Robert G. McCampbell
Direct Line: (405) 235-5567
RMcCampbell@GableLaw.com

GABLE GOTWALS
COUNSEL

BOK Park Plaza
499 W. Sheridan, Suite 2200
Oklahoma City, OK 73102-7101
Telephone (405) 235-5500
www.GableLaw.com

January 3, 2025

RECEIVED
JAN 03 2025
OKLAHOMA SECRETARY
OF STATE

The Honorable Josh Cockroft
Oklahoma Secretary of State
Attn: Executive Legislative Division
2300 N. Lincoln Blvd, Suite 122
Oklahoma City, OK 73105

Re: Initiative Petition

Dear Mr. Secretary,

Please accept for filing the enclosed copy of an initiative petition regarding the process for primary and general elections, as well as a proposed ballot title and gist on the forms provided by your office.

The proponents are represented by:

ROBERT G. MCCAMPBELL
GABLE GOTWALS
499 W. Sheridan Ave., Suite 2200
Oklahoma City, OK 73102
RMcCampbell@Gablelaw.com

AND

MELANIE WILSON RUGHANI
CROWE & DUNLEVY
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102
Melanie.Rughani@CroweDunlevy.com

Sincerely,

Robert G. McCampbell
For the Firm

cc: Oklahoma Attorney General

4923-9355-8283

STATE QUESTION 836 INITIATIVE PETITION 448

PROPONENT'S SUGGESTED BALLOT TITLE

Proponent's suggested ballot title is:

This initiative, which would add a new Article 3A to the Oklahoma Constitution, would establish an "open primary" system for elections for certain offices. In the open primary, all candidates for a covered office would appear on the same primary ballot without regard to party affiliation, and any qualified voter could vote for any candidate without regard to party affiliation. A voter in the open primary could vote for only one candidate per covered office. The two candidates receiving the most votes in the open primary would advance to the general election, without regard to party affiliation and without regard to whether the candidates have been nominated or endorsed by any political party. If only two candidates for a covered office qualify to appear on the ballot, then those candidates would automatically advance to the general election. The legislature could create a procedure for if a candidate will not participate in the general election due to death, withdrawal, or disqualification. In elections for covered offices, candidates would appear on the ballot in randomized order; candidates' political party registration or independent status as of the date of candidate filing would appear on the ballot next to their names; and the ballot would state that a candidate's indicated party registration does not imply the candidate is nominated or endorsed by the political party. The initiative would repeal Article 3, Section 3 of the Oklahoma Constitution, except that candidates for Presidential Elector would continue to be nominated by the recognized political parties at their conventions, and citizens could by petition continue to place the names of independent candidates on the ballot for that office. The measure may have a net positive or negative fiscal impact on the state.

Shall the proposal be approved?

For the proposal - YES
Against the proposal - NO

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

FILED
January 3, 2025
Secretary of State
State of Oklahoma

Instructions for Proponents:

1. **Please type and insert only the full text of the suggested ballot title.**
2. **Do not write or type anywhere on this form except where indicated.**
3. **Once completed, this form must be submitted for filing along with a full copy of the proposed measure and a completed 'Proponent's Gist of the Proposition' form.**

State Question No. 836, Initiative Petition No. 448

WARNING

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

FILED
January 3, 2025
Secretary of State
State of Oklahoma

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 amendment to the Constitution shall be submitted to the legal voters of the State of Oklahoma for their approval or rejection at the next regular general election (or at a special election as may be lawfully called by the Governor), and each for himself says: I have personally signed this petition; I am a legal voter of the State of Oklahoma; my first name, last name, zip code, house number, and month and day of my birth are correctly written on this form. 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 amendment to the Oklahoma Constitution be approved?

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA THAT A NEW ARTICLE 3A OF THE OKLAHOMA CONSTITUTION BE APPROVED:

CONSTITUTION OF OKLAHOMA, ARTICLE 3A -- OPEN PRIMARIES

SECTION 1. APPLICATION

This Article shall govern the process for primary and general elections for the following elected offices: statewide offices, county offices, district attorney, members of the state legislature, members of the United States Congress (hereinafter, "covered offices"). The term "covered offices" does not include the office of Presidential Elector, municipal offices, judicial offices, school board members, or any other office not specified herein as a "covered office."

SECTION 2. OPEN PRIMARIES

A. The primary election process for covered offices shall consist of an "open primary election." In an open primary election, all candidates for a covered office shall appear on the same ballot without regard to the candidates' affiliation or lack of affiliation with any political party and without regard to whether the candidates have been nominated or endorsed by any political party. Any qualified voter may vote for any candidate for a covered office, without regard to the voter's affiliation or lack of affiliation with any political party.

B. A voter in an open primary election may vote for only one candidate for each covered office.

C. The two candidates who receive the most votes in the open primary election shall advance to the general election, without regard to their affiliation or lack of affiliation with any political party and without regard to whether the candidates have been nominated or endorsed by any political party.

D. If only two candidates qualify to appear on the ballot in the primary election for a covered office, then those two candidates shall automatically advance to the general election, without regard to the candidates' affiliation or lack of affiliation with any political party.

SECTION 3. GENERAL ELECTIONS

Only those two candidates advancing from the open primary election according to Section 2 of this Article shall appear on the general election ballot for covered offices; however, the Oklahoma Legislature may, by statute, create a procedure to be followed if a candidate who has advanced

according to Section 2 will not participate in the general election due to death, withdrawal from the race, or disqualification.

SECTION 4. THE BALLOT

In both open primary elections and general elections for all covered offices:

A. Candidates shall appear on the ballot in a randomized order.

B. The ballot shall state, next to the candidate's name, each candidate's political party registration or independent status as of the date of candidate filing. A candidate does not need to seek or gain approval of the political party to have the candidate's registration with that party reflected on the ballot. Every ballot shall contain a statement informing voters that a candidate's indicated party registration does not imply that the candidate is nominated or endorsed by the political party or that the party approves of or associates with that candidate.

SECTION 5. REPEALER

A. Article 3, Section 3 of this Constitution is hereby repealed.

B. Notwithstanding subsection A of this Section, candidates for the office of Presidential Elector shall continue to be nominated by the recognized political parties at their conventions, and citizens may, by petition, continue to place on the ballot the names of independent, nonpartisan candidates for that office.

SECTION 6. SEVERABILITY

The provisions of this Article are severable, and if any part or provision hereof shall be held 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.

SECTION 7. MISCELLANEOUS

The procedures described herein regarding open primary elections and general elections for a covered office shall apply to any special elections for covered offices.

All provisions of this Constitution, state statute, and common law of Oklahoma to the extent inconsistent or in conflict with any provision of this Article are expressly declared null and void as to, and do not apply to, any activities provided for under this Article.

The Legislature may enact legislation to facilitate the operation of this Article, but no law shall limit, restrict or conflict with the provisions hereof.

SECTION 8. EFFECTIVE DATE

This Article shall take effect 90 days after the date this Article is approved by the People; provided that, if the candidate filing period for a particular election begins before this Article is approved by the People, then this Article shall not apply to that election.

Name and Address of Proponents

Kenneth Ray Settel
2452 E. 49th St.
Tulsa, OK 74105

Yvonne Galvan
3131 SW 89th St. Apt. 4206
Oklahoma City, OK 73159

Anthony Stobbe
4852 Hillcrest Lane
Edmond, OK 73025

STATE QUESTION 836 INITIATIVE PETITION 448

PROPONENT'S GIST OF THE PROPOSITION

This gist statement will be affixed at the top of the signature sheet for circulation of signature

The gist of the proposition is:

This initiative, which would add a new Article 3A to the Oklahoma Constitution, would establish an "open primary" system, as set forth therein, for elections for certain offices. In the open primary, all candidates for a covered office would appear on the same primary ballot without regard to party affiliation, and any qualified voter could vote for any candidate without regard to party affiliation. A voter in the open primary could vote for only one candidate per covered office. The two candidates receiving the most votes in the open primary would advance to the general election, without regard to party affiliation and without regard to whether the candidates have been nominated or endorsed by any political party. If only two candidates for a covered office qualify to appear on the ballot, then those candidates would automatically advance to the general election. The legislature could create a procedure to follow if a candidate will not participate in the general election due to death, withdrawal, or disqualification. In all elections for covered offices, candidates would appear on the ballot in randomized order; candidates' political party registration or independent status as of the date of candidate filing would appear on the ballot next to their names; and the ballot would state that a candidate's indicated party registration does not imply the candidate is nominated or endorsed by the political party. The initiative would repeal Article 3, Section 3 of the Oklahoma Constitution, except that candidates for Presidential Elector would continue to be nominated by the recognized political parties at their conventions, and citizens could by petition continue to place the names of independent candidates on the ballot for that office. The initiative provides for severability and an effective date. Further details are provided in the attached petition.

FILED
January 3, 2025
Secretary of State
State of Oklahoma

Instructions for Proponents:

1. **Please type and insert only the full text of the suggested ballot title.**
2. **Do not write or type anywhere on this form except where indicated.**
3. **Once completed, this form must be submitted for filing along with a full copy of the proposed measure and a completed 'Proponent's Suggested Ballot Title' form.**

(OKSOS-SWIP-Fm02-1021)

Josh Cockroft
Secretary of State

J. Kevin Stitt
Governor

OKLAHOMA SECRETARY OF STATE

January 3, 2025

Kenneth Ray Setter
2452 E. 49TH ST.
Tulsa, OK 74105

Yvonne Galvan
3131 SW 89th, St. Apt. 4206
Oklahoma City, OK 73159

Anthony Stubbe
4852 Hillcrest Lane
Edmond, OK 73025

Dear Proponent(s) of Record:

This acknowledges receipt of the petition submitted to the Secretary of State office, which has been designated as **State Question Number 836, Initiative Petition Number 448 (Constitutional amendment)** and filed accordingly on the 3rd day of January 2025. Along with this, the proponents of record have also sufficiently submitted for filing their proposed ballot title and gist of the proposition.

Now that the petition has officially been filed for the record, per Title 34 O.S. Section 8, it is the duty of the Secretary of State to cause to be published, a notice of such filing and the apparent sufficiency or insufficiency of the petition, and shall also include notice that any citizen or citizens of the state may file a protest as to the *constitutionality* of the petition, by a written notice to the Oklahoma Supreme Court and to the proponent(s) filing the petition. Any such protest must be filed within ninety (90) days after the publication of the notice.

As soon as the ninety (90) day appeal/protest period has concluded, our office will be in contact regarding the next steps in the process.

If we may provide any further assistance or should you have any questions, please do not hesitate to contact our office or me directly.

Thank you,

Amy Canton
Director, Executive Legislative Services
405.522.4565 / executivelegislative@sos.ok.gov

Cc: Gable Gotwals, Robert McCampbell

Josh Cockroft
Secretary of State

J. Kevin Stitt
Governor

OKLAHOMA SECRETARY OF STATE

January 3, 2025

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

Dear Ms. Shea:

Please find enclosed the following notice for publication.

- Notice of Filing for State Question 836, Initiative Petition 448

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 *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,

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

NOTICE OF THE FILING OF STATE QUESTION 836, INITIATIVE PETITION 448 AND 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 NINETY (90) DAYS AFTER THIS NOTICE (Okla. Stat. tit. 34, § 8)

NOTICE is hereby given that on January 3, 2025, State Question 836, Initiative Petition 448 was filed in the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 836, Initiative Petition 448 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State. The official record is available for public view via the Oklahoma Secretary of State website at https://www.sos.ok.gov/documents/Questions/836.pdf.

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 ninety (90) days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State.

Proponents of record for State Question 836, Initiative Petition 448:

Kenneth Ray Setter
2452 E. 49TH ST.
Tulsa, OK 74105

Yvonne Galvan
3131 SW 89th, St. Apt. 4206
Oklahoma City, OK 73159

Anthony Stubbe
4852 Hillcrest Lane
Edmond, OK 73025

Josh Cockroft
Secretary of State
State of Oklahoma

Oklahoma Press Service

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

Proof of Publication
Order Number 25-01-26

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: 1/9/2025

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

PUBLICATION FEE $38.95

Landon Cobb

(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this
13 day of January 2025.

(Notary Public)

CINDY SHEA
NOTARY
10004935
EXP. 06/21/26
PUBLIC
STATE OF OKLAHOMA

NOTICE OF THE FILING OF STATE QUESTION 836, INITIATIVE PETITION 448 AND 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 NINETY (90) DAYS AFTER THIS NOTICE (Okla. Stat. tit. 34, § 8)

NOTICE is hereby given that on January 3, 2025, State Question 836, Initiative Petition 448 was filed in the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 836, Initiative Petition 448 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State. The official record is available for public view via the Oklahoma Secretary of State website at https://www.sos.ok.gov/documents/Questions/836.pdf.

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 ninety (90) days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State.

Proponents of record for State Question 836, Initiative Petition 448:

Kenneth Ray Sett	Yvonne Galvan	Anthony Stubbe
2452 E. 49TH ST.	3131 SW 89th, St. Apt. 4206	4852 Hillcrest Lane
Tulsa, OK 74105	Oklahoma City, OK 73159	Edmond, OK 73025

Josh Cockroft
Secretary of State, State of Oklahoma

Oklahoma Press Service

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

Proof of Publication
Order Number 25-01-26

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

Insertion: 1/9/2025

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

PUBLICATION FEE $38.95

Landon Cobb

(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this
13 day of January 2025.

Cindy Shea

(Notary Public)

CINDY SHEA NOTARY # 10004935 EXP. 06/21/26 PUBLIC STATE OF OKLAHOMA

NOTICE OF THE FILING OF STATE QUESTION 836, INITIATIVE PETITION 448 AND 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 NINETY (90) DAYS AFTER THIS NOTICE (Okla. Stat. tit. 34, § 8)

NOTICE is hereby given that on January 3, 2025, State Question 836, Initiative Petition 448 was filed in the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 836, Initiative Petition 448 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State. The official record is available for public view via the Oklahoma Secretary of State website at https://www.sos.ok.gov/documents/Questions/836.pdf.

