Winter 2001

State Constitutional Restrictions on Legislative Procedure: Rethinking Analysis of Original Purpose, Single Subject, and Clear Title Challenges

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ARTICLE

STATE CONSTITUTIONAL RESTRICTIONS ON LEGISLATIVE PROCEDURE: RETHINKING THE ANALYSIS OF ORIGINAL PURPOSE, SINGLE SUBJECT, AND CLEAR TITLE CHALLENGES

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State constitutions generally contain numerous procedural limitations on the state's legislative process, and courts occasionally invalidate laws that are found to have been passed in violation of these requirements. Professor Dragich argues that the courts have not provided well-reasoned analysis in these cases and argues that the goals of the procedural limitations are, at times, being frustrated by their lax enforcement. This Article focuses on three forms of procedural challenges in an attempt to explain where the courts have erred and to provide a more coherent method of analyzing these claims in the future.

State constitutions contain a variety of provisions governing legislative procedures.[1] Unlike substantive limits, procedural restrictions regulate only the process by which legislation is enacted.[2] Common examples are original purpose, single subject, and clear title restrictions.[3] Original purpose clauses prohibit the amendment of a bill so "as to change its original purpose."[4] Single subject rules limit each bill to one subject.[5] Clear title rules require that the subject of the bill be clearly expressed in

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[1] *See, e.g.*, Robert F. Williams, *State Constitutional Limits on Legislative Procedure: Legislative Compliance and Judicial Enforcement*, 48 U. PITT. L. REV. 797, 798 (1987).

[2] *See* People v. Cervantes, 723 N.E.2d 265, 266 (Ill. 1999); Michael W. Catalano, *The Single Subject Rule: A Check on Anti-Majoritarian Logrolling*, 3 EMERGING ISSUES IN STATE CONST. LAW 77, 77; *see also* Williams, *supra* note 1, at 799 (contrasting substantive and procedural limitations).

[3] *See* Williams, *supra* note 1, at 798–99. Other procedural limitations exist, but less frequently serve as the basis for challenging legislation. *See, e.g.*, MO. CONST. art. III, § 20 (requiring a quorum and public sessions); *id.* § 25 (establishing time limits for introduction of bills); *id.* § 28 (requiring bills reviving, reenacting, or amending prior laws to be set forth in full).

[4] *E.g.*, MO. CONST. art. III, § 21.

[5] *See, e.g., id.* § 23.

the bill's title.[6] These provisions are designed to eradicate perceived abuses in the legislative process, such as hasty, corrupt, or private interest legislation.[7] They are intended to promote open, orderly, and deliberative legislative processes,[8] and can be found in almost all state constitutions.[9]

The genesis of state constitutional restrictions on legislative procedure has been recounted elsewhere.[10] The clear title rule, for example, was first adopted in 1798 in Georgia[11] and the single subject rule first appeared in 1818 in Illinois.[12] Most other states followed suit in the mid-nineteenth century.[13] Constitutional restrictions on legislative procedure have survived[14] and have been re-adopted in modern constitutions despite criticism that they allow the invalidation of legislation on "technical" grounds.[15]

State constitutional restrictions on legislative procedure, unlike legislative rules adopted by the two houses of Congress,[16] provide an avenue

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[6] *See, e.g., id.*

[7] *See* Williams, *supra* note 1, at 798. The adoption of the clear title rule, for example, can be traced to the infamous Yazoo land scandal perpetrated by the Georgia legislature in 1795. *See* Millard H. Ruud, *No Law Shall Embrace More Than One Subject*, 42 MINN. L. REV. 389, 391–92 (1958); William D. Popkin, *The Collaborative Model of Statutory Interpretation*, 61 S. CAL. L. REV. 541, 554 (1988); *see also* Cady v. Jardine, 193 S.E. 869, 870 (Ga. 1937) (holding that the title of an act, "to create the office of commissioner of roads and revenues," was broad enough to cover a provision in the law to designate the commissioner).

[8] Williams, *supra* note 1, at 798; Popkin, *supra* note 7, at 553–54.

[9] *See* Williams, *supra* note 1, at 798; Popkin, *supra* note 7, at 554; 1A NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 17.01, at 1 (5th ed. 1992) (single subject); *id.* § 18.01, at 25 (clear title). Appendix I to this Article is a chart showing which state constitutions currently include original purpose, single subject, and clear title provisions. In contrast, the federal constitution imposes few procedural requirements; most congressional procedures are set by standing rules of the House and Senate. ABNER J. MIKVA & ERIC LANE, LEGISLATIVE PROCESS 110–11 (1995); Williams, *supra* note 1, at 798.

[10] *See, e.g.*, Popkin, *supra* note 7, at 533–54; Ruud, *supra* note 7, at 389–90 (history of single subject rule); *id.* at 391–92 (history of clear title rule); Catalano, *supra* note 2, at 78–80 (history of single subject rule).

[11] *See* Ruud, *supra* note 7, at 391–92; *see also* Cady v. Jardine, 193 S.E. 869, 870 (Ga. 1937).

[12] *See* Ruud, *supra* note 7, at 389.

[13] *See id.* at 453–55 (chart showing, for each state, the date of adoption of a single subject restriction); Williams, *supra* note 1, at 798 (noting that procedural limitations were adopted "throughout the nineteenth century").

[14] In a rare exception, when Illinois adopted a new constitution in 1970, it dropped the clear title rule but retained the single subject rule. *See* Aaron Chambers, *State's Single Subject Rule Subject to Numerous Interpretations*, CHI. DAILY L. BULL., Apr. 22, 2000, at 1.

[15] Williams, *supra* note 1, at 799–800 (describing such criticism); *see also Republicans in Illinois Feud Over Gun Control*, N.Y. TIMES, Dec. 29, 1999, at A16 [hereinafter *Republicans Feud*] (describing as a "technicality" the Illinois Supreme Court's invalidation of a gun control measure for violation of the single subject rule).

[16] Because Congress enforces its own rules and because there are few procedural limitations in the federal Constitution, there are few procedural challenges that can be made to a federal statute. *See* MIKVA & LANE, *supra* note 9, at 118; RONALD D. ROTUNDA & JOHN E. NOWAK, 2 TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE § 10.9, at

for challenging statutes, and such litigation is fairly common.[17] The large number of procedural challenge cases seems surprising since State courts consistently proclaim that statutes are presumed constitutional.[18] The Missouri Supreme Court, for example, has long insisted that

> [t]he use of these procedural limitations to attack the constitutionality of statutes is not favored. A statute has a presumption of constitutionality. We interpret procedural limitations liberally and will uphold the constitutionality of a statute against such an attack unless the act *clearly and undoubtedly* violates the constitutional limitation. The burden of establishing [a statute's] unconstitutionality rests upon the party questioning it.[19]

Other states likewise favor a liberal construction[20] of procedural restrictions.[21] Courts have used a variety of phrases to express the high standard

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122 (3d ed. 1999) (procedural rules of both houses of Congress are "beyond judicial challenge").

[17] *See* Catalano, *supra* note 2, at 80 (stating that single subject challenges "continue on a rather regular basis"). A Westlaw search run by the author in the Allstates database on August 9, 2000 returned 87 state highest court cases involving single subject, clear title, or original purpose challenges from 1990 to date. These cases came from 28 states, though they tended to be concentrated in a handful of states. Missouri had 10 cases, Washington and Illinois each had 8, Alabama and West Virginia each had 6, Iowa and Wyoming each had 5, Ohio had 4, and Maryland had 3 during this period. Appendix II to this Article lists the cases by state. Single subject cases involving appropriations bills and cases involving laws enacted by the initiative process have been excluded. Both types of cases present special considerations outside the scope of this Article. *See* Arangold Corp. v. Zehnder, 718 N.E.2d 191, 197–98 (Ill. 1999) (noting that appropriations bills are exempt from single subject requirements under ILL. CONST. art. IV, § 8(d)); State *ex rel.* Caleb v. Beesley, 949 P.2d 724, 727–28 (Ore. 1997) (comparing separate constitutional provisions requiring that measures enacted by initiative and laws enacted by the legislature embrace single subjects).

[18] *See, e.g.*, People v. Wooters, 722 N.E.2d 1102, 1106 (Ill. 1999); State *ex rel.* Ohio Acad. of Trial Lawyers v. Sheward, 715 N.E.2d 1062, 1099 (Ohio 1999); Pierce v. State, 910 P.2d 288, 306 (N.M. 1995).

[19] C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322, 327 (Mo. 2000) (en banc) (internal quotation marks and citations omitted) (brackets in original). Similar language appears throughout the Missouri cases. *See, e.g.*, State v. Miller, 45 Mo. 495, 497 (Mo. 1870) (noting that such provisions are given a "very liberal interpretation"); State *ex rel.* Niedermeyer v. Hackmann, 237 S.W. 742, 743 (Mo. 1922) (en banc) (commenting that it is "uniformly held" that such provisions are to be "liberally construed"); State *ex rel.* Normandy Sch. Dist. v. Small, 356 S.W.2d 864, 877 (Mo. 1962) (en banc) (Storckman, J., dissenting) (stating that if constitutionality is in doubt, "such doubt must be resolved in favor of [the statute's] validity"); Westin Crown Plaza Hotel Co. v. King, 664 S.W.2d 2, 5 (Mo. 1984) (en banc) (stating that the court is "allowed to make every reasonable intendment to sustain the constitutionality of the statute"); Hammerschmidt v. Boone County, 877 S.W.2d 98, 102 (Mo. 1994) (en banc) (noting that the court interprets procedural limitations liberally).

[20] In this Article, the phrase "liberal construction" is used—consistent with the language used by the Missouri Supreme Court—to mean that procedural challenges are disfavored.

[21] *See, e.g.*, People v. Cervantes, 723 N.E.2d 265, 267 (Ill. 1999); Associated Builders & Contractors v. Ventura, 610 N.W.2d 293, 299 (Minn. 2000); *Ohio Acad. of Trial Lawyers*, 715 N.E.2d at 1099; State *ex rel.* Tomasic v. Unified Gov't of Wyandotte County, 955

to be applied in these cases, stating that statutes will be held unconstitutional, for example, only if "clearly, plainly and palpably so,"[22] only if shown "beyond a reasonable doubt" to violate the constitution,[23] or only in case of a "manifestly gross and fraudulent violation."[24] As a result of these high standards, state courts uphold legislation against procedural challenges "more often than not."[25] The Minnesota Supreme Court observed that from the late 1970s until 2000, it had decided five single subject/clear title cases, upholding the statute in every case.[26] In 1984, a Missouri judge indicated that the Missouri Supreme Court had not sustained a procedural challenge in twenty years.[27]

Why, then, do litigants continue to raise original purpose, single subject, and clear title claims? One explanation of this behavior is that "[s]uch challenges are easy to make because all that is necessary is reference to the face of the statute."[28] Another explanation is that each of these cases, depending as it does on the specific text of a particular enactment, is sui generis.[29] As such, there is always a chance that a court will sustain a challenge to one piece of legislation even though it has rejected challenges to many other statutes. A more cynical explanation is that procedural challenges offer litigants one last chance to attack legislation they were unable to defeat during the legislative process.[30] Overall, these explanations suggest that procedural challenges remain common because although they are low-return, they are also low-risk.

P.2d 1136, 1145–46 (Kan. 1998); Utilicorp United, Inc. v. Iowa Util. Bd., 570 N.W.2d 451, 458 (Iowa 1997); Md. Classified Employees Ass'n v. State, 694 A.2d 937, 943 (Md. 1997); *In re* Boot, 925 P.2d 964, 971 (Wash. 1996); Keyserling v. Beasley, 470 S.E.2d 100, 102 (S.C. 1996); McIntire v. Forbes, 909 P.2d 846, 853 (Or. 1996); Accounts Mgmt., Inc. v. Williams, 484 N.W.2d 297, 299 (S.D. 1992); Billis v. State, 800 P.2d 401, 430 (Wyo. 1990).

[22] *Utilicorp United*, 570 N.W.2d at 454.

[23] Beagle v. Walden, 676 N.E.2d 506, 507 (Ohio 1997); Westvaco Corp. v. S.C. Dept. of Revenue, 467 S.E.2d 739, 741 (S.C. 1995).

[24] State *ex rel.* Ohio AFL-CIO v. Voinovich, 631 N.E.2d 582, 586 (Ohio 1994).

[25] Catalano, *supra* note 2, at 80 (referring to single subject challenges).

[26] *Associated Builders & Contractors*, 610 N.W.2d at 300.

[27] Westin Crown Plaza Hotel Co. v. King, 664 S.W.2d 2, 7 (Mo. 1984) (en banc) (Welliver, J., dissenting). Between 1984 and 1994, that trend continued unabated. A Westlaw search conducted by the author returned no case decided after *Westin Crown Plaza Hotel* that invalidated a statute under article III, sections 21 or 23 of the Missouri Constitution until *Hammerschmidt v. Boone County*, 877 S.W.2d 98 (Mo. 1994) (en banc).

[28] Catalano, *supra* note 2, at 82.

[29] *See* Kincaid v. Mangum, 432 S.E.2d 74, 81 (W. Va. 1993) (citing 1A NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 17.03, at 9 (4th ed. 1985)) (indicating that there is no accurate mechanical rule); Porten Sullivan Corp. v. State, 568 A.2d 1111, 1121 (Md. 1990) (stating that a court ordinarily must decide on a case-by-case basis); *see also* M. Albert Figinski, *Maryland's Constitutional One-Subject Rule: Neither a Dead Letter Nor an Undue Restriction*, 27 U. BALT. L. REV. 363, 370 n.48 (1998) (noting that each case must be decided on its own facts).

[30] *See, e.g.*, Williams, *supra* note 1, at 824; Harold Stearley, Case Note, *Missouri's Single-Subject Rule: A Legal Tool to Attack Environmental Legislation?*, 7 MO. ENVTL. L. & POL'Y REV. 41, 48 (1999).

Whatever their motivations, these claims have begun to pay off. The Minnesota Supreme Court, for example, "sound[ed] an alarm that [it] would not hesitate to strike down" legislation violating single subject and clear title provisions.[31] The Missouri Supreme Court has heard ten procedural challenge cases since 1994,[32] finding violations in five of them.[33] The Illinois Supreme Court sustained only one single subject challenge from 1970 to 1996,[34] but it has sustained four challenges since 1997.[35]

A recent Illinois decision led to a nationally publicized furor in the Illinois legislature.[36] In *People v. Cervantes*,[37] the Illinois Supreme Court struck down the Safe Neighborhoods Law for violation of the single subject restriction.[38] The law had been in effect nearly five years at the time of the decision.[39] The scope of the Illinois court's ruling—striking down the entire enactment[40]—is important. The court found that the Safe Neighborhoods Law was intended to address neighborhood safety problems relating to "gangs, drugs, and guns."[41] Two portions of the law were found to constitute separate subjects: provisions amending the WIC (Women, Infants, and Children nutrition program) Vendor Management Act, and provisions relating to the licensing of secure residential youth care facilities.[42] The Illinois Supreme Court discerned "no natural and logical connection" between these provisions and neighborhood safety.[43] The portion of the Safe Neighborhoods Law challenged in *Cervantes* related not to the WIC vendor management program or the licensing of residential youth care facilities, but to weapons.[44] Because the entire act

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[31] *Associated Builders & Contractors*, 610 N.W.2d at 301.

[32] *Hammerschmidt*, 877 S.W.2d at 98; Akin v. Dir. of Revenue, 934 S.W.2d 295 (Mo. 1996) (en banc); Carmack v. Dir., Mo. Dep't. of Agric., 945 S.W.2d 956 (Mo. 1997) (en banc); Fust v. Attorney Gen., 947 S.W.2d 424 (Mo. 1997) (en banc); Mo. Health Care Ass'n v. Attorney Gen., 953 S.W.2d 617 (Mo. 1997) (en banc); Stroh Brewery Co. v. State, 954 S.W.2d 323 (Mo. 1997) (en banc); Nat'l Solid Waste Mgmt. Ass'n v. Dir., Dept. of Natural Res., 964 S.W.2d 818 (Mo. 1998) (en banc); St. Louis Health Care Network v. State, 968 S.W.2d 145 (Mo. 1998) (en banc); Corvera Abatement Tech., Inc. v. Air Conservation Comm'n, 973 S.W.2d 851 (Mo. 1998) (en banc); C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322 (Mo. 2000) (en banc).

[33] *See* Appendix II.

[34] Fuehrmeyer v. City of Chicago, 311 N.E.2d 116 (Ill. 1974).

[35] People v. Cervantes, 723 N.E.2d 265 (Ill. 1999); People v. Wooters, 722 N.E.2d 1102 (Ill. 1999); People v. Reedy, 708 N.E.2d 1114 (Ill. 1999); Johnson v. Edgar, 680 N.E.2d 1372 (Ill. 1997).

[36] *See Illinois Legislators Try to Come to a Compromise on the Safe Neighborhoods Act* (National Public Radio broadcast, Dec. 15, 1999) (transcript available on LEXIS) [hereinafter *Legislators Compromise*]; *Republicans Feud*, *supra* note 15.

[37] 723 N.E.2d 265 (Ill. 1999).

[38] *Id.* at 266.

[39] *Id.*

[40] It appears that severability was argued only on the motion for rehearing, which the court denied. *Id.* at 274 (McMorrow, J., dissenting upon denial of rehearing).

[41] *Cervantes*, 723 N.E.2d at 270.

[42] *Id.* at 270–71.

[43] *Id.* at 270.

[44] *Id.* at 266 (describing indictment on gunrunning charge).

was ruled unconstitutional, however, the defendant's gunrunning charge was dismissed. In fact, prosecutors were "forced to dismiss" firearms charges against numerous defendants.[45] Five years after initial passage of the Safe Neighborhoods Law, the Illinois legislature found itself sharply divided on the merits of reenacting the gun control provisions.[46] The measure has not been reenacted even though the Governor called a special session of the legislature for that purpose.[47]

The Safe Neighborhoods Law exemplifies one consistent thread among recent procedural challenge cases: major changes were introduced into the challenged bills very late in the legislative process. This type of legislative procedure runs directly counter to the open, rational, and deliberative model the constitutional restrictions contemplate.[48] Bills enacted in a hasty, apparently deceptive, or ill-considered process thus seem to invite procedural challenges. To return to *Cervantes*, the original Senate bill, relating to community service sentencing, was amended in the House so as to replace its entire contents with new provisions, now described as the "Safe Neighborhoods Law."[49] The Senate refused to concur with the House amendment.[50] A conference committee was formed, and that body deleted the entire House amendment and substituted another entirely new bill, 157 pages long and containing three components.[51] That version then passed the Senate and the House and was signed by the governor.[52] Similarly, in a Missouri case, *St. Louis Health Care Network v. State*,[53] a substitute bill was offered on the last day of the legislative session for a bill originally relating to the Missouri Family Trust.[54] The substitute bill contained provisions relating to nonprofit corporations, charitable gift annuities, and same-sex marriages.[55] In both cases, the timing and scope of the changes raised suspicion.

A court's description of the legislative procedure leading to passage of the bill at issue sometimes indicates that the court's willingness to overturn the law is based on a suspicion that the process was tainted. For

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[45] *Republicans Feud*, *supra* note 15; *see also* Bob Chiarito, *Experts Predict Raft of Appeals in Wake of 'Safe Neighborhoods' Ruling*, CHI. DAILY L. BULL., Jan. 20, 2000, at 1 (stating that over 2,600 weapons convictions would be affected by the *Cervantes* ruling).

[46] *Republicans Feud*, *supra* note 15; *Legislators Compromise*, *supra* note 36.

[47] *See* Aaron Chambers, *Court Rejects Rehearing of 'Safe Neighborhoods Law' Ruling*, CHI. DAILY L. BULL., Jan. 31, 2000, at 1 (stating that the law has not been reenacted because legislators cannot agree on gun provisions).

[48] *See* Williams, *supra* note 1, at 798; Popkin, *supra* note 7, at 553–54.

[49] *Cervantes*, 723 N.E.2d at 268.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] 968 S.W.2d 145 (Mo. 1998) (en banc).

[54] *Id.* at 146. The Missouri Family Trust is intended to "encourage[ ], enhance[ ], and foster[ ] . . . the provision of medical, social, or other supplemental services for persons with a mental or physical impairment." MO. REV. STAT. § 402.199 (2000).

[55] *St. Louis Health Care Network*, 968 S.W.2d at 146. The law was invalidated for violation of the clear title requirement. *Infra* notes 170–173 and accompanying text.

example, the Maryland Court of Appeals described the "transmogrifi[cation]" of a one-page bill concerning a specific tax into "lengthy emergency legislation" extending to government ethics and county taxing authority.[56] Similarly, the Supreme Court of Appeals of West Virginia explained how a bill on thoroughbred racing became "an omnibus bill which encompassed authorization for all agency rules considered that year."[57] In *National Solid Waste Management. Ass'n v. Director, Department of Natural Resources*,[58] the Missouri Supreme Court described a more subtle, but no less important, last-minute change:

> Two days before the end of the 1995 legislative session, the House of Representatives tacked onto the tail-end of the 31-page Senate Bill 60 . . . an amendment . . . that . . . expanded the subject of the bill from one that originally encompassed only "solid waste management" to one encompassing both "solid waste management" and "hazardous waste management."[59]

The court described these practices as exactly those the constitutional procedural limitations are designed to prevent.[60]

Recognizing that state courts are beginning to review procedural challenges more rigorously, this Article attempts to provide guidance for the resolution of such cases. Part I examines the history, purposes, and standards of original purpose, single subject, and clear title restrictions, using Missouri's provisions as examples. Part I also identifies paradigmatic cases of each of the procedural violations with the hope of more sharply differentiating the three claims.

Parts II through V present a case study of ten Missouri cases decided since 1994, supplemented with notable cases from other states. Part II begins with a brief description of the Missouri cases. These cases together address all three of the constitutional restrictions, and do so in more depth and variety than do the recent cases of any other single state. As such, they constitute a compact yet well-developed body of law for analysis. Part II concludes by presenting a preliminary assessment of the Missouri Supreme Court's analysis of these claims.

Part III uses the Missouri cases as a basis from which to develop a framework for analysis of original purpose, single subject, and clear title claims. The proposed analytical framework is tested against cases re-

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[56] Porten Sullivan Corp. v. State, 568 A.2d 1111, 1114 (Md. 1990).

[57] Kincaid v. Mangum, 432 S.E.2d 74, 77 (W. Va. 1993). The court also noted that the bill did not set out the rules in full, but rather referred legislators to the state register for the contents of the rules. *Id.* at 78.

[58] 964 S.W.2d 818 (Mo. 1998).

[59] *Id.* at 819; *see also* Migdal v. State, 747 A.2d 1225, 1232 (Md. 2000) (holding that an act that protected individuals from being appointed as resident agents and which protected certain companies from derivative suits violated the single subject restriction).

[60] *Solid Waste Mgmt.*, 964 S.W.2d at 820.

cently decided in Missouri and other states. In most cases, the proposed analysis would mandate the result actually reached. The proposed analysis, however, may provide greater clarity to guide the decision of future cases. In a few cases, it would mandate a different result.

Part IV briefly discusses the particular bill versions relevant to the analysis of each claim. It argues that certain violations cannot be proven if the court looks only at the version of the bill finally passed.

Finally, Part V discusses potential remedies, concluding that severance of the offending provisions is the proper remedy under some, but not all, circumstances. As the *Cervantes* case illustrates, consideration of the remedy is necessary to strike an appropriate balance between competing interests: enforcement of the constitutional restrictions, on one hand, and deference to the legislature's policy choices, on the other.

