IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATE FARM FIRE & CASULATY COMPANY, *Petitioner,* v. THE HONORABLE AMY PALUMBO, *Respondent,* -AND- BILLY HURSH and LACY HURSH, *Real Parties in Interest,* -AND- GENTNER DRUMMOND in his official Capacity as Attorney General of Oklahoma	)	FILED SUPREME COURT STATE OF OKLAHOMA FEB 20 2026 SELDEN JONES CLERK Case No. 123739

BRIEF OF *AMICI CURIAE*
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES,
AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION,
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

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The National Association of Mutual Insurance Companies ("NAMIC"), American Property Casualty Insurance Association ("APCIA"), and Chamber of Commerce of the United States of America ("Chamber") file this joint brief as *amici curiae* in support of Petitioner's position that the Attorney General's intervention in the case below is improper. The Oklahoma Constitution vests the Oklahoma Insurance Department, led by the Insurance Commissioner, with the sole authority to regulate the insurance industry in the State of Oklahoma. This separation-of-powers structure ensures that the government official responsible for regulating the industry has the relevant expertise, that insurance businesses are subject to uniform enforcement of the law, and that the lines of accountability are clear to voters across the State. Nevertheless, the trial court allowed the Attorney General to intervene for the express purpose of "regulating" an insurance company. The trial court's order violates the separation of powers and threatens to undermine the benefits provided by the Constitution's single-regulator structure. This Court should therefore issue a writ of prohibition to preclude the trial court's enforcement of its order granting the Attorney General's motion to intervene.

INTEREST OF *AMICI CURIAE*

NAMIC is a national trade association representing the property/casualty insurance industry. Serving more than 1,300 member companies — including local and regional insurers as well as some of the nation's largest carriers — NAMIC members collectively write $467 billion in annual premiums, representing 61% of the homeowners and 53% of the automobile insurance markets. For more than 130 years, NAMIC has been the leading voice advancing public policy solutions and regulatory frameworks that promote a strong, competitive market and protect our members and their policyholders.

APCIA is a national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent 66% of the overall U.S. property casualty insurance market and 61.9% of Oklahoma's property casualty insurance market. On issues of importance to the insurance industry and marketplace, APCIA advocates sound public policies on behalf of its members and their policyholders in legislative and regulatory forums at the federal and state levels and submits *amicus curiae* briefs in significant cases in state and federal courts.

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

Amici curiae submit this brief to bring to the Court's attention significant constitutional principles implicated by the trial court's order granting the Attorney General's motion to intervene below. By allowing the Attorney General to function as a second "regulator" of insurance companies in Oklahoma, the trial court's order places all market participants at risk of inconsistent enforcement and regulatory decisions made without the industry expertise that the Oklahoma Constitution requires. These issues impact insurers and their customers in the State of Oklahoma and have not otherwise been fully addressed by the parties.

ARGUMENT AND AUTHORITIES

I. The Court should grant a writ of prohibition because the trial court's order unlawfully permits the Attorney General to regulate insurance in Oklahoma.

The Attorney General filed his Petition in Intervention to "vindicate the authority of the State of Oklahoma to regulate the business of insurance." *See* Petition for Intervention, Pet'r App'x Tab 3 at ¶ 3. As discussed more fully in Petitioner's Brief, however, *see* Pet'r Br. at 9-12, the Oklahoma Constitution provides that the Oklahoma Insurance Department, led by an elected Insurance Commissioner, "shall be charged with the execution of all laws now in force, or which shall hereafter be passed, in relation to insurance and insurance companies doing business in the State." Okla. Const. art. VI, § 22. The Constitution's delegation of power to the Insurance Department "implies a negation of its exercise by any other officer or department." *Bd. of Regents of Univ. of Okla. v. Baker*, 1981 OK 160, ¶ 7, 638 P.2d 464, 466). The constitutional grant of regulatory and enforcement authority to the Insurance Department thus prohibits the exercise of such authority by the Attorney General. *See Oklahoma Benefit Life Ass'n v. Bird*, 1943 OK 103, ¶ 0.1, 135 P.2d 994 ("where the Legislature has declared that certain classes of cases shall be prosecuted in the name of the State by designated persons or officers, such cases cannot be maintained by any other person").

