

No. _____

In The
Supreme Court of the United States

—◆—
HONORABLE SODY CLEMENTS, LT. GENERAL (Ret.)
RICHARD A. BURPEE, JAMES PROCTOR,
RODD A. MOESEL, RAY H. POTTS, and BOB A. RICKS,

Petitioners,

v.

SOUTHWESTERN BELL TELEPHONE COMPANY
d/b/a AT&T OKLAHOMA and STATE ex rel.
OKLAHOMA CORPORATION COMMISSION,

Respondents.

—◆—
**On Petition For A Writ Of Certiorari
To The Oklahoma Supreme Court**

—◆—
PETITION FOR WRIT OF CERTIORARI
—◆—

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QUESTION PRESENTED

In a legislative matter, may a State deny “with prejudice” a citizen’s right to further petition a legislative body for the redress of grievances notwithstanding the “right to petition” clause of the United States Constitution, Amendment I, incorporated to the States by Amendment XIV, Section 1?

PARTIES TO THE PROCEEDING

Petitioners (applicants below) are the Honorable Sody Clements, Lt. General (Ret.) Richard A. Burpee, James Proctor, Rodd A. Moesel, Ray H. Potts, and Bob A. Ricks. Respondents are Southwestern Bell Telephone Company d/b/a AT&T Oklahoma and the State of Oklahoma ex rel. Oklahoma Corporation Commission.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Sody Clements, Lt. General (Ret.) Richard A. Burpee, James Proctor, Rodd A. Moesel, Ray H. Potts, and Bob A. Ricks respectfully petition for a writ of certiorari to review the Judgment of the Oklahoma Supreme Court.

**OPINIONS BELOW**

The opinion of the Oklahoma Supreme Court, App. 1-20, is designated for publication. The underlying Order of the Oklahoma Corporation Commission, App. 21-92, is unpublished.

**JURISDICTION**

The Judgment of the Oklahoma Supreme Court was entered on December 19, 2017. App. 1-13. On the Oklahoma Supreme Court's own initiative, the Judgment was corrected twice on December 20, 2017. App. 14-18. On Motion of the Respondent, the State of Oklahoma, the Judgment was further corrected by Order entered on January 4, 2018. App. 19-20. This petition is timely filed and the Court has jurisdiction under 28 U.S.C. § 1257(a). As required by this federal statute, Petitioners' appeal arises from the denial of their United States Constitutional right to further petition for redress of grievances in a legislative matter.



RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The First Amendment to the United States Constitution provides:

“Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

The Fourteenth Amendment to the United States Constitution further provides, in part:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”



INTRODUCTION

Petitioners Sody Clements, Lt. General (Ret.) Richard A. Burpee, James Proctor, Rodd A. Moesel, Ray H. Potts, and Bob A. Ricks are all outspoken critics to corporate bribery of public officials, to include in legislative matters (such as here), especially bribery

which is proven by a jury trial in federal district court and affirmed on appeal. The Petitioners also are critical of bribery that damages virtually every Oklahoman with a land telephone line, as well as the United States government, by literally billions of dollars. Finally, the Petitioners are critical of State public officials who refuse to correct the effects of pernicious bribery. The Petitioners call themselves “Oklahomans Against Bribery” and run the website: “OklahomansAgainstBribery.org.” They are highly distinguished, civic-minded Oklahomans seeking to reform proven and, indeed, adjudicated corporate corruption.

Petitioner Sody Clements, is a former employee of the Oklahoma Corporation Commission and is the current Mayor of Nichols Hills, Oklahoma, a municipality located in Oklahoma County, Oklahoma. Mrs. Clements has been a long-time community leader and volunteer and has served in leadership or board positions with numerous churches, schools and civic organizations.

Petitioner Lieutenant General (USAF Ret.) Richard Burpee was the Commander of the Oklahoma City Air Logistics Center, Tinker Air Force Base, from August 1983 to January 1986. Prior to his retirement in February 1990, General Burpee was the Commander of the 15th Air Force, responsible for Strategic Air Command operations in the Western United States, Alaska and the Pacific, with responsibility for more than half of the nation’s intercontinental ballistic missile forces. He is a member of the Oklahoma Military Hall of Fame, a veteran combat pilot decorated for

gallantry and has served as a director to numerous banks, hospitals, schools and charitable foundations.

