LOST IN TRANSLATION: HOW FLORIDA'S SINGLE SUBJECT RULE HAS BEEN SWALLOWED UP BY THE CODIFICATION EXCEPTION

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Abstract

As in most states, Florida's constitution contains a single-subject rule requiring each law to address only one subject, which is intended to prevent logrolling. Yet under what some call a "codification exception," Florida courts find that statutes are no longer subject to the single-subject rule once they have been codified, effectively eviscerating the rule. This Note seeks to demonstrate that this interpretation of the rule is profoundly mistaken and needs to be rectified.

To that end, this Note traces Florida courts' treatment of the single-subject rule since its adoption to show how the original meaning of the rule has been lost in translation as the courts fell into one analytical pitfall after another. The courts have ultimately advanced two rationales for the codification exception: (1) codification can cure constitutional issues relating to form in the session laws (even if not issues of substance), and (2) codification supersedes the session laws and is not itself subject to the single-subject rule, so violations in the session laws are immaterial. Yet, each rationale falls apart when scrutinized under its own logic. The codification exception cannot be squared with the purpose of the single-subject rule as articulated by the courts, and thus must be abolished. This Note seeks to serve as a guide to Florida practitioners to achieving just that.

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INTRODUCTION

Florida's constitution, like that of most other states,[1] contains a "single-subject rule" that requires laws to address one subject at a time—specifically, "Every law shall embrace but one subject and matter properly connected therewith . . . ."[2] This rule is primarily designed to prevent logrolling, where unrelated provisions are included in the same bill even though they are not supported by a majority of lawmakers.[3] In that way, the rule "ensure[s] that every proposed enactment is considered with deliberation and on its own merits."[4]

At least that is the theory. Florida courts, however, have taken a different approach that largely nullifies the single-subject rule. A line of Florida Supreme Court cases holds that the annual codification of the session laws into the *Florida Statutes* serves to remedy any single-subject violations in the session laws.[5] The Florida Supreme Court's thinking in

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1. Thirty-nine states, including Florida, have general single-subject requirements in their constitutions. *See* Brannon P. Denning & Brooks R. Smith, *Uneasy Riders: The Case for a Truth-in-Legislation Amendment*, 1999 UTAH L. REV. 957 app. A (reproducing each state's single-subject rule as applicable). The constitutions of four other states apply the requirement only to appropriations bills or to local and private laws. ARK. CONST. art. 5, § 30 (applying the rule to appropriations bills); MISS. CONST. art. 4, § 69 (same); N.Y. CONST. art. III, § 15 (applying the rule to private and local bills); WIS. CONST. art. IV, § 18 (same). Moreover, New Hampshire had seemingly adopted a single-subject rule through the courts in 2001, see Handley v. Town of Hooksett, 785 A.2d 399, 402–04 (N.H. 2001) (applying the rule to an amendment of a town zoning ordinance despite the apparent absence of constitutional or statutory authority for the requirement), but only one New Hampshire court has discussed the rule since then. *See* Tefft v. Bedford Sch. Dist., No. 03-E-394, 2003 WL 22254706, at *2 (N.H. Super. Ct. Sept. 25, 2003) (noting that the court in *Handley* had "arguably" adopted the rule, but "find[ing] it unnecessary to decide whether *Handley* presages that the single subject rule may have become part of the common law of New Hampshire"). The remaining six states which lack single-subject requirements are Connecticut, Maine, Massachusetts, North Carolina, Rhode Island, and Vermont.

2. FLA. CONST. art. III, § 6. Read in full, this provision states,

> Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title. No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection. The enacting clause of every law shall read: "Be It Enacted by the Legislature of the State of Florida."

Id.

3. For a fuller discussion of what logrolling means and its relevance to the single-subject rule, *see infra* notes 23–26 and accompanying text.

4. Dep't of Educ. v. Lewis, 416 So. 2d 455, 459 (Fla. 1982).

5. *E.g.*, Loxahatchee River Env't Control Dist. v. Sch. Bd. of Palm Beach Cnty., 515 So. 2d 217, 218 (Fla. 1987); *see infra* Part II.

its more recent decisions is that the rule is not meant to apply to the codification of the session laws.[6] And, according to the court, because the codified laws effectively supersede the session laws, laws are not susceptible to the rule at all once they have been codified.[7] In other words, codification is said to "cure" any single-subject violation in the underlying session laws.[8]

Therefore, under this "codification" rule or exception, as some courts have called it, a Florida court will refuse to hear a single-subject challenge to any law except to the extent that the law applied to a party in the short time between the law's effective date and its codification, which is one year or less.[9] What happened in *State v. Rothauser*,[10] a criminal case, is typical of how courts will treat claims falling outside this narrow window. The defendant, Rothauser, claimed that the statute in question violated the single-subject rule, and in fact, the Florida Supreme Court had found the statute unconstitutional on that very ground in a prior case.[11] Yet, because the law had been codified by the time of Rothauser's offense, the district court of appeal held that the law was no longer susceptible to a single-subject challenge.[12] In other words, Rothauser was subject to a criminal statute acknowledged by all (including the district court) to be unconstitutional because he did not commit his alleged crime sooner.

The absurdity of this result did not escape the district court's attention. The court found it "worth noting that [Rothauser] has a point [against the codification exception], and that at least one state supreme court agrees with him."[13] The court also noted that logrolling is the primary evil animating the single-subject rule, yet "the wholesale reenactment of the laws of Florida by [codification] . . . is undeniably the ultimate act of logrolling; thus, it cannot serve as a remedy to cure logrolling."[14] All the same, the court's hands were tied by controlling precedent.

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6. *See infra* notes 65–73 and accompanying text.

7. *See infra* notes 65–73 and accompanying notes.

8. *E.g.*, Salters v. State, 758 So. 2d 667, 670 (Fla. 2000) (per curiam).

9. *E.g.*, Tormey v. Moore, 824 So. 2d 137, 142 (Fla. 2002) (per curiam) (first citing Trapp v. State, 760 So. 2d 924 (Fla. 2000) (per curiam); and then citing *Salters*, 758 So. 2d at 667), *receded from on other grounds*, Franklin v. State, 887 So. 2d 1063 (Fla. 2004). These cases refer to a two-year window based on the legislature's then-biennial codification process, but the legislature now publishes *Florida Statutes* annually. Preface, at vi, *Fla. Stat.* (2022).

10. State v. Rothauser, 934 So. 2d 17 (Fla. Dist. Ct. App. 2006).

11. *Id.* at 18–19; *see also* Fla. Dep't of Highway Safety and Motor Vehicles v. Critchfield, 842 So. 2d 782, 785–86 (Fla. 2003) (per curiam) (finding that the statute impermissibly contained two different subjects—worthless checks on the one hand, and driver's licenses and motor vehicle registration and operation on the other).

12. *Rothauser*, 934 So. 2d at 19.

13. *Id.* (referring to People v. Reedy, 708 N.E.2d 1114 (Ill. 1999)). *Reedy* is discussed in detail below. *See infra* Section III. C.

14. *Id.* at 19–20.

Unfortunately, though there are a few sources mentioning that some courts follow this codification exception,[15] virtually no scholarship addresses the merits of the exception (in Florida or elsewhere) and whether the exception can be squared with the underlying purpose of the single-subject rule.[16]

This Note, therefore, seeks to do just that in the specific context of Florida's rule, demonstrating that the codification exception cannot be reconciled with the underlying purpose of the rule. This Note is meant to serve as a guide for Florida practitioners who might litigate the continuing vitality of the exception. Thus, this Note necessarily relies on Florida courts' interpretation of the single-subject rule.

To that effect, this Note proceeds as follows. Part I of this Note provides an overview of Florida's single-subject rule and its meaning and purpose as explained by Florida courts. This Part distinguishes the rule from an accompanying requirement in the same constitutional provision that each law must state its subject in the title, which is animated by a concern for providing notice to the citizenry of the governing law rather than an anti-logrolling purpose—a distinction that becomes important later in this Note. This Part also explains the background and history of the Florida legislature's process for codifying its session laws.

Part II traces the Florida Supreme Court's line of cases construing the single-subject rule. As that Part explains, the court used to faithfully apply the rule when reviewing legislation, even after the first official codification of Florida's laws in 1892. This original meaning of the rule, however, has become lost in translation as the supreme court has fallen into one analytical pitfall after another in its subsequent cases applying the rule, leading to its current doctrine that laws are susceptible to the rule only before they are codified—a period of one year or less.

