



State Senator John Marty

Governor, public must pressure Legislature to restrict bills to single subject

A Civic Caucus Minnesota's Public Policy Process Interview

August 10, 2018 and August 17, 2018

State Senator John Marty believes the Minnesota Legislature cannot fix its own practice of violating the single-subject clause in the State Constitution, which holds that no legislative bill can embrace more than one subject. The current practice of packing very large, end-of-session omnibus bills with long lists of different topics, he says, concentrates power in the hands of a few powerful legislators, making the Legislature anti-democratic. The solution, Marty believes, is for the next governor and the public to demand that the Legislature stop the practice.

Note

The Civic Caucus interviewed State Senator John Marty twice—a full-length interview on Aug. 10, 2018, and a shorter follow-up interview on Aug. 17, 2018. The following interview notes include discussions from both of those interviews. In addition, at the end of these interview notes is a summary of further discussion that occurred by e-mail between members of the interview group and Senator Marty.

Present for August 10, 2018 interview

John Adams, Steve Anderson, Steven Bosaker, John Cairns, Pat Davies, Paul Gilje, John Marty, Paul Ostrow (chair), Bill Rudelius, Dana Schroeder (associate director), Clarence Shallbetter, T. Williams. By phone: Dan Lortz.

Present for August 17, 2018 interview

Steve Anderson, Janis Clay (executive director), Paul Gilje, Dana Schroeder (associate director), Clarence Shallbetter. By phone: John Cairns, Dan Lortz, John Marty, Paul Ostrow (chair), Bill Rudelius.

Summary

The next governor and the public must put pressure on the Minnesota Legislature to begin adhering to the single-subject clause in the State Constitution, says State Senator John Marty. The single-subject clause states, "No law shall embrace more than one subject, which shall be expressed in its title." Marty describes the trend of the Legislature passing considerably fewer bills than it did in the past, so that today it is passing only about one-fourth as many bills as before 1974.

Marty refers to the long list of topics in the nearly 1,000-page 2018 omnibus bill and asks what the single subject is. The bill, which Gov. Mark Dayton vetoed, included both policy and appropriations items, which Marty believes should be in different bills, so legislators can consider them separately. He says the large, end-of-session omnibus bills give more control and clout to a handful of powerful legislators, making the Legislature anti-democratic.

He discusses the April 2018 Minnesota Supreme Court decision in the *Otto v. Wright County* lawsuit, part of which dealt with enforcement of the single-subject clause. The court ruled that the legislative amendments to the State Auditor's responsibilities over audits of Minnesota counties did not violate the single-subject clause. Marty says the court showed it was reluctant to intervene in the legislative process.

Marty believes the Legislature cannot fix itself. Since the courts have been unwilling to address enforcement of the single-subject clause, he says that public pressure is the only way to change the current legislative practice of violating the clause. He thinks most people see the practice as "atrocious." He makes a case for encouraging the public to ask legislators during the current campaign whether or not they will vote for bills that violate the single-subject clause. Marty also believes the new governor could have a lot of clout in changing the practice.

Biography

John Marty (DFL-Roseville) is a Minnesota State Senator who has represented several northeast metro suburbs and areas of Saint Paul in the Minnesota Senate since 1987. In his first term, he took on several of the most powerful lobbyists, including "big tobacco," when he fought for legislation to prohibit smoking in schools and hospitals, to ban free distribution of cigarettes and other first-in-the-nation proposals.

Since then, Marty has established himself as a leader on ethics issues at the Legislature and has continuously fought to remove special-interest money from the political process. He has also been a consistent advocate for policies that promote fairness, equality and tolerance, as well as those that invest in prevention-investing in health care, schools and jobs to build a better future and prevent problems before they start. Marty was co-chair of the Legislative Commission on Ending Poverty.

He is also the designer and author of the Minnesota Health Plan, which has dozens of co-authors in the House and Senate. The Minnesota Health Plan is a single statewide plan intended to cover all Minnesotans for all of their medical needs.

Marty is currently the Ranking Minority Member of the Senate Energy and Utilities Committee. He is also a member of the Senate Finance Committee and the Senate Health and Human Services Finance and Policy Committee. He has received awards from the Sierra Club, the Audubon Society, and the Minnesota Center for Environmental Advocacy.

He has a B.A. in Ethics and Society from St. Olaf College.

Background

Continuing its focus on Minnesota's competitiveness, the Civic Caucus has been undertaking a review of the quality and effectiveness of Minnesota's legislative process. The Civic Caucus interviewed State Senator John Marty on his efforts to enforce the clause in the Minnesota Constitution that says legislative bills must include only a single subject.

