2 DEBATES, *supra* note 95, at 1087.

¹⁸⁸ *Id.*

¹⁸⁹ See *infra* Part V.B (stating that the effect of this early version of the rule was restored in 1974, when the title requirement was removed altogether from Section 19’s language). Today, Indiana courts face an “all or nothing” proposition—either the entire act in question is void, or none of it is void.

¹⁹⁰ 2 DEBATES, *supra* note 95, at 1087.

¹⁹¹ See *id.* at 2009 (noting the remarks of Mr. Pettit, who acknowledged that the courts would be confronted by at least two legal questions: “first, as to whether a bill contains two subjects, and secondly, whether these subjects are expressed in the title of the bill”).

¹⁹² *Id.* at 1087.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 1087, 1114 (discussing Stevenson’s remarks and noting that Stevenson was unenthusiastic about Dunn’s amendment, but nevertheless “thought it could do no harm”).

raising revenue shall originate in the House of Representatives. Every law shall embrace but one subject, which shall be expressed in the title: [p]rovided, [t]hat if any subject should be embraced in a law, which is not expressed in the title, such law shall only be void as to so much thereof as is not expressed in the title.¹⁹⁵

By providing this “guidance” to the courts, the framers had once more affirmed their intent that the single subject rule would receive vigorous judicial enforcement.

3. The “Matters Properly Connected” Phrase

Another major struggle over the single subject rule took place in the days following its December 11 introduction.¹⁹⁶ On December 12, Michael Bright, a leader of the opposition to the single subject rule and chairman of the Committee on the Legislative Department, moved that the provision—then part of Section 17—be referred to his legislative committee, where Stevenson’s language would be stricken from the Section.¹⁹⁷ A dialogue ensued between the supporters and detractors of Stevenson’s language.¹⁹⁸ Delegate John Niles proposed to amend the evolving instructions to the legislative committee thusly—“[e]very law shall embrace but one subject, *and matters reasonably connected therewith . . .*”¹⁹⁹

Mr. Nave proposed the additional phrase as a “compromise.”²⁰⁰ This compromise would allow for intimately connected items to be included under the rubric of a single subject while Mr. Niles suggested “exclud[ing] all matters which might be entirely foreign or irrelevant to the main subject of the bill.”²⁰¹ Mr. Niles made clear that his proposed addition was intended to soften the *title* requirement and to discourage litigation over *titles*—to clarify that a *perfect title* was not demanded under the rule’s

¹⁹⁵ See JOURNAL OF THE CONVENTION, *supra* note 117, at 934, 936 (discussing Article XII, section 17, as referred to the committee on revision, arrangement, and phraseology and reported on Friday, February 7, 1851).

¹⁹⁶ See *id.* at 413–14 (providing the remarks of Mr. Stevenson, who introduced the rule).

¹⁹⁷ 2 DEBATES, *supra* note 95, at 1113; see JOURNAL OF THE CONVENTION, *supra* note 118, at 428, 475 (noting that Bright was chairman of the committee).

¹⁹⁸ See 2 DEBATES, *supra* note 95, at 1113–16 (referencing a dialogue between Mr. Clark, Mr. Stevenson, Mr. Bright, Mr. Gibson, Mr. Niles, and Mr. Newman over Mr. Stevenson’s offered amendment).

¹⁹⁹ *Id.* at 1115 (emphasis added).

²⁰⁰ See *id.* at 1117 (providing the remarks of Mr. Nave).

²⁰¹ See *id.* at 1115 (quoting the remarks of Mr. Niles).

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language.²⁰² Niles' motion to amend the instructions by adding the new phrase was adopted by the legislative committee.²⁰³ It appeared as though Niles' proposal was going to carry the day.

However, it was then debated whether to re-commit the section to the legislative committee with Niles' instructions.²⁰⁴ Niles' instructions would not prevail because some supporters of Stevenson's language feared that future courts would employ the "properly connected" phrase to eviscerate the clear intent of the Convention that acts be limited to one subject and that the single subject rule be judicially enforced.²⁰⁵ It was also noted that the courts would not arbitrarily decide title requirement questions without reference to the body of the act.²⁰⁶ Other "compromise" delegates favored Niles' amendment insofar as they believed it would discourage the courts from frequently voiding laws for mere technical defects *in the titles* while at the same time *preserving the integrity of the single subject rule*.²⁰⁷ The Convention approved an amendment to the instructions providing that all laws be plainly worded, and the delegates

²⁰² *Id.* Mr. Niles also declared:

I apprehend that it would not be either necessary or prudent to require that a *perfect* epitome of a bill should be included *in the title*. With such a provision as [Stevenson's], it would certainly require the careful examination of a good lawyer in nine cases out of ten, to say what law is constitutional and what is not constitutional. . . . [W]ith the provision [under Stevenson's language], I ask whether, if the Legislature should err in judgment in this matter, such error would not open the door to endless litigation?

Id. (emphasis added).

²⁰³ 2 DEBATES, *supra* note 95, at 1116.

²⁰⁴ *Id.*

²⁰⁵ *See id.* (reviewing the remarks of Mr. Dobson and contending that Niles' amendment would attenuate Stevenson's language). Mr. Smith stated that, "I do not know how our courts would construe the words 'reasonably connected therewith,' but I presume that they would, in most instances, decide that whatever the Legislature had done, was 'reasonable.'" *Id.* Further, Mr. Kelso bluntly remarked that Niles' language was offered to allow the very thing the Convention was called to prevent—passing amalgamated but unrelated provisions under one act. *Id.* at 1116–17. Smith in particular was remarkably clairvoyant—the extent to which his apprehension came true will be discussed at length in a future Article.

²⁰⁶ *See id.* at 1116 (quoting the remarks of Mr. Smith, "I do think that the idea . . . that our courts will determine our laws to be unconstitutional in consequence of the title being defective, and not clearly pointing out the body of the bill, is all 'gammon' . . ."). Smith was correct. Courts over time developed and used a "title-body" analysis for title requirement questions. *See Oddi, supra* note 1, at 16–17 (discussing several court opinions and the holdings that discuss the importance of consulting the body of the act in question).

²⁰⁷ *See, e.g.,* 2 DEBATES, *supra* note 95, at 1116 (referencing the remarks of Mr. Owen which endorse Niles' amendment). Mr. Owen noted that he had "heard no reply made to the argument of [Stevenson], that it is a thing in itself injurious that two or more subjects having no connection with each other, should be embraced in the same bill, or that one bill having merit should be made to carry another one on its back having no merit").

then voted on whether to recommit the section with the instructions as amended.²⁰⁸ A majority, including Stevenson, voted against recommitting the section, and thereby rejected the amended instructions as well.²⁰⁹

The Convention adjourned and on the next day, December 13, Niles immediately moved to again send the instructions to the legislative committee to provide for his “properly connected” phrase.²¹⁰ On this occasion, he described his proposed amendment as allowing matters “naturally and reasonably connected” with the subject of an act.²¹¹ Niles again appeared to intend for his “properly connected” phrase to curtail litigation arising out of the *title* requirement, and again affirmed his support for the single subject requirement, noting that he was “opposed to all omnibuses in legislation.”²¹² Curiously, the Convention again voted to amend the instructions per Niles’ proposed language and approved the re-committal of the existing language of the section to the legislative committee, but thereupon promptly *killed the instructions, including Niles’ language*, by laying the proposed amended instructions upon the table.²¹³ The result was that the section, including Stevenson’s language but excluding Niles’ proposed phrase, was referred to the legislative committee without any instructions whatsoever.²¹⁴

The fact that the Convention twice rejected Niles’ instructions suggests that a majority of delegates—the same majority expressing a clear intent that the single subject rule would enjoy judicial enforcement—was persuaded by the reasoning of those opposed to the “reasonably connected” phrase. The majority still intended that Section 19 would be vigorously enforced by the judiciary and worried that future courts might read the “reasonably connected” phrase as an invitation to eviscerate their intent.²¹⁵ Hence, *Stevenson’s* version of Section 19 was sent to the

²⁰⁸ See *id.* at 1117 (reviewing the remarks of Mr. Morrison whose language was ultimately incorporated into the Constitution as Article 4, Section 20); IND. CONST. of 1851, art. IV, § 20 (providing the text of Indiana Constitution).

²⁰⁹ 2 DEBATES, *supra* note 95, at 1119.

²¹⁰ *Id.* at 1121; accord JOURNAL OF THE CONVENTION, *supra* note 117, at 430.

²¹¹ See 2 DEBATES, *supra* note 95, at 1121 (addressing the remarks of Mr. Niles).

²¹² See *id.* at 1122 (reviewing the remarks of Mr. Niles, who also suggested that the people “may safely presume that the Legislature will carry out the spirit of the section in good faith,” thereby implying that the courts would not need to enforce it); *infra* Part IV.D.5 (noting that by the end of the Convention, on the last occasion that Section 19 was considered, supporters and opponents of the section alike still understood and intended that Section 19 would receive vigorous enforcement from the courts).

²¹³ 2 DEBATES, *supra* note 95, at 1122–23. It was Mr. Pettit who “move[d] to lay *all* the instructions on the table.” *Id.* at 1123 (emphasis added).

²¹⁴ *Id.* at 1123–24.

²¹⁵ Justin W. Evans & Mark C. Bannister, *Reanimating the States’ Single Subject Jurisprudence: A New Constitutional Test*, forthcoming 39 S. ILL. U. L.J. (forthcoming 2015) (explaining that this anxiety proved to be well-founded).

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Committee on Revision, the last step to inclusion in the new Constitution.²¹⁶ And then a remarkable thing happened.

The Committee on Revision reported Section 19 *containing* the phrase, altered slightly from “reasonably connected” to “properly connected.”²¹⁷ The opponents of Section 19 had lost at every turn throughout the Convention, and undoubtedly realized they could not strike the Section altogether. Had Section 19’s opponents managed to accomplish the next best thing in the Committee on Revision—adding the phrase notwithstanding the majority’s earlier rejection of it, in the hopes their ideological allies on future courts would use it to eviscerate Section 19?²¹⁸ While committee records from the Convention do not appear to have been preserved, the circumstantial evidence suggests that this is exactly what happened.

The Committee on Revision, Arrangement and Phraseology had a membership of twenty-one delegates.²¹⁹ The single subject rule’s most dire and outspoken opponents—Michael Bright, John Pettit, and Thomas Walpole—were members of this committee, as were six other delegates who had cast at least one vote against the rule.²²⁰ The following table summarizes how each of the revision committee’s members voted on the single subject rule throughout the Convention:²²¹

²¹⁶ See JOURNAL OF THE CONVENTION, *supra* note 117, at 936 (providing that each law shall address solely one subject).

²¹⁷ See *id.* at 942 (“Every act shall embrace but one subject, and matters properly connected therewith . . .”).

²¹⁸ See, e.g., ESAREY, EXPLORATION TO 1922, *supra* note 53, at 519 (discussing many commentators who disliked partisan judicial elections and quoting, “critics [of the 1851 Constitution] rightly insist that the judiciary was weakened and a vast field opened for sinister partisan politics.”).

²¹⁹ See JOURNAL OF THE CONVENTION, *supra* note 117, at 54 (listing the twenty-one members as following: “Owen, Bright, Morrison of Marion, Read of Clark, Pettit, Kent, Borden, Newman, Rariden, Graham of Warrick, Smith of Ripley, Hamilton, Read of Monroe, Hall, Kilgore, Pepper of Ohio, Morrison of Washington, Ritchey, Wallace, Dobson, and Walpole.”).

²²⁰ *Id.*; see *infra* Table 1 (detailing the three votes that took place).

²²¹ See 2 DEBATES, *supra* note 95, at 1087, 2010–11 (summarizing the delegates who participated in the three votes and how each voted); JOURNAL OF THE CONVENTION, *supra* note 117, at 54 (listing all of the committee members).

Table 1

Member of Revision Committee	First vote (to include)	Second vote (to strike)	Third vote (to include)
<i>Owen</i>	YES	[No vote]	[No vote]
Bright	NO	YES	NO
Morrison of Marion	NO	YES	NO
Read of Clark	YES	NO	YES
Pettit	YES	YES	NO
<i>Kent</i>	[No vote]	[No vote]	YES
<i>Borden</i>	YES	[No vote]	[No vote]
Rariden	YES	YES	NO
Graham of Warrick	NO	YES	YES
Smith of Ripley	YES	NO	YES
Newman	NO	[No vote]	[No vote]
Hamilton	YES	NO	YES
<i>Read of Monroe</i>	YES	[No vote]	[No vote]
Hall	YES	NO	YES
Kilgore	[No vote]	[No vote]	[No vote]
Pepper of Ohio	YES	NO	[No vote]
Morrison of Washington	[No vote]	YES	NO
<i>Ritchey</i>	YES	[No vote]	[No vote]
<i>Wallace</i>	YES	[No vote]	[No vote]
Dobson	YES	NO	YES
Walpole	NO	YES	NO

As Table 1 reveals, Section 19's opponents nearly had a majority, nine of the twenty-one members, and when combined with those who had voted only once, opponents and nominal supporters numbered fifteen.²²² Only five of the revision committee's members had consistently favored the single subject rule throughout the Convention.²²³ The revision committee made its report near the end of the Convention on February 7, 1851—as a practical matter, too late to change by renewing debate.²²⁴ Opponents of the single subject rule had taken one last swing at its defeat, not at the Convention where a majority of delegates favored the rule and opposed the “properly connected” language, but by the future Indiana courts that would interpret and develop Section 19. A large majority of

²²² See *supra* Table 1 (listing Section 19's opponents).

