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SUPREME COURT OF THE OKLAHOMA INTERCOLLEGIATE LEGISLATURE

Case No.: SU2016-001
CITE AS: *DANIEL V. BURT Et Al, SU2016-001*
ARGUED: 10-14-2016
DECIDED: 10-14-2016
DECISION PUBLISHED: 2-1-2017

COURTNEY DANIEL,
LAUREN KYLE,
In their official capacity as Attorney General and Secretary of State of the
Oklahoma Intercollegiate Legislature, respectfully.

PLAINTIFF,
VS.

BRADLEY BURT,
In his official capacity as Speaker of the House.
DEFENDANT.

1 SYLLABUS

2 On Saturday, October 2, 2016, four members of the Board of Directors
3 for the Oklahoma Intercollegiate Legislature, Defendants Burt, Colston,
4 Metcalf and Shatwell, called into session a closed meeting of the Board of
5 Directors, with the primary purpose being to discuss the revocation of
6 membership for the fifth member of the Board of Directors, Governor Chase
7 Maxwell, and without providing prior notification to Secretary of State
8 Lauren Kyle. That evening, around 8:00 PM, the defendants attempted to
9 integrate Governor Maxwell into the meeting by way of phone call. Upon
10 making contact with Governor Maxwell, the other members of the Board of
11 Directors informed him of the purpose of the meeting, leading to the
12 Governor subsequently ending the telephone call. Further attempts were
13 made to establish contact with the Governor, who insisted that he be allowed
14 to consult with Attorney General Daniel. Defendants declined the Governor's
15 request and established a 9:15 PM deadline for Governor Maxwell to call
16 back in. After this deadline passed, the Defendants proceeded to take a vote,
17 resulting in a unanimous 4-0 vote to revoke the Governor's membership in
18 the Oklahoma Intercollegiate Legislature.

19 Shortly after 10:00 PM on October 2, 2016, the Supreme Court of the
20 Oklahoma Intercollegiate Legislature received a request for an injunction
21 from Attorney General Courtney Daniel, asking that the decisions made by
22 the Board of Directors be suspended, pending the filing of a lawsuit. Upon
23 reviewing the available facts, this request was summarily granted by Justice

1 Nieman, who submitted the injunction to Board of Directors and the
2 organization as a whole. The following day, lawsuits were submitted by
3 Secretary of State Kyle and Attorney General Daniel; as these suits were
4 closely related, they were combined to form a joint suit. Under original
5 jurisdiction granted through the Constitution and Statutes of the Oklahoma
6 Intercollegiate Legislature, this Court now decides this case.

7
8 JUSTICE NIEMAN DELIVERED THE OPINION OF THE COURT, WITH JUSTICES
9 HILSHER, SELDENRUST, HELMS AND DRISKELL CONCURRING

10 I

11 This case thus brought before the Court asks us to consider three questions:

- 12 1. *Did the OIL Board of Directors follow proper legal procedures in*
13 *calling itself to order on October 2nd?*
- 14 2. *Does the BoD possess the ability to bar the Secretary of State from*
15 *attending its closed meetings?*
- 16 3. *Was Governor Maxwell denied his right to due process during the*
17 *proceedings to discuss the revocation of his organizational*
18 *membership?*

19 Before we can begin to answer these pressing issues, the Court must
20 first answer the preliminary question of whether the Supreme Court for the
21 Oklahoma Intercollegiate Legislature has jurisdiction in this case.

22 Defendants, in agreement with an amicus brief submitted by former Attorney
23 General Brad Crofford, contend that this Court lacks statutory jurisdiction in

1 this case, citing the existence of alternative remedies for revocation of
2 membership outlined in Title 1, Chapter 2 of the Statutes of the Oklahoma
3 Intercollegiate Legislature, as well as the language in Title 3, Section 200,
4 which details certain cases in which the Court has jurisdiction, as proof that
5 the Court is denied jurisdiction to hear this case. We are not convinced.