Putting it all together, Part III presents the main argument against the codification exception in Florida. This Part expands on the distinction between the single-subject rule and its accompanying title requirement, the most important aspect being that they serve fundamentally different purposes: the title requirement serves to provide notice of the contents of the laws to the public, and codification may well "cure" a title violation because it serves the same goal of making the laws more easily accessible. The single-subject rule, on the other hand, serves primarily to prevent logrolling, and the harm caused by logrolling cannot be rectified by merely codifying a law in violation. Yet Florida courts have

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15. *E.g.*, Patrick O. Gudridge, *Complexity and Contradiction in Florida Constitutional Law*, 64 U. MIAMI L. REV. 879, 924–25, 927–28 (2010); NORMAN J. SINGER & J.D. SHAMBIE SINGER, 1A SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 17:1 (7th ed. 2022).

16. Gudridge's article comes closest, *see* Gudridge, *supra* note 15, at 924–25, 927–28, but his sparse analysis merely accepts the codification exception and suggests a possible justification for it post hoc.

improperly conflated the two requirements without addressing the distinct concerns underlying each requirement. This Part also attacks the rationale that the single-subject rule does not apply to codified laws because it would impair the legislature's power of codification; the legislature doubtless has the power to codify its laws without regard to the single-subject rule, but this does not mean that any single-subject violations in the underlying session laws are somehow cured. Finally, this Part describes a decision from the Illinois Supreme Court that rejected a codification exception to its own single-subject rule and urges Florida courts to follow Illinois's lead.

Part IV addresses a practical challenge for anyone seeking to rectify the current, mistaken interpretation of Florida's single-subject rule: getting before the Florida Supreme Court. Unlike in other states, the Florida Supreme Court's jurisdiction is circumscribed so that it can hear only a few narrow categories of cases. This Note proposes two methods of obtaining review in the supreme court. First, a district court of appeal can certify even well-settled questions of law as involving questions of great public importance that warrant the supreme court's review. Second, if the district courts conflict as to how to apply the codification exception in a given situation, the supreme court has the power to decide the antecedent question of whether the codification exception should be abolished altogether, thereby mooting the conflict issue.

This Note then concludes with some final thoughts, briefly addressing concerns about the lack of finality that would come with abandoning the codification exception. It also explains that courts may come to use the single-subject rule as an interpretive principle as well, choosing a reasonable interpretation that would comply with the rule instead of simply finding a statute unconstitutional.

I. OVERVIEW OF FLORIDA'S SINGLE SUBJECT RULE

Florida's single-subject rule has been in the constitution since 1868.[17] The critical portion of the current constitutional provision actually

17. Franklin v. State, 887 So. 2d 1063, 1072 (Fla. 2004); *see* FLA. CONST. of 1868, art. IV, § 14 ("Each law enacted in the Legislature shall embrace but one subject and matter properly connected therewith . . . ."); FLA. CONST. of 1885, art. III, § 16 ("Each law enacted in the Legislature shall embrace but one subject and matter properly connected therewith . . . ."); FLA. CONST. art. III, § 6. While this Article discusses the single-subject rule applicable to the legislature, another provision similarly requires that constitutional amendments proposed by citizen initiatives "embrace but one subject and matter directly connected therewith" unless they would limit the government's power to raise revenue. FLA. CONST. art. XI, § 3. Because such initiatives are not subject to debate as legislative bills are, and because they seek to change the constitution rather than make statutory law, they are reviewed more strictly than legislative laws. *See* Fine v. Firestone, 448 So. 2d 984, 989 (Fla. 1984). The legislature has also imposed its own single-subject rule, with virtually identical language, on county and municipal ordinances. FLA. STAT. §§ 125.67, 166.041(2) (2024).

contains two requirements: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."[18] The first clause is the single-subject rule at the heart of this Note. The second, requiring a law's subject to be stated in the title, may be called the "title requirement" for convenience.[19] Together, these requirements serve to "prevent hodge podge or 'log rolling' legislation," to "prevent surprise or fraud by means of provisions in bills of which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted," and to "fairly apprise the people of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon."[20] As the Florida Supreme Court put it in 1930:

> It had become quite common for legislative bodies to embrace in the same bill incongruous matters having no relation to each other or to the subject specified in the title, by which means measures were often adopted without attracting attention. And frequently such distinct subjects, affecting diverse interests, were combined in order to unite the members who favored either in support of all. And the failure to indicate in the title the object of a bill often resulted in members voting ignorantly for measures which they would not knowingly have approved. And not only were members thus misled, but the public also; and legislative provisions were sometimes pushed through which would have been made odious by popular discussion and remonstrance if their pendency had been seasonably demonstrated by the title of the bill. Thus it was long since decided that these evils should be corrected by constitutional provisions preventing such aggregations of incongruous measures by confining each act to one subject and matter properly connected therewith, which subject should be briefly expressed in the title.[21]

Although the single-subject rule and the title requirement are often discussed together, they are distinct requirements and are animated by different concerns.[22] Florida courts have been clear that "logrolling" is

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18. FLA. CONST. art. III, § 6.

19. *See generally*, Env't Confederation of Sw. Fla., Inc. v. State, 886 So. 2d 1013 (Fla. 1st. DCA 2004).

20. State *ex rel.* Flink v. Canova, 94 So. 2d 181, 184 (Fla. 1957) (citing THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS 141–46 (3d ed. 1874)).

21. Colonial Inv. Co. v. Nolan, 131 So. 178, 179 (Fla. 1930).

22. *See* SINGER & SINGER, *supra* note 15, § 17:1 ("The prohibition against inclusion of more than one subject or object in the same act is invariably joined in the same constitutional passage, often in the same sentence, with a requirement that the subject or object be expressed in the title.

the chief evil addressed by Florida's single-subject rule.[23] Logrolling refers to putting two or more unrelated provisions into a single law. The pernicious aspect of this practice is that a legislator might oppose a particular provision or bill, but the legislator can only get his or her favored provisions passed by agreeing to the disfavored provision in the same bill.[24] Thus, there is no true legislative majority for any of the provisions in question, but the provisions are approved because the legislators would prefer to have their own provisions passed along with the opposition's, rather than have neither passed[25]—which, according to some, distorts the democratic process.[26] Consistent with this anti-logrolling purpose, Florida courts will evaluate a statutory provision under the single-subject rule by determining if it has a "natural or logical" connection to the law's subject or can reasonably be considered necessary to the subject or tending to effect or promote "the objects and purposes

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They are, however, separate and independent provisions, serving distinct constitutional purposes. The purpose of the title requirement is for concerned parties to find out what a bill or act is about without reading it in full. Unity of subject matter, on the other hand, focuses concentration on the meaning and wisdom of independent legislative proposals or provisions."); Denning & Smith, *supra* note 1, at 965 (noting that the single-subject and title requirements "ha[ve] independent historical roots, but both are now included concurrently in most state constitutions").

23. *See, e.g.*, State v. Johnson, 616 So. 2d 1, 4 (Fla. 1993) ("The purpose of this constitutional prohibition against a plurality of subjects in a single legislative act is to prevent 'logrolling' where a single enactment becomes a cloak for dissimilar legislation having no necessary or appropriate connection with the subject matter." (quoting Martinez v. Scanlan, 582 So. 2d 1167, 1172 (Fla. 1991))); *Firestone*, 448 So. 2d at 988 ("The purpose of this provision is to prohibit the aggregation of dissimilar provisions in one law in order to attract the support of diverse groups to assure its passage. In legislative parlance, [the rule] prohibits what is known as 'logrolling.'"); State v. Rothauser, 934 So. 2d 17, 19 (Fla. Dist. Ct. App. 2006) ("Invariably, 'logrolling' seems to be the first evil that courts and commentators rely upon in explaining the wisdom of this constitutional requirement, which is common in state constitutions."); *see also* Jonathan L. Marshfield, *The Single-Subject Rule and the Politics of Constitutional Amendment in Initiative States*, 101 NEB. L. REV. 71, 113 (2022) ("[t]he Florida Supreme Court . . . tends to view the [single-subject rule for citizen initiatives] as a strict prohibition on logrolling."); Richard Briffault, *The Single-Subject Rule: A State Constitutional Dilemma*, 82 ALB. L. REV. 1629, 1650–51 (2019) ("[T]he purposes long seen as explaining and justifying the single-subject rule [are] prevention of logrolling and riders, and more generally protection of the legislative process from improper manipulations.").

