



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

REV. DR. LORI WALKE., et al.,)

Petitioners,)

v.)

RYAN WALTERS, in his official)
capacity as STATE SUPINTENDENT)

OF PUBLIC INSTRUCTION, et al.)

Respondents.)

No.: 122592

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RESPONDENTS, SUPERINTENDENT RYAN WALTERS'S AND OSDE'S
SUPPLEMENTAL BRIEF IN RESPONSE TO PETITIONERS' APPLICATION FOR
ASSUMPTION OF ORIGINAL JURISDICTION AND PETITION FOR DECLARATORY
AND INJUNCTIVE RELIEF AND/OR A WRIT OF MANDAMUS AND/OR
PROHIBITION

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December 4, 2024

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I. INTRODUCTION

Pursuant to the November 21st, 2024, Order of this honorable Court, Respondents Superintendent Ryan Walters, and the Oklahoma State Department of Education (“OSDE”) respectfully provide this Supplemental Brief and respond to the questions posed, or issues framed, by this honorable Court.

II. AUTHORITIES AND ANALYSIS

ISSUE ONE: **WHAT IS THE ACTUAL STATUS OF THE RFP FOR THE BIBLES.**

The prior Request for Proposals (“RFP”) has been canceled. A replacement RFP has not been initiated at this time; however, one is planned, likely in the near future. It is unknown how long a period of time a subsequent RFP will take, or the form it will take. A small quantity of Bibles was purchased. Limited distribution of the Bibles is planned but has not yet occurred.¹ It is believed the purchase was made pursuant to Title 74 O.S. § 85.5(C)(10)(a).

ISSUE TWO: **WHETHER THE PETITIONERS’ LEGAL CLAIMS OR REQUESTS HAVE BEEN RENDERED MOOT.**

Petitioners’ legal claims and requests are moot.

“Mootness is a state or condition which prevents the appellate court from rendering relief. Where, as here, after an appeal has been commenced, conditions arise which preclude an appellate decision from affording any effective relief, the appeal will be dismissed for mootness. A viable controversy must continue at all stages of review -- both on appeal and certiorari. It is a long-established rule that this court will not consume its time by deciding ‘abstract propositions of law’ or moot issues. The court may not reach these questions. Oklahoma jurisprudence recognizes two exceptions to the mootness doctrine: (1) when the appeal presents a question of broad public interest and (2) when the challenged event is ‘capable of repetition, *yet evading review*.’” State ex rel. Oklahoma Firefighters Pension & Ret. Sys. v. City of Spencer, 2009 OK 73, ¶ 4, 237 P.3d 125, 129 (footnotes omitted)

“[M]ootness exists when circumstances occur such that the court is unable to grant effective relief and any opinion in the controversy would possess characteristics of an advisory or hypothetical opinion. Chandler (U.S.A.), Inc. v. Tyree, 2004 OK 16, ¶ 12, 87 P.3d 598, 601.

¹ <https://x.com/RyanWaltersSupt/status/1857196686201753669>.

The mootness doctrine applies to both original jurisdiction and appellate proceedings. Id. 11, 87 P.3d at 601. This Court is the final arbiter of whether the mootness doctrine applies. In re Guardianship of Doornbos, 2006 OK 94, 151 P.3d 126, 126.

This Court will not decide moot issues or hypothetical questions, when no practical relief will result. Baby F. v. Okla. Cty. Dist. Court, 2015 OK 24, ¶ 11, 348 P.3d 1080, 1084, Doornbos, 2006 OK 94, 151 P.3d at 126.

Oklahoma recognizes an exception to the mootness doctrine when an appeal presents a question of substantial or broad public interest. Doornbos, 2006 OK 94, ¶ 4, 151 P.3d at 126. However, application of exceptions to the mootness doctrine depend on the facts presented and policy considerations. Id. This Court will only apply those exceptions when the practical considerations indicate that doing so would avoid confusion, not prolong it. Id. 4, 151 P.3d at 126-27.” Beach v. Oklahoma Dep’t of Pub. Safety, 2017 OK 40, ¶¶ 16-17, 398 P.3d 1, 7 (emphasis added) (citations retained).

The likelihood-of-recurrence exception is subject to a two-part test. Specifically, whether “(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration; and (2) a reasonable expectation exists that the same complaining party will be subject to the same action again.” Spencer @ 2009 OK 129, 237 P.3d 129-130, n. 18 (emphasis added). The second prong of the likelihood-of-recurrence exception requires a “reasonable expectation” or a “demonstrated probability” that the same controversy will recur dealing with the same complaining party.” Id. (emphasis added).

At least some controversy exists as to whether the two exceptions are applied, or operate, independently. In Shirazi v. Childtime Learning Center, Inc., 2009 OK 13, ¶ 4, 204 P.3d 75, the Court applied the publici juris exceptions independently. However, in Lawrence the Court recognized the likely broad public interest but dismissed the appeal as moot because the likelihood of recurrence was “at best one of conjecture.” Lawrence v. Cleveland County Home Loan Auth., 1981 OK 28, ¶ 8, 626 P.2d 314, 315–16. For the purpose of this Supplemental Brief, it is assumed arguendo that the exceptions are independent of one another.

Respondents acknowledge that the questions posed appear to focus on the RFP; however, and respectfully, the specific question is whether “any” of the Petitioners claims are moot. Supplementation of this record is permissible to show that the controversy presented has become moot. House of Realty, Inc. v. City of Midwest City, 2004 OK 97, ¶ 6, 109 P.3d 314; Matter of I.T.S., 2021 OK 38, ¶ 24, 490 P.3d 127, 134.