I. THE CONSTITUTIONAL REQUIREMENTS

This Part defines the requirements of original purpose, single subject, and clear title rules and discusses the historical bases of, and purposes served by, each. The three procedural requirements are related in that they are parts of a comprehensive constitutional design to control the legislative process.[61] Moreover, the three provisions all were adopted at around the same time,[62] and all reflect suspicion of, and disillusionment with, the legislative process.[63] But the requirements themselves, and the

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[61] *See* Williams, *supra* note 1, at 798 (describing the inclusion, in "virtually all state constitutions," of a "wide range of limitations on state legislative processes"); Popkin, *supra* note 7, at 553–55 (describing the adoption of procedural and substantive requirements to discourage private interest legislation).

[62] *See* Williams, *supra* note 1, at 798. Williams confirms that the types of procedural limitations discussed here were not found in the earliest state constitutions. *Id.* at 798. In Missouri, article III, section 21 (original purpose) dates back to the Constitution of 1875 (as article IV, sections 24, 25, and 26), while article III, section 23 (single subject and clear title) dates back to the Constitution of 1865 (as article IV, section XXXII). Similarly, many states adopted these procedural limitations in the last half of the nineteenth century. *See, e.g.*, ALA. CONST. art. IV, § 2 (single subject and clear title limitations were adopted in 1875); *id.* § 19 (original purpose limitation was adopted in 1875); COLO. CONST. art. V, § 21 (single subject and clear title limitations were adopted in 1876); *id.* § 17 (original purpose limitation was adopted in 1876); MICH. CONST. art. IV, § 24 (all three provisions were originally codified in 1850 as MICH. CONST. of 1850, art. VI, §§ 20, 25); MONT. CONST. art. V, § 11(3) (single subject and clear title provisions were adopted in 1889); *id.* § 11(1) (original purpose provision was adopted in 1889); PA. CONST. art. III, § 3 (single subject and clear title limitations were adopted in 1874); *id.* § 1 (original purpose rule was adopted in 1874); WYO. CONST. art. 3, § 24 (single subject and clear title rules were adopted in 1889); *id.* § 20 (original purpose rule was adopted in 1889). By contrast, Texas adopted single subject and clear title provisions in 1845, TEX. CONST. art. III, §§ 35(a), 35(b), and added the original purpose rule in 1876, *id.* § 30.

[63] *See* State v. Miller, 45 Mo. 495 (1870) (observing that provisions were "designed to strike down a most vicious and corrupt system which prevailed in our legislative bodies"); Jack L. Landau, *The Intended Meaning of "Legislative Intent" and Its Implications for Statutory Construction in Oregon*, 76 OR. L. REV. 47, 86 (1997) (describing state constitutional amendments in the nineteenth century); LAWRENCE M. FRIEDMAN, A HISTORY OF

purposes they serve, are distinct.[64] As such, each rule calls for its own test for compliance, depends on the consideration of a particular version of the bill, and raises distinct concerns with respect to remedies. As a first step, this Article attempts to outline the rationales for each requirement, using paradigmatic cases of each violation in order to provide context for the analytical discussion that follows in Part III.[65]

A. Original Purpose

Missouri's original purpose provision is typical. It reads in pertinent part:

> No law shall be passed except by bill, and *no bill shall be so amended in its passage through either house as to change its original purpose.* Bills may originate in either house and be amended or rejected by the other. Every bill shall be read by title on three different days in each house.[66]

By its text, section 21 not only establishes the original purpose rule, but also implies a limitation of the rule and hints at the rule's underlying rationale. The text makes clear that the original purpose rule does not prohibit amendments to a bill during the course of its consideration and passage. In fact, it explicitly permits either house to amend bills originating in the other house.[67] The Missouri Supreme Court has indicated that "Article III, § 21 was not designed to inhibit the normal legislative processes, in which bills are combined and additions necessary to comply with the legislative intent are made."[68] At least one other state agrees that the original purpose rule should not be applied in such a way as to "unduly hamper the legislature."[69]

In essence, the original purpose rule is "designed to prevent the enactment of . . . statutes in terms so blind that legislators themselves . . . [would fail] to become apprised of the changes in the laws."[70] The final

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AMERICAN LAW 122 (1985) (describing scandals leading to the perception that legislatures were captive to special interests); J. WILLARD HURST, THE GROWTH OF AMERICAN LAW 37–38 (1950) (describing early 19th-century hostility to the legislative process).

[64] *See* Williams, *supra* note 1, at 799 (noting that there are important differences among constitutional limitations on legislative procedures).

[65] The single subject and clear title rules are considered together because they are generally contained in the same constitutional provision. *See infra* note 82.

[66] MO. CONST. art. III, § 21 (emphasis added).

[67] *Id.* I assume that the power of either house to amend bills from the other house necessarily includes the lesser power of either house to amend its own bills.

[68] Stroh Brewery Co. v. State, 954 S.W.2d 323, 326 (Mo. 1997) (en banc) (quoting Blue Cross Hosp. Serv., Inc. of Mo. v. Frappier, 681 S.W.2d 925, 929 (Mo. 1984) (en banc)).

[69] Barclay v. Melton, 5 S.W.3d 457, 459 (Ark. 1999).

[70] Lincoln Credit Co. v. Peach, 636 S.W. 2d 31, 38 (Mo. 1982) (en banc) (quoting State v. Ludwig, 322 S.W.2d 841, 847 (Mo. 1959) (en banc)); *see also* Billis v. State, 800 P.2d

sentence of section 21 supports this rationale. It provides for the reading by title of each bill on three different days in each house.[71] The rule protects the legislative process by allowing bills to be read and monitored by title alone. That is, a legislator is entitled to read bills as originally introduced and to decide, on that basis, how extensively to monitor each bill's progress. Legislators are assured that the purpose of a bill will not have changed dramatically following its introduction. This same reasoning serves to provide adequate notice to members of the public who wish to monitor pending legislation.

The original purpose rule also reinforces the deadline for introduction of new bills by preventing legislators from disguising new bills as amendments to existing bills.[72] Accordingly, the original purpose rule is concerned with *changes* in content of the bill. By aiding legislators in monitoring hundreds of bills introduced in each legislative session, the original purpose rule helps legislators to represent the desires of their constituents.

Though only a few of the recent cases involve original purpose claims, the outcomes are instructive.[73] In *Barclay v. Melton*,[74] a bill that "had as its sole purpose the creation of a tax credit for dependents" was amended by deleting all of the provisions contained in the introduced version and replacing them with new contents.[75] As passed, the bill "assess[ed] a tax surcharge against . . . residents of [certain] school districts."[76] The Arkansas Supreme Court concluded that the change from a tax credit to a tax surcharge was a change in the bill's original purpose.[77]

401, 428 (Wyo. 1990) (stating that the goal of the original purpose rule is "to preclude last-minute, hasty legislation and to provide notice to the public of legislation under consideration") (quoting Anderson v. Oakland County Clerk, 353 N.W.2d 448, 455 (Mich. 1984)).

[71] MO. CONST. art. III, § 21.

[72] *See* 1 SINGER, *supra* note 9, § 9.05, at 580. In Missouri, article III, section 25 provides that new bills cannot be introduced after the 60th day of the session. *See infra* note 272 and accompanying text. Illinois lawmakers reportedly have adopted a new strategy following the *Cervantes* decision: the introduction of some 800 "shell bills." The "shell bills" are left blank until later amended in "any way [lawmakers] see fit." *Numerous Interpretations, supra* note 14, at 1. This strategy may succeed because the Illinois Constitution lacks an original purpose clause. *See* Appendix I.

[73] *See* Appendix II. In only two cases did the court find a violation.

[74] 5 S.W.3d 457 (Ark. 1999).

[75] *Id.* at 459.

[76] *Id.* at 460.

[77] *Id.* The only original purpose challenge ever sustained by the Missouri Supreme Court involved a similar change. In *Allied Mutual Insurance Co. v. Bell*, 185 S.W.2d 4, 6 (Mo. 1945), a bill originally introduced to eliminate the deduction of premiums paid for reinsurance was changed so as to establish a tax on premium receipts. In both cases, the change in the bill had the effect of enacting the opposite result—essentially changing from a tax decrease to a tax increase.

Changes less extreme than this about-face seem not to trigger invalidation on original purpose grounds.[78] *Advisory Opinion No. 331*[79] appears to be unusual in this regard. There, the Alabama Supreme Court ruled that a bill whose original purpose was "to make appropriations for the ordinary expenses of . . . the government" was unconstitutionally altered so as to change its original purpose when provisions limiting the powers of government officials to make necessary expenditures were added.[80] According to the court, the purpose of the bill changed "from one of making general appropriations . . . to one of . . . repealing and changing other provisions of law . . . ."[81] This bill represents a more subtle change. As finally passed, it contained two contradictory elements: provisions authorizing expenditures and provisions limiting the same expenditures. This case adds credence to the notion that a change in direction is fundamental in establishing an original purpose violation.

B. Single Subject and Clear Title

In most states, the single subject and clear title rules are combined in one section of the constitution.[82] The combined rule is commonly phrased: "[n]o bill shall contain more than *one subject*, which shall be *clearly expressed* in its title."[83] In some states, a bill must embrace "one subject, and matters properly connected therewith."[84] Exceptions are commonly made for certain types of bills,[85] such as "general appropria-

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[78] For example, although the Missouri Supreme Court found no violation, this Article considers *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322 (Mo. 2000) (en banc), a good example of an original purpose violation. The bill, as introduced, concerned the definition of a particular position on a transportation commission. *Id.* at 325. As finally passed, the bill included additional provisions relating to employment in transportation agencies, as well as provisions authorizing cities and counties to regulate billboards. *Id.* Given the dramatic change in scope of the bill, it is difficult to accept the conclusion that the purpose of this bill did not change. Even if we accept (as the court did) that the bill's subject is "transportation" and that billboards are "fairly relate[d]" to that subject, *id.* at 328, the facts of the case still suggest that an original purpose violation occurred. The introduction of the billboard provisions came when the bill "was being taken up for the third reading," long after the constitutional deadline for introduction of new measures had passed. *Id.* at 325. Legislators who read the original bill, and thereafter monitored it by title, would have had no reason to suspect the enormous change in the scope and objectives of the bill. Thus, this Article argues that the amendment pertaining to billboards runs afoul of the original purpose rule. *See infra* notes 223–229 and accompanying text.

[79] 582 So. 2d 1115 (Ala. 1991).

[80] *Id.* at 1117–18 (relying on the bill's title for a description of its original purpose).

[81] *Id.* at 1118.

[82] 1A SINGER, *supra* note 9, § 17.01, at 1–2; *see also, e.g.*, MD. CONST. art. III, § 29 ("[E]very law . . . shall embrace but one subject, and that shall be described in its title."); N.Y. CONST. art. 3, § 15 ("No private or local bill . . . shall embrace more than one subject, and that shall be expressed in the title.").

[83] MO. CONST. art. III, § 23 (emphasis added). The text of this section is unchanged from the 1875 Constitution, where it appeared as article IV, section 28.

[84] IOWA CONST. art. III, § 29.

[85] 1A SINGER, *supra* note 9, § 17.01, at 1 (describing exceptions in 15 states for reve-

tion bills, which may embrace the various subjects and accounts for which moneys are appropriated,"[86] and bills revising or codifying the law.[87] It is well-established that even when combined, the single subject/clear title provision sets forth two independent requirements—that a bill have only one subject, and that the bill's title clearly express that subject.[88] The common phrasing of the rule suggests that clear title analysis cannot proceed until the subject of the bill has been determined and found to be "single."[89]

1. Single Subject

Two reasons are thought to support the single subject requirement: the prevention of logrolling[90] and the preservation of a meaningful role for the governor.[91] Simply stated, the single subject rule exists "to secure to every distinct measure of legislation a separate consideration and decision, dependent solely upon its individual merits."[92] One leading com-

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nue bills, appropriations bills, and codification acts).

[86] MO. CONST. art. III, § 23.

[87] *See, e.g.*, ALASKA CONST. art. II, § 13 ("Every bill shall be confined to one subject unless it is . . . one codifying, revising, or rearranging existing laws."); ILL. CONST. art. 4, § 8(d) ("Bills, except bills . . . for the codification, revision, or rearrangement of laws, shall be confined to one subject."); IND. CONST. art. 4, § 19 ("An act, except an act for the codification, revision or rearrangement of laws, shall be confined to one subject . . . ."); LA. CONST. art. 3, § 15(A) ("Every bill, excepting . . . bills for the rearrangement, codification, or revision of a system of laws, shall be confined to one subject."); *see also Ex parte* Coker, 575 So. 2d 43, 48–49 (Ala. 1991) (opinion of Almon, J., on application for rehearing) (discussing the codification exception to the single subject rule).

[88] *See* Corvera Abatement Tech., Inc. v. Air Conservation Comm'n, 973 S.W.2d 851, 861 (Mo. 1998) (en banc) ("two distinct limitations"); Patrice v. Murphy, 966 P.2d 1271, 1274 (Wash. 1998) ("two separate prohibitions"); Utilicorp United, Inc. v. Iowa Util. Bd., 570 N.W.2d 451, 455 (independent but closely related requirements); Md. Classified Employees Ass'n v. State, 694 A.2d 937, 942 (two distinct but related requirements); McIntire v. Forbes, 909 P.2d 846, 853 (Or. 1996) (separate but related requirements); *see also* Ruud, *supra* note 7, at 391 (stating that single subject and clear title provisions, though linked in a single amendment, "have independent operation; independent historical bases; and separate purposes"); 1A SINGER, *supra* note 9, § 17.01, at 2 (stating that the two "independent provisions serv[e] distinct constitutional purposes").

[89] *Cf. McIntire*, 909 P.2d at 853 (stating that the rule "sets distinct requirements for the body of an act, the title of the act, and the relationship between the body and the title").

[90] Logrolling is the "practice of procuring diverse and unrelated matters to be passed as one 'omnibus' through the consolidated votes of the advocates of each separate measure, when perhaps no single measure could have been passed on its own merits." 1A SINGER, *supra* note 9, § 17.01, at 2. Single subject cases are replete with references to logrolling and omnibus bills. *See, e.g.*, People v. Cervantes, 723 N.E.2d 265, 274 (Ill. 1999); Associated Builders & Contractors v. Ventura, 610 N.W.2d 293, 299 (Minn. 2000); Ohio Acad. of Trial Lawyers v. Sheward, 715 N.E.2d 1062, 1098 (Ohio 1999); Brower v. State, 969 P.2d 42, 69 (Wash. 1998); *Patrice*, 966 P.2d at 1274 (Wash. 1998); State *ex rel.* Tomasic v. Unified Gov't of Wyandotte County, 955 P.2d 1136, 1165 (Kan. 1998); *Md. Classified Employees Ass'n*, 694 A.2d at 943; Beagle v. Walden, 676 N.E.2d 506, 507 (Ohio 1997); Bayh v. Ind. State Bldg. & Constr. Trades Council, 674 N.E.2d 176, 179 (Ind. 1996); *McIntire*, 909 P.2d at 854; Kincaid v. Mangum, 432 S.E.2d 74, 76 (W. Va. 1993).

[91] *See* Hammerschmidt v. Boone County, 877 S.W.2d 98, 102 (Mo. 1994) (en banc).

[92] Ruud, *supra* note 7, at 390 (quoting Minnesota v. Cassidy, 22 Minn. 312, 322

mentator observed, "limiting each bill to a single subject" allows legislators to "better grasp[ ] and more intelligently discuss[ ]" the issues presented by each bill.[93] Without the rule, the danger is that "several minorities [may combine] their several proposals as different provisions of a single bill and thus consolidat[e] their votes so that a majority is obtained for the omnibus bill where perhaps no single proposal . . . could have obtained majority approval separately."[94]

Furthermore, the single subject rule protects the governor's veto prerogative by "prevent[ing] the legislature from forcing the governor into a take-it-or-leave-it choice when a bill addresses one subject in an odious manner and another subject in a way the governor finds meritorious."[95] The rule is "intended to prohibit [ ] anti-majoritarian tactic[s]."[96] In a word, the single subject rule protects the *decision* of the legislators and governor on each individual legislative proposal.

Hammerschmidt v. Boone County[97] is a classic case of a single subject violation. Two very narrow bills relating to the conduct of elections were combined,[98] and thereafter provisions relating to the form of county governance were added.[99] There was no "rational unity"[100] between the provisions relating to election procedures and those relating to county governance, and no reason except "tactical convenience"[101] for combining them in a single bill. Election procedures and county governance cannot be reconciled as parts of any single subject. No title could be written to express a single subject incorporating both of these elements.

Another good example is *People v. Cervantes*,[102] an Illinois case. A bill originally relating to community service sentencing was amended several times during the course of its consideration.[103] As passed, the bill expanded the offenses for which a minor can be tried as an adult, permitted longer sentences for felonies committed in furtherance of the ac-

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(1875)).

[93] Ruud, *supra* note 7, at 391.

[94] *Id.* at 391; *see also* Catalano, *supra* note 2, at 79.

[95] *Hammerschmidt*, 877 S.W.2d at 102.

[96] Catalano, *supra* note 2, at 79. Courts also suggest that the single subject rule facilitates deliberation. *See, e.g.*, People v. Reedy, 708 N.E.2d 1114, 1120 (Ill. 1999). Ruud notes that the purpose of facilitating orderly deliberation, however, "relates to legislative procedure; [these rules do] not aim to eradicate devices designed to pervert the rule of majority vote but rather to eliminate rambling, discursive deliberations." Ruud, *supra* note 7, at 391. If the single subject rule were designed only to facilitate deliberation, it "could have been left to the legislative rules to treat." *Id.* at 391.

[97] 877 S.W.2d 98 (Mo. 1994) (en banc).

[98] The court apparently assumed that the subjects of these two original bills were fairly related to each other, so that the combined bill contained a single subject—elections. *Id.* at 99. This assumption seems correct.

[99] *Id.* at 100.

[100] Ruud, *supra* note 7, at 411.

[101] *Id.* at 411.

[102] 723 N.E.2d 265 (Ill. 1999).

[103] *Id.* at 268–69.

tivities of a gang, amended sentences for driving while intoxicated, adjusted sentences for drug offenses, and amended various other sentencing provisions.[104] All of these provisions were found to be related to the amended bill's subject matter, neighborhood safety.[105] Portions of the bill relating to the licensing of youth correctional facilities and welfare program vendor fraud, however, were held to relate to other subjects unconnected with neighborhood safety.[106]

2. Clear Title

Two distinct purposes support the clear title requirement.[107] Most importantly, the requirement "is designed to assure that the people are fairly apprised . . . of the subjects of legislation that are being considered in order that they have [an] opportunity of being heard thereon."[108] Secondarily, by requiring the title to express the whole subject of the bill,[109] the rule "defeats surprise within the legislative process"[110] and prohibits a legislator from "surreptitiously inserting unrelated amendments into the body of a pending bill."[111] These two purposes reflect a widespread concern with special interest legislation in the nineteenth century.[112] The clear title rule, properly understood, safeguards openness and honesty in the legislative process and facilitates public participation.

There are two common variations of clear title violations: overly broad, "amorphous"[113] titles and under-inclusive titles.

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[104] *Id.* at 269.

[105] *See id.* at 270.

[106] *Id.* at 271–73.

[107] *See* Porten Sullivan Corp. v. State, 568 A.2d 1111, 1118 (Md. 1990) (stating that the goals of single subject and clear title rules "are related [but] can also be quite distinct").

[108] *Hammerschmidt*, 877 S.W.2d at 102; *see also* 1A SINGER, *supra* note 9, § 18.02, at 27 (stating that the primary purpose of the clear title rule is to ensure reasonable notice to legislators and the public); State *ex rel.* Lambert v. County Comm'n, 452 S.E.2d 906, 915 (W. Va. 1994); Patrice v. Murphy, 966 P.2d 1271, 1274 (Wash. 1998); La. Seafood Mgmt. Council v. Louisiana Wildlife & Fisheries Comm'n, 715 So. 2d 387, 394 (La. 1998); McCoy v. VanKirk, 500 S.E.2d 534, 546 (W. Va. 1997); Tenn. Mun. League v. Thompson, 958 S.W.2d 333, 338 (Tenn. 1997).

[109] *See* Natural Solid Waste Mgmt. Ass'n v. Dir., Dept. of Natural Res., 964 S.W.2d 818, 821 (Mo. 1998) (en banc) (discussing "commonality" of subjects in a bill).

[110] *Hammerschmidt*, 877 S.W.2d at 101; *see also* Utilicorp United, Inc. v. Iowa Util. Bd., 570 N.W.2d 451, 455 (Iowa 1997); *Lambert*, 452 S.E.2d at 915; Associated Builders & Contractors v. Ventura, 610 N.W.2d 293, 300 (Minn. 2000); Hussey v. Chatham County, 494 S.E.2d 510, 511 (Ga. 1998); *Tenn. Mun. League*, 958 S.W.2d at 336.

[111] *Hammerschmidt*, 877 S.W.2d at 101; *see also* 1A SINGER, *supra* note 9, § 18.02, at 27; McGlothren v. E. Shore Family Practice, 742 So. 2d 173, 177 (Ala. 1999); *McCoy*, 500 S.E.2d at 546; Lutz v. Foran, 427 S.E.2d 248, 251 (Ga. 1993).

[112] *See* Popkin, *supra* note 7, at 553 (suggesting that the concern with private interest legislation is behind all state constitutional restrictions on legislative procedure).

[113] St. Louis Health Care Network v. State, 968 S.W. 2d 145, 147 (Mo. 1998) (en banc) (referring to the title: "related to certain incorporated and non-incorporated entitites").

St. Louis Health Care Network v. State[114] is a paradigmatic case of an amorphous title so broad that it gave no notice of the contents of the bill.[115] This Article classifies *St. Louis Health Care Network* as a clear title case rather than a single subject case precisely because the title is so vague that one cannot discern from it what the bill itself provides. Clear title is properly the basis on which this case was resolved.

National Solid Waste Management Ass'n v. Director, Department of Natural Resources[116] is a paradigmatic case of an under-inclusive title. The title—"relating to solid waste management"—accurately described the subject of most of the bill's provisions, but failed to give any hint of its application to hazardous waste.[117] As a result, the title failed to provide notice of a portion of the bill's subject. The court assumed that the bill's two aspects, solid waste and hazardous waste, could be reconciled as part of a broader subject,[118] but because the title failed to express the full extent of the bill's subject, the court invalidated the law.[119]

The preceding analysis demonstrates that the original purpose, single subject, and clear title provisions, though related, are distinct. The original purpose requirement allows legislators to monitor vast numbers of bills by reference to their titles, confident that each bill's original purpose will remain reasonably constant throughout the process of consideration. It also secures adequate time for the consideration of each proposal by preventing late amendments that drastically alter the bill. The single subject rule assures that legislators and the governor can make a choice based upon the merits of legislation on each subject by preventing them from having to swallow unrelated bitter provisions with the sweet. Finally, the clear title rule protects the right of the public to know the subjects of legislation being considered and to voice opinions on measures of concern to them, and protects against fraudulent or surreptitious legislation.

II. The Case Study

Missouri's constitution contains typical original purpose,[120] single subject,[121] and clear title[122] provisions. Litigation challenging statutes for alleged violations of these procedural requirements has long been a sta-

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[114] *Id.*

[115] *Id.* at 145. This bill also suffered from a single subject violation. *Id.* at 146 (describing provisions relating to venue, terms of office for directors of nonprofit corporations, charitable gift annuities, and same-sex marriage).

