

VOLUME III

The Temple Papers on the Pennsylvania General Assembly

The Rules of the Game:
How the Constitution Affects Lawmaking in Pennsylvania

John P. Krill, Jr.
Michael R. Dimino, Sr.
Michelle J. Atherton

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Forward

The papers in this volume, *The Rules of the Game: How the Constitution Affects Lawmaking in Pennsylvania* — are intended to provide members and senior staff of the Pennsylvania General Assembly — as well as journalists, scholars, students, and citizens — with a deeper understanding of the most important constitutional provisions governing lawmaking in Pennsylvania.

As readers will learn, this is a particularly important topic in the Keystone State because our constitution contains more provisions governing lawmaking than all but four other states and three times as many provisions as are found in the US Constitution. Intended to curtail perceived abuses and even corruption in the past, many of these provisions are centuries old. After more than 100 years of judicial deference to independence of the legislative branch under the so-called “enrolled bill doctrine,” Pennsylvania courts have in recent years begun to give new force to several provisions by upholding or striking down laws on procedural grounds. Yet, as readers will also learn, this volume explores a novel argument for the legislature to recover a measure of flexibility in conducting its business. These papers grew out of an October 25, 2011, symposium attended by more than 100 members and 60 senior staff members of the General Assembly. The symposium was organized by the Pennsylvania Policy Forum, a consortium of faculty members at public and private universities, at the direction of House and Senate members of the Legislative Symposium Planning Committee.

Michael R. Dimino, Sr., associate professor at Widener University School of Law, presented his paper — “The Rules of the Game: The Constitution and the Lawmaking Process” — at the outset of the symposium to provide members with an understanding of four key constitutional provisions that were then tested in a mock court debate. Attorneys John W. Morris challenged — and John P. (Jack) Krill, Jr. defended — the hypothetical law, whose contents and history had been created by Vincent DeLiberato, senior draftsman for the Legislative Reference Bureau. Maureen Lally-Green, a former Superior Court judge, presided over the debate. (All of these symposium participants volunteered their efforts.) At the conclusion of the arguments on each provision, House and Senate members voted on whether the constitution had been violated. The program, the votes of members, and the judge’s opinion are summarized in Appendix B.

The research note prepared by Michelle J. Atherton, assistant director of Temple’s Institute for Public Affairs, concisely summarizes the 32 constitutional provisions affecting lawmaking in Pennsylvania and shows how our legislature compares to the other 49 state legislatures and the Congress.

Finally, in our capstone paper, “Constitutional Constraints and Prerogatives of the Pennsylvania Legislature,” Jack Krill explores in greater depth the history and still evolving court decisions of a fuller range of the constitutional provisions affecting lawmaking. The research and writing required to produce this paper were contributed by Jack and his law firm, K & L Gates, LLP. Like an earlier symposium on the General Assembly’s modernization, the event itself and the publishing of this volume were supported by the Heinz Endowments, the William Penn Foundation, and Temple University.

The Rules of the Game: The Constitution and the Lawmaking Process

*Michael R. Dimino, Sr.*¹

Thank you all for coming. I am here to introduce you to four provisions of the Pennsylvania Constitution that govern the lawmaking process: *first*, the requirement that bills concern only a single subject which is reflected in the bill's title; *second*, the prohibition on amending a bill so as to alter its original purpose; *third*, the requirement that revenue bills originate in the House of Representatives; and *fourth*, the power of each house of the General Assembly to determine the rules of its proceedings.

As to each constitutional provision, I will discuss the constitutional text and explain the reason for the provision's inclusion in the Constitution. I will then discuss the extent to which each limitation on the lawmaking process is, or should be, enforceable in the courts.

I. Single Subject

Article III, § 3 of the Pennsylvania Constitution specifies that “[n]o bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof.”

The point of the provision is to make it more difficult for factions to enact unpopular or wasteful laws. It should therefore come as no surprise that the section was added to the constitution during a period in which the public was particularly distrustful of the legislature. As the Pennsylvania Supreme Court has noted, the Constitutional Convention of 1872-73, which produced the limitations on the legislative process contained in Article III, “was convened to reform corrupt legislative behavior,” which was thought to involve both logrolling and an undue solicitude for the interests of powerful industries.²

¹Associate Professor of Law, Widener University School of Law, Harrisburg campus.

²*Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 394 (Pa. 2005).

Without a single-subject limitation, coalitions of legislators might band together to enact laws that contain multiple provisions, none of which would be popular enough to pass on their own. As a result of this logrolling, those legislators (and the factions they represent) would receive their pet projects, but the general interest of the Commonwealth would be harmed. The single-subject provision makes such logrolling more difficult, as a legislator who wishes to trade his support for one measure in exchange for a colleague's vote on another measure will have to vote for a separate bill that could then be attacked as contrary to his or her constituents' interests.

The single-subject rule also gives both legislators and the public improved notice about the content of a bill, because it prevents a legislator from burying a measure in a bill that is believed to focus on a different issue. The Pennsylvania Supreme Court has recognized that the single-subject rule promotes "open, deliberative, and accountable government" by giving "fair notice to the public and to legislators" of the substance of bills.³ This notice function is so important that the Pennsylvania Supreme Court has referred to "reasonable notice" as "the keystone of Article III, Section 3."⁴ Additionally, the single-subject rule preserves the effectiveness of the governor's veto power, in that the rule prevents the legislature from forcing the governor to choose between signing and vetoing a bill that contains some measures of which he approves and others of which he disapproves.⁵

Similarly, the requirement that the bill's title reflect its subject makes it more difficult to pass an unpopular measure while escaping public attention. This section became part of the Pennsylvania Constitution in 1864, but the movement of states to require bill titles stems from the notorious Yazoo land scandal, in which the Georgia legislature engaged in a corrupt sale of extensive public land to favored companies at prices far below their value.⁶ The title of the bill ordering the sale did not disclose the bill's true purpose; rather, it claimed that the bill was "[a]n 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."

We can all recognize the potential harms that can result from legislative logrolling. Logrolling has a positive aspect as well, however, and so one might characterize the single-subject rule as producing negative—or at least split—consequences. Imagine a situation where certain interest groups (perhaps identified by occupation, race, community of residence, or something else) have an intense desire for a certain type of law, but they lack the numbers to enact it. Logrolling allows them to trade away their votes on matters less important to them so that they might obtain the law that they consider more significant. Preventing logrolling thus protects the generalized public interest at the expense of the

³ *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 585 (Pa. 2003).

⁴ *Pennsylvanians Against Gambling Expansion Fund*, 877 A.2d at 395.

⁵ See Robert F. Williams, *State Constitutional Limits on Legislative Procedure*, 17 *PUBLIUS: THE JOURNAL OF FEDERALISM* 91, 100 (1987).

⁶ See WILLIAM N. ESKRIDGE, JR., *ET AL.*, *CASES AND MATERIALS ON LEGISLATION* 359-60 & n.j (4th ed. 2007).

specialized interests. Whether this is a good or bad consequence depends on one's political philosophy.

Consider also a potential distinction between two different types of measures helped by being combined with others as part of a single bill. In one situation, a bill combines measures, none of which would have the votes to pass individually. In another situation, a bill combines one unpopular measure—a rider—with another measure that does have the votes to pass on its own. Some commentators have argued that the use of a rider should be considered worse than logrolling because logrolling requires more legislative bargaining, resulting in benefits for more legislators. The legislators who benefit from riders, by contrast, need not lose anything in the bargain. Regardless of whether it might be possible to maintain such a distinction, the constitution outlaws both, preferring that each legislative measure succeed or fail on its own, rather than be permitted to ride the coattails of a more popular measure or combine forces so as to obtain the votes needed for passage.

It is easy to see the purposes behind the single-subject rule, and we might be able to achieve consensus about the desirability of those purposes. The difficulty, however, is in the application of the rule to specific cases. The essential problem is in defining what the constitution means by “subject.” Any two measures can be characterized as involving the same subject, if that subject is general enough. Think, for example, of all the different kinds of laws that could be passed relating to the “subject” of “crime.” Conversely, any two measures could be characterized as relating to different subjects if what we mean by “subject” is defined narrowly enough. A law regulating the grade-school requirements in both science and math, for example, might be thought to regulate two subjects.

As early as 1895, the Pennsylvania Supreme Court recognized that the vagueness of the term “subject” could create problems for judicial enforcement of the single-subject rule. As the court noted, “no two subjects are so wide apart that they may not be brought into a common focus, if the point of view be carried back far enough”; yet “few bills are so elementary in character that they may not be subdivided under several heads.”⁷ As an attempt to avoid the horns of this dilemma, the Pennsylvania Supreme Court has created and applied a deferential “germaneness” test: “[W]here the provisions added during the legislative process assist in carrying out a bill’s main objective or are otherwise “germane” to the bill’s subject as reflected in its title,’ the requirements of Article III, Section 3 [the single-subject rule] are met.”⁸

Of course, this “germaneness” test does very little, if anything, to lessen the problem that the bill’s “subject” may be considered at any level of generality, and therefore the “germaneness” test is infinitely manipulable. Without a judicially manageable standard for determining what a bill’s “subject” is, one might suspect that the courts would treat Article III, § 3 as unenforceable in the courts. (As many of you remember, that is what the United States Supreme Court did with the partisan-gerrymandering challenge to Pennsylvania’s

⁷ *Payne v. School District of Coudersport Borough*, 31 A. 1072, 1074 (Pa. 1895).

⁸ *Pennsylvanians Against Gambling Expansion Fund*, 877 A.2d at 395 (quoting *City of Philadelphia*, 838 A.2d at 587).

congressional districts in *Vieth v. Jubelirer*.⁹) The Pennsylvania Supreme Court, however, has concluded that it is up to the courts—as well as to the General Assembly itself—to ensure that laws comply with the single-subject rule.

II. Original Purpose

The second constitutional provision I wish to address is Article III, § 1’s direction that “no bill shall be so altered or amended, on its passage through either House, as to change its original purpose.” Similar to the way the single-subject rule is designed to prevent special interests from short-circuiting the standard legislative process, the requirement that a bill not deviate from its original purpose is designed to prevent a legislative bait-and-switch.

As with the single-subject rule, the problem with the original-purpose requirement is the vagueness of the term “purpose.” A sufficiently broad purpose (imagine, for example, the purpose of “promoting the general welfare”¹⁰) can encompass the entire range of legislation. Conversely, the slightest amendment to a bill could be characterized as altering the original purpose; after all, if the amendment were entirely consonant with the original bill, there would be no need for the amendment.

The courts have recognized this quandary, but have done little to address what is at bottom an insoluble dilemma. Pennsylvania courts require that the bill’s original purpose must be considered in “reasonably broad terms,” but of course that provides us no answer at all.¹¹ The courts recognize that some discretion must be afforded the General Assembly in crafting and amending bills, but they are unwilling to abandon a supervisory role that would allow them to rein in the clearest violations. In *Marcavage v. Rendell* (2008), for example, the Pennsylvania Supreme Court held that the General Assembly violated the Original Purpose Clause when a bill designed to criminalize crop destruction became instead an expansion of the offense of ethnic intimidation. The court was unmoved by the argument that both the original and final versions of the bill involved crime.

Until 1986, and for most practical purposes until 2005, Pennsylvania caselaw had followed the “enrolled bill doctrine,” which prevented courts from looking beyond the enrolled bill itself—the version of the bill certified by the presiding officers of both chambers and filed with the Secretary of the Commonwealth.¹² Such an approach all but eliminated judicial review of the original-purpose requirement, as the whole point of the requirement was to ensure that the purpose of the enrolled bill be the same as the purpose of the bill

⁹ 541 U.S. 267 (2004).

¹⁰ Congress has the power to spend money “to pay the Debts and provide for the common Defence and general Welfare of the United States.” U.S. Const. art I, § 8, cl. 1. The United States Supreme Court has indicated that “[i]n considering whether a particular expenditure is intended to serve general public purposes, courts should defer substantially to the judgment of Congress,” *South Dakota v. Dole*, 483 U.S. 203, 207 (1987), and has gone so far as to suggest that “general welfare” might not be “a judicially enforceable restriction at all.” *Id.* at 207 n.2 (citing *Buckley v. Valeo*, 424 U.S. 1 90-91 (1976) (per curiam)).

¹¹ *Pennsylvanians Against Gambling Expansion Fund*, 877 A.2d at 409.

