Using Article IV of the Illinois Constitution to Attack Legislation Passed by the General Assembly

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Otto von Bismarck famously declared that "[l]aws are like sausages. It's better not to see them being made."[1] Imagine what the great nineteenth century Prussian would say today about the Illinois General Assembly. Each year, thousands of bills are introduced in the Illinois House of Representatives and Senate, and several hundred are usually passed and signed into law by the governor. Sometimes, those aggrieved by their enactment challenge the constitutionality of these bills. Many are familiar with the substantive bases for challenging a legislative enactment—it violates the First Amendment, or Equal Protection, or, in the case of tax legislation, the so-called Uniformity Clause. However, fewer people understand that it is also possible to challenge a legislative enactment on procedural grounds. Such a challenge can be raised when the process used by the General Assembly, and perhaps the governor, in conducting business and enacting laws is inconsistent with specific requirements set forth in article IV of the Illinois Constitution.

Aggrieved parties and their attorneys should take note of these non-substantive provisions that provide alternative grounds on which newly enacted state laws may be invalidated. The procedural and substantive safeguards built into the legislative article of the constitution are the best, but perhaps most under-utilized, tools against the United States Supreme Court's famous warning more than 140 years ago: "[n]o man's life, liberty or property are safe while the Legislature is in session."[2]

This Article will discuss the various methods that may be employed under article IV of the Illinois Constitution—the legislative article—for

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1. The Quotations Page, http://www.quotationspage.com/search.php3?homesearch=Bismarck (last visited Feb. 26, 2009).

2. Final Accounting in the Estate of A.B., 1 Tucker (N.Y. Surr.) 247, 249 (1866).

challenging bills passed by the General Assembly and signed by the governor. Part I examines the constitutional requirement that legislation be limited to a single subject, and that bills making appropriations of state monies not contain any other substantive provisions. It also discusses what happens when that requirement is not met and how challenges can be brought. Parts II and III look at the principal procedural requirements imposed on the General Assembly; namely, that a bill be read by title on three separate days and set forth completely all sections of the law it proposes to amend. Part IV posits that the date upon which a bill passes in the General Assembly and becomes effective could provide a basis for challenging legislation. Part V notes that a challenge can also be raised if the legislature violated the constitutional prohibition against special legislation. Finally, Part VI discusses the power the Illinois Constitution gives the governor to issue an amendatory veto, and argues that a veto that exceeds that authority could also be vulnerable to challenge.

I. THE RISE AND FALL OF THE SINGLE SUBJECT RULE

The Illinois Constitution, like those of forty-two other states,[3] constrains the legislature in its deliberation of legislation. The most significant, and therefore most litigated procedural requirement, is the so-called Single Subject Rule, which is found in article IV, section 8(d), of the Illinois Constitution: "[b]ills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject."[4]

The Single Subject Rule serves the dual purposes of: (1) preventing the passage of legislation that, standing alone, could not muster the votes necessary for passage; and (2) facilitating an orderly legislative procedure.[5] The idea is that the legislature can better understand and debate a bill if it concerns only a single subject and that "an individual legislator may be unable to appreciate all of the nuances and implications of a bill containing numerous unrelated provisions."[6]

3. WILLIAM N. ESKRIDGE, JR., ET AL, CASES AND MATERIALS ON LEGISLATION, STATUTES AND THE CREATION OF PUBLIC POLICY 330 (3d ed. 2004).

4. ILL. CONST. art. IV, § 8(d). A "revisory bill" is "one that makes no substantive changes and adds no new matter to existing legislation," but instead "merely incorporates the provisions of prior legislative amendments." *See, e.g.*, People v. Reedy, 692 N.E.2d 376, 384 (Ill. App. Ct. 1998).

5. Millard H. Ruud, *No Law Shall Embrace More than One Subject*, 42 MINN. L. REV. 389, 391 (1958).

6. *Reedy*, 692 N.E.2d at 382; *see also* Fuehrmeyer v. City of Chicago, 311 N.E.2d 116, 122 (Ill. 1974).

Section 8(d) also provides that "[a]ppropriation bills shall be limited to the subject of appropriations."[7]

States first recognized the need for a single subject restriction after the infamous "Yazoo Act" in the Georgia legislature in 1795.[8] In that scandal, the Georgia legislature passed a bill containing numerous provisions,[9] buried amongst which was the order to sell vast amounts of state land to specific companies.[10] The next year, after the predictable resulting scandal, the legislature attempted to undo the transfer through a subsequent enactment, but the Supreme Court upheld the original enactment and held that the second statute could not divest the purchaser's title to the land acquired under the original enactment.[11]

While perhaps not as colorful as the infamous Yazoo Act, the Single Subject Rule has enjoyed a long and fascinating history before the Illinois Supreme Court. The rule was virtually ignored for the first twenty-five years of the constitution's life. In fact, the Illinois Supreme Court gave only passing attention to the rule between its enactment in 1970 and the mid-1990s, and did not invalidate any legislation for violating the rule.[12] When confronted with single subject challenges, the court consistently ruled that matters germane to the subject of a bill include those matters that address "the means reasonably necessary or appropriate to the accomplishment of the legislative purpose."[13] Consequently, legislative provisions for the development of stagnant vacant property were found to be related to a bill concerned with the elimination of slums.[14] Similarly, a gasoline tax was properly included in legislation providing funding for the Regional Transportation

7. ILL. CONST. art. IV, § 8(d). An appropriation bill is one that provides for the expenditure of funds from the State treasury, and any provision that "purported to change the existing general substantive law . . . was therefore itself substantive in nature, and could not be included in the appropriation bill." Benjamin v. Devon Bank, 368 N.E.2d 878, 880–81 (Ill. 1977).

8. ESKRIDGE, *supra* note 3, at 330.

9. The Yazoo Act was entitled "An act supplementary to an act for appropriating part of the unlocated territory of this state, for the payment of the late state troops, and for other purposes therein mentioned, and declaring the right of this state to the unappropriated territory thereof, for the protection and support of the frontiers of this state, and for other purposes." *Id.* n.j.

10. *Id*.

11. Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 140 (1810).

12. Fuehrmeyer v. City of Chicago, 311 N.E.2d 116, 122 (Ill. 1974) (evaluating legislation vesting the State with exclusive power to regulate professions in Illinois by referencing the titles of Acts concerning thirty different professions). The court stated that the Rule's purpose was relevant in deciding whether a violation existed, as the bill constituted "an assault upon municipal powers of regulation by a combination of groups of businesses subject to those regulations." *Id.* at 121. However, even though *Fuehrmeyer* involved the Single Subject Rule, the court's decision turned on other issues.

13. People *ex rel.* Gutknecht v. City of Chicago, 111 N.E.2d 626, 632 (Ill. 1953).

14. *Id*.

Authority and the development of public transportation, because transportation systems rely heavily on taxation to develop and maintain their operations.[15]

However, during the mid-to-late 1990s, the Illinois Supreme Court considered a series of cases in rapid succession that briefly re-invigorated the rule. Ultimately, though, subsequent decisions greatly diminished the Single Subject Rule as an effective method for challenging legislation.

A. Revival of the Single Subject Rule

The court's first decision in this succession, *Johnson v. Edgar*,[16] involved an egregious instance of legislative "logrolling," the practice of linking unpopular measures with insufficient support to pass on their own with more popular measures to ensure the passage of the less popular measure.[17] In *Johnson*, the court considered a bill that included a provision imposing a gasoline tax to provide funding for the clean-up of old, leaking storage tanks that were buried underground.[18] This measure had been defeated as a stand-alone bill.[19] Later, the provision was amended onto a bill creating Illinois' first sex-offender registry; a measure, needless to say, that was enormously politically popular.[20] Additionally, a controversial measure allowing employers to eavesdrop on their employees was also included in the bill.[21] When combined, the bill containing all three provisions passed the General Assembly.[22]

In holding that the legislation violated the Single Subject Rule, the court concluded that the rule prohibited legislation containing "[d]iscordant provisions that by no fair intendment can be considered as having any legitimate relation to each other."[23] The court stated that although the Rule is to be liberally construed and the subject may be "as

15. Cutinello v. Whitley, 641 N.E.2d 360, 366 (Ill. 1994).

16. 680 N.E.2d 1372, 1379 (Ill. 1997).

17. *Fuehrmeyer*, 311 N.E.2d at 121 (stating that the Single Subject Rules prevents "[t]he practice of bringing together into one bill subjects diverse in their nature, and having no necessary connection, with a view to combine in their favor the advocates of all, and thus secure the passage of several measures, no one of which could succeed upon its own merits").

18. 680 N.E.2d at 1374.

19. *See* H.B. 901, 89th G.A. (Ill. 1996).

20. Child Sex Offender Community Notification Law, P.A. 89-428, 1995 Ill. Laws 428 (1995); *Johnson*, 680 N.E.2d at 1380.

