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Case No. 117,746

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

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INDEPENDENT SCHOOL DISTRICT No. 29, CLEVELAND COUNTY, OKLAHOMA;  
INDEPENDENT SCHOOL DISTRICT No. 4, CLEVELAND COUNTY, OKLAHOMA;  
INDEPENDENT SCHOOL DISTRICT No. 4, TULSA COUNTY, OKLAHOMA; INDEPENDENT  
SCHOOL DISTRICT No. 5, TULSA COUNTY, OKLAHOMA; INDEPENDENT SCHOOL DISTRICT  
No. 22, CANADIAN COUNTY, OKLAHOMA; INDEPENDENT SCHOOL DISTRICT No. 9, TULSA  
COUNTY, OKLAHOMA; INDEPENDENT SCHOOL DISTRICT No. 27, CANADIAN COUNTY,  
OKLAHOMA; and INDEPENDENT SCHOOL DISTRICT No. 3, TULSA COUNTY, OKLAHOMA,

Petitioners,

v.

HON. STEVE BURRAGE, HON. CLARK JOLLEY, AND  
HON. THOMAS E. KEMP, JR., IN THEIR OFFICIAL CAPACITIES AS OKLAHOMA TAX  
COMMISSIONERS; AND HON. CINDY H. TRUONG, IN HER OFFICIAL CAPACITY AS  
AN OKLAHOMA COUNTY DISTRICT COURT JUDGE,

Respondents.

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**RESPONSE OF REAL PARTIES IN INTEREST TO PETITIONERS' APPLICATION TO  
ASSUME ORIGINAL JURISDICTION AND PETITION FOR WRIT OF MANDAMUS AND  
WRIT OF PROHIBITION**

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**ORIGINAL ACTION**

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February 28, 2019

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## INTRODUCTION

Real Parties in Interest, (all Oklahoma school districts) Independent School District No. 2, Tulsa County; Independent School District No. 52, Oklahoma County; Independent School District No. 71, Kay County; Independent School District No. 20, Muskogee County; Independent School District No. 18, Jackson County; Independent School District No. 14, Ottawa County; Independent School District No. 105, Blaine County; and Independent School District No. 2, Kiowa County, (“Underpaid Districts”) (all Oklahoma school districts) present this response to the Application to Assume Original Jurisdiction.

Oklahoma Tax Commission (“OTC”) deprived Underpaid Districts of funds when OTC misconstrued the statute and wrongly calculated motor vehicle revenue (“MVR”) apportionments. Petitioners (“Overpaid Districts”) benefited from OTC’s error, receiving funds they were not entitled to. OTC’s undisputed error unjustly enriched Overpaid Districts. The Oklahoma Court of Civil Appeals (“COCA”) held, “The Tax Commission has misinterpreted the effect of a 2015 amendment to section 1104 and consequently apportioned the wrong amount of motor vehicle collections to eligible school districts . . .” *Independent School District No. 2, et al. v. Oklahoma Tax Commissioner, et al.*, 2018 OK CIV APP 49, ¶ 36, 419 P.3d 1281. COCA and the District Court (“Dist. Ct.”) did not require that OTC or Overpaid Districts repay funds to Underpaid Districts. COCA ordered OTC to “recalculate the amount that should have been apportioned to the school districts pursuant to this method and base the apportionment of motor vehicle collections on the recalculated amounts for the July 1, 2016 to August 25, 2017, time period.” *Id.*

Once OTC bases future apportionments on the recalculated amounts, correcting its error in a manner consistent with OTC’s established practice, Underpaid Districts will receive the funds they are entitled to, while OTC will reduce payments to Overpaid Districts until their prior overpayment is offset. Despite their characterization that the order “takes funds away” from them,

they are not required pay any sum. Instead, Overpaid Districts will not receive funds previously paid to them. OTC robbed<sup>1</sup> funds from Underpaid Districts and gave those funds to Overpaid Districts. Practically and morally, Overpaid Districts' position is indefensible. They agree COCA was correct: "To be clear, no one is challenging the COCA Opinion, affirming the original trial court order, insofar as it ordered OTC to correctly apply the law." Overpaid Districts' Amended Brief, p. 8 ("Pet. Brief, p. \_"). They agree they benefited when they received funds robbed from Underpaid Districts, yet assert that Underpaid Districts have no remedy.

