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Missouri's Single-Subject Rule: A Legal Tool to Block Environmental Legislation? National Solid Waste Ass'n, et al. v. Director of the Department of Natural Resources

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MISSOURI'S SINGLE-SUBJECT RULE: A LEGAL TOOL TO BLOCK ENVIRONMENTAL LEGISLATION?

National Solid Waste Management Ass'n, et al. v. Director of the Department of Natural Resources[1]

I. INTRODUCTION

With the adoption of the single-subject rule into Missouri's State Constitution in 1875,[2] a powerful check on the legislative process was bestowed upon the citizens in Missouri. Should any piece of duly debated and enacted legislation deviate in subject content from what is expressed in its title, even by the smallest technical error, that bill is subject to judicial repeal.[3] This constitutional provision was designed to prevent omnibus legislation, but critics argue that it inappropriately interferes with the legislative process, that it has limited ability to achieve the desired results, and that it holds great potential for abuse.[4] When a single-subject challenge is issued it falls to the judiciary to effect the proper result by exercising its surgical power to sever any offending portions of a piece of legislation. If it is impossible to remove a given provision without total destruction of the legislation, the court's role shifts to declaring the entire bill unconstitutional.[5]

In *National Solid Waste Management Ass'n, et al. v. Director of the Department of Natural Resources*[6] the Missouri Supreme Court faced just such a challenge. The analysis of the court and the chosen remedy demonstrates not only how powerful a legal tool this law adds to the arsenal of minority special interest groups, but also clearly demonstrates that the court will not allow valid legislative action to be usurped by frivolous application of this legal strategy.

II. FACTS AND HOLDING

Just two days prior to the end of the 1995 Missouri legislative session, the House of Representatives amended Senate Bill 60 ("S.B. 60") concerning the state's solid waste fund, landfill permits, waste tires, and flow control.[7] The last-minute amendment imposed new requirements for the issuance and renewal of all "licenses, permits, or grants of authority" associated with solid waste *and hazardous waste disposal*.[8] The amendment, codified at MO. REV. STAT., § 260.003 (1995), specifically

[1] 964 S.W.2d 818, 819 (Mo. 1998), *reh'g denied* (April 21, 1998).

[2] MO. CONST. art III, § 23.

[3] Jeffrey Gray Knowles, *Enforcing the One-Subject Rule: The Case for a Subject Veto*, 38 HASTINGS L.J. 563 (1987).

[4] *Id.* at 563-64. Despite the effort to curb omnibus legislation, as a practical matter the use of riders to garner votes for marginally popular measures or as a weapon to block a gubernatorial veto are strongly entrenched in the state legislative process. *Id.* Once such a bill is enacted the governor must decide to approve or veto it long before any potential court challenge may result, usually with only two to three weeks to make a decision. *Id.* Without line-item veto power the governor faces vetoing the entire bill, even the good portions, or compromising to be sure not to lose the positive merit of the legislation. *Id.* at 586. In this process of "veto proofing" the legislature loses little for if the governor decides to veto a bill, the legislature may simply redraft it or divide it. *Id.* If the governor signs the bill into law, it may never face a court challenge because of an apathetic public or an opposing party's lack of resources to initiate a judicial proceeding. *Id.* If a constitutional challenge arises and the amendment is even remotely germane, or if the bill's title is broad enough to marginally cover the provision, the courts will defer to legislature because there is strong presumption that bills legitimately passed by the legislature and signed by the governor are constitutional. *Id.* at 572-74.

[5] MO. REV. STAT. § 1.140 (1994).

[6] 964 S.W.2d 818, 819 (Mo. 1998).

[7] National Solid Waste Management Ass'n., et al. v. Director of the Dep't of Natural Resources, 964 S.W.2d 818, 819 (Mo. 1998).

[8] *Id.* Solid Waste is defined as "garbage, refuse, discarded materials and undesirable solid and semisolid residual matter resulting from industrial, commercial, agricultural or community activities in such amounts, characteristics and duration as to injure or harm the public health or welfare or animal life or property." MO. REV. STAT. § 260.005(13) (1985). Hazardous waste is defined as:

required that any entity engaged in the activities subject to such licensing must conform its operations "with all applicable local zoning, building, and health care codes, ordinances, and orders with regard to the person and activity regulated pursuant to this chapter."[9] The bill as amended passed both House and Senate. Governor Mel Carnahan signed it into law with an effective date of August 28, 1995.[10]

A taxpayer and trade association composed of Terry Schlemeier, the National Solid Waste Management Association, and Browning-Ferris Industries, Inc., collectively the "Association," filed suit in the Circuit Court, Cole County, seeking to enjoin enforcement of the amendment.[11] The Association challenged the amendment's constitutionality alleging that the imposition of the new requirements with regard to hazardous waste violated the "original purpose" of the proposed legislation, Missouri Constitution Article, III, Section 21 as well as Missouri's "single subject" and "clear title" rule, Missouri Constitution, Article III, Section 23.[12] The Association argued that the inclusion of hazardous waste inappropriately expanded the bill's coverage from that identified by the title of the bill which was limited to solid waste management.[13]

The circuit court held that "hazardous waste does not fairly relate or have a natural connection to solid waste" so it would be improper to categorize these two distinct bodies of waste management under one subject.[14] Additionally, the court found the original purpose of the bill was to amend the state's solid waste management regulations, and consequently, this was a distinct purpose apart from the regulation of hazardous waste.[15] With no disputes between the parties with regard to any material facts of the case, and with the amendment deemed to be standing in violation of Missouri's constitutional requirements, the circuit court granted summary judgment in favor of the Association to enjoin enforcement of the offending amendment.[16]

The Director of the Department of Natural Resources ("DNR") sought appeal of the circuit court's ruling with the Missouri Supreme Court.[17] The DNR maintained the Association lacked standing to challenge the bill's constitutionality, and that even if standing existed, hazardous waste was but a sub-category of waste management under the more expansive subject of "environmental control."[18] The Missouri Supreme Court held that (1) the standing requirement was met by Respondent Schlemeier's position as a Missouri taxpayer;[19] (2) the bill's title which referred only to solid waste management was

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> any waste or combination of wastes, as determined by the commission by rules and regulations, which, because of its quantity, concentration, or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a present or potential threat to the health of humans or the environment.

MO. REV. STAT. § 260.360 (1980).

[9] MO. REV. STAT. § 260.003 (1995).

[10] Bill Summary, S.B. 60, *Solid Waste Fund/Landfill Permits/Waste Tires/Flow Control* (visited Sept. 25, 1999) <http://www.senate.state.mo.us/bills95/SB060.htm>.

[11] National Solid Waste Management Ass'n., 964 S.W.2d at 818-19.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 820.

[15] *Id.*

[16] *Id.*

[17] *Id.* at 819. The Missouri Supreme Court has exclusive jurisdiction over appeals of constitutional questions as outlined in the MO. CONST. art. 5, § 3.

