

**FILED**

**SEP 13 1999**

**OKLAHOMA SECRETARY  
OF STATE**

State Question No. 687

**"WARNING"**

Initiative Petition No. 365

It is a felony for anyone to sign an initiative or referendum petition with any name other than his/her own, or knowingly to sign his/her name more than once for the measure, or to sign such petition when he/she is not a legal voter.

**INITIATIVE PETITION**

**TO: THE HONORABLE FRANCIS A. KEATING,  
GOVERNOR OF OKLAHOMA:**

We, the undersigned legal voters of the State of Oklahoma, respectfully order that the following proposition shall be submitted to the legal voters of the State of Oklahoma for their approval or rejection at the general election to be held on the 7th day of November, 2000, or, if unachievable by that date, at the next general election, and each for himself/herself says: I have personally signed this petition; I am a legal voter of the State of Oklahoma; my residence or post office is correctly written after my name. The time for filing this petition expires ninety days from September 13, 1999. The question we herewith submit to our fellow voters is:

Shall the following proposed law be approved?

**BALLOT TITLE**

Title 21 deals with animal cruelty. This measure adds a new section to Title 21 banning cockfighting. It would become illegal to hold or encourage a cockfight. It would become illegal to keep birds for fighting purposes. It would also become illegal to be a spectator at a cockfight.

**SHALL THE FOLLOWING PROPOSED LAW BE APPROVED?**

For the proposal -- YES  
Against the proposal -- NO

**BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA THAT A NEW SECTION BE ADDED TO TITLE 21:**

**1. DEFINITIONS**

**AS USED IN THIS ACT:**

A. "COCKFIGHT" OR "COCKFIGHTING" IS A FIGHT BETWEEN BIRDS, WHETHER OR NOT FITTED WITH SPURS, KNIVES, OR GAFFS, AND WHETHER OR NOT BETS OR WAGERS ARE MADE ON THE OUTCOME OF THE FIGHT, AND INCLUDES ANY TRAINING FIGHT IN WHICH BIRDS ARE INTENDED OR ENCOURAGED TO ATTACK OR FIGHT WITH ONE ANOTHER.

B. "EQUIPMENT USED FOR TRAINING OR HANDLING A FIGHTING BIRD" INCLUDES KNIVES OR GAFFS, CAGES, PENS, FEEDING APPARATUSES, TRAINING PENS AND OTHER RELATED DEVICES AND EQUIPMENT, AND IS HEREBY DECLARED CONTRABAND AND SUBJECT TO SEIZURE.

**2. INSTIGATING OR ENCOURAGING COCKFIGHT**

EVERY PERSON WHO WILLFULLY INSTIGATES OR ENCOURAGES ANY COCKFIGHT, UPON CONVICTION, SHALL BE GUILTY OF A FELONY. THE PENALTY FOR A VIOLATION OF THIS SECTION SHALL BE AS PROVIDED IN SECTION 8 OF THIS ACT.

**3. KEEPING PLACE, EQUIPMENT OR FACILITIES FOR COCKFIGHTING**

EVERY PERSON WHO KEEPS ANY PIT OR OTHER PLACE, OR KNOWINGLY PROVIDES ANY EQUIPMENT OR FACILITIES TO BE USED IN PERMITTING ANY

COCKFIGHT, UPON CONVICTION, SHALL BE GUILTY OF A FELONY. THE PENALTY FOR A VIOLATION OF THIS SECTION SHALL BE AS PROVIDED IN SECTION 8 OF THIS ACT.

#### 4. SERVICING OR FACILITATING COCKFIGHT

EVERY PERSON WHO DOES ANY ACT OR PERFORMS ANY SERVICE IN THE FURTHERANCE OF OR TO FACILITATE ANY COCKFIGHT, UPON CONVICTION, SHALL BE GUILTY OF A FELONY. SUCH ACTIVITIES AND SERVICES SPECIFICALLY PROHIBITED BY THIS SECTION INCLUDE, BUT ARE NOT LIMITED TO: PROMOTING OR REFEREEING OF BIRDS AT A COCKFIGHT, ADVERTISING A COCKFIGHT, OR SERVING AS A STAKES HOLDER OF ANY MONEY WAGERED ON ANY COCKFIGHT. THE PENALTY FOR A VIOLATION OF THIS SECTION SHALL BE AS PROVIDED IN SECTION 8 OF THIS ACT.

