

IN THE THIRD JUDICIAL DISTRICT, SALT LAKE COUNTY
STATE OF UTAH

TOM GREGORY, et al.,
Plaintiffs,

vs.

MARK SHURTLEFF, et al.,
Defendants.

RULING

Case No. 080908814

Judge: L.A. DEVER

The above entitled matter is before the Court on Defendants' Motion to Dismiss Counts 1 and 2 of Plaintiffs' Complaint and Plaintiffs' Motion to Strike Evidentiary Matters. Having reviewed the Parties' Motions and Oppositions thereto, and, having heard oral arguments on the matter on March 26, 2009, the Court makes the following Ruling.

Background

Plaintiffs include various members of the Utah State Board of Education, Utah School Boards Association, Parent Teacher Association, Utah Education Association, former and current members of the State Legislature, and related groups. Plaintiffs seek a judgment from this Court declaring Senate Bill 2¹, a bill passed in the 2008

¹The bill is entitled the Minimum School Program Budget Amendments. The bill:

- (1) establishes the value of the weighted pupil unit at \$2,577;
- (2) establishes a ceiling for the state contribution to the maintenance and operations portion of the Minimum School Program for fiscal year 2008-09 of \$2,495,183,979;

General Session as unconstitutional pursuant to Article VI, Section 22² and Article X,

- (3) modifies provisions related to the funding of charter schools;
- (4) authorizes the use of appropriations for accelerated learning programs for International Baccalaureate programs;
- (5) modifies the positions that qualify for educator salary adjustments and increases the salary adjustments for those positions;
- (6) establishes and funds the following ongoing programs:
 - (a) a pilot project using a home-based educational technology program to develop school readiness skills of preschool children;
 - (b) a financial and economic literacy passport to track student mastery of certain concepts;
 - (c) the Teacher Salary Supplement Program to provide a salary supplement to an eligible teacher; for special educators for additional days of work;
 - (d) an optional grant program to provide an extended year for math and science teachers through the creation of Utah Science Technology and Research Centers;
 - (e) the High-ability Student Initiative Program to provide resources for educators to enhance the academic growth of high-ability students; and
 - (f) the English Language Learner Family Literacy Centers Program;
- (7) makes one-time appropriations for fiscal year 2008-09 for:
 - (a) pupil transportation to and from school;
 - (b) the Beverley Taylor Sorenson Elementary Arts Learning Program to provide grants to integrate arts teaching and learning into selected schools; and
 - (c) classroom supplies;
- (8) requires the State Board of Education to allocate Minimum School Program nonlapsing balances to provide:
 - (a) one-time signing bonuses for new teachers;
 - (b) one-time performance-based compensation; and
 - (c) a grant program to minimize the expenses of teachers to obtain the American Board Distinguished Teacher certification and to provide additional compensation to teachers who obtain that certification;
- (9) provides a repeal date for certain pilot programs;
- (10) makes nonlapsing appropriations; and
- (11) makes technical corrections.

²“Every bill shall be read by title three separate times in each house except in cases where two-thirds of the house where such bill is pending suspend this requirement. Except general appropriation bills and bills for the codification and general revision of laws, *no bill shall be passed containing more than one subject, which shall be clearly expressed in its title*. The vote upon the final passage of all bills shall be by yeas and nays and entered upon the respective journals of the house in which the vote occurs. No bill or joint resolution shall be passed except with the assent of the majority of all the members elected to each house of the Legislature.” (emphasis added).

Section 3³ of the state constitution. (Compl., 2). The Motion before the Court relates specifically to Article VI, Section 22. Plaintiffs further seek an injunction blocking the implementation, funding, and enforcement of the legislation. Id.

Plaintiffs filed their Complaint because they are concerned with the openness, fairness, and integrity of the process by which the State Legislature enacts legislation and the extent to which that process, "if constitutionally impaired, impacts their ability, as representatives, senators, education officials, or constituents, to effect that process." Id. at 7. Plaintiffs assert the following causes of action: (1) The Omnibus Bill Violates the Single Subject Requirement of Article VI, Section 22; (2) The Omnibus Bill Violates the Clear Title Requirement of Article VI, Section 22; (3) Portions of SB 2 Violate the Non-Delegation Doctrine and Article X, Section 3; and (4) Portions of SB 2 Violate the Non-Delegation Doctrine and Article X, Section 3. Id. at 18-27.

