



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

SEP 1 2020

JOHN D. HADDEN
CLERK

(1) MARC McCORMICK, AND

(2) ELDON MERKLIN,

PROTESTANTS/PETITIONERS,

v.

(1) JANET ANN LARGENT,

(2) ANDREW MOORE, AND

(3) LYNDA JOHNSON,

PROPOSERS/RESPONDENTS.

Case No.

#119030

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

-----ORIGINAL-----
Registered
Marshal
Noted
Open
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. IP 430 asks state voters to approve a plan to repeal the current constitutional legislative directive (that elected legislators reapportion districts for federal and state electoral districts) and replace it with a system that places that power within a Commission (made up of citizens who would be unelected, unaccountable to citizen oversight and selected at random by a group of retired judges). This is in an effort to eliminate the voters’ ability to influence the redistricting process by voting for their candidates of choice.

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

II. THE PARTIES

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

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

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

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

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

III. JURISDICTION

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

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

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

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

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

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

IV. SUMMARY OF THE RECORD

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

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

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

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

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

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

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

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

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

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

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

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

V. THE GIST

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

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

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

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

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

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

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

VI. CONCLUSION

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

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

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

Respectfully submitted,



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CERTIFICATE OF SERVICE

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

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