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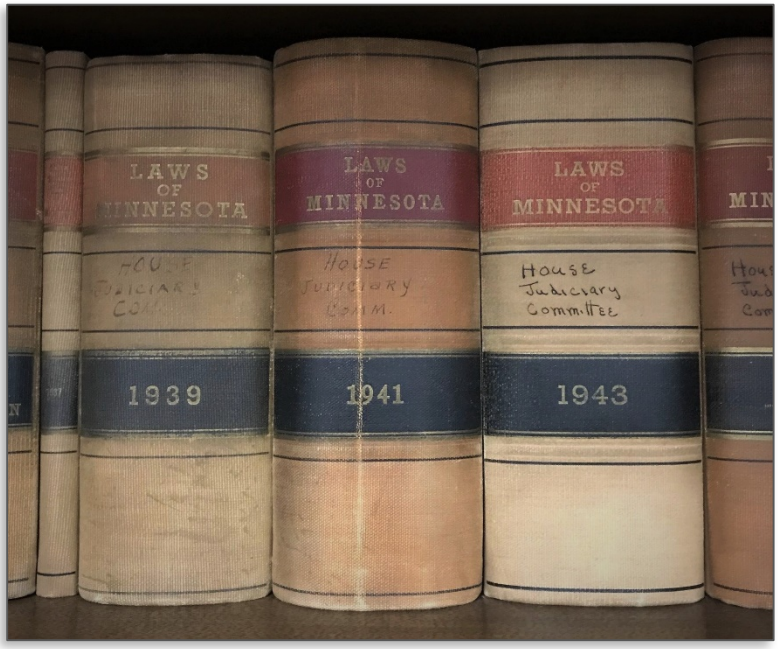
Embraced and Expressed: Minnesota's Single Subject and Title Clause

A Guide for Legislators



About this Publication

This publication discusses the history of the Single Subject and Title Clause of the Minnesota Constitution and the importance of the clause in shaping legislation.

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Executive Summary

The Single Subject and Title Clause of the Minnesota Constitution says that no law can embrace more than one subject, and the subject must be expressed in the law's title. But what is a "subject," and how much information must be stated in the title? As legislators consider how to structure bills to address complicated issues, it is helpful to understand how courts have interpreted this clause.

This publication reviews the origins of the Single Subject and Title Clause, summarizes the early court decisions that granted the legislature broad discretion in identifying subjects and assigning titles, explores how this clause developed into two separate tests, and discusses the modern revival of court challenges citing the clause in light of increasingly large and multifaceted omnibus bills. The publication concludes by describing the remedies courts use when there is a violation of the clause and identifying questions legislators may wish to consider as they prepare and review legislation.

Introduction

"No law shall embrace more than one subject, which shall be expressed in its title." Minnesota Constitution, Article IV, Section 17

The legislature often considers bills that span hundreds of pages, sometimes 900 pages or more. Many legislators and members of the public wonder if bills of this length can truly be considered to embrace a single subject that is expressed in the bill's title as required by the Single Subject and Title Clause of the Minnesota Constitution.

The legislature creates, amends, and votes on bills. Once enacted, those bills become acts and are state law. While a bill cannot be challenged unless and until it becomes an act of the legislature, the Single Subject and Title Clause limits the way in which the legislature can structure bills. Its authors hoped to promote transparency in the legislative process by preventing the legislature from enacting legislation that included multiple unrelated, and possibly controversial, provisions and from hiding the contents of a bill until it became law.

In the late 1800s and early 1900s, parties regularly challenged laws based on alleged violations of the clause, and the courts struck down several of the challenged laws. By the 1930s there were fewer challenges that cited the clause, and by the 1970s courts made it clear that they would give great deference to the legislature.[1]

As the legislature increasingly moved toward passing legislation in large omnibus bills, individual legislators, members of the public, and the Minnesota Supreme Court questioned

[1] See, *Lifteau v. Metropolitan Sports Facilities Commission*, 270 N.W.2d 749 (1978) (emphasizing the need to defer to the legislature given the growing complexity of the legislative process in modern times).

whether those acts violate the Single Subject and Title Clause.[2] In 2000, the supreme court found a section of a large omnibus act unconstitutional.[3] A few years later, the court of appeals found the Personal Protection Act unconstitutional for similar reasons.[4]

But, as can be seen from more recent bills that passed the legislature, large omnibus bills continue to be common. This publication is designed to help legislators determine when legislation is within, or outside, the limits of the Single Subject and Title Clause. The following sections discuss the purpose of the clause, its historical development, the current standards employed by the courts, and questions for legislators to consider as they review legislation.

Origin of the Single Subject and Title Clause

As part of the Minnesota Constitutional Convention in 1857, delegates decided to include the Single Subject and Title Clause.[5] The original draft included a title requirement that said: "No Bill shall be passed by either House, embracing any subject not referred to in its title."[6] In proposing the addition of a single-subject provision, Bradley Meeker, a delegate to the Constitutional Convention, said, "My object in moving this amendment, is to guard against a practice which has been to a greater or less extent, prevalent in this Territory, as well as in other States, of grouping together several different subjects in one bill, and passing them through by means of a system known as log rolling."[7] The proposal received no debate and the adopted provision read: "No law shall embrace more than one subject, which shall be embraced in its title."[8] The language of the clause has not changed and it became Article IV, section 17, of the Minnesota Constitution.

[2] The court began to publicize its concern in the mid-1980s. See, *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986) (*Yetka concurrence*); *Blanch v. Suburban Hennepin Regional Park Dist.*, 449 N.W.2d 150 (Minn. 1989).

[3] *Associated Builders and Contractors v. Ventura*, 610 N.W.2d 293 (Minn. 2000).

[4] *Unity Church of St. Paul v. State*, 694 N.W.2d 585 (Minn. App. 2005).

[5] *The Debates and Proceedings of the Minnesota Constitutional Convention*, 262–263, Francis H. Smith, reporter; St. Paul: E. S. Goodrich, territorial printer, 1857.