6 Article VI, Section 5 of the Constitution of the Oklahoma
7 Intercollegiate Legislature defines the Supreme Court’s overall jurisdiction.
8 The language states that, “The jurisdiction of the Supreme Court shall extend
9 to all matters resulting from internal dispute involving members, the
10 organization, or member institutions, under such restrictions and guidelines
11 as may be established by law.” This language provides a broad venue of
12 jurisdiction for the Court, with the caveat that it may be further limited by
13 future statutes. When examining these statutes, found in Title 3, Chapter 2,
14 Section 200, we can find that the Court has been given a more defined
15 jurisdiction, as the Statutes state that, “The Supreme Court shall have
16 jurisdiction to hear cases arising from opinions of the Attorney General,
17 constitutionally questioned actions of executive officers, constitutionally
18 questioned legislation which affects the organization, the mock
19 constitutionality of legislation for educational purposes, matters outlined in
20 the Senate approved Supreme Court Rules, and constitutional or statutory
21 disputes between branches of government. “

22 On first glance, it appears that the Court has no clear jurisdiction in
23 this case. The only executive officer being sued is Lieutenant Governor

1 Shatwell, and it would be a stretch to assume that a suit between two
2 executive officers, the Attorney General and the Secretary of State, and the
3 Board of Directors, defined as an ancillary body under the statutes, qualifies
4 as a dispute between two branches of government. However, context is key
5 and we must look beyond merely this small section of the statutes. In the
6 previous section, Title 3, Chapter 1, Sections 100-103, the statutes explicitly
7 lay out restrictions upon the Court’s jurisdiction, indicating those cases in
8 which it was felt that the Court should refrain from acting. Of these, Section
9 103 is particularly interesting as it states that, “No Court of the organization
10 shall hear any case except those arising out of alleged violations of the
11 Oklahoma Intercollegiate Legislature Constitutional and Statutory law or
12 from within the Senate approved Supreme Court rules. The OIL Supreme
13 Court has no subject matter jurisdiction in any other matter.” This language
14 clearly specifies a desire for the Court to act as an adjudicator in cases
15 involving alleged statutorial or constitutional violations, as are found in the
16 case before us.

17 Given this fact, the specific instances of jurisdiction in Chapter 2 seem
18 far less relevant. Legislators could not possibly anticipate every specific
19 conceivable situation in which the Supreme Court should have jurisdiction,
20 but still attempted to compile a shorter list of specified instances. However,
21 there was no obvious desire for the Court to refrain from disputing intra-
22 organizational decisions made by the Board of Directors in potential
23 violation of constitutional or statutory law. Moreover, the language in

1 Sections 103 of the Statutes and Article VI, Section 5 of the Constitution imply
2 broad jurisdiction over a variety of topics. Therefore, the Court finds that it
3 indeed has jurisdiction in this case.

4 II

5 With jurisdiction established, the Court can now begin to examine the
6 questions at hand. The first matter to be dealt with is in regard to the
7 Secretary of State. In calling and conducting its meeting, the Board of
8 Directors deliberately chose to exclude Secretary of State Kyle, as was
9 revealed in the evidence submitted by the defendants. According to text
10 messages sent among defendants, it was decided that, because the BoD was
11 conducting a “closed meeting”, they had to neither notify the SoS, nor allow
12 her to attend, a fact which was further reinforced by consultation with
13 former Secretary of State Baylee Butler. Defendants claim that, because the
14 meeting was intended to be private or “closed” that the Secretary of State can
15 be excluded, particularly as it was claimed that SoS Kyle may have been
16 biased when performing her role at the meeting; as a result, defendants used
17 one of their own members to act as secretary for the purpose of keeping
18 minutes and recording votes, a practice which they urge the Court to accept
19 for this case, and this case only.. This argument is found to be unsound by
20 this Court.

21 The duties of the Secretary of State, with regards to their cooperation
22 with the Board of Directors, is clearly laid out in the Statutes. In Title 2,
23 Chapter 1, it is stated that “The Secretary of State shall serve as Board

1 Secretary (of the Board of Directors), but shall not be a member of it". The
2 following paragraph, Section 101, requires that "Notification of the meeting
3 shall be sent to all members of the Board and the Secretary of State no less
4 than two weeks before the meeting shall occur." Finally, in Title 5, Chapter 5,
5 Sections 506 and 507, it is stated that "The Secretary of State shall keep a
6 record of the proceedings of the Board of Directors".

