



**ORIGINAL**

2025 OK 36

**IN THE SUPREME COURT OF THE STATE OF OKLAHOMA** **FILED**  
SUPREME COURT  
STATE OF OKLAHOMA

STATE OF OKLAHOMA, *ex rel.*  
OKLAHOMA STATE DEPARTMENT OF  
HEALTH,

Petitioner,

v.

OKLAHOMA COUNTY CRIMINAL  
JUSTICE AUTHORITY,

Respondent.

MAY 28 2025

JOHN D. HADDEN  
CLERK

No. ~~122,775~~

FOR OFFICIAL PUBLICATION

OKLAHOMA COUNTY CRIMINAL  
JUSTICE AUTHORITY,

Plaintiff/Appellant,

v.

STATE OF OKLAHOMA, *ex rel.*  
OKLAHOMA STATE DEPARTMENT OF  
HEALTH,

Defendant/Appellee.

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No. 122,775

FOR OFFICIAL PUBLICATION

**APPLICATION TO ASSUME ORIGINAL JURISDICTION AND  
PETITION FOR WRIT OF MANDAMUS AND DECLARATORY RELIEF**

**APPEAL FROM THE DISTRICT COURT FOR OKLAHOMA COUNTY**  
**Hon. C. Brent Dishman, District Judge**

¶10 The Oklahoma County Criminal Justice Authority (OCCJA) filed a proceeding in the District Court for Oklahoma County, and sought a writ of mandamus and injunctive relief against the Oklahoma State Department of Health. The Oklahoma Department of Health (OSDH) filed in the Supreme Court an application to assume original jurisdiction and petition for writ of mandamus/prohibition and declaratory relief against the OCCJA. The OSDH filed a motion to dismiss the District Court proceeding brought by the

OCCJA. The District Court for Oklahoma County, Hon. C. Brent Dishman, District Judge, granted the motion to dismiss in part. The OCCJA appealed. The OSDH filed a motion to retain the appeal and consolidate the appeal with the original jurisdiction proceeding. The motion to retain was denied as moot due to a previous order of the Supreme Court retaining the appeal. The motion to consolidate the two proceedings was previously denied. We adjudicate No. 122,524 and No. 122,775 by a single opinion. We hold: The OSDH's application to assume original jurisdiction in No. 122,524 is denied; The OCCJA's petition in error in No. 122,775 is recast into an application to assume original jurisdiction and petition for writ of prohibition; The Court assumes original jurisdiction in No. 122,775 on a single issue and concludes the OSDH has authority to perform unannounced jail inspections; We conclude the interlocutory order of the District Court is not contrary to law or an abuse of discretion and deny the OCCJA's petition for a writ of prohibition.

**NO. 122,524: APPLICATION TO ASSUME SUPERINTENDING  
ORIGINAL JURISDICTION DENIED**

**NO. 122,775: APPEAL OF DISTRICT COURT'S ORDER RECAST  
TO APPLICATION TO ASSUME ORIGINAL JURISDICTION AND PETITION  
FOR WRIT OF PROHIBITION; APPLICATION TO ASSUME ORIGINAL  
JURISDICTION GRANTED AND WRIT OF PROHIBITION DENIED**

Erin M. Moore, and Tracy E. Neel, Assistant Attorneys General, Office of the Oklahoma Attorney General, Oklahoma City, Oklahoma, for Petitioner, Oklahoma State Department of Health, Okla. Sup. Ct. No. 122,524; and for Defendant/Appellee, Oklahoma State Department of Health, Okla. Sup. Ct. No. 122,775.

Lisa Erickson Endres, and Aaron Etherington, Assistant District Attorneys, Oklahoma City, Oklahoma Office of the Oklahoma County District Attorney, for Respondent, Oklahoma County Criminal Justice Authority, Okla. Sup. Ct. No. 122,524; and for Plaintiff/Appellant, Oklahoma County Criminal Justice Authority, Okla. Sup. Ct. No. 122,775.

Edmondson, J.

¶ 1 We are asked to decide whether the Oklahoma State Department of Health (OSDH) has authority to perform unannounced inspections of a jail in Oklahoma County. We answer in the affirmative. Two proceedings involving identical parties request this

decision, the OSDH and the Oklahoma County Criminal Justice Authority (OCCJA). The first proceeding was brought as an original jurisdiction proceeding by the OSDH and the Court declines to assume original jurisdiction. The second was brought by the OCCJA as an appeal. We recast the OCCJA's appeal to an original jurisdiction proceeding and answer the single issue whether the OSDH may perform unannounced jail inspections.

### I. The Proceedings

¶2 The Oklahoma County Criminal Justice Authority (OCCJA) filed a petition in the District Court of Oklahoma County on July 29, 2024, and sought a writ of mandamus and an injunction against the Oklahoma State Department of Health (OSDH) to prevent, (1) OSDH unannounced jail inspections, and (2) an OSDH administrative proceeding against the OCCJA based upon an Administrative Compliance Order issued on or about July 15, 2024. The OCCJA also sought a District Court order to require the OSDH to comply with 74 O.S. § 194, and withdraw Jail Inspection Reports issued by the OSDH on or about June 25, and July 9, 2024. The OCCJA objected to surprise or unscheduled jail inspections and sought a trial court order to compel the OSDH to provide “scheduled annual jail inspections.”

¶3 The OCCJA alleged the OSDH exceeded its lawful authority by “demanding unannounced access for annual jail inspections,” and “failed to follow statutory procedures to obtain relief following a finding of non-compliance with jail standards.” The OCCJA also alleged the OSDH issued an Administrative Compliance Order that “requires the Authority to answer and cure alleged deficiencies in Jail Inspection Reports sooner than the

mandatory 60 days provided to jails to correct deficiencies allowed by 74 O.S. §194.” The OCCJA alleged: “Title 63 of the Public Health Code does not apply to jail inspections under Title 74,” and the OSDH may not use Title 63 as a basis for an Administrative Compliance Order directed to the Authority. The OCCJA alleged the OSDH has no authority to issue a jail inspection report asserting non-compliance with jail standards when the inspectors are not allowed unannounced access to a jail. The OCCJA alleged the OSDH has no authority to issue administrative fines for non-compliance with jail standards.

¶4 The OCCJA alleged unannounced jail inspections by the OSDH are contrary to law because: (1) The statutes authorizing inspection, 74 O.S. §§192-197, and related administrative rules, O.A.C. 310:670-5-1 through O.A.C. 310:670-5-11, do not give express authority for such inspections, and implied authority for such inspections is an improper expansion of the statutes and rules; and (2) Unannounced jail inspections are improper because while the jail may have “sufficient staff on site to safely operate the jail,” “[t]he jail did not, however, have the additional staff scheduled and on hand as needed to accommodate the three-day inspection process without pulling staff from assigned duties necessary for the health, safety, and welfare of the detainees.”

¶5 The OSDH filed a combined response and motion to dismiss on Aug. 19, 2024. The motion to dismiss relied upon 12 O.S. §2012(B)(6) (failure to state a claim upon which relief may be granted), and also relied upon 12 O.S. § 1657 for the proposition that OCCJA’s request for declaratory judgment against an administrative order was improper. The OCCJA responded on Sept. 4, 2024, and the OSDH filed a reply on Oct. 29, 2024. The trial court held a hearing on the motion to dismiss and related filings in November 2024.