²²³ See *supra* Table 1 (supporting the rule consistently were: Read of Clark, Smith of Ripley, Hamilton, Hall, and Dobson).

²²⁴ 2 DEBATES, *supra* note 95, at 2033.

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the delegates opposed inclusion of the phrase and accepted it only at the end of the Convention when the choice was between acceptance of the revised version and rejection of the Section altogether.²²⁵

For several reasons, the “matters properly connected” phrase should not be read to “undo” the single subject requirement.²²⁶ First, even if a majority of the delegates had supported inclusion of the phrase, the majority’s intent with respect to the single subject mandate was uniform: they intended that the provision would actually function to limit acts to one subject and that the courts would enforce this requirement with vigor.²²⁷ This intent cannot be ignored, nor is it outweighed by the “properly connected” phrase in light of the respective intentions and votes for Section 19 and the “matters” phrase.²²⁸ Second, the final version of Section 19, even after its alterations in the revision committee, still contained the proviso that acts would “be void only as to so much thereof as shall not be expressed in the title.”²²⁹ Hence, even after the Revision Committee, Section 19 contemplated that a portion of an act *could* be voided. It would necessarily fall to the courts to perform this analysis and, when necessary, the voiding function.²³⁰

Third, the Address to the Electors, written *after* the Revision Committee’s alterations, continued the position that Section 19 was designed to prevent logrolling by a substantive prohibition forbidding two or more subjects in the same act.²³¹ Fourth, the *supporters* of the “properly connected” phrase expressed an intent that the phrase’s impact would be *limited to the title requirement*.²³² According to Niles, the phrase would be beneficial insofar as it would discourage excessive litigation over the titles of acts.²³³ It would communicate to the courts that the title requirement could not be read in a technical fashion to defeat acts that were *otherwise sound*, including acts that were otherwise sound *by virtue of*

²²⁵ See *id.* at 2066, 2069 (noting that Section 19 made it into the final version of the new 1851 Constitution).

²²⁶ *Id.* at 2069.

²²⁷ See *infra* Part IV.D-G (noting the uniform acknowledgment among the rule’s convention supporters and detractors that the rule would be judicially enforced if it was included in the new Constitution).

²²⁸ 2 DEBATES, *supra* note 95, at 2069.

²²⁹ *Id.*

²³⁰ See *infra* Part IV.D (discussing the fact that even the rule’s opponents acknowledged that the rule would be judicially enforced).

²³¹ See 2 DEBATES, *supra* note 95, at 2043 (indicating that the rule is calculated to prevent logrolling); see also *infra* Part IV.E (discussing the intent and the decision making process of the ratifiers).

²³² 2 DEBATES, *supra* note 95, at 2069.

²³³ *Id.* at 1115.

compliance with the single subject requirement.²³⁴ Fifth, to read Section 19 as “requiring all acts to be limited to one subject and permitting more than one subject” produces an internally inconsistent, logically invalid statement.²³⁵

²³⁴ See *supra* notes 202, 205, 212 and accompanying text (reiterating the views and comments made by Mr. Niles concerning the title requirement).

²³⁵ See ALEXANDER MILLER, PHILOSOPHY OF LANGUAGE 1–22 (2d ed. 2007) (providing an excellent overview of symbolic logic and its power to describe linguistic meaning). Let the phrase, “shall embrace but one subject” be expressed symbolically as *P* and the phrase “matters properly connected therewith” be expressed as *Q*. 2 DEBATES, *supra* note 95, at 2069; MILLER, *supra*, at 2–3. “Act,” as in the type of legislative act contemplated by Section 19, will be denoted as *x*. 2 DEBATES, *supra* note 95, at 2069; MILLER, *supra*, at 2–3. Hence, the first portion of Section 19 can be expressed as:

$$\forall(x) (Px \ \& \ Qx),$$

meaning that, “for all legislative acts, an act shall embrace but one subject and matters properly connected therewith.” MILLER, *supra*, at 5–6. We can further designate a constant *R* meaning “additional subjects,” or “some number of multiple subjects in excess of one.” *Id.* at 3. Because we defined *P* in terms of “one and only one subject,” *R* can be restated as “not ‘but one subject,’” and rewritten symbolically as “not *P*,” or $\neg P$. *Id.* at 3–4. Now, if we take the phrase “matters properly connected therewith” to mean “other subjects,” or “additional subjects,” then $R = Q$ and the two terms are interchangeable. *Id.* at 6–7. Hence, when we substitute *R* for *Q*, our expression becomes:

$$\forall(x) (Px \ \& \ Rx),$$

and, substituting $\neg P$ for *R*, we get:

$$\forall(x) (Px \ \& \ \neg Px),$$

meaning that “for all acts, an act shall be confined to one subject and also need not be confined to one subject.” *Id.* Thus, if the phrase “matters properly connected therewith” is understood to contemplate “matters which are in themselves discrete subjects,” then Section 19 is, logically, a contradiction. See STAN BATONETT, LOGIC 147–49 (2008) (discussing contradictions). Whatever “matters properly connected” are understood to be, therefore, they cannot be additional subjects. *Id.* at 148. To hold otherwise is to interpret Section 19 in such a way that it is reduced to a contradiction—a logical fallacy. Even if this was the intent of the opponents of Section 19, their intent should not prevail for the reasons discussed above, and for the additional reason that engrafting this type of contradictory meaning upon a provision in the Constitution has long been expressly forbidden by our rules of interpretation. See, e.g., *May v. Rice*, 91 Ind. 546, 555 (1883) (discussing the significance of the meanings of words when interpreting constitutions). The court states:

In the interpretation of constitutions, as well as statutes, the object is to ascertain and carry out the purpose of the authors. In doing this, the words used in the instrument should be taken in their literal signification, unless . . . it is made to lead to possible oppression or injustice, or to contradictions or absurd results.

Id. (emphasis added); *Decatur TP. v. Board of Comm’rs of Marion County*, 39 N.E.2d 479, 483 (Ind. Ct. App. 1942) (discussing the purpose and intent of constructing statutes). The court states:

It has often been stated by the courts, that in the construction of statutes [and, by way of *May v. Rice*, constitutions as well] the prime object is to ascertain and carry out the purpose and intent of the [L]egislature; that to do this the words should first be considered in their literal and ordinary signification; that if, by giving them such a signification, the meaning of the whole instrument is rendered doubtful, or is made to lead to contradictions, or absurd results, the intent, as collected from the whole

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Finally, reading Section 19 in a contrary manner renders the entire provision pointless. Had the framers intended to permit multiple subjects in an act, no provision whatsoever would have been necessary, for multiple-subject acts had prevailed in the absence of an affirmative restriction under the 1816 Constitution. The “matters properly connected” are logically best understood to comprise a *subset* of the single subject to which an act must be confined.²³⁶

Section 19’s “matters properly connected” phrase represents the majority framers’ attenuated acceptance of the notion that the courts would avoid nullifying acts based upon technical defects *in their titles*.²³⁷ It was not the intent of the framers to craft a rule limiting acts to one subject, while simultaneously permitting multitudes of subjects. In light of the title requirement’s removal from Section 19 in 1974, it is doubtful how much of a practical difference the phrase makes, or should make, upon single subject analysis in Indiana today.²³⁸ The “matters properly connected” phrase must be understood with the framers’ intent in mind. Acts today should not be voided on mere technicalities, but must nevertheless still be confined to one subject.²³⁹ A “matter properly connected” to the subject is therefore one:

- (1) which might fall outside the scope of the act’s subject, *if the said subject is defined unreasonably narrowly; and*
- (2) which has a *natural and reasonably justifiable* connection to the subject such that the matter is, conceptually and logically, a *subset* of the subject (with the understanding that a given provision is not automatically said to have a natural or reasonable connection to the subject merely because the legislature has included it in the act at issue); *and*
- (3) whose presence in the act does not represent an additional discrete subject when the subject of the act,

instrument, must prevail over the literal import of terms, and control the strict letter of the law.

Decatur, 39 N.E.2d at 483 (emphasis added). Contradictions are *per se* “absurd,” as they are, by definition, never logically valid. BATONETT, *supra*, at 147-49.

²³⁶ 2 DEBATES, *supra* note 95, at 2069.

²³⁷ *Id.*

²³⁸ See IND. CONST. of 1851, art. IV, § 19, *amended* Nov. 5, 1974 (“An act, except an act for the codification, revision or rearrangement of laws, shall be confined to one subject and matters properly connected therewith.”).

²³⁹ See IND. CONST. of 1851, art. IV, § 19, *amended* Nov. 5, 1974 (noting the “matters properly connected” phrase is still included within the text).

however characterized, is defined with reasonable breadth.

The Revision Committee removed the single subject provision from the language to which it had originally been amended.²⁴⁰ This gesture acknowledged the importance of the single subject rule, which was now complete and stood as it would go to the voters for approval:

Sec. 19. Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.²⁴¹

It is through this detailed history that we are able to better understand the evolution of the single subject rule that is still in force in Indiana today, and the rule's intended constitutional function.

D. The Minority's Intent: Delegates Opposed

The remarks of the single subject rule's opponents are noteworthy for the simple reason that these delegates' concerns were considered *and rejected* by the Convention.²⁴² As a result, the opposition's remarks can help to guide our analysis by clarifying or eliminating some otherwise speculative parameters. It is constitutionally axiomatic that the minority's objections should not govern the common law interpretation of Section 19—since *these* delegates lost, *their* intent should not prevail. Section 19's Convention opponents were extremely vocal and active in their opposition.²⁴³ The following five major lines of opposition merit

²⁴⁰ 2 DEBATES, *supra* note 95, at 2069.

²⁴¹ *Id.*; accord JOURNAL OF THE CONVENTION, *supra* note 117, at 942.

²⁴² See *supra* Part IV.C (discussing the failed attempts by Mr. Niles to prevent the single subject rule's inclusion in the draft constitution).

²⁴³ See 2 DEBATES, *supra* note 95, at 1113 (introducing Mr. Niles' motion "to strike out the additions which had been made to the section by the Convention, and to report it back as it was originally reported"); JOURNAL OF THE CONVENTION, *supra* note 117, at 166-70 ("general subjects, and also the various resolution submissions . . . to be incorporated into the new Constitution"). In light of Bright's chairmanship of the legislative committee and his opposition to Section 19, it is unsurprising that the first draft of the committee's legislative article contained no single subject rule. 2 DEBATES, *supra* note 95, at 1113; JOURNAL OF THE CONVENTION, *supra* note 117, at 166-70. The Convention refused Bright's motion to recommit Section 19, which was part of Section 17 at the time, to his committee so that he could strike it out of the draft Constitution. 2 DEBATES, *supra* note 95, at 1113.

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attention.²⁴⁴ Part IV.D.1 considers the view of critics that the single subject provision was unnecessary.²⁴⁵ Next, Part IV.D.2 examines the notion that a regularly-enforced single subject rule would hinder the legislature's function.²⁴⁶ Then, Part IV.D.3 considers the idea that critics believed the single subject provision would invariably require the courts to assess the compliance of acts with the rule.²⁴⁷ Part IV.D.4 explains some critics' feeling that the single subject provision would not be workable in practice.²⁴⁸ Finally, Part IV.D.5 concludes by considering the opposition's final attempt to exclude the single subject provision from the 1850 Indiana Constitution.²⁴⁹

1. The Single Subject Rule: Unnecessary and Superfluous

The first major objection to the single subject rule coalesced around the notion that it was unnecessary. Requiring a majority to pass a bill, every vote to be recorded in the journals, and every bill to be read entirely through on three separate days would, according to the rule's detractors, make legislators fully aware of a bill's contents.²⁵⁰ These provisions,

²⁴⁴ See *infra* Part IV.D.1-5 (discussing the five lines of opposition).

²⁴⁵ See *infra* Part IV.D.1 (introducing the idea that the single subject provision is unnecessary and superfluous).

²⁴⁶ See *infra* Part IV.D.2 (reviewing the arguments of critics for the why the single subject provision would burden the legislature).

²⁴⁷ See *infra* Part IV.D.3 (expressing the view that the rule would add an additional layer of checks and balances to the government).

²⁴⁸ See *infra* Part IV.D.4 (analyzing the oppositions' views that the single subject provision is not feasible in real life scenarios).

²⁴⁹ See *infra* Part IV.D.5 (providing the oppositions' final attempt at the Convention to keep the single subject provision out of the Constitution).

