IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

United Auto Workers, Local Union 1112, et al., Plaintiffs, v. Jennifer L. Brunner, Ohio Secretary of State, Defendant.	:	FINAL APPEALABLE ORDER DOES NOT TERMINATE Case No. 05CVH-03-2553 Judge John F. Bender
United Auto Workers, Local Union 1112, et al., Plaintiffs, v. Jennifer L. Brunner, Ohio Secretary of State, Defendant.	:	Case No. 07CVH-03-3412 CONSOLIDATED
Franklin County Board of Commissioners, Plaintiff, v. State of Ohio, et al., Defendants.	:	Case No. 07CVH-05-7008 CONSOLIDATED

DECISION AND ENTRY
GRANTING MOTION OF UNION PLAINTIFFS
FOR SUMMARY JUDGMENT ON COUNTS X, XI AND XII
OF THEIR COMPLAINT
Filed August 24, 2007

And
GRANTING MOTION OF UNION PLAINTIFFS
FOR SUMMARY JUDGMENT ON COUNTS XIV AND XV
OF THEIR AMENDED COMPLAINT
Filed February 22, 2008
And
GRANTING MOTION OF COMMISSIONER PLAINTIFFS
FOR SUMMARY JUDGMENT ON COUNT I
OF THEIR SUPPLEMENTAL COMPLAINT
Filed February 22, 2008
And
GRANTING MOTION OF DEFENDANT SECRETARY OF STATE
FOR SUMMARY JUDGMENT
Filed February 22, 2008
And
DENYING MOTION OF DEFENDANTS STATE OF OHIO
AND ATTORNEY GENERAL FOR SUMMARY JUDGMENT
Filed February 22, 2008

RENDERED THIS 18TH DAY OF JUNE 2008

BENDER, J.

A. Previous Decisions

On June 8, 2007, the court declared that Section 3 of H.B. 694[1] violated Section 28, Article II of the Constitution, which prohibits retroactive laws.[2] The June 8, 2007 decision was journalized; no appeal was taken.

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[1] An enrolled bill is the final authority on any law the General Assembly approved. *State v. Wilson* (1997), 77 Ohio St.3d 334, 336, fn. 4. "If the language of the enrolled act deposited with the secretary of state * * * conflicts with the language of any subsequent printing or reprinting of the statute, the language * * * of the enrolled act prevails." R.C. 1.53.

Only Sub. H.B. 694 was enrolled. Only Sub. H.B. 694 was signed by the Speaker of the House and the President of the Senate. Only Sub. H.B. 694 was signed by the Governor. Only Sub. H.B. 694 was filed by the Governor with the Secretary of State. Although Am. Sub. H.B. 694 was later filed with the Secretary of State, it was neither an enrolled act nor filed by the Governor as required by Section 16, Article II of the Constitution.

As a matter of law, Sub. H.B. 694 prevails over anything that conflicts with it. Therefore, it is the only version of H.B. 694 that could have been in effect. R.C. 1.53. However, for the convenience of the reader it will be referred to throughout this decision simply as H.B. 694.

[2] "Constitution" always refers to the Ohio Constitution.

On December 5, 2007, the court declared that no version of H.B. 694[3] was passed according to the requirements of Section 15, Article II of the Constitution.[4] Therefore, R.C. 3517.13 and 3517.992 were not amended; those statutes are in effect as they were on April 3, 2007, the day before H.B. 694 purportedly took effect.[5] Correspondingly, R.C. 109.96 and 3517.093 were not enacted; they have never been laws.[6]

B. Present Issue

Shortly after Am. Sub. H.B. 119 (the "budget bill" or "appropriations bill") was signed into law on June 30, 2007, the court noted it contained provisions affecting R.C. 3517.093, 3517.13, and 3517.992. H.B. 694 also had provisions that affect the same three statutes. The court specifically asked the parties whether they wanted to address the effect of Am. Sub. H.B. 119 on H.B. 694. The parties said no. At oral arguments on October 10, 2007, the court again asked the parties whether they wanted to address the budget bill's effect on H.B. 694, noting they did not discuss it in their briefs. The parties again said no.

