

IN THE IOWA SUPREME COURT
No. 21-0856

PLANNED PARENTHOOD OF THE HEARTLAND, INC., and
JILL MEADOWS, M.D.
Petitioners-Appellees,

v.

KIM REYNOLDS ex rel. STATE OF IOWA, and
IOWA BOARD OF MEDICINE
Respondents-Appellants.

ON APPEAL FROM THE IOWA DISTRICT COURT FOR
JOHNSON COUNTY

THE HONORABLE MITCHELL E. TURNER; CASE NO. EQCV081855

BRIEF OF AMICUS CURIAE BY TEN IOWA STATE SENATORS

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STATEMENT REQUIRED BY IOWA R. APP. P. 6.906(4)(d)

No party or party's counsel authored this brief in whole or in part nor contributed money to fund the preparation or submission of this brief. No other person contributed money to fund the preparation or submission of this brief.

INTEREST OF AMICI CURIAE

The Iowa State Senators are ten members of the Iowa State Senate (Senate) who were duly elected by the citizens of their several districts. The Iowa State Senators hold a variety of leadership positions in the Senate. The Senate is a legislative body of Iowa's General Assembly as created by Article III of Iowa's Constitution. As elected Iowa State Senators, Amici have a duty under the Constitution to ensure that the General Assembly's authority and rules of procedure in passing legislation are protected.

Amici include: **Jack Whitver**, Senate Majority Leader; **Chris Cournoyer**, Assistant Senate Majority Leader; **Carrie Koelker**, Assistant Senate Majority Leader; **Waylon Brown**, Senate Transportation Committee Chair; **Dan Dawson**, Senate Ways and Means Committee Chair; **Tim Goodwin**, Senate Ways and Means Committee Vice Chair; **Mike Klimesh**, Senate Local Government Vice Chair; **Tom Shipley**, Senate Local Government Committee Chair; **Roby Smith**, Senate State Government Committee Chair; and **Dan Zumbach**, Senate Agriculture Committee Chair.

ARGUMENT

I. RULES OF PROCEDURE UTILIZED BY GENERAL ASSEMBLY IN PASSING LEGISLATION ARE NONJUSTICIABLE POLITICAL QUESTIONS FOR PURPOSES OF ARTICLE III, SECTION 29 SO LONG AS THE PROCEDURES OTHERWISE COMPLY WITH IOWA’S CONSTITUTION.

Article III, section 29 of Iowa’s Constitution requires every legislative Act to have one subject and that the subject be expressed in the title. This is referred to as the “single-subject rule.” This Court is being asked, in part, to determine if the Act of June 29, 2020, (House File 594), ch. 1110, 2020 Iowa Acts 298 (hereinafter HF 594) complies with the single-subject rule. In making this determination, General Assembly procedures in passing legislation are at issue. As used in this brief the terms “piece of legislation,” “bill,” and “Act” will be used interchangeably. All three terms encompass the lawmaking process utilized by the General Assembly.

Amici urge the Court to find that the rules of procedure utilized by the General Assembly in passing legislation are nonjusticiable political questions for purposes of the single-subject rule so long as the procedures otherwise comply with Iowa’s Constitution. In doing so, the Court is also invited to reconsider prior decisions that analyzed factors outside of the language of legislation when making single-subject determinations.

Amici first desire to make clear to this Court that they respect the authority of the judicial branch to interpret the Constitution, including the single-subject rule in Article III, section 29. When it is clear that Article III, section 29 has been disregarded, the Court must not hesitate to proclaim the supremacy of the Constitution. *Chicago, R.I. & P. Ry. Co. v. Streepy*, 224 N.W. 41, 43 (Iowa 1929).

Nothing in this brief should be read as stating or implying in any manner that the judicial branch lacks authority to review legislation under the single-subject rule and determine if the legislation is valid. As such, it is the duty of the General Assembly to enact legislation that will survive judicial scrutiny applying the single-subject rule. Further, having clear guidance from this Court will assist the General Assembly in ensuring the Constitution is followed during process of enacting legislation.

