

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO: 612,732

SECTION: 24

LOUISIANA FEDERATION OF TEACHERS, EAST BATON ROUGE
FEDERATION OF TEACHERS, JEFFERSON FEDERATION OF TEACHERS,
NELLIE JOYCE MEARIMAN AND KEVIN JOSEPH DEHART

VERSUS

STATE OF LOUISIANA

FILED: _____

DEPUTY CLERK

PLAINTIFFS' MEMORANDUM
IN SUPPORT OF MOTION FOR NEW TRIAL

MAY IT PLEASE THE COURT:

Plaintiffs submit this Memorandum in Support of the Motion for New Trial.

This Court has ruled that HB 974/Act 1 of the 2012 Regular Legislative Session contains more than one object in violation of the “single object” provision in Article 3, §15(A) of the Louisiana Constitution of 1974. However, the Court has stricken only one section of the bill/act, namely, the section that is not reflected in the title of the bill. For the following reasons, the Court’s ruling that the other sections in Act 1 remain in effect is contrary to law.

ARGUMENT:

1. The “title” of HB 964 and Act 1 is not the section that begins “TEACHERS: Provides relative to teacher tenure, pay-for-performance, and evaluations.” This section is actually called the “summary” or “one-liner,” not the title. The title is the section that begins “AN ACT...To amend and reenact...”

In the Reasons for Judgment, the Court states that the section of the bill/act that is not reflected in the title of the bill/act is the only section to be stricken, citing *Orleans Parish School Board v City of New Orleans*.¹ In reaching this conclusion, the Court cites the second sentence of Article 3, §15(A), which states, “every bill shall contain a brief title indicative of its object”. The Court further states that the “title” of the bill (HB 974) is the section of the bill that reads “TEACHERS: Provides relative to teacher tenure, pay-

¹ *Orleans Parish School Board v City of New Orleans*, 81-2691 (La. 3/1/82), 410. So.2d 1038, which held that “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”.

for-performance, and evaluations,” and that the act itself does not have a title. However, the section that reads “TEACHERS: Provides relative to teacher tenure, pay-for-performance, and evaluations,” is not the title of either a bill or an act. Rather, it is called the *summary*, or the “*one-liner*”². The glossary of terms used by the Louisiana legislature³ defines these terms as follows:

Summary
See <i>One-Liner</i>
One-liner
A phrase or sentence that describes a bill or resolution. It appears on the bill or resolution after the keyword and before the heading (“An Act”, “A Joint Resolution”, etc.). It is not part of the proposed law and may be referred to as “summary”. (<i>Also see Keyword</i>)
Title
A concise statement appearing at the beginning of a bill which is indicative of the object of the bill as required by the constitution and embraces the significant aspects of the subject content of the bill. (<i>Const. Art. III, §15(A), and House Rule 7.4 and Senate Rules 7.3 and 7.4</i>)
Keyword
General subject of bill or resolution that appears above the heading (“An Act”, “A Joint Resolution”, etc.) Not part of proposed law.

Thus the section of HB 964 and Act 1 of 2012 that reads “TEACHERS: Provides relative to teacher tenure, pay-for-performance, and evaluations,” is parsed as follows:

- The “**keyword**” is the word **TEACHER**.”
- The “**one-liner**” or “**summary**” is: “Provides relative to teacher tenure, pay-for-performance, and evaluations.”
- The “**title**” is section that begins “AN ACT...To amend and reenact...”

Consequently, both House Bill 974 and Act 1 have a title, which reads:

AN ACT

To amend and reenact R.S. 17:54(B)(1)(b)(i) and (iii), 81(A) and (P)(1), 81.4, 229, 414.1, 441, 442, 443, and 444(B)(1), to enact R.S. 17:418 and 532(C), and to repeal R.S.17:44, 45, 81(I), 154.2, 235.1(E), 346.1, 419, 419.1, 420, 421, 421.1, 421.2, 421.3, 421.5, 422, 422.1, 422.2, 422.3, 422.4, 422.5, 431, 444(A) and (B)(2) and (3), 446, 461 through 464, and 1207, relative to elementary and secondary education; to provide with respect to teachers and other school employees; to provide with respect to

² See Appendix “A” (cited in earlier memoranda) printed from the website of the Louisiana Legislature.