Petitioner James Proctor served as the Director of the Public Utility Division, Oklahoma Corporation Commission, from 1990 to 1993. Because of his role and involvement in the regulatory matters before the Commission, he has extensive knowledge of events, details and complexities of the rate matters pertaining to Southwestern Bell Telephone Company. Mr. Proctor has over thirty years of experience in utility regulation matters, including experience in regulating public utility companies for two state utility commissions and as a regulatory consultant to state regulatory agencies; and, as a consultant to regulated utilities and utility subsidiaries, affiliates and partnerships.

Petitioner Rodd A. Moesel is the president and co-owner of American Plant Products & Services, Inc., a company located in Oklahoma City, Oklahoma. He is also a member of the Oklahoma Agriculture Hall of Fame and was the 2014 recipient of the Oklahoma Governor's Outstanding Achievement Award in Agriculture. Mr. Moesel has served in top leadership roles for organizations such as the Oklahoma Farm Bureau, Oklahoma Greenhouse Growers Association, North American Horticulture Supply Association and Oklahoma 4-H Foundation, to name a few. He currently serves as one of two Oklahoma representatives on the national Council for Agricultural Research, Extension and Teaching ("CARET").

Petitioner Ray H. Potts is the president of Potts Exploration, LLC, a company located in Oklahoma City, Oklahoma. Mr. Potts has over forty-five years of experience in the Oklahoma Oil & Gas industry after earning a masters degree in geology from the University of Missouri in 1959. He was a co-founder of PSEC, Inc., a company sold to ONEOK Resources Company in 1997. While working as a geologist for Pure Oil Company, Mr. Potts attended law school at night and became a member of the Oklahoma Bar in 1965. Mr. Potts has served as the president and on the Board of Directors for the Oklahoma Independent Petroleum Association and as past president and/or director to numerous trade associations, banks, and many not-for-profit groups to include the Oklahoma City Philharmonic, Presbyterian Health Foundation, Downtown YMCA, Allied Arts, Economic Club of Oklahoma and Fortune Club of Oklahoma City.

Petitioner Bob A. Ricks, after earning his law degree from Baylor University in 1969, served twenty-six years in federal law enforcement rising to the position of the FBI's Deputy Assistant Director, responsible for all FBI investigations of domestic and international terrorists. Mr. Ricks also served as Special Agent in Charge of the FBI in the State of Oklahoma, as chairman of the Oklahoma Federal Executive Board which has oversight responsibilities for all federal agencies in the State of Oklahoma. Bob Ricks was appointed Oklahoma Commissioner of Public Safety by Oklahoma Governor Frank Keating and served in that position from 1996 to 2003. Mr. Ricks is the interim director of the Oklahoma State Bureau of Investigation.

All of the Petitioners are United States citizens.

On September 14, 2015, the Petitioners herein filed in the Oklahoma Corporation Commission (“OCC”) their Application pursuant to OAC 165:5-17-2, a rule which allows the filing of an Application by “. . . any person, whether or not a party of record in the original cause.” App. 110. By their filing, the Applicants presented the needed evidence and legal basis required to remedy the intrinsic fraud utilized by Southwestern Bell Telephone Company (“SWBT”) to obtain ill-begotten orders and judgments from the OCC and the Oklahoma Supreme Court. The Application sets forth Applicants’ legal standing for making the Application. App. 110. James Proctor, an expert in utilities regulation and highly knowledgeable concerning the facts of this matter, calculated the amount owed by SWBT to Oklahoma ratepayers, including the Federal Government, exceeded sixteen billion dollars (\$16,000,000,000).

The Applicants requested that the OCC vacate or modify its (legislative) Order No. 341630 (subject to protecting the rights of innocent parties, if any), and that it reconsider certain of the issues which were determined therein. App. 110. Order 341630 was entered in Cause No. PUD 860000260 (“PUD 260”) on September 20, 1989. App. 110-111. Specifically, the Applicants sought to vacate or modify Section III, Part K of the Order determining the “Excess Revenues” as being \$7,847,172 for 1989, and each year thereafter, and also, Section IV, setting forth the Commission’s determination on how the revenue excess should be used. *Id.* The

Order was obtained by means of SWBT's intrinsic fraud, that being, the bribery of one of the three Commissioners established in federal district court.