[18] *National Solid Waste Management Ass'n*, 964 S.W.2d at 819-20. The single-subject rule does not convey all of the necessary components for a party to engage in a constitutional challenge. There remain issues of justiciability. "Justiciability relates to the requirement that a plaintiff show a personal stake in an outcome, [amenable] to remedy, in order to engage judicial power at all." State *ex rel.* Cochran v. Andrews, 181 S.W.2d 653, 655 (W.D. Mo. 1990) *citing* Harrison v. Monroe County, 716 S.W.2d 263, 266 (Mo. 1986), *and* State *ex rel.* Pulitzer Publishing v. Coleman, 152 S.W.2d 640, 646 (Mo. 1941). An issue must be ripe for a judicial proceeding, not mooted by intervening conditions, and most importantly there must be a "bloody plaintiff," which is an injury in fact, actual or threatened, to an individual party to convey standing for the action. Professor Carl H. Esbeck, Remarks in course on *Constitutional Law*, University of Missouri-Columbia, Autumn 1998.

[19] Contemporaneous with adoption of the single-subject rule into Missouri's Constitution, the Missouri Supreme Court recognized the right of a state taxpayer to sue to enjoin improper use of public funds. Newmeyer v. Missouri & Miss. R.R., 52 Mo. 81, 89 (1873). This concept of "taxpayer standing" was further defined in Civic League of St. Louis v. City of St. Louis,

underinclusive for failing to identify the provisions applied to hazardous waste management and as such was unconstitutional; and (3) the appropriate remedy was a permanent injunction against enforcement of the statute with regard to hazardous waste management, not total severance of the amendment.[20]

III. LEGAL BACKGROUND

A. The Single Subject Rule: History and Purpose

"Omnibus legislation" has plagued the legislative process from the days of Ancient Rome to the eve of the new millennium. The enactment of *Lex Caecilia Didia* in 98 B.C. by the Roman Empire was the first legislation designed to forbid the practice of "*lex satura*" – the proposing of laws containing unrelated provisions.[21] Initially slow in its fruition, the single-subject rule crept into the American legal system with its first adoption in the New Jersey Constitution in 1844.[22] Between the Civil War and 1912 most other states followed suit, and today forty-one states have some form of a single-subject rule written into their constitutions.[23] This shift in legislative practice at the state level represents a rejection of the federal legislative system, which has often been described as a vicious system of vote trading.[24]

The multiple purposes cited for the single-subject rule revolve around one central goal – to prevent "logrolling" in the enactment of legislation.[25] "Logrolling" is the practice of combining minority proposals as different provisions in a single bill to consolidate a majority vote for the newly created omnibus bill.[26] Another variation of the logroll prevented by single-subject rules is the addition of "riders," pieces of legislation doomed to failure on their own merits which are attached to popular pieces of legislation to ensure passage.[27] Secondary purposes for limiting legislation to one subject include: (1) the facilitation of orderly legislative procedure by eliminating rambling and divisive deliberations, and (2) eliminating unfair surprise to both the legislature and the public.[28] To curtail the possibility of unfair

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223 S.W. 891, (Mo. 1920), where the court noted that "where public interests are involved, and public funds are about to be dissipated for an illegal purpose, a single taxpayer may maintain an action . . . without being required to show, at trial, the extent of the damages which it may sustain." *Id.* at 893. The test articulated in Eastern Missouri Laborers Dist. Council v. St. Louis County, which is presently in place, is the following: "absent fraud or other compelling circumstances, to have standing, a taxpayer must be able to demonstrate a direct expenditure of funds generated through taxation, or an increased levy in taxes, or a pecuniary loss attributable to the challenged transaction." 781 S.W.2d 43, 47 (Mo. 1989). The term "expenditure" is interpreted broadly so that even if a state program is expected to generate a net gain or return to a cost-neutral position, if state funds are used in any context, even just "startup costs," standing is conveyed and the expenditure can be enjoined. *Id. See also* Thomas C. Albus, *Taxpayer Standing in Missouri*, 54 J. MO. BAR 199, 201 (1998). The plaintiff must be able to demonstrate a sufficient nexus between the expenditure of state funds and the alleged illegality. Id. The case at hand, *National Solid Waste Management Ass'n. v. Director of the Dep't. of Natural Resources*, 964 S.W.2d 818 (Mo. 1998), exemplifies this nexus requirement perfectly. Although the fiscal note accompanying S.B. 60 mandated that all of the provisions in effect be cost neutral (i.e. that permit fees collected would cover any increased expenditures associated with new programs), the Committee on Legislative Research noted that starting up one additional employee, a Management Analyst Specialist, would require ongoing monitoring and oversight of the self-funded programs. L.R. No. 0273-09 (1995). The expenditure of state funds was directly associated with the alleged illegal bill and provided sufficient nexus to convey taxpayer standing to one of the parties to the suit. *National Solid Waste Management Ass'n.*, 964 S.W.2d at 819 (Mo. 1998).

[20] National Solid Waste Management Ass'n., et al. v. Director of the Dep't of Natural Resources, 964 S.W.2d 818 (Mo. 1998).

[21] Millard H. Ruud, *No Law Shall Embrace More Than One Subject*, 42 MINN. L. REV. 389 (1958).

[22] *Id.* at 390.

[23] Knowles, *supra* note 3, at 565. The nine states without a single-subject rule are Arkansas, Connecticut, Maine, Massachusetts, New Hampshire, North Carolina, Rhode Island, Vermont, and Wisconsin. *Id.*

[24] *Id.* at 567.

[25] Rudd, *supra* note 21, at 391.

[26] *Id.* Individually, these minority provisions would have failed if voted on separately. *Id.*

[27] *Id.*

[28] *Id.* at 391-92; *See also* Sweet, *Title of Bills Required by Missouri Constitution*, 9 J. MO. BAR 225, 226 (1953); Carl Everstine, *Titles of Legislative Acts*, 9 MD. L. REV.197, 212 (1948); Jabez Sutherland, STATUTORY CONSTRUCTION §§ 1702-20 (3d ed. 1943); Carl Manson, *The Drafting of Statute Titles*, 10 IND. L.J. 155 (1934); Maurice Merril, *Legislation: Subject, Title*

surprise an additional requirement is imposed for each bill's title to clearly express the single-subject of the bill.

The clear-title corollary serves as a sister requirement to the single-subject rule ensuring that legislation is not passed by stealth.[29] If a title fails to encompass the subject matter of the bill then either the entire act or its offending portions will be struck in a judicial challenge.[30] Missouri's Constitution Article III, Section 23 incorporates the single-subject rule and the clear-tile rule into a single statement stating, "[n]o bill shall contain more than one subject which shall be expressed clearly in its title."[31]

Concurrent with adoption of single-subject provisions, states were adding another complementary feature to their legislative schemes – the gubernatorial veto.[32] At present forty-nine states provide their governors with the options of vetoing entire bills and/or vetoing items from appropriations bills.[33] The single-subject rule and gubernatorial veto augment each other in two ways. First, the combined effect of these legislative controls prevent the logrolling practice of "veto-proofing" bills.[34] In states adopting both of these checks on logrolling, a minority position cannot sneak by the governor's office and dodge the all-or-nothing veto power by attaching itself to a popular piece of legislation.[35] The bill, restricted to one subject, must survive the governor's veto on its singular merits. Secondly, the line-item veto is provided for appropriations bills which by their nature cover multiple subjects and are excused from the single-subject rule.[36] The governor's veto power, exercised line by line on these bills, prevents logrolling where the incentive to do so is greatest.

