



FILED
DEC 27 2019
OKLAHOMA SECRETARY
OF STATE

December 27, 2019

The Honorable Michael Rogers
Oklahoma Secretary of State
2300 N. Lincoln Boulevard, Ste. 122
Oklahoma City, Oklahoma 73105-4897

Re: Initiative Petition

Dear Mr. Secretary:

Please accept for filing the enclosed copy of an initiative petition regarding adult-use marijuana. Also enclosed is a suggested ballot title.

Very truly yours,

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Counsel for Proponents

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PROPOSED BALLOT TITLE

**OKLAHOMA SECRETARY
OF STATE**

This measure adds a new article to the Constitution, which would generally legalize, regulate and tax marijuana for adults 21+ under state law (but not alter the rights of medical marijuana licensees). Specifically, it protects the personal use of marijuana for those 21+, while establishing quantity limits, safety standards, and other restrictions. It maintains prohibitions on impaired driving and distribution to, or use by, those under 21. It would not affect employers' ability to restrict marijuana use by employees. Property owners generally may restrict marijuana on their property. The Oklahoma Marijuana Authority would license, regulate and administer the article pursuant to specified requirements. It permits municipalities, upon popular vote, to limit or prohibit retail licenses. It imposes a 15% excise tax on sales (not applicable to medical marijuana) to fund the Authority, localities where sales occur, schools (for programs to prevent substance abuse and improve student retention and performance), and drug-addiction treatment programs, while ensuring such funds must add to, not replace, existing funding. It provides a judicial process for people to seek modification, reversal, redesignation or expungement of certain prior marijuana-related judgments and sentences. Its provisions are severable and would take effect in 90 days.

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. 807, Initiative Petition No. 423

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.

-----**FILED**-----

INITIATIVE PETITION

DEC 27 2019

To the Honorable John Kevin Stitt, Governor of Oklahoma:

OKLAHOMA SECRETARY
OF STATE

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 next regular general election (or at a special election as may be called by the Governor), and each for himself/herself says: I have personally signed this petition; I am a legal voter of the State of Oklahoma; my residence is 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 31 to the Oklahoma Constitution be approved?

BE IT ENACTED BY THE PEOPLE OF OKLAHOMA THAT A NEW ARTICLE 31 TO THE OKLAHOMA CONSTITUTION BE APPROVED:

**CONSTITUTION OF OKLAHOMA, ARTICLE 31
MARIJUANA**

§ 1. Definitions

Terms used in this article mean:

- (1) "Authority" means the Oklahoma Marijuana Authority or any successor department, division, or agency.
- (2) "Consumer" means a person twenty-one years of age or older. "Consumer" does not include licensed patients.
- (3) "Entity" means an individual, a sole proprietorship, a general partnership, a limited partnership, a limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.
- (4) "Hemp" means the plant of the genus cannabis, and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.
- (5) "License" or "Licensee" means a license issued or an entity licensed pursuant to this article.
- (6) "Local government" means a county, municipality, or other political subdivision.
- (7) "Marijuana" means cannabis indica, cannabis sativa, and cannabis ruderalis, hybrids of such species, as well as resin extracted from the plant and marijuana-infused products. "Marijuana" does not include hemp, or commodities or products manufactured with

hemp, or any other ingredient combined with marijuana to prepare topical, oral, or rectal administrations, food, drink, or other products.

- (8) “Marijuana accessory” means any equipment, product, or material, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marijuana into the human body.
- (9) “Marijuana-infused product” means a product that contains cannabinoids that have been extracted from marijuana or the resin therefrom by physical or chemical means, including but not limited to concentrates, oils, tinctures, edibles, pills, topical forms, gels, creams, and other derivative forms.
- (10) “Medical marijuana” means marijuana that is acquired, grown, processed, manufactured, dispensed, tested, transported, possessed, or used for a medical purpose.
- (11) “Medical marijuana business license” means a license issued to a business under Oklahoma’s medical marijuana laws, including but not limited to a medical marijuana dispensary license, medical marijuana processor license, medical marijuana commercial grower license, medical marijuana laboratory license, and medical marijuana transporter license.
- (12) “Medical marijuana license” means a license issued by the Authority proving the holder of such license is a member of a state-regulated medical marijuana program.
- (13) “Patient” or “Licensed patient” means a person that has been issued a medical marijuana license pursuant to Oklahoma law and Authority regulations.
- (14) “School” means a public or private preschool or a public or private elementary or secondary school used for school classes and instruction. A homeschool, daycare, child-care facility, or other structure not primarily used for school classes and student instruction shall not be considered a “school” as used in this article.
- (15) “Unduly burdensome” means that the measures necessary to comply with the rules or ordinances adopted pursuant to this section subject licensees or potential licensees to such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate a marijuana business.

§2. Limitations

Notwithstanding the provisions of this article, this article does not limit or affect laws that prohibit or otherwise regulate:

- (1) Delivery or distribution of marijuana or marijuana accessories, with or without consideration, to a person younger than twenty-one years of age;
- (2) Purchase, possession, use, or transport of marijuana or marijuana accessories by a person younger than twenty-one years of age;
- (3) Consumption of marijuana by a person younger than twenty-one years of age;
- (4) Operating or being in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence of marijuana;
- (5) Consumption of marijuana while operating or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport, while it is being operated;

- (6) Smoking marijuana while riding in the passenger seat or compartment of a motor vehicle, aircraft, motorboat, or other motorized form of transport, while it is being operated;
- (7) Possession or consumption of marijuana or possession of marijuana accessories on the grounds of a public or private preschool, elementary school, or high school, in a school bus, or on the grounds of any correctional facility;
- (8) Smoking marijuana in a public place, other than in an area licensed by the Authority for consumption, unless otherwise allowed by the Legislature or a local government;
- (9) Undertaking any task under the influence of marijuana, if doing so would constitute negligence or professional malpractice; or
- (10) Processing or performing solvent-based extractions on marijuana if the equipment or process utilizes butane, propane, carbon dioxide or any potentially hazardous material, unless licensed for this activity by the Authority.

§3. Employment, Property, and Patients

Notwithstanding the provisions of this article, this article does not:

- (1) Limit any privileges, rights, immunities, or defenses of a patient, medical marijuana licensee, or medical marijuana business licensee as provided under Oklahoma law;
- (2) Require that an employer accommodate conduct permitted by this article;
- (3) Affect an employer's ability to restrict conduct permitted by this article by employees;
- (4) Limit the right of a person who occupies, owns, or controls private property from prohibiting or otherwise regulating conduct permitted by this article on or in that property, except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marijuana by means other than smoking; or
- (5) Limit the ability of the state or a local government to prohibit or restrict any conduct permitted under this article within a building owned, leased, or occupied by the state or the local government.

§4. Personal Use Protections

- (1) Subject to the limitations in this article, the following acts are not unlawful and shall not be an offense under state law or the laws of any local government within the state or be subject to a civil fine, penalty, or sanction, or be a basis for detention, search, or arrest, or to deny any right or privilege, or to seize or forfeit assets under state law or the laws of any local government, if the person is at least twenty-one years of age:
 - (a) Possessing, purchasing, using, ingesting, inhaling, processing, transporting, delivering without consideration, or distributing without consideration one ounce or less of marijuana, eight grams or less of marijuana in a concentrated form, and/or eight grams or less of marijuana in concentrated form contained within marijuana-infused products. The quantities listed here are cumulative.
 - (b) Possessing, planting, cultivating, harvesting, drying, processing, or manufacturing not more than six mature marijuana plants and six seedlings, and possessing the marijuana produced by the plants and seedlings, provided:
 - (i) The plants and seedlings and any marijuana produced by the plants and seedlings in excess of one ounce are kept in or on the grounds of one private residence, are in a locked space, and are not visible and recognizable as marijuana by normal, unaided vision from a public place; and

- (ii) Not more than twelve plants and twelve seedlings are kept in or on the grounds of a private residence at one time.
 - (c) Assisting another person who is at least twenty-one years of age, or allowing property to be used, in any of the acts permitted by this article.
 - (d) Possessing, purchasing, using, delivering, distributing, manufacturing, transferring, or selling marijuana accessories to persons twenty-one years of age or older.
 - (e) Transporting not more than six mature marijuana plants and six seedlings cultivated in compliance with subsection (1)(b) of this section for testing and/or manufacturing, and/or donation of marijuana for scientific research, provided such transportation is permitted by the Authority or the Legislature.
- (2) A person shall not be denied parental rights, custody of, or visitation with a minor child by the state or local government based solely on conduct that is permitted by this article, unless the person's behavior is such that it creates an unreasonable danger to the minor child that can be established by clear and convincing evidence.
 - (3) A person currently under parole, probation, or other state supervision, or released awaiting trial or other hearing, may not be punished or otherwise penalized based solely on conduct that is permitted by this article.
 - (4) A consumer shall not be required to provide a licensee with identifying information other than identification to determine the consumer's age, and a licensee may not retain any personally identifying information about the consumer for more than sixty days (60) without the consumer's written permission.
 - (5) No conduct permitted by this article shall constitute the basis for detention, search, or arrest; and except when law enforcement is investigating whether a person is operating a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while impaired, the odor of marijuana or burnt marijuana, the possession or suspicion of possession of marijuana without evidence of quantity in excess of the lawful amount, or the possession of multiple containers of marijuana without evidence of quantity in excess of the lawful amount shall not individually or in combination with each other constitute reasonably articulable suspicion of a crime. Marijuana and marijuana-infused products as permitted by this article are not contraband nor subject to seizure.
 - (6) A person shall not be denied eligibility in public assistance programs based solely on conduct that is permitted by this article, unless required by federal law.
 - (7) A person shall not be denied by the state or local government the right to own, purchase or possess a firearm, ammunition, or firearm accessories based solely on conduct that is permitted by this article. No state or local agency, municipal or county governing authority shall restrict, revoke, suspend or otherwise infringe upon the right of a person to own, purchase, or possess a firearm, ammunition, or firearm accessories or any related firearms license or certification based solely on conduct that is permitted by this article.
 - (8) Nothing in this section or this article may be construed to limit any privileges, rights, immunities or defenses of patients, medical marijuana licensees, or medical marijuana businesses or to change or affect any law or regulation addressing marijuana for medical use or to apply any fine or other penalty to a patient. Any restrictions or limitations on persons or consumers set forth in this section or elsewhere in the article do not apply to patients, medical marijuana licensees, or medical marijuana businesses if the restriction or limitation is inconsistent with Oklahoma's laws related to medical marijuana.

§5. Personal Use Penalties

- (1) A consumer who, contrary to §4 of this article, cultivates marijuana plants that are visible and recognizable as marijuana by normal, unaided vision from a public place is subject to a civil fine not exceeding two-hundred and fifty dollars.
- (2) A consumer who, contrary to §4 of this article, cultivates marijuana plants that are not kept in a locked space is subject to a civil fine not exceeding two-hundred and fifty dollars.
- (3) A consumer who smokes marijuana in a public place, other than in an area licensed for such activity by the Authority or unless otherwise allowed by the Legislature or a local government, is subject to a civil fine not exceeding twenty-five dollars. Smoking marijuana in a public place shall not constitute the basis for detention, search, or arrest.
- (4) A person who is under twenty-one years of age, is not a licensed patient, and possesses, uses, ingests, inhales, transports, delivers without consideration or distributes without consideration not more than the amount of marijuana allowed for adults twenty-one years of age or older by § 4 of this article or possesses, delivers without consideration, or distributes without consideration marijuana accessories is subject to a civil fine not to exceed one-hundred dollars and forfeiture of the marijuana. The person shall be provided the option of attending up to four hours of drug education or counseling in lieu of the fine.
- (5) Subject to §4 of this article, a consumer who possesses not more than twice the amount of marijuana allowed pursuant to §4 of this article, produces not more than twice the amount of marijuana allowed pursuant to §4 of this article, delivers without consideration or distributes without consideration to a person who is at least twenty-one years of age not more than twice the amount of marijuana allowed by §4 of this article, or possesses with intent to deliver or distribute not more than twice the amount of marijuana allowed by §4 of this article:
 - (a) For a first violation, is subject to a civil fine not exceeding two hundred dollars and forfeiture of the marijuana;
 - (b) For a second violation, is subject to a civil fine not exceeding three hundred dollars and forfeiture of the marijuana;
 - (c) For a third or subsequent violation, is subject to a civil fine not exceeding five hundred dollars and forfeiture of the marijuana; or
 - (d) For a person under twenty-one years of age who is not a licensed patient, is subject to a civil fine not to exceed two hundred dollars and forfeiture of the marijuana. Any such person shall be provided the option of attending up to eight hours of drug education or counseling in lieu of the fine.
- (6) A person shall not be subject to any additional fees, fines, or other penalties for the violations addressed in this section other than those set forth in this section. Further, a person shall not be subject to increased punishment for any other crime on the basis of their having undertaken any of the conduct listed in Sections 4 or 5 of this article.
- (7) After January 1, 2024, the Legislature may adjust the fines set forth in this article, but any increase shall be no greater than necessary to adjust for inflation.
- (8) It is expressly prohibited to operate extraction equipment or utilize extraction processes on marijuana if the equipment or process utilizes butane, propane, carbon dioxide or any potentially hazardous material in a residential property or without a license to do so from the Authority.
- (9) Nothing in this section or this article may be construed to limit any privileges, rights, immunities, or defenses of patients, medical marijuana licensees or medical marijuana businesses or to change or affect any law or regulation addressing marijuana for medical

use or to apply any fine or other penalty to a patient. Any restrictions or limitations on persons or consumers set forth in this section or elsewhere in the article do not apply to patients, medical marijuana licensees, or medical marijuana businesses if the restriction or limitation is inconsistent with Oklahoma's laws related to medical marijuana.

§ 6. Licensing

- (1) The Oklahoma Medical Marijuana Authority is hereby renamed the Oklahoma Marijuana Authority.
- (2) The Authority shall have the power to license and regulate the cultivation, processing, manufacture, testing, transport, delivery, and sale of marijuana in the state and to administer and enforce this article.
- (3) The Authority shall, at minimum, accept applications for and issue:
 - (a) Licenses permitting commercial cultivators of marijuana to cultivate, package, transport, and sell marijuana, including sales to retail;
 - (b) Licenses permitting independent marijuana testing facilities to analyze and certify the safety, quality, and potency of marijuana and marijuana-infused products;
 - (c) Licenses permitting marijuana to be manufactured or processed into marijuana-infused products and packaged, prepared, and transported for sale, including sales to retail; and
 - (d) Licenses permitting retail sales outlets to sell, package, and deliver marijuana and marijuana-infused products to consumers.
- (4) Additional types or classes of licenses, including licenses that allow for only limited cultivation, processing, transportation, delivery, storage, sale, or purchase of marijuana, licenses that allow for the consumption of marijuana within designated areas, licenses that allow for cultivation for purposes of propagation, and licenses intended to facilitate scientific research or education, may be created.
- (5) An entity may hold both a medical marijuana business license and a license under this article of the same type to operate at the same location consistent with Authority regulations and this article.

§ 7. Rules and Regulations

- (1) Not later than three hundred and sixty-five days after the effective date of this article, the Authority shall promulgate rules and issue regulations necessary for the implementation and enforcement of this article. The rules shall be reasonable and shall include:
 - (a) Procedures for issuing a license and for renewing, suspending, and revoking a license;
 - (b) Application, licensing, and renewal fees, not to exceed the amount necessary to cover the costs to the Authority of implementing and enforcing this article;
 - (c) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana business;
 - (d) Requirements and standards for safe cultivation, processing, manufacture, and distribution of marijuana and marijuana-infused products by licensees, including health standards to ensure the safe preparation of marijuana products and prohibitions on pesticides that are not safe for use on marijuana;

- (e) Standards, procedures, and requirements to test marijuana and marijuana-infused products for components demonstrated to adversely impact human health; and a requirement that marijuana and marijuana-infused products be tested by an independent marijuana testing facility;
 - (f) Labeling standards that protect public health by requiring the listing of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, the number of servings per package, and quantity limits per sale to comply with the allowable possession amount;
 - (g) Requirements that packaging and labels shall not be made to be attractive to children, requirements for warning labels, and requirements that marijuana and marijuana-infused products be sold in resealable, child-resistant packaging designed to be significantly difficult for children under five years of age to open and not difficult for adults to use properly, unless the marijuana is transferred for consumption on the premises where sold;
 - (h) Security requirements, including lighting, physical security, and alarm requirements, and requirements for securely transporting marijuana between licensees;
 - (i) Packaging and labeling requirements to ensure consumer safety and accurate information;
 - (j) Reasonable restrictions on the manufacture and sale of edible marijuana-infused products to ensure consumer and child safety;
 - (k) Inspection, tracking, and record-keeping requirements to ensure regulatory compliance and to prevent diversion;
 - (l) Restrictions on advertising, marketing, and display of marijuana by licensees to prevent advertising and marketing to persons under twenty-one years of age;
 - (m) A plan to promote and encourage small businesses and ownership and employment in the marijuana industry by people from economically distressed areas and to positively impact those areas;
 - (n) Requirements to ensure that all applicable statutory environmental, agricultural, and food and product safety requirements are followed;
 - (o) Requirements to prevent the sale and diversion of marijuana to persons under twenty-one years of age;
 - (p) Requirements to ensure that no licensee may process or sell edible marijuana products in shapes or packages that are attractive to children or that are easily confused with commercially sold candy or products that do not contain marijuana;
 - (q) Administrative penalties for the failure to comply with rules adopted pursuant to this article; and
 - (r) Such other matters as are necessary for the fair, impartial, and comprehensive administration of this article.
- (2) The Authority shall not promulgate a rule or regulation or establish a fee that is unduly burdensome.
- (3) Each application for a license must be submitted to the Authority, and upon receipt of the completed application and application fee, the Authority shall forward the application to

the municipality (or county, for an unincorporated area) in which the proposed licensee will be located, determine whether the applicant qualifies for a license and complies with this article, and issue the appropriate license or send the applicant a notice of rejection setting forth specific reasons why the Authority did not approve the license application within 90 days.

- (4) The Authority shall approve a license application and issue a license if:
 - (a) The applicant has submitted the application in compliance with the rules promulgated by the Authority, is in compliance with this article and the rules, and has paid the required fee; and
 - (b) The proposed licensee would not be in violation of a local ordinance consistent with this article that was in effect at the time of the application.
- (5) The Authority shall begin accepting applications for licensure within twelve months after the effective date of this article. For the first twenty-four months after the Authority begins to receive applications, the Authority shall only accept applications from and issue licenses to existing medical marijuana business licensees.

