

ORIGINAL



NO. 120,945

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SUPREME COURT
STATE OF OKLAHOMA

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JOHN D. HADDEN
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

CHRISTOPHER MARK COWDEN,

Petitioner,

v.

THE OKLAHOMA COUNTY ELECTION BOARD, et al.

Respondents.

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RESPONSE TO PETITIONER'S APPLICATION TO ASSUME ORIGINAL JURISDICTION AND PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS BY RESPONDENTS, THE OKLAHOMA COUNTY ELECTION BOARD, ANITA DETOY, IN HER CAPACITY AS CHAIRPERSON OF THE OKLAHOMA COUNTY ELECTION BOARD, DAVID GLOVER, IN HIS CAPACITY AS VICE CHAIRPERSON OF THE OKLAHOMA COUNTY ELECTION BOARD, AND DOUG SANDERSON, IN HIS CAPACITY AS SECRETARY OF THE OKLAHOMA COUNTY ELECTION BOARD

AARON ETHERINGTON, OBA # 18,259
Assistant District Attorney
Oklahoma County District Attorney's Office
320 Robert S. Kerr, Suite 501
Oklahoma City, OK 73102
(405) 713-1600 Phone
(405) 713-1749 Fax
aaron.etherington@oklahomacounty.org

Attorney for the Oklahoma County Election Board, Anita DeToy, in her official capacity as Chairperson of the Oklahoma County Election Board, David Glover, in his official capacity as Vice Chairperson of the Oklahoma County Election Board, and Doug Sanderson, in his official capacity as Secretary to the Oklahoma County Election Board

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

CHRISTOPHER MARK COWDEN,)
)
 Petitioner,)
)
 vs.)
)
 OKLAHOMA COUNTY ELECTION)
 BOARD, et al.,)
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 Respondents.)

Case No. 120,945

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COMES NOW, Respondents, the Oklahoma County Election Board, Anita DeToy, in her capacity as Chairperson of the Oklahoma County Election Board, David Glover, in his capacity as Vice Chairperson of the Oklahoma County Election Board and Doug Sanderson, in his capacity as Secretary to the Oklahoma County Election Board, by and through their attorney Aaron Etherington, Assistant District Attorney, for the Seventh Judicial District of Oklahoma, Oklahoma County, and respectfully requests this Honorable Court to decline to assume original jurisdiction and deny Petitioner's Petition for Writ of Prohibition and/or Mandamus.

STATEMENT OF THE FACTS

In the proceedings before the Oklahoma County Election Board, the facts were not in dispute. After the City of Oklahoma City called for a general election for the purpose

of electing candidates for the office of Councilmember, James Cooper and Christopher Cowden filed their declaration of candidacy for Ward 2 Councilmember. Within the time provided therefor, James Cooper filed a Petition for Contest of Candidacy on December 8, 2022. In support of the petition, Cooper alleged that Cowden failed to meet the requirements of office as set forth by Article II, Section 6 of the Oklahoma City Charter, namely, that Cowden was not a registered voter of Ward 2 for at least one year immediately preceding the filing of his declaration of candidacy.

On December 13, 2022, a hearing on the Petition for Contest of Candidacy was held before the Oklahoma County Election Board. At the conclusion of the hearing, the Board determined that Cowden's name should be stricken from the ballot as a candidate for Ward 2 Councilmember. It is from this determination that Petitioner now seeks extraordinary relief by writ of prohibition and/or mandamus. In seeking extraordinary relief, however, Petitioner did not request an emergency stay of the Board's ruling.

The general election for Ward 2 City Councilmember is scheduled to be held on February 14, 2023. However, it will not be the only issue to be considered during the election, as other propositions and political races will be submitted to the people at that time. In fact, sixteen different municipal and county-wide political races and propositions will be determined by the election on February 14, 2023. Based upon the time required to print ballots, distribute absentee ballots, program ballot boxes to receive ballots, and deliver ballot boxes for the election, the ballots for the election of Ward 2 City Councilmember have already been printed and do not include Petitioner Cowden as a candidate. These same logistical preparations cannot be restarted and completed in time for the February 14,

2023 election, as would be necessary to include Petitioner Cowden on the ballot. Ex. 1, Affidavit.

