



ORIGINAL

FILED
SUPREME COURT
STATE OF OKLAHOMA

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA SEP 1 2020

JOHN D. HADDEN
CLERK

(1) ROGER GADDIS, AND

(4) ELDON MERKLIN,

PROTESTANTS/PETITIONERS,

v.

(1) ANDREW MOORE,

(2) JANET ANN LARGENT, AND

(3) LYNDAL JOHNSON,

RESPONDENTS/PROPOSERS.

Case No. _____

#119029

PETITIONERS' BRIEF IN SUPPORT OF APPLICATION AND PETITION
TO ASSUME ORIGINAL JURISDICTION AND REVIEW THE
CONSTITUTIONALITY OF INITIATIVE PETITION NO. 430

ROBERT G. McCAMPBELL, OBA No. 10390
GABLEGOTWALS
ONE LEADERSHIP SQUARE, 15TH FLOOR
211 NORTH ROBINSON AVENUE
OKLAHOMA CITY, OK 73102
TELEPHONE: (405) 235-5500

ATTORNEY FOR PROTESTANTS/PETITIONERS

September 1, 2020

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

(1) ROGER GADDIS, AND

(4) ELDON MERKLIN,

PROTESTANTS/PETITIONERS,

v.

(1) ANDREW MOORE,

(2) JANET ANN LARGENT, AND

(3) LYNDAL JOHNSON,

RESPONDENTS/PROPOSERS.

Case No. _____

**PETITIONERS' BRIEF IN SUPPORT OF APPLICATION AND PETITION
TO ASSUME ORIGINAL JURISDICTION AND REVIEW THE
CONSTITUTIONALITY OF INITIATIVE PETITION NO. 430**

ROBERT G. McCAMPBELL, OBA No. 10390
GABLEGOTWALS
ONE LEADERSHIP SQUARE, 15TH FLOOR
211 NORTH ROBINSON AVENUE
OKLAHOMA CITY, OK 73102
TELEPHONE: (405) 235-5500

ATTORNEY FOR PROTESTANTS/PETITIONERS

September 1, 2020

INDEX

I.	INTRODUCTION.....	1
	<i>Baker v. Carr</i> , 369 U.S. 186 (1962).....	1
	<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964).....	1, 4, 5
	U.S. Const. amend. XIV, § 1	1
	Okla. Const., Art. XXIV, § 1	<i>passim</i>
II.	SUMMARY OF THE RECORD	1
III.	MORE THAN ONE SENATOR PER DISTRICT VIOLATES EQUAL PROTECTION	1
A.	MORE THAN 48 SENATORS	1
	<i>Alexander v. Taylor</i> , 2002 OK 59, 51 P.3d 1204.....	3
	<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964).....	1, 4, 5
	<i>Reynolds v. State Election Board</i> , 233 F.Supp. 323 (WDOK 1964).....	4
	<i>Tennant v. Jefferson Cty. Comm'n</i> , 567 U.S. 758 (2012).....	3
	Okla. Const., Art. V, § 9	4
	Okla. Const., Art. V, § 9A	3, 4
	14 Okla. Stat. § 80.35.....	1, 15
	26 Okla. Stat. § 12-106	2
	51 Okla. Stat. § 8.....	2
	Oklahoma Almanac (55 th Ed.)	4
C.	EQUAL PROTECTION ANALYSIS.....	5
	<i>Board of Estimate v. Morris</i> , 489 U.S. 688 (1989).....	6