[116] 964 S.W.2d 818 (Mo. 1998) (en banc).

[117] *Id.* at 821–22.

[118] *See id.*

[119] *Id.*

[120] Mo. Const. art. III, § 21.

[121] *Id.* § 23.

[122] *Id.* § 23.

ple of the Missouri Supreme Court's docket.[123] But the flow of cases has recently swelled: since 1994, the Missouri Supreme Court has decided no fewer than ten.[124] These ten decisions serve as a case study for analysis of the three procedural challenges. Because nearly every state's constitution contains similar procedural requirements, this Article's analysis is relevant not only for Missouri, but for most other states as well. This Part presents a chronology of the ten recent cases discussed throughout the Article. It then offers a preliminary assessment of the Missouri Supreme Court's analysis.

A. Chronology

In 1994, the Missouri Supreme Court decided *Hammerschmidt v. Boone County*.[125] *Hammerschmidt* was the first case to invalidate a statute on procedural grounds in three decades.[126] As such, the case marks a turning point in the Missouri Supreme Court's posture toward, and analysis of, procedural claims. The plaintiff in *Hammerschmidt* challenged a 1993 statute that authorized certain counties, including Boone County, to adopt county constitutions.[127] The new statute also authorized the county to call an election for the purpose of having voters approve the initiation of the process of framing a county constitution.[128] These provisions governing the drafting of county constitutions were inserted by adoption of an amendment on the house floor after two separate bills had been combined into a single piece of legislation and reported out of committee.[129] Missouri House Bill 551 originally dealt with voter registration by mail.[130] Missouri House Bill 552 originally concerned mail ballots.[131] According to its title, the bill as finally passed "relat[ed] to elections."[132] The plaintiff claimed single subject and clear title violations.[133] The Missouri Supreme Court held that the bill contained two subjects: elections and

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[123] *See, e.g.*, State v. Miller, 45 Mo. 495, 497 (Mo. 1870) (noting that the single subject and clear title provision "has of late been several times before this court"); State *ex rel.* Normandy Sch. Dist. v. Small, 356 S.W.2d 864, 876 (Mo. 1962) (Storckman, J., dissenting) (describing a series of school cases alleging single subject and clear title violations); National Solid Waste Mgmt. Ass'n v. Dir., Dept. of Natural Res., 964 S.W.2d 818, 819 (Mo. 1998) (en banc) (noting that the court has had "numerous opportunities" in recent years to examine such claims).

[124] *See supra* note 32. Appendix II indicates which of the three claims were raised and decided in each case.

[125] 877 S.W.2d 98 (Mo. 1994).

[126] *See supra* note 27.

[127] *Hammerschmidt*, 877 S.W.2d at 100 (describing H.B. 551, 87th Gen. Assem., 1st Sess. (Mo. 1993), and H.B. 552, 87th Gen. Assem., 1st. Sess. (Mo. 1993)).

[128] *Id.*

[129] *Id.* at 99.

[130] *Id.*

[131] *Id.*

[132] *Id.*

[133] *Id.* at 100–01.

county governance.[134] The court severed the portion relating to county governance and allowed the rest of the statute to stand.[135]

In 1996, the court decided *Akin v. Director of Revenue*,[136] a case that raised original purpose and single subject claims.[137] The bill at issue was called the "Outstanding Schools Act."[138] Most of its provisions established new educational programs, but the bill also amended tax rates and deductions.[139] The tax provisions raised revenue to pay for only the new educational programs.[140] The court found no original purpose or single subject violation.[141]

The following year, the court decided four cases. *Carmack v. Director of Missouri Department of Agriculture*[142] raised only a single subject claim.[143] This case involved a lengthy bill "relating to economic development."[144] The bill included a provision regarding the compensation formula when the state veterinarian orders the slaughter of diseased livestock.[145] Closely following *Hammerschmidt*'s analysis, the court found that the bill contained more than one subject.[146]

Fust v. Attorney General[147] involved a tort reform bill intended to "assure[ ] just compensation for certain person's [sic] damages."[148] In addition to modifying tort liability and insurance rules and trial procedures in cases involving punitive damages, the bill established a "tort victims' compensation fund."[149] The latter provision was challenged on single subject and clear title grounds.[150] The court found no violation.[151]

In *Missouri Health Care Ass'n v. Attorney General*,[152] the court considered a bill regulating long-term care.[153] The Department of Social Services was to enforce most of the bill's provisions and was mentioned in the bill's title. One provision, however, regulated advertising by nursing homes, and was to be enforced by the Attorney General.[154] The plain-

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[134] *Id.* at 103.
[135] *Id.* at 104.
[136] 934 S.W.2d 295 (Mo. 1996).
[137] *Id.* at 297.
[138] *Id.*
[139] *Id.*
[140] *Id.* at 302.
[141] *Id.*
[142] 945 S.W.2d 956 (Mo. 1997).
[143] *Id.* at 958.
[144] *Id.* at 957.
[145] *Id.*
[146] *Id.* at 961.
[147] 947 S.W.2d 424 (Mo. 1997).
[148] *Id.* at 427.
[149] *Id.*
[150] *Id.*
[151] *Id.* at 428.
[152] 953 S.W.2d 617 (Mo. 1997).
[153] *Id.* at 619.
[154] *Id.* at 623.

tiff raised original purpose, single subject, and clear title claims.[155] The court held that the bill contained two subjects, violating the single subject requirement.[156]

The final case decided in 1997 posed the question of how the procedural requirements apply when a bill results from a combination of bills introduced separately. *Stroh Brewery Co. v. State*[157] involved amendments to liquor control laws.[158] The final bill was a culmination of three measures which originally regulated separate, and relatively narrow, aspects of the sale of alcoholic beverages. Prior to passage, a provision was added requiring beer sold in Missouri to bear a label indicating where it was produced.[159] The plaintiff claimed original purpose and single subject violations.[160] The court found no violation.[161]

In 1998, the court decided three more cases. *National Solid Waste Management Ass'n v. Director, Department of Natural Resources*[162] involved a bill regulating solid waste management, a matter defined as distinct from hazardous waste,[163] but a last-minute amendment extended certain provisions of the bill to apply to hazardous waste as well.[164] The bill's title, however, only referred to solid waste.[165] The plaintiff raised all three procedural challenges.[166] The court found a clear title violation, holding that the title was fatally under-inclusive.[167] The court then "accomplished" severance "by restricting the application of the statute"[168] to solid waste, of which the title gave adequate notice.[169]

The next case, *St. Louis Health Care Network v. State*,[170] was also decided on clear title grounds, although the plaintiff raised all three claims.[171] The bill's title, "relating to certain incorporated and non-incorporated entities," was held to be so broad as to be meaningless and incapable of expressing any single subject.[172] Because the bill's title gave

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[155] *Id.* at 619.
[156] *Id.* at 623.
[157] 954 S.W.2d 323 (Mo. 1997).
[158] *Id.* at 324-25.
[159] *Id.* at 325.
[160] *Id.* at 324.
[161] *Id.*
[162] 964 S.W.2d 818 (Mo. 1998).
[163] *Id.* at 820.
[164] *Id.*
[165] *Id.*
[166] *See id.* at 819.
[167] *Id.* at 821.
[168] *Id.* at 822. Severance "by application" occurs when, because the provisions are not capable of severance in fact, the court "limit[s] [the] statute to less than all of the applications called for by its own terms." 2 SINGER, *supra* note 9, § 44.15, at 542. Some courts disapprove of this practice because it "amounts to judicial amendment" of the statute. 2 SINGER, *supra* note 9, § 44.15, at 542.
[169] *Solid Waste Mgmt.*, 964 S.W.2d at 822.
[170] 968 S.W.2d 145 (Mo. 1998).
[171] *Id.* at 146.
[172] *Id.* at 148.

no meaningful notice of its contents, the entire bill was held unconstitutional.[173]

Corvera v. Abatement Technologies, Inc. v. Air Conservation Comm'n[174] involved another bill that combined three measures that had been introduced separately.[175] The three original bills related to asbestos abatement, underground storage tanks, and water well drillers.[176] The combined bill's title said it related to "environmental control."[177] The plaintiff challenged the bill on single subject and clear title grounds.[178] The court found both requirements to be satisfied and upheld the statute.[179]

Finally, in March 2000, the court decided *C.C. Dillon v. City of Eureka.*[180] Throughout the legislative process, the bill in *Dillon* related, according to its title, to "transportation."[181] Originally, the bill was very narrow, creating a legislative oversight committee on transportation and defining a single position on a transportation commission.[182] As passed, the bill contained several provisions relating to organizational structure, salaries and employment in the Department of Transportation, and also allowed cities and counties to regulate billboards.[183] The bill was challenged on original purpose, single subject, and clear title grounds.[184] The court found no violation.[185]

B. Preliminary Assessment

Together, these ten cases provide a compact case study for analysis of original purpose, single subject, and clear title claims while simultaneously offering multiple variations on each claim. Their facts involve a variety of legislative topics as well as several common legislative practices.

This case study suggests several preliminary conclusions. First, the presumption of statutory validity still appears to hold, although its effect is not as overwhelming as in the past. Second, litigants generally raise more than one of the procedural claims (and often all three)—perhaps because they cannot differentiate among them under the recent cases. Finally, among the three claims, courts are more likely to find single

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[173] *Id.* at 149.
[174] 973 S.W.2d 851 (Mo. 1998).
[175] *Id.* at 860.
[176] *Id.*
[177] *Id.*
[178] *Id.*
[179] *Id.* at 862.
[180] 12 S.W.3d 322 (Mo. 2000).
[181] *Id.* at 329.
[182] *See* S. 883, 89th Gen. Assem., Reg. Sess. (Mo. 1998) (as introduced).
[183] *Dillon*, 12 S.W.3d at 326.
[184] *Id.* at 324–25.
[185] *Id.* at 328–30.

subject and clear title violations. The Missouri Supreme Court appears reluctant to decide original purpose claims, as its posture in the original purpose cases has been exceedingly deferential.

One cannot help but wonder why the Missouri Supreme Court has heard so many procedural challenges. This Article offers two explanations. First, the court's still-deferential posture encourages (at least indirectly) litigation of these claims.[186] The court did sustain procedural challenges in *Hammerschmidt*, *Carmack*, *Missouri Health Care Ass'n*, *Solid Waste Management*, and *St. Louis Health Care Network*. As a result, the court's posture in procedural challenge cases appears less deferential than it was as recently as two decades ago.[187] But in other cases, particularly *Stroh* and *Dillon*, the court found no violation despite considerable evidence of a hasty process, including last-minute alterations of the bills. The court in these latter two cases adopted an extremely deferential posture. The Missouri cases may bear out the conclusion that lax enforcement leads to an increased number of violations.[188]

The second reason for the increased number of claims is that the ambiguities of recent decisions of the Missouri Supreme Court may encourage litigants to bring suit. The court's inability to articulate meaningful standards stems primarily from its failure to separate the three claims properly, particularly with respect to the underlying rationales they are designed to serve.[189] For example, *Hammerschmidt* describes the single subject rule as a "corollary" to the original purpose rule, and notes that "[t]ogether, these constitutional provisions serve 'to facilitate orderly legislative procedure.'"[190] The opinion goes on to list five purposes collectively served by the three constitutional requirements: to facilitate understanding and discussion of the issues presented by each bill; to prevent logrolling; to defeat surprise in the legislative process; to provide fair notice to the public of the subjects of legislation being considered;

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[186] *See* Associated Builders & Contractors v. Ventura, 610 N.W.2d 293, 301 (Minn. 2000) (asserting that "the more deference shown by the courts . . . , the bolder become those who would violate [the constitutional restrictions]" and implying that challenges would follow) (quoting State *ex. rel.* Mattson v. Kiedrowski, 391 N.W.2d 777, 785 (Minn. 1986) (Yetka, J., concurring)). *See generally* Chambers, *supra* note 14 (indicating that the Illinois single subject rule had been "dormant," causing lawmakers to think "the high court had given them the leeway to build larger bills"); Williams, *supra* note 1, at 800 (suggesting that increased judicial enforcement could result in greater legislative compliance).

[187] In 1984, one judge charged, "it is time this Court developed meaningful standards to evaluate legislation challenged under §§ 21 and 23." Westin Crown Plaza Hotel Co. v. King, 664 S.W.2d 2, 7 (Mo. 1984) (Welliver, J., dissenting) (observing that the court had not sustained a procedural challenge in 20 years).

[188] *See Associated Builders & Contractors*, 610 N.W.2d at 301; Chambers, *supra* note 14 (stating that the increased number of cases stems from the legislature's recent tendency toward "carelessly enacting bigger bills").

[189] *Cf.* Chambers, *supra* note 14 (asserting that the increased number of single subject challenges in Illinois stems from the Illinois Supreme Court's failure to "state[ ] clearly what standard the rule demands").

[190] 877 S.W.2d at 101 (quoting Ruud, *supra* note 7, at 391).

and to preserve intact the governor's veto power.[191] The opinion fails to articulate which of these purposes is fulfilled by each provision.

This Article contends that much of the difficulty evident in the recent cases flows directly from the *Hammerschmidt* opinion. To some extent, its muddling of the claims is attributable to rhetorical imprecision. The words "subject" and "purpose," for example, are sometimes used interchangeably in ordinary speech.[192] That the Missouri Supreme Court has done likewise in its opinions is part of the problem. The *Hammerschmidt* opinion discusses all three constitutional limitations—original purpose, single subject, and clear title—even though the plaintiff raised only the latter two, and the court decided only the single subject claim. In a particularly confusing passage, the court stated: "To 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*."[193] Subsequent cases continued to treat distinct claims as if they were the same. In *Akin*, for example, the court's discussion of the original purpose claim seems to rely on a single subject analysis.[194] More recently, the court asserted that its analysis of germaneness for an original purpose claim could serve without further elaboration to decide whether all provisions of the bill fairly related to each other for purposes of a single subject claim.[195] The failure to classify claims rigorously is a large part of the confusion.[196]

In *Hammerschmidt*, the court compounded rhetorical imprecision in analyzing the three claims by outlining an analytical framework not called for by the case itself and unsupported by the constitution and the

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[191] *Id.* at 101–02. This passage is essentially repeated in *Stroh*, 954 S.W.2d at 325–26.

[192] *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1847 (1981). The third definition of purpose links it with subject: "A subject under discussion." *Id.*

[193] *Hammerschmidt*, 877 S.W.2d at 102 (emphasis added). *Fust* contains an equally mystifying passage describing how violations of the clear title mandate may occur:

> First, the *subject* may be so general or amorphous as to violate the *single subject requirement*. Second, the *subject* may be so restrictive that a particular provision is rejected because it falls outside the scope of the *subject*.

Fust v. Attorney Gen., 947 S.W.2d 424, 428 (Mo. 1997) (en banc) (citation omitted).

[194] Akin v. Dir. of Revenue, 934 S.W.2d. 295, 302 (Mo. 1996) (en banc) (finding no original purpose violation because "each provision of the bill related to education").

[195] C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322, 329 (Mo. 2000) (en banc).

[196] As an example, one commentator incorrectly stated that "every single subject case which has reached the level of appeal has been on the basis of an alleged violation of the clear title provision." Stearley, *supra* note 30, at 47 (citing *Mo. Health Care Ass'n*, *Fust*, *Hammerschmidt*, and Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824 (Mo. 1990)). To the contrary, *Missouri Health Care Ass'n* and *Hammerschmidt* were decided on the subject claim, but the court used the title to determine subject. *Hammerschmidt*, 877 S.W.2d at 102–03; Mo. Health Care Ass'n v. Attorney Gen., 953 S.W.2d 617, 622-23 (Mo. 1997) (en banc). *Fust* decided both claims. *Fust*, 947 S.W.2d at 428–29. *Initiative Process*, 799 S.W.2d at 826, decided a subject claim regarding a proposed constitutional amendment, for which there is no clear title requirement. *See* MO. CONST. art. III, § 50.

court's precedents.[197] Most notably, the court relied too heavily upon the bill's title to determine its subject. Subsequent cases attempted to follow *Hammerschmidt*'s prescriptions, but, not surprisingly, *Hammerschmidt*'s rhetorical imprecision and analytical weakness have led to confusion surrounding the proper test for compliance with the constitutional requirements.[198] Precise analytical separation of the original purpose, single subject, and clear title provisions is a difficult task, but it is essential to the proper resolution of such cases.

III. THE PROPER ANALYSIS

This Part provides a framework for analyzing original purpose, single subject, and clear title claims. The most salient characteristic of this framework is that it treats each of the constitutional procedural restrictions independently, and links the test for compliance with each to the specific objectives it is designed to serve. Thus, a critical step in the analysis of original purpose claims is to distinguish purpose from subject and to focus on changes during the legislature's consideration of the bill. In analyzing single subject claims, it is essential to examine the provisions of the bill to determine their relationship to each other, not merely to the bill's title. For clear title claims, it is necessary to examine the title in relation to the body of the bill to assess whether adequate notice was provided. To frame the discussion, this Part presents in more detail the Missouri Supreme Court's analysis of each claim. It then outlines the test for compliance, taking account of the purposes each particular constitutional prohibition is designed to serve.[199] This Part also applies the proposed analysis to selected recent cases in order to test its validity.

A. Original Purpose

Missouri's original purpose rule prohibits a bill from being amended during the course of its consideration "so . . . as to change its original purpose."[200] The Missouri Supreme Court has been extremely deferential in its approach to original purpose claims.[201] In the ten cases under dis-

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[197] First, the court concludes that a bill's subject includes all matters that "fall within or reasonably relate" to its "general core purpose." 877 S.W.2d at 102. Then the court looks to the title of the bill to determine the bill's purpose or subject. *Id.* Finally, if the title is "amorphous," the court turns to the "organization of the constitution" for guidance in determining what is a single subject. *Id.* at 102 n.3.

[198] *See infra* notes 313–315.

[199] At least one court has recognized that decisions must take account of the reasons behind the rule. *See* Porten Sullivan Corp. v. State, 568 A.2d 1111, 1121 (Md. 1990). Many of the opinions recite the reasons behind the constitutional restrictions. *See supra* notes 70, 90–91, and 109–111.

[200] MO. CONST. art. III, § 21. For similar provisions in other states, see Appendix I.

[201] The annotations to article III, section 21 reveal only one case in which the court invalidated a statute on original purpose grounds: *Allied Mutual Insurance Co. v. Bell*, 185

cussion, the court reached the original purpose claim only three times, in *Akin*, *Stroh*, and *Dillon*. Each time, the court found that no change in the bill's purpose had occurred. Original purpose challenges were raised, but not decided, in *Missouri Health Care Ass'n*, *Solid Waste Management*, and *St. Louis Health Care Network*. Highest state courts have decided only three original purpose claims since 1990,[202] finding violations in two of them.[203]

In *Akin*, the subject of the bill at issue, according to the court, was "education."[204] Because there is no requirement that the bill's *purpose* be expressed in the title, the bill's purpose must be discerned from its provisions. Part of the bill was identified as the "Outstanding Schools Act,"[205] which reduced class size, created the "A+ Schools Program," increased teacher training, and upgraded vocational and technical education, among other things.[206] The challenged provision allowed specified new tax revenues to be "transfer[red] monthly from general revenue . . . to the outstanding schools trust fund established in . . . this act."[207] The court held that the tax measure was part and parcel of the purpose of the act: to improve education in Missouri's schools.[208] Though the tax provision affected general taxes,[209] its purpose was not to raise general revenue but to finance the specific educational programs established by the bill.[210] The addition of the tax provision did not change the purpose of Missouri Senate Bill 380.

Stroh and *Dillon* are more problematic. The *Stroh* opinion fails to identify the purpose of the bill independently of its title.[211] The court appeared to characterize the purpose of the bill as one to amend the liquor control law.[212] Accordingly, the court stated that the test was whether the

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S.W.2d 4 (Mo. 1945). *See* MO. ANN. STAT., MO. CONST. art. III, § 21 (West 2000). Judge Price, dissenting in *Solid Waste Management*, made the opposite point that the court's duty is to defer to the legislature, upholding legislation unless it "'clearly and undoubtedly' violates the constitutional limitation." Nat'l Solid Waste Mgmt. Ass'n v. Dir., Dep't of Natural Res., 964 S.W.2d 818, 823 (Mo. 1998) (en banc). Judge Price authored the court's opinions in *Stroh* and *Dillon*, the two original purpose cases this Article characterizes as most deferential. However, both of these decisions were unanimous, suggesting that the court shares Judge Price's deferential approach, at least in the original purpose cases.

[202] Barcklay v. Melton, 5 S.W.3d 457 (Ark. 1999); Advisory Opinion No. 331, 582 So. 2d 1115 (Ala. 1991); Billis v. State, 800 P.2d 401 (Wyo. 1990).

[203] *Barcklay*, 5 S.W.3d at 459–60; *Advisory Opinion No. 331*, 582 So. 2d at 1117–18.

[204] Akin v. Dir. of Revenue, 934 S.W.2d 295, 301 (Mo. 1996) (en banc). The opinion later identifies the purpose of the bill as relating to "education." *Id.* at 302.

[205] *Id.* at 297.

[206] S. 380, 87th Gen. Assem., 1st Sess., § 1 (Mo. 1993).

[207] *Id.* § A.1.

[208] *Akin*, 934 S.W.2d at 302.

[209] Specifically, the measure increased the corporate income tax rate and limited the deduction for federal income taxes paid by individuals and corporations. *Id.* at 297.

[210] *Id.* at 302 (discussing the single subject claim).

[211] *Stroh*, 954 S.W.2d at 326 (noting that the "title stated the purpose of the bill").

[212] *Id.* at 325.

bill's provisions were germane to that purpose.[213] The bill at issue in *Stroh* was a combination of three separately introduced bills that concerned various aspects of the sale of alcoholic beverages.[214] The combined bill went forward as House Committee Substitute for Senate Bill 933.[215] As introduced, Missouri Senate Bill 933 contained only one section, relating to auctions of vintage wine.[216] As finally passed, the substitute bill "'relat[ed] to intoxicating beverages.'"[217] It repealed eight statutory sections and enacted nine new sections.[218] The new sections involved a variety of matters concerning intoxicating beverages, including the challenged provision on beer labeling.[219] The court ruled that neither Missouri Senate Bill 933's original title nor its original text restricted the bill's original purpose to the regulation of vintage wine auctions.[220] The court stated that "[f]urther language of specific limitation, such as 'for the sole purpose of'" would be required to support an original purpose claim.[221] Because all versions of the bill "amended chapter 311 . . . the purpose of [the bill] [was] consistent throughout its legislative history."[222] The court's analysis confuses purpose with subject and gives short shrift to the limitation that article III, section 21 imposes.

