TESTIMONY OF PATRICE DOUGLAS
COMMISSIONER
OKLAHOMA CORPORATION COMMISSION

Committee on Oversight and Government Reform
Hearing Entitled, "America's Energy Future,
Part I: A Review of Unnecessary and Burdensome Regulations"

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Thank you for the opportunity to testify today. I appreciate your interest in hearing the perspective of a state regulator regarding regulations that hinder America's energy independence.

I want to personally thank the Committee for focusing on this topic of national importance, and for holding this hearing in Oklahoma, a leader in energy production. As a state regulator, former mayor, banker and lawyer, I know first-hand the fine line between a regulatory environment that fosters responsible growth, and one that destroys it. It is not only important to identify specific regulations that hinder, rather than help; it is also vital that we identify and correct the systemic problems and mistaken approaches that give rise to such regulations. Without a systemic approach, any unnecessary or harmful regulation will quickly be replaced by another.

The Oklahoma Corporation Commission has broad regulatory responsibility when it comes to energy. This includes the oil and natural gas industry, electric and natural gas utilities, pipelines, and distribution systems for motor fuels. In 2011, the Oklahoma Corporation Commission held more than 30,000 hearings and issued more than 10,000 orders – more than 6500 of these related to the oil and gas industry.

Oklahoma is an energy state. We are the nation's fourth largest natural gas producer and the fifth largest oil producer. The latest study commissioned by the Oklahoma Energy Resources Board shows Oklahoma's oil and gas industry directly or indirectly accounts for some $28 billion in state personal income, and more than 344,000 jobs. One out of every three dollars is directly or indirectly related to this industry – which equates to $52 billion dollars of gross state product.

We are a leader in alternative energy, currently ranking eighth in the nation in commercial wind power production. When the "wind comes sweeping down the plain," we have turned it into energy.

From my perspective, the United States is at a crossroads when it comes to energy. One road offers steady progress toward energy independence. The other guarantees continued reliance on foreign energy. Needless or poorly-executed regulation puts us on a path to continued reliance of foreign energy.

In a well-balanced regulatory environment, America's energy industry is not doomed to extinction. New technology has unlocked oil and gas reserves that were once unreachable. The Energy Information Administration says that given America's new-found energy strength, within 8 years almost half of the oil we need for our nation will be produced in North America, and by 2035, OPEC's hold on North America will be completely broken.

But this promise of a bright energy future is endangered by a federal regulatory approach that too often appears to be based on arbitrary conclusions, political expediency, agenda setting, and misunderstanding. Of overwhelming concern is the mistaken belief that development of our oil and natural gas resources and environmental protection are mutually exclusive goals. It is this mistaken belief that leads to the conclusion that the federal government would be better at regulating, and should have the primary role in such regulation.

Oklahoma is proof that's not the case.

The Fraser Institute Global Petroleum Survey now ranks Oklahoma #1 worldwide for natural gas and oil exploration and production investments. This did not come about - as some may mistakenly think - as a result of weak or insufficient environmental regulation. Instead, the study specifically noted a "clear, consistent, and competitive" approach to regulation. However, another state dropped significantly due to "increased concerns about the cost of complying with state regulations, uncertainty over environmental regulations and administration of regulations." Clearly, needless regulation and its arbitrary application lead to lesser investment – a serious danger in this quivering economy.

Oklahoma's regulatory approach has fostered the growth of an industry vital to America's economy and national security, while also protecting our state's precious water and land. The basis for this successful effort is simple and goes to the heart of the "federal vs. state" debate: We live here. This is our home. We have a vested interest in both the economic and environmental health of our state.

Oklahoma's Corporation Commissioners have expertise and varied experience to bring to the table. Of the three Commissioners, one is a petroleum geologist and attorney, and another has over 20 years experience in regulation of the energy industry. As for my experience, I am an attorney, banker, and former mayor of Oklahoma's 6th largest city. Our staff offers more than 200 years of combined experience both in the regulation and actual operation of energy businesses, including oil and natural gas.

