

ORIGINAL



FILED
SUPREME COURT
STATE OF OKLAHOMA

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA
No. 123238

JOHN D. HADDEN
CLERK

TOBACCO SETTLEMENT ENDOWMENT TRUST FUND,
Petitioner,

v.

**HON. J. 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, TOSS
RUSS, OKLAHOMA STATE TREASURER, CINDY BYRD, OKLAHOMA STATE AUDITOR &
INSPECTOR, AND RYAN WALTERS, OKLAHOMA STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION**

Respondents.

**RESPONSE IN OPPOSITION TO PETITIONER'S APPLICATION FOR ASSUMPTION OF
ORIGINAL JURISDICTION, PETITION FOR DECLARATORY JUDGMENT AND
EXTRAORDINARY RELIEF, AND BRIEF IN SUPPORT ON BEHALF OF RYAN
WALTERS, OKLAHOMA STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

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COA/TUL:	

/s/ Jacquelyne Phelps
JACQUELYNE K. PHELPS
OKLAHOMA BAR NO. 34366
INTERIM GENERAL COUNSEL
OKLAHOMA STATE DEPT. OF EDUCATION
2500 N. LINCOLN BLVD. STE. 500
OKLAHOMA CITY, OK 73105
TEL: 405-521-2983
EMAIL: JACKI.PHELPS@SDE.OK.GOV

Counsel for Superintendent Ryan Walters

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I. INTRODUCTION

Oftentimes a court is called upon to determine not whether a legislative action is “right” or “wrong,” but rather whether such action is constitutional or unconstitutional. This is precisely such a time. The Petitioner’s argument—though cloaked behind nonsensical ramblings about “co-ordinant branches of government” and hypothetical parades of horrors—essentially boils down to the Petitioner’s dislike of the newly enacted statute rather than any actual constitutional controversy.

Nevertheless, the Petitioner asks this Court to hold that the Legislature “usurp[ed] the independence” of the Board of the Tobacco Settlement Endowment Trust Fund (“TSET”) and, as such, the law should be declared void. The Petitioner further requests a stay or a preliminary injunction, claiming that to hold otherwise “could cause chaos.” Pet’r’s App. p.4. However, noticeably absent from the Petition and Brief in Support is any evidence whatsoever of *actual* harm, controversy, or unconstitutionality.

For the reasons presented herein, RYAN WALTERS, State Superintendent of Public Instruction, by his counsel JACQUELYNE PHELPS of the Oklahoma State Department of Education, respectfully requests that this Court DENY the Petitioner’s Application for Original Jurisdiction, Petition for Declaratory Judgment and Extraordinary Relief, and Brief in Support.

II. DISCUSSION

The Petitioner’s argument fails for multiple reasons. First, **A.** The Petitioner cannot, and does not, offer any argument that warrants this Court’s original jurisdiction. Second, **B.** The plain language of the Oklahoma Constitution allows for legislative revisions to

TSET's Board of Governors. Finally, **C.** The Petitioner makes no argument supporting a preliminary or permanent injunction or a request for a stay. We discuss these issues in turn.

A. THE PETITIONER OFFERS NO ARGUMENTS WARRANTING THIS COURT'S ORIGINAL JURISDICTION.

The Petitioner's argument rests on a number of hypotheticals, none of which rise to the level of *publici juris*. See *Edmondson v. Pearce*, 2004 OK 23, ¶ 11, 91 P.3d 605, 613 (noting that original jurisdiction will be assumed when the matter "concern[s] the public interest, i.e., the case is *publici juris* in nature"). Moreover, none of the Petitioner's arguments even remotely approach a level of "urgency or pressing need for an early decision." *Id.*

At its core, the Petitioner's argument in support of original jurisdiction is a nonjusticiable, political question. The problem with that is the fact that "[t]o be appropriate for judicial inquiry, a controversy must be justiciable." *Richardson v. Okla. Tax Comm'n*, 2017 OK 85, ¶ 5, 406 P.3d 571, 573. As this Court noted, "[a] justiciable controversy must be definite, concrete, and capable of a decision granting or denying specific relief of a conclusive nature." *Id.* In this regard, "[t]his Court will not decide abstract or hypothetical questions." *Id.* (referencing *Rogers v. Excise Bd. of Greer Cty.*, 1984 OK 95, ¶ 15, 701 P.2d 754, 761).

The Petitioner's Application for Original jurisdiction fails on this prong alone. The Petitioner cannot, and indeed does not, offer any real, concrete example of any harm resulting from the bill at issue. Nor does the Petitioner provide any evidence that the matter is one of urgency. Indeed, and perplexingly, the sole case the Petitioner cites in support of the urgency requirement is a portion of this Court's *Pearce* decision that

discusses the potential criminal penalties for cockfighting. Pet'r's App. p.3 (referencing *Edmondson v. Pearce*, 91 P.3d at 613-15). Setting aside for a moment the quantum leap required to equate possible removal of a TSET Board member with criminal penalties for cockfighting, the Petitioner simply has not met its high burden to show that this Court's original jurisdiction is either necessary or proper.

