Omnibus Bills
and
Garbage Bills

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I. Introduction

The purpose of this paper is to explain how the single-subject requirement in the Minnesota Constitution has, and has not, limited the Legislature's ability to create omnibus bills that are sometimes called "Christmas tree" bills or "garbage" bills. Along the way, it will explain how logs, woodchucks, and offers you can't refuse have become part of the legislative process.

II. Single-Subject Requirement

The single-subject requirement is contained in article 4, sec. 17, of the Minnesota Constitution, which provides that "No law shall embrace more than one subject, which shall be expressed in its title."

A. Purposes

1. Prevent Logrolling

The primary purpose of the single-subject requirement is to prevent logrolling, that is, combining into one bill several distinct provisions, each of which is supported only by a minority of members, but which, when voted for as a package, will have majority support. As the Minnesota Supreme Court said in the 1875 case of *State v. Cassidy*:

> The well-known object of this section of the constitution . . . was to secure to every distinct measure of legislation a separate consideration and decision, dependent solely upon its individual merits, by prohibiting the fraudulent insertion therein of matters wholly foreign, and in no way related to or connected with its subject, and by preventing the combination of different measures, dissimilar in character, purposes and objects, but united together with the sole view, by this means of compelling the requisite support to secure their passage.

22 Minn. 312, 322.

2. Prevent Fraud

A second purpose of the single-subject requirement is to prevent members of the Legislature from defrauding their fellow members by hiding controversial provisions in otherwise uncontroversial bills. These are called "woodchucks." This practice was condemned by the Court in the 1858 case of *Board of Supervisors of Ramsey County v. Heenan*, 2 Minn. 330. The Court said:

> A knowledge of the character of the legislation which preceded the forming of a State Constitution, will show that a very vicious system prevailed of inserting matter in acts which was entirely foreign to that expressed in the title, and by this means

> securing the passage of laws which would never have received the sanction of the legislature had the members known the contents of the act; it was to prevent frauds of this nature that Section [17] of Article 4 was passed, and it has and was intended to have the effect of defeating the action of the legislature, even if the members are so inattentive as to overlook such extraneous matter after the bill has been *read twice at length under Sec. [19]*. The system is thorough and means to secure to the people fair and intelligible legislation, free from all the tricks and *finesse* which has heretofore disgraced it.

2 Minn. at 336.

B. Logrolling, Fraud, and A Single Subject

Logrolling and fraud often go together, just as the Court has treated them together. But the essence of logrolling is not fraud. Rather, it is cooperation. Logrolling is a technique used by citizens in a democracy to accomplish by working together what they could not accomplish by working separately. Logrolling will not succeed unless each member who is asked to vote for the package knows that his or her provision is in it.

Logrolling may occur even when you are dealing with a single subject, such as food. Consider the question of where you and your spouse will eat Thanksgiving dinner – with your parents or with your spouse's parents. You might try to make that decision "solely upon its individual merits," *id.*, as the Court would have you do. But you might find it easier to make an agreement that is acceptable to both spouses if you roll that decision in with the decision on where to eat Christmas dinner. In fact, if things are complicated, you might even find it necessary to sweeten the pot by throwing in Christmas Eve and New Year's.

In much the same way, it is difficult for the Legislature to enact a capital budget bill that contains only a few projects. Most projects are of significant interest only to those legislators in whose districts they are located. There is no majority to pass a bill until enough projects are included to satisfy a majority of the members in both the Senate and the House. This is logrolling to create an omnibus bill on a single subject and without fraud. It is called "pork barrel politics" or "bringing home the bacon." It need not be "garbage."

Logrolling, however, may facilitate fraud, since a multitude of logs may more easily hide a woodchuck. The woodchuck is bad, not because it is foreign, but because it is hidden. A weakness of the single-subject requirement is that it kills only the foreigners.

