December 20, 2017

VIA HAND DELIVERY

The Honorable Dave Lopez
Oklahoma Secretary of State
2300 N. Lincoln Boulevard, Ste. 101
Oklahoma City, Oklahoma 73105-4897

Re: Initiative Petition

Dear Mr. Secretary:

Please accept for filing the enclosed copy of an initiative petition and the Proponents’ suggested ballot title. The initiative petition requests that a proposed Oklahoma constitutional amendment by article be submitted to the voters at the general election on November 6, 2018. The proposed amendment would levy an additional five percent (5%) gross production tax on oil and gas wells during the first thirty-six (36) months of production which will be used, in specified ways, to fund increased compensation for teachers and other personnel in common education and early learning.

Sincerely yours,

[Signature]

Ryan A. Ray
Counsel for the Proponents

RAR/src
Enclosures

c: The Honorable Mike Hunter
Oklahoma Attorney General (via hand delivery, w/ encls.)

RECEIVED
DEC 20 2017
OKLAHOMA SECRETARY OF STATE
This measure adds a new Article to the Oklahoma Constitution, which creates two limited purpose funds to support quality instruction. It increases compensation for all certified personnel and promotes school readiness. It levies a five percent tax on gross production of oil and gas on wells during the first thirty-six months of production to provide revenue for the funds. The tax does not supplant or replace existing gross production taxes. The Article mandates a $4,000 increase in salaries for all common education certified personnel. It allocates 90% of the available proceeds in the Quality Instruction Fund for that purpose. It also allocates 10% of the available proceeds in the Fund to support compensation for instructors and other instructional expenses for early learning. It requires annual audits of the use of monies from the Funds. It prohibits the use of such funds for superintendent salaries. It requires monies from the Funds not supplant or replace other educational funding, and requires the State Board of Equalization to prohibit further appropriations by the Legislature if such supplanting or replacement has occurred, until remedied. The Article takes effect on January 1 following passage or sixty (60) days after passage, whichever is sooner.

Shall the proposal 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.
State Question No. 795, Initiative Petition No. 416

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 THE PETITION WHEN HE 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 amendment to the 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 6th day of November, 2018 (or at a 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 (90) days from ____. The question we herewith submit to our fellow voters is:

Shall the following proposed new Article XIII-C to the Constitution be approved?

BE IT ENACTED BY THE PEOPLE OF OKLAHOMA THAT A NEW ARTICLE XIII-C TO THE OKLAHOMA CONSTITUTION BE APPROVED:

CONSTITUTION OF OKLAHOMA, ARTICLE XIII-C -- OKLAHOMA QUALITY INSTRUCTION

§ 1. CREATION OF OKLAHOMA QUALITY INSTRUCTION FUND

There is hereby created in the State Treasury a limited purpose fund to be known as the “Oklahoma Quality Instruction Fund.” The Fund shall be a continuing fund not subject to fiscal year limitations and shall not be subject to legislative appropriation. Beginning July 1 in the calendar year subsequent to the passage of this Article XIII-C, the Fund shall consist of the funds collected from the Gross Production Tax levied in Section 3 of this Article XIII-C, and any monies or assets contributed to the Fund from any other source, public or private. All monies accruing to the credit of the Fund are hereby appropriated to be expended for the purposes set forth in this Article XIII-C. The monies accruing to the credit of the Fund shall not be distributed or expended for any other purposes.

§ 2. CREATION OF OKLAHOMA QUALITY INSTRUCTION RESERVE FUND

A. There is hereby created in the State Treasury a limited purpose fund to be known as the “Oklahoma Quality Instruction Reserve Fund.” The Reserve Fund shall be a continuing fund not subject to fiscal year limitations and shall not be subject to legislative appropriation. The Reserve Fund shall consist of one hundred percent (100%) of the funds collected from the Gross Production Tax levied in Section 3 of this Article XIII-C during the period of the Effective Date of this Article XIII-C through June 30 of the next calendar year, and any monies or assets contributed to the Reserve Fund from any other source, public or private. Beginning July 1 in the calendar year following this Article XIII-C’s passage, the Reserve Fund shall consist of any monies deposited in the Reserve Fund in accordance with Paragraph B of this Section of this Article XIII-C, and any monies or assets contributed to the Reserve Fund from any other source, public or private. All monies accruing to the credit of the Reserve Fund are hereby appropriated to be expended for the purposes set forth in this Article XIII-C. The monies accruing to the credit of the Reserve Fund shall not be distributed or expended for any other purposes.

B. The State Board of Education may direct the State Treasurer to deposit monies collected from the Gross Production Tax levied in Section 3 of this Article XIII-C to the Oklahoma
Quality Instruction Reserve Fund and to transfer monies between the Oklahoma Quality Instruction Fund and the Oklahoma Quality Instruction Reserve Fund as the State Board of Education determines is necessary to meet the proposed distributions from the Oklahoma Quality Instruction Fund to school districts or to sustain the Oklahoma Quality Instruction Reserve Fund. In the event that funds available in the Oklahoma Quality Instruction Fund or the Oklahoma Quality Instruction Reserve Fund are not sufficient to fully make a distribution to school districts, the amount to be distributed to each district shall be reduced proportionately. Scheduled distributions that are reduced during a fiscal year shall be fully funded if revenues during that fiscal year are sufficient to pay the deficit. If revenues during a fiscal year are not sufficient to fully fund all distributions for that year, the State Board of Education shall utilize funds for the ensuing year to fully fund the prior year’s scheduled distributions.

§ 3. LEVY OF FIVE PERCENT GROSS PRODUCTION TAX FOR OKLAHOMA QUALITY INSTRUCTION FUND

There is hereby levied a Gross Production Tax of five percent (5%) on the gross value of the production of oil, gas or oil and gas from all oil and gas wells spudded after July 1, 2015, during the first thirty-six (36) months of production, commencing with the month of first production, from and after the effective date of this Article XIII.

This five percent (5%) Gross Production Tax levy shall be in addition to, and shall not supplant any other taxes or fees currently levied or assessed, or levied or assessed in the future, on the production of oil, gas, or oil and gas.

All revenue from the Gross Production Tax levied pursuant to this Article XIII-C, and penalties and interest thereon, collected by the Oklahoma Tax Commission shall be paid to the State Treasurer and deposited into the Oklahoma Quality Instruction Fund and Oklahoma Quality Instruction Reserve Fund as set forth in Sections 1 and 2 of this Article XIII-C.

§ 4. INCREASE IN COMPENSATION OF CERTIFIED PERSONNEL

Subsequent to the Effective Date of this Article XIII-C, each common school district of the State of Oklahoma shall increase the compensation of each certified personnel, as that term is defined in 70 Okla. Stat. § 26-103 (Supp. 2012), employed by such district by $4,000 greater than the salary schedule transmitted by such district for the most recent fiscal year prior to the Effective Date of this Article XIII-C. For purposes of this Article XIII-C, “certified personnel” shall not mean a superintendent or an assistant superintendent of a school district. The monies generated by the Gross Production Tax levied in Section 3 of this Article XIII-C shall continue to be used to support the increase in certified personnel salaries annually thereafter. Any additional monies available from the Oklahoma Quality Instruction Fund to each common school district in the State of Oklahoma may be used for additional increases to certified personnel compensation and benefits or the hiring, recruitment, and/or retention of additional certified personnel as determined by each common school district in its sole discretion as available funds allow.

§ 5. DISTRIBUTION AND ALLOCATION OF MONIES IN OKLAHOMA QUALITY INSTRUCTION FUND - PURPOSES - USES - ETC.

A. Prior to the beginning of each school year the State Board of Education shall determine the amount of monies to be apportioned pursuant to Paragraph B of this Section from the Oklahoma Quality Instruction Fund for the upcoming year. In determining how much revenue will be available for apportionment from the Oklahoma Quality Instruction Fund, the Board shall utilize the revenue estimate for the Gross Production Tax levy in Section XIII-C estimated at the meeting of the State Board of Equalization held within five (5) days after the monthly apportionment in February of each year. In addition to the other requirements of Article 10, Section 23 of the Oklahoma Constitution, the State Board of Equalization shall provide estimates as to the revenue to be expected by the state for the ensuing fiscal year from the Gross Production Tax levy in Section 3 of this Article XIII-C. The amount that may be distributed by the State Board of Education from the revenue to be expected for the ensuing fiscal year shall not exceed ninety-five percent (95%) of this estimate.
B. Monies in the Oklahoma Quality Instruction Fund shall be apportioned by the State Board of Education for the purposes established herein, as follows: For the purposes identified in Section 4 of Article XIII-C, Ninety percent (90%) of said monies shall be apportioned among and between all the several common school districts of the State on the basis of the state aid formula for common education then in effect, and such monies shall be specifically identified and segregated from other monies appropriated and apportioned among the several common school districts of the State on the basis of said state aid formula. To promote school readiness, ten percent (10%) of said monies shall be paid to the State Department of Education, to support compensation for instructors and other instructional expenses in high-quality early learning centers for at-risk children prior to entry into the common education system. Monies expended or distributed from the Oklahoma Quality Instruction Fund as provided herein shall be used only for the purposes specified in this Article XIII-C, Sections 4 and 5.

C. Monies distributed from the Oklahoma Quality Instruction Fund or Oklahoma Quality Instruction Reserve Fund may be used for the purposes specified in this Article XIII-C, Sections 4 and 5, but only for such purposes. Any monies found to be used for any other purposes shall be repaid by the recipients of such monies and deposited into the Oklahoma Quality Instruction Fund. The State Board of Education shall have the authority to distribute monies in the Oklahoma Quality Instruction Reserve Fund for the purposes specified in this Article XIII-C, Sections 4 and 5, but only for such purposes.

D. The annual independent audits conducted by each common school district shall include, and separately report, the use made of the monies distributed to the common school districts under this Article XIII-C to ensure that it is used only for the purposes specified in this Article XIII-C. The audits, including the use made of the monies distributed to the common school districts, shall be publicly available.

E. Monies in the Oklahoma Quality Instruction Fund and the Oklahoma Quality Instruction Reserve Fund shall be invested by the State Treasurer in whatever instruments are authorized by law for investments by the State Treasurer and the interest earned by any investment of monies in these Funds shall be credited back to these Funds.

§ 6. FUNDS NOT TO SUPPLANT OTHER EDUCATION FUNDING

A. Monies expended or distributed from the Oklahoma Quality Instruction Fund and the Oklahoma Quality Instruction Reserve Fund shall supplement, and shall not be used to supplant or replace, any other state funds supporting common education and early childhood education. Monies expended or distributed from the Oklahoma Quality Instruction Fund and the Oklahoma Quality Instruction Reserve Fund shall not be used to supplant or replace, any other state funds supporting common education, including but not limited to the Permanent School Fund, the Oklahoma Education Lottery Trust Fund, the Education Reform Revolving Fund, the Common Education Technology Revolving Fund, the Higher Education Capital Revolving Fund, the Oklahoma Tuition Scholarship Revolving Fund, the Common School Fund, appropriations from the Legislature as provided in Article XIII, Section 1a of the Oklahoma Constitution, or any other appropriations from the Legislature used for educational purposes.

