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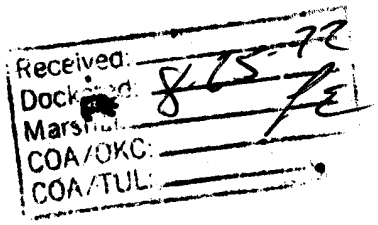
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MICHELLE TILLEY NICHOLS and MICHELLE JONES, Petitioners, vs. PAUL ZIRIAX, SECRETARY OF THE OKLAHOMA STATE ELECTION BOARD; TOM MONTGOMERY, CHAIRMAN OF THE OKLAHOMA STATE ELECTION BOARD; TIM MAULDEN, VICE CHAIRMAN OF THE OKLAHOMA ELECTION BOARD; HEATHER MAHIEU CLINE, MEMBER OF THE OKLAHOMA ELECTION BOARD; JERRY BUCHANAN, ALTERNATE MEMBER OF THE OKLAHOMA ELECTION BOARD, DEBI THOMPSON, ALTERNATE MEMBER OF THE OKLAHOMA ELECTION BOARD; and the HONORABLE J. KEVIN STITT, GOVERNOR OF OKLAHOMA, Respondents.	)	Supreme Court No. 120,646



BRIEF OF THE STATE CHAMBER RESEARCH FOUNDATION LEGAL CENTER, THE OKLAHOMA FARM BUREAU LEGAL FOUNDATION, AND THE OKLAHOMA CATTLEMEN'S ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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TABLE OF AUTHORITIES AND CONTENTS

I. INTRODUCTION

Petitioners, the Proponents of State Question 820 ("SQ 820"), seek to enlist this Court in their campaign plan of having SQ 820 voted upon at the November 2022 election, despite the fact that the question has not made it through the ***required*** statutory process to do so. To that end, Petitioners ask the Court for a truly extraordinary remedy. Determined to meet their fast-approaching, self-declared deadline, Petitioners request this Court to ***compel*** the State Election Board to include SQ 820 on the November 2022 ballot—despite the fact that the question has not cleared the necessary procedural hurdles. But Petitioners have failed to provide this Court with an adequate legal basis for this relief—pinning their arguments solely on the fact that they ***expected*** to make it to the ballot because they filed their state question in January 2022. Unfortunately, Petitioners' expectations do not align with the legal requirements or even historical expectations of how quickly state questions can make it through the initiative petition process. A careful review of the law and recent state question history, as outlined in this brief, reveals that Oklahoma law is unconcerned with the campaign plans of state question advocates, and is very much concerned with uniform processes and deadlines that ensure a fair, predictable, public journey to the ballot—a process worthy of the seriousness of changing the law by popular vote.

This Court has long recognized how "vital the right of initiative is to the people of Oklahoma" and for that reason, the Court has gone to great lengths to protect it. *In re Initiative Petition No. 420,* 2020 OK 9, 458 P.3d 1088. Indeed, the Court has long emphasized because of the importance of the initiative petition process, "all doubt as to the construction of provisions is resolved in favor of the initiative." *In re Initiative Petition No. 403*, 2016 OK 1, ¶ 3, 367 P.3d 472. But here, the Court is not presented with a case where it must decide on the legal or numerical sufficiency of a petition or where the presumption lies in favor of the

petition. Instead, the Court is being presented with a ***novel*** request to *ignore* the statutory structures and not just to allow, but to *mandate* SQ 820 be placed on the ballot, even though various steps in the statutory process remain unfinished. This request should be denied as it seeks relief unavailable under law and relief that would be prejudicial to other similarly situated state questions that legally made their way through the statutory process.