Oklahoma currently has about 190,000 oil and natural gas wells in most of our 77 counties. Before statehood, the first commercial oil well was completed in 1897. In Oklahoma, the industry has been fracturing wells since 1948. Clearly, the state regulatory process has worked, and continues to work. We continue to improve our processes. We aim to bring all stakeholders into our process, and to implement good regulatory practices that consider the health and safety of Oklahomans and protect Oklahoma's air and water.

Importantly, this knowledge and expertise is Oklahoma-based, making it possible to formulate policy and regulations that work best for Oklahoma. Each state is unique. In fact, each geological formation is unique. The "one size fits all" approach favored on the federal level can be counter-productive. At the same time, states can quickly share problems and possible solutions. An individual state can tailor solutions to its own needs. Lessons from law school taught me that this is the exact role envisioned by the founders of our nation – that states are the testing ground for new ideas and that we learn from our sister states.

When regulatory changes are needed, we – as state regulators - can move far more quickly than a federal bureaucracy. For example, it took two years for the Environmental Protection Agency to complete discussions on how to study hydraulic fracturing. In the same time, the State Review of Oil and Natural Gas Environmental Regulations, Inc. (STRONGER), comprised of state regulators, environmental organizations, and the energy industry, completed five state reviews of hydraulic fracturing regulations, and made recommendations that states, including Oklahoma, have implemented. As of May 31, 2012, this STRONGER review had been completed in 22 states, covering more than 90% of our onshore production. In follow-up reviews, most of the recommendations made by STRONGER had been implemented.

At a state level, we are directly accountable to Oklahomans. Oklahoma Corporation Commissioners are elected, and any citizen can directly contact us. We work to make the process as open as possible. Our rulemaking process is conducted in public, and we work hard to be sure all stakeholders are involved and that their knowledge and needs are integral to both the process and solution. To cover all 77 counties in Oklahoma, we have field inspectors to insure regulations are followed.

The benefits of a "state" approach was evidenced at a recent OCC rulemaking proceeding. It pertained to the development of Oklahoma's public reporting system for the materials used in hydraulic fracturing. Part of our model involves the use of the Ground Water Protection Council's 'FracFocus' web site for reporting, which is now being embraced by federal regulators as the way to go for reporting on drilling done on federal land. A second piece of the model allows the industry to report directly to our state commission. As commissioners, we recognized the value of a reporting system that meet the needs of our industry and our citizens. It is not a "one size fits all" approach.

During this rulemaking process, certain members of Oklahoma's oil and gas industry expressed concerns about the cost of this new rule – specifically about the cost of additional training and new compliance deadlines. The industry was divided in its opinion. Continued communication and local meetings with OCC staff led to a rule that lessened the cost impact by phasing in the requirements, and by placing commission staff in a role to bear some of the burden. The resulting rule provided a solid middle ground which accomplishes the goal of making public the chemicals used in hydralic fracturing fluids, while lessening the cost impact on Oklahoma companies.

While our approach might be unnecessary in a different state with less oil and gas production, it was important to Oklahoma. One size does not fit all.

Involvement betters a regulatory system. Working in partnership with the Oklahoma Corporation Commission, the Oklahoma Energy Resources Board – created by and funded with voluntary contributions from the oil and gas industry – has restored to productive use abandoned well sites. All of this is done without cost to the taxpayer.

Stakeholder involvement and openness in the process are key to avoiding the problem Senator Fred Thompson accurately observed - that "agencies sometimes lose sight of common sense as they create regulations." As the two examples above show, state regulatory commissions like Oklahoma are able to inject local expertise into the process of rulemaking, and more able to respond quickly and efficiently to concerns of Oklahomans.

As for the argument that state regulatory bodies are "too intertwined" with the oil and gas industry to be effective at protecting our environment, I disagree. Our Oklahoma Constitution prohibits commissioners from having a financial interest in an oil and gas company. We take an oath to uphold our constitution. And as my example above shows, we do not always agree with the industry but instead make independent judgments as to how we can best uphold our constitutional and statutory duties of protecting Oklahoma's natural resources as well as its economic resources.