²⁵⁰ See generally IND. CONST. of 1816, art. III (noting that the 1816 Article III was entirely silent as to the requirement of a majority to pass a bill). Each of these represented a constitutional innovation in Indiana, as the 1816 Constitution contained none of them. *Id.* Section 17 simply stipulated that "every bill having passed both houses, shall be signed by the president and speaker of their respective houses." *Id.* § 17. Section 9 declared that "[t]he yeas and nays of the members, on any question, shall, at the request of any two of them, be entered on the journals." *Id.* at § 9 (stating otherwise, the recording of votes was not mandatory, but was done only if two or more members specifically requested that they be taken down). Section 17 also established that "[e]very bill shall be read on three different days in each house, unless in case of urgency, two-thirds of the house, when such bill may be depending, shall deem it expedient to dispense with this rule." *Id.* § 17. Accordingly, under the 1816 Constitution, "the rules might be suspended and a bill taken through all readings in both houses on the same day, by merely repeating the title, and then might pass by a bare majority of a quorum, and without the ayes and nays." WALSH, *supra* note 61, at 179 (discussing these safeguards are all, in some form, included in the 1851 Constitution); see IND. CONST. of 1851, art. IV, §§ 18-25 (requiring majority to pass a bill and requiring the yeas and nays on passage of every bill or joint resolution, and requiring every bill to be read by title on three days while prohibiting suspension of the rule for the third reading).

opponents contended, rendered the single subject rule a valueless redundancy checking an efficient legislative process as opposed to legislative abuse. As one delegate put it, "I am satisfied that there [are] already sufficient [provisions] in the Constitution to protect the people from unjust legislation, and if those provisions are not amply sufficient to protect the people against legislative imposition, then to pass [Section 19] would only make the matter worse."²⁵¹

The majority's rejection of these concerns is revealing. First, while the other provisions alluded to might effectively advertise a bill's contents, the preclusion of legislator deception was only one of Section 19's purposes. One of the two primary purposes for the single subject language was the prevention of logrolling.²⁵² The majority felt that the Constitution's other provisions would not effectively prevent logrolling, and that logrolling was a sufficiently pressing problem that it demanded a provision of its own.²⁵³

The single subject rule, moreover, was part of a larger puzzle. Reform of the legislative branch was the primary motivation for the Convention to begin with.²⁵⁴ The ratifiers and their delegates sought to check not only the substance of legislative acts, but also the legislature's internal mechanics—the *procedural* dimension of lawmaking. The single subject rule was one gear in the engine of legislative reform.²⁵⁵ The rule's inclusion would not by itself reform all aspects of the old legislative scheme, but it would play a vital role toward that end.

²⁵¹ See 2 DEBATES, *supra* note 95, at 1085–86, 1119–20, 2009 (quoting the remarks of Bright, Pettit, and Read).

²⁵² *Id.* at 1085.

²⁵³ See generally *City of S. Bend v. Kimsey*, 781 N.E.2d 683, 685–86 & n.4 (Ind. 2003) (holding that the Article 4, Section 23 prohibition against special legislation was intended to prevent logrolling); see also Frank Sullivan Jr., "What I've Learned About Judging," 48 VAL. U. L. REV. 195, 208–11 (2013) (providing a discussion of the *Kimsey* case). *Kimsey* did not rely upon evidence from the Convention in concluding that Section 23 was intended to prohibit logrolling. *Id.* Inferring such an intent is reasonable since the special or local prohibition and the single subject provision appeared for the first time at the Convention as sister provisions. See *supra* Part IV.A.1 (discussing that the two propositions were introduced in the same resolution at the Convention). Even if the Section 23 prohibition against special and local laws was also intended to prevent logrolling, Section 19 was nevertheless still included in the new Constitution. IND. CONST. OF 1851, art. IV § 19. This illustrates the great intensity with which the framers intended to prohibit logrolling—an unsurprising conclusion since the entire purpose of the Convention was to restrain the legislative authority. See *supra* Parts II–III (noting the origin and extensive history of the formation of the single subject rule in Indiana).

²⁵⁴ See *supra* Part III (reviewing the historical conditions surrounding Indiana's single subject rule in 1850).

²⁵⁵ See *supra* Parts II–III (discussing the historical impetus for limiting the legislature through a variety of means).

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2. The Single Subject Rule: Roadblock to an Effective Legislature

Several delegates objected to the single subject rule on the grounds it would frustrate the legislature—one delegate even went so far as to declare that “the operation of such a provision will be to embarrass the Legislature exceedingly.”²⁵⁶ Opposition delegates predicted the rule would simply create needless problems. The anticipated hardships included: (1) the difficulty of reducing a subject to summary form for the title;²⁵⁷ (2) the misguided goal of preventing variety within an act;²⁵⁸ (3) the incentive to circumvent the title requirement by duplicating the text of the act in the title itself;²⁵⁹ (4) the inability of the legislature to craft enduring rights under the rule;²⁶⁰ and (5) the inevitable litigation that would result from such a provision.²⁶¹ The majority, however, remained unfazed. Notwithstanding these concerns, the single subject rule would be included.

Significantly, the majority’s adoption of the single subject rule reflected a rejection of the underlying argument against it, that “many subjects are sometimes *necessarily* embraced in one object.”²⁶² These, of course, were attacks against the core purpose of the single subject rule. *Neither* the procedure of logrolling *nor* its byproduct—bills containing multiple subjects—would be permissible under the new order.

Some opponents did not appreciate that Stevenson’s language was offered for reasons beyond informing legislators of the contents of acts.²⁶³ One opponent’s remarks are illustrative:

It may be convenient and proper sometimes to embrace two or more objects or subjects in the same bill. There can be no objection to doing so if the title shall be so worded as to set forth all the purposes of the bill. *The* intention of [Mr. Stevenson], no doubt, is to prevent the insertion of a provision not at all indicated by the title of the bill. The intention of the gentleman, no doubt, [is a good

²⁵⁶ 2 DEBATES, *supra* note 95, at 1085 (quoting the remarks of Mr. Chapman).

²⁵⁷ *See id.* (referencing the remarks of Mr. Chapman).

²⁵⁸ *See id.* (referencing the remarks of Mr. Clark).

²⁵⁹ *See id.* at 1087 (reviewing the remarks of Mr. Morrison).

²⁶⁰ *See id.* at 2009 (noting the remarks of Mr. Pettit who argued that the legislature would inevitably violate the single subject rule, undermining any rights it created by statute).

²⁶¹ *See id.* at 2008–09 (quoting the remarks of Mr. Spann who contended that legislation arising from the single subject rule would be “endless and vexatious”).

²⁶² *See* 2 DEBATES, *supra* note 95, at 1085 (quoting Mr. Bright) (emphasis added). Mr. Clark also declared that, “[T]here *must* be a variety of things embraced in a bill . . .” *Id.* (emphasis added).

²⁶³ *Id.* at 1085–87.

one], . . . and I think should be carried out; but that can be done without circumscribing the Legislature so that they shall be compelled to embrace but a single object in a bill. *If deception be prevented, that is all that the gentleman has in contemplation,* and I should think that might be accomplished by requiring that the objects or subjects of a bill shall be clearly defined in the title.²⁶⁴

As Stevenson had made clear to the Convention, and as the framers as a whole would communicate to the ratifiers, Section 19 advanced multiple goals.²⁶⁵ While other provisions throughout the new constitution would assist Stevenson's title requirement with the prevention of legislator ignorance, the framers were concerned that without Section 19, logrolling would not be effectively curtailed.²⁶⁶ The majority's resolve in the face of these objections reinforces the degree to which they were committed to preventing logrolling and the fact that they viewed logrolling as an evil in itself.²⁶⁷ Those opposed pointed out that the rule would probably make for a more cumbersome legislative process—yet Stevenson's rule was adopted anyway.²⁶⁸

3. The Single Subject Rule: Necessitating Judicial Involvement

Several opponents were concerned that the single subject rule would craft a misguided check in the governmental distribution of powers and opposed judicial involvement with the rule's enforcement. This is perhaps the most substantial objection to the single subject rule because the framers' reply likely has the most profound and immediate application to contemporary single subject jurisprudence.

This line of opposition began when Michael Bright paused during his remarks to ask, "[w]ho is to decide whether a law embraces two or more objects?"²⁶⁹ A member from the audience replied, "[t]he courts will decide."²⁷⁰ Mr. Bright protested vigorously, encouraging the Convention to "[l]eave it to the Legislature to embrace as many subjects or objects as

²⁶⁴ See *id.* at 1087 (quoting the remarks of Mr. Maguire) (emphasis added).

²⁶⁵ IND. CONST. of 1851, art. IV, § 19; see *infra* Part IV.F (outlining the single subject rule's dual prongs).

²⁶⁶ See *supra* Part IV.D.1 (discussing the single subject rule as unnecessary and superfluous).

²⁶⁷ See *supra* Part IV.D.2 (assessing the argument that the single subject rule would be a roadblock to an effective legislature).

²⁶⁸ See *supra* Part IV.A.2 (noting Stevenson's leadership in securing the rule's approval).

²⁶⁹ 2 DEBATES, *supra* note 95, at 1086 (quoting the remarks of Mr. Bright).

²⁷⁰ See *id.* (quoting the remarks of a Member).

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they please.”²⁷¹ Other delegates echoed objections to the involvement of the courts.²⁷² One asked:

Will it [the single subject rule] not entail a curse upon the country in lieu of a blessing? It will be a question for the courts to determine whether more than one subject is included in any one act, and if more than one, it will be unconstitutional, and therefore a nullity.²⁷³

Another delegate “was of the opinion . . . that this was a matter which should be left entirely to the Legislature; that the Legislature should decide what the law was, and not leave it to be ‘indicated’ by judges on the bench.”²⁷⁴

Hence, all of the delegates, *including those opposed* to the single subject rule, agreed that if the rule was included, the duty of enforcing it would fall to the courts—to analyze questions arising under this provision, as with every other provision of the new constitution.²⁷⁵ No delegate spoke a word to contradict this basic constitutional fact: it would fall to the courts to enforce the single subject rule.²⁷⁶ Single subject questions, in other words, were to be a “judicial” question, resolved by the courts in the exercise of their “judicial function” as the branch of government settling questions of constitutionality.

To the extent the single subject rule might have offended the traditional view of the distribution of powers (which, we have seen, it did not), Indiana’s framers *rewrote the rules*. It would be a judicial *duty* to nullify laws passed in breach of the single subject rule, *even though the rule touched upon the legislature’s internal procedural operations*. The framers were not making the judiciary a superior branch. Rather, *all* branches of the government would be defined by an authority higher than any of them: the framers and ratifiers themselves.

²⁷¹ See *id.* (quoting the remarks of Mr. Bright).

²⁷² See *id.* 1086–87 (noting the remarks of Mr. Bright, Mr. Dobson, Mr. Maguire, Mr. Nave, Mr. Read, and Mr. Morrison).

²⁷³ See *id.* at 1087 (quoting the remarks of Mr. Nave).

²⁷⁴ See *id.* at 2008 (quoting the remarks of Mr. Walpole).

²⁷⁵ 2 DEBATES, *supra* note 95, at 1086.

²⁷⁶ *Id.*; see *supra* Part IV.D.3 (discussing judicial enforcement). See generally Randy E. Barnett, *The Judicial Duty to Scrutinize Legislation*, 48 VAL. U. L. REV. 903, 913 (2014) (expanding on the ideas of individual popular sovereignty, presumed consent, and judicial engagement).

4. The Single Subject Rule: Unworkable in Practice

A few delegates opposed to the single subject rule asserted that the rule would be unworkable in practice.²⁷⁷ The rule, so they argued, would inevitably be “[i]ndefinite and equivocal, and such as . . . could never be effectually carried out. And, indeed, such was the character of the whole article. People would differ about the title, differ about every little thing contained in a bill or law”²⁷⁸ By incorporating the single subject rule, the majority rejected this claim and expressed an intent that the single subject rule would not only “function” in practice, but would be enforced in practice as well.²⁷⁹ Unfortunately, the rule’s broadly-worded language gave its opponents the opportunity to defeat the Convention’s intent by inviting future interpretations that would render the rule a nullity in practice.²⁸⁰

5. The Opposition’s Last Gasp (at the Convention, Anyway)

The delegates called a vote on the rule’s third reading on February 4, 1851.²⁸¹ This represented the minority’s final opportunity to prevent the

²⁷⁷ See 2 DEBATES, *supra* note 95, at 1087 (suggesting that the title requirement could be circumvented by copying the text of the act into the title). Further, Mr. Chapman stated, “I think it will lead to much practical difficulty.” *Id.* at 1085.

²⁷⁸ See *id.* at 2008 (quoting the remarks of Mr. Spann). Similar objections were raised over time in the common law, but tests of reasonableness do not render the law “indefinite” and “equivocal.” Evans & Bannister, *supra* note 215.

²⁷⁹ See *Hendricks v. State*, 196 N.E.2d 66, 70 (Ind. 1964) (discussing precepts of constitutional interpretation). Our common law starts with the presumption that this is so:

One of the fundamental rules of constitutional construction is that no word shall be assumed to be mere surplusage. It is an essential corollary that every word must be given a meaning if possible . . . , “[t]he authorities agree that the words used in the Constitution must be presumed to have been carefully chosen so that each word would have a meaning. It has been said that each word must be thought of as having been deliberately selected and intentionally placed as though it had been hammered into the instrument” *We may assume that the drafters of the Constitution of 1851 meant what they said.*

Id. (quoting *Chadwick v. City of Crawfordsville*, 24 N.E.2d 937, 942 (Ind. 1940)) (emphasis added). The history of Section 19 and the impetus for its adoption show that this is true of the single subject rule in particular. See *supra* Parts III–IV (reviewing the origin of Indiana’s single subject rule, the 1850 convention, and its 1851 ratification); see also 2 DEBATES, *supra* note 95, at 2010 (explaining that logrolling was a real-world problem requiring a real-world solution).

²⁸⁰ Evans & Bannister, *supra* note 215.

²⁸¹ 2 DEBATES, *supra* note 95, at 2001, 2011; see also *Ind. Teachers Ass’n v. Bd. of Sch. Comm’rs, of the City of Indianapolis*, 679 N.E.2d 933, 935 (Ind. Ct. App. 1997) (discussing that, in this respect, the rule’s Convention opponents have prevailed to a greater degree than have its supporters in the modern jurisprudence). The decisional law interpreting Section 19 has rendered the single subject rule a veritable nullity. Evans & Bannister, *supra* note 215.

