Against the Single-Subject Rule for the Citizen Initiative

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ABSTRACT: The citizen initiative allows voters to bypass state legislatures and propose laws for a statewide referendum. It exists in twenty-four states but has national significance because initiatives drive reform on contested issues. Recently, courts have begun to clamp down on the initiative. One significant trend is the strict enforcement of the single-subject rule to strike initiatives when they are considered too broad. Although courts are notoriously inconsistent with the rule, they assert two reasons for aggressive enforcement. First, they claim the rule's historic purpose is to prevent any form of "logrolling"—including any imaginable aggregation of public-regarding voting blocs. Second, courts assert that regardless of the rule's history, normative concerns require judges to aggressively enforce the rule to protect voters from confusion and "false choices."

This Article assesses these claims. Drawing on all known state constitutional convention debates where the single-subject rule was introduced and discussed (sixty-three debates beginning in 1837), the Article shows that the rule was primarily responsive to two specific nineteenth-century problems: (1) legislative dysfunction caused by local and private laws; and (2) outdated rule-of-law concerns caused by uncatalogued statutes. Contrary to the unsupported assumption of most courts, nothing about the rule's origin story requires courts to apply it as a strict ban on aggregating public-regarding voting blocs in statewide referenda. Moreover, drawing on up-to-date empirical research and public choice theory, the Article shows that aggressive judicial enforcement of the single-subject rule is more harmful than helpful to the initiative. As it turns out, referenda are more effective at disaggregating ballot questions than courts, and aggressive judicial enforcement mostly results in judges striking initiatives that do not align with their personal policy preferences.

The Article concludes by sketching a more constructive path forward for courts that prioritizes a deferential standard of review for generalized public policy initiatives, a heightened standard for local or private entitlements, and more

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collaborative remedies (like writs dividing initiatives into separate ballot questions rather than striking them in toto).

INTRODUCTION

The citizen initiative allows voters and outside groups to bypass state legislatures and propose laws for a statewide referendum.[1] With its roots in the Progressive Era, the initiative is fundamentally an accountability device designed to ensure that state governments do not drift too far from majority preferences.[2] It exists in twenty-four states,[3] but it has national significance as initiative states often set the agenda on hotly contested issues like marijuana legalization, redistricting reform, guns, and post-*Dobbs* abortion rights, to name just a few.[4]

But courts and legislatures have begun to clamp down on the initiative.[5] One significant trend is the strict enforcement of the single-subject rule.[6] As

1. *See* M. DANE WATERS, THE INITIATIVE AND REFERENDUM ALMANAC 1–10 (2d ed. 2018) (providing a historical account of initiatives and outlining the legal process in all states).

2. *See* DAVID D. SCHMIDT, CITIZEN LAWMAKERS: THE BALLOT INITIATIVE REVOLUTION 5–10 (1989); Byre v. City of Chamberlain, 362 N.W.2d 69, 79 (S.D. 1985) ("Initiative is the constitutional reservation of power in the people to propose bills and laws and to enact or reject them at the polls independent of the legislative assembly. . . . The purpose of the initiative is . . . to compel enactment of measures desired by the people, and to empower the people, in the event the legislature fails to act, to enact such measures themselves.").

3. *See* WATERS, *supra* note 1, at 13–14 (tabulating the initiative process for all states). The initiatives' scope and structures vary. Some states have an indirect process, whereby the legislature must approve proposals before they can be placed on the ballot. *E.g.*, MASS. CONST. amend. XLVIII, pt. V. Some states allow initiatives only for statutes and not constitutional amendments (some are the converse). *See* WATERS, *supra* note 1, at 12–14. Some states impose significant substantive limitations on the initiative. *E.g.*, ILL. CONST. art. XIV, § 3. Mississippi has a tortured history with the initiative. Currently, the initiative remains in the Mississippi Constitution, but the Mississippi Supreme Court has rendered it inoperative. *See* Butler v. Watson (*In re* Initiative Measure No. 65), 338 So. 3d 599, 602, 615 (Miss. 2021).

4. *See* JOHN DINAN, STATE CONSTITUTIONAL POLITICS 66–68, 91–94, 242–43 (2018) (documenting the significance of initiatives in redistricting, guns, and marijuana, respectively); Melissa Murray & Katherine Shaw, *Dobbs and Democracy*, 137 HARV. L. REV. 728, 765 (2024) (noting the prominent role of ballot initiatives and voter referenda); Justin R. Long, *Guns, Gays, and Ganja*, 69 ARK. L. REV. 453, 456–61 (2016).

5. *See, e.g.*, VanWinkle v. Sage (*In re* Title, Ballot Title & Submission Clause for 2021–2022 #16), 489 P.3d 1217, 1225 (Colo. 2021) (striking an animal rights initiative). For an extreme example, see *Butler*, 338 So. 3d at 602, 615, where the Mississippi Supreme Court held that it was impossible for voters to use the initiative because the constitution required signatures from five congressional districts and Mississippi had recently dropped down to four. For a survey of court rulings striking initiatives, see *List of Certified State Ballot Measures Removed from the Ballot by Courts*, BALLOTPEDIA, https://ballotpedia.org/List_of_certified_state_ballot_measures_removed_from_the_ballot_by_courts [https://perma.cc/KN9D-ZP7N].

6. *See, e.g.*, *VanWinkle*, 489 P.3d at 1225 (striking an animal rights amendment on single-subject grounds); Koussa v. Att'y Gen., 188 N.E.3d 510, 516–17 (Mass. 2022) (striking an initiative to declare ridesharing workers independent contractors); League of Women Voters of Pa. v. DeGraffenreid, 265 A.3d 207, 210 (Pa. 2021) (striking a victims' rights constitutional amendment); *see also* Richard L. Hasen, *Ending Court Protection of Voters from the Initiative Process*, 116 YALE L.J. POCKET PART 117, 118–19 (2006) (describing the strict enforcement trend); Daniel

its name suggests, the rule limits initiatives to only "one subject."[7] In the past, courts applied the rule deferentially, looking only for a rational consolidating subject.[8] Since at least 2000, however, courts have applied a rigorous standard of review that focuses on protecting voters from compound proposals that conjure support by appealing to different referendum voting blocs (so-called "logrolling").[9] Courts assert two justifications for this aggressive review. First, they claim the rule's historic purpose is to protect the initiative from all forms of logrolling, including any initiative designed to aggregate disparate referendum voting blocs.[10] Second, courts assert that regardless of the rule's history, normative concerns require courts to protect voters from confusion and "false choices."[11]

This Article assesses these claims and makes two core contributions. First, it provides an original history of the single-subject rule by identifying and reviewing all known state constitutional convention debates where the rule

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H. Lowenstein, *Initiatives and the New Single Subject Rule*, 1 ELECTION L.J. 35, 36–44 (2002) (noting the trend); Kenneth P. Miller, *Courts as Watchdogs of the Washington State Initiative Process*, 24 SEATTLE U. L. REV. 1053, 1080–84 (2001) (same).

7. *See infra* app. A (providing information on all extant single-subject rule provisions in state constitutions and statutes). These rules are textually sparse. California's provision is typical. It provides in its entirety: "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect." CAL. CONST. art. II, § 8(d); *see also* COLO. CONST. art. V, § 1(5.5) ("No measure shall be proposed by petition containing more than one subject . . . ."); FLA. CONST. art. XI, § 3 ("[A]ny such revision or amendment . . . shall embrace but one subject and matter directly connected therewith.").

8. *See* Robert D. Cooter & Michael D. Gilbert, *A Theory of Direct Democracy and the Single Subject Rule*, 110 COLUM. L. REV. 687, 711 (2010) ("Traditionally, the intractability of the single subject rule has led to lax enforcement.").

9. *See* Lowenstein, *supra* note 6, at 36–44; KENNETH P. MILLER, DIRECT DEMOCRACY AND THE COURTS 184 (2009) ("By the early 2000s, the trend was clear: Courts . . . were more strictly enforcing . . . the single-subject rule."); Carney v. Att'y Gen., 850 N.E.2d 521, 524–25 (Mass. 2006) ("[T]he aggregation of these two very different sets of laws into one petition that the voter must accept or reject would operate to deprive voters of their right under [the single-subject rule] to . . . exercis[e] a meaningful choice in the initiative process."); Advisory Op. to Att'y Gen. re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563, 566 (Fla. 1998) (per curiam) ("The amendment forces the voter who may favor or oppose one aspect of the ballot initiative to vote . . . in an 'all or nothing' manner. Thus, the proposed amendment has a prohibited logrolling effect and fails the single-subject requirement.").

10. *See, e.g.*, *Carney*, 850 N.E.2d at 531–32 ("[H]istory of [the single-subject rule] suggest[s] that any initiative presenting multiple subjects may not operate to deprive the people of a 'meaningful way' to express their will." (quoting Op. of the Justs. to the House of Representatives, 664 N.E.2d 792, 797 (Mass. 1996))).

11. *See, e.g.*, Helton v. Nev. Voters First PAC, 512 P.3d 309, 314 (Nev. 2022) ("The single-subject requirement 'facilitates the initiative process by preventing petition drafters from circulating confusing petitions . . . .'"); *In re* Initiative Petition No. 382, 142 P.3d 400, 405 (2006) ("The most relevant questions under this analysis are whether a voter is: 1) able to make a choice without being misled; and 2) forced to choose between two unrelated provisions contained in one measure.").

was formulated and discussed (sixty-three debates beginning in 1837).[12] These sources shed new light on the rule's original purpose and scope. Contrary to the unsupported assumption of most courts, nothing about the rule's history requires courts to interpret it as a prohibition on all forms of voting-bloc aggregation in the initiative context.[13] In fact, the rule was first devised as a constraint on state legislatures in response to two very limited nineteenth-century problems: (1) legislative dysfunction caused by local and private laws; and (2) outdated rule-of-law concerns caused by the multiplying tome of uncatalogued statutes.[14] Beginning in 1912, the rule was imported into the initiative context on the uncritical assumption that the initiative should face the same constraints as the legislature.[15]

Thus, to appreciate the rule's limited historical scope, it is critical to recognize the unique problems that special legislation caused in the nineteenth century. Today, state legislatures enact mostly general laws, but early state legislatures spent most of their time voting on laws that applied only to particular parties or locales: for example, divorce decrees, articles of incorporation, and ad hoc appropriations to specific towns and private corporations.[16] The pervasiveness of "special legislation" ruined lawmaking because legislators had

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12. *See infra* Part III (describing methodology); *infra* app. B (listing all convention debates and citations to relevant single-subject rule references).

13. *See infra* Section III.C (summarizing findings).

14. *See infra* Part III; 9 JOHN AGG, PROCEEDINGS AND DEBATES OF THE CONVENTION OF THE COMMONWEALTH OF PENNSYLVANIA, TO PROPOSE AMENDMENTS TO THE CONSTITUTIONS, COMMENCED AND HELD AT HARRISBURG, ON THE SECOND DAY OF MAY 1837, at 17–40 (Harrisburg, Packer, Barrett & Park 1838) (discussing relationship between single-subject rule and special legislation logrolling); R. SUTTON, REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF KENTUCKY, 1849, at 127–28, 901–08 (Frankfort, A.G. Hodges & Co. 1849) (discussing codification and the single-subject rule).

15. *See infra* Section III.C; 1 CLARENCE E. WALKER, PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF OHIO 901–04 (E.S. Nichols ed., 1912) (incorporating the legislative single-subject rule by reference and because initiative should be subject to same constraints as legislature); 2 DEBATES IN THE MASSACHUSETTS CONSTITUTIONAL CONVENTION 1917–1918, at 566–68 (1918) (commenting on the need for the single-subject rule to regulate initiative: "Special legislation! The source of nine-tenths of the log-rolling and graft and corruption. Special legislation! The very root and core of all our troubles. Throw this to the people, and you put it within the power of every special interest in the State with unlimited means at its command, to seduce, to harass, to cajole, to betray, to perplex the people into granting privileges that could not be secured from a legislative body.").

16. *See infra* Section III.A.1. Estimates vary, but Robert F. Williams concludes that "[b]y the middle of the nineteenth century, many state legislatures were almost entirely consumed with the enactment of special and local laws." ROBERT F. WILLIAMS, THE LAW OF AMERICAN STATE CONSTITUTIONS 278 (2009). Delegates to Indiana's 1850 convention estimated that more than sixty-six percent of all laws were special legislation. 2 H. FOWLER, REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF INDIANA 2043 (Indianapolis, Wm. R. Burford Printing Co. 1935) (1850). Scholars have subsequently estimated that around ninety percent of all laws adopted by the Indiana legislature in 1849 and 1850 were special laws. Frank E. Horack, *Special Legislation: Another Twilight Zone*, 12 IND. L.J. 109, 115 (1936).

strong incentives to trade votes in exchange for laws that granted discrete personal or local benefits.[17] Indeed, reckless special legislation drove one third of the states to default on their debts in the 1830s and 40s.[18] It was within this context that the states adopted the single-subject rule to help end special legislation.[19] The debates show that the rule was explicitly connected to the unique problems caused by wrapping private and local entitlements into statewide lawmaking.[20]

Thus, in the American state constitutional tradition, the single-subject rule is best understood as an effort to control and limit the trading of votes on private and local entitlements, not a generic ban on all forms of public-regarding voting bloc aggregation.[21] Of course, a court might choose to extend the rule by analogy to that context, and a few states that adopted the rule more recently might have aberrational experiences,[22] but nothing in the rule's origin story suggests that courts must apply it to ban all voting bloc aggregation.[23]

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17. *See* 1 J.V. SMITH, REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF OHIO, 1850–51, at 277, 284, 306, 309, 342 (Columbus, Medary 1851) (describing problems); William Backus Guitteau, Constitutional Limitations upon Special Legislation Concerning Municipalities 7–10 (1905) (PhD Thesis, University of Pennsylvania) (on file with the *Iowa Law Review*).

18. *See* G. ALAN TARR, UNDERSTANDING STATE CONSTITUTIONS 109–13 (1998).

19. It is well known that New Jersey adopted the first general single-subject rule in 1844. *E.g.*, Michael D. Gilbert, *Single Subject Rules and the Legislative Process*, 67 U. PITT. L. REV. 803, 812 (2006). But my research revealed a previously unrecognized and robust discussion at the Pennsylvania Convention of 1837 that sheds significant light on the rule's appearance during this time. *See infra* Section III.A.2.

20. *See infra* Sections III.B–.C.

21. In this context, I define "public-regarding voting bloc" to refer to any group of voters who make voting choices based on what they perceive to be best for the common good of the state. This is distinguishable from private or local voting blocs who make voting choices based on what is best for their private association or local constituencies at the expense of the state community as a whole. I further define and explore the significance of this decision regarding the issue of logrolling in *infra* notes 159–60 and accompanying text.

22. For example, Arizona adopted the rule for the initiative in 2022 as a legislatively referred constitutional amendment without much discussion. Although the rule was adopted recently, its language is nearly identical to many original provisions from the nineteenth century. *See* ARIZ. CONST. art. IV, pt. 1, § 1(9) ("Every initiative measure shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title . . . ."); OHIO CONST. art. II, §§ 1, 15(D) ("No bill shall contain more than one subject, which shall be clearly expressed in its title.") (adopted 1851, incorporated by reference to initiative in 1912). This raises complicated and interesting questions regarding constitutional interpretation, originalism, and the role of history in constitutional meaning that are beyond the scope of this Article. Nevertheless, one can't begin to parse the 2022 language without an understanding of where and why that language originated, which this Article addresses squarely.

23. Indeed, the history suggests that the rule was intended to accommodate negotiation and bargaining regarding generalized public policy while removing incentives to trade local and private entitlements. *See, e.g.*, 2 DEBATES IN THE MASSACHUSETTS CONSTITUTIONAL CONVENTION 1917–1918, *supra* note 15.

This Article's second contribution is demonstrating that courts have no sound normative reason to extend the single-subject rule beyond its limited text and history. To substantiate this claim, I draw on up-to-date empirical political science research and public choice theory.[24] That literature shows that referenda are remarkably accurate at registering majority preferences on complex initiatives so long as the campaign is competitive and generates robust information shortcuts for voters.[25] This is true even for compound initiatives that present voters with so-called *false choices*.[26] As it turns out, voters are adept at determining whether the trade-offs or logrolls contained in a proposed initiative reflect a net improvement to the status quo, which logrolls often actually do.[27] Conversely, studies show that strict enforcement of the single-subject rule by courts is unpredictable and standardless.[28] The best indicator of how courts strictly apply the rule is a judge's own policy preferences relative to the initiative's substance.[29] Thus, current doctrine has it backwards.

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24. *See generally* JOHN G. MATSUSAKA, LET THE PEOPLE RULE: HOW DIRECT DEMOCRACY CAN MEET THE POPULIST CHALLENGE (2020) [hereinafter MATSUSAKA, LET THE PEOPLE RULE]; John G. Matsusaka & Richard L. Hasen, *Aggressive Enforcement of the Single Subject Rule*, 9 ELECTION L.J. 399 (2010) [hereinafter Matsusaka & Hasen, *Aggressive Enforcement*]; Arthur Lupia, *Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, 88 AM. POL. SCI. REV. 63 (1994) [hereinafter Lupia, *Shortcuts Versus Encyclopedias*]; Arthur Lupia, *Dumber than Chimps? An Assessment of Direct Democracy Voters*, *in* DANGEROUS DEMOCRACY?: THE BATTLE OVER BALLOT INITIATIVES IN AMERICA 66 (Larry J. Sabato, Howard R. Ernst & Bruce A. Larson eds., 2001) [hereinafter Lupia, *Dumber than Chimps?*]; Matthew E. Kahn & John G. Matsusaka, *Demand for Environmental Goods: Evidence from Voting Patterns on California Initiatives*, 40 J.L. & ECON. 137 (1997); Michael D. Gilbert, *Does Law Matter? Theory and Evidence from Single-Subject Adjudication*, 40 J. LEGAL STUD. 333 (2011) [hereinafter Gilbert, *Does Law Matter?*]; Thad Kousser & Mathew D. McCubbins, *Social Choice, Crypto-Initiatives, and Policymaking by Direct Democracy*, 78 S. CAL. L. REV. 949 (2005); Gilbert, *supra* note 19; Cooter & Gilbert, *supra* note 8.

25. *See* MATSUSAKA, LET THE PEOPLE RULE, *supra* note 24, 174–86 (summarizing the literature).

26. *See, e.g.*, Lupia, *Shortcuts Versus Encyclopedias*, *supra* note 24, at 63–64, 72 (finding voters used shortcuts to reliably vote their preferences on five compound initiatives that covered hundreds of pages).

27. An important conclusion from the public choice literature is that there is no theoretical or empirical basis to assume that logrolls in the initiative are systematically bad—they can be good and bad for realizing majority preferences. *See* Kousser & McCubbins, *supra* note 24, at 949; Matsusaka & Hasen, *Aggressive Enforcement*, *supra* note 24, at 403 ("There are clearly situations where allowing logrolling can lead to outcomes more consonant with the majority's preferences."); Richard L. Hasen & John G. Matsusaka, *Some Skepticism About the "Separable Preferences" Approach to the Single Subject Rule: A Comment on Cooter & Gilbert*, 110 COLUM. L. REV. SIDEBAR 35, 38 (2010) [hereinafter Hasen & Matsusaka, *Skepticism*] (noting that there is no evidence that initiatives are more likely to produce bad logrolls than good logrolls—especially as compared to logrolling in legislatures).

28. *See* Matsusaka & Hasen, *Aggressive Enforcement*, *supra* note 24, at 400 ("The evidence suggests that in practice the way judges subjectively organize the world is closely linked to their political ideologies, causing their single-subject decisions to be strongly connected to their political views concerning the policy proposed by the initiative."); Lowenstein, *supra* note 6, at 47–48. *But see* Gilbert, *Does Law Matter?*, *supra* note 24, at 335–36 (concluding that rule of law has some influence on decisions).

29. *See* Matsusaka & Hasen, *Aggressive Enforcement*, *supra* note 24, at 417 ("[W]e find that political inclinations play a huge, perhaps dominant role, in single subject decisions.").

Strict enforcement of the single-subject rule does not protect voters; it randomly thwarts the initiative based on the policy predilections of individual judges.

The Article concludes by suggesting a few different paths forward for courts. At a bare minimum, courts should revise their single-subject rule jurisprudence to reflect a highly deferential standard of review. The rule's history does not compel courts to interpret it as a broad ban on logrolling, and the evidence shows that courts cannot apply the rule fairly. Moreover, competitive referenda are more accurate and reliable than courts assume. Thus, courts should apply a standard of review that permits initiatives to proceed to the ballot if there is a rational consolidating theme.[30] However, to the extent courts feel compelled by the rule's history, they should limit their strict review to initiatives that include private or local entitlements.[31] Limiting review in this way would make the jurisprudence more predictable and historically accurate. Finally, if courts truly believe that singularity is necessary for the initiative's well-being, they should consider more collaborative remedies than striking initiatives *in toto*. State courts have various writs and remedies at their disposal they can use to order separate ballot questions along whatever lines the court believes to be problematic. This is not a panacea. It introduces new questions and problems, but it would improve the dynamics in single-subject adjudication.

This Article proceeds in five parts. Part I provides a general overview of the initiative. Part II provides an overview of the single-subject rule in the initiative context and argues that strict enforcement of the single-subject rule is unworkable for courts. Part III presents new evidence from the convention debates and argues that the rule's history does not require courts to interpret the rule broadly. Part IV argues that there are no sound normative reasons for courts to strictly apply the rule. Part V concludes by suggesting a more constructive path forward for courts.

I. OVERVIEW OF THE INITIATIVE

This Part provides a brief overview of the citizen initiative process within which the single-subject rule operates and a short note on the growing contemporary significance of the initiative (and by extension the single-subject rule) in American public law.

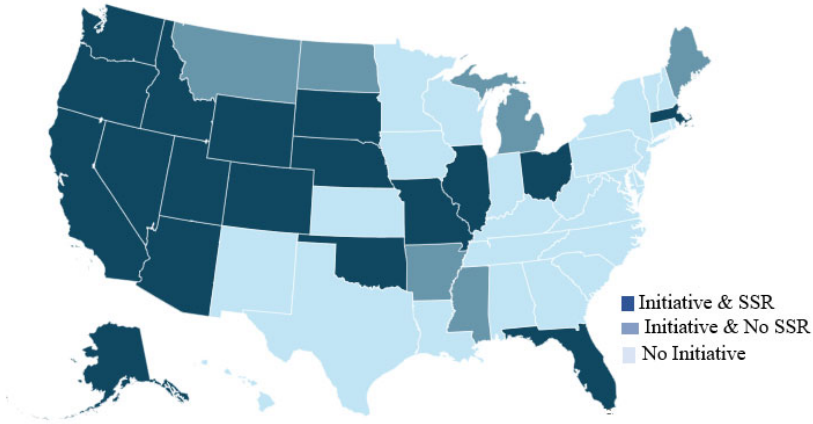
30. *See infra* Section V.A (explaining and defending this standard). I propose a rule similar to the approach of Washington courts. *See, e.g.*, Citizens for Responsible Wildlife Mgmt. v. State, 71 P.3d 644, 652 (Wash. 2003) (employing "rational unity" analysis). That approach has proven to generate more predictable and rule-bound results. *See* Matsusaka & Hasen, *Aggressive Enforcement*, *supra* note 24, at 415.

31. *See infra* Section V.B.

A. GENERAL PROCESS

Twenty-four states allow citizens to propose laws or constitutional amendments by initiative.[32] Of those states, eighteen require initiative proposals to be limited to a single subject.[33] Figure 1 illustrates the distribution of the initiative and single-subject rule among the states.

Figure 1. Geographic Distribution of Initiative and Single Subject Rule



In general, the initiative authorizes citizens to draft a law or constitutional amendment and then solicit signatures from voters in support of the proposal.[34] If the initiative sponsors obtain enough signatures, the proposal is placed on a statewide ballot for a ratification referendum.[35] The details vary between states.[36] Some states require sponsors to register and obtain pre-approval before soliciting signatures.[37] Some states impose geographic distribution requirements for signatures to ensure that proposals have broad support across the state.[38] Many states regulate how signatures can be gathered, especially whether and how sponsors may use signature-gathering firms.[39] A small minority of states have adopted the "indirect initiative."[40] It allows citizens to draft a proposed law

32. *See* WATERS, *supra* note 1, at 12–14; *infra* app. A.

33. *See infra* app. A.

34. WATERS, *supra* note 1, at 12–14.

35. *Id.* (providing survey of initiative process in all states including variations in process).

36. *See id.* at 12–47 (comparing state initiative and popular referendum rules).

37. *See, e.g.*, FLA. STAT. ANN. § 15.21 (West 2024) (requiring that initiative sponsors must register as political committees); WATERS, *supra* note 1, at 14–18 (surveying requirements).

38. *See, e.g.*, ARK. CONST. art V, § 1 (signatures from at least fifteen counties).

39. *See, e.g.*, MONT. CODE ANN. § 13-27-112 (West Supp. 2024) (regulating paid signature gathering).