Overpaid Districts object to OTC dealing with "Other People's Money" while they seek to retain "Other People's Money." Overpaid Districts claim that if OTC does not pay them funds they are not entitled to, "Other People's Money . . . will have to come from the pocketbooks of literally hundreds of thousands of Oklahoma citizens and school patrons." Pet. Brief, p. 3. Overpaid Districts lack sympathy for the Oklahoma citizens and school patrons who suffered a loss when OTC paid Overpaid Districts monies which should properly have been paid to Underpaid Districts.

Overpaid Districts claim they were deprived due process when they were not given notice and an opportunity to explain why they should be permitted to keep their undeserved gains. Overpaid Districts failed to name and give notice to every district affected by OTC's error in their Application for Original Jurisdiction demonstrating they do not believe every school district affected by OTC's error must be given notice and an opportunity to be heard. COCA resolved the due process issue: "When the issue is the proper construction of a statute, it is not always necessary that all parties potentially affected by the result be joined in the action." *Id.* at ¶ 9. COCA stated, "We hold that the non-plaintiff school districts were not required to be joined in this declaratory

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<sup>1</sup> Overpaid Districts state Underpaid Districts ask OTC to rob funds from Overpaid Districts. Pet. Brief, p. 8.

judgment action and affirm the district court's denial of the Tax Commission's motion to dismiss." *Id.* Most importantly, a right to procedural due process is dependent upon a substantial property interest to be protected. Overpaid Districts had no right to the funds in the first place and, therefore, no property interest in the funds which OTC wrongly paid to them.

Overpaid Districts claim the Dist. Ct.'s order violates the current version of 47 O.S. §1104. The current version of 47 O.S. § 1104 became effective after Underpaid Districts were harmed, fourteen months after Underpaid Districts filed their action, and after the Dist. Ct. entered its first judgment. If the amendment to 47 O.S. §1104 is applied as the Overpaid Districts suggest, the amendment would be an *ex post facto* law, would take a vested remedy from Underpaid Districts, and would violate both the Oklahoma and the United States Constitution.

Finally, the law regarding the incurrence of debt by school districts does not prevent OTC from correcting its error and providing a remedy to Underpaid Districts.

Original Jurisdiction and issuance of a Writ of Prohibition and/or Mandamus are extraordinary relief. In the instant action, such relief is unnecessary and inappropriate. The Dist. Ct. order did nothing more than follow the mandates of the order of the COCA, and the OTC, in recalculating apportionments and adjusting apportionments to correct OTC's error, did nothing more than follow the mandates of the lawful orders of the Dist. Ct. and the COCA. When an issue has already been determined by the appellate court, the issue is resolved and any further effort to issue prohibition or mandamus is moot. *Richardson v. Okla. Tax Comm'n*, 2017 OK 85, 406 P.3d 571. A Writ of Prohibition will not lie to prevent execution of a lawful order.

#### **SUMMARY OF THE RECORD**

In July, 2015, the Legislature amended §1104. OTC misconstrued the statute, erred in apportioning MVR, and diverted to Overpaid Districts funds wrongly diverted from Underpaid Districts. On June 15, 2016, Underpaid Districts filed their petition in *Independent School District*

*No. 2, et al. v. Oklahoma Tax Commissioner, et al.*, Oklahoma County Case No. CV-16-1249<sup>2</sup> (“the Parrish action”) asserting that OTC misapplied Oklahoma statutes in apportioning MVR to school districts and sought injunctive relief. OTC answered and filed a Motion to Dismiss for Failure to Join Interested Parties. Judge Parrish denied OTC’s Motion to Dismiss and granted Underpaid Districts’ Motion for Summary Judgment on October 14, 2016, and entered her order on December 9, 2016.