	<i>Davis v. Bandemer</i> , 478 U.S. 109 (1986).....	6
	<i>Evenwel v. Abbott</i> , 136 S. Ct. 1120 (2016).....	6
	<i>Kirkpatrick v. Preisler</i> , 394 U.S. 526 (1969).....	6
	<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964).....	1, 4, 5
	<i>Rucho v. Common Cause</i> , 139 S. Ct. 2484 (2019).....	6
	<i>Wilson v. Fallin</i> , 2011 OK 76.....	5
D.	CONCLUSION – EQUAL PROTECTION	6
IV.	MID-DECADE REDISTRICTING IS A SEPARATE SUBJECT.....	7
A.	INTRODUCTION.....	7
	<i>In re Initiative Petition No. 420</i> , 2020 OK 9, __ P.3d __.....	7
	Okla. Const., Art. XXIV, § 1	<i>passim</i>
B.	ANALYSIS OF ISSUES ARISING FROM MID-DECADE REDISTRICTING.....	8
	1. MORE THAN 48 SENATORS.....	8
	2. SPECIAL SESSION.....	8
	Okla. Const., Art. V, § 3	8
	Okla. Const., Art. V, § 26	8, 9
	Okla. Const., Art. V, § 34	9
	Okla. Const., Art. VI, § 7.....	8
	26 Okla. Stat. § 1-101	8
	3. FISCAL RESPONSIBILITY	9
	<i>Ethics Commission v. Fallin</i> Okla. S.Ct. No. 117149 (Sept. 24, 2018).....	9
	Okla. Const., Art. V, § 57	9

62 Okla. Stat. § 34.34.....	9
62 Okla. Stat. § 34.36.....	9
4. PREPARATION FOR PRESIDENTIAL PRIMARY.....	10
19 Okla. Stat. § 321.....	10
26 Okla. Stat. § 3-115	11
26 Okla. Stat. § 3-116	10
26 Okla. Stat. § 3-118	11
26 Okla. Stat. § 14-118	11
26 Okla. Stat. § 20-101	11
26 Okla. Stat. § 20-104	11
5. CONFUSION ON RESIDENCY REQUIREMENT FOR ELECTION OF 2024	12
14 Okla. Stat. § 80.8.....	12
14 Okla. Stat. §108.....	12
6. RESOLUTION OF THE ISSUES	12
C. LEGAL ANALYSIS	13
<i>Assn. of Optometric Physicians v. Raper,</i> 2018 OK 13, 412 P.3d 1160.....	16
<i>In re Initiative Petition No. 342,</i> 1990 OK 76, 797 P.2d 331.....	14
<i>In re Initiative Petition No. 344,</i> 1990 OK 75, 870 P.2d 782.....	14
<i>In re Initiative Petition No. 363,</i> 1996 OK 22, 927 P.2d 558.....	14
<i>In re Initiative Petition No. 403,</i> 2016 OK 1, 367 P.3d 472.....	13
<i>In re Initiative Petition No. 420,</i> 2020 OK 9, __ P.3d __.....	12, 13, 14
<i>In re Initiative Petition No. 420,</i> 2020 OK 10, __ P.3d __.....	14

	<i>Okla. Oil & Gas Ass’n v. Thompson</i> , 2018 OK 26, 414 P.3d 345.....	13
	<i>Rupe v. Shaw</i> , 286 P.2d 1094 (Okla. 1955).....	13
	Okla. Const., Art. XXIV, § 1	<i>passim</i>
D.	CONCLUSION—MID-DECADE REDISTRICTING	15
	14 Okla. Stat. § 6.1.....	15
	14 Okla. Stat. § 80.35.....	1, 15
	14 Okla. Stat. § 133.....	15
	2011 Okla. Sess. Laws Ch. 194, H.B. 1527.....	15
	2011 Okla. Sess. Laws Ch. 284, H.B. 2145.....	15
	2011 Okla. Sess. Laws Ch. 289, S.B. 821	15
V.	CONCLUSION	15

I. INTRODUCTION

Initiative Petition 430, State Question 815 (“IP 430”), should be stricken by the Court as unconstitutional. (i) IP 430 will cause Oklahoma to have more than 48 senators in 2025 and 2026. Because some districts will have two or more senators, the votes of citizens in those districts will be more valuable. As shown in the one-person-one-vote cases, this violates the Equal Protection Clause of the U.S. Constitution. *Baker v. Carr*, 369 U.S. 186 (1962), *Reynolds v. Sims*, 377 U.S. 533 (1964). (ii) The mid-decade redistricting required by IP 430 will cause a number of issues in addition to having more than 48 senators. By adding mid-decade redistricting to the topics from the proponents’ previous two petitions, IP 420 and IP 426, IP 430 contains at least two separate subjects in violation of Art. XXIV, § 1, Okla. Const.