About two weeks after the court's December 5, 2007 written decision declared all of H.B. 694 unconstitutional, but before the court issued a final order implementing that decision, the Attorney General filed a motion to dismiss this case, arguing for the first time that the budget bill (passed six months earlier) reenacted the provisions of H.B. 694 and rendered the case moot.[7]

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[3] All versions of H.B. 694 are published at www.legislature.state.oh.us/bills.cfm?ID=127_HB_119

[4] Titled, "How bills shall be passed."

[5] *State ex rel. Wilmot v. Buckley* (1899), 60 Ohio St. 273, paragraph four of the syllabus.

[6] The General Assembly did not attempt to reenact R.C. 109.96; it will not be discussed further.

[7] A case becomes moot when an actual controversy no longer exists between parties whose legal rights are truly affected. *Lingo v. Ohio Cent. RR., Inc.*, Franklin App. No. 05AP-206, 2006-Ohio-2268, at ¶20. An actual controversy also no longer exists when an outside event resolves the disputed issue or prevents the court from granting relief. *Tschantz v. Ferguson* (1991), 57 Ohio St.3d 131, 133. Likewise, no actual controversy exists when a court ruling would be purely academic or hypothetical, or would have no practical effect on the parties' legal relationship. *Wagner v. Cleveland* (1988), 62 Ohio App.3d 8, 13.

The parties were told that before the court could address the effect of Am. Sub. H.B. 119 on H.B. 694, the pleadings had to be amended;[8] the parties amended them. All parties moved for summary judgment. Although this case could have been decided long ago, the issue of whether Am. Sub. H.B. 119 properly reenacted the substantive provisions of H.B. 694 is now fully briefed and before the court for a decision.[9]

C. How a Law Shall Be Amended

> *No law shall be * * * amended unless the new act contains the entire * * * section or sections amended, and the section or sections amended shall be repealed.*[10]

When a section of a law is amended, the General Assembly must underline the new language and strike through the language it replaces. Unchanged language must appear as ordinary text. When a section of a law is newly enacted, the entire section must be underlined.[11] A bill must be printed exactly as it was passed.[12]

The Attorney General claims that the budget bill clearly expresses the intent of General Assembly to enact Am. Sub. H.B. 694 (the version of H.B. 694 approved by the House and Senate) into law.[13] The remaining parties contend that no matter what the General Assembly intended, it did not follow the steps the Constitution requires to enact a law when it passed the budget bill.

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[8] The complaint asked the court to issue a declaratory judgment on the constitutionality of H.B. 694. Although the Attorney General's answer asserted as an affirmative defense that Am. Sub. H.B. 119 mooted claims about H.B. 694, the parties did not raise the issue until after the court issued its December 5. 2007 ruling, even though the court first inquired about it shortly after Am. Sub. H.B. 119 was passed. In short, the court did not rule how Am. Sub. H.B. 119 affected H.B. 694 because the parties did not ask the court to decide the issue. For a more complete explanation of why the pleadings had to be amended, see the court's January 3, 2008 decision converting the motion to dismiss to one for summary judgment.

[9] Am. Sub. H.B. 119 contained provisions amending R.C. 3517.093, 3517.13, and 3517.992, which H.B. 694 purported to enact or amend; it did not include the H.B. 694 provision purporting to enact R.C. 109.96. See footnote 3, supra.

[10] Section 15(D), Article II, Ohio Constitution.

[11] Ohio Adm.Code 103-05-01 (A)-(C).

[12] R.C. 101.53.

[13] See footnote 1, supra (explaining that Am. Sub. H.B. 119 could never have had any legal effect because it was never enrolled).

