

House Joint Resolution No. 34.

By: Williams, Francis,  
Byron, O'Kernethy,  
Harmon, Bailey,  
Tweedell and Ellis  
Of The House  
and  
Logan, Of The Senate.

A Resolution Authorizing The Sub-  
mission Of A Proposed Amend-  
ment To The Constitution Of The  
State Of Oklahoma, To The People  
For Their Approval Or Rejection  
For The Purpose Of Amending  
Section 31 Of Article 6 Thereof, To  
Provide For Relieving The State  
Board Of Agriculture Of The Duties  
As A Board Of Regents For The  
State Agricultural And Mechan-  
ical College, And Providing  
For A Separate Board Of Regents  
For The State Agricultural And  
Mechanical College And For All  
Other State Agricultural And  
Mechanical Schools And Colleges.

Be It Resolved: By The House Of Representatives And  
The Senate Of The Fifteenth Legislature Of The  
State Of Oklahoma:

Committee on Education  
acting

Section 1 The Secretary of State shall refer to the people for their approval or rejection, as and in the manner provided by law, the following proposed amendment to Section 31, of Article 6 of the Constitution of the State of Oklahoma, to wit:

Article 6, Section 31. A Board of Agriculture is hereby created to be composed of five members, all of whom shall be farmers and shall be selected in a manner prescribed by law.

Said board shall be maintained as a part of the state government and shall have jurisdiction over all matters affecting animal industry and animal quarantine regulations, and shall discharge such other duties and receive such compensation as now is and may hereafter be provided by law.

Article 6, Section 31 A. A Board of Regents for the State Agricultural and Mechanical College and all agricultural and mechanical schools and colleges maintained in whole or in part by the state is hereby created to be composed of nine members, four of whom shall be actual bona fide dirt farmers residing upon a farm or ranch, whose major activities shall be those of farming. The members shall be appointed by the Governor by and with advice and consent of the Senate for terms of nine years each, with one term expiring each year; provided that the members of the first board shall be appointed for terms of from one to nine years respectively.

The members of said Board shall serve without salary except that they shall receive such compensation for diem and for traveling expenses as may be provided by law.

Acting Chairman  
 Board of Agriculture  
 Oklahoma State Capitol  
 Oklahoma City, Oklahoma

Any member of said Board who may be removed from office for corruption in office, gross neglect of duty, habitual drunkenness or incompetency only by impeachment by the Legislature or by trial in the courts of the state as provided for the removal of officers not subject to impeachment.

Section 2. The ballot title for said proposed amendment shall be in the following form:

Ballot Title

Legislative Referendum No. — State Question No. —  
The gist of the proposition is as follows:

To Amend Article 6 Section 31  
Of The Constitution Of Oklahoma  
Thereby Relieving The State  
Board Of Agriculture Of Its  
Duties As A Board Of Regents  
For The Oklahoma Agricultural  
And Mechanical College And  
Adding Therein Provisions For  
The Appointment Of A Board  
Of Regents For State Agricultural  
And Mechanical Colleges Which  
Board Shall Be Composed Of  
Nine (9) Members Removable  
Only By Impeachment Or Court  
Procedure And With The  
Term Of Office Of One Member  
Of Said Board Expiring Each  
Year.

Shall the proposed Amendment be Adopted?

( ) Yes  
( ) No

Committee on Education  
Dec 10 1901  
Committee on Education

49.67.34  
April  
The President of the Senate shall, immediately after the effective date of this resolution, prepare and file one copy thereof, including said Ballot Tally, with the Secretary of State and one copy with the Attorney General.

Passed the House of Representatives the 30th day of April, 1935.

Passed the Senate the 30th day of April, 1935.

