

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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SUPREME COURT  
STATE OF OKLAHOMA  
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CLERK

(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: \_\_\_\_\_

#121777

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

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## INTRODUCTION

Proponents seek to circulate a petition that, if approved, would enact legislation that is in clear conflict with the Oklahoma Constitution as confirmed by this Court's precedent. Initiative Petition 446 seeks to amend Oklahoma statutes to raise Oklahoma's state minimum wage so that it fluctuates yearly, delegating the authority to determine the amount of the yearly increase in the *state* minimum wage to the *federal* Department of Labor.

That squarely runs afoul of 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 in public works act because it unconstitutionally delegated the State's legislative authority to determine the "prevailing wage" for government employees and contractors to the U.S. Department of Labor.<sup>1</sup> The Court ruled it was unconstitutional for a statute setting minimum state 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.

The Initiative Petition is also legally insufficient for a second, independent reason: it proposes to circulate to voters a misleading gist. For example, the gist indicates to voters that the measure will add an exception to the state's minimum wage law for federal workers, when

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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.

in fact Oklahoma law already contains that exception. This is precisely the type of misleading language this Court invalidated in *In re Initiative Petition No. 425, State Question No. 809*.<sup>3</sup>

The important question of the appropriate minimum wage in Oklahoma can drastically impact employment and the economy, especially for vital employers, farmers, and small businesses in this State. That policy question should not be unconstitutionally delegated to the federal government, much less through an Initiative Petition that will mislead voters. The Court should grant the application to assume original jurisdiction and declare Initiative Petition 446 legally insufficient for submission to the voters.

### SUMMARY OF THE RECORD

Proponents/Respondents have proposed to circulate Initiative Petition No. 446 (State Question No. 832), which seeks to amend the Oklahoma Minimum Wage Act (the “Act”). I.P. 446, App’x Tab 1, at 4. The current version of the Act forbids employers in Oklahoma, with certain exceptions, from paying employees a wage less than the current federal minimum wage. 40 O.S.2021 § 197.2. Initiative Petition 446 would eliminate the reference to the federal minimum wage and would instead increase the state minimum wage yearly, starting in 2025 where it would be set at \$9 per hour. I.P. 446, App’x Tab 1, at 4. By 2029, the Petition would set the minimum wage at \$15 per hour. *Id.*

Starting in 2030, the Petition proposes to increase the minimum wage yearly by unknown amounts: it would be annually increased “by the increase in the cost of living, if any.” *Id.* The Petition measures “the increase in the cost of living” as “the annual percentage increase, as of August of the preceding year, in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) or its successor index, as published by the U.S.

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<sup>3</sup> 2020 OK 58, ¶¶ 21-28, 470 P.3d 284, 290-91.

Department of Labor or its successor agency, with the amount of minimum wage increase rounded to the nearest cent.” *Id.* at 4-5. Thus, pursuant to this Petition, the minimum wage in Oklahoma would be determined by the discretionary judgments of unelected federal officials. The Petition does not provide the U.S. Department of Labor any guidance or standards for setting this amount nor does it provide any entity or official in Oklahoma the power to question, modify, or overrule the federal agency’s determination.

Initiative Petition 446 also modifies *who* is subject to the state minimum wage. It removes exemptions for employers subject to the federal Fair Labor Standards Act. *Id.* at 5. It also removes exemptions for employees in certain agricultural businesses, domestic services, newspapers, and feedstores, as well as removes exemptions for part-time employees, minors, and students under the age of 22. *Id.* at 5-6. Meanwhile, it preserves certain exemptions from the minimum wage, such as volunteers, reserve force deputy sheriffs, salesmen, and executive, administrative, and professional employees, as well as for businesses with both fewer than 10 full-time employees at a location and less than \$100,000 in annual revenue. *Id.* It also *retains* an exemption for federal employees and *adds* an exemption for state employees. *Id.* at 5.

Protestants/Petitioners include both citizens of Oklahoma and organizations of employers, including small business owners, farmers, and other companies that provide hundreds of thousands of Oklahomans with employment. Initiative Petition 446 threatens to raise their prices, reduces their ability to employ as many workers as they do now, and undermines the viability of their businesses. *See* Appl. to Assume Original Jur. at ¶¶ 4-7. Moreover, by tying the minimum wage to the CPI-W, which systematically excludes rural and agricultural communities and businesses, the Initiative fails to take into account the needs of their communities. *See* Salisbury Decl., App’x Tab 3, ¶ 7.

