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The State

Bobtail ruling reinvigorates single-subject rule

By CINDI ROSS SCOPPE
Associate Editor

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Economic development through excellent creme brulee.

Chief Justice Jean Toal noted with great understatement that "the allegation is the General Assembly has continued to push the envelope and push the envelope and push the envelope, and if the court doesn't step in, there will be no end" to passing laws that string together unrelated provisions, in violation of the state constitution.

I wish I could say the high court dealt a fatal blow to bobtailing when it ruled last week that it was unconstitutional to attach a new culinary school and eight other far-flung amendments to the Life Sciences Act. I can't; even if legislators adhere strictly to the ruling's intent, that won't affect the piling of pork into the budget, which is nearly always constitutional.

Still, it's hard to overstate the importance of the Sloan v. Wilkins decision, because it reasserts the full scope of the state constitution's requirement that bills "relate to but one subject."

The single-subject provision had fallen out of favor over the past half-century as the court narrowed its meaning so much that some believed it applied only to protect against fraud or deception. But as Attorney General Henry McMaster reminded the court, it originally had less to do with fraud than with good lawmaking, and the concept of majority rule. From its inception in the Roman Empire to its rapid spread through this country's state constitutions in the 1800s, the rule was aimed primarily at preventing narrow minorities from forming coalitions to cobble together pet projects and ideas that could never pass if they had to stand on their own, thus thwarting the will of the majority.

On Friday, the court wholeheartedly embraced that broader reading of the single-subject rule, calling the Life Sciences Act "obviously violative" even though no one even alleged deception or fraud. "It is patent that the myriad provisions ... simply do not comprise one subject," Justice Johnny Waller wrote for the 4-1 majority.

A footnote added that the court "simply cannot accept the dissent's assertion that the General Assembly may enact myriad measures, ranging from establishment of life sciences facilities to creation of a culinary arts institute, under the general guise of 'economic development,' and thereby comport with the one subject

requirement For this Court to accept such a premise would give tacit approval to legislative logrolling.”

There’s no wishy-washy language in the ruling, no hint that the Legislature might get away with such misdeeds if it isn’t so blatant. Indeed, the ruling deals so quickly and matter-of-factly with the unconstitutionality of bobtailing that it would be easy to miss what a major revival it marks.

If there’s anything disappointing about the decision, it’s that it does not establish the bright-line test many had hoped for. But as Justice James Moore noted at oral arguments, unconstitutional logrolling is like obscenity: You know it when you see it, but that doesn’t mean you can define it.

Let’s be clear: Everybody in the Legislature knew what the Life Sciences Act was when they saw it. The only reason lawmakers convinced one justice to side with them was that their attorneys did such a good job of fabricating the creme brulee defense after the fact. I watched as the Senate produced this piece of obscenity, and I can tell you that no one was under any delusion that turning USC Sumter into a third-rate four-year college or giving Charleston a culinary school or any of the other add-ons was anything more than the small-minded parochialism that dilutes our resources and holds us back.

A commonsense reading of the Senate rule in effect at the time would have prohibited the orgy of amendments, but that was not applied. The Senate has since changed its anti-bobtailing rule, and it looks as though it’s more difficult to get around now.

House leaders welcomed the court’s ruling and said, essentially, that they hoped it would help them keep the Senate in line; but the House, a willing player in the Life Sciences pornography, hasn’t touched its own rules, which are so promiscuous as to make the Senate look schoolmarmish.

Of course, any rule or law is only as good as the willingness of authorities to enforce it. It’s up to the House speaker and the lieutenant governor to enforce the Legislature’s rules, and a majority in the House and Senate can overturn their decisions; the Senate can even ignore any rule by unanimous consent.

That is why it was so important for the Supreme Court to make it clear that it is willing to enforce the rule of law, even if it can’t precisely define in advance where the law starts and stops.

Ms. Scoppe can be reached at cscoppe@thestate.com or at (803) 771-8571.

Higher education structure still needs reform

THE POWER OF an engaged citizenry was on display when a Greenville man successfully sued the General Assembly for packing too many unrelated items into a single piece of legislation. Although his goal was more broad, plaintiff Edward Sloan's victory last week struck at the heart of problems with our state's higher education system: It is allowed to expand at will, unchecked by any strong governing authority. Programs are added and missions expanded without adequate examination of how such actions will dilute resources in a small, relatively poor state with historically mediocre colleges and universities.

The decision blocks — for now — USC Sumter's attempts to convert itself into a four-year college. The regional campus attempted that without support of the USC's own administration or trustees. The Commission on Higher Education has not endorsed the expansion, and the General Assembly thwarted Gov. Mark Sanford's efforts to veto it.

We suspect even this latest roadblock will only slow down USC Sumter, unless there is a serious revamping of higher education governance in our state. It is the latest example why a strong central governing authority, such as a board of regents, is needed to ensure that South Carolina's overall higher education system makes sense for the state, its resources and its future.