¹² See *Kilgore v. Magee*, 85 Pa. 401 (1877).

when it was introduced. If the courts could not look at the original version of the bill, then there was no way to compare the original purpose to the final purpose.¹³

In the 2005 *Pennsylvanians Against Gambling Expansion* case, however, the Pennsylvania Supreme Court discarded its precedent and held that courts could entertain claims that laws violated the original-purpose requirement. When adjudicating such claims, courts now not only ask whether the title of the bill in final form accurately described the contents of the bill, but also whether, after comparing the original purpose to the final purpose, “there has been an alteration or amendment so as to change the original purpose.”¹⁴

III. Origination of Revenue Bills

Per Article III, § 10, “[a]ll bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills.” Unlike the Single-Subject and Original Purpose Clauses, the Origination Clause has an analogue in the Federal Constitution, in article I, § 7, clause 1. The purpose of the provision is to discourage the imposition of taxes by making the House—the chamber closer to the People—responsible for introducing measures raising taxes. The philosophy appears to be that taxation has a unique capability to exert tyrannical power over the people, and so the Origination Clause attempts to increase the barriers for such measures beyond the usual lawmaking procedures mandated for other types of legislation.

Pennsylvania had treated the Origination Clause as non-justiciable,¹⁵ but in the *Pennsylvanians Against Gambling* case mentioned earlier, the Pennsylvania Supreme Court announced that it could in fact decide claims under the Clause. The analysis in that case—both of the jurisdictional question and on the merits—was extremely cursory, however, and so it is unclear how a court will analyze such a claim in the future. In the *Pennsylvanians Against Gambling* case, the court rejected the challenge to the law at issue because “the bill in fact originated in the House.”¹⁶ In the mock oral argument that you are about to see, the bill originated in the Senate, but the portion of the bill dealing with revenue was added as an amendment introduced in the House. Thus, we may have a conflict between the language of the constitution (which discusses the origination of “bills”) and the apparent purpose of the clause (which might be thought to be satisfied where the House introduces the relevant language).

¹³ See *Pennsylvanians Against Gambling Expansion Fund*, 877 A.2d at 408 (criticizing and overruling *Consumer Party v. Commonwealth*, 507 A.2d 323 (Pa. 1986)).

¹⁴ *Pennsylvanians Against Gambling Expansion Fund*, 877 A.2d at 408-09. This two-part inquiry is designed to protect the purpose of the original-purpose rule, which was “not . . . to avoid deception, . . . but rather to preserve a regularized legislative procedure. . . .” Williams, *supra* note 4, at 106.

¹⁵ See *Mikell v. Philadelphia School District*, 58 A.2d 339 (Pa. 1948). Note that the enrolled-bill doctrine, were it still in effect, would prohibit the courts from analyzing the legislative history of a bill to determine where it “really” originated. The determinative consideration would be whether the enrolled bill itself specified that it was a House bill or a Senate bill. Cf. *United States v. Munoz-Flores*, 495 U.S. 385, 408-10 (1990) (Scalia, J., concurring in the judgment).

¹⁶ *Pennsylvanians Against Gambling Expansion Fund*, 877 A.2d at 414.

IV. The Rules of Proceedings and Binding Future Legislatures

Article II, § 11 grants each house of the General Assembly the “power to determine the rules of its proceedings.” As relevant to the oral argument that will begin shortly, this provision raises the question whether a statute may add to the procedures for passing bills. Specifically, the oral argument will consider whether a law should be invalidated due to the legislature’s failure to comply with the Sunshine Law during the consideration of the bill.

This issue has not been litigated in Pennsylvania. Nevertheless, it does not strike me as a difficult one. It seems to me elementary that no legislature can bind its successors. Surely no law could require a supermajority to pass certain types of legislation—imagine a law that purported to require unanimous consent to pass a tax increase—and I know of no way to distinguish any other sort of procedural rule. Each house may determine its own rules, and those rules are open to reexamination by the house itself. If a house wishes to pass a law without complying with its own rules, then that decision should not be the business of the courts.¹⁷

V. Conclusion

I hope that these remarks have served as a useful introduction to the more detailed examination of these issues in which you are about to participate. There will be an opportunity for questions at the conclusion of the oral argument. Thank you for your attendance and your attention.

¹⁷ Wisconsin’s Supreme Court so held earlier this year. *State ex rel. Ozanne v. Fitzgerald*, 798 N.W.2d 436 (Wisc. 2011).

The Pennsylvania General Assembly Operates under More Constitutional Provisions than the US Congress and All but Four State Legislatures

Michelle J. Atherton

Constitutions limit the ability of legislatures, particularly on the state level, to change structure and procedure. For example, nearly all state constitutions stipulate a bicameral system (except Nebraska), the number of members, the form of representation, the required quorum size, and the requirements for office. Beyond these basic structures, however, the states vary widely.

Table 1 shows American legislatures, including Congress, ranked by the number of constitutional provisions regarding legislative structure and procedure. Table 2 lists the 75 constitutional constraints counted in Table 1 ranked by the percentage of legislatures that have them. It also shows which apply to Pennsylvania and the US Constitution. Differences within specific provisions do not yield a different count; a constitution either has a given constraint, which is then counted, or it does not, and so is not counted. Both tables are adapted and updated from analyses by political scientists Nancy Martorano Miller, Ronald D. Hedlund, and Keith E. Hamm. The studies are available from Temple's Institute for Public Affairs.

As Table 1 shows, Pennsylvania is tied for 5th most constrained with Oklahoma, both with 32 constraints. Just Louisiana (39 constraints), Alabama (36), Arkansas (35), and Missouri (33) rank ahead of Pennsylvania and Oklahoma. In contrast, the US Congress has just 11 constraints. Only two state legislatures are less controlled by their constitutions than the US Congress: Rhode Island with 10, and New Hampshire with just seven. The median and the mean number of constraints for all states and the US Congress is 22, showing Pennsylvania is significantly more controlled by its constitution than the typical American legislature.

As evidenced in Table 2, Pennsylvania's constitution contains 18 of the most commonly found constitutional provisions regarding the legislative process. The top nine of these are also found in the US Constitution, with the remaining constraints of revenue bills having to originate in the lower chamber and the vice-president or lieutenant governor as Senate presiding officer rounding out the 11 US constraints.

All of these are held in common with the Pennsylvania Constitution. Pennsylvania's provisions for the majority elected being needed to concur in other chamber amendments/conference reports, that votes on concurrence are recorded in a journal, and that no local laws can be passed when a general will suffice are held in common with just four other states.

TABLE I

American Legislatures Ranked by Number of Constitutional Provisions Regarding Legislative Structure and Procedures

Rank Legislature	Score	Rank Legislature	Score
1 Louisiana	39	Nevada	22
2 Alabama	36	Ohio	22
3 Arkansas	35	T29 Hawaii	21
4 Missouri	33	Indiana	21
T5 PENNSYLVANIA	32	Tennessee	21
Oklahoma	32	Utah	21
7 California	31	T33 Delaware	20
T8 Mississippi	30	Minnesota	20
Texas	30	Montana	20
10 Wyoming	29	West Virginia	20
T11 Colorado	28	37 New Jersey	19
New Mexico	28	T38 Iowa	18
T13 Georgia	26	North Dakota	18
Michigan	26	T40 Kansas	16
T15 Arizona	25	Maine	16
Oregon	25	New York	16
Virginia	25	South Carolina	16
Washington	25	44 Wisconsin	15
T19 Alaska	24	45 Massachusetts	12
Florida	24	T46 Connecticut	11
Maryland	24	North Carolina	11
T22 Idaho	23	Vermont	11
Kentucky	23	US CONGRESS	11
Nebraska	23	50 Rhode Island	10
South Dakota	23	51 New Hampshire	7
T26 Illinois	22		

This table was adopted with modifications from Miller, Nancy Martorano, Ronald D. Hedlund, and Keith E. Hamm. 2010. "State Legislative Evolution: Path Dependency, Organizational Theory, and Bounded Rational Choice," presented to the State Politics and Policy Conference, Springfield, IL.

TABLE 2

Constitutional Provisions Regarding Legislative Structures and Procedures

Limitation	States (%)	PA	US
1 Quorum size stated	100	1	1
2 Choose own officers	96.1	1	1
3 Must keep journal of proceedings	94.1	1	1
4 Limit on length of adjournment without consent of other chamber	92.2	1	1
5 Legislature determines own rules	92.2	1	1
6 Legislator compensation mentioned	90.2	1	1
7 Legislature judges elections and qualifications of members	88.2	1	1
8 Quorum may compel attendance of members	84.3	1	1
9 Can request recorded vote	84.3	1	
10 Session start date	78.4	1	
11 Bills contain only one subject	78.4	1	
12 Title of bill must express subject of bill	74.5	1	
13 Legislative sessions/meetings/hearings must be open to public	70.6	1	
14 Final vote must be recorded in journal	70.6	1	
15 Bills must be read on three different days	68.6	1	
16 Vote needed for final passage of bill	62.7	1	
17 Governor can call special session	58.8	1	
18 List of prohibited special/local laws	56.9	1	
19 Limit on session length	56.9		
20 Legislature can call special session	52.9	1	
21 Revenue bills must originate in house/lower chamber	41.2	1	1
22 Existing laws revised at length, not just by title	41.2	1	

TABLE 2 (CONT'D)

Constitutional Provisions Regarding Legislative Structures and Procedures

Limitation	States (%)	PA	US
23 Provision to advance bills from 2nd to 3rd reading on same day	39.2		
24 People reserve the power of initiative/referenda	35.3		
25 Agenda in special session limited to topics in call	33.3	1	
26 Bills must be read at length on final passage	31.4		
27 Amendments cannot change original purpose of bill	27.5	1	
28 General appropriations bill limited to government operating expenses	23.5	1	
29 Other appropriations in single subject bills	21.6	1	
30 Legislator terms limit	21.6		
31 Legislature can vote to extend session	19.6		
32 Vice-President or Lt. Governor is Senate presiding officer	19.6	1	1
33 All bills must be referred to committee before becoming law	19.6	1	
34 Laws are to be made by bill only	13.7	1	
35 Power to subpoena people and documents	13.7		
36 Deadline for introducing legislation in a session	13.7		
37 Bills from 1st session carry over to 2nd session in the biennium	13.7	1	
38 Provision for organizational session	11.8		
39 Majority elected needed to concur in other chamber amendments/conference reports	9.8	1	
40 Votes on concurrence recorded in journal	9.8	1	
41 Extraordinary majority required for tax/revenue bills	9.8		

TABLE 2 (CONT'D)

Constitutional Provisions Regarding Legislative Structures and Procedures

Limitation	States (%)	PA	US
42 Limit on length of special sessions	9.8		
43 Time limit to pass bills	9.8		
44 No local laws when a general act will suffice*	9.8	1	
45 Interim committees allowed	7.8		
46 Must wait a specified time before hearing/considering a bill	7.8		
47 Local notice to be given of intent to introduce local bill	7.8		
48 No bill rejected may be reintroduced that session	7.8		
49 Budget/Appropriations bills in odd/even year only	7.8		
50 Provision/Limitation for the hiring of staff	7.8		
51 Process for discharging bills from committee consideration	5.9		
52 Must revise, digest, promulgate laws from time to time	5.9		
53 Time limit on effect of appropriations	5.9		
54 Power to conduct investigations	5.9		
55 Bills should be plainly worded; avoid technical language	5.9		
56 Legislature can nullify administrative rules	5.9		
57 Deadline for passage of bills	5.9		
58 Committees must keep proceedings including records of votes	5.9		
59 Limit on legislator retirement benefit	3.9		
60 Committees must give public notice of meetings	3.9		
61 Committees must give public notice of meeting agendas	3.9		

TABLE 2 (CONT'D)

Constitutional Provisions Regarding Legislative Structures and Procedures			
Limitation	States (%)	PA	US
62 Deadline for pre-filing bills	3.9		
63 Time limit on passage of revenue bills	2		
64 May vote to change or add to special session agenda	2		
65 Legislature cannot repeal initiative/ referenda passed by the people	2		
66 May vote to dispense with consideration time limit	2		
67 Legislature can't act on other business until fiscal emergency bill sent to governor	2		
68 Limit on number of bills a legislator may introduce	2		
69 Not tax/revenue bills in odd/even year	2		
70 No bill becomes law without a public hearing	2		
71 Provides for creation of consent calendar	2		
72 Initiative petitions referred to committees, where it can be substituted	2		
73 People must approve revenue bills	2		
74 Legislature must vote to set calendar	2		
75 People must approve of salary increases for legislature	2		
TOTAL		32	11

This table was adapted from Miller, Nancy Martorano, Ronald D. Hedlund, and Keith E. Hamm. 2010. "State Legislative Evolution: Path Dependency, Organizational Theory, and Bounded Rational Choice," presented to the State Politics and Policy Conference, Springfield, IL.

