



Larry V. Parman
Secretary of State

Mary Fallin
Governor

OKLAHOMA SECRETARY OF STATE

September 18, 2013

Ms. Kathryn Turner
940 Eastlake Drive
Blanchard, OK 73010

Dear Ms. Turner:

This will acknowledge receipt of the petition for filing which has been designated as:

State Question Number 767
Initiative Petition Number 397

filed this 18th day of September, 2013 at 3:20 p.m.

Pursuant to 34 O.S. § 9, after the filing of the petition and prior to the gathering of signatures, the Secretary of State shall submit the proposed ballot title of this petition to the Attorney General for review as to legal correctness.

Please be aware that once the ballot title review is completed, there will be a Notice of Filing published, as required by 34 O.S. § 8, in which any citizen or citizens of the state may file a protest as to the constitutionality of the petition or the ballot title.

The circulation period for petitions, according to 34 O.S. § 8, is within ninety (90) days after such filing of an initiative petition or determination of the sufficiency of the petition by the Supreme Court, whichever is later. Should your due date fall on a weekend or holiday or a day that this office is closed for business, pursuant to 25 O.S. § 82.1 (C) and in accordance with AG Opinion 76-195, the due date for this petition will fall on the next succeeding business day that this office is open for business.

If our office may be of further assistance, please do not hesitate to contact the Executive Legislative Division at (405) 522-4564.

Sincerely,

A handwritten signature in cursive script that reads "Chris Morriss".

Chris Morriss
Assistant Secretary of State

FILED

SEP 18 2013

**OKLAHOMA SECRETARY
OF STATE**

State Question No. 767 Initiative Petition No. 397

WARNING

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

INITIATIVE PETITION

To the Honorable Mary Fallin, Governor of Oklahoma: We, the undersigned legal voters of the State of Oklahoma, respectfully order that the following proposed new section to the Oklahoma Constitution shall be submitted to the legal voters of the State of Oklahoma for their approval or rejection at the regular general election, to be held on the 10th day of November, 2014, (or such earlier special election as may be called by the Governor) and each for himself says: I have personally signed this petition; I am a legal voter of the State of Oklahoma; my residence or post office are correctly written after my name. The time for filing this petition expires ninety days from the 18th day of September, 2013. The question we herewith submit to our fellow voters is:

Shall the following proposed new Section 44 of Article 10 of the Constitution be approved?

BALLOT TITLE

This measure amends the Oklahoma Constitution. It adds a new Section 44 to Article 10. Bonds could be sold. Up to Five Hundred Million Dollars (\$500,000,000.00) could be available. Bond money would be used for school districts and career technology districts. Bond money would be used for storm shelters or secure areas. State franchise taxes would repay these bonds. If money from franchise tax was not enough, the Legislature could use the General Revenue Fund to repay the bonds. State bond money could be used by school districts or career technology districts to reduce local debt or eliminate local debt incurred for storm shelters or secure areas. If enough money from franchise tax remains after state bonds are paid for, the balance of franchise tax could be used for grants for storm shelters for people and businesses. When state bonds are paid off, additional bonds could be sold to keep the programs funded. Laws would be written for details about using bond money. State agencies could make rules about state bond money. These rules would have the effect of law. The Oklahoma Constitution is being amended to allow state bond money to pay for shelters and secure areas in schools.

Shall the following proposed new Article X, Section 44 of the Constitution be approved?

For the proposal - YES

Against the proposal - NO

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

Section 44. A. The State of Oklahoma shall be authorized to issue bonds or other evidence of indebtedness in order to provide net proceeds equal to Five Hundred Million Dollars (\$500,000,000.00) for the purpose of acquiring, constructing or improving facilities to be used for the benefit of any common school district or career technology district within the state to provide shelter from dangerous weather conditions or to provide security to the students and employees of the district related to personal safety or both such purposes and for the purposes described by subsection I and subsection J of this section.

B. The maximum maturity for any obligation issued pursuant to subsection A of this section shall be twenty-five (25) years.

C. The Oklahoma Building Bonds Commission shall issue the obligations authorized by this section.

D. The Legislature, pursuant to enabling legislation enacted for such purpose, may define the types of facilities which may be acquired, constructed or improved with proceeds from the sale of obligations issued pursuant to this section in order to provide shelter from dangerous weather conditions, to provide secure areas and secure procedures to protect students and employees of common school districts and career technology districts from the threat or potential threat of violence or both such purposes.

E. The Legislature shall provide by law for the apportionment of the revenues currently derived from the levy of the franchise tax imposed for the privilege of doing business in the state as authorized pursuant to Section 1201 et seq. of Title 68 of the Oklahoma Statutes, as amended, so that one hundred percent (100%) of such franchise tax revenue, or so much thereof as may be required on an annual basis, is dedicated for the repayment of the obligations issued pursuant to the provisions of this section.

F. The Legislature may provide by law for the use of revenues derived from the levy of franchise tax which are not required for repayment of obligations issued pursuant to the provisions of this section in order to provide a grant program for construction of storm shelters for individuals and business entities. Such program shall be administered by the Office of Emergency Management or its successor. The use of franchise tax revenues for storm shelters as authorized by this subsection shall be deemed in furtherance of a public purpose and shall not be deemed a gift of state tax revenues.

G. If the revenues described by subsection E of this section are insufficient to repay the obligations issued pursuant to the provisions of this section, the Legislature may use monies in the General Revenue Fund of the state not otherwise obligated, committed or appropriated in order to ensure the repayment of such obligations.

H. If any obligations issued pursuant to the provisions of this section are defeased, within the limit prescribed by subsection A of this section, the principal amount of such obligation shall become available for issuance by the state governmental entity designated pursuant to subsection C of this section if authorized by an act of the Legislature or authorized by an initiative petition approved in the manner required for laws pursuant to Section 2 of Article V of the Oklahoma Constitution. The act of the Legislature or the law proposed by initiative petition shall specify the amount of any additional issuance authorized by this subsection.

I. Pursuant to laws enacted by the Legislature for such purpose, the proceeds from the obligations issued pursuant to this section may be used to reduce or eliminate any debt incurred by a school district or career technology district for the purpose of acquiring or constructing a storm shelter or secure facility. The debt must have been incurred not earlier than May 1, 2013, pursuant to a vote of the eligible voters of the respective district. If the debt was incurred prior to May 1, 2013, but not prior to July 1, 2007, the provisions of this subsection shall authorize the use of the proceeds in order to reduce or eliminate such debt with respect to construction of the eligible assets which begins on or after May 1, 2013.

J. Pursuant to laws enacted by the Legislature for such purpose, the proceeds from the obligations issued pursuant to this section may be used to reimburse a common school district or a career technology district for expenditures made from a building fund created pursuant to Section 10 of Article X of the Oklahoma Constitution, with respect to a common school district, or for expenditures made from the revenue derived from a millage levy authorized pursuant to Section 9B of Article X of the Oklahoma Constitution, with respect to a career technology district, to the extent the expenditure was for the purpose of acquiring, constructing or improving a storm shelter or secure facility. The expenditure for such storm shelter or secure facility must have been incurred no earlier than May 1, 2013.

K. The obligations authorized pursuant to the provisions of this section may be issued in series, may be issued in either tax-exempt or taxable status for purposes of the Internal Revenue Code of 1986, as amended, and in such form as required in order to promote the marketability of such obligations.

L. Pursuant to laws enacted by the Legislature for such purpose, any administrative rule adopted by an agency of state government that imposes a condition or requirement upon a common school district or career technology district related to the use of proceeds from sale of the obligations authorized by this section shall be binding upon such school district or career technology district.

M. The proceeds from the sale of obligations issued pursuant to the provisions of this section may be made available to any common school district or any career technology district for the purposes authorized by this section and enabling legislation enacted pursuant to this section notwithstanding any other provision of the Oklahoma Constitution that would otherwise prohibit or restrict the use of such proceeds or the use of tax revenue for the repayment of principal, interest, reserves, issuing costs or other costs related to the sale of the obligations authorized by this section. Any provision of the Oklahoma Constitution that would otherwise restrict the issuance of obligations pursuant to this section, restrict the use of the proceeds from the sale of such obligations, restrict the use of tax revenues for repayment of the obligations or in any way restrict the operation of the provisions of this section shall be deemed to have been amended in order to remove any such restrictions.

Name and Address of Proponents:

Kathryn Turner

940 E. Lake

Blanchard, OK 73010

Mikki Davis

717 Woodbriar

Noble, OK 73068

Jered Davidson

11200 N. Kickapoo Avenue

Shawnee, OK 74804

Signatures

The gist of the proposition is: This measure amends the Oklahoma Constitution. It adds a new Section 44 to Article 10. Bonds could be sold. Up to Five Hundred Million Dollars (\$500,000,000.00) could be available. Bond money would be used for school districts and career technology districts. Bond money would be used for storm shelters or secure areas. State franchise taxes would repay these bonds. If money from franchise tax was not enough, the Legislature could use the General Revenue Fund to repay the bonds. State bond money could be used by school districts or career technology districts to reduce local debt or eliminate local debt incurred for storm shelters or secure areas. If enough money from franchise tax remains after state bonds are paid for, the balance of franchise tax could be used for grants for storm shelters for people and businesses. When state bonds are paid off, additional bonds could be sold to keep the programs funded. Laws would be written for details about using bond money. State agencies could make rules about state bond money. These rules would have the effect of law. The Oklahoma Constitution is being amended to allow state bond money to pay for shelters and secure areas in schools.

	Signature	Printed Name	Voting Address	City, Zip Code	County
01				OK	
02				OK	
03				OK	
04				OK	
05				OK	
06				OK	
07				OK	
08				OK	
09				OK	
10				OK	
11				OK	
12				OK	
13				OK	
14				OK	
15				OK	
16				OK	
17				OK	
18				OK	
19				OK	
20				OK	

AFFIDAVIT

STATE OF OKLAHOMA,)

) ss.

COUNTY OF _____)

I, _____, being first duly sworn say:

That I collected the signatures of the persons on the foregoing petition and that:

- | | |
|-----------|-----------|
| 01. _____ | 11. _____ |
| 02. _____ | 12. _____ |
| 03. _____ | 13. _____ |
| 04. _____ | 14. _____ |
| 05. _____ | 15. _____ |
| 06. _____ | 16. _____ |
| 07. _____ | 17. _____ |
| 08. _____ | 18. _____ |
| 09. _____ | 19. _____ |
| 10. _____ | 20. _____ |

each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, address in which the signer is registered to vote, and that each signer is a legal voter in the State of Oklahoma.

Circulator's Signature

Address

City

Zip Code

Subscribed and sworn to before me this _____ day of _____, 2013

Notary Public

Address

City

Zip Code

My Commission Number is: _____

My Commission Expires: _____

(SEAL)

Larry V. Parman
Secretary of State



Mary Fallin
Governor

OKLAHOMA SECRETARY OF STATE

September 19, 2013

INTERAGENCY MAIL

The Honorable E. Scott Pruitt
Attorney General
313 NE 21st Street
Oklahoma City, Oklahoma 73105

Dear Attorney General Pruitt:

You are hereby notified that Kathryn Turner, 940 Eastlake Drive, Blanchard, OK 73010, filed an initiative petition on September 18, 2013, with the Secretary of State. This petition is designated as State Question Number 767, Initiative Petition Number 397.

Pursuant to 34 O.S., § 8, the signatures for this petition are required to be filed within ninety (90) days after the filing of the petition or determination of the sufficiency of the petition by the Supreme Court as provided in this section, whichever is later. The signature requirement for this petition is 155,216.

The proposed ballot title is hereby submitted to you for review as to legal correctness pursuant to the provisions of 34 O.S. § 9(D).

If additional information is needed from this office, or if we may be of further assistance, please contact me.

Sincerely,

Larry V. Parman
Secretary of State

A handwritten signature in cursive script that reads "Chris Morriss".

Chris Morriss
Assistant Secretary of State

Enclosures: State Question 767
Ballot Title

Larry V. Parman
Secretary of State



Mary Fallin
Governor

OKLAHOMA SECRETARY OF STATE

September 19, 2013

Hand delivered

The Honorable Mary Fallin
Governor, State of Oklahoma
Room 212, State Capitol
Oklahoma City, Oklahoma 73105

RECEIVED

SEP 19 2013

OFFICE OF THE
GOVERNOR

Dear Governor Fallin:

Please be advised that Kathryn Turner, 940 Eastlake Drive, Blanchard, OK 73010, filed an initiative petition on September 18, 2013, with the Secretary of State. This petition is designated as State Question Number 767, Initiative Petition Number 397.

Pursuant to 34 O.S., § 8, the signatures for this petition are required to be filed within ninety (90) days after the filing of the petition or determination of the sufficiency of the petition by the Supreme Court as provided in this section, whichever is later. The signature requirement for this petition is 155,216.

The proposed ballot title has been submitted to the Attorney General for review as to legal correctness pursuant to the provisions of 34 O.S. § 9 (D).

If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Larry V. Parman
Secretary of State

A handwritten signature in cursive script that reads "Chris Morriss".

Chris Morriss
Assistant Secretary of State

Enclosure: State Question 767

Larry V. Parman
Secretary of State



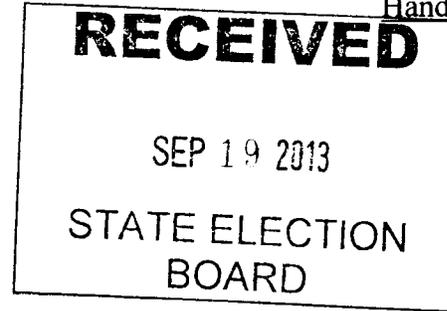
Mary Fallin
Governor

OKLAHOMA SECRETARY OF STATE

September 19, 2013

Hand delivered

The Honorable Paul Ziriach
Secretary, Oklahoma State Election Board
Room 3, State Capitol
Oklahoma City, Oklahoma 73105



Dear Secretary Ziriach:

Please be advised that Kathryn Turner, 940 Eastlake Drive, Blanchard, OK, 73010, filed an initiative petition on September 18, 2013, with the Secretary of State. This petition is designated as State Question Number 767, Initiative Petition Number 397.

Pursuant to 34 O.S., § 8, the signatures for this petition are required to be filed within ninety (90) days after the filing of the petition or determination of the sufficiency of the petition by the Supreme Court as provided in this section, whichever is later. The signature requirement for this petition is 155,216.

The proposed ballot title has been submitted to the Attorney General for review as to legal correctness pursuant to the provisions of 34 O.S. § 9 (D).

If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Larry V. Parman
Secretary of State

A handwritten signature in cursive script that reads "Chris Morriss".

Chris Morriss
Assistant Secretary of State

Enclosure: State Question 767



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

FILED

SEP 27 2013

**OKLAHOMA SECRETARY
OF STATE**

September 27, 2013

Larry V. Parman, Secretary of State
Office of the Secretary of State
2300 N. Lincoln Blvd., Room 101
Oklahoma City, Oklahoma 73105-4897

Re: Ballot Title for State Question No. 767, Initiative Petition No. 397

Dear Secretary Parman:

In accordance with the provisions of 34 O.S.2011, § 9(D), we have reviewed the proposed ballot title for the above-referenced State Question and conclude that it does not comply with applicable laws for the following reason:

It fails to explain in basic words the effect of the proposition because:

1. It does not explain that under current law franchise tax revenues are paid into the State's General Revenue Fund;
2. It does not explain the loss to the State's General Revenue Fund that would occur when bonds are issued and franchise tax revenues are used to repay the bond obligations authorized in the proposal;
3. It fails to explain that if the state franchise tax revenues are not sufficient to pay off the bond obligations, there may not be any funds available to pay the bond holders.
4. It does not explain that when the franchise tax revenues are not sufficient to pay the bond obligations, the Legislature is not required to use General Revenue Fund monies to pay the bond obligations;
5. It fails to explain that the measure creates exceptions to the constitutional provisions prohibiting gifts of state monies and the use of the credit of the state.

Having found that the ballot title does not comply with applicable laws, we will, in accordance with the provisions of 34 O.S.2011, § 9(D), within ten (10) business days, prepare a ballot title which complies with the law and furnish a copy to you.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Scott Pruitt". The signature is fluid and cursive, with the first name "E." being small and the last name "Pruitt" being larger and more prominent.

E. Scott Pruitt
Attorney General

ESP/ab



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

FILED

OCT 11 2013

OKLAHOMA SECRETARY
OF STATE

October 11, 2013

Larry V. Parman, Secretary of State
Office of the Secretary of State
2300 N. Lincoln Blvd., Room 101
Oklahoma City, Oklahoma 73105-4897

Re: Ballot Title for State Question No. 767, Legislative Referendum No. 397

Dear Secretary Parman:

Having found that the Proposed Ballot Title for the above-referenced state question did not comply with applicable laws, we have, in accordance with 34 O.S. 2011, § 9(D), have prepared the following Ballot Title. The Ballot Title reads as follows:

BALLOT TITLE FOR STATE QUESTION NO. 767

This measure adds Article 10, Section 44 to the Oklahoma Constitution. The new Section authorizes the issuance of up to 500 million dollars in State bonds. The bond money would be used by local school districts and career technology districts for storm shelters and campus security.

The measure does not provide for new State revenues to pay for the bonds. Under the measure State franchise tax revenues would no longer go into the General Revenue Fund, which is the primary fund used to pay for State Government. Rather, franchise tax revenues would be used for annual bond payments (principal and interest).

In any year in which the franchise tax revenues are not sufficient to make annual payments, the Legislature, at its discretion, could use General Revenue Fund monies to make the annual bond payment.

In years in which not all the franchise tax revenues are needed to make payments, the remaining franchise tax revenues — with Legislative approval — could be used for storm shelter grants to individuals and businesses.

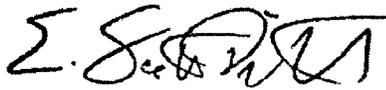
In authorizing these bond and grant programs, the measure creates exceptions to the Constitution's prohibitions on gifts and the use of the State's credit.

SHALL THE PROPOSAL BE APPROVED?

FOR THE PROPOSAL - YES _____

AGAINST THE PROPOSAL - NO _____

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E. Scott Pruitt". The signature is stylized and somewhat cursive.

E. Scott Pruitt
Attorney General

ESP/ab

Larry V. Parman
Secretary of State



Mary Fallin
Governor

OKLAHOMA SECRETARY OF STATE

October 16, 2013

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

Dear Ms. Shea:

Please publish the attached Notice of Filing for State Question Number 767, Initiative Petition Number 397. Pursuant to 34 O.S. § 8, the publication must appear in at least one newspaper of general circulation in the State of Oklahoma. Please publish in *The Oklahoman*, *Tulsa World*, and the *Journal Record* as soon as possible.

Also, please provide the Secretary of State with a verified proof of publication of the Notice. Should you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Chris Morriss".

Chris Morriss
Assistant Secretary of State

Enc: Notice of Filing

cc: Kathryn Turner
940 E. Lake
Blanchard, OK 73010

**NOTICE OF THE FILING OF
STATE QUESTION NUMBER 767
INITIATIVE PETITION NUMBER 397**

NOTICE is hereby given that on September 18, 2013, State Question Number 767, Initiative Petition Number 397 was filed in the Office of the Secretary of State.

The ballot title for this initiative petition is as follows:

This measure adds Article 10, Section 44 to the Oklahoma Constitution. The new Section authorizes the issuance of up to 500 million dollars in State bonds. The bond money would be used by local school districts and career technology districts for storm shelters and campus security.

The measure does not provide for new State revenues to pay for the bonds. Under the measure State franchise tax revenues would no longer go into the General Revenue Fund, which is the primary fund used to pay for State Government. Rather, franchise tax revenues would be used for annual bond payments (principal and interest).

In any year in which the franchise tax revenues are not sufficient to make annual payments, the Legislature, at its discretion, could use General Revenue Fund monies to make the annual bond payment.

In years in which not all the franchise tax revenues are needed to make payments, the remaining franchise tax revenues with Legislative approval could be used for storm shelter grants to individuals and businesses.

In authorizing these bond and grant programs, the measure creates exceptions to the Constitution's prohibitions on gifts and the use of the State's credit.

SHALL THE PROPOSED AMENDMENT TO THE CONSTITUTION BE APPROVED?

_____ Yes – For the proposition

_____ No – Against the proposition

NOTICE is hereby given that, as provided in 34 O.S. § 8 and 10, any citizen or citizens of the state may file a protest as to the constitutionality of the petition or as to the ballot title, by a written notice to the Oklahoma Supreme Court and to the proponent or proponents filing the petition. Proponents filing are: Kathryn Turner, 940 E. Lake, Blanchard, OK 73010; Mikki Davis, 717 Woodbriar, Noble, OK 73068; and Jered Davidson, 11200 N. Kickapoo Avenue, Shawnee, OK 74804. Any such protest must be filed within ten (10) days after this publication. A copy of the protest shall be filed with the Secretary of State.

Larry V. Parman
Secretary of State

Legal Notices 717

**NOTICE OF THE FILING OF
STATE QUESTION NUMBER 767
INITIATIVE PETITION
NUMBER 397**

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In years in which not all the franchise tax revenues are needed to make payments, the remaining franchise tax revenues with Legislative approval could be used for storm shelter grants to individuals and businesses.

In authorizing these bond and grant programs, the measure creates exceptions to the Constitution's prohibitions on gifts and the use of the State's credit.

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Larry V. Parman
Secretary of State

Classified provided by The Oklahoman. Phone may have area code of 405 if not mentioned.

legal-notice > Legal Notices - Classified 9 Listings

October 18

NOTICE OF THE FILING OF STATE QUESTION NUMBER 767 INITIATIVE PETITION NUMBER 397 NOTICE is hereby given that on September 18, 2013, State Question Number 767, Initiative Petition Number 397 was filed in the Office of the Secretary of State. The ballot title for this initiative petition is as follows: This measure adds Article 10, Section 44 to the Oklahoma Constitution. The new Section authorizes the issuance of up to 500 million dollars in State bonds. The bond money would be used by local school districts and career technology districts for storm shelters and campus security. The measure does not provide for new State revenues to pay for the bonds. Under the measure State franchise tax revenues would no longer go into the General Revenue Fund, which is the primary fund used to pay for State Government. Rather, franchise tax revenues would be used for annual bond payments (principal and interest). In any year in which the franchise tax revenues are not sufficient to make annual payments, the Legislature, at its discretion, could use General Revenue Fund monies to make the annual bond payment. In years in which not all the franchise tax revenues are needed to make payments, the remaining franchise tax revenues with Legislative approval could be used for storm shelter grants to individuals and businesses. In authorizing these bond and grant programs, the measure creates exceptions to the Constitution's prohibitions on gifts and the use of the State's credit. **SHALL THE PROPOSED AMENDMENT TO THE CONSTITUTION BE APPROVED?** ____ Yes - For the proposition ____ No - Against the proposition NOTICE is hereby given that, as provided in 34 O.S. ss 8 and 10, any citizen or citizens of the state may file a protest as to the constitutionality of the petition or as to the ballot title, by a written notice to the Oklahoma Supreme Court and to the proponent or proponents filing the petition. Proponents filing are: Kathryn Turner, 940 E. Lake, Blanchard, OK 73010; Mikki Davis, 717 Woodbriar, Noble, OK 73068; and Jered Davidson, 11200 N. Kickapoo Avenue, Shawnee, OK 74804. Any such protest must be filed within ten (10) days after this publication. A copy of the protest shall be filed with the Secretary of State. Larry V. Parman Secretary of State

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

NO. ~~_____~~ #112264

IN RE: INITIATIVE PETITION NO. 397

FILED

OCT 18 2013

OKLAHOMA SECRETARY
OF STATE

BRIEF OF PETITIONER/PROPONENT

David R. Slane, OBA #16156
901 NW 12th Street
Oklahoma City, OK 73106
(405) 319-1800
(405) 319-1802 Facsimile
ATTORNEY FOR TAKE SHELTER
OKLAHOMA

Richard Morrissette, OBA# 11446
217 N. Harvey, Suite 101
Oklahoma City, OK 73102
(405) 235-7900
ATTORNEY FOR TAKE SHELTER
OKLAHOMA

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

IN RE: INITIATIVE PETITION NO. 397)
) No. _____
)

**BRIEF OF PETITIONER/PROPONENT REQUESTING REVIEW OF
SUBSTITUTED BALLOT TITLE PREPARED BY THE ATTORNEY GENERAL
IN CONNECTION WITH INITIATIVE PETITION NO. 397**

This is a statutorily authorized appeal initiated pursuant to Title 34 O.S. 2011, Section 10.A, whereby the petitioner seeks review and substitution of the corrected ballot title proffered by the Oklahoma Attorney General on October 11, 2013, included in the Abstract of Record as Exhibit A and incorporated herein by reference.

THE FACTS CONCERNING BACKGROUND AND HISTORY OF FILING

This legal action is taken on behalf of two entities; Kristi Conatzer, who is the mother of a child who died as a result of the May tornado. Take Shelter Oklahoma is an organization of Oklahoma citizens taking action to protect Oklahoma’s children, namely through providing access to funds for the construction of storm shelters and safe rooms (collectively, “storm shelters”) for Oklahoma public schools and career technology districts. In connection with this purpose, a group of Oklahoma citizens, as authorized by Article 5, Section 1 of the Oklahoma Constitution and Title 34 O.S. 2011, §§ 1 *et seq.*, filed Initiative Petition No. 397 and State Question 767 on September 18, 2013 (the “Petition”), attached hereto as Exhibit B and incorporated herein by reference, seeking to amend the Oklahoma Constitution by adding a new section of law authorizing the issuance of up to \$500 million in bonds by the State of Oklahoma for the purpose of funding said storm shelters to be approved or rejected by the legal voters of the State of Oklahoma at the regular general election to be held on November 10, 2014.