Despite the design of these complementary, legislative restrictions, commentators have highlighted weaknesses and limitations in their effectiveness. One criticism charges that, practically, these devices cannot prevent logrolling as political pressure and judicial deference to duly-enacted legislation limit their application.[37] The courts have adopted the canon of construction that constitutional provisions should be interpreted liberally, and single-subject rules should not be allowed to "hamstring" the legislature or "embarrass honest legislation."[38] Additionally, the line-item veto for appropriations bills is limited in its application because courts have tended to interpret the word "item" very narrowly.[39]

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and Amendment, 13 NEB. L. BULL. 95 (1934); Sinclair, *A Constitutional Restraint on Bill Styling*, 2 U. Newark L. Rev. 35 (1935); Anonymous Comment, 43 HARV. L. REV. 1143 (1930).

[29] *Id.* at 392.

[30] *Id.*

[31] *Id. See also* MO. CONST. art. III, § 23.

[32] Knowles, *supra* note 3, at 569. *See also* B. Sachs, LAWS, LEGISLATURE, LEGISLATIVE PROCEDURE: A FIFTY STATE INDEX 99 (1982); EDWARD MASON, THE VETO POWER 17-18 (1890); Jospeh Kallenbach, THE AMERICAN CHIEF EXECUTIVE 361-77 (1966); Fairly, *The Veto Power of the State Governor*, 11 AM. POL. SCI. REV. 473 (1917); F. Prescott, *The Executive Veto in American States*, 3 W. POL. Q. 98 (1950).

[33] *Id.* Every state except North Carolina has conveyed veto power to the governor. *Id.* at 568.

[34] *Id.* at 567.

[35] *Id.*

[36] *Id.* at 567-569.

[37] *Id.* at 564. *See generally* Knowles, *supra* notes 3 and 4, *and* Ruud, *supra* note 21, at 394: "most judicial challenges have failed" and the judicial interpretation of the rule is so liberal that it has become "a weak and undependable arrow in [the advocate's] quiver." *Id.* at 447.

[38] Ruud, *supra* note 21, at 394 states:

> This means the courts will read "subject" or "object" broadly and not narrowly so that the legislature will not be severely limited in what it may include in a single bill . . . Judge Mitchell expresses lucidly the approach of the courts in these cases when he declares in Johnson v. Harrison: "This provision . . . is to be given a liberal, and not a strict, construction. It is not intended nor should it be so construed as to embarrass legislation by making laws unnecessarily restrictive in their scope and operation, or by multiplying their number, or preventing the legislature from embracing in one act all matters properly connected with one general subject" [50 N.W. 923, 924 (1891)].

[39] Knowles, *supra* note 3, at 575-77. In *Rush v. Ray*, 362 N.W.2d 479 (Iowa 1985), the Iowa Supreme Court ruled that the governor overstepped his veto authority when eliminating several restrictions placed on five appropriations bills. Each bill contained the provision "funds appropriated by this Act shall not be subject to transfer or expenditure for any purpose other than the purposes specified" which in effect amounted to very cleverly placed political riders on those bills. *Id.* at 480. Governor Ray vetoed the restrictions (and their associated political agendas) allowing the moneys to be issued to the general budget of each targeted state department. *Id.* The court ruled the restrictions to be "provisions" of the bills and not "items" subject to the

B. The Single Subject Rule as Applied in Missouri

The test for applying the single-subject rule in Missouri is perhaps best articulated in *Hammerschmidt v. Boone County, Missouri*.[40] In *Hammerschmidt*, an amendment allowing for counties with a population between 100,000 and 200,000 inhabitants to adopt an alternative form of government and frame their own constitution was tacked onto a bill entitled "related to elections."[41] In determining that the provision violated the single-subject rule, the Missouri Supreme Court delineated the elements necessary to satisfy the two procedural limitations encompassed by the state's single-subject rule. In order to satisfy the requirements of a bill containing only one subject and to have that subject clearly expressed in
the title, all matters in the bill must be "germane, connected, and congruous."[42] The court further elucidated that a "subject within the meaning of Article II, Section 23, includes all matters that fall within or reasonably relate to the general core purpose of the proposed legislation," and "[t]o the extent the bill's original purpose is properly expressed in the title to the bill, we need not look beyond the title to determine the bill's subject."[43] Finally, to remain consistent with the rules of constitutional construction, "the words 'one subject' must be broadly read, but not so broadly that the phrase becomes meaningless."[44] Another articulation of the same test was that "all provisions of the bill [must] fairly relate to the same subject, have a natural connection therewith or [be] incidents or means to accomplish its purpose."[45]

Once deciding a provision of a given piece of legislation violates the single-subject rule the court must determine the remedy. Under normal circumstances the court must sever the unconstitutional portion of the statute "unless the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provisions that it cannot be presumed the legislature would have enacted the valid provisions without the void one."[46] This test has also been euphemistically referred to as the "scar tissue test," whereby the offending provision is surgically excised leaving no damage to the surrounding tissue of the legislation.[47]

In *Hammerschmidt*, the court examined its duty in relation to Missouri's "Severance Statute," invalidated the unconstitutional amendment in question, and left the remainder of the act intact.[48]

C. The Clear Title Corollary – The Powerhouse of the Single-Subject Rule

There are basically three situations in which the plurality of a bill's subject matter will face a constitutional challenge, and in two of these situations it is the title which governs the outcome of a bill's survival. In the first instance, the act will contain two or more subjects and the title will clearly express all of the subjects encompassed in the bill.[49] This situation presents the only instance that is truly

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gubernatorial veto. *Id.* In his dissent, Justice Harris noted "[t]he vetoes here in no way modified the legislative plan of how the department could use the funds . . . [but rather] related only to the funds which might remain unused." *Id.* at 485. In effect, the governor was "robbed" of his veto power by clever attachment of political agendas to the appropriations bills and a very narrow interpretation of what constitutes an "item" in a bill. *Id.*

[40] 877 S.W.2d 98 (Mo. 1994).

[41] *Id.* at 99-100.

[42] *Id.* at 102.

[43] *Id.*

[44] *Id.*

[45] *Id. See also* State v. Mathews, 44 Mo. 523, 527 (1869).

[46] *Hammerschmidt*, 877 S.W.2d at 102. *See also* MO. REV. STAT. § 1.140 (1994).

[47] Knowles, *supra* note 3, at 576.

[48] *Hammerschmidt*, 877 S.W.2d at 103. *See also* MO. REV. STAT. § 1.140 (1994): the severance statute requires that "all statutes . . . should be upheld to the fullest extent possible."

[49] Rudd, *supra* note 20, at 398-99.

addressed solely by the one-subject portion of the rule, and creates a situation where it is impossible to sever one portion of the bill thereby mandating the entire act be struck.[50] Considering the fact that single-subject rules have predominated state constitutions for well over 100 years, this situation will only arise in rare instances because the legislature is on notice not to produce such legislation.

