

Senate Joint Resolution No. 4
as Amended by the House.

By Stewart of the Senate
and Webb, of the House.

A Resolution

Authorizing the Submission of a Proposed
Amendment to the Constitution to the People
for their Approval or Rejection; said Proposed
Amendment being an Amendment of Section
9, of Article 9, of the Constitution of the State of Oklahoma.

Be It Resolved By The Legislature of The State of Oklahoma:

Section 1. That the following proposed amendment to the
Constitution of the State of Oklahoma shall be referred to the people
for their ratification or rejection at an election, as provided by law,
said proposed amendment shall be submitted under Articles 5 and
24 of the Constitution, and under the provisions of Article 1, of
Chapter 44, of the Session Laws of Oklahoma 1907-08, said
proposed amendment being an amendment to and in lieu of Section
9, of Article 9, of the Constitution of the State of Oklahoma, and as
follows, to-wit:

"Section 9. Any foreign or domestic railroad, transportation
or transmission company may lease, sell or otherwise dispose of its
property and franchise to, or may lease, buy or otherwise acquire and operate
the property and franchise of any like company wholly within or operating
out of the State, and may exercise the right and power of eminent domain under
the laws of this State, or as may hereafter be provided by law; Provided, that
the provisions of this section shall not be construed to affect the power of the
Corporation Commission to regulate and control the business of all Corporations
in this State, or to affect the provisions of Section Thirty-six, of Article 9, or of Article
Twenty-three of the Constitution of this State.

Said proposed amendment shall be submitted as provided by law,
and in the following form:

" Shall the proposed amendment be adopted: "

yes

no

Said proposed amendment to the Constitution of the State of
Oklahoma shall, upon receiving a majority of all electors
voting at said election, voting in favor of said amendment,
be adopted."

Page 1 Examined and
found correct and
R. P. Wagoner

Senate Joint Resolution No. 4. (cont.)

Section 2. The amendment herein proposed shall be submitted to the qualified electors of this State, as provided by law, at a special election to be held on Tuesday, April 25, 1911.

Passed by the Senate February 25, 1911.

J. P. McAlister
President of the Senate

Passed by the House of Representatives February 25, 1911.

W. A. Vincent
Speaker of the House of Representatives

Approved March Third 1911

Lee C. Cline

Governor of the State of Oklahoma

Open to examination and
found correct & sealed
R. R. Wynne

Oklahoma City, Okla., March 14, 1911.

Hon. Ben F. Harrison,
Secretary of State,
Oklahoma City, Okla.

Dear Sir:

I wish to file herewith proposed ballot title for the submission of the repeal of Section 9, Article 9, and the substitution of a new section therefor, as provided for in Senate Joint Resolution No. 4.

Respectfully,

M. L. Webb + M. P. Stewart

3/14/11
- 2.13.11 BFW

Proposed ballot title for submission of a constitutional amendment proposed by Senate Joint Resolution No. 4.

The proposed new section provides that any railroad, transportation or transmission company may buy, sell, lease or otherwise dispose of its property and franchise and may exercise the right of eminent domain, specifically providing that this shall not be construed to effect the powers of the Corporation Commission to regulate and control the business of all corporations in this state or to affect the provisions of Section 36 of Article 9 (same being the Fellow servant Law) or of Article 23 of the Constitution (same being the Eight Hour Law).

STATE OF OKLAHOMA
LEGAL DEPARTMENT
GUTHRIE

CHARLES WEST, ATTORNEY GENERAL
EDWARD G. SPILMAN, ASSISTANT ATTORNEY GENERAL
WILLIAM C. REEVES, ASSISTANT ATTORNEY GENERAL
CHARLES L. MOORE, ASSISTANT ATTORNEY GENERAL
SMITH C. MATSON, ASSISTANT ATTORNEY GENERAL

ADDRESS ALL COMMUNICATIONS TO
"THE ATTORNEY GENERAL" AND
REFER TO INITIALS

CW-F

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Senate Joint Resolution No. 4--
Proposed amendment to Article 9,
of the Constitution.

Oklahoma City, March 17, 1911.

To the

Secretary of State.

Sir:

Certified copy of Senate Joint Resolution No. 4,
with the proposed ballot title submitted by Senator
Stewart and Mr. Webb, was received in this office on the
15th of March, 1911.

