

# BROKE: THE POCKETBOOK OF ILLINOIS AND THE SINGLE SUBJECT RULE AFTER *WIRTZ V. QUINN*, 953 N.E.2D 899 (ILL. 2011).

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## I. INTRODUCTION

In 2009, the Illinois General Assembly passed a ten-year, \$31 billion construction plan,<sup>1</sup> Illinois' economic stimulus package<sup>2</sup> in response to the financial crash of late 2008. Shortly thereafter, W. Rockwell Wirtz, a prominent alcohol wholesaler<sup>3</sup> and owner of the Chicago Blackhawks,<sup>4</sup> challenged the act as violating the Illinois Constitution's single subject clause.<sup>5</sup> *Wirtz v. Quinn* represents exactly how far the Illinois Supreme Court will go to save questionable legislation when confronted with a legitimate constitutional challenge in the midst of a financial collapse.

This article focuses on the following issues discussed in *Wirtz*: (1) whether the challenged public acts violated the single subject rule of the Illinois Constitution; and (2) whether the enactment of a statute may be contingent on the enactment of another statute without violating the single subject rule of the Illinois Constitution. This Note argues that the Illinois Supreme Court misapplied the single subject rule by applying an overbroad subject to an all-encompassing act. In doing so, the court allowed what the constitutional provision seeks to prevent, legislative "logrolling." In addition, *Wirtz* allows the legislature to side-step political accountability, a concept that has seen a revival in the wake of the Occupy Wall Street and Tea Party movements.

Section II will discuss the history of the single subject rule, both nationally and in Illinois. Section III will discuss the Illinois Supreme

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1. Melissa Leu, *State's Supreme Court Considers Demolishing \$31B Construction Plan*, BOOLINGBROOK PATCH (Mar. 19, 2011), <http://bolingbrook.patch.com/articles/states-supreme-court-considers-demolishing-31b-construction-plan>.
2. Andrew Harris & Tim Jones, *Illinois 'Jobs Now!' Economic Stimulus Plan Upheld by State Supreme Court*, BLOOMBERG (Jul. 11, 2011, 12:23 PM), <http://www.bloomberg.com/news/2011-07-11/illinois-jobs-now-economic-stimulus-plan-upheld-by-state-supreme-court.html>.
3. *W. Rockwell Wirtz—Profile*, WIRTZ BEVERAGE GRP., <http://www.wirtzbeveragegroup.com/Management.asp> (last visited Oct. 10, 2011).
4. *W. Rockwell "Rocky" Wirtz—Profile*, BLACKHAWKS.NHL.COM, <http://blackhawks.nhl.com/club/page.htm?id=47399> (last visited Oct. 10, 2011).
5. *Wirtz v. Quinn*, 953 N.E.2d 899 (Ill. 2011).

Court's analysis in *Wirtz*. Section IV will discuss the ramifications of the court's decision and a proposed rule to apply in single subject clause cases.

## II. EXISTING LAW

The Illinois single subject rule, like versions in most states, limits legislation to one subject. In other words, a piece of legislation that covers more than one subject violates the single subject rule of the Illinois Constitution and is, therefore, unconstitutional. Although deceptively simple, the single subject rule cannot be fully understood without a brief exploration of its long history before returning to the single subject rule in Illinois.

### A. Single Subject Rule: A "Noble" History

The first version of the single subject rule appeared in Ancient Rome in 98 B.C.<sup>6</sup> The Roman version forbade laws containing unrelated provisions.<sup>7</sup> The rule's first appearance in a constitution within the United States occurred in 1818 when Illinois "limited bills appropriating salaries for members of the legislature and for officers of the government to that subject."<sup>8</sup> In 1844, New Jersey adopted a single subject rule that applied to all pieces of legislation.<sup>9</sup> Following New Jersey's lead, forty-two states currently have some version of the single subject rule.<sup>10</sup> The vast majority of those forty-two states also contain title requirements,<sup>11</sup> meaning that the subject of the bill must be contained in the bill's title.<sup>12</sup>

The reasoning behind the widespread adoption of single subject rules is threefold: "(1) to prevent logrolling, (2) to prevent riding, and (3) to improve political transparency, both for citizens and their representatives."<sup>13</sup> These three goals are addressed individually below.

Logrolling occurs when individually supported minority proposals are combined to command majority support, which the proposals could not

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6. ROBERT LUCE, LEGISLATIVE PROCEDURE 548-49 (1922).