*Pennsylvania has this provision but it was not counted by Miller, Hedlund, and Hamm, whose total for the state was 31 provisions.

Constitutional Constraints and Prerogatives of the Pennsylvania Legislature¹

*John P. Krill, Jr.*²

The Commonwealth of Pennsylvania has a framework for its state government that, at first glance, seems to have been cast in the federal mold: a bicameral legislature, a chief executive with veto power and an independent judiciary. A closer look, though, shows that it is not merely a scaled-down model of the federal government. Pennsylvania's state government operates under many different rules and traditions, some of which are due to its long constitutional history, while others are of recent vintage.

This essay will focus on the legislative branch of Pennsylvania state government, the General Assembly.³ It will explore the constraints and prerogatives that guide the General Assembly's workings and make it a unique institution.

History of Pennsylvania's Constitutions in a Nutshell

In 1681, King Charles II issued a charter to William Penn naming him as proprietor of "a Province and Seigniorie" called Pennsylvania, in honor of his late father, Admiral Sir William Penn. The charter gave Penn the power to make laws for the governance of the province, subject to the:

advice, assent, and approbation of the Freemen of the said Countrey, or the greater parte of them, or of their Delegates or Deputies, whom for the enacting of the said Lawes, when, and as often as need shall require, Wee will that the said *William Penn* and his heires, shall assemble in such sort and forme, as to him and them shall seeme best . . .

The laws of the province could be declared void by the king or his privy council within six months after being presented to them, but, if not voided, would remain in full force.⁴

Using this authority, our first Proprietor drafted his initial Frame of Government in 1682. This provided for a Governor (not elected; it was Penn himself), an elected Council of 72 members, which, with the Governor, initiated legislation, and an elected General Assembly of 200, which had to approve legislation, but which could not initiate it. This First Frame quickly proved unwieldy and was succeeded the next year by the Second Frame, which provided for a Governor, a Council of 18 members and a General Assembly of 36 members. The Governor was prohibited from performing any "public act of state" without the advice and consent of the Council. Since Penn was the Governor, he thus

¹ The author thanks Messrs. Richard Stafford and Joseph McLaughlin of the Pennsylvania Policy Forum, Ms. Linda Shorey and Mr. Anthony Holtzman of K&L Gates, LLP, and Mr. Vincent DeLiberato, Mr. Michael Pavlick and Ms. Barbara Lane of the Pennsylvania Legislative Reference Bureau for their helpful comments and contributions. Any errors are the author's own.

² Of Counsel with the law firm of K&L Gates, LLP.

³ This essay is an outgrowth of work done for the second Members Symposium of the Pennsylvania General Assembly, which was held on October 25, 2011, sponsored by the Pennsylvania Policy Forum and funded by the Heinz Endowments and the William Penn Foundation.

⁴ For the text of the Charter and other founding documents, see Soderlund ed., *William Penn and the Founding of Pennsylvania: A Documentary History* (Univ. of Pennsylvania Press, 1983).

restricted his own power with this provision. The members of the Council were subject to term limits: after serving a three-year term, a member was ineligible for a year to be elected to another term.

In 1691 the Crown gave a temporary commission as Governor to Benjamin Fletcher of New York. This was the result of a dispute between William Penn and the Lords of Trade, who wanted Penn's proprietary charter revoked. They saw an opportunity, due to Penn's failure to distance himself from King James II, who was ousted in the Great and Glorious Revolution of 1688. Governor Fletcher bypassed the Council, ignoring its role under the Second Frame, and allowed the Assembly to initiate and pass legislation.

Thus, when Penn was restored to office in 1694, the Assembly had been enjoying the exercise of expanded legislative functions that it did not want to give up. In the face of efforts by Penn's Deputy Governor, William Markham, to reduce them to their previous role, the members of the Assembly refused to approve any legislation until their expanded powers were constitutionally recognized.⁵ Markham felt he had no choice but to confirm their powers in a Third (or Markham's) Frame of Government in 1696. Effectively, Pennsylvania now had a bicameral legislature, consisting of the Council and the Assembly.⁶ Another novelty was that the Third Frame authorized paying salaries to the members of both bodies.

Penn never accepted the Third Frame as legitimate. However, in 1701 he signed the Charter of Privileges. This new constitution made the elected Assembly the sole lawmaking body. The Assembly also became the sole judge of the qualifications of its members. The Council became appointed, rather than elected, and served only to advise the Governor. The Proprietor/Governor retained the power to veto laws.

The American Revolution resulted in Pennsylvanians adopting the Constitution of 1776. This document retained the unicameral Assembly of elected representatives. The Assembly was authorized not just to judge the qualifications of its members, but also to expel a member, although not twice for the same cause. The Constitution provided for representation proportionate to the number of taxable inhabitants in each county and required the Assembly to reapportion itself every seven years. Term limits were imposed: one could not sit in the Assembly more than four years out of seven. There was no Governor. Instead, there was an elected executive council of twelve. The Council had a President, who would be chosen from its members by joint ballot of the Assembly and the Council. But the President was not the chief executive. He was merely *primus inter pares*. All officers were liable to impeachment by the Assembly; impeached officers could be removed by the President and Council. Judges of the Supreme Court were appointed by the Council for 7-year terms. The Constitution of 1776 is regarded as the high-water mark of legislative power, versus executive power, in American constitutional history. It had passionate adherents. It also had fervent opponents.

The triumph of the opponents was the Constitution of 1790. It was modeled after

⁵ See, Klein and Hoogenboom, *A History of Pennsylvania* (McGraw-Hill, New York, 1973), p. 36.

⁶ *Id.*

the U.S. Constitution. It created a bicameral legislature, a strong governor and a judicial branch with justices and judges appointed for life. Its proponents were Pennsylvania's "Federalists," but the "Constitutionalists" still supported the Constitution of 1776. The latter did not give up. The first federal elections in 1788 in Pennsylvania were "in large measure the continuation of a struggle between two well-defined political parties which began forming within weeks after the writing of the Pennsylvania Constitution of 1776."⁷

In Pennsylvania politics, it seems, no victory or defeat is final. The Constitutionalists struck back four decades later with the Constitution of 1838. They could not entirely turn back the clock, but they succeeded in weakening the Governor. Senate confirmation of judicial officers was required. Judges were to be elected for 15 years (Supreme) and 5 years (Common Pleas).

The Constitution of 1874 was a popular response to abuses in state government. It imposed, in Article III, procedures for legislation that still govern. It restricted special and local legislation (over 90% of bills passed in the previous legislature were special and local).⁸ It required uniformity of taxation, gave the Governor a line-item veto over appropriations, virtually doubled the size of the House and Senate (perceived as a good-government measure to make bribery more difficult) and reformed elections.

The Constitution of 1968 created a unified judicial system under the supervision of the Supreme Court. It gave the Court the power to promulgate "procedural" rules. It also created a home-rule option for local government and a decennial process for redistricting of the General Assembly.

We live now under the Constitution of 1968. However, most of its provisions have roots in the prior constitutions.

Selected Provisions of the Constitution Affecting Legislative Powers

What follows is a brief survey of selected provisions of the current Pennsylvania Constitution that affect the powers of the General Assembly.

Article II, Section 1. Legislative Power

The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.

Origin: Constitution of 1776, Sec. 2

Constitution of 1790, Art. I, Sec. 1

This section is the cornerstone of legislative power. Each Department of Commonwealth government has a similar grant. The "supreme executive power" is vested in the Governor by Article IV, Section 2. The judicial power of the Commonwealth is vested in the unified judicial system, headed by the Supreme Court, by Article V, Section 1.

⁷ Jensen and Becker, ed., *The Documentary History of the First Federal Elections* (University of Wisconsin Press, 1976), Vol. I, p. 229.

⁸ What is "special" or "local" continues to be a matter of controversy, as the discussion below illustrates.

One might well ask why, in the face of this provision, so much legislating is done by executive agency rulemaking and why so much adjudicating is likewise done by agencies. The answer is that over time the General Assembly has delegated those powers and the Supreme Court has deferentially accepted the delegations, with very few exceptions. Agencies do not have an inherent right to perform quasi-legislative or quasi-judicial functions.

Our Supreme Court has upheld the commingling of legislative and judicial powers in executive agencies. The supposed expertise of the executive agencies, lacking in the judicial and legislative branches, was the justification. In the 1930s, when administrative agencies were emerging, legislators had no staffs; their desks on the floor of their houses were their offices. And the courts had no experience with judicial specialization. It may have been simply unimaginable in that era that legislative bodies would expand their staffs to acquire specialized expertise. Likewise, the Supreme Court did not anticipate the creation of judicial tribunals with specialized expertise. The Commonwealth Court is one such body. In the Executive Branch, specialized quasi-courts, such as the Environmental Hearing Board, have emerged. And legislative committees have staff who are now as conversant with agency issues as their Executive Branch counterparts.

The General Assembly is not bound by the judicial precedents in the field of administrative law. It has plenary power to readjust the structure of administrative law, as it sees fit. Agencies enjoy rulemaking power only because it has been delegated to them by law. For example, it would be possible (if not practical) to require all proposed rules to go through the same process as a bill. Specialized courts could be created to handle the adjudicative side of administrative law.

It is important to recognize the fundamental difference between the legislative power of the General Assembly and that of Congress. The General Assembly has plenary legislative power, except to the extent its powers are limited by other provisions of the state or federal constitutions or by federal law. In contrast, the U.S. Constitution gives Congress seventeen enumerated powers.⁹ James Wilson, who was a delegate both to the Constitutional Convention and to the Pennsylvania ratifying convention, explained it this way. Under state constitutions, “every thing which is not reserved is given,” whereas under the U.S. Constitution, “every thing which is not given, is reserved.”¹⁰ According to James Madison, the federal constitution formed “a happy combination,” in that “the great and aggregate interests” were the responsibility of Congress and “the local and particular” interests belonged to the state legislatures.¹¹

⁹ United States Constitution, Article I, Section 8.

¹⁰ See, Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788* (Simon & Shuster, NY, 2010), p. 78.

¹¹ The Federalist No. 10, reprinted in Madison, *Writings* (Library of America), p. 166.

Article II, Section 6. Disqualification to Hold Other Office

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under this Commonwealth to which a salary, fee or perquisite is attached. No member of Congress or other person holding any office (except of attorney-at-law or in the National Guard or in a reserve component of the armed forces of the United States) under the United States or this Commonwealth to which a salary, fee or perquisite is attached shall be a member of either House during his continuance in office.

Origin: Constitution of 1790, Sec. 18.

There is a subtle difference between this section and Article I, Section 6 of the United States Constitution. Members of Congress are absolutely prohibited from holding any federal office. Members of the General Assembly are merely prohibited from holding any office “to which a salary, fee or perquisite is attached.”

Because of this distinction, members of the General Assembly can and do serve on numerous state boards and commissions. For example, twelve out of twenty members of the board of directors of the Pennsylvania Higher Education Assistance Agency are legislators.¹² Four members, appointed by leaders of the four caucuses, serve on the State Board of Education.¹³ Another four legislators serve on the Environmental Quality Board.¹⁴ These are just a few instances of important agencies where legislators have a role in governing.

Section 6 is derived from Section 18 of the Constitution of 1790. But Section 18 followed the federalist model: it was a blanket prohibition on legislators holding executive office, even without compensation. The blanket prohibition was continued under the Constitution of 1838, but was relaxed by the Constitution of 1874, which contained the identical language we have today.

One final point: the language of Section 6 seems to prohibit a legislator from holding any office that provides compensation. Doesn't that prohibit legislators from being paid for their service? No. Membership in the General Assembly is not an office within the meaning of Section 6. The members are the surrogates of the people of Pennsylvania. There is also explicit authority in Section 8 for compensating members.

A number of statutes address the issue of incompatible offices. However, Section 6 may best be construed in light of Article II, Section 9, which says that each House “shall judge of the election and qualification of its members.”

¹² 71 P.S. §111.2.

¹³ 24 P.S. § 26-2602-B.

¹⁴ 71 P.S. § 180-1.

Article II, Section 8. Compensation

The members of the General Assembly shall receive such salary and mileage for regular and special sessions as shall be fixed by law, and no other compensation whatever, whether for service upon committee or otherwise.

Origin: Constitution of 1790, Article I, Sec. 17.