On September 7, 2016, the OCC (majority) issued its Order No. 655899 summarily dismissing the Application *with prejudice*. App. 21-92. In its ruling, the OCC held, in part, that the underlying matter wherein the bribery occurred and on which the Petitioners sought review was a legislative matter. App. 44-46. By summarily dismissing the Application "with prejudice" the OCC ruled that the Petitioners were forever barred from presenting further evidence or argument, or again petitioning for further redress of their grievance. The Oklahoma Supreme Court affirmed the OCC's determination to include the "with prejudice" bar to prevent the Petitioners from ever again seeking further review of this legislative matter involving proven public corruption. App. 5.

By this appeal, the Petitioners respectfully assert that the OCC (majority) and the Oklahoma Supreme Court simply went too far in resolving this grievance – by abridging the Petitioners' United States Constitutional right to further petition for redress of grievances by the State's summary dismissal "with prejudice" of Petitioners' application to reform a bribed legislative matter. As was pointedly stated by the dissenting OCC Commissioner, Bob Anthony, "Lastly, how can the Majority recognize that the PUD 344 application is 'legislative' and therefore *res judicata* doesn't apply, but still

dismiss it ‘with prejudice’? Such a legal finding is oxymoronic.” App. 71.

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STATEMENT OF THE CASE

1. *Factual background.* This matter concerns the legacy misconduct of Southwestern Bell Telephone Company (“SWBT”) occurring in 1989 and thereafter in bribing Oklahoma Corporation Commissioner Robert E. Hopkins in relation to a rate matter known as PUD 260. App. 105. The misconduct of attorney William L. Anderson and Commissioner Hopkins was fully adjudicated and determined in the criminal trial brought in the United States District Court for the Western District of Oklahoma, CR-93-137-A, wherein both Commissioner Hopkins and SWBT’s attorney Anderson were found guilty of Accepting Money to Influence a Vote and Bribery, respectively, in violation of 18 U.S.C. § 666(a). App. 106.

The Superseding Indictment filed on July 7, 1994, asserted, *inter alia*, that on or about September, 1989, Robert E. Hopkins “knowingly and corruptly agreed to accept something of value, intending to be influenced or rewarded in connection with the business of the Oklahoma Corporation Commission; that is, [he] agreed to accept money offered to influence or reward his vote on PUD 260, permitting Southwestern Bell Telephone Company to reinvest approximately \$30,000,000 rather than reimburse that amount to Oklahoma rate-payers.” App. 106, footnote 4.

The criminal conviction of Robert E. Hopkins (Note: William Anderson never appealed his conviction) was affirmed by the Tenth Circuit Court of Appeals in its Order and Judgment filed February 14, 1996 (Case No. 95-6120), wherein the Court wrote, in part, “The 1991 tapes, properly admitted under Fed. R. Evid. 801(d)2(E), detailed efforts to conceal the payoffs from the FBI. From those tapes [tapes of the FBI’s Title III wire taps], the jury heard recorded conversations among Hopkins, Anderson, Murphy and other Southwestern Bell executives plotting their ‘story’ in the event federal agents questioned them.” App. 106.

In the 1980s and 90s, telephone rates and telephone company earnings were regulated to ensure that only fair rates were imposed, because left unregulated, charges for telecommunication services might be unfair due to lack of competition and the existence of monopolies. App. 106-107. The OCC is the governmental agency with jurisdiction to determine such matters pursuant to the Oklahoma Constitution and statutes. App. 107. *See* Oklahoma Constitution, Art. 9 and 17 O.S. §§ 131 *et seq.* PUD 260 was an Application brought by the Public Utility Division of the OCC on October 23, 1986, to determine the effect of the newly enacted (United States) Tax Reform Act of 1986 on Oklahoma utilities. *Id.*

Specifically, because the Federal Government had reduced the corporate federal income tax rate from 46% to 34%, effective July 1, 1987, such resulted in an annual “windfall” to SWBT under the existing rates and generated “excess revenues” which the OCC could

order be refunded to Oklahoma consumers such as the Petitioners. *Id.* Motivating its wrongdoing, SWBT wished to keep for itself these “excess revenues” which later were found to amount to over \$100,000,000 per year.¹ App. 107.