7 The language throughout all of these statutes is extremely deliberate.
8 Repeated use of the word "shall" leaves no doubt that these duties are
9 mandatory, and fall exclusively under the purview of the Secretary of State. If
10 legislators intended that these duties were optional, or could be carried out
11 by one of the members of the Board of Directors, the statutes would instead
12 use words like "may" and "can", or would specify alternatives to the
13 Secretary of State for the performance of these duties. But indeed, there is no
14 such language contained therein that would allow the BoD to casually
15 exclude the Secretary of State from its meetings and planning processes,
16 rendering the position of the defendants untenable.

17 As every available statutory measure requires the Secretary of State
18 to be in attendance during meetings of the Board of Directors, as well as to
19 receive notification prior to said meetings, the defendants were in clear
20 violation of statutory requirements as they engaged in their actions
21 immediately prior to and during October 2nd. Though not a member of the
22 BoD, the Secretary of State is nonetheless a vital, irreplaceable component of
23 BoD meetings, and defendants were in error by excluding Secretary of State

1 Kyle; in the future, the SoS should be fully informed and available to attend
2 all meetings of the Board of Directors, as required by statutory language.
3 However, on its own this violation is not sufficient to overturn the decisions
4 reached by the BoD during its October 2nd meeting. Therefore, we move on to
5 the second question.

6 III

7 Plaintiffs allege that any decisions from the October 2nd meeting of the
8 Board of Directors should be rendered void, because the meeting allegedly
9 violated statutory requirements by 1. Not being properly called by the
10 Governor, as prescribed in the statutes, and 2. Not being announced publicly
11 within the time constraints established by law. We agree.

12 Title 2, Chapter 1 of the Statutes of the Oklahoma Intercollegiate
13 Legislature provide for the procedures to be utilized in calling a member of
14 the Board of Directors. Section 101 begins by stating that “The Governor
15 shall have the sole authority to call a meeting of the Board of Directors,
16 except as provided in this act,” indicating that, outside of a select set of
17 circumstances, the ability to call the Board of Directors into a meeting rests
18 solely with the Governor of the organization. Exceptions to this requirement
19 are found in the rest of Section 101 and Section 102, and include the
20 authority of the President Pro Tempore of the Senate or the Speaker of the
21 House to call a Board of Directors meeting if such a meeting has not been
22 held in the calendar year prior to December, and the ability of a simple
23 majority of the Board to call a meeting should they deem it necessary. The

1 record indicates that, with the exception of the Governor, the entirety of the
2 Board of Directors were in agreement on choosing to meet, and this claim is
3 not disputed.

4 However, in addition to preliminary meeting requirements, there are
5 additional steps that must be taken before a meeting of the Board of
6 Directors can occur. Section 101 dictates that “Notification of the meeting
7 shall be sent to all members of the Board and the Secretary of State no less
8 than two (2) weeks before the meeting shall occur. In the case of an
9 emergency two thirds (2/3) of the Board may call an emergency meeting
10 with no less than three days’ notice provided.” As is clear from the record,
11 neither Governor Maxwell nor Secretary of State Kyle were given any
12 notification prior to the commencement of the meeting, much less the
13 minimum of three days’ notice mandated for an emergency meeting. Even
14 the other four members of the Board of Directors had not planned on having
15 a meeting before a text conversation on October 1st, as is clear from
16 documents submitted by the Defendants. Thus, it seems apparent to the
17 Court that Defendants blatantly violated the Statutory notification
18 requirements for meetings of the Board of Directors found in Title 2, Chapter
19 1, Section 101.

20 Defendants argue that because meetings for the revocation of
21 membership are labeled as “closed meetings” (Title 1, Chapter 2, Section 100
22 of OIL Statutes), that these meetings should not be subjected to the same
23 statutory requirements as other BoD meetings; in doing so, they rely upon

1 arguments provided by Secretary of State emeritus Baylee Butler to claim
2 that, because revocation meetings are “private and nothing discussed other
3 than the outcome, is shared with outside parties,” that such meetings should
4 be exempted from general statutory guidelines. Additionally, Attorney
5 General emeritus Brad Crofford, in his amicus brief, asserts that the Statutes
6 conflict so badly that we should allow the Board of Directors more leeway in
7 this instance. We are not persuaded by either of these arguments.

