

ENFORCING INDIANA'S CONSTITUTIONAL REQUIREMENT
THAT LAWS BE LIMITED TO ONE SUBJECT*

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I. Introduction

For years now, Indiana lawmakers have blithely ignored a section of the Indiana Constitution that bluntly mandates that every bill passed into law be "confined to one subject."

Despite this admonition lawmakers passed a bill in 1991 that combined hold-your-nose legislative redistricting with the school funding formula, a bill that absolutely had to be passed. That's how Indiana got such heavily gerrymandered districts that favor Democrats in the House and Republicans in the Senate.

In 1993, lawmakers again used the budget and school funding formula to pass a riverboat gambling that would never have passed on its own merits.

And in 1995, Republican lawmakers rammed through a repeal of the state's prevailing wage law by stuffing it into a bill cutting auto excise taxes. It was a hard-to-swallow sandwich for many lawmakers, but they didn't have much choice. Who wants to vote against a tax cut?

The constitutionality of these efforts has often been challenged in lawsuits, but the Indiana Supreme Court has been reluctant to strike down laws solely because they originated in multi-subject bills.

. . . [L]ogrolling has reached such outrageous levels that lawmakers might as well just stuff everything they do into one giant bill each session and send the entire mess to the governor in a wheelbarrow with a take-it-or-leave-it note.¹

Legislative logrolling involves combining together into one bill several unrelated proposals, in order to accumulate the requisite number of votes for the combined measure

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¹ *Logrolling: how bad laws get passed*, lead editorial, Indianapolis Star, Sunday, January 7, 2001, page D2.

to pass. This practice may occur during the initial drafting of the bill, or at any point after introduction. A subset of logrolling involves the addition of an unrelated rider to an essential piece of legislation, such as a budget or appropriations bill, generally in the last days of a legislative session, so that it may “ride” to approval.

The primary and universally recognized purpose of the one-subject rule is to prevent log-rolling in the enactment of laws — the practice of several minorities combining their several proposals as different provisions of a single bill and thus consolidating their votes so that a majority is obtained for the omnibus bill where perhaps no single proposal of each minority could have obtained majority approval separately.

Another stated purpose of the provision is to prevent “riders” from being attached to bills that are popular and so certain of adoption that the rider will secure adoption not on its own merits, but on the merits of the measure to which it is attached. This stratagem seems to be but a variation of log-rolling.²

A law containing more than one subject would appear to be prohibited by the Indiana Constitution. But the last time the Supreme Court of Indiana used the one subject matter limitation to invalidate a law was thirty years ago, in 1971. Although a number of legislative acts have been challenged on the same basis since 1971, including those described above in the Indianapolis Star editorial, none has been held by the Court to violate the one subject matter prohibition.

The direction the Court has taken in recent years is one of reluctance to intervene in the activities of a co-equal branch of government. But is judicial deference the proper response? This paper attempts to answer that question by first examining the genesis of the current constitutional requirement. Although the one subject limitation contained in Article 4, section 19 has been a part of the Indiana Constitution since 1851, there have been three different versions of Article 4, section 19 during that period. Interpretations of Article 4, section 19 by the Indiana Supreme Court led to two constitutional amendments to that provision in the twentieth century, in 1960 and in 1974.

Next, this paper examines the Court’s decisions interpreting the 1851 and 1960 versions of the one subject matter limitation. These versions required that an act shall

² Rudd, *No Law Shall Embrace More Than One Subject*, 42 Minn. L. Rev. 389, 391 (1958).

contain but one subject, “which shall be expressed in its title.” The “title-body” test the Court applied in many of its holdings involved a parsing of the title of the act to determine whether it was broad enough to encompass all the provisions of the act itself.

Third, this paper examines the Court’s decisions since 1974. Although the requirement that the subject of the act be expressed in its title no longer exists in the current version of Article 4, section 19, this paper finds that initially the post-1974 Court holdings continued to rely on the title-body reasoning of earlier decisions. More recently, the Court has adopted the position that the one subject matter limitation is one that the General Assembly itself must police.

Finally, this paper looks at the ramifications of the current Court’s “hands-off” position, concluding that this position of judicial deference to a co-equal branch of government may unfavorably impact both the executive branch and the judiciary itself.

II. The Genesis of the Current Requirement

Three times in Indiana history, in 1851, 1960, and 1974, Indiana’s citizens ratified constitutional provisions requiring that acts passed by the Indiana General Assembly be confined to one subject and matters properly connected therewith.³ The State’s original, 1816, constitution contained no comparable requirement. The 1816 document was replaced at the Constitutional Convention of 1851 by a new Constitution containing, in Article 4 (the new legislative article), a section 19 limiting the subject matter of acts, and a section 21 regulating the amendment of acts.

These 1851 changes, placing procedural limitations upon the legislature, were not unique to Indiana. One commentator, Professor Robert F. Williams, has noted that

the legislative articles of virtually all state constitutions contain a wide range of limitations on state legislative processes. Generally, these procedural limitations did not appear in the first state constitutions. Instead, they were adopted

³ Pence v. State, 652 N.E.2d 486, 489 (Ind. 1995) (Dickson, J., dissenting) (“[T]he citizens of Indiana recently reaffirmed their demand for the single-subject requirement. Although Article IV, Section 19 was amended in 1960 and 1974, the voters retained the single-subject requirement for all acts except those ‘for the codification, revision or rearrangement of laws.’”)

throughout the nineteenth century in response to perceived state legislative abuses. . . . Last-minute consideration of important measures, log-rolling, mixing substantive provisions in omnibus bills, low visibility and hasty enactment of important, and sometimes corrupt, legislation, and the attachment of unrelated provisions to bills in the amendment process—to name a few of these abuses—led to the adoption of constitutional provisions restricting the legislative process. These constitutional provisions seek generally to require a more open and deliberate state legislative process, one that addresses the merits of legislative proposals in an orderly and rational manner.⁴

Although the Constitution of 1851 was the product of a convention, the 1960 and 1974 changes to sections 19 and 21 of Article 4 were drafted by the General Assembly and proposed to the voters for ratification. Their purpose was to remedy or neutralize the impact of several interpretations of those sections made in decisions of the Supreme Court.

A. The 1851 constitutional provisions and their interpretation

The 1851 version of Article 4, section 19, and the related section 21, remained unaltered for more than 100 years, until 1960.

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

Sec. 21. No act shall ever be revised or amended by mere reference to its title; but the act revised, or section amended, shall be set forth and published at full length.

Section 19 was intended to prevent the combining together of unrelated subjects, and, through the title, to give notice to legislators and the public of the content of legislation.

It has many times been said that the purposes of section 19 of Article 4 of the State Constitution are to prevent “log rolling” legislation; to prevent surprise, or fraud, in the Legislature by means of provisions in bills of which the titles give no intimation; and to apprise the people of the subject of legislation under consideration. . . . The Constitution of 1816 contained no such provision and the

⁴ Williams, *State Constitutional Limits on Legislative Procedure: Legislative Compliance and Judicial Enforcement*, 48 U. Pitt. L. Rev. 797, 798 (1987).

abuses that results therefrom are well illustrated by the . . . *Report of Debates and Proceedings of the Constitutional Convention of 1850*.⁵

One of them [mischiefs to be prevented] was stated to be the enactment of laws under false and delusive titles, whereby measures had procured the support of legislators, who were thus deceived as to the character of the laws, *and another was deemed to be the conjunction, in one act, of two or more subjects having no legal connection, for the purpose of procuring the passage of laws which might not, alone, command legislative sanction, upon the strength of popular measures embraced in the same act.* To prevent these tricks in legislation, the Constitution absolutely, and in all cases, forbids the passage of any law, unless the subject of it be expressed in the title, and, in like manner, inhibits the embodying in the same act of two or more subjects, having no legal connection with each other.⁶ [emphasis added]

Section 21, which by its terms dealt exclusively with amendatory acts, was intended to prevent “blind amendments”:

Under the constitution of 1816, a section might have been amended by the passage of an act running thus: “Be it enacted, &c., that section 26 of an act entitled ‘an act regulating descents and the apportionment of estates,’ approved May 14th, 1852, be and it is hereby amended by inserting after the word ‘within’ the words ‘neither brothers and sisters, nor their descendants.’”