³ The Glossary of Legislative Terms is found on the website for the Louisiana State Legislature at legis.la.gov/glossary.htm

local school superintendents, their employment, and their duties and responsibilities; to provide relative to local school boards and their functions and powers; to provide relative to school personnel decisions; to provide relative to school board reduction in force policies; to provide with respect to the salaries and compensation of teachers and other school employees; to provide relative to tenure for school employees and the removal of tenured and nontenured teachers; to provide for effectiveness; and to provide for related matters.

In each of the cases cited by the Court that have interpreted the “single object” provision in Article 3, §15(A), the courts have referenced the “title” to consist of the section that begins “an act...to amend and reenact...”:

In *Louisiana Public Facilities Authority v Foster*⁴, the Louisiana Supreme Court specifically held that the “title of a “bill” consists of the section that begins

“AN ACT...: To quote directly from the Supreme Court⁵:

“Act 1238 began as Senate Bill 1112. **As introduced, the bill’s title read:**

AN ACT

To amend and reenact R.S. 9:2343(B) and to repeal R.S. 9:2343(C), *relative to membership on the board of trustees of certain public trusts*; to increase the number of trustees of certain public trusts; to provide for their appointment; to provide for the term of the trustees; and to provide for related matters.

The title was subsequently amended to read:

AN ACT

To amend and reenact R.S. 9:2343(B) and (E) and to repeal R.S. 9:2343(C), relative to public trusts; to increase the number of trustees of certain public trusts; to provide for their appointment; to provide for the term of the trustees; to authorize certain public trusts to utilize sole source procurement provisions of the Louisiana Procurement Code; and to provide for related matters. (Emphasis added).

The body of the bill was thereafter amended to conform to the amended title by adding the provision relating to hospital service district beneficiaries. (emphasis added)

In *Louisiana Public Facilities Authority v Foster*, the title of both Senate Bill 1112 of 1999⁶ and the Act is the section that begins “AN ACT...to amend and reenact...”

In *Louisiana Public Facilities Authority v Foster*, the section of SB 1112 that reads

⁴ *Louisiana Public Facilities Authority v Foster*, 2001-0009, (La. 9/18/01), 795 So.2d 288
⁵ *Louisiana Public Facilities Authority*, *supra*, at 299

⁶ For the Court’s review, attached is SB 1112 (the Original bill, Appendix “1”) together with the Summary (Appendix “2”) and the Act (Enrolled Act 1238, as Appendix “3”), substantiating that the language that begins with the words “AN ACT...To amend and reenact...” is the title and the section that begins “TRUSTS...” is the “summary, or one-liner.”

“TRUSTS. Provides for the appointment and terms of trustees of certain public trusts” is the “summary,” or “one-liner,” not the title.

Moreover, in *Louisiana Public Facilities v Foster*, it is noteworthy that the legislature considered three separate bills, each dealing with trusts, introduced during the same legislative session. One bill (SB 1112/Act1238), cited above, sought to amend a single statute concerning trusts, La. R.S. 9:2343. The second bill (SB 122/Act 915⁷) sought to amend another individual statute concerning public trusts, 9:2346. The third bill (enacted as Act 1323⁸) sought to amend another individual statute concerning public trusts, 9:2343(A). This is a far cry from the case at bar, where the legislature – in one bill – sought to amend and reenact nine different statutes, enact two new distinct statutes and repeal 28 statutes even located in different chapters in Title 17.

In *Doherty v Calcasieu Parish School Board*⁹, the court again identified the title¹⁰ as the section that begins with the words “An Act...” In *Doherty*, the legislature sought to amend one statute, La. R.S. 17:81.5.