At the time of judgment, the statutory benchmark for determining the amount apportioned to each district was the amount received in the same month of the previous year. Judge Parrish determined OTC had misapplied the statute in months when total collections were less than in the same month the year before. The Parrish order required, going forward, that OTC apportion to each district its proportional amount based on the apportionments the same month of the prior year. Judge Parrish also required OTC to recalculate the July 2015 collections apportioned in August 2015 and thereafter, for the eight Plaintiff districts only, using the recalculated amounts as their prior year benchmark for the monthly apportionments. See Order, December 9, 2016, Underpaid Districts’ Appendix, Exhibit 1. OTC filed a Petition in Error on January 6, 2017.

Effective August 25, 2017, the Legislature amended § 1104 again, changing the benchmark for apportionments from the amount received the same month of the preceding year, to apportionments based on average daily attendance.

COCA expanded the relief to all Underpaid Districts, affirmed the Dist. Ct judgment, and issued an amended mandate on June 27, 2018. OTC completed the required recalculations and on September 6, 2018, determined it would take no further action in response to the judgment. On September 11, 2018, Underpaid Districts filed a Motion for Summary Judgment for Order for

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<sup>2</sup> Underpaid Districts first filed an Application to Assume Original Jurisdiction. That application was denied.



Further Relief. A representative of a Petitioner district was present when Judge Parrish announced her Order on November 2, 2018. Judge Parrish entered her written Order Granting Additional Relief on November 13, 2018. OTC did not appeal, but did send out notices dated December 4, 2018 to Overpaid Districts, including Petitioners, advising that effective January 2019, OTC would adjust payments to correct for OTC's error. See Document 4, Pet. Appendix.

Overpaid Districts waited to file until February 7, 2019, the eve of the first correcting payment by OTC following the directions of the court, to file their Application to Assume Original Jurisdiction and Petition for Writ of Mandamus and Writ of Prohibition and a Motion in the District Court to Stay Enforcement of the Order of the District Court.

### ARGUMENTS AND AUTHORITY

#### **I. Overpaid Districts improperly attempt to collaterally attack the judgment of the district court and the decision of the Court of Civil Appeals.**

"A collateral attack upon a judgment 'is an attempt to avoid, defeat, evade, or deny the force and effect of a final order or judgment in an incidental proceeding other than by appeal, writ of error, certiorari, or motion for new trial.'" *Acott v. Newton & O'Connor*, 2011 OK 56, ¶ 13, n. 2, 260 P.3d 1271, 1275, n. 2. It is not necessary that a person or entity be a party to an action in order to be bound by the decision in that action. *See e.g., J&C Casing Pullers & Plugging, LLC v. Cotton (In re Hyde)*, 2011 OK 31, 255 P.3d 411 (employer bound by determination of marital status in probate action). "A judgment or final order of a court is not subject to collateral attack unless the judgment is void." *House v. Town of Dickson*, 2007 OK 57, ¶ 10, 193 P.3d 964, 968. The void status must be evident on the judgment roll. *Nilsen v. Ports of Call Oil Co.*, 1985 OK 104, ¶ 11, n. 6, 711 P.2d 98. The record "must affirmatively show that the court did not have jurisdiction, or the decree will be valid until reversed on appeal, or vacated on some direct proceeding taken for that purpose." *Galpin v. Page*, 18 Wall. (U.S.) 350, 21 L. Ed. 959 (1873). Overpaid Districts rely on

*Galpin* to argue that, despite the COCA's finding to the contrary, Judge Parrish lacked the authority to enter the judgment requiring OTC to remedy its error. The burden is on Overpaid Districts to demonstrate that the record affirmatively shows that the court did not have jurisdiction. This the Overpaid Districts cannot do.

COCA found that Overpaid Districts were not necessary parties to the Parrish Action. This issue has been finally resolved. The Dist. Ct.'s judgment is not void on its face and cannot be collaterally attacked.

