

**578 P.3d 154  
2025 OK 73**

**AMERICA'S CAR MART, INC., a foreign  
corporation, Petitioner,**

**v.**

**The Honorable Damon CANTRELL, Judge of  
the District Court for Tulsa County, State of  
Oklahoma, Respondent.**

**No 122,581**

**Supreme Court of Oklahoma.**

**Filed October 14, 2025**

**Mandate Issued: November 7, 2025**

[578 P.3d 155]

¶0 The real parties in interest, the Naquins, sued Petitioner, America's Car Mart, Inc. (ACM), concerning enforcement of a vehicle service warranty contract. Petitioner moved for partial summary judgment. Both parties agreed that, if constitutional, Title 15, Section 141.24(B) of the Service Warranty Act would govern the dispute. Respondent, Judge Cantrell, ruled that the statute constituted an unconstitutional special law and denied Petitioner's motion. We disagree with that ruling and issue a writ of prohibition to prevent Respondent from enforcing it.

## **WRIT OF PROHIBITION GRANTED CASE REMANDED TO TRIAL COURT**

Andrew A. Shank, William C. Searcy, Eller and Detrich, P.C., Tulsa, Oklahoma for America's Car Mart, Inc.

Kris Ted Ledford, Ledford Law Firm, Owasso, Oklahoma, for Real Parties in Interest Linda and Jerimee Naquin

### OPINION

KUEHN, V.C.J.:

¶1 Can a vehicle service warranty be considered an insurance contract that supports a tort action for breach of the duty of good faith and fair

dealing? In the 2014 Service Warranty Act, the Legislature answered that question in the negative. See 15 O.S. §§ 141.1 et seq. Respondent held that Title 15, Section 141.24(B) of the Act is an unconstitutional special law. We find it is not, grant the writ, and remand for further proceedings.

¶2 The real parties in interest, the Naquins, purchased a used 2012 Dodge Durango SUV from ACM, along with a separate vehicle service contract. The Naquins allege that over the following year, they brought the SUV to ACM numerous times for repairs; that ACM charged them the deductible under the service contract; that ACM prevented them from communicating directly with the repair shop; that ACM failed to make the necessary repairs; and that ACM falsely represented that the vehicle had been fixed. In December 2022, the Naquins sued ACM for breach of contract, breach of warranty, and breach of the duty of good faith and fair dealing. ACM moved for partial summary judgment, arguing that Title 15, Section 141.24(B) expressly prohibits a bad faith tort claim arising from a service warranty. After briefing and argument, Respondent denied the motion, finding that the statute was an unconstitutional special law. ACM then filed this writ.<sup>1</sup>

### **Standard of Review**

[1, 2] ¶3 ACM seeks a writ of prohibition and a writ of mandamus. For a writ of prohibition, ACM must show Respondent has exercised judicial power unauthorized by law, and that unlawful exercise of power will result in injury for which there is no other adequate remedy. *Maree v. Neuwirth*, 2016 OK 62, ¶ 6, 374 P.3d 750, 752. For a writ of mandamus, ACM must show it possesses a clear legal right to the relief sought, Respondent has a plain legal duty regarding that relief, Respondent has failed to perform that duty, Respondent's duty does not involve an exercise of discretion, and ACM has no plain and adequate remedy at law. *Id.*

### **A Vehicle Service Warranty is not an Insurance Contract**

¶4 Prior to 2012, vehicle service warranty

contracts were governed by the Oklahoma Insurance Code, Title 36, Section 101 et seq.

[578 P.3d 156]

Under that Code, insurance contracts may support tort actions for breach of the duty of good faith and fair dealing. The Code, however, did not specifically reference vehicle service warranties. In *McMullan v. Enterprise Financial Group, Inc.*, we examined whether vehicle service warranty agreements qualified as insurance contracts for purposes of the Insurance Code. We observed that public policy considerations supported the view that traditional insurers might warrant more extensive regulation than service warranty companies, which were not subject to the same risks. *McMullan v. Enterprise Fin. Grp., Inc.*, 2011 OK 7, ¶ 10, 247 P.3d 1173, 1178. We noted that courts in other jurisdictions were divided on the issue—some held that service warranties were not substantially similar to insurance, while others concluded they were. *Id.* at ¶¶ 14-16, 247 P.3d at 1178-79.

