

IN THE DISTRICT COURT OF WAGONER COUNTY
STATE OF OKLAHOMA

Wagoner County, Oklahoma
Filed
In District Court

MAY 09 2025

PETITION FOR GRAND JURY

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Case No. GJ-2025-01

James E. Hight
Court Clerk
At 4:05 o'clock P.M.

**MOTION TO QUASH ON BEHALF OF
DISTRICT ATTORNEY N. JACK THORP**

COMES NOW, N. Jack Thorp, the duly elected and qualified District Attorney for District 27, State of Oklahoma ("DA Thorp"), and hereby respectfully moves this Honorable Court to quash the Petition for Grand Jury as to DA Thorp.¹

The Petition seeks to impanel a grand jury, pursuant to Okla. Const. Art. II, § 18 and 38 O.S. § 101, to investigate and recommend criminal charges against and/or removal from office of various Wagoner County officials based on accusations of impropriety related to four distinct, wholly unrelated events dating back to 2019. Petitioner seeks to investigate: the elected Wagoner County Sheriff, Chris Elliott; DA Thorp; various named and unnamed sheriff's deputies and Wagoner County Jail employees; and 911 operator, Judy Elliott. The Petition is fatally insufficient as a matter of law because a grand jury lacks jurisdiction to investigate DA Thorp and/or seek his removal based on allegations related to his exercise of prosecutorial

¹ DA Thorp has been a prosecutor for over twenty years and the District Attorney for District 27 since 2017. Prior to his current role, he served as First Assistant to the previous District Attorney for District 27 for seven (7) years. DA Thorp has twice been awarded the David L. Moss Memorial Award for District Attorney of the year: first in 2020, and again in 2023.

discretion. And there is no way an amended petition could confer jurisdiction where none exists. Thus, the Petition should be quashed *with prejudice* as it relates to DA Thorp. Moreover, civil penalties under 30 O.S. § 108 should be imposed on those involved in the preparation and circulation of this spurious Petition.

I. THE PETITION FAILS TO ALLEGE SUFFICIENT FACTS ON WHICH TO SEEK DA THORP'S REMOVAL.

The Petition is based on cursory belated allegations of “criminal acts,” “willful neglect of duty,” “willful maladministration,” “gross partiality in office,” “corruption,” and “attempted concealment of evidence” against the various implicated Wagoner County officials. (Petition at 1-2) (citing 22 O.S. § 1181). Oklahoma law requires that a removal action provide “specific instances of facts from which the conclusions plead[ed] may be drawn,” rather than conclusory assertions of wrongdoing. *See Russell v. Henderson*, 1979 OK 164, ¶¶ 12, 14, 603 P.2d 1132, 1137 (internal quotations omitted) (“Where the proceeding is designed to remove a public official such as that before us now the importance of alleging facts which must be borne out at trial with evidentiary proof thereof is essential.”); *see also Key v. Owens (In re Request for Grand Jury)*, 1996 OK CIV APP 150, ¶ 7, 935 P.2d 1189, 1191. The Petition at issue here offers scant information regarding generally alleged malfeasance; it does not, however, plead sufficient facts regarding any specific impropriety DA Thorp allegedly committed.

The Petition seeks removal² for DA Thorp’s alleged “Willful Neglect of Duty, Willful Maladministration and Gross Partiality in Office.” (Petition at 6, 10, 12). These amorphous conclusions of alleged wrongdoing are insufficient as a matter of law. The Petition’s only allegations specific to DA Thorp are: (1) failure “to file criminal actions against any of those individuals responsible for the death of Angela Liggans” (*Id.* at 6); (2) failure “to file criminal charges against those Deputies responsible for the death of Jeffrey Krueger” (*Id.* at 10-11); (3) failure to “bring criminal actions against Judy Elliott for unlawful entry” into the Wagoner County Jail (*Id.* at 12); and (4) failure to bring “assault and battery charges against Sheriff Elliott for the assault and battery upon Elizabeth Rodriguez.” (*Id.*).³ Remarkably, the Petition seeks to remove the elected District Attorney for the exercise of his inherent discretion regarding whether to prosecute, whom to charge, and for what crime. *This is both unprecedented and contrary to law.*