As the parties will argue the interpretation and application of Article III, section 29, Amici avoid a lengthy discussion of how HF 594 complies with the single-subject rule. Rather, this brief provides the Court with information as to the procedures utilized by the General Assembly in passing legislation and why these procedures should be considered nonjusticiable political questions under the separation of powers when single-subject determinations are made.

A. Current single-subject analytical framework cited by district court and other courts is unnecessary.

Article III, section 29 of Iowa’s Constitution states:

Acts — one subject — expressed in title. Every Act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title.

In determining whether an Act complies with the single-subject rule, the analytical framework is clear. What “subjects” are set out in the Act and are they all “properly connected” and “expressed in the title?” See *Long v. Bd. of Supervisors of Benton County*, 142 N.W.2d 378, 381, (Iowa 1966). This framework would then make the analysis of HF 594 straightforward. Are the subjects in HF 594 “properly connected” and “expressed in the title?” Since the title of HF 594 is not at issue in this case, the analysis is even simpler.

The express language of Article III, section 29 indicates that the Court need only focus on the specific language within the four corners of the Act being challenged in order to make a single-subject determination. However, this is not the analytical framework courts have historically applied. Rather, courts have gone beyond the language of an Act and have analyzed procedures solely within the authority of the General Assembly.

The district court's analysis of HF 594 demonstrates why going beyond the four corners of legislation is problematic regardless of whether the challenge to an Act alleges more than one permissible subject, an incomplete title, or both.

The district court stated that an amendment to the bill was "passed under highly unusual circumstances, including the speed at which the Amendment was passed" as well as the "lack of debate." MSJ Ruling at 18-20. The length of time and how much a bill is debated should not be relevant in making a single-subject determination. An Act is either constitutional or not under Article III, section 29. Whether a piece of legislation is constitutional cannot hinge on legislative debate time. Legislators are free to speak or not speak during debate. There are a variety of reasons why some pieces of legislation are debated longer and why legislators choose to speak or not during debate.

Regardless, those are clearly decisions solely within the authority of the legislative branch. Otherwise, legislators are left to ponder how long a debate should last in order to help ensure that legislation is later found constitutional. This leads to compelled speech of members of the General Assembly and that cannot be the purpose or result of the single-subject rule. It also creates a separation of powers political question.

B. Purposes of single-subject rule in *Mabry* are unnecessary and result in nonjusticiable separation of powers political question.

In *State v. Mabry*, 460 N.W.2d 472, 473 (Iowa 1990) the Court stated that the purpose of the single-subject rule is three-fold: (1) to prevent logrolling, when unfavorable legislation rides in with more favorable legislation; (2) to facilitate the legislative process by preventing surprise when legislators are not informed; and (3) to keep the citizens of the state fairly informed of the subjects the legislature is considering.

Iowa courts have traditionally separated the policy purposes behind Article III, section 29 when determining the proper analysis and the final disposition of the Act. This is especially true depending which of the two distinct, yet inseparable, components of Article III, section 29 is being challenged. See *Long*, at 142 N.W.2d 381. “The primary and universally recognized purpose of the one-subject rule is to prevent ‘log-rolling’ in the enactment of laws, the practice of several minorities combining their several proposals as different provisions of a single bill.” *Id.*

However, Amici urge the Court to distinguish between logrolling that is permissible and logrolling that is prohibited under Article III, section 29. This distinction is important to the internal workings of the General Assembly when drafting and enacting legislation.

The title requirement has the primary purpose of guaranteeing reasonable notice is given to legislators and the public of the inclusion of provisions in a proposed bill and preventing surprise and fraud. An Act is constitutionally valid as to the title unless it contains “matters utterly incongruous to the general subject of the statute is buried in the act. A title is sufficient, even though it is broad, if it gives fair notice of a provision in the body of an act.” *Western Int’l v. Kirkpatrick*, 396 N.W.2d 359, 365 (Iowa 1986).

