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# Note: The Legislature Should Clean Up Its Act—The Minnesota Citizens’ Personal Protection Act, a DNR Technical Bill, and the Single-Subject and Title Clause of the Minnesota Constitution

Melissa M. Milbert

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**NOTE: THE LEGISLATURE SHOULD CLEAN UP ITS  
ACT—THE MINNESOTA CITIZENS’ PERSONAL  
PROTECTION ACT, A DNR TECHNICAL BILL, AND THE  
SINGLE-SUBJECT AND TITLE CLAUSE OF THE  
MINNESOTA CONSTITUTION**

Melissa M. Milbert<sup>†</sup>

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## I. INTRODUCTION

“People who love sausage and respect the law should never watch either of them being made.”<sup>1</sup> This historic quote aptly describes the process utilized by the Minnesota Legislature to enact a controversial law in 2003.

A bill must pass the Minnesota Senate and House of Representatives in identical form to become law.<sup>2</sup> In 2003,

1. *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 311 (Minn. 2000) (Anderson, Paul J., concurring in part and dissenting in part) (citing LEWIS D. EIGEN & JOHNATHAN P. SIEGEL, *THE MACMILLAN DICTIONARY OF POLITICAL QUOTATIONS* 325 (1993)). While the exact origin and form of quotation is unknown, the statement is widely attributed to Prussian politician Otto von Bismark-Schoenhausen, the first Chancellor of Germany. RESPECTFULLY QUOTED: A DICTIONARY OF QUOTATIONS REQUESTED FROM THE CONGRESSIONAL RESEARCH SERVICE 190 (Suzy Platt ed., 1989). Legal scholars frequently note the comparable ugliness of legislating and sausage-making. Adam N. Steinman, *A Constitution for Judicial Lawmaking*, 65 U. PITT. L. REV. 545, 548 n.9 (2004) (citing David Luban, *No Rules?: Considering Values Asking the Right Questions*, 72 TEMP. L. REV. 839, 847 (1999) (“[A] first peek into the legislative sausage factory is indescribably revolting.”); Richard J. Pierce, Jr., *Reconciling Chevron and Stare Decisis*, 85 GEO. L.J. 2225, 2235 (1997) (“When that statute emerges from the sausage factory that is the legislative process, it invariably includes scores of gaps, ambiguities, and internally inconsistent provisions.”); Peter L. Strauss, *The Courts and the Congress: Should Judges Disdain Political History?*, 98 COLUM. L. REV. 242, 265 n.92 (1998) (“[F]or legislation as for sausages, one should enjoy the result, but not watch the making.”)).

2. See MINN. CONST. art. IV, § 22, available at <http://www.house.leg.state.mn.us/cco/rules/mncon/mncon.htm> (last visited Apr. 16, 2005). The Governor must also sign the bill into law. Senate FAQ No. 37, Minnesota Senate, at <http://www.senate.leg.state.mn.us/general/senfaq.htm#37>

legislators introduced two bills in both legislative bodies: one bill related to conceal-and-carry gun permits,<sup>3</sup> and the other bill related to statutes affecting the Department of Natural Resources (DNR).<sup>4</sup> The DNR bill unanimously passed the Senate.<sup>5</sup> The conceal-and-carry bill, however, failed to pass through the Senate committee process, so the full Senate never considered the measure as a freestanding bill.<sup>6</sup> In the House, both the DNR and conceal-and-carry bills passed successfully through the committee process.<sup>7</sup> On the House floor, legislators inserted the conceal-and-carry provision into the DNR bill.<sup>8</sup> Subsequently, House members passed the amended DNR–conceal-and-carry bill and sent it back to the Senate

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(last visited Oct. 31, 2004). For more information, see MINNESOTA SENATE PUBLICATIONS OFFICE, HOW A BILL BECOMES A LAW (updated Feb. 21, 2001), available at <http://www.senate.leg.state.mn.us/general/bill-law2001.pdf>.

3. The conceal-and-carry bill, officially entitled the Minnesota Citizens' Personal Protection Act of 2003, was Senate File No. 222 and House File No. 261.

4. The DNR bill was Senate File No. 842 and House File No. 823.

5. Journal of the Senate, 83rd Leg. Sess., 426–27 (Minn. Mar. 24, 2003).

6. See *Hearing on S.F. 222 Before the S. Comm. on Crime Prevention and Pub. Safety*, 83rd Minn. Leg., Mar. 19, 2003 (audio tape), available at [http://www.senate.leg.state.mn.us/media/archive/2003/committee/cmte\\_crime\\_031903.htm](http://www.senate.leg.state.mn.us/media/archive/2003/committee/cmte_crime_031903.htm) (videotape web media); Unofficial Action, Bill Status for S.F. No. 222, Minnesota Senate, at [http://www.revisor.leg.state.mn.us/revisor/pages/search\\_status/status\\_detail.php?b=Senate&f=SF0222&ssn=0&y=2003](http://www.revisor.leg.state.mn.us/revisor/pages/search_status/status_detail.php?b=Senate&f=SF0222&ssn=0&y=2003) (last visited Feb. 20, 2005).

7. The DNR bill passed through the House Committees on Environment and Natural Resources Policy, Governmental Operations and Veterans' Affairs Policy, and Environment and Natural Resources Finance. *Hearing on S.F. 842 Before the H.R. Comm. on Env't and Natural Res. Fin.*, 83rd Minn. Leg., Apr. 11, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls_year=83) (videotape web media); *Hearing on S.F. 842 Before the H.R. Comm. on Gov't Operations and Veterans' Affairs Policy*, 83rd Minn. Leg., Apr. 9, 2003 (audio tape); *Hearing on S.F. 842 and H.F. 823 Before the H.R. Comm. on Env't and Natural Res. Policy*, 83rd Minn. Leg., Mar. 27, 2003 (audio tape). The Personal Protection Act passed through the House Committees on Civil Law, Judiciary Policy and Finance, and Ways and Means. *Hearing on H.F. 261 Before the H.R. Comm. on Ways and Means*, 83rd Minn. Leg., Apr. 3, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls_year=83) (videotape web media); *Hearing on H.F. 261 Before the H.R. Comm. on Judiciary Policy and Fin.*, 83rd Minn. Leg., Feb. 26, 2003 (audio tape); *Hearing on H.F. 261 Before the H.R. Comm. on Civil Law*, 83rd Minn. Leg., Feb. 11, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls_year=83) (videotape web media).

8. Journal of the House of Representatives, 83rd Leg. Sess., 2678 (Minn. Apr. 23, 2003); *House debate on S.F. No. 842*, 83rd Minn. Leg., Apr. 23, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivesHFS.asp?ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivesHFS.asp?ls_year=83) (videotape web media).

for a vote.<sup>9</sup> The Senate, who could not amend the bill on the Senate floor,<sup>10</sup> re-passed the DNR-conceal-and-carry bill.<sup>11</sup> That same day, the governor signed the amended bill into law.<sup>12</sup>

The State admitted that the legislature utilized an “unusual parliamentary maneuver” to pass the conceal-and-carry provision.<sup>13</sup> The Ramsey County District Court, however, held that this “maneuver” violated a requirement in the Minnesota Constitution barring laws from encompassing more than one “subject” which must be embodied in the law’s “title.”<sup>14</sup> This note explores the Ramsey County District Court’s decision in *Unity Church v. Minnesota*<sup>15</sup> recently affirmed by the Minnesota Court of Appeals.<sup>16</sup> This note does not, however, debate the merits of Minnesota’s conceal-and-carry law.

Part II traces the legislative path taken by both the natural resource and conceal-and-carry bills.<sup>17</sup> Part II surveys the history of the single-subject and title clause of the Minnesota Constitution<sup>18</sup> and the evolution of the Minnesota Supreme Court’s interpretation

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9. See Journal of the House of Representatives, 83rd Leg. Sess., 2678–79 (Minn. Apr. 23, 2003).

10. See Rule 2.06, Temporary Joint Rules of the Minnesota Senate and House of Representatives, 84th Leg. Sess., 2005–2006 (adopting temporary joint rules from the 83rd Legislative Session), available at <http://www.house.leg.state.mn.us/cco/rules/jtrule/jt206.htm>; MASON’S MANUAL OF LEGISLATIVE PROCEDURE 532–34 (Nat’l Conf. of State Legs. eds., 1989) (discussing concurrence in amendments from the other legislative body); see also MINNESOTA SENATE PUBLICATIONS OFFICE, HOW A BILL BECOMES A LAW (updated Feb. 21, 2001), available at <http://www.senate.leg.state.mn.us/general/bill-law2001.pdf>.

11. Journal of the Senate, 83rd Leg. Sess., 1390 (Minn. Apr. 28, 2003); *Senate debate on S.F. No. 842*, 83rd Minn. Leg., Apr. 28, 2003 (audio tape), available at [http://www.senate.leg.state.mn.us/media/archive/2003/floor/sfloor\\_042803.htm](http://www.senate.leg.state.mn.us/media/archive/2003/floor/sfloor_042803.htm) (videotape web media).

12. Journal of the Senate, 83rd Leg. Sess., 1534–35 (Minn. Apr. 28, 2003).

13. Appendix to Respondents’ Brief at RA-044, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Sept. 21, 2004) (on file with the Minnesota State Law Library).

14. *Unity Church*, No. C9-03-9570, 2004 WL 1630505, at \*12 (Minn. Dist. Ct. July 14, 2004).

15. *Unity Church*, No. C9-03-9570, 2004 WL 1630505 (Minn. Dist. Ct. July 14, 2004).

16. *Unity Church v. State of Minnesota*, No. 04-1302, 2005 WL 832118 (Minn. Ct. App. Apr. 12, 2005). The opinion is also located on the website for the Minnesota Court of Appeals. See <http://www.courts.state.mn.us/opinions/coa/current/opa041302-0412.htm> (last visited Apr. 12, 2005).

17. See *infra* Part II.A.

18. See *infra* Part II.B.

of the clause since its enactment.<sup>19</sup> Part III summarizes the factual and procedural posture of the *Unity Church* decision.<sup>20</sup> Part IV then contends that the legislature's enactment of the amended natural resource law failed to comply with the single-subject provision of article IV, section 17 of the Minnesota Constitution.<sup>21</sup> Moreover, this note asserts a contrary holding eviscerates the *Blanch v. Suburban Hennepin Regional Park District* "mere filament" test to a "mere figment" and renders the single-subject and title clause meaningless.<sup>22</sup> In contrast to the law's failure to comply with the single-subject provision, this note contends that the amended natural resource law's title gave reasonable notice of its contents.<sup>23</sup> Further, Part IV asserts that the proper sanction renders the entire law unconstitutional.<sup>24</sup> This note concludes that the appellate courts should return to their proper role in interpreting the single-subject and title clause of the Minnesota Constitution, namely to give each part of the constitution the plain meaning and effect of its language.<sup>25</sup>

## II. HISTORICAL DEVELOPMENT

### A. *The Enactment of the DNR Technical Bill and Minnesota Citizens' Personal Protection Act*

#### 1. *The DNR Technical Bill*

##### a. *The DNR Technical Bill Passes Through the Senate*

On March 13, 2003, a bi-partisan group of senators<sup>26</sup> introduced<sup>27</sup> Senate File (S.F.) No. 842 as "[a] bill for an act

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19. See *infra* Part II.C.

20. See *infra* Part III.

21. See *infra* Part IV.A.1.

22. See *infra* Part IV.A.1.

23. See *infra* Part IV.A.2.

24. See *infra* Part IV.B.

25. See *infra* Part V.

26. Republican Senators Gen Olson, Pat Pariseau, and Thomas Neuville and Democratic Farmer-Labor (DFL) Senators John Marty and Tom Saxhaug co-authored the bill. Journal of the Senate, 83rd Leg. Sess., 337–38 (Minn. Mar. 13, 2003).

27. An introduction of a bill is "the formal presentation of a bill to a body of the [l]egislature." Legislative Terms and Definitions, Minnesota Legislature, at <http://www.house.leg.state.mn.us/leg/faqtoc.asp?subject=18> (last visited Mar. 20,

relating to natural resources.”<sup>28</sup> S.F. No. 842 was classified as a “technical” bill because it clarified and corrected the statutes and administrative rules relating to the Minnesota Department of Natural Resources.<sup>29</sup> The Senate President<sup>30</sup> then referred S.F. No. 842 to the Senate Committee on Environment and Natural Resources.<sup>31</sup> When the committee met to discuss S.F. No. 842 on March 17, 2003, Senator Gen Olson introduced the bill as “the DNR technical bill. These are not significant changes . . . .”<sup>32</sup> After

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2005).

28. Journal of the Senate, 83rd Leg. Sess., 337–38 (Minn. Mar. 13, 2003). The Minnesota Constitution requires the legislature to report a bill on three different days. MINN. CONST. art. IV, § 19, *available at* <http://www.house.leg.state.mn.us/cco/rules/mncon/mncon.htm> (last visited Mar. 20, 2004). A reporting typically consists of reading the bill’s title aloud. Senate FAQ No. 41, Minnesota Senate, *at* <http://www.senate.leg.state.mn.us/general/senfaq.htm> (last visited Mar. 20, 2005). For the full text of S.F. No. 842, see S.F. 842, 83rd Minn.Leg., (2003) (bill as introduced on Senate floor), *at* <http://www.revisor.leg.state.mn.us/cgi-bin/bldbill.pl?bill=S0842.0&session=ls83> (posted Mar. 12, 2003) (last visited Mar. 20, 2005).

29. See MINN. STAT. § 3C.04, subd. 4 (1984). “Technical bills” are also known as “department housekeeping bills.” Plaintiffs’ Memorandum in Support of its Motion for Partial Summary Judgment at 4, *Unity Church*, No. C9-03-9570 (Minn. Dist. Ct. filed May 28, 2004) (citing T. Todd, *Overview of the Legislative Process* at 5 (Minnesota CLE, Jan. 23, 2004)), *available at* <http://www.fredlaw.com/news/conceal/SingleSubjectandTakingsSummaryJudgmentBrief.pdf> (last visited Mar. 20, 2005).

30. The Senate majority elected Senator James P. Metzen as the Senate President for the eighty-third legislative session. Journal of the Senate, 83rd Leg. Sess., 6–7 (Minn. Jan. 7, 2003).

31. Journal of the Senate, 83rd Leg. Sess., 338 (Minn. Mar. 13, 2003). The President of the Senate refers bills to committees with appropriate committee jurisdiction to hear the bill. Senate FAQ No. 60, Minnesota Senate, *at* <http://www.senate.leg.state.mn.us/general/senfaq.htm> (last visited Mar. 20, 2005). The Environment and Natural Resources Committee maintains jurisdiction over all bills relating to the environment or natural resources. Environment and Natural Resources Committee Jurisdiction, Minnesota Senate, *at* <http://www.senate.leg.state.mn.us/committee/2003-2004/Environment/jurisdiction.htm> (last visited Mar. 20, 2005). Each committee functions to hold public hearings on bills, put each bill into its best form, and recommend to the full body only those bills that the committee feels merit further consideration. Legislative FAQs, Minnesota Legislature, *at* <http://ww3.house.leg.state.mn.us/leg/faqtoc.asp?subject=5> (last visited Mar. 20, 2005).

32. *Hearing on S.F. 842 Before the S. Comm. on Env’t and Natural Res.*, 83rd Minn.Leg., Mar. 17, 2003 (audio tape) (comments of Sen. Olson, S. Comm. on Env’t and Natural Res.); Comm. Minutes, *Hearing on S.F. 842 Before the S. Comm. on Env’t and Natural Res.*, 83rd Minn.Leg., Mar. 17, 2003 (on file at Minnesota Legislative Reference Library).

a brief discussion,<sup>33</sup> the committee unanimously recommended to pass<sup>34</sup> S.F. No. 842 with a minor grammatical amendment.<sup>35</sup> The committee also unanimously recommended to place the bill on the Consent Calendar.<sup>36</sup> No person testified in opposition to the bill or mentioned guns in the hearing.<sup>37</sup>

On March 20, 2003, the Senate adopted both the amendment and committee report<sup>38</sup> and placed S.F. No. 842 on the Consent Calendar.<sup>39</sup> On March 24, 2003, Senator Olson introduced S.F. No. 842 on the Senate floor as “the technical bill for the Department of Natural Resources.”<sup>40</sup> No senators asked questions or testified for or against S.F. No. 842.<sup>41</sup> The bill passed the Minnesota Senate by a

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33. Senator Frederickson asked whether the committee discussed the licensing durability provision in the previous legislative session. Senator Lourey asked for a brief overview of the assistant commissioner portion of the law. *Hearing on S.F. 842 Before the S. Comm. on Env't and Natural Res.*, 83rd Minn.Leg., Mar. 17, 2003 (audio tape).

34. Although in common usage a committee is said to pass a bill, technically, it recommends a bill to pass. Legislative FAQs, Minnesota Legislature, at <http://www.house.leg.state.mn.us/leg/faqtoc.asp?subject=18> (last visited Mar. 23, 2005).

35. *Hearing on S.F. 842 Before the S. Comm. on Env't and Natural Res.*, 83rd Minn.Leg., Mar. 17, 2003 (audio tape). The committee amended the bill to read “has completed *that* course” to “has completed *such* course.” *Hearing on S.F. 842 Before the S. Comm. on Env't and Natural Res.*, 83rd Minn.Leg., Mar. 17, 2003 (audio tape) (emphasis added); see Journal of the Senate, 83rd Leg. Sess., 377–78 (Minn. Mar. 20, 2003).

36. Journal of the Senate, 83rd Leg. Sess., 377–78 (Minn. Mar. 20, 2003). The Consent Calendar contains a list of Senate and House bills that committees considered non-controversial. Unlike bills placed on the Calendar, bills on the Consent Calendar bypass the Committee as a Whole. The Committee as a Whole includes all members of Senate that act as a committee to debate or amend bills placed on the Calendar. Senate FAQ Nos. 66 & 112, Minnesota Senate, at <http://www.senate.leg.state.mn.us/general/senfaq.htm> (last visited Mar 23, 2005).

37. See *Hearing on S.F. 842 Before the S. Comm. on Env't and Natural Res.*, 83rd Minn.Leg., Mar. 17, 2003 (audio tape).

38. Journal of the Senate, 83rd Leg. Sess., 377–78 (Minn. Mar. 20, 2003). If a committee amends a bill, the committee only recommends the amendment; the Senate must subsequently adopt the committee report containing the amendment. Senate FAQ No. 55, Minnesota Senate, at <http://www.senate.leg.state.mn.us/general/senfaq.htm> (last visited Mar. 29, 2005).

39. Journal of the Senate, 83rd Leg. Sess., 377–78 (Minn. Mar. 20, 2003). According to Senate rules, bills placed on the Consent Calendar must lie over for one day before the Senate may vote on final passage. See Senate FAQ No. 71, Minnesota Senate, at <http://www.senate.leg.state.mn.us/general/senfaq.htm> (last visited Mar. 29, 2005).

40. *Senate debate on S.F. No. 842*, 83rd Minn.Leg., Mar. 24, 2003 (audio tape).