¶6 The OSDH's motion discussed prior unannounced inspections of the jail and the results. The OSDH argued "only an unannounced inspection will discover compliance" with several provisions of the Oklahoma Administrative Code.<sup>1</sup> The OSDH argued: "74 O.S. § 192 is silent as to whether the inspections the Department is mandated to conduct must be announced or unannounced. However, the language of the statute provides an extensive list of items with which the Department must ensure the Jail's compliance."<sup>2</sup> The OSDH argued: "Some of these items would be inherently evident in paperwork or date logs, such as 'uniform admission and release procedures.' 74 O.S. §182(A)(1). Conversely, other items the Department inspects require the inspector to observe how the facility is operating in the immediate moment."<sup>3</sup> The OSDH argued 74 O.S. §192 requires observations of the jail by an inspector "to ensure that: (1) the facility has 'proper, fit, and sanitary conditions;' (2) the inmates have access to adequate clothing and bedding; (3) showers have hot and cold water; and (4) inmates are aware of the rules of the facility."<sup>4</sup>

¶7 The OSDH's motion relied on "Exhibit 13," an affidavit by the Program Manager of the Jail Inspection Division of the OSDH. The affidavit states inspections for all jails have three parts: an entrance meeting, facility tour, and exit meeting. During the entrance meeting the inspectors provide the jail administrative staff with a list of documents

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<sup>1</sup> OSDH's Response and Motion to Dismiss (Aug. 19, 2024) (p. 5, citing O.A.C. 310:670-5-2(3); 310:670-5-3(b); 310:670-5-5(1); 310:670-5-6(1),(3),(6),(7)(A),(18),(21); 310:670-5-7(a), and 310:670-5-11(a)(4)(A).

<sup>2</sup> *Id.* at p.8-9.

<sup>3</sup> OSDH's Response and Motion to Dismiss (Aug. 19, 2024) p. 9.

<sup>4</sup> *Id.* at p. 9, citing 74 O.S.. § 192 ((A)(3),(5),(6), and "Exhibit 13," an affidavit by "the Program Manager of the Jail Inspection Division" of the OSDH.

needed for the inspectors to review. These documents may include policies and procedures of the jail, facility logs, and specific records such as medical records, and records “pertaining to investigation inspections.”

¶8 The second step of the inspection is the facility tour. The inspectors observe whether the jail is complying with jail standards and facility procedures. The locations inspected include inmate living areas, and medical, laundry, recreation, booking, and other working areas. The inspectors examine whether phone systems allow staff to respond to emergency calls of inmates, as well as sanitary conditions of the showers, cells, kitchen, and common areas, and whether emergency exit doors are blocked. The inspectors examine fire alarms and smoke detections systems, food carts, light measurement in cells, female inmates in proximity with male inmates in booking areas, inmates in cells without a mattress, and multiple inmates in cells with mattresses “without cover allowing for a cleanable surface.” The OSDH stated an inspector must be able to talk to staff as well as inmates during the facility tour.

¶9 The third and final step in the inspection is the exit meeting when inspectors meet with the Jail Administrator “to discuss preliminary deficiency findings, receive updates/explanations concerning the violations found, and receive any additional documentation from the Jail Administrator prior to the conclusion of the inspection.”

¶10 The OCCJA argued statutory language giving the OSDH “access” does not mean “unannounced access.” The OCCJA argued the exercise of the OSDH’s statutory inspection duty must be performed when the jail has “sufficient staffing” or “appropriate staffing” for an inspection. The OCCJA argued: An inspection requires “people off of assigned duties to escort your [OSDH] people around, to pull documents. I’m pulling them

off assigned duties creating a safety and staffing issue.” The OCCJA argued the OSDH’s assertion of access to conduct inspections must be construed as “[r]easonable access.” The OCCJA argued an inspection has two parts: (1) an inspection of “paperwork” showing the jail is “following written procedures and policies” “that can be pulled” when OSDH has made an appointment for a jail inspection and (2) a “walk through the facility.”

¶11 The trial court’s journal entry was filed December 2024, and contains the following explanation.

After review of the pleadings, the motion, response, reply and oral argument of the parties by and through counsel, the Court granted the Motion to Dismiss in part.

Based upon the use of the word “shall” in 74 O.S. §193(A), the Court finds that the plain language of the statute indicates health inspectors shall have access to the jail, whether announced or unannounced, any time they show up to conduct inspections pursuant to 74 O.S. § 193. Plaintiff’s Petition asserting the need for a different statutory interpretation of 74 O.S. §193(A) is dismissed.

Pursuant to 12 O.S. §994(A), the Court finds there is no just reason for delay, and this order is final.

The OCCJA commenced an appeal by filing a petition in error in January 2025. The Court *sua sponte* retained the appeal.

¶12 Before completed briefing by the parties in the District Court, in September 2024 the OSDH filed an application in the Supreme Court requesting the Court to assume superintending original jurisdiction over the OCCJA. The OSDH did not seek an extraordinary supervisory writ to control the District Court proceeding. The OSDH requested the Court to issue a writ of superintending control and directly supervise the OCCJA by requiring cooperative access for unannounced jail inspections.

¶13 We do not consolidate the independent superintending control original jurisdiction proceeding in No. 122,524 with the appeal in No. 122,775 recast to an original

jurisdiction proceeding. However, similar to a consolidation for the sole purpose of a single adjudication of separate proceedings,<sup>5</sup> we address both proceedings by a single opinion to be filed in each of the proceedings.

## II. No. 122,524: Application to Assume Original Jurisdiction and Petition for Writ of Superintending Control and Declaratory Relief

¶14 In No. 122,524: We decline to assume original jurisdiction on the OSDH's request for a writ of superintending control concerning a question of statutory meaning and unannounced jail inspections raised in both the superintending control proceeding and the appeal from the District Court's order.

¶15 The OSDH sought a superintending writ asking the Supreme Court to control and require the OCCJA to acquiesce and facilitate surprise or unannounced inspections of the jail by the OSDH. The OSDH's brief filed in support of its request for a superintending writ argues that the OSDH (petitioner), "has a statutory right to inspect jails and the language and longstanding interpretation by Petitioner makes unannounced inspections the only logical meaning of the statutes."<sup>6</sup> The relief it seeks is a writ issued to the OCCJA authorizing unannounced jail inspections and any other relief the Court deems

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<sup>5</sup> *Beyrer v. Mule, LLC*, 2021 OK 45, ¶9, n.12, 496 P.3d 983, 987-988 ("Consolidation for the sole purpose of one opinion addressing more than one controversy does not consolidate causes of action or controversies, and the opinion is filed in each of the separate proceedings before the Court.") (citing *State ex rel. Okla. Bar Ass'n v. Oliver*, 2015 OK 33, ¶ 14, 350 P.3d 146, 149; *In re Guardianship of Berry*, 2014 OK 56, n. 1, 335 P.3d 779, 783; and *Okla. Dep't of Sec. ex rel. Faught v. Blair*, 2010 OK16, n.1, 231 P.3d 645).

<sup>6</sup> Brief in Support of Application to Assume Original Jurisdiction and Petition for Writ of Mandamus and Declaratory Relief, No. 122,524, Sept. 18, p.13.



appropriate.<sup>7</sup>

¶16 The Court requested the parties to file a statement and address whether the District Court's dismissal order has any effect upon the OSDH's application to assume original jurisdiction and petition for a writ of superintending control. The OCCJA responded and stated the District Court's order "resolved or eliminated many of the factors cited by the Petitioner used to support its request to assume original jurisdiction." The OCCJA argued no urgency was present for assuming jurisdiction *because the effect of the District Court's order allows surprise or unannounced jail inspections to continue by the OSDH.*

¶17 The OSDH responded and renewed its request for the Court to assume original jurisdiction. The OSDH argued the OCCJA met and voted to appeal the District Court's order granting the OSDH's motion to dismiss, and that the issue of the OSDH's authority to have unannounced jail inspections "remains disputed." The OSDH *alleges* that even after the District Judge's order "multiple delays caused by jail staff" occurred making a normal two-day inspection turn into a four-day inspection.

¶18 The OSDH and the OCCJA do not specify whether these delays *alleged* by the OSDH violated the District Judge's order, or if these delays were cognizable before the District Judge within the proceeding that remained after the §994 order as recognized by the parties,<sup>8</sup> or whether the delays were not cognizable because a specific cause of action

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<sup>7</sup> *Id.* at p.13-14.

