

NO. 68

JOURNAL
OF THE
SENATE
OF THE
STATE OF SOUTH CAROLINA



REGULAR SESSION BEGINNING TUESDAY, JANUARY 8, 2019

FRIDAY, MAY 3, 2019

Friday, May 3, 2019
(Local Session)

~~Indicates Matter Stricken~~
Indicates New Matter

The Senate assembled at 11:00 A.M., the hour to which it stood adjourned, and was called to order by the ACTING PRESIDENT, Senator MASSEY.

ADDENDUM TO THE JOURNAL

The following remarks by Senator CAMPSEN were ordered printed in the Journal of January 10, 2019:

Remarks by Senator CAMPSEN

Thank you, Mr. PRESIDENT. This is a Bill that was precipitated by a recent state supreme court decision, *Leatherman v. McMaster*, that the court took in original jurisdiction. The case was about the interpretation of Section 1-3-210 that deals with interim appointments. The Governor has the power to make interim appointments when we are not in session. The question was, does the vacancy that occurs when we are not in session have to be during the same interval between sessions as the appointment is made. The court determined it was an ambiguous statute. Because of that ambiguity, the court went to the intent of the legislature as is their standard of review.

I'm not too critical of the court, but I don't really agree with the decision.

What we are doing with S. 1 is clarifying this area of the law as it relates to interim powers and appointment powers in general. It is one of the myriad of devices that is in our structure of government that keeps each branch of government from getting too powerful.

Advice and consent keeps executive power in check. The framers thought it important to have appointments that are not unilaterally decided by one individual, so the court's ability to strike legislation down as unconstitutional or construe meaning is designed to check and limit power.

It is important in this separation of powers scenario to first recognize that, without the statute, the Governor doesn't have authority to make an interim appointment at all. The continuity of government supports the Governor's ability to make interim appointments if a vacancy occurs in the off session. On the flip side is a fundamental tenant of state and

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constitutional law that the Senate has a role in advice and consent for long-term appointments.

In exercising this, it is important for the Senate to ask hard questions of the nominees. Historically, there have been very few nominees rejected. It is important for us to take the Governor's nominations and act upon them, but in order for us to act on them, we have to get the appointment in a timely manner. This appointment came relatively late in the session.

The way S. 1 is structured actually puts incentive on the Governor's office to get the paper work done on the nomination, on the nominee to participate and cooperate with the Senate, and on the Senate to do the background checks, have hearings, and vote. It makes everybody have to work together.

Without this statute, and as a result of the Supreme Court's opinion, the Governor could make an interim appointment that persists while we are out of session. Under this scenario, if we don't act while we are in session, then the individual could vacate the office for a day, then could be reappointed as interim. It could go on ad infinitum.

That would obviate advice and consent and violate how the framers structured government to contain political power. This decision could almost completely eviscerate this if not addressed.

We are reasserting our advice and consent role to make sure that it is going to be applicable. In the big picture it is important to the citizens that it be reinstated. Like the Governor's veto power or the judicial branch's authority to rule that a statute is unconstitutional, it is one of the devices that restrains runaway political power. I am vehemently opposed to restricting a branch of government's ability to impose the balance that the framers took such care to impose. This legislation is important to maintain a balance in the separation of powers doctrine.

Madison said it best in Federalist 51 about political ambition: ambition must be made to counteract ambition. There is a very salient reason for the advice and consent powers. All we are doing is going back to the status quo before this decision. If we don't do anything when we adjourn, then the interim appointment is vacated. That is the effect of the statute. It makes inaction essentially action.

I wanted to have a vote on this nominee. I intended to vote for the nominee, but this is not about this particular appointment. This is not about trying to hoard or give the Senate more power than it should have or ever did have. This is trying to set the balance of powers back in balance. From my perspective, this is about the structure of government

[SJ]

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and the powers the three branches have over each other and keeping that in balance. That is totally my motivation in being supportive of this.

Again, I'm not being critical of the court. I can admire their work but do not agree with the conclusion. In this case, they disrupted the balance and we have to reset it. They ruled the statute is ambiguous, and that is a clarion call for the General Assembly to step in and remove the ambiguity.

CO-SPONSOR ADDED

The following co-sponsor was added to the respective Bill:

S. 798 Sen. Jackson

HOUSE BILL RETURNED

The following House Bill was read the third time and ordered returned to the House with amendments:

H. 4287 -- Reprs. Lucas, G.M. Smith, Simrill, Rutherford, McCoy, Ott, Stavrinakis, Gilliard and Caskey: A JOINT RESOLUTION TO PROVIDE THAT THE PUBLIC SERVICE AUTHORITY EVALUATION AND RECOMMENDATION COMMITTEE MAY UTILIZE STATE APPROPRIATED OR AUTHORIZED FUNDS, INCLUDING THE USE OF THOSE FUNDS TO RETAIN NECESSARY EXPERTS, LEGAL COUNSEL, BANKING INSTITUTION, OR ANY OTHER FINANCIAL ENTITY, TO EVALUATE AND REVIEW A POTENTIAL, COMPLEX FINANCIAL TRANSACTION FOR THE POTENTIAL SALE OF SANTEE COOPER AND ANY OR ALL OTHER RELATED FINANCIAL TRANSACTIONS NECESSARY FOR USE IN THIS FINANCIAL EVALUATION, WHICH THE COMMITTEE CONSIDERS TO BE IN THE BEST INTERESTS OF THIS STATE AND ITS TAXPAYERS AND RATEPAYERS, TO PROVIDE THAT THE ACTIONS OF THE COMMITTEE ARE SUBJECT TO FINAL APPROVAL BY THE GENERAL ASSEMBLY, AND TO PROVIDE FOR THE MANNER IN WHICH THIS OFFER IS TRANSMITTED TO AND APPROVED OR DISAPPROVED BY THE GENERAL ASSEMBLY, INCLUDING A TIMELINE REQUIREMENT.

On motion of Senator SETZLER.

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MOTION ADOPTED

On motion of Senator SABB, with unanimous consent, the Senate stood adjourned out of respect to the memory of Ms. Alice Thraine of Greeleyville,, S.C. Alice was a member of St. Luke Missionary Baptist Church. She loved cooking and was a huge Cleveland sports fan. Alice was a loving mother and devoted grandmother who will be dearly missed.

ADJOURNMENT

At 11:04 A.M., on motion of Senator SCOTT, the Senate adjourned to meet next Tuesday, May 7, 2019, at 12:00 Noon.

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