The situation before this court is not without precedent. In 1996, the General Assembly passed Am. Sub. H.B. 350, a part of which enacted R.C. 2744.02(C). In 1997, the General Assembly passed Am. Sub. H.B. 215, a part of which amended R.C. 2744.02(B)(2).[14] To follow the procedural steps to amend a bill that the Constitution requires, Am. Sub. H.B. 215 reprinted all of R.C. 2744.02, including R.C. 2744.02(C) as enacted by Am. Sub. H.B. 350. In 1999, Am. Sub. H.B. 350 was declared unconstitutional.[15] The Attorney General claimed that although R.C. 2744.02(C) was originally enacted by Am. Sub. H.B. 350, it remained in effect after Am. Sub. H.B. 350 was declared unconstitutional because Am. Sub. H.B. 215 reprinted and reenacted it.

In *Stevens v. Ackman*,[16] the Supreme Court was asked to decide whether Am. Sub. H.B. 215 reenacted R.C. 2744.02(C). The court noted that by observing the constitutional format of amending a statute, the General Assembly intends to make only those changes properly indicated according to that format.[17] When it reenacts or amends a statute, the General Assembly intends unchanged portions to be a continuation of the prior law, not a new enactment.[18] The *Stevens* court also reiterated that to amend a bill, the new act must reprint the entire section it amends.[19]

When Am. Sub. H.B. 215 amended R.C. 2744.02(B)(2), it reprinted the version of R.C. 2744.02 as amended by Am. Sub. H.B. 350. Am. Sub. H.B. 215 printed R.C. 2744.02(C) in ordinary text, which indicates the General Assembly intended to not change it. In *Stevens*, the court ruled:

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14 The content of the former R.C. 2744.02(B)(2) and 2744.02(C) has absolutely no effect on this case; the sole focus is on the procedures that were used to enact them.

15 *State ex rel. Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451.

16 *Stevens v. Ackman* (2001), 91 Ohio St.3d 182.

17 Id., at 194, citing *Weil v. Taxicabs of Cincinnati, Inc.* (1942), 139 Ohio St. 198, 206.

18 R.C. 1.54.

19 Section 15(D), Article II, Constitution.

> "Am. Sub. H.B. 215 indicates no intent to reenact or enact R.C. 2744.02(C). * * * Clearly, the General Assembly did not intend to reenact R.C. 2744.02(C) in Am.Sub.H.B. No. 215. Therefore, that act neither reenacted nor enacted R.C. 2744.02(C)."[20]

The facts in this case are almost identical. The General Assembly purportedly enacted H.B. 694; the court declared its retroactivity provision unconstitutional.[21] Before the constitutionality of the rest of H.B. 694 was decided, the General Assembly inserted language that was already purportedly enacted by H.B. 694 into another bill, in this case the budget bill, amended it again, and passed it. Later, the rest of H.B. 694 was declared unconstitutional. The Attorney General claims the statutes H.B. 694 attempted to enact or amend are in effect because Am. Sub. H.B. 119 reenacted them.

The goal of statutory construction is to give full effect to the General Assembly's intent,[22] which is found in the words it chose to express a statute's substance[23] and in the procedures it used to enact, amend, or repeal a statute.[24]

> The question is not what did the General Assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.[25]

The effect the General Assembly intended Am. Sub. H.B. 119 to have on R.C. 3517.093, 3517.13 and 3517.992 lies in the words of the act. The title of Am. Sub. H.B. 119 says it amends, not enacts, R.C. 3517.093, 3517.13 and 3517.992.[26]

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20 *Stevens*, supra at 194.

21 Decision, June 8, 2007.

22 *Stevens*, supra at 193-194, citing *Carter v. Youngstown* (1946), 146 Ohio St. 203, paragraph one of the syllabus.

23 Id., citing *Wachendorf v. Shaver* (1948), 149 Ohio St. 231, paragraph five of the syllabus.

24 Id., citing *State ex rel. Durr v. Spiegel* (1914), 91 Ohio St. 13, 22; *In re Hesse* (1915), 93 Ohio St. 230, 235 (stating the General Assembly's intent is determined from the way a statute was amended).

25 *Tomasik v. Tomasik*, 11 Ohio St.3d 481, 2006-Ohio-6109, ¶14, quoting *Slingluff v. Weaver* (1902), 66 Ohio St. 621, paragraph two of the syllabus.