24. *See generally* Michael D. Gilbert, *Single Subject Rules and the Legislative Process*, 67 U. PITT. L. REV. 803, 813–15 (2006).

25. *Id.* at 814; *see also* Dep't of Educ. v. Lewis, 416 So. 2d 455, 459 (Fla. 1982) (stating that the single-subject rule prevents a lawmaker from being "placed in the position of having to accept a repugnant provision in order to achieve adoption of a desired one.").

26. *See* sources cited *supra* note 24. *But see* Gilbert, *supra* note 23, at 808–09 (distinguishing logrolling from "riders," where unpopular provisions are attached to popular but unrelated bills, and arguing that logrolling by contrast is beneficial because it "always leaves a majority of legislators better off, though it may cause severe harm to a minority"); *see also* Marshfield, *supra* note 22, at 83 (similarly distinguishing logrolling from riders, but noting that early state courts found both to be pernicious in the context of the single-subject rule).

of legislation included in the subject,"[27]—unless, of course, the codification exception is found to apply.

The title requirement, on the other hand, is meant to provide notice of the law's contents.[28] As the Florida Supreme Court has said, "[t]he general purpose of the organic restriction [i.e., the title requirement] to prevent deceit has . . . always predominated."[29] Moreover, although the title requirement is meant in part to help legislators,[30] it is primarily intended to benefit the public.[31] Thus, Florida courts will find a law's title to be proper if it is "so worded as not to mislead a person of average intelligence as to the scope of the enactment and is sufficient to put that person on notice and cause him to inquire into the body of the statute itself."[32]

A word about codification is also warranted here. Although Florida's single-subject rule dates back to 1868, the legislature did not begin officially codifying its laws until 1892 (though there were unofficial compilations as far back as 1840).[33] The legislature began following the

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27. Franklin v. State, 887 So. 2d 1063, 1078 (Fla. 2004); *see also* sources cited *infra* note 76.

28. *See, e.g.*, Ison v. Zimmerman, 372 So. 2d 431, 435 (Fla. 1979) ("The constitutional requirement for an act's title is that it give notice as to the act's contents, and, moreover, not mislead the public or the legislature as to the scope of the act."); State v. Physical Therapy Rehab. Ctr. of Coral Springs, 665 So. 2d 1127, 1130 (Fla. Dist. Ct. App. 1996) ("The purpose of this requirement is to put interested persons on notice of the need to inquire further into the particular provisions of the legislation.").

29. Lipe v. City of Miami, 141 So. 2d 738, 741 (Fla. 1962) (quoting Nichols v. Yandre, 9 So. 2d 157, 158 (Fla. 1942)).

30. Indeed, the genesis of the title requirement lies in the infamous Yazoo Land Fraud of 1795, where the Georgia legislature transferred vast tracts of land to private companies (benefitting many politicians) through an act that was "smuggled through the legislature under an innocent and deceptive title." Gilbert, *supra* note 23, at 812 (citation and internal quotation marks omitted); *see also* Michael J. Kasper, *Using Article IV of the Illinois Constitution to Attack Legislation Passed by the General Assembly*, 40 LOY. U. CHI. L.J. 847, 849 (2009). The United States Supreme Court famously ruled that the Contracts Clause (as well as general principles of property and equity) prevented the legislature from passing another act reversing the grant of land in *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 131–39 (1810). Georgia and other states adopted title requirements soon after the scandal emerged. Gilbert, *supra* note 23, at 812.

31. State *ex rel.* Mun. Bond & Inv. v. Knott, 154 So. 143, 146 (Fla. 1934) ("The main purpose of requiring the subject of an act to be briefly expressed in its title is not so much to inform members of the Legislature of its contents (since they are supposed to apprise themselves not only of the subject as expressed in the title but as to the contents of the body of the act as well), but to apprise the citizens of the state of what their representatives in the Legislature are about to enact as a part of the law of the land . . . .").

32. Franklin v. State, 887 So. 2d 1063, 1076 (Fla. 2004) (quoting Loxahatchee River Env't Control Dist. v. Sch. Bd. of Palm Beach Cnty., 515 So. 2d 217, 219 (Fla. 1987)).

33. Preface, *supra* note 9, at viii–ix; *see also* State v. Love, 126 So. 374, 382 (Fla. 1930) (explaining the difference between compilations, which are simply finding tools, and general revisions of the laws, which are enacted by the legislature).

current codification system, published in *Florida Statutes*, in 1951.[34] Under the current process of codification, each year, the legislatively created Division of Law Revision will compile the session laws for publication in *Florida Statutes*;[35] the Division has broad authority under statute to edit the laws for style, grammar, form, positioning, and the like.[36] The legislature will then amend and adopt sections 11.2421,[37] 11.2422,[38] 11.2424,[39] and 11.2425,[40] Florida Statutes, to carry over the Division's finished product as the official statutory law of the state.[41] Therefore, laws in the *Florida Statutes* will control in case of conflict with the session laws.[42] And because *Florida Statutes* is now published annually,[43] generally, a session law will be in effect for no longer than one year before it is codified.

II. WHERE THE FLORIDA SUPREME COURT WENT ASTRAY

At first, Florida courts faithfully applied the single-subject rule and the title requirement without any discussion of the effect of codification, even after Florida began officially codifying its statutes in 1892.[44] But in a 1911 case, *Christopher v. Mungen*,[45] the Florida Supreme Court made the following critical statement: "Where a statute is re-enacted in a general revision of the laws, an original imperfect title becomes immaterial at least after the re-enactment."[46] To understand the context of this statement, one must understand the history of the case. To put a complex matter simply, the Florida Supreme Court had found in a prior

34. Preface, *supra* note 9, at ix.

35. *Id.*

36. *Id.*; *see* FLA. STAT. § 11.242 (2022).

37. *See* FLA. STAT. § 11.2421 (2024) (adopting and enacting Florida Statutes 2024 as the "official statute law of the state").

38. *See id.* § 11.2422 (providing that statutes of a "general and permanent nature" that are not included in Florida Statutes 2024 are repealed).

39. *See id.* § 11.2424 (providing that laws adopted after the 2023 regular legislative session are not repealed by adoption of Florida Statutes 2024).

40. *See id.* § 11.2425 (providing that repeal of any statute by adoption of Florida Statutes 2024 "shall not affect any right accrued before such repeal or any civil remedy where a suit is pending").

41. Salters v. State, 758 So. 2d 667, 670 (Fla. 2000) (per curiam); *accord* Preface, *supra* note 9, at vi.

42. As argued below, however, this does not mean that the codified laws are immune from single-subject challenges for violations arising from the passage of the session laws. *See infra* notes 108–10 and accompanying text.

43. Preface, *supra* note 9, at vi.

44. *See, e.g.*, State *ex rel.* Moodie v. Bryan, 39 So. 929, 961 (Fla. 1905) (collecting cases, many of which postdate 1892 and yet do not discuss codification as a way of curing single-subject or title violations).

45. Christopher v. Mungen, 55 So. 273 (Fla. 1911).

46. *Id.* at 280.

case that an 1866 law titled "An act in relation to escheats," which had since been codified, did not purport to legitimize the children of slave marriages to allow them to inherit.[47] The *Christopher* court, however, repudiated this interpretation and found that the law in fact had that effect.[48] And, in an apparent attempt to preempt any argument based on this interpretation's seeming disparity from the subject of escheatment expressed in the law's title, the court noted that "[w]hen [the law] was enacted, the [c]onstitution did not make the title of an act a controlling part of it and did not require the purpose of the act to be correctly expressed in the title."[49] It was immediately after this sentence that the court made its critical statement that "an original imperfect title becomes immaterial" after reenactment.