§ 8. Licensee Protections

- (1) Actions and conduct by a licensee, a licensee's employee, and a licensee's agent, as permitted pursuant to a license issued by the Authority, or by those who allow property to be used by a licensee, a licensee's employee, or a licensee's agent, as permitted pursuant to a license issued by the Authority, are not unlawful and shall not be an offense under state law, or the laws of any local government within the state, or be subject to a civil fine, penalty, or sanction, or be a basis for detention, search, or arrest, or to deny any right or privilege, or to seize or forfeit assets under state law or the laws of any local government within the state.
- (2) No contract is unenforceable on the basis that marijuana is prohibited by federal law.
- (3) A holder of a professional or occupational license is not subject to professional discipline for providing advice or services arising out of or related to marijuana licensees or applications on the basis that marijuana is prohibited by federal law.

§ 9. Licensee Restrictions

- (1) A licensee may not cultivate, process, test, or store marijuana at any location other than a physical address approved by the Authority and that is secured in a manner that prevents access by persons not permitted by the licensee to access the area.
- (2) A licensee shall comply with security measures to prevent unauthorized access to marijuana and marijuana-infused products in accordance with Authority rules and this article.
- (3) No licensee may refuse representatives of the Authority the right during the hours of operation to inspect the licensed premises or to audit the books and records of the licensee.
- (4) No licensee may allow a person under twenty-one years of age to volunteer or work for the licensee, unless allowed by Authority rule.
- (5) Unless allowed by the Legislature or a local government, no retail licensee that is permitted to sell marijuana to consumers may be located within 1,000 feet of the primary entrance to a school.
- (6) No licensee may sell or otherwise transfer tobacco or alcoholic beverages from the same location as marijuana.

- (7) No licensee may import or export marijuana into or out of Oklahoma until allowed to do so under federal law.
- (8) The Legislature may establish Oklahoma residency requirements for licensees under this article.
- (9) Nothing in this section or this article may be construed to limit any privileges, rights, immunities, or defenses of patients, medical marijuana licensees or medical marijuana businesses or to change or affect any law or regulation addressing marijuana for medical use or to apply any fine or other penalty to a patient, medical marijuana licensee, or medical marijuana business. Any restrictions or limitations on persons or consumers set forth in this section or elsewhere in the article do not apply to patients, medical marijuana licensees, or medical marijuana businesses if the restriction or limitation is inconsistent with Oklahoma's laws related to medical marijuana.

§10. Local Governments

Subject to sections 4 and 8 of this article,

- (1) A local government may regulate the time, place, and manner of operation of businesses licensed pursuant to this article, but may not limit the number or completely prohibit the establishment or operation of businesses licensed pursuant to this article, or any category of license issued pursuant to this article, within its boundaries, except as permitted by this section.
- (2) Individuals may petition to initiate an ordinance to provide for the number of retail licenses issued pursuant to this article allowed within a municipality or to completely prohibit retail licenses issued pursuant to this article within a municipality, and such ordinance shall be submitted to the electors of the municipality at the next regularly scheduled election when a petition is signed by a number of qualified electors residing within the territorial limits of such municipal corporation equal to no less than twenty-five per centum of the total number of votes cast at the next preceding municipal election. This provision applies only to retail licenses issued pursuant to this article, and no other type of licenses.
- (3) Until, and only until, the first regularly scheduled election following the election at which this article is adopted, a municipality may through local ordinance temporarily prohibit a retail licensee regulated under this article from being located within its jurisdiction.
- (4) A local government may not prohibit the transportation of marijuana through its jurisdiction on public roads by a licensee or as otherwise allowed by this article.
- (5) A local government may not adopt ordinances or regulations that are unduly burdensome or in conflict with this article.
- (6) Nothing in this section or this article may be construed to limit any privileges, rights, immunities, or defenses of patients, medical marijuana licensees or medical marijuana businesses or to change or affect any law or regulation addressing marijuana for medical use or to apply any fine or other penalty to a patient, medical marijuana licensee, or medical marijuana business. Any restrictions or limitations set forth in this section or elsewhere in the article do not apply to patients, medical marijuana licensees, or medical marijuana businesses if the restriction or limitation is inconsistent with Oklahoma's laws related to medical marijuana.

§11. Marijuana Tax

- (1) An excise tax of fifteen percent (15%) is imposed upon the gross receipts of all sales of marijuana sold by an entity licensed by the Authority pursuant to this article to a

consumer. This tax shall not apply to the sale of medical marijuana to a licensed patient or caregiver for use by a licensed patient.

- (2) The Legislature may adjust this excise tax rate after November 3, 2024 to achieve the goals of undercutting illicit market prices and discouraging use by persons younger than twenty-one years of age while ensuring sufficient revenues are generated for the Oklahoma Marijuana Revenue Trust Fund.
- (3) The Oklahoma Tax Commission shall by rule establish a procedure for the collection of this tax and shall collect the tax.
- (4) This tax shall be paid in addition to any other applicable state or local sales tax.

§ 12. Oklahoma Marijuana Revenue Trust Fund

- (1) There is hereby created a trust fund to be known as the “Oklahoma Marijuana Revenue Trust Fund.” The trust fund shall consist of all monies received by the Oklahoma Tax Commission from tax proceeds collected pursuant to the marijuana excise tax established by this article.
- (2) Monies from the Oklahoma Marijuana Revenue Trust Fund will be applied first to finance the costs of the Authority reasonably necessary for implementation of this article. Any monies that exceed the budgeted amount for running the Authority shall be expended only for the following purposes:
 - (a) Four percent (4%) to the municipalities (or counties, for unincorporated areas) where the retail sales occurred;
 - (b) Forty-eight percent (48%) to grants to public schools to develop and support programs designed to prevent and reduce substance abuse and improve student retention and performance, by supporting students who are at risk of dropping out of school, promoting alternatives to suspension or expulsion that focus on student retention, remediation, and professional care, and providing after-school support and enrichment programs for students in kindergarten through 12th grade that include art, music, athletics, and academics; and
 - (c) Forty-eight percent (48%) to provide grants to agencies and not-for-profit organizations, whether government or community-based, to increase access to evidence-based low-barrier drug addiction treatment, prioritizing medically proven treatment and overdose prevention and reversal methods and public or private treatment options with an emphasis on reintegrating recipients into their local communities, to support overdose prevention education, and to support job placement, housing, and counseling for those with substance use disorders.
- (3) The Legislature shall appropriate funds from the Oklahoma Marijuana Revenue Trust Fund only for the purposes specified in subsection 2 of this section. Grants awarded pursuant to subparagraph 2 (b) of this section shall be awarded by the Oklahoma State Department of Education or its successor, and grants awarded pursuant to subparagraph 2 (c) of this section shall be awarded by the Oklahoma Department of Mental Health and Substance Abuse Services or its successor from funds appropriated from the trust fund. Even when the funds from the trust fund are used for these purposes, the Legislature shall not use funds from the trust fund to supplant or replace other state funds supporting the entities and programs specified in subsection 2 of this section.
- (4) In order to ensure that the funds from the trust fund are used to enhance and not supplant funding for the purposes set forth in subsection 2 of this section, the State Board of Equalization shall examine and investigate appropriations from the trust 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 issue a finding and report that shall state whether appropriations from the trust fund were

used to enhance or supplant existing funding for the entities and programs specified in subsection 2 of this section. If the State Board of Equalization finds that existing funding was supplanted by funds from the trust fund, the Board shall specify the amount by which 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.

§ 13. Judicial Review

Any rule or regulation adopted by the Authority pursuant to this article must comply with the Oklahoma Administrative Procedures Act. Any person aggrieved by a final order is entitled to seek judicial review in accordance with Oklahoma law. If the Authority fails to timely promulgate rules required by this article, any resident of the state may commence a mandamus action in district court to compel performance by the Authority in accordance with this article.

§14. Annual Report

The Authority shall publish an annual report that includes the number and types of licenses issued, demographic information on licensees, a description of any enforcement or disciplinary action taken against licensees, a statement of revenues and expenses of the Authority related to the implementation, administration, and enforcement of this article, and a statement from the Oklahoma Tax Commission of taxes collected in accordance with this article, with an accounting for how those revenues were disbursed.

§15. Retroactive Application

- (1) A person currently serving a sentence for a conviction, whether by trial or by plea of guilty or *nolo contendere*, who would not have been guilty of an offense or who would have been guilty of a lesser offense under this article had it been in effect at the time of the offense, may file a petition for resentencing, reversal of conviction and dismissal of case, or modification of judgment and sentence before the trial court that entered the judgment of conviction in the person's case to request resentencing, modification, or reversal in accordance with this article.
- (2) Upon receiving a petition under subsection (1), the court shall presume the petitioner satisfies the criteria in subsection (1) and without delay resentence, reverse the conviction as legally invalid, or modify the judgment and sentence unless the State opposes the petition or alleges that granting the petition would pose an unreasonable risk of danger to an identifiable individual's safety.
- (3) In the event that the State opposes the petition or alleges that granting the petition would pose an unreasonable risk of danger to an identifiable individual's safety, the petitioner shall be entitled to a hearing on the record, including the opportunity to question witnesses and present evidence supporting the granting of an order for resentencing, reversal and dismissal, or modification of the judgment and sentence. The State shall bear the burden of proving, by clear and convincing evidence, that the petitioner does not satisfy the criteria in subsection (1) or that granting the petition would pose an unreasonable risk of danger to an identifiable individual if alleged. Unless the State sustains its burden, the court shall resentence, reverse the conviction as legally invalid and dismiss the case, or modify the judgment and sentence.
- (4) Any persons brought before the court upon an application to revoke a suspended sentence for a conviction that would not have been an offense or would have been a lesser offense had this article been in effect at the time of the offense shall have their sentence vacated or modified in accordance with the provisions of this article. Any persons brought before the court upon an application to accelerate a deferred sentence for charges that would not have been an offense or would have been a lesser offense had this article been in effect at the time of the offense shall have their charges vacated or modified in accordance with the provisions of this article.

- (5) Under no circumstances shall resentencing, reversal and dismissal, modification, revocation, or acceleration pursuant to this section result in the imposition of a supervision or imprisonment term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement, or require the payment of any additional fines or fees beyond those authorized by this article.
- (6) A person who has completed his or her sentence for a conviction, whether by trial or plea of guilty or *nolo contendere*, who would not have been guilty of an offense or who would have been guilty of a lesser offense under this article had it been in effect at the time of the offense, may file a petition before the trial court that entered the judgment of conviction in the person's case to have the conviction dismissed, expunged, and vacated as legally invalid or redesignated as a civil infraction in accordance with this article.
- (7) The court shall presume the applicant satisfies the criteria in subsection (6) unless the State opposes the application and proves by clear and convincing evidence that the petitioner does not satisfy the criteria in subsection (6). If the petitioner satisfies the criteria in subsection (6), the court shall redesignate the conviction as a civil infraction or dismiss, expunge, and vacate the conviction as legally invalid in accordance with this article.
- (8) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subsection (6).
- (9) Any felony conviction or misdemeanor that is modified, resentenced, or redesignated as a civil infraction pursuant to subsection (2), (4), or (6) of this section shall be considered a civil infraction for all purposes.
- (10) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.
- (11) Nothing in this section shall be construed to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.
- (12) The provisions of this section shall apply equally to juvenile cases if the juvenile would have been guilty of a lesser offense under this article.
- (13) Nothing in this section shall be construed as limiting the authority of the Legislature to make the process for ensuring retroactive application of this article less burdensome or automatic for persons currently serving sentences or under criminal justice supervision or who have been previously convicted for conduct now permitted or reclassified under this article, or to reduce or eliminate civil or criminal penalties for any marijuana-related conduct beyond what is set forth in this article.

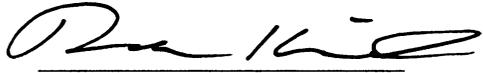
§16. Severability

This article shall be broadly construed to accomplish its purposes and intents. Nothing in this article purports to supersede any applicable federal law, except where allowed by federal law. If any provision in this article or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of the article that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this article are severable.

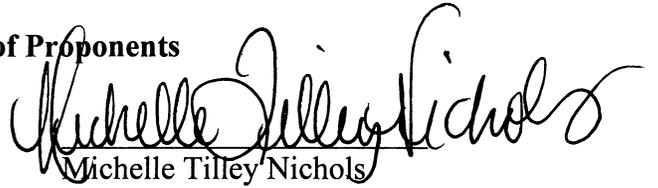
§17. Effective Date

This article shall become effective ninety (90) days after it is approved by the People.

Name and Address of Proponents



Ryan Kiesel
Residence: Oklahoma City, Oklahoma County
Mailing: 3022 NW 39th St. #57532
Oklahoma City, OK 73157



Michelle Tilley Nichols
Residence: Edmond, Oklahoma County
Mailing: 5300 North Shartel, Box 18996
Oklahoma City, OK 73154

SIGNATURES

The gist of the proposition: This measure would add a new Article to the Oklahoma Constitution, which would generally legalize, regulate and tax adult-use marijuana under state law (but not alter the rights of medical marijuana patients or licensees). Specifically, it would protect the personal use of marijuana for persons aged 21+, while establishing quantity limits, safety standards, and other restrictions and penalties for violations thereof. It would not affect an employer's ability to restrict marijuana use by employees or prevent property owners from prohibiting or restricting marijuana-related conduct on that property in most cases. It would vest in the Oklahoma Medical Marijuana Authority, renamed the Oklahoma Marijuana Authority, the power to license and regulate conduct under the article and administer and enforce the article pursuant to specified requirements. It would permit municipalities, upon petition and popular vote, to limit or prohibit retail licenses. It would restrict commercial licenses to existing medical marijuana licensees for the first two years licenses are issued, and permit the Legislature to establish Oklahoma residency requirements. It would impose a 15% excise tax on sales to consumers (not applicable to medical marijuana) to fund the Authority, with the surplus directed to localities where sales occur, to schools (for programs to prevent substance abuse and improve student retention and performance), and to drug addiction treatment programs (with the Board of Equalization ensuring such funds do not replace existing funding). It would provide a judicial process for people to seek modification, reversal, redesignation, or expungement of certain prior marijuana-related judgments and sentences. It would provide for judicial review, severability, and an effective date.

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.

1.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
2.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
3.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
4.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
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12.	_____	_____	_____	_____	_____	_____
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15.	_____	_____	_____	_____	_____	_____
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16.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
17.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
18.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
19.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
20.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County

Michael Rogers
Secretary of State and Education



J. Kevin Stitt
Governor

OKLAHOMA SECRETARY OF STATE

December 27, 2019

FILED

DEC 27 2019

**OKLAHOMA SECRETARY
OF STATE**

Ryan Kiesel
3022 NW 39th Street
Oklahoma City, OK 73157

Michelle Tilley Nichols
5300 North Shartel, Box 18996
Oklahoma City, OK 73154

Dear Proponent(s):

This acknowledges receipt of the petition submitted to the Secretary of State office, which has been designated as **State Question Number 807, Initiative Petition Number 423** and filed accordingly this 27th day of December, 2019.

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 can provide any further assistance or should you have any questions, please do not hesitate to contact our office.

Thank you,

A handwritten signature in black ink, appearing to read "Amy Canton".

Amy Canton
Director, Executive & Legislative Services

OKLAHOMA SECRETARY OF STATE OFFICE
State Capitol Building, Room 122
Oklahoma City, OK 73105
405.522.4565 / executivelegislative@sos.ok.gov

Michael Rogers
Secretary of State and Education



J. Kevin Stitt
Governor

OKLAHOMA SECRETARY OF STATE

December 30, 2019

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 807, Initiative Petition 423

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,

A handwritten signature in black ink, appearing to read "Amy Canton".

Amy Canton
Director, Executive Legislative Division
Oklahoma Secretary of State Office

NOTICE OF THE FILING OF STATE QUESTION 807, INITIATIVE PETITION 423, 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 27, 2019, State Question 807, Initiative Petition 423 was filed in the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 807, Initiative Petition 423 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 807, Initiative Petition 423:

Ryan Kiesel
3022 NW 39th Street
Oklahoma City, OK 73157

Michelle Tilley Nichols
5300 North Shartel, Box 18996
Oklahoma City, OK 73154

Michael Rogers
Oklahoma Secretary of State and Education



www.OKPress.com

Tuesday, January 21, 2020 10:52 AM

Oklahoma Press Service

3601 North Lincoln Blvd.
 Oklahoma City, OK 73105
 Voice (405) 499-0020 Fax (405) 499-0048

Invoice

Agency Amy Canton
 SECRETARY OF STATE
 Oklahoma State Capitol Building, Rm 122
 2300 N LINCOLN BLVD
 OKLAHOMA CITY, OK 73105

Invoice Date 1/21/2020
PO Number SQ 807 - IP 423
Order 20-01-15

Client SECRETARY OF STATE
Reps Cindy Shea

Vendor	Run Date	Ad Size	Line Rate Name	Line Rate	Word Rate Name	Word Rate	Discount	Total
OK-JOURNAL RECORD	1/8/2020	24 ln / 146 wd	L2 Legal 1st Lines	\$0.70	L1 Legal 1st Words	\$0.15	0.0000%	\$38.70
	Caption			SQ 807 - IP 423				
OK-THE OKLAHOMAN	1/3/2020	24 ln / 146 wd	L2 Legal 1st Lines	\$0.70	L1 Legal 1st Words	\$0.15	0.0000%	\$38.70
	Caption			SQ 807 - IP 423				
OK-TULSA WORLD - Legal	1/4/2020	24 ln / 146 wd	L2 Legal 1st Lines	\$0.70	L1 Legal 1st Words	\$0.15	0.0000%	\$38.70
	Caption			SQ 807 - IP 423				

Misc. Charges
 fee \$45.00

Total Advertising	\$161.10
Discounts	\$0.00
Misc. Charges	\$45.00
USA Tax	\$0.00
Total Invoice	\$161.10
Payments	\$0.00
Adjustments	\$0.00
Balance Due	\$161.10

RECEIVED

JAN 22 2020

OKLAHOMA SECRETARY OF STATE

Oklahoma Press Service

3601 North Lincoln Blvd.

Oklahoma City, OK 73105

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

Tuesday, January 21, 2020 10:53 AM

Page 1 of 1

Proof of Publication Order Number 20-01-15

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 here unto attached, was published in said OK-JOURNAL RECORD in consecutive issues on the following dates-to-wit:

Insertion: 1/8/2020

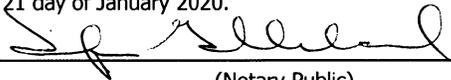
That said newspaper has been published continuously and uninterruptedly in said county during a period of one-hundred and four consecutive weeks prior to the publication of the attached notice or advertisement; that it has been admitted to the United States mail as second-class mail matter; that it has 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 \$38.70



(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this
21 day of January 2020.



