



February 6, 2019

The Honorable Michael Rogers  
Oklahoma Secretary of State  
2300 N. Lincoln Boulevard, Ste. 122  
Oklahoma City, Oklahoma 73105-4897

Re: Initiative Petition

Dear Mr. Secretary:

Please accept for filing the enclosed copy of an initiative petition regarding redistricting.  
Also enclosed is a suggested ballot title.

Very truly yours,

D. Kent Meyers  
Melanie Wilson Rughani  
CROWE & DUNLEVY  
Braniff Building  
324 N. Robinson Ave., Ste. 100  
Oklahoma City, OK 73102

Counsel for Proponents

**RECEIVED**

**FEB 06 2020**

**OKLAHOMA SECRETARY  
OF STATE**

A PROFESSIONAL CORPORATION

OKLAHOMA CITY • Braniff Building • 324 N. Robinson Ave., Ste. 100 • Oklahoma City, OK 73102 • T: 405.235.7700 • F: 405.239.6651  
TULSA • 500 Kennedy Building • 321 S. Boston Ave. • Tulsa, OK 74103 • T: 918.592.9800 • F: 918.592.9801  
DALLAS • 2525 McKinnon St., Ste. 425 • Dallas, TX 75201 • T: 214.420.2163 • F: 214.736.1762

[crowedunlevy.com](http://crowedunlevy.com)

**FILED**

**FEB 06 2020**

**PROPOSED BALLOT TITLE**

**OKLAHOMA SECRETARY  
OF STATE**

This proposed amendment to the Oklahoma Constitution is intended to prevent political gerrymandering. It creates an independent redistricting Commission, and vests the power to redistrict the state's House, Senatorial, and federal Congressional districts in the Commission (rather than the Legislature). The Commission is composed of three members from each of three groups: the state's largest political party, its second-largest party, and those unaffiliated with either party. A panel of retired judges designated by the Chief Justice would select pools of applicants from each group, then choose by lot three Commissioners from each. The amendment establishes qualifications for Commissioners designed to avoid conflicts of interest (for example, neither they nor their immediate family may have been elected to partisan office or worked for a political party in the last five years). It establishes a process for redistricting after each decennial census, and establishes new redistricting criteria. The Commission may not consider candidates' residences or a population's political affiliation or voting history except as needed for these criteria. The Supreme Court would select a plan if the Commission cannot. The amendment provides for funding and judicial review, repeals constitutional provisions, and reserves powers to the Commission rather than the Legislature.

Shall the proposal be approved?

For the proposal - YES

Against the proposal - NO

A "YES" vote is a vote in favor of this measure. A "NO" vote is a vote against this measure.

State Question No. 810, Initiative Petition No. 426

**WARNING**

IT IS A FELONY FOR ANYONE TO SIGN AN INITIATIVE OR REFERENDUM PETITION WITH ANY NAME OTHER THAN HIS OWN, OR KNOWINGLY TO SIGN HIS NAME MORE THAN ONCE FOR THE MEASURE, OR TO SIGN THE PETITION WHEN HE IS NOT A LEGAL VOTER.

**FILED**

**INITIATIVE PETITION**

FEB 06 2020

To the Honorable John Kevin Stitt, Governor of Oklahoma:

OKLAHOMA SECRETARY  
OF STATE

We the undersigned legal voters of the State of Oklahoma respectfully order that the following proposed Amendments to the Constitution shall be submitted to the legal voters of the State of Oklahoma for their approval or rejection at the next regular general election (or at a special election as may be called by the Governor), and each for himself/herself says: I have personally signed this petition; I am a legal voter of the State of Oklahoma; my residence is correctly written after my name. The time for filing this petition expires ninety (90) days from \_\_\_\_\_. The question we herewith submit to our fellow voters is:

Shall the following proposed new Article V-A to the Oklahoma Constitution be approved?

**BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA THAT A NEW ARTICLE V-A OF THE OKLAHOMA CONSTITUTION BE APPROVED:**

**CONSTITUTION OF OKLAHOMA, ARTICLE V-A -- LEGISLATIVE DISTRICTS**

**§ 1. THE SENATE.**

The state shall be divided into forty-eight (48) Senatorial districts. Each Senatorial district shall be entitled to one Senator, who shall hold office for four years; provided that any Senator, serving at the time of the adoption of this amendment, shall serve the full time for which he or she was elected. Vitalization of Senatorial districts shall provide for one-half of the Senators to be elected at each general election.

**§ 2. THE HOUSE OF REPRESENTATIVES.**

The state shall be divided into one hundred and one (101) districts for the House of Representatives. Each district shall be entitled to one Representative. Each Representative elected shall hold office for two years.

**§ 3. POWER OF REDISTRICTING**

A. State House of Representative and Senatorial districts. The power to redistrict the State of Oklahoma's House of Representative and Senatorial districts is henceforth vested in the Citizens' Independent Redistricting Commission.

B. Federal Congressional Districts. The power to redistrict Oklahoma's Federal Congressional Districts is henceforth vested in the Citizens' Independent Redistricting Commission.

## **§ 4. THE CITIZENS' INDEPENDENT REDISTRICTING COMMISSION.**

### **A. Definitions**

1. "Federal Congressional Districts" shall refer to Oklahoma's United States Congressional Districts.
2. "Groups" shall refer to the groups of candidates for Commissioners that have been sorted by their partisan affiliation or unaffiliation as determined by their registration or non-registration with a party with ballot access at the time of the most recent General Election.
3. "Affiliated" shall refer to citizens who, as of the date of their application to serve as Commissioner, have been continuously registered with the same party with ballot access for the last four years.
4. "Unaffiliated" shall refer to citizens who, as of the date of their application to serve as Commissioner, have not been registered with either of the two largest parties with ballot access for any of the last four years.
5. "Plan" shall refer to any proposed or approved redistricting Plan for the districts for Representatives in the U.S. Congress, for Oklahoma State Representatives, or for Oklahoma State Senators.
6. "Pool" shall refer to a group of applicants selected by the Panel pursuant to Section 4(B)(4).
7. "Panel" shall refer to the group of retired Judges or Justices involved in the selection of Commissioners pursuant to Section 4(B)(4).
8. "Census Block" shall refer to a census block used by the United States Bureau of the Census in the most recent Federal Decennial Census.
9. "Immediate family member" shall refer to, with respect to an individual, a spouse, parent, sibling, or child (including step-parent, step-sibling, or step-child).

### **B. The Citizens' Independent Redistricting Commission ("the Commission")**

1. Composition. The Commission shall consist of nine (9) Commissioners: three (3) Commissioners for each Group representing one of the two largest parties with ballot access at the time of the most recent General Election based on total registration, and three (3) Commissioners for the Group representing those that are unaffiliated with either of the state's two largest political parties with ballot access at the time of the most recent General Election.
2. Qualifications. Each Commissioner shall possess all the following qualifications:
  - a. Be a citizen who has been continuously domiciled in Oklahoma for five years immediately preceding the date of appointment to the Commission and whose registered political affiliation has not changed in the four years immediately preceding the date of appointment to the Commission or since the date the initiative petition proposing this Article was filed, whichever period is shorter;
  - b. Has not held, and does not have an immediate family member who has held, partisan elective office at the Federal, State or political subdivision level in this State in the five years immediately preceding the date of appointment to the Commission;

- c. Has not registered, and does not have an immediate family member who has registered, as a lobbyist with the Federal Government or the State of Oklahoma in the five years immediately preceding the date of appointment to the Commission;
- d. Has not held office or served, and does not have an immediate family member who has held office or served, as a paid staff member for a political party in the five years immediately preceding the date of appointment to the Commission;
- e. Has not been nominated, and does not have an immediate family member who has been nominated, as a candidate for elective office by a political party in this State in the five years immediately preceding the date of appointment to the Commission; and
- f. Has not been, and does not have an immediate family member who has been, an employee or paid consultant of the Oklahoma state legislature or U.S. Congress in the five years immediately preceding the date of appointment to the Commission.

### 3. Failure to Possess Qualifications.

- a. If it is found during the work of the Commission that a member did not possess at the time of selection to the Commission all of the qualifications in subsection B paragraph 2 of this section, that member shall be removed and replaced with a member from the same Group using the process described in subsection B paragraph 5 subparagraph b of this section.
- b. If it is found after the completion of the Commission's activities that any member did not possess all of the qualifications in subsection B paragraph 2 of this section, this shall not create a sufficient cause of action to challenge any Plan.

### 4. Application and Selection of Commissioners.

- a. No later than December 1 of the year 2020, or October 1 of each subsequent year ending in zero, the Chief Justice of the Oklahoma Supreme Court shall appoint the director or an employee of its Administrative Office (or, if no director or employee of such Office is able and willing to serve in this capacity, then another public employee) to serve as a Special Master to act as a disinterested party to oversee the application process and the training of Commissioners, and to report the Commission's progress to the Panel. The Special Master shall possess all of the qualifications in subsection B paragraph 2 of this section.
- b. No later than December 15 of 2020, and no later than December 1 of each subsequent year ending in zero, the Chief Justice of the Oklahoma Supreme Court shall designate a Panel to review the applications. The Panel shall consist of three Judges or Justices who have retired from the Oklahoma Supreme Court or the Oklahoma Court of Criminal Appeals or the Oklahoma Court of Civil Appeals, and who are able and willing to serve on the Panel, selected by random drawing. If fewer than three state appellate Judges or Justices who are able and willing to serve have been identified, then the Chief Justice shall appoint a retired Oklahoma Federal District Court Judge who accepts such appointment.
- c. Application to serve as a member of the Commission shall be filed with, and on a form developed by, the Special Master indicating thereon evidence of his or her qualifications as provided by this subsection. The form must request information sufficient to allow the Panel to adequately review and assess each

candidate's qualifications and experience to serve on the Commission. The form shall include language that requires the applicant to affirmatively declare that the information submitted is accurate and shall also contain an advisory that providing false information may lead to perjury charges. The Special Master shall advertise the opportunity to apply as a member of the Commission in the major news outlets in Oklahoma, including print, television, radio and social media outlets. Such advertising shall be at a level to reasonably expose registered voters in Oklahoma to the opportunity to serve on the Commission.

- d. No later than January 31 of the redistricting year ending in one, the Special Master shall notify the Panel that the application deadline is closed and submit the applications to the Panel.
- e. All decisions of the Panel regarding the selection of applicants pursuant to this subsection require the affirmative approval of all three (3) members of the Panel.
- f. In one or more public meetings conducted on or before February 7 of the redistricting year ending in one, after reviewing the applications of the applicants, the Panel shall identify Pools of twenty (20) applicants who are affiliated with the state's largest political party, twenty (20) applicants who are affiliated with the state's second largest political party, and twenty (20) applicants who are unaffiliated with either of the two largest political parties, or such lesser number as there are available, and who in the view of the Panel best demonstrate:
  - i. Experience in organizing, representing, advocating for, adjudicating the interests of, or actively participating in groups, organizations, or associations in Oklahoma; and
  - ii. relevant analytical skills, the ability to be impartial, and the ability to promote consensus on the Commission.

The Panel shall achieve geographic balance by ensuring, to the extent practicable, that there are no fewer than three (3) applicants from each current Congressional District within each Pool. The Panel shall also, to the extent practicable, ensure that each Pool reflects the state's diversity.

If there are not sufficient numbers of applicants to allow for three (3) Commissioners and one (1) Alternate to be selected from any group, as required by this section, then the Fallback Mechanism shall take effect.

- g. No later than February 7 of the redistricting year ending in one, from the Pools of applicants identified in subparagraph f of this paragraph, the Panel shall choose by lot, in random drawing, nine (9) applicants to serve on the Commission as follows:
  - i. three (3) Commissioners who are unaffiliated with either of the state's two (2) largest political parties;
  - ii. three (3) Commissioners who are affiliated with the state's largest political party; and
  - iii. three (3) Commissioners who are affiliated with the state's second largest political party.
- h. After the nine (9) Commissioners have been appointed pursuant to subparagraph g of this paragraph, from the remaining Pools of applicants identified in subparagraph f of this paragraph, the Panel shall choose by lot

one (1) Commissioner from each Pool to serve as Alternates in order to fill vacancies on the Commission.

5. Removal of a member and vacancies on the Commission shall be subject to the following:
  - a. A Commissioner's office shall become vacant upon the occurrence of any of the following:
    - i. Death or mental incapacity of the Commissioner;
    - ii. The Secretary of State's receipt of the Commissioner's written resignation;
    - iii. The Commissioner ceases to be qualified to serve as a Commissioner under paragraph 2 of this subsection; or
    - iv. After written notice and an opportunity for the Commissioner to respond, a vote of two-thirds (2/3rds) of the Commissioners finding substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office.
  - b. Any vacancy in the Commission shall be filled within seven (7) days from the time the Commission is notified of the vacancy. The vacancy shall be filled by the Alternate from the corresponding Group chosen in subparagraph h of paragraph 4 of this subsection. If more alternates are needed, they may be selected by the Panel from the applicants previously selected in subparagraph f of paragraph 4 this subsection.
6. Prohibitions. A Commissioner shall waive his or her right to run for any elected office in a district created by the work of the Commission on which the member served.
7. Compensation. The Commissioners shall be compensated for their service in the same manner as the current per diem and travel reimbursement for members of the State Legislature.
8. Funding.
  - a. There is hereby created in the State Treasury a revolving fund for the Citizens' Independent Redistricting Commission to be designated as the "Citizens' Independent Redistricting Commission Revolving Fund." The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies apportioned to the fund or monies received by the Commission as prescribed by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Oklahoma Redistricting Commission to perform duties as prescribed by law. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.
  - b. On or before February 25 each year, the Commission shall receive an appropriation by the Legislature sufficient to enable the Commission to perform its duties as set forth in this Article.
9. Record Keeping. All Commission votes must be taken by roll call and published on the Commission's website, along with meeting transcripts or minutes including details of any Plan voted on.

10. Public Notice. The Commission shall provide the public at least forty-eight (48) hours' notice for all public meetings and hearings. The Commission shall make each notice which is required to be posted and published under this section available in any language in which the state (or any jurisdiction in the state) is required to provide election materials under federal law. All meetings and hearings except for executive session shall be livestreamed over the internet, and transcripts made publicly available via electronic archive. The Commissioners shall not discuss redistricting matters with members of the public outside of an open meeting of the Commission, except that a Commissioner may communicate about redistricting matters with members of the public to gain information relevant to the performance of his or her duties if such communication occurs in writing available to the public or at a previously publicly noticed forum or town hall open to the general public. This paragraph does not prohibit communication between Commissioners and staff, legal counsel, or consultants retained by the Commission.

### **C. Duties of the Commission and the Secretary**

1. After the Commissioners are appointed the Commission shall:
  - a. Select a Secretary. The Special Master shall nominate a Secretary. The nominee must meet all the criteria of subsection B, paragraph 2 of this section, and be approved by a majority vote of Commissioners. If the Commissioners cannot reach the needed votes, the Special Master shall make another nomination.
2. The Secretary. The duties of the Secretary include the following:
  - a. Assist in the running and convening of Commission meetings, including the drafting of Plans, and approving expenditures necessary for the Commission to fulfill its duties;
  - b. Publicize and hold regional field hearings in each Congressional District to seek public input relevant to redistricting;
  - c. Gather precinct-level shapefiles and data on voter registration and election returns for general and primary elections for the preceding decade, and make the data available for public download by the date of the first public hearing;
  - d. Disaggregate and re-aggregate the electoral data to correspond to the Census Block that will be used to assemble Districts;
  - e. Gather information from the Department of Corrections about the home address of state and federal inmates;
  - f. Begin analyzing election returns from recent Primary and General Elections, to help ensure that the Commission's redistricting Plans will not have the effect of denying or abridging the right to vote on account of race, ethnicity, or membership in a language minority group;
  - g. Hire and manage staff to assist in the Commission and Secretary's duties;
  - h. Assist the Special Master in training Commissioners; and
  - i. Develop and maintain a website that creates a public Plan drawing system and allows members of the public to:
    - i. monitor and comment on the Commission's work;
    - ii. access the data sets and utilize the tools necessary to draw Plans;



- iii. view prior district maps for comparison; and
  - iv. submit proposed Plans and maps indicating communities of interest.
3. Data Preparation. After the United States Bureau of the Census releases the Federal Decennial Census Data, the Commission shall:
- a. Add the data gathered under subsection C, paragraph 2, subparagraph e to the Federal Decennial Census data so that incarcerated people are counted in their home communities;
  - b. Update the analysis begun under subsection C, paragraph 2, subparagraph f;
  - c. Promptly post on the Commission's website Federal Decennial Census data, electoral data, and boundary maps in digitally readable format, at district and precinct levels of detail for general and primary elections for each Plan submitted by a Commissioner;
  - d. Develop and publish publicly no more than two (2) preliminary Plans for the redistricting of the Oklahoma House of Representatives, Oklahoma Senate and Federal Congressional Districts;
  - e. Approve final Plans for State House of Representative and Senatorial and Federal Congressional redistricting, as set forth in subsection D; and
  - f. Release all proposed maps for comment in formats that are easily accessible and readable by members of the public, such as PDF, machine-readable comma-separated values, shapefile, and on the same interactive the Secretary is required to create for public submission of maps.

#### **D. Plan Criteria and Consideration**

The Commission shall simultaneously conduct separate processes for drawing and submitting Plans for the redistricting of the State House of Representative and Senatorial and Federal Congressional Districts. The Commission shall consider both Commissioner-submitted draft Plans and publicly-submitted draft Plans.

##### **1. Redistricting Criteria.**

- a. Federal Law. The redistricting Plan must comply with the United States Constitution and all applicable federal law, including the requirement that it equalize total population.
- b. Contiguity. Each district must be contiguous. The term "contiguous" means that the district is bounded by one unbroken line and is not divided into two or more discrete pieces. A district is not contiguous if pieces of the district touch at only a single point; nor is a district contiguous if it includes pieces of land entirely separated by a body of water but does not include any bridges, tunnels, or public ferries connecting those pieces of land.
- c. The Commission shall also seek to maximize compliance with each of the following criteria, set forth in the following order of priority:
  - i. Communities of Interest. Districts shall minimize the division of communities of interest to the extent practicable. A Community of Interest is defined as an area with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, tribal, linguistic, or historic identities. Communities of interest shall not include common relationships with political parties, officeholders, or political candidates.

- ii. Racial and Ethnic Fairness. No redistricting Plan should be drawn to have the effect of denying or abridging the equal opportunity of racial or ethnic minority groups to participate in the political process or to diminish their ability to elect representatives of their choice, whether alone or in coalition with others.
  - iii. Political Fairness. No Plan should, when considered on a statewide basis, unduly favor or disfavor a political party. Undue favor to a political party shall be determined using the proposed map, data from the last ten years of statewide elections, and the best available statistical methods on identifying inequality of opportunity to elect.
  - iv. Districts shall respect the geographic integrity of political subdivision boundaries to the extent preceding criteria have been satisfied.
  - v. Compactness. A draft Plan should be compact to the extent preceding criteria have been satisfied.
2. A Plan shall not take into consideration any of the following factors, except to the extent necessary to comply with the criteria described in paragraph 1 of this section, and to enable the Plan to be measured against the external metrics described in paragraph 5 of subsection E:
- a. The residence of any member or candidate of the Oklahoma House of Representatives, Oklahoma Senate, or U.S. Congress.
  - b. The political party affiliation or voting history of the population of a district.

