ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 120619

IN THE MATTER OF THE APPLICATION OF THE OKLAHOMA TURNPIKE AUTHORITY FOR APPROVAL OF NOT TO EXCEED $500,000,000 OKLAHOMA TURNPIKE SYSTEM SECOND SENIOR LIEN REVENUE BONDS, SERIES 2022

PROTEST BRIEF OF PIKE OFF OTA, INC., AMY CERATO, MIKE LEARY, VINCE DOUGHERTY, TERRIE CLUB, MIKE CLUB, TWYLA SMITH, CALI COWARD, KAREN POWELL, MIKE POWELL, CEDRIC LEBLANC, DARLA LEBLANC, CLAUDETTE WISPE, MARK DOOLING, NATE PIEL, KARA PIEL, NIKKI WHITSON, JOHN WHITSON, ROBERT WALLACE, CHELSEA WALLACE, ROBIN STEAD, ANNA OLSON, TASSIE HIRSCHFELD, ICE BLAST LLC AND JANETTE WARD

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RELEVANT FACTS AND STATEMENT OF THE CASE

This case centers around ACCESS Oklahoma, the OTA's unprecedented, five-billion-dollar, fifteen-year debt package of proposed turnpike projects. ACCESS Oklahoma includes three proposed turnpikes which would run through Cleveland County, the City of Norman, McClain County, and Purcell. *See* Pike Off Appendix, Exhibit A, Map and Current OTA Descriptions. The OTA has named them the Outer Loop: East-West Connector, the Outer Loop: Tri-City Connector, and the South Extension.

Detailed statements of facts and law relevant to this Court's constitutional exercise of original jurisdiction, as well as this Court's standard of review, are contained in Pike Off OTA's Motion filed in this Court on September 1, 2022, the briefs of other Protestants, and the First Amended Petition in Cleveland County Case No. CV-2022-1692. This Brief will focus on evidence, argument, and authority which shows that the OTA is not legislatively authorized to issue bonds for any of the three new proposed ACCESS Oklahoma Turnpikes.

SUMMARY OF THE ARGUMENT

For the first time in bond validation case history, this Court is squarely presented with a case in which the OTA is not legally authorized to build turnpikes for which it seeks to validate bonds. The OTA can bond and build a turnpike only where and how the legislature has specifically authorized the OTA to do so. Pike Off OTA will show in this brief that the turnpike bonding and building restrictions for the Oklahoma City Outer Loop set forth in 69 O.S. § 1705(f) prohibit the OTA from building the East-West Connector and the Tri-City Connector. Pike Off OTA will further show that the legislature never authorized the OTA to build the South Extension.

The OTA has previously tried to get the legislature to remove these restrictions and provide these authorizations. These efforts failed. The OTA is now unlawfully trying to untether itself from the legislature, the rule of law, and the fundamental principles of representative democracy. It is this Court's duty to reject this unlawful overreach.

ARGUMENT AND AUTHORITY

I. THE RESTRICTIONS IN 69 O.S. § 1705(F) PROHIBIT THE OTA FROM BUILDING THE EAST-WEST CONNECTOR AND THE TRI-CITY CONNECTOR.

A. Section 1705(f) Mandates That the OTA Had to Bond and Build Four Enumerated Turnpikes Together with One Bond Issue, and Not Split Them into Separate or Serial Bond Issues and Projects as the OTA is Attempting to Do Now.

The starting point for any issue of statutory interpretation is the language of the statute itself. *United States v. Bly*, 510 F.3d 453, 460 (4th Cir. 2007). Courts must presume that a legislature says in a statute what it means and means in a statute what it says. *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54, (1992) (*quoting Rubin v. United States*, 449 U.S. 424, 430 (1981)). If the language of a statute or regulation has a plain and ordinary meaning, a court need go no further, and the court must apply the law as it is written. *Id.*; *Applications of Okla. Tpke. Auth.*, 1954 OK 341, 277 P.2d 176, 182; *Loeffler v. Fed. Supply Co.*, 187 Okl. 373, 102 P.2d 862.