<sup>8</sup> *In re Adoption of L.D.S.*, 2006 OK 80, ¶¶5, 7, 155 P.3d 1, 6, 7 ("Jurisdiction remains in the trial court only for the limited purposes enumerated in Rule 1.37 of the Oklahoma Supreme Court Rules..." "It is well settled in Oklahoma, that while an appeal is pending in the Supreme Court, the trial court is without jurisdiction to make an order materially affecting the rights of the parties to that appeal.'...Thus, '[a]bsent a compliance with § (continued...)

was adjudicated and merged into a 12 O.S. §994 judgment before this Court on the OCCJA's appeal,<sup>9</sup> or if the alleged delays involved issues properly considered within the context of a traditional stay pending an appeal.<sup>10</sup>

¶19 The OSDH states concerning these alleged delays that inmates stated they were moved out of over-crowded cells shortly before the OSDH inspectors were allowed access, and that jail records requested by the inspectors during the inspection "were not readily available." The OSDH argues that while an unannounced jail inspection occurred after the District Judge granted the OSDH's motion to dismiss, "there is no guarantee that Respondent [OCCJA] will allow Petitioner [OSDH] to enter the Jail for another unannounced inspection."<sup>11</sup> The allegations made by the OSDH are insufficient to show a need for a superintending control writ.

¶20 We have explained that the Court's broad superintending control jurisdiction

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<sup>8</sup>(...continued)

1031.1 [by which a court may correct, open, modify or vacate its own judgment, decree, or appealable order within thirty days] the trial court loses its jurisdiction to make any order that pertains to the same issues then on appeal.") (citation and material omitted, explanation in original).

<sup>9</sup> *Cathey v. Bd. of Cty. Com'rs for McCurtain Cty.*, 2023 OK 108, ¶22, 553 P.3d 22, 26-27 ("Importantly, '[w]hen a cause is pending on appeal, a district court's exercise of judicial power with respect to issues which are tendered for review in the appellate forum is ineffectual if it occurs before the mandate has been transmitted to revest the trial court with subject matter jurisdiction.'");

<sup>10</sup> 12 O.S.2021, §994(B) states in part: "When a court has ordered a final judgment, decree, or final order under the conditions stated in subsection A of this section, the court may stay enforcement of that final judgment, decree or final order until the filing of a subsequent final judgment, decree or final order and may prescribe such conditions as are necessary to protect the interests of all parties to the action."

<sup>11</sup> Petitioner's Brief Regarding Oklahoma County Case No. CV-2024-2088, filed in Okla.Sup.Ct. No. 122,524, Dec. 13, 2024, p.6-7.

is “circumscribed by the usual principles of law applicable to remedies, such as an alternate exclusive remedy defeating the exercise of such jurisdiction.”<sup>12</sup> The primary issue and relief sought by the request for a superintending writ involves a question of statutory meaning and unannounced jail inspections. This issue is raised in No. 122,524 and No. 122,775 with the same parties.

¶21 The OSDH has failed to show: (1) A superintending control remedy is needed because the remedy sought is beyond the broad legal and equitable constitutional authority possessed by a District Court pursuant to Okla. Const. Art. 7 §7,<sup>13</sup> or (2) Particular factual circumstances require this Court to exercise a superintending jurisdiction over the OCCJA. The OSDH makes a claim for immediate relief to perform unannounced jail inspections,<sup>14</sup> but the claim is not supported by any showing that the District Court of Oklahoma County lacks the authority to grant, or will fail to grant, any legally appropriate relief concerning a jail located in Oklahoma County. The filings in No. 122,524 show no inadequacy of alternative remedies, either in law or fact,<sup>15</sup> in a District Court proceeding involving the

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<sup>12</sup> *Dutton v. City of Midwest City*, 2015 OK 51, ¶32, n.71, 353 P.3d 532, 548.

<sup>13</sup> Okla. Const. Art. 7 §7(a) states in part: “The District Court shall have unlimited original jurisdiction of all justiciable matters, except as otherwise provided in this Article.”

<sup>14</sup> *Fent v. Contingency Review Bd.*, 2007 OK 27, ¶11, 163 P.3d 512, 521 (One of the factors considered by the Court when requested to exercise a discretionary original jurisdiction concurrent with a District Court is whether an urgency or pressing need exists for the Supreme Court to exercise jurisdiction.).

<sup>15</sup> *Smith v. Moore*, 2002 OK 49, ¶¶7-8, 50 P.3d 215, 218 (Court explained issuance of a prerogative writ was conditioned upon the absence of a “plain and adequate remedy in the ordinary course of law;” and while the Court would not control a decision concerning a remedy “within the discretion of the trial court,” the Court may grant relief when a trial court’s discretion resulted in a decision beyond the scope of the trial court’s authority);  
(continued...)

same parties and same legal issue.<sup>16</sup>

¶22 The District Court proceeding remains pending. We decline to assume original jurisdiction on the OSDH's application to assume jurisdiction in Okla. Sup. Ct. No. 122,524.

III. No. 122,775: Appeal of a 12 O.S.2021, §994 Order, and Petition in Error  
Recast to Application to Assume Original Jurisdiction and  
Petition for Supervisory Writ of Prohibition

¶23 This Court inquires into its own jurisdiction in every proceeding before the Court.<sup>17</sup> In summary: The appeal in No. 122,775 is based upon an order relying upon 12 O.S.2021, §994(A) that authorizes a court to “direct the preparation and filing of a final judgment, decree, or final order as to one or more but fewer than all of the claims or parties” when “there is no just reason for delay and upon an express direction for the filing of a final judgment, decree, or final order.”<sup>18</sup> We conclude the District Court's order is not

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<sup>15</sup>(...continued)

*State v. District Court of Marshall County*, 1915 OK 377, 149 P.240, 241 (in the context of extraordinary writ of prohibition the Court has explained an inadequate remedy may depend “very largely upon the facts and circumstances of the case in hand”).

<sup>16</sup> *State ex rel. Okla. Bar Ass'n v. Mothershed*, 2011 OK 84, ¶¶78, 264 P.3d 1197, 1226 (A party must show the inadequacy of a District Court's exercise of jurisdiction over a matter when the party seeks to invoke this Court's jurisdiction that is both original and concurrent with a District Court over the same matter.).

<sup>17</sup> *In re S.J.W.*, 2023 OK 49, ¶7, 535 P.3d 1235, 1240 (“When a case comes before us on appeal, this Court has a duty to inquire into our own jurisdiction as well as the jurisdiction of the lower court.”); *Johnson v. Snow*, 2022 OK 86, n.9, 521 P.3d 1272, 1277 (same); *Hall v. The GEO Group, Inc.*, 2014 OK 22, ¶12, 324 P.3d 399, 404 (same).

<sup>18</sup> 12 O.S.2021, §994(A) states in part: “A. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the preparation and filing of a  
(continued...) ”

a complete adjudication of a single claim, or a single cause of action.

¶24 In 1996 we explained concerning a 12 O.S. §994 judgment on fewer than all claims: “Additionally, if the unadjudicated claim arises from the same transaction or occurrence as the adjudicated claim the District Court does not have the power to enter a final appealable order as to only the adjudicated portion.”<sup>19</sup> We noted this adjudication of a claim, or cause of action, must include adjudication of an affirmative defense as well as a compulsory counterclaim.<sup>20</sup> Several years later in *Oklahoma City Urban Renewal Authority v. City of Oklahoma City*, 2005 OK 2, 110 P.3d 550, we explained “one complete claim” may be advanced for appellate review by as 12 O.S. §994 certification, but a “partly-decided claim” “is unsuitable for §994 certification.” *Id.* 2005 OK 2, ¶¶10-11, 110 P.3d at 557.

¶25 We identified a single “claim” for §994 purposes with a single cause of action in *Casey v. Casey*, 2005 OK13, 109 P.3d 345: “In order for an adjudicated claim to be suitable for immediate appeal pursuant to § 994, it must not arise from the same transaction or occurrence as the unadjudicated claims.” *Id.* 2005 OK 13, n.5, 109 P.3d at

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<sup>18</sup>(...continued)  
final judgment, decree, or final order as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the filing of a final judgment, decree, or final order.”

<sup>19</sup> *Liberty Bank & Tr. Co. v. Rogalin*, 1996 OK 10, ¶10, 912 P.2d 836, 838.