B. THE PLAIN LANGUAGE OF THE OKLAHOMA CONSTITUTION ALLOWS FOR LEGISLATIVE REVISIONS TO TSET'S BOARD OF GOVERNORS.

The Petitioner's argument wholly overlooks the most important clause of the Article governing TSET. That is, the "[t]he Legislature may enact laws to further implement the provisions of this section." Okla. Const. Art. X § 40(G). In other words, from its inception, Article X assumed that the Legislature would be empowered to pass any laws it deemed necessary to its successful implementation. In this case, that authority appears to be altering the manner in which TSET's Board of Directors serve their terms.

To be sure, some degree of "chaos" can potentially ensue when a body's governing members can be removed at will. For example, it is well-known that the Governor had a tendency to replace members of other constitutionally created state boards whenever one (or several) of those members disagree with him. Nevertheless, the Legislature in its infinite wisdom decided that an appointing authority should have the freedom to appoint and reappoint on a whim, and the Oklahoma Constitution allows for just that.

Finally, the Petitioner's only other argument regarding constitutionality appears to be something related to the fact that the new legislation eliminates the TSET Board members' "staggered terms." Pet'r's Br. in Support, pp. 9-10. And yet, the only arguments in support are the *Black's Law* definition of "staggered" and the fact that the United States

and Oklahoma State Senators' terms are staggered. If not having staggered terms renders a board unconstitutional, then TSET has failed to join several necessary parties, as the majority of governing boards in this State do not have staggered terms.

C. THE PETITIONER MAKES NO ARGUMENT SUPPORTING A PRELIMINARY OR PERMANENT INJUNCTION OR ITS REQUEST FOR A STAY.

The Petitioner offers several points on which the parties agree. For instance, the parties agree that TSET is “a trust created by an amendment to the Oklahoma Constitution[.]” Pet’r’s App. p.3. The parties agree that TSET receives the bulk of the annual payments resulting from the original settlement. The parties agree that House Bill 2783’s effective date is August 28, 2025. *Id.* More importantly, the parties agree that “[f]iling the constitutional challenge in the district court would be futile.” *Id.* Where the parties disagree, however, is *why* filing this constitutional challenge in the district court would be futile. Here, the Petitioner’s argument—or lack thereof—speaks volumes.

The Petitioner outlines the Court’s four-factor requirements for granting a stay or a preliminary injunction. Pet’r’s App. p.2. And yet, the Petitioner makes no argument as to how its claims meet any of those factors. For example, the Petitioner notes that a party seeking a preliminary injunction must show a “likelihood of success on the merits” while simultaneously admitting that the claim “would be futile.” *Id.* at pp.2-3. The Petitioner correctly notes that a showing of “irreparable harm” is required and offers only hypotheticals. *Id.* at pp.2; 3-4. In other words, the Petitioner cannot overcome the first two hurdles, that on which it must prevail, to warrant the relief sought.

III. CONCLUSION

At the bottom line, the Petitioner cannot meet its burden to show that the Court's original jurisdiction is either necessary or proper. The Petitioner likewise has not met the Court's four-factor test for either injunctive relief or a stay. As a result, this Court should deny the Application for Assumption of Original Jurisdiction and any and all relief requested therein.

For the reasons presented herein, Respondent RYAN WALTERS, State Superintendent of Public Instruction, respectfully requests that this Court DENY the Application for Original Jurisdiction, DENY the Petition for Declaratory Relief and Preliminary Injunction and/or Stay, and DIMISS this action. Respondent Walters also joins and incorporates fully by reference the Response of Gentner Drummond, Kyle Hilber, and Lonnie Paxton to Petitioner's Application to Assume Original Jurisdiction and Petition for Writ of Prohibition.

Respectfully Submitted,

/s/ Jacquelyne Phelps
JACQUELYNE K. PHELPS
OKLAHOMA BAR NO. 34366
INTERIM GENERAL COUNSEL
OKLAHOMA STATE DEPT. OF EDUCATION
2500 N. LINCOLN BLVD. STE. 500
OKLAHOMA CITY, OK 73105
TEL: 405-521-2983
EMAIL: JACKI.PHELPS@SDE.OK.GOV

Counsel for Superintendent Ryan Walters

CERTIFICATE OF SERVICE

This is to certify that on the 22nd day of July, 2025, a true and correct copy of the foregoing Response was mailed, postage prepaid to the following:

Bob Burke
512 N. Broadway Ave., Ste 300
Oklahoma City, OK 73102
bob@bobburkelaw.com

A handwritten signature in black ink, reading "De Anna Copp", written over a horizontal line.

DE ANNA COPP, SENIOR PARALEGAL
OKLAHOMA STATE DEPT. OF EDUCATION