



ORIGINAL

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

AUG 15 2025

Tobacco Settlement Endowment Trust)
Fund,)
)
Petitioner,)
)
v.)
)
Kevin Stitt, Governor of Oklahoma;)
Lonnie Paxton, President Pro Tempore)
of the Oklahoma Senate; Kyle Hilbert,)
Speaker of the Oklahoma House of)
Representatives; Gentner Drummond,)
Attorney General; Todd Russ, State)
Treasurer; Cindy Byrd, State Auditor)
and Inspector; and Ryan Walters, State)
Superintendent of Public Instruction)
)
Respondents.)

Case No. MA-123238
(Writ of Mandamus)

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**BRIEF *AMICUS CURIAE* OF CAMPAIGN FOR TOBACCO-FREE
KIDS, JOINED BY OTHER PUBLIC HEALTH, MEDICAL AND
COMMUNITY GROUPS, IN SUPPORT OF PETITIONER**

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Pursuant to Oklahoma Supreme Court Rule 1.12(a)(2), and (c), and this Court's Order of August 7, 2025, the Campaign for Tobacco-Free Kids ("Tobacco-Free Kids"), joined by other public health, medical, and community organizations herein identified¹, hereby submit this brief *amicus curiae* in support of Petitioner Tobacco Settlement Endowment Trust Fund (TSET):

INTRODUCTION AND INTERESTS OF *AMICI CURIAE*

At issue in the Petition is whether HB 2783 is constitutional. Like Petitioner, Tobacco Free Kids, and the joining organizations identified below (collectively, "*amici*") all agree: it is **not**. As is apparent from the following descriptions of *amici*, these organizations work—on a daily basis—to reduce the use of deadly and addictive tobacco products, particularly by young people, in Oklahoma and across the nation. Each retains a strong interest in ensuring TSET is able to continue its lifesaving work to protect Oklahomans from disease and mortality due to tobacco products, free from the impact of an unconstitutional statute intended to compromise TSET's independence from political forces and adversely affect its capacity to focus its resources on programs to curb tobacco use.

- **Tobacco Free Kids**, a 501(c)(3) nonprofit organization, is a leading advocacy organization working to reduce tobacco use and its deadly consequences in the United States and globally. Among other actions intended to advance its mission, Tobacco-Free Kids spearheads advocacy efforts intended to reduce youth tobacco use and save lives—including the lives of Oklahomans. These efforts include state and local advocacy directed at increasing tobacco taxes, promoting comprehensive smoke-free laws, enacting limitations on flavored tobacco products that appeal to youth, and funding tobacco prevention and cessation efforts. Tobacco-Free Kids has filed numerous briefs *amicus curiae* in support of such policies in state courts throughout the nation.²
- The **American Cancer Society Cancer Action Network** ("ACS CAN") is the nonpartisan, nonprofit advocacy affiliate of the American Cancer Society ("ACS"). ACS CAN advocates for evidence-based public policies to reduce the cancer burden for everyone, including ensuring fully funding and sustaining evidence-based, statewide tobacco control programs. Prior to the creation of ACS CAN, ACS worked with Oklahoma

¹ Tobacco Free Kids' Application to File *Amicus Curiae* Brief Supporting Petitioner identified that other public health, medical, and community groups may join this brief. *See* p. 1 n.1.

² *See generally* <https://www.tobaccofreekids.org/what-we-do/us/us-state-court-cases>.

voters to help establish TSET. Since its founding, ACS CAN has consistently supported TSET funds being used to benefit the health of Oklahomans.