Pursuant to the statutory requirements found in Title 34 O.S. 2011, § 9.D.1, in a letter dated September 19, 2013, the Oklahoma Secretary of State informed the Attorney General of the filing of the petition and submitted same to him for review as to legal correctness. The Attorney General, “within five (5) business days after the filing of the measure and ballot title...shall notify the Secretary of State whether or not the proposed ballot title complies with applicable law.” *Id.* He failed to do so. The Attorney General gave notice of legal insufficiency of the ballot title on the seventh (7th) day following the filing of the Petition in a letter dated September 27, 2013 with accompanying file stamp of receipt by the Oklahoma Secretary of State the same date, attached hereto as Exhibit C and incorporated herein by reference. The Attorney General submitted a new ballot title on the proposed question to the Oklahoma Secretary of State on October 11, 2013.

PETITIONER’S OBJECTIONS TO SUBSTITUTED BALLOT TITLE

1. ATTORNEY GENERAL’S FAILURE TO OBJECT TIMELY

The Attorney General did not follow statutory procedure set out in 34 O.S. § 9 D.1 and his substitution is not allowed by law.

“ The following procedure shall apply to ballot titles of referendums ordered by a petition of the people or any measure proposed by an initiative petition:

1. After the filing of the petition and prior to the gathering of signatures thereon, the Secretary of State shall submit the proposed ballot title to the Attorney General for review as to legal correctness. Within five (5) business days after the filing of the measure and ballot title, the Attorney General shall, in writing, notify the Secretary of State whether or not the proposed ballot title complies with applicable laws. The Attorney General shall state with specificity and all defects found and, if necessary, within ten (10) business days of determining that the proposed ballot title is defective,

prepare and file a ballot title which complies with the law; ”

The Attorney General failed to notify any party within five (5) business days of the Initiative Petition filed on September 27, 2013. Thus his proposed ballot title change is improper and he failed to follow the five (5) day notice under the law.

2.THE PETITIONER’S ORIGINAL BALLOT TITLE DOES NOT RUN AFOUL OF OKLAHOMA LAW AND IS LEGALLY CORRECT

The Attorney General is to review the petition “for review as to legal correctness under 34 O.S. § 9(D)1.

Petitioners believe the Initiative Petition and Ballot Title complied with the law. Title 34 § 9(B) clearly outlines the requirements for “the suggested ballot title”:

“ B. The parties submitting the measure shall also submit a suggested ballot title which shall be filed on a separate sheet of paper and shall not be deemed part of the petition. The suggested ballot title:

1. Shall not exceed two hundred (200) words;
2. Shall explain in basic words, which can be easily found in dictionaries of general usage, the effect of the proposition;
3. Shall be written on the eighth-grade reading comprehension level;
4. Shall not contain any words which have a special meaning for a particular profession or trade not commonly known to the citizens of this state;
5. Shall not reflect partiality in its composition or contain any argument for or against the measure;
6. Shall contain language which clearly states that a “yes” vote is a vote in favor of the proposition and a “no” vote is a vote against the proposition; and
7. Shall not contain language whereby a “yes” vote is in fact, a vote against the proposition and a “no” vote is, in fact, a vote in favor of the proposition.”

The proposed title submitted by the Petitioner complies with § 9(B).

**3. THE SUBSTITUTED BALLOT TITLE NEGATES THE INTENT
OF THE ORIGINALLY FILED INITIATIVE PETITION**

The proposed ballot title from the Attorney General is designed to over emphasize the franchise tax issue and under emphasize the true purpose of the Initiative which is storm shelters and secure areas for schools and children. (See Exhibits 1-2) The proposal from the Attorney General is misleading, confusing and will not help the average voter when he or she votes.

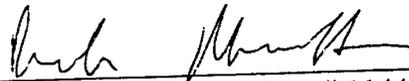
CONCLUSION

Pursuant to Title 34 O.S. § 10.A, the Petitioner respectfully requests this Court to reject the Attorney General's amended ballot title in reference to Initiative Petition No. 397 and restore the Petitioner's substitute ballot title to the Petition.

Respectfully submitted,



David R. Slane, OBA# 16156
901 NW 12th Street
Oklahoma City, OK 73106
(405) 319-1800
(405) 319-1802 Facsimile
ATTORNEY FOR TAKE SHELTER
OKLAHOMA



Richard Morrissette, OBA# 11446
217 N. Harvey, Suite 101
Oklahoma City, OK 73102
(405) 235-7900
ATTORNEY FOR TAKE SHELTER
OKLAHOMA

CERTIFICATE OF SERVICE

This is to certify that on this 17th day of October, 2013 a true and correct copy of the above and foregoing instrument was mailed postage prepaid or hand delivered to:

Oklahoma Attorney General
Scott Pruitt
313 NE 21st Street
Oklahoma City, OK 73015

Oklahoma Secretary of State
2300 N. Lincoln Blvd.
Room 101
Oklahoma City, OK 73105



David R. Slane

Larry V. Parman
Secretary of State



Mary Fallin
Governor

OKLAHOMA SECRETARY OF STATE

September 19, 2013

INTERAGENCY MAIL

The Honorable E. Scott Pruitt
Attorney General
313 NE 21st Street
Oklahoma City, Oklahoma 73105

Dear Attorney General Pruitt:

You are hereby notified that Kathryn Turner, 940 Eastlake Drive, Blanchard, OK 73010, filed an initiative petition on September 18, 2013, with the Secretary of State. This petition is designated as State Question Number 767, Initiative Petition Number 397.

Pursuant to 34 O.S., § 8, the signatures for this petition are required to be filed within ninety (90) days after the filing of the petition or determination of the sufficiency of the petition by the Supreme Court as provided in this section, whichever is later. The signature requirement for this petition is 155,216.

The proposed ballot title is hereby submitted to you for review as to legal correctness pursuant to the provisions of 34 O.S. § 9(D).

If additional information is needed from this office, or if we may be of further assistance, please contact me.

Sincerely,

Larry V. Parman
Secretary of State

A handwritten signature in cursive script that reads 'Chris Morriss'.

Chris Morriss
Assistant Secretary of State

Enclosures: State Question 767
Ballot Title



FILED

SEP 18 2013

**OKLAHOMA SECRETARY
OF STATE**

State Question No. 767 Initiative Petition No. 397

WARNING

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

INITIATIVE PETITION

To the Honorable Mary Fallin, Governor of Oklahoma: We, the undersigned legal voters of the State of Oklahoma, respectfully order that the following proposed new section to the Oklahoma Constitution shall be submitted to the legal voters of the State of Oklahoma for their approval or rejection at the regular general election, to be held on the 10th day of November, 2014, (or such earlier special election as may be called by the Governor) and each for himself says: I have personally signed this petition; I am a legal voter of the State of Oklahoma; my residence or post office are correctly written after my name. The time for filing this petition expires ninety days from the 18th day of September, 2013. The question we herewith submit to our fellow voters is:

Shall the following proposed new Section 44 of Article 10 of the Constitution be approved?

BALLOT TITLE

This measure amends the Oklahoma Constitution. It adds a new Section 44 to Article 10. Bonds could be sold. Up to Five Hundred Million Dollars (\$500,000,000.00) could be available. Bond money would be used for school districts and career technology districts. Bond money would be used for storm shelters or secure areas. State franchise taxes would repay these bonds. If money from franchise tax was not enough, the Legislature could use the General Revenue Fund to repay the bonds. State bond money could be used by school districts or career technology districts to reduce local debt or eliminate local debt incurred for storm shelters or secure areas. If enough money from franchise tax remains after state bonds are paid for, the balance of franchise tax could be used for grants for storm shelters for people and businesses. When state bonds are paid off, additional bonds could be sold to keep the programs funded. Laws would be written for details about using bond money. State agencies could make rules about state bond money. These rules would have the effect of law. The Oklahoma Constitution is being amended to allow state bond money to pay for shelters and secure areas in schools.

Shall the following proposed new Article X, Section 44 of the Constitution be approved?

For the proposal	-	YES
Against the proposal	-	NO

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

Section 44. A. The State of Oklahoma shall be authorized to issue bonds or other evidence of indebtedness in order to provide net proceeds equal to Five Hundred Million Dollars (\$500,000,000.00) for the purpose of acquiring, constructing or improving facilities to be used for the benefit of any common school district or career technology district within the state to provide shelter from dangerous weather conditions or to provide security to the students and employees of the district related to personal safety or both such purposes and for the purposes described by subsection I and subsection J of this section.

B. The maximum maturity for any obligation issued pursuant to subsection A of this section shall be twenty-five (25) years.

C. The Oklahoma Building Bonds Commission shall issue the obligations authorized by this section.

D. The Legislature, pursuant to enabling legislation enacted for such purpose, may define the types of facilities which may be acquired, constructed or improved with proceeds from the sale of obligations issued pursuant to this section in order to provide shelter from dangerous weather conditions, to provide secure areas and secure procedures to protect students and employees of common school districts and career technology districts from the threat or potential threat of violence or both such purposes.

E. The Legislature shall provide by law for the apportionment of the revenues currently derived from the levy of the franchise tax imposed for the privilege of doing business in the state as authorized pursuant to Section 1201 et seq. of Title 68 of the Oklahoma Statutes, as amended, so that one hundred percent (100%) of such franchise tax revenue, or so much thereof as may be required on an annual basis, is dedicated for the repayment of the obligations issued pursuant to the provisions of this section.

F. The Legislature may provide by law for the use of revenues derived from the levy of franchise tax which are not required for repayment of obligations issued pursuant to the provisions of this section in order to provide a grant program for construction of storm shelters for individuals and business entities. Such program shall be administered by the Office of Emergency Management or its successor. The use of franchise tax revenues for storm shelters as authorized by this subsection shall be deemed in furtherance of a public purpose and shall not be deemed a gift of state tax revenues.

**PLAINTIFF'S
EXHIBIT**
12
tabbles

G. If the revenues described by subsection E of this section are insufficient to repay the obligations issued pursuant to the provisions of this section, the Legislature may use monies in the General Revenue Fund of the state not otherwise obligated, committed or appropriated in order to ensure the repayment of such obligations.

H. If any obligations issued pursuant to the provisions of this section are defeased, within the limit prescribed by subsection A of this section, the principal amount of such obligation shall become available for issuance by the state governmental entity designated pursuant to subsection C of this section if authorized by an act of the Legislature or authorized by an initiative petition approved in the manner required for laws pursuant to Section 2 of Article V of the Oklahoma Constitution. The act of the Legislature or the law proposed by initiative petition shall specify the amount of any additional issuance authorized by this subsection.

I. Pursuant to laws enacted by the Legislature for such purpose, the proceeds from the obligations issued pursuant to this section may be used to reduce or eliminate any debt incurred by a school district or career technology district for the purpose of acquiring or constructing a storm shelter or secure facility. The debt must have been incurred not earlier than May 1, 2013, pursuant to a vote of the eligible voters of the respective district. If the debt was incurred prior to May 1, 2013, but not prior to July 1, 2007, the provisions of this subsection shall authorize the use of the proceeds in order to reduce or eliminate such debt with respect to construction of the eligible assets which begins on or after May 1, 2013.

J. Pursuant to laws enacted by the Legislature for such purpose, the proceeds from the obligations issued pursuant to this section may be used to reimburse a common school district or a career technology district for expenditures made from a building fund created pursuant to Section 10 of Article X of the Oklahoma Constitution, with respect to a common school district, or for expenditures made from the revenue derived from a millage levy authorized pursuant to Section 9B of Article X of the Oklahoma Constitution, with respect to a career technology district, to the extent the expenditure was for the purpose of acquiring, constructing or improving a storm shelter or secure facility. The expenditure for such storm shelter or secure facility must have been incurred no earlier than May 1, 2013.

K. The obligations authorized pursuant to the provisions of this section may be issued in series, may be issued in either tax-exempt or taxable status for purposes of the Internal Revenue Code of 1986, as amended, and in such form as required in order to promote the marketability of such obligations.

L. Pursuant to laws enacted by the Legislature for such purpose, any administrative rule adopted by an agency of state government that imposes a condition or requirement upon a common school district or career technology district related to the use of proceeds from sale of the obligations authorized by this section shall be binding upon such school district or career technology district.

M. The proceeds from the sale of obligations issued pursuant to the provisions of this section may be made available to any common school district or any career technology district for the purposes authorized by this section and enabling legislation enacted pursuant to this section notwithstanding any other provision of the Oklahoma Constitution that would otherwise prohibit or restrict the use of such proceeds or the use of tax revenue for the repayment of principal, interest, reserves, issuing costs or other costs related to the sale of the obligations authorized by this section. Any provision of the Oklahoma Constitution that would otherwise restrict the issuance of obligations pursuant to this section, restrict the use of the proceeds from the sale of such obligations, restrict the use of tax revenues for repayment of the obligations or in any way restrict the operation of the provisions of this section shall be deemed to have been amended in order to remove any such restrictions.

Name and Address of Proponents:

Kathryn Turner

940 E. Lake

Blanchard, OK 73010

Mikki Davis

717 Woodbriar

Noble, OK 73068

Jered Davidson

11200 N. Kickapoo Avenue

Shawnee, OK 74804

Signatures

The gist of the proposition is: This measure amends the Oklahoma Constitution. It adds a new Section 44 to Article 10. Bonds could be sold. Up to Five Hundred Million Dollars (\$500,000,000.00) could be available. Bond money would be used for school districts and career technology districts. Bond money would be used for storm shelters or secure areas. State franchise taxes would repay these bonds. If money from franchise tax was not enough, the Legislature could use the General Revenue Fund to repay the bonds. State bond money could be used by school districts or career technology districts to reduce local debt or eliminate local debt incurred for storm shelters or secure areas. If enough money from franchise tax remains after state bonds are paid for, the balance of franchise tax could be used for grants for storm shelters for people and businesses. When state bonds are paid off, additional bonds could be sold to keep the programs funded. Laws would be written for details about using bond money. State agencies could make rules about state bond money. These rules would have the effect of law. The Oklahoma Constitution is being amended to allow state bond money to pay for shelters and secure areas in schools.

	Signature	Printed Name	Voting Address	City, Zip Code	County
01				OK	
02				OK	
03				OK	
04				OK	
05				OK	
06				OK	
07				OK	
08				OK	
09				OK	
10				OK	
11				OK	
12				OK	
13				OK	
14				OK	
15				OK	
16				OK	
17				OK	
18				OK	
19				OK	
20				OK	

AFFIDAVIT

STATE OF OKLAHOMA,)

) ss.

COUNTY OF _____)

I, _____, being first duly sworn say:

That I collected the signatures of the persons on the foregoing petition and that:

- | | |
|-----------|-----------|
| 01. _____ | 11. _____ |
| 02. _____ | 12. _____ |
| 03. _____ | 13. _____ |
| 04. _____ | 14. _____ |
| 05. _____ | 15. _____ |
| 06. _____ | 16. _____ |
| 07. _____ | 17. _____ |
| 08. _____ | 18. _____ |
| 09. _____ | 19. _____ |
| 10. _____ | 20. _____ |

each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, address in which the signer is registered to vote, and that each signer is a legal voter in the State of Oklahoma.

Circulator's Signature

Address

City

Zip Code

Subscribed and sworn to before me this ____ day of _____, 2013

Notary Public

Address

City

Zip Code

My Commission Number is: _____

My Commission Expires: _____

(SEAL)

VERIFICATION

COUNTY OF OKLAHOMA)
)
STATE OF OKLAHOMA) SS:

I, Kristi Conatzer, Co-Petitioner, do hereby verify and state that I have read the information contained in the foregoing Application for Review of Substituted Ballot Title Prepared by Attorney General in Connection with Initiative Petition No. 397 and State Question 767, and it is true and correct to the best of my knowledge and belief.

Dated this 17th day of October, 2013.


KRISTI CONATZER

SUBSCRIBED AND SWORN to before me this 17 day of October, 2013.




NOTARY PUBLIC

(SEAL)

My Commission Expires: 10/17/15

My Commission No.: 03012882

VERIFICATION

COUNTY OF OKLAHOMA)
)
STATE OF OKLAHOMA) SS:

I, Kathryn Turner, Co-Petitioner, do hereby verify and state that I have read the information contained in the foregoing Application for Review of Substituted Ballot Title Prepared by Attorney General in Connection with Initiative Petition No. 397 and State Question 767, and it is true and correct to the best of my knowledge and belief.

Dated this 17th day of October, 2013.


KATHRYN TURNER

SUBSCRIBED AND SWORN to before me this 17 day of October, 2013.




NOTARY PUBLIC

(SEAL)

My Commission Expires: 10/17/15

My Commission No.: 03012882



E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA

FILED

OCT 18 2013

**OKLAHOMA SECRETARY
OF STATE**

October 16, 2013

Larry V. Parman
Secretary of State
2300 N. Lincoln Blvd., Room 101
Oklahoma City, Oklahoma 73105

Re: State Question No. 767, Initiative Petition No. 397

Dear Secretary Parman:

There was an inadvertent error in the subject line of our letter dated October 11, 2013, in which we provided the Ballot Title for State Question No. 767. The reference was to Legislative Referendum No. 397 when it should have been to Initiative Petition No. 397. The Ballot Title itself is unchanged.

Please allow this letter to serve as a correction for this error.

Sincerely,

A handwritten signature in black ink that reads "Tom Bates".

Tom Bates
First Assistant Attorney General

TB:clb

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OCT 18 2013
OKLAHOMA SECRETARY OF STATE



www.OkPress.com

Oklahoma Press Service

3601 North Lincoln Blvd.

Oklahoma City, OK 73105-

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

Tuesday, October 29, 2013 03:31 PM

Page 1

Proof of Publication - Order Number 13-10-63

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

Insertion: 10/18/2013

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

PUBLICATION FEE \$65.90

(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this 29 day of October 2013.

(Notary Public)



NOTICE OF THE FILING OF STATE QUESTION NUMBER 767 INITIATIVE PETITION NUMBER 397

NOTICE is hereby given that on September 18, 2013, State Question Number 767, Initiative Petition Number 397 was filed in the Office of the Secretary of State.

The ballot title for this initiative petition is as follows:

This measure adds Article 10, Section 44 to the Oklahoma Constitution. The new Section authorizes the issuance of up to 500 million dollars in State bonds. The bond money would be used by local school districts and career technology districts for storm shelters and campus security.

The measure does not provide for new State revenues to pay for the bonds. Under the measure State franchise tax revenues would no longer go into the General Revenue Fund, which is the primary fund used to pay for State Government. Rather, franchise tax revenues would be used for annual bond payments (principal and interest).

In any year in which the franchise tax revenues are not sufficient to make annual payments, the Legislature, at its discretion, could use General Revenue Fund monies to make the annual bond payment.

In years in which not all the franchise tax revenues are needed to make payments, the remaining franchise tax revenues with Legislative approval could be used for storm shelter grants to individuals and businesses.

In authorizing these bond and grant programs, the measure creates exceptions to the Constitution's prohibitions on gifts and the use of the State's credit.

SHALL THE PROPOSED AMENDMENT
TO THE CONSTITUTION BE APPROVED?

- Yes - For the proposition
- No - Against the proposition

NOTICE is hereby given that, as provided in 34 O.S. § 8 and 10, any citizen or citizens of the state may file a protest as to the constitutionality of the petition or as to the ballot title, by a written notice to the Oklahoma Supreme Court and to the proponent or proponents filing the petition. Proponents filing are: Kathryn Turner, 940 E. Lake, Blanchard, OK 73010; Mikki Davis, 717 Woodbriar, Noble, OK 73068; and Jered Davidson, 11200 N. Kickapoo Avenue, Shawnee, OK 74804. Any such protest must be filed within ten (10) days after this publication. A copy of the protest shall be filed with the Secretary of State.

Larry V. Parman
Secretary of State

(10-18-13)

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Page 1

Proof of Publication - Order Number 13-10-63

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

Insertion: 10/18/2013

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

PUBLICATION FEE \$512.25

(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this 29 day of October 2013.

(Notary Public)



Published in the Tulsa World, October 18, 2013, Tulsa, OK

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SHALL THE PROPOSED AMENDMENT TO THE CONSTITUTION BE APPROVED?

Yes - For the proposition

No - Against the proposition

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Larry V. Parman
Secretary of State

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Insertion: 10/18/2013

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PUBLICATION FEE \$1,128.94

(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this 29 day of October 2013.

(Notary Public)



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Larry V. Parman
Secretary of State

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OCT 29 2013

OKLAHOMA SECRETARY OF STATE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

NO. 112264

FILED
SUPREME COURT
STATE OF OKLAHOMA
NOV - 6 2013
MICHAEL J. NICHIE
CLERK

IN RE: INITIATIVE PETITION NO. 397

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NOV 06 2013

OKLAHOMA SECRETARY
OF STATE

SUPPLEMENTAL BRIEF OF PETITIONER/PROPONENT

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NOV 06 2013

OKLAHOMA SECRETARY
OF STATE

David R. Slane, OBA #16156
901 NW 12th Street
Oklahoma City, OK 73106
(405) 319-1800
(405) 319-1802 Facsimile
ATTORNEY FOR TAKE SHELTER
OKLAHOMA

Richard Morrisette, OBA# 11446
217 N. Harvey, Suite 101
Oklahoma City, OK 73102
(405) 235-7900
ATTORNEY FOR TAKE SHELTER
OKLAHOMA

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

In Re: Initiative Petition No. 397,)	
State Question 767,)	
)	
TAKE SHELTER OKLAHOMA)	
AND KRISTI CONATZER,)	
)	
Petitioners,)	
)	
Vs.)	Case No. 112264
)	
STATE OF OKLAHOMA, ex rel.,)	
ATTORNEY GENERAL E. SCOTT)	
PRUITT,)	
)	
Respondent.)	

SUPPLEMENTAL BRIEF

THE STATUTORY DEADLINE IS JURISDICTIONAL

Under Oklahoma law ideal 34 O.S. § 9 the attorney general shall follow the following procedure:

“The following procedure shall apply to ballot titles of referendums ordered by a petition of the people or any measure proposed by an initiative petition:

1. After the filing of the petition and prior to the gathering of signatures thereon, the Secretary of State shall submit the proposed ballot title to the Attorney General for review as to legal correctness. Within five (5) business days after the filing of the measure and ballot title, the Attorney General shall, in writing, notify the Secretary of State whether or not the proposed ballot title complies with applicable laws. The Attorney General shall state with specificity and all defects found and, if necessary, within ten (10) business days of determining that the proposed ballot title is defective, prepare and file a ballot title which complies with the law; ”

Petitioners believe the deadline is jurisdictional and failure to object is a fatal flaw. The statute uses the word “shall” not the word “may” or any other optional word to allow for objection after the 5 days.

The entire statutory scheme is to set up with statutory guidelines and deadlines. The purpose of the law is to allow the People to Petition the Government for a change in the law or as in this case the Constitution. It is a very quick ninety (90) day process. Any delay is prejudicial and harmful.

Additionally, it should be noted it is not an objection and rewrite within five (5) days but merely a five (5) day objection to put all parties on notice of a potential problem. The failure to do so starts a delay for all parties because it creates uncertainty in the entire process.

PETITIONERS REQUEST AN ADDITIONAL NINETY (90) DAYS

Petitioners request the Court grant ninety (90) additional days from their decision according to Title 34 § 8(E).

Petitioners request the court issue a separate and Early Order so that the parties will know if the ninety (90) additional days will be granted.

The effects of the Attorney General’s rewrite of the title has hampered, created public confusion and has the effect of sabotaging the Petitioners effort to obtain the approximately 160,000 signatures required for the measure to be placed on the ballot for a Vote of the People.

RECUSAL OF ATTORNEY GENERAL SCOTT PRUITT

The Attorney General should be recused and removed from this case. 5 O.S. Ch.1.

Section Rule 1.7, IDENTIFYING CONFLICTS OF INTEREST MATERIAL
LIMITATION: Comment [8]:

“Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer’s ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer’s other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer’s ability to recommend or advocate all possible positions that each might take because of the lawyer’s duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer’s independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.” (Exhibit 1)

In support, the Petitioners would allege that the Attorney General rewrote the Ballot Title in order to help defeat the measure at the election.

The Initiative would propose that shelters be placed in every public school in the State of Oklahoma. This protection would save children’s lives in the event a school was hit by a tornado.

The shelters would be paid for by funding from the Corporate Franchised Tax.

The State Chamber of Commerce has publically worked to eliminate the Corporate Franchised Tax. (Exhibit 2)

The leaders of the State Chamber of Commerce and influential members of the State Chambers of Commerce have contributed thousands of campaign dollars to Scott Pruitt, the State Attorney General. (Exhibit 3 examples include public utilities, banks and telecommunications)

It is for this reason that the Attorney General did not make the changes to the title for "legal correctness" as required by 34 O.S. § 9 D.1

If the court reviews the Petitioners proposed ballot there is nothing "legally incorrect" about the title. These changes were made because the Attorney General Scott Pruitt is politically motivated to assist his political motivated (campaign contributing) friends at the State Chamber of Commerce. The Attorney General has rewritten the title to help achieve the goal of eliminating the Corporate Franchised Tax and defeating the Initiative Petition.

TITLE COMPARISON

The Attorney General should carry the burden established that he was required by law to rewrite the ballot title due to it being legally incorrect under Oklahoma law. Petitioners proposed the following measure:

"This measure amends the Oklahoma Constitution. It adds a new Section 44 to Article 10. Bonds could be sold. Up to Five Hundred Million Dollars (\$500,000,000.00) could be available. Bond money would be used for school districts and career technology districts. Bond money would be used for storm shelters or secure areas. State franchise taxes would repay these bonds. If money from franchise tax was not enough, the Legislature could use the General Revenue Fund to repay the bonds. State bond money could be used by school districts or career technology districts to reduce local debt or eliminate local debt incurred for storm shelters or secure areas. If enough money from franchise tax remains after state bonds are paid for, the balance of franchise tax could be used for grants for

storm shelters for people and businesses. When state bonds are paid off, additional bonds could be sold to keep the programs funded. Laws would be written for details about using bond money. State agencies could make rules about state bond money. These rules would have the effect of law. The Oklahoma Constitution is being amended to allow state bond money to pay for shelters and secure areas in schools.”

