ORIGINAL

FILED
SUPREME COURT
STATE OF OKLAHOMA
FEB 28 2020
JOHN D. HADDEN
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

(1) ELDON MERKLIN, AND
(2) CLAIRE ROBINSON DAVEY,

PROTESTANTS/PETITIONERS,

v.

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

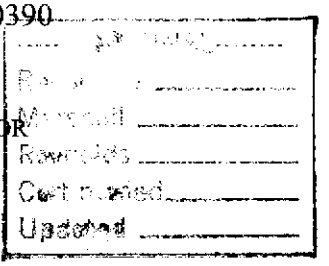
RESPONDENTS/PROPONENTS.

#118686

Case No. _____

BRIEF IN SUPPORT OF APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION AND REVIEW THE GIST OF INITIATIVE PETITION NO. 426

ROBERT G. MCCAMPBELL, OBA NO. 10390
TRAVIS V. JETT, OBA NO. 30601
GABLEGOTWALS
ONE LEADERSHIP SQUARE, 15TH FLOOR
211 NORTH ROBINSON AVENUE
OKLAHOMA CITY, OK 73102
TELEPHONE: (405) 235-5500



ATTORNEYS FOR PROTESTANTS/PETITIONERS

FEBRUARY 28, 2020

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

(1) ELDON MERKLIN, AND (2) CLAIRE ROBINSON DAVEY, PROTESTANTS/PETITIONERS, v. (1) JANET ANN LARGENT, (2) ANDREW MOORE, AND (3) LYNDA JOHNSON, RESPONDENTS/PROPONENTS.	Case No. _____

BRIEF IN SUPPORT OF APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION AND REVIEW THE GIST OF INITIATIVE PETITION NO. 426

ROBERT G. MCCAMPBELL, OBA NO. 10390
TRAVIS V. JETT, OBA NO. 30601
GABLEGOTWALS
ONE LEADERSHIP SQUARE, 15TH FLOOR
211 NORTH ROBINSON AVENUE
OKLAHOMA CITY, OK 73102
TELEPHONE: (405) 235-5500

ATTORNEYS FOR PROTESTANTS/PETITIONERS

FEBRUARY 28, 2020

INDEX

I. INTRODUCTION

This action is filed by Eldon Merklin and Claire Robinson Davey (collectively "Protestants") because the gist of Initiative Petition 426 ("IP 426") is legally insufficient.

First, the gist is affirmatively inaccurate because it reflects that the Panel is designated by the Chief Justice when in fact the Panel is selected by random drawing. A comparison of the gist to the Petition demonstrates the inaccuracy:

GIST	IP 426 § 4(B)(4)(b)
[A] panel of retired judges and justices **designated by the Chief Justice** of the Oklahoma Supreme Court will choose pools of approximately 20 applicants from each group, then randomly select 3 Commissioners from each pool.	The Panel shall consist of three Judges or Justices who have retired from the Oklahoma Supreme Court or the Oklahoma Court of Criminal Appeals or the Oklahoma Court of Civil Appeals, and who are able and willing to serve on **the Panel, selected by random drawing.**

(Emphasis added) This Court has never permitted a gist which is affirmatively inaccurate.

Second, the gist provides the voter with no notice that the Commission can act only by achieving two specific supermajority requirements. The Commission can approve a redistricting plan only if (a) six of the nine Commissioners agree and (b) only with agreement of at least one member of each of the three Groups (largest party, second largest party, and unaffiliated). IP 426, § 4(E)(1). These supermajority requirements materially change the dynamics, and the gist should reveal that the traditional majority vote rule will not apply.

Third, although the gist says that districts will be drawn according to the criteria of "political fairness," it provides the potential signatory with no information at all about what "political fairness" might mean or how that is to be assessed. As pointed out in *Rucho v. Common Cause*, ___ U.S. ___, 139 S.Ct. 2484 (2019), there are different conceptions of

"fairness" in this context, and they are not consistent. The proponents should disclose to signatories what type of "political fairness" would be imposed by this petition.