C. Laws Invalidated

Before the turn of the century, the Minnesota Supreme Court struck down nearly a dozen laws it found in violation of the single-subject requirement. *Winona & St. P. R. Co. v. Waldron*, 11 Minn. 515 (Gil. 392), 88 Am. Dec. 100 (1866); *State v. Kinsella*, 14 Minn. 524 (Gil. 395) (1869);

Mississippi & R. R. Boom Co. v. Prince, 34 Minn. 79, 24 N.W. 361 (1885); *State ex rel. Rice v. Smith*, 35 Minn. 257, 28 N.W. 241 (1886); *State v. Porter*, 53 Minn. 279, 55 N.W. 134 (1893); *Kedzie v. Town of Ewington*, 54 Minn. 116, 55 N.W. 864 (1893); *Keith v. Chapel*, 63 Minn. 535, 65 N.W. 940 (1896); *Simard v. Sullivan*, 71 Minn. 517, 74 N.W. 280 (1898); *State ex rel. Anderson v. Sullivan*, 72 Minn. 126, 75 N.W. 8 (1898); *Palmer v. Bank of Zumbrota*, 72 Minn. 266, 75 N.W. 380 (1898); *State v. Oftedal*, 72 Minn. 498, 75 N.W. 692 (1898); *State ex rel. Bazelle v. Sullivan*, 73 Minn. 378, 76 N.W. 223 (1898).

Since then, it has struck down another six, the last in 2000. *In re Day's Petition*, 93 Minn. 178, 10 N.W. 1124 (1904); *Watkins v. Bigelow*, 93 Minn. 210, 100 N.W. 1104 (1904); *State v. Palmquist*, 173 Minn. 221, 217 N.W. 108 (1927); *State v. Phillips*, 176 Minn. 249, 223 N.W. 98 (1929); *Egekvist Bakeries, Inc. v. Benson*, 186 Minn. 520, 243 N.W. 853 (1932); *State ex rel. Finnegan v. Burt*, 225 Minn. 86, 29 N.W. 2d 655 (1947); *Associated Builders and Contractors v. Ventura*, No. C8-98-1383, 610 N.W. 2d 293 (Minn. 2000).

The laws invalidated were struck down less because their contents were too broad than because their titles were too narrow. In the 1904 case of *Watkins v. Bigelow*, 93 Minn. 210, 100 N.W. 1104, the Court was presented with a law whose title was:

> An act to amend the sixth subdivision of section 4284 of the General Statutes of Minnesota for 1894 as amended by chapter 95 of the Laws of 1901 relating to express trusts.

See Act of April 4, 1903, ch. 132, 1903 Minn. Laws 188.

The law included provisions in addition to the amendment to the sixth subdivision of section 4284, the only one mentioned in the title. The Court said:

> [I]f the title to a statute be a restrictive one, carving out for consideration a part only of a general subject, legislation under such title must be confined within the same limits. All provisions of an act outside of such limits are unconstitutional, even though such provisions might have been included in the act under a broader title.

93 Minn. at 222-23.

The dangers of too narrow a title were most clearly seen in the Egekvist bread case of 1932, *Egekvist Bakeries, Inc. v. Benson*, 186 Minn. 520, 243 N.W. 853. The Legislature in 1927 had enacted a law entitled "An act regulating the weight of bread," *see* Act of April 22, 1927, ch. 351, 1927 Minn. Laws 480, which required that bread be weighed before it was sold in this state. In 1931, the Legislature attempted to take this consumer protection measure one step further and require that the bread also be wrapped in the bakery before it was sold. It did so, logically enough, by amending the 1927 law to add a weighing requirement. The amendatory law was entitled "An act to amend Sections 2 and 3, Chapter 351, General Laws 1927, relating to the weight and sanitary

wrapping of bread." *See* Act of April 24, 1931, ch. 322, 1931 Minn. Laws 412. The Court held that the portions of the law relating to the wrapping of bread were unconstitutional, since they were an amendment to a law that related only to the weight of bread and were "not germane to the general subject expressed in the title of the act sought to be amended." 186 Minn. at 523, 243 N.W. at ___.

In 1945, the Legislature enacted a law to create a civil service system in Hennepin County. The law was entitled:

> An act to establish a classification and salary system in all counties of this state now or hereafter having a population of 500,000 or more, creating a classification and salary commission therein; fixing salaries and sums to be appropriated and spent therefor, and suspending inconsistent laws.

See Act of April 23, 1945, ch. 607, 1945 Minn. Laws 1220.