[6] Id., at 262.

[7] Id. at 262-263.

[8] *Id.*; The Minnesota Supreme Court discussed this history at length in *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293 (Minn. 2000), a significant decision that found a violation of the Single Subject and Title Clause for the first time in several decades. A detailed discussion of the case appears below.

Early Court Decisions: A Focus on Fraud

The Constitutional Convention met in 1857 and the Minnesota Supreme Court decided its first case involving the Single Subject and Title Clause in 1858. The law at issue in that case both reorganized political divisions in the states from a system of counties to a system of counties and townships, and also required the register of deeds to deliver tax documents to the county board of supervisors.[9] The court determined that the act did embrace more than one subject, but concluded that the act did not violate the constitution because there was "no attempt at fraud, or the interpolation of matter foreign to the subject expressed in the title, but an honest effort to create a system of town, and through the town, county government, similar to that of other states."[10]

This first opinion established that the primary consideration of the court would be whether there was any fraud involved in challenged legislation.

Four years later, the court again indicated that it would focus on the question of fraud. The Hennepin County Sheriff had seized a team of mules from the plaintiff in the case in order to settle a lien, and the plaintiff sought to recover the mules because they could not be seized under "An Act for Homestead Exemption." The sheriff argued that the act was unconstitutional, but the court stated that there was "no pretense of fraud" in the passage of the law.[11]

The first time the court struck down a law, it did so with minimal discussion. The author of the court's opinion cited the 1858 and 1862 decisions and expressed the opinion that the act met the standard set forth in those cases, but stated that a majority of the court felt that the "objection must be sustained."[12]

The court returned to its focus on fraud in an 1868 case.[13] A criminal defendant had been found guilty of murder and objected to the trial moving to different counties.[14] The law in question consisted of eight sections, and the defendant argued that the eighth addressed a different subject than the first seven. The court disagreed, noting that the final section was "germane" to the other sections and emphasizing that the "constitutional restriction must be liberally construed" because "strict adherence to its letter would seriously interfere with the practical business of legislation, and would frequently nullify laws not repugnant to its spirit or

[9] *Bd. of Sup'rs of Ramsey Cty. v. Heenan*, 2 Minn. 330, 339 (1858).

[10] *Id*.

[11] *Tuttle v. Strout*, 7 Minn. 465 (1862).

[12] The plaintiff in the case argued that the law dealt with three subjects in relation to railroads: consolidation, bridging the Mississippi River, and taxation. *Winona & St. P. R. Co. v. Waldron*, 11 Minn. 515, 529 (1866).

[13] Another case, *State v. Kinsella* (14 Minn. 524, 526 (Minn. 1869)) warned that interpretation of the clause could not be too broad "without letting in the evils which the provision was intended to exclude."

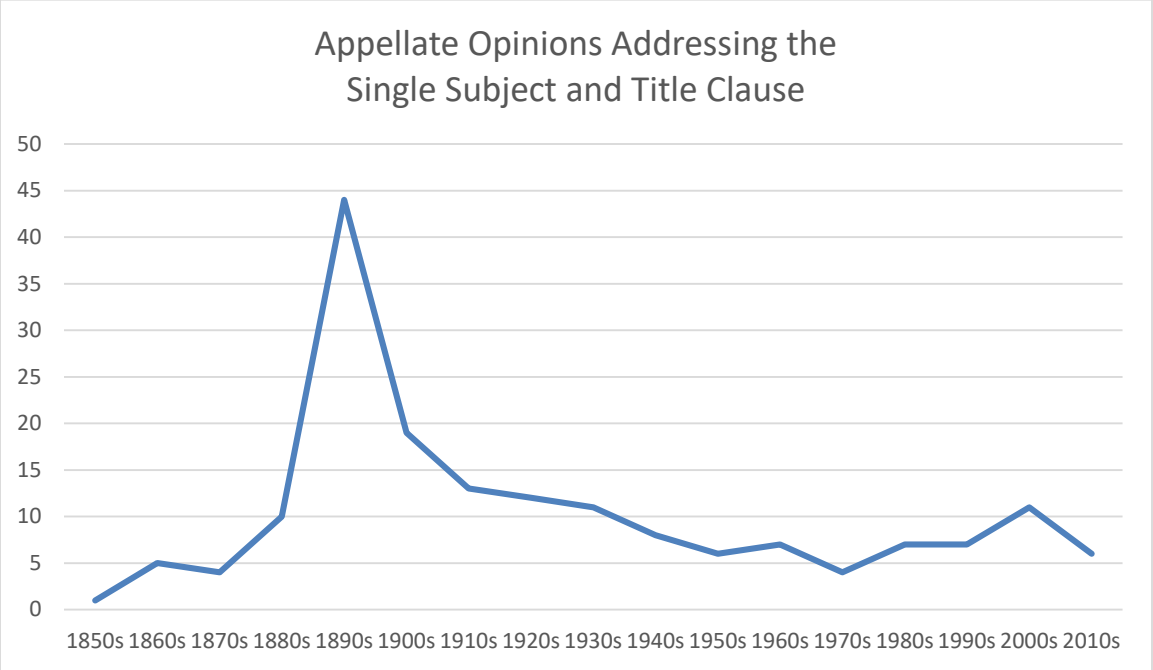
[14] *State v. Gut*, 13 Minn. 341 (1868), *aff'd sub nom. Gut v. State of Minnesota*, 76 U.S. 35, 19 L. Ed. 573 (1869).

meaning."[15] While the court felt that the title was not clear or accurate, it concluded that it was sufficiently suggestive and that there was no pretense of fraud.[16]

Developing a Test Amid Increasing Litigation

In the 1870s and early 1880s, the court saw and rejected a few challenges citing the Single Subject and Title Clause.[17] Most of the rejections came with little commentary. But, a significant spike in litigation over the next few decades resulted in development of a test for assessing challenges to legislation.