It is elemental that the exercise of prosecutorial discretion is not a legally viable basis for removal. (*See infra*, Section II). Thus, the Petition’s allegations do not

² Although the Petition seeks a grand jury investigation for the purposes of criminal indictment related to *other* county officials, it does not plead with any degree of specificity what crime, if any, for which DA Thorp should be investigated. Assuming, *arguendo*, that the Petition is sufficient to state *any* actionable basis for investigating DA Thorp (which it is not), such claims are limited to removal rather than criminal indictment. *Russell, supra*, ¶¶ 12, 14, 603 P.2d at 1137; *Key, supra*, ¶ 7, 935 P.2d at 1191.

³ Petitioner offers no explanation for delaying *years* in bringing this Petition for Grand Jury. As alleged, Liggans passed away approximately four years ago; Krueger passed away nearly six years ago; and Rodriguez was allegedly assaulted over five years ago. Notably, DA Thorp was re-elected to his position in 2022 – well after the incidents complained of by Petitioner.

– and cannot – form the basis for a removal petition under 22 O.S. § 1181. Any grand jury impaneled for the purpose of considering the removal of DA Thorp arising from the exercise of his official duties, including the discretion inherent in such duties, lacks jurisdiction to investigate such acts, much less return a valid true bill for the same. *See Okla. Tax Comm'n v. McInnis*, 1965 OK 204, ¶ 18, 409 P.2d 355, 358 (“[B]y express provision of the law, it is the duty of a grand jury to investigate law violations in its own county, and it has no duty to investigate transactions or acts occurring wholly outside its county, not connected with law violations in its county, or triable therein.”); *Bennett v. Dist. Court*, 1945 OK CR 101, 162 P.2d 561, 568 (“A grand jury is an inquisitorial body pertaining alone to offenses committed within the county or that could be prosecuted in the county[.]”) (citations omitted).

II. THE EXERCISE OF PROSECUTORIAL DISCRETION IS VITAL TO OUR SYSTEM OF JUSTICE AND CANNOT BE THE BASIS FOR REMOVAL.

Even if the Petition’s allegations were sufficiently alleged, which they are not, the only allegations related to DA Thorp are non-actionable under the well-established doctrine of prosecutorial discretion.

Petitioner’s claims against DA Thorp are premised on a fundamental misstatement of his duties as District Attorney, *i.e.*, that DA Thorp “has a statutory and constitutional duty to **bring criminal charges.**” (Petition at 9) (*emphasis added*). This is incorrect. There is no such duty or obligation.

The Supreme Court of the United States has repeatedly decreed that the Government retains “broad discretion” regarding whom and whether or not to prosecute. *United States v. Goodwin*, 457 U.S. 368, 380 n.11 (1982); *see also Marshall*

v. Jerrico, Inc., 446 U.S. 238, 248 (1980). This discretion derives from Article II, § 1 of the United States Constitution, which vests the Executive Branch with authority to prosecute offenses. *See United States v. Nixon*, 418 U.S. 683, 693 (1974). Based on this authority, practical considerations and the best interests of justice necessitate that prosecutors have the inherent discretion to exercise their best judgment regarding charging decisions.

For example, the U.S. Supreme Court has unequivocally stated that **“the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.”** *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) (opinion by Stewart, J.) (emphasis added); *see also Wayte v. United States*, 470 U.S. 598, 607 (1985) (“In our criminal justice system, the Government retains broad discretion as to whom to prosecute.”) (opinion by Powell, J.) (internal quotations omitted). Oklahoma has adopted the same principle. *Jones v. State*, 1982 OK CR 196, ¶ 9, 654 P.2d 1080, 1083 (quoting *Hayes, supra*, 434 U.S. at 364).

The doctrine of prosecutorial discretion exists, in part, to preserve separation of powers and prevent citizens and the judiciary from second-guessing and/or overriding the decisions made by the elected officials responsible for enforcing laws. *See United States v. Armstrong*, 517 U.S. 456, 465 (1996). In *Armstrong*, Chief Justice Rehnquist opined:

Judicial deference to the decisions of [prosecutors] rests in part on an assessment of the relative competence of prosecutors and courts. Such factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake. It also stems from a concern not to unnecessarily impair the performance of a core executive constitutional function.

