

Robert G. McCampbell  
Direct Line: (405) 235-5567  
[RMcCampbell@GableLaw.com](mailto:RMcCampbell@GableLaw.com)



BOK Park Plaza  
499 W. Sheridan, Suite 2200  
Oklahoma City, OK 73102-7101  
Telephone (405) 235-5500  
[www.GableLaw.com](http://www.GableLaw.com)

January 3, 2025

The Honorable Josh Cockroft  
Oklahoma Secretary of State  
Attn: Executive Legislative Division  
2300 N. Lincoln Blvd, Suite 122  
Oklahoma City, OK 73105

RECEIVED  
JAN 03 2025  
OKLAHOMA SECRETARY  
OF STATE

Re: Initiative Petition

Dear Mr. Secretary,

Please accept for filing the enclosed copy of an initiative petition regarding the process for primary and general elections, as well as a proposed ballot title and gist on the forms provided by your office.

The proponents are represented by:

ROBERT G. MCCAMPBELL  
GABLE GOTWALS  
499 W. Sheridan Ave., Suite 2200  
Oklahoma City, OK 73102  
[RMcCampbell@Gablelaw.com](mailto:RMcCampbell@Gablelaw.com)

AND

MELANIE WILSON RUGHANI  
CROWE & DUNLEVY  
324 N. Robinson Ave., Suite 100  
Oklahoma City, OK 73102  
[Melanie.Rughani@CroweDunlevy.com](mailto:Melanie.Rughani@CroweDunlevy.com)

Sincerely,

  
Robert G. McCampbell  
For the Firm

cc: Oklahoma Attorney General

4923-9355-8283

# STATE QUESTION **836** INITIATIVE PETITION **448**

## **PROPONENT'S SUGGESTED BALLOT TITLE**

Proponent's suggested ballot title is:

This initiative, which would add a new Article 3A to the Oklahoma Constitution, would establish an "open primary" system for elections for certain offices. In the open primary, all candidates for a covered office would appear on the same primary ballot without regard to party affiliation, and any qualified voter could vote for any candidate without regard to party affiliation. A voter in the open primary could vote for only one candidate per covered office. The two candidates receiving the most votes in the open primary would advance to the general election, without regard to party affiliation and without regard to whether the candidates have been nominated or endorsed by any political party. If only two candidates for a covered office qualify to appear on the ballot, then those candidates would automatically advance to the general election. The legislature could create a procedure for if a candidate will not participate in the general election due to death, withdrawal, or disqualification. In elections for covered offices, candidates would appear on the ballot in randomized order; candidates' political party registration or independent status as of the date of candidate filing would appear on the ballot next to their names; and the ballot would state that a candidate's indicated party registration does not imply the candidate is nominated or endorsed by the political party. The initiative would repeal Article 3, Section 3 of the Oklahoma Constitution, except that candidates for Presidential Elector would continue to be nominated by the recognized political parties at their conventions, and citizens could by petition continue to place the names of independent candidates on the ballot for that office. The measure may have a net positive or negative fiscal impact on the state.

Shall the proposal be approved?

For the proposal - YES

Against the proposal - NO

A "YES" vote is a vote in favor of the measure. A "NO" vote is a vote against this measure.

**FILED**

January 3, 2025

**Secretary of State  
State of Oklahoma**

### **Instructions for Proponents:**

1. Please type and insert only the full text of the suggested ballot title.
2. Do not write or type anywhere on this form except where indicated.
3. Once completed, this form must be submitted for filing along with a full copy of the proposed measure and a completed 'Proponent's Gist of the Proposition' form.

(OKSOS-SWIP-Fm01-1021)

**WARNING**

IT IS A FELONY FOR ANYONE TO SIGN AN INITIATIVE OR REFERENDUM PETITION WITH ANY NAME OTHER THAN HIS OWN, OR KNOWINGLY TO SIGN HIS NAME MORE THAN ONCE FOR THE MEASURE, OR TO SIGN THE PETITION WHEN HE IS NOT A LEGAL VOTER.

**FILED**

January 3, 2025  
**Secretary of State**  
**State of Oklahoma**

**INITIATIVE PETITION**

To the Honorable John Kevin Stitt, Governor of Oklahoma:

We the undersigned legal voters of the State of Oklahoma respectfully order that the following proposed amendment to the Constitution shall be submitted to the legal voters of the State of Oklahoma for their approval or rejection at the next regular general election (or at a special election as may be lawfully called by the Governor), and each for himself says: I have personally signed this petition; I am a legal voter of the State of Oklahoma; my first name, last name, zip code, house number, and month and day of my birth are correctly written on this form. The time for filing this petition expires ninety (90) days from \_\_\_\_\_. The question we herewith submit to our fellow voters is:

Shall the following proposed amendment to the Oklahoma Constitution be approved?

**BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA THAT A NEW ARTICLE 3A OF THE OKLAHOMA CONSTITUTION BE APPROVED:**

**CONSTITUTION OF OKLAHOMA, ARTICLE 3A -- OPEN PRIMARIES**

**SECTION 1. APPLICATION**

This Article shall govern the process for primary and general elections for the following elected offices: statewide offices, county offices, district attorney, members of the state legislature, members of the United States Congress (hereinafter, “covered offices”). The term “covered offices” does not include the office of Presidential Elector, municipal offices, judicial offices, school board members, or any other office not specified herein as a “covered office.”

**SECTION 2. OPEN PRIMARIES**

- A. The primary election process for covered offices shall consist of an “open primary election.” In an open primary election, all candidates for a covered office shall appear on the same ballot without regard to the candidates’ affiliation or lack of affiliation with any political party and without regard to whether the candidates have been nominated or endorsed by any political party. Any qualified voter may vote for any candidate for a covered office, without regard to the voter’s affiliation or lack of affiliation with any political party.
- B. A voter in an open primary election may vote for only one candidate for each covered office.
- C. The two candidates who receive the most votes in the open primary election shall advance to the general election, without regard to their affiliation or lack of affiliation with any political party and without regard to whether the candidates have been nominated or endorsed by any political party.
- D. If only two candidates qualify to appear on the ballot in the primary election for a covered office, then those two candidates shall automatically advance to the general election, without regard to the candidates’ affiliation or lack of affiliation with any political party.

