



IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

JAN 13 2016

TIM RHODES  
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LARRY A. BURNS, D.O., on behalf of  
himself and his patients,

Plaintiff,

vs.

TERRY L. CLINE, in his official capacity as  
Oklahoma Commissioner of Health, and  
GREG MASHBURN, in his official capacity as  
District Attorney for Cleveland, Garvin and  
McClain Counties;

Defendants.

Case No. CV-2015-2050

Judge Prince

**ORDER GRANTING DEFENDANTS'  
CROSS-MOTION FOR SUMMARY JUDGMENT AND  
DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff's Motion for Summary Judgment and Defendants' Cross-Motion for Summary Judgment are now before the Court for consideration. After reviewing the Parties' submissions and receiving argument of counsel on January 8, 2016, the Court finds that there is no genuine issue of material fact and that the Defendants are entitled to judgment as a matter of law. As outlined herein, the Court specifically finds, as a matter of law, that Senate Bill 642, 2015 Okla. Sess. Laws, Chp. 387 ("Senate Bill 642") does not violate Article V, §57 of the Oklahoma Constitution. The Court further Finds and Orders as follows:

1. As shown by the uncontested Affidavit of the Plaintiff, Larry A. Burns, D.O., Plaintiff provides "safe abortion care in Norman, Oklahoma...[,] including first-trimester surgical and medication abortions, contraception counseling and services, pregnancy testing, and ultrasounds". See Exhibit 4 to Plaintiff's Motion for Summary Judgment.

2. The only claim made by the Plaintiff in this case is that Senate Bill 642 violates the single-subject rule requirement set out in Okla. Const. Art. V, §57. The starting point for such a claim was outlined by the Oklahoma Supreme Court in Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.3d 789, 792, as follows: “every presumption is to be indulged in favor of the constitutionality of a statute”. The Douglas Court further stated, in part, as follows:

‘In considering a statute’s constitutionality, **courts are guided by well-established principles and a heavy burden is cast on those challenging a legislative enactment to show its unconstitutionality**’. Thomas v. Henry, 2011 OK 53, ¶8, 260 P.3d 1251, 1254 (citing Fent v. Okla. Capital Improvement Auth., 1999 OK 64, ¶3, 984 P.2d 200, 204). ... ‘It is also firmly recognized that it is not the place of this Court, or any court, to concern itself with a statute’s propriety, desirability, wisdom, or its practicality as a working proposition.’ Fent, 1999 OK 64, ¶4, 984 P.2d 200, 204. ‘A court’s function, when the constitutionality of a statute is put at issue, is limited to a determination of the validity or invalidity of the legislative provision and a court’s function extends no farther in our system of government.’ Id.

Id., at 792 (emphasis added). In Justice Kauger’s concurring opinion in Douglas, supra., she wrote that “[t]he nature of the single subject rule necessarily requires that legislation be examined on a case by case basis”. Id., at 801. Moreover, the legislative intent behind Senate Bill 642 must be ascertained, “if possible, from a reading of the statutory language in its plain and ordinary meaning.” See W.R. Allison Enterprises, Inc. v. CompSource Oklahoma, 2013 OK 24, 301 P.3d 407, 411. In City of Tulsa v. State ex rel. Pub. Employees Realtions Bd., 1998 OK 92, 967 P.2d 1214, the Court stated, in part, that:

The primary goal of statutory construction is to ascertain and follow the intention of the Legislature. (citations omitted). **Generally, that intent is ascertained from the whole legislative act in light of its general purpose and object.** (citation omitted). Further, the plain meaning of statutory language is conclusive except in the rare case in which literal construction will produce a result demonstrably at odds with the intention of the Legislature.

Id., at 1220 (emphasis added). See H.B. Krug v. Helmerich & Payne, Inc., 2015 OK 74, 362 P.3d 205, 210-211 (“[l]egislative intent controls statutory interpretation. The intent is ascertained from the whole act based on its general purpose and objective”).