**II. Overpaid Districts have no right to a hearing because Overpaid Districts have no property interest to support such a right.**

"Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement." *Olim et al. v. Wikenekona*, 461 U.S. 238 (1983). The central issue is whether Overpaid Districts have a legitimate claim of entitlement to their gains from the OTC's erroneous apportionments. Overpaid Districts acknowledged that the OTC erred in apportioning MVR. Overpaid Districts' Amended Brief, pp. 2, 4, 7, 8, 9. They agree that Underpaid Districts were denied payments to which they were entitled, but assert that though this harm was real and impacted Underpaid Districts, the harm is "moot." Overpaid Districts complain that they will be inconvenienced by receiving less than the sum they anticipated they would receive, but disregard the grave damage that Underpaid Districts suffered when they (and others similarly affected) collectively received more than \$22,000,000 less than they were entitled to. Overpaid Districts also disregard the Oklahoma Constitutional provision stating that there must be a remedy for every harm. "The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or

prejudice.” Okla. Const. Art. 2, § 6. If it is possible to merely declare a harm “moot,” it is possible to deprive a remedy for the injury suffered.

Overpaid Districts have no “legitimate claim of entitlement” to retain the benefit of OTC’s error. Overpaid Districts claim a substantial property interest or a legitimate claim of entitlement to overpaid benefits. In an analogous situation, “[P]laintiffs in the present case do not have a protected property interest in any actual overpayments of child support because the protected property interest must be limited to child support funds that the custodial parents are qualified to receive.” *Walters v. Weiss*, 392 F.3d 306 (8<sup>th</sup> Cir. 2004). Overpaid Districts have no protected property interest in overpayments, because such interest must be limited to payments Overpaid Districts had a right to receive. In *Cassidy v. Adams*, 872 F.2d 729 (6<sup>th</sup> Cir. 1989), the Court explained, “We need not discuss the scope of Kentucky’s post-deprivation due process hearing, because initially we find that Cassidy possessed no property rights in the overpaid benefits; this precludes any violation of procedural due process, substantive due process, or the ‘when due’ clause of the Social Security Act.” *See also Med-Cert Home Care, LLC v. Azar*, 2019 U.S. Dist. LEXIS 17199, 2019 WL 426465 (N.D.Tex. Feb. 4, 2019) (medical provider has no property interest in overpaid Medicare reimbursements); *PHHC, LLC v. Azar*, 2018 U.S. Dist. LEXIS 188092, 2018 WL 5754393 (N.D. Ohio Nov. 2, 2018) (same).

COCA properly found that it was not necessary to include all school districts which might be affected by the construction of the statute in the litigation to determine the proper construction of the statute. COCA then determined the proper construction and that OTC had misapplied the statute, resulting in overpayments. Once it was finally determined that Overpaid Districts were not entitled to the benefits which were overpaid to them, they have no property interest in retaining the benefit of the overpayments. “There was no error in using the final order denying benefits as the basis for the overpayment determination. After it became final, the entitlement decision could

not be collaterally attacked in the overpayment proceeding.” *Gabbert v. Board of Review for the Oklahoma Empl. Sec. Comm’n*, 1997 OK CIV APP 44, ¶ 9, 943 P.2d 158, 161. Overpaid Districts, no doubt, will point to the fact that the employees in *Gabbert* had an opportunity to litigate whether they were entitled to the benefits. The right to the benefits in *Gabbert* depended upon actions of the employees, while the right to the apportionments in the case at bar depended only upon a correct construction and application of the statute. There are no facts regarding Overpaid Districts which needed to be litigated. The issue was finally and correctly decided when COCA determined that OTC had misapplied the statute.

Overpaid Districts assert that they have a right to a hearing, citing *Shamblin v. Beasley*, 1998 OK 88, 967 P.2d 1200. However, *Shamblin* provides that one is entitled to notice and an opportunity to be heard before one is deprived of *substantial* rights. Overpaid Districts do not identify the substantial right about which they have a right to be heard.

