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August 7, 2020

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 and suggested ballot title. A self-addressed stamped envelope is included; we would appreciate return of a file-stamped copy.

Very Truly Yours,

D. Kent Meyers  
Roger A. Stong  
Melanie Wilson Rughani  
CROWE & DUNLEVY  
Braniff Building  
324 N. Robinson Ave., Ste. 100  
Oklahoma City, OK 73102

Counsel for Proponents

cc: Oklahoma Attorney General

A PROFESSIONAL CORPORATION

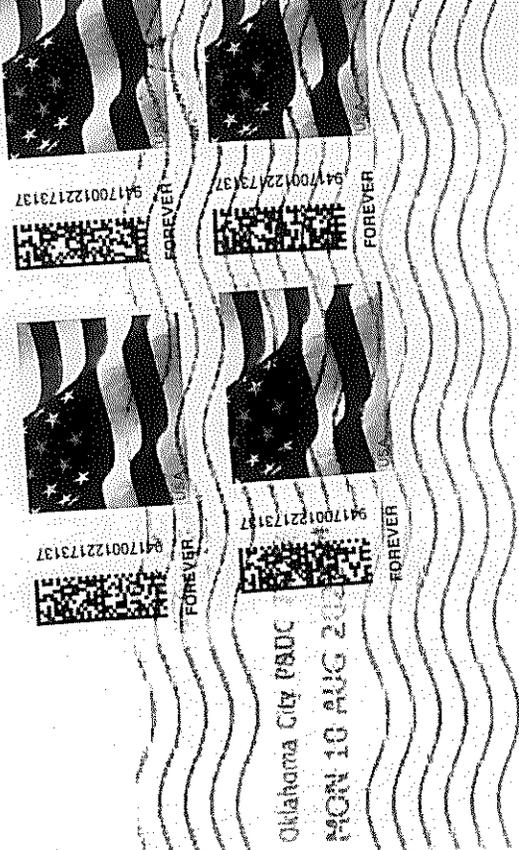
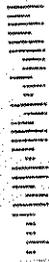
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AUG 11 2020

OKLAHOMA SECRETARY  
OF STATE



Oklahoma City PADC  
MON 10 AUG 2020



**CROWE**  
**DUNLEVY**  
ATTORNEYS AND  
COUNSELORS AT LAW

Barcliff Building • 324 N. Robinson Ave., Ste. 100 • Oklahoma City, OK 73102

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

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AUG 11 2020

OKLAHOMA SECRETARY  
OF STATE

@ 2:25 pm

**FILED**

**AUG 11 2020**

**PROPOSED BALLOT TITLE**

**OKLAHOMA SECRETARY  
OF STATE**

This proposed amendment to the Oklahoma Constitution is intended to prevent political gerrymandering. It creates an independent redistricting Commission, and vests the power to redistrict the state's House, Senatorial, and federal Congressional districts in the Commission (rather than the Legislature). The Commission is composed of three members from each of three groups: the state's largest political party, second-largest party, and those unaffiliated with either. A panel of retired judges would select pools of applicants from each group, then choose by lot three Commissioners from each. The amendment establishes qualifications for Commissioners designed to avoid conflicts of interest (for example, neither they nor their immediate family may have been elected to partisan office or worked for a political party in the last five years). It establishes a process for redistricting within a year after approval of this measure, and then after each decennial census, and establishes new redistricting criteria. No plan may disproportionately advantage any political party, and the Commission may not consider candidates' residences except as needed for these criteria. The Supreme Court would select a plan if the Commission cannot. The amendment provides for funding and judicial review, repeals constitutional provisions, and reserves powers to the Commission.

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.

**FILED**

**AUG 11 2020**

State Question No. 815, Initiative Petition No. 430

**OKLAHOMA SECRETARY  
OF STATE**

**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.

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**INITIATIVE PETITION**

To the Honorable John Kevin Stitt, Governor of Oklahoma:

We the undersigned legal voters of the State of Oklahoma respectfully order that the following proposed Amendments 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 V-A to the Oklahoma Constitution be approved?

**BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA THAT A NEW ARTICLE V-A OF THE OKLAHOMA CONSTITUTION BE APPROVED:**

**CONSTITUTION OF OKLAHOMA, ARTICLE V-A -- LEGISLATIVE DISTRICTS**

**§ 1. THE SENATE.**

The state shall be divided into forty-eight (48) Senatorial districts. Each Senatorial district shall be entitled to one Senator, who shall hold office for four years; provided that any Senator, serving at the time of the adoption of this amendment, shall serve the full time for which he or she was elected. Vitalization of Senatorial districts shall provide for one-half of the Senators to be elected at each general election.

**§ 2. THE HOUSE OF REPRESENTATIVES.**

The state shall be divided into one hundred and one (101) districts for the House of Representatives. Each district shall be entitled to one Representative. Each Representative elected shall hold office for two years.

**§ 3. POWER OF REDISTRICTING**

A. State House of Representative and Senatorial districts. The power to redistrict the State of Oklahoma's House of Representative and Senatorial districts is henceforth vested in the Citizens' Independent Redistricting Commission.

B. Federal Congressional Districts. The power to redistrict Oklahoma's Federal Congressional Districts is henceforth vested in the Citizens' Independent Redistricting Commission.

## **§ 4. THE CITIZENS' INDEPENDENT REDISTRICTING COMMISSION.**

### **A. Definitions**

1. "Federal Congressional Districts" shall refer to Oklahoma's United States Congressional Districts.
2. "Groups" shall refer to the groups of candidates for Commissioners that have been sorted by their partisan affiliation or unaffiliation as determined by their registration or non-registration with a party with ballot access at the time of the most recent General Election.
3. "Affiliated" shall refer to citizens who, as of the date of their application to serve as Commissioner, have been continuously registered with the same party with ballot access for the last four years.
4. "Unaffiliated" shall refer to citizens who, as of the date of their application to serve as Commissioner, have not been registered with either of the two largest parties with ballot access for any of the last four years.
5. "Plan" shall refer to any proposed or approved redistricting Plan for the districts for Representatives in the U.S. Congress, for Oklahoma State Representatives, or for Oklahoma State Senators.
6. "Pool" shall refer to a group of applicants selected by the Panel pursuant to Section 4(B)(4).
7. "Panel" shall refer to the group of retired Judges or Justices involved in the selection of Commissioners pursuant to Section 4(B)(4).
8. "Census Block" shall refer to a census block used by the United States Bureau of the Census in the most recent Federal Decennial Census.
9. "Immediate family member" shall refer to, with respect to an individual, a spouse, parent, sibling, or child (including step-parent, step-sibling, or step-child).

### **B. The Citizens' Independent Redistricting Commission ("the Commission")**

1. **Composition.** The Commission shall consist of nine (9) Commissioners: three (3) Commissioners for each Group representing one of the two largest parties with ballot access at the time of the most recent General Election based on total registration, and three (3) Commissioners for the Group representing those that are unaffiliated with either of the state's two largest political parties with ballot access at the time of the most recent General Election.
2. **Qualifications.** Each Commissioner shall possess all the following qualifications:
  - a. Be a citizen who has been continuously domiciled in Oklahoma for five years immediately preceding the date of appointment to the Commission and whose registered political affiliation has not changed in the four years immediately preceding the date of appointment to the Commission or since the date the initiative petition proposing this Article was filed, whichever period is shorter;
  - b. Has not held, and does not have an immediate family member who has held, partisan elective office at the Federal, State or political subdivision level in this State in the five years immediately preceding the date of appointment to the Commission;

- c. Has not registered, and does not have an immediate family member who has registered, as a lobbyist with the Federal Government or the State of Oklahoma in the five years immediately preceding the date of appointment to the Commission;
- d. Has not held office or served, and does not have an immediate family member who has held office or served, as a paid staff member for a political party in the five years immediately preceding the date of appointment to the Commission;
- e. Has not been nominated, and does not have an immediate family member who has been nominated, as a candidate for elective office by a political party in this State in the five years immediately preceding the date of appointment to the Commission; and
- f. Has not been, and does not have an immediate family member who has been, an employee or paid consultant of the Oklahoma state legislature or U.S. Congress in the five years immediately preceding the date of appointment to the Commission.

### 3. Failure to Possess Qualifications.

- a. If it is found during the work of the Commission that a member did not possess at the time of selection to the Commission all of the qualifications in subsection B paragraph 2 of this section, that member shall be removed and replaced with a member from the same Group using the process described in subsection B paragraph 5 subparagraph b of this section.
- b. If it is found after the completion of the Commission's activities that any member did not possess all of the qualifications in subsection B paragraph 2 of this section, this shall not create a sufficient cause of action to challenge any Plan.

### 4. Application and Selection of Commissioners.

- a. No later than 30 days after this Article is approved by the People and becomes law, and no later than October 1 of each subsequent year ending in zero, the Chief Justice of the Oklahoma Supreme Court shall appoint the director or an employee of its Administrative Office (or, if no director or employee of such Office is able and willing to serve in this capacity, then another public employee) to serve as an Administrator to act as a disinterested party to oversee the application process and the training of Commissioners, and to report the Commission's progress to the Panel. The Administrator shall possess all of the qualifications in subsection B paragraph 2 of this section.
- b. No later than 60 days after this Article is approved by the People, and no later than December 1 of each subsequent year ending in zero, the Chief Justice of the Oklahoma Supreme Court shall designate a Panel to review the applications. The Panel shall consist of three Judges or Justices who have retired from the Oklahoma Supreme Court or the Oklahoma Court of Criminal Appeals or the Oklahoma Court of Civil Appeals, and who are able and willing to serve on the Panel, selected by random drawing. If fewer than three state appellate Judges or Justices who are able and willing to serve have been identified, then the Chief Justice shall appoint a retired Oklahoma Federal District Court Judge who accepts such appointment.
- c. Application to serve as a member of the Commission shall be filed with, and on a form developed by, the Administrator indicating thereon evidence of his or her qualifications as provided by this subsection. The form must request information sufficient to allow the Panel to adequately review and assess each

candidate's qualifications and experience to serve on the Commission. The form shall include language that requires the applicant to affirmatively declare that the information submitted is accurate and shall also contain an advisory that providing false information may lead to perjury charges. The Administrator shall advertise the opportunity to apply as a member of the Commission in the major news outlets in Oklahoma, including print, television, radio and social media outlets. Such advertising shall be at a level to reasonably expose registered voters in Oklahoma to the opportunity to serve on the Commission.

- d. No later than 120 days after this Article is approved by the People, and no later than January 31 of each subsequent redistricting year ending in one, the Administrator shall notify the Panel that the application deadline is closed and submit the applications to the Panel.
- e. In one or more public meetings conducted within twenty (20) days of receiving the applications from the Administrator, after reviewing the applications of the applicants, the Panel shall identify Pools of twenty (20) applicants who are affiliated with the state's largest political party, twenty (20) applicants who are affiliated with the state's second largest political party, and twenty (20) applicants who are unaffiliated with either of the two largest political parties, or such lesser number as there are available, and who in the view of the Panel best demonstrate:
  - i. Experience in organizing, representing, advocating for, adjudicating the interests of, or actively participating in groups, organizations, or associations in Oklahoma; and
  - ii. relevant analytical skills, the ability to be impartial, and the ability to promote consensus on the Commission.

The Panel shall achieve geographic balance by ensuring, to the extent practicable, that there are no fewer than three (3) applicants from each current Congressional District within each Pool. The Panel shall also, to the extent practicable, ensure that each Pool reflects the state's diversity.

If there are not sufficient numbers of applicants to allow for three (3) Commissioners and one (1) Alternate to be selected from any group, as required by this section, then the Fallback Mechanism shall take effect.

- f. Within twenty (20) days of receiving the applications from the Administrator, from the Pools of applicants identified in subparagraph e of this paragraph, the Panel shall choose by lot, in random drawing, nine (9) applicants to serve on the Commission as follows:
  - i. three (3) Commissioners who are unaffiliated with either of the state's two (2) largest political parties;
  - ii. three (3) Commissioners who are affiliated with the state's largest political party; and
  - iii. three (3) Commissioners who are affiliated with the state's second largest political party.
- g. After the nine (9) Commissioners have been appointed pursuant to subparagraph f of this paragraph, from the remaining Pools of applicants identified in subparagraph e of this paragraph, the Panel shall choose by lot one (1) Commissioner from each Pool to serve as Alternates in order to fill vacancies on the Commission.

5. Removal of a member and vacancies on the Commission shall be subject to the following:
  - a. A Commissioner's office shall become vacant upon the occurrence of any of the following:
    - i. Death or mental incapacity of the Commissioner;
    - ii. The Secretary of State's receipt of the Commissioner's written resignation;
    - iii. The Commissioner ceases to be qualified to serve as a Commissioner under paragraph 2 of this subsection; or
    - iv. After written notice and an opportunity for the Commissioner to respond, a vote of two-thirds (2/3rds) of the Commissioners finding substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office.
  - b. Any vacancy in the Commission shall be filled within seven (7) days from the time the Commission is notified of the vacancy. The vacancy shall be filled by the Alternate from the corresponding Group chosen in subparagraph g of paragraph 4 of this subsection. If more alternates are needed, they may be selected by the Panel from the applicants previously selected in subparagraph e of paragraph 4 this subsection.
6. Prohibitions. A Commissioner shall waive his or her right to run for any elected office in a district created by the work of the Commission on which the member served.
7. Compensation. The Commissioners shall be compensated for their service in the same manner as the current per diem and travel reimbursement for members of the State Legislature.
8. Funding.
  - a. There is hereby created in the State Treasury a revolving fund for the Citizens' Independent Redistricting Commission to be designated as the "Citizens' Independent Redistricting Commission Revolving Fund." The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies apportioned to the fund or monies received by the Commission as prescribed by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Citizens' Independent Redistricting Commission to perform duties as prescribed by law. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.
  - b. Within 90 days of approval of this Article, and on or before February 25 of each subsequent year, the Commission shall receive an appropriation by the Legislature sufficient to enable the Commission to perform its duties as set forth in this Article.
9. Record Keeping. All Commission votes must be taken by roll call and published on the Commission's website, along with meeting transcripts or minutes including details of any Plan voted on.
10. Public Notice. The Commission shall provide the public at least forty-eight (48) hours' notice for all public meetings and hearings. The Commission shall make each

notice which is required to be posted and published under this section available in any language in which the state (or any jurisdiction in the state) is required to provide election materials under federal law. All meetings and hearings except for executive session shall be livestreamed over the internet, and transcripts made publicly available via electronic archive, as well as digitally readable files of maps arising during hearings and meetings. The Commissioners shall not discuss redistricting matters with members of the public outside of an open meeting of the Commission, except that a Commissioner may communicate about redistricting matters with members of the public to gain information relevant to the performance of his or her duties if such communication occurs in writing available to the public or at a previously publicly noticed forum or town hall open to the general public. This paragraph does not prohibit communication between Commissioners and staff, legal counsel, or consultants retained by the Commission.