3. In Campbell v. White, 1993 OK 89, 856 P.2d 255, the Oklahoma Supreme Court “expressly affirmed[ed] the viability of [the] . . . germaneness test for challenges brought under . . .” the single-subject rule. Id., at 260. The Campbell Court further stated, in part, that:

**[I]f the bill contains multiple provisions, the provisions must reflect a common, closely akin theme or purpose.** Although it is not possible to refine this formulation more precisely, it should by now be apparent from a review of our prior cases that neither §56 nor §57 supports an expansive reading. **The common themes or purposes embodied in legislation must be readily manifest.**

Id., at 260 (emphasis added). See Coates, et al. v. Fallin, et al., 2013 OK 108, 316 P.3d 924 (the Court must determine “whether the bill contains multiple provisions reflecting a common, closely akin theme or purpose”).

4. In Edmondson v. Pearce, 2004 OK 23, 91 P.3d 605, the Oklahoma Supreme Court stated that the “germaneness” test can be satisfied even if the provisions of the legislation in question are “somewhat detailed . . .”, provided that they are germane and relative to the legislation’s central purpose. Id. The Court in Edmondson further stated, in part, that:

Section 57’s purposes then are to forestall two abuses of the legislative process: 1) guarding against the enactment of legislation by surreptitious means (accomplished by having the title clearly express the subject of a proposed law) and 2) prevention of log-rolling. (citation omitted). It is not constitutionally required, however, that the title contain a complete index of all details in the act. (citation omitted). **It is sufficient that matters in the act’s text are germane to the title and that the title call attention to the general subject matter of the act. . . . Further, legislation containing provisions which are germane, relative and cognate to one another are sufficient to meet the unity-of-subject requirement.** (citation omitted).

Id., at 628 (emphasis added).

5. Therefore, based on the authorities outlined above, the question before the Court is whether, based on a review of the plain meaning of the four (4) sections of Senate Bill 642, the purposes of each are germane to the bill's title and germane, relative and cognate to one another.

6. The title of Senate Bill 642 states its subject to be as follows: "**Abortion procedure compliance requirements**". (emphasis added). A review of the plain meaning of the four (4) sections of Senate Bill 642 shows that each provision "reflect[s] a common, closely akin theme or purpose" (See Campbell v. White, *supra.*, at 260), intended to expand the available enforcement mechanisms for redress of violations of the various laws that regulate abortions:

A. Section 1 of the Senate Bill 642 expands the enforcement mechanisms available in the event there is a violation of the existing law that prohibits the use of "a false governmental record or fraudulent representation ... in order to obtain an abortion for a minor...". See 63 O.S. 2011, § 1-740.4b. It specifically establishes *a civil cause of action, for the benefit of a minor*, against any person who fraudulently assists the minor obtain an unlawful abortion (i.e., a violator "shall be civilly liable to the minor...", with the possible imposition of "attorney fees, litigation costs, and punitive damages"). Subpart E of Section 1 also authorizes the Attorney General, district Attorney, or "any person adversely affected" to seek compliance with Section 1 of the Act through a request for an injunction from a court of competent jurisdiction. The purposes of these provisions are germane to the bill's title (and the other sections of the bill) because they expand the legal remedies that may be employed against abortion providers and others who violate the statutes that are referenced in Section 1.

B. Section 2 of Senate Bill 642 provides an enforcement mechanism through the new requirement that physicians send to the Oklahoma State Bureau of Investigation ("OSBI") "fetal tissue extracted during such abortion" performed on minors under fourteen years of age. The

specific duty upon abortion providers that is added by Section 2 is intended to facilitate the enforcement of criminal penalties for first degree rape committed against “a person under fourteen (14) years of age”. See 21 O.S. 2011, §1114. It also directs OSBI to adopt rules to implement those provisions. Subpart C of Section 2, also provides for *the possibility of administrative licensure sanctions, together with a possible felony criminal conviction*, for a violation of the provisions of Section 2. The purposes of these provisions are germane to the bill’s title (and the other sections of the bill) because they provide an enforcement mechanism for statutory rape violations discovered through abortions.

