



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Michael D. Reynolds, as resident taxpayer)
and voter of the State of Oklahoma,)
Petitioner,)
v.)
Ryan Martinez, The Honorable Kevin)
Stitt, Governor in his official capacity, and)
The Honorable Charles McCall, Speaker)
of the House in his official capacity,)
Respondents.)

FILED
SUPREME COURT
STATE OF OKLAHOMA
AUG 16 2023
JOHN D. HADDEN
CLERK

Case No. O-121504

Received: 8-16-23
Docketed:
Marshal: Jm
COA/OKC:
COA/TUL:

GOVERNOR KEVIN STITT'S RESPONSE TO APPLICATION TO ASSUME ORIGINAL JURISDICTION

Petitioner correctly notes in his Application to Assume Original Jurisdiction that the Constitution requires the Governor to "cause the laws of the State to be faithfully executed[.]" Okla. Const. art. 6, § 8.1 There is no exception. Here—where a State Representative entered a plea of guilty to a felony offense—state law forces the Governor's hand. No later than September 2, 2023, the Governor must issue a writ of election to fill the vacancy in House District 39. The analysis that follows leads to that end alone.

Within thirty (30) days of the occurrence of a vacancy in the State House of Representatives, the Governor shall call for a Special Election. 26 O.S. § 12-106(A). A

1 Notably, the analysis herein is not intended to address the potential roles of others. For instance, 51 O.S. § 24.1(A) mandates immediate suspension of an elected state officer (e.g. a legislator) "found guilty by a trial court of a felony in a state or federal court of competent jurisdiction[.]" The only sensible reading of Subsection (L) makes clear that a "plea of guilty" is the equivalent of a finding of guilt for purposes of Section 24.1. 51 O.S. § 24(L). That subsection further contemplates action by a prosecuting attorney to facilitate the suspension.

vacancy occurs by operation of law when any state officer enters “a plea of guilty . . . in a state or federal court of competent jurisdiction for any felony[.]” 51 O.S. § 8. Consistent with Section 8, Title 51 elsewhere requires an elected state officer to immediately forfeit and vacate his or her office upon the entry of a plea of guilty to a felony. 51 O.S. § 24.1(E) & (F). Sections 8, 24.1(E), and 24.1(F) plainly apply without exception to *every* state office and *all* elected state officers. And the Oklahoma Supreme Court has said that members of the Legislature “are State Officers[.]” *Watson v. State Election Board*, 1956 OK 270, ¶ 11, 302 P.2d 134. In short, the moment Representative Martinez entered a plea of guilty to a felony in Oklahoma County District Court, his office was vacated by operation of law, and he was required to forfeit and vacate the office and certain of its benefits. A thirty (30) day clock simultaneously started for the Governor to call for a Special Election.

Two questions may be looming. The first is whether it matters that the Representative pleaded guilty to a felony but received only a deferred sentence. It does not. Neither the vacation nor the forfeiture provisions make any relevant mention of punishment stemming from a guilty plea. Had the Legislature intended for punishments, deferred or otherwise, to play a role in the analysis, it would have said as much. For example, in 51 O.S. § 24.1(F), the Legislature explicitly allows a state officer to retain entitlement to retirement benefits if the officer “received a deferred sentence[.]” That subsection does not, however, allow for retention of office or other benefits in the event of a deferred sentence. Just as “[t]he Supreme Court may not expand the plain meaning of words by construction[.]” the Governor can no more do the same. *Sisney v. Smalley*, 1984

OK 70, ¶ 17, 690 P.2d 1048. Vacation of the office occurred and became mandatory immediately upon the entry of the plea.

The second possible outstanding question is whether any constitutional provisions addressing removal or suspension somehow render Sections 8 or 24.1 of Title 51 inapplicable to legislators. The answer is again no. Although Article 5, Section 30 of the Oklahoma Constitution allows a legislative chamber to expel members by a two-thirds vote, that is not the exclusive means by which a legislator can be removed from office. The provision does not contain exclusive terms, and any attempt to read it as being exclusive cannot be reconciled with the statutes referenced herein that contemplate application to legislators. Moreover, if Article 5, Section 30 contained the exclusive manner by which a legislator could be removed, the practical effect would be a lowering of expectations of conduct of legislators relative to other state officers. Specifically, while the latter's offices and certain benefits would be immediately vacated and forfeited as a matter of law upon entry of a plea of guilty to a felony offense, legislators would be permitted to continue to serve in significant roles of state government, barring a discretionary removal process being commenced by peers. That cannot be the case as a matter of policy or law.

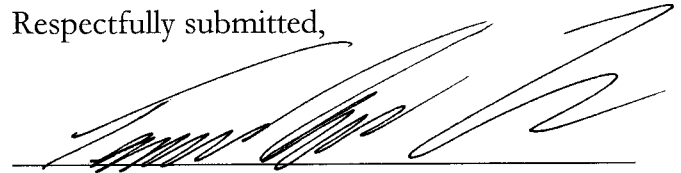
Article 8, Section 1 of the Oklahoma Constitution, which relates to impeachment of certain high-level officials, also does not affect the implication of the vacation and forfeiture statutes. In fact, the Supreme Court has found it does not even apply to legislators. *Maben v. Rosser*, 1909 OK 211, ¶¶ 2–5, 103 P. 674. As a result, Article 8, Section 2 of the Constitution applies and provides as follows: “All elective officers, not liable to impeachment, shall be subject to removal from office in such manner and for such causes

as may be provided by law.” In other words, legislators, not being liable to impeachment, remain removable in all other manners and for all other causes allowed by law. The Oklahoma Constitution simply does not provide an exclusive means by which a legislator may be removed.

The Governor is duty-bound to act. Being so, he will timely issue a writ of election as contemplated by Article 5, Section 20 of the Oklahoma Constitution and 26 O.S. § 12-106.

WHEREFORE, Governor Kevin Stitt submits this response as ordered by this honorable Court.

Respectfully submitted,



Trevor S. Pemberton, OBA No. 22271

General Counsel

Grayson P. Walker, OBA No. 34344

Deputy General Counsel

OFFICE OF GOVERNOR J. KEVIN STITT

2300 N. Lincoln Blvd., Ste. 212

Oklahoma City, OK 73105

(405) 521-2342

Trevor.Pemberton@gov.ok.gov

Grayson.Walker@gov.ok.gov

*Counsel for the Honorable J. Kevin Stitt, Governor of
the State of Oklahoma*

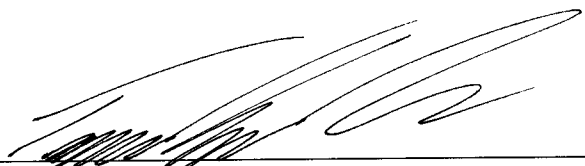
CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August 2023, a true and correct copy of the foregoing was mailed by regular U.S. mail to the following:

Ryan Martinez
2412 Golden Land
Edmond, OK 73102

The Honorable Charles McCall
Speaker of the Oklahoma House of Representatives
Oklahoma Capitol
2300 N. Lincoln Blvd., Ste. 401
Oklahoma City, OK 73105

Michael D. Reynolds
2609 SW 107th St.
Oklahoma City, OK 73170



Trevor S. Pemberton