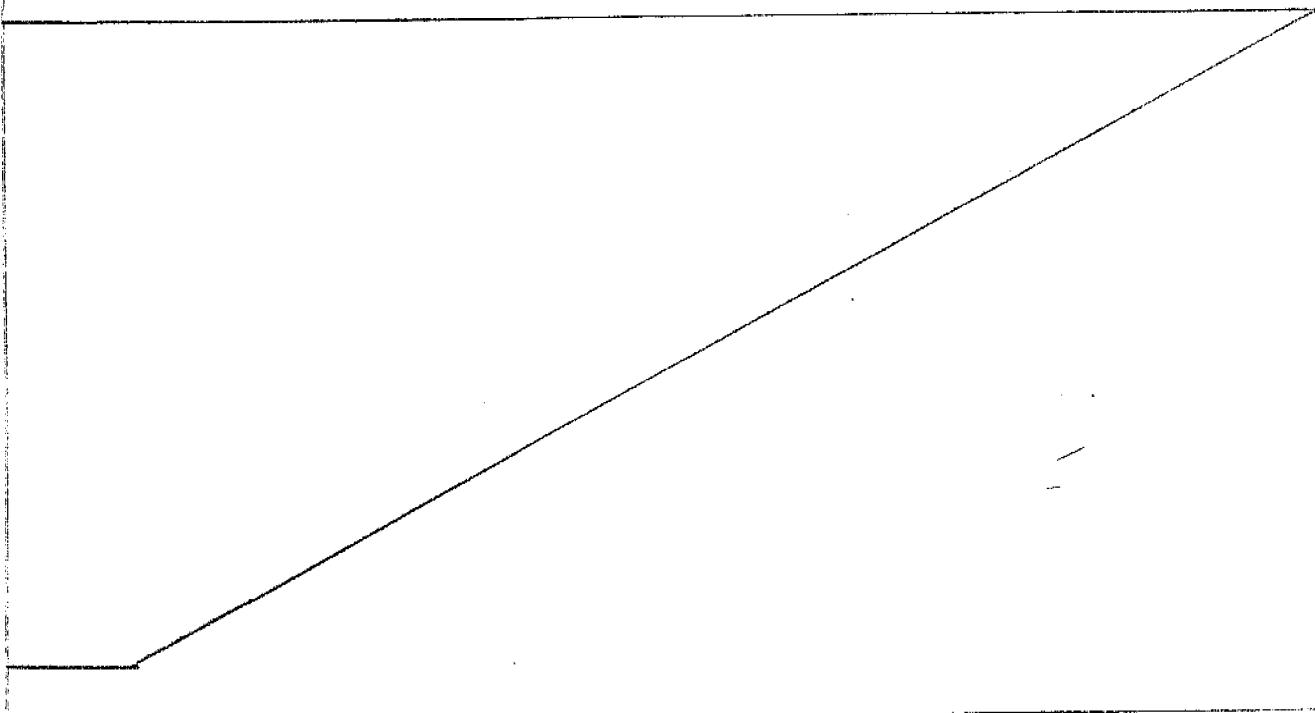
Leon Phillips  
Speaker of the House of Representatives.

Gov. Quinn  
President of the Senate.

Approved by the Governor of the State of Oklahoma this the \_\_\_\_\_ day of \_\_\_\_\_, 1935.

Governor of the State of Oklahoma.

Original Ballot  
Not Certified  
Acting Chairman Committee on Enrollment and Engrossment.



MEMORANDUM FOR

BILL NO. 34

Received in the office of Secretary of State

500 OCTOBER 11 1935

*F. M. Carter*  
Secretary of State

CA



SENATE CHAMBER

STATE OF OKLAHOMA

CLAUDE BRIGGS  
PRESIDENT PRO-TEMPORE  
WILBURTON

June 4, 1935

Hon. Frank C. Carter,  
Secretary of State,  
Building.

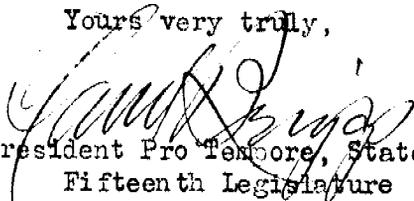
Dear Sir:

Pursuant to directions contained in House Joint Resolution  
No. 34:

"A RESOLUTION AUTHORIZING THE SUBMISSION OF A PRO-  
POSED AMENDMENT TO THE CONSTITUTION OF THE STATE OF  
OKLAHOMA, TO THE PEOPLE FOR THEIR APPROVAL OR RE-  
JECTION FOR THE PURPOSE OF AMENDING SECTION 31 OF  
ARTICLE 6 THEREOF, TO PROVIDE FOR RELIEVING THE  
STATE BOARD OF AGRICULTURE OF THE DUTIES AS A BOARD  
OF REGENTS FOR THE STATE AGRICULTURAL AND MECHANICAL  
COLLEGE, AND PROVIDING FOR A SEPARATE BOARD OF REGENTS  
FOR THE STATE AGRICULTURAL AND MECHANICAL COLLEGE  
AND FOR ALL OTHER STATE AGRICULTURAL AND MECHANICAL  
SCHOOLS AND COLLEGES"

as passed by the Senate and the House of Representatives, at the Regular  
Session of the Fifteenth Legislature, I herewith submit and file with  
you, as Secretary of State of the State of Oklahoma, one copy of House  
Joint Resolution No. 34, including the ballot title contained in said  
resolution.

Yours very truly,

  
President Pro Tempore, State Senate,  
Fifteenth Legislature

CB:H

E N R O L L E D

HOUSE JOINT RESOLUTION NO. 34.

BY: WILLIAMS, FRAZIER, BYROM,  
ABERNETHY (HARMON), BAILEY,  
TWIDWELL AND ELLIS OF THE  
HOUSE AND LOGAN, OF THE  
SENATE.

A RESOLUTION AUTHORIZING THE SUBMISSION OF A PROPOSED AMENDMENT TO THE CONSTITUTION OF THE STATE OF OKLAHOMA, TO THE PEOPLE FOR THEIR APPROVAL OR REJECTION FOR THE PURPOSE OF AMENDING SECTION 31 OF ARTICLE 6 THEREOF, TO PROVIDE FOR RELIEVING THE STATE BOARD OF AGRICULTURE OF THE DUTIES AS A BOARD OF REGENTS FOR THE STATE AGRICULTURAL AND MECHANICAL COLLEGE, AND PROVIDING FOR A SEPARATE BOARD OF REGENTS FOR THE STATE AGRICULTURAL AND MECHANICAL COLLEGE AND FOR ALL OTHER STATE AGRICULTURAL AND MECHANICAL SCHOOLS AND COLLEGES.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE FIFTEENTH LEGISLATURE OF THE STATE OF OKLAHOMA:

SECTION 1. The Secretary of State shall refer to the people for their approval or rejection, as and in the manner provided by law, the following proposed amendment to Section 31, of Article 6 of the Constitution of the State of Oklahoma, to-wit:

Article 6, Section 31. A Board of Agriculture is hereby created to be composed of five members, all of whom shall be farmers and shall be selected in a manner prescribed by law.

Said board shall be maintained as a part of the state government and shall have jurisdiction over all matters affecting animal industry and animal quarantine regulations, and shall discharge such other duties and receive such compensation as now is and may hereafter be provided by law.

Article 6, Section 31 A. A Board of Regents for the State Agricultural and Mechanical College and all agricultural and mechanical schools and colleges maintained in whole or in part by the state is hereby created to be composed of nine members, four of whom shall be actual bona fide dirt farmers residing upon a farm or ranch, whose major activities shall be those of farming. The members shall be appointed by the Governor by and with advice and consent of the Senate for terms of nine years each, with one term expiring each year, provided that the members of the first board shall be appointed for terms of from one to nine years respectively.

The members of said Board shall serve without salary except that they shall receive such compensation per diem and for traveling

expenses as may be provided by law.

Any member of said Board so appointed may be removed from office for corruption in office, gross neglect of duty, habitual drunkenness or incompetency only by impeachment by the Legislature or by trial in the courts of the state as provided for the removal of officers not subject to impeachment.

