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Subject: Summary of Public Interest Foundation v. Lucas (DOT Secretary Proviso)

SC Public Interest Foundation (Sloan) v. Lucas

4-1 (Pleicones, Beatty, Kittredge, Hearn – Few dissenting)

Today, the Supreme Court declared that Proviso 84.18 (suspending sunset of gubernatorial appointment of DOT secretary) is unconstitutional in that it violates the “one subject” rule found in Article III, Section 17 – referring to the proviso as “legislative log-rolling.” As a result, the Governor’s authority to appoint the DOT Secretary was devolved effective July 1, 2015.

- Reasoning that the proviso involved administrative, not monetary matters, the right to appoint the Secretary is not reasonably and inherently related to the raising and expenditure of tax monies and therefore is not germane to the appropriations act – it need not “directly” relate to spending revenue but must “reasonably and inherently relate.” The Court listed nine examples of where it held a section be germane and three cases where it held a section to violate the one subject rule.
- Accordingly, the Court struck the proviso from the appropriations bill as unconstitutional, leaving the remainder of the bill in effect, which the Court acknowledged was a deviation from precedent as recently as 2009 where the Court held that if the one subject rule was violated, then the entire act must be struck down. The Court said that the bill is one big piece of legislation and is the most studied bill, and therefore striking down the entire appropriations act would be too drastic.

****The new “test” for provisos under the one subject rule appears to be whether the proviso reasonably and inherently relates (not directly relates) to the raising and spending of tax monies – it must be a monetary matter, not an administrative or procedural matter. E.g. reenacting tort claims caps, requiring local governments to remit real estate fees to state, creating a committee to negotiate new contracts and fees, altering definition of machines subject to licensing fees, etc. Examples where content was not germane: permitting referendums in SPDs to decide nature of budget, amending an act creating Court of Appeals, and giving state custody of certain unclaimed property.*

Dissent – Few:

The case is not a question of sufficient public interest for the Court to hear in original jurisdiction.

The case is a companion matter to the case where the same petitioners (Sloan) argue that transferring the appointment power from the Governor to the DOT is unconstitutional under separation of powers. The relief is inconsistent in both cases. By granting Petitioners the outcome they seek here, Few argues that the Court allows them to seek the outcome in the companion case that would otherwise not be ripe. Few: That’s what this case is all about – this case was filed only to prevent a finding that the challenge to transfer authority is not ripe, so the Court may deny relief in the companion case without explanation.

The new rule the Court adopts regarding invalidation of the entire appropriations act is not necessary to the controversy, because it was not appropriate for the Court to consider – i.e. that is too broad, too drastic, and was not requested by petitioners.

Few refers to the “restraint” he proposes of modifying a decision from seven years ago, which was a departure from a decision only one year before it. “I believe the Court should adhere in this case to its firm policy of declining to reach constitutional issues unnecessary to the resolution of the case before us. By doing so, we might find it unnecessary to

change the law so frequently.”