19-7163

Case No. 19-

IN THE SUPREME COURT OF UNITED STATES

OCTOBER TERM, 2019

PAUL ANTHONY HATTON,

Petitioner,

vs.

JUSTICES OF THE OKLAHOMA SUPREME COURT AND JUDGES OF THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

Paul Anthony Hatton, Petitioner Pro Se
101 Jordan Way
Pauls Valley, OK 73075-6921
Telephone: (405) 926-7295
Email: paulhatton@live.com

QUESTION PRESENTED

WHETHER THE FEDERAL COURTS HAVE AN AFFIRMATIVE DUTY TO EXERCISE THEIR SUBJECT MATTER JURISDICTION TO HEAR A 42 U.S.C. § 1983 ACTION SEEKING TO HAVE A STATE SUPREME COURT PROMULGATED RULE, Okla.Sup.Ct.R. 1.36(g), DENYING, PROHIBITING AND BARRING THE PETITIONER AS A STATE APPELLANT FROM HIS EXERCISE OF HIS RIGHT TO FILE A STATE APPELLATE BRIEFS IN A STATE APPEAL, TO BE DECLARED UNCONSTITUTIONAL AND ENJOINED IN FEDERAL COURT BECAUSE OF THE RESPONDENTS STATE JUSTICES' AND STATE JUDGES' **NON-JUDICIAL ENFORCEMENT OF THAT RULE**, PARTICULARLY, WHEN STATE APPELLATE BRIEFS ARE MANDATORILY REQUIRED OF THE PETITIONER IN ALL STATE APPEALS TO OVERCOME THE RESPONDENTS' PRESUMPTION OF CORRECTNESS OF ALL OF THE APPEALED STATE TRIAL COURT PROCEEDINGS, ORDERS AND JUDGMENTS.

PARTIES TO THE PROCEEDINGS

All parties to this proceeding in the court whose judgment is the subject of the petition are Petitioner, and Respondents, THE HONORABLE DOUGLAS L. COMBS, Justice of the Oklahoma Supreme Court; THE HONORABLE PATRICK WYRICK[1], Justice of the Oklahoma Supreme Court; THE HONORABLE TOM COLBERT, Justice of the Oklahoma Supreme Court; THE HONORABLE YVONNE KAUGER, Justice of the Oklahoma Supreme Court; THE HONORABLE JOHN F. REIF, Justice of the Oklahoma Supreme Court; THE HONORABLE JAMES R. WINCHESTER, Justice of the Oklahoma Supreme Court; THE HONORABLE JAMES E. EDMONSON, Justice of the Oklahoma Supreme Court; THE HONORABLE NOMA D. GURICH, Justice of the Oklahoma Supreme Court; THE HONORABLE JUDGE ROBERT DICK BELL; THE HONORABLE JUDGE LARRY E. JOPLIN; THE HONORABLE JUDGE KENNETH L. BUETTNER; THE HONORABLE JUDGE E. BAY MITCHELL; THE HONORABLE JUDGE BRIAN JACK GOREE; THE HONORABLE JUDGE BARBARA G. SWINDON, in their official capacities, and to the best of Petitioners information and personal knowledge there

[1] Subsequent to the filing of the complaint in this action Patrick R. Wyrick became a district judge on the United States District Court for the Western District of Oklahoma. On April 11, 2018, President Donald Trump nominated Wyrick to a seat on that court. The U.S. Senate confirmed Wyrick on April 9, 2019, by a vote of 53-47. He received his judicial commission on April 10, 2019. This is likely the actual reason the courts below didn't rightfully exercise their subject matter jurisdiction.

are no others.

RELATED CASES

None known to Petitioner.

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES (continued)

STATE CASES

FEDERAL STATUTES

STATE STATUTES

TABLE OF CONTENTS

TABLE OF AUTHORITIES (continued)

STATE STATUTES

STATE COURT RULES

TABLE OF CONTENTS

TABLE OF CONTENTS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit (App. A, infra) is not reported. The United States Court of Appeals for the Tenth Circuit denial of rehearing (App. C, infra) likewise is not reported. The unpublished opinion of the United States District Court for the Western District of Oklahoma. (App. B).

JURISDICTION

The denial of the United States Court of Appeals for the Tenth Circuit rehearing was entered on December 26, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a), and 42 U.S.C. § 1983. The Respondent Justices of the Supreme Court of Oklahoma acted in a legislative capacity in promulgating 12 O.S., Ch. 15, App. 1, Okla. Sup. Ct. R. 1.36(g), ("Okla.Sup.Ct.R." or "Rule 1.36(g)") and, consequently, they had legislative immunity. Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 723–24 (1980). Oklahoma Supreme Court rules constitute "state" policy in the same manner as legislatively-enacted programs. 446 U.S. at 734. Petitioner Hatton has a right to coercive injunctive and declaratory relief in Federal court under 42 U.S.C. § 1983 when the Petitioners act or threaten acts in their non-adjudicatory enforcement[2] capacity of their

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[2] Petitioners' strictly enforce and/or threaten their nonadjudicatory enforcement of their Rule 1.36 by requiring all state appellants' opening briefs are to be ordered stricken or to be disregarded in the state appellate review and, rather, that the state appellate courts' review is to be, only, limited "to the record actually presented to the trial court." Sup. Ct. R. 1.36(g) and the Petitoners' standing mandate to state appellate courts set forth in Ladra v. New Dominion. LLC,

self-promulgated court rule. 446 U.S. at 736 and 738.

It is factually undisputed that:

> "Public dockets of the Oklahoma appellate courts show that should a Rule 1.36 appellant be granted leave by those courts to file an appellant merits brief, the Defendants acting under color of state law will disregard or omit the issues and arguments raised by the parties in their merits brief in the appellate court's consideration and, nonetheless and rather, decide and dispose of that appeal on their review of the appellate record as they would in any other Rule 1.36 appeal."Complaint, ROA, p. 10.