Overpaid Districts rely upon *Galpin, supra*, for the proposition that Judge Parrish could not require the OTC to remedy its error without affording Overpaid Districts with notice and an opportunity to be heard. Overpaid Districts quote from *Galpin*: “no one shall be personally bound until he has his day in court.” Pet. Brief, p. 6. This was proper in *Galpin* where the court purported to place the absent party under guardianship when she was not present in the jurisdiction and was not served with any process. The order in *Galpin* appointing a guardianship very personally bound the ward. Judge Parrish’s order does not personally bind Overpaid Districts. Overpaid Districts are not required to take any action because there is no judgment against them. Moreover, the remedy crafted by Judge Parrish calls for OTC to act to correct its error and does not call for Overpaid Districts to pay anything. If, as Overpaid Districts argue, Judge Parrish’s order were a judgment against Overpaid Districts, the remedy would be to require the Overpaid Districts to pay the

judgment from their sinking funds. 62 O.S. § 365.5); instead, OTC is directed to act to correct OTC's error.

A clear understanding of the relief ordered by the Dist. Ct. is essential. In compliance with COCA's Order, OTC produced recalculations for the period July 1, 2016 through August 24, 2017 which included the 13 apportionment months for school districts from August, 2016 through August, 2017. In the example, below the correct 13-month total that the example districts should have received is shown in the Recalculated column. The total of the incorrect actual apportionments made for that 13-month period is shown in the Actual column. The Correction column is the result of subtracting the Actual amount from the Recalculated amount. This is how the actual correction amounts in Exhibits 4-1, 4-2 and 4-3 to the Parrish Order were determined. Document 2, Pet. Appendix.

13 months total recalculated by OTC

Each of 13 future months

District	Recalculated	Actual	Correction	ADA Proportion	Payment
Underpaid	1,390,000	1,000,000	+390,000	80,000	110,000
Overpaid	1,000,000	1,390,000	-390,000	120,000	90,000

For the 13 months of the correction Order, OTC first correctly calculates the monthly apportionment for each district, as shown in the ADA Proportion column, according to the current provision of 47 O.S. §1104. To that correctly calculated amount, 1/13 of the Correction amount for each district, being a +30,000 for the Underpaid district and a -30,000 for the Overpaid district, in our example, is added to the amount in the ADA Proportion column. The result is the Payment amount, 110,000 for the Underpaid district, and 90,000 for the Overpaid district. This method would continue until the 13-month correction is completed.

Overpaid Districts are incorrect in claiming that the order of the Dist. Ct. takes funds from any districts. The order follows the OTC's established process to do what COCA found to be necessary. As the Dist. Ct. recognized, "the Court of Civil Appeals ordered a future reapportionment of funds because both its original opinion and its revised opinion came after the close of the July 1, 2016 to August 25, 2017, time period." Dist. Ct. Order, Document 2, Pet. Appendix, pp. 2-3. COCA ordered OTC to reapportion MVR in the future, and the Dist. Ct. properly entered an order to implement the remedy ordered by COCA.

**III. The 2017 Amendment of § 1104 is an *ex post facto* law and cannot be enforced to deny Underpaid Districts the remedy which vested prior the 2017 Amendment.**

Overpaid Districts argue that the Dist. Ct.'s November 13 Order attempts to remedy a past improper distribution by ordering a new improper distribution in violation of the current version of 47 O.S. §1104. Pet. Brief, pp. 9-12. There is a significant problem with Overpaid Districts' argument. The current version of 47 O.S. §1104 cannot be applied to take from Underpaid Districts the right to a remedy which had already vested in Underpaid Districts before the Legislature amended 47 O.S. §1104 to create the current version.

"No bill of attainder, *ex post facto* law, nor any law impairing the obligations of contracts, shall ever be passed. No conviction shall work a corruption of blood or forfeiture of estate: Provided, that this provision shall not prohibit the imposition of pecuniary penalties." *Okla. Const. Art. 2, §15. See also United States Constitution, art. I, § 10.* The law in effect when this action was filed made it clear that the apportionment of MVR should be based upon the amount received in the previous year. After Underpaid Districts filed their action and the Dist. Ct. entered its judgment, but before the appellate court issued its opinion, the Legislature amended the law to cause the apportionment of motor vehicle revenues to be based on average daily attendance. If this amendment cut off any remedy for Underpaid Districts, the amendment is an *ex post facto* law

which purported to take from Underpaid Districts the right to a remedy which had already vested. The Constitution protects a vested right, once created, from acts of the Legislature that invade that vested property right. *Baker v. Tulsa Bldg. & Loan Ass'n*, 1936 OK 568, 66 P.2d 45.

