



ORIGINAL

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

SEP 13 2024

TOM GANN; KEVIN WEST; RICK WEST,

PETITIONERS,

v.

TODD HIETT, Commissioner of the Oklahoma
Corporation Commission,

RESPONDENT.

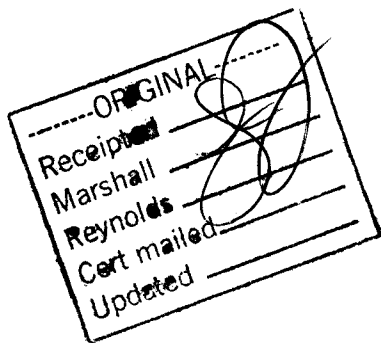
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JOHN D. HADDEN
CLERK

Case No.

122513

**APPLICATION TO ASSUME ORIGINAL JURISDICTION AND PETITION FOR
WRIT OF PROHIBITION WITH BRIEF IN SUPPORT**



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COME NOW, *pro se*, the Petitioners, TOM GANN, KEVIN WEST and RICK WEST, members of the Oklahoma House of Representatives and utility ratepayers,¹ and respectfully pray this Court assumes original jurisdiction in the matters contained herein for the purpose of exercising supervisory control over the acts of TODD HIETT, Corporation Commissioner of the State of Oklahoma (“Hiett”), Respondent herein. Petitioners offer that Respondent, by failing to disqualify himself from judicial cases involving Oklahoma Natural Gas Company (“ONG”), Oklahoma Gas and Electric Company (“OG&E”), and Public Service Company of Oklahoma (“PSO”), has created a circumstance whereby Petitioners will be denied due process if Respondent is not prohibited from participating in judicial cases that are currently pending before the Oklahoma Corporation Commission (“OCC”) involving these utilities. Thus, Petitioners pray the Court assumes original jurisdiction and issues an emergency Writ of Prohibition to Respondent, disqualifying him from and forbidding his participation in judicial cases at the Corporation Commission involving companies, including the utilities above, with direct knowledge of alleged criminal conduct by Respondent. In the event that Respondent “does not remember” all the victims and witnesses of his criminal conduct, Petitioners pray the Court disqualifies Respondent from *all* judicial cases at the OCC.

FACTUAL BACKGROUND, SUMMARY OF THE RECORD & ISSUES PRESENTED

Serious allegations of criminal conduct – including “sexual assault” of a man who “represents a company who goes before the Oklahoma [Corporation] Commission,”² sexual harassment, public intoxication, and drunk driving – have been publicly alleged against Corporation Commissioner Todd Hiett.³ Two alleged incidents – on June 21, 2023 in Oklahoma City, and on June 9, 2024 in Minnesota – specifically involve employees of companies regulated by the

¹ Rep. Tom Gann is a customer of ONG, OG&E and PSO; Rep. Kevin West is a customer of OG&E; Rep. Rick West is a customer of OG&E.

² Anonymized statements by witnesses to Hiett’s alleged June 9, 2024 sexual assault (Appendix Exhibit 2).

³ Appendix Exhibits 2-9.

OCC and/or attorneys who represent regulated companies at the OCC. In response to the published allegations, Commissioner Hiett has admitted abusing alcohol and has not denied any of the accusations against him. However, **Respondent has refused to disqualify himself** from cases at the OCC involving companies with direct knowledge of his alleged criminal conduct – companies whose employees/ agents/ representatives have not yet filed police reports about Hiett’s conduct or filed civil lawsuits against him.

ONE Gas, Inc. is the Tulsa-based parent company of three regulated utility companies serving more than 2 million customers: Oklahoma Natural Gas (ONG), Kansas Gas Service, and Texas Gas Service.

On August 27, 2024, Respondent cast the deciding vote at the OCC, approving a \$31 million rate increase for ONG customers in a \$527 million performance based rate case for the natural gas utility (PUD2024-000010, “2024-10”).⁴ However, just ten weeks earlier, on June 9, 2024, Hiett allegedly sexually assaulted an attorney for ONE Gas, Inc. (parent company of ONG), and one of the company’s attorneys of record in both ONG’s rate case and its still-pending (judicial) fuel case (PUD2024-000047, “2024-47”) allegedly has direct knowledge of the incident.⁵ The incident reportedly took place at the Mid-America Regulatory Conference (“MARC”) in Minnesota which Respondent was attending at state expense on official state business.⁶ Although the victim reportedly did not file a police report,⁷ two eyewitnesses gave detailed statements to the Human Resource director of the Kansas Corporation Commission on June 14, 2024.⁸ In them, both witnesses repeatedly mention how the fact that the abuser was a Commissioner with authority over the victim’s employer exacerbated the “awkward,

⁴ Appendix Exhibit 16.