II. SUMMARY OF THE RECORD

The gist submitted by the proponents, Appx. at Tab A, is as follows:

> This measure adds a new Article to the Oklahoma Constitution, intended primarily to prevent political gerrymandering. The Article creates a Citizens' Independent Redistricting Commission, and vests the power to redistrict the state's House, Senatorial, and federal Congressional districts in the Commission (rather than the Legislature). The 9-member Commission will consist of 3 members from each of 3 groups, determined by voter registration: those affiliated with the state's largest political party; those affiliated with its second-largest party; and those unaffiliated with either. Commissioners are not elected by voters but selected according to a detailed process set forth by the Article: in brief, a panel of retired judges and justices designated by the Chief Justice of the Oklahoma Supreme Court will choose pools of approximately 20 applicants from each group, then randomly select 3 Commissioners from each pool. The Article sets forth various qualifications for Commissioners, Special Master, and Secretary, intended to avoid conflicts of interest *(for example,* they cannot have changed party affiliation within a set period, and neither they nor their immediate family may have held or been nominated for partisan elective office or served as paid staff for a political party or as a registered lobbyist in the last five years). It also sets forth a process for the creation and approval of redistricting plans after each federal Decennial Census, including, among other things, a method for counting incarcerated persons, public notice, and open meeting requirements. In creating the plans, the Commission must comply with federal law, population equality, and contiguity requirements, and must seek to maximize respect for communities of interest, racial and ethnic fairness, political fairness, respect for political subdivision boundaries, and compactness (in order of priority), without considering the residence of any legislator or candidate or a population's political affiliation or voting history except as necessary for the above criteria. The Article creates a fallback mechanism by which the state Supreme Court, using a report from the Special Master, will select a plan if the Commission cannot reach the required level of consensus within a set timeframe. It also sets forth procedures for funding and judicial review, repeals existing constitutional provisions involving legislative districts, codifies the number of state House and Senatorial districts, and reserves powers

to the Commission rather than the Legislature. Please review attached Petition for further details.

III. ARGUMENT AND AUTHORITY

A. The Analysis of a Gist

The right of initiative petition "is not absolute." There are constitutional and statutory, limits on the process. *In re Initiative Petition No. 420*, 2020 OK 10, ¶ 3. Because the ballot title is no longer circulated with the petitions, the gist "'is the only shorthand explanation of the proposal's effect.'" *Oklahoma's Children v. Coburn*, 2018 OK 55, ¶ 14, 421 P.3d 867, quoting *In re Initiative Petition No. 409*, 2016 OK 51, ¶ 3, 376 P.3d 250. The gist now has an "enhanced significance." *Id.* at ¶ 14.

In addressing the first petition by these proponents, this Court noted that the gist must disclose the material changes to be made. *In re Initiative Petition No. 420*, 2020 OK 10, ¶ 4:

- A gist must be "revealing of the design and purpose of the petition."
- A potential signatory must be "at least put on notice of the changes being made."
- The gist must "explain the proposal's effect."

Also, as explained in *Oklahoma's Children, Inc. v. Coburn*, 2018 OK 55, ¶ 24:

- Potential signatories are entitled to "enough information to make an informed decision."
- "[T]his Court has historically taken a dim view of excluding important changes made to the law from the gist of a petition."

The protestants ask this Court to continue in its role of protecting voters who are asked to sign a petition.

B. The Gist is Affirmatively Inaccurate.

1. The Inaccuracy

The gist must be stricken because it is affirmatively inaccurate on a critically important point. The first step of the process is to create a "Panel" of three retired justices or appellate judges who oversee the selection of the Commissioners. The gist states that the Panel is designated by the Chief Justice: "[I]n brief, **a Panel** of retired judges and justices **designated by the Chief Justice** of the Oklahoma Supreme Court will choose pools of applicants . . . ." That statement is factually inaccurate. Section 4(B)(4)(b) of IP 426 provides that the three members of the Panel are **"selected by random drawing."** Those two statements cannot be reconciled.