### **C. Duties of the Commission and the Secretary**

1. After the Commissioners are appointed the Commission shall:
  - a. Select a Secretary. The Administrator shall nominate a Secretary. The nominee must meet all the criteria of subsection B, paragraph 2 of this section, and be approved by a majority vote of Commissioners. If the Commissioners cannot reach the needed votes, the Administrator shall make another nomination.
2. The Secretary. The duties of the Secretary include the following:
  - a. Assist in the running and convening of Commission meetings, including the drafting of Plans, and approving expenditures necessary for the Commission to fulfill its duties;
  - b. Publicize and hold regional field hearings in each Congressional District to seek public input relevant to redistricting;
  - c. Gather precinct-level shapefiles and data on voter registration and election returns for general and primary elections for the preceding decade, and make the data available for public download by the date of the first public hearing;
  - d. Disaggregate and re-aggregate the electoral data to correspond to the Census Block that will be used to assemble Districts;
  - e. Gather information from the Department of Corrections about the home address of state and federal inmates;
  - f. Begin analyzing election returns from recent Primary and General Elections, to help ensure that the Commission's redistricting Plans will not have the effect of denying or abridging the right to vote on account of race, ethnicity, or membership in a language minority group;
  - g. Hire and manage staff to assist in the Commission and Secretary's duties;
  - h. Assist the Administrator in training Commissioners; and
  - i. Develop and maintain a website that creates a public Plan drawing system and allows members of the public to:
    - i. monitor and comment on the Commission's work;
    - ii. access, in a timely manner, the data sets and utilize the tools necessary to draw Plans;

- iii. view prior district maps for comparison; and
  - iv. submit proposed Plans and maps indicating communities of interest and display those Plans and maps.
3. Data Preparation. As soon as practicable after this Article is approved by the People, and after the United States Bureau of the Census releases the Federal Decennial Census Data in each subsequent year ending in one, the Commission shall:
- a. Add the data gathered under subsection C, paragraph 2, subparagraph e to the Federal Decennial Census data so that incarcerated people are counted in their home communities;
  - b. Update the analysis begun under subsection C, paragraph 2, subparagraph f;
  - c. Promptly post on the Commission's website Federal Decennial Census data, electoral data, and boundary maps in digitally readable format, at district and precinct levels of detail for general and primary elections for each Plan submitted by a Commissioner;
  - d. Develop and publish publicly no more than two (2) preliminary Plans each for the redistricting of the Oklahoma House of Representatives, Oklahoma Senate and Federal Congressional Districts;
  - e. Approve final Plans for State House of Representative and Senatorial and Federal Congressional redistricting, as set forth in subsection D; and
  - f. Release all proposed maps for comment in formats that are easily accessible and readable by members of the public, such as PDF, machine-readable comma-separated values, shapefile, and on the same interactive website the Secretary is required to create for public submission of maps.

#### **D. Plan Criteria and Consideration**

The Commission shall simultaneously conduct separate processes for drawing and submitting Plans for the redistricting of the State House of Representative and Senatorial and Federal Congressional Districts. The Commission shall consider both Commissioner-submitted draft Plans and publicly-submitted draft Plans.

##### **1. Redistricting Criteria.**

- a. Federal Law. The redistricting Plan must comply with the United States Constitution and all applicable federal law.
- b. Population equality. No state legislative district's total population shall exceed that of any other district by more than 5%.
- c. Contiguity. Each district must be geographically contiguous. The term "contiguous" means that the district is bounded by one unbroken line and is not divided into two or more discrete pieces. A district is not contiguous if pieces of the district touch at only a single point.
- d. The Commission shall also seek to maximize compliance with each of the following criteria, set forth in the following order of priority:
  - i. Racial and Ethnic Fairness. No redistricting Plan should be drawn to have the effect of denying or abridging the equal opportunity of racial or ethnic minority groups to participate in the political process and elect candidates of their choice, or to dilute or diminish their ability to

elect representatives of their choice, whether alone or in coalition with others.

- ii. Communities of Interest. Districts shall minimize the division of communities of interest to the extent practicable. A Community of Interest is defined as an area with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, tribal, linguistic, or historic identities. Communities of interest shall not include common relationships with political parties, officeholders, or political candidates.
- iii. Political subdivisions. Districts shall respect the geographic integrity of political subdivision boundaries, specifically counties, cities, and reservations, to the extent practicable.
- iv. Compactness. A Plan should be compact to the extent practicable.

## 2. Prohibitions.

- a. A Plan shall not, when considered on a statewide basis, provide a disproportionate advantage to any political party. Disproportionate advantage to a political party shall be determined using the proposed map, data from the last ten years of statewide elections, and the best available, widely accepted statistical methods on identifying bias or inequality of opportunity to elect.
- b. Except to the extent necessary to comply with the criteria described in paragraph 1 of this section, and to enable the Plan to be measured against the external metrics described in subparagraph a of this paragraph, the Commission shall not take into consideration the residence of any member or candidate of the Oklahoma House of Representatives, Oklahoma Senate, or U.S. Congress.

## E. Approval of the Plans

1. Approval or Rejection of Plans. Each Commissioner has one vote. An affirmative vote of at least six (6) of the nine (9) Commissioners is required to approve a Plan, including at least one (1) Commissioner affiliated with each of the two (2) largest political parties in the state and one (1) Commissioner who is unaffiliated with either of the two largest political parties in the state.
2. Preliminary Plan. Prior to developing a final Plan, the Commission shall develop and publish a preliminary Plan as follows:
  - a. Prior to developing a preliminary Plan under this subsection, the Commission shall hold no fewer than one (1) public hearing in each Congressional District at which members of the public may provide input relevant to redistricting.
  - b. The Commission shall develop and publish the preliminary Plan publicly, including digitally downloadable maps and Census block equivalency assignments of each district, and accept public comment on the preliminary Plan for no fewer than fourteen (14) days.
3. To hold a vote, the Commission must convene a voting meeting, open to the public, at which the Commission may vote on a preliminary Plan. If the Commissioners vote to approve a Plan, it shall become law.
4. Upon approval of a Plan by the Commission, the Administrator shall submit the Plan to the State Election Board, the Governor, the Secretary of State, the Senate Pro Tempore of the Senate and the Speaker of the House of Representatives as well as make the Plan publicly available.

5. The Commission shall issue with all preliminary and final Plans written evaluations that measure the maps against external metrics. These metrics shall cover all criteria set forth in subsection D, paragraphs 1 and 2.
6. The Commission shall have one year from the date this Article is approved by the People, or one hundred and twenty (120) days from the release of the Federal Decennial Census data in each subsequent redistricting year, in which to approve final Plans for State House of Representative and Senatorial and Federal Congressional districts.

#### **F. Fallback Mechanism**

If the Commission does not approve a State House of Representative, Senatorial, or Federal Congressional Plan within one year of the date this Article is approved by the People, or within one hundred and twenty (120) days of the release of the Federal Decennial Census Data in each subsequent redistricting year, the following procedure shall be followed to create that Plan only.

1. The Administrator shall create a report to be submitted to the Oklahoma Supreme Court that advises the Court of available Plans and provides enough information for the Court to approve a Plan. The Court shall then have thirty (30) days to approve a Plan.
2. The Court shall approve a Plan that is consistent with the criteria and prohibitions listed in subsection D of this section.
3. If the approval process is not complete by the minimum residency requirement deadline for candidates to the state office, such requirements shall be suspended and not apply for any affected election.

#### **G. Judicial Review**

1. Supreme Court Jurisdiction. The Oklahoma Supreme Court has original and exclusive state-court jurisdiction to hear and decide all challenges to the Commission's actions and final Plans. The Court's jurisdiction is limited to remedy only the specific violation alleged on the specific Plan challenged.
2. Petitions for Review. Within thirty (30) days after a Plan's approval, any aggrieved resident of the State may petition the Oklahoma Supreme Court to invalidate that Plan. The Court shall consolidate all petitions challenging a Plan, give the consolidated petitions precedence over other civil proceedings, conduct expedited hearings, and enter its judgment promptly.
3. Remedial Plans. If the Oklahoma Supreme Court concludes that a Plan approved by the Commission is invalid, the Fallback Mechanism in subsection F shall be used to create a new Plan. If the Court finds a violation in a Plan produced under the Fallback Mechanism, then the Court's remedy shall be constrained by the criteria in subsection D.
4. Legal Representation. The Commission has standing in all legal proceedings concerning its actions and has sole authority to determine whether it will be represented by the State Attorney General or by legal counsel selected and hired by the Commission.
5. Communications made in the course of the Commission's, Secretary's, or Administrator's work under this Article may not be shielded from the public on the basis of legislative privilege. This provision shall not be construed to abrogate or otherwise affect legislative immunity.

**H. Cessation of the Commission's Operations**

Within thirty (30) days after the Plans have taken effect and all pending legal challenges to the Plans and the Commission's actions have concluded, the Commission must be dissolved, and any unexpended money must revert to the State's general revenue fund.

**§ 5. AUTHORITY OF THE LEGISLATURE**

For purposes of interpreting this Article, the People declare that the powers granted to the Commission herein are legislative functions not subject to the control or approval of the Legislature, and are exclusively reserved to the Commission. The Commission and all of its responsibilities, operations, functions, contractors, consultants and employees are not subject to change, transfer, reorganization, or reassignment, and shall not be altered or abrogated in any manner whatsoever, by the Legislature. No other body shall be established by the Legislature to perform functions that are the same or similar to those granted to the Commission in this section. This provision does not, and shall not be construed to, limit the People's power of initiative.

**§ 6. REPEALER**

Article V, Sections 9A, 10A, and 11A-11E of this Constitution are hereby repealed.

**§ 7. SEVERABILITY**

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

**Name and Address of Proponents**

Andrew Moore  
2524 NW 26th St.  
Oklahoma City, OK 73107

Janet Ann Largent  
5401 N. Range Rd.  
Stillwater, OK 74075

Lynda Johnson  
12018 S. Pittsburg Ave.  
Tulsa, OK 74137

**SIGNATURES**

**The gist of the proposition:** This measure adds a new Article to the Oklahoma Constitution, intended primarily to prevent political gerrymandering. The Article creates a Citizens' Independent Redistricting Commission, and vests the power to redistrict the state's House, Senatorial, and federal Congressional districts in the Commission (rather than the Legislature). The 9-member Commission will consist of 3 members from each of 3 groups, determined by voter registration: those affiliated with the state's largest political party; those affiliated with its second-largest party; and those unaffiliated with either. Commissioners are not elected by voters but selected according to a detailed process set forth by the Article: in brief, a panel of retired judges and justices designated by the Chief Justice of the Oklahoma Supreme Court will choose pools of ~20 applicants from each group, then randomly select 3 Commissioners from each pool. The Article sets forth various qualifications for Commissioners, Administrator, and Secretary, intended to avoid conflicts of interest (*for example*, they cannot have changed party affiliation within a set period, and neither they nor their immediate family may have held or been nominated for partisan elective office or served as paid staff for a political party or as a registered lobbyist in the last five years). It also sets forth a process for the creation and approval of new redistricting plans within one year after approval of this Article, and then again after each federal Decennial Census. This process includes, among other things, a method for counting incarcerated persons, public notice, and open meeting requirements. In creating the plans, the Commission must comply with federal law, population equality, and contiguity requirements, and must seek to maximize racial and ethnic fairness, respect for communities of interest, respect for political subdivision boundaries, and compactness (in order of priority). A plan shall not disproportionately advantage a political party when considered on a statewide basis, or consider the residence of any legislator or candidate except as necessary for the above criteria and requirements. The Article creates a fallback mechanism by which the state Supreme Court, using a report from the Administrator, will select a plan if the Commission cannot reach the required level of consensus within a set timeframe. It also sets forth procedures for funding and judicial review, repeals existing constitutional provisions involving legislative districts, codifies the number of state House and Senatorial districts, and reserves powers to the Commission rather than the Legislature. See attached Petition for further details.

**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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Michael Rogers  
Secretary of State and Education



J. Kevin Stitt  
Governor

## OKLAHOMA SECRETARY OF STATE

August 11, 2020

Andrew Moore  
2524 NW 26<sup>th</sup> St  
Oklahoma City, OK 73107

Janet Ann Largent  
5401 N. Range Rd  
Stillwater, OK 74075

Lynda Johnson  
12018 S. Pittsburg Ave.  
Tulsa, OK 74137

Dear Proponent(s):

This acknowledges receipt of the petition submitted to the Secretary of State office, which has been designated as **State Question Number 815, Initiative Petition Number 430** and filed accordingly this 11<sup>th</sup> day of August, 2020.

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 I may provide any further assistance or should you have any questions, please do not hesitate to contact me.

Thank you,

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

Amy Canton  
Director, Executive Legislative Division  
405.522.4565 / [executivelegislative@sos.ok.gov](mailto:executivelegislative@sos.ok.gov)

Michael Rogers  
Secretary of State and Education



J. Kevin Stitt  
Governor

OKLAHOMA SECRETARY OF STATE

August 12, 2020

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 815, Initiative Petition 430

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 815, INITIATIVE PETITION 430, 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 August 11, 2020, State Question 815, Initiative Petition 430 was filed in the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 815, Initiative Petition 430 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.

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Andrew Moore  
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Oklahoma City, OK 73107

Janet Ann Largent  
5401 N. Range Rd  
Stillwater, OK 74075

Lynda Johnson  
12018 S. Pittsburg Ave.  
Tulsa, OK 74137

**Michael Rogers**  
**Oklahoma Secretary of State**

# Oklahoma Press Service

3601 North Lincoln Blvd.

Oklahoma City, OK 73105

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

Monday, August 31, 2020 02:10 PM

Page 1 of 1

## Proof of Publication Order Number 20-08-45

I, Landon Cobb, 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: 8/18/2020

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 \$36.20

*Landon Cobb*

(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this  
31 day of August 2020.

*Cindy Shea*

(Notary Public)



### NOTICE OF THE FILING OF STATE QUESTION 815, INITIATIVE PETITION 430, 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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Andrew Moore	Janet Ann Largent	Lynda Johnson
2524 NW 26th St	5401 N. Range Rd	12018 S. Pittsburg Ave.
Oklahoma City, OK 73107	Stillwater, OK 74075	Tulsa, OK 74137

Michael Rogers, Oklahoma Secretary of State

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(Editor, Publisher or Authorized Agent)

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*Cindy Shea*

(Notary Public)



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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 \$36.20

*Landon Cobb*

(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this  
31 day of August 2020.