Section 8 of the law related to the discharge or demotion of employees. In 1947, the Court found that nothing in the title indicated that the law contained provisions relating to the discharge or demotion of employees. Since the title was restrictive and the subject matter of section 8 was not within it, the Court held that section 8 was invalid and refused to enforce it. *State ex rel. Finnegan v. Burt*, 225 Minn. 86, 88-89, 29 N.W.2d 655, ___ (1947). It relied upon *State ex rel. Anderson v. Sullivan*, 72 Minn. 126, 75 N.W. 8 (1898) in holding only the offending section to be invalid, rather than the entire law.

> Where a portion of a statute conflicts with the constitution, the question whether the other parts are also void must depend upon a consideration of the object of the law, and in what manner and to what extent the unconstitutional portion affects the remainder. The familiar rule on the subject is that, although a part of the statute is unconstitutional, that fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in subject-matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning that it cannot be presumed the legislature would have passed the one without the other.

72 Minn. at 133, 75 N.W. at __.

D. Drafting a General Title to Insure Constitutionality

Fortunately for the Legislature, the Court in *Watkins v. Bigelow*, 93 Minn. 210, 100 N.W. 1104 (1904), had distinguished between a "restrictive" title, which must be strictly construed, and a "general" title, which "should be liberally construed in a common-sense way."

> [It] is sufficient if it is not a cloak for legislating upon dissimilar matters, and the subjects embraced in the enacting clause are naturally connected with the subject expressed in the title.

93 Minn. at 222.

As the Court had said in *State v. Cassidy*:

> [I]f the legislature is fairly apprised of the general character of an enactment by the subject as expressed in its title, and all its provisions have a just and proper reference thereto, and are such as, by the nature of the subject so indicated, are manifestly appropriate in that connection, and as might reasonably be looked for in a measure of such character, then the requirement of the constitution is complied with. It matters not that the act embraces technically more than one subject, one of which only is expressed in the title, as was the case in the township organization act, (*Supervisors of Ramsey County v. Heenan*, 2 Minn. 330,) so that they are not foreign and extraneous to each other, but "blend" together in the common purpose evidently sought to be accomplished by the law.

22 Minn. 312, 324 (1875).

So, the dangers of too restrictive a title, and the limitation of the single-subject requirement, may be avoided simply by drafting a title for the law that is sufficiently broad.

One of the earliest examples of a broad and general title was in the probate code of 1889. *See* Act of April 24, 1889, ch. 46, 1889 Minn Gen. Laws 94. The act consisted of 21 subchapters containing 326 sections, but it was entitled simply "An act to establish a Probate Code." The Court upheld it against a constitutional challenge, saying:

> Any construction of [the single-subject requirement] that would interfere with the very commendable policy of incorporating the entire body of statutory law upon one general subject in a single act, instead of dividing it into a number of separate acts, would not only be contrary to its spirit, but also seriously embarrassing to honest legislation. All that is required is that the act should not include legislation so incongruous that it could not, by any fair intendment, be considered germane to one general subject. The subject may be as comprehensive as the legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject, and not several. The connection or relationship of several matters, such as will render them germane to one subject and to each other, can be of various kinds, as, for example, of means to ends, of different subdivisions of the same subject, or that all are designed for the same purpose, or that both are designated by the same term. Neither is it necessary that the connection or relationship should be logical; it is enough that the matters are connected with and related to a single subject in popular signification.

> The generality of the title of an act is no objection, provided only it is sufficient to give notice of the general subject of the proposed legislation and of the interests likely to be affected. The title was never intended to be an index of the law.

Johnson v. Harrison, 47 Minn. 575, 578, 50 N.W. 923, ___ (1891).

Even when the act itself is not especially broad, a broad title is often given to it, just to be on the safe side, since the Court has said that:

> A title broader than the statute, if it is fairly indicative of what is included in it, does not offend the constitution.

State ex rel. Pearson v. Probate Court of Ramsey County, 205 Minn. 545, 552, 287 N.W. 297, __ (1939).

Even if the broad single subject is not stated in the title, if enough details are stated, the general subject may be inferred from the details expressed. When the Legislature passed a law entitled "An act imposing and relating to a tax on chain stores and mail order establishments," Act of July 24, 1937, ch. 93, 1937 Ex. Sess. Laws 170, it was challenged on the ground that it related to two subjects, chain stores and mail order establishments. The Court inferred that the subject of the law was "taxation" and upheld it. *C. Thomas Stores Sales System, Inc. v. Spaeth*, 209 Minn. 504, 297 N.W. 9 (1941).

