

(STATE QUESTION NO. **71** INITIATIVE PETITION NO. **44**)

WARNING

"It is a felony for any man 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 sign such petition when he is not a legal voter."

FILED
JUL 27 1914
W. H. L. CARPPELL, Clerk

16997
71

(STATE QUESTION NO. INITIATIVE PETITION NO.)

To the Honorable Lee Cruce, Governor of Oklahoma:

We, the undersigned citizens and legal voters of the State of Oklahoma and county of _____, respectfully order that the following proposed Constitutional Amendment shall be submitted to the legal voters of the State of Oklahoma for their approval or rejection at the next election held throughout the State, and each for himself says:
I have personally signed this petition: I am a legal voter of the State of Oklahoma, and County of _____; my residence and postoffice are correctly written after my name. The time for filing this petition expires ninety days from _____, 1914.

The question we herewith submit to our fellow voters is:
Shall the following proposed amendments to the Constitution of Oklahoma be adopted:

AN AMENDMENT ENTITLED:

AN AMENDMENT TO SECTIONS 3 AND 5 OF ARTICLE VII, TO REDUCE THE NUMBER OF SUPREME-APPELLATE COURTS OF THIS STATE FROM TWO TO ONE, STYLED "THE SUPREME COURT," TO COMPRISE NINE JUSTICES AND ONE CHIEF JUSTICE; FIXING THEIR TERMS AND METHODS OF ELECTION; PRESCRIBING THEIR QUALIFICATIONS; DEFINING THEIR DUTIES, POWERS AND ACCOUNTABILITY; PROVIDING FOR ESCHEATS TO THE STATE IN JUDICIAL PROCEEDINGS; TO FACILITATE THE BUSINESS OF THE COURT, AND TO REPEAL SECTIONS 22 AND 23, OF ARTICLE VII, IN CONFORMITY THERETO?

Be It Enacted By the People of the State of Oklahoma:

Section 3 of Article VII shall be amended to read as follows:

Section 3. The Supreme Court shall consist of nine justices and one chief justice and such additional district judges as shall be called in for service as herein provided. Provided that the legislative authority may reduce the number of judges as they deem proper to be commensurate with the business in litigation. Said justices except the chief justice shall hold their offices for a term of six years or until their successors are elected and qualified as provided by law. Until elected, or appointed, as provided by law the court shall consist of the three members now composing the criminal court of appeals and the five members of the then Supreme Court and one justice and one chief justice to be appointed for that purpose as provided by law. Thereafter three justices shall be elected at each general biennial election occurring throughout the State, and for this purpose shall be nominated by petition in such reasonable form and kind as the state election board shall prescribe or shall be required by law, signed by at least one thousand qualified voters of the State and placed upon a separate ballot, containing no names except those who are candidates for the Supreme Court, and without party name or other mark of party distinction, to be voted for by the qualified voters of the State at large. The chief justice shall be nominated and elected for a term of four years at the same time and in the same manner as the Governor. The justices forming the court at its institution shall draw lots for the various lengths of terms to conform herewith. A majority of the members of the Supreme Court shall constitute a quorum and the concurrence of a majority of said court shall be necessary in rendering opinions. No person shall be eligible to the office of justice of the Supreme Court unless he shall be at the time of his election, a citizen of the United States, and shall have been a resident of the State for a period of five years, and unless he shall have attained the age of thirty years, and shall have been a lawyer licensed by some court of record at least five years. Each member of such court shall be a conservator of the peace throughout the State and in case of a vacancy in the membership of said court, the Governor, shall by appointment, fill such vacancy, until the next general election for State officers and at such general election, the vacancy for the unexpired term shall be filled by election by the qualified voters of the State.

The said court shall be established and begin its sessions on the third Monday in January, 1915, and said chief justice shall have executive supervision over the conduct of the business of all courts of record and for that purpose shall provide reasonable rules and regulations for the speedy decision of all causes therein. He shall summarily decide all motions and matters of procedure in the Supreme Court not finally determinative of the case. He shall be authorized to divide said court into as many benches sitting separately as he deems requisite, and to call upon any district judge or judges in the State for temporary service as a member of said Supreme Court for such length of time as the business of the court may demand. He shall be authorized to suspend any Supreme Court or district court justice for inefficiency and upon such suspension it shall be the duty of the legislative authority to investigate the conduct of the justice of the Supreme Court with a view to impeachment. If such legislative authority determines that impeachment proceedings shall not be instituted, the suspension of said justice or judge shall thereupon be terminated, and he shall not be further suspended by said chief justice for any cause theretofore arising. Said Chief Justice shall be subject to impeachment for the same cause and in the same manner as other justices of the Supreme Court.