Hatton's right to injunctive and declaratory relief under 42 U.S.C. § 1983 was not abrogated by the Federal Courts Improvement Act of 1996, Pub.L. No. 104-317, 110 Stat.3847 (Oct. 19, 1996)("FCIA")[3] and under that amendment, when the state appellate judges are acting in their non-adjudicatory enforcement capacity they are subject to a federal courts unflagging obligation to exercise jurisdiction and where Hatton seeks the appropriate grant declaratory and injunctive relief under 42 U.S.C. § 1983. Supreme Court of Virginia v. Consumers Union of U.S., Inc., 446 U.S. at, 736-737 (1980). The state Justices are to be properly held to be **"liable in their enforcement capacities,"** and thus Federal courts have subject matter jurisdiction and

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2015 OK 53,¶ 6, 353 P.3d 529, 531(Okla. 2015); City of Blackwell v. Wooderson, 2017 OK CIV APP 33, ¶ 6, footnote 2, 397 P.3d 491, 494, footnote 2 (Okla. 2017).

[3] The Senate report indicates that the amendment "**restores the doctrine of judicial immunity to the status it occupied prior to** (Pulliam v. Allen, 466 U.S. 522, 541-42 (1984)]" because Pulliam had departed from "400 years of common law tradition and weakened judicial immunity protections." S. Rep.104-366, at *36-*37, 1996 U.S.C.C.A.N. 4202, 4216-17.(emphasis added). See a detailed analysis of the Federal Courts Improvement Act of 1996 in Leclerc v. Webb, 270 F. Supp. 2d 779, 791-72 (2003).

Respondents are "**proper defendants in a [42 U.S.C. § 1983]** suit for declaratory and injunctive relief [for their acts of enforcing or threatening enforcing of the Respondents' non-adjudicatory self-promulgated Rule 1.36(g)]." 446 U.S. at 736 and 738. (emphasis added); Cf. In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17, 23 (1st Cir. 1982)("In Consumers Union, []like the case before us, the requirements under attack were promulgated by the judges themselves in the form of court rules; the judges had acted in a legislative capacity, which made their involvement in the litigation more direct and which gave them an institutional stake in the litigation's outcome. It is therefore the Supreme Court in Consumers Union . . . treated the judicial defendants as having acted in a non-adjudicatory (enforcement) capacity."). Therefore, there is no immunity against injunctions or declaratory judgments when justices or appellate judges act in an enforcement capacity or threatened enforcement of that state court's self-promulgated rule in the initiating actions and threatened actions against suspected violators, and, although, act in their acting in a judicial capacity in the adjudicating such disputes once brought in the non-adjudicatory enforcement of that rule. Consumers Union, 446 U.S. at, 736 & 738. See also, LeClerc v. Webb, 419 F.3d 405 (5th Cir. 2005), reh'g en banc denied, 444 F.3d 428, cert. denied, 551 U.S. 1158 (2007) (injunctive and declaratory relief not barred when judges act in the non-adjudicatory enforcement capacity). Declaratory and injunctive relief is available in § 1983 actions brought against state judicial officials. Id. at 55–56; Brandon E. ex rel. Listenbee v. Reynolds, 201 F.3d 194, 197 (3d Cir. 2000). These cases apply a test borrowed from the First Circuit's seminal case on this subject, In re

Justices of Supreme Court of Puerto Rico, 695 F.2d 17 (1st Cir. 1982). Under the In re Justices test, a judge who acts as a neutral and impartial arbiter of a statute is not a proper defendant to a Section 1983 suit challenging the constitutionality of the statute. This is because "[j]udges sit as arbiters without a personal or institutional stake on either side of [a] . . . controversy" and they "have played no role in [a] statute's enactment, they have not initiated its enforcement, and they do not even have an institutional interest in following their prior decisions (if any) concerning its constitutionality if an authoritative contrary legal determination has subsequently In re Justices. Id., at 21. see also id. at 25. Although In re Justices was decided before Pulliam and, too, before the 1996 amendment to 42 U.S.C. § 1983, courts have continued to adopt and apply its test. See Reynolds, 201 F.3d at 198.

Moreover, the FCIA of 1996 only precludes injunctive relief for suits against a judicial defendant acting in his "judicial capacity."[4] Thus, to the extent that the Petitioner seek declaratory and injunctive relief against the enforcement of Section 3(B) only, the state appellate courts and their individual members are subject to the instant suits.

Standing and ripeness are two doctrines of justiciability that assure federal courts will only decide Article III cases or controversies. To achieve standing, a

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[4] Title 42 U.S.C. § 1983 provides that:

[I]n any action brought against a judicial officer for an **act or omission taken in such officer's judicial capacity,** injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

(emphisis added)(amended Oct. 19, 1996 by PUB. L. 104-317, TITLE III, § 309(c), 110 Stat. 3853).

plaintiff must have suffered an injury in fact, see Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 124 S.Ct. 2301, 2308, (2004), and generally, "must submit to the challenged policy" before pursuing an action to dispute it. Ellison v. Connor, 153 F.3d 247, 254-55 (5th Cir.1998). However, strict adherence to the standing doctrine may be excused when a policy's flat prohibition would render submission futile. Ellison, 153 F.3d at 255 (citing Moore v. United States Dept. of Agric., 993 F.2d 1222 (5th Cir.1993)). The ripeness doctrine counsels against "premature" adjudication by distinguishing matters that are "hypothetical" or "speculative" from those that are poised for judicial review. United Transp. Union v. Foster, 205 F.3d 851, 857 (5th Cir.2000). Even actions for declaratory relief, which by design permit pre-enforcement review, require the presence of an actual "case" or "controversy." Id. A pre-enforcement action "is generally ripe if any remaining questions are purely legal . . . [and] further factual development" is not required for effective judicial review. Id.

FEDERAL CONSTITUTION, STATUTE, AND RULE INVOLVED

United States Constitution, First and Fourteenth Amendment, 28 U.S.C. § 2106, and Oklahoma Supreme Court Rule 36(g).