The mischiefs of this practice were numerous, and in some respect grievous. It required much labor and pains on the part of legislators to enable them to understand such bills. Sometimes, in the haste of the last hours of a session, this care being scarcely practicable, bills in this form were passed which never could have received legislative sanction if they had been understood, and in the administration of the law constant reference and comparison of statutes were necessary to render such acts intelligible. It was merely to prevent the mischiefs of this mode of legislation that the clause in question was inserted in the constitution of 1851, and this is completely accomplished by requiring the amendatory act to set forth, at full length, the section as amended.⁷

During the 1800s, a number of other states enacted constitutional limitations similar to those contained in sections 19 and 21. However, a trio of rulings by the Indiana Supreme Court during the nineteenth century, establishing how legislation was to be

⁵ *Marion School Twp. v. Smith*, 215 Ind. 586, 589, 21 N.E.2d 412, 414 (1939).

⁶ *Grubbs v. State*, 24 Ind. 295 (1865), *quoted in* *Jackson v. State*, 194 Ind. 248, 249, 142 N.E. 423, 424 (1924).

⁷ *Greencastle So. Tpk. Co. v. State*, 28 Ind. 382, 386-387 (1867).

drafted to meet these constitutional requirements, remains unique among the states and continues to reverberate in Indiana to this day.⁸

1. The decision in *Langdon v. Applegate*

In a 1854 decision, *Langdon v. Applegate*,⁹ the Court interpreted Article 4, section 21 to require that an amendatory act must set forth at full length *both* the current language of the section, and the language of the section as it would exist after amendment. This interpretation remained in effect for thirteen years. Overruling *Langdon* in 1867, the Court said:

The evils growing out of the previous rulings of this court [in *Langdon* and its progeny] are not confined to the inconvenience of legislation, but frequently grow out of mistakes in copying the old law. . . .

The previous decisions of this court, holding that the old act or section to be revised or amended must be set forth with the act or section as revised or amended, are overruled.¹⁰

Although the issue would appear to have been conclusively decided in 1867 with the Court's overruling of *Langdon*, the same argument has continued to be made. In 1902, for example:

It is argued that the amendatory act is invalid, under [Article 4, section 21], for failure to set out in full the old section to be amended; and *Langdon v. Applegate*, 5 Ind. 327, and cases following it, are cited to sustain the proposition. The decision in the *Langdon* case was overruled in *Greencastle Southern Turnpike Co. v. State*, 28 Ind. 382, 34 years ago, since which time it has been uniformly held by this court that the constitutional provisions are satisfied by

⁸ See generally 1 Sutherland, *Statutory Construction* § 22 (5th ed.)

⁹ *Langdon v. Applegate*, 5 Ind. 327 (1854) (“The [constitutional] convention, was aware of the loose and imperfect manner in which bills were hurried through the general assembly, thought proper to throw several guards around the legislation of the State. Bills had been passed without being read; laws repealed by reference to the word, line, section, or chapter; until the confusion that followed left the statutes so imperfect and ambiguous, that the most able jurists in the State were unable to ascertain their meaning.”)

¹⁰ *Greencastle So. Tpk. Co. v. State*, 28 Ind. 382, 388-389 (1867). For a full discussion of the *Langdon* decision, see Oddi & Attridge, *The Indiana Code of 1971: Its Preparation, Passage, and Implications*, 5 Ind. L. Forum 1, 54-67 (1971). See also Notes, “Constitutional” Limitations on Amendments in Indiana, 28 Ind. L.J. 65 (1952-53).

setting forth at full length in the amendatory act the act or section as amended. [citations omitted]¹¹

The *Langdon* argument was reasserted in 1958,¹² and again in 1974, without success:

There is also some indication that appellants question the constitutionality of the act for failure to comply with the requirement of Article IV, § 19, which provides that in amending legislation, the section or subsection amended shall be set forth and published at full length. If so, that question has been long settled. Article IV, § 19, of our Constitution was amended in 1960. The substance of former Article IV, § 21, was incorporated therein, the earlier provision being: “No act shall ever be revised or amended by mere reference to its title; but the act revised, or section amended, shall be set forth and published at full length.” This “full length” requirement has been held to require only that the revised or amended act shall be complete within itself, i.e., by setting out the act or section as amended and not to require that the act or section being revised or amended be set forth in its original form.¹³

2. The replacement rule

Second, the Court adopted what has come to be known as the “replacement rule” of amendments.¹⁴ Under this construction of Article 4, section 21, based upon a line of decisions beginning in the 1870s,¹⁵ an amendment to a section of an original act repeals and *replaces* that section with the amended section:

¹¹ *Weatherhogg v. Bd. of Comm’rs*, 158 Ind. 14, 24, 62 N.E. 477, 481 (1902).

¹² *O’Donnell v. Krneta et al.*, 154 N.E.2d 45, 238 Ind. 582 (1958).

¹³ *Taxpayers Lobby of Indiana v. Orr*, 311 N.E.2d 814, 820, 262 Ind. 92, 105 (1974).

Note that, beginning with its publication of the Acts of 1973, the General Assembly has instituted a printing style for its bills and enrolled acts that permits the reader of an amendatory provision to determine, through the use of ~~stricken type~~, what was deleted from the existing law, and through the use of **bold face type**, what was added. The Preface to the Acts of 1973 explains: “This [printing] code was used in each version of every 1973 bill, from introduction through the final printing as an enrolled act.” Institution of this practice of setting out changes from the existing law through the consistent use of special printing codes would appear to address the problems of determining the impact of proposed and final legislation raised in the Constitutional Convention of 1851, without the need to set forth two versions (a “before” and “after”) of each proposal, as the *Langdon* court ruled necessary. Modern technology has eased or eliminated several of the practical difficulties faced by nineteenth century lawmakers and courts in attempting to implement measures to apprise both the members and the public regarding legislative measures.

¹⁴ Uniform Statute and Rule Construction Act (1995), § 14 and comment. (Under the Indiana replacement rule, the revision of the earlier statute is deemed to be a new start and the earlier statute ceases entirely to exist.) *See generally*, 1 Sutherland, *supra*.

¹⁵ *Draper v. Falley*, 33 Ind. 465 (1870), *Blakemore v. Dolan*, 50 Ind. 194 (1875), *Feibleman v. State*, 98 Ind. 516 (1884).

It is settled by adjudication of this court, that when a section in an existing law is amended in the mode prescribed by the constitution, it ceases to exist, and the section as amended superseded such original section, and the section as amended becomes incorporated in and constitutes a part of the original act; and the original section is as effectually repealed and obliterated from the statutes as if it had been repealed by express words; and it is upon this principle that it has been held that a section which has once been amended cannot again be the subject of amendment, but the section as amended must be amended.¹⁶

Where a section of a statute is amended, it ceases to exist, and is superseded by the section amended . . . [A]n act of the Legislature which attempts to amend a section of the statute which has already been amended, is unconstitutional and void.¹⁷

3. The long title

Third, Article 4, section 21 was interpreted by the Court to require what has come to be known as the Indiana “long title.”¹⁸ As explained in an 1899 decision, in order to comply with all the requirements of Article 4, section 21 in the revision of an act or the amendment of section, the title of the act to be amended must be referred to in the title of the amendatory act by setting it out in full.¹⁹

The replacement rule compounded the difficulties of this interpretation because, under the replacement rule, it is the most recently amended version of an act that is to be referenced and amended, not the original version. This meant that each time an act was amended, the title of the amendatory act was required to repeat the title of the previous amendatory act which, in turn, repeated the title of the previous amendatory act, and on and on. Titles to amendatory acts grew in length to cover pages of the Acts of Indiana;

¹⁶ *Blakemore v. Dolan*, 50 Ind. 194, 204 (1875).