8 While it is true that Board of Directors meetings for the purpose of
9 membership revocation are described as “closed”, there is no indication that
10 this means that such meetings are exempted from the statutory
11 requirements that every other BoD meeting is made to abide by. If
12 lawmakers wanted this to be the case, they would have included a specific
13 exemption within the governing laws of the Oklahoma Intercollegiate
14 Legislature; the fact that they did not provides strong evidence that these
15 closed meetings were intended to function, for all intents and purposes, the
16 same way as any other meeting of the Board of Directors. Nor is the claim of
17 conflicting statutes sufficient to excuse the circumvention of statutory
18 requirements by the Board of Directors in this instance. The Court admits
19 that there are conflicting requirements in Title 1, Chapter 2 and Title 8,
20 Chapter 2, Section 201, and recommends that these conflicts be speedily
21 resolved, but the conflicts here do not apply to the specific conduct disputed
22 by the Plaintiffs. Plaintiffs do not argue that the closed meeting should have
23 been made accessible to the public, but rather that the meeting was not

1 called with the advance notice required by the Statutes. The fact that the
2 Governor was not given sufficient warning about the meeting means that he
3 was unable to make proper plans to attend the meeting on October 2nd,
4 particularly since this was a Sunday evening in the middle of the academic
5 semester. By not providing sufficient notice, the Board of Directors robbed
6 Governor Maxwell and Secretary of State Kyle of their statutory privileges,
7 thus inviting this lawsuit and invalidating the meeting.

8 Although defendants concede that they did not provide proper
9 statutory notification for their meeting, and we have rejected their
10 arguments on the nature of closed meetings of the Board of Directors, they
11 assert that because previous meetings for member revocation have not
12 strictly followed statutes, they should not have the results of their meeting in
13 this case invalidated. This Court wholly rejects this argument. While it is true
14 that proper procedures have not been strictly adhered to in the past, this is
15 no justification for the current Board of Directors to ignore statutes now. In
16 previous cases, there were never any suits filed, and had there been, this
17 Court would indeed have found that the membership of those Boards would
18 have been in error. However, in the specific case mentioned, the Board of
19 Directors was faced with actual criminal conduct that required immediate
20 visible action in order for the organization to save face and to preserve
21 continued existence; had those members not been subject to immediate
22 discipline, the organization would have faced harsh sanctions from state
23 institutions. The fact that those members who were ejected from the

1 Oklahoma Intercollegiate Legislature chose not to sue, an action which would
2 have resulted in their criminal behavior coming to light to not only the
3 organization, but to state authorities as well, indicates that they were willing
4 to forego their statutory protections in return for not being potentially
5 subjected to prosecution.

6 Given these facts, the Court rejects all arguments made by the
7 Defendants on this issue. The fact that proper guidelines were not followed,
8 thus robbing SoS Kyle and Governor Maxwell of their statutory privileges and
9 protections, means that the Board of Directors chose to subject itself to
10 possible legal challenge, which was granted by this Court. This oversight
11 provides sufficient cause to void the October 2nd meeting of the Board of
12 Directors, but in order to address all disputes, this Court now considers the
13 final question.

14 IV

15 The final issue that this Court must address examines whether
16 Governor Maxwell's right to due process, as described in the Statutes of the
17 Oklahoma Intercollegiate Legislature, were violated. Defendants claim that,
18 given the variable in play such as previous allegations of assault by the
19 Governor, that they were justified in denying him the ability to present his
20 case in person. The Court unreservedly rejects this argument.

21 Due process rights for those whose memberships are being
22 considered for revocation are defined in Title 1, Chapter 2, Sections 100a
23 and 102-104. As there were apparently neither victims nor witnesses in this

1 case, and suit was filed on other grounds before the 30 day requirement for
2 the notification of the ejected member's delegation chair, we do not consider
3 Sections 103 and 104 in this decision.

4 Section 100a of this section of the Statutes requires that, before
5 holding a meeting to revoke the membership of a person within the
6 organization, the Board of Directors must hold a preliminary meeting to
7 determine the validity of charges, and to determine the safety of allowing the
8 accused to testify at the subsequent revocation meeting. If it is determined
9 that it would be unsafe to allow the accused to testify, then the "accused shall
10 be allowed a reasonable time period to chose a representative to come
11 before the Board during the subsequent meeting where the vote to revoke
12 the membership of he accused shall occur; otherwise the accused shall be
13 allowed to testify at said subsequent hearing". This is reiterated in Section
14 102 with the additional caveat of "In the event the accused and their
15 representative are unable to attend, a written explanation of the Board of
16 Directors' decision shall be provided to the accused". Although Secretary of
17 State Kyle was not allowed to attend the meeting in her capacity as Board
18 Secretary, and was thus unable to record minutes for the meetings, evidence
19 submitted by the Defendants indicate that the Board met in good faith to hold
20 a preliminary meeting before holding the meeting for revocation of Governor
21 Maxwell's membership, and we do not dispute this claim. Therefore, we
22 move to address the other questions.