STATE APPELLATE RULE INVOLVED

12 O.S., Ch. 15, App. 1, Okla. Sup. Ct. R. 1.36(g), ("Okla.Sup.Ct.R. or Rule 1.36")Appellate Review and Briefs.

> "The appellate court shall confine its review to the record actually presented to the trial court. Unless otherwise ordered by the appellate court, no briefs will be allowed on review. If briefs are ordered, the appellate court will prescribe a briefing schedule.

> Motions for leave to submit appellate briefs shall be deemed denied unless affirmatively granted by the court. No briefs shall be tendered by attachment to a motion for leave to brief, and the clerk shall not accept or file an appellate brief without prior leave of the court. A motion for appeal related attorney's fees must be made by motion prior to mandate. See Rule 1.14."

STATEMENT OF THE CASE

A. Legal Background of Challenged Appellate Brief Prohibitory Procedural Rule, Okla.Sup.Ct.R. 1.36(g).

The State of Oklahoma has two appellate tracks for conducting and disposing of its civil appeals. **The traditional appeal track** is under Okla.Sup.Ct.R. 1.11(e)(1) demands a statement of the fact which is expressly required of the appellant's advocate to frame the unique set of fact issues on appeal and if not presented to the appellate court the appeal may be dismissed. Okla.Sup.Ct.R. 1.11(1)(e) Summary of the Record.

> (1) Appellate Briefs. The brief of the moving party shall contain a Summary of the Record, setting forth the material parts of the pleadings, proceedings, facts and documents upon which the party relies, together with such other statements from the record as are necessary to a full understanding of the questions presented to this Court for decision. Facts stated in the Summary of the Record must be supported by citation to the record where such facts occur. Citations to the record shall identify the number of the document in the record, and the page number within the document. Example: ROA, Doc.1, p.5. If the answering party shall contend that such Summary of the Record is incorrect or incomplete, that party's brief shall contain a Summary of the Record correcting any such

inaccuracies with citation to the record.

> Where a party complains of the admission or rejection of testimony, that party shall set out the testimony to the admission or rejection of which the party complains, stating specifically the objections thereto. Where a party complains of an instruction given or refused, the party shall cite to the place in the record on appeal where said instruction may be found, together with the objection thereto.
>
> When a party desires to set out instructions or requested instructions, or if it is necessary to set out admitted or rejected testimony, the party may set forth such material in either the Summary of the Record in the brief or in an appendix to the brief as described in Rule 1.11(i). A party need not include in the Summary of the Record all of the evidence in support of a claim that the record does not show or tend to show a certain fact, but when such a question is presented, the adverse party shall include in that party's brief or appendix so much of the evidence claimed to have had that effect.
>
> The Summary of the Record need include only a general statement of the substance of those parts of the record over which there is no controversy and which are not required to be shown in detail in order to present the issues to this Court, and such parts of the record as are purely formal and immaterial to the consideration of any issue presented to this Court may be omitted therefrom.

The Oklahoma appellate advocate in traditional, historic, and common law is to within thirty days after the trial court's entry of a trial court

appealable order[5] is mandatorily required to perform the traditional advocate function[6] of paying filing fee, filing the with Clerk of the Oklahoma Supreme Court a petition in error[7] of an appealable order of the trial court[8] designation of record or counter-designation of record.[9] Within sixty-days thereafter the appellant's advocate is mandatorily required to prepare and to file a Brief-in-Chief with the office of the Clerk of the Oklahoma Supreme Court.[10]

It is the function of the appellant advocate to prepare and timely file the Brief-in-Chief or the opening brief in the mandatorily specified form and having the required contents.[11] The Brief-in-chief or opening brief is mandatorily

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[5] 12 Okla. Stat., §§ 681 and 696.3 if the final order is prepared by the parties in form and submitted to the trial court, or 12 § Section 696.2 if order prepared by trial court. For examples of judgments and final orders, see Okla.Sup.Ct.R. 1.20.

[6] 12 Okla. Stat., § 990A.

[7] Okla.Sup.Ct.R.1.23(a)(1) file an original petition with fourteen (14) copies. Counter-petitions in error must be filed within forty days after the date of an appealable order. Okla.Sup.Ct.R. 1.27(a).

[8] The form requirements are set forth in 12 Okla. Stat., § 696.3. An order prepared in compliance with § 696.3 is a jurisdictional prerequisite to the commencement of a civil appeal. Okla.Sup.Ct.R. 1.27(a).

[9] Okla.Sup.Ct.R. 1.28(a) & 1.28(c). Designation of record must be filed both in the office of the trial court clerk and Oklahoma Supreme Court Clerk.

[10] Okla.Sup.Ct.R. 1.10(a)(1).

[11] Okla.Sup.Ct.R.1.11.

required to be of a certain specific size, format, font size, and page numbering[12], size[13], cover[14], index[15], Summary of the Record[16], separate propositions[17], signature of counsel[18], certificate of service[19], appendix to brief[20], citations to

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[12] Okla.Sup.Ct.R. 1.11(a).

[13] Okla.Sup.Ct.R. 1.11(b).

[14] Okla.Sup.Ct.R. 1.1l(c).

[15] Okla.Sup.Ct.R. 1.1l(d).

[16] For the actual judicial application or usage of the opening brief's statement of the case contained in the brief-in-chief or opening briefs, see McHodge v. Tulsa St. Ry. Co., 1923 OK 637, ¶ 10, 219 P. 656(Okla. 1923) "This brief summary of the record presents counsel's precise grounds for reversal as nearly as we are able to state them."); Phillips v. Mitchell, 1922 OK 135, ¶ 2, 207 P. 559 (Okl. 1922)("From this brief summary of the record it becomes fairly obvious that the only question necessary for us to consider in passing upon the first assignment of error is: Are the findings and judgment of the trial court against F. O. Phillips and in favor of the Mitchells contrary to the clear weight of the evidence? Upon this point it is sufficient to say that we have examined the evidence carefully, and are convinced that the judgment of the trial court is amply sustained by the evidence."); Petitt v. Double-O Oil Co., 1921 OK 179, ¶3, 198 P. 616 (Okla. 1921)("A brief summary of the record discloses that Millie Petitt, nee Stephens, attained her majority on September 4, 1912, and on September 28, 1912, conveyed her allotment to her mother, Ella Hadley, to be held by her mother in trust, as she and her mother testified, to be relieved from annoyance from parties seeking to cheat her out of her land."). See, also, "Admissions made in the briefs may be considered as supplementing and curing an otherwise deficient appellate record." State ex rel. Macy v. Board of County Commissioners, 1999 OK 53 ¶ 4 n.8, 986 P.2d 1130, 1134 (see collected cases).