## ARGUMENT AND AUTHORITY

### I. Initiative Petition 446 is clearly and facially an unconstitutional delegation of legislative authority to federal officials in direct contravention of this Court's decision in *City of Oklahoma City*.

“This Court is the Protector of our Constitution,” so “it is this Court’s responsibility to see the petitions for change actually reflect the voter[’]s intent and comply with the requirements set out in both the Constitution and the statutes.”<sup>4</sup> In order “to prevent costly expenditure of public revenues on needless elections,” this Court will invalidate petitions that contain “clear or manifest facial constitutional infirmities.”<sup>5</sup> Upon a protest of an initiative petition, “this Court must review the petition to ensure that it complies with the parameters of the rights and restrictions as established by the Oklahoma Constitution, legislative enactments and this Court’s jurisprudence.”<sup>6</sup>

This Court’s jurisprudence demonstrates that the Petition attempts to delegate the legislative power of the State of Oklahoma in a manner that is clearly and facially unconstitutional. In *City of Oklahoma City*, this Court examined the constitutionality of Oklahoma’s Minimum Wages on Public Works Act, which required government employees and contractors to be paid the local “prevailing wages.”<sup>7</sup> Previous versions of that law “gave Oklahoma’s Labor Commissioner complete authority ... to determine prevailing wages” and gave Oklahomans the right to challenge those determinations before the Commissioner and state courts.<sup>8</sup> But the Legislature later amended that law and required the Oklahoma Labor Commissioner to adopt the “prevailing wage” as determined by U.S. Department of Labor,

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<sup>4</sup> *In re Initiative Petition No. 344, State Question No. 630*, 1990 OK 75, ¶ 16, 797 P.2d 326, 330.

<sup>5</sup> *In re Initiative Petition No. 358, State Question No. 658*, 1994 OK 27, ¶¶ 6-7, 870 P.2d 782, 785.

<sup>6</sup> *In re Initiative Petition No. 384, State Question No. 731*, 2007 OK 48, ¶ 2, 164 P.3d 125, 127.

<sup>7</sup> *City of Oklahoma City*, 1995 OK 107, ¶¶ 1, 5, 918 P.2d at 28-29.

<sup>8</sup> *Id.* at ¶ 8, 918 P.2d at 29.



except in localities where a federal determination had not been made.<sup>9</sup> The Court held that this amendment “violate[d] article IV, section 1, and article V, section 1 of the Oklahoma Constitution” because “[i]t delegates the power to determine prevailing wages to a department of the federal government without setting standards for the exercise of that determination.”<sup>10</sup>

This Court pointed to several features of the Minimum Wages on Public Works Act as unconstitutional delegations. It “provided no definite standards or articulated safeguards for the [U.S.] Department of Labor to follow” in determining the prevailing wage for localities in Oklahoma. It “leaves an important determination to the unrestricted and standardless discretion of unelected bureaucrats.” “Worse,” the Court’s opinion continued, “it delegates to an administrative arm of the federal government.” Meanwhile, this “federal agency” is “less answerable to the will of the people of Oklahoma than is the Labor Commissioner who holds elected office.” And “[i]t leaves public entities with no Oklahoma forum in which to challenge the accuracy of the [U.S.] Department of Labor’s wage determinations.”<sup>11</sup>

Initiative Petition 446 contains the exact same constitutional infirmities, if not more. On its face, it amends the Oklahoma Minimum Wage Act to provide that, after increasing to \$15 per hour, the minimum wage will increase every year based on “the Consumer Price Index ... as published by the U.S. Department of Labor.” I.P. 446, App’x Tab 1, at 4-5. Like the law invalidated in *City of Oklahoma City*, the Initiative Petition here (1) provides no standards for the U.S. Department of Labor to follow in calculating the CPI-W (which will determine Oklahoma’s minimum wage), (2) it leaves that important determination solely to the discretion of unelected bureaucrats, (3) those bureaucrats are arms of the federal government virtually

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<sup>9</sup> *Id.* at ¶ 9, 918 P.2d at 29.