This provision was discussed by the Pennsylvania Supreme Court in *Stilp v. Commonwealth*, 974 A.2d 491 (Pa. 2009). In that case, a taxpayer alleged that Pennsylvania legislators receive various items of value in violation of Article II, Section 8. The Court held that:

- “Other compensation” refers to payment for services rendered, the amount of which is not fixed and predetermined.
- For purposes of Article II, Section 8, “salary,” “mileage,” and “other compensation” have the meanings suggested by dictionaries in existence around 1874.
- A legislator’s receipt of reimbursement for legislative “expenses” does not violate Article II, Section 8.
- COLAs fit within the meaning of “salary,” as do “additional dollar amounts” received by the General Assembly’s leaders under the Public Official Compensation Law.
- Lodging and meal expenses (including *per diems*), postage, calendars, office supplies, funding for commercials and newsletter mailings for constituent informational purposes, vehicle allowances, gasoline, legal services related to legislative matters, and unvouchered expense allowances reasonably related to future expenses are legislative “expenses” and do not violate Article II, Section 8.
- “Benefits” did not exist at the time this section was adopted and are not addressed in the Pa. Constitution. Therefore, the General Assembly has plenary power to provide “benefits” to its members.
- “Benefits” may include medical insurance, dental insurance, vision insurance, life insurance, long term care insurance, medication coverage, and pension.

The *Stilp* Court reaffirmed an old case, notable for its snapshot of legislative life in the early 1900s, *Russ v. Commonwealth*, 60 A. 169 (Pa. 1905), which upheld providing legislators with “table supplies, wines, liquors, cigars, china, stoves, car fare, and services...while in attendance at the unveiling of the monument at the tomb of Ulysses S. Grant in New York.”¹⁵

¹⁵ The *Russ* dissent discloses that the bill included \$3026.60 for “wines and liquors” and \$450 for cigars.

Article II, Section 10. Quorum

A majority of each House shall constitute a quorum, but a smaller number may adjourn from day to day and compel the attendance of absent members.

Origin: Constitution of 1776, Sec. 10.

The language regarding the power to compel the attendance of absent members did not appear until the Constitution of 1790, but it was a power assumed to be encompassed within the powers “necessary for the Legislature of a free State,” in Section 9 of the 1776 Constitution.

The power to compel attendance proved to be essential to get the United States Constitution ratified in 1787. The Pennsylvania Assembly met to consider a resolution to convene a state convention to vote on whether to ratify the federal Constitution, as called for by Article VII of that document. The Anti-Federalist members of the Assembly absented themselves from the chamber, which deprived it of a quorum. The Speaker ordered the sergeant at arms, aided by the assistant clerk to “collect the absent members.”¹⁶ The sergeant at arms found several members in lodging houses in Philadelphia and brought them back, achieving a quorum. The resolution to convene a ratification convention then passed. The sergeant at arms appears to have deputized a number of citizens to assist him, because some of the “seceding assemblymen” complained that they were hauled to the chamber by a violent mob. One of the absentees, who was not found that day, was fined five shillings, in accordance with the rules.

If the “seceding assemblymen” had crossed the Delaware to New Jersey, they would have been out of reach, but still subject to fines.

Article II, Section 11. Powers of Each House; Expulsion

Each House shall have power to determine the rules of its proceedings and punish its members or other persons for contempt or disorderly behavior in its presence, to enforce obedience to its process . . . and shall have all other powers necessary for the Legislature of a free State.

Origin: Constitution of 1776, Sec. 9.

At the start of each new General Assembly, the House and Senate customarily adopt rules. The Senate traditionally has followed Mason’s Manual, while the House has used Thomas Jefferson’s Manual as a model.

In *Zemprelli v. Daniels*, 496 Pa. at 247 (1981), the Supreme Court recognized that each house has exclusive power over its internal affairs and proceedings as long as the exercise of that power is not violative of the Pennsylvania Constitution. In *Pennsylvania AFL-CIO v. Commonwealth*, 691 A.2d 1023 (Pa. Commonwealth 1997), *aff’d*, 563 Pa. 108, 757 A.2d 917, 924 (2000), the courts refused to invalidate a statute that allegedly had been passed

¹⁶ See, *The Documentary History of the Ratification of the Constitution*, Volume II: *Pennsylvania* (State Historical Society of Wisconsin, 1976), p. 95 et seq.

in a manner that violated the rules of one of the chambers. Each house has the power to waive its own rules, either explicitly or implicitly and the courts will not interfere.

There are statutes enacted by prior General Assemblies that arguably govern the proceedings of each house. For example, Pennsylvania's Sunshine Act requires committee meetings and floor sessions to be advertised in a particular manner.¹⁷ Business transacted at a meeting that violates the Sunshine Act may be declared void by a court.¹⁸

Can the long-gone General Assembly of 1998 that enacted the Sunshine Act restrict the freedom of either house today to structure its proceedings as it sees fit? There is no controlling case in Pennsylvania, but a recent case in another state suggests that the answer is "no."

In *State of Wisconsin ex rel. Ozanne v. Fitzgerald*, No. 11-cv-1244 (Wis. Cir. Ct. – Dane County, Slip Op. March 18, 2011) and 798 N.W.2d 436 (Wis. 2011), the Wisconsin Supreme Court construed a similar law:

- The Wisconsin Open Meetings Law says “[a]ny action taken at a meeting of a governmental body held in violation of this subchapter is voidable....”
- A district attorney sought to enjoin publication of a new statute, because the legislature enacted it without publishing notice, in violation of the law.
- The trial court agreed and issued a temporary restraining order against official publication of the law.
- Wisconsin Supreme Court took jurisdiction and reversed.
- The law allowed the Wisconsin Senate or Assembly to supersede its provisions by adopting a rule to the contrary, but neither chamber did so. Nevertheless, the Court held that:
 - The trial court violated separation of powers principles by enjoining the legislative process as it was occurring (in Wisconsin it is not complete until a law is published). While Article IV, Section 10 of the Wisconsin Constitution requires “the doors of each house [to] be kept open except when the public welfare shall require secrecy,” the legislature did not violate this provision because “[t]he doors of the senate and assembly were kept open to the press and members of the public during the enactment of the Act.”
- The Wisconsin Supreme Court suggested that, regardless of whether the legislature adhered to the Open Meetings Law, its notice of meeting at which the bill was agreed

¹⁷ 65 Pa. C. S. § 709(d) and § 712. The rules of each chamber potentially trump the procedure. § 709(e).

¹⁸ 65 Pa. C. S. § 713.

on was sufficient, because, in posting notice, it “relied on its interpretation of its own rules of proceeding,” which is a matter of “purely legislative concern[]” that a court will not review.

- A concurrence argued also that a subsequent enactment using procedures that violate the Open Meetings Law operates as an amendment overriding the Open Meetings Law.

Article II, Section 15. Privileges of Members

The members of the General Assembly shall in all cases, except treason, felony, violation of their oath of office, and breach of surety of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses and in going to and returning fro the same; and for any speech or debate in either House they shall not be questioned in any other place.

Origin: Constitution of 1790, Article I, Section XVII.

The Pennsylvania Supreme Court regards the Speech or Debate Clause of the Pennsylvania Constitution as essentially providing the same immunity as its federal counterpart. *Consumers Education and Protective Association v. Nolan*, 470 Pa. 372 (1977).

In 1972, the U.S. Supreme Court explained that the Clause prohibits “inquiry only into those things generally said or done in the House or the Senate in the performance of official duties and into the motivation for those acts.” *United States v. Brewster*, 408 U.S. 501, 512 (1972). The Clause does not, however, bar an “inquiry into activities that are casually or incidentally related to legislative affairs but not a part of the legislative process itself.” *Id.* at 528.

The legislative immunity created by the Speech or Debate Clause insures that legislators are free to represent the interests of their constituents without fear that they will be later called to task in the courts for that representation. The Speech or Debate Clause has been read broadly in order to effectuate its purpose. It prohibits inquiry into those things said or done in the House of Representatives or Senate in the performance of official duties and into the motivation for those acts.

The Speech or Debate Clause in Article I, Section 6 of the U.S. Constitution applies to members of Congress and their staff. It does not protect state legislators. However, the U.S. Supreme Court has held that state legislators and their staff enjoy similar immunity as a matter of federal common law. This immunity applies in civil cases in federal courts. It has not been extended to federal criminal cases brought against state legislators.

Article III.A. Procedure

Until 1986, the Enrolled Bill Doctrine prevented judicial scrutiny of the General Assembly's compliance with the procedural requirements of Part A of Article III. An enrolled bill is the final Printer's Number of a bill, after passage by both houses that has been signed by the presiding officer of each house in the presence of their respective houses, as required by Article III, Section 8 and deposited with the Secretary of the Commonwealth. From the earliest years under the Constitution of 1874, this doctrine effectively precluded judicial review. See, *Kilgore v. Magee*, 85 Pa. 401 (1877).

In 1986, the Pennsylvania Supreme Court, in *Consumer Party v. Commonwealth*, 507 A.2d 323 (Pa. 1986), sidestepped the Enrolled Bill Doctrine to examine compliance with Article III, Section 1, which is discussed below. Because the parties had stipulated to the facts, and the Court therefore did not have to inquire into legislative history, the Court made an exception to the doctrine. *Consumer Party* launched the Court and the General Assembly on a slippery slope that has now all but overridden the Enrolled Bill Doctrine. The courts no longer care whether the facts are stipulated or not. They will inquire into the legislative history, using printer's numbers and the legislative journals.

Article III, Section 1. Passage of Laws

No law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose.

Origin: Constitution of 1874, Article III, Section 1.

In *Consumer Party v. Commonwealth*, 507 A.2d 323 (Pa. 1986), the Court decided a challenge to the Public Official Compensation Law of 1983. This statute started as a bill introduced in the Senate with the title:

An act amending the act of August 9, 1955 (P.L. 323, No. 130), entitled 'an act relating to counties of the third, fourth, fifth, sixth, seventh and eighth classes; amending, revising, consolidating and changing the laws relating thereto' further providing for the filling of vacancies in certain circumstances.

By the time it was enacted, the bill had been amended and its title read:

An act establishing salaries and compensation of certain public officials including justices and judges of Statewide courts, judges of courts of common pleas, judge of the Philadelphia Municipal Court, judges of the Philadelphia Traffic Court, district justices and the Governor, the Lieutenant Governor, the State Treasurer, the Auditor General, the Attorney General and certain other State officers and the salary and certain expenses of the members of the General Assembly; and repealing certain inconsistent acts.

The change from a bill amending county codes to a bill raising the pay of state elected officials, legislators and judges would seem like a change of original purpose. But the Court held that it was not. It reached its conclusion by using a test that had nothing to do with original purpose:

We have said that the purpose sought to be achieved by Article III, section 1 was to put the members of the General Assembly and others interested on notice so that they may act with circumspection. . . Here the bill in final form, with a title that clearly stated its contents, was presented to each house for its consideration and adoption. Under these circumstances there is no basis for sustaining a challenge under Article III, section 1.

The *Consumer Party* Court thus applied the test for the adequacy of a bill's title under Section 3 (discussed below) to a question of original purpose under Section 1. Nineteen years later, the Court corrected this mistake, but only prospectively, not affecting its judgment in *Consumer Party*.

In *Pennsylvanians Against Gambling Expansion Fund ("PAGE") v. Commonwealth*, 583 Pa. 275 (2005), the Court modified the test. It said that the first question for an original-purpose case is whether the original purpose of a bill changed from its introduction to its final passage. It said the next question is whether the title of the final bill is deceptive. The second prong of this test perpetuates the way the *Consumer Party* court conflated review of original purpose with review of clear title, but the unpalatable alternative would have been to overrule the *Consumer Party* test, while necessarily leaving intact the pay raises it upheld. The Court said that the Gaming Act passed muster under its two-pronged test, because:

- The bill's original purpose (in reasonably broad terms) and final purpose was to regulate gaming.
- Neither the bill's title nor its contents were deceptive because the title "placed reasonable persons on notice of the subject of the bill" and "the contents of the bill were not deceptive."

Marcavage v. Rendell, 936 A.2d 188 (2007), overturned a statute that started as a bill amending the Crimes Code to provide for the offense of agricultural crop destruction. As enacted, it amended the Crimes Code to provide for the offense of ethnic intimidation. The Commonwealth Court held that amending the Crimes Code was too broad a goal to be considered the original purpose of the bill from beginning to end of the process. Although the final title of the bill was not deceptive, the statute failed the first prong of the *PAGE* test. The Supreme Court adopted the opinion of the Commonwealth Court. 597 Pa. 371 (2008).

Article III, Section 2. Reference to Committee; Printing

No bill shall be considered unless referred to a committee, printed for the use of the members and returned therefrom.

Origin: Constitution of 1874, Article III, Sec. 2.

This provision has two salutary features. A bill must be printed “for the use of the members.” Members, therefore, should not have to “pass a bill in order to find out what’s in it,” as happened recently in Congress. The committee process theoretically allows for more consideration of a measure, but the Constitution does not require committees to give any degree of attention to a bill.