After July 1, 1915, the causes submitted to said court shall be decided within six months after the same have been filed with the clerk of said court and all causes of public interest, which the Governor, the Attorney General or the chairman of the Corporation Commission shall certify that the public welfare requires an expeditious determination of the same shall be finally determined by said court within a period of ninety days after the same have been so certified, and the failure of the Supreme Court or any justice thereof, charged with the duty of carrying out this provision shall constitute grounds for impeachment. And it shall be the duty of the legislative authority of this State at its first session thereafter to take note of any such violation of the constitution and present charges of impeachment accordingly; and it shall be the duty of the chief justice to make report in writing to the legislative authority at any regular session of every case in which the Governor, the Attorney General or the Chairman of the Corporation Commission has filed such certificate of public importance and account as to the disposition of such case by said court together with a record of the efficiency of each Supreme Court justice and district judge of the State.

After January 1st, 1916, no member of the Supreme Court shall be eligible for any office under the authority of this State other than a judicial office until after the expiration of two years following the term of his incumbency.

Special judges in cases of disqualification shall not be appointed either on the Supreme or district bench, but the chief justice shall assign a judge or judges to such matters.

The proceeds of property escheated to the State under judicial proceedings shall be paid to the state treasurer to go into the general funds of the state.

Section 5 of Article VII shall be amended by adding the words "or syllabus" after the words "written opinion" therein.

Section 22 and 23 of Article VII are hereby repealed.

J. S. Estes

C. S. Hartman

CHAS. WEST,
ATTORNEY GENERAL

SMITH C. MATSON
CHARLES L. MOORE
SAMUEL I. McELHOES
CLAUDE J. DAVENPORT
JOSEPH L. HULL
ASSISTANT ATTORNEYS GENERAL

STATE OF OKLAHOMA
OFFICE OF THE
ATTORNEY GENERAL

OKLAHOMA CITY

June 6, 1914.

CIM-B

PLEASE REFER TO INITIALS

State Question No. 71,
Initiative Petition No. 44,
Ballot Title.

To the
Secretary of State,

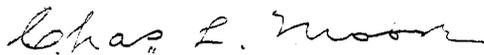
Oklahoma City, Oklahoma.

Dear Sir:

The ballot title suggested by the ~~proposes~~
of the above numbered State Question No. 71, is hereby
disapproved, and the following prescribed in lieu there-
of, to-wit:

"The gist of the proposition is to amend Sections
Three and Five of Article Seven of the State Constitution
by reducing the number of final appellate courts in the
State from two to one, styled 'The Supreme Court', to
comprise nine associate justices and one chief justice;
fixing their terms and methods of election; prescribing
their qualifications; defining their duties, powers and
accountability; providing for escheats to the State in
judicial proceedings; to facilitate the business of the
court, and to repeal Sections 22 and 23, of Article VII,
in conformity thereto."

Very respectfully,



Assistant Attorney General.

#8

#6661

SECRETARYS MEMORANDUM
OKLAHOMA CITY, STATE OF OKLAHOMA
Secretary's Office:

This memorandum was filed for record this
8 day of June

A. D., 1914 at 9 o'clock A.M.

Inscribed in _____ Corporation
Record No. _____ at Page _____

W. D. Thompson
Secretary of State
BY *W. D. Thompson*

FILED
JUL 27 1914
W. H. L. CAMPBELL, Clerk

STATE OF OKLAHOMA
DEPARTMENT OF STATE
OKLAHOMA CITY

BENJAMIN F. HARRISON
SECRETARY

HUGH L. HARRELL
ASST. SECRETARY

July 2nd, 1914.

RECEIVED of J. S. Estes and C. S. Wortman, Twenty-one Hundred and Eighty-six pamphlets of State Question Number Seventy-one (71). Initiative Petition Number Forty-four (44); Sixteen hundred and eighty-eight (1688) of said pamphlets containing Twenty (20) names, each, and Four Hundred and Ninety-eight (498) of said pamphlets containing less than twenty names, making a total of Forty-One Thousand and Sixty-nine (41,069).

WITNESS my hand, this the second day of July,
A.D., 1914.

SECRETARY OF STATE.

TO HON. BENJAMIN F. HARRISON, SECRETARY OF STATE
OF THE STATE OF OKLAHOMA; AND J. S. BEETS, OF OKLAHOMA
CITY, AND C. S. WOFFMAN, OF CLAREMORE, THE PARTIES WHO
FILED INITIATIVE PETITION NUMBER 44 BEING STATE
QUESTION 71. PROPOSING AMENDMENTS TO THE CONSTITUTION
OF OKLAHOMA.