B. In order to ensure that the monies from the Oklahoma Quality Instruction Fund and the Oklahoma Quality Instruction Reserve Fund are used to enhance and not supplant funding for the purposes set forth in this Article XIII-C, the State Board of Equalization shall examine and investigate distributions and expenditures from the Fund each year. At the meeting of the State Board of Equalization held within five (5) days after the monthly apportionment in February of each year, the State Board of Equalization shall make a determination and report whether distributions and expenditures from the Oklahoma Quality Instruction Fund and the Oklahoma Quality Instruction Reserve Fund were used solely for the purposes set forth in Article XIII-C. If the State Board of Equalization finds that other education funding was supplant or replaced by monies from the Oklahoma Quality Instruction Fund or the Oklahoma Quality Instruction Reserve Fund, the State Board of Equalization shall specify the amount by which existing compensation for certified personnel was supplant or replaced. In this event, the Legislature shall not make any appropriations for the ensuing fiscal year until an appropriation in that amount is made to replenish the Oklahoma Quality Instruction Fund, or the Oklahoma Quality Instruction Reserve Fund, or both.
§ 7. EFFECTIVE DATE, CONSTRUCTION

A. This Article XIII-C shall become effective on the January 1 following the Article’s passage or the first day of the calendar month which is at least sixty (60) days after the Article’s passage, whichever is sooner.

B. Nothing in this Article XIII-C shall be construed as conflicting with Article X, Section 23 of the Constitution.

§ 8. SEVERABILITY

The provisions hereof are severable, and if any part or provision hereof shall be void, invalid, or unconstitutional, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions hereof, and the remaining provisions hereof shall continue in full force and effect.

Name and Address of Proponents

Michael O. Thompson  
14508 Longford Way  
Edmond, OK 73013

Mary Lynn Peacher  
10620 S. 69th East Ave.  
Tulsa, OK 74133

Ray H. Potts  
2950 E. Britton Road  
Oklahoma City, OK 73114
SIGNATURES

The gist of the proposition is as follows: This measure adds a new Article to the Oklahoma Constitution. The new Article creates two limited purpose funds to support quality instruction. It increases compensation for all certified personnel, including teachers, and supports early learning. It levies a five percent tax on gross production of oil and gas on wells during the first thirty-six months of production to provide revenue for the Oklahoma Quality Instruction Fund (the "Fund"), and to provide revenue for a Reserve Fund ensuring the Fund can fulfill its obligations. The tax does not supplant or replace existing gross production taxes on such wells during such periods. The Article mandates a $4,000 increase in salaries for all common education certified personnel, including teachers and others. It allocates 90% of the available proceeds in the Fund for that purpose. It also allocates 10% of the available proceeds in the Fund to support compensation for instructors and other instructional expenses in high-quality early learning centers for at-risk children prior to entry into the common education system. It requires annual audits of the use of monies from the Funds, which shall be made publicly available. It prohibits the use of such funds for superintendent or assistant superintendent salaries. It requires that monies from the Funds not supplant or replace other educational funding, and requires the State Board of Equalization to prohibit further appropriations by the Legislature if such supplanting or replacement has occurred, until remedied.

WARNING

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AFFIDAVIT

STATE OF OKLAHOMA )
COUNTY OF __________ ) SS.

I, ________________________________, being first duly sworn, say:

That I am at least eighteen (18) years old and that all signatures on the signature sheet were signed in my presence. I believe that each signer has stated his or her name, mailing address, and residence correctly, and that each signer is a legal voter of the State of Oklahoma and the County of his residence as stated.

Circulator's Signature

Address

City Zip Code

Subscribed and sworn to before me this ____day of ________, 20_____.

My Commission Expires:

Notary Public

Address

City Zip Code

My Commission Number:
December 20, 2017

Michael O. Thompson  
14508 Longford Way  
Edmond, OK  73013

Mary Lynn Peacher  
10620 S. 69th East Ave.  
Tulsa, OK  74133

Ray H. Potts  
909 E. Britton Road  
Oklahoma City, OK  73114

Dear Proponent(s):

This acknowledges receipt of the petition submitted to the Secretary of State office, which has been designated as State Question Number 795, Initiative Petition Number 416 and filed accordingly this 20th day of December 2017.

Per Title 34 O.S. Section 8, subsequent to the publication of the notice of filing of said petition, the apparent sufficiency or insufficiency thereof and notice that any citizen(s) of the state may file a protest as to the constitutionality of the petition, the Secretary of State will provide a notification to the proponent(s) of record, setting the date to begin circulation for signatures. The date set shall not be less than fifteen (15) days nor more than thirty (30) days from the date when all appeals, protests and rehearings have been resolved or the period for filing such has expired.

If we may provide any further assistance or should you have any questions, please do not hesitate to contact Amy Canton, Executive Legislative Division (executivelegislative@sos.ok.gov / 405-522-4565).

Sincerely,

Dave Lopez  
Secretary of State

Cc: Ryan A. Ray, Counsel for Proponents
December 20, 2017

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

Dear Ms. Shea:

Please find enclosed the following for publication;

- **Notice of Filing for State Question 795, Initiative Petition 416**

Per Title 34 O.S. § 8, the publication must appear in at least one newspaper of general circulation in the State of Oklahoma. Please publish the enclosed notice in *The Oklahoman, Tulsa World,* and the *Journal Record* as soon as possible.

Also, upon the completion of publication, please provide our office with the corresponding Affidavits of Publication. Should you have any questions, please do not hesitate to contact our office.

Sincerely,

Dave Lopez
Secretary of State

NOTICE is hereby given that on December 20, 2017, State Question 795, Initiative Petition 416 was filed in the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 795, Initiative Petition 416 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State.

NOTICE is likewise, hereby given, as provided in Title 34 Section 8 of the Oklahoma Statutes, that any citizen or citizens of the state may file a protest as to the constitutionality of said petition, by a written notice to the Supreme Court and to the proponent(s) filing the petition. Any such protest must be filed within ten (10) business days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State.

Proponents of record for State Question 795, Initiative Petition 416:

Michael O. Thompson  
14508 Longford Way  
Edmond, OK 73013

Mary Lynn Peacher  
10620 S. 69th East Ave.  
Tulsa, OK 74133

Ray H. Potts  
909 E. Britton Road  
Oklahoma City, OK 73114

Dave Lopez  
Oklahoma Secretary of State
Good afternoon Cindy,

I hope this email finds you well.

Please find attached a letter requesting publication of the Notice of Filing for State Question 795, Initiative Petition 416. I have placed the original documents in the mail addressed to your office. Also, if you can, I would very much appreciate it if you could notify me once a publication date is available.

Thank you and Merry Christmas!

Amy Canton
Executive Legislative Division
OKLAHOMA SECRETARY OF STATE OFFICE
State Capitol Building, Room 101
405.522.4565 / executivelegislative@sos.ok.gov
December 21, 2017

HAND DELIVERED

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

Dear Governor Fallin:

Please be advised that an initiative petition, designated as **State Question 795, Initiative Petition 416**, was sufficiently filed with the Office of the Secretary of State on Wednesday, December 20, 2017. Proponents of record for said petition is as follows;

Michael O. Thompson
14508 Longford Way
Edmond, OK 73013

Mary Lynn Peacher
10620 S. 69th East Ave.
Tulsa, OK 74133

Ray H. Potts
909 E. Britton Road
Oklahoma City, OK 73114

Please find enclosed a true and exact copy of State Question 795, Initiative Petition 416 on record with the Office of the Secretary of State.

Per Title 34 O.S. Section 8, subsequent to the publication of notice of filing of said petition, the apparent sufficiency thereof and notice that any citizen(s) of the state may file a protest as to the constitutionality of the petition, the Secretary of State will provide a notification to the proponent(s) setting the date to begin circulation for signatures. The date set shall not be less than fifteen (15) days nor more than thirty (30) days from the date when all appeals, protests and rehearings have been resolved or the period for filing such has expired.

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

Sincerely,

Dave Lopez
Secretary of State
December 21, 2017

HAND DELIVERED

Secretary Paul Ziriax
Oklahoma State Election Board
Room B6, State Capitol
Oklahoma City, Oklahoma 73105

Dear Secretary Ziriax:

Please be advised that an initiative petition, designated as **State Question 795, Initiative Petition 416**, was sufficiently filed with the Office of the Secretary of State on Wednesday, December 20, 2017. Proponents of record for said petition is as follows;

Michael O. Thompson  
14508 Longford Way  
Edmond, OK 73013

Mary Lynn Peacher  
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Ray H. Potts  
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If I may be of any further assistance, please do not hesitate to contact me.

Sincerely,

Dave Lopez  
Secretary of State

2300 N. LINCOLN BLVD., ROOM 122, OKLAHOMA CITY 73105-4897 • (405) 521-3912
Proof of Publication
Order Number 17-12-39

I, Cindy Shea, of lawful age, being duly sworn upon oath, deposes and says: That I am the Authorized Agent of OK-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 hereunto attached, was published in said OK-JOURNAL RECORD in consecutive issues on the following dates-to-wit:

Insertion: 12/26/2017

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 $37.25

(Linked, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this 29 day of December 2017.

(Notary Public)


NOTICE is hereby given that on December 20, 2017, State Question 795, Initiative Petition 416 was filed in the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 795, Initiative Petition 416 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State.

NOTICE is likewise hereby given, as provided in Title 34 Section 8 of the Oklahoma Statutes, that any citizen or citizens of the state may file a protest as to the constitutionality of said petition, by a written notice to the Supreme Court and to the proponent(s) filing the petition. Any such protest must be filed within ten (10) business days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State.

Proponents of record for State Question 795, Initiative Petition 416:

Michael O. Thompson
14508 Longford Way
Edmond, OK 73013

Mary Lynn Peachar
10620 S. 69th East Ave.
Tulsa, OK 74133

Ray H. Potts
909 E. Britton Road
Oklahoma City, OK 73114

Dave Lopez
Oklahoma Secretary of State

RECEIVED
JAN 05 2018
OKLAHOMA SECRETARY OF STATE
Proof of Publication
Order Number 17-12-39

1. Cindy Shea, of lawful age, being duly sworn upon oath, deposes and says: That I am the Authorized Agent of OK-THE OKLAHOMAN, 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 hereunto attached, was published in said OK-THE OKLAHOMAN in consecutive issues on the following dates:

Insertion: 12/26/2017

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 $736.78

(Confidential, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this 29 day of December 2017.

(Notary Public)

NOTICE OF THE FILING OF STATE QUESTION 795, INITIATIVE PETITION 416. THE APPARENT SUFFICIENCY THEREOF, AND NOTICE TO CITIZENS OF THE STATE THAT ANY SUCH PROTEST, AS TO THE CONSTITUTIONALITY OF SAID PETITION, MUST BE FILED ACCORDINGLY WITHIN TEN (10) BUSINESS DAYS AFTER THIS NOTICE (Okla. Stat. tit. 34, § 8)

NOTICE is hereby given that on December 20, 2017, State Question 795, Initiative Petition 416 was filed in the Office of the Oklahoma Secretary of State.