<sup>20</sup> *Id.* 1996 OK 10, n.3, 912 P.2d at 839. See also *May-Li Barki, M.D., Inc., v. Liberty Bank and Tr. Co.*, 1999 OK 87, ¶3, 20 P.3d 135, 142 (supplemental opinion on rehearing) (There can be no judgment suitable for 12 O.S. §994 when the adjudication “disposes of but a portion of the contest by leaving unresolved any issue on the merits of the partly-decided claim.”) (emphasis deleted).

347. In *Casey* we relied on *Liberty Bank, supra, Tolson v. United States*,<sup>21</sup> which is cited in 12 Okla. Stat. Ann. tit. 12, §994 (West 2015) “Oklahoma Comments” for the principle that §994 may not be used for an adjudication of “only one of several theories of recovery,”<sup>22</sup> and also *Retherford v. Halliburton Co.*,<sup>23</sup> which explains “this jurisdiction [Oklahoma] is committed to the wrongful act or transactional definition of ‘cause of action.’” *Casey*, 2005 OK 13, n.5, 109 P.3d at 347 (explanation added).<sup>24</sup>

¶26 A trial court’s §994 adjudication of a complete cause of action results in a judgment on that claim or cause of action and may be appealed as other judgments,<sup>25</sup>

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<sup>21</sup> 732 F.2d 998 (D.C.Cir.1984).

<sup>22</sup> An interlocutory trial court order adjudicating a theory of recovery may be used to invoke the Supreme Court’s discretionary review in the proper circumstances based upon 12 O.S. §952(b)(3). This review of a decision “that affects a substantial part of the merits of the controversy” has occurred when, for example, the Court addressed plaintiffs’ theories of liability as in *Rogers v. Quiktrip Corp.*, 2010 OK 3, ¶3, 230 P.3d 853, 855, and also in the context of a trial court’s decision granting a partial motion to dismiss concerning what constituted separate causes of action pled by a plaintiff, *Fox v. Mize*, 2018 OK 75, ¶¶4, 8, 428 P.3d 314, 318-19.

<sup>23</sup> 1977 OK 178, 572 P.2d 966, 969.

<sup>24</sup> See also *Andrew v. Depani-Sparkes*, 2017 OK 42, ¶8, 396 P.3d 210, 214 (For an adjudicated “claim” to be suitable for immediate appeal pursuant to 12 O.S. §994, the claim, or cause action, adjudicated by the §994 process must not arise from the same transaction or occurrence as any unadjudicated “claims” left pending in the trial court.).

<sup>25</sup> 12 O.S.2021, §994(A) states in part: “When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the preparation and filing of a *final judgment, decree, or final order* as to one or more but fewer than all of the claims.”(emphasis added); see also “Oklahoma Comments” for 12 Okla. Stat. Ann. tit. 12 §994 (West 2015) which states in part: “If a trial court orders the filing of a final judgment on fewer than all the claims, it should be prepared and filed in the same manner as any other judgment, the time to appeal will start to run upon its filing, and subject to the provisions of [§994] subsection (B), it may be enforced as any other judgment.”  
(continued...)

unlike an interlocutory adjudication anterior to judgment which may receive appellate review upon appeal from the subsequent judgment.<sup>26</sup> When a trial court erroneously creates a §994 adjudication by leaving unadjudicated part of a single cause of action addressed by the §994 adjudication, then the adjudication is not a judgment, is not final, and remains an interlocutory order anterior to judgment on the single cause of action and this interlocutory order remains “under the plenary control of the trial judge to modify or vacate.” *Oklahoma City Urban Renewal Authority v. City of Oklahoma City*, 2005 OK 2, ¶13, 110 P.3d 550, 558-59.

¶27 In *Oklahoma City Urban Renewal Authority* we noted the trial court “left unresolved issues on the partially-decided claims” when it “held in abeyance any determination as to the constitutional infirmity of any of the transactions it was considering.” *Id.* 2005 OK 2, ¶13, 110 P.3d at 558. In other words, the trial court did not address one of the legal theories presented by a party, “constitutional infirmity,” when attempting to

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<sup>25</sup>(...continued)  
(explanatory cite added).

<sup>26</sup> An immediately appealable-by-right interlocutory order which is not appealed, or an interlocutory order uncertified for discretionary certiorari review, or certified and certiorari review is denied, are subject to a first-instance appellate review when the subsequent judgment is appealed. See, e.g., *In re Guardianship of Berry*, 2014 OK 56, ¶40, 335 P.3d 779, 792-93 (“intermediate or interlocutory orders anterior to judgment may be reviewed on appeal from the judgment”) (emphasis omitted); *Lincoln Farm, L.L.C. v. Oppliger*, 2013 OK 85, n.15, 315 P.3d 971, 976 (An immediately appealable-by-right interlocutory order that is not immediately appealed is subject to appellate review on appeal from the subsequent judgment.); *Schiewe v. Cessna Aircraft Co.*, 2024 OK 19, n. 1, 546 P.3d 234, (appeal after Court denied certiorari review of a certified interlocutory order); *Lay v. Ellis*, 2018 OK 83, ¶¶17-22, 432 P.3d 1035, 1040-43 (same); cf. *Smedsrud v. Powell*, 2002 OK 87, ¶¶13-14, 61 P.3d 891, 896 (judicial economy is served by the settled-law-of-the-case doctrine that usually bars relitigation of issues finally settled in a previous appeal involving the same parties and causes of action).

grant a 12 O.S. §994 “final judgment” on a cause of action that was partially based upon that alleged constitutional infirmity. We then said because this order “left unresolved issues of the partly-decided judgment claim, the order was at that point nothing more than an intermediate or interlocutory order which is not an appealable order.” *Id.*

¶28 In summary, a 12 O.S. §994 judgment on fewer than all claims, or causes of action, is based upon a complete adjudication of at least one cause of action, including related defenses and compulsory counterclaims. The adjudication for a §994 purpose may not be based upon one of several legal theories advanced in support for a single cause of action.

¶29 The trial court’s 12 O.S. §994 order stated the OSDH possessed statutory authority to perform an unannounced inspection and the parties have stated an unannounced inspection occurred after the court’s order. The trial court and the parties appear to have viewed the OCCJA’s District Court petition as presenting at least two causes of action, *i.e.*, (1) wrongfulness of unannounced jail inspections by the OSDH, and (2) wrongfulness of post-inspection administrative conduct or actions taken by the OSDH as a result of inspections or attempts to inspect the jail.<sup>27</sup> The District Court’s order *appears* to be an adjudication of the first cause of action, *i.e.*, the alleged wrongfulness of unannounced jail inspections. However, a 12 O.S. §994 issue of appellate jurisdiction is whether this first cause action was completely adjudicated. The OCCJA’s trial court petition

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<sup>27</sup> See, e.g., OCCJA’s Response to Motion to Dismiss with Supporting Brief (Sept. 4, 2024), O. R. Vol. 2, Tab 3 (argument in three sections in support of its trial court petition, (1) lack of deference to agency construction of statutes (2) unannounced inspections not authorized by law, and (3) the OCCJA not subject to administrative compliance proceedings).



alleges a wrongful manner of unannounced OSDH inspections.<sup>28</sup>

¶30 We conclude the 12 O.S. §994 order did not completely adjudicate the wrongfulness of unannounced jail inspections because the order did not address at least one of the OCCJA's legal theories invoked to show alleged wrongful inspections. Again, as stated in the Oklahoma Comments for 12 O.S. §994, an order pursuant to § 994 may not be used to adjudicate only one of several theories of recovery.

¶31 A combination of the OCCJA's petition, response to the OSDH's motion to dismiss, and the OCCJA's argument during the hearing show three legal theories advanced by the OCCJA in support of its cause of action for OSDH's alleged wrongful jail inspections: (1) The mandatory "shall" in 74 O.S. §193 mandates an inspection must occur but does not mandate the manner of the inspection as unannounced; (2) The mandatory "shall" in 74 O.S. §193 does not create an implied power possessed by the OSDH to create the manner of an inspection as unannounced; and (3) Statutes relating to jail inspections, including 74 O.S. §193, cannot create authority for the OSDH performing unannounced jail inspections in an unreasonable manner by such creating less than secure circumstances in the jail, *i.e.*, an official's exercise of a mandatory duty may not be exercised as an unreasonable performance of that duty.