Upon the Initiative submission, Attorney General Scott Pruitt, gave the following grounds for rewriting the Ballot Title:

1. It does not explain that under current law franchise tax revenues are paid into the State’s General Revenue Fund;
2. It does not explain the loss to the State’s General Revenue Fund that would occur when bonds are issued and franchise tax revenues are used to repay the bond obligations authorized in the proposal;
3. It fails to explain that if the state franchise tax revenues are not sufficient to pay off the bond obligations, there may not be any funds available to pay the bond holders.
4. It does not explain that when the franchise tax revenues are not sufficient to pay the bond obligations, the Legislature is not required to use General Revenue Fund monies to pay the bond obligations;
5. It fails to explain that the measure creates exceptions to the constitutional provisions prohibiting gifts of the state monies and the use of the credit of the state.

PETITIONERS WOULD SUBMIT THE FOLLOWING FOR CONSIDERATION

The burden of poof rests with the Attorney General to show that the ballot title as submitted by the Petitioners in not legally correct. Under the statute the Attorney General only has the authority to rewrite the language if it is not legally correct. The

ballot title as submitted by the Petitioners is legally correct and the Attorney General failed to prove otherwise in his untimely objection of September 27, 2013. Petitioners would submit the following response to the Attorney General's objection and rewrite:

1. The ballot title as submitted states that the franchise tax will repay the debt on the bond. That is legally correct. Where the revenue from the franchise tax is currently deposited is irrelevant and has no impact as to the legal correctness of the ballot title as it does not matter where such revenue is deposited since the petition would direct that the revenue from the franchise tax be used to repay the bond debt. In fact, nothing guarantees that the revenue from the franchise tax will still be deposited in the State's General Revenue Fund by the time the petition is placed on the ballot. The legislature could have directed the money elsewhere by such time, which could then make any reference to where the franchise tax is deposited legally incorrect.

2. A political commentary on the "loss to the State's General Revenue Fund" is irrelevant as the legal correctness of the ballot title. The petition directs the franchise tax to pay the bond indebtedness, and the ballot title as submitted by the Petitioners provides a correct legal description of such. Again, nothing guarantees that the revenue from the franchise tax will still be deposited in the State's General Revenue Fund by the time the petition is placed on the ballot. The legislature could have directed the money elsewhere by such time, which could then make any discussion about the "loss to the State's General Revenue Fund" legally incorrect. Further the statute prohibits "partiality in its composition" or the inclusion of "any argument for or against the measure", therefore any discussion of the "loss to the State's General Revenue Fund" would violate the statute.

3. The measure clearly states the legislature is responsible for ensuring all debts are paid from the General Revenue Fund, should the franchise tax not be sufficient to pay the debt service. Therefore, the Attorney's General claim that "there may not be any funds available to pay the bond holders" is false so this false statement is irrelevant to the legal correctness of the ballot title as submitted by the Petitioners.

4. Sentence five of the original ballot title reads "If money from franchise tax was not enough, the Legislature could use the General Revenue Fund to repay the bonds." That is legally correct. The Attorney General is misleading when he leaves doubt as to whether the legislature is required to repay the bond obligations since the Petition states that the legislature is obligated to use monies from the General Revenue Fund if the franchise tax falls short "in order to ensure the repayment of such obligations."

5. The ballot title specifically explains the exception as it states the purpose of the measure is to amend the Constitution and to issue bonds for the purpose of funding storm shelters and secure areas in schools. It is legally correct The Attorney's General point is irrelevant as this is the reason for the Constitutional amendment. If the provisions were currently allowed, then there would be no reason to have such a Constitutional amendment filed.

Additionally, Title 34, § 9(B) of state statute outlines what the ballot title submitted by the Petitioners shall do:

"B. The parties submitting the measure shall also submit a suggested ballot title which shall be filed on a separate sheet of paper and shall not be deemed part of the petition.

The suggested ballot title:

"1. Shall not exceed two hundred (200) words;

"2. Shall explain in basic words, which can be easily found in dictionaries of general usage, the effect of the proposition;

- "3. Shall not contain any words which have a special meaning for a particular profession or trade not commonly known to the citizens of this state;
- "4. Shall not reflect partiality in its composition or contain any argument for or against the measure;
- "5. Shall contain language which clearly states that a "yes" vote is a vote in favor of the proposition and a "no" vote is a vote against the proposition; and
- "6. Shall not contain language whereby a "yes" vote is, in fact, a vote against the proposition and a "no" vote is, in fact, a vote in favor of the proposition."

The Ballot Title submitted by the Petitioners meets all six requirements and the Attorney General has failed to meet the burden of proof that the ballot title as submitted by the Petitioners does not meet the six points nor has he met the burden of proof that the ballot title as submitted by the Petitioners is legally incorrect.

In contrast to the legally correct ballot title submitted by the Petitioners, the revised ballot title as prepared by the Attorney General violates the statute and is legally incorrect.

The ballot title as rewritten by the Attorney General states:

"This measure adds Article 10, Section 44 to the Oklahoma Constitution. The new Section authorizes the issuance of up to 500 million dollars in State bonds. The bond money would be used by local school districts and career technology districts for storm shelters and campus security.

"The measure does not provide for new State revenues to pay for the bonds. Under the measure State franchise tax revenues would no longer go into the General Revenue Fund, which is the primary fund used to pay for State Government. Rather, franchise tax revenues would be used for annual bond payments (principal and interest).

"In any year in which the franchise tax revenues are not sufficient to make annual payments, the Legislature, at its

discretion, could use General Revenue Fund monies to make the bond payment.

"In years in which not all the franchise tax revenues are needed to make payments, the remaining franchise tax revenue – with Legislative approval – could be used for storm shelter grants to individuals and businesses.

"In authorizing these bond and grant programs, the measure creates exceptions to the Constitution's prohibitions on gifts and the use of the State's credit."

The Attorney's General rewritten ballot title violates the law and is legally incorrect as follows:

1. The second paragraph reflects partially in its composition, as prohibited by statute, by making the argument against the measure because no new state revenues are raised to pay for the bonds. The language further reflects partially in its composition by suggesting potential harm to the General Revenue Fund since the franchise tax revenue would no longer be deposited in that fund. Further nothing guarantees that the revenue from the franchise tax will still be deposited in the State's General Revenue Fund by the time the petition is placed on the ballot. The legislature could have directed the money elsewhere by such time, which could then make any discussion about the General Revenue Fund legally incorrect.

2. The last paragraph is legally incorrect since passage of the measure amends to Constitution to provide for such.

The language, as submitted by Take Shelter Oklahoma, in regards to the Constitutional amendment, reads as follows:

Section 44. A. The State of Oklahoma shall be authorized to issue bonds or other evidence of indebtedness in order to provide net proceeds equal to Five Hundred Million

Dollars (\$500,000,000.00) for the purpose of acquiring, constructing or improving facilities to be used for the benefit of any common school district or career technology district within the state to provide shelter from dangerous weather conditions or to provide security to the students and employees of the district related to personal safety or both such purposes and for the purposes described by subsection I and subsection J of this section.

B. The maximum maturity for any obligation issued pursuant to subsection A of this section shall be twenty-five (25) years.

C. The Oklahoma Building Bonds Commission shall issue the obligations authorized by this section.

D. The Legislature, pursuant to enabling legislation enacted for such purpose, may define the types of facilities which may be acquired, constructed or improved with proceeds from the sale of obligations issued pursuant to this section in order to provide shelter from dangerous weather conditions, to provide secure areas and secure procedures to protect students and employees of common school districts and career technology districts from the threat or potential threat of violence or both such purposes.

E. The Legislature shall provide by law for the apportionment of the revenues currently derived from the levy of the franchise tax imposed for the privilege of doing business in the state as authorized pursuant to Section 1201 et seq. of Title 68 of the Oklahoma Statutes, as amended, so that one hundred percent (100%) of such franchise tax revenue, or so much thereof as may be required on an annual basis, is dedicated for the repayment of the obligations issued pursuant to the provisions of this section.

F. The Legislature may provide by law for the use of revenues derived from the levy of franchise tax which are not required for repayment of obligations issued pursuant to the provisions of this section in order to provide a grant program for construction of storm shelters for individuals and business entities. Such program shall be administered by the Office of Emergency Management or its successor. The use of franchise tax revenues for storm shelters as authorized by this subsection shall be deemed in furtherance of a public purpose and shall not be deemed a gift of state tax revenues.

G. If the revenues described by subsection E of this section are insufficient to repay the obligations issued pursuant to the provisions of this section, the Legislature may use monies in the General Revenue Fund of the state not otherwise obligated, committed or appropriated in order to ensure the repayment of such obligations.

H. If any obligations issued pursuant to the provisions of this section are defeased, within the limit prescribed by subsection A of this section, the principal amount of such obligation shall become available for issuance by the state governmental entity designated pursuant to subsection C of this section if authorized by an act of the Legislature or authorized by an initiative petition approved in the manner required for laws pursuant to Section 2 of Article V of the Oklahoma Constitution. The act of the Legislature or the law proposed by initiative petition shall specify the amount of any additional issuance authorized by this subsection.

I. Pursuant to laws enacted by the Legislature for such purpose, the proceeds from the obligations issued pursuant to this section may be used to reduce or eliminate any debt incurred by a school district or career technology district for the purpose of acquiring or constructing a storm shelter or secure facility. The debt must have been

incurred not earlier than May 1, 2013, pursuant to a vote of the eligible voters of the respective district.

J. Pursuant to laws enacted by the Legislature for such purpose, the proceeds from the obligations issued pursuant to this section may be used to reimburse a common school district or a career technology district for expenditures made from a building fund created pursuant to Section 10 of Article X of the Oklahoma Constitution, with respect to a common school district, or for expenditures made from the revenue derived from a millage levy authorized pursuant to Section 9B of Article X of the Oklahoma Constitution, with respect to a career technology district, to the extent the expenditure was for the purpose of acquiring, constructing or improving a storm shelter or secure facility. The expenditure for such storm shelter or secure facility must have been incurred no earlier than May 1, 2013.

K. The obligations authorized pursuant to the provisions of this section may be issued in series, may be issued in either tax-exempt or taxable status for purposes of the Internal Revenue Code of 1986, as amended, and in such form as required in order to promote the marketability of such obligations.

L. Pursuant to laws enacted by the Legislature for such purpose, any administrative rule adopted by an agency of state government that imposes a condition or requirement upon a common school district or career technology district related to the use of proceeds from sale of the obligations authorized by this section shall be binding upon such school district or career technology district.

M. The proceeds from the sale of obligations issued pursuant to the provisions of this section may be made available to any common school district or any career

technology district for the purposes authorized by this section and enabling legislation enacted pursuant to this section notwithstanding any other provision of the Oklahoma Constitution that would otherwise prohibit or restrict the use of such proceeds or the use of tax revenue for the repayment of principal, interest, reserves, issuing costs or other costs related to the sale of the obligations authorized by this section. Any provision of the Oklahoma Constitution that would otherwise restrict the issuance of obligations pursuant to this section, restrict the use of the proceeds from the sale of such obligations, restrict the use of tax revenues for repayment of the obligations or in any way restrict the operation of the provisions of this section shall be deemed to have been amended in order to remove any such restrictions.

CONCLUSION

The Ballot Title as well as the entire Initiative is legally correct and sound under Oklahoma Law. The Attorney General has exceeded his authority by rewriting the Initiative Ballot Title because it was never “legally incorrect”. It is for this reason that the proposed language of Take Shelter Oklahoma should be used and not that of the Attorney General.

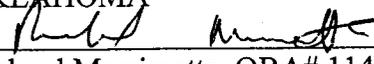
WHEREFORE, Petitioners would request the Petitioner’s short title be restored, the ninety (90) days be extended by law, and the Attorney General be removed from the case.

Respectfully submitted,



David R. Slane, OBA# 16156
901 NW 12th Street
Oklahoma City, OK 73106

(405) 319-1800
(405) 319-1802 Facsimile
ATTORNEY FOR TAKE SHELTER
OKLAHOMA


Richard Morrissette, OBA# 11446
217 N. Harvey, Suite 101
Oklahoma City, OK 73102
(405) 235-7900
ATTORNEY FOR TAKE SHELTER
OKLAHOMA

CERTIFICATE OF SERVICE

This is to certify that on this 6th day of November, 2013 a true and correct copy of the above and foregoing instrument was mailed postage prepaid or hand delivered to:

Oklahoma Attorney General
Scott Pruitt
313 NE 21st Street
Oklahoma City, OK 73015

Oklahoma Secretary of State
2300 N. Lincoln Blvd.
Room 101
Oklahoma City, OK 73105


David R. Slane

📁 Oklahoma Statutes Citationized

📁 Title 5. Attorneys and the State Bar

📁 Chapter 1 - Attorneys and Counselors

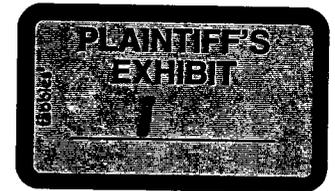
📁 Appendix 3-A - Oklahoma Rules of Professional Conduct

📁 Article Client-Lawyer Relationship

📄 Section Rule 1.7 - Conflict of Interest: Current Clients

Cite as: O.S. §, ___

Oklahoma Rules of Professional Conduct
Chapter 1, App. 3-A
Client-Lawyer Relationship
Rule 1.7. Conflict of Interest: Current Clients



(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

Comment

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0(e) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts



Elimination of Oklahoma Franchise Tax

January 2013

Jonathan Buxton, VP Policy Development & Government Affairs (jbuxton@okstatechamber.com)

Fast Facts

- Corporations pay a tax that is based on the amount of capital invested in Oklahoma
- In 2010, SJR61 placed a moratorium on the Franchise Tax until July 1, 2013
- In lieu of Franchise Tax, businesses were required to pay the Business Activity Tax

Background

The Oklahoma Franchise Tax is a tax that corporations pay based on the amount of capital invested in Oklahoma; essentially a tax for the right to do business in Oklahoma. According to the Oklahoma Tax Commission, corporations are taxed \$1.25 for every \$1000 they invest in Oklahoma. The Franchise Tax goes above and beyond the already existing 6% Corporate Tax assessed on business, making Oklahoma a less attractive place to do business. It especially is hard on small business as often times the cost of compliance is more than the amount the state receives in taxes.

The Franchise Tax puts companies that want to or currently do business in Oklahoma at a huge tax disadvantage and serves as a disincentive for economic development, recruitment, capital investment; and could lead to companies moving their businesses to competing states.

The Franchise Tax stands out as one of the most uncompetitive taxes the state levies; elimination of this tax could be one of the best ways to improve the competitiveness of the Oklahoma tax system and enhance economic growth. Eliminating this tax not only lowers the burden but also simplifies the tax system. That alone easily makes franchise tax worthy of repeal.

Chamber Policy

Eliminate the Franchise tax.





Executive Committee



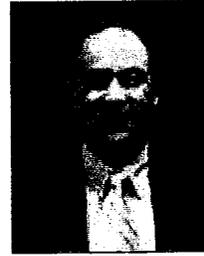
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Gwendolyn Caldwell,
 Senior VP of Government
 Affairs (executive-
[committees/gwendolyn-caldwell](#))
 State Chamber of Oklahoma
<http://www.okstatechamber.com>)



(executive-committees/glenn-

[coffee](#)
Glenn Coffee,
 Attorney-At-Law (executive-committees/glenn-coffee)
 Glenn Coffee and Associates, PLLC
<https://www.facebook.com/pages/Glenn-Coffee-and-Associates-PLLC/336812993095827>)



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[committees/brent-copeland](#)
Brent Copeland,
 Plant Manager (executive-
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 Goodyear Tire & Rubber Co.
<http://www.goodyear.com>)



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[committees/peter-delaney](#)
Peter Delaney,
 Chairman, President an
 (executive-committees/peter-
[OGE Energy Corp](#)
<http://www.oge.com>)



(executive-

[committees/aaron-fulkerson](#)
Aaron Fulkerson,
 Vice President & CAO (executive-
[committees/aaron-fulkerson](#))
 Schnake Turnbo Frank|PR
<http://www.stfpr.com>)



(executive-committees/bryan-

[gonterman](#)
Bryan Gonterman,
 President (executive-committees/bryan-gonterman)
 AT&T (<http://www.att.com>)



(executive-

[committees/ted-haynes](#)
Ted Haynes,
 President (executive-committees/ted-
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 BlueCross and BlueShield of
 Oklahoma
<http://www.bcbsok.com/>)



(e)

[committees/steve-hendrick](#)
Steve Hendricks
 Director, Governme
 Operations (executiv
[committees/steve-hendrid](#)
 The Boeing Compa
<http://www.boeing.com>)





(executive-
committees/chris-hitch)

Chris Hitch,
President and Co-CEO (executive-
committees/chris-hitch)
Hitch Enterprises, Inc.
(<http://www.hitcho.com>)



(executive-committees/brad-
krieger)

Brad Krieger,
Chairman (executive-committees/brad-krieger)
Arvest Bank (<http://www.arvest.com>)



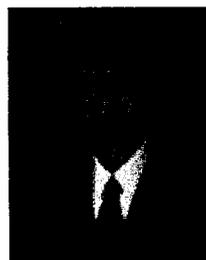
(executive-
committees/greg-m-love)

Greg M. Love,
President and COO (executive-
committees/greg-m-love)
Love's Travel Stops & Country
Stores, Inc. (<http://www.loves.com>)



(e)
committees/greg-massey

Greg Massey,
President & CEO (exec-
committees/greg-massey)
First United Bank & Tr.
(<https://www.firstunitedbank.com>)



(executive-
committees/eddie-miller)

Eddie Miller,
CEO (executive-committees/eddie-
miller)
Bios Management Company
(<http://bioscorp.com/>)



(executive-committees/chuck-
mills)

Chuck Mills,
President (executive-committees/chuck-mills)
Mills Machine Company, Inc.
(<http://www.millsmachine.com>)



(executive-
committees/fred-s-morgan)

Fred S. Morgan,
President and CEO (executive-
committees/fred-s-morgan)
State Chamber of Oklahoma
(<http://www.okstatechamber.com>)



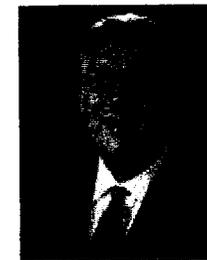
(e)
committees/kristin-pec

Kristin Peck,
VP Government & Public
(executive-committees/kristi
Cox Communications,
(<http://www.cox.com>)



(executive-
committees/renee-porter)

Renee Porter,
President (executive-
committees/renee-porter)
Advancia Corporation
(<http://www.advancia.com>)



(executive-committees/h-j-
reed)

H. J. Reed,
Manager, State Government Affairs, Mid-
Continent (executive-committees/h-j-reed)
Phillips 66
(<http://www.phillips66.com/EN/Pages/index.aspx>)



(executive-
committees/t-hastings-siegfried)

T. Hastings Siegfried,
Vice Chairman (executive-
committees/t-hastings-siegfried)
NORDAM (<http://www.nordam.com>)

Scott Pruitt For Attorney General

COMMITTEE NAME & NUMBER

2014 114038

REPORTING PERIOD: FROM Apr 01, 2013 to Ju

SCHEDULE A1. MONETARY CONTRIBUTIONS from committees**SCHEDULE A1. CONTRIBUTIONS. Give the following information for the contributions of more than \$50 in the aggregate from a committee [p committee, political party committee, or candidate committee] during the reporting period.**

Name, Ethics Commission number, and address of contributor	Principal interest or principal business activity	Date accepted	Amount of contribution [written instrument only]	
McGuirewoods Federal PAC (513003) 901 East Cary Street Richmond, VA 23219	Support Candidates For Election	Jun 21, 2013	1,000.00	
Phillips Murrah PAC (f/k/a Phillips McFall PAC) (200009) Corporate Tower, 101 N Robinson 13th Fl Oklahoma City, OK 73102	Support Or Oppose Candidates.	Jun 17, 2013	1,000.00	
Chesapeake Oklahoma Pac (210032) P.o. Box 18496 Oklahoma City, OK 73154	To Support Oklahoma State And Local Candidates	Jun 06, 2013	1,000.00	
Oklahoma Medical PAC (OMPAC) (209016) PO Box 54520 Oklahoma City, OK 73154	Support Candidates For Election	Jun 04, 2013	1,000.00	
OGE ENERGY CORP EMPLOYEES PAC (597183) PO Box 321 Oklahoma City, OK 73101	This Is A Separate Segregated Fund.	Jun 04, 2013	1,500.00	
AT&T Oklahoma PAC (297312) 405 N Broadway Room 1128 Oklahoma City, OK 73102	To Promote And Support State Candidates.	Jun 04, 2013	5,000.00	
REFUNDS ONLY: Name, EC number and address of contributor	Principal interest or principal business activity	Date refunded	Refunded amount	Reason for refund
(a) Total contributions over \$50 in the aggregate (itemized above) during reporting period			10,500.00	
(b) Total contributions of \$50 or less in the aggregate during reporting period			.00	
Number of contributors making contributions of \$50 or less			0	
(c) TOTAL contributions during reporting period [(a) + (b); enter on line 7, column (a)]			10,500.00	

EC FORM C-1R Schedule A1 [Rev.4/12]

Scott Pruitt For Attorney General

COMMITTEE NAME & NUMBER

2014 114038

REPORTING PERIOD: FROM Jul 01, 2013 to Se

SCHEDULE A1. MONETARY CONTRIBUTIONS from committees**SCHEDULE A1. CONTRIBUTIONS. Give the following information for the contributions of more than \$50 in the aggregate from a committee [p committee, political party committee, or candidate committee] during the reporting period.**

Name, Ethics Commission number, and address of contributor	Principal interest or principal business activity	Date accepted	Amount of contribution [written instrument only]	
AHS Medical Holdings LLC Good Government Fund (505001) One Burton Hills Boulevard, Suite 250 Nashville, TN 37215	To Support Good Government	Sep 30, 2013	5,000.00	
Marathon Oil Company Employees PAC (597154) PO Box 75000 Detroit, MI 48275-2250	Political Action	Sep 30, 2013	5,000.00	
Oklahoma Dental Political Action Committee (DENPAC) (297209) 317 NE 13th St Oklahoma City, OK 73104	Support Candidates.	Sep 30, 2013	5,000.00	
Okla Bankers Public Affairs Committee [OkB PAC] (597182) 643 NE 41st St Oklahoma City, OK 73105	Political Action Committee	Sep 26, 2013	2,000.00	
OGE ENERGY CORP EMPLOYEES PAC (597183) PO Box 321 Oklahoma City, OK 73101	This Is A Separate Segregated Fund.	Sep 05, 2013	2,000.00	
Cardinal Health Inc Pac A/k/a Cardinal Health Companies Pac (513005) 7000 Cardinal Place Dublin, OH 43017	To Support Candidates & Committees Whose Views Coincide With Cardinal Health Inc	Aug 20, 2013	500.00	
Echostar Corporation And Dish Network Corporation PAC (512003) 1110 Vermont Avenue NW, Suite 750 Washington, DC 20005	To Support Oklahoma State Candidates	Aug 20, 2013	1,000.00	
Health Care Service Corporation Employees' Political Action Committee (512009) 300 E. Randolph Street, Legal Department Chicago, IL 60601	A Qualified Multicandidate PAC	Jul 31, 2013	1,500.00	
Koch Industries Inc Political Action Committee (597138) 600 14th Street, NW ; Suite 800 Washington, DC 20005	General Purpose Multi-candidate PAC	Jul 31, 2013	2,500.00	
REFUNDS ONLY: Name, EC number and address of contributor	Principal Interest or principal business activity	Date refunded	Refunded amount	Reason for refund
(a) Total contributions over \$50 in the aggregate (itemized above) during reporting period			24,500.00	-
(b) Total contributions of \$50 or less in the aggregate during reporting period			.00	
Number of contributors making contributions of \$50 or less			0	
(c) TOTAL contributions during reporting period [(a) + (b); enter on line 7, column (a)]			24,500.00	

EC FORM C-1R Schedule A1 [Rev. 4/12]

COMMITTEE NAME & NUMBER Scott Pruitt For Attorney General 2014 114038 REPORTING PERIOD: FROM Jul 01, 2013 to :**SCHEDULE A. MONETARY CONTRIBUTIONS from persons other than commit****SCHEDULE A. CONTRIBUTIONS.** Give the following information for the contributions of more than \$50 in the aggregate from a person other than the committee during the reporting period. In addition to reporting them on schedule B, list loans from persons other than committees.