¶5 We held in *McMullan* that the extent of regulation alone did not define either an insurance company or an insurance contract. *Id.* at ¶ 10, 247 P.3d at 1178. Regardless of their label, we found that vehicle service warranty contracts functioned like insurance policies in that they protected consumers from bearing the cost of certain vehicle-related expenses. *Id.* at ¶ 13, 247 P.3d at 1178. Because the Legislature had not enacted a specific provision excluding such contracts from the Insurance Code, we concluded that vehicle service warranty contracts were subject to the same duty of good faith and could support a tort claim for a breach of that duty. *Id.* at ¶ 19, 247 P.3d at 1180.

[3] ¶6 While this Court interprets statutes, it remains the Legislature's prerogative to amend them. In 2012, in direct response to *McMullan*, the Legislature enacted the Service Warranty Act to establish a new regulatory framework for vehicle service warranty contracts. 15 O.S. Supp. 2012, §§ 141.1—150. The Act explicitly provides that "service warranties are not insurance" and are not regulated under the

Oklahoma Insurance Code. 15 O.S. Supp. 2012, § 141.2(17)(f). At the same time, the Legislature narrowly defined what constitutes a "service warranty" under the Act. 15 O.S. Supp. 2012, § 141.2(17)(e). This definition expressly excluded warranties, guarantees, extended warranties, extended guarantees, contract agreements or any other service contracts issued by a company with assets in excess of \$100 million. 15 O.S. Supp. 2012, § 141.2(17)(e). That is, those high-asset companies are generally excluded from the provisions of the Service Warranty Act.

¶7 However, the Legislature ensured that the bar on tort claims for breach of the duty of good faith and fair dealing applied broadly and includes those high-asset companies. The Act states:

A service warranty and those contracts specified in subparagraphs a through e of paragraph 17 of Section 141.2 of this title shall not be deemed to create a special relationship between the parties which would give rise to an action in tort to recover for breach of the duty of good faith and fair dealing. This section shall not be construed to preclude a breach of contract action for failure of the parties to comply with the implied duty of good faith and fair dealing in carrying out their obligations as set forth in the service warranty.

15 O.S. Supp. 2012, § 141.24(B) (emphasis added). This language is unequivocal: *McMullan* has been abrogated by statute.<sup>2</sup> The Legislature barred all such tort claims, including for contracts issued by companies with over \$100 million in assets. The parties do not dispute that Section 141.24(B) governs the contract at issue. ACM was therefore correct in asserting that, under Section 141.24(B), the Naquins cannot pursue a tort claim for breach of the duty of good faith and fair dealing.

[578 P.3d 157]

Section 141.24(B) is Not an Unconstitutional

## Special Law

¶8 The Naquins do not claim that the Service Warranty Act as a whole is unconstitutional. They argued below, and maintain on appeal, that Section 141.24(B) cannot bar their suit because it is a special law. It is not.

**[4, 5]** ¶9 The Oklahoma Constitution prohibits special laws which, among other things, limit civil actions, or which regulate the practice or jurisdiction of the courts, or change the rules of evidence in court proceedings. Okla. Const. art. 5, § 46. General laws include all persons or things of a class. *Reynolds v. Porter*, 1988 OK 88, ¶ 14, 760 P.2d 816, 822. A special law arbitrarily singles out a particular classification of persons or things for different treatment than is given to all others similarly situated. *Beason v. I.E. Miller Services, Inc.*, 2019 OK 28, ¶ 6, 441 P.3d 1107, 1111; *Zeier v. Zimmer, Inc.*, 2006 OK 98, ¶ 17, 152 P.3d 861, 868. “The test is whether the provision fits into the structured regime of established procedure as part of a symmetrical whole.” *Zeier*, ¶ 13, 152 P.3d at 867.

**[6]** ¶10 Section 141.24(B) does not create an impermissible classification under the constitutional test for special laws. The class of contracts covered by Section 141.24(B) includes all agreements that are issued as, resemble, or function as service warranties under the Service Warranty Act. The Act first provides that service warranties are not insurance and are not subject to the Insurance Code. While Section 141.2(17)(e) excludes from the statutory *definition* of service warranties those contracts issued by companies with significant assets—contracts that would otherwise fall within the general scope of the Act—Section 141.24(B) nevertheless applies uniformly. It expressly removes the cause of action for breach of the duty of good faith and fair dealing for *all* such warranties, including those excluded under Section 141.2(17)(e).