7. *Id.*

8. Millard H. Ruud, "No Law Shall Embrace More than One Subject", 42 MINN. L. REV. 389, 389 (1958).

9. See N.J. CONST., art. IV, § 7, para. 4 ("To avoid improper influences which may result from intermingling in one and the same act such things as have no proper relation to each other, every law shall embrace but one object . . ."); see also Robert D. Cooter & Michael D. Gilbert, *A Theory of Direct Democracy and the Single Subject Rule*, 110 COL. L. REV. 687, 704 (2010).

10. Brannon P. Denning & Brooks R. Smith, *Uneasy Riders: The Case for a Truth-in-Legislation Amendment*, 1999 UTAH L. REV. 957 app. A at 1005-25 (1999).

11. *Id.* The state constitutions of Illinois, Indiana, and Arkansas do not contain title requirements. *Id.*

12. Cooter & Gilbert, *supra* note 9, at 705.

13. Michael D. Gilbert, *Single Subject Rules and the Legislative Process*, 67 U. PITT. L. REV. 803, 813 (2006).

gather on their own.<sup>14</sup> The evil associated with logrolling is the “perversion of majority rule.”<sup>15</sup> In addition to trumping majority rule, logrolling “can force legislators ‘to accept a repugnant provision in order to achieve adoption of a desired one.’”<sup>16</sup>

Riders are attached provisions that cannot attain enough votes on their own merits, so they are added to popular bills, and the popular bills carry the not-so-popular rider to passage.<sup>17</sup> The critical difference between logrolling and riding is that logrolling results from bargaining, compromise, and coalition building, while riding is the product of legislative manipulation and the proposing legislator’s political clout.<sup>18</sup> Regardless of the distinction, both riding and logrolling are equally undesirable in the eyes of courts.

Political transparency is accomplished by forcing legislators to consider and intelligently discuss an act that can be easily grasped by the legislators.<sup>19</sup> The process also lends itself to political accountability, an idea that has been thrust into the forefront of political discussion by the Occupy Wall Street and Tea Party movements. For an illustration of this idea, consider this example using a provision from the act in question in *Wirtz v. Quinn*: Legislator A, a representative from Carbondale, Illinois, votes in favor of the Illinois economic stimulus package, which contains a provision delegating a study to be conducted by the University of Illinois at Urbana-Champaign (U of I). Citizen B, a Southern Illinois University at Carbondale (SIU) alumnus and faculty member, is upset that her representative would choose U of I for the study over SIU. When Citizen B questions Legislator A’s vote, Legislator A could successfully argue to Citizen B that the act in question contained provisions X, Y, and Z, which were advantageous to Citizen B, and that Legislator A’s hand was forced to accept the U of I study in order to accomplish the passing of X, Y, and Z.

This illustration provides an example of political maneuvering. When an act contains multiple subjects and provisions, no single vote by the representative for any single act is politically destructive to a representative’s reelection. When a provision helps Legislator A’s constituency, he voted for it; when a provision hurts Legislator A’s constituency, his hand was forced. The single subject rule seeks to avoid political maneuvering, as in the example above, by requiring legislatures to consider specific acts. This in turn allows for a more accurate voting record

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14. Ruud, *supra* note 8, at 391.

15. Gilbert, *supra* note 13, at 814 (quoting Ruud, *supra* note 8, at 399).

16. *Id.* (quoting Dep’t of Educ. v. Lewis, 416 So. 2d 455, 459 (Fla. 1982)).

17. *Id.* at 815.

18. *Id.*

19. Ruud, *supra* note 8, at 391.

that is not clouded by “forced hands,” thus promoting political transparency.

Although the purpose behind the single subject rule may be noble, its application has been confusing and unpredictable. The difficulty in application lies in the definition of the word subject, perhaps “one of the most abstract words in the [English] language.”<sup>20</sup> While the purpose of the rule is “to prevent the submission or approval of incoherent initiative measures that are little more than ‘grabbags’ of various provisions,”<sup>21</sup> accomplishing this goal has created equally abstract tests for determining whether all of an act’s provisions relate to the same subject. In Illinois, provisions within the act must have a “natural and logical connection” to be considered one subject.<sup>22</sup> Another popular test among courts is whether the provision is germane or reasonably germane to the Act’s subject.<sup>23</sup> These tests give no more guidance to the application of the law than does the word “subject.” In addressing the Supreme Court of Florida’s “oneness” standard, one justice said, “‘Oneness,’ like beauty, is in the eye of the beholder; and our conception of [it] thus has changed every time new members have come onto this Court.”<sup>24</sup> The lack of uniformity and great degree of discretion has allowed “personal prejudices and political and subjective considerations by the court[s] . . . .”<sup>25</sup> Discretion and subjective considerations ultimately led to the Illinois Supreme Court’s decision in *Wirtz*, but, before addressing *Wirtz* specifically, the status of the single subject rule in Illinois must be discussed.