41. See *id.*



vote of sixty-five to zero.<sup>42</sup>

*b. The DNR Technical Bill Passes Through the House Committee Process*

On March 10, 2003, Representative Tony Cornish<sup>43</sup> introduced<sup>44</sup> House File (H.F.) No. 823, an identical “companion” bill<sup>45</sup> to S.F. No. 842, on the floor of the Minnesota House of Representatives.<sup>46</sup> The Speaker of the House<sup>47</sup> then referred H.F. No. 823 to the House Committee on Environment and Natural Resources Policy.<sup>48</sup> On March 24, 2003, because bills must pass both legislative bodies in identical form,<sup>49</sup> Senate File No. 842 also received its first reading on the House floor.<sup>50</sup> Like its companion

42. Journal of the Senate, 83rd Leg. Sess., 426–27 (Minn. Mar. 24, 2003). An absolute majority of those elected in the Senate (thirty-four Senators) must vote for a bill on final passage in order for it to become law. MINN. CONST. art. IV, § 22, available at <http://www.house.leg.state.mn.us/cco/rules/mncon/mncon.htm> (last visited Mar. 29, 2005). The DNR bill’s introduction, third reading, and passage took less than two minutes on the Senate floor. See *Senate debate on S.F. No. 842*, 83rd Minn.Leg., Mar. 24, 2003 (audio tape).

43. Reps. David Dill, Dennis Ozment, Tom Hackbarth, Bob Gunther, Bill Haas, Doug Lindgren, Dean Simpson, Brad Finstad, Judy Soderstrom, and Sondra Erickson also introduced the bill. Journal of the House of Representatives, 83rd Leg. Sess., 583 (Minn. Mar. 10, 2003).

44. Like the Senate, the House must report a bill on three different days before voting on its passage. See MINN. CONST. art. IV, § 19, available at <http://www.house.leg.state.mn.us/cco/rules/mncon/mncon.htm> (last visited Mar. 29, 2005); see also Rule 1.04, Permanent Rules of the Minnesota House of Representatives, 84th Leg. Sess., 2005–2006 (adopted Feb. 10, 2005) (detailing that a bill receives its first reading at its introduction on the House floor), available at <http://www.house.leg.state.mn.us/cco/rules/permrule/104.htm>.

45. Companion bills are identical bills introduced in the House and Senate. Legislative Terms and Definitions, Minnesota Legislature, at <http://ww3.house.leg.state.mn.us/leg/faqtoc.asp?subject=18> (last visited Mar. 29, 2005).

46. Journal of the House of Representatives, 83rd Leg. Sess., 583 (Minn. Mar. 10, 2003).

47. The House majority elected Representative Steve Sviggum as the Speaker of the House for the eighty-third legislative session. Journal of the House of Representatives, 83rd Leg. Sess., 6 (Minn. Jan. 7, 2003).

48. Journal of the House of Representatives, 83rd Leg. Sess., 584 (Minn. Mar. 10, 2003). The Speaker of the House refers a bill to the appropriate committee after its first reading. Rule 1.11, Permanent Rules of the Minnesota House of Representatives, 84th Leg. Sess., 2005–2006 (adopted Feb. 10, 2005), available at <http://www.house.leg.state.mn.us/cco/rules/permrule/111.htm>.

49. See MINN. CONST. art. IV, § 22, available at <http://www.house.leg.state.mn.us/cco/rules/mncon/mncon.htm> (last visited Mar. 29, 2005).

50. Journal of the House of Representatives, 83rd Leg. Sess., 747 (Minn. Mar.

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House bill, the Speaker referred S.F. No. 842 to the House Committee on Environment and Natural Resources Policy.<sup>51</sup>

The House Committee on Environment and Natural Resources Policy met to discuss both DNR technical bills on March 27, 2003.<sup>52</sup> Near the close of the hearing, Representative Cornish remarked that “the Senate fixed [the bill] for us’ by amending the bill’s language ‘has completed *such* course’ to ‘has completed *that* course.’”<sup>53</sup> The committee adopted the language in S.F. No. 842, retired H.F. No. 823, unanimously recommended to pass S.F. No. 842, and re-referred the bill to the Governmental Operations and Veterans Affairs Policy Committee.<sup>54</sup>

On April 9, 2003, the Governmental Operations and Veterans Affairs Policy Committee met to discuss S.F. No. 842.<sup>55</sup> The

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24, 2003). The version of S.F. No. 842 sent to the House is called the First Engrossment. S.F. No. 842, First Engrossment, 83rd Leg. Sess. (Minn. Mar. 20, 2003), *available at* <http://www.revisor.leg.state.mn.us/cgi-bin/bldbill.pl?bill=S0842.1&session=ls83>. An engrossment is the current text of a bill that incorporates amendments adopted by the Senate or House into its title and/or text. Legislative Terms and Definitions, Minnesota Legislature, *at* <http://ww3.house.leg.state.mn.us/leg/faqtoc.asp?subject=18> (last visited Mar. 29, 2005). The Revisor’s Office engrosses bills. *See* MINN. STAT. § 3C.04 (2004) (outlining the Revisor’s duties).

51. Journal of the House of Representatives, 83rd Leg. Sess., 747 (Minn. Mar. 24, 2003).

52. *Hearing on S.F. 842 and H.F. 823 Before the H.R. Comm. on Env’t and Natural Res. Policy*, 83rd Minn.Leg., Mar. 27, 2003 (audio tape). The House Committee on Environment and Natural Resources “[e]xamines issues relating to: air and water quality; pollution and its prevention; land use and preservation; ground and surface water resources; solid, hazardous, and radioactive waste management and reduction; forestry and mining; wildlife protection; hunting, fishing, and other outdoor public recreational activities; and environmental education.” Environment and Natural Resources Committee Scope, Minnesota House of Representatives, *at* <http://www.house.leg.state.mn.us/comm/scope.asp?comm=11> (last visited Mar. 29, 2005).

53. *Hearing on S.F. 842 and H.F. 823 Before the H.R. Comm. on Env’t and Natural Res. Policy*, 83rd Minn.Leg., Mar. 27, 2003 (audio tape) (emphasis added).

54. *Id.* Committees have a number of choices for action: amend a bill; combine two or more bills under one file number; send more detailed or complex bills to a subcommittee; recommend a bill to pass as introduced; recommend a bill to pass as amended; send a bill to another committee with a recommendation to pass; send a bill to another committee without a recommendation to pass; or kill a bill by voting it down, tabling it, delaying action, ignoring it, or returning it to its author. Legislative FAQs, Minnesota Legislature, *at* <http://ww3.house.leg.state.mn.us/leg/faqtoc.asp?subject=5> (last visited Mar. 29, 2005).

55. *Hearing on S.F. 842 Before the H.R. Comm. on Gov’t Operations and Veterans Affairs Policy*, 83rd Minn.Leg., Apr. 9, 2003 (audio tape). The Committee on Governmental Operations and Veterans Affairs Policy reviews legislation related to: the overall operations of state government; “the purchase of materials and

committee unanimously recommended to pass S.F. No. 842 and re-referred the bill to the Environment and Natural Resources Finance Committee.<sup>56</sup>

The Environment and Natural Resources Finance Committee met to discuss S.F. No. 842 on April 11, 2003.<sup>57</sup> Acting upon a request by the DNR, the committee inserted a technical amendment into S.F. No. 842 that rescinded the need for legislative approval for certain state park fees.<sup>58</sup> The committee also voted favorably to include a littering amendment in S. F. No. 842.<sup>59</sup> The amendment, also known as H.F. No. 289, specifically identified cigarette butts and fireworks debris as rubbish that

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services by state agencies; state employee contracts; structural changes to legislative commissions; state and local government information technology; agency rulemaking procedures; . . . the composition of state agencies;" veterans affairs; and gambling. Governmental Operations and Veterans Affairs Policy Committee Scope, Minnesota House of Representatives, at <http://www.house.leg.state.mn.us/comm/scope.asp?comm=13> (last visited Mar. 29, 2005). S.F. No. 842 came before the committee because of two provisions: (1) the commissioner's discretion to appoint assistant DNR commissioners; and (2) the bidding process involved with the state parks working capital fund. *Hearing on S.F. 842 Before the H.R. Comm. on Gov't Operations and Veterans Affairs Policy*, 83rd Minn.Leg., Apr. 9, 2003 (audio tape).

56. *Hearing on S.F. 842 Before the H.R. Comm. on Gov't Operations and Veterans Affairs Policy*, 83rd Minn.Leg., Apr. 9, 2003 (audio tape).

57. *Hearing on S.F. 842 Before the H.R. Comm. on Env't and Natural Res. Fin.*, 83rd Minn.Leg., Apr. 11, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls_year=83) (videotape web media). The Committee on Environment and Natural Resources Finance: (1) reviews and recommends funding for environment and natural resource programs; and (2) oversees several state agencies' budgets, including the DNR. Environment and Natural Resources Finance Committee Scope, Minnesota House of Representatives, at <http://www.house.leg.state.mn.us/comm/scope.asp?comm=10> (last visited Mar. 29, 2005).

58. *Hearing on S.F. 842 Before the H.R. Comm. on Env't and Natural Res. Fin.*, 83rd Minn.Leg., Apr. 11, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls_year=83) (videotape web media). The amendment, A03-0483, allows the parks to raise certain fees annually to reflect inflation. These fees run the gamut from "battery rental for boats to tour fees for the Mystery Cave and Mine Parks." *Id.* (comments of Rep. Cornish). For more information on the Forestville Mystery Cave and Hill Annex Mine State Park, see [http://www.dnr.state.mn.us/state\\_parks/fees.html](http://www.dnr.state.mn.us/state_parks/fees.html) (last visited Mar. 23, 2005).

59. *Hearing on S.F. 842 Before the H.R. Comm. on Env't and Natural Res. Fin.*, 83rd Minn.Leg., Apr. 11, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls_year=83) (videotape web media). Two Committee members dissented on the oral vote. *Id.* After the committee vote, Representative Kahn requested to amend S.F. 842's title to reflect the littering amendment. *Id.*

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should be kept clear from Minnesota's public highways, waters, and lands.<sup>60</sup> At the close of the hearing, the committee recommended to pass S.F. No. 842<sup>61</sup> and place the bill on the General Register.<sup>62</sup> No person opposed the bill or mentioned guns in the House committee hearings.<sup>63</sup>

## 2. *The Minnesota Citizens' Personal Protection Act of 2003*

### a. *The Personal Protection Act Passes Through the House Committee Process*

On January 20, 2003, lead author Lynda Boudreau<sup>64</sup> introduced H.F. No. 261 as:

A bill for an act relating to public safety; enacting the Minnesota Citizens' Personal Protection Act of 2003;

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60. *Hearing on S.F. 842 Before the H.R. Comm. on Env't and Natural Res. Fin.*, 83rd Minn.Leg., Apr. 11, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls_year=83) (videotape web media). For H.F. No. 289's full text, see [http://www.revisor.leg.state.mn.us/cgi-bin/getbill.pl?number=HF0289&session=ls83&version=latest&session\\_number=0&session\\_year=2003](http://www.revisor.leg.state.mn.us/cgi-bin/getbill.pl?number=HF0289&session=ls83&version=latest&session_number=0&session_year=2003) (last visited Mar. 29, 2005).

61. Representative Hackbarth dissented on the oral vote, presumably because he felt that S.F. No. 842 fell outside the purview of the Committee's fiscal jurisdiction. See *Hearing on S.F. 842 Before the H.R. Comm. on Env't and Natural Res. Fin.*, 83rd Minn.Leg., Apr. 11, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls_year=83) (videotape web media).

62. *Hearing on S.F. 842 Before the H.R. Comm. on Env't and Natural Res. Fin.*, 83rd Minn.Leg., Apr. 11, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls_year=83) (videotape web media). The General Register contains a list of all bills (except those placed on the Consent Calendar) that received two prior readings and were reported out of one or more committees. Each day that the House meets in session, the Chief Clerk's Office must publish a list of the bills on the General Register. General Register, Minnesota House of Representatives, at <http://www.house.leg.state.mn.us/cco/generalreg.asp> (last visited Mar. 24, 2005).

63. See *Hearing on S.F. 842 Before the H.R. Comm. on Env't and Natural Res. Fin.*, 83rd Minn.Leg., Apr. 11, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls_year=83) (videotape web media); *Hearing on S.F. 842 Before the H.R. Comm. on Gov't Operations and Veterans Affairs Policy*, 83rd Minn.Leg., Apr. 9, 2003 (audio tape); *Hearing on S.F. 842 and H.F. 823 Before the H.R. Comm. on Env't and Natural Res. Policy*, 83rd Minn.Leg., Mar. 27, 2003 (audio tape).

64. Tony Cornish, the DNR technical bill's lead author, co-authored H.F. No. 261. The Speaker of the House also co-authored H.F. No. 261. Journal of the House of Representatives, 83rd Leg. Sess., 174 (Minn. Jan. 30, 2003).

recognizing the inherent right of law-abiding citizens to self-protection through the lawful use of self-defense; providing a system under which responsible, competent adults can exercise their right to self-protection by authorizing them to obtain a permit to carry a pistol.<sup>65</sup>

The Minnesota Citizens' Personal Protection Act of 2003 ("Personal Protection Act" or "Act"), popularly known as the "conceal-and-carry law,"<sup>66</sup> governs the issuance of handgun permits in Minnesota.<sup>67</sup> The prior law gave sheriffs and police chiefs wide discretion to grant gun permits and required applicants to demonstrate a personal or professional need to carry a gun.<sup>68</sup> Conversely, the Act requires county sheriffs to issue handgun permits to anyone who meets specified criteria unless the person is disqualified under specific, listed factors.<sup>69</sup> After its introduction on the House Floor, the Speaker referred H.F. No. 261 to the House Civil Law Committee.<sup>70</sup>

65. Journal of the House of Representatives, 83rd Leg. Sess., 174 (Minn. Jan. 30, 2003); H.F. No. 261, 83rd Leg. (Minn. 2003) (bill as introduced on House floor), available at <http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=H0261.0&session=ls83> (last visited Mar. 24, 2005).

66. Notwithstanding this popular label, the Act does not require a person to actually conceal the firearm. See Tony Kennedy & Randy Furst, *Gun Permit Law Thrown Out*, STAR TRIB. (Minneapolis – St. Paul), July 14, 2004, at A1, available at 2004 WLNR 17427891; Marie McCain, *Handgun Law Thrown Out*, PIONEER PRESS (St. Paul), July 14, 2004, at A1, available at 2004 WLNR 3531441.

67. Personal Protection Act, ch. 28, art. 2, § 6, 2003 Minn. Laws 265, 275. Since 1996, the conceal-and-carry issue proceeded to different stages in the legislative process. Joseph Olson, *The Minnesota Citizens' Personal Protection Act of 2003: History and Commentary*, 25 HAMLIN J. PUB. L. & POL'Y 21, 86 n.1 (2003) ("Professor Olson participated in virtually every negotiating session during the seven years that the [conceal-and-carry] bill was in the legislative process."). See also Conrad deFiebre, *Gun Bill Returns to Capitol for a 2nd Showdown*, STAR TRIB. (Minneapolis – St. Paul), Feb. 21, 1997, at 1B.

68. MINN. STAT. § 624.714 (2002). Sheriffs and police chiefs interpreted the law differently in parts of the state, which led to calls for a more uniform permitting system. Handgun Permit Law, Safety New Laws, Session Daily, House Public Information Services (posted Apr. 24, 2003), at <http://www.house.leg.state.mn.us/hinfo/sdaily/2003/wraps/safe2003.htm>.

69. Personal Protection Act, ch. 28, art. 2, § 6, subd. 2(b), 2003 Minn. Laws 265, 275. Under the Act, permit applicants must be a U.S. citizen or permanent resident, at least twenty-one years old, and trained in the proper use of a handgun. *Id.* Persons listed in a state gang database are ineligible for a permit. *Id.* In addition, persons who have been found incompetent to stand trial, committed as mentally ill or chemically dependent, or dishonorably discharged from the armed forces are generally ineligible to apply for a permit. *Id.* subd. 2(b)(4)(v).

70. Journal of the House of Representatives, 83rd Leg. Sess., 174 (Minn. Jan. 30, 2003). The Committee on Civil Law reviews all bills relating to areas of Minnesota's civil laws. Civil Law Committee Scope, Minnesota House of

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On February 11, 2003, the Civil Law Committee met to discuss H.F. No. 261.<sup>71</sup> The committee recommended to pass H.F. No. 261, as amended,<sup>72</sup> by a vote of seven to four<sup>73</sup> and re-referred the bill to the Judiciary Policy and Finance Committee.<sup>74</sup> The Judiciary Policy and Finance Committee met to discuss H.F. No. 261 on February 26, 2003.<sup>75</sup> Similarly, the committee recommended to

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Representatives, at <http://www.house.leg.state.mn.us/comm/scope.asp?comm=4> (last visited Mar. 18, 2005).

71. *Hearing on H.F. 261 Before the H.R. Comm. on Civil Law*, 83rd Minn.Leg., Feb. 11, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls_year=83) (videotape web media). The committee heard testimony for approximately one hour and forty minutes. *Id.* Representative Boudreau, two attorneys, and five Minnesota residents testified in support of the bill. Comm. Minutes, *Hearing on H.F. No. 261 Before the H.R. Comm. on Civil Law*, 83rd Minn. Leg. Feb. 11, 2003 (on file at the Minnesota Legislative Reference Library). Seven groups and individuals testified against the bill. *Id.*

72. Representative Boudreau offered a “delete everything” amendment at the start of the hearing. *Hearing on H.F. 261 Before the H.R. Comm. on Civil Law*, 83rd Minn.Leg., Feb. 11, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls_year=83) (videotape web media). “Delete everything” amendments are commonly used when substantial changes to a bill’s content require numerous pages of “page and line” amendments. MINNESOTA BILL DRAFTING MANUAL ch. 7, § 4(b) (2002), available at [http://www.revisor.leg.state.mn.us/revisor/pubs/bill\\_drafting\\_manual/Chapter%207.htm#a0704b](http://www.revisor.leg.state.mn.us/revisor/pubs/bill_drafting_manual/Chapter%207.htm#a0704b) (last visited Mar. 29, 2005). The version the Civil Law Committee recommended to pass is called the First Engrossment of H.F. No. 261, available at <http://www.revisor.leg.state.mn.us/cgi-bin/bldbill.pl?bill=H0261.1&session=ls83> (posted Feb. 13, 2003). For information on engrossments, see *supra* note 50 and accompanying text.

73. Representatives Holberg, DeLaForest, Borrell, Kohls, Lipman, Smith, and Swenson voted to recommend to pass H.F. No. 261. Representatives Biernat, Latz, Pugh, and Wardlow voted not to recommend to pass H.F. No. 261. Representative Atkins was absent for the vote. Comm. Minutes, *Hearing on H.F. No. 261 Before the H.R. Comm. on Civil Law*, 83rd Minn.Leg., Feb. 11, 2003 (on file at the Minnesota Legislative Reference Library).

74. *Hearing on H.F. 261 Before the H.R. Comm. on Civil Law*, 83rd Minn.Leg., Feb. 11, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls_year=83) (videotape web media). The Judiciary Policy and Finance Committee reviews policies related to the administration of Minnesota’s criminal justice system. Judiciary Policy and Finance Committee Scope, Minnesota House of Representatives, at <http://www.house.leg.state.mn.us/comm/scope.asp?comm=18> (last visited Mar. 23, 2005).