In *Matter of Rubicon*¹¹, the court also refers to the title as the section that is encompassed beginning with the phrase “AN ACT...”¹²

In *Wall v Close*¹³, the bill involved a fiscal code, unlike the case at bar where the bill involves a variety of statutes culled from various chapters in Title 17 of the Revised Statutes. The court stated¹⁴:

The purpose of the act, as indicated by its title, is to provide for a financial code for the State-i.e., a digest of the laws pertaining to financial matters generally-and to provide rules of procedure relating to the administration of the financial affairs of the State. The act creates the Department of Finance and confers upon it certain functions, but it does not purport to reorganize the Executive Department of the State Government. The functions, duties, powers, and prerogatives of the Department of Finance are all set forth at length and in detail in the body of the act. Its functions and duties are many, but its powers are limited.

⁷ The Original SB 122 is attached as Appendix “4”, the Summary is attached as Appendix “5,” and the Act (Act 915) is attached as Appendix “6.”

⁸ The Original HB 2047 is attached as Appendix “7”, the Summary is attached as Appendix “8,” and the Act (Act 1323) is attached as Appendix “9.”

⁹ *Doherty v Calcasieu Parish School Board*, 93-3017 (La. 4/11/94), 634 So.2d 1172 Appendix “10,” Act 631 of 1987

¹⁰ *Matter of Rubicon*, 95-0108 (La. App. 1 Cir. 2/14/96); 670 So.2d 475

¹¹ *Matter of Rubicon*, *supra*, at 480: “The title states, in part, that the act will “provide for payment of witness fees to law enforcement officers subpoenaed in certain administrative proceedings” and “provide for appeal of final enforcement or permit action.” Attached is Appendix “11,” which is Act 1208 of 1995.

¹³ *Wall v Close*, 203 La. 345 (1943)

¹⁴ *Wall v Close*, *supra*, at 379-380

The section of an “act” that begins “AN ACT...to amend and reenact...” is the title, and that same section in the bill is also the title. It would not make sense for the words “AN ACT...to amend and reenact...” to be considered the “title” in the act but these same words and this same section would not be considered the “title” in the bill.

Both acts and bills include the language “AN ACT” even before a bill has been enacted.

When a bill is enacted, the summary or one-liner is removed from the act, but the title remains.

In the Reasons for Judgment, the Court draws a distinction between a “bill” and an “act”. The Court found that Article 3, §15(A) speaks to a “bill,” not an “act.”¹⁵ This was in response to plaintiffs’ argument that the title of Act 1 begins with the words “AN ACT...To amend and reenact R.S....”

The court suggests that plaintiffs seem to take the position that the terms “bill” and “act” are interchangeable. To set the record straight, and (hopefully) to make our position abundantly clear, plaintiffs state unequivocally: we acknowledge that a “bill” and an “act” are in fact two separate measures. The bill becomes an act upon final passage, but it is not an act until it is passed. But the section of both bills and acts that begins “AN ACT...To amend and reenact” is the title. The section referred to as the title in the bill is the same as the title of the act.

Plaintiffs also acknowledge that Article 3, §15(A) of the Louisiana Constitution speaks to a “bill”; that is, a *bill* shall be confined to one object.

It is significant, as the Court points out in the Reasons for Judgment, that the next sentence of Article 3, §15(A) states “every bill shall contain a brief title indicative of its object”. This is the premise that plaintiffs respectfully contend that the Court’s ruling is contrary to law; the title is not the section of the bill or the act upon which the Court has based its finding.

Moreover, plaintiffs emphasize that the significant word in the provision in Article 3, §15(A) that states, “every bill shall contain a brief title indicative of its object”

¹⁵ Article 3, §15(A): “The legislature shall enact no law except by a bill introduced during that session, and propose no constitutional amendment except by a joint resolution introduced during that session, which shall be processed as a bill. Every bill, except the general appropriation bill and bills for the enactment, rearrangement, codification, or revision of a system of laws, shall be confined to one object. Every bill shall contain a brief title indicative of its object. Action on any matter intended to have the effect of law shall be taken only in open, public meeting. (emphasis added)

is the word “object.” The Constitution refers to an object in the singular sense. The title of a bill, the title of an act, and the contents of the bill and the act, must have one, single object. This Court has found that HB 964/Act 1 has more than one object.

