

In the
Supreme Court of the United States

No. 22-7466

RICHARD E. GLOSSIP, *Petitioner*,

vs.

STATE OF OKLAHOMA, *Respondent*.

ON WRIT OF CERTIORARI TO THE
OKLAHOMA COURT OF CRIMINAL APPEALS

MOTION OF VICTIM FAMILY MEMBERS DEREK VAN TREESE,
DONNA VAN TREESE, AND ALANA MILETO FOR
LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS
AMICUS CURIAE AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.3, 28.4, and 28.7 of this Court, *amicus curiae* victim family members Derek Van Treese, Donna Van Treese, and Alana Mileto (“Van Treese family”) respectfully move for leave to participate in the oral argument in this case as *amicus curiae* supporting affirmance of the judgment below and that argument time be divided between the parties and the Van Treese family 20/20/20 – i.e., that each participant receive twenty minutes.

Respondent State of Oklahoma does not oppose the motion, in light of the fact that it is taking the positions that the Court possesses jurisdiction to review the judgment below and that the judgment below should be reversed.

Petitioner Glossip opposes the motion.

Amicus Van Treese family is well aware that *amicus* participation in oral argument “will be granted only in the most extraordinary circumstances.” Rule 28.7. Extraordinary circumstances exist here.

In this case, Glossip was sentenced to death for murdering Barry Van Treese nearly two decades ago. After the Oklahoma Court of Criminal Appeals affirmed his death sentence, Glossip filed a certiorari petition seeking review of that decision. The State then filed a brief acquiescing in certiorari and supporting vacating Glossip’s capital conviction. Brief for Respondent Oklahoma in Support of Petition for Writ of Certiorari 1-2 (“Oklahoma Brief”).

Meanwhile, the Van Treese family, represented by undersigned pro bono counsel, filed the only brief in opposition to Glossip’s certiorari petition. The Van Treese family’s brief explained that the family had been actively supporting a final conclusion in this case through 25 years of litigation. The family’s brief began by presenting a jurisdictional issue regarding whether this Court could review the judgment below. The brief explained that an adequate and independent state ground supported the decision—i.e., the Oklahoma Post-Conviction Procedure Act’s limitations on successive petitions. Brief *Amicus Curiae* of Victim Family Members Derek Van Treese et al. in Opposition to the Petition 5-8 (“Van Treese Brief”).¹ The family’s brief then addressed the merits of Glossip’s claim, establishing why his claim was meritless.

¹ The Van Treese Brief was also joined by the Oklahoma District Attorneys’ Association (ODAA). This current motion to participate in oral argument is filed solely on behalf of the Van Treese family. Undersigned counsel are not representing the ODAA, and the ODAA will be involved in subsequent proceedings through separate legal counsel.

Yesterday, January 22, 2024, the Court granted certiorari to review Glossip’s petition. The Court’s order also directed the parties (Glossip and Oklahoma) to brief the jurisdictional question raised by the Van Treese family in their response brief, specifically whether “the Oklahoma Court of Criminal Appeals’ holding that the Oklahoma Post-Conviction Procedure Act precluded post-conviction relief is an adequate and independent state-law ground for the judgment.” Order, *Glossip v. Oklahoma* (Jan. 22, 2024).

Against this backdrop, unless the Court expands oral argument to involve another participant, the argument will not provide a full airing of the arguments surrounding the questions presented. Both Glossip and Oklahoma have previously told the Court that it possesses jurisdiction to review the case. Oklahoma’s brief devoted six pages specifically responding in opposition to the Van Treese family’s argument. See Oklahoma Brief 19-24 (“The Van Treese family *amicus* brief argues that the decision below ‘rest on an independent state ground’ and thus that his Court lacks jurisdiction to grant the relief request. That argument is mistaken.”). Similarly, Glossip’s brief endorsed the State’s position on jurisdiction. Glossip Reply 11 (arguing that the “OCCA decision rests on neither any independent nor adequate state law ground”).

In addition, both Glossip and Oklahoma have previously told the Court that they support vacating Glossip’s capital sentence. See Oklahoma Brief 25; Glossip Reply 3.