75. *Hearing on H.F. 261 Before the H.R. Comm. on Judiciary Policy and Fin.*, 83rd Minn.Leg., Feb. 26, 2003 (audio tape). The committee heard testimony for approximately one hour and forty-five minutes. *Id.* Representative Boudreau and eight groups and individuals testified in support of the bill. Comm. Minutes, *Hearing on H.F. 261 Before the H.R. Comm. on Judiciary and Fin.*, 83rd Minn.Leg., Feb. 26, 2003 (on file at the Minnesota Legislative Reference Library). Seven groups and individuals testified against the bill. *Id.*

pass H.F. No. 261, as amended,<sup>76</sup> by a vote of twelve to eight<sup>77</sup> and re-referred the bill to the Ways and Means Committee.<sup>78</sup> Finally, the Ways and Means Committee met to discuss H.F. No. 261 on April 3, 2003.<sup>79</sup> The committee recommended to pass H.F. No. 261, as amended,<sup>80</sup> by a voice vote and place the bill on the General Register.<sup>81</sup>

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76. Another “delete everything” amendment was pursued by the Committee. See *Hearing on H.F. 261 Before the H.R. Comm. on Judiciary Policy and Fin.*, 83rd Minn.Leg., Feb. 26, 2003 (audio tape); see *supra* note 72 and accompanying text (discussing “delete everything” amendments). The committee recommended to pass the Second Engrossment of H.F. No. 261, available at <http://www.revisor.leg.state.mn.us/cgi-bin/bldbill.pl?bill=H0261.2&session=ls83> (posted Feb. 27, 2003). For information on engrossments, see *supra* note 50 and accompanying text.

77. Representatives Smith, Eastlund, Anderson, J., Blaine, Fuller, Lipman, Meslow, Murphy, Powell, Soderstrom, Strachan, and Walz voted to recommend to pass H.F. No. 261. Comm. Minutes, *Hearing on H.F. 261 Before the H.R. Comm. on Judiciary Policy and Fin.*, 83rd Minn.Leg., Feb. 26, 2003 (on file at the Minnesota Legislative Reference Library. Representatives Ellison, Hilstrom, Hilty, Johnson, S., Lesch, Paymar, Rhodes, and Thao voted not to recommend to pass H.F. No. 261. *Id.*

78. *Hearing on H.F. 261 Before the H.R. Comm. on Judiciary Policy and Fin.*, 83rd Minn.Leg., Feb. 26, 2003 (audio tape). The Committee on Ways and Means passes the House budget resolution and individual spending targets, sets the price of government, and certifies each budget bill from House finance and tax committees so it reconciles with the budget resolution and spending targets. Ways and Means Committee Scope, Minnesota House of Representatives, at <http://www.house.leg.state.mn.us/comm/scope.asp?comm=26> (last visited Mar. 23, 2005).

79. *Hearing on H.F. 261 Before the H.R. Comm. on Ways and Means*, 83rd Minn.Leg., Apr. 3, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls_year=83) (videotape web media). The committee heard testimony and discussed the merits for approximately one hour and twenty minutes. *Id.* Five people testified for and against H.F. No. 261. *Id.*

80. The committee pursued another “delete everything” amendment. See *id.*; see *supra* note 72 and accompanying text (discussing “delete everything” amendments). The committee recommended to pass the Third Engrossment of H.F. No. 261, available at <http://www.revisor.leg.state.mn.us/cgi-bin/bldbill.pl?bill=H0261.3&session=ls83> (posted Apr. 7, 2003).

81. *Hearing on H.F. 261 Before the H.R. Comm. on Ways and Means*, 83rd Minn.Leg., Apr. 3, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls_year=83) (videotape web media); see *supra* note 62 and accompanying text (explaining the General Register).

*b. The Personal Protection Act Fails to Pass Through the Senate Committee on Crime Prevention and Public Safety*

Meanwhile, Senator Pat Pariseau<sup>82</sup> introduced S.F. No. 222, the companion bill to H.F. No. 261, on the Senate floor on January 30, 2003.<sup>83</sup> The Senate President referred the bill to the Crime Prevention and Public Safety Committee.<sup>84</sup>

Three weeks later, Senator Pariseau moved<sup>85</sup> to (1) withdraw S.F. No. 222 from the Crime Prevention and Public Safety Committee, (2) give the bill a second reading, and (3) place the bill on General Orders.<sup>86</sup> The Senate voted down Senator Pariseau's motion by a vote of thirty-four to thirty-two.<sup>87</sup> As a result, S.F. No. 222 remained in committee.<sup>88</sup>

82. Senators Gen Olson, Michael Jungbauer, David Gaither, and Carrie Ruud co-authored S.F. No. 222. Journal of the Senate, 83rd Leg. Sess., 137 (Minn. Jan. 30, 2003).

83. *Id.*; S.F. No. 222, 83rd Minn. Leg., Mar. 12, 2003 (bill as introduced on Senate floor), available at <http://www.revisor.leg.state.mn.us/cgi-bin/bldbill.pl?bill=S0842.0&session=ls83> (last visited Mar. 23, 2005). For information on companion bills, see *supra* note 45.

84. Journal of the Senate, 83rd Leg. Sess., 137 (Minn. Jan. 30, 2003). The Crime Prevention and Public Safety Committee maintains jurisdiction over all bills relating to crime prevention, law enforcement, criminal justice, and corrections. Crime Prevention and Public Safety Committee Jurisdiction, Minnesota Senate, at <http://www.senate.leg.state.mn.us/committee/2003-2004/Crime/jurisdiction.htm> (last visited Mar. 23, 2005).

85. Under Senate Rule 5.1, a majority of the whole Senate may recall a bill from committee and place it on General Orders. Rule 5.1, Temporary Rules of the Minnesota Senate, 83rd Leg. Sess., 2003, available at <http://www.senate.leg.state.mn.us/departments/secretary/sendesk/rules/2003/temp.shtml>.

86. Journal of the Senate, 83rd Leg. Sess., 213 (Minn. Feb. 20, 2003). After a bill receives its first reading on the Senate floor, no further action is taken on the bill until the chief author requests a committee hearing. Senate FAQ No. 112, Minnesota Senate, at <http://www.senate.leg.state.mn.us/general/senfaq.htm#112> (last visited Mar. 23, 2005). Senator Pariseau stated that she requested a committee hearing several times. *Senate debate on Sen. Pariseau's Mot. to Recall S.F. No. 222 from Comm.*, 83rd Minn. Leg., Feb. 20, 2003 (audio tape), available at [http://www.senate.leg.state.mn.us/media/archive/2003/floor/sfloor\\_022003.htm](http://www.senate.leg.state.mn.us/media/archive/2003/floor/sfloor_022003.htm) (videotape web media).

Sen. Pariseau further remarked that "it is about time that we as a full body had a chance to ask all the questions to clear the air, to make amendments, whatever your intention is. And this is the place to get it done, not in committees that will not hear it." *Id.*

87. Journal of the Senate, 83rd Leg. Sess., 213 (Minn. Feb. 20, 2003).

88. *Senate debate on Sen. Pariseau's Mot. to Recall S.F. No. 222 from Comm.*, 83rd Minn. Leg., Feb. 20, 2003 (audio tape), available at [http://www.senate.leg.state.mn.us/media/archive/2003/floor/sfloor\\_022003.htm](http://www.senate.leg.state.mn.us/media/archive/2003/floor/sfloor_022003.htm) (videotape web media).



On March 17, 2003, the Crime Prevention and Public Safety Committee first heard testimony on S.F. No. 222.<sup>89</sup> After hearing testimony for and against the bill,<sup>90</sup> Senator Foley, the Committee Chair, adjourned the meeting and remarked that the committee would hear more testimony before voting on S.F. No. 222.<sup>91</sup> Two days later, the committee met to further discuss the Senate conceal-and-carry bill.<sup>92</sup> After hearing approximately two hours of testimony, the committee voted to adjourn the hearing without taking action on S.F. No. 222.<sup>93</sup> Later in the legislative session, Senator Pariseau moved to withdraw S.F. No. 222 from committee and return the bill to its author.<sup>94</sup> The motion prevailed and no

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89. *Hearing on S.F. 222 Before the S. Comm. on Crime Prevention and Pub. Safety*, 83rd Minn.Leg., Mar. 17, 2003 (audio tape), available at [http://www.senate.leg.state.mn.us/media/archive/2003/committee/cmte\\_crime\\_031703.htm](http://www.senate.leg.state.mn.us/media/archive/2003/committee/cmte_crime_031703.htm) (videotape web media). Before presenting the bill, Senator Pariseau offered “a delete everything” amendment and stated that the bill’s form “is essentially the same as the Second Engrossment of the House bill.” *Id.*; see *supra* note 72 (discussing “delete everything” amendments).

90. Twenty individuals and groups testified for and against the bill. Comm. Minutes, *Hearing on S.F. 222 Before the S. Comm. on Crime Prevention and Pub. Safety*, 83rd Minn.Leg., Mar. 17, 2003 (on file at the Minnesota Legislative Reference Library). The committee heard testimony for approximately two hours and fifteen minutes. See *Hearing on S.F. 222 Before the S. Comm. on Crime Prevention and Pub. Safety*, 83rd Minn.Leg., Mar. 17, 2003 (audio tape), available at [http://www.senate.leg.state.mn.us/media/archive/2003/committee/cmte\\_crime\\_031703.htm](http://www.senate.leg.state.mn.us/media/archive/2003/committee/cmte_crime_031703.htm) (videotape web media).

91. *Hearing on S.F. 222 Before the S. Comm. on Crime Prevention and Pub. Safety*, 83rd Minn.Leg., Mar. 17, 2003 (audio tape), available at [http://www.senate.leg.state.mn.us/media/archive/2003/committee/cmte\\_crime\\_031703.htm](http://www.senate.leg.state.mn.us/media/archive/2003/committee/cmte_crime_031703.htm) (videotape web media).

92. *Hearings on S.F. 222 Before the S. Comm. on Crime Prevention and Pub. Safety*, 83rd Minn.Leg., Mar. 19, 2003 (audio tape), available at [http://www.senate.leg.state.mn.us/media/archive/2003/committee/cmte\\_crime\\_031903.htm](http://www.senate.leg.state.mn.us/media/archive/2003/committee/cmte_crime_031903.htm) (videotape web media).

93. *Id.* Senators Moua, Ranum, Skoglund, and Foley voted to adjourn the meeting without taking action on the bill. Comm. Minutes, *Hearing on S.F. 222 Before the S. Comm. on Crime Prevention and Pub. Safety*, 83rd Minn. Leg., Mar. 19, 2003 (on file at Minnesota Legislative Reference Library). Senators Kleis and McGinn voted not to adjourn. Senators Berglin and D. Johnson were excused from the meeting. *Id.* By voting to adjourn the meeting, the Committee chose to keep S.F. No. 222 in the committee indefinitely. See MINNESOTA SENATE PUBLICATIONS OFFICE, HOW A BILL BECOMES A LAW (updated Feb. 21, 2001), available at <http://www.senate.leg.state.mn.us/general/bill-law2001.pdf>. The committee took no further action on S.F. No. 222 during the legislative session. Unofficial Action, Bill Status for S.F. No. 222, Minnesota Senate, at [http://www.revisor.leg.state.mn.us/revisor/pages/search\\_status/status\\_detail.php?b=Senate&f=SF0222&ssn=0&y=2003](http://www.revisor.leg.state.mn.us/revisor/pages/search_status/status_detail.php?b=Senate&f=SF0222&ssn=0&y=2003) (last visited Mar. 23, 2005).

94. Journal of the Senate, 83rd Leg. Sess., 390 (Minn. Mar. 20, 2003). A bill receives no further consideration after it is returned to its author. See MINNESOTA

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further action was taken on the Personal Protection Act as a separate bill in the Senate.<sup>95</sup>

3. *Two Bills Become One*

a. *The Minnesota House of Representatives Amends the Personal Protection Act to the DNR Technical Bill on the House Floor*

On April 23, 2003, the Senate DNR bill came before the House body for a vote.<sup>96</sup> At this time, S.F. No. 842 amended the following sections in the Minnesota statutes:

- (1) 16A.1283, relating to legislative approval for certain state park fees;
- (2) 84.01, subdivision 3, relating to assistant DNR commissioners;
- (3) 84.026, relating to natural resource grants;
- (4) 84.085, subdivision 1, relating to gifts or grants of land to the commissioner;
- (5) 84.82, subdivision 2, relating to snowmobile registration applications;
- (6) 84.862, relating to snowmobile safety course reciprocity;
- (7) 85.20, relating to littering within outdoor recreation systems;
- (8) 85.22, relating to the state parks working capital fund;
- (9) 86B.401, subdivision 1, relating to watercraft license applications;
- (10) 97A.065, subdivision 2, relating to game and fish fines;
- (11) 97C.355, subdivisions 1 and 2, relating to fish house

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SENATE PUBLICATIONS OFFICE, HOW A BILL BECOMES A LAW (updated Feb. 21, 2001), available at <http://www.senate.leg.state.mn.us/general/bill-law2001.pdf>.

95. Journal of the Senate, 83rd Leg. Sess., 390 (Minn. Mar. 20, 2003); Unofficial Action, Bill Status for S.F. No. 222, Minnesota Senate, at [http://www.revisor.leg.state.mn.us/revisor/pages/search\\_status/status\\_detail.php?b=Senate&f=SF0222&ssn=0&y=2003](http://www.revisor.leg.state.mn.us/revisor/pages/search_status/status_detail.php?b=Senate&f=SF0222&ssn=0&y=2003) (last visited Mar. 23, 2005).

96. *House debate on S.F. 842*, 83rd Minn. Leg., Apr. 23, 2003 (audio tape). Representative Cornish briefly introduced the bill: “[t]his bill is . . . what’s known historically as the DNR technical bill, Senate File 842 . . . . It’s a lot of technical language . . . .” *Id.*

license display;

(12) 169.42, subdivision 1, relating to littering on highways;

(13) 169.42, subdivision 3, relating to liability for littering on highways;

(14) 609.68, relating to the penalty for littering on highways; and

(15) repealed 97A.051, subdivision 1, relating to paper publication of DNR rules.<sup>97</sup>

On the floor, Representative Cornish offered an amendment to S.F. No. 842.<sup>98</sup> The amendment allowed the DNR to recognize out-of-state safety courses for off-highway motorcycles, all-terrain vehicles (ATVs), boats, and hunting.<sup>99</sup> Specifically, the Cornish amendment added eight words to Minnesota Statutes 2002, section 97B.020(a) on firearms safety certificates.<sup>100</sup> Representative Kelliher challenged the Cornish amendment as not germane to the DNR technical bill.<sup>101</sup> In response, Speaker Sviggum ruled the

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97. S.F. No. 842, First Engrossment, 83rd Leg. Sess. (Minn. Mar. 20, 2003), available at <http://www.revisor.leg.state.mn.us/cgi-bin/bldbill.pl?bill=S0842.1&session=ls83>; see *supra* note 50 and accompanying text (discussing engrossments).

98. *House debate on S.F. 842*, 83rd Minn. Leg., Apr. 23, 2003 (audio tape). The House and Senate may amend any bill, memorial, or resolution passed by the other legislative body. Rule 2.04, Temporary Joint Rules of the Minnesota Senate and House of Representatives, 84th Leg. Sess., 2005–2006 (adopting temporary joint rules from the 83rd Legislative Session), available at <http://www.house.leg.state.mn.us/cco/rules/jtrule/jt206.htm>.

99. Journal of the House of Representatives, 83rd Leg. Sess., 2644 (Minn. Apr. 23, 2003).

100. *Id.* Representative Cornish's amendment amended Minnesota Statute section 97B.020 to read:

[A] person born after December 31, 1979, may not obtain an annual license to take wild animals by firearms unless the person has a firearms safety certificate or equivalent certificate, driver's license or identification card with a valid firearms safety qualification indicator issued under section 171.07, subdivision 13, previous hunting license, or other evidence indicating that the person has completed in this state or in another state a hunter safety course recognized by the department under a reciprocity agreement or certified by the department as substantially similar.

*Id.* (emphasis added).

101. Journal of the House of Representatives, 83rd Leg. Sess., 2645 (Minn. Apr. 23, 2003). Under House rules, "[a] motion or proposition on a subject different from that under consideration must not be admitted under guise of being an amendment." Rule 3.21, Permanent Rules of the Minnesota House of Representatives, 84th Leg. Sess., 2005–2006 (adopted Feb. 10, 2005), available at <http://www.house.leg.state.mn.us/cco/rules/permrule/321.htm>. Under Senate

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Cornish amendment to be in order.<sup>102</sup> The House body then adopted the Cornish amendment on a voice vote.<sup>103</sup>

Representative Boudreau then moved to amend S.F. No. 842 to include the Minnesota Citizens' Personal Protection Act of 2003.<sup>104</sup> In response to a germaneness objection,<sup>105</sup> Representative Boudreau argued that the conceal-and-carry bill was germane to the Cornish amendment's reference to hunting certificates.<sup>106</sup> Speaker Sviggum, co-sponsor of the House conceal-and-carry bill, acknowledged that he fostered "some doubt" on the amendment's germaneness,<sup>107</sup> and subsequently referred the question to House

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rules, a non-germane amendment relates to a substantially different subject, or is intended to accomplish a substantially different purpose, than that of the original bill. Rule 35, Temporary Rules of the Minnesota Senate, 83rd Leg. Sess., 2003, available at <http://www.senate.leg.state.mn.us/departments/secretary/sendsk/rules/2004/perm.pdf>.

102. Journal of the House of Representatives, 83rd Leg. Sess., 2645 (Minn. Apr. 23, 2003). Under House rules, "[w]hether a proposition is germane to the matter under consideration is a question to be decided by the presiding officer [the Speaker of the House] . . ." Rule 3.21, Permanent Rules of the Minnesota House of Representatives, 84th Leg. Sess., 2005–2006 (adopted Feb. 10, 2005), available at <http://www.house.leg.state.mn.us/cco/rules/permrule/321.htm>. In ruling the Cornish amendment germane to the DNR technical bill, House Speaker Sviggum explained that "sections 97 of the Minnesota Statutes are recognized in both the bill and the amendment and the subject matter of the reciprocity [is] the same in the amendment and the bill." *House debate on S.F. No. 842*, 83rd Minn. Leg., Apr. 23, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivesHFS.asp?ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivesHFS.asp?ls_year=83) (videotape web media).

103. Journal of the House of Representatives, 83rd Leg. Sess., 2645 (Minn. Apr. 23, 2003).

104. *Id.*

105. Representative Kelliher again raised a germaneness objection. Representative Kelliher argued that the Boudreau amendment, in amending sections of law dealing with pistol permitting, extended into subject areas beyond the original DNR technical bill and the Cornish "bridge" amendment. See *House debate on S.F. No. 842*, 83rd Minn. Leg., Apr. 23, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivesHFS.asp?ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivesHFS.asp?ls_year=83) (videotape web media).

