



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Tobacco Settlement Endowment Trust Fund )  
*Petitioner,* )

v. )

Case No. 123,238

KEVIN STITT, Governor of Oklahoma; )  
LONNIE PAXTON, President Pro Tempore )  
of the Oklahoma Senate; and )  
KYLE HILBERT, Speaker of the Oklahoma )  
House of Representatives; and )  
GENTNER DRUMMOND, Attorney )  
General of Oklahoma; and )  
TODD RUSS, Treasurer of Oklahoma; and )  
CINDY BYRD, Oklahoma State Auditor and )  
Inspector; and )  
RYAN WALTERS, Oklahoma State )  
Superintendent of Public Instruction. )

*Respondents.* )

FILED  
SUPREME COURT  
STATE OF OKLAHOMA  
JUL 22 2025  
JOHN D. HADDEN  
CLERK

Received:	7-22-25
Docketed:	
Marshal:	JM
COA/OKC:	
COA/TUL:	

GOVERNOR STITT'S RESPONSE TO THE APPLICATION TO ASSUME  
ORIGINAL JURISDICTION, PETITION FOR DECLARATORY RELIEF, ETC.

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July 22, 2025

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Respondent, Governor J. Kevin Stitt, respectfully submits this brief in response to Petitioner's Application to Assume Original Jurisdiction, etc. ("Application"). Governor Stitt allowed House Bill 2783 to become law without his signature—he sought neither to endorse nor block it. Governor Stitt therefore submits this response to uphold the rule of law, urge the Court to exercise judicial restraint and more consistently fulfill its gatekeeping role over excessive uses of original jurisdiction, and to highlight issues raised by Petitioner that warrant closer scrutiny and may not be fully addressed in other Respondents' filings. In sum, Petitioner: (1) has not demonstrated the urgency or substantial public interest required to justify the exercise of original jurisdiction; (2) has not shown a ripe, concrete, personal, or imminent injury necessary to support justiciability; and (3) advances substantive claims that reflect a fundamental misunderstanding of the constitutionally permissible appointment, removal, and vacancy filling process—one that does not alter the length or staggered nature of board terms.

### **BACKGROUND**

The Oklahoma Tobacco Settlement Endowment Trust ("TSET") is a public trust created by voters in 2000 through State Question 692 and codified in Article X, Section 40 of the Oklahoma Constitution. TSET manages settlement funds from tobacco lawsuits, using investment earnings to support health initiatives like tobacco prevention and cancer research. TSET is governed by a Board of Directors with members appointed by state officials, including the Governor, legislative leaders, and statewide elected officers. The initial Board of Directors ("Board") for TSET served staggered seven-year terms and State Question 692 expressly allowed the Legislature to "enact laws to further implement" the law. OKLA. CONST. art. X, § 40, adopted by State Question No. 692, Legislative Referendum No. 320 (Nov. 7, 2000).

In May of this year, the Legislature passed House Bill 2783 to clarify the removal provisions of the TSET Board of Directors. HB 2783 provides that the Board shall serve at the

pleasure of their appointing authority and not exceed a seven-year term of office. H.B. 2783, 2025 O.S.L. 469, § 1(C). HB 2783 became law without the Governor's signature on May 28, 2025. *See* OKLA. CONST. art. VI, § 11.

### **ARGUMENT AND AUTHORITIES**

#### **I. THIS COURT SHOULD DECLINE TO ASSUME ORIGINAL JURISDICTION.**

The Oklahoma Constitution envisions this Court to sit primarily as a court of review. *See Jarman v. Mason*, 1924 OK 722, ¶ 20, 229 P. 459, 462; *see also* OKLA. CONST. art. VII, § 4. While original jurisdiction is constitutionally permitted, it serves a limited and exceptional role. It exists “primarily as a ‘stand by’ service which it will exercise only when, from the exigencies of the case, great injury will be done by its refusal so to do.” *Keating v. Johnson*, 1996 OK 61, ¶ 9, 918 P.2d 51, 56 (quoting *Kitchens v. McGowen*, 1972 OK 140, 503 P.2d 218).

