

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

REV. DR. LORI WALKE, et al.,)
)
) Petitioners,) No. MA-122592
)
) v.) On Petitioners' application to assume
) original jurisdiction and petition for
)) declaratory and injunctive relief and/or
)) a writ of mandamus against
 RYAN WALTERS, in his official capacity as)
 STATE SUPERINTENDENT OF PUBLIC)
 INSTRUCTION, et al.,) respondents Ryan Walters, et al.
)
 Respondents.)

PETITIONERS' SUPPLEMENTAL BRIEF (1) SUPPORTING OME'S REQUEST FOR STAY OF SECOND BIBLE RFP; AND (2) APPLYING FOR STAY OF NEW BIBLICAL CHARACTER EDUCATION RFP AND ANCILLARY RELIEF

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The Court should grant OMES’s request for a stay of its work on the Second Bible RFP. In addition, Petitioners ask that the Court issue a stay blocking Respondents from continuing to process a new RFP they issued on February 21, 2025, for biblical instructional materials. Both RFPs are unlawful for the same reasons that the original Bible RFP was.

SUMMARY OF THE SUPPLEMENTAL RECORD

After withdrawing the Bible RFP initially challenged in this action, OSDE sent OMES a requisition on January 7, 2025, seeking issuance of a nearly identical RFP. (DSA Index, Descriptions of Items 4–11; McFarland Decl., ¶¶ 5–15, DSA1:1–2.¹) Like the original Bible RFP, this Second Bible RFP seeks “55,000 King James Version Bibles,” together with the Pledge of Allegiance, Declaration of Independence, Constitution, and Bill of Rights. (DSA6:1–2.) On February 5, 2025, OMES sent OSDE a redlined version of the Second Bible RFP that requests removal of a requirement that the latter four documents be bound together with the Bibles. (DSA Index, Description of Item 12; DSA12:1.) OSDE has not responded to OMES’s requested revisions. (DSA Index, Description of Item 12.)

On February 21, 2025, OSDE and OMES issued a separate RFP for “the purchase of supplemental instructional materials that effectively integrate the Bible and character education into elementary-level social studies curriculum, providing students with a foundational understanding of the role these elements have played in shaping the nation.” (PSSA2, 13.) This Biblical Character Education RFP states that the “[m]aterials should

¹ “DSA” citations (in the format [item number:page number]) are to Defendants’ Supplemental Appendix, filed on February 14, 2025. “PA” citations are to Petitioners’ original appendix, filed on October 17, 2024. “PSA” citations are to Petitioners’ Supplemental Appendix, filed on December 2, 2024. “PSSA” citations are to Petitioners’ Second Supplemental Appendix, tendered herewith together with a motion for leave to file it.

contain age-appropriate biblical content, provide simple explanations that are easily understandable for elementary age students, and demonstrate how biblical figures and stories have influenced historical events and cultural practices in the United States.” (PSSA14.) The deadline for bids is March 20, 2025. (PSSA4.) The “[b]idder must be able to ship the required materials to every school district in the State of Oklahoma” “no more than 56 calendar days after the award date of the contract.” (PSSA13–14.) Payment is due within thirty days of delivery of the materials. (PSSA18.)

On February 26, 2025, Superintendent Walters issued a press release about this RFP, entitled “OSDE Posts RFP for Bible-based Curriculum,” in which he stated that the RFP aims “to ensure elementary students [are] taught principles of virtue.” (PSSA58.)

On February 24, 2025, Petitioners sent Respondents a letter asking them to agree to cease all work on both the Second Bible RFP and the Biblical Character Education RFP until this Court enters a final decision in this case. (PSSA61.) The letter requested a response by February 28. (PSSA61.) On February 26, OMES emailed in response that it can only cease work on the RFPs if ordered by the Court, and that it supports issuance of such a stay order. (PSSA64.) No response has been received from OSDE. (Luchenitser Decl., ¶ 3, PSSA68.)

ARGUMENT AND AUTHORITIES: THE COURT SHOULD STAY BOTH RFPs

This Court has authority to issue stays and other temporary injunctive relief, including in original-jurisdiction actions. *See* Okla. Sup. Ct. R. 1.15(c); *State ex rel. Trapp v. Chambers*, 1923 OK 943, ¶ 17, 220 P. 890. In deciding whether to issue temporary relief, the Court considers: “(a) [t]he likelihood of success on [the merits]; (b) [t]he threat of irreparable harm to [the] moving party if relief is not granted; (c) [t]he potential harm to the opposing party; and (d) [a]ny risk of harm to the public interest.” Okla. Sup. Ct. R. 1.15(c).