However, as an Act’s provisions become “more disjointed and less obviously related to each other, the legislature’s obligation to provide greater specificity in the act’s title necessarily increases.” *State v. Iowa District Court*, 410 N.W.2d 684, 688 (Iowa 1987). The primary purpose of the title requirement also directly correlates to the required disposition of an act with an insufficient title. In accordance with the express language in Article III, section 29, only the portion(s) of an act that do not relate to the subject expressed in the title are void. *Id.*

Again, there is no challenge to the title of HF 594. As such, the title reflected the subjects in the bill and provided notice of the subjects to legislators and the public. This is the notice mandated by the Constitution under Article III, section 29.

These distinctions between the primary purposes behind the single-subject and title requirements, as well as the different dispositions required when a violation is found, reveal why it is problematic for courts to inquire into the General Assembly's rules of procedure.

The title of the Act provides notice of the language in a bill. That is the only notice requirement in the Constitution involving the lawmaking process. As will be discussed, while there are no constitutional requirements to do so, the General Assembly has adopted rules of procedure providing additional notice of language in a bill.

However, compliance or non-compliance with any of those rules, practices, and traditions is wholly within the prerogative of the General Assembly and not subject to review by the judicial branch. *Carlton v. Grimes*, 23 N.W.2d 883, 889 (Iowa 1946). Finding a single-subject violation based on procedures that are not mandated by the Constitution, but instead are protected, cannot be the result of Article III, section 29.

It is the single-subject limitation that ensures constitutionally prohibited logrolling does not occur. However, to make the determination as to whether an Act violates the single-subject rule does not require a court to analyze factors outside the language of an Act.

Unconstitutional logrolling can be determined under the express provisions of Article III, section 29 by simply analyzing the very language in the Act. The subjects contained in the Act must be properly connected. In addition, the subjects must be reflected in the title. This is what determines permissible or impermissible logrolling.

The courts can remedy impermissible logrolling by looking at the four corners of the Act itself. Going beyond the four corners in search of a violation in the procedures and internal workings of the General Assembly is not what the Constitution demands of the judicial branch and actually creates constitutional issues.

As courts have utilized the purposes set out in *Mabry*, the issue of going beyond the language of legislation implicates political questions. How is a court to determine if impermissible logrolling occurs? Should courts conduct a public opinion poll to determine “unfavorable legislation” versus “more favorable legislation” when deciding whether the inclusion of a specific provision in an Act reaches the level of unconstitutional logrolling? What ultimately makes legislation “favorable” or unfavorable” is in the minds of individual legislators as reflected in their votes on legislation.

Every provision in a bill that receives approval of a constitutional majority of the members in each house is “favorable legislation.” Such “favorable legislation” could have resulted from logrolling. However, it is only logrolling that results in a violation of Article III, section 29 that requires a court to invalidate the law. This is an important distinction that Amici urge this Court to consider when deciding this case. Absent this distinction, the General Assembly is unable to properly engage in its authority under the Constitution to pass legislation.

There are Acts that unquestionably result from logrolling as part of the lawmaking process. A bill may contain provisions a particular legislator can agree with as well as disagree. However, on the whole, the positives of the provisions in the bill outweigh the negatives, so the legislator votes in support of the legislation.

Similarly, there are bills a legislator refuses to support unless certain provisions get added or taken out by amendment. As this Court’s precedent makes clear, constitutionally prohibited logrolling occurs only when a single Act contains “two or more subjects that are so dissimilar and discordant that by no fair intendment can be considered as having any legitimate connection with or relation to each other.” *Long*, 142 N.W.2d at 381.

The second rationale in *Mabry* of preventing surprise when legislators are not informed is purely a legislative matter for the General Assembly. It is unnecessary and not appropriate for the courts to analyze such a factor when making determinations on the single-subject rule.