[17] Okla.Sup.Ct.R. 1.11(f).

[18] Okla.Sup.Ct.R. 1.11(g).

[19] Okla.Sup.Ct.R. 1.11(h).

[20] Okla.Sup.Ct.R. 1.11(i).

record[21], authority[22], and citations to authority[23]. Should the Brief-in-Chief that is submitted to the state appellate court fails to substantially conform to the mandatory requirements of the appellate court's rules "the Court may continue or dismiss a cause, reverse or affirm the judgment appealed, render judgment, strike a filing, assess costs or take any other action it deems proper."[24]

The Oklahoma Supreme Court may under Okla.Sup.Ct.R 1.7(III) at its sole discretion *sua sponte* place certain appeals on a fast track docket where "they are assigned for disposition by the fast track docket method may be placed on that docket and decided promptly by a short memorandum order with no party having a right to recall or to have that appeal to be reassigned from that docket. "The advanced case may be set for oral presentation with or without any record or briefs." id. This Rule is not at issue here.

Oklahoma has an appellate procedure and proceedings which prohibits

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[21] Okla.Sup.Ct.R. 1.11(j).

[22] Okla.Sup.Ct.R. 1.11(k).

[23] Okla.Sup.Ct.R. 1.11(l).

[24] Okla.Sup.Ct.R. 1.2, Title 12 Okla. Stat., § 995 and Title 20 Okla. Stat,. § 15.1. Compare for inconsistency in application with Rule 1.36(g) with the, alternative, application of Okla.Sup.Ct.R. 1.11(i). see, Patzkowsky v. State ex rel. Oklahoma Board of Agriculture, 2009 OK CIV APP 18, ¶ 3, 217 P.3d 146, 147 (Okla) ("Consistent with th[e Okla.Sup.Ct. R. 1.11(e)(1)] requirement, we are not required to search the multiple volumes of this record to find where those "facts" were demonstrated in the evidence. Under such circumstances an appellate court is justified in ignoring assignments of error dependent upon those "facts." Peters v. Wallace, 1927 OK 279, 260 P. 42.").

all appellate briefing. This is completely unique to the English common law before 1775, Federal law, no other state law, and territorial law is an appellate practice and procedure that is exclusive to Oklahoma. Under Oklahoma Supreme Court Rule 1.36 alternative appellate procedure where the appeal is decided by, solely, by Respondents without an appellate brief from Hatton or other similar parties being allowed to submit an appellate brief. Rather, the Respondents' themselves alone research the record on appeal, identify the trial court errors and legal issues, and decide the appeal under Oklahoma's unique no-appellate brief allowed, under the **second appeal track** for accelerated procedure or the summary appellate process under Okla.Sup.Ct.R. 1.36(g). Respondents' strictly enforce and/or threaten their enforcement of their Rule 1.36 by requiring all state appellants' opening briefs are to be ordered stricken or to be disregarded in the state appellate review and, rather, that the state appellate courts' review is to be, only, limited "to the record actually presented to the trial court." Sup. Ct. R. 1.36(g) and the Defendant/Appellants' standing mandate to state appellate courts set forth in Ladra v. New Dominion. LLC, 2015 OK 53,¶ 6, 353 P.3d 529, 531(Okla. 2015); City of Blackwell v. Wooderson, 2017 OK CIV APP 33, ¶ 6, footnote 2, 397 P.3d 491, 494, footnote 2 (Okla. 2017). Furthermore, should the Oklahoma appellate court grant leave for the parties leave to file an appellate briefs, nonetheless, those filed appellate briefs are

wholly disregarded, or overlooked by the Respondents and, rather, their decision is based on their research of the appellate record and is " limited "to the record actually presented to the trial court." Sup. Ct. R. 1.36(g). In effect Rule 1.36 appeals without appellate briefs are no appeal whatsoever but rather, is the Oklahoma appellate courts second guessing the trial court and denying Petitioner and all others the right of the appellant to his/her advocating any preserved issue on appeal. Hatton is prohibited from filing an appellate brief which is mandatorily required by Oklahoma controlling case law to overcome the correctness of the Oklahoma trial court proceedings, orders and/or judgment. Andrew v. Depani-Sparkes, 2017 OK 42, 1116, n. 34, 396 P.3d 210; Willis v. Sequoyah House. Inc., 2008 OK 87, 1115, 194 P.3d 1285, 1290 ("A trial judge's decision comes to a court of review clothed with a presumption of correctness"); F.D.I.C. v. Jernigan, 1995 OK 54, ,8 n.13, 901 P.2d 793, 796 n.1("On appeal we indulge in the presumption that a trial court's decision is correct and the proceedings are regular.");Boorigie v. Boyd, 1914 OK 77, , 2, 139 P. 253, 253-54 ("We must presume, in the absence of a contrary showing, that the court's proceedings were regular."); Kahre v. Kahre, 1995 OK 133, , 45, 916 P.2d 1355, 1365 ("Before any claimed error concerning the admission or exclusion of evidence will be deemed reversible error, an affirmative showing of prejudicial error must be made."); Eckel v. Adair, Okl., 698 P.2d 921, 924 (1985); see also

Wilson-Harris v. Southwest Telephone Co., 193 Oki. 194, 141 P.2d 986, 989-990 (1943). Therefore, under Oklahoma controlling case law all appellants are required to file an appellant merits brief to overcome the presumption of correctness of trial court proceedings and order, and to identify, argue and to demonstrate to the Respondents the errors in the trial court of fact and law of the proceedings and orders in the trial court and to seek appellate court error correction as well as a process of clarifying and interpreting law. Because the Oklahoma Rule 1.36 appellant cannot file a brief he/she cannot overcome this presumption of correctness.