This Court already ruled with respect to the previous petition, IP 420, that saying the Panel was "designated by the Chief Justice" is inconsistent with saying the Panel is "selected by random drawing." As the Court explained:

> The petition requires a Panel to be designated by the Chief Justice consisting of retired Justices and appellate judges. Sections 4(A)(7) and 4(B)(4)(b) of IP 420. *** Section 4(B)(4)(b) also states that the Panel will be selected by random drawing. We agree with the Petitioners that this creates an inconsistency in the petition and should be clarified.

2020 OK 10, ¶ 7. The Court should not retreat from its finding that "designated by the Chief Justice" is "inconsistent" with "selected by random drawing."

Even if the Court would entertain relitigation of the issue, the result would be the same. The word "designated" means that the person designating is making the selection. "Designate" means:

- "3.To select for a particular duty, office, or purpose; appoint." *The American Heritage Dictionary*, (American Heritage, 1969) at p. 357.
- "3. To name for an office or duty; appoint." *Webster's New World Dictionary* (Simon and Schuster, 1984), at p. 382

- "To indicate, select, appoint, nominate, or set apart for a purpose or duty, as to designate an officer for a command." *Black's Law Dictionary* (West, 1979) at p. 402.
- The synonyms of "designate" are "name, specify, indicate; appoint." *Roget's College Thesaurus*, (Grosset and Dunlap, 1958) at p. 93.

None of these definitions even remotely suggests that to "designate" can mean to select randomly.

Also, a voter asked to sign the petition could not possibly read the gist to say that the Panel is chosen randomly. Once again, the gist states:

> **[A] panel of retired judges and justices designated by the Chief Justice** of the Oklahoma Supreme Court will choose pools of approximately 20 applicants from each group, **then randomly select 3 Commissioners** from each pool.

(emphasis added). The only possible reading of that provision is that the Panel is "designated by the Chief Justice" and the Commissioners are "randomly select[ed]."

The fact that the gist reflects that its statement on how the Panel is selected is "in brief," does not mean that the gist can be inaccurate. This Court has repeatedly affirmed that a gist is "'not required to contain every regulatory detail so long as its outline is not incorrect.'" *In re Initiative Petition 420*, 2020 OK 10, at ¶ 4, *quoting In re Initiative Petition 409*, 2016 OK 51, ¶ 3. Here the gist is incorrect.

An argument by the proponents that the inaccuracy should be permitted due to the logistics of drafting a short gist cannot succeed. It would have been easier and used fewer words to draft the gist accurately. For example:

> [A] randomly selected panel of retired judges and justices ~~designated by the Chief Justice of the Oklahoma Supreme Court~~ will choose pools of approximately 20 applicants from each group, then randomly select 3 Commissioners from each pool.

2. Legal Significance of the Inaccuracy

This Court has never held that a gist can be approved even though it is inaccurate. Instead, this Court has consistently ruled that a gist must be accurate. *E.g. Oklahoma's Children,* supra, ¶ 13 (Gist can omit some regulatory detail "so long as it is outline is not incorrect."); *In re Initiative Petition 384*, 2007 OK 48, ¶ 9, 164 P.3d 125 (Gist must be "free from the taint of misleading terms."), *Initiative Petition 344*, 1990 OK 75, ¶ 14, 797 P.2d 326 (Gist must be "not deceiving."); *In re Initiative Petition 409*, 2016 OK 51, ¶ 3 (The gist is to prevent "deceit"). This Court should not compromise on its requirement that the gist be truthful with voters.