“An amended bill need not be referred to committee or considered on three separate days in the House from which the bill which was amended originated, if the amendments are germane to, and do not wholly change, the general subject of the bill.” *Parker v. Commonwealth, Dept. of Labor and Industry*, 540 A.2d 313, 328 (Pa. Cmwlth. 1988), *aff’d w/o opinion*, 521 Pa. 531, 557 A.2d 1061 (1989). The Supreme Court adopted this test for evaluating compliance with Section 4 (“three readings,” discussed below) in *Pennsylvania School Boards Association, Inc. v. Commonwealth Association of School Administrators*, 569 Pa. 436, 805 A.2d 476 (2002).

In *Harrisburg School District v. Hickok*, 762 A.2d 398 (Pa. Cmwlth. 2000), there was a claim that “because S.B. 652, containing the EEA [Education Empowerment Act, added to a Public School Code bill late in the enactment process] was not printed for the members of the Rules Committee of the House to consider before their vote, it violated Article III, Section 2.” The Court held: “Because the bill was printed for the members prior to their vote, what the Harrisburg School District seems to be contending is that every time there is an amendment, even of the House or Senate Floor, the bill has to be reprinted. We can find no such requirement, and, as such, this count is dismissed.” 762 A.2d at 414.

Article III, Section 3. Form of Bills

No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof.

Origin: Adopted in 1864 as an amendment to the Constitution of 1838 (Article XI, Sec. 8). Codification exception added by the Constitution of 1968.

The fullest explication of the requirements of Section 3 can be found in *Pennsylvanians Against Gambling Expansion Fund v. Commonwealth*, 877 A.2d 383 (Pa. 2005) (“PAGE”). The case was a facial challenge to procedures used in enacting The Pennsylvania Race Horse Development and Gaming Act (“Gaming Act”). The Pennsylvania Supreme Court articulated key principles related to Article III, Section 3’s single subject rule:

- There must be “a single unifying subject to which all of the provisions of the act are germane” and, in determining whether this standard is met, a court must exercise “deference by hypothesizing a reasonably broad topic.”
- “[T]o withstand single-subject challenge the designation or use of the monies collected under a statute must also be germane to the overall subject of the statute if the legislature is going to disburse funds through a single statutory enactment.”
On the other hand, if the statute creates special funds/accounts without providing for disbursements from them, the Supreme Court is “willing to accept source relation as an adequate subject-matter connection to support legislative earmarking/allocation/apportionment of special funds, and to this degree, the involvement of the targeted subjects as incidental or collateral to the main purpose.”
- The Gaming Act’s single unifying subject: regulation of gaming.

But provisions for monetary disbursements to the Volunteer Fire Company Grant Program and recipients of benefits under the Forest Reserves Municipal Financial Relief Law, “violate this constitutional provision as they are not germane to the single subject of the regulation of gaming.”

- Those provisions were deemed severable and stricken.
- A clear-title challenge: “must demonstrate either (1) that the legislators and the public were actually deceived as to the act’s contents at the time of passage, or (2) that the title on its face is such that no reasonable person would have been on notice as to the act’s contents.”

PAGE relied in part on *City of Philadelphia v. Commonwealth*, 838 A.2d 566 (Pa. 2003), which overturned a statute that amended Title 53 (Municipalities) of the Pa. Consolidated Statutes on various topics: governance of the Pennsylvania Convention Center, political activity of police officers, mixed-use development projects undertaken by parking authorities, citizenship requirements for board members of business improvement districts, authority over Philadelphia’s taxis and limousines, etc. The Court held that:

- The law violated the single subject rule, because “there is no single unifying subject to which all of the provisions of the act are germane.” The subject of “municipalities” was too broad, covering an entire title of the Pennsylvania Consolidated Statutes.”
- Article III, Section 3’s exception for bills “codifying or compiling the law or a part thereof,” did not save the statute, because it did not “purport merely to compile existing statutory law unaltered from its original substance.” Although it amended a codification, it did not “make only such alterations in form and content as are necessary to effect the codification.”

The *City of Philadelphia* decision did contain one bright spot for legislative prerogatives. The Court refused to give any weight to the testimony of two representatives who were allowed to testify by Commonwealth Court about alleged chaos on the floor of the House during passage of the bill. The Court gave the Enrolled Bill Doctrine some significance in declining to scrutinize the floor procedures of the House.

When a bill violates the single-subject rule, what is the remedy? In *Commonwealth v. Neiman*, 5 A.3d 353 (Pa. Super. Ct. 2010), a convicted criminal was determined to be a sexually violent offender and, therefore, required to comply with the lifetime registration requirements of Megan's Law, 42 Pa.C.S. §§ 9791-9799.9. The defendant challenged Megan's Law on the grounds that it was enacted in violation of the single subject rule: the bill that became Megan's Law also made amendments to the Deficiency Judgment Act.

Superior Court upheld Megan's Law but struck down the amendments to Deficiency Judgment Act. The Court said:

- “[E]ach subject in an act must be ‘germane’ to the other subjects in an act.” Court stressed that there are “limits on germaneness, for otherwise virtually all legislation... would meet the single-subject requirement.”
- Is it that “some overarching relationship exists between Megan's Law and the Deficiency Judgment Act, that is not too broad so as to offend the single subject rule” ?
- No. Potentially unifying subjects were deemed too broad: Title 42 of Pa. Consolidated Statutes, protection from predators, civil remedies.

Despite the bill's lack of a unifying subject, the court upheld Megan's Law in reliance on *PAGE*, in which “our supreme court ruled that where a bill violates the single subject rule, the extraneous, unconstitutional provisions may be severed so as to preserve the main subject of the bill as constitutional.” The court found that “the centerpiece of [the bill] was the Megan's Law provisions” because “[t]he bill began and concluded with Megan's Law, and Megan's Law supplied the vast majority of the bill's provisions.” Thus, there was “a single unifying subject to which most of the provisions of the act are germane, the regulation of sexual predators.” Because the Deficiency Judgment Act amendments were unrelated to sexual predators and severable, they were stricken.

Nieman is a problematic case in more than one respect. Recognizing that it would have been hard for the court to void Megan's Law, the reader is left trying to understand the basis for the “centerpiece” rule. The Superior Court seemed to measure the length of the text for each subject in the bill and tossed out the shorter one. But the importance of a provision is not measurable by its length. And if, as the court did, one arbitrarily designates a particular subject in the bill as the “main” one, the other subject(s) automatically become “extraneous” and “unconstitutional.” When a court uses severability to save some part of a bill in this fashion, it is really substituting its judgment for the General Assembly's on what is more important to enact. If *Nieman* is upheld by the Supreme Court, the single-subject

rule will have a judicial filter not mentioned in Section 3.

Another Section 3 case of interest is *Christ the King Manor v. DPW*, 911 A.2d 624 (Pa. Cmwlth. 2006). The 2005 General Appropriations Act did not provide sufficient funds for the Department of Public Welfare to cover the anticipated rate of inflation, as established by its regulations, in connection with payments to nursing facilities under the medical assistance (“MA”) program. Instead, the General Assembly enacted Act 42, which authorized DPW to amend its rate-setting methodology so as to better control the inflation increases. Act 42 also authorized DPW to adopt the amendments by using “notice-omitted” rulemaking. Act 42 was challenged on grounds, among others, that it was enacted in violation of Article III, Sections 1 and 3. Commonwealth Court concluded that Act 42 did not violate the single subject rule because, even after the bill was significantly amended by conference committee, there was “a single unifying subject, the regulation of publicly funded healthcare services. All of the provisions of Act 42 are germane to that single, unifying subject.” The court also held that Act 42 did not violate clear title rule because “Petitioners fail to aver that legislators or the public were actually deceived as to [the bill’s] contents at the time of passage” and “the final title of [the bill]” – which expanded upon original title to reflect content of amendments – “sufficiently puts reasonable persons on notice as to the contents of Act 42.”

And Act 42 did not violate the original purpose rule. First, “[c]onstruing [the bill’s] original purpose in a reasonably broad manner, the conference committee amendments did not change the central purpose of [the bill]: the regulation of Pennsylvania’s publicly funded healthcare programs.” Second, the title and content of the bill, in final form, were not deceptive because “[t]he title...clearly reflected the amended contents of the bill” and “Petitioners fail to allege that legislators were actually deceived as to [the bill’s] contents at the time of passage.”

DeWeese v. Weaver, 824 A.2d 364 (Pa. Cmwlth. 2003) overturned a statute that provided for DNA testing of certain criminal offenders, re-established a state DNA database and state DNA bank, and described DNA-related duties of police officers. It also contained provisions that amended the law of comparative negligence as it pertained to joint and several liability. After noting that the Supreme Court has described a “subject” as “those things which have a proper relation to each other,” Commonwealth Court concluded that the statute violated the rule. The court explained: “We cannot say that requiring DNA samples from incarcerated felony sex offenders bears a ‘proper relation’ to joint and several liability for acts of negligence.” The statute however, did not contravene the clear title rule. The bill’s title expressly stated “that [it] contained amendments to the Judicial Code, a statute broad in scope,” but it also “specified those amendments as codifying the DNA Act and providing for the ‘apportionment of liability’” and, therefore, provided notice of its contents to reasonable persons. “The title serves as a signal not a precis of the bill’s contents.”

These cases have created a question about what is left of the codification exception to the single-subject rule. In *City of Philadelphia v. Commonwealth*, the Supreme Court said: “[T]he exception ... pertains to bills which codify the law and make only such alterations

in form and content as are necessary to effect the codification.” This narrow construction of the codification exception is at odds with the general principles of statutory and constitutional construction, which resolve every doubt in favor of a law’s constitutionality. It also invites challenges to codifications that make substantive changes in the un-codified law. The courts seem to feel that allowing an enactment to amend a codification on more than one subject creates a giant loophole in the single-subject rule. That is probably correct. But how does a court decide that one provision of the Constitution deserves more careful attention than another?

The “clear title” requirement of Section 3 was addressed in *In re Department of Transportation*, 511 Pa. 620, 515 A.2d 899 (1986). The Supreme Court said:

In essence, Article III, Section 3 prohibits legislative draftsmen from proposing acts with titles calculated to mislead and deceive. . . . It assures against the practice of the intentional masking of acts with misleading or ‘omnibus’ titles. Nevertheless, Article III, Section 3 was not intended to serve as a shackle upon the hands of the legislature. [As] this Court has stated:

This section [provision] was not intended to exercise a pedantic tyranny over the grammatical efforts of legislators, nor to place them between the horns of a constitutional dilemma, namely, that the title of an act must be so general [or so particularized as to include all of its subject-matter, and yet] nor [not] so general as to give no indication of its purpose, nor so particular as to inferentially exclude from its scope any items inadvertently omitted.

Under Article III, Section 3 a title is constitutional if it puts a reasonable person on notice of the general subject matter of the act. Thus, it is elementary that Article III, Section 3 does not require a title to be an index or synopsis of an act’s contents. All that is required under this section is that the title contain words sufficient to cause one having a reasonably inquiring mind to examine the act to determine whether or not he or she may be affected by it.

Id. at 626-27, 515 at 902 (citations omitted) (quoting *Commonwealth v. Stofchek*, 322 Pa. 513, 517, 85 A. 849, 843 (1936)) (bracketed language is in original). Drawing from this purpose, the Court set the following test for evaluating a title challenge: “[O]ne who seeks to declare a title unconstitutional under this provision must demonstrate either (1) that the legislators and the public were actually deceived as to the act’s contents at the time of passage, or (2) that the title on its face is such that no reasonable person would have been on notice as to the act’s contents.”

Article III, Section 4. Consideration of Bills

Every bill shall be considered on three different days in each House...All amendments . . . shall be printed for the use of the members . . .

Origin: Constitution of 1776, Sec. 15 (“To the end that laws before they are enacted may be more maturely considered, and the inconvenience of hasty determinations . . . prevented, all bills . . . shall be printed for the consideration of the people, before [final reading] . . . and for the more perfect satisfaction of the public, the reasons and motives for making such laws shall be fully and clearly expressed in the preambles.”).

The three-readings requirement has not been applied in such a way that amendments automatically force a bill back to committee or to first reading. If a bill is amended, it need not be referred back to committee or considered on three additional days, if the amendments are germane to, and do not wholly change, the general subject of the bill. See, *Pennsylvania AFL-CIO v. Commonwealth*, 691 A.2d 1023 (Pa. Commonwealth 1997), *aff’d*, 563 Pa. 108, 757 A.2d 917 (2000). See, *Pennsylvania School Boards Association, Inc. v. Commonwealth Association of School Administrators*, 569 Pa. 436, 805 A.2d 476 (2002).

