

Sorting it Out

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On June 4, the Oklahoma Supreme Court announced its decision in *Douglas v. Cox Retirement Properties*, striking down the Comprehensive Lawsuit Reform Act of 2009 (CLRA). The court held that the CLRA violated the single-subject rule of the Oklahoma Constitution.

In dissenting from the court's *Douglas* decision, Justice Winchester pointed to the "chaos that will inevitably follow this opinion." There can be no doubt that the *Douglas* decision resulted in a flurry of activity (and a few headaches) for lawyers who practice in state courts.

The CLRA was a lengthy document that amended or created more than a dozen Oklahoma statutes. As indicated by the *Douglas* decision itself, the CLRA contained 90 sections "encompassing a variety of subjects," many of them dealing with civil procedure. Needless to say, the CLRA represented a significant change in Oklahoma procedural law.

What's more, the CLRA was the law in Oklahoma from its effective date, November 1, 2009, until it was stricken this year. As a result, countless lawsuits proceeded for more than three years under the CLRA. Many of these lawsuits were resolved before the court struck down the CLRA. Many others remain pending and must now be litigated in the wake of the court's decision.

Oklahoma lawyers may be checking their rulebooks more often as the dust settles on this decision's impact. Many litigants will not notice any change. But in some cases, the court's decision striking the CLRA will make significant differences in litigation outcomes. For example, the *Douglas* decision removes the CLRA's immunity for firearms manufacturers. This fundamentally changes the landscape in that type of lawsuit.

In some areas, the decision's effect may be less clear. For example, since 2009, the Oklahoma Legislature has amended some of the statutes that the CLRA amended or created. In an interesting twist, these later amendments may save certain provisions of the CLRA, based on the same constitutional provision that the court relied on in striking down the CLRA.

The single-subject rule, also known as the rule against logrolling, is found in Article 6, Section 57 of the Oklahoma Constitution. Section 57 also requires that the Legislature re-enact laws when it

amends them.

As an example, Section 3226 of the Oklahoma Discovery Code was amended three times since 2009. Each time, the Legislature set forth the statute in its entirety. As a result, it appears that the Legislature saved the CLRA's changes to Section 3226, simply by complying with the Oklahoma Constitution in its later amendments.

This twist may affect a number of the CLRA's provisions. As a result, the term "re-enactment" may join "logrolling" as part of our vocabulary.

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