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Proponents of record for State Question 795, Initiative Petition 416:

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14566 Longford Way
Edmond, OK 73013

Mary Lynn Peacher
10620 S. 69th East Ave.
Tulsa, OK 74133

Ray H. Potts
909 E. Britton Road
Oklahoma City, OK 73114

Dave Lapsz
Oklahoma Secretary of State

RECEIVED
JAN 05 2018
OKLAHOMA SECRETARY
OF STATE
Proof of Publication
Order Number 17-12-39

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NOTICE OF THE FILING OF STATE QUESTION 795, INITIATIVE PETITION 416, THE APPARENT SUFICIENCY THEREOF, AND NOTICE TO CITIZENS OF THE STATE THAT ANY SUCH PROTEST, AS TO THE CONSTITUTIONALITY OF SAID PETITION, MUST BE FILED ACCORDINGLY WITHIN TEN (10) BUSINESS DAYS AFTER THIS NOTICE (Okla. Stat. Tit. 34, § 6)

NOTICE is hereby given that on December 26, 2017, State Question 795, Initiative Petition 416 was filed with the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 795, Initiative Petition 416 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State.

NOTICE is likewise, hereby given, as provided in Title 34 Section 8 of the Oklahoma Statutes, that any citizen or citizens of the state may file a protest as to the constitutionality of said petition, by a written notice to the Supreme Court and to the proponent(s) filing the petition. Any such protest must be filed within ten (10) business days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State.

Supporters of record for State Question 795, Initiative Petition 416:

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Mary Lynn Peacher
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Tulsa, OK 74133

Roy H. Potts
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Oklahoma City, OK 73114

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Oklahoma Secretary of State

JENNIFER GILLILAND
Notary Public for the State of Oklahoma
Commission #13000399
My Commission Expires 6/10/2018

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IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

OKLAHOMA INDEPENDENT
PETROLEUM ASSOCIATION
S. KIM HATFIELD and
LUKE ESSMAN,

Protestants/Petitioners,

vs.

RAY H. POTTS,
MICHAEL O. THOMPSON, and
MARY LYNN PEACHER,

Respondents/Proponents.

Case No. #116679

NOTICE OF ORIGINAL JURISDICTION
SUPREME COURT PROCEEDING AND
PETITION TO REVIEW THE CONSTITUTIONALITY OF
INITIATIVE PETITION 416

Notice to:

Respondent: Michael O. Thompson
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Respondent: Mary Lynn Peacher
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Respondent: Ray H. Potts
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IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

OKLAHOMA INDEPENDENT
PETROLEUM ASSOCIATION, S. KIM
HATFIELD, AND LUKE ESSMAN,

Protestants/Petitioners,

v.

RAY H. POTTS, MICHAEL O.
THOMPSON, and
MARY LYNN PEACHER,

Respondents.

Case No. #

ENTRY OF APPEARANCE

The undersigned attorneys, Robert G. McCampbell, Adam C. Dooverspike, and Jake M.
Krattiger, of GABLEGOTWALS, a professional corporation, hereby appear as counsel for Oklahoma
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the case.

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JAKE M. KRATTIGER, OBA No. 30617

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OKLAHOMA INDEPENDENT
PETROLEUM ASSOCIATION
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LUKE ESSMAN,

Protestants/Petitioners,

vs.

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MARY LYNN PEACHER,

Respondents/Proponents.

Case No. #116679

ENTRY OF APPEARANCE

The undersigned attorney, A.J. Ferate, hereby appears as counsel for Oklahoma Independent Petroleum Association, Protestant/Petitioner in the case.

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#116679

Case No.

BRIEF IN SUPPORT OF APPLICATION AND PETITION TO
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THE CONSTITUTIONALITY OF INITIATIVE PETITION NO. 416

ROBERT G. MCCAMPBELL, OBA No. 10390
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Case No. 116679

MOTION FOR ORAL ARGUMENT

Protestants/Petitioners, pursuant to Oklahoma Supreme Court Rules 1.9 and 1.191(g), move for oral argument before the Supreme Court en banc to consider the constitutionality of Initiative Petition No. 416. This case is appropriate for oral argument before the full Court for the following reasons:

1. Oral argument is appropriate due to the special nature of this case and the publici juris nature of the case.

2. This case will affect the entire state for several reasons. First, Initiative Petition 416 ("IP 416") would enact a 250% tax increase on gross production of oil and gas wells in Oklahoma during the first 36 months of production. Second, Initiative Petition 416 would provide an across the board universal raise to all "certified personnel", 26 Okla. Stat. § 26-103, of every school district in the state. Third, it is estimated that the tax proposed by IP 416 would be over $300 million per year.

3. The constitutional gross production tax presents particular issues (a) because the tax would apply to wells drilled as far back as July 1, 2015, (b) because the tax would not be
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CASE NO. #116679

PETITIONERS' APPENDIX TO APPLICATION AND PETITION TO
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vs.

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MICHAEL O. THOMPSON,
MARY LYNN PEACHER, and
RAY H. POTTS,

Respondents.

Case No. #116680

ENTRY OF APPEARANCE

The undersigned attorneys, Robert G. McCampbell, Adam C. Dooverspike, and Jake M. Krattiger, of GABLEGOTWALS, a professional corporation, hereby appear as counsel for Mike McDonald, Valerie Mitchell, and Oklahoma Independent Petroleum Association, Protestants/Petitioners in the case.

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RAY H. POTTS, and
MARY LYNN PEACHER,

Respondents/Proponents.

Case No. #

ENTRY OF APPEARANCE

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Case No. #116680

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PETITIONERS' APPENDIX TO APPLICATION TO
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Luke Essman

January 10, 2018
IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

OKLAHOMA OIL & GAS ASSOCIATION
and DAVID A. SIKES,

PETITIONERS,

v.

MICHAEL O. THOMPSON, MARY
LYNN PEACHER, and RAY H. POTTS,

RESPONDENTS.

APPLICATION TO ASSUME ORIGINAL JURISDICTION

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January 10, 2018
IN THE SUPREME COURT OF THE
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OKLAHOMA OIL & GAS ASSOCIATION
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v.

MICHAEL O. THOMPSON, MARY
LYNN PEACHER, and RAY H. POTTS,

RESPONDENTS.

NOTICE OF ORIGINAL JURISDICTION
SUPREME COURT PROCEEDING

Notice to: The Oklahoma Attorney General
State of Oklahoma
313 N.E. 21st Street
Oklahoma City, OK 73105

The Oklahoma Secretary of State
State of Oklahoma
101 State Capitol
Oklahoma City, OK 73105

Respondent: Michael O. Thompson
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Respondent: Mary Lynn Peacher
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Respondent: Ray H. Potts
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IN THE SUPREME COURT OF THE
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PETITIONERS,

v.

MICHAEL O. THOMPSON, MARY
LYNN PEACHER, and RAY H. POTTS,

RESPONDENTS.

ENTRY OF APPEARANCE

V. Glenn Coffee and Denise Lawson of the law firm of Glenn Coffee & Associates,
PLLCC, enter their appearance as counsel for Oklahoma Oil & Gas Association and David A.
Sikes, Petitioners, in this case.

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v.

MICHAEL O. THOMPSON, MARY LYNN PEACHER, and RAY H. POTTs,

RESPONDENTS.

No. #116682

BRIEF IN SUPPORT OF APPLICATION TO ASSUME ORIGINAL JURISDICTION

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PETITIONERS' APPENDIX TO APPLICATION
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Petitioners,

v. No. 116,679

RAY H. POTTS, MICHAEL O. THOMPSON, and MARY LYNN PEACHER,

Respondents.

For Official Publication

ORIGINAL PROCEEDING TO DETERMINE THE CONSTITUTIONAL VALIDITY OF INITIATIVE PETITION NO. 416, STATE QUESTION NO. 795

¶0 This is an original proceeding to determine the legal sufficiency of Initiative Petition No. 416, State Question No. 795. The petition seeks to amend the Oklahoma Constitution by adopting Article XIII-C, a new Article. The proposed Article XIII-C would primarily serve to increase funding for public education through an increase in the gross production tax. The opponent petitioners allege the petition is unconstitutional because it creates a retroactive tax in violation of U.S. Const. amend. V and because it violates the one general subject rule of Okla. Const. art. 24, § 1. Upon review, we hold that the petition is legally sufficient.

INITIATIVE PETITION NO. 416, STATE QUESTION NO. 795 IS LEGALLY SUFFICIENT FOR SUBMISSION TO THE PEOPLE OF OKLAHOMA

Robert G. McCampbell, Adam C. Doverspike, and Jake M. Krattiger, GableGotwals, Oklahoma City, Oklahoma, for Petitioners.
Anthony J. Ferate, Edmond, Oklahoma, for Petitioner Oklahoma Independent Petroleum Association.


COMBS, C.J.

¶1 On December 20, 2017, Respondents Michael O. Thompson, Ray H. Potts, and Mary Lynn Peacher (collectively, Proponents) filed Initiative Petition No. 416, State Question No. 795 (IP 416) with the Oklahoma Secretary of State. IP 416 would create a new Article XIII-C in the Oklahoma Constitution. IP 416 contains 8 sections, which Proponents assert will levy a new 5% gross production tax on oil and gas production from certain wells, and provide for the deposit of the proceeds primarily in a new fund entitled the “Oklahoma Quality Instruction Fund” (the Fund). Monies from the Fund will be distributed: 1) 90% to common school districts of the State of Oklahoma to increase compensation and benefits for certified personnel, and the hiring, recruitment and retention thereof; and 2) 10% to the State Department of Education to promote school readiness, and to support compensation for instructors and other instructional expenses in “high-quality early learning centers” for at-risk children prior to entry into the common education system.

¶2 Section 1 of IP 416 creates the Fund. Section 2 creates the Oklahoma Quality Instruction Reserve Fund to ensure the Fund always has sufficient
resources, and provides mechanisms for the transfer of monies. Section 3 levies a 5% tax on the gross value of the production of oil, gas, or oil and gas from all oil and gas wells spudded after July 1, 2015, during the first thirty-six months of production, commencing with the month of first production, from and after the effective date of the article. Section 4 provides for a $4,000 increase in compensation for certified personnel, including teachers, but excluding superintendents and assistant superintendents. Section 5 provides for the distribution of funds according to the percentage scheme noted in the previous paragraph above. Section 6 attempts to ensure that the new funds will be used to supplement existing funding rather than supplant it, and grants the Board of Equalization the power to specify the amount that was supplanted or replaced, preventing the Legislature from making appropriations until it makes an appropriation to replace the supplanted amount. Sections 7 and 8 provide an effective date and severability provision, respectively.

¶3 On January 10, 2018, Petitioners Oklahoma Independent Petroleum Association, S. Kim Hatfield, and Luke Essman (collectively, Protestants), timely filed an Application to Assume Original Jurisdiction in this Court protesting the sufficiency of IP 416 and the basis that it fails to pass constitutional muster.