2. Act 1 does not have “one main, general object or purpose.” Because both the title and content of Act 1 consist of a multitude of objects, the entire Act must be declared void.

Wall v Close,¹⁶ cited by the Court, and the other cases that have interpreted Article 3, §15(A), hold that the bill must have “one main general object or purpose.” In the case at bar, HB 974/Act 1 fails to satisfy that requirement. As this Court has noted in the Reasons for Judgment, “Any attempt to relate these provisions [in Section 1] to the objects set forth in the title and in 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.”

The Court has ruled that the Act contains multiple objects. Each of these objects are stated in the title, which distinguishes the case at bar from *Orleans Parish School Board v City of New Orleans*¹⁷. However, if the content of the bill or the act contains multiple objects, then it cannot be deemed constitutional simply because the title states multiple objects. Such a holding would entirely defeat the purpose of the requirement that there must be a single object. The conclusion that HB 964/Act 1 contains more than one object must necessarily lead to the conclusion that it violates the “single object” requirement. Second, that outcome would make a mockery of Article 3, §15(A), which prohibits multiple objects in the first place. The legislature cannot avoid the “single object” requirement simply by listing the multitude of objects in the title. Otherwise stated, the title is further evidence of the multiplicity of objects in HB974/Act 1.

In *Matter of Rubicon*¹⁸, the First Circuit held the entire act invalid because the act in question contained multiple objects:¹⁹

¹⁶ *Wall v Close, supra*

¹⁷ *Orleans Parish School Board v City of New Orleans*, 81-2691, (La. 3/1/82), 410 So. 2d 1038

¹⁸ *Matter of Rubicon, supra*

¹⁹ *Matter of Rubicon, supra*, at 480

The two objects of Act 1208 are separate and distinct, and by including them in one bill, the legislature contravened the requirements of Article III, section 15(A) of the state constitution. The act is an example of the type of bill that the constitution sought to eliminate. It forces legislators to consider unrelated objects and then to vote on all of them at one time. Because Act 1208 is not confined to one object, it violates the one object requirement of the state constitution.

The Court in *Matter of Rubicon* acknowledged that a violation of the one object limitation does not necessarily invalidate the entire act. But the *Rubicon* Court distinguished the situation where the title of the act expresses only one object and the body sets forth two objects (which is not the issue in the case at bar) from situations where both the title and the act embrace two or more objects (such as the case at bar), in which event the entire act must be declared null.²⁰

Violation of the one object requirement does not necessarily invalidate an entire act. When the title of an act expresses only one object, while its body sets forth two objects, the court must restrict its declaration of nullity to the object of the act which is not expressed in the title. *Orleans Parish School Board v. City of New Orleans*, 410 So.2d 1038, 1040 (La.1982); *State v. Ferguson*, 104 La. 249, 28 So. 917, 919 (1900). **However, if the title of the act expresses, and the body of the act embraces, two distinct objects, the entire act must be declared null, as the court may not choose between the two objects, holding one valid and one void.** *Ferguson*, 28 So. at 919.

In the present case, the two objects embraced by the body of Act 1208 are also expressed in its title. ... Because the title of the act and the act itself embrace two distinct objects, we are constrained to hold the entire act invalid.

Because we declare Act 1208 unconstitutional in its entirety because of the one object violation, we premit any discussion of the issue that the body is broader than the title. (emphasis added)

In the Reasons for Judgment, this Court also cites *Doherty v. Calcasieu Parish School Board*,²¹ holding that where parts of a statute are reasonably related and have a natural connection to the subject matter, the single object requirement is satisfied. But the 1921 Constitution, which was the applicable provision in *Doherty*, does not refer to a single object of a “bill”, but rather, a “statute”. This is a significant point, which can best be explained by the following illustration.