*Cindy Shea*

(Notary Public)



NOTICE OF THE FILING OF  
STATE QUESTION 815, INITIATIVE PETITION 430,  
THE APPARENT SUFFICIENCY THEREOF, AND NOTICE TO  
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CONSTITUTIONALITY OF SAID PETITION, MUST BE FILED  
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Proponents of record for State Question 815, Initiative Petition 430:

Andrew Moore	Janet Ann Largent	Lynda Johnson
2524 NW 26th St	5401 N. Range Rd	12018 S. Pittsburg Ave.
Oklahoma City, OK 73107	Stillwater, OK 74075	Tulsa, OK 74137

Michael Rogers, Oklahoma Secretary of State



**ORIGINAL**

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

SEP 1 2020

JOHN D. HADDEN  
CLERK

(1) ROGER GADDIS, AND

(2) ELDON MERKLIN,

PROTESTANTS/PETITIONERS,

v.

(1) ANDREW MOORE,

(2) JANET ANN LARGENT, AND

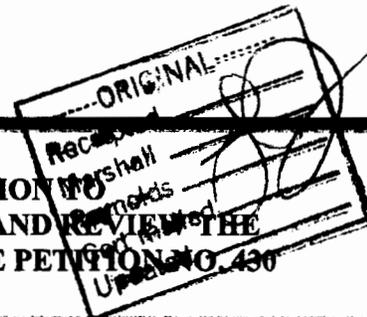
(3) LYNDA JOHNSON,

PROPOSERS/RESPONDENTS.

#11902 9

Case No. \_\_\_\_\_

APPLICATION AND PETITION TO  
ASSUME ORIGINAL JURISDICTION AND REVIEW THE  
CONSTITUTIONALITY OF INITIATIVE PETITION NO. 430



ROBERT G. McCAMPBELL, OBA No. 10390  
GABLEGOTWALS  
ONE LEADERSHIP SQUARE, 15TH FLOOR  
211 NORTH ROBINSON AVENUE  
OKLAHOMA CITY, OK 73102  
TELEPHONE: (405) 235-5500

ATTORNEY FOR PROTESTANTS/PETITIONERS

SEPTEMBER 1, 2020

**IN THE SUPREME COURT OF THE STATE OF OKLAHOMA**

(1) ROGER GADDIS, AND

(2) ELDON MERKLIN,

PROTESTANTS/PETITIONERS,

v.

(1) ANDREW MOORE,

(2) JANET ANN LARGENT, AND

(3) LYNDA JOHNSON,

PROPOSERS/RESPONDENTS.

Case No. \_\_\_\_\_

---

**APPLICATION AND PETITION TO  
ASSUME ORIGINAL JURISDICTION AND REVIEW THE  
CONSTITUTIONALITY OF INITIATIVE PETITION NO. 430**

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ROBERT G. MCCAMPBELL, OBA No. 10390  
GABLEGOTWALS  
ONE LEADERSHIP SQUARE, 15TH FLOOR  
211 NORTH ROBINSON AVENUE  
OKLAHOMA CITY, OK 73102  
TELEPHONE: (405) 235-5500

***ATTORNEY FOR PROTESTANTS/PETITIONERS***

**SEPTEMBER 1, 2020**

## I. INTRODUCTION

Initiative Petition 430, State Question 815 (“IP 430”), should be stricken by this Court as unconstitutional.

IP 430 would make several significant changes in redistricting legislative districts for the Oklahoma House of Representatives, Oklahoma Senate, and U.S. House of Representatives. In particular, under IP 430, the decisions would not be made by the voters’ elected representatives in the Legislature, but would be made by a body of people who are not elected and would be selected through a process specifically designed to leave them unaccountable to the voters.

IP 430 suffers from two fatal constitutional defects.

1. Equal Protection – More than 48 Senators. Because of the unusual mechanism the proponents would use to accomplish mid-decade redistricting, Oklahoma will have more than 48 senators for a period of two years. The result will be that some senate districts will have the benefit of having multiple senators. As demonstrated by the one-person-one-vote cases, this will violate the Equal Protection Clause of the U.S. Constitution, Amend. XIV, § 1, because some Oklahomans’ votes would be more valuable than others.

2. Mid-Decade Redistricting is a Separate Subject. Because of the new subject proponents have added in IP 430, which was not included in their two previous petitions (IP 420 and IP 426), IP 430 embraces more than one subject in violation of Article XXIV, § 1.

a. IP 430 introduces a new subject by requiring mid-decade redistricting. It is readily apparent that mid-decade redistricting is not an integral part or intertwined with the proponents’ proposal because they filed IP 420 and IP 426 without including a provision for mid-decade redistricting. Oklahoma has traditionally drawn new legislative districts once every ten years, after the U.S. Census is completed. The proponents would add a second round

of redistricting in 2023, this time employing a redistricting commission (“Commission”). The mid-decade redistricting proposal of IP 430 creates several serious issues which should not be log-rolled into the redistricting commission proposal from IP 420 and 426. These issues include:

(1) The mechanism IP 430 would use will result in Oklahoma having more than 48 senators for two years.

(2) Mid-decade redistricting will cause the amount of effort and money spent by the State and County election boards to draw new precinct lines to at least double.

(3) Because of the time required after the district lines are drawn in order to draw new precinct lines across the state, the mid-decade redistricting procedure proposed in IP 430 will result in a very real possibility that Oklahoma will not have precinct lines drawn in time for the Presidential primary in March 2024.

(4) Mid-decade redistricting would also require a special session of the Legislature to make an appropriation, but neither IP 430 nor the Oklahoma Constitution contain a provision addressing how the Special Session will be convened or conducted.

(5) The mid-decade redistricting proposal will require a mandatory appropriation of uncertain amount to the Commission. However, multiple provisions of Oklahoma law designed to ensure fiscal responsibility in appropriations will be nullified.

(6) Mid-decade may result in there being no residency requirement for the Legislature in the election of 2024.

## II. THE PARTIES

3. Protestant/Petitioner Roger Gaddis is a citizen of Oklahoma. He has been a resident of Pontotoc County for over twenty years and has been registered to vote for over twenty years. Mr. Gaddis is a resident and voter in Senate District 13.

4. Protestant/Petitioner Eldon Merklin is a citizen of Oklahoma. He has been a resident of Woodward County for over twenty years and registered to vote for over twenty years. Mr. Merklin is a resident and voter in Senate District 27.

5. Respondent/Proponent Andrew Moore is one of the proponents to IP 430.

6. Respondent/Proponent Janet Ann Largent is one of the proponents to IP 430.

7. Respondent/Proponent Lynda Johnson is one of the proponents to IP 430.

### III. JURISDICTION

8. IP 430 was filed with the Oklahoma Secretary of State on August 11, 2020. Appx. at Tab A.

9. Pursuant to 34 O.S. § 8, the Secretary of State published notice of IP 430 on August 18, 2020. Appx. at Tab B.

10. A protest is due 10 business days after notice is published. 34 O.S. § 8(B). Saturdays, Sundays, and legal holidays are excluded. *In re Initiative Petition 397*, 2014 OK 23, ¶ 19, 326 P.3d 496. The tenth business day after the notice was published is Tuesday, September 1, 2020.

11. The Protestants/Petitioners are citizens of Oklahoma and this Court has jurisdiction to hear this protest. 34 O.S. § 8. “Any citizen can protest the sufficiency and legality of an initiative petition.” *In re Initiative Petition 409*, 2016 OK 51, ¶ 2, 376 P.3d 250, quoting *In re Initiative Petition 384*, 2007 OK 48, ¶ 2, 164 P.3d 125.

12. “When a protest is filed in this Court, we are ‘vested with original jurisdiction to evaluate and determine the sufficiency of the proposed initiative petition pursuant to 34 O.S. Supp. 2015 § 8.’” *In re Initiative Petition 409, supra*, 2016 OK 51 at ¶ 2, quoting *In re Initiative Petition 403*, 2016 OK 1, ¶ 3, 367 P.3d 472. Pursuant to Rule 1.194 of this Court, a challenge to an initiative petition shall be treated as an original action in this Court.

13. This protest attacks the constitutionality of IP 430. A protest is also being filed on behalf of protestants Marc McCormick and Scott Johnson which challenges the “gist” submitted with IP 430.

#### IV. SUMMARY OF THE RECORD

14. This is the proponents’ third initiative petition on redistricting. These same proponents filed IP 420, Appx. at Tab C, IP 426, Appx. at Tab D, and now, IP 430.

15. IP 430, § 3(A) and (B), proposes a constitutional amendment to take the power to redistrict Congressional districts, the Oklahoma House of Representatives and Oklahoma Senate away from the voters’ elected representatives and vest that power instead in a “Citizens’ Independent Redistricting Commission” (The “Commission”).

16. First, a “Panel” of three retired Justices or Judges of the Court of Criminal Appeals or Court of Civil Appeals would be “designated” by the Chief Justice or “selected by random drawing.” § 4(B)(4)(b). The Commission would be made up of three “Groups”: (a) the largest political party, (b) the second largest party, and (c) those unaffiliated with either of the two largest parties. § 4(A)(2). From a list of those who apply to be a Commissioner, the Panel would select 20 names in each Group. §4(B)(4)(e). Three names would be selected by random drawing from the 20 names in each of the three Groups, § 4(B)(4)(f), for a total of nine Commissioners.

17. Additionally, the Chief Justice would appoint an Administrator of the Commission (the director or an employee of the Administrative Office). § 4(B)(4)(a).

18. In the event the “Fallback Mechanism” is necessary, the Administrator would create a report for the Supreme Court, and the Court would then determine the redistricting plan. § 4(F).

19. IP 430 would also change how legislative districts are apportioned. The Commission is required to provide a redistricting plan which “shall not, when considered on a statewide basis, provide a disproportionate advantage to any political party.” § 4(D)(2)(a). The Commission would seek to maximize, in order of priority, “racial and ethnic fairness,” § 4(D)(1)(d)(i), respect for “communities of interest,” § 4(D)(1)(d)(ii), and respect for boundaries of “political subdivisions,” § 4(D)(1)(d)(iii). The Commission would be prohibited from considering the location of the residence of incumbents. § 4(D)(2)(b).

20. IP 430, unlike IP 420 and IP 426, would require Oklahoma to redistrict in mid-decade. The Commission will draw district lines not only after each Federal Decennial Census, but also within one year of IP 430 being approved by the voters (if it is so approved). § 4(e)(6).

21. If the approval process is not complete in time for minimum residency requirements to be met, those requirements would be dispensed with. § 4(F)(3).

22. The Legislature will be required to make an appropriation to the Commission “sufficient to enable the Commission to perform its duties as set forth in this Article.” § 4(B)(8)(b). The first such appropriation shall be made “within 90 days of approval of this Article.” § 4(B)(8)(b).

23. IP 430, §1 provides that there will be 48 senate districts, four year terms, and staggered terms. However, it makes no provision for two year terms in order to initiate the stagger. The requirement of mid-decade redistricting coupled with prohibition on considering where incumbents live, will cause Oklahoma to have more than 48 senators in 2025 and 2026. IP 430 contains no provision for how the “extra” senators will be allocated across the state.

**V. SUBSTANTIVE ISSUES**

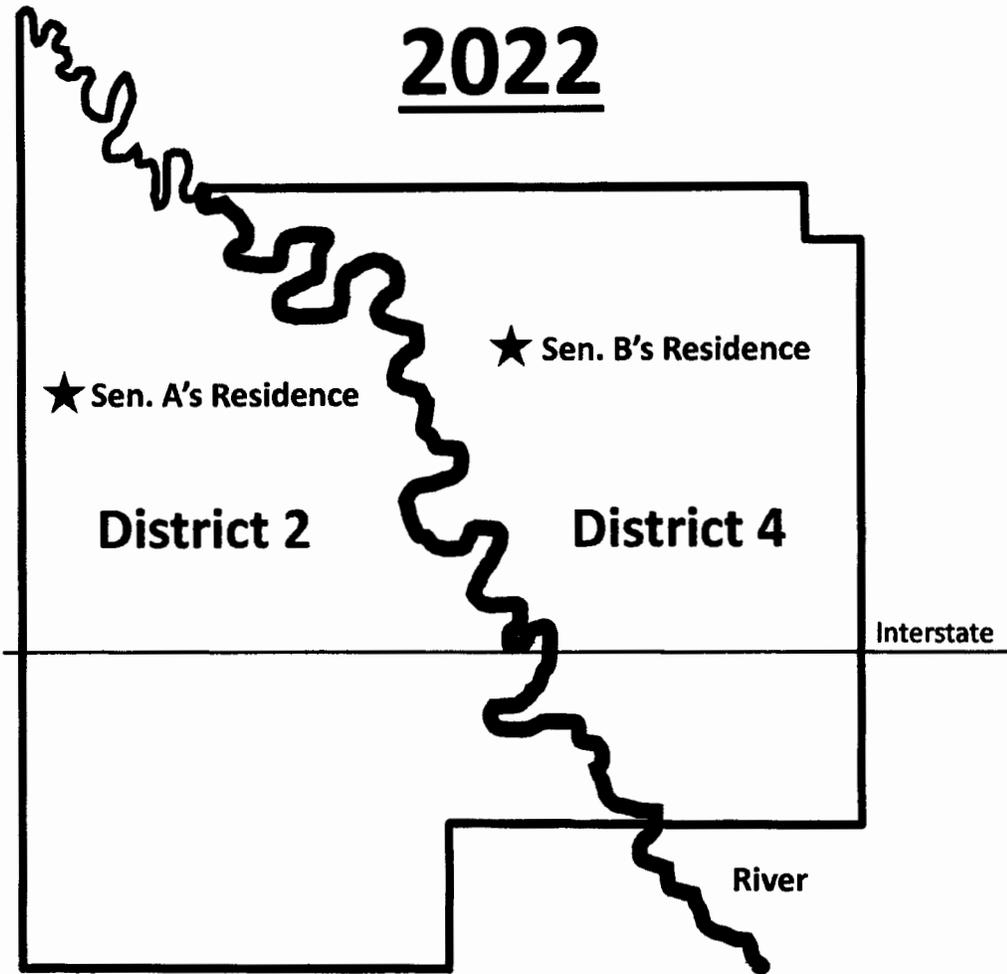
**A. MORE THAN 48 SENATORS**

24. The combination in IP 430 of (a) providing only for full four year terms, §1, (b) requiring mid-decade redistricting by the Commission within one year of the approval of IP 430, § 4(E)(6), and (c) prohibiting the Commission from considering where incumbents live when the new districts are drawn, §4(D)(2)(b), will result in Oklahoma having more than 48 senators in 2025 and 2026. The diagrams and explanations in the next three paragraphs explain how that will happen.

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25.