**SECTION 3. GENERAL ELECTIONS**

Only those two candidates advancing from the open primary election according to Section 2 of this Article shall appear on the general election ballot for covered offices; however, the Oklahoma Legislature may, by statute, create a procedure to be followed if a candidate who has advanced



according to Section 2 will not participate in the general election due to death, withdrawal from the race, or disqualification.

#### SECTION 4. THE BALLOT

In both open primary elections and general elections for all covered offices:

A. Candidates shall appear on the ballot in a randomized order.

B. The ballot shall state, next to the candidate's name, each candidate's political party registration or independent status as of the date of candidate filing. A candidate does not need to seek or gain approval of the political party to have the candidate's registration with that party reflected on the ballot. Every ballot shall contain a statement informing voters that a candidate's indicated party registration does not imply that the candidate is nominated or endorsed by the political party or that the party approves of or associates with that candidate.

#### SECTION 5. REPEALER

A. Article 3, Section 3 of this Constitution is hereby repealed.

B. Notwithstanding subsection A of this Section, candidates for the office of Presidential Elector shall continue to be nominated by the recognized political parties at their conventions, and citizens may, by petition, continue to place on the ballot the names of independent, nonpartisan candidates for that office.

#### SECTION 6. SEVERABILITY

The provisions of this Article are severable, and if any part or provision hereof shall be held void, invalid, or unconstitutional, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions hereof, and the remaining provisions hereof shall continue in full force and effect.

#### SECTION 7. MISCELLANEOUS

The procedures described herein regarding open primary elections and general elections for a covered office shall apply to any special elections for covered offices.

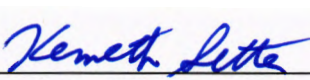
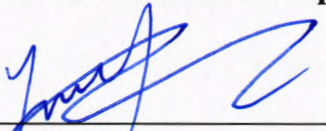
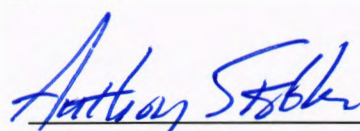
All provisions of this Constitution, state statute, and common law of Oklahoma to the extent inconsistent or in conflict with any provision of this Article are expressly declared null and void as to, and do not apply to, any activities provided for under this Article.

The Legislature may enact legislation to facilitate the operation of this Article, but no law shall limit, restrict or conflict with the provisions hereof.

#### SECTION 8. EFFECTIVE DATE

This Article shall take effect 90 days after the date this Article is approved by the People; provided that, if the candidate filing period for a particular election begins before this Article is approved by the People, then this Article shall not apply to that election.

#### Name and Address of Proponents

		
Kenneth Ray Setzer 2452 E. 49th St. Tulsa, OK 74105	Yvonne Galyan 3131 SW 89 <sup>th</sup> St. Apt. 4206 Oklahoma City, OK 73159	Anthony Stobbe 4852 Hillcrest Lane Edmond, OK 73025

# STATE QUESTION **836** INITIATIVE PETITION **448**

## **PROPONENT'S GIST OF THE PROPOSITION**

This gist statement will be affixed at the top of the signature sheet for circulation of signature

### **The gist of the proposition is:**

This initiative, which would add a new Article 3A to the Oklahoma Constitution, would establish an "open primary" system, as set forth therein, for elections for certain offices. In the open primary, all candidates for a covered office would appear on the same primary ballot without regard to party affiliation, and any qualified voter could vote for any candidate without regard to party affiliation. A voter in the open primary could vote for only one candidate per covered office. The two candidates receiving the most votes in the open primary would advance to the general election, without regard to party affiliation and without regard to whether the candidates have been nominated or endorsed by any political party. If only two candidates for a covered office qualify to appear on the ballot, then those candidates would automatically advance to the general election. The legislature could create a procedure to follow if a candidate will not participate in the general election due to death, withdrawal, or disqualification. In all elections for covered offices, candidates would appear on the ballot in randomized order; candidates' political party registration or independent status as of the date of candidate filing would appear on the ballot next to their names; and the ballot would state that a candidate's indicated party registration does not imply the candidate is nominated or endorsed by the political party. The initiative would repeal Article 3, Section 3 of the Oklahoma Constitution, except that candidates for Presidential Elector would continue to be nominated by the recognized political parties at their conventions, and citizens could by petition continue to place the names of independent candidates on the ballot for that office. The initiative provides for severability and an effective date. Further details are provided in the attached petition.

**FILED**

January 3, 2025  
**Secretary of State**  
**State of Oklahoma**

### **Instructions for Proponents:**

1. Please type and insert only the full text of the suggested ballot title.
2. Do not write or type anywhere on this form except where indicated.
3. Once completed, this form must be submitted for filing along with a full copy of the proposed measure and a completed 'Proponent's Suggested Ballot Title' form.

(OKSOS-SWIP-Fm02-1021)

Josh Cockroft  
Secretary of State



J. Kevin Stitt  
Governor

## OKLAHOMA SECRETARY OF STATE

January 3, 2025

Kenneth Ray Setter  
2452 E. 49<sup>TH</sup> ST.  
Tulsa, OK 74105

Yvonne Galvan  
3131 SW 89<sup>th</sup>, St. Apt. 4206  
Oklahoma City, OK 73159

Anthony Stubbe  
4852 Hillcrest Lane  
Edmond, OK 73025

Dear Proponent(s) of Record:

This acknowledges receipt of the petition submitted to the Secretary of State office, which has been designated as **State Question Number 836, Initiative Petition Number 448 (Constitutional amendment)** and filed accordingly on the 3rd day of January 2025. Along with this, the proponents of record have also sufficiently submitted for filing their proposed ballot title and gist of the proposition.

Now that the petition has officially been filed for the record, per Title 34 O.S. Section 8, it is the duty of the Secretary of State to cause to be published, a notice of such filing and the apparent sufficiency or insufficiency of the petition, and shall also include notice that any citizen or citizens of the state may file a protest as to the *constitutionality* of the petition, by a written notice to the Oklahoma Supreme Court and to the proponent(s) filing the petition. Any such protest must be filed within ninety (90) days after the publication of the notice.

As soon as the ninety (90) day appeal/protest period has concluded, our office will be in contact regarding the next steps in the process.

If we may provide any further assistance or should you have any questions, please do not hesitate to contact our office or me directly.