Dillon continues along the same path of extreme deference in analyzing original purpose. There, a bill "relating to transportation" was amended to include provisions allowing cities and counties to regulate billboards more restrictively than does the state.[223] The bill originally repealed one section relating to the chief highway engineer[224] and enacted in its place two new ones pertaining to "the position of the chief executive officer . . . of the highways and transportation commission."[225] As passed, it repealed five sections and added seven new ones.[226] The new provisions concerned accounting for transportation project funds; highway patrol members' salary increases; the organization of the Missouri Department of Transportation; audits of the highway commission; and—the provision at issue—city and county regulation of billboards.[227] Reciting the test that new matter must be "germane" to the bill's original pur-

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[213] *Id.* at 326.
[214] *Id.* at 324–25.
[215] *Id.* at 325.
[216] *Id.* at 326.
[217] *Id.* at 327.
[218] *Id.* at 325.
[219] *Id.*
[220] *Id.* at 326.
[221] *Id.*
[222] *Id.*
[223] *Dillon*, 12 S.W.3d at 325.
[224] *See* S. 883, 89th Gen. Assem., Reg. Sess. (Mo. 1998) (referring to the repeal of Mo. REV. STAT. § 226.040 (Supp. 1997)).
[225] *Dillon*, 12 S.W.2d at 326; Mo. S. 883 (repealing Mo. REV. STAT. §§ 43.020, 71.228, 226.005, 226.040, 226.140).
[226] *Dillon*, 12 S.W.2d at 326.
[227] *Id.*

pose, the court found the requirement satisfied because billboards "have been inextricably linked to highway transportation by federal and state legislation."[228] This linkage between state and federal legislation demonstrated that "these subjects are germane to one another."[229] The very statement of the court's conclusion in *Dillon* begs the question of a change in original purpose. Indeed, the provision at issue permitted local, not state, regulation of billboards, making the purported connection between billboards and highway transportation irrelevant. In both *Stroh* and *Dillon*, the court adopted an overly deferential posture, assumed that purpose and subject were the same, and examined only the bills' titles. Proper analysis of compliance with the original purpose limitation requires a reexamination of all three of these elements.

1. Deferential Posture

The Missouri Supreme Court appears reluctant to decide original purpose claims.[230] This reluctance probably reflects a desire to avoid examining the entire legislative process, as would be required in order to decide an original purpose claim. Doing so could appear to offend the dignity of the legislature as a coordinate branch of government.[231] Origi-

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[228] *Id.* at 327. In *Solid Waste Management*, Judge Price suggested a similar role for federal environmental legislation to establish a "close relationship" between hazardous and solid waste. 964 S.W.2d at 824 (Price, J., dissenting); *cf.* Figinsky, *supra* note 29, at 382–83 (describing the use of federal/state cooperation in welfare programs to establish a "nexus" between child support enforcement provisions and AFDC). Comments on the propriety of using federal law in this manner are beyond the scope of this Article. For present purposes, it is sufficient to note that the original purpose of the bill at issue in *Dillon* did not in fact extend to all aspects of transportation.

[229] *Dillon*, 12 S.W.3d at 328.

[230] In *Missouri Health Care Ass'n*, *Solid Waste Management*, and *St. Louis Health Care Network*, the court passed over this claim to decide the case on either single subject or clear title grounds. In each of these cases, the court's recitation of the facts suggests that an original purpose violation might have occurred. *See Mo. Health Care Ass'n*, 953 S.W.2d at 619–20; *Solid Waste Mgmt.*, 964 S.W.2d at 819; *St. Louis Health Care Network*, 968 S.W.2d at 146. To be fair, the court sometimes advances a reason for taking up one of the other challenges instead. In *Solid Waste Management*, the court assumed arguendo that the bill's original purpose encompassed all of the provisions eventually passed, although the court held that the bill contained a clear title violation. 964 S.W.2d at 820. In *St. Louis Health Care Network*, the court first took up the state's first point on appeal, which happened to be a clear title argument. 968 S.W.2d at 147. In *Missouri Health Care Ass'n*, the court simply announced that the "dispositive issue" was the single subject claim. 953 S.W.2d at 622. These reasons do not eliminate suspicion that the court prefers to avoid the original purpose inquiry.

[231] It is well established that judges overstep their bounds when they pass judgment on the value or worthiness of the legislature's purpose. *See* KENT GREENAWALT, STATUTORY INTERPRETATION: 20 QUESTIONS 270 (1999) ("[E]xcept when statutory terms invite judges to appraise issues from a moral perspective, judges should rarely rely explicitly on their own moral views in statutory cases.") Thus, courts often decline to delve too deeply into the legislative process. *See* Unified Sch. Dist. No. 229 v. State, 885 P.2d 1170, 1173 (Kan. 1994) ("[T]he wisdom or desirability of the legislation is not before us."); Keyserling v. Beasley, 470 S.E.2d 100, 101 (S.C. 1996) ("[T]he determination of the social and eco-

nal purpose analysis also would be frustrated, to some degree, by the lack of published legislative history in Missouri and many other states. Nevertheless, the original purpose claim is of equal import with any other constitutional claim.[232] Thus, the court should not shy away from deciding an original purpose claim when the facts suggest that a change in original purpose has occurred.[233]

The Missouri Supreme Court should recognize that an overly deferential posture is no more faithful to separation of powers principles than is an overly active one.[234] The people, through the constitution, have established limitations on the powers of all branches of government, including the legislative branch. Original purpose provisions are important limitations on the legislative process, born of deep distrust of corrupt legislative practices.[235] That distrust has not abated,[236] and the procedural

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nomic desirability of [the statute] is not before this Court."). Courts also likely recognize that the "purpose" of a measure includes a wide range of considerations, including the need to introduce measures of interest to constituents, even if the legislator believes nothing will come of them. *See* MIKVA & LANE, *supra* note 9, at 27 (stating that "legislators will introduce legislation in response to almost any demand from constituents, lobbyists, or other interest groups"). *See generally* Michael A. Rebell & Robert L. Hughes, *Efficacy and Engagement: The Remedies Problem Posed by* Sheff v. O'Neil*—and a Proposed Solution*, 29 CONN. L. REV. 1115, 1132–34 (1997) (describing, in the context of institutional reform litigation, the state courts' heightened "sensitivity to the constitutional authority of coordinate branches of the government" and linking deferential posture to the fact that most state court judges are elected).

[232] The Missouri Supreme Court has not given this provision equal weight. The court has shown a willingness to engage in a rigorous analysis of single subject and clear title claims. The same cannot be said for its original purpose analysis in *Stroh* and *Dillon*, where there were substantial changes in the objectives of the legislation prior to passage. *See supra* notes 157–161 and accompanying text; *supra* notes 180–185 and accompanying text.

[233] The courts of other states seem to share Missouri's distaste for examining the legislative process. *See, e.g.*, Bayh v. Ind. State Bldg. and Constr . Trades Council, 674 N.E.2d 176, 179 (Ind. 1996) (announcing that "political proceedings behind the passage of an Act are not the proper consideration of a judicial body").

[234] *Cf.* Franklin v. Gwinnett County Pub. Sch., 503 U.S. 60, 72 (1992) (responding to a separation of powers argument that the court should not infer a private cause of action by saying that "selective abdication of the sort advocated here would harm separation of powers principles in another way, by giving judges the power to render inutile causes of action authorized by Congress through a decision that no remedy is available").

[235] Williams, *supra* note 1, at 798–99; Popkin, *supra* note 7, at 553–54. Term limits express a similar distrust. *See* Linda Cohen & Matthew Spitzer, *Term Limits*, 80 GEO. L.J. 477, 480 (1992) (describing the view of proponents of term limits that legislators are unresponsive to voters, most interested in their own careers, and beholden to special interests); Einer Elhauge, *Are Term Limits Undemocratic?*, 64 U. CHI. L. REV. 83, 88 (1997) (describing the argument for term limits that long legislative service makes legislators "corrupt, arrogant, cynical, unprincipled, resistant to reform, sympathetic to special interest groups, and out of touch with their electorate"); Adrianne G. Threatt, *The Impact of Term Limits on the Congressional Committee System*, 6 GEO. MASON L. REV. 767, 771 (1998) (describing the desire of term limits proponents to eliminate the voice of special interests and shift the focus from local to national interests).

[236] Term limits, added in recent years to many state constitutions, are the most recent expression of the need to keep the legislature in check. *See* Threatt, *supra* note 235, at 767 (stating that "many states" adopted term limits in the 1990s); Editorial, *Scaring Mississippi Voters*, WALL ST. J., Oct. 30, 1995, at A18 (listing 23 states that adopted term limits be-

limitations have not been repealed.[237] The legislature acts illegitimately when it ignores constitutional limitations on its procedures. The constitution implicitly directs the court to enforce these limitations, as litigation is the only way for the people to challenge statutes enacted through faulty processes. In such cases, the court's duty is not to defer to the legislative process but to enforce the terms of the constitution.[238] This argument in no way contravenes the notion that courts should not second-guess legislatures. The notion there is one of deference to *results*.[239] Courts are not empowered to substitute their own wisdom for that of the legislature. This Article speaks of deference only to *process*, and argues that deference to a flawed process is improper.

2. *Distinguishing Purpose from Subject*

A second problem in the Missouri original purpose cases is the court's failure to distinguish purpose from subject. In *Akin*, for example, the court stated that the test for original purpose claims is whether the bill as passed includes "matters not germane to the object of the legislation *or unrelated to its original subject*."[240] The court held that "the purpose of S. 380 was consistent throughout, that purpose being a bill relating to education."[241] Education is not a "purpose" but a "subject." Purpose and subject are not the same. According to one dictionary, "purpose" is "an end or aim" or "an object, effect or result aimed at [or] intended."[242]

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tween 1990 and 1995); Elhauge, *supra* note 235, at 85 (stating that 24 states had adopted term limits); U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 917 n.39 (1995) (Thomas, J., dissenting) (noting that 16 states had adopted some form of term limits prior to 1994 and that 6 more states did so in the 1994 elections).

[237] *See* Williams, *supra* note 1, at 800 (noting that limits on legislative procedure have survived and "continue to reflect important policies relating to the nature of the deliberative process").

[238] See State *ex rel.* Ohio Acad. of Trial Lawyers v. Sheward, 715 N.E.2d 1062, 1100 (Ohio 1999) (indicating that non-enforcement of a constitutional restriction on legislative procedure "would be no less than an abdication" of its duty) (internal quotation marks and brackets omitted); Porten Sullivan Corp. v. State, 568 A.2d 1111, 1118 (Md. 1990) (holding that despite the general posture of deference to the legislature, procedural restrictions are "still part of our Constitution . . . [and] not to be treated as a dead letter"); Kincaid v. Mangum, 432 S.E.2d 74, 82 (W. Va. 1993) ("[T]he question of whether the legislature might perform a task more efficiently if it did not have to follow the constitution is essentially irrelevant. Since the constitution applies, the question of whether efficiency takes primacy over other goals must be taken to have been answered by our constitutional framers.") (quoting State v. A.L.I.V.E. Voluntary, 606 P.2d 769, 778–79 (Alaska 1980)) (internal quotation marks and brackets omitted); Patrice v. Murphy, 966 P.2d 1271, 1274 (Wash. 1998) (holding that the court's role is to "vouchsaf[e]" "serious constitutional interests").

[239] *See supra* note 231.

[240] 934 S.W.2d at 302 (emphasis added). According to the court, the appellant characterized the alleged constitutional defect as a "chang[e] [in] subjects during the legislative process." *Id.* at 297.

[241] *Id.*

[242] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1847 (1981). Only the third definition of purpose links it with subject: "A subject under discussion." *Id.*

"Subject," on the other hand, is "something that forms a basis (as for action, study, [or] discussion): as . . . something concerning which something is said or done: a thing . . . treated of."[243] Perhaps simpler, "subject" corresponds to grammatical subject and to the "subject term" of a logical proposition;[244] "purpose" corresponds to the grammatical or logical predicate.[245] The Supreme Court of Appeals of West Virginia recognized this distinction when it commented that the legislature "undertakes to legislate upon a particular subject for the accomplishment of a certain object."[246]

This confusion is understandable: the bill titles themselves identify subjects but not purposes. There is, of course, no requirement that the purpose be expressed in the bill's title. And in Missouri, as in most states, there is no published legislative history indicating how sponsors or drafters have characterized their purposes.[247] Thus, the only way to determine a bill's purpose is by a careful reading of its provisions. The Missouri Supreme Court's opinions seldom attempt to identify the purpose as this Article defines it, preferring simply to substitute the subject recited in the bill's title. For example, the court has referred to "education"[248] and "transportation"[249] as "purposes." Plainly, these are *subjects*, i.e., matters treated in bills. A bill's *purpose* is to achieve some end or result with respect to its subject.

More important than dictionary definitions in distinguishing purpose from subject is the constitution itself. Missouri's constitution contains distinct limitations concerning the purpose and subject of a bill.[250] The limitations are contained in two separate sections adopted ten years apart. Having adopted the single subject limitation in 1865,[251] the people of Missouri apparently believed additional restrictions on the legislative process were necessary. The original purpose limitation was adopted in 1875[252] and should be understood to have separate meaning and effect. The single subject rule primarily protects legislators and the governor in the moment of final decision on a bill.[253] It does so by prohibiting the bundling together of unrelated provisions to force the passage of provi-

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[243] *Id.* at 2275.

[244] *Id.*

[245] *Id.* at 1786 (defining "predicate" as "something that is affirmed or denied of the subject in a proposition in logic").

[246] Kincaid v. Mangum, 432 S.E.2d 74, 80 (W. Va. 1993) (quoting Simms v. Sawyers, 101 S.E. 467 (W. Va. 1919)).

[247] MORRIS L. COHEN, ROBERT C. BERRING, & KENT C. OLSON, HOW TO FIND THE LAW 189 (1989) (stating that there is "far less legislative history information available on the state level" than there is for federal statutes).

[248] *Akin*, 934 S.W.2d at 302.

[249] *Dillon*, 12 S.W.3d at 328.

[250] *See* MO. CONST. art. III, §§ 21, 23.

[251] *See supra* note 62.

[252] *See supra* note 62.

[253] *See supra* Part I.B.1.

sions a legislator or governor abhors along with those she favors. The original purpose rule ensures that the result sought remains more or less constant (though the details may vary). This restriction goes well beyond the simple prohibition on multiple subjects by limiting the legislature's options even with respect to a single subject.

The leading treatise suggests that original purpose provisions help enforce other constitutional limitations on the legislature.[254] For example, an original purpose provision prevents legislators from evading the constitutional limit on the time for introduction of bills by substituting entirely new content into bills already introduced.[255] In fact, several of the recent Missouri cases have involved the insertion into pending bills of new legislative proposals after the deadline for introducing new bills had passed.[256] The original purpose limitation must be understood as going beyond the single subject rule to create an independent restriction on the legislative process.

The opinions, however, reveal that in cases presenting both original purpose and single subject challenges, the Missouri Supreme Court simply performs the same analysis twice. Consider *Dillon*: "Our analysis in determining that billboards are *germane* to transportation [the original purpose analysis] also supports our determination ... that billboards *fairly relate* to, or are *naturally connected* with, transportation [the single subject test]."[257] The court is correct in that "germane," "related," and "connected" all mean about the same thing. "Germane" means "having a close relationship."[258] Almost indistinguishably, "related" means "having relationship: connected by means of an established or discoverable relation."[259] "Connected" means "having the parts or elements logically re-

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[254] *See* 1 SINGER, *supra* note 9, § 9.05, at 580.

[255] An Ohio case illustrates the link between various procedural restrictions. Ohio's constitution contains a typical provision requiring each bill to be considered on three separate days in each chamber. OHIO CONST. art. II, § 15(C). The plaintiffs claimed that a statute was enacted in violation of this provision when the version of the bill finally passed was considered only once in each house. State *ex rel.* Ohio AFL-CIO v. Voinovich, 631 N.E.2d 582, 587 (Ohio 1994). The Ohio Supreme Court ruled that there was no violation of the three-consideration rule provided that the subject matter of the original bill was not "vitally alter[ed]," *id.* at 589, and that the bill passed was not "completely different in content" from the original, *id.* at 588. Though the Ohio constitution does not contain an original purpose provision, the Ohio court implicitly recognized that other procedural restrictions are rendered ineffectual if a bill's content can be changed dramatically, especially near the end of the legislative session. *Id.* at 589.

[256] *See, e.g.*, St. Louis Health Care Network v. State, 968 S.W.2d 145, 146 (Mo. 1998) (describing proposals inserted on the last day of the session); National Solid Waste Mgmt. Ass'n v. Dir., Dept. of Natural Res., 964 S.W.2d 818, 819 (Mo. 1998) (describing proposals inserted two days before the end of the session). The situation appears much the same in other states. *See, e.g.*, Migdal v. State, 747 A.2d 1225, 1226–27 (Md. 2000) (describing numerous changes to a bill during the last days of a session, including "tacking on" to one bill the text of another bill which had been killed in committee the week before).

[257] 12 S.W.3d at 329 (emphasis added).

[258] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 951 (1981).

[259] *Id.* at 1916.

lated."[260] Hence, while the constitution sets out two independent requirements, the Missouri Supreme Court uses an identical test for both. This ignores the substantive distinction between the two and frustrates the constitutional attempt to regulate the legislative process.

The root of the problem is the court's over-reliance on the title of the bill to resolve both original purpose and single subject claims.[261] The court looks first at the title to determine the purpose or subject. With respect to purpose this is an impossible task, for section 21 itself establishes no requirement that the bill's purpose be reflected in its title.[262] In *Stroh*, the Missouri Supreme Court explicitly linked analysis of the original purpose requirement to the bill's title when, in a discussion of bill titles, it stated that "only clear and undoubted language limiting purpose will support an article III, section 21 challenge."[263] The court went on to examine the title of the bill at issue to determine whether its language was so confined.[264] The court reduced analysis of the bill's purpose to the title alone. This analytical framework departs from the court's precedents. In *Lincoln Credit Co. v. Peach*,[265] for example, the court remarked that the title "can be changed without violating Art. III, § 21."[266] It is the purpose itself that must not change.

In determining whether an original purpose violation has occurred, the court should read all the provisions of the bill as introduced, determine the bill's objective, then read all of the provisions of the bill as passed, instead of simply relying on the title. If the overall objective of the bill as passed is consistent with the objective of the bill as introduced, there is no original purpose violation. The proper analysis assigns no role to the title of the bill.

3. Test for Compliance

The real difficulty in original purpose analysis is identifying the appropriate level of generality at which to define the original purpose. Defining purpose at too high a level of generality equates with excessive deference, but defining purpose too narrowly "inhibit[s] the normal legislative process[ ]."[267] The test for original purpose violations asks

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[260] *Id.* at 480.

[261] *See infra* notes 301–331 and accompanying text.

[262] MO. CONST. art. III, § 21. The word "title" appears in section 21 only once, in the provision requiring that each bill be read by title on three different days in each house. *Id.* The reading of bills by title gives the title a practical function, but does not suggest that the title is in any way relevant to the legal analysis of an original purpose claim.

[263] *Stroh*, 954 S.W.2d at 326.

[264] *See id.*

[265] 636 S.W.2d 31 (Mo. 1982).

[266] *Id.* at 38. This passage is quoted in *Akin*, 934 S.W. 2d at 302, suggesting that the departure in *Stroh* is a recent one.

[267] *Stroh*, 954 S.W. 2d at 326.

whether new matters are germane to the original purpose of the bill.[268] This test allows amendments to a bill extending or limiting its scope provided the new matter is germane.[269] By allowing amendments so long as they are germane to the original purpose, this test balances the harms that could be caused by an overly deferential posture towards the legislature against those that could be caused by constant interference with the legislative process.

Some may argue that even this method of characterizing original purpose unduly restricts the legislature. After all, if a legislator has the votes to pass a measure not included in a bill already filed, the court should not stand in the way of passage of that measure.[270] The reply is two-fold. First, legislators have several options for introducing new measures. When introducing bills in the first place, legislators can draft them broadly enough to call for a reasonably expansive definition of their purpose. As the *Stroh* court describes it, the sponsor has a "strategic choice whether to introduce a bill whose broad purpose will accommodate late amendments that may in turn help the bill's chance of passage, or to introduce a narrower bill, protecting the bill from undesired amendments but perhaps lessening its likelihood of passage."[271] The constitution does not require a *narrow* purpose. Holding legislators to the "strategic choice" of drafting a narrow bill rather than allowing a change in purpose does not overstep the court's bounds. Moreover, Missouri legislators can file new bills at any time through the sixtieth day of the legislative session.[272] The constitution allows sufficient flexibility for the legislature to do its work.

Second, if legislators have not taken advantage of those constitutional options during the session, prevention of a non-germane measure's enactment is exactly what the constitution requires. As noted earlier,[273] the addition of the original purpose rule to the Missouri Constitution in 1875 must have been meant to accomplish something beyond what the single subject and clear title rules already required. One theory is that the original purpose rule serves to enforce the constitution's separate limitation on the time when new bills can be introduced.[274] The time limitation seems intended to prevent passage of new measures without sufficient

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[268] *Akin*, 934 S.W.2d at 302.

[269] *See Stroh*, 954 S.W.2d at 326 (citing Lincoln Credit Co. v. Peach, 636 S.W.2d 31, 38 (Mo. 1982)).

[270] *Cf.* Patrick D. Hughes, *Revisiting the Single-Subject Rule*, CHI. DAILY L. BULL., Feb. 9, 2000, at 15 ("The bills got the votes, and they were signed; that should be that.") (referring to single subject violations.).

[271] 954 S.W.2d at 326 (focusing on the title rather than provisions of the bill to define purpose).

[272] MO. CONST. art. III, § 25; *see also* 1 SINGER, *supra* note 9, § 9.04, at 579 (describing variations of this rule in other states).

[273] *See supra* note 252 and accompanying text.

[274] *See supra* notes 254–256 and accompanying text.

time for consideration. The danger of less-than-careful consideration is the same whether it occurs with respect to a new bill or new contents inserted into a bill introduced earlier for other purposes.

Returning to the Missouri cases, a reading of the original bill involved in *Akin* reveals that it was designed to establish a variety of specific programs to improve education. The bill as introduced did not purport to treat all or even most aspects of the subject of "education."[275] Fairly read, its purpose was to create specific programs to improve public education. Defining purpose to match the scope of the provisions actually introduced does not eviscerate section 21's provision that bills may be amended during the course of consideration. Many details of the programs could be changed. Different programs designed to achieve the same results as those originally proposed could be substituted without changing the purpose of the bill and without violating section 21. In fact, the court held that a tax measure, which was a new matter altogether, could later be added to the bill as a mechanism for funding the programs without violating the original purpose rule because it was germane to the implementation of the programs delineated in the original bill. But other matters, such as a change in the age until which children are required to attend school, would be off-limits because they fall outside the original purpose of the bill.[276]

Dillon is at the other end of the spectrum. There, the original bill was extremely limited.[277] While the bill title announced its subject to be "transportation," the bill itself only set out to change the definition of a particular position on a transportation-related commission. Though the court accepted the argument that the bill's original purpose related to the broad subject of transportation,[278] the bill's provisions simply bely that conclusion.[279] The broadest purpose fairly attributable to this bill as filed

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[275] Missouri Senate Bill 380, 87th Gen. Assem., 1st Sess. (Mo. 1993), establishes a "Commission on Performance," *id.* § 2; calls for statewide curriculum guidelines, *id.* § 3, a statewide assessment system, *id.* § 4, and annual performance bonus awards, *id.* § 8; links school accreditation to tax levy, *id.* § 9; sets criteria for approving teacher training programs, *id.* § 10; adjusts the state aid funding formula, *id. passim*; and provides for the distribution of the proceeds of riverboat gambling to various education funds, *id.* §§ 11–17.

[276] A change in the age until which children are required to attend school would not be permissible even though it is encompassed within the bill's *subject*, education.

[277] S. 883, 89th Gen. Assem., 2d Sess. (Mo. 1998), is a two-page bill that repeals one statutory section and enacts two new sections.

[278] *Dillon*, 12 S.W.3d at 327 (describing the argument that the "bill as introduced pertained only to transportation" and stating that "Dillon's burden, then, is to demonstrate that billboards are . . . not germane to transportation").