21. Child Sex Offender Community Notification Law, P.A. 89-428, § 601, 1995 Ill. Laws 428 (1995).

22. *Johnson*, 680 N.E.2d at 1375.

23. *Id.* at 1379 (citing People *ex rel.* Ogilvie v. Lewis, 274 N.E.2d 87, 94 (Ill. 1971)).

broad as the legislature chooses," the items included in an enactment must have a "natural and logical connection."[24]

The court recognized that the "subject" of a bill was also to be liberally construed and as broad as the legislature chooses.[25] Its examination of Public Act 89-428, which was entitled, "An Act in relation to public safety," revealed "subjects as diverse as child sex offenders, employer eavesdropping, and environmental impact fees imposed on the sale of fuel."[26] The court invalidated the Act, stating: "[w]ere we to conclude that the many obviously discordant provisions contained in Public Act 89-428 are nonetheless related because of a tortured connection to a vague notion of public safety, we would be essentially eliminating the [S]ingle [S]ubject [R]ule as a meaningful constitutional check on the legislature's actions."[27]

Shortly after *Johnson*, the court revisited the Single Subject Rule three times within one year: twice regarding sweeping criminal law proposals, and once regarding implementation of the state budget. First, in *People v. Reedy*, the court considered the validity of legislation including the then popular "truth-in-sentencing" provisions of the Code of Corrections, with topics like the duties and jurisdiction of local law enforcement officials, asset forfeiture proceedings arising from drug offenses, and the perfection and attachment of hospital liens.[28] The original bill had been titled "A Bill for an Act concerning the insanity defense," but after the amendments were added the title was changed to "An Act in relation to governmental matters."[29] The court found the inclusion of a hospital lien provision fatal to the bill's constitutionality.[30] Despite recognizing the wide latitude given to the legislature, the court concluded:

> Even when giving great deference to the legislature, the most lenient examination of the Act shows that its contents encompass at least two unrelated subjects: matters relating to the criminal justice system, and matters relating to hospital liens. In our opinion, even the most liberal attempt to reconcile these two subjects is unavailing.[31]

24. *Id.*; *see also* Cutinello v. Whitley, 641 N.E.2d 360, 366 (Ill. 1994) (defining the term "subject" under the Single Subject Rule).

25. *Johnson*, 680 N.E.2d at 1379.

26. *Id.* at 1380.

27. *Id.* at 1381.

28. 708 N.E.2d 1114, 1119 (Ill. 1999).

29. *Id.* at 1118.

30. *Id.* at 1119.

31. *Id*.

In rejecting "governmental matters" as a proper single subject, the court concluded "[a]s we cautioned in *Johnson*, the permitted use of such a sweeping and vague category to unite unrelated measures would render the single subject clause of our constitution meaningless."[32]

At the end of the year, the court considered *People v. Cervantes*, a challenge to an enactment entitled, "Safe Neighborhoods Law."[33] Similar to the bill in *Johnson*, the act challenged in *Cervantes* amended nine different code sections, including the WIC Vendor Management Act,[34] the Firearm Owners Identification Card Act, the Vehicle Code, the Juvenile Court Act, the Criminal Code, the Cannabis Control Act, the Controlled Substances Act, the Rights of Crime Victims and Witnesses Act, and the Unified Code of Corrections.[35] The court was particularly troubled by the inclusion of WIC related provisions:

> Contrary to the State's assertions, none of the amendments to the WIC Vendor Management Act mention abuse of WIC benefits, criminal WIC fraud, criminal penalties, or forfeiture. The plain language of the WIC Vendor Management Act indicates that the provisions bestow authority upon the Department to operate the WIC program and govern the day-to-day operations of WIC retail vendors. We cannot discern, and the State has been unable to establish, how any of these provisions bear a natural and logical connection to neighborhood safety.[36]

Just as it had rejected the concept of "public safety" as a legitimate subject in *Johnson*, the court thus rejected "neighborhood safety" as a proper single subject. In *Johnson*, the title "public safety" was so broad and vague as to be virtually meaningless.[37] Viewed in this light, the provisions of the legislation in *Johnson*—gasoline taxes, eavesdropping, and sex offender registration—cannot, by any fair interpretation, be reasonably related to each other. On the other hand, all of the provisions contained in the legislation considered in *Cervantes*, with the exception of the WIC matters, were reasonably related to the overall theme of crime prevention. Had the WIC provisions been omitted from the bill, the court would no doubt have upheld it.

32. *Id*.

33. 723 N.E.2d 265, 266 (Ill. 1999).

34. "WIC" is short for Women, Infants & Children. *Cervantes*, 723 N.E.2d at 268.

35. *Id.* at 269.

36. *Id.* at 271–72.

37. As an historical aside, Robspiere's "Committee on Public Safety" constructed a guillotine in Paris' Tuileries Garden to institute the reign of terror after the French revolution. SIMON SCHAMA, CITIZENS: A CHRONICLE OF THE FRENCH REVOLUTION 619–21 (1989).

Thus, the Illinois Supreme Court had settled into a routine of rejecting most single subject claims and invalidating legislation in egregious cases, and the rule had become an effective mechanism for policing legislation. However, this did not last long.

B. Waning of the Single Subject Rule

In *Arangold v. Zehnder*, curiously decided between *Reedy* and *Cervantes*, the court considered legislation entitled "FY1996 Budget Implementation Act" in order to "make the changes in State programs that are necessary to implement the Governor's FY1996 budget recommendations."[38] A joint conference committee was appointed that advised changing the bill's title to "An Act concerning State services, amending named Acts," and also suggested adopting a new and lengthy set of substantive provisions.[39] In the end, the legislation challenged in *Arangold* amended twenty-one separate laws.[40]

In upholding the legislation, a divided court rejected the argument that either the number of provisions in a bill or a bill's length determined a single subject violation, instead concluding that "[w]hat is dispositive is whether the contents included within the enactment have a

38. Arangold v. Zehnder, 718 N.E.2d 191, 194 (Ill. 1999).

39. *Id.* at 194–95 (citing V 1995 Ill. S.J. 4248–368; VI 1995 Ill. H.J. 6279–398).

40. *Id.* at 195. Public Act 89-21 amended twenty-one different acts, some extensively and others in minor respects. The amended acts include the State Employees Group Insurance Act of 1971 (5 ILL. COMP. STAT. 375/1 *et seq*. (West 1996)), the Illinois Pension Code (40 ILL. COMP. STAT. 5/1-101 *et seq*. (West 1996)), the Illinois Act on the Aging (20 ILL. COMP. STAT. 105/1 *et seq*. (West 1996)), the Civil Administrative Code of Illinois (20 ILL. COMP. STAT. 405/64 et seq. (West 1996)), the Children and Family Services Act (20 ILL. COMP. STAT. 505/1 *et seq*. (West 1996)), the Disabled Persons Rehabilitation Act (20 ILL. COMP. STAT. 2405/0.01 *et seq*. (West 1996)), the State Finance Act (30 ILL. COMP. STAT. 105/1 *et seq*. (West 1996)), the State Prompt Payment Act (30 ILL. COMP. STAT. 540/0.01 *et seq*. (West 1996)), the Illinois Income Tax Act (35 ILL. COMP. STAT. 5/101 *et seq*. (West 1996)), the State Mandates Act (30 ILL. COMP. STAT. 805/1 *et seq*. (West 1996)), the School Code (105 ILL. COMP. STAT. 5/1-1 *et seq*. (West 1996)), the Nursing Home Care Act (210 ILCS 45/1-101 *et seq*. (West 1996)), the Child Care Act of 1969 (225 ILL. COMP. STAT. 10/1 *et seq*. (West 1996)), the Riverboat Gambling Act (230 ILL. COMP. STAT. 10/1 *et seq*. (West 1996)), the Illinois Administrative Procedure Act (5 ILL. COMP. STAT. 100/1-1 *et seq*. (West 1996)), the Illinois Public Aid Code (305 ILL. COMP. STAT. 5/1-1 *et seq*. (West 1996)), the Abused and Neglected Child Reporting Act (325 ILL. COMP. STAT. 5/1 *et seq*. (West 1996)), the Juvenile Court Act of 1987 (705 ILL. COMP. STAT. 405/1-1 *et seq*. (West 1996)), the Adoption Act (750 ILL. COMP. STAT. 50/0.01 *et seq*. (West 1996)), the Probate Act of 1975 (755 ILL. COMP. STAT. 5/1-1 *et seq*. (West 1996)), and the Unemployment Insurance Act (820 ILL. COMP. STAT. 405/100 *et seq*. (West 1996)). An Act Concerning State Services, P.A. 89-21, 1995 Ill. Laws 21. Public Act 89-21 also repealed the Tobacco Products Tax Act (1995 Ill. Laws 731) and replaced it with the Tobacco Products Tax Act of 1995 (1995 Ill. Laws 726). FY1996 Budget Implementation Act, P.A. 89-21, 1995 Ill. Laws 21.