⁵ Appendix Exhibits 4 and 7.

⁶ The Oklahoma Corporation Commission is a dues-paying member of MARC and all three OCC Commissioners are MARC board members. <http://www.marc-conference.org/members/>.

⁷ Appendix Exhibit 6.

⁸ *Supra* Note 2.

uncomfortable” situation and impacted how it was handled. Even at the time the sexual assault was happening, the witnesses recognized its potential consequences for the victim’s employer in matters before the OCC.

This Court has long held that utility rate cases at the OCC, like ONG’s 2024-10 rate case in which Respondent cast the deciding vote on August 27, 2024, are legislative.⁹ However, Fuel Adjustment and Prudence Review (“fuel”) cases for regulated public utilities at the OCC are judicial. In annual fuel cases, the OCC is required to examine a utility’s past fuel purchases and determine whether they were fair, just, reasonable and prudent before formally authorizing those costs to be recovered from customers.

There are currently judicial fuel cases pending at the OCC for at least six public utility companies, including ONG (2024-47), OG&E (PUD2024-000038, “2024-38”) and PSO (PUD2024-000040, “2024-40”), the last three each worth more than half-a-billion-dollars.

ONG, OG&E and PSO are all being represented in these judicial fuel cases (as well as their rate cases and other pending matters) by the new Thompson Tillotson law firm.¹⁰ On June 21, 2023, attorneys Deborah Thompson and Kenneth Tillotson hosted a “launch” reception for their new firm at Broadway 10 Bar & Chophouse in Oklahoma City.¹¹ At the reception, Commissioner Hiatt is alleged to have sexually harassed a female OCC employee and driven home drunk (including running a stop sign and driving the wrong way down a one-way street), despite witness attempts to stop him (“Broadway 10 incident”). *The Oklahoman* has reported this happened in the presence of “a man who works for a utility company.”¹² Petitioners have reason to believe at least one of the attorneys hosting the party had knowledge (either during or after) of at least some of the Broadway 10 incident.

⁹ *Southwestern Bell Telephone Company vs. Oklahoma Corp. Comm.*, 1994 OK 38, 873 P.2d 1001 at ¶8.

¹⁰ Appendix Exhibits 17-21.

¹¹ Appendix Exhibit 10.

¹² Appendix Exhibit 8.

Before the full details of the June 2024 sexual assault in Minnesota (“MARC incident”) became public, Hiett told *The Oklahoman* in a July 16, 2024 article about his “drunken behavior” at MARC that, “It’s very unfortunate that I am not able to recall what happened.”¹³ In its July 29, 2024 article detailing the sexual assault, *The Oklahoman* reported “He [Hiett] said he still does not remember the incident.” Nine days later, Hiett did not respond directly to *The Oklahoman*’s request for comment about the Broadway 10 incident, although one female OCC employee witness told *The Oklahoman* for its August 7, 2024 article that a week after the Broadway 10 incident, “He [Hiett] said, ‘I just want to apologize for my behavior the other night. It was not acceptable. I’m really embarrassed and I’m sorry that I put you and anybody else through that.’”¹⁴ Taking these statements at face value, Hiett apparently did remember the Broadway 10 incident well enough to speak about it to a witness a week later, and although claiming he “does not remember” the MARC incident, was told about it in enough detail that, less than three weeks later, he had sought “help for an alcohol affliction” and “said he plans to never drink alcohol again.”¹⁵

But Respondent’s knowledge, whether remembered or learned, of his alleged criminal conduct did not prevent him from participating in and even voting on cases – including judicial fuel cases – at the OCC involving regulated public utility companies whose employees/ agents/ representatives had direct knowledge of his illegal conduct. Neither Hiett nor the parties with this knowledge disclosed it to the public or the other parties to the tainted cases.

Petitioners acknowledge they are without means to appeal OCC final orders approved more than 30 days ago; nor do they have the means to post a half-billion-dollar supersedeas bond,¹⁶ as each utility would no doubt require if Petitioners did attempt such an appeal, even

¹³ Appendix Exhibit 3.