[279] As a matter of fact, the Missouri Senate's Web page describes the bill as "establishing accountability provisions for the Department of Transportation." http://www.senate.state.mo.us/98bills/bills/SB883.htm (last visited Nov. 15, 2000). The "Current Bill Summary" states that the conference committee version of the act "contain[s] provisions for accountability for the Missouri Highways and Transportation Commission and the Department of Transportation." *Id.* This description, while not authoritative, strongly suggests that the bill's purpose was not nearly as broad as "transportation." Significantly, the description continues: "Provisions about billboards, the Highway Patrol, the State Auditor,

would be to modify the salaries and terms of employment of persons employed by the Department of Transportation and related boards and commissions and, perhaps, to alter the organizational structure of the department itself.[280] Under this reading, the matters later added to Missouri Senate Bill 883 pertaining to highway patrol salaries and to the organization of the Department of Transportation would be within the original purpose. Those relating to accounting for transportation project funds and to audits of the highway and transportation commission would probably be invalid. The provisions allowing cities and counties to regulate billboards would clearly fall outside the purpose of the bill as originally introduced and are in no way germane to a bill proposing to alter the conditions of employment of state transportation workers.

Stroh is a closer case. The final bill in that case was a combination of three bills originally introduced as separate measures.[281] Combining bills is common and the court approves of this tactic: "Article III, §21 was not designed to inhibit the normal legislative processes, in which bills are combined and additions necessary to comply with the legislative intent are made."[282] The *Stroh* opinion focuses on the fact that all three bills amended portions of chapter 311 of the Missouri Revised Statutes, relating to intoxicating beverages.[283] The provisions of the three original bills suggest that their purposes are best characterized as regulating the employment of persons under twenty-one years of age in selling or handling intoxicating liquor;[284] prohibiting distillers, wholesalers, brewers, and other suppliers from having any financial interest in retail businesses that sell intoxicating liquors and from furnishing any equipment, credit, or property to retail dealers;[285] and regulating auctions of vintage wine.[286] Each of these purposes is narrower than the general subject of intoxicating beverages. The question is how to analyze original purpose in the context of combined bills. Section 21 provides that "*no bill* shall be so

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and contractors are also included." *Id.*

[280] *See* S. 883, § A (repealing MO. REV. STAT. § 226.040 (Supp. 1997) (concerning the appointment of a chief engineer and other employees of the transportation commission) and enacting two new sections, section 226.008 of the Revised Statutes of Missouri (establishing the Joint Committee on Transportation Oversight), and section 226.040 of the Revised Statutes of Missouri (requiring appointment of a director of the Missouri Department of Transportation and other officers of the department)).

Even this reading is arguably much more expansive than the bill itself, but that may be appropriate in order to allow the legislature sufficient leeway to exercise its will. The court has repeatedly held that amendments to the bill may extend or limit its scope; "even new matter is not excluded if germane." Stroh Brewery Co. v. State, 954 S.W.2d 323, 326 (Mo. 1997) (en banc) (citing Lincoln Credit Co. v. Peach, 636 S.W.2d 31, 38 (Mo. 1982)).

[281] *Stroh*, 954 S.W.2d at 324–25.

[282] *Id.* at 326 (quoting Blue Cross Hospital Serv., Inc. of Mo. v. Frappier, 681 S.W.2d 925, 929 (Mo. 1985)).

[283] *Id.* at 327.

[284] H.R. 1470, 88th Gen. Assem., 2d Sess. (Mo. 1996).

[285] S. 814, 88th Gen. Assem., 2d Sess. (Mo. 1996).

[286] S. 933, 88th Gen. Assem., 2d Sess. (Mo. 1996).

amended . . . as to change *its* original purpose."[287] The court focused on Missouri Senate Bill 933, the bill into which the other two bills were combined, and struggled to find a way to hold that its original purpose had not been changed.[288] Missouri Senate Bill 933's original purpose was exceptionally narrow, and the court's conclusion that a bill regulating wine auctions could encompass a beer labeling provision[289] is strained. The better procedure for combined bills would be to permit the original purpose of each bill to survive in the combined bill—essentially adding them together.[290] Doing so would hold the legislature to its original purposes, as the constitution requires, but would also permit the practice of combining bills.[291] In *Stroh*, the combined purpose of the three original bills concerns restrictions on the sale of intoxicating beverages.[292] Each bill attempted to regulate a dangerous aspect of the sale of liquor: the danger that underage persons will have access to liquor; the danger that suppliers will induce sales of their products by providing samples, advertising materials, dispensing fixtures, or other gifts to retailers; and the danger that fraud may occur in auctions of vintage wines. Reading the combined purpose to encompass all of these matters would allow the addition of provisions relating to the issuance or conditions of liquor licenses to stand. But the provision at issue, a trade protection provision relating to labeling of beer sold in Missouri, which was added during floor debate on the combined bill,[293] would fall outside the original purpose because a provision aimed at providing a competitive advantage in the marketplace to Missouri's beer producers is not germane to the original purpose of any of the bills as introduced.

The court has considerable discretion in defining the original purpose, though it must do so by analyzing the original bill's provisions, not merely its title. And the test for germaneness is generous: it is not all that difficult to show a relationship between two provisions, as *Akin*'s holding demonstrates.[294] But the court must enforce section 21 as it would any other constitutional provision. It should not strain to find "germane" additions clearly unrelated to a bill's original purpose under the guise of getting out of the legislature's way.

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[287] MO. CONST. art. III, § 21 (emphasis added).

[288] *Stroh*, 954 S.W.2d at 324–27.

[289] *Id.* at 325 (describing the bill); *id.* at 326 (finding no original purpose violation).

[290] This argument assumes that the combined purposes all relate to a single subject, as they did in *Stroh*.

[291] This proposal might seem to permit logrolling, but that evil is addressed by the single subject rule, not the original purpose rule. Under the proposal, the combined bill would still be required to have a single subject (here, intoxicating beverages) and, for that matter, to have that subject clearly expressed in the bill's title.

[292] 954 S.W.2d at 327.

[293] *Id.* at 325.

[294] *See Akin*, 934 S.W.2d at 302.

B. Single Subject

Article III, section 23 of the Missouri Constitution requires that each bill be limited to one subject.[295] The Missouri Supreme Court has long held article III, section 23 to be mandatory, not discretionary.[296] But procedural limitations are interpreted liberally.[297] As a result, the phrase "one subject" is read broadly, "but not so broadly that the phrase becomes meaningless."[298] The current test for compliance with the single subject rule, articulated in *Hammerschmidt*, has two elements. First, *Hammerschmidt* directs the court to look at the title to determine the bill's subject.[299] This prong departs from the court's precedents by ignoring the bill's provisions. In addition, *Hammerschmidt* looks to the separate headings of the constitution in order to define what constitutes a single subject.[300] This prong is the result of *Hammerschmidt*'s crossing of two lines of cases and is a poor fit for statutes. This section argues that single subject analysis must focus on the bill's provisions, and identifies an alternative external source for assessing single subject violations.

1. Relationship Among Provisions

Although the single subject restriction inherently relates to a bill's contents, recent Missouri Supreme Court opinions focus on the title to measure compliance with the rule. This practice arises, at least in part, from the rhetorical imprecision recounted above. The confusion is compounded by *Hammerschmidt*'s pronouncement that the bill's title determines its subject.[301] This test is a significant divergence from prior case

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[295] MO. CONST. art. III, § 23. Section 23 provides two narrow exceptions not relevant to this Article. The clear title provision of section 23 is discussed in the next section.

[296] *See* Hammerschmidt v. Boone County, 877 S.W.2d 98, 102 (Mo. 1994) (en banc) (citing State v. Miller, 45 Mo. 495 (1870)). Most other states agree. *See, e.g.*, Associated Builders & Contractors v. Ventura, 610 N.W.2d 293, 299 (Minn. 2000); Tenn. Mun. League v. Thompson, 958 S.W.2d 333, 336 (Tenn. 1997); Utilicorp United, Inc. v. Iowa Util. Bd., 570 N.W.2d 451, 454 (Iowa 1997); McIntire v. Forbes, 909 P.2d 846, 846 (Or. 1996); Pierce v. State, 910 P.2d 288, 306 (N.M. 1995); Billis v. State, 800 P.2d 401, 430–31 (Wyo. 1990). Ohio holds the rule to be directory only. State *ex rel.* Ohio Acad. Trial Lawyers v. Sheward, 715 N.E.2d 1062, 1098 (Ohio 1999).

[297] *Hammerschmidt*, 877 S.W.2d at 102; *see also supra* notes 18–27 and accompanying text.

[298] *Hammerschmidt*, 877 S.W.2d at 102.

[299] *Id.*

[300] *Id.* The implication is that a single subject must fall within one of the headings of the constitution.

[301] *Id.* at 102 n.3. This confusion is not unique to Missouri. In Illinois, some of the opinions state that the bill's provisions must relate to each other. *See, e.g.*, People v. Cervantes, 723 N.E.2d 265, 267 (Ill. 1999) ("[A] legislative act violates the single subject rule when the General Assembly includes . . . unrelated provisions that by no fair interpretation have any legitimate relation to one another."). Other opinions require only that all matters included within the enactment "have a natural and logical connection" to a single subject—the subject expressed in the title. Arangold Corp. v. Zehnder, 718 N.E.2d 191, 199 (Ill.

law, which stated that in determining a single subject claim, a court had to decide "whether all provisions of the bill fairly relate to the same subject, have a natural connection therewith or are incidents or means to accomplish its purpose."[302] Moreover, commentators have described the single subject rule as requiring "unity" of subject matter.[303] This description makes clear that the rule is addressed to the provisions of the bill, not the title.[304] Put another way, "there must be some rational unity between the matters embraced in the act."[305]

This test's focus on the provisions of the bill has a long history. In 1870, the Missouri Supreme Court emphasized in *State v. Miller*[306] that the "character of the act was to be determined by its provisions, and not by its title."[307] The *Miller* court was faithful to this test in resolving the case before it, holding that "the *provisions* of the act treat of subjects which have a natural connection."[308]

If section 23 establishes two distinct requirements,[309] then the single subject clause must have a meaning separate from that of the clear title clause which follows it. That is, the single subject rule requires more than that the subject of the bill be expressed in the title. Section 23 by its terms speaks of the bill, not the title. The bill itself has a subject, and the title is a shorthand way of describing that subject for easy reference.[310] In order to appreciate the complexity and scope of the subject, it is neces-

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1999). These divergent standards were the subject of a heated argument between the majority and the dissent in the most recent Illinois case. Premier Prop. Mgmt. v. Chavez, 728 N.E.2d 476, 483 (Ill. 2000) (adopting *Arangold* rule); *id.* at 489 (Harrison, C.J., concurring in part and dissenting in part) (arguing that *Cervantes* controls).

[302] *Hammerschmidt*, 877 S.W.2d at 102 (quoting Westin Crown Plaza Hotel Co. v. King, 664 S.W.2d 2, 6 (Mo. 1984)). Many states articulate the rule this way. *See, e.g., Cervantes*, 723 N.E.2d at 267 ("natural and logical connection"); Associated Builders & Contractors v. Ventura, 610 N.W.2d 293, 300 (Minn. 2000) ("logically connected"); McIntire v. Forbes, 909 P.2d 846, 856 (Or. 1996) ("logical or natural connection").

[303] *See* Ruud, *supra* note 7, at 390; 1A SINGER, *supra* note 9, § 17.02, at 7.

[304] Similarly, the Supreme Court of Oregon recited a test emphasizing that "the provisions of the law" must "relate directly or indirectly to the same subject." McIntire v. Forbes, 909 P.2d 846, 854 (Or. 1996) (quoting State v. Shaw, 29 P. 1028, 1029 (Or. 1892)). Applying this test, the Oregon court declared, requires that the court first "examine the body of the act to determine whether (without regard to an examination of the title) [it] can identify a unifying principle logically connecting all provisions in the act." *Id.* at 856.

[305] Ruud, *supra* note 7, at 411 (quoting State *ex rel.* Test v. Steinwedel, 180 N.E. 865, 868 (Ind. 1932)); *see also In re* Boot, 925 P.2d 964, 971 (Wash. 1996).

[306] 45 Mo. 495 (1870).

[307] *See id.* at 498 (citing People v. McCann, 16 N.Y. 58 (1857)).

[308] *Id.* at 500 (emphasis added).

[309] *See, e.g.*, Carmack v. Dir., Mo. Dep't of Agric., 945 S.W.2d 956, 959 (Mo. 1997) (en banc); *see also supra* notes 82–90 and accompanying text.

[310] *Cf.* 1A SINGER, *supra* note 9, § 18.07, at 47 ("[W]hen a statute is attacked because of duality or plurality of subject matter, the attack is upon the body of the act, not simply on the title."); McIntire v. Forbes, 909 P. 2d 846, 854 (Or. 1996) (stating that the "principal purpose" for the single subject rule is to "guard against logrolling" in the "*body* of an act"); *id.* at 857 (describing the function of the title to "identify and express a unifying principle logically connecting all provisions in the Act").

sary to read the provisions of the bill. Thus, proper analysis of a single subject claim would follow *Miller*'s test.

In its recent cases, the Missouri Supreme Court seems to have abandoned analysis of the bill's provisions in favor of over-reliance on the title to determine whether or not the bill contains a single subject.[311] *Hammerschmidt* appears to be the source of the problem. The *Hammerschmidt* court "conclude[d]" that "[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."[312] The court picked up this theme in *Carmack* and subsequent cases.[313] *Missouri Health Care Ass'n* flatly recites that "the test for whether a bill contains a single subject focuses on [its] title."[314] *Fust* states even more explicitly that "the single subject test is *not* whether individual provisions of a bill relate to each other."[315] *Fust*'s statement exposes *Hammerschmidt*'s error. Article III, section 23 requires precisely that the bill contain a single subject. There is simply no way to make that determination without comparing the bill's provisions to each other.

In subsequent single subject cases, the court has struggled to apply the *Hammerschmidt* test. In *Corvera*, for example, the court determined the subject from the bill's title, "environmental control," and found all of the bill's provisions fairly related to that subject.[316] The *Corvera* case tests this Article's insistence that a bill's subject be measured by its provisions. The bill finally passed was a combination of three separate bills.[317] Its provisions created the Emergency Response Commission—an agency charged with responding to releases of hazardous substances, regulating underground storage tanks, and regulating asbestos abatement projects.[318] A reading of these provisions, particularly those relating to underground storage tanks (a water pollution problem) and asbestos (an

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[311] The Illinois Supreme Court seems to have done likewise in its most recent single subject case. *See* Premier Prop. Mgmt. v. Chavez, 728 N.E.2d 476, 483–84 (Ill. 2000). The majority insists that the only requirement is that the provisions bear a relationship to a single subject, apparently the one expressed in the title. *Id.* The dissent argues that the provisions must relate to *each other* so as to form a single subject. *Id.* at 489–90 (Harrison C.J., dissenting). Similarly, the Supreme Court of Alabama relied on the title to decide a single subject claim in *Town of Brilliant v. City of Winfield*, 752 So. 2d 1192, 1200 (Ala. 1999).

[312] 877 S.W.2d at 102 (citing no authority for this proposition). There is no requirement that the bill's original purpose be expressed in the title. This statement is an example of the Missouri Supreme Court's failure to distinguish purpose from subject. But even if this statement is understood to refer to the expression of the subject in the title, it departs from precedents requiring analysis of the relationship among the bill's provisions.

[313] According to *Carmack*, "*Hammerschmidt* directs that we look first to the [bill's] title to determine its subject." 945 S.W.2d at 959.

[314] 953 S.W.2d 617, 622 (Mo. 1997) (en banc).

[315] 947 S.W.2d 424, 428 (Mo. 1997) (en banc) (emphasis added).

[316] 973 S.W.2d 851, 862 (Mo. 1998) (en banc).

[317] *Id.* at 860 (describing Missouri House Bills 77, 78, and 356, cited *infra* note 349).

[318] *Id.*

air pollution problem), suggests that they are distinct subjects.[319] *Corvera* poses the question of the level of generality at which a subject can no longer be considered "single." The issue is whether "pollution" is a single subject, or whether "water pollution" and "air pollution" are two separate subjects. If they are separate, they can still be harmonized, and the legislature did so by writing the title broadly to encompass both aspects within "environmental control." But the fact that the legislature harmonized the subjects under an umbrella title does not relieve the court of responsibility for determining whether the bill's provisions in fact concern a single subject.[320]

The single subject rule, as noted above, exists primarily to prevent logrolling and to protect a governor's veto. One cannot be sure that the bill at issue in *Corvera* is not an example of logrolling. It could well be that neither the original bill "relating to . . . underground storage tanks"[321] nor the original bill "for the purpose of regulating certain . . . asbestos abatement projects"[322] appeared able to garner a majority to permit passage on its own, but by combining the minority committed to passage of the one with the minority advancing the other, passage of both may have been assured. If so, the combined bill embodies exactly the evil the single subject rule exists to prevent, and should be held invalid. It may be, however, that both bills could have passed separately but were combined to make for more orderly, comprehensive legislation protecting the environment.[323] Such legislation should be held valid. Missouri's lack of recorded legislative history makes it impossible to know what happened in

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[319] I leave aside the question of the bill's creation of a commission to enforce provisions of Missouri and federal law relating to hazardous substances. H.R. 77/78/356, 85th Gen. Assem., 1st Sess. § A (Mo. 1989). The court concluded that substantive provisions and enforcement provisions together constitute a single subject under the "incidents or means" portion of the single subject test. *Corvera*, 973 S.W.2d at 862.

[320] Ironically, the court has implicitly recognized that it is necessary to examine a bill's provisions to determine what the subject is, but it has usually done so in the context of clear title challenges. In other words, the court examines the provisions in order to see whether the title clearly expresses their content for purposes of determining the validity of the title. *See* National Solid Waste Mgmt. Ass'n v. Dir., Dept. of Natural Res., 964 S.W.2d 818, 820 (Mo. 1998) (en banc) (hypothesizing that the subject of the bill could be environmental control); *cf. Mo. Health Care Ass'n*, 953 S.W.2d at 623 n.2 (single subject case hypothesizing that the subject of the bill could be long-term care if the title were revised accordingly). A further irony is the court's admission in *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824 (Mo. 1990) (en banc), a case concerning the single-subject rule for petitions proposing constitutional amendments, that "the Court must make an independent examination of the proposed amendment to determine if there is a discernable single subject among its provisions." *Id.* at 832 (arising under MO. CONST. Art. III, § 50).

[321] H.R. 78, 85th Gen. Assem., 1st Sess. (Mo. 1988).

[322] H.R. 77, 85th Gen. Assem., 1st Sess. (Mo. 1988).

[323] *Cf.* 1A SINGER, *supra* note 9, § 17.02, at 2 (asserting that the single subject rule should not "cause the number of statutes required to effect a purpose to be needlessly multiplied").

this case. Although the single subject rule ordinarily assumes that log-rolling occurred,[324] one cannot say the *Corvera* decision is wrong.

The Missouri Supreme Court's misplaced emphasis on the title as determinative of the subject, however, led to the wrong result in *Dillon*. There, the bill's title, "relating to transportation," never changed, even though new provisions were added during the course of consideration.[325] The court relied on this fact to hold that no single subject violation occurred, even though the final version of the bill included provisions allowing local governments to regulate billboards.[326] The court appeared to reason that because the title remained constant, it necessarily followed that no new subjects were added to the bill.[327] This is a non sequitur.

The Missouri Supreme Court's penchant for forcing the title to carry the whole weight of the analysis flows from the tendency to assume that all three constitutional limitations depend on the same rationale. It is true that the original purpose and single subject requirements would operate in a cumbersome manner at best without adequate bill titles. But the title is only the means, not the end. The single subject rule assures legislators and the governor that no extraneous (and unpalatable) matters have been slipped into bills they otherwise support. This protection concerns the provisions of the bill, not its title. That the title serves as a shorthand mechanism for describing the subject of the bill is irrelevant in measuring compliance with the single subject restriction.

Rules requiring unity of subject matter do not restrict the breadth of an act.[328] The legislature must be allowed to treat a problem in a comprehensive way rather than in separate components,[329] but the subject may not be so broad as to be meaningless.[330] Going back to *Corvera*, one may wonder whether a subject like "environmental control" can truly be "single." A hypothetical bill on that subject could span hundreds of pages and cover topics including agricultural runoff, underground storage tanks,

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[324] Ruud, *supra* note 7, at 399.

[325] 12 S.W.3d 322, 326–27 (Mo. 2000) (en banc).

[326] *Id.* at 325.

[327] *Id.*

[328] *See* 1A SINGER, *supra* note 9, § 17.02, at 7; *see also* People v. Cervantes, 723 N.E.2d 265, 267 (Ill. 1999) (subject may be "as comprehensive as the legislature chooses"); McIntire v. Forbes, 909 P.2d 846, 856 (Or. 1996) ("legislature may choose a *comprehensive* subject"); Jaksha v. State, 486 N.W.2d 858, 874 (Neb. 1992) (single subject permissible "no matter how broad").

[329] *See* Unified Sch. Dist. No. 229 v. State, 885 P.2d 1170, 1194 (Kan. 1994) (discussing comprehensive bill relating to public education); *In re* Boot, 925 P.2d 964, 971 (Wash. 1996) (discussing comprehensive bill relating to violence prevention).

[330] *See* State *ex rel.* Ohio Acad. Trial Lawyers v. Sheward, 715 N.E.2d 1062, 1100–01 (Ohio 1999) (hypothesizing that if stretched enough, the single subject rule would allow all provisions to come in under one of only two subjects: civil law and criminal law). Similarly, the dissenting judge in the most recent Illinois case disagreed with the majority's conclusion that "property" constituted a single subject. Premier Prop. Mgmt. v. Chavez, 728 N.E.2d 476, 489 (Ill. 2000) (Harrison, C.J., concurring in part and dissenting in part) (stating that "a taxonomy so broad is useless").

and sewage treatment (all related to water quality); automobile emissions, factory emissions, and asbestos (all related to air quality); transportation of hazardous wastes; disposal of medical wastes; protection of endangered species; and numerous others. But as long as "there is no blatant disunity among the provisions of a bill and there is a rational purpose for their combination in a single enactment," the act is valid.[331]

Because diverse matters may properly be combined in a single bill, it is sometimes hard to judge whether a bill contains a single subject on the basis of its contents alone. In cases like *Corvera*, it may be necessary to refer to an external source. I turn now to the question of how to determine compliance.

2. Test for Compliance

If reference to an external source is necessary to determine whether a statute contains a single subject, courts should look to the chapter headings of the Missouri Revised Statutes. If a bill amends multiple chapters, the court should presume that the bill contains multiple subjects. This presumption, however, can be overcome by a showing that the provisions fairly relate to the same subject or are means of accomplishing the subject of the bill.

Hammerschmidt confused single subject analysis by using the structure of the constitution, not the chapter headings of the statutes, as the external source for determining unity of subject matter. After the court determined the subject of the bill from its title, the opinion went on to describe the process for determining the subject when the title is not clear. In a footnote, the court mused about overly broad titles:

> [W]here the challenge to a law is . . . to the number of subjects it contains and the bill's title fails to express the subject of the bill with reasonable precision, *we look to the Constitution as a whole*. . . . The organization of the constitution creates a presumption that matters relating to separate subjects therein should . . . not be commingled under unrelated headings. The organizational headings of the constitution are strong evidence of what those who drafted and adopted the constitution meant by "one subject."[332]

This test, derived from *Initiative Process*, is a poor fit for statutes, however, for three primary reasons: the constitutional requirements for amendments differ from those for laws, constitutional provisions are by

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[331] 1A SINGER, *supra* note 9, § 17.02, at 7.