Thus, that language was used in the context of a law that was not subject to the title requirement but had since been codified. To the extent that the court was reiterating that a codified law is immune from a title challenge where the requirement did not exist at the time of the underlying session law's passage, that position is unobjectionable so far as this Note is concerned.[50] On the other hand, if the court were stating that session laws can never be subject to the title requirement once they are codified, that would be dicta of the most tenuous kind, as it would simply have no place in the opinion. The case simply concerned the meaning of a statute.[51] The codification issue was not before the court, as the court was dealing with a statute that originally preceded the title requirement's enactment in the constitution and thus was not subject to the requirement (as the court expressly found). Nor did the parties raise any title issue in their briefs.[52] Moreover, the next sentence after the court's crucial language says, "[i]n so far [sic] as [previous cases] conflict with this conclusion, they are disapproved."[53] Yet the cited cases did not concern the title requirement or the single-subject rule; they merely concerned either the interpretation or the effect of the 1866 law.[54]

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47. *Id.* at 279; *see* sources cited *infra* note 54.

48. *Christopher*, 55 So. at 279–80.

49. *Id.* at 280.

50. As explained below, this Note also agrees that the act of codification itself should not be subject to the single-subject rule or the title requirement. *See* discussion *infra* Section III.B.

51. Although the court briefly addressed the statute's validity as well, it did so with respect to a constitutional provision that partly provided its own process for escheatment. *Christopher*, 55 So. at 279–80.

52. Brief for Petitioner at 1, Christopher v. Mungen, 55 So. 273 (1911) (No. 70,475); Brief for Respondent at 1–3, Christopher v. Mungen, 55 So. 273 (1911) (No. 70,566).

53. *Christopher*, 55 So. at 280.

54. Daniel v. Sams, 17 Fla. 487, 493–94 (1880), *overruled by Christopher*, 55 So. 273; Williams v. Kimball, 16 So. 783 (Fla. 1895), *overruled by Christopher*, 55 So. 273; Adams v. Sneed, 25 So. 893, 895–96 (Fla. 1899), *overruled by Christopher*, 55 So. 273.

This is significant because a case involving a statute preceding the title requirement's adoption would be a poor vehicle to announce a codification exception, and the court's statements can only be understood within the specific context of that case. But subsequent supreme court cases would come to regard *Christopher* as holding that codification will cure *any* title violations in *any* of the session laws that were codified, without providing any additional reasoning supporting that doctrine.[55]

Then, in 1945, the court decided *State ex rel. Badgett v. Lee*,[56] which, again, concerned the title requirement rather than the single-subject rule. The decision in *Badgett* is important for two reasons. First, it was perhaps the court's first enunciation of a rationale, absent from *Christopher*, for the doctrine that codification will cure any title violations. The court explained that "[i]t is certain that all laws may be grouped under one title and passed by the Legislature without" violating the title requirement.[57] The court continued: "The title of the act adopting the revision . . . gave equal notice of the inclusion of acts with sufficient titles, acts with insufficient titles, and acts with insufficient titles which had been passed upon by this court."[58] In other words, the codifying act itself complied with the title requirement by identifying itself as a codification, which remedied any violations of the requirement in the laws that were codified.

Second, the court would establish the form-versus-substance paradigm which would be followed by later courts, and which would be used to extend the codification exception to apply to single-subject violations as well as title violations. After finding that the title violation of the law in question had been cured by codification,[59] the court explained, "What we have said relates only to the invalidity of acts because of deficient titles. Incorporation in a general revision of the statutes would not cure a particular act of any *unconstitutionality of content*."[60] Thus, the court held that it had to separately examine "the constitutionality of the body" of the law.[61] Because the law had been

55. *E.g.*, Henderson-Waits Lumber Co. v. Croft, 103 So. 414, 416 (Fla. 1925) (Whitfield, J., concurring) ("The question whether the title to an act when originally enacted was broad enough to cover some of its sections is of no moment, when the sections of said act were subsequently embodied in the General Statutes."); McConville v. Fort Pierce Bank & Tr., 135 So. 392, 394 (Fla. 1931) ("As section 13 of chapter 6426, Acts of 1913, became, by revision, section 4167, Revised General Statutes of Florida 1920, it is clear that under the rule in such cases any defect in the original title was cured by such revision."); Thompson v. Intercounty Tel. & Tel., 62 So. 2d 16, 18 (Fla. 1952) (finding that the court in *Christopher* had "concluded that . . . imperfect titles could be corrected in [a] general revision of the laws").

56. 22 So. 2d 804 (Fla. 1945).

57. *Id.* at 807.

58. *Id.*

59. *Id.*

60. *Id.* (emphasis added).

61. *Id.*

previously adjudged arbitrary and unreasonable in addition to violating the title requirement, it was "unconstitutional because of *substance* as well as title."[62] Importantly, the court explained that the substantive violation—that is, the law's arbitrariness and unreasonableness—could not be cured by codification because "the invalidity of the act was still present after its" codification.[63] *Badgett* became frequently cited for its title-versus-substance (later generalized into *form*-versus-substance) formulation,[64] and the courts would later extend its reasoning to find that single-subject violations are cured upon codification as well.[65]

Another line of Florida Supreme Court cases, however, represents the court's modern single-subject jurisprudence, beginning with *Santos v. State*,[66] a DUI case from 1980. The defendant claimed that two subsections of the codified DUI statute related to different subjects.[67] In response, the court said that the single-subject rule does not apply "[w]hen laws passed by the legislature are being codified for publication in the Florida Statutes."[68] Rather, "[t]he legislature is free to use whatever classification system it chooses," and the rule "does not require *sections of the Florida Statutes* to conform to the single-subject requirement."[69]

The court went on to find that the two subsections came from separate session laws, one involving the subject of use of the state's public roads and the other involving the subject of DUI.[70] The court then held "that neither of the laws at issue here violates" the single-subject rule.[71] Thus, the court appeared to hold simply that codified statutes must be judged by how they were passed as session laws, which would certainly be correct. Indeed, the court would not have had to determine whether the session laws violated the rule if codification would have cured any violation.

Unfortunately, contemporary cases contradict that reading. Later that same year, in its brief opinion in *State v. Combs*,[72] the court held that

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62. *Id.* (emphasis added).

63. *Id.*

64. *E.g.*, Mass. Bonding & Ins. v. Bryant, 175 So. 2d 88, 92 (Fla. Dist. Ct. App. 1965) (noting that certain defects in form may be cured by codification, but not any "unconstitutionality of content"), *aff'd*, 189 So. 2d 614 (Fla. 1966); McKee v. State, 203 So. 2d 321, 323 (Fla. 1967) ("[I]ncorporation in a general revision of the statutes will not cure a particular act of any unconstitutionality of content. . . . [H]owever, the deficiency herein was in regard to form or title—not substance or content.").

65. *See* Keegan v. State, 553 So. 2d 797, 798 n.1 (Fla. Dist. Ct. App. 1989) (per curiam); State v. Rothauser, 934 So. 2d 17, 19 (Fla. Dist. Ct. App. 2006).

66. Santos v. State, 380 So. 2d 1284 (Fla. 1980).

67. *Id.* at 1285.

68. *Id.*

69. *Id.* (emphasis added).

70. *Id.*

71. *Id.*

72. State v. Combs, 388 So. 2d 1029 (Fla. 1980).

Santos means codified laws cannot violate the single-subject rule at all: the rule "applied only to [the session law], and only so long as it remained a 'law.' Once re-enacted as a portion of the Florida Statutes, *it was not subject to challenge* under article III, section 6."[73] Accordingly, the court did not review the session law for any violation of the rule. Note that this rationale is markedly different from that espoused by the *Badgett* line of cases: where those cases found that the codifying act complied with the single-subject and title requirements and thereby cured any violations in the session laws, *Combs* and *Santos* held that codification is not subject to these requirements at all and thus refused to apply them.

Finally, in a third case, the supreme court simply cited *Santos* and *Combs* as holding that both the single-subject and the title requirements "no longer apply" once the "laws passed by the legislature are adopted and codified" into the *Florida Statutes*.[74]

These three cases are discussed separately because they constitute a new baseline for Florida's single-subject jurisprudence. Particularly, *Santos* did not cite any authority for its discussion of the effect of codification on single-subject violations, and *Combs* relied solely on *Santos* for its analysis rather than its prior doctrine from the *Badgett* line of cases. Likewise, although *Loxahatchee* cites a 1952 case (which in turn cited *Badgett* and *Christopher*),[75] the decision primarily relies on *Santos* and *Combs* to support its holding. Moreover, the courts inconsistently applied the codification exception before the *Santos* line of cases, but post-*Santos* courts now follow that line of cases as authoritative doctrine.[76] Confusingly, however, modern Florida courts still occasionally follow the *Badgett* line of cases as well.[77]

III. ARGUMENT AGAINST THE CODIFICATION EXCEPTION

Whereas the previous Part traced how the Florida Supreme Court came to adopt the codification exception, this Part seeks to demonstrate the flaws in the exception. This discussion is centered on Florida courts' understanding of the single-subject rule and title requirement, as it is the courts that created the codification exception, and it is the courts that must decide to abolish it. This discussion will show that the doctrine surrounding the exception cannot be sustained by its own logic and is inconsistent, in part, with the precedent it is based on.