ARGUMENT AND AUTHORITIES

Petitioner is before this Honorable Court seeking a writ of prohibition and/or mandamus to have his name restored to the ballot for election to Ward 2 Councilmember for the City of Oklahoma City. Petitioner's request for extraordinary relief, however, is not justiciable and the record is otherwise insufficient to consider the merits of the issues presented. Under these circumstances, Respondents submit that this Court should decline to assume original jurisdiction and deny his request for extraordinary relief in all respects.

PROPOSITION I: THIS COURT SHOULD DECLINE TO ASSUME ORIGINAL JURISDICTION ON GROUNDS OF NON-JUSTICIABILITY.

This Court's original jurisdiction finds its source in Article 7, Section 4 of the Oklahoma Constitution. "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. 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, and such other remedial writs as may be provided by law and may exercise other and further jurisdiction as may be conferred by statute." Okla. Const. art. 7, § 4. Although setting forth two types of authority that may be exercised, the preliminary question of whether jurisdiction should be assumed in the first instance must be addressed.

The decision to exercise original jurisdiction is separate from a decision on the merits and is purely discretionary. *Miller Dollarhide, P.C. v. Tal*, 2006 OK 27, ¶ 9, 174 P.3d 559, 563. It is certainly true that the public nature of a question presented coupled with the urgency of circumstance may counsel in favor of assuming original jurisdiction. *Keating v. Johnson*, 1996 OK 61, ¶ 10, 918 P.2d 51, 56. However, justiciability of the issues presented is a valid consideration in determining whether to assume original jurisdiction as well. *Keating*, 1996 OK 61, ¶ 2, 918 P.2d at 61 (Simms, J., Specially Concurring). So too is the fundamental fairness of the proceedings. *Keating*, 1996 OK 61, ¶ 2, 918 P.2d at 59 (Opala, J., Concurring). After all, as wisely noted by Justice Opala, “Fundamental fairness in litigation process cannot be afforded except within a framework of orderly procedure. No area of the law may lay claim to exemption from the range of orderly procedure’s basic strictures.” *Id.*

In the present case, Petitioner’s request for extraordinary relief is not justiciable for two significant reasons. First, Petitioner has failed to give notice of these proceedings to the City of Oklahoma City as an interested party despite raising arguments that would invalidate two provisions of the City’s organic law. Secondly, Petitioner’s request for relief is moot. Petitioner’s failure to request a stay of the Board’s order striking his name from the ballot has resulted in the inability of this Court to grant effective relief. As his petition is not justiciable, Respondents submit that this Court should decline to assume original jurisdiction.

A. PETITIONER HAS FAILED TO GIVE NOTICE OF THE PROCEEDINGS TO ALL INTERESTED PARTIES AND, THUS, THE ISSUES PRESENTED ARE NOT JUSTICIABLE AND FUNDAMENTAL FAIRNESS CANNOT BE ACCORDED IN ADJUDICATING THE MERITS OF THE REQUEST FOR EXTRAORDINARY RELIEF.

As provided by the Rules of this Court, a petitioner seeking extraordinary relief must give notice of the proceedings to any adverse parties, unless this Court determines that the existence of an emergency warrants consideration of the petition without such notice; in the absence of required notice, the petition will not be heard. Okla.Sup.Ct.R. 1.191(e). Undoubtedly this provision is designed to ensure that both justiciability and fundamental fairness exist in proceedings of original cognizance. Despite the important principles underlying the safeguard of Rule 1.191, Petitioner has failed to give notice of these proceedings to the City of Oklahoma City. Petitioner's failure to accord the City of Oklahoma City proper notice of these proceedings in the face of his direct assault on the City's sovereign authority to regulate its affairs counsels against the assumption of original jurisdiction on the grounds that the same would adjudicate non-justiciable issues and deprive the City of fundamental fairness.

