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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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STATE OF OKLAHOMA

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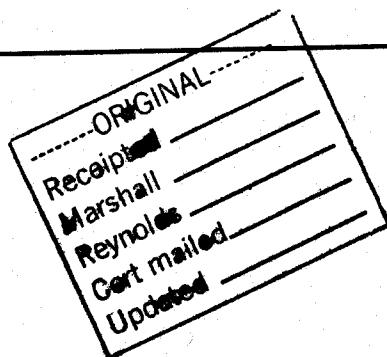
TOBACCO SETTLEMENT ENDOWMENT TRUST FUND,
Petitioner,

JOHN D. HADDEN
CLERK

v.

KEVIN STITT, GOVERNOR OF OKLAHOMA; LONNIE PAXTON, PRESIDENT PRO
TEMPORE OF THE OKLAHOMA SENATE; KYLE HILBERT, SPEAKER OF THE
OKLAHOMA HOUSE OF REPRESENTATIVES; GENTNER DRUMMOND, ATTORNEY
GENERAL; TODD RUSS, STATE TREASURER; CINDY BYRD, STATE AUDITOR AND
INSPECTOR; and RYAN WALTERS, STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION,
Respondents.

**Brief in Support of Application to Assume Original Jurisdiction, Petition for Declaratory
Judgment, and Request for Extraordinary Relief**



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July 1, 2025

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel TOBACCO)
SETTLEMENT ENDOWMENT TRUST FUND,)
Petitioner,)
)
v.)
)
)
KEVIN STITT, GOVERNOR OF OKLAHOMA;)
LONNIE PAXTON, PRESIDENT PRO TEMPORE)
OF THE OKLAHOMA SENATE; KYLE)
HILBERT, SPEAKER OF THE OKLAHOMA)
HOUSE OF REPRESENTATIVES; GENTNER)
DRUMMOND, ATTORNEY GENERAL; TODD)
RUSS, STATE TREASURER; CINDY BYRD,)
STATE AUDITOR AND INSPECTOR; AND)
RYAN WALTERS, STATE SUPERINTENDENT)
OF PUBLIC INSTRUCTION.)
Respondents.)

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Other Materials:

Lucin Bebuk, John C. Coates IV, and Guhan Subramanian, "The Powerful Antitakeover
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Introduction

The Petitioner recognizes that a statute properly enacted is a solemn act. The Supreme Court will uphold a statute unless it is clearly, palpably, and plainly inconsistent with the Constitution. *Reynolds v. Porter*, 1988 OK 88, 760 P.2d 816.

Nevertheless, just as it is the responsibility of the Legislature to make a law and the Executive to enforce the same, it is for the Judiciary to interpret the law. *Stephens Produce Co. v. Stephens*, 1958 OK 277, 332 P.2d 674.

The Judiciary is the independent branch of government charged with the responsibility of protecting the Constitution. *Wyatt-Doyle & Butler Engineers, Inc. v. City of Eufaula*, 2000 OK 74, 13 P.3d 474; *Robinson v. Fairview Fellowship Home for Senior Citizens, Inc.*, 2016 OK 42, 371 P.3d 477; *Vasquez v. Dillard's, Inc.*, 2016 OK 89, 381 P.2d 768.

Background

After the 1998 nationwide settlement of litigation against the manufacturers of tobacco products, Oklahoma voters approved an amendment to the Oklahoma Constitution placing the majority of the state's share of current and future payments into a trust for the benefit of the people of Oklahoma. State Question 692 was approved on November 7, 2000, to amend Okla. Const. Art. X to create the Tobacco Settlement Endowment Trust Fund (TSET). Oklahoma was the only state that created a constitutional trust to protect its share of the tobacco settlement.