II. SUMMARY OF THE RECORD

The Summary of the Record including a description of the provisions of IP 430 is set forth in § IV of the Application and Petition in this case.

III. MORE THAN ONE SENATOR PER DISTRICT VIOLATES EQUAL PROTECTION

A. MORE THAN 48 SENATORS

Three provisions in IP 430 will combine to cause Oklahoma to have more than 48 senators in 2025 and 2026. First, § 1 of IP 430 provides for each senator to serve a four year term. Second, IP 430 requires that a mid-decade redistricting occur within one year if IP 430 is approved by the voters. § 4(E)(6). Third, when the mid-decade redistricting occurs, the lines must be drawn without consideration of where the incumbent senators live. § 4(D)(2)(b).

The 24 even numbered districts will elect senators in 2022 for four year terms, IP 430, § 1, and the 24 odd numbered districts will elect senators in 2024. 14 O.S. § 80.35.1. The

Application and Petition filed in this case contains a detailed description, with diagrams, explaining how IP 430 will result in more than 48 senators. Here is a summary:

1. Suppose there is an area large enough for two senate districts. It is divided north to south by a river and east to west by an interstate highway. In 2021 the Legislature redistricts the Senate and designates the area as Districts 2 and 4, divided by the river, north to south.

2. In November 2022, Senator A is elected in District 2 and Senator B is elected in District 4. Senators A and B will both serve through the end of 2026. Suppose also that IP 430 is approved by the voters in November 2022.

3. In the spring of 2023, the Commission redistricts again, this time without being able to consider where incumbents live. Suppose the same geographic area which is Districts 2 and 4 is now divided east to west by the interstate with the result that Senators A and B now both live in District 2.

4. District 2 will have two senators in the Legislative Session of 2024. Senators A and B would no longer be able to represent District 4, 51 O.S. § 8, and 26 O.S. § 12-106 would require that a special election be held to fill the empty seat.

5. In the Legislative Sessions of 2025 and 2026, District 2 will still have two senators. The geographic area sufficient for two senators in Districts 2 and 4 will have three—senators A, B, and C. Oklahoma will have 49 senators. The same pattern will occur in multiple places.

6. For the Legislative Sessions in 2025, and 2026, voters in districts with one senator will be at a disadvantage as compared to voters in District 2, which will have two senators.

Although this scenario demonstrates how Oklahoma will end up with more than 48 senators, the legal argument does not depend on the facts matching the scenario. The legal argument is based on the fact that in every place an even number senator is drawn into a district with another incumbent, that will cause the state to have more than 48 senators.

This is not a surprise. IP 430 specifically allows for a district to have more than one senator. Compare § 2 on the House of Representatives with § 1 on the Senate:

The House, IP 430 § 2	The Senate, IP 430 § 1 (emphasis added)
“Each district shall be entitled to one Representative. Each Representative elected shall hold office for two years.”	“Each senatorial district shall be entitled to one senator, who shall hold office for four years; provided that any senator, serving at the time of the adoption of this amendment, shall serve the full time for which he or she was elected. ”

The harder question is how many senators may end up in the same district. With no consideration of incumbents’ residence, three or more incumbents could easily end up in the same district.

It is inevitable that incumbent senators will be drawn into the same district because IP 430 specifically prohibits the Commission from considering the residence of a state senator. § 4(D)(2)(b). Indeed, eliminating incumbent protection is an explicit goal of IP 430. Drawing incumbents into the same district has not been a problem in past redistricting because incumbents, of either party, were not typically drawn into the same district, and because consideration could be given to “historical precedents” and “political interests.” Art. V § 9A, Okla. Const. (Avoiding contests between incumbents is a “valid, neutral” state districting policy. *Tennant v. Jefferson Co.*, 567 U.S. 758, 764 (2012); *Alexander v. Taylor*, 2002 OK 59, ¶ 23.)