106. Journal of the House of Representatives, 83rd Leg. Sess., 2660 (Minn. Apr. 23, 2003). Representative Boudreau argued that "the issue of reciprocity is all encompassing and that is one component in the Cornish bill that could be argued as germane and the other would be the training." *House debate on S.F. No. 842*, 83rd Minn. Leg., Apr. 23, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivesHFS.asp?ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivesHFS.asp?ls_year=83) (videotape web media). Representative Stang further argued that "the Boudreau amendment references the permitting process to carry a concealed weapon. And on the Cornish bill on page 2, line 3, there is language related to the issuance of a permit in the boat safety education program." *Id.*

107. *House debate on S.F. No. 842*, 83rd Minn. Leg., Apr. 23, 2003 (audio tape),

members.<sup>108</sup> After debate, the House members voted the Boudreau amendment to be germane to the DNR technical bill.<sup>109</sup> While debating the Act's merits, House members proceeded to vote down nine amendments to the Personal Protection Act.<sup>110</sup> The House members, however, voted 112 to 18 to adopt Representative Osterman's amendment, which imposed a lifetime ban on firearm possession for violent felons, into the Personal Protection Act.<sup>111</sup> The House voted to insert the Personal Protection Act into S.F. No. 842 by a vote of eighty-eight to forty-six.<sup>112</sup> Thereafter, Senate File No. 842, now amended to contain the Personal Protection Act, passed the House by a vote of eighty-eight to forty-six.<sup>113</sup>

*b. The Amended DNR Bill Re-passes the Senate and Becomes Law*

On April 28, 2003, the amended DNR bill returned to the Senate.<sup>114</sup> The Senate faced a choice to either concur with the House amendments or send the amended bill to a conference committee.<sup>115</sup> After debate, the Senate voted to concur in the

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*available at* [http://www.house.leg.state.mn.us/htv/archivesHFS.asp?ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivesHFS.asp?ls_year=83) (videotape web media).

108. Journal of the House of Representatives, 83rd Leg. Sess., 2660 (Minn. Apr. 23, 2003). House rules permit the Speaker of the House to submit the question of germaneness to the House body for advice or decision. Rule 3.21, Permanent Rules of the Minnesota House of Representatives, 84th Leg. Sess., 2005–2006 (adopted Feb. 10, 2005), *available at* <http://www.house.leg.state.mn.us/cco/rules/permrule/321.htm>; MASON'S MANUAL OF LEGISLATIVE PROCEDURE 175 (Nat'l Conf. of State Legs. eds., 1989).

109. Journal of the House of Representatives, 83rd Leg. Sess., 2660 (Minn. Apr. 23, 2003).

110. *Id.* at 2667–77.

111. *Id.* at 2660–67. The Osterman amendment eventually became article 3 of chapter 28. 2003 Minn. Laws 265, 290–98.

112. Journal of the House of Representatives, 83rd Leg. Sess., 2678 (Minn. Apr. 23, 2003).

113. *Id.* at 2678–79.

114. Journal of the Senate, 83rd Leg. Sess., 1389 (Minn. Apr. 28, 2003). S.F. No. 842's title remained "[a] bill for an act relating to natural resources" although it contained the Personal Protection Act. *See id.* The Boudreau amendment contained instructions for the Revisor of Statutes to "[a]mend the title accordingly." Journal of the House of Representatives, 83rd Leg. Sess., 2660 (Minn. Apr. 23, 2003).

115. Rule 2.06, Temporary Joint Rules of the Minnesota Senate and House of Representatives, 84th Leg. Sess., 2005–2006 (adopting temporary joint rules from the 83rd Legislative Session), *available at* <http://www.house.leg.state.mn.us/cco/rules/jtrule/jt206.htm>; MASON'S MANUAL OF LEGISLATIVE PROCEDURE 532–34 (Nat'l Conf. of State Legs. eds., 1989)

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House amendments by a vote of thirty-six to thirty-one.<sup>116</sup> Subsequently, the amended bill received its third reading and was placed in its re-passage.<sup>117</sup> S.F. No. 842 re-passed the Senate by a vote of thirty-seven to thirty.<sup>118</sup> At 9:10 p.m. that same day, Governor Pawlenty signed S.F. No. 842 into law.<sup>119</sup> In sum, the Senate body discussed the Personal Protection Act for approximately seven and one-half hours.<sup>120</sup>

Prior to the Governor's signature, the Revisor of Statutes<sup>121</sup> changed the title of S.F. No. 842 to "[a] bill relating to state

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(discussing concurrence in amendments from the other legislative body); *see* MINNESOTA SENATE PUBLICATIONS OFFICE, HOW A BILL BECOMES A LAW (updated Feb. 21, 2001), *available at* <http://www.senate.leg.state.mn.us/general/bill-law2001.pdf>. A conference committee consists of three or five Senators and an equal number of Representatives. The committee works out a compromise and makes a report to each body. If the Senate and House adopt the conference committee report, the bill is re-passed by both legislative bodies and sent to the governor. *See* Rule 2.06, Temporary Joint Rules of the Minnesota Senate and House of Representatives, 84th Leg. Sess., 2005–2006 (adopting temporary joint rules from the 83rd Legislative Session), *available at* <http://www.house.leg.state.mn.us/cco/rules/jtrule/jt206.htm>; *see* MINNESOTA SENATE PUBLICATIONS OFFICE, HOW A BILL BECOMES A LAW (updated Feb. 21, 2001), *available at* <http://www.senate.leg.state.mn.us/general/bill-law2001.pdf>.

116. Journal of the Senate, 83rd Leg. Sess., 1390 (Minn. Apr. 28, 2003). The Senate thereafter amended its rules to prohibit a concurring vote on bills that follow S.F. 842's parliamentary path. Rule 35.6, Permanent Rules of the Minnesota Senate, 83rd Leg. Sess., 2003–2004 (adopted Mar. 4, 2004), *available at* <http://www.senate.leg.state.mn.us/departments/secretary/sendesk/rules/2004/perman.pdf>.

117. *Id.* "Re-passage" means "a final vote on a bill previously passed in another form to include amendments of the other chamber, a conference committee[,] or amendments." Legislative FAQs, Minnesota Legislature, *at* <http://www3.house.leg.state.mn.us/leg/faqtoc.asp?subject=18> (last visited Oct. 31, 2004).

118. Journal of the Senate, 83rd Leg. Sess., 1390 (Minn. Apr. 28, 2003). After the bill's passage, Senator Pariseau, the chief Senate author of the Personal Protection Act, replaced Senator Olson as the chief author of S.F. No. 842. *Id.* at 1527.

119. *Id.* at 1534–35.

120. *Senate debate on S.F. No. 842*, 83rd Minn. Leg., Apr. 28, 2003 (audio tape) (Sen. Bachman noting that "it has been seven and one-half hours . . ."), *available at* [http://www.senate.leg.state.mn.us/media/archive/2003/floor/sfloor\\_042803.htm](http://www.senate.leg.state.mn.us/media/archive/2003/floor/sfloor_042803.htm) (videotape web media). No Senator debated the merits of the DNR provisions. *See id.*

121. The Revisor's Office assists legislators at most stages of the legislative process. This includes preparation of a draft of a bill through its presentation to the governor. The Revisor's Office also helps state agencies draft administrative rules and compiles, edits, and prints Laws of Minnesota, Minnesota Statutes, and Minnesota Rules. Revisor of Statutes, Minnesota Legislature, *at* <http://www.revisor.leg.state.mn.us> (last visited Oct. 31, 2004).

government regulation.”<sup>122</sup> The Revisor also divided S.F. No. 842 into three articles and placed these articles in chapter 28 of the 2003 Minnesota Session Laws.<sup>123</sup> Article 1, entitled “Natural Resources Regulatory Provisions,” contains the DNR technical provisions and the Cornish amendment.<sup>124</sup> Article 1 includes no specific effective date for its provisions.<sup>125</sup> Article 2, entitled “Public Safety Regulatory Provisions,” contains the Personal Protection Act.<sup>126</sup> Article 2 includes a severability provision and an effective date of May 28, 2003.<sup>127</sup> Article 3, entitled “Lifetime Ban on Firearm Possession for Violent Felons,” contains the Osterman amendment.<sup>128</sup> Article 3 includes an effective date of August 1, 2003.<sup>129</sup>

### B. *The History of the Single-Subject and Title Clause*

The enactment of Lex Caecilia Didia in 98 B.C. by the Roman Empire was the first legislation designed to forbid the practice of “*lex satuta*”—proposing laws containing unrelated provisions.<sup>130</sup> The single-subject rule firmly established itself in the American legal system in 1844 when New Jersey included a general “single-

122. See 2003 Minn. Laws 265, 265. “Drafters sometimes include a direction to ‘amend the title accordingly’ . . . [T]he [R]evisor [should] make all necessary amendments to the title when the amendments are engrossed into the bill. This direction should be used sparingly because the drafter is in the best position to provide all necessary title amendments.” MINNESOTA BILL DRAFTING MANUAL ch. 7, § 4(a)(8) (2002), available at [http://www.revisor.leg.state.mn.us/revisor/pubs/bill\\_drafting\\_manual/Chapter%207.htm#a0704a](http://www.revisor.leg.state.mn.us/revisor/pubs/bill_drafting_manual/Chapter%207.htm#a0704a) (last visited Oct. 31, 2004); see *supra* note 114 (discussing Rep. Boudreau’s direction to “amend the title accordingly”).

123. 2003 Minn. Laws 265, 265–98. Session laws include all the bills passed during a particular session, arranged in the order in which they are passed, signed by the governor, and filed with the secretary of state. Senate FAQ No. 95, Minnesota Senate, at <http://www.senate.leg.state.mn.us/general/senfaq.htm#95> (last visited Oct. 31, 2004).

124. 2003 Minn. Laws 265, 266–72.

125. *Id.* Unless a specific effective date is provided, a law takes effect on August 1 following its final enactment. Senate FAQ No. 103, Minnesota Senate, at <http://www.senate.leg.state.mn.us/general/senfaq.htm#103> (last visited Oct. 31, 2004).

126. Personal Protection Act, ch. 28, art. 2, 2003 Minn. Laws 265, 272–90 (codified at MINN. STAT. §§ 13.871, 609.66, subd. 1(d), 624.714, 624.7142, and 624.7143 (Supp. 2003)).

127. Personal Protection Act, ch. 28, art. 2, § 36, 2003 Minn. Laws 265, 272–90.

128. 2003 Minn. Laws 265, 290–98.

129. *Id.*

130. Millard H. Ruud, *No Law Shall Embrace More Than One Subject*, 42 MINN. L. REV. 389, 389 (1958) (citing R. Luce, *Legislative Procedure* 548–49 (1922)).

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subject” clause in its constitution.<sup>131</sup> “[I]n response to perceived abuses of the legislative process,” most states followed New Jersey’s lead between the Civil War and 1912.<sup>132</sup> Forty-one state constitutions currently contain some variation of a single-subject requirement.<sup>133</sup>

Early Minnesota leaders recognized potential mischief in bundling together disparate legislative provisions in one bill.<sup>134</sup> At the Minnesota Democratic Constitutional Convention in 1857, the Convention amended a proposal that addressed a title requirement in response to Bradley Meeker’s comments:

My object in moving this amendment is to guard against a practice which has been to a greater or less extent, prevalent in this Territory, as well as in other States, of grouping together several different subjects in one bill, and passing them through by means of a system known as log-rolling.<sup>135</sup>

Minnesota’s constitutional provision contains two parts: the first part is that a bill shall not include more than one subject.<sup>136</sup> The single-subject requirement prevents the legislative practice of “logrolling.”<sup>137</sup> Logrolling combines “several propositions in one measure . . . so that the legislature or voters will pass all of them, even though these propositions might not have passed if they had

131. *Id.* at 390. Illinois adopted a limited single-subject rule in 1818 to apply to bills appropriating salaries for legislative members and government officials. *Id.*

132. *Id.* at 452–55 tbl.1; James L. McDowell, “Single Subject” Provisions in State Legislatures, *SPECTRUM: THE JOURNAL OF STATE GOVERNMENT* 23, 35 (March 22, 2003), available at 2003 WLNR 12643280.

133. Jeffrey Gray Knowles, *Enforcing the One-Subject Rule: The Case for a Subject Veto*, 38 *HASTINGS L.J.* 563, 565 (1987) (citing Millard H. Ruud, *No Law Shall Embrace More Than One Subject*, 42 *MINN. L. REV.* 389, 389 (1958)). The nine states without a single-subject rule are Arkansas, Connecticut, Maine, Massachusetts, New Hampshire, North Carolina, Rhode Island, Vermont, and Wisconsin. *Id.*

134. *Associated Builders*, 610 N.W.2d at 299 (citing *THE DEBATES AND PROCEEDINGS OF THE MINNESOTA CONSTITUTIONAL CONVENTION* 124, 262–63 (Francis H. Smith, reporter 1857)).

135. *Id.* Bradley B. Meeker was appointed as a judge in the new territory of Minnesota in 1849 and presided at Minneapolis’s first term of court. After leaving the bench, Meeker served as a member of the constitutional convention in 1857. Minnesota’s Meeker County is named for him. *See id.* (citing 14 *COLLECTIONS OF THE MINNESOTA HISTORICAL SOCIETY, MINNESOTA BIOGRAPHIES 1655–1912*, 501 (compiled by Warren Upham and Rose Barteau Dunlap, 1912)).

136. *See* *MINN. CONST.* art. IV, § 17, available at <http://www.house.leg.state.mn.us/cco/rules/mncon/mncon.htm> (last visited Oct. 31, 2004).

137. Ruud, *supra* note 130, at 391.



been submitted separately.”<sup>138</sup> A variation of logrolling is called a “rider.”<sup>139</sup> A rider is an unrelated amendment attached to a non-controversial bill that typically cannot pass on its own merits.<sup>140</sup> Single-subject provisions facilitate orderly legislative procedure by eliminating divisive deliberations and reduce the possibility of surprise to both the legislature and the public.<sup>141</sup>

The second part of the rule is that the single subject of a bill must be expressed in the title of the law.<sup>142</sup> The requirement that the title contain the subject of a bill is “independent” of the requirement that the bill encompass one subject.<sup>143</sup> The title requirement serves “to prevent legislation by stealth” and complements its “sister requirement” that the law not encompass more than one subject.<sup>144</sup> Minnesota Constitution article IV, section 17 incorporates the single-subject and title requirement into one statement: “[n]o law shall embrace more than one subject, which shall be expressed in its title.”<sup>145</sup>

### C. *The Minnesota Supreme Court’s Interpretation of Section 17*

#### 1. *Early Interpretation*

The single-subject and title provisions of section 17 are often discussed together, but over the years the court detailed how the provisions serve different purposes and require somewhat different analyses. Only a year after article IV, section 17’s adoption, the constitutional requirement faced its first test. In *Board of Supervisors of Ramsey County v. Heenan*, the Minnesota Supreme Court upheld the constitutionality of a law that reorganized county and township governments and required the register of deeds to deliver tax documents to the county board of supervisors.<sup>146</sup> The court concluded that the single-subject requirement was not offended because there was “no attempt at fraud or the interpolation of

138. BLACK’S LAW DICTIONARY 960 (8th ed. 2004).

139. Ruud, *supra* note 130, at 391; *see* Knowles, *supra* note 133 at 563 n.1.

140. Ruud, *supra* note 130, at 391.

141. *Id.*

142. *See* MINN. CONST. art. IV, § 17, *available at* <http://www.house.leg.state.mn.us/cco/rules/mncon/mncon.htm> (last visited Oct. 31, 2004).

143. Ruud, *supra* note 130, at 391.

144. *Id.* at 392.

145. MINN. CONST. art. IV, § 17, *available at* <http://www.house.leg.state.mn.us/cco/rules/mncon/mncon.htm> (last visited Oct. 31, 2004).

146. 2 Minn. 330, 339 (1858).

matter foreign to the subject expressed in the title.”<sup>147</sup>

Thirty-three years later, the court formulated the scope and purpose of both the single-subject and title provisions. In *Johnson v. Harrison*, the court held that “[a]n act to establish a Probate Code,” which provided for property rights in a decedent’s estate and procedure in probate courts, fell short of violating section 17.<sup>148</sup> In the decision, the court explained that the single-subject provision serves to prevent “log-rolling legislation”<sup>149</sup> or “omnibus bills.”<sup>150</sup> Although the provision is mandatory, the court explained that the judiciary should interpret the single-subject provision liberally.<sup>151</sup> The court stated that legislation “germane” to one general subject satisfies the constitutionality threshold.<sup>152</sup> As a result, the court adopted a “germaneness” test to determine whether a law violates section 17’s single-subject provision:

All that is necessary is that the act should embrace some one [sic] general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.<sup>153</sup>

The court reiterated that the title provision served a related but different purpose. The court explained the title requirement serves to prevent fraud or surprise on the legislature and public by

147. *Id.*

148. 47 Minn. 575, 580, 50 N.W. 923, 925 (1891).

149. In 1875, the court defined logrolling as the “combination of different measures, dissimilar in character . . . united together . . . compelling the requisite support to secure their passage.” *State v. Cassidy*, 22 Minn. 312, 322 (1875). The single-subject provision’s purpose is to “secure to every distinct measure of legislation a separate consideration and decision, dependent solely upon its individual merits, by prohibiting the fraudulent insertion therein of matters wholly foreign.” *Id.*

150. *Johnson*, 47 Minn. at 577, 50 N.W. at 924. The *Johnson* court defined “logrolling legislation” as bills containing “a number of different and disconnected subjects” and then “carried through [the legislative process] by a combination of interests.” *Id.*

151. *Id.*

152. *Id.* “[The subject provision] is not intended, nor should it be so construed as, to embarrass legislation by making laws unnecessarily restrictive in their scope and operation, or by multiplying their number, or by preventing the legislature from embracing in one act all matters properly connected with one general subject.” *Id.*

153. *Id.* “Germane” means “relevant [or] pertinent.” BLACK’S LAW DICTIONARY 708 (8th ed. 2004); *see supra* note 101 (discussing the Minnesota House and Senate definitions of “germane”).

prohibiting “provisions in a bill whose title gives no intimation of the nature of the proposed legislation.”<sup>154</sup> In essence, section 17’s title provision serves to provide notice of a bill’s contents.<sup>155</sup> The court required the title to suggest “in any sense” the law’s legislative purpose.<sup>156</sup> The court accorded the same liberal interpretation to section 17’s title provision.<sup>157</sup>

While the supreme court continued to formulate analysis and policy for the subject and title provisions, it also repeatedly struck down statutory enactments under section 17. In *Winona & St. Peter Railroad Co. v. Waldron*, the court held that an act to “facilitate the construction of a railroad from Winona, westerly by way of St. Peter” failed constitutional muster because its title included “[c]onsolidation; bridging the Mississippi; taxation.”<sup>158</sup> In *Anderson v. Sullivan*, the court invalidated a law authorizing an increase in county officers’ compensation because the law’s title, “[a]n act authorizing and directing the county commissioners . . . to reduce the compensation and number of officers and other employees of such counties,” neglected to mention the wage increase.<sup>159</sup> The court invalidated the offending provision but upheld the remainder of the law.<sup>160</sup>

The court’s tendency to strike down legislation conflicting with section 17 continued though the beginning of the twentieth century. In 1919, the court held that a law “for the regulation of agencies receiving [abandoned or homeless] children for care or placing out, and women during confinement” violated the single-

154. *Johnson*, 47 Minn. at 577, 50 N.W. at 924.

155. *See id.*

156. *State ex rel. Olsen v. Bd. of Control of State Insts.*, 85 Minn. 165, 175, 88 N.W. 533, 537 (1902).

157. *See id.* (holding that “[e]very reasonable presumption should be in favor of the title”). In 1939, the supreme court noted that the generality of the title of an act is not grounds for invalidation as long as the title gives notice of the general subject because “the title was never intended to be an index of the law.” *State ex rel. Pearson v. Probate Court*, 205 Minn. 545, 552, 287 N.W. 297, 301 (1939) (holding the title “[a]n act relating to persons having a psychopathic personality” for a law which provided for the commitment of sexual offenders failed to violate the title clause because it gave notice that the law concerned “sexually irresponsible persons”).