Art. X, § 40 (D) created a TSET Board of Directors:

D. There is hereby created the Board of Directors of the Tobacco Settlement Endowment Trust Fund. The Board of Directors shall consist of seven (7) members, one appointed by each of the following appointing authorities:

1. The Governor;

2. *The President Pro Tempore of the Senate;*
3. *The Speaker of the House of Representatives;*
4. *The Attorney General;*
5. *The State Treasurer;*
6. *The State Auditor and Inspector; and*
7. *The State Superintendent of Public Instruction.*

The initial appointed members shall serve staggered terms of office as provided for by law. Thereafter, the appointed members of the Board of Directors shall serve seven-year terms of office. At least one appointee shall be appointed from each congressional district, and not more than two appointees shall be appointed from any single congressional district. Not more than four appointees shall be members of the same political party. An appointee shall have been a member of the political party to which the appointee belongs for at least one (1) year prior to the date of appointment. Appointees shall have demonstrated expertise in public or private health care or programs related to or for the benefit of children or senior adults.

The Board of Directors shall meet at least one time each calendar quarter.
(Emphasis added)

The people approved the constitutional amendment that goes to great lengths to ensure that members of the Board of Directors represent all geographic areas of Oklahoma and not be dominated by either major political party. The people obviously wanted the distribution of the majority of Oklahoma's share of the tobacco settlement be spent without regard to politics. It is unique that so many state officials each appoint a member so that the TSET Board of Directors is not influenced by the Governor or leaders of the Legislature alone. The amendment is clear and specific regarding the qualifications of board members, the frequency of board meetings, and the finite length of board members' terms.

Prior to the passage of HB 2783 in the 2025 regular session of the Legislature, 62 O.S. § 2308 (C) provided:

C. The terms of the Board of Directors shall be staggered as provided by subsection B of Section 2 of Enrolled Senate Bill No. 372 of the 1st Session of the 48th Oklahoma Legislature, as amended by Section 4 of Enrolled House Bill No. 1003 of the 1st Session of the 48th Oklahoma Legislature.

HB 2783, of which the constitutionality is challenged by this action, changed subsection 2308 (C) to read:

The Board of Directors shall serve at the pleasure of their appointing authority, not to exceed a seven-year term of office.

A certified copy of HB 2783 was not available from the Secretary of State as the date of this filing. The Appendix contains the Enrolled version of the bill as passed by both houses of the Legislature (Exhibit A). The bill became law without the signature of the Governor.

At a duly called meeting of the TSET Board of Directors on May 29, 2025, board members in attendance unanimously passed a motion authorizing the filing of this action to challenge the Legislature's attempt to change the length of terms.

PROPOSITION I

HB 2783 authorized the Appointing Authorities to fire a member of the TSET Board of Directors at will, contrary to the Constitution which mandates a seven-year term.

HB 2783 usurps the people's desire for the independence of the TSET Board of Directors when voters approved a mandatory seven-year term and staggered terms. The length of the terms can only be changed by a vote of the people, not the Legislature.

Okla. Const. Art. X, § 40 (D) is clear, "...the appointed members of the Board of Directors **shall** serve seven-year terms of office." Allowing an Appointing Authority to replace his or her appointment to the board at will violates the plain and unambiguous meaning of the constitutional provision and the voters in approving the amendment. "Shall" means just that. Once appointed, a member of the Board of Directors "shall" serve a seven-year term.

HB 2783 is silent about any reason or procedure for removing a member of the Board except "at the pleasure" of the Appointing Authority. Members of the TSET Board of Directors,

like all appointed state officers, are subject to suspension upon the conviction of a felony pursuant to 51 O.S. § 24.1.

The Legislature cannot change the length of a term of a member of the TSET Board of Directors when the length of the term is clearly stated in the Constitution.