¶11 The statute is not a special law because it applies generally to every service warranty. As ACM correctly points out, the Legislature could have instead permitted a tort action for breach of the duty of good faith and fair dealing only

against companies with the significant assets described in Section 141.2(17)(e). However, doing so would have singled out those particular companies’ warranties for special treatment—the very definition of a special law. The Legislature declined that approach, choosing instead to treat all service warranty agreements alike. In doing so, it did not carve out a favored or disfavored subset within the class. Section 141.24(B) therefore applies uniformly to a broad and inclusive class and does not violate the constitutional prohibition against special laws.

¶12 The Naquins contend that the relevant class is all persons who have insurance. But that framing ignores both the plain language and legislative purpose of the Service Warranty Act. In *McMullan*, this Court was faced with a statutory gap—there was no law specifically governing vehicle service warranty contracts. In the absence of legislative direction, the Court applied existing insurance principles and concluded that such contracts could be treated like insurance, including the duty of good faith and fair dealing. The Legislature responded directly to *McMullan* by enacting the Service Warranty Act, which expressly declared that vehicle service warranty contracts are not insurance and are not governed by the Insurance Code. In doing so, the Legislature replaced a judicially created rule with a clear statutory policy. The Naquins define the class as “all insurance holders” and complain that service warranties are treated differently within that broad designation. Yet the Legislature has the authority to create distinct legal categories. Defining service warranties separately from insurance does not make the Act unconstitutional—it reflects a deliberate policy choice in response to *McMullan*.

## Conclusion

¶13 *McMullan v. Enterprise Financial Group, Inc.* has been abrogated by statute. Title 15, Section 141.24(B) of the Service Warranty Act is not a special law. Section 141.24(B) applies to the vehicle service warranty contract in this case. We grant the writ of prohibition, precluding the trial court from

[578 P.3d 158]

enforcing its Order of June 5, 2024 denying ACM's Motion for Partial Summary Judgment. We remand for further proceedings consistent with this Opinion.

**WRIT OF PROHIBITION GRANTED CASE  
REMANDED TO TRIAL COURT**

CONCUR: Rowe, C.J., Kuehn, V.C.J., and Winchester, Edmondson, Darby and Jett, JJ.

DISSENT: Combs, J. (by separate writing), and Gurich, J.

RECUSED: Kane, J.

COMBS, J., with whom GURICH, J., joins, dissenting:

¶1 I dissent from the majority's assumption of original jurisdiction and issuance of a writ of prohibition based on their finding that section 141.24(B) of Oklahoma's Service Warranty Act is not an unconstitutional special law. The Respondent district judge made the correct decision in this case, finding that section 141.24(B) is an unconstitutional special law. Thus, there is no basis for us to interfere in the case through the issuance of an extraordinary writ.

¶2 Section 141.24(B) is an unconstitutional special law that treats a subset of insurers like America's Car Mart, Inc. differently from all other insurers by exempting them from tort claims for breach of the duty of good faith and fair dealing—claims that would ordinarily expose an insurer to punitive damages that aren't available under a contract claim for breach of the duty of good faith and fair dealing, *see* 23 O.S.2021, § 9.1 (authorizing punitive damages only "[i]n an action for the breach of an obligation **not arising from contract**" (emphasis added)). To clarify why America's Car Mart, Inc. is an insurer, we need a little more historical context than what the majority opinion sets forth, because the majority opinion implies there were no statutes governing vehicle service warranty contracts prior to 2012 and that this

Court approached the question in the *McMullan* case without any guidance or limitations on our legal interpretation from the Legislature. *See* Majority Op. ¶ 4.

¶3 As early as 1993, the Legislature had enacted the Service Warranty **Insurance** Act—codified in sections 6601 to 6639 of Oklahoma's **Insurance** Code as contained in Title 36 of the Oklahoma Statutes—to govern service warranty contracts generally, including vehicle service warranty contracts. *See* 36 O.S.2011, §§ 6601—6639 (repealed 2012). Indeed, the 1993 bill had a caption informing the legislators who enacted it that the Service Warranty **Insurance** Act was "[a]n Act relating to **insurance**." Ch. 108, 1993 Okla. Sess. Laws 269, 269.