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rule's inclusion in the new Constitution. And try they did. Various attacks were lodged against Stevenson's language, most of which were echoes of earlier objections.²⁸² After listening to the opposition's comments, the rule's champion, Alexander Stevenson, rose to make his final remarks on the section he had proposed.²⁸³ In reply to a motion to strike his language entirely, Stevenson said:

If that motion prevails it will strike out a principle which I look upon as being of the greatest importance—one which has been regarded of so much importance as to be incorporated in the new Constitutions of several of the States. Now, I have seen the power that a few individuals have in passing bills that are worthless and injurious, by tacking them upon other bills, even upon revenue bills. This is an evil which should be remedied. We are here to reform it—and we ought to reform it. Gentleman say that this provision will result in injury. For my part, I cannot see what injury is likely to result from it. In my mind they are all imaginary.²⁸⁴

Stevenson's closing remarks reinforce what we have already observed. Logrolling, the "passing [of] bills . . . by tacking them upon other bills[.]" was the "mischief to be remedied" by the single subject rule.²⁸⁵ It was of fundamental importance not just to the Convention, but to the voters who authorized the Convention.²⁸⁶ Accordingly, the single subject rule was intended to be enforced—to be a "reform," as Stevenson would put it, which had *practical, real-world value*.²⁸⁷

The motion to strike the rule was defeated by a vote of seventy-eight opposed to forty-two in support, and it was engrossed for a third reading by a vote of seventy-eight to thirty-one.²⁸⁸ The single subject rule had won

²⁸² See 2 DEBATES, *supra* note 95, at 2008–10 (debating alternative wordings at the Convention).

²⁸³ *Id.* at 2010 (referencing the remarks of Mr. Stevenson).

²⁸⁴ *Id.* (quoting the remarks made by Mr. Stevenson).

²⁸⁵ See *Nagy v. Evansville-Vanderburgh Sch. Corp.*, 844 N.E.2d 481, 484 (Ind. 2006) ("In construing the constitution, we look to the history of the times, and examine the state of things existing when the [C]onstitution or any part thereof was framed and adopted, to ascertain the old law, the mischief, and the remedy." (emphasis added)); see also *City Chapel Evangelical Free Inc. v. S. Bend*, 744 N.E.2d 443, 447 (Ind. 2001) (noting that the time in history surrounding the time period of the framers and amenders must be examined in relation to the text).

²⁸⁶ See *supra* Part III (examining the origin of Indiana's single subject rule); see also *infra* Part IV.E (considering the ratifiers and what the framers told them).

²⁸⁷ 2 DEBATES, *supra* note 95, at 2010.

²⁸⁸ *Id.* at 2010–11.

its place in the draft of the new Constitution. Its fate would now fall to the ratifiers of the Indiana Constitution—the voters.

E. The Ratifiers and What the Framers Told Them

Interpreting a provision of the Indiana Constitution is not exclusively a matter of the framers' intent, though that intent is "paramount."²⁸⁹ We must also seek out the intent of the ratifiers, those Indiana citizens who voted to adopt the proposed Constitution. This is sometimes stated as seeking "the common understanding of both those who framed [the Constitution] and those who ratified it."²⁹⁰ On occasion, as was the case in *Bonner v. Daniels*, the Indiana Supreme Court has adopted a constitutional interpretation based *strictly* on the language of the provision in question, on the grounds that "[t]he actual language . . . is particularly valuable because it 'tells us how the voters who approved the Constitution understood it, whatever the expressed intent of the framers in debates or other clues.'"²⁹¹ Although appropriate there, where no direct evidence of original intent existed on the particular question at issue, the *Bonner* approach is unnecessary—and, indeed, is undesirable—with respect to Section 19. First, *Bonner's* approach is a rare exception to the conventional method of constitutional interpretation. Most authorities rely upon a variety of factors to interpret a given provision, and those that focus heavily or exclusively upon just one factor focus upon the *framers'* intent, since that intent is "paramount."²⁹² In the case of Section 19, there is overwhelming (even uniform) evidence of a clear intent on the part of the framers.²⁹³ Second, the single subject rule is distinguishable on multiple important grounds from provisions of the type under

²⁸⁹ See *supra* note 5 and accompanying text (stating that the meaning of a constitutional provision must be derived from the intent of the framers).

²⁹⁰ E.g., *Nagy*, 844 N.E.2d at 484 (quoting *McIntosh v. Melroe Co.*, 729 N.E.2d 972, 986 (Ind. 2000)); *Embry v. O'Bannon*, 798 N.E.2d 157, 160 (Ind. 2003) (quoting *City Chapel Evangelical Free Inc.*, 744 N.E.2d at 447).

²⁹¹ 907 N.E.2d 516, 519–20 (2009). In *Bonner*, neither the Debates nor any other indicia of the framers' intent was cited in support of the interpretation adopted there. See *id.* at 520–22. The plaintiffs in *Bonner* claimed that the education clause, found in Section 1 of Article 8, requires the legislature to provide an education of a particular quality, but the Court rejected this claim. *Id.*

²⁹² See *id.* at 519–20 (explaining that the history surrounding the drafting and ratification must be reviewed in conjunction with the text); *supra* note 5 (stating that the meaning of a Constitutional provision must be derived from the intent of the framers); see also *City Chapel Evangelical Free Inc.*, 744 N.E.2d at 447 (noting that the time period of the framers and ratifiers must be examined in relation to the text).

²⁹³ See *supra* Parts III–IV (examining the origins of Indiana's single subject rule).

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consideration in *Bonner*.²⁹⁴ Finally, choosing between the ratifiers' intent and the framers' intent is unnecessary with respect to Section 19 because we have a clear "common understanding" among the framers and ratifiers of the single subject rule.²⁹⁵

Our next step, then, is to examine what the ratifiers' intent was. The plain language of Section 19 dictated not a procedural prohibition against logrolling directly, but rather a *substantive* prohibition upon legislation generally: namely, no act could contain *more than one subject*.²⁹⁶ Hence, the voter who simply read Section 19, without any other context or external influence, would attach an intent to Section 19 that the *substance* of legislation be regulated in such a manner as to preclude multiple subjects under one act.²⁹⁷ This remains true today even after Section 19's amendments.²⁹⁸ In addition to the plain language of the single subject rule, the ratifiers had another resource with which to evaluate and interpret their new Constitution.²⁹⁹ This influence was widely circulated and undoubtedly shaped the meaning they would attach to Section 19.³⁰⁰ Immediately before adjournment, the framers announced a "voters'

²⁹⁴ *Bonner*, 907 N.E.2d at 522. First, the language under consideration in *Bonner* reflected no specific intent on the part of the framers to require an educational system of any particular quality. *Id.* This is in stark contrast to the single subject rule, for which the framers manifested a clear and incontrovertible intent that logrolling be prohibited and that the courts enforce the prohibition. Second, *Bonner* noted that the first of the two duties imposed by the education clause was "general and aspirational" and not "concrete," such that it was not judicially cognizable. *Id.* at 520. This Article has demonstrated the framers' intent that the single subject rule would be not only mandatory and enforceable, but also *actually enforced* by the courts in practice. The single subject rule cannot be read, either on its face or in light of the framers' intent, to be merely aspirational. *See generally supra* Part IV.D.3 (analyzing the single subject rule as necessitating judicial involvement); *supra* Part IV.D.4 (discussing the single subject rule as unworkable in practice); *supra* Part IV.D.5 (analyzing the opposition's final objections to the rule); *supra* notes 149, 156 and accompanying text (comparing the royal version of the single subject rule with the Indiana Constitution, art. IV, § 19); *supra* note 162 (discussing Mr. Stevenson's remarks); *supra* note 175 (noting the meanings of the terms "subject" and "object" during that period). Finally, unlike the language in *Bonner*, the single subject rule is not an issue of first impression. *See, e.g.,* Jackson v. Indiana ex rel. S. Bend Motor Bus Co., 142 N.E. 423, 424 (Ind. 1924) (noting that precedents exist in which acts were nullified as violations of the single subject rule).

²⁹⁵ *See supra* Part IV.E (exploring the ratifiers' intent).

²⁹⁶ IND. CONST. of 1851, art. IV, § 19.

²⁹⁷ *See infra* Part IV.F (noting that the framers, too, intended to achieve a prohibition against logrolling by a substantive regulation upon the contents of bills).

²⁹⁸ *See infra* Part V (concluding that the framers' and ratifiers' intent continues to govern the meaning of Section 19, notwithstanding its linguistic evolution over time).

²⁹⁹ 2 DEBATES, *supra* note 95, at 1086, 2042 (discussing the requirement that statutory language "be expressed in plain and simple" terms).

³⁰⁰ *Id.* at 2042 (introducing the Address to the Electors, which was to "embody[] a brief statement of the changes proposed in the amended Constitution").

guide” to the new Constitution.³⁰¹ Entitled “Address to the Electors,” this document explained the changes that the new Constitution would make to the existing state government.³⁰² The single subject rule was explained as follows:

No law is to embrace more than one subject and matters properly connected therewith; and the subject is to be expressed in the title. *The tendency of this rule is, to prevent what is familiarly termed ‘log-rolling.’* Two provisions having no proper connection with each other, may, under the present [1816] Constitution, be embraced in the same bill, and be carried by a combination of their respective friends, though neither, in itself, has merit or strength to obtain the vote of a majority, and would fail, *as it ought*, if voted upon singly.³⁰³

This is extremely valuable as a matter of constitutional construction. First, in light of its prolific verbatim publication in newspapers of the day, it is highly unlikely that the ratifiers would have been unaware of the framers’ purpose for the single subject rule.³⁰⁴ The *Address* helps us to conclude with a greater degree of confidence what this Article has already intimated: the framers and ratifiers understood the single subject rule in the same way.

The *Address* also reaffirms what was implied in the Debates—the title requirement was intended to prevent legislator deception or ignorance as to a bill’s contents, while the single subject rule was intended to prevent logrolling and multi-subject acts.³⁰⁵ This correlation between Section 19’s two requirements, title and subject, and the two intents, deception or ignorance and logrolling or multi-subject acts, is important today. This distinction is important in Indiana because the language of Section 19 has been amended since the Convention.³⁰⁶ The framer’s intent concerning titles is no longer a part of the Constitution since the title requirement was

³⁰¹ *Id.* (“[A]ddress to the electors of the State, explanatory of the provisions of the new Constitution,” a guide intended to aid in securing its adoption.)

³⁰² *Id.* at 2042–46.

³⁰³ *Id.* at 2043 (emphasis added).

³⁰⁴ *See, e.g., Address to the Electors*, IND. ST. J., Mar. 12, 1851, at 1–2 [hereinafter *Address*] (reciting the *Address* verbatim).

³⁰⁵ IND. CONST. of 1851, art. IV, § 19.

³⁰⁶ *See infra* Part VI (discussing the single subject rule in other states). This distinction is important in other single subject jurisdictions since these other states, with the exception of Illinois, also contain the title requirement. Confusing the discrete purposes of the single subject rule and the title requirement will result in an unclear framework for evaluating single subject challenges in the courts.

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removed in 1974.³⁰⁷ What remains is the single subject rule and the intent motivating its adoption. The goals of preventing logrolling and multi-subject acts retain the vitality of original intent even today.³⁰⁸

Reading the single subject rule based *strictly on the language*, without reference to contemporaneous indicia of original intent, *leads to the same result*. “[C]onstitutional declarations, regardless of the subject-matter, are imperative on legislative action unless they obviously and unmistakably appear to be merely directory.”³⁰⁹ The controlling term selected by the framers— “[a]n act . . . shall be confined to one subject” —was not in 1850, nor is it now, “merely directory.”³¹⁰ The framers understood that “[i]n the second and third persons, *shall* implies a promise, command or determination.”³¹¹ The framers did not intend to make a recommendation or to provide guidance through the single subject rule. It was to be a *rule*, a *requirement*—a *command*. The language itself prohibits reading the single subject rule as a mere aspiration. Accomplishing such an interpretation by appeal to a more remote principle, such as the separation of powers doctrine, is irreconcilable with original intent and reads into the Constitution a conflict between these principles that does not exist.³¹²

F. *The Single Subject Rule’s Dual Prongs*

The framers intended the single subject rule to prohibit logrolling and intended that this procedural prohibition would be accomplished through a substantive restriction upon the contents of bills.³¹³ Likewise, we have seen that the ratifiers understood the substantive requirement as a function of Section 19’s plain language.³¹⁴ By virtue of the Address to the Electors and the newspaper coverage of the day, the ratifiers undoubtedly understood that Section 19 also embraces a procedural bar against logrolling.³¹⁵

Section 19’s framers and ratifiers shared a common understanding: the single subject rule embodies *both* a *procedural* prohibition against logrolling, *as well as* a *substantive* restriction forbidding any act from

³⁰⁷ IND. CONST. of 1851, art. IV, § 19, amended Nov. 5, 1974.

³⁰⁸ See *infra* Part V.C (concluding that the framers’ and ratifiers’ intent continues to govern the meaning of Section 19, notwithstanding its linguistic evolution over time).

³⁰⁹ Powell v. State, 139 N.E. 670, 670 (Ind. 1923) (emphasis added).

³¹⁰ IND. CONST. of 1851, art. IV, § 19.

³¹¹ WEBSTER, *supra* note 176, at 747 (emphasis partly removed).

³¹² Evans & Bannister, *supra* note 215.

³¹³ See *supra* Part IV.F (exploring the single subject rule’s dual prongs).

³¹⁴ See generally *supra* Part IV.C (analyzing the plain language of Section 19).

³¹⁵ See generally Part IV.E (discussing the ratifiers and their common understanding with the framers as to the rule’s meaning).

containing more than one subject.³¹⁶ This reality has been implicitly recognized in Indiana's decisional law because devices have arisen to prevent the enforcement of each of Section 19's prongs.³¹⁷ Any framework for the analysis of single subject questions must account for the single subject rule's dual prongs.