40. *See* WATERS, *supra* note 1, at 14 (noting ten states have adopted the indirect initiative).

and obtain supporting signatures for presentation to the state legislature.[41] The proposal moves to a referendum only if the legislature refuses to adopt it or takes no responsive action.[42] Finally, a few states have imposed subject-matter limitations on the initiative.[43]

In most states, executive agencies or officials monitor and regulate the initiative process (including signature verification), subject to judicial review.[44] In a few states, courts are required to preclear all initiative proposals before they reach the ballot.[45]

B. HISTORY AND PURPOSE

The initiative is a product of the Progressive Era and its populist goals.[46] South Dakota was the first to adopt the statutory initiative in 1898.[47] Oregon was the first to adopt the constitutional initiative in 1902.[48] By 1918, eighteen states had the initiative in some form.[49] A second round of adoption began in the mid-twentieth century, with Alaska adopting the statutory initiative in 1956, followed by Wyoming (indirect statutory initiative) and Florida (constitutional initiative) in 1968, Illinois in 1970, and Mississippi in 1992.[50]

The dominant justification for the initiative's initial adoption was to address concerns about accountability in state government.[51] Those concerns stemmed principally from legislative capture by private interests, especially well-financed corporations and party bosses.[52] But voters were also frustrated with courts for

41. *Id.* at 12, 14.

42. *Id.* at 14.

43. *Id.* at 24–25. Illinois is perhaps the most restrictive, allowing initiatives regarding only the legislature. *Id.* at 24.

44. *See id.* at 18–20, 33–36.

45. *See, e.g.*, FLA. CONST. art. IV, § 10.

46. SCHMIDT, *supra* note 2, at 5–10.

47. WATERS, *supra* note 1, at 654. South Dakota did not adopt the constitutional initiative until 1972. DINAN, *supra* note 4, at 16.

48. DINAN, *supra* note 4, at 16.

49. JOHN J. DINAN, THE AMERICAN STATE CONSTITUTIONAL TRADITION 62 & 313 n.132 (2006) (thirteen states adopted the constitutional initiative by 1918); WATERS, *supra* note 1, at 12 (listing states that adopted statutory initiative before 1918).

50. *See* DINAN, *supra* note 49, at 62 & 313 n.132; WATERS, *supra* note 1, at 13–14. Mississippi adopted the initiative in 1916, but the Mississippi Supreme Court held in *Power v. Robertson*, 93 So. 769, 775–77 (Miss. 1922), on single-subject grounds ironically, that the amendment adopting the initiative was unconstitutional because it included both the statutory and constitutional initiative process. History repeated itself. After voters ratified an amendment in 1992 that reinstated the initiative process, the Mississippi Supreme Court held that the initiative was inoperative because it required signature distributions from districts that have subsequently been changed or abolished through redistricting. *See* Butler v. Watson (*In re* Initiative Measure No. 65), 338 So. 3d 599, 615 (Miss. 2021).

51. *See* DINAN, *supra* note 49, at 84.

52. *See id.* at 85–87; Justin H. Phillips, *Does the Citizen Initiative Weaken Party Government in the U.S. States*, 8 STATE POL. & POL'Y Q. 127, 127 (2008) (describing party control as key impetus for initiative process).

invalidating popular social and economic reforms.[53] The overall concern was that voters did not have an independent method for correcting discrete government failures, especially when legislatures refused to act or courts invoked unpopular constitutional principles to block reform.[54] Exacerbating this frustration was the fact that many state legislatures were grossly malapportioned in favor of existing elites.[55] As a result, popular majorities frequently found themselves misaligned with the government on pressing issues such as workers' safety, child labor, collective bargaining, corporate taxation, and welfare.[56]

The constitutional amendment initiative was championed as a way for voters and outside groups to bypass failed government structures and realign government with popular preferences.[57] The initiative could achieve this by allowing a small group of private citizens to formulate policy proposals with minimal government oversight or involvement.[58] Initiative "[p]roponents also hoped [that] the mere presence of the initiative" would create incentives for officials and courts to align with popular preferences.[59] Ultimately, the initiative was designed to bring government accountability to popular majorities. It sought to empower "the people of [a] state to hold the government within their control."[60] Accountability and democratic realignment remain the touchstones of the initiative process.[61]

C. *CONTEMPORARY SIGNIFICANCE AND TRENDS*

The initiative plays an increasingly important role in American public law.[62] As the U.S. Supreme Court has steadily returned significant policy issues to the states, battles now rage within the states over how to decide critical issues such as abortion rights, redistricting, marijuana policy, gun rights, school

53. *See* DINAN, *supra* note 49, at 48–53, 125–30.

54. *Cf. id.* at 48–53, 85–87 ("The chief concern during this period was that particular interests such as railroads and corporations had grown so powerful that they were frequently preventing the passage of legislation favored by a broad majority of the public.").

55. *See id.* at 70–72; TARR, *supra* note 18, at 102–05.

56. DINAN, *supra* note 49, at 85–91 (describing instance of workers safety and other pressing issue where public sentiment was misaligned with legislative outputs).

57. *See id.* at 85–86.

58. *See* DINAN, *supra* note 4, at 16–17.

59. Jonathan L. Marshfield, *Forgotten Limits on the Power to Amend State Constitutions*, 114 NW. U. L. REV. 65, 123–24 (2019).

60. THE RECORDS OF THE ARIZONA CONSTITUTIONAL CONVENTION OF 1910, at 189 (John S. Goff ed., 1991).

61. *See, e.g.*, Stavros v. Off. of Legis. Rsch. & Gen. Couns., 15 P.3d 1013, 1017 (2000) ("The purpose of a citizen initiative is to present to the voters a measure the legislative branch of government has not enacted, and may have specifically rejected . . . .").

62. *See* Jessica Bulman-Pozen & Miriam Seifter, *The Right to Amend State Constitutions*, 133 YALE L.J.F. 191, 198–206 (2023).

finance schemes, transgender rights, and much more.[63] The initiative is an important forum in these battles. This is especially true because partisan gerrymandering (on both sides of the aisle) and extremist party platforms have resulted in significant policy misalignment in many states.[64] State legislatures frequently pursued policies at variance with state popular preferences on hot-button issues.[65] As a result, voters and outside groups have quickly turned to the initiative to realign policy.

But the initiative has broader implications for American public law. Although only twenty-four states have the initiative, those states are home to almost fifty percent of the country's population.[66] Moreover, initiatives impact policy in neighboring states and at the federal level. Although Justice Brandeis may have overestimated the extent to which the states are laboratories of democracy,[67] there is a remarkable amount of policy creep between states triggered by initiatives.[68] For example, in 1996, a California citizen sponsored a successful statewide initiative that became the first American state law to legalize medical marijuana.[69] California's experience set off a cascade of marijuana reform in both initiative and non-initiative states.[70] These reforms

63. *See, e.g.*, *id.* at 206–07, 212; Jonathan L. Marshfield, *America's Other Separation of Powers Tradition*, 73 DUKE L.J. 545, 548–50 (2023).

64. *See* Nicholas O. Stephanopoulos & Eric M. McGhee, *Partisan Gerrymandering and the Efficiency Gap*, 82 U. CHI. L. REV. 831, 875–76 (2015) ("[T]he scale and skew of today's gerrymandering are unprecedented in modern history."); Jeffrey R. Lax & Justin H. Phillips, *The Democratic Deficit in the States*, 56 AM. J. POL. SCI. 148, 153–54 (2012) (finding significant incongruence in 39 policies across 50 states); MATSUSAKA, LET THE PEOPLE RULE, *supra* note 24, at 55 (finding incongruence on 44 policies across 50 states using 2,150 separate policy decisions); Gabor Simonovits, Andrew M. Guess & Jonathan Nagler, *Responsiveness Without Representation: Evidence from Minimum Wage Laws in the U.S. States*, 63 AM. J. POL. SCI. 401, 405–09 (2019); Robert Y. Shapiro, *Public Opinion and American Democracy*, 75 PUB. OP. Q. 982, 1000–03 (2011). *But see* ROBERT S. ERIKSON, GERALD C. WRIGHT & JOHN P. MCIVER, STATEHOUSE DEMOCRACY: PUBLIC OPINION AND POLICY IN THE AMERICAN STATES 73–82 (1993) (finding strong correlation between state opinion and policy).

65. *See supra* note 64 and accompanying text.

66. *See* U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE RESIDENT POPULATION FOR THE UNITED STATES, REGIONS, STATES, DISTRICT OF COLUMBIA, AND PUERTO RICO: APRIL 1, 2020 TO JULY 1, 2024 (2024), https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html (on file with the *Iowa Law Review*) (navigate to provided URL then download the "Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia, and Puerto Rico: April 1, 2020 to July 1, 2024" Excel file).

67. *See* Charles W. Tyler & Heather K. Gerken, *The Myth of the Laboratories of Democracy*, 122 COLUM. L. REV. 2187, 2188, 2220–22 (2022).

68. *See* DINAN, *supra* note 4, at 241–52, 255.

69. *Id.* at 242–43.

70. *Id.* Twenty-four states and D.C. have now legalized recreational marijuana and seventeen more have legalized medical marijuana in some form. *See* Kyla Russell, *Where Is Marijuana Legal in the US? A State-By-State Guide*, NBC4 LOS ANGELES (Mar. 27, 2024, 4:23 AM), https://www.nbclosangeles.com/news/national-international/where-is-marijuana-legal-in-the-us-a-state-by-state-guide/3290272 [https://perma.cc/9Q6C-A5B5].

have in turn impacted federal policy regarding marijuana regulation and criminal enforcement.[71]

Initiatives can also trigger more direct federal reform. Initiatives often push the boundaries of what is permissible under federal law.[72] When this happens, aggrieved parties invariably sue to enforce federal law, which ultimately provides an opportunity for the Supreme Court to weigh in. In *Romer v. Evans*, for example, voters in Colorado used the initiative to adopt a constitutional amendment that prohibited the state or its subsidiaries from protecting individuals from discrimination based on, among other things, sexual orientation.[73] The initiative triggered a federal challenge, which led to the Supreme Court's ruling protecting sexual orientation for the first time.[74] Similarly, the prequel to *Obergefell v. Hodges*, which recognized a federal constitutional right to marriage equality for same-sex couples, was a slew of state initiatives limiting marriage to heterosexual couples.[75]

For all these reasons, the initiative process has become competitive and contentious. In 2024, there were 159 statewide ballot questions presented to voters.[76] Contributions to ballot question campaigns in 2024 exceeded $1.3 billion.[77] This has also raised the stakes for regulating the initiative to ensure its accuracy and authenticity. Indeed, many states are experiencing a wave of initiative reforms.[78]

One final dynamic heavily influences contemporary politics surrounding the initiative. State officials generally do not like to have their powers curbed or their policy agendas thwarted by initiatives.[79] As a result, they have developed a playbook of countermeasures designed to undermine disfavored initiatives.[80] These include a refusal to fund programs necessary to implement initiatives, failure to create and adequately staff agencies and departments to oversee initiative programs, passing ostensible "implementation" legislation that effectively undermines the initiative, and, of course, campaigns to formally

71. LISA N. SACCO, JOANA R. LAMPE & HASSAN Z. SHEIKH, CONG. RSCH. SERV., IF12270, THE FEDERAL STATUS OF MARIJUANA AND THE POLICY GAP WITH STATES 1–2 (2024), https://www.congress.gov/crs-product/IF12270 [https://perma.cc/AXR4-HZJU].

72. *See, e.g.*, DINAN, *supra* note 4, at 134–38.

73. Romer v. Evans, 517 U.S. 620, 623–24 (1996).

74. *See id.* at 635–36; Marie-Amélie George, *The Missing History of* Romer v. Evans, 3 J. AM. CONST. HIST. 925, 927 (2025).

75. Obergefell v. Hodges, 576 U.S. 644, 677–81 (2015); *see* DINAN, *supra* note 4, at 138–43.

76. *See 2024 Ballot Measures*, BALLOTPEDIA, https://ballotpedia.org/2024_ballot_measures [https://perma.cc/CQ76-MRGB].

77. *Id.*

78. John Dinan, *Changing the Rules for Direct Democracy in the Twenty-First Century in Response to Animal Welfare, Marijuana, Minimum Wage, Medicaid, Elections, and Gambling Initiatives*, 101 NEB. L. REV. 40, 63–69 (2022).

79. *See* Jonathan L. Marshfield, *The Single-Subject Rule and the Politics of Constitutional Amendment in Initiative States*, 101 NEB. L. REV. 71, 95–103 (2022).

80. *Id.*

amend or repeal disfavored initiatives.[81] Countermeasures have also included tightening the initiative process itself to fend off future threats.[82]

A predictable consequence of these tactics is that initiatives have grown in scope and detail to limit government direction and realize popular preferences.[83] Recent initiatives "have exceeded 8,000 words and included supplemental provisions creating entirely new state agencies, earmarking funds, setting regulation-like technical parameters, revising tangential criminal and tax statutes, and even adjusting the constitution's amendment rules."[84] Although this strategy may corral state government, it "increases the likelihood that the initiative will violate the single-subject rule."[85] In this way, the single-subject rule often provides incumbent officials with a preemptive line of attack when faced with unwanted initiatives.[86]

This is the environment within which the single-subject rule operates. I now turn to the rule itself.

II. THE SINGLE-SUBJECT RULE AND ITS DYSFUNCTION

As noted above, eighteen of the twenty-four initiative states have a single-subject rule. In this Part, I argue that conventional accounts of the rule's history mistakenly portray the rule as an acontextual common-law norm inherited from Ancient Rome without investigating evidence from the state constitutional convention debates, where the rule was first introduced into American public law. I also survey existing texts to show that they are incomplete and do not compel courts to take any particular approach when reviewing initiatives for singularity. Finally, I show that heightened judicial review under the single-subject rule has been a failure.

A. ROMANTICIZED "COMMON-LAW" STYLE HISTORY

As a concept, the single-subject rule traces to Ancient Rome, although some trace it to the Ten Commandments.[87] As the story goes, sneaky Roman lawmakers learned that they could enact unpopular laws by bundling them with popular ones.[88] Frustrated by this practice, in 98 B.C., the Romans prohibited laws that joined together unrelated provisions.[89] Conventional histories of the

81. *See id.* at 95–108 (describing countermeasures and illustrating them).

82. *Id.* at 106.

83. *Id.* at 108.

84. *Id.* at 75–76 (footnotes omitted).

85. *Id.* at 76.

86. *Id.* at 117–18.

87. *See* ROBERT LUCE, LEGISLATIVE PROCEDURE: PARLIAMENTARY PRACTICES AND THE COURSE OF BUSINESS IN THE FRAMING OF STATUTES 548–49 (1922); Millard H. Ruud, *"No Law Shall Embrace More than One Subject,"* 42 MINN. L. REV. 389, 389–90 (1958).

88. LUCE, *supra* note 87, at 548.

89. *Id.*

rule in American law note that the colonies engaged in similar gamesmanship.[90] Under colonial rule, laws adopted by colonial assemblies were reviewed by the Privy Council for compliance with English law.[91] Improper laws were vacated by the Privy Council.[92] Colonial assemblies attempted to evade this review by hiding unlawful measures within lawful acts.[93] The Privy Council became savvy to this practice, and, in 1702, Queen Anne instructed Lord Cornbury of New Jersey to avoid "intermixing in one and the same Act . . . such things as have no proper relation to one other."[94]

Not much has been written about the single-subject rule in American public law during the century after Queen Anne's instruction.[95] Most histories pick up the story in 1844 (142 years later) when New Jersey adopted America's first general single-subject rule using language that parroted Queen Anne's 1702 instruction.[96] A wave of states followed New Jersey's lead (although only New Jersey parroted Queen Anne's language).[97] Louisiana and Texas adopted a legislative single-subject rule in 1845; New York and Iowa in 1846; Illinois and Wisconsin in 1848; and California, Kentucky, and Michigan in 1850.[98] In 1900, thirty-eight states had adopted the rule.[99] By 1960, forty-three states had adopted it.[100]

As states began to adopt the statutory and constitutional initiative during the Progressive Era, they eventually imported the single-subject rule from the legislative context and applied it uncritically to citizen lawmaking.[101] In 1912, Ohio became the first state to apply the rule to the initiative.[102] Massachusetts followed suit in 1918 when it adopted the initiative, as did Missouri in 1920.[103] California added the rule to the initiative process in 1948,[104] as did Oklahoma

90. *Id.* at 549.

91. *See id.* at 549–50.

92. *See id.*

93. *Id.*

94. Cooter & Gilbert, *supra* note 8, at 704.

95. *Cf. id.* (jumping from 1702 to 1844).

96. *See id.* In 1818, Illinois adopted a single-subject rule for laws related to government salaries. *Id.* at 704 n.77.

97. *See* Gilbert, *supra* note 19, at 811–12, 822 (describing each state's adoption after New Jersey and listing year of adoption for all states through 2005). The language of New Jersey's 1844 provision was: "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title." N.J. CONST. of 1844, art. IV, § 7(4). This particular phrasing of the rule was unique. *See* Gilbert, *supra* note 19, at 811–12, 822.

98. Gilbert, *supra* note 19, at 822.

99. *Id.*

100. Cooter & Gilbert, *supra* note 8, at 705.

101. *See id.*; *see also infra* Section III.C (reviewing convention debates from this period).

102. *See infra* note 309 and accompanying text.

103. *See infra* notes 315, 321, and accompanying text; *see also infra* app. A.

104. Cooter & Gilbert, *supra* note 8, at 705. California's history with the rule is interesting because it came on the heels of an omnibus initiative that attracted much negative attention. *See id.*

in 1952.[105] As noted above, there are currently twenty-four initiative states, and eighteen have single-subject rule requirements.

Very little else has been written about America's history with the single-subject rule beyond this basic narrative. The suggestion from these accounts is that New Jersey's adoption in 1844 reflected the continuation of a shared understanding and generalized purpose for the rule without any unique American circumstances or context to trigger a sudden interest in reviving the rule after 142 years of dormancy.[106] On these accounts, the rule captures a generic norm of good parliamentary procedure—different laws should be considered separately.[107] However, as I explain in detail below, this take on the American experience with the rule is weak (at best) and disregards the state constitutional conventions debates where Americans first wrestled with the rule.[108] Those debates are rich with context and shed much light on the rule's original purpose and scope.

B. INCOMPLETE TEXTS

In the United States, the single-subject rule is the product of explicit state constitutional text.[109] The texts of these provisions have remained largely unchanged over time, and they contain minimal content.[110] California's provision is representative: "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect."[111] However, no state provision defines "subject" or singularity in any way.[112] A few provisions

105. *See infra* note 316 and accompanying text.

106. *See* LUCE, *supra* note 87, at 548–52 (describing American history in the context of state single-subject rules).

107. *See id.* at 548–52 (noting that rule in America traces back to "Ten Commandments" and was responsive, in part, to early colonial legislatures who were "unfamiliar[] with the canons of correct law-drafting, for the assemblies of that time contained few members trained in the science of the law").

108. *See infra* Part III.

109. *See* THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 170 (5th ed., Boston, Little, Brown & Co. 1883) (noting that initial adoption of these provisions worked "a very great change in the law"). Indeed, there appears to be no instance of a court imposing the rule in the absence of explicit positive law establishing the rule in some analogous context. A few courts have inferred the rule from tangential text. Illinois has inferred a single-subject requirement from the state constitutional provision requiring "'free and equal' elections." *See* Coal. for Pol. Honesty v. State Bd. of Elections, 415 N.E.2d 368, 379 (Ill. 1980). The Washington Supreme Court held that the legislature's single-subject rule applies to the initiative. Wash. Fed'n of State Emps. v. State, 901 P.2d 1028, 1030 (Wash. 1995). *But see* Mont. Ass'n of Cntys. v. State *ex rel.* Fox, 404 P.3d 733, 740 (2017) (overturing precedent inferring that legislative single-subject rule applied to initiative).

110. *See* Cooter & Gilbert, *supra* note 8, at 705.

111. CAL. CONST. art. II, § 8(d).

112. Nevada's statutory provision is one exception, but it essentially parrots the judicial standard. *See* NEV. REV. STAT. ANN. § 295.009(2) (LexisNexis 2017).

say that initiatives can include matters "properly connected therewith,"[113] and a few others say that an initiative may embrace a "general subject."[114] But most provisions simply state that initiatives may not contain "more than one subject."[115]

That said, several texts require that the initiative's subject be expressed in its title, and that any subject not identified in the title is void and unenforceable.[116] These provisions point towards process and transparency concerns. Arizona's provision is a good example:

> Every initiative measure shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an initiative measure which shall not be expressed in the title, such initiative measure shall be void only as to so much thereof as shall not be embraced in the title.[117]

Finally, a few provisions include exceptions to the single-subject rule for appropriations bills and "bills for the codification and general revision of the laws."[118]

Overall, as both courts and scholars note, single-subject rule provisions are largely void of substance and provide little guidance on how they might be operationalized.[119] More specifically, the language and inherent logic of singularity do not require or equip courts to interpret the rule through the lens of political transparency or logrolling.[120] An initiative on a single issue can be incredibly complex and hard for voters to understand,[121] while compound initiatives might be very simple.[122] Similarly, "[l]ogrolling can take place within a measure that embraces one logical subject," and compound initiatives

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113. *E.g.*, OR. CONST. art. IV, § 1(2)(d) ("A proposed law or amendment to the Constitution shall embrace one subject only and matters properly connected therewith.").

114. *E.g.*, OKLA. CONST. art. XXIV, § 1.

115. *See, e.g.*, NEB. CONST. art. III, § 2 ("Initiative measures shall contain only one subject."); OHIO CONST. art. II, § 15(D) ("No bill shall contain more than one subject . . . ."); *see also infra* app. A (collecting all single-subject rule provisions in state constitutions and statutes).

116. *See, e.g.*, ARIZ. CONST. art. IV, pt. 1, § 1(9).

117. *Id.*

118. WYO. CONST. art. III, § 24 (as applied to the initiative by WYO. CONST. art. III, § 52(g)).

119. *See* Daniel H. Lowenstein, *California Initiatives and the Single-Subject Rule*, 30 UCLA L. REV. 936, 938–39 (1983) ("This rule cannot be implemented satisfactorily by simply applying the dictionary definition of the word 'subject' to the provisions of an initiative.").

120. *See* Cooter & Gilbert, *supra* note 8, at 709–12 ("[T]he wording of the rule itself says nothing about these purposes."); Matsusaka & Hasen, *Aggressive Enforcement*, *supra* note 24, at 403–05 (examining logrolling).

121. *E.g.*, Matsusaka & Hasen, *Aggressive Enforcement*, *supra* note 24, at 405–06 (discussing Lowenstein's example of school finance reform).

122. *Id.* ("[F]or example, an initiative containing two provisions: (1) change the date of the primary election from June to May; and (2) increase the maximum sentence for the crime of rape by one year.").

can present packages that are not logrolls.[123] The texts of the state's rules do little to help courts find a rule of decision.

C. JURISPRUDENTIAL FAILURE

The single-subject rule presents courts with a tricky (nay impossible) analytical puzzle. As Professors Michael Gilbert and Robert Cooter have observed, "[a]s a matter of logic," any two provisions can be placed under a single broad subject if courts elevate the level of extraction by which they define the consolidating subject.[124] Conversely, any two provisions can be framed as addressing different subjects if courts lower the level of extraction.[125]

Courts are savvy to this problem.[126] Early in the rule's history, the dominant approach by courts was lax enforcement of the single-subject rule.[127] In California, for example, the Supreme Court held as early as 1854 that the single-subject rule was "merely directory" and that laws in violation of the single-subject rule were nevertheless valid.[128] Other courts held that the rule was justiciable, but they deferred to lawmakers in defining the level of extraction when identifying the consolidating subject.[129]

However, this deferential approach has largely given way to more aggressive review by courts, especially in the initiative context.[130] Courts now routinely reject initiative proposals for addressing more than one subject.[131] To justify this aggressive review, courts assert that they should effectuate the rule's underlying purposes.[132] The rule's two core purposes, according to the courts, are prohibiting logrolling and improving political transparency for voters.[133]

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123. Cooter & Gilbert, *supra* note 8, at 712 (giving examples).

124. *Id.* at 710.

125. Lowenstein, *supra* note 119, at 940–41 ("[A]ny collection of items, no matter how diverse and comprehensive, will fall 'within' a single (broad) subject if one goes high enough . . . and, on the other hand, the most simple and specific idea can always be broken down into parts, which may in turn plausibly be regarded as separate (narrow) subjects.").

126. *See* Marshall v. State *ex rel.* Cooney, 975 P.2d 325, 331 (1999) ("[A] constitutional initiative to 'improve Montana's government' could amend virtually every part of Montana's Constitution but have one single subject.").

127. *See* Cooter & Gilbert, *supra* note 8, at 711; COOLEY, *supra* note 109, at 175–76 (explaining how courts "construe the constitutional provision liberally, rather than to embarrass legislation by a construction whose strictness is unnecessary").

