

Impartiality is a Fundamental and Legal Obligation of the Oklahoma Pardon and Parole Board

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No prisoner confined in the Oklahoma Department of Corrections has ever received a fundamentally fair and impartial clemency hearing from the Oklahoma Pardon and Parole Board. Impartiality will remain an illusion in the State of Oklahoma as long as the judiciary is permitted to appoint retired judges, district attorneys, and law enforcement to an executive board in violation of the separation of powers.

Oklahoma's Parole Board was created in 1944 by a constitutional amendment during the administration of Governor Robert S. Kerr. The Board was created as a moral policy designed to cool the passions of a citizenry that felt betrayed by former Governor Leon Philips.¹ The public was outraged when they learned that Governor Philips had granted clemency to a physician, serving a life sentence for murder, stemming from a death that was the result of an illegal abortion.² In an attempt to quell public unrest and restore confidence in the executive, the authors of the constitutional amendment significantly limited the clemency power of all future governors by requiring the newly created Parole Board to "impartiality investigate" and then "recommend" to the Governor only the prisoners the Board deemed worthy of clemency.³

At first glance, the official duties of the Board do not appear to create an irreconcilable conflict with other provisions of Oklahoma's Constitution. This is presuming, of course, that they are performed in a lawful and ethical manner. However, a closer look at the Board's composition reveals the author's corrupt intent to deny prisoners an opportunity to plead for mercy before an impartial panel and to unlawfully influence the recommendations of the Governor's appointees, to wit:

There is hereby created a Pardon and Parole Board to be composed of five members; three to be appointed by the Governor; one by the Chief Justice of the Supreme Court; one by the Presiding Judge of the Criminal Court of Appeals.

I submit to the reader that the composition of the Board reveals an arrangement between the legislature and the judiciary to encroach upon governmental powers belonging to the executive, while appearing to act in the interest of Oklahoma citizens. I believe that the authors of the

constitutional amendment turned a blind eye to the separation of powers doctrine, with the assurance from the judiciary that all legal challenges would fail, because Oklahoma prisoners do not have a liberty interest in the clemency process.⁴ It is an undisputed fact that no prisoner has ever won legal decision against the Oklahoma Pardon and Parole Board – the judiciary has fiercely used its gatekeeping function to silence and keep a knee on the neck of those prisoners who dare to be heard, myself included. Furthermore, it is undisputed that the Oklahoma Pardon and the Parole Board was not created as an administrative body for the purpose of facilitating and/or ensuring public safety. Rather, it was created as a political body, by the legislature and the judiciary, both of whom agreed to limit and redistribute the powers of the executive.

On 15 September 2020, I appeared before the Oklahoma Pardon and Parole Board on an application for commutation.⁵ In support of my application, I provided the Board with new evidence proving that I was factually innocent of murder in the first degree.⁶ Rather than “impartially investigate” the new evidence, as required by the Oklahoma Constitution, Judge Allen C. McCall used his position on the Board to retry me using the medical evidence now proven to be false.⁷ My request for clemency was denied.

On 28 April 2021, I filed a complaint against Judge McCall after discovering that he was violating the separation of powers clause. He was assigned to the Judicial Ethics Advisory Panel, while simultaneously serving as a member of the Oklahoma Parole Board.⁸ My complaint was assigned to Judge Natalie Mai who, to this day, refuses to compel the court clerk to certify the summons and return it for the perfection of service. Determined to be heard, I proceeded without the summons. I served my complaint upon the Parole Board, Attorney General, and Governor with notice that the court clerk was interfering with my right to due process. On 7 July 2021, Judge McCall resigned from the Oklahoma Pardon and Parole Board.

Comprehensive changes are needed in the Board’s composition before those imprisoned will ever receive a fundamentally fair and impartial clemency hearing. As a starting point, the judiciary must be separated from the executive in order to seat an unbiased panel. Impartiality of the mind cannot be achieved when uniting the powers of the executive and the judiciary in one body or person as the internal conflict between public performance and private beliefs is too great.

Publicly, Judge McCall would lead you to believe that he was a fair and impartial member of the executive by stating that “he had always tried to stand up for victims and law enforcement and give inmates a fair opportunity”.⁹ But privately, his allegiance to the judiciary corrupted his legal obligation of impartiality: “I absolutely trust a criminal justice system designed and refined by names like Jefferson, Adams, Jay, Madison, Marshall (John and Thurgood), O’Connor and Roberts... *So why is our Board attempting to undermine verdicts in cases of violent crimes?*”¹⁰

ENDNOTES

- ¹ Amended by State Question No. 309, Legislative Referendum No. 86, adopted at election held on July 11, 1944.
- ² “Capital Clemency in Oklahoma 1943-1966” by attorney Gary Peterson of Oklahoma City, Oklahoma.
- ³ Article 6, 10 of Oklahoma’s Constitution.
- ⁴ Philips v. Williams, 608 P.2d at 1134.
- ⁵ Oklahomadoc.zoom.us/rec/share Access Passcode: UW=Fq9SE.
- ⁶ Affidavits from a Board Certified Neurologist; and a Board Certified Forensic Pathologist.
- ⁷ Appointed by the Oklahoma Supreme Court.
- ⁸ Article 7, 11 (c) of Oklahoma’s Constitution.
- ⁹ Tulsa World Newspaper.
- ¹⁰ Email dated June 7, 2020.

ABOUT THE AUTHOR

David Fleenor was a 24-year-old first-time felon when 12 strangers — without any special skill or training — recommended that he spend the remainder of his natural life in prison without review after being found guilty of his first felony offense.