

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DIVISION I, SECTION 24

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LA TEACHERS FEDERATION, ET AL .
V. . SUIT NO. 612,732
STATE OF LOUISIANA .
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TUESDAY, DECEMBER 18, 2012

ORAL REASONS FOR RULING ON CROSS MOTIONS FOR SUMMARY
JUDGMENT

THE HONORABLE R. MICHAEL CALDWELL, JUDGE PRESIDING

APPEARANCES:

LARRY SAMUEL FOR PLAINTIFFS

JIMMY FAIRCLOTH AND JOHN HUNT FOR DEFENDANT

REPORTED BY: PAMELA KATE VOLENTINE, CCR #26011

DECEMBER 18, 2012

THE COURT: ALL RIGHT. THIS IS SUIT NUMBER 612,732, LOUISIANA FEDERATION OF TEACHERS AND OTHERS VERSUS THE STATE OF LOUISIANA. THIS CASE INVOLVES A REQUEST FOR A DECLARATORY JUDGMENT ADDRESSING THE CONSTITUTIONALITY OF ACT 1 OF THE REGULAR LEGISLATIVE SESSION OF 2012. THE PLAINTIFFS CONTEND THAT THE ACT VIOLATES ARTICLE 3, SECTION 15(A) OF THE LOUISIANA STATE CONSTITUTION OF 1974. THE PARTIES HAVE AGREED TO SUBMIT THE CASE TO THE COURT ON CROSS-MOTIONS FOR SUMMARY JUDGMENT. THE PARTIES HAVE DONE SO BECAUSE THIS IS PURELY A MATTER OF LAW. THE CORRECTNESS, APPROPRIATENESS, AND/OR WISDOM OF WHAT THE ACT PURPORTS TO DO IS NOT BEFORE THIS COURT. THE ONLY ISSUE IS WHETHER OR NOT THIS ACT RESULTED FROM A BILL THAT MET THE PROCEDURAL REQUIREMENTS OF ARTICLE 3, SECTION 15(A). THE LOUISIANA SUPREME COURT, IN THE CASE OF **LOUISIANA PUBLIC FACILITIES AUTHORITY VERSUS FOSTER**, 795 SO.2D 288, A 2001 CASE, CITING EARLIER DECISIONS OF THAT COURT, NOTED THAT "THE LEGISLATIVE POWER OF THE STATE IS VESTED IN THE LEGISLATURE. IN ITS EXERCISE OF THE ENTIRE LEGISLATIVE POWER OF THE STATE, THE LEGISLATURE MAY ENACT ANY LEGISLATION THAT THE STATE CONSTITUTION DOES NOT PROHIBIT. THUS, TO HOLD LEGISLATION INVALID UNDER THE CONSTITUTION, IT IS NECESSARY TO RELY ON SOME PARTICULAR CONSTITUTIONAL PROVISION THAT LIMITS THE POWER OF THE LEGISLATURE TO ENACT SUCH A STATUTE." THE COURT WENT ON TO HOLD THAT "LAWS ENACTED BY THE LEGISLATURE ARE PRESUMED TO BE

CONSTITUTIONAL, AND THE CONSTITUTIONALITY OF STATUTES SHOULD BE UPHOLD WHENEVER POSSIBLE." THE COURT HAD PREVIOUSLY, IN THE CASE OF **DOHERTY VERSUS CALCASIEU PARISH SCHOOL BOARD**, 634 SO.2D 1172, DECIDED IN 1994, NOTED THAT "THERE IS A STRONG PRESUMPTION THAT LEGISLATIVE ACTIONS ARE CONSTITUTIONAL. ONLY WHERE THE STATUTE IS CLEARLY REPUGNANT TO THE CONSTITUTION WILL IT BE STRICKEN. ALTHOUGH COURTS ARE NOT CONCERNED WITH THE POLICY OR WISDOM BEHIND A STATUTE, OCCASIONALLY COURTS MUST CORRECT OR IGNORE OBVIOUS INADVERTENCES WITHIN A STATUTE TO MAKE THAT STATUTE INTELLIGIBLE AND OPERATIVE." AND AGAIN, IN THE **LOUISIANA PUBLIC FACILITIES** CASE, THE COURT SAID, "IT IS NOT ENOUGH FOR A PERSON CHALLENGING A STATUTE TO SHOW THAT THE CONSTITUTIONALITY OF THE STATUTE IS FAIRLY DEBATABLE, BUT, RATHER IT MUST BE SHOWN CLEARLY AND CONVINCINGLY THAT IT WAS THE CONSTITUTIONAL AIM TO DENY THE LEGISLATURE THE POWER TO ENACT THE STATUTE." NOW, WITH THAT JURISPRUDENTIAL GUIDANCE, WE MUST NOW LOOK AT THE CONSTITUTIONAL PROVISION ITSELF. SECTION 15(A) OF ARTICLE 3 OF THE CONSTITUTION OF 1974 SAYS, IN PERTINENT PART, "EVERY BILL SHALL BE CONFINED TO ONE OBJECT." THE PLAINTIFFS SEEM TO TAKE THE POSITION THAT THE TERMS "BILL" AND "ACT" ARE INTERCHANGEABLE, AND FURTHER THAT WE SHOULD IGNORE THE NEXT SENTENCE OF THAT PROVISION, WHICH READS, "EVERY BILL SHALL CONTAIN A BRIEF TITLE INDICATIVE OF ITS OBJECT." THE TWO SENTENCES ARE PART OF THE SAME PROVISION. CLEARLY, THEY MUST BE READ TOGETHER. WHEN DONE SO, IT IS OBVIOUS THAT THE