Under controlling applicable Oklahoma case law, Andrew. Depani-Sparkes, 2017 OK 42, 16, n. 34' 396 P.3d 210, appellate proceedings conducted under the Okla.Sup.Ct.R. 1.36(g) summary appeals are inherently biased and predetermined because institutional bias of the appellate court because on appeal the trial court proceedings are presumed to be correct. Because the Hatton and all similarity situated appellants are deprived, and prohibited from the filing an Okla.Sup.Ct.R. 1.ll(e) brief-in-chief, they cannot demonstrate to the Oklahoma appellate courts the errors in trial court's proceedings "and noting that the appellant [cannot seek] to overturn a decision [and he/they cannot bear] the burden of "overcoming the law's presumption of correctness [of the trial court proceedings, orders and judgment]". Andrew v. Depani-Sparkes, 2017 OK 42, 1116, n. 34, 396 P.3d 210. Acting under color of state law the Respondents have under Okla.Sup.Ct.R. 1.36(g)summary

appeals implemented appellate proceedings which are sham, spurious and unconstitutional appellate proceeding because without an appellate brief there is no appellate hearing. Cf. Andrew v. Depani-Sparkes, 2017 OK 42, 11 16, n. 34, 396 P.3d 210. Acting under color of state law the Justices and Judges of the Oklahoma appellate courts in Sup.Ct.R. 1.36(g) summary appeals proceedings have an affirmative duty, obligation and interest to dispense justice even handedly, detached, and impartial appellate review of trial court proceedings. Those appellate duties, obligations, and interests directly irreconcilably are in direct conflict with their presumption of the correctness of appealed trial court proceedings. F.D.I.C. v. Jernigan, 1995 OK 54, 11 8 n.13, 901 P.2d 793, 796 n.13. That presumption of correctness of the trial court proceedings and orders cannot be changed without the Respondents being persuaded by the Appellant through an appellate advocate filing an appellate brief addressing the errors of the trial court to identify, and argue in an effort to persuade the Respondents of trial court errors.

It is factually undisputed that:

> "Public dockets of the Oklahoma appellate courts show that should a Rule 1.36 appellant be granted leave by those courts to file an appellant merits brief, the Defendants acting under color of state law will disregard or omit the issues and arguments raised by the parties in their merits brief in the appellate court's consideration and, nonetheless and rather, decide and dispose of that appeal on their review of the appellate record as they would in any other Rule 1.36 appeal."Complaint, ROA, p. 10.

Therefore, under Rule 1.36(g)Respondents' completely deny Hatton equal

access, right to petition to Oklahoma appellate courts.

Appellate Review and Briefs.

> "The appellate court shall confine its review to the record actually presented to the trial court. Unless otherwise ordered by the appellate court, no briefs will be allowed on review. If briefs are ordered, the appellate court will prescribe a briefing schedule. Motions for leave to submit appellate briefs shall be deemed denied unless affirmatively granted by the court. No briefs shall be tendered by attachment to a motion for leave to brief, and the clerk shall not accept or file an appellate brief without prior leave of the court. A motion for appeal related attorney's fees must be made by motion prior to mandate. See Rule 1.14."

The Rule 1.36 beginning its effective date of January 1, 1997, is unconstitutional, null, void, and of no lawful effect, or consequence, and all Rule 1.36 appeals that have been or are before the Respondents are undecided and remain undetermined, undecided and are ongoing. This is notwithstanding a 20 O.S. § 16 appellate court mandate may have issued and filed. Rule 1.36 is unconstitutional, null, void and of no consequence because it is in violation of all Oklahoma state Rule 1.36 appellants' rights, interests, including said appellants' property interests, privileges, and immunities guaranteed all citizens under U.S. CONST., Art. IV, Privileges and Immunities, Sec. 1, and Full Faith and Credit, Sec. 2; Art. VI, Sec. 2, Supremacy Clause; amend. I, right of access to state courts, Free Speech, and amend XIV, § 1 both its equal protection clause and due process clauses. More specifically, Respondents deny Hatton and all

other Rule 1.36 state appellants follows: (i) Under Rule 1.36 Respondents deny Hatton and all other appellants their fundamental First Amendment right of access to Oklahoma appellate courts, right to petition the Oklahoma appellate courts and their free speech right of advocacy in the Oklahoma appellate courts and to file a Rule 1.ll(l)(e) appellate merits brief to raise, advocate all of their claims and defenses, right to be heard, right to counsel, the right to be represented by and to be assisted by counsel and/or to otherwise question the trial court's proceedings, judgment or final order. (ii) Rule 1.36(g) appellate proceedings deny Oklahoma appellants the right to equal access to justice compared with appellate proceeding conducted under Rule 1.ll(l)(e). (iii) Under Rule 1.36 appellate proceedings where the Respondents' decide the appeal, solely, on the appellate record and Hatton and other state appellants are denied by Respondents an appellate hearing because under practice in Oklahoma appellate courts Rule 1.36 appellants cannot identify and raise issues, argue to seek the Respondents' to on appeal correct trial court errors as well as the process of clarifying and interpreting law in their disposition of Hatton's appeal.

The state appellant is denied, prohibited and barred from the exercise of his First Amendment right to mount a zealous appellate attack or to otherwise question the trial court's proceedings, judgment or final order. Or, under Okla.Sup.Ct.R. 1.36(g) the merits of the trial court's judgment is presumed to

be absolutely correct. The state appellant is denied, barred and prohibited[25] from filing a Brief-in-chief. Appellants are denied and prohibited from preparing and filing a Brief-in-chief, or any brief and he cannot advocate any of the appellant's issues on appeal through his preparing any brief document. Neither any document has a specified size, format, font size, and page numbering, size, cover, index, Summary of the Record, separate propositions, signature of counsel, certificate of service, appendix to brief, citations to record, authority, or citations to authority or otherwise to frame the factual nor the legal issues for the appellate courts of Oklahoma review, weigh, consider and dispose. Should an appellant attempt to file a brief, the appellate court will order such brief stricken from the docket. Ladra v. New Dominion, LLC, 2015 OK 53, ¶ 6, 353 P.3d 529, 531.