Section 3 of Article 18 of the Oklahoma Constitution permits a city with a population of more than two thousand people to adopt a charter for autonomous self-governance. Okla. Const. art. 18, § 3(a); *see also* 11 O.S.2021, § 13-101. "Article 18 of the Oklahoma Constitution gives governing and legislating power to these municipalities, commonly referred to as home-rule cities." *Edwards v. City of Sallisaw*, 2014 OK 86, ¶ 10, 339 P.3d 870, 874. "With the approval of a municipality's charter, the state has

surrendered a portion of its authority by giving home-rule cities sovereignty over their ‘municipal affairs.’” *Id.*, 2014 OK 86, ¶ 11, 339 P.3d at 874.

In home-rule municipalities, the city charter not only serves as the body’s constitution, but it also acts to supersede any conflicting state law on matters of purely municipal concern. *Trimble v. City of Moore*, 1991 OK 97, ¶ 27, 818 P.2d 889, 898; 11 O.S.2021, § 13-109. On the other hand, “[a]ll conflicting charter provisions must yield to the State’s Constitution and to the general laws which govern state functions.” *Simpson v. Dixon*, 1993 OK 71, ¶ 21, 853 P.2d 176, 186. Finally, where there is a matter of both city and state concern, which is exclusive to neither, the provisions of a charter and statute may be treated as cumulative and both given effect. *Hampton v. Hammons*, 1987 OK 77, ¶ 27, 743 P.2d 1053, 1060.

In pressing his challenge to the determination of the Oklahoma County Election Board that his name should be stricken from the ballot for city councilmember, Petitioner raises a direct constitutional challenge to Article II, Section 6 of the Oklahoma City Charter which provides:

No person shall be eligible to the office of Mayor or Councilmember unless such person meets the following qualifications prior to filing a declaration of candidacy as required by this Charter: (a) The person must be a citizen of the United States and of the State of Oklahoma; (b) The person must be at least 21 years of age; (c) The person must have been a resident of Oklahoma City or an area annexed into Oklahoma City for at least one year; (d) For the office of Mayor, the person must have been a registered voter at an address within Oklahoma City for at least one year immediately preceding the filing of a declaration of candidacy; and (e) For a Councilmember position representing a ward, the person must have been a registered voter at an address within the ward for at least one year immediately preceding the filing of a declaration of candidacy.

Okla. City, Charter, art. II, § 6 (Aug. 4, 2021).¹ Specifically, Petitioner avers that the requirement that he be a registered voter at an address within the ward for at least one year preceding the filing of a declaration of candidacy places an unconstitutional burden on free political expression and association under the First and Fourteenth Amendments to the United States Constitution and corresponding provisions of the Oklahoma Constitution. Petitioner's Brief, p. 5-6.

Petitioner's constitutional challenge has still other implications to the City Charter. Upon reasoning that Article II, Section 6 is unconstitutional, Petitioner argues that the qualification for city councilmember should be governed by Section 16-110 of Title 11 of the Oklahoma Statutes. There, Section 16-110 states:

A candidate may have his or her name printed upon the nonpartisan general municipal election ballot as a candidate for any office to be filled at the election. To become a candidate, a declaration of candidacy must be filed with the county election board no earlier than 8:00 a.m. on the first Monday in February and no later than 5:00 p.m. on the next succeeding Wednesday. A candidate must also be a registered voter at an address within the municipality, or of the ward where the office is from a ward for at least six (6) months prior to filing a declaration of candidacy. Filing as a candidate in a nonpartisan municipal election or voting for such candidate shall not affect one's party affiliation or regularity.