Louisiana’s Teacher Tenure Act consists of several statutes, namely, La. R.S. 17:461 through 464 (Orleans Parish) and La. R.S. 17:441 through 17:444 (all other parishes). Under the 1974 Constitution, it would not be necessary for the legislature to

²⁰ *Matter of Rubicon*, *supra*, at 480

²¹ *Doherty v Calcasieu Parish School Board*, *supra*

introduce separate bills to amend the separate statutes that comprise the tenure law. Thus a bill would satisfy the “single object” requirement in the 1974 Constitution because it would have one purpose, one aim, one object, that would all be related and have a nature connection to the subject matter.

House bill 974/Act 1 goes well beyond this, as the Court has noted. Given that the Court has found that the bill and the act contain more than one object, coupled with the rationale in *Doherty*, this Court must necessarily strike down the entire bill/act as unconstitutional.

3. The Court has ruled that Section 4 of Act 1 is constitutional. However, Section 4 must be declared unconstitutional for the same reason as Section 1.

Section 4 of HB 974/Act 1 repeals the following statutes²². The list itself illustrates that even the statutes that the legislature sought to repeal consist of a multitude of objects:

- 17:44 Compensation of certificated teachers of exceptional children in special schools
- 17:45 Probation and tenure of teachers in special schools
- 17: 81 (I) General powers of city, parish, and other local public school boards
- 17:154.2 Extended school day; compensation
- 17:235.1 (E) Parent orientation; mandatory for school entrance; city and parish school boards; guidelines; employer responsibilities
- 17:346.1 Teaching requirements
- 17:419 Minimum salaries for teachers in elementary and other schools
- 17:419.1 Minimum salary schedules for school support personnel
- 17:420 Inclusion of salary schedules for budget purposes
- 17:421 Minimum salary schedule
- 17:421.1 Applicability of graduate work to the minimum salary schedule
- 17:421.2 Cost-of-living increases based on annually adjusted increases in Consumer Price Index
- 17:421.3 Minimum salary schedule for teachers
- 17:421.5 Minimum salaries for superintendents, principals, assistant principals, and other certified or licensed school personnel; supplemental salary funds, uses
- 17:422 Additional compensation or increased increments; teachers of federal, agricultural, and industrial arts programs
- 17:422.1 Adjustments in salaries of employees not covered by minimum schedules
- 17:422.2 Minimum salaries for nondegree holding teachers
- 17:422.3 Adjustments in salaries of school lunch employees in nonpublic schools
- 17:422.4 Adjustments in salaries of vocational-technical institute instructors
- 17:422.5 Reduction in salaries; teachers

²² To facilitate the Court’s review, attached to this Memorandum is Appendix “12,” which is a compilation of the text of each of the statutes repealed in Section 4 of Act 1 of 2012.

17:431 Supervisors, principals, and other administrative personnel in certain school systems; salaries
17:444(A) and (B)2 and B(3) Promotions to and employment into positions of higher salary and tenure
17:446 Teachers and other certified personnel paid with federal funds; probation and tenure
17:461 Probation and tenure of teachers
17:462 Permanent teachers; causes for removal; procedure
17:463 Promotions to and employment into positions of higher salary; tenure; Orleans Parish
17:464 Rules and regulations impairing provisions prohibited
17:1207 Minimum pay for substitute school employees

This list of statutes that the legislature has sought to repeal in HB 974/Act 1 substantiates the multitude of objects encompassed in this omnibus act. A ruling that Section 4 remains in effect allows the act to continue to violate the "multiple object" provision. Should the Court strike only select statutes in Section 4, the court would be choosing between multiple objects and would essentially be performing a legislative act.

CONCLUSION

This Court has ruled that HB 964/Act 1 contains more than one object, which violates Article III, §15(A) of the Louisiana Constitution of 1974. Neither the bill nor the act contains one general object or purpose. The actual title of both the bill and the act – not the provision that has been incorrectly determined to be the title – contains all of its many objects. The entire bill/act must be declared void.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have on this 22nd day of January, 2013, served a copy of the foregoing pleading on all parties to this proceeding, by electronic transmission


LARRY SAMUEL