(Notary Public)



NOTICE OF THE FILING OF STATE QUESTION 807, INITIATIVE PETITION 423, 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)

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Proponents of record for State Question 807, Initiative Petition 423:

Ryan Kiesel

3022 NW 39th Street
Oklahoma City, OK 73157

Michelle Tilley Nichols

5300 North Shartel, Box 18996
Oklahoma City, OK 73154

Michael Rogers

Oklahoma Secretary of State and Education

Oklahoma Press Service

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Oklahoma City, OK 73105

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

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Insertion: 1/3/2020

That said newspaper has been published continuously and uninterrupted 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 \$38.70



(Editor, Publisher or Authorized Agent)

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Proponents of record for State Question 807, Initiative Petition 423:

Ryan Kiesel
3022 NW 39th Street
Oklahoma City, OK 73157

Michelle Tilley Nichols
5300 North Shartel, Box 18996
Oklahoma City, OK 73154

Michael Rogers
Oklahoma Secretary of State and Education

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3601 North Lincoln Blvd.

Oklahoma City, OK 73105

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

Tuesday, January 21, 2020 10:53 AM

Page 1 of 1

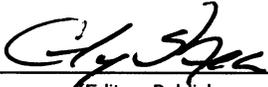
Proof of Publication Order Number 20-01-15

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Insertion: 1/4/2020

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 \$38.70



(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this
21 day of January 2020.



(Notary Public)



**NOTICE OF THE FILING OF
STATE QUESTION 807, INITIATIVE PETITION 423,
THE APPARENT SUFFICIENCY THEREOF, AND NOTICE TO
CITIZENS OF THE STATE THAT ANY SUCH PROTEST, AS TO
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Ryan Kiesel
3022 NW 39th Street
Oklahoma City, OK 73157

Michelle Tilley Nichols
5300 North Shartel, Box 18996
Oklahoma City, OK 73154

Michael Rogers
Oklahoma Secretary of State and Education

In the Supr



of Oklahoma
SUPREME COURT
STATE OF OKLAHOMA

ORIGINAL

JAN 17 2020

JOHN D. HADDEN
CLERK

Paul Tay,

Petitioner/Protestant

Sup. Ct. Case #

~~#118582~~

v.

Ryan Kiesel,
Michelle Tilley

Respondents/
Proponents

Received	
Marshall	fe
Replies	
Certified	
Updated	

Protest to Challenge the Constitutionality
of State Question 807, Petition Number 423

- 1). Petitioner/Protestants Paul Tay is currently incarcerated at David L. Moss Criminal Justice Center, 300 N Denver, Tulsa, OK 74103.
- 2). Respondents/Proponents Ryan Kiesel and Michelle Tilley are residents of Oklahoma City, OK 731___.
- 3). Petitioner/Protestant Paul Tay invokes Article 1, Section 1 of the Oklahoma Constitution, establishing the United States

Constitution, the Bill of Rights,
U.S. Supreme Court decisions,
and all other administrative
rules as established by Federal
agencies to be the Supreme Laws
of the Land.

4. Article one, Section One Oklahoma
constitution refers to the Supremacy
Clause of the U.S. Constitution
which states, primarily, that no
State Articles of Constitution,
Statutes or court rulings may
usurp the Supremacy of
federal law.
5. State Question 807, Petition Number
923 would do just that, usurp
ing the Supremacy of the
Controlled Substances Act and
IRS Rule 280E
6. Controlled Substances Act
prohibits the cultivation, processing,
possession, and consumption of
Cannabis
7. IRS Rule 280E prohibits

banks from conducting business with cannabis business entities.

- 8) State Question 807 explicitly states the intention to usurp the Supremacy of the Controlled Substances Act.
- 9) State Question 807 would create a state-sponsored agency specifically to engage in criminal felony RICO money laundering, by excise sales taxing cannabis purchases, and creating a trust fund to funnel excise sales tax receipts to other agencies and private non-profit entities.
- 10) Under the authority of Article One, Section One of the Oklahoma State Constitution, the Supremacy Clause of the U.S. Constitution, Controlled Substances Act, 28CFR 280E, and all mandatory authority of all related U.S. Supreme Court rulings, the Petitioners / Protestants Paul Tay

humbly beseech the Oklahoma
Supreme Court to declare
State Question 807, Petition
Number 423, unconstitutional,
Void, to be stricken from
consideration in all of its
form by the People of
Oklahoma.

Paul Tan
DLN # 01163908
David L. Moss CJC
300 N Denver
Tulsa, OK 74102

13 Jan 20

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

IN RE: STATE QUESTION No. 807,)
 INITIATIVE PETITION No. 423)
)
 PAUL TAY,)
)
 Petitioner,)
)
 v.)
)
 RYAN KIESEL and)
 MICHELLE TILLEY,)
)
 Respondents.)

FILED
 SUPREME COURT
 STATE OF OKLAHOMA
 JUN 23 2020
 JOHN D. HADDEN
 CLERK

No. 118,582

FOR OFFICIAL
PUBLICATION

**ORIGINAL PROCEEDING TO DETERMINE THE CONSTITUTIONAL
 VALIDITY OF STATE QUESTION NO. 807, INITIATIVE PETITION NO.
 423**

¶0 This is an original proceeding to determine the legal sufficiency of State Question No. 807, Initiative Petition No. 423. The petition seeks to create a new article to the Oklahoma Constitution, Article 31, for the purpose of legalizing, regulating, and taxing the use of marijuana by Oklahoma adults. Petitioner Paul Tay filed this protest alleging the petition is unconstitutional because it violates the federal supremacy provisions of Article VI, clause 2 of the United States Constitution and Article 1, Section 1 of the Oklahoma Constitution. Petitioner alleges the proposed measure is preempted by existing federal statutes including the Controlled Substances Act, 21 U.S.C. §§ 801-904, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and Section 280E of the Internal Revenue Code, 26 U.S.C. § 280E. Because the United States Supreme Court has not addressed this question, the Supremacy Clause permits us to perform our own analysis of federal law. Upon our review, we hold Petitioner has not met

his burden to show clear or manifest facial constitutional infirmities because he has not shown State Question No. 807 is preempted by federal law. On the grounds alleged, the petition is legally sufficient for submission to the people of Oklahoma.

**STATE QUESTION NO. 807, INITIATIVE PETITION NO. 423 IS
LEGALLY SUFFICIENT FOR SUBMISSION TO THE PEOPLE OF
OKLAHOMA**

Paul Tay, Tulsa, Oklahoma, *pro se* Petitioner.

D. Kent Meyers and Melanie Wilson Rughani, Crowe & Dunlevy, Oklahoma City, Oklahoma, for Respondents.

PER CURIAM:

I.
FACTS AND PROCEDURAL HISTORY

¶1 On December 27, 2019, Respondents Ryan Kiesel and Michelle Tilley (Respondents) filed State Question No. 807, Initiative Petition No. 423 (SQ 807) with the Secretary of State of Oklahoma. SQ 807 proposes for submission to the voters the creation of a new constitutional article, Article 31, which would legalize, regulate, and tax the use of marijuana by adults under Oklahoma law. Notice of the filing was published on January 3, 4, & 8, 2020. Within ten business days, Petitioner Paul Tay (Petitioner) brought this original proceeding pursuant to the provisions of 34 O.S. Supp. 2015 § 8(b)¹, challenging the constitutionality of SQ

¹ Title 34 O.S. Supp. 2015 § 8(b) provides:

807. Petitioner alleges the proposed amendment by article is unconstitutional because it violates the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2, as well as Okla. Const., art. 1, § 1, which provides that the United States Constitution is the supreme law of the land. Specifically, Petitioner contends SQ 807 is preempted by the Controlled Substances Act (CSA), 21 U.S.C. §§ 801-904, the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, and Section 280E of the Internal Revenue Code, 26 U.S.C. § 280E (2018).

II. **THE PROPOSED MEASURE**

¶2 The proposed Article 31 contains seventeen (17) sections. Section 1 provides for definitions used throughout Article 31. Section 2 contains limitations, noting Article 31 does not affect or limit laws that govern use by minors under twenty-one (21) years of age or use in certain circumstances or locations. Section 3 provides Article 31 will not limit the rights and privileges of medical marijuana patients, or the rights of employers and governments except in the ways provided.

It shall be the duty of the Secretary of State to cause to be published, in at least one newspaper of general circulation in the state, a notice of such filing and the apparent sufficiency or insufficiency of the petition, and shall include notice that any citizen or citizens of the state may file a protest as to the constitutionality of the petition, by a written notice to the Supreme Court and to the proponent or Respondents filing the petition. Any such protest must be filed within ten (10) business days after publication. A copy of the protest shall be filed with the Secretary of State.

¶3 Section 4 legalizes the personal use of marijuana. Section 4 declares the possession and use of certain amounts of marijuana to be not unlawful and not an offense under state law. It also provides similar status to personal cultivation of marijuana plants. In addition, Section 4 provides certain protections for personal use in such areas as parental rights, parole, privacy, eligibility in public assistance, and possession of firearms. Section 5 creates civil fines and penalties for violations of the possession and use restrictions found in Article 31, primarily in Section 4.

¶4 Section 6 renames the Oklahoma Medical Marijuana Authority to the Oklahoma Marijuana Authority (Authority) and gives it power over licensing for the commercial cultivation and sale of marijuana. Section 7 requires the Authority to promulgate rules and regulations for implementation and enforcement of Article 31. Section 7 also sets out comprehensive areas that must be addressed by those regulations, including labelling, security, inspection, and testing procedures.

¶5 Section 8 provides protections for licensees, declaring conduct authorized by Article 31 as not unlawful under Oklahoma law. Section 8 further notes that contracts will not be unenforceable on the basis marijuana is prohibited by federal law, and professionals will not be subject to discipline in Oklahoma for providing advice to licensees based on federal law prohibitions. Section 9 provides

for various restrictions on licensees, concerning areas such as location, security, and the need to comply with Authority inspection.

¶6 Section 10 allows local governments, subject to the provisions of Section 4 and 8, to regulate the time, place, and manner of business licensed under Article 31. However, Section 10 also prevents local governments from prohibiting licensees in their jurisdictions after the next election, from prohibiting transportation of marijuana, and from adopting unduly burdensome regulations or ordinances.

¶7 Section 11 imposes an excise tax of fifteen percent (15%) on the gross receipt of sales of marijuana by licensees to consumers. Section 11 also permits the Legislature to alter the excise tax rate after November 3, 2024, and requires the Oklahoma Tax Commission (OTC) to both collect the tax and establish rules and procedures for collection. Section 12 creates the Oklahoma Marijuana Revenue Trust Fund (Fund) to receive the proceeds from the excise tax. Section 12 also provides for percentage-based distribution of that revenue after costs for running the Authority are deducted. Revenue from the Fund will be distributed in the following manner: 1) four percent (4%) to the political subdivisions where the retail sales occurred; 2) forty-eight percent (48%) to grants for public schools; and 3) forty-eight percent (48%) to provide grants to agencies and non-profit

organizations to increase access to drug addiction treatment services. Section 12 also contains provisions to prevent legislative undercutting of funding in those areas due to the new revenue from the Fund.

¶8 Section 13 provides for judicial review of rules and regulations adopted by the Authority pursuant to the Oklahoma Administrative Procedures Act (APA). Section 14 requires the Authority to publish an annual report concerning licensees, any actions taken against them, revenues and expenses of the Authority, and revenue collected by the OTC.

¶9 Section 15 provides for retroactive application of Article 31. Section 15 allows those convicted of once-criminal conduct made lawful by Article 31 to petition for resentencing, reversal of conviction and dismissal, or modification of their judgment and sentence. Section 15 also creates a procedure for the State to oppose such a petition, including based on an unreasonable risk of danger to an identifiable individual's safety. Section 16 is a severability clause, and Section 17 notes Article 31's effective date will be ninety (90) days after it is approved by the people of Oklahoma.

III. **STANDARD OF REVIEW**

¶10 “The first power reserved by the people is the initiative,” which includes “the right to propose amendments to the Constitution by petition...” Okla. Const. art. 5, § 2; *In re: Initiative Petition No. 420, State Question No. 804*, 2020 OK 9, ¶12, ___ P.2d ___; *In re Initiative Petition No. 409, State Question No. 785*, 2016 OK 51, ¶2, 376 P.3d 250. This Court has repeatedly noted that the right of initiative is precious, and one which the Court must zealously preserve to the fullest measure of the spirit and letter of the law. *In re: Initiative Petition No. 420*, 2020 OK 9 at ¶12; *Okla. Oil & Gas Ass’n v. Thompson*, 2018 OK 26, ¶4, 414 P.3d 345; *In re Initiative Petition No. 382, State Question No. 729*, 2006 OK 45, ¶3, 142 P.3d 400.

¶11 However, while the right of initiative is zealously protected by the Court, it is not absolute. *In re: Initiative Petition No. 420*, 2020 OK 9 at ¶13; *Okla. Oil & Gas Ass’n*, 2018 OK 26 at ¶5. Any citizen of Oklahoma may protest the sufficiency and legality of an initiative petition. *In re: Initiative Petition No. 420*, 2020 OK 9 at ¶13; *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 a protest, it is the duty of this Court to review the petition to ensure that it complies with the rights and restrictions established by the Oklahoma Constitution, legislative enactments, and this Court’s jurisprudence. *In re:*

Initiative Petition No. 420, 2020 OK 9 at ¶13; *In re: Initiative Petition No. 384*, 2007 OK 48 at ¶2.

¶12 Pre-election review of an initiative petition under 34 O.S. Supp. 2015 § 8 is confined to determining whether there are “clear or manifest facial constitutional infirmities” in the proposed measure. *In re: Initiative Petition No. 420*, 2020 OK 9 at ¶13 (quoting *In re: Initiative Petition No. 358, State Question No. 658*, 1994 OK 27, ¶7, 870 P.2d 782). Further, because the right of the initiative is so precious, the Court has held that “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. 420*, 2020 OK 9 at ¶12; *In re Initiative Petition No. 403, State Question No. 779*, 2016 OK 1, ¶3, 367 P.3d 472. Thus, a protestant bears the heavy burden of demonstrating the required clear or manifest constitutional infirmity. *In re: Initiative Petition No. 420*, 2020 OK 9 at ¶14; *In re Initiative Petition No. 362, State Question No. 669*, 1995 OK 77, ¶12, 899 P.2d 1145.

IV. **ANALYSIS**

A. Principles of Federal Preemption and the Anticommandeering Doctrine

¶13 Petitioner’s argument rests on the interpretation and application of the federal supremacy provisions of the United States Constitution² and the Oklahoma Constitution.³ Petitioner asserts SQ 807 is preempted because it conflicts with existing federal legislation concerning controlled substances such as marijuana. The federal government, acting through Congress, has the power to preempt state law pursuant to the Supremacy Clause. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992); *Craft v. Graebel-Oklahoma Movers, Inc.*, 2007 OK 79, ¶11, 178 P.3d 170. State law and state constitutional provisions must also yield to the United States Constitution. *See Okla. Coalition for Reproductive Justice v. Cline*, 2012 OK 102, ¶2, 292 P.3d 27; *In re Initiative Petition No. 349, State Question No. 642*, 1992 OK 122, ¶12-13, 838 P.2d 1.

¶14 With respect to both the United States Constitution and federal statutes enacted by Congress, this Court is governed by the decisions of the United States Supreme Court and must pronounce rules of law that conform to extant Supreme Court jurisprudence. *Hollaway v. UNUM Life Ins. Co. of America*, 2003

² U.S. Const. art. VI, cl. 2 provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

³ Okla. Const., art. 1, § 1 reinforces the federal Supremacy Clause, and provides: “The State of Oklahoma is an inseparable part of the Federal Union, and the Constitution of the United States is the supreme law of the land.”

OK 90, ¶15, 89 P.3d 1022; *Bogart v. CapRock Communications Corp.*, 2003 OK 38, ¶13, 69 P.3d 266; *Cline*, 2012 OK 102 at ¶12 (“Because the United States Supreme Court has spoken, this Court is not free to impose its own view of the law...”).

¶15 However, subject to decisions of the United States Supreme Court, we are free to promulgate judicial decisions grounded in our own interpretation of federal law. *Hollaway*, 2003 OK 90 at ¶15; *Bogart*, 2003 OK 38 at ¶13. The Supreme Court of the United States has yet to directly address federal law preemption of state marijuana regulation. Because the United States Supreme Court has not considered this question we are free to make our own determination on preemption and indeed have a duty to do so since the question has been placed before us. That is a freedom we do not have where the United States Supreme Court has pronounced clear rules on federal questions, such as an individual’s right to abortion protected by the United States Constitution. See, e.g., *In re Initiative Petition No. 395, State Question No. 761*, 2012 OK 42, 286 P.3d 637; *In re Initiative Petition No. 349, State Question No. 642*, 1992 OK 122, 838 P.2d 1. An individual’s constitutional right to an abortion is hardly the only area in which this Court has determined it is bound by United States Supreme Court precedent on federal questions. For example, in *Lewis v. Sac and Fox Tribe of Okla. Housing*

Auth., 1994 OK 20, ¶5, 896 P.2d 503, the Court noted its jurisdiction to adjudicate certain civil actions concerning Indian matters was limited by opinions of the United States Supreme Court addressed to the question. In *Cities Service Gas Co. v. Okla. Tax Com'n*, 1989 OK 69, ¶7, 774 P.2d 468, the Court noted it was obligated to apply the United States Supreme Court's four pronged test to decide whether state taxes on interstate commerce were permissible under the commerce clause. In *Bailess v. Paukune*, 1953 OK 349, 254 P.2d 349, the Court overruled a prior decision concerning interpretation of the General Allotment Act of February 8, 1887, on remand from an appeal to the United States Supreme Court, because that Court's interpretation was binding.