11 O.S.2021, § 16-110. Petitioner urges, without explanation, that the statute should govern the filing period for candidacy of City Councilmember as well. Petitioner's Brief, p. 6 n7. Consequently, Petitioner would have this Court invalidate Article X, Section 1 of the Oklahoma City Charter by implication. There, the Charter provides, in relevant part, "On the second Tuesday of February of each odd-numbered year, a general election shall

¹ Available at <https://www.okc.gov/government/municipal-code> (last accessed Jan. 6, 2023).

be held in the City for nomination of candidates for the office of Councilmember from each ward for which the term of the incumbent Councilmember expires in that year.” Okla. City, Charter, art. X, § 1(a) (Aug. 4, 2021).

In light of the potential to invalidate two separate portions of the City Charter in order to grant the relief he now requests, it is beyond legitimate dispute that the issues presented by the instant request for extraordinary relief have a direct bearing upon the sovereignty granted to the City of Oklahoma City by the Oklahoma Constitution. Had he brought his request for declaratory relief in the district court, Section 1653 of Title 12 would have mandated that the City be made a party to the proceedings. 12 O.S.2021, § 1653 (providing that a municipality shall be made a party to any request to declare a municipal ordinance or regulation unconstitutional). The question becomes whether the fact that Petitioner brings the same request to this Court in the first instance requires a different result. Respondents submit that it does not and that Petitioner’s failure to give notice to the City as an interested party in accordance with the Rules of this Court now warrants refusal of original jurisdiction.

This Court has repeatedly recognized that a matter presented for original cognizance must be justiciable. *See e.g., Hendrick v. Walters*, 1993 OK 162, ¶¶ 3-6, 865 P.2d 1232, 1236-38; *Democratic Party v. Estep*, 1982 OK 106, ¶ 1, 652 P.2d 271, 272; *Application of State ex rel. Dept. of Transp.*, 1982 OK 36, ¶ 6, 646 P.2d 605, 608-609; *see also Keating*, 1996 OK 61, ¶ 2, 918 P.2d at 61 (Simms, J., Specially Concurring). That there must be inquiry into the justiciability in such proceedings is logical when it is considered that a lack of justiciability deprives a court of power to render a decision. *Johnson v. Snow*, 2022 OK

86 ¶ 12 n4, ___P.3d ___; *Dutton v. City of Midwest City*, 2015 OK 51, ¶ 32 n69, 353 P.3d 532, 547. “To be a proper subject for adjudication, a controversy must be ‘justiciable,’ that is, appropriate for judicial inquiry. Included within the rubric of ‘justiciability’ is a controversy which is (a) definite and concrete, (b) *concerns legal relations among parties with adverse interests* and (c) is real and substantial so as to be capable of a decision granting or denying specific relief.” *Dept. of Transp.*, 1982 OK 36, ¶ 6, 646 P.2d at 608-609 (emphasis added).

In the matter *sub judice*, Petitioner has named as parties the Oklahoma County Election Board and its members and provided notice to Ward 2 candidate James Cooper as a real party in interest. Expressly recognizing that these parties do not have a vested interest in defending against the constitutional challenge to the provisions of the City Charter, Petitioner has given notice of the proceedings to the Attorney General stating, “Notice provided due to question on constitutionality of statute.” *See* Application to Assume Original Jurisdiction, Certificate of Service; Brief in Support, Certificate of Service; Notice of Original Jurisdiction Supreme Court Proceeding. While notice to the Attorney General is proper when the constitutionality of a state statute is at issue, there is no such statute under attack. 12 O.S.2021, §§ 1653, 2024(D); 74 O.S.2021, § 18b(A)(1), (3).

As a result of Petitioner’s omission, there is no party to these proceedings with a true adversarial interest in defending the City’s organic law as contained in the Charter. While the Board may have some interest in defending its decision from claim of error, and Cooper have some purely personal interest in contesting Petitioner’s candidacy, these interests cannot substitute as advocacy for the City’s interest in defending its own sovereign

power to determine the qualifications of its elected officials and otherwise self-govern. What's more, the failure of Petitioner to include the City as an interested party creates confusion about the enforceability of any decision by this Court against the City. *In re Doornbos*, 2006 OK 94, ¶ 4, 151 P.3d 126, 126-27.

