

# CERTIORARI

## Journal of Consumer Advocacy

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### ● CASE FILE

## Case Settled, Design Corrected After Fatal Product Failure

In 2012, American Airlines contracted with Cv International to produce a special sliding scaffold “tail dock” that could be used to work on the vertical stabilizer – or tail – of a huge 737 jet aircraft at AA’s Tulsa Maintenance Base.

Because the jet stabilizer can extend almost 70 feet above the ground, the special multi-level scaffold was constructed to fit around the rear of a plan. On each level, a chain guard was positioned around the outside edge of the dock, but there was a gap between the scaffold and the surface of the plane. A sliding metal floor – called a “slider” – could be positioned to fill the gap and locked into place.

In March 2013, Kevin Harris was part of a five-person crew working on a 737 that had been brought to Tulsa after a reported bird strike. Work had been formed on the leading edge of the plane’s stabilizer and the crew was in the process of removing the dock.

Harris, a 13-year veteran A&P mechanic at the American maintenance base, was on the third level of the dock working to retract a slider overhead on the fourth level. His co-worker looked away for a second and when he looked back, Harris was gone. His co-workers discovered that he apparently had

stepped into the gap where a slider of the third level had been retracted and had fallen some 18 feet through the second level gap all the way to the first level.

Harris had multiple neck and back fractures and brain trauma. He remained hospitalized at various long-term care facilities for seven months until he finally died from his injuries.

Back at American, company officials soon realized the four-story scaffold had not posted safety notices, no attachments for safety lanyards worn by workers, and other required safety measures.

The scaffold was retrofitted and these devices added. Training also was instituted for workers that used the equipment.

Harris’ family contacted Frasier, Frasier & Hickman LLP for help and a lawsuit was filed in federal court against Cv International alleging the faulty design of the equipment rendered it unreasonably dangerous.

Recently, the case was concluded with an out-of-court settlement.

“This was a terrible situation that should have never occurred, if Cv International had observed the required safety codes for this type of equipment,” said George Miles who handled the case.



## ● ELECTION

# Seven SQs on November Ballot

Seven state questions will be on the Oklahoma ballot on November 8. Read on for a summary of each state question by the Oklahoma Policy Institute. For more background information and what supporters and opponents of the state question are saying, click <http://okpolicy.org/2016-oklahoma-state-question-guide/>.

### **SQ 776: Constitutional Amendment on the Death Penalty**

SQ 776 is a constitutional amendment that affirms the state of Oklahoma's right to perform executions. It gives the Legislature the power to designate any method of execution, prohibits the reduction of death sentence due to an

### **Voting Early by "In Person" Absentee Ballot**

You can vote early, in-person, at your County Election Board office on these days before the Nov. 8 general election:

- Friday, Nov. 4, from 8 a.m. to 6 p.m.
- Saturday, Nov. 5, from 9 a.m. to 2 p.m.

invalid method of execution, and prohibits the death penalty from being ruled "cruel and unusual punishment" or unconstitutional according to the Oklahoma Constitution.

### **State Question 777: Constitutional Limits on Regulation of Agriculture**

SQ 777 is a constitutional amendment that would give Oklahoma residents the right to engage in farming and ranching practices and employ agricultural technology. The amendment bans any new law regulating or prohibiting an agricultural practice unless it can be shown to have a "compelling state interest." That means any new agricultural regulations would have to pass strict scrutiny, the legal standard used for laws that deprive people of fundamental rights like free speech, gun ownership, or religious freedom.

### **State Question 779: Sales Tax for Education**

SQ 779 is a constitutional amendment that would raise the state sales and use tax by one percentage point. Of the total revenue generated by the new tax, 60 percent would go to providing a salary increase of at least \$5,000 for every public school teacher. The remaining funds would be divided between public schools (9.5 percent), higher education (19.25 percent), career and technology education (3.25 percent), and early childhood education (8 percent). The State Board of Equalization would be required to certify that revenues from the new tax are not being used to supplant existing funds.

### **State Questions 780 & 781: Criminal Justice Reform**

SQ 780 changes the classification of simple drug possession crimes from felony to misdemeanor. It also raises the dollar amount that determines whether property crimes are a felony or misdemeanor from \$500 to \$1,000. Anticipat-

ing fewer prison receptions for drug possession, SQ 781 directs the cost savings from SQ 780 to a fund that would be distributed to counties to provide mental health and substance abuse services. The state Office of Management and Enterprise Services is directed to determine the annual savings, which will be distributed to counties in proportion to their population.

### **State Question 790: Use of Public Resources for Religious Purposes**

SQ 790 is a constitutional amendment that would repeal Article 2, Section 5 of the Oklahoma Constitution, which reads, "No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such."