A general need for “judicial resolution is insufficient, by itself, to invoke this Court’s original cognizance,” but rather “a petitioner who seeks extraordinary relief must offer a legally sufficient reason to bring the proceeding in this Court instead of another court of competent jurisdiction.” *City of Tulsa v. State*, 2001 OK 23, ¶ 1, 20 P.3d 144, 146. If this Court were to permit every case with arguable merit and public interest to proceed under its original jurisdiction, all litigants would flock to “this Court of last resort, thereby avoiding the expense and delay incident to appeal,” and “destroy[ing] its efficiency as an appellate court.” *Keating*, 1996 OK 61 at ¶¶ 9-10 (citations omitted). Accordingly, the exercise of original jurisdiction is a matter of this Court’s discretion, and only appropriate in rare circumstances. *Id.* at ¶ 12.

The Court’s discretion in accepting original jurisdiction plays a critical role in safeguarding the judicial process from overreach or misuse. That discretion should be exercised cautiously, especially where ordinary judicial remedies remain available.

To warrant the assumption of original jurisdiction, a petitioner must demonstrate two distinct prerequisites: (1) that the underlying issue substantially concerns the public interest and (2) that there exists “some urgency or pressing need for an early determination of the matter.” *Id.* at ¶ 10 (emphasis added); *see also Edmondson v. Pearce*, 2004 OK 23, ¶ 11, 91, P.3d 605, 614.

In *Keating v. Johnson*, for example, petitioners asked this Court to declare unconstitutional certain statutes that allowed legislative leaders to appoint members of executive boards and commissions, arguing a violation of the separation of powers set forth in Article IV, Section 1 of the Oklahoma Constitution. 1996 OK 61 at ¶ 11. This Court declined to assume original jurisdiction, finding the petitioners “failed to show there is some immediacy invoked in this controversy that would call for this Court to exercise its discretion to hear the matter at the present time.” *Id.* at ¶ 17.

This Court further observed that in prior cases where it assumed original jurisdiction over constitutional challenges to legislation “our basis for doing so was a general public need for a speedy determination of the constitutional question.” *Id.* at ¶ 11. *Keating* could be distinguished from those earlier decisions because original jurisdiction was warranted there only because the circumstances involved clear urgency, such as the immediate implementation of new legislation, alleged vacancies in public office, or substantial revenue implications flowing from a recent Attorney General opinion. *Id.* at ¶¶ 11–17. The Court closed its analysis by emphasizing that the public nature of a legal question, standing alone, does not justify bypassing the usual judicial process. *Id.* at ¶ 18.

Here, like the petitioners in *Keating*, Petitioner makes no serious attempt to identify any genuine urgency that would justify original jurisdiction. Petitioner cites the upcoming August 28, 2025 effective date of HB 2783 and concludes “[f]iling the constitutional challenge in district court would be futile” because “[a] district court action could not be completed for appeal before August

28, 2025.” Pet’r’s App. at 3; *see also id.* at 4 (“An ordinary and usual remedy is not available to obtain judicial determination before this law takes effect.”). That claim, however, is supported by neither legal authority nor a factual showing.

First, the notion that a full and final resolution must occur before August 28 overlooks the range of available interim remedies available to district courts. Second, two months is more than sufficient time for a district court to consider and resolve a request for temporary relief. If granted, that relief would eliminate any claimed urgency; if denied, there would remain ample time for appellate review. Two months also allows plenty of time for a court to resolve a dispositive motion, which could fully resolve and dispose of Petitioner’s claims. In fact, in a recent matter involving the Governor, the district court heard and resolved a request for injunctive relief and dismissed the action within a mere ten (10) days from the initial filing. *See Fugate v. Stitt*, No. CV-2025-411 (Okla. Cnty. filed February 21, 2025; dismissed March 3, 2025).