¹⁷ *Feibleman v. State*, 98 Ind. 516, 518, citing numerous Indiana cases. *See also* *Metsker v. Whitsell*, 181 Ind. 126, 103 N.E. 1078, 1084 (1914); *Griffin Telephone Corp. v. Public Service Comm.*, 236 Ind. 29, 34, 138 N.E.2d 150, 152 (1956). *But see* *Milk Control Board v. Pursifull*, 219 Ind. 49, 36 N.E.2d 850, 852 (1941).

¹⁸ Note, *Legislation: The Form of Amendatory Statutes*, 43 Harv. L. Rev. 482 (1929-30).

¹⁹ *Lingquist v. State*, 153 Ind. 542, 55 N.E. 426 (1899). The *Lingquist* court approved the title: “An act to amend section 16 of an act entitled ‘An act concerning public offenses and their punishment’ . . .”. *See also* *Hendershot v. State ex rel. Bennet*, 162 Ind. 69, 69 N.E. 679, 680 (1904), where the court found the 1899 amendatory act at issue invalid, leaving the 1891 act in full force and effect, because a phrase was omitted from the recitation of the title of the act proposed to be amended.

sometimes the title to an amendatory act was longer than its body.²⁰ Errors in copying were a significant problem.²¹ As the process became more and more unwieldy, use of amendatory acts was avoided when possible; the legislature resorted, instead, to the passage of original acts that amended or repealed any conflicting law “by implication.”²²

B. The 1960 constitutional amendment and its interpretation

Unwieldy though the process had become, it was not until the 90th session of the General Assembly that a Senate Joint Resolution was adopted proposing the amendment of section 19 and repeal of section 21 of Article 4 “to ease the preparation and presentation of laws by simplifying the requirements for bill titles.”²³ The *Indiana Legislative Advisory Commission Report to the Indiana General Assembly of 1959* explains: “[T]he purpose of this constitutional amendment . . . is to remove the stigma

²⁰ 1 Sutherland, *Statutory Construction*, §1909 (1910) (“Since the title of the last amendment must include the title of the amendment preceding it or, if there is none, of the original act, where the original act has been amended several times, a hideous collection of title heaped upon titles results.”)

²¹ Note that this was long before the time of computer databases. Copying mistakes were a serious concern. Original bills were handwritten until the typewriter came into common usage. According to Derry & Williams, *A Short History of Technology*, Dover Publications (1960), p. 642, “[T]he extensive use of the typewriter dates only from the 1880’s.” The commentary also notes that the typewriter’s “usefulness is, of course, strictly limited by the small number of serviceable copies that it can produce . . .” An inquiry to Professor Richard Polt, purveyor of *The Classic Typewriter Page* <<http://xavier.xu.edu/~polt/typewriters.html>>, resulted in the following response of June 27, 2000: “Typewriters were first introduced in 1874. Hardly anyone adopted them right away, but they grew in popularity through the 1880s, and I would guess that by 1890, a substantial majority of offices had typewriters in use.”

Whether initially handwritten or typewritten, bills were printed after introduction to provide copies for legislators and others; the typesetting compounding the opportunity for error. Type was still cast and set by hand at the beginning of the 19th century; Derry & Williams, *supra*, p. 638. “[T]he ‘linotype’ (from ‘line o type’)” was completed in 1890. *Id.*, at pp. 640-641.

²² Notes, “*Constitutional*” *Limitations on Amendments in Indiana*, 28 Ind. L.J. 65 , 74 n.31 (1952-53).

²³ Acts 1957, c. 384, p. 1106; Acts 1959, c. 406, pp. 1100-1.

Article 16, section 1 of the Indiana Constitution describes the procedure for constitutional amendment; an amendment must be agreed to by a majority of the members elected to each of the two houses, and then must be “referred to the General Assembly to be chosen at the next general election.” If again agreed to by a majority of the members elected to each of the two houses, “then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State; and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.”

Indiana has acquired in the field of titles to laws.”²⁴ The Resolution was adopted for the second time by the 91st session.

At the 1960 general election, Indiana voters ratified the amendment, which revised the existing section 19, added a second paragraph incorporating language similar to that of section 21,²⁵ and added a new final sentence authorizing identification by citation reference. Section 21 itself was repealed. The resulting language read:

Sec. 19. Every act, amendatory act, or amendment of a code shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be expressed in an act, amendatory act, or amendment of a code, which shall not be expressed in the title, such act, amendatory act, or amendment of a code shall be void only as to so much thereof as shall not be expressed in the title. The requirements of this paragraph shall not apply to original enactments of codifications of law. [emphasis added]

Every amendatory act and every amendment of a code shall identify the original act or code, as last amended, and the sections or subsections amended shall be set forth and published at full length. The identification required by this paragraph may be made by citation reference.

In addition to eliminating the long title by permitting identification by citation reference, the 1960 amendment opened up the language of the one subject requirement to permit an exception for “original enactments of codifications of law.” Indiana’s statutes had not been codified since the enactment of the Revised Statutes of 1852.²⁶ Only one other state, Pennsylvania, had fallen further behind.²⁷ In 1969 the Indiana Legislative Council began preparing a bill for the enactment of the Indiana Code of 1971. A special agency, the Indiana Statute Revision Commission, was established to oversee the work.

²⁴ *Reproduced in* Bremer, ed., *Constitution Making in Indiana*, Vol. IV, 1930-1960, Indiana Historical Bureau, Indianapolis (1978), pp. 281-282.

²⁵ *State v. Nutting*, 246 Ind. 105, 116, 203 N.E.2d 192, 199 (1964) (section 21 was substantially reenacted in Article 4, section 19).

²⁶ Although Article 4, section 19 as adopted in 1851 prohibited acts with more than one subject, it also provided the opportunity, in Article 7, section 20, for the General Assembly, at its first session after the adoption of the Constitution, to “reduce into a systematic code, the general statute law of the State.” The resultant Revised States of 1852 were enacted in 1852 and took effect May 6, 1853. *See* Indiana Code of 1976, Vol. 1, p. xxii.

²⁷ Oddi & Attridge, *Draftsman’s Manual to the Indiana Code of 1971*, Indiana Legislative Council (1971), p. 2.

The volume of session laws enacted since the 1852 revision had reached such proportions that, as a practical matter, research of official statute law was impossible without reliance on unofficial sources. The Indiana Code of 1971 undertook not merely an updating, but a reenactment and rearrangement of viable statutory law. The arrangement was designed to accommodate new legislation in order to prolong the life of the Code and simplify future revision. Thus the viable statutes were divided into 35 major categories or Titles. Related bodies of law within these categories were further broken down into Articles. Articles were divided into chapters, with each chapter usually corresponding to a prior act of the General Assembly. Chapters were divided into sections which corresponded sections of prior acts. . . . [N]ew citations were adopted to reflect the arrangement. [The four-part numeric system] was designed to be particularly adaptable to computerized data retrieval methods and to insure that the General Assembly could accurately pin-point legislation which it proposed to amend.²⁸

The resultant eight-volume bill, titled “A bill for an act to enact the Indiana Code of 1971,” was completed after 18 months and introduced in the 1971 General Assembly. The mega-bill, which repealed every Indiana statute enacted before 1971, with very limited specific exceptions, and which compiled and reenacted within a code format but without alterations in language, the substantive provisions of every statute of a permanent nature that had been considered operative up to that point in time, became law on January 22, 1971.²⁹

In an opinion filed September 24, 1971, the Indiana Supreme Court abruptly, and citing no authority, threw out the Indiana Code of 1971 as a violation of the one-subject requirement of Article 4, section 19, although the validity of the Indiana Code was not at issue before it.³⁰ The ruling stated that although Article 4, section 19 (1960) provided that the requirements of this paragraph shall not apply to original enactments of codifications of law,

. . . the so-called Indiana Code of 1971 is not of the class of codes referred to in that sentence. It is merely a comprehensive compilation of all the existing statutory law of this state in handy reference form, and it cannot run counter to the requirements of Article 4, Section 19. . . . Examples of [the type of codes that

²⁸ Indiana Code of 1976, Vol. 1, pp. xxiii-xxiv.