"AN AMENDMENT ENTITLED:

THE GIST OF THE PROPOSITION IS TO AMEND SECTIONS 3 and
5 OF ARTICLE VII OF THE STATE CONSTITUTION BY REDUCING
THE NUMBER OF FINAL APPELLATE COURTS IN THE STATE FROM TWO
TO ONE, STYLED 'THE SUPREME COURT', TO COMPRISE NINE
ASSOCIATE JUSTICES AND ONE CHIEF JUSTICE; FIXING
THEIR TERMS AND METHODS OF ELECTION; PRESCRIBING THEIR
QUALIFICATIONS; DEFINING THEIR DUTIES, POWERS AND ACCOUNT
ABILITY; PROVIDING FOR ESCHEATS TO THE STATE IN JUDICIAL
PROCEEDINGS; TO FACILITATE THE BUSINESS OF THE COURT, AND
TO REPEAL SECTIONS 22 and 23, OF ARTICLE VII, in CONFORMITY
THEREUNTO.

You and each of you are hereby notified, and will taken notice, that I, Parker W. Cross, of Perry, Noble County, Oklahoma, a citizen and elector of the State of Oklahoma, do hereby protest against Initiative Petition No. 44; entitled as above, and as grounds of said protest aver:

First: That said petitions are not legally signed by a sufficient number of legal petitioners:

Second: That a large number of persons whose names appear as signers of said petition^s are not qualified electors and legal voters of the county, precinct and state from which they signed as petitioners and were not such at the time their names were signed to said petitions.

Third: That said petitions are not sufficient in form, and do not conform ^{to} with the requirements of the Constitution and Laws of the State of Oklahoma.

Fourth: That said proposed amendments to the constitution are ~~in~~ conflict with the Bill of Rights, and in conflict with the Constitution of the United States; that Art. 1. Sec. 10, Clause 1. of the Federal Constitution provides: "That no state shall pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility." That the Enabling Act granted ^{ing} Statehood to the State of Oklahoma, was a grant subject to the Constitution of the United States, and that said restriction in the Federal Constitution providing that no state shall PASS a Bill of Attainder, amounts to a prohibition against the submitting of said constitutional amendment, because the provisions of said proposed amendment to the Constitution, inflict punishment without a judicial trial upon the Justices of the SUPREME COURT, by disqualifying them from office, or from the pursuit of a lawful ~~av~~ocation, when they are citizens of the United States ^{and} otherwise qualified to hold office.

Fifth: That said Initiative petitions^s proposing amendments to the constitution of the State of Oklahoma, and the manner of proposing such amendments, is not submitted or proposed in conformity to any of the methods prescribed or recognized by the constitution of the state, and the manner of proposing such amendments is contrary to and in conflict with the constitution and laws of Oklahoma, and if adopted will be unconstitutional.

Sixth: That said proposed amendments are in conflict with Sec. 1, Art. 1. of the constitution of the State of Oklahoma, which provides: "The State of Oklahoma is an inseparable part of the Federal Union, and the constitution of the United States is the Supreme Law of the land."

Seventh: That as shown by the signatures attached to said petitions, a large number of names were evidently written thereon by the same persons, and as further shown by the said petitions, the parties circulating the same have made affidavit in a large number of instances, and filled in names in their affidavit of a large number of names not appearing upon the face of said petitions, and that ^a large number of persons whose names appear upon said petitions recite that they are citizens and legal voters, of counties other than that of their residence, and post office address^{es} as shown by the petitions themselves, and that if said above names wrongfully on said petitions as above set forth are stricken therefrom, said petitions will not contain the requisite number of legal signers to entitle the same to be submitted in compliance with the law.

Eighth: That one Charles West, ~~as~~ Attorney General of the State of Oklahoma, and as such Attorney General by the laws of the State of Oklahoma, it is his duty to pass upon certain features of said proposed amendments, that the said Charles X. West, is also at this time ~~and has~~ been for some time past and at all times herein mentioned, a candidate for nomination for the office of Governor, and ~~actively~~ engaged in making his campaign therefor, and that the said Charles West, is personally interested in the initiation of said measure, and has been advocating the same personally both in the press and in addresses to public assembles, and that by reason of his said interest therein, the said Attorney General and his deputies are disqualified from furnishing a ballot title or otherwise passing upon said ~~bill~~ ^{amendment}. That the ballot title provided by the Attorney General's office is unfair, and does not fairly state the proposition, or properly advise the voters of the character and contents of the measure.