OBJECT REQUIRED TO APPEAR IN THE TITLE BY THE SECOND SENTENCE IS THE "ONE OBJECT" REFERENCED IN THAT FIRST SENTENCE. THIS NEED TO CONSIDER THE TITLE WAS RECOGNIZED BY THE FIRST CIRCUIT COURT OF APPEAL IN THE **IN RE: RUBICON** CASE, 670 SO.2D 475, RELIED UPON BY THE PLAINTIFFS. NOW, AS WAS ARGUED BY THE STATE, THE "BILL" THAT WAS CONSIDERED BY THE LEGISLATURE, AND THUS, THE "BILL" GOVERNED BY ARTICLE 3, SECTION 15(A) WAS HOUSE BILL 974 OFFERED IN THESE PROCEEDINGS BY THE PLAINTIFFS AS EXHIBIT A. THAT BILL DOES HAVE A TITLE, WHICH READS "TEACHERS: PROVIDES RELATIVE TO TEACHER TENURE, PAY-FOR-PERFORMANCE, AND EVALUATIONS." THE "ACT" EVENTUALLY PASSED BY THE LEGISLATURE AND OFFERED BY THE PLAINTIFFS AS EXHIBIT B DOES NOT HAVE A TITLE. AS I PREVIOUSLY NOTED, THE PLAINTIFFS WANT THE COURT TO FOCUS ON THE "ACT" RATHER THAN THE "BILL." THAT IS NOT WHAT THE CONSTITUTIONAL PROVISION AT ISSUE ADDRESSES. RATHER, SECTION 15(A) OF ARTICLE 3 REQUIRES THAT THE BILL HAVE A "TITLE INDICATIVE OF ITS OBJECT." SO FOR THAT REASON, CASES INTERPRETING A SIMILAR PROVISION OF THE 1921 CONSTITUTION ARE RELEVANT. THE 1921 PROVISION, FOUND AT SECTION 16 OF ARTICLE 3 READ AS FOLLOWS: "EVERY LAW ENACTED BY THE LEGISLATURE SHALL EMBRACE BUT ONE OBJECT AND SHALL HAVE A TITLE INDICATIVE OF SUCH OBJECT." THERE, THE "ONE OBJECT" AND THE INDICATIVE TITLE REQUIREMENTS WERE CONTAINED IN ONE SENTENCE. IN THE 1974 CONSTITUTION, THE REQUIREMENTS ARE CONTAINED IN TWO CONSECUTIVE SENTENCES. THE CHOICE OF SENTENCE STRUCTURE IN THE 1974 PROVISION