#### 5. OWNING, POSSESSING, KEEPING OR TRAINING BIRD FOR FIGHTING

EVERY PERSON WHO OWNS, POSSESSES, KEEPS, OR TRAINS ANY BIRD WITH THE INTENT THAT SUCH BIRD SHALL BE ENGAGED IN A COCKFIGHT, UPON CONVICTION, SHALL BE GUILTY OF A FELONY. THE PENALTY FOR A VIOLATION OF THIS SECTION SHALL BE AS PROVIDED IN SECTION 8 OF THIS ACT.

#### 6. SPECTATORS

EVERY PERSON WHO IS KNOWINGLY PRESENT AS A SPECTATOR AT ANY PLACE, BUILDING, OR OTHER SITE WHERE PREPARATIONS ARE BEING MADE FOR A COCKFIGHT WITH THE INTENT TO BE PRESENT AT SUCH PREPARATION OR COCKFIGHT, OR IS KNOWINGLY PRESENT AT SUCH COCKFIGHT, UPON CONVICTION SHALL BE GUILTY OF A MISDEMEANOR.

#### 7. SEIZURE, DESTRUCTION, OR FORFEITURE OF COCKFIGHTING EQUIPMENT OR FACILITIES

FOLLOWING THE CONVICTION OF A PERSON FOR SECTIONS 2, 3, 4, OR 5 OF THIS ACT, THE COURT ENTERING THE JUDGMENT SHALL ORDER THAT THE BIRDS AND KNIVES OR GAFFS USED IN VIOLATION OF THIS ACT BE FORFEITED TO THE STATE, AND MAY ORDER THAT ANY AND ALL EQUIPMENT DESCRIBED IN SECTION 1 USED IN VIOLATION OF THIS ACT BE FORFEITED TO THE STATE.

#### 8. PUNISHMENT

A. EVERY PERSON WHO IS GUILTY OF A FELONY UNDER ANY OF THE PROVISIONS OF SECTIONS 2, 3, 4, OR 5 OF THIS ACT SHALL BE PUNISHED BY IMPRISONMENT IN THE STATE PENITENTIARY FOR NOT LESS THAN ONE (1) YEAR NOR MORE THAN TEN (10) YEARS, OR SHALL BE FINED NOT LESS THAN TWO THOUSAND DOLLARS (\$2,000.00) NOR MORE THAN TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), OR BY BOTH SUCH FINE AND IMPRISONMENT.

B. EVERY PERSON WHO UPON CONVICTION IS GUILTY OF ANY OF THE PROVISIONS OF SECTION 6 OF THIS ACT SHALL BE PUNISHED BY IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN ONE (1) YEAR, OR SHALL BE FINED NOT MORE THAN FIVE HUNDRED DOLLARS (\$500.00), OR BY BOTH SUCH FINE AND IMPRISONMENT.

#### 9. EXEMPTION

NOTHING IN THIS ACT SHALL PROHIBIT ANY OF THE FOLLOWING:

A. HUNTING BIRDS OR FOWL IN ACCORDANCE WITH OKLAHOMA REGULATION OR STATUTE, INCLUDING BUT NOT LIMITED TO THE SPORT OF HUNTING GAME WITH TRAINED RAPTORS.

B. AGRICULTURAL PRODUCTION OF FOWL FOR HUMAN CONSUMPTION.

## SIGNATURES

The gist of the proposition is as follows:

This measure would prohibit the practice of cockfighting, making it illegal to instigate, keep a place for or service a cockfight. It would also be unlawful to own or keep a bird for fighting purposes and to knowingly be present at a cockfight.