^{amendment}
Ninth: That under the provisions of said ~~bill~~, if the same should be initiated, and passed, and it should be held that the present Supreme Court, because said legislation affected its membership were disqualified to pass thereon, the Chief Justice appointed thereunder would like-wise be disqualified from acting, or making appointments of other judges to act thereon, and no tribunal could, or would exist to pass upon the constitutionality or any other question in relation thereto.

W H E R E F O R E, your objector and protestant
prays that a day be fixed for the hearing of the objections
herein enumerated and that said Referendum Petition No.
~~46~~, be declared insufficient, illegal, unauthorized and
in conflict with the constitution of the State of Oklahoma
and in conflict with the constitution and laws of the
United States.

Parker W. Tress

344

#6661

SECRETARY'S MEMORANDUM
OKLAHOMA CITY, STATE OF OKLAHOMA

Secretary's Office:

This instrument was filed for record this

9 day of July
A. D., 1914 at 10:00 P. M.

Recorded at _____ Corporation
Record No. _____ at Page _____

BY Benjamin F. Thompson
Secretary of State

FILED
JUL 27 1914
W. R. L. CAMPBELL, Clerk

BEFORE BENJAMIN F. HARRISON.

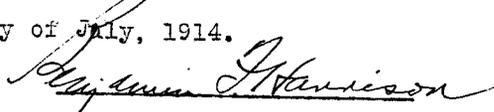
SECRETARY OF STATE.

IN THE MATTER OF THE PROTEST OF Parker W. Cress, a citizen of and Legal voter of Noble County, State of Oklahoma, against Initiative Petition No. 44, State Question No. 71, being an initiated petition to submit a proposed constitutional amendment entitled; "The gist of the proposition is to amend Sections 3 and 5 of Article VII, of the State Constitution by reducing the number of final appellate courts in the State from Two to One, styled 'The Supreme Court!' to comprise nine Associate Justices and One Chief Justice; fixing their terms and methods of election prescribing their qualifications; defining their duties, powers, and account ability; providing for escheats to the State in Judicial Proceedings; to facilitate the business of the Court, and to repeal Sections 22 and 23 of Article VII, in conformity thereto."

Now on this 10th day of July, A. D. 1914, comes Parker W. Cress, and files in the office of the Secretary of State of the State of Oklahoma, his protest against the sufficiency of Initiative Petition No 44, State Question No 71, being a proposed initiative measure entitled;" The gist of this proposition is to amend Sections 3 and 5 of Article VII of the State Constitution by reducing the number of final Appellate Courts in the State from Two to One, styled 'The Supreme Court ' to comprise nine Associate Justices and One Chief Justice; fixing their terms and methods of election; prescribing their qualifications; defining their duties, powers and account ability; providing for escheats to the State in Judicial proceedings; to facilitate the business of the court, and to repeal sections 22 and 23, of Article VII, in Conformity thereto."

It is therefore ordered, that the 15th day of July, 1914, be, and the same is hereby designated as the date of hearing of testimony and arguments upon the above mentioned protests.

Witness my hand this 10th day of July, 1914.


Secretary of State.

TO the Honorable Benjamin F. Harrison, Secretary of State,
of Oklahoma, J. S. Estes, of Oklahoma City, Oklahoma, and C. S.
Wertman, of Claremore, Oklahoma, the parties who initiated State
Question No. 71, Initiative petition No. 44, an Amendment Entitled:

"THE GIST OF THE PROPOSITION IS TO AMEND SECTION 3 AND 5 of
ARTICLE VII OF THE STATE CONSTITUTION BY REDUCING THE NUMBER OF FINAL
APPELLATE COURTS IN THE STATE FROM TWO TO ONE, STYLED "THE SUPREME
COURT", TO COMPRISE NINE ASSOCIATE JUSTICES AND ONE CHIEF JUSTICE;
FIXING THEIR TERMS AND METHODS OF ELECTION; PRESCRIBING THEIR QUALI-
FICATIONS; DEFINING THEIR DUTIES, POWERS AND ACCOUNTABILYTY; PROVIDING
FOR ESCHEATS TO THE STATE IN JUDICIAL PROCEEDINGS; TO FACILITATE THE
BUSINESS OF THE COURT, AND TO REPEAL SECTION 22 AND 23, OF ARTICLE VII,
IN CONFORMITY THERETO."

You, and each of you, are hereby notified, and will take
notice herefrom, that, I, H. M. Sinclair, a resident and voter in
the City of Oklahoma and State of Oklahoma, do hereby protest the
initiative petition referred to herein and the title as herein set
forth, for the following reasons, to-wit:

FIRST: Because said petition does not contain the requisite
number of legal voters to entitle it to filing.

