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Tipping Point: Missouri Single Subject Provision

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I. INTRODUCTION

The Missouri single subject provision, which requires that each bill enacted by the Missouri Legislature contain a single subject, is one of the great equalizers in backroom politics. Simply put, it is a hurdle that prevents legislators from hijacking the legislative process by attaching an unrelated provision to a proposed bill. This is a practice that many of our Federal legislators find to be a daily occurrence, but one that our state politicians are prevented from doing under the single subject provision of the Missouri Constitution. However, even with the broad prohibition outlined in the single subject provision, for the reasons discussed within this laws summary, the Missouri Supreme Court has decided violations of the provision along a continuum of reasoning. Somewhere in the middle of this continuum, the tipping point, is where many of these cases lay.

This continuum analysis comes to the forefront in a recent Missouri Supreme Court case, *Rizzo v. State*, in which the court straddles the line, and may have mistakenly crossed it.[1] In *Rizzo*, the Missouri Supreme Court decided that a provision in a bill that could be applied both within the subject of the bill and outside the subject of the bill, must be struck down in total.[2] As decided, the *Rizzo* decision straddles the tipping point of the single subject provision continuum outlined below. However, because the Missouri Supreme Court did not narrow their question of constitutionality to an "as applied" basis, the entire decision may be overbroad. Nevertheless, before this law summary turns to *Rizzo* it is helpful to discuss the single subject provision at length and the recent decisions the Missouri Supreme Court has made. This law summary will then attempt to find the bounds of the continuum, but more importantly, it will attempt to find the tipping point.

II. LEGAL BACKGROUND

Article III, Section 23 of the Missouri Constitution states:

> No bill shall contain more than one subject which shall be clearly expressed in its title, except bills enacted under the third exception in section 37 of this article and general appropriation bills, which

1. *See* 189 S.W.3d 576 (Mo. 2006) (en banc).
2. *See id.*

> may embrace the various subject and accounts for which moneys are appropriated.[3]

The single subject provision was first added to the Missouri Constitution in 1865 and "[a] similar provision has appeared in every Missouri Constitution since [that time]."[4] A recent analysis found that "[t]he single subject rule can be traced to ancient Rome, where crafty lawmakers learned to carry an unpopular provision by 'harnessing it up with one more favored.'"[5]

This section will look at how such a short section of the Missouri Constitution can keep Missouri courts busy. To do this, it is necessary to first consider the policy behind the provision. In light of the policy goals, the section will go on to define the factors and limitations considered by Missouri courts in deciding cases based on the single subject provision.

A. Policy and Factors

To better understand how courts interpret the elements of the single subject provision, a study of its policy rationale is required. The provision sets out procedures the General Assembly must follow to ensure that the bills it introduces can be easily understood and intelligently discussed, both by legis-

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3. MO. CONST. art. III, § 23.

4. Hammerschmidt v. Boone County, 877 S.W.2d 98, 101 (Mo. 1994) (en banc). *See also* MO. CONST. of 1865, art. IV, § 32. ("No law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title; but if any subject embraced in an act be not expressed in the title, such act shall be void only as to so much thereof as is not so expressed.").

5. Michael D. Gilbert, *Single Subject Rules and the Legislative Process*, 67 U. PITT. L. REV. 803, 811 (2006). (quoting ROBERT LUCE, LEGISLATIVE PROCEDURE 548 (1922)). In present usage, a clause, usually having little relevance to the main issue, that is added to a legislative bill is called a "rider." THE AMERICAN HERITAGE DICTIONARY OF ENGLISH LANGUAGE (4th ed. 2006).
Author Robert Luce further found:

> To prevent this nefarious practice, the Romans in 98 B.C. forbade laws consisting of unrelated provisions. Similar legislative misbehavior plagued colonial America. In 1695, the Committee of the Privy Council complained that diverse acts in Massachusetts were "joined together under ye same title," making it difficult to vacate unpopular provisions without also invalidating favorable ones. In 1702, Queen Anne tried to check this practice, instructing Lord Cornbury of New Jersey to avoid "intermixing in one and the same Act . . . such things as have no proper relation to each other." In 1818, a single subject requirement for bills pertaining to government salaries materialized in the Illinois Constitution. The first general single subject rule appeared in New Jersey in 1844, followed by Louisiana and Texas in 1845, and New York and Iowa in 1846.

Id. at 811-12 (internal citations omitted).

lators and the general public.[6] One of the public policy goals behind the provision is to prevent logrolling. Logrolling is the practice of combining several unrelated provisions in a single bill when none of the provisions individually will garner enough votes, but collectively will generate sufficient support from legislators with a strong interest in particular provisions to secure a majority vote for the bill as a whole.[7] Logrolling is often seen as a surreptitious method of passing legislation. As such, courts have looked down upon the practice.

Another public policy goal is "to prevent 'the enactment of amendatory statutes in terms so blind that legislators themselves [are] sometimes deceived in regard to their effect, and the public, from difficulty in making the necessary examination and comparison, fail[s] to become apprised of the changes made in the law.'"[8] Courts are more willing to strike a bill if it is clear that the organization of a bill hinders both the approval process and the administrative process of the bill.

Since 1865, Missouri Courts have interpreted the meaning of the single subject provision. The most general rule is that in order for the single subject provision to be satisfied, all of the provisions of the statute must "fairly relate to the same subject, have a natural connection therewith or are incidents or means to accomplish its purpose."[9] The test to determine whether a provision of a bill violates the single subject rule is "not whether individual provisions of a bill relate to each other . . . [but] whether [the challenged provision] fairly relates to the subject described in the title of the bill, has a natural connection to the subject, or is a means to accomplish the law's purpose."[10]

Interpreting the single subject provision, the Missouri Supreme Court has stated that the subject of a bill must "include[] all matters that fall within or reasonably relate to the general core purpose of the proposed legislation."[11] To determine the "core purpose" or the subject of a bill, the Supreme Court first looks to the title of the bill.[12] Since there can be many versions of a bill before it is agreed on and enacted, and thus many titles for the same bill, only the title of the enacted bill is relevant.[13]

Since the subject of a provision within a bill is compared first and foremost with the title of the bill, the title is an important area of analysis and it

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6. Hammerschmidt v. Boone County, 877 S.W.2d 98, 101-02 (Mo. 1994) (en banc).

7. *Id.* at 101.

8. State v. Ludwig, 322 S.W.2d 841, 847 (Mo. 1959) (en banc) (quoting THOMAS M. COOLEY, CONSTITUTIONAL LIMITATIONS 314 (1885)).

9. *Hammerschmidt*, 877 S.W.2d at 102.

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

11. *Hammerschmidt*, 877 S.W.2d at 102.