Likelihood of success on the merits. Both the Second Bible RFP and the Biblical Character Education RFP are squarely within the scope of this action. The relief requested in the Petition includes an injunction “barring Respondents from taking any action to implement or enforce the Bible Education Mandate, including spending any state funds to purchase Bibles—pursuant to the Bible RFP or otherwise—or to further the Mandate in any other manner.” Pet. ¶ 122(b). The Second Bible RFP calls for spending state funds to purchase Bibles and is materially identical to the original Bible RFP—both solicit 55,000 King James Version Bibles for school districts. (*Compare* Second Bible RFP, DSA4, DSA6:1–2, *with* original Bible RFP, PA29, 87–88.) And through the Biblical Character Education RFP, OSDE is likewise seeking to spend state funds to implement and further the Bible Education Mandate. The Mandate requires teachers to “focus on how biblical principles have shaped the foundational aspects of Western societies, such as the concepts of justice, human rights, and the rule of law,” and “highlight key historical moments where the Bible played a role.” (July 24, 2024 Mem., PA8.) The materials solicited by the Biblical Character Education RFP would do exactly that by “integrat[ing] the Bible . . . into elementary-level social studies curriculum, providing students with a foundational understanding of the role [the Bible] played in shaping the nation,” and “demonstrat[ing] how biblical figures and stories have influenced historical events and cultural practices in the United States.” (PSSA13–14.)

Further, both the Second Bible RFP and the Biblical Character Education RFP are unlawful for the same reasons that the original Bible RFP was (except that Petitioners do not allege here that either new RFP has been gerrymandered to favor a particular supplier).

Spending in support of unlawful rule. Both of the new RFPs are illegal because they require spending state funds in support of an unlawful rule—the Mandate. *See* Pet’rs’ Br. 7.

Lack of substantive spending authority. Both RFPs are unlawful because OSDE has not been authorized by the legislature to spend state funds on Bibles or biblical instructional materials. Indeed, OSDE lacks authority to select and buy instructional materials itself. Instead, OSDE’s powers are limited to allocating funds to school districts for the purchase of curricular materials of the districts’ choice. *See* Pet’rs’ Br. 10–11 and citations therein.

Lack of authority to reallocate funds. Even if OSDE did have statutory authority to select and buy instructional materials itself, no state funds have been properly allocated for the spending planned under the two new RFPs. There is no evidence or public record that OSDE has complied—for either RFP—with the procedures for reallocating state funds, which require sending a “request for budget transfer” and “revised agency budget” to OMES and a legislative committee, as well as notice to and consultation with the Secretary of Education. *See* Pet’rs’ Br. 11; Pet’rs’ Reply 7–8. OSDE also has not complied with a statute that requires the State Board of Education to approve spending on service contracts that are awarded through competitive bidding. *See* 70 O.S. § 3-120; 2024 and 2025 Board Meeting Documents, State Bd. of Educ., <https://bit.ly/4hTraED> (last visited Mar. 3, 2025).

Violation of the Oklahoma Constitution’s religion clauses. Both of the new RFPs violate Section 5 of Article II and Section 2 of Article I of the State Constitution. Under both RFPs, state funds are to be used for the support of a particular system of religion. And the two RFPs favor one particular religious tradition, as they seek copies of a single religious text and instructional materials about that text. *See* Pet’rs’ Br. 13–15; Pet’rs’ Reply 8–9.

Balancing of harms. The unlawful spending of Petitioners’ tax payments that would occur under the two RFPs would constitute irreparable harm. *See Kellogg v. Sch. Dist. No. 10*, 1903 OK 81, 74 P. 110, 113–16. In contrast, Respondents will suffer no harm from being

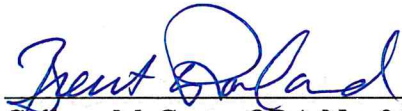
temporarily blocked from engaging in unlawful conduct. *See Okla. Pub. Emps. Ass’n v. Okla. Mil. Dep’t*, 2014 OK 48, ¶ 34, 330 P.3d 497. And stopping unlawful state spending is in the public interest. *See Fent v. Contingency Rev. Bd.*, 2007 OK 27, ¶¶ 8, 11, 163 P.3d 512.²

RELIEF REQUESTED

Accordingly, Petitioners ask the Court to order that, until the Court enters a final decision in this case, Respondents (1) cease all work on the Second Bible RFP and the Biblical Character Education RFP, including the processing and awarding of any contract and the payment of any state funds to any supplier; and (2) refrain from taking any other action to implement or enforce the Bible Education Mandate, including spending any state funds to purchase Bibles or biblical instructional materials or to further the Mandate in any other manner. The latter relief is needed because OSDE keeps coming up with new ways to further the Mandate, such as the two new RFPs and its November 2024 purchase of 532 Bibles. (Purchase Order, PSA33.) Issuance of the requested interim relief by March 20, 2025—the due date for bids under the Biblical Character Education RFP (PSSA4)—would ensure that further unlawful state spending does not occur. Lastly, Petitioners ask that the Court’s final relief include (1) a declaration that the Second Bible RFP and the Biblical Character Education RFP are unlawful and void; (2) an injunction prohibiting spending of any state funds pursuant to either of these RFPs; and (3) a writ of mandamus requiring Respondents to withdraw both of the RFPs.

² Rule 1.15(c) also states that “[a]ll applications for stay shall state that relief was first sought in the district court or other lower tribunal.” To the extent that this requirement is applicable in an action such as this one, Petitioners satisfied it by seeking Respondents’ agreement to the requested stay in their February 24 letter (PSSA61), as the Respondent agencies themselves may be considered to be the equivalent of the “lower tribunal.”

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing document to be served on March 4, 2025, on counsel for all the Respondents in this action via the mail and email addresses set forth below:

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