SECTION 2. The ballot title for said proposed amendment shall be in the following form:

"BALLOT TITLE

LEGISLATURE REFERENDUM NO. \_\_\_\_\_ STATE QUESTION NO. \_\_\_\_\_

The Gist of the proposition is as follows:

TO AMEND ARTICLE 6, SECTION 31 OF THE CONSTITUTION OF OKLAHOMA, THEREBY RELIEVING THE STATE BOARD OF AGRICULTURE OF ITS DUTIES AS A BOARD OF REGENTS FOR THE OKLAHOMA AGRICULTURAL AND MECHANICAL COLLEGE AND ADDING THERETO PROVISIONS FOR THE APPOINTMENT OF A BOARD OF REGENTS FOR STATE AGRICULTURAL AND MECHANICAL COLLEGES, WHICH BOARD SHALL BE COMPOSED OF NINE (9) MEMBERS, REMOVABLE ONLY BY IMPEACHMENT OR COURT PROCEDURE, AND WITH THE TERM OF OFFICE OF ONE MEMBER OF SAID BOARD EXPIRING EACH YEAR.

SHALL THE PROPOSED AMENDMENT BE ADOPTED?

( ) Yes

( ) No."

The President of the Senate shall, immediately after the effective date of this resolution, prepare and file one copy thereof, including said Ballot Title, with the Secretary of State and one copy with the Attorney General.

PASSED the House of Representatives the 30th day of April, 1935.

PASSED the Senate the 30th day of April, 1935.

LEON C. PHILLIPS

SPEAKER OF THE HOUSE OF REPRESENTATIVES.

CLAUD BRIGGS

PRESIDENT PRO-TEM OF THE SENATE.

APPROVED by the Governor of the State of Oklahoma on this the \_\_\_ day of \_\_\_\_\_, 1935.

\_\_\_\_\_  
GOVERNOR OF THE STATE OF OKLAHOMA.

CORRECTLY ENROLLED  
ROY COLEMAN  
ACTING CHAIRMAN COMMITTEE ON ENROLLED AND ENGROSSED BILLS.



MAC Q. WILLIAMSON  
ATTORNEY GENERAL

STATE OF OKLAHOMA  
OFFICE OF THE ATTORNEY GENERAL  
OKLAHOMA CITY

June 5, 1935

Honorable Frank C. Carter,  
Secretary of State,  
B u i l d i n g

Dear Sir:

You are hereby notified that, pursuant to the direction and duty lodged in and imposed upon the Attorney General by Section 5876, Oklahoma Statutes 1931, he has examined the proposed ballot title for Legislative Referendum No. 68, State Question No. 210, as set forth in Section 2 of House Joint Resolution No. 34 of the Fifteenth Legislature of Oklahoma, which resolution including said ballot title was delivered to him on June 4, 1935, by the Honorable Claud Briggs, President Pro Tempore of the Senate of said Legislature, pursuant to the provisions of said Section 2, and finds that said ballot title is not in legal form and in harmony with the law. Therefore, pursuant to the provisions of Section 5876, Oklahoma Statutes 1931, the Attorney General has prepared and is submitting herewith a ballot title for said Legislative Referendum No. 68, State Question No. 210, which, in his opinion, is in legal form and in harmony with the law, same being as follows:

"BALLOT TITLE

Legislative Referendum No. 68 State Question No. 210

The gist of the proposition is as follows:

To amend Article 6, Section 31 of the Constitution of Oklahoma so as to relieve the State Board of Agriculture of its duties as a Board of Regents for the Oklahoma Agricultural and Mechanical Colleges and schools, and to create and provide for the appointment of a separate Board of Regents for said colleges and schools to be composed of nine members, removable only by impeachment or court procedure, and with the term of office of one member of said Board expiring each year.

SHALL THE PROPOSED AMENDMENT BE ADOPTED?

- ( ) YES  
( ) NO"

Very truly yours,  
FOR THE ATTORNEY GENERAL,

*Fred Hansen*  
Fred Hansen,  
Assistant Attorney General.