Petitioner adeptly outlines the legal arguments showing that the trial court's order approving the Attorney General's intervention violates the separation of powers. *Amici curiae* write separately to explain the benefits that the Oklahoma Constitution's "single regulator" structure provides for insurance companies, insurance consumers, and the insurance industry generally, benefits that are threatened by permitting the Attorney General to act as a second regulator of the insurance industry.

A. The Oklahoma Constitution requires that the insurance industry be regulated by an individual with significant industry expertise.

The Oklahoma Constitution requires that, to run for Insurance Commissioner, a candidate "shall be at least twenty-five (25) years of age and well versed in insurance matters." Okla. Const. art. VI, § 23 (emphasis added). By statute, the Legislature further requires that the Insurance Commissioner be "a resident of this state for at least five (5) years and have had at least five (5) years' experience in the insurance industry in administration, sales, servicing, or regulation." *See* 36 O.S. § 302.[1] This experience is critical to fulfilling the complex task of enforcing the Insurance Code.

At the broadest level, the Insurance Code focuses on both solvency regulation (*i.e.*, ensuring that insurers are financially able to fulfill their contractual commitments) and market regulation (*i.e.*, ensuring that insurers treat consumers fairly). It is structured around several key functions, including insurer licensing (*e.g.*, 36 O.S. §§ 601-650), product regulation (*e.g.*, 36 O.S. §§ 2001-2020.4), financial regulation (*e.g.*, 36 O.S. §§ 309.2, 311A.1-16), market conduct (*e.g.*, 36 O.S. §§ 1201-1219), and consumer services (*e.g.*, 36 O.S. §§ 1250.1-17). The Insurance Commissioner, together with the employees of the Insurance Department, possesses the technical competence and specialized knowledge essential for the efficient and prudent execution of the regulatory duties under the Insurance Code. *See Crain v. Nat'l Am. Ins. Co.*, 2002 OK CIV APP 77, ¶ 27, 52 P.3d 1035 ("Because the insurance industry carries such an important public mission, Oklahoma recognized the need to regulate the State's insurance

[1] Echoing the Oklahoma constitution, the Legislature has provided that "[t]he Insurance Commissioner is charged with the enforcement of the Insurance Code, [and] of any requirements placed on insurance companies pursuant to [other] Oklahoma Statutes." *See* 36 O.S. § 307 (emphasis added).

companies by constitutional provisions and establishment of the Insurance Commission to oversee the execution of the industry's state-related policy goals.").

The significance of the regulatory expertise brought by Insurance Commissioners is frequently remarked upon by courts. *See, e.g., Matter of Scot. RE (U.S.), Inc.*, No. 2019-0175-JTL, 2025 WL 3438318, at *14 (Del. Ch. Nov. 28, 2025) (holding that a deferential standard of review of the Insurance Commissioner's determinations was warranted "because the 'specialized nature of the insurance industry,' 'the complexities of regulating insurers,' and 'the expertise that the Commissioner and the Department of Insurance develop over time'"); *In re Senior Health Ins. Co. of Pennsylvania*, 310 A.3d 26, 51 (Pa. 2024) ("The General Assembly, in recognition of the specialized complexities involved in insurance generally, and in the regulation of this industry in particular, assigned the task of overseeing the management of that industry, in this Commonwealth, to the Insurance Department, the agency having expertise in that field."); *Emps. Reinsurance Corp. v. Threlkeld & Co. Ins. Agency*, 152 S.W.3d 595, 598 (Tex. App. 2003) ("The insurance commissioner's expertise in the insurance trade is unquestioned as the department she directed was 'created to regulate "the business of insurance' in this state.'").

General law enforcement agencies, such as the Office of the Attorney General, are in a much different position. As a generalist lawyer, the Attorney General lacks the knowledge or expertise to intervene as a regulator in the insurance industry in a way that does not cause great disruption to the settled expectations of the insureds and insurers in the state. To be sure, the Insurance Commissioner has the ability to call upon the Attorney General for "legal counsel, and such assistance as may be required to enforce provisions of this Code." *See* 36 O.S. § 305(A). But this statute presupposes that the Attorney General would be providing advice to

the Insurance Commissioner about legal matters or would be representing the Insurance Commissioner in legal proceedings. Either way, the Attorney General would be constrained by the guidance of the Insurance Commissioner on regulatory and policy matters and would not be exercising independent regulatory authority. This structure – a subject-matter-expert regulator assisted by an expert legal department upon request – leverages the competencies of both officials without undermining the Constitution's separation of powers or the knowledge necessary to regulate an industry as complex and nuanced as insurance.