While there have been challenges citing the clause in every decade since the 1850s, 44 appellate decisions addressed the clause in the last decade of the 1800s and there were another 19 opinions in the first decade of the 1900s—more than the 56 decisions in the 80 years between 1940 and 2019.[18]



[15] *Id*. at 349-350.

[16] *Id*. at 350.

[17] *Barton v. Drake*, 21 Minn. 299 (1875); *State v. Cassidy*, 22 Minn. 312 (1875); *State v. McFadden*, 23 Minn. 40 (1876); *State v. City of Lake City*, 25 Minn. 404 (1879); *Hoffman v. Parsons*, 6 N.W.797 (Minn. 1880).

[18] The chart includes all decisions by the Minnesota Supreme Court, Minnesota Court of Appeals, Minnesota Tax Court, and Eighth Circuit Court of Appeals. As a result, a few cases produced opinions issued by more than one court: *Metropolitan Sports Facilities Com'n v. County of Hennepin* (tax court and supreme court both in 1991); *Associated Builders and Contractors* (decided by the court of appeals as *Associated Builders and Contractors v. Carlson* in 1999 and by the supreme court as *Associated Builders and Contractors v. Ventura* in 2000); and *Otto v. Wright County* (court of appeals in 2017 and supreme court in 2018).

In 1875, the court reviewed its earlier decisions and attempted to explain what the clause required:

> …if 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.[19]

Perhaps recognizing that this description of the clause provided little guidance, the court later expressed its opinion that it was nearly impossible to establish a general rule for assessing whether a particular act met the constitutional requirements.[20] That opinion suggested a general standard for assessing challenges. It emphasized that the clause should be given a broad, general construction and noted that it does not matter if an act technically embraces more than one subject, or if the title does not include every subject addressed in the act, as long as the subjects "are not at variance" with the subject expressed in the title.[21]

Establishing a Single Subject Test

A year after identifying the difficulty of establishing an appropriate test, the court issued its opinion in *Johnson v. Harrison*, which is widely cited as the best description of the test a court should apply when assessing whether an act has violated the single subject requirement.[22] The court emphasized that the clause had two purposes: (1) preventing logrolling legislation or omnibus bills in which a number of different and disconnected subjects are united in one bill; and (2) preventing surprise and fraud by including subjects not identified in the title.[23] In assessing challenges to legislation, the court indicated that the primary test should be whether the act "is within the mischiefs intended to be remedied."[24]

The opinion focused on the question of whether legislation addressed more than one subject and emphasized that it should be given a broad and general construction: "It is not intended, nor should it be so construed as, to embarrass legislation by making laws unnecessarily restrictive in their scope and operation, or by multiplying their number, or by preventing the

[19] *State v. Cassidy*, 22 Minn. 312, 324 (1875).

[20] *State ex rel. Nash v. Madson*, 45 N.W. 856, 856 (1890).

[21] *Id*., at 856-857.

[22] See, e.g. *State v. Erickson*, 125 Minn. 238 (1914); *State v. Helmer*, 211 N.W. 3 (Minn. 1926); *Sverkerson v. City of Minneapolis*, 283 N.W. 555 (Minn. 1939); *State v. Meyer*, 37 N.W.2d 3 (Minn. 1949); *Visina v. Freeman*, 89 N.W.2d 635 (Minn. 1958); *State v. Bell*, 157 N.W.2d 760 (Minn. 1968); *Wass v. Anderson*, 252 N.W.2d 131 (Minn. 1977); *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986); *Associated Builders and Contractors v. Ventura*, 610 N.W.2d 293 (Minn. 2000); *Unity Church of St. Paul v. State*, 694 N.W. 2d 585 (Minn. App. 2005); and *Otto v. Wright County*, 910 N.W.2d 446 (Minn. 2018).

[23] *Johnson v. Harrison*, 50 N.W. 923, 924 (Minn. 1891).

[24] *Id*.

legislature from embracing in one act all matters properly connected with one general subject."[25]

As a result, the term "subject" must be given a broad interpretation and "may be as comprehensive as the legislature chooses to make it."[26] An act would only violate the Single Subject and Title Clause if it embraced "two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with or relation to each other."[27] All that is required, the court added, is that all matters should fall under "some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."[28] Later opinions refer to this as the test of germaneness.

In short, the subject of an act can be as broad as the legislature chooses; every provision in an act must be germane to that one subject, meaning the subjects must have some legitimate connection to the one subject; and courts should give the requirement a broad, general construction.

Establishing a Title Test

While multiple decisions addressed the titles of various acts, the court did not announce a unified test until 1902. Before that, opinions were somewhat inconsistent.[29] The court reviewed those cases and pulled out the unifying themes, concluding:

> Every reasonable presumption should be in favor of the title, which should be more liberally construed than statutes giving to the general words in such title paramount weight. 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. The remedy to be secured and mischief avoided is the best test of a sufficient title which is to prevent it from being made a cloak or artifice to distract attention from the

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id*.

[29] In *State v. Gut*, 13 Minn. 341, 350 (1868), the court found a title valid even where "the subject of this law is not clearly or accurately expressed in its title." But a year later, the court struck down a law whose title said that it was "incorporating the village of High Forest" because it also divided and organized the town. *State v. Kinsella*, 14 Minn. 524 (1869). In 1885, the court first struck down a provision in "An act relating to the Mississippi Boom Corporation" because the section required other businesses to give the Mississippi Boom Corporation notice when their logs were to go over the Falls of St. Anthony, and then upheld "An act to regulate the foreclosure of real estate" even though the title only suggested mortgage foreclosure actions and the law included executions. In an 1886 decision, *State ex rel. Rice v. Smith*, 28 N.W. 241, 243 (Minn. 1886), the court struck down a law where the title referenced the amendments it made to an 1878 law but also repealed an 1877 law that "related to the same general subject of tax proceedings." Just a few years later, the court said: "it was never claimed that every other act which it repeals or alters by implication must be mentioned in the title of the new act." *City of Winona v. School Dist. No. 82*, 41 N.W. 539, 540 (Minn. 1889). While the opinions may not have been directly contradictory, they did not provide clear direction as to what a title needed to contain to satisfy the constitution.