I.
STANDARD OF REVIEW
¶4 “The first power reserved by the people is the initiative....” Okla. Const. art. 5, § 2; In re Initiative Petition No. 409, State Question No. 785, 2016 OK 51, ¶2, 376 P.3d 250; In re Initiative Petition No. 403, State Question No. 779, 2016 OK 1, ¶3, 367 P.3d 472. With that reservation comes “the power to propose laws and amendments 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.” Okla. Cost. art. 5, § 1; In re Initiative Petition No. 409, 2016 OK 51 at ¶2; In re Initiative Petition No. 403, 2016 OK 1 at ¶3. “The right of the initiative is precious, and it is one which this Court is zealous to preserve to the fullest measure of the spirit and the letter of the law.” In re Initiative Petition No. 382, State Question No. 729, 2006 OK 45, ¶3, 142 P.3d 400. See In re Initiative Petition No. 349, State Question No. 642, 1992 OK 122, ¶35, 838 P.2d 1.

¶5 However, while the fundamental and precious right of initiative petition is zealously protected by this Court, it is not absolute. Any citizen can protest the sufficiency and legality of an initiative petition. In re Initiative Petition No. 409, 2016 OK 51 at ¶2; In re Initiative Petition No. 384, State Question No. 731, 2007 OK 48, ¶2, 164 P.3d 125. “Upon such protest, this Court must review the petition to ensure that it complies with the ‘parameters of the rights and restrictions’ as established by the Oklahoma Constitution, legislative enactments and this Court's

¶6 This Court has generally refused to declare a ballot initiative invalid in advance of a vote of the people except where there is a clear or manifest showing of unconstitutionality. In re Initiative Petition No. 403, 2016 OK 1 at ¶3; In re Initiative Petition No. 358, State Question No. 658, 1994 OK 27, ¶7, 870 P.2d 782.

We have repeatedly emphasized both how vital the right of initiative is to the people of Oklahoma, as well as the degree to which we must protect it:

“Because the right of the initiative is so precious, all doubt as to the construction of pertinent provisions is resolved in favor of the initiative. The initiative power should not be crippled, avoided, or denied by technical construction by the courts.”

In re Initiative Petition No. 403, 2016 OK 1 at ¶3 (quoting In re Initiative Petition No. 382, 2006 OK 45 at ¶3).

Accordingly, Opponents in this matter bear the burden of demonstrating the proposed initiative petition is clearly and manifestly unconstitutional. In re Initiative Petition No. 403, 2016 OK 1 at ¶3; In re Initiative Petition No. 362, State Question No. 669, 1995 OK 77, ¶12, 899 P.2d 1145.

II.
ANALYSIS
¶7 Opponents in this matter allege IP 416 is insufficient and must not be submitted to the voters as it stands because it is unconstitutional. Opponents challenge the constitutionality of IP 416 on two grounds: 1) Section 3 of IP 416 creates a retroactive tax in violation of U.S. Const. amend. V; and 2) IP 416 violates the single-subject requirements of Okla. Const. art. 24, § 1.

A. The new article proposed by IP 416 does not create a retroactive tax in violation of U.S. Const. amend. V.

¶8 Opponents assert that IP 416 is unconstitutional because, due to a potential drafting error, the new proposed article creates a retroactive tax in violation of U.S. Const. amend. V.¹ The alleged issue is the language of section 3, which provides in pertinent part:

There is hereby levied a Gross Production Tax of five percent (5%) on the gross value of the production of oil, gas or oil and gas from all oil and gas wells spudded after July 1, 2015, during the first thirty-six (36) months of production, commencing with the month of first production, from and after the effective date of this Article XIII. (Emphasis added).

¶9 Opponents allege that because the last sentence of the above-quoted portion of IP 416 specifies “this Article XIII” and not “this Article XIII-C,” the tax

¹U.S. Const. amend. V provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
provision is effective from the effective date of Article XIII and not the new Article XIII-C, creating a retroactive tax because Article XIII has been in effect in various forms for decades. Under Opponents' interpretation, the new Article would levy a new five percent tax on the gross value of the production of oil, gas, or oil and gas from all oil and gas wells spudded after July 1, 2015, for the first thirty-six months of production, applicable all the way back to July 1, 2015, itself.²

¶10 Because of this problem, Opponents argue IP 416 will levy a retroactive tax in violation of U.S. Const. amend. V, as interpreted by the Supreme Court of the United States. In *U.S. v. Carlton*, 512 U.S. 26, 30-31, 114 S.Ct. 2018, 129 L.Ed.2d 22 (1994), the Court stated that any retroactive tax legislation must: 1) be supported by a legitimate legislative purpose furthered by rational means; and 2) the period of retroactivity must be modest, lest it run afoul of U.S. Const. amend. V. The *Carlton* Court upheld as constitutional a piece of retroactive tax legislation that it viewed as curative, and therefore reasonable, with a moderate period of retroactivity:

We conclude that the 1987 amendment's retroactive application meets the requirements of due process. First, Congress' purpose in enacting the amendment was neither illegitimate nor arbitrary. Congress acted to correct what it reasonably viewed as a mistake in the original 1986 provision that would have created a significant and unanticipated revenue loss. There is no plausible contention that Congress acted with an improper motive, as by targeting estate representatives such as

² As Proponents note, Article XIII has been changed many times over past decades, making it difficult to pin down a single "effective date" for the Article. Regardless, such a date would be prior to July 1, 2015.
Carlton after deliberately inducing them to engage in ESOP transactions. Congress, of course, might have chosen to make up the unanticipated revenue loss through general prospective taxation, but that choice would have burdened equally "innocent" taxpayers. Instead, it decided to prevent the loss by denying the deduction to those who had made purely tax-motivated stock transfers. We cannot say that its decision was unreasonable.

512 U.S. at 32.\(^3\)

¶11 Opponents admit that the reference to Article XIII rather than Article XIII-C may be a typographical error, but argue this Court lacks the authority to redraft a petition in the same way it is allowed to redraft a ballot title per 34 O.S. Supp. 2015 § 10.\(^4\) Opponents argue the only remedy is to declare IP 416 insufficient and allow the proponents of the petition to withdraw it and refile pursuant to 34 O.S. Supp. 2015 8(E).\(^5\)

\(^3\) Opponents cite cases from other jurisdictions to support their arguments that wholly new, rather than curative, legislation that is retroactive is not passed for a legitimate legislative purpose, see NetJets Aviation, Inc. v. Guillory, 207 Cal. App. 4th 26, 57-58 (2012), and a period of retroactivity of 2 to 3 years is not modest, see Rivers v. State, 490 S.E.2d 261, 278-79 (S.C. 1997).

\(^4\) Title 34 O.S. Supp. 2015 § 10 provides:

A. Any person who is dissatisfied with the wording of a ballot title may, within ten (10) business days after the same is published by the Secretary of State as provided for in subsection 1 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.

B. No such appeal shall be allowed as to the ballot title of constitutional and legislative enactments proposed by the Legislature.

\(^5\) Title 34 O.S. Supp. 2015 § 8(E) provides:

E. Signature-gathering Deadline for Initiative Petitions. When an initiative petition has been filed in the office of the Secretary of State and all appeals, protests and rehearings have been resolved or the period for such has expired, the Secretary of State shall set the date for circulation of signatures for the petition to begin but in no event shall the date be less than fifteen (15) days nor
¶11 However, this Court need not determine if the tax levied by IP 416 satisfies the requirements of *Carlton*, because an interpretation of IP 416 is possible that prevents any retroactive application of the tax provision. Further, such an interpretation is possible without this Court redrafting any part of the petition.

¶12 Proponents argue that there was no drafting error and the only reasonable interpretation of the language of Section three is that the effective date is that of the new article, Article XIII-C. Proponents focus on specific language: “from and after the effective date of this Article XIII.” They argue use of the term “this” necessarily is self-referencing, and thus as drafted the tax must begin from the effective date of this Article XIII, which is Article XIII-C. Such an interpretation removes any retroactivity problem: per Section 7, the effective date of Article XIII-C will be the January 1 following the article’s passage or the first day of the calendar month which is at least sixty days after the article’s passage, whichever is sooner.

¶12 Under Proponents interpretation, should the article be adopted, on the effective date in Section 7, the tax will begin to be levied on the production from
all oil and gas wells spudded after July 1, 2015, for however much of their first thirty-six (36) months of production still remains after the effective date. Given how Section 3 of IP 416 is worded, this is not the only possible interpretation of the language in question. However, it is the interpretation that avoids any potential retroactive application of the tax in question that might invalidate the provision on constitutional grounds. Because the right of the initiative is so precious, all doubt as to the construction of pertinent provisions is resolved in favor of the initiative. In re Initiative Petition No. 403, 2016 OK 1 at ¶3; In re Initiative Petition No. 382, 2006 OK 45 at ¶3.

¶13 The above rule is consistent with how this Court has long-handled constitutional challenges in other areas such as statutes, and indeed, is perhaps more forgiving due to the precious nature of the people’s right to initiative. In Calvey v. Daxon, this Court explained of constitutional challenges to legislation:

If there are two possible interpretations --- one of which would hold the legislation unconstitutional, the construction must be applied which renders them constitutional. Unless a law is shown to be fraught with constitutional infirmities beyond a reasonable doubt, this Court is "bound to accept an interpretation that avoids constitutional doubt as to the validity of the provision."

The ambiguous meaning of the pertinent provision of Section 3 is resolved in favor of an interpretation that does not create a retroactive tax in violation of U.S. Const. amend. V.

B. The new article proposed by IP 416 does not violate the single-subject requirements of Okla. Const. art. 24, § 1.

¶14 Petitioners also assert IP 416 is legally insufficient because the proposed article violates the single-subject requirements of Okla. Const. art. 24, § 1.6 Proposed amendments to the Oklahoma Constitution, even when made by article, must still embrace a single general subject. See In re Initiative Petition No. 403, State Question No. 779, 2016 OK 1, ¶¶1-2, 367 P.3d 472; In re Initiative Petition No. 342, State Question No. 628, 1990 OK 76, ¶¶1-4 797 P.2d 331; In re Initiative Petition No. 344, State Question No. 630, 1990 OK 75, ¶¶2-5, 797 P.2d 326. This Court applies a germaneness test to initiative petitions that seek to amend the

6 Okla. Const. art. 24, § 1 provides:

Any amendment or amendments to this Constitution may be proposed in either branch of the Legislature, and if the same shall be agreed to by a majority of all the members elected to each of the two (2) houses, such proposed amendment or amendments shall, with the yea and nays thereon, be entered in their journals and referred by the Secretary of State to the people for their approval or rejection, at the next regular general election, except when the Legislature, by a two-thirds (2/3) vote of each house, shall order a special election for that purpose. If a majority of all the electors voting on any proposed amendment at such election shall vote in favor thereof, it shall thereby become a part of this Constitution.

No proposal for the amendment or alteration of this Constitution which is submitted to the voters shall embrace more than one general subject and the voters shall vote separately for or against each proposal submitted; provided, however, that in the submission of proposals for the amendment of this Constitution by articles, which embrace one general subject, each proposed article shall be deemed a single proposal or proposition.
Oklahoma Constitution by article, in order to determine whether they embrace a single general subject. *In re Initiative Petition No. 403*, 2016 OK 1 at ¶5; *In re Initiative Petition No. 363, State Question No. 672*, 1996 OK 122, ¶15, 927 P.2d 558. In *In re Initiative Petition No. 363*, the Court described the test in the following manner:

> [W]hen the proposed *constitutional amendment is by a new article* the test for gauging multiplicity of subjects is whether the changes proposed are *all germane* to a singular common subject and purpose or are essentially unrelated one to another.

