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.¹

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.\(^2\) This notice function is so important that the Pennsylvania Supreme Court has referred to “reasonable notice” as “the keystone of Article III, Section 3.”\(^3\) 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.\(^4\)

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.\(^5\) 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 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


\(^3\) Pennsylvanians Against Gambling Expansion Fund, 877 A.2d at 395.


\(^5\) See WILLIAM N. ESKRIDGE, JR., ET AL., CASES AND MATERIALS ON LEGISLATION 359-60 & n.j (4th ed. 2007).
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.”

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.”

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 judiciously 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 congressional districts in Vieth v. Jubelirer.) 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.

7 Pennsylvanians Against Gambling Expansion Fund, 877 A.2d at 395 (quoting City of Philadelphia, 838 A.2d at 587).
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”\(^9\)) 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.\(^10\) 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.\(^11\) 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 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.\(^12\)

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.”\(^13\)

---

9 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)).

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


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

13 *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.
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, but in the Pennsylvania 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 Pennsylvania Against Gambling case, the court rejected the challenge to the law at issue because “the bill in fact originated in the House.”15 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).

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.16

14 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).
15 Pennsylvanians Against Gambling Expansion Fund, 877 A.2d at 414.
16 Wisconsin’s Supreme Court so held earlier this year. State ex rel. Ozanne v. Fitzgerald, 798 N.W.2d 436 (Wisc. 2011).
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.