<sup>10</sup> *Id.* at ¶ 1, 918 P.2d at 28; *see also id.* at ¶¶ 18-19, 918 P.2d at 30.

<sup>11</sup> *Id.* at ¶ 14, 918 P.2d at 30.

unaccountable to the Oklahoma Legislature or Oklahomans, and (4) Oklahomans and their state officials have little power to challenge the U.S. Department of Labor's CPI determinations that will govern Oklahoma's minimum wage. The law at issue in *City of Oklahoma City* at least delegated *some* determinations to Oklahoma's Labor Commissioner, such as in localities where there was no federal determination;<sup>12</sup> here, the Initiative Petition delegates *all* the discretion to the federal agency. Under the Initiative Petition, the State's "legislative authority is abdicated," and therefore "it impermissibly delegates legislative power."<sup>13</sup>

The Initiative Petition does not propose the type of legislation this Court has upheld in the face of non-delegation challenges. It does not delegate power to a state agency or subdivision with robust standards and guidelines to implement state policy.<sup>14</sup> Rather, the U.S. Department of Labor determines the CPI that will govern Oklahoma's minimum wage with no standards provided in the Initiative Petition to guide that determination and no oversight from state entities. Nor is this case one in which state laws merely recognize the supremacy of federal law.<sup>15</sup> That is more akin to what the *current* Oklahoma Minimum Wage Act does. By setting Oklahoma's minimum wage at "the current federal minimum wage,"<sup>16</sup> the Act acknowledges that states may not permit employers to pay wages *less* than the federal minimum

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<sup>12</sup> *Id.* at ¶ 9, 918 P.2d at 29.

<sup>13</sup> *Id.* at ¶¶ 18-19, 918 P.2d at 30.

<sup>14</sup> *E.g., Tulsa Cnty. Deputy Sheriff's Fraternal Ord. of Police, Lodge No. 188 v. Bd. of Cnty. Comm'rs of Tulsa Cnty.*, 2000 OK 2, ¶¶ 6-16, 995 P.2d 1124, 1128-30 (rejecting non-delegation challenge to statute that permitted private entities to run prisons because the Legislature had "extensive guidelines already in place which have long applied to county-operated prisons and ... apply to privately-operated prisons").

<sup>15</sup> *E.g., Thomas v. Henry*, 2011 OK 53, ¶¶ 15-20, 260 P.3d 1251, 1256-58 (state law requiring verification of federal immigration status not an unlawful delegation because it "recognizes the cooperation between state and federal law and it recognizes federal power to regulate immigration").

<sup>16</sup> 40 O.S.2021 § 197.2.

wage.<sup>17</sup> But while the federal minimum wage sets the floor, the Initiative Petition seeks to unconstitutionally delegate to the federal government the ability to cause increases to the state minimum wage far *above* the federal minimum wage. That is unlawful.

This Court has also distinguished between laws that reference only “a set of particular standards already in existence” created by another entity, which constitute the lawful policy choice of a “set of fixed standards,” and laws that “delegat[c] legislative authority to another entity that might promulgate and change those standards on an ongoing basis,” which are unconstitutional.<sup>18</sup> Here, the Initiative Petition unambiguously proposes the latter. The CPI is a constantly evolving standard that, according to the U.S. Department of Labor, will continue to “be updated or revised in the future.”<sup>19</sup> The text of Initiative Petition 446 confirms this conclusion: it proposes to “increase” the minimum wage “on January 1 of successive years” based on the “annual percentage increase, as of August of the preceding year, in the Consumer Price Index . . . as published by the U.S. Department of Labor.” I.P. 446, App’x Tab 1, at 4-5. Not even the referenced index or federal agency is fixed: the Petition references the CPI-W “or its successor index” and the US. Department of Labor “or its successor agency.” *Id.*

Make no mistake: the federal Department of Labor’s determination of the CPI is no rote matter of unalterable arithmetic. The CPI has its origins during World War I and has evolved, shifted, and changed numerous times over the century.<sup>20</sup> The U.S. Department of Labor makes discretionary decisions regarding how the CPI is calculated “on an ongoing

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<sup>17</sup> See 29 U.S.C. §§ 206, 218(a).

