IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE HONORABLE HARRY E. COATES, as a member of the Senate of the State of Oklahoma, THE HONORABLE EMILY VIRGIN as a member of the House of Representatives of the State of Oklahoma, PROFESSIONAL FIRE FIGHTERS OF OKLAHOMA, a not-for-profit Oklahoma Corporation by and through its President, RICK BEAMS, who also appears as an individual,	)	
Petitioners,	)	
v.	)	Sup. Ct. Case No. O-112167
THE HONORABLE MARY FALLIN, in her Official Capacity only as Governor of the State of Oklahoma, THE HONORABLE E. SCOTT PRUITT, in his Official Capacity only as Attorney General of the State of Oklahoma,	)	
Respondents.	)	

BRIEF OF INTERVENOR RESPONDENT OKLAHOMA INJURY BENEFIT COALITION, INC.

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INTRODUCTION

This case involves a direct challenge to the Oklahoma Legislature's ability to offer employers options for providing workers' compensation to its employees. At base, Petitioners seek a judicial mandate that workers' compensation must be provided by one method, i.e., a government-regulated program. Oklahoma law, however, has traditionally allowed options for employers when addressing the public good of workers' compensation. *Adams v. Iten Biscuit Co.*, 1917 OK 47, 162 P. 938, 939. The current alternative coverage—or "Option"—provision of the new workers' compensation law—SB 1062, codified at 85(A) O.S. 2013 §§ 202-211—is no different in that respect. As was the case in *Iten Biscuit*, employers have the choice of participating in the traditional government-regulated system—the "Administrative Act"—or providing benefits under an employer-sponsored occupation injury benefit plan.

Crucial to the instant case is the fact that the Option provides the same compensation and same terms of payment as the Administrative Act, mirroring the workers' compensation legislation that this Court deemed constitutional in *Iten Biscuit*. *See* 162 P. at 939. At the same time, it creates competition in the workers' compensation insurance market that will have the effect of lowering rates—and Oklahoma's are currently the sixth highest in the country.

This Court's job, however, is not to decide if the new law is a good idea. *See Iten Biscuit*, 162 P. at 946 ("[W]ith the wisdom or policy of the [workers' compensation] legislation we have no concern."). That work is best left to the political branches and, in this case, the will of the people was overwhelming.[1] Petitioners now seek a judicial veto of the

[1] SB 1062 passed the Senate by a vote of 35-12 and the House by a vote of 74-24.

new law but fail to appreciate this Court's clear instruction that "[e]very presumption is to be indulged in favor of the constitutionality of a statute." *Douglas v. Cox Retirement Props., Inc.*, 2013 OK 37, ¶ 3, 302 P.3d 789, 792 (citing *Thomas v. Henry*, 2011 OK 53, ¶ 8, 260 P.3d 1251, 1254). While Petitioners offer a host of arguments against SB 1062, each and every one is based primarily on either a misunderstanding of Oklahoma law or this Court's prior decisions. Precedent and judicial modesty thus counsel against accepting any part of the "kitchen sink" attack here that would undermine a law so beneficial to Oklahoma's economy.[2]

RELEVANT BACKGROUND

Under Oklahoma's new workers' compensation law, employers may now choose to use the administrative system sponsored by the State to cover workers' compensation claims, or to exit the government system and administer an employer sponsored benefit plan. This private benefits program—much like health insurance—can either be insured by an outside, private company or self-insured by capable employers. These programs are further backed through a guaranty fund established within the Office of the State Treasurer to protect against insolvency.

While the employer has some discretion with respect to how the plan functions, the same benefits for employees available under the administrative system must be available for the non-system employees on a regardless-of-fault basis. Dollar amounts, percentages, and duration limits of the non-system programs must match or exceed the administrative amounts and review processes in the courts remain available to all workers' compensation-eligible employees.

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[2] So as not to repeat arguments of the other parties or otherwise burden the Court, this brief will focus on rebutting Petitioners' challenge to the Option.