One may ask why, if logrolling could be defined as combining multiple bills into one, the single subject rule did not simply prohibit the combination of bills. That is to say, why did the framers elect to define their logrolling restriction in terms of subjects rather than in terms of procedure? The framers undoubtedly recognized that a rule crafted in terms of combining bills previously introduced could easily be circumvented. Legislators seeking to combine their unrelated bills could simply do so before introducing the new, combined product on the floor. Moreover, the framers were not opposed to all forms of logrolling: legislators could pass one another's provisions so long as each of the unrelated provisions was passed as a separate act. A third reason was the framers' well-known aversion not only to logrolling, but also to the numerous substantive shortcomings that existed under the 1816 Constitution. This is illustrative of the degree to which the framers opposed logrolling, and bad law-making generally. Section 19 was intended to prohibit both the procedure of logrolling, as well as the combination of disparate subjects under one heading.³¹⁸

G. *The Single Subject Rule in Constitutional Context*

The single subject rule was intended to function as one piece in the larger puzzle of legislative reform. Restriction of the legislature motivated the citizenry in its approval of the 1850 Convention, as well as their delegates at the Convention and the ratifiers who approved the final product.³¹⁹ The ratifiers and their Convention delegates sought to

³¹⁶ IND. CONST. of 1851, art. IV, § 19; see 2 DEBATES, *supra* note 95, at 1085 (establishing that the key purpose of this new rule was to prevent logrolling).

³¹⁷ See *supra* note 205 (expressing Mr. Smith's concern that future courts would misread the framers' intent by finding all legislative acts to be "reasonable" under Section 19). In Indiana, the "enrolled act rule" precludes enforcement of Section 19's procedural prong, while the substantive prong is eviscerated by a reasonableness standard so broad as to find all legislative acts compliant with Section 19. Evans & Bannister, *supra* note 215. These doctrines will also be addressed in a future Article.

³¹⁸ IND. CONST. of 1851, art. IV, § 19; 2 DEBATES, *supra* note 95, at 1085.

³¹⁹ See 2 DEBATES, *supra* note 95, at 2043 (providing an additional provision not included in the previous 1816 Constitution); *supra* Part III (examining the origins of Indiana's single subject rule). The framers explicitly declared so in their *Address*, introducing the summary of changes to the legislative branch, including Section 19, thusly: "[t]he following provisions, tending to check and regulate the legislative branch of government, are not found in the old Constitution" 2 DEBATES, *supra* note 95, at 2043 (emphasis added).

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circumscribe both the substance of legislation, as well as the manner of its enactment.³²⁰ Several delegates conceived of Section 19's value within the context of Article 4.³²¹ Because these provisions restricting the legislature were not only included in the 1851 Constitution, but also provided the impetus for a Convention to begin with, their enforcement is an indispensable element in fulfilling the intent of the framers and ratifiers. This is particularly true of Section 19, for which there is a specific and explicit intent that the single subject rule be judicially enforced.³²² If Section 19 is an unenforced nullity in practice, then the framers' and ratifiers' intent has been defeated.³²³

The framers did not simply intend that the single subject rule would be included in the Constitution. They intended that it would be recognized as judicially cognizable—"the courts will decide."³²⁴ The single subject rule's commanding, non-discretionary language, as well as the Address to the Electors and the intrinsic judicial nature of such questions corroborate this understanding. No evidence, either historical or legal, supports a contrary conclusion.

The single subject rule did not offend the prevailing view of the separation of powers between the three branches of government. Still, it

³²⁰ See generally IND. CONST. of 1851, art. I, art. IV, §§ 17-25, 27-29 (reviewing the Indiana Bill of Rights and examining provisions that directly restrict legislation); see also *supra* Part IV.F (exploring the single subject rule's dual prongs).

³²¹ See, e.g., 2 DEBATES, *supra* note 95, at 1086 (noting the remarks of Mr. Hall concerning other resolutions offered to curb legislative abuses, including the prohibition of special legislation, the single subject and title requirements of Section 19, and the requirement that votes for the final passage of every bill be recorded in the journals). Unsurprisingly, Hall appreciated the value of the single subject rule in the context of the other reforms: it was he who had introduced the October 9 resolutions, in which the single subject rule first appeared before the Convention. *Id.* Contemporary scholars have also acknowledged the rule's value as a limit on the legislative process and its role in the scheme of legislative reform:

The legislative process is another way the Indiana Constitution limits government . . . [c]onfining acts to a single related subject facilitates the public's ability to be familiar with the content of legislation. Access to the content of legislation is necessary because "acts must be circulated before they become a law" (Article [4], Section 28). The circulation requirement gives the public the opportunity to voice its satisfaction or dissatisfaction that, in theory, may influence the decision of the elected officials.

THE CONSTITUTIONALISM OF AMERICAN STATES 428 (George E. Conner & Christopher W. Hammons eds., 2008).

³²² See *supra* Part IV.A.3 (reviewing the intent of the delegates in support and specifically, how the supporters made their case at the Convention); see also *supra* Part IV.A, IV.D (discussing the majority's intent and the delegates opposed); *supra* Part IV.F (examining the single subject rule's dual prongs).

³²³ See *supra* Part IV (examining the dynamics of the 1850 Convention and 1851 ratification).

³²⁴ 2 DEBATES, *supra* note 95, at 1086. See generally *supra* Part IV.D.3 (assessing the judiciary's role in the single subject rule's enforcement).

is worth noting that *even if* the single subject rule had upset the traditional notion of separation of powers, *it was the framers' prerogative to so alter the constitutional order*. Whether the framers were simply following tradition or were being legal trailblazers, their intent is "paramount" in affixing a meaning to Section 19.³²⁵ The wisdom of the framers' choices is to be questioned and improved upon through the process of amendment provided for in the Constitution itself. Contemporary jurisprudence remains obliged to fulfill the framers' and ratifiers' vision of an enforceable – indeed, a *judicially* enforced – prohibition of logrolling.

V. THE LINGUISTIC EVOLUTION OF SECTION 19: CHANGES IN WORDING, BUT NOT INTENT

The framers' and ratifiers' mutual intent with respect to Section 19 is clear.³²⁶ But Section 19 has been amended twice since the 1850 Convention. We must inquire whether it is proper to define the meaning of today's Section 19 according to original intent, or whether some other intent has superseded that of the framers and ratifiers. Many years ago, the Indiana Supreme Court established that:

The adoption of a new [C]onstitution repeals and supersedes all the provisions of the old [C]onstitution not continued in force by the new instrument. The same rule applies to amendments of an existing [C]onstitution *which are inconsistent with the original text of the instrument amended . . .*³²⁷

The Court has declared that a constitutional "amendment is not to be considered as an isolated bit of design and color, but it must be seen as an integral part of the entire harmonious picture of the [C]onstitution" which "is superimposed upon that with which it is in *direct conflict . . .*"³²⁸

Hence, we must inquire as to whether the amendments to Section 19 are "inconsistent" with the original text to the point of being in "direct conflict" with it. Today's Section 19 is not in direct conflict with the original text, and is in no way inconsistent with the original version. Consequently, the framers' intent attached to the single subject rule retains its authority as the "paramount" reference in understanding the

³²⁵ See *supra* note 5 and accompanying text (stating that the meaning of a constitutional provision must be derived from the intent of the framers).

³²⁶ See 2 DEBATES, *supra* note 95, at 2042 (discussing the intended impact of particular provisions, including Section 19, in the Address to the Electors).

³²⁷ *Griebel v. State, ex rel. Niezer*, 12 N.E. 700, 703 (Ind. 1887) (emphasis added).

³²⁸ *Kirkpatrick v. King et al.*, 91 N.E.2d 785, 788 (Ind. 1950) (emphasis added).

rule's meaning today. Part V.A discusses the 1960 Amendment to Section 19.³²⁹ Part V.B then considers a second Amendment in 1974.³³⁰ Finally, Part V.C concludes that the original intent of the provision has been preserved.³³¹

A. *The 1960 Amendment: The Codification Exception Introduced*

In 1959, the Indiana General Assembly offered an amendment to Section 19 to provide that its single subject and title "requirements . . . shall not apply to original enactments of codifications of laws."³³² Also added was the stipulation that "every amendatory act and every amendment of a code shall identify the original act or code, as last amended, and the sections or subsections amended shall be set forth and published at full length."³³³ This amendment was approved by the voters and took effect in 1960.³³⁴ Significantly, the single subject rule was retained and expanded to include amendatory and code acts. In its entirety, Section 19 then read:

Every act, amendatory act or amendment of a code shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act, amendatory act or amendment of a code, which shall not be expressed in the title, such act, amendatory act or amendment of a code shall be void only as to so much thereof as shall not be expressed in the title. The requirements of this paragraph shall not apply to original enactments of codifications of laws.

Every amendatory act and every amendment of a code shall identify the original act or code, as last amended, and the sections or subsections amended shall be set forth

³²⁹ See *infra* Part V.A (reviewing the rationale for the amendment in 1960 to the single subject provision).

³³⁰ See *infra* Part V.B (discussing the 1974 amendment).

³³¹ See *infra* Part V.C (concluding that the delegates' original intent for the single subject was ultimately preserved).

³³² State ex rel. Percy v. Crim. Court of Marion Cnty., 274 N.E.2d 519, 521 (Ind. 1971).

³³³ *Id.*

³³⁴ See Oddi, *supra* note 1, at 3 (noting that Indiana voters have approved the single subject rule on three occasions: once in 1851, again in 1960, and then again in 1974).

and published at full length. The identification required by this paragraph may be made by citation reference.³³⁵

The historical record reveals that the 1960 amendment was motivated by two concerns: simplifying the title requirement, and creating an exception to Section 19's requirements for codifications.³³⁶ Codification was a topic of increasing concern in Indiana around this time. Until 1971, the Indiana Code familiar to attorneys today did not exist. Only sporadic codifications had been attempted throughout Indiana's history, the last of which occurred in 1881.³³⁷ As a result, statutory laws simply piled up, organized into no official body of acts. By the late 1960s, "[t]he volumes of session laws enacted since the 1852 [codification] had reached such proportions that, as a practical matter, research of official statute law was impossible without reliance upon unofficial sources."³³⁸ The 1960 amendment therefore appears to have been made in anticipation of ensuring the normalization of the codification process—a process long neglected and overdue in Indiana.

Indeed, in 1969 the Indiana General Assembly directed its Legislative Council to begin preparations on a bill bringing into existence the first Indiana Code.³³⁹ At the same time, a special commission was established to oversee the actual work of codification.³⁴⁰ The Indiana Statute Revision Commission's members included state representatives and senators as well as other leaders in Indiana law.³⁴¹ Two years later, the Commission's work was finished.³⁴² "The Indiana Code of 1971 undertook not merely an updating, but a reenactment and rearrangement of viable statutory law. The arrangement [into titles, articles, chapters and sections] was designed to accommodate new legislation in order to prolong the life of the Code and simplify future revision."³⁴³ A new citation system on the title-article-chapter-section format was devised "to ensure that the General Assembly could accurately pinpoint legislation which it proposed

³³⁵ JOHN R. WALSH, *LAWS OF THE STATE OF INDIANA* 1100-01 (Bookwalter Co., 1959); *Pearcy*, 274 N.E.2d at 521.

³³⁶ See Oddi, *supra* note 1, at 9-10 (noting the 1960 amendment sought "to remove the stigma Indiana had acquired in the field of titles to laws") (citing 4 CHARLES KETTLEBOROUGH, *CONSTITUTION MAKING IN INDIANA* 281-82 (John Bremmer ed., 1978)).

³³⁷ See *THE HISTORY OF INDIANA LAW*, *supra* note 1, at 363-73.

³³⁸ *Id.* at 373.

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.* See generally Marcia J. Oddi & Margaret C. Attridge, *The Indiana Code of 1971: Its Preparation, Passage and Implications*, 5 IND. L. FORUM 3 (1971) (providing a detailed and excellent overview of the creation of the 1971 Code).

³⁴³ See *THE HISTORY OF INDIANA LAW*, *supra* note 1, at 373 (discussing the 1971 amendment).

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to amend,” as required by the 1960 version of Section 19.³⁴⁴ The 1971 Code also “contained a provision repealing every statute enacted prior to 1971 (with certain specified exceptions).”³⁴⁵ The General Assembly enacted the Code on January 22, 1971, whereupon it “was intended to have the status of past enacted revisions and thus provide a clear and unambiguous statement of Indiana statute law.”³⁴⁶

The 1960 amendment to Section 19 had accomplished laying the groundwork for Indiana to finally begin a normalized, periodic codification process—or so the General Assembly believed. After all of their work, Indiana’s legislators were soon to receive a surprise emanating, ironically, from the newly-amended Section 19.

B. The 1974 Amendment: The Codification Exception Revised, the Title Requirement Removed

Soon after its enactment, the constitutional status of the new Code was addressed in the November 1971 Indiana Supreme Court opinion of *State ex rel. Percy v. Criminal Court of Marion County*.³⁴⁷ In May 1971, defendant Anthony Newman was charged with First Degree Burglary.³⁴⁸ He was found guilty and the question of sentencing arose.³⁴⁹ In April, the month prior to the defendant’s indictment, Indiana’s governor approved a new statute, 1971 Public Law No. 155 (“P.L. 155”), which required sentencing judges to give defendants credit for time spent in jail while awaiting trial.³⁵⁰ Unsurprisingly, the defendant desired a shorter sentence and moved that he be sentenced according to P.L. 155.³⁵¹ Noble Percy, the Marion County prosecutor, preferred that the defendant serve a longer sentence and opposed the motion.³⁵² The trial court granted the defendant’s motion and the prosecutor appealed, claiming that P.L. 155 was unconstitutional in violation of the prevailing 1960 version of the single subject rule.³⁵³

The Indiana Supreme Court accepted the prosecutor’s appeal as an original action and issued a writ of mandate in an opinion dated

³⁴⁴ *Id.* at 374; *see supra* note 332 and accompanying text (stating the primary motivation for the amendments to Section 19 as accommodations to the codification process).