¶16 Petitioner asserts SQ 807 is constitutionally infirm because it conflicts with federal legislation. When it comes to the preemptive effect of federal legislation, the purpose of Congress is the ultimate touchstone. *Altria Group, Inc. v. Good*, 555 U.S. 70, 76, 129 S.Ct. 538, 172 L.ed.2d 398 (2008). Consideration of any issues arising under the Supremacy Clause starts with the assumption that the historic police powers of the States are not preempted by federal action unless that is the clear and manifest purpose of Congress. *Altria Group, Inc.*, 555 U.S. at 78; *Cipollone*, 505 U.S. at 516; *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947). The preemption doctrine is thus not an

independent grant of legislative power to the Congress but rather a rule of decision applied in the case of an apparent conflict between federal and state law. *Murphy v. Natl. Collegiate Athletic Ass'n*, ___ U.S. ___, 138 S.Ct. 1461, 1479 (2018). See *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 324-25, 135 S.Ct. 1378, 191 L.Ed.2s 471 (2015).

¶17 There are three varieties of preemption that may arise from federal action: express preemption, field preemption, and conflict preemption. *Murphy*, 138 S.Ct. at 1480. See *English v. General Elec. Co.*, 496 U.S. 72, 78-79, 110 S.Ct. 2270, 110 L.Ed.2d 65 (1990). Express preemption occurs when a federal statute includes a provision stating that it displaces state law and defining the extent to which state law is preempted. See *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 256, 133 S.Ct. 1769, 185 L.Ed.2d 909. Field preemption occurs when Congress expresses an intent to occupy an entire field, such that even complementary state regulation in the same area is foreclosed. *Arizona v. U.S.*, 567 U.S. 387, 401, 132 S.Ct. 2492, 183 L.Ed.2d 351 (2012). Finally, conflict preemption occurs when there is an actual conflict between state and federal law. See *Geier v. American Honda Motor Co., Inc.*, 529 U.S. 861, 120 S.Ct. 1913, 146 L.Ed.2d 914. Despite nuances in how they arise, these forms of preemption all function in essentially the same way:

Congress enacts a law that imposes restrictions or confers rights on private actors; a state law confers rights or imposes restrictions that conflict with the federal law; and therefore the federal law takes precedence and the state law is preempted.

Murphy, 138 S.Ct. at 1480.

¶18 While the Supremacy Clause and the preemption doctrine may effectively prevent States from regulating areas controlled by federal law, “even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts.” *Murphy* at 1477. Known as the anticommandeering doctrine, this principle means that even a particularly strong federal interest does not enable Congress to command a state government to enact state regulation or enable it to compel a state to enact and enforce a federal regulatory scheme. *See id.* at 1466-77; *New York v. United States*, 505 U.S. 144, 161 & 178, 112 S.Ct. 2408, 120 L.ed.2d 120 (1992).

B. SQ 807 is not preempted by the Controlled Substances Act, 21 U.S.C. §§ 801 – 904.

¶19 Petitioner argues several federal provisions effectively preempt SQ 807. First, Petitioner argues SQ 807 is unconstitutional because it is preempted by the provisions of the Controlled Substances Act (CSA), 21 U.S.C. §§ 801 – 904. The CSA governs the use and trafficking of controlled substances, including

marijuana. Marijuana is a Schedule I controlled substance pursuant to the CSA, and thus it is illegal under federal law for any person to manufacture, distribute, or dispense, marijuana, and also illegal under federal law for any person to possess marijuana with intent to manufacture, distribute, or dispense it. See 21 U.S.C. §§ 841(a)(1) & 844(a) (2018). Petitioner asserts this prohibition renders SQ 807 facially unconstitutional.

¶20 The CSA contains an explicit preemption provision. Title 21 U.S.C. § 903 (2018) provides:

No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.

Section 903 states that the CSA's provisions do not expressly preempt state law and are not intended to exclusively occupy any field to the exclusion of state law. Thus, of the three types of preemption only conflict preemption is relevant.

¶21 Federal courts have interpreted the “positive conflict” language used in Section 903 to mean that state laws are preempted only in cases of actual conflict with federal law such that compliance with both federal and state law is a physical impossibility, *see Hillsborough County, Fla. v. Auto. Medical*

Laboratories, Inc., 471 U.S. 707, 713, 105 S.Ct. 2371, 85 L.Ed.2d 714, or where state law stands as an obstacle to the accomplishment and execution of Congress' full purposes and objectives. *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287, 115 S.Ct. 1483, 131 L.Ed.2d 385 (1995).

¶22 Petitioner first argues SQ 807 explicitly states an intention to usurp the supremacy of the CSA. This is incorrect. SQ 807 does not mention the CSA, nor does it state any intent to comprehensively regulate all controlled substances to the exclusion of the CSA. However, Petitioner correctly notes that SQ 807 effectively provides limited immunity from prosecution under state law for possession and distribution of marijuana. The decision to exercise that immunity, by either possessing and using marijuana as a consumer or taking advantage of the licensing scheme for production and distribution, could subject individuals to federal prosecution under the CSA. Petitioner argues this makes compliance with both federal and state law impossible.

¶23 The physical impossibility standard is a high burden. Federal precedent suggests that anything short of explicitly conflicting commands to act one way and also act the opposite way is insufficient to satisfy that burden. *See Wyeth v. Levine*, 555 U.S. 555, 571-73, 581, 129 S.Ct. 1187, 173 L.Ed.2d 51 (2009); *Barnett Bank, N.A. v. Nelson*, 517 U.S. 25, 31, 116 S.Ct. 1103, 134

L.Ed.2d 237 (1996). Respondents assert that SQ 807 does not create a situation where compliance with both federal and state law is impossible. SQ 807 contains no affirmative mandate that individuals use marijuana or that they grow it for commercial distribution. Oklahomans, Respondents argue, “can elect to refrain from using cannabis and, thus, be fully compliant with both federal and state law.”⁴

¶24 In *Wyeth*, the Supreme Court determined physical impossibility was a “demanding defense” that did not apply where a state law required a drug manufacturer to change its warning labels after they had been approved by the FDA because there was no evidence to suggest the FDA would object to the amended warning label. 555 U.S. 555 at 571-73. In a more factually relevant scenario, in *Barnett Bank, N.A.*, the Court did not find physical impossibility in a scenario where a federal statute authorized the sale of insurance and a state statute forbade the same sale of insurance. 517 U.S. 25 at 31. The Court noted the “two statutes do not impose directly conflicting duties on national banks-as they would, for example, if the federal law said, ‘you must sell insurance,’ while the state law said, ‘you may not.’” *Id.* In the present matter, the proposed Article 31 contains no mandate that requires Oklahomans to violate any provision of the CSA. Thus,

⁴Respondents/Proponents Ryan Kiesel and Michelle Tilley’s Brief in Response to Protest Challenging Constitutionality of Initiative Petition No. 423, February 18, 2020, p. 5.

it is not facially physically impossible to comply with both state law and the CSA, were SQ 807 to be adopted.

¶25 Petitioner additionally contends SQ 807 stands as an obstacle to the accomplishment and execution of Congresses' purposes in enacting the CSA. That is also a high threshold to meet. *See Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 607, 131 S.Ct. 1968, 563 U.S. 582 (2011). "What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Id.* at 373.

¶26 The manifest purpose of the CSA was "to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances." *Gonzales v. Raich*, 545 U.S. 1, 12, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005). SQ 807 does not purport to limit or prevent federal authorities from enforcing federal law. SQ 807 instead would alter how Oklahoma regulates marijuana and would provide a form of limited immunity under state law for users and producers that satisfy the measure's requirements. Further, the federal government lacks the power to compel Oklahoma, or any other state, to enforce the provisions of the CSA or to criminalize possession and use of marijuana under state law. *See Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S.Ct. 1461, 1475-79, 200 L.Ed.2d 854 (2018) (discussing and applying the anticommandeering doctrine).

¶27 Petitioner argues one of the purposes of the CSA was to bring the United States into compliance with various treaty obligations, including the Vienna Convention on Psychotropic Substances. *See* 21 U.S.C. § 801a (2018). In support of his argument, Petitioner cites old decisions of the United States Supreme Court that struck down state laws inconsistent with U.S. treaty obligations and established the supremacy of the federal government. *See Ware v. Hylton*, 3 U.S. 199, 1 L.Ed. 568 (1796) (holding treaty provisions are binding as U.S. domestic law and take precedence over state law); *M’Culloch v. Maryland*, 17 U.S. 316, 4 L.Ed. 579 (1819) (holding state action may not impede valid constitutional exercises by the federal government). However, beyond conclusory statements Petitioner makes no argument as to how exactly SQ 807 prevents the U.S. from complying with its treaty obligations as reinforced in the CSA.

¶28 “The case for federal preemption is particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there [is] between them.” *Wyeth*, 555 U.S. at 575 (quoting *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 166-67, 109 S.Ct. 971, 103 L.Ed.2d 118 (1989)). Respondents argue the CSA was never intended to coerce the states to follow or adopt its specific regulatory scheme, and

the states are free to engage in their own complementary regulation of controlled substances, even if that regulation differs in scope and standards.

¶29 Respondents' argument is supported by the anticommandeering doctrine and the recent decision of the Supreme Court of the United States in *Murphy*. In that case, the Court invalidated a federal law that prohibited states from authorizing sports gambling schemes. Specifically, the challenged provision of the Professional Amateur Sports Protection Act (PASPA) made it unlawful for a state to sponsor, operate, advertise, promote, license, or authorize by law or compact gambling and betting on competitive sporting events. *Murphy*, 138 S.Ct. at 1470. The Court concluded that a state repealing an existing ban on sports gambling constituted "authorization" of that activity, but that the PASPA provision at issue was an unconstitutional violation of the anticommandeering doctrine because it unequivocally dictated what a state legislature could and could not do. *Id.* at ¶1478. However, the *Murphy* Court noted that the anticommandeering doctrine and preemption require separate analysis. Notably, because the challenged PASPA provision did not impose any restrictions on private actors, the Court determined federal preemption was not implicated. *Id.* at 1481.

¶30 The posture of this case is distinct from *Murphy*. Clearly Congress lacks the power to enact a law ordering a state legislature to refrain from enacting a

law licensing the growing and use of marijuana for individual consumption. *See id.* at 1482. That is not what the CSA does. Rather, unlike the challenged provisions of PASPA, the CSA's restrictions are directed at private individuals. Still, *Murphy* is useful by analogy to reinforce the limits of the CSA's intended scope and the limits of its preemption. In enacting the CSA, Congress specifically chose to leave room for state regulation of controlled substances, likely in part because its ability to compel the states is limited (per *Murphy*) but also because it relied on the states to voluntarily shoulder the burden of policing and regulating controlled substances. *See* 21 U.S.C. § 903 (2018). The fact that Oklahoma might choose to do so in a far less restrictive way than the CSA does not mean doing so inherently frustrate the CSA's overarching purposes.

¶31 The reasoning of the Supreme Court of Arizona concerning its medical marijuana statute is instructive on that point:

The state-law immunity AMMA provides does not frustrate the CSA's goals of conquering drug abuse or controlling drug traffic. Like the people of Michigan, the people of Arizona 'chose to part ways with Congress only regarding the scope of acceptable medical use of marijuana.' *Ter Beek*, 846 N.W.2d at 539.

Reed-Kaliher v. Hoggat, 237 Ariz. 119, ¶23, 347 P.3d 136 (2015). By adopting SQ 807, the people of Oklahoma would be going farther than the people of Arizona, but they would still simply be parting ways with Congress on the scope of

acceptable marijuana use and how unacceptable use is to be penalized. Use by those under 21, in public, and under other conditions, would remain prohibited. Further, SQ 807 also makes no attempt to impede federal enforcement of the CSA where marijuana is concerned.⁵

¶32 Not all states are in agreement. The Supreme Court of Oregon relied on *Michigan Cannery and Freezers Ass'n, Inc. v. Agricultural Marketing and Bargaining Bd.*, 467 U.S. 461, 104 S.Ct. 2518, 81 L.Ed.2d 399 (1984) in finding Oregon's medical marijuana statute was preempted by federal law in *Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries*, 230 P.3d 518 (Oregon 2010).⁶ At a glance, *Michigan Cannery and Freezers Ass'n*, might appear to be controlling. In that case the Supreme Court concluded Michigan's Agricultural Marketing and Bargaining Act was preempted by the federal Agricultural Fair Practices Act

⁵ While the potential for such enforcement remains, the reality is that the Justice Department has shown little interest of late in using federal resources to enforce federal marijuana prohibitions in the states that have legalized its use. At his confirmation hearing, Attorney General William Barr noted: "[t]o the extent that people are complying with state laws on distribution and production, we're not going to go after that." Brian Tashman, *What We Learned from William Barr's Confirmation Hearing*, ACLU, Jan. 16, 2019, <https://www.aclu.org/blog/civil-liberties/executive-branch/what-we-learned-william-barrs-confirmation-hearing>. In each budget cycle since FY 2014, Congress has passed an appropriate rider preventing the Department of Justice from using taxpayer funds to prevent the states from "implementing their own laws that authorize the use, distribution, possession, or cultivation of marijuana. See Pub. L. No. 116-6, div. C, Section 537, 133 Stat. 138 (2019); *United States v. McIntosh*, 833 F.3d 1163, 1178 (9th Cir. 2016).

⁶ Also, in *People v. Crouse*, 2017 CO 5, 388 P.3d 39, the Supreme Court of Colorado determined a specific provision of Colorado's medical marijuana scheme requiring law enforcement officers to return medical marijuana seized from an individual later acquitted of a state drug charge was preempted by the CSA because it would require state police officers to violate federal law. *People* concerns a distinct factual scenario not directly implicated by Petitioner's challenge to SQ 807.

because the former stood as an obstacle to the accomplishment of the latter's purpose.

¶33 Michigan's law gave food producer's associations the option to obtain from the state the right to act as the exclusive bargaining agent for all producers of a particular commodity. *Id. at 466*. Doing so would interfere with producers' freedom to bring their products to market individually or through an association, as guaranteed by the Agricultural Fair Practices Act. *See id. at 464-65*. The Court concluded that "because the Michigan Act authorizes producers' associations to engage in conduct that the federal Act forbids, it 'stands as an obstacle to the—accomplishment and execution of the full purposes and objectives of Congress.'" *Id. at 478* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 85 L.Ed. 581 (1984)).

¶34 However, we find *Michigan Cannery* was properly distinguished by the Supreme Court of Michigan in *Ter Beek v. City of Wyoming*, 846 N.W.2d 531 (Mich. 2014). There, the court explained:

The United States Supreme Court concluded that the Michigan Act was preempted by the AFPA because the Michigan Act, by compelling individual producers to effectively join and be bound by the actions of accredited associations, "empowers producers' associations to do precisely what the federal Act forbids them to do" and "imposes on the producer the same incidents of association

membership with which Congress was concerned in enacting” the AFPA. *Id.* at 478, 104 S.Ct. 2518. **In other words, the AFPA guaranteed individual producers the freedom to choose whether to join associations; the Michigan Act, however, denied them that right.**

Such circumstances are not present here. Section 4(a) simply provides that, under state law, certain individuals may engage in certain medical marijuana use without risk of penalty. As previously discussed, while such use is prohibited under federal law, § 4(a) does not deny the federal government the ability to enforce that prohibition, nor does it purport to require, authorize, or excuse its violation. Granting Ter Beek his requested relief does not limit his potential exposure to federal enforcement of the CSA against him, but only recognizes that he is immune under state law for MMMA-compliant conduct, as provided in § 4(a). Unlike in *Michigan Canners*, the state law here does not frustrate or impede the federal mandate.

Id. at 539-40 (emphasis added).

¶35 Based on the above analysis and the lack of a bright line rule concerning conflict preemption in this area, we find Petitioner has not demonstrated that SQ 807 is clearly or manifestly unconstitutional due to its alleged preemption by the CSA. Like the people of Michigan and Arizona, the voters of Oklahoma, should they adopt SQ 807, would be parting ways with Congress only regarding the scope of acceptable use of marijuana. *See Reed-*

Kaliher v. Hoggatt, 237 Ariz. 119, ¶¶22-23, 347 P.3d 136 (2015); *Ter Beek*, 846 N.W.2d at 536-41.⁷

C. SQ 807 unlikely to result in State violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 – 1968.

¶36 Petitioner also asserts SQ 807 is unconstitutional because it would create a state-sponsored agency specifically to engage in criminal money laundering by levying and collecting an excise tax on cannabis and creating a fund to funnel that money to other agencies and non-profit entities. Petitioner thus asserts SQ 807 necessitates violation of The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961 – 1968.

¶37 RICO prohibits persons from receiving income derived from a pattern of racketeering activity, which includes “the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in Section 102 of the Controlled Substance Act) punishable under any law of the United States.” 18 U.S.C. § 1961(1)(D) (2018). RICO is to be read broadly. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985). RICO also created a new civil cause

⁷ It should also be noted that one of the specific purposes of the CSA is to conquer drug abuse. *See Gonzales*, 545 U.S. at 12. Much of the excise tax revenue that would be collected if SQ 807 is adopted would be directed to programs specifically designed to combat drug abuse. That collection and funding effort would serve to aid one of the primary purposes of the CSA, not thwart it.

of action for any person injured in their business or property by reason of a violation of its prohibitions. *RJR Nabisco, Inc. v. European Cmty.*, ___ U.S. ___, 136 S.Ct. 2090, 2096, 195 L.Ed.2d 476 (2016). See 18 U.S.C. § 1964 (2018). Petitioner, however, is not alleging a private RICO claim.⁸ Rather, he is asserting SQ 807, if adopted, would result in an inevitable violation of RICO's provisions. Though petitioner does not specifically invoke the preemption doctrine, his framing of this tension implies a form of conflict preemption.

¶38 Respondents acknowledge that, like the CSA, RICO remains a potential ongoing threat to any individuals engaged in the cannabis business. However, Respondents also correctly note that Petitioner is not asserting SQ 807 is unconstitutional because of RICO's potential application to individual private citizens. Rather, Petitioner argues SQ 807 is unconstitutional because it will force the State of Oklahoma and its officials to engage in RICO violations through the

⁸ Respondent's challenge Petitioner's standing to make such a claim, noting he has alleged no injury to his own interests. However, we need not consider that issue because Petitioner's challenge is to the legal sufficiency of SQ 807 and he is not seeking to invoke the private right of action created by 18 U.S.C. § 1964.

