



**ORIGINAL**

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED  
SUPREME COURT  
STATE OF OKLAHOMA  
SEP 1 2020

JOHN D. HADDEN  
CLERK

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

v.

(1) ANDREW MOORE,  
(2) JANET ANN LARGENT, AND  
(3) LYNDA JOHNSON,

PROPOSERS/RESPONDENTS.

**#11902 9**

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

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

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SEPTEMBER 1, 2020

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## I. INTRODUCTION

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

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

IP 430 suffers from two fatal constitutional defects.

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

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

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

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

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

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

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

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

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

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

## **II. THE PARTIES**

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

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

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

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

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

### III. JURISDICTION

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

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

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

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

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

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

#### IV. SUMMARY OF THE RECORD

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

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

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

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

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

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

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

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

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

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

**V. SUBSTANTIVE ISSUES**

**A. MORE THAN 48 SENATORS**

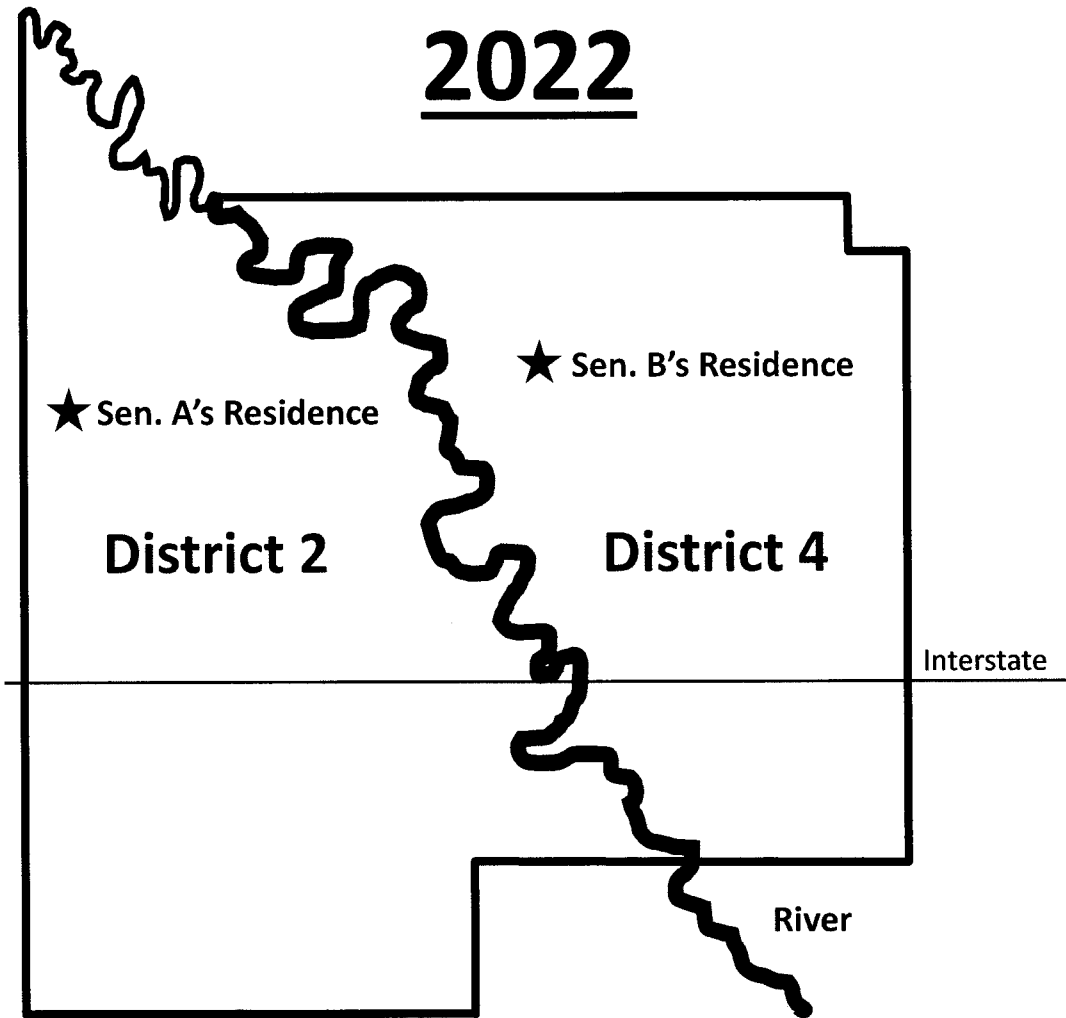
24. The combination in IP 430 of (a) providing only for full four year terms, §1, (b) requiring mid-decade redistricting by the Commission within one year of the approval of IP 430, § 4(E)(6), and (c) prohibiting the Commission from considering where incumbents live when the new districts are drawn,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

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25.