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73. *Combs*, 388 So. 2d at 1030 (emphasis added).

74. Loxahatchee River Env't Control Dist. v. Sch. Bd. of Palm Beach Cnty., 515 So. 2d 217, 218 (Fla. 1987).

75. *See* Thompson v. Intercounty Tel. & Tel., 62 So. 2d 16, 18 (Fla. 1952).

76. *E.g.*, Franklin v. State, 887 So. 2d 1063, 1076 (Fla. 2004); Salters v. State, 758 So. 2d 667, 669–70 (Fla. 2000) (per curiam); Martin v. State, 327 So. 3d 810, 810 (Fla. Dist. Ct. App. 2021) (per curiam) (collecting cases).

77. *E.g.*, State v. Rothauser, 934 So. 2d 17, 19 (Fla. Dist. Ct. App. 2006).

At the outset, it is important to reestablish that the single-subject requirement and the title requirement are distinct and serve different purposes, according to the courts.[78] Recall that the title requirement primarily serves to give notice to the public and legislators so that they are not misled as to the law's contents.[79] The "first evil" addressed by the single-subject requirement, on the other hand, is logrolling.[80] While this requirement also aids in providing notice, Florida Supreme Court precedent makes clear that the main concern of this requirement is with legislation including unrelated subjects without majority support.[81]

Relatedly, it must also be clear what kind of violation this Note is discussing, as some violations are treated interchangeably as single-subject violations or title violations. Specifically, where the contents of a law exceed what is stated in the title, some courts treat the law as a single-subject violation (treating the subject in the title and the extraneous body material as different subjects),[82] while others treat it as a title violation (because the title failed to give notice of the body material in question).[83] Yet treating this type of situation as a single-subject violation appears to be a mistake. The single-subject requirement, according to the Florida Supreme Court, prohibits laws that contain matters so unrelated to each other that they cannot be said to fall under one "subject."[84] If the body of a law falls under one subject but addresses different matter from the title, then the law would seem to violate only the title requirement and not the single-subject requirement.[85] Accordingly, this Note focuses on what it

78. *See supra* notes 21–31 and accompanying text; *see also* Tormey v. Moore, 824 So. 2d 137, 139 (Fla. 2002) (per curiam) ("The single subject clause addresses two parts of the law: (1) the body of the law; and (2) the title of the law. The first part of the single subject rule simply requires that only one subject be addressed in the law. The purpose for the constitutional prohibition against a plurality of subjects in a single legislative act is to prevent a single enactment from becoming a 'cloak' for dissimilar legislation having no necessary or appropriate connection with the subject matter. The second part requires that the subject be briefly expressed in the title. The purpose of the title requirement is to put people who may be subject to the law, other lawmakers, and other interested persons on notice of the nature and substance of the law and, at a minimum, inform them of the need to further inquire into the specifics of the legislation." (citation omitted)), *receded from on other grounds*, Franklin v. State, 887 So. 2d 1063 (Fla. 2004).

79. *See supra* notes 27–31 and accompanying text.

80. *See supra* notes 22, 26 and accompanying text.

81. *See supra* notes 22, 26 and accompanying text.

82. *E.g.*, Rouleau v. Avrach, 233 So. 2d 1, 3 (Fla. 1970) (stating that a law violated the single-subject rule as well as the title requirement because it "attempt[ed] to legislate beyond the primary subject stated in the title . . . and reach[] a second subject not stated in the title").

83. *E.g.*, Tormey, 824 So. 2d at 139; Franklin, 887 So. 2d at 1076.

84. *See* sources cited *supra* note 76.

85. *Franklin*, 887 So. 2d at 1075 n.23 (explaining that where a law addresses a subject beyond that expressed in the title, "the violation [is] one of title defect, i.e., the title d[oes] not adequately give notice of all the provisions in the body of the act," which "is distinguishable from" a single-subject violation). Unfortunately, the supreme court in the same case muddied the

posits to be "true" single-subject violations, which occur when a law embraces multiple subjects and cannot be remedied by simply having a more expansive title.

With that understanding, this Part proceeds in three sections. The first two sections address the main rationales relied on by the Florida Supreme Court to justify the codification exception: (1) the form-versus-substance paradigm, which mainly arises in the *Badgett* line of cases; and (2) the rationale that codification supersedes the session laws and is itself immune from the single-subject rule, espoused by the *Santos* line of cases. The third section discusses an Illinois Supreme Court decision[86] that addressed and ultimately rejected a codification exception for that state's own single-subject rule and serves as a model for how Florida courts should treat the issue.

A. *The Form-Versus-Substance Rationale*

Under *Badgett*'s formulation, a constitutional violation in the enactment of a law is cured by codification if it pertains to the form of the law, rather than its substance or content.[87] Yet the courts have uncritically conflated the title and single-subject requirements despite the different purposes they serve. When those differences are figured into the analysis, the case for applying a "codification" exception to the single-subject rule under *Badgett*'s test is far weaker than the case for applying the exception to the title requirement. To be sure, the single-subject requirement could not be called "substantive" in the sense that it prohibits the legislature from passing laws on certain matters in the way that due process prohibits the passage of arbitrary or discriminatory provisions.[88] Yet it *is* substantive in a content-based sense: there is no "proper," procedurally valid way to pass a law embracing multiple subjects.[89] For example, if a law is found to be unconstitutional because of a defective title, the legislature can pass a new law with the same content so long as it fixes the title. By contrast, using again the example of a statute that

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distinction by saying, in a single-subject case, that a court should first determine the single subject *from the title of the act*, and then determine if the body's provisions relate to that subject or properly connected matter. *See id.* at 1073–79. This would be appropriate for analyzing a challenge based on the title requirement, but not for a true single-subject challenge.

86. People v. Reedy, 708 N.E.2d 1114 (Ill. 1999).

87. State *ex rel.* Badgett v. Lee, 22 So. 2d 804, 807 (Fla. 1945) ("What we have said relates only to the invalidity of acts because of deficient titles. Incorporation in a general revision of the statutes would not cure a particular act of any unconstitutionality of content."); *id.* (finding statute nonetheless invalid because it was "unconstitutional because of substance as well as title").

88. *Cf. id.* (distinguishing the title requirement from the substantive prohibition against unreasonable and arbitrary legislation, a violation of which was not cured by codification).

89. *See also* Gibson v. State, 16 Fla. 291, 299 (1877) (explaining that the single-subject rule "refers to the *subject-matter* of the legislation, and not to a single purpose or end sought to be accomplished" (emphasis added)).

violates substantive due process, there is no way for the legislature to properly reenact the provision without changing its content. The single-subject requirement is no different from due process in that respect: the *content* of the law cannot include multiple subjects, no matter how the legislature passes it.

The problem, really, is that "form" and "substance" and "content" are rough terms that are supposed to represent a more nuanced analysis; this formulation already breaks down when considered in light of the single-subject rule, which goes to both form and substance. The better test—and the one that the form-versus-substance distinction appears to really be getting at—is whether codification would remedy the evils animating the constitutional requirement at issue. Indeed, the supreme court in *Badgett* itself seemed to recognize this, as it found (perhaps erroneously, although that is outside this Note's scope) that codification satisfies the title requirement because it still serves the underlying purpose of providing notice of the law's contents.[90] It also recognized that it is immaterial to the analysis whether a session law was "judicially declared unconstitutional" before codification, because "[t]he evil inhibited by [the title requirement] would be present in either event."[91] (*Badgett*, it will be remembered, involved only the title requirement and did not purport to extend its reasoning to the single-subject requirement.)