12. C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322, 328-29 (Mo. 2000) (en banc).

13. Mo. State Med. Ass'n v. Mo. Dep't of Health, 39 S.W.3d 837, 839-41 (Mo. 2001) (en banc).

lends itself to some bright line rules. First, the title to a legislative act should be comprehensive but "need not be a synopsis of the entire act."[14] Second, an act is not void if the title to the act is broader than the act.[15] Lastly, "'[t]he title to a bill need only indicate the general contents of the act[;]' '[t]he title cannot, however, be so general that it tends to obscure the contents of the act.'"[16] The "clear title" provision of the state constitution, which requires that the subject of proposed legislation be clearly stated in its title, "was designed to prevent fraudulent, misleading, and improper legislation, by providing that the title should indicate in a general way the kind of legislation that was being enacted."[17] This provision, however, does not require that "every separate tax or every separate legislative thought be in a different bill, it is sufficient if the matters in an Act are germane to the general subject therein."[18]

Where it is unclear if the title of a bill expresses its subject with reasonable precision, courts look to the Constitution as a whole for guidance.[19] Courts use the organizational headings of the constitution as "evidence of what those who drafted and adopted the constitution meant by 'one subject.'"[20] Accordingly, a statute may rely on the precision of the Constitution's headings in organizing a bill into a single subject, but it must still have a "single, readily identifiable and reasonably narrow purpose."[21] Also, in at least one case, the Missouri Supreme Court held that a "[c]ourt may examine the contents of the bill originally filed to determine its subject."[22] However,

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14. Barrett *ex rel.* Bradshaw v. Hedrick, 241 S.W. 402 (Mo. 1922) (en banc). *See also* State *ex rel.* Sekyra v. Schmoll, 282 S.W. 702, 705 (Mo. 1926) (en banc); State *ex rel.* Garvey v. Buckner, 272 S.W. 940 (Mo. 1925) (en banc); State v. Thomas, 256 S.W. 1028, 1030 (Mo. 1923).

15. State v. Mo. Pac. Ry. Co., 147 S.W. 118, 126 (Mo. 1912); *Sekyra*, 282 S.W. at 705.

16. *C.C. Dillon Co.*, 12 S.W.3d at 329 (Mo. 2000) (en banc) (citations omitted) (quoting Westin Crown Plaza Hotel Co. v. King, 664 S.W.2d 2, 6 (Mo. 1984) (en banc) and St. Louis Health Care Network v. State, 968 S.W.2d 145, 147 (Mo. 1998) (en banc)).

17. Mo. State Med. Ass'n v. Mo. Dep't of Health, 39 S.W.3d 837, 841 (Mo. 2001) (en banc) (quoting Fust v. Attorney Gen., 947 S.W.2d 424, 429 (Mo. 1997) (en banc)).

18. State *ex rel.* Transp. Mfg. & Equip. Co. v. Bates, 224 S.W.2d 996, 999 (Mo. 1949) (en banc).

19. *Hammerschmidt*, 877 S.W.2d at 102 n.3. "The constitution is divided into separate articles." Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824, 831 (Mo. 1990) (en banc). "The organization of the constitution creates a presumption that matters pertaining to separate subjects therein described should . . . not [be] commingled under unrelated headings." *Id.*

20. *Hammerschmidt*, 877 S.W.2d at 102 n.3.

21. *Id.*

22. *See* Carmack v. Dir., Mo. Dep't of Agric., 945 S.W.2d 956, 960 (Mo. 1997) (en banc).

the "underlying motive not expressed or disclosed in a legislative act cannot be treated as the subject of the act."[23]

B. Severability

Once a court finds that a bill contains more than one subject, "the question remains whether the entire bill is unconstitutional or whether the [unconstitutional section] may be severed from the bill."[24] Missouri Revised Statutes section 1.140 states, in pertinent part:

> The provisions of every statute are severable. If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid unless the court finds the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.[25]

Missouri Courts have interpreted section 1.140 in their own way. In *Hammerschmidt v. Boone County*, the Missouri Supreme Court reasoned that when a bill violates the single subject provision the entire bill is deemed unconstitutional "unless the Court is convinced beyond a reasonable doubt that one of the bill's multiple subjects is its original, controlling purpose and that the other subject is not."[26] If the bill does have a controlling purpose, "[the court] will sever that portion of the bill containing the additional subject(s) and permit the bill to stand with its primary, core subject intact."[27]

In reaching this determination, a court will consider three factors: First, whether the additional subject is essential to the efficacy of the bill. Second, whether it is a provision without which the bill would be incomplete and unworkable. And third, whether the provision is one without which the legislators would not have adopted the bill.[28]

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23. Thomas v. Buchanan County, 51 S.W.2d 95, 97 (Mo. 1932) (en banc).

24. *See* SSM Cardinal Glennon Children's Hosp. v. State, 68 S.W.3d 412, 417 (Mo. 2002) (en banc).

25. MO. REV. STAT. § 1.140 (2006).

26. 877 S.W.2d at 103.

27. *Id.* (citation omitted) (first alteration in original) (quoting Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824, 832 (Mo. 1990) (en banc)).

28. *Missourians to Protect the Initiative Process*, 799 S.W.2d at 832 (citing Buchanan v. Kirkpatrick, 615 S.W.2d 6, 13 n.8 (Mo. 1981) (en banc)).

There are several reasons both for and against severing sections from already passed bills in an *ex ante* way. The following sections will explore the reasoning behind both arguments.

1. Argument in Favor of Severability

The argument in favor of severability is relatively simple: just because a provision of a bill is deemed unconstitutional does not mean the entire bill should be thrown out. If courts were to throw out the entire bill, legislative waste would take place. All of the hard work that it took to pass the bill would be thrown out with a provision that could have been merely an unpopular addition.

2. Arguments in Favor of Striking Down the Entire Bill as Unconstitutional

A recent University of Pittsburgh Law Review article studied many state single subject provisions from around the nation. This article outlined a compelling case for striking down an entire bill once it was found unconstitutional under a single subject provision.[29] Author Michael D. Gilbert argued that "[w]ith respect to riders, severing them fails to provide legislators with an incentive not to engage in this behavior" and in fact "encourages legislators to attach riders."[30] The rationale for this argument is that these unrelated provisions, if detected, "will simply be removed and can be reattached to another bill."[31] The political backlash of having a rider excised from the bill is minimal.[32] However, "if the presence of a rider leads to invalidation of an entire bill, legislators who attached the rider will pay a higher price."[33] This price stems from the sponsors of the popular provisions in the bill that were thrown out along with the unpopular rider. In the future, legislators may be "less likely to bargain with the culprits, and citizens may be enraged by the delay or failure to enact important legislation."[34] If completely striking down a bill that violates the single subject provision were the rule, legislators would fear the compromise of their popular legislation and attempt to prevent riders from being attached in the first place.[35]

Another argument in favor of striking down the entire bill as unconstitutional is motivated by a desire to protect the separation of powers between the

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

30. *Id.* at 867.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* at 867-68.

35. *Id.* at 868.

legislature and the judiciary. Since legislation is often the result of much debate and political tradeoffs, if a judge takes away only one provision of a bill, presumably, at least one legislator would be upset. In fact, if this provision were excised prior to passage, the bill might not have had enough support to garner enough votes to pass. Therefore, if the courts sever only a portion of a bill, they may be subverting the legislative process and allowing legislation that might not have received enough votes to become law.

C. The Rise of Single Subject Litigation in Missouri

Over the past ten years there has been a dramatic rise in the number of challenges to bills based on the single subject provision. Furthermore, and perhaps accordingly, the number of bills struck down by the Missouri Supreme Court due to the single subject provision has also increased. The following section will first discuss the dramatic rise in single subject litigation and then look at the possible causes for this rise.