Rather, and in contrast and comparison with traditional appeals under the expedited summary judgment process under Okla.Sup.Ct.R.1.36(b) after the

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[25] Under the rules for accelerated summary judgment appeal, no briefing shall be allowed unless ordered by the appellate court. Okla. Sup. Ct. R. 1.36(g). Instead, "'[a]n appellate court shall confine its review to the record actually presented to the trial court.' Id. It is evident, therefore, that a party shall not include new arguments or authorities--which would have the effect of briefing the issues--in her Petition in Error. When a party attempts to circumvent this rule, appellate courts are to strike those parts of the petition that exceed the scope allowed by Rule 1.36(g). See, e.g., Simington v. Parker, 2011 OK CIV APP 28, ¶ 6, 250 P.3d 351, 353-54" O'Feery v. Smith, 2001 OK CIV APP 142, ¶ 3, 38 P.3d 242, 244"; Ladra v. New Dominion, LLC, 2015 OK 53, ¶ 6, 353 P.3d 529, 531. Plainly, Rule 1.36 "as applied" is strictly enforced to fully prohibit and prevents appellant Hatton his exercise of his Fourteenth Amendment Due Process right to file an appellate brief. This, plainly, is Rule 1.36(g) is bias and prejudice and, too, is expressly a structural error as bias and prejudice.

appellant's petition in error having an appealable order or judgment and the designation of record is filed the Oklahoma Supreme Court through a *sua sponte* order it directs the parties to "proceed as an accelerated appeal pursuant to rule 1.36 of the Okla.Sup.Ct.Rules." Thereafter, the appellant's advocate to has, only, to proceed in the appeal as the substituted judicial administrative functionary and he performs the duties traditional to the office of the clerk of the trial court. The appellant must physically travel to the office of the trial court clerk, obtain and pay for each and every complete certified copy of each and all of the designated trial court filings.[26] After obtaining copies of trial court documents the appellant must assemble the physical record of the documents on appeal, place each in chronological order as reflected in the trial court docket for the case appealed. Each filing must be separated by a tabbed sheet to assist in locating each filing. An index must be prepared by appellant for each volume of the appellate record identifying each document, including the appearance docket and once assembled the office of the clerk of the trial court must be submitted to the office of the clerk of the trial court for their inspection and review of the original of the appellant's compilation, index, and covers of the documents for that office's certification. The appellant must include that trial court clerk's certification in the first volume of the record,

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[26] Okla.Sup.Ct.R.1.36(c).

bind the original, four copies for the Supreme Court, and the copies for the appellant's and appellee's record on appeal. He must transmit the original and four copies of the record on appeal to the office of the clerk of the Oklahoma Supreme Court. Also, opposing party's counsel must be transmitted a copy.

The appellant's advocate cannot do anything further after filing and transmitting the record on appealRather, he is, totally, denied and prohibited from performing the appellate advocate function, i.e., framing the set of facts unique for the appeal, and arguing the appeal in any fashion. Appellants are totally foreclosed and barred from filing a brief and motions for leave to file an appellate brief are presumed to be denied. In all Okla.Sup.Ct.R. 1.36(g) appeals, the Oklahoma appellate court Justices or judges are the complete substitute for the advocate for the parties. And too they have the presumption of the correctness of the trial court proceedings, orders and judgment. The state court justices or appellate judges are the substitute for the advocate. They necessarily conflate, commingle, or fuse the traditional advocate's function of advocate into both the advocate and that of the judge for the prevailing party[27] in all Okla.Sup.Ct.R. 1.36(g) accelerated appeals. It appears

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[27] Under Okla.Sup.Ct.R. 1.36(g) appeals the state justices and judges function as the prevailing party's appellate advocates and as the advocate functionary for the prevailing party, those justices and judges are completely functioning outside of scope of their historic and traditional judicial capacity and are not entitled to immunity. Forrester v. White, 484 U.S. 219 (1988)(state court judge did not have absolute judicial immunity from damages suit under 42 U.S.C. § 1983 for his decision to demote and dismiss a probation officer). It is axiomatic, that a

as though they decide which party is to be the winner or looser and then search the appellate record to find facts for their decision to support their supposition. At all times the appellant's advocate is implacably and ruthlessly prohibited from actually perform any advocacy function whatsoever, until after the Oklahoma appellate court has handed down its decision. Only, after the entry of the state appellate court opinion, then and only then may the appellant's attorney may first file a brief in his motion to reconsider. The appellant's advocate is tied and bound until after the appellate court's opinion is rendered. Under Okla.Sup.Ct.R. 1.36(g) appellant advocates are implacably and ruthlessly prohibited from filing a Brief-in-Chief or opening brief on the merits of the appeal. In all Okla.Sup.Ct.R. 1.36(g) appeals the parties are denied the benefit of having any legal representative through counsel during entire hearing on the merits portion of the appeal.

B. Proceedings in the Courts below.

(I) United States District Court for the Western District of Oklahoma

On December 14, 2017, filed a 42 U.S.C. § 1983 action challenging the U.S. Constitutionality of Okla.Sup.Ct.R. 1.36(g). Petitioner Paul Anthony Hatton ("Hatton" or "Petitioner") as the state appellant in pending and ongoing state

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judge may not as an advocate proffer facts to the court and in the same case adjudicate the finding of those same facts. In other words a judge may not work both sides of the bench, both as the advocate of facts and as the adjudicator finding those same facts in that same case.