ARGUMENT

Petitioners appear to raise five broad-based challenges to the "Option" (or "alternative coverage") provisions of SB 1062: (1) arguments that the new law is an unconstitutional "special law;" (2) an alleged denial of Oklahoma citizens' rights to access the courts and to receive speedy and certain relief; (3) due process claims; (4) separation-of-powers arguments; and (5) a charge that the law violates the "Single Subject Rule." Each of these challenges fails.[3]

I. THE OPTION IS NOT A PROHIBITED "SPECIAL LAW" UNDER THIS COURT'S PRECEDENT

Petitioners first argue that the Option is a special law, prohibited under Article 5, §§ 46, 51, & 59, of the Oklahoma Constitution. Pet. Br. 9-10, Pet. 35-37. But a close look at the case law offered in support demonstrates that this argument is wrong.

The three-prong test for resolving this issue is: "1) Is the statute a special or general law? 2) If the statute is a special law, is a general law applicable? And 3) If a general law is not applicable, is the statute a permissible special law?" *Reynolds v. Porter*, 1988 OK 88, ¶ 13, 760 P.2d 816, 822. In *Grant v. Goodyear Tire & Rubber Co.*, 2000 OK 4, 5 P.3d 594, this Court held that a law allowing only individual self-insured employers to receive the benefit of a credit for injury benefit overpayments was unconstitutional because it was a special law that replaced a general law for a select group and gave no rational justification for doing so. *Grant*, 2000 OK 4, ¶ 8, 5 P.3d at 597-98. The law at issue here, in contrast, easily passes constitutional muster under *Reynolds*' three-prong test.

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[3] A good deal of Petitioners' brief (and petition) merely lists provisions of the new law and tacks labels on them that, if accurate, would invalidate those provisions. Even if this Court may consider points *sua sponte*, it is inappropriate for Petitioners to state legal conclusions without offering arguments in support of those claims and telling that they were unable to do so.

First, the new workers' compensation coverage option is a general law because "it relates to persons or things ***as a class*** rather than relating to particular persons or things. A statute is a special law where a part of the entire class of similarly affected persons is separated for different treatment." *Grant*, 2000 OK 4, ¶ 8, 5 P.3d at 597-98 (citations omitted) (emphasis added). The availability of the Option to the entire class of employers required to have workers' compensation coverage makes it a general law with respect to them.[4] *See* § 202.

In *Grant*, the benefit received by the employer was based on a pre-existing status that had been singled out by a new law for preferential treatment. That does not occur here, though, as it is the employers—not the Legislature—that separate themselves. Petitioners themselves acknowledge this election, Pet. Br. 9, but apparently fail to realize that a special law must involve special treatment of a legislatively acknowledged, pre-existing group. Yet if no employer chose one of the additional forms of workers' compensation coverage, every one of them would fall into the administrative act. There are no pre-existing groups receiving preferential treatment and, therefore, it cannot be a special law.

Furthermore, any benefit accruing to the employer comes only by virtue of the employer's decision to provide workers' compensation coverage under an employer-sponsored benefit plan and, most importantly, by managing claims in an efficient and responsible manner under the plan. This is no more a special law than allowing certain employers to self-insure as opposed to purchasing workers' compensation insurance

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[4] If Petitioners are correct, the previous version of workers' compensation was also unconstitutional since not all employers (e.g., ranchers) were required to have workers' compensation coverage. In fact, under Petitioners' theory, Oklahoma has ***never*** had a constitutional workers' compensation scheme. That cannot be correct.

coverage. The employee is covered under either scenario. The Legislature offered the same choice to every employer in the class; no one is getting special treatment.

Likewise, no employees are singled out for disparate treatment under the law since the entire group is entitled to ***at least*** the same coverage available under the previous workers' compensation system and the same ability to challenge adverse injury benefit determinations. *See* §§ 209 & 211; *see also* Part II *infra* (discussing appeals process for injury benefits claims). Importantly, not only is the coverage the same, but the new law also insures the money available to injured workers by establishing guarantee funds to which qualified employers must make contributions. §§ 205-208.