#### B. Single Subject Rule in Illinois

As mentioned *supra*, Illinois first adopted a limited version of the single subject rule in 1818.<sup>26</sup> Illinois adopted its constitutional provision as it stands today in 1870.<sup>27</sup> The Illinois Constitution states in relevant part: “Bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject.”<sup>28</sup> In interpreting the Illinois single subject rule, the Illinois Supreme Court has stated:

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20. Oregon Educ. Ass’n v. Phillips, 302 Or. 87, 105 (1986) (Linde, J., concurring).

21. Raven v. Deukmejian, 52 Cal.3d 336, 361 (1990) (Mosk, J., concurring in part and dissenting in part).

22. Johnson v. Edgar, 680 N.E.2d 1372, 1379 (Ill. 1997).

23. Gilbert, *supra* note 13, at 827.

24. *In re* Ltd. Political Terms in Certain Elective Offices, 592 So. 2d 225, 231 (Fla. 1991) (advisory op.) (Kogan, J., concurring in part and dissenting in part) (citation omitted).

25. Carl H. Manson, *The Drafting of Statute Titles*, 10 IND. L.J. 155, 159 (1934-1935).

26. Ruud, *supra* note 8, at 389.

27. Denning & Smith, *supra* note 10, app. A at 1005-25.

28. ILL. CONST. art. IV, § 8(d).

‘The requirement of singleness of subject has been frequently construed, and the applicable principles are settled. The term ‘subject’ is comprehensive in its scope and may be as broad as the legislature chooses, so long as the matters included have a natural or logical connection. An act may include all matters germane to a general subject, including the means reasonably necessary or appropriate to the accomplishment of legislative purpose. Nor is the constitutional provision a limitation on the comprehensiveness of the subject; rather, it prohibits the inclusion of ‘discordant provisions that by no fair intendment can be considered as having any legitimate relation to each other.’<sup>29</sup>

Thus, Illinois courts treat the legislature’s judgment with great deference, and with a strong presumption of constitutionality.<sup>30</sup>

To fully understand *Wirtz*, one must understand Illinois single subject clause case law leading up to *Wirtz*. In *Johnson v. Edgar*, the Illinois Supreme Court held the act in question, which included such subjects as “child sex offenders, employer eavesdropping, and environmental impact fees,” violated the single subject rule.<sup>31</sup> The *Johnson* court found the “legislative life,” or legislative history, of the bill persuasive.<sup>32</sup> The act’s “life” began as an “eight-page bill addressing the narrow subject of reimbursement by prisoners to the Department of Corrections for the expense of incarceration.”<sup>33</sup> The act then grew to over two hundred pages, encompassing a wide variety of areas.<sup>34</sup> In addressing the state’s argument that the act’s subject was “public safety,” the court stated that if it were to conclude that the discordant provisions related to the broad subject of “public safety,” the court would essentially eliminate the single subject rule “as a meaningful constitutional check on the legislature’s actions.”<sup>35</sup>

In another leading Illinois single subject rule case, *People v. Reedy*, the Illinois Supreme Court again found the “legislative life” of the act in question persuasive. The court noted that the act in question began for the purpose of addressing the use of the insanity defense.<sup>36</sup> After it passed in

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29. *People ex rel. Ogilvie v. Lewis*, 274 N.E.2d 87, 94 (Ill. 1971) (quoting *People ex rel. Gutknecht v. Chicago*, 111 N.E.2d 626, 632 (Ill. 1953)) (citation omitted).

30. *People v. Dabbs*, 940 N.E.2d 1088, 1097 (Ill. 2010). The court noted:

[S]tatutes carry a strong presumption of constitutionality and that a party challenging the constitutionality of a statute has the burden of rebutting that presumption. To rebut the presumption, the challenging party must clearly establish a constitutional violation . . . . [W]e will resolve any doubt as to the construction of a statute in favor of its validity.

*Id.* (citations omitted).

31. *Johnson v. Edgar*, 680 N.E.2d 1372, 1380 (Ill. 1997).

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at 1380-81.

36. *People v. Reedy*, 708 N.E.2d 1114, 1118 (Ill. 1999).

the Senate, the House of Representatives “deleted the entire text of the bill” and incorporated “numerous matters in addition to the subject of the insanity defense.”<sup>37</sup> The court also noted the change in the bill’s title from a focused topic to a much broader one, namely from “A Bill for an Act concerning the insanity defense,” to “An Act in relation to governmental matters, amending named Acts.”<sup>38</sup> The court went on to caution against the use of sweeping and vague categories to unite unrelated matters before concluding the act included at least two, and as many as five, distinct subjects.<sup>39</sup> Although the previous two cases held that the acts in question were unconstitutional, the next case presented a much more permissive perspective from the Illinois Supreme Court.