The details of SWBT’s wrongdoing were that a conspiracy between Anderson and others began in early September 1989. App. 107-108. The plan involved enlisting a third party to approach and influence Commissioner Hopkins in connection with his vote on PUD 260 (specifically, Commission Order No. 341630), a matter then pending before the Commission. *Id.* In furtherance of that conspiracy, Anderson called Michael R. Murphy (a state Representative) and asked him to approach Hopkins and offer him \$10,000 if the Commissioner voted for the position advanced by Anderson for SWBT. *Id.* Murphy also received a call from Jewel Callahan, who told Murphy that he had \$5,000 more for Hopkins in the event of such a vote. Murphy agreed to act as the “go-between” or “bagman” between

¹ On August 26, 1992, after extensive discovery, 37 days of witness testimony and lengthy hearings, the OCC unanimously approved its rate making Order in Cause No. PUD 890000662 (“PUD 662”), Order No. 367868, which established SWBT’s *annual* revenue excess to be more than \$100,000,000 based upon the actual data (not estimated data) for the complete test year 1989. App. 107, footnote 5. Applying the annual revenue excess as determined by the valid (unanimous) Commission Order No. 367868, with the approved 11.589% compounded annual interest rate as established in Commission Order No. 342343, Mr. Proctor has determined that the ratepayers of Oklahoma, including the Federal Government, are due some **16 billion dollars**. App. 107, footnote 5.

Anderson/Callahan and Commissioner Hopkins. *Id.* Within days, Murphy contacted Hopkins and advised that Anderson and Callahan had \$15,000 that he and Hopkins could “split” if Hopkins would vote for “reinvestment” in the PUD 260 case. App. 108.

On or about September 18, 1989, Hopkins accepted the money in exchange for his vote in PUD 260, Order No. 341630, which occurred on September 20, 1989. *Id.* The vote was two votes in favor (*including Hopkins’ bribed vote*), and one vote against. Excluding Hopkins’ bribed vote, the vote on the Order was one in favor and one against, a vote which lacked approval from a majority. *Id.*

2. *Oklahoma Corporation Commission proceedings.* On September 14, 2015, the Applicants filed at the OCC their Application pursuant to OAC 165:5-17-2, a rule which allows the filing of an Application by “. . . any person, whether or not a party of record in the original cause.” App. 110. By their filing, the Applicants presented the needed evidence and legal basis required to remedy the intrinsic fraud utilized by SWBT to obtain ill-begotten orders and judgments from the OCC and the Oklahoma Supreme Court. *Id.* The Application sets forth Applicants’ legal standing for making the Application. *Id.*

The Applicants requested that the OCC vacate or modify its Order No. 341630 (subject to protecting the rights of innocent parties, if any), and that it reconsider certain of the issues which were determined therein. App. 110-111. Order 341630 was entered in

Cause No. PUD 260 on September 20, 1989. *Id.* Specifically, the Applicants sought to vacate or modify Section III, Part K of the Order determining the “Excess Revenues” as being \$7,847,172 for 1989, and each year thereafter, and also, Section IV, setting forth the OCC’s determination on how the revenue excess should be used. App. 111. The Application asserted that the (bribed) PUD 260 Order was obtained by intrinsic fraud. *Id.*

In the OCC proceedings, the Petitioners specifically raised the issue of their constitutional right to petition the government for the redress of grievances. *See Applicants’ Response to Motion to Dismiss*, filed November 2, 2015, pages 6-7.

On September 7, 2016, the OCC (majority) issued its Order No. 655899 summarily dismissing the Application *with prejudice*. App. 21-92. In its ruling, the OCC held that the underlying matter wherein the bribery occurred and on which the Petitioners sought review, was a legislative matter. App. 44-46. By summarily dismissing the Application “with prejudice” the OCC ruled that the Petitioners were forever barred from presenting further evidence or argument or further petitioning for redress of their grievance on this legislative matter.