Petitioners might have a point if, say, workers whose employers choose the Option received smaller injury payments or could not appeal adverse determinations. *Cf. Grant*, 2000 OK 4, ¶ 10, 5 P.3d at 598 (holding law unconstitutional because it statutorily limited a certain reimbursement to a particular group of employers within the class of "employers required to carry workers' compensation insurance"). But because everyone in the class here of "employees at companies required to carry workers' compensation insurance" is treated equally, it is incorrect to argue that this law preferences some employees over others.

To be sure, in establishing their own plans, some employers may choose, under the law, to grant more benefits to their employees. This, however, is decided by employers, not lawmakers—and thus is perfectly constitutional. The fact that private choices may result in better outcomes for some in the group does not mean that the Option is a "special law" under the Oklahoma Constitution.

For example, a company might choose to be a limited liability corporation rather than a limited liability partnership for tax purposes (and decide to pass the savings along to its

employees in the form of higher salaries). Because the choice is available to all similarly situated groups, it is not a special law. Likewise, where a company is required to pay 7.5 percent of an employee's salary toward Social Security, the requirement is not rendered unconstitutional simply because the company can offer to pay the entire 15 percent on behalf of the employee.

Even if the alternative coverage option were a special law, which it is not, it would still be constitutional because it is "reasonably and substantially related to a valid legislative objective." *Id.* The Oklahoma Legislature certainly had the right to be concerned with a workers' compensation system that was among the most costly and inefficient programs in the entire nation. *See* Press Release, Gov. Mary Fallin, Gov. Fallin Signs Into Law Historic Workers' Comp Reform (May 6, 2013) (available at http://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=223&article_id=11749). Oklahoma's workers' compensation system was broken and special laws are permitted "when there are special evils with which existing general laws are incompetent to cope." *Williams v. Mayor & City Council of Baltimore*, 289 U.S. 36, 46 (1933).

Here, allowing employers to choose alternative coverage for their workers' compensation needs will create competition and drive down costs. *See* Nat'l Council on Comp. Ins., Oklahoma Evaluation (Sept. 2013) (concluding that the new measures will result in a 12.7 percent reduction of workers' compensation premiums in 2014). Lowering costs is surely a valid legislative objective for lawmakers in Oklahoma and, because employees are treated equally, there is no countervailing interest that might otherwise weigh against the Legislature's ability to enact the law.

For the same reasons, Petitioners are incorrect to argue that the Option violates § 51 of Article 5 of the Constitution—prohibiting special laws that grant special privileges. Pet. Br. 9-10. To begin, under this Court's precedent, it is inaccurate to call the Option a special law; both employers and employees are ensured treatment equivalent to the other members of their class. Furthermore, the law grants no legislative favors or special privileges to any specific groups. *See McCarroll v. Drs. Gen. Hosp.*, 1983 OK 54, 664 P.2d 382, 386 (holding that a law made an impermissible distinction between groups by a "legislative grouping of health care providers into a class for special legislative treatment"). Employers choose which option to take, if any, and are then held accountable for ensuring the same benefits under any plan.[5]

It is also inaccurate to say that the law allows an unconstitutional control of court jurisdiction or rules, a violation of § 46 of Article 5. Pet. Br. at 9-10. First and foremost, this is not a special law. *See Zeier v. Zimmer, Inc.*, 2006 OK 98, ¶ 13, 152 P.3d 861, 867 (holding statute unconstitutional because it treated legislatively described groups differently). The law only excludes courts, agencies, and the Commission from making rules "related to design, documentation, implementation, administration or funding of a qualified employer's benefit plan." §§ 202(D) & 209. The law does not shield employee-benefit claims from judicial review, *see* Part II *infra*, and so it changes nothing about the people or types of cases on which the state courts exercise jurisdiction.