This is not meant to suggest that Oklahoma and other states are perfect. We are not. We have and will continue to work in a positive way with the Environmental Protection Agency, and other federal agencies, on matters of mutual interest in which we can share our collective expertise. We seek ways to improve.

The issue is simply whether successful energy regulation is better suited to the state level, or the federal. In my opinion, the clear answer lies with the states. Instead of designating a "federal regulator," states would be better served if we were able to have federal agencies as resources for information to help us.

When considering a regulation, with both private and public sector experience, I ask three questions: 1) What is the goal? 2) Is the goal something that is truly beneficial and necessary? 3) Will the regulation accomplish the goal in the least burdensome, most efficient way."

Recently, I have questioned whether this litmus test was applied in the Environmental Protection Agency's recent rules mandating so-called "green completion" techniques for oil and gas wells. The EPA states that their goal was "cost-effective regulations, required by the Clean Air Act, to reduce harmful air pollution from the oil and natural gas industry while allowing continued, responsible growth in U.S. oil and natural gas production." To support this new mandate of "green completion," the EPA argues that the new mandate will significantly improve air quality and will not be overly costly on businesses.

Oklahoma's oil and gas industry – composed of both big and small companies - disagrees, pointing out some of the faulty assumptions made by the EPA to justify these additional mandates. First, the amount of harmful gases emitted during the initial stages of a well's life is far less than estimated by the EPA. Oklahoma's oil and gas industry estimates that the EPA missed the mark by as much as 1,400 percent. The faulty assumptions were pointed out to the

EPA, but were either ignored or dismissed.

Secondly, the EPA states that the costs of "green completion" are offset by the additional recovery of natural gas and other products that can be sold. Again, our Oklahoma companies disagree. Oklahoma companies estimate that the added cost to business could be as much as $1 million per ton of harmful gas reduction. From a small business owner's and consumer's standpoint, these costs are huge and any benefit that may occur is small. The math simply does not work.

I am not suggesting that we encourage emissions that could harm Oklahoma's clean air. I simply believe we should review all the facts. Our largest oil and gas companies already use "green completion" methods in more than 90 percent of the wells drilled - and were doing so prior to the EPA's edict. Applying a "one size fits all" approach does not allow for critical evaluation and flexibility. For the smaller producers, the new rules may result in fewer wells drilled, translating to less production and fewer jobs. Further, the consumer could see higher energy prices as a result of the rules, with little or nothing in the way of direct benefit.

We also need to consider whether the application of the rule has unintended consequences. Too often, a rule that seeks a worthy goal is applied in an arbitrary way that is harmful, rather than helpful.

An example of this can be found in the EPA's regulation of conversions of vehicles to compressed natural gas (CNG).

There is no doubt that growth of CNG as a motor fuel is good for America, reducing our dependence on foreign oil, reducing emissions, and saving consumers at the pump. Since CNG is domestically produced, events in foreign lands – such as Iran's recent "saber rattling" – have no direct impact on CNG prices. In Oklahoma, CNG sells for less than half the price of a gallon of regular gasoline, and is a cornerstone of Governor Mary Fallin's energy plan.

The biggest barrier to increased CNG use in Oklahoma is availability of the product to the consumer and the cost of conversion. As Americans use more CNG, more facilities will be needed to meet this demand. The Oklahoma Corporation Commission recently approved a rebate plan to encourage the use of CNG, offering Oklahomans rebates for the purchase of a CNG-powered vehicle, conversion of a vehicle to CNG, and for the installation of a home refueling system.

But even with the rebate, the cost of conversion remains high. The reason is simple: the biggest component of the cost of CNG conversion is compliance with EPA regulations. The manufacturers of these conversion kits must go through a complex certification process that costs $200,000 or more. Each certification applies only to a single engine type. Installers also must be certified, adding yet another layer of cost.

The EPA's justification of this rule is the Clean Air Act, most notably, that section which forbids the unauthorized tampering with a vehicle's emission controls. That rule was originally aimed at much dirtier fuels. Natural Gas is one of the cleanest transportation fuels available today.