**2022**

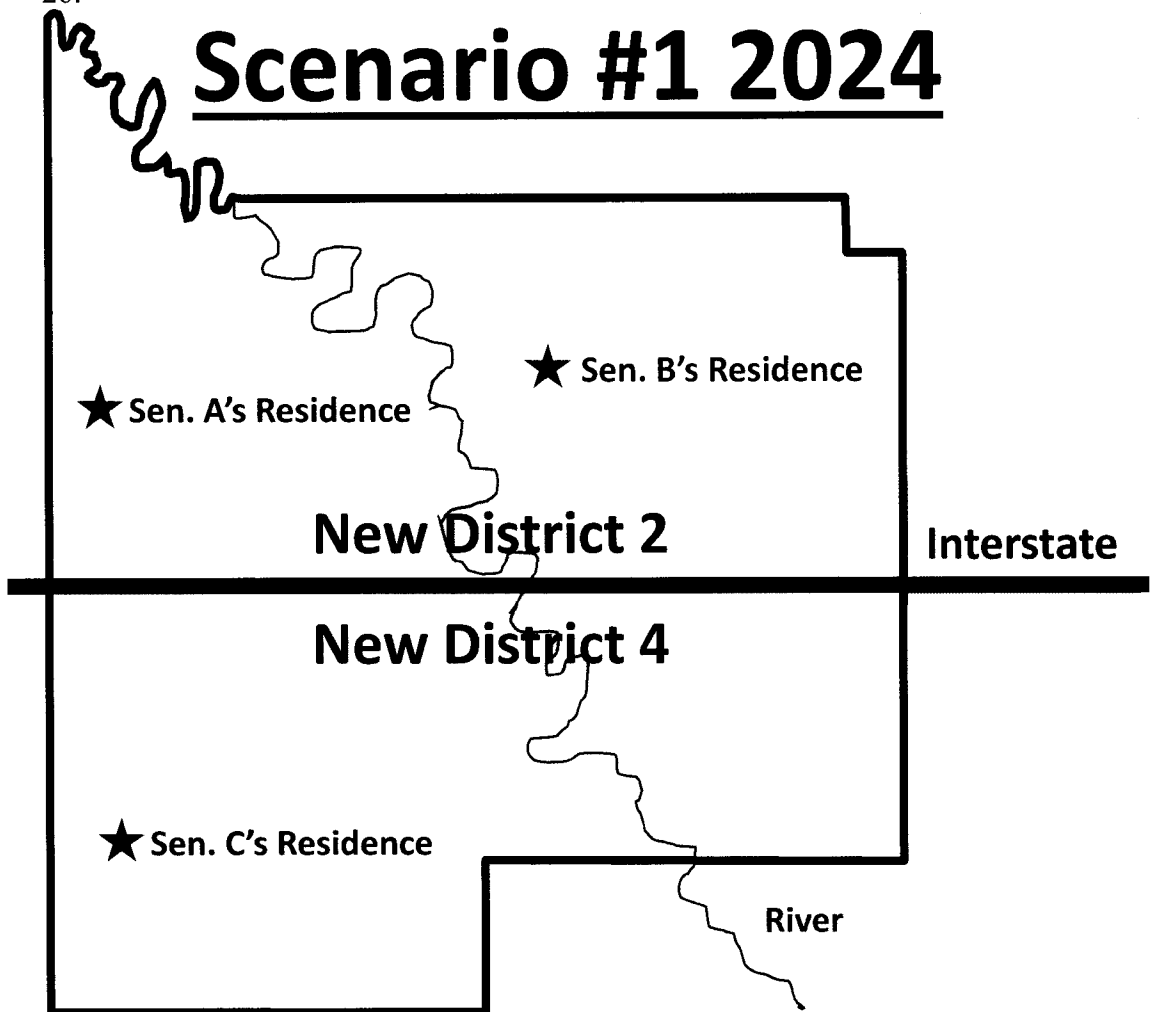


**Scenario #1:**

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

26.