Thus far, many attempts by private citizens to assert RICO violations by marijuana businesses have failed. See *Ainsworth v. Owenby*, 326 F.Supp.3d 1111 (D. Oregon 2018); *Bokaie v. Green Earth Coffee LLC*, 2018 WL 6813212 (N.D. Cali. 2018). But see *Safe Streets Alliance v. Hickenlooper*, 859 F.3d 865 (10th Cir. 2017). Of note, the Tenth Circuit in *Safe Streets Alliance* also concluded that the plaintiff organizations had failed to allege any viable substantive right to enforce the preemptive provisions of the CSA, thus implying that individuals may not possess the option of challenging state marijuana laws in federal court as preempted by the CSA. See 859 F.3d at 901-04.

excise tax provisions.⁹ Petitioner's argument is flawed for several reasons. First, government entities are not subject to the criminal law provisions of RICO because they cannot form the necessary malicious intent for the predicate acts. *See Lancaster Community Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397 (9th Cir. 1991).¹⁰ Further, state and local officials are granted immunity from the majority of the provisions of the CSA that create the predicate acts for a RICO violation.¹¹

⁹ As Petitioner notes in his response:

9. All elements of probable cause to bring criminal felony charges against state officials who promulgate IP 423, if it becomes article 31, Oklahoma Constitution, exist under [RICO].

Petitioner/Protestant's Brief in Response to Respondents/Respondents Ryan Kiesel and Michelle Tilley's Response, ¶9.

¹⁰ The Second Circuit Court of Appeals has indicated it is possible to seek prospective injunctive relief against a sovereign entity in a civil action pursuant to RICO. *See Gingras v. Think Finance, Inc.*, 922 F.3d 112, 124-25 (2nd Cir. 2019). However, Petitioner is not seeking injunctive relief. He is arguing SQ 807 is facially unconstitutional because it would require the State to engage in criminal RICO violations. *Gingras* is thus not directly applicable.

¹¹ Title 21 U.S.C. § 885(d) (2018) provides:

Except as provided in sections 2234 and 2235 of Title 18, no civil or criminal liability shall be imposed by virtue of this subchapter upon any duly authorized Federal officer lawfully engaged in the enforcement of this subchapter, or upon any duly authorized officer of any State, territory, political subdivision thereof, the District of Columbia, or any possession of the United States, who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.

In *Smith v. Superior Ct.*, 239 Cal.Rptr.3d 256, 260 (Cal. App. Dep't Super. Ct. 2018), a California appellate court applied Section 885(d) and concluded the San Francisco Police Department was immune from federal prosecution under the CSA when complying with California law for the return of marijuana lawfully possessed under California law. *But see People v. Crouse*, 2017 CO 5, ¶8, 388 P.3d 39 (holding state law return provision to be preempted by the CSA because an officer could not be "lawfully engaged" in enforcement activities under state law if state law required violation of federal law).

¶39 Petitioner's RICO argument is focused on the excise tax provisions of SQ 807 that would result in the state handling tax revenue from the marijuana industry and appropriating it for use.¹² In addition to the specific limitations of RICO itself when applied to a sovereign entity, Petitioner's argument is flawed because illegality of a given activity is not a bar to its lawful taxation. Petitioner attempts to paint the excise tax provisions of SQ 807 as a form of racketeering. Sections 11 and 12 of SQ 807 create an excise tax and revenue framework very similar to the state's other existing excise taxes. The United States Supreme Court has upheld the taxation of federally-unlawful activities on multiple occasions. *See Department of Revenue of Montana v. Kurth Ranch*, 511 U.S. 767, 778, 114 S.Ct. 1937, 128 L.Ed.2d 767; *U.S. v. Sullivan*, 274 U.S. 259, 263, 47 S.Ct. 607, 71 L.Ed. 1037 (1927). *Kurth Ranch* concerned the punitive nature of a tax on marijuana specifically, and the Court explained:

As a general matter, the unlawfulness of an activity does not prevent its taxation. **Montana no doubt could collect its tax on the possession of marijuana**, for example, if it had not previously punished the taxpayer for the same offense, or, indeed, if it had assessed the tax in the same proceeding that resulted in his conviction.

¹² Petitioner states:

State Question 807 would create a state-sponsored agency specifically to engage in criminal felony RICO money laundering, by excise sales taxing cannabis purchases and creating a trust fund to funnel excise sales tax receipts to other agencies and private non-profit entities.

511 U.S. at 778 (internal citations omitted) (emphasis added). Multiple states have taxed marijuana in various ways despite criminal prohibitions. *See State v. Gullede*, 896 P.2d 378 (Kan. 1995); *State v. Garza*, 496 N.W.2d 448 (Neb.1993); *Sisson v. Triplett*, 428 N.W.2d. 565 (Minn. 1988).

¶40 The U.S. Government itself already collects taxes on marijuana businesses that are illegal under federal law. *See IRS, Taxpayers Trafficking in a Schedule I or II Controlled Substance*, Dec. 10, 2014, <https://www.irs.gov/pub/irs-wd/201504011.pdf>. Title 26 U.S.C. § 280E (2018), which Petitioner cites in support of his argument, actually supports the legal taxation of marijuana. Section 280E forbids marijuana businesses from deducting business expenses from their gross income when calculating their federal income taxes.¹³ Implicit in the provision is the acknowledgement that marijuana businesses are otherwise paying taxes on illegal activity. Further, it is axiomatic that if the states and federal government are permitted to tax illegal activity, they are permitted to use the resulting revenue. Based on the above analysis, Petitioner has not shown that SQ

¹³ Specifically, 26 U.S.C. § 280E (2018) provides:

No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.

807 is clearly and manifestly unconstitutional because it would force the state and state officials to engage in unlawful conduct that violates RICO by taxing marijuana in Oklahoma.¹⁴

V. CONCLUSION

¶41 In considering federal law questions, the Supremacy Clause requires this Court adhere to decisions of the United States Supreme Court. We have previously declared unconstitutional various initiative petitions and state laws that infringed upon rights the United States Supreme Court has expressly determined are guaranteed by the United States Constitution. We have also followed United States Supreme Court precedent on federal questions in diverse areas such as Indian law and application of the Commerce Clause. However, the United States Supreme Court has never addressed preemption of state marijuana laws under federal statutes such as the CSA.

¶42 Petitioner argues that this uncertainty concerning federal preemption of state marijuana regulations compels this Court to declare SQ 807 unconstitutional. The opposite is true. The burden is on a protestant to

¹⁴ Though Respondents discuss the potential application of other federal statutes, such as 18 U.S.C. §§ 1956 & 1957 (2018) (money laundering) and 18 U.S.C. § 1960 (2018) (prohibition of unlicensed money transmitting business), those statutes are not discussed by Petitioner in his filings.

demonstrate that a proposed initiative is clearly and manifestly unconstitutional on its face. *In re: Initiative Petition No. 420*, 2020 OK 9 at ¶14.

¶43 This Court acknowledges the lack of controlling federal precedent has created uncertainty concerning the interplay between state regulatory schemes permitting marijuana use and existing federal law. The people of Oklahoma have spoken once on this interplay between state regulations and existing federal law in the approval and implementation of SQ 788, Oklahoma’s legalization of medical marijuana. We have confronted that uncertainty, and considered the question in depth by examining the parameters of SQ 807, the language of federal statutes such as the CSA, and principles of preemption under the Supremacy Clause. Based on the above analysis, Petitioner has failed to meet his burden of demonstrating that SQ 807 is clearly or manifestly unconstitutional. We hold therefore that State Question No. 807, Initiative Petition No. 423, is legally sufficient for submission to the people of Oklahoma.

**STATE QUESTION NO. 807, INITIATIVE PETITION NO. 423 IS
LEGALLY SUFFICIENT FOR SUBMISSION TO THE PEOPLE OF
OKLAHOMA**

¶44 Gurich, C.J., Kauger, Winchester, Edmondson and Combs, JJ.,
concur;

¶45 Darby, V.C.J., Kane (**by separate writing**) and Rowe (**by separate
writing**), JJ., dissent;

¶46 Colbert, J., not participating.

¶2 Our preemption analysis begins with the assumption that the historic police powers of the states are not superseded by federal law unless that is the clear and manifest purpose of Congress. See *Altria Group, Inc. v. Good*, 555 U.S. 70, 77 (2008). Section 903 of the CSA sets forth Congress’s clear and manifest purpose to preempt state law, specifically when “there is a positive conflict between [a provision of the CSA and a state law] so that the two cannot consistently stand together.” 21 U.S.C.A. § 903 (current through P.L. 116-142). Such “positive conflict” exists either when it is physically impossible to comply with both state and federal law or when state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hillsborough Cnty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). The United States Supreme Court has previously found when state law authorizes conduct that federal law forbids, it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. See *Mich. Cannery & Freezers Ass’n v. Agric. Mktg. and Bargaining Bd.*, 467 U.S. 461, 478 (1984) (citing *Hines*, 312 U.S. at 67).

¶3 We next look to the purposes and objectives of Congress in the CSA. The United States Supreme Court has determined:

The main objectives of the CSA were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances. Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels.

To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA. The CSA categorizes all controlled substances into five schedules. The drugs are grouped together based on their accepted medical uses, the potential for abuse, and their psychological and physical effects on the body.

Gonzales v. Raich, 545 U.S. 1, 12-13 (2005) (footnotes and citations omitted).

Congress has continued to classify marijuana as a Schedule I drug despite extensive efforts to have it unclassified or reclassified. See 21 U.S.C.A. § 812(c)(10) (current through P.L. 116-142). Marijuana is classified as a Schedule I drug based on Congress's belief that marijuana has high potential for abuse, there is no accepted medical use, and there is a lack of accepted safety for use under medical supervision. See *id.* § 812(b)(1)(A)-(C). Federal law prohibits *all* production, sale, and use of marijuana.² State Question 807 authorizes the widespread production, sale, and use of marijuana. The proposed measure affirmatively authorizes conduct the CSA expressly forbids. This clearly presents an obstacle to the accomplishment and execution of the full purposes and objectives of Congress and is preempted.

¶4 The majority leans on this notion that state law immunity would not frustrate the CSA's goals of conquering drug abuse or controlling drug traffic because, if SQ 807 is approved, Oklahoma would "simply be parting ways with Congress on the

² The sole exception is using marijuana as part of a Food and Drug Administration preapproved research study. See *Gonzales v. Raich*, 545 U.S. 1, 14 (2005) (citing 21 U.S.C. § 823(f)).

scope of acceptable marijuana use.” This notion of “scope of acceptable use” comes from decisions on the legalization of medical marijuana, not recreational marijuana. See *Reed-Kaliher v. Hoggat*, 347 P.3d 136, 141-142 (Ariz. 2015); *Ter Beek v. City of Wyoming*, 846 N.W.2d 531, 539 (Mich. 2014). Congress is clear that there is no acceptable use of marijuana. The proposed measure makes the scope of acceptable use extremely broad, permitting use by anyone 21 years of age or older. This “parting of ways” leaves a gaping hole between Congress’s scope of acceptable use (none) and Oklahoma’s (anyone 21 or older). If that is not “a positive conflict” between the CSA and Oklahoma law “so that the two cannot consistently stand together,” then what is? The majority’s decision makes the already narrow preemption provision in 21 U.S.C.A. § 903 a complete nullity.

¶5 Some clarification as to preemption and the anticommandeering doctrine is warranted. The analysis employed by the majority blends consideration of obstacle preemption with the anticommandeering doctrine and *Murphy v. National Collegiate Athletic Association*, ___ U.S. ___, 138 S. Ct. 1461 (2018), to bolster its holding. Preemption is based on the Supremacy Clause and means that when federal and state law conflict, federal law prevails and state law is preempted. See *id.* at 1476. “[E]very form of preemption is based on a federal law that regulates the conduct of private actors, not the States.” *Murphy*, 138 S. Ct. at 1481 (emphasis added). The anticommandeering doctrine is based on the Tenth Amendment and is a limit to Congress’s legislative powers. See *id.* at 1476. Congress does not have the power to issue direct orders to the governments of

the states. *Id.* In *Murphy*, the United States Supreme Court found there was ***no federal preemption provision in PAPSA because PAPSA regulates states, not private actors.*** *Id.* at 1481. The *Murphy* Court then found “there is simply no way to understand the provision prohibiting state authorization as anything other than a ***direct command to the States.*** And that is exactly what the anticommandeering rule does not allow.” *Murphy*, 138 S. Ct. at 1481 (emphasis added).

¶6 In sum, preemption is implicated when federal law regulates private actors; the anticommandeering doctrine is implicated when federal law regulates the states. In *Murphy*, the Supreme Court found preemption was not implicated. Rather, the PAPSA provision regulated the states and violated the anticommandeering doctrine. The Supreme Court did ***not*** find the PAPSA provision regulated private conduct and that the state law did not stand as an obstacle to the purposes of PAPSA and, therefore, was not preempted. That is an important distinction. Because the United States Supreme Court found preemption was not implicated in *Murphy*, they did not undergo an obstacle preemption analysis. As a result, *Murphy* cannot support the majority’s holding that SQ 807 does not stand as an obstacle to the purposes of the CSA and, therefore, is not preempted. Here, there is no question the CSA regulates the conduct of private actors and that § 903 of the CSA is a preemption provision. Therefore, the only inquiry is whether the proposed state law stands as an obstacle to the

accomplishment and execution of the full purposes and objectives of the CSA (not whether the CSA violates the anticommandeering statute).³

¶7 Furthermore, any suggestion that this Court should find SQ 807 is not preempted because the federal government is aware of the widespread state legalization of medical and/or recreational marijuana but has declined to enforce the CSA is irrelevant. Congress creates federal laws. The executive branch is responsible for enforcing those laws. This branch is charged with interpreting the laws in a way that gives effect to the intent of Congress. Congressional intent is clear: the production, sale, and use of marijuana for any purpose is prohibited, and any state law that permits such acts is preempted. Despite a shift in public opinion and many states legalizing medical and/or recreational marijuana, Congress has continued to classify marijuana as a Schedule I drug and prohibit *all* production, sale, and use of it. In *Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries*, 230 P.3d 518, 533 (Or. 2010), the Supreme Court of Oregon aptly noted “whatever the wisdom of Congress’s policy choice to categorize marijuana as a Schedule I drug, the Supremacy Clause requires that we respect that choice when, as in this case, state law stands as an obstacle to the accomplishment of the full purposes of the federal law.”

¶8 I respectfully dissent.

³ In fact, the CSA does not violate the anticommandeering doctrine. The CSA regulates the conduct of private actors, not the States. Therefore, the CSA does not implicate the anticommandeering doctrine.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

JUN 23 2020

JOHN D. HADDEN
CLERK

IN RE STATE QUESTION No. 807,)
INITIATIVE PETITION No. 423)
)
PAUL TAY,)
)
Petitioner,)
)
v.)
)
RYAN KIESEL and)
MICHELLE TILLEY,)
)
Respondents.)

No. 118,582

FOR OFFICIAL
PUBLICATION

Rowe, J., with whom Darby, VCJ., joins, dissenting:

¶1 I dissent from the Court’s opinion holding that State Question No. 807, Initiative Petition No. 423 (“SQ 807”) is not preempted by federal law and legally sufficient for submission to the people of Oklahoma.

¶2 The Controlled Substances Act (“CSA”), 21 U.S.C. §§ 801-904, which governs the use and trafficking of controlled substances, explicitly addresses the issue of federal preemption of state law:

No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.

21 U.S.C. § 903. As the Court notes in its opinion, a “positive conflict” arises either when it is impossible to comply with both federal and state law, or where state law stands as an obstacle to the accomplishment and execution of Congress’s full purposes and objectives. *See Hillsborough City, Fla. v. Automated Med Labs, Inc.*, 471 U.S. 707, 713 (1985).

¶3 The Court correctly concludes that the proposed constitutional amendments in SQ 807 contain no mandate that would require Oklahomans to violate the provisions of the CSA. However, passage of SQ 807 would clearly present an obstacle to the accomplishment and execution of Congress’s full purposes and objections, expressed in the CSA. The purpose of the CSA was “to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances.” *Gonzalez v. Raich*, 545 U.S. 1, 12 (2005). Marijuana is considered a Schedule I controlled substance under the CSA. 21 C.F.R. § 1308.11(d)(23). It is illegal for any person to manufacture, distribute, or dispense marijuana and also illegal for any person to possess marijuana with the intent to manufacture, distribute, or dispense it. 21 U.S.C. §§ 841(a)(1), 844(a).

¶4 If SQ 807’s proposed amendments become law, there will unquestionably be a proliferation in the cultivation, manufacture, distribution, dispensation, and recreational use of marijuana in Oklahoma. These outcomes are hardly hypothetical. In a world where these activities are sanctioned and licensed by the State of Oklahoma, it will become virtually impossible for federal law enforcement, operating with limited resources, to accomplish Congress’s

objective in the CSA to control the production, sale, and use of controlled substances.

¶5 Contrary to the Court's analysis, reading the CSA as preempting state laws which legalize and regulate trafficking in marijuana would not run afoul of the anti-commandeering doctrine. The anti-commandeering doctrine operates as a limit on federal preemption. "We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power to directly compel the States to require or prohibit those acts." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1477 (2018) (quotation omitted). The CSA contains no direct mandate for the states to adopt drug enforcement regulations which mirror its provisions; the CSA merely prohibits certain conduct on behalf of individuals. Congress anticipated that states would adopt regulatory schemes that are generally complementary to federal law, even if not perfectly consistent with the CSA. Sanctioning activity that is proscribed by federal law, however, is in no sense complementary.

¶6 The Court likens the question before us to that addressed by the United States Supreme Court in *Murphy v. National Collegiate Athletic Association*, where the Court invalidated a federal law, the Professional Amateur Sports Protection Act (PASPA), that prohibited states from authorizing or licensing gambling on sporting events. *Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. at 1470. The Court found that PASPA violated the anti-commandeering doctrine because it "unequivocally dictate[d] what a state legislature may and may not do." *Id.* at 1478.

PASPA, however, is distinguishable from the CSA in a number of important ways. First, PASPA did not make sports gambling a federal crime. *Id.* at 1471. This meant that the burden of enforcing its provisions would fall exclusively on state government, thus conscripting state law enforcement for federal purposes. *Id.* Second, and most importantly, the CSA does not contain any provisions unequivocally dictating what a state legislature may and may not do.

¶7 SQ 807's proposed constitutional amendments clearly present a substantial obstacle to Congress's objectives expressed in the CSA to control the production, sale, and use of controlled substances. Therefore, SQ 807 is preempted by federal law.