> When testing a proposed constitutional amendment for its components' germaneness, we look to whether each of its several facets bears a common concern or impacts one general object or subject.


¶15 Fairly recently, this Court applied the germaneness test to a substantially similar initiative petition to IP 416, and determined that the initiative petition in question did not violate the single-subject requirements of Okla. Const. art. 24, § 1. *In re Initiative Petition No. 403*, 2016 OK 1 at ¶2. The proposal at issue in that cause would have funded a constitutionally-set teacher pay raise via a new sales tax, as opposed to a new gross production tax. *In re Initiative Petition No. 403*, 2016 OK 1 at ¶11. The proposed Article XIII-C at issue in that cause would also

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7 Petitioners in another cause challenging the constitutionality of IP 416 assert this Court should abandon the germaneness test we most recently applied in *In re Initiative Petition No. 403*. For reasons set out in *Oklahoma Oil & Gas Association v. Michael O. Thompson*, 2018 OK 26, ___ P.3d ___, we decline to do so.
have distributed the funds to more sources and for more educational funding purposes:

In the case before us, the proposed Article 13-C consists of seven sections. Section 1 creates the Oklahoma Education Improvement Fund. Section 2 levies an additional 1% sales and use tax with "[a]ll revenue from the sales tax and the use tax levied" being used to fund the Oklahoma Education Improvement Fund created by Section 1. Section 3 directs the percentage distribution of the monies in the Fund for certain educational purposes including, common education (69.5%), higher education (19.25%), career and technology education (3.25%), and early childhood education (8%). Section 4 provides for a $5,000 increase in teacher salaries to be funded with 86.33% of the common education distribution under Section 3. Section 5 directs that funds "expended or distributed from the Oklahoma Education Improvement Fund shall supplement, and shall not be used to supplant or replace, other state funds" supporting education. Section 5 also directs the State Board of Equalization to "examine and investigate appropriations from the Fund each year," and if it finds that education funding was supplanted by monies from the Fund, the State Board of Equalization must "specify the amount by which education funding was supplaned." If education funding was supplaned by monies from the Fund, Section 5 directs that "the Legislature shall not make any appropriations for the ensuing fiscal year until an appropriation in that amount is made to replenish the Oklahoma Education Improvement Fund." Section 6 provides the effective date of the proposed amendment, and Section 7 provides a severability clause.

_In re Initiative Petition No. 403, 2016 OK 1 at ¶11 (footnotes omitted)._ 

The similarities between the two proposals are readily apparent from the above description.

¶16 Opponents assert IP 416 is distinguishable from Initiative Petition No. 403, described above, and make several arguments as to why IP 416 violates the single-subject requirements of Okla. Const. art. 24, § 1. Opponents argue IP 416:
¶20 This Court’s recent decision in *In re Initiative Petition No. 403, 2016* OK 1 at ¶12, is highly instructive. This Court explained of that initiative petition:

The subject of the proposed amendment is the Oklahoma Education Improvement Fund. Each section of the proposed amendment is "reasonably interrelated and interdependent, forming an interlocking "package"" [sic] deemed necessary by the initiatives' drafters to assure effective public education improvement funding. Proponents drafted the petition with each component being necessary to the accomplishment of one general design. The proposal stands or falls as a whole. For example, if a voter agrees that the Oklahoma Education Improvement Fund should be created but does not agree that an additional one cent sales tax is the appropriate funding mechanism to do so, then the voter must choose whether to approve the proposal based on such considerations. If, on the other hand, a voter agrees that an additional one cent sales tax is the appropriate funding mechanism to fund the Oklahoma Education Improvement Fund, but does not agree with the percentage distribution of the monies as set forth in Section 3, then again, the voter must choose whether to approve the proposal based on such considerations. Such choices are the consequence of the voting process rather than any constitutional defect in the proposal. The proposed initiative petition clearly constitutes a single scheme to be presented to voters, and each section is germane to creating and implementing the Oklahoma Education Improvement Fund.

*In re Initiative Petition No. 403, 2016 OK 1* at ¶12 (footnotes omitted).

Much like the proposal in *In re Initiative Petition No. 403*, each section of the new proposed article in IP 416 is reasonably interrelated and interdependent, forming an interlocking package to achieve the goal of improving public education funding.

Here, rather than the "Oklahoma Education Improvement Fund," we have the "Oklahoma Quality Instruction Fund." The type of tax levied is different, and the fund distribution is not identical (it is less complex and varied, in fact). However,
the logic by which this Court determined each section of Initiative Petition No. 403 to be germane to creating and implementing its fund applies equally here. Each component was deemed by the drafters necessary to accomplish one general design, to improve funding for public education. Hard choices, such as determining whether the new gross production tax amount is the appropriate funding mechanism for the proposed increases in education funding, are the consequence of the voting process. They are not a constitutional defect.

¶21 Opponents' arguments concerning the powers granted to the Board of Equalization by the proposed new article are unpersuasive for similar reasons. Opponents discuss the hypothetical effects the powers granted to the Board of Equalization might have on the entire state budgeting process, asserting that when there is a budget shortfall, "education funding" would be required to be held constant resulting in a situation where "millions of dollars of additional cuts will have to be suffered by other agencies." Brief In Support of Application and Petition to Assume Original Jurisdiction and Review the Constitutionality of Initiative Petition No. 416, p.12. They also assert these powers are novel and would negatively affect the balance of separation of powers in Oklahoma.

¶22 These arguments, however, are almost identical to those made by the petitioners in In re Initiative Petition No. 403 and rejected by this Court.
Concerning the speculative nature of the effect on the appropriations process, we noted:

[A]ny suggestion ... that the implementation of the Education Improvement Fund would negatively affect the legislative appropriations process or usurp legislative fiscal policy-making is entirely speculative at this point. We decline, at the pre-election stage, to declare the proposal unconstitutional on nothing more than speculation.

In re Initiative Petition No. 403, 2016 OK 1 at ¶17 (footnotes omitted).

Further, Opponents' arguments in this cause ignore the fact that the Board of Equalization already possesses much of the same power proposed by IP 416, pursuant to Okla. Const. art. 10, § 41 and other statutory provisions.

¶23 This Court described those powers in some detail in In re Initiative Petition No. 403. For purposes of comparison, that explanation is worth restating at length here:

In the case before us, opponents argue the proposal is misleading because voters will "think they are voting for teacher pay raises, when in fact, they are voting to significantly change our state's fiscal structure to give the Board of Equalization control over their local Representative and Senators deciding on education appropriations." This argument ignores the powers already conferred to the State Board of Equalization in the Oklahoma Constitution. Article 10, § 21 of the Oklahoma Constitution provides that the duty of the State Board of Equalization "shall be to adjust and equalize the valuation of real and personal property of the several counties in the state, and it shall perform such other duties as may be prescribed by law . . . ."

Okl. Const. Art. 10, § 21(A) (emphasis added). In Art. 10, § 23, entitled "Balanced Budget," Section 23(1) states that "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 . . . of the revenues to be received by the state under the laws in effect at the time such determination is made, for the next ensuing fiscal year . . .." Article 10, § 23(2) goes on to provide that "[t]he Legislature shall not pass or enact any bill, act or measure making an appropriation of money for any purpose until such certification is made and filed. . . ." All appropriations made in excess of such certification shall be "null and void" unless the Legislature follows certain specific procedures to adjust the certification amount.

In Art. 10, § 41, entitled the Oklahoma Education Lottery Trust Fund, the State Board of Equalization acts "to ensure that the funds from the trust fund are used to enhance and not supplant funding for education," and "examine[s] and investigate[s] appropriations from the trust fund each year." Art. 10, § 41(D). The State Board of Equalization "shall issue a finding and report which shall state whether appropriations from the trust fund were used to enhance or supplant education funding. If the State Board of Equalization finds that education funding was supplanted by funds from the trust fund, the Board shall specify the amount by which education funding was supplanted. In this event, the Legislature shall not make any appropriations for the ensuing fiscal year until an appropriation in that amount is made to replenish the trust fund." Id.

In Section 1521 of Title 69, which creates the Rebuilding Oklahoma Access and Driver Safety Fund, the State Board of Equalization also acts to "ensure that the funds from the ROADS Fund are used to enhance and not supplant state funding for the Department of Transportation," and "the State Board of Equalization shall examine and investigate expenditures from the fund each year." 69 O.S. Supp. 2013 § 1521(E). If the State Board of Equalization finds that funds were used to supplant state funding for the Department of Transportation, the Board "shall specify the amount by which such funding was supplanted," and in this event, "the Legislature shall not make any appropriations for the ensuing fiscal year until an appropriation in that amount is made to replenish state funding for the Department of Transportation."
The State Board of Equalization already examines the General Revenue Fund and each Special Revenue Fund and certifies to the Legislature the amounts available for appropriation in the upcoming fiscal year. The State Board of Equalization audits the Lottery Education Fund in the same way it would audit the Education Improvement Fund. The Lottery Education Fund was proposed and passed by the people in 2004.

_In re Initiative Petition No. 403, 2016 OK 1_ at ¶14-17 (footnotes omitted).

¶24 Opponents fail to demonstrate that the changes proposed by IP 416 are not all germane to a singular common subject and purpose. IP 416, much like Initiative Petition No. 403 on which it is obviously modelled, does not constitute logrolling and constitutes a single scheme to be presented to the voters of the State of Oklahoma.

**III. CONCLUSION**

¶25 After fully considering Opponents’ two constitutional challenges, this Court concludes that the new article proposed by IP 416 does not create a retroactive tax in violation of U.S. Const. amend. V and does not violate the single-subject requirements of Okla. Const. art. 24, § 1. It is the determination of this Court that IP 416 is legally sufficient for submission to the people of Oklahoma. Any petition for rehearing in this matter shall be filed no later than five (5) days from the date this opinion is handed down.
INITIATIVE PETITION NO. 416, STATE QUESTION NO. 795 IS LEGALLY SUFFICIENT FOR SUBMISSION TO THE PEOPLE OF OKLAHOMA

CONCUR: COMBS, C.J., GURICH, V.C.J., KAUGER (by separate writing), WINCHESTER, EDMONDSON, and REIF, JJ.

CONCUR SPECIALLY: WYRICK, J. (by separate writing)

RECUSED: COLBERT, J.
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MIKE MCDONALD, VALERIE MITCHELL, and OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION,

Petitioners,

v.

MICHAEL O. THOMPSON, RAY H. POTTS, and MARY LYNN PEACHER,

Respondents.

No. 116,680

ORIGINAL PROCEEDING TO DETERMINE THE SUFFICIENCY OF THE GIST OF INITIATIVE PETITION NO. 416, STATE QUESTION NO. 795

¶0 This is an original proceeding to determine the legal sufficiency of the gist of Initiative Petition No. 416, State Question No. 795. The petition seeks to amend the Oklahoma Constitution by adopting Article XIII-C, a new Article. The proposed Article XIII-C would primarily serve to increase funding for public education through an increase in the gross production tax. The opponent petitioners allege the gist of the petition is insufficient and misleading. Upon review, we hold that the gist of the petition is legally sufficient.

