



ORIGINAL

2025 OK 44

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

BLACK EMERGENCY RESPONSE TEAM,)
)
UNIVERSITY OF OKLAHOMA CHAPTER)
OF THE AMERICAN ASSOCIATION OF)
UNIVERSITY PROFESSORS,)
)
OKLAHOMA STATE CONFERENCE OF)
THE NATIONAL ASSOCIATION FOR THE)
ADVANCEMENT OF COLORED PEOPLE)
)
AMERICAN INDIAN MOVEMENT)
INDIAN TERRITORY,)
)
PRECIOUS LLOYD, as next friend of S.L.,)
)
ANTHONY CRAWFORD,)
)
REGAN KILLACKEY,)
)
Plaintiffs,)
)
v.)
)
GENTNER DRUMMOND, in his official)
capacity as Oklahoma Attorney General,)
)
RYAN WALTERS, in his official capacity)
as Oklahoma Superintendent of Public)
Instruction,)
)
CHRIS VAN DEHENDE, SARAH LEPAK,)
MIKE TINNEY, ZACHARY ARCHER,)
RYAN DEATHERAGE, BECKY CARSON,)
in their official capacities as members)
of the Oklahoma State Board of Education,)
)

FILED
SUPREME COURT
STATE OF OKLAHOMA

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No. 122,472

FOR OFFICIAL PUBLICATION

KEVIN STITT, in his official capacity as)
Governor of Oklahoma,)
))
JEFFREY HICKMAN, MICHAEL TURPEN,)
JACK SHERRY, DENNIS CASEY,)
STEVEN TAYLOR, COURTNEY)
WARMINGTON, P. MITCHELL ADWON,)
JEFFERY HICKMAN, DUSTIN HILLIARY,)
KEN LEVIT, in their official capacities as)
the Oklahoma State Regents for Higher)
Education,)
))
JOHN R. BRAUGHT, ROBERT ROSS,)
ERIC STEVENSON, ANITA HOLLOWAY,)
KENNETH S. WAITS, RICK NAGEL,)
in their official capacities of the Board)
of Regents of the University of Oklahoma,)
))
Defendants.)

KUEHN, V.C.J., CONCURRING IN PART AND DISSENTING IN PART:

¶1 The United States District Court for the Western District of Oklahoma certified six questions to this Court pursuant to the Revised Uniform Certification of Questions of Law Act, 20 O.S. 2021 §§ 1601-1611. I concur with the Majority Opinion's conclusion that this Court should not answer questions one, four, five, and six. I respectfully dissent to answering questions two and three.

¶2 This Court is authorized to answer unresolved questions of law properly certified in accordance with the Revised Uniform Certification of Questions of Law Act.¹ However, this Court has no obligation to answer

¹ 20 O.S. 2021 §§ 1601-1611.

federally certified questions.² 20 O.S. 2021 § 1602 states the “Supreme Court . . . *may* answer a question of law certified to it by [federal courts] . . .” (emphasis added).³

¶3 The Court should answer a certified federal question of law only after considering (1) whether the answer is dispositive of an issue in pending litigation in the certifying court and (2) whether there is established and controlling law on the subject matter.⁴

¶4 The two questions answered by the Majority are as follows:

2. As it relates to § 24-157(a)(1)’s prohibition of “[a]ny orientation or requirement that presents any form of race or sex stereotyping or a bias on the basis of race or sex,” what is the meaning of the term “requirement?”
3. As it relates to § 24-157(A)(1)’s prohibition of “[a]ny orientation or requirement that presents any form of race or sex stereotyping or a bias on the basis of race or sex,” what does it mean to “present[]” race or sex stereotyping or a bias on the basis of race or sex?

¶5 I respectfully dissent to answering these certified questions, because the Western District left nothing for this Court to answer. Without pending questions, the request to answer fails the first requirement of § 1602,

² See *Ball v. Wilshire Ins. Co.*, 2007 OK 80, 184 P.3d 463; *Scottsdale Ins. Co. v. Tolliver*, 2005 OK 93, 127 P.3d 611; *Hammock v. U.S.*, 2003 OK 77, 78 P.3d 93; *Cray v. Deloitte Haskins & Sells*, 1996 OK 102, 925 P.2d 60 (All declining to answer certified questions).

³ See also *Scottsdale Ins. Co. v. Tolliver*, 2005 OK 93, ¶ 2, 127 P.3d 611. 612 (“[P]ermits this Court to exercise its discretion to answer a question of law within designated guidelines when it is properly certified . . .”)

⁴ 20 O.S. 2021 § 1602. See *Cherokee Nation v. United States Dep’t of the Interior*, 2025 OK 4, ¶ 8, 564 P.3d 58, 63; *Siloam Springs Hotel, LLC v. Century Surety Company*, 2017 OK 14, ¶ 14, 392 P.3d 262, 265–66; *Government Employees Insurance Co. v. Quine*, 2011 OK 88, ¶ 13, 264 P.3d 1245, 1248.

our test for taking up a certified question.⁵ At first glance, it seems the Western District's dismissal order "reserve[d] ruling" on the Plaintiff's challenges to the second sentence of § 24-157(A)(1). However, this Court is not limited by form when considering certified questions, but rather the substance of the document.⁶ In its dismissal order, the Western District applied this Court's plain and ordinary meaning standard⁷ to determine the scope of "requirement" in § 24-157(A)(1), and on several occasions, "conclude[d] that [§ 24-157(A)(1)], based on its plain language, applies to and restricts curricular speech." The Western District further held, that (1) "requirement" extends to a "broad range of activit[ies]" including degree-required courses and course assignments and (2) "presents" encompasses "any situation in which race or sex stereotyping or bias is deliberately introduced or otherwise discussed." With this holding, the Western District judge clearly answered the questions now presented to this Court, leaving only the possibility that the Federal Court wishes this Court provide an advisory opinion or appellate review under the guise of a certified question.

