

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE HONORABLE HARRY E.)
COATES, et al.,)
)
Petitioners,)
)
v.) No. 112,167
)
THE HONORABLE MARY FALLIN,)
et al.,)
)
Respondents.)

**AMICUS CURIAE BRIEF OF NATIONAL FEDERATION OF
INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER
IN SUPPORT OF RESPONDENTS**

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November 7, 2013

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AND OTHER AUTHORITIES**

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I. Introduction

National Federation of Independent Business Small Business Legal Center (“NFIB Legal Center”) urges this Court to hold that the Oklahoma legislature has the power to modernize the state workers’ compensation system into an administrative system. The Oklahoma Constitution’s single subject rule permits the legislature to enact comprehensive reforms so long as they concern a single subject. The legislature did just that by enacting Senate Bill 1062, constructing an administrative system governing workers’ compensation claims.

The new administrative system also provides constitutionally-required access to the courts. Because all decisions are ultimately reviewable by this Court, no person will be denied access. The Oklahoma Constitution requires no more than a review of state agency decisions under the Oklahoma Administrative Procedures Act (“OAPA”).

NFIB Legal Center appears as amicus to discuss the legislature’s effort to assist small businesses by reforming the comparatively expensive judicial workers’ compensation system into an administrative system. “It is not the place of the Supreme Court or any court to concern itself with a statute’s propriety, desirability, wisdom or its practicality as a working proposition; such questions are plainly and definitely established by fundamental law as functions of the legislative branch of government.” *Thomas v. Henry*, 2011 OK 53, ¶32, 260 P.3d 1251, 1262. The Petitioners failed to carry the “heavy burden” cast upon them to show Senate Bill 1062 is unconstitutional. *Douglas v. Cox Retirement Properties, Inc.*, 2013 OK 37, ¶3, 302 P.3d 789, 792 (internal quotations and citations omitted). Indulging “[e]very presumption in favor of the constitutionality of a statute,” this Court ought to reaffirm the legislature’s ability to craft an administrative workers’ compensation system. *Id.*

II. Adopting An Administrative Workers' Compensation System Required Addressing Many Issues That All Relate To A Single Subject

A. Workers' Compensation is a Single Subject

The legislature “clearly expressed” Senate Bill 1062’s one subject in its title: “Worker’s Compensation.” Okla. Const. art. 5, § 57. Previous reforms of Oklahoma workers’ compensation system were not struck down for violating the single subject rule. *See, e.g.*, 2011 Okla. Sess. Laws § 318 (149-page reform). Given the numerous recent reform efforts and the vigorous public debate, Oklahoma legislators and voters were “adequately notified of the potential effect of the legislation.” *Douglas*, 2013 OK 37, ¶4, 302 P.3d at 792.

The legislature’s primary purpose – switching from a judicial to an administrative system – concerns a single subject. The benefits derived from ending the adversarial system, including minimizing the costs of hiring multiple attorneys and doctors, were discussed broadly in the media. *See, e.g.*, Randy Ellis, *Senate Unveils Workers’ Compensation Overhaul Bill*, *The Oklahoman*, Feb. 18, 2013 (discussing cost comparisons between Oklahoma’s adversarial system and Arkansas’s administrative system); Randy Ellis, *Firefighter’s Case Highlights Oklahoma Workers’ Compensation Controversies*, *The Oklahoman*, Mar. 18, 2013 (describing how the proposed reform would “dramatically reduce the role of workers’ compensation attorneys and the pay they could expect to receive”); Mike Neal, *Workers Comp Reform Key To State’s Future*, *Tulsa World*, Mar. 23, 2013 (“As one of only two remaining judicial-based workers compensation systems in the U.S., Oklahoma’s system is antiquated and creates an adversarial environment which pits employers and employees against each other. The result of this adversarial system is soaring costs for both employers and employees”); Randy Krehbiel, *House Members Make Changes To Senate Workers Comp Bill*, *Tulsa World*, Apr. 5, 2013 (“The State Chamber and other business

organizations have for decades argued that Oklahoma’s workers comp insurance rates are prohibitively high, largely because of a system that they say encourages litigation and duplicative medical examinations.”); Michael McNutt, *Oklahoma House Approves Workers’ Compensation Measure*, *The Oklahoman*, Apr. 25, 2013 (“Oklahoma has the sixth-highest workers’ compensation rates in the nation for employers, which is a major deterrent to businesses operating in the state”); *see also* State Chamber of Oklahoma, *Workers’ Compensation*, <http://www.okstatechamber.com/workcomp> (listing numerous media articles about reform efforts).