Thank you,

Amy Canton  
Director, Executive Legislative Services  
405.522.4565 / [executivelegislative@sos.ok.gov](mailto:executivelegislative@sos.ok.gov)

Cc: Gable Gotwals, Robert McCampbell

Josh Cockroft  
Secretary of State



J. Kevin Stitt  
Governor

OKLAHOMA SECRETARY OF STATE

January 3, 2025

Ms. Cindy Shea  
Oklahoma Press Service  
3601 N. Lincoln  
Oklahoma City, Oklahoma 73105

Dear Ms. Shea:

Please find enclosed the following notice for publication.

- Notice of Filing for State Question 836, Initiative Petition 448

Per Title 34 O.S. § 8, the publication must appear in at least one newspaper of general circulation in the State of Oklahoma. Please publish the enclosed notice in *The Oklahoman*, *Tulsa World*, and *Journal Record* as soon as possible.

Also, upon the completion of publication, please provide our office with the corresponding Affidavits of Publication. Should you have any questions, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Canton".

Amy Canton  
Director, Executive Legislative Services  
Oklahoma Secretary of State Office

**NOTICE OF THE FILING OF STATE QUESTION 836, INITIATIVE PETITION 448 AND THE APPARENT SUFFICIENCY THEREOF, AND NOTICE TO CITIZENS OF THE STATE THAT ANY SUCH PROTEST, AS TO THE CONSTITUTIONALITY OF SAID PETITION, MUST BE FILED ACCORDINGLY WITHIN NINETY (90) DAYS AFTER THIS NOTICE (Okla. Stat. tit. 34, § 8)**

**NOTICE** is hereby given that on January 3, 2025, State Question 836, Initiative Petition 448 was filed in the Office of the Oklahoma Secretary of State.

**NOTICE** is also hereby given that State Question 836, Initiative Petition 448 is SUFFICIENT for filing with the Office of the Oklahoma Secretary of State. The official record is available for public view via the Oklahoma Secretary of State website at <https://www.sos.ok.gov/documents/Questions/836.pdf>.

**NOTICE** is likewise, hereby given, as provided in Title 34 Section 8 of the Oklahoma Statutes, that any citizen or citizens of the state may file a protest as to the constitutionality of said petition, by a written notice to the Supreme Court and to the proponent(s) filing the petition. Any such protest must be filed within ninety (90) days after publication of this notice. Also, a copy of any such protest shall be filed with the Office of the Oklahoma Secretary of State.

Proponents of record for State Question 836, Initiative Petition 448:

Kenneth Ray Setter  
2452 E. 49<sup>TH</sup> ST.  
Tulsa, OK 74105

Yvonne Galvan  
3131 SW 89<sup>th</sup>, St. Apt. 4206  
Oklahoma City, OK 73159

Anthony Stubbe  
4852 Hillcrest Lane  
Edmond, OK 73025

**Josh Cockroft**  
**Secretary of State**  
**State of Oklahoma**



# Oklahoma Press Service

3601 North Lincoln Blvd.

Oklahoma City, OK 73105

Voice: (405) 499-0020 Fax: (405) 499-0048

Monday, January 13, 2025 10:51 AM

Page 1 of 1

## Proof of Publication Order Number 25-01-26

I, Landon Cobb, of lawful age, being duly sworn upon oath, deposes and says: That I am the Authorized Agent of OK-JOURNAL RECORD, a Daily newspaper printed and published in the city of OKLAHOMA CITY, county of Oklahoma, and state of Oklahoma, and that the advertisement referred to, a true and printed copy of which is here unto attached, was published in said OK-JOURNAL RECORD in consecutive issues on the following dates-to-wit:

Insertion: 1/9/2025

That said newspaper has been published continuously and uninterrupted in said county during a period of one-hundred and four consecutive weeks prior to the publication of the attached notice or advertisement; that it has been admitted to the United States mail as second-class mail matter; that it has a general paid circulation, and publishes news of general interest, and otherwise conforms with all of the statutes of the Oklahoma governing legal publications.

PUBLICATION FEE \$38.95

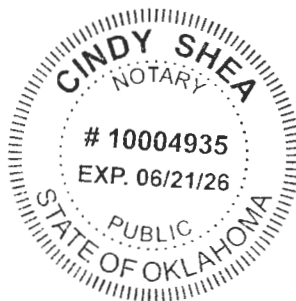
*Landon Cobb*

(Editor, Publisher or Authorized Agent)

SUBSCRIBED and sworn to me this  
13 day of January 2025.

*Cheryl Spivey*

(Notary Public)



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Proponents of record for State Question 836, Initiative Petition 448:

Kenneth Ray Sett	Yvonne Galvan	Anthony Stubbe
2452 E. 49TH ST.	3131 SW 89th, St. Apt. 4206	4852 Hillcrest Lane
Tulsa, OK 74105	Oklahoma City, OK 73159	Edmond, OK 73025

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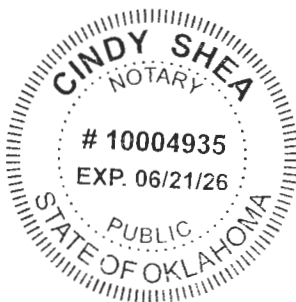
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(Notary Public)



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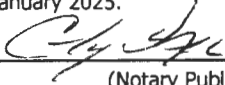
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(Notary Public)



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**Josh Cockroft**  
Secretary of State, State of Oklahoma



**ORIGINAL**

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA APR - 9 2025

THE OKLAHOMA REPUBLICAN PARTY, and )  
RONDA VUILLEMONT-SMITH, )

JOHN D. HADDEN  
CLERK

Petitioners, )

vs. )

Case No.