[332] 877 S.W.2d at 102 n.3 (emphasis added). The court derived this test from *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 831 (Mo. 1990) (en banc).

nature much broader than statutory provisions, and many statutes cover topics not reflected in any constitutional heading.

First, the simple importation of the test for determining the subject of a constitutional amendment into the line of cases involving statutes is unsupported by the constitution's text. Though similar to the single subject provision of article III, section 23, the requirement for initiative petitions differs in important respects.[333]

Second, constitutional provisions are by their very nature much broader than statutory provisions. The text of a constitutional amendment bears little resemblance to the text of an ordinary statute.[334] A constitution is an organic document broadly delineating the rights of the people and the powers of government. The Missouri Constitution contains only twelve articles and within those articles just twenty-four subheadings. Its provisions are typically general and brief. Statutes, on the other hand, impose specific duties, establish procedures, define particular crimes and set penalties, and regulate innumerable aspects of daily life. The Revised Statutes of Missouri are divided into forty-one titles and currently include over 450 separately numbered chapters.[335]

These differences suggest that the Missouri Supreme Court took a wrong turn in *Hammerschmidt* by importing the single subject test from *Initiative Process* to a case involving a run-of-the-mill statute. The notion that what constitutes a single subject in a constitutional amendment is a single subject in a bill is mistaken.[336] But this test does provide an anal-

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[333] Article III, section 50 provides in relevant part:

> Petitions for *constitutional amendments* shall not contain more than one amended and revised article of this constitution, or one new article which shall not contain more than one subject and matters properly connected therewith. . . . Petitions for *laws* shall contain not more than one subject which shall be expressed clearly in the title. . . .

MO. CONST. art. III, § 50 (emphasis added). Section 50 repeats verbatim for laws the subject and title provisions of section 23. In other words, a statutory enactment must contain only one subject whether it is passed by the legislature or adopted via the petition process. For constitutional amendments, on the other hand, section 50 requires that petitions pertain only to one amended article of the current constitution. This provision effectively confines such petitions to one of the 12 broad subjects reflected in the current constitution. Secondarily, section 50 requires that any proposed new article contain only one subject. The inclusion of this provision strengthens the argument that each of the constitution's existing articles treats one broad subject.

[334] One need only recall the oft-repeated pronouncement of Chief Justice Marshall that "it is a Constitution we are expounding" to appreciate the strength of this distinction in American law. McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 407 (1819). State constitutions, however, are typically less broad and less static than the federal constitution.

[335] *See* MO. REV. STAT. Analytical Table of Chapters (1994). According to the preface, titles are used for convenience only and are not part of the law. MO. REV. STAT. vii (1994). Chapters furnish the basis for citation of Missouri statutes. *Id.*

[336] *See* Ruud, *supra* note 9, at 407–08 (describing efforts of two states to use constitutional provisions as guides for single subject analysis and concluding that they were unsound except insofar as they made appropriations measures a subject unto themselves).

ogy by which to devise a comparable test for statutes. For statutes, the analogous subject index is the list of chapter headings of the revised statutes. New legislation necessarily amends or adds to the compiled statutes and must be fit into this subject structure. Reference to the structure of the revised statutes affords an easier and more coherent basis for assessing the subjects of bills.[337]

Third, *Hammerschmidt*'s constitutional structure test is of limited value because the subjects of many statutes simply are not reflected in the articles and headings of the constitution.[338] In such cases, the *Hammerschmidt* test provides no guidance. *Stroh* provides an example of such a statute. All three bills involved in that case concerned intoxicating beverages.[339] This subject simply does not appear in the structure of the constitution.[340] All three bills did, however, purport to amend chapter 311 of the Revised Statutes of Missouri, the liquor control law of the state.[341]

Missouri Health Care Ass'n allows a comparison of the use of the constitution and statutes as external sources for measuring compliance with the single subject rule. The court accepted the bill's title, "relating to the department of social services" ("DSS") as its subject, and then checked the bill's provisions to see whether they were connected with DSS.[342] The opinion does not explicitly refer to the structure of the constitution as a subject guide, but its holding implicitly follows this approach by focusing on which agency is charged with enforcing each of the bill's provisions.[343] This Article's proposed test would reach the same result. Provisions of the bill amending chapters 198 (nursing homes) and 660 (relating to DSS itself), though found in separate parts of the code, all relate to the same subject—the regulation by DSS of care provided by nursing homes. The provisions amending chapter 407 (merchandising

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The dissenting judge in *Initiative Process* apparently believed the majority judged the subject of the proposed constitutional amendment more strictly than it had judged statutes. *Initiative Process*, 799 S.W.2d at 839 (Rendlen, J., dissenting). He commented that constitutional provisions "are to be given a broader construction" than statutes. *Id.* (citing Boone County Court v. State, 631 S.W.2d 321, 324 (Mo. 1982) (en banc)).

[337] *But see* Beagle v. Walden, 676 N.E.2d 506, 509–10 (Ohio 1997) (Pfeifer, J., concurring in part) (noting that the constitution does not require all provisions of a bill to affect the same chapter of the Revised Code); Geja's Café v. Metropolitan Pier and Exposition Auth., 606 N.E.2d 1212, 1220 (Ill. 1992) (holding that the constitution does not prohibit the amendment of an existing statute that contains multiple subjects).

[338] *Compare* MO. CONST. Contents (1945) *with* MO. REV. STAT. Analytical Table of Chapters (1994).

[339] *See supra* notes 211–222.

[340] *See* MO. CONST. Contents (1945).

[341] H.R. 1470, 88th Gen. Assem., 2d Sess. (Mo. 1996); S. 814, 88th Gen. Assem., 2d Sess. (Mo. 1996); S. 933, 88th Gen. Assem., 2d Sess. (Mo. 1996).

[342] 953 S.W.2d at 622.

[343] The court found provisions concerning the trade practices of nursing homes—provisions enforced by the attorney general, not DSS—to constitute a second subject. *Id.* at 623. Some of the state's executive agencies are defined not in the constitution, but in statutes. Thus, reference to the constitution to see which agency enforces a particular provision often will be fruitless.

practices), however, plainly constitute a second subject relating to trade, not long-term care.

The *Missouri Health Care Ass'n* opinion raises an important question about the reach of the *Hammerschmidt* test: whether all provisions relating to any program administered by a single agency can constitute a single subject. The constitutional structure test would hold that everything that falls within article IV, section 37 of the Missouri Constitution, defining "Social Services," constitutes a single subject. Recourse to the structure of the Revised Statutes of Missouri would yield a different result. DSS has an exceptionally broad mandate, with responsibilities toward children and their parents, the elderly, troubled youth, and the poor.[344] Its divisions include Aging, Child Support Enforcement, Family Services, Medical Services, and Youth Services.[345] These divisions administer diverse programs ranging from adoption to child abuse, nursing homes, home energy assistance, and Medicaid.[346] These unrelated programs are found in chapters 453, 210, 198, 660, and 208 of the Revised Statutes of Missouri, respectively.[347] Under the proposed test, the placement of these matters in separate chapters would create a presumption that they are separate subjects not to be contained in one bill.[348] The proposed test comports with the ordinary understanding that child abuse and nursing home care, for example, are separate subjects.

Corvera offers another opportunity to apply the proposed test. There, the bill's provisions relating to asbestos projects amended chapters 643 ("air conservation") and 701 ("state standards"), while those relating to underground storage tanks were added to chapter 292.[349] The proposed test establishes a presumption that provisions amending different chapters pertain to different subjects, not a single subject. The ultimate question remains whether all the provisions are "fairly related" to each other and thus constitute a single subject. Focusing on the fact that all provisions of the bill regulate environmental hazards, the court found

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[344] *See* MO. REV. STAT. § 660.010 (1994) (establishing DSS); OFFICIAL MANUAL: STATE OF MISSOURI 521 (1999) (describing DSS).

[345] *See* OFFICIAL MANUAL, *supra* note 344, at 523–35.

[346] *See id.*

[347] MO. REV. STAT. Analytical Table of Chapters at XI–XXVI.

[348] The presumption, however, is secondary to the "fairly related" test. If the provisions of the bill are "fairly related" to each other, then they constitute one subject regardless of their codification into different chapters. Indeed, the "unquestioning use of the classification of subjects in the law as a basis for determining compliance with the one-subject rule is . . . unsound." Ruud, *supra* note 7, at 411 (describing the use of various elements of a state's jurisprudence—constitution, statutes, and common law—to determine unity of subject). As Ruud points out, subjects are classified in the law for a variety of reasons, many of which bear scant relation to the single subject rule. *Id.* (listing history, legal theory, convenience, and functional relationships as common reasons for classifying law in a particular manner). Resorting to the classification of subjects in the law can, however, serve as a "practical guide" to distinguish subjects "reasonably relat[ed]" from those combined for "tactical convenience only." *Id.*

[349] *See* H.R. 77/78/356, 85th Gen. Assem., 1st Sess. (Mo. 1989).

no single subject violation.[350] In the end, the decision in *Corvera* rests on the presumption that the statute is constitutional.[351] This presumption means that if alternative readings are possible, the court is bound to adopt the constitutional one.[352] Though the title does not define the subject, the words selected by the legislature to describe the bill may be persuasive.[353] Here, the legislature described the subject of the bill as "environmental control," and the court determined that the term "environment" includes a "complex" of factors relating to "climate, soil, and living things."[354] On that theory, the court correctly held that the bill contained a single subject.

To sum up, the subject of a bill should be measured by the content of its provisions. The provisions must relate to each other and together must constitute a single subject. The title must express the subject, but the title is not its test. When guidance is needed to determine whether a bill's provisions in fact constitute a single subject, the court should resort to the organization of the statutes themselves. This proposal is a limited one, however. It establishes a presumption that matters within a single chapter of the revised statutes constitute a single subject, and that matters found in different chapters deal with separate subjects. The presumption can be overcome, however, by demonstrating that the provisions themselves in fact "fairly relate" to the same subject or are "incidents" or "means" of accomplishing it.

C. Clear Title

This Article has argued at length that the Missouri Supreme Court relies too heavily on a bill's title to measure original purpose and single subject violations. The ironic result in some of the clear title cases is that the court sidesteps real analysis of the title. In *Corvera*, for example, the court took up the clear title claim first.[355] It found that the title "relating to environmental control" was capable of expressing a single subject.[356] It then concluded (without discussing the bill's provisions) that the title in fact clearly expressed the content of the bill.[357] Only then did the court determine whether the bill contained a single subject.[358] This is back-

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[350] *Corvera*, 973 S.W.2d at 862.

[351] *Id.*

[352] *Id.*

[353] According to the Oregon Supreme Court, "if the court has *not* identified a unifying principle logically connecting all provisions in the act," it should, as a second step, "examine the title of the act with reference to the body of the act . . . to determine whether the legislature . . . has . . . expressed in the title[ ] such a unifying principle. . . ." McIntire v. Forbes, 909 P.2d 846, 856 (Or. 1996).

[354] *Corvera*, 973 S.W.2d at 861 (discussing the title of the bill).

[355] *Id.* at 861–62.

[356] *Id.* at 860, 862.

[357] *Id.*

[358] *Id.*

wards. Article III, section 23 requires that the bill *contain* a single subject which (additionally) must be clearly *expressed* in its title.[359] The single subject analysis must come first.[360] As the court stated in *Solid Waste Management*, "[t]he mere fact that two subjects in a bill can be reconciled as part of a broader subject, and thus satisfy . . . [the] single subject [rule], does not, in itself, mean that the broader subject has been clearly expressed in the title."[361] This section considers the analysis of clear title claims.

The clear title rule exists primarily to ensure that the public has "sufficient notice of the contents of the act."[362] Logically, a bill's title may violate the rule in two ways.[363] First, it can be worded so broadly as to provide no meaningful notice of the bill's contents. Second, the title's wording can be so specific as to fail to express the totality of the bill's subject matter. Clear title problems usually fall into one of these two categories. Among the ten recent Missouri cases, there is one of each type: *St. Louis Health Care Network* involved an overly broad title, while *Solid Waste Management* involved an under-inclusive title. Together, these two cases set the outer limits of clear title analysis under Missouri law.

1. Breadth of Title

In 1998, the court decided *St. Louis Health Care Network* and *Solid Waste Management. St. Louis Health Care Network* involved a bill whose title said it "relat[ed] to certain incorporated and non-incorporated entities."[364] Commenting that the phrase "incorporated and non-incorporated entities" "could define most, if not all, legislation passed by the General Assembly,"[365] the court ruled the title "far too broad" to express any single subject.[366] The court observed that "it is difficult to imagine a broader phrase that could be employed in the title of legislation."[367] In this rare situation, the court need not determine the subject of the bill. No matter what the subject of the bill's provisions turns out to be, this title cannot adequately express that subject.[368] This case establishes that overly broad

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[359] MO. CONST. art. III, § 23.

[360] One exception is discussed, *infra* notes 365–368 and accompanying text.

[361] 964 S.W.2d at 821; *see also Mo. Health Care Ass'n*, 953 S.W.2d at 623 n.2.

[362] *Corvera*, 973 S.W.2d at 862; *see also* 1A SINGER, *supra* note 9, § 18.02, at 27; *supra* notes 107–118.

[363] *Cf.* 1A SINGER, *supra* note 9, § 18.08, at 54-55 (discussing severability of provisions in bills).

[364] 968 S.W.2d at 146.

[365] *Id.* at 148 (noting that the phrase encompasses "businesses, charities, civic organizations, governments, and government agencies").

[366] *Id.*

[367] *Id.* at 147.

[368] The bill bearing this broad title covered matters ranging from venue to same-sex marriage, confirming that the bill did not contain a single subject. *Id.* at 146.

titles are facially invalid; reference to the contents of the bill is not necessary to the analysis in such cases, and such reference cannot save the statute.

Solid Waste Management concerns the opposite problem—a title that is narrower than the bill itself.[369] The bill's title, "relating to solid waste management," provided no notice that some of the bill's provisions related to hazardous waste management as well.[370] The fact that solid waste management and hazardous waste management could be understood as parts of a single subject was irrelevant because the title, as written, did not express the broader subject; it expressed only a portion of it.[371] *Solid Waste Management* establishes that a bill title that "descends to particulars and details" is "affirmatively misleading" if it fails to mention all aspects covered by the bill.[372] Thus, an "under-inclusive" title violates the clear title requirement.[373] Resolution of this type of clear title claim requires reference to "some source extrinsic to the title itself,"[374] namely, to the contents of the bill. A bill's title, whether broad or narrow, must above all be "accurate" and "clear."[375]

The most recent Missouri case, *Dillon*, marked a step back from the progress made in *Solid Waste Management* and *St. Louis Health Care Network*. The bill title referred only to "transportation," but the bill included provisions allowing cities and counties to regulate billboards.[376] The *Dillon* court recognized that the bill title at issue was, if anything, under-inclusive.[377] Additionally, in finding provisions regulating billboards to be clearly expressed in the bill title "transportation," the court reiterated its original purpose analysis, which assumed that the federal highway funding requirement that states regulate billboards establishes a connection between billboards and transportation.[378] The court, therefore, found no violation of the clear title requirement.[379]

An Iowa Case, *State v. Taylor*,[380] provides a comparison. The bill at issue in that case contained seventy-four sections calling for, among other things, training for gang-affected youth; restricting access by juveniles to drugs, tobacco, and alcohol; establishing community programs for at-risk juveniles; combatting child abuse; creating weapon-free school zones; and appropriating funds for juvenile programs and serv-

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[369] *See* 964 S.W.2d at 821–22.

[370] *Id.* at 820.

[371] *Id.* at 821–22; *see also* Mo. Health Care Ass'n v. Attorney Gen., 953 S.W.2d 617, 623 n.2 (Mo. 1997) (en banc).

[372] 964 S.W.2d at 821.

[373] *Id.*

[374] *Id.*

[375] *Id.* at 821.

[376] *Dillon*, 12 S.W.3d at 324.

[377] *Id.* at 329. The court seemed to turn the underinclusivity analysis upside down when it concluded that "billboard regulation is not underinclusive of transportation." *Id.*

[378] *Id.* at 327–28 (original purpose); *id.* at 329 (clear title).

[379] *Id.* at 328–29.

[380] 557 N.W.2d 523 (Iowa 1996).

ices.[381] It also criminalized the act of trafficking in stolen weapons by an adult, "without reference to juvenile justice concerns."[382] The bill's title described it as "relating to juvenile justice."[383] The Iowa Supreme Court found the title deficient because it failed "to indicate that the legislation addresses a weapons law which bears no specific relationship to juveniles."[384] Here, the title was broad and properly encompassed a wide variety of initiatives relating to juveniles. The title suggested, however, that the legislation applied only to offenses relating to juvenile delinquency,[385] and hence was under-inclusive. The title gave no notice that the bill included an adult weapons offense. Focusing on the notice function of bill titles, the Iowa court commented that as the legislation becomes broader in scope, "the legislature's obligation to provide greater specificity in the act's title necessarily increases."[386]

2. Test for Compliance

In Missouri, as in other states, the test for compliance with the clear title rule focuses on whether the title actually provided notice of the contents of the bill. The title must "indicate in a general way the kind of legislation that was being enacted."[387] The title need not give specific details of the bill's contents,[388] nor be the best possible title.[389] Because the main rationale behind the clear title rule is providing notice to the public,[390] the test for compliance should focus on the likely understanding of the average person.[391] The title must call attention to the subject matter of the bill[392] in such a way as to provoke a reading of the bill[393] or lead to an

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[381] *Id.* at 526.
[382] *Id.*
[383] *Id.* at 527.
[384] *Id.*
[385] *Id.*
[386] *Id.* at 527.
[387] Nat'l Solid Waste Mgmt. Ass'n v. Dir., Dep't of Natural Res., 964 S.W.2d 818, 821 (Mo. 1998) (en banc) (quoting Fust v. Attorney Gen., 947 S.W.2d 424, 429 (Mo. 1997) (en banc)); *see also* Lutz v. Foran, 427 S.E.2d 248, 251 (Ga. 1993).
[388] St. Louis Health Care Network v. State, 968 S.W.2d 145, 147 (Mo. 1998) (en banc); *see also* Utilicorp United, Inc. v. Iowa Util. Bd., 570 N.W.2d 451, 455 (Iowa 1997) (holding that the title need not be an index of the bill); Louviere v. Mobile City Bd. of Educ., 670 So. 2d 873, 876 (Ala. 1995) (same); Pierce v. State, 910 P.2d 288, 306 (N.M. 1995) (same).
[389] Associated Builders & Contractors v. Ventura, 610 N.W.2d 293, 301 (Minn. 2000) ("We held 'it is not essential that the best or even an accurate title be employed, if it be suggestive in any sense of the legislative purpose.'") (citations omitted).
[390] *See supra* notes 107–112 and accompanying text.
[391] *See, e.g.*, McGlothren v. E. Shore Family Practice, 742 So. 2d 173, 177 (Ala. 1999) (holding that the test is whether the "average legislator or person" would be informed of the purpose of the enactment); Patrice v. Murphy, 966 P.2d 1271, 1275 (Wash. 1998) (explaining that the clear title rule requires notice to the general public).
[392] Jaksha v. State, 486 N.W.2d 858, 874 (Neb. 1992).
[393] McCoy v. Vankirk, 500 S.E.2d 534, 546 (W. Va. 1997).

inquiry into the body of the act.[394] The title should not force the reader to "search out the commonality" of subjects contained in the bill but not mentioned in the title.[395]

Accordingly, analysis of the sufficiency of the title ordinarily requires a comparison with the provisions of the bill. Some states have articulated a requirement that the act conform to the title.[396] Because the constitutional provisions require the title to express the subject of the bill, however, it seems more helpful to phrase the test the other way around: the title must conform to the bill.[397]

The Missouri Supreme Court's analysis of the title in *Dillon* paid insufficient attention to the contents of the bill in question. As finally passed, the bill was about two subjects: the state transportation bureaucracy and local regulation of billboards. The bill's title, "relating to transportation," was actually far broader than the provisions of the bill itself, which concerned mainly positions, salaries, and the organizational structure of the Department of Transportation and related commissions. The subject of this bill was not really "transportation" but rather employment matters within the transportation department. The title in *Dillon* was also under-inclusive as related to the billboard provisions in the bill as enacted. The court attempted to address this problem by imagining a relationship between transportation and billboards,[398] but the fact that such a relationship may exist is irrelevant to article III, section 23, which requires that the title actually reflect the contents of the bill, not merely that some relationship between the title and bill could theoretically exist.[399] The title in *Dillon* gave no notice of the bill's actual contents and was therefore misleading, and should have been held invalid under the rationale of *Solid Waste Management.*

The dissenting opinion in *Solid Waste Management* created confusion about the test for compliance with the clear title rule by conflating it with the compliance test for the single subject rule. In *Solid Waste Man-*

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[394] *In re* Boot, 925 P.2d 964, 971 (Wash. 1996).

[395] Nat'l Solid Waste Mgmt. Ass'n v. Dir., Dep't of Natural Res., 964 S.W.2d 818, 821 (Mo. 1998) (en banc).

[396] *See, e.g., id.*; Tenn. Mun. League v. Thompson, 958 S.W.2d 333, 336–37 (Tenn. 1997).

[397] *See* Pierce v. State, 910 P.2d 288, 306 (N.M. 1995) (finding the title "sufficiently related to the contents of the bill to pass muster"). The fact that the title may be changed to reflect amendments to the bill during the course of its consideration supports this understanding. *See Solid Waste Mgmt.*, 964 S.W.2d at 821 (noting consistent approval of title amendments during bill consideration).

[398] *See Dillon*, 12 S.W.3d at 327–29. The court relied on the connection between federal highway funding and state regulation of billboards to save this bill. *Id.* That there may be such a connection in other contexts does not mean that this bill's title accurately expressed the content of its provisions. Interestingly, Judge Price offered a similar theory in *Solid Waste Management*, turning to federal environmental law to "demonstrate[ ] the close relationship between hazardous and solid waste." 964 S.W.2d at 824 (Price, J., dissenting).

[399] *Cf.* McIntire v. Forbes, 909 P.2d 846, 856 (Or. 1996) (requiring, in the context of single subject analysis, that the title be examined "with reference to the body of the act").

agement, the majority and dissenting opinions disagreed about the meaning of the words "relating to" as used in most bill titles in Missouri.[400] The dissent argued that use of the words "relating to" in the title of a bill incorporates within the title's ambit anything "relating to" the subject actually expressed therein,[401] but this standard is actually the single subject test: to determine the bill's subject from its provisions, one examines the provisions to see whether their topics are so related or connected as to form a single subject. The test for titles is whether they clearly express the subject, not the subject plus other matters related to it. The subject has already been defined, and there is no need to consider additional matters that may somehow be "related" to it. In fact, to do so contravenes the purpose of the clear title rule, which is to provide accurate notice of the bill's contents.

Overly broad and under-inclusive titles violate the clear title requirement. To be valid, the title must clearly express the bill's actual subject. Thus, analysis of the title ordinarily must examine the bill's provisions, not proceed only in the abstract. A bill whose title fails to provide meaningful notice of the bill's contents is unconstitutional.

IV. Relevant Version of Bill

In two recent opinions, the Missouri Supreme Court laid down rules concerning the version of the bill to be examined in determining whether the original purpose, single subject, and clear title rules have been violated. In *Stroh*, the court stated that the "original purpose of a bill must . . . be measured at the time of the bill's introduction."[402] Later in the same opinion, the court added that the "determination of whether a bill violates the . . . single subject requirement is made concerning the bill as it is finally passed."[403] Most recently, in *Dillon*, the court addressed clear title cases, stating that that "rule necessarily applies to the version of the bill that passed, not the introduced version."[404] The court's statements were unaccompanied by any explication of the rules or by citation to prior authority. As a result, these new rules leave open several questions.