The remaining two possibilities of offending legislation occur when either the title restricts the subject of a bill so that a particular provision falls outside of its scope; or the title of the act is so broad, possibly covering multiple subjects itself, that it misleads the reader as to what is actually covered by the bill.[51] Violation of the clear-title requirement in either manner usually results in one of two remedies. If the title of the bill fails to give notice or is misleading about the bill's contents the entire act is usually held to be invalid.[52] However, if the title gives adequate notice of the bill's contents and only a portion of the bill fails to relate to that title then only the offending portion of the bill is struck.[53]

In *Fust v. Attorney General for the State of Missouri*,[54] the Missouri Supreme Court articulated the State's test for determining violations of the clear-title corollary. In *Fust* judgment creditors were awarded punitive damages in a malicious prosecution action. Not wishing to surrender fifty percent of their award to the Tort Victims Compensation Fund[55] as required by statute, Fust challenged the constitutionality of the state law creating the fund.[56] The creditors argued that the title of the bill, including the words "A bill . . . assuring just compensation for certain personal damages," did not relate to tort actions resulting in the award of punitive damages.[57] They argued that this title was too ambiguous to put the public on notice that punitive damages from suits in tort would be used as a source of financing the compensation fund.[58]

The court articulated that the clear-title corollary could be violated "if the subject may be so general or ambiguous as to violate the single subject requirement," or if the subject is "so restrictive that a particular provision is rejected because it falls outside the scope of the subject."[59] The court further clarified: "[t]he title to the act is valid if it indicates the general contents of the act, and mere generality of title will not prevent the act from being valid unless it is so obscure or amorphous as to tend to cover up the contents of the act."[60] Applying this test, the court held that the creditors in *Fust* failed to meet their burden of establishing that the title of the bill contained a restriction or limitation that would affirmatively

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[50] *Id.* Where a portion of an act is clearly discernible from the remaining legislation, severance is the appropriate remedy. Where unrelated subjects are combined in one bill to gain a majority vote and there is no way to determine whether one subject predominated and another is a rider, the entire bill must fail because there is no way determine which subject the legislature wished to become law. *Id.*

[51] *Id. See also* Hammerschmidt v. Boone County, Missouri, 877 S.W.2d 98 (Mo. 1994), *and* Carmack v. Director of the Dep't of Ag., 945 S.W.2d 956 (Mo. 1997).

[52] *Id.* at 397.

[53] *Id.*

[54] 947 S.W.2d 424 (Mo. 1997).

[55] This compensation fund was established to compensate victims of torts who go uncompensated as a result of a defendant being judgment proof. MO. REV. STAT. § 537.675 (1994) states:

> (1) There is created the "Tort Victims' Compensation Fund." Unexpended moneys in the fund shall not lapse at the end of the biennium as provided in section 33.080, RSMo. (2) Fifty percent of any final judgment awarding punitive damages after the deduction of attorneys' fees and expenses shall be deemed rendered in favor of the state of Missouri. The circuit clerks shall notify the attorney general of any final judgment awarding punitive damages rendered in their circuits. With respect to such fifty percent, the attorney general shall collect upon such judgment, and may execute or make settlements with respect thereto as he deems appropriate for deposit into the fund. (3) The state of Missouri shall have no interest in or right to intervene at any stage of any judicial proceeding under this section. (4) No disbursement shall be made from the tort victims' compensation fund until procedures for disbursement are established by further action of the general assembly.

[56] Fust v. Attorney General for the State of Mo., 947 S.W.2d 424, 428-29 (Mo. 1997).

[57] *Id.*

[58] *Id.* at 429.

[59] *Id.* at 428.

[60] *Id.* at 429, *citing* Lincoln Credit Co. v. Peach, 636 S.W.2d 31, 39 (Mo. 1982), *appeal dismissed*, 459 U.S. 1094 (1983). *See also* Hunt v. Armour & Company, 136 S.W.2d 312, 314 (1940), *and* Carmack v. Director of Mo. Dep't of Agriculture, 945 S.W.2d 956 (Mo. 1997).

mislead either a legislator or a member of the public about the content of the bill.[61] The court reasoned the title need not describe every detail of the bill, and that "[m]erely because the fund is generated by money collected in cases where plaintiffs obtained judgment for more than was necessary to justly compensate them for their injuries does not mean the provision is unrelated to *assuring just compensation for certain personal damages*."[62]

The clear-title rule is the driving force of the single-subject rule. Incongruities between a bill's title and its contents dominate the constitutional challenges raised by litigants, and the analysis of a given piece of legislation under this rule is determinant. In fact, every single subject case litigated in Missouri which has reached the level of appeal has been on the basis of an alleged violation of the clear title provision.[63]

D. Use of the Single Subject Rule as a Legal Strategy

The use of the single-subject rule to raise a constitutional challenge with regard to a bill's validity gives rise to the citizen policeman ensuring "faithful and dutiful public service" on the part of the legislature.[64] The ability to invoke this cause of action protects the rights of unpopular minorities who may feel their interests were not addressed by the general assembly and the governor.[65] Only the most naive, however, would deny the powerful, legal strategy created by this law.

Any interested entity can seek to invalidate any piece of legislation with such a combination of laws, on the basis of a very small technical error in the wording of the title to a bill – a bill which has been duly debated and which received a majority vote in the state legislature. On the other hand, any crafty legislator can attempt to logroll by drafting the title of his or her bill to be so general as to negate any potential violation of the single-subject rule, even if the bill encompasses multiple subjects. Should a challenge ensue as a result of either scenario, it becomes the judiciary's duty to accurately interpret the exact wording of a given statute and its title to be sure it conforms to its constitutional requirements.

1. Scenario # 1: A Technical Violation of the Single Subject Rule

National Solid Waste Management Ass'n v. Director of the Department of Natural Resources[66] serves to illustrate the first scenario depicted above. In this case Senate Bill 60, pertaining primarily to various management provisions with regard to solid waste, was amended in the House of Representatives just prior to its final vote.[67] The amendment in controversy was placed as section 1 of the bill and read in pertinent part as follows:

> Notwithstanding any provision of chapter 260, RSMo, the department of natural resources shall require that before any permit, license, or grant of authority is issued or renewed by the department of natural resources pursuant to chapter 260, RSMo, the local jurisdiction shall verify that the person and activity which is the subject of such permit, license or grant of authority, is in compliance with all applicable local zoning, building, and health codes, ordinances, and orders with regard to the person and activity regulated pursuant to chapter 260, RSMo. Failure of the local jurisdiction to respond to a request from the department of natural resources for such

[61] Fust v. Attorney General for the State of Mo., 947 S.W.2d 424, 428-29 (Mo. 1997).
[62] *Id.*
[63] Missouri Health Care Ass'n. v. Attorney General of the State of Mo., 953 S.W.2d 617 (Mo. 1997); Fust v. Attorney Gen. of the State of Mo., 947 S.W.2d 424 (Mo. 1997); Hammerschmidt v. Boone County, 877 S.W.2d 98 (Mo. 1994); Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824 (Mo. 1990).
[64] Albus, *supra* note 19, at 202.
[65] *Id.*
[66] 964 S.W.2d. 818 (Mo. 1998).
[67] *Id.* at 819.

> verification within 30 days of such request shall be deemed to be verification of local compliance.[68]

The alleged offending words of this amendment were "pursuant to chapter 260, RSMo." Chapter 260 of the Missouri Revised Statutes holds the regulations for all provisions of state law concerning the subject of environmental control.[69] Although hazardous waste has always been considered a subcategory of solid waste, in Missouri's regulatory scheme solid waste management has been relegated to Sections 260.200 through 260.345 of the Missouri Revised Statutes, while hazardous waste management appears in a separate and distinct fashion in Sections 260.350 through 260.434.[70] The alleged constitutional violation was that the words "pursuant to chapter 260" inappropriately expanded coverage of the bill's permit requirements into the area of hazardous waste management when the title of the bill was stated to "relate to solid waste management."[71] While this is arguably a violation of the single-subject rule, one must look further to the motivations of the litigants to obtain a full appreciation of the legal strategy employed.