natural and logical connection to a single subject."[41] The court reasoned:

> Our review of the Act's provisions persuades us that the entire Act is directed toward changing the substantive law in order to implement the state's budget for the 1996 fiscal year. The legislature made these changes to ensure that expenditures in a program did not exceed appropriations for that program for the fiscal year. Therefore, all matters included within Public Act 89-21 have a natural and logical connection to implementation of the state's budget for the 1996 fiscal year. The Act thus comports with the [S]ingle [S]ubject [R]ule.[42]

In *Arangold*, the court explained its process for applying the Single Subject Rule: "the proper test for determining a single subject violation is whether the matters included within the enactment have a natural and logical connection *to a single subject*."[43] Indeed, the court specifically declared that it "has never held that the [S]ingle [S]ubject [R]ule imposes a second and additional requirement that the provisions within an enactment be related to each other."[44]

In his concurring opinion, Justice Freeman took a different approach, stating: "the [S]ingle [S]ubject [R]ule analysis employed by the court is already two-tiered."[45] First:

> A court should look to see whether an act, on its face, involves a legitimate single subject. In carrying out this portion of the [S]ingle [S]ubject [R]ule analysis, the court has considered, for example, whether the stated subject of an act is so broad as to frustrate the very purpose of the single subject clause . . . .[46]

Second, the court conducts a "separate inquiry of whether the various provisions within an act all relate to the proper subject at issue. This is what has been meant by the requirement that an act's provisions have 'a natural or logical connection,' or 'a legitimate relation to each other.'"[47]

Justice Freeman's two-tiered approach is a more nuanced approach than the "I know it when I see it" method advocated by the majority's "natural and logical connection" language because it establishes a basis of measurement. Absence of the first step identified by Justice Freeman begs the question: natural and logical connection to what? The first step answers that question by establishing the baseline—the legitimate single

41. *Arangold*, 718 N.E.2d at 198.
42. *Id.*
43. *Id.* at 199.
44. *Id.* at 200.
45. *Id.* at 203 (Freeman, J., concurring).
46. *Id*.
47. *Id.*

subject of the bill. Each element of the bill is then measured for its legitimate relationship to that subject.

C. The Current State of the Single Subject Rule

That is not to say, however, that either the majority or Justice Freeman's opinion was correct. In fact, both tests improperly recognized implementation of the state's budget as an appropriate subject for a substantive bill. Indeed, article IV, section 8(d) specifically provides that appropriations bills are exempt from the Single Subject Rule.[48] It defies long-standing rules of statutory construction that the constitution would specifically exempt the appropriations portion of the state budget from the rule while at the same time implicitly exempting the substantive bills of that same budget from the rule. The delegates to the 1970 Constitutional Convention could have exempted budget related matters from the Single Subject Rule, but chose to do so only with appropriations bills and not substantive bills.

Instead, the court should have ruled that the subject was closer to the "public safety" category addressed in *Johnson* or the "governmental matters" discussed in *Reedy*. At first glance, and setting aside the fact that the legislation in *Arangold* contained many more provisions than either of the bills invalidated in *Johnson* and *Reedy*, the subject appears to be a legitimate single subject—substantive changes necessary to implement the state's budget. In practice, however, the subject is so vague and open-ended that it could include virtually anything. The court's decision thus had the effect of defanging the rule only a few years after it had first flashed its teeth.

The Single Subject Rule is effective only when it is properly enforced. However, courts have virtually stopped invalidating legislation under the Rule. As a result, the legislature is free to become increasingly bold about expanding the scope of legislation, particularly in these budget implementation bills. After *Arangold*, rather than deal with important but unpopular, controversial, or divisive ideas as individual bills, the legislature can simply bury them in budget implementation bills where they will be submerged with the many other provisions. The fact that the budget implementation bills tend to arise late in the legislative session, when there are so many things happening, only heightens that incentive.

48. ILL. CONST. art. IV, § 8(d).

Instead of measuring only whether each element of a bill is related to the overall subject, the court should add a third step to determine whether the provisions have any rational relationship to one another. This way, the rule would be reinvigorated and again serve as an effective restraint on legislative abuses. At the same time, however, this test would not unduly constrict the legislature. Instead of rolling every budget related item into one enormous bill, the legislature could satisfy this standard by passing several smaller budget implementation bills, one related to health care, another for human services, one for criminal justice, and so on. This would strike a balance between the legislature's need for flexibility and the importance of having a Single Subject Rule with teeth.

In short, using the Single Subject Rule to challenge legislation remains the most effective method available under article IV. Moreover, it is easy to determine whether any particular bill is susceptible to a single subject challenge. One need only review the legislation and determine how many separate laws are being amended (as opposed to how long the bill is or how many different articles it may contain). Obviously, the more laws a particular bill amends, the less likely it is that they are joined by a common theme or purpose.

II. THE THREE READINGS REQUIREMENT: MUCH ADO ABOUT NOTHING

No discussion of litigation under article IV would be complete without reference to the section 8(d) provision that: "[a] bill shall be read by title on three different days in each house."[49] The purpose of the requirement is to prevent last minute legislation that deprives both legislators and the public of adequate notice of pending legislation and an opportunity to review it prior to passage.[50] The "three-readings requirement" must, however, be read in conjunction with two other constitutional provisions that should have the effect of rendering the three readings requirement almost unenforceable. However, because every major challenge to bills passed by the General Assembly has raised the three readings requirement, it warrants some discussion here.

First, article IV, section 6(d) provides that each chamber of the General Assembly is empowered to determine the rules of its proceedings.[51] Second, the last paragraph of section 8(d) of article IV provides: "[t]he Speaker of the House of Representatives and the

49. *Id.*

50. *See* Giebelhausen v. Daley, 95 N.E.2d 84, 95 (Ill. 1950) (discussing the three readings requirement under a previous Illinois constitution).

51. ILL. CONST. art. IV, § 6(d).

President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met."[52] This is commonly known as the "enrolled bill rule."

Although the constitution mandates that each bill be read by title on three separate days, the gaping hole in this provision is the lack of any requirement that the title of the bill be the same on each of those three days. Coupled with the General Assembly's power to dictate the rules of its proceedings, it is possible, and indeed fairly common, for a bill to have one title and corresponding provisions for four of the six constitutionally mandated readings (three in the House and three in the Senate), and have a different title and provisions for the final two readings, which could both occur on the same day.[53] In other words, despite the three readings requirement, the procedural rules adopted by the legislature permit a change in the title of the bill at any point in the process without restarting the three readings clock.

The enrolled bill rule provides that whenever legislation has been certified by the presiding officers of both houses as having been passed in compliance with all the procedural rules, a court will not look beyond that certification to conduct an independent examination.[54] In other words, certification by the presiding officers creates an irrefutable presumption that all of the procedural requirements have been satisfied, including the three readings requirement.[55] The Illinois Supreme Court has interpreted the enrolled bill rule language in article IV, section 8(d) to mean that the signatures of the presiding officers of both houses constitute conclusive proof that all constitutionally required procedures have been followed in the enactment of the bill.[56] The Committee on the Legislature at the 1970 Constitutional Convention specifically

52. *Id.* § 8(d).

53. *Cf.* Orr v. Edgar, 698 N.E.2d 560, 563 (Ill. App. Ct. 1998) (noting that "[a]fter a brief floor debate on January 7, 1997, the bill was read one time in both houses and passed along partisan lines that same day").

54. 6 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION, COMMITTEE PROPOSALS, MEMBER PROPOSALS 1386–87 (1969–1970) [hereinafter "6 RECORD OF PROCEEDINGS"]. Other states adopt a "modified enrolled bill rule" that allows examination of any provision requiring an entry in the legislature's journal, *cf.* Barnsdall Refining Corp. v. Welsh, 269 N.W.2d 853 (S.D. 1936); Indep. Cmty. Bankers Ass'n v. South Dakota, 346 N.W.2d 737 (S.D. 1984), or an "extrinsic evidence rule," where courts will consider evidence beyond the legislative journal. *See* D & W Auto Supply v. Dep't of Revenue, 602 S.W.2d 420 (Ky. 1980).