Additionally, Petitioner provides no evidentiary support for its assertion that delay in resolving this legal challenge would “cause chaos” or imperil “approximately \$150 million to Oklahoma government projects and non-profit entities this year.” Pet’r’s App. at 4. Petitioner cites no affidavit, declaration, or document identifying an impending distribution deadline that would be disrupted *if* a Respondent exercised the discretion to remove a member of the Board. Notably, HB 2783 became law on May 28, 2025. Yet Petitioner waited 34 days before initiating this proceeding. Petitioner’s own delay undercuts any claim of urgency. Furthermore, HB 2783 does not mandate any immediate change upon its effective date. The composition of the Board remains the same unless and until a Respondent chooses to exercise the discretion granted. The harms Petitioner speculates about depend entirely on discretionary future conduct and may never materialize. That kind of hypothetical injury, lacking both factual support and imminence, underscores why original jurisdiction should be exceedingly rare. *See Keating*, 1996 OK 61 at ¶ 12

("[O]nly in rare circumstances should this Court assume original jurisdiction to grant a form of declaratory relief.").

Nor does Petitioner demonstrate that this case presents an issue of substantial public importance. The controversy concerns the positions of seven (7) appointees to a single state board—a matter far more personal than public in nature. Petitioner speculates that board action could be called into question "[i]f a Respondent removed a member of the TSET Board of Directors," but offers no concrete evidence or legal authority to support that outcome. Pet'r's App. at 3. Such conjecture does not meet the high bar required to justify this Court's intervention at the outset. Because Petitioner has not satisfied the threshold requirements for extraordinary relief, this Court should exercise its gatekeeping discretion and decline to assume original jurisdiction.

**II. THIS COURT SHOULD DENY ORIGINAL JURISDICTION BECAUSE PETITIONER CANNOT PRESENT A JUSTICIABLE CONTROVERSY.**

To invoke this Court's jurisdiction, a petitioner must present a justiciable controversy—one that satisfies the three inter-related judicial doctrines of standing, mootness, and ripeness. *See, e.g., Trump v. New York*, 592 U.S. 125, 131 (2020); *Richardson v. State ex rel. Okla. Tax Comm'n*, 2017 OK 85, ¶ 5, 406 P.3d 571, 573. A petitioner bears the burden of establishing it meets the justiciability requirement. *See Okla. Educ. Ass'n v. State ex rel. Okla. Leg.*, 2007 OK 30, ¶ 7, 158 P.3d 1058, 1062. Here, because Petitioner has not met its burden of showing either standing or ripeness, the Court should deny Petitioner's Application.

First, Petitioner does not establish standing to pursue this challenge. At a minimum, standing requires an injury-in-fact which is actual, concrete and not conjectural in nature. *See Matter of M.R.*, 2024 OK 28, ¶ 15, 548 P.3d 120, 127-28. As this Court has explained, "[t]he doctrine of standing ensures a party has a personal stake in the outcome of a case and the parties are truly adverse." *Fent v. Contingency Rev. Bd.*, 2007 OK 27, ¶ 7, 163 P.3d 512, 519–20. Petitioner identifies



no such injury here. The supposed harm is the hypothetical removal of a member of the TSET Board of Directors. *See, e.g.*, Pet'r's Br. at 7 (complaining that HB 2782 would "[a]llow[] an Appointing Authority to replace his or her appointment to the board at will"). But that harm, if it occurs, would be personal to the individual member, not to the Board as a whole. Moreover, even that harm is entirely speculative. It relies entirely on a contingent—not imminent or concrete—possibility that a Respondent will exercise discretion to remove a member. *See, e.g.*, Pet'r's App. at 3 (“*If* a Respondent removed a member of the TSET Board of Directors pursuant to HB 2783” (emphasis added)). Petitioner offers no factual basis to suggest that any Respondent intends to exercise such discretion imminently. And this Court has repeatedly warned that remote, hypothetical, future eventualities do not give rise to an injury-in-fact. *See Toxic Waste Impact Grp. v. Leavitt*, 1994 OK 148, ¶ 9, 890 P.2d 906, 911.

To the extent Petitioner attempts to pivot, invoking the public interest standing doctrine, *see, e.g., Hunsucker v. Fallin*, 2017 OK 100, 408 P.3d 599, that argument fails for the reasons discussed in Section I, *supra*. And if the Court does not reject that theory outright, it should take the opportunity to clarify the limited, narrow, and exceptional nature of such standing.