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

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

**INSTRUCTIONS FOR CIRCULATORS:** Circulators must be legal voters (lawfully registered to vote) in Oklahoma and must personally witness all signatures. **ALL PETITION SIGNERS MUST BE LEGAL VOTERS (LAWFULLY REGISTERED TO VOTE) IN OKLAHOMA.** After the signer signs, turn this sheet over and print the name only in the corresponding space provided. When all signatures have been obtained, fill out the circulators affidavit on the back of this sheet in the presence of a notary public.

RETURN THIS PETITION TO: Janet Halliburton  
 Oklahoma Coalition Against Cockfighting  
 P.O. Box 780378  
 Oklahoma City, OK 73178

**AFFIDAVIT**

STATE OF OKLAHOMA )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

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

That I am a qualified elector of the State of Oklahoma and that the following persons signed this sheet of the foregoing petition, and each of them signed his or her name thereto in my presence:

- |           |           |
|-----------|-----------|
| 1. _____  | 11. _____ |
| 2. _____  | 12. _____ |
| 3. _____  | 13. _____ |
| 4. _____  | 14. _____ |
| 5. _____  | 15. _____ |
| 6. _____  | 16. _____ |
| 7. _____  | 17. _____ |
| 8. _____  | 18. _____ |
| 9. _____  | 19. _____ |
| 10. _____ | 20. _____ |

I believe that each has stated his or her name, post office, and residence correctly, and that each signer is a legal voter of the State of Oklahoma and the County of his or her residence as stated.

\_\_\_\_\_  
Circulator's Signature

\_\_\_\_\_  
Post Office Address

\_\_\_\_\_  
City

\_\_\_\_\_  
Zip Code

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Post Office Address

\_\_\_\_\_  
City

\_\_\_\_\_  
Zip Code

My Commission Expires:  
\_\_\_\_\_

(SEAL)



**FILED**

JAN 28 2000

OKLAHOMA SECRETARY  
OF STATE

**OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA**

January 28, 2000

Mike Hunter, Secretary of State  
Office of the Secretary of State  
101 State Capitol Building  
Oklahoma City, Oklahoma 73105

**Re: Ballot Title for State Question No. 687, Initiative Petition No. 365**

Dear Secretary Hunter:

Having found that the Proponents' suggested Ballot Title for the above-referenced State Question was not in harmony with the law, we have, in accordance with the provisions of 34 O.S.Supp.1999, § 9(D)(1), prepared the following substitute Ballot Title for filing in your office. As a Title 34 Ballot Title review, the following does not constitute an Attorney General's opinion on the merits or constitutionality of the underlying change in the law. The substitute Ballot Title reads as follows:

**BALLOT TITLE**

This measure adds a new section to Title 21 of the Oklahoma Statutes. The measure makes cockfighting illegal. It defines "cockfight" or "cockfighting" as:

1. A fight between birds.
2. Whether or not fitted with spurs, knives, or gaffs.
3. Whether or not bets or wagers are made on the outcome of the fight.

Mike Hunter, Secretary of State  
January 28, 2000  
Page 2

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The definition includes training fights.

The measure defines equipment used for training or handling a fighting bird.

Under the measure:

1. It is a felony to instigate or encourage cockfighting.
2. It is a felony to keep places, equipment or facilities for cockfighting.
3. It is a felony to aid or assist in cockfighting.
4. It is a felony to own, possess, keep or train birds for cockfighting.

Under the proposal it is a misdemeanor to knowingly be a spectator at a cockfight.

The measure provides for the forfeiture of birds and equipment use in cockfighting.