**23007**

KENNETH RAY SETTER;  
YVONNE GALVAN; and  
ANTHONY STOBBE, )

Respondents. )

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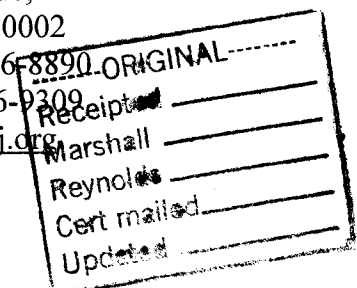
**APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION AND  
REVIEW INITIATIVE PETITION NO. 448/STATE QUESTION 836'S  
CONSTITUTIONALITY, SUGGESTED BALLOT TITLE, AND GIST**

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TREVOR PEMBERTON  
(OK Bar No. 22271)  
PEMBERTON LAW GROUP  
600 North Robinson Avenue  
Oklahoma City, OK 73102  
Telephone: (405) 501-5054  
Email: [trevor@pembertonlawgroup.com](mailto:trevor@pembertonlawgroup.com)

JORDAN SEKULOW\*  
(D.C. Bar No. 991680)  
STUART J. ROTH\*  
(D.C. Bar No. 475937)  
ANDREW J. EKONOMOU\*  
(GA Bar No. 242750)  
BENJAMIN P. SISNEY  
(OK Bar No. 21816)  
NATHAN MOELKER\*  
(VA Bar No. 98313)  
LIAM HARRELL\*  
(DC Bar No. 1740309)  
AMERICAN CENTER FOR  
LAW AND JUSTICE  
201 Maryland Avenue, NE  
Washington, D.C. 20002  
Telephone: (202) 546-8890  
Facsimile: (202) 546-9309  
Email: [bsisney@aclj.org](mailto:bsisney@aclj.org)

*Counsel for Petitioners*



\*Not admitted in this jurisdiction.



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE OKLAHOMA REPUBLICAN PARTY, and )  
RONDA VUILLEMONT-SMITH, )

Petitioners, )

vs. )

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

KENNETH RAY SETTER; )  
YVONNE GALVAN; and )  
ANTHONY STOBBE, )

Respondents. )

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APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION AND  
REVIEW INITIATIVE PETITION NO. 448/STATE QUESTION 836'S  
CONSTITUTIONALITY, SUGGESTED BALLOT TITLE, AND GIST

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TREVOR PEMBERTON  
(OK Bar No. 22271)  
PEMBERTON LAW GROUP  
600 North Robinson Avenue  
Oklahoma City, OK 73102  
Telephone: (405) 501-5054  
Email: [trevor@pembertonlawgroup.com](mailto:trevor@pembertonlawgroup.com)

JORDAN SEKULOW\*  
(D.C. Bar No. 991680)  
STUART J. ROTH\*  
(D.C. Bar No. 475937)  
ANDREW J. EKONOMOU\*  
(GA Bar No. 242750)  
BENJAMIN P. SISNEY  
(OK Bar No. 21816)  
NATHAN MOELKER\*  
(VA Bar No. 98313)  
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(DC Bar No. 1740309)  
AMERICAN CENTER FOR  
LAW AND JUSTICE  
201 Maryland Avenue, NE  
Washington, D.C. 20002  
Telephone: (202) 546-8890  
Facsimile: (202) 546-9309  
Email: [bsisney@aclj.org](mailto:bsisney@aclj.org)

*Counsel for Petitioners*

\*Not admitted in this jurisdiction.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE OKLAHOMA REPUBLICAN PARTY, and )  
RONDA VUILLEMONT-SMITH, )

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

KENNETH RAY SETTER; )  
YVONNE GALVAN; and )  
ANTHONY STOBBE, )

Respondents. )

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APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION AND  
REVIEW INITIATIVE PETITION NO. 448/STATE QUESTION 836'S  
CONSTITUTIONALITY, SUGGESTED BALLOT TITLE, AND GIST

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TREVOR PEMBERTON  
(OK Bar No. 22271)  
PEMBERTON LAW GROUP  
600 North Robinson Avenue  
Oklahoma City, OK 73102  
Telephone: (405) 501-5054  
Email: [trevor@pembertonlawgroup.com](mailto:trevor@pembertonlawgroup.com)

JORDAN SEKULOW\*  
(D.C. Bar No. 991680)  
STUART J. ROTH\*  
(D.C. Bar No. 475937)  
ANDREW J. EKONOMOU\*  
(GA Bar No. 242750)  
BENJAMIN P. SISNEY  
(OK Bar No. 21816)  
NATHAN MOELKER\*  
(VA Bar No. 98313)  
LIAM HARRELL\*  
(DC Bar No. 1740309)  
AMERICAN CENTER FOR  
LAW AND JUSTICE  
201 Maryland Avenue, NE  
Washington, D.C. 20002  
Telephone: (202) 546-8890  
Facsimile: (202) 546-9309  
Email: [bsisney@aclj.org](mailto:bsisney@aclj.org)

*Counsel for Petitioners*

\*Not admitted in this jurisdiction.

**IN THE SUPREME COURT OF THE STATE OF OKLAHOMA**

THE OKLAHOMA REPUBLICAN PARTY, and )  
RONDA VUILLEMONT-SMITH, )

Petitioners, )

vs. )

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

KENNETH RAY SETTER; )  
YVONNE GALVAN; and )  
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**APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION AND  
REVIEW INITIATIVE PETITION NO. 448/STATE QUESTION 836'S  
CONSTITUTIONALITY, SUGGESTED BALLOT TITLE, AND GIST**

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COME NOW the Petitioners and, pursuant to 34 O.S. § 8(B), submit this timely<sup>1</sup> challenge to Initiative Petition no. 448, State Question no. 836 (hereinafter, "IP 448" or the "Initiative"). Petitioners challenge IP 448 on the grounds that it violates the United States Constitution. Specifically, IP 448 forces political parties to unwillingly associate with political candidates in violation of the First Amendment rights of political parties' and their members. In addition to this clear constitutional violation, the suggested ballot title and gist are misleading and insufficient.

**I. INTRODUCTION**

1. Petitioner, the Oklahoma Republican Party, is an unincorporated nonprofit association and Political Party Committee, operating under Oklahoma law as an association of Oklahoma citizens. Its primary purpose, as reflected in its bylaws, is to elect duly nominated Republican

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<sup>1</sup> As set forth on the Oklahoma Secretary of State's website, "Initiative petition 448 was filed as of January 3, 2025, but not published until January 9, 2025." IP 448 "is currently in the 1st 90-day protest period (as to the Constitutionality); 04/09/2025 will be the final day of the 90-day protest period." See 34 O.S. § 8(B) ("Any such protest must be filed within ninety (90) days after publication.").

candidates, subject to its own procedure, and to promote its principles by nominating, designating and advancing candidates of its choosing.

2. Petitioner, Ronda Vuillemont-Smith, is a resident of Tulsa County and a registered member of the Oklahoma Republican Party.