The problem arises because IP 430 would give every senator a four year term. When the Oklahoma Senate was created, the Constitution created staggered terms by having half the senators elected to two year terms on a one time basis. Art. V, § 9, Okla. Const. (now repealed). Then, in 1964, the Senate was reconfigured again and again, a one time, two year term was used to create the stagger. Here is how it happened: Article V, § 9A was adopted and provided for a system of apportioning senate districts by county and included the language the proponents use here. Just like IP 430, § 9A provided that senators would serve for four years, “provided that any senator, serving at the time of the adoption of this amendment, shall serve the full time for which he was elected.” That provision was adopted as SQ 416 on May 26, 1964. Art. V, § 9A, Okla. Stat. Ann.; *Oklahoma Almanac*, (55th Edition) p. 628. A few weeks later, on June 15, 1964, the Supreme Court decided *Reynolds v. Sims*, 377 U.S. 533 (1964), extending the one-person-one-vote principal to state legislatures. About seven weeks after that, in *Reynolds v. State Election Bd.*, 233 F.Supp. 323 (W.D. Okla. 1964)(August 7, 1964), the court needed to create staggered terms for the Senate, this time without violating the Equal Protection Clause. The court did so by providing that half the senators would start with two year terms. “Senators elected from even-numbered districts in November, 1964, shall hold office until the fifteenth day succeeding the general election in November, 1966, and senators elected from the odd-numbered districts in 1964 shall hold office until the fifteenth day succeeding the general election in November 1968.” *Id.* at 332. See also Appx. at Tab J. Now, by requiring mid-decade redistricting and by having staggered terms but with no senators serving two year terms, IP 430 creates a system that will inevitably be an Equal Protection violation.

B. EQUAL PROTECTION ANALYSIS

Because some senate districts will have two senators and other districts only one, the apportionment scheme of IP 430 will violate the Equal Protection clause. *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (“Simply stated, an individual’s right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.”); and *Wilson v. Fallin*, 2011 OK 76, ¶ 12. “It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State’s voters could vote two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once.” *Reynolds*, at 562. And yet, under IP 430, certain voters will get to vote two times for a senator—in 2022 and again in 2024—while voters living in other parts of the state will vote only once.

There are two Equal Protection problems presented when districts are not equal. “Equal representation for equal numbers of people is a principle designed to prevent *debasement of voting power* and *diminution of access* to elected representatives.” *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)(emphasis added). Both are presented here.

For debasement of voting power, sometimes called “electoral equality,” the principle is that each person’s vote should count the same as another’s. If a vote in one part of the state is given more weight than a vote in another part of the state, “the resulting discrimination against voters living in disfavored areas is easily demonstrable mathematically.” *Reynolds v. Sims*, 377 U.S. at 578, 562-63. That problem is presented here. In districts where an even number senator is redistricted into an odd number district, those voters will get to elect two senators for the Sessions in 2025 and 2026—the even number senator they elect in 2022 and the odd number senator they elect in 2024. Those voters’ votes count twice as much as the votes of their neighbors who live in districts with only one senator. “The personal right to vote

is a value in itself, and a citizen is, without more and without mathematically calculating his power to determine the outcome of an election, shortchanged if he votes for only one representative when citizens in a neighboring district, of equal population vote for two” *Board of Estimate v. Morris*, 489 U.S. 688, 698 (1989).

A second problem is diminution of access, sometimes called “representational equality,” which is the principle that a constituent should have equal access to a senator that “represents” him or her. The principle of representational equality protects both voters and nonvoters who live in the district. *Evenwel v. Abbott*, ___ U.S. ___, 136 S.Ct. 1120, 1132 (2016). The representation could be (a) voicing the constituent’s concerns at the Capitol, (b) helping the constituent navigate the state bureaucracy, or (c) providing other constituent services. *Kirkpatrick, supra*. As explained in *Evenwell*, 136 S.Ct. at 1132, “By ensuring that each representative is subject to requests and suggestions from the same number of constituents, total-population apportionment promotes equitable and effective representation.” See also, *Rucho v. Common Cause*, 139 S.Ct. 2484, 2501 (2019)(“[E]ach representative must be accountable to (approximately) the same number of constituents.”), and *Davis v. Bandemer*, 478 U.S. 109, 123 (1986). IP 430 would violate the equality of representation principle because those living in districts with two senators would have twice as much representation as those living in districts with one.