Assuming still that title violations, unlike single-subject violations, can be cured by codification, one can see how codification might remedy the harm from a title violation. Recall that the title requirement is concerned less with aiding legislators and more with providing notice to the public, who are less aware of the goings-on in the legislature. Codification makes it far simpler for the public to ascertain what the law of the land is. Indeed, codification is almost certainly more helpful to the public in that respect than the title requirement, as it is simply unrealistic to expect lay persons to effectively learn the law from perusing the session laws as opposed to a code. Accordingly, there may be a fair argument that codification serves the central purposes of the title requirement and can therefore cure any title violations in the session laws.

Not so with the single-subject rule. This rule is concerned less with notice issues and more with logrolling, the inclusion of unrelated subjects in a law. Thus, as explained above, the single-subject rule governs the *content* of each law, even if it does not restrict which subjects may be legislated on. That being the case, codification cannot further the purpose of the rule and thus remedy a violation. If a law contains unrelated subjects, neither of which would have garnered majority support on its own, codifying the law does not rectify this issue. As the court said in

90. *Badgett*, 22 So. 2d at 807.

91. *Id.*

Rothauser, codification is the "ultimate act of logrolling," so it is especially difficult to see how codification can cure any logrolling that occurred in the underlying laws.[92]

Consider the following cases where both courts found laws unconstitutional under *Badgett*'s test despite their codification. In one, *Massachusetts Bonding & Insurance v. Bryant*,[93] the First District Court of Appeal reviewed a law under another requirement that appears in the same constitutional provision as the single-subject and title requirements.[94] Specifically, amendatory acts are required to reenact and publish at length the affected laws in their amended form,[95] which the legislature had failed to do in this case.[96] To the argument that the amendatory act's codification had cured the violation, the court responded that "[w]hile certain defects, such as defects in titles, errors of spelling and punctuation, obvious misprints, and the like, may be remedied by [codification], this type of legislation cannot be used as a device . . . [to] cure any unconstitutionality of content."[97] When the case went up to the Florida Supreme Court, that court said it agreed with the district court's reasoning that the law was still unconstitutional, explaining that "the defect was not as of such kind as could be cured by a general reenactment of existing statutes [i.e. codification]."[98] By saying the defect was not the kind that could be cured by codification, the Florida Supreme Court plainly meant that the harm caused by the defect was still present even after codification, and thus the law's constitutional infirmity was not rectified.[99]

Similarly, in *Brewer v. Gray*,[100] the legislature had failed to reapportion the Senate as required by the constitution.[101] The State argued that the 1955 codification of a 1945 reapportionment law satisfied the legislature's duty, but the Florida Supreme Court did not buy it.[102] The court specifically noted its prior decision in *Badgett* that title violations are cured by codification, but it found that case inapplicable as the

92. State v. Rothauser, 934 So. 2d 17, 20 (Fla. Dist. Ct. App. 2006).

93. 175 So. 2d 88 (Fla. Dist. Ct. App. 1965), *aff'd*, 189 So. 2d 614 (Fla. 1966).

94. *Id.* at 92.

95. *Id.*; *see also* FLA. CONST. art. III, § 6 ("No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection.").

96. *Bryant*, 175 So. 2d at 92.

97. *Id.*

98. *Bryant*, 189 So. 2d at 616.

99. *Cf.* Tormey v. Moore, 824 So. 2d 137, 142 (Fla. 2002) (per curiam) ("This action contains the very evil sought to be prevented by the single subject requirement. In other words, we must conclude that the [provision at issue] was "logrolled" into the act." (citation omitted)), *receded from on other grounds*, Franklin v. State, 887 So. 2d 1063 (Fla. 2004).

100. 86 So. 2d 799 (Fla. 1956).

101. *Id.* at 801.

102. *Id.* at 804–05.

legislature had not "perform[ed] the constitutional duty imposed on it" even with the fact of codification.[103] This was because the Florida Constitution required any apportionment to use data from the most recent state or federal census, which in this case was the 1950 federal census, and obviously a 1945 law could not have been based on the 1950 census.[104] In other words, because the underlying constitutional violation was still present, codification had not remedied the violation.[105]

This kind of reasoning applies with full force to single-subject violations. If one follows the district court's reasoning in *Massachusetts Bonding* that the defect—i.e., the failure to reenact and publish at length the amended laws—was specifically one of content, then the same goes for a single-subject violation. Whatever the merits of the codification exception as applied to the title requirement, it cannot justifiably be applied to the single-subject requirement under *Badgett*'s rationale.

B. *The Superseding-Codification Rationale*

Under the more modern line of cases beginning with *Santos*, single-subject violations in the session laws are said to become immaterial after codification because the session laws have been superseded and codification itself need not comply with the single-subject rule.[106] While the premises seem sound, they do not support the conclusion reached.

It should first be noted that this Note entirely agrees that codification should not be subject to the rule. It would be absurd to suggest that the legislature lacks the power to codify its own laws, especially in light of the obvious benefits to the public and the bar alike. Subjecting the codifying acts to the single-subject rule, for reasons explained below,[107] would thwart that legitimate power and surely could not have been intended by the rule's framers.

Yet the courts have made the unjustified leap of finding that, because codification is not subject to the rule, neither are session laws once they are codified. This is a non sequitur. If the codifying act does not violate the rule, that says nothing about the underlying session laws; the fact that a session law has been codified does not change whether the law was subject to logrolling or addressed more than one subject. Rather, one must

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103. *Id.* at 804.

104. *Id.*

105. It is not clear that *Badgett* would even apply, as that case involves codification as a means of curing constitutional violations in the laws that were codified; in *Brewer*, by contrast, codification was at play not as a means to remedy any defects in the session laws, but to carry over a prior apportionment to remedy the legislature's failure to reapportion. Regardless, the court's discussion in *Brewer* demonstrates its understanding that the rule in *Badgett* was not intended to apply where the harm from the constitutional violation is still present after codification.

106. *See supra* notes 66–74 and accompanying text.

107. *See infra* notes 112–13 and accompanying text.

measure whether codification serves to remedy the harms contemplated by the single-subject rule—whether it fulfills the purpose of the rule or thwarts it. Florida courts have been insistently clear that the purpose of the rule is to prevent logrolling.[108] And as extensively discussed in the preceding Section, codification does nothing to remedy any logrolling that may have occurred in the underlying session laws.

Some courts suggest they cannot review session laws because they cease to be laws but are instead superseded by the codified statutes.[109] This argument is attractive at first glance, for as discussed above, the session laws cease to be controlling once they have been validly codified.[110] Yet this is too clever by half. Whatever the technical accuracy of the argument, its reasoning cannot be followed if it conflicts with the single-subject rule, which as a constitutional provision is supreme over any contrary legislative procedures. If, as *Combs* does, one seeks to define "law" in the single-subject rule as excluding non-controlling session laws,[111] that is an impermissible definition if it conflicts with the purpose of the rule. And surely the framers of the original rule did not expect that parties could only challenge laws to the extent they applied to an artificial window of one year or less.

Relatedly, some authorities (such as *Badgett*)[112] posit that codification satisfies the single-subject rule because it concerns only one subject—i.e., codification. Yet, that is simply another way of coming up with a subject that is so general that it encompasses every conceivable matter. If that rationale alone could suffice, then Florida cases finding that the rule was violated because two provisions in a statute were too unrelated to be part of a single subject[113] would be incorrect. And if that were the case, then the single-subject rule would truly be meaningless. Moreover, even if the single-subject rule applied to, and was satisfied by, the codifying acts, that still does not reckon with any violations of the rule in the underlying session laws.

C. *Discussion of* People v. Reedy

In contrast with how Florida courts have addressed the issue, the Illinois Supreme Court's treatment—and ultimate rejection—of the codification exception highlights the proper approach to this issue. The

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108. *See supra* notes 23, 27 and accompanying text.

109. *E.g.*, State v. Combs, 388 So. 2d 1029, 1030 (Fla. 1980).

110. *See supra* notes 36–41 and accompanying text.

111. *Combs*, 388 So. 2d at 1030.

