Clear-Title and Single-Subject Implications

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Constitution.

We must begin with the applicable constitutional language: “No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except ... a bill codifying or compiling the law or a part thereof.” Pa Const. (1984 Ed.) Art. III, § 3, Purdon’s Statutes Const. Art. 3, § 3 (1994) (emphasis added).

Clear Title.

In order to meet the requirement that the subject of a bill be clearly expressed in its title, the title must cause an individual with a reasonably inquiring mind to examine the statute to determine whether or not he or she is affected by the bill. In re Commonwealth, Department of Transportation, 511 Pa. 620, 627, 515 A.2d 899, 902 (1986); Common Cause/Pennsylvania v. Commonwealth, 710 A.2d 108, 120 (Pa. Commonwealth 1998).

The Supreme Court has expressed concern about the title of Act 230 of 2002: “[The act] contains voluminous and varying provisions: ... and some are only hinted at in the title in the vaguest of terms (e.g. ‘making repeals’), if at all.” City of
Philadelphia v. Commonwealth, 575 Pa. 542, 579, 838 A.2d 566, 589 (2003) [also referred to as Street v. Rendell or the Convention Center Case]. As a result of this concern, the Legislative Reference Bureau has begun to make titles of bills more explanatory. The new matter expressed in the title should state briefly but plainly what is being done. Repeals directly related to the new matter should be characterized as related repeals. Repeals indirectly related to the new matter in the title should explicitly identify the subject of the repeal. Repeals unrelated to the new matter in the title should not be included in the bill.

On June 22, 2005, the Pennsylvania Supreme Court decided a challenge to Act 2004-71, which established the gaming provisions of Title 4 of the Pennsylvania Consolidated Statutes. Pennsylvanians Against Gambling Expansion Fund, Inc., v. Commonwealth, No.229 MM 2004 (Pa. 2005). As of this date, only an unreported slip opinion is available. The Court reiterated the requirement that the title of a bill put a reasonable individual on notice of the general subject matter of the bill. Slip op. at 28.

Single Subject.

with citizenship requirements for municipal governing bodies. *Id.* During passage, Act 230 of 2002 was expanded to cover, *inter alia:* collective bargaining arbitration provisions in Philadelphia; changes to the size, composition, and governance of the Pennsylvania Convention Center Authority; authority over taxicabs and limousines in Philadelphia; functions and supervision of the Philadelphia Parking Authority; and police officer participation in election campaigns. *Id.* at 552-53, 838 A.2d at 572-73.

The Court has also disapproved of the 11th-hour addition of over 100 pages of complicated statutory revision. See *City of Philadelphia,* 575 Pa. at 551-53, 838 A.2d at 572-73. Extensive revisions made in the late stages of bill passage expose the bill to challenge.

Traditionally, germaneness has been the single-subject standard. A statute may contain any number of provisions properly connected with and germane to the subject expressed in the title. *Ullom v. Boehm,* 392 Pa. 643, 653, 142 A.2d 19, 24 (1958); *Poor District Case (No.1),* 329 Pa. 390, 399, 197 A. 334, 339 (1938); *Pennsylvania State Lodge, Fraternal Order of Police, v. Commonwealth,* 692 A.2d 609, 616 (Pa. Commonwealth 1997), aff’d, 550 Pa. 549, 707 A.2d 1129 (1998). The Court is retreating from this standard: “*I*t has resulted in a situation where germaneness has, in effect, been diluted to the point where it has been assessed according to whether the court can fashion a
single, over-arching topic to loosely relate the various subjects included in the statute under review.” City of Philadelphia, 575 Pa. at 576-77, 838 A.2d at 587. A modification has been effected.

To pass muster under the single-subject standard, an act must have a single unifying subject to which all of its provisions are germane. City of Philadelphia, 575 Pa. at 579, 838 A.2d at 589; Pennsylvanians Against Gambling, slip op. at 11. This requires a determination as to whether disparate subjects constitute parts of a unifying scheme to accomplish a single purpose. City of Philadelphia, id.