SECOND: Because the petition shows upon its face that a large
number of names signed thereto were signed by one person, and that
said number so signed by the one person, if deducted from the total
number of names, would reduce the number to less than the required
number of names.

THIRD: That the petition circulated for signatures, and to
which the signatures were obtained, was not a correct copy of the
petition filed with the Secretary of State prior to the circulation
of said petition for signatures.

FOURTH: Because the purported copy of the petition filed
with the Secretary of State prior to circulating the petition for
signatures was not a true and correct copy of the petition circulated
and signed by the electors of the state.

FIFTH: Because said petition does not state whether said
question is to be submitted at a special or general election.

SIXTH: Because the said petition circulated for signatures, and upon which the signatures were obtained, did not state when the time for filing said petition would expire.

SEVENTH: Because said petition circulated for signatures, and upon which the signatures were obtained, did not state the date of the filing of a copy thereof with the Secretary of State.

EIGHTH: Because said petition was not initiated by filing a true and correct copy thereof with the Secretary of State a sufficient length of time prior to the 4th of August, 1914.

WHEREFORE, Your objector and protestant prays that a day be fixed for the hearing of this protest and the objections herein enumerated and set forth, and that said Referendum Petition No. 44, State Question No. 71, be declared insufficient, illegal and unauthorized.

H. M. Sinclair

AFFIDAVIT.

State of Oklahoma)
(ss.
County of Oklahoma)

I, H. M. Sinclair, of lawful age, being first duly

sworn, depose and say: My name is H. M. Sinclair; I am a resident of Oklahoma City, and a voter in said City and State; I have read the foregoing protest and know the contents thereof, and that the matters and things therein set forth are true, as I verily believe.

H. M. Sinclair

Subscribed and sworn to before me this 11th day of July, 1914.

My commission expires Dec 2-1916. John Hagel
Notary Public.

SEVENTH: Because said petition directed for signatures, and upon which the signatures were obtained, did not state the date of the filing of a copy thereof with the Secretary of State.

EIGHTH: Because said petition was not initiated by filing a true and correct copy thereof with the Secretary of State a sufficient length of time prior to the 4th of August, 1914.

WHEREFORE, Your objector and protector says that a day be fixed for the hearing of this protest and the objections herein enumerated and set forth, and that said Reference Petition No. 44, State Question No. VI, be declared insufficient, illegal and unauthorized.

SECRETARY'S MEMORANDUM
 OLAHOMA CITY, STATE OF OKLAHOMA
 Secretary's Office:

This instrument was filed for record this
 day of July at 3:30 o'clock P. M.
 A. D. 1914

Recorded in _____ at Page _____
 Corporation _____

BY _____
 Secretary of State

19997A

JUL 27 1914
 THE STATE OF OKLAHOMA
 SECRETARY'S OFFICE

I, H. M. Sinclair, of lawful age, being first duly sworn, depose and say: My name is H. M. Sinclair; I am a resident of Oklahoma City, and a voter in said City and State; I have read the foregoing protest and know the contents thereof, and that the matters and things therein set forth are true, as I verily believe.

Subscribed and sworn to before me this 17th day of July, 1914.

Notary Public

BEFORE BENJAMIN F. HARRISON.

SECRETARY OF STATE.

In the matter of H. M. Sinclair, a citizen and legal voter of Oklahoma County, State of Oklahoma, against initiative petition No. 44, State Question No. 71, being an initiated petition to submit a proposed constitutional amendment entitled, " The gist of the proposition is to amend Section 3 and 5 of Article VII of the State Constitution by reducing the number of final appellate courts in the State from two to one, styled " The Supreme Court", to comprise nine associate justices and one chief Justice; fixing their terms and methods of election, prescribing their qualifications; defining their duties, powers and accountability; providing for escheats to the State in Judicial Proceedings; to facilitate the business of the Court, and to repeal Section 22 and 23, of Article VII, in conformity thereto."

Now, in this 11th day of July, A. D. 1914, comes H. M. Sinclair, and files in the office of the Secretary of State of Oklahoma, his protest against the sufficiency of Initiative Petition No. 44, State Question No. 71, being a proposed initiative measure entitled: " The gist of the proposition is to amend Section 3 and 5 of Article VII of the State Constitution, by reducing the final number of Appellate Courts in the State from two to one, styled " The Supreme Court ", to comprise nine Associate Justices and One Chief Justice; fixing their terms and methods of election; prescribing their qualifications; defining their duties, powers and accountability; providing for escheats to the State in judicial proceedings; to facilitate the business of the court, and to repeal Sections 22 and 23, of Article VII, in conformity thereto."