¶8 Accordingly, I respectfully dissent.



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

JUL 15 2020

JOHN D. PADDEN
CLERK

RYAN KIESEL and MICHELLE)
TILLEY, PROPONENTS STATE)
QUESTION NO. 807,)
Petitioners,)
vs.)
THE HONORABLE SECRETARY OF)
STATE MICHAEL ROGERS, in his)
OFFICIAL CAPACITY,)
Respondent.

Case No.

#11891 9

ORIGINAL
Recorded
Indexed
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PETITIONERS/PROPONENTS' *EMERGENCY* APPLICATION TO ASSUME ORIGINAL JURISDICTION AND *EMERGENCY* PETITION FOR EXTRAORDINARY RELIEF, INCLUDING STAY OF SIGNATURE CIRCULATION DEADLINE, AND BRIEF IN SUPPORT

Ryan Kiesel, OBA #21254
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July 15, 2020

ATTORNEY FOR PETITIONERS/
PROPONENTS

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Proponents of Initiative Petition 423, State Question 807, Ryan Kiesel and Michelle Tilley respectfully request that the Court grant an **emergency** stay of the setting and enforcement of the deadlines within which to circulate State Question 807 for signatures until such time as signatures can be safely collected in Oklahoma. If, following a stay for a reasonable period of time, signatures still cannot be collected safely in person, Proponents request that they be allowed to collect signatures electronically through a safe and secure online electronic signature platform.

As the Court is aware, on March 11, 2020, the World Health Organization declared the novel coronavirus, COVID-19, a global pandemic.¹ On Sunday, March 15, 2020, Mayor David Holt of Oklahoma City declared a state of emergency, revoking all event permits, banning all gatherings of 50 or more in the City, and urging residents to do their best to stay home, practice social distancing, and minimize the spread of the virus. Soon thereafter, on Sunday, March 15, 2020, Governor J. Kevin Stitt declared a State of Emergency in all 77 counties of Oklahoma.² There are now over 21,000 confirmed cases of COVID-19 in Oklahoma, including almost 1000 new cases on July 13, 2020 alone.³

On March 18, 2020, Secretary of State Michael Rogers, with the approval of Governor Stitt acting according to Emergency Powers in 63 O.S. § 683.9, issued a statement to the citizens of Oklahoma that during the statewide COVID-19 emergency the 90-day circulation period for initiative petitions imposed by 34 O.S. §§ 4, 8(E) was tolled in order to best protect public health. The statement informed that once the declaration of emergency

¹ See, e.g., <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

² See <https://www.sos.ok.gov/documents/executive/1913.pdf>.

³ See <https://coronavirus.health.ok.gov/>

was lifted by the Governor, the circulation period would resume and new deadlines would be calculated. Additionally, Secretary Rogers encouraged Oklahomans to limit their social interactions and stay at home and ordered that signature gathering activities should halt immediately.

On June 10, 2020, Secretary Rogers issued another statement to the citizens of Oklahoma that, although the declaration of emergency had not been affirmatively lifted, Governor Stitt had given the Secretary of State's office approval to resume the normal initiative process and, as such, signature collection would now resume. Additionally, in the statement, Secretary Roger cautioned: "Signature-gathering activities should proceed with caution, paying close attention to CDC guidelines regarding social distancing and use of personal protective equipment."⁴

Two days later, on June 12, 2020, Governor Stitt issued an amended Executive Order once again declaring an emergency threat to the public's peace, health, and safety and requiring continued measures to protect Oklahomans against COVID-19's continued threat. The Executive Order directs state agencies to follow the guidance of the Oklahoma Department of Health which recommends social distancing and directs that individuals should follow the Center for Disease Control's guidelines for social distancing that advises people to stay at least 6 feet apart. Despite the persistence of Executive Orders declaring a

⁴ See June 10, 2020 letter from Michael Rogers, Secretary of State and Education to the Citizens of Oklahoma. Petitioners would provide a cite to this Court, but Petitioners have not received this letter from the Secretary. Nor were Petitioners able to find this letter on the Secretary of State's website. Petitioners were provided a copy of the letter from legal counsel of another State Question after that legal counsel inquired about a conflict between the setting of circulation dates and the Secretary's emergency stay of petition circulation.

state of emergency, the most recent of which was issued on July 10, 2020⁵, Secretary Rogers set the signature circulation deadline for SQ 810 as no later than 5pm on September 30, 2020.⁶ Secretary Rogers has also set a circulation deadline for SQ 812 as no later than 5pm on October 5, 2020.⁷

On June 23, 2020, this Court found SQ 807 legally sufficient for submission to the People of Oklahoma. Once the rehearing period concludes, Secretary Rogers will set the 90-day collection period for SQ 807 Proponents to collect 177,958 signatures. The collection period will likely start in the beginning of August.

Unfortunately, the COVID-19 crisis is far from over. According to the Oklahoma Department of Health, on March 18, 2020, the date of Secretary Roger's original stay announcement, there were 29 reported COVID-19 cases in Oklahoma. As of July 14, 2020, there are 21,738 reported cases in Oklahoma.⁸ There is now widespread, uncontrolled community spread of COVID-19 throughout Oklahoma. The Department of Health advises that the virus is spread between people in close contact with one another (within 6 feet), that spread is possible before people show symptoms, and that it may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it.⁹ The Center for Disease Control guidelines (that Secretary Rogers advises be adhered to) direct to "put 6 feet of distance between yourself and people who don't live in your household."¹⁰

⁵ See Second Amended Executive Order 2020-20, <https://www.sos.ok.gov/documents/executive/1951.pdf>

⁶ See <https://www.sos.ok.gov/gov/questions.aspx>

⁷ See Id.

⁸ See <https://coronavirus.health.ok.gov/>

⁹ See <https://coronavirus.health.ok.gov/>

¹⁰ See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

Circulating a petition for signatures involves tens of thousands, if not hundreds of thousands, of direct conversations and close interactions between people and the sharing and handling of thousands of petitions. Circulating petitions at this time places the signature gatherers at risk of contracting and spreading COVID-19, causing further community spread and exacerbating the public health emergency right when Oklahoma is struggling to get COVID-19 under control so that people stay healthy and return to school and work and the economy can recover as quickly as possible. Many large events and gatherings, where signatures are traditionally collected, have been cancelled. It would be unethical, improper, and impractical for Petitioners to attempt to gather in-person signatures given the current public health crises in the state and the existing emergency orders and health directives.

Article 5, § 2 of the Oklahoma Constitution provides that the first power reserved by the people is the initiative. Because the “people’s right to institute change through [] initiative [] is a fundamental characteristic of Oklahoma government,” *In re Initiative Petition No. 360*, 1994 OK 97, ¶ 9, 879 P.2d 810, 814, there is no question here of right. The Constitution states that for a Constitutional change the signatures required is 15% of the total number of votes cast at the last general election for the Office of Governor. This means that the Proponents of SQ 807 need to collect 177,958 signatures to place it on the ballot. However, the process requirements as to how and when those signatures must be collected are *statutory* and cannot function to deny the people the constitutionally protected power of the initiative.¹¹

Through the years, the Oklahoma Legislature has added statutory conditions to this basic constitutional right, including the process to place an initiative on the ballot. These statutory requirements are set forth in Title 34, including 34 O.S. Section 8 that directs that

¹¹ See 34 O.S. §§ 1-27

once 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 more than thirty (30) days from the date when all appeals, protests and rehearings have been resolved or have expired. Notification shall be sent to the proponents specifying the date on which circulation of the petition shall begin and that the signatures are due within ninety (90) days of the date set.¹²

Because the statutory law governing signature collection contemplates in-person signatures and close contact among persons (*see, e.g., In re Initiative Petition No. 347*, 1991 OK 55, 813 P.2d 1019, 1034), Proponents do not believe that they can practically, and in good conscience, circulate their initiative petition during a declared public health state of emergency. Importantly, there is also a complete lack of urgency surrounding signature collection for SQ 807.¹³ Even assuming a record-breaking successful signature collection effort, it is impossible for SQ 807 to complete the remaining portions of the initiative process to be eligible for the November 2020 ballot.¹⁴ That means the earliest SQ 807 could appear before voters would be in 2021 or as late as November of 2022. But the risks of collecting signatures now are great

¹² See 34 Okl.St. Ann. § 8

¹³ Petitioners have not been notified of a beginning circulation date, but in a phone call with Amy Canton of the Executive Legislative Division of the Oklahoma Secretary of State's office on July 14, 2020, Petitioners were informed that their signatures would be due on October 26, 2020.

¹⁴ The date the State Election Board must submit final ballot language for printing acts as a constructive deadline on all proposed State Questions. The Oklahoma State and County Election Boards must comply with Federal law that requires Oklahoma voters in the military stationed overseas receive their absentee ballots within a certain window of time before an election. In order to meet those statutory obligations the last date to add anything (including a state question) to a ballot before the November General Election is on or about August 28, 2020.

to both the campaign's staff, volunteer circulators, and petitioner signers, employees of the Secretary of State's office, and to the larger community working to reduce the rate of COVID-19. Proponents invested significant time and resources in SQ 807 and it was found legally sufficient by this Court. While Proponents will be irreparably harmed by being forced to choose between abandoning their effort or proceeding to collect regardless of the significant risk to individual and public health, they recognize that a reasonable delay at this juncture will cause no harm to either themselves or to the state, and is the only way, at this point in time, to preserve their constitutionally protected right. Further, it is also the only way to protect the Constitutional right of Oklahoma voters who have a Constitutional interest in exercising their right to sign or not to sign a petition of SQ 807. Oklahoma voters should not have to choose between participating in a fundamental aspect of our democracy and their health and the health of their community.

The Petitioners recognize that an indefinite delay of signature circulation by this Court or the Secretary of State acting under the authority of the Governor could become an untenable impediment to the exercise of the Constitutional right to petition. In order to protect that right from future arbitrary delays or even mischief by opponents of this or future initiative petitions, Petitioners pray that any order staying signature collections meet the following criteria: the situation should be extraordinary, the length of the stay should be reasonable, and if the stay persists beyond a reasonable time Proponents should be afforded alternatives in order to ensure the right to Petition is preserved.

In the case at hand, a global pandemic, a persistent declared state of emergency in Oklahoma since March 15, 2020, and a disturbing spike in cases in Oklahoma in recent

weeks¹⁵, surely meets the criteria of extraordinary. The initial stay in signature collection took place at a time with fewer COVID cases and with less aggressive community spread. Secretary of State Rogers, in his official capacity, made a passionate argument to this Court that even the counting of signatures presented an untenable circumstance given the pandemic.¹⁶ This Court found that the Secretary of State had “not established the signature-counting process cannot be performed in an efficient manner, while also taking the necessary safety precautions for those involved.” *Id.* at ¶6. Even still, this Court only ordered the Secretary of State to accept and count signatures during the pandemic after a finding that the Secretary could “procure the tools to carry out the signature-counting process.” *Id.* The process of signature-collection is of a different scale than signature-counting, potentially involving close contact of hundreds of thousands of Oklahomans. If the Secretary of State found the former concerning, the Secretary should find latter untenable.¹⁷ In any case, the context of signature collection at this moment in time is extraordinary.

Petitioners also recognize that there should be limits to the exercise of extraordinary powers in extraordinary times. To be very clear, Petitioners are not asking this Court for an order that recognizes an unqualified power to stay signature collection upon the declaration of

¹⁵ COVID 19: Oklahoma Reports First Pediatric Death With 456 New Infections; 20,235 Cases Confirmed, *Tulsa World*, July 13, 2020, https://www.tulsaworld.com/news/local/covid-19-oklahoma-reports-states-first-pediatric-death-along-with-456-new-cases-total-surpasses/article_112b7c62-e81e-503e-84eb-995cead30b4a.html

¹⁶ *In Re: State Question No. 805 Initiative Petition No. 421*, 2020 OK 45.

¹⁷ As of July 13, 2020, the homepage for the Secretary of State website has a banner at the very top of the page announcing that “Due to the COVID-19 outbreak, we are restricting our public offices and moving our services to be used ONLINE and by MAIL. ONLINE services include most business filings, document orders, good standings, notary and trademark filings. It is our mission to provide an exceptional standard of service to the public and business community, while doing our part to mitigate the spread of this virus.” (Emphasis original. See <https://www.sos.ok.gov/>).

an emergency. Such a power could stand as an arbitrary and impermissible obstacle to a Constitutional right. An unqualified power to stay signature collection could also invite mischief by political opponents or supporters of initiatives by vesting them with the power to start and stop signature collection to strategically manipulate the outcome of a signature collection effort.¹⁸

Therefore, Petitioners urge this Court to issue an order that commands a stay for a reasonable time and, beyond that time, affords Proponents of alternatives to the current statutory signature collection process. As a measure of reasonableness, the Court should consider the urgency of a State Question campaign to meet deadlines in order to be eligible to be placed on an upcoming ballot. Again, it is impossible for SQ 807 to be eligible for any remaining election in 2020. The earliest SQ 807 could be on a ballot would be in 2021 and that is ONLY if the Governor sets the question for a special election.

Petitioners ask the Court to reserve for a later order the question of what alternatives should be available Petitioners if a stay of signature collection goes beyond a reasonable time. However, one such potential remedy would be an order recognizing that signatures can be collected electronically¹⁹ and directing the state to establish necessary protocols.²⁰

¹⁸ Note Petitioners are in no way accusing the Secretary of State or the Governor of acting with bad intent in the current matter. Rather, raising this concern is precautionary in nature and meant to aid the Court in its consideration of a remedy.

¹⁹ Oklahoma law gives legal recognition to electronic signatures. The law states that “[a] record of signature may not be denied legal effect or enforceability solely because it is electronic form.” If the law requires that a signature or record be notarized, the requirement is satisfied if the electronic signature of the person authorized to preform those acts is authorized. Electronic signatures are admissible as evidence in court 12A Okl.St. Ann. § 15-113

²⁰ For example, DocuSign is a nationally recognized firm that processes transactions involving electronic signatures. It has more than 500,000 customers and has processed hundreds of millions of electronic signatures and transactions for governmental entities, financial institutions, insurance companies, nonprofit entities, educational institutions, real

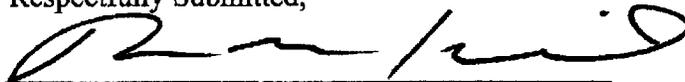
As a matter of Constitutional principle, Oklahomans should not have to choose between exercising their right to make public policy by initiative petition and their health and the health of their fellow Oklahomans. Based on the current state of emergency as declared by the Governor, the increasing rates of COVID-19 in Oklahoma, and the directives of both the Department of Health and the Center of Disease Control to maintain social distancing, and the lack of urgency to meet 2020 ballot deadlines, we respectfully request that 90-day circulation period for SQ 807 imposed by 34 O.S. §§ 4, 8(E) be once again tolled and that the Court issue all appropriate emergency relief, including an emergency stay of the statutory deadlines for initiative petitions; and a writ of prohibition barring the Secretary from setting and enforcing signature collection deadlines to a date to be determined by future court order. Additionally, Proponents request that the Court maintain jurisdiction over this case and if the public health emergency continues in such a way that it creates an unreasonable and indefinite delay to the signature collection process, that the Court allow Petitioners to move the Court to allow the Petitioners alternatives to circulate the petition and gather signatures, safely and accurately.

Petitioners freely admit that none of these remedies guarantee a successful signature collection process for SQ 807. However, absent these remedies the failure of SQ 807 is assured. It is simply not possible for Petitioners to safely, responsibly, and effectively collect signatures during a pandemic, especially as the pandemic is surging at this moment in

estate transactions, healthcare providers, and legal services. It can be used to collect petition signatures electronically and the protocols and procedures employed by DocuSign in obtaining electronic signatures satisfy the policies underlying the statutes governing the initiative process in Oklahoma. Those protocols and procedures provide authentication and verification that the person providing the electronic signature is in fact that person, and that the person intends to sign the petition.

Oklahoma. Again, Petitioners and Oklahoma voters should not have to choose between following critical public health guidelines and participating in a fundamental aspect of Oklahoma democracy. Petitioners pray that in these narrow and unprecedented circumstances that the Court will grant the extraordinary relief requested.

Respectfully Submitted,



RYAN KIESEL, OBA# 21254
ATTORNEY FOR
PETITIONERS/PROONENTS

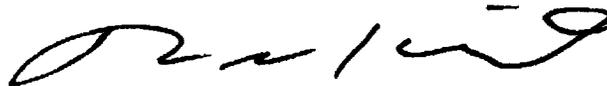
CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 2020, a true and correct copy of the above and foregoing document was mailed, postage prepaid, to the following:

Mike Hunter, Attorney General
Mithun Mansinghani, Solicitor General
Office of the Oklahoma Attorney General
313 NE 21st St.
Oklahoma City, Oklahoma 73105

And

The Honorable Michael Rogers, Oklahoma Secretary of State
Office of the Oklahoma Secretary of State
2300 N. Lincoln Blvd., Ste. 101
Oklahoma City, Oklahoma, 73105



Ryan Kiesel, OBA #21254
3022 NW 39th St. #57532
Oklahoma City, OK 73157
405-303-1215
ATTORNEY FOR
PETITIONERS/
PROONENTS

Michael Rogers
Secretary of State and Education



J. Kevin Stitt
Governor

OKLAHOMA SECRETARY OF STATE

July 22, 2020

Ryan Kiesel
3022 NW 39th Street
Oklahoma City, OK 73157

Michelle Tilley Nichols
5300 North Shartel, Box 18996
Oklahoma City, OK 73154

Dear Proponent(s):

Per Title 34, Section 8 of the Oklahoma Statutes, no petitions for rehearing have been filed with the Supreme Court and the period for such has expired, therefore notice is hereby given that the signature gathering period for **State Question Number 807, Initiative Petition Number 423** is set to begin on July 29, 2020 and all signatures are due within ninety (90) days of the date set. Signatures will not be accepted for filing after 5:00 p.m. on October 26, 2020. The current signature requirement for amendments or additions to the Oklahoma Constitution is 177,958.

Please find enclosed a true and accurate copy of said petition on record with the Secretary of State, plus a copy of the current signature requirements for statewide petitions as certified by the Secretary of the Oklahoma State Election Board.

If we may provide any further assistance or should you have any questions, please do not hesitate to contact our office (405-522-4565 or executivelegislative@sos.ok.gov).