appeal: Embrace Home Loans, Inc. vs. Plaintif/Appellee, vs Paul Anthony Hatton, Defendant/Appellant, and Shelia To Hatton: Unknown Successors of Edith M. Rennie, if any: John Doe, as Occupant of the Premises: and Jane Doe, as Occupant of the Premises, Defendants/Appellees, Case No. SD-117581 ("Hatton state appeal"). In the complaint Hatton showed the trial court that he had subject matter jurisdiction over his constitutional challenge to Rule 1.36(g). When acting in its enforcement capacity, the Oklahoma Supreme Court, Oklahoma Court of Civil Appeals and its members, are not immune from suits for declaratory or injunctive relief. See Supreme Court of Virginia v. Consumers Union of the U.S., 446 U.S. 719(1980) (holding that the Virginia Supreme Court and its chief justice may be sued for acts committed in their enforcement capacities). See also, LeClerc v. Webb, 419 F.3d 405 (5th Cir. 2005), reh'g en banc denied, 444 F.3d 428, cert. denied, 551 U.S. 1158 (2007); Brandon E. ex rel. Listenbee v. Reynolds, 201 F.3d 194, 197 (3d Cir. 2000). Moreover, the FCIA of 1996 only precludes injunctive relief for suits against a judicial defendant acting in his "judicial capacity." Thus, to the extent that the plaintiffs seek declaratory and injunctive relief against the enforcement of Section 3(B) only, the Oklahoma appellate courts, Respondents, and its individual members are subject to the instant suits. The District Court dismissed without addressing this Consumers Union subject matter jurisdictional issue.

(II) United States Court of Appeals for the Tenth Circuit

Hatton timely filed a petition in error. On December 10, 2019, the Tenth Circuit dismissed without addressing the subject matter jurisdictional issue that he had shown he had subject matter jurisdiction over his constitutional challenge to Rule 1.36(g). When acting in its enforcement capacity, the Oklahoma Supreme Court, Oklahoma Court of Civil Appeals and its members, are not immune from suits for declaratory or injunctive relief. See Supreme Court of Virginia v. Consumers Union of the U.S., 446 U.S. 719 (1980)(holding that the Virginia Supreme Court and its chief justice may be sued for acts committed in their enforcement capacities). See also, LeClerc v. Webb, 419 F.3d 405 (5th Cir. 2005), reh'g en banc denied, 444 F.3d 428, cert. denied, 551 U.S. 1158 (2007); Brandon E. ex rel. Listenbee v. Reynolds, 201 F.3d 194, 197 (3d Cir. 2000).

Moreover, the FCIA of 1996 only precludes injunctive relief for suits against a judicial defendant acting in his "judicial capacity." Thus, to the extent that the plaintiffs seek declaratory and injunctive relief against the enforcement of Section 3(B) only, the Oklahoma appellate courts, Respondents, and its individual members are subject to the instant suits. The Tenth Circuit dismissed without addressing the Consumers Union subject matter jurisdictional issue.

REASON FOR GRANTING THE PETITION, VACATING THE FINAL ORDER, AND REMANDING TO THE TENTH CIRCUIT

I. BOTH THE TRIAL COURT AND THE TENTH CIRCUIT DISMISSED ON JURISDICTIONAL GROUNDS HATTON'S 42 U.S.C. § 1983 CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF WITHOUT HAVING ADDRESSED SUPREME COURT'S CONTROLLING AND APPLICABLE SUBJECT MATTER JURISDICTION CASE LAW AUTHORITY: Supreme Court of Virginia v. Consumers Union of the U.S., 446 U.S. 719 (1980).

The Respondents Justices of the Supreme Court of Oklahoma acted in a legislative capacity in promulgating 12 O.S., Ch. 15, App. 1, Okla. Sup. Ct. R. 1.36(g), ("Okla.Sup.Ct.R." or "Rule 1.36(g)") and, consequently, they had legislative immunity. Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 723–24 (1980). Oklahoma Supreme Court rules constitute "state" policy in the same manner as legislatively-enacted programs. 446 U.S. at 734. Petitioner Hatton has a right to coercive injunctive and declaratory relief in Federal court under 42 U.S.C. § 1983 when the Petitioners act or threaten acts in their non-adjudicatory enforcement[28] capacity of their self-promulgated court rule. 446 U.S.

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[28] Petitioners' strictly enforce and/or threaten their nonadjudicatory enforcement of their Rule 1.36 by requiring all state appellants' opening briefs are to be ordered stricken or to be disregarded in the state appellate review and, rather, that the state appellate courts' review is to be, only, limited "to the record actually presented to the trial court." Sup. Ct. R. 1.36(g) and the Petitoners' standing mandate to state appellate courts set forth in Ladra v. New Dominion. LLC, 2015 OK 53,¶ 6, 353 P.3d 529, 531(Okla. 2015); City of Blackwell v. Wooderson, 2017 OK CIV APP 33, ¶ 6, footnote 2, 397 P.3d 491, 494, footnote 2 (Okla. 2017).

at 736 and 738.

It is factually undisputed that:

> "Public dockets of the Oklahoma appellate courts show that should a Rule 1.36 appellant be granted leave by those courts to file an appellant merits brief, the Defendants acting under color of state law will disregard or omit the issues and arguments raised by the parties in their merits brief in the appellate court's consideration and, nonetheless and rather, decide and dispose of that appeal on their review of the appellate record as they would in any other Rule 1.36 appeal."Complaint, ROA, p. 10.

Hatton's right to injunctive and declaratory relief under 42 U.S.C. § 1983 was not abrogated by the Federal Courts Improvement Act of 1996, Pub.L. No. 104-317, 110 Stat.3847 (Oct. 19, 1996)("FCIA") and under that amendment, when the state appellate judges are acting in their non-adjudicatory enforcement capacity they are subject to a federal courts unflagging obligation to exercise jurisdiction and where Hatton seeks the appropriate grant declaratory and injunctive relief under 42 U.S.C. § 1983. Supreme Court of Virginia v. Consumers Union of U.S., Inc., 446 U.S. at, 736-737 (1980). The state Justices are to be properly held to be **"liable in their enforcement capacities,"** and thus Federal courts have subject matter jurisdiction and Respondents are "**proper defendants in a [42 U.S.C. § 1983]** suit for declaratory and injunctive relief [for their acts of enforcing or threatening enforcing of the Respondents' non-adjudicatory self-promulgated Rule 1.36(g)]." 446 U.S. at 736 and 738. (emphasis added); Cf. In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17, 23 (1st Cir. 1982)("In Consumers Union, []like the case before us, the