# Scenario #1 2024

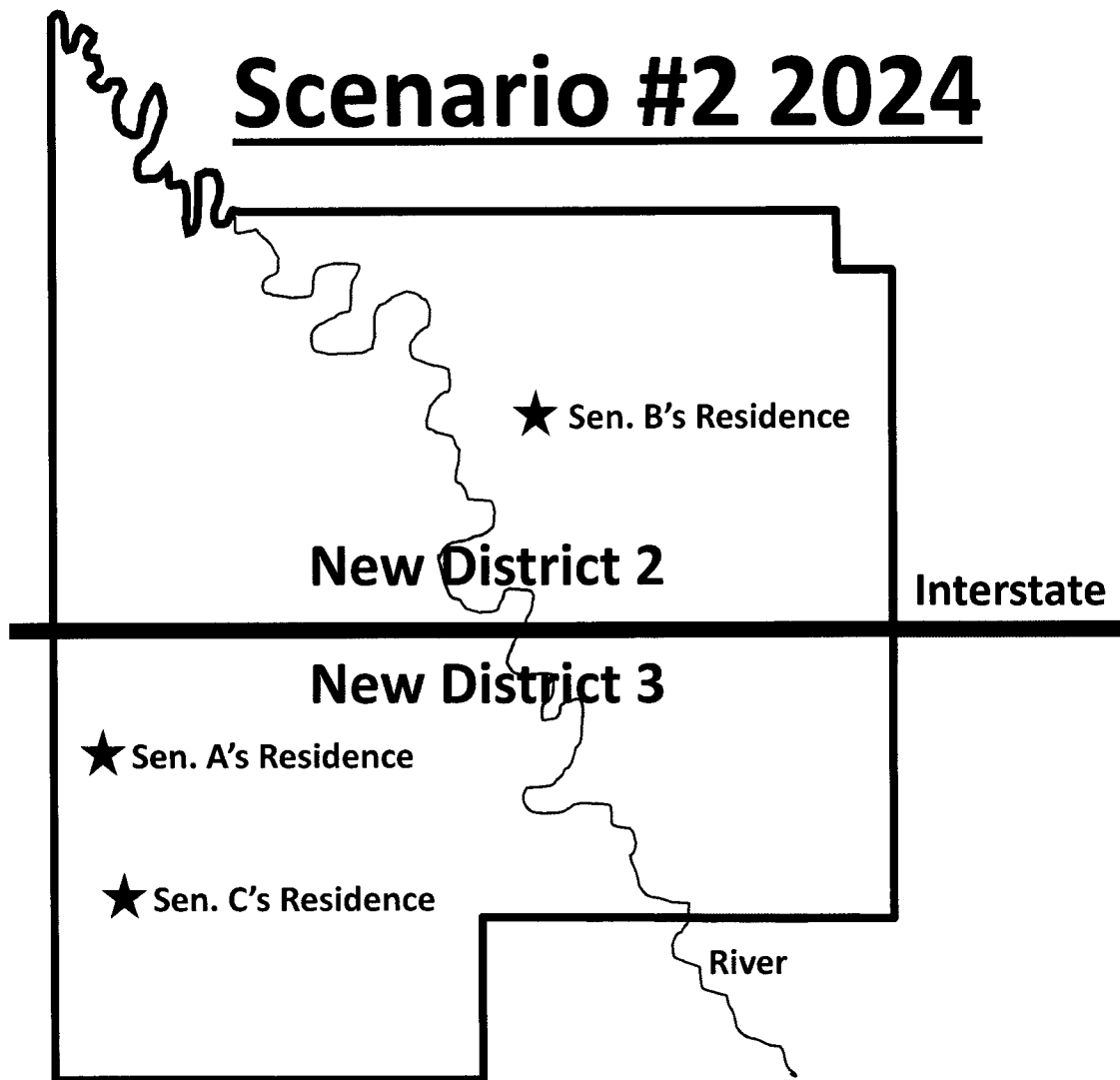


## Scenario #1:

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

27.

## Scenario #2 2024



### Scenario #2:

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

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

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

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

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

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

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

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

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

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

**VI. CONCLUSION**

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

Respectfully submitted,



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

### CERTIFICATE OF SERVICE

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

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