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 ninety (90) days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State.

Proponents of record for State Question 836, Initiative Petition 448:

Kenneth Ray Sett	Yvonne Galvan	Anthony Stubbe
2452 E. 49TH ST.	3131 SW 89th, St. Apt. 4206	4852 Hillcrest Lane
Tulsa, OK 74105	Oklahoma City, OK 73159	Edmond, OK 73025

Josh Cockroft
Secretary of State, State of Oklahoma

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

Proof of Publication
Order Number 25-01-26

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

Insertion: 1/9/2025

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

PUBLICATION FEE $38.95

Landon Cobb
(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this
13 day of January 2025.

(Notary Public)

CINDY SHEA
NOTARY
10004935
EXP. 06/21/26
PUBLIC
STATE OF OKLAHOMA

NOTICE OF THE FILING OF STATE QUESTION 836, INITIATIVE PETITION 448 AND 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 NINETY (90) DAYS AFTER THIS NOTICE (Okla. Stat. tit. 34, § 8)

NOTICE is hereby given that on January 3, 2025, State Question 836, Initiative Petition 448 was filed in the Office of the Oklahoma Secretary of State.

NOTICE is also hereby given that State Question 836, Initiative Petition 448 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State. The official record is available for public view via the Oklahoma Secretary of State website at https://www.sos.ok.gov/documents/Questions/836.pdf.

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 ninety (90) days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State.

Proponents of record for State Question 836, Initiative Petition 448:

Kenneth Ray Sett	Yvonne Galvan	Anthony Stubbe
2452 E. 49TH ST.	3131 SW 89th, St. Apt. 4206	4852 Hillcrest Lane
Tulsa, OK 74105	Oklahoma City, OK 73159	Edmond, OK 73025

Josh Cockroft
Secretary of State, State of Oklahoma

ORIGINAL

FILED
SUPREME COURT
STATE OF OKLAHOMA
APR - 9 2025
JOHN D. HADDEN
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE OKLAHOMA REPUBLICAN PARTY, and RONDA VUILLEMONT-SMITH,	)	
Petitioners,	)	
vs.	)	Case No. [redacted]23007
KENNETH RAY SETTER; YVONNE GALVAN; and ANTHONY STOBBE,	)	
Respondents.	)	

APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION AND REVIEW INITIATIVE PETITION NO. 448/STATE QUESTION 836'S CONSTITUTIONALITY, SUGGESTED BALLOT TITLE, AND GIST

TREVOR PEMBERTON
(OK Bar No. 22271)
PEMBERTON LAW GROUP
600 North Robinson Avenue
Oklahoma City, OK 73102
Telephone: (405) 501-5054
Email: trevor@pembertonlawgroup.com

JORDAN SEKULOW*
(D.C. Bar No. 991680)
STUART J. ROTH*
(D.C. Bar No. 475937)
ANDREW J. EKONOMOU*
(GA Bar No. 242750)
BENJAMIN P. SISNEY
(OK Bar No. 21816)
NATHAN MOELKER*
(VA Bar No. 98313)
LIAM HARRELL*
(DC Bar No. 1740309)
AMERICAN CENTER FOR
LAW AND JUSTICE
201 Maryland Avenue, NE
Washington, D.C. 20002
Telephone: (202) 546-8890
Facsimile: (202) 546-9309
Email: bsisney@aclj.org

Counsel for Petitioners

*Not admitted in this jurisdiction.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE OKLAHOMA REPUBLICAN PARTY, and RONDA VUILLEMONT-SMITH,	)	
Petitioners,	)	
vs.	)	Case No. _____
KENNETH RAY SETTER; YVONNE GALVAN; and ANTHONY STOBBE,	)	
Respondents.	)	

APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION AND REVIEW INITIATIVE PETITION NO. 448/STATE QUESTION 836'S CONSTITUTIONALITY, SUGGESTED BALLOT TITLE, AND GIST

TREVOR PEMBERTON
(OK Bar No. 22271)
PEMBERTON LAW GROUP
600 North Robinson Avenue
Oklahoma City, OK 73102
Telephone: (405) 501-5054
Email: trevor@pembertonlawgroup.com

JORDAN SEKULOW*
(D.C. Bar No. 991680)
STUART J. ROTH*
(D.C. Bar No. 475937)
ANDREW J. EKONOMOU*
(GA Bar No. 242750)
BENJAMIN P. SISNEY
(OK Bar No. 21816)
NATHAN MOELKER*
(VA Bar No. 98313)
LIAM HARRELL*
(DC Bar No. 1740309)
AMERICAN CENTER FOR
LAW AND JUSTICE
201 Maryland Avenue, NE
Washington, D.C. 20002
Telephone: (202) 546-8890
Facsimile: (202) 546-9309
Email: bsisney@aclj.org

Counsel for Petitioners

*Not admitted in this jurisdiction.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE OKLAHOMA REPUBLICAN PARTY, and RONDA VUILLEMONT-SMITH,	)	
Petitioners,	)	
vs.	)	Case No. _____
KENNETH RAY SETTER; YVONNE GALVAN; and ANTHONY STOBBE,	)	
Respondents.	)	

APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION AND REVIEW INITIATIVE PETITION NO. 448/STATE QUESTION 836'S CONSTITUTIONALITY, SUGGESTED BALLOT TITLE, AND GIST

TREVOR PEMBERTON
(OK Bar No. 22271)
PEMBERTON LAW GROUP
600 North Robinson Avenue
Oklahoma City, OK 73102
Telephone: (405) 501-5054
Email: trevor@pembertonlawgroup.com

JORDAN SEKULOW*
(D.C. Bar No. 991680)
STUART J. ROTH*
(D.C. Bar No. 475937)
ANDREW J. EKONOMOU*
(GA Bar No. 242750)
BENJAMIN P. SISNEY
(OK Bar No. 21816)
NATHAN MOELKER*
(VA Bar No. 98313)
LIAM HARRELL*
(DC Bar No. 1740309)
AMERICAN CENTER FOR
LAW AND JUSTICE
201 Maryland Avenue, NE
Washington, D.C. 20002
Telephone: (202) 546-8890
Facsimile: (202) 546-9309
Email: bsisney@aclj.org

Counsel for Petitioners

*Not admitted in this jurisdiction.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE OKLAHOMA REPUBLICAN PARTY, and RONDA VUILLEMONT-SMITH,	)	
Petitioners,	)	
vs.	)	Case No. _____
KENNETH RAY SETTER; YVONNE GALVAN; and ANTHONY STOBBE,	)	
Respondents.	)	

APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION AND REVIEW INITIATIVE PETITION NO. 448/STATE QUESTION 836'S CONSTITUTIONALITY, SUGGESTED BALLOT TITLE, AND GIST

COME NOW the Petitioners and, pursuant to 34 O.S. § 8(B), submit this timely[1] challenge to Initiative Petition no. 448, State Question no. 836 (hereinafter, "IP 448" or the "Initiative"). Petitioners challenge IP 448 on the grounds that it violates the United States Constitution. Specifically, IP 448 forces political parties to unwillingly associate with political candidates in violation of the First Amendment rights of political parties' and their members. In addition to this clear constitutional violation, the suggested ballot title and gist are misleading and insufficient.

I. INTRODUCTION

1. Petitioner, the Oklahoma Republican Party, is an unincorporated nonprofit association and Political Party Committee, operating under Oklahoma law as an association of Oklahoma citizens. Its primary purpose, as reflected in its bylaws, is to elect duly nominated Republican

[1] As set forth on the Oklahoma Secretary of State's website, "Initiative petition 448 was filed as of January 3, 2025, but not published until January 9, 2025." IP 448 "is currently in the 1st 90-day protest period (as to the Constitutionality); 04/09/2025 will be the final day of the 90-day protest period." *See* 34 O.S. § 8(B) ("Any such protest must be filed within ninety (90) days after publication.").

candidates, subject to its own procedure, and to promote its principles by nominating, designating and advancing candidates of its choosing.

2. Petitioner, Ronda Vuillemont-Smith, is a resident of Tulsa County and a registered member of the Oklahoma Republican Party.

3. Respondents are each proponents of IP 448.

4. IP 448 strips from political parties the ability to associate with candidates of their choosing. This violates the U.S. Constitution, specifically the associational rights protected by the First Amendment. *Tashjian v. Republican Party*, 479 U.S. 208, 224 (1986) ("The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.").

A. The Substance of IP 448

5. IP 448 would add a new Article 3A to the Oklahoma Constitution, imposing upon the Petitioners a a so-called "open primary" election for certain county, state, and federal elections. (App. A-2).

6. As will be addressed below, IP 448 actually makes substantive changes beyond the primary, infringing upon a political party's associational rights on the general election ballot.

7. IP 448's full frontal assault on the constitutionally protected rights of Oklahoma political parties – protected by the First Amendment – is blatant. According to its ballot title,

> "[i]n the open primary, all candidates for a covered office would appear on the same primary ballot without regard to party affiliation, and any qualified voter could vote for any candidate without regard to party affiliation. . . . "The two candidates receiving the most votes in the open primary would advance to the general election, *without regard to party affiliation and without regard to whether the candidates have been nominated or endorsed by any political party*."

Initiative Petition no. 448, State Question no. 836, Sec. 4; (App. A-5) (emphasis added).

8. According to the text, "In both open primary elections and general elections," IP 448, Sec. 4; (App. A-4) "[a] candidate does not need to seek or gain approval of the political party to have the candidate's registration with that party reflected on the ballot." *Id.* at Sec. 4(B).[2] The ballot lists "next to the candidate's name, each candidate's political party registration or independent status as of the date of candidate filing." *Id.*

B. IP 448 Does Not Establish an Open Primary, but a Blanket Primary.

9. IP 448 is billed as creating an "open primary," but in reality creates a "blanket primary" variant. A "'blanket primary' refers to a system in which 'any person, regardless of party affiliation, may vote for a party's nominee.'" *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 445 n.1 (2008) (quoting *Cal. Democratic Party v. Jones*, 530 U.S. 567, 576 n.6 (2000)). To be clear, "[a] blanket primary is distinct from an 'open primary,' in which a person may vote for any party's nominees, but must choose among that party's nominees for all offices." *Id.* (citation omitted).

10. IP 448, which allows any person, regardless of party affiliation, to vote for a party's nominee, clearly creates a type of blanket primary. Worse, it allows any voter to vote for anyone claiming affiliation with any party, regardless of whether that candidate was nominated or endorsed by that party. The candidate need only have registered their affiliation with a party to have that party's name placed by theirs on the ballot. The party has no control over who may register their affiliation, and "[a] candidate does not need to seek or gain approval of the political party to have the candidate's registration with that party reflected on the ballot." IP 448, Sec. 4(B); (App. A-4).

11. In a true open primary, "all registered voters may choose in which party primary to

[2] This rather substantive provision lies buried in IP 448's text and does not appear in the ballot title or gist. In other words, as addressed in more detail *infra* IV, the ballot title and gist are misleading.

vote," then that voter may only vote among that party's candidates in that election. *Tashjian v. Republican Party*, 479 U.S. 208, 222 n. 11 (1986). IP 448 is not that.

12. Instead, IP 448 provides that a voter would receive a single ballot and that "all candidates for a covered office would *appear on the same primary ballot without regard to party affiliation*, and any qualified voter could vote for any candidate *without regard to party affiliation*." Suggested Ballot Title, IP 448; (App. A-2) (emphasis added).

13. That does not meet the U.S. Supreme Court's definition of an open primary, especially not a permissible open primary.

14. Blanket primaries regulating internal processes for candidate selection, *Jones*, 530 U.S. 567, and "open" primaries requiring delegates to vote contrary to the national party's rules, *Dem. Party of U.S. v. Wis. ex rel. La Follete*, 450 U.S. 107 (1981), violate the First Amendment.

II. LEGAL STANDARD

15. This Court reviews ballot petitions for their sufficiency and constitutionality. *Tate Chamber of Okla. v. Cobbs*, 2024 OK 13, ¶1, 545 P.3d 1216, 1216; *In re Initiative Petition No. 420, State Question No. 804*, 2020 OK 10, ¶1 458 P.3d 1088. The Court limits pre-election review to "clear or manifest facial constitutional infirmities." *In re Initiative Petition No. 358, State Question No. 658*, 1994 OK 27, ¶7, 870 P.2d 782, 785.

16. "[A] determination on a constitutional question as to the legality of a measure proposed . . . will be reached by this Court . . . if, in the Court's opinion, reaching the issue may prevent the holding of a costly and unnecessary election." *In re Initiative Petition No. 349, State Question No. 642*, 1992 OK 122, ¶18, 838 P.2d 1, 8.

17. The Court has emphasized the importance of the exercise of this power: "it is this Court's responsibility to see the petitions for change . . . comply with the requirements set out

in both the Constitution and the statutes." *In re Initiative Petition No. 344, State Question No. 630*, 1990 OK 75, ¶16, 797 P.2d 326, 330.

III. IP 448 VIOLATES STATE POLITICAL PARTIES' UNDENIABLE FIRST AMENDMENT RIGHTS.

18. The net result (and obvious intent) of IP 448 is to strip from Oklahoma political parties and their members, including Petitioners, the right to associate and disassociate, invoking the First Amendment and drawing strict scrutiny. *Washington State Grange v. Washington State Republican Party,* 552 U.S. 442, 452 (2008).This is a standard it cannot survive, as discussed below.

19. The United States Supreme Court has struck down laws imposing blanket open primaries on state political parties. *See Jones*, 530 U.S. at 569; *La Follete*, 450 U.S. at 109.

20. Recognizing that "States have a major role to play in structuring and monitoring the election process," *Jones*, 530 U.S. at 572, the Supreme Court "stressed that when States regulate parties' internal processes they must act within limits imposed by the Constitution." *Id.* at 573. When states hold primaries, they must not infringe on First Amendment rights by mandating that parties associate with candidates against their will.

21. The Supreme Court ruled that "the First Amendment protects 'the freedom to join together in furtherance of common political beliefs,'" *id.* (quoting *Tashjian*, 479 U.S. at 214-215); this "necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only." *La Follette*, 450 U.S. at 122.