In *Arangold Corp. v. Zehnder*, the plaintiff challenged an act that amended more than twenty different statutes.<sup>40</sup> The defendant argued that the act related to the subject of the implementation of the state budget.<sup>41</sup> In upholding the validity of the Act, the court found the General Assembly’s intent dispositive. Speaking on behalf of the General Assembly, the court stated that “the General Assembly was not attempting to unite obviously discordant provisions under some broad and vague category. To the contrary, the . . . purpose . . . was to implement the state’s budget . . . .”<sup>42</sup> The court went on to observe that it “has never held that the single subject rule imposes a second and additional requirement that the provisions within an enactment be related to each other.”<sup>43</sup> To clarify, the entirety of the bill must relate to one subject, but a close relationship between the act’s various provisions is not necessary so long as the provisions can be said to relate to one subject. Armed with an understanding of past Illinois single subject rule jurisprudence, the Illinois Supreme Court’s analysis in *Wirtz* will now be examined.

### III. EXPOSITION OF *WIRTZ V. QUINN*

*Wirtz v. Quinn* involved plaintiffs W. Rockwell Wirtz, on behalf of all taxpayers situated in the State of Illinois, and Wirtz Beverage Illinois, LLC, and defendants, Illinois public officials.<sup>44</sup> The plaintiffs’ complaint sought to enjoin the disbursement of public funds by the defendant public officials.<sup>45</sup> The plaintiffs argued that the challenged public acts violated the

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37. *Id.*

38. *Id.*

39. *Id.* at 1119.

40. *Arangold Corp. v. Zehnder*, 718 N.E.2d 191, 197 (Ill. 1999).

41. *Id.*

42. *Id.* at 199.

43. *Id.* at 200.

44. *Wirtz v. Quinn*, 953 N.E.2d 899, 903 (Ill. 2011).

45. *Id.*

Illinois Constitution, specifically the single subject rule.<sup>46</sup> The acts will be summarized below.

#### A. The Public Acts

The public acts addressed in *Wirtz* consisted of four acts, namely, Public Acts 96-34, 96-35, 96-37, and 96-38.<sup>47</sup> Public Act 96-34<sup>48</sup> (Stimulus Bill) created the Video Gaming Act and the Capital Spending Accountability Law.<sup>49</sup> In addition, it amended the Illinois Lottery Law, the State Finance Act, the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, the Retailers' Occupation Tax Act,<sup>50</sup> the Riverboat Gambling Act, the Liquor Control Act of 1934, the Environmental Protection Act, the Illinois Vehicle Code, and the Criminal Code of 1961.<sup>51</sup> The act also required the University of Illinois at Urbana-Champaign "to conduct a study on the effect on Illinois families of purchasing lottery tickets."<sup>52</sup> The Act further provided: "This Act takes effect July 1, 2009 . . . but this Act does not take effect at all unless House Bill 312 of the 96th General Assembly,<sup>53</sup> as amended, becomes law."<sup>54</sup>

Public Act 96-35 (Appropriations Bill) was an appropriations bill, the effectiveness of which was contingent on the Stimulus Bill becoming law.<sup>55</sup>

Public Act 96-37 (Stimulus Implementation Bill) authorized grants and expenditures to not-for-profit hospitals, health centers, libraries, parks, and colleges.<sup>56</sup> This Act made changes to the lottery and video gaming provisions in the Stimulus Bill and clarified that increased taxes created under the Stimulus Bill will be deposited into the Capital Funds Project.<sup>57</sup> The Stimulus Implementation Bill also required financial disclosures in car rental contracts, included a car rental fee provision, certified a pilot river edge redevelopment zone in Elgin, Illinois, and implemented an urban weatherization program.<sup>58</sup> Various parts of this act were contingent on the Stimulus Bill becoming law.<sup>59</sup>

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46. *Id.*

47. *See id.* at 905-13.

48. Entitled, "An Act concerning revenue." *Id.* at 905.

49. *Id.* at 905-06.

50. The amendment raised the tax rate on the sale of candy, soft drinks, and grooming and hygiene products from 1% to 6.25%. *Id.* at 906.

51. *Id.* at 906-07.

52. *Id.* at 906.

53. Later enacted as Public Act 96-35.

54. *Wirtz*, 953 N.E.2d at 907.

55. *Id.* at 913.

56. *Id.* at 911.

57. *Id.*

58. *Id.*

59. *Id.* at 913.