158. *Winona & St. Peter R.R. v. Waldron*, 11 Minn. 515, 535 (1866).

159. *Anderson v. Sullivan*, 72 Minn. 126, 130–31, 75 N.W. 8, 8–9 (1898). The court observed that a contrary holding increased salaries of some officers at the expense of others. *Id.* at 131, 75 N.W. at 8–9.

160. *Id.* at 133, 75 N.W. at 9–10 (“The familiar rule on the subject is that, while a part of the statute is unconstitutional, that fact does not authorize the court to declare the remainder void also . . .”).

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subject and title clause.<sup>161</sup> The court observed that the latter part of the law was “in no way germane to the former [and] has to do with places where mothers from almost every walk of life are received and cared for during confinement.”<sup>162</sup> Instead of severing the offending provision, the court invalidated the entire law: “[t]he rule is well settled that where the title to an act actually indicates, and the act itself actually includes, two distinct objects where the Constitution declares it shall embrace but one, the whole act must be treated as void.”<sup>163</sup>

In *State ex rel. Finnegan v. Burt*, the court held that a law “to establish a classification and salary system in all counties of this state” violated section 17’s title requirement by neglecting to give notice of a provision that related to the discharge and demotion of employees.<sup>164</sup> The court further noted that the law failed to encompass one subject.<sup>165</sup> The court severed the offending provision and left the remainder of the law intact on the ground that the unconstitutional provision was unrelated to the rest of the law’s subject matter.<sup>166</sup>

The supreme court appeared to give the legislature greater deference in the latter part of the twentieth century. In the two cases addressing section 17 from the late 1970s, the supreme court held that the challenged laws fell short of offending section 17’s constitutional restrictions.<sup>167</sup> *Wass v. Anderson* rejected a claim that an amendment in a law “relating to transportation” violated the single-subject provision.<sup>168</sup> The court observed that the amendment, which levied taxes on bonds for highway construction and fuel for vehicles on public highways, was germane to the subject of “transportation.”<sup>169</sup> The court further rejected the claim that the highway bonding amendment violated section 17’s title provision,<sup>170</sup> noting that, although “transportation” is a general

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161. *State v. Women’s & Children’s Hosp.*, 143 Minn. 137, 138–39, 173 N.W. 402, 402 (1919).

162. *Id.* at 139, 173 N.W. at 402.

163. *Id.*

164. 225 Minn. 86, 88–89, 29 N.W.2d 655, 656 (1947).

165. *Id.* at 89, 29 N.W.2d at 656–57.

166. *Id.* at 89–90, 29 N.W.2d at 657.

167. *Lifteau v. Metro. Sports Facilities Comm’n*, 270 N.W.2d 749 (Minn. 1978); *Wass v. Anderson*, 312 Minn. 394, 252 N.W.2d 131 (1977).

168. 312 Minn. at 399–401, 252 N.W.2d at 135–36.

169. *Id.* at 400, 252 N.W.2d at 135–36.

170. *Id.* at 401–03, 252 N.W.2d at 136–37.

term, it was not misleading as to the law's contents.<sup>171</sup> The court required the title to at least reflect "the interests likely to be affected,"<sup>172</sup> explaining that "it is not essential that the best or even an accurate title be employed, if it be suggestive in any sense of the legislative purpose."<sup>173</sup>

Likewise, in *Lifteau v. Metropolitan Sports Facilities Commission*, the court rejected a claim that a law titled "[a]n act relating to metropolitan government; providing for sports facilities; establishing a sports commission and prescribing its powers and duties" violated the title provision of section 17.<sup>174</sup> The law in question empowered a commission, established pursuant to the act, to work with the Metropolitan Council to impose a two percent tax on the sale of alcohol near the Hubert H. Humphrey Metrodome.<sup>175</sup> The court held that the law's title provided sufficient notice of its contents to satisfy section 17's title requirement.<sup>176</sup> In addition, the court took "judicial notice" of the proposal's ample media and legislative coverage.<sup>177</sup>

## 2. *The Court Sends a Warning to the Minnesota Legislature*

In the next three cases after *Lifteau*, the court held that each challenged law passed section 17's requirements.<sup>178</sup> The court however, adopted a different approach by issuing a firm warning to the legislature that the court would strike down expansive legislation offending the Minnesota Constitution. In *State ex rel. Mattson v. Kiedrowski*, the court heard a claim that a provision permitting the legislature to transfer responsibilities of the State Treasurer to the Commissioner of Finance violated the separation of powers doctrine as well as single-subject and title restrictions.<sup>179</sup> The court held that the law was unconstitutional on the separation

171. *Id.* at 403, 252 N.W.2d at 137.

172. *Id.* at 398, 252 N.W.2d at 134.

173. *Id.* at 403, 252 N.W.2d at 137 (quoting *State ex rel. Olsen v. Bd. of Control of State Insts.*, 85 Minn. 165, 175, 88 N.W. 533, 537 (1902)).

174. 270 N.W.2d at 753.

175. *Id.* at 752-53. For more information on the Hubert H. Humphrey Metrodome, see <http://www.ballparks.com/baseball/american/metrod.htm> (last visited Mar. 15, 2005).

176. *Lifteau*, 270 N.W.2d at 753.

177. *Id.*

178. *Metro. Sports Facilities Comm'n v. County of Hennepin*, 478 N.W.2d 487 (Minn. 1991); *Blanch v. Suburban Hennepin Reg'l Park Dist.*, 449 N.W.2d 150 (Minn. 1989); *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986).

179. 391 N.W.2d at 778, 783.

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of powers doctrine and passed on analyzing the section 17 claim.<sup>180</sup>

The disparate provisions of the law, however, prompted Justice Yetka, joined by Justice Simonett, to declare that “now all bounds of reason and restraint seem to have been abandoned.”<sup>181</sup> He referenced, for example, provisions relating to agricultural land, a council of Asian-Pacific Minnesotans, and the establishment of a recycling program.<sup>182</sup> Justice Yetka questioned whether the supreme court became too lenient in permitting such legislation and observed that “[t]he worm that was merely vexatious in the 19th century has become a monster eating the constitution in the 20th.”<sup>183</sup> Justice Yetka concluded with a stern warning to the legislature that the court would act on future legislation that impinges on section 17.<sup>184</sup>

A similar alarm sounded three years later in *Blanch v. Suburban Hennepin Regional Park District*.<sup>185</sup> There, the court heard a claim that a provision authorizing a metropolitan park district to acquire and develop park land in an act “relating to the organization and operation of state government” violated section 17.<sup>186</sup> The court observed that “[t]he common thread which runs through the various sections . . . is indeed a mere filament.”<sup>187</sup> The court, however, upheld the provision because the park bill was designed to allow the legislature to appropriate funds from the preceding session and thus fell under the broad subject of appropriating funds to operate the state government.<sup>188</sup> Justice Yetka again concurred, joined once more by Justice Simonett, and observed

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180. *Id.* at 783.

181. *Id.* at 784 (Yetka, J., concurring specially).

182. *Id.*

183. *Id.*

184. *Id.*

[W]e should send a clear signal to the legislature that this type of act will not be condoned in the future. Garbage or Christmas tree bills appear to be a direct, cynical violation of our constitution . . . . It is clear to me that the more deference shown by the courts to the legislature and the more timid the courts are in acting against constitutional infringements, the bolder become those who would violate them . . . . [W]e should publicly warn the legislature that if it does hereafter enact legislation similar to [the law in question], which clearly violates Minn. Const. art IV, § 17, we will not hesitate to strike it down regardless of the consequences to the legislature, the public, or the courts generally.

*Id.* at 785.

185. 449 N.W.2d 150 (Minn. 1989).

186. *Id.* at 154–55.

187. *Id.* at 155.

188. *Id.*

that the court correctly resolved the challenge because the legislature did not have the opportunity to heed the court's warning in *Mattson*.<sup>189</sup> Chief Justice Popovich reiterated in his concurring opinion the court's increased concern with the possibility of future violations of section 17 and noted that "[t]he views of the justices expressed today should be considered as instructive, alerting a co-equal branch of government, the legislature, to our concerns."<sup>190</sup> In regards to the proper sanction, the court remarked: "[w]e are constrained to observe that since it is the presence of more than one subject which renders a bill constitutionally infirm, it appears to us at this time unlikely that any portion of such a bill could survive constitutional scrutiny."<sup>191</sup>

Then in *Metropolitan Sports Facilities Commission v. County of Hennepin*, the court held that a law exempting space in the Metrodome<sup>192</sup> from property taxation did not violate section 17's single-subject clause.<sup>193</sup> The court concluded the property tax provision was germane by noting that the law's title included taxation.<sup>194</sup> While acknowledging the law could follow more consistently with Section 17's requirements, the court recognized the legislature enacted the law prior to the *Blanch* warning about the constitutional frailty of "garbage bills."<sup>195</sup>

### 3. *The Court Refuses to Adopt a "Mere Figment Test"*

Finally, in *Associated Builders and Contractors v. Ventura*, the Minnesota Supreme Court followed through on its prior warnings to the Minnesota Legislature and declined to "push the mere filament [test] to a mere figment."<sup>196</sup> The legislature folded a provision relating to prevailing wages in school district construction projects into a tax bill, which the court described as a "prodigious

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189. *Id.* (Yetka, J., concurring specially). "The legislature hereafter has full notice of the consequences of overstepping constitutional limitations in its drafting of omnibus bills." *Id.*

190. *Id.* at 156-57 (Popovich, C. J., concurring specially).

191. *Id.* at 155.

192. *See supra* note 175 (providing information on the Metrodome).

193. *Metro. Sports*, 478 N.W.2d 487, 491 (Minn. 1991).

194. *See id.*

195. *See id.*

196. *Associated Builders*, 610 N.W.2d at 303. The court utilized the *Blanch* "germaneness" test which requires "the common thread which runs through the various sections [to] only be a mere filament." *Id.* at 308 (quoting *Blanch*, 449 N.W.2d at 155).

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work of legislation covering 247 pages with 16 articles.”<sup>197</sup> The court rejected claims that the prevailing wage provision was germane to the subject of tax relief or the operation of state and local government.<sup>198</sup> While the prevailing wage provision may impact taxes by affecting construction costs, the court noted that this impact served as a by-product outside of the provision’s purpose.<sup>199</sup> Also, the short text of the prevailing wage provision neglected to mention tax relief or reform.<sup>200</sup> The court concluded the relationship between the prevailing wage provision and the subject of taxes fell short of even *Blanch’s* “mere filament” test.<sup>201</sup> The court enumerated that more than a general impact on state finances was required to establish a minimum thread of germaneness as “virtually any bill that relates to government financing and government operations affects, in some way, expenditure of state funds.”<sup>202</sup> The court stated that “the Single Subject and Title Clause, as Minnesota’s first ‘sunshine law,’ requires that the legislature not fold into larger, more popular bills, wholly unrelated and potentially unpopular provisions that may not pass as a stand-alone bill.”<sup>203</sup> The court noted that section 17 serves “to preclude unrelated subjects from appearing in a popular bill, not to eliminate unpopular provisions in a bill that genuinely encompasses one general subject.”<sup>204</sup>

The court further declared the prevailing wage provision violated the title clause of section 17.<sup>205</sup> The title of the wage law referenced “financing and operation of state and local government” as well as “property tax relief and rate reform, tax rebates, truth in taxation, local tax levies and tax credits.”<sup>206</sup> The court noted the title lacked any reference to labor, wages, school

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197. *Id.* at 297. The prevailing wage amendment only applied to school district construction projects costing more than \$100,000. Once enacted, the prevailing wage amendment was codified at MINN. STAT. § 121.15, subd. 1a (Supp. 1997). *See* Act of June 2, 1997, ch. 231, art. 16, § 4, 1997 Minn. Laws 2629. In 1998, MINN. STAT. § 121.15, subd. 1a was renumbered as MINN. STAT. § 123B.71, subd. 2. *See* MINN. STAT. § 121.15, subd. 1a (1998).

198. *Associated Builders*, 610 N.W.2d at 302.

199. *Id.* at 302–03.

200. *Id.* at 302.

201. *Id.*

202. *Id.*

203. *Id.* at 303.

204. *Id.*

205. *Id.* at 304.

206. *Id.*



construction or other words to suggest the law contained a provision significantly impacting school construction costs.<sup>207</sup> Although the court afforded every reasonable presumption in favor of the title,<sup>208</sup> the court surmised that the title failed to offer sufficient notice to meet constitutional requirements.<sup>209</sup> The court chose to sever the offending provision and leave the remaining provisions of the law intact, stating it favored “a more pragmatic result that is consistent with our constitution and the cases interpreting provisions in violation of the single-subject and title clause.”<sup>210</sup>

### III. THE *UNITY CHURCH* DECISION

More than thirty different religious organizations (collectively “Plaintiffs”) brought suit in Ramsey County District Court to challenge the Personal Protection Act and seek declaratory and equitable relief.<sup>211</sup> Plaintiffs alleged that the Act impinged on their religious freedoms and constituted an unconstitutional “taking.”<sup>212</sup>

207. *Id.*

208. *See In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989) (“Minnesota statutes are presumed constitutional, and our power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary.”).

209. *Associated Builders*, 610 N.W.2d at 304.

210. *Id.* at 307.

211. Respondents’ Brief at 2, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Sept. 21, 2004) (on file with the Minnesota State Law Library). Numerous plaintiffs intervened at different times during the course of the litigation. For more information, see <http://www.fredlaw.com/news/conceal> (last visited Mar. 15, 2005). Also, for a list of the parties involved in the lawsuit, see <http://www.fredlaw.com/news/conceal/ramparties.html> (last visited Mar. 15, 2005). In May 2003, the Episcopal Bishop of Minnesota and twelve congregations filed a lawsuit in Hennepin County challenging the constitutionality of the Personal Protection Act. *See* <http://www.fredlaw.com/news/conceal> (last visited Mar. 15, 2005). On June 6, 2003, the Hennepin County District Court issued a preliminary injunction which enjoined enforcement of a portion of the Act against the plaintiffs. Memorandum and Order at 1, *Edina Cmty. Lutheran Church v. State*, No. 03-008185 (Minn. Dist. Ct. filed June 6, 2003), *available at* <http://www.fredlaw.com/news/conceal/HC060603.pdf>. After plaintiffs’ successful appeal to the Minnesota Court of Appeals, the district court on remand issued a broader temporary injunction. *Edina Cmty. Lutheran Church v. State of Minnesota*, 673 N.W.2d 517, 523 (Minn. Ct. App. 2004) (appellate decision); *Edina Cmty. Lutheran Church*, No. 03-008185, 2004 WL 632766, at \*1 (Minn. Dist. Ct. Mar. 16, 2004) (district court decision). The Hennepin County District Court stayed the case until the appellate courts resolve *Unity Church*. *See* <http://www.fredlaw.com/news/conceal> (last visited Mar. 15, 2005).

212. Religious Intervenors’ First Amended Complaint at 10–16, *Unity Church*,

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Plaintiffs further alleged that the Personal Protection Act violated Minnesota's single-subject restriction.<sup>213</sup> Plaintiffs moved for summary judgment on the Act's alleged constitutional violations.<sup>214</sup> The State argued the Act comported with constitutional mandates and moved for partial summary judgment and to dismiss Plaintiffs' Complaints.<sup>215</sup>

On July 13, 2004, the district court denied Defendant's motions and granted Plaintiffs' Motion for Summary Judgment on the ground that the Act violated section 17's single-subject restriction.<sup>216</sup> The court concluded that the Personal Protection Act, in regulating firearms, contained "totally different subject matter" from the DNR regulatory provisions.<sup>217</sup> The court declared that Minnesota "has prided itself in its openness in all areas of government . . . [A]ttaching this very important and divisive amendment to a totally unrelated, noncontroversial bill without providing notice to the general public is a direct violation of the

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No. C9-03-9570 (Minn. Dist. Ct. filed Oct. 7, 2003), *available at* <http://www.fredlaw.com/news/conceal>; City of Minneapolis Intervenor's Complaint at 4–5, *Unity Church*, No. C9-03-9570 (Minn. Dist. Ct. filed Nov. 20, 2003), *available at* <http://www.fredlaw.com/news/conceal>. Specifically, the Plaintiffs alleged the Act (1) violated their rights to freedom of religion and freedom of speech under the federal and state constitutions by regulating their right to bar individuals with firearms from their buildings and parking lots; (2) violated similar constitutional rights by regulating their rights as landlords; and (3) constituted an unconstitutional "taking" without just compensation under the federal and state constitutions. Religious Intervenors' First Amended Complaint at 10–16, *Unity Church*, No. C9-03-9570 (Minn. Dist. Ct. filed Oct. 7, 2003), *available at* <http://www.fredlaw.com/news/conceal>.

213. Religious Intervenors' First Amended Complaint at 17–18, *Unity Church*, No. C9-03-9570 (Minn. Dist. Ct. filed Oct. 7, 2003), *available at* <http://www.fredlaw.com/news/conceal>; City of Minneapolis Intervenor's Complaint at 4–5, *Unity Church*, No. C9-03-9570 (Minn. Dist. Ct. filed Nov. 20, 2003), *available at* <http://www.fredlaw.com/news/conceal>.

214. Appellant's Brief at 3, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Aug. 18, 2004) (on file with the Minnesota State Law Library). Separate plaintiffs moved for summary judgment at different times and on various grounds. *See* Appellant's Brief and Appendix at A350-A354, A357-A360, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Aug. 18, 2004) (on file with the Minnesota State Law Library).

215. Appellant's Brief at 3, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Aug. 18, 2004) (on file with the Minnesota State Law Library); *see* Appellant's Brief and Appendix at A355–A356, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Aug. 18, 2004) (on file with the Minnesota State Law Library).

216. *Unity Church*, No. C9-03-9570, 2004 WL 1630505, at \*1 (Minn. Dist. Ct. July 14, 2004).

217. *Id.* at \*15.

state constitution and the holdings of our highest court.”<sup>218</sup>

Relying on *Associated Builders*, the district court severed the Personal Protection Act from chapter 28 and left the remainder of the law intact.<sup>219</sup> In addition, the district court permanently enjoined the State of Minnesota from taking any action to enforce the Personal Protection Act.<sup>220</sup> Although the district court commented on the religious freedoms, due process, and taking issues, it did not make any judgment, ruling, or order on these grounds.<sup>221</sup>

On behalf of the State of Minnesota, the Minnesota Attorney General’s Office filed a notice of appeal.<sup>222</sup> The State also petitioned the Minnesota Supreme Court for accelerated review and moved the district court to stay its ruling pending appeal.<sup>223</sup>

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218. *Id.*

219. *Id.* at \*9 (citing *Associated Builders*, 610 N.W.2d at 304–05). The district court chose to strike the “divisive” amendment, the Personal Protection Act, from Chapter 28. See 2003 Minn. Laws 265, 272–98. Contrary to the court of appeals decision, the lifetime firearm possession ban for violent felons remains part of the Personal Protection Act despite the Revisor of Statutes’s action to segregate the Osterman amendment into article 3. See Journal of the House of Representatives, 83rd Leg. Sess., 2660–67 (Minn. Apr. 23, 2003); see *supra* notes 110–12 and accompanying text (detailing the Osterman amendment’s inclusion in the Personal Protection Act). Article 1, which contains the DNR technical provisions and the Cornish amendment, remained intact. See 2003 Minn. Laws 265, 266–72.