Name and address of contributor	Occupation and employer or principal business activity (if no employer)	Date accepted	Amount of contribution	Nature of contribution [cash or written instrument]
CURTIS DAVIDSON 205 Stonewall Ardmore, OK 73401	BANKER FIRST NATIONAL BANK & TRUST OF ARDMORE	Sep 30, 2013	250.00	Written Instrument
KEVIN HERN 8630 S. Peoria Ave. Tulsa, OK 74132	CEO FIRSTRIKE, LLC	Sep 30, 2013	1,000.00	Credit
W. PRESTON BALDWIN 30 Milbank Ave. Greenwich, CT 06830	PRESIDENT & CEO CENTERPOINT 360, LLC	Sep 30, 2013	1,000.00	Credit
BOB KHAJEHNOURI 14712 DALEA DR. OKLAHOMA CITY, OK 73142	SELF EMPLOYED BOB NOURI	Sep 30, 2013	2,500.00	Credit
BOB KHAJEHNOURI 14712 DALEA DR. OKLAHOMA CITY, OK 73142	SELF EMPLOYED BOB NOURI	Sep 30, 2013	2,500.00	Credit
MARIO MAX FAIRCHILD 5800 Country Club Terrace Edmond, OK 73003	OWNER AUTO MAX	Sep 30, 2013	5,000.00	Written Instrument
STEVEN P. HUDIBURG 6000 Tinker Diagonal Midwest City, OK 73110	PRESIDENT HUDIBURG INVESTMENTS	Sep 30, 2013	5,000.00	Written Instrument
DAVID J COOK P. O. Box 784 Laverne, OK 73848	PRESIDENT / CEO BANK OF LAVERNE	Sep 26, 2013	100.00	Written Instrument
BRUCE T BENBROOK P. O. Box 1008 Woodward, OK 73802-1008	CHAIRMAN STOCK EXCHANGE BANK	Sep 26, 2013	200.00	Written Instrument
ANN CAMERON 3408 Rena Dawn Ln. Edmond, OK 73013	COMMUNITY VOLUNTEER SELF	Sep 26, 2013	200.00	Credit
NEVYLE R CABLE 16425 Loop 56 Okmulgee, OK 74447	BANKER FIRST NATIONAL BANK & TRUST OF OKMULGEE	Sep 26, 2013	200.00	Written Instrument
PAUL H. CORNELL 5628 E. 115th St. Tulsa, OK 74137	PRESIDENT CITIZENS BANKSHARES	Sep 26, 2013	250.00	Written Instrument
GREGG L VANDAVEER 12024 Ashbury Ct. Oklahoma City, OK 73170	PRESIDENT/CEO SOONER STATE BANK	Sep 26, 2013	250.00	Written Instrument
BILL M ZALOUDEK P. O. Box 187 Kremlin, OK 73753	FARM SUPPLIES SELF EMPLOYED	Sep 26, 2013	500.00	Written Instrument
KEN BASS P. O. Box 100 Wilburton, OK 74578	BANKING WILBURTON STATE BANK	Sep 26, 2013	500.00	Written Instrument
ERIC M BOHNE 9836 S. 77th E. Ave. Tulsa, OK 74133	CEO / CHAIRMAN SECURITY BANK - TULSA	Sep 26, 2013	500.00	Written Instrument
STEVE MERRILL 1812 Highlands Landing Edmond, OK 73013	SVP GATHERING & PROCESSING OG&E ENERGY CORP.	Sep 26, 2013	500.00	Written Instrument
E. KEITH MITCHELL 37 Doyle Dr. Shawnee, OK 74801-8718	COO ENABLE MIDSTREAM	Sep 26, 2013	500.00	Written Instrument
DAVID E RAINBOLT 6226 N. Riviera Dr.	CEO BANCFIRST	Sep 26, 2013	500.00	Written Instrument

SCHEDULE A. CONTRIBUTIONS. Give the following information for the contributions of more than \$50 in the aggregate from a person other than during the reporting period. In addition to reporting them on schedule B, list loans from persons other than committees.

Oklahoma City, OK 73112 JOHN LEWIS MASSEY P. O. Box 130 Durant, OK 74702-0130	BANKER FIRST UNITED	Sep 26, 2013	500.00	Written Instrument
R. M. BEVERAGE 1908 Oak Valley Terrace Edmond, OK 73025	PRESIDENT & CEO OKLAHOMA BANKER'S ASSOCIATION	Sep 26, 2013	500.00	Written Instrument
GREG L MASSEY P. O. Box 130 Durant, OK 74702	BANKER FIRST UNITED BANK	Sep 26, 2013	500.00	Written Instrument
DOUG ALLEN P. O. Box 13337 Oklahoma City, OK 73113	GENERAL COUNSEL STATE OF OKLAHOMA	Sep 26, 2013	500.00	Written Instrument
RICHARD LANG 5454 Heyward Square Pl. Marietta, GA 30068	SVP MARKETING & SALES COMCAST CABLE	Sep 26, 2013	1,000.00	Credit
STEVE BURRAGE P. O. Box 671 Antlers, OK 74523	BANKER FIRSTBANK	Sep 26, 2013	2,500.00	Written Instrument
DAVID BURRAGE P. O. Box 960 Atoka, OK 74525	PRESIDENT / CEO FIRSTBANK	Sep 26, 2013	2,500.00	Written Instrument
DAVID G ALBERT 3169 St. Charles Pl. Ellicott City, MD 21042	VP EXTERNAL AFFAIRS SEXAT CORP.	Sep 09, 2013	250.00	Written Instrument
STEVEN D CRALL 19532 Talavera Ln. Edmond, OK 73012	TAX MANAGER OG&E ENERGY	Sep 05, 2013	75.00	Written Instrument
JERROD E MOSER 15300 N. Mustang Rd. Piedmont, OK 73078-9677	DIRECTOR CORP. HEALTH & SAFETY OG&E	Sep 05, 2013	75.00	Written Instrument
ROY (RAE) R RICE 6209 N. Midwest Blvd. Edmond, OK 73034	LOBBYIST OG&E ENERGY CORP.	Sep 05, 2013	100.00	Written Instrument
THOMAS M MCCURDY, III 1115 Parkview Circle Purcell, OK 73080	REGULATORY RELATIONS OG&E	Sep 05, 2013	100.00	Written Instrument
LEON HOWELL 3212 Olde Bridge Rd. Moore, OK 73160	PLANNING ENGINEER OG&E	Sep 05, 2013	100.00	Written Instrument
KATHLEEN A O'SHEA 7001 NW 161st St. Edmond, OK 73013	MANAGER OG&E ENERGY CORP.	Sep 05, 2013	100.00	Written Instrument
ROBERT J BURCH 13981 S. Anderson Rd. Arcadia, OK 73007	DIRECTOR POWER SUPPLY SERVICES OG&E	Sep 05, 2013	100.00	Written Instrument
IRBY CLARY 1492 Augusta Dr. Ada, OK 74820	MANAGER OG&E	Sep 05, 2013	100.00	Written Instrument
TAMMY TURNIPSEED 1708 Chickasha Circle Edmond, OK 73013	ENGINEERING OG&E	Sep 05, 2013	100.00	Written Instrument
TERENA BOYER 3304 Wauwinet Way Norman, OK 73071	DIRECTOR OG&E	Sep 05, 2013	100.00	Written Instrument
DONNIE O. JONES 23220 Running Deer Trl. Edmond, OK 73025	MANAGING DIRECTOR POWER PLANT OPERATIONS OG&E	Sep 05, 2013	100.00	Written Instrument
MERVIN PARKHURST 7500 S. Date Pl. Broken Arrow, OK 74011	RETIRED RETIRED	Sep 05, 2013	100.00	Credit
PETER M DAY 2709 SW 135th Oklahoma City, OK 73170	DIRECTOR TECH SERVICES OG&E	Sep 05, 2013	100.00	Written Instrument

SCHEDULE A. CONTRIBUTIONS. Give the following information for the contributions of more than \$50 in the aggregate from a person other than during the reporting period. In addition to reporting them on schedule B, list loans from persons other than committees.

GENE FRYAR P. O. Box 129 Ardmore, OK 73402-0129	COMM. AFF. MGR. ARDMORE OG&E ENERGY CORP.	Sep 05, 2013	100.00	Written Instrument
RONALD GRIFFIN 6201 NE 113th St. Edmond, OK 73013	MANAGER OG&E	Sep 05, 2013	100.00	Written Instrument
RANDY LEWIS 16613 Sunny Hollow Rd. Edmond, OK 73012	MANAGEMENT OG&E	Sep 05, 2013	100.00	Written Instrument
SCOTT MILANOWSKI 2713 NE 133rd St. Edmond, OK 73013	DIRECTOR OG&E	Sep 05, 2013	100.00	Written Instrument
MELODY MARTIN 15104 Himalaya Ridge Edmond, OK 73013	ENV. AFFAIRS MANAGER OG&E ENERGY CORP.	Sep 05, 2013	100.00	Written Instrument
PATRICK D. OR JAN F. SHORE 3815 Marked Tree Dr. Edmond, OK 73013	ATTORNEY OG&E	Sep 05, 2013	100.00	Written Instrument
BRYAN J SCOTT 301 N. Walker Ave. Oklahoma City, OK 73102	DIRECTOR, PRICING & LOAD RESEARCH OG&E	Sep 05, 2013	100.00	Written Instrument
ROBERT GOTTSBALL 803 Amity Ln. El Reno, OK 73036	DIRECTOR OG&E	Sep 05, 2013	100.00	Written Instrument
MARVIN E VAN BEBBER 1702 Windsor Pl. Oklahoma City, OK 73116	DIRECTOR OG&E	Sep 05, 2013	125.00	Written Instrument
ROBERT KOENIG 1625 Exeter Ct. Oklahoma City, OK 73159	MANAGEMENT OG&E	Sep 05, 2013	200.00	Written Instrument
MATT JOHNSON 12636 Peppertree Pl. Oklahoma City, OK 73142	CPA OG&E ENERGY CORP.	Sep 05, 2013	200.00	Written Instrument
JAMES B SWICKEY P. O. Box 54882 Oklahoma City, OK 73154	BANKER VALLIANCE BANK	Sep 05, 2013	200.00	Written Instrument
JOHN D RHEA 3900 Hatterly Lane Norman, OK 73072	ATTORNEY OG&E ENERGY CORP.	Sep 05, 2013	250.00	Written Instrument
CRISTINA FERNANDEZ MCQUISTION 3900 N. Harvey Parkway Oklahoma City, OK 73118	VP STRATEGIC PLANNING & CIO OG&E	Sep 05, 2013	300.00	Written Instrument
JERRY A. PEACE 3820 Old Forest Lane Oklahoma City, OK 73131	EXECUTIVE OG&E ENERGY CORP.	Sep 05, 2013	500.00	Written Instrument
JEAN CONSTANT LEGER, JR. 2119 Brookhaven Dr. Edmond, OK 73034	ENGINEER OG&E	Sep 05, 2013	500.00	Written Instrument
BRIAN ALFORD 4804 NW 159th Edmond, OK 73013	CORPORATE COMMUNICATIONS OG&E ENERGY CORP.	Sep 05, 2013	500.00	Credit
USHA MARIA TURNER 14356 Terrazza Crossing Edmond, OK 73034	ENGINEER OG&E ENERGY	Sep 05, 2013	500.00	Written Instrument
WILLIAM J BULLARD 1900 Preston Pl. Edmond, OK 73013	ATTORNEY OG&E ENERGY	Sep 05, 2013	500.00	Written Instrument
PHILIP L CRISSUP 216 W. Meade Dr. Yukon, OK 73099	ENGINEER OG&E	Sep 05, 2013	500.00	Written Instrument
MIKE MATHEWS 733 Villa Ave. Yukon, OK 73099	VP POWER DELIVERY OG&E	Sep 05, 2013	500.00	Written Instrument
PATRICIA D HORN 7350 Bayliner Launch	EXECUTIVE OG&E ENERGY CORP.	Sep 05, 2013	500.00	Written Instrument

SCHEDULE A. CONTRIBUTIONS. Give the following information for the contributions of more than \$50 in the aggregate from a person other than the reporting person during the reporting period. In addition to reporting them on schedule B, list loans from persons other than committees.

Edmond, OK 73013 DONALD R ROWLETT 2608 W. Country Club Dr. Oklahoma City, OK 73116	ACCOUNTANT OG&E	Sep 05, 2013	500.00	Written Instrument
JOSEPH L. 'LEW' MEIBERGEN 1508 Oak Hill Circle Enid, OK 73703	PRESIDENT JOHNSTON ENTERPRISES	Sep 05, 2013	500.00	Written Instrument
MAX J. MYERS 3325 Findhorn Dr. Edmond, OK 73034	TREASURER OG&E ENERGY CORP.	Sep 05, 2013	500.00	Written Instrument
JESSE B. LANGSTON 4401 NE 88th Oklahoma City, OK 73131	VICE PRESIDENT OG&E	Sep 05, 2013	500.00	Written Instrument
SCOTT FORBES 1109 Outabounds Dr. Edmond, OK 73034	ACCOUNTANT OG&E ENERGY CORP.	Sep 05, 2013	500.00	Written Instrument
KIMBER SHOOP 10300 Berrywood Dr. Oklahoma City, OK 73151	ATTORNEY OG&E	Sep 05, 2013	500.00	Written Instrument
GARY HUNERYAGER 4213 Tamarisk Dr. Oklahoma City, OK 73120	VP INTERNAL AUDITS OG&E ENERGY CORP.	Sep 05, 2013	500.00	Written Instrument
PAUL L RENFROW 8901 Oakmont Circle Oklahoma City, OK 73131	VP PUBLIC AFFAIRS OG&E ENERGY CORP.	Sep 05, 2013	1,000.00	Written Instrument
ROBERT SEAN TRAUSCHKE 11925 Stonemill Rd. Oklahoma City, OK 73131-7501	EXECUTIVE OG&E ENERGY CORP.	Sep 05, 2013	2,500.00	Written Instrument
PETER B DELANEY 6901 Avondale Dr. Oklahoma City, OK 73116	CHAIRMAN, PRESIDENT & CEO OG&E ENERGY CORP.	Sep 05, 2013	3,500.00	Written Instrument
ERICA SECHRIST 2000 Stokes Ln. Nashville, TN 37215	DIRECTOR GOVERNMENT AFFAIRS ADVANCE AMERICA	Aug 26, 2013	150.00	Credit
VIRGIL JURGENSMEYER 1920 7th Ave. NE Miami, OK 74354	FRESH MUSHROOM FARMER J-M FARMS, INC.	Aug 26, 2013	250.00	Credit
LOREN L. MONROE 1733 Fairview Ave. McLean, VA 22101	PRINCIPAL BGR GOVERNMENT AFFAIRS	Aug 21, 2013	1,000.00	Written Instrument
BGR PAC P. O. Box 14416 Washington, DC 20044	Qualified Committee FEC PAC	Aug 21, 2013	1,000.00	Written Instrument
C. BRUCE LAWRENCE 18809 Hunter Creek Edmond, OK 73012	EXECUTIVE INTEGRIS HEALTH	Jul 31, 2013	500.00	Written Instrument
MARC A. TOPAZ 6101 Joshua Rd. Fort Washington, PA 19034	PARTNER KESSLER, TOPAZ, METLZER, CHECK, LLP	Jul 22, 2013	1,000.00	Written Instrument
MICHAEL T BEATTIE 153 Janine Way West Grove, PA 19390	PRESIDENT CASH CUE, LLC	Jul 22, 2013	1,250.00	Written Instrument
PAGE C FAULK 3802 Porter St. NW, Apt. 30 Washington, DC 20016	ATTORNEY US CHAMBER INSTITUTE FOR LEGAL REFORM	Jul 18, 2013	250.00	Written Instrument
JERE M ERVIN 1116 Safety Harbor Cove Old Hickory, TN 37138	EXECUTIVE SPD FINANCIAL	Jul 09, 2013	1,000.00	Written Instrument
ROBERT A. GARRETT 5201 Kingston Park 6-361 Knoxville, TN 37919	EXECUTIVE SPD FINANCIAL	Jul 09, 2013	1,000.00	Written Instrument
S. MARCELLA BUTLER 3817 W. 4th St. Ft. Worth, TX 76107	HUMAN RESOURCES THINK FINANCE	Jul 09, 2013	2,500.00	Written Instrument

SCHEDULE A. CONTRIBUTIONS. Give the following information for the contributions of more than \$50 in the aggregate from a person other than the contributor during the reporting period. In addition to reporting them on schedule B, list loans from persons other than committees.

WILLIAM STUART OR LINDA MITCHELL PRICE 113 E. 22nd St. Tulsa, OK 74114	OIL, GAS & ENERGY COMPANY SELF-EMPLOYED	Jul 01, 2013	1,000.00	Written Instrument		
ROBERT E. HEALY 6709 W. 199th St., Suite 115 Overland Park, KS 66209-2013	EXECUTIVE MACFARLANE GROUP	Jul 01, 2013	1,250.00	Written Instrument		
REFUNDS ONLY:	Name and address of contributor receiving refund	Occupation and employer or principal business activity (if no employer)	Date refunded	Refunded amount	Reason for refund	Adjust
(a) Total Contributions over \$50 in the aggregate (itemized above) during reporting period			59,675.00			
(b) Total contributions of \$50 or less in the aggregate during reporting period			730.00			
Number of contributors making contributions of \$50 or less [# of persons]			16			
(c) Less contributions from lenders also reported on schedule B			.00			
(d) TOTAL contributions during reporting period [(a) + (b) - (c); enter on line 6, column (a)]			60,405.00			

EC FORM C-1R schedule A [REV.4/12]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

NO. 112264

FILED
SUPREME COURT
STATE OF OKLAHOMA
DEC 2 2013
MICHAEL J. MICHE
CLERK

IN RE: INITIATIVE PETITION NO. 397

FILED

DEC 02 2013

OKLAHOMA SECRETARY
OF STATE

REPLY BRIEF OF PETITIONER/PROPONENT

RECEIVED

DEC 02 2013

OKLAHOMA SECRETARY
OF STATE

David R. Slane, OBA #16156
901 NW 12th Street
Oklahoma City, OK 73106
(405) 319-1800
(405) 319-1802 Facsimile
ATTORNEY FOR TAKE SHELTER
OKLAHOMA

Richard Morrisette, OBA# 11446
217 N. Harvey, Suite 101
Oklahoma City, OK 73102
(405) 235-7900
ATTORNEY FOR TAKE SHELTER
OKLAHOMA

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ATTACHMENTS:

- (1) AFFIDAVIT OF DAVID SLANE
- (2) EMAIL FROM DONNA PARKER

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

IN RE INITIATIVE PETITION NO.)	
397, STATE QUESTION NO. 767:)	
)	
TAKE SHELTER OKLAHOMA, and)	
KRISTI CONATZER,)	
)	
Petitioners,)	
)	
vs)	No. 112,264
)	
STATE OF OKLAHOMA, ex. rel.,)	
ATTORNEY GENERAL SCOTT)	
PRUITT,)	
)	
Respondent.)	

PETITIONER’S REPLY BRIEF

COMES NOW, Petitioners by and through counsel and for their reply to Respondent’s Brief, would advise the Court of the following:

FIVE (5) DAY JURISDICTIONAL RESPONSE

In an untimely manner the Attorney General made a determination on September 27, 2013 that the ballot title as filed by the petitioners on September 18, 2013 was “insufficient.” (See 11/22/13 Attorney General Press Release.)

34 O.S. § 9.D. required the Attorney General to make a determination of legal correctness regarding the ballot title by September 25, 2013:

1. After the filing of the petition and prior to the gathering of signatures thereon, the Secretary of State shall submit the proposed ballot title to the Attorney General for review as to legal correctness. **Within five (5) business days after the filing of the measure and ballot title**, the Attorney General shall, in writing, notify the Secretary of State whether or not the proposed ballot title complies with applicable laws. The Attorney General shall state with specificity any and all defects found and, if necessary,

within ten (10) business days of determining that the proposed ballot title is defective, prepare and file a ballot title which complies with the law; and (**Emphasis added.**)

The Attorney General did not respond within the statutory timeframe of five (5) business days, instead responding on the seventh (7th) business day – September 27, 2013. Therefore, the Attorney General does not have jurisdiction under the law to rewrite the ballot title.

The petition was filed in compliance with the statute by to citizens with the Secretary of State's office on September 18, 2013 pursuant to the requirements of 34 O.S.

§ 8.A.:

A. When a citizen or citizens desire to circulate a petition initiating a proposition of any nature, whether to become a statute law or an amendment to the Constitution, or for the purpose of invoking a referendum upon legislative enactments, such citizen or citizens shall, when such petition is prepared, and before the same is circulated or signed by electors, file a true and exact copy of same in the office of the Secretary of State.

The ballot title was also filed with the Secretary of State in compliance with the statute by the citizens pursuant with the requirements 34 O.S. § 9.B. Contrary to the claims made by the Attorney General, 34 O.S. § 9.B. does not require the petitioners to file the ballot title with the Attorney General:

- B. The parties submitting the measure shall also submit a suggested ballot title which shall be filed on a separate sheet of paper and shall not be deemed part of the petition. The suggested ballot tile:
1. Shall not exceed two hundred (200) words;
 2. Shall explain in basic words, which can be easily found in dictionaries of general usage, the effect of the proposition;
 3. Shall not contain any words which have a special meaning for a particular profession or trade not commonly known to the citizens of this state;

4. Shall not reflect partiality in its composition or contain any argument for or against the measure;
5. Shall contain language which clearly states that a "yes" vote is a vote in favor of the proposition and a "no" vote is a vote against the proposition; and
6. Shall not contain language whereby a "yes" vote is, in fact, a vote against the proposition and a "no" vote is, in fact, a vote in favor of the proposition.

The Attorney General claims that he filed his Notice with the Secretary of State within the five (5) business days required by statute on September 27, 2013. He states that it was filed "within the five (5) business days of the Secretary's September 20, 2013 filing with the Attorney General's [sic] Office." The statute under 34 O.S. § 9.D. however **requires his notice be filed within five (5) business days of the filing of the petition** by the citizens under 34 O.S. § 8.A. The petition was filed on September 18, 2013 and the Attorney's General Notice was required to be filed by September 25, 2013.

1. After the filing of the petition and prior to the gathering of signatures thereon, the Secretary of State shall submit the proposed ballot title to the Attorney General for review as to legal correctness. **Within five (5) business days after the filing of the measure and ballot title**, the Attorney General shall, in writing, notify the Secretary of State whether or not the proposed ballot title complies with applicable laws. The Attorney General shall state with specificity any and all defects found and, if necessary, within ten (10) business days of determining that the proposed ballot title is defective, prepare and file a ballot title which complies with the law; and (**Emphasis added.**)

The Attorney General further argues that his failure to meet the rigid five (5) business day deadline is irrelevant because he "substantially complied" with law as provided for in 34 O.S. § 24:

The procedure herein prescribed is not mandatory, but if substantially followed will be sufficient. If the end aimed at

can be attained and procedure shall be sustained, clerical and mere technical errors shall be disregarded.

The Attorney's General argument does not, however, meet the requirements of Section 24 since his failure to act within the rigid five (5) business day deadline does not all for the "procedure" to be "sustained" as required for Section 24 to apply. 34 O.S. § 9.D. provides that persons proposing to circulate an initiative petition cannot begin collecting signatures until there has been a determination of legal correctness regarding the ballot title:

1. After the filing of the petition and **prior to the gathering of signatures** thereon, the Secretary of State shall submit the proposed ballot title to the Attorney General for review as to legal correctness. Within five (5) business days after the filing of the measure and ballot title, the Attorney General shall, in writing, notify the Secretary of State whether or not the proposed ballot title complies with applicable laws. The Attorney General shall state with specificity any and all defects found and, if necessary, within ten (10) business days of determining that the proposed ballot title is defective, prepare and file a ballot title which complies with the law; and (**Emphasis added.**)

The Attorney General did not respond within the statutory timeframe of five (5) business days, instead responding on the seventh (7th) business day – September 27, 2013. The petitioners began collection of signatures on the sixth (6th) business day since the Attorney General had not objected to the legal correctness of the ballot title within the statutorily defined timeframe thus clearing the way for the signature collection process to begin. Should the Attorney General be allowed to delay the collection of signatures beyond the fifth (5th) business day as prescribed by statute by claiming he "substantially complied" with the law harms the "procedure" of collecting signatures, thus harming both the attainment of the "end aimed at" and the sustaining of the "procedure."

The Attorney General also incorrectly argues that without his review of the ballot title, there is no option for an independent review. In fact the statute under 34 O.S. § 10. provides that the Supreme Court is the body that should review the ballot title in case of conflict and make the determination of legal correctness:

- A. Any person who is dissatisfied with the wording of a ballot title may, within ten (10) days after the same is published by the Secretary of State as provided for in subsection B of Section 8 of this title, appeal to the Supreme Court by petition in which shall be offered a substitute ballot title for the one from which the appeal is taken. Upon the hearing of such appeal, **the court may correct or amend the ballot title before the court, or accept the substitute suggested, or may draft a new one which will conform to the provisions of Section 9 of this title. (Emphasis added.)**

In the past when the Court has determined that neither of the two ballot title options conform with the provisions of 34 O.S. § 9.B., they have drafted a new title conforming to the requirements. That may in fact be the best option before the Court in the current case.

In his reply brief, the Attorney General argues that “subjective judgments are necessarily involved” in his writing of the ballot title. He clearly applied that reasoning when objecting to the proposed ballot title filed by the petitioners and when rewriting the ballot title. 34 O.S. § 9.B. prohibits such “subjective judgment” related to the ballot title:

4. **Shall not reflect partiality in its composition** or contain any argument for or against the measure; **(Emphasis added.)**

In the past, the Court in the matter of Ballot Title to State Question 556, 638 P.2d 450, has upheld this prohibition against subjective judgment and partiality in composition. In the case, the Court disallowed the Attorney’s General ballot title rewrite

and the Court drafted a new one that conformed with the law.

At 452;

[1] We decline to dismiss this appeal. As will be discussed further later, the Attorney General's first allegation is without merit **because his substitute ballot title is legally insufficient, as it is deceptive and misleading.... (Emphasis added.)**

The Attorney General argues that he has subjectively determined that the ballot title should include an argument against the measure by suggesting using the revenue from the franchise tax will harm the funding and operations of the general government functions of the state. Thus is clearly prohibited under 34 O.S. § 9.B.:

4. Shall not reflect partiality in its composition **or contain any argument for or against the measure; (Emphasis added.)**

The appropriate place for the Attorney General – or any other opponent of the use of the franchise tax as the revenue stream to pay the debt service on school shelter bonds – to argue his “robbing Peter to pay Paul” belief is during the campaign period not in the ballot title in violation of the statute.

The Attorney General does not address a major provision of the petition in his rewrite of the ballot title when he fails to include mention of the pay off of past debts for a school district currently constructing a storm shelter. The sentence in the petitioners' proposed ballot language accurately reflects Subsections I and J of the petition:

State bond money could be used by school districts or career technology centers to reduce local debt or eliminate local debt incurred for storm shelters or secure areas.