**2022**

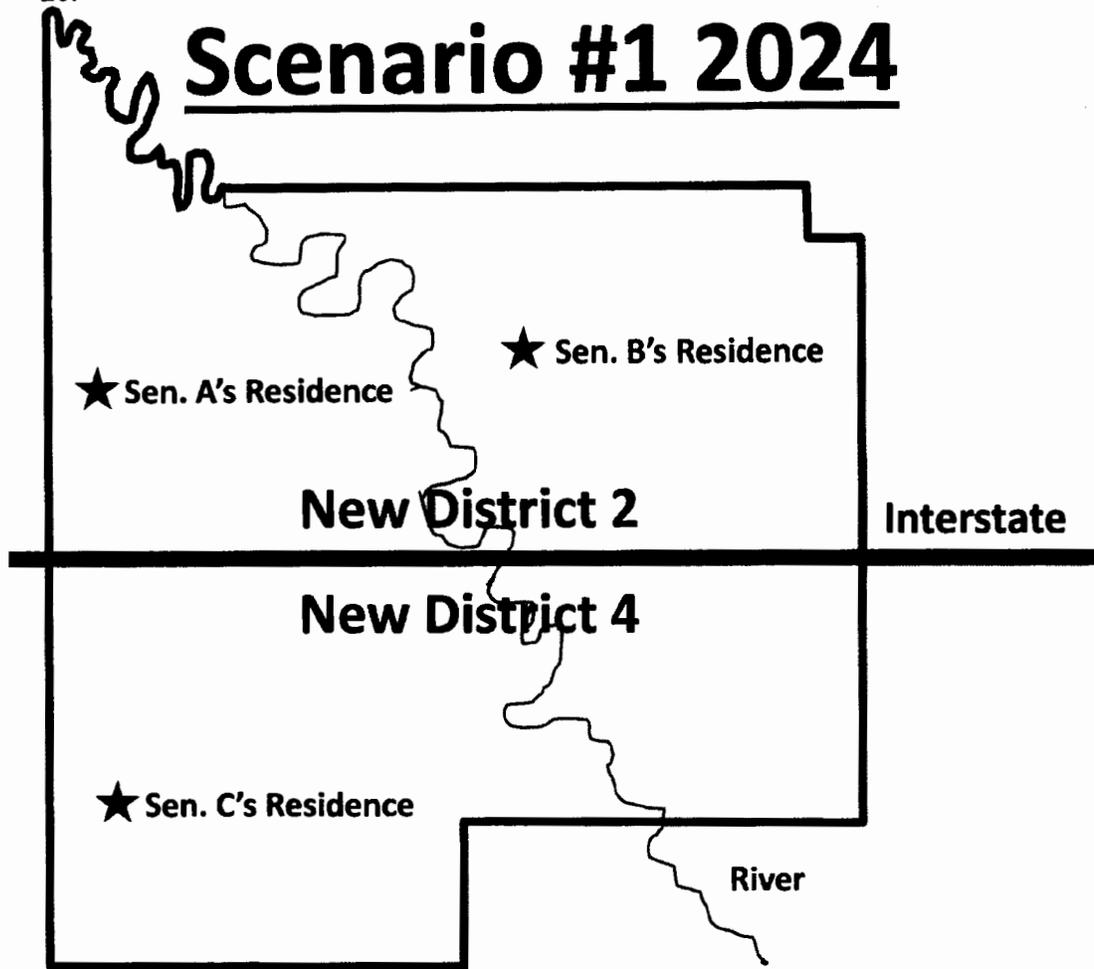


**Scenario #1:**

- In 2021 the Legislature redistricts the Senate. Suppose Senate Districts 2 and 4 are adjacent and divided north to south by the river.
- In November 2022, Senator A is elected in District 2 and Senator B is elected in District 4. Also, IP 430/SQ 815 passes.
- Senators A and B will both serve through the end of 2026. IP 430, § 1.

26.

# Scenario #1 2024

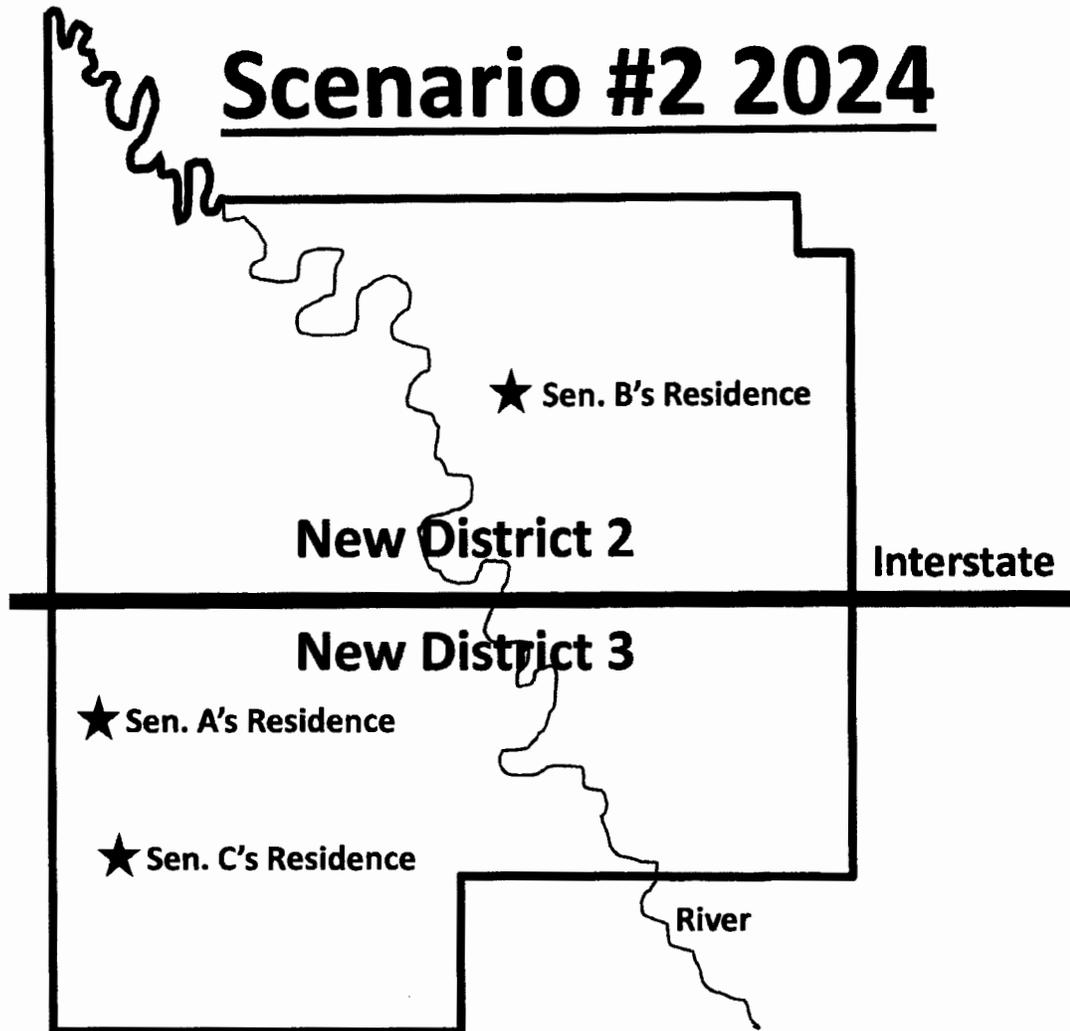


## Scenario #1:

- In 2023, the Redistricting Commission redistricts again, IP 430 , § 4(E)(6), not considering where the incumbents reside. IP 430, § 4(D)(2)(b).
- Suppose the Commission divides Districts 2 and 4 by the interstate instead of the river, with the result that Senators A and B now both live in District 2. Neither A nor B can represent District 4. 51 O.S. § 8.
- 26 O.S. § 12-106 would require that a special election be held to elect a senator from District 4. Suppose Senator C is elected in District 4.
- In the Legislative Sessions of 2025 and 2026, District 2 still has two senators, and District 4 also has a senator. Districts 2 and 4 combined have three senators—Senators A, B, and C. Oklahoma has 49 senators.
- The same scenario could occur in multiple places in the state.

27.

## Scenario #2 2024



### Scenario #2:

- Another alternative occurs if Senator A lives west of the river and south of the interstate.
- Suppose the Commission creates Districts 2 and 3 divided by the interstate, Senator A would be in District 3.
- Senator A would not need to run in 2024 because he or she would be entitled to serve through 2026. IP 430 , § 1.
- Suppose Senator C wins in District 3 in 2024.
- District 3 will have two Senators, A and C, during the Legislative Sessions of 2025 and 2026, and Oklahoma will have more than 48.
- Voters living west of the river and south of the interstate get to elect two Senators, Senator A in 2022 and Senator C in 2024.
- The same scenario could occur in multiple places in the state.

28. The facts will not play out *exactly* in accordance with this scenario of course. The scenario demonstrates the fact that every place an even numbered senator is drawn into a district with another incumbent, that will cause the Senate to have more than 48 senators. If the district left empty is even numbered, it will be filled by a special election. If it is odd numbered, it will be filled by special election or in the general election in 2024.

29. Drawing senators into the same district is inevitable if there is no consideration of incumbents' residences. Drawing senators into the same district will occur disproportionately in Oklahoma County and Tulsa County. Oklahoma County contains at least part of 12 senate districts. Tulsa County contains at least part of ten senate districts. Appx. at Tab E.

30. Having incumbents drawn into the same district will occur more often in urban areas. For example, currently Senate Districts 30, 40, 44 and 46 meet at the corner of NW 14th and Youngs Blvd. and Senate Districts 40, 46 and 48 meet at the corner of NW 47 and Classen in Oklahoma City. A slight adjustment in the boundaries by the Commission at either location could result in two or more even numbered senators living in the same district.

**B. EQUAL PROTECTION. AMENDMENT XIV, SECTION 1, U.S. CONSTITUTION.**

31. Because some voters will have two senators and other voters will have only one, the disadvantaged voters will be denied equal protection of law. *Reynolds v. Sims*, 377 U.S. 533 (1964). The voters in the disadvantaged districts are denied electoral equality because their votes do not count as much as the votes of their neighbors, who get to vote for two senators. *Kirkpatrick v. Preisler*, 34 U.S. 526 (1969); *Reynolds v. Sims*, *supra*. Also, citizens of disadvantaged districts are denied representational equality because their access to a state senator who represents their district is only one-half of the access of a constituent with two senators. *Kirkpatrick, supra*; *Evenwel v. Abbott*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 1120 (2016).

**C. MULTIPLE SUBJECTS IN VIOLATION OF ARTICLE XXIV,  
SECTION 1, OF THE OKLAHOMA CONSTITUTION.**

32. IP 430 contains at least two subjects. First, IP 430 contains provisions similar to the proponents' two previous petitions, IP 420 and IP 426, which would create a redistricting commission and create new substantive standards for how districts would be drawn. Second, IP 430 also contains a new subject – mid-decade redistricting. As shown in the brief in support, mid-decade redistricting will create a number of issues in addition to causing the state to have more than 48 senators. Mid-decade redistricting is an important subject that should not simply be log-rolled in with the proponents' other propositions.

33. Oklahomans have been particularly diligent in exercising their right to vote on issues of redistricting. The voters have employed their powers of direct democracy on redistricting issues on at least seven occasions:

- a. IP 253/SQ 357. *See Carrier v. State Election Board*, 1957 OK 253, at ¶ 1.
- b. IP 271/SQ 408. *See In re Initiative Petition 271*, 1962 OK 178, at ¶ 1.
- c. Leg. Ref./SQ 416. Adopting Art. V, § 9A and 10A in 1964.
- d. Ref. Pet. 18, SQ 437. *See In re Referendum Petition 18*, 1966 OK 152, at ¶ 2.
- e. Leg. Ref. 218/SQ 523. Amending Art. V, § 11A in 1976.
- f. IP 317/SQ 556. *See In re Initiative Petition 317*, 1982 OK 78, at ¶ 1.
- g. Leg. Ref. 349/SQ 748. Amending Art. V, § 11A in 2010.

**VI. CONCLUSION**

IP 430 violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article XXIV, § 1 of the Oklahoma Constitution and should be stricken from the ballot.

Respectfully submitted,



---

ROBERT G. MCCAMPBELL, OBA No. 10390  
GABLEGOTWALS  
One Leadership Square, 15th Floor  
211 North Robinson Avenue  
Oklahoma City, OK 73102  
Telephone: (405) 235-5500  
[RMcCampbell@Gablelaw.com](mailto:RMcCampbell@Gablelaw.com)

*Attorney for Protestants/Petitioners  
Roger Gaddis and Eldon Merklin*

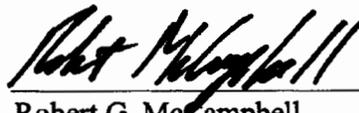
#### CERTIFICATE OF SERVICE

I hereby certify that on this 1<sup>st</sup> day of September 2020, a true and correct copy of the above and forgoing was served by email and U.S. Mail postage prepaid as follows:

D. Kent Meyers  
Roger A. Stong  
Melanie Wilson Rughani  
CROWE & DUNLEVY, P.C.  
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**ORIGINAL**

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA SEP 1 2020

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(1) ROGER GADDIS, AND  
(4) ELDON MERKLIN,  
  
PROTESTANTS/PETITIONERS,

v.

(1) ANDREW MOORE,  
(2) JANET ANN LARGENT, AND  
(3) LYNDA JOHNSON,  
  
RESPONDENTS/PROponents.

**#119029**

Case No. \_\_\_\_\_

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**PETITIONERS' BRIEF IN SUPPORT OF APPLICATION AND PETITION  
TO ASSUME ORIGINAL JURISDICTION AND REVIEW THE  
CONSTITUTIONALITY OF INITIATIVE PETITION NO. 430**

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September 1, 2020

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**September 1, 2020**

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## I. INTRODUCTION

Initiative Petition 430, State Question 815 (“IP 430”), should be stricken by the Court as unconstitutional. (i) IP 430 will cause Oklahoma to have more than 48 senators in 2025 and 2026. Because some districts will have two or more senators, the votes of citizens in those districts will be more valuable. As shown in the one-person-one-vote cases, this violates the Equal Protection Clause of the U.S. Constitution. *Baker v. Carr*, 369 U.S. 186 (1962), *Reynolds v. Sims*, 377 U.S. 533 (1964). (ii) The mid-decade redistricting required by IP 430 will cause a number of issues in addition to having more than 48 senators. By adding mid-decade redistricting to the topics from the proponents’ previous two petitions, IP 420 and IP 426, IP 430 contains at least two separate subjects in violation of Art. XXIV, § 1, Okla. Const.

## II. SUMMARY OF THE RECORD

The Summary of the Record including a description of the provisions of IP 430 is set forth in § IV of the Application and Petition in this case.