WOULD SEEM TO ME TO CREATE LITTLE OR NO DEVIATION FROM THE 1921 REQUIREMENTS. THUS, I FEEL THAT I MUST CONSIDER THE TITLE OF THE BILL WHEN ADDRESSING THE CONSTITUTIONALITY OF THIS ACT. AS THE FIRST CIRCUIT COURT OF APPEAL NOTED IN THE CASE OF **WOOLEY VERSUS LUCKSINGER**, 14 SO.3D 311, A 2008 CASE, BECAUSE OF THE REQUIREMENTS OF ARTICLE 3, SECTION 15(A) OF THE CONSTITUTION, "THE TITLE OF AN ACT MAY BE CONSIDERED FOR THE PURPOSES OF DETERMINING LEGISLATIVE INTENT." IN ADDRESSING THE REQUIREMENT OF "ONE OBJECT," OUR SUPREME COURT IN THE 1943 DECISION OF **WALL VERSUS CLOSE**, 14 SO.2D 19, SAID, "THE RULE WHICH HAS BEEN STATED BY THIS COURT, OVER AND OVER AGAIN, IS THIS: THE CONSTITUTIONAL REQUIREMENT THAT A STATUTE SHALL EMBRACE ONLY ONE OBJECT DOES NOT MEAN THAT EACH AND EVERY MEANS NECESSARY TO ACCOMPLISH AN OBJECT IN THE LAW MUST BE PROVIDED FOR BY A SEPARATE ACT RELATING TO IT ALONE. A STATUTE THAT DEALS WITH SEVERAL BRANCHES OF ONE SUBJECT HAS NOT THEREBY VIOLATED THE CONSTITUTIONAL PROVISION." AND "THE REQUIREMENT THAT A STATUTE SHALL HAVE ONLY ONE OBJECT DOES NOT FORBID THE LEGISLATURE TO DEAL WITH SEVERAL BRANCHES OF THE SUBJECT STATED IN THE TITLE OF THE ACT OR TO PROVIDE IN ONE ACT ALL OF THE MEANS NECESSARY FOR CARRYING OUT ITS OBJECT." THE COURT WENT ON TO NOTE THAT "THE OBJECT OF A LAW IS THE AIM OR PURPOSE OF THE ENACTMENT. THE OBJECT IS, 'PROPERLY SPEAKING, ITS GENERAL PURPOSE.' THE OBJECT OF THE LAW IS THE MATTER OR THING FORMING THE GROUNDWORK OF THE ACT." AND "IN DECIDING WHETHER A STATUTE VIOLATES A

CONSTITUTIONAL PROVISION WHICH PROHIBITS AN ACT FROM EMBRACING MORE THAN ONE OBJECT, COURTS MUST KEEP IN MIND ITS MAIN PURPOSE AS DISCLOSED BY ITS LANGUAGE. IT MATTERS NOT HOW COMPREHENSIVE THE ACT MAY BE OR HOW NUMEROUS ITS PROVISIONS; IT DOES NOT VIOLATE SUCH A CONSTITUTIONAL PROHIBITION IF ITS LANGUAGE, REASONABLY CONSTRUED, SHOWS THAT IT HAS BUT ONE MAIN, GENERAL OBJECT OR PURPOSE, AND IF NOTHING IS WRITTEN INTO IT EXCEPT WHAT IS NATURALLY CONNECTED WITH, AND IS INCIDENTAL OR GERMANE TO, THE ONE PURPOSE OR OBJECT." THEN ADDRESSING THE CONSTITUTION OF 1974, THE SUPREME COURT, IN THE **DOHERTY** DECISION, ALSO NOTED THAT "WHERE PARTS OF A STATUTE ARE REASONABLY RELATED AND HAVE A NATURAL CONNECTION TO THE GENERAL SUBJECT MATTER OF THE LEGISLATION, THE STATUTE IS CONSIDERED TO HAVE ONE OBJECT REGARDLESS OF HOW DETAILED IT IS REGARDING THE ACCOMPLISHMENT OF THE STATED PURPOSE." AND THAT "THE MEANS NECESSARY TO CARRY OUT A LAW ARE NOT SEPARATE OBJECTS OF THE LAW." SO AGAIN, WITH THIS JURISPRUDENTIAL BACKDROP, THE BILL AND ITS TITLE MUST BE CONSIDERED. AS PREVIOUSLY NOTED, THE TITLE IS "TEACHERS: PROVIDES RELATIVE TO TEACHER TENURE, PAY-FOR-PERFORMANCE, AND EVALUATIONS." NOW SECTION 1 OF THE ACT THEN PROCEEDS TO DEAL WITH INTERACTIONS BETWEEN LOCAL SCHOOL BOARDS AND THE SUPERINTENDENT OF SCHOOLS; TERMS OF THE SUPERINTENDENT'S CONTRACT; THE POWER AND RESPONSIBILITIES OF THE SCHOOL BOARD WITH REFERENCE TO SCHOOL PERFORMANCE, NUMBER OF SCHOOLS, AND HIRING OF PERSONNEL. THE STATE