IT IS THEREFORE ORDERED that the 15th day of July, 1914, at 1.30 P. m. be, and the same is hereby designated as the date of hearing of testimony and arguments upon the abovementioned protest.

Witness my hand this the thirteenth day of July, A. D. 1914.

Benjamin F. Harrison
Secretary of State.

(Filed Aug 1 1914
W.H.I. Campbell, Clerk)

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

Parker W. Cress,
Appellant,

vs.

No. 6661

J. S. Estes and C. S. Wortman,
Appellees.

S Y L L A B U S.

1. Where only a slight difference exists between the wording of the ballot title in the copy of a petition initiating a proposed amendment to the state constitution, required to be filed in the office of the secretary of state, and the original petition signed by the electors, which in no way substantially affects the proposed measure: HELD, that the procedure prescribed by the statute is substantially followed, and such error being merely technical will be disregarded and the petition sustained.

2. The power to propose and adopt a proposition of any nature and to amend their constitution is vested in the people of the state, and in the exercise of such power they constitute the legislative branch of the government and are not subject to interference or control by the judiciary.

3. Objections urged against the validity of proposed amendments to the constitution to the effect that they are inimical to a republican form of government, repugnant to the constitution of the State and of the United States, et cetera, are not the subject of review by the Supreme Court in this appellate proceeding.

(Syllabus by the Court.)

IN THE MATTER OF THE INITIATIVE PETITION NO. 44, STATE
QUESTION NO. 71.

A F F I R M E D.

Parker W. Cress,
Attorney for Appellant.

Ed Hirsch and Norman R. Haskell,
Attorneys for Appellees.

STATE OF OKLAHOMA
DEPARTMENT OF STATE
OKLAHOMA CITY

BENJAMIN F. HARRISON
SECRETARY

HUGH L. HARRELL
ASST. SECRETARY

October 21st, 1914.

Hon. Joe S. Morris,

Secretary of State Election Board,

and State Board of Public Affairs,

Oklahoma City, Oklahoma.

Gentlemen:

Under the provisions of Sec. 5360 of the Harris Day Code, I have the honor to certify that there was filed in this office on July 2nd, 1914 an Initiative Petition which is styled State Question No. 71, Initiative Petition No. 44, same having a ballot title regularly approved and submitted by the Attorney General as follows:

"The gist of the proposition is to amend Sections Three and Five of Article Seven of the State Constitution by reducing the number of final appellate courts in the State from two to one, styled 'The Supreme Court', to comprise nine associate justices and one chief justice; fixing their terms and methods of election; prescribing their qualifications; defining their duties, powers and accountability; providing for oaths to the State in judicial proceedings; to facilitate the business of the court, and to repeal Sections 22 and 23, of Article VII, in conformity thereto."

Said petition has 41,069 signatures, which is a greater number of signatures than is required by law to initiate an amendment to the Constitution.

Said petition was protested against, and the protest held insufficient by the Secretary of State which decision was subsequently affirmed by the Supreme Court, leaving the petition now entitled to be voted on at the next election.

Witness my hand and official seal this the 21st day of October, 1914.

SECRETARY OF STATE.

Original

BEFORE HONORABLE BEN F. HARRISON, SECRETARY OF THE STATE OF OKLAHOMA

In Re the Protest of Parker W. Cress, to Initiative Petition #44, State Question #71; also Initiative Petition #50, St. Quest. 77.

Parker W. Cress,
Protestant

Norman R. Haskell,
W. E. Sharp
Ed Hirsh,
Petitioners.

Parker W. Cress appearing for himself, and N. R. Haskell
W. E. Sharp and Ed Hirsh, appearing for the Petitioners.

Protestant Parker W. Cress, requests the Honorable Secretary;

It now being ten minutes after eleven o'clock, that he be given until 1:30 for the purpose of preparing his application in writing, for a continuance in this case, on account of the absence of evidence in order to make a showing to the Secretary.

Request Granted.

