



2017 OK 19

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA FILED  
SUPREME COURT  
STATE OF OKLAHOMA

SUSAN SPENCER and CHERI )  
CHANDLER, )  
 )  
 Petitioners, )  
 )  
 v. )  
 )  
 JUSTICE PATRICK WYRICK, )  
 )  
 Respondent. )

MAR - 7 2017

MICHAEL S. RICHIE,  
CLERK

Case No. 115,765

FOR OFFICIAL  
PUBLICATION

**APPLICATION FOR EXTRAORDINARY RELIEF**

¶ 0 Petitioners filed this original proceeding to challenge Governor Fallin’s recent appointment of Respondent, Justice Patrick Wyrick, to the Oklahoma Supreme Court. Upon consideration, we assume original jurisdiction and dismiss the action with prejudice.

**ORIGINAL JURISDICTION ASSUMED;  
ACTION DISMISSED WITH PREJUDICE**

Ryan D. Kiesel, Brady R. Henderson  
ACLU of Oklahoma  
Oklahoma City, Oklahoma, Attorneys for Petitioners

Neal Leader  
Special Assistant Attorney General, Office of the Attorney General  
Oklahoma City, Oklahoma, Attorney for Respondent

**PER CURIAM**

¶ 1 Petitioners, who allege they are residents and registered voters “of the Second Supreme Court District,” filed this proceeding to contest Governor Fallin’s recent appointment of Respondent, Justice Patrick Wyrick, to the

Oklahoma Supreme Court. Petitioners challenge Justice Wyrick's eligibility to sit as a Justice on this Court and request *quo warranto* relief, or in the alternative, a writ of prohibition, barring Justice Wyrick from exercising "authority of an office to which he is constitutionally ineligible." Because this cause is *publici juris*, we assume original jurisdiction. See also Okla. Const. art. 7, § 4 ("The original jurisdiction of the Supreme Court shall extend to a general superintendent control over all inferior courts and all Agencies, Commissions and Boards created by law.").

¶ 2 Prohibition is not available as a corrective remedy to undo a completed act, and is not available to try the title to an office. Sneed v. State ex rel. Dep't of Transp., 1983 OK 69, ¶ 11, 683 P.2d 525, 529; State ex rel. Rucker v. Tapp, 1963 OK 37, ¶ 28, 380 P.2d 260, 267. "[A]n action in the nature of *quo warranto* will be deemed to constitute the exclusive remedy" to try the title to an office.<sup>1</sup> The law is unequivocally clear that a proper plaintiff in a *quo warranto* proceeding is the Attorney General, the District Attorney, or a contestant for the office at issue.<sup>2</sup> ***A "collateral attack by a private individual is not permitted."***<sup>3</sup> Absolutely no facts were pled suggesting that

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<sup>1</sup> Tapp, 1963 OK 37, ¶ 28, 380 P.2d 260, 267. Section 1532 of Title 12 allows an action in *quo warranto* "[w]hen any person shall usurp, intrude into, or unlawfully hold or exercise any public office, or shall claim any franchise within this state or any office in any corporation created by authority of this state." 12 O.S. 2011 § 1532.

<sup>2</sup> State ex rel. Bd. of Regents v. McCloskey Bros., 2009 OK 90, ¶ 20, 227 P.3d 133, 145.

<sup>3</sup> Id. (emphasis added); see also 12 O.S. 2011 § 1531–1533.

either of the Petitioners is entitled to the office of Justice of the Oklahoma Supreme Court. This proceeding is clearly a collateral attack by a private individual and is not permitted.

¶ 3 This Court possesses original jurisdiction to issue writs of *quo warranto* per 12 O.S. 2011 § 1532 and to issue writs of prohibition per Article 7, § 4 of the Oklahoma Constitution. **Petitioners concede that under the Oklahoma Constitution neither the Senate acting as a court of impeachment nor the Court on the Judiciary has jurisdiction to consider a challenge to the qualifications of a sitting Justice by *quo warranto* or any other means. We agree.** The untimely nature of this action<sup>4</sup> and the Petitioners' lack of standing require dismissal of this action with prejudice. The Respondent's request for fees and costs is denied. Any petition for rehearing must be filed by 5:00 p.m., Friday, March 10, 2017.

**ORIGINAL JURISDICTION ASSUMED;  
ACTION DISMISSED WITH PREJUDICE**

¶ 4 Combs, C.J., Gurich, V.C.J., Kauger, Winchester, Colbert, and Reif (by separate writing), JJ., concur.

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<sup>4</sup> See Okla. Const. art. 7B, § 3(e), which provides:

The concurrence of the majority of Commissioners in office at the time shall be sufficient to decide any question, unless otherwise provided herein. The Commission shall have jurisdiction to determine whether the qualifications of nominees to hold Judicial Office have been met and to determine the existence of vacancies on the Commission.

See also Fent v. Henry, 2011 OK 10, ¶ 21, 257 P.3d 984, 994 (finding that the Judicial Nominating Commission's decisions are valid when decided by a majority of its members).

¶ 5 Watt (by separate writing), and Edmondson (by separate writing), JJ., concur in part and dissent in part.

¶ 6 Wyrick, J., not present and not participating.