22. "[A] corollary of the right to associate is the right not to associate. 'Freedom of association would prove an empty guarantee if associations could not limit control over their

decisions.'" *Jones*, 530 U.S. at 574-75 (quoting *La Follette*, 450 U.S. at 122 n. 22).[3]

23. The First Amendment protects the right of citizens "to band together in promoting among the electorate candidates who espouse their political views." *Id.* at 574.

24. "Regulations that impose severe burdens on associational rights must be narrowly tailored to serve a compelling state interest." *Clingman v. Beaver*, 544 U.S. 581, 586 (2005).

25. IP 448 mandates involuntary association between candidates and parties and cannot meet strict scrutiny. It contradicts precedent like *Jones*.

A. A Severe Burden on the Right to Associate Requires Strict Scrutiny.

26. A party's choice of its candidates is of paramount importance: "In no area is the political association's right to exclude more important than in the process of selecting its nominee . . . who becomes the party's ambassador to the general electorate." *Jones*, 530 U.S. at 575; *see id.* at 587 (Kennedy, J., concurring) ("The true purpose of this law, however, is to force a political party to accept a candidate it may not want and . . . to change the party's doctrinal position.").

27. A State may not force political parties to associate: "[w]hen the State seeks to direct changes in a political party's philosophy by forcing upon it unwanted candidates . . . the State's incursion . . . is subject to careful scrutiny." *Id.* (Kennedy, J., concurring).

28. "[T]he freedom to associate for the 'common advancement of political beliefs,' necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only." *La Follette*, 450 U.S. at 122 (citations omitted);

---

[3] The *Jones* Court's analysis made clear that its cases rejecting political parties' attempts to limit association *on otherwise unconstitutional grounds* do not support a state's ability to restrict a state political party by imposing an open primary. *Id.* at 573 (citing *Smith v. Allwright*, 321 U.S. 649 (1944) ("invalidat[ing] the Texas Democratic Party's rule limiting participation in its primary to whites") and *Terry v. Adams*, 345 U.S. 461 (1953) ("invalidat[ing] the same rule promulgated by the Jaybird Democratic Association"). Those cases "do not stand for the proposition that party affairs are public affairs, free of First Amendment protections – and our later holdings make that entirely clear." *Id.* (citation and footnote omitted).

Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957) ("Exercise of these basic freedoms . . . has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.").

29. "Unsurprisingly," the Supreme Court's "cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party 'selects a standard bearer.'" *Jones*, 530 U.S. at 575 (internal citations omitted).

30. In striking down California's primary law, the Court emphasized the unremarkable yet fundamental proposition that the party, "and not someone else, has the right to select the [] Party's standard bearer," *id.* at 575-76 (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997) (internal quotation marks omitted)), and that "[t]he members of a recognized political party unquestionably have a constitutional right to select their nominees for public office," *id.* at 576 (quoting *Timmons*, 520 U.S. at 371 (Stevens, J., dissenting)).

31. The First Amendment protects the right of citizens "to band together in promoting among the electorate candidates who espouse their political views." *Jones*, 530 U.S. at 574.

32. When an organization is compelled to associate with someone of differing views, the organization's message is undermined; the organization is understood to embrace views (and, here, candidates) it does not wish to embrace.

33. In *Jones,* the Supreme Court struck down California's primary law provision, Proposition 198, because it "forces political parties to associate with – to have their nominees, and hence their positions, determined by – those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival." 530 U.S. at 577.

34. IP 448 has the same effect, irrespective of its label.[4] Curtailing these rights at the ballot box "limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action." *Tashjian*, 479 U.S. at 216.[5]

35. Respondents undoubtedly labeled IP 448 as an "open primary" measure in an effort to evade *Jones*' reach, but its substance is the problem and the net result is the same: it mandates political parties' association with candidates against their will.

36. A political party's candidate is its "ambassador to the general electorate in winning it over to the party's views." *Jones*, 530 U.S. at 575. A political party's programs and policies for governance may only be implemented by electing candidates who adhere to its principles and programs. If it cannot select its own candidates, it cannot properly exist.

37. Any candidate could identify with any party, regardless of its values or beliefs: a candidate need only have a "registration" for the ballot to "state, next to the candidate's name, each candidate's political party registration or independent status." IP 448, Sec. 4(B); (App A-4).

38. "A candidate does not need to seek or gain approval of the political party to have the candidate's registration with that party reflected on the ballot." *Id.* This is true even in a general election. *Id.* In sum, any voter can vote for any candidate, and the candidate can indicate affiliation with any party.

39. The inclusion of a disclaimer, that "[e]very ballot shall contain a statement informing

---

[4] Like California's law, IP 448 creates something "qualitatively different from a closed primary. Under that system, even when it is made quite easy for a voter to change his party affiliation the day of the primary, and thus, in some sense, to 'cross over,' at least he must formally become a member of the party; and once he does so, he is limited to voting for candidates of that party." *Jones*, 530 U.S. at 577.

[5] This is not like Colorado's Prop. 108, which imposed an open primary but allowed the State's major political parties to "opt out" of the mandate with a 3/4 intraparty vote. *See Colo. Republican Party v. Griswold*, 715 F. Supp. 3d 1339 (D. Colo. 2024) (denying Party's motion for preliminary injunction).

voters that a candidate's indicated party registration does not imply that the candidate is nominated or endorsed by the political party or that the party approves of or associates with that candidate," *id.*, fails to cure the petition's illness, and instead, diagnoses it.

40. Such a disclaimer adds no clarity. It highlights, without remedying, the confusion of the system and the loss of all associational rights in meaningfully presenting its candidates to the voters. Thus, in addition to IP 448 forcing party association with a candidate invoking its name while not duly affiliated with or endorsed by the political party, its disclaimer also prevents the political party from expressing on the ballot that its bona fide, duly affiliated candidates are in fact, duly associated.

41. IP 448 raises material questions: What is a political party if it cannot choose candidates embodying its values and present them to the public? Why should a candidate, who merely registers as a member of a party by the filing deadlines, be able to capitalize on that party's name without its consent? And why may a candidate place a party's name next to their own on a ballot if a disclaimer is required stating that party's name may or may not indicate alignment with the party?[6]

B. The "Top Two" Feature Fails to Save IP 448.

42. Respondents will no doubt contend that IP 448's "top two" feature, directing that the two candidates receiving the most votes on the singular primary ballot will proceed to the general election ballot, saves it from its constitutional defect. It does not.

43. While cloaked in the nomenclature of a nonpartisan system, the blanket primary in this Initiative still bears the same constitutional infirmities as the primary struck down in *Jones*.

---

[6] *Ex parte Wilson*, 7 Okla. Crim. 610, 625 (Ok. Crim. App. 1912) ("[A]ll of the provisions of the primary election law were enacted by the Legislature to prevent electors from voting any ballot except that of their respective parties, and thereby prevent fraud and preserve the purity of the ballot."). IP 448 intentionally disrupts that well-recognized purpose of a primary ballot.

44. The Court in *Jones* suggested a "*nonpartisan* blanket primary" system containing a "top two" feature which could be constitutional by furthering a compelling interest with the least restrictive means. *Jones*, 540 U.S. at 585. IP 448's "top two" system is distinguishable.

45. First, like the law struck down in *Jones*, IP 448 advances no compelling state interests. The Court here need not even reach the least restrictive means stage of strict scrutiny analysis.

46. The *Jones* Court only suggested the "nonpartisan blanket primary" with the top two feature as a lesser restrictive means after holding that *all seven* of California's asserted compelling interests purporting to justify its infringement were not compelling. *Jones*, 530 U.S. at 582-85.

47. *Jones* explained that, even assuming a compelling interest, it failed the least restrictive means analysis step. *Id.* at 585 ("[E]ven if all these state interests were compelling ones, Proposition 198 is not a narrowly tailored means."). It was at this juncture of the analysis that the *Jones* Court suggested the "*nonpartisan* blanket primary" with a "top two" feature could constitute a lesser restrictive means.

48. Second, and more substantively, the Court's "nonpartisan" alternative in *Jones* is not what exists here. It would be a system where "[e]ach voter, regardless of party affiliation, may then vote for any candidate, and the top two vote getters . . . then move on to the general election." *Id.* This system could survive because "[p]rimary voters are not choosing a party's nominee," achieving the stated goals "without severely burdening a political party's First Amendment right of association," *id.* at 586, and therefore be less restrictive.

49. In the *nonpartisan* system described in *Jones*, candidates are not misidentified as affiliated with political parties when they are not so affiliated. This is IP 448's critical flaw.

50. Under IP 448, not only can anyone vote for any candidate, anyone can *register* and *run*

under any party's banner – without that party's nomination or endorsement.[7] This is a serious deviation from the aforementioned *nonpartisan* blanket primary and is what violates the Petitioners' (and other political parties') First Amendment associational rights.

51. Respondents may also point to *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008), where the Supreme Court upheld an open "top two" primary system where candidates merely selected their political party "preference." The Supreme Court concluded that the "primary does not, by its terms, choose parties' nominees . . . . The law never refers to the candidates as nominees of any party, *nor does it treat them as such*." *Id.* at 453 (emphasis added).

52. Here, in contrast, candidates do not merely select their "preference," but instead, the candidate displays their *actual registration and affiliation* with the party. IP 448, Sec. 4(B); (App. A-4).

53. Thus, candidates could run for an office against the party's own interest, will, or vetting—effectively becoming a *de facto* party nominee without the party's consent and without regard to its platform.

54. The line between *Jones* and *Grange* is clear. Candidates may express their preferences but cannot mandate party association. The latter is precisely what IP 448's ballot does.

55. On the proposed ballot, candidates would have their registration and affiliation with a party listed next to their name, with a vague disclaimer, leaving the voter unsure of actual party

[7] Current laws governing State and County primary elections explicitly allow political parties to nominate their respective candidates for upcoming general elections. 26 O.S. § 1-102. Voters can only vote in the primary of the party they are registered with, 26 O.S. § 1-104(A), and political parties decide whether to allow Independents to vote in their primaries, 26 O.S. § 1-104(B). Independents can vote in one party's primary. 26 O.S. § 1-104(B). Importantly, individuals who feel disenfranchised can form a recognized political party. 26 O.S. §§ 1-104(B)(4) & 1-108. These rules protect parties' associational rights, ensure meaningful nominations, and preserve voters' ability to participate in party primaries—unlike the impermissible blanket primary system, which infringes on those rights.

endorsement.

56. Even with the disclaimer, the ballot would confuse voters "at the most crucial stage in the electoral process—the instant before the vote is cast." *Anderson v. Martin*, 375 U.S. 399, 402 (1964). The ballot conveys to voters that candidates are affiliated with and registered with a political party, regardless of whether the party so wishes.

57. That ballot imposes severe burdens on the protected First Amendment freedoms of a political party and its members, weakening the link between candidates and the party's platform.

C. IP 448 Cannot Survive Strict Scrutiny.

58. IP 448 cannot be justified under strict scrutiny, since it lacks a compelling interest.

59. The Respondents may advance interests similar to those in *Jones*: producing elected officials who better represent the electorate; expanding candidate debate beyond the scope of partisan concerns; a view that a blanket primary is the only way to ensure that disenfranchised persons enjoy the right to an effective vote; promoting fairness; affording voters greater choice; increasing voter participation; and protecting privacy. *Jones*, 530 U.S. at 582.

60. The Supreme Court analyzed each asserted interest in turn and concluded each one was *not* compelling. *Id.* at 585. In particular, the first two purported interests were "simply circumlocution for producing nominees and nominee positions other than those the parties would choose if left to their own devices." *Id.* at 582.

61. Such interests "reduce to nothing more than a stark repudiation of freedom of political association: Parties should not be free to select their own nominees because those nominees, and the positions taken by those nominees, will not be congenial to the majority." *Id.*

62. The other interests fared no better. The purported interest in ensuring that

disenfranchised persons enjoy the right to an effective vote just meant allowing people in other parties to vote in a majority party's election. The Court rejected such a claim. A "nonmember's desire to participate in the party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications." *Tashjian*, 479 U.S. at 215-16 n.6 (citing *Rosario v. Rockefeller*, 410 U.S. 752 (1973)).

63. "The voter who feels himself disenfranchised should simply join the party. That may put him to a hard choice, but it is not a state-imposed restriction upon *his* freedom of association, whereas compelling party members to accept his selection of their nominee *is* a state-imposed restriction upon theirs." *Jones*, 530 U.S. at 584.

64. As for the other four asserted interests, addressing concerns such as fairness, greater choice, they likewise fail to justify the law. For example, "[a]s for affording voters greater choice, it is obvious that the net effect of this scheme -- indeed, its avowed purpose -- is to reduce the scope of choice, by assuring a range of candidates who are all more 'centrist.'" *Id.*

65. Simply put, IP 448's requirement for political parties to associate with candidates not of their choice or will cannot meet the strict scrutiny standard, as it is neither narrowly tailored nor justified by a compelling interest. No interest justifies mandating that political parties be unwillingly associated with political candidates.

66. Recent experience and logic bear out *why* the United States Supreme Court has so clearly and consistently applied the First Amendment's protections to political parties' associational rights that doom IP 448. The threat of politically motivated actors exploiting open primaries to intentionally and openly infringe political parties' associational rights (which again, include the right to associate and *to not* associate, *Jones*, 530 U.S. at 574-75) is far from hollow. Organizations exist for precisely this purpose. *See* Juliann Ventura, *Anti-Trump Group*

Urging Democrats to Crossover for Haley in S.C., Michigan Primaries, THE DETROIT NEWS (Feb. 13, 2024), https://tinyurl.com/mw8a882k (discussing PrimaryPivot's targeting of potential crossover voters in states with open primaries, including Michigan.).

67. Unlike the system upheld in *Grange*, a reasonable voter must wonder, under this system, what a party's name next to the candidate's, followed by a disclaimer, actually implies.