Article III, Section 5. Concurring in amendments; conference committee reports

No amendment to bills by one House shall be concurred in by the other, except by the vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting for and against recorded upon the journal thereof; and reports of committees of conference shall be adopted in either House only by the vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting recorded upon the journals.

Origin: Constitution of 1874, Article III, Section 5.

In *Pennsylvania AFL-CIO ex rel. George v. Commonwealth* (“AFL-CIO 3”), 563 Pa. 108, 757 A.2d 917 (2000) and *Common Cause of Pennsylvania v. Commonwealth*, 710 A.2d 108 (Pa. Cmwlth. 1998), *aff’d*, 562 Pa. 632, 757 A.2d 367 (2000), plaintiffs contended that the originating chamber could not amend a bill when returned to it on concurrence. They argued that Section 5 establishes two exclusive procedures that are available to the originating chamber once different versions of a bill have been passed by the two chambers: (1) the originating chamber may concur in the amendments adopted by the other or (2) a conference committee may be called to develop a compromise version if the originating chamber chooses not to concur in the other’s amendments. They contended that, following the passage of differing versions of a bill by the two chambers, the originating chamber is constitutionally limited to concurring or non-concurring in the amendments made by the other chamber and may not further amend the bill on its own. The courts disagreed. Article III, Section 5 contains no pronouncement restricting an originating chamber from further amending a bill returned to it by the other chamber with amendments.

Article III, Section 6. Revival and Amendment of Laws

No law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length.

Origin: Constitution of 1874, Article III, Section 6.

The Supreme Court addressed this provision in *L.J.W. Realty Corp. v. City of Philadelphia*, 390 Pa. 197, 134 A.2d 878 (1957): “The constitution does not make the obviously impractical requirement that every act shall recite all other acts that its operation may incidentally affect, either by way of repeal, modification, extension or supply.” Nevertheless, in 2005 in the *PAGE* decision, the Court held “that Article III, Section 6 requires, with regard to a directed, specific repealer, the effectuation of which is not otherwise apparent from the associated bill, that as much of the law that is expressly repealed by the bill must be published at length.” Yet the *PAGE* Court allowed the legislature to continue to use general repealers of “all inconsistent statutes.”

Although the *PAGE* Court wanted to save legislators from having to cross-reference provisions in other statutes that were being affected by a bill, its decision has raised drafting concerns. Does amending two different statutes within one bill potentially conflict with the single-subject rule? If, instead, one introduces companion bills, it may be difficult procedurally to move them in tandem.

Article III, Section 7. Notice of Local and Special Bills

No local or special bill shall be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or the thing to be effected may be situated, which notice shall be at least thirty days prior to the introduction into the General Assembly of such bill and in the manner to be provided by law; the evidence of such notice having been published, shall be exhibited in the General Assembly, before such act shall be passed.

Origin: Constitution of 1874, Article III, Sec. 8.

See the related provision, discussed below, in Article III, Section 32. Local and special legislation was of great concern in the constitutional convention of 1872-73. “Out of 9,230 acts passed between 1866 and 1873, 8,700 were special and local acts.”¹⁹ There was no general incorporation law, so corporate charters and privileges had to be passed by the General Assembly.

¹⁹ Klein and Higgenboom at 318.

Article III, Section 10. Revenue Bills

All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills.

Origin: Constitution of 1790, Article I, Sec. 20.

Mikell v. Philadelphia School District, 58 A.2d 339 (Pa. 1948), was a challenge to a personal property tax on residents of first class school districts “for public school purposes.” Plaintiffs contended that the statute was a revenue-raising measure that originated in the Senate instead of, as required, in the House. The Supreme Court upheld the statute on the grounds that:

- First, the statute was not a revenue-raising measure for purposes of Article III, Section 10 because “the revenue derived from the tax imposed” was not “coverable into the treasury of the exacting sovereign for its own governmental uses.”
- Instead, “the taxes collected will be used for public school purposes within [first class] school districts.”
- Second, under the terms of Article III, Section 10, “the Senate may amend a House revenue bill even to the extent of striking out everything following the enacting clause and substituting therefor a bill of its own creation.”
- A revenue statute, therefore, “once enacted, is not inherently defective simply because the bill originated in the Senate and was passed first by that body.”
- The House-origination principle is “merely directory,” not “mandatory,” and “[a] failure of the legislature to follow a directory provision of the Constitution, respecting the introduction and passage of legislation, does not present a justiciable question, and, in no event, does it impair the validity of a duly certified enactment.”

In 2005 in *PAGE*, the Supreme Court changed course and determined that claims under Article III, Section 10 are justiciable. It concluded that, despite significant amendments in the Senate, the Gaming Act “in fact originated in the House” and, therefore, did not violate Article III, Section 10.

Article III, Section 11. Appropriation Bills

The general appropriation bill shall embrace nothing but appropriations for the executive, legislative and judicial departments of the Commonwealth, for the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

Origin: Constitution of 1874, Article III, Sec. 15.

This provision is essentially an exception to the single-subject rule of Section 3.

Appropriations often have line items that contain not just a dollar amount, but descriptive language that conditions or limits the use of the funds. Is such language allowed in the General Appropriations Act? *Biles v. Commonwealth, Department of Public Welfare*, 403 A.2d 1341 (Cmwlth. Ct., 1979) adopted a three-pronged test for such language: 1) it must be germane to the appropriation, 2) it must not conflict with existing legislation and 3) it must not extend beyond the life of the appropriations act.²⁰

In *Common Cause v. Commonwealth*, 668 A.2d 190 (Pa. Cmwlth. 1995), *aff'd*, 544 Pa. 512, 677 A.2d 1206 (1996), it was held that the appropriations exception to the single-subject rule was limited to the five subjects detailed in Article III, §11. A General Appropriations Act that contained line-item appropriations to state agencies, with the object of passing the funds on to certain persons or communities, was held to violate Article III, Section 29, which prohibits direct appropriations to such entities.

In *Uniontown Hospital v. Commonwealth, Department of Health* (unpublished decision, April 3, 2006), the Commonwealth Court held that language in the GAA that mandated particular action by an agency was not germane, conflicted with legislation vesting the agency with exclusive jurisdiction over the issue and, because it looked to a long-term outcome of the activity, extended beyond the life of the GAA. The language was struck down for violating all three prongs of the *Biles* test.

If language in a GAA is unconstitutional, can the Governor use his line-item veto power to blue-pencil out the offending verbiage? The question was addressed in *Jubelirer v. Rendell*, 953 A.2d 514 (Pa. 2008), discussed below under Article IV, Section 16. It appears that the Governor may not strike language only. If he objects to limiting conditions, he must strike the funds as well, so that the entire line-item is vetoed.

Note that appropriations to “non-preferreds” require a two-thirds vote of each house. These are appropriations to charitable and educational institutions that are not under “the absolute control of the Commonwealth,” other than “normal schools established by law for the professional training of teachers for the public schools of the State.” Article III, Section 30.

²⁰ *Biles* adopted the test crafted in an opinion of the Attorney General, 1978 *Op. Att’y Gen.* Pa. 56.

Article III, Section 14. Public School System

The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.

Origin: Constitution of 1776, Sec. 44 (“A school or schools shall be established in each county . . . for the convenient instruction of youth . . .”).

In *Marrero v. Commonwealth*, 739 A.2d 110 (1999), the Philadelphia School District and other entities and individuals alleged that the General Assembly had failed to provide “adequate” funding to Philadelphia’s public schools, in violation of Article III, Section 14. Commonwealth Court dismissed the claims on grounds of non-justiciability, reasoning that it could not resolve the claims without making policy determinations of a type that only the General Assembly may make. The Supreme Court affirmed.

- Quoting Commonwealth Court, the Supreme Court said that Article III, Section 14 does “not [] confer an individual right upon each student to a particular level or quality of education, but, instead, [] impose[s] a constitutional duty upon the *legislature* to provide for the maintenance of a thorough and efficient *system* of public schools throughout the Commonwealth.” (emphasis in original).
- Again quoting Commonwealth Court, the Supreme Court explained: The ‘General Assembly has satisfied the constitutional mandate to provide a thorough and efficient *system* of public education by enacting a number of statutes relating to the operation and funding of the public school system in both the Commonwealth and, in particular, in the City of Philadelphia. Thus, this court will not inquire into the reason, wisdom, or expediency of the legislative policy with regard to education, nor any matters relating to legislative determinations of school policy or the scope of educational activity. In short, as the Supreme Court was unable to judicially define what constitutes a ‘normal program of educational services’ in *Danson [v. Casey]*, 399 A.2d 360 (1979)], this court [*i.e.*, Commonwealth Court] is likewise unable to judicially define what constitutes an ‘adequate’ education or what funds are ‘adequate’ to support such a program. These are matters which are exclusively within the purview of the General Assembly’s powers, and they are not subject to intervention by the judicial branch of our government.’

The key to the outcome of this case may have been that the text of the education clause in our constitution ties the concept of “thorough and efficient” to a determination of what will “serve the needs of the Commonwealth.” It is hard to imagine a function more legislative in nature than making those choices. Yet, across the Delaware River, the New Jersey Supreme Court has been doing just that since 1990. New Jersey’s constitutional education clause requires a “thorough and efficient” system, but does not explicitly key it to meeting the needs of the state.

Article III, Section 20. Classification of Municipalities

The Legislature shall have power to classify counties, cities, boroughs, school districts, and townships according to population, and all laws passed relating to each class, and all laws passed relating to, and regulating procedure and proceedings in court with reference to, any class, shall be deemed general legislation within the meaning of this Constitution.

Origin: Constitution of 1874, Article III, Sec. 34 (added in 1923).

This provision clarifies the power of the General Assembly to classify units of government by population, without falling prey to the prohibitions on local and special legislation. Because of this provision, it is possible to have just one City of the First Class and just one City of the Second Class.

Article III, Section 24. Paying Out Public Moneys

No money shall be paid out of the treasury, except on appropriations made by law . . .

Origin: Constitution of 1790, Article I, Sec. 21.

Control of the purse has been a legislative prerogative since the reign of Richard II. However, in the 1970s, when federal funding was involved, it was challenged in Pennsylvania by the Chief Executive. Federal funding for state programs had been growing, to the point where they constituted 25% of state expenditures. The General Assembly had been routinely appropriating federal funds to the Executive Branch with a single-sentence “blank check” in the General Appropriations Act. Eventually the General Assembly decided to restrict the access to and use of federal funds. The Governor believed that federal funds that the executive branch applied for and received could be expended without legislative oversight. The General Assembly responded by enacting a law, over the Governor’s veto, that in essence mandated that all federal funds be deposited in the General Fund without designation as a restricted or separate account, and that federal funds be available for appropriation by the General Assembly. The General Assembly then passed a budget that specified in line-item detail how federal funds could be expended. The State Treasurer was prohibited from paying out any such federal funds unless pursuant to a specific appropriation by the General Assembly. The Governor challenged this. In *Shapp v. Sloan*, 391 A.2d 595 (1978), the Pennsylvania Supreme Court upheld the General Assembly’s position.

The outcome in *Shapp* was not a foregone conclusion. Two justices dissented. They believed that the Supremacy Clause of the U.S. Constitution governed and that, because federal statutes gave funds to state governors, the state legislature could not interpose itself in the process. It is implicit in the dissent in *Shapp* that Congress can confer powers on state governors and other state officers and agencies and then fund their execution of those powers. However, this overlooks the fact that governors are creatures of state law, not of federal law. We now know that Congress cannot compel state and local executive officials to take part in implementing a federal regulatory scheme. In *Printz v. United States*, 521 U.S. 898 (1997) (the Brady Gun Law case), the Supreme Court held that Congress could

not mandate that local law-enforcement officials conduct background checks on gun purchasers. The Supreme Court, though, has not decided whether principles of federalism prevent Congress from unilaterally giving discretionary powers to state officials. However, at least one federal district court thinks that Congress cannot unilaterally expand their job descriptions beyond what is established by state law: “Although the [Texas] AG attempts to characterize [a federal statute] as providing him with authority to sue, such a reading would in effect transform Congress into the Texas legislature.” *Ysleta del sur Pueblo*, 79 F.Supp.2d at 713.

A more recent skirmish over the appropriations clause was Council 13, *AFSCME v. Casey*, 626 A.2d 623 (Pa. Cmwlth. 1993). The Federal Fair Labor Standards Act (“FLSA”) establishes minimum wage and overtime standards. *Council 13* held that FLSA preempts Art. III, Sec. 24 when state employees are “required” to work during a budget impasse. The court authorized the Governor and Treasurer to pay them, despite the lack of an appropriation. This single-judge opinion, by then-President Judge Craig of Commonwealth Court, was the first published case discussing this interplay between federal and state law. The decision did not explore the Governor’s authority to “require” employees to work when he lacked an appropriation to pay them. The decision just assumed that he could “require” their services.