In the case of the East-West Connector and Tri-City Connector, the issue is not that the legislature never authorized the OTA to build the two turnpikes. To the contrary, the issue is that the legislature strictly restricted the **manner** in which the OTA could bond and build turnpikes such as these two. One must simply read the whole statute, and not just part of it, to know this.[1]

[1] As Pike Off OTA will show below, this is not the 2016 Jerry Fent single subject rule argument.

The specific restrictions are set forth in 69 O.S. § 1705(f). This provision describes the OTA's general turnpike bonding authority, but also limits the OTA's bonding and building authority in the case of four specifically enumerated turnpikes. The statute states that the OTA has the authority:

> f) To issue turnpike revenue bonds of the Authority, payable solely from revenues, including the revenues accruing to the trust fund created by Sections 1701 through 1734 of this title, for the purpose of paying all or any part of the cost of any one or more turnpike projects. Provided that any bonds issued for the construction of the proposed turnpike referred to in **subparagraphs (10), (20), (21) and (22) of paragraph (e) of this section shall be issued as one issue for all four of the proposed turnpikes and shall be financed, constructed and operated under one bond indenture.**

69 O.S. § 1705(f) (emphasis added).

The four enumerated turnpikes, along with the "one issue," "one bond indenture" mandate, were part of a turnpike package the legislature authorized in 1987. *See* Pike Off Appx., Exh. B, 1987 H.B. 1259, 1987 Okla. Sess. Law Serv. 215 (West); *Application of Okla. Tpke. Auth.*, 1989 OK 21, ¶ 22, 770 P.2d 16, 19.

The OTA has confirmed in its own resolutions and Access Oklahoma podcasts that the East-West Connector and the Tri-City Connector are part of the turnpike package legislatively authorized in 1987. Specifically, these two proposed turnpikes would both be part of the "Oklahoma City Outer Loop" which appears in Section 20 of the statute.[2]

The plain language of the second sentence of the statute clearly required, and still requires, the OTA to have bonded and built all four of the enumerated turnpikes - to the extent the OTA chose to do so - with **both** one single bond issue **and** one single bond indenture. There is no other reasonable way to construe "**shall** be issued as one issue for **all four** of the

[2] 69 O.S. § 1705(e)(20); Pike Off Appx., Exh. C, OTA Report on Agenda Item 952 of the OTA June 9, 2022 Special Meeting; *see also* www.accessoklahoma.com/tri-city-connector; www.accessoklahoma.com/east-west-connector.

proposed turnpikes and **shall** be financed, constructed and operated under one bond indenture." 69 O.S. § 1705(f) (emphasis added).

Thus, the plain language of the statute clearly prohibits the OTA from splitting the four specifically enumerated turnpike projects, or any part of them, into separate or serial turnpike projects financed under separate, subsequent, serial, or multiple bond issues. For example, the statute mandates that the OTA could not execute one bond issue for part of the Sections 20 and 21 turnpikes, then execute a second, subsequent bond issue for part of the Section 10 turnpike, then execute a third bond issue for yet another part of the Section 20 turnpike.

In its original execution of the 1987 turnpike package, the OTA faithfully complied with the statute. In 1989, the OTA executed one bond issue to fund and build portions of each of the four turnpikes falling within the 1705(f) restrictions; namely, the Kilpatrick Turnpike (Section 20), the Creek Turnpike (Section 21), the Cherokee Turnpike (then Section 22), and the Chickasaw Turnpike (Section 10). Pike Off Appx., Exh. A; 69 O.S. § 1705(e)(10), (20), (21), (22); Exh. D, p. 1, OTA historical account of 1989 bond issue; *see also O.T.A.*, *supra*, 770 P.2d at 19.

Now, over thirty years later, the OTA has decided it wants to build two new segments of the Section 20 Oklahoma City Outer Loop. However, as the OTA has repeatedly acknowledged in its pursuit of the proposed Access Oklahoma program, the OTA is having to execute new, separate, and subsequent bond issues to do so.[3] To really understand why this is an unlawful splitting of the mandatory turnpike bundle into multiple and subsequent bond issues, one has to know what legally constitutes "one" bond issue or "a" bond issue.