Thank you,

A handwritten signature in black ink that reads "Michael Rogers".

Michael Rogers
Secretary of State and Education

State Question No. 807, Initiative Petition No. 423

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.

FILED

INITIATIVE PETITION

DEC 27 2019

To the Honorable John Kevin Stitt, Governor of Oklahoma:

OKLAHOMA SECRETARY
OF STATE

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 next regular general election (or at a special election as may be called by the Governor), and each for himself/herself says: I have personally signed this petition; I am a legal voter of the State of Oklahoma; my residence is correctly written after my name. The time for filing this petition expires ninety (90) days from July 29, 2020. The question we herewith submit to our fellow voters is:

Shall the following proposed new Article 31 to the Oklahoma Constitution be approved?

BE IT ENACTED BY THE PEOPLE OF OKLAHOMA THAT A NEW ARTICLE 31 TO THE OKLAHOMA CONSTITUTION BE APPROVED:

**CONSTITUTION OF OKLAHOMA, ARTICLE 31
MARIJUANA**

§ 1. Definitions

Terms used in this article mean:

- (1) "Authority" means the Oklahoma Marijuana Authority or any successor department, division, or agency.
- (2) "Consumer" means a person twenty-one years of age or older. "Consumer" does not include licensed patients.
- (3) "Entity" means an individual, a sole proprietorship, a general partnership, a limited partnership, a limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.
- (4) "Hemp" means the plant of the genus cannabis, and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.
- (5) "License" or "Licensee" means a license issued or an entity licensed pursuant to this article.
- (6) "Local government" means a county, municipality, or other political subdivision.
- (7) "Marijuana" means cannabis indica, cannabis sativa, and cannabis ruderalis, hybrids of such species, as well as resin extracted from the plant and marijuana-infused products. "Marijuana" does not include hemp, or commodities or products manufactured with

hemp, or any other ingredient combined with marijuana to prepare topical, oral, or rectal administrations, food, drink, or other products.

- (8) “Marijuana accessory” means any equipment, product, or material, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marijuana into the human body.
- (9) “Marijuana-infused product” means a product that contains cannabinoids that have been extracted from marijuana or the resin therefrom by physical or chemical means, including but not limited to concentrates, oils, tinctures, edibles, pills, topical forms, gels, creams, and other derivative forms.
- (10) “Medical marijuana” means marijuana that is acquired, grown, processed, manufactured, dispensed, tested, transported, possessed, or used for a medical purpose.
- (11) “Medical marijuana business license” means a license issued to a business under Oklahoma’s medical marijuana laws, including but not limited to a medical marijuana dispensary license, medical marijuana processor license, medical marijuana commercial grower license, medical marijuana laboratory license, and medical marijuana transporter license.
- (12) “Medical marijuana license” means a license issued by the Authority proving the holder of such license is a member of a state-regulated medical marijuana program.
- (13) “Patient” or “Licensed patient” means a person that has been issued a medical marijuana license pursuant to Oklahoma law and Authority regulations.
- (14) “School” means a public or private preschool or a public or private elementary or secondary school used for school classes and instruction. A homeschool, daycare, child-care facility, or other structure not primarily used for school classes and student instruction shall not be considered a “school” as used in this article.
- (15) “Unduly burdensome” means that the measures necessary to comply with the rules or ordinances adopted pursuant to this section subject licensees or potential licensees to such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate a marijuana business.

§2. Limitations

Notwithstanding the provisions of this article, this article does not limit or affect laws that prohibit or otherwise regulate:

- (1) Delivery or distribution of marijuana or marijuana accessories, with or without consideration, to a person younger than twenty-one years of age;
- (2) Purchase, possession, use, or transport of marijuana or marijuana accessories by a person younger than twenty-one years of age;
- (3) Consumption of marijuana by a person younger than twenty-one years of age;
- (4) Operating or being in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence of marijuana;
- (5) Consumption of marijuana while operating or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport, while it is being operated;

- (6) Smoking marijuana while riding in the passenger seat or compartment of a motor vehicle, aircraft, motorboat, or other motorized form of transport, while it is being operated;
- (7) Possession or consumption of marijuana or possession of marijuana accessories on the grounds of a public or private preschool, elementary school, or high school, in a school bus, or on the grounds of any correctional facility;
- (8) Smoking marijuana in a public place, other than in an area licensed by the Authority for consumption, unless otherwise allowed by the Legislature or a local government;
- (9) Undertaking any task under the influence of marijuana, if doing so would constitute negligence or professional malpractice; or
- (10) Processing or performing solvent-based extractions on marijuana if the equipment or process utilizes butane, propane, carbon dioxide or any potentially hazardous material, unless licensed for this activity by the Authority.

§3. Employment, Property, and Patients

Notwithstanding the provisions of this article, this article does not:

- (1) Limit any privileges, rights, immunities, or defenses of a patient, medical marijuana licensee, or medical marijuana business licensee as provided under Oklahoma law;
- (2) Require that an employer accommodate conduct permitted by this article;
- (3) Affect an employer’s ability to restrict conduct permitted by this article by employees;
- (4) Limit the right of a person who occupies, owns, or controls private property from prohibiting or otherwise regulating conduct permitted by this article on or in that property, except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marijuana by means other than smoking; or
- (5) Limit the ability of the state or a local government to prohibit or restrict any conduct permitted under this article within a building owned, leased, or occupied by the state or the local government.

§4. Personal Use Protections

- (1) Subject to the limitations in this article, the following acts are not unlawful and shall not be an offense under state law or the laws of any local government within the state or be subject to a civil fine, penalty, or sanction, or be a basis for detention, search, or arrest, or to deny any right or privilege, or to seize or forfeit assets under state law or the laws of any local government, if the person is at least twenty-one years of age:
 - (a) Possessing, purchasing, using, ingesting, inhaling, processing, transporting, delivering without consideration, or distributing without consideration one ounce or less of marijuana, eight grams or less of marijuana in a concentrated form, and/or eight grams or less of marijuana in concentrated form contained within marijuana-infused products. The quantities listed here are cumulative.
 - (b) Possessing, planting, cultivating, harvesting, drying, processing, or manufacturing not more than six mature marijuana plants and six seedlings, and possessing the marijuana produced by the plants and seedlings, provided:
 - (i) The plants and seedlings and any marijuana produced by the plants and seedlings in excess of one ounce are kept in or on the grounds of one private residence, are in a locked space, and are not visible and recognizable as marijuana by normal, unaided vision from a public place; and

- (ii) Not more than twelve plants and twelve seedlings are kept in or on the grounds of a private residence at one time.
 - (c) Assisting another person who is at least twenty-one years of age, or allowing property to be used, in any of the acts permitted by this article.
 - (d) Possessing, purchasing, using, delivering, distributing, manufacturing, transferring, or selling marijuana accessories to persons twenty-one years of age or older.
 - (e) Transporting not more than six mature marijuana plants and six seedlings cultivated in compliance with subsection (1)(b) of this section for testing and/or manufacturing, and/or donation of marijuana for scientific research, provided such transportation is permitted by the Authority or the Legislature.
- (2) A person shall not be denied parental rights, custody of, or visitation with a minor child by the state or local government based solely on conduct that is permitted by this article, unless the person's behavior is such that it creates an unreasonable danger to the minor child that can be established by clear and convincing evidence.
 - (3) A person currently under parole, probation, or other state supervision, or released awaiting trial or other hearing, may not be punished or otherwise penalized based solely on conduct that is permitted by this article.
 - (4) A consumer shall not be required to provide a licensee with identifying information other than identification to determine the consumer's age, and a licensee may not retain any personally identifying information about the consumer for more than sixty days (60) without the consumer's written permission.
 - (5) No conduct permitted by this article shall constitute the basis for detention, search, or arrest; and except when law enforcement is investigating whether a person is operating a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while impaired, the odor of marijuana or burnt marijuana, the possession or suspicion of possession of marijuana without evidence of quantity in excess of the lawful amount, or the possession of multiple containers of marijuana without evidence of quantity in excess of the lawful amount shall not individually or in combination with each other constitute reasonably articulable suspicion of a crime. Marijuana and marijuana-infused products as permitted by this article are not contraband nor subject to seizure.
 - (6) A person shall not be denied eligibility in public assistance programs based solely on conduct that is permitted by this article, unless required by federal law.
 - (7) A person shall not be denied by the state or local government the right to own, purchase or possess a firearm, ammunition, or firearm accessories based solely on conduct that is permitted by this article. No state or local agency, municipal or county governing authority shall restrict, revoke, suspend or otherwise infringe upon the right of a person to own, purchase, or possess a firearm, ammunition, or firearm accessories or any related firearms license or certification based solely on conduct that is permitted by this article.
 - (8) Nothing in this section or this article may be construed to limit any privileges, rights, immunities or defenses of patients, medical marijuana licensees, or medical marijuana businesses or to change or affect any law or regulation addressing marijuana for medical use or to apply any fine or other penalty to a patient. Any restrictions or limitations on persons or consumers set forth in this section or elsewhere in the article do not apply to patients, medical marijuana licensees, or medical marijuana businesses if the restriction or limitation is inconsistent with Oklahoma's laws related to medical marijuana.

§5. Personal Use Penalties

- (1) A consumer who, contrary to §4 of this article, cultivates marijuana plants that are visible and recognizable as marijuana by normal, unaided vision from a public place is subject to a civil fine not exceeding two-hundred and fifty dollars.
- (2) A consumer who, contrary to §4 of this article, cultivates marijuana plants that are not kept in a locked space is subject to a civil fine not exceeding two-hundred and fifty dollars.
- (3) A consumer who smokes marijuana in a public place, other than in an area licensed for such activity by the Authority or unless otherwise allowed by the Legislature or a local government, is subject to a civil fine not exceeding twenty-five dollars. Smoking marijuana in a public place shall not constitute the basis for detention, search, or arrest.
- (4) A person who is under twenty-one years of age, is not a licensed patient, and possesses, uses, ingests, inhales, transports, delivers without consideration or distributes without consideration not more than the amount of marijuana allowed for adults twenty-one years of age or older by § 4 of this article or possesses, delivers without consideration, or distributes without consideration marijuana accessories is subject to a civil fine not to exceed one-hundred dollars and forfeiture of the marijuana. The person shall be provided the option of attending up to four hours of drug education or counseling in lieu of the fine.
- (5) Subject to §4 of this article, a consumer who possesses not more than twice the amount of marijuana allowed pursuant to §4 of this article, produces not more than twice the amount of marijuana allowed pursuant to §4 of this article, delivers without consideration or distributes without consideration to a person who is at least twenty-one years of age not more than twice the amount of marijuana allowed by §4 of this article, or possesses with intent to deliver or distribute not more than twice the amount of marijuana allowed by §4 of this article:
 - (a) For a first violation, is subject to a civil fine not exceeding two hundred dollars and forfeiture of the marijuana;
 - (b) For a second violation, is subject to a civil fine not exceeding three hundred dollars and forfeiture of the marijuana;
 - (c) For a third or subsequent violation, is subject to a civil fine not exceeding five hundred dollars and forfeiture of the marijuana; or
 - (d) For a person under twenty-one years of age who is not a licensed patient, is subject to a civil fine not to exceed two hundred dollars and forfeiture of the marijuana. Any such person shall be provided the option of attending up to eight hours of drug education or counseling in lieu of the fine.
- (6) A person shall not be subject to any additional fees, fines, or other penalties for the violations addressed in this section other than those set forth in this section. Further, a person shall not be subject to increased punishment for any other crime on the basis of their having undertaken any of the conduct listed in Sections 4 or 5 of this article.
- (7) After January 1, 2024, the Legislature may adjust the fines set forth in this article, but any increase shall be no greater than necessary to adjust for inflation.
- (8) It is expressly prohibited to operate extraction equipment or utilize extraction processes on marijuana if the equipment or process utilizes butane, propane, carbon dioxide or any potentially hazardous material in a residential property or without a license to do so from the Authority.
- (9) Nothing in this section or this article may be construed to limit any privileges, rights, immunities, or defenses of patients, medical marijuana licensees or medical marijuana businesses or to change or affect any law or regulation addressing marijuana for medical

use or to apply any fine or other penalty to a patient. Any restrictions or limitations on persons or consumers set forth in this section or elsewhere in the article do not apply to patients, medical marijuana licensees, or medical marijuana businesses if the restriction or limitation is inconsistent with Oklahoma's laws related to medical marijuana.

§ 6. Licensing

- (1) The Oklahoma Medical Marijuana Authority is hereby renamed the Oklahoma Marijuana Authority.
- (2) The Authority shall have the power to license and regulate the cultivation, processing, manufacture, testing, transport, delivery, and sale of marijuana in the state and to administer and enforce this article.
- (3) The Authority shall, at minimum, accept applications for and issue:
 - (a) Licenses permitting commercial cultivators of marijuana to cultivate, package, transport, and sell marijuana, including sales to retail;
 - (b) Licenses permitting independent marijuana testing facilities to analyze and certify the safety, quality, and potency of marijuana and marijuana-infused products;
 - (c) Licenses permitting marijuana to be manufactured or processed into marijuana-infused products and packaged, prepared, and transported for sale, including sales to retail; and
 - (d) Licenses permitting retail sales outlets to sell, package, and deliver marijuana and marijuana-infused products to consumers.
- (4) Additional types or classes of licenses, including licenses that allow for only limited cultivation, processing, transportation, delivery, storage, sale, or purchase of marijuana, licenses that allow for the consumption of marijuana within designated areas, licenses that allow for cultivation for purposes of propagation, and licenses intended to facilitate scientific research or education, may be created.
- (5) An entity may hold both a medical marijuana business license and a license under this article of the same type to operate at the same location consistent with Authority regulations and this article.

§ 7. Rules and Regulations

- (1) Not later than three hundred and sixty-five days after the effective date of this article, the Authority shall promulgate rules and issue regulations necessary for the implementation and enforcement of this article. The rules shall be reasonable and shall include:
 - (a) Procedures for issuing a license and for renewing, suspending, and revoking a license;
 - (b) Application, licensing, and renewal fees, not to exceed the amount necessary to cover the costs to the Authority of implementing and enforcing this article;
 - (c) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana business;
 - (d) Requirements and standards for safe cultivation, processing, manufacture, and distribution of marijuana and marijuana-infused products by licensees, including health standards to ensure the safe preparation of marijuana products and prohibitions on pesticides that are not safe for use on marijuana;

- (e) Standards, procedures, and requirements to test marijuana and marijuana-infused products for components demonstrated to adversely impact human health; and a requirement that marijuana and marijuana-infused products be tested by an independent marijuana testing facility;
 - (f) Labeling standards that protect public health by requiring the listing of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, the number of servings per package, and quantity limits per sale to comply with the allowable possession amount;
 - (g) Requirements that packaging and labels shall not be made to be attractive to children, requirements for warning labels, and requirements that marijuana and marijuana-infused products be sold in resealable, child-resistant packaging designed to be significantly difficult for children under five years of age to open and not difficult for adults to use properly, unless the marijuana is transferred for consumption on the premises where sold;
 - (h) Security requirements, including lighting, physical security, and alarm requirements, and requirements for securely transporting marijuana between licensees;
 - (i) Packaging and labeling requirements to ensure consumer safety and accurate information;
 - (j) Reasonable restrictions on the manufacture and sale of edible marijuana-infused products to ensure consumer and child safety;
 - (k) Inspection, tracking, and record-keeping requirements to ensure regulatory compliance and to prevent diversion;
 - (l) Restrictions on advertising, marketing, and display of marijuana by licensees to prevent advertising and marketing to persons under twenty-one years of age;
 - (m) A plan to promote and encourage small businesses and ownership and employment in the marijuana industry by people from economically distressed areas and to positively impact those areas;
 - (n) Requirements to ensure that all applicable statutory environmental, agricultural, and food and product safety requirements are followed;
 - (o) Requirements to prevent the sale and diversion of marijuana to persons under twenty-one years of age;
 - (p) Requirements to ensure that no licensee may process or sell edible marijuana products in shapes or packages that are attractive to children or that are easily confused with commercially sold candy or products that do not contain marijuana;
 - (q) Administrative penalties for the failure to comply with rules adopted pursuant to this article; and
 - (r) Such other matters as are necessary for the fair, impartial, and comprehensive administration of this article.
- (2) The Authority shall not promulgate a rule or regulation or establish a fee that is unduly burdensome.
- (3) Each application for a license must be submitted to the Authority, and upon receipt of the completed application and application fee, the Authority shall forward the application to

the municipality (or county, for an unincorporated area) in which the proposed licensee will be located, determine whether the applicant qualifies for a license and complies with this article, and issue the appropriate license or send the applicant a notice of rejection setting forth specific reasons why the Authority did not approve the license application within 90 days.

- (4) The Authority shall approve a license application and issue a license if:
 - (a) The applicant has submitted the application in compliance with the rules promulgated by the Authority, is in compliance with this article and the rules, and has paid the required fee; and
 - (b) The proposed licensee would not be in violation of a local ordinance consistent with this article that was in effect at the time of the application.
- (5) The Authority shall begin accepting applications for licensure within twelve months after the effective date of this article. For the first twenty-four months after the Authority begins to receive applications, the Authority shall only accept applications from and issue licenses to existing medical marijuana business licensees.

§ 8. Licensee Protections

- (1) Actions and conduct by a licensee, a licensee's employee, and a licensee's agent, as permitted pursuant to a license issued by the Authority, or by those who allow property to be used by a licensee, a licensee's employee, or a licensee's agent, as permitted pursuant to a license issued by the Authority, are not unlawful and shall not be an offense under state law, or the laws of any local government within the state, or be subject to a civil fine, penalty, or sanction, or be a basis for detention, search, or arrest, or to deny any right or privilege, or to seize or forfeit assets under state law or the laws of any local government within the state.
- (2) No contract is unenforceable on the basis that marijuana is prohibited by federal law.
- (3) A holder of a professional or occupational license is not subject to professional discipline for providing advice or services arising out of or related to marijuana licensees or applications on the basis that marijuana is prohibited by federal law.