Adjourned until 1:30

Application filed and verified and hearing continued as follows;

Parker W. Cress;

Included in this application for continuance in estimating the number found defective in the 9,000 already examined, showing one thousand twelve hundred; those were the questions arising by reason of default having been practiced by the circulator in making affidavits as to the number of names contained in the petitions, nor have we included those questions which would require and necessitate the work of expert evidence other than legal questions, such as the law plainly states that a petition must recite and represent such matters of that kind. If the number are excluded by the Secretary until they are shown to be free from fraud, where they show that the circulator has practiced fraud by the face of

the petitions, it would increase this number very greatly, just exactly how many I am unable to state until I have time to check it over, but the number as estimated would be two or three thousand, and now in behalf of this application for continuance, I wish to say to the Secretary, we are not making this just for dealy, but in good faith, with the intent of having the balance of these examined, and it would expedite the transaction of this hearing to have these examined and tabulated, as when they are presented, the legal questions arising on each, could be ruled on in a body, and I believe that we should be granted the request, your Honor, of this continuance, for such reasonable time as will afford us an opportunity to complete a further investigation of these petitions. I am advised by Mr. Tebbe, who has been making these examinations and who is a practicing attorney, that he has worked here as late as ten oclock at night, trying to get ready for this hearing, with the permission and the kind indulgence of the Secretary.

Honorable Ben F. Harrison:

The papers so far filed do not show sufficient cause;

The motion for continuance will be denied;

Objections claimed by Mr. Cress.

Parker M. Cress

I desire to suggest to the Secretary the following objections to the sufficiency of the petition on State question #1, Initiative Petition #40, That as provided by statute; "When such petition is prepared, and before the same is circulated or signed by electors, it is required that a true and exact copy of same be filed in the office of the Secretary of State." As showing that this has not been done in this case, I call your attention to the original petition filed in his office, the title of which reads, "An amendment to Sections three and five of Article 7, and reads, The number of Supreme Appellate Courts of said State to 2 to 1, styled The Supreme Court etc." which is signed at the close, J. S. Estes and

C. S. Wortman, and appears on the original petition. I call the Secretary's attention to the petitions circulated and filed herein, which are not true and exact copies of that filed in your office in the beginning, being entitled "An amendment entitled The object of the proposition is to amend Sections 3 and 5, Article 7, of the State Constitution by reducing the number of final Appellate Courts in the State from 2 to 1, styled Supreme Court etc.", which are not signed and do not contain the name of J. S. Estes and C. S. Wortman attached thereto. I call the attention of the Secretary to this, that each of said petitions which have been circulated and filed are subject to this objection. I also desire to call the Secretary's attention to the fact that the petitions filed herein, do not conform to that provisions of the statute which provides for their size and measurements, which requires them to be 7 inches in width, by 10 inches in length, with a margin of 1 3/4 inches at the top for binding. Now as to the right to submit the petition in this case, I desire to call the Secretary's attention to the fourth ground of the protest; "That said proposed amendment to the Constitution is in conflict with the Bill of Rights and in conflict with the constitution of the United States." That Article 1 of Section 10 clause 1 of the Federal Constitution provides that no state shall propose any bill of Attainder or Ex Post Facto law. ~~The law~~ or law impairing the obligations of contracts or grant any title of nobility. The enabling Act which granted Statehood to the state of Oklahoma, granted it subject to the Federal Constitution of the United States, and that enabling Act was accepted irrevocably by the Constitutional Convention. Now Mr. Secretary in the consideration of this proposition this has never been before yourself or the Supreme Court. This is not a provision which says that a Bill of Attainder shall be void and this is not a provision which says it shall not pass, and the attempt to submit this Act, or the submission of it, would be doing everything that is prohibited by the Federal Constitution.

Now the Supreme Court of the United States has spoken on this subject as to what this bill is and I want to call the Honorable Secretary's attention to some of the provisions of this bill as to its effect.

After providing that the court shall consist of a thoroughly qualified force of men for supreme court justices, in fixing their duties it provides that after January 1st, 1916 no member of the Supreme Court shall be eligible for any office under the authority of the State, other than a judicial office until after the expiration of two years following the term of his incumbency. It provides over all the rights of citizenship over the right which the Supreme Court of the United States says have available, and under the list of continuance without a trial, it bars him of a right which most American citizens esteem, of one of the high rights, the right to hold office. Of course a man convicted of a felony, as a punishment for crime may properly be denied this right as a punishment for his offense, but it holds a justice of the Supreme Court and such officers to that extent that it bars him of the right accorded any other citizen, of holding office.

In the case of *Cummings vs. The State of Missouri*, it was appealed to the Supreme Court of the United States, the principal is laid down denying a bill of contumacy. A bill of contumacy is a Legislative Act which inflicts punishment with a judicial trial. The Ex Post Facto law is one where punishment is imposed for an act not imposed at the time it was committed or imposing additional punishment than the prosecutor. Being disqualified from office is a punishment. Let's apply that to this provision. It disqualifies these men from the holding of an office. The Supreme Court of the United States says that that falls within the bill of contumacy, and goes on at length and thoroughly states that which I contend for. It states that punishment can only be administered by a trial had in a court of justice.