[3] *E.g.*, Pike Off Appx., Exh. E, OTA Line of Credit Application to Council of Bond Oversight, page entitled "List Anticipated Prospective Financings Anticipated After the Issue, Including Refunding;" Exh. F, Bond Buyer Article (OTA noting that multiple subsequent bond issues will be involved in ACCESS Oklahoma).

B. One Bond Issue, Or A Bond Issue, is a Group Of Bonds Issued at The Same Time.

The courts and the authoritative dictionary publications have all agreed that "a bond issue" is a class or series of bonds that are all offered, emitted, or delivered at one and the same time. *See Chem. Bank New York Tr. Co. v. S. S. Westhampton*, 358 F.2d 574, 578 (4th Cir. 1965) (citing Encyclopedic Dictionary of Business Finance, p. 23 (Prentice-Hall 1960)); *Bell Cty. v. Lightfoot*, 104 Tex. 346, 349, 138 S.W. 381, 383 (1911) (citing Black's Law Dictionary and Webster's Unabridged Dictionary); *see also McMasters v. Town of Byars*, 1950 OK 260, 223 P.2d 545, 546 (explaining that a "bond issue" denotes delivery of the bonds and the issuing authority's receipt of the sale proceeds). Black's Law Dictionary defines "bond issue" and "stock issue" as "[a] class or series of securities that are **simultaneously** offered for sale. Black's Law Dictionary (11th Ed. 2019) (emphasis added).

Likewise, United States Treasury Regulations on tax exempt requirements for state and local bonds emphasize the same simultaneous transaction requirement. In defining a bond issue, as opposed to separate bond issues, the regulations provide for three requirements, all of which must be met. One of the requirements is the following:

> **(i) Sold at substantially the same time.** The bonds are sold at substantially the same time. Bonds are treated as sold at substantially the same time if they are sold less than 15 days apart.

26 C.F.R. § 1.150-1(c)(1)(i) (emphasis in original). As tax exempt, state issued bonds, an OTA bond issue is subject to these regulations.

The law and ordinary English reveal with great clarity what one bond issue is, and what it is not. No matter what label one may place on a chronologically separate sequence or series of bond issues, a group of bonds issued in one year (say, 1989), and another group of bonds issued 27 years after that, and then another group of bonds issued 33 years after that (say,

2022), cannot be legally called "one issue." They are legally and inherently three separate bond issues. No semantic games can change this. To the extent the OTA is seeking to execute a bond issue for the construction of two new segments of the Section 1705(e)(20) Outer Loop, the bond issue is a new and subsequent bond issue that Section 1705(f) simply does not allow.[4]

C. The Law Mandates that the OTA is No Longer Legally Authorized to Build the East-West Connector and The Tri-City Connector.

In 1989, the OTA executed the one, and only one, bond issue the legislature allowed for the construction of the Section 20 Oklahoma City Outer Loop, and the three other enumerated turnpikes. Now, a full generation later, the OTA is attempting to do a new, distinctly separate bond issue, and build distinctly separate segments of the Outer Loop, and only the Outer Loop.[5]

The Legislature clearly did not authorize the OTA to do this. If the OTA was ever going to build what it is now calling the East-West Connector and Tri-City Connector, the OTA had to do so in compliance with the one bond issue requirement of Section 1705(f), or in other words, as part of the one bond issue the OTA offered, sold, and delivered in 1989. The OTA did not bond and build this part of the Oklahoma City Outer Loop at that time, however.

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[4] This brief focuses on the "one bond issue" leg of the 1705(f) restriction, but Pike Off would also note that the OTA has failed to carry its burden of establishing with any evidence, authority, or even cogent argument that it has complied with the "one bond indenture" leg of the restriction.

[5] The OTA has wisely determined that **only** Section 20 could authorize the East-West Connector. Section 28 could not. Section 28 authorized the OTA to build all or part of "**a new turnpike**" which would connect with the H.E. Bailey Turnpike in the vicinity of Tuttle, and then proceed easterly into the vicinity of Norman. 69 O.S. § 1705(e)(28). The use of the singular "**a new turnpike**" means that the OTA can use an authorization once, and not two or more times, to build a particular turnpike alignment. In building the H.E. Bailey Norman Spur, the OTA built the one authorized Section 28 alignment which could connect with the H.E. Bailey Turnpike in the vicinity of Tuttle, and then proceed easterly to a point in the vicinity of Norman. The single use authorization of Section 28 would not allow the OTA to now pick a new, second connection with the H.E Bailey, significantly north of the Spur, and build a new route not only easterly into the vicinity of Norman, but also all the way through Norman, and then north and east to connect with I-40. This is what the East-West Connector route does, and the plain language of Section 20 and 28 shows that **only** Section 20 would ever have allowed the OTA to do that. *Cf.* § 1705(e)(20) and (28). Of course, 69 O.S. § 1705(f) serves as the full and final trump card prohibiting the East-West Connector.