The issue was revisited in *Council 13, AFSCME v. Commonwealth*, 986 A.2d 63 (Pa. 2009). In anticipation of another budget impasse, Governor Rendell classified employees as “critical” or “non-critical.” The latter would have to be furloughed, because of Art. III, Sec. 24. The former would be paid under the authority of *Casey*. Commonwealth Court said that “Congress did not intend the FLSA to authorize public employers to raid their treasuries illegally any more than it intended that private employers could rob banks, whenever necessary to make payroll on time.” Reversing, the Supreme Court held that FLSA’s minimum wage provision preempts Article III, Section 24 to the extent they conflict with one another. Again, however, the Court did not decide whether the Governor has the authority to employ personnel without an appropriation or may “require” them to work. The Court therefore did not actually decide whether Section 24 conflicts with FLSA.

Although the *Council 13* cases arose from a budget impasse, the issue in them has the potential to arise at any time. For example, if a budget were enacted, but the governor was dissatisfied with cuts to a particular program that would require downsizing, could he simply neglect to reduce the personnel complement of that program and then rely on *Council 13* and FLSA to tap the treasury for the extra funds?

Congress has addressed this issue for the federal government by enacting the Anti-Deficiency Act, which prohibits federal officials from incurring obligations for expenditures in excess of appropriations.²¹

²¹ Codified at 31 U.S.C. § 1341.

Article III, Section 32. Certain Local and Special Laws

The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General assembly shall not pass any local or special law:

1. Regulating the affairs of counties, cities, townships, wards, boroughs, or school districts. 2. Vacating roads, town plats, streets or alleys. 3. Locating or changing county seats, erecting new counties or changing county lines. 4. Erecting new townships or boroughs, changing township lines, borough limits or school districts. 5. Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury. 6. Exempting property from taxation. 7. Regulating labor, trade, mining or manufacturing. 8. Creating corporations, or amending, renewing or extending the charters thereof.

Nor shall the General Assembly indirectly enact any special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.

Origin: Constitution of 1874, Article III, Sec. 7.

This provision generally bars local or special enactments, where a general law would suffice. However, it does not prevent the General Assembly from addressing issues for general classes of entities. It is possible, though, to create a class so narrowly defined that it will be rejected by the courts as local or special legislation. These cases still crop up from time to time.

For example, *West Mifflin Area School District v. Zahorchak*, 4 A.3d 1042 (Pa. 2010) overturned a provision amending the School Code (24 P.S. §16-1607.1) that said:

If a third class school district in which a public high school is not maintained operates and, for at least five consecutive years, has operated under a special board of control . . . has been placed on the education empowerment list . . . , has . . . curtailed its educational program by eliminating its high school and has not assigned its high school pupils to another school district . . . , the secretary [may]:

. . . designate two or more school districts that shall accept on a tuition basis the high school students of a distressed school district, so long as a designated school district's border is no more than three miles from the border of the distressed school district. Such designation shall occur no later than fifteen (15) days after the effective date of this section....

Duquesne City School District was the only Pennsylvania school district that met all the statutory criteria. Three school districts located within three miles of Duquesne, which were therefore potential recipients of Duquesne's high school students, alleged §1607.1 was special legislation. Our Supreme Court agreed:

- Even if the phrase “has been placed on the education empowerment list” captures

all school districts that were on the list at some point (a total of six), as opposed to only those on the list at the same time they meet the other criteria, the class created is “substantially closed” to new members.

- Indeed, other than Duquesne, “there are only five other potential school districts that could ever become members of the class....[D]uring the relevant timeframe, none of the other five third-class districts operated under a special board of control....Thus, to enter the class, one of those districts would have to return to control-board governance, remain under such governance for five consecutive years, and eliminate its high school without assigning its pupils to other schools. Not only is such a series of occurrences unlikely, but given that the Secretary’s assignment of students to neighboring school districts would have had to occur ‘no later than fifteen (15) days after the effective date of this section,’ 24 P.S. §16-1607.1(a)(1) – that is, by August 14, 2007 – any such third-class district that ultimately met all of these conditions could not benefit from the remedial provisions of Section 1607.1.”

Article IV, Section 16. Partial Disapproval of Appropriation Bills

The Governor shall have power to disapprove of any item or items of any bill, making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless re-passed according to the rules and limitations prescribed for the passage of other bills over the Executive veto.

Origin: Constitution of 1874, Article IV, Sec. 16.

This provision was the focus of litigation in *Jubelirer v. Rendell*, 953 A.2d 514 (Pa. 2008). The Governor vetoed language that limited how certain appropriations could be spent, but did not veto the money, in the General Appropriations Act of 2005. The presiding officers of the General Assembly sued for a declaration that the Governor may not strike out words and phrases from line items. Commonwealth Court ruled unanimously against the presiding officers, in an *en banc* opinion by then-President Judge Colins, which relied on *Commonwealth ex rel. Attorney General v. Barnett*, 48 A. 976 (Pa. 1901) to uphold all of the challenged vetoes. Barnett said: “If the legislature, by putting purpose, subject, and amount inseparably together, and calling them an ‘item,’ can coerce the governor to approve the whole or none, then the old evil [i.e., logrolling] is revived which [Art. IV, Sec. 16] was intended to destroy.” Oddly, the *Barnett* Court also explicitly deemed the Governor to have wisdom greater than that of the General Assembly. Because *Barnett* held that the Governor could reduce the amount of an item, Commonwealth Court concluded that the Governor could also “reduce” the language of an item. The Supreme Court reversed unanimously, in an opinion by Chief Justice Castille, stating:

- The parties’ “dispute boils down to the meaning of ‘item’ for purposes of Section 16 – i.e., that of which the Governor may disapprove.”

- An “item” is “a sum of money directed by the General Assembly to be spent for a particular purpose.”
- “Logrolling” in the GAA is not an issue. The Court noted the appellants’ argument that the single-subject requirement in Art. III is the “anti-logrolling” provision, not the line-item veto. Appropriations acts are explicitly exempted.

In subsequent years, the General Assembly has followed the practice of enacting budget implementation provisions as amendments to the Fiscal Code. While this practice may eliminate quarrels over whether substantive law has been included in General Appropriation Acts, it may give rise, if used excessively, to concerns about compliance with the Single Subject requirement of Article III, Section 3.

Article V, Section 10. Judicial Administration

(c) The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts . . . and to practice law . . . if such rules neither abridge, enlarge nor modify the substantive rights of any litigant . . . All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.

Origin: Constitution of 1968

This relatively recent addition to the Constitution gave procedural rulemaking power to the Pennsylvania Supreme Court and is an implicit constraint on the General Assembly’s power.

The question of what is merely procedural and what affects substantive rights has led to differing opinions. For example, in 1988, the Court adopted Rule 238 of the Rules of Civil Procedure. Rule 238 provided for damages for delay in tort cases. The Court considered this rule procedural. The U.S. Court of Appeals for the Third Circuit decided that it was substantive (and therefore should be followed by federal district courts under the Erie doctrine). See, e.g., *Rosen v. Rucker*, 905 F.2d 702 (1990).

In *Gmerek v. State Ethics Commission*, 807 A.2d 812 (2002), the Court invalidated lobbying reform legislation that covered all lobbyists, including those who were lawyers, on the grounds that the law infringed on the Court’s power to regulate the bar. The non-severability clause in the statute meant that the entire law became void. A year later, the Court adopted a new Rule of Professional Conduct that required lawyers acting as lobbyists to comply with any rules of either house of the General Assembly regarding lobbying and with any statute on that subject. A new version of the lobbying law was enacted in 2006. It is now clear that lawyers can be disciplined by the Court for violating the lobbying law. It is not so clear that they can be sanctioned directly under the lobbying law.

Article VIII, Section 1. Uniformity of Taxation

All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

Origin: Constitution of 1874, Article IX, Sec. 1 (added in 1961).

This provision was the focus of *Clifton v. Allegheny County*, 969 A.2d 1197 (Pa. 2009), a challenge to Pennsylvania’s property assessment laws, which do not require (nor prohibit) periodic property reassessments. The trial court found that, because a base-year assessment method that does not require periodic reassessments inherently causes significant disparities in the ratio of assessed value to market value, Pennsylvania’s property assessment laws were facially unconstitutional under the Uniformity Clause. The Supreme Court disagreed that the statutes were facially unconstitutional, but held that the base-year method, as applied in Allegheny County, violated the Uniformity Clause:

- Allegheny County’s use of the base year system violated the proportionality principle, which underlies the uniformity requirement: each taxpayer must pay no more or less than his proportionate share of the cost of government.
- The Court rejected the County’s argument that its use of the base-year system was excusable because it was rationally related to a legitimate governmental interest “in creating and preserving a stable and predictable local real estate tax assessment system.”

Article VIII, Section 14. Surplus

All surplus of operating funds at the end of the fiscal year shall be appropriated during the ensuing fiscal year by the General Assembly.

Origin: Constitution of 1968.

In *Stilp v. Commonwealth*, 974 A.2d 491 (Pa. 2009), a taxpayer alleged that funds from appropriations made in past years remain in “legislative leadership accounts” in violation of Article 8, Section 14. The taxpayer contended that “legislative leadership accounts” are comprised of funds from prior years’ appropriations in violation of Article 8, Section 14. The Supreme Court disagreed:

- The annual General Appropriations Act provides that some appropriations “lapse” at end of fiscal year, while others are “continuing” in nature.
- The Court cited definitions of “surplus” from two different dictionaries published around 1968 (when the appropriations provisions in Article VIII, Section 14 were adopted).

- “Funds which are appropriated for a duration that exceeds the end of the fiscal year in which the appropriations are made are committed and are not surplus, i.e., left over, at the end of the fiscal year in which they are made. Therefore...the term ‘surplus’ in Article VIII, Section 14 does not apply to continuing appropriations.”
- “[T]here is no express prohibition in the Pennsylvania Constitution against continuing appropriations.”

Conclusion

This paper has reviewed key provisions of the Pennsylvania Constitution that affect the prerogatives of the General Assembly. It is not intended to be an unabridged catalogue of cases interpreting those provisions. Likewise, this paper has only scratched the surface of the history and rationale for these provisions. Instead, it is hoped that this survey will provide a basic working knowledge of the concepts for legislators and citizens and perhaps stimulate some to study them in depth.

APPENDIX A

Bench Memorandum

To: The Justices of the Supreme Court of Pennsylvania
From: Law Clerk
Date: October 25, 2015
Re: *League of Electric Cooperatives v. Commonwealth of Pennsylvania, Secretary of Revenue*, 123 C.D. 2015

Procedural History:

The League of Electric Cooperatives filed a petition for review in Commonwealth Court. The Secretary of Revenue filed preliminary objections on grounds of standing, ripeness, exhaustion of remedies and exclusivity of remedy in the Board of Finance and Revenue. Commonwealth Court overruled the objections.

The parties cross-moved for summary judgment. Both sides agreed that the facts are not in dispute. Commonwealth Court granted summary judgment in favor of the Secretary on all counts. The League appealed to this Court. This Court noted probable jurisdiction and scheduled the case for briefing and argument limited to the questions below.

Statement of Questions:

1. Does an enactment violate Article III, Section 1 (“Original Purpose”) of the Pennsylvania Constitution, when an amendment to the underlying bill added an independent measure that was not in the first Printer’s Number?
2. Does an enactment violate Article III, Section 3 (“Single Subject”) of the Pennsylvania Constitution, when it amends two sections of the same title (Title 15, Corporations) of the Consolidated Statutes, with one section affecting the rights of dissenting shareholders and the other affecting the taxation of electric cooperatives?
3. Does an enactment violate Article III, Section 10 (“Origination in the House of Revenue Bills”) of the Pennsylvania Constitution, when the underlying bill, that did not affect revenue, originated in the Senate, but an amendment increasing taxation was inserted in the House?
4. Should an enactment be declared void, when the underlying bill was amended by a committee of the General Assembly at a meeting that was not advertised as required by the Sunshine Act?

Facts and Issues:

The plaintiff/appellant League is an unincorporated association that seeks a declaratory judgment to enjoin the respondent/appellee, the Secretary of Revenue, from enforcing an

amendment to 15 Pa. C.S Section 7333 that was made by Act 1 of 2015.

Prior to Act 1, Section 7333 imposed an annual fee of \$10 for each 100 members on electric cooperative corporations, but exempted them “from all other state taxes of whatsoever kind or nature.” Act 1 eliminated the exemption.