Oklahoma think tanks also debated the merits of reform in multiple analyses. *See* Gene Perry, *In The Know: Workers’ Comp Topic Of Bill Flurry*, Oklahoma Policy Institute, Jan. 22, 2013 (“Another bill, by Rep. Mark McCullough, R-Sapulpa, would create an administrative system overseen by a commission of political appointees.”); Jonathan Small, *Work Comp Reform Could Be A Game Changer*, Oklahoma Council on Public Affairs, Feb. 19, 2013 (discussing adversarial system costs and “counterproductive results”); Gene Perry, *In The Know: Senate Unveils Workers’ Compensation Overhaul Bill*, Oklahoma Policy Institute, Feb. 19, 2013 (“A state Senate leadership bill to abolish the Oklahoma Workers’ Compensation Court and replace it with an administrative system for compensating injured workers was unveiled Monday to a chorus of cheers and jeers.”); Andrew Spiropoulos, *Workers’ Comp Reform Will Spur Oklahoma Economy*, Oklahoma Council on Public Affairs, Apr. 4, 2013 (“The most important reform in this bill is the conversion of our overly litigious and burdensome court system into the administrative system that is the dominant model throughout the nation.”); Gene Perry, *In The Know: Senate Approves Tax Cut for 2015; House Approves Workers Comp Overhaul*, Oklahoma Policy Institute, Apr. 25, 2013 (“A

measure hailed as historic by the state’s largest business group in its overhaul of Oklahoma’s workers’ compensation system is one legislative vote away from heading to the governor for final approval.”).

The numerous columns, hearings, papers, and opinions on joining the modern trend to adopt an administrative system “adequately notified” legislators and voters “of the potential effect of the legislation.” *Douglas*, 2013 OK 37, ¶4, 302 P.3d at 792.

B. Adopting an Administrative System Conferred Significant Economic Benefits to Oklahomans and Oklahoma Small Businesses

Small businesses represent 97.2 percent of all Oklahoma employers and employ a majority of Oklahomans. U.S. Small Business Administration, Office of Advocacy, *Oklahoma Small Business Profile*, Feb. 2013, at 1. NFIB represents over 4,200 Oklahoma small businesses.

The Oklahoma legislature undertook a progressive reform to attract businesses and jobs to compete with neighboring states. Prior to the 2013 reform, Oklahoma’s workers’ compensation system was the sixth most expensive in the nation. Jay Dotter and Mike Manley, *2012 Oregon Workers’ Compensation Premium Rate Ranking Summary*, Oregon Department of Consumer and Business Services, October 2012, at 2. Not only did Oklahoma small businesses face premiums at 147% of the national median, the state was a major anomaly in the region: Missouri (36th highest cost); Texas (38th); Kansas (41st), Colorado (43rd); and Arkansas (49th). *Id.*; see also Andrew Spiropoulos, *Workers’ Comp Reform Will Spur Oklahoma Economy*, Oklahoma Council on Public Affairs, Apr. 4, 2013. The perverse incentives inherent to the old, adversarial process predictably condemned Oklahoma to be an outlier on many workers’ compensation metrics: average lost-time claim frequency per 100,000 workers; average indemnity cost per case; and average permanent partial indemnity

per case. NCCI, *Oklahoma Workers Compensation State Advisory Forum 2012*, October 3-4, 2012, at 48, 69, 71; *see also* Todd Lamb, *Lt. Governor's 2013 Policy and Issues Report*, at 6.