220. *Unity Church*, No. C9-03-9570, 2004 WL 1630505, at \*1 (Minn. Dist. Ct. July 14, 2004). Attorney General Mike Hatch (“Hatch”) stated that new permit requests would need to meet criteria of the “old” law. McCain, *supra* note 66, at A1; see MINN. STAT. § 624.714 (2002). Hatch further explained that establishments may simply exclude guns without posted signs; a verbal warning is sufficient. McCain, *supra* note 66, at A1. Building owners, however, may choose to keep signs in place for informational purposes. Kennedy & Furst, *supra* note 66, at A11. Moreover, the Minnesota Department of Public Safety declared that it will not recognize out-of-state firearm permits because the prior law contained no reciprocity provision. See MINN. STAT. § 624.714 (2002); see also Update on Permit to Carry a Pistol in Minnesota, Department of Public Safety, at <http://www.dps.state.mn.us/bca/CJIS/Documents/CarryPermit/Permit%20to%20Carry.html> (last visited Oct. 31, 2004). Permits issued under the Act, with the exception of out-of-state reciprocity permits, remain valid until they expire or are revoked or suspended. *Id.* The state issued more than 25,000 permits since the permitting process became less discretionary. Kennedy & Furst, *supra* note 66, at A1.

221. *Unity Church*, No. C9-03-9570, 2004 WL 1630505, at \*10 (Minn. Dist. Ct. July 14, 2004).

222. Notice of Appeal, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed July 19, 2004) (on file with the Minnesota State Law Library).

223. Appellant’s Brief at 4, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Aug. 18, 2004) (on file with the Minnesota State Law Library); Respondents’ Brief at 3, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Sept. 21, 2004) (on file with

The supreme court denied the State's Petition for Accelerated Review.<sup>224</sup> Likewise, the district court denied the State's Motion for a Stay Pending an Appeal.<sup>225</sup> In its order, the district court doubted the State could prevail on the merits on appeal.<sup>226</sup> Further, the district court felt the State could not prove irreparable harm.<sup>227</sup> "The harm to the judicial system by endorsing an unconstitutional act far outweighs the speculative and alleged irreparable harm that [the] State claims may affect the governmental administration in the processing or data collection of firearm permits."<sup>228</sup>

The State filed its brief with the Minnesota Court of Appeals on August 18, 2004.<sup>229</sup> Plaintiffs, the respondents, filed their brief

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the Minnesota State Law Library). In reference to his motion to the supreme court, Minnesota Attorney General Hatch argued that *Unity Church* deserves immediate review because the case covers issues of great public interest. Marie McCain, *Appeals Begin in Gun-Permit Decision*, PIONEER PRESS (St. Paul), July 21, 2004, at B1, available at 2004 WLNR 3535741. Hatch remarked that the court needs to clarify the Minnesota's single-subject provision. *Id.*

224. *Unity Church v. State of Minnesota*, No. 04-1302, 2004 Minn. LEXIS 496, at \*1 (Minn. Aug. 17, 2004).

225. Memorandum and Order at 2, *Unity Church*, No. C9-03-9570 (Minn. Dist. Ct. filed Aug. 23, 2004), available at <http://www.fredlaw.com/news/conceal/StayDenialOrder082304.pdf>.

226. *Id.* at 6. The district court noted that the State could win on appeal only if the Minnesota Supreme Court reversed *Associated Builders* and other precedents. *Id.*

227. *Id.* at 7–9. The district court discounted the State's arguments that irreparable harm results from law enforcement agencies losing money needed to help offset the cost of background checks for permit seekers. *Id.* The court also discounted the State's contention that irreparable harm results from the shortened the amount of time—from thirty days to twenty-one days—that officials have to either deny or grant a permit. *Id.*

228. *Id.* at 10. The district court cited additional harm, including:

- (1) [p]arking lot owners would again be prohibited from enforcing trespass laws against those that conceal-and-carry firearms in their parking lots[;]
- (2) [e]mployers would be prohibited from restricting their employees' activities in their parking lots[;]
- (3) [o]wners of parking [lots], whether public or private, would not be able to prohibit people from concealing and carrying firearms on their property[;]
- (4) [l]andlords would not be able to prohibit certain activities of its tenants regarding the concealing and carrying of firearms.

*Id.* at 10–11. Further, the district court noted that its holding does not prohibit persons who obtained a firearm permit under the Personal Protection Act from carrying a firearm. *Id.* at 10. The court's holding does not prohibit a person who obtained a firearm permit under the "old" law from carrying a firearm. *Id.* Finally, the court stated that "no person who is qualified because they need to carry a gun for their job or for security purposes is prohibited from applying for and obtaining a firearm permit." *Id.*

229. Appellant's Brief, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Aug. 18, 2004) (on file with the Minnesota State Law Library).

on September 21, 2004.<sup>230</sup> The State then filed its reply on October 11, 2004.<sup>231</sup> Two groups filed briefs as amicus curiae.<sup>232</sup> Gun Owners' Civil Rights Alliance (GOCRA) filed its brief on August 26, 2004,<sup>233</sup> and the American Civil Liberties Union (ACLU) of Minnesota filed its brief on September 24, 2004.<sup>234</sup> The court of appeals held oral argument on January 13, 2005.<sup>235</sup>

On April 12, 2005, the Minnesota Court of Appeals evaluated chapter 28 under a liberal "germaneness" standard and affirmed the district court's conclusion that the law's two subjects "lack a legitimate connection to one another."<sup>236</sup> The court further affirmed the district court's decision to sever the gun provisions from the remainder of the law.<sup>237</sup> The court reasoned that "where

230. Respondents' Brief, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Sept. 21, 2004) (on file with the Minnesota State Law Library).

231. Appellant's Reply Brief, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Oct. 11, 2003) (on file with the Minnesota State Law Library).

232. In Latin, amicus curiae means "friend of the court." BLACK'S LAW DICTIONARY 83 (8th ed. 2004). An amicus curiae is "a person who is not a party to a lawsuit but petitions the court . . . to file a brief in the action because that person has a strong interest in the subject matter." *Id.*

233. In 1988, Joseph E. Olson, a professor at Hamline School of Law, and others created GOCRA "to promote the rights of gun owners." GOCRA devotes attention, in part, to conceal-and-carry reform in Minnesota. On August 9, 2004, the Minnesota Court of Appeals granted GOCRA's request to file a brief as amicus curiae, stating that GOCRA's position most closely aligned with the State's position. See GOCRA's Brief at 2, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Aug. 26, 2004) (on file with the Minnesota State Law Library).

234. The ACLU is a "national organization whose primary purpose is to help enforce and preserve individual rights and liberties guaranteed by federal and state constitutions." BLACK'S LAW DICTIONARY 82 (7th ed. 1999). Among the liberties that concern the group "are the rights of the citizenry to participate in a fair democratic process leading to the enactment of laws that affect the rights and duties of citizens." ACLU's Brief at 1, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Sept. 29, 2004) (on file with the Minnesota State Law Library). The ACLU's position most closely aligns with Respondents' position. See *id.*

235. See Minnesota Court of Appeals Calendar, at [http://www.courts.state.mn.us/documents/cio/coaCalendar/coa\\_calendar.rtf](http://www.courts.state.mn.us/documents/cio/coaCalendar/coa_calendar.rtf) (last visited Mar. 20, 2005).

236. *Unity Church*, No. 04-1302, 2005 WL 832118, at \*10 (Minn. Ct. App. Apr. 12, 2005). The court stated: "We are compelled to find that [C]hapter 28, which contains dissimilar provisions, must be declared unconstitutional in violation of the single-subject requirement." *Id.* at \*18.

237. *Unity Church*, No. 04-1302, 2005 WL 832118, at \*12 (Minn. Ct. App. Apr. 12, 2005). The court reasoned that although the district court neglected to specifically mention article 3 in its order, the district court intended to strike down the gun provisions in both articles 2 and 3. *Id.* This note contends that the Personal Protection Act in fact embraced article 3's Osterman amendment. See Journal of the House of Representatives, 83rd Leg. Sess., 2660-67 (Minn. Apr. 23, 2003); see *supra* notes 110-112 and accompanying text (detailing the Osterman

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litigation challenges only one aspect of a law, the judiciary should sever the provision being challenged and decline to prejudice unchallenged portions of the law.”<sup>238</sup> In its opinion, the court expressly refused to review the merits of the Personal Protection Act.<sup>239</sup>

The State plans to appeal the court of appeal’s decision to the Minnesota Supreme Court.<sup>240</sup> The supreme court will likely agree to review *Unity Church* on certiorari given the important constitutional issues in the case.<sup>241</sup>

#### IV. ANALYSIS

##### A. *The Minnesota Supreme Court Should Hold that Chapter 28 Violates Article IV, Section 17 of the Minnesota Constitution*

In an appeal of a grant of summary judgment where there is no dispute of material fact, a reviewing court determines whether the lower court erred in its application of the law.<sup>242</sup> Appellate courts review the constitutionality of a statute de novo.<sup>243</sup> Minnesota statutes are presumed constitutional and reviewing courts should exercise their power to declare a statute unconstitutional with extreme caution.<sup>244</sup> To challenge a statute’s constitutional validity, a party must meet “the very heavy burden of demonstrating beyond a reasonable doubt that the statute is unconstitutional.”<sup>245</sup> Although faced with a heavy burden of proof, the Minnesota Court of Appeals properly held that Respondents successfully proved the legislature enacted chapter 28 in violation of the single-subject and title clause of the Minnesota Constitution.

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amendment’s inclusion in the Personal Protection Act).

238. *Unity Church*, No. 04-1302, 2005 WL 832118, at \*11 (Minn. Ct. App. Apr. 12, 2005) (citing *Associated Builders*, 610 N.W.2d at 305).

239. *Id.* at \*4.

240. Paul Gustafson, *Conceal-carry Gun Law Illegal, Court Rules*, STAR. TRIB. (Minneapolis – St. Paul), Apr. 13, 2005, at B1. The State had not yet filed a petition for certiorari as this note was sent to the publisher.

241. The State does not have a right to appeal to the Minnesota Supreme Court. “[T]he Minnesota Constitution does not, either expressly or by necessary implication, guarantee to the individual a right of appeal to [the supreme] court.” *O’Rourke v. O’Rourke*, 300 Minn. 158, 164, 220 N.W.2d 811, 815 (1974).

242. *Metro. Prop. and Cas. Ins. Co. v. Metro. Transit Comm’n*, 538 N.W.2d 692, 695 (Minn. 1995).

243. *State v. Behl*, 564 N.W.2d 560, 566 (Minn. 1997).

244. *Id.*

245. *Id.* (quoting *State v. Merrill*, 450 N.W.2d 318, 321 (Minn. 1990)).

1. *Chapter 28 Violates Section 17's Single-Subject Requirement*

The Minnesota Court of Appeals affirmed the district court's conclusion that the Personal Protection Act, in regulating firearms, contained "totally different subject matter" from the DNR's regulatory provisions.<sup>246</sup> To determine whether a law adheres to section 17's single-subject provision, the *Blanch* "germaneness" test requires "[t]he common thread which runs through the various sections" need only be a "mere filament."<sup>247</sup> Although this liberal standard gives deference to the legislature, in recent cases the court took "quite a different approach" and stated it will "not hesitate to strike down oversweeping legislation that violates the single-subject and title clause, regardless of the consequences."<sup>248</sup> The *Associated Builders* court "recognized limitations on the interpretation of the single-subject provision"<sup>249</sup> and refused to "push the mere filament [test] to a mere figment."<sup>250</sup> In light of the court's amended viewpoint, *Unity Church* presents an opportunity, at least for the Minnesota Supreme Court,<sup>251</sup> to clearly establish whether it adheres to *Blanch*'s "mere filament" germaneness test or adopts a different standard that challenged provisions face under section 17 scrutiny.

To explain the *Blanch* "germaneness" test, the supreme court stresses a "reasonableness" standard to determine the extent of the relationship between or among a law's provisions.<sup>252</sup> The court recognized over one hundred years ago that "the legislature [has] full scope to include in one act all matters having a *logical* or *natural* connection."<sup>253</sup> The *Johnson* court noted that laws cannot "embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any *legitimate* connection . . . ."<sup>254</sup> The *Buhl* court recognized that an act is unconstitutional

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246. *Unity Church*, No. 04-1302, 2005 WL 832118, at \*10 (Minn. Ct. App. Apr. 12, 2005); *Unity Church*, No. C9-03-9570, 2004 WL 1630505, at \*8 (Minn. Dist. Ct. July 14, 2004).

247. *Blanch*, 449 N.W.2d at 155.

248. *Associated Builders*, 610 N.W.2d at 301.

249. *Defenders of Wildlife v. Ventura*, 632 N.W.2d 707, 712 (Minn. Ct. App. 2001), *review denied* (Minn. Oct. 24, 2001).

250. *Associated Builders*, 610 N.W.2d at 303.

251. The Minnesota Court of Appeals, an intermediate appellate court, serves primarily to correct errors and render decisions. *St. Aubin v. Burke*, 434 N.W.2d 282, 284 (Minn. Ct. App. 1989), *review denied* (Minn. Mar. 29, 1989).

252. *Johnson v. Harrison*, 47 Minn. 575, 577, 50 N.W. 923, 924 (1891).

253. *Id.* (emphasis added).

254. *Id.* (emphasis added).

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on single-subject grounds where it “embrace[s] two or more dissimilar and discordant subjects which cannot *reasonably* be said to have any legitimate connection.”<sup>255</sup> The *Associated Builders* court further explained that “[t]he purpose of preventing logrolling is to preclude unrelated subjects from appearing in a popular bill, not to eliminate unpopular provisions in a bill that *genuinely* encompasses one general subject.”<sup>256</sup> With these principles in mind, even under a liberal “mere filament” germaneness test, the State cannot advance any reasonable arguments to link the DNR technical bill and Minnesota Citizens’ Personal Protection Act of 2003.

The State asserts that “[t]he common ‘filament’ of Chapter 28 is government regulation, either of potentially hazardous instrumentalities or devices or of the persons who use or regulate them.”<sup>257</sup> The words “instrumentalities” and “devices,” however, appear neither in chapter 28’s title nor text.<sup>258</sup> The word “hazardous” only appears in a portion of the Personal Protection Act that disallows a person under the influence of a “hazardous” substance to carry a pistol.<sup>259</sup> Further, “park fees,” “fish and dark houses,” “littering,” and “pamphlet form of laws” unlikely fall under the purview of “instrumentalities,” “devices,” or “hazardous.”<sup>260</sup>

The broad and encompassing subject of “government regulation” completely eviscerates *Blanch’s* “mere filament” germaneness test and renders section 17 meaningless. “Regulation” means “[t]he act or process of controlling by rule or

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255. *Buhl v. Joint Ind. Consol. Sch. Dist. No. 11*, 249 Minn. 480, 484, 82 N.W.2d 836, 839 (1957) (emphasis added).

256. 610 N.W.2d at 303 (emphasis added).

257. Appellant’s Brief at 21, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Aug. 18, 2003) (on file with the Minnesota State Law Library).

258. See 2003 Minn. Laws 265; see also ACLU’s Brief at 15, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Sept. 29, 2004) (on file with the Minnesota State Law Library).

259. 2003 Minn. Laws 265, 287.

[A] person may not carry a pistol on or about the person’s clothes or person in a public place . . . when the person is knowingly under the influence of any chemical compound or combination of chemical compounds that is listed as a *hazardous* substance in rules adopted under section 182.655 and that affects the nervous system, brain, or muscles of the person so as to impair the person’s clearness of intellect or physical control . . . .

*Id.* (emphasis added).

260. See ACLU’s Brief at 15, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Sept. 29, 2004) (on file with the Minnesota State Law Library).



restriction” or “[a] rule or order having legal force.”<sup>261</sup> “The words ‘law’ and ‘rule’ are synonyms for ‘regulation.’”<sup>262</sup> A logical extension of the State’s argument is that any two subjects are related if they relate to the broader topic of “government regulation.”<sup>263</sup> The State’s argument eradicates any meaning or purpose left in section 17. Consequently, the State’s illogical argument certainly pushes the “mere filament [test] to a mere figment.”<sup>264</sup>

GOCRA argues that “[l]icensing of various activities involving potentially dangerous activities is the strong cord which binds these state government regulations together.”<sup>265</sup> “Licensing,” however, cannot “logically,” “naturally,” “legitimately,” “reasonably,” or “genuinely” encompass chapter 28’s one subject.<sup>266</sup>

The provision GOCRA cites as a “snowmobile license”<sup>267</sup> in the original DNR bill actually relates to the registration of newly purchased snowmobiles, not a personal license to drive a snowmobile.<sup>268</sup> The provision makes no mention of “license” or “licensing.”<sup>269</sup> Although not cited by GOCRA, the only remaining DNR licensing provision provides that “[a] person may not take fish from a dark house or fish house unless the house is licensed.”<sup>270</sup> Compared to a fish license, the Personal Protection Act provides for “a system under which responsible, competent adults can exercise their right to self-protection by authorizing them to obtain a permit to carry a pistol.”<sup>271</sup> As a result, a dark or fish house license and a permit to carry a pistol illogically relate. Fish and

261. BLACK’S LAW DICTIONARY 1311 (8th ed. 2004).

262. Respondents’ Brief at 26, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Sept. 21, 2004) (on file with the Minnesota State Law Library) (citing ROGET’S II THE NEW THESAURUS 764 (1980)).

263. See ACLU’s Brief at 15, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Sept. 29, 2004) (on file with the Minnesota State Law Library).

264. *Associated Builders*, 610 N.W.2d at 303.

265. GOCRA’s Brief at 5, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Aug. 26, 2004) (on file with the Minnesota State Law Library).

266. See *supra* notes 253–56 and accompanying text.

267. See GOCRA’s Brief at 5, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Aug. 26, 2004) (on file with the Minnesota State Law Library).

268. See 2003 Minn. Laws 265, 268; see also S.F. 842, First Engrossment, 83rd Leg. Sess. (Minn. Mar. 20, 2003), available at <http://www.revisor.leg.state.mn.us/cgi-bin/bldbill.pl?bill=S0842.1&session=ls83>.

269. See *supra* note 268.

270. 2003 Minn. Laws 265, 271; see S.F. 842, First Engrossment, 83rd Leg. Sess. (Minn. Mar. 20, 2003), available at <http://www.revisor.leg.state.mn.us/cgi-bin/bldbill.pl?bill=S0842.1&session=ls83>.

271. 2003 Minn. Laws 265, 265.

dark house licensing lacks a “logical,” “natural,” “legitimate,” “reasonable,” or “genuine” relationship to gun permits.<sup>272</sup>

The Cornish amendment’s “licensing” provisions similarly fail to “logically,” “naturally,” “legitimately,” “reasonably,” or “genuinely” relate to gun permits.<sup>273</sup> The all-terrain vehicle and off-highway motorcycle “licensing” provisions cited by GOCRA neglect to contain any language about licenses.<sup>274</sup> The all-terrain vehicles provision only provides for reciprocity agreements: “[t]he commissioner may enter into reciprocity agreements or otherwise certify all-terrain vehicle environmental and safety education and training courses from other states that are substantially similar to in-state courses.”<sup>275</sup> The off-highway motorcycle provision also only provides for reciprocity for safety courses: “[t]he commissioner may enter into reciprocity agreements or otherwise certify off-highway motorcycle environmental and safety education and training courses from other states that are substantially similar to in-state courses.”<sup>276</sup> Neither provision mentions a “license” or “licensing.”<sup>277</sup>

The Cornish amendment includes a “shall issue” provision for a “watercraft operator’s permit” for persons who completed an out-of-state “boat safety education program.”<sup>278</sup> Compared to a permit to operate watercraft, the Personal Protection Act provides a system under which adults can “exercise their right to self-protection by authorizing them to obtain a permit to carry a pistol.”<sup>279</sup> As a result, a watercraft operator’s permit and a permit to carry a pistol illogically relate. A watercraft operator’s permit lacks a “logical,” “natural,” “legitimate,” “reasonable,” or “genuine” relationship to gun permits.<sup>280</sup>

Besides boat safety education reciprocity, the Cornish amendment also provides for hunter safety certificate reciprocity:

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272. See *supra* notes 253–56 and accompanying text.