The Supreme Court has also distinguished the subject of an act, which must be singular, from the objects of an act, which may be various. As it said in *State v. Cassidy*:

> Most laws have several objects in view. All criminal legislation has reference, or ought to have, not only to the definition of the offense and the punishment of the offender, but the suppression of the crime and the reformation of the criminal; yet an express indication of one only of these objects in the title of an act would not, therefore, make it unconstitutional. Besides, the "subject" of the act, and not the "object" had in view by its enactment, as is the case in some of the states, is what is required by this clause of our constitution.

22 Minn. 312, 324-25.

With these court decisions in mind, the Legislature has tried to insure the constitutionality of each law against attacks based upon the single-subject requirement, first by beginning each title with a broad, general statement of the subject of the law, such as "An act relating to taxation," and second, by following that single broad subject with a more detailed listing of the major objects of the bill, such as "imposing a tax on chain stores and mail order establishments."

A third way the Legislature has tried to make sure that everything contained in the law is included within the title is to include in the title a listing of all laws and statutory sections amended, since the Court has said it is not necessary to describe in words the subject of each section amended, so long as the section number is given. *State ex rel. Olson v. Erickson*, 125 Minn. 238, 146 N.W. 364 (1914).

III. Three Threats

Three times in the last three decades the Minnesota Supreme Court has expressed its frustration with the Legislature's practice of attaching controversial unrelated items to the omnibus appropriations and tax bills. Three times the Court has warned the Legislature not to do this again or risk having an entire omnibus bill declared invalid. The first warning came in the *Mattson* case.

A. *State ex rel. Mattson v. Kiedrowski* - "A Monster Eating the Constitution"

1. The Decision

By 1985, the Minnesota Supreme Court's interpretation of the single-subject requirement could be summarized as follows: the Legislature could include within a law any number of objects, so long as they all related to a single subject. The single subject could be stated broadly and explicitly, or it could be inferred from the several objects described in the title. This description might be done in words, or it might be done by listing the numbers of the statutory sections amended.

The omnibus State Departments Appropriation Bill of that year had a title that began:

> An act relating to the organization and operation of state government; appropriating money for the general legislative, judicial, and administrative expenses of state government with certain conditions; providing for the transfer of certain money in the state treasury; authorizing land acquisition; fixing and limiting fees; creating, modifying, transferring, and abolishing agencies and functions; amending Minnesota Statutes. . . .

See Act of June 27, 1985, ch. 13, 1985 Minn. Laws 2072.

The statutes and session laws amended required two pages to list in the title. The act itself was 378 sections and 273 pages long. *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 784 (Minn. 1986).

Among other things, the law transferred most of the duties of the state treasurer to the commissioner of finance. Robert W. Mattson, the incumbent state treasurer, challenged the law as an unconstitutional attempt to abolish his office. The Court agreed, saying that the Legislature could not do that without submitting a constitutional amendment to the people. 391 N.W.2d. at 782-83.

The Court declined to consider whether the provisions violated the single-subject requirement. 391 N.W.2d at 783 n.9.

2. An Offer You Can't Refuse

The provisions relating to the state treasurer had not been logrolled into the bill to help get votes for its passage, since a majority of the Senate had voted on the floor to take them out. They had not been fraudulently inserted, since they had been in the bill since it was voted out of subcommittee in both the Senate and the House two months before and had been the subject of extensive debate on the floor and in the media. And they certainly related to the single subject expressed in the title: "the organization and operation of state government." This may partly explain why the majority of the Court declined to consider whether they violated the single-subject requirement. But the provisions relating to the state treasurer illustrate another reason why omnibus bills are often criticized—they were part of an offer the members of the Legislature could not refuse.

When a bill is so popular, or so necessary, that no one can vote against it, there is a temptation for its sponsors to add to it provisions that could not succeed on their own. This is not logrolling or fraud, and it may be on the same subject. But it constitutes an offer made by the sponsors that a majority in the Senate and in the House cannot refuse. As Justice Yetka wrote in a concurring opinion, joined by Justice Simonett, "It all but bribes members of the public, as well as public officials, to support the measure in order to see their proposals result in fulfillment." 391 N.W.2d at 785.