3. Respondents are each proponents of IP 448.

4. IP 448 strips from political parties the ability to associate with candidates of their choosing. This violates the U.S. Constitution, specifically the associational rights protected by the First Amendment. *Tashjian v. Republican Party*, 479 U.S. 208, 224 (1986) (“The Party’s determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.”).

**A. The Substance of IP 448**

5. IP 448 would add a new Article 3A to the Oklahoma Constitution, imposing upon the Petitioners a so-called “open primary” election for certain county, state, and federal elections. (App. A-2).

6. As will be addressed below, IP 448 actually makes substantive changes beyond the primary, infringing upon a political party’s associational rights on the general election ballot.

7. IP 448’s full frontal assault on the constitutionally protected rights of Oklahoma political parties – protected by the First Amendment – is blatant. According to its ballot title,

“[i]n the open primary, all candidates for a covered office would appear on the same primary ballot without regard to party affiliation, and any qualified voter could vote for any candidate without regard to party affiliation. . . . “The two candidates receiving the most votes in the open primary would advance to the general election, *without regard to party affiliation and without regard to whether the candidates have been nominated or endorsed by any political party.*”

Initiative Petition no. 448, State Question no. 836, Sec. 4; (App. A-5) (emphasis added).



8. According to the text, “In both open primary elections and general elections,” IP 448, Sec. 4; (App. A-4) “[a] candidate does not need to seek or gain approval of the political party to have the candidate’s registration with that party reflected on the ballot.” *Id.* at Sec. 4(B).<sup>2</sup> The ballot lists “next to the candidate’s name, each candidate’s political party registration or independent status as of the date of candidate filing.” *Id.*

**B. IP 448 Does Not Establish an Open Primary, but a Blanket Primary.**

9. IP 448 is billed as creating an “open primary,” but in reality creates a “blanket primary” variant. A “‘blanket primary’ refers to a system in which ‘any person, regardless of party affiliation, may vote for a party’s nominee.’” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 445 n.1 (2008) (quoting *Cal. Democratic Party v. Jones*, 530 U.S. 567, 576 n.6 (2000)). To be clear, “[a] blanket primary is distinct from an ‘open primary,’ in which a person may vote for any party’s nominees, but must choose among that party’s nominees for all offices.” *Id.* (citation omitted).

10. IP 448, which allows any person, regardless of party affiliation, to vote for a party’s nominee, clearly creates a type of blanket primary. Worse, it allows any voter to vote for anyone claiming affiliation with any party, regardless of whether that candidate was nominated or endorsed by that party. The candidate need only have registered their affiliation with a party to have that party’s name placed by theirs on the ballot. The party has no control over who may register their affiliation, and “[a] candidate does not need to seek or gain approval of the political party to have the candidate’s registration with that party reflected on the ballot.” IP 448, Sec. 4(B); (App. A-4).

11. In a true open primary, “all registered voters may choose in which party primary to

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<sup>2</sup> This rather substantive provision lies buried in IP 448’s text and does not appear in the ballot title or gist. In other words, as addressed in more detail *infra* IV, the ballot title and gist are misleading.

vote,” then that voter may only vote among that party’s candidates in that election. *Tashjian v. Republican Party*, 479 U.S. 208, 222 n. 11 (1986). IP 448 is not that.

12. Instead, IP 448 provides that a voter would receive a single ballot and that “all candidates for a covered office would *appear on the same primary ballot without regard to party affiliation*, and any qualified voter could vote for any candidate *without regard to party affiliation*.” Suggested Ballot Title, IP 448; (App. A-2) (emphasis added).

13. That does not meet the U.S. Supreme Court’s definition of an open primary, especially not a permissible open primary.

14. Blanket primaries regulating internal processes for candidate selection, *Jones*, 530 U.S. 567, and “open” primaries requiring delegates to vote contrary to the national party’s rules, *Dem. Party of U.S. v. Wis. ex rel. La Follete*, 450 U.S. 107 (1981), violate the First Amendment.

## **II. LEGAL STANDARD**

15. This Court reviews ballot petitions for their sufficiency and constitutionality. *Tate Chamber of Okla. v. Cobbs*, 2024 OK 13, ¶1, 545 P.3d 1216, 1216; *In re Initiative Petition No. 420*, *State Question No. 804*, 2020 OK 10, ¶1 458 P.3d 1088. The Court limits pre-election review to “clear or manifest facial constitutional infirmities.” *In re Initiative Petition No. 358*, *State Question No. 658*, 1994 OK 27, ¶7, 870 P.2d 782, 785.

16. “[A] determination on a constitutional question as to the legality of a measure proposed . . . will be reached by this Court . . . if, in the Court’s opinion, reaching the issue may prevent the holding of a costly and unnecessary election.” *In re Initiative Petition No. 349*, *State Question No. 642*, 1992 OK 122, ¶18, 838 P.2d 1, 8.

17. The Court has emphasized the importance of the exercise of this power: “it is this Court’s responsibility to see the petitions for change . . . comply with the requirements set out

in both the Constitution and the statutes.” *In re Initiative Petition No. 344, State Question No. 630*, 1990 OK 75, ¶16, 797 P.2d 326, 330.

### **III. IP 448 VIOLATES STATE POLITICAL PARTIES’ UNDENIABLE FIRST AMENDMENT RIGHTS.**

18. The net result (and obvious intent) of IP 448 is to strip from Oklahoma political parties and their members, including Petitioners, the right to associate and disassociate, invoking the First Amendment and drawing strict scrutiny. *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 452 (2008). This is a standard it cannot survive, as discussed below.

19. The United States Supreme Court has struck down laws imposing blanket open primaries on state political parties. *See Jones*, 530 U.S. at 569; *La Follette*, 450 U.S. at 109.

20. Recognizing that “States have a major role to play in structuring and monitoring the election process,” *Jones*, 530 U.S. at 572, the Supreme Court “stressed that when States regulate parties’ internal processes they must act within limits imposed by the Constitution.” *Id.* at 573. When states hold primaries, they must not infringe on First Amendment rights by mandating that parties associate with candidates against their will.

21. The Supreme Court ruled that “the First Amendment protects ‘the freedom to join together in furtherance of common political beliefs,’” *id.* (quoting *Tashjian*, 479 U.S. at 214-215); this “necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only.” *La Follette*, 450 U.S. at 122.

