

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

(1) STATE CHAMBER OF OKLAHOMA,  
(2) OKLAHOMA FARM BUREAU LEGAL  
FOUNDATION,  
(3) CHAD WARMINGTON, and  
(4) TOMMY SALISBURY,  
*Protestants/Petitioners,*

v.

(1) KELSEY COBBS and  
(2) DUSTIN PHELAN,  
*Proponents/Respondents,*

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

MAR 25 2024

JOHN D. HADDEN  
CLERK

Case No: 121,777

**PETITION FOR REHEARING**

Pursuant to Rule 1.13(f) of this Court, Proponents/Protestants petition for rehearing to seek clarification on the reasoning and holding of this Court’s ruling.

“Generally, rehearing is granted” for one of several reasons, including “to clarify the opinion.” *Tomahawk Res., Inc. v. Craven*, 2005 OK 82, ¶ 1, 130 P.3d 222, 224. This Court in the past has granted rehearing on Initiative Petition challenges to clarify the scope and nature of its decision. *Tay v. Green*, 2022 OK 38, 509 P.3d 615, 616, *clarified on reh’g* (May 9, 2022). Indeed, in this Court’s seminal nondelegation case—*City of Oklahoma City*—this Court granted rehearing to clarify an aspect of its opinion. *City of Oklahoma City v. State ex rel. Oklahoma Dep’t of Lab.*, 1995 OK 107, 918 P.2d 26, 31-33, *clarified on reh’g* (Oct. 13, 1995); *see also Strelecki v. Oklahoma Tax Comm’n*, 1993 OK 122, 872 P.2d 910, 923, *clarified on reh’g* (Mar. 23, 1994) (granting rehearing of petition addressing the retroactive application of new rule of federal law for the “purpose

of clarifying the applicability of our opinion”).

Rehearing is needed here to clarify the scope and impact of this Court’s decision because the Court’s ruling did not provide an explanation for its conclusions. “Judicial decisions are reasoned decisions. Confidence in a judge’s use of reason underlies the public’s trust in the judicial institution. A public statement of those reasons helps provide the public with the assurance that creates that trust.” *Rita v. U.S.*, 551 U.S. 338, 356 (2007). Thus, “[i]t is usually a judicial decision’s reasoning—its *ratio decidendi*—that allows it to have life and effect in the disposition of future cases.” *Ramos v. Louisiana*, 140 S. Ct. 1390, 1404 (2020) (citation omitted). But because this Court issued a decision without providing reasons for the conclusions it reached, ambiguity remains concerning both the constitutionality of the challenged Initiative Petition, should it be enacted, and this Court’s jurisprudence on the constitutional doctrine of nondelegation as it will apply in future cases.

*First*, rehearing is needed to clarify the scope of this Court’s constitutional determination with respect to the challenged initiative. Without further explanation, it could be that the Court believes Initiative Petition No. 446 is fully constitutional such that a future nondelegation challenge to the Initiative, if enacted, would require overcoming *stare decisis*. Conversely, this Court’s decision could be read to have merely determined that the Initiative Petition is not so clearly and manifestly unconstitutional that it cannot be circulated to voters, *but* to have left open the possibility for a future *de novo* constitutional challenge if the proposal is enacted. Proponents/Respondents, on page two of their brief, emphasized the standard of review for pre-election review of Initiative

Petitions—stating an initiative can move forward unless “clearly and manifestly unconstitutional”—seemingly indicating that the standard is higher than the one that applies to post-enactment review of the constitutionality of a statute. But, as Justice Kuehn asks, “how does the Court measure manifestly and clearly?” 2024 OK 13, ¶ 9 (Kuehn, J., concurring in part, dissenting in part).

If the standard of review the Court applied in this case is indeed higher than if the Initiative is challenged *after* enactment, then the Court’s decision in this case would not necessarily foreclose a future nondelegation challenge to an enacted Initiative Petition No. 446. However, if the Court’s decision in this case instead concluded that there exists *no* constitutional infirmity in Initiative Petition No. 446’s delegation—clear, manifest, or otherwise—then a future challenge by Protestants/Petitioners would be futile. Because this Court’s decision provided no reasoning or analysis supporting its conclusions, clarity on this point is needed. Otherwise, Protestants/Petitioners, as well as Proponent/Respondents, the State, and the courts may expend resources on litigating the constitutionality of the Initiative, if enacted, without knowing whether such litigation is in vain.

*Second*, rehearing is needed to clarify the state of this Court’s jurisprudence on nondelegation. As the Chief Justice stated in dissent, “there is no way to summarily allow the Petition to proceed without either expressly contracting our teachings of the non-delegation doctrine in *City of Oklahoma City*, or else expressly overruling said precedent.” 2024 OK 13, ¶ 7 (Kane, C.J., dissenting). But, because this Court’s decision lacked analysis, this Court’s nondelegation precedent has been muddled: “Does the

majority overrule *City of Oklahoma City v. State ex rel. Department of Labor* by implication, or factually distinguish said case? There is no way to tell.” *Id.* The Legislature, as well as initiative proponents, needs clarity on the bounds of Oklahoma’s nondelegation doctrine. Future litigants seeking to bring nondelegation challenges also would benefit from any clarity this Court can provide regarding the Oklahoma Constitution’s rules on the delegation of state legislative authority and the import of this Court’s decisions about those rules. Otherwise, future parties will have to litigate, based on speculation about the decision in this case, about what does and does not constitute an unlawful delegation.

For the foregoing reasons, the Court should grant rehearing to clarify its decision in this case.

Respectfully submitted,



---

**Mithun Mansinghani**, OBA No. 32453  
LEHOTSKY KELLER COHN LLP  
629 W. Main Street  
Oklahoma City, OK 73102  
(512) 693-8350  
mithun@lkcfirm.com

**CERTIFICATE OF SERVICE**

This is to certify that on the 25th day of March, 2024, a true and correct copy of the above Notice was transmitted via commercial carrier, postage prepaid, via email, and/or by hand to the following:

Melanie Wilson Rughani  
CROWE & DUNLEVY  
Braniff Building  
324 N. Robinson Ave., Suite 100  
Oklahoma City, OK 73102

Garry Gaskins  
Oklahoma Attorney General's Office  
313 NE 21st St.  
Oklahoma City, OK 73105

Oklahoma Secretary of State's Office  
Executive Legislative Division  
2300 N. Lincoln Blvd., Room 122  
Oklahoma City, OK 73105

  
**Mithun Mansinghani**