Senate Bill Two's title references the Minimum School Program Act. The initial purpose of the Minimum School Program Act provided that the Act:

Relates to public education. Provides for state and local funding of the minimum school program. Establishes the value of the weighted pupil unit. Requires school districts to impose a minimum basic tax rate. Provides for funding of school reform programs. Establishes distribution

³"The general control and supervision of the public education system shall be vested in a State Board of Education. The membership of the board shall be established and elected as provided by statute. The State Board of Education shall appoint a State Superintendent of Public Instruction who shall be the executive officer of the board."

formulas. Provides for a contingency fund. Provides an appropriation for the school building supported program.

1991 Bill Tracking UT S.B. 196; see Utah Code Ann. § 53A-17a-102 (1991)⁴. The language of Section 53A-17a-102, addressing the purpose of the Minimum School Program Act, has not changed since 1991.

DEFENDANTS' MOTION TO DISMISS COUNTS 1 AND 2

Defendants explain that during the 2008 General Session, legislative leadership combined thirteen school funding bills receiving the highest prioritization by legislators with the school finance bill. (Defs.' Mem. In Supp., 2). Aside from the bill's short title, it has a long title found on lines eight through ninety-one of the enrolled bill. Id. Highlighted provisions of the long title include the sum proposed to be appropriated by the bill along with a description of the thirteen separately introduced bills. Id.; see Ex. A.

Defendants maintain that courts give wide latitude to the legislature as to what

⁴ Provides "(1) The purpose of this chapter is to provide a minimum school program for the state in accordance with the constitutional mandate. It recognizes that all children of the state are entitled to reasonably equal educational opportunities regardless of their place of residence in the state and of the economic situation of their respective school districts or other agencies.

(2) It further recognizes that although the establishment of an educational system is primarily a state function, school districts should be required to participate on a partnership basis in the payment of a reasonable portion of the cost of a minimum program.

(3) It is also the purpose of this chapter to describe the manner in which the state and the school districts shall pay their respective share of the costs of a minimum program. *This chapter also recognizes that each locality should be empowered to provide educational facilities and opportunities beyond the minimum program and accordingly provide a method whereby that latitude of action is permitted and encouraged.*" (emphasis added).

constitutes a single subject and clear title. *Id.* at 3. The Utah Supreme Court explained:

Upon the question of titles to amendatory acts the cases are very numerous, but not always in strict harmony. The courts are, however, unanimous with respect to the following general rules to be observed: (1) That the constitutional provision now under consideration *should be liberally construed*; (2) that the provision should be applied so as *not to hamper the lawmaking power* in framing and adopting comprehensive measures covering a whole subject, the branches of which may be numerous, but where all have some direct connection with or relation to the principal subject treated; (3) that the constitutional provision should be so applied as to guard against the real evil which it was intended to meet; (4) that no hard and fast rule can be formulated which is applicable to all cases, but each must to a very large extent be determined in accordance with the peculiar circumstances and conditions thereof, and that the decisions of the courts are valuable merely as illustrations or guides in applying these general rules. Moreover, it is now established beyond question that unless the invalidity of a particular law in question is clearly and manifestly established the law must prevail as against such an objection. If, therefore, *by any reasonable construction*, the title of the act can be made to conform to the constitutional requirement, it is the duty of the courts to adopt this construction rather than another (if the title be open to more than one construction) which will defeat the act. (1 Lewis' Suth. Stat. Const. [2d Ed.], secs. 115-127, and cases there cited.) In case of doubt it must be assumed that the Legislature understood and applied the title so as to comply with the constitutional provision, and not contrary thereto. If, after applying such a reasonable construction the title is insufficient, or the subject is plural, then the law must fail. The provision is mandatory, and may not be ignored.

State ex rel. Edler v. Edwards, 95 P. 367, 368 (Utah 1908) (emphasis added).