Discussion

Since the 1970s, there is a very clear trend of the Legislature passing considerably fewer bills than it did in the past. State Senator John Marty made that remark and said the Legislature is passing about one-fourth as many bills as before 1974. "We're not passing fewer laws," he said. "We're just cramming them into fewer bills." He said that this creates problems with accountability and, if the trend continues, it could lead to one bill per session.

"It's a bipartisan problem," he said. It's caused, he said, by legislative leadership realizing they gain clout over other members because they get to determine what's in the omnibus bills in the end. Committee chairs do it, too, he said. "It's become a habit more and more," he said.

The single-subject rule is in Article IV of the Minnesota Constitution, the article dealing with the state Legislature. Section 17 of Article IV states: "Laws to embrace only one subject. No law shall embrace more than one subject, which shall be expressed in its title."

A large number of topics were included in the 989-page 2018 omnibus bill. Marty referred to the very long list of topics in the bill's title and asked, "What's the single subject? What doesn't fit in that bill?"

Governor Mark Dayton vetoed the omnibus bill. Marty said Senate Majority Leader Paul Gazelka (R-Nisswa) couldn't believe Dayton vetoed the bill. Marty noted that Gazelka said there were some clunkers Dayton didn't like, but there were lots of good things, too. Marty said the point is that the Republican leadership was saying we can put it all together in the bill and we can ram it past the governor and he'll take it. "It's a terrible way to write laws," Marty said.

The Minnesota Supreme Court briefly addressed the single-subject issue, when it issued a decision in April 2018 in the Otto v. Wright County lawsuit. The lawsuit was brought by State Auditor Rebecca Otto and dealt with several issues, one of them enforcement of the single-subject clause in the state Constitution. The Civic Caucus signed on as an amicus (see Sept. 15, 2017, press release), along with the ACLU and 16 other individuals and organizations, in support of the single-subject aspect of the lawsuit.

In one part of the Supreme Court's decision, the court ruled that the legislative amendments to the State Auditor's responsibilities over audits of Minnesota counties do not violate the single-subject clause. Marty said in its decision, the Supreme Court "set a very high, impossible-to-meet standard." He said the court showed that it was reluctant to intervene in the legislative process, requiring a plaintiff to meet an "extraordinary burden of persuasion."

Prior to the Otto decision, Marty had been considering putting together a different lawsuit on enforcement of the single-subject clause. But after the decision, he said he and others concerned about violations of the single-subject clause were told by a number of court observers and constitutional law experts that they wouldn't get anywhere in the courts right now.

Marty is now taking the approach of making enforcement of the single-subject clause a public issue. Marty said if you talk with the public about how the single-subject clause is being ignored, overwhelmingly the public says, "This stinks." He said the public doesn't like the large omnibus bills, which he also called garbage bills or Christmas tree bills (because of all the ornaments on the tree). "The public understands that something is wrong," he said. "They ask, 'How do you get away with this? Why do you cram these things into a handful of bills on the last night of the legislative session?'"

In 1986, State Supreme Court Justice Lawrence Yetka wrote a concurring opinion addressing a violation of the single-subject clause. Marty said Yetka's opinion concurred with a Supreme Court decision that the Legislature could not gut the office of then-State Treasurer Bob Mattson, as it had attempted to do. Marty quoted Yetka's opinion: "To add matters totally unrelated to either taxes or appropriations seems to be a clear violation of the Constitution, which this court should not tolerate. The worm that was merely vexatious in the 19th century has become a monster eating the Constitution in the 20th. Perhaps this court has been too lax in permitting the slippage to occur or perhaps the right case has not yet reached the courts until now."

Marty commented, "He said it was a worm that became a monster. I'd argue this is Godzilla. It's getting worse." He believes the 2018 multi-topic omnibus bill would have made a much better case than the Otto case to address violation of the single-subject clause.

In 2017, Marty and 10 colleagues wrote a "protest and dissent" on the single-subject issue, which the state Constitution allows any two or more legislators to do. It's then submitted to the Minnesota Senate Journal or the Minnesota House Journal. Marty said for every finance bill that came up in the Senate, he offered an amendment on the floor that would pull out anything that has policy in it. Every one of his amendments failed, some by only a couple of votes.

Marty said he wrote the dissent so that if he and others went to court, they could show they'd tried everything and exhausted all remedies. He said former State Representative Tony Cornish said the Constitution's single-subject clause doesn't prohibit adding numerous policy provisions into a single budget bill. Cornish said, "They've never enforced it before, so I don't know why they're still pointing at that."

"This isn't just a rule," Marty said. "This is the Constitution. There's a reason for the Constitutional clause. Justice Yetka and others spelled it out. They said the point of it is to make things

accountable and to prevent logrolling. We've got a Constitutional prohibition against multiple-topic bills and we ought to take it seriously. Why is it in the Constitution if we're never going to enforce it?"