THE GIST OF INITIATIVE PETITION NO. 416, STATE QUESTION NO. 795 IS LEGALLY SUFFICIENT

Robert G. McCampbell, Adam C. Doverspike, and Jake M. Krattiger, GableGotwals, Oklahoma City, Oklahoma, for Petitioners.

Anthony J. Ferate, Edmond, Oklahoma, for Petitioner Oklahoma Independent Petroleum Association.
Joel L. Wohlgemuth, Ryan A. Ray, Alix R. Newman, Norman Wohlgemuth
Chandler Jeter Barnett & Ray, P.C., Tulsa, Oklahoma, for Respondents.

COMBS, C.J.

¶1 On December 20, 2017, Respondents Michael O. Thompson, Ray H.
Potts, and Mary Lynn Peacher (collectively, Proponents) filed Initiative Petition
No. 416, State Question No. 795 (IP 416) with the Oklahoma Secretary of State.
IP 416 would create a new Article XIII-C in the Oklahoma Constitution. IP 416
contains 8 sections, which Proponents assert will levy a new 5% gross production
tax on oil and gas production from certain wells, and provide for the deposit of the
proceeds primarily in a new fund entitled the “Oklahoma Quality Instruction Fund”
(the Fund). Monies from the Fund will be distributed: 1) 90% to common school
districts of the State of Oklahoma to increase compensation and benefits for
certified personnel, and the hiring, recruitment and retention thereof; and 2) 10% to
the State Department of Education to promote school readiness, and to support
compensation for instructors and other instructional expenses in “high-quality early
learning centers” for at-risk children prior to entry into the common education
system.

¶2 Section 1 of IP 416 creates the Fund. Section 2 creates the Oklahoma
Quality Instruction Reserve Fund to ensure the Fund always has sufficient
resources, and provides mechanisms for the transfer of monies. Section 3 levies
the 5% gross production tax. Section 4 provides for a $4,000 increase in
compensation for certified personnel, including teachers, but excluding
superintendents and assistant superintendents. Section 5 provides for the
distribution of funds according to the percentage scheme noted in the previous
paragraph above. Section 6 attempts to ensure that the new funds will be used to
supplement existing funding rather than supplant it, and grants the Board of
Equalization the power to specify the amount that was supplanted or replaced,
preventing the Legislature from making appropriations until it makes an
appropriation to replace the supplaned amount. Sections 7 and 8 provide an
effective date and severability provision, respectively.

¶ 3 On January 10, 2018, Petitioners Mike McDonald, Valerie Mitchell, and
Oklahoma Independent Petroleum Association (collectively, Protestants), timely
filed an Application to Assume Original Jurisdiction in this Court protesting the
sufficiency of the gist of IP 416.

1. STANDARD OF REVIEW

¶ 4 “The first power reserved by the people is the initiative....” Okla. Const.
art. 5, § 2; In re Initiative Petition No. 409, State Question No. 785, 2016 OK 51,
¶ 2, 376 P.3d 250; In re Initiative Petition No. 403, State Question No. 779, 2016
OK 1, ¶ 3, 367 P.3d 472. With that reservation comes “the power to propose laws
and amendments 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.” Okla. Cost. art. 5, § 1; In re Initiative Petition No. 409, 2016 OK 51 at ¶2; In re Initiative Petition No. 403, 2016 OK 1 at ¶3. “The right of the initiative is precious, and it is one which this Court is zealous to preserve to the fullest measure of the spirit and the letter of the law.” In re Initiative Petition No. 382, State Question No. 729, 2006 OK 45, ¶3, 142 P.3d 400. See In re Initiative Petition No. 349, State Question No. 642, 1992 OK 122, ¶35, 838 P.2d 1.

¶5 However, while the fundamental and precious right of initiative petition is zealously protected by this Court, it is not absolute. Any citizen can protest the sufficiency and legality of an initiative petition. In re Initiative Petition No. 409, 2016 OK 51 at ¶2; In re Initiative Petition No. 384, State Question No. 731, 2007 OK 48, ¶2, 164 P.3d 125. “Upon such protest, this Court must review the petition to ensure that it complies with the ‘parameters of the rights and restrictions [as] established by the Oklahoma Constitution, legislative enactments and this Court’s jurisprudence.’” In re Initiative Petition No. 384, 2007 OK 48 at ¶2 (quoting In re Initiative Petition No. 379, State Question No. 726, 2006 OK 89, ¶16, 155 P.3d 32).

¶6 The gist of an initiative petition is required by 34 O.S. 2011 § 3, which provides in pertinent part: “A simple statement of the gist of the proposition shall be printed on the top margin of each signature sheet.” This Court described the
importance of the gist and ballot title, as well as the requirements, in *In re Initiative Petition No. 344, State Question No. 630*, where we explained:

[T]he statement on the petition [the gist] and the ballot title must be brief, descriptive of the effect of the proposition, not deceiving but informative and revealing of the design and purpose of the petition. The limitations ... are necessary to prevent deception in the initiative process.... The voters, after reading the statement on the petition and the ballot title, should be able to cast an informed vote.

1990 OK 75, ¶14, 797 P.2d 326.

This Court further explained in detail how the gist of an initiative petition should be evaluated in *In re Initiative Petition No. 409*, where we stated:

This Court has long held that the purpose of the gist, along with the ballot title, is to "prevent fraud, deceit, or corruption in the initiative process." The gist "should be sufficient that the signatories are at least put on notice of the changes being made," and the gist must explain the proposal's effect. The explanation of the effect on existing law "does not extend to describing policy arguments for or against the proposal." The gist "need only convey the practical, not the theoretical, effect of the proposed legislation," and it is "not required to contain every regulatory detail so long as its outline is not incorrect.""We will approve the text of a challenged gist if it is 'free from the taint of misleading terms or deceitful language.'"


II.

ANALYSIS

¶7 The gist of IP 416 as submitted is as follows:

This measure adds a new Article to the Oklahoma Constitution. The new Article creates two limited purpose funds to support quality instruction. It increases compensation for all certified personnel,
including teachers, and supports early learning. It levies a five percent tax on gross production of oil and gas wells during the first thirty-six months of production to provide revenue for the Oklahoma Quality Instruction Fund (the “Fund”), and to provide revenue for a Reserve Fund ensuring the Fund can fulfill its obligations. The tax does not supplant or replace existing gross production taxes on such wells during such periods. The Article mandates a $4,000 increase in salaries for all common education certified personnel, including teachers and others. It allocates 90% of the available proceeds in the Fund for that purpose. It also allocates 10% of the available proceeds to support compensation for instructors and other instructional expenses in high-quality early learning centers for at-risk children prior to entry into the common education system. It requires annual audits of the use of monies from the Funds, which shall be made publicly available. It prohibits the use of such funds for superintendent or assistant superintendent salaries. It requires that monies from the Funds not supplant or replace other educational funding, and requires the State Board of Equalization to prohibit further appropriations by the Legislature if such supplanting or replacement has occurred, until remedied.

Petitioners’ Appendix to Application to Assume Original Jurisdiction and Petition to Review the Gist of Initiative Petition 416, Ex. B.

Protestants challenge the legal sufficiency of the gist, and assert that the insufficiency of the gist is fatal to IP 416.

¶8 Protestants make several arguments that the gist of IP 416 is insufficient, including that the gist: 1) is misleading because it mentions only teachers as the recipients of the salary increase; 2) engages in advocacy by using terms such as “to support quality instruction” and “in high quality early learning centers;” 3) fails to mention the State Department of Education will receive 10% of the proceeds; 4) fails to mention that the new tax will be applied to wells drilled after July 1, 2015;
5) fails to mention the salary increase for certified personnel will be set within the Constitution itself; 6) fails to mention the pay raise will be given without regard to merit; and 7) fails to mention the tax will be imposed by the Constitution. This Court finds Protestants’ arguments to be unpersuasive.

¶9 Protestants first assert that the gist of IP 416 is misleading because it mentions only teachers specifically as recipients of the salary increase that would be put in place by the new article. However, neither the gist, nor the petition itself mentions only teachers. In fact the gist properly mirrors the petition by stating that the new article “increases compensation for all certified personnel, including teachers.” The gist further notes, in keeping with the petition, that superintendents and assistant superintendents are excluded. This language is not deceiving or misleading, but informative of the purpose behind IP 416 itself and properly describes the effect the new article will have. This situation, where the gist highlights one part of a larger category in the same manner the petition itself does, is factually distinguishable from In re Initiative Petition No. 344, where this court determined a gist to be insufficient because it did not address all the major changes proposed by the petition. See 1990 OK 75 at ¶¶12-15. Protestants’ reliance on that case is misplaced.

¶10 Protestants also assert the gist sets forth policy arguments in favor of the proposal by using loaded terms that are subject to political debate, such as “to
support quality instruction” and “in high quality learning centers.” Protestants cite to *OCPA Impact v. Sheehan*, where this Court redrafted a ballot title to alter language such as “improve public education” to “increase funding for public education.” See 2016 OK 84, ¶¶9-11, 377 P.3d 138. Petitioners assert this Court should treat the gist the same as a ballot title for purposes of language that indicates partiality, and determine the gist is insufficient for this reason. However, ballot titles are subject to statutory requirements the gist is not.¹ These more stringent requirements are fitting given that the ballot title is all a voter has access to within the voting booth. Though the gist is now the only shorthand explanation of the proposal’s effect a potential signatory sees as part of the pamphlet, *In re Initiative Petition No. 409*, 2016 OK 51 at ¶4, nothing stops a potential signatory

¹ Title 34 O.S. Supp. 2015 § 9(B) provides:

B. The parties submitting the measure shall also submit a suggested ballot title to the Secretary of State which shall be filed on a separate sheet of paper and shall not be part of or printed on 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.
from looking up the text of an initiative petition or asking to see it. Proponents terms, which again mirror the petition itself, are not deceitful or misleading and do not prevent potential voters from making an informed decision.

¶11 Protestants also challenge the legal sufficiency of the gist for failing to specify that 10% of new proceeds will go to the Department of Education. However, though it does not specify what entity will handle the funds in question, the gist does specify the allocation of funds as well as the use to which they will be put.² Specifically, the gist states that the new article: “also allocates 10% of the available proceeds to support compensation for instructors and other instructional expenses in high-quality early learning centers for at-risk children prior to entry into the common education system.” Again, the language of the gist is not deceitful or misleading, and does not prevent voters from making an informed decision. As this Court has previously noted, the gist is “not required to contain every regulatory detail so long as its outline is not incorrect.” In re Initiative Petition No. 409, 2016 OK 51 at ¶3.

¶12 Protestants also allege the gist is legally insufficient because it fails to mention the new tax will be applied in a retroactive manner to wells drilled after July 1 of 2015. At the outset, it is true that the gist does not specify the July 1, 2015, date or explain the interaction between that date, the first 36 months of

² For comparison, in OCPA Impact, Inc. v. Sheehan, this Court redrafted a ballot title because it failed to breakdown the actual amounts and allocation of revenue. 2016 OK 84, ¶11, 377 P.3d 138. That is not the case here.
production, and the effective date of the new article. However, the question whether the tax imposed by IP 416 applies retroactively is answered in the negative by this Court’s opinion in *Okla. Indep. Petroleum Assoc. v. Ray H. Potts*, 2018 OK 24, --- P.3d ----. Further, by its very nature, the gist is a simple statement that summarizes the petition. We do not believe the omission of this one substantive detail is fatal to the legal sufficiency of the gist, and the omission is not deceitful or misleading, especially given that the gist does state the tax will apply to “wells during the first thirty-six months of production.”