55. Benjamin v. Devon Bank, 368 N.E.2d 878, 880 (Ill. 1977).

56. Fuehrmeyer v. City of Chicago, 311 N.E.2d 116, 119 (Ill. 1974) ("Whether or not a bill has been read by title, as the Constitution commands, seems fairly to be characterized as a procedural matter, the determination of which was deliberately left to the presiding officers of the two Houses of the General Assembly."); *see also* Polich v. Chicago Sch. Fin. Auth., 402 N.E.2d 247, 257 (Ill. 1980).

recommended that the enrolled bill rule be adopted in the 1970 Constitution to replace the former "journal entry rule" that allowed legislation to be challenged in the courts by pointing to a defect in its passage as reflected in the journal.[57]

In a series of cases decided in the 1990s, the Illinois Supreme Court continued to recognize the enrolled bill rule and its prohibition on judicial review of the procedural aspects of legislation. The first of these cases was *Geja's Café v. Metropolitan Pier & Exposition Authority*,[58] where the court considered a challenge to legislation imposing a restaurant tax for the purpose of financing construction at Chicago's convention center.[59] The court recognized that the framers of the 1970 Constitution intended to avoid judicial nullification of statutes on purely procedural grounds.[60]

The court went on to conclude, however, that "the General Assembly has shown remarkably poor self-discipline in policing itself. Indeed, both parties agree that ignoring the three-readings requirement has become a procedural regularity."[61] The court upheld the legislation despite its concerns, concluding that separation of powers was an overriding concern, but in doing so, the court fired a shot across the legislature's bow: "If the General Assembly continues its poor record of policing itself, we reserve the right to revisit this issue on another day to decide the continued propriety of ignoring this constitutional

57. *See* 6 RECORD OF PROCEEDINGS, *supra* note 54, at 1386–87; *see also Benjamin*, 368 N.E.2d at 879–81. Under the former journal entry rule, amendments to bills did not need to be read on three separate days in each house so long as the amendment was "germane" to the general subject matter of the original bill. People *ex rel.* County Collector of Cook County v. Jeri, Ltd., 239 N.E.2d 777, 779 (Ill. 1968).

58. 606 N.E.2d 1212 (Ill. 1992).

59. *Id.* at 1215.

60. *Id.* at 1221. The court noted:

> Presently Illinois has the "journal entry" rule as distinguished from an "enrolled bill" rule. It is proposed that Illinois adopt the "enrolled bill" rule. The "journal entry" rule means that a piece of legislation can be challenged in the courts by pointing to a defect in its passage as reflected in the journal. Under this rule, a statute dually [sic] passed by the General Assembly and signed by the Governor may be attacked in the courts, not necessarily on its merits, but on some procedural error or technicality found in the legislative process. The "journal entry" rule, as a result, leads to complex litigation over procedures and technicalities. The "enrolled bill" rule would provide that when the presiding officers of the two houses sign a bill, their signatures become conclusive proof that all constitutional procedures have been properly followed. The "enrolled bill" rule would not permit a challenge to a bill on procedural or technical grounds regarding the manner of passage if the bill showed on its face that it was properly passed. Signatures by the presiding officers would, of course, constitute proof that proper procedures were followed.

Id. (quoting 6 RECORD OF PROCEEDINGS, *supra* note 54, at 1386–87).

61. *Id.*

violation."[62] The Supreme Court has subsequently addressed the three readings requirement, but has simply restated the enrolled bill rule without the saber rattling present in *Geja's Café*.[63]

The three readings requirement is virtually useless; but only because the Constitutional Convention deliberately decided to make it so. In *Geja's Café*, the Illinois Supreme Court effectively threatened to ignore the enrolled bill doctrine and invalidate legislation passed in violation of the three readings requirement. However, judicial saber rattling is not the answer. In the end, the court properly restrained itself. In fact, the court lacks the authority to "enforce" the three readings requirement. If the court were to ever rule that any bill was invalid for violating the three readings requirement, the court would have to ignore the Constitutional Convention's deliberate choice of the enrolled bill rule, which is tantamount to declaring the constitution unconstitutional.[64]

Constitutional challenges to legislation passed by the General Assembly often claim a violation of the three readings requirement, and very often those challenges are correct—the rule was technically violated. Nonetheless, practitioners should note that these claims should be omitted from constitutional attacks on legislation because their inclusion betrays that the party bringing the challenge does not

62. *Id*.

63. Cutinello v. Whitley, 641 N.E.2d 360 (Ill. 1994); People v. Dunigan, 650 N.E.2d 1026 (Ill. 1995); Cincinnati Insurance Co. v. Chapman, 691 N.E.2d 374 (Ill. 1998). However, a spirited attack of the enrolled bill rule did come out in *Orr v. Edgar*, where Judge Zwick dissented from the court's decision regarding the constitutionality of an election law forbidding a voter from casting a single vote for all candidates of a political party. Judge Zwick lambasted the General Assembly in his dissent:

> We are confronted with a case in which it is undisputed that the speaker of the House and the president of the Senate deliberately and shamelessly falsified their certifications regarding passage of the Act knowing that the bill was fundamentally defective. As the majority has observed, this act had been introduced for the first time on the very last day of the legislative session. At this point in time, section 8(d) made the enactment of newly introduced legislation constitutionally impossible. It should be noted that the very next day, indeed, the very next hour, the opposite political party took majority control of the House of Representatives. The deliberate falsification of the certifications required by section 8(d) to achieve passage of a defective bill that would have otherwise lapsed is unprecedented. Certainly our supreme court never intended to give its judicial imprimatur to such extraordinary and reprehensible conduct by its application of the enrolled bill doctrine, and never before has this doctrine been used to shield such patent dishonesty.

Orr v. Edgar, 698 N.E.2d 560, 573 (Ill. App. Ct. 1998) (Zwick, J., dissenting).

64. Interestingly, two Illinois Appellate Courts have incorrectly ruled that the three readings requirement could be suspended by a majority of the members of General Assembly pursuant to its rules. People v. Gray, 549 N.E.2d 730, 739 (Ill. App. Ct. 1989); People v. Cannady, 513 N.E.2d 118, 120 (Ill. App. Ct. 1987). The General Assembly does not have the authority to suspend the Constitution.

fully comprehend the enrolled bill rule and its effect. Thus, the inclusion of a three readings claim is likely to raise suspicion, if not skepticism, regarding other challenges, such as the Single Subject Rule, no matter how meritorious they may be.

III. COMPLETE SECTIONS & AMENDMENT BY REFERENCE OR IMPLICATION

The Complete Section Provision of article IV, section 8(d), like the Single Subject Rule, is a notice provision designed to educate both legislators and the public about the contents of legislation. The section provides: "A bill expressly amending a law shall set forth completely the sections amended."[65] The Constitutional Convention's Committee on the Legislature explained the purpose and intent of this language:

> The prohibition of "amendment by reference" is designed to prevent an act from being amended simply by referring to it. For example, the "amendment by reference" provision prevents an act from being amended through adding or subtracting language if the relevant portions of the act to be amended are not set forth. Addition of or subtraction of a "not" within a sentence of a law could drastically alter the effect of the law; hence, the need exists to clearly show on the record exactly what is being amended.[66]

The Illinois Supreme Court first considered the "amendment by reference" prohibition of this section in *Fuehrmeyer v. City of Chicago*,[67] where the court invalidated legislation that did not set forth completely the sections amended. The bill in question provided for the exclusive exercise by the state of the power to regulate certain professions, vocations and occupations. However, it only referred by name to the thirty other acts that it was amending, without explicitly amending those statutes.[68] The court concluded that: "[n]owhere does Public Act 77-1818 set forth the relevant provisions of any of the 30 acts to which it makes reference. It simply recites their titles."[69] Consequently, the legislation was invalidated.[70]

Following *Fuehrmeyer*, the General Assembly again attempted to provide for the exclusive regulation by the state of the private detective business, but this time it did so by amending the Private Detective Act to include a new section providing: "Pursuant to paragraph (h) of

65. ILL. CONST. art. IV, § 8(d).
66. 6 RECORD OF PROCEEDINGS, *supra* note 54, at 1387–88.
67. 311 N.E.2d 116 (Ill. 1974).
68. *Id.* at 117–18.
69. *Id.* at 120.
70. *Id*.

section 6 of article VII of the Constitution of 1970 the power to regulate the private Detective Business shall be exercised exclusively by the State and may not be exercised by any unit of local government, including home rule units."[71]

The constitutionality of that Act was challenged in *United Private Detective & Security Assoc. v. City of Chicago*,[72] where the plaintiffs challenged the constitutionality of the Act for its failure to repeal another statute authorizing municipalities to license and regulate detectives concurrently with the state.[73] Although the bill did not expressly amend or repeal the relevant section of the other statute, the court held that the other statute was repealed by implication, not by reference, and therefore was constitutional.[74] The court did not explain its distinction in terms of policy, but merely stated:

> Public Act 78-1232 repeals by implication that section of the Municipal Code which authorizes municipal regulation of private detectives concurrently with that by the State. An act which is complete in itself and which only by implication repeals a prior statue does not violate section 8(d) of article IV of the Constitution.[75]

Subsequently, the First District Appellate Court considered the constitutionality of legislation mandating that certified nurses' salaries be raised to the level of certified teachers' salaries.[76] However, the bill did not appropriate any state funds to support the increased salaries that would be borne by local municipalities.[77] This conflicted with the State Mandates Act, which requires the state to reimburse local governments for the cost of programs that are mandated by state legislation.[78] Instead of specifically amending the State Mandates Act to exempt or exclude the nurses' pay increase from its application, the General Assembly simply included a statement of legislative intent within the Nurses' Pay Bill that only made reference to the Mandates Act: "The General Assembly hereby finds and declares that this amendatory Act does not require reimbursement by the State under the 'State Mandates Act.'"[79]

71. P.A. 78-1232 (1974).

72. 343 N.E.2d 453 (Ill. 1976).