128. Washington v. Page, 4 Cal. 388, 389 (1854).

129. *See, e.g.*, Blood v. Mercelliott, 53 Pa. 391, 393–95 (1867) (surveying extant cases from other states applying highly deferential standard based on legislature's chosen level of extraction).

130. *See* Cooter & Gilbert, *supra* note 8, at 711 & n.129.

131. *See, e.g.*, Advisory Op. to the Att'y Gen. re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563, 565–66 (Fla. 1998) (per curiam); Kemper v. Hamilton (*In re* Title, Ballot Title & Submission Clause, for 2007–2008, #17), 172 P.3d 871, 874–76 (Colo. 2007).

132. *See* Cooter & Gilbert, *supra* note 8, at 706–09; *e.g.*, Koussa v. Att'y Gen., 188 N.E.3d 510, 515–16 (Mass. 2022).

133. *E.g.*, Okla. Ass'n of Optometric Physicians v. Raper, 412 P.3d 1160, 1164 (2018) ("The purpose of the one general subject rule . . . is 'to prevent imposition upon or deceit of the public

Of these, logrolling is by far the most important to courts.[134] Political transparency appears in the cases, but it does not often do much independent analytical work. The idea is that when initiatives logroll, they present voters with complicated and confusing choices.[135]

It is not always clear how courts define logrolling.[136] In public choice theory, logrolling occurs when separate proposals—each with only minority support—are combined into one proposal that then garners majority support because of the bundle's reciprocal benefits.[137] However, when courts talk about logrolling, they often describe another related practice called riding.[138] Riding occurs when an initiative attaches an unpopular provision to a popular provision.[139] Courts assert that logrolling and riding are inappropriate for the initiative—and prohibited by the single-subject rule—because they "threaten[] to give legal force to proposals that individually command only minority support."[140] Courts further assert that by limiting the initiative to just one subject, the initiative will be cleansed from logrolling, riding, and voter confusion.[141]

This general approach to the single-subject rule has been a jurisprudential failure for several reasons.[142] First, courts cannot possibly know voters' actual

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by the presentation of a proposal which is misleading or the effect of which is concealed or not readily understandable,' . . . and to 'afford the voters freedom of choice and prevent "logrolling," or the combining of unrelated proposals in order to secure approval by appealing to different groups which will support the entire proposal in order to secure some part of it although perhaps disapproving of other parts.'" (quoting *In re* Initiative Petition No. 314, 625 P.2d 595, 603 (1980))).

134. *See, e.g.*, Advisory Op. to the Att'y Gen. re: Voluntary Universal Pre-Kindergarten Educ., 824 So. 2d 161, 165 (Fla. 2002); Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824, 830 (Mo. 1990); State v. Broadaway, 942 P.2d 363, 367 (Wash. 1997); Cooter & Gilbert, *supra* note 8, at 706 ("Courts disdain logrolling . . . .").

135. *See* League of Women Voters v. Eu, 9 Cal. Rptr. 2d 416, 428 (Ct. App. 1992); *Koussa*, 188 N.E.3d at 517–18 ("The petitions thus violate the related subjects requirement because they present voters with two substantively distinct policy decisions: one confined for the most part to the contract-based and voluntary relationship between app-based drivers and network companies; the other—couched in confusingly vague and open-ended provisions—apparently seeking to limit the network companies' liability to third parties injured by app-based drivers' tortious conduct.").

136. *See* Gilbert, *supra* note 19, at 836–44 (distinguishing riding from logrolling, which commentators generally characterize together).

137. *See id.* at 813–14.

138. *E.g.*, Advisory Op. to the Att'y Gen. re Use of Marijuana for Certain Med. Conditions, 132 So. 3d 786, 795 (Fla. 2014) ("This Court has defined logrolling as 'a practice wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue.'" (quoting *In re* Advisory Op. to Att'y Gen.—Save Our Everglades, 636 So. 2d 1336, 1339 (Fla. 1994))).

139. Gilbert, *supra* note 19, at 836–37.

140. *Id.* at 814, 836–37; *accord* State *ex rel.* Dix v. Celeste, 464 N.E.2d 153, 157 (Ohio 1984); Dep't of Educ. v. Lewis, 416 So. 2d 455, 459–60 (Fla. 1982).

141. *E.g.*, League of Women Voters v. Eu, 9 Cal. Rptr. 2d 416, 428 (Ct. App. 1992) ("[I]f proposed legislation conduces to a single subject, logrolling and confusion are not an issue.").

142. *See, e.g.*, Richard Briffault, *The Single-Subject Rule: A State Constitutional Dilemma*, 82 ALB. L. REV. 1629, 1630–31 (2019) (describing the legislative rule as "deeply problematic" and summarizing legal commentary regarding the rule's inconsistent application and failures); *see also*

preferences regarding the different components of a proposed initiative.[143] Without this information, courts cannot identify actual logrolls within a proposed initiative.[144] Riding presents the same problem.

Second, to operationalize the logrolling framework without knowing actual voter preferences, courts have developed a series of "tests" to identify logrolls.[145] Courts give their tests different names, but when strictly applied, they all have the same core structure: Courts consider whether a rational voter who supports one component of the initiative would reasonably support all remaining components.[146] If a rational voter would accept all provisions, then the proposal is singular because it is free of potential logrolls or riders. However, if a rational voter could accept one portion but could logically reject another portion, then the proposal might contain a logroll or rider. In that case, courts feel empowered to invalidate the initiative on single-subject grounds to "protect" voters from so-called false choices.[147] I call this general approach to single-subject rule adjudication the "logrolling framework."

This framework is problematic because it returns courts to the same level-of-extraction problem *and* introduces a degree of speculation regarding the

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Cooter & Gilbert, *supra* note 8, at 710 ("Despite 150 years of litigation[,] . . . [t]here is no workable theory of interpretation for the single subject rule.").

143. And, as mentioned above, any initiative can be broken down into multiple components by playing with the level of extraction. *See supra* notes 124–25 and accompanying text.

144. *See* Cooter & Gilbert, *supra* note 8, at 712; Justin W. Evans & Mark C. Bannister, *The Meaning and Purposes of State Constitutional Single Subject Rules: A Survey of States and the Indiana Example*, 49 VAL. U. L. REV. 87, 150 (2014) (illustrating that actual voting and preferences are required to identify a true logroll in the legislative context). Cooter and Gilbert suggest that courts explore data and actual evidence in litigation to determine severable preferences and identify true logrolls, but this has not been embraced by courts and has been criticized as impractical. *See* Cooter & Gilbert, *supra* note 8, at 720–22.

145. *See* Briffault, *supra* note 142, at 1630–31. *See generally* Rachael Downey, Michelle Hargrove & Vanessa Locklin, *A Survey of the Single Subject Rule as Applied to Statewide Initiatives*, 13 J. CONTEMP. LEGAL ISSUES 579 (2004) (surveying all approaches by courts).

146. *See generally* Downey et al., *supra* note 145. Courts look for "germaneness," "oneness of purpose," and "operational relatedness," to name just a few different labels for the tests. *Id.* at 585, 592; Weiner v. Att'y Gen., 144 N.E.3d 886, 892 (Mass. 2020). For an example of how the strict application is phrased, see *Weiner*, 144 N.E.3d at 892 ("[D]oes the initiative petition 'express an operational relatedness among its substantive parts that would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy'?" (quoting Hensley v. Att'y Gen., 53 N.E.3d 639, 658 (Mass. 2016))); *see also* Cooter & Gilbert, *supra* note 8, at 710 (claiming that the new tests for compliance with the single-subject rule are just rephrasing the analysis the tests sought to circumvent).

147. Some cases suggest slightly more generous review in that they do not require logical necessity to find singularity. My point is not that courts always apply this strict form of review. My point is that courts randomly invoke this strict review frequently, which is embraced by the generic doctrinal focus on ferreting out logrolls by use of logic. *E.g.*, Carney v. Att'y Gen., 850 N.E.2d 521, 524–25 (Mass. 2006) ("[T]he aggregation of these two very different sets of laws into one petition that the voter must accept or reject would operate to deprive voters of their right . . . to enact a uniform statement of public policy through exercising a meaningful choice in the initiative process.").

makeup of voter preferences.[148] Any initiative proposal can be reduced to multiple decision points for voters, and courts can imagine an infinite number of coherent voting blocs where a rational voter might prefer that the initiative be segmented somehow.[149] Additionally, this approach is wildly over-inclusive of problematic logrolls because it also kills well-crafted initiatives that reflect true majority preferences.[150]

Two illustrations are helpful. In *Right of Citizens to Choose Health Care Providers*, the Florida Supreme Court reviewed an initiative to create a right to health care choice for patients.[151] It said: "The right of every natural person to the free, full and absolute choice in the selection of health care providers, licensed in accordance with state law, shall not be denied or limited by law or contract."[152] The Florida Supreme Court held that the phrase "shall not be denied or limited by law *or* contract" violated the single-subject rule because it required health care choice in both government regulation and by private agreement, which might segment voting blocs.[153] The court explained:

> The proposed amendment combines two distinct subjects by banning limitations on health care provider choices imposed by law and by prohibiting private parties from entering into contracts that would limit health care provider choice. The amendment forces the voter who may favor or oppose one aspect of the ballot initiative to vote on the health care provider issue in an "all or nothing" manner. Thus, the proposed amendment has a prohibited logrolling effect and fails the single-subject requirement.[154]

This analysis (which is representative of how courts strictly apply the logrolling framework) illustrates both the level-of-extraction and over-inclusivity problems. Regarding the level of extraction, there are various other equally logical ways to read the initiative singularly. For example, if viewed as a categorical ban on limiting health care choice, then voters who oppose health care choice could express their preferences fully and those who support it could too. Moreover, by using two wholly imaginary voting blocs to break the initiative into two subjects, it is unclear how any initiative could survive and what rule-of-decision is limiting or guiding courts.

Regarding the over-inclusivity problem, the court's analysis illustrates that the framework is not well tailored to identify problematic logrolls.

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148. Cooter & Gilbert, *supra* note 8, at 710 (noting all doctrinal tests "simply rephrase the original problem without adding much to its solution").

149. *Id.*

150. *See* Matsusaka & Hasen, *Aggressive Enforcement*, *supra* note 24, at 405.

151. Advisory Op. to the Att'y Gen. re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563, 565 (Fla. 1998) (per curiam).

152. *Id.*

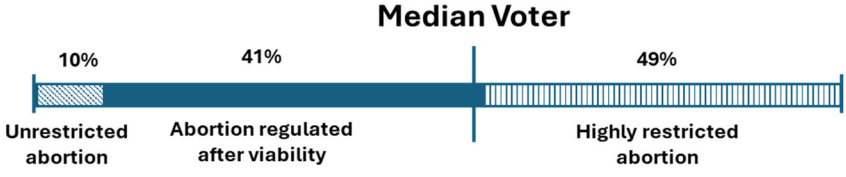
153. *Id.* at 566 (emphasis added).

154. *Id.*

Just because one imaginary voting bloc will be faced with an "all or nothing choice" does not mean that the initiative presents a problematic logroll. Indeed, in some cases, it appears that this all-or-nothing application of the logrolling framework is likely to thwart democratically desirable initiatives by mislabeling them as logrolls.

To illustrate this further, consider the first sentence of Florida's 2024 abortion rights amendment: "No law shall prohibit, penalize, delay, or restrict abortion before viability or when necessary to protect the patient's health, as determined by the patient's healthcare provider."[155] Imagine ten percent of Floridians want unrestricted access to abortion, forty-one percent want access to abortion but believe strongly that it should be restricted after viability, and the remaining forty-nine percent want to retain the existing highly restrictive abortion law that limits access even before viability.[156] The logrolling framework suggests that this initiative is problematic because the swing voting bloc of ten percent is now required to accept the post-viability provision that only forty-one percent of voters truly want. Yet, it seems plausible, and democratically desirable, that the small minority of voters (ten percent) who prefer unrestricted access to abortion would rather shift towards the forty-one percent who insist on post-viability regulation than join the forty-nine percent who would retain highly restricted access to abortion. The below chart illustrates this.

Figure 2.



In this scenario, it is true that the ten percent bloc cannot accurately register their precise first-order preferences when voting on the initiative,[157]

155. *Amendment to Limit Government Interference with Abortion*, FLA. DIV. ELECTIONS, https://initiativepetitions.dos.fl.gov/InitiativeForms/Fulltext/Fulltext_2307_EN.pdf [https://perma.cc/HB2X-EPYP].

156. For this example, I focus on how the court's analysis might strike a proposal that has majority support. In reality, Florida's initiative amendment process requires supermajority support (sixty percent). *See* FLA. CONST. art. XI, § 5(e).

157. As the Florida Supreme Court has repeatedly argued, the initiative is problematic because some group of voters are forced to vote on an initiative that contains some of their preferences but not all of them in a "take-it-or-leave-it fashion." For example, in *Advisory Opinion to the Attorney General, re Amendment to Bar Government from Treating People Differently Based on Race in Public Education*, 778 So. 2d 888, 890 (Fla. 2000) (per curiam), the court rejected an initiative to prohibit affirmative action because it identified five prohibited classifications—"race, sex, color, ethnicity, [and] national origin"—and prohibited preferential treatment based on those classifications in "public education, employment, or contracting." The court held that by combining classifications and subjects of regulation, the initiative combined numerous subjects into one initiative. *Id.* at 893;

but the initiative is not truly a logroll because although it will aggregate voting blocs to pass (10% + 41%), it accurately reflects the preferences of the median voter (+ 1).

Over-inclusivity draws attention to another problematic feature of the logrolling framework. When courts apply the framework, they understand the core evil to be the aggregation of public-regarding voting blocs (like the two pro-choice groups voting together in the example above). Although this is formally a logroll, it is important to distinguish it from a different, more concerning form. The textbook form of problematic logrolling occurs when local or private groups exchange votes to obtain benefits that they disproportionately enjoy at the expense of the broader public.[158] The classic example is a legislative district that wants money from the state for an improvement that benefits only residents of that district. The representative engages in logrolling when she trades votes with a representative from another district who is also looking for an insular improvement. In that way, the state expends funds based on the self-interest of the individual district representatives rather than an assessment of the state's overall needs and resources.

The aggregation of public-regarding voting blocs on a statewide referendum for generalized policy is different. In that case, separate voting blocs represent preferences about the best generalized statewide policy. These voting blocs might aggregate because a paired policy sufficiently overlaps with their respective preferences, or they are comfortable accepting the other side's general statewide proposal in exchange for realizing their own general policy. In either scenario, voters are weighing whether existing statewide policy would be improved by the pairing of two or more statewide policies.

This is different from the private/local-interest vote trading described above. Private/local-interest vote trading is inherently disconnected from statewide considerations and is driven by the fact that the substance of the proposal provides discrete entitlements at a discount.[159] Conversely, the aggregation of statewide voting blocs on generalized laws is inherently connected to statewide

see also In re Advisory Op. to the Att'y Gen.—Save Our Everglades, 636 So. 2d 1336, 1341 (Fla. 1994) ("We note that the initiative embodies precisely the sort of logrolling that the single-subject rule was designed to foreclose. There is no 'oneness of purpose,' but rather a duality of purposes. One objective—to restore the Everglades—is politically fashionable, while the other—to compel the sugar industry to fund the restoration—is more problematic. Many voters sympathetic to restoring the Everglades might be antithetical to forcing the sugar industry to pay for the cleanup by itself, and yet those voters would be compelled to choose all or nothing. The danger is that our organic law might be amended to compel the sugar industry to pay for the cleanup singlehandedly even though a majority of voters do not think this wise or fair.").

158. *See* Lynn A. Baker, *Direct Democracy and Discrimination: A Public Choice Perspective*, 67 CHI.-KENT L. REV. 707, 721–22 (1991); LYNN A. BAKER & CLAYTON P. GILLETTE, LOCAL GOVERNMENT LAW 275, 277–81 (4th ed., Thomson Reuters/Found. Press 2010) (2004).

159. Indeed, what drives logrolling in this context is the ability for local constituencies or private associations to obtain discounted and discrete benefits that are subsidized by the statewide community.

considerations even if it reflects a suboptimal improvement on statewide policy. The logrolling framework does not distinguish between these two forms of logrolling even though they present very different levels of concern.[160]

Because of these shortcomings, the logrolling framework has had a deleterious effect on single-subject rule adjudication. On the one hand, it has emboldened aggressive judicial review of initiatives by ostensibly operationalizing the rule as a strict ban on logrolling. On the other hand, it has not provided any clarity or predictability, and it is ill-suited to achieving the stated objective of ferreting out logrolls, riders, and confusion. Indeed, courts have reached all manner of conflicting results when applying the logrolling framework, which has led to loud and explicit frustration from the bench, bar, and academy.[161]

Judges themselves are some of the loudest critics of the rule's incoherence and randomness. Justice Linde of the Oregon Supreme Court concluded that the rule is "so meaningless that it is difficult to avoid *ad hoc* . . . reactions to the merits of individual measures."[162] Justice Coats of the Supreme Court of Colorado asserted that "[e]ven a cursory review of this court's . . . jurisprudence reveals an unmistakable lack of uniformity in our treatment of the single-subject requirement."[163]

Legal scholars universally agree. Professors Michael Gilbert and Robert Cooter conclude that "[d]espite 150 years of litigation in the legislative setting and, more recently, the initiative context, the abstraction problem remains

160. To illustrate this, consider an extreme example. Imagine the following initiative: (1) abortion shall be lawful; and (2) the death penalty shall be unlawful. If this was approved by voters, we can theorize two scenarios. First, the abortion-rights voting bloc tightly overlaps with the bloc opposing the death penalty, and that conglomerate group is in the majority. In that case, there is no actual logrolling problem because the changes in state policy reflect how a majority of voters would have responded to the issues separately.

Another scenario is that the abortion-rights bloc does not overlap with the anti-death penalty bloc; both groups are individually in the minority, but they can team up to form a majority. In this scenario, when the initiative passes, there might be a logrolling problem because it's unclear whether a majority would support either policy if presented to them separately. However, it is clear from this scenario that a majority of voters prefer state policy to allow abortion but prohibit the death penalty *more* than retaining the status quo (which outlaws abortion and allows the death penalty). Thus, even the worst-case scenario represents an improvement in the alignment between majoritarian preferences and existing state policy. To be sure, this improvement might not be the perfect alignment because a decisive voting bloc may have voted differently if the policies were separated. But, there has nevertheless been an overall improvement in alignment, and this improvement is fundamentally different than what transpires with private/local vote trading. Private/local vote trading includes situations where the state as a whole is disadvantaged by a coalition of private/local voting blocs that have obtained discounted benefits not in the state's interests.

161. *See generally* Hasen, *supra* note 6 (illustrating conflicting results and calling for repeal of rule).

162. Or. Educ. Ass'n v. Phillips, 727 P.2d 602, 612 (Or. 1986) (Linde, J., concurring).

163. Ausfahl v. Caldara (*In re* Title, Ballot Title & Submission Clause for 2005–2006 # 74), 136 P.3d 237, 244 (Colo. 2006) (Coats, J., dissenting).

unmanageable. There is no workable theory of interpretation for the single subject rule."[164] Professor Lowenstein has likewise concluded "that what constitutes a 'subject' is a matter of choice based on considerations of convenience, rather than some objective demarcation of the human mind."[165] Professor Anne Campbell concluded that the single-subject rule is so indeterminate that "the initiative power is at the mercy of the court[s]."[166] Professor Richard Briffault concluded that the jurisprudence was "deeply problematic."[167] I am aware of no legal scholar who concludes that single-subject rule jurisprudence has a discernible through line that might provide a predictable rule of decision for courts.[168] Nor do there appear to be any studies suggesting that strict application of the rule produces beneficial effects notwithstanding predictability concerns.[169]

Indeed, leading political scientists studying the initiative have shown that the single-subject rule is a jurisprudential failure and is mostly a conduit for judges to squash the initiatives that they personally dislike on the merits.[170] In a 2010 study, Professors John Matsusaka and Richard Hasen studied voting behavior of appellate court judges in single-subject rule cases.[171] They gathered data on more than seven hundred individual votes in more than one hundred and fifty different cases between 1997 and 2006.[172] After accounting for several factors, their analysis finds that when judges aggressively enforce the single-subject rule, the best predictor of how they will vote is their degree of political

164. Cooter & Gilbert, *supra* note 8, at 710.

165. Lowenstein, *supra* note 119, at 938–39.

166. Anne G. Campbell, *In the Eye of the Beholder: The Single Subject Rule for Ballot Initiatives*, *in* THE BATTLE OVER CITIZEN LAWMAKING: A COLLECTION OF ESSAYS 131, 163 (M. Dane Waters ed., 2001).

167. Briffault, *supra* note 142, at 1630. Critiques of the rule are not new. As early as 1890, scholars bemoaned the courts' inability to make sense of the rule. ASHTON R. WILLARD, A LEGISLATIVE HANDBOOK RELATING TO THE PREPARATION OF STATUTES WITH A CHAPTER ON THE PUBLICATION OF STATUTES 29–31 (Cambridge, Riverside Press 1890) (concluding that the rule is unclear); *see* CHESTER LLOYD JONES, STATUTE LAW MAKING IN THE UNITED STATES 46–48 (1912) ("The whole field of unity of subject is one in which the courts have arrived at no definite rules."). Indeed, in 1837, delegates to the Pennsylvania Convention predicted the functional nonjusticiability of these provisions. 9 AGG, *supra* note 14, at 38–39.

168. Perhaps the closest to an analytical or doctrinal defense of these provisions is Gilbert's 2011 empirical study. *See* Gilbert, *Does Law Matter?*, *supra* note 24, at 355–56 ("I use a new methodology to determine the correct legal outcomes for a sample of single-subject cases. The data suggest that both law and ideology influence judicial decision making in this area."). *But see* Matsusaka & Hasen, *Aggressive Enforcement*, *supra* note 24, at 406–07 (criticizing that study).

169. Matsusaka & Hasen, *Aggressive Enforcement*, *supra* note 24, at 406 ("We are unaware of any empirical evidence that the single subject rule in practice has reduced complexity or alleviated voter confusion."). To be sure, there have been compound initiatives that appear problematic. *See* PHILIP L. DUBOIS & FLOYD FEENEY, LAWMAKING BY INITIATIVE: ISSUES, OPTIONS, AND COMPARISONS 143–44 (1998).

170. *See* Matsusaka & Hasen, *Aggressive Enforcement*, *supra* note 24, at 399–400.

171. *Id.* at 407.

172. *Id.* at 407, 409.

alignment "with the substance of the initiative."[173] They conclude that "subjective considerations" play a "huge" role when courts strictly apply the single-subject rule.[174] Indeed, they emphasize that "[w]hile many previous studies [in other areas of law] have found a connection between a judge's political inclinations and his or her decisions, in most cases those effects have been modest. In contrast, we find that political inclinations play a huge, perhaps dominant role, in single subject decisions."[175]

Despite such a damning record and the evidence proving that the single-subject rule is not well suited to strong judicial enforcement, courts continue to aggressively apply the logrolling framework. This behavior by courts is especially curious because nothing in the text of these provisions requires the courts to apply the rule in this way. Why not soften the standard of review to reduce error? One doctrinal explanation is that, notwithstanding the rule's thin text, courts perceive the history of the rule to require that it function as a general and strict ban on logrolling.[176] In that case, courts are not at liberty to simply ignore the rule (for better or worse).[177] Alternatively, courts might in good faith believe that logrolling, riding, and voting bloc aggregation are normatively bad for the initiative and that the single-subject rule is an effective solution.[178] I now turn to why both of these are weak and unnecessary assumptions by courts.

III. FORGOTTEN AMERICAN HISTORY OF THE SINGLE-SUBJECT RULE

To my knowledge, no one has studied why the states began to revive the single-subject rule in the 1840s after one hundred and forty years of dormancy.[179] This gap is curious. By the time New Jersey adopted the first single-subject rule in 1844, the Republic was more than sixty-eight years old, and the states had collectively passed tens of thousands of laws and held more than fifty-six constitutional conventions.[180] Yet the single-subject rule was (we are told) absent from American public law until New Jersey decided it was a good idea

173. *Id.* at 416.

174. *Id.* at 415.

175. *Id.* at 417.

176. *See, e.g.*, Carney v. Att'y Gen., 850 N.E.2d 521, 530 (Mass. 2006) ("We cannot overlook the context in which the relatedness amendment [single-subject rule] was agreed to.").

177. *E.g.*, *id.* at 528.

178. *E.g.*, In re Initiative Petition No. 314, 625 P.2d 595, 603 (1980) (asserting a normative basis for using the rule to prevent logrolling and promote clarity without reference to history).

179. *Cf.* Evans & Bannister, *supra* note 144, at 152–53 ("[M]ost states have interpreted the meaning of the rule without reference to a historical record establishing the rule's true purposes.").

180. *See* DINAN, *supra* note 49, at 7–9 (listing conventions by year). As far as I know, there is no accurate tabulation of the number of statutes adopted by state legislatures for this period. However, my manual review of Pennsylvania's session laws from 1843 reveals 174 adopted statutes and 64 in 1800. From these totals, I estimate that the thirteen original states/colonies adopted at least twenty thousand laws from 1702 to 1844.

to incorporate Queen Anne's 1702 instruction into its constitution.[181] It then spread fast: sixteen adoptions by the 1850s. These circumstances beg for a more contextual investigation.