FH:HT

210  
11917

MAC Q. WILLIAMSON  
ATTORNEY GENERAL

STATE OF OKLAHOMA  
OFFICE OF THE ATTORNEY GENERAL  
OKLAHOMA CITY

JUNE 5, 1935

Honorable Frank C. Carter,  
Secretary of State,  
B u i l d i n g

Dear Sir:

You are hereby notified that, pursuant to the direction and duty lodged in and imposed upon the Attorney General by Section 5876, Oklahoma Statutes 1931, he has examined the proposed ballot title for Legislative Referendum No. \_\_\_\_\_, State Question No. \_\_\_\_\_, as set forth in Section 2 of House Joint Resolution No. 34 of the Fifteenth Legislature of Oklahoma, which resolution including said ballot title was delivered to him on June 4, 1935, by the Honorable Claud Briggs, President Pro Tempore of the Senate of said Legislature, pursuant to the provisions of said Section 2, and finds that said ballot title is not in legal form and in harmony with the law. Therefore, pursuant to the provisions of Section 5876, Oklahoma Statutes 1931, the Attorney General has prepared and is submitting herewith a ballot title for said Legislative Referendum No. \_\_\_\_\_, State Question No. \_\_\_\_\_, which, in his opinion, is in legal form and in harmony with the law, same being as follows:

"BALLOT TITLE

Legislative Referendum No. \_\_\_\_\_ State Question No. \_\_\_\_\_

The gist of the proposition is as follows:

To amend Article 6, Section 31 of the Constitution of Oklahoma so as to relieve the State Board of Agriculture of its duties as a Board of Regents for the Oklahoma Agricultural and Mechanical Colleges and schools, and to create and provide for the appointment of a separate Board of Regents for said colleges and schools to be composed of nine members, removable only by impeachment or court procedure, and with the term of office of one member of said Board expiring each year.

SHALL THE PROPOSED AMENDMENT BE ADOPTED?

( ) YES  
( ) NO"

Very truly yours,

FOR THE ATTORNEY GENERAL,

Fred Hansen  
Fred Hansen,  
Assistant Attorney General.

FH:HT



DEPARTMENT OF STATE  
STATE OF OKLAHOMA  
OKLAHOMA CITY  
June 8, 1935.

In the Matter of  
State Question No. 210  
Legislative Referendum No. 68.

To Hon. J. Wm. Cordell,  
Secretary, State Election Board.

I, F. C. Carter, Secretary of State of the State of Oklahoma, do hereby certify that on the 15th day of May, A. D. 1935, there was filed in the office of the Secretary of State of the State of Oklahoma, House Joint Resolution No. 34, providing for the submission of a proposed amendment to the Constitution of the State of Oklahoma, amending Article 6, Section 31 of the Constitution.

I FURTHER CERTIFY that under date of June 6th, Attorney General of the State of Oklahoma, filed in my office the attached Ballot Title, as approved by him, of the said Legislative Referendum No. 68, State Question No. 210. This Ballot Title is made a part of this Certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be attached this 8th day of June, A. D. 1935.

*F. C. Carter*  
SECRETARY OF STATE

BY *Katherine Manton*  
ASST. SECRETARY OF STATE

Received this 8th  
day of June, 1935.

STATE ELECTION BOARD

by *J. Wm. Cordell*  
*Secy.*



DEPARTMENT OF STATE  
STATE OF OKLAHOMA  
OKLAHOMA CITY  
June 8, 1935

His Excellency, E. W. Marland  
State House  
Oklahoma City, Oklahoma

Your Excellency:

I, F. C. Carter, Secretary of State of the State of Oklahoma, do hereby certify that on the 18th day of May, A. D. 1935, there was filed in the office of the Secretary of State of the State of Oklahoma, House Joint Resolution No. 34, providing for the submission of a proposed amendment to the Constitution of the State of Oklahoma, amending Article 6, Section 31 of the Constitution.

I FURTHER CERTIFY that under date of June 6th, the Attorney General of the State of Oklahoma, filed in my office the attached Ballot Title, as approved by him, of the said Legislative Referendum No. 68, State Question No. 10. This Ballot Title is made a part of this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be attached this 8th day of June, A. D. 1935.

SECRETARY OF STATE

BY  
ASST. SECRETARY OF STATE

Received this 8th  
day of June 1935.

BY Harve L. Milton

S. 2. 210  
Ref. 68

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

The State of Oklahoma, ex rel.  
Roy E. Hayman, et al.,

Plaintiffs,

vs.

State Election Board.

Defendant.

