



RICK WARREN
COURT CLERK

29

Larry A. Burns, D.O., on behalf of himself and his
patients,
Plaintiff/Appellant,

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/Appellees.

)
) Supreme Court Case Number: 114679
)
) Lower Court Case Number: CV-2015-2050
)
) Lower Court: Oklahoma County District Court
)

MANDATE

On the 2nd day of November, 2016, the Honorable Chief Justice John F. Reif of the Oklahoma Supreme Court ordered the Clerk of the Supreme Court to issue mandate, pursuant to the rules of the Oklahoma Supreme Court, in the above-styled appeal from the Oklahoma County District Court.

On appeal, the following judgment was entered on October 4th, 2016:

REVERSED AND REMANDED WITH DIRECTIONS

Costs of \$0.00 are taxed and allowed pursuant to Section 978 of Title 12 of the Oklahoma Statutes and the rules of the Oklahoma Supreme Court.

Therefore, the Oklahoma County District Court is directed to enter of record the above judgment and to issue process or take further action as required by the order or opinion issued in this appeal.

MICHAEL S. RICHIE
Clerk of the Appellate Courts

By LaDonna Johnson, Deputy

2016 OK 99

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

OCT 4 2016

MICHAEL S. RICHIE
CLERK OF
THE APPELLATE COURTS

LARRY A. BURNS, D.O., on behalf of)
himself and his patients,)
Plaintiff/Appellant,)

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/Appellees.)

No. 114,679

) FOR OFFICIAL
) PUBLICATION

**ON APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY,
THE HONORABLE JUDGE THOMAS PRINCE, PRESIDING**

¶0 The plaintiff, Larry A. Burns, D.O., (Burns) challenges Senate Bill No. 642, Okla. Sess. L. 2015, Ch. 387 (West) ("SB 642"), as violating the single subject rule mandated by Okla. Const. art. 5, §57. Burns appeals from summary adjudication in favor of defendants and the denial of his request for declaratory judgment that SB 642 is unconstitutional and his request for permanent stay. We granted certiorari and we hold that SB 642 is unconstitutional and violates the single-subject rule of Okla. Const. art. 5, §57.

**MOTION TO RETAIN PREVIOUSLY GRANTED;
DISTRICT COURT'S JUDGMENT REVERSED AND
REMANDED WITH DIRECTIONS**

J. Blake Patton
Oklahoma City, Oklahoma, for Appellant

Zoe Levine
New York, New York, for Appellant

Sarah A. Greenwalt
Office of the Attorney General
Oklahoma City, Oklahoma, for Appellees

WATT, J.:

¶1 The issue before this Court concerns the constitutionality of SB 642, passed by the Legislature and signed into law by the Governor on June 4, 2015. The effective date of the legislation was November 1, 2015. This legislation includes one section modifying an existing statute relating to abortions, and enacts three unrelated new sections in this same title. We reverse the district court's findings and hold the statute unconstitutional as it violates the single subject rule set forth in Okla. Const. art. 5, §57.

PROCEDURAL HISTORY

¶2 Prior to filing the declaratory action giving rise to this appeal, Burns filed an application with this court to assume original jurisdiction, seeking declaratory and injunctive relief against the defendants, 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/State). In the petition for original jurisdiction, Burns asked this Court to find SB 642 unconstitutional and to issue a permanent injunction blocking its

enforcement.¹ On October 26, 2015, this Court assumed original jurisdiction and ordered a stay of the enforcement of the legislation for 30 days.² After Burns filed his petition for declaratory relief in district court, this Court ordered the stay to remain in effect.³ This appeal arises from Burns' petition for injunction filed in district court and its grant of summary judgment finding SB 642 constitutional and denying injunctive relief. This Court issued an order retaining this appeal on March 2, 2016.

STANDARD OF REVIEW

¶3 We determine we have authority to address the constitutionality of SB 642. Under *Douglas v. Cox Retirement Properties, Inc.*, 2013 OK 37, 302 P. 3d 789, we acknowledge the heavy burden placed on those who raise constitutional

¹ Larry Burns, D.O., Petitioner, v. 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, Respondents, Case No. 114,312, filed September 25, 2015.

² See, Corrected Order, filed October 28, 2015, "Original jurisdiction is assumed. The enforcement of Senate Bill 642, which amends 63 O.S. §1-740.4b, and enacts 63 O.S. §§1-749, 1-749.1 and 1-750, is stayed for 30 days from the date of this order. If, within that 30 days, the petitioner files a petition for declaratory and injunctive relief in the Oklahoma County District Court, and notifies this Court of the filing of the petition, the stay shall continue in effect. If no petition is filed, the stay shall be dissolved. This Court does not express any opinion on the constitutionality of Senate Bill 642 at this time."