IV. IP 448'S SUGGESTED BALLOT TITLE AND GIST ARE SUBSTANTIALLY MISLEADING.

68. In additiona to the constitutional infirmity, there exists a separate, independent problem with IP 448; its suggested ballot title and gist mislead the reader about IP 448's nature. While the ballot title and gist frame IP 448 as creating a so-called open primary system, for reasons addressed *supra* I(B), it does not. At the least, the title and gist fail to clearly state IP 448's changes to the *general* election ballot.

69. A Petition's gist and the title must be "descriptive of the effect of the proposition, not deceiving but informative and revealing." *In re Initiative Petition No. 344, State Question No. 630*, 1990 OK 75, ¶14, 797 P.2d 327, 330. This is "necessary to prevent deception," and so that voters are "able to cast an informed vote." *Id.*

70. The language "should be sufficient that the signatories are at least put on notice of the changes being made," and must explain the proposal's actual effect. *In re Initiative Petition No. 342, State Question No. 630* 1990 OK 76, ¶14, 797 P.2d 331, 334; *In re Initiative Petition No. 409, State Question No. 785*, 2016 OK 61, ¶6 (unpublished).

71 Following the topline assertions that it governs and makes changes *to primaries*, the gist mentions no changes to *general* elections until well into the text.

72. The use of "in elections for covered offices," (App. A-2), and "in all elections for covered offices," (App. A-5), in the suggested ballot title and gist, respectively, is easily

mistaken, due to placement and word usage, as meaning in all *primary* elections, as the clear impression is that IP 448 is all about primaries. The ballot title and gist are misleading.[8]

73. In sum, IP 448 works a radical change to the nature of elections in Oklahoma, a change its suggested ballot title and gist do not sufficiently disclose.

CONCLUSION

Petitioners respectfully urge this Court to strike IP 448 from the ballot.

Dated: April 9, 2025.

Respectfully submitted,

/s/ Trevor S. Pemberton
TREVOR PEMBERTON
(OK Bar No. 22271)
PEMBERTON LAW GROUP
600 North Robinson Avenue
Oklahoma City, OK 73102
Telephone: (405) 501-5054
Email: trevor@pembertonlawgroup.com

JORDAN SEKULOW*
(D.C. Bar No. 991680)
STUART J. ROTH*
(D.C. Bar No. 475937)
ANDREW J. EKONOMOU*
(GA Bar No. 242750)

/s/ Benjamin P. Sisney
BENJAMIN P. SISNEY
(OK Bar No. 21816)
NATHAN MOELKER*
(VA Bar No. 98313)
LIAM HARRELL*
(DC Bar No. 1740309)
AMERICAN CENTER FOR
LAW AND JUSTICE
201 Maryland Avenue, NE
Washington, D.C. 20002
Telephone: (202) 546-8890
Facsimile: (202) 546-9309
Email: bsisney@aclj.org

Counsel for Petitioners

*Not admitted in this jurisdiction.

[8] The risk of confusion is real and substantiated. Major local news outlets report that amendments made to IP 447/SQ 835, then refiled as IP 448/SQ 836, "ensure[] that the initiative only addresses the process for partisan *primary* elections." Barbara Hoberock, *Open Primary Supporters Refile State Question: What Has Changed?*, THE OKLAHOMAN (Jan. 7, 2025) https://tinyurl.com/2s2hyhv4 (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 2025, a true and correct copy of the above and foregoing document was served electronically and by express mail or hand-delivery on the following:

Melanie Wilson Rughani
CROWE & DUNLEVY, P.C.
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102
melanie.rughani@crowedunlevy.com
Counsel for Respondents

Robert G. McCampbell
Gable Gotwals
499 West Sheridan Avenue, Suite 2200
Oklahoma City, OK 73102
rmccampbell@gablelaw.com
Counsel for Respondents

Secretary of State's Office
State of Oklahoma
2300 N. Lincoln Boulevard, Suite 101
Oklahoma City, OK 73105-4897

Attorney General's Office
State of Oklahoma
313 NE 21st Street
Oklahoma City, OK 73105-4897

/s/ Benjamin P. Sisney
Benjamin P. Sisney
Counsel for Petitioners

OKLAHOMA STATE COURTS NETWORK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

The Oklahoma Republican Party and Ronda Vuillemont-Smith, Petitioners, vs. Kenneth Ray Setter, Yvonne Galvan and Anthony Stobbe, Respondents.	**No. O-123007** **(Other)** Filed: 04/09/2025 Filed Opinion/Order 2025 OK 56

PARTIES

Galvan, Yvonne, Respondent
Oklahoma Republican Party, Petitioner
Setter, Kenneth Ray, Respondent
Stobbe, Anthony, Respondent
Vuillemont-smith, Ronda, Petitioner

ATTORNEYS

Attorney	Represented Parties
DORWART, FREDERIC (Bar #2436) FREDERICF DORWART, LAWYERS 124 E. 4TH ST. TULSA, OK 74103	Setter Kenneth Ray
Drummond, Gentner OKLAHOMA ATTORNEY GENERAL 313 NE 21ST ****INTERAGENCY MAIL****	
FOGLEMAN, AMELIA A (Bar #16221) 100 NORTH ELGIN AVE. SUITE 200 TULSA, OK 74120	Galvan Yvonne Setter Kenneth Ray Stobbe Anthony

Attorney	Represented Parties
McCampbell, Robert (Bar #10390) GableGotwals 499 West Sheridan Ave. Suite 2200 Oklahoma City, OK 73102	Galvan Yvonne Setter Kenneth Ray Stobbe Anthony
Moelker, Nathan J 201 Maryland Ave NE Washington, DC 20002	
PEMBERTON, TREVOR S (Bar #22271) 600 North Robinson Ave, Suite 323 Oklahoma City, OK 73102	Oklahoma Republican Party Vuillemont-smith Ronda
Rughani, Melanie W 324 N. Robinson Ave., Ste. 100 Oklahoma City, OK 73102	Galvan Yvonne Setter Kenneth Ray Stobbe Anthony
Secretary of State Attention: Amy Canton Room 101 *****Interagency Mail*****	
Sisney, Benjamin P (Bar #21816) 201 Maryland Ave, N.E. Washington, DC 20002	Oklahoma Republican Party Vuillemont-smith Ronda

EVENTS

Event	Party	Docket	Reporter
Tuesday, June 24, 2025 at 10:00 AM Oral Argument			
Tuesday, June 24, 2025 at 10:00 AM Oral Argument Held			

LOWER COURT COUNTS AND OTHER INFORMATION

Count	Case Number	Statute	Crime	Sentence	Judge	Reporter
-	-	-				

DOCKET

Date	Code	Description

04-09-2025 [CASE]

OTHER INITIAL FILING

04-09-2025 [PAY]

RECEIPT # 91372 ON 04/09/2025.
PAYOR: TREVOR S PEMBERTON TOTAL AMOUNT PAID: $ 200.00.
LINE ITEMS:
$200.00 ON OTHER INITIAL FILING.

04-09-2025 [AAJP]

APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION AND REVIEW INITIATIVE PETITION NO. 448/STATE QUESTION 836'S CONSTITUTIONALITY, SUGGESTED BALLOT TITLE, AND GIST FILED BY PEMBERTON FOR OKLAHOMA REPUBLICAN PARTY ET AL-PETRS
Document Available (#1061309771) TIFF PDF

04-09-2025 [TEXT]

NOTICE OF APPEARANCE BY TRVOR PEMBERTON
Document Available (#1061309775) TIFF PDF

04-09-2025 [TEXT]

NOTICE OF APPEARANCE BY BENJAMIN P. SISNEY
Document Available (#1061311391) TIFF PDF

04-09-2025 [ATBC]

PETRS' BRIEF
Document Available (#1061311395) TIFF PDF

04-09-2025 [TEXT]

APPENDIX

04-09-2025 [TEXT]

MOTION FOR ORAL ARGUMENT
Document Available (#1061311399) TIFF PDF

04-09-2025 [TEXT]

NOTICE OF ORIGINAL JURISDICTION SUPREME COURT PROCEEDING
Document Available (#1061310126) TIFF PDF

04-10-2025 [TEXT]

JE: RESPS TO RESP TO PETRS' APPL ETC AND MOT FOR ORAL ARGUMENT NLT 5-1-25. C/ATTYS
Document Available (#1061311420) TIFF PDF

05-01-2025 [TEXT]

ENTRY OF APPEARANCE BY ROBERT G. MCCAMPBELL
Document Available (#1061310649) TIFF PDF

05-01-2025 [TEXT]

ENTRY OF APPEARANCE BY AMELIA A. FOGLEMAN******TYPO CORRECTED*******
Document Available (#1061310588) TIFF PDF

05-01-2025 [TEXT]

ENTRY OF APPEARANCE BY MELANIE WILSON RUGHANI*******TYPO CORRECTED*******
Document Available (#1061310584) TIFF PDF

05-01-2025 [RESP]

RSPNTS' RESPONSE TO MOTION FOR ORAL ARGUMENT
Document Available (#1061310580) TIFF PDF

05-01-2025 [TEXT]

RSPNTS' BRIEF IN OPPOSITION TO PROTESTANTS' APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION
Document Available (#1061310645) TIFF PDF

05-01-2025 [TEXT]

RSPNTS' APPENDIX

05-05-2025 [TEXT]

PETRS' UNOPPOSED MOTION FOR LEAVE TO FILE REPLY BRIEF
Document Available (#1061310735) TIFF PDF

05-06-2025 [TEXT]

JE: PETRS' UNOPPOSED MOT FOR LEAVE TO FILE REPLY BRIEF GRANTED. PETRS MAY FILE A REPLY OF NOT MORE TH/5 PGS ON OR BEFORE 5-12-25. N/ATTYS
Document Available (#1061310721) TIFF PDF

05-12-2025 [TEXT]

PETRS' REPLY BRIEF IN SUPPORT OF THEIR APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION AND REVIEW INITIATIVE PETITION NO. 448/STATE QUESTION 836'S CONSTITUTIONALITY, SUGGESTED BALLOT TITLE, AND GIST
Document Available (#1061312110) TIFF PDF

05-27-2025 [ASNJ]

ASSIGNED TO SUPREME COURT

05-27-2025 [ORAG]

JE: PETR'S UNOPPOSED MOT FOR ORAL ARGUMENT IS GRANTED. ORAL ARGUMENT IS SET FOR 10 AM ON 6-24-25, IN CT/ROOM OF SUP CT OF OKLAHOMA, LOCATED ON 2ND FLOOR OF STATE CAPITOL. ETC. PETRS WILL H/30 MINUTES TO PRESENT ORAL ARGUMENT, RSPNTS WILL H/30 MINUTES FOR REBUTTAL. ETC. EACH PARTY TO FILE, NLT 6-10-25, NOTICE TO CT PROVIDING NAME(S) OF COUNSEL WHO WILL BE ARGUING CASE, NAMES OF OTHER COUNSEL AT TABLE, AND ALLOCATION OF ARGUMENT TIME, ETC. ATTYS MAY SIT AT COUNSEL TABLE ONLY IF THEY H/EOA IN CASE. ETC. C/ATTYS
Document Available (#1061869742) TIFF PDF

05-27-2025 [ORAG]

ORAL ARGUMENT SCHEDULED FOR 06/24/2025

06-05-2025 [TEXT]

ENTRY OF APPEARANCE BY FREDERIC DORWART
Document Available (#1061870682) TIFF PDF

06-10-2025 [TEXT]

RSPNT'S NOTICE TO THE COURT REGARDING ORAL ARGUMENT
Document Available (#1061869503) TIFF PDF

06-10-2025 [TEXT]

PETRS' NOTICE OF ARGUING COUNSEL AND ALLOCATION OF ARGUMENT TIME
Document Available (#1061869531) TIFF PDF

06-17-2025 [TEXT]

JE: I H/BY RECUSE MYSELF ETC. JETT, J. C/ATTYS
Document Available (#1061870043) TIFF PDF

06-17-2025 [TEXT]

JE: ETC, CJ H/BY ASSIGNS HON BELL TO OKLA SUP CT TO SERVE AS SPECIAL JUSTICE IN TH/CASE. C/ATTYS
Document Available (#1061870051) TIFF PDF

06-23-2025 [TEXT]

MOTION TO ASSOCIATION COUNSEL - NATHAN J. MOELKER
Document Available (#1061871712) TIFF PDF

06-24-2025 [TEXT]

JE: MOT TO ASSOC MOELKER AS COUNSEL PRO HAC VICE IN TH/MATTER IS H/BY GRANTED. ETC. C/ATTYS
Document Available (#1061871829) TIFF PDF

06-24-2025 [OAHLD]

ORAL ARGUMENT HELD

09-16-2025 [OPIN]

JE: OPINION---------- INITIATIVE PETITION NO. 448, STATE QUESTION NO. 836 LEGALLY SUFFICIENT FOR GATHERING OF SIGNATURES----------COMBS, J. CONCUR: ROWE, CJ, WINCHESTER, EDMONDSON, COMBS, GURICH, DARBY, JJ. CONCUR IN PART, DISSENT IN PART: KUEHN, VCJ (BY SEP WRITING), KANE, J, BELL, SJ. RECUSED: JETT, J. C/ATTYS PRESS WEST OBJ MDC (2025 OK 56)
Document Available (#1062688122) TIFF PDF

09-16-2025 [TEXT]

JE: KUEHN, VCJ, W/WHOM BELL, SJ, JOINS, CONCURRING IN PART, DISSENTING IN PART ETC. C/SAME AS OPIN (2025 OK 56)
Document Available (#1062688126) TIFF PDF

1062688848

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STEVEN CRAIG MCVAY, AMY CERATO, KENNETH RAY SETTER, And ANTHONY STOBBE, Petitioners, v. JOSH COCKROFT, in his official Capacity as Oklahoma Secretary of State, and GENTNER DRUMMOND, In his official capacity as Oklahoma Attorney General, Respondents.	)	No. 123,179

FILED
SUPREME COURT
STATE OF OKLAHOMA
SEP 15 2025
SELDEN JONES
CLERK

RECEIVED
SEP 17 2025
OKLAHOMA SECRETARY
OF STATE

ORDER

Petitioners' Motion for Stay, Preliminary Injunction, and Other Necessary Interim Relief is denied as to the request that the 90-day signature circulation period for SQ 836 be stayed or suspended.