The petition clearly provides for such under prescribed conditions and the language in the petitioner's proposed ballot title accurately explains the effect of the

proposition:

I. Pursuant to laws enacted by the Legislature for such purpose, the proceeds from the obligations issued pursuant to this section may be used to reduce or eliminate any debt incurred by a school district or career technology district for the purpose of acquiring or constructing a storm shelter or secure facility. The debt must have been incurred not earlier than May 1, 2013, pursuant to a vote of the eligible voters of the respective district. If the debt was incurred prior to May 1, 2013, but not prior to July 1, 2007, the provisions of this subsection shall authorize the use of the proceeds in order to reduce or eliminate such debt with respect to construction of the eligible assets which begins on or after May 1, 2013.

On the other hand, the Attorney's General rewrite does not accurately explain the effect of the proposition because he eliminates all reference to the pay off of past debts since he cannot figure out how to summarize it in the ballot title.

The effect of his insufficient ballot title language is to mislead the voter by not disclosing the ability of past debts to be paid by the state bond impacting voters on both sides of the issue. Some voters may want to vote against the measure due to this retroactive provision, while other voters may want to vote for the measure to provide for the pay off of past debts. To hide such an important factor is both misleading and deceptive.

The Attorney's General rewrite of the ballot title includes language stating:

In authorizing these bond and grant programs, the measure creates exceptions to the Constitution's prohibitions on gifts and the use of the State's credit.

He argues that the petitioner's ballot title does not reflect that the measure creates "exceptions to the Constitution's prohibitions on gifts and the use of the State's credit." The ballot title specifically explains the exception as it states the purpose of the measure

is to amend the Constitution and to issue bonds for the purpose of funding storm shelters and secure areas in schools. The Attorney's General point is irrelevant as this is the reason for the Constitutional amendment. If the provisions were currently allowed, then there would be no reason to have such a Constitutional amendment as proposed by the measure.

What the Attorney General has attempted to do in this portion of his rewrite of the ballot title is to mislead the voter into believing there is some secret gift or exception to laws regarding gifts in the measure in an attempt to sway the voter's opinion on the vote. Should the Court determine that the petitioner's ballot title is inadequate on this issue, it should better explain the issue in an unbiased manner that assists the voter in deciding their vote.

NINETY (90) DAY ISSUE

In 1982, in the case of *In re Initiative Petition No. 315, State Questions No. 553*, 649 P.2d 545, 533 (Okla. 1982) the Court held that:

The 90-day period for circulation does not begin until the proposed title has been reviewed by the Attorney General, the 10-day appeal period has expired, and any appeals timely filed, exhausted.

This holding was based in part on the fact that in 1982 the statute provided for a voluntary, precirculation determination of the ballot title, which made sense, as the ballot title was part of the petition. In providing for the voluntary, precirculation ballot title determination, the provisions of 34 O.S. § 8, as they existed in 1982, provided:

D. Persons proposing to circulate an initiative or referendum petition may file with the Attorney General, within ten (10) days after filing a true and exact copy of said petition in the office of the Secretary of State, a copy of a proposed ballot title prior to the circulation of the

initiative or referendum petition, which ballot title shall be processed as otherwise provided in this act prior to the circulation of the initiative or referendum petition and in which event it need not be submitted for any further approval thereafter.

Unlike the 1982 law, the ballot title is no longer a part of the Petition. Further unlike the 1982 law, today's initiative petition statute does not contain a voluntary, precirculation ballot title procedure.

Instead today's initiative petition statute contained in 34 O.S. § 9.D. provides that persons proposing to circulate an initiative petition cannot begin collecting signatures until there has been a determination of legal correctness regarding the ballot title:

1. After the filing of the petition and **prior to the gathering of signatures** thereon, the Secretary of State shall submit the proposed ballot title to the Attorney General for review as to legal correctness. Within five (5) business days after the filing of the measure and ballot title, the Attorney General shall, in writing, notify the Secretary of State whether or not the proposed ballot title complies with applicable laws. The Attorney General shall state with specificity any and all defects found and, if necessary, within ten (10) business days of determining that the proposed ballot title is defective, prepare and file a ballot title which complies with the law; and

2. Within ten (10) business days after completion of the review by the Attorney General, the Secretary of State shall, if no appeal is filed, transmit to the Secretary of the State Election Board an attested copy of the measure, including the official ballot title, and a certification that the requirements of this section have been met. If an appeal is taken from such ballot title within the time specified in Section 10 of this title, then the Secretary of State shall certify to the Secretary of the State Election Board the ballot title which is finally approved by the Supreme Court. **(Emphasis added.)**

The legislative intent of the provision is clear and makes sense as no ballot measure could become law without a title to place it on the ballot; thus the requirement which **incorporates the legally correct ballot title into the Petition** when 34 O.S. § 9.D.2. requires the Secretary of State to forward **the measure, including the ballot title**, to the Secretary of the State Election Board. Legislative intent on this matter is also consistent with the fact that no legislation may be passed by the legislature without a title and enacting clause.

The current initiative petition statute has a stronger requirement than did the law in 1982 regarding the finding of the ballot title's legal correctness. In 1982, under a process that was voluntary, the Court held the 90-day period for circulation did not begin until the proposed ballot title had been reviewed by the Attorney General, the 10-day appeal period had expired, and any appeals timely filed, exhausted. That holding certainly remains applicable today – and is even more necessary – since the current statute **requires** a finding that the ballot title is legally correct **prior to the collection of signatures**.

In his press release announcing his November 22nd response brief filing, Attorney General Scott Pruitt stated that he detailed specific provisions he found “insufficient” with the proposed ballot title. The matter before the Court as detailed by General Pruitt in his press release is the sufficiency of the ballot title. 34 O.S. § 8.E. provides that the 90-day period for signature collection begins, in the case of an appeal, once the Court determines sufficiency, while 34 O.S. § 8.B. and 34 O.S. § 8.C. clearly combine both the Petition itself and the proposed ballot title into the determination of sufficiency.

B. It shall be the duty of the Secretary of State to cause to be published, in at least one newspaper of general circulation in the state, a notice of such filing and the apparent sufficiency or insufficiency of the petition. Such publication **shall include the text of the ballot title** as reviewed or, if applicable, as rewritten, by the Attorney General pursuant to the provisions of subsection D of Section 9 of this title, and shall include notice that any citizen or citizens of the state may file a protest as to the constitutionality of the petition, by a written notice to the Supreme Court and to the proponent or proponents filing the petition, **or as to the ballot title** as provided in Section 10 of this title. Any such protest must be filed within ten (10) days after publication. A copy of the protest shall be filed with the Secretary of State. (**Emphasis added.**)

C. Upon the filing of a protest to the petition, the Supreme Court shall then fix a day, not less than ten (10) days thereafter, at which time it will hear testimony and arguments for and against the sufficiency of such petition. (*Note: This provision of statute incorporates the ballot title into the process when referring to a protest of the petition.*)

E. Within ninety (90) days after such filing of an initiative petition or determination of the sufficiency of the petition by the Supreme Court as provided in this section, **whichever is later**, the signed copies thereof shall be filed with the Secretary of State, but the signed copies of a referendum petition shall be filed with the Secretary of State within ninety (90) days after the adjournment of the Legislature enacting the measure on which the referendum is invoked or determination of the sufficiency of the petition by the Supreme Court as provided in this section, whichever is later. Each elector shall sign his or her legally registered name, address or post office box, and the name of the county of residence. Any petition not filed in accordance with this provision shall not be considered. The proponents of a referendum or an initiative petition, any time before the final submission of signatures, may withdraw the referendum or initiative petition upon written notification to the Secretary of State. (**Emphasis added.**)

Today's petition initiative statute clearly provides that the 90-day period for collection of signatures either (1) extends for 90 additional days after the Court finds

sufficiency or (2) begins once the Court determines the legal correctness of the ballot title – meaning, in the case of an appeal such as the one before this Court, the 90-day signature collection period ends 90 days from the date of the Court’s Order.

VALIDITY OF ELECTORS SIGNATURE

At question is the validity of the electors’ signatures collected prior to the Court’s Order. As provided for in the 1982 ruling which is still applicable today, should the Court determine that the 90-day period does not begin until the determination of legal correctness of the ballot title as provided for in 34 O.S. § 9.D., the Attorney General argues that any signature collected prior to the Court’s Order would be invalid. If the Court holds such and determines that those signatures will not be counted, the Plaintiffs would ask that a new signature page be allowed to be submitted to the Secretary of State to reduce confusion among the voters and to ensure no question as to the validity of future signatures collected during the 90-day period beginning at the time of the Court’s Order. Most important here is the preservation of the initiative petition process for the citizens of the State of Oklahoma.

CASE OF FIRST IMPRESSION

Extenuating circumstances exist in this specific matter before the Court which may provide the need for the Court to hold that the signature collection period be extended for an additional 90 days from the date of the Court’s Order allowing for the determination that signatures collected since September 26, 2013 are valid as provided for in 34 O.S. § 8.B., 34 O.S. § 8.C., and 34 O.S. § 8.E.

The petition was filed with the Secretary of State’s office on September 18, 2013 pursuant to the requirements of 34 O.S. § 8.A.:

A. When a citizen or citizens desire to circulate a petition initiating a proposition of any nature, whether to become a statute law or an amendment to the Constitution, or for the purpose of invoking a referendum upon legislative enactments, such citizen or citizens shall, when such petition is prepared, and before the same is circulated or signed by electors, file a true and exact copy of same in the office of the Secretary of State.

The initiative petition statute contained in 34 O.S. § 9.D. required the Attorney General to make determination of legal correctness regarding the ballot title by September 25, 2013:

1. After the filing of the petition and prior to the gathering of signatures thereon, the Secretary of State shall submit the proposed ballot title to the Attorney General for review as to legal correctness. **Within five (5) business days after the filing of the measure and ballot title,** the Attorney General shall, in writing, notify the Secretary of State whether or not the proposed ballot title complies with applicable laws. The Attorney General shall state with specificity any and all defects found and, if necessary, within ten (10) business days of determining that the proposed ballot title is defective, prepare and file a ballot title which complies with the law; and **(Emphasis added.)**

The Attorney General did not respond within the statutory timeframe of five (5) business days, instead responding on the seventh (7th) business day – September 27, 2013. The petitioners began collection of signatures on the sixth (6th) business day since the Attorney General had not objected to the legal correctness of the ballot title within the statutorily defined timeframe thus clearing the way for the signature collection process to begin. As a result of the Attorney's General failure to perform his duties as prescribed by the law, his delayed objection and self-admitted "subjective judgments" have created confusion as to the status of the signature collection process and has interfered with the efforts to collect signatures on the petition. (See attached Affidavit)

LEGAL CONCLUSION

1. The Attorney General did not comply with the provisions of the statute outlined in 34 O.S. § 9.D. when attempting to rewrite the ballot title and as such no longer has jurisdiction on the matter.
2. The Attorney's General ballot title rewrite does not comply with the statute's requirement as outlined in 34 O.S. § 9.B., is subjective in nature as admitted by the Attorney General, and will be misleading and deceptive to the voter.
3. The statute as outlined in 34 O.S. § 9.D. provides that persons proposing to circulate an initiative petition cannot begin collecting signatures until there has been a determination of legal correctness regarding the ballot title.
4. The statute as outlined in 34 O.S. § 8.E. provides that the 90-day period for signature collection begins, in the case of an appeal, once the Court determines sufficiency, while 34 O.S. § 8.B. and 34 O.S. § 8.C. clearly combine both the Petition itself and the proposed ballot title into the determination of sufficiency.

For the reasons stated above and in order to preserve to initiative petition process for the citizens of the State of Oklahoma in this matter and for future initiative petitions, the Plaintiffs respectfully requests that this Court enter its Order:

1. Rejecting the Attorney's General ballot title rewrite; (or)
2. Providing for a ballot title drafted by the Court that conforms with Section 9; and

NINETY (90) DAY OPTIONS

Specify that:

- a. The 90-day signature collection period begins on the day of the Court's Order under 34 O.S. § 9.D. and that all signatures collected prior to that day are invalid and directing the Petitioners to file a new signature page with the Secretary of State to ensure compliance with the Order, or
- b. The 90-day signature collection period is extended 90-days from the day of the Court's Order under 34 O.S. § 8. And that all signatures collected since September 26, 2013 are valid.

Regardless of the Courts decision, Petitioners would urge the Court to establish a bright line rule on the ninety (90) day issue and the five (5) day jurisdictional argument. This will ensure further Initiative Petitions avoid the legal pitfalls. Petitioners have been placed in a position to guess whether the ninety (90) days has started or whether it will start after this appeal.

WHEREFORE, Petitioners request the Court find the Attorney General lacks jurisdiction to rewrite the title, request the Court extend the ninety (90) day period for collections of signatures and either accept Petitioners ballot title or rewrite the same.

Respectfully submitted,



David R. Slane, OBA# 16156

901 NW 12th Street

Oklahoma City, OK 73106

(405) 319-1800

(405) 319-1802 Facsimile

ATTORNEY FOR TAKE SHELTER

OKLAHOMA



Richard Morrissette, OBA# 11446
217 N. Harvey, Suite 101
Oklahoma City, OK 73102
(405) 235-7900
ATTORNEY FOR TAKE SHELTER
OKLAHOMA

CERTIFICATE OF SERVICE

This is to certify that on this 27 day of December, 2013 a true and correct copy of the above and foregoing instrument was mailed postage prepaid or hand delivered to:

Oklahoma Attorney General
Scott Pruitt
313 NE 21st Street
Oklahoma City, OK 73015

Oklahoma Secretary of State
2300 N. Lincoln Blvd.
Room 101
Oklahoma City, OK 73105



David R. Slane

From: **Donna Parker** donna.parker38@yahoo.com
Subject: Re: Town Hall Meeting today
Date: November 11, 2013 at 9:37 AM
To: Take Shelter Oklahoma barnonemark@gmail.com

But if that is the language you want to change it to, what is the original language that you want to change? Don't get me wrong; I am all for school shelters. But before advocating for new language I need to know what I am advocating for.?

On Sunday, November 10, 2013 5:44 PM, Take Shelter Oklahoma <barnonemark@gmail.com> wrote:
Donna,

Here is the location on the web where you can read the exact language of the petition.

<http://takeshelterok.com/petition.html>

Take Shelter Oklahoma
P.O. Box 2299
Oklahoma City, OK 73101
e-mail: TakeShelterOklahoma@gmail.com
phone: 405-470-7925
website: www.TakeShelterOK.com
Facebook: www.facebook.com/pages/Take-Shelter-Oklahoma/549750171741213
Twitter: @TakeShelterOK

See **More** from Donna Parker

SC - 13-0111
CNL

2014 OK 23

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

IN RE: INITIATIVE PETITION NO. 397,
STATE QUESTION NO. 767,

)
) **FILED**

APR -1 2014

TAKE SHELTER OKLAHOMA and
KRISTI CONATZER,

)
) MAY 07 2014

MICHAEL J. RICHIE
CLERK

Petitioners,

)
) OKLAHOMA SECRETARY
) OF STATE

v.

)
) No. 112,264

RECEIVED

APR 01 2014

STATE OF OKLAHOMA, ex rel.,
ATTORNEY GENERAL, E. Scott
PRUITT

)
) FOR OFFICIAL PUBLICATION

ATTORNEY GENERAL

Respondent.

APPEAL OF ATTORNEY GENERAL'S BALLOT TITLE

¶ 0 Proponents of an initiative petition brought an appeal in this Court challenging the ballot title prepared by the Oklahoma Attorney General for the proposed initiative. **We hold that:** 1. A proponent of an initiative petition must file or submit a copy of the initiative petition and a copy of the ballot title to the Attorney General when the proponent files the initiative petition and ballot title with the Secretary of State, 34 O.S. § 9 (A) & (B); 2. The Attorney General must file a response to a ballot title within five business days from the date the ballot title is filed with the Secretary of State, 34 O.S. § 9 (D); 3. The Attorney General's § 9(D) response to a ballot title is statutorily effective although the Attorney General's response was filed two days late; 4. A proponent of an initiative who challenges a ballot title prepared by the Attorney General has the burden to show that the Attorney General's ballot title is legally incorrect, or is not impartial, or fails to accurately reflect the effects of the proposed initiative; 5. The Attorney General's ballot title challenged in this proceeding is legally correct, impartial, and accurately reflects the effects of the proposed initiative; 6. When a ballot title appeal has been made, a proponent's ninety-day period of time to collect signatures commences when the ballot title appeal is final.

**BALLOT TITLE PREPARED BY THE OKLAHOMA ATTORNEY GENERAL
DECLARED TO BE LEGALLY SUFFICIENT FOR THE PROPOSED INITIATIVE**

David R. Slane and Richard Morrissette, Oklahoma City, for Co-Petitioners/Proponents,
Take Shelter Oklahoma, Kristi Conatzer

Neal Leader, Senior Assistant Attorney General and Charles S. Rogers, Senior Assistant
Attorney General, Oklahoma City, for Respondent State of Oklahoma, ex rel. Attorney
General E. Scott Pruitt

EDMONDSON, J.

¶ 1 On Sept. 18, 2013, Initiative Petition No. 397, State Question 767 was filed
with Secretary of State. The Initiative Petition proposes amendments to the State
Constitution with an ultimate primary purpose of constructing storm shelters for schools.
Proponents also filed with the Secretary of State a proposed ballot title for their proposed
Initiative.

¶ 2 The Oklahoma Attorney General disagreed with Proponents' ballot title and
then prepared and filed with the Secretary of State a new ballot title for the Initiative.
Proponents disagreed with the ballot title prepared by the Attorney General and sought
relief from this Court by filing an appeal from the new ballot title. Proponents' application
for an order to disqualify the Attorney General from participation in this proceeding was
withdrawn by counsel for Proponents during oral argument before the Court *en banc* and
need not be addressed.

I. Attorney General's Jurisdiction to File a New Ballot Title

Proponents claim that the Attorney General lost jurisdiction to file a new
ballot title because the Attorney General's objection to Proponents' ballot title
was untimely filed with the Secretary of State.

¶ 3 On Wednesday, September 18, 2013, Initiative Petition No. 397, State

Question 767, was filed with Secretary of State by Proponents. On Thursday, September 19, 2013, the Secretary of State sent a notice by Interagency Mail to the Attorney General that an initiative petition had been filed and submitted a copy of the ballot title to the Attorney General. The Attorney General states that the notice from the Secretary of State was received on Friday, September 20, 2013. On Friday September 27, 2013, the Attorney General filed with the Secretary of State a notice that the ballot title did not comply with applicable laws, and that pursuant to 34 O.S.2011 § 9(D) he would prepare and supply to the Secretary of State a ballot title within ten days. On October 11, 2013, the Attorney General filed a ballot title with the Secretary of State.

¶ 4 Proponents argue that the Attorney General has five business days from the date the ballot title is filed with the Secretary of State to file an objection to a ballot title. They submit that they filed the ballot title on Wednesday September, 18, 2013, and that the Attorney General's objection filed on Friday, September 27, 2013, was beyond the five-day limit. They contend that the Attorney General lost jurisdiction to file an objection when the five-day period expired.

¶ 5 The Attorney General argues that the five-day period for him to file an objection to a ballot title commences when a ballot title is *filed with the Attorney General by a proponent*. The Attorney General submits that the Proponent failed to file the ballot title with the Attorney General and that this five-day period never commenced. Proponents argue that they are *not* required to file copies of a proposed initiative and ballot title with the Attorney General. The Attorney General also argues that his objection to the ballot title was filed with the Secretary of State within five business days from the date he received copies of the initiative petition and ballot title from the Secretary of State via interagency

mail.

¶ 6 The parties have different views on the meaning of language in 34 O.S.2011

§ 9 (A), (B), & (D). The relevant language states that:

A. When a referendum is ordered by petition of the people against any measure passed by the Legislature or *when any measure is proposed by initiative petition*, whether as an amendment to the Constitution or as a statute, *it shall be the duty of the parties submitting the measure to prepare and file one copy of the measure with the Secretary of State and one copy with the Attorney General.*

34 O.S.2011 § 9(A) (emphasis added).

B. *The parties submitting the measure shall also submit a suggested ballot title which shall be filed on a separate sheet of paper and shall not be deemed part of the petition. . . .*

34 O.S.2011 § 9(B) (emphasis added).

D. The following procedures shall apply to ballot titles of referendums ordered by a petition of the people or any measure proposed by an initiative petition:

1. *After the filing of the petition and prior to the gathering of signatures thereon, the Secretary of State shall submit the proposed ballot title to the Attorney General for review as to legal correctness. Within five (5) business days after the filing of the measure and ballot title, the Attorney General shall, in writing, notify the Secretary of State whether or not the proposed ballot title complies with applicable laws. . . .*

34 O.S.2001 § 9 (D) (1) (emphasis added).

¶ 7 Section 9(A) states that the “parties submitting the measure” must prepare and file one copy of the “measure” with the Secretary of State and one copy with the Attorney General. In § 9(A) “submitting the measure” identifies who is required to file a copy of the measure *with both the Attorney General and the Secretary of State.*

¶ 8 Section 9(B) states that the parties “submitting the measure” “shall also submit a suggested ballot title” Section 9(B) does not expressly identify the Secretary of State, Attorney General or both are to receive the submitted ballot title. However, a

party's duty to submit the ballot title is expressly stated to be performed *with the act of submitting the proposed measure to the Attorney General and Secretary of State*. Section 9(B) plainly states that the parties "submitting the measure" shall also submit a suggested ballot title.

¶ 9 The primary goal in reviewing a statute is to ascertain legislative intent, if possible, from a reading of the statutory language in its plain and ordinary meaning.¹ This is so because the plain words of a statute are deemed to express legislative authorial intent in the absence of any ambiguity or conflict in language.² The test for ambiguity in a statute is whether the statutory language is susceptible of more than one reasonable interpretation.³ Generally, and consistent with a court's construction of alleged ambiguity in a contract,⁴ a judicial determination of the presence of more than one reasonable construction of the statutory language, *i.e.*, ambiguity, presents a question of law⁵

¹ *W. R. Allison Enters., Inc. v. CompSource Okla.*, 2013 OK 24, ¶ 15, 301 P.3d 407, 411. The plain meaning of a statute's language is conclusive except in the rare case when literal construction produces a result demonstrably at odds with legislative intent. *Head v. McCracken*, 2004 OK 84, ¶ 13, 102 P.3d 670, 680.

² *State ex rel. Bd. of Regents of Univ. of Oklahoma v. Lucas*, 2013 OK 14, ¶ 15, 297 P.3d 378, 387 ("If wording in a statute is plain, clear and unambiguous then the plain meaning of the words used must be judicially accepted as expressing the intent of the Legislature, and there exists no reason or justification to use interpretive devices or rules of construction to determine meaning."); *Cline v. Oklahoma Coalition for Reproductive Justice*, 2013 OK 93, ¶ 14, 313 P.3d 253, 258-259 (to determine the meaning of legislation we look to the plain language of the statute because the Legislature is presumed to have expressed its intent in the text of the statute; and only when the legislative intent cannot be ascertained from the statutory language in cases of ambiguity or conflict do we utilize rules of statutory construction); *Rogers v. Quicktrip Corp.*, 2010 OK 3, ¶ 11, 230 P.3d 853, 859 ("If a statute is plain and unambiguous, it will not be subjected to judicial construction but will receive the interpretation and effect its language dictates.").

³ *In the Matter of J.L.M.*, 2005 OK 15, ¶ 5, 109 P.3d 336, 338.

⁴ *Colclasure v. Colclasure*, 2012 OK 97, ¶ 10, 295 P.3d 1123, 1135 ("The courts decide, as a matter of law, whether a contract provision is ambiguous.").

⁵ In the context of construing a statute we stated that whether language is ambiguous is a question of law, and we relied upon a similar statement applied to an insurance policy and the application of contract law. *YDF, Inc. v. Schlumar, Inc.*, 2006 OK 32, ¶ 6, 136 P.3d 656, 658, citing *American Economy Ins. Co. v.* (continued...)

because the determination that a statutory construction is reasonable is based initially on a plain meaning of the words in the statute where no fact is disputed.⁶ The plain language of § 9 (A) & (B) states that the ballot title is submitted with the measure, and the measure is submitted *to both the Attorney General and the Secretary of State*. We hold that Proponents were required to file or submit a copy of initiative petition and a copy of the ballot title to the Attorney General when they filed the initiative petition and ballot title with the Secretary of State.

¶ 10 The next argument made by the parties is whether the five business days for the Attorney General to object to a ballot title commence on (1) the day a proponent files the initiative petition and ballot title with the Secretary of State, or (2) the date the initiative petition and ballot title are filed with the Attorney General, or (3) the date the Attorney General receives notice from the Secretary of State that an initiative petition and ballot title have been filed.

¶ 11 The Attorney General's argument is that 34 O.S. § 9 should be construed to

⁵(...continued)

Bogdahn, 2004 OK 9 ¶ 11, 89 P.3d 1051, 1054.

One reason *YDF, Inc., supra*, is correct is that a court's interpretation of statutory law presents a question of law. *Troxell v. Okla. Dept. of Human Services*, 2013 OK 100, ¶ 4, 318 P.2d 206. See *Hogg v. Okla. Cnty. Juvenile Bureau*, 2012 OK 107, ¶ 7, 292 P.3d 29, 33 ("Ascertaining the meaning of statutory language is a pure issue of law."); *In re De-Annexation of Certain Real Property from City of Seminole*, 2004 OK 60, ¶ 18, 102 P.3d 120, 129 ("Statutory construction presents a question of law."). An interpretation of ambiguity solely from the statutory language is thus an interpretation of statutory law and presents an issue of law.