The parties alleging violation of the single-subject rule in this case, Terry Schlemeier of the National Solid Waste Management Association ("NSWMA" is a national trade association)[72], and Browning-Ferris Industries, Inc. ("BFI" – a foreign corporation)[73], are primarily involved in the business of solid waste management. Timothy Duggan of the Missouri Attorney's General Office, who represented the DNR in this case explained "these parties had no concern with the minimal additional requirements for hazardous waste permits, but rather were opposed to the entire bill as it pertained to solid waste management."[74] "Their efforts to defeat the legislation failed on the House Floor, so they used the single subject rule, coupled with taxpayer standing, as their strategy to attempt defeat of the legislation in court *ex post facto*."[75] The legal strategy employed appears to be completely divorced from supporting the Missouri Constitution or protecting taxpayers from illegal expenditures, but was instead geared toward defeating legislation designed to protect the citizens of the state from the effects of solid waste pollution. Had taxpayer standing not been available to one of the parties, Terry Schlemeier,[76] it is questionable whether this case would have made it into the Missouri courts at all.[77] Joining Terry

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[68] S.B. 60 and S.B. 112, § 1, 88th Mo. General Assembly (1995).

[69] *See generally* MO. REV. STAT. chap. 260.

[70] *Id.*

[71] *National Solid Waste Management Ass'n.*, 964 S.W.2d at 819.

[72] The National Solid Waste Management Association has its headquarters at 4301 Connecticut Avenue, N.W., #300, Washington, DC, 20008, and a Midwest Regional Office at 650 E. Diehl Road, Suite 160, Naperville, Ill. 60563.

[73] Browning-Ferris Industries, Inc. ("BFI") is incorporated in Delaware with its principle place of business at P.O. Box 3151 Houston, Tex., 77253. BFI has operations for solid waste disposal in 150 U.S. cities, including Clayton, Mo.

[74] Telephone Interview with Timothy Duggan, Assistant Attorney General of Missouri, in Jefferson City, Mo. (Feb. 8, 1999).

[75] *Id.* Duggan added that the waste management industry's major fear was that by requiring companies to conform their practices to local zoning, building, and health codes, and ordinances, they would be facing grassroots political opposition to block the creation of new landfills when applying for the local permits for solid waste disposal. This would, in effect, disarm their lobbying power at the state capitol, and allow smaller blocks of voters veto power over their expansion into new localities.

[76] Schlemeier is Missouri's lobbyist for the National Solid Waste Management Association.

[77] Since the late 1800s, Missouri has placed restrictions on foreign corporations with regard to obtaining standing to engage in legal action within the state's borders. MO. STAT. §§ 1026 and 1318 (1899); *revised* MO. REV. STAT. § 351.635, *repealed and replaced* MO. REV. STAT. § 351.574 (1990). *See also* Anonymous, *Comments on Recent Decisions, Interstate Commerce – Limitation of Right of Foreign Corporation to Sue – Contracts Contemplating Importation*, 17 ST. LOUIS L. REV. 275 (April 1932). Note that such state regulations can be declared unconstitutional under the Interstate Commerce Clause, United States Constitution, Article I, Section 8, Clause 3, if the statutes have been applied to restrict the importation of "goods, persons, or information" as part of a transaction of interstate commerce. *Id.* at 276. The rationales for these restrictions were stated in Chicago Mill and Lumber Company v. Sims, 74 S.W. 128 (St. Louis Ct. App. 1903), as the need to place foreign and domestic corporations operating within the state on an equal playing field, and the need to prevent foreign corporations from avoiding liability created by their operations in Missouri. *Id.* at 130-131.

The object of the statutes in question is to require foreign corporations to do business on the same footing domestic ones occupy, and with no exceptional advantages. The regulations prescribed to attain this object are that they shall have an office where they may be served with legal process and brought within the jurisdiction of the state courts, pay a proper proportion of dues on their capital stock into the state treasury and be otherwise subject to the liabilities, restrictions, and duties imposed on

Schlemeier as a party to this suit ensured standing which allowed BFI[78] and the NSWMA[79] to enter the Missouri courts to challenge SB 60's constitutionality.

2. Scenario # 2: Legislative Co-opting of the Single-Subject Rule by use of an Overly Inclusive Title

To illustrate the second scenario of the potential legal strategy associated with the single-subject rule we have the case of *Corvera Abatement Technologies, Inc. v. Air Conservation Commission.*[80] As part of a five-count claim, *Corvera* challenged a Missouri law concerning asbestos abatement projects on the basis of violation of the single-subject rule.[81] The bill, as passed, contained provisions regulating asbestos abatement projects, the operation of underground storage tanks, and regulations concerning

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corporations of like character organized under state laws. To enforce these requirements, a fine for the violation of the law is provided and prosecution authorized; and as a further means of enforcement a disobedient company is precluded from maintaining an action in the courts of the state on any demand arising out of contract or tort. *Id. See also* Wahlen Construction and Equipment Company, Inc. v. Grandview Bank and Trust Company, 578 S.W.2d 69, 70 (S.D. Mo. 1979). These requirements have largely been relegated to the mere formality of registering with the state to obtain a "certificate of authority." *See* MO. REV. STAT., § 351.574 (1994). Moreover, potential constitutional issues from restricting a party's right to sue have been avoided by allowing corporations to proceed with a cause of action even if compliance with these laws occurs subsequent to the date of the alleged breech of contract or tort arising out of any business activities. Chicago Mill and Lumber Company v. Sims, 74 S.W.2d 128 (St. Louis Ct. App. 1903). *See also* MO. REV. STAT. § 351.574 (1994). Other statutory requirements imposed to obtain the state's certificate of authority include registering an appropriate corporate name, and maintaining a registered office and agent within the state to serve as the corporation's agent for service of process. MO. REV. STAT., § 351.584 and §§ 351.586 - 351.592 (1994). Once these minor threshold requirements are satisfied, as previously noted, standing is attained by demonstrating an injury in fact. *See generally supra* note 18 and accompanying text. In the present case, the new licensing regulations of S.B. 60 as they pertained to solid waste management were not significantly disproportional to similar requirements in other states to allow any potential cause of action for violation of the dormant commerce clause. For a complete discussion of state and federal powers in relation to interstate commerce, see William Cohen & Jonathan D. Varat, CONSTITUTIONAL LAW: CASES AND MATERIALS 241-371 (1997).

[78] BFI, Inc. has met Missouri's statutory requirements for issuance of its certificate of authority; its registered office and agent for service of process is BFI Wastes Systems of North America, 120 South Central Avenue, Clayton, Mo. 63105, (corporate registration information available on request from the Secretary of State, Room 208, State Capitol, Jefferson City, Mo. 65101). However, BFI is not a Missouri citizen and arguably ineligible to invoke taxpayer standing. If BFI had successfully contended that it is allowed to invoke taxpayer standing by virtue of paying corporate taxes to the state of Missouri, then it may have been able to proceed because a portion of its Missouri operations involves the disposal of "medical waste," which would fall under Missouri's definition of hazardous waste. Interview with Krista Keeton, BFI Corporate Communications, in Clayton, Mo. (Apr. 1, 1999).