3. *Oklahoma Supreme Court appeal.* The Oklahoma Supreme Court affirmed the OCC’s determination, to include the “with prejudice” bar to the Petitioners ever seeking further review of the legislative matter. App. 5, 13. In the Oklahoma Supreme Court appeal

proceedings, the Petitioners again specifically raised the issue of their constitutional right to petition the government for the redress of grievances. App. 126.



REASONS FOR GRANTING THE WRIT

- I. The Oklahoma Supreme Court has decided, in a published decision, an important question of federal law in a way that conflicts with the relevant decisions of this Court or in a way that has not been, but should be, settled by this Court; that is, the Oklahoma Supreme Court has wrongly held that citizens may be denied their right to petition a legislative body on a legislative matter notwithstanding the First Amendment right to petition for redress of grievances.**

It has been widely noted that the right to petition the government for redress of grievances is one of the most basic, but often overlooked and sometimes taken for granted, rights enshrined by the United States Constitution. It is described as being the fundamental basis by which more famous rights are based, and indeed, the very essence of what is a republic. Historically the right can be traced back to the Magna Carta and to the English Bill of Rights of 1689 which declared the “right of the subjects to petition the King.”

Denial of the right to petition the government was listed as grounds for the American Revolution in the Declaration of Independence of 1776. The right’s first

significant use in the United States was in the 1830s to advocate for the end of slavery. In 1836, the U.S. House of Representatives adopted a “gag rule” that tabled all anti-slavery petitions, a rule that was repealed by John Quincy Adams and others in 1844 on the basis that it was contrary to the right to petition government for the redress of grievances.

While the freedom of speech, the press, and of religion have been discussed by the United States Supreme Court far more often, the critical role played by the right to petition government for redress of grievances has not been ignored. It has been held that the First Amendment right of all citizens to “petition the Government for redress of grievances” is so fundamental as to be “implied by ‘[t]he very idea of a government, republican in form.’” *BE&K Const. Co. v. NLRB*, 536 U.S. 516, 524-525 (2002) (quoting *United States v. Cruikshank*, 92 U.S. 542, 552 (1876)). This core right is “one of ‘the most precious of liberties safeguarded by the Bill of Rights.’” *Id.* at 524 (quoting *United Mine Workers of America v. Ill. St. Bar Ass’n*, 389 U.S. 217, 222 (1967)). Indeed, one central aspect of the right to petition the government is the ability to seek redress in court. *Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011).

Free speech and the right to petition government for redress of grievances go hand in hand with one another; in fact, free speech is at its greatest in the context of holding government accountable. “[T]he Constitution created a form of government under which ‘[t]he people, not the government possess the absolute sovereignty.’” The “right of free public discussion of the

stewardship of public officials” is “fundamental.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 274-275 (1964) (quoting James Madison, Report of 1800, in 4 *Elliot's Debates on the Federal Constitution* 569 (1863)). Recognizing the important role that public criticism of government has played in holding government accountable, this Court “has frequently reaffirmed that speech on public issues occupies the ‘highest rung on the hierarchy of First Amendment values,’ and is entitled to special protection.” *Connick v. Meyers*, 461 U.S. 138, 145 (1983) (quoting *NAACP v. Clairborne Hardware*, 458 U.S. 886, 913 (1982)); *Snyder v. Phelps*, 562 U.S. 443, 451-452 (2011). At its core “[s]peech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people.” *Citizens United v. Federal Election Commission*, 558 U.S. 310, 339 (2010). The right to petition government is one means by which citizens can exercise their free speech rights and seek to hold officials accountable.

Using the right to petition government for redress of grievances, all citizens may speak out as critics of government officials and freely address matters of a public concern. *Lane v. Franks*, 134 S.Ct. 2369, 2377 (2014) (“Speech by citizens on matter of public concern lies at the heart of the First Amendment . . .”). Under the First Amendment’s free speech and right to petition guarantees, all citizens may present their grievances against the government for redress without fear of reprisal or retribution. *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government

may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”). Of course, government corruption is a matter of high public concern. As such, “speech concerning public affairs is more than self-expression; it is the essence of self-government.” *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964).