It is for the legislative branch and individual legislators to prevent surprise and avoid being uninformed. As the title of HF 594 contained all the subjects in the bill, the General Assembly provided sufficient notice to legislators. In addition, the General Assembly has taken a number of steps to ensure there are no surprised or uninformed legislators voting on bills.

As previously discussed, the Constitution does not require the General Assembly to adopt rules and procedures that address these issues. However, the General Assembly has voluntarily done so. These rules and procedures provide processes for lawmaking that exceed any constitutional mandates.

Bills and amendments are posted on the General Assembly's website. The General Assembly requires copies of amendments be available before a vote can be taken. Each body of the General Assembly permits its members of the same political party to meet (caucus) at any point before or even during debate to discuss legislation. This is a common practice utilized by both parties to ensure that members are fully informed on legislation.

During debate each body also permits a legislator to request the presiding officer defer on a bill. This is an informal legislative process whereby a piece of legislation is tabled until an amendment is drafted or an answer to a question concerning the legislation can be found. A legislator desiring more information on a bill is permitted to ask questions of other members. In addition, a point of order may be raised to obtain clarification on an issue or question of procedure.

The final purpose in *Mabry* is preventing surprise to the public of the subjects in a bill. The district court stated that “Iowans would have been asleep by the time the Amendment was passed in its final form.” MJS Ruling at 18. This is not a necessary consideration for the courts when making a single-subject rule determination. Proper notice to the public under Article III, section 29 was provided by the title of HF 594.

However, the General Assembly provides additional notice regarding all aspects of HF 594. In addition to the legislation being posted on the General Assembly’s website, the bill history concerning HF 594 is readily accessible. This includes videos of debate, results of votes, amendments, points of order, and the language in the bill. See Iowa Legislature, House File 594:

<https://www.legis.iowa.gov/perma/083020217277>.

This information also discloses lobbyists who declared positions on the bill, including those who declared during the same day or night that both legislative bodies were considering HF 594. See Iowa Legislature, House File 594, Lobbyist Declarations:

<https://www.legis.iowa.gov/perma/083020217278>.

The time of day the bill is passed is irrelevant and certainly not mandated by the Constitution. It is not appropriate for another branch of government to regulate when the General Assembly concludes business for the day. The same is true if the legislative branch tried to tell the other two branches what hours of the day to work and not work. To do so results in a separation of powers issue.

C. Iowa courts recognize importance of separation of powers and authority of General Assembly in passing legislation.

Iowa courts have long recognized the importance and need for the political question doctrine. This Court recently discussed the doctrine in *Iowa Citizens for Community Improvement, et al., v. State of Iowa et al.*, No. 19-1644 slip op. at 31-30 (Iowa June 18, 2021). The operative distinction is between questions “that could be resolved upon...judicial determination” and matters requiring “the exercise of “legislative discretion” or “exercise of legislative authority.” *ICCI* at 23-24, citing *Denny v. Des Moines County*, 121 N.W 1066, 1069-1070 (Iowa 1909).

The Court also noted it had adopted the six-factor test from *Baker v. Carr*, 369 U.S. 186, 210-211, 217 (1962):

(1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving the issue; (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; (4) the impossibility of a court's undertaking independent resolution without expressing a lack of the respect due coordinate branches of government; (5) an unusual need for unquestioning adherence to a political decision already made; or (6) the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

ICCI at 21, 24. When one or more of these factors is present, the Court may find a political question. *State ex rel. Dickey v. Besler*, 954 N.W.2d 425, at 435 (Iowa 2021).

The principles underlying *Baker* are found in Article III of Iowa's Constitution establishing the General Assembly as a separate and equal branch of government.

Article III is divided into two headings. The first heading is entitled "Three Separate Departments" and contains Section 1:

Departments of government. The powers of the government of Iowa shall be divided into three separate departments — the legislative, the executive, and the judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

The second heading in Article III is entitled “Legislative Department” and contains two sections of particular importance to this case. The first is found in Section 1:

General assembly. The legislative authority of this state shall be vested in a general assembly, which shall consist of a senate and house of representatives; and the style of every law shall be, “Be it enacted by the General Assembly of the State of Iowa.”