²⁹ Oddi & Attridge, *The Indiana Code of 1971: Its Preparation, Passage, and Implications*, 5 Ind. L. Forum 1, 3 (1971).

³⁰ See *infra* note 57 and accompanying text.

meet the requirements of Article 4, section 19] are the Probate Code, the Election Code, the Uniform Commercial Code, etc. Each example has but one subject.³¹

C. The 1974 constitutional amendment and its interpretation

In the session that convened the following January, the 97th General Assembly approved a House Joint Resolution to once more amend Article 4, section 19 of the Indiana Constitution. The provision was approved again by the subsequent 98th General Assembly, and was ratified by the voters at the next general election, November 5, 1974. The amended section now reads:

Sec. 19. *An act, except an act for the codification, revision or rearrangement of laws, shall be confined to one subject and matters properly connected therewith.* [emphasis added]

This is indeed a major revision to the former language. Although the amended section 19 *reaffirms* the one subject requirement (except for codifications, revisions or rearrangements of laws), the title requirement is gone. The second paragraph, which in the 1960 version restated section 21, also has been totally eliminated.

Although this most-recent amendment took effect in 1974, no information has been located to explain the General Assembly's rationale in effecting such a major rewrite, one that goes far beyond simply clarifying the exception for codifications of law.³²

³¹ State ex rel. Percy v. The Criminal Court of Marion County, 257 Ind. 178. 183, *superseding opinion*, 262 Ind. 9, 16, 274 N.E.2d 519, 522 (1971).

See generally Dickerson, *The Sad Story of Superbill, or What Happened to the Indiana Code of 1971?* 5 Ind. L. Forum 251 (1971).

³² Describing the constitutional amendments on the ballot at the upcoming general election, a story by Jack Averitt in the Indianapolis News, dated Nov. 1, 1974, p. 9, col. 1, read in part:

The first [proposed amendment] gives the General Assembly authority to codify state laws in one legislative act. After the legislature passed the Indiana Code of 1971, an Indiana Supreme Court opinion concluded that that the code, in reality, was nothing more than an official, comprehensive compilation of legislative acts. It concluded that the previously passed laws therefore would remain in effect until repealed or amended.

After reviewing the language of the amendment, the description concludes: "If the amendment is adopted, the Legislature likely will be asked to update and repass all existing laws in one legislative act." And indeed, in the 1976 session, the General Assembly enacted the Indiana Code of 1976, which was essentially the 1971 Code, updated to include all changes that had occurred during the intervening period.

Since the 1974 amendment, the Indiana Constitution has not required that the subject of an act be expressed in its title, and has not specified the identification required of amendatory acts.³³ But the 1974 version, the 1960 version, and the 1851 original all are constant in one respect, the requirement that an act “shall embrace,” or “shall be confined to,” one subject and matters properly connected therewith.

III. Pre-1974 Court Interpretation

A review of the Supreme Court decisions based on the pre-1974 versions of section 19 reveals that most of these opinions use the title as a guide in determining subject matter. As a result, these opinions may provide little useful precedent for determining the validity of statutes under the 1974 language.

A. Title too narrow

Most of the pre-1974 decisions involve a challenge to the adequacy of the title of the act under review; an assertion that the title is narrower than the act’s subject matter. For example, in a 1963 decision,³⁴ the contention was that the title of the Real Estate License Law of Indiana was too narrow to include the selling of real estate at public auction, and that the act, insofar as it attempted to regulate auctioneers, violated Article 4, section 19 and was void and of no effect. The title read: “An act regulating real estate brokers and real estate salesmen, and prescribing penalties for the violation thereof.” After stating that the purpose of the requirement

is to prevent surprise or fraud in the Legislature by means of a provision or provisions in a bill of which the title gave no information to persons who might be subject to the legislation under consideration . . . [as well as] to prevent a combination of non-related subjects in the same act³⁵

³³ In 1970 the drafters of the new Illinois constitution eliminated the title requirement, creating a provision then unique among the states. *See Note, State Statutes: The One-Subject Rule Under the 1970 Constitution*, 6 J. Marshall J. Pract. & Proc. 359 (1973).

³⁴ *State ex rel. Indiana Real Estate Comm. v. Meier*, 244 Ind. 12, 190 N.E.2d 191 (1963).

³⁵ *Id.*

the Court examined the distinctions between real estate brokers and auctioneers and concluded: “[W]e cannot say that ordinary persons who might be affected by the act would be apprised from its title of the occupation of auctioneer as an included subject.”³⁶

In a 1956 case involving the constitutionality of the act establishing the Iroquois Conservancy District,³⁷ it was contended that the conservancy court, created by section 6 of the act, was not embraced in the title. The title read: “An act to prevent floods, to protect cities, towns, farms and highways from inundation, to conserve water for beneficial uses, and to authorize the organization of drainage and conservancy districts, and declaring an emergency.” In holding that the title to the act did not embrace the subject of the creation of a new court and that that portion of the act was void, the Court said: “It is obvious that one reading the statute would surely be surprised at finding an entirely new and novel court created to administer the Act. It cannot be denied that the title gives no information regarding the creation of the new court.”³⁸

In the 1971 case of *Dortch v. Lugar*,³⁹ numerous constitutional objections were raised to Chapter 173 of the Acts of 1969, commonly referred to as the “Unigov” bill, including the contention that the title was not sufficiently broad to cover the subject matter contained in the act. The title read: “An act concerning reorganization of government in counties containing a city of the first class.”

It is argued that the Act *establishes* or *creates* a new class of municipal corporations to be known as “consolidated cities” and that the words “reorganization of government in counties containing a city of the first class” neglects to describe the far-reaching quality of the Act in reorganizing the government of first class cities and destroying that class of municipal corporations, except as that class is used to determine the new class of consolidated cities.⁴⁰

Citing its previous holdings, including *Meier* and *Iroquois*, and the principles stated therein, the Court found the phrasing of the title:

³⁶ *Id.*

³⁷ State ex rel. Penn. RR v. Iroquois Conservancy District, 235 Ind. 353, 133 N.E. 2d 848 (1956).

³⁸ *Id.*

³⁹ *Dortch v. Lugar*, 266 N.E.2d 25 (Ind. 1971).

⁴⁰ *Id.* at 30.

sufficiently broad to apprise of the nature of the Act's contents. . . . To hold that the Act's title is not sufficiently descriptive of its contents in this case would be placing an undue premium on sheer technical semantics as opposed to substantive meaning.⁴¹

In an oft-cited earlier decision, the Court, in *Bright v. McCullough* (1866),⁴² considered the adequacy of the title: "An act providing for the election or appointment of supervisors of highways, and prescribing certain of their duties, and those of county and township officers, in relation thereto."

It was contended that this title was not broad enough to encompass section 20, which authorized the township trustee to annually assess a road tax. The answer, according to the Court, depended upon what must be deemed to be the subject of the act, from the language of the title. In parsing or reformulating the title, the Court found a broader meaning:

If . . . the subject of the act expressed in the title is highways, the provisions of section 20 are most clearly properly connected with that subject. But, on the other hand, if the "election and duties of supervisors" is properly the subject expressed in the title . . . then, as supervisors neither assess nor collect the road tax, it is not easy to perceive what legitimate or proper connection could exist between the subject of the act and the assessment of the tax. . . .