The Supreme Court of Oklahoma has consistently ruled that an unambiguous provision of the Constitution must always prevail over a statute that is contrary to the founding document. In *Atchison T. & S. F. RY. Co. v. Excise Bd. of Washington County*, 1934 OK 388, 35 P.2d 274, the Court stated:

¶ 16 *In construing constitutional provisions...where the provision is plain and unambiguous on its face, the court has no alternative but to say that the provision means what it says.*

That principle of construction has been repeated in dozens of cases over the 118 years since Oklahoma statehood. In *Latting v. Cordell*, 1946 OK 217, 172 P.2d 397, Justice Davison wrote for the majority:

¶1 *The object of construction, applied to a Constitution, is to give effect to the intent of its framers, and of the people adopting it. This intent is to be found in the instrument itself; and when the text of a constitutional provision is not ambiguous, the courts, in giving construction thereto, are not at liberty to search for its meaning beyond the instrument.*

Nearly a half century ago, in *Draper v. State*, 1980 OK 117, 621 P.2d 1142, Justice Hodges wrote:

¶8 *The Constitution, the bulwark to which all statutes must yield, must be construed with reference to the fundamental principles which support it. Effect must be given to the intent of its framers and of the people adopting it. This intent is to be found in the instrument itself; and when the text of a constitutional provision is not ambiguous, the courts, in giving construction thereto, are not at liberty to search for its meaning beyond the instrument*

The Constitution's powerful description as the "bulwark," appears in *Reherman v. Oklahoma Water Resources Bd.*, 1984 OK 12, 679 P.2d 1296; *Oklahoma Elec. Co-op, Inc. v. Oklahoma Gas & Elec. Co.*, 1999 OK 35, 982 P.2d 512; *In re Assessments for Year 2005 of Certain Real Prop. Owned by Askins Properties, L.L.C.*, 2007 OK 25, 161 P.3d 303; and *South Tulsa Citizens Coalition LLC v. Arkansas River Bridge Authority*, 2008 OK 4, ¶11, 176 P.3d 1217.

There is no ambiguity in Okla. Const. Art. X, § 40 (D), "...the appointed members of the Board of Directors **shall** serve seven-year terms of office."

The official Website of Oklahoma state government acknowledges that the Constitution requires the members of the TSET Board of Directors to serve seven-year terms. See <https://oklahoma.gov/tset/about-us/board-of-directors.html>.

PROPOSITION II

HB 2783 is contrary to the Constitution by eliminating staggered terms of members of the TSET Board of Directors.

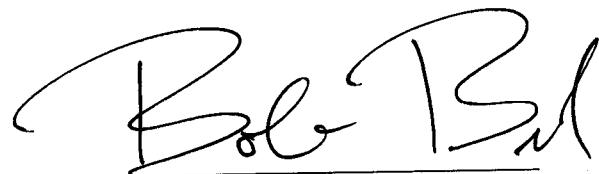
Okla. Const. Art. X, § 40 (D) provides that members of the TSET Board of Directors serve staggered terms to be initially determined by the Legislature and thereafter serve seven-year staggered terms. Until the passage of HB 2783, the Legislature had provided for staggered terms. However, HB 2783 has eliminated the language in 62 O.S. 2308 (C) regarding staggered terms. The elimination of the language is contrary to the Constitution.

Black's Law Dictionary, 2nd Edition, defines "staggered" as most commonly referring to a board of directors. Instead of having a single selection for an entire board, directors are chosen in turns over a period of time. The purpose of staggered terms is to provide for continuity by new appointees joining other board members who have institutional knowledge. Staggered terms are

used in the U.S. Senate and the Oklahoma State Senate. See Lucin Bebcuk, John C. Coates IV, and Guhan Subramanian, "The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence, and Policy." 54 Stan. L. Rev. 997 (2002).

Summary

Based upon the foregoing Argument and Authorities, the Petitioners request the Supreme Court accept Original Jurisdiction, issue a temporary injunction as prayed for or stay the effective date of the law, and find HB 2783 contrary to the Oklahoma Constitution and invalid.



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Certificate of Mailing

On this 30th day of June, 2025, I hereby certify that I placed a copy of this BRIEF in the U.S. mail, postage prepaid, to:

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