[79] The NSWMA's only means to obtain standing to sue in Missouri is by "associational standing." Associational standing is granted when an association can demonstrate that one of its members alone would have standing to bring the action, and that the suit relates to the purposes of the organization itself – sometimes referred to as the "zone of interests test." This test enlarges the class of people who may seek legal redress in the name of third parties and has been drawn from the Administrative Procedures Act, requiring plaintiffs to be within the class of person intended to be affected by the enacted legislation. Clarke v. Securities Indus. Ass'n. 479 U.S. 338, 396 (1987); 5 U.S.C. § 702 (1994). *See also* K. Davis, ADMINISTRATIVE LAW TREATISE SECTION 24:17 (2d ed. 1983); Richard Stewart, *The Reformation of American Administrative Law*, 88 HARV.L.REV. 1667, 1731-1734 (1975); Lee Albert, *Standing to Challenge Administrative Action: An Inadequate Surrogate for Claim for Relief*, 83 YALE L.J. 425 (1974); Kenneth Scott, *Standing in the Supreme Court – A Functional Analysis*, 86 HARV.L.REV. 645 (1973); Louis Jaffe, *Standing Again*, 84 HARV.L.REV. 633, 634, n. 9 (1971). The claim asserted or relief requested need not require that the individual member suffering the injury participate in the suit. Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333, 333 (1977), *citing* Warth v. Seldin, 422 U.S. 490 (1975).

David Beiderman claims the NSWMA was involved in this case to represent the interests of its member BFI. Interview with David Beiderman, Counsel for the National Solid Waste Management Association, in New York City, N.Y. (Apr. 8, 1999). However, if this individual member of the NSWMA is unable to demonstrate an injury in fact, the NSWMA is itself unable to exercise associational standing. *Id.* Beiderman acknowledged that he was new to the NSWMA and could not name other specific parties that its organization may have represented. *Id.* The association could have demonstrated standing if BFI, or another member company, successfully proves they were involved in hazardous-waste management and could demonstrate an injury in fact from this bill. *Id.*

[80] 973 S.W.2d 851 (Mo. 1998).

[81] *Id.* at 860.

water well-drillers.[82] Despite the wide range of regulatory coverage, the court held the act did not violate the single-subject rule. Specifically the court held that because the title of the bill included the words, "An Act . . . relating to environmental control," and as such all of the provisions "fairly relate to and have a natural connection with, and are a means of accomplishing environmental control."[83] Clearly the three provisions of this legislation fell under decidedly different categories or subjects, but a clever application of a very broad title rendered the constitutional challenge void.[84]

IV. INSTANT DECISION

A. Standing as a Missouri Taxpayer

As an initial matter, the Missouri Supreme Court addressed the threshold issue of justiciability. The DNR challenged the Association's standing to bring suit under Missouri's taxpayer standing requirements.[85] The court determined that to establish standing, a single party of the Association must show "that [his] taxes went or will go to public funds that have or will be expended due to the challenged action."[86] Reviewing the record of the circuit court that concluded that enforcement of SB 60 required the expenditure of state funds for "salaries, expenses, and other costs that would not otherwise be made," the court held that at least one party to the suit, taxpayer Terry Schlemeier, had standing.[87] Having made the determination that at least one of the Respondents had standing, the court decided there was no need to address standing requirements in relation to the National Solid Waste Management Association or Browning-Ferris Industries, Inc.[88] The court then proceeded with its analysis of the constitutionality of HB 60's amendment.

B. The Constitutional Issues

The court restated the exact language and purpose of the constitutional articles at issue. Article III, Section 21, of the Missouri Constitution requires that "no bill shall be so amended in its passage through either house as to change its original purpose," and Section 23 requires that "[n]o bill shall contain more than one subject which shall be expressed clearly in its title."[89] These limitations were designed to promote orderly procedure, avoid surprise, and prevent logrolling whereby peripheral matters that lack majority support are added as amendments to ensure their passage.[90] Additionally, both sections of the Constitution serve to keep the legislature and public informed of the subject matter of pending

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[82] *Id.*

[83] *Id.* at 862.

[84] The issue of standing did not arise in this case. Corvera is a Missouri corporation with its principal place of business in St. Louis, and as such this corporate entity is considered a Missouri citizen and pays Missouri taxes. *CATI homepage* (visited Sept. 25, 1999) <http://corvera.com/index.htm>. This corporation could not only use taxpayer standing itself, but could demonstrate an injury in fact in relation to the legislation it challenged. (In addition to the constitutional challenge raised by Corvera, the corporation had also alleged violation of the Missouri Administrative Procedures Act, failure of the Air Conservation Commission to comply to statutory requirements for filing fiscal notes for its promulgated rules, a violation of separation of powers in enacting legislative rules, and for enacting rules stricter than their federal counterparts in violation of MO. REV. STAT. § 643.055.1 (1994). 973 S.W.2d 851 (Mo. 1998).) Arguably, however, if Corvera had no other means to engage the Missouri courts, it too could have relied on an associated party, such as its lobbyist, to gain access as long as that party was a citizen of the state, paid Missouri taxes, and could demonstrate a pecuniary loss by the expenditure of those taxes to implement the regulations in question.

[85] National Solid Waste Management Association et al. v. Director of the Dep't of Natural Resources, 964 S.W.2d 818, 819 (Mo. 1998).

[86] *Id.*, *citing* O'Reilly v. City of Hazelwood, 850 S.W.2d 96, 98 (Mo. 1993).

[87] *Id.*

[88] *Id.*

[89] *Id.* *See also* MO. CONST., art. III, § 23.

[90] *Id.*

laws, and insulate the governor from having to veto an entire bill on the basis of singular, non-germane amendments.[91] After exploring the constitutional provisions and the purposes for those provisions, the court proceeded to examine the circuit court's application of the law to the facts of this case.

In relation to the single subject-rule, the court determined the circuit court had granted summary judgment to the respondents by applying the standards elucidated in *Hammerschmidt v. Boone County*[92] and deciding that hazardous waste does not "fairly relate" to or have a "natural connection" with solid waste.[93] Similarly, the circuit court concluded the purpose of the bill was to amend the state's solid-waste management law, and this purpose is distinct from any intention to change the state's hazardous-waste regulations. In determining whether the circuit court had been erroneous in its conclusions, the supreme court examined the differences in the state's specific regulatory schemes for the management of solid and hazardous wastes and the exact title of the HB 60 to identify the specific statutory changes the bill was intended to implement.