**E. Approval of the Plans**

1. Approval or Rejection of Plans. Each Commissioner has one vote. An affirmative vote of at least six (6) of the nine (9) Commissioners is required to approve a Plan, including at least one (1) Commissioner affiliated with each of the two (2) largest political parties in the state and one (1) Commissioner who is unaffiliated with either of the two largest political parties in the state.
2. Preliminary Plan. Prior to developing a final Plan, the Commission shall develop and publish a preliminary Plan as follows:
  - a. Prior to developing a preliminary Plan under this subsection, the Commission shall hold no fewer than one (1) public hearing in each Congressional District at which members of the public may provide input relevant to redistricting.
  - b. The Commission shall develop and publish the preliminary Plan publicly, including digitally downloadable maps and Census block equivalency assignments of each district, and accept public comment on the preliminary Plan for no fewer than fourteen (14) days.
3. To hold a vote, the Commission must convene a voting meeting, open to the public, at which the Commission may vote on a preliminary Plan. If the Commissioners vote to approve a Plan, it shall become law.
4. Upon approval of a Plan by the Commission, the Special Master shall submit the Plan to the State Election Board, the Governor, the Secretary of State, the Senate Pro Tempore of the Senate and the Speaker of the House of Representatives as well as make the Plan publicly available.

5. The Commission shall issue with all preliminary and final Plans written evaluations that measure the maps against external metrics. These metrics shall cover all criteria set forth in subsection D, paragraph 1.
6. The Commission shall have one hundred and twenty (120) days from the release of the Federal Decennial Census data in which to approve final Plans for State House of Representative and Senatorial and Federal Congressional districts.

#### **F. Fallback Mechanism**

If the Commission does not approve a State House of Representative, Senatorial, or Federal Congressional Plan within one hundred and twenty (120) days of the release of the Federal Decennial Census Data, the following procedure shall be followed to create that Plan only.

1. The Special Master shall create a report to be submitted to the Oklahoma Supreme Court that advises the Court of the available Plans and provides enough information for the Court to approve a Plan. The Court shall then have thirty (30) days to approve a Plan.
2. The Court shall approve a Plan that is consistent with the criteria listed in subsection D of this section.
3. If the approval process is not complete by the minimum residency requirement deadline for candidates to the state office, such requirements shall be suspended and not apply for any affected election so long as:
  - a. The candidate resided in one legislative district but, through the process of redistricting, his or her residence has been redistricted out of the former district and into an adjacent district; and
  - b. The candidate either files for state office in his or her new district or moves his or her residence into the newly adjacent district and registers as a voter by the time of candidate filing for state office.

#### **G. Judicial Review**

1. **Supreme Court Jurisdiction.** The Oklahoma Supreme Court has original and exclusive state-court jurisdiction to hear and decide all challenges to the Commission's actions and final Plans. The Court's jurisdiction is limited to remedy only the specific violation alleged on the specific Plan challenged.
2. **Petitions for Review.** Within thirty (30) days after a Plan's approval, any aggrieved resident of the State may petition the Oklahoma Supreme Court to invalidate that Plan. The Court shall consolidate all petitions challenging a Plan, give the consolidated petitions precedence over other civil proceedings, conduct expedited hearings, and enter its judgment promptly.
3. **Remedial Plans.** If the Oklahoma Supreme Court concludes that a Plan approved by the Commission is invalid, the Fallback Mechanism in subsection F shall be used to create a new Plan. If the Court finds a violation in a Plan produced under the Fallback Mechanism, then the Court's remedy shall be constrained by the criteria in subsection D.
4. **Legal Representation.** The Commission has standing in all legal proceedings concerning its actions and has sole authority to determine whether it will be represented by the State Attorney General or by legal counsel selected and hired by the Commission.
5. **Communications made in the course of the Commission's, Secretary's, or Special Master's work under this Article may not be shielded from the public on the basis of**

legislative privilege. This provision shall not be construed to abrogate or otherwise affect legislative immunity.

#### **H. Cessation of the Commission's Operations**

Within thirty (30) days after the Plans have taken effect and all pending legal challenges to the Plans and the Commission's actions have concluded, the Commission must be dissolved, and any unexpended money must revert to the State's general revenue fund.

#### **§ 5. AUTHORITY OF THE LEGISLATURE**

For purposes of interpreting this Article, the People declare that the powers granted to the Commission herein are legislative functions not subject to the control or approval of the Legislature, and are exclusively reserved to the Commission. The Commission and all of its responsibilities, operations, functions, contractors, consultants and employees are not subject to change, transfer, reorganization, or reassignment, and shall not be altered or abrogated in any manner whatsoever, by the Legislature. No other body shall be established by the Legislature to perform functions that are the same or similar to those granted to the Commission in this section. This provision does not, and shall not be construed to, limit the People's power of initiative.

#### **§ 6. REPEALER**

Article V, Sections 9A, 10A, and 11A-11E of this Constitution are hereby repealed.

#### **§ 7. SEVERABILITY**

The provisions of this Article are severable, and if any part or provision hereof shall be void, invalid, or unconstitutional, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions hereof, and the remaining provisions hereof shall continue in full force and effect.

#### **Name and Address of Proponents**

Andrew Moore  
2524 NW 26th St.  
Oklahoma City, OK 73107

Janet Ann Largent  
5401 N. Range Rd.  
Stillwater, OK 74075

Lynda Johnson  
12018 S. Pittsburg Ave.  
Tulsa, OK 74137

**SIGNATURES**

**The gist of the proposition:** This measure adds a new Article to the Oklahoma Constitution, intended primarily to prevent political gerrymandering. The Article creates a Citizens' Independent Redistricting Commission, and vests the power to redistrict the state's House, Senatorial, and federal Congressional districts in the Commission (rather than the Legislature). The 9-member Commission will consist of 3 members from each of 3 groups, determined by voter registration: those affiliated with the state's largest political party; those affiliated with its second-largest party; and those unaffiliated with either. Commissioners are not elected by voters but selected according to a detailed process set forth by the Article: in brief, a panel of retired judges and justices designated by the Chief Justice of the Oklahoma Supreme Court will choose pools of approximately 20 applicants from each group, then randomly select 3 Commissioners from each pool. The Article sets forth various qualifications for Commissioners, Special Master, and Secretary, intended to avoid conflicts of interest (*for example*, they cannot have changed party affiliation within a set period, and neither they nor their immediate family may have held or been nominated for partisan elective office or served as paid staff for a political party or as a registered lobbyist in the last five years). It also sets forth a process for the creation and approval of redistricting plans after each federal Decennial Census, including, among other things, a method for counting incarcerated persons, public notice, and open meeting requirements. In creating the plans, the Commission must comply with federal law, population equality, and contiguity requirements, and must seek to maximize respect for communities of interest, racial and ethnic fairness, political fairness, respect for political subdivision boundaries, and compactness (in order of priority), without considering the residence of any legislator or candidate or a population's political affiliation or voting history except as necessary for the above criteria. The Article creates a fallback mechanism by which the state Supreme Court, using a report from the Special Master, will select a plan if the Commission cannot reach the required level of consensus within a set timeframe. It also sets forth procedures for funding and judicial review, repeals existing constitutional provisions involving legislative districts, codifies the number of state House and Senatorial districts, and reserves powers to the Commission rather than the Legislature. Please review attached Petition for further details.

**WARNING**

**IT IS A FELONY FOR ANYONE TO SIGN AN INITIATIVE OR REFERENDUM PETITION WITH ANY NAME OTHER THAN HIS OWN, OR KNOWINGLY TO SIGN HIS NAME MORE THAN ONCE FOR THE MEASURE, OR TO SIGN THE PETITION WHEN HE IS NOT A LEGAL VOTER.**

1.	Signature of Legal Voter	Print Name	Address	City	Zip	County
2.	Signature of Legal Voter	Print Name	Address	City	Zip	County
3.	Signature of Legal Voter	Print Name	Address	City	Zip	County
4.	Signature of Legal Voter	Print Name	Address	City	Zip	County
5.	Signature of Legal Voter	Print Name	Address	City	Zip	County
6.	Signature of Legal Voter	Print Name	Address	City	Zip	County
7.	Signature of Legal Voter	Print Name	Address	City	Zip	County
8.	Signature of Legal Voter	Print Name	Address	City	Zip	County
9.	Signature of Legal Voter	Print Name	Address	City	Zip	County
10.	Signature of Legal Voter	Print Name	Address	City	Zip	County
11.	Signature of Legal Voter	Print Name	Address	City	Zip	County
12.	Signature of Legal Voter	Print Name	Address	City	Zip	County
13.	Signature of Legal Voter	Print Name	Address	City	Zip	County
14.	Signature of Legal Voter	Print Name	Address	City	Zip	County
15.	Signature of Legal Voter	Print Name	Address	City	Zip	County
16.	Signature of Legal Voter	Print Name	Address	City	Zip	County
17.	Signature of Legal Voter	Print Name	Address	City	Zip	County
18.	Signature of Legal Voter	Print Name	Address	City	Zip	County
19.	Signature of Legal Voter	Print Name	Address	City	Zip	County
20.	Signature of Legal Voter	Print Name	Address	City	Zip	County

**AFFIDAVIT**

STATE OF OKLAHOMA )

) ss.

COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, being first duly sworn, say:

That I am at least eighteen (18) years old and that all signatures on the signature sheet were signed in my presence. I believe that each signer has stated his or her name, mailing address, and residence correctly, and that each signer is a legal voter of the State of Oklahoma and the County of his residence as stated.

\_\_\_\_\_

Circulator's Signature

\_\_\_\_\_

Address

\_\_\_\_\_

City

Zip Code

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

Notary Public

My Commission Expires:

\_\_\_\_\_

Address

\_\_\_\_\_

\_\_\_\_\_

City

Zip Code

My Commission Number:

\_\_\_\_\_

Michael Rogers  
Secretary of State and Education



J. Kevin Stitt  
Governor

## OKLAHOMA SECRETARY OF STATE

February 6, 2020

Andrew Moore  
2524 NW 26<sup>th</sup> St  
Oklahoma City, OK 73107

Janet Ann Largent  
5401 N. Range Rd  
Stillwater, OK 74075

Lynda Johnson  
12018 S. Pittsburg Ave.  
Tulsa, OK 74137

Dear Proponent(s):

This acknowledges receipt of the petition submitted to the Secretary of State office, which has been designated as **State Question Number 810, Initiative Petition Number 426** and filed accordingly this 6<sup>th</sup> day of February, 2020.

Per Title 34 O.S. Section 8, subsequent to the publication of the notice of filing of said petition, the apparent sufficiency or insufficiency thereof and notice that any citizen(s) of the state may file a protest as to the constitutionality of the petition, the Secretary of State will provide a notification to the proponent(s) of record, setting the date to begin circulation for signatures. The date set shall not be less than fifteen (15) days nor more than thirty (30) days from the date when all appeals, protests and rehearings have been resolved or the period for filing such has expired.

If I may provide any further assistance or should you have any questions, please do not hesitate to contact me.

Thank you,

A handwritten signature in black ink, appearing to read "Amy Canton".

Amy Canton  
Director, Executive Legislative Division  
405.522.4565 / [executivelegislative@sos.ok.gov](mailto:executivelegislative@sos.ok.gov)

Michael Rogers  
Secretary of State and Education



J. Kevin Stitt  
Governor

OKLAHOMA SECRETARY OF STATE

February 10, 2020

Ms. Cindy Shea  
Oklahoma Press Service  
3601 N. Lincoln  
Oklahoma City, Oklahoma 73105

Dear Ms. Shea:

Please find enclosed the following for publication;

- Notice of Filing for State Question 810, Initiative Petition 426

Per Title 34 O.S. § 8, the publication must appear in at least one newspaper of general circulation in the State of Oklahoma. Please publish the enclosed notice in *The Oklahoman*, *Tulsa World*, and the *Journal Record* as soon as possible.

Also, upon the completion of publication, please provide our office with the corresponding Affidavits of Publication. Should you have any questions, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "AC", written in a cursive style.

Amy Canton  
Director, Executive Legislative Division  
Oklahoma Secretary of State Office



**NOTICE OF THE FILING OF STATE QUESTION 810, INITIATIVE PETITION 426, THE APPARENT SUFFICIENCY THEREOF, AND NOTICE TO CITIZENS OF THE STATE THAT ANY SUCH PROTEST, AS TO THE CONSTITUTIONALITY OF SAID PETITION, MUST BE FILED ACCORDINGLY WITHIN TEN (10) BUSINESS DAYS AFTER THIS NOTICE (Okla. Stat. tit. 34, § 8)**

**NOTICE** is hereby given that on February 6, 2020, State Question 810, Initiative Petition 426 was filed in the Office of the Oklahoma Secretary of State.

**NOTICE** is also hereby given that State Question 810, Initiative Petition 426 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State.

**NOTICE** is likewise, hereby given, as provided in Title 34 Section 8 of the Oklahoma Statutes, that any citizen or citizens of the state may file a protest as to the constitutionality of said petition, by a written notice to the Supreme Court and to the proponent(s) filing the petition. Any such protest must be filed within ten (10) business days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State.

Proponents of record for State Question 810, Initiative Petition 426:

Andrew Moore  
2524 NW 26<sup>th</sup> St  
Oklahoma City, OK 73107

Janet Ann Largent  
5401 N. Range Rd  
Stillwater, OK 74075

Lynda Johnson  
12018 S. Pittsburg Ave.  
Tulsa, OK 74137

**Michael Rogers**  
**Oklahoma Secretary of State and Education**

**MERCHANDISE**  
 SPECIALTY GOLF BAGS

**CHECK IT OUT!**  
 Collectible Brownings, Berettas, & Winchester's. Many new in box \$2,500-\$6,000. 405-659-2990

**GUN SHOW**  
 FEBRUARY 15TH & 16TH  
 SAT. 9-5 & SUN. 9-4  
 STATE FAIRGROUNDS  
 CENTENNIAL BUILDING  
 INFO: (563) 927-8176  
 WWW.RKSHOWS.COM  
 Midwest Arms Shows LLC  
 now  
 Managed by RK Shows Inc.  
 OK's largest selection of used  
 Golf cars ♦ 800-276-0571

**ANIMALS**

Scan to find even more animals.



35 bred cows mostly black, \$1,150ea. 405-273-1757



**Dogs** 573

French Bulldog Puppies AKC 8wks, vet chk, s/w, IF, 4M, \$2,000ea. stubbornoodles.com  
 918-407-5220 or 918-407-5221  
 GERMAN SHEPHERD puppies, 11 weeks old, great bloodlines, 1M, 4F, \$125, 405-886-3352.



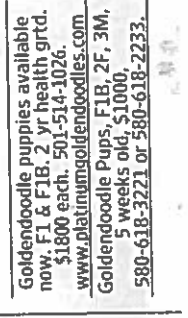
German Shepherd Pups \$175 w/ shots & wormed, Full blooded, No papers. Please call 405-532-8717.  
 German Shepherds, AKC, 6 wks East German bloodlines, 3 black, 2 sable \$800-1000, 405-933-9707



Golden Doodle For Your Valentine  
 5 adorable F1 fmls, 8 wks, s/w/vet ckd, \$800/ob. 405-203-8106 # 405-919-9506  
 GOLDENDOODLE PUPPIES  
 3f, 2m born Dec. 18th. \$800 Call/txt 405-875-6253 for pics/info.



Goldendoodle puppies available now, F1 & F1B, 2 yr health grcd. \$1800 each. 501-514-1026. www.platinumgoldendoodles.com  
 Goldendoodle Pups, F1B, 2F, 3M, 5 weeks old, \$1000, 580-618-3221 or 580-618-2233.



**Dogs** 573

must sign.  
 /s/ Clifford W. Ginn  
 County of Tulsa, State of Oklahoma Before me, the undersigned notary public, personally appeared: Clifford Ginn to me known to be the person(s) described in and who executed the foregoing application and acknowledged that he executed the same as his free act and deed.

*Clifford W. Ginn*  
 Notary Public

3-5-22  
 My commission expires

**OKLAHOMA ALCOHOLIC BEVERAGE LAWS ENFORCEMENT COMMISSION NOTICE OF INTENTION TO APPLY FOR AN ALCOHOLIC BEVERAGE LICENSE**

In accordance with Title 37, Section 522 and Title 37A, Section 2-141, OM Shri Ganeshaya Namaha, 200 SW 25th St, OKC, OK 73109, a limited liability company, hereby publishes notice of its intention to apply within sixty days from this date to the Oklahoma Alcoholic Beverage Laws Enforcement Commission for a Beer and Wine License under authority of and in compliance with the said Act: That it intends, if granted such license to operate as a Beer & Wine establishment with business premises located at 200 SW 25th St, Oklahoma City, Oklahoma County, Oklahoma under the business name of Discount Food and Tobacco.

Dated this 30th day of January, 2020  
 Signature of Applicant(s):  
 /s/ Ashish Shrestha  
 County of Oklahoma, State of Oklahoma

Before me, the undersigned notary public, personally appeared, Ashish Shrestha, to me known to be the person described in and who executed the foregoing application and acknowledged that he executed the same as his free act and deed.

**Dogs** 573 | **Notary Public** 573

will be open to the public and held on March 2, 2020 at 10 a.m. at 107 N. Kimberly, Shawnee. If you have any questions or concerns please call Bob Sheppard or Christina Yargee at (405) 273-1050.

**NOTICE OF THE FILING OF STATE QUESTION 810, INITIATIVE PETITION 426, THE APPARENT SUFFICIENCY THEREOF, AND NOTICE TO CITIZENS OF THE STATE THAT ANY SUCH PROTEST, AS TO THE CONSTITUTIONALITY OF SAID PETITION, MUST BE FILED ACCORDINGLY WITHIN TEN (10) BUSINESS DAYS AFTER THIS NOTICE (Okla. Stat. tit. 34, § 8)**

NOTICE is hereby given that on February 6, 2020, State Question 810, Initiative Petition 426 was filed in the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 810, Initiative Petition 426 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State.

NOTICE is likewise, hereby given, as provided in Title 34 Section 8 of the Oklahoma Statutes, that any citizen or citizens of the state may file a protest as to the constitutionality of said petition, by a written notice to the Supreme Court and to the proponent(s) filing the petition. Any such protest must be filed within ten (10) business days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State.

Proponents of record for State Question 810, Initiative Petition 426:  
 Andrew Moore  
 Janet Ann Largent Lynda Johnson  
 5401 N. Range Rd 12018 S. Pittsburg Ave.  
 Oklahoma City, OK 73107 Stillwater, OK 74075 Tulsa, OK 74137

Michael Rogers  
 Oklahoma Secretary of State and Education  
 5404 TIMBER LANE OKC OK 73111, MISC ITEMS  
 P.O. Box 720, McCloud, Oklahoma, 74851, or may be handdelivered to Ms. Deer at the Kickapoo Tribal Health Center Administration Building, 105365 S. Highway 102, McCloud, Oklahoma, 74851.

#169 WILLIAM HUDSON, 1211 W INDIANA AVE, MIDLAND TX 79701, MISC ITEMS  
 #97 AMBER WILLIAMS, 2501 NW 122ND ST, APT 1701, OKC OK 73120, MISC ITEMS  
 No contact should be made with any Kickapoo Tribe of Oklahoma personnel regarding this RFQ other than to the individual named above.

Public notice 1959 Ford F100 PK VIN F10J0K20537 Contact Curtis Smith (405) 697-3620.

**REQUEST FOR QUALIFICATIONS (RFQ) ARCHITECTURAL AND ENGINEERING (A&E) SERVICES TO DEVELOP PLANS AND SPECIFICATIONS FOR EXPANSION OF THE KICKAPOO TRIBAL HEALTH**

The Community Action Agency invites bids from vendors to provide...

**TURNER; OCCUP ANT(S) OF THE PREMISES; Defense.**

TO: Unknown Heirs, Executors, Administrators, Trustees, Devises, and Assigns, if any, of Gwendolyn Turner, a/k/a Gwendolyn Ruth Turner, Deceased.

PLEASE TAKE NOTICE that a petition has been filed against you in the District Court of Oklahoma County, Oklahoma in an action entitled Nationstar Mortgage LLC d/b/a Mr. Cooper v. Unknown Heirs, Executors, Administrators, Trustees, Devises, and Assigns, if any, of Gwendolyn Turner, a/k/a Gwendolyn Ruth Turner, Deceased, et al., Case No. CJ-2020-541, by Plaintiff, Nationstar Mortgage LLC d/b/a Mr. Cooper. This summons by publication is specifically directed to the Unknown Heirs, Executors, Administrators, Trustees, Devises, and Assigns, if any, of Gwendolyn Turner, a/k/a Gwendolyn Ruth Turner, Deceased, whose whereabouts are unknown.