B. A single regulator provides critical regulatory uniformity.

A second critical benefit of vesting the power to regulate insurance companies in a single department is regulatory uniformity. Having "dual regulators" places insurance companies at risk of conflicting standards and determinations. For example, the Insurance Commissioner could conclude that marketing representations by an insurance company did not constitute "unfair and deceptive acts or practices in the business of insurance" under the Insurance Code, *see* 36 O.S. § 1204, but the Attorney General could nevertheless bring an action charging the same company with an unfair or deceptive practice under the Oklahoma Consumer Protection Act, 15 O.S. § 752(13). In light of the extensive, diverse, and highly technical regulations applicable to insurers, it is essential that they are not subjected to inconsistent regulation by multiple departments of the government. *See Crain*, 2002 OK CIV APP 77, ¶ 18, 52 P.3d 1035 (observing that "[i]nsurance companies have been placed under the general supervisory control of the State Insurance Department").

The uncertainty that would result from potentially conflicting dual regulators would directly impact the insurance market in Oklahoma. It is difficult for companies to plan, invest, and grow if they cannot predict who is regulating them and how those regulators' approaches

may differ with respect to enforcement of the Insurance Code or related statutes. Businesses need stability and predictability to responsibly invest in a market, and both are frustrated when multiple regulators (with potentially conflicting priorities) operate in the same space. By granting the authority to regulate insurance companies to the Insurance Department alone, the Oklahoma Constitution attracts market entry and growth, leading to increased competition in the insurance industry, which benefits consumers as insurers compete through price and service.

C. A single regulator promotes accountability and oversight.

The Oklahoma Constitution provides that the Insurance Commissioner is directly elected by the voters of the State of Oklahoma. *See* Okla. Const. art. VI, § 23(A). Once elected, the Insurance Commissioner serves for one four-year term and can be reelected only once more for another four-year term. *Id.* at § 23(A)-(B). Elections serve as a powerful mechanism for accountability because voters can reward or penalize public officials for their performance and decisions. But the voters' ability to hold officials accountable materially decreases when there is more than one regulator in the field. As contemplated by the Oklahoma Constitution, the Insurance Commissioner has the sole authority to regulate the insurance industry, and voters can hold the Insurance Commissioner accountable if insurance companies are poorly regulated or permitted to treat consumers unfairly.

If the Attorney General were given independent authority to regulate the insurance industry, however, the lines of political accountability would be blurred. The Insurance Commissioner could blame the Attorney General for poor regulatory results (or *vice versa*), leaving the voters confused about who is making the decisions that impact the price and availability of insurance products in the state. *Cf.* Deborah Jones Merritt, *The Guarantee*

Clause and State Autonomy: Federalism for a Third Century, 88 Colum. L. Rev. 1, 62 (1988) (explaining that "confusion over the lines of political responsibility is unacceptable in a republican government; in order to fulfill the ideal of popular control, the citizens must know which officials are responsible for unpopular legislation"); *New York v. U.S.*, 505 U.S. 144, 168-69 (1992) (noting that, where both federal and state authorities share regulatory power, accountability is diminished because "it may be state officials who will bear the brunt of public disapproval, while the federal officials who devised the regulatory program may remain insulated from the electoral ramifications of their decision").

D. Allowing a second regulator undermines the rule of law.

Ultimately, the Oklahoma Constitution intentionally embraces a separation-of-powers framework when it comes to the insurance industry that leverages comparative expertise, leads to a more uniform regulatory environment, and holds the insurance regulator politically accountable. This constitutional structure reinforces important rule-of-law values by ensuring government officials stay in their constitutional "lanes." The decision to place the regulation of insurers under the leadership of an elected official with substantial experience in the field reflects an understanding that specialized knowledge is essential for properly overseeing financial solvency, licensing insurance producers, and enforcing the Oklahoma Insurance Code. Allowing an agency or officer without that specialized knowledge to regulate the insurance industry increases the risk of uninformed, capricious rulings with negative outcomes for all market participants. Allowing two different regulators to occupy the same space only exacerbates those problems.