Furthermore, the law only limits adjudicators from interfering with how employers set up their benefit plans. Because this administrative task is not the province of the judiciary

[5] Petitioners' equal protection claims fail for the same reason. Each employer can choose to continue making worker injury insurance premiums to the state, or to pay the premiums to insurance companies; the only employers who are exempt are the same ones that have always been exempt. Employers and employees are thus equally protected under the law.

in any event, *cf. Okla. Tax Comm'n v. City Vending of Muskogee, Inc.*, 1992 OK 110, 835 P.2d 97, 99 (accepting ALJ's role in the administrative state as not interfering with the job of courts), the Option is not a special law infringing on the court system. Judges will still be free to rule on the adequacy of an employee benefit plan even if they cannot coerce an employer to accept a certain type funding for the plan, for instance. And, of course, any state-created right (like workers' compensation) may permissibly be administered according to the rules established by the Legislature. *See, e.g., Pine v. Davis*, 1944 OK 10, 145 P.2d 378, 380. This includes administrative processes such as establishing commissions or administrative law judges to hear claims. It is no more an affront to § 46 than is requiring the exhaustion of administrative remedies before a plaintiff can file suit.

The Constitution's prohibition on special laws expresses the intent of the Oklahoma framers that all citizens should receive equal rights and that no legislative favors should be granted to the few. *Grant*, 5 P.3d at 598. So while the Legislature has the power to require all employers to purchase workers' compensation insurance coverage, it does not have the power to select only certain groups within those employers who must purchase workers' compensation insurance. The Option does not do that. Rather than singling any group out for special treatment, the Legislature offered the same choice to the entire group—so long as employee coverage remains unaltered. To treat the law as "special" in this context would thus run contrary to the definition set out in the Constitution and expounded in this Court's precedent.

II. THE OPTION DOES NOT ALTER OKLAHOMA CITIZENS' RIGHT TO ACCESS TO THE COURTS WITHOUT DELAY

Because it is well understood that Oklahoma courts will be open to provide speedy and certain remedy for wrongs or injuries, section 211 was drafted to ensure a quick and

certain path to review the denial of employees' claims. While Petitioners charge that the "Act creates an 'impermissible hurdle unconstitutionally restricting' an employee's access to the courts, as well as to the Commission," Pet. Br. 11-12, they do not offer much exposition of how or why they think this happens. *See* note 3 *supra*. The brief somewhat describes the steps that an employee must take before bringing a claim to Oklahoma courts, but it is unclear how it is different than the previous version of workers' compensation in Oklahoma or any other administratively processed claims. That is perhaps not surprising, given that such provisions are long standing in Oklahoma law and do not violate the Constitution. *See Iten Biscuit*, 1917 OK 47, 162 P. 938 at 939 ("That [the Constitution's guarantee of open courts and speedy relief] was a mandate to the judiciary and was not intended as a limitation upon the legislative branch of the government seems clear.").

To understand how the new law offers ready access to the courts, it is helpful to have at hand an accurate description of the rights afforded an injured worker. *See* § 211. If an employee is injured, he first brings the claim to his employer who can either pay the benefit or notify the employee in writing within 15 days of an adverse decision on the claim. The employee then has six months to seek review of the claim with an in-house committee that does not include the initial person who ruled on the claim. That committee has 45 days—from the date the employee contests the adverse decision—to make a ruling on the claim.

This gives an employer only 60 days to decide a request for injury benefits before the claim goes outside the company; any additional time is only because of a delay by the employee in bringing the claim before the review committee. If any part of the benefit request is denied by the committee, appeal is immediately available to the en banc Administrative Commission, § 211(B)(5), which is a state court of competent jurisdiction

under § 1 of Article 7 of the Constitution much like the Workers' Compensation Court was a specially established court under the previous version of the Oklahoma law. Appeal from that court is available to this Court.[6] § 211(B)(7). This is similar to the appeal procedures under the previous system.[7]

The speed and efficiency built into the system for processing benefit claims and providing review in state court are hallmarks of a constitutional process. To begin, an employee can be in front of the Commission within 60 days of first filing a claim with his employer. The claim then goes directly to an Oklahoma court with review available in this Court. Petitioners do not challenge the Commission as an appropriate court, only the ability to get there. *See* Pet. Br. 11-12. Within two months of the first request for injury benefits, however, the employee can be before a state court.