The OTA is now legislatively bound by that choice.

The people of Oklahoma, particularly those in and around the path of these turnpikes, are also entitled to rely on that choice. The areas in and around these proposed new turnpikes have changed tremendously since 1987. People in these areas have built homes and businesses, raised families, and lived productive lives for decades. Now, a generation later, the OTA is proposing to destroy thousands of homes, businesses, and properties in the City of Norman, Cleveland County, and McClain County. Thousands of people are being displaced, and their lives changed forever, because the OTA wants to build new turnpikes in violation of a clear legislative mandate.[6]

All this disruption, displacement, and destruction is a compelling demonstration of why the legislature places constraints on the OTA in the first place. Executive Branch agencies do not simply get to ignore and flout these clear legislative constraints. This is so no matter how much the agency believes a project may be needed or desirable, how long it has planned or studied the projects, and no matter how inconvenient those constraints may seem to be to the Agency.

This Court must enforce the Oklahoma statutes as written. For any Court to conclude otherwise would be to ignore the plain language of the statute, and to decide that the duly enacted legislation of the people's elected representatives means nothing. This Court therefore cannot approve any new bonds for the OTA to build the East-West Connector or the Tri-City Connector.

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[6] This is why the City of Norman and Board of County Commissioners of Cleveland County both passed unanimous resolutions opposing both the East-West Connector and the South Extension Turnpikes. Pike Off Appx., Exh. G, City of Norman Resolution; Exh. H, Cleveland County Resolution.

D. The Historical Evidence from 1987 to 1989 Shows that Section 1705(f) Does Not Allow the OTA to Fund and Build the East-West Connector or Tri-City Connector.

This is obviously a more sophisticated statutory analysis than, say, parsing through the simple sentence "see spot run." Evidence helps the analysis. Newspapers of the time abundantly covered the legislature's enactment of the 1987 turnpike package. The newspaper articles abundantly confirm that the OTA and lawmakers were keenly aware that 1705(f) meant what it said, and that it did not and does not allow the OTA to do what it is trying to do now.[7]

First, the Articles confirm that Governor Henry Bellmon, Secretary of Transportation Neal McCaleb (also Executive Director of the OTA), and Oklahoma Legislators all understood that the four-turnpike bundle was truly a one shot, "all-or-nothing proposition." Pike Off Appx. Exh. I, February 19, 1988 Sapulpa Daily Herald Article; Exh. J, March 18, 1988 Daily Oklahoman Article; Exh. K, August 26, 1988 Okmulgee Times Democrat AP Article. Consistent with the restrictive language of Section 1705(f), one article aptly summed it up as follows:

> The 1987 Legislature approved building of four toll roads, including the Oklahoma City turnpike, but only if part or all of the four roads were built at the same time.

Pike Off Appx., Exh. L, April 22, 1988 Daily Oklahoman Article.

The Articles also report the OTA and the Governor expressing a growing sense of frustration with the restrictions of 1705(f). The OTA originally tried to build a much more substantial package of the mandatory four-turnpike bundle, including the Oklahoma City Outer Loop, with a much larger version of the one bond issue allowed. However, the OTA's efforts

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[7] Newspaper articles are self-authenticating. 12 O.S. §2902(6). A newspaper article more than twenty years old falls within the hearsay exception of 12 O.S. §2803(16). As federal courts have reasoned, an old newspaper account is likely more accurate and trustworthy than the memory of an eyewitness after the passing of time. *See Dallas Cnty. v. Com. Union Assur. Co.*, 286 F.2d 388, 397 (5th Cir. 1961) (seminal case and progenitor of identical Federal Rules of Evidence); *Hicks v. Charles Pfizer & Co. Inc.*, 466 F. Supp. 2d 799, 806 (E.D. Tex. 2005).

to do so were rejected as unfeasible. Pike Off Appx., Exh. I; Exh. M, August 8, 1988 Daily Oklahoman Article. The OTA had to significantly scale back its plans, ultimately settling on what the OTA presented to this Court in 1989. *E.g.*, Pike Off Appx., Exhs. I, M; *O.T.A.*, 770 P.2d at 19.