22. “[A] corollary of the right to associate is the right not to associate. ‘Freedom of association would prove an empty guarantee if associations could not limit control over their

decisions.”” *Jones*, 530 U.S. at 574-75 (quoting *La Follette*, 450 U.S. at 122 n. 22).<sup>3</sup>

23. The First Amendment protects the right of citizens “to band together in promoting among the electorate candidates who espouse their political views.” *Id.* at 574.

24. “Regulations that impose severe burdens on associational rights must be narrowly tailored to serve a compelling state interest.” *Clingman v. Beaver*, 544 U.S. 581, 586 (2005).

25. IP 448 mandates involuntary association between candidates and parties and cannot meet strict scrutiny. It contradicts precedent like *Jones*.

**A. A Severe Burden on the Right to Associate Requires Strict Scrutiny.**

26. A party’s choice of its candidates is of paramount importance: “In no area is the political association’s right to exclude more important than in the process of selecting its nominee . . . who becomes the party’s ambassador to the general electorate.” *Jones*, 530 U.S. at 575; *see id.* at 587 (Kennedy, J., concurring) (“The true purpose of this law, however, is to force a political party to accept a candidate it may not want and . . . to change the party’s doctrinal position.”).

27. A State may not force political parties to associate: “[w]hen the State seeks to direct changes in a political party’s philosophy by forcing upon it unwanted candidates . . . the State’s incursion . . . is subject to careful scrutiny.” *Id.* (Kennedy, J., concurring).

28. “[T]he freedom to associate for the ‘common advancement of political beliefs,’ necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only.” *La Follette*, 450 U.S. at 122 (citations omitted);

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<sup>3</sup> The *Jones* Court’s analysis made clear that its cases rejecting political parties’ attempts to limit association *on otherwise unconstitutional grounds* do not support a state’s ability to restrict a state political party by imposing an open primary. *Id.* at 573 (citing *Smith v. Allwright*, 321 U.S. 649 (1944) (“invalidat[ing] the Texas Democratic Party’s rule limiting participation in its primary to whites”) and *Terry v. Adams*, 345 U.S. 461 (1953) (“invalidat[ing] the same rule promulgated by the Jaybird Democratic Association”). Those cases “do not stand for the proposition that party affairs are public affairs, free of First Amendment protections – and our later holdings make that entirely clear.” *Id.* (citation and footnote omitted).



*Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (“Exercise of these basic freedoms . . . has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.”).

29. “Unsurprisingly,” the Supreme Court’s “cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party ‘selects a standard bearer.’” *Jones*, 530 U.S. at 575 (internal citations omitted).

30. In striking down California’s primary law, the Court emphasized the unremarkable yet fundamental proposition that the party, “and not someone else, has the right to select the [ ] Party’s standard bearer,” *id.* at 575-76 (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997) (internal quotation marks omitted)), and that “[t]he members of a recognized political party unquestionably have a constitutional right to select their nominees for public office,” *id.* at 576 (quoting *Timmons*, 520 U.S. at 371 (Stevens, J., dissenting)).

31. The First Amendment protects the right of citizens “to band together in promoting among the electorate candidates who espouse their political views.” *Jones*, 530 U.S. at 574.

32. When an organization is compelled to associate with someone of differing views, the organization’s message is undermined; the organization is understood to embrace views (and, here, candidates) it does not wish to embrace.

33. In *Jones*, the Supreme Court struck down California’s primary law provision, Proposition 198, because it “forces political parties to associate with – to have their nominees, and hence their positions, determined by – those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival.” 530 U.S. at 577.

34. IP 448 has the same effect, irrespective of its label.<sup>4</sup> Curtailing these rights at the ballot box “limits the Party’s associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action.” *Tashjian*, 479 U.S. at 216.<sup>5</sup>

35. Respondents undoubtedly labeled IP 448 as an “open primary” measure in an effort to evade *Jones*’ reach, but its substance is the problem and the net result is the same: it mandates political parties’ association with candidates against their will.

36. A political party’s candidate is its “ambassador to the general electorate in winning it over to the party’s views.” *Jones*, 530 U.S. at 575. A political party’s programs and policies for governance may only be implemented by electing candidates who adhere to its principles and programs. If it cannot select its own candidates, it cannot properly exist.

37. Any candidate could identify with any party, regardless of its values or beliefs: a candidate need only have a “registration” for the ballot to “state, next to the candidate’s name, each candidate’s political party registration or independent status.” IP 448, Sec. 4(B); (App A-4).

38. “A candidate does not need to seek or gain approval of the political party to have the candidate’s registration with that party reflected on the ballot.” *Id.* This is true even in a general election. *Id.* In sum, any voter can vote for any candidate, and the candidate can indicate affiliation with any party.

39. The inclusion of a disclaimer, that “[e]very ballot shall contain a statement informing

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<sup>4</sup> Like California’s law, IP 448 creates something “qualitatively different from a closed primary. Under that system, even when it is made quite easy for a voter to change his party affiliation the day of the primary, and thus, in some sense, to ‘cross over,’ at least he must formally become a member of the party; and once he does so, he is limited to voting for candidates of that party.” *Jones*, 530 U.S. at 577.

<sup>5</sup> This is not like Colorado’s Prop. 108, which imposed an open primary but allowed the State’s major political parties to “opt out” of the mandate with a 3/4 intraparty vote. *See Colo. Republican Party v. Griswold*, 715 F. Supp. 3d 1339 (D. Colo. 2024) (denying Party’s motion for preliminary injunction).

voters that a candidate's indicated party registration does not imply that the candidate is nominated or endorsed by the political party or that the party approves of or associates with that candidate," *id.*, fails to cure the petition's illness, and instead, diagnoses it.

40. Such a disclaimer adds no clarity. It highlights, without remedying, the confusion of the system and the loss of all associational rights in meaningfully presenting its candidates to the voters. Thus, in addition to IP 448 forcing party association with a candidate invoking its name while not duly affiliated with or endorsed by the political party, its disclaimer also prevents the political party from expressing on the ballot that its bona fide, duly affiliated candidates are in fact, duly associated.