Secretary. I refuse to consider the fourth ground of protest because it raises a question as to the validity of the proposition if adopted.

Mr. Cress:- Now if I desire to create a political machine and make it powerful, give it power, to enforce its organization, create what is contrary to republican form of government, establish a form whereby it is vested with power to enforce all it's ordinances and to do this without trial, constituting what may be called a Supreme tribunal and building up the organization perfect in all it's parts, I don't know how I could improve on certain provisions of this bill.

Secretary: Objections entered as I have no authority to pass on those questions.

Mr. Hirsh: We wish to enter a demurrer to all of the paragraphs of the Complainants petition, as to what the legal phase of the various portests. We demur to paragraph Four of Complainants ptotest, Paragraph fift, paragraph sixth, paragraph seventh, paragraph eight and paragraph ninth on the ground that they all involve the constitutionality of the act.

Mr. Cress: On the question of that demurrer, I would like to be heard; I want to say that this bill creates in this Supreme Justice the power to suspend any Justice of the District or Supreme Court and provided no way of restoration of the rights of the District Judges, they are simply suspended without right of trial merely at his whim and caprice.

Objection entered by Mr. Hirsh.

Mr. Harrison: I cannot afford to sit here and listen to those things, as I cannot pass on them, in the court is the place to argue those things. If you want to submit those questions to the Supreme Court we will go up there tomorrow and do it.

Mr. Hirsh

Mr. Cress: That in the provision of the Federal Constitution it expressly provides in no such bills shall be passed, and that this Secretary's office have one of the officers whose duty it is to assist or pass upon the question of what bill shall pass and what shall not pass that any act of furthering the passage of this bill would amount to the violation of the Federal Constitution which expressly enacts these acts will not be taken, and as to the question of the right of the Secretary to do those things, I call the Secretary's attention to the further provisions in this bill, which provides, that after these Justices are suspended that no trial is provided for to reinstate them. If this bill was intended it simply means this proviso: After authorizing the Court to divide it in as many branches as he sees fit, then he is authorized to suspend any Supreme Court or District Justice for inefficiency and it shall be the authority of the Legislature to try him and impeach him. If the Legislature decide upon hearing him, that there is no just ground for his suspension, he can be re-instated but otherwise he stands suspended.

Mr. Harrison, Secretary: I have not read that petition but I know you are reading it correctly, but I am satisfied you will get just exactly what you want when you go to the Supreme Court. You should argue that in the Supreme Court.

Mr. Cress: This question comes, however, under the provision of this bill. It provides, let's assume that this bill is passed and enacted into law, then it provides that the Governor shall appoint a Supreme Justice. If this bill is enacted then it effects the present Supreme Court, because it would effect other offices and it could not pass upon them constitutionally of law. It places them in office, then the provisions of this bill are that the Chief Justice shall call in to sit, other Justices where the present ones would be disqualified, but the Chief Justice himself, having been appointed under this law, and holding his office under it, is personally qualified from acting

The entire petition includes the title of the bill. You take a bill without a title and enact it as a law, and it is invalid because it is untitled. It is void. For that reason the Legislature wisely provided that in the initiation of these bills titles should be provided which to state the provisions thereof. We charge in our protest that it does not do that and does not conform to this statute. If you will notice the difference in the bills are two-fold, when the original filed with you contains these names attached. This is material.

(Read Amendment to Sections 3 and 5 or Article 7*).

Secretary: Under the Supreme Court decisions, as it is written, I don't see that there is any vast difference between the two copies. In fact they use different words that mean the same thing, if I understand the English language and I don't think that is material.

(Argument concluded)

Witness Called.

STATE OF OKLAHOMA)
OKLAHOMA COUNTY) SS.

I, Ida M. Canfield, Notary Public, within and for the county and State of Oklahoma, do hereby certify that the above named witness, E. F. Tebbe, the witness whose name is subscribed to the foregoing deposition was before me first duly sworn to testify the truth, the whole truth and nothing but the truth, in the case aforesaid, and that the deposition by them respectively subscribed was reduced to writing by me a disinterested, qualified person, and in my presence and subscribed by the respective witness in my presence and the same was taken on the 15th day of July, 1914, A.D., between the hours of 8 o'clock AM, and 6 o'clock PM. of said day and at the office of The Secretary of State, Hon. Benj. F. Harrison, in the City of Oklahoma City, in the County of Oklahoma County and State of Oklahoma, and that I am not attorney for either of said parties a relative of either of said parties or otherwise interested in the event of said action.

Ida M. Canfield.
Notary Public.

My Commission expires Mar. 12th, 1918.