Early in the legislative process, when a bill is in committee or on the floor, it can't be used in this way, since members may amend out the unwanted provisions, just as they did on the Senate floor on this bill. But later in the process, a time always comes when it is too late to amend the bill. This most often happens when conference committee reports, which cannot be amended, are being considered just before the constitutional deadline for adjournment of a regular session in an odd-numbered year. It also happens when a regular session in an even-numbered year is approaching a deadline the members have imposed upon themselves. But the law under attack in the *Mattson* case was not a conference committee report; it was a brand new bill introduced at the start of a special session, and there was no rule prohibiting amendments to it. It was not being rushed through to meet a constitutional deadline for adjournment, since that deadline had passed in May. But the impending start of a new fiscal year July 1, 1985, was a practical consideration creating a deadline beyond which a majority of members were unwilling to delay action.

When the time comes for action, the sponsors of a bill are sorely tempted to load it down with all kinds of objectionable provisions that their fellow members will be forced to hold their noses and vote for. If the bill is in conference committee, the conferees may add to it provisions that were not in either the Senate bill or the House bill that went into conference. There may have been no notice that the provisions were being considered, no opportunity for public testimony, no time for the other members of the Legislature to read and study them, and not even time for the other members to become aware that the provisions have been added. Even if the provisions have been in one of the

bills for months, as the provisions relating to the state treasurer had been in the House bill since the hearings in the State Departments Division, the existence of a deadline creates an opportunity for mischief: the conferees from the Senate may yield to a House position they know a majority of the Senate would not accept if they had a choice.

There is no constitutional prohibition against creating these "offers you can't refuse," other than the single-subject requirement. The majority of the Court was right in declining to invalidate the state treasurer provisions on that ground. But I can understand their frustration and their desire to put some limits on the practice. Justice Yetka warned the Legislature:

> The worm that was merely vexatious in the 19th century has become a monster eating the constitution in the 20th.
>
> . . .
>
> While we recognize that modern times require modern methods of legislating, it was never intended by our founding fathers that the legislature be able to combine into one act a number of totally unrelated subjects. Thus, we should publicly warn the legislature that if it does hereafter enact legislation similar to Chapter 13, which clearly violates Minn. Const. art. IV, § 17, we will not hesitate to strike it down regardless of the consequences to the legislature, the public, or the courts generally.

State ex rel. Mattson v. Kiedrowski, 391 N.W.2d 777, 784-85 (Minn. 1986) (Yetka, J., concurring).

B. *Blanch v. Suburban Hennepin Regional Park District*—"A Mere Filament"

The State Departments Bill for the second year of the next biennium was also hauled into court. One of its sections authorized the Suburban Hennepin Regional Park District to acquire land for a Lake Minnetonka regional park by eminent domain without the approval of the municipality in which the land was located, provided the Metropolitan Council held a public hearing and found that acquisition of the land was necessary and desirable and that negotiations with the property owner had been unsuccessful. Act of April 28, 1988, ch. 686, art. 1, § 26, 1988 Minn. Laws 1172, 1199. The city of Minnetrista, where the park district desired to acquire land, challenged the law as special legislation adopted without local approval and as in violation of the single-subject requirement. The Minnesota Supreme Court rejected the challenge. *Blanch v. Suburban Hennepin Regional Park District*, 449 N.W.2d 150 (Minn. 1989). The Court found that local consent was not required for this special law and that the parkland acquisition authority fell within the single subject of the bill—the organization and operation of state government. 449 N.W.2d at 154-55. As the Court said:

> The common thread which runs through the various sections of chapter 686 is indeed a mere filament. Were we not of the opinion that the park bill, designed to make possible the utilization of funds appropriated in the preceding session of the legislature, is germane to the broad subject of appropriations for the operation of state

> government, we would, despite our long-standing tradition of deference to the legislature, be compelled to declare it violative of art. 4, § 17, and, hence, unconstitutional and void.