**SHALL THIS PROPOSAL BE APPROVED?**

For the Proposal. \_\_\_\_\_ YES

Against the Proposal. \_\_\_\_\_ NO

Respectfully submitted,



W.A. DREW EDMONDSON  
ATTORNEY GENERAL

NOV 13 2001

2001 OK 98

JAMES W. PATTERSON  
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

In re:	)	
	)	
INITIATIVE PETITION NO. 365,	)	For Official Publication
	)	No. 94,155
STATE QUESTION NO. 687.	)	

ORIGINAL ACTION CHALLENGING VALIDITY OF SIGNATURES AND  
LEGAL SUFFICIENCY OF INITIATIVE PETITION NO. 365, STATE  
QUESTION NO. 687

¶ 0 This case comes before us as an original action to determine the numerical and legal sufficiency of an initiative petition that seeks to ban cockfighting in the state of Oklahoma.

INITIATIVE PETITION NO. 365 IS DECLARED SUFFICIENT  
FOR SUBMISSION TO THE VOTE OF THE PEOPLE OF THE STATE  
OF OKLAHOMA AS STATE QUESTION NO. 687.

D. Kent Meyers, Roger A. Strong, Paige S. Bass, Crowe & Dunlevy, Oklahoma City, Oklahoma, attorneys for Opponents Tom Hargus and James T. Tyler.

Larry L. Oliver, Larry L. Oliver & Associates, P.C., Tulsa, Oklahoma, and Lee Slater, Oklahoma City, Oklahoma, attorneys for Opponents James Talley, Kelly Barger, Sheryl Maize, George Day, Joseph Clinton Phillips, D.D.S., Mark Kelly, Judy Hamilton, Jeffrey Pearce, Bill McNatt, and Mark Urbanosky and "John Doe".

Marc Edwards, Phillips McFall McCaffrey McVay & Murrah, P.C., attorney for Petitioners.

WINCHESTER, J.

¶ 1 This is an original action brought pursuant to 34 O.S.Supp.2001, § 8 by Opponents Tom Hargus and James T. Tyler and by Opponents James Talley, Kelly Barger, Sheryl Maize, George Day, Joseph Clinton Phillips, D.D.S., Mark Kelly, Judy Hamilton, Jeffrey Pearce, Bill McNatt, and Mark Urbanosky and "John Doe" challenging the numerical and legal sufficiency of Initiative Petition No. 365, State Question No. 687 that seeks to ban cockfighting in the state of Oklahoma. We hold numerical and legal

sufficiency is established and that the petition meets the standards for submission to the people.

¶ 2 Pursuant to the order of this Court, a hearing was commenced on October 2, 2000, to determine factual issues relating to the petition. The hearing was concluded on November 2, 2000, and the record of proceedings was filed on December 18, 2000.

¶ 3 Opponents' challenges to the petition fall into two categories, to-wit: challenges to the numerical sufficiency of the signatures and numerous constitutional challenges. Petitioners argue that Opponents fail to meet their burden of clear and convincing proof regarding the invalidity of certain signature challenges and contend that the constitutional challenges lack merit.

#### **STANDARD OF REVIEW**

¶ 4 The proceeding in this Court is authorized by 34 O.S.Supp.2001, § 8, 1992 Okla.Sess.Laws, ch. 92, § 7 and is not appellate in character but constitutes a transference to this Court by the Secretary of State "of all the papers and documents on file in his office relating to the initiative or referendum petition for an original investigation and hearing *de novo*." *In re Initiative Petition No. 281, State Question No. 441*, 1967 OK 230, ¶ 5, 434 P.2d 941, 945. "[T]he real purpose of an initiative petition is to secure a vote of the people upon a proposed law or constitutional amendment." *In re Initiative Petition No. 281, State Question No. 441*, 1967 OK 230, ¶ 9, 434 P.2d 941, 946.

#### **SIGNATURE CHALLENGES**

¶ 5 When an opponent attacks signatures that appear on an initiative petition on the basis its signers were not registered voters, a presumption

arises that the persons are registered voters. The opponent bears the burden of producing sufficient competent evidence to overcome this presumption. *In re Initiative Petition No. 249*, 1950 OK 238, ¶ 0, 222 P.2d 1032 (Syllabus). As we review Opponents' challenges herein, it is important to note that a successful challenge to a signature renders moot another challenge to that signature. *Oklahomans for Alcoholic Beverage Controls, Inc. v. Shelton*, 1972 OK 133, ¶ 15, 501 P.2d 1089, 1092.