The proposed ballot title is disapproved.

Substantially, the resolution provides that any for-
eign or domestic railroad, transportation or transmission
company may: first, dispose of its property and franchises;
second, may buy or otherwise acquire; and, third, operate
the property and franchise of any like company within or
operating out of this State, and in addition may exercise
the right and power of eminent domain.

The purpose of the amendment is, therefore, on its face
to dispose, to acquire, to operate property or franchise
of railroad, transportation or transmission companies, and
also to exercise the right of eminent domain.

No doubt the author of this resolution did not see the

purpose thereof. I feel sure that he is too patriotic to have introduced it if he had seen it. I am of the opinion that the legislature likewise would not have passed it, nor the Governor have signed it if the real purpose had been apparent to them. No doubt they were deceived by designing persons into believing that such a provision did not have the far reaching effect that it really has. But, it is immaterial what was the purpose of the framers. The purpose of the law must be gathered from the words it uses, and its purpose is to be measured by its effect. It must be presumed to intend the consequences that it will produce. What then are the immediate consequences that will follow in case this law is adopted?

It is clear that the laws for the preservation of natural gas rest upon two propositions: first, that the foreign companies are excluded from the highways of the state-- it is a use of eminent domain; and, second, foreign companies are not given the power of exercising eminent domain. The use of the eminent domain or common state property, and the exercise of the power of eminent domain, or power to take property for the use of the state, are so closely allied to amount practically to the same thing. Therefore, is it not questionable whether the purpose of this law is not to destroy the laws to preserve natural gas?

It is notorious that since the natural gas laws have been suspended by certain injunctions from the Federal Court

Secretary of State- 3

the supply has been very inadequate to the consumption in this State. In Oklahoma City that perhaps is more apparent than any where else, except, possibly, Muskogee.

Is the purpose of this law to entirely destroy the use of natural gas in the State? Should I conclude this from seeing what its effect will necessarily be?

Another necessary effect of the law proposed will be to give to foreign oil companies the power of eminent domain. You will bear in mind that the Standard Oil Company through its subsidiary, the Prairie Oil & Gas Company, had pipe lines in this state previous to statehood. They exercised their rights under a Kansas charter, and have always contended that they under their Kansas charter had no public duty to perform. That was the reason why this office was so strenuously opposed the building of pipe lines in this state except under domestic charters. The evident effect of this law is to allow the domestic oil pipe lines to be sold to and consolidated with the foreign pipe lines, in order that the standard oil company may prosecute its business under its Kansas Charter; In other words, as a private concern, and be free from the public duties put upon it by the Yeager-Strain bill and other oil legislation adopted in this State since statehood. Because of its effect, I not therefore, must see that the purpose of this law is to destroy the control of the state over the purchase and

transportation of oil in the State.

The resolution says that it shall not be construed to effect the provisions of Section 36 of Article 9 or Article 23. That is what the resolution says-- that it shall be construed. In my judgment, however, it will be construed to effect Section 6 of Article 23 because we know from experience that if this section is passed that no transportation or transmission company will be operated in Oklahoma under a domestic charter. They will all seek a foreign charter in order that they may have access to the Federal courts. As to how the Federal courts will construe the doctrine of contributory negligence ought not to be an open question among lawyers. Contributory negligence is a question of evidence. The Federal courts will follow their own rules on such a subject, and while perhaps the laws inaugurated by the state court may be construed not to effect Article 23, in the Federal courts undoubtedly the result will be to avoid Article 23, and, therefore, must I not be of the opinion that the purpose of the Section is to repeal Article 23 of the Constitution, because that is the necessary effect?

The necessary effect of the passage of this law, as I said, will be that all transportation and transmission companies as well as railroad companies will be operated under foreign charters. As long as railroad rate regulation is administered

by injunction in the federal court, until the day comes that such injunctions are prohibited by congressional act or the decision of the Supreme Court of the United States, the direct effect of allowing all transportation and transmission companies to operate in this state under foreign charters will be to impede, hinder and so far as possible destroy the power of the Corporation Commission to regulate and control the business of such companies in this State.

Therefore, though the section says that it shall not be construed to effect the power of the Corporation Commission its necessary effect, and, therefore, its purpose is to produce exactly the contrary result.