73. *Id.* at 458.

74. *Id.* at 459.

75. *Id.* (citation omitted).

76. Bd. of Educ. of Maine Twp. High Sch. Dist. 207 v. State Bd. of Educ., 487 N.E.2d 1053 (Ill. App. Ct. 1985).

77. *Id.* at 1056.

78. *Id.* at 1055.

79. *Id.* at 1056.

The court declined to apply the implied amendment doctrine because it found that the General Assembly was well aware of the effect of the Mandates Act, and therefore that this was not a case of inadvertently enacting a bill that conflicted with prior legislation.[80] It also noted that "Illinois courts do not favor implied amendments."[81]

Finally, in *Granberg v. Didrickson*,[82] the First District Appellate Court again invalidated a bill on the grounds that it violated the "amendment by reference" provision of the Illinois Constitution. In that case, the legislature appropriated $15,792,000 to the Department of Transportation, an amount in excess of that permitted by the State Finance Act.[83] The state argued that by exceeding the cap imposed by the State Finance Act, the legislature amended the State Finance Act by implication. The court found that the legislation was an improper amendment by reference and not an amendment by implication, stating: "Here, . . . the General Assembly was aware of the infirmities in the contested appropriation, but chose not to amend or repeal the State Finance Act. The doctrine of amendment by implication does not apply."[84]

Granberg presented essentially the same issue that had been decided by the United States Supreme Court in *Tennessee Valley Authority v. Hill*.[85] Congress began appropriating money to the TVA in 1967 to construct a dam along the Little Tennessee River for the purpose of stimulating development and generating enough power to heat 20,000 homes.[86] The massive project would cost tens of millions of dollars.[87] Midway through construction, however, a University of Tennessee ichthyologist[88] discovered a previously unknown species of perch called a snail darter ("a three inch, tannish colored fish"), which caused the Secretary of the Interior to use his powers under the Endangered Species Act to halt the nearly completed project in order to ensure that the dam would not "result in the destruction or modification of habitat of [an endangered or threatened] species."[89] In the predictable ensuing

80. *Id.* at 1058.

81. *Id.*

82. 665 N.E.2d 398 (Ill. App. Ct. 1996).

83. *Id.* at 400.

84. *Id.* at 403.

85. Tenn. Valley Auth. v. Hill, 437 U.S. 153 (1978).

86. *Id.* at 157.

87. *Id.* at 158.

88. Ichthyology is "the branch of zoology dealing with fishes, their structure, classification, and life history." WEBSTER'S NEW WORLD DICTIONARY 668 (3d. College ed., 1988).

89. *Hill*, 437 U.S. at 158.

litigation, the Court rejected the TVA's argument that Congress repealed by implication the applicable portion of the Endangered Species Act by continuing to appropriate money for the dam, and upheld the Secretary's actions.[90] It concluded that "the doctrine disfavoring repeals by implication 'applies with full vigor when . . . the subsequent legislation is an *appropriations* measure.'"[91] Congress eventually mandated the completion of the dam,[92] and the snail darter apparently thrives in other parts of the Tennessee River.[93]

Each year, the Illinois General Assembly passes hundreds of bills into law, many of which impact the enforcement of other, pre-existing laws. Often, as in *Granberg*, the resulting mishmash results in inconsistent or even contradictory statutes. While each General Assembly is free to pass any bill and is not bound by the actions of previous General Assemblies, it must, like any other entity, follow the law. If a bill passed by the General Assembly and signed by the governor is inconsistent with or conflicts with a pre-existing law, it must amend that pre-existing law to eliminate the conflict. If it does not, either through neglect or deliberate omission, the conflict can be a fertile field in which those seeking to invalidate the law can plow.

Challenges on the Complete Section Provision are, however, somewhat more difficult to find than a Single Subject challenge. While the existence of a Single Subject challenge can generally be gleaned from even a cursory review of legislation, a challenge based on the failure to set forth all the impacted sections involves a detailed review of not only the legislation but of all of the other statutes that may be indirectly affected. While this can be a cumbersome task, the cases referenced above demonstrate that it may be worthwhile for anyone seeking to invalidate legislation.

IV. EFFECTIVE DATE OF LEGISLATION

As the above discussion demonstrates, nothing about the legislative process is simple. Another example is the seemingly innocuous question about when a bill passed by the General Assembly gains the power of law. In answering that question, three distinct events come into play. The first event is when the bill is "passed" by the General Assembly, the second is when the bill becomes law, and the third is when the bill becomes "effective." The effective date of a bill may or

90. *Id.* at 190.

91. *Id*.

92. Energy and Water Development Act of 1980, Pub. L No. 96-69, 93 Stat. 437 (1979).

93. ABNER J. MIKVA & ERIC LANE, LEGISLATIVE PROCESS 848 (2d ed. 2002).

may not be same date as when it becomes law, which in turn may or may not be the same date the bill passed. The Illinois Constitution provides in article IV, section 10:

> The General Assembly shall provide by law for a uniform effective date for laws passed prior to June 1 of a calendar year. The General Assembly may provide for a different effective date in any law passed prior to June 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date.[94]

The effective date of a bill may be stated expressly in the bill as a date certain (e.g., July 1, 2009) or a measured date (e.g., 90 days after becoming law). Different sections of the same bill may also have different effective dates. A bill may also provide that it becomes effective immediately upon becoming law. If a bill has no express effective date, the effective date is determined pursuant to the Effective Date of Laws Act.[95] Bills passed on May 31 or earlier are effective January 1 of the next year,[96] and those passed on or after June 1 become effective June 1 of the following year.[97]

Why is this so complicated? The framers of the Illinois Constitution deliberately established the General Assembly as a part-time body. However, rather than mandate a specific adjournment date, the framers incented the General Assembly to conclude its business efficiently by making it more difficult, through the super-majority requirement of section 10, to pass legislation after May 31 that would become immediately effective.[98] The effect of this clause is that legislation that receives only a majority vote after May 31 cannot become effective until one year later. As a result, the General Assembly might as well wait and pass the same bill during its next session because the effective date will be the same.

What does it mean for a bill to be "passed" by the General Assembly? Section 3 of the Effective Date of Laws Act provides that a bill is passed at the time of its final legislative action prior to presentation to the governor.[99] As a general rule, a bill is "passed" on the date when the second house of the General Assembly approves the bill in its final form. Thus, if the governor signs the bill without any form of a veto, or if the bill becomes law because of the governor's

94. ILL. CONST. art. IV, § 10.
95. 5 ILL. COMP. STAT. 75/1 *et seq*. (2006).
96. 5 ILL. COMP. STAT. 75/1(a).
97. 5 ILL. COMP. STAT. 75/2 (2006).
98. ILL. CONST. art. IV, § 10.
99. 5 ILL. COMP. STAT. 75/3 (2006).

inaction, the date the bill is passed is the date (1) when the second house approves the bill without amendment; (2) when the house of origin concurs in all of the second house's amendments; (3) when the second house recedes from all of its amendments; or (4) when a conference committee report is adopted by the second house.[100]

While this appears straightforward, it becomes particuarly complicated when the governor vetoes the bill. If the General Assembly overrides a veto or restores an item reduction, the passage date relates back to the time when the General Assembly first approved the bill, because that was the time it was first approved in its final form.[101] However, if the General Assembly accepts an amendatory veto, the bill is "passed" when both houses vote to accept the amendatory veto because this is the first time the General Assembly has approved the bill in its final form—there is no relation back to the date the General Assembly first approved the bill.[102] Whether the amendatory veto is technical or substantive, the bill is "passed" upon acceptance of such changes.[103]

This circumstance arose in *Mulligan v. Joliet Regional Port District*,[104] where the Illinois Supreme Court considered the effective date of a bill subject to an amendatory veto. In 1982 and 1983, local officials had considered developing an airport on the port district's property and had begun to take the necessary steps to approve its construction.[105] In the meantime, the General Assembly passed a bill providing that the airport could not be constructed unless approved by a popular referendum.[106] The Governor issued an amndatory veto and the issue was whether the legislation had become effective in time to halt the airport proposal.[107] The court noted that the issue of effective dates had been "subject to much debate" but ultimately concluded that the bill was not effective until the General Assembly accepted the Governor's recommended changes.[108] The court reasoned:

> The consideration of an amendatorily vetoed bill by the General Assembly obviously requires additional legislative action because the

100. Mulligan v. Joliet Reg'l Port Dist., 527 N.E.2d 1264, 1269 (Ill. 1988).

101. City of Springfield v. Allphin, 384 N.E.2d 310, 316 (Ill. 1978); *see also* 1975 Ill. Op. Att'y Gen. 77 (1975).

102. People *ex rel*. Klingler v. Howlett, 278 N.E.2d 84, 87 (Ill. 1972) (citing Bd. of Educ. v. Morgan, 147 N.E. 34, 36 (Ill. 1925)); *see also* 1974 Ill. Op. Att'y Gen. 119 (1974).