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<sup>28</sup> A trial court's adjudication of a legal issue on a substantial part of the merits that is less than an adjudication on a complete cause of action may be reviewed by the Court upon certification by the trial court pursuant to Okla. Sup. Ct. R. 1.50, and a petition for discretionary review pursuant to 12 O.S.2021, § 952(b)(3). See, *e.g.*, *Truel v. A. Aguirre LLC*, 2017 OK 105, ¶¶3-5, 430 P.3d 1016, 1017-18 (Court's review was based upon 12 O.S. §952(b)(3) when it reviewed a trial court's construction and meaning of a statute and the adjudication left for a future adjudication the remaining part of the merits of the cause of action relying upon the statute's application). See also *Rogers v. Quiktrip Corp.*, *supra*, and *Fox v. Mize*, *supra*, at note 22, adjudicating a legal theory or a cause of action.

¶32 One part of this third theory appears in the OCCJA's petition in error asserting the trial court erroneously failed to hold an evidentiary hearing concerning the manner the OSDH performed its inspections, and that such hearing was necessary for the OCCJA's challenge to the OSDH's implied power to perform an unannounced inspection.<sup>29</sup> For an appellate jurisdictional analysis, we need not analyze potential sources for a state agency's implied powers or when certain facts may be necessary to show the existence of an implied power.<sup>30</sup> Rather, our immediate focus on the jurisdictional issue is upon the OCCJA raising in the trial court the manner of the OSDH's inspections *as a separate legal theory challenging alleged wrongful inspections* and that such allegation indicates not all legal theories on a single cause of action were addressed by the 12 O.S. §994 order.

¶33 An appeal may be dismissed as premature when appellate jurisdiction is based upon a 12 O.S. §994 decision adjudicating less than a complete single cause of action. *Liberty Bank, supra*, *Oklahoma City Urban Renewal Authority, supra*, and *Casey, supra*. The 12 O.S. §994 order of the trial court is an interlocutory order that is not immediately appealable and the appeal is premature. However we decline to dismiss the OCCJA's appeal.

¶34 We requested the parties to inform the Court on the effect of the trial court's order on the pending superintending writ proceeding. We have not required the parties to also brief whether the trial court's order is proper for a 12 O.S. §994 "final judgment."

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<sup>29</sup> We examine language in an assignment of error to determine legal issues that are "fairly comprised" within the assignment of error. *Berkson v. State ex rel. Askins*, 2023 OK 70, ¶17, 532 P.3d 36, 45.

<sup>30</sup> See the discussion of express and implied authority herein in Part IV. Unannounced Jail Inspections.

Generally, when a court raises an issue *sua sponte* the parties are given a reasonable opportunity to present facts and law on the issue prior to the court's decision adjudicating the *sua sponte* issue, and one example is a court's *sua sponte* inquiry into its jurisdiction.<sup>31</sup> We do not depart from this principle but find it need not be applied in the present controversy.

¶35 We have examined the appellate record and considered (1) the interlocutory nature of the trial court's order adjudicating part of a cause of action, (2) the narrow scope of the trial court's adjudication relating to application of a statute, (3) the motion to dismiss filed by the OSDH, (4) the lack of prejudice to the parties by the Court *sua sponte* recasting the OCCJA's petition in error to an application to assume original jurisdiction and petition for writ of prohibition, (5) the narrow scope of our original jurisdiction review in the present controversy,<sup>32</sup> (6) the *publici juris* nature of a first impression issue involving statutory authority for unannounced jail inspections combined with expenditure of public funds for jail staff and OSDH jail inspections and a need for prompt resolution, (7) the nature of prohibition as a supervisory remedial writ in the context of the claims made by the OCCJA in its appeal; and (8) additional usual factors when *sua sponte* recasting a filing and a

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<sup>31</sup> *Indep. Sch. Dist. No. 52 of Okla. Cty. v. Hofmeister*, 2020 OK 56, ¶54, 473 P.3d 475, 498.

<sup>32</sup> The scope of our review in the controversy is usually limited to reviewing the exercise of judicial discretion by the trial court. This is because a request for a writ is based, in the absence of unusual circumstances, upon preserving the controverted legal issue with the trial court's exercise of discretion in the first instance. *In re Guardianship of Berry*, 2014 OK 56, ¶85, 335 P.3d 779, 806. See *Scruggs v. Edwards*, 2007 OK 6, ¶6, 154 P.3d 1257, 1261 (rule requiring trial court preservation prior to review by supervisory writ); *Kincannon v. Pugh*, 1926 OK 125, ¶¶14-15, 243 P. 945, 947, 243 P. 945 (recognized exceptions to general rule).

proceeding before the Court.<sup>33</sup> We conclude that recasting the proceeding is appropriate.

¶36 The OCCJA's petition in error is recast to an application to assume original jurisdiction and petition for writ of prohibition.<sup>34</sup> We assume original jurisdiction. We conclude that the District Court's order is not contrary to law or an abuse of discretion and deny the petition for writ of prohibition.

#### IV. No. 122,775: Unannounced Jail Inspections

¶37 The trial court granted, in part, the OSDH's motion to dismiss based upon a construction of 74 O.S. § 193. The trial court appears to have adjudicated the sole issue whether the OSDH possesses statutory authority for performing an unannounced jail inspection. The OCCJA argued 74 O.S. §193 and related statutes do not authorize unannounced inspections by the OSDH.<sup>35</sup>

¶38 Our discretionary original jurisdiction review is usually limited to the scope of judicial discretion actually exercised by the trial court, and in this circumstance the OSDH's statutory authority to perform an unannounced jail inspection, *i.e.*, 74 O.S. §193 and any

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<sup>33</sup> *Sanders v. Turn Key Health Clinics*, 2025 OK 19, ¶¶19-34, 566 P.3d 591, 599-603 (Court explained its review when *sua sponte* recasting an appeal to an original jurisdiction proceeding); *Ethics Com'n v. Keating*, 1998 OK 36, ¶9, 958 P.2d 1250, 1254 (in a matter involving a state agency, one type of *publici juris* controversy involves the proper functioning of a government agency when there exists a need for a prompt resolution to determine the necessity whether public funds must be spent).

<sup>34</sup> *Inhofe v. Wiseman*, 1989 OK 41, 772 P.2d 389, 391 (mandamus or prohibition may issue to correct a District Court's order that is contrary to authority or an abuse of discretion).

<sup>35</sup> OCCJA's Response to Motion to Dismiss with Supporting Brief (Sept. 4, 2024), O. R. Vol. 2, Tab 3, pg. 6-15.

statutes related to 74 O.S. § 193 that show the legislature's intent for enacting 74 O.S. §193 and the meaning of the statutory language.<sup>36</sup>

¶39 One express purpose of a jail inspection is stated in 74 O.S. §192: "The State Department of Health shall inspect at least once each year all city and county jails to ensure compliance with the standards promulgated pursuant to the provisions of this section." 74 O.S.Supp.2023, §192(A). These standards include admission and release procedures, security measures, sanitary conditions, and several requirements for the care and custody of inmates. These requirements include but are not limited to: "a wholesome and adequate diet," "adequate clothing and usable bed," "showers with hot and cold running water, toilets, and water basins provided in the ratio of not less than one to every twenty prisoners," properly advising inmates "of the rules of the facility," steps taken by the jail "to ensure the safety and segregation of women, the infirm, and minors," "[a]dequate medical care," and "[n]o person to be confined without twenty-four-hour supervision." 74 O.S.Supp.2023, § 192(A).

¶40 The trial court relied on 74 O.S.2021, §193, which states as follows.