## III. MORE THAN ONE SENATOR PER DISTRICT VIOLATES EQUAL PROTECTION

### A. MORE THAN 48 SENATORS

Three provisions in IP 430 will combine to cause Oklahoma to have more than 48 senators in 2025 and 2026. First, § 1 of IP 430 provides for each senator to serve a four year term. Second, IP 430 requires that a mid-decade redistricting occur within one year if IP 430 is approved by the voters. § 4(E)(6). Third, when the mid-decade redistricting occurs, the lines must be drawn without consideration of where the incumbent senators live. § 4(D)(2)(b).

The 24 even numbered districts will elect senators in 2022 for four year terms, IP 430, § 1, and the 24 odd numbered districts will elect senators in 2024. 14 O.S. § 80.35.1. The

Application and Petition filed in this case contains a detailed description, with diagrams, explaining how IP 430 will result in more than 48 senators. Here is a summary:

1. Suppose there is an area large enough for two senate districts. It is divided north to south by a river and east to west by an interstate highway. In 2021 the Legislature redistricts the Senate and designates the area as Districts 2 and 4, divided by the river, north to south.

2. In November 2022, Senator A is elected in District 2 and Senator B is elected in District 4. Senators A and B will both serve through the end of 2026. Suppose also that IP 430 is approved by the voters in November 2022.

3. In the spring of 2023, the Commission redistricts again, this time without being able to consider where incumbents live. Suppose the same geographic area which is Districts 2 and 4 is now divided east to west by the interstate with the result that Senators A and B now both live in District 2.

4. District 2 will have two senators in the Legislative Session of 2024. Senators A and B would no longer be able to represent District 4, 51 O.S. § 8, and 26 O.S. § 12-106 would require that a special election be held to fill the empty seat.

5. In the Legislative Sessions of 2025 and 2026, District 2 will still have two senators. The geographic area sufficient for two senators in Districts 2 and 4 will have three—senators A, B, and C. Oklahoma will have 49 senators. The same pattern will occur in multiple places.

6. For the Legislative Sessions in 2025, and 2026, voters in districts with one senator will be at a disadvantage as compared to voters in District 2, which will have two senators.

Although this scenario demonstrates how Oklahoma will end up with more than 48 senators, the legal argument does not depend on the facts matching the scenario. The legal argument is based on the fact that in every place an even number senator is drawn into a district with another incumbent, that will cause the state to have more than 48 senators.

This is not a surprise. IP 430 specifically allows for a district to have more than one senator. Compare § 2 on the House of Representatives with § 1 on the Senate:

The House, IP 430 § 2	The Senate, IP 430 § 1 (emphasis added)
<p>“Each district shall be entitled to one Representative. Each Representative elected shall hold office for two years.”</p>	<p>“Each senatorial district shall be entitled to one senator, who shall hold office for four years; <b>provided that any senator, serving at the time of the adoption of this amendment, shall serve the full time for which he or she was elected.</b>”</p>

The harder question is how many senators may end up in the same district. With no consideration of incumbents’ residence, three or more incumbents could easily end up in the same district.

It is inevitable that incumbent senators will be drawn into the same district because IP 430 specifically prohibits the Commission from considering the residence of a state senator. § 4(D)(2)(b). Indeed, eliminating incumbent protection is an explicit goal of IP 430. Drawing incumbents into the same district has not been a problem in past redistricting because incumbents, of either party, were not typically drawn into the same district, and because consideration could be given to “historical precedents” and “political interests.” Art. V § 9A, Okla. Const. (Avoiding contests between incumbents is a “valid, neutral” state districting policy. *Tennant v. Jefferson Co.*, 567 U.S. 758, 764 (2012); *Alexander v. Taylor*, 2002 OK 59, ¶ 23.)

The problem arises because IP 430 would give every senator a four year term. When the Oklahoma Senate was created, the Constitution created staggered terms by having half the senators elected to two year terms on a one time basis. Art. V, § 9, Okla. Const. (now repealed). Then, in 1964, the Senate was reconfigured again and again, a one time, two year term was used to create the stagger. Here is how it happened: Article V, § 9A was adopted and provided for a system of apportioning senate districts by county and included the language the proponents use here. Just like IP 430, § 9A provided that senators would serve for four years, "provided that any senator, serving at the time of the adoption of this amendment, shall serve the full time for which he was elected." That provision was adopted as SQ 416 on May 26, 1964. Art. V, § 9A, Okla. Stat. Ann.; *Oklahoma Almanac*, (55th Edition) p. 628. A few weeks later, on June 15, 1964, the Supreme Court decided *Reynolds v. Sims*, 377 U.S. 533 (1964), extending the one-person-one-vote principal to state legislatures. About seven weeks after that, in *Reynolds v. State Election Bd.*, 233 F.Supp. 323 (W.D. Okla. 1964)(August 7, 1964), the court needed to create staggered terms for the Senate, this time without violating the Equal Protection Clause. The court did so by providing that half the senators would start with two year terms. "Senators elected from even-numbered districts in November, 1964, shall hold office until the fifteenth day succeeding the general election in November, 1966, and senators elected from the odd-numbered districts in 1964 shall hold office until the fifteenth day succeeding the general election in November 1968." *Id.* at 332. See also Appx. at Tab J. Now, by requiring mid-decade redistricting and by having staggered terms but with no senators serving two year terms, IP 430 creates a system that will inevitably be an Equal Protection violation.

## **B. EQUAL PROTECTION ANALYSIS**

Because some senate districts will have two senators and other districts only one, the apportionment scheme of IP 430 will violate the Equal Protection clause. *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (“Simply stated, an individual’s right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.”); and *Wilson v. Fallin*, 2011 OK 76, ¶ 12. “It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State’s voters could vote two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once.” *Reynolds*, at 562. And yet, under IP 430, certain voters will get to vote two times for a senator—in 2022 and again in 2024—while voters living in other parts of the state will vote only once.

There are two Equal Protection problems presented when districts are not equal. “Equal representation for equal numbers of people is a principle designed to prevent *debasement of voting power and diminution of access* to elected representatives.” *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)(emphasis added). Both are presented here.

For debasement of voting power, sometimes called “electoral equality,” the principle is that each person’s vote should count the same as another’s. If a vote in one part of the state is given more weight than a vote in another part of the state, “the resulting discrimination against voters living in disfavored areas is easily demonstrable mathematically.” *Reynolds v. Sims*, 377 U.S. at 578, 562-63. That problem is presented here. In districts where an even number senator is redistricted into an odd number district, those voters will get to elect two senators for the Sessions in 2025 and 2026—the even number senator they elect in 2022 and the odd number senator they elect in 2024. Those voters’ votes count twice as much as the votes of their neighbors who live in districts with only one senator. “The personal right to vote

is a value in itself, and a citizen is, without more and without mathematically calculating his power to determine the outcome of an election, shortchanged if he votes for only one representative when citizens in a neighboring district, of equal population vote for two . . . .” *Board of Estimate v. Morris*, 489 U.S. 688, 698 (1989).

A second problem is diminution of access, sometimes called “representational equality,” which is the principle that a constituent should have equal access to a senator that “represents” him or her. The principle of representational equality protects both voters and nonvoters who live in the district. *Evenwel v. Abbott*, \_\_\_ U.S. \_\_\_, 136 S.Ct. 1120, 1132 (2016). The representation could be (a) voicing the constituent’s concerns at the Capitol, (b) helping the constituent navigate the state bureaucracy, or (c) providing other constituent services. *Kirkpatrick, supra*. As explained in *Evenwell*, 136 S.Ct. at 1132, “By ensuring that each representative is subject to requests and suggestions from the same number of constituents, total-population apportionment promotes equitable and effective representation.” See also, *Rucho v. Common Cause*, 139 S.Ct. 2484, 2501 (2019)(“[E]ach representative must be accountable to (approximately) the same number of constituents.”), and *Davis v. Bandemer*, 478 U.S. 109, 123 (1986). IP 430 would violate the equality of representation principle because those living in districts with two senators would have twice as much representation as those living in districts with one.

### **C. CONCLUSION – EQUAL PROTECTION**

The two protestants in this case, Roger Gaddis (Pontotoc County) and Eldon Merklin (Woodward County), both live in odd numbered senate districts and both live outside the Oklahoma City and Tulsa metropolitan areas. They are disadvantaged by IP 430. (a) The phenomenon of voters having two senators will occur because the even numbered senators get drawn into an incumbent’s district meaning voters in odd numbered districts will be

disadvantaged. (b) Also, as discussed below, the advantage of having two senators will disproportionately favor voters in Oklahoma and Tulsa counties. This Court should protect the Equal Protection rights of Mr. Gaddis and Mr. Merklin along with the rights of hundreds of thousands of Oklahomans who will not have two senators. This Court should strike down this obvious Equal Protection violation.

#### **IV. MID-DECADE REDISTRICTING IS A SEPARATE SUBJECT**

##### **A. INTRODUCTION**

IP 430 is also unconstitutional because it has two subjects in violation of Art. XXIV § 1, Okla. Const. This Court ruled that creating a redistricting commission and creating new criteria for drawing district lines are one subject. *In re Initiative Petition 420*, 2020 OK 9. However, mid-decade redistricting is a separate subject, and will create several issues:

1. Oklahoma will have more than 48 senators in 2025 and 2026.
2. Precinct lines may well not be completed on time for the presidential primary in March of 2024.
3. The State Election Board and county election boards will at least double the time and expense they have to spend on redistricting tasks.
4. IP 430 will require a Special Session of the legislature to appropriate funds for mid-decade redistricting, but it makes no provision for such a Session.
5. IP 430 makes no provision for compliance with our state's fiscal responsibility provisions to prevent government overspending.
6. Anticipating the problem that district lines will not be completed in time for candidates to meet the residency requirement, IP 430 § 5(F) provides that there would be no residency requirement in that event.

The protestants do not advance these as policy arguments. Instead, these issues demonstrate that mid-decade redistricting an important issue. Pursuant to Art. XXIV, § 1 voters should have the option to vote on whether the state should take on mid-decade redistricting. Further, voters should have the option to vote to wait and see what they think of the Legislature's redistricting in 2021 before committing the state to a second round in 2023.

**B. ANALYSIS OF ISSUES ARISING FROM MID-DECADE REDISTRICTING**

**1. More than 48 Senators**

Having more than 48 senators is an important issue, and Oklahoma voters deserve an opportunity to vote on that issue. (a) Equal Protection is discussed above. (b) The districts having more than one senator will disproportionately be in Oklahoma and Tulsa counties because they have the most districts and the senators live closer to each other. Twenty-two of the forty-eight Senate districts are in Oklahoma or Tulsa County. Appx. at Tab F. As a matter of math, 2.6% of the geographic area (2/77) contains 45.8% of the districts (22/48). When districts are drawn without considering incumbents' residences, drawing incumbents into the same district is inevitable.

**2. Special Session**

Currently, there are two methods for a Legislative Session to start: (a) Art. V § 26 requires a regular session beginning in February each year. (b) The Governor can call a Special Session, limited to subjects designated by the Governor. Art. VI, § 7, Okla. Const.

IP 430 would necessarily require a third method. Section 4(B)(8)(b) requires that "the Commission shall receive an appropriation by the Legislature" within 90 days of IP 340 being approved. That appropriation will have to occur at a Special Session. Initiative Petitions are presumptively voted on at the general election. Art. V, § 3, Okla. Const. The general election in 2022 will occur on November 8. 26 O.S. § 1-101. Ninety days after that will be Monday,

February 6, 2023—the first day of the regular Session. Art. V, § 26, Okla. Const. The Legislature could not wait until February 6 to begin. Art. V, § 34, Okla. Const. In any event, a Special Session would be necessary so the Legislature could review the budget submission, pass the legislation through both houses, and obtain the Governor’s signature. Although IP 430 will require a Special Session, it makes no provision for how the Session would be convened or conducted.

### **3. Fiscal Responsibility**

Appropriations legislation is not a mere ministerial detail. Even constitutional agencies must comply with the normal procedural requirements in order to allow the Legislature to analyze the appropriation request. Order, *Ethics Commission v. Fallin, et al.* No. 117,149, (September 24, 2018). For example, the State Finance Act, 62 O.S. § 34.36 requires a budget request. However, IP 430, § 4(B)(4)(d), allows 120 days after approval to receive applications to be a Commissioner, so there may not even be a Commission to approve a budget request until a month after the 90 day deadline for the appropriation in § 4(B)(8)(b).

Further, an important fiscal responsibility measure is a consideration of all the agencies’ budgets rather than parceling out appropriations one at a time, 62 O.S. § 34.34; Art. V, § 57, and that will not be possible if the Commission receives one appropriation early.

Also, the time and money spent on redistricting by the state and county election boards will at least double. The affidavit of Paul Ziriak, Appx. at Tab I, discusses the fiscal impact of mid-decade redistricting.

Oklahoma has a long history of strict regulation of the state’s fiscal matters in order to avoid state indebtedness. IP 430, however, would do an end run around those procedures.

#### **4. Preparation for Presidential Primary**

Another special issue arising from mid-decade redistricting is that there is a very real risk that Oklahoma could not have precinct lines drawn in time to be prepared for the Presidential primary election to be held in March of 2024. The affidavit of Paul Ziriaux, Secretary of the State Election Board is at Tab I in the Appendix and describes the facts.

After district lines are drawn by the Legislature, the process of drawing precinct lines begins. The process includes:

a. The legislature draws lines for Congress, the Legislature, and Judicial Districts. Precinct lines cannot cross any of these district lines. 26 O.S. § 3-116(A). Precinct lines also cannot cross a county commissioner district line. Those lines are drawn by the counties and October 1 is the last day they can be completed. 19 O.S. § 321(B).

b. The information on the lines drawn by the legislature is given to the O.U. Center for Spatial Analysis (CSA) which works with the State Election Board and county elections boards to get the precinct lines completed. See Appx. at Tab H. As the counties complete their county commissioner district lines, that information is given to the county election board and the CSA which can use the lines drawn by the legislature and the lines drawn for county commissioner districts to draw precinct lines.

c. The CSA meets with each county to make a plan for precinct lines in that county. Some of these meetings can be by telephone, but each county has to work with CSA individually to create a precinct plan for that county. Once a plan for a county is devised, it has to be formally approved by the County Election Board.

d. After a county election board approves the precinct plan, CSA adds the street guide record to the file which allows matching of a particular street address to a precinct. This

can be an involved process because different addresses on a particular street can be in different precincts.

e. After the street guide record is added, each county election board updates their information on each voter. For those voters with changes, for example if they are in a new precinct, new voter cards must be produced and mailed. 26 O.S. § 3-118(5).

f. After that, precinct maps have to be printed and distributed. 26 O.S. § 3-115.