C. CONCLUSION – EQUAL PROTECTION

The two protestants in this case, Roger Gaddis (Pontotoc County) and Eldon Merklin (Woodward County), both live in odd numbered senate districts and both live outside the Oklahoma City and Tulsa metropolitan areas. They are disadvantaged by IP 430. (a) The phenomenon of voters having two senators will occur because the even numbered senators get drawn into an incumbent’s district meaning voters in odd numbered districts will be

disadvantaged. (b) Also, as discussed below, the advantage of having two senators will disproportionately favor voters in Oklahoma and Tulsa counties. This Court should protect the Equal Protection rights of Mr. Gaddis and Mr. Merklin along with the rights of hundreds of thousands of Oklahomans who will not have two senators. This Court should strike down this obvious Equal Protection violation.

IV. MID-DECADE REDISTRICTING IS A SEPARATE SUBJECT

A. INTRODUCTION

IP 430 is also unconstitutional because it has two subjects in violation of Art. XXIV § 1, Okla. Const. This Court ruled that creating a redistricting commission and creating new criteria for drawing district lines are one subject. *In re Initiative Petition 420*, 2020 OK 9. However, mid-decade redistricting is a separate subject, and will create several issues:

1. Oklahoma will have more than 48 senators in 2025 and 2026.
2. Precinct lines may well not be completed on time for the presidential primary in March of 2024.
3. The State Election Board and county election boards will at least double the time and expense they have to spend on redistricting tasks.
4. IP 430 will require a Special Session of the legislature to appropriate funds for mid-decade redistricting, but it makes no provision for such a Session.
5. IP 430 makes no provision for compliance with our state's fiscal responsibility provisions to prevent government overspending.
6. Anticipating the problem that district lines will not be completed in time for candidates to meet the residency requirement, IP 430 § 5(F) provides that there would be no residency requirement in that event.

The protestants do not advance these as policy arguments. Instead, these issues demonstrate that mid-decade redistricting is an important issue. Pursuant to Art. XXIV, § 1 voters should have the option to vote on whether the state should take on mid-decade redistricting. Further, voters should have the option to vote to wait and see what they think of the Legislature's redistricting in 2021 before committing the state to a second round in 2023.

B. ANALYSIS OF ISSUES ARISING FROM MID-DECADE REDISTRICTING

1. More than 48 Senators

Having more than 48 senators is an important issue, and Oklahoma voters deserve an opportunity to vote on that issue. (a) Equal Protection is discussed above. (b) The districts having more than one senator will disproportionately be in Oklahoma and Tulsa counties because they have the most districts and the senators live closer to each other. Twenty-two of the forty-eight Senate districts are in Oklahoma or Tulsa County. Appx. at Tab F. As a matter of math, 2.6% of the geographic area (2/77) contains 45.8% of the districts (22/48). When districts are drawn without considering incumbents' residences, drawing incumbents into the same district is inevitable.

2. Special Session

Currently, there are two methods for a Legislative Session to start: (a) Art. V § 26 requires a regular session beginning in February each year. (b) The Governor can call a Special Session, limited to subjects designated by the Governor. Art. VI, § 7, Okla. Const.

IP 430 would necessarily require a third method. Section 4(B)(8)(b) requires that "the Commission shall receive an appropriation by the Legislature" within 90 days of IP 340 being approved. That appropriation will have to occur at a Special Session. Initiative Petitions are presumptively voted on at the general election. Art. V, § 3, Okla. Const. The general election in 2022 will occur on November 8. 26 O.S. § 1-101. Ninety days after that will be Monday,

February 6, 2023—the first day of the regular Session. Art. V, § 26, Okla. Const. The Legislature could not wait until February 6 to begin. Art. V, § 34, Okla. Const. In any event, a Special Session would be necessary so the Legislature could review the budget submission, pass the legislation through both houses, and obtain the Governor’s signature. Although IP 430 will require a Special Session, it makes no provision for how the Session would be convened or conducted.