Even if this Court were inclined to create a new rule under which untruthfulness would be allowed in some cases, this case would not be the case for such a rule because of the prejudicial nature of the inaccuracy. The method of selecting the Panel is critically important. The members of the Panel are the only people that get to exercise any discretion over which applicants are named to the Commission, and their power is significant. The Panel gets to eliminate all but 20 applicants for each of the three Groups (largest party, second largest, and those unaffiliated with either). IP 426, § 4(B)(4)(f).

Each Panel member has virtually unfettered discretion. (1) For example, the members of the Panel can eliminate an applicant based on their view of the applicant's "ability to be impartial" or "ability to promote consensus on the Commission." IP 426, § 4(B)(4)(f)(ii). They can also eliminate applicants in the interest of "geographic balance." IP 426, § 4(B)(4)(f). (2) There is no appeals process. (3) Once an applicant is eliminated by the Panel, there is no alternative method to get selected. IP 426, § 4(B)(4)(g)-(h). Importantly, (4) the Panel can approve the list of finalists only when all three members are unanimous. IP 426, §4(B)(4)(e). Thus, as practical matter, any Panel member has the ability to veto a name of which he or she disapproves.

Whether the Panel is selected by the Chief Justice or selected by random drawing is a very significant piece of information for a potential signatory. Because the Panel members are the only people who exercise discretion in selecting the Commissioners and because their discretion is virtually unfettered, the selection of the Panel members is extremely important. According to the gist, the Chief Justice would choose the members of the Panel. The Supreme Court not only brings prestige and gravitas to the process, but a well-deserved reputation for decision making which is non-partisan and just. A voter reading the gist would naturally feel comfortable with a Panel selected with Supreme Court involvement. However, IP 426 actually provides for a very different system in which the Panel is selected at random. Instead of getting Panel members designated by the Chief Justice, the voters will get "potluck" with respect to the selection of the Panel. Many voters would have a very different view of an undemocratic selection process in which no public official involved.

The protestants here do not ask the Court to accept their policy arguments. They ask only for a gist which does not actively mislead voters. The voters can then decide for themselves whether to sign the petition. Further, the proponents should not be allowed to trade on the authority and prestige of this Court in order to achieve their policy goal.

3. The Previous Case

In the previous case, concerning IP 420, the question of whether the Panel would be selected by the Chief Justice or selected at random was vigorously litigated. In its decision, the Court noted the importance of the gist containing a description of the selection process.

> First, a shorthand explanation in simple language should convey the selection process and composition of the commissioners. The petition requires a Panel to be designated by the Chief Justice consisting of retired Justices and appellate judges. Sections 4(A)(7) and 4(B)(4)(b) of IP 420.

In re Initiative Petition 420, 2020 OK 10 ¶ 7. It is still the case that the gist should contain a sentence along the lines suggested by the Court explaining how the Panel gets selected, and the Court should require that sentence to be accurate.

4. Case Law

In *Oklahoma's Children, supra,* 2018 OK 55, ¶ 23, this Court struck a gist as inaccurate, because it omitted mention of the little cigar tax – one of the five taxes that would be repealed by the petition. The Court distinguished *McDonald v. Thompson*, 2018 OK 25, 414 P.3d 367, noting that in *McDonald* "'the gist properly mirrors the petition.'" *Id.* at ¶ 19, quoting *McDonald* at ¶ 9. The Court should apply the same analysis here. This gist does not "mirror the petition." Further, in *Oklahoma's Children*, at ¶ 17, the Court noted that a gist could avoid some regulatory detail "so long as its outline is not incorrect." Once again, this Court should follow *Oklahoma's Children*. Because this gist is incorrect, it must be stricken.

The relevance of the selection process is further shown by the *Voters First* case, in which an Ohio court struct down a ballot title which failed to provide information to voters about who selected the members of the redistricting committee. *State ex rel. Voters First v. Ohio Ballot Bd.*, 2012-Ohio-4149, 133 Ohio St. 3d 257, 266, 978 N.E.2d 119, 127. **"It is axiomatic that '[w]ho does the appointing is just as important as who is appointed.'"** *Id.* at ¶ 34. The instant case is even more egregious because the gist does not merely omit to describe the process; the gist here will actively mislead voters about the selection process.