- **Americans for Nonsmokers' Rights** ("ANR") is a national non-profit tobacco control advocacy organization based in Berkeley, California. Since its formation in 1976, ANR has been dedicated to protecting nonsmokers' rights to breathe smokefree air in enclosed public places and workplaces and to preventing youth addiction to nicotine, including use of e-cigarettes and other flavored tobacco products. ANR represents a national constituency of over 11,000 individuals and organizations concerned about the health risks that tobacco and other nicotine products pose to the health and safety of smokers and nonsmokers alike and committed to reducing and preventing tobacco and e-cigarette use amongst youth and adults.
- The **American Heart Association** is the nation's oldest and largest voluntary organization dedicated to fighting heart disease and stroke. Founded in 1924, the organization now includes more than 40 million volunteers and supporters with offices nationwide. The Association funds innovative research, advocates for the public's health, and shares lifesaving resources. For more than 40 years, its volunteer advocates and staff have been active in ensuring policies promoting longer, healthier lives for all which includes protecting tobacco master settlement funds for tobacco prevention efforts.
- The **American Lung Association** is the nation's oldest voluntary health organization working to save lives by improving lung health and preventing lung disease. The American Lung Association has long been active in research, education and public policy advocacy regarding the adverse health effects caused by tobacco use. This includes supporting efforts to dedicate state funds towards programs to prevent and reduce tobacco use.
- The **Oklahoma Academy of Family Physicians** ("OAFP"), representing over 1,200 physician, student, and resident members, is the leading statewide organization dedicated to supporting family physicians and improving the health of all Oklahomans through advocacy, continuing medical education, and growing the pipeline for family medicine. The OAFP has long championed tobacco prevention and cessation efforts to reduce the burden of tobacco-related disease across the state.
- The **Oklahoma Chapter of the American Academy of Pediatrics** ("OKAAP"), representing pediatricians, pediatric subspecialists, residents, and medical students across the state, works to promote the health and well-being of Oklahoma's children through advocacy, education, and community partnerships. OKAAP is committed to preventing tobacco use among youth, reducing children's exposure to secondhand smoke, and advancing policies that protect every child from the harmful effects of tobacco and nicotine.
- The largest statewide organization representing future and current physicians, the **Oklahoma State Medical Association** ("OSMA") works to foster better health for all Oklahomans through state and local advocacy, public health awareness programs and comprehensive continuing medical education. The OSMA has filed numerous *amicus curiae* briefs in Oklahoma courts in support of medicine-friendly policies.

ARGUMENTS & AUTHORITIES

I. THIS COURT HAS CORRECTLY STAYED HB 2783 AND MAY PROPERLY ASSUME ORIGINAL JURISDICTION.

On August 6, 2025, this Court stayed the effectiveness of HB 2783. *See* Order, Aug. 6, 2025. The Court properly assumed original jurisdiction and granted this temporary relief because the matter presented is urgent and its immediate resolution serves the public interest. In the absence of this stay, HB 2783 would have gone into effect on August 28, 2025, raising instantaneous issues. *See Edmondson v. Pearce*, 2004 OK 23, ¶¶ 7–8, 91 P.3d 605, 612, *as corrected* (July 28, 2004) (assuming original jurisdiction despite lower courts staying operation of the challenged statute and reducing urgency of decision). TSET’s constitutionally protected status gives Oklahoma important public health and fiscal benefits, especially relative to other states, and any change to this status implicates the public interest. The public interest considerations are apparent, *infra*; this “is clearly a matter *publici juris*.” *Fent v. Contingency Rev. Bd.*, 2007 OK 27, ¶ 11, 163 P.3d 512, 521 (finding public interest where state board would disburse \$45 million); *see also Ethics Commission v. Cullison*, 850 P.2d 1069 (Okla.1993) (assuming original jurisdiction because of a conflict between the Legislature and the constitutionally created Ethics Commission); *Edmondson v. Pearce*, 2004 OK 23, ¶ 12, 91 P.3d 605, 614.

The Court should reject Respondent Ryan Walters’ (“Walters”) argument that the dispute presented is merely “abstract or hypothetical.” Walters’ Brief, p. 2. Rather, as *amici* show below, Oklahoma’s protected use of funds received pursuant to the Master Settlement Agreement (“MSA”)—in stark contrast to how other states have diverted their MSA funds—demonstrates that the politicization and unlawful change to the structure of TSET presents a real and probable danger to both public health and the public fisc. Likewise, this Court should reject Respondent Kevin Stitt’s (“Stitt”) argument that the position of TSET’s Board of Directors (the “Directors”) is “far

more personal than public in nature” because they are just appointees “to a single board.”³ Stitt Brief, p. 5. Unlike executive or administrative boards created by the Legislature and stacked with political appointees, TSET is run by a board of public trustees, responsible for the disbursement of substantial sums in a prudent fashion **and for constitutionally-defined purposes**. OKLA. CONST. art. 10, §§ 40(D), (E). The Court has properly assumed original jurisdiction in this matter.