When Underpaid Districts filed their action, they had a right to have OTC's error remedied through a recalculation of the MVR payments. Both the Dist. Ct. and COCA recognized the way to implement a remedy for OTC's error was to require OTC to recalculate, using the correct construction of the statute, and to determine the harm done so that it could be corrected with adjusted payments of MVR moving forward. This would allow Underpaid Districts to receive the funds which were erroneously withheld from them without requiring any Overpaid District to repay funds erroneously paid to it. Such payments to Overpaid Districts, when they were not entitled to those funds as a matter of law, constitute unjust enrichment, and Overpaid Districts should not be permitted to retain the benefit of that unjust enrichment.

In the case at bar, applying the 2017 amendment to prevent Underpaid Districts from receiving a remedy for the loss which they suffered when other districts were unjustly enriched would deprive Underpaid Districts of a substantial right which has already vested and would deny them the substantial protection of Underpaid Districts' right to be fully compensated.

**IV. The Court is not prevented by the laws regarding the incurrence of debt by school districts from providing a remedy to Underpaid Districts.**

Overpaid Districts argue that there simply is no remedy because the fiscal years in which Underpaid Districts were deprived of the funds to which they were entitled have ended, and the matter cannot now be remedied. However, the fiscal years had ended when the COCA made its decision. COCA noted that Underpaid Districts filed their petition before the end of the 2016 fiscal year: "The plaintiffs' petition was filed on June 15, 2016, before the start of the 2017 fiscal year. The injunctive relief that the plaintiffs sought could, and in this case did, affect how the funds are

distributed in fiscal year 2017. The Tax Commission was on notice that might be a result of this litigation and, therefore, was in a position to avoid ‘paying any money back’ wrongly distributed in fiscal year 2017.” *Independent School District No. 2, et al. v. Oklahoma Tax Commissioner, et al.*, 2018 OK CIV APP 49, ¶2, n. 1, 419 P.3d 1281.

Overpaid Districts rely upon *Morton v. Adair Cty. Excise Bd.*, 1989 OK 174, 780 P.2d 707. However, that case concerns a county excise board which failed to approve funding for the election board chief clerk. The court stated that it was impermissible to adjust a fiscal year budget after its expiration. They also rely upon *State ex rel. Wall v. Holder*, 1955 OK 23, 279 P.2d 1098 which also concerned a county excise board which refused to approve funds for a legitimate expense. Both cases are inapposite, because they do not concern a situation in which an entity was wrongly paid funds to which it was not legally entitled, and as the District Court properly determined, there is a way to require OTC to correct its error without disturbing official action, or creating disorder or confusion. Underpaid Districts did not ask for an adjustment of an earlier fiscal year budget; instead, they asked that OTC recalculate and correct apportionments going forward. MVR are generated each month. Unlike in the cases cited by Overpaid Districts, a continuing stream of revenue permits OTC to correct its error, as directed by the District Court. The modest reduction in revenue to the Overpaid Districts creates no unconstitutional debt unless they fail keep their spending within available revenues as the Underpaid Districts had to do without the fortune of previously being overpaid. “Not every contract entered into by a municipality qualifies as a §26 debt.” *Fleming v. Town of Cashion*, 2007 OK CIV APP 74, 167 P.3d 975.

*Independent School District No. 54 v. Independent School District No. 67*, 2018 OK 34, (“*Stroud*”) does not resolve the issue. *Stroud* concerned ad valorem taxes while this case concerns motor vehicle taxes. This Court concluded that *Stroud* suffered no monetary loss to its general



fund. *Id.* at ¶3. Stroud suffered no loss because the State Aid formula took into account the amount which Stroud would receive in ad valorem taxes.