273. See *id.*

274. See GOCRA’s Brief at 6, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Aug. 26, 2004) (on file with the Minnesota State Law Library).

275. 2003 Minn. Laws 265, 269; Journal of the House of Representatives, 83rd Leg. Sess., 2644 (Minn. Apr. 23, 2003).

276. 2003 Minn. Laws 265, 267; Journal of the House of Representatives, 83rd Leg. Sess., 2644 (Minn. Apr. 23, 2003).

277. See 2003 Minn. Laws 265, 267; see also Journal of the House of Representatives, 83rd Leg. Sess., 2644 (Minn. Apr. 23, 2003).

278. 2003 Minn. Laws 265, 269; Journal of the House of Representatives 83rd Leg. Sess., 2644 (Minn. Apr. 23, 2003).

279. 2003 Minn. Laws 265.

280. See *supra* notes 253–56 and accompanying text.

A person born after December 31, 1979, may not obtain an *annual license to take wild animals by firearms* unless the person has a firearms safety certificate or equivalent certificate . . . or other evidence indicating that the person has completed in this state or in another state a hunter safety course recognized by the department under a reciprocity agreement or certified by the department as substantially similar.<sup>281</sup>

The Cornish amendment does not provide for license reciprocity, but provides for safety certificate reciprocity.<sup>282</sup> Moreover, the provisions serve different purposes and are governed by different state agencies. The Cornish amendment, governed by the Department of Natural Resources, requires firearm safety course certificates for a hunting license to “take wild animals.”<sup>283</sup> Conversely, the Personal Protection Act, governed by the Department of Public Safety, relates to a permit to carry a pistol, so to exercise a right to “self-protection through the lawful use of self-defense.”<sup>284</sup> As a result, a hunting safety course certificate lacks a “logical,” “natural,” “legitimate,” “reasonable,” or “genuine” relationship to a permit to carry a pistol.<sup>285</sup> Chapter 28, then, contains a “combination of different measures, dissimilar in character, purposes and objects.”<sup>286</sup>

Not only does chapter 28 lack a single subject, its method of passage shows evidence of impermissible logrolling. Legislative history may provide evidentiary support of single-subject violations.<sup>287</sup> The subjects contained in the DNR technical bill and the Personal Protection Act fell under different committee jurisdictions. The Senate Committee on Environment and Natural Resources and the House Committees on Environment and Natural Resources Policy, Environment and Natural Resources Finance, and Governmental Operations and Veterans’ Affairs Policy heard the DNR technical bill.<sup>288</sup> No person mentioned guns

281. 2003 Minn. Laws 270–71 (emphasis added); Journal of the House of Representatives, 83rd Leg. Sess., 2633, 2644–45 (Minn. Apr. 23, 2003).

282. See 2003 Minn. Laws 270.

283. See *id.* at 270–71; MINN. STAT. § 97B.020 (2004).

284. See 2003 Minn. Laws 265, 274; MINN. STAT. § 624.712 (2004).

285. See *supra* notes 253–56 and accompanying text.

286. *Cassidy*, 22 Minn. at 322.

287. *Defenders of Wildlife*, 632 N.W.2d at 714.

288. *Hearing on S.F. 842 Before the H.R. Comm. on Env’t and Natural Res. Fin.*, 83rd Minn. Leg., Apr. 11, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls\\_year=](http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls_year=)

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in any of the committee hearings.<sup>289</sup> Conversely, the Senate Committee on Crime Prevention and Public Safety and the House Committees on Civil Law, Judiciary Policy and Finance, and Ways and Means debated the Personal Protection Act.<sup>290</sup> No person mentioned natural resources in any of the committee hearings.<sup>291</sup>

Furthermore, the Personal Protection Act unlikely passed as a stand-alone bill. A variation of logrolling, called a “rider,” occurs when an unrelated amendment, unlikely to succeed on its own merits, attaches to a non-controversial bill.<sup>292</sup> Presuming H.F. No. 261 passed the House,<sup>293</sup> the Senate President likely referred the bill to the Senate Committee on Crime Prevention and Public Safety.<sup>294</sup> Like the Senate companion bill containing the Personal Protection Act, the Senate Committee on Crime Prevention and Public Safety unlikely recommended to pass H.F. No. 261 out of committee.<sup>295</sup> Variations of the Personal Protection Act failed to pass through the legislative process as a stand-alone bill for the past

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83 (videotape web media); *Hearing on S.F. 842 Before the H.R. Comm. on Gov't Operations and Veterans' Affairs Policy*, 83rd Minn.Leg., Apr. 9, 2003 (audio tape); *Hearing on S.F. 842 and H.F. 823 Before the H.R. Comm. on Env't and Natural Res. Policy*, 83rd Minn.Leg., Mar. 27, 2003 (audio tape); *Hearing on S.F. 842 Before the S. Comm. on Env't and Natural Res.*, 83rd Minn.Leg., Mar. 17, 2003 (audio tape).

289. See *supra* note 288.

290. *Hearing on H.F. 261 Before the H.R. Comm. on Ways and Means*, 83rd Minn.Leg., Apr. 3, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls_year=83) (videotape web media); *Hearing on S.F. 222 Before the S. Comm. on Crime Prevention and Pub. Safety*, 83rd Minn.Leg., Mar. 19, 2003 (audio tape), available at [http://www.senate.leg.state.mn.us/media/archive/2003/committee/cmte\\_crime\\_031903.htm](http://www.senate.leg.state.mn.us/media/archive/2003/committee/cmte_crime_031903.htm) (videotape web media); *Hearing on S.F. 222 Before the S. Comm. on Crime Prevention and Pub. Safety.*, 83rd Minn.Leg., Mar. 17, 2003 (audio tape), available at [http://www.senate.leg.state.mn.us/media/archive/2003/committee/cmte\\_crime\\_031703.htm](http://www.senate.leg.state.mn.us/media/archive/2003/committee/cmte_crime_031703.htm) (videotape web media); *Hearing on H.F. 261 Before the H.R. Comm. on Judiciary Policy and Fin.*, 83rd Minn.Leg., Feb. 26, 2003 (audio tape); *Hearing on H.F. 261 Before the H.R. Comm. on Civil Law*, 83rd Minn.Leg., Feb. 11, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivesCOM.asp?ls_year=83) (videotape web media).

291. See *supra* note 290.

292. Ruud, *supra* note 130, at 391.

293. See Laura McCallum, *Conceal and Carry Law – Extreme Case or Business as Usual?*, Minnesota Public Radio News, July 14, 2004, at [http://news.minnesota.publicradio.org/features/2004/07/14\\_mccalluml\\_garbag\\_ebills](http://news.minnesota.publicradio.org/features/2004/07/14_mccalluml_garbag_ebills) (“[Supporters of the conceal-and-carry gun bill] knew they had the votes to pass the bill if they could get it to the Senate floor.”).

294. See *supra* note 84 and accompanying text.

295. See *supra* note 93 and accompanying text.

seven years.<sup>296</sup>

The DNR technical bill was also non-controversial. In the House, both the Environment and Natural Resources Policy and Governmental Operations and Veteran's Affairs Policy Committees unanimously recommended to pass the DNR technical bill.<sup>297</sup> The Committee on Environment and Natural Resources Finance recommended to pass the bill by a vote of thirteen to one.<sup>298</sup> No one testified against the DNR technical bill in any of the House hearings.<sup>299</sup> In the Senate, the Committee on Environment and Natural Resources, the only committee to hear the bill, unanimously recommended to pass the DNR technical bill.<sup>300</sup> No one testified against the DNR technical bill in the Senate hearing.<sup>301</sup> The Senate considered the DNR technical bill "non-controversial" by voting to place it on the Consent Calendar.<sup>302</sup> Once the bill reached the Senate floor, no senator asked questions or testified for or against S.F. No. 842.<sup>303</sup> The Senate passed the bill by a vote of sixty-five to zero.<sup>304</sup> The DNR technical bill's introduction, third reading, and passage took less than two minutes on the floor.<sup>305</sup> The Personal Protection Act, in contrast, faced opposition at every step of the legislative process.<sup>306</sup>

In this case, the court would not "eliminate unpopular provisions in a bill that genuinely encompasses one general

296. See *supra* note 67 and accompanying text.

297. *Hearing on S.F. 842 Before the H.R. Comm. on Gov't Operations and Veterans' Affairs Policy*, 83rd Minn.Leg., Apr. 9, 2003 (audio tape); *Hearing on S.F. 842 and H.F. 823 Before the H.R. Comm. on Env't and Natural Res. Policy*, 83rd Minn.Leg., Mar. 27, 2003 (audio tape).

298. *Hearing on S.F. 842 Before the H.R. Comm. on Env't and Natural Res. Fin.*, 83rd Minn.Leg., Apr. 11, 2003 (audio tape), available at [http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivescomm.asp?comm=envfin&ls_year=83) (videotape web media).

299. *Id.*; *Hearing on S.F. 842 Before the H.R. Comm. on Gov't Operations and Veterans' Affairs Policy*, 83rd Minn.Leg., Apr. 9, 2003 (audio tape); *Hearing on S.F. 842 and H.F. 823 Before the H.R. Comm. on Env't and Natural Res. Policy*, 83rd Minn.Leg., Mar. 27, 2003 (audio tape).

300. *Hearing on S.F. 842 Before the S. Comm. on Env't and Natural Res.*, 83rd Minn.Leg., Mar. 17, 2003 (audio tape).

301. See *id.*

302. *Id.*; see *supra* notes 36, 39 and accompanying text.

303. See *Senate debate on S.F. No. 842*, 83rd Minn.Leg., Mar. 24, 2003 (audio tape).

304. Journal of the Senate, 83rd Leg. Sess., 426-27 (Minn. March 24, 2003).

305. See *Senate debate on S.F. No. 842*, 83rd Minn.Leg., Mar. 24, 2003 (audio tape).

306. See *supra* Part II.A.2-3 (detailing the Personal Protection Act's legislative history).

subject.”<sup>307</sup> In holding that chapter 28 violates section 17, the court would “preclude unrelated subjects from appearing in a popular bill.”<sup>308</sup> Speaker Sviggum accurately stated that legislators “need to make sure [bills] rise and fall on their own merits.”<sup>309</sup> Although not conclusive proof,<sup>310</sup> the fact the Personal Protection Act unlikely succeeded on its merits and attached to an unrelated non-controversial bill provides evidence of impermissible logrolling.

The State correctly points out that the court should take judicial notice of the Personal Protection Act’s ample public and legislative coverage.<sup>311</sup> The legislature considered some form of the conceal-and-carry gun bill during seven previous legislative sessions.<sup>312</sup> The Personal Protection Act received ample public and legislative attention,<sup>313</sup> and was introduced as separate bills in both legislative bodies.<sup>314</sup> The conceal-and-carry bill, however, also changed frequently during and between legislative sessions.<sup>315</sup> While the supreme court should take notice of the conceal-and-carry bill’s public and legislative coverage, this benefit cannot save chapter 28. The Personal Protection Act remains “wholly unrelated”<sup>316</sup> to the DNR technical provisions. As a result, chapter

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307. *Associated Builders*, 610 N.W.2d at 303.

308. *Id.*

309. Jim Ragsdale, *Ruling Could Threaten Legislation*, PIONEER PRESS (St. Paul), Apr. 1, 2000, at A4, available at 2000 WLNR 2239620 (discussing *Associated Builders* case).

310. *Defenders of Wildlife*, 632 N.W.2d at 714.

311. See *Associated Builders*, 610 N.W.2d at 304; *Defenders of Wildlife*, 632 N.W.2d at 714.

312. Joseph Olson, *The Minnesota Citizens’ Personal Protection Act of 2003: History and Commentary*, 25 HAMLINE J. PUB. L. & POL’Y 21, 22–31 (2003); see *supra* note 67 and accompanying text.

313. See Appellant’s Brief at 7–10, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Aug. 18, 2004) (on file with the Minnesota State Law Library) (describing newspaper coverage); see also *Senate debate on S.F. No. 842*, 83rd Minn.Leg., Apr. 28, 2003 (audio tape) (Senator Bachman noting “it has been seven and one-half hours”), available at [http://www.senate.leg.state.mn.us/media/archive/2003/floor/sfloor\\_042803.htm](http://www.senate.leg.state.mn.us/media/archive/2003/floor/sfloor_042803.htm) (videotape web media); *House debate on S.F. No. 842*, 83rd Minn.Leg., Apr. 23, 2003 (audio tape) (consisting of approximately five and a half hours of debate), available at [http://www.house.leg.state.mn.us/htv/archivesHFS.asp?ls\\_year=83](http://www.house.leg.state.mn.us/htv/archivesHFS.asp?ls_year=83) (videotape web media).

314. The Personal Protection Act was Senate File No. 222 and House File No. 261. See *supra* Part II.A.2.

315. See *supra* notes 72, 76, 80, 89 and accompanying text (detailing the Personal Protection Act’s “delete everything” amendments); see also Olson, *supra* note 67.

316. See *Associated Builders*, 610 N.W.2d at 302.

28 fails to adhere to the plain language of section 17 that “[n]o law shall embrace more than one subject.”<sup>317</sup>

The State asserts that “[i]f the district court’s ruling were allowed to stand, an untold number of other state laws which were passed in a similar fashion as S.F. No. 842 would fall.”<sup>318</sup> This claim, however, holds no weight. The State admitted the conceal-and-carry law was “the product of unusual parliamentary maneuvering.”<sup>319</sup> Certainly, the court should recognize that “it is the legislature’s prerogative to establish [the] state’s public policy . . . and that the legislative process is not bound by rigid textbook rules.”<sup>320</sup> The rules and procedures used by legislative bodies, however, cannot circumvent section 17.<sup>321</sup> In short, “lawmaking must occur within the framework of the constitution.”<sup>322</sup>

In sum, the DNR technical provisions lack a “logical,” “natural,” “legitimate,” “reasonable,” and “genuine” relationship to gun permits.<sup>323</sup> The supreme court should hold that chapter 28 violates the single-subject provision of the Minnesota Constitution article IV, section 17 and is thus unconstitutional.

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317. See MINN. CONST. art. IV, § 17.

318. Appellant’s Brief at 22, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Aug. 18, 2004) (on file with the Minnesota State Law Library).

319. Appendix to Respondents’ Brief at RA-044, *Unity Church* (No. 04-1302) (Minn. Ct. App. filed Sept. 21, 2004) (on file with the Minnesota State Law Library). Sometime after it passed the Personal Protection Act, the Senate amended its rules to prohibit a concurring vote on bills that follow S.F. 842’s parliamentary path. Rule 35.6, Permanent Rules of the Minnesota Senate, 83rd Leg.Sess., 2003–2004 (adopted Mar. 4, 2004), available at <http://www.senate.leg.state.mn.us/departments/secretary/sendesk/rules/2004/perm.pdf>.

320. *Associated Builders*, 610 N.W.2d at 303. The court of appeals remarked: “What the Minnesota Constitution requires is germaneness. It does not require the absence of legislative maneuvering to enact unpopular, but germane, bills.” *Unity Church*, No. 04-1302, 2005 WL 832118, at \*9 (Minn. Ct. App. Apr. 12, 2005).

321. The courts are the “final interpretative body as to constitutional matters.” *State v. Osterloh*, 275 N.W.2d 578, 579–80 (Minn. 1978).

322. *Associated Builders*, 610 N.W.2d at 303. The court of appeals noted: “If the legislature deems it an impediment that perhaps one bill gets shot down on an average of once every 20 or 30 years, they, not the courts, hold the keys to amending the Minnesota Constitution and repealing the single-subject requirement.” *Unity Church*, No. 04-1302, 2005 WL 832118, at \*10 (Minn. Ct. App. Apr. 12, 2005).

323. See *supra* notes 253–56 and accompanying text.

## 2. Chapter 28 Adheres to Section 17's Title Requirement

In its decision, the district court touched briefly on section 17's title requirement. The court mentioned that the Revisor of Statutes changed the law's title from "[a]n act relating to natural resources" to "[a]n act relating to state government regulation."<sup>324</sup> The district court also recited language from *Associated Builders* as to the purpose of section 17's title requirement.<sup>325</sup> The district court, however, neglected to directly analyze the constitutionality of chapter 28's title and instead generally relied on a public policy argument to strike down chapter 28 under section 17.<sup>326</sup>

The court of appeals "confin[ed] [its] analysis to the 'single-subject requirement' since respondents did not claim a violation of the 'title requirement' of [section 17]."<sup>327</sup> Respondents, however, argued that chapter 28's title was too generic to satisfy section 17.<sup>328</sup> Furthermore, the State appeared to use the phrase "single-subject provision" to refer to Minnesota Constitution article IV, section 17, which includes both the single-subject and title requirements.<sup>329</sup> Given this confusion, this note appropriately analyzes chapter 28's adherence to section 17's title requirement.

The purpose of section 17's title provision is "to prevent fraud or surprise on the legislature and the public—in essence to provide notice of the nature of the bill's contents."<sup>330</sup> In *Associated Builders*, the law's title referenced "financing and operation of state and local government" and various "themes of tax reform and relief."<sup>331</sup> The court remarked that the "first clause in the title of the [law] seem[ed] to be virtually generic"<sup>332</sup> and "hardly [gave] notice of 'the interests likely to be affected.'"<sup>333</sup> The court rendered the law unconstitutional because the law's title failed to contain any words

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324. *Unity Church*, No. C9-03-9570, 2004 WL 1630505, at \*2 (Minn. Dist. Ct. July 14, 2004). The court remarked that "[t]his change in the title did not have any hearings and was not approved by either body of the legislature." *Id.*

325. *See id.* at \*9.

326. *See id.* at \*8–10.

327. *Unity Church*, No. 04-1302, 2005 WL 832118, at \*5 (Minn. Ct. App. Apr. 12, 2005).

328. Respondents' Brief at 25–26, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Sept. 21, 2004) (on file with the Minnesota State Law Library).

329. Appellant's Brief at 15, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Aug. 18, 2004) (on file with the Minnesota State Law Library).

330. *Associated Builders*, 610 N.W.2d at 304.

331. *Id.*

332. *Id.*

333. *Id.* (citing *Wass*, 312 Minn. at 398, 252 N.W.2d at 134).



to suggest the law significantly impacted prevailing wages in school construction costs.<sup>334</sup>

Plainly, the first clause of the chapter 28's title suffers a similar defect; "[a]n act relating to state regulation"<sup>335</sup> appears "virtually generic."<sup>336</sup> "Regulation" means "[t]he act or process of controlling by rule or restriction" or "[a] rule or order having legal force."<sup>337</sup> "The words 'law' and 'rule' are synonyms for 'regulation.'"<sup>338</sup> "State regulation" is too broad of a subject to give notice of "the interests likely to be affected"<sup>339</sup> or suggest "in any sense . . . the legislative purpose"<sup>340</sup> as required under section 17.