Rule 1.191 requires a petitioner seeking extraordinary relief to give notice to all interested parties unless there exists an emergency that excuses the same. Okla.Sup.Ct.R. 1.191(e). Underlying the rule is the need not only for a live case in controversy, but the bedrock guarantees of due process and fundamental fairness. In declining to assume original jurisdiction in *Keating v. Johnson*, 1996 OK 61, 918 P.2d 51, Justice Opala said this of the fundamental fairness that comes with obedience to procedure: "It is procedure that spells much of the difference between rule by law and rule by whim or caprice. Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under the law." *Keating*, 1996 OK 61, ¶ 2 n2, 918 P.2d at 59 (Opala, J., Concurring)(quoting *Joint Anti-Facisct Refugee Comm'ee, v. McGrath*, 341 U.S. 123, 179, 71 S.Ct. 624, 652, 95 L.Ed. 817 (1951)(Douglas, J., Concurring)). "Chaos, caprice and *ad hoc* pronouncements would inevitably follow the slightest departure from orderly procedure." *Id.*, 1996 OK 61, ¶ 2 n3, 918 P.2d at 59. These principles apply with equal force here. Absent proper notice to the City of Oklahoma City and an opportunity to be heard, these proceedings are infected with a structural error that renders them fundamentally unfair. Under these circumstances, this Court should decline to assume original jurisdiction and deny Petitioner's request for extraordinary relief.

B. PETITIONER’S REQUEST FOR EXTRAORDINARY RELIEF IS MOOT, AS THERE IS NO EFFECTIVE RELIEF THAT MAY NOW BE GRANTED BY THIS COURT.

Petitioner’s failure to give the City of Oklahoma City notice of these proceedings and an opportunity to defend the constitutionality of its charter, without more, renders the issues presented non-justiciable. Moreover, the cause is now moot. “[M]ootness exists when circumstances occur such that the court is unable to grant effective relief and any opinion in the controversy would possess characteristics of an advisory or hypothetical opinion. The mootness doctrine applies to both appellate and original jurisdiction proceedings.” *Beach v. Okla. Dept. Pub. Safety*, 2017 OK 40, ¶ 16, 398 P.3d 1, 7.

Following the adverse decision of the Oklahoma County Election Board, Petitioner neither sought nor was granted a stay of the Board’s decision to strike his name from the ballot for Ward 2 City Councilmember. Consequently, in order to meet logistical deadlines associated with the February 14, 2023 election, the ballots for the Ward 2 contest have already been printed and exclude Petitioner as a candidate. More importantly, however, the preparations that must take place – ballot printing, absentee ballot distribution, ballot box machine programming, and ballot box delivery – cannot be restarted and completed in time for the scheduled election. Ex. 1, Affidavit.² This point is significant, as the date of the scheduled election is mandated by the City Charter which states, “On the second Tuesday of February of each odd-numbered year, a general election *shall* be held in the

² Respondents acknowledge that, as a general rule, this Court confines its review to the appellate record. However, this Court has recognized an exception to this general rule exists and permits consideration of facts which occur during the pendency of an appeal that bear upon the issue of mootness. *Saxon v. Macy*, 1990 OK 60, ¶ 3, 795 P.2d 101, 102. An affidavit may be relied upon to show mootness. *Lawrence v. Cleveland Cnty. Home Loan Auth.*, 1981 OK 28, ¶ 5-6, 626 P.2d 314, 315; Okla.Sup.Ct.R. 1.6(a).

City for nomination of candidates for the office of Councilmember from each ward for which the term of the incumbent Councilmember expires in that year.” Okla. City, Charter, art. X, § 1(a) (Aug. 4, 2021)(emphasis added). As a matter of purely municipal concern, the Charter’s mandate that the election be held on the second Tuesday of February as it is currently scheduled is not subject to change. *Simpson*, 1993 OK 71, ¶ 22, 853 P.2d at 186; *Lackey v. State*, 1911 OK 270, ¶ 28, 116 P. 913, 919-20.