No. 27,675

S Y L L A B U S

1. An amendment to the Constitution proposed by the Legislature under the provisions of Section 1, Article 24, of the Constitution and submitted to the electorate of the State at a regular general election is not effective unless it is approved by a majority of the electors voting at such election.
2. An Amendment to Article 6, Section 31, of the Constitution was proposed by the Legislature and submitted to the electorate of the State at a regular general election held throughout the State November 3, 1936. The State Election Board after tabulating the returns from the various counties of the State, certified that the measure had failed of adoption. Relators, as citizens and taxpayers of the State, in this action, seek to review the action of the State Election Board by writ of certiorari. HELD, that since the pleadings and evidence fail to disclose that said measure received an affirmative vote equal to a majority of the electors voting at said election, relators are entitled to no relief.

APPLICATION FOR WRIT OF CERTIORARI TO THE STATE ELECTION BOARD

WRIT DENIED

Silverman & Rosenstein,  
Theodore Rinehart,  
Stanley D. Campbell,  
W. J. Holloway,

For Plaintiffs

Mac Q. Williamson, Attorney General,  
Randell S. Cobb, Ass't Atty. General,

For Defendant

Wm. M. Franklin,

Amicus Curiae

OSBORN, C.J. :

This is an original action instituted in this Court in the name of the State of Oklahoma on relation of Roy E. Hayman, and seventeen other plaintiffs, as the officers and directors of Oklahoma A. & M. College Former Students Association, against the State Election Board, and Albert Hunt, Charles D. Campbell and J. Wm. Cordell, individually, and as the members composing said State Election Board, wherein it is sought to review by certiorari the records and proceedings of the State Election Board with reference to the result of the regular general election held throughout the State on November 3, 1936, so far as State Question No. 210, Legislative Referendum No. 68, is concerned.

There is no dispute in regard to the essential facts. The measure involved was proposed by the 15th Legislature and was submitted to the electorate of the State at the general election held November 3, 1936. It appeared upon the ballot as State Question No. 210, Legislative Referendum No. 68, under the following ballot title:

"To amend Article 6, Section 31, of the Constitution of Oklahoma so as to relieve the State Board of Agriculture of its duties as a Board of Regents for the Oklahoma Agricultural and Mechanical Colleges and schools, and to create and provide for the appointment of a separate Board of Regents for said colleges and schools to be composed of nine members, removable only by impeachment or court procedure, and with the term of office of one member of said Board expiring each year."

The proposed measure received an affirmative or "yes" vote totalling 379,405, and a negative or "no" vote totalling 219,996. The State Election Board certified that the referred measure did not receive the requisite vote, and therefore failed of passage. The highest total vote cast and counted at said election for any office or measure for which all the electors of the State were entitled to vote was a total of 749,740, the same being the total vote cast and counted at said election for Presidential Electors. The total number of ballots issued at said election throughout the respective precincts of the State, after deducting the

the spoiled ballots, was 767,745, which figure was used by the State Election Board to represent the number of voters voting at such election and the number that must be taken into consideration in determining whether the measure lost or carried. It is noted that the number of affirmative votes cast for the measure is less than one-half of this figure, but it is the contention of the relators that the highest total vote cast and counted for any office or measure determines the number of electors voting at such election, within the meaning of the Constitution and that said measure, having received a majority of the number of votes cast for Presidential Electors, the State Election Board erred in certifying that the measure failed of adoption.

At the outset it is contended that relators, being residents and taxpayers, cannot maintain this action; that certiorari will not lie to review the action of the State Election Board for the reason that said State Election Board in canvassing the returns and declaring the result of said election acted purely in an administrative or ministerial capacity and that the writ of certiorari will lie only to review judicial or quasi-judicial acts.

Under the view we take of this case, it is unnecessary for us to discuss or determine these interesting questions, for we are of the opinion that under the pleadings and stipulated facts herein, the relators are not entitled to relief.

It suffices to say that courts are invested with jurisdiction to determine, in a proper proceeding, whether the Constitution has been amended. In re McConaughy, (Minn) 119 N. W. 408; 12 C. J. 880, 6 R. C. L. 32.