The title, then, indicates that the act will provide for the election or appointment, and perscribe [sic.] the duties of county and township officers in relation to highways; and as the levy and collection of a road tax are among the duties required of county and township officers, section 20 would seem to be clearly within the subject expressed in the title. Nor, in this view, does the title, in our opinion, express more than one subject. It is not very aptly worded, but the subject of legislation expressed by its language is "highways," limited, perhaps, by the particular specifications, to provisions for the election or appointment of supervisors, and their duties, and the duties of county and township officers, in relation to highways. *Without any change of the sense, it might be read thus: An act concerning highways, providing for the election of supervisors thereof, and prescribing their duties, and the duties of county and township officers in relation thereto. [emphasis added]*⁴³

⁴¹ *Id.* at 31.

⁴² *Bright v. McCullough*, 27 Ind. 223 (1866).

⁴³ *Id.* at 225-226.

B. Title and act are double

A handful of pre-1974 Indiana cases address situations where it is contended that the subject matter of the act at issue is dual, as is the title. In these cases the Court cannot simply determine duality in the body by what is *not* encompassed in the title. Because both subjects are also expressed in the title, it has to find a different test.

These decisions are discussed in the order they were issued. It is offered that the first and last of the decisions (*Jackson* and *Pearcy*, *infra*) remain relevant as precedent in post-1974 challenges. In the other three cases, the Court answered the contention of duality in the body by reformulating the title, as it did in *Bright v. McCullough*, to make it broad enough to cover the content of the act. This title-body test was made irrelevant by the 1974 amendment to Article 4, section, which eliminated the requirement that the subject of the act be expressed in its title.

In *Jackson v. State* (1924),⁴⁴ at issue was the constitutionality of chapter 186 of the Acts of 1923, which sought to amend a 1913 act relating to motor vehicles. All of the provisions of the 1923 act also related to motor vehicles, except section 8, which provided that all the proceeds of the inheritance tax would constitute a part of the general fund of the state. Appellee claimed that the 1923 amendatory act was void, because it was not restricted to one subject and matters properly connected therewith; that the title, instead of expressing one subject, expressed two, namely the regulation and registration of motor vehicles, and the disposition of inheritance taxes, and that the body of the act embraced both subjects, which were not properly connected.

The Court in *Jackson* described and rejected what the modern reader might call the “six degrees of separation”⁴⁵ approach to determining what is one subject:

If in an act relating to the regulation of motor vehicles we can have a provision relating to the disposition of inheritance taxes, then, as related thereto, we can also include a provision relating to the levying and collection of such

⁴⁴ *Jackson v. State*, 194 Ind. 248, 142 N.E. 423 (1924).

⁴⁵ John Guare, *Six Degrees of Separation*, awarded the 1990 New York Drama Critics Circle Award.

taxes, and then, as related to that, we can have a provision relating to inheritance taxes themselves.

By such a process of tracing relationship, we could find that most subjects of legislative enactments were related, just as by a similar process we can find the relationship of all of mankind. If the position of appellants is sustained, it would seem to follow that we could have one act which dealt with the operation of motor vehicles and also with the descent of property.

...

... It has been said that in construing the body of the act, we should consider the title, and in construing the title we should consider the body, and from it all determine the subject.

If we follow this rule, then we find that of the more than 30 sections all but one relate to the general subject of motor vehicles, and the one exception (section 8) relates to inheritance taxes.

... There is no apparent relation between the subject of motor vehicles and the subject of inheritance taxes, and none is disclosed in either the title or the body of this act, and yet in both the title and the body each of these subjects is dealt with.

...

The act is clearly double and embraces two subjects which are not properly connected, and because of said constitutional provision chapter 186 of the Acts of the 1923 General Assembly is void. [emphasis added]⁴⁶

Although in cases where the title is narrower than the act, Article 4, section 19 (1851) provides that “the act shall be void only as to so much thereof as shall not be expressed in the title,” the *Jackson* court held “that is not the case here, both subjects being in the title and body. In such a case the courts cannot choose between the two subjects and eliminate one of them.”⁴⁷

Taking a contrary view, the Court in *State ex rel. Test v. Steinwedel* (1932)⁴⁸ applied a title-body test. Here the title of the act at issue, Acts of 1921, chapter 132, read: “An act concerning school attendance and the employment of minors, fixing penalties and repealing conflicting laws.” Appellees argued that the body of the act embraced two subjects, compulsory school attendance and child labor, “two subjects having no legal connection with each other.” Citing *Jackson*, the Court said that if two subjects are

⁴⁶ *Jackson v. State*, 194 Ind. 248, 256-257, 142 N.E. 423, 425-426 (1924).

⁴⁷ *Id.* at 426.

embraced in the act, and both are expressed in the title, it follows that the entire act is void. But the Court went on to state that it did not believe that in the current case the act embraced more than one subject.

The Constitution does not define “one subject,” and there is no specific rule of law which affords any help in determining whether a particular act of the General Assembly contains one or more than one subject, and there is no absolute test of general applicability either in fact or law. . . .

[T]he only test which this court can apply is the indefinite one of “reasonableness,” a standard and not a specific rule of law. Section 19, art. 4 does not, by restricting the contents of an “act” to one subject, contemplate a metaphysical singleness of idea or thing, but rather that there must be some rational unity between the matters embraced in the act; the unity being found in the general purpose of the act and the practical problems of efficient administration. It is hardly necessary to suggest that matters which ordinarily would not be thought to have any common features or characteristics might for purposes of legislative treatment be grouped together and treated as one subject. For purposes of legislation, “subjects” are not absolute existences to be discovered by some sort of a priori reasoning, but are the result of classification for convenience of treatment and for greater effectiveness in attaining the general purpose of the particular legislative act. And if, from the standpoint of legislative treatment, there is any reasonable basis for the grouping together in one “act” of various matters, this court cannot say that such matters constitute more than one subject.⁴⁹

Applying the statement in *Bright v. McCullough* that “the subject of an act may be enlarged or restricted at the will of the legislature, and the subject must be determined by reference to the language used in the title,”⁵⁰ the *Steinwedel* Court effectively rewrote the title:

But, since the title of the act is *in effect* “An act concerning *minors*, regulating the attendance and employment thereof” (Appellant’s brief, p. 32), the title is limited to expressing the subject of school attendance and employment of minors; and the subject, as indicated by the provisions of the act, fairly may be said to be school attendance and employment of minors. [emphasis added]⁵¹

⁴⁸ State ex rel. Test v. Steinwedel, 180 N.E. 865 (1932).

⁴⁹ *Id.* at 868.

⁵⁰ *Bright v. McCullough*, 27 Ind. 223 (1866).

⁵¹ State ex rel. Test v. Steinwedel, 180 N.E. 865, 869 (1932).

The title-body approach of *Steinwedel* was followed in *Ule v. State* (1935),⁵² where it was again contended that the title and body were dual. *Ule* also relied upon language from *Indiana Central Ry. Co. v. Potts* (1856),⁵³ (which appears to be extolling detailed, rather than general, titles);

[T]he subject must be reasonably particular and not too general; for otherwise the object of the constitutional provision would be wholly thwarted. A part of the object of that provision was that the title should indicate the character of the sections of the act. To effect this object, the title must be reasonably particular; and to secure such particularity, as a general rule, titles should not express ends, objects or purposes to be accomplished, but rather means by which ends of to be accomplished.⁵⁴

In *Stith Petroleum v. Dept. of Audit and Control* (1937),⁵⁵ the Court quickly disposed of the contention that the act at issue embraced more than one subject, stating “[a] reading of the title is quite convincing that it embraces but one subject . . .”⁵⁶ The title in *Stith*, like the title in *Ule*, provides a lengthy index of its contents. The Court cites *McCullough*, *Steinwedel* and other decisions to the effect that if there is any reasonable basis for grouping together in one act various matters of the same nature, and the public cannot be deceived reasonably thereby, the act is valid.