Second, Petitioner does not present a dispute that is ripe for review. This Court has long declined to entertain constitutional challenges to legislation until presented with a live controversy where the complaining party has been or is about to be denied a right to which the party is lawfully entitled. *Okla. Educ. Ass'n*, 2007 OK 30 at ¶ 15. Petitioner does not meet that standard. No party has yet been removed from the TSET Board and again, there is no factual record to suggest any Respondent intends to remove a member imminently. Any claimed injury depends on the speculative exercise of discretionary removal authority by one of several Respondents. That discretionary action may never occur. Until it does, or is imminently about to occur, any claim of harm is premature, and the petition fails to present a ripe controversy.

**III. THIS COURT SHOULD DENY PETITIONER'S RELIEF BECAUSE PETITIONER'S ARGUMENT RESTS ON FUNDAMENTAL MISUNDERSTANDINGS OF THE APPOINTMENT, REMOVAL, AND VACANCY FILLING PROCESS.**

If the Court were to reach the merits, Petitioner's complaints about HB 2783—that it impermissibly interferes with seven-year appointment terms and eliminates staggered appointments—rest on at least two faulty premises. First, it improperly assumes that appointed state officers have an unconditional right to serve their full constitutional term. Second, it misunderstands how the appointment and removal process works.

To begin, the plain text of the Constitution is clear: “[a]ll elective officers, not liable to impeachment, shall be subject to removal from office in such manner and for such causes as may be provided by law.” OKLA. CONST. art. VIII, § 2. As this Court explained shortly after statehood, “[b]y this provision of the Constitution, the Legislature was given authority to prescribe the manner and enumerate the causes for which an elective officer might be removed.” *State v. Davenport*, 1920 OK 312, ¶ 4, 193 P. 419, 420. Along similar lines, “the legislative power has no limitation except by specific declaration in the state or federal constitutions.” *Glasco v. State ex rel. Okla. Dep’t of Corr.*, 2008 OK 65, ¶ 27, 188 P.3d 177, 186, *as corrected* (July 7, 2008); *see also* OKLA. CONST. art. V, § 36 (“The authority of the Legislature shall extend to all rightful subjects of legislation, and any specific grant of authority in this Constitution, upon any subject whatsoever, shall not work a restriction, limitation, or exclusion of such authority upon the same or any other subject or subjects whatsoever.”). Thus, when a constitutional provision is silent on removal of a state officer, the Oklahoma Constitution grants the Legislature the authority to fill in those gaps. That appears to be precisely what HB 2783 does here.

Accordingly, Petitioner's suggestion that TSET Board members are vested with an unconditional right to a seven-year term can be disregarded out right. Petitioner's concession that “like all appointed state officers, [TSET Board members] are subject to suspension upon the

conviction of a felony pursuant to 51 O.S. § 24.1” resolves the legal question. Pet’r’s Br. at 8. If a member can be removed under a statutory provision, the member has no unconditional right to serve a seven-year term—even when the Constitution provides that member “shall serve seven-year terms of office.” OKLA. CONST. art. X, § 40(D). If the Legislature may authorize removal for cause, it may likewise authorize removal without cause. A statutory term of service “at the pleasure” of the appointing authority does not contradict a seven-year term; rather, it defines the conditions under which the service may end early, just as 51 O.S. § 24.1 does.

Next, removal itself does not disrupt terms of appointment, and nothing about HB 2783 itself affects either the term of office of TSET Board members nor the staggered nature of their terms.<sup>1</sup> Terms attach to the state office, not to the individual currently holding it. When any state official serving a term of years is removed, resigns, dies, or otherwise vacates a seat, the successor completes the unexpired term. A new term begins only upon expiration of the existing one.