Reformers focused on Arkansas's success at mitigating costs through an administrative system. Oklahoma employers paid an average of \$2.77 for every \$100 in payroll, which is more than double the \$1.19 that neighboring Arkansas employers paid. Jay Dotter and Mike Manley, *2012 Oregon Workers' Compensation Premium Rate Ranking Summary*, Oregon Department of Consumer and Business Services, October 2012, at 2. So while the old system placed "Oklahoma businesses at a significant competitive disadvantage regionally," the reformed system will ensure businesses are not penalized for staying in or coming to Oklahoma. Mike Neal, *Workers Comp Reform Key To State's Future*, *Tulsa World*, Mar. 23, 2013

The reform accomplished its goal. The estimated immediate savings to Oklahoma small businesses was 12.9%. NCCI, *Oklahoma Workers Compensation State Advisory Forum 2013*, October 9-10, 2013, at 9, 43. An NCCI scoring of the legislation estimates minimum savings of \$48 million a year due solely to the switch from a judicial to an administrative system. State Chamber of Oklahoma, *Senate Bill 1062 – Workers' Compensation Replacement Legislation*, Apr. 18, 2013.

C. The Legislature Addressed Numerous Issues Related to the Single Subject of Workers' Compensation

Workers' compensation is a single subject. In 1915, the legislature created the State Industrial Commission to provide an administrative system "for the compulsory compensation of injured employes [sic] in hazardous industries." 1915 Okla. Sess. Laws, pp. 471-496. In 1959, the legislature switched to a judicial system, creating the State Industrial Court which preceded the current Workers' Compensation Court. 1959 Okla. Sess. Laws, pp.

397-98. And in 2013, the legislature choose to return to an administrative system. 2013 Okla. Sess. Laws, § 208. That decision required the legislature to specify the nuts and bolts of the administrative system.

Unlike the tort reform law recently struck down by this Court for violating the single subject rule, this reform is entirely contained in a single Title: 85A. *Contra Douglas*, 2013 OK 37, ¶¶7-8, 302 P.3d at 793. Similar omnibus reforms contain many sections and pages. *See* 1978 Okla. Laws, §§ 101-1103 (introducing new evidence code); 1961 Okla. Laws, pp. 69-182. (adopting the Uniform Commercial Code across 10 articles and 368 sections). This most recent reform similarly enacts a wholesale restructuring directed at a single subject.

III. Oklahoma’s Administrative Workers’ Compensation System Provides Access To State Courts

Oklahoma’s constitutional open court provision requires “courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputations.” Okla. Const. art. 2 §6. Senate Bill 1062 provides a remedy to every injury and access to the courts.

The reformed system provides an administrative appeal to the state court system. *See* Workers’ Compensation Commission – Appeal to Commission – Appeal to Supreme Court, Okla. Stat., tit. 85A, § 78. This Court may “modify, reverse, remand for rehearing, or set aside the judgment” if the award is:

1. In violation of constitutional provisions;
2. In excess of the statutory authority or jurisdiction of the Commission;
3. Made on unlawful procedure;
4. Affected by other error of law;
5. Clearly erroneous in view of the reliable, material, probative and substantial competent evidence;
6. Arbitrary or capricious;
7. Procured by fraud; or
8. Missing findings of fact on issues essential to the decision.

Okla. Stat., tit. 85A, § 78(C). These standards are identical to the OAPA standards for administrative review, except that the workers' compensation review adds fraudulent procurement as a grounds for reversal. *Cf.* Okla. Stat., tit. 75, § 322. And these administrative appeals will have "precedence over all other civil cases in the Supreme Court, except preferred Corporation Commission appeals." Okla. Stat., tit. 85A, § 78(C).