5. Conclusion

The Court should continue to uphold the principle that the gist must be accurate in order to allow voters to make an informed decision on whether to sign the petition.

C. The Gist Omits Any Explanation of the Supermajority Requirements for the Commission

A second fatal problem is that the gist omits any notice of the two super majority requirements needed for the Commission to take action. The Commission can approve a redistricting plan only if (a) six of the nine commissioners approve, and (b) at least one Commissioner from each of the three Groups (Largest Party, Second Largest Party, and Unaffiliated) approves. IP 426, § 4(E)(1). The gist does not reveal these. The importance is that if the Commission cannot meet both of the super majority requirements, then this Court will determine the redistricting lines under IP 426's "Fallback Mechanism." IP 426, § 4(F)(2).

Because it will be difficult to meet the two super majority requirements, this Court will frequently be in the position of performing the legislative and highly political task of selecting the redistricting plan. A signatory deserves disclosure of this mechanism which not only makes it very difficult for the Commission to approve a redistricting plan but also makes it very likely that this Court will be the body selecting the redistricting plan.

This Court recognizes that notice of reallocation of political power is important in a gist. In *In re Initiative Petition 344*, 1990 OK 75, 797 P.2d 326, 330, this Court struck a gist which failed to disclose that the petition's effect would be to "increase the power of the newly elected Governor . . . ." Also, *In re Initiative Petition 384*, 2007 OK 48, ¶ 11, the Court explained, "The Protestants contend that these omissions mean that the gist failed to alert potential signatories to the effect the proposed statue would have on the balance of power between local school boards and the state. We agree." Similarly here, the failure to provide information on the super majority vote requirements deprives potential signatories of a key piece of information on how power will be allocated between the Commission and the Supreme

Court. It is particularly noteworthy here since the reallocation of political power is the primary purpose of IP 426.

The concurring opinion of Justice Winchester joined by Vice Chief Justice Darby and Justice Kauger in the case concerning the previous petition, IP 420, also emphasized the need of the gist to explain the role of the Supreme Court in the redistricting process. "IP 420 shifts power in the redistricting process from the Legislature to the Oklahoma Supreme Court, something the gist ignores." 2020 OK 10, ¶ 1, (Winchester concurring). "The gist as written does not mention the Court, and from the gist alone, a potential signatory will not know that the Court will significantly be involved in redistricting." *Id.* at ¶ 2. Similarly here, the proponents should be required to disclose the super majority requirements which significantly increase the likelihood of the Supreme Court having to make the legislative decision to adopt a particular plan.

A similar issue was fought in the first round. This Court held that merely telling voters that there is a "process for the selection of Commissioners" was insufficient and that voters deserved to know that the Commission would always contain three members of the largest party, three from the second largest party, and three unaffiliated. "Although the selection process need not be detailed, a simple statement concerning the selection and composition of the Commission is critical here to inform a potential signatory of the true nature of the petition." *Id. at* ¶ 7. The same principle applies here with respect to the Commission's approval requirements. A voter asked to sign the petition deserves to know that the Commission cannot approve a plan based on a majority vote as would ordinarily be the case.

"Fundamentally, the need for voters to be given enough information to make an informed decision is why this Court has historically taken a dim view of excluding important

changes made to the law from the gist of a petition." *Oklahoma's Children, supra*, 2018 OK 55, ¶¶ 24. The proponents should be required to correct the notable omission of the super majority requirements.