While some narrow limits to the right to petition government have been applied in some contexts, in the case of *sham judicial proceedings* for example, the Petitioners have found no legal authority or proper basis justifying the denial of the right to petition government in the context of *legislative matters*. In its ruling, the OCC held that the underlying matter wherein the bribery occurred and on which the Petitioners sought review, was a legislative matter. App. 44-46. The Oklahoma Supreme Court affirmed the OCC’s determination to include the “with prejudice” preclusion to the Petitioners ever again seeking further review of this legislative matter involving proven public corruption. App. 5, 13. Here, the Oklahoma Supreme Court has in a published opinion, setting future precedence, seemingly become the very first court in our nation’s history to *affirm the denial of a group of citizens’ right to ever further petition a legislative body on a legislative matter of obvious public importance*.

To be sure, Oklahoma public officials may be tired of being called to task for not bothering to fix a sixteen billion dollar fraud perpetrated against most of the citizenry of the State. Perhaps they are embarrassed or shameful for having failed to do so. The underlying

merits briefs filed by the Petitioners are attached hereto. App. 93-145, 146-198. Importantly, the underlying bribery at issue was proven in a federal district court criminal trial affirmed by the Tenth Circuit Court of Appeals citing the strength of the FBI Title III wiretaps of those involved. App. 106. The “overwhelming” legal merit of these briefs speaks for itself and, frankly, contrasts significantly with the sparse, weak and overly-defensive reasoning provided by the Oklahoma Supreme Court in its (majority) opinion. (Note the dissent of Chief Justice Combs.) *Cf.* App. 93-198 with App. 1-13. In this circumstance, however, and as relates to the issue of this appeal, the right of citizens to further petition their legislature for the redress of grievances (to include the proven bribery of a legislative body by regulated corporate entities) should be protected and held absolute.

In this matter, the Petitioners are mindful of what the United States Supreme Court said in *Smith v. Arkansas State Highway Employees, Local 1315*, 441 U.S. 463, 465 (1979), that while citizens can “speak freely and petition openly” which “is protected by the First Amendment” it is also true that “the First Amendment does not impose any affirmative obligation on the government to listen, to respond or, in this context, to recognize [citizens and their petition for redress of grievances].” In the last decade, Oklahoma has consistently been ranked as one of the most corrupt states in the Union. Petitioners, who are exceptionally civic-minded, hope that someday Oklahoma politicians will be “cognizant of and responsive to [the] concerns”

of their constituents; indeed, “[s]uch responsiveness [being] key to the very concept of self-governance through elected officials.” *McCutcheon v. FEC*, 134 S.Ct. 1434, 1462 (2014). If that day should come, or perhaps to help it come, the Petitioners want their First Amendment right to be able to further petition for the redress of grievances in this important legislative matter involving proven public corruption.

On September 14, 2015, the Applicants filed at the OCC their Application pursuant to OAC 165:5-17-2, a rule which allows the filing of an Application by “. . . any person, whether or not a party of record in the original cause.” App. 110. By their filing, the Applicants presented the needed evidence and legal basis required to remedy the intrinsic fraud utilized by SWBT to obtain ill-begotten orders and judgments from the OCC and the Oklahoma Supreme Court. The Application sets forth Applicants’ legal standing for making the Application. *Id.* In the OCC proceedings, the Petitioners specifically raised the issue of their constitutional right to petition the government for the redress of grievances. *See* Applicants’ Response to Motion to Dismiss, filed November 2, 2015, pages 6-7.

On September 7, 2016, the OCC (majority) issued its Order No. 655899 summarily dismissing the Application *with prejudice*. App. 21-92. In its ruling, the OCC held that the underlying matter wherein the bribery occurred and on which the Petitioners sought review, was a legislative matter. App. 44-46. By summarily dismissing the Application “with prejudice” the OCC ruled that the Petitioners were forever barred

from presenting further evidence or argument or petitioning for further redress of their grievance on this legislative matter involving proven public corruption.

The Oklahoma Supreme Court affirmed the OCC's Order to include the "with prejudice" bar to the Petitioners ever again seeking further review of the legislative matter involving proven public corruption. App. 5, 13. In the Oklahoma Supreme Court appeal proceedings, the Petitioners again specifically raised the issue of their constitutional right to petition the government for the redress of grievances. App. 126. Respectfully, a writ of certiorari should be granted because the Oklahoma Supreme Court, in a published opinion with precedential effect, has decided an important question of federal law in a way that conflicts with the relevant decisions of this Court, or in a way that has not been, but should be, settled by this Court.