II. HB 2783 IS UNCONSTITUTIONAL BECAUSE THE DISCRETIONARY POWERS IT GRANTS TO APPOINTING OFFICIALS VIOLATE TSET’S CONSTITUTIONAL STRUCTURE.

HB 2783 is unconstitutional. Specifically, Oklahoma’s Constitution provides that, after initial staggered terms, “the appointed members of the Board of Directors [of TSET] shall serve seven-year terms of office.” *See* OKLA. CONST. art. X, § 40(C). Ignoring this text completely, HB 2783 instead provides that Directors “shall serve at the pleasure of their appointing authority.” The insertion of this discretionary power over the terms of the Directors violates the constitutional provision that Directors “shall” serve a seven-year term with no reference to the pleasure of their appointing authority or a discretionary power of removal. Significantly, the State Constitution provides in several places, art. VII, §§ 5, 6, 8 and 10, that appointees shall serve at the “pleasure” of their appointing authorities, illustrating that when Oklahomans intend to give such discretionary power to appointing officials, they know exactly how to do it. This language does not apply to the appointment of TSET Directors.

III. RESPONDENTS’ ARGUMENTS THAT HB 2783 DOES NOT VIOLATE THE STATE CONSTITUTION ARE UNAVAILING AND THE CASES UPON WHICH THEY RELY ARE NOT PRECEDENTIAL.

Respondents Drummond, Hilbert, and Paxton argue that precedent requires this Court to conclude HB 2783 is constitutional. To do so, Respondents rely heavily on *Bynum v. Strain*, 1923

³ Would this Respondent consider the appointment of Justices of this Court a merely personal matter, each being only an individual and this being just one court?

OK 596, 218 P. 883, a century old case concerning a challenge to the removal of an *acting* bank commissioner where “[n]either the banking department nor the bank commissioner was created by the Constitution.” ¶ 18, 218 P. 288. This is a glaring distinction, as the Constitution—unlike its instruction as to the creation of TSET—simply instructs the Legislature to create a Banking Department. *See* OKLA. CONST. art. XIV § 1. Even more critically, Respondents’ Brief neglects to mention that this Court previously cabined *Bynum*’s holding to officers whose responsibilities are executive in nature. *Hall v. Tirey*, 1972 OK 118, ¶ 17, 501 P.2d 496, 501. This Court likewise declined to apply *Bynum* to the State Board for Property and Casualty Rates because that Board is primarily a quasi-legislative and quasi-judicial administrative body. *Id.* Respondents’ Brief makes no effort to show that TSET is primarily an executive body (like the Banking Department) or to otherwise address the limitations on *Bynum* as established by this Court in *Hall*. Respondents’ reliance on *Bynum* is therefore unavailing.

To support their argument, Respondents Drummond, Hilbert, and Paxton also cite *Wentz v. Thomas*, 1932 OK 636, 15 P.2d 65, and *Cameron v. Parker*, 38 P. 14 (1894), two more century-old cases readily distinguishable from the instant dispute. *Wentz* is distinguishable because it concerns the removal of an acting highway commissioner whose appointment was *not* pursuant to any constitutional authority. It is therefore neither helpful nor precedential. *Cameron*, similarly, does not discuss or reference any applicable constitutional provisions concerning the appointment or removal of the official at issue therein, and it is thus not precedential. With respect to *Cameron*, these Respondents once again failed to note subsequent authorities undercutting its application in the instant case. But this Court has previously declined to approve or disapprove the *Cameron* holding for primarily executive positions, and it has actually declined to follow *Cameron* in the case of quasi-legislative and quasi-judicial administrative bodies. *Hall v. Tirey*, 1972 OK 118, ¶

18, 501 P.2d 496, 501. These Respondents, lastly, rely on *Leedy v. Brown*, 1910 OK 342, 113 P. 117, yet another case decided over 100 years ago. However, the quotations from *Leedy* cited are actually from an even older decision, and one decided in another jurisdiction: *Ex parte Wiley*, 54 Ala. 226 (1875). *Wiley* interprets a provision of Alabama's Constitution, which, unlike art. X, § 40, in Oklahoma's Constitution, provided that "[a]ll State officers may be impeached for any misdemeanor in office." *Ex parte Wiley*, 54 Ala. 226, 228 (1875). Further, *Wiley* addressed a separation of powers issue in the Alabama Constitution, not an alleged conflict between a statutory provision and a constitutional provision. In sum, *Leedy*, *Wentz*, *Cameron* and *Bynum* are, contrary to Respondents' assertion, not "precedent," and the same do not support Respondents' position in this matter.