To remedy this, I draw on a neglected set of sources: the debates of all known state constitutional conventions where the single-subject rule was debated, reformed, and adopted into American public law.[182] The states have collectively held 233 conventions since 1776.[183] We have debate records for at least 115 of those.[184] My review reveals that sixty-three of those debates addressed the single-subject rule in some fashion. Appendix B lists those debates and citations to relevant portions of the debates.

My findings provide new insight and understanding regarding the single-subject rule and suggest a more limited orientation for the rule than courts assume. In short, the states first adopted the rule as a constraint on legislatures and in response to two very specific and contextual problems: (1) overt distortion of the statewide legislative process by the commodification of private and local laws; and (2) the eighteenth-century codification movement's desire to facilitate the rule of law through well-catalogued and accessible statutory codes. These two issues were connected. The main reason statutes were inaccessible was their random and exponential multiplication through special legislation.

In this Part, my goal is to substantiate these as the two dominant themes that animated the rule's adoption and migration between states. I do not make any claims regarding the original meaning of particular single-subject rule provisions in specific cases. My more modest goal is to challenge the dominant judicial assumption that the rule's generic history requires courts to apply it as a strict prohibition on all imaginable forms of logrolling. This presumption, I argue, should be questioned on a state-by-state basis in just about every state because it is not the reason why the rule was first imported into state constitutional law in either the legislative or initiative context.[185]

The rule was first engrafted into state constitutional law as part of a series of reforms designed to wrangle state legislation away from dispensing private and local privileges and toward generalized laws devised in furtherance of the

181. *See supra* Section II.A. At the time this represented almost half the states (16/33). *See* Gilbert, *supra* note 19, at 822. There is some evidence that the rule existed in a non-constitutional form in legislative process rules. *See* 9 AGG, *supra* note 14, at 35 (describing rule of the Pennsylvania senate that was evaded and then abandoned). It also appears that Georgia included an analogous provision in its 1798 Constitution: "nor shall any law or ordinance pass, containing any matter different from what is expressed in the title thereof." GA. CONST. of 1798, art. I, § 17. This provision is often viewed as a pure title requirement without a single-subject limitation, but it was adopted because of an infamous instance of private-interest riding where property speculators secured an undetected land grant. *See* COOLEY, *supra* note 109, at 172 n.2.

182. *Cf.* DINAN, *supra* note 49, at 2–9 (describing these conventions and sources as valuable for other issues in American public law).

183. *Id.* at 7 (examining 1776–2005).

184. *See id.* at 1 (including Missouri's 1943 debates discovered after Dinan's survey).

185. For my own part, I am conducting that analysis for the state of Florida.

statewide public good. The rule's historic gravamen was vote-trading and riding in the context of special legislation, not aggregation or conglomeration of public-regarding voting blocs on generalized state laws. Indeed, the history suggests that robust bargaining in the making of generalized laws was the exact result that delegates hoped to achieve by removing special legislation from the lawmaking market.

A. *Logrolling in the Era of Local and Private Laws*

The principal reason that states first adopted the single-subject rule was to address the problem of special legislation in state legislatures. This Section briefly describes the problem of special legislation and then demonstrates that the states adopted the single-subject rule in direct response to this problem.

1. The Problem and Prevalence of Special Legislation

To appreciate the single-subject rule's origins, it is necessary to understand how state legislation has changed since the early nineteenth century. Contemporary state legislation is presumptively general and public in nature.[186] That is, state legislation does not directly resolve discrete private claims nor distribute specific private entitlements.[187] Those functions of government are now mostly handled by courts and executive agencies pursuant to the policy judgments and generalized categories expressed in public legislation.

Things were very different in the 1800s.[188] Early state legislatures spent most of their time voting on "private," "local," or "special laws."[189] Those laws applied only to specific parties or locales.[190] Some special laws were essentially adjudicative.[191] Legislative divorce decrees, for example, were the product of an individualized petition for divorce that was resolved by an act of legislation setting the terms and grounds for a particular divorce.[192] Early state legislatures

186. *See* Evan C. Zoldan, *Reviving Legislative Generality*, 98 MARQ. L. REV. 625, 630–32 (2014) (confirming this but drawing attention to concerning modern tactics to make laws special); WILLIAMS, *supra* note 16, at 277–79.

187. *See* Zoldan, *supra* note 186, at 632, 634.

188. *See* Robert M. Ireland, *The Problem of Local, Private, and Special Legislation in the Nineteenth-Century United States*, 46 AM. J. LEGAL HIST. 271, 278 (2004).

189. *See* WILLIAMS, *supra* note 16, at 278 ("By the middle of the nineteenth century, many state legislatures were almost entirely consumed with the enactment of special and local laws."). Delegates to Indiana's 1850 constitutional convention estimated that two-thirds of all laws adopted since statehood were special or local in nature. 2 FOWLER, *supra* note 16, at 2043. Scholars have subsequently estimated that ninety percent of all laws adopted by the Indiana legislature in 1849 and 1850 were special laws. Horack, *supra* note 16, at 115–16.

190. *See* Ireland, *supra* note 188, at 271.

191. *See id.*

192. *E.g.*, Act of Apr. 22, 1829, No. 154, 1829 Pa. Laws 244 (noting petition by wife and grounds of abandonment and then: "*Be it enacted by the Senate and House of Representatives of the commonwealth of Pennsylvania in General Assembly met, . . .* [t]hat the marriage contract entered into between the said Martin Overfield and Susanna his wife, be and the same is hereby declared to be null and

heard thousands of these petitions.[193] Other acts awarded state benefits to particular individuals (often war veterans),[194] settled specific probate matters,[195] resolved guardian issues for minors,[196] quieted title to real property,[197] administered local government affairs,[198] and all manner of other special decrees.[199]

One notable form of special legislation was the case-by-case incorporation of businesses.[200] States did not initially have generalized incorporation laws administered by state agencies.[201] Instead, private parties petitioned the legislature for incorporation on an individualized basis.[202] The legislature would then pass laws that created the entities and set the terms of incorporation.[203] As economist and historian John Wallis has shown, acts of special incorporation generally included significant economic entitlements granted from the state to the corporation's owners.[204] These laws were structured to extract future state revenues from the corporation in exchange for some state-granted private privilege, such as a monopoly, cheap state capital (usually through the issuance of public debt or state purchase of corporate shares), and "favorable access to markets or courts."[205]

Special legislation was destructive of the legislative process.[206] For one thing, special legislation raised the costs of entry for those seeking to vindicate certain rights or access public goods.[207] The system inherently advantaged the well-connected and wealthy, who could obtain the sympathetic ears of legislators.[208] More importantly, it heightened incentives for legislators to trade

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void . . . *[p]rovided*, that nothing herein contained shall be construed to render illegitimate the children of said marriage.").

193. *See* Glenda Riley, *Legislative Divorce in Virginia, 1803-1850*, 11 J. EARLY REPUB. 51, 51, 61, 64, 66 (1991); Simeon E. Baldwin, *Legislative Divorces and the Fourteenth Amendment*, 27 HARV. L. REV. 699, 700 (1913) (collecting data regarding legislative divorces in the late nineteenth century and concluding that "[t]he number of legislative divorces granted in the various states has been very large" with Delaware alone granting more than 300 legislative divorces between 1889 and 1897).

194. *E.g.*, Act of Feb. 17, 1827, No. 26, 1827 Pa. Laws 40 ("Be it enacted . . . [t]hat the state treasurer be and he is hereby authorised and required to pay to George Huffman . . . or to his order, two hundred dollars in full compensation for services rendered during the revolutionary war.").

195. *E.g.*, Act of Apr. 14, 1827, No. 169, 1827 Pa. Laws 396.

196. *E.g.*, Act of Mar. 27, 1827, No. 69, 1827 Pa. Laws 145.

197. *E.g.*, Act of Feb. 24, 1837, No. 21, 1837 Pa. Laws 22.

198. *E.g.*, Act of Mar. 27, 1827, No. 71, 1827 Pa. Laws 147.

199. *See* Ireland, *supra* note 188, at 274.

200. *See* John Joseph Wallis, *Constitutions, Corporations, and Corruption: American States and Constitutional Change, 1842 to 1852*, 65 J. ECON. HIST. 211, 215 n.9 (2005).

201. *See id.* at 215.

202. *Id.*

203. *Id.*

204. *Id.* at 240–41.

205. *Id.* at 240.

206. For examples of contemporary recognition of these problems, see *supra* note 17.

207. *See* Ireland, *supra* note 188, at 279.

208. *Id.* at 287.

votes for personal gain or local advantage.[209] Professor Justin Long summed up the legislative dynamics this way: "Naturally, the quantity of 'private bills' and the easy advantages they offered to well-connected supplicants attracted pernicious influences to the state houses."[210] The deeper conceptual problem was that legislators were not legislating for the public good—their energy and resources were exhausted by large dockets of special legislation, and their motivations in legislating were to benefit their patrons and themselves, rather than the public.[211] Within this context, vote trading, riding, and logrolling for private gain and local advantage became the norm.[212]

Consider, for example, Indiana's infamous "Mammoth Bill" of 1836.[213] In 1836, there was great speculation in Indiana about the prosperity that internal improvements would bring to the particular towns and counties where they were constructed.[214] Thus, legislators competed for projects in their districts.[215] The first draft of the Improvement Bill included only two canal projects.[216] This upset legislators from excluded areas, who responded by working to include their pet projects in exchange for their support of others.[217] By final passage, the bill had expanded to encompass eight large projects, including multiple new canals, a railroad, and a turnpike.[218] Moreover, the Bill gave certain

209. *Id.* at 273–74 (explaining how special legislation was commodified by legislators and created a strict culture of vote-trading regarding special projects); Mandy L. Cooper, *Too Big to Fail? Families, Internal Improvement, and State Government in Antebellum North Carolina*, 41 J. EARLY REPUBLIC 349, 350–51 (2021) (arguing state improvement acts were the result of wealthy elites extracting specific legislative backing of individual corporations).

210. Justin R. Long, *State Constitutional Prohibitions on Special Laws*, 60 CLEV. ST. L. REV. 719, 726 (2012); *see* DINAN, *supra* note 49, at 69–70.

211. Ireland, *supra* note 188, at 279–80.

212. *Id.* at 273 (explaining that practice was so entrenched that it was essentially an "implied promise" that legislators would support each other's special legislation bills). *See generally* John Majewski, *The Political Impact of Great Commercial Cities: State Investment in Antebellum Pennsylvania and Virginia*, 28 J. INTERDISC. HIST. 1 (1997) (illustrating how culture and pervasiveness of vote-trading on private and local entitlements drove various critical projects). In other doctrinal contexts, courts have explicitly acknowledged the direct connection between special legislation and logrolling. *E.g.*, Maple Run at Austin Mun. Util. Dist. v. Monaghan, 931 S.W.2d 941, 945 (Tex. 1996) ("The purpose of Section 56 [prohibition on special legislation] is to 'prevent the granting of special privileges and to secure uniformity of law throughout the State as far as possible.' . . . In particular, it prevents lawmakers from engaging in the 'reprehensible' practice of trading votes for the advancement of personal rather than public interests." (quoting Miller v. El Paso County., 150 S.W.2d 1000, 1001 (Tex. 1941))).

213. *See* REGINALD C. MCGRANE, FOREIGN BONDHOLDERS AND AMERICAN STATE DEBTS 129–30 (1935); Act of Jan. 27, 1836, ch. 2, 1836 Ind. Acts 6.

214. *See* MCGRANE, *supra* note 213, at 128–29.

215. *Id.* at 129–30.

216. *See* 1 FOWLER, *supra* note 16, at 678–79 (statement of Mr. Kilgore).

217. *See id.*

218. LEE NATHANIEL NEWCOMER, THE WABASH & ERIE CANAL 19–20 (1936) (M.A. thesis, Ohio State University), http://rave.ohiolink.edu/etdc/view?acc_num=osu1392395243 (on file with the *Iowa Law Review*).

private companies the special privileges regarding key projects using state funds on favorable financing terms.[219]

The Indiana bill is now synonymous with the dangers of logrolling in state legislatures.[220] The Bill vastly overcommitted to projects that did not benefit the whole state, and the private companies named in the Bill embezzled millions of dollars.[221] Ultimately, the Bill contributed significantly to driving Indiana into bankruptcy.[222] But Indiana's experience was not unique. In 1837, nine states (roughly thirty-six percent of those then-admitted to the Union) defaulted on their debts.[223] These legislative failures caused widespread popular outrage, and the country experienced a wave of state constitutional conventions focused principally on addressing the problem of special legislation.[224] It was within this very dramatic and focused context that the states resurrected the single-subject rule after one hundred and forty years of dormancy.

2. The Single-Subject Rule and the Campaigns Against Special Legislation

Antebellum states adopted various measures aimed at ending special legislation, including general incorporation, outright bans on special legislation, limitations on public debt, and restrictions on state-ownership in private companies.[225] The key to properly understanding America's history with the single-subject rule is to recognize that it was first embraced as one piece of this bundle of reforms designed to end special legislation and its attendant private spoils system.[226] Of course, the rule can have broader consistent applications, but the principal reason for which states first adopted it was to help combat special legislation. More specifically, when delegates discussed

219. *See id.*; 1 FOWLER, *supra* note 16, at 675–78; 1836 Ind. Acts 16–20.

220. Jonathan L. Marshfield, *Popular Regulation? State Constitutional Amendment and the Administrative State*, 8 BELMONT L. REV. 342, 354–55 (2021); Evans & Bannister, *supra* note 144, at 94–96.

221. *See id.*

222. Lee Newcomer, *A History of the Indiana Internal Improvement Bonds*, 32 IND. MAG. HIST. 106, 107 (1936).

223. *Id.* at 111–12.

224. John Dinan, *Explaining the Prevalence of State Constitutional Conventions in the Nineteenth and Twentieth Centuries*, 34 J. POL. HIST. 297, 316 (2022). For example, in 1849, in the lead up to Indiana's 1850 Constitutional Convention, Governor Whitcomb argued that "[i]f calling a convention to amend the constitution were productive of no other result than furnishing an effectual remedy for this growing evil [of special and local legislation], it would be abundantly justified . . . ." City of Hammond v. Herman & Kittle Props., Inc., 119 N.E.3d 70, 79 (Ind. 2019) (quoting William W. Thornton, *The Constitutional Convention of 1850*, *in* REPORT OF THE SIXTH ANNUAL MEETING OF THE STATE BAR ASSOCIATION OF INDIANA HELD AT INDIANAPOLIS, JULY 8 AND 9, 1902, at 152, 165 (1902)).

225. *See* CHARLES CHAUNCEY BINNEY, RESTRICTIONS UPON LOCAL AND SPECIAL LEGISLATION IN STATE CONSTITUTIONS 9, 128–32 (Philadelphia, Kay & Brother 1894).

226. *See generally id.* (offering one of the best contextual perspectives on the single-subject rule).

logrolling and riding, they generally had in mind special legislation.[227] I offer five main arguments in support of this claim.

First, the delegates at the earliest conventions discussing the single-subject rule said so explicitly. Although New Jersey was the first state to adopt a general single-subject rule provision in 1844, it was not the first state to deeply consider such a provision. The 1837 Pennsylvania constitutional convention engaged in extensive deliberation regarding the single-subject rule, although they ultimately rejected it by just five votes.[228] Delegates proposing the single-subject rule argued that it would address the commodification of special legislation that was distorting the legislative process (particularly special incorporation and state funding of discrete local projects).[229] Indeed, the main concern was that the legislature "huddl[ed] every species of legislation into one act" without regard to the state as a whole.[230] To emphasize this, delegates gave several examples of improper legislation from past sessions that the single-subject rule was intended to prevent.[231] Those examples all involved the random combination of various special laws that were the product of trading private

227. Indeed, reading the debates, one gets the impression that logrolling was special legislation and special legislation was logrolling. *See* Evans & Bannister, *supra* note 144, at 99–100 (describing sentiment in 1850 that "private legislation and logrolling [were] twin evils").

228. I'm unaware of any source that has identified this debate at the 1837 convention regarding the single-subject rule. 9 AGG, *supra* note 14, at 17–40 (vote was 55 to 60). The proposed provision read: "The legislature shall not combine in any bill any two or more distinct and separate objects of legislation, or any two or more distinct appropriations to distinct objects, except appropriations to works belonging to, and carried on by, the commonwealth. And the object or subject of each bill or act shall be distinctly stated in the title thereof." *Id.* at 17.

229. *See id.* at 22 ("With regard to the amendment [single-subject rule], . . . [i]t would prevent that ruinous and corrupt system called log-rolling, which had been so often and so justly complained of. . . . A few years ago the legislature passed a bill to open a road in Bedford county, and in one of the sections of the bill there was a provision, divorcing a man from his wife. . . . [I]t had been quite usual to pass laws . . . incorporating some five or six companies for different purposes. Now, this was all entirely improper."); *id.* at 30 ("[D]id we not see the legislature continually uniting dissimilar objects in one bill, some being for good purposes, while others were for bad? . . . Gentlemen would, probably, recollect the bill that was before the legislature, to authorize certain church-wardens to sell a church in Morgantown, Berks county, and to which were tacked divorces, bills for the incorporation of a great number of companies for different purposes, and among the rest one for the manufacturing of edge tools . . . ."); *id.* at 27 (offering a clarifying proposal to focus more effectively on problems with special legislation that would read: "No act of incorporation shall be passed by the legislature, unless public notice to be prescribed by law shall have been given for two months, and in no case shall one law contain more than one act of incorporation.").

230. *Id.* at 22.

231. *Id.* at 21 ("[S]uppose you were about to grant aid to, or to charter different companies, for the purpose of making internal improvements . . . ?"); *id.* at 22 ("If it was intended to prevent the granting of more charters than one in a single bill, why not say so[?]"); *id.* (road construction in particular town, divorce, and multiple incorporations); *id.* at 24 (joining petitions for particular real estate sales); *id.* at 30 (divorce, real estate sales, incorporations); *id.* at 33 (same).

and local advantage.[232] Conversely, opponents of the rule offered hypotheticals showing how the rule would not "reach its object" because it would also invalidate general legislation, which was presumed to be an obviously bad outcome.[233]

That said, the main predicate for Pennsylvania's 1837 single-subject rule proposal was the legislature's recent adoption of its own Mammoth Improvement Act.[234] That Act was a tipping point in popular outcry against legislative dysfunction.[235] Beginning in 1825, after New York's Erie Canal cut Philadelphia out of western trade routes, "Philadelphia's mercantile and manufacturing elite" pressured the state government to build a competing route connecting Philadelphia with Pittsburgh and the Ohio River (the Mainline).[236] However, legislators from those two cities constituted only nineteen percent of the legislature, which meant they needed support from rural districts.[237] In exchange for supporting the Mainline, rural districts demanded their own internal improvements, mostly in the form of costly and inefficient canal branch lines.[238] The resulting logrolling was extreme.[239] Fifty-five percent of state expenditures on the Mainline were for branch lines.[240] Those lines were unprofitable and unpopular by 1834.[241] They contributed greatly to the state's default in 1842.[242]

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232. *See supra* note 231. The idea was that combining special laws is strong circumstantial evidence of logrolling because of how special legislation rewarded individual beneficiaries and legislators. *See* Evans & Bannister, *supra* note 144, at 150 (making this point about combinations generally).

233. *See* 9 AGG, *supra* note 14, at 26–27 (opposing the rule because it could jeopardize even general laws: "It seemed to him that the amendment did not reach its object. It provided, that every law embracing two distinct subjects should be void. Suppose, then, a general law should contain one section that was inconsistent with its objects, the whole law would be void."); *id.* at 25 ("Suppose the legislature should revise the penal code, and say that the punishment for murder should be so and so; the punishment for larceny different, and the punishment for other crimes different again from that, would or would not the gentleman's amendment declare that those subjects were proper . . . ?"). One delegate astutely noted that a single-subject rule might be under-inclusive in stopping logrolling because of level-of-extraction problems. *See id.* at 23 (proposing three appropriations for specific bridges and suggesting that they would all satisfy the single-subject rule but would be very likely to induce logrolling).

234. *See id.* at 22–23, 30; OPINIONS AND ACTS OF JOSEPH RITNER, ON ALL MEASURES OF PUBLIC IMPORTANCE SINCE HIS INAUGURATION, EXEMPLIFIED BY COPIES OF, AND EXTRACTS FROM HIS ADDRESSES, MESSAGES, VETOES, AND PROCLAMATIONS 11–16 (n.p. 1838) [hereinafter RITNER] (describing the veto of the "Mammoth Improvement Bill of 1837").

235. *See* Majewski, *supra* note 212, at 7–9.

236. *Id.* at 4.

237. *Id.* at 6.

238. *Id.* at 6–7.

239. *Id.* at 6–8.

240. *Id.* at 7.

241. *See id.* at 8–10.

242. *Id.* at 10.

It was within this context that the Pennsylvania legislature adopted the Mammoth Internal Improvement Act of 1836.[243] The Act was the epitome of the logrolling schemes that characterized the Mainline's failures.[244] It allocated forty-five million in state funds to nine different local canal and road projects of all sizes and locations and to four public-private railway projects.[245] The Act also included special incorporation provisions that granted private firms "large capitals" from the state for railroads.[246] The Act was passed by the Pennsylvania legislature by a two-thirds majority, but the public was unhappy, and the governor vetoed the bill.[247] In his veto message, the Governor identified logrolling fueled by local and private interests as a main concern:

> True economy demands, that the main lines of our canals and rail ways, now under contract . . . shall be pushed on with the least possible delay . . . . But it seems to me, that this bill is calculated materially to retard their progress, by dissipating the funds of the Commonwealth, upon a great variety of objects which, however meritorious in themselves, and interesting as local improvements, are not part of the main lines, but lay the foundation for a vast increase of public debt.[248]

The Governor further explained that the bill was problematic because "[i]t bestows on capitalists, and speculators, the money which is the property of the whole people, thereby enriching individuals and sections to the injury of the rest of the community."[249]

Delegates at the 1837 Convention shared these sentiments and viewed the single-subject rule as a way to avoid similar problems in the future.[250] When the rule was introduced at the convention, its sponsor emphasized that it was designed principally to prevent the bundling of multiple local improvement projects and the chartering or sponsoring of multiple different private improvement corporations.[251] One of the sponsor's main arguments was that the rule would eliminate the dynamics that generated the Mammoth

243. *See* 9 AGG, *supra* note 14, at 22, 27, 30 ("[A] bill was passed, making appropriations to an immense amount, for a great variety of objects ; many of which were very proper in themselves, but in consequence of the bill being overloaded with appropriations, the governor was compelled to veto the whole."); RITNER, *supra* note 234, at 11–12.

244. *See* RITNER, *supra* note 234, at 11–16.

245. *Id.* at 12–13.

246. 9 AGG, *supra* note 14, at 27.

247. *Id.* at 30–31.

248. RITNER, *supra* note 230, at 12.

249. *Id.*

250. *See* 9 AGG, *supra* note 14, at 22, 27, 30.

251. *Id.* at 22 ("This he would answer in a word, by saying, that they [the previously introduced examples of internal improvement bundling] were two different and distinct subjects, or objects of legislation.").

Improvement Bill in the first place by undercutting the commodification of special legislation.[252]

Indiana's 1850 convention also had an especially robust discussion of the single-subject rule.[253] As mentioned above, the problem of special legislation came to a head with Indiana's Mammoth Internal Improvements Act of 1836 and the state's subsequent bankruptcy.[254] In general, delegates to the convention were focused on drafting a constitution that could rein in special legislation.[255] The single-subject rule was one piece of the overall reform package they crafted to end special legislation.[256] Indeed, one delegate described the single-subject rule as cojoined to the new provision banning special legislation:

> The abuses practiced under our present system of legislation, by incorporating various measures in one bill, is a subject which the people have taken under their consideration; and among other resolutions that have been adopted by them in reference to it, is this one: that special legislatio[n s]hould be prohibited in the State Legislature—that no act should embrace more than one object, and that that object should be expressed in the title—that upon the final passage of every bill in either House the yeas and nays should be entered upon the journal.[257]

Other delegates confirmed the rule's principal target by providing examples of improper laws that the single-subject rule would address. Here, like at the Pennsylvania debates, those examples all included compound special legislation strongly suggestive of vote-trading based on private and local interests.[258] The idea was clear: Special legislation must end, and the single-subject rule was one component of the plan to banish it from lawmaking.[259]

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252. *Id.* at 23 ("If there had been a provision of this kind, we would not have been left in this situation."); *id.* at 22 (arguing that it was "entirely improper" for bills to "incorporat[e] some five or six companies for different purposes" because "[i]f a [special] measure had not merit enough of itself to warrant its passage in the legislature, without connecting it with five or six other subjects, . . . it ought not to be adopted at all"). Arguments against the rule were compelling and largely prophetic of the rule's limitations and failures. They included: (1) the level-of-extraction problem; (2) separation of powers concerns about courts adjudicating legislative process; and (3) concerns that the single-subject rule was not an effective means for controlling special interest logrolling. *See id.* at 37–39.