The First Amendment to the United States Constitution provides:

"Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The Fourteenth Amendment to the United States Constitution further provides, in part:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the

State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

As reflected by the above cited authorities, it is not the law, nor should it be, consistent with the First Amendment to the United States Constitution, that citizens can be forever denied their right to further petition their legislatures or legislative bodies so to reform a legislative order only passed as a result of corporate bribery. Respectfully, the denial of such First Amendment rights to further petition the government for redress of grievances of a legislative matter on the basis that “too much time has passed,” or that “the matter has already been considered previously,” or for whatever other contrived excuse is given by public officials for why they do not wish to remedy a public injustice proven (and indeed, adjudicated) beyond any reasonable doubt, should not stand. Here, a writ of certiorari should be granted because denying citizens the right to further petition their legislative bodies on legislative matters involving proven public corruption threatens and undermines our very republican form of government; because proven corporate corruption of public officials should not be immune from further redress; and because SWBT’s pernicious actions at issue here were already proven beyond any reasonable doubt.

II. This case presents a matter of substantial public importance, both in terms of pecuniary damage done by Respondent Southwestern Bell Telephone Company and by the Respondent's harm to "the good order of society."

A. The pecuniary harm done by Respondent exceeds 16 billion dollars to Oklahoma ratepayers, including the United States Government.

This case involves perhaps the largest fraud ever perpetrated by corporate America. It involves the bribery of a public official essentially to steal what amounted to over one hundred million dollars (\$100,000,000) a year for nearly thirty years. Petitioner James Proctor served as the Director of the Public Utility Division, Oklahoma Corporation Commission, from 1990 to 1993. Because of his role and involvement in the regulatory matters before the Commission, he has extensive knowledge of events, details and complexities of the rate matters pertaining to SWBT. Mr. Proctor has over thirty years of experience in utility regulation matters, including experience in regulating public utility companies for two state utility commissions and as a regulatory consultant to state regulatory agencies; and, as a consultant to regulated utilities and utility subsidiaries, affiliates and partnerships.

Mr. Proctor, an expert in utilities regulation and highly knowledgeable concerning the facts of this matter, calculated the amount owed by SWBT to

Oklahoma ratepayers, including the Federal Government. On August 26, 1992, after extensive discovery, 37 days of witness testimony and lengthy hearings, the OCC unanimously approved its rate making Order in Cause No. PUD 662, Order No. 367868, which established SWBT's *annual* revenue excess to be more than \$100,000,000 based upon the actual data (not estimated data) for the complete test year 1989. App. 107. Applying the annual revenue excess as determined by the valid (unanimous) Commission Order No. 367868, with the approved 11.589% compounded annual interest rate as established in Commission Order No. 342343, Mr. Proctor has determined that the ratepayers of Oklahoma (to include the Federal Government) are due some **16 billion dollars**. App. 107, footnote 5.

It is a gross injustice that the Respondent has been successful in keeping its ill-gotten fortune notwithstanding that SWBT's bribery of Commissioner Hopkins was fully adjudicated and determined in the criminal trial brought in the United States District Court for the Western District of Oklahoma, CR-93-137-A. In this criminal proceeding, both Commissioner Hopkins and SWBT's attorney Anderson were found guilty of Accepting Money to Influence a Vote and Bribery, respectively, in violation of 18 U.S.C. § 666(a). The conviction of Commissioner Hopkins was affirmed by the Tenth Circuit Court of Appeals in its Order and Judgment filed February 14, 1996 (Case No. 95-6120), wherein the Court wrote, in part, "The 1991 tapes, properly admitted under Fed. R. Evid. 801(d)2(E), detailed efforts to conceal the payoffs from the FBI. From

those tapes [tapes of the FBI's Title III wire taps], the jury heard recorded conversations among Hopkins, Anderson, Murphy and other Southwestern Bell executives plotting their 'story' in the event federal agents questioned them." App. 106. From a merely monetary standpoint, the high importance of this case to the public interest warrants review on a writ of certiorari.