Respondent Stitt argues that the appointing officials may never exercise the power that HB 2783 would grant to them, so the issue raised by Petitioner is hypothetical. *See* Stitt Brief, pp. 5–6. In other words, Respondent Stitt essentially argues that a facial challenge to a statute may never be made, only an "as-applied" challenge. Respondent provides no authority for this novel position. Further, if the Court adopted Respondent's position, it is not clear that TSET could ever challenge HB 2783. Obviously, if TSET's Directors are replaced "at the pleasure of" Respondents, any new Directors would in all likelihood not litigate the constitutionality of the actions of those who had just appointed them (while removed Directors would lack any authority to further challenge their removal on behalf of TSET). Such a scenario demonstrates the necessity of a facial challenge under circumstances such as this. Indeed, "[t]his Court has held that one adversely affected by a statute which he claims to be invalid *on its face* as applied to him need not risk its violation in order to invoke declaratory judgment relief under the Act." *Tulsa Indus. Auth. v. State*, 1983 OK 99, ¶ 14,

672 P.2d 299, 301, *citing State ex rel. Bd. of Examiners in Optometry v. Lawton*, 1974 OK 69, 523 P.2d 1064 (1974) (emphasis in original).

Respondent Walters argues HB 2783 is merely an implementing measure allowed by art. X, § 40(G). Walters Brief, p. 3. To do so, Walters curiously concedes Respondent Stitt has a “well-known” tendency to replace members of state boards whenever they disagree with him and that this can cause some “chaos.” *Id.* Still, Walters argues the Constitution allows for TSET members to be appointed “on a whim.” Brief at p. 3. Walters’ position misstates art. X, § 40. The text of that provision provides for set terms and makes no provision for Directors to be removed or replaced “on a whim.” Further, if art. X, § 40 did allow for such easy removal, there would be no need for HB 2783 in the first place, and it would have been unnecessary for the Legislature to have enacted it. Walters’ argument also ignores the significance of art. X, § 40’s provisions requiring staggered terms for the initial Directors. Walters’ Brief, pp. 3–4. As in other public bodies complete with constitutionally staggered terms, said terms provide for stability and ensure the existence of a “continuing” body. *See, e.g., Joseph Story, Commentaries on the Constitution of the United States* §§ 712, 713, 724 (1833). Oklahomans intended to maintain this initial staggering *via* the provision of subsequent seven-year terms for all TSET Directors. Okla. Const., art. X, § 40(D). If new political officials could simply remove Directors at their pleasure, this would not only violate the seven-year term provision but also disturb the voter-approved scheme for staggered terms, a further constitutional violation.

Respondent Stitt takes a somewhat different position from Walters, stating that HB 2783 is only “to clarify the removal provisions.” Stitt Brief, p. 1. This argument is disingenuous because art. X, § 40, contains no removal provisions, so there are no such provisions to clarify. Similarly, Respondent Stitt argues that removal of a Director would not actually disrupt any appointment,

because it runs with the office not the individual holding it. Stitt Brief, p. 8. This view, if true, would again render HB 2783 unnecessary, yet this Court must assume the Legislature enacted HB 2783 because it believed it lacked the removal power at issue in the first place. Respondent Stitt then contends that Article V of the Constitution gives the Legislature power to legislate regarding removal of a Director. Stitt Brief, p. 7; *see also* Drummond, Hilbert, Paxton Brief, pp. 1–3. However, this case does not concern the Legislature’s appointment or removal power under Article V; this case is about Article X, and the cases Respondent Stitt cites concern the power of the Legislature to remove Article V elective officers, not TSET Directors appointed pursuant to art. X, § 40. Article X cabins, rather than grants, the Legislature power to remove TSET Directors because such removal power conflicts with the constitutionally mandated seven-year term provision.