³ See, Order, Case No. 114,312, filed November 16, 2015, "Petitioner's motion to continue stay in effect is granted. The Court notes that petitioner has filed a petition in the Oklahoma County District Court on November 3, 2015, in *Burns v. Cline*, case no. CV-2015-2050. This Court's stay of the enforcement of Senate Bill 642 remains in effect until further order from this Court".

challenges to legislation. This Court favors a statutory construction that upholds the constitutionality of a statute. *Oliver v. Hofmeister*, 2016 OK 15, ¶ 5, 368 P.3d 1270, 1272. This Court does not consider the “propriety, desirability or wisdom” in a statute. *Douglas*, 2013 OK 37, ¶3, 302 P.3d at 792. The function of this Court is limited to a determination of whether legislative provision is valid and nothing further. *Douglas, supra*.

ANALYSIS

¶4 Art. 5, § 57 of the Oklahoma Constitution provides: “Every act of the Legislature shall embrace but one subject, which shall be clearly expressed in its title....”⁴ This clause is commonly referred to as the “single subject rule”. The purpose of this constitutional provision is not to impede legislation. Rather it is to insure transparency in the legislative process.⁵ The single subject rule is to prevent the Legislature from making a bill “veto proof” by appending unpopular

⁴ The Oklahoma Constitution , art. 5, §57 provides:

Every act of the Legislature shall embrace but one subject, which shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of statutes; and no law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred shall be re-enacted and published at length: Provided, That if any subject be embraced in any act contrary to the provisions of this section, such act shall be void only as to so much of the law as may not be expressed in the title thereof.

⁵ *Fent v. Fallin*, 2013 OK 107, ¶ 4, 315 P.3d 1023, 1025 (citation omitted).

legislation within popular bills.⁶

¶5 We have stated the purposes of this rule are:

1) to ensure that the legislators or voters of Oklahoma 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 one choice in which a legislator or voter is forced to assent to an unfavorable provision to secure passage of a favorable one, or conversely, forced to vote against a favorable provision to ensure that an unfavorable provision is not enacted.⁷

¶6 The recognition of this doctrine extends back to statehood.⁸ This constitutional provision acts as a safeguard against enacting legislation which, if introduced as a single bill, could never command the approval of a majority of the legislature.⁹

¶7 Defendants advance two theories in support of their argument that SB 642 is constitutional. First, defendants attempt to argue that this legislation does not violate the single subject rule because it is germane, relative and cognate to one subject, the protection of women’s reproductive health. Defendants next

⁶ *Id.*

⁷ *Fent v. State ex rel. Oklahoma Capitol Improvement Authority*, (hereinafter “*Oklahoma Capitol*”), 2009 OK 15, ¶ 14, 214 P.3d 799, 804 (citations omitted)

⁸ *In re County Commissioners of Counties Comprising Seventh Judicial Dist.*, 1908 OK 207, 98 P. 557.

⁹ *Oklahoma Capitol*, 2009 OK 15, ¶ 15, 214 P.3d 799, 804-805 (citation omitted).

contend that SB 642 is simply *comprehensive* legislation, and that this Court has found that comprehensive legislation does not necessarily violate Okla. Const. art. 5, §57. Upon careful review of Oklahoma jurisprudence, we find defendants' arguments are not in accord with our prior decisions on the single subject rule.

**Legislation Must be Germane, Relative and Cognate to Satisfy
art. 5 §57 of the Oklahoma Constitution**

¶8 Defendants posit that SB 642 is constitutional under the single subject rule, because all sections in this legislation relate to protecting the reproductive health of women. To reinforce this point, the State argues that all four sections in SB 642 simply create enforcement mechanisms and put “teeth into existing laws designed to protect women’s reproductive health.”¹⁰

¶9 Burns asserts this law fails to satisfy the constitutional mandate of art. 5, §57. Specifically, plaintiff argues that the different provisions of SB 642 impose directives to different state entities for different purposes,¹¹ similar to the law struck down in *Oklahoma Capitol*. Plaintiff urges that the provisions of this law are so unrelated that legislators voting on the bill were presented with an “all or nothing choice” suggestive of logrolling, the very thing this constitutional

¹⁰ See Record, Defendants’ Combined Response to Plaintiff’s Motion for Summary Judgment, and Defendants’ Cross-Motion for Summary Judgment.