¶14 Finally, Protestants assert the gist is legally insufficient because it fails to mention both the salary increase and the tax will be set by the Oklahoma Constitution, and that the salary increase will be without regard to merit. Protestants argue these changes upset the balance of power and usurp a role traditionally held by the Legislature. Protestants cite to *In re Initiative Petition No. 384, State Question No. 731*, where this Court held a gist to be insufficient because it failed to alert potential signatories to the effect the proposal would have on the balance of power between local school boards and the state. 2007 OK 48, ¶11, 164 P.3d 125.

¶15 The gist of IP 416, however, is creating a new article in the Oklahoma Constitution to 1) impose the new gross production tax; and 2) provide a pay increase for common education certified personnel:
This measure adds a new Article to the Oklahoma Constitution. The new Article creates two limited purpose funds to support quality instruction. It increases compensation for all certified personnel, including teachers, and supports early learning. It levies a five percent tax on gross production of oil and gas wells during the first thirty-six months of production to provide revenue for the Oklahoma Quality Instruction Fund (the “Fund”), and to provide revenue for a Reserve Fund ensuring the Fund can fulfill its obligations. The tax does not supplant or replace existing gross production taxes on such wells during such periods. The Article mandates a $4,000 increase in salaries for all common education certified personnel, including teachers and others. (Emphasis added).

Further, the use of the term “all” as emphasized above necessarily implies the pay increase will be given across the board without regard to merit. Protestants’ arguments in this instance are in reality little more than policy arguments against the proposal, and would be more appropriately made to the public. The gist’s explanation of the effect on existing law should not extend to describing policy arguments for or against the proposal, and the gist need only convey the practical, not the theoretical, effect of the proposal. In re Initiative Petition No. 409, 2016 OK 51 at ¶3; In re Initiative Petition No. 384, 2007 OK 48 at ¶8. A gist is sufficient if it apprises the voters of what the proposed measure is intended to do. In re Initiative Petition No. 384, 2007 OK 48 at ¶8.

III. CONCLUSION

¶16 The gist of IP 416 properly alerts potential signatories to the changes being made by the new article should voters approve it. The gist provides potential
signatories with sufficient information to make an informed decision about the true nature of the proposed constitutional change. *In re Initiative Petition No. 344, 1990 OK 75, ¶14, 797 P.2d 326.* The gist is also free from the taint of misleading terms and deceitful language. *In re Initiative Petition No. 409, 2016 OK 51 at ¶3; In re Initiative Petition No. 384, 2007 OK 48 at ¶9.* The gist of IP 416 is legally sufficient. Any petition for rehearing in this matter shall be filed no later than five (5) days from the date this opinion is handed down.

**THE GIST OF INITIATIVE PETITION NO. 416, STATE QUESTION NO. 795 IS LEGALLY SUFFICIENT**

CONCUR: COMBS, C.J., GURICH, V.C.J., KAUGER (by separate writing), WINCHESTER, EDMONDSON, and REIF, JJ.

CONCUR SPECIALLY: WYRICK, J. (by separate writing)

RECUSED: COLBERT, J.
2018 OK 26

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

OKLAHOMA OIL & GAS ASSOCIATION and
DAVID S. SIKES,

Petitioners,

v.

No. 116,682

MICHAEL O. THOMPSON, MARY LYNN PEACHER, and RAY H. POTTS,

Respondents.

F I L E D
SUPREME COURT
STATE OF OKLAHOMA
M A R 1 9 2 0 1 8
JOHN D. HADDEN CLERK

ORIGINAL PROCEEDING TO DETERMINE THE CONSTITUTIONAL VALIDITY OF INITIATIVE PETITION NO. 416, STATE QUESTION NO. 795

¶0 This is an original proceeding to determine the legal sufficiency of Initiative Petition No. 416, State Question No. 795. The petition seeks to amend the Oklahoma Constitution by adopting Article XIII-C, a new Article. The proposed Article XIII-C would primarily serve to increase funding for public education through an increase in the gross production tax. The opponent petitioners allege the petition is unconstitutional because it violates the one general subject rule of Okla. Const. art. 24, § 1. Upon review, we hold that the petition is legally sufficient.

INITIATIVE PETITION NO. 416, STATE QUESTION NO. 795 IS LEGALLY SUFFICIENT FOR SUBMISSION TO THE PEOPLE OF OKLAHOMA

V. Glenn Coffee and Denise Lawson, Glenn Coffee & Associates, PLLC, Oklahoma City, Oklahoma, for Petitioners.

COMBS, C.J.

¶1 On December 20, 2017, Respondents Michael O. Thompson, Mary Lynn Peacher, and Ray H. Potts (collectively, Proponents) filed Initiative Petition No. 416, State Question No. 795 (IP 416) with the Oklahoma Secretary of State. IP 416 would create a new Article XIII-C in the Oklahoma Constitution. IP 416 contains 8 sections, which Proponents assert will levy a new 5% gross production tax on oil and gas production from certain wells, and provide for the deposit of the proceeds primarily in a new fund entitled the “Oklahoma Quality Instruction Fund” (the Fund). Monies from the Fund will be distributed: 1) 90% to common school districts of the State of Oklahoma to increase compensation and benefits for certified personnel, and the hiring, recruitment and retention thereof; and 2) 10% to the State Department of Education to promote school readiness, and to support compensation for instructors and other instructional expenses in “high-quality early learning centers” for at-risk children prior to entry into the common education system.

¶2 Section 1 of IP 416 creates the Fund. Section 2 creates the Oklahoma Quality Instruction Reserve Fund to ensure the Fund always has sufficient resources, and provides mechanisms for the transfer of monies. Section 3 levies a 5% tax on the gross value of the production of oil, gas, or oil and gas from all oil and gas wells spudded after July 1, 2015, during the first thirty-six months of
production, commencing with the month of first production, from and after the effective date of the article. Section 4 provides for a $4,000 increase in compensation for certified personnel, including teachers, but excluding superintendents and assistant superintendents. Section 5 provides for the distribution of funds according to the percentage scheme noted in the previous paragraph above. Section 6 attempts to ensure that the new funds will be used to supplement existing funding rather than supplant it, and grants the Board of Equalization the power to specify the amount that was supplanted or replaced, preventing the Legislature from making appropriations until it makes an appropriation to replace the supplanted amount. Sections 7 and 8 provide an effective date and severability provision, respectively.

¶3 On January 10, 2018, Petitioners Oklahoma Oil & Gas Association and David A. Sikes (collectively, Protestants), timely filed an Application to Assume Original Jurisdiction in this Court protesting the sufficiency of IP 416 and the basis that it fails to pass constitutional muster.

I. STANDARD OF REVIEW

¶4 “The first power reserved by the people is the initiative....” Okla. Const. art. 5, § 2; In re Initiative Petition No. 409, State Question No. 785, 2016 OK 51, ¶2, 376 P.3d 250; In re Initiative Petition No. 403, State Question No. 779, 2016 OK 1, ¶3, 367 P.3d 472. With that reservation comes “the power to propose laws
and amendments 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." Okla. Const. art. 5, § 1; In re Initiative Petition No. 409, 2016 OK 51 at ¶2; In re Initiative Petition No. 403, 2016 OK 1 at ¶3. "The right of the initiative is precious, and it is one which this Court is zealous to preserve to the fullest measure of the spirit and the letter of the law." In re Initiative Petition No. 382, State Question No. 729, 2006 OK 45, ¶3, 142 P.3d 400. See In re Initiative Petition No. 349, State Question No. 642, 1992 OK 122, ¶35, 838 P.2d 1.

¶5 However, while the fundamental and precious right of initiative petition is zealously protected by this Court, it is not absolute. Any citizen can protest the sufficiency and legality of an initiative petition. In re Initiative Petition No. 409, 2016 OK 51 at ¶2; In re Initiative Petition No. 384, State Question No. 731, 2007 OK 48, ¶2, 164 P.3d 125. "Upon such protest, this Court must review the petition to ensure that it complies with the 'parameters of the rights and restrictions [as] established by the Oklahoma Constitution, legislative enactments and this Court's jurisprudence.'" In re Initiative Petition No. 384, 2007 OK 48 at ¶2 (quoting In re Initiative Petition No. 379, State Question No. 726, 2006 OK 89, ¶16, 155 P.3d 32).
¶6 This Court has generally refused to declare a ballot initiative invalid in advance of a vote of the people except where there is a clear or manifest showing of unconstitutionality. *In re Initiative Petition No. 403*, 2016 OK 1 at ¶3; *In re Initiative Petition No. 358, State Question No. 658*, 1994 OK 27, ¶7, 870 P.2d 782.

We have repeatedly emphasized both how vital the right of initiative is to the people of Oklahoma, as well as the degree to which we must protect it:

"Because the right of the initiative is so precious, all doubt as to the construction of pertinent provisions is resolved in favor of the initiative. The initiative power should not be crippled, avoided, or denied by technical construction by the courts."

*In re Initiative Petition No. 403*, 2016 OK 1 at ¶3 (quoting *In re Initiative Petition No. 382*, 2006 OK 45 at ¶3.

Accordingly, Opponents in this matter bear the burden of demonstrating the proposed initiative petition is clearly and manifestly unconstitutional. *In re Initiative Petition No. 403*, 2016 OK 1 at ¶3; *In re Initiative Petition No. 362, State Question No. 669*, 1995 OK 77, ¶12, 899 P.2d 1145.

II.
ANALYSIS

¶7 Opponents in this matter allege IP 416 is insufficient and must not be submitted to the voters as it stands because it is unconstitutional. Opponents challenge the constitutionality of IP 416 on the grounds that it violates the single-subject requirements of Okla. Const. art. 24, § 1. Opponents raise two general
arguments concerning the application of Okla. Const. art. 24, § 1 in this cause.

First, Opponents argue this Court should overrule In re Initiative Petition No. 403, State Question No. 779, 2016 OK 1, 367 P.3d 472, and instead of the "germaneness" standard applied in that cause adopt a "one general subject" standard in keeping with what Opponents argue is the plain language of Okla. Const. art. 24, § 1. Second, Opponents assert IP 416 violates Okla. Const. art. 24, § 1 because it combines multiple distinct subjects, including granting expansive powers to the Board of Equalization in Section 6.

A. In re Initiative Petition No. 403, State Question No. 779, 2016 OK 1, 367 P.3d 472 remains good law.

¶8 Opponents concede that in the case of In re Initiative Petition No. 403, State Question No. 779, 2016 OK 1, 367 P.3d 472, this Court determined an almost identical initiative petition to the one at issue in this cause did not violate the single-subject rule of Okla. Const. art. 24, § 1. In that cause, this Court applied a "germaneness test" to determine if a proposed constitutional amendment by new article violated the single subject-requirements of Okla. Const. art. 24, § 1. In re Initiative Petition No. 403, 2016 OK 1 at ¶10. We summed up the test in the following manner:

"when the proposed constitutional amendment is by a new article the test for gauging multiplicity of subjects is whether the changes proposed are all germane to a singular common subject and purpose or are essentially unrelated to one another."
In re Initiative Petition No. 403, 2016 OK 1 at ¶10 (quoting In re Initiative Petition No. 363, State Question No. 672, 1996 OK 122, ¶15, 927 P.2d 558).