³⁴⁵ THE HISTORY OF INDIANA LAW, *supra* note 1, at 374.

³⁴⁶ *Id.*

³⁴⁷ *Percy v. Crim. Court of Marion Cnty.*, 274 N.E.2d 519, 519–23 (Ind. 1971).

³⁴⁸ *Id.* at 519.

³⁴⁹ *Id.*

³⁵⁰ See LARRY A. CONRAD, LAWS OF THE STATE OF INDIANA, PASSED AT THE NINETY-SIXTH REGULAR SESSION OF THE GENERAL ASSEMBLY 655–56 (1969) (defining P.L. 155).

³⁵¹ *Percy*, 274 N.E.2d at 519–20.

³⁵² *Id.* at 520.

³⁵³ *Id.*

September 24, 1971, requiring that the Marion County trial court, and all other courts of the state, disregard P.L. 155 when sentencing criminal defendants.³⁵⁴ The legislature was unrepresented at the hearing upon which the September opinion was based.³⁵⁵ After the September 24 opinion was issued, the General Assembly, led by Phillip Gutman, president *pro tempore* of the Indiana Senate and chairman of the Indiana Code Revision Commission, filed an amicus brief with the Indiana Supreme Court.³⁵⁶ The Court thereupon issued a revised opinion—the controlling opinion in the case, dated November 1, 1971—which largely reaffirmed the September opinion and which responded more directly to the arguments made in the Legislature’s amicus brief.³⁵⁷

In its November opinion, the Indiana Supreme Court addressed two major issues: first, whether the 1971 Indiana Code itself was fully compliant with the requirements of Section 19; and second, whether P.L. 155 in particular had complied with the single subject rule.³⁵⁸ With respect to the Code, the Legislature’s amicus brief requested that the Court:

³⁵⁴ See *id.* (“the application of the questioned Act (Public Law 155) will have a profound immediate effect upon the administration of criminal justice”); Oddi, *supra* note 1, at 11–12 (noting that the Indiana Supreme Court decided that the Indiana Code of 1971 was a violation of Article IV, Section 19).

³⁵⁵ See *Pearcy*, 274 N.E.2d at 520 (noting that the legislature was not a party to the action). Despite its interest, the legislature did not file an amicus brief until *after* the September opinion was handed down. *Id.* The General Assembly genuinely believed that it had complied with Section 19’s requirements and anticipated the result opposite that reached by the Court. See THE HISTORY OF INDIANA LAW, *supra* note 1, at 374 (noting that the legislature believed the Code was covered by an exception); see also *infra* note 359 and accompanying text (noting the legislature’s surprised response to *Pearcy*).

³⁵⁶ *Pearcy*, 274 N.E.2d at 520.

³⁵⁷ See *id.* at 519 (noting that the November opinion superseded the September opinion). Because it was superseded only five weeks after it was handed down, the September opinion was never published in the North Eastern Reporter.

³⁵⁸ See *id.* at 519–22 (addressing whether the Indiana Code and P.L. 155 complied with the single subject rule). The fate of P.L. 155 was not to be a happy one. P.L. 155 was the amended version of a statute originally enacted in 1857. See CONRAD, *supra* note 350, at 655 (noting the date the law was enacted). As such, P.L. 155 was subject to the single subject requirement. See IND. CONST. of 1851, art. IV, § 19 (requiring acts to be limited to a single subject). The original text of the law concerned several particulars regarding prison officials. CONRAD, *supra* note 350, at 655. The language at issue in *Pearcy*, which was added to the 1857 statute by P.L. 155, concerned the sentencing of convicted defendants. *Id.* at 656. The Court concluded that:

Public Law 155 is clearly double and embraces two subjects which are not properly connected. There is no apparent relation between the subject of prison officials and employees and the subject of the length and diminution of sentences of convicts, and none is disclosed in either the title or body of Public Law 155. Therefore, Public Law 155, in its entirety, is in violation of Art. [IV], [Section] 19, and is ineffective as an amendment to [the original act then codified in the 1971 Code].

Pearcy, 274 N.E.2d at 522–23.

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[1] affirm the validity of [all of] the 1971 Session laws [including P.L. 155] . . . [2] affirm the validity of the Acts of subsequent Sessions of the Indiana General Assembly [that is, the acts of future legislatures to be codified, presumably, in the same manner as existing statutes had been codified in the 1971 Code] . . . [and 3] affirm the validity of the Indiana Code of 1971 [that is, the Code itself].³⁵⁹

The Court rejected the first two requests as untenable— “[a]t the outset, we are compelled to comment that the first and second requests . . . cannot reasonably be met In regard to the third request, we can do no more than to define the legal significance of the Indiana Code of 1971.”³⁶⁰

The Court then proceeded with its analysis, finding that Section 19’s exception of codifications from the single subject and title requirements applied exclusively to “original enactments of codifications of laws.”³⁶¹ “Readily apparent,” the Court wrote, “is the significant plural designations in” the codifications phrase, and “[i]t is a reasonable construction to interpret such plurals as referring to a *series of separate codes* each containing a single general subject and matters properly connected therewith”³⁶² The 1971 Code, of course, contained a “multitude . . . of subjects” and represented a comprehensive codification of *all* effective statutory law in the state.³⁶³ Hence, the Court reasoned, the Code “is in reality nothing more than an *official* comprehensive compilation of all of the legislative Acts, just as Burns Annotated Statutes is a similar private compilation of the same laws.”³⁶⁴

While the Code’s references to its codified prior acts met the citation requirement added to Section 19 in 1960, “each and every viable statute or section thereof contained [in the Code], shall remain in effect unless or until repealed or amended by an Act of the General Assembly which satisfies the title and single subject requirements of Art. IV, [Section] 19.”³⁶⁵ As the Court saw it, the single subject rule, under its 1960 incantation, forbade what the legislature had attempted. The Code, then:

[H]ad official status . . . however, [the *Pearcy* opinion] refused to recognize the repeal and replacement of prior

³⁵⁹ *Pearcy*, 274 N.E.2d at 520.

³⁶⁰ *Id.*

³⁶¹ *Id.* at 522.

³⁶² *Id.* at 521 (emphasis added).

³⁶³ *Id.* at 522.

³⁶⁴ *Id.*

³⁶⁵ *Pearcy*, 274 N.E.2d at 522.

session laws by the 1971 Code. Citations to its provisions were treated as alternate citations to the session laws from which the Code provisions were derived. The Court's opinion was based on the requirements then found in Article [IV], Section 19 The General Assembly had been aware of this requirement, but acted on the premise that the Code was covered by an exception to the requirement for "original enactments of codifications of laws"; . . . the Court construed the exception narrowly and found that the Code did not fall within its sweep.³⁶⁶

As a result:

The decision in the *Pearcy* case posed a problem for the legislature. While there was now an official organized structure for the statutes, and Code citations could be used instead of more cumbersome session law citations, the contents of the Indiana Code of 1971 could not be relied upon as *the law*. In addition, the status of nonviable statutes which had been intentionally excluded from the Indiana Code of 1971 in order that they be repealed was left in doubt.³⁶⁷

The legislature responded to this by proposing an amendment, approved in 1974, to the language of Section 19.³⁶⁸ Although *Pearcy* had been based on both the single subject and title requirements, the single subject rule was nevertheless retained. The third, and present, version of Section 19 was then born—" [a]n act, except an act for the codification, revision or rearrangement of laws, shall be confined to one subject and matters properly connected therewith."³⁶⁹ The vastly simplified amendment accomplished three goals: (1) it did away with the title requirement; (2) it made explicit the exemption for codifications from the

³⁶⁶ THE HISTORY OF INDIANA LAW, *supra* note 1, at 374 (discussing the 1960 amendment).

³⁶⁷ *Id.*

³⁶⁸ *Id.*

³⁶⁹ IND. CONST. of 1851, art. IV, § 19, *amended* Nov. 5, 1974; *see* THE HISTORY OF INDIANA LAW, *supra* note 1, at 375 (noting that after the new amendment was ratified in 1974, the Indiana General Assembly again passed an "Indiana Code," which was signed into law on January 21, 1976). The 1976 Code was "very similar to the Indiana Code of 1971, retaining virtually the same arrangement and citation system." *Id.* "With the [1976] enactment of the Indiana Code, Indiana had an official body of statutory law and an unambiguous source of reference for future legislative action." *Id.* West published the first official edition in 1976 and this has been updated ever since. *Id.*

single subject rule; and (3) most significantly, it retained the single subject rule.³⁷⁰

C. *The Result is Continuity: Original Intent Preserved*

This discussion has illustrated why the intent of the Constitution's framers and ratifiers continues to govern the meaning of Section 19.³⁷¹ As Justice Brent Dickson has observed, "the citizens of Indiana recently reaffirmed their demand for the single-subject requirement. Although [Section 19] was amended in 1960 and 1974, the voters retained the single-subject requirement for all acts except those 'for the codification, revision or rearrangement of laws.'"³⁷² The fact that the single subject rule was retained is, by itself, sufficient evidence that the ratifiers of the 1960 and 1974 amendments intended to retain the meaning originally attached to the rule. This is the most logical inference: had the amendments' authors intended to alter the meaning then inherent in the single subject rule, they would have made a material alteration to the rule itself to reflect such an intent. Indiana's common law, moreover, embraces this notion.³⁷³

With respect to the rule's language, only one altered phrase that has not yet been discussed exists between the original version and that of today: the word "embrace" has been replaced by "confined."³⁷⁴ This change does not reflect an intent to detach original intent from the single

³⁷⁰ See *infra* Part V.C (implying that the legislature and voters of 1974 did not share William Dunn's concern that without a limitation on the portion to be voided, based upon the expressed and unexpressed portions in the Act's title, opponents of an act would seek deliberately to diversify it). Modern legislators and voters apparently view this possibility as one to be addressed within the legislature, by the legislature's own internal rules of procedure. The courts cannot be called upon to save legislation otherwise in violation of Section 19 on the grounds that a legislative minority successfully diversified the Act.

³⁷¹ See generally *supra* Part IV (discussing this intent).

³⁷² Pence v. State, 652 N.E.2d 486, 489 (Ind. 1995) (Dickson, J., dissenting); see also *In re A.B.*, 949 N.E.2d at 1224 (Dickson, J., concurring) (finding that the 1974 amendment to Section 19 meant that Indiana's "single-subject requirement stands expressly endorsed not only by the framers and ratifiers of Indiana's 1851 Constitution but also by the General Assembly and voters one hundred twenty-three years later").

³⁷³ See, e.g., *Bayh v. Ind. State Bldg. & Constr. Trades Council*, 674 N.E.2d 176, 179 (Ind. 1996) (rejecting the alleged single subject violation in question, but acknowledging that "one of the purposes of Art. [IV], [Section] 19 is to prevent 'logrolling' legislation"). Indiana's contemporary decisional law, all of which has rejected claimed single subject violations under the 1974 language, has acknowledged that the intent of Section 19 is to prevent logrolling, thereby implicitly recognizing the continued vitality of the framers' intent in the modern version of the single subject rule.

³⁷⁴ Compare IND. CONST. of 1851, art. IV, § 19 ("Every act shall embrace but one subject and matters properly connected therewith . . ." (emphasis added)) with IND. CONST. art. IV, § 19, amended Nov. 5, 1974 ("An act, except an act for the codification, revision or rearrangement of laws, shall be confined to one subject and matters properly connected therewith." (emphasis added)).

subject rule, for today's meaning of "confined to one" accomplishes the same limitation embodied in the 1850 phrase "embrace but one."³⁷⁵ The term chosen in 1974 is simply a modern phraseology intended to preserve original intent.

A final, definitive piece of evidence supporting the continuity of original intent is provided by the Honorable Ray Richardson, the author and sponsor of the 1974 amendment.³⁷⁶ Richardson served on the Indiana Statute Revision Commission and was also a member of the Indiana House of Representatives.³⁷⁷ Richardson took the lead on the Legislature's response to *Pearcy* by sponsoring House Joint Resolution 4, the purpose of which was "to simplify and clarify the technical requirements for acts."³⁷⁸ By early 1973, the amended language had passed the Legislature as required by the Constitution and was approved by the Governor as Public Law 349 on April 16, 1973.³⁷⁹ The voters of Indiana approved the amendment in 1974.³⁸⁰

Mr. Richardson explained that the General Assembly had indeed believed that the 1971 Code fell within the codification exception of the 1960 version of the single subject rule.³⁸¹ Notwithstanding the *Pearcy* decision, Indiana still demanded a system of organized and unambiguous statutory law. Hence, "the primary reason for the [1974] amendment was the language that permits codifications."³⁸² The legislature also removed the title requirement in the 1974 amendment because the titles to the

³⁷⁵ Compare THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 279 (William Morris ed., American Heritage Publishing Co. 1969) (defining "confine" as "[t]o keep within bounds; restrict"), with WEBSTER, *supra* note 176, at 292 (defining "embrace" as "[t]o comprehend; to include or take in . . . [t]o comprise").