⁶ In a general sense, a court's adjudication of "reasonableness" may present an issue of fact, or an issue of law, or a mixed question of law and fact, depending upon how the concept of "reasonable" or "reasonableness" is applied for the type of adjudication at issue. See, e.g., *Franco-American Charolaise, Ltd. v. Okla. Water Resources Bd.*, 1990 OK 44, 855 P.2d 568, 574-575 (discussion of the reasonableness of water use by a riparian owner and the conclusion that the issue was for a jury); *Barringer v. Baptist Healthcare of Oklahoma*, 2001 OK 29, ¶¶ 6, 26, 22 P.3d 695, 697, 701 (an example of determinations of "reasonableness" in the context of summary judgment review, and whether one, or more than one reasonable interpretation of undisputed facts is present). In this original jurisdiction matter we are asked to adjudicate the meaning of statutory language and not the existence of extrinsic facts.

mean that the filed copy of the ballot title which it reviews for legal correctness is the one filed with the Attorney General, and that the filing of this copy with the Attorney General is also the event which commences the Attorney's General's five-day period to file an objection to the ballot title. We reject that construction of 34 O.S. § 9, as contrary to the plain language of that statute.

¶ 12 The statutory language providing the Attorney General five business days to object to a ballot title does not occur in isolation from the rest of the statute in which it appears. The five-day period occurs not in paragraphs "A" or "B" but in paragraph "C" and immediately following a sentence stating that: "After the filing of the petition and prior to the gathering of signatures thereon, the Secretary of State shall submit the proposed ballot title to the Attorney General *for review as to legal correctness.*" This sentence refers to the Secretary of State performing the act of submitting a copy of the ballot title to the Attorney General "for review as to legal correctness." The plain language of the statute states that the reason the Secretary of State submits a copy of the ballot title to the Attorney General is for the Attorney General to determine the legal correctness of the ballot title. Because of this duty on the Secretary of State to submit a copy of the ballot title to the Attorney General for review as to legal correctness, we conclude that the copy that the Secretary of State submits to the Attorney General is a copy of the ballot title filed of record with the Secretary of State.

¶ 13 Further, the language "[w]ithin five (5) business days *after the filing of the measure and ballot title* the Attorney General shall, in writing, notify the Secretary of State whether or not the proposed ballot title complies with applicable laws" occurs immediately after language stating that the Secretary of State has a duty to provide a copy of the ballot

title to the Attorney General for the purpose of this determination. The statutory language does not state that the five-day period commences upon the date the Attorney General receives notice of the filing from the Secretary of State.

¶ 14 During oral argument before the Court *en banc*, counsel for the Attorney General argued that the Attorney General's construction of 34 O.S. § 9 was a long-standing construction of a statute by a state agency, and that a long-standing construction should be given deference by the Court. We agree that deference may be afforded to the long-standing construction of a statute by a state agency.⁷ We also recognize that continual construction of a statute by the agency charged to enforce it must be given great weight; and that when the Legislature has convened many times during a period in which an administrative agency has construed a statute and it has not expressed its disapproval with that construction, the Legislature's silence may be regarded as acquiescence in or approval of the agency's construction.⁸ However, upon a closer examination of the Attorney General's argument, we conclude that these principles do not apply.

¶ 15 Generally, a published Attorney General Opinion *may* be persuasive authority for a court, but a court is not bound by the Opinion of the Attorney General.⁹ It is also correct that legislative silence after promulgation of a published Attorney General Opinion may be judicially construed as a legislative approval of an Attorney General's construction

⁷ *United Airlines, Inc. v. State Bd. of Equalization*, 1990 OK 29, 789 P.2d 1305, 1311–1312.

⁸ *United Airlines, Inc. v. State Bd. of Equalization*, 1990 OK 29, 789 P.2d at 1311-1312.

⁹ *Austin, Nichols & Co. v. Okla. Cnty. Bd. of Tax-Roll Corrections*, 1978 OK 65, 578 P.2d 1200, 1203.

of an ambiguous and uncertain statute.¹⁰ But in the matter before us, no published Attorney General Opinion has been cited in support of the Attorney General's construction of 34 O.S. § 9. We have no Attorney General Opinion before us that would allow us to examine its *ratio decidendi* for a quality of persuasiveness in legal argument. No published agency rule has been cited by the Attorney General.¹¹ The record of facts before us contains no reference to a previous public construction of 34 O.S. § 9 by the Attorney General on the issues before the Court.¹²

¶ 16 Deference given to a state agency's construction of a statute is based upon the statute's language being ambiguous or uncertain,¹³ and the fact that the agency's construction must be legally reasonable when applied to the circumstance,¹⁴ and the

¹⁰ *Okla. Public Employees Ass'n v. State ex rel. Okla. Office of Personnel Management*, 2011 OK 68, ¶ 24, 267 P.3d 838, 847.

¹¹ The Court takes judicial notice of promulgated state agency rules. *Lone Star Helicopters, Inc., v. State*, 1990 OK 111, 800 P.2d 235, 237 (citing 75 O.S. § 252, which now states, in part, that "All courts, boards, commissions, agencies, authorities, instrumentalities, and officers of the State of Oklahoma shall take judicial or official notice of any rule, amendment, revision, or revocation of an existing rule promulgated pursuant to the provisions of the Administrative Procedures Act.").

¹² The *record of facts* before us fails to show a consistent and continual construction of the statute in a public manner by the Attorney General that is consistent with the Attorney General's argument. Generally, argument of counsel is not a form of evidence. *In re Guardianship of Stanfield*, 2012 OK 8, n. 55, 276 P.3d 989, 1002 (unsworn statements by counsel do not constitute evidence); *Willis v. Sequoyah House, Inc.*, 2008 OK 87, ¶¶ 12-13, 194 P.3d 1285, 1289-1290 (same). Also generally, proof consists in forms of testimony, deposition, affidavit, and other "acceptable evidentiary substitutes." *Willis*, 2008 OK 87, at n. 14. A ballot title appeal is prosecuted in this Court in the form of an original jurisdiction proceeding where the parties submit proof in support of their legal arguments, and they do not rely upon a record transmitted from a lower tribunal. While the Attorney General may have consistently and continually construed the statute as counsel states, proof of such a construction by the Attorney General is absent from the record before us.

¹³ We have explained, "Administrative construction cannot override the plain language of a statute. Where a statute is neither ambiguous nor of doubtful meaning, the rule that weight is to be given to an agency construction in determining the effect of the statute will not be applied." *Bradshaw v. Oklahoma State Election Bd.*, 2004 OK 69, ¶ 6, 98 P.3d 1092, 1094.

¹⁴ The construction of an ambiguous and uncertain statute by a state agency must also be reasonable for a court to give the construction deference and great weight. *Oral Roberts Univ. v. Okla. Tax Comm'n*, 1985 OK 97, 714 P.2d 1013, 1015. See *Independent Finance Institute v. Clark*, 1999 OK 43, ¶ 13, 990 P.2d 845, (continued...)

agency's construction must be consistent and continual in a public manner so that the Legislature has notice of the construction by the agency.¹⁵ Is 34 O.S. § 9 ambiguous and uncertain? We think not, and rules of construction for determining legislative intent for an ambiguous statute are not needed in this case.

¶ 17 Prior to 1994, paragraph § 9(D) expressly provided for the five-day period to commence on the date the ballot title was filed "with the Attorney General."¹⁶ In 1994 this language expressly stating that the five-day period commenced upon filing with the Attorney General was removed from the statute by legislative amendment.¹⁷ The 1994 amendment also added language that the Secretary of State "shall submit the proposed ballot title to the Attorney General *for review as to legal correctness*."¹⁸ In one legislative act the Secretary of State was given the duty of providing a copy of the ballot title to the Attorney General for a review of the ballot title's legal correctness and the date to

¹⁴(...continued)

851 (deference given to the construction of a statute made by an agency charged with its enforcement is a rule of construction for ambiguous statutory language, and the deference is based upon an agency construction that is reasonable and not clearly wrong).

¹⁵ In *R. R. Tway, Inc. v. Oklahoma Tax Comm'n*, 1995 OK 129, n. 3, 910 P.2d 972, 976, we declined to give judicial deference to an agency's construction of a state statute. We observed that there was no evidence in the record showing the agency's consistent and continual construction of the statute by a published agency rule, or that the agency had construed the statute in some other manner that would give notice to the Legislature of the agency's actions.

¹⁶ 34 O.S.Supp.1993 (D) (1) stated that:

"Within five (5) business days after the filing of such copy and ballot title with the Attorney General, he shall, in writing, notify the Secretary of State whether or not the proposed ballot title is in legal form and harmony with the law. If the proposed ballot title is in harmony with the law the Attorney General shall so certify to the Secretary of State. Should such ballot title not be in proper form, in the opinion of the Attorney General, it shall be his duty, within ten (10) business days of determining that th proposed ballot title is not in proper form, to prepare and file a ballot title which does conform to the law; and"

¹⁷ Laws 1994, c. § 147, § 3, amending 34 O. S. Supp.1993 § 9, eff. May 3, 1994.

¹⁸ Laws 1994, c. § 147, § 3, amending 34 O. S. Supp.1993 § 9, eff. May 3, 1994, emphasis added.

commence the five-day period for the Attorney General to file an objection was changed.¹⁹

¶ 18 During oral argument before the Court *en banc*, counsel for the Attorney General argued that a “five full days” were needed by the Attorney General to examine a proposed initiative and ballot title to make a correctly reasoned and informed approval of, or objection to, a ballot title, and that the Attorney’s General’s five-day limit should not be shortened by whatever means the Secretary of State may, in his or her discretion, use to provide a copy of the ballot title to the Attorney General. In the absence of evidence to the contrary, a court will generally presume that a public official will act in good faith to perform the official’s duties and will faithfully discharge the duties the law imposes on the official.²⁰ We decline to assume that a Secretary of State will select a method of notice that is inconsistent with 34 O.S. § 9(D), or that a Secretary of State is either unwilling or unable to convey a copy of the ballot title to the Attorney General *immediately upon its filing* when the Secretary of State performs this duty imposed by 34 O.S. § 9(D).

¶ 19 Because of the arguments of the parties, we must note that the day an

¹⁹ Although doubt as to the meaning of a statute may be resolved by reference to its enacted history, *Independent Finance Institute v. Clark*, 1999 OK 43, ¶ 14, 990 P.2d at 851, our observation on the legislative history is not for the purpose of resolving doubt of concerning ambiguous language, but for the purpose of showing that the language which altered the time for calculating the Attorney General’s duty to file a response to a ballot title is a plain and ordinary reading of the language and that the Attorney General’s construction is not a reasonable alternative.

²⁰ *Berryman v. Bonaparte*, 1932 OK 141, 11 P.2d 164, 167-168 (“A mere presumption of law applies only in the absence of evidence as to the fact, and flies out of the case upon the production of any evidence, but the presumption that public officials perform their duties casts the burden of proof upon the issue. We call attention to these matters in order that the learned counsel may not in the future become confused relative to general legal presumptions and the presumptions of law relative to public officials.”). See also, *State ex rel. Okla. Corp. Com’n v. McPherson*, 2010 OK 31, ¶ 28, 232 P.3d 458, 465 (“But because of the presumption that officials will take proper actions subsequent to a demand letter, the taxpayer’s [*qui tam*] interest does not come into being until the taxpayer shows that officials failed to take the proper actions after receiving the demand letter.”); *State ex rel. Haning v. Department of Public Welfare*, 1952 OK 229, 245 P.2d 452, 455 (“The rule is well settled in this jurisdiction that in considering an action in mandamus against such public officials this court may exercise its judicial discretion in granting or denying the writ, and may in a proper case withhold the writ in anticipation of good faith performance of the declared statutory duty.”).

initiative petition is filed with the Secretary of State is not counted as the first day of the five-day period because fractions of a day are disregarded in statutory computations which include more than one day and when there is no question of priority involved.²¹ We must note that § 9(D) does not use the language suggested by the Attorney General that it is necessary that he be provided "five full days" to file a response to the ballot title. The statute requires the Attorney General's response *within* five days from the filing with the Secretary of State. We also note that the "five days" is further defined by the statute as five *business* days. We construe the phrase "business" to be consistent with 25 O.S. Supp. 2012 § 82.1, and therefore exclude statutory "holidays" defined in § 82.1, so that a business day would be Monday through Friday, inclusive, and does not include Saturday, Sunday, or any statutorily listed holiday in § 82.1 which may fall *on any day within* the five-day period after the initiative petition and ballot title are filed with the Secretary of State.²²

¶ 20 After a proponent submits a copy of both the proposed measure and ballot title to both the Secretary of State and the Attorney General, and before signatures are collected, the Secretary of State submits the proposed ballot title to the Attorney General for review as to legal correctness, and the Attorney General must respond within five business days, and the response must state whether a proposed ballot title complies with

²¹ 25 O.S. 2011 § 23:

"The word 'year' means a calendar year, and 'month,' a calendar month. Fractions of a year are to be computed by the number of months, thus: half a year is six (6) months. Fractions of a day are to be disregarded in computations which include more than one (1) day, and involve no question of priority."

²² 25 O.S. Supp. 2012 § 82.1 states in part:

"A. The designation and dates of holidays in Oklahoma shall be as follows: Each Saturday, Sunday, New Year's Day on the 1st day of January, Martin Luther King, Jr.'s Birthday on the third Monday in January,"

"C. Any act authorized, required, or permitted to be performed on a holiday as designated in subsection A of this section may be performed on the next succeeding business day, and no liability or loss of rights of any kind shall result from such delay. . . ."

applicable laws.²³ If the Attorney General objects to the ballot title, then the Attorney General must file with the Secretary of State a corrected ballot title within “ten (10) business days of determining that the proposed ballot title is defective.”²⁴

¶ 21 The ballot title was filed with the Secretary of State on Wednesday, September 18, 2013. The first day of the five-day period was Thursday, September 19, 2013, and the fifth day was Wednesday, September 25, 2013. The response was filed by the Attorney General with the Secretary of State on Friday, September 27, 2013. The response was filed two days late. Proponents argue that the Attorney General had ten business days from September 25, 2013, to file a new ballot title and the new ballot title had to be filed by Wednesday, October 9, 2013. They argue that the ballot title filed by the Attorney General on Friday, October 11, 2013, was untimely and of no legal effect. However, if the filing of the Attorney General on September 27, 2013, although untimely, still retained legal efficacy, then the ballot title filed by the Attorney General on October 11, 2013, was on the tenth business day after he filed his initial response to ballot title.

¶ 22 Proponents argue that the 34 O.S. § 9 (D) duty imposed on the Attorney General is a mandatory duty to file a response within five business days; and then if an objection to the ballot title is timely made, the duty to file a new ballot title within ten business days is also a mandatory duty. Proponents conclude that because the time limit

²³ 34 O.S.2001 § 9(D)(1) states in part:

After the filing of the petition and prior to the gathering of signatures thereon, the Secretary of State shall submit the proposed ballot title to the Attorney General for review as to legal correctness. Within five (5) business days after the filing of the measure and ballot title, the Attorney General shall, in writing, notify the Secretary of State whether or not the proposed ballot title complies with applicable laws.

²⁴ 34 O.S. § 9(D)(1) states in part: “The Attorney General shall state with specificity any and all defects found and, if necessary, within ten (10) business days of determining that the proposed ballot title is defective, prepare and file a ballot title which complies with the law;”

is mandatory it is also jurisdictional. They state that the Attorney General lost jurisdiction to respond to the ballot title and to file a new ballot title when he did not file within five days from the date the ballot title was filed with the Secretary of State.

¶ 23 Generally, the legal principle which has been followed in this jurisdiction for many years is that a public official performing a statutorily required duty will not be divested of jurisdiction to perform that duty by the mere passage of time unless the statute also states that the duty shall not be performed by that official after the expiration of a certain time or date. For example, in *School District No. 61, Payne County v. Consolidated District No. 2, Coyle, Logan County*, 1925 OK 518, 237 P. 1110, we stated the following:

The case of *People v. Cook*, 14 Barb. (N. Y.) 259 [1852], seems to be one among the early cases passing upon this question, and is frequently referred to in later decisions, wherein the following rule is announced in the syllabus of the opinion:

Statutes directing the mode of proceeding by public officers are directory, and a strict compliance with their provisions is not essential to the validity of the proceedings, unless it be so declared in the statute. *Within this principle, where a statute directs a public officer to do a thing within a certain time, without any negative words restraining him from doing it afterwards, the naming the time will be regarded as directory merely, and not as a limitation of his authority.* This rule has been very steadfastly adhered to, by the courts, in all cases where certain acts are directed to be done, by public officers, within a stated time, and in a particular manner, when those acts are of a public character, and concern the public interests, or when the rights of third persons are concerned.

A discussion of the rules announced in the syllabus above quoted will be found on page 290 and the following pages of the opinion, citing numerous authorities illustrating the application of the rules announced.

In 25 R. C. L. p. 769, § 16, the following language is found:
"In general, statutory provisions directing the mode of proceeding by public officers and intended to secure order, system, and dispatch in proceedings, and by a disregard of

which the rights of parties cannot be injuriously affected, are not regarded as mandatory, *unless accompanied by negative words importing that the acts required shall not be done in any other manner or time than that designated.* * * *

School District No. 61, Payne County, 237 P. at 1111 (emphasis added).

Application of *School District No. 61, Payne County*, *supra*, requires an examination of 34 O.S. § 9, and a determination if any words state that the acts required by the Attorney General shall not be done in any other manner or time than that designated. There is no express language in 34 O.S. § 9 which removes jurisdiction from the Attorney General to file an objection to a ballot title two days late, and there is nothing in the plain language of § 9 indicating a legislative intent to remove the Attorney General from the ballot title procedure by an untimely response to the filing of an initiative or ballot title.²⁵

¶ 24 Our opinion in *School District No. 61, Payne County*, *supra*, was released in 1925 and applied a principle used by several courts since at least 1852.²⁶ Proponents have not made any argument that the holding in *School District No. 61, Payne County*, *supra*, has been superseded. The rationale used in *School District No. 61, Payne County*, *supra*, is found in other contexts such as the general rule that jurisdiction of a court, once

²⁵ The argument made by Proponents has some similarities to one we rejected in *State ex rel. Oklahoma Bar Ass'n v. Mothershed*, 2011 OK 84, 264 P.3d 1197. In *Mothershed* a party argued that failure to follow the "shall" language requiring an act of a public official/public body within a certain time divested that public body of jurisdiction to act. In the present case, Proponents argue that a public official's failure to observe a statutory time requirement has divested that official of jurisdiction to act. We explained in *Mothershed* that there was no legislative intent to create a jurisdictional time limit in a particular rule for Bar disciplinary procedure (at ¶ 62, 264 P.3d at 1221), and herein we similarly note that there is no legislative language or intent indicated by the plain language in 34 O.S. § 9 to remove the Attorney General from the ballot title procedure by an untimely filing made by the Attorney General.

²⁶ We note that *School District No. 61, Payne County*, *supra*, is consistent with *Castro v. Keyes*, 1992 OK 92, 836 P.2d 1275, where parties argued that a county board of equalization lacked jurisdiction to adjudicate a timely filed taxpayer protest when the adjudication came after the statutory date for adjournment for the board. This Court rejected that argument and we reaffirmed the holding of *Castro* in both *George L. Verity Management Development Corp. v. Keyes*, 1992 OK 93, 836 P.2d 1279, and *Oklahoma City Golf and Country Club v. Keyes*, 1992 OK 94, 836 P.2d 1282. See *Larry Jones Intern. Ministries, Inc. v. Means*, 1997 OK 125, ¶ 7, 946 P.2d 669, 671.

correctly invoked, will not usually be divested by a subsequent event such as the passage of time unless a statute expressly states the contrary or if a legislative intent is shown that would make a time limit mandatory.²⁷ Proponents have not made any argument that a recognized public policy calls for modifying or overruling *School District No. 61, Payne County, supra*. The Legislature is certainly aware that in the context of the initiative process it may restrict a filing after a certain date, and appears to have used such language in 34 O.S. 2011 §4, where with reference to filing signature sheets with the Secretary of State it has enacted language stating that “additional signature sheets shall not be accepted after 5:00 p.m. on the ninetieth day.”²⁸

¶ 25 We recognize the possibility that a statute may express a mandatory requirement in the absence of *express* language stating that the requirement is mandatory. Several rules of construction may be used to make a determination whether express language is necessary to create mandatory law or alter certain legal interests in a particular circumstance.²⁹ Specifically, when examining whether statutory language is mandatory in the context of statutorily specified time limits, the Court may examine

²⁷ *State ex rel. Oklahoma Bar Ass'n v. Mothershed*, 2011 OK 84, ¶ 54, & nn. 59-63, & ¶ 62, 264 P.3d 1197, 1217, 1221. See also *Baugh v. Little*, 1929 OK 383, 282 P. 459, 460 (“It is well established, as a general rule, that jurisdiction once acquired is not defeated by subsequent events; . . .”).

²⁸ The nature of this time limit in 34 O.S.2001 §4 and whether it is mandatory is not before us in the present controversy. It is noted merely to show an example of the Legislature restricting a filing after a certain date.

²⁹ See, e.g., *McCathern v. City of Oklahoma City*, 2004 61, ¶ 17, 95 P.3d 1090, 1097 (“We will not abridge governmental tort responsibility by legislative text that is ambiguous or silent.”); *Satellite Sys., Inc. v. Birch Telecom of Oklahoma, Inc.*, 2002 OK 61, ¶ 7, 51 P.3d 585, 588 (A legislative intention to abolish a common law right must be clearly and plainly expressed and there is a presumption that favors preservation of common-law rights).

whether statutory time limits “attach directly to the *right* created.”³⁰ Before us today we have no authority cited in either briefs or in oral argument concerning whether express language is necessary to show a mandatory statutory requirement in this context or whether the five-day limit attaches to a right itself. However, the issue presented is *publici juris* because it concerns the proper procedure used by the People when enacting legislation.³¹ Because the issue is *publici juris* and no additional evidence is necessary to adjudicate an issue of law, we may nevertheless adjudicate the issue whether the five-day period is mandatory in nature.³²

¶ 26 The purpose of the statutory initiative process is to provide a procedure where the People, the citizens of Oklahoma, exercise their right of initiative whereby they propose bills and laws and enact them or reject them at the polls independent of legislative assembly.³³ This right of the People to enact laws through an initiative petition process is reserved in Article V § 1 of the Oklahoma Constitution,³⁴ and we have explained that the

³⁰ *Matter of Estate of Speake*, 1987 OK 61, 743 P.2d 648, 652.

³¹ *In re Initiative Petition No. 315, State Question No. 553*, 1982 OK 15, 649 P.2d 545, 553 (“when questions of a general public nature are involved, which affect the state at large, the people of the state become indirect parties and their interests must be protected to prevent a possible ‘practical injustice’ even if the person who might have objected is silent.”); *State ex rel. Freeling v. Lyon*, 1917 OK 229, 165 P. 419, 420 (A matter that affects the rights of the citizens of the State is *publici juris*.); *Ethics Commission v. Cullison*, 1993 OK 37, 850 P.2d 1069, 1073 (An adjective-law barrier in a private-law original jurisdiction action will not hinder the court from giving adequate relief in an original jurisdiction proceeding that is *publici juris*.).

³² When the parties’ briefs present a *publici juris* issue and no additional facts are necessary for its adjudication, the Court possesses the judicial discretion to determine an issue of law presented by those briefs. *State v. Torres*, 2004 OK 12, ¶ 7, 87 P.3d 572, 578; *City of Enid v. Public Employees Relations Bd.*, 2006 OK 16, ¶ 30 133 P.3d 281,299-300 (Edmondson, J., Concurring).

³³ *Terry v. Bishop*, 2007 OK 29, ¶ 9, 158 P.3d 1067, 1070-1071.

³⁴ Okla. Const. Art. 5 § 1:

“The Legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives; but the people reserve to themselves the power to propose laws and amendments
(continued...)”

People's right is a fundamental and precious right zealously protected by this Court.³⁵ Proponents view the Attorney General's participation in the initiative petition process in this case as an obstruction to the People's right of initiative. We disagree. As we explain herein, the Attorney General's participation is not as a typical counsel in an adversarial litigation dispute. An Attorney General does not use the People's initiative process as a vehicle to champion his or her political positions. An Attorney General's participation in an initiative process is as a neutral legal advisor for the People. The Attorney General is *required by statute* to give an opinion on a ballot title proposed with an initiative petition and is *required by statute* to defend ballot titles, either those filed by proponents which he approves, or those authored and filed by the Attorney General. Participation by the Attorney General *in every initiative petition proceeding* is required by statute.

¶ 27 The Constitution grants to the People a right to an initiative and states that the Legislature shall make suitable provisions for carrying into effect this right,³⁶ and the statutorily required participation by the Attorney General in the ballot title process *is part of the initiative process for carrying into effect the right of the People*. As we note herein, a properly worded ballot title is one means used to combat fraud and deceit in the initiative process. The ballot title functions as a safeguard to protect the initiative right of the People, and "we will not cripple, avoid or deny by technical construction the initiative

³⁴(...continued)
to the Constitution and to enact or reject the same at the polls independent of the Legislature, and also reserve power at their own option to approve or reject at the polls any act of the Legislature."

³⁵ *In re Initiative Petition No. 384, State Question No. 731, 2007 OK 48, ¶ 2, 164 P.3d 125, 126.*

³⁶ Okla. Const. Art. 5 § 3 states in part: "The Legislature shall make suitable provisions for carrying into effect the provisions of this article."

right.”³⁷ This portion of Proponents’ argument ultimately rests upon a technical construction that the five-day filing period for the Attorney General in 34 O.S. § 9(D) must be attached to a right possessed by, and litigated by, an Attorney General. We reject this view as contrary to the plain language of 34 O.S. § 9(D) and conclude that the five-day period § 9(D) does not attach directly to a statutorily created right possessed by the Attorney General. The plain language of the statute places a duty upon the Attorney General that is the nature of the exercise of a governmental function that is part of a legislative process used by the People.