¹⁴ Appendix Exhibit 8.

¹⁵ Appendix Exhibit 3.

¹⁶ *Oklahoma Constitution*, Article IX, § 21.

within 30 days. Petitioners also acknowledge that although knowledge of Respondent's drinking problem has apparently been widespread for years, including among staff at the Attorney General's Office,¹⁷ Petitioners have no reason to believe that attorneys for the Attorney General's Office representing utility ratepayers in judicial fuel cases at the OCC had sufficient evidence of Hiatt's criminal conduct, prior to *The Oklahoman's* July 29, 2024 article about the MARC incident, to request that Respondent disqualify himself.

Consequently, Petitioners are not in a position to ask the Court to overturn the orders Respondent voted to approve in judicial fuel cases that were decided before the allegations of criminal conduct against Hiatt became public. These include Hiatt casting the deciding vote in Empire District Electric Company's 2022 fuel case on May 9, 2024,¹⁸ voting to approve some \$1.4 billion of OG&E's 2022 fuel costs on April 11, 2024,¹⁹ and voting to approve more than \$1 billion of PSO's 2022 fuel costs on April 4, 2024.²⁰ In all of these judicial fuel cases, decided by Hiatt and the OCC after the 2023 Broadway 10 incident that a witness has reported Hiatt *does* remember, the utilities were represented by the Thompson Tillotson law firm that hosted the Broadway 10 reception.²¹

Since the MARC and Broadway 10 incidents became public however, on July 29 and August 7, respectively, Respondent has *continued* to participate and vote in judicial cases involving regulated public utility companies whose employees/ agents/ representatives have direct knowledge of his alleged criminal conduct. On July 31, 2024, Hiatt voted to approve three orders in ONG's fuel case (2024-47) and one order in OG&E's fuel case (2024-38).²² On August 27, 2024, Hiatt voted to approve three more orders in PSO fuel case (2024-40).²³

¹⁷ Appendix Exhibit 9.

¹⁸ Appendix Exhibit 22.

¹⁹ Appendix Exhibit 23.

²⁰ Appendix Exhibit 24.

²¹ In some cases, the utility was also represented by in-house counsel.

²² Appendix Exhibit 11.

²³ Appendix Exhibit 15.

ARGUMENTS AND AUTHORITIES

I. The Oklahoma Supreme Court Exercises Superintending Control Over the Oklahoma Corporation Commission.

The Oklahoma Supreme Court exercises its general superintending control over all inferior courts and all agencies, commissions and boards created by law, including the Oklahoma Corporation Commission, under the *Oklahoma Constitution*, Article VII, § 4 and Article IX, §

20. Article VII, § 4 provides, in part:

... The original jurisdiction of the Supreme Court shall extend to a general superintending control over all inferior courts and all Agencies, Commissions and Boards created by law. The Supreme Court, Court of Criminal Appeals, in criminal matters and all other appellate courts shall have power to issue, hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and such other remedial writs as may be provided by law and may exercise such other and further jurisdiction as may be conferred by statute. ...

Article IX, § 20 provides, in part:

No court of this State, except the Supreme Court, shall have jurisdiction to review, affirm, reverse, or remand any action of the Corporation Commission with respect to the rates, charges, services, practices, rules or regulations of public utilities, or of public service corporations, or to suspend or delay the execution or operation thereof, or to enjoin, reverse, or interfere with the Corporation Commission in the performance of its official duties; provided, however, that writs of mandamus or prohibition shall lie from the Supreme Court to the Corporation Commission in all cases where such writs respectively would lie to any inferior court or officer.

This Court said in *Umholtz v. City of Tulsa*, 1977 OK 98, 565 P.2d 15 (“*Umholtz*”) that:

¶6 A writ of prohibition is an extraordinary remedy which is generally inappropriate unless three elements are present – these elements are:

1. A court, officer, or person has or is about to exercise judicial or quasi-judicial power.
2. The exercise of said power is unauthorized by law.
3. And the exercise of that power will result in injury for which there is no other adequate remedy.