The nature of this suit against you is regarding any interest you may have in the following described real estate (property) situated in Oklahoma County, Oklahoma, to wit: SEE ATTACHED EXHIBIT A, Lots Twenty-nine (29) and Thirty (30), in Block Ten (10) of Alhaye Addition, to Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof. Plaintiff claims damages against you in the amount of: Unpaid Principal Balance: \$32,587.42 Date of Default: 02/01/2019 Interest Due From: 01/01/2019 Interest Rate: 6.500% including all subsequent amounts due and owing per the terms of the Note and Mortgage, all subsequent advances by Plaintiff, if any, for taxes, insurance

premiums, or expenses necessary for the preservation of the subject property, all costs of this action, reasonable attorney's fees and costs as the Court may allow, and the costs of foreclosing your interest in the property and ordering said property sold with or without appraisal as Plaintiff may elect, all of which you will take due notice.

Unless you answer the petition on or before April 3, 2020, judgment will be taken in favor of Nationstar Mortgage LLC d/b/a Mr. Cooper and against you. WITNESS my hand and official seal this 11th day of February, 2020

**RICK WARREN**  
Court Clerk  
By: Deputy  
Sally E. Garrison, OBA # 18709  
Chad T. Hantak, OBA # 33651  
THE MORTGAGE LAW FIRM, PLLC  
421 NW 13th Street, Suite 300  
Oklahoma City, OK 73103  
Telephone: (405) 246-0602  
Facsimile: (405) 698-0007  
sally.garrison@mgjlawfirm.com  
chad.hantak@mgjlawfirm.com  
Attorneys for Plaintiff  
(2-13, 2-20, 2-27-20)

**(CV11854019)**  
NOTICE  
Notice is hereby given to Jimmy Earp that on the 25th day of March, 2020 at 9:00 a.m., Workers' Compensation Court of Existing Claims, 1915 North Stiles Avenue, Oklahoma City, Oklahoma, this claim will be heard before the Honorable Margaret Bonhoff on the issue of termination of continuing medical maintenance. If Claimant Jimmy Earp fails to appear, this matter shall be heard without his attendance.  
(2-13, 2-20, 2-27-20)

**Juvenile**

(JV11853009)  
ORDER AND NOTICE OF HEARING APPLICATION FOR ORDER DETERMINING CHILD ELIGIBLE FOR ADOPTION WITHOUT CONSENT OF

**Civil**

money judgment including principal, interest, attorney fees, advances and all costs; and forever barring all your interest in said real property; and quieting title to said real property in favor of plaintiff; and for such other relief as may be proper.  
Dated this 12th day of FEBRUARY, 2020.

**RICK WARREN**  
DISTRICT COURT CLERK  
By: Deputy  
MICHAEL P. BROGAN, OBA #1155  
Attorney at Law  
P.O. BOX 950012  
Oklahoma City, OK 73195  
(405) 760-2525  
Attorney for plaintiff  
(2-13, 2-20, 2-27-20)

**(CV11854018)**  
NOTICE BY PUBLICATION  
CASE NO. CJ-2020-541  
Judge: Prince, Thomas E.

IN THE DISTRICT COURT WITHIN AND FOR OKLAHOMA COUNTY STATE OF OKLAHOMA  
NATIONSTAR MORTGAGE LLC D/B/A MR. COOPER, Plaintiff, vs. UNKNOWN HEIRS, EXECUTORS, ADMINISTRATORS, TRUSTEES, DEVISEES, AND ASSIGNS, IF ANY, OF GWENDOLYN TURNER, A/K/A GWENDOLYN RUTH TURNER, DECEASED; RANDY TURNER, A/K/A RANDALL K. TURNER, A/K/A RANDALL KEVIN TURNER; SPOUSE, IF ANY, OF RANDY TURNER, A/K/A RANDALL K. TURNER, A/K/A RANDALL KEVIN

**Miscellaneous**

(MS11854010)  
NOTICE OF INTENTION TO APPLY FOR AN ALCOHOLIC BEVERAGE LICENSE

Phone: (405) 225-1311  
Cell: (405) 343-0413  
Fax: (405) 225-1312  
(2-12-20)

**Miscellaneous**

(MS11845987)  
INVITATION TO BID

The Community Enhancement Corporation at 1700 Northeast Fourth Street, Oklahoma City, Oklahoma, is requesting Submissions of Qualifications for General Contractors/Construction Manager at Risk Services for the construction of Creston Park, a 500 unit apartment community in Oklahoma City, Oklahoma. Full Requests for Qualifications and Information Packets may be obtained from [icoigan@cochanet.org](mailto:icoigan@cochanet.org) or [meaves@cochanet.org](mailto:meaves@cochanet.org). There is no charge for email documents when available. Deadline for submittals is 5:00 p.m. March 6, 2020, and must be submitted by email to Mr. Ian Colgan ([icoigan@cochanet.org](mailto:icoigan@cochanet.org)). Equal Employment Opportunity. Equal Housing Opportunity.  
(2-6, 2-13-20)

**(MS11847627)**  
NOTICE

SOLICITATION FOR BIDS (BID NOTICE)  
Sealed bids will be received by the Office of Management and Enterprise Services, Capital Assets Management, Construction and Properties Department, Will Rogers Building, 2401 Lincoln Blvd. Ste. 212, Oklahoma City, OK 73105, up to and including the time and date indicated below. The bids will be opened and read aloud after the time indicated. Digital copies of the plans and bid documents may be obtained from CAP website at: <https://omes.ok.gov/services/construction-and-properties>. Digital copies of the bid documents are on file at the Construction & Properties office and are available for public inspection. CAP Project Number: 20214  
Project Name: Vegetation and Brush Cleaning

adverse weather conditions, please call 405-521-2112 prior to Pre-bid Conference.  
Date and Time: 2/25/2020 at 10:00AM  
Location: Joseph Harp Correctional Center, 16161 Moffat Road, Lexington, OK, 73051  
Bid Opening Date: 3/10/2020  
Location: Will Rogers Building 2401 Bidders" in Project Manual. In case of

Project Location: Joseph Harp Correctional Center, 16161 Moffat Road, Lexington, OK, 73051  
Cost Estimator: \$1,451,594.00  
Using Agency: Oklahoma Department of Corrections  
Bid Documents Available: February 7, 2020 Fee to Submit Online Bid: See Website  
Pre-Bid Conference: Mandatory, Refer to "Instructions to Bidders" in Project Manual. In case of

**Miscellaneous**

(MS11853068)

NOTICE OF THE FILING OF STATE QUESTION 810, INITIATIVE PETITION 426, THE APPARENT SUFFICIENCY THEREOF, AND NOTICE TO CITIZENS OF THE STATE THAT ANY SUCH PROTEST, AS TO THE CONSTITUTIONALITY OF SAID PETITION, MUST BE FILED ACCORDINGLY WITHIN TEN (10) BUSINESS DAYS AFTER THIS NOTICE (Okla. Stat. tit. 34, § 8)

NOTICE is hereby given that on February 6, 2020, State Question 810, Initiative Petition 426 was filed in the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 810, Initiative Petition 426 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State. NOTICE is likewise, hereby given, as provided in Title 34 Section 8 of the Oklahoma Statutes, that any citizen or citizens of the state may file a protest as to the constitutionality of said petition, by a written notice to the Supreme Court and to the proponent(s) filing the petition. Any such protest must be filed within ten (10) business days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State.

Propponents of record for State Question 810, Initiative Petition 426:  
Andrew Moore Janet Ann Largent Lynda Johnson  
2524 NW 26th St 5401 N. Range Rd 12018 S. Pittsburg Ave.  
Oklahoma City, OK 73107 Stillwater, OK 74075 Tulsa, OK 74137  
Michael Rogers  
Oklahoma Secretary of State and Education  
(2-13-20)

**Miscellaneous**

(MS11851284)  
NOTICE TO CONTRACTORS  
OKLAHOMA TURNPIKE AUTHORITY REQUIRES ON-LINE BIDDING. To sign up for on-line bidding contact Bid Express at [www.BidExpress.com](http://www.BidExpress.com).

FILED  
SUPREME COURT  
STATE OF OKLAHOMA  
FEB 28 2020

JOHN D. HADDEN  
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

- (1) MARC McCORMICK,  
(2) LAURA NEWBERRY,  
(3) ROGER GADDIS, AND  
(4) CLAIRE ROBINSON DAVEY,

PROTESTANTS/PETITIONERS,

v.

- (1) ANDREW MOORE,  
(2) JANET ANN LARGENT, AND  
(3) LYNDA JOHNSON,

RESPONDENTS/PROponents.

#118685

Case No. \_\_\_\_\_

---

APPLICATION AND PETITION TO ASSUME  
ORIGINAL JURISDICTION AND REVIEW THE  
CONSTITUTIONALITY OF INITIATIVE PETITION NO. 426

---

ROBERT G. McCAMPBELL, OBA No. 10390  
TRAVIS V. JETT, OBA No. 30601  
GABLEGOTWALS  
ONE LEADERSHIP SQUARE, 15TH FLOOR  
211 NORTH ROBINSON AVENUE  
OKLAHOMA CITY, OK 73102  
TELEPHONE: (405) 235-5500

*ATTORNEYS FOR PROTESTANTS/PETITIONERS*

FEBRUARY 28, 2020

## I. INTRODUCTION

Come now Protestants/Petitioners and challenge Initiative Petition 426, State Question 810 (“IP 426”), pursuant to 34 O.S. § 8(B) because it violates the U.S. Constitution.

IP 426 would make several significant changes in the procedure and substance of apportionment decisions for legislative districts for the Oklahoma House of Representatives, Oklahoma Senate, and U.S. House of Representatives. In particular, under IP 426, the apportionment decisions would not be made by the voters’ elected representatives in the Legislature, but would be made by an unelected Redistricting Commission or the Supreme Court.

As will be shown below and in the brief in support, IP 426 is unconstitutional.

### **Counting Prisoners**

1. IP 426 proposes an unconstitutional change to the way prisoners are counted in Oklahoma. The United States Census Bureau counts “group quarters” residents, such as prisoners, college students, members of the military, residents of long-term care facilities, and residents of domestic abuse shelters in a similar manner. 83 Fed. Reg. 5525, 5533–36 (Feb. 8, 2018), App. at Tab C; U.S. Census Bureau, Group Quarters/Residence Rules, App. at Tab D. They are counted at the place where they are. *Id.* IP 426, however, would count prisoners differently from the others on the list. IP 426 would count prisoners at the “home address” in the records of the Department of Corrections. IP 426 § 4(C)(2)(e).

2. Counting prisoners differently from other group quarters residents would violate Article I, § 2 of the U.S. Constitution because it will result in unequal population among the different Congressional Districts. *Karcher v. Daggett*, 462 U.S. 725, 730 (1983); *Kirkpatrick v. Preisler*, 394 U.S. 526, 530–31 (1969). In Oklahoma, some Congressional Districts have multiple state prisons, federal prisons, and private prisons. However, the First

District does not have any state, federal, or private prisons. The result, then, will be an unequal change in the population of the various districts. Further, because Oklahoma County and Tulsa County are disproportionately the largest in terms of population, but do not have a proportional share of state, federal, and private prisons, the result of the change in counting will be that the areas in which the prisons are located will be undercounted and Oklahoma County and Tulsa County will be over counted.

3. As set forth below, Protestant/Petitioner Roger Gaddis lives in Pontotoc County, in the Fourth Congressional District of Oklahoma. That district has multiple state, federal, and private prisons. However, that district does not include Tulsa County and includes only a small part of Oklahoma County.

**Discrimination Based on Exercise of First Amendment Rights**

4. As shown below, Protestants/Petitioners here present specific, concrete cases of Oklahomans whose constitutional rights are violated because they would be automatically disqualified from serving on the Redistricting Commission merely because they (or their spouse) had exercised their First Amendment rights.

- Marc McCormick exercised his first amendment right to change political parties on February 6, 2020. Under IP 426 that disqualifies him from being a Commissioner. IP 426, § 4(B)(2)(a).
- Clair Robinson Davey changed political parties on February 6, 2020. Under IP 426 that disqualifies her from serving on the Commission. IP 426, § 4(B)(2)(a).
- Laura Newberry is married to Dan Newberry, who was a State Senator until 2018. Under IP 426 that disqualifies Ms. Newberry from serving as a Commissioner. IP 426, § 4(B)(2)(b).

5. IP 426 is further unconstitutional because Oklahomans would be disqualified from serving on the redistricting Commission if they or a family member had exercised their constitutional right to (1) hold a partisan office, (2) run for office, (3) switch political parties,

(4) serve as a lobbyist, (5) work for a political party or (6) work for the Legislature. Oklahomans would also be prohibited if they had switched their party affiliation in the previous four years.

The First Amendment protects the right to free speech and to political association. *Elrod v. Burns*, 427 U.S. 347, 357 (1976). The state cannot make participation in the Commission conditional based on a person's foregoing the right to free speech or political association. *Rutan v. Republican Party*, 497 U.S. 62, 86 (1990). In this case the infringement is particularly illogical because an Oklahoman would be prohibited from serving on the Commission even if, for example, that person's stepsister living in another state holds office in a different political party.

## II. THE PARTIES

6. Protestant/Petitioner Marc McCormick, is a citizen of Oklahoma. He has been a resident of Oklahoma County and registered to vote in Oklahoma County for over 30 years. On February 6, 2020, Mr. McCormick exercised his First Amendment right to change political parties and changed from Republican to Democrat. App. at Tab Q.

7. Protestant/Petitioner Laura Newberry is a citizen of Oklahoma. She has been a resident of Tulsa County for over twenty years and has been registered to vote for over twenty years. Ms. Newberry is married to Dan Newberry who was a State Senator from 2008 to 2018. App. at Tab N & O. Pursuant to section 4(B)(2)(b) of Initiative Petition 426, Ms. Newberry would be disqualified from serving as a Redistricting Commissioner because she is married to a person who was a State Senator until 2018.

8. Protestant/Petitioner Roger Gaddis is a citizen of Oklahoma. He has been a resident of Pontotoc County for over twenty years and has been registered to vote for over

twenty years. He lives in and is registered to vote in the Fourth Congressional District of Oklahoma.

9. Protestant/Petitioner Claire Robinson Davey is a citizen of Oklahoma. She has been a resident of Oklahoma County and registered to vote in Oklahoma County for over nine years. On February 6, 2020, Ms. Davey exercised her First Amendment right to change political parties and changed from Republican to Democrat. App. at Tab R.

10. Respondent/Proponent Andrew Moore is one of the proponents of IP 426.

11. Respondent/Proponent Janet Ann Largent is one of the proponents of IP 426.

12. Respondent/Proponent Lynda Johnson is one of the proponents of IP 426.

### III. JURISDICTION

13. IP 426 was filed with the Oklahoma Secretary of State on February 6, 2020. App. at Tab A.

14. Pursuant to 34 O.S. § 8, the Secretary of State published notice of IP 426 on February 13, 2020. App. at Tab B.

15. Within 10 business days after notice is published an Oklahoma citizen can file “a protest as to the constitutionality of the petition.” 34 O.S. § 8(B). Saturdays, Sundays, and legal holidays are excluded. *In re Initiative Petition 397*, 2014 OK 23, ¶ 19, 326 P.3d 496. President’s Day, January 17, 2020, was a legal holiday. 25 O.S. § 82.1. The tenth business day after the notice was published is Friday, February 28, 2020.

16. The Protestants/Petitioners are citizens of Oklahoma. 34 O.S. § 8. ““Any citizen can protest the sufficiency and legality of an initiative petition.”” *In re Initiative Petition 409*, 2016 OK 51, ¶ 2, 376 P.3d 250, quoting *In re Initiative Petition 384*, 2007 OK 48, ¶ 2, 164 P.3d 125.



17. This Court has jurisdiction. A citizen, within ten days of the published notice, can file “a protest as to the constitutionality of the petition” with this Court. 34 O.S. § 8(B).

18. “When a protest is filed in this Court, we are ‘vested with original jurisdiction to evaluate and determine the sufficiency of the proposed initiative petition pursuant to 34 O.S. Supp. 2015 § 8.’” *In re Initiative Petition 409, supra*, 2016 OK 51 at ¶ 2, quoting *In re Initiative Petition 403*, 2016 OK 1, ¶ 3, 367 P.3d 472. Pursuant to Rule 1.194 of this Court, a challenge to an initiative petition shall be treated as an original action in this Court.

19. This protest attacks the constitutionality of IP 426. A protest is also being filed today on behalf of Protestant Eldon Merklin which attacks the “gist” submitted with IP 426.

#### IV. SUMMARY OF THE RECORD

20. IP 426 proposes a constitutional amendment to change the procedure for apportioning legislative districts for U.S. House of Representatives, Oklahoma House of Representatives and Oklahoma Senate. First, a “Panel” of three retired Justices or Judges of the Court of Criminal Appeals or Court of Civil Appeals would be selected by the Chief Justice (according to the gist) or by random selection (according to the petition). The Panel would select the names who will be eligible to serve on the Commission. The Commission is made up of three “Groups”: (a) the largest political party, (b) the second largest party, and (c) those unaffiliated with either of the two largest parties. From a list of those who apply to be a Commissioner, the Panel eliminates all but 20 names in each Group. Three applicants are then randomly selected for each Group from the list of 20. The Commission can adopt a redistricting plan only if six of the nine Commissioners votes in favor and only if at least one Commissioner from each of the three Groups votes in favor. Additionally, the Chief Justice designates a Special Master (the director or an employee of the Administrative Office).

21. IP 426 would also change how legislative districts are apportioned. The Commission would minimize division of communities of interest including but not limited to “racial, ethnic, economic, social, cultural, geographic, tribal, linguistic, or historic identities.” The Commission would maximize “political fairness.”

## V. SUBSTANTIVE ISSUES

### A. CONGRESSIONAL REAPPORTIONMENT – ART. I, § 2 & EQUAL PROTECTION CLAUSE

22. Pursuant to Article I, § 2 of the United States Constitution, Congressional Districts should be apportioned such that “as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s.” *Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964). “The ‘as nearly as practicable’ standard requires that the State make a good faith effort to achieve precise mathematical equality.” *Kirkpatrick*, 394 U.S. at 530–31. *See also Karcher*, 462 U.S. 725.

23. The U.S. Census Bureau uses similar standards for counting “group quarters” residents. Group quarters include correctional facilities, college dormitories, military barracks, nursing homes, mental hospitals, group homes, missions, and shelters. U.S. Census Bureau, Group Quarters/Residence Rules, App. at Tab D. The Census counts those group quarters residents at the place where they are at the time the Census occurs. 83 Fed. Reg. 5525, 5533–36 (Feb. 8, 2018), App. at Tab C. IP 426 would count prisoners differently, however. IP 426 would count prisoners at their home address according to the Department of Corrections. IP 426, § 4(C)(2)(e) & (C)(3)(a).

24. Counting prisoners in this manner, will have unequal effects across the state of Oklahoma.

25. Protestant/Petitioner Roger Gaddis is a resident of Pontotoc County in the Fourth Congressional District of Oklahoma. The Fourth Congressional District has four state

correctional institutions and one private prison. Those institutions (and their population) are as follows:

- Joseph Harp Correctional Center, Lexington (1,269)
- Lexington Assessment and Reception Center, Lexington (437)
- Lexington Correctional Center, Lexington (918)
- Lawton Community Corrections Center, Lawton (145)
- GeoGroup, Lawton Correction and Rehabilitation Facility, Lawton (2,505)

Okla. Dep't of Corrections, Incarcerated Inmates Daily Count Sheet (Feb. 18, 2020), App. at Tab G.