State ex rel. Percy v. Criminal Court of Marion County (1971)⁵⁷ is the most recent of the pre-1974 decisions. *Percy* is the decision that invalidated the Indiana Code of 1971 and compelled the General Assembly to again amend Article 4, section 19.⁵⁸ In *Percy*, the Marion County Prosecutor contended that P.L. 155 of the Acts of 1971 was unconstitutional under Article 4, section 19 (1960). The Court agreed, stating that the act being amended by the 1971 act was an 1857 act entitled “An act to provide for the government and discipline of the state prison” that dealt with salary of prison officials, criminal activity by prison officials, and penalties therefore. The 1971 amendment, titled

⁵² *Ule v. State*, 208 Ind. 255, 194 N.E. 140 (1935).

⁵³ *Indiana Central Ry. Co. v. Potts*, 7 Ind. 681 (1856).

⁵⁴ *Id.* at 684.

⁵⁵ *Stith Petroleum v. Dept. of Audit and Control*, 211 Ind. 400, 5 N.E.2d 517 (1937).

⁵⁶ *Id.* at 521.

⁵⁷ *State ex rel. Percy v. The Criminal Court of Marion County*, 257 Ind. 178, *superseding opinion*, 262 Ind. 9, 274 N.E.2d 519 (1971).

“An act to amend IC 1971, 11-2-1 concerning penal officers, employees, and length of sentences of convicts” added a proviso to the end of what the Court ruled was section 6 of the 1857 act, following existing language relating to the date the term of service and imprisonment of every convict shall commence. The proviso required the sentencing court to order that a convicted person be credited for time spent in imprisonment prior to trial.

It is the contention of the Prosecuting Attorney that there is no rational unity existing between the provisions relating to penal institution employees and the provisions relating to length and diminution of sentences.

We are in agreement with this contention. Public Law 155 is clearly double and embraces two subjects which are not properly connected. There is no apparent relation between the subject of prison officials and employees and the subject of the length and diminution of sentences of convicts, and none is disclosed in either the title or body of Public Law 155. Therefore Public Law 155, in its entirety, is in violation of Art. 4, § 19, and is ineffective as an amendment . . . See, *Jackson v. State* (1924), 194 Ind. 248, 142 N.E. 423.⁵⁹

After finding the 1971 amendatory act to be double and void, the Court turned its attention to section 6 of the 1857 act, a provision that had existed, unchanged and unchallenged, for over a century.

The last sentence of the original act is as follows: “The term of service and imprisonment of every convict shall commence from the day of his conviction and sentence.” Clearly the term of service and imprisonment of convicts is in no way connected to the salaries or discipline of penal officials or personnel nor is it related to the title of the [1857] Act. Therefore, we hold that portion of the Act to be unconstitutional in violation of Art. 4, § 19. [citations omitted]⁶⁰

IV. Post-1974 Court Interpretation

With the elimination of the title requirement, much of the rationale relied on in earlier cases is of little value.⁶¹ From the preceding review of the few Indiana cases that could be

⁵⁸ See *supra* note 30 and accompanying text.

⁵⁹ *Id.* at 262 Ind. 17, 274 N.E.2d 522-23. In order to find that the act being amended was the 1857 act, the court first had to find the entire Indiana Code of 1971 unconstitutional. See *supra*, n.30.

⁶⁰ *Id.* at 262 Ind. 1, 274 N.E.2d 523.

⁶¹ As one commentator explains, in discussing a similar 1970 constitutional change in Illinois: “Basically, the line of logic in these [title-body] cases is that the title is descriptive of the scope of the ‘subject’ as that word is used in its constitutional sense. Therefore, if the body of the act

located where duality in title and body is discussed, it appears that only *Jackson* and *Pearcy* continue to have any real precedential value under the 1974 provision. The other decisions (*Steinwedel*, *Ule*, *Stith Petroleum*) rely on the title, or on a reinterpretation of the title, to determine the subject matter of the body of the act.

Since the 1974 constitutional amendment, the Indiana Supreme Court has examined three cases dealing with Article 4, section 19. Again, these decisions will be discussed in the order in which they were issued.

Dague v. Piper Aircraft Corp. (1981)⁶² is the only post-1974 instance where the Court has dealt directly with the one subject limitation. Among the issues certified to the Indiana Supreme Court by the United States Court of Appeals, Seventh Circuit, was the question: Does the Products Liability Act contravene Article 4, section 19 of the Indiana Constitution? The act at issue was P.L. 141, Acts 1978, which contained twenty-eight sections; the first twenty-seven concerned courts, section 28 established a products liability law, including a statute of limitations for product liability actions. The title was: “An act to amend I.C. 33 concerning courts and court officers and products liability.”

Citing *Steinwedel* and *Stith Petroleum*, the Indiana Supreme Court stated that “[o]ne basic principle of our review is that, in considering the validity of an act under this constitutional provision, a very liberal construction is to be applied, with all doubts resolved in favor of the legislation’s validity.” In its analysis, as exemplified in the following quotation, the Court used the title-body and notice-of-content rationale relevant *before* the 1974 amendment to the Constitution.

It is clear from the case before us that the legislature was aware of the contents of Public Law 141 when the act was passed. There is no basis for finding that some trick was employed to attach the Product Liability Act to the other provisions of the act, so that the public would be deceived by its location.

contains a provision not expressed in the title, that provision constitutes a second subject. Under these decisions, the concept of subject matter is a fluid one, waxing and waning with the breadth or narrowness of the title. The title, in effect, served as a guide in determining subject matter. Under the new constitution that guide may no longer be used, leaving subject matter as an amorphous concept.” Note, *State Statutes: The One-Subject Rule Under the 1970 Constitution*, 6 J. Marshall J. Pract. & Proc. 359, 376 n.82-83 (1973).

⁶² *Dague v. Piper Aircraft Corp.*, 418 N.E.2d 207 (Ind. 1981).

In fact, the title of the act specifically mentions the subject matter of section twenty-eight. Plaintiff does not claim that these evils are present in Public Law 141 or, more particularly, in section twenty-eight of the act. The broad subject in the act is the construction, operation and jurisdiction of Indiana courts. Thus, it would not be clearly unreasonable to conclude that the Product Liability Act should fall under that heading. In view of these factors and the broad constructions we have given in the application of this constitutional provision, we cannot say that the grouping together of the subjects in this act was so unreasonable as to be repugnant to the Indiana Constitution.⁶³

The surviving reason for the one subject requirement, after the 1974 constitutional amendment, is to prevent a combination of nonrelated measures in one bill intended to insure the successful passage of the whole—i.e., to prevent logrolling. Had the Court distinguished its pre-1974 holdings that relied upon the title of the act, and relied instead on its still relevant language in *Jackson v. State*, the outcome in this decision, the only one that deals directly with the one subject requirement of Article 4, section 19 after its 1974 amendment, might have been quite different.

In *Pence v. State* (1995),⁶⁴ the second post-1974 case, appellant claimed that Acts 1992, P.L. 4 (P.L.4-1992) violated Article 4, section 19 in that it contained more than one subject. The law amended sections of the Indiana Code to bring it into compliance with the federal Americans with Disabilities Act, and also included language relating to the General Assembly's pension fund. In a 4-1 decision, the Court ruled that appellant lacked standing to bring the suit. The dissent urged that the Court announce a policy to fully enforce Article 4, section 19, prospectively.⁶⁵

⁶³ *Id.* at 214-15.

⁶⁴ *Pence v. State*, 652 N.E.2d 486 (Ind. 1995).

⁶⁵ *Id.* at 489-90: The framers of our Constitution believed this provision was necessary to safeguard the legislative process against political "log-rolling," where legislators combine two unrelated bills, each without sufficient support to pass on its own, in order to accumulate the requisite number of votes to pass both I favor enforcement of this constitutional imperative and believe that Indiana courts should seriously consider claims that enactments violate this requirement. Particularly in view of the recently renewed commitment of Indiana citizens to the single-subject requirement, courts should henceforth invalidate nonconforming statutory provisions.