1. The Single-Subject and Original-Purpose Rules as Applied to Solid and Hazardous Waste Legislation

The court acknowledged that there exists some overlap between the two types of wastes at issue, nevertheless these types of waste have been segregated with specific statutory regulatory schemes.[94] Chapter 260 of the Missouri Revised Statutes may fall under the general title of "Environmental Control," as the DNR had argued, but solid-waste management has been relegated to Section 260.200 through 260.345. On the other hand, hazardous-waste management has been addressed in a separate and distinct fashion in sections 260.350 through 260.434.[95] The court bypassed rendering a definitive determination of whether these two types of waste fell under the broader subject heading of "Environmental Control" and stated it was unnecessary to resolve this issue.[96] Moreover, the court added that even assuming arguendo that the original purpose and single subject of the bill was "environmental control" and that solid and hazardous waste "fairly relate to" and have a "natural connection" with each other, the bill is still fatally flawed by its underinclusive title.[97]

2. The Clear Title Rule and SB 60

The Missouri Supreme Court referenced the standard for evaluating a clear title challenge from its previous decision in *Fust v. Attorney General of Missouri.*[98] In *Fust*, the court ruled that "if the title of a bill contains a particular limitation or restriction, a provision that goes beyond the limitation in the title is invalid because such title affirmatively misleads the reader."[99] The court further elaborated that a bill with multiple and diverse subjects can only be clearly expressed by stating a broad umbrella category including all of the bills subjects; absent such a title the reader is left to search for some commonality from some extrinsic source.[100]

In the case at hand, the title of SB 60 as finally enacted was: "AN ACT to repeal sections 260.200, 260.201, 260.202, 260.205, 260.207, 260.227, 260.228, 260.235, 260.241, 260.270, 260.273,

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[91] *Id.*
[92] 877 S.W.2d 98, 102 (1994).
[93] *National Solid Waste Management Ass'n*, 964 S.W.2d 818, 820 (Mo. 1998).
[94] *Id.* at 820.
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] 947 S.W.2d 424 (Mo. 1997).
[99] *Id.* at 429.
[100] National Solid Waste Management Ass'n., et al. v. Director of the Dep't of Natural Resources, 964 S.W.2d 818, 821 (Mo. 1998).

260.274, 260.275, 260.276, 260.325, 260.330, 260.335, and 260.345, RSMo 1994, relating to solid waste management, and to enact in lieu thereof twenty new sections relating to the same subject, with penalty provisions."[101] The court determined that this title fails to refer, in any way, to hazardous waste or an all-encompassing category of "environmental control," but instead descends to the particular subject of being "related to" solid waste management.[102] The title specifically refers only to solid waste management and lists sections of the Missouri
Revised Statutes to be repealed that lie in the segregated and distinct body of law reserved for solid-waste management.[103] The court concluded that the bill's inclusion of an amendment pertaining to hazardous-waste does not conform to this title and as such fails the standard of the clear-title rule.

After finding the amendment to SB 60 to be unconstitutional, the court determined the appropriate remedy. The court stated that in this instance severance of the entire offending provision would be contrary to the mandate of the severance statute.[104] Because the amendment was intended to pertain to solid-waste management, and since the application of the bill to hazardous-waste management appeared to be incidental and unintentional, the appropriate remedy was to restrict the application of the challenged section to solid waste management.[105] The court ruled that the DNR was enjoined from enforcing the application of SB 60 to hazardous waste management.[106]

V. COMMENT

A. Does the Single-Subject Rule Work as Intended?

Critics have challenged the effectiveness of single-subject provisions for a variety of reasons and paint the limitations of allowing such a constitutional attack on legislation as a combination or series of failures.[107] Beginning in the legislature, political pressure increases the likelihood of multiple subjects being added to any given bill.[108] Next, the state's governor has all-or-nothing veto power, and pressure rests upon the governor to sign legislation into law in light of its good provisions – thus, making the bill "veto-proof."[109] The final link in the chain is the judicial system which accords great deference to the legislative branch so as not to disturb the passage of valid legislation. Armed with vague standards of review, any decision by a court to invalidate a bill or sever offending provisions is based upon highly technical parsing of legislative language.[110] But is this truly an accurate assessment of the judicial role, or are the critics ignoring the final element in this process – the court's remedy?

In *National Solid Waste Management Ass'n.* v. *Director of the Department of Natural Resources*,[111] the dissent criticizes the majority opinion for the exact reasons noted above. The split in opinion of the members of the court hinges on the very technical interpretation of what the words "related

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[101] *Id.*
[102] *Id.* at 821.
[103] *Id.*
[104] *Id.* at 822. The severance statute requires that "all statutes . . . should be upheld to the fullest extent possible." MO. REV. STAT., § 1.140 (1994). *See also* Preisler v. Calcaterra, 243 S.W.2d 62 (Mo. 1951); State *ex rel.* State Board of Mediation v. Pigg, 244 S.W.2d 75 (Mo. 1951); Missouri Pacific R.R. Co. v. Morris (Mo. 1961), 345 S.W.2d 52; Southwestern Bell Tele. Co. v. Morris, 345 S.W.2d 62 (Mo. 1961); St. Louis County v. City of Florissant, 406 S.W.2d 281 (Mo. 1966); Millsap v. Quinn, 785 S.W.2d 82 (Mo. 1990).
[105] National Solid Waste Management Ass'n., et al. v. Director of the Dep't of Natural Resources, 964 S.W.2d 818, 822 (Mo. 1998).
[106] *Id.*
[107] *See generally* Knowles, *supra* note 3 and accompanying text, *and* Ruud, *supra* note 21 and accompanying text.
[108] Knowles, *supra* note 3, at 563.
[109] *Id.* at 566-571. The only exception to the all or nothing veto power of the governor is when the line-item veto is provided for appropriations bills which by their nature have to cover multiple subjects and are excused from single-subject rule coverage. *See supra* note 36.
[110] *Id.* at 571-575.
[111] 964 S.W.2d 818 (Mo. 1998).

to" mean in the context of solid waste.[112] The dissent argues for a broad interpretation of these words to encompass all forms of solid waste, including hazardous waste, while the majority adopts a strict interpretation resulting in a determination that the amendment to SB 60 violates the clear title provision of the single-subject rule.[113] Despite any technical distinctions among the types of waste subject to this regulation, the real question here is did the court achieve the correct result?

As noted earlier, the trade association and foreign corporation that opposed the legislation were really exercising a collateral attack on the bill's provisions relating to solid waste management.[114] Their primary goal was to invalidate the entire bill so their industry would not be subjected to the new regulations on solid waste management, and the secondary goal was complete severance of the amendment to avoid future compliance with local zoning, building, and health codes.[115] There was really little interest at all in how this bill might be applied to hazardous-waste management.[116] The court crafted the appropriate remedy by striking the application of the disputed amendment to hazardous waste.[117] At first glance one might get the impression that the solid waste industry won this battle as the offending provision was limited in its application, but in reality, the court protected the valid legislative process leading to stricter control of solid waste management in the state, and prevented the parties in question from manipulating the single-subject rule to their advantage.

Another issue arises with the court's remedy regarding the court's power under the severance statute. The statute reads as follows:

> The provisions of every statute are severable. If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid unless the court finds the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.[118]

Nowhere in this language is the court allowed to keep a bill intact in its entirety while restricting the application of a portion of the bill to a particular subject. The severance remedy as applied in this case is a court-made extension of the severance statute. In *Associated Industries v. Director of Revenue*,[119] the Missouri Supreme Court held that "where a provision is invalid as to some, but not all, possible applications, and it is not possible to excise part of the text and allow the remainder to be in effect, the language of the provision must be restricted to the valid application."[120] The court, in effect, acknowledged it is rewriting the statute, but only to accommodate the constitutionally imposed limitation and only to the extent it complies with legislative intent.[121]

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[112] *Id.* at 823.