### **State Question 792: Alcohol Law Reform**

SQ 792 would amend the Oklahoma constitution to allow grocery and convenience stores to sell wine and high-point beer. Currently these stores are prohibited from selling beer containing above 3.2 percent alcohol by volume, as well as all wine and all liquor. SQ 792 would also allow Oklahoma liquor stores to sell refrigerated beer and alcohol accessories (i.e., sodas, corkscrews). The measure would allow multiple beer and wine stores to be owned by one corporation (ownership would be limited to two stores per person if spirits are sold). Currently individual liquor store owners are not allowed to have more than one store. If SQ 792 passes, these changes would take effect on October 1, 2018.

## Important Races on November Ballot

The General Election is Tuesday, Nov. 8, and all registered voters can take part in this important election.

The last day to register and be eligible to vote in this election is Oct. 14. Registering to vote – or changing registration – is easy in Oklahoma. The necessary forms are available at election board office and tag agencies, or on-line at [www.ok.gov/elections](http://www.ok.gov/elections).

Also, Frasier, Frasier & Hickman, LLP can help. Our office has all the forms necessary to register or change registration at our offices at 1700 Southwest Boulevard. If you need assistance with voter registration matters, come by our office or call us at 918-584-4724.

The polls will be open from 7 a.m. to 7 p.m. on Election Day, November 8.



**“The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.”**

**–Franklin D. Roosevelt  
January 20, 1937**

The general election on Nov. 8 is historic in nature for at least two reasons.

First, Hillary Clinton will be on the ballot which marks the first time in our nation's history that a female has been nominated by a major political party to be president. But this election is historic for other reasons related to the offering of “down ballot” candidates – those that fall under the marquee races for president and vice president.

In Oklahoma, every one of the 101 seats in the Oklahoma House of Representatives and half of the 48 seats in the Oklahoma Senate were



up for grabs this year. As the state reels from a \$1.3 billion revenue failure which affected core services such as health and public education, record numbers of teachers and their sup-

porters are on the ballot running for legislative seats. Voters could cause a philosophical shift in the Legislature by replacing some incumbents and choosing wisely in open contests.

Although most major state offices will not be on the ballot until 2018 (a Corporation Commission seat is the only “major” statewide race this year) a number of important “down ballot” races will be in play, includ-

ing retention of a Supreme Court justice and five appeals court judges.

Additionally, as seen on Page 2, seven state questions that could amend the state Constitution will be on the ballot.

Tulsa County voters also will choosing a sheriff and court clerk. And voters residing inside the City of Tulsa will elect city councilors in districts 1, 2, and 9.

Voters are encouraged to study the questions and candidates carefully, and make an informed choice. Staying home and not voting is not an option in this election.

Make your voice heard and make our country, state and communities better by your participation.

*– Jim Frasier*

## ● YOUR VOTE

# Workers Have Right to Vote

Workers who properly notify their employer that they intend to vote must be given ample time to do so on Election Day. And when workers show that they actually did vote they cannot be subject to loss of pay or any other penalty for the absence.

Oklahoma law requires employers to grant their employees who are registered voters ample time to cast their votes. They also must pay employees for the time they are absent to vote.

Workers must:

- Notify the employer at least the day before the election that they intend to exercise their right to vote.
- After voting, return to work with proof of having voted. If there is no form designated by the employer, have a poll official write a note that the



employee voted, with the time, date, and official's signature.

Employers must either:

- Adjust work hours so they do not begin before 10 a.m. or end after 4 p.m. – giving workers a three-hour window to vote after the polls open at 7 a.m. and before they close at 7 p.m.
- Grant employees sufficient time – at least two hours – during which to leave work to vote. The employer may select the hours the worker can be absent from work to vote.

These rights and obligations are found in the Oklahoma Statutes in Title 26, Section 7-101. And they are backed up by several Attorney General opinions. Violation of this law is a misdemeanor criminal offense with penalty for each violation ranging from \$50 to \$100.



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## ● FALL 2016

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certiorari, (ser-she-eh-ra-re) noun [Latin, to be informed]; to be informed as a means of gaining appellate review; a common writ.

When at least four of the nine U.S. Supreme Court justices vote to hear a case, the court issues a writ of certiorari.

## ● CONSUMER

### Breastfeeding Mom Finds Accommodations Through Obamacare

Latitia Richardson was a bus driver for the Metropolitan Tulsa Transit Authority – MTTA. She had worked there for five years and was a good employee.

When she had her child, Latitia decided she wanted to breast-feed her baby. At work she wanted to pump milk and collect it for her child. As a bus driver, she was entitled to bathroom breaks but did not want to pump in a restroom.

Latitia called Frasier, Frasier & Hickman LLP for guidance. Attorneys Frank Frasier and Steve Hickman looked into her situation and determined she had a right under the Affordable Healthcare Act – more commonly known as Obamacare – to be able to pump breast milk at reasonable times and places; not including restrooms.

A letter was written and Frasier and MTTA agreed that a reasonable solution could be found. Latitia was temporarily transferred to the MTTA call center, where she can fulfill her need to feed lawfully.

“Fortunately, we were able to negotiate a resolution to this situation,” said Frasier. “No litigation was needed or had to be filed.”