Unless Petitioners are arguing that Oklahoma must return to the pre-workers' compensation era when employee claims went straight to court, 60 days to process a claim cannot amount to a denial of justice. Even in the traditional model of workers' compensation, workers must traverse administrative barriers for a workers' compensation claim; the point is that those barriers are far less onerous than litigating an injury claim. In this, the new law is no more demanding (and no less constitutional) than its predecessor.

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[6] The Act also contains a provision allowing review of the committee decision in state district court if any of the other review provisions are deemed unconstitutional or unenforceable. § 211. Because the Legislature has control over the provisions of workers' compensation, it has the authority to funnel claims and initial appeals into either state or administrative courts. *Hefley v. Neely Ins. Agency, Inc.*, 1998 OK 12, ¶ 7, 954 P.2d 135, 137; *Pine v. Davis*, 1944 OK 10, 145 P.2d 378.

[7] 85 O.S. § 340.

III. THE OPTION DOES NOT DENY OKLAHOMA CITIZENS' RIGHT TO DUE PROCESS

Oklahoma's new workers' compensation law does not deny any individual either a procedural or substantive right to due process of law. Petitioners contend, primarily, that the Option violates due process because the "Legislature is eliminating an Oklahoma worker's right to be heard before a fair and impartial tribunal" in that the "Act empowers a qualified employer to act as legislator, adjudicator and litigant with regard to certain basic litigation and personal rights of an injured employee." Pet. Br. 12-13.[8] This argument seems to be based on a misunderstanding that the "appeals committee" controls the ultimate disposition of an employee's claim and would be subject to "facial partiality." Pet. 39.

An understanding of the review process through which injury benefit claims move under the new law demonstrates that Petitioners' arguments lack merit. Although there is an in-house committee that reviews the benefit request denial, that is merely the first step in the employee's appeal rights. Furthermore, it promotes the proper determination of benefits by the employer. Allowing the employer a chance to re-evaluate the decision before sending claims to court is not unconstitutional, nor does it prejudice the employee's right to judicial review. Until the employer has made a final decision, there is no claim for the employee in state court anyway.

Had the Oklahoma legislature created a system whereby that committee made some sort of final determination on the employee's rights, Petitioners' worries about a fair and impartial tribunal might make more sense. But that is not the system in place. The new law

[8] A secondary claim is raised against the entire law—not just the Option portion—claiming vagueness and overbreadth with respect to the terms and provisions used in the statute. Without a single example of such terms or provisions, however, this claim is waived. Respondents and this Court should not have to guess what Petitioners' argument is.

provides employers with two months to fully process a denial of benefits; then a state-created court, outside the company, can hear an employee's challenge and make an objective determination of the committee's recommendation. § 211(B)(5).

Due process (or equal protection) violations simply do not occur where, as here, the rights of employees are statutorily guaranteed to be enforced to the same extent as other employees covered by workers' compensation. The Option here works, in a sense, like health care coverage—and qualified employers must provide coverage for injuries with dollar, percentage, and duration limits at least equal to or greater than those contained in the regular administrative system, along the statutorily prescribed remedies described above. § 203(B), § 201. This coverage is backed by guarantee funds, established by the new law, to which qualified employers contribute. §§ 205-208. Petitioners' claims fail to recognize that Oklahoma has always allowed coverage options in workers' compensation settings. The new law simply (and permissibly) allows employers to provide workers' compensation benefits to workers in more than one method, just as permitted in *Iten Biscuit*. *See* 162 P. at 939.

IV. THE OPTION DOES NOT VIOLATE SEPARATION OF POWERS

SB 1062 follows in the steps of previous workers' compensation laws that provided for legislatively created courts to adjudicate injury benefit claims. Petitioners are correct that the "separation-of-powers doctrine interdicts legislative intrusion upon the functions assigned to the judiciary by the constitution," *Yocum v. Greenbriar Nursing Home*, 2005 OK 27, ¶ 13, 130 P.3d 213, 220, but then fail to offer any support of their claim against the Option on this ground. Specifically, Petitioners assert that the Option provisions "repeatedly and impermissibly mix executive and legislative functions," Pet. Br. 14, but offer only one example that is woefully inadequate on its face—the new law's requirement of a transcript

for cases docketed in this Court. § 211(C). Under well-established Oklahoma law, Petitioners' arguments are both overstated and unavailing.