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<sup>36</sup> *Cole v. Josey*, 2019 OK 39, ¶3, 457 P.3d 1007, 1009 ("In the interpretation of statutes, courts do not limit their consideration to a single word or phrase in isolation to attempt to determine their meaning, but construe together the various provisions of relevant legislative enactments to ascertain and give effect to the legislature's intention and will, and attempt to avoid unnatural and absurd consequences."); *Tulsa Cty. Deputy Sheriff's F.O.P., Lodge No. 188 v. Bd. of Cty. Comm'rs of Tulsa Cty.*, 2000 OK 2, ¶10, 995 P.2d 1124, 1128-29 (application of statutes relating to jail facilities requires ascertaining legislative intent and "all statutory provisions upon a particular subject will be considered and given effect as a whole"); see *In re Guardianship of Berry*, *supra* and *Scruggs v. Edwards*, *supra*, at note 32.

A. Inspectors employed by the State Department of Health shall be permitted to enter all jail premises and administrative offices for the purpose of performing their assigned duties.

B. The results of these inspections shall be presented in the form of a written report to the person immediately responsible for the administration of the facility inspected and such other offices the Department deems appropriate. The report shall contain:

1. A list of deficiencies in the condition or operation of the facility and specific proposals for their solution; and

2. A statement as to whether or not the facility inspected is in substantial compliance with the jail standards established pursuant to Section 192 of this title.

The trial court appears to have construed “shall be permitted to enter all jail premises and administrative offices for the purpose of performing their assigned duties” in 74 O.S. §193 as a mandatory duty requiring jail officials to permit the OSDH inspectors to enter the jail premises for an OSDH inspection authorized by 74 O.S. §192, and also construed the nature of a 74 O.S. §192 inspection as authorizing an unannounced inspection by the OSDH inspectors.

¶41 The OCCJA’s *petition* challenges unannounced jail inspections by making allegations of fact purporting to show that unannounced jail inspections have an adverse impact upon staffing and security requirements for the Oklahoma County jail. In summary, that the OCCJA’s decision concerning usual staffing and security requirements for the jail are reasonable, and the alleged negative impact upon staffing and security requirements caused by an unannounced jail inspection is an unreasonable impact and outside statutory authority possessed by the OSDH.

¶42 The OSDH filed a motion to dismiss and stated it was based upon 12 O.S.2021, §2012(B)(6) (“Failure to state a claim upon which relief can be granted”). A motion to dismiss pursuant to 12 O.S. §2012(B)(6) is properly granted only when there are

no facts consistent with the allegations under a cognizable legal theory.<sup>37</sup> A motion to dismiss pursuant to 12 O.S.2011, § 2012(B)(6) does not test the veracity of facts underlying the allegations in the petition.<sup>38</sup> If exhibits are attached to a 12 O.S.2011, §2012(B)(6) motion then the nature of the information must be examined for matters outside of the pleadings presented in support of the motion, and whether these matters convert the motion into one for summary judgment.<sup>39</sup> The OSDH attached several exhibits in support of its motion including several jail inspection reports and an affidavit.

¶43 The OCCJA does not use the petition's allegations of fact related to security or staffing as issues of fact supporting alleged cause(s) of action, with a legal argument challenging a 12 O.S. §2012(B)(6) dismissal based upon an alleged present cognizable cause of action.<sup>40</sup> Rather, the OCCJA's response to the OSDH's motion appears to focus on whether statutory language gives, or does not give, the OSDH authority for performing an unannounced jail inspection. The response does request "a full evidentiary hearing . . . so the [District] Court alone can independently determine the appropriate statutory

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<sup>37</sup> *Knox v. O. G. & E. Co.*, 2024 OK 37, ¶22, 549 P.3d 1260, 1269.

<sup>38</sup> *Wilson v. State ex rel. State Election Bd.*, 2012 OK 2, ¶ 4, 270 P.3d 155, 157 ("court must take as true all of the challenged pleading's allegations together with all reasonable inferences that can be drawn from them").

<sup>39</sup> *Knox v. O. G. & E. Co.*, 2024 OK 37, ¶19, 549 P.3d 1260, 1267-68.

<sup>40</sup> *Boston v. Buchanan*, 2003 OK 114, ¶6, 89 P.3d 1034, 1038 (Issues that are "made up" for a trial on a cause of action consist of facts or conclusions of law presented by one party's pleadings, and controverted by the other party's pleadings, 12 O.S.2001, §§ 551, 552).

interpretation to be applied without agency deference to prior historical practices,”<sup>41</sup> but the request does not associate any facts as necessarily at issue as part of the OCCJA’s pled and identified cause(s) of action.

¶44 The OCCJA’s response has attached exhibits, including an attached publication, “Jail Standards and Inspection Programs; Resource and Implementation Guide” published by the National Institute of Corrections (Exhibit No. 8), and an affidavit by the then Chief Executive Officer of the OCCJA (Exhibit No. 9). The attached publication and affidavit *appear* to be cited in support of a legal argument for requiring the OSDH to make scheduled inspections. The OCCJA argues a “single day visual inspection should not be the sole-basis for non-compliance [with jail standards], which means ‘surprise’ inspections should not be needed.”<sup>42</sup> The OCCJA argues the jail satisfies federal standards, and Exhibit 8 states “compliance with jail standards inspections are intended to be a means of document review to ensure that processes procedures and policies are in place and being ‘substantially’ complied with on a regular basis over time, which should be evident from the document review itself.”<sup>43</sup>

¶45 Consistent with this approach that “over time” a document review based upon announced or scheduled jail inspections will show compliance with statutory jail standards, the OCCJA minimizes a need for showing a day-to-day compliance with jail standards.

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<sup>41</sup> OCCJA’s Response to Motion to Dismiss with Supporting Brief (Sept. 4, 2024), O. R. Vol. 2, Tab 3, pg.4.

<sup>42</sup> OCCJA’s Response to Motion to Dismiss with Supporting Brief (Sept. 4, 2024), O. R. Vol. 2, Tab 3, pg.13.

<sup>43</sup> OCCJA’s Response to Motion to Dismiss with Supporting Brief (Sept. 4, 2024), O. R. Vol. 2, Tab 3, pg.13, (citing Exhibit 8, Jail Standards Guide, p.21).



The OCCJA argues that requiring the OSDH to make scheduled or announced inspections complies with legislative intent because: “even if the jails cleaned or corrected deficiencies before inspectors arrived, how is this a bad thing if the goal of the inspections, compliance with health and safety standards are met by the extra effort being made to clean up the place before they arrive.”<sup>44</sup>

¶46 We note that although not addressed by the OCCJA, its Exhibit No. 8, also states the following at pg.21.

Unannounced inspections have the advantage of allowing the inspector to see the jail as it routinely functions, not just how it looks or functions after days or weeks of preparation. Announced inspections, on the other hand, ensure the availability of key jail officials on the date of inspection and can facilitate a more thorough and comprehensive inspection. If the facility makes an ongoing effort to comply with standards and documents these efforts, this should be evident in the inspection.

The inspection process recommended by the publication states benefits by both unannounced and announced jail inspections. The OCCJA cites no authority for the legislature or the OSDH having adopted this exhibit or its specific recommendations for OSDH jail inspections in Oklahoma. The OCCJA uses the exhibit, without comment on its stated utility of unannounced inspections, as a standard for reasonableness that should be applied to all jail inspections performed by the OSDH.

¶47 The OCCJA’s response cites to Exhibit 9, an affidavit by the then Chief Executive Officer of the OCCJA, for a statement that the Department of Justice “does not perform ‘unannounced’ jail inspections of the Oklahoma County Detention Center and typically schedules federal jail standard compliance inspections of the Oklahoma County

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<sup>44</sup> OCCJA’s Response to Motion to Dismiss with Supporting Brief (Sept. 4, 2024), O. R. Vol. 2, Tab 3, pg.13.

Detention Center with 60 days in advance notice.”<sup>45</sup> The response states this fact “demonstrates that jail inspection duties to determine compliance with jail standards is a task that does not need to be accomplished or performed through ‘unannounced’ inspections.”<sup>46</sup>

¶48 In response to the OSDH’s motion to dismiss, the OCCJA focuses on the absence of “unannounced” in statutory language relating to jail inspections. The OCCJA argues that the term “access” and its mandatory duty to provide access “do not convey or even hint that such authorizes ‘unannounced’ inspections.” The OCCJA argues statutorily required access is “only such access as is necessary for the purpose of performing inspector’s ‘assigned duties.’” The OCCJA argues that legislative intent may not be changed or altered by reading into the statute an implied authority for an unannounced inspection.