> substance of the act itself. The title, if objected to, should be aided if possible by resort to the body of the act, to show that it was not intended by such title to mislead the legislature or the people, nor distract their attention from its distinctive measures.[30]

Subsequent decisions clarified that titles could be general or restrictive. Where they were general, they received a broad, general construction, but an act with a restrictive title, such as "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," must be given a narrow construction and provisions outside that title are void.[31] In that case, the section identified in the title related only to municipal trusts but the act changed the requirements for other trusts. The court noted that the law would have been valid under a general title such as "An act relating to express trusts."[32]

In short, titles can be restrictive or general. If a title is restrictive, it must only address the subjects or prior legislation directly referenced in the title.[33] In the more common cases, titles are general and are likely to be valid unless they are so misleading that they distract attention from the actual contents of the legislation.[34]

[30] *State ex rel. Olsen v. Bd. of Control of State Institutions*, 88 N.W. 533, 537 (Minn. 1902).

[31] *Watkins v. Bigelow*, 100 N.W. 1104, 1108-09 (Minn. 1904).

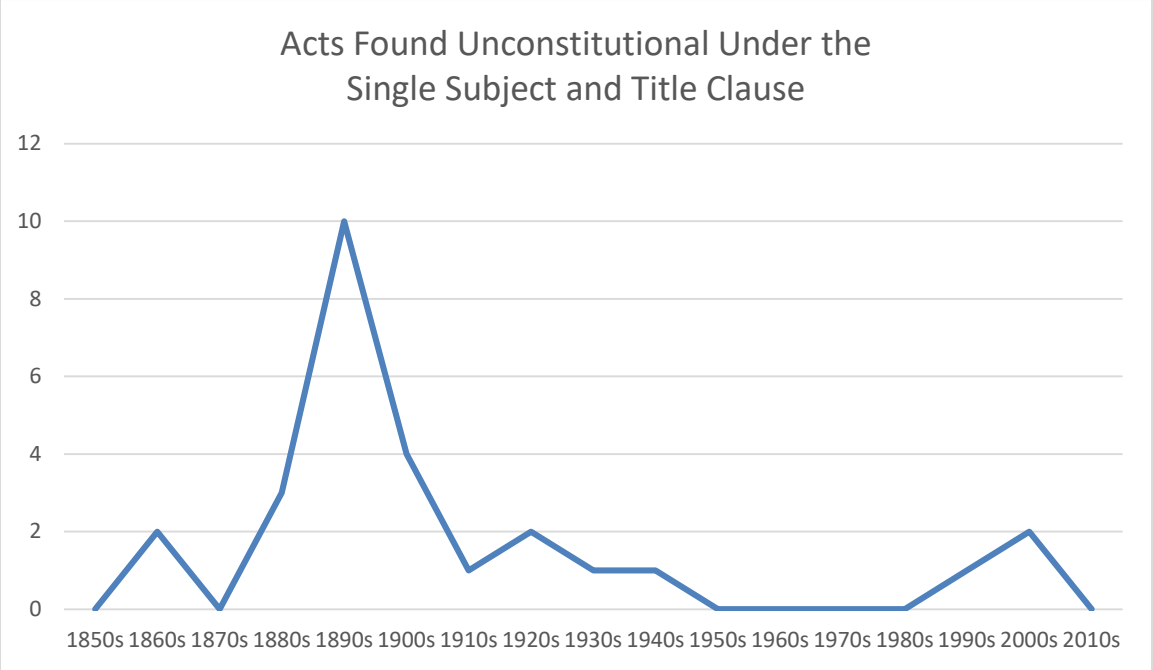
[32] *Id*., at 1109.

[33] See, *Megins v. City of Duluth*, 106 N.W. 89, 90 (Minn. 1906) ("It is true that general titles to statutes must be construed liberally and in a common-sense way, and it is sufficient if a general title is not a cloak for legislating upon dissimilar matters. But when the title is restrictive, carving out for consideration a part only of a general subject, legislation under it must be confined within the same limits, and all provisions of the act outside of such limits are unconstitutional, even though such provisions might have been included in the act under a broader title."); *State v. Palmquist*, 217 N.W. 108 (Minn. 1927) (A title that indicated it was amending a prior act to "enlarge the definition of indecent assault to include male persons" could not also change the age of consent from 14 to 16).

[34] See, *State v. Droppo*, 147 N.W. 829, 830 (Minn. 1914) ("The title is crude and clumsy; but it is not misleading, nor is it a cloak for inappropriate legislation.")

Increasing Deference to the Legislature

The court found that 17 acts violated the Single Subject and Title Clause from 1885 to 1907, just five in the next 40 years, and there were no successful challenges at the appellate level between 1947 and 1999.[35]



While earlier decisions noted that the clause should be given a broad and general construction,[36] later opinions increasingly emphasized that fact. While only some opinions in the 1920s and 1930s explicitly recited that the interpretation must be broad and general,[37] references to that forgiving standard became more common in the 1940s.[38] By the 1950s, all but one court that ruled on a challenge citing the clause mentioned this broad and general

[35] The single appellate decision in 1999 was issued by the court of appeals in *Associated Builders*, which the supreme court upheld a year later. In the 1990s, a Minnesota district court found that a provision violated the clause in *In re Grand Jury Subpoena for Legislative Telephone Records*, 1993 WL 193288 (Dist.Ct.Minn. 1993). There is no appellate opinion in that case.

[36] Courts use the term "liberal" to describe this broad interpretation. As used by the courts, the term does not refer to a political ideology. Rather, it means that the interpretation should not be literal or strict.