He said the Legislature does not need to pass a new law on the single-subject issue, since it's already in the Constitution.

Marty is trying to make the public aware of the single-subject issue. He said he's trying to get the public to speak out now during the fall campaign. "Public pressure can change things," he said.

"I don't mind an omnibus Health and Human Services appropriations bill. Even though it has multiple appropriations, it is a single subject: appropriating money for health and human-service programs," Marty said. "But put the policy things in separate bills. If they have financial implications, you put those budget items in the appropriations bill. It's a doable process. It used to work that way. It's been going downhill very fast."

Marty said he doesn't think the Legislature can fix it itself. "I think the governor would have a lot of clout," he said. "I intend to talk to the next governor about this. The governor could have a big impact on this."

He said Governor Dayton, despite good intentions, made the problem worse. If he found a number of items in a bill that he objected to, Dayton would state them in a veto message, but would then negotiate each of them with legislators. With other governors Marty's served under, he said, if the governor said 10 items were not acceptable, then every one of them would be taken out or the bill would be vetoed again. Legislative leadership knew that Dayton would negotiate, so they had an incentive to put as many unrelated items as they wished in the budget bills. When Dayton stood firm this year and vetoed the 989-page bill legislative leaders were surprised.

Marty said we need to get a number of legislators to say they don't like the current process and won't go along with it. Then, when leadership is starting to put the large omnibus bills together, those legislators can say they promised voters during the campaign that they wouldn't go along with that process. "I really think it could change things," he said. "If it doesn't, it's time to go back to the courts and try again. But after the Otto ruling, I really don't think that's the way to go right now."

He said he's trying to build public awareness and engagement on this issue. "I think most people say that this is an atrocious legislative practice," he said.

The cause of the large, multi-topic omnibus bills process is largely control. Marty noted that in his time on the Senate Tax Committee, the committee would hear a bill and then the chair would lay the bill over for possible inclusion in the omnibus bill. "And who puts together the omnibus bill?" he asked. "The chair. It doesn't matter what members of the committee feel."

Marty said in 2017, the State Government Finance Bill included a one-paragraph repealer of Minnesota's campaign-finance laws. It does have financial implications, he said, because the program uses taxpayer funding for some of the money. "But that's a policy decision," he said. "Eliminating 40 years of campaign-finance reforms is a huge policy matter. I would bet that most of the Legislature was not aware that the bill would repeal Minnesota's campaign-finance laws. That's not the way you should pass things."

The reason things happen that way, Marty said, is that committee chairs now have more clout, caucus leadership now has more clout and, basically, the Legislature becomes anti-democratic. "I don't think legislators should be so deferential to the speaker or the majority leader or committee chairs," he said. "Legislators shouldn't give up their power. But, for some reason, most legislators go along when leadership says, 'We're going to do it this way.'" He said people who have control over the decisions appreciate the current process and others don't challenge the leaders enough.

"That's why we need a big shakeup," he said. "Legislators just accept the way things are currently done." He said there must be some outside force—the courts, the public or the governor—saying, "This is not OK." "With that external push, you could eliminate the single-subject problem," he said.

Marty said legislators ought to talk with each other about the single-subject issue, but they won't do that until there's enough public pressure. "The issue must be raised in the campaign," he said. "We need a discussion where legislators can say, 'I'm not going to vote for anything that violates the single-subject clause.'"

It's important to articulate what single subject really means. "We're not trying to say we can't have a technical corrections bill or perhaps even an omnibus supplemental appropriations bill in the second year of a legislative session," Marty said. "You could make the argument that numerous small modifications in the previous year's budget might be considered a single subject."

The limited number of days in the legislative session is not a problem right now. Marty gave that response to an interviewer's question. "The beginning of the legislative session is when we should study and debate things," he said. But the large omnibus bills are only considered at the very end of the session. He said the 2018 omnibus bill was only made available to legislators three hours before debate on the bill began. "It would have taken the average reader 30 hours to read," he said.

An interviewer asked where the filter is that says what's important when there are so many items in a 900-plus-page bill. "That's one of the things missing, which is why we need some enforcement of the single-subject rule," Marty responded.

The governor would be the one who could single handedly do something about the single-subject issue. Marty made that statement and an interviewer noted that during the Civic Caucus gubernatorial candidate interviews, only Republican candidate Jeff Johnson said he would veto any bill that violated the single-subject clause.

"The governor has more clout than everyone else combined on this," Marty said. He said he's going to make that case to the new governor.

People are outraged, but, in their guts, they don't think there's anything they can do. An interviewer made that statement and said that outrage alone doesn't work. "People have to have the sense that actually something can change," the interviewer said.