As discussed above, Missouri incorporated the single subject provision in its constitution in 1865 and has had the provision ever since.[36] From 1884 to the present there have been 56 Missouri Supreme Court cases that consider the implication of the single subject provision on a bill.[37] Figure 1 on the

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36. *See supra* note 4 and accompanying text.

37. The following cases struck down all or part of a law due to a violation of the single subject provision: Rizzo v. State, 189 S.W.3d 576 (Mo. 2006) (en banc); SSM Cardinal Glennon Children's Hosp. v. State, 68 S.W.3d 412 (Mo. 2002) (en banc); St. Louis Health Care Network v. State, 968 S.W.2d 145 (Mo. 1998) (en banc); Mo. Health Care Ass'n v. Attorney Gen., 953 S.W.2d 617 (Mo. 1997) (en banc); Carmack v. Dir., Mo. Dep't of Agric., 945 S.W.2d 956 (Mo. 1997) (en banc); Hammerschmidt v. Boone County, 877 S.W.2d 98 (Mo. 1994) (en banc); Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824 (Mo. 1990) (en banc)).

The following cases were appealed to the Missouri Supreme Court but did not constitute a violation of the single subject provision: Jackson County v. State, 207 S.W.3d 608 (Mo. 2006) (en banc); Comm. for a Healthy Future, Inc. v. Carnahan, 201 S.W.3d 503 (Mo. 2006) (en banc); City of St. Charles v. State, 165 S.W.3d 149 (Mo. 2005) (en banc); McEuen *ex rel.* McEuen v. Mo. State Bd. of Educ., 120 S.W.3d 207 (Mo. 2003) (en banc); State *ex rel.* St. John's Mercy Health Care v. Neill, 95 S.W.3d 103 (Mo. 2003) (en banc); Drury v. City of Cape Girardeau, 66 S.W.3d 733 (Mo. 2002) (en banc); McDermott v. Mo. Bd. of Probation and Parole, 61 S.W.3d 246 (Mo. 2001) (en banc); Mo. State Medical Ass'n v. Mo. Dep't of Health, 39 S.W.3d 837 (Mo. 2001) (en banc); C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322 (Mo. 2000) (en banc); United Gamefowl Breeders Ass'n of Mo. v. Nixon, 19 S.W.3d 137 (Mo. 2000) (en banc); Corvera Abatement Techs., Inc. v. Air Conservation Com'n, 973 S.W.2d 851 (Mo. 1998) (en banc); Stroh Brewery Co. v. State, 954 S.W.2d 323 (Mo. 1997) (en banc); Fust v. Attorney Gen., 947 S.W.2d 424 (Mo. 1997) (en banc); Westin Crown Plaza Hotel Co. v. King, 664 S.W.2d 2 (Mo. 1984) (en banc); State v. Williams, 652 S.W.2d 102 (Mo. 1983) (en banc); Lincoln Credit Co. v. Peach, 636 S.W.2d 31 (Mo. 1982) (en banc); State *ex rel.* Williams v. Marsh, 626 S.W.2d 223

next page illustrates both the number of single subject provision cases in Missouri and the number of cases that were struck down due to the single subject provision.

For each ten year period from 1877-1997 there were between one and eight cases going to the Missouri Supreme Court asking the single subject question, with most ten year periods having two to three cases.[38] Strikingly, in the period from 1997-2007 there were twenty such cases going to the Missouri Supreme Court.[39] An even more astonishing statistic is that from 1877-1997 only two cases overturned bills on the basis of violating the single subject provision, and those occurred in 1990 and 1994.[40] Since 1997, five cases have struck down bills in whole or in part due to the violation of the single subject provision.[41]

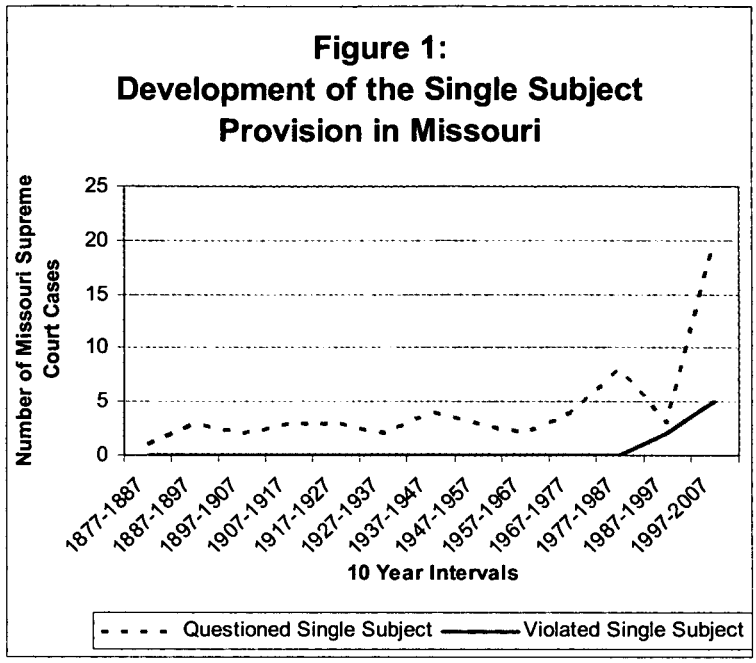
(Mo. 1982) (en banc); Union Elec. Co. v. Kirkpatrick, 606 S.W.2d 658 (Mo. 1980) (en banc); State *ex rel.* Wagner v. St. Louis County Port Auth., 604 S.W.2d 592 (Mo. 1980) (en banc); State *ex rel.* Jardon v. Indus. Dev. Auth., 570 S.W.2d 666 (Mo. 1978) (en banc); Brown-Forman Distillers Corp. v. McHenry, 566 S.W.2d 194 (Mo. 1978) (en banc); Danforth *ex rel.* Farmers' Elec. Co-op., Inc. v. State Envtl. Improvement Auth., 518 S.W.2d 68 (Mo. 1975) (en banc); State *ex rel.* Atkinson v. Planned Indus. Expansion Auth., 517 S.W.2d 36 (Mo. 1975) (en banc); State *ex rel.* McClellan v. Godfrey, 519 S.W.2d 4 (Mo. 1975) (en banc); Mo. State Park Bd. v. McDaniel, 513 S.W.2d 447 (Mo. 1974) (per curiam); State v. Weindorf, 361 S.W.2d 806 (Mo. 1962); Sch. Dist. of Mexico, Mo., No. 59 v. Maple Grove Sch. Dist., No. 56, 359 S.W.2d 743 (Mo. 1962) (per curiam); State *ex rel.* Reorganized Sch. Dist. No. 4 v. Holmes, 231 S.W.2d 185 (Mo. 1950) (en banc); State *ex rel.* Taylor v. Wade, 231 S.W.2d 179 (Mo. 1950) (en banc); State *ex rel.* Transp. Mfg. & Equip. Co. v. Bates, 224 S.W.2d 996 (Mo. 1949) (en banc); State v. Beckman, 185 S.W.2d 810 (Mo. 1945) (per curiam); State *ex rel.* Bier v. Bigger, 178 S.W.2d 347 (Mo. 1944) (en banc); *Ex parte* Lockhart, 171 S.W.2d 660 (Mo. 1943) (en banc); Thomas v. Buchanan County, 51 S.W.2d 95 (Mo. 1932) (en banc); Gross v. Gentry County, 8 S.W.2d 887 (Mo. 1928) (en banc); State *ex rel.* Matacia v. Buckner, 254 S.W. 179 (Mo. 1923) (en banc); Barrett *ex rel.* Bradshaw v. Hedrick, 241 S.W. 402 (Mo. 1922) (en banc); State *ex rel.* Niedermeyer v. Hackmann, 237 S.W. 742 (Mo. 1922) (en banc); State v. Smith, 135 S.W. 465 (Mo. 1911); State v. Brodnax, 128 S.W. 177 (Mo. 1910); State *ex rel.* Sch. Dist. of Memphis v. Gordon, 122 S.W. 1008 (Mo. 1909) (en banc); *Ex parte* Loving, 77 S.W. 508 (Mo. 1903) (en banc); Elting v. Hickman, 72 S.W. 700 (Mo. 1903); Lynch v. Murphy, 24 S.W. 774 (Mo. 1893); State v. Morgan, 20 S.W. 456 (Mo. 1892) (en banc); State *ex rel.* Attorney Gen. v. Miller, 13 S.W. 677 (Mo. 1890); Ewing v. Hoblitzelle, 85 Mo. 64 (1884).