[37] *State v. Helmer*, 211, N.W. 3, 3 (Minn. 1926) ("This provision is always liberally construed to avoid unduly hampering legislative action; and doubts concerning the sufficiency of the title of an act are resolved in favor of its sufficiency."); *Sverkerson v. City of Minneapolis*, 283 N.W. 555, 558 (Minn. 1939) ("…when the parties are well aware of the provision, the objection partakes somewhat of the technical and reason for liberal construction exists.")

[38] *C. Thomas Stores Sales Sys. v. Spaeth*, 297 N.W. 9, 13 (Minn. 1941) ("The constitutional provision ought to be practically and liberally construed."); *Blanton v. Northern Pac. Ry. Co.*, 10 N.W.2d 382, 386 (Minn. 1943) (the clause is to be given "broad and extended meaning"); *State ex rel. Finnegan v. Burt*, 29 N.W.2d 655, 657 (Minn. 1947) (general title statutes should be liberally construed); *State v. Meyer*, 37 N.W.2d 3, 8 (the constitutional provision should be liberally construed).

construction.[39] The court continued to express its deference to the legislature through the 1960s and 1970s.

By the end of the 1970s and early 1980s, the court seemed to almost preclude future challenges citing the Single Subject and Title Clause.

In a case the court decided in 1978, a bar owner brought a challenge to the act creating the Metropolitan Sports Facilities Commission and permitting that entity to impose taxes.[40] The title began, "An act relating to metropolitan government; providing for sports facilities; establishing a sports commission and prescribing its powers and duties;" and the district court concluded that "the title of the Act failed to give adequate notice of the provisions for the takeover of the metropolitan sports area."[41] The supreme court disagreed, saying: "Were we to declare the Act invalid by reason of its title, we would place in jeopardy many acts passed over the years by the Minnesota Legislature. One must understand the growing complexity of the legislative process in modern times."[42]

Similarly, a decision issued in 1984 said that "it would have been better practice for the legislature to break Chapter 553 into two separate acts, its provisions are marginally related," but found that there was no constitutional violation.[43] The court emphasized that strict adherence to the letter of the clause "would seriously interfere with the practical business of legislation, and would frequently nullify laws not repugnant to its spirit or meaning."[44]

Two years later the court's tone changed dramatically.

Growing Concerns About Lengthy Bills

Two opinions in the second half of the 1980s signaled that the court intended to look more closely at challenges alleging that legislation violated the single subject provision of the Single Subject and Title Clause.

First, in 1986, the court found that an act was unconstitutional for other reasons and did not address the Single Subject and Title Clause.[45] The case involved an act in which the legislature

[39] *Thomas v. Housing and Redevelopment Authority of Duluth*, 48 N.W.2d 175, 190 (Minn. 1951); *City of Duluth v. Northland Greyhound Lines*, 52 N.W.2d 774, 777 (Minn. 1952); *Western States Utilities Co. v. City of Waseca*, 65 N.W.2d 255, 265 (Minn. 1954); *Visina v. Freeman*, 89 N.W.2d 635, 653 (Minn. 1958). The exception is *State v. City of Duluth*, 56 N.W.2d 416 (Minn. 1952).

[40] *Lifteau v. Metropolitan Sports Facilities Commission*, 270 N.W.2d 749 (Minn. 1978).

[41] *Id*., at 753.

[42] *Id*.

[43] *Bernstein v. Commissioner of Public Safety*, 351 N.W.2d 24, 25 (Minn. 1984).

[44] *Id*.

[45] *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986).

transferred most of the responsibilities of the State Treasurer to the Commissioner of Finance.[46] The bill enacted by the legislature was 273 pages long; had a title that covered two pages; and contained 378 sections including "a section creating a council on Asian-Pacific Minnesotans, a section dealing with the revisor of statutes, one relating to agricultural land, one containing amendments to the Minnesota Zoological Garden, one establishing an Aspen recycling program, and many others."[47] Justice Yetka suggested the court had been too lax in applying the Single Subject and Title Clause and that, as a result, "garbage bills"[48] and "Christmas tree bills"[49] were becoming too common.[50] The concurrence concluded by saying that the court "will not hesitate" to strike down legislation that violates the Single Subject and Title Clause "regardless of the consequences to the legislature, the public, or the courts generally."[51]

The court of appeals took note of Justice Yetka's warning,[52] but the practice of the legislature did not change dramatically. Three years later, the supreme court upheld another act, but built on the warnings delivered by Justice Yetka in *Mattson*.[53] The court concluded that the various sections were germane to one general topic, but indicated that the connection was "a mere filament."[54] It then warned that, if an act violated the Single Subject and Title Clause, the court was likely to find the entire act unconstitutional: "…since 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."[55] Justice Yetka wrote another concurrence, stating that, going forward, the legislature had "full notice of the consequences of overstepping constitutional limitations in its drafting of omnibus bills."[56]

During the 1990s, courts continued to express their concerns that the legislature was violating the Single Subject and Title Clause.[57] But the appellate courts did not find a violation until *Associated Builders and Contractors v. Ventura*.

[46] *Id*., at 778.

[47] *Id*., at 784.

[48] Bills in which multiple individual ideas were combined within a single bill at the end of a legislative session.

[49] Bills with multiple provisions considered to be pet projects of individual legislators.

[50] *Mattson*, at 785.

[51] *Id.*

[52] *Matter of State Farm Mut. Auto. Ins. Co.*, 392 N.W.2d 558, 567 n. 3 (Minn. App. 1986).

[53] *Blanch v. Suburban Hennepin Regional Park Dist.*, 449 N.W.2d 150 (Minn. 1989).

[54] *Id*, at 155.

[55] *Id*.

[56] *Id*.

[57] *Metropolitan Sports Facilities Com'n v. County of Hennepin*, 478 N.W.2d 487, 491 (Minn. 1991) ("…while Chapter 14 might have been drafted with more careful attention to the single subject requirement, we note that Chapter 14 was enacted prior to this court's recent warnings about the constitutional vulnerability of 'garbage bills.'").