The interviewer mentioned the national No Labels Speaker's Project. He said 48 members of the U. S. House from both parties have committed that they won't support a new speaker unless there are major rule changes in the House. He asked if anything like that could happen at the Legislature.

Marty replied that he didn't think that would happen without outside pressure. "Things change," he said. "Our main message must be that this can change. We need public pressure on this. We could get political reform."

Marty said when people hear about large omnibus "garbage" bills passing at the last minute, they almost universally oppose the practice. "The campaign is important," he said. "Even if only one percent of people think this part of the legislative process is an important issue, they can make a difference. We need people to ask candidates their opinion on the single-subject issue during the campaign, so they make a commitment. We don't know who's going to be in the majority after this fall's election, so it's a good time to get candidates of both parties on the record on this issue."

"The mere fact that we need a better process at the Legislature is not going to motivate people," an interviewer commented. "We need to say these things are fundamentally undemocratic."

We don't need a majority of legislators to commit to enforcing the single-subject clause. Marty said if even if there were only 15 members of each party in the House who said they wouldn't vote for bills that violate the single-subject clause, then the majority party couldn't pass any bills. "But," he said, "it'd be difficult if you didn't have a bipartisan bloc of 30 or 50 legislators saying they're not going to participate in violating the single-subject clause. You won't find many in leadership positions who are going to support this."

Policy items don't belong in appropriations bills. When asked about the large Health and Human Services (HHS) appropriations bills, Marty made the point that policy items should be treated separately from the appropriations. He said if there were one bill with all the HHS budget items in it, it would likely pass the single-subject test. Legislators could then consider all the policy items on their own, in separate bills. The budget committees would then judge separately, in an appropriations bill, whether the budget is adequate to fund the policies and programs in the policy bills.

"Keeping budget items and policy items separate is the most important part of the solution," Marty said.

Doing the same old thing just because that's how you've always done it is a big mistake; you must intersect the system by doing something different. An interviewer made that statement and said that ranked choice voting (RCV) is one of those things. Marty replied that about half the members of the Legislature support ranked choice voting. "I strongly support it. I think there's potential," he said.

Money in politics has corrupted the system. Marty made that statement and used the illustration of individuals and organizations making campaign contributions when they don't even live in the state or the district. "They just dump in unlimited amounts of money to influence who gets elected in places where they aren't even voters," he said. "We can't have a democracy that doesn't have accountability. We need voters to decide elections, not campaign donors. That's essential if we want to sustain our democracy."

The Civic Caucus could put out a report on what critical things must happen in order for things to change at the Legislature . Marty encouraged the Civic Caucus to do that and to explain why 20 different things are important and then highlight two or three things that could change right now. "The Civic Caucus brings in a lot of bright thinkers," he said.

Further discussion by e-mail following the August 10, 2018 interview. In follow-up e-mails with members of the Civic Caucus interview group, Marty answered questions and provided additional comments.

Is it possible that some legislators welcome the fact that they can vote once on a massive piece of legislation and avoid being held accountable for up-or-down votes on individual bills? An interviewer asked that question and Marty replied that many legislators like the lack of accountability, at least to a point. But he said that with large omnibus bills, legislators cannot control most of the provisions of the bill for which they might have voted. Yet they could be unfairly attacked for some provision of the bill that was beyond their control.

"I think most politicians would rather be criticized for the positions they have and the votes they take than be criticized for some provision in an omnibus bill they had no control over," Marty wrote.

Garbage bills give more control and clout to a handful of powerful legislators. Marty made that statement and said that takes away authority from newer members, giving them fewer opportunities to provide leadership and grow in their positions. "It clearly reduces the need to approach other legislators to build support," he wrote. "Instead of talking to all members of the Legislature, newer legislators need only persuade the committee chair or the majority leader to include a provision in their omnibus bills. It is healthy for legislators to approach their colleagues to persuade them. It should be the Legislature that determines whether to support a bill, not a few legislative leaders."

One of the most troubling aspects of the omnibus bill process is that committee chairs can simply lay a bill over "for possible inclusion" in an omnibus bill. Marty made that statement and wrote, "This dismisses the role of committee members and their deliberations and simply leaves it up to the chair to decide what to do with a piece of legislation. It makes it more a matter of the chair's desire than the desire of the full committee membership."

Adopting North Dakota's constitutional provision that requires a vote on every bill that is introduced would not improve the legislative process. Marty made that remark and said it would encourage a huge increase in the number of bills discussed, leading to less time for consideration of any individual bill. "Some bills are introduced just to begin building awareness of an issue, to make a political statement or to please some constituency and even the authors might not be ready for them to be heard," he wrote.