253. *See* 1 FOWLER, *supra* note 16, at 58–59, 104; *id.* vol. 2, at 1086–87.

254. *See supra* Section III.A.1.

255. Evans & Bannister, *supra* note 144, at 95.

256. *See* 1 FOWLER, *supra* note 16, at 40 (introducing single-subject rule alongside explicit prohibition on special legislation); Evans & Bannister, *supra* note 144, at 100 (noting that this bundle "reflect[ed] society's view of private legislation and logrolling as twin evils").

257. 2 FOWLER, *supra* note 16, at 1086.

258. *Id.* (describing bill that gave state grant to county and approved a divorce); *id.* (bill included an overt rider "appropriating the sum of seventy-five thousand dollars for a private and local purpose").

259. *See* Evans & Bannister, *supra* note 144, at 99–100, 125 & n.253 (noting Indiana's prohibition on special legislation and single-subject rule were introduced as "sister provisions" and target same general problem but from different angles). Other debates of note include: 1 DEBATES AND PROCEEDINGS OF THE FIRST CONSTITUTIONAL CONVENTION OF WEST VIRGINIA, 1861–1863,

Second, even in state conventions where the single-subject rule did not receive sustained debate, it was often introduced or framed as a package alongside other common provisions targeting special legislation.[260] In New Jersey, for example, the single-subject rule was adopted alongside provisions that limited public debt for private use,[261] prohibited the legislature from granting divorce,[262] prohibited the legislature from adopting special laws dispensing of property for certain individuals,[263] and limited the legislature's ability to charter banks through special legislation.[264] Texas, Louisiana, California, and Iowa adopted similar packages.[265] New York's 1846 provision

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at 906–07 (Charles H. Ambler, Frances Haney Atwood & William B. Mathews eds., Huntington, n.d.) (explaining special legislation enabled unnoticed riders that distorted lawmaking process and that single-subject rule was intended to stop this practice; providing examples of special legislation and logrolling); RICHARD SUTTON, DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF DELAWARE, REPORTED BY RICHARD SUTTON, ESQ., STENOGRAPHER TO THE U.S. SENATE, TOGETHER WITH THE AMENDED CONSTITUTION AND SCHEDULE, AND A TABULAR STATEMENT SHOWING THE NAMES, AGES, OCCUPATION, &C., OF THE MEMBERS OF THE CONVENTION 205–06 (Dover, G.W.S. Nicholson 1853) (amending general single-subject rule to apply only to "local or private laws" to "prevent the combination of bills together" because "that danger need [n]ever be feared in reference to general bills"); 2 WM. BLAIR LORD, THE DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, ASSEMBLED AT THE CITY OF ANNAPOLIS, WEDNESDAY, APRIL 27, 1864, at 1114 (Annapolis, Richard P. Bayly 1864) (connecting single-subject rule directly to efforts to control private legislation and its corrupt influence on public spending in infrastructure development); 1 PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF IDAHO 1889, at 531–35 (I.W. Hart ed., 1912).

260. *E.g.*, FRANCIS H. SMITH, THE DEBATES AND PROCEEDINGS OF THE MINNESOTA CONSTITUTIONAL CONVENTION INCLUDING THE ORGANIC ACT OF THE TERRITORY 262–63 (Saint Paul, Earle S. Goodrich 1857) (lumping together single-subject rule, logrolling, and prohibition on legislative divorces).

261. N.J. CONST. of 1844, art. IV, §§ VI(3)–(4), VII(4).

262. *Id.* art. IV, § VII(1).

263. *Id.* art. IV, § VII(7).

264. *Id.* art. IV, § VII(8), (11); PROCEEDINGS OF THE NEW JERSEY STATE CONSTITUTIONAL CONVENTION OF 1844, at 619 (N.J. Writers' Project of the Works Projects Admin. ed. 1942); *id.* at civ (discussing this progression and packaging of reforms "designed to prevent the legislature from playing venal politics by the enactment of special laws affecting private persons, corporations and local governments"). Limiting private legislation was a recurring theme at the New Jersey convention that adopted the single-subject rule. *Id.* at 136 ("There is a great deal of private legislation that ought to be avoided . . . ."). Another issue was to limit legislative sessions to limit opportunity for special laws. *See id.* at 135–37.

265. TEX. CONST. of 1845, art. VII, § 24 (single-subject rule); *id.* § 31 (prohibition of private corporations); *id.* § 33 (limitations on public debt); *id.* § 30 (no corporate privileges); *id.* § 18 (no legislative divorce). LA. CONST. of 1845, tit. VI, art. 118 (single-subject rule); *id.* art. 113 (no pledge of public debt); *id.* art. 117 (no legislative divorce); *id.* art. 122 (no banking or discounting privileges); *id.* art. 123 (no special legislation for incorporation); CAL. CONST. art. IV, § 24 (repealed 1966) (single-subject rule); *id.* § 25 (repealed 1966) (prohibition on special legislation and divorce decrees); *id.* art. XVI (amended 1970) (limits on public debt); IOWA CONST. of 1846, art. IV, § 26 (single-subject rule); *id.* § 28 (no legislative divorce); *id.* art. IX, § 2 (no incorporation by special legislation); *id.* art. VIII (limitations on public debt).

As did Maryland; MD. CONST. of 1851, art. III, § 17 (single-subject rule); *id.* § 47 ("Corporations may be formed under general laws, but shall not be created by special act . . . .");

is especially instructive because it explicitly applied only to "private [and] local bill[s]."[266] In 1859, Kansas followed Indiana's lead and adopted back-to-back provisions imposing the single-subject rule and prohibiting special legislation, as did other states.[267]

Third, after the first wave of single-subject rule deliberations beginning in the 1830s, there was a second wave following the Civil War.[268] Not surprisingly, this surrounded another infrastructure crisis that triggered popular outcry against special legislation.[269] Here, again, the single-subject rule featured as part of the campaign against special legislation.[270]

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id. § 21 ("No divorce shall be granted by the general assembly."); *id.* § 45 (limitations on chartering banks); *id.* § 22 ("The credit of the State shall not, in any manner, be given or loaned to or in aid of any individual, association, or corporation, nor shall the general assembly have the power, in any mode, to involve the State in the construction of works of internal improvement, or in any enterprise which shall involve the faith or credit of the State, or make any appropriations therefor."); *see also* SUTTON, *supra* note 14, at 1091, 1094 (adopting KY. CONST. of 1850, section 32: "The general assembly shall have no power to grant divorces, to change the names of individuals, or direct the sales of estates belonging to infants, or other persons laboring under legal disabilities by special legislation; but, by general laws, shall confer such powers on the courts of justice.").

266. WILLIAM G. BISHOP & WILLAM H. ATTREE, REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF NEW YORK 1068 (Albany, The Evening Atlas 1846) ("No private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title."). Wisconsin and Illinois adopted similar provisions in 1848. WIS. CONST. art IV, § 18 ("No private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title."); ILL. CONST. of 1848, art. III, § 23 ("[A]nd no private or local law which may be passed by the General Assembly shall embrace more than one subject, and that shall be expressed in the title.").

267. KANSAS CONSTITUTIONAL CONVENTION: A REPRINT OF THE PROCEEDINGS AND DEBATES OF THE CONVENTION WHICH FRAMED THE CONSTITUTION OF KANSAS AT WYANDOTTE IN JULY, 1859, at 579, 611–14 (Kansas State Printing Plant 1919) ("No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived or amended, unless the new act contain the entire act revived, or the section or sections . . . so amended shall be repealed" alongside "[a]ll laws of a general nature shall have a uniform operation throughout the State; and in all cases where a general law can be made applicable, no special law shall be enacted."); THE OREGON CONSTITUTION AND PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF 1857, at 410 (Charles Henry Carey ed., 1926) (adopting same pairing); 1 W. BLAIR LORD, THE DEBATES OF THE CONSTITUTIONAL CONVENTION; OF THE STATE OF IOWA, ASSEMBLED AT IOWA CITY, MONDAY, JANUARY 19, 1857, at 530–31 (Davenport, Luse, Lane & Co. 1857) (connecting single-subject rule to provision prohibiting special legislation).

268. TARR, *supra* note 18, at 113–14.

269. *Id.*

270. *E.g.*, DEBATES AND PROCEEDINGS OF THE CONVENTION WHICH ASSEMBLED AT LITTLE ROCK, JANUARY 7TH 1868, UNDER THE PROVISIONS OF THE ACT OF CONGRESS OF MARCH 2D, 1867, AND THE ACTS OF MARCH 23D AND JULY 19TH, 1867, SUPPLEMENTARY THERETO, TO FORM A CONSTITUTION FOR THE STATE OF ARKANSAS 170–72 (Little Rock, J.G. Price 1868) (adopting single-subject rule amidst various provisions limiting special laws); *see* Ireland, *supra* note 188, at 292–93 (recounting problems of special legislation after the Civil War); 1 OFFICIAL REPORT OF THE DEBATES AND PROCEEDINGS IN THE NEBRASKA CONSTITUTIONAL CONVENTION ASSEMBLED IN LINCOLN, JUNE THIRTEENTH, 1871, at 128–29 (Addison E. Sheldon ed., York, T.E. Sedgwick 1905) (adopting single-subject rule); 1 E.B. WILLIS & P.K. STOCKTON, DEBATES AND PROCEEDINGS OF THE

Fourth, contemporary legal scholars viewed the single-subject rule as intertwined with popular campaigns against special legislation. In 1894, Charles Binney published his authoritative work, *Restrictions Upon Local and Special Legislation in State Constitutions*.[271] In that work, Binney observed that the use of special legislation was inextricably linked to the practice of logrolling and riding because it provided an irresistible opportunity for "private schemes" and local interests to be "pushed through the legislatures . . . to the sacrifice of public interests."[272] Thus, when Binney tabulated all state constitutional provisions designed to limit and regulate special legislation, he included all existing single-subject rule provisions alongside outright bans on special legislation and various other provisions attacking the problem.[273] Robert Luce's definitive work on *Legislative Procedure* likewise understood the single-subject rule as a part of the overall campaign to limit special legislation.[274] And Thomas Cooley, albeit to a lesser degree, placed single-subject and title requirements within the context of special legislation riders and logrolling in his 1868 edition of *Constitutional Limitations*.[275] Again, the idea was clear: The single-subject rule was inextricably linked to the problem of special legislation.

Finally, the behavior of state legislatures immediately after the adoption of single-subject rules suggests that they understood their deeper target was special legislation. To my knowledge, there are no robust quantitative empirical studies analyzing the effects of the single-subject rule on legislative behavior. However, there is evidence that the overall campaign against special legislation was effective in limiting special legislation. In Indiana, for example, after the 1851 convention, special legislation decreased significantly and dramatically

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CONSTITUTIONAL CONVENTION OF THE STATE OF CALIFORNIA, CONVENED AT THE CITY OF SACRAMENTO, SATURDAY, SEPTEMBER 28, 1878, at 111, 113 (Sacramento, J.D. Young 1880); 1 DAKOTA CONSTITUTIONAL CONVENTION HELD AT SIOUX FALLS, SEPTEMBER, 1885, at 18 (Doane Robinson ed., Huron, Huronite Printing Co. 1907).

271. *See generally* BINNEY, *supra* note 225.

272. *Id.* at 6–9 (concluding that "American constitutional restrictions . . . evince a belief that legislatures are by nature utterly careless of the public welfare, if not hopelessly corrupt,–that they cannot be trusted to deal with this species of [special] legislation, which must, therefore, be stamped out as far as possible, if not altogether. To effect this purpose some Constitutions have [bundles of provisions designed to address special legislation, including provisions that require laws to] contain[] but one subject." (footnote omitted)).

273. *Id.* at 9 (listing provisions); *id.* at 130–31 (tabulating provisions that regulated special legislation and including single-subject rule as inherently related to special legislation).

274. LUCE, *supra* note 87, at 550–51 (describing the practice at issue as a "resort of special interests" and illustrating the problem by reference to various combinations of special laws).

275. THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 172 (1st ed. 1868); *see also Special Legislation*, 25 AM. JURIST & L. MAG. 317, 319–20 (1841) (exploring how special legislation interacts with bundled legislative voting, private interests, and public goods); Ireland, *supra* note 188, at 273–74 (collecting historical commentary showing strong connection between logrolling and special legislation); Evans & Bannister, *supra* note 144, at 99–100 (noting that in 1850 "society[] view[ed] . . . private legislation and logrolling as twin evils").

as a proportion of the legislature's work.[276] By most accounts, legislatures (eventually) reacted to constitutional provisions designed to quell special legislation.[277] However, anecdotal evidence strongly suggests that state legislatures did not reduce the complexity and compound structure of general legislation.[278] Those bills continued to include far-reaching topics with wide-ranging effects.[279] Moreover, courts generally upheld these compound general laws against single-subject rule challenges.[280]

B. THE CODIFICATION MOVEMENT

The campaigns to limit special legislation coincided with another movement in nineteenth-century America: the push to codify law.[281] This movement had various strands. One strand resembled Jeremy Bentham's aspiration to replace judge-made common law with an exhaustive, plain language code.[282] That position had deep political theory dimensions, and a version of Betham's thinking gained nominal traction in the United States during the mid-twentieth century.[283]

However, another outgrowth of the codification movement was the more moderate position that the law should be systematically recorded for public and government access.[284] For this group, codification was not about reforming the law's deep institutional structure; it was about ensuring that existing statutory law was organized so that it could be found, followed, critiqued, and revised.[285] By 1830, the moderate codification movement was deeply entrenched in the

276. JUSTIN E. WALSH, THE CENTENNIAL HISTORY OF THE INDIANA GENERAL ASSEMBLY, 1816–1978, at 100–10, 240 (1987) (concluding that seventy percent reduction in legislation was result of the change "from special to general laws" brought about by the reforms in 1850); *see* Evans & Bannister, *supra* note 144, at 95–96, 153.

277. *See* BINNEY, *supra* note 225, at 128–31; Ireland, *supra* note 188, at 299 ("[G]radually, in most of the states these reforms substantially reduced the number of special laws . . . .").

278. *See generally* Act of May 28, 1852, ch. VII, 1855 Ind. Acts 23 (omnibus banking legislation of 26 pages and 56 sections addressing all manner of banking in Indiana; adopted after 1851 single-subject rule); Act of Apr. 17, 1867, No. 70, 1867 Pa. Laws 88 (omnibus act regarding liquor licensing and other matters adopted after single-subject rule of 1864).

279. *E.g.*, Act of Mar. 7, 1857, ch. XLIII, 1857 Ind. Acts 89 (adopting general regulatory schemes for regulating circuses and stockbrokers); Act of Mar. 9, 1857, ch. XXXIII, 1857 Ind. Acts 42 (omnibus general local government restructuring law). *See generally* Washington v. Page, 4 Cal. 388, 389 (1854) (commenting that if single-subject rule was strictly applied to legislature, "almost every Act of that, and the subsequent sessions" would be unconstitutional).

280. *E.g.*, State v. Bowers, 14 Ind. 195, 199 (1860) (upholding general law that bundled regulation of circuses with regulation of stock and exchange brokers); *see* COOLEY, *supra* note 109, at 174–76 (collecting cases and concluding that early application against single-subject rules was liberal).

281. *See generally* CHARLES M. COOK, THE AMERICAN CODIFICATION MOVEMENT: A STUDY OF ANTEBELLUM LEGAL REFORM (1981) (discussing the development of the codification movement in national history).

282. *See id.* at 74–75.

283. *See id.* at 75–83, 164.

284. *Id.* at 80–81.

285. *Id.*

United States.[286] Championed by influential jurists like Justice Story and powerful lawyers like Theron Metcalf (later Massachusetts Justice), there was a widespread recognition that law, especially statutory law, should be well catalogued and labelled.[287]

Indeed, at that time, the statutory law of most states was in shambles.[288] State legislatures had passed uncounted laws without any effort to organize those laws in an accessible form.[289] Instead, laws were generally published on a rolling basis in chronological order of passage.[290] Adding to the chaos was the problem of special legislation and its attendant logrolling and riding. Not only were laws hard to find because they were published in a non-topical format, but each law might address any number of topics under the most unhelpful of titles, and general laws could be buried between thousands of obscure special laws.[291] It was also common for special laws to function as exemptions from general laws, which made it even harder to ascertain the applicable rule from case to case.[292] Finally, the sheer volume of special legislation compounded errors, inconsistencies, and even duplication of laws.[293]

Thus, Pennsylvania Governor John White Geary concluded in 1871 that "[i]t is impossible for the citizens, judges of the courts, or members of the legal profession, to acquire or retain an accurate knowledge of the varying systems of laws."[294] A delegate to New Jersey's 1844 convention said that "a plain man cannot know anything of the laws, and I have seen even lawyers at a loss to understand what was the law applicable to the case before them."[295] A delegate to the Illinois 1869 convention exclaimed that even lawyers were "befogged" by the law's chaotic structure.[296] Historian Robert M. Ireland has concluded that "in all probability, the problem was nationwide."[297]

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286. *See id.* at 163–64.

287. *Id.* at 81–82, 166.

288. *See id.* at 24.

289. *Id.* at 24–25.

290. *See id.* at 34–35, 168–70.

291. Ireland, *supra* note 188, at 271–72 (concluding that "[b]efore reform the ratio of special to general legislation ranged from three to one to more than ten to one" and noting that in New Jersey in 1873, the legislature adopted 1,250 pages of special legislation and only one hundred pages of general legislation).

292. *See id.* at 278–80, 287.

293. *Id.* at 273 (providing examples of duplicate special legislation).

294. John White Geary, Annual Message to the Assembly (Jan. 4, 1871), *in* 8 PAPERS OF THE GOVERNORS 1858–1871, at 1121, 1129 (George Edward Reed ed., Pennsylvania Archives 4th Ser. 1902).

295. PROCEEDINGS OF THE NEW JERSEY STATE CONSTITUTIONAL CONVENTION OF 1844, *supra* note 264, at 126.

296. 1 DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF ILLINOIS, CONVENED AT THE CITY OF SPRINGFIELD, TUESDAY, DECEMBER 13, 1869, at 576 (Springfield, E.L. Merritt & Brother 1870).

297. Ireland, *supra* note 188, at 279.

Within this context, the single-subject rule was a partial solution. It would not solve the problem entirely, but convention delegates seized upon the opportunity to improve the organization and accessibility of statutes by requiring the legislature to consolidate around coherent subjects and give bills useful titles.[298] For example, the committee that drafted Louisiana's single-subject rule at the 1844 convention explained:

> The titles of our laws were generally of a very indifferent character; and the words appended, "and for other purposes," were intended to cover a mass of heterogeneous propositions. It was impossible to find a particular statutory provision without wading through a long list of sections, the titles to which gave at best a most imperfect idea of what followed. It was the business of a whole life to penetrate and find out our laws. There was a total absence of order and system in their classification, and the evil was becoming greater and greater every year. . . . A remedy, it was clear, ought to be provided, and the committee could suggest nothing better than this section.[299]

Kentucky's 1849 Convention leveraged the single-subject rule for similar purposes and more overtly embraced the codification movement.[300] In conjunction with the single-subject rule, the Kentucky convention also proposed a provision that required the legislature to appoint a commission to "revise, digest, and arrange the statute laws, civil and criminal, so as to have but one law on any one subject, to be in plain English."[301] The purpose of these provisions was to ensure that Kentucky's "code of laws will then be readily referred to, and easily understood, and justice may be dealt out equally to all."[302] Similar sentiments were expressed at Maryland's 1851 convention[303] and Idaho's

298. This idea arose as early as the 1837 Pennsylvania convention. *See* 9 AGG, *supra* note 14, at 39 ("If the objection is to the index, then we had better reach the object, by providing that the secretary of the commonwealth shall provide a suitable index for the laws of the state.").

299. ROBERT J. KERR, PROCEEDINGS AND DEBATES OF THE CONVENTION OF LOUISIANA WHICH ASSEMBLED AT THE CITY OF NEW ORLEANS JANUARY 14, 1844, at 840 (New Orleans, Besancon, Ferguson & Co. 1845).

300. SUTTON, *supra* note 14, at 127–28, 901–08.

301. *Id.* at 127.

302. *Id.* at 903 (explicitly connecting the single-subject rule to these aspirations).

303. 1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION 9, 305–07, 312 (Annapolis, William M'Neir 1851) (discussing lawyers will be unable to find laws without single-subject and title rules); 2 LORD, *supra* note 259, at 797–99 ("The great difficulty under our old system was that the laws were scattered through many volumes, and it was almost impossible for any man who was not a lawyer to ascertain whether the statute found in any particular book was the existing law or not. . . . That necessity brought about the adoption, by the Convention of 1850, of the system of codification.").

1889 Convention,[304] among others.[305] Early courts also recognized this as a core purpose of the rule.[306]

As I explain in more detail below, this history provides further context for the single-subject rule that points in favor of lax contemporary judicial enforcement. If a core purpose of the rule is to ensure that the state's statutes are organized and accessible, those concerns have largely been surpassed by modern codification practices and technology. Moreover, they elevate concerns about transparency rather than a robust substantive version of the single-subject rule.

C. THE INITIATIVE AND THE SINGLE-SUBJECT RULE

When states first adopted the initiative beginning in 1897 (South Dakota), they did not immediately impose the single-subject rule. By 1912, more than ten states had adopted the initiative without the single-subject rule.[307] This included several states that already had the rule for legislatures. Conventions in Michigan and Arizona, for example, deeply considered appropriate restrictions on the initiative against the backdrop of the legislative single-subject rules without adopting it.[308]

Ohio was the first state to impose the rule on the initiative in 1912.[309] Ohio's adoption was uneventful and unenlightening, but representative of how the rule took hold in the initiative context. Ohio's 1912 convention debated the initiative *ad nauseum*, but it never once discussed the single-subject rule as a specific constraint on the initiative.[310] Instead, it adopted a generic constitutional provision that says: "The limitations expressed in the constitution on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws."[311] This catchall incorporated the pre-existing

304. 1 PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF IDAHO 1889, *supra* note 259, at 531–32.

305. 3 REVISED RECORD OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK MAY 8, 1894 TO SEPTEMBER 29, 1894, at 146 (William H. Steele ed., 1900); 2 REVISED RECORD OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK APRIL FIFTH TO AUGUST TWENTY-SIXTH 1938, at 1157 (1938).

306. *E.g.*, Ind. Central R.R. Co. v. Potts, 7 Ind. 681, 685–86 (1856) ("Another object of this constitutional provision was to promote codification."); People *ex rel.* Graff v. Inst. of Protestant Deaconesses, 71 Ill. 229, 233 (1874); State v. Ah Sam, 15 Nev. 27, 29–30, 32 (1880).

307. *See* WATERS, *supra* note 1, at 907–08.

308. 1 PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MICHIGAN 546 (Lansing, Wynkoop Hallenbeck Crawford Co. 1907) (debating initiative; legislative rule adopted 1850); THE RECORDS OF THE ARIZONA CONSTITUTIONAL CONVENTION OF 1910, *supra* note 60, at 1407 (legislative single-subject rule); *id.* at 1402–03 (discussing initiative).

309. 1 WALKER, *supra* note 15, at 553.

310. *See id.* at 671–954 (debating initiative).

311. *Id.* at 952 (debate regarding OHIO CONST. art. II, § 1).

legislative single-subject rule for the initiative without any specific deliberation.[312] Indeed, the catchall was a compromise between delegates who opposed the initiative altogether (or preferred an indirect initiative) and those who preferred a broad, unrestrained initiative.[313] In the end, they agreed that the people should have at least the same lawmaking power as the legislature.[314]

Ohio's experience with the initiative single-subject rule is important because it highlights how the rule's earlier history as a legislative constraint is relevant in the initiative context. Like Ohio, many states imported the rule without much independent thought or explanation, presumably because they imagined the rule would work essentially the same way in the initiative context as it did in the legislative.[315] For example, Oklahoma adopted the single-subject rule for the initiative in 1952 without any explanation or discussion,[316] as did Wyoming in 1967.[317] When Oregon adopted the rule in 1968, the Secretary of State produced a voter pamphlet for all ballot questions.[318] That pamphlet included no explanation regarding the single-subject rule's application to the initiative.[319] In 1994, when Colorado adopted the single-subject rule, the Legislative Council of the General Assembly explained that the rule was proposed because: "Bills enacted by the General Assembly are subject to the single subject rule. Since the initiative and referendum are forms of legislation, the rule should apply to these methods of amending the constitution and the statutes."[320]

There are exceptions, sort of. Massachusetts adopted the rule in 1918 after sustained debate regarding the proper scope of the initiative.[321] Delegate Robert Luce and others argued against the initiative proposal on various grounds, but they repeatedly argued that the initiative was subject to abuse by private groups and local jurisdictions that might bury or bundle measures for their own gain within broader popular initiatives.[322] They referred to this as

312. *See id.* at 952–54; Downey et al., *supra* note 145, at 614 ("This section of the Ohio Constitution also states that all restraints on the legislature's ability to enact laws are also applicable to the ability of citizens to create laws. Therefore, the requirement that 'no bill shall contain more than one subject' applies to citizen initiatives as well as to legislative acts." (footnote omitted)).