¶ 6 Const. Art. 5, § 2 requires that the petition be signed by a number of legal voters equal to at least eight percent (8%) of "the total number of votes cast at the last general election for the State office receiving the highest number of votes at such election." The election to which we look is that of November, 2000, and the number of signatures necessary to place the instant petition before the people is 69,887. The Secretary of State determined the total number of signatures on the petition to be 99,750. The initial number of Opponents' non-registration challenges was 37,146 signatures. Successful challenge to 29,864 signatures would render the petition invalid. Opponents set forth the following individual challenges.

**Signatures taken by circulator Robert Godwin: 3,205**

¶ 7 Opponents challenge 3,205 signatures taken by a circulator named Robert Godwin, who refused to obey subpoenas and other court orders commanding him to appear. We deny this challenge because the evidence was not critical and it would penalize Petitioners, who are blameless with regard to this circulator's refusal to appear.

**Signatures collected by Don Card: 4,120**

¶ 8 Opponents challenge the validity of petitions circulated by Don Card on the basis Mr. Card was not a qualified elector as required in 34

O.S.Supp.2001, § 3.1 and under Oklahoma Constitution Article 3, §1 that states, "Subject to such exceptions as the Legislature may prescribe, all citizens of the United States, over the age of eighteen (18) years, who are bona fide residents of this state, are qualified electors of this state." We note that a circulator is required only to be a "qualified elector," not a registered voter. *Oklahomans for Modern Alcoholic Beverage Controls, Inc. v. Shelton*, 1972 OK 133, ¶ 8, 501 P.2d 1089, 1092.

¶ 9 Evidence at the hearing established Mr. Card is a United States citizen over eighteen years of age. However, Opponents presented sufficient evidence at the hearing to support a finding that Mr. Card is not a qualified elector. Therefore, we must disqualify these 4,120 signatures.

**Signatures taken by circulator Billy Calvin: 7,542**

¶ 10 Opponents challenge 7,542 signatures gathered by a circulator named Billy Calvin. The evidence at the hearing established Mr. Calvin is a bona fide resident of the state of Oklahoma and is over the age of eighteen. Therefore, Mr. Calvin is a qualified elector and eligible to circulate the petition. As such, we deny this challenge.

**Signatures of persons whose signatures on the petition pre-dated their voter registration dates: 143 net [433 total, 290 previously disqualified because collected by Don Card]**

¶ 11 Opponents challenge these signatures and presented conclusive evidence 143 persons [net] applied for voter registration at the time they signed the petition. Pursuant to 34 O.S.Supp.2001, §§ 3, 6 and 23, only registered voters have the right to sign initiative petitions. Therefore, we must disqualify these 143 net signatures.

**Signatures collected by Arling Medina: 3,366**

¶ 12 One of the petition circulators, Mr. Arling Medina, testified that at no

time did he appear before a notary public to execute the affidavits attached to the signatures he gathered. He also testified he did not sign such affidavits under oath. His testimony was corroborated by a co-worker who testified that a Ms. Herrian, the circulator in charge who notarized Mr. Medina's signature, came to Mr. Medina's office to gather previously signed pamphlets. Evidence showed that Ms. Herrian's notary logs did not reflect any record of notarization for Mr. Medina. We have held that the failure of an affiant to appear personally before a notary destroys the verification and invalidates the signatures on those sheets. See, e.g., *In re Initiative Petition No. 347*, 1991 OK 55, ¶ 48, 813 P.2d 1019, 1035, [citing *In re Initiative Petition No. 142*, *State Question No. 205*, 176 Okl. 155, 55 P.2d 455 (1936) and *In re Initiative Petition No. 281*, *State Question No. 441*, 434 P.2d 941 at pp. 953-956 (Okl.1967)]. Therefore, we must disqualify these 3,366 signatures.