Public Act 96-38 (“Stimulus Amendment”) changed various provisions in the Stimulus Bill and was contingent on the Stimulus Bill becoming law.<sup>60</sup>

### B. Procedural History

The Circuit Court of Cook County held that the plaintiffs’ claims failed as a matter of law because there was no reasonable ground for allowing plaintiffs’ complaint to go forward.<sup>61</sup> The primary reason for denying the plaintiffs’ complaint was the application of a strong presumption of constitutionality to the pieces of legislation.<sup>62</sup> In doing so, the circuit court noted that Illinois courts define subject in a “very, very broad, liberal sense, quite differently than most people on the street would define ‘single subject.’”<sup>63</sup>

The Appellate Court of Illinois, First District, reversed in a unanimous decision, holding that the Stimulus Bill violated the single subject clause of the Illinois Constitution because the provisions in the act did not have a natural and logical connection to the single subject of revenue, as argued by the defendants.<sup>64</sup> The appellate court examined the legislative life of the bill and noted that the Stimulus Bill began as a “five-page bill addressing the narrow subject of amending the Illinois estate and generation-skipping transfer tax” and transformed into a “280-page bill covering a variety of subjects.”<sup>65</sup> Accordingly, the other acts fell because they were contingent on the Stimulus Bill becoming law.<sup>66</sup>

The defendants petitioned the Illinois Supreme Court for leave to appeal, and the Illinois Supreme Court granted the leave.<sup>67</sup> The Illinois Supreme Court then addressed (1) whether the acts violated the single subject rule, and (2) whether the contingency provisions violated the single subject rule.

### C. Reasoning

In addressing the issue of whether the challenged acts violated the single subject rule of the Illinois Constitution, the court held the acts did not

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60. *Id.* at 912-13.

61. *Wirtz v. Quinn*, 942 N.E.2d 765, 770 (Ill. App. Ct. 2011).

62. *Id.*

63. *Id.*

64. *Wirtz*, 953 N.E.2d at 904.

65. *Wirtz*, 942 N.E.2d at 773.

66. *Wirtz*, 953 N.E.2d at 904.

67. *Id.*

violate the Illinois Constitution because the acts represent “constitutionally legitimate enactment[s] genuinely encompassing single subject[s].”<sup>68</sup>

In reaching its conclusion, the court first defined the subject of the Stimulus Bill as “capital projects,” instead of “revenue,” as contained in the Act’s title.<sup>69</sup> In addressing the individual provisions of the Act, the court noted that enacted provisions increased revenue sources to be deposited into the Capital Projects Fund, and those that did not increase revenue helped implement the other provisions.<sup>70</sup> In reviewing the legislative history of the Act, the court noted that there were no “smoking gun” provisions in the Stimulus Bill that clearly violated the intent and purpose of the single subject rule.<sup>71</sup> The court went on to state that the legislative debate involved detailed discussion of many of the provisions in the bill without any evidence of provisions being “tacked on.”<sup>72</sup> The enactment of the law was the result of compromise and negotiation amongst the General Assembly, further bolstering the constitutionality of the act.<sup>73</sup>

The remaining provisions were examined in substantially the same way as the Stimulus Bill. The court first defined the subject of the acts in question,<sup>74</sup> then went on to show the natural and logical connection of the challenged provisions to the subject of the act, and finally examined the legislative history to investigate any possible legislative misconduct or bad intentions, such as logrolling and riding.<sup>75</sup>

The Illinois Supreme Court reversed the appellate court and affirmed the circuit court’s ruling, holding that the challenged provisions did not violate the single subject rule of the Illinois Constitution.<sup>76</sup> In addressing the second issue, namely, whether the enactment of a statute may be contingent on the enactment of another statute without violating the single subject rule of the Illinois Constitution, the court held that although the issue was one of first impression, “nothing in our [C]onstitution prohibits making a piece of legislation contingent on a separate legislative enactment.”<sup>77</sup>

The court reasoned that because in Illinois, “the General Assembly may lawfully enact a statute, the operation of which is dependent upon a contingent event,”<sup>78</sup> the enactment of another piece of legislation was a

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68. *Id.* at 911.

69. *Id.* at 907.

70. *Id.*

71. *Id.* at 909-10.

72. *Id.* at 911.

73. *Id.*

74. The subject of the Stimulus Implementation Bill was the implementation of the state’s capital budget; the subject of the Stimulus Amendment was capital projects. *Id.* at 912-13.

75. *See id.* at 911-13.

76. *Id.* at 913.