II. Fuel Cases at the OCC are Judicial and Require Commissioners to Exercise their Quasi-Judicial Powers.

In *Monson v. State ex rel. Oklahoma Corp. Com'n*, 1983 OK 115, 673 P.2d 839 (“*Monson*”) and elsewhere, this Court has recognized the quasi-judicial power of the Oklahoma Corporation Commission:

¶5 In some of our past decisions we did refer to the Commission’s adjudicative power as “quasi-judicial”. We did this in order to distinguish it from pure judicial adjudication. The legal foundation for the Commission’s dispute-settling function is different in character from that of other administrative agencies. The latter bodies derive their adjudicative authority not from a direct constitutional grant but rather from statutory delegation. The Commission’s dispute-settling power clearly stands reposed in it by virtue of a direct constitutional mandate. [Citations omitted.]

Also in *Umholtz*, at ¶9, this Court quoted a Kansas case²⁴ for the definition of quasi-judicial power:

“* * * quasi-judicial is a term applied to administrative boards or officers empowered to investigate facts, weigh evidence, draw conclusions as a basis for official actions, and exercise discretion of [a] judicial nature.”

In annual Fuel Adjustment Clause (“FAC”) and Prudence Review cases for public utilities, the OCC is required to examine a utility’s past fuel purchases and determine whether they were fair, just, reasonable and prudent before formally authorizing those costs to be recovered from customers.²⁵ In these annual fuel cases, the OCC weighs evidence and draws conclusions about the prudence of a utility’s already-incurred fuel and purchased power expenses as a basis for official actions, such usually being a final order that states, in part:

THE COMMISSION THEREFORE ORDERS that the FAC of [Utility] is hereby approved for the calendar year XXXX.

THE COMMISSION FURTHER ORDERS that the [electric generation, purchased power and] fuel procurement practices, policies, judgement, and fuel

²⁴ *Thompson v. Amis*, 208 Kan. 658, 493 P.2d 1259 (1972).

²⁵ Okla. Admin. Code §§ 165:50, 165:45-1-2 and 165:35-1-2. OAC §165:45-1-2 defines a “Prudency review” for gas service utilities. OAC §165:35-1-2 defines a “Prudence review” for electric utilities. Except for a few minor wording changes, the definitions are largely the same, “prudency” being an older form of the word “prudence.”

purchase costs and expenses incurred for calendar year XXXX are approved as prudent, fair, just and reasonable.

Annual fuel cases require the Commissioners to exercise their quasi-judicial powers and are therefore judicial in nature. Consequently, Respondent has exercised, and is also about to exercise, his quasi-judicial powers in the aforementioned judicial fuel cases for regulated public utilities.

III. Hiatt's Exercise of his Quasi-Judicial Power in These Judicial Fuel Cases is Prohibited by Both State Ethics Rule 4.7 and Code of Judicial Conduct Rule 2.11.

To required element #2 for a Writ of Prohibition, in fuel cases at the OCC involving companies, including the aforementioned utilities, with direct knowledge of alleged criminal conduct by Respondent, Respondent's exercise of his quasi-judicial power is prohibited by both State Ethics Rules and the *Code of Judicial Conduct* (5 O.S. § Appendix 4).

Although in *State ex rel. Edmondson v. Oklahoma Corporation Commission*, 1998 OK 118, 971 P.2d 868, the Court said OCC Commissioners are not "judges" (¶20-21), in *Monson*, the Court also said (at ¶5):

In short, the Constitution's command is that, when acting in an adjudicative capacity, the Commission is to be treated as the functional analogue of a court of record.

In addition, under "I. Application," the *Code of Judicial Conduct* says most of its rules do apply to part-time judges, and subsection (B) says explicitly:

(B) A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including an officer such as a magistrate, court commissioner, special master, referee, or member of the administrative law judiciary.

Consequently, although Corporation Commissioners are only considered "quasi-judicial," "when acting in an adjudicative capacity" in judicial cases in which they are "authorized to perform judicial functions," Commissioners are bound by elements of the *Code of Judicial Conduct*.

Canon 2 of Oklahoma's *Code of Judicial Conduct* addresses disqualification of judges.

CANON 2

RULE 2.11 Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances: ... [Emphasis added.]

The Comment on this Rule begins as follows:

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. [Emphasis added.]

Also worthy of note in this circumstance is Canon 1:

CANON 1

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

...

RULE 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and avoid impropriety and the appearance of impropriety.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge. [Emphasis added.]