### **Signatures involving defects arising from notarization**

#### **Signatures on petitions where the notaries failed to file proper notary bonds: 1,246**

¶ 13 Before entering upon the duties of the office, a notary must file his or her commission from the Secretary of State and a one thousand dollar (\$1,000.00) bond with the court clerk for the county in which the notary resides or is employed. 49 O.S.Supp.2001, § 2. The circulator's affidavit is required along with a valid notarization pursuant to 34 O.S.Supp.2001, § 6 and 12 O.S.Supp.2001, § 432, respectively. We disqualified signatures on pamphlets in which the circulator's verification was before a notary public whose commission had expired in *Oklahomans for Alcoholic Beverage Controls, Inc. v. Shelton*, 1972 OK 133, ¶ 18, 501 P.2d 1089, 1093. The

undisputed evidence in the instant case established the notaries on these 1,246 challenged signatures failed to file their bonds. As such, they were without power to perform notarial acts. We must disqualify these 1,246 signatures.

**Signatures challenged for defective notarization: 300**

¶ 14 Opponents challenge 300 signatures for defective notarization. The circulator of the petitions on which these signatures appear, Ms. Inez Bandon, testified she signed her petition affidavits in the presence of Ms. Evalena Herrian, a notary. Ms. Bandon testified at the hearing that she believed Ms. Herrian's husband, Dean Herrian, might have been present when her petition affidavits were notarized. Evidence received during the course of the hearing revealed that, in fact, it was Mr. Herrian, not Mrs. Herrian, who actually notarized Ms. Bandon's affidavits. However, Ms. Bandon's confusion does not impeach her oath as a circulator, wherein she attested to her status as a qualified elector, to the execution of the petition signatures in her presence and to her belief in the correctness of the signers' addresses. *In re Initiative Petition No. 347, State Question No. 639*, 1991 OK 55, ¶ 49, 813 P.2d 1019, 1036. Therefore, we deny this challenge.

**Signatures challenged for illegible notary names on petitions: 153**

¶ 15 Opponents challenge 153 signatures on petitions for illegible notary names. At the hearing, Petitioners elicited testimony that established these notaries were properly qualified. Therefore, we deny this challenge.

**Signatures challenged on the basis the notary public's bond was not filed with the Oklahoma County Court Clerk on the day of notarization: 400**

¶ 16 Opponents challenge 400 signatures on petitions notarized by Ms.

Evalena Herrian, contending the affidavits were executed on September 16, 1999, and Ms. Herrian's notary bond was not filed with the Oklahoma County Court Clerk until September 17, 1999. The record reflects that the Court Clerk's filing stamp on Ms. Herrian's bond form shows a filing date of September 16, 1999, and we regard this as conclusive. Accordingly, we deny this challenge.

**Signatures on petitions unsigned by the circulator or signed by someone other than the circulator named in the heading: 57**

¶ 17 The record established the petitions containing these 57 signatures were not verified on the back by an affidavit signed by the circulator who gathered the signatures on the signature sheet. Some were blank, while others were signed by someone other than the named circulator, all in violation of the requirements of 34 O.S.Supp.2001, § 6. Section 6 requires each sheet of petitions containing signatures to be verified on the back by an affidavit signed by the circulator who gathered them. Therefore, we must disqualify these 57 signatures.

**Forged signatures: 8**

¶ 18 Petitioners' attorneys disclosed at the hearing that eight signatures were forgeries. Evidence confirmed this. Accordingly, we disqualify these 8 signatures.

**Duplicate signatures: 62**

¶ 19 Opponents presented uncontroverted evidence that 62 persons signed the petition more than once. "No legal voter properly can affix his signature to a petition more than one time. When a signature is duplicated, the duplicated signature is to be disregarded." *Oklahomans for Alcoholic Beverage Controls, Inc. v. Shelton*, 1972 OK 133, ¶ 13, 501 P.2d 1089,

1092-1093. Therefore, we disqualify these 62 signatures.