In contrast to *Associated Builders*, however, the rest of chapter 28's title gives sufficient notice that it contains DNR technical provisions and the Personal Protection Act. Chapter 28's title includes:

An act relating to state government regulation; requiring legislative approval of certain state park fees; modifying commissioner's authority relating to employees, gifts, and grants; modifying provisions of the state parks working capital fund; modifying application provisions for certain licenses; providing for reciprocity of certain safety courses; modifying certain county reimbursement provisions; modifying identification provisions for fish and dark houses; modifying littering prohibition; eliminating requirement to publish pamphlet form of laws; enacting the Minnesota Citizens' Personal Protection Act of 2003; recognizing the inherent right of law-abiding citizens to self-protection through the lawful use of self-defense; providing a system under which responsible, competent adults can exercise their right to self-protection by authorizing them to obtain a permit to carry a pistol; providing that persons convicted of crimes of violence are prohibited from possessing, receiving, shipping, or transporting firearms for the remainder of the person's

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334. *Id.*

335. 2003 Minn. Laws 265, 265.

336. *See Associated Builders*, 610 N.W.2d at 304.

337. BLACK'S LAW DICTIONARY 1311 (8th ed. 2004).

338. Respondents' Brief at 26, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Sept. 21, 2004) (citing ROGET'S II THE NEW THESAURUS 764 (1980)) (on file with the Minnesota State Law Library).

339. *See Associated Builders*, 610 N.W.2d at 304 (citing *Wass*, 312 Minn. at 398, 252 N.W.2d at 134).

340. *See id.* (citing *Olson*, 85 Minn. at 175, 88 N.W. at 537).

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lifetime . . . .<sup>341</sup>

Respondents argue that the legislature's failure to timely change S.F. No. 842's title to reflect the gun-related amendments violates section 17.<sup>342</sup> In support, Respondents cite to the title's legislative history.<sup>343</sup> First, the title remained "[a] bill for an act relating to natural resources" after the House amended S.F. No. 842 to include the Personal Protection Act.<sup>344</sup> Second, the title stayed unchanged when the House sent the amended bill to the Senate.<sup>345</sup> Finally, the title remained "[a] bill for an act relating to natural resources" after the Senate re-passed S.F. No. 842.<sup>346</sup>

Respondents' argument, however, ignores section 17's clear language and the distinction between a bill and a law. "A bill is a proposed legislation that has not completely made its way through the legislative process."<sup>347</sup> "Laws are bills that have been enacted by the legislature and then signed by the governor."<sup>348</sup> Section 17 states that "[n]o law shall embrace more than one subject, which shall be expressed in its title."<sup>349</sup> Sometime *before* the governor signed S.F. No. 842 into law, the Revisor of Statutes changed the title of S.F. No. 842 to "[a] bill relating to state government regulation."<sup>350</sup> The legislature's failure to change S.F. No. 842's title prior to the bill becoming law does not violate section 17's title mandate.

While its opening clause highlights the non-existence of a single subject among the bill's provisions, chapter 28's title gave sufficient notice of its contents when the bill was signed into law.

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341. 2003 Minn. Laws 265, 265.

342. Respondents' Brief at 25–27, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Sept. 21, 2004) (on file with the Minnesota State Law Library).

343. *Id.* at 25–26.

344. Journal of the House of Representatives, 83rd Leg. Sess., 2678–79 (Minn. Apr. 23, 2003). The Boudreau amendment, however, included a directive to the Revisor of Statutes to "[a]mend the title accordingly." *Id.* at 2660.

345. See Journal of the Senate, 83rd Leg. Sess., 1389 (Minn. Apr. 28, 2003).

346. See *id.* at 1389–90.

347. *Associated Builders*, 610 N.W.2d at 312 (Anderson, Paul, J., concurring in part and dissenting in part). In other words, a "bill" is "[a] legislative proposal offered for debate before its enactment." BLACK'S LAW DICTIONARY 174 (8th ed. 2004).

348. *Associated Builders*, 610 N.W.2d at 312 (Anderson, Paul, J., concurring in part and dissenting in part).

349. MINN. CONST. art. IV, § 17.

350. See 2003 Minn. Laws 265, 265; see also Respondents' Brief at 11, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Sept. 21, 2004) (on file with the Minnesota State Law Library).

As a result, chapter 28's title satisfies section 17's title restriction. Regardless of its title's constitutional soundness, however, chapter 28 fails to contain a single subject in violation of section 17's clear language that "no law shall embrace more than one subject, which shall be expressed in its title."<sup>351</sup>

*B. The Court Should Strike Down Chapter 28 in Its Entirety*

Relying on *Associated Builders*, the district court severed the Personal Protection Act and left the remainder of the law intact.<sup>352</sup> Also relying on *Associated Builders*, the Minnesota Court of Appeals affirmed the district court and reasoned that the supreme court "expressly advised the judiciary, if possible, to bring 'the law into constitutional compliance by severing a provision that is not germane to the theme of the law.'"<sup>353</sup> Both courts, however, improperly relied on *Associated Builders* for several reasons. The *Associated Builders* decision ignored the Minnesota Constitution's plain language, relied on improper judicial principles, and ultimately encouraged the legislative behavior prevented by section 17. Further, the courts overlooked *Unity Church's* striking factual similarities to *Women's and Children's Hospital*. Accordingly, the Minnesota Supreme Court should declare all of Chapter 28—the DNR technical provisions and the Personal Protection Act—unconstitutional.

In *Associated Builders*, Justices Alan Page and Paul Anderson dissented on this precise issue.<sup>354</sup> Justices Page and Anderson argued the only appropriate sanction for single-subject and title violations is to render the entire law unconstitutional.<sup>355</sup> In support, the justices cited (1) section 17's plain language; (2) the distinction between laws validly enacted and not validly enacted; and (3) policy.<sup>356</sup> Based on these reasons, Justices Page and Anderson felt the *Associated Builders* majority incorrectly severed the

351. See MINN. CONST. art. IV, § 17.

352. *Unity Church*, No. C9-03-9570, 2004 WL 1630505, at \*1-2 (Minn. Dist. Ct. July 14, 2004); see *supra* note 219.

353. *Unity Church*, No. 04-1302, 2005 WL 832118, at \*11 (Minn. Ct. App. Apr. 12, 2005) (citing *Associated Builders*, 610 N.W.2d at 305); see *supra* notes 237-38.

354. *Associated Builders*, 610 N.W.2d at 307-11 (Page, J., dissenting); *id.* at 311-14 (Anderson, Paul, J., concurring in part and dissenting in part).

355. *Associated Builders*, 610 N.W.2d at 307-11 (Page, J., dissenting); *id.* at 311-14 (Anderson, Paul, J., concurring in part and dissenting in part).

356. *Associated Builders*, 610 N.W.2d at 307-11 (Page, J., dissenting); *id.* at 311-14 (Anderson, Paul, J., concurring in part and dissenting in part).

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offending portion and left the remainder of the law in effect.<sup>357</sup> Under the same analysis, the court of appeals and district court incorrectly severed the Personal Protection Act while leaving the law's DNR provisions intact.

The clear language of Minnesota's single-subject restriction requires the supreme court to hold chapter 28, in its entirety, unconstitutional. Minnesota Constitution article IV, section 17 asserts that "[n]o law shall embrace more than one subject, which shall be expressed in its title."<sup>358</sup> Section 17 states "no law;" it does not state "no provision of a law."<sup>359</sup> Section 17 does not give the court any authority by which to hold a provision of a law unconstitutional.<sup>360</sup>

Justice Paul Anderson noted that "[a] violation of [s]ection 17 strikes at the validity of the entire law, not merely the challenged provision."<sup>361</sup> The *Blanch* court also observed that an entire law unlikely survives if it violates the single-subject and title restriction: "we are constrained to observe that since it is the presence of more than one subject which renders a bill constitutionally infirm, it appears to us at this time unlikely that any portion of such a bill could survive constitutional scrutiny."<sup>362</sup> Based on section 17's clear and explicit language, the supreme court should strike down the DNR technical provisions and the Personal Protection Act.

The distinction between laws validly enacted and not validly enacted similarly obliges the supreme court to declare chapter 28 unconstitutional. In criticizing the majority's decision to sever the offending provision, Justice Page remarked "[t]he court evidently does not understand the distinction between a law that, while validly enacted, contains a provision that is unconstitutional and a law that was unconstitutional because it was never validly enacted."<sup>363</sup> Standing alone, the DNR technical provisions clearly

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357. *Associated Builders*, 610 N.W.2d at 309 (Page, J., dissenting); *id.* at 311 (Anderson, Paul, J., concurring in part and dissenting in part).

358. MINN. CONST. art. IV, § 17, available at <http://www.house.leg.state.mn.us/cco/rules/mncon/mncon.htm> (last visited Mar. 18, 2005).

359. *Associated Builders*, 610 N.W.2d at 309 (Page, J., dissenting); *id.* at 311–12 (Anderson, Paul J., concurring in part and dissenting in part).

360. *Associated Builders*, 610 N.W.2d at 312 (Anderson, Paul J., concurring in part and dissenting in part).

361. *Id.*

362. *Blanch*, 449 N.W.2d at 155.

363. *Associated Builders*, 610 N.W.2d at 309–10 (Page, J., dissenting).

do not violate the Minnesota Constitution.<sup>364</sup> The DNR provisions, however, were never validly enacted because of their inclusion in a law that violates the Minnesota Constitution.<sup>365</sup> As a result, chapter 28's method of enactment, not its content, falls short of complying with section 17's constitutional requirements.

The policy enumerated in the *Associated Builders'* dissenting opinions also favors the remedy of rendering the entire law unconstitutional. Justice Page argued that striking down an entire law that offends section 17 "discourage[s] the legislature from engaging in the conduct that article IV, section 17 [sic] seeks to prevent."<sup>366</sup> Further, Justice Page noted that "there may be some political benefit to be gained by including such provisions in a law even if the law is subsequently held unconstitutional and only the offending provision is severed from the remaining provisions of the law."<sup>367</sup> Justice Anderson commented, "[b]y allowing severance, the majority essentially permits the legislature to pass whatever bills it pleases, knowing that if challenged, the courts will strike only the challenged provisions."<sup>368</sup> The supreme court's decision to invalidate the entire law remains the only outcome that deters the legislature from offending section 17's constitutional requirements. For this reason, the court should follow the sound reasoning of Justices Page and Anderson and strike down chapter 28 in its entirety.

In addition, factually similar precedent compels the supreme court to render the entire law unconstitutional. Over the years, the court both severed offending provisions and invalidated entire laws in response to single-subject and title violations.<sup>369</sup> Most recently, the *Associated Builders* court severed the offending provision from the rest of the challenged law.<sup>370</sup> The law encompassed the Omnibus Tax Act, "a prodigious work of legislation covering 247 pages with 16 articles."<sup>371</sup> The offending prevailing wage

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364. *Id.* at 310.

365. *See id.*

366. *Id.*

367. *Id.*

368. *Id.* at 312-13 (Anderson, Paul J., concurring in part and dissenting in part).

369. *Compare id.* at 307 (severed offending provision), and *Finnegan*, 225 Minn. at 89-90, 29 N.W.2d at 657 (severed offending provision), and *Anderson*, 72 Minn. at 133, 75 N.W. at 9-10 (severed offending provision), with *Women's & Children's Hosp.*, 143 Minn. at 138-39, 173 N.W. at 402 (invalidated entire law).

370. *Associated Builders*, 610 N.W.2d at 307.

371. *Id.* at 297.

amendment was a “simple little bill, four lines”<sup>372</sup> that altered the definition of “project” in school construction statutes.<sup>373</sup> The court reasoned that “chapter 231 includes a provision that clearly is not germane to the subject of otherwise massive legislation.”<sup>374</sup> Unlike the “massive legislation” in *Associated Builders*, chapter 28 is thirty-three pages long and contains only three articles.<sup>375</sup> In contrast to the short prevailing wage amendment, *Unity Church*’s three articles cover six, eighteen, and eight pages, respectively.<sup>376</sup> In light of these differences, the supreme court should distinguish *Associated Builders*.

*Unity Church* reveals similarities to a case where the court, in response to a section 17 violation, struck down the entire law. In *Women’s & Children’s Hospital*, the court held that an act “for the regulation of agencies receiving [abandoned or homeless] children for care or placing out, and women during confinement” violated the single-subject and title clause.<sup>377</sup> Instead of severing one of these two subjects, the court invalidated the entire law.<sup>378</sup> The court in *Associated Builders* distinguished *Women’s & Children’s Hospital*: “[t]here the law contained two distinct subjects and if either provision was to survive, the court would be required to engage in a balancing of importance between the two—clearly a legislative process.”<sup>379</sup>

Like *Women’s & Children’s Hospital*, chapter 28 contains two subjects. The first subject is natural resources. Article 1 contains the technical provisions affecting the Department of Natural Resources.<sup>380</sup> The second subject relates to guns. Article 2 contains the Personal Protection Act, which provides “a system under which responsible, competent adults can exercise their right to self-protection by authorizing them to obtain a permit to carry a pistol.”<sup>381</sup> Article 3 contains the lifetime ban on firearm possession

372. *Id.* at 296 (citing *Hearing on H.F. No. 1512 Before the H. Comm. Labor Mgmt. Rel.*, 80th Minn.Leg., Mar. 24, 1997 (audio tape) (comments of Rep. Bakk)).

373. *Id.* (citing H.F. No. 1512, 80th Minn.Leg., 1997 (codified at MINN. STAT. § 123B.71, subd. 2 (1998))).

374. *Id.* at 306.

375. 2003 Minn. Laws 265, 265–98.

376. *Id.*

377. *Women’s & Children’s Hosp.*, 143 Minn. at 138–39, 173 N.W. at 402.

378. *Id.* at 139, 173 N.W. at 402.

379. *Associated Builders*, 610 N.W.2d at 306.

380. 2003 Minn. Laws 265, 266–72.

381. 2003 Minn. Laws 265, 265, 272–90.

for violent felons.<sup>382</sup> If the supreme court chose severance as the appropriate remedy, the court would impermissibly tread into the legislative sphere to select between two distinct subjects.<sup>383</sup> The court would shift to the impermissible role of “super legislature” and violate the delicate balance of power between the legislature and the judiciary.<sup>384</sup> For these reasons, the supreme court should strike down all of chapter 28 as unconstitutional.

## V. CONCLUSION

The *Unity Church* case forces the question of legislative bundling before the Minnesota judiciary. In view of de novo review, case precedent, legislative history, and common sense, the Minnesota Supreme Court should hold that chapter 28 violates the single-subject provision of Minnesota Constitution article IV, section 17.<sup>385</sup> “While the ‘mere filament’ test served the court for many years, its interpretation has now become so deferential as to render section 17 ineffectual.”<sup>386</sup> Chapter 28 contains “wholly dissimilar” provisions that fail to conjure enough constitutional muster to pass *Blanch*’s liberal “mere filament” germaneness test.<sup>387</sup> If the supreme court accepts the State’s argument that natural resource and gun provisions relate under the broad topic of “government regulation,” the court would obliterate any meaning left in section 17 and push the “mere filament [test] to a mere figment.”<sup>388</sup> Regardless of its title’s constitutional soundness, chapter 28 fails to contain a single subject in violation of section 17’s clear language that “no law shall embrace more than one subject, which shall be expressed in its title.”<sup>389</sup>

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382. 2003 Minn. Laws 265, 290–98.

383. The legislature has extensive powers which it can exercise in determining what laws are needed. *State v. Comer*, 207 Minn. 93, 290 N.W. 434 (1940). The separation of powers constitutional doctrine forbids interference within respective spheres of one governmental branch with another. See MINN. CONST. art. 3, § 1, available at <http://www.house.leg.state.mn.us/cco/rules/mncon/mncon.htm> (last visited Mar. 18, 2005).

384. See *Associated Builders*, 610 N.W.2d at 309–10 (discussing “super legislature”).

385. See *infra* Part IV.A.1.

386. *Associated Builders*, 610 N.W.2d at 311 (Anderson, Paul J., concurring in part and dissenting in part).

387. See *infra* Part IV.A.1.

388. See *infra* Part IV.A.1; see also *Associated Builders*, 610 N.W.2d at 303.

389. See *infra* Part IV.A.2; see also MINN. CONST. art. IV, § 17, available at <http://www.house.leg.state.mn.us/cco/rules/mncon/mncon.htm> (last visited

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Contrary to the lower courts' decisions, the supreme court should strike down chapter 28 in its entirety.<sup>390</sup> Not only does the plain language of section 17 require this result, but court precedent and the interest of balancing power between the judiciary and the legislature necessitate the supreme court to strike down the entire law.<sup>391</sup> Further, the court would discourage the legislature from engaging in conduct that thwarts the effect and purpose of section 17.<sup>392</sup>

This holding returns the appellate courts to its proper role in interpreting the single-subject and title clause of the Minnesota Constitution, namely to give each part of the constitution the plain meaning and effect of its language.<sup>393</sup> This holding also gives the legislature, the public, and the district courts clarity in how the court will interpret future cases involving single-subject and title violations.<sup>394</sup> The court over the past twenty-five years issued warnings to the legislature about the constitutional frailty of “logrolling” and “garbage” bills.<sup>395</sup> Current Minnesota Governor Tim Pawlenty observed that the “[c]ourt gave the [l]egislature a gentle nudge in *Associated Builders*. We may hope that the [l]egislature will conduct itself in a manner that is clearly more consistent with constitutional principles in the future. If not, the [c]ourt’s gentle nudge may need to become a little firmer.”<sup>396</sup> The holding proposed in this note sends a “firmer” message to the legislature to conduct itself within the framework of the Constitution. The legislature certainly used an “unusual

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390. See *infra* Part IV.B.

391. See *infra* Part IV.B.

392. See *infra* Part IV.B.

393. See *Associated Builders*, 610 N.W.2d at 311 (Anderson, Paul J., concurring in part and dissenting in part). “I also acknowledge the role our court may have played in encouraging this reliance by our overlong unwillingness to give Section 17 its stated force and effect. For the past 30 years, we have not used Section 17 to invalidate any piece of legislation. We may have been overly deferential to the legislature’s continuing abuses in this area.” *Id.* at 313.

394. “There are many bills that pass the Legislature every year that have more than one subject,” remarked Attorney General Hatch. Kennedy & Furst, *supra* note 66, at A11. “It’s important that we get some direction and guidance on how the court is going to be applying the interpretation [of Section 17].” *Id.*

395. See *infra* Part C.2–3.

396. Timothy J. Pawlenty, *Distinguishing Filament from Figment: Minnesota’s Single Subject Rule*, BENCH & BAR OF MINNESOTA (July 2000), available at [http://www.2.mnbar.org/benchandbar/2000/jul00/law\\_at\\_lg.htm](http://www.2.mnbar.org/benchandbar/2000/jul00/law_at_lg.htm) (last visited Mar. 18, 2005).



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parliamentary maneuver” to pass the Personal Protection Act.<sup>397</sup>  
The court, however, cannot allow the legislature to “outmaneuver”  
the plain language of the Minnesota Constitution.

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397. Respondents’ Appendix to Respondents’ Brief at RA-044, *Unity Church*, No. 04-1302 (Minn. Ct. App. filed Sept. 21, 2004) (on file with the Minnesota State Law Library).