3. Fiscal Responsibility

Appropriations legislation is not a mere ministerial detail. Even constitutional agencies must comply with the normal procedural requirements in order to allow the Legislature to analyze the appropriation request. Order, *Ethics Commission v. Fallin, et al.* No. 117,149, (September 24, 2018). For example, the State Finance Act, 62 O.S. § 34.36 requires a budget request. However, IP 430, § 4(B)(4)(d), allows 120 days after approval to receive applications to be a Commissioner, so there may not even be a Commission to approve a budget request until a month after the 90 day deadline for the appropriation in § 4(B)(8)(b).

Further, an important fiscal responsibility measure is a consideration of all the agencies’ budgets rather than parceling out appropriations one at a time, 62 O.S. § 34.34; Art. V, § 57, and that will not be possible if the Commission receives one appropriation early.

Also, the time and money spent on redistricting by the state and county election boards will at least double. The affidavit of Paul Ziriaux, Appx. at Tab I, discusses the fiscal impact of mid-decade redistricting.

Oklahoma has a long history of strict regulation of the state’s fiscal matters in order to avoid state indebtedness. IP 430, however, would do an end run around those procedures.

4. Preparation for Presidential Primary

Another special issue arising from mid-decade redistricting is that there is a very real risk that Oklahoma could not have precinct lines drawn in time to be prepared for the Presidential primary election to be held in March of 2024. The affidavit of Paul Ziriaux, Secretary of the State Election Board is at Tab I in the Appendix and describes the facts.

After district lines are drawn by the Legislature, the process of drawing precinct lines begins. The process includes:

a. The legislature draws lines for Congress, the Legislature, and Judicial Districts. Precinct lines cannot cross any of these district lines. 26 O.S. § 3-116(A). Precinct lines also cannot cross a county commissioner district line. Those lines are drawn by the counties and October 1 is the last day they can be completed. 19 O.S. § 321(B).

b. The information on the lines drawn by the legislature is given to the O.U. Center for Spatial Analysis (CSA) which works with the State Election Board and county elections boards to get the precinct lines completed. See Appx. at Tab H. As the counties complete their county commissioner district lines, that information is given to the county election board and the CSA which can use the lines drawn by the legislature and the lines drawn for county commissioner districts to draw precinct lines.

c. The CSA meets with each county to make a plan for precinct lines in that county. Some of these meetings can be by telephone, but each county has to work with CSA individually to create a precinct plan for that county. Once a plan for a county is devised, it has to be formally approved by the County Election Board.

d. After a county election board approves the precinct plan, CSA adds the street guide record to the file which allows matching of a particular street address to a precinct. This

can be an involved process because different addresses on a particular street can be in different precincts.

e. After the street guide record is added, each county election board updates their information on each voter. For those voters with changes, for example if they are in a new precinct, new voter cards must be produced and mailed. 26 O.S. § 3-118(5).

f. After that, precinct maps have to be printed and distributed. 26 O.S. § 3-115.

The concluding paragraph of Secretary Ziriak's affidavit explains, "If the lines for Congress and the state legislature were not completed until the Fall of 2023, that would put the election officials in a very difficult position with respect to the presidential preferential primary. The presidential preferential primary in Oklahoma will be on March 5, 2024. 26 O.S. § 20-101(A) (first Tuesday in March). Results for the presidential preferential primary must be reported by congressional district 26 O.S. § 20-104(A). This means congressional district lines, and the corresponding precinct lines must be in place for that election. Under the federal Military and Overseas Voter Empowerment Act and corresponding state law, ballots for that election have to be transmitted to uniformed services and overseas voters at least 45 days before the election. 26 O.S. § 14-118(A). That will be January 20, 2024. In order to begin preparing election databases and ballot files for the presidential preferential primary, the precincts that will participate in that election must be known. The candidate filing period for the presidential preferential primary begins on the first Monday in December. 26 O.S. § 20-102. That is December 4, 2023. The process of programming the databases and preparing ballot files for the presidential preferential primary typically begins in mid-to-late December, so the final precinct lines for the election must be in place at that time. If the congressional or legislative district lines are not completed until November of 2023, election officials would

have only a few weeks to complete the precinct drawing process that normally takes 6 months or longer.”