Armstrong, 517 U.S. at 465 (internal citations omitted)⁴. For this reason, federal courts consistently reject any attempt to appeal or bring any form of collateral attack as to a prosecutor's charging decision. *See, e.g., In re Wild*, 994 F.3d 1244, 1263 (11th Cir. 2021) ("The commencement of criminal proceedings marks a clear and sensible boundary on the prosecutorial-discretion spectrum. Before charges are filed—when the government is still in the process of investigating and deciding "whether to prosecute"—its authority and discretion are understood to be "exclusive" and "absolute.") (internal citations omitted).

Petitioner's allegations are precisely the type of vague complaints of dereliction of duty that the Oklahoma Court of Criminal Appeals has rejected as insufficient to overcome the absolute authority to which prosecutors are entitled regarding charging decisions. *See Woodward v. Morrissey*, 1999 OK CR 43, ¶ 16, 991 P.2d 1042, 1047 (collecting cases involving charging decisions and noting: "[w]e have repeatedly found these same arguments alleging overbreadth of prosecutorial discretion unpersuasive."). Other states have rejected similar attempts to indict and/or disqualify prosecutors for the exercise of discretion not to file criminal charges. *See*,

⁴*Armstrong* remains the law of the land, notwithstanding the baseless assertion of the petitioning LLC that initiated this proceeding. (*See* Proposition III, *infra*).

e.g., *Baxter v. Peterlin*, 509 N.E.2d 156, 158 (Ill. Ct. App. 1987) (“[I]t was within the bounds of prosecutorial discretion to decline prosecution... No good purpose would be served by permitting a person in the plaintiff’s position to claim impropriety on the part of a prosecutor based upon hindsight, because he disagreed with the prosecutor’s conclusions regarding a particular case.”).

In *Baxter*, the Illinois Court of Appeals reviewed an action involving a request for a special prosecutor to investigate criminal activity by the Mayor of Ottawa, Illinois. 509 N.E.2d at 157. The petitioner claimed the sitting District Attorney should be disqualified based upon an alleged political connection with the Mayor. *Id.* The Circuit Court dismissed the petitioner’s complaint, and the Court of Appeals affirmed, writing:

Assuming *arguendo* there was probable cause to believe Mayor Thomas had committed a crime, it was within the bounds of prosecutorial discretion to decline prosecution of the mayor... Prosecutorial discretion is an essential component of the criminal justice system. **No good purpose would be served by permitting a person in the plaintiff’s position to claim impropriety on the part of a prosecutor based upon hindsight, because he disagreed with the prosecutor’s conclusions regarding a particular case.**

Id. at 158 (emphasis added).

Here, Petitioner’s allegations would be insufficient to even *disqualify* DA Thorp (as in *Baxter*), or to pursue a claim under the common law, such as negligence. Rather, the Petition’s allegations regarding DA Thorp’s charging decisions are non-actionable. *See Jones, Hayes, supra*; *see also Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) (“[In American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another.”).

III. THE PETITIONER IS NOT STATUTORILY AUTHORIZED TO SEEK THE RELIEF REQUESTED.

Standing to file a Petition for Grand Jury is controlled by 38 O.S. § 101 which provides:

Beginning November 1, 1989, **any person, group of persons or organization** desiring to circulate a petition for the impaneling of a grand jury, pursuant to the provisions of Section 18 of Article II of the Oklahoma Constitution shall file a copy of said petition with the court clerk of the county prior to the obtaining of any signatures upon such petition.

(emphasis added).

The Petitioner in this case is not a “person” or “group of persons.” Additionally, the Petitioner does not qualify as an “organization” for the purposes of standing to initiate a grand jury. Petitioner is identified as “Wagoner County Citizens Against Corruption, LLC,” and the Petition is ostensibly executed by a member of the LLC. (Petition at 2, 14). Publicly-available documents on the Oklahoma Secretary of State’s website reflect that the LLC was formed on April 9, 2025 – just 15 days before the filing of the Petition for Grand Jury. (See Exhibit A, Articles of Organization).