Respondent Stitt also points to many instances where appointing officials have filled vacant TSET Director positions for the remainder of their terms. Stitt Brief, p. 7–9. This, however, does not establish the existence of some accepted practice of removing incumbents at the pleasure of appointing officials. Rather, the positions were vacant, and not because the incumbents had been removed. Although the brief states that mid-term vacancies “whether from resignation or *removal*” (emphasis added) have disrupted the TSET structure, Stitt Brief at p.9, in fact none of the numerous examples provided are of “removal”.

IV. CONCLUDING THAT HB 2783 IS UNCONSTITUTIONAL IS NECESSARY TO ENSURE THAT TSET FUNCTIONS AS INTENDED BY THE VOTERS IN PROVIDING IT WITH CONSTITUTIONAL PROTECTION.

Argument about the constitutionality of HB 2783 might be viewed as an abstract issue of legal interpretation, but that view is incorrect. The impact of allowing appointing officials to dismiss and replace TSET Directors at their pleasure, in violation of the Constitution, will be profound, as illustrated not only by the significant public health and fiscal benefits of TSET’s

policies over the last quarter of a century, but also by comparing Oklahoma's allocation of MSA funds to other states. Allowing appointing officials to remove existing TSET Directors and replace the same with individuals likely to be more compliant to political whims will threaten what TSET has achieved and its future success. It is important to note that voters have *twice* rejected legislative attempts to modify TSET's constitutionally mandated funding and expenditure formulas.⁴ The constitutionality of HB 2783 must be addressed *now* given the unassailable conclusion that TSET has functioned to date exactly as the voters intended and must continue to do so absent voters' say.

States generally collect substantial sums from MSA payments and tobacco taxes, but spend very little on prevention and cessation programs. *See* Campaign for Tobacco-Free Kids, *A State-by-State Look at the 1998 Tobacco Settlement 26 Years Later* (updated December 18, 2024) at <https://www.tobaccofreekids.org/what-we-do/us/statereport> (last visited July 24, 2025) (reporting that in 2025 states will spend only 3.5% of the \$22.1 billion they receive from MSA payments and tobacco taxes, on tobacco prevention and cessation). California, for instance, securitized its MSA payments and since 2006 all of the state's share of MSA payments go to bondholders, not to support public health. *See* California Debt & Investment Advisory Commission *Issue Brief: Tobacco Securitization Bond Issuance in Cali.*, at <https://www.treasurer.ca.gov/cdiac/reports/tobacco.pdf> (last visited July 30, 2025). In contrast, Oklahoma has protected its MSA payments from both securitization and political interference *via* the creation of TSET. Indeed, Oklahoma was the **first and only state** to establish, by a vote of the people, a constitutionally protected trust fund for the

⁴ In 2002, Oklahomans rejected SQ 701, which sought to alter the language of Article X, § 40, to permit the Board's expenditure of up to 5.5% of the "average market value" of the trust fund in any given fiscal year. Almost twenty (20) years later, Oklahomans similarly rejected SQ 814, which would have altered the allotments of funds to the Legislature and TSET, respectively, giving the Legislature 75% of incoming funds "to be appropriated and expended to draw down federal matching funds for the Medicaid program." Browne, A., NonDoc, "SQ 814: Less money for TSET, more money for Medicaid?" (Oct. 19, 2020), at <https://nondoc.com/2020/10/19/sq-814-less-money-for-tset-more-money-for-medicaid/> (last visited July 22, 2025).

purpose of directing MSA funds to specific causes. By creating TSET within the State Constitution, as explained by former Governor Frank Keating, Oklahomans intended to, and did, protect *billions* in potential future payments from “the vagaries of the legislative [and] political processes[.]” Oklahoma TSET, “Oklahoma TSET: Keeping the Promise for Health” (Nov. 19, 2015), at <https://www.youtube.com/watch?v=yw7fd3Tr6UQ&t=684s> (last visited July 23, 2025). The Governor went on to state that establishing TSET by popular vote “was the reason why we can look back with considerable pride as a state that we did it in the right way.” *Id.*