While certification of CNG conversions is intended to promote health and safety, the rule as applied is slowing the growth of CNG. If left to the states, a new rule could be designed with the new fuel in mind. However, as currently drafted and applied, the rule is not meeting the intended goal, and is instead, thwarting the growth of an industry which supports economic development and clean air. Oklahoma's congressional delegation has repeatedly tried without success to streamline the regulations concerning CNG conversions.

The Oklahoma Corporation Commission is seeing a similar controversy over the EPA's regulations on regional haze issue. Oklahoma worked hard to develop a State Implementation Plan (SIP) to meet the regional haze standards. The SIP would have met those standards even sooner than that proposed by the EPA.

But it was rejected – at least partially because it would have left coal-burning plants in place longer than what the EPA deems desirable. Rather than allow for a more cost-effective transition that would accomplish the same goal, the EPA apparently prefers its own system – regardless of outcome. The result – a court battle which costs both the government and companies badly needed resources and the possibility of skyrocketing electric bills. If the court battle is resolved in favor of the EPA, Oklahoma's two largest electric providers could see as much as 2.1 billion dollars in costs to retrofit coal plants, without consideration of whether the plant is due for retirement in the near future. All of this would be funded on the backs of Oklahoma families and businesses.

Many federal regulations do not seem to change regardless of new data questioning their need. For example, the American Burying Beetle's status as an endangered species has not changed, in spite of evidence showing its population in Oklahoma is far greater and more wide-ranging than originally thought. This has resulted in needless expense and lost production for the state's oil and gas industry as it complies with requirements aimed at solving a problem that may not exist. It could also affect and slow the wind energy industry.

As we go forward, it is important to remember that regulations often affect more than one sector. Rules that affect one sector will likely have spillover effects in another. The wind energy sector is affected by regulations applied to the natural gas industry. The utility sector is affected by rules implemented in the coal sector, the natural gas sector, and the wind sector. One regulation can have a domino effect.

Norman Ralph Augustine observed that "Regulations grow at the same rate as weeds." The question that should be uppermost in the minds of regulators, lawmakers, and policy makers is whether that growth will produce a fruitful garden, or choke it off.

New language adopted by the Oklahoma Corporation Commission March 16, 2012

Oklahoma Administrative Code 165:10-3-10. Well completion operations

(b) **Chemical disclosure.** Within 60 days after the conclusion of hydraulic fracturing operations on an oil, gas, injection, disposal, or service well that is hydraulically fractured, the operator must submit information on the chemicals used in the hydraulic fracturing operation to the FracFocus Chemical Disclosure Registry or, alternatively, submit the information directly to the Commission. If the chemical disclosure information is submitted directly to the Commission under this subsection, the Commission will post such information on the FracFocus Chemical Disclosure Registry.

(1) The submission required by this subsection must include the following information:

(A) the name of the operator;

(B) the API number of the well;

(C) the longitude and latitude of the surface location of the well;

(D) the dates on which the hydraulic fracturing operation began and ended;

(E) the total volume of base fluid used in the hydraulic fracturing operation;

(F) the type of base fluid used;

(G) the trade name, supplier, and general purpose of each chemical additive or other substance intentionally added to the base fluid; and

(H) for each ingredient in any chemical additive or other substance intentionally added to the base fluid, the identity, Chemical Abstract Service (CAS) number, and maximum concentration. The maximum concentration for any ingredient must be presented as the percent by mass in the hydraulic fracturing fluid as a whole, and is not required to be presented as the percent by mass in any particular additive.

(2) For purposes of this subsection, the phrase "chemical additive or other substance intentionally added to the base fluid" refers to a substance knowingly and purposefully added to the base fluid and does not include trace amounts of impurities, incidental products of chemical reactions or processes, or constituents of natural materials.

(3) The operator is not responsible for inaccurate information provided to the operator by a vendor or service provider, but the operator is responsible for ensuring such information is corrected when any inaccuracy is discovered.