26 Am. Sub. H.B. 119, p. 1, 2.

> *Be it enacted by the General Assembly of the State of Ohio*:
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> SECTION 101.01. That sections 9.821, * * * 3517.093, * * * 3517.13, 3517.992, * * * and 631.23 be amended: [27]

Am. Sub. H.B. 119 cannot amend R.C. 3517.093 because H.B. 694 never enacted it. Am. Sub. H.B. 119 cannot be interpreted as an expression of the General Assembly's intent to enact R.C. 3517.093 because the text of the act simply cannot support that construction. First, Am. Sub. H.B. 119 clearly says it amends R.C. 3517.093. Second, R.C. 3517.093 appears in ordinary text and is underlined and stricken through.[28] If the General Assembly had intended to enact R.C. 3517.093 in Am. Sub. H.B. 119, it would have said "to enact" instead of "to amend" and would have underlined the entire text.

Because H.B. 694 is unconstitutional, it did not amend R.C. 3517.13 or 3517.992. A law found to be unconstitutional is treated as if it never existed. Thus, the printed text of Am. Sub. H.B. 119 purports to amend versions of R.C. 3517.13 and 3517.992 as amended by H.B. 694, which never existed. Thus, the pre-H.B. 694 versions of R.C. 3517.13 and 3517.992 are the law.[29]

The only versions of R.C. 3517.13 and 3517.992 that Am. Sub. H.B. 119 could possibly amend are the pre-H.B. 694 versions of these statutes. It does not reprint them, as Section 15(D), Article II, of the Constitution says it must in order to amend them. Because Am. Sub. H.B. 119 does not comply with Section 15(D), Article II, of the Constitution, it does not amend R.C. 3517.13 or 3517.992 and does not amend or enact R.C. 3517.093.

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27 Id., p. 7 -8.
28 Id., p. 726-729.
29 *State ex rel. Wilmot*, supra.

D. One-Subject, Clearly Expressed

> *No bill shall contain more than one subject, which shall be clearly expressed in its title.*

The Union Plaintiffs and the Secretary of State claim the campaign finance laws from H.B. 694 that Am. Sub. H.B. 119 attempts to reenact are not rationally related to the remainder of the act, which is a general appropriations bill. The Attorney General contends that Am. Sub. H.B. 119 does not violate the one subject rule because the H.B. 694 "provisions concerning the awarding of state contracts are rationally related to the utilization of governmental resources or the disbursement of funds, proper subjects of a budget bill."[30]

In 1851, the Second Constitutional Convention added the one-subject rule to the Ohio Constitution to prevent logrolling[31] –"the legislative practice of including several propositions in one measure * * * so that the legislature * * * will pass all of them, even though these propositions might not have passed if they had been submitted separately."[32] It "also has the related benefit of operating to prevent 'riders' from being attached to bills that are * * * so certain of adoption that the rider will secure adoption not on its own merits, but on the measure to which it is attached.'"[33] When applying the one-subject rule, courts must avoid unnecessarily restricting the scope and operation of laws, multiplying their number needlessly, or preventing comprehensive legislation.[34]

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30 Attorney General's memo contra, p. 17.
31 *State ex rel. Dix v. Celeste* (1984), 11 Ohio St.3d 141, 143.
32 Black's Law Dictionary (8 Ed. 2004), 960.
33 *Dix*, supra., quoting Ruud, "No Law Shall Embrace More Than One Subject" (1958), 42 Minn. L. Rev. 389, 391.
34 *State ex rel. Ohio Civ. Serv. Emps. Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.,* 104 Ohio St.3d 122, 2004-Ohio-6363, ¶25, citing *Dix*, supra at 145.