C. Section 3 of Senate Bill 642 also provides an enforcement mechanism through the expansion of the existing administrative authority available to the Oklahoma State Department of Health to inspect abortion facilities prior to licensing and relicensing, and upon receipt of complaints. Subpart E of Section 3 also provides for *the possibility of administrative licensure sanctions* for violation of the provisions of Section 3 of Senate Bill 642 and all existing laws regulating abortion (i.e., 63 O.S. 2011, §§1-729, et seq.). The purposes of these provisions are germane to the bill’s title (and the other sections of the bill) because they expand the tools that are available to OSDH to regulate abortion providers.

D. Section 4 of Senate Bill 642 expands the enforcement mechanisms available in the event of a violation of the framework of laws that regulate abortions. It specifically expands the civil and criminal penalties for violations of all existing laws regulating abortion (i.e., 62 O.S. 2011, §§1-729, et seq.), to include *the possibility of a felony criminal conviction (stated, in part, to flow against “[a] person who intentionally, knowingly or recklessly violates ... this act ... ”) and a civil penalty or fine up to \$100,000.00*, with each day of violation constituting a separate offense. The purposes of these provisions are germane to the bill’s title (and the other sections of

the bill) because they expand the penalties that apply in the event an abortion provider violates the statutes that are referenced in Section 4.

7. As shown by the following quote from the Plaintiff's Motion for Summary Judgment, the Plaintiff attempted to criticize the wisdom or desirability of Senate Bill 642 by characterizing the process by which it was enacted as "log-rolling": "Legislators who may have favored the one provision of S.B. 642 could not have voted to enact that part of the bill without voting to enact the other, unrelated provisions as well". See Plaintiff's Motion for Summary Judgment, page 13. During the hearing on January 8, 2016, Plaintiff's counsel specifically described this allegation as a claim of "log-rolling". However, a claim of "log-rolling" may not be separated from the "germaneness" test. The Oklahoma Supreme Court has consistently described the term "log-rolling" as a tactical legislative maneuver that applies or is applicable only in the event that the "germaneness" test (for the single-subject rule) has been violated. See e.g., Fent v. State, ex rel. Oklahoma Capitol Improvement Auth., 2009 OK 15, 214 P.3d 799, 807 ("it would appear that this is the quintessential logrolling example – something for Oklahoma City, something for Tulsa, and something for the rest of the state. The provisions in the statute are so unrelated that those voting on the law would without a doubt be faced with an unpalatable all-or-nothing choice"); Fent v. State of Oklahoma, ex rel., Office of State Finance, 2008 OK 2, 184 P.3d 467, 476 ("the purpose of the one-subject is to prevent 'log-rolling', the practice of including unpopular causes with popular causes on an entirely different subject in the same legislative measure"); and, In Re In Initiative Petition No. 382, 2006 OK 45, 142 P.3d 400, 405 ("[t]he purposes of the single subject rule are: 1) to ensure that legislators ... are adequately notified of the potential effect of the legislation; and 2) to prevent 'logrolling', the practice of assuring the passage of a law by creating a proverbial 'Hobson's choice' ..."). Because the

Court has determined that the "germaneness" test has been satisfied, the Plaintiff's claim of "log-rolling" is, correspondingly, rejected.

9. Without deciding the wisdom or desirability of Senate Bill 642, extending a presumption in favor of the constitutionality of the statute and looking to the purposes of the bill from its plain meaning, the Court finds that the "germaneness test" has been satisfied and that Senate Bill 642 does not violate Okla. Const. Art. V, §57. Plaintiff's Motion for Summary Judgment should be and is HEREBY denied; and, Defendants' Cross-Motion for Summary Judgment should be and is HEREBY granted.

10. The Court further finds that the stay entered by the Oklahoma Supreme Court on November 16, 2015, in appellate Case No. 114,312, staying the enforcement of Senate Bill 642 until further Order of the Oklahoma Supreme Court, should be and is HEREBY unaffected by the entry of this Order.

IT IS SO ORDERED.

DATED this 13<sup>th</sup> day of January, 2016.

  
THE HONORABLE THOMAS E. PRINCE  
JUDGE OF THE DISTRICT COURT

CERTIFICATE OF MAILING

This is to certify that on the 13th day of January, 2016, a true and correct copy of the above and foregoing instrument was mailed to the following:

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DEPUTY COURT CLERK