449 N.W.2d at 155.

The Court warned that the presence of an unrelated provision in a bill would not necessarily result in severing the offending provision while leaving the remainder of the law; it might result in striking down the entire omnibus bill. ("[S]ince it is the presence of more than one subject which renders a bill constitutionally infirm, it appears to us at this time unlikely that any portion of such a bill could survive constitutional scrutiny." *Id.*) Justice Yetka observed that the Legislature now had fair warning to avoid its past practices in the future: "The legislature hereafter has full notice of the consequences of overstepping constitutional limitations in its drafting of omnibus bills." 449 N.W.2d at 155 (concurring specially).

C. *Associated Builders and Contractors v. Ventura* - "A More Pragmatic Result"

The Omnibus Tax Bill of 1997 was 247 pages long, with 15 articles related to various aspects of tax policy and one labeled "Miscellaneous." *See* Act of June 2, 1997, ch. 231, 1997 Minn. Laws 2640. Its title began, "An act relating to the financing and operation of state and local government; . . . . *Id.* Section 4 of article 16 required that school districts pay prevailing wages on any construction project with an estimated cost over $100,000. The requirement was not limited to projects financed with state appropriations. The contractors' association, a school district, and an unsuccessful bidder on a school construction project sued the governor and others to have the prevailing wage section declared unconstitutional as in violation of the single-subject requirement. The Minnesota Supreme Court agreed. *See Associated Builders and Contractors v. Ventura*, No. C8-98-1383, 610 N.W.2d 293 (Minn. 2000).

The district court had noted that, "although the title contained over 800 words and numerals, neither the words 'labor,' 'wages,' 'school districts,' 'construction,' and 'project,' nor 'Minn. Stat. § 177.41' appeared in the title." 610 N.W.2d at 298. The Supreme Court noted that the subject of prevailing wages had historically been discussed in the labor committees, not the tax committees, and that amendments to the laws governing school districts had historically been done in education bills. 610 N.W.2d at 303. It found that any connection between prevailing wages and the financing and operation of state and local government was "a mere figment," not sufficient even to constitute a "mere filament."

Rather than carrying through on its two previous threats to strike down an entire omnibus bill if it were found to violate the single-subject requirement, however, the Court chose to mandate "a more pragmatic result." 610 N.W.2d at 307. It held that:

> Where the common theme of the law is clearly defined by its other provisions, a provision that does not have any relation to that common theme is not germane, is void, and may be severed.

Id.

The Court observed in a footnote that its warning in *Blanch* had been only a dictum, not part of the Court's ruling. 610 N.W.2d at 307 n.32.

In dissent, Justice Page complained that:

> By severing article 16, section 4 from the remainder of chapter 231, the court has taken on the role of a super legislature, deciding which provisions of chapter 231 will be given effect by picking and choosing between the law's various provisions, even though all of its provisions are unconstitutional.
>
> . . .
>
> Finding the law unconstitutional and severing the offending provision, however, does nothing to discourage the legislature from passing laws in violation of article IV, section 17.
>
> . . . Given the possibility that the law may not be challenged at all or if challenged, may be held constitutional, there is no downside to enacting such legislation if the worst position the legislature will be in if the law violates the constitution is the same position it would have been in had the offending provision not been enacted. Further, there may be some political benefit to be gained by including such provisions in a law even if the law is subsequently held unconstitutional and only the offending provision is severed from the remaining provisions of the law.

610 N.W.2d 309-10.

IV. The Future

For the immediate future, it would appear that the Court will continue its past practice of cleaning up garbage bills by striking any provisions that violate the single-subject requirement, rather than striking down the entire bill.

This is what the Court of Appeals chose to do when it found that 2003 Minn. Laws ch. 28, violated the single-subject requirement. *Unity Church v. State*, No. A4-1302 (Minn. App. Apr. 12, 2005). The Court found that articles 2 and 3 of the law, parts of which were named the "Minnesota Citizens' Personal Protection Act of 2003" and made it easier for individuals to obtain a permit to carry a handgun, were not germane to article 1, various housekeeping provisions relating to the

Department of Natural Resources. Having determined that the law violated the single-subject requirement, the Court chose to sever the two articles that were challenged and preserve article 1, which was not, thus following the advice of the Supreme Court in *Associated Builders* to "[bring] the law into constitutional compliance by severing a provision that is not germane to the theme of the law." (Quoting *Associated Builders*, 610 N.W.2d at 305.)