The second is Section 9:

Authority of the houses. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and, with the consent of two thirds, expel a member, but not a second time for the same offense; and shall have all other powers necessary for a branch of the general assembly of a free and independent state.

A leading case concerning the political question doctrine and the interpretation of Article III, section 9 involves the legislature’s constitutional authority over its “rules of proceedings.” In *Des Moines Register v. Dwyer*, 542 N.W.2d 491 (Iowa 1996), the Court found the Iowa Senate’s response to an open records request to be a political question not subject to judicial resolution. The political question doctrine was grounded in the principle of the separation of powers “which requires we leave intact the respective roles and regions of independence of the coordinate branches of government.” *Id.* at 495.

The Court further noted that Article III, section 9 expressly grants to each legislative chamber the authority to “determine its rules of proceedings.” *Id.* at 496. For this purpose, “rules of proceedings” must be interpreted broadly, to include “rules which govern the internal workings of the legislature,” “acts that occur in the regular course of the legislative process,” and “the propriety of and effect of any action . . . taken by the body as it proceeds in the exercise of any power, in the transaction of any business, or in the performance of any duty conferred on it by the Constitution’.” *Id.* at 498-501.

The General Assembly utilizes this authority to “determine its rules of proceedings” by adopting rules relating to the passage of legislation. During the first session of a General Assembly, the House of Representatives and the Senate adopt resolutions establishing the rules that provide, in part, procedures and processes for passing legislation in their respective bodies. In addition, the House and Senate adopt “joint rules” that establish additional procedures and processes binding on both bodies when passing legislation.

Again, these are not mandatory requirements for a bill to be deemed constitutional under Article III, section 29. Rather, they demonstrate the General Assembly voluntarily providing additional notice requirements.

These resolutions containing the chamber and joint rules are posted on the General Assembly's website, advance through the committee process for review and action, are subject to debate and amendment, and are voted on for adoption. After adoption, the final rules are posted on the General Assembly's website. Iowa Legislature Chamber Rules:

<https://www.legis.iowa.gov/perma/01092017629>.

Courts have upheld the authority of the General Assembly to adopt rules of procedure for passing legislation. "With the exception of the few mandatory provisions noted the Constitution of Iowa has given the general assembly a free hand in determining its rules of procedure." *Carlton*, 23 N.W.2d at 889. Also, "whether either chamber strictly observes these rules or waives or suspends them is entirely within its own control or discretion, so long as it observes the mandatory requirements of the Constitution." *Id.*

The drafting and enacting of legislation, in a manner suited to carry out the policy objectives of the legislature and to promote the likelihood of passage and signature by the Governor, is undoubtedly an appropriate action to be taken under Article III, section 9 and the *Dwyer* decision. The drafting and enacting of legislation is the fundamental purpose of the legislative branch.

It is necessary for the courts to make single-subject rule determinations based on the provisions of Article III, section 29. However, these determinations cannot be made absent consideration by the courts of the General Assembly's authority under Article III, section 9. The authority of both the judicial and legislative branch can be maintained by considering the language of the bill alone when making such determinations.

D. Iowa's Constitution mandates certain requirements in legislation, but these mandates support not going beyond language of an Act in single-subject determinations.

Amici acknowledge that the Constitution mandates certain requirements on the General Assembly in the passing of laws. In addition, the General Assembly is prohibited from adopting rules of proceedings or otherwise taking actions to avoid these requirements.

Article III, section 15:

Bills. Bills may originate in either house, and may be amended, altered, or rejected by the other; and every bill having passed both houses, shall be signed by the speaker and president of their respective houses.

Article III, section 17:

Passage of bills. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the general assembly, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.