requirements under attack were promulgated by the judges themselves in the form of court rules; the judges had acted in a legislative capacity, which made their involvement in the litigation more direct and which gave them an institutional stake in the litigation's outcome. It is therefore the Supreme Court in Consumers Union . . . treated the judicial defendants as having acted in a non-adjudicatory (enforcement) capacity."). Therefore, there is no immunity against injunctions or declaratory judgments when justices or appellate judges act in an enforcement capacity or threatened enforcement of that state court's self-promulgated rule in the initiating actions and threatened actions against suspected violators, and, although, act in their acting in a judicial capacity in the adjudicating such disputes once brought in the non-adjudicatory enforcement of that rule. Consumers Union, 446 U.S. at, 736 & 738. See also, LeClerc v. Webb, 419 F.3d 405 (5th Cir. 2005), reh'g en banc denied, 444 F.3d 428, cert. denied, 551 U.S. 1158 (2007) (injunctive and declaratory relief not barred when judges act in the non-adjudicatory enforcement capacity). Declaratory and injunctive relief is available in § 1983 actions brought against state judicial officials. Id. at 55–56; Brandon E. ex rel. Listenbee v. Reynolds, 201 F.3d 194, 197 (3d Cir. 2000). These cases apply a test borrowed from the First Circuit's seminal case on this subject, In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17 (1st Cir. 1982). Under the In re Justices test, a judge who acts as a neutral and impartial arbiter of a statute is not a proper defendant to a Section 1983 suit challenging the constitutionality of the statute. This is because "[j]udges sit as arbiters without a personal or institutional stake on either side of [a] . . . controversy" and they "have played

no role in [a] statute's enactment, they have not initiated its enforcement, and they do not even have an institutional interest in following their prior decisions (if any) concerning its constitutionality if an authoritative contrary legal determination has subsequently In re Justices. Id., at 21. see also id. at 25. Although In re Justices was decided before Pulliam and, too, before the 1996 amendment to 42 U.S.C. § 1983, courts have continued to adopt and apply its test. See Reynolds, 201 F.3d at 198.

Moreover, the FCIA of 1996 only precludes injunctive relief for suits against a judicial defendant acting in his "judicial capacity."[1] Thus, to the extent that the Petitioner seek declaratory and injunctive relief against the enforcement of Rule 1.36(g) only, the state appellate courts and their individual members are subject to the instant suits.

CONCLUSION

PREMISES CONSIDERED, this Court pursuant to 28 U.S.C. § 2106, and Supreme Court Rule 16.1 should without oral argument's make a summary disposition on the merits in favor of the Petitioner by entering a memorandum opinion, granting a writ of certiorari to the United States Court of Appeals for the Tenth Circuit, vacating its decision in Case No. 19-6067 of December 10, 2019, finding and entering a remand order under Supreme Court Rule 10, because the decision of the United States Court of Appeals for the Tenth

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[1] Title 42 U.S.C. § 1983 provides that:

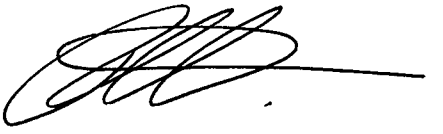
[I]n any action brought against a judicial officer for an **act or omission taken in such officer's judicial capacity,** injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

(emphisis added)(amended Oct. 19, 1996 by PUB. L. 104-317, TITLE III, § 309(c), 110 Stat. 3853).

Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings in failing to follow controlling applicable case law authority of this Court: Supreme Court of Virginia v. Consumers Union, 446 U.S. 719 (1980). And, too, the Tenth Circuit court of appeals has entered a decision in conflict with the decisions of other United States court of appeals: LeClerc v. Webb, 419 F.3d 405 (5th Cir. 2005), reh'g en banc denied, 444 F.3d 428, cert. denied, 551 U.S. 1158 (2007); Brandon E. ex rel. Listenbee v. Reynolds, 201 F.3d 194, 197 (3d Cir. 2000). This Court has stated that Federal courts have subject matter jurisdiction under 42 U.S.C. § 1983 to grant declaratory injunction and coercive injunctive relief to hear a U.S. Constitutional challenges to a state supreme court self-promulgated court rule when that same state supreme court or other state appellate courts affirmatively non-judicially enforce or threaten the enforcement of that state court rule. 446 U.S. at 736-737. This Court noted that state appellate court respondents were properly held "liable in their enforcement capacities," Federal courts have subject mater jurisdiction and, thus, Respondents are "**proper defendants in a [42 U.S.C. § 1983] suit for declaratory and injunctive relief.**" 446 U.S. at 736 (emphasis added). Moreover, the FCIA of 1996 only precludes injunctive relief for suits against a judicial Respondents acting in his "judicial capacity." Thus, to the extent that the Petitioner seek declaratory and injunctive relief against the enforcement of Section 3(B) only, the state appellate courts and their individual members are subject to the

instant suits, and that such further proceedings are to be had as may be just under the circumstances.

Respectfully submitted,

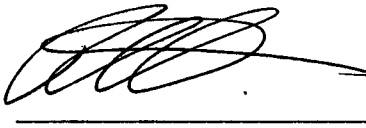


12/27/19

Paul Anthony Hatton, Petitioner Pro Se
101 Jordan Way
Pauls Valley, OK 73075-6921
Telephone: (405) 926-7295
Email: paulhatton@live.com

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule, 21, and 39, I certify that this above and foregoing petition is prepared in accordance with the requirements of Supreme Court Rule, Rule 14 on 8½ by 11-inch paper, printed in proportionally spaced in 14-point CenturybookBT typeface, the typeface of the footnotes are in 12-point typeface with 2-point or more leading between lines, and is no greater than 40-pages in length. I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.



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Paul Anthony Hatton, Petitioner Pro Se
101 Jordan Way
Pauls Valley, OK 73075-6921
Telephone: (405) 926-7295
Email: paulhatton@live.com