A bill with more than one topic does not violate the one-subject rule so long as a common purpose or relationship between topics exists.[35] While courts accord great deference to the General Assembly and interpret the "common purpose or relationship" requirement very liberally, a manifestly gross and fraudulent violation of the one-subject rule will invalidate an act.[36] A "manifestly gross and fraudulent violation" occurs when there is such disunity of subject matter that there is "no discernible practical, rational, or legitimate reason for combining the provisions in one Act."[37] The one-subject rule is not merely directory; it "'is part of our Constitution and must be enforced.'"[38]

Applying the one-subject rule to an appropriations bill is particularly complex because "appropriations bills * * * are different from other Acts of the General Assembly [;] [they] encompass many items, all bound by the thread of appropriations."[39] "The danger of riders is particularly evident when a bill as important and likely of passage as an appropriations bill is at issue."[40]

In *Simmons-Harris v. Goff*,[41] a ten-page School Voucher Program was included in a one-thousand page general appropriations bill; the court determined the School Voucher Program was "little more than a rider."[42] The court not only found no rational reason to combine the School Voucher Program with the biennial appropriations bill; it found that there was "a 'blatant disunity between' the School Voucher Program and

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35 Id., citing *State ex rel. Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 496.
36 *In re Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777, paragraph one of the syllabus.
37 *Beagle v. Walden* (1997), 78 Ohio St.3d 59, 62. See also, *Dix*, supra at 146 (one-subject provision is directed at disunity in subject matter, not plurality)
38 *State ex rel. OCSEA*, supra at ¶29, quoting *Simmons-Harris v. Goff* (1999), 86 Ohio St.3d 1, 15.
39 Id., at 16.
40 *Simmons-Harris*, supra at 16 (stating a general appropriations bill presents a "special temptation" to attach riders).
41 *Simmons-Harris v. Goff* (1999), 86 Ohio St.3d 1.
42 Id, at ¶16.

most other items" in the bill in violation of the one-subject rule.[43] Consequently, the School Voucher program was severed from the rest of the appropriations bill.

In *State ex rel. Ohio Civ. Serv. Emps. Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.,*[44] 104 Ohio St.3d 122, a single sentence in a 226-page budget corrections bill excluded the employees of the Ohio School Facilities Commission from the protections of the Public Employees' Collective Bargaining Act. Attempting to explain the apparent disunity of subject matter, SERB contended that the items in the bill "are all bound by appropriations, thus uniting to form a single subject" and comply with the one-subject rule.[45] The Ohio Supreme Court flatly rejected this rationale:

> This argument * * * stretches the one-subject concept to the point of breaking. Indeed, SERB's position is based on the notion that a provision that impacts the state budget, even if only slightly, may be lawfully included in an appropriations bill merely because other provisions in the bill also impact the budget. Such a notion, however, renders the one-subject rule meaningless in the context of appropriations bills because virtually any statute arguably impacts the state budget, even if only tenuously. We flatly rejected this proposition in *Simmons-Harris*. * * *
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> * * * SERB's argument is primarily aimed at persuading us that an appropriations bill can survive scrutiny under the one-subject rule. Of that there can be no doubt. In the instant case, however, the record is devoid of any explanation whatever as to the manner in which the amendment to R.C. 3318.31 will clarify or alter the appropriation of state funds. Accordingly, we can discern no common purpose or relationship between the budget-related items in Am.Sub.H.B. No. 405 and the exclusion of OSFC employees from the collective-bargaining process.[46]

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43 Id.
44 104 Ohio St.3d 122, 2004-Ohio-6363.
45 Id., at ¶33.
46 Id., ¶33-34 (Emphasis added).

Therefore, the provision excluding the employees of the Ohio School Facilities Commission from the Public Employees' Collective Bargaining Act was severed from the rest of the budget corrections bill.