There are several other sections in the Constitution placing limits on the type of legislation that may be passed. For example, no establishment of religion; no abridgement of free speech; laws must be of general nature; and no attainders or ex post facto. Iowa Constitution, Article I, sections 3, 6, 7, and 21.

In applying the various sections of the Constitution, a bill cannot be of the type that is prohibited or limited, shall include the phrase “Be it enacted by the General Assembly of the State of Iowa,” be passed by “assent of a majority of all the members elected to each branch of the general assembly,” and “signed by the speaker and president of their respective houses.” The bill is then presented to the Governor for consideration and finally deposited with the Secretary of State. Iowa Constitution, Article III, sections 1, 16, and 17.

Therefore, going beyond the bill’s language is unnecessary if the legislation complies with these requirements. As the legislature is a “co-ordinate branch of the government, in no sense inferior to the other branches and equally bound by oath of obedience to the Constitution, we perceive no reason for not regarding its final record as embodied in such enrolled bill.” *Davidson Bldg. Co. v. Mulock*, 235 N.W.2d 45 (Iowa 1931) (quoting *State of Iowa, ex rel Hammond v. Lynch*, 151 N.W. 91, 155 (Iowa 1915)).

Thus, previous court decisions have recognized that not only is it frequently unnecessary, but at times impermissible, for courts to review legislative procedures when determining if legislation is constitutional. *Carlton*, 23 N.W.2d at 889. These determinations are grounded into the concept of the General Assembly's authority in the area of establishing rules in passing of legislation. *Id.* Therefore, these cases recognize the separation of powers' role when courts are reviewing legislation being challenged under Article III, section 29.

These decisions also recognize the accompanying nonjusticiable political question issues that arise when courts "review actions involving legislative procedures and practices indigenous to the political process, unrelated to any specific constitutional mandate." *Dwyer*, 542 N.W.2d at 501. "As elected representatives involved with the political process, senators are conditioned to decide political questions." *Id.* "The proper forum for a challenge to the rules or procedures used in the house or senate, on matters distinctly within the dominion of each chamber, lies not with the courts, but in the political process." *Id.*

The same rationale can and should be applied to the single-subject rule under Article III, section 29. The analytical framework that considers only the language in an Act is consistent with these opinions.

HF 594 complies with all of the constitutional requirements for the enactment of a bill. There is no dispute that the Act contains the necessary language mandated by the Constitution, was passed by a majority vote of members in both bodies of the General Assembly, and that the votes on the final passage were entered on the appropriate House and Senate Journals. It was signed by both the President of the Iowa Senate and the Speaker of the Iowa House of Representatives. There is also no dispute that the bill was sent to the Governor for consideration, and after her approval, was deposited in the office of the Secretary of State.

This Court is able to determine whether or not there has been a violation of Article III, section 29 without encroaching on the authority of the General Assembly in doing so. By limiting the scope of single-subject review to the language in an Act, the authority of the General Assembly is protected. However, even in doing so, this Court also does not cede any of its authority.

In analyzing and considering only the language in an Act, the balance between the authority of the courts to make single-subject determinations and the authority of the General Assembly to pass legislation is kept inviolate.

CONCLUSION

For the reasons provided herein, this Court should find that the procedures utilized by the Iowa General Assembly in passing the Act of June 29, 2020 (House File 594), ch. 1110, 2020 Iowa Acts 298 are nonjusticiable political questions for purposes of Article III, section 29 of Iowa's Constitution so long as the procedures otherwise comply with the Constitution. In addition, that the Court should find that in making single-subject determinations under Article III, section 29 of Iowa's Constitution, only the language contained in the Act should be considered.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2)

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/s/ W. Charles Smithson
Signature

August 31, 2021
Date

/s/ Robert J. Bird, Jr.
Signature

/s/ Jake Heard
Signature

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2021, I electronically filed the forgoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, that will send notification to the parties of record.

/s/ W. Charles Smithson
W. Charles Smithson