³⁷⁶ Email from Hon. Ray Richardson, attorney at law, civic leader, and former member of the Indiana House of Representatives (Aug. 11, 2009, 12:32 PM) (confirming that he was the author of HJR 4); see JOURNAL OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF INDIANA: FIRST REGULAR SESSION OF THE NINETY-EIGHTH GENERAL ASSEMBLY 29-30 (1973) [hereinafter JOURNAL OF THE HOUSE OF REPRESENTATIVES] (memorializing Mr. Richardson's sponsorship of HJR 4).

³⁷⁷ JOURNAL OF THE HOUSE OF REPRESENTATIVES, *supra* note 376, at 29-30; see also Email from Hon. Ray Richardson, *supra* note 376 (detailing his time in the House).

³⁷⁸ IND. CONST. of 1851, art. IV, § 19; JOURNAL OF THE HOUSE OF REPRESENTATIVES, *supra* note 377, at 30 (emphasis added). The legislature's use of the word "requirements" is instructive: even the legislature itself acknowledges the status of the single subject rule as a mandatory provision; the framers did not intend to embed any discretionary element. See generally *supra* Part III (explaining the origins of Section 19).

³⁷⁹ 2 LAWS OF THE STATE OF INDIANA: PASSED AT THE FIRST REGULATION SESSION OF THE NINETY-EIGHTH INDIANA GENERAL ASSEMBLY 2004 (1973).

³⁸⁰ IND. CONST. of 1851, art. IV, § 19, amended Nov. 5, 1974; THE HISTORY OF INDIANA LAW, *supra* note 1, at 374.

³⁸¹ Email from Hon. Ray Richardson, *supra* note 376; see *supra* note 359 and accompanying text (noting the legislature's surprised response to *Pearcy*).

³⁸² Email from Hon. Ray Richardson, *supra* note 376.

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legislature's acts "were quite lengthy, [and] still there was much litigation over whether a particular nuance was covered."³⁸³ In other words, a desire to remove the title requirement alone might not have inspired legislative action, but since Section 19's language was to be amended to address codification anyway, the legislature also took the opportunity to simplify the Section's other requirements.³⁸⁴

The single subject rule's retention was not accidental. Mr. Richardson explained that legislators affirmatively desired a one-subject-per-bill-limit because most lawmakers appreciate the constitutional prerogative of voting exclusively for what they desire.³⁸⁵ From the legislative perspective, the single subject rule creates *greater* freedom; without it, legislators are forced to base their votes upon whether they want to "take the good with the bad."

In conclusion, the intent originally attached to Section 19 remains authoritative. The single subject rule was retained in both subsequent versions of Section 19, and the only substantive linguistic change to the rule was a modernization of the phraseology.³⁸⁶ The sponsor of the 1974 change confirms that the legislature valued, and intended to retain, the rule.³⁸⁷ The fact that the title requirement was done away with is immaterial insofar as the single subject rule is concerned. Although the two provisions were originally designed to work in tandem, the purposes of the single subject rule existed independently from that of the title requirement.³⁸⁸ Like the change in verbiage from "embrace" to "confine," the removal of the title requirement did nothing to detach the framers' intent for the single subject rule from today's version of Section 19.³⁸⁹

VI. THE SINGLE SUBJECT RULE IN OTHER STATES

To summarize thus far, Indiana's framers and ratifiers unambiguously intended that the single subject rule would preclude the procedural evil of logrolling (or, at least, its most negative form), as well as the substantive evil of multiple subjects in an act.³⁹⁰ The Indiana

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ *Id.*

³⁸⁶ Compare IND. CONST. of 1851, art. IV, § 19 (noting original language), with IND. CONST. of 1851, art. IV, § 19, amended Nov. 5, 1974 (introducing the Section's new language).

³⁸⁷ IND. CONST. of 1851, art. IV, § 19, amended Nov. 5, 1974.

³⁸⁸ See *supra* note 125 and accompanying text (noting that the prevention of logrolling was one of the two purposes of the amendment that introduced the single subject rule at the 1850 Convention).

³⁸⁹ IND. CONST. of 1851, art. IV, § 19, amended Nov. 5, 1974.

³⁹⁰ See *supra* Part IV.A.3 (noting that the Indiana Convention majority intended to prohibit only logrolling that results in multiple subjects within the same act, and not logrolling that

framers and ratifiers unambiguously intended that the courts would actively hear and evaluate claims based upon the single subject rule.³⁹¹ We now turn to examine what the other forty single subject states have found with respect to the purposes and meanings of their respective rules.³⁹² Part VI.A begins by discussing the purposes of the single subject rule in other states.³⁹³ Then, Part VI.B analyzes additional purposes, beyond the primary purposes, that other states have found germane to the single-subject provision.³⁹⁴

results in a package of acts, each of which is limited to a single discrete subject and passes on its own merits); *supra* Part IV.F (comparing the procedural and substantive goals of the single subject rule).

³⁹¹ See TEX. CONST. art. III, § 35(b) (“[t]he legislature is solely responsible for determining compliance with the rule”). However, no such restriction applies to Texas’ single subject rule. *Id.* § 35(a). No other single subject state’s constitution removes the title requirement from the courts’ jurisdiction and no state, including Texas, removes the single subject rule from the realm of justiciability. Despite this, an alarming number of states’ courts have, at various points throughout time, removed the single subject rule from their own jurisdiction through case law. See, e.g., *Kueckelhan v. Fed. Old Line Ins. Co.*, 418 P.2d 443, 451 (Wash. 1966) (reasoning that, on the sole basis of other case precedent, “this constitutional requirement is to be liberally construed so as not to impose awkward and hampering restrictions upon the legislature,” and, “[c]onsequently, the legislature is deemed the judge of the scope which it will give to the word ‘subject’” (emphasis added)). See generally *supra* Part IV (explaining why such a maneuver is in conflict with the framers’ and ratifiers’ intent). This is the subject of a future Article by the authors. Evans & Bannister, *supra* note 215.

³⁹² See *supra* Part VI.A (observing the few states that rely upon evidence of the framers’ and ratifiers’ intent as they formulated their decisional law). We have also noted that for many states, there have been few alternatives since the historical record of many states is quiet or altogether silent on the single subject rule. The 1872 Tennessee case of *Cannon v. Mathes* supplies a helpful illustration of how state supreme courts have been forced to infer their framers’ intent. *Cannon v. Mathes*, 55 Tenn. 504, 505 (1872). The court confronted the question as to why both a single subject provision and a title requirement had been included in the state’s constitution, and which, if either, was judicially cognizable. *Id.* There, the court said:

Plausible reasons might be given to show, that it was not essential to the object which the Convention sought to accomplish, that the subject of legislation should be imperatively indicated in the titles of bills, but where there is no real ambiguity in the language employed, we have no right to fritter away the *obvious import* of that language by construction. The Convention *evidently designed* to cut up by the roots, not only the pernicious system of legislation, which embraced in one act incongruous and independent subjects, but also the evil practice of giving titles to acts which conveyed no real information as to the objects embraced in its provisions.

Id. at 518 (emphasis added).

³⁹³ See *infra* Part VI.A (discussing the judicially-inferred purposes of the single-subject provision in states other than Indiana).

³⁹⁴ See *infra* Part VI.B (discussing ancillary purposes for the single subject rule).

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A. *The Purposes in Other States*

It appears that the most frequently-cited purpose of the single subject rule is the prevention of deception.³⁹⁵ In particular, the single subject rule is purportedly intended to prevent the deception of legislators as to the contents of the acts on which they will vote or to prevent the public from being deceived as to what their elected representatives are considering or passing into law, or both. Significantly, however, most states in which the prevention of deception is cited as a purpose for the single subject rule *remain tied to the title requirement as well*.³⁹⁶ Recall that the Indiana framers had originally included the single subject provision and the title requirement together (as most states' constitutions do now)—but that the Indiana framers also designated different purposes for each provision.³⁹⁷ Specifically, the title requirement was to prevent deception, while the single subject rule was to prevent logrolling and the joining of legal initiatives belonging to different subjects.³⁹⁸

The prevention of logrolling and preventing the joining of disparate subjects were the Indiana framers' two primary purposes for the single subject rule.³⁹⁹ A majority of single subject states have acknowledged these purposes as to their single subject rules as well.⁴⁰⁰ Nearly all single subject states acknowledge the importance of the rule's plain language—

³⁹⁵ See *Thompson v. McKinley Cnty.*, 816 P.2d 494, 500 (N.M. 1991) (“The mischief to be prevented is . . . surprise or fraud on the legislature . . .”); *State v. Mabry*, 460 N.W.2d 472, 473 (Iowa 1990) (noting the single subject rule “facilitates the legislative process by preventing surprise when legislators are not informed”); *Kerner v. Johnson*, 583 P.2d 360, 379 (Idaho 1978) (“The purpose of this constitutional provision is to prevent fraud and deception in the enactment of laws . . .”); *Wash. State Sch. Dirs. Ass’n v. Dep’t. of Labor & Indus.*, 510 P.2d 818, 821 (Wash. 1973) (noting that among the rule’s purposes is “to protect and enlighten the members of the legislature”); see also *McIntire v. Forbes*, 909 P.2d 846, 853–54 (Or. 1996) (distinguishing the prevention of deception as a role of the title requirement and not the single subject rule); *Kline v. N.J. Racing Comm.*, 183 A.2d 48, 52–53 (N.J. 1962) (noting that the prevention of deception is commonly tied to the title requirement). This Article is aligned with Oregon’s view on this point. See *infra* note 397 and accompanying text (noting the different purposes for the single subject rule and the title requirement).

³⁹⁶ One exception is Illinois. See ILL. CONST. art. IV, § 8.d (requiring only that bills “be confined to one subject”). As we have seen, the 1974 amendment to Indiana’s single subject rule illustrates that the rule does not depend upon the title requirement for its existence. IND. CONST. of 1851, art. IV, § 19. Rather, the single subject rule exists for its own purposes, independently and apart from the purposes that motivated the title requirement. See also *supra* Part IV.F (analyzing the dual purposes of the single subject rule in detail).

³⁹⁷ See *supra* Part IV (discussing comments at the Indiana Constitutional Convention); *supra* Part IV.C (noting that other provisions in the Indiana Constitution would guard against legislator ignorance respecting the contents of bills, and that the single subject rule was therefore included for purposes other than that).

³⁹⁸ See *supra* Part IV.A (discussing logrolling as an evil which must be cured).

³⁹⁹ See *supra* Part IV.F (discussing these dual purposes).

⁴⁰⁰ See *infra* notes 401–02 and accompanying text (discussing examples).

the purpose of the single subject rule is to prevent the joining of two or more different subjects under one act or heading.⁴⁰¹ More than half of the states' case law has also recognized that the rule is intended to disincentivize logrolling.⁴⁰² Many states have expressly acknowledged that the rule's primary or overriding purpose is to combat logrolling.⁴⁰³

Three additional purposes are sometimes cited for the single subject rule. These are less often mentioned purposes for the rule and hence, we label them the "minor" purposes. First, some states have found that the rule exists to ensure that every subject considered and passed into law will be considered on its own merits.⁴⁰⁴ The desirability of requiring all acts to

⁴⁰¹ See, e.g., *Wyo. Nat'l Abortion Rights Action League v. Karpan*, 881 P.2d 281, 290 (Wyo. 1994) (noting that the rule prohibits "the combination in the same bill or initiative of unrelated and separate subjects that have nothing to do with the subject of the original legislation . . ."); *In re Marriage of Thompson*, 398 N.E.2d 17, 20 (Ill. App. Ct. 1979) (stating that the single subject rule "was designed to prevent the joinder of incongruous and unrelated matters in one act"); *Baltimore Transit Co. v. Metropolitan Transit Auth.*, 194 A.2d 643, 649 (Md. 1963) (noting that the rule exists "to prevent the combination in one act of several distinct and incongruous subjects"); *Rosebud Cnty. v. Flinn*, 98 P.2d 330, 334 (Mont. 1940) ("The purpose requiring singleness of subject is to prevent the practice . . . of embracing in the same bill incongruous matters . . ." (internal quotation marks removed)); *Catron v. Bd. of Comm'rs, of Archuleta Cnty.*, 33 P. 513, 514 (Colo. 1893) (stating that the rule prohibits "[t]he practice of putting together in one bill subjects having no necessary or proper connection").

⁴⁰² See, e.g., *Pa. State Ass'n of Jury Comm'rs v. Commonwealth*, 64 A.3d 611, 615-16 (Pa. 2013) ("the single subject rule limits the practice of 'logrolling'"); *Am. Petroleum Inst. v. S.C. Dep't of Revenue*, 677 S.E.2d 16, 18 (S.C. 2009) (noting that "[t]he purpose of Article III, § 17 [is] . . . to prevent legislative 'log-rolling'"); *State ex rel. Citizens Against Tolls v. Murphy*, 88 P.3d 375, 387 (Wash. 2004) ("the purpose of this prohibition is to prevent logrolling or pushing legislation through by attaching it to other necessary or desirable legislation (citing *Amalgamated Transit Union Local 587 v. State*, 142 Wash.2d 183, 207 (Wash. 2006))); *Fla. Dep't of Highway Safety & Motor Vehicles v. Critchfield*, 842 So.2d 782, 785 (Fla. 2003) ("The purpose of this constitutional prohibition against a plurality of subjects in a single legislative act is to prevent 'log-rolling' where a single enactment becomes a cloak for dissimilar legislation having no necessary or appropriate connection with the subject matter." (quoting *Martinez v. Scanlan*, 582 So.2d 1167 (Fla. 1991))); *State ex rel. Dix v. Celeste*, 464 N.E.2d 153, 155 (Ohio 1984) ("The primary and universally recognized purpose of such provisions is to prevent logrolling").