112. State *ex rel.* Badgett v. Lee, 22 So. 2d 804, 807 (Fla. 1945).

113. *E.g.*, Fla. Dep't of Highway Safety and Motor Vehicles v. Critchfield, 842 So. 2d 782, 785–86 (Fla. 2003) (per curiam); State v. Thompson, 750 So. 2d 643, 646–49 (Fla. 1999) (per curiam); State v. Johnson, 616 So. 2d 1, 4 (Fla. 1993).

court was asked to adopt the exception in *People v. Reedy*,[114] but it refused. The court recognized that a codification exception serves to bring finality to new legislation, but the court has no power to "emphasize[] finality over the importance of addressing the underlying wrong that exists in unconstitutionally enacted legislation."[115] Such a rule "would unjustifiably emasculate the single subject rule in Illinois."[116] It is also important to note that Illinois's version of the rule specifically exempts codifications,[117] yet that did not lead the court to find that the session laws being codified are somehow exempt as well.

As the *Reedy* court properly held, a court has no power to ignore the constitution. By following a codification exception in the interest of finality or some other seemingly venerable goal, a court inserts its own values which may conflict with those the people had enshrined in their fundamental document.[118] If these courts wish to do justice to the constitution, they cannot abdicate their responsibility to enforce the rule in accordance with its text and purpose.

IV. GETTING TO THE FLORIDA SUPREME COURT

Even if a party seeking to abolish the codification exception could convince the Florida Supreme Court to revisit its precedent, getting in front of the court could be tricky. The court's jurisdiction is very narrow under the Florida Constitution and is mainly limited to adjudicating issues of statewide or public importance and resolving conflicts in the District Courts of Appeal.[119] Because current precedent requires the district courts to follow the codification exception, there is no opportunity for those courts to conflict over the exception's viability.

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114. 708 N.E.2d 1114, 1119 (Ill. 1999).

115. *Id.* at 1119–20. Notably, the Florida Supreme Court seems to have never endorsed finality as a justification for the codification exception.

116. *Id.* at 1120.

117. ILL. CONST. art. IV, § 8(d).

118. *Cf.* District of Columbia v. Heller, 554 U.S. 570, 634 (2008) ("The very enumeration of [a] right [in the Constitution] takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.").

119. *See, e.g.*, Jenkins v. State, 385 So. 2d 1356, 1357–58 (Fla. 1980) ("[T]he powers of this Court to review decisions of the district courts of appeal are limited and strictly prescribed. . . . The revision and modernization of the Florida judicial system at the appellate level . . . embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute."); Johns v. Wainwright, 253 So. 2d 873, 874 (Fla. 1971) ("The District Courts of Appeal were never intended to be intermediate courts. It was the intention of the framers of the constitutional amendment which created the District Courts that the decision of those courts would, in most cases, be final and absolute.").

But there are two methods of obtaining jurisdiction that may be viable—one that is more obvious and can be pursued in any single-subject case, and one that would arise in only a limited category of cases but perhaps is more likely to succeed. First, the Florida Supreme Court can review any District Court of Appeal decision that passes upon a question and certifies it to be of great public importance.[120] What makes this method of obtaining review so attractive is not only that the supreme court almost always accepts review in these cases as a practical matter,[121] but also that the district court's decision to certify a question is unreviewable.[122] This of course does not mean that the supreme court is obliged to hear the case, but it does mean that the court will never be without jurisdiction (barring standing issues and the like) where the district court follows the proper procedure for certification[123]—and as already explained, the supreme court usually does decide to review such cases.

Moreover, the district courts frequently certify (and the supreme court frequently resolves) even well-settled questions of great public importance with the express purpose of merely giving the supreme court an opportunity to revisit its precedent. For example, after finding that the supreme court's older precedent had already resolved an issue, one district court nonetheless certified it as a question of great public importance "[b]ecause the question has not been directly addressed by the Supreme Court in almost 50 years and because it is a matter of importance to the bench and bar in the state."[124] Another district court found that an issue had already been "squarely determined by the supreme court,"[125] yet it certified the question "in order to permit the supreme court to revisit the question if it desires."[126] These are not

120. FLA. CONST. art. V, § 3(b)(4).

121. Raoul G. Cantero III, *Certifying Questions to the Florida Supreme Court: What's So Important?*, 76 FLA. B.J. 40, 40 n.1 (2002). This can also be seen from searching for cases certifying questions of great public importance in Westlaw or a similar database.

122. *See, e.g.*, Duggan v. Tomlinson, 174 So. 2d 393, 394 (Fla. 1965) (per curiam) ("[T]he ultimate decision of whether the decision does pass upon a question of great public interest is one which the Constitution vests exclusively in the district courts . . . .").

123. Novack v. Novack, 195 So. 2d 199, 200 (Fla. 1967) ("[T]he proposition of whether a decision of a district court decides a question of great public importance is one solely for the district court to determine only insofar as vesting complete jurisdiction in this Court to entertain the cause is concerned." (quoting Zirin v. Charles Pfizer & Co., 128 So. 2d 594, 597 (Fla. 1961))).

124. Taylor v. State, 401 So. 2d 812, 816 (Fla. Dist. Ct. App. 1981), *decision approved*, 444 So. 2d 931 (Fla. 1983).

125. State *ex rel.* Reno v. Neu, 434 So. 2d 1035, 1035 (Fla. Dist. Ct. App. 1983) (per curiam), *aff'd sub nom.* Neu v. Mia. Herald Publ'g Co., 462 So. 2d 821 (Fla. 1985) (per curiam).

126. *Id.* at 1036.

isolated examples.[127] Thus, the fact that a question is definitively settled by the supreme court's precedent appears not to preclude the district court from certifying the question anyway—nor will it necessarily impair the supreme court's willingness to review the case.

The second method of obtaining review would involve a back-end approach under the supreme court's conflict jurisdiction. Specifically, the supreme court can review a district court decision that conflicts with the decision of another district court.[128] Yet once the supreme court obtains jurisdiction of a case under this method, the court is not bound to decide only the conflict-creating issue, but rather it can address any issue that was properly raised, even if the court would ordinarily lack jurisdiction over the question.[129] Indeed, the court can resolve a case on separate grounds without ever reaching the conflict issue.[130]

Turning to the codification exception, although the district courts are bound to follow it, the district courts may conflict on how the rule is applied in a given situation. For example, district courts reviewing the same law occasionally conflict as to the timing of the "window" for bringing single-subject challenges. One court may find that the law violates the single-subject rule but that the violation was cured by codification before the relevant party's conduct occurred. Another court may agree that the rule was violated but also find that it was not cured by the time of the party's conduct.[131] A party in such a case who seeks to obtain review of the codification exception's vitality could then appeal to

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127. *See, e.g.*, Young v. St. Vincent's Med. Ctr., Inc., 653 So. 2d 499, 499 (Fla. Dist. Ct. App. 1995) (per curiam) ("While we feel that the question . . . has been extensively addressed in the previously cited [supreme court and district-court] cases, . . . we again certify this question to be one of great public importance."); Am. Fed'n of Gov't Emps. v. DeGrio, 454 So. 2d 632, 637–38 (Fla. Dist. Ct. App. 1984).

128. There are technically two ways for the court to obtain conflict jurisdiction: where a district court's decision "expressly and directly conflicts" with the decision of another district court or the supreme court, FLA. CONST. art. V, § 3(b)(3), and where a district court certifies that its decision directly conflicts with that of another district court, *id.* § (4). Because these provisions state that the court "may review" such decisions, the court's jurisdiction is discretionary in either case. *See, e.g.*, State v. Vickery, 961 So. 2d 309, 311 (Fla. 2007).

129. Savoie v. State, 422 So. 2d 308, 312 (Fla. 1982) ("[O]nce this Court has jurisdiction of a cause, it has jurisdiction to consider all issues appropriately raised in the appellate process, as though the case had originally come to this Court on appeal. This authority to consider issues other than those upon which jurisdiction is based is discretionary with this Court and should be exercised only when these other issues have been properly briefed and argued and are dispositive of the case.").

130. *See, e.g.*, State v. Ivey, 285 So. 3d 281, 284, 286–88 (resolving case on different ground from one certified by district court to involve a question of great public importance); Jenkins v. State, 978 So. 2d 116, 121–30 (Fla. 2008) (reviewing two threshold issues because they could moot the conflict issue, but ultimately reaching and resolving the conflict issue).

131. *Cf.* State v. Thompson, 750 So. 2d 643, 645–46 (Fla. 1999) (per curiam).

the supreme court based on the inter-district conflict, but ask the court to do away with the exception and thus moot the conflict issue.