However, this has not been the policy generally followed in past decisions. Rather, this Court has often permitted the legislature's combination of questionably related subjects into a single act. *See, e.g.*, *Dague v. Piper Aircraft Corp.* (1981), 275 Ind. 520, 418 N.E.2d 207; *Bright v. McCullough* (1866), 27 Ind. 223. Due to our prior reluctance to enforce the single-subject-per-act

Bayh v. Indiana State Building and Construction Trades Council (1996)⁶⁶ is the third and the most recent decision dealing with the one subject requirement. In addition, *Bayh* raises issues relating to the “replacement rule” of amendments.⁶⁷

Ind.Code 5-16-7, the Prevailing Wage Law, was amended twice by the 1995 Indiana General Assembly. The first act to pass, House Enrolled Act (H.E.A.) 1598, was a 105 section act affecting numerous parts of the Indiana Code. Sections 8 and 9 of the act amended sections 1 and 4 (I.C. 5-16-7-1 and I.C. 5-16-7-4) of the Prevailing Wage Law. H.E.A. 1598 was signed by the Governor May 1, 1995 and, by its terms, took effect July 1, 1995. The second act to pass, H.E.A. 1435, had only two sections; these sections amended I.C. 5-16-7-1 and I.C. 5-16-7-4 “as amended by H.E.A. 1598-1995.” H.E.A. 1435 also was signed by the Governor May 1, 1995 and also, by its terms, took effect July 1, 1995.

In an action brought to enjoin enforcement of H.E.A. 1435, the trial court first found H.E.A. 1598 (with provisions relating to state administration, local administration, taxation, airport development zones, and education) to be unconstitutional under Article 4, section 19, insofar as sections 8 and 9 dealt with revising the Prevailing Wage Law while the rest of the act, according to the trial court, dealt with “the single subject of taxation.” The trial court found that the two offending sections could be severed, leaving the rest of H.E.A. 1598 intact.⁶⁸ Then the trial court found that H.E.A. 1435, the two-section act amending I.C. 5-16-7-1 and 4, “as amended by H.E.A 1598-1995,” was also

requirement and our resulting implied invitation to the General Assembly to accord minimal attention to the single-subject requirement in our Constitution, we should continue to extend considerable deference to provisions enacted prior to today. To invalidate the presently challenged statutory provisions, presumably enacted in reliance upon this Court's precedent, would thus be inappropriate.

I would find that the plaintiffs have standing to seek judicial determination of the questions presented but would uphold the challenged legislation as congruous with prior decisions interpreting the single-subject-per-act requirement of the Indiana Constitution, which should henceforth be fully enforced.

⁶⁶ *Bayh v. Indiana State Bldg. and Const.*, 674 N.E.2d 176 (Ind. 1996).

⁶⁷ *See supra* note 14 and accompanying text.

⁶⁸ *But see* *Jackson v. State*, 142 N.E. 423, 426 (Ind. 1924), *id* at n. 46, which held that when an act is clearly double, the courts cannot choose between the two subjects and eliminate one of them.

invalid because the amendments were to the now unconstitutional sections of H.E.A. 1598.

On appeal, the Supreme Court majority opinion did not address the question of whether the omnibus H.E.A 1598, or any part thereof, was in violation of Article 4, section 19. Instead, the Court ruled:

On its face, H.E.A. 1435 concerns only one subject: the revision of Indiana’s Prevailing Wage Act. Therefore, it does not violate Art. 4, §19. . . . H.E.A. 1435 is a free-standing, duly enacted law. Because H.E.A. does not violate Art. 4, § 19 of Indiana’s Constitution, it is valid and enforceable. Accordingly, we have reversed the decision of the trial court and rescinded the injunction.⁶⁹

In the Court’s determination that H.E.A. 1435 was a free-standing, complete act, independent of H.E.A. 1598, it dismissed printing codes and lead-in lines indicating otherwise (i.e., “AS AMENDED BY HEA 1598”) in the two Enrolled Acts:

A comparison of H.E.A. 1598 and H.E.A. 1435 with respective revision marks included does show that H.E.A. 1435 was a revision of H.E.A. 1598’s revisions of IC 5-16-7, but such a comparison is not relevant to consideration of the validity of an act under Art. 4, § 19. The inclusion of such marks is for researching convenience only and the marks are not part and parcel of the final laws which are passed by the General Assembly and signed by the Governor. . . . *H.E.A. 1435 does not depend upon the validity of H.E.A. 1598 for its comprehensibility or existence.* The reference to H.E.A. 1598 in H.E.A. 1435’s enabling language (i.e. “AS AMENDED BY HEA 1598”) merely indicates that H.E.A. 1435 abrogates and nullifies the prevailing wage revisions made to IC 5-16-7 by H.E.A. 1598. . . .

The trial court saw H.E.A. 1435 not as a second amendment to Indiana Code ch. 5-16-7, but as an amendment to H.E.A. 1598. This was erroneous. . . . Although H.E.A. 1435’s enabling language can be read to indicate that the legislature considered IC 5-16-7 previously amended by H.E.A. 1598, this consideration does not change the fact that H.E.A. 1435’s purpose was *to amend IC 5-16-7*, not H.E.A. 1598. [first emphasis added]⁷⁰

⁶⁹ Bayh v. Indiana State Bldg. and Const., 674 N.E.2d 176, 178-79 (Ind. 1996). The dissent notes at p. 180 that while it was unnecessary also to resolve the issue of whether H.E.A. 1598 was unconstitutional, “my own analysis of the record and the law leads me to the conclusion that H.E.A. 1598 is also constitutional.” The dissent cites as authority *Dague v. Piper Aircraft Corp.*, and *Dortch v. Lugar*, both of which may be considered to follow the no longer relevant title-body rationale.

⁷⁰ *Id.* at. 177-78. See *supra* n.11 re printing codes. See *supra* nn.12-15 re the replacement rule.

Although this reasoning runs directly counter to the rulings of the Indiana Court asserting the replacement rule, no cases in the line of replacement rule decisions, starting with *Draper v. Falley*,⁷¹ were referenced, distinguished, or overturned by the Court.⁷²

In its opinion, the Court reaffirmed earlier Indiana rulings that the political proceedings behind the passage of an act are not the proper consideration of a judicial body: “[H]owever, our inquiry into whether an act violates Art. 4, § 19 ends upon review of the final act itself.”⁷³ The Court explained that the “enrolled act rule” is settled law in Indiana: when an enrolled act is authenticated by the signatures of the presiding officers of the two houses, it will be conclusively presumed that the same was enacted in conformity with all the requirements of the Constitution. It is not allowable to look to the journals of the two houses, or to other extrinsic sources, for the purpose of attacking the validity or the manner of its enactment. Inquiry is limited to the face of the enrolled act.⁷⁴

⁷¹ *Draper v. Falley*, 33 Ind. 465 (1870).

⁷² Although the case of *Keane v. Remy*, 201 Ind. 286, 168 N.E. 10 (1929) is identified and distinguished by the Court, the case is not precisely on point.

The General Assembly has followed the replacement rule rationale in its legislative drafting since the later part of the 19th century. Although the portion of Article 4, section 19 requiring that an amendatory act identify the original act, as last amended, and that the sections amended by set forth and published at full length, was deleted from the Constitution by the 1974 amendment, these procedures have continued to be strictly adhered to by the General Assembly and its staff in order to maintain the integrity of the Indiana Code, and are incorporated in the House and Senate Rules, available online at <<http://www.ai.org/legislative/rules.html>>. Both the “lead-in lines” (e.g. “as amended by H.E.A. 1598-1995”) and the printing codes indicating changes to the prior law, are present on the face of each bill, from its introduction to its publication as an Enrolled Act in the Acts of Indiana, making the intent of the General Assembly as to what version of the law is to be amended, and what changes are to be effectuated, readily ascertainable. See e.g. Oddi & Attridge, *Draftsman’s Manual to the Indiana Code of 1971*, Indiana Legislative Council (1971), p. 21; *Indiana Bill Drafting Manual*, approved by the Indiana Legislative Council, Sept. 23, 1999, ch. 3, available online at <<http://www.ai.org/legislative/manual/chap03/index.html#chap3bills>>.