As an example of these benefits, in fiscal year 2025, Oklahoma ranked second nationally in state funding for tobacco prevention and cessation efforts. Campaign for Tobacco-Free Kids, *A State-by-State Look at the 1998 Tobacco Settlement 26 Years Later* (updated December 18, 2024) at <https://www.tobaccofreekids.org/what-we-do/us/statereport> (last visited July 24, 2025). Oklahoma’s funding, \$36.4 million, represents 85.9% of the funding level recommended by the Centers for Disease Control and Prevention. *Id.* By comparison, Oklahoma’s “peer states”⁵ allocated significantly lower percentages: Alabama (3.2%), Arkansas (30.7%), Colorado (74.9%), Idaho (29.8%), Louisiana (8.5%), and Tennessee (2.6%). *Id.* Oklahoma’s funding supports initiatives such as TSET’s partnership with the Oklahoma Health Care Authority (OHCA) to reduce tobacco use among SoonerCare members, Oklahoma’s Medicaid population. As a result, smoking rates among this group fell to 22.9% in 2024, *see* TSET, *FY 2024 Annual Report: Road*

⁵ TSET commissioned an evaluation of its impact on adult smoking prevalence in Oklahoma. To this end, researchers identified a comparison group of states based on two key criteria: (1) cigarette tax rates and (2) percentage of the population covered by clean indoor air laws. These factors were chosen because they represented the most effective state-level strategies for reducing adult smoking rates. Using these criteria, six comparable states were selected for analysis. *See* Michael C. Fiore, MD, MPH, MBA et al., *Assessing the Impact of the Tobacco Settlement Endowment Trust on Oklahoma’s Adult Smoking Prevalence: Executive Summary* (Oklahoma Tobacco Settlement Endowment Trust Sept. 9, 2016) at https://oklahoma.gov/content/dam/ok/en/tset/documents/public-info/reports-data/TSET_Impact_Study_Executive_Summary.pdf (last visited July 25, 2025).

to Health (Feb. 19, 2025) at <https://oklahoma.gov/content/dam/ok/en/tset/documents/public-info/reports-data/FY24%20TSET%20Annual%20Report.pdf> (last visited July 24, 2025), the lowest level recorded since data collection began in 2008, when the rate stood at 48%, see Oklahoma Health Care Auth., *OHCA Sees Drop in Smoking Rates Among SoonerCare Members* (Jan. 28, 2014), at <https://oklahoma.gov/ohca/about/newsroom/2014/january/15554-ohca-sees-drop-in-smoking-rates-among-soonercare-members.html> (last visited July 25, 2025).

Because of its consistent funding and clear independence from political interference, TSET is achieving long-term goals. The Oklahoma Tobacco Helpline, which provides telephone-based counseling services and tobacco cessation medications to help tobacco users to quit, was ranked #1 in 2024 by the North American Quitline Consortium. See Oklahoma Tobacco Settlement Endowment Trust, *FY 2024 Annual Report: Road to Health* (published February 19, 2025) at <https://oklahoma.gov/content/dam/ok/en/tset/documents/public-info/reports-data/FY24%20TSET%20Annual%20Report.pdf> (last visited July 24, 2025). Since its launch in 2003, the Helpline has served over 600,000 individuals in all 77 counties. *Id.* These efforts contributed to a 45% decrease in adult smoking prevalence from 28.6% in 2001 to 15.8% in 2025. *TSET Performance Dashboard* (last updated Mar. 2025) at https://oklahoma.gov/content/dam/ok/en/tset/documents/public-info/35171%20TSET%20Brand%20Dashboard%20Updated%20March%202025_F.pdf (last visited July 24, 2025). TSET also engages in public education to discourage tobacco use. In fiscal year 2024, for instance, four new messaging packages generated over 47 million combined video views on social media and digital platforms. Oklahoma Tobacco Settlement Endowment Trust, *FY 2024 Annual Report: Road to Health* (published February 19, 2025) at <https://oklahoma.gov/content/dam/ok/en/tset/documents/public-info/reports->

[data/FY24%20TSET%20Annual%20Report.pdf](#) (last visited July 24, 2025). During that same year, two TSET-funded campaigns prompted 75% of Oklahomans to talk with their children about tobacco use, according to a survey conducted by the University of Oklahoma Health Sciences Center. *Id.*

There can be little doubt that the entire purpose of providing TSET with constitutional protection was to allow it to most effectively prevent tobacco-related disease and death among Oklahomans, free of political pressure to divert the MSA funds to other purposes. Precisely because the voters protected TSET in the Oklahoma Constitution, it has functioned to achieve its lifesaving mission with remarkable effectiveness that other states receiving MSA funds cannot claim. HB 2783, if permitted to take effect, will no doubt have gravely adverse effects on TSET's activities and programs, and such effects cannot be reconciled with the text and purpose of art. X, § 40, as passed by Oklahoma voters over twenty (20) years ago.