An appropriation is "an authorization granted by the General Assembly to make expenditures and to incur obligations for specific purposes."[47] The amendments to R.C. 3517.093, 3517.13, and 3517.992 are purely regulatory. They do not authorize anyone to spend state money or incur any obligations on behalf of the state. The General Assembly passed H.B. 694 as a stand-alone bill without including an appropriation, belying any suggestion that R.C. 3517.093, 3517.13, and 3517.992 somehow need to be in an appropriations bill. R.C. 3517.093, 3517.13, and 3517.992 did not suddenly become infused with a "common thread of appropriations" simply because they were included in an appropriations bill or because they could operate to disqualify a contractor from being eligible to be awarded a state or local contract.[48] R.C. 3517.093, 3517.13, and 3517.992 have absolutely nothing to do with how much money the state can spend, which agency or authority can spend it, or what it can be spent on. They merely define a class of those ineligible to receive public funds.[49]

When and how the provisions from H.B. 694 were added to Am. Sub. H.B. 119 also carry some significance. The House version of the budget bill said nothing about H.B. 694. The Senate version simply incorporated the court ruling that applying H.B.

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[47] R.C. 131.01(F).

[48] *Simmons-Harris v. Goff*, 86 Ohio St.3d at 16.

[49] In *State ex rel. OCSEA*, supra at ¶33, the Supreme Court expressly rejected the argument that the effect a statute could have on a contract was a sufficient nexus to appropriations to satisfy the one-subject rule; the budget bill was "devoid of any explanation whatever" on how excluding employees of the Ohio School Facilities Commission from the protections of the Public Employees' Collective Bargaining Act would clarify or alter the appropriation of state funds."

In this case, the provisions of H.B. 694 disqualify a class of persons from contracting with the state or its political subdivisions based on campaign contributions. There is no conceivable explanation as to how these provisions could clarify or alter the appropriation of state funds.

694 retrospectively was unconstitutional.[50] The Conference Committee report mirrored the Senate version.

The day before Am. Sub. H.B. 119 was to be voted on, the Senate was presented with about 190 pages of amendments.[51] The same amendments were presented to the House the day of the vote.[52] The provisions amending R.C. 3517.093, 3517.13, and 3517.992 appear for the first time in the midst of those last minute amendments.

The House and Senate voted on the budget bill with three days remaining in the biennium; the Governor signed it the last day of the biennium. If the budget bill had not been signed that day, state government would no longer have authority to operate. This scenario presents the temptation to add riders with uncertain prospects of passing on their own to an appropriations bill that is virtually certain to pass, i.e., to engage in logrolling, "'the very evil the one-subject rule was designed to prevent.'"[53]

Finally, the one-paragraph title of H.B. 694 clearly states a purpose to amend and enact campaign finance laws:

> To amend sections 3517.13 and 3517.992 and to enact sections 109.96 and 3517.093 of the Revised Code to limit solicitations of and political contributions by owners and certain family members of owners of businesses that are seeking or that have been awarded public contracts, to require the Attorney General to develop and provide to each executive agency model contracts that the agency is required to use in any contract the agency enters into, and to make other changes to the Campaign Finance Law.

By contrast, the title of Am. Sub. H.B. 119 not only waits six pages to state it is an appropriations bill, it also makes no reference to campaign finance reform. The only

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50 Id., p. 2588.

51 127th General Assembly, Senate Journal, June 26, 2007, p. 479-665.

52 127th General Assembly, House Journal, June 27, 2007, p. 532-718.

53 *Akron Metro. Housing Auth. Bd. of Trustees v. State of Ohio*, Franklin App. No. 07AP-738, 2008-Ohio-2836, ¶17, quoting *State ex rel. Dix v. Celeste* (1984)m 11 Ohio St.3d 141, 145.

way to determine the budget bill also reforms campaign finance laws is to wade through a list of 545 numbers of sections of the Revised Code and successfully pick the three on campaign finance reform.

In sum, R.C. 3517.093, 3517.13, and 3517.992 represent a complete disunity of subject matter with the balance of the biennial appropriations bill. The record before the court contains no practical, rational, or legitimate reason for combining them with Am. Sub. H.B. 119. Consequently, Am. Sub. H.B. 119 violates Section 15(D), Article II of the Constitution, a directive from the people of Ohio that (1) no bill shall contain more than one subject, and (2) a bill's subject shall be clearly stated in its title.

SO ORDERED.

/s/ John F. Bender
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John F. Bender, Judge
Filed June 18, 2008 11:23 a.m.

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