

ORIGINAL



No. 120131

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

MAY 2 2023

In the Supreme Court of the State of Oklahoma

JOHN D. HADDEN  
CLERK

Brian and Janelle Shellem, husband and wife, individually, and on behalf of their minor children C.S. and M.S., Brett and Emilie Garrelts, husband and wife, individually, and on behalf of their minor child B.G., and Grady and Theresa Epperly, husband and wife, individually, and on behalf of their minor children L.E., C.E., O.E., and M.E.,

*Plaintiffs-Appellees,*

v.

Angela Grunewald, Superintendent of Edmond Public Schools, and Edmond Board of Education members Jamie Underwood, Cynthia Benson, Kathleen Duncan, Lee Ann Kuhlman, Meredith Exline, sued in their official and individual capacities,

*Defendants-Appellants.*

RESPONSE TO PETITION FOR REHEARING

On Appeal from the District Court of Oklahoma County, State of Oklahoma;  
District Court Case No. CJ-2021-3883 (Andrews, D.)

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## RESPONSE TO PETITION FOR REHEARING

Appellees, in response to the School District's Petition for Rehearing, respectfully request that this Court deny the same. The Court's decision of March 28, 2023 was based on a proper analysis of the law and the facts presented in the case, and no errors or omissions warrant a rehearing. This response to the Petition demonstrates why the Court's decision is correct and should not be reheard. Appellees contend that the District's arguments in its Petition for Rehearing are unfounded, and the Court's decision was proper, fair, and just.

### **ARGUMENT & AUTHORITY**

#### **I. THE COURT'S DECISION WAS BASED ON A PROPER APPLICATION OF THE LAW**

The District argues that the Court's decision was based on an issue not before the Court on appeal. However, this argument ignores the Court's discretion to affirm a judgment on any rational theory, even when that theory was not the basis of the lower court's decision. The Court's analysis of 70 O.S. § 1210.189(A)(1) was appropriate, as the statute is relevant to the case at hand.

As the District acknowledges, the Court has the authority to affirm a judgment on any rational theory. *Indep. Sch. Dist. of Okla. Cnty. v. Hofmeister*, 2020 OK 56 at ¶52. In this case, the Court determined that the trial court's decision could be affirmed based on a proper interpretation of 70 O.S. § 1210.189(A)(1). The Court did not reverse the trial court's decision based on an issue not preserved for appeal or briefed by the parties, but instead affirmed the judgment based on a correct application of the law.

Furthermore, the Court's decision was in the interest of judicial efficiency, as it resolved the case without the need for a lengthy and costly remand and an additional appeal. The Court's

analysis of 70 O.S. § 1210.189(A)(1) was a proper exercise of its discretion, and the District's argument to the contrary is without merit.

## **II. THE COURT PROPERLY CONSIDERED THE *AMICUS CURIAE* BRIEF**

The District contends that the Court improperly considered the *amicus curiae* brief filed by the former Attorney General. However, the Court's consideration of the *amicus* brief was in line with the Oklahoma Supreme Court Rules and established precedent.

Under Okla. Sup. Ct. R. 1.12(a)(1), the Court may consider *amicus curiae* briefs that are "confined to the issues raised by the parties." In this case, the *amicus curiae* brief addressed the trial court's interpretation and application of 70 O.S. § 1210.189(A)(1), which was relevant to the issues raised by the parties. The undersigned predicated their argument on 70 O.S. § 1210.189(A)(1) in the trial court in addition to raising constitutional claims. The *amicus* brief did not introduce a new issue, but rather offered a different perspective on an existing issue, which the Court found persuasive.

Moreover, the District's argument that the Court's reliance on the *amicus curiae* brief was unfairly prejudicial is unfounded. The Court's decision did not hinge solely on the *amicus* brief, but rather on its own analysis of the statute and the facts of the case. The *amicus* brief merely provided a helpful perspective, which the Court considered in reaching its decision. There was no error in the Court's consideration of the *amicus curiae* brief.

## **III. THE DISTRICT HAD A FAIR OPPORTUNITY TO PRESENT ITS ARGUMENTS.**

The District claims that it was not given the opportunity to brief the issue of 70 O.S. § 1210.189(A)(1), which the Court relied upon in its decision. However, the District had a fair opportunity to present its arguments, both in its initial appellate brief and in its response to the *amicus curiae* brief.

The Attorney General was clearly within his right to file an *amicus* brief. The Attorney General is the chief legal and law enforcement officer of the State of Oklahoma. The Attorney General is responsible for providing legal advice to the other departments and agencies of the executive branch, legislative branch, and judicial branch of state government. The Attorney General gives direct input to the Governor of Oklahoma, whose responsibility it is to “cause the laws of the State to be faithfully executed.” *See* Article 5 § 8 of the Oklahoma Constitution.

As noted previously, the Court’s decision was based on a proper interpretation of 70 O.S. § 1210.189(A)(1), a statute that was relevant to the issues raised by the parties. The District had the opportunity to address this statute and its applicability in its initial appellate brief. Furthermore, the District had an opportunity to respond to the *amicus curiae* brief in the trial court. The District had ample opportunities to present its arguments concerning the statute and its interpretation.

The District’s assertion that it was not given a fair opportunity to present its arguments is unsupported by the record. The Court’s decision was based on a thorough analysis of the statute and the arguments presented by the parties, and the District had a fair opportunity to address the issues before the Court.

#### **IV. THE COURT’S DECISION DOES NOT RESULT IN A MISCARRIAGE OF JUSTICE.**

The District argues that the Court’s decision results in a miscarriage of justice by denying it the opportunity to challenge the trial court’s interpretation of 70 O.S. § 1210.189 (A)(1). However, the Court’s decision was based on a correct application of the law and does not constitute a miscarriage of justice. The Court’s interpretation of 70 O.S. § 1210.189(A)(1) was in line with the plain language of the statute and its purpose. The Court’s decision upheld the trial court’s judgment.

The Court's decision is no miscarriage of justice. Rather, it promotes the proper functioning of the school system in Oklahoma, as intended by the legislature. The District's argument that the Court's decision is unjust lacks merit and does not warrant a rehearing.

### CONCLUSION

For the reasons set forth above, Appellees respectfully request that this Court deny the District's Petition for Rehearing. The Court's decision of March 28, 2023, was based on a correct application of the law and the facts of the case, and no errors or omissions warrant a rehearing.

Dated May 2, 2023  
Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this document was transmitted to counsel for Defendants-Appellants via e-mail on May 2, 2023, at the following addresses:

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