¶49 The OCCJA argues the legislature gave express authority to the OSDH to make unannounced inspections in 63 O.S. §1-1911(B) (Nursing Home Care Act) and 10 O.S. §1430.27 (Group Homes Act) and such shows a legislative intent to not give the OSDH authority for unannounced jail inspections in Oklahoma Statutes Title 74.<sup>47</sup> The OCCJA argues the OSDH has a history of exceeding the scope of its authority.

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<sup>45</sup> OCCJA’s Response to Motion to Dismiss with Supporting Brief (Sept. 4, 2024), O. R. Vol. 2, Tab 3, pg.13.

<sup>46</sup> *Id.*

<sup>47</sup> The OCCJA’s response footnotes two additional examples of unannounced inspections authorized by the Oklahoma Administrative Code for Air Ambulance Inspections and Emergency Medical Response Agency Inspections. *Id.* O.R. Vol. 2, Tab 3, pg.10.

¶50 Generally, an express power in the nature of an official's affirmative duty normally creates an implied power necessary to fulfill the affirmative duty, and this implied power becomes an implied duty unless some other provision of law or factual circumstance makes the implied duty either discretionary or unnecessary to fulfill.<sup>48</sup> Necessity for an implied power/authority may arise from application of law, fact, or a mixture of law and fact. For example, a state entity may possess implied authority or power based upon "a reasonable implication from the language of the statute," or as a "logical result" or a "foreseeable result" from express authority statutorily granted,<sup>49</sup> or when "fairly implied, necessarily incidental to the express powers, or essential to its declared objects and purposes,"<sup>50</sup> or from the language or application of different statutes, or statutes concerning the manner a state agency exercises authority, or history concerning legislative regulation of the subject being regulated by the agency, or by legislative funding for the manner

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<sup>48</sup> *Indep. Sch. Dist. No. 52 of Okla. Cty. v. Hofmeister*, 2020 OK 56, ¶37, 473 P.3d 475, 492.

<sup>49</sup> *Oklahoma Tax Com'n v. Fortinberry Co., Inc.*, 1949 OK 75, 207 P.2d 301, 305 (an implied power is present when it "is a *reasonable implication from the language* of the statute") (emphasis added); *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 41-42, 105 S.Ct. 1713, 85 L.Ed.2d 24 (1985) (Statutes may "clearly contemplate" that a governmental entity will engage in conduct not expressly authorized by statutes when "[s]uch conduct is a foreseeable result" or when "it is clear" the conduct amounts to "effects [that] logically would result" from express statutory authority.).

<sup>50</sup> *Oklahoma Educ. Ass'n v. State ex rel. Oklahoma Legislature*, 2007 OK 30, ¶17, 158 P.3d 1058, 1065 ("A school board's powers and duties are restricted to those expressly granted, fairly implied, necessarily incidental to the express powers, or essential to its declared objects and purposes."); *School District No. 25 of Woods County v. Hodge*, 1947 OK 220, ¶13, 183 P.2d 575, 581 (Legislature's constitutional duty of establishing and maintaining a system of free public schools carries with it the legislature's implied power to create, alter or even to abolish districts as a means suitable to the accomplishment of that purpose.).

exercising authority.<sup>51</sup>

¶51 Of course, a general statutory term may be considered similar to naming or defining a “class” in the sense that this general term includes any subclass expressly named by statute as well as a subclass created “as a matter of fact” when proper proof is offered.<sup>52</sup> In other words, a statutory term “inspection” may include “unannounced inspection” and “announced inspection” as a subclass type of a statutory “inspection” when these two subclasses are either expressly stated in the statute or arise as an implied authority as a matter of fact. However, the terms “unannounced inspection” and “announced inspection” do not appear in the statutes at issue. Further, their application in this controversy as part of an implied authority is not dependent upon an offer of proof or a finding of fact.

¶52 An implied authority or power need not arise from applying a fact, but may arise also from a reasonable *implication created by express language* of a statute’s fair meaning. This principle is consistent with both: (1) This Court’s long history of ascertaining legislative intent by applying one type of plain-meaning textualism that is based upon

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<sup>51</sup> See, e.g., *Okla. Pub. Employees Ass’n. v. Okla. Dept. of Cent. Serv.*, 2002 OK 71, n.21, 55 P.3d 1072, 1088 (four non-exhaustive examples suggesting an implied power may arise from language in a different, not at issue, statute concerning the manner a state agency exercises power, a statutory scheme related to the legislative history as applied to the subject being regulated by the agency, different statutes or the State Constitution requiring the implied power, and legislative funding for fulfillment of the express power/authority knowingly, *i.e.*, with legislative intent, to include funding for exercise of an implied power/duty).

<sup>52</sup> See, e.g., *Securities and Exchange Commission v. C. M. Joiner Leasing Corp.*, 320 U.S. 344, 351, 64 S.Ct. 120, 88 L.Ed. 88 (1943) (a “security” was statutorily defined to include by name or description many documents within the meaning of the term “security”, and also novel, uncommon, or irregular devices qualify as a “security” “as a matter of fact” if the offered proof showing their character in commerce).

implication, *i.e.*, when a plain meaning implication arises from language that is not ambiguous,<sup>53</sup> and (2) Implication from language used as part of one type of plain meaning textualism that has been applied by certain members of the U. S. Supreme Court as one of the “principal tenets” that has “guided the interpretation of legal tests for centuries.”<sup>54</sup>

¶53 The scope of an express power and whether an implied power is necessary may arise when a challenge is made to the manner used by an official when performing an express and mandatory duty. For example, in *Oklahoma Department of Mines v. Dahlgren*, 1999 OK 95, 995 P.2d 1103, we rejected a party’s claim a court should instruct an agency how to perform the agency’s enforcement duty in advance of enforcement when the manner of enforcement was discretionary: “While the Department has a mandatory

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<sup>53</sup> See, *e.g.*, *City of Hugo v. State ex rel. Pub. Emp. Relations Bd.*, 1994 OK 134, ¶15, 886 P.2d 485, 492 (“authority will be implied if necessary for the due and efficient exercise of powers expressly granted or if it may be *fairly implied from the statutory language*”) (emphasis added); *Oklahoma Tax Com’n v. Fortinberry Co., Inc.*, *supra* at, n.49; *Rickard v. Coulimore*, 2022 OK 9, ¶5, 505 P.3d 920, 923 (“The fundamental purpose of statutory construction is to ascertain and give effect to the intent of the Legislature ... To do this, we first look to the language of the statute...If the statutory language is clear and unambiguous, this Court must apply the plain and ordinary meaning of the words.”) (citations omitted).

<sup>54</sup> See, *e.g.*, Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 16 (Thomson/West, 2012) (“Textualism, in its purest form, begins and ends with what the text says *and fairly implies*. Its principal tenets have guided the interpretation of legal tests for centuries.”) (emphasis added); *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 102, 118 S.Ct.1003, 140 L.Ed.2d 210 (1998) (“Such meaning is *fairly implied by the text*” is applied for defining, in part, “cases” and “controversies” based upon an issue of law, that is, noting the character of what was “traditionally amenable” to “judicial process,” or “activities” that are “appropriate” to courts as a matter of law; and the issue or question of law defining the scope of judicial (cases and controversies) was answered by the express and implied meaning of traditional legal texts that were then applied to a plaintiff’s factual and legal circumstances for a determination of a plaintiff’s standing) (quoted language appears in part IV, Opinion by the Court, authored by Scalia, J., in which Rehnquist, C.J., and O’Connor, Kennedy, Thomas, and Breyer, JJ., joined) (emphasis added).

duty to enforce the Act, the method of enforcement is discretionary with the Department. It would be premature for this Court to tell the Department in advance how it must carry out its enforcement duty.” *Id.* 1990 K 95, ¶14, 995 P.2d at 1108.