77. *Id.*

78. *Id.* (citations omitted).

sufficiently acceptable contingent event. The court looked to Florida's highest court and adopted the standard that the tying together of two statutes through contingency provisions is acceptable if there is a "reasonable relationship between the statutes."<sup>79</sup> In applying this standard, the court found that the acts at issue in *Wirtz* "clearly [were] reasonably related to one another in that they were associated with raising funds for capital projects, establishing capital projects, and appropriating funds to those projects."<sup>80</sup> The court applauded the legislature's use of contingency provisions, noting that each act was passed separately, in accordance with the Illinois Constitution.<sup>81</sup>

Ultimately, the court found no violation of the single subject rule for the Stimulus Bill, the Stimulus Implementation Bill, or the Stimulus Amendment,<sup>82</sup> and held that the tying together of statutes through contingency provisions is valid so long as the acts are reasonably related. The court's ultimate conclusion was incorrect, will result in more confusion in this area of the law, and harms the intended beneficiary of the single subject rule, Illinois citizens. These topics are discussed in further detail *infra*.

#### IV. ANALYSIS

The Illinois Supreme Court wrongly decided *Wirtz v. Quinn*, and in doing so, the court increased uncertainty in an already uncertain area of law, undermined the principles underlying the single subject rule, and created a new loophole of tying legislative acts together to "comply with" the single subject rule, while stripping the single subject rule of any meaningful use. In its analysis, this Note will explore the ramifications of the *Wirtz* decision on future cases, examine the undermining of the principles underlying the single subject rule, and propose a new test for future single subject clause jurisprudence.

##### A. Ramifications

Perhaps the most interesting aspect of the Illinois Supreme Court's analysis in *Wirtz* is its brevity. In the court's most extensive analysis, the examination of the Stimulus Bill, after setting out the rule and the statements of four legislators, the court simply concludes that the bill passes

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79. *Id.* at 914 (quoting *In re Advisory Op. to the Governor*, 239 So.2d 1, 9 (Fla. 1970)).

80. *Id.*

81. *Id.*

82. The Appropriations Bill was outside the scope of the single subject rule of the Illinois Constitution because appropriations bills are specifically exempt under the constitutional provision. *Id.* at 904.

muster and relates to a single subject of capital projects.<sup>83</sup> The mechanics underlying the analysis in *Wirtz* are especially intriguing. The defendants proposed the subject of “capital projects.”<sup>84</sup> The court accepted that subject as “legitimate” by noting that it was not “so broad that the rule [was] evaded.”<sup>85</sup> The court then stated that the provisions either raised revenue for capital projects or implemented the other provisions.<sup>86</sup> The court’s analysis eventually concluded with statements such as, nothing “[stood] out as being constitutionally unrelated to the single subject of capital projects,”<sup>87</sup> or there was no “smoking gun.”<sup>88</sup> The court then used this “smoking gun” analysis to distinguish past precedent.

While previous Illinois single subject rule decisions seemed to turn on explorations into a bill’s legislative life or history, *Wirtz* added a smoking gun requirement without defining exactly what a smoking gun provision looks like.<sup>89</sup> The Stimulus Bill’s transformation from a five-page estate tax bill to a 280-page economic stimulus package was not enough to fall under past precedent such as *Johnson* and *Reedy*, where the examined acts underwent similar mutations. The court’s analysis under the new smoking gun requirement suggests that future courts must examine the bill’s legislative history to determine if the bill was a product of compromise or something more insidious.<sup>90</sup> Some of the factors the court examined included the length and depth of legislative debate and the comments of legislators.<sup>91</sup>

This type of analysis will undoubtedly present problems for future courts in its application. How much legislative debate is enough to make the bill a product of compromise and not logrolling? What if legislators differ in their description of the legislative process? Does compromise in and of itself make a bill pertain to a single subject? The Illinois Supreme Court left these questions and many others unanswered.

Another factor implicit in the court’s analysis was the importance of the legislation presented. The statements of Senator Dillard that Illinois “is literally falling apart”<sup>92</sup> colorfully illustrates this factor. The court weighed this factor into its decision when stressing that “the bill was reached through compromise and with the goals of putting people back to

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83. *Id.* at 911.

84. *Id.* at 907.

85. *Id.*

86. *Id.*

87. *Id.* at 908-09.

88. *Id.* at 909.

89. *Id.*

90. *Id.* at 910-11.

91. *Id.* at 911.

92. *Id.* at 910 (citations omitted).

work . . . .”<sup>93</sup> Again, the court did not establish how dire the straits must be in order to justify judicial acquiescence.