(4) If certain chemical information, such as the chemical identity, CAS number, and/or maximum concentration of an ingredient, is claimed in good faith to be entitled to protection as a trade secret under the Uniform Trade Secrets Act, 78 O.S. §§85-94, the submission to the FracFocus Chemical Disclosure Registry may note the proprietary nature of that chemical information instead of disclosing the protected information to the registry. The submission must include the name of the supplier, service company, operator, or other person asserting the claim that the chemical information is entitled to protection as a trade secret and provide the chemical family name or similar descriptor for the chemical if the chemical identity and CAS number are not disclosed. The Commission or the Director of the Oil and Gas Conservation Division may require the claimant to file with the Commission a written explanation in support of the claim.

(5) Nothing in this subsection restricts the Commission's ability to obtain chemical information under the provisions of OAC 165:10-1-6 or other applicable Commission rules.

(6) This subsection applies to:

(A) horizontal wells that are hydraulically fractured on or after January 1, 2013; and

(B) other wells that are hydraulically fractured on or after January 1, 2014.

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Oklahoma Ranked No.1 Worldwide for E&P Investments (Fraser Institute)

NGI's Daily Gas Price Index
27 June 2012

Oklahoma is better than OK after vaulting into the No. 1 position worldwide for natural gas and oil exploration and production (E&P) investments, according to the sixth annual Fraser Institute Global Petroleum Survey.

The state ranked first of 147 jurisdictions worldwide in the Canadian public policy think tank's survey, moving up from fourth place among 135 jurisdictions in 2011. Fraser tallied the responses of 623 petroleum industry executives and managers regarding barriers to upstream investments in various jurisdictions around the world based on tax rates, regulatory regimes, environmental regulations and security threats.

The exploration and development budgets of participating companies accounted for more than half of the annual spending on E&P among international oil companies, Fraser said.

The United States dominated the top 10 rankings, with Mississippi at No. 2, falling from the top spot in 2011. Texas moved into third place, up from fifth in 2011, while North Dakota rose to fourth place from 10th. New Mexico jumped to seventh from 41th a year ago; Kansas fell to eighth from third; and West Texas, which counted as a jurisdiction, fell to 10th from sixth place.

The Canadian province of Manitoba (fifth), the Netherlands (sixth), and Denmark (ninth) rounded out the global top 10.

Fraser senior economist Gerry Angevine, who coordinated the survey, credited the U.S. leaders with implementing "safe and sensible sensible petroleum development" regimes. "Their tax, regulatory and labor terms are clear, consistent and competitive. They are in a great position to attract and reap economic benefits from petroleum investment, including the development of shale gas and tight oil resources through the application of hydraulic fracking technology."

Ohio, which was ranked second for E&P investments a year ago, fell to 14th place in the latest tally, the "result of increased concerns about the cost of complying with state regulations, uncertainty over environmental regulations, and the interpretation and administration of regulations," the survey said.

Several U.S. states dramatically improved their scores from a year ago. California moved to 45th place from 91st a year ago, which at that time had been the lowest of any U.S. state, based on improved "fiscal terms, taxation, labor availability and regulatory issues." Year/year New Mexico vaulted from 41st place; Colorado moved to 16th from 53rd; and Pennsylvania rose to 34th from 65th. Alaska and New York were the worst-ranked U.S. states in this year's survey from a year ago, at 61st and 68th, respectively.

U.S. offshore-Gulf of Mexico, which had fallen to 60th in the 2011 ranking following the 2010 Macondo well blowout, improved to 26th in the latest ranking. "Respondents indicated that they are now less concerned about regulatory duplication and uncertainty in the Gulf of Mexico," the survey said.

Within Canada Saskatchewan fell to No. 2 among the provinces and territories after ranking as the top jurisdiction in 2011; Saskatchewan was ranked 13th overall from 11th a year ago. "While Saskatchewan outperformed Manitoba in some important areas (e.g., fiscal terms), Manitoba's improved scores on questions pertaining to taxation in general, the cost of regulatory compliance and uncertainty over environmental regulation propelled the province to the top of the Canadian rankings," according to the survey.