313. *See id.* at 826, 901–04 (discussing the compromises made by delegates on both sides of the debate); *id.* at 942 ("I now wish to offer the only genuine dyed-in-the-wool, blown-in-the-bottle, middle-of-the-road amendment.").

314. *See id.* at 920–22, 952–54 (showing that the constant debate was whether initiative was unrestrained by constitution).

315. *E.g.*, 2 VERBATIM STENOTYPE TRANSCRIPTION OF THE DEBATES OF THE 1943–1944 CONSTITUTIONAL CONVENTION OF MISSOURI 441–43 (1944).

316. *See* H.R.J. Res. 1, 23rd Leg., Reg. Sess. (Okla. 1951).

317. *See* S.J. Res. 3, 1967 Leg., 39th Sess. (Wyo. 1967).

318. *See generally* CLAY MYERS, STATE OF OREGON VOTERS' PAMPHLET: GENERAL ELECTION (1968).

319. *See generally id.*

320. COLO. LEGIS. COUNCIL, AN ANALYSIS OF 1994 BALLOT PROPOSALS, GEN. ASSEMB. 59-0392, at 3 (1994).

321. *See* 2 DEBATES IN THE MASSACHUSETTS CONSTITUTIONAL CONVENTION 1917–1918, *supra* note 15, at 566–68, 856–63, 959–60.

322. *Id.* at 561–70.

"log-rolling" and gave myriad examples from other states as evidence that the convention should protect the initiative from this abuse.[323] Ultimately, the convention amended the proposal and included the single-subject rule in part to address these issues.[324] Although this history reflects more careful and thoughtful deliberation regarding the single-subject rule, it is easy to overgeneralize from these debates if we neglect their historical context.

For example, the Supreme Judicial Court of Massachusetts has relied on these debates (especially Luce's comments) to conclude that Massachusetts's single-subject rule was intended to prohibit any public policy initiatives that would require some imaginary voting bloc to accept the whole initiative when that bloc agrees only with a portion of the initiative (a classic formulation of the aggressive logrolling framework).[325] Thus, in *Carney v. Attorney General*, relying heavily on the rule's history, the court struck down an initiative designed to prohibit dog racing for betting because the initiative included provisions that prohibited the state from issuing dog racing licenses and also criminalized activities related to dog racing.[326] According to the court, the initiative impermissibly blended administrative and criminal issues so that voters were presented with a false choice.[327]

What is remarkable about the court's use of the convention debates is that the court completely omits the operative distinction between general laws addressing broad questions of public policy, on the one hand, and special legislation, on the other.[328] Special legislation and its attendant private-interest logrolling were a core concern expressed by delegates at the convention.[329]

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323. *Id.*

324. *Id.* at 856–57.

325. Carney v. Att'y Gen., 850 N.E.2d 521, 532 (Mass. 2006) ("To clear the relatedness hurdle, the initiative petition must express an operational relatedness among its substantive parts that would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy. A broader interpretation of the common purpose requirement would undercut the very foundations of the relatedness limitation.").

326. *Id.* at 532–33.

327. *Id.* at 524–25 ("[T]he aggregation of these two very different sets of laws into one petition that the voter must accept or reject would operate to deprive voters of their right [under the single-subject rule to] exercis[e] a meaningful choice in the initiative process.").

328. The court's use of the debates is interesting. It tends to draw from delegates who opposed the initiative process entirely to demonstrate that the single-subject rule was intended to solve all the problems raised by opponents of the initiative. *E.g.*, *id.* at 529–30 (citing various delegates concerned about logrolling but failing to acknowledge that those delegates raised logrolling in their speeches in total opposition to the initiative, not in support of the single-subject rule). Similarly, the court includes several cites to delegates' comments regarding the initiative and lack of deliberation in the drafting process as evidence that the single-subject rule prohibits aggregation of public-regarding voting blocs. *Id.* at 531 n.21. However, those comments were from delegates who opposed the initiative entirely in favor of representative lawmaking. They say nothing about the single-subject rule as the intended response to these limitations.

329. 2 DEBATES IN THE MASSACHUSETTS CONSTITUTIONAL CONVENTION 1917–1918, *supra* note 15, at 239 (describing need for labor protection because of "special legislation, which had been made possible by the Legislature"); *id.* at 812 (Luce: "It has been found everywhere that to private

Indeed, in the remarks by Robert Luce arguing for a single-subject rule (upon which the court relies heavily), Luce explained:

> This measure makes absolutely no provision for excluding trivial topics from the consideration of the voters. Make it so that it will refer to broad questions of public policy . . . and then we [will] get on the same ground.
>
> . . . .
>
> . . . Why not eliminate private and special bills? Special legislation! The curse of all legislatures. Special legislation! The source of nine-tenths of the log-rolling and graft and corruption. Special legislation! The very root and core of all our troubles. Throw this to the people, and you put it within the power of every special interest in the State with unlimited means at its command, to seduce, to harass, to cajole, to betray, to perplex the people into granting privileges that could not be secured from a legislative body.
>
> . . . .
>
> . . . [This proposal] has put in here not a word to prevent log-rolling, to prevent the people of Berkshire from tying up with the people from Hampden or Essex, swapping votes, and thus securing the enactment of unrelated measures at the same time. . . . If [the convention] will consent to amend [this] proposition so that every measure shall be but a single, concrete proposition, again we may come nearer together. There are almost two score States that to-day in their constitutions forbid their legislatures putting two propositions into the same bill, yet he has not provided even in this revolutionary measure the restriction that nearly forty States have believed necessary to put upon their legislative bodies.[330]

Delegates, of course, expressed other general concerns related to voter confusion and transparency, but the debates strongly suggest that to the extent delegates were worried about logrolling, their focus was on local and private interests using the initiative to obtain particularized benefits in the same way that special legislation had fueled a spoil system in the legislature.[331] Contrary to the court's assertion, there is very little evidence that the single-subject rule was chosen to prohibit the aggregation of voting blocs on questions of broad

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and special legislation is chiefly due log-rolling, venality, graft, and corruption in all its forms. Everything that has gone to hurt legislation in public estimation is in large part to be traced to special legislation."); 1 DEBATES IN THE MASSACHUSETTS CONSTITUTIONAL CONVENTION 1917–1918, at 508 (Boston, Wright & Potter Printing Co. 1919) (calling special legislation "corruption").

330. 2 DEBATES IN THE MASSACHUSETTS CONSTITUTIONAL CONVENTION 1917–1918, *supra* note 15, at 566–68 (these are the exact pages the court cites for its strict application of the logrolling framework, *see* Carney v. Att'y Gen., 850 N.E.2d 521, 529–31 & n.20 (Mass. 2006)).

331. *Id.* at 812.

public policy. Indeed, Luce's remarks above suggest that he viewed general policy questions as a cure to logrolling because they eliminated the operative currency: special benefits.[332]

My point is not that there is no state-specific evidence anywhere that supports a strict application of the logrolling framework.[333] My more modest point is that courts tend to view the single-subject rule with a series of misguided or incomplete assumptions about its origins. Once courts incorrectly assume that the rule is synonymous with a strict ban on all forms of logrolling, they often miss the narrower contextual version of the rule (which has strong historical support), in favor of an unnecessary extension of the rule to prohibit all forms of voting bloc aggregation.

To be sure, courts should investigate the unique history of the rule in their specific state, but they should do so against the backdrop of the rule's broader American origins. In the American state constitutional tradition, the rule is best understood as an effort to control and limit special legislation, not a generic ban on all forms of public-regarding voting bloc aggregation. Of course, a court might choose to extend the rule by analogy to that context, but nothing about the rule's generic American origins suggests that it necessarily applies in that way. Indeed, history suggests that general public policy questions were beyond the rule's direct aim precisely because they were the solution to the deeper problem that the rule was to address.

IV. THE INITIATIVE DOESN'T NEED A STRICT SINGLE-SUBJECT RULE

Aside from history, courts also strictly enforce the single-subject rule out of concern that the initiative will malfunction if voters are presented with compound initiatives.[334] Compound initiatives are problematic, according to courts, because voters are unlikely to have the information or sophistication necessary to vote accurately, which undermines the referendum's final legitimacy.[335] Courts also assert that compound initiatives are problematic because they might present voters with "false choices."[336] That is, compound initiatives might require some voters to accept the whole initiative when they agree only with a portion. According to courts, this is a fundamental defect in the initiative that courts can cure with strict enforcement of the single-subject rule.[337]

In this Part, I argue that both concerns are misguided. First, competitive referenda are highly accurate indicators of majoritarian preferences even on complex ballot questions, so long as the referenda are contested and generate

332. *See id.* at 566–68; 812–13 (attributing logrolling to special legislation).

333. California, for example, has a unique history that might support a different historical understanding of the rule.

334. *See supra* Section II.C (collecting cases taking these various approaches).

335. *See supra* notes 132–34 and accompanying text.

336. *See supra* note 147 and accompanying text.

337. *See supra* Section II.C.

multiple information shortcuts for voters. Courts are simply wrong to assume that referenda are unreliable if voters are presented with complex, compound ballot questions. Accuracy is determined by competitiveness, not singularity. Moreover, singularity does not guarantee clarity or simplicity.[338]

Second, there is no good reason for courts to aggressively monitor generalized policy initiatives for aggregation of public-regarding voting blocs. Competitive referenda are reliable indicators of how majorities feel about the comparison between the status quo and even compound ballot question(s). On the other hand, courts systemically botch strict application of the single-subject rule. Thus, courts do more harm to the initiative than good when they strictly enforce the single-subject rule.

A. Competitive Referenda Are Relatively More Accurate

Courts often justify strict enforcement of the single-subject rule by claiming that it helps voters make accurate decisions.[339] According to courts, complex initiatives are hard for voters to digest and analyze, which means voters cannot accurately register their preferences, which ultimately undermines the democratic quality of the initiative. Thus, if an initiative is complex, courts might need to intervene and protect the process by adopting rules that streamline proposals for voters, ergo strict enforcement of the single-subject rule.

This rationale might seem intuitive, but it is misguided and out of touch with what we know about the referendum. First, courts are simply wrong to assert that the accuracy of ballot-question referenda depends on the degree to which individual voters obtain the substantive knowledge and expertise needed to analyze initiatives on their own.[340] The opposite is true. Voters (and aggregate election results) accurately reflect voter preferences even when voters lack the substantive knowledge needed to assess the election firsthand.[341] This is because voters are adept at leveraging "information shortcuts" to vote

338. *See supra* notes 120–22 and accompanying text.

339. Campbell, *supra* note 166, at 133–34; *e.g.*, Wyo. Nat'l Abortion Rts. Action League v. Karpan, 881 P.2d 281, 290 (Wyo. 1994).

340. In the single-subject rule jurisprudence, courts assume that voter competence is achieved by obtaining individualized substantive understanding of the initiative. That is, courts strictly enforce the single-subject rule because they imagine that for referenda to be accurate, each voter must be able to learn the law, assess the consequences of the proposal, and arrive at a substantively sound reason for their choice. Because this process is daunting, courts conclude that they should aggressively intervene and streamline initiatives as much as possible so that voters have a fighting chance. *See, e.g.*, Koussa v. Att'y Gen., 188 N.E.3d 510, 520 (Mass. 2022) (rejecting a petition because "for the purposes of the related subjects inquiry, any residual doubts about the meaning of an obscurely drafted petition must be resolved against the proponents of such a petition. Otherwise, we would be encouraging or at least condoning efforts to mislead and confuse voters by concealing controversial provisions in obscure language. That would cut impermissibly against the design of art. 48, which was constructed to include 'safeguards against potential voter confusion in the initiative process.'"). Of course, as the political science literature shows, this is an overly romantic (and absurd) way to theorize the actual functionality of modern referenda.

341. MATSUSAKA, LET THE PEOPLE RULE, *supra* note 24, at 169–86.

for their interests and values.[342] Moreover, in competitive elections, these information shortcuts are highly efficient at helping voters align their votes with their interests.[343] Indeed, economist Sam Peltzman has concluded that "one would be hard put to find nonpolitical markets that process information better than the voting market."[344]

To appreciate how referenda truly function, consider this example from the literature:

> Consider an environmentalist deciding how to vote on the "Preserve Our Forests" initiative. The title is enticing, but the environmentalist is unsure what the proposal would actually do: would it limit timber harvesting, which she would like, or is it actually a deceptively titled proposal that would roll back regulations and untether timber companies?
>
> Now, the environmentalist could try to become substantively informed by reading the hundreds of words of legalese that comprise the law—challenging for anyone without a law degree, expertise in statutory interpretation, and knowledge of forest regulation terminology and practices. Alternatively, the environmentalist can seek an information shortcut, such as the recommendation of the Sierra Club . . . . If the Sierra Club shares her values, she can accurately register her pro-environment preferences by following the Sierra Club's recommendation. Similarly, a pro-timber-industry voter can follow the recommendation of the timber industry. (The timber industry's recommendation also provides a shortcut for the environmentalist; she knows to vote *against* that recommendation.)
>
> When the environmentalist follows the Sierra Club's recommendation, she is voting competently (as defined above): her vote is the one she would have chosen if fully informed. However, she is not substantively informed about the proposal; she would not be able to answer detailed questions about it or provide a substantive rationale for her vote.[345]

These ideas have been tested and are proven to hold true under rather ordinary conditions.[346] That is, in competitive referenda campaigns with

342. *Id.* (summarizing literature on information shortcuts).

343. *Id.*

344. *Id.* at 176; SAM PELTZMAN, POLITICAL PARTICIPATION AND GOVERNMENT REGULATION 115 (1998).

345. MATSUSAKA, LET THE PEOPLE RULE, *supra* note 24, at 172.

346. Lupia, *Shortcuts Versus Encyclopedias*, *supra* note 24, at 72; ARTHUR LUPIA & MATHEW D. MCCUBBINS, THE DEMOCRATIC DILEMMA: CAN CITIZENS LEARN WHAT THEY NEED TO KNOW? 206–10 (1998); *see* Kahn & Matsusaka, *supra* note 24, at 159.

multiple shortcut providers whose values are known to voters, even the most *uninformed* voters are remarkably effective at voting their true preferences.[347]

Consider one study with findings especially relevant to the single-subject rule.[348] In 1988, Californians were faced with five separate initiatives addressing reform to automobile insurance law.[349] These initiatives were precipitated by high insurance rates and the legislature's inability to agree on reform.[350] One of the propositions was decidedly pro-consumer (Prop. 103), while the other four were decidedly pro-insurers and trial lawyers (Props. 100, 101, 104, and 106).[351] The five initiatives were incredibly complex, long, compound, intersecting, and conflicting.[352] However, the initiatives were also subject to a highly contested campaign by insurers, consumer protection groups, and trial lawyers.[353]

To explore how accurately voters handled the initiatives, political scientist Arthur Lupia surveyed voters on election day with a series of questions that allowed him to identify three groups of voters: substantively informed voters, uninformed voters who reported using a well-known information shortcut, and uninformed voters who did not use any shortcuts.[354] Lupia also recorded how each respondent voted and their substantive preferences regarding insurance reform.[355] The results were striking.[356] Uninformed voters with a shortcut performed almost identically to substantively informed voters, while the group of uninformed voters without shortcuts was mostly random.[357] The below figure illustrates Lupia's results.[358]

347. MATSUSAKA, LET THE PEOPLE RULE, *supra* note 24, at 176–79.

348. *See generally* Lupia, *Shortcuts Versus Encyclopedias*, *supra* note 24.

349. *Id.* at 63.

350. *Id.* at 64.

351. *Id.* at 64–65.

352. For example, Proposition 104 was a gigantic, 122-page, omnibus insurance reform measure. Among other things, it created a no-fault insurance scheme, prohibited most non-economic damages, capped attorneys' fees, set price controls on certain insurance rates, authorized a good-driver discount, purported to preempt portions of other contemporary insurance initiatives, and limited the legislature's ability to make changes. *See* OFF. OF CAL. SEC. OF STATE, VOTER INFORMATION GUIDE FOR 1988, GENERAL ELECTION, at 102, 144–45 (reproducing full text thereafter).

353. Lupia, *Shortcuts Versus Encyclopedias*, *supra* note 24, at 65.

354. *Id.* at 67–72.

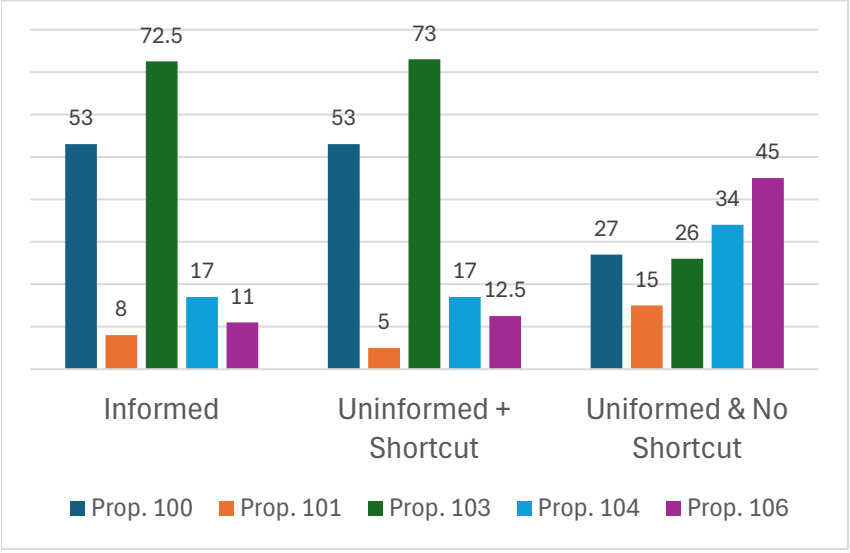
355. *Id.*

356. *See id.* at 69–72.

357. *Id.*

358. This visualization inspired by MATSUSAKA, LET THE PEOPLE RULE, *supra* note 24, at 179 fig.14.1.

Figure 3.



The overall outcome in the election on the five initiatives was accurately predicted by the voting behavior of the uninformed voters with shortcuts.[359] Proposition 103 passed, and all others failed, suggesting the effectiveness of the shortcuts and the overall accuracy of the referenda in identifying the preferences of the median voter.[360]

Subsequent studies have confirmed Lupia's original findings using more robust methods and datasets,[361] and a large literature shows that candidate elections are remarkably accurate notwithstanding individual voter information problems.[362] This work shows that the key to accurate referenda is competition between interest groups, which drives competitors to produce careful and rigorous analysis of a proposal and hold adversaries accountable for misleading analysis.[363] Competition between interest groups, in turn, provides voters with robust shortcuts upon which to base their choices.[364]

359. *Id.* at 177–79 (although Lupia notes that insurers almost undermined information shortcuts for the win).

360. *See* Lupia, *Shortcuts Versus Encyclopedias*, *supra* note 24, at 64, 66, 70.

361. *See, e.g.*, SHAUN BOWLER & TODD DONOVAN, DEMANDING CHOICES: OPINION, VOTING, AND DIRECT DEMOCRACY 167–68 (1st paperback ed. 2000); LUPIA & MCCUBBINS, *supra* note 346, at 206–10; MATSUSAKA, LET THE PEOPLE RULE, *supra* note 24, at 179 n.19 (summarizing literature and a few complicating studies).

362. *See* MATSUSAKA, LET THE PEOPLE RULE, *supra* note 24, at 175–76.

363. *See id.* at 179.

364. *Id.* at 179–85.

In view of all this evidence, it seems careless for courts to persist in the strict enforcement of the single-subject rule based on the belief that only a *polis* of fully informed voters can produce accurate referenda. This is an idealized and oversimplified view of the referenda that probably never existed.[365] Referenda accuracy turns on the degree to which interest groups generate competitive shortcuts for voters, not whether courts can reduce ballot questions to a level suitable for voters to digest firsthand.[366] Indeed, the initiatives in Lupia's study certainly violated a strict application of the single-subject rule, but the referenda produced very accurate results.

The literature emphasizes another point that enhances the accuracy of referenda. Referenda present voters with a binary choice: retain the status quo or adopt one particular reform.[367] This simplified decision matrix is well suited to voter choice because voters have intimate knowledge of how the status quo has aligned with their interests, and they also have shortcuts to help assess whether the proposal would be better for them.[368] Thus, they can vote accurately on the ballot question without analyzing all imaginable alternatives.[369] This is not to say that voters do not consider the indirect consequences of an initiative. They do. This is a large part of what competitive interest group campaigns draw out in creating voter shortcuts.[370] The point is that if voters approve an initiative, there is a strong likelihood that a majority of voters truly and accurately prefer it to the status quo (even with all of its trade-offs and consequences). This matters greatly because it connects the initiative back to its core purpose as an accountability device.

This literature draws out one final point: Referenda leverage large samples of the citizenry.[371] If the goal of the initiative is to allow the people to realign government policy with majority preferences, then statewide referenda have unparalleled advantages of scale.[372] This can help address voter information

365. Lupia, *Dumber than Chimps?*, *supra* note 24, at 70 ("The key to competence in direct democracy is the voters who use shortcuts (which is to say nearly all direct democracy voters) for making correct decisions . . . ."). Moreover, there is also no evidence the single-subject rule as applied (or even the theoretical model) would improve clarity and accuracy. *See* Matsusaka & Hasen, *Aggressive Enforcement*, *supra* note 24, at 406 ("We are unaware of any empirical evidence that the single subject rule in practice has reduced complexity or alleviated voter confusion.").

366. Of course, a referendum might be reliable in the absence of shortcuts if it is incredibly simple. *See* MATSUSAKA, LET THE PEOPLE RULE, *supra* note 24, at 179. If courts believe that this is the standard by which the single-subject rule should be assessed, then they will likely need to shut down almost all initiatives. The reality is that most voters, on most initiatives, rely on shortcuts. Lupia, *Dumber than Chimps?*, *supra* note 24, at 70.

367. Lupia, *Dumber than Chimps?*, *supra* note 24, at 67–68; MATSUSAKA, LET THE PEOPLE RULE, *supra* note 24, at 184.

368. MATSUSAKA, LET THE PEOPLE RULE, *supra* note 24, at 184.

369. *Id.*

370. *Id.* at 172–74.

371. *Id.* at 174.

372. *See id.*

problems (as aggregation can cancel out errors and trend toward accuracy),[373] but it should also inform institutional choices. On the one hand, courts are not good at strictly enforcing singularity, and they tend to fall back on their own personal preferences more than anything else.[374]

On the other hand, the evidence strongly suggests that competitive referenda are a sound forum for identifying the true majority preferences on even complex policy proposals. Thus, it seems problematic that a court's unreliable adjudication of singularity is the gateway to the more reliable referendum. This is backwards. Voters handle complex and competitive initiatives just fine, but courts have been botching their adjudication of singularity for more than a century.[375] Strictly enforcing the single-subject rule because it protects the initiative from malfunction is like replacing slightly scratched eyeglasses with a blindfold.

B. Referenda Offer Real and Salient Choices

Courts also justify strict enforcement of the single-subject rule on the grounds that compound initiatives improperly aggregate voting blocs and, therefore, present individual voters with false choices. As noted above, this argument is often predicated on a mistaken belief by courts that the history of the single-subject rule requires them to prohibit all forms of logrolling. The history does not require this. Nor does the text. Nevertheless, some courts assert that it is normatively desirable.

Courts that make this assertion are often unclear as to why voting bloc aggregation is problematic. Some courts suggest that it is bad because voters cannot negotiate policy compromises like legislators.[376] Legislative bills can be amended around compromise and debate before voting, but the initiative

373. *Id.*

374. *See supra* Section II.C.

375. A related point here is that when voters are confused or overwhelmed by a ballot question, they tend to vote no. MATSUSAKA, LET THE PEOPLE RULE, *supra* note 24, at 185. This creates incentives for clear and high-quality initiatives by sponsors and also suggests that the stakes are low in sending compound initiatives to referenda. On the other hand, if courts adjudicate singularity incorrectly, they improperly withhold a proposal from voters and entrench the status quo on their own accord.

376. In *Carney v. Attorney General*, the court said:

> The brief submitted by the Attorney General [argues] that "voters who have . . . mixed feelings" about the separate sections of the petition "must be trusted to sort them out before they vote." As we stated above, voters, unlike legislators, are not afforded the opportunity to participate in the deliberative process of debate and compromise to craft a statement of public policy that they can endorse without significant reservation. They have no meaningful way to "sort out" their mixed feelings about an initiative bill short of voting it up or down as a whole.

Carney v. Att'y Gen., 850 N.E.2d 521, 532 n.23 (Mass. 2006).

process cannot accommodate compromise to the same degree.[377] This gives great power to initiative sponsors because they draft the initiative unilaterally and then present it to voters on a take-it-or-leave-it basis. For this reason, it might be desirable to limit initiatives to a single subject because any trade-offs or bargains were made privately and not through public-regarding deliberation by the people's representatives.