The court further explained that the purpose of Article VI, Section 22, was to prevent the Legislature from “intermingling in one act two or more separate and *distinct* propositions--things which, in a legal sense, *have no connection* with, or proper relation

to, each other.” Martineau v. Crabbe, 150 P. 301, 304 (Utah 1915)(emphasis added). It stated, “This requirement of singleness is not intended to embarrass honest legislation, but only to prevent the vicious practice of joining in one act incongruous and unrelated matters; and if all the parts of a statute have a natural connection and reasonably relate, directly or indirectly to one general and legitimate subject of legislation, the act is not open to the objection of plurality, no matter how extensively or minutely it deals with the details looking to the accomplishment of the main legislative purpose.” Id. (quotation omitted); see also State v. Twitchell, 333 P.2d 1075, 1078 (Utah 1959) (holding that the title does not have to be an index to the act and, all that is required is that the subject matter of the act be reasonably related to the title and that all parts of the act be reasonably related to each other); State v. Kallas, 94 P.2d 414 (Utah 1939) (explaining that even though the original Liquor Control Act of 1935 Section 195 dealt with penalties and the amending section made no change to the penalty, the section did not violate the constitutional proscription because anything germane to the general subject expressed in the title of the original law, or that could have been included in the original law under its general title, could be included in a subsequent amendatory act); Globe Grain & Milling Co. v. Industrial Comm'n, 91 P.2d 512, 516 (Utah 1939) (explaining that the constitutional provision does not require that all the methods prescribed in the act for carrying out its objects be reflected in the title, nor all the classes affected by the act).

PLAINTIFFS' OPPOSITION

Plaintiffs assert that Senate Bill 2 ("SB 2") violates the single subject rule by bundling substantive law with budgetary amendments and appropriations measures. Plaintiffs maintain that SB 2 is the product of "log-rolling." They further maintain that the omnibus parts bear no relationship to each other because they are so disparate in subject matter, purpose and effect. Plaintiffs allege that agencies having nothing to do with education are identified in the omnibus bills. However, Plaintiffs' assertions reflect an incomplete representation.

For example, Plaintiffs claim that SB 2 provides for implementation and administration by agencies that have nothing to do with educational affairs, like the Utah Department of Human Resources. (Pls.' Opp., 10). This specific example falls under Section 53A-17a-156, Teacher Salary Supplement Program. (Def.'s Mem. In Supp. Ex. A, S.B. 2, 2008 Leg., Gen. Sess., Ins. 771-850 (Utah 2008)). It should be noted that the aforementioned section is part of the Minimum School Program Act, which is the short title of SB 2 i.e. Minimum School Program Budgets Amendment. The relevant section of the statute provides:

- (4) The Department of Human Resource Management shall:
 - (a) create an on-line application system for a teacher to apply to receive a salary supplement through the Teacher Salary Supplement Program;

- (b) determine if a teacher:
 - (i) is an eligible teacher; and
 - (ii) has a course assignment as listed in Subsections (1)(a)(i)(A) through (D);
 - (c) verify, as needed, the determinations made under Subsection (4)(b) with school district and school administrators; and
 - (d) certify a list of eligible teachers and the amount of their salary supplement, sorted by school district and charter school, to the Division of Finance.
- (5) (a) An eligible teacher shall apply with the Department of Human Resource Management prior to the conclusion of a school year to receive the salary supplement authorized in this section.

Utah Code Ann. § 53A-17a-156 (2008). It is reasonable to consider that this provision is consistent with the purpose of Minimum School Program Act Section 53A-17a-102(3), which provides in relevant part, “This chapter also recognizes that each locality should be empowered to provide educational facilities *and opportunities beyond the minimum program* and accordingly provide a method whereby that latitude of action is permitted and encouraged.” See also supra n.4. As the Utah Supreme Court explained regarding Article VI, Section 22, “This requirement of singleness is not intended to embarrass honest legislation, but only to prevent the vicious practice of joining in one act incongruous and unrelated matters[.]” Martineau, 150 P. at 304 (citation omitted).