The success that USC Sumter had (and may have again) in slipping its unwarranted expansion through the legislature provides fresh proof that our fragmented governance system still allows for gross abuse and waste, in spite of encouraging trends we've seen recently from the state's top three universities.

In 1991, when The State's series of "Power Failure" reports examined the ways South Carolina's governmental structure holds its people back, USC and Clemson were known for going around the Commission on Higher Education for the General Assembly to approve purchases and programs to expand their missions. Other colleges did it too, and it didn't matter if that new hardware or those new degrees were already available somewhere else. This is the way the state got more than one engineering school and more than one medical school, and more.

More recently, however, we have seen an encouraging trend in which Clemson, the Medical University of South Carolina and USC's flagship campus in Columbia have determined to unite in reform. This move has been led by the schools' presidents, James Barker, Ray Greenberg and Andrew Sorensen.

The big three united behind a call for funding for endowed chairs — state seed money to attract the brightest talents in higher education and the grant funding they bring. The schools are working to develop their own centers and programs of excellence. Such specialization can allow each to reach heights that were never possible under the old system.

Lawmakers must keep the commitment they have made to full funding of the endowed chairs system. This program is an investment in our state and one that will help build brainpower and economic vitality over time.

Meanwhile, President Sorensen has set the right tone at USC, attempting to make the school's regional campuses into a more cohesive system. A student who enrolls at one USC campus should be able to see how its courses and credits relate to the system as a whole. That will help meet what should be an important goal for our higher education system — providing multiple and affordable access points to acquire the basics.

It has been good to see this progress. But it only works as long as the individual presidents agree on it. And beyond this one area of emphasis, the fragmentation of decision-making still holds the system back.

The USC Sumter episode provides the most recent and vivid example of how lack of central oversight can contribute to unnecessary duplication and unacceptable expansions in schools' missions. USC Sumter and its boosters are not alone in their designs on a larger role, one that runs directly counter to crafting the most effective and affordable higher education system for our state. South Carolina must stop depending on the good will of a few individuals now and then (such as three presidents, or four Supreme Court justices) to achieve this end. Our lawmakers must reform the system so that our state can take a strategic approach to higher education, and stay that course.

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Heed Sanford on higher ed reform
Published on 01/26/05
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Improving higher education in South Carolina will require a better allocation of limited resources as well as some difficult cuts in the state's over extended system of colleges and universities. In his proposed budget, Gov. Mark Sanford is continuing his campaign for higher ed economies, including the eventual elimination of two University of South Carolina campuses. The Legislature should follow his lead, not move in the opposite direction as it did last year.

So far, the governor has been unable to overcome legislative parochialism in his attempt to eventually cut campuses at Union and Salkahatchie as a drain on the system. To his credit, he continues the effort in his budget plan.

"The [cost of] operation and maintenance of these universities continues to increase even though enrollment is decreasing compared to other nearby colleges and universities," the governor wrote in the budget. Students attending the colleges could "access existing larger campuses in nearby communities."

Savings from the campus closings could be used for need-based scholarships for students who otherwise might not have an opportunity to attend college, he wrote.

Gov. Sanford urges more consolidation among universities, citing the merger of pharmacy schools at USC and the Medical University of South Carolina. That collaboration is expected to save \$2 million a year.

Similarly, he recommends cutting degree programs that aren't used by a sufficient number of students to justify their existence. There are, for example, two students at USC majoring in European Studies.

The governor also recommends eliminating funds for contract lobbyists employed by eight universities, further urging the Legislature to approve a bill sponsored by Rep. Jim Merrill, R-Daniel Island, to eliminate the use of contract lobbyists by state agencies generally. Not only is the expense unwarranted, but lobbyists have been able to persuade the Legislature to increase expenses for their clients that aren't justified.

The governor's higher ed budget recognizes that the state spends too much money maintaining 33 public colleges and universities, while allowing tuition for those institutions to rise to a level of 120 percent of the national average.

Gov. Sanford observed that the growth of state colleges "has happened with the intent of making higher education more accessible to everyone in the state." But, he added, "the unintended consequence is that the higher tuitions needed to sustain our inefficient system of under-utilized campuses has actually made higher education less accessible to many." Last year, the legislative response to the governor's proposals to streamline higher ed was to expand two colleges in an economic development bill. (Those ill-advised bobtails are among those being challenged in court.)

Meanwhile, the governor has abandoned his effort to create a board of regents with authority over the state higher ed system, recognizing it can't overcome the institutional and legislative opposition.

Instead, he has proposed a less drastic but needed change in direction. The diffusion of resources has diminished the effectiveness of higher education, and keeps it from reaching a level of excellence that should be the goal of the state and the system.

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