26. By contrast, the First Congressional District of Oklahoma does not have any state, federal, or private prisons.

27. There are county and municipal jails in every Congressional District. The counting in the county and municipal jails will have a much lower impact, however, since prisoners' home address and place of incarceration will frequently be in the same congressional district.

28. According to the estimated 2016 population set forth in the *Oklahoma Almanac, 2017-2018*, Oklahoma County (782,970) (19.9%) and Tulsa County (642,940) (16.4%) have a significantly disproportionate share of the population of our state (3,923,561). App. at Tab Y.

29. As a statistical matter, Oklahoma County and Tulsa County, then, will be the home to a disproportionate number of Oklahoma prisoners.

30. The Fourth District of Oklahoma contains no part of Tulsa County and only a small part of Oklahoma County. The vast majority of the population in Oklahoma County is in the Fifth Congressional District. 2011 Okla. Sess. Laws Ch. 194, § 2.

31. Counting prisoners at their listed home address instead of the counting them where they are will artificially decrease the population count in the Fourth District of Oklahoma and artificially increase the population count in the First District of Oklahoma and the Fifth District of Oklahoma.

32. There will further be an anomaly with respect to inmates in federal and private prisons in Oklahoma. Almost all of the federal and private prisoners will be from a state other than Oklahoma, and most other states follow the U.S. Census group quarters rule under which prisoners are counted where they are instead of their previous home address. The effect will be that many of the Oklahoma federal and private prisoners will not be counted at all because they would not be counted in Oklahoma under IP 426, but they would not be counted in their home state either.

33. IP 426's arbitrary method for counting prisoners violates Art. I, § 2 of the Constitution when applied to congressional redistricting and the Equal Protection Clause of the 14th Amendment, when applied to state legislative redistricting. This is not "a good-faith effort to achieve precise mathematical equality." *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 530–31 (1969)). This is not a reasonable attempt to "ascertain the number of eligible voters in each district and . . . apportion accordingly." *Kirkpatrick*, 394 U.S. at 534–35. This attempt to "correct" the census data is "haphazard, inconsistent, or conjectural . . ." as prohibited by *Karcher*, 462 U.S. at 732 n.4. Choosing only to manipulate prisoners' residences, and not those similarly situated is arbitrary and certainly is not systematic. *Id.*

34. IP 426's arbitrary method for counting prisoners violates the Equal Protection Clause of the 14th Amendment when applied to state legislative redistricting. IP 426 would

reassign people to districts “in which they admittedly did not reside.” *Mahan v. Howell*, 410 U.S. 315, 332 (1973). It singles out prisoners for disparate treatment rather than conducting “careful and comprehensive process free from any taint of arbitrariness or invidious discrimination” which is applicable to similarly situated group quarters residents. *Kostick v. Nago*, 960 F. Supp. 2d 1074, 1095 (D. Haw. 2013), *aff’d*, 571 U.S. 1161 (2014).

**B. DISQUALIFICATION FROM THE COMMISSION BASED ON VOTER REGISTRATION  
– EQUAL PROTECTION CLAUSE**

35. Pursuant to § 4(B)(2)(a) of IP 426, an Oklahoman would be disqualified from serving as a redistricting commissioner if he or she changed their political party after IP 426 was filed.

36. Protestants/Petitioners McCormick and Davey both changed their party affiliation after IP 426 was filed. App. at Tab Q and R.

37. IP 426 was filed the morning of February 6, 2020.

38. Protestants/Petitioners McCormick and Davey were aware of the petition and changed their political parties. They seek to vindicate the constitutional rights not only for themselves but for the thousands of other Oklahomans who exercise their constitutional right to change political parties.

39. Data from the Oklahoma State Election Board shows that Oklahomans regularly exercise their constitutional right to change political parties. For example, during a six month period in 2018, over 19,000 Oklahomans changed their political party. App. at Tab Z and AA.

40. Section 1 of 14th Amendment of the U.S. Constitution guarantees equal protection of the laws. Strict scrutiny applies when a legal classification “interferes with the exercise of a fundamental right such as . . . rights guaranteed by the First Amendment . . . .”

*Hendricks v. Jones*, 2013 OK 71, ¶ 8, 349 P.3d 531, 534. “The right to associate with the political party of one's choice” is protected by the First Amendment. *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 214 (1986).

41. There is no basis for the State of Oklahoma to discriminate against Oklahomans because they changed their political party, much less a compelling state interest. Further, the across-the-board, indiscriminate disqualification of everyone who changed their political party is not narrowly drawn to achieve a compelling state interest.

42. Also, public notice of IP 426 was published by the Secretary of State on February 13, 2020. App. at Tab B.

43. Although the disqualification based on changing political parties applies only back to the date the petition was filed, that disqualification will trap and disqualify many Oklahomans who, unlike Mr. McCormick and Ms. Davey, did not have the advantage of being aware of the contents of the petition. Virtually every Oklahoman who changed their party affiliation on February 6 and 7 would have been unaware that IP 426 even existed, much less that it would discriminate against them if they changed their political affiliation.

**C. DISQUALIFICATION FROM THE COMMISSION BASED ON MARITAL STATUS  
– EQUAL PROTECTION CLAUSE**

44. Laura Newberry is and has been married to Dan Newberry. Dan Newberry served as a State Senator for the period 2010 to 2018. For that reason, under IP 426 Laura Newberry is automatically disqualified from serving as a redistricting Commissioner. App. at Tab N & O.

45. Because Mr. Newberry is no longer serving in the State Senate, App. at Tab N & O, the Newbury household has no financial interest in how district lines are drawn.

46. IP 426 § 4(B)(2)(b) automatically disqualifies from serving as a Commissioner any person who has an “immediate family member” who has held partisan elective office in the previous five years. IP 426 § 4(A)(9) defines “immediate family member” to refer to “a spouse.” Therefore, Ms. Newberry is automatically disqualified.

47. Ms. Newberry would not be disqualified if she and Mr. Newberry had never gotten married or were divorced. She is disqualified only because of her status of being married to Mr. Newberry.

48. It is irrational and arbitrary to discriminate against Ms. Newberry because of her status of being married.

49. The State of Oklahoma has no interest in treating Ms. Newberry differently than someone in identical circumstances who is not married.

**D. DISQUALIFICATION FROM THE COMMISSION – FIRST AMENDMENT**

50. The First Amendment of the United States Constitution guarantees all citizens the right to participate in political parties, to participate in running for office and to petition the government for the redress of grievances.

51. Nevertheless, IP 426 would discriminate against certain Oklahomans if they, or one of their family members, had exercised their constitutional right to be active in the government of any state in the past five years.

52. In particular, in setting forth the qualifications to be a Commissioner participating in redistricting, IP 426, § 4(B)(2) provides that an individual is absolutely disqualified if that individual or a family member has (a) held a partisan political office, (b) been a lobbyist, (c) been nominated for office by a political party, (d) held office in a political party, (e) been an employee of a political party, or (f) been an employee of the Legislature.

53. Further, Oklahomans would be disqualified from serving as a Commissioner if they had exercised their right to change party affiliation during the previous four years. § 4(B)(2)(a).

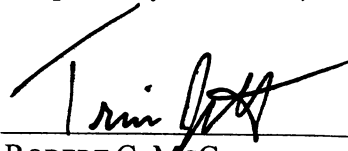
54. A state cannot discriminate against a person for exercising their First Amendment rights.

55. A state cannot discriminate against a person because the person is related to someone who exercised their First Amendment rights.

## VI. CONCLUSION

IP 426 violates the United States Constitution and must be stricken from the ballot.

Respectfully submitted,



---

ROBERT G. MCCAMPBELL, OBA No. 10390

TRAVIS V. JETT, OBA No. 30601

GABLEGOTWALS

One Leadership Square, 15th Floor

211 North Robinson Avenue

Oklahoma City, OK 73102

Telephone: (405) 235-5500

[RMcCampbell@Gablelaw.com](mailto:RMcCampbell@Gablelaw.com)

[TJett@Gablelaw.com](mailto:TJett@Gablelaw.com)

*Attorneys for Protestants/Petitioners*

*Marc McCormick, Laura Newberry,*

*Roger Gaddis, and Claire Robinson Davey*



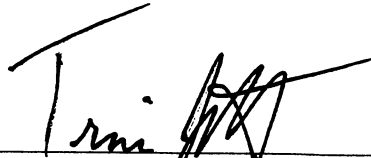
**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of February 2020, a true and correct copy of the above and forgoing was served by hand delivery as follows:

D. Kent Meyers  
Roger A. Stong  
Melanie Wilson Rughani  
CROWE & DUNLEVY, P.C.  
324 N. Robinson Ave., Suite 100  
Oklahoma City, OK 73102

Attorney General's Office  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105-4897

Secretary of State's Office  
State of Oklahoma  
2300 N. Lincoln Blvd.  
Suite 101  
Oklahoma City, OK 73105-4897



---

Robert G. McCampbell  
Travis V. Jett

S536330

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

FEB 28 2020

JOHN D. HADDEN  
CLERK

- (1) MARC McCORMICK,
- (2) LAURA NEWBERRY,
- (3) ROGER GADDIS, AND
- (4) CLAIRE ROBINSON DAVEY,

PROTESTANTS/PETITIONERS,

v.

- (1) ANDREW MOORE,
- (2) JANET ANN LARGENT, AND
- (3) LYNDA JOHNSON,

RESPONDENTS/PROPOSERS.

#118685

Case No. \_\_\_\_\_

---

**PETITIONERS' BRIEF IN SUPPORT OF APPLICATION AND PETITION  
TO ASSUME ORIGINAL JURISDICTION AND REVIEW THE  
CONSTITUTIONALITY OF INITIATIVE PETITION NO. 426**

---

ROBERT G. McCAMPBELL, OBA No. 10390  
TRAVIS V. JETT, OBA No. 30601  
GABLEGOTWALS  
ONE LEADERSHIP SQUARE, 15TH FLOOR  
211 NORTH ROBINSON AVENUE  
OKLAHOMA CITY, OK 73102  
TELEPHONE: (405) 235-5500

*ATTORNEYS FOR PROTESTANTS/PETITIONERS*

**FEBRUARY 28, 2020**

**INDEX**

**I. INTRODUCTION**..... 1

*Elrod v. Burns*,  
427 U.S. 347 (1976).....2

*Rutan v. Republican Party of Illinois*,  
497 U.S. 62 (1990).....2

U.S. Const. art. I, § 2..... 1

U.S. Const. amend. I ..... 1, 2

U.S. Const. amend. XIV, § 1 ..... 1

**II. SUMMARY OF THE RECORD** ..... 2

**III. ANALYSIS** ..... 2

**A. IP 426’s arbitrary method for counting prisoners is unconstitutional.** ..... 2

2011 Okla. Sess. Laws Ch. 194, § 2 .....2, 4

83 Fed. Reg. 5525 (Feb. 8, 2018) .....2, 3

**1. The arbitrary prisoner counting method violates Article I, § 2 of the U.S. Constitution** ..... 4

*Davidson v. City of Cranston, Rhode Island*,  
837 F.3d 135 (1<sup>st</sup> Cir. 2016).....5

*Fletcher v. Lamone*,  
831 F. Supp. 2d 887 (D. Md. 2011) .....6, 7

*Karcher v. Daggett*,  
462 U.S. 725 (1983).....4, 5, 6, 7, 8

*Kirkpatrick v. Preisler*,  
394 U.S. 526 (1969).....4, 5, 6, 7

*Kostick v. Nago*,  
960 F.Supp. 2d 1074 (D. Haw. 2013) .....6, 7

*Mandel v. Bradley*,  
432 U.S. 173 (1977).....7

*Tennant v. Jefferson Cty. Comm’n*,  
567 U.S. 758 (2012).....5, 6

<i>Turpen v. Oklahoma Corp. Comm'n</i> , 1988 OK 126, 769 P.2d 1309.....	7
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964).....	4
U.S. Const. art. I, § 2.....	4, 8
<b>2. The arbitrary counting of prisoners also violates the Equal Protection Clause. ....</b>	<b>8</b>
<i>Burns v. Richardson</i> , 384 U.S. 73 (1966).....	9
<i>Evenwel v. Abbott</i> , 136 S. Ct. 1120 (2016).....	8
<i>Kostick v. Nago</i> , 960 F.Supp. 2d 1074 (D. Haw. 2013).....	9
<i>Mahan v. Howell</i> , 410 U.S. 315 (1973).....	9
U.S. Const. amend. XIV, § 1 .....	8, 9
<b>B. IP 426’s restrictions on who can be a Commissioner are unconstitutional .....</b>	<b>10</b>
<b>1. Party affiliation restrictions violate the Equal Protection Clause.....</b>	<b>10</b>
<i>Autor v. Pritzker</i> , 740 F.3d 176 (D.C. Cir. 2014).....	10
<i>Bush v. Vera</i> , 517 U.S. 952 (1996).....	10
<i>Hendricks v. Jones</i> , 2013 OK 71, 349 P.3d 531.....	10
<i>Johnson v. California</i> , 543 U.S. 499 (2005).....	11
<i>Tashjian v. Republican Party of Connecticut</i> , 479 U.S. 208 (1986).....	10
U.S. Const. amend. I .....	10, 11
U.S. Const. amend. XIV, § 1 .....	10
26 Okla. Stat. § 5-105(A).....	11

<b>2. IP 426’s prohibition on the family members of former elected official violates Equal Protection .....</b>	<b>12</b>
<i>Eisenstadt v. Baird</i> , 405 U.S. 438 (1972).....	13
<i>Hendricks v. Jones</i> , 2013 OK 71, 349 P.3d 531.....	12
<i>Obergefell v. Hodges</i> , 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).....	13
<i>Vill. of Willowbrook v. Olech</i> , 528 U.S. 562, 564 (2000).....	12, 13
U.S. Const. amend. XIV, § 1 .....	12, 13
<b>3. IP 426 violates the First Amendment.....</b>	<b>13</b>
<i>Autor v. Pritzker</i> , 740 F.3d 176 (D.C. Cir. 2014).....	14
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976).....	14
<i>In re Initiative Petition No. 420</i> , 2020 OK 9, __ P.3d __.....	14, 15
<i>In re Initiative Petition No. 406</i> , 2016 OK 3, 369 P.3d 1068.....	15
<i>In re Initiative Petition No. 396</i> , 2012 OK 67, 281 P.3d 1275.....	15
<i>In re Initiative Petition No. 395</i> , 2012 OK 42, 286 P.3d 637.....	15
<i>In re Initiative Petition No. 358</i> , 1994 OK 27, 870 P.2d 782.....	15
<i>Kusper v. Pontikes</i> , 414 U.S. 51 (1973).....	14
<i>Planned Parenthood v. Casey</i> , 505 U.S. 833 (1992).....	15
<i>Rutan v. Repub. Party</i> , 497 U.S. 62 (1990).....	14
<i>Threadgill v. Cross</i> , 1910 OK 165, 109 P. 558.....	15

U.S. Const. amend. I .....	13
34 Okla. Stat. § 8.....	15
2009 Okla. Sess. Laws Ch. 318, § 1 .....	15
<b>IV. CONCLUSION .....</b>	<b>15</b>

## I. INTRODUCTION

Initiative Petition 426, State Question 810 (“IP 426”), violates the U.S. Constitution and should be stricken from the ballot. First, IP 426 manipulates how prisoners are counted in violation of Article I, § 2 and the Equal Protection Clause of the U.S. Constitution. IP 426 singles out prisoners from all other “group quarters” residents, which the Census Bureau counts at the location where they actually reside. Instead of counting prisoners at the prison, it would count them at their previous address if they lived in Oklahoma and exclude them if they lived somewhere else. Prisons tend to be located in rural and generally more conservative areas. By counting prisoners differently from other “group quarters” residents, the proponents have selected a methodology with specific partisan consequences. It is also telling that other similarly situated “group quarters” residents, like college students, will continue to be counted in the liberal-leaning districts where they attend school. In other words, by choosing to “reallocate” prisoners, but not other people living in group quarters as counted by the Census, the proponents have selected a distinctly partisan methodology. This arbitrary and disparate population redistribution method violates Article I, § 2 and the Equal Protection Clause.

Second, IP 426’s eligibility restrictions for serving on the Redistricting Commission violate the Equal Protection Clause and the First Amendment. The prohibition on changing party affiliation is discriminatory and infringes on the fundamental right to associate with a political party and violates the Equal Protection Clause. Prohibiting potential Commissioners from changing political parties up to four years before redistricting begins is much longer than necessary to protect any compelling interest that the state may have.

IP 426’s disqualification of family members of elected officials, lobbyists, and even paid “consultants” of the Legislature also violates Equal Protection. It is wholly arbitrary and illegitimate to disqualify an individual whose spouse retired from the Legislature multiple

years before IP 426 was even filed. Such an applicant has no financial interest tied to redistricting, and any claim that they may be controlled by the political views of their spouse is nothing more than an outdated stereotype.

Finally, IP 426 is unconstitutional under the First Amendment of the U.S. Constitution. The state cannot make participation on the commission conditional based on a person's foregoing the right to political association. *Elrod v. Burns*, 427 U.S. 347, 357 (1976); *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 78 (1990). In this case, the infringement is particularly illogical because an Oklahoman would be prohibited from serving on the Commission even if, for example, that person's spouse, who belongs to a different political party, was a consultant to the Legislature on a non-politically sensitive matter four years ago.

## **II. SUMMARY OF THE RECORD**

The Summary of the Record including a description of what IP 426 does is set forth in § IV of the Application and Petition for this case.

## **III. ANALYSIS**

### **A. IP 426's arbitrary method for counting prisoners is unconstitutional.**

IP 426 is unconstitutional and should be stricken. Rather than apportioning by counting people at their "usual residence," which has been the Census Bureau's standard since 1790,<sup>1</sup> IP 426 would constitutionalize an arbitrary method for counting prisoners.

Historically, Oklahoma has apportioned congressional districts based on total population as determined by the Census. *See, e.g.*, 2011 Okla. Sess. Laws Ch. 194, § 2. IP 426 would distort Oklahoma's population numbers before the Redistricting Commission even began attempting to draw districts with population equality. The Commission must first

---

<sup>1</sup> 83 Fed. Reg. 5525, 5526 (Feb. 8, 2018), App. at Tab C.



“[g]ather information from the Department of Corrections about the home address of state and federal inmates.” IP 426, § 4(C)(2)(e). After the Census is published, “the Commission shall . . . [add the home address data] to the Federal Decennial Census data so that incarcerated people are counted in their home communities.” *Id.* § 4(C)(3)(a). This necessarily means that individuals whose address is outside of Oklahoma<sup>2</sup> will not be included in the population count.

IP 426 would manipulate the Census data to treat prisoners differently than any other subcategory of “group quarters” residents recognized by the Census Bureau. Other group quarters are college dormitories, military barracks, nursing homes, mental hospitals, group homes, missions, and shelters.<sup>3</sup> The Census Bureau’s rule is that people in these facilities are counted at the facilities.<sup>4</sup> Yet, IP 426 would arbitrarily change the rules solely for prisoners.

The proponents’ choice to count prisoners differently is partisan. Most of Oklahoma’s prisons are located in rural areas,<sup>5</sup> which are becoming more conservative as urban areas become more liberal.<sup>6</sup> Less than 20% of Oklahoma’s state and federal prison population is located in Oklahoma, Tulsa, Cleveland, and Payne County,<sup>7</sup> which is the Democrat party’s power base. Oklahoma’s sole Democrat in Congress is from the 5<sup>th</sup> Congressional District,

---

<sup>2</sup> Oklahoma’s federal prisons—FTC Oklahoma City and FCI El Reno—and private prisons like CI Great Plains hold prisoners from around the country. For instance, “in 2015, approximately 86,000 inmates passed through the Federal Transfer Center (FTC) in Oklahoma City, Oklahoma, on the way to their designated institutions across the country” with the facilitation holding up to 1,500 inmates at any one time. FTC Oklahoma City has One-of-a-Kind Mission, Federal Bureau of Prisons, App. Tab E. *See also* Silas Allen, Detroit’s ex-mayor begins his sentence in El Reno prison, *The Oklahoman*, Jan. 23, 2014, at 13A, App. Tab F.