Top state officials thus came to realize that financial restrictions would not allow the OTA to build as much of the Oklahoma City Outer Loop as originally envisioned with one bond issue, and that the restrictions of 1705(f) would not allow the OTA to do a second, subsequent bond issue. Pike Off Appx., Exh. J. Realizing the bind they were in, the Governor and the OTA attempted in 1988 to get the legislature to remove the restrictions. *Id.*; Pike Off Appx., Exh. J; Exh. N, July 5, 1988 Daily Oklahoman Article. These efforts were included in a House Bill for economic development introduced late in the 1988 legislative session, but the legislation **failed**. Pike Off Appx., Exh. N; Exh. O, July 14, 1988 Article.

To this day, the legislature has never removed these restrictions. The OTA cannot, consistent with the rule of law, fail to get legislative authorization for what it wants to do, but then just do it anyway through force, fiat, or the hope that no one will notice because of the passage of time. The OTA's attempt to issue bonds for the construction of the East-West Connector and Tri-City Connector is clearly unlawful under the still standing restrictions of 69 O.S. § 1705(f).

E. This Court's Validation of a New Bond Issue in 2016 is Not Legal Precedent for the OTA to Bond and Build the East-West Connector and Tri-City Connector.

In 2016, the OTA issued new bonds to build the Kickapoo turnpike and a new segment of the Kilpatrick turnpike. The OTA would describe these two turnpikes as segments of the Oklahoma City Outer Loop. As such, these projects would have been subject to the mandate in Section 1705(f) for one, and only one, bond issue for the four enumerated turnpikes.

The 2016 bond issue was undoubtedly a new and separate bond issue, subsequent to the bond issue of 1989. This new issue was also for two new segments of only one of the four turnpikes enumerated in Section 1705(f). The OTA thus funded and built the 2016 projects in clear violation of the plain language of Section 1705(f).

This Court's decision validating the OTA's application to approve these bonds in *Okla. Tpke. Auth.*, 2016 OK 124, 389 P.3d 318, is not, however, legal precedent for the OTA's position in this case. This is so because the correct Section 1705(f) issue was neither raised by the parties nor addressed by the Court in the 2016 case.

When parties do not raise or consider an issue, and the court does not address it, "the case is not binding precedent on that point." *U. S. v. Turrieta*, 875 F.3d 1340, 1346 (10th Cir. 2017) (applying rule in issue over whether a trailer or mobile home qualified as a "dwelling," and citing *U.S. v. L.A. Tucker Truck Lines*, 344 U.S. 33 (1952)); *Oklahoma Educ. Ass'n v. State ex rel. Oklahoma Legislature*, 2007 OK 30, 158 P.3d 1058, 1064 (citing *Tucker Truck Lines*). It is universally recognized that "questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Com. of Pa. v. Brown*, 373 F.2d 771, 784 (3d Cir. 1967) (*citing Tucker Truck Lines*, 344 U.S. at 37-38; *Webster v. Fall*, 266 U.S. 507, 511, 45 S. Ct. 148, 149, 69 L. Ed. 411 (1925)).

This is part and parcel of the "party presentation" principle. As the United States Supreme Court has explained,

> In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.

U. S. v. Sineneng-Smith, 140 S. Ct. 1575, 1579, 206 L. Ed. 2d 866 (2020) (*citing Greenlaw v.*

U.S., 554 U.S. 237, 128 S. Ct. 2559, 171 L. Ed. 2d 399 (2008)). The Court has also explained that courts

> [D]o not, or should not, sally forth each day looking for wrongs to right. We wait for cases to come to us, and when they do we normally decide only questions presented by the parties.