The ballot title prepared by this office in connection with the bill initiated about a year ago is in many respects applicable to the present resolution, as, to-wit: this office found that its purpose was to supersede Section 2 of Article 9 of the Constitution. It will be noted that Section 2 gave certain rights of location and operation to corporations organized or authorized under the laws of this State. The effect of the proposed law, and, therefore, its purpose will be to supersede Section 2 of Article 9 by giving the same rights to all companies wherever organized. Section 2 by its failure to give this right to foreign corporations denies them to the

In the case of the bill initiated a year ago, we found that its purpose was to supersede Section 6. The necessary effect of the passage of the Resolution perhaps will be as far as possible to remove all companies from the effect of

Section 6 of Article 9, and, therefore, I must find that its purpose is to supersede Section 6. Section 6 is the section giving the corporation commission the means of discovering the busyness of companies by requiring them to keep their books in the State. If the companies are foreign companies there may be some doubt whether they can be compelled to keep the books of the company in the State. The fact is plain that the companies doubt it, because they have taken an appeal from the order of the commission requiring them to keep their books in the State. Certainly if the order of the commission requiring them to comply with Section 6 is valid they should enforce it without taking an appeal.

A year ago we found that the effect, and, therefore, the purpose of the proposed initiated bill was to supersede Section 8, Article 9. That Section is the Section forbidding the consolidation of competing lines. Clearly the effect, and, therefore, the purpose of the law proposed today is to supersede said Section 8 in that it expressly provided that whatever buying, selling or operation of like companies together is desired, may be fulfilled. No limitation at all is put upon the buying, selling and operation provided for in the proposed Section 9. ^POld Section 9 of Article 9 is, of course, superseded.

In the bill initiated a year ago we found that the necessary effect, and, therefore, the purpose was to super-

Secretary of State- 7

sede Section 11 of Article 9. That Section provided that the benefit of future legislation should not flow to any company until it had completely accepted the Constitution. The Supreme Court of the United States held in the Pullman and Western Union Cases against Kansas that these companies had a right to do their interstate business without a franchise from the State, and the claim of the companies will be that the state business they will do under a contract that the state made by this proposed section. In other words, they will claim that they have a contract by reason of their investment by the terms of which they are to get the benefit of any law that may be relied upon by a domestic corporation. (See the Colorado Smelter Case.)

The law proposed now differs from the bill of last year in so far as Section 28 is concerned.

It is clear that the purpose of this law is to repeal Section 31 of Article 9, as was the purpose of the law of a year ago. This section denied the right of eminent domain to foreign companies.

I have already stated that the effect of the law now proposed will be to hinder the powers of the Corporation Commission in regulating under Section 18. Therefore, I am of the opinion that the following should be the ballot title, and I transmit it to you to be the ballot title for the proposed law:

Reverend

Wm. H. H. H.

Director

No. 25

Filed Mar. 17,

1911.

March
Twenty-second,
Nineteen Eleven.

To His Excellency,

The Governor of Oklahoma,

Oklahoma City.

S i r :--

I have the honor to inform you that Ballot
Title to Senate Joint Resolution No. 4, proposing an
amendment to Article IX, Section 9, of the Constitution of
this State, has been approved by the Attorney General,
and that a certified copy of the same has been transmitted
to the State Election Board in accordance with law.

Very respectfully,

Secretary of State.

bfn-w

STATE ELECTION BOARD
T. J. LEAHY, CHAIRMAN, FAHUBER
SETH K. GORDON, SECRETARY, GORE
J. L. HAMON, LAWTON

ADDRESS ALL
COMMUNICATIONS TO THE
SECRETARY

Department of Elections
STATE OF OKLAHOMA

OKLAHOMA CITY, OKLA. May 19, 1911.

Honorable Ben Harrison,
Secretary of State,
Oklahoma City, Oklahoma.

Dear Sir:--

I am herewith enclosing you a copy
of the vote on the last election; and also as per
your request I am returning Grady County having made
a copy of it.

Very truly yours,

Ben White
SEC'Y STATE ELECTION BOARD.