The consistent history and practice of both the Executive and Legislative branches confirms this understanding. In 2001, for example, Governor Frank Keating appointed an individual to serve an unexpired term on the TSET Board through January of 2003. *See* Gov. Keating Order of Appointment (Mar. 8, 2001), Gov.’s App’x 1. At the expiration of that unexpired term in 2003, Governor Brad Henry reappointed that same individual to a new seven-year term expiring in 2010. *See* Gov. Henry Order of Appointment (May 20, 2003), Gov.’s App’x 2. In 2015, a TSET Board member appointed by Governor Brad Henry in 2010 resigned before her term

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<sup>1</sup> The plain language of HB 2783, clarifying the TSET Board members “serve at the pleasure of their appointing authority,” also does not on its face affect the seven-year term nor staggered board. Those requirements are still mandated either under OKLA. CONST. art. X, § 40 or other statutes like 62 O.S. § 2304(B) (providing that appointments “shall be staggered as provided in this section, pursuant to the provisions of Section 40 of Article X of the Oklahoma Constitution.”). Any changes made by the Legislature to 62 O.S. § 2308 must be read in harmony with 62 O.S. § 2304(B). *See City of Sand Springs v. Dept. of Public Welfare*, 1980 OK 36, ¶ 28, 608 P.2d 1139, 1151 (“Repeals by implication are not favored and all statutory provisions must be given effect if possible.”).

expired, causing Governor Mary Fallin to appoint a replacement to serve the remainder of the unexpired term through June 30, 2017. *See* Gov. Henry Order of Appointment (Aug. 13, 2010), Gov.'s App'x 3; Gov. Fallin Order of Appointment (Nov. 23, 2015), Gov.'s App'x 4. Upon the expiration of that term, Governor Fallin reappointed the same individual to a seven-year term ending June 30, 2024. *See* Gov. Fallin Order of Appointment (Jul. 11, 2017), Gov.'s App'x 5. Most recently, after the expiration of that term in 2024, Governor Stitt appointed an individual to serve the new seven-year term. *See* Gov. Stitt Order of Appointment (Oct. 28, 2024), Gov.'s App'x 6.

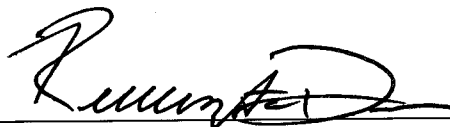
The Legislature has consistently acted in kind. In 2004, for example, the Speaker of the Oklahoma House of Representative appointed a new TSET Board member to serve an unexpired four-year term ending June 30, 2008. *See* Appointment Letter from Okla. H.R. Speaker Larry E. Adair (May 21, 2004), Gov.'s App'x 7. In subsequent years, both the House and Senate have appointed members to terms explicitly referencing the standard seven-year schedule. *See* Appointment Letter from Okla. H.R. Speaker Jeffrey W. Hickman (Aug. 19, 2015), Gov.'s App'x 8 (appointing a member to a seven-year term ending June 30, 2022); Appointment Letter from Okla. H.R. Speaker Kyle Hilbert (Apr. 3, 2025), Gov.'s App'x 9 (same, for a term ending June 30, 2029); Appointment Letter from Okla. Senate President Pro Tempore Cal Hobson (Jan. 12, 2004), Gov.'s App'x 10 (appointing a member to serve "the balance of a seven-year term, expiring June 30, 2009"); Appointment Letter from Okla. Senate President Pro Tempore Glenn Coffee (Feb. 12, 2009), Gov.'s App'x 11 (reappointing a member "for a seven-year term, expiring June 30, 2016").

In short, there is no indication that mid-term vacancies, whether from resignation or removal, have ever disrupted the seven-year term structure or staggered schedule of the TSET Board. HB 2783 does not change that practice. There is no basis to conclude that future removals under the new law would operate any differently.

**CONCLUSION**

For these reasons, Respondent Governor Stitt respectfully requests that this Court deny Petitioner's Application, decline to original jurisdiction, or otherwise deny all requested relief.

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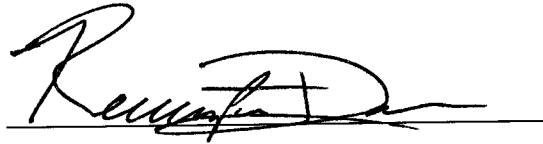
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**CERTIFICATE OF SERVICE**

This certifies that on this 22<sup>nd</sup> day of July, 2025, a true and correct copy of the foregoing instrument was served via first class U.S. mail, postage prepaid, or personal delivery, to the following:

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A handwritten signature in black ink, appearing to read "Zach West", is written over a horizontal line.