Because the date of the municipal election cannot be changed and because there is insufficient time to restart and complete the pre-election preparations that must occur in order to conduct the election on February 14, 2023, the instant request for extraordinary relief is now moot. To be sure, there is no relief that can be effectively granted if it is impossible to include Petitioner as a candidate on the ballot for February 14, 2023. Thus, any decision by this Court in favor of Petitioner would be nothing more than an advisory opinion.

Respondents acknowledge there are exceptions to the mootness doctrine. However, this Court has said, “[E]xceptions to the mootness doctrine are not fixed and their application depends on the facts presented and the policy considerations. We will only apply those exceptions when the practical considerations indicate that doing so would avoid, rather than prolong, confusion.” *In re Doornbos*, 2006 OK 94, ¶ 4, 151 P.3d 126, 126-27. Factors that counsel against a determination of the issues in the present case despite their mootness include: (1) the issues are confined to a single litigant who will suffer no collateral or ongoing consequences, *In re D.B.W.*, 1980 OK 125, ¶ 4, 616 P.2d 1149, 1150-51, (2) the likelihood of recurrence of similar factual circumstances is

speculative, *Lawrence v. Cleveland Cnty. Home Loan Auth.*, 1981 OK 28, ¶ 8, 626 P.2d 314, 316; (3) there is no urgent need to resolve any public law issue, *Northeast Okla. Elec. Co-Op, Inc. v. State*, 1991 OK 28, ¶ 11, 808 P.2d 680, 683-84; (4) the failure to include all interested parties in these proceedings deprives any decision of binding effect on the City of Oklahoma City, *Doornbos*, 2006 OK 94, ¶ 5, 151 P.3d at 127; and (5) Petitioner has failed to provide an adequate record of the hearing before the Oklahoma County Election Board, as discussed further herein, rendering these proceedings inadequate to resolve any urgent issue of broad public concern or any matter that is capable of repetition yet evading review.

Because there is no relief that may be effectively granted to Petitioner at this time, resolution of the merits of the issues presented would result in an advisory opinion. While there are exceptions that can justify consideration of the merits of an issue that has been rendered moot, those exceptions do not save review of Petitioner's claims. As such, Respondents submit that this Court should decline to assume jurisdiction and dismiss the request for extraordinary relief on the grounds that the same are not justiciable.

PROPOSITION II: PETITIONER HAS FAILED TO PROVIDE A SUFFICIENT RECORD FOR THIS COURT TO ADJUDICATE HIS REQUEST FOR EXTRAORDINARY RELIEF.

As discussed in Proposition I, Respondents submit that this Court should decline to assume original jurisdiction. Even if this Court were to find the matter before it to be justiciable and the question one of sufficient urgency and public importance to justify original cognizance, Petitioner has failed to provide this Court with an adequate record upon which to consider his request for extraordinary relief.

It is well established that “legal error may not be presumed in an appellate court from a silent record. Absent a record showing otherwise, this court presumes that the trial court did not err.” *In re Walterscheidt*, 2022 OK 57, ¶ 28, 512 P.3d 354, 366. This fundamental principle does not lose force where, as here, Petitioner is seeking an appeal from an administrative body. As aptly stated by this Court, “An appeal is a continuation of the same case, proceeding, or controversy presented in the inferior tribunal, and an administrative appeal brings before the appellate tribunal the administrative record where the issues adjudicated on appeal are confined to those properly at issue upon the administrative record.” *State v. Rivero*, 2021 OK 31, ¶ 31, 489 P.3d 36, 48-49.