Further, if the Commission cannot meet both of the super majority requirements necessary to approve a plan, § 4(E)(1), this Court’s role as the “Fallback Mechanism” cannot begin until one year after November 8, 2022. § 4(F).

All of this adds up to a very real possibility that the precinct drawing process will not be complete on time for the Presidential Primary.

5. Confusion on Residency Requirement for Election of 2024

Yet another consequence of mid-decade redistricting is that Oklahoma could have senators and representatives elected who do not meet the residency requirements for living in their district. Residency for the Legislature will need to be established by October 10, 2023, six months prior to filing for office. 14 O.S. §§ 80.8, 108. As discussed above, the Commission may not have completed its work and there may not be district lines by October 10, 2023.

Anticipating that mid-decade redistricting will not be completed on time, IP 430, for the first time in the history of our state, would allow a person to run without meeting minimum residency requirements. “If the approval process is not complete by the minimum residency requirement deadline for candidates to the state office, **such requirements shall be suspended and not apply for any affected election.**” § 4(F)(3) (emphasis added).

6. Resolution of the Issues

It is no answer for the proponents to assert simply that these issues will get ironed out as issues always do. Legislative solutions would be prohibited by IP 430, § 5 which prevents the Legislature from taking action on issues given to the Commission. Also, many of the issues cannot be fixed because they would be part of the Constitution; for example, (a) there would be more than 48 senators, (b) a Special Session would be required, (c) mid-decade redistricting

would be required, (d) the Commission would be required to redistrict by November of 2023, etc. Further, the Legislature could not call itself into Special Session. Finally, some issues are simply not subject to government control. For example, redrawing precinct lines in 77 different counties requires 77 different plans; it takes time.

C. LEGAL ANALYSIS

This Court analyzed the application of Art. XXIV, § 1 to the proponents' first petition, IP 420, and the Court should employ the same legal analysis here. In *In re Initiative Petition 420*, 2020 OK 9, ¶ 22 (emphasis added), the Court discussed its analysis in *In re Initiative Petition 403*, 2016 OK 1, at ¶ 12, (the Oklahoma Education Improvement Fund) and explained:

Using this germaneness test, we held each section of the amendment was reasonably interrelated and interdependent, forming an interlocking package “**deemed necessary by the initiatives’ drafters** to assure effective public education improvement funding.”

Here, mid-decade redistricting was definitely not “deemed necessary by the initiatives’ drafters.” The proponents made no mention of mid-decade redistricting in IP 420 or IP 426.

Also, *In re Initiative Petition 420*, explained that different provisions should “constitute a single scheme.” The excerpt (emphasis added) reads as follows:

“[G]enerally provisions governing projects **so related as to constitute a single scheme** may be properly included within the same amendment; and that matters germane to the same general subject indicated in the amendment's title, or within the field of legislation suggested thereby, may be included therein.”

In re Initiative Petition 420, 2020 OK 9, at ¶ 19 (emphasis added) quoting from *Rupe v. Shaw*, 286 P.2d 1094 (Okla. 1955). Similarly, in *OKOGA v. Thompson*, 2018 OK 26, ¶ 14, 414 P.3d 345, this Court examined Art. XXIV, § 1 and explained the test as follows:

“**A single subject measure, within the meaning of Art. 24, § 1, Okla. Const., is one whose componential ingredients, no matter how numerous, are so interrelated as to all form parts of an integrated whole.**”

Quoting *In re Initiative Petition 363*, 1996 OK 22, ¶ 15. In IP 430 it is apparent that mid-decade redistricting does not “constitute a single scheme” or “an integrated whole” with the rest of the proposition because the proponents drafted IP 420 and IP 426 to proceed without mid-decade redistricting. The substantive issues of creating a Commission and creating new criteria for drawing districts is not a “single scheme” with the decision to implement mid-decade redistricting and repeal districting legislation passed a year earlier.