[113] *Id.*

[114] *See generally* Duggan, *supra* note 74-5.

[115] *Id.*

[116] *See generally* Duggan, *supra* notes 74-5.

[117] National Solid Waste Management Ass'n., et al. v. Director of the Dep't of Natural Resources, 964 S.W.2d 818, 822 (Mo. 1998).

[118] MO. REV. STAT., § 1.140 (1994).

[119] 918 S.W.2d 780 (Mo. 1996).

[120] *Id.* at 784.

[121] *Id.* at 784. The court relies on Professor Norman J. Singer's treatise, SUTHERLAND'S STATUTORY CONSTRUCTION, § 44.02 (5th ed. 1993).

> Singer, in his oft-quoted text on statutory construction, identifies three different situations in which severability applies, although very often the cases do not explicitly distinguish among the three. They are: 1) where part, but not all, of an act is invalid as to all applications; 2) where 'the entire act is invalid to part, but not all, possible applications'; and 3) where part, but not all, of the act is invalid to part, but not all, possible applications. .

Id. Also stated in Sutherland:

The court determined the legislative intent behind SB 60 was laid out in its title which states its purpose as regulating solid waste management.[122] Additionally, since the only portion of the entire bill which applies to hazardous waste appears in an amendment added in haste during the final two days of the legislative session, the court determined this must have been incidental and maybe even unintentional.[123] Based upon the legislative intent and the belief the legislature would want the amendment to apply to solid waste management, the court concluded that "severance may be accomplished by restricting the application of the statute."[124]

While arguably the court stepped into the role of the legislature by utilizing this common- law application of the severance statute, the legislature has had ample time since the court's adoption of this doctrine to abrogate these powers with its legislative sword. Silence from the legislature, however, may not be conclusive as acceptance of this perceived judicial interference with the legislative process, and future proceedings may bring this issue to the floor of the general assembly.

While some may fear the court is acting as a "super-legislator," it appears the court struck the appropriate balance in this case by upholding the thoroughly deliberated portions of SB 60 while only limiting the application of an amendment added in haste in the final two days of the legislative session. The court preserved the purposes of the single-subject rule by preventing unintended consequences of legislative haste, or legislation by stealth. If majority support truly exists for extending the permit requirements for the management of hazardous-waste the legislators can draft a new piece of legislation in the next session. Similarly, if the legislature perceives the common-law application of the severance statute to be a threat to its legislative role, the legislature has the power to draft legislation to abrogate that acquired power.

While this case demonstrates the very real possibility of how the single-subject rule can be manipulated as a legal tool to defeat valid legislation, the court has demonstrated the resolve to prevent the exploitation of such tactics. A computer search of Westlaw only yielded four cases where the single-subject rule strategy was employed in this fashion in the state of Missouri.[125] Granted, the only cases cited were those at the Supreme Court level in instances of appeal as the trial courts do not maintain case reporters, however, this small number would seem to indicate that the floodgates of frivolous litigation did not open after adoption of the single-subject constitutional provision in Missouri in 1875. It would also seem to indicate that the common law extension of severance powers, only utilized in two cases, has not resulted in a usurping of the legislative process.

B. Fine Tuning the Single-Subject Rule

While there are disagreements as to just how effective the singe-subject rule is in meeting its desired goals, there seems to be no question that this constitutional provision could stand a little fine-tuning. In *Hammerschmidt v. Boone County,*[126] Judge Holstein, in his concurrence with the majority, highlighted a more significant problem with the single-subject rule which remains unaddressed. There is no statute of limitations for a cause of action created under
Article III, Section 23.[127] This lack of any time limit for a citizen to challenge alleged offending legislation creates a situation of legislative instability and infinality. Judge Holstein noted that in

> It is not possible to deal with [the "as applied"] situation by invalidating, or excising, part of the text and allowing the remainder to continue in effect. If the act is to be sustained, its language must be restricted in application to those objectives within the jurisdiction of the legislature. *Id.* at § 44.14.

Stated another way, the statute must, in effect, be rewritten to accommodate the constitutionally imposed limitation, and this will be done as long as it is consistent with legislative intent. *Id.*

[122] National Solid Waste Management Ass'n. v. Director of the Dep't of Natural Resources, 964 S.W.2d 818, 822 (Mo. 1998).

[123] *Id.*

[124] *Id.*

[125] See *supra* note 63.

[126] 877 S.W.2d 98 (Mo. 1994).

[127] *Id.* at 105.

instances of alleged violation of the single-subject rule, no individual, substantive rights are at stake, and consequently, any such claim of violation should be raised at the earliest opportunity.[128]

Judge Holstein recommended establishing statute of limitations to require filing such a complaint no later than the adjournment of the next full legislative session following the alleged offending bill's passage.[129] An exception would be allowed for a party who could establish that he or she was the first person aggrieved, or in the class of the first persons aggrieved, and then the claim must be raised not later than the next full regular legislative session following the plaintiff's injury.[130] As a final limitation, Judge Holstein proposed a maximum ten-year statute of limitations on all possible claims of violation beginning on the effective date of the statute.[131] These changes, while minor in nature, would have the effect of promoting stability and predictability in the legislative process which ultimately conforms to the same goal of the single-subject rule itself.

C. Alternatives to the Single-Subject Rule

It has been proposed that a "subject veto" accorded to the governor would be more effective in serving the purpose of preventing omnibus legislation.[132] The theory is that shifting the severance power of the judicial system to the governor is a more direct approach to eliminating nongermane portions of a given piece of legislation.[133] This type of system is perceived to eliminate the two major limitations of the single-subject rule's effectiveness – veto-proofing and inefficiency. While veto-proofing has already been discussed, the inefficiencies this alternative addresses include: (1) lack of interest and resources available to parties to raise a judicial challenge, and (2) the inconsistency in court decisions once a challenge is brought to the bar.[134] While inefficiencies may be addressed in such a scheme, it seems more problematic that the concept of a "subject veto" is merely a "line-item veto" in disguise. Such a program places the executive branch in the position of a "super-legislator" holding the power to defeat any portion of legitimately passed legislation as the singular governor may see fit. While the single-subject rule may have its limitations it appears to be preferable than upsetting the traditional balance of power accorded the tripartite system of government.

D. Conclusion

The single-subject rule provides an appropriate measure of checks and balances on the lawmaking power of state government. Legislators, in view of the state constitution, must craft laws which focus on single, well-deliberated issues. The final legislative product then remains subject to the scrutiny of the gubernatorial veto. Once signed into law, if a member of the public can demonstrate a cognizable injury from a bill violating the single-subject rule the scrutiny then shifts to the judiciary. The courts have enough discretion in exercising the severance remedy to prevent frustration of honest legislation and prevent manipulation of this constitutional provision in an attempt to thwart the legislative process. The outcome in *National Solid Waste Management Ass'n v. Director of the Department of Natural Resources* demonstrates the wisdom of this 124 year-old provision of Missouri's Constitution.

HAROLD STEARLEY

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[128] *Id.*
[129] *Id.*
[130] *Id.*
[131] *Id.*
[132] Knowles, *supra* note 3, at 586.
[133] *Id.*
[134] *Id.* at 587.