D. No Disclosure Regarding "Political Fairness."

A third fatal deficiency is that the gist fails to provide a voter any information regarding "political fairness." The gist explains that the Commission will apply substantive criteria to drawing district lines including that the plan "must comply with federal law, population equality, and contiguity requirements, and must seek to maximize respect for communities of interest, racial and ethnic fairness, political fairness, respect for political subdivision boundaries, and compactness . . . ." By far the most notable change in the law would be that the Commission must seek to maximize "political fairness," see IP 426, § 4(D)(1)(iii), and yet the gist provides no information to a potential signatory of what "political fairness" might mean. *See Oklahoma's Children, supra*, on the need to disclose "changes made to the law." *See also Voters First, supra*, 978 N.E.2d at 128 (Ballot title in redistricting initiative was insufficient because it failed to provide information on what the changes to the redistricting criteria would be.).

The gist must disclose more to the voters than simply that "political fairness" will be maximized. "Fairness" can mean different things in redistricting. *See Rucho v. Common* Cause, ____ U.S. ____, 139 S.Ct. 2484, 2499, 204 L.Ed. 2d 931 (2019). ("[I]t is not even clear what fairness looks like in this context.") As the U.S. Supreme Court noted in *Rucho*, 139 S.Ct. at 2499, "[f]airness may mean a greater number of competitive districts." Defining "fairness" to mean more "competitive districts," however, has a material effect. "[M]aking as many districts as possible more competitive could be a recipe for disaster for the disadvantaged party. *** 'If all or most of the districts are competitive . . . even a narrow statewide preference

for either party would produce an overwhelming majority for the winning party in the state legislature.'" *Id.*, quoting *Davis v. Bandemer*, 478 U.S. 109, at 130 (1986)(plurality opinion). On the other hand, "political fairness" might mean a proportional system in which the two major parties obtain a share of seats judged to be fair based on their proportion of the voters in the state. See *Davis v. Bandemer*, 478 U.S. 109, 154 (O'Connor, J., concurring); and *Gaffney v. Cummings*, 412 U.S. 735, 738, (1973). As *Rucho* court explained, "On the other hand, perhaps the ultimate objective of a 'fairer' share of seats in the congressional delegation is most readily achieved by yielding to the gravitational pull of proportionality and engaging in cracking and packing, to ensure each party its 'appropriate' share of 'safe' seats." 139 S.Ct. at 2499, citing *Bandemer*, 130 U.S. at 130-31.

The different conceptions of "fairness" cannot all be accommodated. As the *Rucho* Court noted, "fairness" as an increase in competitive districts and "fairness" as proportional representation in the legislature are inconsistent goals. Proportional "fairness" "comes at the expense of competitive districts . . . ." *Id.* at 2499 (emphasis added). The Court also observed that "fairness" as keeping communities of interest or political subdivisions together will be inconsistent with an anti-gerrymandering goal in some instances. *Id.* at p. 2499. This is so because "the 'natural political geography' of a State – such as the fact that urban electoral districts are often dominated by one political party – can itself lead to inherently packed districts." *Id.* at p.2499.

What do the proponents of IP 426 intend when they say "political fairness"? The petition itself provides little help to the voter. Section 4(D)(1)(c)(iii) provides with respect to political fairness that a plan should not unduly favor a political party. That section opaquely explains "undue favor to a political party shall be determined using the proposed map, data

from the last ten years of statewide elections, and the best available statistical methods on identifying inequality of opportunity to elect." Although the petition defines undue favor to mean "inequality of opportunity to elect," the proponents do not provide even that information in the gist. In this gist the voter gets nothing about what "political fairness" might be.

In briefing concerning the previous petition, IP 420, it appears the proponents' goal is a system of proportional representation. For example in the proponents' brief before this Court in the *Newberry* case, No. 118,406, December 5, 2019, at p.13, the proponents complained that Democrats make up 36.6% of registered voters in Oklahoma but have only 24.8% of seats in the House and only 18.7% of seats in the Senate. *Id.* The brief asserts that the Democrats' "underrepresentation in the legislature is at least in part the result of gerrymandered districts and would be ameliorated, not enhanced, by the petition." *Id.* In this passage, then, the proponents are explicit that their petition is intended to promote proportional representation. The voters asked to sign the petition are entitled to at least some notice of this significant change in the law.[1]

Although it appears from the proponents' briefing they want to adopt a system of proportional representation, that does not matter in the Court's analysis of the gist. If proponents want to assert that "political fairness" means something other than a proportional system, this is fine. The proponents can pick any version of "political fairness" they want. All the protestants ask is that the gist should disclose to a voter asked to sign the petition something about what type of "political fairness" the petition would implement so that voter can make an informed decision.