This method of reviewing the issue would not be breaking new ground. In *Jacobson v. State*,[132] the Florida Supreme Court was faced with conflicting decisions by the district courts on the effect of a suspect's flight from an illegal stop as to suppression of evidence later obtained from the suspect.[133] The supreme court, however, resolved the case on the ground that the police stop was lawful in the first place.[134] The court acknowledged that it "ha[s] jurisdiction because of the facial conflict" between the district courts.[135] But since, "[h]aving jurisdiction, [the court has] jurisdiction over all issues," the court elected to "dispose of the case on a ground other than the conflict ground[,] . . . moot[ing] the conflict issue."[136]

Similarly, in another case the district courts had conflicted over whether a statute allowed the courts to order or merely recommend that the Department of Corrections declare a forfeiture of a prisoner's gain-time for bringing a frivolous appeal of postconviction proceedings.[137] The Florida Supreme Court noted, however, that "there is a preliminary question . . . which has not been addressed by either court, but which . . . controls the final decision in this case"[138]—namely, whether the appeal was a "collateral criminal proceeding" such that it fell outside the statute's terms.[139] The court then found that the district courts were incorrect to assume that the statute applied, and thus resolved the case on a different ground from those courts.[140]

These methods are likely the most tenable for obtaining review in the Florida Supreme Court. To be sure, it may be difficult to convince the court to revisit its single-subject jurisprudence when it is collateral to the issues resolved by the lower courts; but as the above-discussed cases illustrate, it is not unheard of. Consider also *Cantor v. Davis*,[141] where the Florida Supreme Court reviewed a district-court decision finding an attorney's-fee statute constitutional.[142] Although the supreme court had likewise found the statute facially constitutional in other cases postdating

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132. 476 So. 2d 1282 (Fla. 1985).

133. *Id.* at 1283–85.

134. *Id.* at 1285.

135. *Id.*

136. *Id.*

137. Hall v. State, 752 So. 2d 575, 577 (Fla. 2000) (per curiam).

138. *Id.*

139. *Id.* at 577–78.

140. *Id.* at 578–80. Even though it already disposed of the case, the court went on to resolve whether a district court could order or only recommend forfeiture to the Department under a different statute because the issue could reoccur. *Id.* at 580–81.

141. 489 So. 2d 18 (Fla. 1986).

142. *Id.* at 19.

the district court's decision, the petitioners also argued that the statute could not constitutionally be applied to them because of retroactivity concerns.[143] Despite the petitioners' failure to raise the issue in the lower courts—and despite the court's earlier insistence that it would review issues besides those creating jurisdiction only if they were "appropriately raised in the appellate process"[144]—the court addressed the issue on the merits.[145] The court emphasized that "[the respondent] concedes that this statutory provision was unconstitutionally applied in the case at bar and that addressing this issue would necessarily require that [the court] alter the result reached below."[146] The court therefore reached the issue and agreed that the statute could not be constitutionally applied to the petitioners.[147]

These same considerations would support the court's exercising its discretion to do away with the erroneous codification exception in a conflict case. Take the facts in *Rothauser*, for instance. Recall that not only did Rothauser raise in the lower courts the issue of the criminal statute's unconstitutionality under the single-subject rule, but the district court even acknowledged that the supreme court had found the statute unconstitutional on that ground.[148] Yet because Rothauser had not committed the alleged crime sooner, he could not bring his challenge.[149] If Rothauser could have met the requirements to obtain supreme court review under either of the two methods discussed above, this would present as compelling a case as any for the court to revisit its precedent. Like in *Cantor*, there was no doubt that the statute was unconstitutional—indeed, the statute in *Rothauser* was *facially* unconstitutional,[150] at least when it was passed. And unlike the petitioners in *Cantor*, Rothauser had properly raised the issue in the lower courts. Moreover, *Rothauser* was a criminal case, so the defendant was being punished under a criminal

143. *Id.*

144. Savoie v. State, 422 So. 2d 308, 312 (Fla. 1982).

145. *Cantor*, 489 So. 2d at 19–20.

146. *Id.* at 20.

147. *Id.*

148. *Rothauser*, 934 So. 2d at 18–19.

149. *Id.* at 19.

150. *See, e.g.*, Trushin v. State, 425 So. 2d 1126, 1129–30 (Fla. 1982) (holding that facial constitutional challenges can be raised for the first time on appeal, while as-applied constitutional challenges are forfeited if not raised in the trial court but may be reviewed by an appellate court in its discretion). *Compare* Sanford v. Rubin, 237 So. 2d 134, 137–38 (Fla. 1970) (finding that alleged single-subject violation in another attorney's-fee statute did not involve fundamental error, and thus could not be raised for the first time on appeal, because the attorney's fee "did not go to the merits of the case or the foundation of the case"), *with* State v. Johnson, 616 So. 2d 1, 3–4 (Fla. 1993) (finding that single-subject challenge was a facial constitutional challenge and subject to fundamental-error review where statute in question would have significantly increased defendant's sentence).

statute acknowledged by all to have violated the state constitution when it was passed.

Because it is solely up to the supreme court's discretion whether it will address issues other than those providing jurisdiction, there are no set standards to determine when it will do so. But this discussion serves to illustrate the factors that may convince the supreme court to revisit its precedent in light of its limited jurisdiction.

CONCLUSION

This Note is mindful of the concern some may hold about the lack of finality that would result from allowing single-subject challenges against statutes after they are codified.[151] Yet it might be safely assumed that most laws will be challenged as soon as they pass, resulting in decisional authority on these laws' validity. Thus, any single-subject concerns as to these laws will be resolved relatively quickly and definitively, as far as stare decisis allows. On the flip side, other litigants will not be arbitrarily prevented from bringing single-subject challenges simply because their conduct did not occur—indeed, *could not* have occurred, in some cases—until after the subject laws were codified.

Even putting that aside, the risk that an older statute will be unexpectedly invalidated under the single-subject rule is no different than the situation where, say, statutes that have been in force for some time are found invalid under a newly expansive interpretation of the federal Constitution.[152] Indeed, the concern should be greater in the latter situation, as federal constitutional rights tend to be so amorphous and their interpretation necessarily somewhat subjective; by contrast, the single-subject rule is concrete and easy to understand.[153] Moreover, if the Florida Supreme Court were to do away with the codification exception, it may come to more frequently use the single-subject rule as an interpretive tool by way of the canon of constitutional avoidance. That is, if the court were faced with multiple reasonable interpretations of a law and only one such interpretation would result in the law complying with the single-subject rule, then the court would presume that the legislature did not intend to violate the rule (however much of a legal fiction that

151. *See, e.g.*, People v. Reedy, 708 N.E.2d 1114, 1119–20 (Ill. 1999) (but rejecting that rationale).

152. *See, e.g.*, Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 336–66 (2010); Griswold v. Connecticut, 381 U.S. 479, 485–86 (1965).

153. This does not mean, of course, that the rule is necessarily easy to apply. *See generally* Briffault, *supra* note 22 (explaining the difficulty courts and scholars have faced in establishing consistent standards for enforcing the rule). *But cf. infra* note 155 and accompanying text.

may be) and follow the compliant interpretation in lieu of invalidating the statute.[154]

Regardless, the Florida Constitution is supreme over all other state law. If a constitutional provision clearly applies, then the perceived harshness of the results does not the justify the courts in ignoring it.[155] Moreover, the legislature has carried over the single-subject rule to apply it to the counties and municipalities through statute,[156] demonstrating the legislature's acceptance of the rule's importance and feasibility. If what is good for the goose is good for the gander, then surely the legislature can be held to the constitutional provision governing its own actions.

154. *See Franklin*, 887 So. 2d at 1073 (explaining in the context of the single-subject rule that a law "must be construed, if fairly possible, as to avoid unconstitutionality and to remove grave doubts on that score" (quoting *Canova*, 94 So. 2d at 184–85)). *See generally* Daniel N. Boger, Note, *Constitutional Avoidance: The Single Subject Rule as an Interpretive Principle*, 103 VA. L. REV. 1247 (2017).

155. *See Franklin*, 887 So. 2d at 1073 ("Extant in our constitution since 1868, the single subject clause is a direct expression of the people's intent to provide a limitation on the Legislature's power to enact laws. The judiciary's obligation is to apply the constitutional limitation to legislation that violates the constitution.").

156. *See supra* note 17.