<sup>3</sup> U.S. Census Bureau, Group Quarters/Residence Rules, <https://www.census.gov/topics/income-poverty/poverty/guidance/group-quarters.html> (last revised Mar. 20, 2018), App. Tab D.

<sup>4</sup> 83 Fed. Reg. at 5533-36, App. Tab C.

<sup>5</sup> Okla. Dep’t of Corrections, Incarcerated Inmates Daily Count Sheet (Feb. 18, 2020), App. Tab. G; Okla. Dep’t of Corrections, Facility and Community Locations (revised Jan. 2020), App. Tab H.

<sup>6</sup> Catherine Sweeney, Tulsa and OKC: Looks can be deceiving, *The Journal Record* (Nov. 9. 2018), App. Tab I (“Legislators, political scientists and campaign consultants are in a near-consensus: Oklahoma’s cities are getting more liberal while the rural areas get more conservative.”).

<sup>7</sup> App. Tab G, H, & W.

which is comprised mostly of Oklahoma County residents.<sup>8</sup> Every Democrat in the Oklahoma Senate has a district covering some portion of Oklahoma, Tulsa, or Cleveland County, and 86% of Democrat state house seats include Oklahoma, Tulsa, Cleveland, or Payne County.<sup>9</sup>

The proponents' choice to exclude out-of-state prisoners from the count, but not out-of-state college students, has partisan consequences. For example, the proponents would prefer that out of state prisoners not be counted at all rather than have them counted in the rural location they reside. Neither is it happenstance that the proponents of IP 426 want to count incarcerated Oklahomans anywhere but in the rural locations that they reside.

**1. The arbitrary prisoner counting method violates Article I, § 2 of the U.S. Constitution.**

For congressional redistricting, each district must “be apportioned to achieve population equality ‘as nearly as is practicable.’” *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964)). “[T]he ‘as nearly as practicable’ standard requires that the State make a good-faith effort to achieve precise mathematical equality.” *Id.* (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 530–31 (1969)).

It is unquestionably permissible to redistrict based on total population as determined by the Census. *Karcher*, 462 U.S. at 738. If a state bases congressional apportionment on some other standard such as eligible voter population, it must “ascertain the number of eligible voters in each district and . . . apportion accordingly.” *Kirkpatrick*, 394 U.S. at 534–35. If a state attempts to “correct” census data for a more accurate reflection of total population, it must be in “a good-faith effort to achieve population equality.” *Karcher*, 462 U.S. at 727. The deviations cannot be “haphazard, inconsistent, or conjectural . . . .” *Id.* at 732 n.4.

---

<sup>8</sup> 87% of the population in CD 5 live in Oklahoma County. 2011 Okla. Sess. Laws Ch. 194, § 2.

<sup>9</sup> Thomas Thoren, Mapping the 2020 Legislature, Oklahoma Watch (Jan. 31, 2020), App. Tab J, <https://oklahomawatch.org/2020/01/31/the-new-legislature-mapped/>.

In *Kirkpatrick*, Missouri attempted to justify a malapportioned map because “the percentage of eligible voters among the total population differed significantly from district to district—some districts contained disproportionately large numbers of military personnel stationed at bases maintained by the Armed Forces and students in attendance at universities or colleges.” 394 U.S. at 534. The U.S. Supreme Court rejected this justification because “Missouri made no attempt to ascertain the number of eligible voters in each district and to apportion accordingly.” *Id.* at 534–35. Rather Missouri had made “haphazard adjustments to a scheme based on total population,” which was not constitutionally permissible. *Id.* at 535.

In *Karcher*, the Supreme Court struck down New Jersey’s redistricting plan because it was “not the result of a good-faith effort to achieve population equality.” 462 U.S. at 727. New Jersey attempted to justify their unequal plan by highlighting the “statistical imprecision of the census.” *Id.* at 735. The Court rejected this argument noting that “census data provide[s] the only reliable—albeit less than perfect—indication of the districts’ ‘real’ relative population levels.” *Id.* at 738. If a state deviates from population equality, “the population deviations” must be “necessary to achieve some legitimate state objective.” *Id.* at 740. The deviations were not justified, and the plan was held unconstitutional.

Since *Kirkpatrick* and *Karcher*, courts have affirmed redistricting based on total population as determined by the Census, *Tennant v. Jefferson Cty. Comm'n*, 567 U.S. 758, 762 (2012), and have recognized states’ authority to count prisoners at their usual residence. *See Davidson v. City of Cranston, Rhode Island*, 837 F.3d 135, 146 (1st Cir. 2016) (equal protection case). Under the less restrictive standard applicable to state legislative redistricting, the U.S. Supreme Court summarily affirmed Hawaii’s redistricting plan that excluded both out-of-state military personnel and out-of-state college students for redistricting purposes only

after a “careful and comprehensive process free from any taint of arbitrariness or invidious discrimination against minority groups or the military.” *Kostick v. Nago*, 960 F. Supp. 2d 1074, 1095 (D. Haw. 2013), *aff’d*, 571 U.S. 1161 (2014). The Hawaii plan applied equally to these two politically diverse subcategories of group quarters residents, and there is no evidence Hawaii was picking and choosing groups to exclude.<sup>10</sup>

Conversely, the Supreme Court summarily affirmed a Maryland district court case in which the state manipulated only the prisoner population count by excluding out-of-state prisoners and reassigning in-state prisoners to the last address. *Fletcher v. Lamone*, 831 F. Supp. 2d 887, 896 (D. Md. 2011), *aff’d*, 567 U.S. 930 (2012). It is not surprising that the Supreme Court affirmed the district court judgment with the 2012 election approaching because the prison population adjustments did not “exceed 1% of a district’s population.” *Id.* at 893. However, there is no basis to conclude the Court was approving the district court’s unpersuasive reasoning or unnecessarily ruling on Maryland’s flawed prisoner reallocation statute. The reasoning in *Fletcher* is inconsistent with *Kirkpatrick* and *Karcher*,<sup>11</sup> and the district court’s refusal to require the state to justify its deviation from population equality is inconsistent with the Supreme Court’s subsequent decision in *Tennant*. If the Court had

---

<sup>10</sup> Hawaii did not attempt to exclude out-of-state prisoners “because it does not import prisoners from elsewhere . . . .” *Kostick*, 960 F. Supp. 2d at 1094 n.14.

<sup>11</sup> The *Fletcher* court’s reasoning directly conflicts with *Kirkpatrick* and *Karcher*. *First*, the district court admitted that “Maryland might come closer to its goal of producing accurate data if it assigned college students or active duty military personnel to their permanent home addresses for purposes of redistricting.” *Fletcher*, 831 F. Supp. 2d at 896. Yet, without any authority, the court summarily concluded that is not what is required by Article I, § 2. This is directly contrary to *Karcher*’s mandate that any corrections to Census data must be “consistent” and “systematic,” 462 U.S. at 732 n.4, and that any criteria a state considers in redistricting must be “nondiscriminatory.” *Id.* at 740. *Second*, the *Fletcher* court failed to shift the burden to Maryland to “show with some specificity” that the population deviations from prisoner residence manipulation was to achieve a legitimate objective like compact districts or respecting political boundaries. *Id.* at 740, 741. Singling out one subcategory of group quarters residents does not further any legitimate state interest recognized by the Court.

intended to upend *Kirkpatrick* and *Karcher*, it would not have done so in a summary affirmance.<sup>12</sup>

IP 426 should be stricken from the ballot as unconstitutional for the same reasons recognized in *Kirkpatrick*, *Karcher*, and *Kostick*. IP 426 goes beyond any acceptable discretion a state has in drawing congressional districts. First, IP 426 cannot be classified as a good faith attempt to apportion based on the eligible voter population. *See Kirkpatrick, supra*. If IP 426 was making a systematic effort to draw districts with a similar number of eligible voters, it would eliminate all non-residents from the population count, not just prisoners. The proponents made no attempt to eliminate for reapportionment purposes the more than 20,000 college students paying out-of-state tuition in Oklahoma<sup>13</sup> or the more than 80,000 undocumented non-citizens that are estimated to be residing in Oklahoma.<sup>14</sup>

Second, IP 426 cannot be justified as a systematic effort to account for those undercounted by the Census as recognized by the *Karcher* court. 462 U.S. at 732 n.4. We are unaware of any argument that the Census undercounts prisoners. It merely counts prisoners at a place other than where the proponents prefer.

Third, redistributing prisoners to their last known residence has nothing to do with

---

<sup>12</sup> The summary affirmance of *Fletcher* does not bind this Court in this case. “[T]he precedential weight of that summary disposition [by the U.S. Supreme Court] is confined to the narrowest possible grounds.” *Turpen v. Oklahoma Corp. Comm’n*, 1988 OK 126, ¶ 8, 769 P.2d 1309, 1315. “[A] summary affirmance is an affirmance of the judgment only.” *Id.* (quoting *Mandel v. Bradley*, 432 U.S. 173, 176 (1977)). The judgement in *Fletcher* was that Maryland’s plan was constitutional. It is not surprising the Supreme Court affirmed this judgment since the prisoner residence adjustments did not “exceed 1% of a district’s population.” *Fletcher*, 831 F. Supp. 2d at 893. The affirmance should not be construed as endorsing the district court’s reasoning, *Mandel*, 432 U.S. at 176, especially in light of its conflict with *Karcher*. *See supra*. n.11. The Supreme Court’s decisions since *Fletcher* have further undercut its reasoning. In *Tennant*, 567 U.S. at 760, the Court reiterated that the state’s burden to justify a legitimate state interest for deviating from population equality, which *Fletcher* district court ignored since no justifiable interest existed. The Supreme Court also summarily affirmed a district court decision in *Kostick*, which is directly opposed to *Fletcher* as discussed above.

<sup>13</sup> Racey Burden, Out-of-State Students, by College, Oklahoma Watch (July 3, 2014), App. Tab K.

<sup>14</sup> Profile of the Unauthorized Population: Oklahoma, Migration Policy Institute, App. Tab L.

achieving population equality, which is the standard set in *Karcher*. Under IP 426, the populations of districts will necessarily be unequal because some districts will be allotted prisoner residents who do not actually live there. While excluding prisoners from the formula may theoretically help achieve voter equality on a district by district basis, arbitrarily reassigning prisoners does not further the goal of population equality without similarly accounting for other groups of ineligible voters.

Fourth, this is not a consistent, systematic, good faith effort to correct census data. Even if a state could redistribute group quarters residents consistent with Article I, § 2, the Supreme Court has made clear that it cannot be done in a “haphazard, inconsistent, or conjectural manner.” *Karcher*, 462 U.S. at 732 n.4. Singling out prisoners from all other group quarters residents is not “systematic” and consistent. It is, however, politically expedient. Recalculating prisoners will reduce numbers in rural districts, while college students will continue to be counted in liberal leaning districts. “[U]nless some systematic effort is made to correct the distortions inherent in census counts of total population, deviations from the norm of population equality are far more likely to exacerbate the differences between districts.” *Id.*

## **2. The arbitrary counting of prisoners also violates the Equal Protection Clause.**

IP 426’s arbitrary method of counting prisoners violates the Equal Protection Clause when applied to redistricting the state legislature. “States must draw congressional districts with populations as close to perfect equality as possible. But, when drawing state and local legislative districts, jurisdictions are permitted to deviate somewhat from perfect population equality to accommodate traditional districting objectives, among them, preserving the integrity of political subdivisions, maintaining communities of interest, and creating geographic compactness.” *Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 (2016). With this leeway,

the Supreme Court has recognized the right to exclude certain non-residents including prisoners for apportionment of the state legislature. *Id.* at 1124; *Burns v. Richardson*, 384 U.S. 73, 92 (1966). However, it expressly prohibited a scheme assigning people to districts “in which they admittedly did not reside.” *Mahan v. Howell*, 410 U.S. 315, 332 (1973). States must use a comprehensive, nondiscriminatory process to analyze similarly situated groups if groups are going to be eliminated from the Census count. *Kostick*, 960 F. Supp. 2d at 1095. IP 426 not only assigns prisoners to the district in which they do not reside, it singles out one subcategory of group quarters residents to count differently for political purposes. This exceeds the discretion allowed to states under the Equal Protection Clause.

IP 426’s political maneuvering is apparent after looking at Oklahoma’s current State House and State Senate maps. *See* App. Tab J. Less than 20% of the state’s prison population is included in districts represented by Democrats.<sup>15</sup> Conversely, Democrats in the House represent districts that include the University of Oklahoma, Oklahoma State University, and the University of Tulsa.<sup>16</sup> The Census Bureau treats prisons and college housing the same, but IP 426 chose to redistribute the prisoner population but not the college student population. Neither does IP 426 attempt to redistribute the populations living in nursing homes and mental health facilities, which are dispersed throughout the state, nor does it attempt to account for the non-voting non-citizen population (documented or undocumented). For the same reasons IP 426 is unconstitutional when applied to congressional districts, it violates the Equal Protection Clause when applied to redistricting the State Legislature.

---

<sup>15</sup> App. Tab G, H, J, W. *See also* District Maps and Reports, Oklahoma State Legislature, <https://www.okhouse.gov/Publications/GISDistrictMapsReports.aspx>.

<sup>16</sup> Notably, all three of the Democrats’ non-metro seats include major universities and colleges: Northeastern State University in Tahlequah, University of Science and Arts of Oklahoma in Chickasha, and Northeastern Oklahoma A&M College in Miami. App. Tab J.

**B. IP 426's restrictions on who can be a Commissioner are unconstitutional.**

**1. Party affiliation restrictions violate the Equal Protection Clause.**

IP 426 discriminates against individuals who exercise their fundamental right to be affiliated with a political party. Under the Equal Protection Clause, strict scrutiny applies when a “classification impermissibly interferes with the exercise of a fundamental right, such as . . . rights guaranteed by the First Amendment . . . .” *Hendricks v. Jones*, 2013 OK 71, ¶ 9, 349 P.3d 531, 534; *Autor v. Pritzker*, 740 F.3d 176, 184 (D.C. Cir. 2014). Under strict scrutiny, the enactment must be narrowly tailored and support a compelling government interest. *Bush v. Vera*, 517 U.S. 952, 976 (1996).

IP 426 interferes with the exercise of fundamental, First Amendment rights. “The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization. . . . ‘The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom.’” *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 214 (1986). IP 426 interferes with this right by disqualifying Commission applicants who change their political affiliation “in the four years immediately preceding the date of appointment to the Commission or the date the initiative petition proposing this Article was filed, whichever period is shorter . . . .” IP 426, § 4(B)(2)(a).

This restriction cannot pass heightened scrutiny. There is no compelling state interest to restrict potential Commissioners from changing party affiliation. IP 426 precludes Commissioners from considering the political affiliation or voting history of the population of a district, IP 426, § 4(D)(2)(b), so the Commissioners' political affiliation should not matter.

Even if the state could have a compelling interest, the proponents' prohibition is much broader than necessary to achieve any compelling state interest. The sheer amount of time that switching political parties is prohibited for someone wishing to sit on the Commission is



unreasonable and cannot be defined as narrowly tailored. Petitioners and everyone else similarly situated cannot serve on the Commission because they exercised their First Amendment rights approximately one year before Commissioners will be appointed for the 2021 redistricting cycle, and four years before Commissioners are appointed in future years. IP 426, § 4(B)(4)(g) & § 4(B)(2)(a). This is far beyond any necessary temporal limitation. For instance, a candidate for political office must be a member of a political party for only six months before seeking its nomination for elective office. 26 O.S. § 5-105(A). If candidates for political office can switch parties up to six months before the filing period, there is no way that the 1 to 4 year restriction imposed by IP 426 can be deemed “narrowly tailored.”

Moreover, when strict scrutiny applies, the burden is on the government to prove the enactment is necessary. *Johnson v. California*, 543 U.S. 499, 505 (2005). It is much more likely that individuals will change their party years before the redistricting process begins because they wish to be affiliated with a different party, rather than to apply to fill one of three seats on the Commission designated for their new party instead of their old party. The protestants in this case knew of the unconstitutional limitation IP 426 sought to impose when changing their party affiliation, but virtually all who are similarly situated would not have known. IP 426 was filed on February 6, 2019, the deadline to switch parties to vote in the Presidential Preference Primary was February 7, and notice of the petition was not published until February 13. The Democratic presidential primary will be hotly contested in Oklahoma,<sup>17</sup> and candidates have been actively campaigning in the state.<sup>18</sup> The state cannot have a compelling interest in precluding individuals who changed parties to vote in the presidential

---

<sup>17</sup> Ryan Welton, Presidential Poll Shows Surprise, Perhaps Indecision Atop Democratic Field In Oklahoma, Newson6.com (Feb. 24, 2020), <https://www.newson6.com/story/41809481/presidential-poll-shows-surprise-perhaps-indecision-atop-democratic-field-in-oklahoma>.

<sup>18</sup> Klobuchar pitches plans over ‘pipe dreams’, The Oklahoman, Feb. 25, 2020, at A1, App. Tab M.

primary, or for any other reason, more than a year before Commissioners will be appointed.

Finally, there are less restrictive measures to facilitate any state interest in preventing someone from switching parties to become eligible for a different party-designated seat on the Commission. For instances, the state's interests would be preserved if those switching parties shortly before a redistricting cycle were eligible only for positions designated for their former party. This would alleviate any concerns about affiliation changes disrupting ideological balance. There is nothing that should be disqualifying about the act of switching parties. In fact, if the goal is to reduce partisan gerrymandering, it seems logical that someone willing to switch parties may be well-suited for the role of a Commissioner.

**2. IP 426's prohibition on the family members of former elected official violates Equal Protection.**

IP 426 would prohibit family members of former elected officials (who retired before this petition was even proposed) from serving on the Commission. This is arbitrary, irrational, and violates the Equal Protection Clause. "[T]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination . . . ." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). Under rational basis scrutiny, a classification must "rationally further a legitimate state interest." *Hendricks*, 2013 OK 71, ¶ 9, 349 P.3d 531, 534. When there is no rational basis for differences in treatment of similarly situated individuals, a law cannot pass constitutional muster. *Id.* ¶ 16; *Vill. of Willowbrook*, 528 U.S. at 564.

While it is logical that the state may wish to preclude current state legislators and lobbyists from being Commissioners, it defies logic that the spouse of a retired Legislator who has no financial interest in how the Legislature is apportioned can be rationally precluded from serving on the Commission. Petitioner Newberry is qualified in every respect to serve on the

Commission except that her husband retired from the state senate two years before IP 426 was even filed.<sup>19</sup> There is no discernable conflict of interest that would preclude Newberry from complying with the standards for drawing districts set forth in IP 426. Newberry has no financial incentives precluding her from correctly applying the law. Neither she nor her husband currently derive any income from the Legislature or lobbying the Legislature.

It is wholly illegitimate to claim that Mr. Newberry's former service to the state can impute the appearance of disinterestedness or impropriety on Ms. Newberry. Presuming that a wife is bound by her spouse's political view or interests or could be controlled by her spouse is an outdated gender stereotype that should be summarily rejected. *Cf. Obergefell v. Hodges*, 135 S. Ct. 2584, 2604 (2015). Further, if Ms. Newberry was not married to Mr. Newberry or was divorced there would be nothing precluding her service, which itself demonstrates an Equal Protection violation. *See Eisenstadt v. Baird*, 405 U.S. 438, 454 (1972) (holding that "dissimilar treatment for married and unmarried persons who are similarly situated" violates the Equal Protection Clause).

Precluding Ms. Newberry and others who are similarly situated from serving on the Commission is wholly arbitrary and cannot be said to be rationally related to a legitimate state purpose. From today until a Commission is seated, Ms. Newberry is disqualified from serving on the Commission. The constitutional injury is ripe, and she undoubtedly has standing to raise this challenge. The Court should strike down IP 426 under the Equal Protection Clause.