Therefore, according to Oklahoma's *Code of Judicial Conduct*, in judicial cases, a Corporation Commissioner must "avoid impropriety and the appearance of impropriety" and "disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." As illustrated by the votes and actions described above, including continuing to participate in half-billion-dollar judicial fuel cases for ONG, OG&E and PSO, Respondent has obviously not complied with the law.

Respondent has also not complied with State Ethics Rules. Corporation Commissioners are State Officers.²⁶ Rule 4.7 of the *Annotated Ethics Rules Prepared by the Oklahoma Ethics Commission Effective November 1, 2022*²⁷ addresses “State Officer Impartiality.”

Rule 4.7. State Officer Impartiality.

In the event a state officer or employee:

...

(3) determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his or her impartiality in the matter; the state officer or employee shall not participate in the matter unless he or she is required to do so by law or permitted to do so by these Rules.²⁸ [Emphasis added.]

The Ethics Commission’s “Commission Comment” about Rule 4.7 begins as follows:

This Rule requires state officers and employees to disqualify from matters in which their impartiality may reasonably be questioned. It also permits state officers and employees to voluntarily disqualify from participating in matters in which they may have a real or perceived conflict of interest. To evaluate whether or not such a conflict exists, the Rule requires a “reasonable person” standard, i.e., would a reasonable person with knowledge of the relevant facts question the impartiality of the state officer or employee? A “reasonable person” is a hypothetical person used as a legal standard.

The Rule provides that a state officer or employee who disqualifies should not “participate in the matter.” That means that not only should the state officer or employee disqualify from voting or participating in a final decision in the matter, but that the state officer or employee should refrain from discussing or in any way trying to influence the ultimate decision, including making public statements other than his or her disqualification.²⁹ [Emphasis added.]

Therefore, Ethics Rule 4.7 requires a state officer, including a Corporation Commissioner, to disqualify him/herself in any matter (legislative or judicial) in which “a reasonable person with knowledge of the relevant facts [would] question his or her impartiality.” But,

²⁶ *Oklahoma Constitution*, Schedule 15.

²⁷ Oklahoma Ethics Commission. *Annotated Ethics Rules Prepared by the Oklahoma Ethics Commission Effective November 1, 2022*. <https://oklahoma.gov/content/dam/ok/en/ethics/documents/resources/laws/2022-Annotated-Ethics-Rules.pdf>.

²⁸ *Ibid*, page 253.

²⁹ *Ibid*, page 256.

again, Respondent has not done that. In addition to the aforementioned actions in judicial fuel cases, on August 27, 2024 Hiett cast the deciding vote approving a \$31 million rate increase for ONG customers in the utility's (legislative) rate case (2024-10).³⁰ Before that, he actively participated in an August 20, 2024 hearing in the case – even after Commissioner Bob Anthony explicitly asked him on the record if he was going to recuse himself from the case.³¹ Hiett also voted on orders in PSO's (legislative) rate case (PUD2023-000086) on August 13, 2024 in violation of Rule 4.7.³²

Any party to an OCC case (whether legislative or judicial) with direct knowledge of illegal conduct by Commissioner Hiett who has not yet officially reported it or filed a civil lawsuit against him has leverage over Hiett in their cases before him at the OCC. The threat always exists that if he doesn't rule in their favor, the illegal conduct could be reported, or a civil lawsuit could be filed. Respondent's impartiality is unquestionably tainted, and both State Ethics Rules and the *Code of Judicial Conduct* require Hiett to recuse himself – but Hiett refuses. Respondent's exercise of his quasi-judicial power in judicial cases involving companies with direct knowledge of Respondent's alleged criminal conduct is therefore doubly prohibited – by both the *Code of Judicial Conduct* and State Ethics Rules.

IV. Respondent's Exercise of His Quasi-Judicial Power by Participating in Judicial Utility Fuel Cases Will Result in Injury to the Utilities' Ratepayers, Including Petitioners, Through the Denial of Their Due Process Rights; A Writ of Prohibition is the Only Adequate Remedy.

Despite the “awkward, horrifying”³³ and likely traumatizing ordeals to which some of their employees and representatives have been subjected, the victims of taint and bias in these judicial cases are not the utility companies, but the millions of Oklahoma utility customers,

³⁰ Appendix Exhibit 16.

³¹ Appendix Exhibit 14.

³² Appendix Exhibit 13.

³³ *Supra* Note 2.

including the Petitioners, who already have been, and stand to be unfairly disadvantaged again, in judicial fuel cases at the OCC in which Commissioner Hiatt has a perverse incentive to give the utilities what they want, regardless of the facts in evidence.