This rationale is misguided for several reasons. First, public-choice scholars have long shown that even the most self-interested forms of logrolling and bundling in initiatives can be both good and bad.[378] Logrolling can sometimes produce outcomes "more consonant with the majority's preferences," and sometimes it can produce misalignment.[379] More importantly, public-choice scholars and empirical researchers do not know whether, all else being equal, good outcomes are more likely than bad outcomes when policies are logrolled in the initiative.[380] In fact, logrolling can improve democratic alignment from the status quo, and there is good reason to believe that finely segmenting public decision-making creates its own bad outcomes.[381] Thus, if text and history do not require courts to apply the single-subject rule as a strict ban on all forms of logrolling, it is unclear why courts believe that there is a sound normative basis for importing the logrolling framework into the rule.[382] It is just not true that the initiative will malfunction unless courts apply the logrolling framework.[383] Loosening the standard might actually improve the initiative, as I explain below.

Second, even if we assume that some logrolls are bad, the logrolling framework applied by courts is horribly imprecise—both overinclusive and underinclusive. As I illustrate above using Florida's 2024 abortion initiative, the rule is overinclusive because it captures initiatives that aggregate voting blocs to arrive at a position aligned with the median voter (+1).[384] It is also underinclusive because singular policies can be the product of interest group logrolling (school vouchers, for example, might gain majority support because

377. Although it is not crucial to my argument here, courts likely overstate this point too. Sponsors are savvy to building initiatives that appeal to voters. They likely build coalitions in the drafting phase. Hasen & Matsusaka, *Skepticism*, *supra* note 27, at 38 ("[O]ne should not ignore the fact that initiative proponents often form coalitions across diverse groups as well.").

378. *See* Kousser & McCubbins, *supra* note 24, at 949–50; Matsusaka & Hasen, *Aggressive Enforcement*, *supra* note 24, at 403–05 (summarizing proofs).

379. Matsusaka & Hasen, *Aggressive Enforcement*, *supra* note 24, at 403–05.

380. *Id.* at 405 & n.21; Hasen & Matsusaka, *Skepticism*, *supra* note 27, at 38.

381. *See* Kousser & McCubbins, *supra* note 24, at 961.

382. Matsusaka & Hasen, *Aggressive Enforcement*, *supra* note 24, at 405 ("Much of the doctrine and analysis surrounding the single subject rule presumes that logrolls are always bad, so that voters need to be protected against all logrolls. As we have seen, this view is overly simplistic, lacks theoretical justification, and stands a real chance of inhibiting socially desirable policy changes." (footnote omitted)).

383. *Id.* at 404 ("At best, the single subject rule is redundant; at worst, it is harmful.").

384. *See supra* notes 155–57 and accompanying text.

of an unusual combination of otherwise disparate voting blocs whose interests are beneath the policy's substance). In other words, even if we accept that courts should use the single-subject rule to shut down initiative logrolling, they are not using a good test.[385]

Third, the costs created by the test's inefficiency and inaccuracy should be weighed against the costs of allowing logrolls to go to referenda. If the costs of sending a logroll to referendum are very high, then the inaccuracy of the test might be justified. If the costs are low, however, the inaccuracy of the test is problematic. As explained above, competitive referenda are generally reliable in determining whether voters prefer the status quo or the proposed reform, even when the proposed reform is compound and includes trade-offs. Thus, courts should assume that sending logrolls to referenda is likely to produce one of two outcomes: (1) voters do not like the costs of the logroll as compared to the status quo and reject the initiative; or (2) voters recognize that the logroll is not perfectly aligned with their interests, but it is better aligned than the status quo, and they therefore approve the initiative. Both outcomes have strong democratic legitimacy and are consistent with the underlying purpose of the initiative.[386] Thus, it is unclear what payoff courts expect when they strictly apply the single-subject rule to keep initiatives from the ballot.

Fourth, even if we assume that logrolls are bad, it is unclear why courts believe that the initiative is especially vulnerable to undemocratic logrolls without strict judicial oversight. Logrolling requires extraordinary coordination and consolidation. For example, if a county wants to extract a local improvement at the state's expense, the county needs a representative who can convince officials in charge of state funds to pay out. Legislatures facilitate this process because of their district-based composition, plenary powers, and formal opportunities for repeat play by legislators. The initiative, on the other hand, seems much less vulnerable to detrimental logrolling because it requires sponsors to wrangle large voting blocs of individual citizens through a

385. *See* Cooter & Gilbert, *supra* note 8, at 712 (making a similar point).

386. To illustrate, imagine an Omnibus Realignment Initiative that includes all manner of disparate policies that magically satisfied myriad different minority voting blocs on issues of concern to them alone. If the initiative somehow passed because those voting blocs combined to form a majority, what is the democratic deficiency? A majority of voters believe that the many trade-offs locked into the initiative are better than the status quo. True, none of the individual policies would have passed on their own, but without the logroll, the status quo would also have persisted, which a majority of voters clearly did not want. Why should the single-subject rule be used to entrench the status quo when voters are so dissatisfied with it that they are willing to accept various different trade-offs in order to correct the status quo? In other words, if an initiative includes a logroll and thereby introduces a new misalignment between state policy and majority preferences, the initiative can justify that misalignment democratically because the referenda results show that a majority of voters prefer the misalignments logrolled into the initiative over the misalignment reflected in the status quo. If we trust the quality of referenda, courts should presume that positive referenda results will reflect a net improvement of policy alignment even if they also introduce some new misalignments.

decentralized drafting process and the gauntlet of a one-time, at-large statewide referendum.[387] This seems especially unwieldy for generalized public policy initiatives. Sponsors would have to identify voting blocs that are willing to trade their votes for reciprocal support and then coordinate a referendum campaign on a statewide basis that consummates the trade. And, to the extent that sponsors craft an initiative by happenstance (or even by trickery) that accurately guesses the policy bouquet favored by a majority of voters, sponsors have done nothing harmful because a majority of voters prefer the initiative's trade-offs over the status quo. Stated differently, it is not clear why courts think the initiative needs special protection from logrolling. It likely does not need any more protection than the legislature—and probably less—because referenda are accurate and potent vetoes.[388]

Fifth, it is unclear why courts believe that difficulties in public deliberation during the initiative's drafting phase are problematic. Even if we assume that initiative drafters do not engage in public deliberation and negotiation with stakeholders during the drafting phase, this is a feature, not a bug. Privatization of drafting is core to the initiative because it enables independence from public institutions and entrenched interests that already influence state policy. The whole idea is to allow for private citizens and groups to *independently* suggest a reform to the status quo. The obvious trade-off is that the proposed law will not look like the proverbial "sausage" that passes through the legislature with all of its negotiations, compromises, and logrolling, but this is the initiative's essential purpose—to allow for the public to consider independent policy proposals as compared to those produced by the legislature. Moreover, the primary check on these proposals is the referenda themselves, not searching judicial review based on an inapplicable comparison to the legislative process.[389]

Finally, the logrolling framework is so aggressive and inaccurate that it offends the right of citizens to initiate laws in the first place. To be sure, the initiative is not absolute. It can be regulated, and the single-subject rule is a constitutional constraint on the process. However, in selecting a framework

387. Indeed, conscious logrolling seems incredibly unlikely through the initiative process as compared to the legislatures.

388. One might respond that courts are concerned with riding. But here the argument is even more strained. If the concern is riding, then the court need not review initiatives for voting bloc aggregation.

389. Recognizing that privatization of initiative drafting is a feature, not a bug, also highlights that courts are harmfully oversimplistic when they assert that compound initiatives give voters false choices. Voters always have the choice to construct their own initiative that perfectly aligns with their preferences. But this isn't feasible because the costs of qualifying an initiative for the ballot are high. And that's precisely the point. Aggregation of voting blocs spreads the costs of qualifying an initiative for the ballot and reflects a combination of groups that, together, are sufficiently agitated by the status quo to take action and expend resources. The initiative is designed to leverage that "market" for the overall benefit of majorities by allowing majorities to vote on whether they share that same compound agitation enough to replace the status quo with something that doesn't perfectly align with their individual agitation.

for adjudicating singularity, courts must balance their single-subject rule doctrine against the countervailing, first-order interests of the constitutional right to initiate laws. The logrolling framework empowers courts to bar an initiative whenever a reasonable voter might approve one portion of the initiative but reject another. This is an incredibly onerous standard to navigate at the drafting phase while also working to craft a law that will effectively realign policy with majority preferences. This burden is even more onerous because courts do not apply the rule predictably, and state governments often deploy countermeasures to undermine initiatives that they do not like. Thus, initiative sponsors must thread an impossible needle: their initiative must not suggest any reasonable segmentation of voting blocs but must contain enough detail to push state policy in the right direction. A doctrine that makes the initiative this difficult seems imbalanced and inconsistent with the right to initiate laws. Courts have essentially allowed a derivative constraint on the initiative to squash the initiative itself.

* * *

In sum, the case for aggressively enforcing the single-subject rule in the initiative context is weak at best. It is not necessary or even helpful for the democratic quality of referenda, and there is no sound reason to monitor initiatives for the aggregation of public-regarding voting blocs. I now conclude by offering some preliminary thoughts on a better path forward for courts.

V. WHAT SHOULD COURTS DO?

The single-subject rule places courts in a tough spot. They cannot ignore the rule, but strictly applying it is problematic. In this Part, I explore how courts might improve their approach. My main recommendation is simple: Courts should allow generalized policy initiatives to go to the ballot so long as a reasonable voter could identify a consolidating subject, other than the mere fact of consolidation. Only if an initiative includes a private or local entitlement should courts look more closely for potential logrolls, but even then, their review should be cabined. I end this Part with a few thoughts about how courts and litigants might imagine more collaborative remedies in single-subject rule litigation. My analysis here is preliminary and exploratory. More work must be done to reconstruct single-subject rule jurisprudence once it is freed from the logrolling framework.

A. Apply Deferential Review for Generalized Policy Initiatives

For all the reasons described above, courts should abandon the logrolling framework and avoid strict enforcement of the single-subject rule. Of course, courts cannot ignore the rule, but they should reevaluate their doctrinal framework when it produces bad results and is not required by text or history.

My proposal is that courts leverage the rule's textual intractability to impose a presumption in favor of singularity for generalized initiatives. (I

address the unique problem of private or local entitlements and how to spot them in the next Section.) So long as a reasonable voter could identify a consolidating subject besides the mere fact that sponsors placed the issues together under one ballot question, courts should send the initiative to referenda. Of course, this standard does not solve the level-of-extraction problems that plague the single-subject rule. However, using a presumption of singularity recognizes that voters are better situated to deal with that problem than courts. This standard is also not novel. Washington courts, for example, have used a similar rule.

By way of illustration, consider the Washington case, *Citizens for Responsible Wildlife Management v. State*.[390] It involved an initiative that prohibited trapping "an animal with certain body-gripping traps," or "poison[ing] an animal with sodium fluoroacetate or sodium cyanide."[391] Groups challenged the initiative under the single-subject rule, claiming that it covered at least two subjects: (1) trapping animals; and (2) poisoning animals.[392] The challengers argued that this violated the single-subject rule because a reasonable voter could support a ban on poisoning animals but oppose a ban on trapping animals, and vice versa.[393] In applying what the court called the "rational unity" standard, it upheld the initiative because "[i]t is logical to conclude that both body-gripping traps and pesticides each bear a rational relationship to the general subject of [the initiative]—the regulation of methods for trapping and killing animals."[394] This reflects a sound approach to adjudicating singularity, given all that we know about referenda and the courts' inability to strictly and consistently apply the rule.

The rational unity standard is not perfect, but it has several benefits. First, and most importantly, it leverages the strength of the referenda in sorting out which reform packages voters prefer over the status quo. As explained above, referenda are good at doing this, and courts have not identified a compelling justification for withholding compound initiatives from referenda. This standard reflects a better institutional allocation of authority. When an initiative could reasonably be described as covering one subject, voters should decide whether any latent bundling is acceptable or not. For all the reasons described above, the rational unity standard does not present the inflated democratic concerns that courts often ascribe to deferential review.

Second, this standard provides courts with a more predictable rule of decision and is less subject to the personal whims of individual judges. Courts

390. *See generally* Citizens for Responsible Wildlife Mgmt. v. State, 71 P.3d 644 (Wash. 2003) (examining a wildlife protection initiative).

391. *Id.* at 647.

392. *Id.* at 651–52.

393. *Id.* at 652–53 (arguing that only provisions "necessary" to each other and the consolidating topic are allowed).

394. *Id.* at 652.

are bad at adjudicating singularity, and this standard puts them in a better position to predictably apply the single-subject rule. It is not foolproof, and there will be aberrations from the rule, but there is good reason to believe that courts will behave in a more constrained and predictable manner under this rule. Indeed, evidence suggests that Washington state judges are much more rule-bound and predictable in their application of the rule than courts that apply the strict logrolling framework.[395]

Third, this standard empowers initiative sponsors to focus on crafting initiatives that effectively realign policy with majoritarian preferences and are likely to win at referenda rather than guessing how to craft an initiative that will survive a court's random application of the logrolling framework. In other words, this standard restores a more appropriate balance between the right to initiate laws and the single-subject rule as an outside constraint on that right.

Fourth, this standard still imposes limits. Sponsors cannot propose omnibus initiatives without a consolidating theme. To be sure, the standard gives discretion to sponsors in how they construct the theme, and we can imagine creative ways to rationally consolidate otherwise disparate proposals. But this is precisely the point. The single-subject rule does not define "subject," and courts must therefore design a framework that complies with the rule while balancing competing interests. The logrolling framework has failed. The referendum has proven reliable. Courts should therefore revise their framework in favor of more expansive access to the referendum and impose the single-subject rule only as an outer limit when propositions cannot reasonably be consolidated.

This standard also imposes limits in another, more important direction. As noted above, many states require executive agencies or officials to make initial determinations about an initiative's singularity. Those officials often disfavor initiatives because they threaten existing state policies with which the officials are aligned. Thus, the officials charged with enforcing the single-subject rule have incentives to apply it aggressively to keep initiatives from the ballot. If a court adopts the deferential standard that I propose, it has a clear and strong basis to provide a robust check on state officials who might apply the single-subject rule as a pretext for entrenching the status quo. Again, the only cost to this approach is sending compound initiatives to referenda, which the evidence suggests is a good forum for their true assessment.

Finally, I do not mean to suggest that courts do not have an important role to play in protecting and monitoring the initiative from gamesmanship and manipulation by interest groups and initiative sponsors. These are real concerns that can undermine the initiative. My point is that the single-subject

395. Washington was within the sample tested by Matsusaka and Hasen to determine if courts relied on law or personal preferences when deciding cases. Matsusaka & Hasen, *Aggressive Enforcement*, *supra* note 24, at 407. Washington's lax enforcement contributed to a finding of predictability and rule-bound decision-making. *Id.* at 400, 409.

rule is not an effective doctrine for redressing many of these concerns. The political science literature discussed above demonstrates that referenda work best when they are competitive, and voters have access to reliable and robust information shortcuts. This suggests that if courts are concerned about the quality and integrity of the initiative, they should pay closer attention to other initiative regulations.

For example, many states allow courts to play a prominent role in reviewing signature-gathering efforts and enforce rules designed to ensure that only truly popular initiatives make the ballot. Courts can also be called upon to enforce financial disclosure statements by groups campaigning for or against initiatives. All these rules that help ensure competitive elections with clear and diverse information shortcuts are critical for an initiative's legitimacy and accuracy. Rather than erratically withholding initiatives from the ballot based on the single-subject rule, courts should focus on the rules and doctrines that can enhance competition and information shortcuts.[396]

B. Review Private or Local Entitlements More Strictly

As I argue above, the single-subject rule's history is deeply connected to the problem of special legislation. Thus, to the extent that courts believe they must apply the single-subject rule in its historical form, they should focus on a doctrinal framework more closely tied to the problems flowing from special legislation.

As history suggests, there are sound normative reasons for courts to be concerned about special legislation, even in the initiative context. When an initiative logrolls public-regarding voting blocs, voters are forced to decide between the status quo and an imperfect change that includes some realignment and some potential new misalignments. When the logroll relates to generalized state policies, voting blocs do not have any special interest in the initiative's success or failure other than their democratic preference for a particular statewide policy. Thus, if voting blocs accept the logroll, it is because they think the net effect in alignment of statewide policy will be better than the status quo.

Conversely, when an initiative includes a private or local entitlement, beneficiaries have a discrete interest in the initiative's success that is not common to all voters. This creates an especially potent currency for capturing votes and enticing voting blocs that do not exist to the same degree for generalized policies. More importantly, entitlements help overcome coordination problems inherent in the initiative. By including entitlements in the text of the initiative, beneficiary voting blocs do not have to actually coordinate for their discrete voting interests to naturally reciprocate (if they just vote for the most selfish option, they will logroll each other's entitlements). Thus, it seems plausible that including discrete entitlements in initiatives is

396. In this regard, I do not think that aggressive enforcement of ballot title language is especially helpful. That doctrine also mistakenly assumes that referenda reliability is based on each individual voter's ability to digest the initiative firsthand, which is wrong.

more likely to skew the referenda in problematic ways because special entitlements entice beneficiaries to vote for logrolled policies that they would otherwise oppose.[397] Of course, this overlaps significantly with the historic problems associated with special legislation discussed above.[398]

Fortunately, courts should be better equipped to strictly monitor private- and local-interest logrolling. Indeed, the doctrine would require familiar and well-trodden steps. First, the court would review the initiative to determine if it includes any private or local entitlements.[399] In some cases, this might be easy because the initiative identifies specific private parties or locales.[400] In other cases, the initiative might create categories using criteria that appear general but have the effect of creating very specific beneficiaries.[401] There is a robust body of state constitutional law that already makes this distinction, and which courts could use to decide these hard cases.[402] Second, if the court concludes that the initiative contains a special-law component, it could then rigidly apply the logrolling framework.[403] That is, it should examine whether a reasonable beneficiary could also reject any other portion of the initiative. If the answer is yes, then the court should flag the initiative as potentially

397. To be clear, public-choice theorists emphasize that even deeply self-interested voting like I describe here can produce positive and negative public effects. And, to my knowledge, there is no quantitative research testing my hypothesis in this particular context. There is evidence regarding the initiative and state fiscal policy, which has overlapping dynamics with my claim here but still operates in the realm of generalized policy rather than discrete entitlements. However, the single-subject rule's history suggests that this is a plausible behavioral phenomenon. Historically, legislators were unable to control their logrolling behavior because the commodity of special legislation allowed them to realize discrete benefits for themselves and their constituents. Problematic logrolling still occurs when legislators make general laws, but presumably with less frequency and potency. My hypothesis also has strong intuitive appeal: Voters will generally support laws that produce discrete benefits for them over any assessment of generalized laws that have mediated effects on their interests and values. That said, it is a hypothesis even if a historically informed one.

398. Parties have mounted single-subject arguments based on private/local entitlements. *See* Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth, 877 A.2d 383, 396–97 (Pa. 2005).

399. This is well-trodden in state constitutional law in a variety of contexts. *See generally* Anthony Schutz, *State Constitutional Restrictions on Special Legislation as Structural Restraints*, 40 J. LEGIS. 39 (2013–2014) (surveying doctrine applying provisions prohibiting special legislation); Zoldan, *supra* note 186, at 634–40 (exploring how courts can identify special and private legislation).

400. Of course, the rule would apply to specific local or private burdens too. For an example of an initiative that included a specific private burden, see *In re Advisory Op. to the Att'y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1341 (Fla. 1994) (requiring sugar companies to finance Everglades cleanup).

401. *See* BAKER & GILLETTE, *supra* note 158, at 263–65, 274–81 (exploring examples).

402. *See id.* In short, a category is a special law when it uses criteria that have no rational connection to the law's stated purpose. *E.g.*, Rodriguez v. Gonzales, 227 S.W.2d 791, 793 (Tex. 1950).

403. It is important to note that this is not required by the text or logic of the rule, but it is the approach most consistent with the rule's historical purposes.

containing a private/local logroll.[404] Additionally, the court must ask whether a rational non-beneficiary could accept any portion of the initiative but reject the special entitlement. If the answer is yes, then the court should flag the initiative as potentially containing a special-interest rider.

To illustrate, consider an initiative that legalizes marijuana and grants distribution licensing and taxing authority to only four counties. On step one, this creates a special entitlement for the four counties. On step two, each county could rationally accept its licensing and taxing authority but oppose granting any other licenses. Voters in each county might also reasonably reject marijuana legalization unless they receive special taxing authority. Conversely, voters outside the privileged counties could reasonably approve legalization but reject privileging the four counties. Thus, it is unclear whether the entitlements are driving beneficiary vote aggregation at the expense of majoritarian preferences on legalization.

One might respond to this proposal by noting that courts have been unable to fairly apply the logrolling framework to ordinary initiatives, so we should expect courts to botch it here too. This may be true, and courts should carefully consider the degree to which they can apply the rule more predictably in this context. If they cannot, then courts should send even these initiatives to referenda for all the reasons explained above.

However, there is reason to believe that courts will apply the rule more fairly and predictably in this context. First, the threshold for heightened review is whether the initiative includes a special-law component. This should subject most initiatives to the deferential review described above, thus preserving the overall predictability of the initiative process. Second, if the court determines that an initiative has a special-law component, its logrolling analysis is necessarily constrained by reference to the special entitlement. Rather than reviewing the initiative based on any imaginary voting bloc that might find the logroll objectionable, the court must evaluate whether a rational voter who is a beneficiary of the special law could disagree with any other aspect of the initiative, or whether a rational non-beneficiary could support one aspect of the initiative and reject the entitlement. This focuses the analysis on the precise logroll/rider that courts are trying to prevent.

Of course, this analysis is not foolproof, but it provides a much more constraining framework for courts and is more carefully tailored to the goal of limiting special-law logrolling.

C. EXPLORE MORE COLLABORATIVE REMEDIES

When courts find a violation of the single-subject rule, they almost universally conclude that the initiative, as a whole, is disqualified from the ballot. Thus, the remedy awarded in single-subject rule cases is usually a

404. I discuss more constructive remedies besides striking the initiative in the next Section. *See infra* Section V.C.

judgment that prohibits executive officials (usually the secretary of state) from placing the proposed initiative on the ballot.[405]

But the single-subject rule is potentially well suited to other, more constructive remedies, like splitting the ballot question along whatever lines the court finds problematic. Indeed, if the court finds a single-subject rule violation, it has necessarily concluded that the proposal includes discrete and severable subjects that voters should consider separately. In other words, inherent in the analysis is the separation required by the single-subject rule. Moreover, nothing about the single-subject rule itself prohibits this type of relief. The rule prohibits initiatives from containing more than one subject. Thus, an order separating a compound initiative into separate, single-subject initiatives can be consistent with the rule.[406]

Additionally, state high courts have broad remedial powers and original jurisdiction over writs that could accommodate this. It might require creative lawyering by the parties. For example, if an initiative is challenged as violating the single-subject rule, the initiative's sponsor might defend that challenge on the merits. But the initiative's sponsor might also petition the court for a writ of mandamus in the alternative that the court finds a violation of the single-subject rule and orders the secretary of state to split the initiative.

These kinds of remedies can be complex and will require further investigation and research. But they are not beyond the pale of what state courts do. Consider *Nevada Judges Ass'n v. Lau*.[407] The case involved term limits for officials in all three branches of state government.[408] It was challenged on various grounds in the form of a petition for a writ of mandamus to the Nevada Supreme Court, instructing the Secretary of State to remove the initiative from the ballot.[409] The court found that the ballot was misleading to voters because it lumped together term limits for all judges and other officials without separating them out.[410] However, rather than strike the initiative

405. *See, e.g.*, Koussa v. Att'y Gen., 188 N.E.3d 510, 523 (Mass. 2022) ("The matter is remanded to the county court where a judgment shall enter declaring that the Attorney General's certifications of Initiative Petitions 21-11 and 21-12 are not in compliance with the related subjects requirement of art. 48 and thus that the petitions are not suitable to be placed on the ballot in the 2022 Statewide election."); Scott L. Kafker & David A. Russcol, *The Eye of a Constitutional Storm: Pre-Election Review by the State Judiciary of Initiative Amendments to State Constitutions*, 2012 MICH. STATE L. REV. 1279, 1304.

406. One problem with this proposal is that it might undermine the signature gathering phase for qualifying initiatives to be on the ballot. If sponsors procure signatures based on a compound ballot question, a court might disqualify the question based on the theory that the signatures were procured in violation of the single-subject rule. Courts might also entertain a variety of strategic concerns with this approach such as creating incentives for poor framing by sponsors at the onset of the initiative process. These issues deserve more rigorous investigation and analysis than is possible here.

407. *See generally* Nev. Judges Ass'n v. Lau, 910 P.2d 898 (Nev. 1996).

408. *Id.* at 899–904.

409. *Id.* at 899–900.