Section 1, Article 24, of the Constitution provides as follows:

"Any amendment or amendments to this Constitution may be proposed in either branch of the Legislature, and if the same shall be agreed to by a majority of all the members elected to each

of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered in their journals and referred by the Secretary of State to the people for their approval or rejection, at the next regular general election, except when the Legislature, by a two-thirds vote of each house, shall order a special election for that purpose. If a majority of all the electors voting at such election shall vote in favor of any amendment thereto, it shall thereby become a part of this Constitution.

"If two or more amendments are proposed they shall be submitted in such manner that electors may vote for or against them separately."

From an early day in the history of our State it has been determined (In re Initiative Petition No. 2, 26 Okl. 548, 109 P. 823) that an amendment to the Constitution submitted to the people, in order to become effective "must be approved by a majority of the electors voting at such election, " and not by a majority of those voting on the amendment itself, nor by a majority of the electors voting for any particular candidate. By the provisions of Section 3, Article 5, of the Constitution, relating to the Initiative and Referendum, the duty was enjoined upon the Legislature to enact suitable measures for carrying into effect the Initiative and Referendum.

While it is conceded that under the Constitution a submitted amendment to become effective must receive a vote equal to a "majority of all the electors voting at such election", difficulty arised in making a determination of the total number of electors voting at such election. The Legislature of 1910, in aid of the constitutional provisions above mentioned, and in order to effectuate the purpose of clarifying and carrying into effect the provisions of the Initiative and Referendum, enacted what is now Section 5886, O. S. 1931, which provides as follows:

"Whenever any measure or proposition is submitted to a vote by the initiative or referendum, it shall be the duty of the official counters of the precinct to make and transmit to the county election board the returns thereof in the same manner that they make their returns in the case of an election of public officers, transmitting to such county election board a certificate of the total number of electors voting in such election; and the county election board shall keep a record showing such total number of votes case in each of

such precincts as shown by such returns. Should the proposition be one covering the State at large, or any district therein, or be of such other nature as to require it, the county election board shall certify the result of such election to the state election board in the same manner as it certifies the result of election for public officers, and such county election board shall transmit to the state election board a certificate showing the total number of votes cast at any such election. It shall be the duty of the state election board to keep a record of all such election returns made to it under the provisions of this section."

It will thus be seen that it is the duty of the official counters of each precinct to transmit to the county election board "a certificate of the total number of electors voting in such election; and the county election board shall keep a record showing such total number of votes cast in each of such precincts as shown by such returns". It is then made the duty of the county election board to transmit to the State Election Board "a certificate showing the total number of votes cast at any such election." Section 5899, O. S. 1931, provides:

"It shall be the duty of the election officers to make out separate abstract sheets upon which the returns relating to proposed amendments shall be certified, each proposition appearing in an abstract to itself. It shall be the duty of the state election board to certify to the Governor, immediately upon receipt of all the returns upon any proposition, the result thereof, and upon receipt of such certificate from said board, it shall be the duty of the governor to issue his proclamation giving the whole number of votes cast in the State or any district and declaring the results of the vote upon the proposition."

It is insisted by the State Election Board that the precinct counters furnished to the county election boards certificates showing the number of ballots issued, and certificates showing, under the provisions of section 57-22, O. S. 1931, the number of ballots spoiled or not voted, and that the county election boards furnished like certificates to the State Election Board, and the State Election Board contends that by subtracting the spoiled ballots from those issued the number of voters voting at the election will be correctly determined and that this constitutes a substantial compliance with the above statutory provisions.

It was the intention of the Legislature, in enacting the above quoted provisions, to make more definite and certain the precise method to be used by the State Election Board in determining the result of an election upon an initiated or referred measure. If the counters in the various precincts had furnished the certificates provided for by Section 5886, supra, and if the county election boards had furnished the certificates to the State Election Board as required by said section, the State Election Board could promptly, by the mere process of tabulation, determine the result of such election upon an initiated or referred measure. By the provisions of section 5811, O. S. 1931, "such certificates, when properly certified to, shall be prima facie evidence of the correctness of the result of the several counties."