DISCUSSION AND ANALYSIS

Under Utah’s liberal standard of notice pleading, a plaintiff is required to submit a “short and plain statement . . . showing that the pleader is entitled to relief” and “a

demand for judgment for the relief.” Code v. Utah Dep't of Health, 2007 UT App 390, ¶ 4, 74 P.3d 1134, (internal citation omitted) (quoting Utah R. Civ. P. 8(a)(1)-(2)). The Utah Court of Appeals explained, “It is important to also note that the fundamental purpose of our liberalized pleading rules is to afford parties ‘the privilege of presenting whatever legitimate contentions they have pertaining to their dispute,’ subject only to the requirement that their adversary have ‘fair notice of the nature and basis or grounds of the claim and a general indication of the type of litigation involved.’” Zoumadakis v. Uintah Basin Med. Ctr., 2005 UT App 325, ¶ 3, 122 P.3d 891 (quotation omitted). A 12(b)(6) motion to dismiss concerns the sufficiency of the pleadings, *not the underlying merits* of a particular case. Tuttle v. Olds, 2007 UT App 10, ¶ 14, 155 P.3d 893 (citation omitted) (emphasis added). Furthermore the Utah Supreme Court stated, “[I]f there is any doubt about whether a claim should be dismissed for the lack of a *factual* basis, the issue should be resolved in favor of giving the party an opportunity to present its proof.” St. Benedict's Dev. Co. v. St. Benedict's Hosp., 811 P.2d 194, 199 (Utah 1991) (citation omitted) (emphasis added).

Moreover, the United States District Court for the District of Utah explained:

In considering a motion to dismiss under Rule 12(b)(6), all well-pleaded factual allegations, *as distinguished from conclusory allegations*, are accepted as true and viewed in the light most favorable to . . . the nonmoving party. [internal footnote omitted]. Plaintiff must provide “enough facts to state a claim to relief that is *plausible* on its face.” [internal footnote omitted]. . . . But, the court “need *not accept conclusory*

allegations without supporting factual averments." [internal footnote omitted]. "The court's function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is *legally sufficient* to state a claim for which relief may be granted." [internal footnote omitted].

TecServe v. Stoneware, Inc., 2008 U.S. Dist. LEXIS 58929 (D. Utah Aug. 4, 2008)

(emphasis added).

Plaintiffs do not present any factual allegations. Plaintiffs provide a history of the 2008 legislative session as it relates to SB2. (Compl. 9-18). While these are facts, they are insufficient to state a claim for relief. Plaintiffs provide no context for the Court to consider its factual review of the legislative session or its assertion of "the hostage bills." Plaintiffs statements are conclusory.

Their causes of action: (1) The Omnibus Bill Violates the Single Subject Requirement of Article VI, Section 22, and, (2) The Omnibus Bill Violates the Clear Title Requirement of Article VI, Section 22, are based on conclusory allegations, not facts. Plaintiffs are seeking a legal determination from this Court as to whether SB 2 complies with Article VI, Section 22 of the state constitution. "[A] plaintiff must 'nudge[][his] claims across the line from conceivable to plausible' in order to survive a motion to dismiss. Thus, the mere metaphysical possibility that some plaintiff could prove some set of facts in support of the pleaded claims is insufficient; the complaint must give the court reason to believe that this plaintiff has a reasonable likelihood of mustering factual

support for these claims.” Id. (quotation omitted).

Conclusion

Based upon case law as discussed above, see supra pp. 4-6, and, Plaintiffs’ failure to make anything other than conclusory allegations without support of factual averments, the Court GRANTS Defendant’s Motion to Dismiss Counts I and II of Plaintiffs’ Complaint.

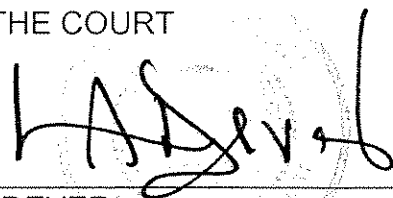
PLAINTIFFS’ MOTION TO STRIKE EVIDENTIARY MATTERS

The Plaintiffs filed a Motion to Strike Evidentiary Matters submitted by the Defendants in support of the Motion to Dismiss. The Plaintiffs correctly point out that evidentiary submissions are inappropriate under Rule 12(b)(6). The Court orders the evidentiary matters submitted by the Defendants to be stricken.

This Ruling serves as the ORDER OF THE COURT. No further order is required.

Dated 19th day of May, 2009.

BY THE COURT

A handwritten signature in black ink, appearing to read "L.A. Dever", is written over a circular court seal. The signature is fluid and cursive.

L.A. DEVER
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the foregoing Ruling dated this 20 day of May, 2009, postage prepaid, to the following:

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CLERK OF COURT