103. People v. Schumpert, 533 N.E.2d 1106, 1111 (Ill. 1989).

104. *Mulligan*, 527 N.E.2d 1264.

105. *Id.* at 1266.

106. *Id.*

107. *Id.*

108. *Id.* at 1268.

> original language of the bill is no longer intact. A bill changed upon the Governor's specific recommendation is no longer the same bill as initially "passed" by the General Assembly and the "final legislative action" would not simply be a reaffirmation of the bill's original language as in the situation involving an override of a non-amendatorily vetoed bill. Thus, in an amendatory veto situation, a bill can only be viewed as "passed" when the legislature has voted to accept the Governor's recommendations for change. Only then is the bill in its final form and can the public be held to have been put on notice as to the bill's actual contents.[109]

In short, when the General Assembly overrides the governor, the effective date relates back to the original passage, but if the General Assembly accepts the governor's changes, the effective date is when the changes are accepted. When the General Assembly overrides a veto, then the language of the bill was in its final form on the date of initial approval by the General Assembly. But if the General Assembly accepts an amendatory veto, the bill was not in its final form until the acceptance of the changes. It would make no sense to declare such a bill "passed" upon its initial approval by the legislature because the bill was not in its final form.[110]

While the effective date of a bill subject to an amendatory veto is pretty well settled, a more interesting question has yet to be considered. If a bill is passed after May 31, and it provides for an effective date earlier than June 1 of the following calendar year, it must pass both houses by a three-fifths vote for the stated effective date to apply.[111] This leads to the question of what happens when a bill that provides for an immediate effective date is approved by both houses of the General Assembly prior to June 1 but is amendatorily vetoed by the governor and the General Assembly accepts the governor's changes after June 1 with a majority, but not a super-majority, vote.

This situation highlights two potentially conflicting constitutional provisions. First, article IV, section 9(d) provides that the governor's "specific recommendations may be accepted by a record vote of a majority of the members elected to each house."[112] Thus, a simple majority is all it takes to accept an amendatory veto. On the other hand, the effective date provision establishes that the bill will be "passed" only upon acceptance of the governor's changes after June 1. As a

109. *Id.* at 1270–71 (citing City of Springfield v. Allphin, 384 N.E.2d 310 (Ill. 1978)).

110. *See id.* at 1268 (citing Bd. of Educ. v. Morgan, 147 N.E. 34 (Ill. 1925)).

111. ILL. CONST. art. IV, § 10.

112. *Id.* § 9(d).

result, it appears that such an acceptance would require a super-majority three-fifths vote.

While this potential conflict has never been judicially resolved, such a circumstance should require a super-majority vote to accept the governor's amendatory veto. A bill sent to the governor prior to June 1 that is subsequently amendatorily vetoed would not assume its final form until after the super-majority requirement became operative. Application of the simple majority vote requirement in such a circumstance would have the effect of permitting the General Assembly and the govneror to avoid the super-majority requirement by clever use of the amendatory veto. For example, the General Assembly could pass a bill with no effective date that had the support of a majority, but not a three-fifths majority, after June 1, but it would not become effective until June 1 of the following year. If the governor were to use his amendatory veto to insert an immediate effective date, then the General Assembly could avoid the heightened vote requirement and still have an immediately effective bill. The constitution should not permit such slight of hand.

That is not to say that such a bill is necessarily ripe for constitutional challenge. Attacking a bill under these circumstances (passage prior to June 1, acceptance of an amendatory veto by less than three-fifths after June 1) is essentially a challenge that the bill did not receive a sufficient number of votes (had the amendatory veto been accepted by a three-fifths majority the bill would certainly be properly "passed"). No court has addressed whether a bill that received the requisite number of votes is subject to the enrolled bill rule, and so it remains an open question.

On one hand, the enrolled bill rule insulates the General Assembly from challenge to its procedures in passing bills, as opposed to substantive provisions like the Single Subject Rule. The question of whether a bill received the requisite number of votes certainly appears to be more procedural than substantive. On the other hand, application of the enrolled bill rule to a question as basic and fundamental as whether the bill passed could lead to abuses and chicanery.[113] The correct answer is probably that whether a bill received a sufficient number of votes is a procedural requirement that ought be subject to the enrolled bill rule. While this may lead to abuse and even chicanery, the proper remedy is the voters, not judges. The constitutional framers decided that the legislature was answerable to the voters, and any abuses of the constitution's procedural requirements could be taken up

113. *See* Orr v. Edgar, 698 N.E.2d 560, 573 (Ill. App. Ct. 1998) (Zwick, J., dissenting).

at the ballot box at the next election. That should be incentive enough for the legislature.

V. SPECIAL LEGISLATION

Article IV, section 13 of the Illinois Constitution provides: "The General Assembly shall pass no special or local law when a general law is or can be made applicable."[114] In other words, the General Assembly may not confer a special benefit or exclusive privilege on a person or a group of persons to the exclusion of others similarly situated.[115] The special legislation provision does not prohibit all legislative classifications; instead it is designed to prevent only those classifications that are arbitrary.[116] Significantly, the constitution goes on to provide that "[w]hether a general law is or can be made applicable shall be a matter for judicial determination."[117] In making that determination, however, classifications drawn by the General Assembly enjoy a presumption of constitutional validity, and any doubts are to be resolved in favor of upholding them.[118]

Unlike the Single Subject Rule or the Three Readings Requirement, which impose procedural restrictions on the General Assembly, the Special Legislation prohibition imposes the most significant substantive restriction on the General Assembly's lawmaking powers. This restriction dates back to the Constitutional Convention of 1870, which recognized:

> Governments were not made to make the 'rich richer and the poor poorer,' nor to advance the interest of the few against the many; but that the weak might be protected from the will of the strong; that the poor might enjoy the same rights with the rich; that one species of property might be as free as another-that one class or interest should not flourish by the aid of government, whilst another is oppressed with all the burdens.[119]

Constitutional challenges to a statute on special legislation grounds often coincide with challenges on equal protection grounds.[120] The equal protection guarantee of the Illinois Constitution also seeks to

114. ILL. CONST. art. IV, § 13.

115. Cutinello v. Whitley, 641 N.E.2d 360, 363 (Ill. 1994).

116. *In re* Vernon Hills, 658 N.E.2d 365, 367 (Ill. 1995); Nevitt v. Langfelder, 623 N.E.2d 281, 285 (Ill. 1993).

117. ILL. CONST. art. IV, § 13.

118. *Vernon Hills*, 658 N.E.2d at 367.

119. I DEBATES AND PROCEEDINGS OF THE 1870 CONSTITUTIONAL CONVENTION OF THE STATE OF ILLINOIS 578 (remarks of Delegate Anderson).

120. ILL. CONST. art. I, § 2 ("No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.").

prevent classifications on the basis of unjustified criteria.[121] However, the special legislation and equal protection provisions establish different constitutional protections. The special legislation provision prohibits classification in favor of a select group without a reasonable basis. In contrast, the Equal Protection Clause protects against "arbitrary and invidious discrimination that results when government withholds from a person or a class of persons a right, benefit or privilege without a reasonable basis for the governmental action."[122] In other words, the Equal Protection Clause ensures that a person or class of people is not deprived of a right granted to others, while the prohibition against special legislation ensures that the state does not unjustly confer a benefit on a person or class of people.

The standards governing special legislation and equal protection challenges under the Illinois Constitution are generally the same as those governing claims under the Equal Protection Clause of the United States Constitution.[123] Thus, where the legislation affects neither a fundamental right nor implicates a suspect class, the appropriate level of scrutiny for a special legislation challenge is the rational basis test—whether the statutory classification is rationally related to a legitimate state interest.[124]

The Illinois Supreme Court has established a "two-prong" rational basis test for special legislation challenges.[125] Statutory classifications will withstand a special legislation challenge only if: (1) they are founded upon a rational difference of situation or condition existing in the persons or objects upon which the classification rests, and (2) there is a rational and proper basis for the classification in view of the objects and purposes to be accomplished.[126]

The court has been most willing to strike down legislation when the classification confers a special benefit or privilege to some local governments based upon geographic or population measures. While a legislative classification "is not local or special merely because [it is] based upon population,"[127] such classifications are often the basis for challenge. For example, in *In re Belmont Fire Protection District*, the court invalidated legislation permitting the transfer of territory between fire districts within counties having a population between 600,000 and

121. *Nevitt*, 623 N.E.2d at 285.