<sup>18</sup> *Hill v. Am. Med. Response*, 2018 OK 57, ¶¶ 33-42, 423 P.3d 1119, 1132-34; see also *Oklahoma Coal. for Reprod. Just. v. Cline*, 2016 OK 17, ¶¶ 12-21, 368 P.3d 1278, 1285-87.

<sup>19</sup> U.S. Bureau of Labor Statistics, Consumer Price Index, *Frequently Asked Questions*, <https://www.bls.gov/cpi/questions-and-answers.htm>.

<sup>20</sup> See *Dewalt v. Sullivan*, 963 F.2d 27, 28 (3d Cir. 1992).

basis,” including a rotating selection of “the urban areas from which data on prices are collected,” identification of “the places where households purchase various types of goods and services,” assignment of “quotes in the CPI item categories to specific outlets,” and weighting of different goods in the CPI “market basket” by “importance.”<sup>21</sup> “The combination of carefully selected geographic areas, retail establishments, commodities and services, and associated weight, gives a weighted measurement of price change for all items in all outlets, in all areas priced for the CPI.”<sup>22</sup> Who does all of that selecting and weighting that ultimately results in the computation of a final CPI figure? Federal officials—not Oklahomans vested with the legislative authority of the state by the Constitution.

That is, CPI determinations are wholly subject to the whims of federal officials. For each of the item categories, it “has chosen samples of several hundred specific items within selected business establishments frequented by consumers to represent the thousands of varieties available in the marketplace.”<sup>23</sup> So, for example, “in a given supermarket, the Bureau [of Labor Statistics] may choose a plastic bag of golden delicious apples, U.S. extra fancy grade, weighing 4.4 pounds, to represent the apples category.”<sup>24</sup> These measures are constantly being revised according to the judgment calls of federal officials. The agency made changes, for example, to the new vehicles methodology earlier this year.<sup>25</sup> The federal agency will continue to revise standards and inputs indefinitely, “as long as there are significant changes in consumer buying habits or shifts in population distribution or demographics.”<sup>26</sup>

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<sup>21</sup> Consumer Price Index, *Frequently Asked Questions*, *supra* n.19.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> U.S. Bureau of Labor Statistics, Consumer Price Index, *Recent and upcoming methodology changes: 2023*, <https://www.bls.gov/cpi/notices/2023/methodology-changes-2023.htm>.

<sup>26</sup> Consumer Price Index, *Frequently Asked Questions*, *supra* n.19.

And the decisions the federal agency makes will often prejudice certain Oklahomans, since the CPI “considers only urban consumers, thus excluding large swathes of the population from consideration and leaving many regions and demographics unrepresented in the calculation,”<sup>27</sup> such as “rural nonmetropolitan areas, those in farm households, [and] people in the Armed Forces.”<sup>28</sup> The CPI’s exclusion of “rural” areas thus excludes around 1.3 million Oklahomans, and the particular CPI subset adopted by the Initiative Petition—the CPI-W—excludes 70% of all Americans.<sup>29</sup> Thus, while delegation to an Oklahoma policy-maker properly vested with legislative authority would likely account for these Oklahomans, the Initiative Petition’s delegation to the federal Department of Labor leads to systematic exclusion of them. And while an Oklahoma policy maker would likely decide to measure changes in the cost of living specific to Oklahoma’s economic conditions, the Department of Labor makes a different choice by refusing to measure the CPI-W for Oklahoma.<sup>30</sup>

Under Initiative Petition 446, *all* of these myriad discretionary determinations on how to calculate the CPI—which will dictate Oklahoma’s minimum wage—are delegated completely and unqualifiedly to the U.S. Department of Labor. That is unconstitutional.

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It is hard to imagine more on-point precedent manifestly demonstrating the unconstitutionality of Initiative Petition 446 than *City of Oklahoma City*. Any distinctions between the two have no constitutional import based in precedent. Indeed, both the law invalidated in *City of Oklahoma City* and the Initiative Petition in this case deal with the same

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<sup>27</sup> Rebecca Baldrige, *What is the Consumer Price Index (CPI)?*, BUSINESS INSIDER (Mar. 14, 2023), <https://www.businessinsider.com/personal-finance/consumer-price-index>.

<sup>28</sup> Consumer Price Index, *Frequently Asked Questions*, *supra* n.19.