### **3. IP 426 violates the First Amendment.**

IP 426, § 4(B)(2)'s exclusion of individuals from serving as a Commissioner solely because of their protected First Amendment activities—or their blood or marital status with

---

<sup>19</sup> Resignation Letter of Sen. Dan Newberry (June 6, 2017), App. Tab N; Tulsa state Sen. Dan Newberry resigning to take senior management position at TTCU, Tulsa World (06/06/2017), App. Tab O.

someone exercising those rights—is an unconstitutional condition of employment and denial of government benefit. *Elrod*, 427 U.S. at 372; *Rutan v. Republican Party of Illinois*, 497 U.S. at 78–79; *Autor*, 740 F.3d at 183; *see also Kuser v. Pontikes*, 414 U.S. 51, 56-57 (1973).

In *In re Initiative Petition No. 420*, 2020 OK 9, \_\_\_ P.3d \_\_\_, Petitioners raised the same argument, but this Court declined to reach the merits of the First Amendment claim. Petitioners’ incorporate its arguments from *In re Initiative Petition No. 420* by reference, see App. at Tab P, and asks the Court not to defer in this case.

First, the protestants have addressed the Courts concerns that it would be addressing abstract legal issues. Two protestants—Mr. McCormick and Ms. Davey —changed their voter registration and are prohibited from serving as Commissioners.<sup>20</sup> This is not a hypothetical; they are now disqualified from serving as Commissioners. Similarly, protestant Laura Newberry is now disqualified from serving as a Commissioner because her spouse retired from the state senate two years before this petition was filed. Her injury is not abstract.

Second, the proponents have not solved the retroactivity problem specified by the Court in footnote 17 of *In re Initiative Petition No. 420*, 2020 OK 9. IP 420 disqualified anyone from serving as a Commissioner who had changed their party affiliation, served as an elected official, or lobbied the Legislature years before IP 420 was filed. In IP 426, the proponents chose to do nothing about the retroactivity problem for elected officials, lobbyists, paid consultants, and their family members, and their remedy for those who changed party affiliation is also deficient. For the 2020 redistricting cycle, IP 426 disqualifies those who changed their party affiliation any time after IP 426 was filed. Thus, IP 426 still bars individuals who changed parties between the filing of the petition and the publication of notice on February 13. It is likely that a sizable number of voters switched parties during this period to meet the

---

<sup>20</sup> Voter Registration of McCormick, App. Tab Q; Voter Registration of Robinson Davey, App. Tab R.

February 7 to vote in the contested Democratic presidential primary. Since the proponents did not remedy the retroactivity problem, the Court should rule in this case.

Third, IP 426's overbreadth is demonstrated by new provisions added to IP 426 after IP 420 was stricken. IP 426 disqualified "paid consultant" of the Legislature in the past 5 years from serving as a Commissioner. § 4(B)(2)(f). This is clearly overbroad. For example, people working on the Capitol restoration project would be disqualified without reason.

Fourth, the Court should take up the federal constitutional challenges here not only because these protestants present concrete and ripe issues, but also because the Legislative specifically provided for such challenges. In 2009, 34 O.S. § 8(B) to add language that during the pre-circulation phase a citizen "may file a protest as to the constitutionality of the petition." 2009 Okla. Sess. Laws Ch. 318, § 1. Since 2009, the Court has taken up federal constitutional issues on multiple occasions.<sup>21</sup> Under *Threadgill v. Cross*, 1910 OK 165, 109 P. 558, the Supreme Court declined to take up constitutional challenges to initiative petitions. Over time, however, the Court recognized the need to take up clear and manifest constitutional infirmities. *In re Initiative Petition No. 358*, 1994 OK 27, ¶ 7, 870 P.2d 782 (citations omitted). The protestants ask the Court to take up the federal constitutional challenges pursuant to 34 O.S. § 8(B) or because IP 426 has clear and manifest constitutional infirmities. When a protestant, as in this case, can show that a petition will create a concrete injury immediately upon enactment, the Court should resolve the constitutional challenge expressly authorized by 34 O.S. § 8.

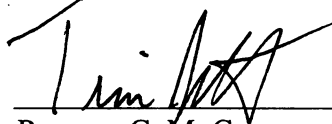
#### IV. CONCLUSION

For these reasons, Petitioners respectfully request the Court find IP 426 to be unconstitutional and order that it be stricken.

---

<sup>21</sup> E.g. *In re Initiative Petition No. 406*, 2016 OK 3, ¶ 3, 369 P.3d 1068 (Petition was unconstitutional under *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)); *In re Initiative Petition No. 396*, 2012 OK 67, ¶ 3, 281 P.3d 1275 (Petition did not violate federal Equal Protection Clause); *In re Initiative Petition No. 395*, 2012 OK 42, ¶ 1, 286 P.3d 637 (Petition was unconstitutional under *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)).

Respectfully submitted,



---

ROBERT G. MCCAMPBELL, OBA No. 10390

TRAVIS V. JETT, OBA No. 30601

GABLEGOTWALS

One Leadership Square, 15th Floor

211 North Robinson Avenue

Oklahoma City, OK 73102

Telephone: (405) 235-5500

[RMcCampbell@Gablelaw.com](mailto:RMcCampbell@Gablelaw.com)

[TJett@Gablelaw.com](mailto:TJett@Gablelaw.com)

*Attorneys for Protestants/Petitioners*

*Marc McCormick, Laura Newberry,*

*Roger Gaddis, and Claire Robinson Davey*

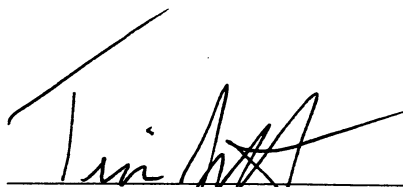
### CERTIFICATE OF SERVICE

I hereby certify that on this 28<sup>th</sup> day of February, 2020, a true and correct copy of the above and forgoing was served by hand delivery as follows:

D. Kent Meyers  
Roger A. Stong  
Melanie Wilson Rughani  
CROWE & DUNLEVY, P.C.  
324 N. Robinson Ave., Suite 100  
Oklahoma City, OK 73102

Secretary of State's Office  
State of Oklahoma  
2300 N. Lincoln Blvd.  
Suite 101  
Oklahoma City, OK 73105-4897

Attorney General's Office  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105-4897



---

Robert G. McCampbell

Travis V. Jett

IN THE SUPREME COURT OF THE STATE

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

FEB 28 2020

JOHN D. HADDEN  
CLERK

#118685

Case No. \_\_\_\_\_

#118686

(1) ELDON MERKLIN, AND  
(2) CLAIRE ROBINSON DAVEY,  
PROTESTANTS/PETITIONERS,

v.

(1) JANET ANN LARGENT,  
(2) ANDREW MOORE, AND  
(3) LYNDA JOHNSON,  
RESPONDENTS/PROONENTS.

---

**APPLICATION AND PETITION TO  
ASSUME ORIGINAL JURISDICTION AND REVIEW  
THE GIST OF INITIATIVE PETITION NO. 426**

---

ROBERT G. McCAMPBELL, OBA No. 10390  
TRAVIS V. JETT, OBA No. 30601  
GABLEGOTWALS  
ONE LEADERSHIP SQUARE, 15TH FLOOR  
211 NORTH ROBINSON AVENUE  
OKLAHOMA CITY, OK 73102  
TELEPHONE: (405) 235-5500

*ATTORNEYS FOR PROTESTANTS/PETITIONERS*

**FEBRUARY 28, 2020**

## I. INTRODUCTION

Initiative Petition 426, State Question 810 (“IP 426”) should be stricken by this Court because the gist is insufficient as a matter of law. IP 426 asks state voters to approve a plan to repeal the current constitutional system in which elected legislators reapportion districts for federal and state electoral districts and replace it with a system in which an unelected Commission.

The gist has three fatal defects. *First*, the gist is affirmatively inaccurate. The *gist* says that the Panel of retired judges and justices will be “designated by the Chief Justice.” However, the *Petition* reveals that the Panel will actually be “selected by random drawing.” A comparison of the gist with the Petition reveals the conflict.

### GIST

**[A] panel of retired judges and justices designated by the Chief Justice of the Oklahoma Supreme Court will choose pools of approximately 20 applicants from each group, then randomly select 3 Commissioners from each pool.**

### IP 426 § 4(B)(4)(b)

The Panel shall consist of three Judges or Justices who have retired from the Oklahoma Supreme Court or the Oklahoma Court of Criminal Appeals or the Oklahoma Court of Civil Appeals, and who are able and willing to serve on **the Panel, selected by random drawing.**

In the previous petition filed by these proponents (No. 420), this Court found that saying the Panel will be “designated by the Chief Justice” and saying the Panel will be “selected by random drawing” are “inconsistent.” *In re Initiative Petition 420*, 2020 OK 10, ¶ 7. This Court should not retreat from that finding.

*Second*, the gist fails to mention that instead of operating by majority vote, the Commission is subject to two super majority requirements. The Commission can approve a plan only if (a) six of the nine Commissioners approves and (b) only if at least one commissioner from each group (largest party, second largest party, and those unaffiliated with



either of those parties) approves. IP 426, § 4(E)(1). These two super majority requirements not only impact the operation of the Commission, but significantly increase the likelihood that the Commission will not be able to enact a plan and that the redistricting plan will actually be enacted by the Supreme Court as provided in the "fallback mechanism." IP 426, § 4(F). Nevertheless, the gist provides no information of any type regarding the super majority requirements. A voter asked the sign the petition deserves some notice of the super majority requirements in order to be able to make an informed decision.

*Third*, the gist recites a list criteria which will be considered in redistricting. IP 426, § 4(D). While many of them are self explanatory, such as "minimize the division of communities of interest," IP 426, § 4(D)(C), one is particularly opaque. The gist says at § 4(D)(1)(C)(iii) the Commission shall seek to maximize "political fairness," but provides no information to the voter about what "political fairness" might mean or how that is to be assessed. There is more than one understanding of fairness with respect to redistricting. See *Rucho v. Common Cause*, \_\_\_ U.S. \_\_\_, 139 S.Ct. 2484, 2499 (2019) (“[I]t is not even clear what fairness looks like in this context.”). Indeed, as explained by the *Rucho* court, some of the most discussed versions of "fairness" are contradictory to each other. A voter asked to sign the petition deserves some disclosure of what "political fairness" means in IP 426.

## II. THE PARTIES

1. Protestant/Petitioner Eldon Merklin is a citizen of Oklahoma. He has been a resident of Woodward County for over twenty years and registered to vote for over twenty years.

2. Protestant/Petitioner Claire Robinson Davey is a citizen of Oklahoma. She has been a resident of Oklahoma County and registered to vote in Oklahoma County for over nine years.

3. Respondent/Proponent Andrew Moore is one of the proponents to IP 426.

4. Respondent/Proponent Janet Ann Largent is one of the proponents to IP 426.
5. Respondent/Proponent Lynda Johnson is one of the proponents to IP 426.

### III. JURISDICTION

6. IP 426 was filed with the Oklahoma Secretary of State on February 6, 2020. Appx. at Tab A.

7. Pursuant to 34 O.S. § 8, the Secretary of State published notice of IP 426 on February 13, 2020. Appx. at Tab B.

8. A protest is due 10 business days after notice is published. 34 O.S. § 8(B). Saturdays, Sundays, and legal holidays are excluded. *In re Initiative Petition 397*, 2014 OK 23, ¶ 19, 326 P.3d 496. February 17 is President’s Day, a legal holiday. 25 O.S. § 82.1. The tenth business day after the notice was published is Friday, February 28, 2020.

9. The Protestants/Petitioners are citizens of Oklahoma and this Court has jurisdiction to hear this protest. 34 O.S. § 8. “Any citizen can protest the sufficiency and legality of an initiative petition.” *In re Initiative Petition 409*, 2016 OK 51, ¶ 2, 376 P.3d 250 (*quoting In re Initiative Petition 384*, 2007 OK 48, ¶ 2, 164 P.3d 125).

10. “When a protest is filed in this Court, we are ‘vested with original jurisdiction to evaluate and determine the sufficiency of the proposed initiative petition pursuant to 34 O.S. Supp. 2015 § 8.’” *In re Initiative Petition 409, supra*, 2016 OK 51 at ¶ 2 (*quoting In re Initiative Petition 403*, 2016 OK 1, ¶ 3, 367 P.3d 472). Pursuant to Rule 1.194 of this Court, a challenge to an initiative petition shall be treated as an original action in this Court.

### IV. INITIATIVE PETITION 426

11. IP 426 would enact a constitutional amendment to change the procedure for drawing legislative districts for U.S. House of Representatives, Oklahoma House of Representatives and Oklahoma Senate and the substantive criteria to be considered in redistricting.

12. IP 426 would create a new Commission to control redistricting. First, a “Panel” of three retired Justices or Judges of the Court of Criminal Appeals or Court of Civil Appeals and would be selected either by the Chief Justice (according to the gist) or by random selection (according to the Petition). The Panel members are the only people who can exercise any discretion over who is selected to serve as a Redistricting Commissioner. IP 426, § 4(B)(4)(f). The Panel members would oversee the creation of The Commission.

13. The Commission would be made up of three “Groups”: (a) the largest political party, (b) the second largest party, and (c) those unaffiliated with either of the two largest parties. IP 426, § 4(B)(1). From those who apply to be a Commissioner, the Panel can exercise virtually unfettered discretion in deciding who to eliminate to get to 20 finalists in each Group. IP 426, § 4(B)(4)(e) and (f). The Commissioners are randomly selected from the 20 finalists in each Group that were not eliminated by the Panel. IP 426, § 4(B)(4)(g).

## V. SUBSTANTIVE ISSUES

14. There are three fatal deficiencies in the gist.

15. *First*, the gist is factually inaccurate. The gist says the Panel is “designated by the Chief Justice,” but the petition itself shows that the Panel is “selected by random drawing.” This is a significant difference.

16. The proponents of this petition previously filed Initiative Petition 420 which was a very similar petition. This Court addressed the gist of IP 420 in *In re Initiative Petition 420*, 2020 OK 10. In that case, the issue of how the Panel would be selected was litigated, and this Court found there is an inconsistency between saying the Panel is designated by the Chief Justice and saying the Panel is selected randomly. *Id.* at ¶ 7. Consistent with that ruling, the Court should again rule that those terms are inconsistent.

17. The *second* fatal deficiency in the gist is that it fails to make any mention of the super majority requirements governing the Commission.

18. The Commission will not operate like an ordinary government body where the majority of votes controls. Instead the Commission is subject to two special requirements:

- The Commission can act only if six of the nine Commissioners vote in favor. IP 426, § 4(E)(1).
- The Commission can act only with the approval of at least one Commissioner from each of the three Groups IP 426, § 4(E)(1).

These two super majority requirements make it very difficult for the Commission to take action and materially increase the likelihood that the decision on the redistricting plan will end up with this Court, pursuant to the fallback mechanism pursuant to IP 426, § 4(F).

19. The *third* fatal deficiency in the gist is that it omits any explanation of what “political fairness” means even though the Commission is required to “maximize” it. IP 426, § 4(D)(1)(c).

20. IP 426 sets forth substantive standards to be used when the district lines are redrawn. Although many of these are criteria which are ordinarily applied, such as respecting political subdivision boundaries, the biggest substantive change to be made is that the Commission will draw lines to achieve "political fairness." Although this is the most important change to the substantive criteria, the gist provides no information at all about what "political fairness" might mean. It is a particularly noteworthy omission since "fairness" has different and inconsistent meanings in redistricting. As noted in *Rucho v. Common Cause*, *supra*, 139 S.Ct. at 2499, “fairness” defined as a greater number of competitive districts and “fairness” defined as electing a number of legislators which is proportional to a political party’s statewide support are inconsistent goals.

21. Most importantly, the proponents can select any version of “political fairness” they want. The protestants ask only that the gist include some sort of information of what “political fairness” means so a voter can make an informed decision whether to sign the petition.

## VI. CONCLUSION

A gist “should be sufficient that the signatories are at least put on notice of the changes being made . . . .” *In re Initiative Petition 409*, 2016 OK 51, ¶ 3. That is the request of Protestants here.

With respect to all of these issues, IP 426 would make historic, fundamental changes to our Constitution. On each of these issues, there will be a difference of opinion among Oklahoma voters. Protestants do not argue that language needs to be included advocating their position on the issues. Instead, the argument here is merely that a potential signatory is entitled to notice of the fundamental changes contained in the petition.

Because the gist is deficient, this Court must dismiss the Petition. “The gist is not subject to amendment by this Court, and as a result, the only remedy is to strike the petition from the ballot.” *In re Initiative Petition 420*, 2020 OK 10, ¶ 11.

Respectfully submitted,



---

ROBERT G. MCCAMPBELL, OBA No. 10390

TRAVIS V. JETT, OBA No. 30601

GABLEGOTWALS

One Leadership Square, 15th Floor

211 North Robinson Avenue

Oklahoma City, OK 73102

Telephone: (405) 235-5500

[RMcCampbell@Gablelaw.com](mailto:RMcCampbell@Gablelaw.com)

[TJett@Gablelaw.com](mailto:TJett@Gablelaw.com)

*Attorneys for Protestants/Petitioners*

*Eldon Merklin and Claire Robinson Davey*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of February 2020, a true and correct copy of the above and forgoing was served by hand delivery as follows:

D. Kent Meyers  
Roger A. Stong  
Melanie Wilson Rughani  
CROWE & DUNLEVY, P.C.  
324 N. Robinson Ave., Suite 100  
Oklahoma City, OK 73102

Secretary of State's Office  
State of Oklahoma  
2300 N. Lincoln Blvd.  
Suite 101  
Oklahoma City, OK 73105-4897

Attorney General's Office  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105-4897



---

Robert G. McCampbell  
Travis V. Jett

S536201

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FEB 28 2020

JOHN D. HADDEN  
CLERK

(1) ELDON MERKLIN, AND  
(2) CLAIRE ROBINSON DAVEY,  
  
PROTESTANTS/PETITIONERS,

v.

(1) JANET ANN LARGENT,  
(2) ANDREW MOORE, AND  
(3) LYNDA JOHNSON,

RESPONDENTS/PROponents.