In moving forward, future courts must determine how much weight should be given to the court’s decision in *Wirtz*. In particular, should the “smoking gun” analysis become part of single subject rule jurisprudence, or should courts view this case in light of the extreme economic difficulties facing the state of Illinois at the time of the decision? When viewed in reference to analogous precedent, one may view *Wirtz* as a case of “desperate times call for desperate measures.” Perhaps the easiest way for future courts to distinguish *Wirtz* would be to find a statement from a legislator describing the challenged bill as “flawed” or a provision of the bill as “tacked on.”<sup>94</sup> Perhaps more troubling to the validity of the single subject rule than the “smoking gun” analysis is the new validation of contingency provisions.

By rubber-stamping the tying together of various pieces of legislation, the Illinois Supreme Court has given the Illinois General Assembly a new way around the single subject rule. Although the court states that the use of this new legislative tool actually complies “meticulously with the requirements of that constitutional provision,”<sup>95</sup> the effects will be the same as multi-subject legislation. In fact, the tying together of various pieces of legislation allows the legislature a new route to logroll, ride, and avoid political accountability. The contingency provisions permit minority coalitions to create multiple pieces of legislation carefully tied together so that the failure of one bill will lead to the failure of the other contingent bills. In other words, exactly the same “perversion of majority rule” or logrolling the single subject rule seeks to guard against.

In addition, a legislator with enough clout and political maneuvering can now make a popular bill’s passage contingent on the passage of a less popular bill. This new spin on a traditional “rider” is now not only possible but also will likely face less judicial scrutiny under the “reasonably related” test as it would under the “single subject” test.

Finally, political accountability will also be undermined, the only real difference being the wording of the legislator’s answer to the question, “Why did you vote for that bill?” The answer would now be, “Because if I didn’t vote for that bad piece of legislation, then this other good piece of legislation would have failed.” This answer is eerily similar to the hypothetical discussed *supra* in Section II.A. The end result is a new approach that presents the same problems the single subject rule sought to prevent.

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93. *Id.* at 911.

94. *See id.*

95. *Id.* at 914 (quoting *Gaulden v. Kirk*, 47 So.2d 567, 575 (Fla. 1950)).

Perhaps the most discouraging aspect of *Wirtz* is the ease with which it could have been decided. If one were to approach an average person on the street and ask, “Do the lottery, video gaming, candy taxes, a university study, riverboat gambling, liquor control, environmental protection, vehicle regulation, and the criminal code share any type of commonality or possibly be grouped under one subject?” the answer would be a resounding “no.” If the Illinois Supreme Court did this, it could have avoided the determination regarding the contingency provisions by affirming a unanimous appellate court that held the other acts fell because they were contingent on the Stimulus Bill’s passage. Instead the Illinois Supreme Court adopted, without sufficient reasoning, the broad subject of capital projects, found the provisions of the Stimulus Bill related to this subject, and further held that future statutes can be made contingent on the passage of others, thus allowing the undermining of the single subject rule.

#### B. An Old Rule with Modern Applicability Undermined

While the two movements may be on different ends of the spectrum ideologically, Occupy Wall Street and the Tea Party movements both scream for political transparency. An underlying concern of both movements is a distrust of the political process. The single subject rule provides a useful tool for a politically aware constituency to monitor the votes of their representatives. Over time, however, the focus of the single subject rule, as evidenced by the analysis of the Illinois Supreme Court, has shifted from the examination of the subject of the legislation to an examination of the intent of the entire legislature. While a look at the circumstances surrounding the adoption of a bill can be helpful in identifying possible logrolling or riding, this “legislative life” examination should not be dispositive. This type of analysis presents a variety of problems, which will be addressed *infra*.

First, the length and depth of legislative debate does not bear on a bill’s single subject. If a bill contains multiple subjects, no amount of debate, alone, will make it contain fewer subjects. Second, compromise, in and of itself, does not result in a constitutional piece of legislation. In fact, one of the evils the single subject rule seeks to prevent, namely logrolling, is the result of compromise between various minority groups that ultimately results in what was described *supra* as the “perversion of majority rule.” Next, the focus on legislative debate does not provide any guidance into what type of “smoking gun” a court should look for in their examination. For instance, would a court be justified in finding a “smoking gun” based on the statements of a disgruntled legislator who was on the losing end of a vote? Or would the statements of a victorious legislator be tainted by his or her desires for community or judicial support for legislation? Lastly, to

primarily analyze the statements of legislators, those whom the single subject rule seeks to regulate, seems to be a curious proposition.

Instead of focusing on the legislative process, which may or may not have any bearing on the singleness of a particular subject, there must be something more dispositive the court may focus on in its analysis. A court's adoption of a subject under which to analyze a particular piece of legislation does not necessarily clear up the problem, due the subjectivity inherent in the choice of a subject. The *Wirtz* opinion makes this clear with the lack of reasoning for adopting the subject of capital projects. In essence, the *Wirtz* analysis adds a lack of judicial transparency to a lack of legislative transparency.