38. *See* Fig. 1.

39. *Id.*

40. *See* Hammerschmidt v. Boone County, 877 S.W.2d 98 (Mo. 1994) (en banc); Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824 (Mo. 1990) (en banc).

41. *See* Rizzo v. State, 189 S.W.3d 576 (Mo. 2006) (en banc); SSM Cardinal Glennon Children's Hosp. v. State, 68 S.W.3d 412 (Mo. 2002) (en banc); St. Louis Health Care Network v. State, 968 S.W.2d 145 (Mo. 1998) (en banc); Mo. Health



D. A Single Subject

In order to define the continuum and the tipping point it will be necessary to explain the rulings of several cases on both sides. For various reasons, the following recent Missouri decisions have found the legislative enactments at issue constitutional under the Missouri single subject provision.

In *City of St. Charles v. State* a bill "relating to emergency services" included amendments prohibiting new tax increment financing districts in certain counties that had an area "designated as a flood plain by the Federal Emergency Management Agency."[42] The essence of the City's challenge was that the provisions of the bill pertaining to tax increment financing did not "relat[e] to emergency services," which was the clearly stated subject of the bill.[43] Therefore, the city argued, "the bill contain[ed] more than one subject-sections properly relating to emergency services and sections that do not."[44] The Missouri Supreme Court found the goal of the TIF amendment was "to ensure that adequate emergency services are available in certain areas

Care Ass'n v. Attorney Gen., 953 S.W.2d 617 (Mo. 1997) (en banc); Carmack v. Dir., Mo. Dep't of Agric., 945 S.W.2d 956 (Mo. 1997) (en banc).

42. 165 S.W.3d 149, 151 (Mo. 2005) (en banc).

43. *Id.* (alteration in original).

44. *Id.*

that need them most-area[s] designated as flood plain[s] by the Federal Emergency Management Agency."[45] The court further held that the goal was logically achieved by "prohibiting new TIF districts in flood plain areas and eliminating the corresponding public-financing incentives for private redevelopment, so that there [would be] less likelihood that development [would] occur, thus less need for emergency services."[46] Therefore, the TIF amendment in the bill did not violate the Missouri Constitution's single subject provision.[47]

Similarly, in *Missouri State Medical Association v. Missouri Department of Health*, a bill entitled "AN ACT To repeal sections . . . , relating to health services, and to enact in lieu thereof fifteen new sections relating to the same subject, with an expiration date for certain sections" required:

> insurance coverage for cancer early detection[;] . . . confidentiality of HIV-related information; insurance for mental illness and chemical dependency; standard "explanation of benefits" by health insurers; standard "referral" information by health insurers and providers; standard (pre-operation) information on the advantages, disadvantages, and risks . . . of breast implantation; and the establishment of a health insurance advisory committee.[48]

The Missouri State Medical Association argued that the bill covered "at least three different subjects-insurance, health records, and pre-operation information on breast implantation."[49] The Missouri Supreme Court held that these three subjects "are (at least) incidents or means [relating] to health services."[50] Therefore, the enacted bill did not violate the Missouri Constitution's single subject provision.[51]

Another recent case in which this Court upheld a provision that seemed to stretch the subject of the bill was *C.C. Dillon Co. v. City of Eureka*.[52] In *C.C. Dillon*, a bill entitled "An Act to repeal sections . . . relating to transportation, and to enact in lieu thereof seven new sections relating to the same subject" included provisions intended to regulate billboards along highways.[53] C.C. Dillon "argue[d] only that the addition of the billboard regulations, as they relate to 'transportation,' introduce[d] multiple subjects within

45. *Id.* at 152 (first alteration in original) (internal quotation marks omitted).
46. *Id.*
47. *Id.*
48. 39 S.W.3d 837, 839 (Mo. 2001) (en banc).
49. *Id.* at 841.
50. *Id.*
51. *See id.*
52. *See* 12 S.W.3d 322 (Mo. 2000) (en banc).
53. *Id.* at 329.

the bill" but did not argue that the title of the bill was overly broad.[54] Therefore, the Missouri Supreme Court held that because Missouri, at the direction of the United States Congress, regulated billboards "to promote highway safety, to promote convenience and enjoyment of highway travel, and to preserve the natural scenic beauty of highways and adjacent areas," the section of a bill providing for regulation of billboards fairly related to the bill's subject of "transportation."[55] The bill with the subject of transportation, therefore, did not violate the Missouri Constitution's single subject provision by including regulations on billboards.[56]

E. Not a Single Subject

As mentioned previously, in order to define the continuum of cases, it is necessary to explain the reasoning of recent cases from both sides. For various reasons, the following recent cases of the Missouri Courts have found the legislative enactments at issue in violation of the Missouri single subject provision and therefore unconstitutional.

In *Hammerschmidt v. Boone County*, a bill entitled "An Act To repeal sections . . . relating to elections, and to enact in lieu thereof eleven new sections relating to the same subject" included an amendment that allowed certain counties within the state to "adopt an alternative form of government and frame a county constitution."[57] The Missouri Supreme Court found that "[t]he original purpose of the bill-its single subject core-was to amend laws relating to elections."[58] Looking at the single subject core, elections, and the amendment authorizing a county to adopt a county constitution, the court concluded that the amendment "does not fairly relate" to the subject of the bill, "nor does it have a natural connection to that subject."[59] Further, the Court found that the amendment is not a necessary incident nor does it "provide a means to accomplish the purposes of [the] bill to amend laws 'relating to elections.'"[60] Therefore, the bill, as written, violated the Missouri Constitution's single subject provision by including authorization of county constitutions.[61]

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54. *Id.* at 329. It is unclear whether the court would have been receptive to such an argument; they simply did not take it up. *See id.* There are also some other Missouri Supreme Court cases that were decided simply by looking at the title of the bill. *See, e.g.*, Stroh Brewery Co. v. State, 954 S.W.2d 323, 324-25 (Mo. 1997) (en banc) (reviewing both the bill's title, "relating to intoxicating beverages," and the provisions in question which were amendments to the liquor control chapter of the State code).