¶54 A state agency exercising a mandatory power/duty may possess discretion as to the manner by which the power is exercised, but the discretion must be exercised in good faith and in accordance with the legislative will and purpose.<sup>55</sup> The OCCJA’s petition seeks primarily injunctive relief to prevent unannounced inspections and mandate announced inspections, although a request for a declaratory remedy is included.<sup>56</sup> An injunction against a public official concerning the official’s discretionary power may be based upon a gross abuse of discretion when taken for untenable reasons, or to a clearly unreasonable extent,<sup>57</sup> or when action is fraudulent or in bad faith,<sup>58</sup> or when the action is

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<sup>55</sup> *Application of State Board of Medical Examiners*, 1949 OK 100, 206 P.2d 211, 214-15 (when an agency’s exercise of power is mandatory but has “discretion as to the manner in which the power is exercised,” then the agency “has no discretion as to whether it shall, in good faith and in accordance with legislative will [and purpose], exercise the power”).

<sup>56</sup> *Macy v. Oklahoma City School Dist. No. 89*, 1998 OK 58, ¶11, 961 P.2d 804, 807 (“A suit for declaratory judgment pursuant to [12 O.S.] § 1651 is neither strictly legal nor equitable, but assumes the nature of the controversy at issue.”).

<sup>57</sup> *Shadid v. Oklahoma Alcoholic Beverage Control Bd.*, 1982 OK 3, 639 P.2d 1239, 1242 (“As a general rule, public officials will not be enjoined in the exercise of discretionary power. However, an injunction may be issued in a case of gross abuse of discretion if it appears that the action was taken for untenable reasons or to a clearly unreasonable extent.”).

<sup>58</sup> *White v. Pottawatomie County*, 1947 OK 195, 184 P.2d 446 (Syllabus by the Court) (Discretionary powers of public officials will not be controlled by injunction in absence of any showing that their action is fraudulent or in bad faith.).

lacking a reasonable or rational basis,<sup>59</sup> or when the official's action is inconsistent with legislative intent.<sup>60</sup>

¶155 When an agency's "powers are limited by the plain language of the statute," then the agency's manner, or extent, of performance "must remain within the bounds of the law," and the agency has no discretion to act outside the agency's statutory powers.<sup>61</sup> While a mandatory injunction by mandamus<sup>62</sup> will not ordinarily be allowed to control or compel performance of a duty requiring the exercise of discretion, it may issue to compel action when one which the respondent has taken was erroneous or arbitrary.<sup>63</sup> An express power imposing a mandatory duty for the OSDH to inspect a jail does not confer an implied and discretionary power to act arbitrarily or capriciously. Arbitrariness is shown by an act that is "not upon any course of reasoning and exercise of judgment," and when reasonable

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<sup>59</sup> *Hennessey v. Indep. School Dist. No. 4, Lincoln Co.*, 1976 OK 101, ¶13, 552 P.2d 1141, 1145 (A state agency's exercise of a discretionary power must not be unconstitutional and must possess "a reasonable or rational basis if it is to avoid the stigma of arbitrariness.").

<sup>60</sup> *Sharp v. 251st St. Landfill, Inc.*, 1996 OK 109, ¶5, 925 P.2d 546, 549 (a decision of an administrative agency inconsistent with legislative intent may serve as a basis for injunctive relief to effectuate the legislative design when application of an equitable remedy is appropriate).

<sup>61</sup> *Winters v. Governor's Special Committee*, 1967 OK 249, ¶¶7-8, 441 P.2d 370, 374.

<sup>62</sup> *Oklahoma Annual Conference of the United Methodist Church, Inc. v. Timmons*, 2023 OK 101, ¶19, 538 P.3d 163, 170 ("A mandatory injunction, rather than preserving the status quo, 'is an extraordinary remedial process that commands the performance of some positive act.'"); cf. *Osage Nation v. Bd. of Commr's of Osage Cnty.*, 2017 OK 34, ¶46, 394 P.3d 1224, 1240-41 (discussed injunction and mandamus remedies and noted a mandatory injunction against a public official to compel the enforcement of law is usually considered a request for mandamus).

<sup>63</sup> *Morton v. Adair County Excise Bd.*, 1989 OK 174, ¶4, 780 P.2d 707, 709.

persons have different conclusions on the matter in controversy in the exercise of such judgment, then neither conclusion could be said to be arbitrary.<sup>64</sup>

¶56 The purpose of a 12 O.S. §2012(B)(6) motion to dismiss is to test the law that governs the claim, not to examine and reach conclusions about the underlying facts.<sup>65</sup> Such motion should be denied “[i]f relief is possible under any set of facts which can be established and are consistent with the allegations.”<sup>66</sup> A court considers when a plaintiff’s petition alleges facts upon which relief may be available.<sup>67</sup>

¶57 We are asked to determine whether the Legislature intended to assign discretionary authority to the OSDH to perform unannounced jail inspections. The legislature requires jail inspections by the OSDH, the legislature has stated specific requirements for jail management and care for prisoners, and the OSDH is required to examine whether a jail meets those requirements. 74 O.S.Supp.2023, §192. The OSDH is required to perform an inspection and a jail must admit an OSDH inspector to inspect the jail. 74 O.S. §§192-193. The statutes relating to jail inspections by the OSDH do not state whether the OSDH performs announced or unannounced inspections. We agree with the OCCJA that a state agency may not expand its own implied power or authority beyond

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<sup>64</sup>*Lane v. State Bd. For Registration of Professional Engineers*, 1970 OK 41, ¶23, 468 P.2d 784, 789 (quoting *Boyle v. Rock Island Coal Min. Co.*, 1925 OK 927, 256 P. 883 (Syllabus by the Court)).

<sup>65</sup> *Spencer v. Nelson*, 2024 OK 63, ¶19, 557 P.3d 144, 149.

<sup>66</sup> *Miller v. Miller*, 1998 OK 24, ¶15, 956 P.2d 887, 894.

<sup>67</sup> *A--Plus Janitorial & Carpet Cleaning v. The Employers’ Workers’ Comp. Ass’n*, 1997 OK 37, ¶19, 936 P.2d 916, 922.



express mandatory law.<sup>68</sup> However, we disagree with the conclusion made by the OCCJA that the OSDH expanded its powers. We conclude an unannounced inspection is a reasonable means to satisfy at least two of the several legislative purposes in the jail inspection statutes, (1) encourage day-to-day compliance with the legislature's jail standards, and (2) a state agency examination whether a jail is complying with such standards.

¶58 We agree with the District Court's interlocutory order concluding the OSDH possesses discretion to perform unannounced jail inspections. We view the District Court's order in light of the allegations in OCCJA's petition and conclude: (1) The order adjudicated the statutory power of the OSDH to perform unannounced inspections; and (2) The order did not adjudicate the OCCJA's theory that the manner used by the OSDH for unannounced inspections is unreasonable and that such unreasonableness could be corrected by an equitable remedy.

¶59 The interlocutory order of the District Court was not contrary to law or an abuse of discretion and the OCCJA's petition for a writ of prohibition is denied.

## V. Conclusion

¶60 We decline to assume original jurisdiction in No. 122,524 on the OSDH's request for a writ of superintending control. The OCCJA's petition in error in No. 122,775 is recast into an application to assume original jurisdiction and petition for writ of prohibition. The Court assumes original jurisdiction in No. 122,775 on a single issue and

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<sup>68</sup> *Strong v. State, ex rel. Oklahoma Police Pension and Retirement Board*, 2005 OK 45, ¶9, 115 P.3d 889, 893–94 (state agencies lack authority to expand their powers beyond mandatory law).

concludes the OSDH has authority to perform unannounced jail inspections.

¶61 We conclude the interlocutory order of the District Court is not contrary to law or an abuse of discretion and deny the OCCJA's petition for a writ of prohibition.

¶62 CONCUR: ROWE, C.J.; WINCHESTER, EDMONDSON, COMBS, GURICH, and DARBY, JJ.

¶63 CONCUR SPECIALLY: KUEHN, V.C.J., by separate opinion, which JETT, J., joined.

¶64 CONCUR IN RESULT: KANE, J.