¹¹ See, SB 642, Oklahoma State Bureau of Investigation, Oklahoma State Board of Health and the Oklahoma Attorney General.

provision is designed to prevent. *Oklahoma Capitol, supra.*; *In re Initiative Petition No. 382*, 2006 OK 45 ¶14, 142 P.3d 400, 407-408; *Nova Health Systems v. Edmondson*, 2010 OK 21, ¶1, 233 P. 3d 380, 381-382, (hereinafter *Nova Health*).

¶10 The sections of SB 642 contain the following provisions:

- (a) Section 1, amends 63 O.S. 2011 §1-740.4b, adding powers to the Attorney General (A.G.) or the District Attorney (D.A.) to enjoin certain conduct relating to requisite consents for minors seeking abortions;
- (b) Section 2, adds a new section of law, authorizing the Oklahoma Bureau of Investigations (OSBI) to create a new forensic protocol for statutory rape investigations;
- (c) Section 3, adds a new section of law creating a new licensing and inspection scheme for abortion facilities, directing the Oklahoma State Department of Health (OSDH) to develop requisite regulatory protocols;
- (d) Section 4, adds a new broad-sweeping section, imposing felony penalties as well as civil penalties up to One Hundred Thousand Dollars for a violation of *any* existing regulation relating to abortion statutes contained in 63 O.S. 2011 §§1-737.7 to 1-737.16.

¶11 We have consistently found legislation is related to one subject when the provisions are “germane, relative, and cognate to a readily apparent common theme and purpose.”¹² However, it is not enough for defendants to simply

¹² *Oklahoma Capitol*, 2009 OK 15, ¶16, 214 P.3d at 805.

articulate some rational connection between similar or related provisions.¹³

Instead, our focus is “whether it appears that either the proposal is misleading or provisions in the proposal are so unrelated that many of those voting on the law would be faced with an unpalatable all-or-nothing choice.”¹⁴

¶12 Section 1 amends 63 O.S. 2011 §1-740.4b, dealing with the consent required for an abortion to be performed on a minor and delineating civil and criminal penalties for any violation. The amendment creates a new class of people subject to this prohibition and adds new authority to both the A.G. and D.A. Sections 2 and 3 both place new duties and directives on OSBI and OSDH respectively. Section 4 is a very broad sweeping provision that provides for substantial civil as well as criminal penalties for *any* violation of any statute contained in 63 O.S. 2011 §§1-737.7 to 1-737.16.

¶13 We reject defendants’ arguments and find this legislation violates the single subject rule as each of these sections is so unrelated and misleading that a legislator voting on this matter could have been left with an unpalatable all-or-nothing choice.¹⁵ The heart of the single subject rule is to insure constitutional

¹³ *Id.*

¹⁴ *Oklahoma Capitol*, 2009 OK 15, ¶ 15, 214 P.3d 799, 804-805 (citation omitted).

¹⁵ *Oklahoma Capitol*, 2009 OK 15, ¶16, 214 P.3d at 805.

protection that each piece of legislation enacted is worthy of the approval of the voter and to prevent the enactment of unpopular provisions by logrolling or attaching it to a favorable bill. We also find this legislation violates the single subject rule under *Oklahoma Capitol, supra.*, as it delegates authority to three different state agencies.

‘Comprehensive’ Legislation Is Not Determinative of Whether a Bill is Constitutional Under Okla. Const. art. 5, §57.

¶14 Although we have already concluded that this legislation fails for violating the single subject rule, we will briefly address defendants’ second contention. Defendants assert that SB 642 is simply *comprehensive* legislation, and that this Court has found that comprehensive legislation does not necessarily violate Okla. Const. art. 5, §57. In this loosely reasoned argument, the State relies on *Coates v. Fallin*, 2013 OK 108, 316 P.3d 924, (hereinafter “*Coates*”) and *Thomas v. Henry*, 2011 OK 53, 260 P.3d 1251, (hereinafter “*Thomas*”). Defendants’ position is not supported by these cases.

¶15 Defendants’ interpretation of *Coates* is misleading and not in accord with this Court’s findings and narrow pronouncement in this published order. The central constitutional challenge in *Coates* was whether Senate Bill 1062, 2013 Okla. Sess. Laws, Ch. 208, (SB 1062), as a multiple subject bill, violated Okla.