### C. PROPOSAL

In this section, two proposed tests are discussed. The first test distinguishes logrolling and riding, condemning the latter while allowing the former. The second test focuses more sharply on the political accountability goal of the single subject rule.

The court's discussion in *Wirtz* regarding compromise leading to single subject rule compliance could be justified with the adoption of a rule condoning logrolling.<sup>96</sup> In essence, by condoning logrolling and condemning riders, the single subject rule would promote legislative bargaining and coalition-building, while disallowing smoking gun provisions such as riders.<sup>97</sup> The difficulty, however, lies in distinguishing riders from logrolling. Although this appears to be what the *Wirtz* court attempted to do by searching for compromise within the legislative process, the attempt to distinguish between the two may be futile. In addition, while the promotion of logrolling and condemnation of riding is a novel idea, political accountability again becomes cloudy. Assuming, *arguendo*, that the Stimulus Bill is an example of permissible logrolling, it would be allowed under a rule that permits logrolling. Suppose Representative A bargained for Representative B's support of Representative A's proposal regarding the increased taxes on candy and soda. In exchange for his support, Representative B requires that Representative A support Representative B's proposal regarding video gaming. Again, if either's constituents do not support or approve of the exchange of support, accountability becomes unclear due to "forced hands." Specifically, Representative A can respond to his constituents that the desirable candy tax would not have passed but for his support of the undesirable video gaming proposal.

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96. Gilbert, *supra* note 13, at 849.

97. *See id.* at 849-65.

A different rule formulation, one that the current political climate calls for, involves political accountability being the primary focus of the single subject rule. In formulating such a rule, the court would have to determine whether the average constituent/citizen would find a provision of the act sufficiently distinct as to warrant the provision being severed from the act. A provision of an act would be sufficiently distinct when support of one provision within an act does not necessarily warrant or require the support of other provisions within the same act. For example, in the Stimulus Act, one could very well support the candy tax and adamantly oppose video gaming. Under this rule, the two provisions would then be severed, and legislators would then be forced to vote on the provisions individually. Thus, under this rule, a much clearer voting record is created. One flaw in this scenario is that the same bargaining and vote swapping can occur, and the “forced hand” argument can still be made. For example, a representative could still respond to his constituency by saying that he had to vote for undesirable Bill X in order to gather enough support of desirable Bill Y. However, by making a legislator vote on a specific provision and creating a more accurate voting record, the “forced hand” argument likely loses some of its persuasiveness. There are still other arguments against this type of rule formulation.

The Political Accountability Rule could eliminate some of the benefits associated with logrolling such as legislative compromise. The rule, however, still allows room for compromise and coalition building by requiring legislative compromises in formulating these singular bills. Bargaining and vote-exchanging may still exist for bills that would not offend a representative’s constituency. Arguably, this rule formulation requires a representative to be more aware of his or her constituency’s feelings toward a wider variety of topics because that representative must understand his or her constituency’s reaction to every vote. The key in a vote swap would be exchanging a vote for a less offensive or more palatable bill in order to garnish support for desirable bills.

The heightened level of political accountability associated with the Political Accountability Rule could lead to less political efficiency or responsiveness by ultimately requiring the legislature to vote more times on smaller bills rather than voting fewer times on larger bills. While this may be true, in theory the debate time on more specific bills would be shorter than that devoted to much larger pieces of legislation. The proposition also requires a balancing of values.

In other words, the rule requires the balancing of political efficiency or responsiveness against political accountability. Given the last two major political movements, Occupy Wall Street and the Tea Party movement, the political climate currently values political accountability. In addition, desperate times, such as the recent financial crisis, call for more calculated,

well thought-out measures. A representative's constituency has a stronger interest in that representative's actions in times of crisis because the constituents need to know if that representative is accurately representing the interests of the constituency when so much is at stake.

## V. CONCLUSION

Although the single subject rule of the Illinois constitution may be difficult to apply, the policies underlying the rule remain important in today's political climate. After the Illinois Supreme Court's decision in *Wirtz v. Quinn*, the rule consists of a subjective determination of a bill's subject coupled with the exploration the bill's "legislative life" or history. The *Wirtz* analysis does not achieve the objectives underlying the single subject rule, namely the prevention of logrolling and riding and the promotion of political accountability. To realize the benefits of these underlying objectives, a new rule must be formulated to either allow logrolling while condemning riding, or promote strict political accountability. Given today's political climate and the distrust of the legislative process, the promotion of strict political accountability is the more favorable of these two proposals.