Major Opinions on the Single Subject and Title Clause

Between 2000 and 2018, there were three significant opinions regarding the Single Subject and Title Clause.

Associated Builders

In 2000, the supreme court followed through on the warnings it had issued. In *Associated Builders and Contractors v. Ventura*, the court found that the portion of an act relating to prevailing wage requirements was unconstitutional.[58] It was the first supreme court decision striking down a law for violating the Single Subject and Title Clause since 1947.

The challenged provision in the act required that all school construction with a cost over $100,000 be covered by the state's prevailing wage law. It received a hearing in the House, but was ultimately included in the omnibus tax bill, a bill which included 16 articles and covered 247 pages. The prevailing wage provision appeared in article 16, labeled "Miscellaneous," as one of 31 sections. The main title of the bill said that it was an act "relating to the financing and operation of state and local government." The subheading did not include a reference to labor, wages, school districts, or construction. In its opinion, the court reviewed the history of the Single Subject and Title Clause in great detail, noting that the provision had been given broad and general interpretation and rarely employed to strike down a law. However, the court also noted its recent warnings to the legislature. Ultimately, the court concluded that the act violated both the single subject and the title provisions of the Single Subject and Title Clause.

In assessing the question of whether the act embraced more than one subject, the court said: "The connection between the amendment and any subject of tax in the Omnibus Tax Act falls far short of even the mere filament test."[59] The appellants argued that the provision applied to publicly funded projects, and that made it germane to the operation of state government. The majority of the act dealt with tax reform, and the court held that "more than an impact on state finances is required to establish even a minimum thread of germaneness, as virtually any bill that relates to government financing and government operations affects, in some way, expenditure of state funds."[60] The court added that "even under a liberal interpretation—to avoid 'embarrassment' of legislation—to construe an amendment requiring prevailing wages that lacks any express limitation to public funding as related to the subject of financing and operation of state and local government would push the mere filament to a mere figment."[61]

Appellants also argued that the court should focus on the issue of fraud and, since there was no evidence of logrolling, the court should uphold the act. The court disagreed, saying that

[58] *Associated Builders and Contractors v. Ventura*, 610 N.W.2d 293 (Minn. 2000).

[59] *Id*., at 302.

[60] *Id*.

[61] *Id*., at 303.

"lawmaking must occur within the framework of the constitution."[62] While the justices did not conclude that the legislature's motives were inappropriate, they did express concerns that the legislative process that the provision followed was unusual.[63] The court found that the act embraced more than one subject.

Turning to the title, the court stated that the issue was separate from the question of whether the act embraced more than a single subject.[64] The title contained multiple references to taxation, but did not have "a reference to labor, wages, school construction or a myriad of other words that would suggest that it contains a provision having a potentially significant impact on the cost of school construction."[65] As a result, the court found that the title did not "give even a hint" that the prevailing wage provision was part of the bill.[66]

After establishing that the act violated the Single Subject and Title Clause, the court turned to the question of an appropriate remedy. While an earlier decision had threatened that a violation could result in the entire act being found unconstitutional, the court acted with more restraint. It concluded that severance is generally the better practice, saying that, if a challenged provision violates the clause, only that provision should be found unconstitutional. "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."[67]

Unity Church of St. Paul

Following *Associated Builders*, the court of appeals rejected several challenges to laws based on alleged violations of the single subject clause before invalidating another law.[68] Unlike *Associated Builders*, *Unity Church of St. Paul v. State* involved a shorter act that consisted of three articles.[69] In its final form, the act contained three separate articles: Article 1 related to

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[62] *Id*.

[63] *Id*., at 303-304 ("First, prevailing wages have been historically discussed in the labor committees, not tax committees….Second, the issue of prevailing wages had no companion bill in the senate, received little consideration in the house committee hearings and was inserted into a much broader and popular bill with an entirely different legislative theme. Third, while we acknowledge that the legislative process is complicated and the rationale for pursuing one particular process or another is not always clear, obviously a more direct route to adopting the amendment would have been to redefine 'project' in Minn. Stat. § 177.42, which includes the original definition of 'project' for prevailing wage purposes. These factors raise concerns about the legislative process….")

[64] *Id*.

[65] *Id*.

[66] *Id*.

[67] *Id*. at 307.

[68] *Defenders of Wildlife v. Ventura*, 632 N.W.2d 707 (Minn. App. 2001); *Taylor v. State*, 2004 WL 2283507 (Minn. App.; No. A04-383); *State v. Patterson*, 2005 WL 89123 (Minn. App.; No. A04-162); and *Kruger v. Pawlenty*, 2005 WL 221929 (Minn. App.; No. A04-1041).

[69] *Unity Church of St. Paul v. State*, 694 N.W.2d 585 (Minn. App. 2005).

natural resources; Article 2 contained legislation known as the Minnesota Citizen's Personal Protection Act of 2003; and Article 3 related to violent felons in possession of firearms.

Several entities filed suit challenging the law alleging constitutional violations including a violation of the Single Subject and Title Clause. The district court and court of appeals concluded that the subject of the original bill, natural resources, was the subject of the act. The firearm provisions were not sufficiently connected to natural resources and, therefore, were not germane to the subject of the act. Expanding slightly on the discussion of severance in *Associated Builders*, the court noted that it could sever the challenged provision of an act and leave the remainder intact. Concluding that Article 2 and Article 3 were challenged provisions, the court severed those provisions, found them unconstitutional, and left Article 1 intact. The case was appealed to the Minnesota Supreme Court, but the legislature re-passed the Personal Protection Act before the supreme court heard the case and that court dismissed the appeal.

