

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

NOV 20 2023

JOHN D. HADDEN  
CLERK

#121777

- (1) STATE CHAMBER OF OKLAHOMA,  
(2) OKLAHOMA FARM BUREAU LEGAL  
FOUNDATION,  
(3) CHAD WARMINGTON, and  
(4) TOMMY SALISBURY,

*Protestants/Petitioners,*

v.

- (1) KELSEY COBBS and  
(2) DUSTIN PHELAN,

*Proponents/Respondents,*

Case No: \_\_\_\_\_

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APPLICATION TO ASSUME ORIGINAL JURISDICTION  
AND PROTEST OF INITIATIVE PETITION NO. 446

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**APPLICATION TO ASSUME ORIGINAL JURISDICTION  
AND PROTEST OF INITIATIVE PETITION NO. 446**

Pursuant to Title 34, Section 8 of the Oklahoma Statutes and Rule 1.194 of this Court, Protestants/Petitioners State Chamber of Oklahoma, Oklahoma Farm Bureau, Chad Warmington, and Tommy Salisbury respectfully request the Court to assume original jurisdiction and declare Initiative Petition No. 446 (State Question No. 832) legally insufficient for submission to the voters.

In support of this Application and Protest, Protestants/Petitioners state as follows:

**Relevant Facts Justifying Relief**

1. On November 3, 2023, the Oklahoma Secretary of State published notice of the filing of Initiative Petition 446 by the Proponents/Respondents named in this action. I.P. 446, App'x Tab 1, at 9-12.

2. Initiative Petition 446 seeks to amend the Oklahoma Minimum Wage Act by raising the state minimum wage by specified amounts through the year 2029 and then, starting in 2030, continue to raise the minimum wage annually by *unspecified* amounts that are tied to a measure of increases in the cost of living. That measure, which will dictate Oklahoma's future minimum wage, is delegated wholly to the U.S. Department of Labor, a federal agency. I.P. 446, App'x Tab 1, at 4-5. Initiative Petition 446 also makes other changes to the Act, including adding and removing exemptions of certain employers and employees from the Act, while retaining other exemptions. *Id.* at 5-6.

3. Protestants/Petitioners are citizens of Oklahoma and organizations of Oklahoma citizens.

4. The State Chamber of Oklahoma is an advocate for business in Oklahoma, with a membership of around 600 businesses of Oklahoma citizens. Its mission is to make 1

Oklahoma the best place to do business in the country, including by advocating for policies that promote employment. Initiative Petition 446 harms the Chamber's purposes and goals because it will result in higher prices for consumers, fewer jobs for workers, and greater failure rates for businesses. *See* Warmington Decl., App'x Tab 2.

5. The Oklahoma Farm Bureau and the Oklahoma Farm Bureau Legal Foundation are organizations of Oklahomans with the mission and purpose to support the rights and freedoms of farmers and ranchers by promoting individual liberties, private property rights, and free enterprise. This mission is undermined by Initiative Petition 446 because it threatens the economic viability of many agricultural businesses and the vitality of rural communities. *See* Tucker Decl., App'x Tab 4.

6. Chad Warmington is a citizen of Oklahoma registered to vote and has lived in the State since 1996. He is president and CEO of the State Chamber of Oklahoma. *See* Warmington Decl., App'x Tab 2.

7. Tommy Salisbury is a farmer and businessman that is a citizen of Oklahoma from Collinsville and has been a registered Oklahoma voter since 2010. His farming, ranching, and feedstore operations each gross more than \$100,000 annually and collectively employ 39 Oklahomans. If enacted, Initiative Petition 446 would subject his businesses to an ever-increasing minimum wage and higher prices, which would jeopardize his business and his ability to employ all of the Oklahomans he currently employs. *See* Salisbury Decl., App'x Tab 3.

8. Initiative Petition 446 is legally insufficient in at least two respects: it unconstitutionally delegates state legislative authority to the federal government, in violation

of Article IV, Section 1 and Article V, Section 1 of the Oklahoma Constitution, and its gist is misleading to voters.

9. *First*, Initiative Petition 446, if enacted, would make annual changes to the state's minimum wage based on the U.S. Department of Labor's Consumer Price Index (CPI-W), I.P. 446, App'x Tab 1, at 4-5, thereby unconstitutionally delegating the legislative authority to determine the *state* minimum wage to a *federal* agency. That conflicts with the Oklahoma Constitution as explained by this Court in *City of Oklahoma City v. State ex rel. Department of Labor*, which invalidated the state's minimum wage for government employees and contractors because it set the legally-required wage as the "prevailing wage" determined by the U.S. Department of Labor.<sup>1</sup> The Court ruled it was unconstitutional for a state statute setting wages to "leave[] an important determination to the unrestricted and standardless discretion of unelected bureaucrats," *especially* if "it delegates to an administrative arm of the federal government," which "is less answerable to the will of the people of Oklahoma."<sup>2</sup> Because Initiative Petition 446 seeks to do the exact same thing, it is manifestly unconstitutional on its face and the Court should hold that it is legally insufficient for submission to a vote of the people of Oklahoma.