II. The Attorney General's claim that the Insurance Commissioner has delegated independent regulatory authority to him should be rejected.

The Attorney General has submitted a letter dated January 29, 2026, from the Insurance Commissioner which endorses the Attorney General's intervention and requests that the Attorney General "partner" with the Insurance Department in connection with claims against State Farm. *See* Resp.'s App'x at Tab 1, Ex. A. The Attorney General argues that, because the Insurance Commissioner "welcomes" and "supports" his intervention, Resp. of Attorney General at 2, 10, the constitutional separation-of-powers doctrine is respected. As shown below, however, the Insurance Commissioner's letter does not (and could not) ratify the Attorney General's unlawful intervention.

First and foremost, the separation-of-powers doctrine does not depend upon "intra-executive conflict," as the Attorney General posits. *Id.* at 10. The Insurance Commissioner cannot bestow on the Attorney General the independent power to regulate insurance companies when the two officers agree on the nature or scope of that regulation (or retract that authority when they do not). Constitutional duties are not "property" of the owner that may be given to others. This Court has thus held, for example, that the Legislature cannot delegate its authority to the Executive, even when enacted into law and agreed to by both branches. *See In re Initiative Petition No. 366*, 2002 OK 21, ¶ 17, 46 P.3d 123, 128; *Wells v. Childers*, 1945 OK 365, ¶ 36, 165 P.2d 371, 376. Nor can the Executive cede its power by signing a law passed by the Legislature. *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 205 (2020). If even a duly enacted statute cannot alter the separation of powers, a letter certainly cannot do so. To

hold otherwise would eviscerate the political accountability the Oklahoma Constitution seeks to ensure by separating the powers among state executive officers.[2]

Second, to the extent that the Attorney General would argue that the Insurance Commissioner's letter satisfies 36 O.S. § 305(A) – which allows the Insurance Commissioner to "call upon the Attorney General for legal counsel, and such assistance as may be required to enforce provisions of" the Insurance Code – this argument should be rejected. Section 305(A) allows the Attorney General to "assist" the Insurance Commissioner in the Commissioner's exercise of his duty to enforce provisions of the Insurance Code. But the Attorney General did not purport to file the Petition on behalf of the Insurance Commissioner. In fact, the Insurance Commissioner's letter confirms that the Attorney General is not representing the Commissioner because it demands that the Attorney General first confer with the Commissioner before adding his name as a party. *See* Resp.'s App'x at Tab 1, Ex. A ("Please ensure your office communicates with my office before adding my name or the Oklahoma Insurance Department to this case as a party."). Therefore, there cannot be any plausible claim that the Attorney General is acting pursuant to § 305(A).

Where the Oklahoma Constitution places authority in one body, that authority may only be exercised in accordance with the Constitution and may not be given away by statute or otherwise. *See Smith v. Bd. of Com'rs of Washita Cty.*, 1913 OK 315, ¶ 2, 133 P. 177. Here, § 305(A) permits the Insurance Commissioner to call upon the Attorney General for assistance

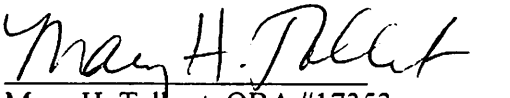
[2] As the above-cited authorities establish, the Insurance Commissioner's opinion that the Attorney General may exercise independent regulatory authority over insurance companies (at least when his actions meet with the approval of the Commissioner) is of no moment. This is a legal question for the courts, and this Court has not hesitated to strike down efforts to delegate authority when doing so would violate the separation of powers even where the delegating party believes it is proper to do so.

in the Commissioner's enforcement of the Insurance Code, but it does not authorize the Attorney General to unilaterally insert himself into private litigation as a co-equal regulator of insurance companies in the State of Oklahoma. The Court should ensure that the Constitution's separation of powers between those executive officers be preserved and protected and that enacted laws are interpreted in a way consistent with the Constitution.

CONCLUSION

For the foregoing reasons, NAMIC, APCIA, and the Chamber respectfully request this Court issue a writ of prohibition to preclude the trial court from allowing the Attorney General to intervene in the lawsuit below for the purpose of exercising regulatory authority over insurance companies, an authority that is vested in the Insurance Department alone.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was mailed this 20th day of February, 2026, by depositing it in the U.S. Mail, postage prepaid or by electronic mail to:

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