Const. art. 5, §57. SB 1062 repealed the Workers' Compensation Code,¹⁶ replacing it with three separate acts.¹⁷ The petitioner in *Coates* urged enacting legislation with three separate acts was unconstitutional logrolling under art., 5 §57. We examined SB 1062 under the guidance of *Thomas, supra.*, emphasizing, the relevant inquiry is *not how many acts are in a particular bill, but rather whether the multiple parts reflect a common closely akin theme or purpose.* The analysis of this bill revealed that all sections related to the common theme of workers' compensation or the protection of workers against work-related injuries. This Court decreed SB 1062 *did not violate the single subject rule.*¹⁸ The focus of the inquiry *is not* the number of sections in a particular bill, but rather whether the multiple parts reflect a *common, closely akin theme or purpose.* *Coates does not* stand for the proposition proffered by defendants, that comprehensive legislation does not violate the single subject rule. Whether or not legislation is comprehensive *is not* the determinative factor for constitutional challenge under

¹⁶ 85 O.S. 2011, §301 *et seq.*

¹⁷ Administrative Workers' Compensation Act, 85A O.S. Supp.2014 §301 *et seq.*, Oklahoma Employee Injury Benefit Act, 85A O.S. Supp.2014, 201, *et seq.*, and the Workers' Arbitration Compensation Act, 85A O.S. Supp.2014 §301 *et seq.*

¹⁸ This Court specifically noted that "[u]ntil such time as a case or controversy or a justiciable issue is presented to this Court, we are without jurisdiction to rule further with regard to the Act." *Coates*, 2013 OK 108, ¶3, 316 P.3d 924, 925.

art. 5, §57. We reject defendants' argument on this point.

¶16 The State also relies on *Thomas, supra.* for the same principle. Their reliance on this case for the proposition that comprehensive legislation does not violate the single subject rule is likewise misplaced. *Thomas* incorporated the *same* principles already enumerated in this opinion for determining if legislation is germane, relative and cognate. In fact, we **clearly** stated, “[t]he question is not how *similar* two provisions in a proposed law are, but whether it appears either that the proposal is misleading or that the provisions in the proposal are so unrelated that many of those voting on the law would be faced with an unpalatable all-or-nothing choice.” *Thomas*, 2011 OK 53, ¶26, 260 P.3d 1251, 1260.

This Court Previously Struck Down Comparable Abortion Legislation as Violating the Single Subject Rule

¶17 The legislation before us is indistinguishable from legislation we determined violated the single subject rule in *Nova Health, supra.*¹⁹ In *Nova Health*, we examined the “Freedom of Conscience Act” and its multiple sections. Most sections in the Freedom of Conscience Act contained some reference to abortion procedures. However, a common connection or theme is not sufficient to satisfy the single subject rule where the legislation is potentially misleading or

¹⁹ This Court resolved the issues in *Nova* by a “Disposition by Order”.

leaves the Legislature with an all-or-nothing choice.²⁰

¶18 We find that each of the four sections of SB 642, lack a common purpose and are not germane, relative and cognate. Although each section relates in some way to abortion, the broad sweep of each section does not cure the single subject defects in this bill. Although defendants urge that SB 642 does not constitute logrolling, we find the provisions are so unrelated that those voting on this bill were faced with a constitutionally prohibited all-or-nothing choice to ensure the passage of favorable legislation.

CONCLUSION

¶19 We conclude that SB 642 contains different and unrelated purposes contrary to the single subject requirement of Okla. Const., art. 5, §57. Although we understand the power of the Legislature in enacting new laws, we are bound to uphold our Constitution. SB 642 is unconstitutional and void.

²⁰ See, *Nova Health*, 2010 OK 21, 233 P.3d 380, *footnote 5*, “The choice, often known as ‘Hobson’s choice’ is an apparently free choice that offers no real alternative; in the parlance of our times, a ‘take it or leave it’. The phrase finds its origin in the practice of an English livery stable proprietor named Thomas Hobson, ... who required that his customers choose the horse nearest the stable door or none at all.” (Citation omitted).

**TRIAL COURT'S ORDER GRANTING DEFENDANTS'
CROSS-MOTION FOR SUMMARY JUDGMENT AND DENYING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IS REVERSED;
CAUSE REMANDED FOR FURTHER PROCEEDINGS
CONSISTENT WITH TODAY'S PRONOUNCEMENT**

REIF, C.J., WATT, WINCHESTER, EDMONDSON, COLBERT, JJ. – CONCUR

COMBS, V.C.J., KAUGER, TAYLOR, GURICH, JJ. – CONCURRING
SPECIALLY

I, Michael S. Kiehl, Clerk of the Appellate Courts of the State of Oklahoma do hereby certify that the above and foregoing is a full, true and complete copy of the

Open

In the above entitled cause, as

the same remains on file in my office

In Witness Whereof I hereunto set my hand and affix the Seal of said Court at Oklahoma City, this 2nd day of Nov

2016

By [Signature] Clerk
DEPUTY [Signature]