Alberta climbed to third from sixth in Canadian-only rankings; it climbed to 21st from 51st in Fraser's global rankings, mostly because of improved scores pertaining to the regulatory climate. "Two years ago Alberta ranked 60th in the world for oil and gas investment, the result of what the industry saw as an unexpected royalty grab by the provincial government," said Angevine. "Today investors say they are less concerned about regulatory uncertainty, the cost of regulatory compliance, and regulatory duplication and inconsistency."

British Columbia was ranked the fifth most-attractive Canadian jurisdiction, up from eighth in 2011, while Newfoundland and Labrador dropped to sixth from fifth in the Canadian rankings. The Yukon, which was not ranked in 2011, finished seventh, the Northwest Territories rose to eighth from 10th, and Quebec's ranking remained at ninth. New Brunswick rounded out the Canadian list in the 10th spot.

The "10 least attractive jurisdictions are Bolivia, Venezuela, Iran, Russia-Eastern Siberia, Libya, Ecuador, Uzbekistan, Argentina-Santa Cruz, Iraq and Russia-other," the survey said. "Investors say they will continue to turn away from jurisdictions with onerous fiscal regimes, political instability, land claim disputes, and corruption," Angevine said. "Similarly, investors prefer to avoid jurisdictions with costly, time-consuming, and uncertain regulations."

The jurisdictions were assigned scores for each of 18 factors that affect investment decisions, and the scores were based on the proportion of negative responses received. The higher the proportion of negative responses for a jurisdiction, the higher were its perceived investment barriers and, therefore, the lower its ranking.

Patrice Douglas

Born in Oklahoma, Patrice Douglas is the fourth generation in her family to call Oklahoma "home." After graduating from Putnam City North High School, Patrice attended Oklahoma Christian for her undergraduate degree, and then the University of Oklahoma, where she obtained her law degree.

Patrice practiced law full time for 13 years until she joined her family business. Working with her father in his company, ACP Sheet Metal, she faced first hand the challenges of small business owners. During her five years at ACP, she served as its vice president and general counsel. With her legal experience and love of small business, community banking was a perfect fit. She served as President of SpiritBank, and as Executive Vice President of First Fidelity Bank, where she served until being appointed to Oklahoma's Corporation Commission.

Community service is her passion. She has been appointed by three governors to serve on six different statewide boards and task forces. Serving two terms for the Edmond Economic Development Authority, she was elected it chair and served in that capacity 4 years, until October, 2008. She also served on the Oklahoma Bankers Association Board of Directors.

In April 2009, she was elected as Edmond's mayor. In 2011, she was unopposed for a second term. While serving as mayor, she championed in the creation of the Small Business Task Force. She launched a youth volunteerism program, and has stood firm for Edmond's senior citizens to reinstate the senior meal program. Most recently, she led the effort to partner with private and public entities to build Oklahoma's largest competition swimming pool complex. She was elected and served on the Oklahoma Municipal League Board of Directors, and served on its Task Force on Government Efficiencies. She helped create the Mayors' Council on Economic Development, and was elected as the Chairperson.

In February, 2011, Patrice received the Kate Barnard Award for Outstanding Public Service in Oklahoma– the first municipal official to receive this honor. She is a three-time finalist for the Journal Record's Woman of the Year, and has been named Oklahoma Christian's Distinguished Alumni for the College of Business.

Governor Mary Fallin appointed her to the Oklahoma Corporation Commissioner to replace Commissioner Jeff Cloud, upon his resignation. She took office October 10, 2011. She filed for election to this position, and was unopposed for this term, which will end in 2014. As a corporation commissioner, she is a member of the National Association of Regulatory Utility Commissioners (NARUC), and serves on the Water Committee of this organization. Recently, she was elected as Chairman of the OCC, effective August 1, 2012.

Family and faith are her focus. Her husband of 24 years, Brent Douglas, is president of Giant Partners. Her two sons are the lights of her life. She enjoys hanging out with them, and knows that she is raising a future astronaut and President of the United States. She is involved in her church, Life Church.