55. *C.C. Dillon*, 12 S.W.3d at 327-29 (emphasis omitted).

56. *See id.* at 329.

57. 877 S.W.2d 98, 99-100 (Mo. 1994) (en banc).

58. *Id.* at 103.

59. *Id.*

60. *Id.*

61. *See id.*

Similarly, in *SSM Cardinal Glennon Children's Hospital v. State*, a bill entitled "AN ACT . . . relating to professional licensing" included an amendment that altered the scope of hospital lien law.[62] The Missouri Supreme Court found that the sole subject of the bill, as encompassed by the title, was professional licensing.[63] The court further found that professional licensing "refer[s] to the act of obtaining, maintaining, or revoking the State's authority for a person to engage in professional activity."[64]

The state argued that a valid relationship existed because the entities, "which are newly allowed liens by the amendment, are professionally licensed."[65] Rejecting the State's argument, the court held that "[t]he single subject limitation requires the *contents* of the bill, not the entities affected by the bill, [to] fairly relate to the subject expressed in the title of the act."[66] The court determined that the connection between the act of professional licensing and hospital liens was too attenuated to survive the single subject provision.[67] By including amendments to the hospital lien law, the professional licensing bill was in violation of the Missouri Constitution's single subject provision and was therefore declared unconstitutional.[68]

Another recent case in which the Missouri Supreme Court struck down a provision that stretched the subject of the bill was *Carmack v. Director, Missouri Department of Agriculture*.[69] In *Carmack*, a bill that "repealed 88 statutory sections 'relating to economic development' and enacted 102 new sections 'relating to the same subject'" included a provision changing the indemnification paid to owners who had livestock destroyed by the State because of communicable disease.[70] In order to understand the limits of the subject "relating to economic development" the Missouri Supreme Court looked to a section of the Missouri Constitution entitled "economic development."[71] The Court found that "[a] program administered by an agency other than the department of economic development is not an economic development program within the meaning of the constitution."[72] Based on this finding, the Court reasoned that the bill's "core subject is laws relating to economic development programs administered by the department of economic development."[73]

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62. 68 S.W.3d 412, 415 (Mo. 2002) (en banc) (alteration in original).
63. *Id.* at 416-17.
64. *Id.*
65. *Id.* at 417.
66. *Id.* (*quoting* Mo. Health Care Ass'n v. Attorney Gen., 953 S.W.2d 617, 623 (Mo. 1997) (en banc)).
67. *Id.*
68. *See id.*
69. *See* 945 S.W.2d 956 (Mo. 1997) (en banc).
70. *Id.* at 957-58.
71. *Id.* at 960.
72. *Id.*
73. *Id.* at 961.

Although "five of the six changes in the law proposed by [the bill] relate to programs administered by the department of economic development," the provision amending the indemnification to livestock owners did not.[74] Since the indemnification paid to owners who had livestock destroyed by the state because of communicable disease amends a law affecting programs administered by other executive departments, the court held that the bill contained more than one subject in violation of the Missouri Constitution's single subject provision.[75]

In *St. Louis Health Care Network v. State* the Missouri Supreme Court struck down a bill entitled "An Act To repeal sections . . . relating to certain incorporated and non-incorporated entities, and to enact in lieu thereof eleven new sections relating to the same subject."[76] The court looked at the definition of "entity" and reasoned that "incorporated and non-incorporated" does not add anything to "entity."[77] The court further stated that the title could logically be reduced to say "An Act To repeal sections . . . relating to entities."[78] Even if the court bought the defendant's argument and limited the term "entities" to only describe any legislation that affects, in any way, businesses, charities, civic organizations, governments, and government agencies, the title would still be too broad.[79] Therefore, the act was struck down as violating both the single subject provision and the Clear Title provision.[80]

III. RECENT MISSOURI DEVELOPMENTS

In 2006, the Missouri Supreme Court decided the case *Rizzo v. State* on the basis of the single subject provision.[81] In *Rizzo v. State*, the question arose about whether a provision in a bill was within the same subject as the title.[82]

House Bill 58 ("H.B. 58"), the bill in question, was introduced in the Missouri General Assembly on December 3, 2004.[83] H.B. 58 was originally introduced as "AN ACT To repeal [seven sections of the Missouri Revised Statutes], and to enact in lieu thereof, seven new sections relating to political

74. *Id.* at 960-61.
75. *Id.* at 961.
76. 968 S.W.2d 145, 147, 149 (Mo. 1998) (en banc).
77. *Id.* at 147.
78. *Id.*
79. *Id.* at 148.
80. *See id.* at 149.
81. *See* 189 S.W.3d 576 (Mo. 2006) (en banc).
82. *See id.* at 578-79.
83. Missouri House of Representatives, Activity History for HB58, http://www.house.mo.gov/bills051/action/aHB58.htm (last visited November 9, 2006) [hereinafter Activity History].

subdivisions, with penalty provisions."[84] The bill, as finally passed, repealed 130 sections and added 165 new sections to the Missouri Revised Statutes "relating to political subdivisions."[85] Among the provisions in the bill was section 115.348, which provided that "[n]o person shall qualify as a candidate for elective public office in the state of Missouri who has been convicted of or pled guilty to a felony or misdemeanor under the federal laws of the United States of America."[86] The Missouri General Assembly passed the bill on May 26, 2005 and the governor signed the bill into law on July 7, 2005.[87]

Henry Rizzo was a member of the Jackson County Legislature and sought reelection to that office.[88] Rizzo filed a declaration of candidacy, completing the first official step in being elected to that office.[89] However, since Rizzo pled guilty to a misdemeanor charge of providing false statements to a financial institution in 1991, the State sought to disqualify him from running for reelection pursuant to section 115.348.[90] Rizzo, along with two Jackson County voters filed suit challenging section 115.348's constitutional validity.[91] "[T]he circuit court held that section 115.348 violate[d] the equal protection clause of the United States and Missouri constitutions, severed it from H.B. 58, and denied Rizzo's remaining constitutional claims as moot."[92] The State appealed the judgment of the circuit court and Rizzo cross-appealed, arguing that the statute violated the single subject provision of the Missouri Constitution.[93] Rizzo contended that the prohibition against people guilty of a federal felony or misdemeanor running for state-wide elected office contained in H.B. 58 was unconstitutional as part of a bill "relating to political subdivisions."[94]

Analyzing H.B. 58 as it was originally filed, the court first looked at the title of the bill.[95] The title stated that the bill was "relating to political subdivisions."[96] The court then found it necessary to define "political subdivision," specifically with regard to the word "subdivision."[97] The court found

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84. H.R. 58, 93d Leg., 1st Reg. Sess. (Mo.) (as introduced in House of Representatives, Dec. 3, 2004), *available* at http://www.house.mo.gov/bills051/biltxt/intro/HB0058I.htm.

85. H.R. 58, 93d Leg., 1st Reg. Sess. (Mo. 2005) (enacted), *available at* http://www.house.mo.gov/bills051/biltxt/truly/HB0058T.HTM.

86. *Id. See also Rizzo*, 189 S.W.3d at 578.

87. Activity History, *supra* note 83.

88. *Rizzo*, 189 S.W.3d at 578.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* at 578-79.