Petitioners and others have filed formal complaints against Respondent at the State Ethics Commission and the Council on Judicial Complaints regarding Respondent's violation of State Ethics Rules and the *Code of Judicial Conduct*. However, the complaint procedures of both are time-consuming and confidential. Complainants have no right to know what, if anything, is being or will be done in response to their filed complaints or when. Petitioners have also asked for official Attorney General Opinions regarding the applicability of Ethics Rule 4.7 and *Code of Judicial Conduct* Rule 2.11 to the circumstances at the OCC involving Respondent. That said, even when the Attorney General's Office gets around to considering Petitioners' request, there is no guarantee the Attorney General will issue an opinion (or that Hiatt will follow it any better than he has followed the existing laws).³⁴

For the record, fuel cases at the OCC require public notice and public hearings.³⁵ That said, in each of the aforementioned fuel cases, Orders Prescribing Notice were adopted by the Commission that allowed the cases to proceed *without* directly notifying the public, including (or, more accurately, *excluding*) Petitioners, purporting to satisfy that requirement by providing notice to *the Attorney General alone* instead.³⁶ But the OCC's fuel review laws and rules also require an opportunity for the public to file customer complaints.³⁷ Despite the fact that customers were never directly notified either of their right to file such complaints or how/when to do so, Petitioners and others have filed complaints in these cases as well. However, according

³⁴ Appendix Exhibit 25.

³⁵ 17 O.S. § 252 and OAC § 165:50-5-3.

³⁶ Appendix Exhibits 26-28.

³⁷ OAC § 165:50-5-3.

to OCC Rules of Practice,³⁸ because Petitioners are not “a person entitled to personal notice in a case” (thanks to the Orders Prescribing Notice), Petitioners do not believe they are eligible either to personally intervene or to make “formal appearance either in person or by an attorney at any stage of a case” and become a “party of record” in the tainted fuel cases impacting them. Without such standing, they cannot make an objection. In short, Petitioners representation at the OCC in these cases rests with the Attorney General,³⁹ but the Attorney General has remained silent about the potential impact of Hiatt’s alleged criminal conduct on the integrity of these judicial fuel cases, and indeed, on anything at all.⁴⁰

Having exhausted all other options, Petitioners pray this Court will intervene to protect both Petitioners and the public interest generally from the severe injury of tainted judicial cases at the OCC collectively worth billions of dollars.⁴¹ This Court recognized its authority to grant the relief requested in *Southwestern Bell Telephone Company vs. Oklahoma Corp. Comm.*, 1994 OK 38, 873 P.2d 1001 (“*SWBT*”) when it wrote:

¶26 We recognize that an argument could be made that the provisions of Art. 9, § 20 which grant this Court the power to issue writs of mandamus and prohibition to the Commission in a proper case, support the power of this Court to disqualify a corporation commissioner, if he were sitting in a judicial capacity. [Emphasis added.]

And such action is not without precedent. In *Union Electric Company v. Public Service Commission*, 591 S.W.2d 134 (Mo.App.1979) (“*Union Electric*”), a public utility and several industrial intervenors sought a writ of prohibition to prevent a member of the Missouri Public Service Commission from participating in a rate case in which she previously had an interest in

³⁸ See OAC § 165:5-9-4. “Intervention and parties of record.”

³⁹ 74 O.S. § 18b(A)(21).

⁴⁰ See Appendix Exhibit 29, “Utility Regulation at the Oklahoma Corporation Commission is Broken,” for Commissioner Bob Anthony’s explanation why ratepayers’ constitutional rights are being repeatedly violated because the attorney general is trying to represent competing interests at the same time, and the OCC is failing to protect the due process rights of all the parties in utility cases – especially residential ratepayers.