V. RESPONDENT GOVERNOR STITT'S ARGUMENT THAT TSET LACKS STANDING TO BRING THIS ACTION IS WITHOUT MERIT.

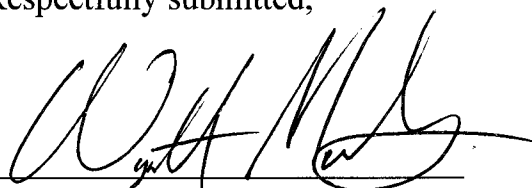
Respondent Stitt urges that TSET lacks standing. Stitt Brief, pp. 5–6. But the authorities Stitt relies on do not stand for the proposition that a constitutionally created state board lacks standing to challenge the constitutionality of a statute altering its structure. The primary case cited by Stitt, *Fent v. Contingency Rev. Bd.*, 2007 OK 27, ¶ 8, 163 P.3d 512, 520, examines whether a taxpayer—not a state board—has standing to challenge the constitutionality of legislation. And, *Fent* answers that question in the affirmative, concluding a taxpayer *does* have such standing. That is rather different from the matter at hand. Respondent does not address cases such as *Application of State ex rel. Dep't of Transp.*, 1982 OK 36, ¶ 7, 646 P.2d 605, 609, in which this Court concluded that the Oklahoma Department of Transportation had standing to challenge the constitutionality of a statute affecting its structure, and *Tulsa Industry Authority v. State*, 1983 OK 99, ¶ 20, 672 P.2d

299, 302, in which this Court rejected a claim of unconstitutionality on its merits, not because the state-trust-petitioner lacked standing to bring such challenge. Respondent also does not address comparable federal cases noting that Oklahoma’s standing “jurisprudence is similar” to federal law, *Toxic Waste Impact Grp., Inc. v. Leavitt*, 1994 OK 148, ¶ 9, 890 P.2d 906, 911. *E.g., Bd. of Ed. of Cent. Sch. Dist. No. 1 v. Allen*, 392 U.S. 236, 241, n. 5 (1968) (Local Board of Education has standing to challenge constitutionality of state statute under state and federal constitutions); *Coleman v. Miller*, 307 U.S. 433, 437 (1939) (state legislators have standing); *Jackson Mun. Airport Auth. v. Harkins*, 67 F.4th 678, 684 (5th Cir. 2023), *withdrawn and superseded by* No. 21-60312, 2023 WL 5522213 (5th Cir. Aug. 25, 2023), *reh’g en banc granted, opinion vacated*, 78 F.4th 844 (5th Cir. 2023), and *on reh’g en banc*, 98 F.4th 144 (5th Cir. 2024) (Airport Authority Commissioners had standing to challenge constitutionality of state statute, but action later dismissed as moot because all commissioners had been replaced and none had reasonable likelihood of reappointment); *Priorities USA v. Nessel*, 978 F.3d 976, 979–982 (6th Cir. 2020) (state legislatures have standing); *City of Los Angeles, California v. Fed. Aviation Admin.*, 63 F.4th 835, 842 n. 4 (9th Cir. 2023) (city has standing); *Belmont Mun. Light Dep’t v. FERC*, 38 F.4th 173, 185–86 (D.C. Cir. 2022) (state Public Utilities Commission and state Office of the Consumer Advocate have standing to seek review of federal agency order).

CONCLUSION

For the reasons set forth above, this Court should grant the Petition and conclude that HB 2783 is unconstitutional.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wyatt A. McGuire', written over a horizontal line.

Wyatt A. McGuire, OBA #34720

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CERTIFICATE OF MAILING

I certify that a true and correct copy of this document was emailed and mailed, *via* U.S. Mail, to the following Counsel on August 15th, 2025:

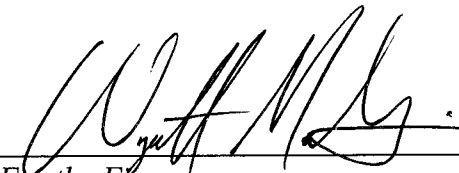
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