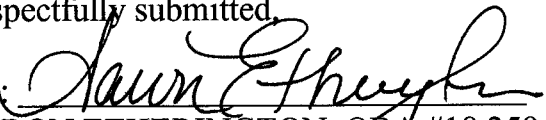
In the case at bar, Petitioner seeks to challenge the findings of the Oklahoma County Election Board on the Petition for Contest of Candidacy filed by James Cooper. However, he does not include in the record before this Court a transcript of the proceedings to establish what evidence was presented and what arguments were raised before the Board. Absent a transcript of the proceedings, Petitioner not only asks this Court to presume what evidence and arguments were raised below, but to also presume error of a constitutional magnitude on the part of the Board in making its determination. This dangerous invitation should be declined by this Court. As Petitioner has failed to provide an adequate record for appellate review, his request for extraordinary relief should be denied.

CONCLUSION

WHEREFORE, Respondents, the Oklahoma County Election Board, Anita DeToy, in her capacity as Chairperson of the Oklahoma County Election Board, David Glover, in his capacity as Vice Chairperson of the Oklahoma County Election Board, Doug

Sanderson, in his capacity as Secretary of the Oklahoma County Election Board, respectfully requests this Honorable Court to decline original jurisdiction and dismiss Petitioner's Petition for Writ of Prohibition and/or Mandamus in all respects.

Respectfully submitted,

BY: 
AARON ETHERINGTON, OBA #18,259
ASSISTANT DISTRICT ATTORNEY
320 Robert S. Kerr, Suite 501
Oklahoma City, OK 73102
Phone: (405) 713-1600
Fax: (405) 713-1749
aaron.etherington@oklahomacounty.org

*Attorney for the Oklahoma County Election Board,
Anita DeToy, in her official capacity as Chairperson of
the Oklahoma County Election Board, David Glover,
in his official capacity as Vice Chairperson of the
Oklahoma County Election Board, and Doug
Sanderson, in his official capacity as Secretary to the
Oklahoma County Election Board*

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document was mailed postage prepaid to the following:

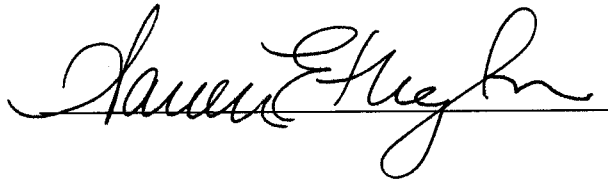
Robert D. Gifford
Gifford Law, PLLC
PO Box 2682
Oklahoma City, OK 73101
Robert.Gifford@GiffordLawyer.com

Attorney for Petitioner

Denies Lawson
Lexie Norwood
Glenn Coffee & Associates, PLLC
PO Box 437
Oklahoma City, OK 73101
denise@glenncoffee.com
lexie@glenncoffee.com

Attorneys for Real Party in Interest, James Cooper

Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

A handwritten signature in cursive script, appearing to read "James Cooper", written over a horizontal line.

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) ss.

AFFIDAVIT

I, Doug Sanderson, do hereby affirm and state as follows:

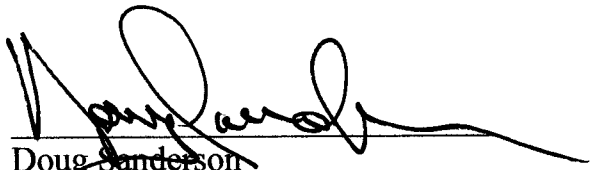
1. I am the duly appointed Secretary of the Oklahoma County Election Board and have served in this capacity since 1995. Prior to this appointment, I served as Secretary of the Logan County Election Board between 1988 to 1995.
2. The county-wide election scheduled for February 14, 2023, includes a number of other elections including: the special Democrat and Republican primaries for Oklahoma County Clerk; municipal primary elections for Bethany, Del City, Oklahoma City, and Warr Acres; and school board candidate primaries and/or special proposition questions for the school districts of Crutchfield C-74, Deer Creek I-3, Harrah I-7, Millwood I-37, Mid-Del I-52, Mustang I-69, and Western Heights I-41.
3. Based upon my 35 years of experience as Election Board Secretary, it is not possible to add a candidate to the February 14 election ballot at this time.
4. In order to add a candidate to the February 14 election ballot, preparations that are already underway would have to be halted and restarted. If restarted at this point in time, the necessary preparations could not be completed on or before February 14, 2023.
5. Halting and restarting the election preparations would adversely affect elections other than that for Ward 2, City Councilmember for the City of Oklahoma City.
6. Preparations for the February 14 election that have already been completed or are in progress include design, approval, printing and distribution of ballots, programming of voting machines, and distribution of absentee ballots.
7. Following the completion of a design and approval process, all 698,566 ballots for the election have been printed and delivered to the Election Board. These represent 16 different ballot styles and 8 ballot style rotations for 288 voting precincts.