1 It is apparent from the language at play in these statutes that the
2 legislators intended to protect the rights of anyone being considered for
3 membership revocation by the Board of Directors. Defendants claim that
4 they declined to allow Governor Maxwell to present his case in person due to
5 fears of violence, citing as their primary reasoning the fact that there was an
6 accusation of assault by Governor Maxwell against another member of the
7 organization. The Court is uncertain whether this actually constitutes a
8 sufficient reason to prohibit the accused from attending his revocation
9 meeting in person, particularly as there were never any charges filed thus
10 reducing this claim to mere unsubstantiated hearsay, but it is not our role to
11 dictate what constitutes unsafe conditions in this context; this authority is
12 thus left to the Board of Directors. The much more alarming fact in this case
13 is that Governor Maxwell was neither provided a “reasonable time period” to
14 choose a representative, nor in fact was allowed to have representation at all.
15 As is established in the case facts, Governor Maxwell remained unaware of
16 the meeting until around 8:00 PM on Sunday evening, and was immediately
17 asked to provide a defense before the Board voted at 9:15. Furthermore, he
18 was disallowed from attending in person, and was refused permission to
19 meet with Attorney General Daniel, who generally serves as chief legal
20 counsel for the Governor.

21 Given these facts, it is readily apparent that Governor Maxwell was
22 denied his right to due process by the Board of Directors in this case, an
23 affront that we severely condemn. By no measure can it be said that the

1 Governor was granted a “reasonable period of time” with which to choose a
2 representative, and in fact was denied representation altogether. It is
3 revealing that neither the Defendants nor Attorney General emeritus Brad
4 Crofford dispute this point, and Defendants merely assert that they were
5 within their right to bar Governor Maxwell from being present and that
6 interviewing him over the phone was sufficient to constitute due process.
7 This is an absurd argument given the context surrounding this meeting; since
8 the Governor was not notified at all beforehand, as is required by statutes,
9 and was prohibited from testifying in person, he is required to be allowed to
10 find legal counsel, presumably the Attorney General. The record indicates
11 that the Board of Directors intentionally stripped the Governor of these
12 rights, thus invalidating their meeting. The right to due process is granted to
13 every member of the Oklahoma Intercollegiate Legislature, and it was
14 shameful for the Board of Directors to deny said rights to Governor Maxwell.
15 If similar action is taken in the future, this Court believes that such behavior
16 will constitute “gross misconduct” as defined by Title 1, Chapter 2, Section
17 106. With this in mind, this Court rules that the violation of Governor
18 Maxwell’s right to due process constitutes sufficient reason to invalidate the
19 meeting of the Board of Directors on October 2nd.

20 V

21 This case is fundamentally about the rule of law within the Oklahoma
22 Intercollegiate Legislature. The meeting by the Board of Directors on October
23 2, 2016 was clearly in violation of several statutes of the Oklahoma

1 Intercollegiate Legislature, and to allow the decisions reached at this meeting
2 to stand would be tantamount to advocating a complete disregard for all laws
3 governing the organization. Defendants request that we issue a narrow
4 ruling permitting their actions in this case, but prohibiting identical actions
5 in the future; this request highlights the fact that Defendants are clearly
6 aware of the illegality of their conduct in this case. We choose to reject this
7 claim and stand by the rule of law within the Oklahoma Intercollegiate
8 Legislature. By ignoring a plethora of statutory requirements in holding their
9 meeting to revoke the membership of Governor Maxwell, the Board of
10 Directors has indicated a dangerous inclination to ignore the law when it is
11 unfavorable to them, and we cannot allow such behavior to stand. Therefore,
12 we hold void all decisions reached by the Board of Directors of the Oklahoma
13 Intercollegiate Legislature at its meeting on October 2, 2016, and direct them
14 to abide by all statutory guidelines for proper conduct in the future.

15 *It is so ordered.*

16 Chief Justice Colston did not take part in this case.