Petitioners' motion to stay the effectiveness of SB 1027 as to any other state question is denied without prejudice to Petitioners filing a future state question with the Secretary of State.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 15th DAY OF SEPTEMBER, 2025.

CHIEF JUSTICE

ROWE, C.J.; KUEHN, V.C.J.; and WINCHESTER, EDMONDSON, COMBS, GURICH, and DARBY, JJ., concur.

KANE, J., dissents.

JETT, J., recused.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

KENNETH RAY SETTER and ANTHONY STOBBE,

Petitioners,

v.

JOSH COCKROFT, in his official Capacity as Oklahoma Secretary of State, and GENTNER DRUMMOND, In his official capacity as Oklahoma Attorney General,

Respondents.

No. 123,180

ORDER

Petitioners challenge the retroactive application of Senate Bill 1027 ("S.B. 1027" or the "Act") to State Question No. 836, Initiative Petition No. 448 filed with the Secretary of State on January 3, 2025.

The Court assumes original jurisdiction for the purposes of issuing a temporary stay pending the litigation herein. The effectiveness of S.B. 1027 as to State Question No. 836 is hereby stayed. S.B. 1027 shall not be enforced as to State Question No. 836.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 15th DAY OF SEPTEMBER, 2025.

CHIEF JUSTICE

CONCUR: ROWE, C.J, WINCHESTER, EDMONDSON, COMBS, GURICH, DARBY and KANE, JJ.
RECUSED: JETT, J.
NOT VOTING: KUEHN, V.C.J.

2025 OK 56
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

In re INITIATIVE PETITION NO. 448, STATE QUESTION NO. 836:	)	
THE OKLAHOMA REPUBLICAN PARTY and RONDA VUILLEMONT-SMITH,	)	
Protestants/Petitioners,	)	
v.	)	Case No. 123,007
KENNETH RAY SETTER, YVONNE GALVAN, and ANTHONY STOBBE,	)	FOR OFFICIAL PUBLICATION
Proponents/Respondents.	)	

ORIGINAL PROCEEDING TO PROTEST INITIATIVE PETITION

¶ 0 This is an original proceeding to determine the legal sufficiency of Initiative Petition No. 448, State Question No. 836 (hereinafter "IP 448"). IP 448 seeks to repeal Article III, Section 3 of the Oklahoma Constitution that currently governs Oklahoma's primary elections and to create a new primary system in its place under the proposed constitutional amendment that creates Article III-A in the Oklahoma Constitution. According to the Proponents/Respondents' gist, IP 448 "would establish an 'open primary' system" in which "all candidates for a covered office would appear on the same primary ballot without regard to party affiliation, and any qualified voter could vote for any candidate without regard to party affiliation. A voter in the open primary could vote for only one candidate per covered office. The two candidates receiving the most votes in the open primary would advance to the general election, without regard to party affiliation and without regard to whether the candidates have been nominated or endorsed by any political party." Pet'rs' App. at p.A5, Gist. The gist goes on to provide that "[i]n all elections for covered offices, . . . candidates' political party registration or independent status as of the date of candidate filing would appear on the ballot next to their names[,]

and the ballot would state that a candidate's indicated party registration does not imply the candidate is nominated or endorsed by the political party." *Id.* The Protestants/Petitioners filed this protest pursuant to 34 O.S.2024, § 8(B) challenging the facial constitutionality of IP 448 as violating the U.S. Constitution's First Amendment right of association and challenging both the gist and ballot title as misleading. Upon our review, we hold IP 448 is legally sufficient. It survives Petitioners/Protestants' facial constitutional challenge in light of applicable U.S. Supreme Court precedents. Its gist is not misleading, and the challenge to its ballot title is premature.

INITIATIVE PETITION NO. 448, STATE QUESTION NO. 836 IS LEGALLY SUFFICIENT FOR GATHERING OF SIGNATURES

Trevor Pemberton
Pemberton Law Group
Oklahoma City, Oklahoma; and

Benjamin P. Sisney and Nathan J. Moelker
American Center for Law and Justice
Washington, D.C.

For Protestants/Petitioners.

Robert G. McCampbell
GABLEGOTWALS, PC
Oklahoma City, Oklahoma;

Amelia A. Fogleman
GABLEGOTWALS, PC
Tulsa, Oklahoma;

Melanie Wilson Rughani
CROWE & DUNLEVY, P.C.
Oklahoma City, Oklahoma; and

Frederic Dorwart
FREDERIC DORWART, LAWYERS PLLC
Tulsa, Oklahoma

For Proponents/Respondents.

COMBS, J.:

I. FACTS AND PROCEDURAL HISTORY

¶ 1 On January 3, 2025, Kenneth Ray Setter, Yvonne, Galvan, and Anthony Stobbe (hereinafter "Proponents") filed IP 448 with the Secretary of State pursuant to 34 O.S.2024, § 8(A). In compliance with 34 O.S.2024, § 8(B), the Oklahoma Republican Party and Ronda Vuillemont-Smith (hereinafter "Protestants") timely filed this original action to protest the legal sufficiency of IP 448 on April 9, 2025. Protestants challenge the facial constitutionality of IP 448, arguing it violates their First Amendment right of association under the U.S. Constitution and fails to pass strict scrutiny. AAOJ ¶¶ 18–67, at 5–14. Protestants also challenge the gist and ballot title of IP 448 as misleading—particularly insofar as the gist and ballot title both refer to an "open primary" rather than a "blanket primary" and insofar as the gist buries any reference to changes affecting general elections "until well into the text." AAOJ ¶¶ 9–14, 68–73, at 3–4, 14–15.

II. THE PROPOSED MEASURE

¶ 2 As previously indicated, IP 448 would add a new Article III-A to the Oklahoma Constitution, composed of eight sections. Section 1 of IP 448 is captioned "APPLICATION" and spells out the scope of the elections affected by Article III-A. Pet'rs' App. at p.A3, Initiative Petition § 1. It provides that Article III-A "shall govern the process for primary and general elections for . . . statewide

offices, county offices, district attorney, members of the state legislature, and members of the United States Congress," but not elections for "the office of Presidential Elector, municipal offices, judicial offices, school board members, or any other office not specified herein as a 'covered office.'" *Id.* Section 2 is captioned "OPEN PRIMARIES" and spells out a new process for primary elections for covered offices. *Id.*, Initiative Petition § 2(A). Under the new process, all candidates for a covered office—whether affiliated or unaffiliated with, endorsed by, or nominated by a political party—will appear on the same primary ballot that every qualified voter receives. *Id.* Every voter may vote for one candidate appearing on the primary ballot, and the two candidates receiving the most votes will advance to appear on the general election ballot. *Id.*, Initiative Petition § 2(B)–(C). Section 3 is captioned "GENERAL ELECTIONS" and repeats that the top two vote-getters from the primary will advance to the general election ballot, but it also gives the Legislature leave to enact statutes governing exigencies that may arise, such as the death, withdrawal or disqualification of a candidate who has advanced to the general election. *Id.* at A3–A4, Initiative Petition § 3. Section 4 is captioned "THE BALLOT" and specifies that, on ballots for both primaries and general elections, "[c]andidates shall appear . . . in a randomized order" and that "each candidate's political party of registration or independent status as of the date of candidate filing" will be listed next to their names, along with a disclaimer "informing voters that a

candidate's indicated party registration does not imply that the candidate is nominated or endorsed by the political party or that the party approves of or associates with that candidate." *Id.* at A4, Initiative Petition § 4(A)–(B). Section 5 is captioned "REPEALER" and revokes the constitutional amendment to Article III, section 3 of the Oklahoma Constitution adopted in 1978, but preserves provisions therein requiring candidates for the office of Presidential Elector to be either nominated by the recognized political parties at their convention or, if nonpartisan, placed on the ballot by citizens' petition. *Id.*, Initiative Petition § 5(A)–(B). Section 6 of IP 448 is captioned "SEVERABILITY" and provides that in the event any part or provision of the proposed Article III-A is "held void, invalid, or unconstitutional, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions [t]hereof," which "shall continue in full force and effect." *Id.*, Initiative Petition § 6. Section 7 is captioned "MISCELLANEOUS" and specifies that the same procedures governing primary and general elections "shall apply to special elections for covered offices," that any provision of law found inconsistent with Article III-A is "expressly declared null and void," and that "[t]he Legislature may enact legislation to facilitate the operation" of Article III-A but cannot enact any law to "limit, restrict or conflict with the provisions" of Article III-A. *Id.*, Initiative Petition § 7. Finally, section 8 is captioned "EFFECTIVE DATE" and specifies that Article III-A will take effect 90 days after the date of its approval by

the People, but will not apply to any election for which the filing period has already begun prior to the effective date.

¶ 3 The gist and the ballot title for IP 448 are nearly identical. Below is the language of the gist:

> The gist of the proposition is:
>
> This initiative, which would add a new Article 3A to the Oklahoma Constitution, would establish an "open primary system, as set forth therein, for elections for certain offices. In the open primary, all candidates for a covered office would appear on the same primary ballot without regard to party affiliation, and any qualified voter could vote for any candidate without regard to party affiliation. A voter in the open primary could vote for only one candidate per covered office. The two candidates receiving the most votes in the open primary would advance to the general election, without regard to party affiliation and without regard to whether the candidates have been nominated or endorsed by any political party. If only two candidates for a covered office qualify to appear on the ballot, then those candidates would automatically advance to the general election. The legislature could create a procedure to follow if a candidate will not participate in the general election due to death, withdrawal, or disqualification. In all elections for covered offices, candidates, candidates would appear on the ballot in randomized order; candidates' political party registration or independent status as of the date of candidate filing would appear on the ballot next to their names; and the ballot would state that a candidate's indicated party registration does not imply the candidate is nominated or endorsed by the political party. The initiative would repeal Article 3, Section 3 of the Oklahoma Constitution, except that candidates for Presidential Elector would continue to be nominated by the recognized political parties at their conventions, and citizens could by petition continue to place the names of independent candidates on the ballot for that office. The initiative provides for severability and an effective date. Further details are provided in the attached petition.

Pet'rs' App. at p.A5, Gist. For reasons spelled out later in this opinion, the language of Proponents' proposed ballot title does not need to be set forth in its entirety. *See infra*-Part IV.C.

III. STANDARD OF REVIEW

¶ 4 "The first power reserved by the people is the initiative . . . ." Okla. Const. art. V, § 2; *Gaddis v. Moore* (*In re Initiative Pet. No. 420, State Question No. 804*), 2020 OK 9, ¶ 12, 458 P.3d 1088, 1093 (citing *Okla. Grocers Ass'n v. Retail Liquor Ass'n of Okla.* (*In re Initiative Pet. No. 409, State Question No. 785*), 2016 OK 51, ¶ 2, 376 P.3d 250, 252; *OCPA Impact, Inc. v. Sheehan* (*In re Initiative Pet. No. 403, State Question No. 779*), 2016 OK 1, ¶ 3, 367 P.3d 472, 474). With that reservation comes "the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the Legislature, and also reserve power at their own option to approve or reject at the polls any act of the Legislature." Okla. Const. art. V, § 1; *Gaddis*, 2020 OK 9, ¶ 12, 458 P.3d at 1093 (citing *Okla. Grocers Ass'n*, 2016 OK 51, ¶ 2, 376 P.3d at 252; *OCPA Impact, Inc.*, 2016 OK 1, ¶ 3, 367 P.3d at 474). "The right of the initiative is precious, and it is one which this Court is zealous to preserve to the fullest measure of the spirit and the letter of the law." *Gaddis*, 2020 OK 9, ¶ 12, 458 P.3d at 1093 (citing *Okla. Prof'l Econ. Dev. Council, Inc. v. Carpenter* (*In re Initiative Pet. No. 382, State Question No. 729*), 2006 OK 45, ¶ 3, 142 P.3d 400, 403; *Feldman v. Okla. Coal. to Restrict*

Abortion, Inc. (*In re Initiative Pet. No. 349, State Question No. 642*), 1992 OK 122, ¶ 35, 838 P.2d 1, 12). We have repeatedly emphasized both how vital the right of initiative is to the people of Oklahoma, as well as the degree to which we must protect it:

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

Gaddis, 2020 OK 9, ¶ 12, 458 P.3d at 1093 (quoting *OCPA Impact, Inc.*, 2016 OK 1, ¶ 3, 367 P.3d at 474; *Carpenter*, 2006 OK 45, ¶ 3, 142 P.3d at 403).

¶ 5 However, while the fundamental and precious right of initiative petition is zealously protected by this Court, it is not absolute. *Gaddis*, 2020 OK 9, ¶ 13, 458 P.3d at 1093. It is subject to constitutional and statutory limitations. *Bailey v. Carpenter* (*In re Initiative Pet. No. 379, State Question No. 726*), 2006 OK 89, ¶ 17, 155 P.3d 32, 40; *In re Initiative Pet. No. 9 of Okla. City*, 1939 OK 238, ¶ 13, 90 P.2d 665, 669; *Whitson v. City of Kingfisher*, 1936 OK 97, ¶¶ 22–24, 54 P.2d 616, 620–21. Oklahoma statutes permit any citizen to protest the sufficiency and constitutionality of an initiative petition. 34 O.S.2024, § 8(B)–(C); *Gaddis*, 2020 OK 9, ¶ 13, 458 P.3d at 1093 (citing *Okla. Grocers Ass'n*, 2016 OK 51, ¶ 2, 164 P.3d at 252; *Ballard v. First Class Educ. for Okla.* (*In re Initiative Pet. No. 384, State Question No. 731*), 2007 OK 48, ¶ 2, 164 P.3d 125, 127). "Upon such protest, this Court must review the petition to ensure that in complies with the 'parameters

of the rights and restrictions established by the Oklahoma Constitution, legislative enactments, and this Court's jurisprudence.'" *Gaddis*, 2020 OK 9, ¶ 13, 458 P.3d at 1093 (quoting *Ballard*, 2007 OK 48 ¶ 2, 164 P.3d at 127; *Bailey*, 2006 OK 89, ¶ 16, 155 P.3d at 39).