⁴¹ Although this Petition has focused on judicial utility fuel cases, most oil and gas cases at the OCC (docket code “CD”) are also judicial.

a consumer-oriented corporation opposing a rate increase for that utility. The court held that members of the Public Service Commission are prohibited from acting in cases where they have an interest or occupy the status of a party.⁴²

In *Union Electric*, the Missouri court also addressed the problem of whether prohibition is available to prevent the Commissioner in question from participating in the case, or must the question of disqualification await the final order in that case and be raised on appeal as a ground for setting aside the order. The court held prohibition was proper and prohibited the Commissioner from further proceeding with the case. Quoting the lower court it upheld on the question, the Missouri Court wrote:

One basis of the court's decision was the same common law rule considered in *King's Lake*.^[43] The court stated at 214 S.W. 91:

Union Electric and the intervenors stressed in oral argument that they do not have an adequate remedy by appeal on any order made by the Commission in this case because there is no statutory authority for a refund of rates paid under a Commission order even if that order is later set aside by a court. However, it is not necessary to base the right to prohibition on the inadequacy of relief provided by appeal. Under *Slate*,^[44] Slavin [the Commissioner] is wholly lacking in jurisdiction to hear this case. In that situation it was held in *State ex rel. T.J.H. v. Bills*, 504 S.W.2d 76, 79 (Mo. banc 1974) that appeal is not an adequate remedy when the court is wholly wanting in jurisdiction. [Emphasis added.]

⁴² The common law Rule of Necessity (about which this Court speculated in *SWBT* at ¶29-34) likely does not apply, because disqualifying one commissioner out of three will not automatically preclude a quorum of the Commission from conducting its business or preclude the concurrence of the majority of said Commission necessary to decide any question (*Oklahoma Constitution*, Article IX, § 18a).

United States v. Will, 449 U.S. 200, 101 S.Ct. 471, 66 L.Ed.2d 392 (1980):

[T]he common law Rule of Necessity, under which a judge, even though he has an interest in the case, has a duty to hear and decide the case if it cannot otherwise be heard, prevails over the disqualification standards of § 455.

Barker v. Secretary of State's Office of Missouri, 752 S.W.2d 437 (Mo. App. 1988):

[In *Union Electric*,] the distinction was made from the *Rose* case which sought to disqualify the entire board so that without provision for another board to consider the charges against him, *Rose* would avoid the revocation of his license. In *Union Electric* there was another way to proceed without the participation of the tainted Commissioner.

⁴³ *King's Lake Drainage Levee Dist. v. Jamison*, 176 Mo. 557, 75 S.W. 679 (1903).

⁴⁴ *State ex rel. McAllister v. Slate*, 278 Mo. 570, 214 S.W. 85 (banc 1919).

Petitioners submit that, owing to Ethics Rule 4.7, *Code of Judicial Conduct* Rule 2.11 and traditional judicial ethics,⁴⁵ Respondent, too is wholly wanting in jurisdiction to hear judicial cases at the OCC involving the aforementioned regulated companies and others with direct knowledge of Respondent's alleged illegal conduct. Appeal is not an adequate remedy, or within the power of the Petitioners, given their inability to intervene, object, or appeal owing to the OCC's Orders Prescribing Notice, and their inability to post a half-billion-dollar supersedeas bond in the case, even if they were in a position to appeal. Consequently, prohibition is the only adequate remedy to preserve Petitioners' due process rights in these fuel cases.

CONCLUSION

As an elected state officer, Respondent cannot be removed from office except by impeachment of the legislature (*Oklahoma Constitution*, Article VIII, § 1). However, this Court has the power to prevent further injury to Petitioners and millions of other ratepayers by disqualifying Respondent from and forbidding his participation in judicial cases at the OCC involving companies, including the aforementioned utilities, with direct knowledge of Respondent's alleged criminal conduct. In the event that Respondent "does not remember" all the victims and witnesses of his criminal conduct, Petitioners pray the Court disqualifies Respondent from *all* judicial cases at the OCC, saving other parties from being forced to seek the same extraordinary relief Petitioners have been forced to resort to here.⁴⁶

⁴⁵ McKeown, M. Margaret. "Forum: Politics and Judicial Ethics: A Historical Perspective." *Yale Law Journal* v.131 (Oct. 24, 2021): <https://www.yalelawjournal.org/forum/politics-and-judicial-ethics-a-historical-perspective>.

[T]he concept of impartiality, which forms the centerpiece of judicial ethics, derives from ancient law. ... [I]mpartiality was and is deemed important, given that it both affects the fundamental rights of the litigants and legitimizes the judiciary in the eyes of the public.

⁴⁶ Alternatively, the Court could refer the cause to a referee to determine the exact scope of the judicial cases from which Hiatt should be prohibited. (Oklahoma Supreme Court Rule 1.192.)

Respectfully submitted,



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PETITIONERS

CERTIFICATE OF SERVICE

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