

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

TOM GANN,

Petitioner,

v.

OKLAHOMA CORPORATION COMMISSION ex rel. STATE OF OKLAHOMA, and
PUBLIC SERVICE COMPANY OF OKLAHOMA,

Respondents.

**APPLICATION FOR EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF OKLAHOMA**

TOM GANN
Oklahoma State House of Representatives
2300 N. Lincoln Blvd., Room 334
Oklahoma City, OK 73105
Telephone: (405) 557-7364
Tom.Gann@okhouse.gov

Petitioner, Pro Se

**TO THE HONORABLE NEIL M. GORSUCH, ASSOCIATE JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR
THE TENTH CIRCUIT:**

Pursuant to this Court's Rules 13.5, 22, and 30, the petitioner, Tom Gann, a member of the Oklahoma House of Representatives and a customer of Public Service Company of Oklahoma ("PSO"), respectfully requests that the time to file his Petition for Writ of Certiorari in this matter be extended for 60 days up to and including Friday, November 27, 2026 (because November 26 is Thanksgiving). The Oklahoma Supreme Court issued its opinion on April 21, 2026. (Appendix A.) The petitioner's timely-filed Amended Motion for Reconsideration/ Petition for Rehearing was denied on June 29, 2026. (Appendix B.) See Sup. Ct. R. 13.3. Absent an extension of time, the Petition for Writ of Certiorari would be due on Monday, September 28, 2026 (because September 27 is a Sunday). Petitioner is filing this Application more than ten days before that date. See Sup. Ct. R. 13.5.

This Court would have jurisdiction over the Oklahoma Supreme Court's judgment under 28 U.S.C. 1257(a).

1. This case presents a substantial and important question of federal law: Whether a State Supreme Court can decline to consider constitutional rights violation issues (including due process, fundamental error, and lack of jurisdiction) – insisting on “error preservation” and “issue exhaustion” below – in an appeal of right brought by a non-party who did not even receive notice of the case below until after the deadline to intervene, and therefore had no opportunity to preserve any error or exhaust any issue. Below, the Oklahoma Supreme Court recognized the

petitioner/appellant's standing as "any aggrieved person" to bring the appeal. Okla. Const. Art. IX, § 20. Nevertheless, it held that, "¶24 Issue exhaustion applies with equal force to parties and non-parties to the underlying Corporation Commission proceeding."

2. In so holding, the Oklahoma Supreme Court created a split with this Court's holding in *Carr v. Saul*, 593 U.S. 83 (2021) wherein this Court found that requiring issue exhaustion of complex constitutional challenges during non-adversarial administrative hearings was an unduly burdensome prerequisite. Although the Oklahoma Corporation Commission ("OCC") has the power and authority of a court of record (Okla. Const. Art. IX, § 19), it is a tribunal of limited jurisdiction comprised of three statewide-elected officials, none of whom even hold a law degree. Further, the Oklahoma Supreme Court cited no issue-exhaustion law or regulation in support of its application of this "rule." Instead, it imposed a judicially created issue-exhaustion requirement based on prior case law in which issue exhaustion had been applied to prior appellants who either had been a party to the OCC proceeding below (*State ex rel. Cartwright v. Oklahoma Natural Gas Co.*, 1982 OK 11, 640 P.2d 1341) or who admittedly had the opportunity to participate below but chose not to do so (*Oklahoma Elec. Co-op., Inc. v. State ex rel. Oklahoma Corp. Comm.*, 1995 OK 91, 903 P.2d 321). As described in the Petition for Rehearing, like the rest of PSO's captive customers, the petitioner/appellant did not even receive notice of the PSO rate case before the OCC until after the deadline to intervene.

3. In so holding, the Oklahoma Supreme Court also created a split with

both Federal Rule of Civil Procedure 46¹ and the vast majority of states² that expressly exempt a party who had no opportunity to object from their error-preservation requirements. The administrative rule cited by the Oklahoma Supreme Court in its opinion (Okla. Admin. Code § 165:5-13-3(f)) explicitly applies to “a party of record,” which the petitioner/appellant was not, but unlike Federal Rule of Civil Procedure 46, Oklahoma’s rule 165:5-13-3(f) is silent with respect to non-parties.

4. This Court has held “that a cause of action is a species of property protected by the Fourteenth Amendment’s Due Process Clause.” *Logan v. Zimmerman Brush Co.*, 455 US 422, 428 (1982), citing *Martinez v. California*, 444 U. S. 277, 281-282 (1980). “Similarly, the Fourteenth Amendment’s Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures, when such an action would be ‘the equivalent of denying them an opportunity to be heard upon their claimed right[s].’” *Logan*, 429-430, citing *Boddie v. Connecticut*, 401 U. S. 371, 380 (1971). By declining to consider the petitioner’s constitutional rights violation issues raised in an appeal of right, the Oklahoma Supreme Court’s ruling has raised *entirely new* federal constitutional

¹ Federal Rule of Civil Procedure 46:

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made. [Emphasis added.]

² The third sentence of Federal Rule of Civil Procedure 46 has been adopted verbatim by Alabama, Alaska, Arizona, Colorado, Delaware, Hawaii, Idaho, Indiana, Maine, Minnesota, Mississippi, Montana, Nevada, New Mexico, North Dakota, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, and Wyoming. The following states have substantively similar to laws exempting appellants who had no opportunity to object from error preservation requirements: Arkansas, Georgia, Kansas, Kentucky, Maryland, Massachusetts, Missouri, New Jersey, North Carolina, Ohio, and Virginia.

rights issues – like Appellant’s 1st Amendment right to petition the government, and his 14th Amendment right to timely, adequate notice and equal protection – issues not briefed by any party below. Consequently, this *pro se* petitioner has been forced to seek the assistance of counsel, not from consumer law experts who might have assisted his efforts to vindicate the constitutional due process rights of captive utility customers if the Oklahoma Supreme Court had actually ruled on them, but from administrative law experts now needed to vindicate the constitutional due process rights of non-party appellants raising constitutional rights violation issues.

5. After more than two months of searching for qualified counsel, two candidates are currently considering taking this case. As they perform their due diligence and conflict checks, it was suggested that the petitioner should “protect his rights,” because no counsel could file this Application for Extension of Time on the petitioner’s behalf until formally retained. Thus, the petitioner respectfully requests a 60-day extension to finalize retention of counsel and to give that counsel adequate time to prepare a Petition for Writ of Certiorari on the petitioner’s behalf.

6. Given the prescribed deadline dates apparently landing on weekends and holidays, to the extent that the *pro se* petitioner has miscalculated any deadlines cited above, he respectfully requests the Court deem this application corrected as it requires to provide the maximum possible extension of time.

Accordingly, the petitioner respectfully requests that an order be entered extending the time to file a Petition for Writ of Certiorari for 60 days, up to and including Friday, November 27, 2026.

Dated: September 15, 2026

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tom Gann", written over a horizontal line.

TOM GANN
Oklahoma State House of Representatives
2300 N. Lincoln Blvd., Room 334
Oklahoma City, OK 73105
Telephone: (405) 557-7364
Tom.Gann@okhouse.gov

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