8. Mobile ballot box machines are programed to read each ballot style and ballot style rotation in order for the machine to accept and count each ballot. These machines will not recognize or count a non-conforming ballot. This programming has been completed for the 16 different ballot styles and 8 ballot style rotations for the 288 voting precincts that will participate in the election on February 14, 2023.
9. Because programming of the mobile ballot box machines has been completed, a change in any ballot will void all 698,566 ballots already printed at a cost of \$101,290.62.
10. In addition, absentee voting for the February 14 election has already begun. On January 5, 2023, the State Election Board emailed absentee ballots to military and overseas voters. Voted email ballots have already been returned by voters. Additional absentee ballots are scheduled to be mailed by the Oklahoma County Election Board on January 13, 2023.
11. Making a change to any ballot will void all absentee ballots already delivered to voters.
12. Restarting the absentee voting process could disenfranchise some absentee voters.
13. If ordered to add a candidate to the race for Ward 2, City Councilmember for the City of Oklahoma City, there would be insufficient time to restart and complete all necessary preparations on or before February 14, 2023. The list of tasks that must be performed in sequential order and cannot be performed concurrently illustrates this point.
 - a. Step 1: Generate ballot styles and forward proofs to State Election Board for approval. Notify ballot printer of election entities and ballot colors. Minimum time to complete Step 1: 1 day.
 - b. Step 2: Receive ballot proofs from State Election Board. Send ballot proofs to parent entities for approval. Examine and adjust ballot quantities. Complete, sign, and send County Ballot Proof Affirmation to State Election Board upon notice of approval of new ballot proof by parent entities. State Election Board forwards ballot files to printer. Minimum time to complete Step 2: 2 days.
 - c. Step 3: Receive and examine absentee ballots from printer. Resend all absentee ballots to voters. Minimum time to complete Step 3: 5 days.
 - d. Step 4: Pick up election day precinct ballots. Minimum time to complete Step 4: 5 days.

- e. Step 5: Download deployed election database from the State Election Board. Calculate number of mobile ballot boxes needed and begin programming of the same. Minimum time to complete Step 5: 2 days.
- f. Step 6: Perform live ballot test with party chairpersons as is necessary for county-wide partisan primary election. Minimum time to complete Step 6: 1 day.
- g. Step 7: Program eScan voting machines and deliver election day voting machines and supplies to polling places. Minimum time to complete Step 7: 15 days.

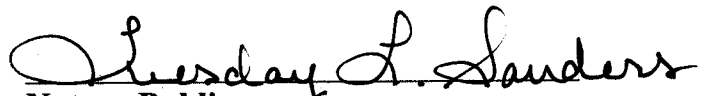
14. Assuming the process of adding a new candidate to the ballot could begin on January 19, 2023, the earliest the above timeline of sequential tasks could be completed is February 18, 2023.

FURTHER AFFIANT SAYETH NOT.

By: 
 Doug Sanderson
 Secretary of the Oklahoma County
 Election Board

Subscribed and sworn to before me this 9th day of January 2023.




 Notary Public
 Comm. No.: 22002997
 Expires: 03/03/2026