¶ 28 Proponent’s jurisdiction argument requires a determination whether the Legislature “had uppermost in mind” *the effect of the procedural step at issue* upon the process, and whether the Legislature intended it not as a “mere procedural step” but a requirement that was *essential* to the result of the process or the Legislature’s intended goal.³⁸ In Proponents’ argument, the “procedural step” which they urge as jurisdictional is the *timeliness* of the response filed by the Attorney General. However, we find no legislative intent in the plain language of the statute to make the *timeliness* of the response an essential or critical step in the result of the initiative process.

¶ 29 Our conclusion will not impose any additional burden upon the People to propose initiatives. This is so because (1) the Attorney General concedes that timeliness of his actions may be controlled by mandamus, and (2) as explained herein, we recognize that a proponent’s ninety-day period to collect signatures may commence after a ballot title

³⁷ *In re Initiative Petition No. 379, State Question No. 726*, 2006 OK 89, ¶ 17, 155 P.3d 32, 40.

³⁸ *Gulfstream Petroleum Corp. v. Layden*, 1981 OK 56, 632 P.2d 376, 379 (principle applied to whether entry of a spacing order was a mere procedural step or a mandatory jurisdictional step in the process of entering a pooling order).

appeal in accordance with the plain language and meaning of the ballot title statutes and prior opinions of this Court.

¶ 30 We have stated the general rule that "Those who challenge the validity of actions of public officials apparently within their statutory powers must carry the burden of demonstrating such invalidity."³⁹ Proponents have not met their burden to show that the Attorney General's filing two days late deprived the filing of legal effect. We reject the argument made by Proponents that the time limits for the Attorney General in 34 O.S. §9(D) are jurisdictional. *We hold that the Attorney General's § 9(D) response to a ballot title required by law to be filed within five days from the date the ballot title is filed with the Secretary of State is statutorily effective although the Attorney General's filing is two days late. School District No. 61, Payne County, supra.*

¶ 31 Although we reject Proponents' argument that the five-day time limit for the Attorney General in 34 O.S. § 9(D) is jurisdictional, we must note that an Attorney General may not thwart an initiative by failing to file a response to the filings with the Secretary of State. Counsel for the Attorney General observed in his brief and during oral argument that the proper judicial remedy for a violation of this five-day deadline would be a writ of mandamus to compel a response.⁴⁰ We also note that although the Attorney General

³⁹ *U.C. Leasing, Inc. v. State ex rel. State Bd. of Public Affairs*, 1987 OK 43, 737 P.2d 1191, 1196.

⁴⁰ *Chandler U.S.A., Inc. v. Tyree*, 2004 OK 16, ¶ 24, 87 P.3d 598, 604 ("A typical case for mandamus has five elements: (1) The party seeking the writ has no plain and adequate remedy in the ordinary course of the law, (2) The party seeking the writ possesses a clear legal right to the relief sought, (3) The respondent (defendant) has a plain legal duty regarding the relief sought, (4) The respondent has refused to perform that duty, and (5) The respondent's duty does not involve the exercise of discretion."); *In the Matter of B.C.*, 1988 OK 4, 749 P.2d 542, 544 (Mandamus will not usually control the substantive content of an official's decision within the discretion of that official in the performance of a duty. But when the duty requires an exercise of discretion and the official has not performed, mandamus will issue to require the official to actually exercise the required discretionary act.)

states that mandamus may be used, he also invokes the substantial compliance standard of 34 O.S. § 24.⁴¹

¶ 32 In some circumstances, judicial application of a substantial compliance standard to a duty to take an action within a defined period of time may result in an excused performance within that time period.⁴² Although not *expressly* argued as a syllogism, when his § 24 substantial-compliance-standard argument is combined with his argument that *after receipt* of the ballot title *by the Attorney General* a “full five days” of legal research is needed by the attorney(s) assigned to review a proposed ballot title and file a response with the Secretary of State, he is essentially creating a syllogism with the conclusion that he should be excused from the five-day period for filing a response to a ballot title because factual circumstances prevent him from meeting this deadline. With this conclusion, the Attorney General’s hypothetical mandamus action would not turn on whether the Attorney General had missed the five-day deadline, but whether the Attorney General had sufficient factual reasons for delay past the five-day deadline and only when such reasons were legally insufficient would the writ issue.⁴³ We decline to adopt this view.

¶ 33 There is no suggestion or evidence before us from the Attorney General that fulfilling the duty to file an initial response to a ballot title takes more than five days. We

⁴¹ 34 O.S.2011 § 24: “The procedure herein prescribed is not mandatory, but if substantially followed will be sufficient. If the end aimed at can be attained and procedure shall be sustained, clerical and mere technical errors shall be disregarded.”

⁴² Cf. *City of Tulsa v. Whittenhall*, 1929 OK 122, 282 P. 322 (notice of claim filed on thirty-first day was in substantial compliance with requirement for notice within thirty days because plaintiff was unable to provide notice within the thirty-day period).

⁴³ See the discussion and application of a substantial compliance standard in *Henderson v. Maley*, 1991 OK 8, 806 P.2d 626, as to both (1) the issues in that controversy and (2) the standard applied in a prohibition proceeding, *Looney v. County Election Board of Seminole County*, 1930 OK 461, 293 P. 1056. *Henderson*, 806 P.2d at 630, 632.

assume that a Secretary of State will act in good faith and perform his or her duty and provide a copy of ballot title to an Attorney General immediately upon its filing. *Berryman v. Bonaparte, supra*. We also assume that an Attorney General will act in good faith and perform his or her duty and file a timely response to any ballot title filing with the Secretary of State. *Id.*

¶ 34 We agree with that part of the Attorney General's statement that the statutory role of the Attorney General in drafting a ballot title does not place him in the usual and ordinary adversarial posture that occurs in a litigation context, or provide him with a public platform to express political views. He represents all of the People in the context of either approving a ballot title written by others or providing one which he authors. The purpose of a ballot title along with the gist appearing on a signature page is to prevent deceit and fraud in the initiative process.⁴⁴ We agree with the Attorney General that he is required by statute to be made a defendant if anyone timely objects to a proposed ballot title,⁴⁵ and he must defend a ballot title, either one prepared by a proponent which he approved and did not alter, or one he authored and substituted for the initial title. His filing a response to the ballot title is an important step in the process of the initiative to help prevent deceit and fraud, and that filing should not be made ineffective in the absence of legislative intent requiring that result.

¶ 35 Ideally, in this limited role as a legal advisor to the People, the Attorney

⁴⁴ *In re Initiative Petition No. 363, State Question No. 672*, 1996 OK 122, 927 P.2d 558, 567 (The terms of § 3 require that the petition contain a simple statement of the gist of the proposition, which is in contrast to § 9 which provides that the ballot title, in no more than 150 words, explain the effect of the proposition: "The purpose of these two statutes is to prevent fraud, deceit or corruption in the initiative process.").

⁴⁵ 34 O.S.2011 § 11 quoted *infra* at ¶ 37.

General is not merely reactive to a particular proponent of an initiative who fails to provide him with statutorily required notice, or merely reactive to a particular Secretary of State who selects a means of notice to the Attorney General that is less than immediate. But rather, that he takes positive action for a quick review of the ballot title once it is filed with the Secretary of State and he has notice of its filing. Ideally, a proponent of an initiative and a Secretary of State would provide the Attorney General with the types of notice which the statutes require and the Attorney General needs. We are confident that proponents of initiatives, the Secretary of State, and the Attorney General will work together in the future to avoid the procedural issues which are a large part of this controversy.

II. Burden of Proof and Standard of Review

Proponents claim that in a ballot title appeal the Attorney General bears the burden of proof to show that a ballot title proposed by Proponents did not satisfy legal requirements.

¶ 36 Any person who is dissatisfied with the wording of ballot title for an initiative petition may bring a proceeding in this Court pursuant to 34 O.S. § 10.⁴⁶ The Attorney General is required to “defend the ballot title from which the appeal is taken.”⁴⁷ Oklahoma Supreme Court Rule 1.194 provides that an objection to an initiative petition is commenced in the Supreme Court and the controversy proceeds in accordance with the procedures set out in 34 O.S. § 8. It further states that the proceeding shall be treated as an original

⁴⁶ See 34 O.S.2011 § 10 (A) quoted *infra* at ¶ 37.

⁴⁷ See 34 O.S.2011 § 11 quoted *infra* at ¶ 37.

action, and that the parties shall be afforded a trial *de novo*.⁴⁸ The procedure for an appeal of a ballot title is the same for proceedings challenging the petition when no statutory conflict necessarily exists between the statutes for the two types of proceedings.⁴⁹

¶ 37 Generally, statutes on the same subject matter are viewed *in pari materia* and construed together as a harmonious whole giving effect to each provision.⁵⁰ However, we need not rely on this principle as a rule of statutory construction because the plain language of 34 O.S. §§ 8, 9, 10 and 11 make express reference to each other and expressly require that the statutes be construed and applied together. For example:

B. It shall be the duty of the Secretary of State to cause to be published, in at least one newspaper of general circulation in the state, a notice of such filing and the apparent sufficiency or insufficiency of the petition. *Such publication shall include the text of the ballot title as reviewed or, if applicable, as rewritten, by the Attorney General pursuant to the provisions of subsection D of Section 9 of this title, and shall include notice that any citizen or citizens of the state may file a protest as to the constitutionality of the petition, by a written notice to the Supreme Court and to the proponent or proponents filing the petition, or as to the ballot title as provided in Section 10 of this title. Any such protest must be filed within ten (10) days after publication. A copy of the protest shall be filed with the Secretary of State.*

34 O.S.2011 § 8(B) (emphasis added).

⁴⁸ Oklahoma Supreme Court Rule 1.194:

" Proceedings to protest or to object to initiative and referendum petitions.

Proceedings in the Supreme Court to determine protests or objections to initiative and referendum petitions shall be commenced and proceed in accordance with the procedures set out in 34 O.S. § 8.

The proceeding shall be treated as an original action and the parties shall be afforded a trial *de novo*. *In re Initiative Petition 281, State Ques. No. 441*, 1967 OK 230, 434 P.2d 941. If factual issues are raised, the Court may assign the matter to a referee.

The Court may issue directions when the procedure is not set out in 34 O.S. § 8, in this Rule, or in Part VI of these Rules."

⁴⁹ 34 O.S.2011 § 11, states in part that: "... Other procedure upon such appeals shall be the same as is prescribed for appeals from petitions filed as set forth in Section 8 of this title."

⁵⁰ *Tyler v. Shelter Mut. Ins. Co.*, 2008 OK 9, ¶ 1, 184 P.3d 496. See also *Taylor v. State Farm Fire and Cas. Co.*, 1999 OK 44, ¶ 19, 981 P.2d 1253, 1261 (All legislative enactments *in pari materia* are to be interpreted together as forming a single body of law that will fit into a coherent symmetry of legislation.).

A. Any person who is dissatisfied with the wording of a ballot title may, within ten (10) days after the same is published by the Secretary of State *as provided for in subsection B of Section 8 of this title*, appeal to the Supreme Court by petition in which shall be offered a substitute ballot title for the one from which the appeal is taken. Upon the hearing of such appeal, the court may correct or amend the ballot title before the court, or accept the substitute suggested, or may draft a new one which will conform to the provisions of Section 9 of this title.

34 O.S.2011 § 10 (A) (emphasis added).

Notice of the appeal *provided for in the preceding section* shall be served upon the Attorney General and upon the party who filed such ballot title, or on any of such parties, at least five (5) days before such appeal is heard by the court. The Attorney General shall, and any citizen interested may, defend the ballot title from which the appeal is taken. *Other procedure upon such appeals shall be the same as is prescribed for appeals from petitions filed as set forth in Section 8 of this title.*

34 O.S.2011 § 11 (emphasis added).

The plain language in these statutes requires applying them together as a whole because:

(1) § 8 refers to the Attorney General's ballot title in § 9 and an appeal with reference to § 10; (2) § 10 refers to both §§ 8 and 9 for application of § 10; and (3) § 11 refers to the appeal "provided for in the preceding section," (*i.e.*, § 10), and then incorporates consistent § 8 procedure for initiative appeals into the procedure for a ballot title appeal by using the phrase, "Other procedure upon such appeals shall be the same as is prescribed for appeals from petitions filed as set forth in Section 8 of this title." Section 9 refers to the requirements for a ballot title and the procedure for a ballot title prepared by the Attorney General, and it provides that if an appeal is taken from a ballot title within the time specified in Section 10 of this title, then the Secretary of State shall certify to the Secretary of the State Election Board the ballot title which is finally approved by the Supreme Court. 34 O.S. 2011 § 9 (D) (2). These statutes clearly and plainly provide that any person who is dissatisfied with the ballot title may file an appeal in this Court, the Attorney General

defends the action, the procedure for a ballot title appeal is governed by the specific statutes for such, and then additional consistent procedures from initiative appeals are incorporated into ballot title appeals by 34 O.S. § 11.

¶ 38 Proponents argue that the Attorney General has failed to meet his burden of proof in this proceeding. They argue that the Attorney General must meet the burden of showing that the ballot title proposed by Proponents is legally insufficient. We disagree with the conclusion made by Proponents.

¶ 39 Generally, the party invoking a court's judicial discretion with a request for judicial relief must satisfy the applicable burden for the relief sought. A burden to present facts, claims and legal arguments falls on the party who asserts an entitlement to the judicial relief sought.⁵¹ An appeal of a ballot title is prosecuted using the Court's original jurisdiction.⁵² In an original jurisdiction proceeding a petitioner has the burden to produce facts in support of a claim,⁵³ as well as a burden to present legal issues with supporting authority.⁵⁴ In the present context, the burden on Proponents is to raise legal issues in a

⁵¹ *State of Oklahoma, ex rel. State Insurance Fund v. Great Plains Center, Inc.*, 2003 OK 79, ¶ 29, 78 P.3d 83, 92. See *Colton v. Huntleigh USA Corp.*, 2005 OK 46, ¶ 10, 121 P.3d 1070, 1073 (The burden to show any particular fact or claim rests upon the party asserting such fact or claim as part of that party's action or defense). The phrase "burden of proof" is often used to refer to both (1) a burden of persuasion (which is a duty or obligation of establishing in the mind of the trier of fact a conviction on the ultimate issue), and (2) a burden to produce evidence in support of a party's claim or an affirmative defense. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 272-275, 114 S.Ct. 2251, 129 L.Ed.2d 221 (1994); *Johnson v. Board of Governors of Registered Dentists of the State of Okla.*, 1996 OK 41, n. 3, 913 P.2d 1339, 1350 (Opala, J., with Kauger, V.C.J. Concurring).

⁵² Oklahoma Supreme Court Rule 1.194, note 48, *supra*.

⁵³ *Powers v. District Court of Tulsa County*, 2009 OK 91, n. 23, 227 P.3d 1060, 1070.

⁵⁴ *S. W. v. Duncan*, 2001 OK 39, ¶ 31, 24 P.3d 846, 857 (in an original jurisdiction proceeding need not consider a claim that is unsupported by convincing argument or authority unless the claim is facially apparent without the need for legal research). See also *In re Initiative Petition No. 249, State Question 349*, 1950 OK 238, 222 P.2d 1032, 1034 (pursuant to 34 O.S.1941 § 8 in an initiative petition appeal the hearing (continued...))

procedurally proper manner and show those facts in a procedurally proper manner which are necessary to support the legal issues Proponents raise.

¶ 40 When an Attorney General changes a ballot title, the ballot title written by the Attorney General becomes *the ballot title* for that initiative unless the title is altered on an appeal to this Court. The Attorney General's ballot title is the one "from which the appeal is taken." 34 O.S. § 10. The party bringing an appeal shall file a "petition in which shall be offered a *substitute* ballot title." *Id.* In the present case, it is the ballot title filed by the Attorney General which is the ballot title of the initiative, unless changed on appeal. The Court has accepted a ballot title written by an Attorney General when the Court could not conclude that the text for the ballot title was "clearly contrary" to the command of statutory law.⁵⁵ We have stated, "Where the title submitted by the Attorney General is found sufficient it is generally approved and utilized regardless of the sufficiency of those submitted by other parties."⁵⁶ The burden is on Proponents to show that the ballot title prepared by the Attorney General is clearly contrary to either statutory law or the Oklahoma Constitution.

III. The Attorney General's Ballot Title

Proponents claim that the ballot title prepared by the Attorney General violates statutory law and displays partiality.

⁵⁴(...continued)
in this Court is a trial *de novo* in which the burden rests upon the protestant to establish that party's various contentions).

⁵⁵ *In re Initiative Petition No. 363, State Question 672*, 1996 OK 122, 927 P.2d 558, 571.

⁵⁶ *In re Initiative Petition No. 347, State Question No. 639*, 1991 OK 55, 813 P.2d 1019, 1032.

¶ 41 Petitioners' initially proposed ballot title, now the substitute ballot title offered on appeal, states as follows:

This measure amends the Oklahoma Constitution. It adds a new section 44 to Article 10. Bonds could be sold. Up to Five Hundred Million Dollars (\$500,000,000.00) could be available. Bond money would be used for school districts and career technology districts. Bond money would be used for storm shelters or secure areas. State franchise taxes would repay these bonds. If money from franchise tax was not enough, the Legislature could use the General Revenue Fund to repay the bonds. State bond money could be used by school districts or career technology districts to reduce local debt or eliminate local debt incurred for storm shelters or secure areas. If enough money from franchise tax remains after state bonds are paid for, the balance of franchise tax could be used for grants for storm shelters for people and businesses. When state bonds are paid off, additional bonds could be sold to keep the programs funded. Laws would be written for details about using bond money. State agencies could make rules about state bond money. These rules would have the effect of law. The Oklahoma State Constitution is being amended to allow state bond money to pay for shelters and secure areas in schools.

¶ 42 The current ballot title for the initiative, the ballot title prepared by the Attorney General, states as follows:

This measure adds Article 10, Section 44 to the Oklahoma Constitution. The new section authorizes the issuance of up to 500 million dollars in State bonds. The bond money would be used by local school districts and career technology districts for storm shelters and campus security.

The measure does not provide for new State revenues to pay for the bonds. Under the measure the State franchise tax revenues would no longer go into the General Revenue Fund, which is the primary fund used to pay for State Government. Rather, franchise taxes revenues would be used for annual bond payments (principal and interest).

In any year in which the franchise tax revenues are not sufficient to make annual payments, the Legislature, at its discretion, could use General Revenue Fund monies to make the annual bond payment.

In years in which not all the franchise tax revenues are needed to make payments, the remaining franchise tax revenues – with Legislative approval – could be used for storm shelter grants to individuals and businesses.

In authorizing these bond and grant programs, the measure creates

exceptions to the Constitution's prohibitions on gifts and the use of the state's credit.

¶ 43 A ballot title has six basic requirements set forth in 34 O.S. § 9 (B). A suggested ballot title:

1. Shall not exceed two hundred (200) words;
2. Shall explain in basic words, which can be easily found in dictionaries of general usage, the effect of the proposition;
3. Shall not contain any words which have a special meaning for a particular profession or trade not commonly known to the citizens of this state;
4. Shall not reflect partiality in its composition or contain any argument for or against the measure;
5. Shall contain language which clearly states that a "yes" vote is a vote in favor of the proposition and a "no" vote is a vote against the proposition; and
6. Shall not contain language whereby a "yes" vote is, in fact, a vote against the proposition and a "no" vote is, in fact, a vote in favor of the proposition.

34 O.S.2011 § 9 (B), in part.

¶ 44 Proponents' arguments against the Attorney General's ballot title are that it is legally incorrect and displays partiality. In their original brief the only argument challenging the ballot title is that it "is designed to over emphasize the franchise tax issue and under emphasize the true purpose of the Initiative which is storm shelters and secure areas for schools and children . . . The proposal from the Attorney General is misleading, confusing and will not help the average voter when he or she votes." Their Supplemental Brief makes the following four arguments against the ballot title.

1. The second paragraph shows partiality because it makes an argument against the proposition because it states that no new revenues are raised to pay for the bonds;
2. The second paragraph shows partiality because it suggests potential harm to the General Revenue Fund since it states that the franchise tax revenue will not be deposited to that fund;
3. The second paragraph is legally incorrect because by the time the Proposed Measure is adopted the Legislature could direct franchise taxes to some fund

other than the General Revenue Fund; and

4. "The last paragraph is legally incorrect since passage of the measure amends to [sic] Constitution to provide for such."

These first three arguments object to ¶ 2 of the title which states that:

The measure does not provide for new State revenues to pay for the bonds. Under the measure the State franchise tax revenues would no longer go into the General Revenue Fund, which is the primary fund used to pay for State Government. Rather, franchise taxes revenues would be used for annual bond payments (principal and interest).

¶ 45 Proponents object to the first sentence and state that it reflects partiality. The sentence: "The measure does not provide for new State revenues to pay for the bonds" is factually correct, as the measure states that the franchise tax in "section 1201 et seq. of Title 68" will be used to pay the bond obligation.

¶ 46 During oral argument before the Court *en banc*, Proponents refined this argument and used the language in the first sentence and the mention of "franchise tax" in more than one place in the ballot title as evidence of partiality. In other words, they argued that the Attorney General overemphasized use of the franchise tax, and it is this overemphasis which shows partiality.

¶ 47 The proposed measure contains the following language.

E. The Legislature shall provide by law *for the apportionment of the revenues currently derived from the levy of the franchise tax* imposed for the privilege of doing business in this state as authorized pursuant to Section 1201 et seq. of Title 68 of the Oklahoma Statutes, as amended, *so that one hundred percent (100%) of such franchise tax revenue, or so much thereof as may be required on an annual basis, is dedicated for the repayment of the obligations* issued pursuant to the provisions of this section.

F. The Legislature may provide by law *for the use of revenues derived from the levy of franchise tax* which are not required for repayment of

obligations issued pursuant to the provisions of this section in order to provide a grant program for construction of storm shelters for individuals and business entities. Such program shall be administered by the Office of Emergency Management or its successor. The use of *franchise tax revenues* for storm shelters as authorized by this subsection shall be deemed in furtherance of a public purpose and shall not be deemed a gift of state tax revenues.

G. *If the revenues described by subsection E of this section are insufficient to repay the obligations pursuant to the provisions of this section, the Legislature may use monies in the General Revenue Fund of the state not otherwise obligated, committed or appropriated in order to ensure the repayment of such obligations.*

Two paragraphs of this proposed measure expressly refer to the franchise tax and one refers to "the revenues" which is a reference to revenue from the franchise tax. A ballot title shall explain the effect of a proposition. 34 O.S. § 9 (B) (2). We may summarize the effect of these paragraphs and enumerate the references in the measure to franchise tax revenue as follows:

In paragraph "E"

(1) The Legislature shall provide by a legislative apportionment that 100% (or so much as is needed) of the franchise tax revenue is dedicated to repayment of certain obligations.

In paragraph "F"

(2) The Legislature may use amounts from the franchise tax revenue that are not necessary for repayment of certain obligations for a grant program for construction of storm shelters for individuals and business entities.

(3) The use of franchise tax revenues for storm shelters as authorized by this subsection shall be deemed in furtherance of a public purpose and shall not be deemed a gift of state tax revenues.

In paragraph "G"

(4) *If the revenues described by subsection E of this section [i.e., franchise tax revenues] are insufficient to repay the obligations pursuant to the provisions of this section, the Legislature may use monies in the General*

Revenue Fund

In the proposed measure there are three express references to the franchise tax revenue and one grammatical reference, or a total of four references. In the Attorney General's ballot title there are five references to the franchise tax revenue that are used to explain the four references we have identified in the proposed measure. We also note that the phrase "franchise tax(es)" expressly appears four times in Proponent's proposed ballot title.

¶ 48 The difference of one reference is attributed to the sentence in the Attorney General's ballot title which states that "Under the measure State franchise tax revenues would no longer go into the General Revenue Fund, which is the primary fund used to pay for State Government." The proposed measure does refer to the General Revenue Fund in paragraph "G" of the measure but without giving a definition for "General Revenue Fund." This reference to the Fund in the proposed measure, as well as the express reference to the Fund in Proponent's substitute title, are not references to the franchise tax revenue going into the Fund prior to an enactment of the measure.

¶ 49 In one case we stated that a single sentence may express partiality and be argumentative, if when explaining a proposed measure it also includes what *other states* have done *or might do* with a proposal similar to that to be voted on by the citizens in Oklahoma.⁵⁷ For the purpose of examining partiality in a ballot title, we noted the difference between a ballot title stating what other States *might* do and what the proposed Oklahoma measure *would do under then current law*.⁵⁸ In this circumstance, the

⁵⁷ *In re Initiative Petition No. 360, State Question No. 662*, 1994 OK 97, 879 P.2d 810, 820.

⁵⁸ *In re Initiative Petition No. 360*, 1994 OK 97, 879 P.2d at 819.

possibility of what voters in other states would do was considered to be beyond the legal effect or legal scope of the proposed measure; *i.e.*, it amounted to a policy argument and not a statement of a legal effect created by the enactment of the proposed measure.

¶ 50 A similar issue arose in another case where we discussed legal effect and noted that a portion of a ballot title was misleading. The misleading nature of language in the title was not because the title expressed something as a legal effect when it was a contingency, but because the title did not explain the correlation between the contingency and the legal effect of the measure.⁵⁹

¶ 51 Current law states that the franchise tax shall be deposited into the General Revenue Fund.⁶⁰ Proponents do not dispute that the General Revenue Fund is the primary fund used to pay for state government.⁶¹ While the measure does not state that the current franchise tax is paid into the General Revenue Fund, and the measure does not define

⁵⁹ *In re Initiative Petition No. 363*, 1996 OK 122, 927 P.2d at 569.