With respect to original purpose, the court recognized the obvious point that it is not sufficient to measure original purpose violations against the final version alone.[405] The court stated that original purpose must be measured at the time of the bill's introduction.[406] But because the

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[400] *Compare Solid Waste Mgmt.*, 964 S.W.2d at 822 *with id.* at 823 (Price, J., dissenting).

[401] *Id.* at 823 (describing "relating to" as a phrase of "connection, not restriction").

[402] 954 S.W.2d 323, 326 (Mo. 1997) (en banc).

[403] *Id.* at 327.

[404] 12 S.W.3d 322, 329 (Mo. 2000) (en banc).

[405] *Stroh*, 954 S.W.2d at 326.

[406] *Id.*

notion of a change in purpose is inherently comparative, the court must also read the provisions of the final version and determine whether the bill's purpose changed during its consideration.[407] Because the original purpose rule protects the integrity of the legislative process, its test for compliance must focus on developments throughout the process of consideration.[408] If only the end result were examined, changes that occurred during the process, in violation of section 21, would never be detected.[409]

The proper time for determining compliance with the single subject rule is a harder question. As noted, the court in *Stroh* declared that single subject violations are measured against the version of the bill finally passed.[410] At first blush, this rule seems doubtful—after all, the single subject rule refers to "a bill," not "an Act."[411] But the primary rationale for the single subject rule is to safeguard the moment of decision at the end of the process—the vote of legislators or the signature of the governor. Thus, measuring compliance with the single subject rule by reference to the version of the bill presented for decision is correct.

Clear title claims present the hardest question. According to *Dillon*, the title that counts is the one attached to the bill as finally passed.[412] The leading treatise comments:

> [I]t would violate the letter and spirit of the constitutional safeguard against stealthy legislation to hold that the subject of a bill must be clearly expressed in its title during the progress of the measure through the legislature, but that any misleading or delusive title may be attached to it when it is presented to the governor for approval.[413]

The earlier *St. Louis Health Care Network* case in effect applied this rule, though without comment.[414] Reflection on the purposes served by the clear title rule, however, suggests that the court takes too limited a view of the relevant time. The same concern for accuracy of the title at the last stage of the legislative process—when the bill is presented to the governor—should prevail at all earlier stages of the bill's consideration. If the

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[407] The *Stroh* court in fact compares Missouri Senate Bill 933, 88th Gen. Assem., 2d Sess. (Mo. 1996), as introduced, with Missouri House Bill 933, 88th Gen. Assem., 2d Sess. (Mo. 1996), as finally passed. 954 S.W.2d at 326.

[408] The court recognizes as much in *Akin* by indicating that the bill's original purpose remained the same "throughout the legislative process." 934 S.W.2d 295, 302 (Mo. 1996) (en banc).

[409] *See* Williams, *supra* note 1, at 799.

[410] *See supra* note 403 and accompanying text.

[411] MO. CONST. art. III, § 23.

[412] *See Dillon*, 12 S.W.3d at 329.

[413] 1A SINGER, *supra* note 9, § 18.01, at 25 (quoting Weis v. Ashley, 81 N.W. 318 (Neb. 1899)).

[414] *See* St. Louis Healthcare Network v. State, 968 S.W.2d 145, 147 (Mo. 1998) (en banc).

purpose of the clear title rule is primarily to provide notice to the public throughout the legislative process and to provide an opportunity to comment on pending legislation, then the title must be clear at every stage. It is not sufficient for the title to express the bill's subject clearly only at the end of the process, when the time to comment has passed. Moreover, article III, section 23 speaks of "bills," not of "acts." It provides that "*no bill* shall contain more than one subject which shall be clearly expressed in *its* title."[415] Literally, every bill's subject shall be clearly expressed in its title. So read, the provision covers introduced bills, amended bills, substitute bills, and bills finally passed. The clear title limitation applies at every stage of the legislative process, from introduction through signature into law.

That bills' titles are commonly rewritten while the legislation is under consideration also supports the argument that the title must be clear at every stage. The Missouri Supreme Court recently remarked that changing the bill's title as the bill is amended during the course of consideration "is not a novel proposition."[416] It is a "process that the legislature has routinely used" and one the court "has consistently approved."[417] In *Corvera*, for example, each of the bills as introduced bore a title accurately expressing the particular aspect of the environment it purported to control,[418] and the combined bill's title was rewritten to conform to the broader scope of the substitute bill.[419] In *Solid Waste Management*, by contrast, the original title remained the same even after the bill was amended, and resulted in a clear title violation.[420] The bill bore the title "relating to solid waste" throughout the process, even after the bill was amended at the very end of the legislative session to apply to hazardous waste.[421] Thus, during most of the time when members of the public might have been expected to monitor the legislation and comment on it, the title gave adequate notice of the bill's contents. The fact that the title became unclear only at the very last minute did not dissuade the court from finding a clear title violation. Similarly, in *St. Louis Health Care Network* the title was accurate at the start but was changed when the bill was amended, and in such a way as to "obscure" the contents of the amended bill.[422] Together, these cases suggest that as long as there is still time to learn of the bill and comment on it, the constitution requires a title that fairly apprises the public of the actual subject of the pending

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[415] MO. CONST. art. III, § 23 (emphasis added).

[416] Nat'l Solid Waste Mgmt. Ass'n v. Dir., Dep't of Natural Res., 964 S.W.2d 818, 821 (Mo. 1998) (en banc).

[417] *Id.*

[418] 973 S.W.2d 851, 860 (Mo. 1998) (en banc) (describing bills "for the purpose of regulating certain asbestos abatement projects"; "relating to ... underground storage tanks"; and "relating to water well drillers").

[419] *Id.* (describing a bill "relating to environmental control").

[420] 964 S.W.2d at 819.

[421] *Id.* at 820.

[422] *See St. Louis Health Care Network*, 968 S.W.2d at 149.

legislation. A contrary holding would permit one of the evils the clear title rule aims to prevent: "surreptitious[ ] insert[ion] of related amendments into the body of a pending bill."[423] When a case arises in which a title that was defective during a substantial part of the process is revised to become clear only at the very end, the court should reconsider its position in *Dillon* that only the final title matters.[424]

V. REMEDY

In some states, the constitutional provisions themselves provide a remedy for violation of the relevant procedural restriction, answering the question whether a violation necessarily invalidates the entire enactment.[425] For example, Iowa's single subject and clear title rule provides that "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."[426] The Oregon provision is identical.[427] The Washington Supreme Court has interpreted that state's constitution to provide that "if only one subject is embraced in the title, then any subject not expressed in the title . . . may be rejected, and the part that is expressed in the title be allowed to stand."[428]

By contrast, in Missouri and many other states, neither the constitution nor its interpretation by the courts sets forth an across-the-board rule as to the effect of an original purpose, single subject, or clear title violation. As a result, the proper remedy for such a violation remains uncertain, and courts have come to a variety of conclusions about the answer. As noted above, the Illinois Supreme Court's invalidation of the entire Safe Neighborhoods Law sparked a furious response, particularly because the court refused to consider severance, even on rehearing.[429] This response indicates that courts must consider severance in arriving at a proper balance between enforcing the constitutional restrictions and unduly hampering the legislature's ability to act.

Few of the ten recent Missouri cases discuss the specific remedy for a constitutional procedural violation. In some, no violation was found, while in others the statute as a whole was held unconstitutional.[430] *Hammerschmidt*, however, embarked on a discussion of remedies, specifically

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[423] Hammerschmidt v. Boone County, 877 S.W.2d 98, 101 (Mo. 1994).

[424] *See Dillon*, 12 S.W.3d at 329.

[425] *See* 2 SINGER, *supra* note 9, § 44.12, at 534.

[426] IOWA CONST. art. III, § 29.

[427] OR. CONST. art. IV, § 20.

[428] Patrice v. Murphy, 966 P.2d 1271, 1276 (Wash. 1998) (quoting Power v. Huntley, 235 P.2d 173 (Wash. 1951)) (internal quotation marks omitted).

[429] *See* Chambers, *supra* note 47, at 2 (noting that the court "turned down a suggestion that it should sever the law's [invalid] provisions").

[430] *See* Appendix II.

addressing the severance of unconstitutional provisions.[431] *Hammerschmidt* recognized that the court must reconcile conflicting mandates in deciding what remedy is appropriate when one of the constitutional limitations on legislative procedure is violated.[432] On one hand, courts "bear[ ] an obligation to sever unconstitutional provisions of a statute" when they can do so without rendering the remainder meaningless.[433] On the other hand, the court implies that when "the procedure by which the legislature enacted a bill violates the Constitution," the entire enactment may be tainted.[434] If so, severance may be improper.

A threshold question, then, is whether original purpose, single subject, and clear title violations necessarily taint the entire bill, so that no valid provisions remain.[435] This Part explores that question and concludes that, at least in some situations, these violations invalidate only a portion of the enactment. Even so, applying severance in these cases is often difficult.

A. Severance Analysis

Severance analysis requires two steps. First, the legislature must have intended that the provisions of the act be severable.[436] Missouri's severance statute,[437] like those of many states, expresses that intent with respect to all statutes, though one commentator suggests that such blanket severability provisions "are treated only as aids to interpretation and not as commands."[438] Second, the provisions must be capable of severance.[439] Generally, this means that "the valid portion of an enactment must be independent of the invalid portion and must form a complete act within itself."[440] Missouri's statute requires severance unless "the valid provisions of the statute are . . . dependent upon the void provision . . . or unless . . . the valid provisions, standing alone, are incomplete . . . ."[441] Independence depends on whether "the legislature would have enacted the valid provisions without the void one."[442] Completeness requires that the "valid provisions, standing alone, are [ ]complete and [ ]capable of

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[431] 877 S.W.2d 98, 103–04 (Mo. 1994).
[432] *Id.* at 103.
[433] *Id.* (citing MO. REV. STAT. § 1.140 (1986)).
[434] *Id.* (stating that severance is a "more difficult issue" when the process of enactment was flawed).
[435] *Cf. id.* (finding that where "the procedure by which the legislature enacted a bill violates the Constitution, . . . the entire bill is unconstitutional unless the Court is convinced beyond reasonable doubt" that one subject is controlling).
[436] 2 SINGER, *supra* note 9, § 44.03, at 495.
[437] MO. REV. STAT. § 1.140 (1969).
[438] 2 SINGER, *supra* note 9, § 44.11, at 531.
[439] *Id.* § 44.03, at 495.
[440] *Id.* § 44.04, at 501 (footnote omitted).
[441] MO. REV. STAT. § 1.140 (1969).
[442] *Id.*

being executed in accordance with the legislative intent."[443] Both steps of the analysis boil down to legislative intent, a problematic concept in the context of procedural violations.

B. Application of Severance to Procedural Violations

The Missouri Supreme Court appears to accept severance as a remedy for constitutional procedural violations. While the court has not recently invalidated any provision on original purpose grounds, its decisions in *Hammerschmidt* and *Carmack* severed the provisions found to violate the single subject rule from an otherwise complete, coherent, and valid bill.[444] One of the court's clear title violation cases applies severance;[445] the other does not.[446] In these decisions, the court appears to balance severance against invalidation of the whole statute in the abstract, instead of discussing remedies in connection with the specific violation found to have occurred. As a result, the court's analysis of remedies is incomplete. Further analysis is required in order to determine whether the same rules actually govern severance in all procedural violation cases.

Solid Waste Management complicated the remedy question by overlooking the requirement that the void provisions be capable of severance. There, the bill's title and most of its provisions related to solid waste, but one provision also encompassed hazardous waste.[447] The Missouri Supreme Court recited its duty to sever the offending provisions, but found it impossible to do so given the wording of the enactment.[448] Instead, the court "restrict[ed] the application of the statute" to the valid portion—solid waste.[449] As the court admitted, this amounts to rewriting the statute,[450] disregarding the usual rule that courts have no power to rewrite a statute.[451]

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[443] *Id.*

[444] *Hammerschmidt*, 877 S.W.2d at 104 (severing provisions concerning county governance from a bill concerning election procedures); Carmack v. Dir., Mo. Dep't of Agric., 945 S.W.2d 956, 961 (Mo. 1997) (severing provisions concerning diseased livestock from a bill relating to economic development).

[445] Nat'l Solid Waste Mgmt. Ass'n v. Attorney Gen., 964 S.W.2d 818, 822 (Mo. 1998) (en banc).

[446] St. Louis Health Care Network v. State, 968 S.W.2d 145, 145 (Mo. 1998) (en banc).

[447] *Solid Waste Mgmt.*, 964 S.W.2d at 819–20.

[448] *Id.* at 822. According to the court, section 260.003 of the Missouri Revised Statutes "refers to a 'permit, license, or grant of authority [ ] issued or renewed . . . *pursuant to this chapter.*'" The court observed that the statute's reference to "this chapter," chapter 260, "encompasses the separate regulatory schemes for both solid waste management and hazardous waste management." *Id.*

[449] *Id.* (citing Associated Indus. v. Dir. of Revenue, 918 S.W.2d 780, 784 (Mo. 1996) (en banc)).

[450] *Id.*

[451] *See Associated Indus. v. Dir. of Revenue*, 918 S.W.2d at 785; 2 SINGER, *supra* note 9, § 44.14, at 541 (describing the "reluctance to engage in judicial legislation").

This ruling also contradicted one of the very cases relied upon for support, *Associated Industries of Missouri v. Director of Revenue*.[452] In *Associated Industries*, the United States Supreme Court had found that a Missouri statute violated the Commerce Clause in certain situations;[453] on remand, the Missouri Supreme Court decided the statute was "completely invalid" and struck it down "in toto."[454] The court concluded that severance was not an option because Missouri's severance statute "does not address the 'as applied'" situation.[455] It also specified that the court "ha[d] no power to rewrite the statute," so the only remedy was to "strike it down in its entirety."[456] Yet in *Solid Waste Management*, the court justified severance in just such a situation by reference to *Associated Industries*.

The standard test for resolving severance issues, and the focus of *Associated Industries*, is legislative intent.[457] This test raises thorny questions in the context of procedural violations. First, the intent test promises to be difficult to apply in the absence of substantive legislative history. In *Associated Industries* itself, the court examined the history of the enactment of a provision similar in its terms to the one that severance by application would have created.[458] That earlier enactment was "never implemented" and was "ultimately repealed" and replaced with the enactment invalidated by the United States Supreme Court.[459] With this information in hand, the Missouri Supreme Court was on firm ground in inferring that the legislature did not intend severance. In the case of most statutes, however, there is no such history. Nor is it likely that other sources exist from which to obtain the information the severance test requires. The intent test forces many courts considering severance to turn to speculation.[460]

More importantly, the question of legislative intent plays out differently in cases of the procedural violations. *Associated Industries* involved a statute that, as to some applications of its terms, exceeded the legislature's taxing power.[461] The text of the enactment at issue suggested that

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[452] 918 S.W.2d 780 (Mo. 1996) (en banc).

[453] Associated Indus. of Mo. v. Lohman, 511 U.S. 641, 643 (1994).

[454] *Associated Indus. v. Dir. of Revenue*, 918 S.W.2d at 781.

[455] *Id.* at 784.

[456] *Id.* at 785.

[457] *See* 2 SINGER, *supra* note 9, § 44.03, at 495; *Associated Indus. v. Dir. of Revenue*, 918 S.W.2d at 784.

[458] *See id.* at 784–85.

[459] *Id.* at 785.

[460] *Cf. id.* at 785 (refusing "to speculate that the General Assembly would have approved the statute as now limited").

[461] The legislature enacted a use tax that violated the Commerce Clause of the United States Constitution. Associated Indus. of Mo. v. Lohman, 511 U.S. 641, 643 (1994). That is, the General Assembly enacted a statute that exceeded its substantive power to tax under article X of the Missouri Constitution (taxation) and the Tenth Amendment of the United States Constitution (reserving to the states powers not delegated to the United States).

the Missouri General Assembly was aware of constitutional limitations on its taxing power and intended to act up to the limits of that power.[462] The Missouri court concluded that the legislature would not have enacted the "patchwork" tax scheme that was left after the limits of the state's taxing power were determined.[463]

In the context of the Missouri constitution's procedural limitations, however, the question is not the extent of the legislature's substantive power.[464] Under article III, sections 21 and 23, the legislature has no power to enact any bill in contravention of the procedural limitations. These provisions, by their terms, contemplate no range of authority. To illustrate, the legislature has the substantive power to tax so long as it does not contravene provisions of the state or federal constitutions. But it cannot enact a tax, even if substantively permissible, by means of a bill "amended . . . so as to change its original purpose,"[465] or "contain[ing] more than one subject,"[466] or failing to "clearly express[ ]" that subject in its title.[467] Legislative intent to enact a bill violating one or more of these restrictions is irrelevant. The prohibitions exist precisely to eliminate legislation by means the people find odious. In *Missouri Health Care Ass'n*, for example, the legislature may well have intended to enact a single bill regulating care in nursing homes and also regulating representations nursing homes make in advertising. In fact, passage of the two measures may have been feasible only in combination.[468] If so, the bill represented a classic case of logrolling, and violated the single subject rule. Legislative intent to combine two separate subjects cannot be used to defeat the constitutional prohibition. And if passage of the two measures depended on their combination, it would be deceptive to maintain that the legislature intended to pass one without the other.

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[462] *Associated Indus. v. Dir. of Revenue*, 918 S.W.2d at 785 (noting that "the legislature contemplated in general that there would be constitutional exceptions" to the tax it enacted).

[463] *Id.*

[464] *See* Ruud, *supra* note 7, at 399 ("[T]he one-subject rule is not concerned with substantive legislative power.").

[465] MO. CONST. art. III, § 21.

[466] *Id.* § 23.

[467] *Id.*

[468] As the court noted, the two subjects could have theoretically been reconciled as parts of the larger subject of "long-term care," but the legislature failed to do so, referring in the bill's title only to the provisions relating to standards of care (enforced by the Department of Social Services) and not to advertising. Mo. Health Care Ass'n v. Attorney Gen., 953 S.W.2d 617, 623 n.2 (Mo. 1997) (en banc). This example highlights the difficulty of distinguishing cases of comprehensive legislation on a broad topic (valid) from cases of logrolling (invalid). This difficulty leads courts to "assume" that logrolling is behind any enactment involving multiple subjects, without inquiring into the specific facts. Ruud, *supra* note 7, at 399.

C. Linking Remedy to Rationale

Constitutional restrictions on legislative procedure in most states are "mandatory," not merely "directory," and hence are judicially enforceable.[469] The court in *State v. Miller*[470] stated:

> [W]e consider [the single subject and clear title provision] equally obligatory and mandatory with any other provision in the constitution; and where a law is clearly and palpably in opposition to it, there is no alternative but to pronounce it invalid.[471]

As constitutional prohibitions, these rules take priority over the general severance statute or specific severability provisions.[472] Consequently, the courts are duty-bound to enforce these rules in cases where the legislature has been found to violate them.

The question of the specific remedy by which such enforcement occurs, however, runs headlong into judicial reluctance to trample on legislative prerogative. This reluctance finds expression in the "cardinal principle" that courts are "to save and not to destroy" legislation.[473] The severance remedy generally tries to balance courts' duty to enforce constitutional requirements against the mandate to uphold legislation wherever possible. In the context of procedural violations, the legislative intent test requires some refinement. In these cases, the court should link its analysis of remedies to the particular procedural violation found. In doing so it must take account of the rationales behind the procedural limitations.[474] If the purposes of the prohibition are fulfilled in the particular case, the act should be held valid.[475] If not, severance should be ordered only when the enactment does not embody the evil the procedural restriction was designed to prevent. Enforcement of constitutional procedural limitations in some cases requires complete invalidation of the enactment. The remedy for each violation is discussed below.

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[469] *See* Ruud, *supra* note 7, at 393 (stating that only Ohio holds the single subject rule to be directory). *McIntire v. Forbes*, 909 P.2d 846 (Or. 1996), raised the question whether the Oregon courts were authorized to review legislative acts for compliance with constitutional procedural rules. The Oregon Supreme Court concluded that such rules are judicially enforceable. *Id.* at 853.

[470] 45 Mo. 495 (1970).

[471] *Id.* at 498 (discussing Mo. CONST. art. IV, § 32, the forerunner of art. III, § 23).

[472] *See* State *ex rel.* Normandy Sch. Dist. v. Small, 356 S.W.2d 864, 879 (Mo. 1962) (en banc) (Storckman, J., dissenting).

[473] 2 SINGER, *supra* note 9, § 44.09, at 526 (quoting Tilton v. Richardson, 403 U.S. 672 (1971)).

[474] Ruud, *supra* note 7, at 402.

[475] *Id.*

1. Original Purpose

The Missouri Supreme Court's reluctance to sustain original purpose challenges (and the dearth of such cases in other states) may moot any discussion of the remedy for such a violation. But because this Article argues that the court should modify its overly deferential posture towards this claim, it offers a few comments on the appropriate remedy.

This Article posits that the rationale behind the original purpose rule is to facilitate an orderly legislative process.[476] The rule allows legislators to monitor the large volume of legislative proposals by title, assuring them that drastic changes in the bills' objectives have not been made. The original purpose rule also serves to enforce the constitutional deadline for introduction of new measures. This rule ensures adequate time for the consideration of each measure, whether introduced as a new bill or as an amendment to a bill already pending. These rationales reflect a concern with the entire legislative process from beginning to end.

The original purpose rule prohibits any change in purpose. This is a unitary concept: either the purpose changed or it did not. When a bill's purpose changes midstream, the whole bill is tainted. In such a case, severance is improper. Furthermore, severance analysis requires a determination that the valid provisions are independent of the void ones. A true change in the bill's purpose affects the entire bill, so it is hard to see how any portion of it could be considered independent of the rest. When a bill has been transformed during the course of its consideration, it is utterly impossible to say what portion of some earlier version the legislature would have intended to pass. Severance analysis simply does not fit this claim.

2. Single Subject

Unlike the unitary concept of original purpose, the prohibition on multiple subjects lends itself to severance analysis. A court reviewing a bill containing multiple subjects can theoretically isolate distinct subjects and perhaps determine which of them is the primary one, as *Hammerschmidt* directs.[477] If the portion of the bill relating to the primary subject can stand on its own as a complete enactment, and if the legislature would have passed that portion independently of the rest, then that portion should be preserved. Only the portions relating to additional subjects would be severed.[478] This analysis, however, may discount the possibility that logrolling was involved.

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[476] *See supra* notes 70–71 and accompanying text.

[477] *See Hammerschmidt*, 877 S.W.2d at 103.