The concluding paragraph of Secretary Ziriak's affidavit explains, "If the lines for Congress and the state legislature were not completed until the Fall of 2023, that would put the election officials in a very difficult position with respect to the presidential preferential primary. The presidential preferential primary in Oklahoma will be on March 5, 2024. 26 O.S. § 20-101(A) (first Tuesday in March). Results for the presidential preferential primary must be reported by congressional district 26 O.S. § 20-104(A). This means congressional district lines, and the corresponding precinct lines must be in place for that election. Under the federal Military and Overseas Voter Empowerment Act and corresponding state law, ballots for that election have to be transmitted to uniformed services and overseas voters at least 45 days before the election. 26 O.S. § 14-118(A). That will be January 20, 2024. In order to begin preparing election databases and ballot files for the presidential preferential primary, the precincts that will participate in that election must be known. The candidate filing period for the presidential preferential primary begins on the first Monday in December. 26 O.S. § 20-102. That is December 4, 2023. The process of programming the databases and preparing ballot files for the presidential preferential primary typically begins in mid-to-late December, so the final precinct lines for the election must be in place at that time. If the congressional or legislative district lines are not completed until November of 2023, election officials would

have only a few weeks to complete the precinct drawing process that normally takes 6 months or longer.”

Further, if the Commission cannot meet both of the super majority requirements necessary to approve a plan, § 4(E)(1), this Court’s role as the “Fallback Mechanism” cannot begin until one year after November 8, 2022. § 4(F).

All of this adds up to a very real possibility that the precinct drawing process will not be complete on time for the Presidential Primary.

#### **5. Confusion on Residency Requirement for Election of 2024**

Yet another consequence of mid-decade redistricting is that Oklahoma could have senators and representatives elected who do not meet the residency requirements for living in their district. Residency for the Legislature will need to be established by October 10, 2023, six months prior to filing for office. 14 O.S. §§ 80.8, 108. As discussed above, the Commission may not have completed its work and there may not be district lines by October 10, 2023.

Anticipating that mid-decade redistricting will not be completed on time, IP 430, for the first time in the history of our state, would allow a person to run without meeting minimum residency requirements. “If the approval process is not complete by the minimum residency requirement deadline for candidates to the state office, **such requirements shall be suspended and not apply for any affected election.**” § 4(F)(3) (emphasis added).

#### **6. Resolution of the Issues**

It is no answer for the proponents to assert simply that these issues will get ironed out as issues always do. Legislative solutions would be prohibited by IP 430, § 5 which prevents the Legislature from taking action on issues given to the Commission. Also, many of the issues cannot be fixed because they would be part of the Constitution; for example, (a) there would be more than 48 senators, (b) a Special Session would be required, (c) mid-decade redistricting

would be required, (d) the Commission would be required to redistrict by November of 2023, etc. Further, the Legislature could not call itself into Special Session. Finally, some issues are simply not subject to government control. For example, redrawing precinct lines in 77 different counties requires 77 different plans; it takes time.

### C. LEGAL ANALYSIS

This Court analyzed the application of Art. XXIV, § 1 to the proponents' first petition, IP 420, and the Court should employ the same legal analysis here. In *In re Initiative Petition 420*, 2020 OK 9, ¶ 22 (emphasis added), the Court discussed its analysis in *In re Initiative Petition 403*, 2016 OK 1, at ¶ 12, (the Oklahoma Education Improvement Fund) and explained:

Using this germaneness test, we held each section of the amendment was reasonably interrelated and interdependent, forming an interlocking package **“deemed necessary by the initiatives’ drafters to assure effective public education improvement funding.”**

Here, mid-decade redistricting was definitely not “deemed necessary by the initiatives’ drafters.” The proponents made no mention of mid-decade redistricting in IP 420 or IP 426.

Also, *In re Initiative Petition 420*, explained that different provisions should “constitute a single scheme.” The excerpt (emphasis added) reads as follows:

**“[G]enerally provisions governing projects so related as to constitute a single scheme may be properly included within the same amendment; and that matters germane to the same general subject indicated in the amendment's title, or within the field of legislation suggested thereby, may be included therein.”**

*In re Initiative Petition 420*, 2020 OK 9, at ¶ 19 (emphasis added) quoting from *Rupe v. Shaw*, 286 P.2d 1094 (Okla. 1955). Similarly, in *OKOGA v. Thompson*, 2018 OK 26, ¶ 14, 414 P.3d 345, this Court examined Art. XXIV, § 1 and explained the test as follows:

**“A single subject measure, within the meaning of Art. 24, § 1, Okla. Const., is one whose componential ingredients, no matter how numerous, are so interrelated as to all form parts of an integrated whole.”**

Quoting *In re Initiative Petition 363*, 1996 OK 22, ¶ 15. In IP 430 it is apparent that mid-decade redistricting does not “constitute a single scheme” or “an integrated whole” with the rest of the proposition because the proponents drafted IP 420 and IP 426 to proceed without mid-decade redistricting. The substantive issues of creating a Commission and creating new criteria for drawing districts is not a “single scheme” with the decision to implement mid-decade redistricting and repeal districting legislation passed a year earlier.

Also, in *In re Initiative Petition 420*, 2020 OK 10 at ¶ 20, this Court distinguished *In re Initiative Petition 344*, 1990 OK 75, ¶ 9, explaining that IP 344 had multiple subjects:

**The sections are not so intertwined as to require that they be adopted at the same time in order to preserve the integrity of each section.**

Again, mid-decade redistricting is not “so intertwined” with the propositions advanced in IP 420 and IP 426 “as to require that they be adopted at the same time in order to preserve the integrity of each section.” The proponents can accomplish all their substantive policy goals from IP 420 and 426 without also plunging the state into a mid-decade redistricting situation.

Proponents cannot avoid the operation of Art. XXIV, § 1, by simply asserting that IP 430 all relates to the word “redistricting.” As recognized in *In re Initiative Petition 420*, 2020 OK 9, at ¶ 20, that is insufficient. The Court distinguished *In re Initiative Petition 342*, 1990 OK 76, ¶ 8, where the Court found a violation of Art. XXIV, § 1 explaining that **“the only connection that these topics have to each other is that they all tangentially relate to the general subject of corporations.”** *Id.* Similarly, the Court distinguished *In re Initiative Petition 344*, 1990 OK 75, where the Court found a violation even though all of the changes related to “the executive branch.” The same analysis applies here. Mid-decade redistricting does not meet the “integrated whole” or “required to preserve the integrity” tests with respect to the proponents’ substantive proposals in IP 420 and IP 426.

The purpose of Art. XXIV, § 1 is to prevent log-rolling. Voters should not have to make an “unpalatable all or nothing choice.” *Assn. of Optometric Physicians v. Raper*, 2018 OK 13, ¶ 9. IP 430 presents the unpalatable all or nothing choice that a voter favoring a redistricting commission also has to approve the expense and confusion of mid-decade redistricting.

**D. CONCLUSION—MID-DECADE REDISTRICTING**

Oklahoma voters deserve an opportunity to vote separately on whether (a) to adopt the proponents’ substantive redistricting proposal and (b) whether to commit to mid-decade redistricting. Further, when redistricting last occurred, the redistricting legislation passed with huge bipartisan margins in both houses.

Redistricting Legislation	Votes in House	Votes in Senate
Congress, 14 O.S. § 6.1 (Laws 2011, Ch. 194, H.B. 1527)	88-0	37-5
Senate, 14 O.S. § 80.35 (Laws 2011, Ch. 289, S.B. 821)	67-30	38-6
House, 14 O.S. § 133 (Laws 2011, Ch. 284, H.B. 2145)	93-3	43-4

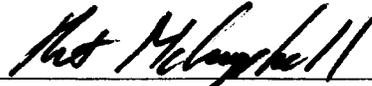
Appx. at Tab G. Given the widespread agreement with redistricting legislation in 2011, voters may well want to wait to see what happens in 2021 before deciding to incur the expense, confusion and uncertainty from undertaking an additional round of redistricting in 2023. This is a separate question, and voters deserve to consider it separately.

As detailed in paragraph 33 of the Application and Petition, Oklahoma voters have exercised their rights of direct democracy on at least seven occasions with respect to redistricting. Given this active history, voters should not be stuck with a log-rolled petition in which mid-decade redistricting is lumped in with the proponents’ substantive proposals. The proponents can easily split IP 430 into two questions and refile, and the voters would not be forced into an unpalatable all or nothing choice.

**V. CONCLUSION**

Petitioners respectfully request the Court find IP 430 to be unconstitutional.

Respectfully submitted,



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**ORIGINAL**

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

**FILED**  
**SUPREME COURT**  
**STATE OF OKLAHOMA**

SEP 1 2020

JOHN D. HADDEN  
CLERK

(1) MARC McCORMICK, AND

(2) ELDON MERKLIN,

PROTESTANTS/PETITIONERS,

v.

(1) JANET ANN LARGENT,

(2) ANDREW MOORE, AND

(3) LYNDA JOHNSON,

PROPOSERS/RESPONDENTS.

Case No.

**#119030**

APPLICATION AND PETITION TO  
ASSUME ORIGINAL JURISDICTION AND REVIEW  
THE GIST OF INITIATIVE PETITION NO. 430

-----ORIGINAL-----  
Registered \_\_\_\_\_  
Marshal \_\_\_\_\_  
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SEPTEMBER 1, 2020

**IN THE SUPREME COURT OF THE STATE OF OKLAHOMA**

(1) MARC McCORMICK, AND

(2) ELDON MERKLIN,

PROTESTANTS/PETITIONERS,

v.

(1) JANET ANN LARGENT,

(2) ANDREW MOORE, AND

(3) LYNDA JOHNSON,

PROponents/RESPONDENTS.

Case No. \_\_\_\_\_

---

**APPLICATION AND PETITION TO  
ASSUME ORIGINAL JURISDICTION AND REVIEW  
THE GIST OF INITIATIVE PETITION NO. 430**

---

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SEPTEMBER 1, 2020

## I. INTRODUCTION

Initiative Petition 430, State Question 815 ("IP 430") should be stricken by this Court. IP 430 asks state voters to approve a plan to repeal the current constitutional legislative directive (that elected legislators reapportion districts for federal and state electoral districts) and replace it with a system that places that power within a Commission (made up of citizens who would be unelected, unaccountable to citizen oversight and selected at random by a group of retired judges). This is in an effort to eliminate the voters' ability to influence the redistricting process by voting for their candidates of choice.

As will be shown below and in the brief in support, the gist of IP 430 is inaccurate and misleading as it fails to disclose certain vitally important concepts to potential signatories.

## II. THE PARTIES

1. Protestant/Petitioner Marc McCormick is a citizen of Oklahoma. He has been a resident of Oklahoma County for over twenty years and has been registered to vote for over twenty years.

2. Protestant/Petitioner Scott Johnson is a citizen of Oklahoma. He has been a resident of Oklahoma County for over twenty years and registered to vote for over twenty years.

3. Respondent/Proponent Andrew Moore is one of the proponents of IP 430.

4. Respondent/Proponent Janet Ann Largent is one of the proponents of IP 430.

5. Respondent/Proponent Lynda Johnson is one of the proponents of IP 430.

## III. JURISDICTION

6. IP 430 was filed with the Oklahoma Secretary of State on August 11, 2020. Appx. at Tab A.

7. Pursuant to 34 O.S. § 8, the Secretary of State published notice of IP 430 on August 18, 2020. Appx. at Tab B.

8. A protest is due 10 business days after notice is published. 34 O.S. § 8(B). Saturdays, Sundays, and legal holidays are excluded. *In re Initiative Petition 397*, 2014 OK 23, ¶ 19, 326 P.3d 496. The tenth business day after the notice was published is Tuesday, September 1, 2020.

9. The Protestants/Petitioners are citizens of Oklahoma and this Court has jurisdiction to hear this protest. 34 O.S. § 8. “Any citizen can protest the sufficiency and legality of an initiative petition.” *In re Initiative Petition 409*, 2016 OK 51, ¶ 2, 376 P.3d 250 (quoting *In re Initiative Petition 384*, 2007 OK 48, ¶ 2, 164 P.3d 125).

10. “When a protest is filed in this Court, we are ‘vested with original jurisdiction to evaluate and determine the sufficiency of the proposed initiative petition pursuant to 34 O.S. Supp. 2015 § 8.’” *In re Initiative Petition 409, supra*, 2016 OK 51 at ¶ 2 (quoting *In re Initiative Petition 403*, 2016 OK 1, ¶ 3, 367 P.3d 472). Pursuant to Rule 1.194 of this Court, a challenge to an initiative petition shall be treated as an original action in this Court.

11. This protest attacks the gist of IP 430. A protest is also being filed on behalf of protestants Roger Gaddis and Eldon Merklin to challenge the constitutionality of IP 430.

#### IV. SUMMARY OF THE RECORD

12. This is the proponents’ third initiative petition on redistricting. These same proponents previously filed IP 420, Appx at Tab C, IP 426, Appx at Tab D, and now, IP 430, Appx at Tab A.

13. IP 430, § 3(A) and (B), proposes a constitutional amendment to take the power to redistrict the U.S. House of Representatives, Oklahoma House of Representatives and Oklahoma Senate away from the voters’ elected representatives and vest that power instead in a “Citizens’ Independent Redistricting Commission” (The “Commission”).

14. First, a "Panel" of three retired Justices or Judges of the Court of Criminal Appeals or Court of Civil Appeals would be "designated" by the Chief Justice or "selected by random drawing." § 4(B)(4)(b). The Panel would select the names who will be eligible to serve on the Commission, § 4(A)(7), and must complete the receiving of applications within 120 of when IP 430 is approved. § 4(B)(4)(d). The Commission would be made up of three "Groups": (a) the largest political party, (b) the second largest party, and (c) those unaffiliated with either of the two largest parties. § 4(A)(2). From a list of those who apply to be a Commissioner, the Panel would select 20 names in each Group. §4(B)(4)(e). Three names would be selected by random drawing from the 20 names in each of the three Groups, § 4(B)(4)(f), for a total of nine Commissioners.

15. Additionally, the Chief Justice would appoint an Administrator of the Commission (the director or an employee of the Administrative Office). § 4(B)(4)(a).

16. The Legislature will be required to make an appropriation to the Commission "sufficient to enable the Commission to perform its duties as set forth in this Article." § 4(B)(8)(b). The first such appropriation shall be made "within 90 days of approval of this Article." § 4(B)(8)(b).

17. In the event the "Fallback Mechanism" is necessary, the Administrator would create a report for the Supreme Court, and the Court would then determine the redistricting plan. § 4(F).

18. IP 430 would also change how legislative districts are apportioned. The Commission is required to provide a redistricting plan which "shall not, when considered on a statewide basis, provide a disproportionate advantage to any political party." § 4(D)(2)(a). Section 4(D)(2)(a) will require the Commission to use "the proposed map" and "data from the

last ten years of statewide elections” to “determine” if there is “disproportionate advantage” “to any political party” “on a statewide basis.”