Petitioner does not qualify as an “organization” with standing to file a Petition for Grand Jury. The Oklahoma Constitution at Article II § 18, titled “Grand Jury,” specifically states that “qualified electors” may submit a Petition for Grand Jury. Additionally, the term “organization” in 38 O.S. § 101 cannot be interpreted to include limited liability companies. Section 101 was enacted, and became effective, on November 1, 1989. *Id.* At that time, the Oklahoma Limited Liability Company Act (18 O.S. §§ 2000 et seq.) *did not exist*. The Act became law on September 1, 1992 –

three years *after* § 101 governing requests for a grand jury went into effect. Accordingly, the Oklahoma Legislature could not have intended to include limited liability companies in the definition of “organization,” since the Act regarding LLCs did not exist.

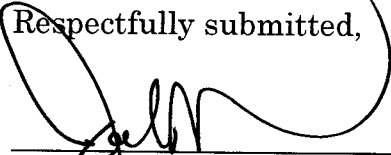
Under these circumstances, there is no question that the belated, impermissible, and unprecedented actions of this embryonic limited liability company were motivated by the transparent desire to avoid the imposition of civil damages pursuant to 38 O.S. § 108, which provides:

Any person responsible for the creation, drafting or circulating of a grand jury petition may be held liable for civil damages for libel or slander due to any false allegation made in the body of the petition, if such allegations are proven to be made with an ulterior motive or illicit purpose.

Suffice to say, this Honorable Court should not permit, as a matter of law and equity, this subterfuge. There could be no set of circumstances more appropriate than those in this case for the imposition of sanctions.

WHEREFORE, District Attorney N. Jack Thorp respectfully requests that the Court quash the Petition for Grand Jury as against DA Thorp, *with prejudice*, and for sanctions against Petitioner Wagoner County Citizens Against Corruption, LLC, Brent Watson, who signed the Petition, and such other parties as may be responsible for its filing and distribution.

Respectfully submitted,



Joel L. Wohlgemuth, OBA #9811

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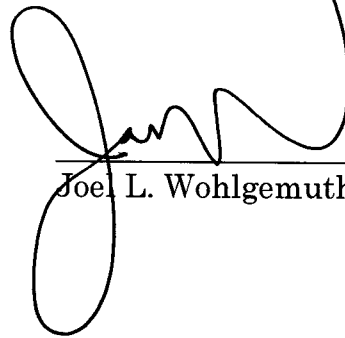
*Attorneys for N. Jack Thorp,
District Attorney for District 27,
State of Oklahoma*

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May 2025, a true and correct copy of the foregoing was mailed via first class mail postage prepaid to the following:

Wagoner County Citizens Against Corruption, LLC
P.O. Box 140241
Broken Arrow, OK 74014-0241

Brent Watson, Registered Agent
8624 Wright Ave.
Broken Arrow, OK 74014

A handwritten signature in black ink, appearing to read 'Joel L. Wohlgemuth', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke.

Joel L. Wohlgemuth

OKLAHOMA Secretary of State Electronic Filing**ARTICLES OF ORGANIZATION****DOMESTIC LIMITED LIABILITY COMPANY**

Document Number: 70449700002 Submit Date: 4/9/2025

LIMITED LIABILITY COMPANY NAME

The name of the Limited Liability Company is:
WAGONER COUNTY CITIZENS AGAINST CORRUPTION LLC

PRINCIPAL PLACE OF BUSINESS ADDRESS

8624 WRIGHT AVE
BROKEN ARROW, OK 74014 USA

Email - wagonerccac@gmail.com

EFFECTIVE DATE

Effective Date:
Same as filing date.

DURATION

Perpetual

REGISTERED AGENT AND REGISTERED OFFICE ADDRESS**Agent Name**

BRENT WATSON

Address

8624 WRIGHT AVE
BROKEN ARROW, OK 74014 USA

ATTACHMENTS**File Label****File Name and Path****SIGNATURE**

I hereby certify that the information provided on this form is true and correct to the best of my knowledge and by attaching the signature I agree and understand that the typed electronic signature shall have the same legal effect as an original signature and is being accepted as my original signature pursuant to the Oklahoma Uniform Electronic Transactions Act, Title 12A Okla. Statutes Section 15-101, et seq.

Dated - 4/9/2025

Signature Names

BRENT WATSON

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