B. The harm done by Respondent to "the good order of society" warrants review.

Even if the United States Supreme Court were to consider the (bribed) PUD 260 Order to be like a Court Judgment (with the limitations to reconsideration that Judgments inherently present) or to consider the bribery issues in the context of SWBT's fraud on the Oklahoma Supreme Court (App. 109), the fact is that fraud is not "validated" by mere passage of time. The principle is perhaps best articulated by the distinguished jurist Justice Hugo Black, who writing the Opinion for the United States Supreme Court in the case *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244-245 (1944) wrote:

Federal courts, both trial and appellate, long ago established the general rule that they would not alter or set aside their judgments after the expiration of the term at which the judgments were finally entered. [Citation omitted.] This salutary general rule springs from the belief that, in most instances, society is best served by putting an end to litigation after a case has been tried and judgment

entered. This has not meant, however, that a judgment finally entered has ever been regarded as completely immune from impeachment after the term. From the beginning, there has existed along side the term rule a rule of equity to the effect that, under certain circumstances, one of which is after-discovered fraud, relief will be granted against judgments regardless of their term of entry. [Citation omitted.] This equity rule, which was firmly established in English practice long before the foundation of our Republic, the courts have developed and fashioned to fulfill a universally recognized need for correcting injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the term rule. Out of deference to the deep-rooted policy in favor of the repose of judgments entered during past terms, courts of equity have been cautious in exercising their power over such judgments. [Citation omitted.] But where the occasion has demanded, where enforcement of the judgment is “manifestly unconscionable” [Citation omitted.], they have wielded the power without hesitation. [Citation omitted.] [I]n cases where courts have exercised this power, the relief granted has taken several forms; setting aside the judgment to permit a new trial, altering the terms of the judgment, or restraining the beneficiaries of the judgment from taking any benefit whatever from it. But, whatever form of relief has taken . . . the net result in every case has been the same; where situation has required, the court has, in some

manner, devitalized the judgment even though the term at which it was entered had long since passed away.

Every element of the fraud here disclosed demands the exercise of this historic power of equity to set aside fraudulently begotten judgments. [. . .] Here, even if we consider nothing but Hartford's sworn admissions, we find a deliberately planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Appeals.

The Circuit Court did not hold that Hartford's fraud fell short of that which prompts equitable intervention, but thought Hazel had not exercised proper diligence in uncovering the fraud, and that this should stand in the way of its obtaining relief. We cannot easily understand how, under the admitted facts, Hazel should have been expected to do more than it did to uncover the fraud. But even if Hazel did not exercise the highest degree of diligence Hartford's fraud cannot be condoned for that reason alone. This matter does not concern only private parties. There are issues of great moment to the public in a patent suit. [Citation omitted.] Furthermore, tampering with the administration of justice in the manner undisputably shown here involves far more than an injury to a single litigant. *It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistent with the good order of society. Surely it cannot be that preservation of the integrity of*

the judicial process must always wait upon the diligence of litigants. The public welfare demands that agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud. (Emphasis added.)

As stated in *Hazel-Atlas*, the Respondent SWBT's proven corruption and fraud is of such a nature which "cannot complacently be tolerated consistent with the good order of society." App. 134. Here, SWBT's proven and undisputable fraud was "against the [very] institutions set up to protect and safeguard the public." *Id.* From the standpoint of harm done to "the good order of society," the high importance of this case to the public interest warrants review on a writ of certiorari.

◆

CONCLUSION

Respectfully, a writ of certiorari should be granted because the Oklahoma Supreme Court has decided, in a published decision, an important question of federal law in a way that conflicts with the relevant decisions of this Court or in a way that has not been, but should be, settled by this Court; that is, the Oklahoma Supreme Court has wrongly held that citizens may be denied their right to further petition a legislative body on a legislative matter notwithstanding the First Amendment right to petition for the redress of grievances.

A writ of certiorari should also be granted because denying citizens the right to further petition their

legislative bodies on legislative matters – especially matters involving proven public corruption – threatens and undermines our very republican form of government; because proven corporate corruption of public officials should not be immune from further redress; and because SWBT’s pernicious actions at issue here were already proven beyond any reasonable doubt. The high importance of this case to the public interest, both from a monetary standpoint and from the standpoint of harm done – now and in the future – to “the good order of society,” warrants review on a writ of certiorari.

Respectfully submitted,

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