

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

FEB 14 2017

MICHAEL S. RICHIE  
CLERK

#115765

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

SUSAN SPENCER, )  
CHERI CHANDLER, )  
Petitioners, )  
 )  
vs. )  
 )  
JUSTICE PATRICK WYRICK, )  
Respondent )

Case No. \_\_\_\_\_

PETITION FOR WRIT IN NATURE OF QUO WARRANTO,  
OR IN THE ALTERNATIVE, A WRIT OF PROHIBITION,  
BARRING RESPONDENT FROM EXERCISING AUTHORITY  
AS A JUSTICE OF THE SUPREME COURT OF OKLAHOMA

COME NOW, Susan Spencer and Cheri Chandler, Petitioners herein, by and through Brady R. Henderson and Ryan Kiesel of the American Civil Liberties Union of Oklahoma Foundation, and request that this Honorable Court assume original jurisdiction to try the title to the office of Justice of the Supreme Court of Oklahoma representing Supreme Court District 2, and to issue a writ in the nature of quo warranto or a writ of prohibition barring Respondent Justice Patrick Wyrick<sup>1</sup> from exercising authority of this office for which he is constitutionally ineligible. In support of this requests, Petitioners allege the following:

<sup>1</sup> When referring to Respondent by name, Petitioners will use the title "Justice," out of utmost respect for the institution of the Supreme Court and appropriate decorum. However, as Petitioners argue below, Respondent does not bear a legal right to said title. The use thereof should not be construed as any endorsement that Respondent bears any *de jure* title to the office of Supreme Court Justice, but is an acknowledgement of his *de facto* status until such time as it is reviewed by this Court.

## RELEVANT FACTS

1. Respondent Justice Patrick Wyrick was appointed on February 10, 2017, to fill the vacancy created in District 2 by the retirement of Justice Steven Taylor.
2. The Oklahoma Constitution requires that each of the nine justices of the Supreme Court be from a separate district within the state. Okla. Const. Art. VII, §2. Nine such districts are set out, corresponding to the nine justices of the Court.
3. The Oklahoma Constitution further requires that to be eligible to serve as a Justice of the Oklahoma Supreme Court, at the time of one's election or appointment, he or she "shall have been a qualified elector in the district for at least one year immediately prior to the date of filing or appointment..." among other requirements not pertinent to the present case. Okla. Const. Art. VII, §2.
4. The Oklahoma Constitution defines a qualified elector, *inter alia*, as a bona fide resident. Okla. Const. Art. III, §1.
5. This Court's prior holdings also require actual residency for qualified elector status. *See In Re: Initiative Petition No. 379*, 2006 OK 89, 155 P.3d 32.
6. District 2 includes the following counties exclusively: LeFlore, Haskell, Pittsburg, Latimer, Pushmataha, McCurtain, Choctaw, Bryan, Marshall,

Johnston, Atoka, McIntosh and Sequoyah. 20 O.S. §2. Neither Oklahoma County nor Cleveland County is included in District 2.

7. Respondent has not been a bona fide resident in Supreme Court District 2 for the requisite one year.
8. Instead, Respondent has been a qualified elector and resident of Cleveland County, Oklahoma, since 2008, where he maintains his home and family.
9. Respondent filled out and filed an Application for Oklahoma Judicial Vacancy (hereinafter "Application"), on or about October 27, 2016. A partially redacted copy thereof is attached as Exhibit 1 and hereby incorporated by reference.<sup>2</sup>
10. Respondent's Application is sworn and verified by notarized affidavit, in which Respondent swore under oath on October 27, 2016, "I have read the questions in the foregoing application and questionnaire and have answered them truthfully, fully and completely." Exhibit 1, at attached untitled affidavit.
11. On his sworn Application, Respondent swore to being a resident of District 2 "since birth." Exhibit 1, at ¶7.

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<sup>2</sup> For convenience, subsequent citations to Exhibit 1 will include Paragraph numbers corresponding to the numbered questions in the Application, unless noted otherwise.

12. On his sworn Application, Respondent listed a purported residence address in Atoka, Oklahoma. Exhibit 1, ¶7.
13. However, according to his sworn Application, as of October 27, 2016, Respondent was a resident of Oklahoma City, Oklahoma, not Atoka, Oklahoma. Exhibit 1, ¶13.
14. Also according to his sworn Application, Respondent has not lived in Atoka, Oklahoma, nor anywhere else in District 2, since 1999 or earlier, if at all. Exhibit 1, ¶13.
15. Respondent has worked fulltime in Oklahoma City, Oklahoma, approximately 130 miles from Atoka, since August 2008.
16. Respondent has maintained no fulltime employment in Atoka during this period.
17. Respondent has in fact been a resident and qualified elector of Cleveland County, Oklahoma from 2008 to on or after September 19, 2016.
18. Respondent married Jamie Marie Talbert per a marriage license issued in Oklahoma County, Oklahoma, in August 2004.
19. Respondent and his wife cohabitate and raise children in the same household. They are neither divorced nor separated.