¶6 The procedural posture of this case should further caution this Court from entertaining answering certified question two and three. Beyond

⁵ The Majority Opinion dismissed question three based on the improper certification of question two. However, absent the majority's certification, question three is still dismissed. 20 O.S. 2021 § 1602. The second requirement of § 1602 is satisfied, as the certified questions present matters of first impression for which there is no controlling Oklahoma precedent.

⁶ See *Randle v. City of Tulsa*, 2024 OK 40, ¶ 37 n. 25, 556 P.3d 612, 623.

⁷ *Hamilton v. Northfield Insurance Company*, 2020 OK 28, ¶ 10, 473 P.3d 22, 26.

the Order of dismissal, the Western District issued a preliminary injunction *only after* reaching conclusions in its Order *and* granting an Order of Preliminary Injunction. When issuing the preliminary injunction, the Western District judge determined the plaintiffs have (1) a likelihood to succeed on the merits; (2) a likelihood of irreparable harm absent preliminary relief; (3) a threatened injury that outweighs the injury the opposing party will suffer under the injunction; and (4) shown the injunction will serve the public interest.⁸ In reaching its holding, the Western District relied on its prior conclusions as to the definitions of “requirement” and “present[.]” in § 24-157(A)(1).

¶7 Even beyond issuing the injunction, both the injunction and the order to dismiss are on appeal in the Tenth Circuit.⁹ The proper procedural path, when faced with questions of state law which may affect a preliminary injunction, is to appeal the injunction and allow the circuit court to determine if certification is proper.¹⁰ Despite this well-accepted procedure, the Western District chose to issue a preliminary injunction *and* certify questions to this Court—unlike other similarly situated district courts who have chosen to *either*

⁸ *Id.*; *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 19 (2008).

⁹ Order Certifying State-Law Questions to the Oklahoma Supreme Court at 3, *Black Emergency Response Team et al. v. Drummond* (No. 122,472) (Okla. 2024).

¹⁰ *Kansas Jud. Rev. v. Stout*, 519 F.3d 1107 (10th Cir. 2008), *certified question answered*, 287 Kan. 450, 196 P.3d 1162 (2008), *opinion after certified question answered*, 562 F.3d 1240 (10th Cir. 2009) (Certifying questions to Kansas Supreme Court on appeal of a preliminary injunction); *Diginet, Inc. v. W. Union ATS, Inc.*, 958 F.2d 1388 (7th Cir. 1992) (Addressing appeal of a preliminary injunction and the potential of certification).

grant the preliminary injunction *or* certify questions.¹¹ This action simultaneously disrupts a proper appeal to the Tenth Circuit and seeks this Court's appellate review in the form of certified questions.

Conclusion

¶8 For the above reasons, I would respectfully decline to answer. Although this Court encourages certification on questions of state law, proper certification occurs prior to determinative decisions by the certifying court. The purpose of certifying questions to state courts, at its core, is to "save time, energy, and resources and help[] build a cooperative judicial federalism."¹² When used correctly, certification ensures (1) federal courts are properly informed on substantive Oklahoma law¹³ and (2) a state's highest court decides important questions of state law.¹⁴ Certified questions are not to be used to pose abstract or hypothetical questions,¹⁵ coerce the court into

¹¹ See *Kansas Jud. Watch v. Stout*, 455 F. Supp. 2d 1258, 1263 (D. Kan. 2006) (Finding certification after the issuance of a preliminary injunction to be "wasteful of the parties' and the Court's time, energy, and resources that have already been spent . . . for [the] preliminary injunction"); *Turner v. City of Bos.*, 760 F. Supp. 2d 202, 207 (Requiring parties to file memoranda addressing if certification is appropriate prior to discussing preliminary injunction issues); *Willey v. Brown*, No. CV 23-2299-BAH, 2024 WL 3557937, p. 19 (D. Md. July 25, 2024) (Denying the motion for preliminary injunction and motions to dismiss without prejudice to be refiled after certified questions were answered); *But see Minnesota Recipients All. v. Noot*, 527 F. Supp 140, 144-145 (D. Minn. 1981) (Issuing a preliminary injunction due to irreparable harm to plaintiffs and in the same order certifying questions to the highest court as questions may be resolved by a complete judicial analysis of the state statutes).

¹² *United States v. Defreitas*, 29 F.4th 135, 141 (2022) (quoting *Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974)).

¹³ *Bonner v. Oklahoma Rock Corp.*, 1993 OK 131, n.3, 863 P.2d 1176, 1178.

¹⁴ *Mitchell v. Roberts*, 43 F.4th 1074, 1086 (10th Cir. 2022).

¹⁵ *Bagby v. Trustees of Claremore Jr. College Authority*, 1974 OK 74, ¶ 10, 525 P.2d 1355, 1356.

providing advisory opinions,¹⁶ or as a form of appellate review.¹⁷ This Court accepts certified questions for unresolved legal issues, none of which are present here.

¹⁶ *Ball v. Wilshire Ins. Co.*, 2007 OK 80, ¶1 n.3, 184 P.3d 463, 464 n.3.

¹⁷ *Cray v. Deloitte Haskins & Sells*, 1996 OK 102, ¶ 8, 925 P.2d 60, 62.