STATE QUESTION NUMBER ONE

PROPOSED BY THE LEGISLATURE

	YES	NO
ADAIR COUNTY	59	449
ALFALFA "	454	668
ATOKA "	193	361
BELLEVILLE "	89	11
BECKHAM "	461	884
BLAINE "	642	554
BOYD "	265	876
CADDO "	968	1138
CANADIAN "	846	714
CARTER "	1206	838
CHESTER "	179	439
CHICKASAW "	962	829
CIMARRON "	263	94
CLAY COUNTY "	598	537
COAL "	604	927
COMANCHE "	1720	714
CRAIG "	392	838
CREEK "	471	428
CUSTER "	1664	1215
DELAWARE "	no election held	
DEWEY "	915	402
ELLIS "	766	382
GARFIELD "	1360	1100
GARVIN "	483	966
GRADY "	1093	842
GRANT "	501	1043
GREEN "	340	519
HASKINSON "	107	631

	YES	NO
HARPER COUNTY	555	148
HASKELL "	237	538
HUGHES "	308	1105
JACKSON "	206	1048
JEFFERSON "	739	562
JOHNSTON "	388	561
KAY "	907	1102
KIACHTICHER "	559	860
KIOWA "	434	575
LATIMER "	101	527
LE FLORE "	244	212
LINCOLN "	611	1603
LOGAN "	824	883
LOVE "	250	333
MCCLAIN "	596	294
MCURTAIN "	no election held	
MCINTOSH "	153	256
MAJON "	574	508
MARSHALL "	120	382
MAYES "	230	378
MURRAY "	357	309
MUSKOGEE "	402	986
NOBLE "	309	735
NOBATA "	141	194
OKFUSKIE "	177	357
OKMUNGA "	3181	1306
OKMULGEE "	431	364
OSAGE "	458	96
OTTAWA "	275	480
PANHANDLE "	263	985

	YES	NO
PAYNE COUNTY	406	1342
PITTSBURG "	1004	682
PONTOTOC "	469	877
POTTAWATOMIE "	1310	1237
PURMATAHA "	189	181
ROGER KILLS "	626	305
ROGERS "	185	813
SEMINOLE "	no election held	
SERQUOYAH "	80	478
STEPHENS "	357	610
SWANSON "	343	447
TEXAS "	494	309
TILLMAN "	428	396
TULSA "	1182	868
WAGONER "	98	415
WASHINGTON "	794	781
WASHITA "	511	848
WOODS "	808	524
WOODWARD "	<u>842</u>	<u>820</u>
TOTAL	41,768	46,662
MAJORITY		4,894 =

STATE ELECTION BOARD, }
STATE OF OKLAHOMA. } 20

Honorable Lee Cruise,

Governor of the State of Oklahoma.

Sir:--

I, Ben W. Riley, Secretary of the State Election Board of the State of Oklahoma, hereby certify that the above and foregoing is a true and correct vote cast for and against State Question Number One, proposed by the Legislature, in the above counties in the State of Oklahoma, at the Special Election held in said State of Oklahoma on the 25th day of April, A. D. 1911, as shown by the official returns of the respective County Election Boards of the State of Oklahoma, as now appears of record in the office of the State Election Board of the State of Oklahoma.

IN TESTIMONY WHEREOF, I herewith set my hand and affix the official seal of office this the Eighth day of May, A. D. 1911.

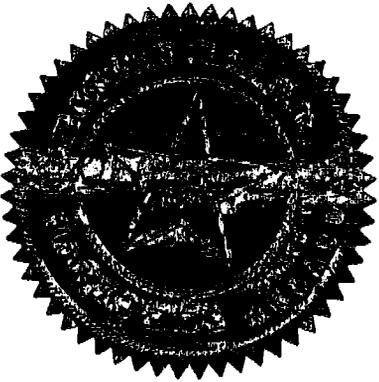
APPROVED:

Ben W. Riley

SECRETARY STATE ELECTION BOARD.

CHAIRMAN

MEMBER



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Plot m Stats
Section No 45

SECRETARY'S OFFICE
STATE OF DELAWARE
SECRETARY'S OFFICE

This instrument was filed for record this
19th day of May

A. D. 1911 at 5 o'clock P. M.

Recorded in _____ at _____
Record No. _____ of Page _____
_____ Corporation

Briggs
Briggs
Secretary of State
BY *Arnold*