#118686

Case No. \_\_\_\_\_

---

**BRIEF IN SUPPORT OF APPLICATION AND PETITION TO  
ASSUME ORIGINAL JURISDICTION AND REVIEW THE  
GIST OF INITIATIVE PETITION NO. 426**

---

ROBERT G. McCAMPBELL, OBA No. 10390  
TRAVIS V. JETT, OBA No. 30601  
GABLEGOTWALS  
ONE LEADERSHIP SQUARE, 15TH FLOOR  
211 NORTH ROBINSON AVENUE  
OKLAHOMA CITY, OK 73102  
TELEPHONE: (405) 235-5500

*ATTORNEYS FOR PROTESTANTS/PETITIONERS*

**FEBRUARY 28, 2020**

**INDEX**

**I. INTRODUCTION**..... 1

*Rucho v. Common Cause*,  
139 S.Ct. 2484, 204 L.Ed.2d 931..... 1

Initiative Petition 426, State Question 810 ..... *passim*

**II. SUMMARY OF THE RECORD**.....2

Initiative Petition 426, State Question 810 ..... *passim*

**III. ARGUMENT AND AUTHORITY** .....3

**A. THE ANALYSIS OF A GIST** .....3

*In re Initiative Petition No. 409*,  
2016 OK 51, 376 P.3d 250.....3

*In re Initiative Petition No. 420*,  
2020 OK 10, .....3

*Oklahoma’s Children v. Coburn*,  
2018 OK 55, 421 P.3d 867.....3

**B. THE GIST IS AFFIRMATIVELY INACCURATE** .....4

**1. The Inaccuracy**.....4

*In re Initiative Petition No. 409*,  
2016 OK 51, 376 P.3d 250.....5

*In re Initiative Petition No. 420*,  
2020 OK 10, .....4, 5

Initiative Petition 426, State Question 810 ..... *passim*

**2. Legal Significance of the Inaccuracy**.....6

*In re Initiative Petition No. 344*,  
1990 OK 75, 797 P.2d 326.....6

*In re Initiative Petition No. 384*,  
2007 OK 48, 164 P.3d 125.....6



<i>In re Initiative Petition No. 409,</i> 2016 OK 51, 376 P.3d 250.....	6
<i>Oklahoma’s Children v. Coburn,</i> 2018 OK 55, 421 P.3d 867.....	6
Initiative Petition 426, State Question 810 .....	<i>passim</i>
<b>3. The Previous Case.....</b>	<b>8</b>
<i>In re Initiative Petition No. 420,</i> 2020 OK 10, .....	7, 8
Initiative Petition 426, State Question 810 .....	<i>passim</i>
<b>4. Case Law.....</b>	<b>8</b>
<i>McDonald v. Thompson,</i> 2018 OK 25, 414 P.3d 367.....	8
<i>Oklahoma’s Children v. Coburn,</i> 2018 OK 55, 421 P.3d 867.....	8
<i>State ex rel. Voters First v. Ohio Ballot Bd.,</i> 133 Ohio St. 3d 257, 978 N.E.2d 119.....	8
<b>5. Conclusion .....</b>	<b>8</b>
<b>C. THE GIST OMITTS ANY EXPLANATION OF THE SUPERMAJORITY REQUIREMENTS FOR THE COMMISSION .....</b>	<b>9</b>
<i>In re Initiative Petition No. 344,</i> 1990 OK 75, 797 P.2d 326.....	9
<i>In re Initiative Petition No. 384,</i> 2007 OK 48, 164 P.3d 125.....	9
<i>In re Initiative Petition No. 420,</i> 2020 OK 10, .....	10
<i>Oklahoma’s Children v. Coburn,</i> 2018 OK 55, 421 P.3d 867.....	11
Initiative Petition 426, State Question 810 .....	<i>passim</i>

<b>D.</b>	<b>NO DISCLOSURE REGARDING “POLITICAL FAIRNESS”</b> .....	11
	<i>Davis v. Bandemer</i> , 478 U.S. 109, 106 S.Ct. 2797, 92 L.Ed.2d 85 (1986).....	12
	<i>Gaffney v. Cummings</i> , 412 U.S. 735 (1973).....	12
	<i>In re Initiative Petition No. 363</i> , 1996 OK 122, .....	14
	<i>In re Initiative Petition No. 384</i> , 2007 OK 48, 164 P.3d 125.....	14
	<i>In re Initiative Petition No. 420</i> , 2020 OK 10, .....	13
	<i>Oklahoma’s Children v. Coburn</i> , 2018 OK 55, 421 P.3d 867.....	11
	<i>Rucho v. Common Cause</i> , 139 S.Ct. 2484, 204 L.Ed.2d 931.....	11, 12, 13
	<i>State ex rel. Voters First v. Ohio Ballot Bd.</i> , 133 Ohio St. 3d 257, 978 N.E.2d 119.....	11
	Initiative Petition 426, State Question 810 .....	passim
<b>E.</b>	<b>THE GIST SHOULD BE SHORT</b> .....	14
	<i>In re Initiative Petition No. 384</i> , 2007 OK 48, 164 P.3d 125.....	14
<b>IV.</b>	<b>CONCLUSION</b> .....	15
	<i>In re Initiative Petition No. 342</i> , 1990 OK 76, 797 P.2d 331.....	15
	<i>In re Initiative Petition No. 384</i> , 2007 OK 48, 164 P.3d 125.....	15
	<i>In re Initiative Petition No. 409</i> , 2016 OK 51, 376 P.3d 250.....	15

## I. INTRODUCTION

This action is filed by Eldon Merklin and Claire Robinson Davey (collectively “Protestants”) because the gist of Initiative Petition 426 (“IP 426”) is legally insufficient.

*First*, the gist is affirmatively inaccurate because it reflects that the Panel is designated by the Chief Justice when in fact the Panel is selected by random drawing. A comparison of the gist to the Petition demonstrates the inaccuracy:

### GIST

[A] panel of retired judges and justices designated by the Chief Justice of the Oklahoma Supreme Court will choose pools of approximately 20 applicants from each group, then randomly select 3 Commissioners from each pool.

### IP 426 § 4(B)(4)(b)

The Panel shall consist of three Judges or Justices who have retired from the Oklahoma Supreme Court or the Oklahoma Court of Criminal Appeals or the Oklahoma Court of Civil Appeals, and who are able and willing to serve on **the Panel, selected by random drawing.**

(Emphasis added) This Court has never permitted a gist which is affirmatively inaccurate.

*Second*, the gist provides the voter with no notice that the Commission can act only by achieving two specific supermajority requirements. The Commission can approve a redistricting plan only if (a) six of the nine Commissioners agree and (b) only with agreement of at least one member of each of the three Groups (largest party, second largest party, and unaffiliated). IP 426, § 4(E)(1). These supermajority requirements materially change the dynamics, and the gist should reveal that the traditional majority vote rule will not apply.

*Third*, although the gist says that districts will be drawn according to the criteria of “political fairness,” it provides the potential signatory with no information at all about what “political fairness” might mean or how that is to be assessed. As pointed out in *Rucho v. Common Cause*, \_\_\_ U.S. \_\_\_, 139 S.Ct. 2484 (2019), there are different conceptions of

“fairness” in this context, and they are not consistent. The proponents should disclose to signatories what type of “political fairness” would be imposed by this petition.

## II. SUMMARY OF THE RECORD

The gist submitted by the proponents, Appx. at Tab A, is as follows:

This measure adds a new Article to the Oklahoma Constitution, intended primarily to prevent political gerrymandering. The Article creates a Citizens’ Independent Redistricting Commission, and vests the power to redistrict the state’s House, Senatorial, and federal Congressional districts in the Commission (rather than the Legislature). The 9-member Commission will consist of 3 members from each of 3 groups, determined by voter registration: those affiliated with the state’s largest political party; those affiliated with its second-largest party; and those unaffiliated with either. Commissioners are not elected by voters but selected according to a detailed process set forth by the Article: in brief, a panel of retired judges and justices designated by the Chief Justice of the Oklahoma Supreme Court will choose pools of approximately 20 applicants from each group, then randomly select 3 Commissioners from each pool. The Article sets forth various qualifications for Commissioners, Special Master, and Secretary, intended to avoid conflicts of interest (*for example*, they cannot have changed party affiliation within a set period, and neither they nor their immediate family may have held or been nominated for partisan elective office or served as paid staff for a political party or as a registered lobbyist in the last five years). It also sets forth a process for the creation and approval of redistricting plans after each federal Decennial Census, including, among other things, a method for counting incarcerated persons, public notice, and open meeting requirements. In creating the plans, the Commission must comply with federal law, population equality, and contiguity requirements, and must seek to maximize respect for communities of interest, racial and ethnic fairness, political fairness, respect for political subdivision boundaries, and compactness (in order of priority), without considering the residence of any legislator or candidate or a population’s political affiliation or voting history except as necessary for the above criteria. The Article creates a fallback mechanism by which the state Supreme Court, using a report from the Special Master, will select a plan if the Commission cannot reach the required level of consensus within a set timeframe. It also sets forth procedures for funding and judicial review, repeals existing constitutional provisions involving legislative districts, codifies the number of state House and Senatorial districts, and reserves powers

to the Commission rather than the Legislature. Please review attached Petition for further details.

### III. ARGUMENT AND AUTHORITY

#### A. The Analysis of a Gist

The right of initiative petition “is not absolute.” There are constitutional and statutory, limits on the process. *In re Initiative Petition No. 420*, 2020 OK 10, ¶ 3. Because the ballot title is no longer circulated with the petitions, the gist ““is the only shorthand explanation of the proposal’s effect.”” *Oklahoma’s Children v. Coburn*, 2018 OK 55, ¶ 14, 421 P.3d 867, quoting *In re Initiative Petition No. 409*, 2016 OK 51, ¶ 3, 376 P.3d 250. The gist now has an “enhanced significance.” *Id.* at ¶ 14.

In addressing the first petition by these proponents, this Court noted that the gist must disclose the material changes to be made. *In re Initiative Petition No. 420*, 2020 OK 10, ¶ 4:

- A gist must be “revealing of the design and purpose of the petition.”
- A potential signatory must be “at least put on notice of the changes being made.”
- The gist must “explain the proposal’s effect.”

Also, as explained in *Oklahoma’s Children, Inc. v. Coburn*, 2018 OK 55, ¶ 24:

- Potential signatories are entitled to “enough information to make an informed decision.”
- “[T]his Court has historically taken a dim view of excluding important changes made to the law from the gist of a petition.”

The protestants ask this Court to continue in its role of protecting voters who are asked to sign a petition.

**B. The Gist is Affirmatively Inaccurate.**

**1. The Inaccuracy**

The gist must be stricken because it is affirmatively inaccurate on a critically important point. The first step of the process is to create a “Panel” of three retired justices or appellate judges who oversee the selection of the Commissioners. The gist states that the Panel is designated by the Chief Justice: “[I]n brief, a **Panel** of retired judges and justices **designated by the Chief Justice** of the Oklahoma Supreme Court will choose pools of applicants . . . .” That statement is factually inaccurate. Section 4(B)(4)(b) of IP 426 provides that the three members of the Panel are “**selected by random drawing.**” Those two statements cannot be reconciled.

This Court already ruled with respect to the previous petition, IP 420, that saying the Panel was “designated by the Chief Justice” is inconsistent with saying the Panel is “selected by random drawing.” As the Court explained:

The petition requires a Panel to be designated by the Chief Justice consisting of retired Justices and appellate judges. Sections 4(A)(7) and 4(B)(4)(b) of IP 420. \*\*\* Section 4(B)(4)(b) also states that the Panel will be selected by random drawing. We agree with the Petitioners that this creates an inconsistency in the petition and should be clarified.

2020 OK 10, ¶ 7. The Court should not retreat from its finding that “designated by the Chief Justice” is “inconsistent” with “selected by random drawing.”

Even if the Court would entertain relitigation of the issue, the result would be the same. The word “designated” means that the person designating is making the selection. “Designate” means:

- “3. To select for a particular duty, office, or purpose; appoint.” *The American Heritage Dictionary*, (American Heritage, 1969) at p. 357.
- “3. To name for an office or duty; appoint.” *Webster’s New World Dictionary* (Simon and Schuster, 1984), at p. 382

- “To indicate, select, appoint, nominate, or set apart for a purpose or duty, as to designate an officer for a command.” *Black’s Law Dictionary* (West, 1979) at p. 402.
- The synonyms of “designate” are “name, specify, indicate; appoint.” *Roget’s College Thesaurus*, (Grosset and Dunlap, 1958) at p. 93.

None of these definitions even remotely suggests that to “designate” can mean to select randomly.

Also, a voter asked to sign the petition could not possibly read the gist to say that the Panel is chosen randomly. Once again, the gist states:

**[A] panel of retired judges and justices designated by the Chief Justice of the Oklahoma Supreme Court will choose pools of approximately 20 applicants from each group, then randomly select 3 Commissioners from each pool.**

(emphasis added). The only possible reading of that provision is that the Panel is “designated by the Chief Justice” and the Commissioners are “randomly select[ed].”

The fact that the gist reflects that its statement on how the Panel is selected is “in brief,” does not mean that the gist can be inaccurate. This Court has repeatedly affirmed that a gist is “not required to contain every regulatory detail so long as its outline is not incorrect.” *In re Initiative Petition 420*, 2020 OK 10, at ¶ 4, quoting *In re Initiative Petition 409*, 2016 OK 51, ¶ 3. Here the gist is incorrect.

An argument by the proponents that the inaccuracy should be permitted due to the logistics of drafting a short gist cannot succeed. It would have been easier and used fewer words to draft the gist accurately. For example:

**[A] randomly selected panel of retired judges and justices ~~designated by the Chief Justice of the Oklahoma Supreme Court~~ will choose pools of approximately 20 applicants from each group, then randomly select 3 Commissioners from each pool.**

## 2. Legal Significance of the Inaccuracy

This Court has never held that a gist can be approved even though it is inaccurate. Instead, this Court has consistently ruled that a gist must be accurate. *E.g. Oklahoma's Children*, supra, ¶ 13 (Gist can omit some regulatory detail “so long as its outline is not incorrect.”); *In re Initiative Petition 384*, 2007 OK 48, ¶ 9, 164 P.3d 125 (Gist must be “free from the taint of misleading terms.”), *Initiative Petition 344*, 1990 OK 75, ¶ 14, 797 P.2d 326 (Gist must be “not deceiving.”); *In re Initiative Petition 409*, 2016 OK 51, ¶ 3 (The gist is to prevent “deceit”). This Court should not compromise on its requirement that the gist be truthful with voters.

Even if this Court were inclined to create a new rule under which untruthfulness would be allowed in some cases, this case would not be the case for such a rule because of the prejudicial nature of the inaccuracy. The method of selecting the Panel is critically important. The members of the Panel are the only people that get to exercise any discretion over which applicants are named to the Commission, and their power is significant. The Panel gets to eliminate all but 20 applicants for each of the three Groups (largest party, second largest, and those unaffiliated with either). IP 426, § 4(B)(4)(f).

Each Panel member has virtually unfettered discretion. (1) For example, the members of the Panel can eliminate an applicant based on their view of the applicant’s “ability to be impartial” or “ability to promote consensus on the Commission.” IP 426, § 4(B)(4)(f)(ii). They can also eliminate applicants in the interest of “geographic balance.” IP 426, § 4(B)(4)(f). (2) There is no appeals process. (3) Once an applicant is eliminated by the Panel, there is no alternative method to get selected. IP 426, § 4(B)(4)(g)-(h). Importantly, (4) the Panel can approve the list of finalists only when all three members are unanimous. IP 426, § 4(B)(4)(e). Thus, as a practical matter, any Panel member has the ability to veto a name of which he or she disapproves.



Whether the Panel is selected by the Chief Justice or selected by random drawing is a very significant piece of information for a potential signatory. Because the Panel members are the only people who exercise discretion in selecting the Commissioners and because their discretion is virtually unfettered, the selection of the Panel members is extremely important. According to the gist, the Chief Justice would choose the members of the Panel. The Supreme Court not only brings prestige and gravitas to the process, but a well-deserved reputation for decision making which is non-partisan and just. A voter reading the gist would naturally feel comfortable with a Panel selected with Supreme Court involvement. However, IP 426 actually provides for a very different system in which the Panel is selected at random. Instead of getting Panel members designated by the Chief Justice, the voters will get “potluck” with respect to the selection of the Panel. Many voters would have a very different view of an undemocratic selection process in which no public official involved.

The protestants here do not ask the Court to accept their policy arguments. They ask only for a gist which does not actively mislead voters. The voters can then decide for themselves whether to sign the petition. Further, the proponents should not be allowed to trade on the authority and prestige of this Court in order to achieve their policy goal.

### **3. The Previous Case**

In the previous case, concerning IP 420, the question of whether the Panel would be selected by the Chief Justice or selected at random was vigorously litigated. In its decision, the Court noted the importance of the gist containing a description of the selection process.

First, a shorthand explanation in simple language should convey the selection process and composition of the commissioners. The petition requires a Panel to be designated by the Chief Justice consisting of retired Justices and appellate judges. Sections 4(A)(7) and 4(B)(4)(b) of IP 420.

*In re Initiative Petition 420*, 2020 OK 10 ¶ 7. It is still the case that the gist should contain a sentence along the lines suggested by the Court explaining how the Panel gets selected, and the Court should require that sentence to be accurate.

#### 4. Case Law

In *Oklahoma's Children*, *supra*, 2018 OK 55, ¶ 23, this Court struck a gist as inaccurate, because it omitted mention of the little cigar tax – one of the five taxes that would be repealed by the petition. The Court distinguished *McDonald v. Thompson*, 2018 OK 25, 414 P.3d 367, noting that in *McDonald* “the gist properly mirrors the petition.” *Id.* at ¶ 19, quoting *McDonald* at ¶ 9. The Court should apply the same analysis here. This gist does not “mirror the petition.” Further, in *Oklahoma's Children*, at ¶ 17, the Court noted that a gist could avoid some regulatory detail “so long as its outline is not incorrect.” Once again, this Court should follow *Oklahoma's Children*. Because this gist is incorrect, it must be stricken.

The relevance of the selection process is further shown by the *Voters First* case, in which an Ohio court struck down a ballot title which failed to provide information to voters about who selected the members of the redistricting committee. *State ex rel. Voters First v. Ohio Ballot Bd.*, 2012-Ohio-4149, 133 Ohio St. 3d 257, 266, 978 N.E.2d 119, 127. “**It is axiomatic that ‘[w]ho does the appointing is just as important as who is appointed.’**” *Id.* at ¶ 34. The instant case is even more egregious because the gist does not merely omit to describe the process; the gist here will actively mislead voters about the selection process.

#### 5. Conclusion

The Court should continue to uphold the principle that the gist must be accurate in order to allow voters to make an informed decision on whether to sign the petition.

### **C. The Gist Omits Any Explanation of the Supermajority Requirements for the Commission**

A second fatal problem is that the gist omits any notice of the two super majority requirements needed for the Commission to take action. The Commission can approve a redistricting plan only if (a) six of the nine commissioners approve, and (b) at least one Commissioner from each of the three Groups (Largest Party, Second Largest Party, and Unaffiliated) approves. IP 426, § 4(E)(1). The gist does not reveal these. The importance is that if the Commission cannot meet both of the super majority requirements, then this Court will determine the redistricting lines under IP 426's "Fallback Mechanism." IP 426, § 4(F)(2).

Because it will be difficult to meet the two super majority requirements, this Court will frequently be in the position of performing the legislative and highly political task of selecting the redistricting plan. A signatory deserves disclosure of this mechanism which not only makes it very difficult for the Commission to approve a redistricting plan but also makes it very likely that this Court will be the body selecting the redistricting plan.

This Court recognizes that notice of reallocation of political power is important in a gist. In *In re Initiative Petition 344*, 1990 OK 75, 797 P.2d 326, 330, this Court struck a gist which failed to disclose that the petition's effect would be to "increase the power of the newly elected Governor . . . ." Also, *In re Initiative Petition 384*, 2007 OK 48, ¶ 11, the Court explained, "The Protestants contend that these omissions mean that the gist failed to alert potential signatories to the effect the proposed statute would have on the balance of power between local school boards and the state. We agree." Similarly here, the failure to provide information on the super majority vote requirements deprives potential signatories of a key piece of information on how power will be allocated between the Commission and the Supreme

Court. It is particularly noteworthy here since the reallocation of political power is the primary purpose of IP 426.

The concurring opinion of Justice Winchester joined by Vice Chief Justice Darby and Justice Kauger in the case concerning the previous petition, IP 420, also emphasized the need of the gist to explain the role of the Supreme Court in the redistricting process. “IP 420 shifts power in the redistricting process from the Legislature to the Oklahoma Supreme Court, something the gist ignores.” 2020 OK 10, ¶ 1, (Winchester concurring). “The gist as written does not mention the Court, and from the gist alone, a potential signatory will not know that the Court will significantly be involved in redistricting.” *Id.* at ¶ 2. Similarly here, the proponents should be required to disclose the super majority requirements which significantly increase the likelihood of the Supreme Court having to make the legislative decision to adopt a particular plan.

A similar issue was fought in the first round. This Court held that merely telling voters that there is a “process for the selection of Commissioners” was insufficient and that voters deserved to know that the Commission would always contain three members of the largest party, three from the second largest party, and three unaffiliated. “Although the selection process need not be detailed, a simple statement concerning the selection and composition of the Commission is critical here to inform a potential signatory of the true nature of the petition.” *Id.* at ¶ 7. The same principle applies here with respect to the Commission’s approval requirements. A voter asked to sign the petition deserves to know that the Commission cannot approve a plan based on a majority vote as would ordinarily be the case.