94. *Id.*

95. *See id.* at 579.

96. *Id.*

97. *Id.*

that "subdivision" means something less than the whole.[98] Therefore, since a state-wide elective office would comprise the whole body politic, it could not be a subdivision.[99] Furthermore, "political subdivision" would only pertain to something less than a state-wide political office.[100]

After the court determined the single subject of the bill, it looked at the provisions of the bill. The Court found that "H.B. 58 amended six sections of Chapter 50, County Finances, Budget and Retirement Systems, and one section of Chapter 250, Sewerage Systems and Waterworks--City or District," and two sections of "Chapter 115, Election Authorities and Conduct of Elections."[101] All of these chapters related exclusively to political subdivisions.[102] Specifically, "[s]ection 115.013 define[d] several terms related to elections, including the term 'political subdivision,'" and "[s]ection 115.019 involves the procedure for forming a board of election commissioners in counties of the first class," both of which are directly related to political subdivision.[103]

With a solid foundation on the subject of H.B. 58 the court looked to the specific provision in question. The provision stated:

> No person shall qualify as a candidate for elective public office in the state of Missouri who has been found guilty of or pled guilty to a felony or misdemeanor under the federal laws of the United States of America.[104]

The court found that this provision, unlike the others in the bill, dealt with every elective office within the state including state-wide political offices.[105] This led to the reasoning that since this provision of the bill covered statewide offices, which would not be a political subdivision, this provision must be outside the scope of the title. The Missouri Supreme Court, therefore, held that "[s]ection 115.348 [was] constitutionally invalid in that it exceed[ed] the scope of H.B. 58's declared subject--legislation relating to political subdivisions."[106]

Once the court found that section 115.348 was unconstitutionally overbroad, it had to decide how to deal with the provision. At this point the court only discussed two possibilities: it could either strike the entire H.B. 58 as being unconstitutional or simply sever section 115.348 from the bill.[107] The

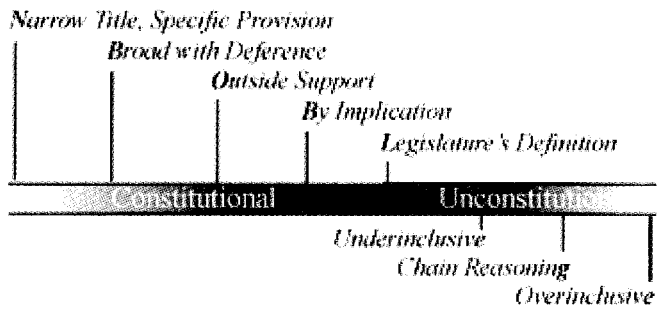
98. *Id.*
99. *See id.*
100. *Id.*
101. *Id.* at 580-81.
102. *Id.* at 581.
103. *Id.*
104. MO. REV. STAT. § 115.348 (2006).
105. *Rizzo*, 189 S.W.3d at 581.
106. *Id.*
107. *Id.*

court decided on the latter of the two options and left the remainder of H.B. 58 intact.[108]

IV. DISCUSSION

It seems that Missouri courts have struggled to distinguish between what is considered a single subject and what is not. Consequently, it may be helpful to think of the Missouri Supreme Court decisions as if they were on a continuum. At one end of the continuum there are cases where a provision is clearly within the same subject as the title of the bill. At the opposite end of the continuum, there are cases where a provision is clearly not within the same subject as the title of the bill. The cases that lie at the margins of this continuum are the easiest for the court to decide, however, it is what lies between those two points where much of the litigation is held.

The following paragraphs will attempt to use the reasoning employed by Missouri courts to determine where the tipping point of the continuum lies. The tipping point is the point at which a topic within a bill is either within the subject of the bill or outside the subject of the bill. In this regard, the summary employs the phrase "tipping point" instead of "mid point" because courts do not give equal deference to legislators and those who challenge legislation.[109] As the Missouri Supreme Court has stated, "[a]n act of the legislature carries a strong presumption of constitutionality."[110] As such, any doubts raised are to be resolved by the courts "in favor of the procedural and substantive validity of legislative acts."[111] Thus, the party attacking the statute must show that the constitutional limitation has been "clearly and undoubtedly" violated.[112] Therefore, the "tipping point" is more aptly defined as the point at which the single subject provision is clearly and undoubtedly violated.



108. *See id.*

109. *See* Carmack v. Dir., Mo. Dep't of Agric., 945 S.W.2d 956, 959 (Mo. 1997) (en banc).

110. *Id.*

111. *Id.*

112. Fust v. Attorney Gen., 947 S.W.2d 424, 427 (Mo. 1997) (en banc).

A. Narrow Title, Specific Provision

In *Stroh Brewery Co. v. State*, the Missouri Supreme Court easily found a bill constitutional under the single subject provision.[113] The title of the challenged bill was "an act . . . relating to intoxicating beverages,"[114] while the bill's provisions provided measures for "liquor control."[115] The Supreme Court reasoned that "[p]rovisions amending the liquor control chapter of the State code may be said to fairly relate to the bill's subject of 'laws relating to intoxicating beverages.'"[116] Therefore, the Missouri Supreme Court found this to be an easy question because the title of a bill is directly tied to the activity it regulates.[117] This is among the easiest of single subject questions because the title is neither overinclusive nor underinclusive and the provision in question logically relates to the title.

B. Broad with Deference

Toward the middle of the continuum, but still on the constitutional side, a more complicated question arises when the title of a bill is so broad that many provisions will fall under its consideration. In *Missouri State Medical Ass'n v. Missouri Deptartment of Health*, the Missouri Supreme Court held that the topic of "health services" validly included a plethora of health related provisions.[118] This decision illustrates two points. First, if the title of a bill looks to be overinclusive, the court will look closely at its constitutionality. And second, Missouri courts will give deference to the legislature in naming the title of a bill. As long as the topic is not too broad and amorphous as to contain nearly everything a legislature acts on, and the specific provision in question falls within that large umbrella, it will be upheld.

C. Outside Support

Further down the continuum, courts have addressed a situation where the topic of a bill and the provisions contained therein seem to share very little in common. This was the case in *C.C. Dillon Co. v. City of Eureka*, where the Missouri Supreme Court considered a "transportation" bill that contained provisions regulating the use of billboards.[119] The Missouri Supreme Court held that billboards were within the subject of transportation because Congress had previously included billboard regulations within its

113. *See* 954 S.W.2d 323 (Mo. 1997) (en banc).
114. *Id.* at 324 (alteration in original).
115. *Id.*
116. *Id.* at 327.
117. *See id.*
118. *See* 39 S.W.3d 837, 841 (Mo. 2001) (en banc).
119. *See* 12 S.W.3d 322 (Mo. 2000) (en banc).

transportation legislation.[120] This presumption is problematic because the United States Congress does not have a single subject provision lurking over its head. What may be considered within the same subject in Congressional legislation may have little or no relation to what should be considered a single subject under the Missouri Constitution. In *C.C. Dillon Co.*, however, the court probably used this reasoning because the provision in question did not run afoul of the public policy rationale given for the single subject provision. The court gave all indication that the purpose of this bill was not obscured by the title of the bill and the Missouri state legislators were accustomed to dealing with billboards under the auspice of transportation. Therefore, if there is outside support, e.g., Congress, for the inclusion of a topic within a subject, Missouri Courts may give deference to the legislature.