It appears that at least since 1916 the administrative method of determining the number of "electors voting at such election" in the various elections at which constitutional amendments have been voted on has been the method used in the election under consideration herein, -- that is, the number of ballots issued to electors, less the number of spoiled ballots. Although this administrative construction of an ambiguous constitutional provision has been followed by the election board for more than twenty years, relators have not sought relief in the various forums to require a certification of the returns upon any different method of determination of the controversial question. Instead, they seek to ignore the certificates furnished by this method by asserting that the highest vote actually cast and counted throughout the state for any office or measure for which all the electors of the state are entitled to vote is the true criterion for determining the result of an election on a statewide question.

Under this suggested method, no elector would be considered who did not vote on the office or measure receiving the highest vote, whereby eliminating many voters who, in the

instant case, voted only state, county or precinct ballots. The inaccuracy and fallibility of this method are conspicuously apparent. They assert that this number should arbitrarily be considered as representing the number of "electors voting at such election". This is predicated upon a presumption which is significantly contrary to the actual and admitted facts as presented in this case. By this method every voter appearing at the polls who did not see fit to cast a vote for Presidential Electors, but who may have voted for every other State officer, or county or precinct officer, or on the submitted amendment itself, is eliminated from consideration as an "elector voting at such election." This is in direct discord with the theory conceded by all parties to this proceeding that every voter appearing at the polls and casting a vote for or against any candidate or measure submitted is to be considered in determining the total number of "electors voting at such election". It appears from a certificate filed herein, made pursuant to special order of this Court, that "the total vote cast and counted at the regular election of November, 1936, as computed and compiled from the highest vote cast and counted in each precinct for any office or measure, either National, State, County or Precinct, as shown by the County Election Boards of the several counties of the State, is 760,055." Relators contend that there are errors in said certificates in that in 81 precincts, scattered throughout various counties of the State, they have ascertained by an individual investigation, and by evidence aliunde the election returns, that a less number of voters voted in said precincts than were certified by the County Election Boards to the State Election Board. However, relators point out no statutory proceeding for correcting such certificates, either by proceedings before the State Election Board or in any other manner. Should there be such errors, certainly this Court in this kind of proceeding is not the forum for correcting such errors. For

this Court to enter upon a determination of such questions, many additional parties, other than the State Election Board, would be necessary parties to this proceeding, and this action, which relators denominate a writ of certiorari (which we do not determine) would be resolved into a glorified election contest, casting doubt and uncertainty upon the result of the canvass of the votes as to every State officer and State question upon which the people of the state as a whole vote. We cannot concede that such evidence aliunde is permissible in this proceeding in this forum. It will be noted that, whether we take the ballots issued less the ballots spoiled as the method for determination of the number of "electors voting at such election" or whether we take the highest vote cast and counted for any office or measure in the various precincts of the state, as certified by the State Election Board, the measure failed to receive votes equal to "a majority of the electors voting at such election" as provided by section 1, Article 24 of the Constitution.

It is urged that the Nebraska Court in the case of *Tecumseh National Bank v. Saunders*, 71 N. W. 779, has held contrary hereto. A careful reading of that case disclosed that the question involved herein was not considered in that case. The same is likewise true of the Arkansas case of *Rice v. Palmer*, 96 S. W. 396. The Mississippi case of *State v. Brantley*, 74 So. 662, on its face shows that there was no determinative rule of law intended to be laid down therein. Therein the court said:

"Inasmuch as a majority of the court are not agreed upon any one of the many constitutional points argued and considered, and therefore no legal principle and be conclusively settled at this time, we shall forego or waive any elaborate discussion of the merits or demerits of any one of the many contentions made or constitutional questions argued."

Thus we find no state has deliberately adopted the theory of relators as a rule for determining the number of electors voting at a certain election.

It is fundamental that those who seek an extraordinary writ from a court must disclose, in a proper and legal way, that they are clearly entitled to such writ. From what we have hereinabove said, it appears that belators have not shown that the proposed constitutional amendment received a vote equal to "a majority of all the electors voting at such election." Having failed in this necessary requirement, it follows that they are entitled to no supervisory writ from this court.

Writ denied.

BAYLESS, V. C. J., WELCH, PHELPS, CORN and DAVISON, JJ:  
Concur.

RILEY and HURST, JJ: Dissent.