¶ 6 As to initiative provisions being challenged as unconstitutional, this Court has consistently confined our pre-election review under 34 O.S.2024, § 8 to "***clear or manifest facial*** constitutional infirmities." *Gaddis*, 2020 OK 9, ¶ 14, 458 P.3d at 1093 (emphasis added) (quoting *Burrows v. Okla. Best, Inc.* (*In re Initiative Pet. No. 358, State Question No. 658*), 1994 OK 27, ¶ 7, 870 P.2d 782, 785). Accordingly, the Petitioners in this matter bear the burden of demonstrating the proposed initiative petition contains clear or manifest facial constitutional infirmities. *Id.* ¶ 14, 458 P.3d at 1094 (citing *OCPA Impact, Inc.*, 2016 OK 1, ¶ 3, 367 P.3d at 474; *Barby v. Oklahomans for Prop. Tax Reform* (*In re Initiative Petition No. 362, State Question No. 669*), 1995 OK 77, ¶ 12, 899 P.2d 1145, 1151).

¶ 7 Regarding challenges to the sufficiency of the gist, the relevant yet brief statutory provision is found in title 34, section 3 of the Oklahoma Statutes:

> . . . A simple statement of the gist of the proposition shall be printed on the top margin of each signature sheet.[1]

---

[1] This has been the language governing the gist from its inception in 1985 until May of this year. The Oklahoma Legislature amended section 3 this legislative session to add numerous requirements for the gist and made their amendment effective by emergency on May 23, 2025. S.B. 1027, 60th Leg., 1st Reg. Sess. § 1 (Okla. 2025) (to be codified at 34 O.S.2025, § 3). Arguably, the provisions of this amendment do

34 O.S.2024, § 3. This provision regarding a "gist" has been part of Oklahoma's initiative petition process since only 1985. *Ballard*, 2007 OK 48 ¶ 5, 164 P.3d at 128. *See generally* Act of July 23, 1985, ch. 288, § 1, 1985 Okla. Sess. Laws 1248, 1248.

¶ 8 Despite the brevity of its language and its existence, over the past forty years this Court has generated a considerable body of jurisprudence that fleshes out the statutory requirement of a gist. In our first batch of cases reviewing the gists of several initiative petitions filed in 1990, we observed that the gist, a/k/a "[t]he statement on the Petition[,] should be sufficient that the signatories are at least put on notice of the changes being made." *In re Initiative Petition No. 342, State Question No. 628*, 1990 OK 76, ¶ 14, 797 P.2d 331, 334. We also held that section 3 "limit[s] the [initiative petition] process to the extent that the statement on the petition . . . must be brief, descriptive of the effect of the proposition, not deceiving but informative and revealing of the design and purpose of the petition" in order "to prevent deception in the initiative process." *In re Initiative Petition No. 344, State Question No. 630*, 1990 OK 75, ¶ 14, 797 P.2d 326, 330. In subsequent opinions, we stated that the explanation of the effect on existing law need not extend to

---

not apply to IP 448, as its effective date falls after the date Proponents filed IP 448 with the Secretary of State and after the date Protestants filed this original action. *See In re State Question No. 832, Initiative Pet. No. 446*, 2024 OK 60, ¶ 3, 558 P.3d 19, 20; *see also id.* ¶ 1, 558 P.3d at 20–21 (Combs, J., concurring specially).

describing policy arguments for or against the proposal. *Ballard*, 2007 OK 48, ¶ 8, 164 P.3d at 129 (citing *Parker v. S.T.O.P. New Taxes* (*In re Petition No. 347, State Question No. 639*), 1991 OK 55, ¶ 23, 813 P.2d 1019, 1029–30). The gist "need only convey the practical, not the theoretical, effect of the proposed legislation," and it is "not required to contain every regulatory detail so long as its outline is not incorrect." *Okla. Grocers Ass'n*, 2016 OK 51, ¶ 3, 376 P.3d at 252 (quoting *Ballard*, 2007 OK 48, ¶ 7, 164 P.3d at 129). "The purpose of" section 3's limitations on the gist "is to prevent deceit and fraud." *In re Initiative Petition No. 342*, 1990 OK 76, ¶ 11, 797 P.2d at 333. "We will approve the text of a challenged gist if it is 'free from the taint of misleading terms or deceitful language.'" *Okla. Grocers Ass'n*, 2016 OK 51, ¶ 3, 376 P.3d at 252 (quoting *Ballard*, 2007 OK 48, ¶ 9, 164 P.3d at 129). But when statutes have been promulgated to prevent deceit and fraud, "the provisions are indispensable and noncompliance is fatal." *In re Initiative Petition No. 342*, 1990 OK 76, ¶ 11, 797 P.2d at 333 (emphasis added) (citing *Cmty. Gas & Serv. Co. v. Walbaum*, 1965 OK 118, ¶ 8, 404 P.2d 1014, 1016). Thus, "the only remedy is to strike the petition from the ballot" because "[t]he gist is not subject to amendment by this Court." *Newberry v. Moore* (*In re Initiative Petition No. 420, State Question No. 804*), 2020 OK 10, ¶ 11, 458 P.3d 1080, 1086 (citing *Okla. Grocers Ass'n*, 2016 OK 51, ¶ 7, 376 P.3d at 254). *But see Tay v. Green*, 2022 OK 38, ¶¶ 17–18, 509 P.3d 615, 622–23 (utilizing a severability clause in the initiative

petition to sever portions of a gist that did not adequately describe all that Section 5 of the initiative petition did and to strike the entirety of Section 5 based on a finding "the proposition would not be defeated without Section 5," and then determining that the remaining gist was legally sufficient such that the initiative petition could proceed to the signature collection phase).

¶ 9 For reasons that will become clear later, the standard for review relating to ballot titles does not need to be recited at this juncture. *See infra*-Part IV.C.

IV. ANALYSIS

A. IP 448 Does Not Violate the U.S. Constitution's First Amendment Right of Association

¶ 10 Protestants primarily challenge the facial constitutionality of IP 448, arguing it is unconstitutional insofar as it violates the U.S. Constitution's First Amendment right to associate and fails to pass strict scrutiny. AAOJ ¶¶ 18–67, at 5–14. Before delving into the specifics of their argument, we need to unpack their statement that the First Amendment contains a right of association and familiarize ourselves with some U.S. Supreme Court precedents regarding that right in relation to primary elections.

¶ 11 The text of the First Amendment in the Bill of Rights states, "Congress shall make no law respecting an establishment of Religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of

grievances." U.S. Const. amend. I. The text itself does not mention the word "associate" or "association." Nevertheless, U.S. Supreme Court precedent recognizes that the First Amendment rights to expression and assembly give rise to a right of association, particularly when it comes to association within a political party in light of the Fifteenth Amendment right to vote. *See Williams v. Rhodes*, 393 U.S. 23, 30–31 (1968). Thus, "freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments," and "[t]he right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Kusper v. Pontikes*, 414 U.S. 51, 56–57 (1973) (citations omitted); *accord Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000); *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214 (1986); *Democratic Party of the U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 121–22 (1981). The freedom to associate "necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only," *La Follette*, 450 U.S. at 122, which "is to say, a corollary of the right to associate is the right not to associate," *Jones*, 530 U.S. at 574.

¶ 12 States are generally granted broad power to control the election process for state offices, as states have a substantial interest in the manner in which elections are conducted. *See La Follette*, 450 U.S. at 126. The State's power, however, is not

absolute and may not be exercised in a manner which violates the Constitution. Specifically, the State must observe the limits established by the First Amendment rights of its citizens, including the freedom of political association. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008). In this regard, "[e]lection regulations that impose a severe burden on associational rights are subject to strict scrutiny" and will be upheld only if a compelling state interest can justify a narrowly tailored limitation of First Amendment freedoms. *Id.* On the other hand, "[i]f a statute imposes only modest burdens, . . . then 'the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions' on election procedures. *Id.* at 452 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)). The U.S. Supreme Court has "repeatedly upheld reasonable, politically neutral regulations that have the effect of channeling expressive activity at the polls." *Id.* (quoting *Burdick v. Takushi*, 504 U.S. 428, 438 (1992)).

¶ 13 There are three relevant U.S. Supreme Court precedents concerning state regulation of primary elections that implicates the right to associate.

¶ 14 In *Democratic Party of the United States v. Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981), the charter of the National Democratic Party was at odds with Wisconsin election laws with respect to choosing delegates. The National Democratic Party's charter provided that delegates to its national convention were

to be chosen in a procedure where only Democrats could participate, whereas Wisconsin law allowed delegates to be chosen through a process in which voters did not declare their party affiliation—meaning any voter could vote in the democratic primary, and chosen delegates were bound to vote for the nominee in accordance with the open primary results. *Id.* at 109. Wisconsin sought declaratory relief and prevailed in the state court system, but on certiorari the U.S. Supreme Court held that the freedom of association necessarily presupposes the freedom to identify those who constitute the association, and a "political party's choice among the various ways of determining the makeup of a state's delegation to the party's national convention is protected by the Constitution." *Id.* at 124.

¶ 15 In *California Democratic Party v. Jones*, 530 U.S. 567 (2000), the Court addressed California's change in selection of party nominees from a closed primary to a "blanket" primary in which each voter's ballot (regardless of party) listed every candidate regardless of party affiliation and in which voters could choose freely among all candidates. The candidate of each party with the most votes would be chosen as that party's nominee for the general election. In an 7-2 opinion authored by Justice Antonin Scalia, the Supreme Court recognized that states have a major role in the election process—including structuring the primaries—but that, when a state regulates the political party's "internal processes," the state must abide by the Constitution. *Id.* at 572-73. The Court stated: "In no area is the political

association's right to exclude more important than in the process of selecting its nominee." *Id.* at 575. The Court found that the blanket primary system violated these principles, because of the prospect of having a nominee determined by voters of the opposite party and those with opposite views. *See id.* at 578. The Court further found that California's articulated compelling interests of producing elected officials who better represent the electorate, of expanding candidate debate beyond the scope of partisan concerns, of ensuring minority voters the right to enjoy an effective vote, of promoting fairness, of affording greater choice to voters, of increasing voter participation, and of protecting privacy were not narrowly tailored to further these interests. *See id.* at 585.

¶ 16 In doing so, the Court observed California could further these interests without burdening a party's First Amendment rights by conducting what it called a "nonpartisan blanket primary," where the state would determine the qualifications of the candidates and then:

> Each voter, regardless of party affiliation, may then vote for any candidate, and the top two vote getters (or however many the State prescribes) then move on to the general election. This system has all the characteristics of the partisan blanket primary, save the constitutionally crucial one: Primary voters are not choosing a party's nominee. Under a nonpartisan blanket primary, a State may ensure more choice, greater participation, increased "privacy," and a sense of "fairness"—all without severely burdening a political party's First Amendment right of association.

Id. at 585-86 (emphasis added).

¶ 17 In *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008), Washington had initially adopted a "blanket" primary system nearly identical to the system deemed unconstitutional in *Jones*. After the U.S. Court of Appeals invalidated Washington's first system in light of the U.S. Supreme Court's holding in *Jones*, Washington voters passed an initiative petition (I-872) adopting a primary system much like the one described in *Jones*'s dictum, providing:

> That candidates for office shall be identified on the ballots by their self-designated "party preference"; that voters may vote for any candidate; and that the two top votegetters for each office, regardless of party preference, advance to the general election.

Id. at 444. The State Republican Party challenged the law, arguing it violated the Party's associational rights "by usurping its right to nominate its own candidates and by forcing it to associate with candidates it does not endorse." *Id.* at 448. In a 7-2 opinion authored by Justice Clarence Thomas, the U.S. Supreme Court rejected this argument as flawed. After discussing the precedential tenets relating to the constitutional protection of political associational rights, the Court held the initiative did not impose a severe burden on the Party because, unlike the California law struck down in *Jones*, the Washington initiative "does not, by its terms, choose the parties' nominees." *Id.* at 453. "The essence of nomination—the choice of a party representative—does not occur under I-872" because "[t]he top two candidates from the primary election proceed to the general election regardless of their party preferences." *Id.* Because the initiative did not impose any severe burden on the

Party's associational rights, the Court reasoned, Washington need not assert a compelling state interest, and its interest in providing voters with relevant information about candidates was "easily sufficient" to uphold the initiative as consistent with the First Amendment. *Id.* at 458.

¶ 18 Protestants want to liken this case to *Jones* and distinguish *Washington State Grange*. They attempt to do so by arguing that, whereas *Washington State Grange* approved I-872's requirement that the ballot list "party preference" next to the candidates' names, IP 448 requires the ballot to list "party registration," which Protestants contend is the same as "party association" and "affiliation." AAOJ ¶¶ 54–55, at 11. Protestants further argue that IP 448 undermines their political party's message and forces the Republican Party of Oklahoma "to embrace views (and, here candidates) it does not wish to embrace." *Id.* ¶ 32, at 7. Finally, Protestants argue that candidates who proceed to the general election "effectively becom[e] a *de facto* party nominee without the party's consent and without regard to its platform." *Id.* ¶ 53, at 11.

¶ 19 Regarding the first argument, there's no meaningful difference between "party registration" and "party preference." Protestants' latter two arguments were advanced by the Washington Republican Party in the *Washington State Grange* case and squarely rejected. 552 U.S. at 452–54. IP 448 does not refer to candidates as nominees, it does not treat them as such, and the top two candidates proceed to the

general election without regard to party affiliation. Moreover, we have faith in Oklahoma's electorate to read the disclaimer required by Section 4 of IP 448, much like the U.S. Supreme Court had faith in Washington's electorate to know the difference between a candidate's party preference and party endorsements. *See Washington State Grange*, 552 U.S. at 454.