¶4 In the appeal of *McMullan v. Enterprise Financial Group, Inc.*, 2011 OK 7, 247 P.3d 1173, this Court was asked on certiorari to decide a matter of first impression regarding whether vehicle service warranty contracts are insurance contracts that would give rise to tort claims for breach of the duty of good faith and fair dealing to which all other insurers are susceptible. In *McMullan*, we observed that, under the statute defining "insurer," *see* 36 O.S.2001, § 103, "[b]urial associations are expressly excluded from the definition of insurer," *id.* § 103(C), but that "[s]ervice warranty providers, such as Enterprise, are not mentioned at all." *McMullan*, 2011 OK 7, ¶ 7, 247 P.3d at 1175. As the majority states, the *McMullan* court ultimately decided that vehicle service warranty contracts were insurance contracts that could support a tort claim for a breach of the duty of good faith "because the Legislature had not enacted a specific provision excluding such contracts from the Insurance Code." Majority Op. ¶ 5 (citing *McMullan*, 2011 OK 7, ¶ 19, 247 P.3d at 1180).<sup>1</sup>

[578 P.3d 159]

¶5 Thereafter, lobbyists with the service contract industry got legislators and the Oklahoma Department of Insurance to support bills that would specify service warranty contracts are not insurance,<sup>2</sup> bills which were enacted in 2011 and 2012.<sup>3</sup> But, to use a legal analogy, those bills did not preempt the entire

field; they specifically excluded certain types of contracts from their purview or ambit. For example, the Service Warranty Act excludes several types of contracts from its definition of "service warranty," including "warranties, guarantees, extended warranties, extended guarantees, contract agreements or any other service contracts, whether or not such service contracts otherwise meet the definition of service warranty, issued by a company which has net assets in excess of One Hundred Million Dollars (\$100,000,000.00)." 15 O.S.2021, § 141.2(17)(e). By virtue of *McMullan*, such contracts that this Court classified as insurance contracts have not been otherwise reclassified by the Legislature. Because they are not "service warranties" under section 141.2(17)(e), the provision in section 141.2(17)(f) stating that "service warranties are not insurance in this state" does not apply to such contracts. They are specifically not "service warranties," meaning they are still "insurance in this state" under both *McMullan* and section 141.2(17)(f) of the Service Warranty Act. Because it is undisputed that America's Car Mart, Inc. has more than \$100 million in assets,<sup>4</sup> it should follow that America's Car Mart, Inc.'s contract with the real parties in interest is insurance.

¶6 But then section 141.24(B) of the Service Warranty Act purports to make "service warranties" and the excluded insurance contracts not susceptible to bad faith claims. This is where section 141.24(B) becomes an unconstitutional special law. Article V, Section 46 of the Oklahoma Constitution provides that the Legislature shall not pass special laws affecting certain subjects. It enacts a "mandatory prohibition against special laws." *Zeier v. Zimmer, Inc.*, 2006 OK 98, ¶ 7, 152 P.3d 861, 865. A statute is a special law when part of an entire class of similarly affected persons is segregated and targeted for different treatment. *Reynolds v. Porter*, 1988 OK 88, ¶ 14, 760 P.2d 816, 822. "The Legislature runs afoul of the prohibition on enacting special laws set forth in Oklahoma Const. Art. 5, § 46 when it adopts a classification that is arbitrary and capricious and bears no reasonable relationship to the object of the Legislation." *Ponca Iron & Metal v.*

[578 P.3d 160]