ARGUES THAT THOSE PROVISIONS ARE INTERRELATED WITH, AND GERMANE TO, THE IMPLEMENTATION OF THE OBJECT OF THE BILL AS STATED IN THE TITLE AND AS SET OUT IN THE REST OF THE BILL. THE PLAINTIFFS, OF COURSE, ARGUE THAT THESE PROVISIONS ADDRESS TOTALLY SEPARATE OBJECTS FROM ANY OTHER PORTIONS OF THE BILL. ANY ATTEMPT TO RELATE THESE PROVISIONS TO THE OBJECTS SET FORTH IN THE TITLE AND IN THE OTHER PROVISIONS OF THE BILL OR ACT REQUIRES A LONG, TENUOUS, AND CONVOLUTED JOURNEY, WHICH THIS COURT IS NOT WILLING TO MAKE. WHILE CERTAIN MINOR PROVISIONS OF SECTION 1 COULD CONCEIVABLY HAVE A "NATURAL CONNECTION TO THE GENERAL SUBJECT MATTER OF THE LEGISLATION," AS REQUIRED BY THE **DOHERTY** DECISION, THE OVERWHELMING SUBSTANCE OF SECTION 1 DOES NOT. THUS, SECTION 1, WHEN COMPARED TO THE TITLE AND THE OTHER SECTIONS OF THE ACT, DOES NOT MEET THE "ONE OBJECT" REQUIREMENT. ON THE OTHER HAND, SECTION 2, DEALING WITH SALARIES FOR TEACHERS AND OTHER SCHOOL EMPLOYEES, AND THE RELATIONSHIP BETWEEN SALARIES AND EFFECTIVENESS, OR PERFORMANCE, CLEARLY COMES WITHIN THE OBJECT STATED IN THE TITLE. LIKewise, SECTION 3 DEALING WITH TENURE IS ALSO PART OF THE STATED OBJECT OF THE BILL AND IS RELATED TO SECTION 2. SECTION 4 REPEALS VARIOUS LAWS. FROM THIS COURT'S REVIEW OF THE STATUTES TO BE REPEALED, ALL APPEAR TO BE IN CONFLICT WITH SECTIONS 2 AND 3 OF THE ACT, AND THUS ARE PART OF THE "ONE OBJECT." NOW, COURTS HAVE DEALT WITH THE QUESTION OF WHAT TO DO WHEN ONE PORTION OF THE ACT DOES NOT MEET THE "ONE OBJECT" REQUIREMENT AND

WHEN THE "ONE OBJECT" IS REFLECTED IN THE TITLE OF THE BILL. AS THE LOUISIANA SUPREME COURT HELD IN **ORLEANS PARISH SCHOOL BOARD VERSUS CITY OF NEW ORLEANS**, THAT'S 410 SO.2D 1038, A 1982 DECISION, "WHEN AN ACT OF THE LEGISLATURE HAS MORE THAN ONE OBJECT, AND ONLY ONE OF THOSE OBJECTS IS REFLECTED IN THE TITLE OF THE ACT, THE ENTIRE ACT IS NOT NECESSARILY UNCONSTITUTIONAL. THE UNCONSTITUTIONAL PORTION OF THE ACT MAY BE STRICKEN WHILE THE VALID PORTION IS ENFORCED." ACCORDINGLY, IT IS THE HOLDING OF THIS COURT THAT SECTION 1 OF ACT 1 OF THE REGULAR SESSION OF 2012 IS UNCONSTITUTIONAL, BUT THAT SECTIONS 2, 3, AND 4 ARE, IN FACT, CONSTITUTIONAL. THEREFORE, EACH MOTION FOR SUMMARY JUDGMENT IS GRANTED IN PART AND DENIED IN PART. COSTS ARE ASSESSED AGAINST THE PLAINTIFFS. AND IF THE COUNSEL FOR THE STATE WILL PLEASE PREPARE A JUDGMENT TO THAT EFFECT, SEND A COPY TO OPPOSING COUNSEL PURSUANT TO RULE 9.5 OF THE UNIFORM RULES, AND HAVE THE ORIGINAL FILED AND SENT TO MY OFFICE, PLEASE.

END OF TRANSCRIPT

C E R T I F I C A T E

I, PAMELA KATE VOLENTINE, CERTIFIED COURT REPORTER IN AND FOR THE STATE OF LOUISIANA AND EMPLOYED AS OFFICIAL COURT REPORTER BY THE 19TH JUDICIAL DISTRICT COURT, DO HEREBY CERTIFY THAT THIS PROCEEDING WAS REPORTED BY ME IN THE STENOTYPE METHOD, THAT THIS TRANSCRIPT WAS PREPARED BY ME AND IS A TRUE AND CORRECT TRANSCRIPT TO THE BEST OF MY ABILITY AND UNDERSTANDING, THAT THE TRANSCRIPT HAS BEEN PREPARED IN COMPLIANCE WITH TRANSCRIPT FORMAT GUIDELINES REQUIRED BY STATUTE OR BY RULES OF THE BOARD OR BY THE SUPREME COURT OF LOUISIANA, AND THAT I AM NOT RELATED TO COUNSEL OR TO THE PARTIES HEREIN, NOR AM I OTHERWISE INTERESTED IN THE OUTCOME OF THIS MATTER.

WITNESS MY HAND THIS 19TH DAY OF NOVEMBER, 2012.



Pamela Kate Volentine

PAMELA KATE VOLENTINE, CCR
OFFICIAL COURT REPORTER
19TH JUDICIAL DISTRICT COURT
CCR #26011