<sup>29</sup> *See id.*; Salisbury Decl., App’x Tab 3, ¶ 7.

<sup>30</sup> *Id.* (publishing area indices for various metropolitan region, none of which are in Oklahoma).

subject—minimum wages—and unconstitutionally delegate state legislative authority to the same federal agency—the U.S. Department of Labor. “While the constitutional doctrine of nondelegation has been somewhat relaxed in several jurisdictions, its force in this state remains undiminished.”<sup>31</sup> This Court has not hesitated in the past to hold that an initiative petition that unconstitutionally delegates legislative authority is “legally insufficient for submission to a vote of the people of Oklahoma.”<sup>32</sup> It should do so again here. Because Initiative Petition 446 contains “clear or manifest facial constitutional infirmities” as “established by . . . this Court’s jurisprudence,” it must be invalidated.<sup>33</sup>

**II. Initiative Petition 446 is also legally insufficient because it proposes to circulate to voters a gist that misleads voters about proposed changes to the state minimum wage law.**

State law requires that, at the top of every signature sheet for an Initiative Petition, the circulated Petition must contain “the gist of the proposition.”<sup>34</sup> “[T]he purpose of the gist is to prevent fraud, deceit or corruption in the initiative process,” so “any alleged flaw created by an omission of details in the gist must be reviewed to determine whether such omission is critical to protecting the initiative process.”<sup>35</sup> A gist must be “free from the taint of misleading terms or deceitful language,” otherwise the Initiative Petition must be invalidated as legally insufficient.<sup>36</sup> “The gist ‘should be sufficient that the signatories are at least put on notice of the changes being made,’” by providing an “explanation of the effect on existing law.”<sup>37</sup>

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<sup>31</sup> *Democratic Party of Oklahoma v. Estep*, 1982 OK 106, ¶ 16, 652 P.2d 271, 277 (citation omitted).

<sup>32</sup> *In re Initiative Petition No. 366, State Question No. 689*, 2002 OK 21, ¶¶ 16-20, 46 P.3d 123, 128-29.

<sup>33</sup> *In re State Question No. 807, Initiative Petition No. 423*, 2020 OK 57, ¶ 12, 468 P.3d 383, 388, *as corrected* (June 25, 2020) (citations omitted).

<sup>34</sup> 34 O.S.2021 § 3.

<sup>35</sup> *In re Initiative Petition No. 425, State Question No. 809*, 2020 OK 58, ¶ 10, 470 P.3d 284, 288.

<sup>36</sup> *In re Initiative Petition No. 420, State Question No. 804*, 2020 OK 10, ¶ 4, 458 P.3d 1080, 1084.

<sup>37</sup> *In re Initiative Petition No. 409, State Question No. 785*, 2016 OK 51, ¶ 3, 376 P.3d 250, 252.

Here, the gist misleads with respect to the Petition’s effect on existing law. The gist provides a list of exemptions from the Oklahoma Minimum Wage Act that the proposal would “eliminate” (such as farm workers and feedstore employees) and it provides a list of employees that “would remain exempt” (such as volunteers). I.P.446, App’x Tab 1, at 1. With respect to government workers, it states: “Under this measure, federal and state employees would not be covered under the OMWA.” *Id.* That misleadingly suggests the Petition would amend the law to exempt federal workers when, in fact, they are already exempt.<sup>38</sup>

Again, the invalidity of Initiative Petition 446 is controlled by this Court’s precedent, which invalidated a gist that misled in the exact same way in *In re Initiative Petition No. 425, State Question No. 809*.<sup>39</sup> There, the petition sought to amend state firearm laws in multiple ways, and the gist stated that the measure “prohibits any person, including handgun licensees, from possessing handguns or certain offensive weapons on college, university, or technology center property.”<sup>40</sup> The problem was that the gist did “not mention it is *retaining* the campus ban that *currently exists*.”<sup>41</sup> That is, approval of the initiative petition would “not change the current prohibition against handguns and other offensive weapons on these campuses.”<sup>42</sup> Thus, “this language gives the false impression that, currently, the law does not prohibit handguns and other offensive weapons on these campuses and that approval of [the measure] would change to law to establish, create, or reinstate such a ban.”<sup>43</sup> The Court held “the language does not accurately explain the proposal’s effect on existing law and is misleading.”<sup>44</sup>

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<sup>38</sup> See 40 O.S.2021 § 197.4(e)(3); see also I.P. 446, App’x Tab 1, at 5.