⁶⁰ 68 O.S.2011 § 1203, states in part that: "There is hereby levied and assessed a franchise or excise tax upon every corporation, association, joint-stock company and business trust organized under the laws of this state"

68 O.2011 § 1208 (A) & (B):

"A. It is hereby declared to be the purpose of Section 1201 et seq. of this title to provide for revenue for general governmental functions of the State of Oklahoma.

B. All monies collected under Section 1201 et seq. of this title shall be transmitted monthly to the State Treasurer of the State of Oklahoma to be placed to the credit of the General Revenue Fund of the state, to be paid out only pursuant to direct appropriations of the Legislature."

⁶¹ *See, e.g.*, Okla. Const. Art. 10 § 23:

"To ensure a balanced annual budget, pursuant to the limitations contained in the foregoing, procedures are herewith established as follows:

1. Not more than forty-five (45) days or less than thirty-five (35) days prior to the convening of each regular session of the Legislature, the State Board of Equalization shall certify the total amount of revenue which accrued during the last preceding fiscal year to the General Revenue Fund and to each Special Revenue Fund appropriated directly by the Legislature, and shall further certify amounts available for appropriation

4. Surplus funds or monies shall be any amount accruing to the General Revenue Fund of the State of Oklahoma over and above the itemized estimate made by the State Board of Equalization. . . ."

“General Revenue Fund,” one effect from the proposed measure is clearly to change the franchise tax revenue from deposit into the Fund to a dedicated purpose of funding the construction of storm shelters. Proponents argue that “[w]here the revenue of the franchise tax is currently being deposited is irrelevant and has no impact as to the legal correctness of the ballot title as it does not matter where such revenue is deposited since the petition would direct that the revenue from the franchise tax be used to repay the bond debt.” Section 9(B) expressly states that the ballot title: “Shall explain in basic words, which can be easily found in dictionaries of general usage, the effect of the proposition.” 34 O.S. § 9(B)(2). Since (1) the franchise tax is currently being collected and being used for one use (deposited in the General Revenue Fund) and the measure states a new use for the tax (to pay for bonds), and (2) one purpose of a ballot title is to explain the effect of a proposed measure with reference to current law, the Attorney General did not impermissibly explain that funds currently being deposited in one fund will be used for a different purpose. We do not find the one additional reference to the franchise tax and the definition of the General Revenue Fund to be argumentative or displaying partiality.

¶ 52 A ballot title shall not exceed two hundred words, 34 O.S. § 9(B)(1). We do not view the use of five references to the franchise tax as opposed to four to be excessive to the point of displaying partiality when the Attorney General is attempting to summarize a measure in less than two hundred words and uses grammatical shortcuts to achieve this goal.

¶ 53 Stating that funds currently deposited in one fund will be used for a different purpose does not, by itself, state that a “harm” will occur to that fund. The claim that the title is contrary to law because the Legislature could change the state fund where franchise

taxes are deposited, or change their use prior to a vote on the proposed measure, is a claim simply without merit. The ballot title is required to state its effect on current law. While it is certainly possible that a Legislature could create a law with an effective date sufficiently in the future so as to have an impact upon an initiative petition, Proponents have pointed to no law which has been created for a future effective date that would alter the proposed measure's legal effect.

¶ 54 Proponents object to the last paragraph of the Attorney General's ballot title and argue that it is legally incorrect. The last paragraph states: " In authorizing these bond and grant programs, the measure creates exceptions to the Constitution's prohibitions on gifts and the use of the state's credit." Their objection is that passage of the measure itself provides for amending the Constitution.

¶ 55 We note that while Proponents' substitute title does not mention gifts or the state's credit, the proposed measure states in paragraph "F" that the use of the franchise tax for the storm shelters as authorized by this subsection "... shall not be deemed a gift of state tax revenues" and in paragraph "M" the measure states that:

The proceeds from the sale of obligations issued pursuant to the provisions of this section may be made available to any common school district or any career technology district for the purposes authorized by this section and enabling legislation enacted pursuant to this section notwithstanding any other provision of the Oklahoma Constitution that would otherwise prohibit or restrict the use of such proceeds or the use of tax revenue for the repayment of principal, interest, reserves, issuing costs or other costs related to the sale of the obligations authorized by this section. Any provision of the Oklahoma Constitution that would otherwise restrict the use of tax revenues for repayment of the obligations or in any way restrict the operation of the provisions of this section shall be deemed to have been amended in order to remove any such restrictions.

Proponents argue that the proposed measure states that the Constitution "is amended,"

and their substitute ballot title states that “ The Oklahoma State Constitution is being amended to allow state bond money to pay for shelters and secure areas in schools.” The Attorney General argues that while bond money is to be used to pay for shelters, the proposed measure also enacts a means or method for attaining this goal or ultimate purpose, and that means is achieved by amending the Constitution and creating exceptions to the Constitution's prohibitions on gifts and the use of the state's credit. Proponents' have not demonstrated that the Attorney General has incorrectly stated the legal effect of the measure on this point.

¶ 56 Proponents also argue that the Attorney General makes a claim that “there may not be any funds available to pay the bond holders,” and Proponents argue that the statement “. . . is false, so this false statement is irrelevant to the legal correctness of the ballot title as submitted by the Petitioners.” The Attorney General's ballot title does not contain this language. The actual statement in the ballot title is: “In any year in which the franchise tax revenues are not sufficient to make annual payments, the Legislature, at its discretion, could use General Revenue Fund monies to make the annual bond payment.” The actual statement in the proposed measure states that:

G. If the revenues described by subsection E of this section are insufficient to repay the obligations issued pursuant to the provisions of this section, the Legislature may use monies in the General Revenue Fund of the state not otherwise obligated , committed or appropriated in order to ensure the repayment of such obligations.

The language in the Attorney General's ballot title summarizes this language in the proposed measure and is not misleading.

¶ 57 Proponents argue that the Attorney General's ballot title creates doubt whether the Legislature is required to repay the bond obligations. Again the actual

provision of the Attorney General's ballot title states that: "In any year in which the franchise tax revenues are not sufficient to make annual payments, the Legislature, at its discretion, could use General Revenue Fund monies to make the annual bond payment." Again, this language summarizes paragraph "G" of the measure and is not misleading. The Attorney General correctly indicates that the Legislature could use funds from the General Revenue Fund or from another source to repay the bond obligations. Paragraph "G." of the proposed measure states that ". . . the Legislature *may* use monies in the General Revenue Fund of the state" (emphasis added). The Attorney General's ballot title language is not a false statement.

¶ 58 Proponents state that the ballot title reflects partiality because it states that franchise taxes will not be paid into the General Revenue Fund. The substitute ballot title *by Proponents* discusses a relationship between the franchise tax and the General Revenue Fund: "If money from franchise tax was not enough, the Legislature could use the General Revenue Fund to repay the bonds." Proponents challenge the *meaning* of language on a point which they have in their substitute ballot. The Attorney General's language explains the effect of the proposition, and under current law, is factually correct. This objection is without merit.

¶ 59 If the Attorney General's text for the ballot title is not "clearly contrary" to the command of statutory law, then his ballot title is accepted and the Court need not examine Petitioners' substitute ballot. A ballot title must reflect the character and purpose of the measure and it must not be deceptive or misleading, and it must also be free from

uncertainty and ambiguity.⁶² We have stated that: “The test is whether the title is couched in such a way that voters are afforded an opportunity to fairly express their will, and whether the question is sufficiently definite to apprise voters with substantial accuracy what they are asked to approve.”⁶³

¶ 60 Nothing in Proponents’ arguments show where the Attorney General’s ballot title fails to state the legal effect of the proposed measure under current law. Further, we conclude that the Attorney General’s proposed ballot title fulfills the requirements of 34 O.S.2001 § 9, because it accurately reflects the effects of the proposed amendment to the State Constitution by informing the electorate concerning the principle thrust of the proposition; *i.e.*, to fund the construction of storm shelters by using franchise tax revenues, bonds, and other resources within the discretion of the Legislature.

IV. Request for Time to Collect Signatures

Proponents request additional time to collect signatures, or in the alternative a new ninety-day period to collect signatures.

¶ 61 In their Supplemental Brief, Proponents cite 34 O.S. § 8(E) and request an additional ninety (90) days to collect signatures, and they make a more developed argument in their Reply Brief where they rely upon *In re Initiative Petition No. 315, State Question No. 553*, 1982 OK 15, 649 P.2d 545, 553 and 34 O.S. § 9 (D) and a former version of 34 O.S. § 8.

¶ 62 *In re Initiative Petition No. 315, supra*, states that “The 90-day period for

⁶² *In re Initiative Petition No. 360, State Question No. 662*, 1994 OK 97, 879 P.2d 810, 818.

⁶³ *In re Initiative Petition No. 360*, 1994 OK 97, 879 P.2d at 818.

circulation does not begin until the proposed title has been reviewed by the Attorney General, the 10-day appeal period has expired, and any appeals timely filed, exhausted.” 649 P.2d at 553. The Attorney General argues that: (1) When *In re Initiative Petition No. 315, State Question No. 553, supra*, was decided the ballot title was *part of the petition* that was submitted to the Attorney General, (2) The ballot title is no longer *part of the petition* submitted to the Attorney General, and (3) The language in *In re Initiative Petition No. 315*, is no longer good law on this point.

¶ 63 The Attorney General's argument may be summarized as stating that the correctness of a ballot title need not be settled prior to collection of signatures because (1) the ballot title is not part of the petition when it is submitted to the Attorney General, (2) §§ 9 & 10 do not expressly delay collecting signatures until after a ballot title appeal has been settled, and (3) the petition and the gist of the measure on the signature page sufficiently inform the voters of the proposed measure.

¶ 64 Three bodies of text must be identified: (1) the petition, (2) the gist of the petition which appears on a signature page, and (3) the ballot title, which may, or may not be part of the petition for certain purposes (as we hold today). We have explained that both the gist and the ballot title work together to prevent fraud in the initiative process.⁶⁴ A petition has “an exact copy of the title and text of the measure inserted.”⁶⁵ The petition

⁶⁴ *In re Initiative Petition No. 363, State Question No. 672*, 1996 OK 122, 927 P.2d 558, 567 (The terms of § 3 require that the petition contain a simple statement of the gist of the proposition, which is in contrast to § 9 which provides that the ballot title, in no more than 150 words, explain the effect of the proposition: “The purpose of these two statutes is to prevent fraud, deceit or corruption *in the initiative process.*”) (emphasis added).

⁶⁵ 34 O.S.2011 § 2 states in part that: “The question we herewith submit to our fellow voters is: Shall the following bill (or proposed amendment to the Constitution or resolution) be approved? (Insert here an exact (continued...))

and signature sheets together make a pamphlet, and each signature sheet is attached to a copy of the petition and has a gist of the measure on each signature page.⁶⁶ If “the title” referred to in § 2 that is to be included as part of the circulated petition is not the correct “ballot title,” and the correct ballot title need not be included on the circulated petition pamphlet, as indicated by the Attorney General, then one purpose of a ballot title in limiting fraud, deceit, and corruption in the initiative process would be severely limited.

¶ 65 The Attorney General correctly observes that the ballot title is treated as separate from the initiative petition in 34 O.S. § 9. The ballot title is also treated as part of the petition in 34 O.S. § 2. Giving effect to both of these provisions means that the ballot title is not part of the petition for the purpose of a ballot title appeal, but a ballot title is part of the initiative petition in 34 O.S. § 2, and thus part of the petition that is duplicated for securing signatures in 34 O.S. § 3.

¶ 66 Section 9(D)(1) clearly provides for filing the ballot title with the Secretary of State prior to collecting signatures. If an appeal is taken from the ballot title, then the Secretary of State certifies to the Secretary of the State Election Board the ballot title that is “finally approved by the Supreme Court.” 34 O.S. § 9(D)(2).

⁶⁵(...continued)
copy of the title and text of the measure.)”

⁶⁶ 34 O.S.2011 § 3 (emphasis added):
“*Each initiative petition and each referendum petition shall be duplicated for the securing of signatures, and each sheet for signatures shall be attached to a copy of the petition. Each copy of the petition and sheets for signatures is hereinafter termed a pamphlet. On the outer page of each pamphlet shall be printed the word “Warning”, and underneath this in ten-point type the words, “It is a felony for anyone to sign an initiative or referendum petition with any name other than his own, or knowingly to sign his name more than once for the measure, or to sign such petition when he is not a legal voter”. A simple statement of the gist of the proposition shall be printed on the top margin of each signature sheet. Not more than twenty (20) signatures on one sheet on lines provided for the signatures shall be counted. Any signature sheet not in substantial compliance with this act shall be disqualified by the Secretary of State.*”

¶ 67 Section 8(E) provides in part that:

- E. Within ninety (90) days after such filing of an initiative petition or determination of *the sufficiency of the petition* by the Supreme Court as provided in this section, *whichever is later*, the signed copies thereof shall be filed with the Secretary of State,

34 O.S.2011 § 8(E), in part, emphasis added.

Proponents argue that “sufficiency of the petition” should include determination of a proper ballot title. While we agree that § 8(E) applies to a ballot title appeal and that the 90-day period to collect signatures commences after the ballot title appeal, our reasons are not those of Proponents.

¶ 68 The Attorney General is correct that the statutory scheme distinguishes a protest challenging the sufficiency of a petition from a protest (or appeal) of the ballot title, and this distinction is expressly made in § 8(B) where the separate authority for an appeal of the ballot title in § 10 is noted.⁶⁷

. . . notice [shall include] that any citizen or citizens of the state may file a *protest as to the constitutionality of the petition*, by a written notice to the Supreme Court and to the proponent or proponents filing the petition, *or as to the ballot title as provided by Section 10* of this title. . . .

34 O.S.2011 § 8(B), in part, and emphasis added.

The Attorney General also argues that a “petition” does not include the ballot title, because a “ballot title” is submitted on a separate piece of paper “and shall not be deemed part of

⁶⁷ 34 O.S.2011 § 10 (A):

“A. Any person who is dissatisfied with the wording of a ballot title may, within ten (10) days after the same is published by the Secretary of State as provided for in subsection B of Section 8 of this title, appeal to the Supreme Court by petition in which shall be offered a substitute ballot title for the one from which the appeal is taken. Upon the hearing of such appeal, the court may correct or amend the ballot title before the court, or accept the substitute suggested, or may draft a new one which will conform to the provisions of Section 9 of this title.”

the petition.” 34 O.S.2011 § 9(B).⁶⁸ Two responses to this argument by the Attorney General are necessary. First, even with a statutory distinction between appeals on a ballot title and appeals on the legal sufficiency of a petition, one statute *for a ballot title appeal* states that the procedures which are part of a 34 O.S. § 8 appeal on a petition are also applicable to a ballot title appeal.

Notice of the appeal provided for in the preceding section shall be served upon the Attorney General and upon the party who filed such ballot title, or on any of such parties, at least five (5) days before such appeal is heard by the court. The Attorney General shall, and any citizen interested may, defend the ballot title from which the appeal is taken. *Other procedure upon such appeals shall be the same as is prescribed for appeals from petitions filed as set forth in Section 8 of this title.*
34 O.S.2011 § 11, emphasis added.

The procedure in § 8(E)⁶⁹ states that signatures will not be collected until after a protest to a petition is finally determined. There is no express provision in the ballot title statutes for the ninety-day signature collection period as occurring either during or after a ballot title appeal. We thus hold that § 8(E) procedure for collecting signatures in a ninety-day period at the conclusion of a protest to a petition is also applicable to a ballot title appeal.

¶ 69 We also note that the Attorney General correctly identifies three types of legal proceedings involving initiative petitions: (1) protest to the constitutionality of the petition [§ 8 (B) proceeding], (2) protest to the ballot title [§§ 8(B) & 10 proceeding], and (3) an objection to the signature count [§ 8(H) proceeding]. The approach to these

⁶⁸ 34 O.S.2011 § 9(B) states in the first sentence of the paragraph: “The parties submitting the measure shall also submit a suggested ballot title which shall be filed on a separate sheet of paper and shall not be deemed part of the petition.”

⁶⁹ 34 O.S.2001 § 8 (E) states in part:
“Within ninety (90) days after such filing of an initiative petition or determination of the sufficiency of the petition by the Supreme Court as provided in this section, whichever is later, the signed copies thereof shall be filed with the Secretary of State”

proceedings taken by the Attorney General would result in different times to commence collecting signatures based upon whether a protest to a petition was combined with a ballot title protest. According to the Attorney General, if only a ballot title protest is filed, then the 90-day period is not stayed pending resolution of the ballot title appeal. On the other hand, if a protest to the petition is combined with a ballot title protest, then the 90-day period does not commence until the protest to the petition is determined, which may or may not be the same date the Court decides the ballot title appeal; but in any event the date of any judicial decision(s) for commencing the ninety-day period would be different than for a ballot title. The last sentence of 34 O.S. § 11 requires more uniformity in procedure than that suggested by the Attorney General. The second response we have to the argument by the Attorney General is that the ballot title, that is the correct ballot title, must be part of the petition which in turn is part of the circulated pamphlet.⁷⁰ A correct ballot title on the face of the initiative petition which is used during collection of signatures helps to prevent fraud and deceit in the initiative process.

¶ 70 A proponent has ninety days to collect signatures and file them with the Secretary of State. 34 O.S. § 8(E), and 34 O.S.2011 § 4.⁷¹ The Attorney General is correct that a proponent gets *only one* 90-day period to collect signatures. Because of 34 O.S. §§ 2, 3, 8(E) and 11, the ninety-day period *commences* or *begins* for Proponents herein in accordance with our holding in *In re Initiative Petition No. 315, supra*, where we stated that when a ballot title appeal has occurred the time to collect signatures *does not begin until*

⁷⁰ 34 O.S.2011 §§ 2, 3 *supra*, at notes 65 and 66.

⁷¹ Additional signature sheets "shall not be accepted [by the Secretary of State] after 5:00 p.m. on the ninetieth day." 34 O.S.2011 § 4, explanatory phrase added.

completion of that appeal. *Id.* 649 P.2d at 553.

V. Conclusion and Rehearing

¶ 71 *We hold that:* 1. A proponent of an initiative petition must file or submit a copy of the initiative petition and a copy of the ballot title to the Attorney General when the proponent files the initiative petition and ballot title with the Secretary of State, 34 O.S. § 9 (A) & (B); 2. The Attorney General must file a response to a ballot title within five business days from the date the ballot title is filed with the Secretary of State, 34 O.S. § 9 (D); 3. The Attorney General's § 9(D) response to a ballot title is statutorily effective although the Attorney General's response was filed two days late; 4. A proponent of an initiative who challenges a ballot title prepared by the Attorney General has the burden to show that the Attorney General's ballot title is legally incorrect, or is not impartial, or fails to accurately reflect the effects of the proposed initiative; 5. The Attorney General's ballot title challenged in this proceeding is legally correct, impartial, and accurately reflects the effects of the proposed initiative; 6. When a ballot title appeal has been made, a proponent's ninety-day period of time to collect signatures commences when the ballot title appeal is final.

¶ 72 Should any party file a petition for rehearing, it must be filed within five business days from the date this opinion is filed with the Clerk of this Court.⁷² The first day of this five-day period is the first business day occurring immediately after this opinion is filed with the Clerk. Any party may file a response to a petition for rehearing and a

⁷² This Court may set the time for a party to file a petition for rehearing. *Fent v. Henry*, 2011 OK 10, ¶ 23, 257 P.3d 984, 995.

response to a petition for rehearing may be filed within eight (8) business days after the date this opinion is filed with the clerk of this Court. *The time limits to file a petition for rehearing and response shall not be extended.* If no petition for rehearing is filed within five business days from the date this opinion is filed with the Clerk of this Court, then the opinion shall be final on the sixth business day after the opinion is filed with the Clerk. If any rehearing petition is timely filed within the five-day period, then the opinion shall not become final until all requests for rehearing are adjudicated.

¶ 73 CONCUR: REIF, V.C.J., KAUGER, WATT, WINCHESTER, EDMONDSON, TAYLOR, COMBS, GURICH, JJ.

¶ 74 NOT VOTING: COLBERT, C. J.

SC -13-0114
CNL

2014 OK 23
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

IN RE: INITIATIVE PETITION NO. 397,
STATE QUESTION NO. 767:

TAKE SHELTER OKLAHOMA, and
KRISTI CONATZER,

Petitioners,

v.

STATE OF OKLAHOMA, ex rel.,
ATTORNEY GENERAL SCOTT PRUITT,

Respondent.

) **FILED**

) MAY 07 2014

) OKLAHOMA SECRETARY
) OF STATE

) No. 112,264

) **FOR OFFICIAL
) PUBLICATION**

FILED
SUPREME COURT
STATE OF OKLAHOMA

APR 21 2014

MICHAEL S. RICHIE
CLERK

RECEIVED

APR 22 2014

ATTORNEY GENERAL

ORDER DENYING REHEARING

¶1 Petitioners seek rehearing in this matter “as it relates to the ninety (90) day issue” for collecting signatures for the initiative petition. Petitioners ask the Court “to allow all signatures [previously] collected by registered voters to be used for the new ninety (90) day period.” Petitioners urge “the Court to grandfather the signatures into the new ninety (90) day period as a matter of equity, fairness and justice to the some one hundred thousand (100,000) citizens and registered voters.” In support, petitioners argue: 1) the law was unclear and unsettled, 2) the Attorney General contended that the ninety-day period for collecting signatures ran during the ballot title appeal which placed petitioners in a “catch twenty-two” position either to let the time run or to collect invalid signatures if the ninety-day period begins after the ballot title appeal, and 3) the initiative effort substantially complied with the law.

¶2 Our opinion agreed with petitioners’ argument that the law was unclear

in that the ballot title statutes do not expressly provide “for the ninety-day signature collection period as occurring either during or after a ballot title appeal.” *In Re: Initiative Petition No. 397, State Question No. 767, 2014 OK 23*, ¶ 68. As petitioners urged, we clearly pronounced “that § 8(E) procedure for collecting signatures in a ninety-day period at the conclusion of a protest to a petition is also applicable to a ballot title appeal.” *Id.* Also as petitioners requested, we clearly pronounced that petitioners’ statutory ninety-day period to collect signatures begins when the ballot title appeal is completed in accordance with *In re Initiative Petition No. 315, State Question No. 553, 1982 OK 15, 649 P.2d 545*. *In Re: Initiative Petition No. 397, State Question No. 767, 2014 OK 23* at ¶¶61 and 70.

¶3 On rehearing petitioners argue that the more than 100,000 signatures they collected before and during the ballot title appeal were collected in substantial compliance with the law. However, the collection of signatures before the ballot title appeal was final did not substantially comply with our 1982 opinion in *In re Initiative Petition No. 315, State Question No. 553, 1982 OK 15* at ¶¶24-25, 649 P.2d at 552-553.

¶4 Petitioners also argue the precepts of equity, fairness, and justice due the 100,000 voters who already signed the initiative petition require these signatures be added to the signatures petitioners will collect during the post-appeal ninety-day period. Equity, fairness, and justice will not breathe life into initiative petitions where the signatures are collected contrary to the confines of the governing law. *In re*

Initiative Petition No. 379, 2006 OK 89, 155 P.3d 32.

¶5 Further, petitioners' request does not seek equity, fairness, or justice. Instead, it seeks an exclusive and special time period designed by the procedural circumstances surrounding this initiative petition – a time period much longer than the statutory ninety days.¹ Petitioners ask us to rewrite the statutory ninety-day time period for collecting signatures because of the peculiarities presented in this controversy. This we will not do.

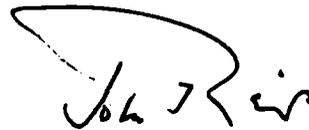
¶6 In their appeal, petitioners requested additional time to collect signatures or, in the alternative, a new ninety (90) day period to collect signatures. Part IV of our opinion addressed petitioners' specific alternative requests. Agreeing with the Attorney General that a proponent of an initiative petition "gets *only* one 90-day period to collect signatures," we decided that petitioners' time to collect signatures "does not begin until completion of that appeal." *In Re: Initiative Petition No. 397, State Question No. 767, 2014 OK 23* at ¶ 70. In other words, we ruled that the circulation of the initiative petition and the collecting of signatures must begin again

¹ We do not know the exact amount of time petitioners are requesting. The number of days during which petitioners have already circulated the initiative petition is not before us. The record does reflect that the initiative petition and ballot title were filed with the Secretary of State on Wednesday, September 18, 2013; the AG did not respond within the allowed five (5) business days on Wednesday, September 25, 2013; petitioners began gathering signatures on Thursday, September 26, 2013; the AG objected to petitioners' ballot title on Friday, September 27, 2013; the AG submitted a new ballot title on Friday, October 11, 2013; petitioners filed this appeal in this Court on Thursday, October 17, 2013; and petitioners continued its signature campaign from September 26th until it had collected over 100,000 signatures using, we assume, the rejected ballot title in the petition as both the ballot title and the gist of the proposition.

after this appeal is finally determined.

¶7 “Rehearing is not for rearguing a question which has been previously presented and fully considered by this Court.” *Tomahawk Resources, Inc. v. Craven*, 2005 OK 82, ¶1, 130 P.3d 222, 224 (Supplemental Opinion on Rehearing). Here, petitioners present a point that we clearly resolved in our opinion when we said a proponent of an initiative petition “gets *only* one 90-day period to collect signatures.”

¶8 Petitioners’ petition for rehearing is denied. No second rehearing request may be filed. Okla.Sup.Ct.R. 1.13, 12 O.S.2011, ch. 15, app. 1. The opinion in this controversy shall be final on the first business day after this order is filed with the Clerk of the Supreme Court. This order shall be published and appended to the opinion of the Court in this controversy.

A handwritten signature in black ink, appearing to read "John J. Reif". The signature is written in a cursive style with a large, sweeping initial "R".

VICE CHIEF JUSTICE

Reif, V.C.J., and Kauger, Watt, Winchester, Edmondson, Taylor, Combs, and Gurich, JJ., concur.

Colbert, C.J., not voting.