19. The Commission would seek to maximize, in order of priority, “racial and ethnic fairness,” § 4(D)(1)(d)(i), respect for “communities of interest,” § 4(D)(1)(d)(ii), and respect for boundaries of “political subdivisions,” § 4(D)(1)(d)(iii). The Commission would be prohibited from considering the location of the residence of incumbents. § 4(D)(2)(b).

20. IP 430, unlike IP 420 and IP 426, would require Oklahoma to redistrict in mid-decade. The Commission will draw district lines not only after each Federal Decennial Census, but also within one year of IP 430 being approved by the voters (if it is so approved). § 4(e)(6).

21. If the approval process is not complete in time for the minimum residency requirement for a legislative candidate to be met, that requirement would be dispensed with. § 4(F)(3).

22. IP 430, §1 provides that there will be 48 senate districts, four year terms, and staggered terms. However, it makes no provision for two year terms in order to initiate the stagger. IP 430 contains no provision for how any senators in excess of 48 will be allocated across the state.

## V. THE GIST

23. The Protestants challenge the “gist” set forth at the top of the signature page, the purpose of which is to provide a voter with sufficient information to make an informed decision on whether he or she wants to sign it. In this case, the gist suffers from multiple fatal flaws.

24. The gist is misleading when it asserts the purpose of the petition is “primarily to prevent political gerrymandering.” Because of significant changes in the language in this petition, as compared to IP 420 and IP 426 previously filed by these proponents, IP 430 would

explicitly create a proportional representation system which is “a bipartisan gerrymander.” *David v. Bandemer*, 478 U.S. 109, 155 (O’Connor, J., concurring).

25. The gist fails provide sufficient notice regarding mid-decade redistricting. All the gist says is that the petition “sets forth a process for the creation and approval of new redistricting plans within one year after approval of this article.” That clause is inadequate to provide notice of the expense, confusion and complexity involved in IP 430’s mid-decade redistricting requirement. The gist should inform the voter of something more than “sets forth a process.”

26. The petition fails to disclose that it would favor urban vs. rural areas during the Legislative Sessions of 2025 and 2026. The senators in excess of 48 for those two years will be disproportionately in Oklahoma and Tulsa counties.

27. The petition fails to disclose that it will change the law so that boundaries for cities and counties will be materially less important in drawing district lines.

28. IP 430 says that the panel will select 20 finalists from each of the three groups (the state’s largest party, the second largest party, and those unaffiliated with either party) to be Commissioner. Section 4(B)(4)(e) says 20—no more, no less. The gist, however, says that the panel will pick “~ 20” finalists. A tilde (~) has multiple meanings and this description is fatally ambiguous.

## VI. CONCLUSION

29. Because the gist is deficient, this Court must dismiss the Petition. This Court cannot step into the shoes of the Petitioners and redraft their gist for them. *In re IP 409*, 2016 OK 51, ¶ 7. The remedy is for the Petitioners, if they wish, to submit a new Petition which complies with the law and contains an accurate and sufficient gist.

30. The purpose of the gist is to allow a voter who is asked to sign the petition to make “an informed decision.” *Oklahoma’s Children v. Coburn*, 2018 OK 55, ¶ 24. A gist “should be sufficient that the signatories are at least put on notice of the changes being made....” *In re Initiative Petition 409*, 2016 OK 51, ¶ 3. That is the request of Protestants here. IP 430 contains a fatally deficient gist and should be stricken from the ballot.

31. With respect to all of these issues, IP 430 would make historic, fundamental changes to our Constitution. On each of these issues, there will be a difference of opinion among Oklahoma voters. Protestants do not argue that language needs to be included advocating their position on the issues. Instead, the argument here is merely that a potential signatory is entitled to some sort of notice, in neutral language, of the fundamental changes being proposed and should be given enough information to make an informed decision.

Respectfully submitted,



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**ORIGINAL**

**IN THE SUPREME COURT OF THE STATE OF OKLAHOMA**

**FILED  
SUPREME COURT  
STATE OF OKLAHOMA  
SEP 1 2020  
JOHN D. HADDEN  
CLERK**

(1) MARC McCORMICK, AND  
(2) SCOTT JOHNSON,  
  
PROTESTANTS/PETITIONERS,  
  
v.  
(1) JANET ANN LARGENT,  
(2) ANDREW MOORE, AND  
(3) LYNDA JOHNSON,  
  
PROPOSERS/RESPONDENTS.

Case No. **#119030**

Stamp: ORIGINAL, Recd, Marshall, Remarks, Completed, Updated

**BRIEF IN SUPPORT OF APPLICATION AND PETITION  
ASSUME ORIGINAL JURISDICTION AND REVIEW THE  
GIST OF INITIATIVE PETITION NO. 430**

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**SEPTEMBER 1, 2020**

**IN THE SUPREME COURT OF THE STATE OF OKLAHOMA**

(1) MARC MCCORMICK, AND

(2) SCOTT JOHNSON,

PROTESTANTS/PETITIONERS,

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(1) JANET ANN LARGENT,

(2) ANDREW MOORE, AND

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**BRIEF IN SUPPORT OF APPLICATION AND PETITION TO  
ASSUME ORIGINAL JURISDICTION AND REVIEW THE  
GIST OF INITIATIVE PETITION NO. 430**

---

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**SEPTEMBER 1, 2020**

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## I. INTRODUCTION

This action is filed by Marc McCormick and Scott Johnson (collectively "Protestants") because the gist of Initiative Petition 430 ("IP 430") is legally insufficient.

1. The proponents made two important changes to the language from their previous petitions, IP 420 and IP 426, in describing how the redistricting commission ("Commission") will draw new lines for legislative districts. It is now explicit that the Commission will use voting data from the previous ten years to determine whether a political party will have a "disproportionate advantage." This is a proportional representation scheme in which the Commission would draw districts so that each political party would get representation which is not "disproportionate." It is a political gerrymander. However, the gist reflects, as it did under IP 420 and IP 426 which used different language, that the purpose is to prevent political gerrymandering.

2. The gist fails to alert the reader that mid-decade redistricting will cause significant expense, disruption and confusion. While the gist does not need to reflect policy arguments, a voter deserves to know more than just there is "a process for the creation and approval of new redistricting plans within one year after approval of this Article."

3. The gist fails to disclose that when there are more than 48 senators in 2025 and 2026, the "extra" senators will be disproportionately in Oklahoma and Tulsa counties.

4. The gist fails to disclose that boundary lines for cities and counties would be deemphasized in drawing legislative districts.

5. The gist inaccurately reflects that the Panel selecting the Commissioner will select "~ 20" names in each of the three groups (members of the state's largest party, second largest party, and those unaffiliated with either party).

## II. SUMMARY OF THE RECORD

The gist submitted by the proponents, Appx. at Tab A, (emphasis added) is as follows:

This measure adds a new Article to the Oklahoma Constitution, **intended primarily to prevent political gerrymandering**. The Article creates a Citizens' Independent Redistricting Commission and vests the power to redistrict the state's House, Senatorial, and federal Congressional districts in the Commission (rather than the Legislature). The 9-member Commission will consist of 3 members from each of 3 groups, determined by voter registration: those affiliated with the state's largest political party; those affiliated with its second-largest party; and those unaffiliated with either. Commissioners are not elected by voters but selected according to a detailed process set forth by the Article: in brief, a panel of retired judges and justices designated by the Chief Justice of the Oklahoma Supreme Court will choose pools of ~20 applicants from each group, then randomly select 3 Commissioners from each pool. The Article sets forth various qualifications for Commissioners, Administrator, and Secretary, intended to avoid conflicts of interest (for example, they cannot have changed party affiliation within a set period, and neither they nor their immediate family may have held or been nominated for partisan elective office or served as paid staff for a political party or as a registered lobbyist in the last five years). It also **sets forth a process for the creation and approval of new redistricting plans within one year after approval of this Article**, and then again after each federal Decennial Census. This process includes, among other things, a method for counting incarcerated persons, public notice, and open meeting requirements. In creating the plans, the Commission must comply with federal law, population equality, and contiguity requirements, and must seek to maximize racial and ethnic fairness, respect for communities of interest, **respect for political subdivision boundaries**, and compactness (in order of priority). A plan shall not disproportionately advantage a political party when considered on a statewide basis, or consider the residence of any legislator or candidate except as necessary for the above criteria and requirements. The Article creates a fallback mechanism by which the state Supreme Court, using a report from the Administrator, will select a plan if the Commission cannot reach the required level of consensus within a set timeframe. It also sets forth procedures for funding and judicial review, repeals existing constitutional provisions involving legislative districts, codifies the number of state House and Senatorial districts, and reserves powers to the Commission rather than the Legislature. See attached Petition for further details.

### III. ARGUMENT AND AUTHORITY

#### A. The Analysis of a Gist

##### 1. Protection of Voters Asked to Sign

The right of initiative petition “is not absolute.” There are constitutional and statutory, limits on the process. *In re Initiative Petition No. 420*, 2020 OK 10, ¶ 3. Because the ballot title is no longer circulated with the petitions, the gist ““is the only shorthand explanation of the proposal’s effect.”” *Oklahoma’s Children v. Coburn*, 2018 OK 55, ¶ 14, 421 P.3d 867, quoting *In re Initiative Petition No. 409*, 2016 OK 51, ¶ 3, 376 P.3d 250. The gist now has an “enhanced significance.” *Id.* at ¶ 14. As explained in *Oklahoma’s Children, Inc. v. Coburn*, 2018 OK 55, ¶ 24:

- Potential signatories must be given “enough information to make an informed decision.”
- “Fundamentally, the need for voters to be given enough information to make an informed decision is why this Court has historically taken a dim view of excluding important changes made to the law from the gist of a petition.”

The protestants ask this Court to continue in its role of protecting voters who are asked to sign a petition.

##### 2. Reallocation of Political Power

This Court has repeatedly recognized that giving notice of reallocation of political power is important in a gist. In *In re Initiative Petition 344*, 1990 OK 75, 797 P.2d 326, 330, this Court struck a gist which failed to disclose that the petition’s effect would be to “increase the power of the newly elected Governor . . . .” Also, *In re Initiative Petition 384*, 2007 OK 48, ¶ 11, the Court explained, “The Protestants contend that these omissions mean that the gist failed to alert potential signatories to the effect the proposed statue would have on the balance of power between local school boards and the state. We agree.”

When considering the first redistricting petition from these proponents, IP 420, the concurring opinion of Justice Winchester, joined by Vice Chief Justice Darby and Justice Kauger, also discussed the need of the gist to explain reallocation of power. “IP 420 shifts power in the redistricting process from the Legislature to the Oklahoma Supreme Court, something the gist ignores.” *In re Initiative Petition 420*, 2020 OK 10, ¶ 1, (Winchester concurring). “The gist as written does not mention the Court, and from the gist alone, a potential signatory will not know that the Court will significantly be involved in redistricting.” *Id.* at ¶ 2.

## **B. Insufficiencies In This Gist**

### **1. IP 430 Would Require Proportional Representation**

#### **a. New Language in IP 430**

IP 430 provides for a system of proportional representation in which the Commission would review a proposed map and data from previous elections and determine if the plan is proportionate for each party. IP 430 contains two critical changes from the proponents’ previous petitions which make explicit that it would impose a proportional scheme. First, IP 420 and IP 426 both provided at § 4(D)(2)(b) that a redistricting plan shall not take into account the “voting history of the population of a district.” That language has been deleted in IP 430. Instead, IP 430, § 4(D)(2)(a) now requires that the Commission “shall” use “data from the last ten years of statewide elections” in making its determination.

The second noteworthy change in IP 430 in this regard concerns the substantive criteria to be applied by the Commission. The proponents’ first two petitions, IP 420 and 426 at § 4(D)(1)(c)(iii), provided, “No plan should, when considered on a statewide basis, unduly favor or disfavor a political party.” However, the current petition states:

IP 430 at §4(D)(2)(a) (emphasis added)

A Plan shall not, when considered on a statewide basis, provide a **disproportionate advantage to any political party**. Disproportionate advantage to a political party shall be determined using the proposed map, data from the last ten years of statewide elections, and the best available, widely accepted statistical methods on identifying bias or inequality of opportunity to elect.

By requiring the Commission to determine what would be “disproportionate advantage to any political party” on a “statewide basis”, IP 430 is explicit that it would institute a proportional representation system.

Also, add the two changes together: The Commission (a) “shall” use “data from the last ten years of statewide elections,” (b) to “determine” (c) if “the proposed map” (d) will “provide a disproportionate advantage to any political party,” (e) on a “statewide basis.” It is a textbook proportional representation system in which the Commission’s task would be to draw a map designated to give each party gets the number of legislative seats it deserves as determined by the Commission.

**b. Proportional Representation**

In considering the gist of proponents’ second petition, IP 426, this Court provided a good description of proportional representation in *In re Initiative Petition 426*, 2020 OK 44, ¶ 17, quoting *Rucho v. Common Cause*, 139 S.Ct. 2484, 2499 (2019):

The Court determined that “[p]artisan gerrymandering claims invariably sound in a desire for proportional representation” i.e., reapportioning district lines to come as near as possible to allocating seats to the contending parties in proportion to what their anticipated statewide vote will be.

That is what § 4(D)(2)(a) does. The U.S. Supreme Court also provided a good description of proportional representation in *Gaffney v. Cummings*, 412 U.S. 735, 752 (1973). There the Court considered a plan from Connecticut in which “virtually every Senate and House district line was

drawn with the conscious intent to create a districting plan that would achieve a rough approximation of the statewide political strength of the Democratic and Republican Parties . . . .”

A proportional representation plan is a political gerrymander; it is simply a bipartisan gerrymander. For example, in *Davis v. Bandemer*, 478 U.S. 109, 155 (1986)(O’Connor, J. concurring) it was explained that *Gaffney* represented a “bipartisan gerrymander”. Indeed in *Gaffney*, one of the complaints about the plan was that it a “gigantic political gerrymander.” 412 U.S. at 752. Similarly, in *Rucho v. Common Cause*, 139 S.Ct. at 2499, the Court described how a plan would accomplish “proportionality” by “engaging in cracking and packing, to ensure each party its ‘appropriate’ share of ‘safe’ seats.” 139 S.Ct. at 2499, citing *Davis v. Bandemer*, 478 U.S. at 130-131.