*Wilkinson*, 2010 OK 75, ¶ 6, 242 P.3d 534, 536. Stated another way, Article V, Section 46 requires uniformity of treatment when like-situated litigants arrive at the courthouse door: "[C]ourt procedure [must] be symmetrical and apply equally across the board for an entire class of similarly situated persons or things." *Zeier*, 2006 OK 98, ¶ 13, 152 P.3d at 868. Here, section 141.24(B) is a special law because it singles out only a subset of insurers sued for breach of the implied covenant of good faith and fair dealing for immunity—at the expense of only a subset of insureds who bring such suits—rather than applying the law uniformly to all similarly situated insurers and insureds. For nearly 50 years it has been settled law in Oklahoma that under *Christian v. American Home Assurance Co.*, 1977 OK 141, 577 P.2d 899, an insurer owes a duty of good faith and fair dealing to its insured and that an insurer who violates that duty can be sued for both breach of contract and tortious bad faith. Because section 141.24(B) of the Service Warranty Act injects asymmetry into the law, it offends Article V, Section 46's prohibition against special laws. Consequently, the Respondent properly found that section 141.24(B) is an unconstitutional special law, and a writ of prohibition should not issue.

¶7 Perhaps more importantly, however, I dissent from the majority's assumption of original jurisdiction and issuance of a writ of prohibition to the lower court insofar as it is intended to prevent the enforcement of a partial summary adjudication regarding only one of several claims against the defendant Petitioner. "As a preliminary matter, this Court will generally 'not review a trial court order which overrules a motion for summary judgment.'" *Edwards v. Andrews*, 2016 OK 107, ¶ 7, 382 P.3d 1045, 1047 (citing *Rowan v. Rowan*, 1974 OK 66, 523 P.2d 1068). An exception to that rule exists, however, in cases involving a defendant's immunity from suit. *See Edwards*, 2016 OK 107, ¶¶ 7-8, 382 P.3d at 1047; *McLin v. Trimble*, 1990 OK 74, ¶ 32, 795 P.2d 1035, 1043 ("A writ of prohibition will issue to prohibit a court from proceeding with an action against immune

defendants.” (citing *Powell v. Seay*, 1976 OK 22, 553 P.2d 161)); *Hill v. Graham*, 1967 OK 10, ¶ 21, 424 P.2d 35, 38 (“Upon consideration of the matters presented, we conclude that no cause of action may be maintained by a step-mother in a representative capacity against an unemancipated minor son to recover damages for wrongful death alleged to have resulted from the minor’s negligence. The trial court was without jurisdiction to render judgment since no cause of action existed. Respondent’s action in overruling petitioner’s motion for summary judgment constituted an assumption of judicial power not granted by law. In such a case prohibition is a proper remedy.”). This is not a case where America’s Car Mart, Inc. is immune from suit, as evidenced by the fact that numerous other claims (e.g., breach of contract, breach of warranty, violation of the Oklahoma Consumer Protection Act, and negligence *per se*) will be allowed to proceed in the district court, even after the majority’s issuance of a writ of prohibition.

¶8 Moreover, never before has this Court issued a writ of prohibition to prevent **part of a lawsuit** from going forward. Ordinarily, this Court will only issue a writ of prohibition if an inferior tribunal has exercised (or is about to exercise) judicial power **unauthorized by law** that will result in injury for which there is no adequate remedy at law. *Cannon v. Lane*, 1993 OK 40, ¶ 12, 867 P.2d 1235, 1239 (quoting *James v. Rogers*, 1987 OK 20, ¶ 5, 734 P.2d 1298, 1299). The majority’s suggestion that the district court’s exercise of jurisdiction over one cause of action (i.e., the bad faith tort claim) was unauthorized by law goes too far, particularly when the viability of that cause of action is a close call **and** when the lawsuit involved several other causes of action (e.g., breach of contract, breach of warranty, violation of the Oklahoma Consumer Protection Act, and negligence *per se*) over which the district court indisputably had jurisdiction. When this Court has issued a writ of prohibition to prevent enforcement of an order denying summary judgment or a motion to dismiss, it has always been to arrest and prevent **all further proceedings** in the case below. See, e.g., *Edwards*, 2016 OK 107, ¶ 8, 382 P.3d at