122. Chi. Nat'l League Ball Club, Inc. v. Thompson, 483 N.E.2d 1245, 1250 (Ill. 1985).

123. *Nevitt*, 623 N.E.2d at 284–85. *See also* U.S. CONST. amend XIV, § 1, cl. 2.

124. *Nevitt*, 623 N.E.2d at 285.

125. *See, e.g.*, *In re* Belmont Fire Prot. Dist., 489 N.E.2d 1385, 1388 (Ill. 1986).

126. *Id.*; *see also In re* Vernon Hills, 658 N.E.2d 365, 368 (Ill. 1995).

127. People *ex rel.* Du Page v. Smith, 173 N.E.2d 485, 489 (Ill. 1961).

1,000,000 persons (which at the time was only DuPage County).[128] It concluded that the legislation was impermissible special legislation because there was no rational reason why a municipality served by multiple fire protection districts in a county with the specified population can be said to differ from a municipality served by multiple fire protection districts in a county with a population less than 600,000 or more than 1,000,000. The court reasoned that "[i]f a real need exists to eliminate the alleged disadvantages and dangers of multiple fire protection districts serving one municipality, then the same need to remedy this evil also exists in other counties as well, regardless of the level of the population of the county."[129]

This does not mean, however, that all geographic or population classifications are impermissible special legislation. In *Chicago National League Ball Club, Inc. v. Thompson*, the legislature had amended the Illinois Environmental Protection Act to, in effect, prohibit night games at Wrigley Field.[130] Because Wrigley Field was the only ballpark in the state affected by the legislation, the Cubs alleged that the legislation was impermissible special legislation.[131] The court found it reasonable for the General Assembly to distinguish between stadiums in cities with more than one million inhabitants and those with fewer than one million inhabitants, because the noise from a nighttime sporting event would affect more people in an urban area.[132] Parking and traffic problems would also be more pronounced around stadiums in larger urban areas.[133] The court also found that the same considerations applied to the distinction between daytime and nighttime sporting events.[134] Finally, amateur athletics were found to have generally shorter seasons and attract fewer spectators.[135] Because a rational basis could be found for each classification, the court upheld the legislation.[136]

Similarly, in *Cutinello v. Whitley*, the court upheld a classification that allowed DuPage, Kane, and McHenry Counties to impose a motor

128. *Belmont*, 489 N.E.2d at 1391.

129. *Id.* at 1389*; see also Vernon Hills*, 658 N.E.2d at 369–71 (striking down a statute limited in application to only those counties with populations of between 500,000 and 750,000, which, at the time, made the legislation applicable only to Lake County, by the application of the "two-prong test" and same reasoning from *Belmont*).

130. Chi. Nat'l League Ball Club, Inc. v. Thompson, 483 N.E.2d 1245, 1248 (Ill. 1985).

131. *Id.* at 1249.

132. *Id.* at 1251.

133. *Id.*

134. *Id.*

135. *Id.* at 1251–52.

136. *Id.* at 1252.

fuel tax.[137] For the court, statistical evidence showing that those three counties were the three fastest growing counties in the state satisfied the first prong.[138] The court also found that a greater need for transportation financing in those three counties than in other areas of the state satisfied the second prong.[139] The legislation was, therefore, rationally related to the state's purpose of providing fast-growing counties with a method to raise the funds needed to expand and maintain their burdened county highway systems.[140]

Classifications that are not geographic or population based are subject to the same examination, although the outcomes are less predictable. Take for example, *Best v. Taylor Machine Works*, where the court considered sweeping tort reform legislation imposing a $500,000 limit on non-economic damages for injuries.[141] The court recognized that "the hallmark of an unconstitutional classification is its arbitrary application to similarly situated individuals without adequate justification or connection to the purpose of the statute,"[142] and concluded that "the arbitrary and automatic cap on compensatory damages for noneconomic injuries in only certain tort cases" was contrary to bill's stated purpose to "reestablish the credibility of the tort system."[143] The court struck down the law as special legislation because it was "unable to discern any connection between the automatic reduction of one type of compensatory damages awarded to one class of injured plaintiffs and a savings in the systemwide costs of litigation."[144]

On the other hand, in *Nevitt v. Langfelder*, the court upheld an amendment to the Public Employee Disability Act that guaranteed a minimum level of disability benefits to public employees involved in law enforcement and fire protection, but exempted the City of Chicago and Cook County based on their populations.[145] The court cited several reasons why the legislature might rationally exclude Chicago and Cook County from the application of the Act, including employee bargaining strength and increased hazards facing employees in those units.[146] As a result, the court determined that the legislation was rationally related to

137. 641 N.E.2d 360, 367 (Ill. 1994).
138. *Id.* at 365–66.
139. *Id.*
140. *Id.* at 366.
141. 689 N.E.2d 1057, 1066 (Ill. 1997).
142. *Id.* at 1072.
143. *Id.* at 1076.
144. *Id.* at 1077.
145. 623 N.E.2d 281, 287, 291 (Ill. 1993).
146. *Id.* at 286–87.

the state's purpose of guaranteeing a minimum level of disability benefits.[147]

The legislation considered in *Bilyk v. Chicago Transit Authority* immunized the Chicago Transit Authority, but not private carriers, from tort liability for failure to protect passengers from the criminal acts of third parties.[148] The court began by declaring that "[a] legislative classification will be upheld if any set of facts can be reasonably conceived which justify distinguishing the class to which the law applies from the class to which the statute is inapplicable."[149] The court concluded that the CTA,

> unlike private carriers, is a municipal corporation, relying heavily upon the public treasury to subsidize the costs of public transportation. The substantial involvement of taxpayers in funding of public transportation provides a rational basis for differentiating between the liability of governmental and private carriers upon a failure to prevent criminal assaults on passengers.[150]

Because of this rational basis for the classification, the court upheld the legislation.[151]

These cases establish a mixed bag of results: some population based classifications are stricken and some are upheld; other classifications are given similarly uneven treatment. While courts should take a deferential approach to weighing legislative classifications,[152] the more arbitrary the classification, the more likely that a court will find that it lacks a rational relationship to a legitimate state policy conferring a benefit on only one group. As a result, anytime the legislature confers a benefit on one group to the exclusion of others, those excluded should consider challenging the validity of the action as impermissible special legislation.

147. *Id.* at 287.

148. 531 N.E.2d 1, 2 (Ill. 1988).

149. *Id.* at 3.

150. *Id.* at 4.

151. *Id.* at 7.

152. *See In re* Vernon Hills, 658 N.E.2d 365, 367 (Ill. 1995) ("Classifications drawn by the General Assembly are always presumed to be constitutionally valid, and all doubts resolved in favor of upholding them. The party who attacks the validity of a classification bears the burden of establishing its arbitrariness.").

VI. THE AMENDATORY VETO PROCESS

The Illinois Constitution empowers the governor to veto[153] a bill in three different ways: (1) total veto, (2) item or reduction veto, and (3) amendatory veto.[154] As its name implies, a total veto negates an entire bill unless the General Assembly overrides the veto by a three-fifths vote in each house.[155] Item and reduction vetoes, on the other hand, apply only to appropriations bills.[156] An "item veto" eliminates an item of appropriation in a bill, whereas a "reduction veto" reduces the amount of an item in an appropriations bill. An amendatory veto allows a governor to make specific recommendations for changes to substantive, as opposed to appropriations, bills.[157] However, the governor's power regarding reduction and amendatory vetoes is limited, and any actions that exceed that authority may present an opportunity to challenge the ensuing enactment.

A. Reduction of Appropriations

Like forty-two other states, the Illinois Constitution empowers the governor to eliminate or reduce an item contained in an appropriations bill.[158] An appropriation item veto may be overridden in the same manner as a vetoed bill (i.e., three-fifths vote in each house), but an item reduced may be restored to the original amount by a simple majority vote in each house.[159] The constitution provides that "[p]ortions of a bill not reduced or vetoed shall become law" without further action by the General Assembly.[160] The Attorney General has interpreted this to mean that even in the case of a reduction veto, the amount remaining after the reduction has the effect of law and is available to the recipient of the appropriation.[161]

153. "Veto" is Latin for "I forbid." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED 2548 (1961).

154. ILL. CONST. art. IV, § 9. The governor has sixty days to either sign the bill into law or exercise one of the three veto powers by returning the bill with his objections to the house in which it originated. The failure of the governor to act in any way within sixty days results in the bill becoming law as if the governor had approved and signed the bill. *Id.* § 9(b). Illinois has no pocket veto.

155. *Id.* § 9(c).

156. *Id.* § 9(d).

157. *Id.* § 9(e).

158. MIKVA & LANE, *supra* note 93, at 760. Note that the federal Constitution does not empower the President to make a reduction or "line-item" veto. *Id.* However, Congress did enact the Line Item Veto Act, effective January 1, 1997, which granted Presidents line item veto authority over appropriations, new direct spending, and certain tax benefits. *Id.*

159. *Id.*

160. *Id.*

161. 1973 Ill. Op. Att'y Gen. 158 (1973).