[478] *But see* Ruud, *supra* note 7, at 399–400 (suggesting that the inclusion of multiple subjects renders the entire act "suspect" and therefore, makes the use of severance "manifestly unsound"); State *ex rel.* Normandy School Dist. of St. Louis County v. Small, 356

The Missouri Supreme Court seems to treat multiple subjects as inherently independent for purposes of the remedy. In *Hammerschmidt* and *Carmack*, the court identified one subject as primary and severed the rest of the enactment. Closer analysis is necessary. The single subject rule assumes that "unrelated subjects were combined into one bill in order to convert several minorities into a majority" and "declares that this perversion of majority rule will not be tolerated."[479] As a result,

> [t]he entire act is suspect and so it must all fall. If this is the rationale for the constitutional rule . . . , then it is manifestly unsound to employ severability to save the provisions dealing with one of the subjects. The necessary assumption that this will carry out the legislative purpose, assented to by a majority of the legislators, cannot be made.[480]

The question of legislative intent boils down to which provisions, if any, served as the inducement for passage of the act.[481] When logrolling is at work, each provision theoretically serves as the inducement for someone's vote. Logrolling taints the entire act. In such cases, the court can hardly be justified in choosing from the act the subject which, if submitted alone, the legislature would have enacted.[482] The only exception, according to one commentator, is for bills clearly containing "riders," which are relatively minor, unrelated provisions inserted into much larger bills comprehensively treating other subjects.[483] There, the bulk of the bill clearly would have passed; the rider was attached to it so as to secure passage which it could not obtain on its own.[484] This exception is limited, and hard to detect in the absence of published legislative history.[485] Unless it is possible to determine with certainty that a portion of the act was primary and would have been passed without the inducement provided by other provisions attached to it, the court should invalidate the entire enactment.

On this ground, it is hard to say whether severance was proper in *Hammerschmidt* and *Carmack*. *Hammerschmidt* looks like a case of two distinct subjects being combined in one bill for tactical reasons only. But there is no evidence that the legislature would not have passed the elec-

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S.W.2d 864, 879 (Mo. 1962) (Storckman, J., dissenting) (noting that a severability statute cannot prevail over a constitutional mandate, and suggesting that a single subject violation taints the whole act).

[479] Ruud, *supra* note 7, at 399.

[480] *Id.* (citations omitted).

[481] *Id.*; *see also* 2 SINGER, *supra* note 9, § 44.06, at 516–17 (discussing inducements for passage of legislation).

[482] Ruud, *supra* note 7, at 400.

[483] *Id.* at 399–400.

[484] *Id.* at 400 (stating that riders most often are attached to general appropriations acts, which are assured of passage).

[485] *Id.* (noting that it is "troublesome" to determine when the rider situation exists).

tions provisions alone, and those provisions are complete. *Carmack* appears to involve a rider. The rest of the bill is complete and it is doubtful that the insertion of the unrelated provision was essential to the bill's passage. In these cases, severance properly balances concerns about log-rolling against the mandate to preserve legislation to the extent possible.

This analysis suggests that severance would also have been proper in the Illinois case, *People v. Cervantes*.[486] In a bill comprehensively addressing the subject of neighborhood safety, two provisions were found to treat separate subjects.[487] The invalid provisions relating to welfare vendor fraud and juvenile detention facility licensing could have been severed without rendering the Safe Neighborhoods Law incomplete or unworkable. There is no evidence that the invalid provisions were necessary to ensure the bill's passage. The Illinois Supreme Court should have considered severance in this case.[488] By failing to do so, it invalidated the entire law nearly five years after its passage. By this time, changes in the make-up of the legislature and in the political agenda of the day made it impossible to reenact the valid portions of the law.[489] The Illinois Supreme Court in *Cervantes* tread too heavily on the legislature's prerogative.

3. Clear Title

As for clear title violations, the Missouri Supreme Court has properly connected the remedy with the particular manner in which the bill's title violated the rule. *St. Louis Health Care Network* involved a title so broad as to be meaningless.[490] The court held the whole bill unconstitutional; there was no discussion of severance.[491] Though the court did not say so explicitly, invalidation is the only proper remedy for this type of title violation. The purpose of the clear title rule is to provide notice of the bill's contents, and if the title is so amorphous as to provide no notice whatsoever, the whole act must be invalidated.[492]

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[486] 723 N.E.2d 265 (Ill. 1999).

[487] *Id.* at 272.

[488] The Governor of Illinois filed an amicus brief requesting that the court consider severing the invalid provisions and allowing the remainder of the Safe Neighborhoods Law to stand. Brief of Amicus Curiae Governor George H. Ryan in Support of the Petition for Rehearing Filed by Plaintiff-Appellant People of the State of Illinois at 7 (filed Jan. 24, 2000). The court denied the motion for rehearing. 723 N.E. 2d 265 (Ill. 1999).

[489] Chambers, *supra* note 47.

[490] *See* St. Louis Health Care Network v. State, 968 S.W.2d 145, 147–49 (Mo. 1998) (en banc).

[491] *See id.* The court's holding may simply respond to the procedural posture of the case, which sought a declaratory judgment of unconstitutionality. *Id.* at 146.

[492] *See* 1A SINGER, *supra* note 9, § 18.08, at 54; *cf.* Ruud, *supra* note 7, at 402 (asserting that if the title gives adequate notice, the act should be held valid).

Solid Waste Management, on the other hand, involved an under-inclusive title.[493] The court implicitly recognized that the bill's title gave adequate notice as to most of its provisions. Accordingly, the court limited the statute to those applications within the title.[494] The rationale behind the clear title rule is, by definition, satisfied as to some portion of the bill when the title is under-inclusive. The question is whether the portion adequately expressed in the title meets the independence and completeness requirements for severance. If so, severance of the remainder is proper.

As noted earlier, however, the invalid portion of the bill in *Solid Waste Management* was not in fact capable of severance.[495] Both the valid and the invalid matters were subsumed within the textual phrase "pursuant to this chapter" which delineated the application of the provision.[496] Thus, the court restricted the statute to apply only to matters expressed in the title. Accomplishing severance by restricting the provision's application to a subset of what its terms cover is a bad idea because then the text of the statute no longer means what it says. This action "amount[s] to judicial amendment" of the statute,[497] a practice *Associated Industries* specifically disavowed.[498] The proper remedy when the void provisions are incapable of severance is to invalidate the statute altogether.

In sum, the rationales underlying the three distinct constitutional limitations suggest that severance is the proper remedy for certain single subject and clear title violations. In single subject cases, severance is proper when logrolling was not involved and when severance can be accomplished without rewriting the statute. As long as logrolling was not at work, severance affords appropriate deference to the legislature without eviscerating the constitutional prohibition. Clear title violations involving under-inclusive titles also permit severance if the statute is in fact capable of severance. Under-inclusive titles give notice as to some, but not all, of the bill's contents. In these cases, the purpose of the rule is served as to the portion of the bill expressed in the title. Overbroad titles, however, taint the entire bill and render the whole enactment void. Original purpose violations have the same effect. In these cases, severance is improper.

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[493] *See Solid Waste Mgmt.*, 964 S.W.2d at 821.

[494] *Id.* at 822.

[495] *See supra* notes 447–463 and accompanying text. A complete discussion of severance by application is beyond the scope of this Article.

[496] *Solid Waste Mgmt.*, 964 S.W.2d at 822.

[497] 2 SINGER, *supra* note 9, § 44.15, at 542.

[498] *See* Associated Indus. of Mo. v. Dir. of Revenue, 918 S.W.2d 780, 785 (Mo. 1996).

VI. CONCLUSION

Constitutional restrictions on legislative procedure are intended to prevent ill-considered, surreptitious, or corrupt legislation. Though litigants employ these restrictions to seek invalidation of legislation for a variety of reasons, the facts of recent cases suggest that legislatures occasionally resort to procedures that the original purpose, single subject, and clear title rules were designed to eliminate.[499] Courts must walk a fine line between enforcing these constitutional requirements and unduly interfering with the legislative process.

Recent Missouri cases illustrate several permutations of each type of procedural violation, and also highlight difficulties in the analysis of these claims. First of all, courts, commentators, and litigants sometimes fail to distinguish the three procedural claims and to address their separate underlying rationales. As a result, the test for compliance with each of the procedural requirements is confusing. In a few cases, rhetorical imprecision, analytical weakness, or an overly deferential posture led to the wrong result.

State constitutions place safeguards on the legislative process in the form of original purpose, single subject, and clear title restrictions, and courts should not ignore them. As the Missouri Supreme Court stated in *State v. Miller*, "where a law is clearly and palpably in opposition to [the constitutional limitation], there is no other alternative but to pronounce it invalid."[500] As long as the people of the states continue to impose constitutional restrictions on legislative procedure, state courts will be called upon to decide cases challenging legislation on these grounds. If Missouri's experience is any guide, the failure to apply rigorous, consistent standards for decision of such cases will only increase the flow.

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[499] *See* Williams, *supra* note 1, at 800 (discussing Pennsylvania's legislature).
[500] 45 Mo. 495, 498 (Mo. 1870) (discussing single subject violations).

APPENDIX I

	Single Subject	*Clear Title*	*Original Purpose*
Ala.	Art. IV, § 45	Art. IV, § 45	Art. IV, § 61
Alaska	Art. II, § 13	Art. II, § 13	
Ariz.	Art. IV, Pt. 2, § 13	Art. IV, Pt. 2, § 13[1]	
Ark.			Art. 5, § 21
Cal.	Art. 4, § 9	Art. 4, § 9	
Colo.	Art. 5, § 21	Art. 5, § 21[2]	Art. 5, § 17
Conn.			
Del.	Art. II, § 16	Art. II, § 16	
Fla.	Art. 3, § 6	Art. 3, § 6	
Ga.	Art. 3, § 5	Art. 3, § 5	
Haw.	Art. III, § 14	Art. III, § 14	
Idaho	Art. III, § 16	Art. III, § 16[3]	
Ill.[4]	Art. 4, § 8(d)		
Ind.	Art. 4, § 19		
Iowa	Art. III, § 29	Art. III, § 29	
Kan.	Art. II, § 16	Art. II, § 16	
Ky.	§ 51	§ 51	
La.	Art. 3, § 15(A)[5]	Art. 3, § 15(A)	Art. 3, § 15(C)[6]
Me.			
Md.	Art. III, § 29	Art. III, § 29	
Mass.			
Mich.	Art. IV, § 24[7]	Art. IV, § 24	
Minn.	Art. IV, § 17	Art. IV, § 17	
Mo.	Art. III, § 23	Art. III, § 23[8]	Art. III, § 21
Miss.		Art. IV, § 71	Art. IV, § 60
Mont.	Art. V, § 11(3)	Art. V, § 11(3)	Art. V, § 11(1)
Neb.	Art. III, § 14	Art. III, § 14	
Nev.	Art. IV, § 17	Art. IV, § 17	

[1] Provides that act containing objects not expressed in title is void only as to the portion not expressed.

[2] Provides that act containing objects not expressed in title is void only as to the portion not expressed.

[3] Provides that act containing objects not expressed in title is void only as to the portion not expressed.

[4] Illinois formerly had a clear title requirement but dropped it in the constitutional revision of 1970. *See* Chambers, *supra* note 14.

[5] Refers to single "object."

[6] Prohibits amendment of bill "to make a change not germane to the bill as introduced."

[7] Refers to "one object."

[8] Formerly provided that where subject is not expressed in title, act is void only as to portions not expressed. MO. CONST. of 1865, Art. IV, §32.

N.H.			
N.J.	Art. 4, § 7[9]	Art. 4, § 7, ¶ 4	
N.M.	Art. IV, § 16	Art. IV, § 16[10]	
N.Y.[11]	Art. 3, § 15	Art. 3, § 15	
N.C.			
N.D.	Art. IV, § 13	Art. IV, § 13	
Ohio	Art. II, § 15(D)	Art. II, § 15(D)	
Okla.	Art. V, § 57	Art. V, § 57[12]	
Or.	Art. IV, § 23	Art. IV, § 20	
Pa.	Art. III, § 3	Art. III, § 3	Art. III, § 1
R.I.			
S.C.	Art. III, § 17	Art. III, § 17	
S.D.	Art. III, § 21	Art. III, § 21	
Tenn.	Art. II, § 17	Art. II, § 17	
Tex.	Art. III, § 35(a)	Art. III, § 35(b)[13]	Art. III, § 30
Utah	Art. VI, § 22	Art. VI, § 22	
Vt.			
Va.	Art. IV, § 12[14]	Art. IV, § 12	
Wash.	Art. 2, § 19	Art. 2, § 19	
W. Va.	Art. VI, § 30[15]	Art. VI, § 30	
Wis.[16]	Art. 4, § 18	Art. 4, § 18	
Wyo.	Art. 3, § 24	Art. 3, § 24[17]	Art. 3, § 20

[9] Refers to "one object."

[10] Provides that act containing objects not expressed in title is void only as to the portion not expressed.

[11] Applies only to "private or local bills."

[12] Provides that act containing objects not expressed in title is void only as to the portion not expressed.

[13] Provides that the "legislature is solely responsible for determining compliance" with the clear title rule.

[14] Refers to "one object."

[15] Refers to "one object."

[16] Applies only to "private or local" bills.

[17] Provides that act containing objects not expressed in title is void only as to the portion not expressed.

APPENDIX II

1. *Original Purpose Cases Finding Violation*

Advisory Opinion No. 331, 582 So. 2d 1115 (Ala. 1991)[18]
Barclay v. Melton, 5 S.W.3d 457 (Ark. 1999)

2. *Original Purpose Cases Finding No Violation*

C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322 (Mo. 2000) (en banc)
St. Louis Health Care Network v. State, 968 S.W.2d 145 (Mo. 1998) (en banc)[19]
Nat'l Solid Waste Mgmt. Ass'n v. Dir., Dep't of Natural Res., 964 S.W.2d 818 (Mo. 1998) (en banc)[20]
Stroh Brewery Co. v. State, 954 S.W.2d 323 (Mo. 1997) (en banc)
Akin v. Dir., Dept. of Revenue, 934 S.W.2d 295 (Mo. 1996) (en banc)
Billis v. State, 800 P.2d 401 (Wyo. 1990)
Mollman v. State, 800 P.2d 466 (Wyo. 1990)
Heggen v. State, 800 P.2d 475 (Wyo. 1990)
Cambio v. State, 800 P.2d 482 (Wyo. 1990)

3. *Single Subject Cases Finding Violation*

Ex parte Springer, 619 So. 2d 1267 (Ala. 1992)
State v. Thompson, 750 So. 2d 643 (Fla. 1999)
Martinez v. Scanlan, 582 So. 2d 1167 (Fla. 1991)
People v. Cervantes, 723 N.E.2d 265 (Ill. 1999)
People v. Wooters, 722 N.E.2d 1102 (Ill. 1999)
People v. Reedy, 708 N.E.2d 1114 (Ill. 1999)
Johnson v. Edgar, 680 N.E.2d 1372 (Ill. 1997)
State v. Taylor, 557 N.W.2d 523 (Iowa 1996)
Giles v. State, 511 N.W.2d 622 (Iowa 1994)
Migdal v. State, 747 A.2d 1225 (Md. 2000)
Porten Sullivan Corp. v. State, 568 A.2d 1111 (Md. 1990)
Associated Builders & Contractors v. Ventura, 610 N.W.2d 293 (Minn. 2000)
Mo. Health Care Ass'n v. Attorney Gen., 953 S.W.2d 617 (Mo. 1997) (en banc)

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[18] Concerns an appropriations bill, but relevant for original purpose claim.
[19] Claim raised but not decided.
[20] Claim raised but not decided.

Carmack v. Dir., Mo. Dep't of Agric., 945 S.W.2d 956 (Mo. 1997) (en banc)
Hammerschmidt v. Boone County, 877 S.W.2d 98 (Mo. 1994) (en banc)
State *ex rel.* Ohio Acad. of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999)
State *ex rel.* Hinkle v. Franklin County Bd. for Elections, 580 N.E.2d 767 (Ohio 1991)
Campbell v. White, 856 P.2d 255 (Okla. 1993)
Johnson v. Walters, 819 P.2d 694 (Okla. 1991)
McIntire v. Forbes, 909 P.2d 846 (Or. 1996)
Tenn. Mun. League v. Thompson, 958 S.W.2d 333 (Tenn. 1997)
Wash. State Legislature v. State, 985 P.2d 353 (Wash. 1999)
Kincaid v. Mangum, 432 S.E.2d 74 (W. Va. 1993)

4. *Single Subject Cases Finding No Violation*

Town of Brilliant v. City of Winfield, 752 So. 2d 1192 (Ala. 1999)
Ex parte Coker, 575 So. 2d 43 (Ala. 1990)
Lutz v. Foran, 427 S.E.2d 248 (Ga. 1993)
Kinsela v. State, 790 P.2d 1388 (Id. 1990)
Premier Prop. Mgmt. v. Chavez, 728 N.E.2d 476 (Ill. 2000)
Arangold v. Zehnder, 718 N.E.2d 191 (Ill. 1999)[21]
People v. Dunigan, 650 N.E.2d 1026 (Ill. 1995)
Geja's Café v. Metro. Pier & Exposition Auth., 606 N.E.2d 1212 (Ill. 1992)
Bayh v. Ind. State Bldg. & Constr. Trades Council, 674 N.E.2d 176 (Ind. 1996)
Iowa Dep't of Transp. v. Iowa Dist. Court, 586 N.W.2d 374 (Iowa 1998)
Utilicorp United, Inc. v. Iowa Utils. Bd., 570 N.W.2d 451 (Iowa 1997)
State v. Mabry, 460 N.W.2d 472 (Iowa 1990)
State *ex rel.* Tomasic v. Unified Gov't of Wyandotte County, 955 P.2d 1136 (Kan. 1998)
Kan. Pub. Empls. Ret. Sys. V. Reimer & Kroger Assocs., Inc., 941 P.2d 1321 (Kan. 1997)
Unified Sch. Dist. No. 229 v. State, 885 P.2d 1170 (Kan. 1994)
Harding v. K.C. Wall Products, Inc., 831 P.2d 958 (Kan. 1992)
Doherty v. Caleasien Parish Sch. Bd., 634 So. 2d 1172 (La. 1994)
Md. Classified Employees Ass'n, Inc. v. State, 694 A.2d 937 (Md.

[21] Concerns a "budget implementation bill," which apparently differs from an appropriations bill. 718 N.E.2d at 195 (describing "actual state budget" adopted on same day as "budget implementation bill").

1997)
Metro. Sports Facilities Comm'n v. County of Hennepin, 478 N.W.2d 487 (Minn. 1991)
C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322 (Mo. 2000) (en banc)
Corvera Abatement Techs. v. Air Conservation Comm'n, 973 S.W. 2d 851 (Mo. 1998) (en banc)
St. Louis Health Care Network v. State, 968 S.W.2d 145 (Mo. 1998) (en banc)[22]
Nat'l Solid Waste Mgmt. Ass'n v. Dir., Dept. of Natural Res., 964 S.W.2d 818 (Mo. 1998) (en banc)[23]
Stroh Brewery Co. v. State, 954 S.W.2d 323 (Mo. 1997) (en banc)
Fust v. Attorney Gen., 947 S.W.2d 424 (Mo. 1997) (en banc)
Akin v. Dir., Dept. of Revenue, 934 S.W.2d 295 (Mo. 1996) (en banc)
Jaksha v. State, 486 N.W.2d 858 (Neb. 1992)
Beagle v. Walden, 676 N.E.2d 506 (Ohio 1997)
State *ex rel.* Ohio AFL-CIO v. Voinovich, 631 N.E.2d 582 (Ohio 1994)
Keyserling v. Beasley, 470 S.E.2d 100 (S.C. 1996)
Westvaco Corp. v. S.C. Dep't of Revenue, 467 S.E.2d 739 (S.C. 1995)
Accts. Mgmt., Inc. v. Williams, 484 N.W.2d 297 (S.D. 1992)
State v. Broadaway, 942 P.2d 363 (Wash. 1997)
In re Boot, 925 P.2d 964 (Wash. 1996)
State v. Thorne, 921 P.2d 514 (Wash. 1996)
Wash. Fed'n of State Employees v. State, 901 P.2d 1028 (Wash. 1995)
Appalachian Power Co. v. State Tax Dep't, 466 S.E.2d 424 (W. Va. 1995)
State *ex rel.* Marockie v. Wagoner, 446 S.E.2d 680 (W. Va. 1994)
City of Brookfield v. Milwaukee Metro. Sewerage Dist., 491 N.W.2d 484 (Wis. 1992)
Billis v. State, 800 P.2d 401 (Wyo. 1990)
Mollman v. State, 800 P.2d 466 (Wyo. 1990)
Heggen v. State, 800 P.2d 475 (Wyo. 1990)
Cambio v. State, 800 P.2d 482 (Wyo. 1990)

5. *Clear Title Cases Finding Violation*

State v. Taylor, 557 N.W.2d 523 (Iowa 1996)
St. Louis Health Care Network v. State, 968 S.W.2d 145 (Mo. 1998)

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[22] Claim raised but not decided.
[23] Claim raised but not decided.

(en banc)
Nat'l Solid Waste Mgmt. Ass'n. v. Dir., Dept. of Natural Res., 964 S.W.2d 818 (Mo. 1998) (en banc)
McIntire v. Forbes, 909 P.2d 846 (Or. 1996)
Tenn. Mun. League v. Thompson, 958 S.W.2d 333 (Tenn. 1997)
Patrice v. Murphy, 966 P.2d 1271 (Wash. 1998)

6. *Clear Title Cases Finding No Violation*

McGlothren v. E. Shore Family Practice, 742 So. 2d 173 (Ala. 1999)
Louvier v. Mobile County Bd. of Educ., 670 So. 2d 873 (Ala. 1995)
Hussey v. Chatham County, 494 S.E.2d 510 (Ga. 1998)
Lutz v. Foran, 427 S.E.2d 248 (Ga. 1993)
Kinsela v. State, 790 P.2d 1388 (Idaho 1990)
Utilicorp United, Inc. v. Iowa Utils. Bd., 570 N.W.2d 451 (Iowa 1997)
Yeoman v. Commonwealth, 983 S.W.2d 459 (Ky. 1998)
Commonwealth Revenue Cabinet v. Smith, 875 S.W.2d 873 (Ky. 1994)
La. Seafood Mgm't Council v. La. Wildlife & Fisheries Comm'n, 715 So. 2d 387 (La. 1998)
C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322 (Mo. 2000) (en banc)
Corvera Abatement Techs. v. Air Conservation Comm'n, 973 S.W.2d 851 (Mo. 1998) (en banc)
Stroh Brewery Co. v. State, 954 S.W.2d 323 (Mo. 1997) (en banc)
Fust v. Attorney Gen., 947 S.W.2d 424 (Mo. 1997) (en banc)
Hammerschmidt v. Boone County, 877 S.W.2d 98 (Mo. 1994) (en banc)[24]
Pierce v. State, 910 P.2d 288 (N.M. 1995)
Thompson v. McKinley County, 816 P.2d 494 (N.M. 1991)
Westvaco Corp. v. S.C. Dep't of Revenue, 467 S.E.2d 739 (S.C. 1995)
Accounts Mgmt., Inc. v. Williams, 484 N.W.2d 297 (S.D. 1992)
Brower v. State, 969 P.2d 42 (Wash. 1998)
State v. Broadaway, 942 P.2d 363 (Wash. 1997)
In re Boot, 925 P. 2d 964 (Wash. 1996)
Wash. Fed'n of State Employees v. State 901 P.2d 1028 (Wash. 1995)
McCoy v. VanKirk, 500 S.E.2d 534 (W. Va. 1997)
State *ex rel.* Lambert v. County Comm'n of Boone County, 452 S.E.2d 906 (W. Va. 1994)
State *ex rel.* Marokie v. Wagoner, 446 S.E.2d 680 (W. Va. 1994)

[24] Claim raised but not decided.

City of Brookfield v. Milwaukee Metro. Sewerage Dist., 491 N.W.2d 484 (Wis. 1992)
Billis v. State, 800 P.2d 401 (Wyo. 1990)
Mollman v. State, 800 P.2d 466 (Wyo. 1990)
Heggen v. State, 800 P.2d 475 (Wyo. 1990)
Cambio v. State, 800 P.2d 482 (Wyo. 1990)