[1] The change would indeed be significant. Under the proponents' brief's reliance on "registered voters," actual votes at the ballot box would be deemphasized. The partisan "battle" would turn to a long term battle to register voters. No party or amicus before the U.S. Supreme Court in *Rucho* suggested that party registration was an appropriate measure of "fairness."

With respect to the previous petition, this Court noted that the gist "should inform 'a signer of what the measure is generally intended to do'" 2020 OK 10, ¶ 4, quoting *In re Initiative Petition 363*, 1996 OK 122, ¶ 20. The Court further noted that "the gist should be descriptive of the proposal's effect and sufficiently informative to reveal its design and purpose." *Id.* at ¶ 11 citing *In re Initiative Petition 384*, 2007 OK 48, ¶ 7. The Court should apply the same analysis here. Merely including the words "political fairness" does not inform a signer of "what the measure is generally intended to do" and does not "reveal its design and purpose."

E. The Gist Should Be Short.

The protestants here are definitely not arguing that the gist should ever expand to become a long and involved document. Instead, the gist here includes a great deal of material which is either redundant, surplusage, or not necessary because it does not describe a change in the law. In the Appendix, the protestants offer a redlined version of the gist which demonstrates that over 70 words could be eliminated without detracting from the informative nature of the gist.[2]

In re Initiative Petition 384, 2007 OK 48, ¶ 12, 164 P.3d 125, this Court struck a gist that "at once, contains too much and not enough information." The gist there described "'instructional expenditures'" in "mind-numbing detail" but failed to disclose, for example, "the additional authority given to the Superintendent of Public Instruction." Similarly here the gist contains unnecessary detail, but fails to provide any information at all on (a) what "political fairness" means or (b) that there are super majority requirements for the Commission.

[2] The protestants are not trying to redraft the gist for the proponents. Instead, this redline version simply demonstrates language of the proposed gist that could be eliminated without detracting from the meaning of gist.

IV. CONCLUSION

The Court should not entertain an argument that the gist is unimportant. "[T]he Legislature has deemed the gist a necessary part of the pamphlet, and we are not at liberty to ignore that requirement . . . ." *In re Initiative Petition 384, supra,* 2007 OK 48, at ¶ 13.

A properly drafted gist is "indispensable and noncompliance is fatal." *In re Initiative Petition No. 342*, 1990 OK 76, ¶ 11, 797 P.2d 331. "The gist is not subject to amendment by this Court, and as a result, the only remedy is to strike the petition from the ballot." *In re Initiative Petition No. 409*, ¶ 7.

The proponents should not be permitted to play cat and mouse with the voters on how much they will disclose. The gist is legally insufficient for two reasons:

1. The gist is affirmatively inaccurate.
2. The gist does not provide potential signatories with sufficient information to make an informed decision.

Respectfully submitted,

ROBERT G. MCCAMPBELL, OBA No. 10390
TRAVIS V. JETT, OBA No. 30601
GABLEGOTWALS
One Leadership Square, 15th Floor
211 North Robinson Avenue
Oklahoma City, OK 73102
Telephone: (405) 235-5500
RMcCampbell@Gablelaw.com
TJett@Gablelaw.com

Attorneys for Protestants/Petitioners
Eldon Merklin and Claire Robinson Davey

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February 2020, a true and correct copy of the above and forgoing was served by U.S. Mail postage prepaid and by email 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

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

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

Robert McCampbell

Robert G. McCampbell
Travis V. Jett

S535574