As counsel for the Van Treese family, I believe that I can offer the Court the benefit of experience and expertise in the legal issues involved in this case. I am the Ronald N. Boyce Presidential Professor of Criminal Law and University Distinguished Professor of Law at the S. J. Quinney College of Law at the University of Utah, where I teach regarding criminal procedure

and jurisdiction issues. I am generally regarded as one of the nation’s leading experts on crime victims’ rights. This Court has previously appointed me to defend the judgment below in a criminal case when the parties were not defending the ruling. See *Dickerson v. United States*, 530 U. S. 428, 442, n. 8 (“Because no party to the underlying litigation argued in favor of § 3501’s constitutionality in this Court, we invited Professor Paul Cassell to assist our deliberations by arguing in support of the judgment below”). I have also defended a restitution award for a crime victim in this Court when the parties declined to do so. See *Paroline v. United States*, 572 U. S. 434 (2014).

Co-counsel for the Van Treese family is Kent Scheidegger of the Criminal Justice Legal Foundation. Mr. Scheidegger has more than three decades of experience in capital appellate litigation. He has been involved in more than 100 briefs filed with this Court in cases involving capital punishment, habeas corpus, independent and adequate state grounds, and successive petitions. For example, he has been involved in *Coleman v. Thompson*, 501 U. S. 722 (1991), *McCleskey v. Zant*, 499 U. S. 467 (1991), and *Jones v. Hendrix*, No. 21-857 (2023).

In addition, the Van Treese family has already participated in this case through their *amicus* brief at the certiorari stage—a brief that raised the particular jurisdictional argument that the Court has now added into the case. The Van Treese family understands that, in some past cases, when the parties have declined to do so, the Court has selected an *amicus* attorney to defend the judgment below. But in this case, where the Van Treese family has already been participating, they are the logical party to defend the decision. As the Court can determine from the family’s previously filed brief, the Van Treese family will squarely present adversarial arguments on all questions

presented. Public confidence will best be served if the family presents these arguments, as the public will know that both sides of the case are being fully presented by litigants with concrete interests at stake.

Moreover, the merits issues in this case involve complicated factual issues concerning whether exculpatory materials were available to defense counsel. As discussed in the family’s brief, undersigned counsel has already carefully reviewed those materials and stands prepared to present the relevant facts to the Court—facts demonstrating that the prosecutors never concealed anything from the defense. Van Treese Brief 11-13.

CONCLUSION

For these reasons, the Van Treese family requests that they be allowed to participate in the oral argument in this case to defend the judgment below and that each of the three argument participants be allowed 20 minutes of argument time.

January 23, 2024



PAUL G. CASSELL
Counsel of Record
Utah Appellate Project
S. J. Quinney College of Law
at the University of Utah*

KENT S. SCHEIDEGGER
Criminal Justice Legal Foundation

(*institutional address for
identification purposes, not to imply
institutional endorsement)

Counsel for Amici Curiae Derek Van Treese et al.

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CERTIFICATE OF SERVICE

I, Kent S. Scheidegger, a member of the Bar of this Court, hereby certify that on this 23rd day of January, 2024, one copy of the Motion of Victim Family Members Derek Van Treese, Donna Van Treese, and Alana Mileto for Leave to Participate in Oral Argument as *Amicus Curiae* and for Divided Argument in the above-entitled case were mailed first-class postage prepaid to:

Amy Pickering Knight
Phillips Black, Inc.
1721 Broadway, Suite 201
Oakland, CA 94612
(520) 878-8849
amy@amyknightlaw.com
Counsel for Richard Glossip

Gentner F. Drummond
Oklahoma Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
(405) 521-3921
gentner.drummond@oag.ok.gov
Counsel for Oklahoma

John R. Mills
1721 Broadway, Suite #201
Oakland, CA 94612
(888) 532-0897
j.mills@phillipsblack.org
Counsel for Richard Glossip

I further certify that a digital copy was emailed to the addresses indicated above and that all parties required to be served have been served.

KENT S. SCHEIDEGGER
2131 L Street
Sacramento, CA 95816
(916) 446-0345

Attorney for Amici Curiae Derek Van Treese et al.