1047 (“This action falls within the *McLin* exception because Guardian is immune from suit for charges of discriminatory practices in [578 P.3d 161]

employment by domestic workers under section 1302(B). Further, pursuant to section 1301(l)(a), a ‘person’ or ‘individual’ is excluded from the definition of ‘employer’ and is not subject to suit by an ‘employee.’ Therefore, Guardian **is not subject to any action for discriminatory practices** in employment.” (emphasis added)); *McLin*, 1990 OK 74, ¶ 32, 795 P.2d at 1043; *Cont’l Tel. Co. of Okla., Inc. v. Hunter*, 1979 OK 14, ¶¶ 2-4, 590 P.2d 667, 668 (issuing a writ of prohibition to prevent further proceedings by the district judge after he overruled a demurrer and motion to dismiss, all because exclusive jurisdiction over the controversy lay in the Corporation Commission); *Spraker v. Carroll*, 1966 OK 142, ¶ 0, 416 P.2d 946, 946 (“Prohibition is the proper remedy where an inferior court assumes to exercise judicial power not granted by law or is attempting to make an excessive and unauthorized application of judicial force, and the exercising of jurisdiction by such court where it has no jurisdiction for the reason that **plaintiff’s sole remedy is before the State Industrial Court under the Oklahoma Workmen’s Compensation Law**, is a case within such rule, and the writ should issue.” (emphasis added)); *Hampton v Clendinning*, 1966 OK 51, ¶ 17, 416 P.2d 617, 621-22 (“Under the facts in this case we are of the opinion **no cause of action based upon tort can be maintained by a parent against an unemancipated minor child....** The trial court’s action in overruling defendant’s motion to dismiss as to such minor constituted an assumption of judicial power not granted by law.... The application for this Court to assume original jurisdiction is granted, and writ of prohibition accordingly is granted as prayed for by Petitioner, **prohibiting further proceedings against defendant, William B. Hinkle.**” (emphasis added)); *Gordon v. Followell*, 1964 OK 74, ¶ 14, 391 P.2d 242, 245 (“The jurisdiction of the district and superior courts in this state under the declaratory

judgments act is limited to 'cases of actual controversy'. No such controversy was shown in the petition in the declaratory judgments action. Prohibition is a proper remedy to arrest the action of an inferior court where a proper showing has been made that such court is proceeding in a cause without jurisdiction.""); *Bd. of Comm'rs of Harmon Cty. v Keen*, 1944 OK 243, ¶¶ 6-7, 194 Okla. 593, 153 P.2d 483, 485 ("Here **no cause of action exists or can be stated....** A writ of prohibition is accordingly issued permanently restraining the respondent district judge and the district court of Harmon County **from proceeding further in said cause.**" (emphasis added)); *State ex rel. Cavett v. Douglass*, 1940 OK 263, ¶ 9, 187 Okla. 272, 102 P.2d 856, 858 (quoting *State ex rel. Morrell v. Worten*, 1932 OK 744, ¶ 13, 161 Okla. 130, 17 P.2d 424, 426). I do not think we should set this dangerous precedent of issuing a writ of prohibition to arrest only a portion of the proceedings below.

¶9 Finally, America's Car Mart, Inc. has an adequate remedy at law insofar as it can file an appeal when judgment is eventually entered. It appears Petitioner was first inclined to seek certification of the district court's denial of partial summary adjudication pursuant to 12 O.S.2024, § 952(b)(3) and to attempt filing an appeal through a petition in error. See Pet. in Error 1 & Ex. A, *Naquin v. America's Car Mart, Inc.*, No. 122,304 (Okla. filed July 1, 2024). But after this Court informed Petitioner that appeals from interlocutory orders require the filing of a petition for certiorari to review a certified interlocutory order, which this Court has discretion to deny, Petitioner realized that an interlocutory appeal would get nowhere because Oklahoma Supreme Court Rule 1.50 provides that "[n]o certified interlocutory order shall be considered if taken from an order overruling a motion for summary judgment." Okla. Sup. Ct. R. 1.50, 12 O.S.2024, ch. 15, app. 1. As I see it, the lack of an interlocutory appeal does not demonstrate lack of an adequate remedy at law, but rather why interlocutory review of the order by either appeal or writ is inappropriate. It is the reason "this Court will generally 'not review a trial court order which overrules a motion for

summary judgment.' " *Edwards*, 2016 OK 107, ¶ 7, 382 P.3d at 1047 (citing *Rowan*, 1974 OK 66, 523 P.2d 1068).

¶10 For the foregoing reasons, I dissent. I would deny Petitioner's application to assume original jurisdiction.