¶9 Opponents argue against the continued application of this test, and for this Court to overrule In re Initiative Petition No. 403. To do so would be a departure from the rule of stare decisis. Simply stated, stare decisis means to abide by decided cases. Fent v. State ex rel. Okla. Capitol Imp. Auth., 2009 OK 15, n.12, 214 P.3d 799; Rodgers v. Higgins, 1993 OK 45, ¶28, 871 P.2d 398. This doctrine serves to remove any capricious element from the law and grant it stability over time. Sisk v. J.B. Hunt Transport, Inc., 2003 OK 69, n.24, 81 P.3d 55; Fent, 2009 OK 15 at n.12; Rodgers, 1993 OK 45 at ¶28. Only those precedents that are patently bad should be altered by judicial correction. Sisk, 2003 OK 69 at ¶13; Rodgers, 1993 OK 45 at ¶28. In Rodgers, this Court discussed the factors we should be mindful of when called upon to reassess our commitment to prior holdings as binding precedent:

(1) whether the rule has proved to be intolerable by defying practical workability, (2) whether the rule is subject to the sort of reliance that would add special hardship to the consequences of overruling and inequity to the cost of repudiation, (3) whether related principles of law have developed so far that the old rule remains no more than a remnant of abandoned doctrine and (4) whether facts have so changed or come to be viewed so differently that the old rule has been robbed of significant application or justification.

1993 OK 45 at ¶29 (citing Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 854-55, 112 S.Ct. 2791, 2808-09, 120 L.Ed.2d 674 (1992)).
¶10 Opponents do not address any of these factors directly, but they do make several arguments addressing why the germaneness test is improper. First, they assert it conflicts with the plain language of Okla. Const. art. 24, § 1, which provides in pertinent part:

No proposal for the amendment or alteration of this Constitution which is submitted to the voters shall embrace more than one general subject and the voters shall vote separately for or against each proposal submitted; provided, however, that in the submission of proposals for the amendment of this Constitution by articles, which embrace one general subject, each proposed article shall be deemed a single proposal or proposition.

Opponents assert the plain language of the provision requires a “one general subject” standard that they equate to the standard used to judge amendments made NOT by entire article, and which should be less liberal.

¶11 Opponents also assert this Court has not consistently applied the germaneness standard to amendments by article. According to Opponents, this Court applied a different test in In re Initiative Petition No. 344, State Question No. 630, 1990 OK 75, 797 P.2d 326. The language Opponents cite from that case explaining the rule is actually a direct quote from an older Arizona case this Court was favorably referencing:

If the different changes contained in the proposed amendment all cover matters necessary to be dealt with in some manner, in order that the Constitution, as amended, shall constitute a consistent and workable whole on the general topic embraced in that part which is amended, and if, logically speaking, they should stand or fall as a whole, then there is but one amendment submitted. But, if any one of
the propositions, although not directly contradicting the others, does not refer to such matters, or if it is not such that the voter supporting it would reasonably be expected to support the principle of the others, then there are in reality two or more amendments to be submitted, and the proposed amendment falls within the constitutional prohibition.

Kerby v. Luhrs, 44 Ariz. 208, 221, 36 P.2d 549, 554 (1934).

In reality, this language is not in conflict with the rule this Court articulated in In re Initiative Petition No. 403, 2016 OK 1 at ¶10. In fact, In re Initiative Petition No. 344, which Opponents argue is inconsistent, did not disavow the liberal approach taken in Rupe v. Shaw, 1955 OK 223, ¶6, 286 P.2d 1094, but rather distinguished it:

In his reply brief, the Attorney General relies on Rupe v. Shaw, 286 P.2d 1094 (Okla. 1955), in support of his position that the Petition embraces only one subject. The Attorney General argues that this Court in Rupe adopted the liberal test rather than the more restrictive test adopted by some other jurisdictions and that under the liberal test the present Petition embraces only one general subject. This Court found that the petition in Rupe addressed only one general subject because the details were incidental to accomplishing the general design of the proposal. Many of the changes made by the present Petition are not incidental or necessary to an overall design.

In re Initiative Petition No. 344, 1990 OK 75 at ¶6.

¶12 Regardless, In re Initiative Petition No. 403 set out in some detail this Court’s long history of applying the more liberal germaneness test to amendments by article. 2016 OK 1 at ¶¶5-10. The Court made reference to a wealth of prior precedent in support of such an approach: Rupe v. Shaw, 1955 OK 223, ¶6, 286 P.2d 1094 (holding a more liberal construction should be applied to amendments
by article); *In re Initiative Petition No. 314, State Question No. 550*, 1980 OK 174, 625 P.2d 595 (explaining that unconstitutional changes proposed by amending an existing article could have been effected through amendment by new article without violating the single-subject requirement); *In re Initiative Petition No. 319, State Question No. 563*, 1984 OK 23, ¶¶8-9, 682 P.2d 222 (recognizing the different test for amendment by article, explaining the germaneness test, and approving the petition as proposed); *In re Initiative Petition No. 363*, 1996 OK 122, ¶15, 927 P.2d 558 (reiterating that the test for amendment by article is whether the changes proposed are *all germane* to a singular common subject and purpose or are essentially unrelated to one another).

¶13 Opponents argue the germaneness test frustrates the policy behind the single-subject rule by allowing almost anything absent totally unrelated provisions to pass constitutional muster, and that the test’s flexibility allows individuals to game the system and avoid the single-subject requirement by cloaking multi-subject amendments with vague titles, essentially tricking potential signatories and voters. However, Opponents ignore the actual operation of the germaneness test in question. This Court does not base its analysis merely on the relation of a new article’s sections to a single statement of purpose such as a fund name, but on their relationship to each other and their combined, common purpose. *See In re Initiative Petition No. 403*, 2016 OK 1 at ¶12.
¶14 Further, in *Initiative Petition No. 403* we explained the policy behind the one general subject rule:

The purpose of the one general subject rule, as this Court has repeatedly held, is "to prevent imposition upon or deceit of the public by the presentation of a proposal which is misleading or the effect of which is concealed or not readily understandable," and to "afford the voters freedom of choice and prevent "logrolling", or the combining of unrelated proposals in order to secure approval by appealing to different groups which will support the entire proposal in order to secure some part of it although perhaps disapproving of other parts." *In re Initiative Petition No. 314*, 1980 OK 174, ¶59, 625 P.2d 595, 603 (quoting *Fugina v. Donovan*, 104 N.W.2d 911, 914 (Minn. 1960)) (emphasis added).

2016 OK 1 at ¶13.

The germaneness test does not frustrate this purpose, but rather serves it. The goal is to ensure the proposed amendment by article does not combine *unrelated proposals* which would result in a misleading effect or logrolling. That goal is accomplished by ensuring that all the proposed changes are germane to a singular common subject or purpose, which necessarily excludes the possibility that they will be unrelated to one another. *See Initiative Petition No. 403*, 2016 OK 1 at ¶10.

The Court explained as much succinctly in *In re Initiative Petition No. 363*:

A single-subject measure, within the meaning of Art. 24 § 1, Okl. Const., is one whose componential ingredients, no matter how numerous, are so interrelated as to all form parts of an integrated whole. The purpose of the one-general-subject criterion is to guard against deceit or against the presentation of a misleading proposal as well as to prevent log rolling—the combining of unrelated proposals. *In re Initiative Petition No. 319* teaches that when the proposed constitutional amendment is by a new article the test for gauging
multiplicity of subjects is whether the changes proposed are all germane to a singular common subject and purpose or are essentially unrelated one to another.

1996 OK 122 at ¶15 (footnotes omitted).

¶15 The rule this Court applied in *In re Initiative Petition No. 403* is not unworkable. It has been applied successfully by this Court several times over the past few decades, as noted above. The rule has not been robbed of its significance, nor is it an abandoned doctrine due to the evolution of underlying legal principles. Further, IP 416 was very obviously drafted in reliance on this Court’s decision in *In re Initiative Petition No. 403*, and to overrule it at this stage would result in exactly the sort of capricious instability the doctrine of *stare decisis* is intended to counter. Opponents have failed to meet the burden required to show why this Court should depart from long-settled precedent in this instance. *See Sisk*, 2003 OK 69 at ¶13; *Rodgers*, 1993 OK 45 at ¶¶28-29.

**B. The new article proposed by IP 416 does not violate the single-subject requirements of Okla. Const. art. 24, § 1.**

¶16 Opponents also assert IP 416 violates the single-subject rule of Okla. Const. art. 24, § 1 because it contains multiple distinct subjects by lumping a $4,000 pay increase for certified common education personnel with the new gross production tax, as well as with expanding the reach of the Board of Equalization, an executive branch entity, into the legislative realm. As discussed in the previous section of this opinion, *In re Initiative Petition No. 403, State Question No. 779*, 12
2016 OK 1, 367 P.3d 472 remains good law. That case, combined with this
Court’s decision in Okla. Indep. Petroleum Assoc. v. Ray H. Potts, 2018 OK 24, ---
P.3d ----, are controlling and dispositive of Opponents’ arguments concerning
application of Okla. Const. art. 24, § 1 to IP 416. IP 416 does not violate the

III.
CONCLUSION

¶25 After fully considering Opponents’ arguments concerning the continued
applicability of the germaneness test and their constitutional challenge, this Court
concludes that In re Initiative Petition No. 403, State Question No. 779, 2016 OK
1, 367 P.3d 472 remains good law and the new article proposed by IP 416 does not
violate the single-subject requirements of Okla. Const. art. 24, § 1. It is the
determination of this Court that IP 416 is legally sufficient for submission to the
people of Oklahoma. Any petition for rehearing in this matter shall be filed no
later than five (5) days from the date this opinion is handed down.

INITIATIVE PETITION NO. 416, STATE QUESTION NO. 795 IS
LEGALLY SUFFICIENT FOR SUBMISSION TO THE PEOPLE OF
OKLAHOMA

CONCUR: COMBS, C.J., GURICH, V.C.J., KAUGER (by separate writing),
WINCHESTER, EDMONDSON, and REIF, JJ.

CONCUR SPECIALLY: WYRICK, J. (by separate writing)

RECUSED: COLBERT, J.
April 23, 2018

VIA E-MAIL AND U.S. MAIL

The Honorable Tod Wall
Acting Oklahoma Secretary of State
2300 N. Lincoln Boulevard, Ste. 101
Oklahoma City, Oklahoma 73105-4897

Re: Initiative Petition No. 416/State Question No. 795

Dear Mr. Secretary:

In accordance with 34 Okla. Stat. § 8(E), Michael O. Thompson, Mary Lynn Peacher, and Ray H. Potts, Proponents of Initiative Petition No. 416/State Question No. 795, hereby withdraw the Initiative Petition at the current time.

Sincerely yours,

Ryan A. Ray
Counsel for the Proponents

RAR/src

c: The Honorable Mike Hunter
Oklahoma Attorney General (via U.S. Mail)