¶ 20 *Washington State Grange* remains directly on point. IP 448 does not impose any severe burden on Protestants' associational rights. Proponents' asserted interests in allowing independent voters to participate, in electing the most popular candidates, in gaining efficiency, in increasing voter participation and turnout, in providing voters with greater choice, and in promoting fairness is sufficient to pass constitutional muster. We do not find any clear or manifest facial constitutional infirmities in the proposed measure. We therefore deem IP 448 legally sufficient with respect to Protestants' pre-election constitutional challenge.

B. IP 448's Gist Is Not Misleading.

¶ 21 Protestants set forth two arguments for why they believe the suggested ballot title and gist are misleading. For reasons discussed below, *see infra* Part IV.C, we need not consider such arguments with respect to the ballot title at this stage.

¶ 22 First, they argue the gist "mislead[s] the reader about IP 448's nature" because it "frame[s] IP 448 as creating a so-called 'open' primary system" when in reality IP 448 "creates a 'blanket primary' variant." Protestants' Br. in Supp. 2, 13;

see also AAOJ ¶¶ 9, 68, at 3, 14 (containing nearly identical language). Protestants provide us with quotations from U.S. Supreme Court precedents that define that term and contrast it with an open primary:

> A "'blanket primary' refers to a system in which 'any person, regardless of party affiliation, may vote for a party's nominee.'" *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 445 n.1 (2008) (quoting *Cal. Democratic Party v. Jones*, 530 U.S. 567, 576 n.6 (2000)). To be clear, "[a] blanket primary is distinct from an 'open primary,' in which a person may vote for any party's nominees, but must choose among that party's nominees for all offices." *Id.* (citation omitted).
>
> . . . .
>
> In a true open primary, "all registered voters may choose in which party primary to vote," then that voter may only vote among that party's candidates in that election. *Tashjian v. Republican Party*, 479 U.S. 208, 222 n.11 (1986). IP 448 is not that. Instead, IP 448 provides that a voter would receive a single ballot and that "all candidates for a covered office would appear on the same primary ballot without regard to party affiliation, and any qualified voter could vote for any candidate without regard to party affiliation." Suggested Ballot Title, IP 448; (App. A-3 (emphasis added).

Br. in Supp. 2–3; AAOJ ¶¶ 9, 11, at 3–4. Protestants argue that the "'open primary' system" referenced in the first sentence of the gist "does not meet the U.S. Supreme Court's definition of an open primary." Br. in Supp. 3; AAOJ ¶ 13, at 4. Protestants conclude that Proponents use of "open primary" to describe a "blanket primary" is "mislead[ing] [to] the reader about IP 448's nature." Br. in Supp. 13; AAOJ ¶ 68, at 14.

¶ 23 Proponents respond by arguing that Protestants "rely solely on the fact that the Supreme Court has used the term [i.e., "open primary"] 24 years ago [i.e., in the case of *California Democratic Party v. Jones*, 530 U.S. 567 (2000),] to describe a system that differs from IP 448. But voters need not refer to any external source because the gist (and the attached petition) fully explains the IP 448 process." Resp'ts' Br. in Opp'n 14 (citation and footnote omitted). Proponents contend that the term "open primary" has been used to describe primary systems like that proposed in IP 448, as demonstrated in several cases from Alaska, California, and Idaho. *Id.* at 14 n.11 (citing *Kohlhaas v. State*, 518 P.3d 1095, 1105 (Alaska 2022); *Rubin v. Padilla*, 183 Cal. Rptr. 3d 373, 383 (Ct. App. 2016); *Field v. Bowen*, 131 Cal. Rptr. 3d 721, 724 (Ct. App. 2011); *Idahoans for Open Primaries v. Labrador*, 533 P.3d 1262, 1268 (Idaho 2023)).

¶ 24 We find the gist is not misleading insofar as it uses the term "open primary" to describe a primary system that the U.S. Supreme Court has previously labeled a "non-partisan blanket primary." The primary system being proposed is sufficiently described in detail within the gist. Potential signatories who read the gist should not be confused or misled by any label. The Proponents could choose any label they want, so long as their gist proceeds to define what they mean by that term. Here, they've chosen the label "open primary," and their gist proceeds to define exactly what they mean by that term.

¶ 25 Second, Protestants argue the gist is misleading because it "fail[s] to clearly state IP 448's changes to the general election ballot," or at least doesn't do so until "well into the text." Br. in Supp. 13; AAOJ ¶¶ 68, 71–72, at 14–15.

¶ 26 Proponents respond that the gist clearly informs the reader about the impact on general elections in its fourth sentence: "The two candidates receiving the most votes in the open primary would advance to the general election without regard to party affiliation and without regard to whether the candidates have been nominated or endorsed by any political party." Resp'ts' Br. in Opp'n 14–15. They contend this explanation is explicit and "far from 'buried.'" *Id.* at 15. We agree with Proponents that the gist makes it clear IP 448 makes changes to the general election ballot. Consequently, the gist is not misleading and is therefore legally sufficient.

C. Protestants' Challenge to the Ballot Title is Premature.

¶ 27 Protestants argue the ballot title is misleading for the same two reasons they believe the gist is misleading. We find any challenge to the ballot title at this stage of the process is premature.

¶ 28 In 2015 the Legislature amended 34 O.S.2011, §§ 8, 9, and 10 to specify that the ballot title review should take place **after** the signature-gathering phase. For example, section 8 was amended, in part, as follows:

> Section 8. A. When a citizen or citizens desire to circulate a petition initiating a proposition of any nature, whether to become a

statute law or an amendment to the Constitution, or for the purpose of invoking a referendum upon legislative enactments, such citizen or citizens shall, when such petition is prepared, and before the same is circulated or signed by electors, file a true and exact copy of same in the office of the Secretary of State and shall at the same time file a separate ballot title, which shall not be part of or printed on the petition.

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

. . . .

~~H.~~ I. Upon order of the Supreme Court it shall be the duty of the Secretary of State to forthwith cause to be published, in at least one newspaper of general circulation in the state, a notice of the filing of the "signed petitions" and the apparent sufficiency or insufficiency thereof, and shall also publish the text of the ballot title as reviewed and approved or, if applicable, as rewritten by the Attorney General pursuant to the provisions of subsection D of Section 9 of this title and notice that any citizen or citizens of the state may file an objection to the count made by the Secretary of State, by a written notice to the Supreme Court and to the proponent or proponents filing the petition. Any such objection must be filed within ten (10) business days after publication and must relate only to the validity or number of the signatures or a challenge to the ballot title. A copy of the objection to the count or ballot title shall be filed with the Supreme Court, the Attorney General and the Secretary of State~~, and notice shall also be given to the Secretary of State~~.

Act of Mar. 9, 2015, ch. 193, § 4, 2015 Okla. Sess. Laws 635, 637–38 (codified at 34 O.S.Supp.2015, § 8). The amendment to subsection (A) makes it clear that the ballot title is not "part of or printed on the petition." The amendment to subsection (B) makes it clear that a protest "as to the ballot title as provided in Section 10 of this title" is no longer part of the pre-circulation protest discussed in that subsection, and the amendment to subsection (I) makes it clear that a challenge to the ballot title—whether it be the proponent's proposed ballot title or the Attorney General's rewritten ballot title—is now part of the post-circulation protest discussed in that subsection. The same is borne out by the language of the 2015 amendment to section 10: "Any person who is dissatisfied with the wording of a ballot title may, within ten (10) business days after the same is published by the Secretary of State as provided for in subsection ~~B~~ I of Section 8 of this title, appeal to the Supreme Court by petition in which shall be offered a substitute ballot title for the one from which the appeal is taken. . . ." ch. 193, § 6, 2015 Okla. Sess. Laws at 640 (codified at 34 O.S.Supp.2015, § 10(A)).

¶ 29 These amendments served as the basis for our observation in *Oklahoma Grocers Association v. Retail Liquor Association of Oklahoma* (*In re Initiative Petition No. 409, State Question No. 785*), 2016 OK 51, 376 P.3d 250, that "the ballot title review process, and any challenge to the ballot title, must now statutorily come after the circulation period pursuant to § 8," 2016 OK 51, ¶ 4 n.10, 376 P.3d

at 253 n.10, and as the basis for our finding in *Tay v. Malone* (*In re State Question No. 813, Initiative Petition No. 429*), 2020 OK 79, 476 P.3d 471, that the protestant's "challenge to the ballot title [wa]s premature," 2020 OK 79, ¶ 8, 476 P.3d at 473. Our determination that pre-circulation review of the ballot title is premature is particularly justified insofar as the ballot title is subject to revision after circulation. *See* 34 O.S.2024, § 9(D) (giving the Attorney General the power to review the proponent's proposed ballot title "as to legal correctness . . . . and, if necessary, within ten (10) business days of determining that the proposed ballot title is defective, [to] prepare and file a ballot title which complies with the law"); *id.* § 8(I) (acknowledging the Attorney General's ability to rewrite the ballot title); *id.* § 10(A) (giving the Supreme Court, contingent upon an appeal being filed by a protestant, the power to "correct or amend the ballot title before the court, or [to] accept the substitute suggested, or . . . [to] draft a new one which will conform to the provisions of Section 9 of this title"). Protestants' challenge to the ballot title of IP 448 is premature.

V. CONCLUSION

¶ 30 The People's right to propose law and amendments to the Oklahoma Constitution through the initiative process is precious, and any doubt as to the legal sufficiency of an initiative petition should be resolved in its favor. Protestants have not met their burden to prove IP 448 contains any clear or manifest facial

constitutional infirmities. Nor have they demonstrated the gist is misleading. Their challenge to the proposed ballot title is premature at this stage. We therefore hold, on these grounds, that IP 448 is legally sufficient for submission to the People of Oklahoma for signatures.

INITIATIVE PETITION NO. 448, STATE QUESTION NO. 836 IS LEGALLY SUFFICIENT FOR GATHERING OF SIGNATURES

ROWE, C.J., and **WINCHESTER, EDMONDSON, COMBS, GURICH,** and **DARBY, JJ.**, concur.

KUEHN, V.C.J. (by separate writing); **KANE, J.**; and **BELL, S.J.**, concur in part and dissent in part.

JETT, J., recused.

2025 OK 56

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

In Re INITIATIVE PETITION NO. 448, STATE QUESTION NO. 836:	)	
THE OKLAHOMA REPUBLICAN PARTY and RONDA VUILLEMONT-SMITH,	)	
Protestants/Petitioners,	)	
v.	)	No. 123,007
KENNETH RAY SETTER, YVONNE GALVAN, and ANTHONY STOBBE,	)	**FOR OFFICIAL PUBLICATION**
Proponents/Respondents.	)	

FILED
SUPREME COURT
STATE OF OKLAHOMA
SEP 16 2025
SELDEN JONES
CLERK

RECEIVED
SEP 17 2025
OKLAHOMA SECRETARY
OF STATE

KUEHN, V.C.J., with whom BELL, S.J., joins, CONCURRING IN PART, DISSENTING IN PART:

¶ 1 I agree with the Majority that Initiative Petition 448 should go to a vote of the people. I disagree with the decision to determine whether the Petition itself violates the Oklahoma Constitution.

¶ 2 In *State Chamber of Oklahoma v. Cobbs* I explained that Title 34 and the Oklahoma Constitution, read together, do not give this Court the authority to determine the constitutionality of the merits of any initiative petition before it is put to a vote of the people. *State Chamber of Oklahoma v. Cobbs*, 2024 OK 13, ¶¶ 3-5, 545 P.3d 1216, 1216-17 (Kuehn, J., concurring in part and dissenting in part). In that separate opinion I traced this Court's shifting jurisprudence. In 1910 we concluded that, under the Oklahoma

Constitution, we should not interfere with the initiative petition process before a petition was put to a vote. *Id.* ¶ 3, 545 P.3d at 1216. In 1975, we decided we could intervene where a determination of constitutionality on the merits "could prevent a costly and unnecessary election." *Id.*, *quoting In re Supreme Court Adjudication of Initiative Petitions in Norman, Okla. Numbered 74-1 and 74-2*, 1975 OK 36, ¶ 19, 534 P.2d 3, 8. In 1992, we suggested such a review would be appropriate where the provisions were not severable. *Id.*, *quoting In re Initiative Petition No. 347, State Question No. 639*, 1991 OK 55, ¶ 25, 813 P.2d 1019, 1030-31. And we have stated our review is confined to "clear or manifest facial constitutional infirmities." *In re Initiative Petition No. 358, State Question No. 658,* 1994 OK 27, ¶ 7, 870 P.2d 782, 785-86. As I discussed in *Cobbs*, this self-imposed limitation is remarkably poorly defined in our cases. *Cobbs*, 2024 OK 13, ¶¶ 9-10, 545 P.3d at 1218 (Kuehn, J., concurring in part and dissenting in part). I concluded that, in these cases, a majority of this Court simply wanted to decide the constitutional issue before voters ever saw it. *Id.* ¶ 13, 545 P.3d at 1219.

¶ 3 Article 2, Section 1 of the Oklahoma Constitution's Bill of Rights provides:

> All political power is inherent in the people; and government is instituted for their protection, security, and benefit, and to promote their general welfare; and they have the right to alter or reform the same whenever the public good may require it: Provided, such change be not repugnant to the Constitution of the United States.

Okla. Const. art. 2, § 1. That is, the default position is that the people may generally propose and vote on changes in statutes and the Constitution – the

mechanisms of government. I believe this Court has lost its way because it misunderstands the requirement that any petition put forward by the people not be repugnant to the Constitution. And that misunderstanding led this Court to manufacture its "clear and manifest" standard, which is neither stated nor implied in the constitutional language quoted above.