41. IP 448 raises material questions: What is a political party if it cannot choose candidates embodying its values and present them to the public? Why should a candidate, who merely registers as a member of a party by the filing deadlines, be able to capitalize on that party's name without its consent? And why may a candidate place a party's name next to their own on a ballot if a disclaimer is required stating that party's name may or may not indicate alignment with the party?<sup>6</sup>

#### **B. The "Top Two" Feature Fails to Save IP 448.**

42. Respondents will no doubt contend that IP 448's "top two" feature, directing that the two candidates receiving the most votes on the singular primary ballot will proceed to the general election ballot, saves it from its constitutional defect. It does not.

43. While cloaked in the nomenclature of a nonpartisan system, the blanket primary in this Initiative still bears the same constitutional infirmities as the primary struck down in *Jones*.

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<sup>6</sup> *Ex parte Wilson*, 7 Okla. Crim. 610, 625 (Ok. Crim. App. 1912) ("[A]ll of the provisions of the primary election law were enacted by the Legislature to prevent electors from voting any ballot except that of their respective parties, and thereby prevent fraud and preserve the purity of the ballot."). IP 448 intentionally disrupts that well-recognized purpose of a primary ballot.

44. The Court in *Jones* suggested a “*nonpartisan* blanket primary” system containing a “top two” feature which could be constitutional by furthering a compelling interest with the least restrictive means. *Jones*, 540 U.S. at 585. IP 448’s “top two” system is distinguishable.

45. First, like the law struck down in *Jones*, IP 448 advances no compelling state interests. The Court here need not even reach the least restrictive means stage of strict scrutiny analysis.

46. The *Jones* Court only suggested the “*nonpartisan* blanket primary” with the top two feature as a lesser restrictive means after holding that *all seven* of California’s asserted compelling interests purporting to justify its infringement were not compelling. *Jones*, 530 U.S. at 582-85.

47. *Jones* explained that, even assuming a compelling interest, it failed the least restrictive means analysis step. *Id.* at 585 (“[E]ven if all these state interests were compelling ones, Proposition 198 is not a narrowly tailored means.”). It was at this juncture of the analysis that the *Jones* Court suggested the “*nonpartisan* blanket primary” with a “top two” feature could constitute a lesser restrictive means.

48. Second, and more substantively, the Court’s “*nonpartisan*” alternative in *Jones* is not what exists here. It would be a system where “[e]ach voter, regardless of party affiliation, may then vote for any candidate, and the top two vote getters . . . then move on to the general election.” *Id.* This system could survive because “[p]rimary voters are not choosing a party’s nominee,” achieving the stated goals “without severely burdening a political party’s First Amendment right of association,” *id.* at 586, and therefore be less restrictive.

49. In the *nonpartisan* system described in *Jones*, candidates are not misidentified as affiliated with political parties when they are not so affiliated. This is IP 448’s critical flaw.

50. Under IP 448, not only can anyone vote for any candidate, anyone can *register* and *run*

under any party's banner – without that party's nomination or endorsement.<sup>7</sup> This is a serious deviation from the aforementioned *nonpartisan* blanket primary and is what violates the Petitioners' (and other political parties') First Amendment associational rights.

51. Respondents may also point to *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008), where the Supreme Court upheld an open “top two” primary system where candidates merely selected their political party “preference.” The Supreme Court concluded that the “primary does not, by its terms, choose parties’ nominees . . . . The law never refers to the candidates as nominees of any party, *nor does it treat them as such.*” *Id.* at 453 (emphasis added).

52. Here, in contrast, candidates do not merely select their “preference,” but instead, the candidate displays their *actual registration and affiliation* with the party. IP 448, Sec. 4(B); (App. A-4).

53. Thus, candidates could run for an office against the party's own interest, will, or vetting—effectively becoming a *de facto* party nominee without the party's consent and without regard to its platform.

54. The line between *Jones* and *Grange* is clear. Candidates may express their preferences but cannot mandate party association. The latter is precisely what IP 448's ballot does.

55. On the proposed ballot, candidates would have their registration and affiliation with a party listed next to their name, with a vague disclaimer, leaving the voter unsure of actual party

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<sup>7</sup> Current laws governing State and County primary elections explicitly allow political parties to nominate their respective candidates for upcoming general elections. 26 O.S. § 1-102. Voters can only vote in the primary of the party they are registered with, 26 O.S. § 1-104(A), and political parties decide whether to allow Independents to vote in their primaries, 26 O.S. § 1-104(B). Independents can vote in one party's primary. 26 O.S. § 1-104(B). Importantly, individuals who feel disenfranchised can form a recognized political party. 26 O.S. §§ 1-104(B)(4) & 1-108. These rules protect parties' associational rights, ensure meaningful nominations, and preserve voters' ability to participate in party primaries—unlike the impermissible blanket primary system, which infringes on those rights.

endorsement.

56. Even with the disclaimer, the ballot would confuse voters “at the most crucial stage in the electoral process—the instant before the vote is cast.” *Anderson v. Martin*, 375 U.S. 399, 402 (1964). The ballot conveys to voters that candidates are affiliated with and registered with a political party, regardless of whether the party so wishes.

57. That ballot imposes severe burdens on the protected First Amendment freedoms of a political party and its members, weakening the link between candidates and the party’s platform.

**C. IP 448 Cannot Survive Strict Scrutiny.**

58. IP 448 cannot be justified under strict scrutiny, since it lacks a compelling interest.

59. The Respondents may advance interests similar to those in *Jones*: producing elected officials who better represent the electorate; expanding candidate debate beyond the scope of partisan concerns; a view that a blanket primary is the only way to ensure that disenfranchised persons enjoy the right to an effective vote; promoting fairness; affording voters greater choice; increasing voter participation; and protecting privacy. *Jones*, 530 U.S. at 582.

60. The Supreme Court analyzed each asserted interest in turn and concluded each one was *not* compelling. *Id.* at 585. In particular, the first two purported interests were “simply circumlocution for producing nominees and nominee positions other than those the parties would choose if left to their own devices.” *Id.* at 582.

61. Such interests “reduce to nothing more than a stark repudiation of freedom of political association: Parties should not be free to select their own nominees because those nominees, and the positions taken by those nominees, will not be congenial to the majority.” *Id.*

62. The other interests fared no better. The purported interest in ensuring that

disenfranchised persons enjoy the right to an effective vote just meant allowing people in other parties to vote in a majority party's election. The Court rejected such a claim. A "nonmember's desire to participate in the party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications." *Tashjian*, 479 U.S. at 215-16 n.6 (citing *Rosario v. Rockefeller*, 410 U.S. 752 (1973)).