⁷³ *Bayh v. Indiana State Bldg. and Const.*, 674 N.E.2d 176, 179 (Ind. 1996).

⁷⁴ *Id.* But see *Hoovler v. State*, 689 N.E.2d 738, 741 (Ind.App. 1997) (We agree with the State that there was no evidence presented or even an allegation made of political log-rolling here.)

See Williams, *State Constitutional Limits on Legislative Procedure: Legislative Compliance and Judicial Enforcement*, 48 U. Pitt. L. Rev. 797, 816 (1987). (“At one end of the continuum is the ‘enrolled bill rule,’ . . . This is marked by judicial passivity and complete deference to the legislative enactment. At the other end is the ‘extrinsic evidence rule,’ characterized by judicial activism and recognition of the written constitution as a binding source of law. Between these two extremes are three intermediate approaches to judicial enforcement, the ‘slightly modified’ enrolled bill rule, the ‘modified’ enrolled bill rule, and the ‘journal entry rule.’ All of these have been developed by the courts as they have been called on by litigants to interpret and enforce state

The Court concluded its discussion of the enrolled act rule with the statement: “What one person might see as evil logrolling, another might view as simple give and take. The single subject provisions of the Constitution and the enrolled act rule are designed to promote fair practice in legislating without much judicial intervention.”⁷⁵

IV. Conclusions

The constitutional limitations on the title, subject matter and amendment of acts, embodied in the Indiana Constitution of 1851, were intended to curb perceived abuses in legislative processes. Twice in the past 40 years, first to eliminate the long title requirement, and later to permit adoption of the Indiana Code, the General Assembly has adopted and the public has ratified amendments to these limitations. The only limit that remains, post-1974, is the requirement that acts, except codifications, be restricted to one subject.

No objective test for determining what constitutes one subject has been devised by the Indiana Supreme Court. Despite the caveat of the *Jackson* court that, by “a process of tracing relationship, we could find that most subjects of legislative enactments were related, just as by a similar process we can find the relationship of all of mankind,” this is precisely the method that appears most often to have been applied in the past. Turning to the title of the act to weigh whether there is any reasonable basis for the General Assembly’s grouping together of the various matters included within an act, the Court has sometimes parsed the title to achieve the requisite overarching phraseology needed to unite seemingly disparate elements.

constitutional restrictions on legislative procedure.”)

⁷⁵ Bayh v. Indiana State Bldg. and Const., 674 N.E.2d 176, 179 (Ind. 1996).

In *Indiana State Teachers Ass’n. v. Bd. of School Comm.*, 679 N.E.2d 933, 935 (Ind.App. 1997), P.L. 340-1995 is challenged as a violation of Art. 4, § 19 in that it combines the state budget and legislation restricting the rights of public school teachers in Indianapolis to bargain collectively. (“[O]ur supreme court has taken a laissez-faire approach to determining whether a violation of the single-subject requirement has occurred. . . . The court’s broad approach to analyzing legislative acts for single-subject violations has prevailed, and the implied invitation to the General Assembly remains.”)

With the elimination in 1974 of the requirement that the subject of an act be expressed in the title, and with the Court’s reaffirmation in *Bayh* of the enrolled act rule’s prohibition against looking behind the enrolled act to see whether the legislature had engaged in the type of conduct the one subject requirement was intended to prevent, it might appear to be very difficult for today’s Court to make a determination that an act violates the requirements of Article 4, section 19.

However, the enrolled act rule does not “insulate an act from the attack that it violates the one subject rule, because the fact of violation can be determined from the act itself without resort to extrinsic evidence.”⁷⁶ A “review of the final act itself”⁷⁷ should be all that is necessary for the Court to determine whether or not an act violates of Article 4, section 19. Although the enrolled act rule’s proscription against looking to the journals or other extrinsic evidence to attack the validity or manner of enactment is longstanding in Indiana,⁷⁸ Article 4, section 19 does not prohibit acts containing two or more subjects *only if it can be proven* that the subjects were combined together for the purpose of procuring the passage of measures that might not, alone, command legislative approval. Instead, the prohibition of Article 4, section 19 is absolute.

Finally, judicial deference may not be the proper response to violations of the one subject matter limitation, the effects of which cut across all three branches of government. For, if members of the legislature may, without fear that the act later will be struck down by the courts, place other members in the position of having to accept an unwanted provision in order to get a wanted one, so may they impact the Governor in the same manner. The Governor, without a line item veto, may be placed in as difficult a position as a member of the General Assembly by the combination of two different subjects within one act, such as the state budget and, for example, a rider relating to riverboat gambling.

⁷⁶ Rudd, p. 393.

⁷⁷ *Bayh v. Indiana State Bldg. and Const.*, 674 N.E.2d 176, 179 (Ind. 1996).

⁷⁸ In *State ex rel Colbert v. Wheeler*, 89 N.E. 1, 2 (1909), a case where an enrolled act was missing, the Court stated: “. . . [I]t is not allowable to look at the journal of the two houses or to other extrinsic sources for the purpose of attacking its validity or the manner of its enactment”, citing, *inter alia*, *Evans v. Browne*, 30 Ind. 514 (1869).

The same rationale also applies to the judicial branch. *Dague v. Piper Aircraft* presented such a case. During the last hours of the 1978 legislative session, legislative leaders patched an endangered products liability bill onto the end of a “judges bill,” a 27-section bill relating to the Indiana court system.⁷⁹ The subsequent challenge to the constitutionality of the combined act was the first to be decided by the Indiana Supreme Court under the newly revised Article 4, section 19. Here the Court was placed in the position of either invalidating the entire combined courts/products liability act, or issuing a ruling upholding the constitutionality of the act, a “choice” similar to that legislators, and then the Governor, had faced earlier.

So long as the Court maintains its current noninterventionist approach to Article 4, section 19 challenges, the possibility posited in the January 7, 2000 editorial⁸⁰ of “one giant bill [sent] to the governor . . . with a take-it-or-leave-it note” does not appear entirely unrealistic. But, in a recent opinion indicating that its position of deference does have limits, the Court spoke directly to the question of the relationship between judicial deference and the separation of powers, on the one hand, and the constitutional system of checks and balances, on the other:⁸¹

The separation of powers provision exists not only to protect the integrity of each branch of government, but also to permit each branch to serve as an effective check on the other two. Indeed, Black’s Law Dictionary defines separation of powers as “the constitutional doctrine of checks and balances by which the people are protected against tyranny.” Black’s Law Dictionary 1369-70 (7th ed. 1999). See *Book*, 238 Ind. at 161, 149 N.E.2d at 294 (“[T]he powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others.”) (quoting Thomas Jefferson, “Notes on the State of Virginia”). The concept of an independent judiciary lies at the bedrock of the separation of powers doctrine that shapes our form of government. It was one of the central principles underlying the thinking of the framers of the Indiana Constitution and also the Constitution of the United States. As Alexander Hamilton put it in the Federalist Papers:

⁷⁹ Such a combination may occur at any point in the legislative process, from the initial preintroductory bill drafting stage to, as here, in conference committee.

⁸⁰ *Logrolling: how bad laws get passed*, lead editorial, Indianapolis Star, Sunday, January 7, 2001, page D2.

⁸¹ *State v. Monfort*, 723 N.E.2d 407, ___ (Ind. 2000).

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the Legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

...

The Federalist No. 78, at 426, 428-29 (E.H. Scott ed., 1894)

The same considerations undergird our state Constitution. We have long taken the view that:

Our courts are the bulwark, the final authority which guarantees to every individual his right to breathe free, to prosper and be secure within the framework of a constitutional government. The arm which holds the scales of justice cannot be shackled or made impotent by either restraint, circumvention or denial by another branch of that government.