Id.; *see also U.S. v. Burkholder*, 816 F.3d 607, 620, n.11 (10th Cir. 2016) ("In our adversary, common-law system, courts properly answer only the questions that the parties present to them and that are necessary for the resolution of the case at hand.").

In the 2016 case, Protestor Jerry Fent simply failed to raise the correct legal issues. Mr. Fent claimed, without supporting legal authority, that Oklahoma turnpike bonds violate the rule against perpetuities. *See Okla. Tpke. Auth.*, 389 P.3d at 321. He further claimed, without any real evidence, that the OTA's actions with 2016 bond issue and turnpike project were intrinsically fraudulent.

Mr. Fent did point out that Section 1705(f) called for the four enumerated turnpikes to be bundled together into one overall building project. However, Mr. Fent then took the wrong fork in the legal road. He incorrectly argued that it was an unconstitutional violation of the single subject rule for the legislature to have done so. As good jurisprudence dictates, the Court focused exclusively upon the constitutional argument, and then dispatched it as not consistent with prior precedent or the plain meaning of the Constitution. *See Okla. Tpke. Auth.*, 389 P.3d at 320. The Court did not address the true meaning or consequences of Section 1705(f) at all.

The real truth is not merely that the OTA was legally authorized to build all four turnpikes with one bond issue and one bond indenture. The real truth is that the OTA was **legally required to do so.** If this Court had been presented with the true and proper

Section 1705(f) issue, the case could and should have turned out differently. The plain language of the statute would have compelled the Court to hold that in 2016, the OTA was impermissibly attempting to do a new and subsequent bond issue to impermissibly build two new segments of only one of the four turnpikes listed in Section 1705(f).

The same truth holds for the East-West and Tri-City Connector Turnpikes. The OTA long ago executed the one bond issue the legislature authorized for the Oklahoma City Outer Loop, and for the three other turnpikes enumerated in Section 1705(f). The OTA is now literally reduced to a position that they should be allowed to do something unlawful because they got away with it before, while no one was watching, and once legislative memories had faded. This is not a lawful position, however. The OTA cannot lawfully execute a subsequent, new bond issue to fund and build either the East-West Connector or the Tri-City Connector.

II. THE LEGISLATURE NEVER AUTHORIZED THE SOUTH EXTENSION.

A. 69 O.S. § 1705 Does Not Authorize the South Extension.

The OTA asserts that 69 O.S. § 1705(e)(28), enacted in 1993, authorizes the South Extension. It does not.

The relevant section of Section 28 is the final leg of the authorization. This leg authorizes a segment of turnpike that runs from the H.E. Bailey Turnpike in the vicinity of Tuttle, then across the Canadian River and **easterly** to a point in the vicinity of the city of Norman. 69 O.S. § 1705(e)(28). Section 28 does not authorize the OTA to take an imaginary dip **southeasterly,** (or south, or south and east) from some point between the H.E. Bailey Turnpike and Norman, all the way down to and through the City of Purcell.[8] Likewise,

[8] Comparative maps of Purcell's city limits and the South Extension show that the South Extension doesn't just run north of Purcell. It runs right through Purcell. Pike Off Appx., Exh. P, Purcell City Limits Map; Exh. Q, South Extension Map.

Section 28 does not authorize the OTA to build a turnpike alignment that would start in the City of Purcell, run **northeasterly** through rural Cleveland County, continue **northerly** through virtually the entirety of East Norman, including Lake Thunderbird, and then finally meet with the proposed § 1705(e)(20) East-West Connector in far Northeast Norman at Indian Hills Road. Yet this is exactly the route the South Extension would take. Pike Off Appx., Exh. A.

The directional restrictions in Section 28 starkly reveal the fatal flaw in the OTA's contentions. One could try to play fast and loose with an isolated focus on the "vicinity of Norman" language in Section 28, and posit that Purcell is in some global sense in the "vicinity of Norman." However, to correctly construe the statute as a whole, the Court cannot get hung up on the "vicinity" language of the statute in isolation. The Court must read the vicinity language as part of a whole, in conjunction with the directional authorization of Section 28.