The item or reduction veto is a dramatic tilting of power from the legislature to the governor that was incorporated into many state constitutions in the late nineteenth and early twentieth centuries.[162] This provision empowers the governor to eliminate or reduce the amount of money that has been appropriated from the treasury. However, the governor cannot alter a condition or limitation of an appropriation, such as the rate at which money may be drawn from funds appropriated.[163] For example, when the governor attempted to reduce the rate at which the Junior College Board could distribute money to junior college districts, the Attorney General concluded that the term "item" meant "a specified sum of money to be used for a specific purpose."[164] Applying that interpretation, the Attorney General ruled that the distribution rate was not a "specified sum of money," and, therefore, was not an "item of appropriation" within the meaning of the constitution.[165] Accordingly, the governor's action was ineffective as a reduction veto.[166]

This interpretation is generally in line with those applied in other states, where, as a general rule, the governor has wide authority to alter or eliminate spending provisions from appropriations bills but no authority to alter the substantive conditions attached to those appropriations.[167]

B. Amendatory Veto

The constitution also empowers the governor to propose substantive changes to legislation passed by the General Assembly. Article IV, section 9(e) provides:

> The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a

162. Luis Fisher & Neal Devins, *How Successfully Can the States' Item Veto Be Transferred to the President?*, 75 GEO. L.J. 159, 178 (1986).

163. 1973 Ill. Op. Att'y Gen. 151 (1973).

164. *Id.* at 153 (citing People *ex rel.* State Bd. of Agric. v. Brady, 115 N.E. 204, 207 (Ill. 1917)).

165. *Id.* at 154–55.

166. *Id.* at 158.

167. *Cf.* Wisconsin *ex rel.* Kleczka v. Conta, 264 N.W.2d 539, 550–51 (Wis. 1978) (finding that the governor could reduce the amount in a spending bill so long as the remainder was a "complete, entire, and workable law" (quoting State *ex rel.* Wis. Tel. Co. v. Henry, 260 N.W. 486, 491 (Wis. 1935)); New Mexico *ex rel.* Sego v. Kirkpatrick, 524 P.2d 975, 982 (N.M. 1974) ("The Governor may not distort, frustrate or defeat the legislative purpose by a veto of proper legislative conditions, restrictions, limitations or contingencies placed upon an appropriation . . . .").

> majority of the members elected to each house. Such bill shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated.[168]

Unlike a line-item or reduction veto, the effect of an amendatory veto is that the entire bill remains vetoed unless and until action is taken by the General Assembly to either: (1) accept the specific recommendations of the governor by a majority vote, or (2) override the veto by a three-fifths vote to enact the bill in its original form.[169]

While the governor is certainly empowered to "recommend" specific changes to a bill passed by the General Assembly, the question for litigation is the extent of that power, and whether in a particular instance the governor has exceeded that authority.[170] Shortly after the adoption of the 1970 Illinois Constitution, the Illinois Supreme Court confronted the issue of the scope of the amendatory veto in *People ex rel. Klinger v. Howlett*, when the governor had used his amendatory veto to recommend that "the title of each bill be amended and that everything after the enacting clause be stricken and entirely new textual material be substituted."[171] In other words, the governor erased the entire bill and replaced it with something else. The court recognized that the scope of the governor's authority "has not been clearly stated either in the constitution itself or in the committee reports or debates in the constitutional convention."[172]

During the Constitutional Convention, the court noted, terms like "corrections," "precise corrections," "technical flaws," "simple deletions," and "to clean up the language" were used to describe the scope of the amendatory veto power.[173] On the other hand, in response to the question, "'Then was it the Committee's thought that the conditional veto would be available only to correct technical errors?' a committee member answered, 'No, Ma'am.'"[174] In *Klinger*, the court did not have to decide the exact scope of the governor's powers because "[i]t can be said with certainty . . . that the substitution of complete new

168. ILL. CONST. art. IV, § 9(e).

169. *Id.* § 9(d).

170. *See* Kirk W. Dillard, *The Amendatory Veto Revisited: How Far Can the Governor's Magic Constitutional Pen Reach?*, 76 ILL. B.J. 598, 602 (1988) (discussing judicial responses to the governor's use of the amendatory veto).

171. People *ex rel.* Klinger v. Howlett, 278 N.E.2d 84, 85 (Ill. 1972).

172. *Id.* at 87–88.

173. *Id.* at 88.

174. *Id.*

bills, as attempted in the present case, is not authorized by the constitution."[175] Because the General Assembly had accepted the governor's amendatory veto, the court ruled that legislation was invalid.[176]

The court has subsequently reiterated its view that "the governor may not use the power to substitute an entirely new bill for the one passed by the legislature . . . ."[177] Instead, the amendatory veto provision was intended to allow the governor to improve a bill in "material ways," yet not alter its "essential purpose and intent."[178] The question thus becomes how much the governor can alter a bill without changing its "essential purpose and intent."

The court elaborated this point in *People ex rel. Canton v. Crouch*, where it approved an amendatory veto concerning the implementation of tax increment financing districts.[179] The court explained:

> [T]he power encompasses more than mere proofreading to correct technical errors. It therefore becomes a question of guided discretion to judge whether the changes are less than fundamental alterations but more than technical corrections. We think the changes made in the act at bar fall within that middle area. They were intended to improve the bill in material ways, yet not to alter its essential purpose and intent. The changes constituted minor enhancements which spoke to the clarity, fairness and practical requirements of the Act. They did not exceed the scope of the Governor's amendatory veto power.[180]

In *County of Kane v. Carlson*, the court considered a closer case regarding the sufficiency of an amendatory veto accepted by the General Assembly that made four separate recommendations to a bill amending the Illinois Public Labor Relations Act.[181] The governor's amendatory veto recommended that: (1) educational employees be deleted from the scope of the bill; (2) jurisdiction over a certain agency be shifted to the Labor Relations Board; (3) the anti-injunction law be made applicable to bill; and (4) the Board's governing body be

175. *Id.*

176. *Id.*

177. *See* County of Kane v. Carlson, 507 N.E.2d 482, 493 (Ill. 1987) (citing *Klinger*, 278 N.E.2d at 88).

178. People *ex rel.* Canton v. Crouch, 403 N.E.2d 242, 251 (Ill. 1980); *see also* Cont'l Ill. Nat'l Bank & Trust v. Zagel, 401 N.E.2d 491, 495–96 (Ill. 1979) ("[I]t is clear that section 9(e) of article IV was not intended by the voters to restrict the amendatory veto power to a proofreading device.").

179. 403 N.E.2d at 244.

180. *Id.* at 251.

181. 507 N.E.2d at 484.

expanded.[182] The court held that the governor did not exceed his amendatory veto, because the court "[did] not believe that the changes disturbed the basic purpose of the legislation or altered the system prescribed for carrying that out."[183] Accordingly, recommendations "were consistent with the scope of the [g]overnor's amendatory veto power."[184]

Today, courts continue to recognize that "the exact boundaries of the [g]overnor's power under this section have not been totally defined."[185] The only boundaries are that the governor can make more than technical corrections, but may not substitute entirely new bills. That leaves a lot of gray area in between. As a result, anyone aggrieved by a bill in which the governor's amendatory veto has been accepted by the General Assembly should closely examine the governor's recommendation to determine if the veto is potentially invalid. If a court were to determine that the recommendations exceeded the governor's authority, then the result would be a complete invalidation of the legislation. A court could not simply invalidate the amendatory veto and rule that the original bill would become effective, because the original bill was never signed by the governor. As such, the challenger need not be aggrieved by only the amendatory veto, but any provision of the entire bill. If the governor exceeds the amendatory veto authority, the legislation is invalid in its *entirety*, not just those provisions affected by the governor's actions.

VII. CONCLUSION

Article IV of the Illinois Constitution imposes only a handful of procedural restrictions on the General Assembly in considering and passing legislation—the Single Subject Rule, the Three Readings Requirement, the Complete Section Provision, the Effective Date Clause, and the proscription against special legislation. The legislative article also imposes limitations on the governor's amendatory veto powers. As the foregoing analysis demonstrates, these provisions have occasionally been the poison arrow used by Illinois Supreme Court to invalidate very important pieces of legislation. Most of those cases, however, came before the court in the 1980s and 1990s. There have been fewer and fewer challenges brought under article IV in recent years. Nonetheless, the provisions of article IV remain a potentially

182. *Id.* at 493–94.

183. *Id.* at 494.

184. *Id.*

185. Dep't of Cent. Mgmt. Servs. v. Ill. State Labor Relations Bd., 619 N.E.2d 239, 243 (Ill. App. Ct. 1993).

potent weapon for challenging legislation, but like any other weapon, these arrows are harmless if they remain in the quiver.