### **Numerous Hyper-Technical Challenges**

¶ 20 Opponents presented numerous hyper-technical challenges of several thousand additional signatures at the hearing but offered no evidence a contesting party actually was prejudiced thereby. Thus, these challenges are not well taken and are denied. *Oklahomans for Alcoholic Beverage Controls, Inc. v. Shelton*, 1972 OK 133, ¶ 12, 501 P.2d 1089, 1093.

**Signatures of persons identified as “not found” in Opponents’ electronic database: 35,832 net (37,146 total; 1,314 collected by Arling Medina and previously disqualified.)**

¶ 21 In the statutory scheme of the initiative and referendum process, the requirement that petition signers state their correct street addresses serves to prevent fraud by enabling Opponents “to trace purported signers and investigate their qualifications.” *In re Initiative Petition No. 142, State Question No. 205*, 1936 OK 209, ¶ 23, 55 P.2d 455, 458. Opponents must show that the signers cannot with due diligence be located to ascertain their voter status, in order to meet their burden of “clear and convincing evidence” a signer is not a registered voter. The Oklahoma Election Management System (OEMS), enacted in 1990 and codified at 22 O.S.Supp.2001, § 3-101 et. seq., constitutes a single, computerized official database of registered voters maintained by the State Election Board. Opponents testified at the hearing that they utilized information they obtained from the Oklahoma Election Management System (OEMS), maintained by the state election board, in formulating the database they used to verify voter registration status of petition signers. Neither the above-stated purpose of the requirement that petition signers state their correct street addresses, nor the presumption that petition signers are registered voters, has been

extinguished by the adoption of the Oklahoma Election Management System. The OEMS does not relieve Opponents of their burden to establish by "clear and convincing evidence" that a petition signer is not a registered voter, in order to perfect a signature challenge.

¶ 22 In the instant case, Opponents do not argue the street addresses that appear on the petition pamphlets for these challenged signatures are incorrect, or that Opponents are unable to trace and investigate voter qualifications of these signers by means of their street address. Instead, Opponents presented evidence at the hearing that either the exact first, middle and last names, or the exact street addresses of the challenged signatures are "not found" in Opponents' database. Testimony that a petition signer is "not found" in Opponents' database does not meet the burden of presenting "clear and convincing evidence" a petition signer is not a registered voter. We take note that Petitioners produced voter registration cards for individuals whom Opponents alleged were "not found" in their database, at the hearing.

¶ 23 We also take note that inactive voters under 26 O.S.Supp.2001, § 4-120.2 would not be identified in such a database as Opponents, nor would active voters whose address changes were not current.<sup>1</sup> Indeed, the

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<sup>1</sup>26 O.S.Supp.2001, § 4-120.2 Inactive voters, provides as follows:

A. No later than June 1 of each odd numbered year and for the previous twenty-four (24) months, any voter for whom a first-class mailing from the county election board was returned, any voter identified by the Secretary of the State Election Board as a potential duplicate, any voter who has surrendered his or her Oklahoma driver license to the Department of Public Safety upon being issued a driver license in another state, and any active registered voter who did not vote in the second previous general election or any election conducted by a county election board since the second previous general election and who has initiated no voter registration change shall be sent an address confirmation mailing prescribed by the Secretary of the State Election board and paid for by the state. Voters who do not respond to the confirmation mailing or whose mailing is returned as nonforwardable shall be designated as inactive sixty (60) days after the mailing. An inactive voter's status shall be changed to active under the following conditions:

1. With any registration change initiated by the voter; or
2. By voting in any election conducted by a county election board.