20. Respondent's wife works as a physical therapist in the Oklahoma City metropolitan area. She neither has been, nor is now employed in the Atoka area.
21. Respondent and his wife purchased a residential home at 2921 SE 27<sup>th</sup> Street in Moore, Oklahoma, within Cleveland County, as joint tenants on or about August 15, 2008, for a sale price of \$310,000.
22. Respondent and his wife lived in the home at 2921 SE 27<sup>th</sup> Street in Moore Oklahoma until at least November 2015.
23. Throughout Respondent and Mrs. Wyrick's residency at 2921 SE 27<sup>th</sup> Street, the home's address was listed as the couple's mailing and legal address for property tax purposes. No address in Atoka or otherwise outside Cleveland County was utilized.
24. Respondent and his wife sold their home at 2921 SE 27<sup>th</sup> Street in March, 2016, for \$295,000.
25. Respondent and his wife purchased a residential home at 13609 Portofino Strada, in Oklahoma City, within Cleveland County, on or about November 20, 2015, for a sale price of \$495,000.
26. The Portofino Strada home's address was listed as the couple's mailing and legal address for tax purposes. No address in Atoka or otherwise outside Cleveland County was utilized.

27. Respondent registered to vote as a resident of Cleveland County on or about October 19, 2000, listing his residence as 3000 Chautauqua, #107, Norman, Oklahoma.
28. On or about May 1, 2012, Respondent updated his residence of registration to 2921 SE 27<sup>th</sup> Street in Moore, Oklahoma. In his registration document, he swore under penalty of perjury to reside at this 27<sup>th</sup> Street address as of April 2012.
29. Respondent remained registered at the 27<sup>th</sup> Street address until September 2016.
30. Respondent voted eight times as a sworn resident in Cleveland County during the period he now swears under penalty of perjury (in Response #7 of his Application) to having been a resident of Atoka County. The elections in which he voted in Cleveland County were held:
  - a. November 7, 2000 (in person)
  - b. July 27, 2004 (absentee)
  - c. November 2, 2004 (absentee)
  - d. November 7, 2006 (in person)
  - e. November 4, 2008 (in person)
  - f. November 2, 2010 (in person)
  - g. March 6, 2012 (in person)

h. June 24, 2014 (in person)

i. March 1, 2016 (in person)

31. There is no record of Respondent ever voting in Atoka County.
32. There is no record of Respondent's wife of 12 years voting or being registered to vote in Atoka County at any time.
33. Respondent's wife registered to vote as a resident of Cleveland County in 2004, and still maintains this registration today. She has registered swearing to reside at the 27<sup>th</sup> Street and then Portofino Strada addresses, respectively.
34. Respondent's wife voted as a sworn resident of Cleveland County eight times from 2004 to the present, the most recent of which was on November 8, 2016.
35. Respondent's wife continues to live and maintain her voter registration at 13609 Portofino Strada, in Oklahoma City, Oklahoma. There is no record of the couple filing for divorce or legal separation.
36. On his sworn and notarized Oklahoma State Bureau of Investigation Release from Liability and Authorization for Background Investigation for the Oklahoma Judicial Nominating Commission, Respondent gives his address as within Oklahoma City, Oklahoma, as of October 27<sup>th</sup>, 2016.
37. On an IRS Form 4506-T (Request for Transcript of Tax Return) submitted with his application to the Judicial Nominating Commission in October 2016, Respondent gives his current address as Oklahoma City, Oklahoma.

38. Respondent's first pertinent claim to asserting legal residency in Atoka, Oklahoma, was in September 20, 2016, when he transferred his voter registration to Atoka, Oklahoma.
39. The property in Atoka at which Respondent registered to vote and by doing, swore to residing at the same, was not Respondent's actual residence.
40. An interest in the property in Atoka at which Respondent registered to vote was transferred to him via quitclaim deed by other members of the Wyrick family with the notation on the deed that "the property is not currently a homestead." This transfer occurred sometime in between March and August 2016.
41. Respondent Wyrick's family continues to reside, live, work, and interact with their local community institutions in Cleveland County, Oklahoma.

#### JURISDICTION AND VENUE

42. Petitioners are lawful residents and registered voters of the Second Supreme Court District.
43. Petitioners' and all those similarly situated as resident of the Second Supreme Court District have suffered injury to their right of representation on the State Supreme Court, which is equal to the rights of the citizens of Oklahoma's other eight districts.



44. Jurisdiction and venue are both proper in this court under the provisions of 12 O.S. §1531 et seq. as well as this Court's jurisdiction conferred in Article VII, §1 of the Oklahoma Constitution.

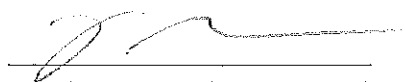
#### CAUSES OF ACTION

45. Since Respondent is not constitutionally eligible to be seated as a Justice of the Oklahoma Supreme Court from the Second District, but has been appointed and sworn to the same, this triggers Oklahoma's quo warranto statute, which allows an action to be brought contesting title to office, "when any person shall usurp, intrude into, or *unlawfully hold or exercise any public office...*" 12 O.S. §1532 (emphasis added).
46. In the alternative, should this Court determine that a writ in the nature of quo warranto pursuant to 12 O.S. §§1531-1535 is inappropriate for whatever reason, a writ of prohibition could and should be issued to bar Respondent from extra-legal exercise of authority prohibited to him by Article VII, §2 of the Oklahoma Constitution.

WHEREFORE, premises considered, Petitioners request that this Honorable Court issue a writ in the nature of quo warranto or in the alternative, a writ of prohibition, to prevent Respondent from exercising the authority of an office to which he is not constitutionally entitled. Petitioners hereby also request an evidentiary hearing and the allowance of discovery, should Respondent contest any of the factual allegations

detailed above. Petitioners reserve the right to further plead as necessary to conform to any subsequently ascertained evidence.

Respectfully submitted,



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