¶ 4 What does it mean, to be repugnant to the Constitution? Repugnant is a very strong word, now "relatively rare in legal discourse." Noah Feldman, *The Voidness of Repugnant Statutes: Another Look at the Meaning of Marbury*, 148 Proc. Am. Phil. Soc'y 27, 31 (2004). Colloquially, we might think something repugnant is unpleasant or offensive. However, as a legal term of art its meaning is very different. A statute or provision is repugnant if it is "Inconsistent or irreconcilable with; contrary or contradictory to. . . . '[N]ot legally and logically possible of existing simultaneously.' " *Repugnant*, Black's Law Dictionary (12th Ed. 2024) (quoting *McElrath v. Georgia*, 601 U.S. 87 (2024)). This applies to clauses within the same document or two documents compared to one another. For centuries "repugnant" has been used in English law to describe situations where laws were contrary, where there was a problematic relationship between laws, and especially where a law was problematic in relation to already controlling law. Mary Sarah Bilder, *The Corporate Origins of Judicial Review*, 116 Yale L.J. 502, 513 (2006).

¶ 5 How can this Court decide whether a proposal is repugnant to the Constitution? Justice Opala of this Court described the circumstances under which we might find a law repugnant:

> Only in the clearest case of *firmly settled* and *stable* federal constitutional jurisprudence that absolutely condemns the proposed measure as facially impossible of enforcement, application or execution - and then *only* if the protestants have standing to complain of constitutional infirmity - would this court ever be justified in not clearing an initiative petition for submission to a vote of the people.

In re Initiative Petition No. 349, State Question No. 642, 1992 OK 122, ¶ 1, 838 P.2d 1, 19 (Opala, C.J., dissenting). I agree in part, but I believe we should not base our decision in comparison with *jurisprudence*, but with the language of the Constitution itself. I thus disagree with the Majority's assumption that controlling Supreme Court case law—favorable or unfavorable—should determine whether an initiative petition may be put to a vote. Article 2, Section 1 does not refer to legal decisions, but to the language of the Constitution itself.

¶ 6 The mere fact that a Petition opposes or contradicts case law does not show that it is repugnant. Supreme Court opinions are themselves works in progress. Jurisprudence is seldom definitive. Any given case may interpret a constitutional provision, but those interpretations are subject to the courts making them. They may change over time. *Compare, e.g., Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) and *Roe v. Wade*, 410 U.S. 113

(1973). An opinion, or a series of opinions, may focus on developing legal theory. For any given theory, for any specific holding or legal finding, there will remain unlitigated theories and claims which, when subsequently raised, may prompt different legal interpretations and different results. Or a case may be decided purely on *stare decisis* grounds, leaving open the possibility that a future court may choose a different path. Case law is inherently malleable and cannot guide us to determine whether a proposal is repugnant to the Constitution.

¶ 7 Here's an example from this Court. In 1992, this Court found that Initiative Petition No. 349, restricting a woman's right to abortion, was unconstitutional in light of a United States Supreme Court ruling.[1] *In re Initiative Petition No. 349*, 1992 OK 122, ¶ 35, 838 P.2d at 12. The petition was found invalid and struck from the ballot. *Id*. However, Justice Wilson, joined by Chief Justice Opala in dissent, found that it violated the separation of powers doctrine for this Court to exercise judicial power in order to "interfere with the legislative process invoked by the initiative petition." *Id*., 1992 OK 122, ¶ 5, 838 P.2d at 16 (Wilson, J., dissenting). She stated, "If the people have secured sufficient, valid signatures of the registered electorate of this state to invoke their highest order of legislative power, then the people have a constitutional right to complete their legislative process by voting on

[1] Just thirty years later, this Court found legislation partially restricting abortion constitutional in light of a different United States Supreme Court ruling. *Oklahoma Call for Reproductive Justice v. Drummond*, 2023 OK 24, ¶ 16, 526 P.3d 1123, 1132.

Initiative Petition No. 349, State Question No. 642.14. Submitting the petition to the people is not the 'easy course', it is the only constitutional course." *Id.* at ¶ 7, 838 P.2d at 18 (Wilson, J., dissenting) (footnote omitted). Chief Justice Opala also wrote separately, noting that the Court's decision amounted to "impermissible restraint on the free exercise of political speech." *Id.*, 1992 OK 122, ¶ 1, 838 P.2d at 19 (Opala, C.J., dissenting). Under our Constitution the people have the right to propose a law, in order to express their views or wishes, even if that proposal is unconstitutional under the current law. As Justice Hodges said, "the people have a constitutional right to vent their anger and frustration through the initiative process in an effort to effect change in their government." *Id.*, 1992 OK 122, ¶ 1, 838 P.2d at 14 (Hodges, V.C.J., dissenting).

¶ 8 This Court's decision to consider the Petition's constitutionality in this case oversteps our role. It is of course the province of the courts to interpret the laws and the Constitution—to say what the law is. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). But first, there must be a law to interpret. In Oklahoma, laws are made by the Legislature and approved by the Governor. Okla. Const. art 5, § 7, art. 6, § 11. Or, under Article 2 Section 1, the people acting as a legislature may alter or reform the law. Specifically, the "first power reserved by the people is the initiative. . . ." Okla. Const. art. 5, § 2. The people may both propose laws and constitutional amendments, and "enact or reject the same at the polls." Okla. Const. art. 5, § 1. Until a measure

is actually enacted, either through legislation or at the polls, this Court has no business declaring whether it is legal.

¶ 9 Why is this important? Article 2, Section 1 reserves all political power to the people. If this means anything, then the people must be free to exercise that power by proposing changes to the law. When this Court steps in (as it does here) before signatures are even gathered, it mandates the outcome of the initiative petition process before it can truly begin. This Court is deciding the "case" before there is a case, before there is even a law. The people of the state may choose to propose a law that would contradict controlling case law; nothing in Section 1 prohibits them from doing so. Should such a measure be put to a vote and pass, and be challenged in court, this Court might ultimately conclude the resulting law could not stand. However, that has nothing to do with the people's right to vote on it.

¶ 10 This Court may only ask whether the Petition directly contradicts or opposes specific language found in the Constitution. I cannot find that it does. To be contradictory, inconsistent or in opposition requires a specificity of language just not present here. Say the people proposed a constitutional amendment, or a law, prohibiting women from voting. This would directly contradict the Nineteenth Amendment, which specifically provides that the right to vote shall not be denied or abridged on account of sex. U.S. Const. amend. XIX. What if the people proposed to create a state-run institution of slavery? This could not legally and logically exist with the provisions forbidding

slavery found in the Thirteenth Amendment. U.S. Const., amend. XIII. If the people propose legislation restricting voting rights only to people whose skin color is within a particular range of colors found in the current Pantone SkinTone Guide? That would oppose the Fifteenth Amendment's stricture against denying or abridging the right to vote based on color. U.S. Const. amend XV. Denying the right to vote to people over age 70? Inconsistent with the Twenty-Sixth Amendment. U.S. Const., amend. XXVI. Prohibiting the manufacture, sale, or transportation of intoxicating liquors within the United States or any state therein, or their importation or exportation? That is, what if the People tried by legislation to recreate the Eighteenth Amendment? That would violate the Twenty-First Amendment, which repealed that very provision. U.S. Const., amend. XXI.

¶ 11 These all seem like simple, even obvious, examples. But the point is that we can't make that kind of comparison here. Is it possible to write a law, similar to the Petition, which could be said to violate the First Amendment's language? Certainly, and the Supreme Court has held that various states have done so. Is it possible to write a law, similar to the Petition, which does not violate that language? Again, certainly, and the Supreme Court has so held. Both parties rely on these Supreme Court cases to support their positions. That fact tells me that the Petition cannot be either consistent or inconsistent with the First Amendment based on the constitutional language

alone. And if it cannot, then this Court cannot find that it is repugnant to the Constitution.

¶ 12 I agree the Petition should go to a vote of the people. I believe it is premature for this Court to intervene in the process. For this reason I dissent to that part of the opinion which determines the Petition's constitutionality.

Benjamin M. Lepak
Secretary of State

J. Kevin Stitt
Governor

OKLAHOMA SECRETARY OF STATE

October 8, 2025

Kenneth Ray Setter
2452 E. 49TH ST.
Tulsa, OK 74105

Yvonne Galvan
3131 SW 89th, St. Apt. 4206
Oklahoma City, OK 73159

Anthony Stubbe
4852 Hillcrest Lane
Edmond, OK 73025

Sent via email and regular USPS mail

Dear Proponent(s):

Per 34OS (eff. as of 11/2024), and Supreme Court Order 2025 OK 56, filed September 16, 2025, on behalf of SC case no. 123007, official notice is hereby given that the **signature gathering period for State Question 836, Initiative Petition 448 is set to begin October 29, 2025**, and all signatures are due within ninety (90) days of the date set. Signatures will not be accepted for filing after 5:00 p.m. **on the ninetieth day**, **Monday, January 26, 2025**. The current signature requirement for amendments or additions to the Oklahoma Constitution is **172,993**.

Prior to your organization's circulation of the petition, please carefully review the state's applicable instructions and guides (attached). Following the instructions and guides as closely as possible will help to ensure efficient signature verification processing times.

Attachments:

1. **An exact copy (PDF format) of the official IP446 petition pamphlet for circulation**
2. **Instructions for Mass Printing an Official Statewide Petition Pamphlet.**
3. **Instructions for Filling Out and Completing a Statewide Signature Sheet and Accompanying Circulator Affidavit Page.**

4. **Weblink to the State's video containing instructions on how to properly fill out and complete the statewide petition signature sheet, (weblink: https://youtu.be/2gl2hDPEXHo)**
5. **A copy of the current signature requirements for statewide petitions as certified by the Secretary of the Oklahoma State Election Board.**

VERY IMPORTANT NOTE: Prior to your organization mass printing the petition pamphlet, please submit 3 samples of the signature sheet, to the SOS office, for testing with the State's electronic verification system. This will ensure that the signature sheets produced by your organization's professional offset printer can be accurately scanned and read by the State's electronic verification system during the signature count. Samples may be mailed in or delivered to our office in person.

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

Thank you,

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

Cc: Crowe & Dunlevy (Melanie Rughani)
Gable Gotwals Counsel (Rober McCampbell)

State Question No. 836, Initiative Petition No. 448

WARNING

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

FILED
January 3, 2025
Secretary of State
State of Oklahoma

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 amendment to the Constitution shall be submitted to the legal voters of the State of Oklahoma for their approval or rejection at the next regular general election (or at a special election as may be lawfully called by the Governor), and each for himself says: I have personally signed this petition; I am a legal voter of the State of Oklahoma; my first name, last name, zip code, house number, and month and day of my birth are correctly written on this form. The time for filing this petition expires ninety (90) days from October 29, 2025**. The question we herewith submit to our fellow voters is:**

Shall the following proposed amendment to the Oklahoma Constitution be approved?

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA THAT A NEW ARTICLE 3A OF THE OKLAHOMA CONSTITUTION BE APPROVED:

CONSTITUTION OF OKLAHOMA, ARTICLE 3A -- OPEN PRIMARIES

SECTION 1. APPLICATION

This Article shall govern the process for primary and general elections for the following elected offices: statewide offices, county offices, district attorney, members of the state legislature, members of the United States Congress (hereinafter, "covered offices"). The term "covered offices" does not include the office of Presidential Elector, municipal offices, judicial offices, school board members, or any other office not specified herein as a "covered office."

SECTION 2. OPEN PRIMARIES

A. The primary election process for covered offices shall consist of an "open primary election." In an open primary election, all candidates for a covered office shall appear on the same ballot without regard to the candidates' affiliation or lack of affiliation with any political party and without regard to whether the candidates have been nominated or endorsed by any political party. Any qualified voter may vote for any candidate for a covered office, without regard to the voter's affiliation or lack of affiliation with any political party.

B. A voter in an open primary election may vote for only one candidate for each covered office.

C. The two candidates who receive the most votes in the open primary election shall advance to the general election, without regard to their affiliation or lack of affiliation with any political party and without regard to whether the candidates have been nominated or endorsed by any political party.

D. If only two candidates qualify to appear on the ballot in the primary election for a covered office, then those two candidates shall automatically advance to the general election, without regard to the candidates' affiliation or lack of affiliation with any political party.

SECTION 3. GENERAL ELECTIONS

Only those two candidates advancing from the open primary election according to Section 2 of this Article shall appear on the general election ballot for covered offices; however, the Oklahoma Legislature may, by statute, create a procedure to be followed if a candidate who has advanced

according to Section 2 will not participate in the general election due to death, withdrawal from the race, or disqualification.

SECTION 4. THE BALLOT

In both open primary elections and general elections for all covered offices:

A. Candidates shall appear on the ballot in a randomized order.

B. The ballot shall state, next to the candidate's name, each candidate's political party registration or independent status as of the date of candidate filing. A candidate does not need to seek or gain approval of the political party to have the candidate's registration with that party reflected on the ballot. Every ballot shall contain a statement informing voters that a candidate's indicated party registration does not imply that the candidate is nominated or endorsed by the political party or that the party approves of or associates with that candidate.

SECTION 5. REPEALER

A. Article 3, Section 3 of this Constitution is hereby repealed.

B. Notwithstanding subsection A of this Section, candidates for the office of Presidential Elector shall continue to be nominated by the recognized political parties at their conventions, and citizens may, by petition, continue to place on the ballot the names of independent, nonpartisan candidates for that office.

SECTION 6. SEVERABILITY

The provisions of this Article are severable, and if any part or provision hereof shall be held 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.

SECTION 7. MISCELLANEOUS

The procedures described herein regarding open primary elections and general elections for a covered office shall apply to any special elections for covered offices.

All provisions of this Constitution, state statute, and common law of Oklahoma to the extent inconsistent or in conflict with any provision of this Article are expressly declared null and void as to, and do not apply to, any activities provided for under this Article.

The Legislature may enact legislation to facilitate the operation of this Article, but no law shall limit, restrict or conflict with the provisions hereof.

SECTION 8. EFFECTIVE DATE

This Article shall take effect 90 days after the date this Article is approved by the People; provided that, if the candidate filing period for a particular election begins before this Article is approved by the People, then this Article shall not apply to that election.

Name and Address of Proponents

Kenneth Ray Setter
2452 E. 49th St.
Tulsa, OK 74105

Yvonne Galvan
3131 SW 89th St. Apt. 4206
Oklahoma City, OK 73159

Anthony Stobbe
4852 Hillcrest Lane
Edmond, OK 73025