To begin, even accusing OS § 203, *see* note 3 *supra*, as violating separation of powers misapprehends the nature of workers' compensation. The Option's instruction that courts cannot promulgate rules or procedures related to the design, documentation, implementation, administration or funding of a qualified benefit plan is not a separation of powers violation because the Legislature has the ability to create the right and, thus, has the ability to control its implementation. *See Iten Biscuit*, 162 P. at 944 (holding that the Legislature may fix recovery amounts "where the injury happens in that class of employments subject to legislative regulation and control"). As already discussed, designing, implementing, administering, and funding benefit plans are not the province of the judiciary, just as under current law company procedures for reporting claims, choosing a treating physician, or selecting what type of insurance coverage to carry are not prescribed by the judiciary. Accordingly, there is no separation of powers issue here.

Plaintiffs' attack on §§ 209-210 fares no better because there is no common-law or court-created right to workers' compensation. The Legislature can design the system it deems most appropriate so long as it provides for any common-law right for a negligence claim that an employee would otherwise have. As already demonstrated above, such a claim is provided for at least as well under the new law as it was under the previous version of workers' compensation. Therefore, the ability to create—and thus control—workers' compensation in general prevents this portion of the law from violating separation of powers.

Petitioners' only concrete argument on this score focuses on the transcript requirement in § 211(C). According to Petitioners, that requirement amounts to a

constitutional separation-of-powers violation because appellate courts allow litigants to decide whether a transcript is necessary under their rules. *See* Okla. S. Ct. R. 1.28-1.31. That argument, among other things, misses the point of this Court's Rules. A record of some sort is always required, with narrow exceptions as far as transcripts are concerned that would not come into play in workers' compensation claims—at least not ones that went through the process laid out in § 211.

Even assuming, though, that this *de minimus* requirement is worth judicial consideration, it hardly violates separation of powers. Any state-created right may be administered according to the rules established by the law-making body. And this includes the initial administrative processes.

V. THE OPTION DOES NOT VIOLATE THE SINGLE-SUBJECT RULE

The various provisions of the new workers' compensation law at issue in this case are all interrelated pieces of a whole: the germaneness test for the single-subject rule is thus met. Petitioners' claim of "log-rolling," Pet. Br. 15, fails because various parts of the law are not only germane to one another, they are also flip sides of the same coin. *Cf. State ex rel. Ohio AFL-CIO v. Voinovich*, 631 N.E.2d 582, 586 (Ohio 1994) ("Although the provisions embrace more than a singular topic, they do have a common purpose: to amend and reform the laws governing the compensation of injured workers and to fund the two agencies that are charged with administering those laws. And they all have a clear common relationship, namely workers' compensation."). The new system here is aimed *in toto* at updating the state workers' compensation system to make it less costly and more efficient. The alternative coverage provision does exactly that.

Petitioners' claim that the Option was "enormously unpopular" as evidenced in the 2012 legislative session is not only false, but irrelevant to this inquiry.[9] Only the question of the different provisions' "germaneness" to one another matters, and that test is amply satisfied here. It is not "log-rolling" to explain the alternative choices to traditional workers' compensation coverage within the same legislation that is outlining workers' compensation. *See* Br. of Intervenor Respondent Chambers of Commerce.

CONCLUSION

For the foregoing reasons, Petitioners' claims fail as a matter of law and should be dismissed.

[9] HB 2155, which contained only an alternative workers' compensation option, passed the Senate 28-17 and failed in the House 50-42.

Date: November 7, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2013, a true and correct copy of the foregoing was mailed by First Class U.S. Mail, postage prepaid, addressed to the following:

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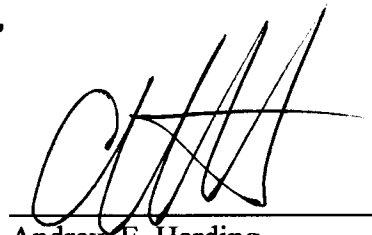

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