First, consider the issue of the expenditure of public money for the Bibles in alleged violation of Art. I, § 5 or Art. II, § 5 of the Oklahoma Constitution. Lack of a current RFP renders such controversy currently unviable and moot. It is anticipated that the Plaintiffs will assert that the purchase of a relatively small quantity of Bibles results in a live controversy. This assertion is incorrect because only a single purchase of this nature is allowable under Title 74 O.S. § 85.5(C)(10)(a).

Admittedly, the expenditure of public money issue may be, or is, likely to recur. However, such issue is extremely unlikely to evade judicial review as discussed *infra*; therefore, the likelihood-of-recurrence exception is not satisfied.

It is anticipated the Petitioners will continue to assert that the expenditure of public money on the Bible is a matter of broad public interest and satisfies an exception to the mootness doctrine. This is incorrect. The only manner in which the expenditure of public money on the Bible can satisfy the public juris exception is: (a) if the secular value of the Bible is ignored in contravention of specific verbiage to the contrary in cases such as McCreary, 545 U.S. 844, 874, 125 S. Ct. 2722, 2741 (2005), Sch. Dist. of Abington Twp., Pa. v. Schempp, 374 U.S. 203, 225, 83 S. Ct. 1560, 1573 (1963) and Stone v. Graham, 449 U.S. 39, 42, (1980), and (b) the Petitioners fabricated premise that the Bible will be used for religious instruction is taken as fact absent specific supporting proof and despite proof to the contrary.

Second, consider the issue of teaching about the Bible for its secular value. The Petitioners have not presented a publici juris issue. Keating v. Johnson, 1996 OK 61, ¶ 9, 918 P.2d 51, 56. Petitioners must then satisfy the requisites of likelihood-of-recurrence exception. After the commencement of this case, Defense of Democracy created, and has distributed, an “opt out” document for classroom instruction that includes teachings about the Bible for its secular value.² Sans citation to Title 25 O.S. § 2005(A)(3), the Petitioners nonetheless use its “opt out” provision ensuring that they, and other persons similarly situated, will not be subject to the same action again for use of the Bible in classroom instruction. Thus, any opinion in this case will possess characteristics of an advisory or hypothetical opinion.

The issues presented in this case, if not solved by the statutory “opt out” provision, are also not “likely to evade [judicial] review.” Matter of I.T.S., 2021 OK 38, ¶ 24, 490 P.3d 134-135. As the Petitioners admit, a current case pends in the district court of Mayes County, Oklahoma. Petitioners’ Application, pg. 40, ¶ 104. Other cases involving Art. II, § 5 of the Oklahoma Constitution have proceeded via the normal appellate process. See e.g., Prescott v. Oklahoma Capitol Pres. Comm’n, 2015 OK 54, 373 P.3d 1032; Oliver v. Hofmeister, 2016 OK 15, 368 P.3d 1270.

ISSUE THREE: WHETHER THE REQUEST FOR A STAY FROM RESPONDENTS OMES, RICK ROSE, AMANDA OTIS, AND BRENDA HANSEL HAS BEEN RENDERED MOOT.

The request to stay by OMES Respondents (collectively “OMES”) is rendered moot. OMES is not currently engaged in any work on the RFP due to the cancellation. An additional,

² <https://okcfox.com/news/local/parental-choice-nonprofit-creates-bible-opt-out-form-for-parents-ryan-walters-reacts-state-superintendent-defense-of-democracy-curriculum-history-jenks-stillwater-oklahoma-department-education-osde-saralynn-boren-kamala-harris-teachers-unions-religion>.

or replacement, RFP has not been set before OMES. The requested stay is unique in that it does not seek a stay of the enforcement of a previously issued order, see e.g., 12 O.S. §§ 990.4, 994, or Sup.Ct.R. 1.15(a), but appears permissible under the inherent power of this honorable Court to order a stay. Mapco, Inc. v. Means, 1975 OK 109, ¶ 11, 538 P.2d 593, 595.

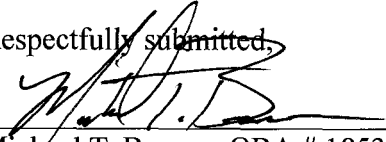
OMES appears to have requested an injunction rather than a stay and “must show that four factors weigh in [their] favor: 1) the likelihood of success on the merits; 2) irreparable harm to the [Petitioners] if the injunction is denied; 3) [Petitioners’] threatened injury outweighs the injury the opposing party will suffer under the injunction; and 4) the injunction is in the public interest.” Dowell v. Pletcher, 2013 OK 50, § 7, 304 P.3d 457, 460 as corrected (July 15, 2013) (emphasis added). “The right to injunctive relief must be established by clear and convincing evidence and the nature of the injury must not be nominal, theoretical or speculative.” Id. (citations omitted) (emphasis added). “Clear and convincing evidence is ‘that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established.’” Matter of C. G., 1981 OK 131, ¶ 17, 637 P.2d 66, 70-71, n. 12. OMES fails to make the requisite showing to obtain an injunction.

The current circumstances are somewhat analogous to Westinghouse Elec. Corp. v. Grand River Dam Auth., 1986 OK 20, ¶ 1, 720 P.2d 713, 714 wherein the substantial completion of a contract rendered the entire appeal moot. Similarly, here the cancellation of the RFP renders the issue of OMES’ work on the RFP moot.

III. CONCLUSION

Petitioners’ legal claims and requests are rendered moot for the reasons discussed supra. The matter of OMES’ continued work is also rendered moot because currently there is no work to be performed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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