Otto

More recently, the supreme court decided a case in which the State Auditor alleged that the legislature violated the clause when it passed an act that permitted counties to have a required audit performed by either the State Auditor or a certified public accounting firm.[70] The provision was part of the 2015 State Government Finance Omnibus Bill, which included a wide range of topics.[71] The court reiterated that the appropriate test to determine whether an act contained a single subject was the test of germaneness. Emphasizing that test, the court noted that phrases like "mere filament" or "mere figment" could be helpful illustrations of the test, but that they are not the actual test.[72] In a footnote, the court stated that the test for germaneness is the one illustrated in *Johnson v. Harrison*.[73] The court concluded that the provisions related to the State Auditor were germane and upheld the law. The opinion added that other provisions within the act might not meet the germaneness test, but stated that it would not strike down a germane section "simply because other provisions in the law are not germane."[74]

[70] *Otto v. Wright County*, 910 N.W.2d 446 (Minn. 2018).

[71] *Id*., at 455 ("Pointing to the wide variety of topics addressed in the 2015 State Government Finance Omnibus Bill—chapter 77—ranging from appropriations, to provisions that adopt a symbol to represent the State's commitment to honoring members of the military, to railroad condemnation powers and regulation of cosmetologists, the State Auditor argues that this law is the 'epitome' of an unconstitutional 'garbage bill'.")

[72] *Id*., at 458.

[73] See, *Johnson v. Harrison,* 50 N.W. 923, 924 (Minn. 1891) ("All that is necessary is that [the] act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.... 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.")

[74] *Id*.

Current State of the Law

One Clause, Two Requirements

Ironically, the Single Subject and Title Clause embraces two different subjects:

1) every act must embrace a single subject; and
2) the subject of each act must be expressed in its title.

The first indication that the clause contained two separate tests appeared in 1862.[75] In that case the court separated the question of whether the law embraced a single subject from the question of the title for the first time.[76] Despite this early indication that the clause addressed two separate issues, most early court decisions attempted to harmonize the two concepts.

Over 100 years later, the court asserted that the provisions in the Single Subject and Title Clause are independent, saying: "Article 4, s 17, contains two proscriptions one with respect to subject; the other, title which serve independent though interrelated purposes."[77] Decisions since then have agreed that there are two separate requirements that serve distinct purposes.[78] While related, the two concepts are not the same—an act might embrace multiple subjects while having an appropriate title, or might embrace a single subject but have an insufficient title.

Single Subject

While it has been applied with varying degrees of intensity, the basic test to determine whether a statute embraces more than one subject is unchanged from the germaneness test announced in 1891. In essence, the court must first determine the subject of the act and then determine whether the challenged provisions are germane to that subject.

In determining the subject, or general idea, of the act, courts have said they will apply a forgiving standard and remember that the subject can be general and broad. Courts decisions have added that review will not be overly restrictive because the clause is meant to prevent logrolling, not to unduly burden the process of legislation. There is no restriction on what courts can review to determine the subject, and courts have looked at the topic that makes up the largest number of sections in a piece of legislation enacted by the legislature and at a bill's path to enactment.

After identifying the subject, courts have determined whether the challenged provisions relate to the popular or logical understanding of that one general idea. They have emphasized that

[75] *Tuttle v. Strout*, 7 Minn. 465 (1862).

[76] *Id*., at 468.

[77] *Waas v. Anderson*, 252 N.W.2d 131, 134 (Minn. 1977).

[78] See, *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 304 (Minn. 2000) ("The single subject and title provisions of Section 17 are often discussed together, but the title provision serves a different purpose and requires a somewhat different analysis.")

the connection does not need to be significant. While it is not the formal test, it is generally sufficient that the challenged provisions are connected to the subject by a "mere filament."[79]

Titles

"The purpose of the title provision is to prevent fraud or surprise on the legislature and the public—in essence to provide notice of the nature of the bill's contents."[80] Courts have been clear that there are no magic words that make a title valid or invalid. Instead, the title must contain enough information to give a legislator notice that a general topic appears in the bill. The title does not need to be a complete index to the bill, but cannot omit any reference to a topic.

Under current practice, nonpartisan staff prepare bill titles following a standardized form that includes identifying a general subject, specifying the parts of that subject that a bill addresses, and listing the specific sections of law that are amended, added, or repealed.[81]

Remedies

In general, recent court opinions suggest that the appropriate remedy for a violation of the Single Subject and Title Clause is to find that the challenged provision is unconstitutional and sever that provision from the rest of the act.

In *Associated Builders*, the court acknowledged that there are situations where severance is not possible. Severance is appropriate, the court found, when a provision is not germane to the subject of the legislation. But, where an act contains two unrelated provisions, the court may not be able to determine which of the two was the primary subject and must invalidate both provisions.

If the challenged provision is germane to the general subject of the act and identified in the title, courts have found that it is not unconstitutional even if other provisions in the act embrace an additional subject or were not referenced in the title.

[79] *Blanch v. Suburban Hennepin Regional Park Dist., 449 N.W.2d 150, 155* (Minn. 1989). In *Associated Builders and Contractors*, 610 N.W.2d at 303, the court indicated that it is not sufficient for the challenged section to be joined by a "mere figment." In *Otto v. Wright County*, 910 N.W.2d 446 (Minn. 2018), the court emphasized that "mere filament" and "mere figment" were meant to illustrate the test, not replace the test of germaneness.

[80] *Associated Builders & Contractors*, at 304.

[81] See, *Minnesota Revisor's Manual with Styles and Forms, 2013 Edition*, Office of the Revisor of Statutes. Available here: https://www.revisor.mn.gov/static/office/2013-Revisor-Manual.fc22eeba4f7b.pdf.

Questions for Legislators to Consider

There are three situations in which legislators may want to pay close attention to the Single Subject and Title Clause. First, committees and chairs can consider the clause when developing legislation (especially when developing omnibus bills). Second, all members may want to consider the implication of adding amendments to bills. Finally, some members may wish to assess whether an act violates the clause when an act is challenged.

Developing Legislation

Does the legislation have one general subject?

The subject, or theme, of the legislation can be very broad and courts have given very little guidance on the issue. Subjects cannot be so broad that they have little meaning, such as impacting the state budget. In general, the best practice is for legislators to have intent in identifying the subject of legislation instead of relying on courts to later assign a subject to the legislation.