§ 9. Licensee Restrictions

- (1) A licensee may not cultivate, process, test, or store marijuana at any location other than a physical address approved by the Authority and that is secured in a manner that prevents access by persons not permitted by the licensee to access the area.
- (2) A licensee shall comply with security measures to prevent unauthorized access to marijuana and marijuana-infused products in accordance with Authority rules and this article.
- (3) No licensee may refuse representatives of the Authority the right during the hours of operation to inspect the licensed premises or to audit the books and records of the licensee.
- (4) No licensee may allow a person under twenty-one years of age to volunteer or work for the licensee, unless allowed by Authority rule.
- (5) Unless allowed by the Legislature or a local government, no retail licensee that is permitted to sell marijuana to consumers may be located within 1,000 feet of the primary entrance to a school.
- (6) No licensee may sell or otherwise transfer tobacco or alcoholic beverages from the same location as marijuana.

- (7) No licensee may import or export marijuana into or out of Oklahoma until allowed to do so under federal law.
- (8) The Legislature may establish Oklahoma residency requirements for licensees under this article.
- (9) Nothing in this section or this article may be construed to limit any privileges, rights, immunities, or defenses of patients, medical marijuana licensees or medical marijuana businesses or to change or affect any law or regulation addressing marijuana for medical use or to apply any fine or other penalty to a patient, medical marijuana licensee, or medical marijuana business. Any restrictions or limitations on persons or consumers set forth in this section or elsewhere in the article do not apply to patients, medical marijuana licensees, or medical marijuana businesses if the restriction or limitation is inconsistent with Oklahoma's laws related to medical marijuana.

§10. Local Governments

Subject to sections 4 and 8 of this article,

- (1) A local government may regulate the time, place, and manner of operation of businesses licensed pursuant to this article, but may not limit the number or completely prohibit the establishment or operation of businesses licensed pursuant to this article, or any category of license issued pursuant to this article, within its boundaries, except as permitted by this section.
- (2) Individuals may petition to initiate an ordinance to provide for the number of retail licenses issued pursuant to this article allowed within a municipality or to completely prohibit retail licenses issued pursuant to this article within a municipality, and such ordinance shall be submitted to the electors of the municipality at the next regularly scheduled election when a petition is signed by a number of qualified electors residing within the territorial limits of such municipal corporation equal to no less than twenty-five per centum of the total number of votes cast at the next preceding municipal election. This provision applies only to retail licenses issued pursuant to this article, and no other type of licenses.
- (3) Until, and only until, the first regularly scheduled election following the election at which this article is adopted, a municipality may through local ordinance temporarily prohibit a retail licensee regulated under this article from being located within its jurisdiction.
- (4) A local government may not prohibit the transportation of marijuana through its jurisdiction on public roads by a licensee or as otherwise allowed by this article.
- (5) A local government may not adopt ordinances or regulations that are unduly burdensome or in conflict with this article.
- (6) Nothing in this section or this article may be construed to limit any privileges, rights, immunities, or defenses of patients, medical marijuana licensees or medical marijuana businesses or to change or affect any law or regulation addressing marijuana for medical use or to apply any fine or other penalty to a patient, medical marijuana licensee, or medical marijuana business. Any restrictions or limitations set forth in this section or elsewhere in the article do not apply to patients, medical marijuana licensees, or medical marijuana businesses if the restriction or limitation is inconsistent with Oklahoma's laws related to medical marijuana.

§11. Marijuana Tax

- (1) An excise tax of fifteen percent (15%) is imposed upon the gross receipts of all sales of marijuana sold by an entity licensed by the Authority pursuant to this article to a

consumer. This tax shall not apply to the sale of medical marijuana to a licensed patient or caregiver for use by a licensed patient.

- (2) The Legislature may adjust this excise tax rate after November 3, 2024 to achieve the goals of undercutting illicit market prices and discouraging use by persons younger than twenty-one years of age while ensuring sufficient revenues are generated for the Oklahoma Marijuana Revenue Trust Fund.
- (3) The Oklahoma Tax Commission shall by rule establish a procedure for the collection of this tax and shall collect the tax.
- (4) This tax shall be paid in addition to any other applicable state or local sales tax.

§ 12. Oklahoma Marijuana Revenue Trust Fund

- (1) There is hereby created a trust fund to be known as the “Oklahoma Marijuana Revenue Trust Fund.” The trust fund shall consist of all monies received by the Oklahoma Tax Commission from tax proceeds collected pursuant to the marijuana excise tax established by this article.
- (2) Monies from the Oklahoma Marijuana Revenue Trust Fund will be applied first to finance the costs of the Authority reasonably necessary for implementation of this article. Any monies that exceed the budgeted amount for running the Authority shall be expended only for the following purposes:
 - (a) Four percent (4%) to the municipalities (or counties, for unincorporated areas) where the retail sales occurred;
 - (b) Forty-eight percent (48%) to grants to public schools to develop and support programs designed to prevent and reduce substance abuse and improve student retention and performance, by supporting students who are at risk of dropping out of school, promoting alternatives to suspension or expulsion that focus on student retention, remediation, and professional care, and providing after-school support and enrichment programs for students in kindergarten through 12th grade that include art, music, athletics, and academics; and
 - (c) Forty-eight percent (48%) to provide grants to agencies and not-for-profit organizations, whether government or community-based, to increase access to evidence-based low-barrier drug addiction treatment, prioritizing medically proven treatment and overdose prevention and reversal methods and public or private treatment options with an emphasis on reintegrating recipients into their local communities, to support overdose prevention education, and to support job placement, housing, and counseling for those with substance use disorders.
- (3) The Legislature shall appropriate funds from the Oklahoma Marijuana Revenue Trust Fund only for the purposes specified in subsection 2 of this section. Grants awarded pursuant to subparagraph 2 (b) of this section shall be awarded by the Oklahoma State Department of Education or its successor, and grants awarded pursuant to subparagraph 2 (c) of this section shall be awarded by the Oklahoma Department of Mental Health and Substance Abuse Services or its successor from funds appropriated from the trust fund. Even when the funds from the trust fund are used for these purposes, the Legislature shall not use funds from the trust fund to supplant or replace other state funds supporting the entities and programs specified in subsection 2 of this section.
- (4) In order to ensure that the funds from the trust fund are used to enhance and not supplant funding for the purposes set forth in subsection 2 of this section, the State Board of Equalization shall examine and investigate appropriations from the trust 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 issue a finding and report that shall state whether appropriations from the trust fund were

used to enhance or supplant existing funding for the entities and programs specified in subsection 2 of this section. If the State Board of Equalization finds that existing funding was supplanted by funds from the trust fund, the Board shall specify the amount by which 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.

§ 13. Judicial Review

Any rule or regulation adopted by the Authority pursuant to this article must comply with the Oklahoma Administrative Procedures Act. Any person aggrieved by a final order is entitled to seek judicial review in accordance with Oklahoma law. If the Authority fails to timely promulgate rules required by this article, any resident of the state may commence a mandamus action in district court to compel performance by the Authority in accordance with this article.

§14. Annual Report

The Authority shall publish an annual report that includes the number and types of licenses issued, demographic information on licensees, a description of any enforcement or disciplinary action taken against licensees, a statement of revenues and expenses of the Authority related to the implementation, administration, and enforcement of this article, and a statement from the Oklahoma Tax Commission of taxes collected in accordance with this article, with an accounting for how those revenues were disbursed.

§15. Retroactive Application

- (1) A person currently serving a sentence for a conviction, whether by trial or by plea of guilty or *nolo contendere*, who would not have been guilty of an offense or who would have been guilty of a lesser offense under this article had it been in effect at the time of the offense, may file a petition for resentencing, reversal of conviction and dismissal of case, or modification of judgment and sentence before the trial court that entered the judgment of conviction in the person's case to request resentencing, modification, or reversal in accordance with this article.
- (2) Upon receiving a petition under subsection (1), the court shall presume the petitioner satisfies the criteria in subsection (1) and without delay resentence, reverse the conviction as legally invalid, or modify the judgment and sentence unless the State opposes the petition or alleges that granting the petition would pose an unreasonable risk of danger to an identifiable individual's safety.
- (3) In the event that the State opposes the petition or alleges that granting the petition would pose an unreasonable risk of danger to an identifiable individual's safety, the petitioner shall be entitled to a hearing on the record, including the opportunity to question witnesses and present evidence supporting the granting of an order for resentencing, reversal and dismissal, or modification of the judgment and sentence. The State shall bear the burden of proving, by clear and convincing evidence, that the petitioner does not satisfy the criteria in subsection (1) or that granting the petition would pose an unreasonable risk of danger to an identifiable individual if alleged. Unless the State sustains its burden, the court shall resentence, reverse the conviction as legally invalid and dismiss the case, or modify the judgment and sentence.
- (4) Any persons brought before the court upon an application to revoke a suspended sentence for a conviction that would not have been an offense or would have been a lesser offense had this article been in effect at the time of the offense shall have their sentence vacated or modified in accordance with the provisions of this article. Any persons brought before the court upon an application to accelerate a deferred sentence for charges that would not have been an offense or would have been a lesser offense had this article been in effect at the time of the offense shall have their charges vacated or modified in accordance with the provisions of this article.

- (5) Under no circumstances shall resentencing, reversal and dismissal, modification, revocation, or acceleration pursuant to this section result in the imposition of a supervision or imprisonment term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement, or require the payment of any additional fines or fees beyond those authorized by this article.
- (6) A person who has completed his or her sentence for a conviction, whether by trial or plea of guilty or *nolo contendere*, who would not have been guilty of an offense or who would have been guilty of a lesser offense under this article had it been in effect at the time of the offense, may file a petition before the trial court that entered the judgment of conviction in the person's case to have the conviction dismissed, expunged, and vacated as legally invalid or redesignated as a civil infraction in accordance with this article.
- (7) The court shall presume the applicant satisfies the criteria in subsection (6) unless the State opposes the application and proves by clear and convincing evidence that the petitioner does not satisfy the criteria in subsection (6). If the petitioner satisfies the criteria in subsection (6), the court shall redesignate the conviction as a civil infraction or dismiss, expunge, and vacate the conviction as legally invalid in accordance with this article.
- (8) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subsection (6).
- (9) Any felony conviction or misdemeanor that is modified, resentenced, or redesignated as a civil infraction pursuant to subsection (2), (4), or (6) of this section shall be considered a civil infraction for all purposes.
- (10) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.
- (11) Nothing in this section shall be construed to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.
- (12) The provisions of this section shall apply equally to juvenile cases if the juvenile would have been guilty of a lesser offense under this article.
- (13) Nothing in this section shall be construed as limiting the authority of the Legislature to make the process for ensuring retroactive application of this article less burdensome or automatic for persons currently serving sentences or under criminal justice supervision or who have been previously convicted for conduct now permitted or reclassified under this article, or to reduce or eliminate civil or criminal penalties for any marijuana-related conduct beyond what is set forth in this article.

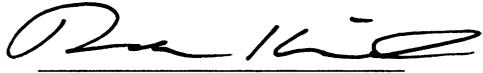
§16. Severability

This article shall be broadly construed to accomplish its purposes and intents. Nothing in this article purports to supersede any applicable federal law, except where allowed by federal law. If any provision in this article or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of the article that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this article are severable.

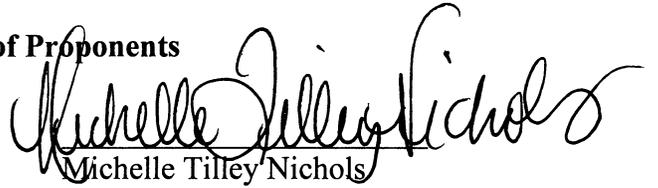
§17. Effective Date

This article shall become effective ninety (90) days after it is approved by the People.

Name and Address of Proponents



Ryan Kiesel
Residence: Oklahoma City, Oklahoma County
Mailing: 3022 NW 39th St. #57532
Oklahoma City, OK 73157



Michelle Tilley Nichols
Residence: Edmond, Oklahoma County
Mailing: 5300 North Shartel, Box 18996
Oklahoma City, OK 73154

SIGNATURES

The gist of the proposition: This measure would add a new Article to the Oklahoma Constitution, which would generally legalize, regulate and tax adult-use marijuana under state law (but not alter the rights of medical marijuana patients or licensees). Specifically, it would protect the personal use of marijuana for persons aged 21+, while establishing quantity limits, safety standards, and other restrictions and penalties for violations thereof. It would not affect an employer's ability to restrict marijuana use by employees or prevent property owners from prohibiting or restricting marijuana-related conduct on that property in most cases. It would vest in the Oklahoma Medical Marijuana Authority, renamed the Oklahoma Marijuana Authority, the power to license and regulate conduct under the article and administer and enforce the article pursuant to specified requirements. It would permit municipalities, upon petition and popular vote, to limit or prohibit retail licenses. It would restrict commercial licenses to existing medical marijuana licensees for the first two years licenses are issued, and permit the Legislature to establish Oklahoma residency requirements. It would impose a 15% excise tax on sales to consumers (not applicable to medical marijuana) to fund the Authority, with the surplus directed to localities where sales occur, to schools (for programs to prevent substance abuse and improve student retention and performance), and to drug addiction treatment programs (with the Board of Equalization ensuring such funds do not replace existing funding). It would provide a judicial process for people to seek modification, reversal, redesignation, or expungement of certain prior marijuana-related judgments and sentences. It would provide for judicial review, severability, and an effective date.

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.

1.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
2.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
3.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
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	Signature of Legal Voter	Print Name	Address	City	Zip	County
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	Signature of Legal Voter	Print Name	Address	City	Zip	County
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	Signature of Legal Voter	Print Name	Address	City	Zip	County
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	Signature of Legal Voter	Print Name	Address	City	Zip	County
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	Signature of Legal Voter	Print Name	Address	City	Zip	County
12.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
13.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
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15.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
16.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
17.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
18.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
19.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County
20.	_____	_____	_____	_____	_____	_____
	Signature of Legal Voter	Print Name	Address	City	Zip	County

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ORIGINAL



2020 OK 65

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

RYAN KIESEL and MICHELLE
TILLEY, PROPONENTS STATE
QUESTION NO. 807,

Petitioners,

v.

THE HONORABLE SECRETARY
OF STATE MICHAEL ROGERS,
IN HIS OFFICIAL CAPACITY,

Respondents.

FILED
SUPREME COURT
STATE OF OKLAHOMA

AUG 3 - 2020

JOHN D. HADDEN
CLERK

No. 118,919

FOR OFFICIAL PUBLICATION

Rec'd (date)	8-3-20
Posted	RE
Mailed	RE
Distrib	RE
Publish	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no

ORDER

¶1 Original jurisdiction is assumed. *In re: State Question No. 805, Initiative Petition No. 421*, 2020 OK 45, ¶1, ___ P.3d ___; *Fent v. Contingency Review Bd.*, 2007 OK 27, ¶11, 163 P.3d 512 (holding the Court may assume original jurisdiction in a *publici juris* controversy where there is an urgent need for judicial determination). The extraordinary relief sought by Petitioners, the proponents of State Question No. 807 (SQ 807) is hereby denied.

¶2 The first power reserved by the people of Oklahoma is that of initiative, and that power is guaranteed by Okla. Const. art. 5, § 2. Pursuant to that provision, the Respondent has mandatory and non-discretionary duties that include the filing of

initiative petitions submitted to him. See *In re: State Questions No. 805*, 2020 OK 45 at ¶2; *Threadgill v. Cross*, 1910 OK 165, ¶5, 109 P. 558 (distinguished on other grounds by *In re Initiative Petition No. 349, State Question No. 642*, 1992 OK 122, 838 P.2d 1). Other duties required of Respondent are derived from statute, including 34 O.S. Supp. 2015 § 8. This Court has previously upheld the constitutionality of these statutory provisions, see *Assoc. of Indus. of Okla. v. Okla. Tax. Comm'n*, 1936 OK 156, ¶0, 55 P.2d 79, and determined they must be complied with. *Id.*; *In re Initiative Petition No. 281*, 1967 OK 230, ¶50, 434 P.2d 941.

¶3 Pursuant to 34 O.S. Supp. 2015 § 8(E), when an initiative petition has been filed and all appeals, protests, and rehearings have been resolved, Respondent “**shall set the date for circulation**” and “**in no event shall the date 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 have expired.**” (Emphasis added). Section 8 further provides that “the signatures are due within ninety (90) days of the date set.”

¶4 Recently, in *In re: State Question No. 805*, the Court noted other duties imposed upon Respondent by Section 8 are ministerial and mandatory. 2020 OK 45 at ¶6; *Norris v. Cross*, 1909 OK 316, syll., 105 P. 1000. Those requirements include a directive that Respondent begin the counting process when proponents of an initiative petition terminate the circulation period and tender the signed petitions.

36 O.S. Supp. 2015 § 8(G) (noting that when requirements are met, Respondent “shall begin the counting process”). In that matter, Respondent sought to delay the counting process because of ongoing safety concerns stemming from the COVID-19 pandemic. The Court determined Respondent had “not established the signature-counting process cannot be performed in an efficient manner, while also taking the necessary safety precautions for those involved.” *In re: State Question No. 805*, 2020 OK 45 at ¶6.

¶5 In this matter, Petitioners ask this Court to order Respondent to not enforce the statutorily-mandated circulation period due to similar safety concerns. Respondent’s statutory duty to set a 90-day circulation period within a certain time frame after all challenges have been resolved is no less ministerial and mandatory than his duty to begin the counting process when signatures are submitted. Further, based on the materials provided, Petitioners have not established that the process of signature gathering cannot be performed while taking the necessary safety precautions.

¶6 Petitioners also assert Section 8 is unconstitutional as applied under the facts of this case because COVID-19 makes successful signature gathering within the statutory time period impossible. Therefore, Petitioners argue Section 8’s requirements serve to deny them their right to initiative guaranteed by Okla. Const.

art. 5, § 2. Demonstrating a statute's unconstitutionality is a heavy burden that requires a showing the statute is clearly, palpably, and plainly inconsistent with the Constitution. *Benedetti v. Cimarex Energy Co.*, 2018 OK 21, ¶5, 415 P.3d 43. Every presumption is to be indulged in favor of the constitutionality of a statute. *CDR Systems Corp. v. Okla. Tax Comm'n*, 2014 OK 31, ¶10, 339 P.3d 848. Petitioners have failed to show that even under current conditions, Section 8 denies or places an undue burden on their right to initiative.

¶7 Accordingly, the extraordinary relief sought by Petitioners is denied. Any petition for rehearing in this matter must be filed no later than August 5, 2020.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 3rd
DAY OF AUGUST, 2020.


CHIEF JUSTICE

Gurich, C.J., Darby, V.C.J., Kauger, Winchester, Edmondson, Colbert, Combs and Rowe, JJ., concur;

Kane, J., concurs in result.