D. Tipping Point: By Implication

The case that lies at the tipping point of the continuum is *City of St. Charles v. State.*[121] In this case, the topic of "emergency services" was found to include a provision prohibiting new tax increment financing districts in certain counties that had an area designated as a flood plain by the Federal Emergency Management Agency.[122] The Missouri Supreme Court upheld this provision because the prohibition of new TIFS would reduce the need for new emergency services.[123] Therefore, in what seems to be a stretch, a court upheld a bill where the topic was relatively narrow, "emergency services," but the result of one of its provisions only has some indirect effect on that topic. Therefore, instead of the Court looking at the provision on its face and determining the limits of the subject, in this case the court looked at the result of the provision to determine its implication on the subject.

E. Legislature's Definition

Beginning on the other side of the tipping point is *Carmack v. Director, Missouri Deptartment of Agriculture.*[124] The Missouri Supreme Court found that a bill entitled "relating to economic development" did not properly include an alteration to the indemnification paid by the State to owners who had livestock destroyed due to communicable diseases.[125] This decision identified an important technicality that may be used to defeat bills under the single subject provision. To defeat the bill the court looked to the Missouri Constitution and what comes under the subject heading "economic development" to

120. *See id.* at 327-29.
121. *See* 165 S.W.3d 149 (Mo. 2005) (en banc).
122. *Id.* at 151-52.
123. *Id.* at 152.
124. *See* 945 S.W.2d 956 (Mo. 1997) (en banc).
125. *Id.* at 957.

determine the subject limits of a bill entitled "economic development."[126] They could have easily come out the opposite way in this case if they would have stopped their interpretation with the plain meaning of the phrase "economic development." Webster's Dictionary defines "economic" as "of, relating to, or based on the production, distribution, and consumption of goods and services"[127] and "development" as "to create or produce, especially by deliberate effort over time."[128] This provision that subsidizes the livestock market in an effort to keep farmers profitable is a deliberate effort over time to create or produce a better market for the production of livestock. Therefore, this case demonstrates that the Supreme Court can be inconsistent at times. Since "[a]n act of the legislature carries a strong presumption of constitutionality,"[129] it would seem that the court should construe a title to be more inclusive.

F. Underinclusive

Moving further away from the tipping point is *Hammerschmidt v. Boone County*.[130] A bill entitled "elections" included a provision allowing certain counties within the state to "adopt an alternative form of government and frame a county constitution."[131] This case is a little more clearly a violation of the single subject provision. As opposed to the "effect" reasoning of *City of St. Charles v. State*, the court here indicated that where a provision might come under a topic sometime in the future, it is not enough to consider it within the same subject. The court found that the true purpose of the provision was not to have an election, but to frame county constitutions. Therefore, if a title to a bill is clearly underinclusive and does not include the topics covered within the bill, it may be found beyond the single subject provision. However, as previously seen, courts will give deference to the legislature.

G. Chain Reasoning

SSM Cardinal Glennon Children's Hospital v. State was decided by using chain reasoning to defeat a bill.[132] In *Cardinal Glennon*, a bill entitled "professional licensing" altered the scope of hospital lien law.[133] The only connection this provision has with professional licensing is that the provision

126. *See id.* at 960.
127. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 720 (2002).
128. *Id.* at 618.
129. *Carmack*, 945 S.W.2d at 959.
130. *See* 877 S.W.2d 98 (Mo. 1994) (en banc).
131. *Id.* at 99-100.
132. *See* 68 S.W.3d 412 (Mo. 2002) (en banc).
133. *Id.* at 414.

deals with hospitals and hospitals have professional licensing.[134] The court found that this chain reasoning between subjects must clearly fall based on the single subject provision; otherwise policy goals would be undermined.

Chain reasoning is very close to the rationale of underinclusive subjects. However, if the legislature is using chain reasoning, the connection between a bill's title and its provisions are even further detached.

H. Overinclusive

Finally, the easiest bills for the court to strike down are those like that found in *St. Louis Health Care Network v. State.*[135] The Missouri Supreme Court struck down a bill entitled "An Act To repeal sections . . . relating to certain incorporated and non-incorporated entities, and to enact in lieu thereof . . . sections relating to the same subject."[136] Since "incorporated and non-incorporated entities" includes nearly everything the legislature deals with, the title did not put other legislators or the public on notice of what would be in the bill. The court further reasoned that "[i]f the title of a bill is too broad or amorphous to identify a single subject within the meaning of article III, section 23, then the bill's title violates the mandate that bills contain a single subject clearly expressed in its title."

In the situation of an overinclusive bill, the single subject provision closely parallels its statutory partner, the clear title provision.[137] However, like the court in *St. Louis Health Care Network*, the judge will look at the title of the bill in light of the single subject provision. If the title to a bill is over-inclusive it may violate both the single subject provision and the clear title provision.

Overinclusive bills run afoul of all of the public policy rationales behind the single subject provision. An overinclusive bill makes it more difficult for the bill to be understood and intelligently discussed, both by legislators and the general public. Furthermore, logrolling becomes a much easier task when the title of a bill is overinclusive. For these reasons, overinclusive bills are the easiest for the courts to strike down.

In summary, challenges to Missouri's single subject provision are properly analyzed by reference to a continuum of decisions by the Missouri Supreme Court. What is clear from these decisions is that the continuum begins at a point where a narrow title clearly encompasses the specific provisions within the bill, and the continuum ends where the title of the bill is so overbroad and overinclusive that it would be hard to find anything that would not

134. *See id.* at 417.

135. *See* 968 S.W.2d 145 (Mo. 1998) (en banc).

136. *Id.* at 146.

137. MO. CONST. art. III, § 23 ("No bill shall contain more than one subject which shall be clearly expressed in its title...").

be included. The continuum between these two points, as depicted above, is one way of interpreting the many cases of the Missouri Supreme Court.

I. Tipping Point Analysis in Light of Rizzo

The recent Missouri Supreme Court case *Rizzo v. State* further defines the continuum. Henry Rizzo was running for office of a political subdivision and not a state-wide office. Therefore, if section 115.348 was limited simply to political subdivisions, the bill would clearly fall on the single subject side of the continuum. However, since section 115.348 was not specifically limited to political subdivisions, but also included state-wide office holders, the court reasoned that the entire provision was outside the bounds of the subject "political subdivisions."

This case adds to the Tipping Point analysis because the court could have decided this case in one of two ways. They could have taken an *as applied* method and looked at how this provision was being applied in Henry Rizzo's situation and saw whether it was a situation contemplated by the title of the bill. Or, they could have taken the provision as a whole and looked for a situation that would take the provision outside the scope of the bill. They decided to pursue the latter option. Therefore, by implication, instead of the court deciding cases as applied, if a Missouri court can find any interpretation of a provision that will take it outside the bounds of the subject, all other interpretations will be struck down.