Act 1 originated in the Senate of Pennsylvania as Senate Bill 1 of 2015, Printer’s Number 1. As introduced by its sole sponsor, Senator Originator, S.B. 1 proposed to amend Section 1575 of Title 15 (Corporations) to extend the time for receipt of the demand and deposit of certificated shares from not less than 30 days to 45 days.¹

The Senate passed the bill and sent it to the House, where it was referred to the House Finance Committee.

The House Finance Committee amended the bill to add the provision affecting Section 7333. However, the Finance Committee did not advertise the meeting at which it amended and reported-out the bill as S.B. 1, P.N. 1031. Questions were raised on the floor of the House about the amended bill’s constitutionality. The House voted in favor of its constitutionality and passed the bill.

When S.B. 1 reached the Senate floor again, Senator Originator objected to the amendment on the grounds that he introduced the bill solely to extend the period for submission of demands and stock certificates by dissenting shareholders. He said it was not his purpose to change in any way the tax on electric cooperatives. The Senate nevertheless passed the bill as amended.

The presiding officers of the House and Senate each signed S.B. 1, P.N. 1031 in the presence of their chambers. The Governor vetoed the bill. His disapproval message stated his opinion that the bill was unconstitutional.

Although Senator Originator, among others, voted to sustain the veto, the Senate and House overrode it. S.B. 1 became Act 1 of 2015. The enrolled bill is on file with the Secretary of the Commonwealth.

The League contends that Printer’s Number 1031 of S. B. 1 of 2015, which became Act 1, violated the following sections of the Pennsylvania Constitution:

Article III, Section 1, “Original Purpose.” The League says that the amendment in the House altered the purpose of the bill.

Article III, Section 3, “Single Subject.” The League says that S.B. 1, P.N. 1031 contained two subjects and that there is no germane link to connect them.

Article III, Section 10, “Origination in the House of Revenue Bills.” The League says the bill should have started in the House, not in the Senate.

¹ The corporation law gives shareholders who dissent from certain corporate actions the right to demand payment of the fair value of their shares. The law sets a time period for the submission of such a demand and the deposit of the shares being surrendered.

The League also contends that the failure of the House Finance Committee to advertise the meeting at which it amended and reported the bill violated Section 709 of the Sunshine Act. The League asks the Court to exercise its discretion under Section 713 of the Sunshine Act to declare the amendment of Section 7333 by Act 1 void.

Arguments:

On original purpose: the League says that the purpose was solely to change the time period for dissenting shareholders to submit demands and tender their shares in certain corporate disputes. Adding a taxation measure fundamentally changed the purpose, as shown by Senator Originator's remarks in the Legislative Journal. The Secretary says that the "original purpose" must be viewed as that of the General Assembly, not of any one sponsor of a bill and must be construed very broadly. Here the original purpose would be to amend Title 15 (Corporations). In any event, the bill as enacted still accomplished the purpose of its sponsor. The fact that it accomplished more is irrelevant.

On single subject: the League says that the amendment in the House was not germane to the original bill. The Secretary says that the unifying subject of the amended bill was corporation law. The Secretary also argues that the codification exemption in Article III, Sec. 3 applies.

On origination-of-revenue-bills: the League says that deleting the tax exemption of its members converted the bill into a revenue measure that should have originated in the House. The Secretary says that deleting an exemption is not a revenue measure and, in any event, whether the bill is labeled "S.B." or "H.B." does not matter. What matters is that the amendment originated in the House.

The Sunshine Act was passed by a prior General Assembly years ago and cannot bind the current House (or the Senate) from exercising its constitutional power "to determine the rules of its proceedings" as it sees fit. In any event, the doctrine of separation of powers requires the Court to forebear from deciding the statutory issue. The Secretary argues that the Court should exercise its discretion to decline to void the statute.

On the Sunshine Act issue: the League says the law on its face applies to the General Assembly and its committee meetings (but not its caucus meetings). The Secretary concedes that the definitions in the Sunshine Act would apply, but says that the Enrolled Bill doctrine prevents the Court from looking at compliance with statutory procedures. The Secretary also contends that the House of Representatives is the sole arbiter of its proceedings, including committee meetings, under Article II, Section 11 of the Constitution.

APPENDIX B

Summary of the Members' Symposium on the Constitutional Foundations of the Lawmaking Process

Attendance and Participants: Altogether, 106 members of the General Assembly (22 senators and 84 representatives) and an estimated 60 legislative staff members attended the symposium held on October 25, 2012, in the auditorium of the State Museum of Pennsylvania. Other members of the General Assembly and staffers may have watched a live broadcast on the Pennsylvania Cable Network. Also in attendance, on behalf of the Pennsylvania Policy Forum, were 22 students and 12 faculty members from 10 Pennsylvania public and private colleges and universities: Carnegie Mellon, Immaculata, Kutztown, Messiah, Penn, Penn State, Penn State Harrisburg, Temple, the University of Pittsburgh, and Wilkes University. Participants in the symposium, House and Senate members of the Legislative Symposium Planning Committee, and members of the Pennsylvania Policy Forum are identified in the attached program.

History of Senate Bill 1 of 2015

After a background presentation by Michael R. Dimino, associate professor at Widener University School of Law, on the history and court interpretations of four constitutional provisions affecting lawmaking in Pennsylvania, the symposium featured mock oral arguments on a hypothetical law whose history allegedly violated those provisions. As created by Vincent DeLiberato, senior draftsman for the Legislative Reference Bureau, SB 1 of 2015 merely extended from 30 to 45 days a filing deadline for dissenters in Pennsylvania corporations to demand payments for their shares because of their disagreement with corporate decisions. After the bill was passed by the Senate, however, the House Finance Committee, in a meeting open to the public but not advertised in compliance with the Sunshine Law, amended the legislation by eliminating the tax exemption of Pennsylvania Cooperative Utilities, thereby arguably adding multiple subjects to the legislation, changing its original purpose, and transforming the bill a revenue-raising measure. As indicated below, the constitutional provisions at issue stipulate that bills may contain only a single subject, that the original purpose of a bill not be changed after introduction, and that bills raising revenues must originate in the House. Also at issue is whether the constitutional power of each General Assembly to determine the rules of its proceedings overrides statutes enacted by previously elected legislatures governing the lawmaking process, and specifically in this case, the Sunshine Law requiring meetings to be advertised in advance and open to the public. Attached is a bench memo framing the issues in legal terms for the judge. The issues argued by the opposing litigators – John W. Morris and John P. Krill -- the votes of members of the General Assembly after each argument, and the decision of Maureen Lally Green, former Superior Court judge who presided over the debate, are summarized below.

Constitutional Provisions at Issue and Results of Members' Voting on the Constitutionality of SB1 of 2015

1. Provision at Issue: Article III, Section 3.

"No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof."

Members' Votes: Was the Constitution violated on multiple-subject grounds?

Yes: 65%

No: 35%

2. Provision at Issue: Article III, Section 1.

"No law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose."

Members' Votes: Was the Constitution violated on altered-purpose grounds?

Yes: 29%

No: 71%

3. Provision at Issue: Article III, Section 10

"All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills."

Members' Votes: Was the Constitution violated on origination-of-revenue-bills grounds?

Yes: 54%

No: 46%

4. Provision at Issue: Article II, Section 11

"Each House shall have power to determine the rules of its proceedings ..."

Members' Votes: Was SB1 invalidated by violating the Sunshine Law?

Yes: 49%

No: 51%

The judge's opinion: On question one, the judge sided with the majority and agreed that that the bill had two clear subjects, shareholder rights as introduced in the Senate, and revenue increases as amended by the House. Therefore, the Constitution was violated on multiple subject grounds. On question two, the judge agreed with the majority of legislators voting that Article 1, Section 1 of the Constitution was still upheld and SB1 did not have an altered purpose. Because the revenue raising component of the bill originated in the House, the judge did not agree with the majority of voting members that SB1 should be invalidated. Finally, on question four, citing the principle that the Constitution takes precedence over a statute, the judge agreed with the majority that the House's power to determine the rules of its proceedings relieved it of complying with the Sunshine Law. In the end, SB1 of 2015 was struck down partially, with the section on shareholder rights upheld.

The Constitutional Foundations of the Lawmaking Process
Members' Symposium
State Museum of Pennsylvania
October 25, 2011

2:30 pm	Senate President Pro Tempore Joseph B. Scarnati, III	Call to Order
	Senate Majority Leader Dominic Pileggi	Welcoming Remarks
	House Democratic Leader Frank Dermody	Welcoming Remarks and Introduction of David Y. Miller
	Professor David Y. Miller, University of Pittsburgh, and Chair, Pennsylvania Policy Forum	Remarks and Introduction of Participants
2:40 pm	Background on Lawmaking and the Pennsylvania Constitution	
	Associate Professor Michael R. Dimino, Sr., Widener University School of Law	The Rules of the Game: The Constitution and the Lawmaking Process
3:00 pm	Did the General Assembly Violate the Constitution in Enacting Senate Bill 1 of 2015?: A Mock Trial	
	<p><i>Presiding from the Bench:</i> Maureen Lally-Green, director of the Office for Church Relations of the Diocese of Pittsburgh and former judge of the Pennsylvania Superior Court</p> <p><i>The Hypothetical History of Senate Bill 1 of 2015</i> Vincent DeLiberato, senior draftsman, Legislative Reference Bureau</p> <p><i>For the Plaintiffs:</i> John W. Morris, president judge of the Pennsylvania Court of Judicial Discipline and former first assistant district attorney of Philadelphia</p> <p><i>For the Defense:</i> John P. Krill, partner, K&L Gates LLP, and former executive deputy general counsel for the Commonwealth of Pennsylvania</p> <p><i>Members will be asked on multiple occasions to vote on whether various legislative procedures invalidated the enactment of SB 1.</i></p> <p><i>Verdict by the judge.</i></p> <p><i>Questions and comments from members of the General Assembly.</i></p>	
4:50 pm	Closing Remarks Speaker Samuel H. Smith and Senate Democratic Leader Jay Costa	
5:00 pm	Reception hosted by the Pennsylvania Policy Forum in the lobby outside the auditorium.	

Acknowledgements

This symposium was organized by the Pennsylvania Policy Forum at the direction of the Legislative Symposium Planning Committee. The Policy Forum thanks the program participants for generously volunteering their time and expertise; K&L Gates LLP, for providing research support; and the House Republican Video Office, the State Museum of Pennsylvania, and Temple University for logistical and technical support. Funding has been provided by the Heinz Endowments and William Penn Foundation.

Legislative Symposium Planning Committee

Honorable Lisa Baker
Honorable Jay Costa
Honorable Frank Dermody
Honorable Daylin Leach

Honorable Sandra Major
Honorable Dominic Pileggi
Honorable Samuel H. Smith
Honorable Jake Wheatley

Pennsylvania Policy Forum

The Pennsylvania Policy Forum is a consortium of faculty members and academic leaders from public and private Pennsylvania colleges and universities who share an interest in generating ideas, analyses, and symposiums that might prove useful to citizens, elected officials, and civic leaders in addressing major issues confronting the Commonwealth and its local governments. As educators who train students for citizenship and public policy careers, members share an interest in helping to improve the skills, knowledge, and tools of public and civic sector leaders.

Membership

Theodore R. Alter, professor of agricultural, environmental and regional economics, Penn State University

Thomas Baldino, professor, political science, Wilkes University
Beverly A. Cigler, professor of public policy and administration, Penn State Harrisburg

Richardson Dilworth, associate professor of political science and director, Center for Public Policy, Drexel University

Michael R. Dimino, Sr., associate professor, Widener University School of Law

Ken Gormley, dean and professor of law, Duquesne University Law School
Paula Holoviak, associate professor of political science, Kutztown University

John J. Kennedy, associate professor of political science, West Chester University

Michael King, adjunct professor, Albright College and Temple University;
associate professor, Penn State University (retired)

Robin Lauermann, associate professor of political science, Messiah College

Joseph R. Marbach, provost and professor of political science, La Salle University

Joseph P. McLaughlin, Jr., director of the Institute for Public Affairs, Temple University

(Chair) David Y. Miller, professor and director of the Center for Metropolitan Studies, Graduate School of Public and International Affairs, University of Pittsburgh

Randall M. Miller, professor of history, St. Joseph's University

Megan Mullin, associate professor of political science, Temple University

(Vice-Chair) Richard A. Stafford, distinguished service professor of public policy, Heinz College, Carnegie Mellon University

David B. Thornburgh, executive director, Fels Institute of Government, University of Pennsylvania

Craig Wheeland, associate vice president for academic affairs and professor, Villanova University