10. *Second*, Initiative Petition 446 proposes to circulate to voters a misleading gist. The gist states: "Under this measure, federal and state employees would not be covered under the OMWA." I.P. 446, App'x Tab 1, at 2. This misleads voters into thinking that the measure will amend existing law to *add* an exemption from the minimum wage for federal and state workers, when in fact the law already contains an *existing* exemption for federal workers. This

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<sup>1</sup> 1995 OK 107, 918 P.2d 26.

<sup>2</sup> *Id.* at ¶ 14, 918 P.2d at 30.

Court has held that when a gist “does not mention it is retaining” an exemption in the law sought to be amended which “currently exists,” it “gives the false impression that, currently, the law does not” already have that exemption—making the gist misleading and making the Initiative Petition legally insufficient for submittal to the voters.<sup>3</sup> Similarly, the gist states the minimum wage law does not apply to “[s]ome employers with ten or fewer employees,” I.P. 446, App’x Tab 1, at 2, but in fact this exemption applies only to the very small subset of employers with gross revenue less than \$100,000 annually (far below the average gross revenue for businesses in Oklahoma with less than 10 employees). Because the gist “conspicuously omits a key limitation” in the exemption, it must be declared invalid.<sup>4</sup>

11. As more fully explained in the Brief in Support of this Application and Protest, the facts of this case and the relevant law justify granting the relief requested by Protestants/Petitioners.

#### **Reasons Why Original Jurisdiction Should Be Assumed**

12. After publication of notice of the filing of an initiative petition, “any citizen or citizens of the state” has a right under statute to “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.”<sup>5</sup> This Court both shall decide the question of constitutionality and “shall decide whether such petition is in the form required by the statutes,”<sup>6</sup> which includes the

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<sup>3</sup> *In re Initiative Petition No. 425, State Question No. 809*, 2020 OK 58, ¶¶ 21-28, 470 P.3d 284, 290-91.

<sup>4</sup> *In re Initiative Petition No. 420, State Question No. 804*, 2020 OK 10, ¶¶ 6-11, 458 P.3d 1080, 1084-86; *see also Oklahoma’s Child, Our Future, Inc. v. Coburn*, 2018 OK 55, ¶¶ 27-34, 421 P.3d 867, 875-76 (gist failed to explain existing law and therefore petition’s “practical effect”).

<sup>5</sup> 34 O.S.2021 § 8(B).

<sup>6</sup> *Id.* § 8(D).

statutory requirement for a gist.<sup>7</sup> “Any citizen can protest the legal sufficiency of an initiative petition,” including organizations in Oklahoma.<sup>8</sup>

13. As described *supra* ¶¶ 4-7, Proponents/Petitioners are citizens of Oklahoma and organizations of citizens of Oklahoma. And as reflected in the Certificate of Service, *infra*, Proponents/Petitioners through their counsel have served written notice of this Application and Protest.

14. “Any such protest must be filed within ten (10) business days after publication.”<sup>9</sup> Here, notice was published on November 3, 2023, and this Application and Protest was filed within 10 business days of that date (excluding weekends and the Veteran’s Day holiday).<sup>10</sup>

15. Upon the filing of a protest, “[t]he proceeding shall be treated as an original action,”<sup>11</sup> and this Court is “vested with original jurisdiction to evaluate and determine the sufficiency of the proposed initiative petition . . . .”<sup>12</sup>

16. For these reasons, original jurisdiction should be assumed over this Protest.

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<sup>7</sup> *Id.* § 3.

<sup>8</sup> *In re Initiative Petition No. 425, State Question No. 809*, 2020 OK 58, ¶¶ 3, 5, 28, 470 P.3d at 286-87, 291 (assuming original jurisdiction over protest filed by the Oklahoma Second Amendment Association and granting relief because the gist was misleading).

<sup>9</sup> *Id.*

<sup>10</sup> *See* Okla. Sup. Ct. R. 1.3 (“When the period of time prescribed or allowed is less than eleven (11) days, intermediate legal holidays and any other day when the office of the Supreme Court Clerk does not remain open for business until the regularly scheduled closing time, shall be excluded from the computation.”); 25 O.S.2021 § 82.1(A) (listing Veterans’ Day as a state holiday).


<sup>11</sup> Okla. Sup. Ct. R. 1.194.

<sup>12</sup> *In re Initiative Petition No. 409, State Question No. 785*, 2016 OK 51, ¶ 2, 376 P.3d 250, 252 (citation omitted).

### Nature of Relief Sought

Based on the foregoing considerations, and for the reasons more fully explained in the accompanying Brief in Support, Protestants/Petitioners ask the Court to assume original jurisdiction and declare that Initiative Petition No. 446 (State Question No. 832) is legally insufficient for submission to the voters of Oklahoma.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that on the 20th day of November, 2023, a true and correct copy of the above Application and Petition was transmitted via commercial carrier, postage prepaid to the following:

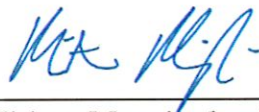
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