The substantive criteria to be applied to drawing district lines makes a significant difference. As the Court in *Rucho v. Common Cause* noted, one conception could mean “a greater number of competitive districts.” 139 S. Ct. 2484, 2500 (2019) (emphasis added). “But making as many districts as possible more competitive could be a recipe for disaster for the disadvantaged party.” *Id.* As the *Rucho* Court noted, a plan for an increase in competitive districts and a plan for proportional representation in the legislature are inconsistent goals. Proportional fairness “comes at the expense of competitive districts . . . .” *Id.* at 2499 (emphasis added). *Rucho* also noted that a plan for as keeping communities of interest or political subdivisions together will be inconsistent with an anti-gerrymandering goal in some instances. *Id.* at p. 2499. This is so because “the ‘natural political geography’ of a state—such as the fact that urban electoral districts are often dominated by one political party—can itself lead to inherently packed districts.” *Id.* at p. 2499. The differing conceptions show how important it

is that the gist of IP 430 accurately describe the substantive criteria IP 430 would implement for drawing district lines.

**c. Comparison to Gist in IP 420**

In considering the gist of IP 420, *In re Initiative Petition 420*, 2020 OK 10, this Court found the gist to be insufficient. In particular, the Court ruled that it was particularly important that the gist mention that the Commission could not consider “the political party affiliation or voting history of the population of a district.” The Court noted that language was “especially representative of the underlying purpose” of the petition. Here is what the Court explained:

Section 4(D)(2)(b) of IP 420 removes from consideration “[t]he political party affiliation or voting history of the population of a district.” Petitioners contend this provision is noticeably absent from the gist and its inclusion is necessary to reveal the purpose of the petition. We agree. Because this criterion is especially representative of the underlying purpose of the petition it should be, albeit briefly, mentioned.

*In re Initiative Petition 420*, 2020 OK 10, ¶ 8. Following the Court’s opinion, the proponents filed IP 426 in which the gist was redrafted to (a) include language that the Commission could not consider party affiliation or voting history and (b) include that the petition’s purpose is “to prevent political gerrymandering.”

Now, IP 430 is the reverse. Instead of being prohibited from considering a district’s voting history, the Commission is now required to consider the voting history. IP 430, section 4(D)(2)(a) provides that “disproportionate advantage” “**shall** be determined using the proposed map, [and] data from the last ten years of statewide elections . . . .” That issue—whether the Commission can consider voting history in a district—is still incredibly important, and the Court should use that same logic now that the language has been reversed:

- Just as it was important that IP 420 prohibited the Commission from considering a district's voting history, it is important that IP 430 requires the Commission to consider a district's voting history.
- Just as the prohibiting consideration of voting history in IP 420 was "especially representative" of the underlying purpose of IP 420 to prohibit gerrymandering, requiring consideration of the voting history of a district to determine disproportionate advantage is "especially representative" of the underlying purpose of IP 430 to allow gerrymandering (in the form of proportional representation).

With respect to the proponents' gist in IP 420, the Court noted that the gist "should inform 'a signer of what the measure is generally intended to do'" 2020 OK 10, ¶ 4, quoting *In re Initiative Petition 363*, 1996 OK 122, ¶ 20. The Court further noted that "the gist should be descriptive of the proposal's effect and sufficiently informative to reveal its design and purpose." *Id.* at ¶ 11 citing *In re Initiative Petition 384*, 2007 OK 48, ¶ 7. The Court should apply the same analysis here. To assert in the first line that IP 430 is "intended primarily to prevent political gerrymandering" is not "what the measure is generally intended to do" and does not "reveal its design and purpose."

Although the gist discloses that a plan "shall not disproportionately advantage a political party," that is insufficient. The gist leads with the statement that IP 430 is "intended primarily to prevent political gerrymandering," which is markedly misleading given the packing and cracking that will be necessary to achieve proportionality. Also, the phrase "disproportionate advantage" is insufficient for voters not involved in politics. The reader deserves to know that the Commission will look at prior voting data to predict how a proposed

map will affect the various parties. As noted in *In re Initiative Petition 420*, 2020 OK 10, ¶ 8, the issue of whether the Commission will consider voting history of a district is “necessary to reveal the purpose of the petition.” Yet, it is not included in this gist. A neutral description could be drafted using the language in IP 430. Something like: “The Commission shall use data from the last ten years of statewide elections to determine if the proposed map will provide a disproportionate advantage to any political party.”

This Court has repeatedly affirmed that a gist is “not required to contain every regulatory detail so long as its outline is not incorrect.” *In re Initiative Petition 420*, 2020 OK 10, at ¶ 4, quoting *In re Initiative Petition 409*, 2016 OK 51, ¶ 3. Here, the outline is incorrect. The statement that IP 430 is intended “primarily” “to prevent political gerrymandering” is inaccurate. Its purpose is to create proportional representation for the parties.

The cases discussed above concerning the need for a gist to disclose a reallocation of political power are pertinent as well. The proportional system proposed in IP 430 would deemphasize the importance of which candidates voters would support in the next election and enhance the importance of which parties voters supported in previous elections. It would also shift political power away from Libertarians and Independents, who can affect the outcome in competitive races, and toward the two largest parties. Just as the gist in IP 420 needed to disclose the enhanced role of the Supreme Court in redistricting, the gist in IP 430 needs to disclose the enhanced role of political parties.

In addressing the first petition by these proponents, this Court also noted that the gist must disclose the material changes to be made. “A potential signatory must be ‘at least put on notice of the changes being made.’” *In re Initiative Petition No. 420*, 2020 OK 10, ¶ 4, quoting *In re Initiative Petition 409*, 2016 OK 51, ¶ 3. This principle too requires that this gist be

stricken. District lines drawn to achieve proportionality would be a huge change to our conception of democracy. “The Framers would have been amazed at a constitutional theory that guarantees a certain degree of representation to political parties.” *Rucho*, 139 S.Ct. at 2502, n.1. A voter deserves at least notice of the massive change to the conception of democracy.

**2. Insufficient Description of Mid-decade Redistricting.**

The gist’s only mention of mid-decade redistricting is that the petition “sets forth a process for the creation and approval of new redistricting plans within one year after approval of this article.” That one clause is completely inadequate to apprise a voter of the issues that will arise with mid-decade redistricting. As shown in the brief challenging the constitutionality of IP 430, which is filed at the same time as this brief, mid-decade redistricting will cause a number of issues including (1) we will have more than 48 senators for two years, (2) precinct lines may not be done on time for the presidential primary in March 2024, (3) there will need to be a Special Session of the Legislature but there is no provision for how, or when, or by whom the Session would be called, (4) there may be no residency requirements in the 2024 elections. Although the gist does not need to include all of the details, a voter asked to sign the petition deserves some notice beyond “sets forth a process for creation and approval of new redistricting plans within one year after approval of this article.”

A similar issue was fought with respect to IP 420. This Court held that merely telling voters that there is a “process for the selection of Commissioners” was insufficient and that voters deserved to know that the Commission would always contain three members of the largest party, three from the second largest party, and three unaffiliated. “Although the selection process need not be detailed, a simple statement concerning the selection and composition of the Commission is critical here to inform a potential signatory of the true nature

of the petition.” *Id.* at ¶ 7. The same principle applies here. Merely saying “there is a process” for districting in the year following approval is insufficient.

The gist should include some neutral language disclosing that mid-decade redistricting will involve some dislocation and uncertainties.

### 3. Urban v. Rural

The gist is also insufficient in failing to provide any notice that when there are extra senators in 2025 and 2026, the benefit will occur primarily in urban areas. As explained in detail in the Application and Petition challenging the constitutionality of IP 430 and in the Brief in Support of that Application, IP 430 would result in Oklahoma having more than 48 senators during the years 2025 and 2026. The districts having extra senators will have an advantage. Those districts will be disproportionately be in Oklahoma and Tulsa counties because they are the most densely populated and the senators live closer to each other. When the Commission draws district lines without considering where the incumbents live, it is inevitable that incumbents will be drawn into the same district, and this will disproportionately occur in Oklahoma and Tulsa counties.

The gist should make some basic disclosure in this regard. In *Fletchall v. Rosenblum*, 442 P.2d 193 (Ore. 2019), a ballot noted that the “Commission over-represents rural areas.” The court found that was not enough and ordered that a more robust description would be required. *Id.* at 200-201. In this case, the protestants would be satisfied with the non robust version. Simple notice that it is the districts in urban counties which would most likely get the benefit of having more than one senator would be sufficient.

Just as the gist in IP 344 needed to reflect that it would increase the power of the Governor and IP 384 needed to reflect the shift in the balance of power between school boards and the state, the gist for IP 420 should reflect the shift toward urban counties. If a gist is to

disclose the changes made by the petition, and a potential signatory allowed to make an informed decision, the gist should contain some notice that Oklahoma and Tulsa counties will be advantaged in 2025 and 2026. Something like: “Senators in excess of 48 will more likely be allocated in urban areas.”

#### **4. Cities and Counties Deemphasized**

The gist fails to disclose that respecting boundaries of cities and counties will be deemphasized as compared to current law. IP 430 restricts the discretion permitted to account for political subdivision boundaries in redistricting. Courts have allowed a material amount of flexibility from strict population equality in drawing state legislative districts, and one of the reasons for allowing such flexibility is to allow for districts to be drawn with respect to city and county boundaries. *Wilson v. Fallin*, 2011 OK 76, citing *Reynolds v. Sims*, 377 U.S. 533, 579 (1964); *Mahan v. Howell*, 410 U.S. 315 (1973). A state legislative district is presumed to comport with Equal Protection if the difference between the largest and smallest district by population is no more than 10%. *Voinovich v. Quilter*, 507 U.S. 161-162 (1993). That is just a presumption. In *Mahan v. Howell*, for example, a redistricting plan was approved even though the difference between the largest district and the smallest district was 16%, and the Court specifically cited the desirability of accommodating political subdivision boundaries in allowing the plan. 410 U.S. at 321.

IP 430 would change that. Under IP 430, one of the criteria is: “No state legislative district’s total population shall exceed that of any other district by more than 5%.” § 4(D)(1)(b). Because flexibility in drawing state legislative districts will be materially reduced, there will be a diminished ability to respect political subdivision boundaries. The new 5% rule is “an important change to the law” and should not be “excluded” from the gist. *See Oklahoma’s Children*, 2018 OK 55, ¶ 24.

Further, the gist is materially misleading because it reflect that one of the criteria in drawing district lines will be “respect for political subdivision boundaries.” In fact, IP 430 will reduce respect for subdivision boundaries by cutting in half the flexibility allowed to accommodate those boundaries. This misleading description is exacerbated by the fact that the gist makes no mention of the new 5% rule that would be required in Oklahoma.

In *Oklahoma’s Children, supra*, 2018 OK 55, ¶ 23, this Court struck a gist as inaccurate, because it discussed some of the taxes to be repealed, but omitted mention of the little cigar tax. Here the gist is similarly misleading because it mentions “respect for political subdivisions” but fails to mention the 5% restriction.

#### **5. Confusion and Inaccuracy in Selection Process**

Under IP 430, the “Panel” of retired judges and justices will select 20 finalists to be on the Commission from each of the three “Groups” (members of the state’s largest party, the second largest party, and those unaffiliated with either). § 4(B)(4)(e). However, the gist says the Panel will choose “~20” applicants. The use of a tilde (~) in the gist, instead of language, creates confusion and does not provide sufficient information to allow a voter to make an informed decision. A tilde can mean several different things:

- A tilde can mean “the difference between.” *Webster’s Unabridged Dictionary, Supplemental*, p.129. Appx. at Tab K.
- It can be a diacritical mark used in Spanish. *Webster’s Unabridged Dictionary*, p.1909; Appx. at Tab K.
- A tilde can mean “varies with” or “similar to”. *Web Design Group*, p.4; Appx. at Tab K.
- A tilde can mean “approximately.” *Bymath.com*, p.1; Appx. at Tab K.
- “Approximately” can also be symbolized by a double tilde. *Bymath.com*, p.1; Appx. at Tab K.

It is assumed here that ~ is intended to mean “approximately,” but that should not be left to chance, depending on who is reading the gist. In order to allow a voter to make an informed decision, the gist should employ unambiguous words instead of symbols with multiple meanings. Further if the ~ is intended to mean “approximately,” that opens another question of how close to 20 a number needs to be. Is 19 approximately 20? What about 22? Or 17? Again, a gist should inform a voter, and unambiguous language should be used.

Also, if ~ means “approximately,” the gist is inaccurate. IP 430, at § 4(B)(4)(e) says the Panel will select 20—no more, no less. This is a material issue because of the way IP 430 is constructed. The three Commissioners from each Group will be selected randomly from among the finalists selected by the Panel. The members of the Panel then, are the only people able to exercise any discretion about who will be on the Commission. The discretion given to the members of the Panel is very broad, as they can eliminate applicants based on their assessments of a candidate’s “ability to be impartial,” and “ability to promote consensus.” § 4(B)(4)(e). Because members of the Commission will be selected at random, the ability to eliminate a name or leave a name on the list is the most important decision point in the process. To include a 21st applicant on the list or to exclude an applicant so the list has 19 instead of 20, is a material issue. Also, if the tilde means “approximately” that creates confusion as to the Panel’s role. Are Panel members supposed to be neutral or are they supposed to advocate to keep their favorite or, more importantly, eliminate a less favorite candidate?

This Court has repeatedly said that the gist should “mirror” the petition. *E.g. McDonald v. Thompson*, 2018 OK 25, ¶ 9. That is particularly important with respect to the exercise of discretion allowed for the members of the Panel. The gist here does not mirror the petition.

#### IV. CONCLUSION

The protestants here do not ask the Court to accept their policy arguments. They ask only for a gist which provides notice and allows voters to make an informed decision.

The Court should not entertain an argument that the gist is unimportant. “[T]he Legislature has deemed the gist a necessary part of the pamphlet, and we are not at liberty to ignore that requirement . . . .” *In re Initiative Petition 384, supra*, 2007 OK 48, at ¶ 13.

A properly drafted gist is “indispensable and noncompliance is fatal.” *In re Initiative Petition No. 342*, 1990 OK 76, ¶ 11, 797 P.2d 331. “The gist is not subject to amendment by this Court, and as a result, the only remedy is to strike the petition from the ballot.” *In re Initiative Petition No. 409*, ¶ 7.

The gist of IP 430 is legally insufficient and should be stricken.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of September 2020, a true and correct copy of the above and forgoing was served by email and hand delivery as follows:

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**FILED**

September 23, 2020  
**Secretary of State  
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September 22, 2020

The Honorable Michael Rogers  
Oklahoma Secretary of State  
2300 N. Lincoln Boulevard, Ste. 122  
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Re: Initiative Petition 430

Dear Mr. Secretary:

Pursuant to Title 34, Section 8(E), the proponents of Initiative Petition 430, State Question 815, regarding legislative redistricting, respectfully withdraw the Petition.

Sincerely,

Melanie Wilson Rughani  
Counsel for Proponents Andrew Moore,  
Janet Ann Largent, and Lynda Johnson