⁴⁰³ See, e.g., *Kincaid v. Mangum*, 432 S.E.2d 74, 82 (W. Va. 1993) (holding that "an omnibus bill to authorize legislative rules" violated the single subject rule because such a bill "can lead to logrolling or other deceiving tactics"); *Gellert v. State*, 522 P.2d 1120, 1122 (Alaska 1974) ("It is generally agreed that the primary aim of 'one subject' provisions in state constitutions is the restraint of logrolling in the legislative process"); *Planned Parenthood Affiliates of Cal. v. Swoap*, 219 Cal. Rptr. 664, 670 (Cal. 1985) (declaring that "[i]t was to cure this evil [of logrolling] that the constitution made it mandatory that a bill should embrace but one subject-matter" (quoting *Ex parte Hallawell*, 99 P. 490, 491 (Cal. 1909))).

⁴⁰⁴ See, e.g., *Parrish v. Lamm*, 758 P.2d 1356, 1362 (Colo. 1988) (naming among the three purposes of the rule "to guarantee that each legislative proposal passes on its own merit"); *Simpson v. Tobin*, 367 N.W.2d 757, 767 (S.D. 1985) (stating that the rule was intended to prevent the combination of "diverse measures which have no common basis except, perhaps

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pass on their own merits was raised and endorsed by Indiana's framers as well.⁴⁰⁵

This topic invites us to revisit a question posed earlier: why did the framers in Indiana (and in the other states that recognize logrolling as a key motive for the single subject rule) attempt to prohibit a procedural evil by a substantive restriction?⁴⁰⁶ Otherwise stated, why did the framers address a substantive issue, when it was primarily a procedural issue they sought to remedy? The presence of two subjects in an act does not necessarily indicate that the act was the product of logrolling. It is conceivable that a legislator who cares passionately about two issues—two separate subjects—would merge her proposals regarding the two issues into a single act. At such a juncture, no logrolling would have taken place. Instead, the legislator might draft such a bill having never spoken with another legislator about the proposals. The framers' and ratifiers' extensive anecdotal experience suggested to them that an act containing multiple subjects was usually procured through logrolling. That is, the existence of multiple subjects in a bill is good inferential evidence of logrolling, but as our hypothetical legislator demonstrates, a multi-subject act does not establish conclusively that logrolling occurred.⁴⁰⁷ So why prohibit logrolling by substantive means?

One likely answer is that the framers implicitly perceived that the correlation between multi-subject acts and logrolling was so strong that it was a "good enough" solution to logrolling. In this line of reasoning, the framers elected for the subject language because multiple subjects are easier to prove as a practical matter than logrolling.⁴⁰⁸ There is also

their separate inability to receive a favorable vote on their own merits"); *Oxnard Beet Sugar Co. v. State*, 102 N.W. 80, 81 (Neb. 1905) (naming the purpose of the rule as "to require each proposed measure to stand upon its own merits"); *State ex rel. Dunn v. Board of Comm'rs*, 29 P. 974, 975 (Nev. 1892) (describing the purpose of the rule as to prevent the passage of matters "many of which could not be carried upon their own merits"); *State v. Cassidy*, 22 Minn. 312, 322 (1875) (describing the purpose of the rule as "to secure to every distinct measure of legislation a separate consideration and decision"); *Cutlip v. Sheriff of Calhoun Cnty.*, 3 W. Va. 588, 590 (1869) (giving as one of the two purposes of the rule "to secure a fair and impartial consideration of each subject by making it stand or fall on its merits").

⁴⁰⁵ See *supra* Part IV.A.3 (describing the motion to amend and implement the single subject rule).

⁴⁰⁶ See *supra* Part IV.F (exploring the interrelationship between the procedural and substantive aspects of the rule).

⁴⁰⁷ Rephrasing this in a mathematical vein, multi-subject acts may be highly correlated with logrolling, but such a correlation does not establish that either phenomenon has caused the other.

⁴⁰⁸ Whether logrolling occurred or not in a given instance is an empirical assessment. From the judicial vantage, this is a question of fact. Yet evidence of logrolling may not always be direct, since logrolling can occur outside of the public's view. In contrast, evidence of multiple subjects in an act is always "directly" available, so long as the act itself is publicly

another equally valid explanation—logrolling was not the sole purpose behind the single subject rule. The framers viewed multi-subject acts as an additional discrete evil to be remedied.⁴⁰⁹ We have also already observed that the framers (in Indiana and elsewhere) appreciated the added benefit of requiring acts—even those that were not procured through logrolling—to be confined to one subject. One-subject acts, even if they are passed individually as part of a broader “package” of logrolled measures, must stand on their own merits, must each be scrutinized (at least partially) in isolation from other measures, and preserve the governor’s ability to selectively sign or veto.

Two additional “minor” purposes for the single subject rule have been proffered in the decisional law throughout the states. The single subject rule’s second “minor” purpose is to free legislators from the burden of voting for provisions they would not ordinarily vote for to pass other items that they do favor.⁴¹⁰ The third “minor” rationale for the single

available. Courts are at liberty to take judicial notice of an act’s existence. The number of subjects existing within an act, then, is a question of law.

⁴⁰⁹ See *supra* note 253 and accompanying text (noting that the Indiana framers viewed multi-subject acts as evils in themselves for many reasons and that among these was the fact that multi-subject acts virtually always contained provisions wholly unrelated to one another, some or all of which were, by definition, unmeritorious). This insight is further bolstered by the fact that judicial discussions of the rule’s purposes very often explicitly intermingle these purposes. See, e.g., *Catron v. Bd. of Comm’rs, of Archuleta Cnty.*, 33 P. 513, 514 (Colo. 1893) (combining the purposes of preventing logrolling and ensuring that subjects stand on their own merit by declaring that “one of the evils sought to be eradicated” was “[t]he practice of putting together in one bill subjects having no necessary or proper connection, for the purpose of enlisting in support of such bill the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits”); *State v. Earley*, 386 P.2d 221, 226 (Kan. 1963) (combining the purposes of precluding multi-subject acts and preserving legislators’ ability to vote only for subjects that they favor). This is logically unobjectionable. Many factors inspired the single subject rule’s creation, and these factors are not mutually exclusive. Delegates to the constitutional conventions throughout the states favored the single subject rule for numerous reasons.

⁴¹⁰ *Earley*, 386 P.2d at 226 (describing the purpose of the rule as “to prevent two or more unrelated subjects being covered in an act so that members of the legislature would feel that they should vote for a bill which contained a provision to which they were opposed in order to secure the enactment of the bill with some provisions they considered important” (quoting *Shrout v. Rinker*, 84 P.2d 974, 976 (Kan. 1938))); *Nova Health Sys. v. Edmondson*, 233 P.3d 380, 381 (Okla. 2010) (defining logrolling as “the practice of assuring the passage of a law by creating one choice in which a legislator or voter is forced to assent to an unfavorable provision to secure the passage of a favorable one”); *State v. Cooper*, 382 So.2d 963, 965 (La. 1980) (“[a] legislator should not have to consider the validity of two unrelated objects in deciding how to vote on a bill”); *State v. Waggoner*, 490 P.2d 1308, 1309 (Wash. 1971) (stating that “logrolling does not exist unless the component provisions of an enactment embrace more than one subject”); *Neuenschwander v. Wash. Suburban Sanitary Comm’n*, 48 A.2d 593, 599 (Md. 1946) (stating that the purpose of the rule was to combat the practice in which “members of the Legislature were often constrained to vote for such foreign provisions to avoid jeopardizing the main subject or to secure new strength for it”). Indiana legislators

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subject rule is the preservation of the integrity of the governor's veto. Because most state governors do not have a "subject" veto and must accept bills in their entirety or veto them in their entirety, the single subject rule helps to ensure that governors can separately consider bills addressing different subjects.⁴¹¹

B. *The Single Subject Rule Across the States: Continuity of Purpose*

We conclude our look across the states by noting that the single subject rule has several purposes. Its major or primary purposes are to *invalidate multi-subject acts*, and to *invalidate acts that are procured through logrolling*.⁴¹² More specifically, the single subject rule stands in opposition to only one variant of logrolling – namely, logrolling that results in multi-subject acts. Logrolling that is achieved by the passage of multiple one-subject acts is, from the vantage of the single subject rule, altogether unobjectionable.⁴¹³

Additionally, the single subject rule has several "minor" purposes. The rule is intended to guarantee that every subject considered and passed into law will be considered on its own merits, that legislators will be free to vote as they please on each subject considered for passage, and that the governor will similarly be free to approve or veto each subject passed by the legislature. The purpose of preventing deception falls under the gambit of the title requirement – a complimentary but discrete mandate existing in all single subject states except Indiana and Illinois, requiring that an act's subject be expressed in its title.

This survey of states yields three more noteworthy observations. First, the conclusions that most states have drawn as to the purposes of their respective single subject rules are consistent with this paper's analysis of the purposes underlying Indiana's version of the rule. This is significant because few, if any, of the other single subject states have such a clear and reliable historical record as Indiana's. The fact that the rule's avowed purpose has evolved over time in many states is a reflection of the curious fact that most states have interpreted the meaning of the rule

valued this as well in proposing the 1974 amendment to Indiana's single subject rule. *See supra* note 385 and accompanying text (discussing the reasons for legislators' support of the amended single subject rule in Indiana).

⁴¹¹ *See, e.g., In re House Bill No. 1353*, 738 P.2d 371, 372 (Colo. 1987) (noting that the single subject rule "enables the governor to consider each single subject of legislation separately and independently in determining whether to exercise his veto power"). Colorado has taken the lead on this doctrine.

⁴¹² *See supra* Part III (introducing the evils that predicated the necessity for a single subject rule).

⁴¹³ *See supra* Part IV.A.3 (discussing this form of logrolling in the context of the enactment of the Indiana single subject rule).

without reference to a historical record establishing the rule's true purposes. In contrast, Indiana's historical record is complete, compelling, and unambiguous. Indiana should serve as a persuasive authority for states that desire a definitive resolution concerning the rule's purposes and meaning and, by extension, to the question of what generalizable framework is best-suited to guide single subject analyses.

This discussion's second key take-away is that the many purposes of the single subject rule sometimes overlap and often complement one another. Whatever framework is chosen for single subject rule analysis ought to defend and advance all of these purposes, and especially the rule's major purposes. To the extent that a state has adopted a framework for analysis that frustrates or defeats any one or more of the rule's purposes, or to the extent that a state accomplishes the same end by not articulating any framework whatsoever, the legal test is conclusively flawed. In this event, alternative frameworks for single subject analysis should be sought out.

The final key point is that no state's constitution removes the single subject rule from the courts' jurisdiction. The Texas Constitution is unique among single subject states in that it expressly removed the *title* requirement from the realm of justiciability.⁴¹⁴ The Texas example demonstrates that the many states' framers and ratifiers could have removed single subject questions from judicial review. In states in which the historical record is scant, the absence of such a removal supports the view that the state's framers intended that the courts would enforce the single subject rule. In the case of Indiana, the historical record unmistakably establishes this intent. It follows that whatever framework or legal test a state might formulate for the purpose of evaluating single subject challenges, the framework cannot, either expressly or in effect, frustrate or defeat the process of judicial review. Such a framework would not only conflict with, but would affirmatively undermine, the many purposes of the single subject rule.

VII. CONCLUSION

The framers and ratifiers of the 1851 Indiana Constitution intended that the single subject rule would nullify multi-subject acts, as well as those procured through logrolling, so that each subject passed upon would be duly considered. Unlike many provisions of the Indiana Constitution that must be interpreted solely upon circumstantial evidence, analogous constitutional provisions, and logical inference, the meaning and purposes of Section 19 are robustly established by *direct*

⁴¹⁴ See *supra* note 391 (discussing the Texas requirement in greater depth).

evidence. The single subject rule is both a mechanical conscription upon the internal workings of the legislature as well as a substantive regulation of the contents of legislative acts. Both the supporters and opponents of Section 19 expected that the single subject rule would be enforced. Moreover, they uniformly expected that the *courts* would enforce the rule and its several purposes.

Among the other forty single subject states, we find that most have also recognized the rule's two principal purposes: the prevention of logrolling and the preclusion of multi-subject acts. Many have also recognized the rule's minor purposes: to ensure that all subjects enacted into law would be considered and approved on their own merits, to free legislators from the burden of voting for unpalatable measures in order to achieve the passage of favored ones, and to preserve the integrity and effectiveness of the gubernatorial veto. Significantly, none of these states' constitutions removes the single subject rule from the purview of the courts—invariably a reflection of the framers and ratifiers of these states that, like in Indiana, these states' respective courts would enforce the single subject rule. These legislatures were stripped of the authority to logroll and to pass multi-subject acts *not by the courts, but by the framers and ratifiers*.

Bearing in mind these parameters and the commonalities among the forty-one single subject states, it should be possible to set forth a test for single subject analysis that would apply across all of the single subject states. Curiously, in a bothersome trend throughout the nineteenth and twentieth centuries, many of the very courts charged to enforce the single subject rule have come to nullify it through the decisional law. Since so few courts had consulted or developed a detailed understanding of the single subject rule, this evolution is not surprising. Now that such an assessment has been attempted, the issue of what framework or legal test should govern single subject analysis is ripe for consideration. These and other concerns are addressed in a forthcoming Article by the authors.⁴¹⁵

⁴¹⁵ Evans & Bannister, *supra* note 215.