To that point, the legislature has shown throughout 69 O.S. § 1705(e) that it is fully capable of using a wide array of directional authorizations and restrictions such as southeasterly, southerly, south, north, south and east, east and north, northwesterly, and northeasterly. These directional authorizations are often used in conjunction with getting to or from the vicinity of a specific town or place. *E.g.*, 69 O.S. § 1705(e)(7), (10), (11), (15), (20), (21), (28) (using "southerly" to allow the OTA to build a first leg of a Section 28 turnpike from I-40 to the H.E. Bailey turnpike west of I-35), and (35).

None of this array of directions exists in the terminal authorization of Section 28. The terminal authorization to the vicinity of Norman is easterly, and only easterly.[9] Section 28

[9] The use of a compass or compass rose adds science-based standards to a route analysis. At a defined, observable, and measurable point, a route is no longer an "easterly" route. A route becomes a southeasterly, southerly, northwesterly, or northerly route. Pike Off Appx., Exh. R, Compass Rose.

does not authorize the OTA to build a route which significantly departs from this singular, easterly restriction to an extended, nineteen-mile jaunt southerly, northerly, or in any direction **other than** easterly. The final leg of Section 28 is a horizontal leg across the map, not a vertical leg up and down the map. In proposing the South Extension, the OTA has taken a very extended, unauthorized, un-easterly detour down to and through Purcell. Moreover, in proposing a plan to run an array of turnpike alignments up, down, and all across Norman, the OTA has unlawfully run the stop sign the legislature put up at the end of Section 28.

The OTA's reliance on the highly general proposition that "it is within the discretion of the Authority to determine the routes and the termini of authorized projects" is entirely misplaced here. The key premise of that general proposition is "authorized projects." The fallacy of the OTA's position is that the South Extension is not an "authorized project." Cases such as *Okla. Tpke. Auth.*, 1950 OK 208, 221 P.2d 795, are thus inapposite. In that 1950 case, the protestants claimed the legislative authorization that the Turner Turnpike "shall extend between the cities of Tulsa and Oklahoma City" meant that the Turner had to extend "into the city limits or into the business districts of Tulsa and Oklahoma City." *Okla. Tpke. Auth.*, 221 P.2d at 811. Given the monumentally broad and general legislative authorization for the Turner, the Court understandably rejected that argument. The authorization of § 1705(e)(28) is much more descriptive and limiting. The South Extension simply is not an "authorized project," so the OTA has no discretion to build it.

B. The OTA Previously Tried but Failed to Get Legislative Authorization for a South Extension Turnpike.

In 1998-99, the OTA and ODOT proposed to build either highways or tollways along various routes similar to the South Extension and East-West Connector. Unlike this time around, Transportation Secretary Neal McCaleb asked for input in advance from the public in

the southeast Oklahoma City metro area, and also asked the legislature to authorize new turnpike routes it had not previously authorized. Opposition to the routes was fierce.

House Bill 1459 and Senate Bill 371 were introduced in the Oklahoma legislature in early 1999 to allow an extension of the southeast route of an Outer Loop turnpike down to Purcell, instead of down only as far south as the area of Moore and Norman. These bills would have effectively authorized the OTA to build the route it now calls the South Extension. These bills were both rejected in the legislative process, and they never became law. Pike Off Appx., Exh. S, Exh. T, Exh. U; Exh. V.

In February of 1999, Neal McCaleb announced the indefinite suspension of all proposed plans for the south and east outer loop that ODOT and OTA were proposing. Pike Off Appx., Exh. W. In late 2000, David Streb (now head of the OTA's lead engineering firm) reiterated that the east loop around Norman was "dead." Pike Off Appx., Exh. X. The South Extension is no more alive in 2022. The OTA cannot lawfully issue any bonds for it.

CONCLUSION

The OTA is trying to circumvent the people's elected representatives and the rule of law with the proposed new turnpikes in ACCESS Oklahoma. A fundamental role of the Courts is to vindicate the rule of law and curb government overreach, from wherever and however it may come. The OTA is not legally authorized to bond and build the East-West Connector, the Tri-City Connector, or the South Extension. This Court must therefore deny the OTA's Application for Validation of Bonds.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September, 2022, a true and correct copy of the above and foregoing was mailed, first class, postage prepaid, to the following:

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