Notes:

<sup>1</sup> Respondent's ruling was entered on March 5, 2024. On June 5, 2024, the parties jointly entered an Agreed Interlocutory Order memorializing the March 5 ruling and certifying the issue for inter locutory review under 12 O.S. § 952(b)(3) ACM filed a petition in error on July 1, 2024 However, ACM voluntarily dismissed that appeal on July 15, and filed this writ on October 11, 2024.

<sup>2</sup> The Naquins mistakenly suggest that this Court reached a contrary conclusion when it discussed *McMullan* in *Sparks v. Old Republic Home Protection Co., Inc.*, 2020 OK 42, 467 P 3d 680. In *Sparks*, we held that a home service warranty was a warranty—not a service contract—and therefore not subject to the Home Service Contract Act *Sparks*, 2020 OK 42, ¶ 34, 467 P 3d at 690-91 In reaching that conclusion, we analogized to *McMullan* in discussing the general purposes and characteristics of insurance versus service contracts. However, *Sparks* expressed no opinion on the validity of the Service Warranty Act or whether *McMullan* remained binding precedent, as the Naquins now claim

<sup>1</sup> This narrative is supported not only by this Court's *McMullan* opinion, but also by industry news reports See, e g, *Oklahoma Bill Clears Service Contract Providers of Insurance Laws*, F&I Magazine, June 26, 2012, <https://www.fimagazine.com/352623/oklahoma-bill-clears-service-contract-providers-of-insurance-laws> In the cited digital article from a magazine serving the finance and insurance professionals at new car and truck dealerships, the assistant executive director of the Service Contract Industry Council (SCIC) is quoted as saying, "When the service contract model law was put in place, it didn't include a paragraph making it

clear that service contracts are not insurance. Most service contract laws will have a paragraph or two that this is not insurance and should not be viewed as such. We brought this to the attention of the industry once we saw the opinion from the [Oklahoma] Supreme Court” *Id.* This realization became key when the SCIC reached out to the Oklahoma Legislature to amend the law, as discussed *infra* note 2.

<sup>2</sup> *Oklahoma Bill Clears Service Contract Providers of Insurance Laws*, *supra* note 1 (“Spearheaded by the Service Contract Industry Council (SCIC), SB 1475 was signed into law on April 25, 2012, more than a year after a state Supreme Court ruled that service contracts met the definition of insurance. We brought this to the attention of the industry once we saw the opinion from the Supreme Court. The [Oklahoma Department of Insurance] was supportive of the bill.” (alteration in original)).

<sup>3</sup> See Oklahoma Home Service Contract Act, ch 224, § 2(A), 2011 Okla. Sess 849, 850 (codified at 36 O S 2011, § 6751(A)) (“The purpose of the Oklahoma Home Service Contract Act is to create an independent legal framework within which home service contracts are defined, may be sold and are regulated in this state. The Oklahoma Home Service Contract Act declares that home service contracts, as defined in

Section 3 of this act, are not insurance and not otherwise subject to the Insurance Code”); Service Warranty Act, ch. 150, §§ 2(14)(f), 24(B), 2012 Okla. Sess Laws 489, 492, 501 (codified at 15 O S Supp 2012, §§ 141 2(14)(f), 141.24(B)) (specifying that “service warranties are not insurance in this state or otherwise regulated under the Insurance Code” and that service warranty contracts and other contracts specifically exempted from the statutory definition “shall not be deemed to create a special relationship between the parties which would give rise to an action in tort to recover for breach of the duty of good faith and fair dealing”). The second Act cited here, i.e., the Service Warranty Act, contains the statutory provisions at issue in this lawsuit.

<sup>4</sup> See Am’s Car Mart, Inc.’s AAOJ & Pet for Writ of Prohibition & Mandamus ¶ 10 n 4, at 7–8, Oct 11, 2024 (admitting that “the ACM Service Contract at issue falls under the Act’s definition of the five contract exemptions or exceptions” and that “[t]his definition” in section 141 2(17)(e) “applies to ACM”); Real Party in Interest Linda Naquin & Jerimee Naquin’s Resp. to AAOJ & Pet for Writ of Prohibition & Mandamus 6, Oct 31, 2024 (“First, ACM is not subject to the provisions of the Service Warranty Act because its net assets exceed \$100,000,000.00 ”).