410. *Id.* at 903–04.

in toto, the court ordered the Secretary of State to place them on the ballot separately.[411] The court wrote:

> [W]e direct that the next time the initiative appears on the ballot, it be severed and presented in the form of two questions, enabling voters to vote yes or no in regard to term limits for non-judicial public officers and yes or no in regard to term limits for judges and justices. Each question shall have its own respective explanation and arguments, and the explanation in regard to term limits for judges shall make clear that in the case of appointed judges, proposed term limits may preclude an incumbent from seeking re-election after serving less than three years on the bench. This will ensure that the voters are well informed in regard to the specific impact that the proposed term limits will have on the separate branches of government and the elected officers serving in each.[412]

The court even included language for the Secretary of State to include on the ballot.[413]

These types of remedies are usually within a state court's authority, if properly raised by the parties. More importantly, they reflect a more collaborative approach to the initiative, consistent with the court's obligation to facilitate, while also monitoring, the initiative. Of course, some initiatives might not be easy to split via a writ, and sponsors should retain the right to withdraw an initiative if they do not approve the court's restructuring. But these types of remedies could preserve efficiencies, leverage the strengths of a referendum, and help courts avoid overreach.

CONCLUSION

The initiative is an important institution in our democratic order. Courts play an important role in monitoring and enforcing its bounds and realizing its potential. The strict enforcement of the single-subject rule has proven to be detrimental to the initiative and the courts. Courts should reconsider their approach to the rule and adopt a standard that better fits the rule's history, capacity, and purpose in the state constitutional order.

411. *Id.*

412. *Id.* at 904.

413. *Id.* ("[W]e direct the Secretary of State to place the proposed amendment . . . as a separate question the next time it appears on the ballot. The following explanation shall be part of that ballot question . . . .").

APPENDIX A: ALL SINGLE-SUBJECT RULE PROVISIONS FOR INITIATIVE PROCESSES IN STATE CONSTITUTIONS

State	Ohio
Year Initiative SSR First Adopted	1912
Source of Authority	Constitutional
Citation	OHIO CONST. art. II, §§ 1, 15(D).
Text of SSR Provision	"No bill shall contain more than one subject, which shall be clearly expressed in its title. No law shall be revived or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections amended shall be repealed."
If SSR Comes from State Constitution, How Was It Adopted?	Constitutional convention
Source	CONSTITUTION OF OHIO WITH AMENDMENTS PROPOSED BY THE CONSTITUTIONAL CONVENTION OF 1912, at 8, 14 (1912).

Massachusetts	Missouri	California
1918	1920	1948
Constitutional	Constitutional	Constitutional
MASS. CONST. amend. art. XLVIII(II), § 3.	MO. CONST. art. XII, § 2(b).	CAL. CONST. art. II, § 8(d).
"[P]etition[s] shall . . . contain[] only subjects . . . which are related or which are mutually dependent."	"No such proposed amendment shall contain more than one amended and revised article of this constitution, or one new article which shall not contain more than one subject and matters properly connected therewith."	"An initiative measure embracing more than one subject may not be submitted to the electors or have any effect."
Constitutional convention	First adopted by citizen-initiated constitutional amendment. Readopted by 1945 convention	Legislatively-referred constitutional amendment
	Proposition No. 15, approved by voters November 1920.	1948 Cal. Stat. 305, 306 (Proposition 10, approved by voters November 1948).

Oklahoma	Alaska
1952	1956
Constitutional	Constitutional
OKLA. CONST. art. XXIV, §1.	ALASKA CONST. art. II, §13, art. XII, §11.
"No proposal for the amendment or alteration of this Constitution which is submitted to the voters shall embrace more than one general subject and the voters shall vote separately for or against each proposal submitted; provided, however, that in the submission of proposals for the amendment of this Constitution by articles, which embrace one general subject, each proposed article shall be deemed a single proposal or proposition."	"Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title."
Legislatively-referred constitutional amendment	Constitutional convention
1951 Okla. Sess. Laws 341 (approved by voters as State Question 353 in July 1952).	MINUTES OF THE DAILY PROCEEDINGS, ALASKA CONSTITUTIONAL CONVENTION, at 1746–47, app. VI at 10 (Nadine Williams ed., 1965).

Wyoming	Oregon
1968	1968
Constitutional & Statutory	Constitutional
WYO. CONST. art. III, §§ 24, 52(g); WYO. STAT. ANN. § 22-24-304(a) (2025).	OR. CONST. art. IV, § 1(2)(d).
"No bill, except general appropriation bills and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject is embraced in any act which is not expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."	"A proposed law or amendment to the Constitution shall embrace one subject only and matters properly connected therewith."
Legislatively-referred constitutional amendment	Legislatively-referred constitutional amendment
1967 Wyo. Sess. Laws 729.	1967 Or. Laws 1630 (approved by voters as Measure 2 in November 1968).

Florida	Illinois
1972	1980
Constitutional	Judge-applied
FLA. CONST. art. XI, § 3.	Coal. for Pol. Honesty v. State Bd. of Elections, 415 N.E.2d 368, 379 (Ill. 1980).
"The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith."	"[I]t is only separate and unrelated questions which cannot be combined in a single proposition."
Legislatively-referred constitutional amendment	Inferred by court
1972 Fla. Laws 1665 (approved as Amendment 3 by voters in November 1972; amended in November 1994 to except initiatives constraining government power to raise revenue from SSR, added to ballot by citizen initiative, approved by voters as Amendment 4; later amended in 1998).	ILL. CONST art. III, § 3.

Colorado
1994
Constitutional
COLO. CONST. art. V, § 1(5.5).
"No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls. In such circumstance, however, the measure may be revised and resubmitted for the fixing of a proper title without the necessity of review and comment on the revised measure in accordance with subsection (5) of this section, unless the revisions involve more than the elimination of provisions to achieve a single subject, or unless the official or officials responsible for the fixing of a title determine that the revisions are so substantial that such review and comment is in the public interest."
Legislatively-referred constitutional amendment
1993 Colo. Sess. Laws 2152 (approved by voters as Referendum A in November 1994).

Washington	Nebraska
1995	1998
Judge-applied	Constitutional
Wash. Fed'n of State Emps. v. State, 901 P.2d 1028, 1030 (Wash. 1995).	NEB. CONST. art. III, § 2.
"We conclude that Const. art. 2, § 19, which requires that legislation embrace no more than one subject and that subject be expressed in the title, applies to initiative measures."	"Initiative measures shall contain only one subject."
Inferred by court	Legislatively-referred constitutional amendment
WASH. CONST. art. II, § 19.	1997 Neb. Laws 7 (approved by voters in May 1998).

Nevada	Utah
2005	2008
Statutory	Constitutional & Statutory
NEV. REV. STAT. ANN. § 295.009 (LexisNexis 2017).	UTAH CONST. art. 6, § 22; UTAH CODE ANN. § 20A-7-202 (5) (a) (iv)
"1. Each petition for initiative or referendum must: (a) Embrace but one subject and matters necessarily connected therewith and pertaining thereto; and (b) Set forth, in not more than 200 words, a description of the effect of the initiative or referendum if the initiative or referendum is approved by the voters. The description must appear on each signature page of the petition. 2. For the purposes of paragraph (a) of subsection 1, a petition for initiative or referendum embraces but one subject and matters necessarily connected therewith and pertaining thereto, if the parts of the proposed initiative or referendum are functionally related and germane to each other in a way that provides sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative or referendum."	"Except general appropriation bills and bills for the codification and general revision of laws, no bill shall be passed containing more than one subject, which shall be clearly expressed in its title."
Statutory	Constitutional & Statutory
2005 Nev. Stat. 2837.	2008 Utah Laws 1529.

South Dakota
2018
Constitutional & Statutory
S.D. CONST. art. XXIII, § 1; S.D. CONST. art. III, § 21 (existed prior to initiative); and S.D. CODIFIED LAWS § 2-1-11.1 (2021).
"A proposed amendment may amend one or more articles and related subject matter in other articles as necessary to accomplish the objectives of the amendment; however, no proposed amendment may embrace more than one subject. If more than one amendment is submitted at the same election, each amendment shall be so prepared and distinguished that it can be voted upon separately."
Legislatively-referred constitutional amendment
2018 S.D. Sess. Laws ch. 4, § 2 31 (approved by voters as Amendment Z in November 2018).

Idaho	Arizona
2020	2022
Statutory	Constitutional
IDAHO CODE § 34-1801A(1) (2025).	ARIZ. CONST. art. IV, pt. 1, §1(9).
"An initiative petition shall embrace only one (1) subject and matters properly connected with it."	"Every initiative measure shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an initiative measure which shall not be expressed in the title, such initiative measure shall be void only as to so much thereof as shall not be embraced in the title."
	Legislatively-referred constitutional amendment
2020 Idaho Sess. Laws 977.	2021 Ariz. Sess. Laws 3588, 3591, (approved by voters as Proposition 129 in November 2022).

APPENDIX B: STATE CONVENTION DEBATES AND CITATIONS

State	Convention Year	Official Title of Debates
Pennsylvania	1837	9 JOHN AGG, PROCEEDINGS AND DEBATES OF THE CONVENTION OF THE COMMONWEALTH OF PENNSYLVANIA, TO PROPOSE AMENDMENTS TO THE CONSTITUTION, COMMENCED AND HELD AT HARRISBURG, MAY 2, 1837, at 17–40 (Harrisburg, Packer, Barrett & Park 1838).
New Jersey	1844	PROCEEDINGS OF THE NEW JERSEY STATE CONSTITUTIONAL CONVENTION OF 1844, at 56, 115, 619–20 (N.J. Writers' Project of the Works Projects Admin. ed., 1942).
Louisiana	1845	ROBERT J. KER, PROCEEDINGS AND DEBATES OF THE CONVENTION OF LOUISIANA WHICH ASSEMBLED AT THE CITY OF NEW ORLEANS JANUARY 14, 1844, at 840–41 (New Orleans, Besancon, Ferguson & Co. 1845).
Texas	1845	WM. F. WEEKS, DEBATES OF THE TEXAS CONVENTION 509 (Houston, J.W. Cruger 1846).
Wisconsin	1846	THE CONVENTION OF 1846, at 188, 403, 739 (Milo M. Quaife ed., 1919).
New York	1846	WILLIAM G. BISHOP & WILLAM H. ATTREE, REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF NEW YORK 933, 1068 (Albany, The Evening Atlas 1846).
Illinois	1847	THE CONSTITUTIONAL DEBATES OF 1847, at 305–06, 698–99 (Arthur Charles Cole ed., 1919).
Wisconsin	1847	JOURNAL OF THE CONVENTION TO FORM A CONSTITUTION FOR THE STATE OF WISCONSIN, WITH A SKETCH OF THE DEBATES, BEGUN AND HELD AT MADISON, ON THE FIFTEENTH DAY OF DECEMBER, EIGHTEEN HUNDRED AND FORTY-SEVEN 61, 207, 210, 351, 606 (Madison, Tenney, Smith & Holt 1848).
California	1849	J. ROSS BROWNE, REPORT OF THE DEBATES IN THE CONVENTION OF CALIFORNIA ON THE FORMATION OF THE STATE CONSTITUTION, IN SEPTEMBER AND OCTOBER, 1849, at 90 (Washington, John T. Towers 1850).
Kentucky	1849	R. SUTTON, REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF KENTUCKY, 1849, at 127–28, 901–10 (Frankfort, A.G. Hodges & Co. 1849).
Indiana	1850	2 H. FOWLER, REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF

		INDIANA 58, 104, 1085–87, 2043 (Wm. R. Burford Printing Co. 1935) (1850).
Maryland	1850	1 DEBATES AND PROCEEDINGS OF THE MARYLAND REFORM CONVENTION TO REVISE THE STATE CONSTITUTION 9, 305–19 (Annapolis, William M'Neir 1851).
Michigan	1850	REPORT OF THE PROCEEDINGS AND DEBATES IN THE CONVENTION TO REVISE THE CONSTITUTION OF THE STATE OF MICHIGAN, 1850, at 147–48 (Lansing, R.W. Ingalls 1850).
Ohio	1850	1 J.V. SMITH, REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF OHIO, 1850–51, at 108, 233, 297 (Columbus, Medary 1851); *id.* vol 2 at 151, 318, 560–61.
Virginia	1850	WM. G. BISHOP, REGISTER OF THE DEBATES AND PROCEEDINGS OF THE VA. REFORM CONVENTION 223 (Richmond, Ro. H. Gallaher 1851).
Delaware	1852	RICHARD SUTTON, DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF DELAWARE, REPORTED BY RICHARD SUTTON, ESQ., STENOGRAPHER TO THE U.S. SENATE, TOGETHER WITH THE AMENDED CONSTITUTION AND SCHEDULE, AND A TABULAR STATEMENT SHOWING THE NAMES, AGES, OCCUPATION, &C., OF THE MEMBERS OF THE CONVENTION 144, 189, 205–06, 214, 240, 259 (Dover, G.W.S. Nicholson 1853).
Massachusetts	1853	1 HARVEY FOWLER, OFFICIAL REPORT OF THE DEBATES AND PROCEEDINGS IN THE STATE CONVENTION, ASSEMBLED MAY 4TH, 1853, TO REVISE AND AMEND THE CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS 93 (Boston, White & Potter 1853).
Iowa	1857	W. BLAIR LORD, THE DEBATES OF THE CONSTITUTIONAL CONVENTION; OF THE STATE OF IOWA, ASSEMBLED AT IOWA CITY, MONDAY, JANUARY 19, 1857, at 30, 530–31 (Davenport, Luse, Lane & Co. 1857).
Minnesota	1857	FRANCIS H. SMITH, THE DEBATES AND PROCEEDINGS OF THE MINNESOTA CONSTITUTIONAL CONVENTION INCLUDING THE ORGANIC ACT OF THE TERRITORY 262–63 (St. Paul, Earle S. Goodrich 1857).
Oregon	1857	THE OREGON CONSTITUTION AND PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF 1857, at 292, 294, 410 (Charles Henry Carey ed., 1926).
Kansas	1859	KANSAS CONSTITUTIONAL CONVENTION: A REPRINT OF THE PROCEEDINGS AND DEBATES OF THE CONVENTION WHICH FRAMED THE CONSTITUTION

		OF KANSAS AT WYANDOTTE IN JULY, 1859, at 113–14, 307, 579, 611–14 (1920).
Virginia	1861	PROCEEDINGS OF THE VIRGINIA STATE CONVENTION OF 1861, at 16 (George H. Reese ed., 1965).
West Virginia	1861	1 DEBATES AND PROCEEDINGS OF THE FIRST CONSTITUTIONAL CONVENTION OF WEST VIRGINIA (1861–1863), at 906–10 (Charles H. Ambler, Frances Haney Atwood & William B. Mathews eds., n.d.).
Maryland	1864	WM. BLAIR LORD, THE DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MARYLAND, ASSEMBLED AT THE CITY OF ANNAPOLIS, WEDNESDAY, APRIL 27, 1864, at 11, 474, 797–99, 1113–15 (Annapolis, Richard P. Bayly 1864).
Nevada	1864	ANDREW J. MARSH, OFFICIAL REPORT OF THE DEBATES AND PROCEEDINGS IN THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEVADA, ASSEMBLED AT CARSON CITY, JULY 4TH, 1864, TO FORM A CONSTITUTION AND STATE GOVERNMENT 143 (San Francisco, Frank Eastman 1866).
Maryland	1867	DEBATES OF THE MARYLAND CONSTITUTIONAL CONVENTION OF 1867, at 113–15, 557 (Philip B. Perlman ed., 1923).
New York	1867	EDWARD F. UNDERHILL, PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK, HELD IN 1867 AND 1868, IN THE CITY OF ALBANY, at 176, 1173, 2102–04, 2754, 3599–600, 3626, 3914–15, 3933, 3961 (Albany, Weed, Parsons & Co. 1868).
South Carolina	1868	J. WOODRUFF, PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF SOUTH CAROLINA, HELD AT CHARLESTON, S.C., BEGINNING JANUARY 14TH AND ENDING MARCH 17TH, 1868, at 313, 446, 844 (Charleston, Denny & Perry 1868).
Arkansas	1868	DEBATES AND PROCEEDINGS OF THE CONVENTION WHICH ASSEMBLED AT LITTLE ROCK, JANUARY 7TH 1868, UNDER THE PROVISIONS OF THE ACT OF CONGRESS OF MARCH 2D, 1867, AND THE ACTS OF MARCH 23D AND JULY 19TH, 1867, SUPPLEMENTARY THERETO, TO FORM A CONSTITUTION FOR THE STATE OF ARKANSAS 170, 589, 865 (James M. Pomeroy ed., Little Rock, J.G. Price 1868).
Illinois	1869	ELY, BURNHAM & BARTLETT, DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF ILLINOIS, CONVENED AT THE CITY OF SPRINGFIELD, TUESDAY, DECEMBER 13, 1869, at 116, 394, 536–40, 1872, 1882 (Springfield, E.L. Merritt & Brother 1870).

Nebraska	1871	1 OFFICIAL REPORT OF THE DEBATES AND PROCEEDINGS IN THE NEBRASKA CONSTITUTIONAL CONVENTION ASSEMBLED IN LINCOLN, JUNE THIRTEENTH, 1871, at 129, 190–91 (Addison E. Sheldon ed., 1905).
Pennsylvania	1872	1 DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA: CONVENED AT HARRISBURG, NOVEMBER 12, 1872; ADJOURNED, NOVEMBER 27, TO MEET AT PHILADELPHIA, JANUARY 7, 1873, at 96 (Harrisburg, Benjamin Singerly 1873); *id.* vol. 2 at 579–82, 766; *id.* vol. 5 at 243–46.
Ohio	1873	1 J.G. ADEL, OFFICIAL REPORT OF THE PROCEEDINGS AND DEBATES OF THE THIRD CONSTITUTIONAL CONVENTION OF OHIO, ASSEMBLED IN THE CITY OF COLUMBUS, ON TUESDAY, MAY 13, 1873, at 841–42, 1259 (Cleveland, W.S. Robison & Co. 1873) ; *id.* vol. 2 at 280–81, 284–92.
Missouri	1875	6 DEBATES OF THE MISSOURI CONSTITUTIONAL CONVENTION OF 1875, at 505 (Isidor Loeb & Floyd C. Shoemaker eds., 1940) ; *id.* vol. 7 at 231 (1941); *id.* vol. 12 at 280 (1944).
Georgia	1877	SAMUEL W. SMALL, A STENOGRAPHIC REPORT OF THE PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION HELD IN ATLANTA, GEORGIA, 1877, at 314, 374, 484 (Atlanta, Constitution Publishing Co. 1877).
California	1878	E.B. WILLIS & P.K. STOCKTON, DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF CALIFORNIA, CONVENED AT THE CITY OF SACRAMENTO, SATURDAY, SEPTEMBER 28, 1878, at 111, 740, 796–99, 1269–70 (Sacramento, J.D. Young 1880).
South Dakota	1885	1 DAKOTA CONSTITUTIONAL CONVENTION HELD AT SIOUX FALLS, SEPTEMBER, 1885, at 18, 141, 172, 228–31 (Doane Robinson ed., 1907).
Idaho	1889	PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF IDAHO 1889, at 531–35 (I.W. Hart ed., 1912).
Montana	1889	PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION HELD IN THE CITY OF HELENA, MONTANA JULY 4TH, 1889, AUGUST 17TH, 1889, at 135, 608, 611 (1921).
North Dakota	1889	R.M. TUTTLE, OFFICIAL REPORT OF THE PROCEEDINGS AND DEBATES OF THE FIRST CONSTITUTIONAL CONVENTION OF NORTH DAKOTA, ASSEMBLED IN THE CITY OF BISMARCK, JULY 4TH TO AUG. 17TH, 1889, at x (Bismarck, Tribune 1889).

Kentucky	1890	CLARENCE E. WALKER, OFFICIAL REPORT OF THE PROCEEDINGS AND DEBATES IN THE CONVENTION ASSEMBLED AT FRANKFORT, ON THE EIGHTH DAY OF SEPTEMBER, 1890, TO ADOPT, AMEND OR CHANGE THE CONSTITUTION OF THE STATE OF KENTUCKY 163, 214, 1132–33, 1555–60, 1597–99, 1604, 1616, 1642–46, 1725, 2222 (Frankfort, E. Polk Johnson 1890).
New York	1894	1 WILLIAM H. STEELE, REVISED RECORD OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK, MAY 8, 1894 TO SEPTEMBER 29, 1894, at 952 (1900); *id.* vol. 3 at 142–56.
Utah	1895	OFFICIAL REPORT OF THE PROCEEDINGS AND DEBATES OF THE CONVENTION ASSEMBLED AT SALT LAKE CITY ON THE FOURTH DAY OF MARCH, 1985, TO ADOPT A CONSTITUTION FOR THE STATE OF UTAH, at 1861 (Salt Lake City, Star Printing Co. 1898).
Delaware	1896	CHARLES G. GUYER & EDMOND C. HARDESTY, DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF DELAWARE 786, 817–20, 2475, 2642, 2871 (1958).
Alabama	1901	OFFICIAL PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF ALABAMA, MAY 21ST, 1901, TO SEPTEMBER 3RD, 1901, at 393, 1122, 1126 (1940).
Virginia	1901	REPORT OF THE PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION, STATE OF VIRGINIA, HELD IN THE CITY OF RICHMOND JUNE 12, 1901, TO JUNE 26, 1902, at 1874–79, 3113 (J.H. Lindsay ed., 1906).
Michigan	1907	1 JOSEPH H. BREWER, CHAS. H. BENDER & CHAS. H. MCGURRIN, PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF MICHIGAN 546–47 (1907).
Arizona	1910	THE RECORDS OF THE ARIZONA CONSTITUTIONAL CONVENTION OF 1910, at 590–92 (John S. Goff ed., 1991).
Ohio	1912	1 CLARENCE E. WALKER, PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF OHIO 9, 566, 657, 826–27, 901–08 (E.S. Nichols ed., 1912).
New York	1915	REVISED RECORD OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK: APRIL SIXTH TO SEPTEMBER TENTH, 1915, at 841, 1976, 2945, 4247–48, 4292 (1916).
Massachusetts	1917	2 DEBATES IN THE MASSACHUSETTS CONSTITUTIONAL CONVENTION, 1917–1918, at 566–68, 856–57 (William H. Sanger ed., 1918).

Nebraska	1919	JOURNAL OF THE NEBRASKA CONSTITUTIONAL CONVENTION 33, 52, 231, 300, 683, 1062, 1253, 1571, 2094, 2196–97, 2684, 2895 (Clyde H. Barnard ed., 1921).
Illinois	1920	PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF ILLINOIS, CONVENED JANUARY 6, 1920, at 389, 3722–23, 3739–43, 3984, 3995 (William S. Gray, John L. Dryer & Rodney H. Brandon eds., n.d.).
New York	1938	REVISED RECORD OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK, APRIL FIFTH TO AUGUST TWENTY-SIXTH, 1938, at 1157–58 (1938).
Missouri	1943	2 ROMA J. HASEY, ARDIS NINABUCK & SHIRLEY O'BRIEN, VERBATIM STENOTYPE TRANSCRIPTION OF THE DEBATES OF THE 1943–1944 CONSTITUTIONAL CONVENTION OF MISSOURI 441–43 (1944); *id.* vol. 14 at 4911–12, 4924–25, 5053, 5187–88.
New Jersey	1947	STATE OF NEW JERSEY CONSTITUTIONAL CONVENTION OF 1947, at 1066, 1077, 1084, 1100–01, 1108, 1261, 1502–04 (Sidney Goldmann ed., 1949).
Hawaii	1950	1 PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF HAWAII, 1950, at 344, 402, 422 (Agnes C. Conrad ed., 1960).
Alaska	1955	MINUTES OF THE DAILY PROCEEDINGS, ALASKA CONSTITUTIONAL CONVENTION 1746–47, 1758–59 (Nadine Williams ed., 1965).
New York	1967	5 PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK, APRIL FOURTH TO SEPTEMBER TWENTY-SIXTH, 1967, at 375 (1967); *id.* vol. 8 at 622; *id.* vol. 9 at 84; *id.* vol. 10 at 316, 333.
Hawaii	1968	1 PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF HAWAII OF 1968, at 309, 475 (1973).
Illinois	1970	1 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION, at 390, 607, 648 (1970); *id.* vol. 4 at 2700; *id.* vol. 6 at 1529, 1549; *id.* vol. 7 at 2447, 2529, 2637, 3106.
Montana	1971	MONTANA CONSTITUTIONAL CONVENTION, 1971–1972, at 276, 377–78, 388–89 (1979); *id.* vol. 2 at 862, 869, 1047, 1053, 1092, 1106; *id.* vol. 3 at 519–21 (1981).
North Dakota	1972	DEBATES OF THE NORTH DAKOTA CONSTITUTIONAL CONVENTION OF 1972, at 748–49, 1408, 1806 (Dean F. Bard ed., 1972).
Louisiana	1973	OFFICIAL JOURNAL OF THE PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF 1973 OF THE STATE OF LOUISIANA 85 (1974).