63. "The voter who feels himself disenfranchised should simply join the party. That may put him to a hard choice, but it is not a state-imposed restriction upon *his* freedom of association, whereas compelling party members to accept his selection of their nominee *is* a state-imposed restriction upon theirs." *Jones*, 530 U.S. at 584.

64. As for the other four asserted interests, addressing concerns such as fairness, greater choice, they likewise fail to justify the law. For example, "[a]s for affording voters greater choice, it is obvious that the net effect of this scheme -- indeed, its avowed purpose -- is to reduce the scope of choice, by assuring a range of candidates who are all more 'centrist.'" *Id.*

65. Simply put, IP 448's requirement for political parties to associate with candidates not of their choice or will cannot meet the strict scrutiny standard, as it is neither narrowly tailored nor justified by a compelling interest. No interest justifies mandating that political parties be unwillingly associated with political candidates.

66. Recent experience and logic bear out *why* the United States Supreme Court has so clearly and consistently applied the First Amendment's protections to political parties' associational rights that doom IP 448. The threat of politically motivated actors exploiting open primaries to intentionally and openly infringe political parties' associational rights (which again, include the right to associate and *to not* associate, *Jones*, 530 U.S. at 574-75) is far from hollow. Organizations exist for precisely this purpose. See Juliann Ventura, *Anti-Trump Group*

*Urging Democrats to Crossover for Haley in S.C., Michigan Primaries*, THE DETROIT NEWS (Feb. 13, 2024), <https://tinyurl.com/mw8a882k> (discussing PrimaryPivot’s targeting of potential crossover voters in states with open primaries, including Michigan.).

67. Unlike the system upheld in *Grange*, a reasonable voter must wonder, under this system, what a party’s name next to the candidate’s, followed by a disclaimer, actually implies.

#### **IV. IP 448’S SUGGESTED BALLOT TITLE AND GIST ARE SUBSTANTIALLY MISLEADING.**

68. In additiona to the constitutional infirmity, there exists a separate, independent problem with IP 448; its suggested ballot title and gist mislead the reader about IP 448’s nature. While the ballot title and gist frame IP 448 as creating a so-called open primary system, for reasons addressed *supra* I(B), it does not. At the least, the title and gist fail to clearly state IP 448’s changes to the *general* election ballot.

69. A Petition’s gist and the title must be “descriptive of the effect of the proposition, not deceiving but informative and revealing.” *In re Initiative Petition No. 344, State Question No. 630*, 1990 OK 75, ¶14, 797 P.2d 327, 330. This is “necessary to prevent deception,” and so that voters are “able to cast an informed vote.” *Id.*

70. The language “should be sufficient that the signatories are at least put on notice of the changes being made,” and must explain the proposal’s actual effect. *In re Initiative Petition No. 342, State Question No. 630* 1990 OK 76, ¶14, 797 P.2d 331, 334; *In re Initiative Petition No. 409, State Question No. 785*, 2016 OK 61, ¶6 (unpublished).

71. Following the topline assertions that it governs and makes changes *to primaries*, the gist mentions no changes to *general* elections until well into the text.

72. The use of “in elections for covered offices,” (App. A-2), and “in all elections for covered offices,” (App. A-5), in the suggested ballot title and gist, respectively, is easily



mistaken, due to placement and word usage, as meaning in all *primary* elections, as the clear impression is that IP 448 is all about primaries. The ballot title and gist are misleading.<sup>8</sup>

73. In sum, IP 448 works a radical change to the nature of elections in Oklahoma, a change its suggested ballot title and gist do not sufficiently disclose.

### **CONCLUSION**

Petitioners respectfully urge this Court to strike IP 448 from the ballot.

Dated: April 9, 2025.

/s/ Trevor S. Pemberton  
TREVOR PEMBERTON  
(OK Bar No. 22271)  
PEMBERTON LAW GROUP  
600 North Robinson Avenue  
Oklahoma City, OK 73102  
Telephone: (405) 501-5054  
Email: [trevor@pembertonlawgroup.com](mailto:trevor@pembertonlawgroup.com)

Respectfully submitted,

JORDAN SEKULOW\*  
(D.C. Bar No. 991680)  
STUART J. ROTH\*  
(D.C. Bar No. 475937)  
ANDREW J. EKONOMOU\*  
(GA Bar No. 242750)

/s/ Benjamin P. Sisney  
BENJAMIN P. SISNEY  
(OK Bar No. 21816)  
NATHAN MOELKER\*  
(VA Bar No. 98313)  
LIAM HARRELL\*  
(DC Bar No. 1740309)  
AMERICAN CENTER FOR  
LAW AND JUSTICE  
201 Maryland Avenue, NE  
Washington, D.C. 20002  
Telephone: (202) 546-8890  
Facsimile: (202) 546-9309  
Email: [bsisney@aclj.org](mailto:bsisney@aclj.org)

*Counsel for Petitioners*

\*Not admitted in this jurisdiction.

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<sup>8</sup> The risk of confusion is real and substantiated. Major local news outlets report that amendments made to IP 447/SQ 835, then refiled as IP 448/SQ 836, “ensure[] that the initiative only addresses the process for partisan *primary* elections.” Barbara Hoberock, *Open Primary Supporters Refile State Question: What Has Changed?*, THE OKLAHOMAN (Jan. 7, 2025) <https://tinyurl.com/2s2hyhv4> (emphasis added).

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of April, 2025, a true and correct copy of the above and foregoing document was served electronically and by express mail or hand-delivery on the following:

Melanie Wilson Rughani  
CROWE & DUNLEVY, P.C.  
324 N. Robinson Ave., Suite 100  
Oklahoma City, OK 73102  
melanie.rughani@crowedunlevy.com  
*Counsel for Respondents*

Robert G. McCampbell  
Gable Gotwals  
499 West Sheridan Avenue, Suite 2200  
Oklahoma City, OK 73102  
rmcccampbell@gablelaw.com  
*Counsel for Respondents*

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

Attorney General's Office  
State of Oklahoma  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105-4897

/s/ Benjamin P. Sisney  
Benjamin P. Sisney  
*Counsel for Petitioners*