Also, in *In re Initiative Petition 420*, 2020 OK 10 at ¶ 20, this Court distinguished *In re Initiative Petition 344*, 1990 OK 75, ¶ 9, explaining that IP 344 had multiple subjects:

The sections are **not so intertwined as to require that they be adopted at the same time in order to preserve the integrity of each section.**

Again, mid-decade redistricting is not “so intertwined” with the propositions advanced in IP 420 and IP 426 “as to require that they be adopted at the same time in order to preserve the integrity of each section.” The proponents can accomplish all their substantive policy goals from IP 420 and 426 without also plunging the state into a mid-decade redistricting situation.

Proponents cannot avoid the operation of Art. XXIV, § 1, by simply asserting that IP 430 all relates to the word “redistricting.” As recognized in *In re Initiative Petition 420*, 2020 OK 9, at ¶ 20, that is insufficient. The Court distinguished *In re Initiative Petition 342*, 1990 OK 76, ¶ 8, where the Court found a violation of Art. XXIV, § 1 explaining that **“the only connection that these topics have to each other is that they all tangentially relate to the general subject of corporations.”** *Id.* Similarly, the Court distinguished *In re Initiative Petition 344*, 1990 OK 75, where the Court found a violation even though all of the changes related to “the executive branch.” The same analysis applies here. Mid-decade redistricting does not meet the “integrated whole” or “required to preserve the integrity” tests with respect to the proponents’ substantive proposals in IP 420 and IP 426.

The purpose of Art. XXIV, § 1 is to prevent log-rolling. Voters should not have to make an “unpalatable all or nothing choice.” *Assn. of Optometric Physicians v. Raper*, 2018 OK 13, ¶ 9. IP 430 presents the unpalatable all or nothing choice that a voter favoring a redistricting commission also has to approve the expense and confusion of mid-decade redistricting.

D. CONCLUSION—MID-DECADE REDISTRICTING

Oklahoma voters deserve an opportunity to vote separately on whether (a) to adopt the proponents’ substantive redistricting proposal and (b) whether to commit to mid-decade redistricting. Further, when redistricting last occurred, the redistricting legislation passed with huge bipartisan margins in both houses.

Redistricting Legislation	Votes in House	Votes in Senate
Congress, 14 O.S. § 6.1 (Laws 2011, Ch. 194, H.B. 1527)	88-0	37-5
Senate, 14 O.S. § 80.35 (Laws 2011, Ch. 289, S.B. 821)	67-30	38-6
House, 14 O.S. § 133 (Laws 2011, Ch. 284, H.B. 2145)	93-3	43-4

Appx. at Tab G. Given the widespread agreement with redistricting legislation in 2011, voters may well want to wait to see what happens in 2021 before deciding to incur the expense, confusion and uncertainty from undertaking an additional round of redistricting in 2023. This is a separate question, and voters deserve to consider it separately.

As detailed in paragraph 33 of the Application and Petition, Oklahoma voters have exercised their rights of direct democracy on at least seven occasions with respect to redistricting. Given this active history, voters should not be stuck with a log-rolled petition in which mid-decade redistricting is lumped in with the proponents’ substantive proposals. The proponents can easily split IP 430 into two questions and refile, and the voters would not be forced into an unpalatable all or nothing choice.

V. CONCLUSION

Petitioners respectfully request the Court find IP 430 to be unconstitutional.

Respectfully submitted,



ROBERT G. MCCAMPBELL, OBA No. 10390

GABLEGOTWALS

One Leadership Square, 15th Floor

211 North Robinson Avenue

Oklahoma City, OK 73102

Telephone: (405) 235-5500

RMcCampbell@Gablelaw.com

Attorney for Protestants/Petitioners

Roger Gaddis, and Eldon Merklin

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:

D. Kent Meyers
Roger A. Stong
Melanie Wilson Rughani
CROWE & DUNLEVY, P.C.
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102

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

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



Robert G. McCampbell

S549795