J. Is Rizzo *Correct or Even Desirable?*

Section 1.140 states that "[t]he *provisions* of every statute are severable."[138] That begs the question, what exactly is a *provision*? Can a provision be construed to mean two separate and distinct ways of applying the same section of a bill? This was the situation in *Rizzo* where the section in question dealt with both political subdivisions and state-wide political offices.[139] Furthermore, could this one section be considered to be two provisions as applied and thus, be capable of being severed while the other one is not? This would lead to a narrower holding that only the application of a provision that would be beyond the scope of the single subject will be unconstitutional, while application of a provision that would be within the scope of the single subject would remain.

The Missouri Supreme Court in *Rizzo* should have severed the unconstitutional portion of H.B. 58 in such a way as to still allow the prohibition of people convicted of a felony or misdemeanor under federal laws in elections for political subdivisions, just not for state-wide elections. This is an important distinction because Henry Rizzo was a member of and sought reelection

138. MO. REV. STAT. § 1.140 (2006) (emphasis added).

139. *See* Rizzo v. State, 189 S.W.3d 576 (Mo. 2006).

to the Jackson County Legislature, a valid "political subdivision" and not a state-wide office. Therefore, if the court had decided to strictly sever only the unconstitutional applications of the provision of the bill, and leave the remainder, Rizzo could not run for office in the Jackson County Legislature.

In order to analyze the severing procedure the court must start with the premise that "[a]n act of the legislature carries a strong presumption of constitutionality."[140] Consistent with this presumption, the Missouri Supreme Court has stated that "all statutes . . . should be upheld to the fullest extent possible."[141] The process of severing a bill, as previously mentioned, is enumerated in Missouri Revised Statutes Section 1.140.[142] The Missouri Supreme Court has further construed the process of severing in *Associated Industries v. Director of Revenue*.[143] The Missouri Supreme Court stated that "where a provision is invalid as to some, but not all, possible applications, and it is not possible to excise part of the text and allow the remainder to be in effect, the language of the provision must be restricted to the valid application."[144]

Like in *National Solid Waste*, the title in *Rizzo*, "political subdivisions," was underinclusive.[145] It admittedly did not include state-wide elected offices.[146] However, the court in *Rizzo* should have followed the precedent set by both *National Solid Waste* and *Associated Industries* and looked at the provision "as applied" to determine its constitutionality.[147] Since the provision in question would be valid as it pertained to political subdivisions, but invalid as it pertained to state-wide elected offices, the court should have first looked to see if it was possible to excise part of the text and allow the remainder to be in effect. In this situation it would not have been possible to excise part of the text because of the blatant overinclusivity of the text. However, the rule used in *National Solid Waste* allows the court to completely

140. Carmack v. Dir., Mo. Dept. of Agric., 945 S.W.2d 956, 959 (Mo. 1997) (en banc) (citing Hammerschmidt v. Boone County, 877 S.W.2d 98, 102 (Mo. 1994) (en banc)).

141. Associated Indus. v. Dir. of Revenue, 918 S.W.2d 780, 784 (Mo. 1996) (en banc).

142. MO. REV. STAT. § 1.140 (2006).

143. *See* 918 S.W.2d 780.

144. Nat'l Solid Waste Mgmt. Ass'n v. Dir. of Dep't of Natural Res., 964 S.W.2d 818, 822 (Mo. 1998) (en banc) (citing *Associated Indus.*, 918 S.W.2d at 784). "Stated another way, the statute must, in effect, be rewritten to accommodate the constitutionally imposed limitation, and this will be done as long as it is consistent with legislative intent." *Associated Indus.*, 918 S.W.2d at 784.

145. Rizzo v. State, 189 S.W.3d 576, 579 n.3 (Mo. 2006) (en banc).

146. *Id.*

147. *See Associated Indus.*, 918 S.W.2d at 784; *Nat'l Solid Waste*, 964 S.W.2d at 822.

rewrite the language of the provision to restrict it to the valid application.[148] The provision could therefore be changed from its current language:

> No person shall qualify as a candidate for elective public office in the State of Missouri who has been convicted of or found guilty of or pled guilty to a felony or misdemeanor under the federal laws of the United States of America.[149]

To include this more specific language: no person shall qualify as a candidate for elective public office *in a political subdivision* of the State of Missouri who has been convicted of or found guilty of or pled guilty to a felony or misdemeanor under the federal laws of the United States of America. Therefore, the provision would still pertain to political subdivisions and Henry Rizzo could not run for the Jackson County Legislature.

Of course this solution would only be applicable if the "as applied" method would not run afoul of the original legislative intent.[150] Once again, *Rizzo* is in a similar situation to that which *National Solid Waste* was in. Along those same lines, it is clear that there is no conflict with the original legislative intent if the laws of Missouri make it more restrictive to be a politician in a political subdivision than in a state-wide office. It may be a bit inconsistent, but the two applications of the provision are severable because they are not dependent upon each other. In fact, there may be many reasons why the legislature would do just that.[151]

If the Missouri Supreme Court was convinced that the bill contained a "single central [remaining] purpose," they should have severed the portion of the bill that contained the additional subject(s) and permitted the bill to stand with its primary, core subject intact. In fact, the Supreme Court was convinced that the single subject was "political subdivisions" and the additional subject was state-wide politics. By the court striking down all of section 115.348, however, the court threw away the good with the bad, eliminating some unconstitutional limitations on state-wide office seekers, while also eliminating some constitutional limitations on political subdivisions. By applying the provision only to political subdivisions the court could have simply removed the additional subject and avoided further confrontation with the single subject provision.

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148. *See Nat'l Solid Waste*, 964 S.W.2d at 822.

149. H.R. 58, 93d Leg., 1st Reg. Sess. (Mo.) (as introduced in House of Representatives, Dec. 3, 2004), *available* at http://www.house.mo.gov/bills051/biltxt/intro/HB0058I.htm.

150. *Id.* (quoting *Associated Indus.*, 918 S.W.2d at 784).

151. For instance, the legislature may decide that there is more political will to disallow candidates from political subdivisions rather than state-wide officials. They may also feel that it is easier to cover up a previous federal crime in smaller elections rather than state-wide elections where there is more intense media scrutiny, therefore, the purpose of the bill is already being carried out at the state-wide level.

The decision in *Rizzo* is not a desirable one. As discussed, there are already policy concerns inherent in severing only portions of bills and not striking down bills in their entirety.[152] However, if, based on the court's own discretion, they decide to sever only the affected portion, they should probably do so conservatively. Therefore, the court should strike down only the portion that is in direct confrontation with the Constitution. This course of action would minimize the fear that the bill as a whole would not have passed but for the provision that is now being eliminated by the court.

V. CONCLUSION

Had the Missouri Supreme Court construed section 115.348 "as applied" it would have cast a different shadow on the above mentioned continuum. *Rizzo v. State* would have been at the center of the tipping point analysis. The analysis would be based on an "as applied" basis which would lend far different results, not only for Rizzo, but for others in his situation. However, as decided, *Rizzo* stands for the proposition that if an overinclusive bill cannot be severed by the words in the provision alone, the entire provision will be struck. This decision plants the case firmly on the unconstitutional side of the Missouri single subject provision continuum.

With the current litigation trend for the single subject provision, many more cases will likely be decided in the near future. Therefore, the "tipping point," as I have defined it, is likely to further evolve in the future.

ALEXANDER R. KNOLL

152. *See* discussion *supra* Part II.B.2.