For amending the Pennsylvania Consolidated Statutes, there are two types of titles. A narrow consolidated title, such as Fish or Game, can be treated as a single subject. Any number of substantive amendments should be permissible. A broad consolidated title, such as Crimes or Judiciary, requires a narrower purpose. Substantive amendments should be tested for a unifying scheme. For purposes of the single-subject requirement, requiring DNA samples from incarcerated felony sex offenders does not bear a proper relation to joint and several liability for negligence, even though both topics are properly included in the Judicial Code. DeWeese v. Weaver, 824 A.2d 364, 370 (Pa. Commonwealth 2003).

For new consolidations, the situation is different. The Supreme Court addressed the possibility that Act 230 of 2002
might be constitutional as a codifying and compiling bill, which is an exception to the single-subject rule. *City of Philadelphia*, 575 Pa. at 581, 838 A.2d at 590. It was determined, however, that the exception was not met:

Act 230 is not a compiling bill, as it does not purport merely to compile existing statutory law unaltered from its original substance.... Further, Act 230 does not merely consolidate existing legislation into Title 53 of the Pennsylvania Consolidated Statutes. Rather, it both amends a Consolidated Statute and purports to consolidate existing law. While SB 1100 [Act 230 of 2002] is thus a bill that, at least in part, 'codifies ... the law,' it does not follow that the bill necessarily comes within Section 3's [codifying or compiling] exception to the single-subject requirement.

*Id.* at 581-82, 838 A.2d at 590-91 (emphasis added). The Court held that the General Assembly does not have license to include, in an act consolidating an existing statute, unrestricted substantive revisions to the law which are unrelated to the codification process. *Id.* at 584, 838 A.2d at 592. The Court’s language is extremely broad: “[T]he exception to the single-subject requirement for legislation ‘codifying ... the law or a part thereof’ pertains to bills which codify the law and make only such alterations in form and content as are necessary to effect the codification.” *Id.* (emphasis added). Taken literally, this would allow only a pure codification--something which has never been done. Practically speaking, without special chamber rules prohibiting amendments and permitting only an affirmative or negative vote, pure codification can never take place.
A possible solution is offered. As long as there is only one unifying scheme to a bill, it could consolidate several related statutory provisions on a subject into a consolidated title and, at the same time, make substantive changes in those related statutory provisions. Under this approach, the bill would embrace only one subject: the law covered by the related statutory provisions. The substantive changes would be necessary to effect the consolidation because the bill would not pass without the changes. In such a bill, no other changes to the affected consolidated title would be made; and no other consolidations would be made.

The new standard applies to un consolidated statutes as well as consolidated statutes. Although Act 230 of 2002 was an amendment to the Pennsylvania Consolidated Statutes, the court’s language on single subject can be read to encompass unconsolidated statutes: “There must be limits [on judicial deference to broad legislative topics], however, as otherwise virtually all legislation, no matter how diverse in substance, would meet the single-subject requirement.” City of Philadelphia, 575 Pa. at 578, 838 A.2d at 588.

Some free-standing statutes, such as the Agricultural Area Security Law or the Lead Certification Act, are sufficiently limited in scope to be treated as a single subject. This should permit any number of substantive amendments. Most free-standing statutes, however, are more comprehensive in nature. This
requires a narrower purpose, and substantive amendments should be tested for a unifying scheme.

As long as there is only one unifying scheme to a bill, it could codify several related statutory provisions on a subject into a free-standing act and, at the same time, make substantive changes in those related statutory provisions. Under this approach, the bill would embrace only one subject: the law covered by the related statutory provisions. The substantive changes would be necessary to effect the codification because the bill would not pass without the changes. In such a bill, no other changes to the affected free-standing act would be made; and no other codifications would be made.