What is the subject of the legislation?

Some legislation will have a clear, narrow subject such as naming a bridge. Other legislation will have a broad subject like "government operations." Both types of subject can be valid, but challenges to legislation with a subject that can be clearly and quickly articulated is least likely to be successful.

What is the best way to determine the subject of a piece of legislation?

While the general subject of legislation may be clear in many cases, that may not always be the case. There is no single rule that courts will follow. When a bill contains a large number of provisions on one subject and one or two on other subjects, courts are likely to find that the subject is the one embraced by most of the provisions. Similarly, if the legislature adds an unrelated provision as an amendment, a court is likely to conclude that the subject is the subject in the original bill. But if an act has two or more subjects and there is balance between those subjects, a court may be unable to determine the act's subject. In that case, a court may elect to invalidate the entire act. Legislators may want to ask whether a bill contains one general, unifying theme or goal.

Do all the sections relate to that general subject?

In large bills, legislators may face challenges in reviewing every section to determine whether each provision is sufficiently related to the popular or logical understanding of one general idea that runs through the bill. In most omnibus bills, article titles can guide legislators. It may be helpful to pay close attention to the sections in an article labeled "Miscellaneous."

Were significant policy provisions added from another piece of legislation?

The original purpose of limiting legislation to a single subject was to avoid the practice of combining controversial provisions with those that had broad support. This practice, often

called logrolling, has been the basis for several court opinions finding legislation unconstitutional. There is no prohibition on creating a single piece of legislation out of two or more significant policies that began as separate bills, but those provisions must all relate to one general subject.

If one or more sections do not relate to the general subject, is there a way to change the legislation?

When the provisions in a bill are not connected to one general subject, legislators may wish to revise the bill. One option is to remove any offending sections and create multiple bills. Another option is to revise the sections so that they clearly relate to the subject.

Is the title general or specific?

The purpose of a title is to give notice to legislators and the public of the policies addressed in a bill. Titles can be general in nature and give notice that a broad topic is addressed. Titles can also be specific and indicate that the legislation is addressing a narrow issue. If the title is specific, a court may invalidate a provision that is germane to the act's subject because it is outside the narrow parameters described in the title.

Are all of the significant provisions in the legislation identified in the title?

Nonpartisan staff usually write the title of a bill and the purpose of the title is to inform, not persuade.[82] The title should describe the subjects that are generally addressed in the legislation and clearly state any significant changes to current law. In general, the title should inform legislators about the subjects that result in automatic referrals under the legislature's rules. For example, a title will usually include references to any new taxes, appropriations, felony penalties, and data classifications. Titles also identify the specific statutory or session law provisions that are amended, created, or repealed. Legislators may wish to review the sections of legislation that they find most important and assess whether the title gives colleagues and the public notice that the provision is in the bill.

Amending Legislation

Is a proposed amendment germane to a bill, as meant by the Single Subject and Title Clause?

The House and Senate apply their own tests to decide whether a proposed amendment is germane to a bill. That test is different from the one the courts apply when assessing a challenge under the Single Subject and Title Clause. The fact that the legislature determined an amendment was germane does not guarantee that the courts will reach the same conclusion. A court will examine whether the provisions in the amendment relate to the same general subject as the body of the bill.

[82] Bill titles currently follow a standard form established by the Revisor of Statutes. See footnote 81.

Does the amendment add a significant policy provision legislators had previously considered on its own and that is not dependent on other parts of the bill?

As mentioned above, courts have held that the primary purpose of the single subject requirement is to prevent logrolling. When a significant piece of legislation is added to another bill through an amendment, courts will look closely at the general subject of the act to determine whether the addition was appropriate.

If the legislation was amended in committee, is the change reflected in the revised version of the title?

Not all changes need to be reflected in a title. But changes that add new policies or make significant changes to the policy may require an amendment to the title. Members may wish to examine revised bills to be certain that a new title properly reflects the contents of the bill.

Challenged Legislation

If legislation is challenged in court, does it put other provisions at risk?

Supreme court decisions have established that the preferred action for a court to take is to find only a challenged provision unconstitutional and permit other sections of a law to remain in place. However, courts may strike down an entire act in some situations. If a piece of legislation has only two provisions, a court may not be able to determine what the general subject of the legislation is. In that case, courts will strike down the entire act.

If a district court or the court of appeals finds a provision unconstitutional, should the legislature consider re-passing that provision?

When the court of appeals found the Personal Protection Act unconstitutional because it had been combined with a bill addressing the Department of Natural Resources, the legislature repassed the provisions before the supreme court reviewed the case. Legislators in similar situations may want to take the same action if it appears likely that the supreme court will reach the same conclusion as a lower court or if the legislature wants a policy to go into effect as soon as possible.

Conclusion

The Single Subject and Title Clause has always been a part of the Minnesota Constitution. The purpose of the clause is to prevent fraud in the form of passing legislation by either attaching it to unrelated, popular provisions or by failing to give notice that the legislation is contained in the bill. In the early years of the state, litigants regularly challenged legislation alleging that titles were invalid or that an act embraced more than one subject. Courts have consistently said that the clause should be given a broad and general interpretation, meaning that they should defer to the legislature. Challenges became less frequent after the early 1900s and the clause seemed to diminish in importance from the mid-1940s to the mid-1980s.

But modern courts have criticized the practice of using large omnibus bills to pass a wide range of policies and attention to the clause has been revived. Despite the new focus on the clause, the test has not changed. When assessing legislation, courts will review an act to determine:

- whether it has one general subject or idea;
- if a challenged provision is related to the popular or logical understanding of that one general idea; and
- if the title of the act gave legislators and the public notice that it would affect a specific policy.

As legislative practices continue to evolve, it is likely that there will be additional challenges citing the Single Subject and Title Clause. Legislators can protect their legislation by understanding the history and purpose of the clause, and the ways in which courts have applied it.