A. Oklahoma Agencies Utilize Similar Administrative Decision-Making Processes With Limited Judicial Review

State administrative agencies decide citizens' rights in similar non-judicial hearings, which receive deferential review by the judiciary. "The Legislature may delegate rule making authority to agencies, boards and commissions to facilitate the administration of legislative policy pursuant to the Administrative Procedures Act." *Walker v. Grp. Health Servs., Inc.*, 2001 OK 2, ¶27, 37 P.3d 749, 759 (Group Insurance Board has authority to promulgate administrative rules); *see also, e.g., Oklahoma Alcoholic Beverage Control Bd. v. Burris*, 1980 OK 58, 626 P.2d 1316, 1319-20 (Alcoholic Beverage Control Board decisions "are presumptively correct and valid" under the OAPA); *Seely v. Oklahoma Horse Racing Comm'n*, 1987 OK CIV APP 61, 743 P.2d 685, 688 (Oklahoma Horse Racing Commission is "empowered to suspend or revoke licenses" for violations of its rules and regulations with judicial recourse under the OAPA).

In many cases, the statutory judicial review is narrower than under the workers' compensation reform. Municipal City Planning Commission decisions on zoning and permitting are reviewable only when the decision is "arbitrary, unreasonable or capricious." Okla. Stat., tit. 11, § 47-124. Appeals from the Oklahoma State Department of Health's hospice licensing regime are reviewed directly by this Court, which must "give great weight to findings made and inferences drawn by the Department on questions of fact." Okla. Stat.,

tit. 63, § 1-860.11. Unemployment claim appeals are reviewed only to “determin[e] whether an error of law was committed in the hearing and whether the findings are supported by the evidence introduced. The findings, decisions, and orders of an administrative body are presumptively correct absent valid competent evidence to the contrary.” *Baldrige v. Express Temp. Servs., Inc.*, 2005 OK CIV APP 100, ¶7, 125 P.3d 709, 711. The reformed workers’ compensation system provides broader judicial review than these statutes. If the Court were to determine that the workers’ compensation system violated the constitutional guarantee of open access, the Court may have to strike down the Oklahoma Administrative Procedures Act next.

B. States Adopting Administrative Systems Have Found Deferential Judicial Review Satisfies Open Court Requirements

Other states addressing this issue have found judicial review of an administrative decision meets the constitutional requirement of access to the courts. *See Alaska Pub. Interest Research Grp. v. State*, 167 P.3d 27, 39 (Alaska 2007) (“A number of other states have workers’ compensation statutes which have two-tier administrative decisionmaking, with initial determinations reviewed within the agency or department, followed by judicial review by an appellate court.”). The Alaska Supreme Court found no violation of separation of powers where the legislature created an Appeal Commission within the executive branch as a quasi-judicial agency. *Id.* at 34. Similarly, the New Hampshire Supreme Court found their workers’ compensation act’s “compelled adjudication of the underlying facts by an administrative body does not offend the separation of powers doctrine.” *McKay v. New Hampshire Comp. Appeals Bd.*, 732 A.2d 1025, 1030 (N.H. 1999) (noting prior laws permitting *de novo* fact-finding by a court did not change this conclusion because workers’ compensation is a purely statutory creation). And the Kansas Supreme Court upheld “the

Workers Compensation Act that eliminated de novo review of ALJ decisions from the district court.” *Gleason v. Samaritan Home*, 926 P.2d 1349, 1363 (Kan. 1996) (“[w]ithout question, the legislature is empowered to enact law relating to the scope of appellate jurisdiction over administrative appeals.”).

Colorado’s Supreme Court found a workers’ compensation reform that permitted *only* certiorari review did not satisfy the constitutional requirement for open courts, but “judicial review of an administrative agency’s decisions” would. *Allison v. Indus. Claim Appeals Office of State of Colo.*, 884 P.2d 1113, 1119 (Colo. 1994) (“As a result of the guarantee of access to the courts, parties are constitutionally entitled to judicial review of an administrative agency’s decisions that affect their substantive statutory rights.”). Perhaps mindful of these interpretations, the Oklahoma legislature properly provides for judicial scrutiny under regular agency review standards. These longstanding standards do not offend the constitutional guarantee of access to the courts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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