<sup>39</sup> 2020 OK 58, ¶¶ 21-28, 470 P.3d at 290-91.

<sup>40</sup> *Id.* at ¶ 22, 470 P.3d at 290.

<sup>41</sup> *Id.* at ¶ 23, 470 P.3d at 290 (emphasis added).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

“[B]ecause it suggests changes that are not actually proposed by the measure,” the gist was invalid.<sup>45</sup>

Initiative Petition 446’s gist is misleading and legally insufficient for the same reason. It states that “[u]nder this measure, federal ... employees” would “not be covered” by the state’s minimum wage law. I.P. 446, App’x Tab 1, at 2. But like in *In re Initiative Petition No. 425*, the gist “does not mention it is retaining” this exemption, which “currently exists,” and thus “gives the false impression that, currently, the law does not” already exempt federal workers from the state’s minimum wage law.<sup>46</sup> This is especially misleading because the gist for Initiative Petition 446 includes state and federal workers in the same sentence, making no distinction between the two, but in reality the proposal *adds* an exemption for state workers and *retains* an exemption for federal workers. *See* I.P. 446, App’x Tab 1, at 5.

The gist is also misleading because it vaguely suggests “[s]ome employers with ten or fewer employees” are exempt. I.P. 446, App’x Tab 1, at 2. But the gist fails to mention that this exemption applies only to businesses with less than 10 employees at any one location that have an annual gross revenue of less than \$100,000. *Id.* at 5. That is no minor omission: in 2017 the average revenue for businesses with less than five employees in Oklahoma is over \$300,000, and for businesses with between five and nine employees over \$1.1 million.<sup>47</sup> So while a voter reading the gist would be led to believe that businesses with less than 10 employees would generally be exempt from the minimum wage—and perhaps sign the petition on the belief that small businesses are largely not subject to the state minimum wage—in fact

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<sup>45</sup> *Id.* at ¶ 21, 470 P.3d at 290.

<sup>46</sup> *Id.* at ¶ 23, 470 P.3d at 290.

<sup>47</sup> Data calculated from U.S. Census Bureau, *2017 SUSB Annual Data Tables*, <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html> (May 2021).



very few businesses would benefit from that exemption. This is especially true for low-margin industries that under the Petition will be newly subject to the state minimum wage, like agriculture, where revenue can be easily above \$100,000 without the business making any profit. *See* Tucker Decl., App'x Tab 4, ¶ 5. Because the gist “conspicuously omits a key limitation” in the exemption, it “fails to alert potential signatories about the true nature” of the law if amended and therefore must be invalidated.<sup>48</sup>

A gist cannot “require[] potential signatories to know what the law was” and, by failing to indicate how the law would be changed and how it would function practically, Proponents advance a gist that is “both confusing and misleading.”<sup>49</sup> In short, because “[t]he gist suggests a change to the law that is not being proposed [and] does not accurately explain the proposal’s effect on existing law,” it is “misleading” and must be declared invalid.<sup>50</sup>

\* \* \*

Because the Petition is unconstitutional and “the Oklahoma Constitution and statutes provide no authority for this Court or Proponents to amend the petition itself,” the “petition is legally insufficient and must be stricken.”<sup>51</sup> Similarly, because “[t]he gist is not subject to amendment by this Court . . . , the only remedy is to strike the petition from the ballot.”<sup>52</sup>

## CONCLUSION

The Court should grant the application to assume original jurisdiction and declare Initiative Petition 446 legally insufficient for submission to the voters.

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<sup>48</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>49</sup> *In re Initiative Petition No. 425, State Question No. 809*, 2020 OK 58, ¶ 27, 470 P.3d at 291.

<sup>50</sup> *Id.* at ¶ 28, 470 P.3d at 291.

<sup>51</sup> *Oklahoma’s Child, Our Future, Inc. v. Coburn*, 2018 OK 55, ¶ 57, 421 P.3d at 881.

<sup>52</sup> *In re Initiative Petition No. 409, State Question No. 785*, 2016 OK 51, ¶ 7, 376 P.3d at 254.

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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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