“Fundamentally, the need for voters to be given enough information to make an informed decision is why this Court has historically taken a dim view of excluding important

changes made to the law from the gist of a petition.” *Oklahoma’s Children, supra*, 2018 OK 55, ¶¶ 24. The proponents should be required to correct the notable omission of the super majority requirements.

**D. No Disclosure Regarding “Political Fairness.”**

A third fatal deficiency is that the gist fails to provide a voter any information regarding “political fairness.” The gist explains that the Commission will apply substantive criteria to drawing district lines including that the plan “must comply with federal law, population equality, and contiguity requirements, and must seek to maximize respect for communities of interest, racial and ethnic fairness, political fairness, respect for political subdivision boundaries, and compactness . . . .” By far the most notable change in the law would be that the Commission must seek to maximize “political fairness,” see IP 426, § 4(D)(1)(iii), and yet the gist provides no information to a potential signatory of what “political fairness” might mean. *See Oklahoma’s Children, supra*, on the need to disclose “changes made to the law.” *See also Voters First, supra*, 978 N.E.2d at 128 (Ballot title in redistricting initiative was insufficient because it failed to provide information on what the changes to the redistricting criteria would be.).

The gist must disclose more to the voters than simply that “political fairness” will be maximized. “Fairness” can mean different things in redistricting. *See Rucho v. Common Cause*, \_\_\_ U.S. \_\_\_, 139 S.Ct. 2484, 2499, 204 L.Ed. 2d 931 (2019). (“[I]t is not even clear what fairness looks like in this context.”) As the U.S. Supreme Court noted in *Rucho*, 139 S.Ct. at 2499, “[f]airness may mean a greater number of competitive districts.” Defining “fairness” to mean more “competitive districts,” however, has a material effect. “[M]aking as many districts as possible more competitive could be a recipe for disaster for the disadvantaged party. \*\*\* ‘If all or most of the districts are competitive . . . even a narrow statewide preference

for either party would produce an overwhelming majority for the winning party in the state legislature.” *Id.*, quoting *Davis v. Bandemer*, 478 U.S. 109, at 130 (1986)(plurality opinion). On the other hand, “political fairness” might mean a proportional system in which the two major parties obtain a share of seats judged to be fair based on their proportion of the voters in the state. See *Davis v. Bandemer*, 478 U.S. 109, 154 (O’Connor, J., concurring); and *Gaffney v. Cummings*, 412 U.S. 735, 738, (1973). As *Rucho* court explained, “On the other hand, perhaps the ultimate objective of a ‘fairer’ share of seats in the congressional delegation is most readily achieved by yielding to the gravitational pull of proportionality and engaging in cracking and packing, to ensure each party its ‘appropriate’ share of ‘safe’ seats.” 139 S.Ct. at 2499, citing *Bandemer*, 130 U.S. at 130-31.

The different conceptions of “fairness” cannot all be accommodated. As the *Rucho* Court noted, “fairness” as an increase in competitive districts and “fairness” as proportional representation in the legislature are inconsistent goals. Proportional “fairness” “comes at the expense of competitive districts . . . .” *Id.* at 2499 (emphasis added). The Court also observed that “fairness” as keeping communities of interest or political subdivisions together will be inconsistent with an anti-gerrymandering goal in some instances. *Id.* at p. 2499. This is so because “the ‘natural political geography’ of a State – such as the fact that urban electoral districts are often dominated by one political party – can itself lead to inherently packed districts.” *Id.* at p.2499.

What do the proponents of IP 426 intend when they say “political fairness”? The petition itself provides little help to the voter. Section 4(D)(1)(c)(iii) provides with respect to political fairness that a plan should not unduly favor a political party. That section opaquely explains “undue favor to a political party shall be determined using the proposed map, data

from the last ten years of statewide elections, and the best available statistical methods on identifying inequality of opportunity to elect.” Although the petition defines undue favor to mean “inequality of opportunity to elect,” the proponents do not provide even that information in the gist. In this gist the voter gets nothing about what “political fairness” might be.

In briefing concerning the previous petition, IP 420, it appears the proponents’ goal is a system of proportional representation. For example in the proponents’ brief before this Court in the *Newberry* case, No. 118,406, December 5, 2019, at p.13, the proponents complained that Democrats make up 36.6% of registered voters in Oklahoma but have only 24.8% of seats in the House and only 18.7% of seats in the Senate. *Id.* The brief asserts that the Democrats’ “underrepresentation in the legislature is at least in part the result of gerrymandered districts and would be ameliorated, not enhanced, by the petition.” *Id.* In this passage, then, the proponents are explicit that their petition is intended to promote proportional representation. The voters asked to sign the petition are entitled to at least some notice of this significant change in the law.<sup>1</sup>

Although it appears from the proponents’ briefing they want to adopt a system of proportional representation, that does not matter in the Court’s analysis of the gist. If proponents want to assert that “political fairness” means something other than a proportional system, this is fine. The proponents can pick any version of “political fairness” they want. All the protestants ask is that the gist should disclose to a voter asked to sign the petition something about what type of “political fairness” the petition would implement so that voter can make an informed decision.

---

<sup>1</sup> The change would indeed be significant. Under the proponents’ brief’s reliance on “registered voters,” actual votes at the ballot box would be deemphasized. The partisan “battle” would turn to a long term battle to register voters. No party or amicus before the U.S. Supreme Court in *Rucho* suggested that party registration was an appropriate measure of “fairness.”

With respect to the previous petition, this Court noted that the gist “should inform ‘a signer of what the measure is generally intended to do’” 2020 OK 10, ¶ 4, quoting *In re Initiative Petition 363*, 1996 OK 122, ¶ 20. The Court further noted that “the gist should be descriptive of the proposal’s effect and sufficiently informative to reveal its design and purpose.” *Id.* at ¶ 11 citing *In re Initiative Petition 384*, 2007 OK 48, ¶ 7. The Court should apply the same analysis here. Merely including the words “political fairness” does not inform a signer of “what the measure is generally intended to do” and does not “reveal its design and purpose.”

**E. The Gist Should Be Short.**

The protestants here are definitely not arguing that the gist should ever expand to become a long and involved document. Instead, the gist here includes a great deal of material which is either redundant, surplusage, or not necessary because it does not describe a change in the law. In the Appendix, the protestants offer a redlined version of the gist which demonstrates that over 70 words could be eliminated without detracting from the informative nature of the gist.<sup>2</sup>

*In re Initiative Petition 384*, 2007 OK 48, ¶ 12, 164 P.3d 125, this Court struck a gist that “at once, contains too much and not enough information.” The gist there described “instructional expenditures” in “mind-numbing detail” but failed to disclose, for example, “the additional authority given to the Superintendent of Public Instruction.” Similarly here the gist contains unnecessary detail, but fails to provide any information at all on (a) what “political fairness” means or (b) that there are super majority requirements for the Commission.

---

<sup>2</sup> The protestants are not trying to redraft the gist for the proponents. Instead, this redline version simply demonstrates language of the proposed gist that could be eliminated without detracting from the meaning of gist.



#### IV. CONCLUSION

The Court should not entertain an argument that the gist is unimportant. “[T]he Legislature has deemed the gist a necessary part of the pamphlet, and we are not at liberty to ignore that requirement . . . .” *In re Initiative Petition 384, supra*, 2007 OK 48, at ¶ 13.

A properly drafted gist is “indispensable and noncompliance is fatal.” *In re Initiative Petition No. 342*, 1990 OK 76, ¶ 11, 797 P.2d 331. “The gist is not subject to amendment by this Court, and as a result, the only remedy is to strike the petition from the ballot.” *In re Initiative Petition No. 409*, ¶ 7.

The proponents should not be permitted to play cat and mouse with the voters on how much they will disclose. The gist is legally insufficient for two reasons:

1. The gist is affirmatively inaccurate.
2. The gist does not provide potential signatories with sufficient information to make an informed decision.

Respectfully submitted,



---

ROBERT G. MCCAMPBELL, OBA No. 10390  
TRAVIS V. JETT, OBA No. 30601  
GABLEGOTWALS  
One Leadership Square, 15th Floor  
211 North Robinson Avenue  
Oklahoma City, OK 73102  
Telephone: (405) 235-5500  
[RMcCampbell@Gablelaw.com](mailto:RMcCampbell@Gablelaw.com)  
[TJett@Gablelaw.com](mailto:TJett@Gablelaw.com)

*Attorneys for Protestants/Petitioners  
Eldon Merklin and Claire Robinson Davey*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of February 2020, a true and correct copy of the above and forgoing was served by U.S. Mail postage prepaid and by email as follows:

D. Kent Meyers  
Roger A. Stong  
Melanie Wilson Rughani  
CROWE & DUNLEVY, P.C.  
324 N. Robinson Ave., Suite 100  
Oklahoma City, OK 73102

Secretary of State's Office  
State of Oklahoma  
2300 N. Lincoln Blvd.  
Suite 101  
Oklahoma City, OK 73105-4897

Attorney General's Office  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105-4897



---

Robert G. McCampbell  
Travis V. Jett

S535574



www.OkPress.com

Wednesday, February 19, 2020 11:56 AM

# Oklahoma Press Service

3601 North Lincoln Blvd.  
 Oklahoma City, OK 73105  
 Voice (405) 499-0020 Fax (405) 499-0048

## Invoice

**Agency** Amy Canton  
 SECRETARY OF STATE  
 Oklahoma State Capitol Building, Rm 122  
 2300 N LINCOLN BLVD  
 OKLAHOMA CITY, OK 73105

**Invoice Date** 2/19/2020  
**PO Number** SQ 810 IP 426  
**Order** 20-02-50  
**Dynamics Acct** 2-3225

**Client** SECRETARY OF STATE  
**Reps** Cindy Shea

Vendor	Run Date	Ad Size	Line Rate Name	Line Rate	Word Rate Name	Word Rate	Discount	Total
OK-JOURNAL RECORD	2/13/2020	24 ln / 146 wd	L2 Legal 1st Lines	\$0.70	L1 Legal 1st Words	\$0.15	0.0000%	\$38.70
	<b>Caption</b>		SQ 810 IP 426					
OK-THE OKLAHOMAN	2/13/2020	24 ln / 146 wd	L2 Legal 1st Lines	\$0.70	L1 Legal 1st Words	\$0.15	0.0000%	\$38.70
	<b>Caption</b>		SQ 810 IP 426					
OK-TULSA WORLD - Legal	2/13/2020	24 ln / 146 wd	L2 Legal 1st Lines	\$0.70	L1 Legal 1st Words	\$0.15	0.0000%	\$38.70
	<b>Caption</b>		SQ 810 IP 426					

**Misc. Charges**  
 fee \$45.00

<b>Total Advertising</b>	\$116.10
<b>Discounts</b>	\$0.00
<b>Misc. Charges</b>	\$45.00
<b>USA Tax</b>	\$0.00
<b>Total Invoice</b>	\$161.10
<b>Payments</b>	\$0.00
<b>Adjustments</b>	\$0.00
<b>Balance Due</b>	\$161.10

**RECEIVED**

**MAR 11 2020**

**OKLAHOMA SECRETARY OF STATE**

# Oklahoma Press Service

3601 North Lincoln Blvd.  
Oklahoma City, OK 73105  
Voice: (405) 499-0020 Fax: (405) 499-0048

Monday, March 9, 2020 11:41 AM

Page 1 of 1

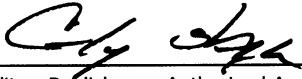
## Proof of Publication Order Number 20-02-50

I, Cindy Shea, of lawful age, being duly sworn upon oath, deposes and says: That I am the Authorized Agent of OK-JOURNAL RECORD, a Daily newspaper printed and published in the city of OKLAHOMA CITY, county of Oklahoma, and state of Oklahoma, and that the advertisement referred to, a true and printed copy of which is here unto attached, was published in said OK-JOURNAL RECORD in consecutive issues on the following dates-to-wit:

Insertion: 2/13/2020

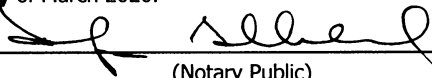
That said newspaper has been published continuously and uninterruptedly in said county during a period of one-hundred and four consecutive weeks prior to the publication of the attached notice or advertisement; that it has been admitted to the United States mail as second-class mail matter; that it has a general paid circulation, and publishes news of general interest, and otherwise conforms with all of the statutes of the Oklahoma governing legal publications.

PUBLICATION FEE \$38.70

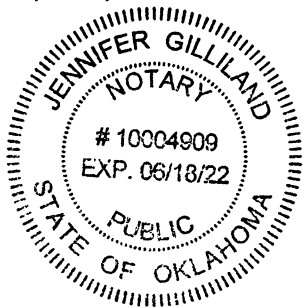


(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this  
9 day of March 2020.



(Notary Public)



**NOTICE OF THE FILING OF  
STATE QUESTION 810, INITIATIVE PETITION 426,  
THE APPARENT SUFFICIENCY THEREOF, AND NOTICE TO  
CITIZENS OF THE STATE THAT ANY SUCH PROTEST, AS TO  
THE CONSTITUTIONALITY OF SAID PETITION, MUST BE FILED  
ACCORDINGLY WITHIN TEN (10) BUSINESS DAYS AFTER THIS  
NOTICE (Okla. Stat. tit. 34, § 8)**

NOTICE is hereby given that on February 6, 2020, State Question 810, Initiative Petition 426 was filed in the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 810, Initiative Petition 426 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State.

NOTICE is likewise, hereby given, as provided in Title 34 Section 8 of the Oklahoma Statutes, that any citizen or citizens of the state may file a protest as to the constitutionality of said petition, by a written notice to the Supreme Court and to the proponent(s) filing the petition. Any such protest must be filed within ten (10) business days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State.

Proponents of record for State Question 810, Initiative Petition 426:

Andrew Moore	Janet Ann Largent	Lynda Johnson
2524 NW 26th St	5401 N. Range Rd	12018 S. Pittsburg Ave.
Oklahoma City, OK 73107	Stillwater, OK 74075	Tulsa, OK 74137

Michael Rogers  
Oklahoma Secretary of State and Education

RECEIVED

MAR 11 2020

OKLAHOMA SECRETARY  
OF STATE

# Oklahoma Press Service

3601 North Lincoln Blvd.  
Oklahoma City, OK 73105  
Voice: (405) 499-0020 Fax: (405) 499-0048

Monday, March 9, 2020 11:41 AM

Page 1 of 1

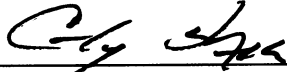
## Proof of Publication Order Number 20-02-50

I, Cindy Shea, of lawful age, being duly sworn upon oath, deposes and says: That I am the Authorized Agent of OK-THE OKLAHOMAN, a Daily newspaper printed and published in the city of OKLAHOMA CITY, county of Oklahoma, and state of Oklahoma, and that the advertisement referred to, a true and printed copy of which is here unto attached, was published in said OK-THE OKLAHOMAN in consecutive issues on the following dates-to-wit:

Insertion: 2/13/2020

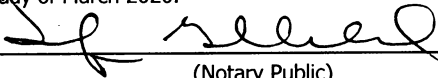
That said newspaper has been published continuously and uninterruptedly in said county during a period of one-hundred and four consecutive weeks prior to the publication of the attached notice or advertisement; that it has been admitted to the United States mail as second-class mail matter; that it has a general paid circulation, and publishes news of general interest, and otherwise conforms with all of the statutes of the Oklahoma governing legal publications.

PUBLICATION FEE \$38.70



(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this  
9 day of March 2020.



(Notary Public)



**NOTICE OF THE FILING OF  
STATE QUESTION 810, INITIATIVE PETITION 426,  
THE APPARENT SUFFICIENCY THEREOF, AND NOTICE TO  
CITIZENS OF THE STATE THAT ANY SUCH PROTEST, AS TO  
THE CONSTITUTIONALITY OF SAID PETITION, MUST BE FILED  
ACCORDINGLY WITHIN TEN (10) BUSINESS DAYS AFTER THIS  
NOTICE (Okla. Stat. tit. 34, § 8)**

NOTICE is hereby given that on February 6, 2020, State Question 810, Initiative Petition 426 was filed in the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 810, Initiative Petition 426 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State.

NOTICE is likewise, hereby given, as provided in Title 34 Section 8 of the Oklahoma Statutes, that any citizen or citizens of the state may file a protest as to the constitutionality of said petition, by a written notice to the Supreme Court and to the proponent(s) filing the petition. Any such protest must be filed within ten (10) business days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State.

Proponents of record for State Question 810, Initiative Petition 426:

Andrew Moore	Janet Ann Largent	Lynda Johnson
2524 NW 26th St	5401 N. Range Rd	12018 S. Pittsburg Ave.
Oklahoma City, OK 73107	Stillwater, OK 74075	Tulsa, OK 74137

Michael Rogers  
Oklahoma Secretary of State and Education

RECEIVED

MAR 11 2020

OKLAHOMA SECRETARY  
OF STATE

# Oklahoma Press Service

3601 North Lincoln Blvd.

Oklahoma City, OK 73105

Voice: (405) 499-0020 Fax: (405) 499-0048

Monday, March 9, 2020 11:41 AM

Page 1 of 1

## Proof of Publication Order Number 20-02-50

I, Cindy Shea, of lawful age, being duly sworn upon oath, deposes and says: That I am the Authorized Agent of OK-TULSA WORLD - Legal, a Daily newspaper printed and published in the city of TULSA, county of Tulsa, and state of Oklahoma, and that the advertisement referred to, a true and printed copy of which is here unto attached, was published in said OK-TULSA WORLD - Legal in consecutive issues on the following dates-to-wit:

Insertion: 2/13/2020

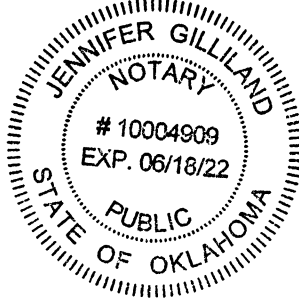
That said newspaper has been published continuously and uninterruptedly in said county during a period of one-hundred and four consecutive weeks prior to the publication of the attached notice or advertisement; that it has been admitted to the United States mail as second-class mail matter; that it has a general paid circulation, and publishes news of general interest, and otherwise conforms with all of the statutes of the Oklahoma governing legal publications.

PUBLICATION FEE \$38.70

(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this  
9 day of March 2020.

(Notary Public)



### NOTICE OF THE FILING OF STATE QUESTION 810, INITIATIVE PETITION 426, THE APPARENT SUFFICIENCY THEREOF, AND NOTICE TO CITIZENS OF THE STATE THAT ANY SUCH PROTEST, AS TO THE CONSTITUTIONALITY OF SAID PETITION, MUST BE FILED ACCORDINGLY WITHIN TEN (10) BUSINESS DAYS AFTER THIS NOTICE (Okla. Stat. tit. 34, § 8)

NOTICE is hereby given that on February 6, 2020, State Question 810, Initiative Petition 426 was filed in the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 810, Initiative Petition 426 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State.

NOTICE is likewise, hereby given, as provided in Title 34 Section 8 of the Oklahoma Statutes, that any citizen or citizens of the state may file a protest as to the constitutionality of said petition, by a written notice to the Supreme Court and to the proponent(s) filing the petition. Any such protest must be filed within ten (10) business days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State.

Proponents of record for State Question 810, Initiative Petition 426:

Andrew Moore	Janet Ann Largent	Lynda Johnson
2524 NW 26th St	5401 N. Range Rd	12018 S. Pittsburg Ave.
Oklahoma City, OK 73107	Stillwater, OK 74075	Tulsa, OK 74137

Michael Rogers  
Oklahoma Secretary of State and Education

RECEIVED

MAR 11 2020

OKLAHOMA SECRETARY  
OF STATE