An inactive voter who does not vote in any election conducted by a county election board during the period beginning on the date of the confirmation mailing and ending on the day after the date of the second successive general election for federal office shall be removed as a registered voter and all the information on that voter shall be destroyed. Each county election board secretary shall maintain a list of the names and addresses of all persons sent a confirmation mailing as described in this section and information on whether or not each such person has responded to the notice. Said list shall be maintained for twenty-four (24) months following the date of the second

database Opponents utilized in checking the signatures for this petition was taken from voting records as to which addresses were due to be updated in the upcoming odd-numbered year, to-wit: 2001. The hearing on this matter occurred in October and November of 2000, just months prior to the next-scheduled update of addresses and nearly two years after the last official update. Therefore, we decline to accept Opponents' database as conclusive proof of current names and addresses of all registered voters in the state of Oklahoma. We hold that Opponents' evidence of "not found" in this database falls short of the "clear and convincing proof" necessary to rebut the presumption that petition signers are registered voters.

¶ 24 Opponents apparently made no effort to confirm or investigate the actual addresses given by these signers, but merely searched their database for exact matches as to full name and complete address. We continue to ascribe to our previous holding that the signatures of persons who give insufficient addresses without proof of a purpose to deceive, are presumed valid. This is true when Opponents, as in the case at bar, make no attempt to show that any of signers who allegedly gave insufficient addresses or whose first, middle and last names are not an exact match of those in Opponents' database could not have been located with due diligence. See, e.g., *In re Initiative Petition No. 317, State Question No. 556*, 1982 OK 78, ¶ 40, 648 P.2d 1207, 1216. Opponents failed to present

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successive federal general election after the date of the confirmation mailing.

B. The secretary of each county election board shall cause all inactive voters in a precinct to be identified on the precinct registry.

C. No later than June 1 of each odd-numbered year, the Secretary of the State Election Board shall identify duplicate voter registrations in the state and shall direct appropriate county election board secretaries to cancel the voter registration of all but the latest registration of duplicate voter registrations. Each county election board secretary shall maintain for twenty-four (24) months a list of the names and addresses of all canceled duplicate voter registrations. For the purposes of this subsection, duplicate voter registrations are those registrations which contain the following identical information on more than one registration:

1. First name, middle name or initial, last name, and date of birth;
2. Driver license or social security number; or
3. Last name, date of birth, and the last four digits of the social security number.

clear and convincing evidence of voter non-registration as to these 35,832 *net* challenges. Accordingly, these challenges are denied.

¶ 25 The number of successful challenges to signatures by Opponents stands at 9,002. This number falls short of the 29,864 required to invalidate the initiative petition on the basis of numerical insufficiency. We find 90,748 of the total 99,750 signatures determined by the Secretary of State are valid. As such, we hold that the initiative petition is numerically sufficient to be presented on the ballot for a vote of the people.

### CONSTITUTIONAL CHALLENGES

¶ 26 Generally, we decline to declare an initiative invalid prior to a vote of the people except when there is a 'clear or manifest' showing of unconstitutionality. See, e.g., *In re Initiative Petition No. 362, State Question No. 669*, 1995 OK 77, ¶ 12, 899 P.2d 1145, 1151, citing *In re Initiative Petition No. 358, State Question No. 658*, 1994 OK 27, ¶ 7, 870 P.2d 782, 785. Accordingly, we decline consideration of the issues advanced by Opponents relative to asserted constitutional invalidity of the instant initiative petition.

### CONCLUSION

¶ 27 From examination of all the evidence we conclude the petition is valid in the form required by statutes, that the petition is signed by a sufficient number of legal voters of this state, and that the petition should be submitted to the people for determination. Accordingly, we hold that the initiative petition is legally sufficient numerically and that the ballot title meets the standards for submission to the people.

INITIATIVE PETITION NO. 365 IS DECLARED SUFFICIENT  
FOR SUBMISSION TO THE VOTE OF THE PEOPLE OF THE STATE  
OF OKLAHOMA AS STATE QUESTION NO. 687.

¶ 28 HARGRAVE, C.J., WATT, V.C.J., HODGES, LAVENDER, OPALA,  
KAUGER, BOUDREAU, WINCHESTER, JJ., concur.

¶ 29 SUMMERS, J., not participating.