The state aid statute, 70 O.S. § 18-200.1, corrected the error in *Stroud* without court intervention, while OTC's \$22,797,481 error in the case at bar requires court intervention. Under 70 O.S. §18-200.1, the first step is to establish an amount for the Foundation Program. Then each district is credited with certain of revenue, which the statute calls Foundation Program Income, to determine the Foundation Aid needed to ensure that the district will receive its Foundation Program amount. After these credits, called Chargeables by the State Department of Education, are determined, the amount of Foundation Aid is the difference between the amount of Chargeables and the district's Foundation Program amount. Unlike in *Stroud*, the error was not harmless.

The ad valorem taxes included in the Chargeables are based upon the current school year. 70 O.S. § 18—200.1(D)(1)(b)(1). However, the MVR Chargeable is based on the amount actually collected during the previous year. 70 O.S. §18—200.1(D)(1)(b), even if the district does not receive that amount in the current year. So if OTC wrongly distributes less MVR than are due, the formula does not self-correct. Because the State Aid amount is determined based on the amount of MVR collected in the preceding year, the statute does not adjust State Aid when OTC short-changes a district in the current year. There is no provision in the statute for changing the amount of State Aid to a district based on a failure to receive the projected MVR.

Because of the difference between the ways that ad valorem taxes and motor vehicle taxes are handled in the state aid formula, the *Stroud* case is not applicable to the facts now before the Court or controlling in the case at bar. OTC argued that Stroud applied and Judge Parrish thoughtfully considered that argument. Incredibly, Overpaid Districts argue that the use of the lowered MVR amount in the calculation of state aid for the subsequent year, yielding an increase, offsets the prior

year loss caused by the OTC's wrongful apportionments. It does not. This example demonstrates why.

	Underpaid		District		Overpaid		District	
	First	Year	Second	Year	First	Year	Second	Year
	Formula	Actual	Formula	Actual	Formula	Actual	Formula	Actual
Foundation Program	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
Motor Vehicle	10,000	8,000	8,000	8,000	10,000	12,000	12,000	12,000
Other Chargeables	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000
Foundation Aid	50,000	50,000	52,000	52,000	50,000	50,000	48,000	48,000
Actually Received		98,000		100,000		102,000		100,000
Gain/(loss)		(2,000)		-		2,000		

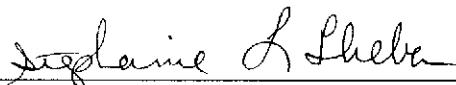
Actual MVR affects school district revenue in only two ways: as the amount received in the current year, 47 O.S. §1104, and as a chargeable in the subsequent year Foundation Aid calculation. 70 O.S. §18-200.1(D)(1)(b)(2). The state aid formula first calculates the Foundation Program amount for each district, which, if actually received, meets the statutory goal to “provide for as large a measure of equalization as possible among districts.” 70 O.S. § 18-101. The Underpaid District falls \$2,000 short of the Foundation Program amount because it receives \$2,000 less in MVR than it received for MVR in the previous year, which prior year amount is used to calculate the \$50,000 received in Foundation Aid. The Overpaid District exceeds its Foundation Program amount by \$2,000, benefiting from the excess MVR wrongly paid to it. The Second Year calculations of Foundation Aid for each district use the First Year’s actual MVR amounts. Since the wrongful apportionments of MVR persist, the resulting changes in Foundation Aid, more for the Underpaid District and less for the Overpaid District, do not correct, pay back or remedy the loss suffered by the Underpaid District in the First Year. The Second Year Foundation Aid amounts

simply are adjusted to the amounts of MVR each district is expected to receive in the Second Year. The result when that expectation is realized, unlike the First Year, is that each district in fact receives the Foundation Program income the legislature intends for it to receive. It is as simple as this: if a district is underpaid in one year, that loss from the Foundation Program income set by the formula is not offset until it is overpaid in a later year. The subsequent year increase in Foundation Aid is not an overpayment; it is the correct payment. Likewise, Overpaid Districts' gains from the OTC's wrongful distortion of MVR in the months at issue were not offset by lowered Foundation Aid in later years.

#### CONCLUSION

For all the reasons stated above, this Honorable Court should deny original jurisdiction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of February, 2019, a true and correct copy of the foregoing instrument was mailed, postage paid, to:

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*Respondent Judge of the District Court*

  
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