For those reasons and the reasons set forth in the brief below, the State Chamber Research Foundation Legal Center, the Oklahoma Farm Bureau Legal Foundation, and the Oklahoma Cattlemen's Association (collectively, "*amici*"), *strongly* urge this Court to deny Proponents' request. First, because the initiative petition process requires adherence to the "ministerial and mandatory" statutory deadlines prior to placement on the ballot. And second, because this request is truly extraordinary when put in context of previous state questions. The vast majority of state questions from the last decade have taken more than the Petitioner's "expected" or desired 8 months to make it on the ballot. As such, truncating the process for one state question, but not others, unfairly disadvantages other state questions that have gone through the required process. Additionally, doing so would open the door for gamesmanship and practically guarantee that this Court will receive additional requests for extra-statutory relief in the future elections. Thus, because the plain language of the statute ***requires*** SQ 820 to complete the statutory procedure prior to placement on the ballot, Petitioners' requests should be denied.

II. INTERESTS OF AMICUS CURIAE

Amici, the State Chamber Research Foundation Legal Center, the Oklahoma Farm Bureau Legal Foundation, and the Oklahoma Cattlemen's Association, each have a keen interest in ensuring fairness and equal application of the laws related to the initiative and referenda petition process for the benefit of all Oklahomans. Individually and collectively, the

State Chamber Research Foundation Legal Center ("SCRF Legal Center"), the Oklahoma Farm Bureau Legal Foundation ("OKFB Legal Foundation") and the Oklahoma Cattlemen's Association ("Cattlemen's Association"), represent the interests of their donors and members at every level of state government. Each of the *amici* organizations thus have a strong desire to protect and promoting their members' and donors' political rights—both when interacting with Legislative acts or laws proposed by means of an initiative or referendum petition. For this reason, the *amici* organizations have a shared interest in ensuring the procedural processes related to initiative and referendum petitions are zealously protected and apply equally to all players in that process.

Over the years, the *amici* organizations and many of their members and donors have been actively involved in the initiative petition process. Some have successfully utilized the initiative petition process to enact change in the law while others have been active litigants in the process—whether by means of contesting the legal sufficiency, the ballot title, or the signature count of various state questions. And because the *amici* represent a diverse range of industries, undoubtedly, from time to time, *amici* have found themselves on opposite sides of a state question. However, the common interest that unites the *amici* is to ensure that the rules that govern this process apply equally to all individuals who wish to utilize the citizen's right to participate in government through the initiative petition process. For this reason, the *amici* seek to have their voice heard in this case: not to advocate for or against the ***substance*** of SQ 820, but to advocate for adherence to the ***process*** that is enshrined in statute and applies equally to all participants.

III. ARGUMENTS AND AUTHORITIES

a. The initiative petition process requires adherence to "ministerial and mandatory" statutory deadlines and procedural steps prior to placement on the ballot.

The purpose of statutory guidelines around the initiative and referenda "is to provide a process" whereby the People may "exercise their right of initiative whereby they propose bills and laws and enact them or reject them at the polls independent of legislative assembly." *In re Initiative Petition No. 397,* 2014 OK 23, ¶ 26, 326 P.3d 496. And although the right to engage in initiative and referenda petitions is precious, it is limited insofar as "the interpretation adopted must be reasonable and it is the duty of the courts to accept that intended by the framers of legislation, so far as its intention can be ascertained." *Oliver v. City of Tulsa*, 1982 OK 121, 654 P.2d 607, 613. "The right of initiative petition is not absolute. There are limits, both constitutional and statutory, on the process." *In re Initiative Petition No. 344*, 1990 OK 75, ¶ 14, 797 P.2d 326, 330.

In this instance, the legislative intent to establish definite timelines that attach to various procedural steps is clear through a review of the plain language of Title 34 of the Oklahoma Statues. "If a statute is plain and unambiguous, it will not be subjected to judicial construction but will receive the interpretation and effect its language dictates." *Rogers v. Quiktrip Corp.*, 2010 OK 3, ¶ 11, 230 P.3d 853, 859.[1] "If wording in a statute is plain, clear and unambiguous then the plain meaning of the words used must be judicially accepted as expressing intent of the Legislature, and there exists no reason or justification to use interpretive devices or rules

[1] Indeed, the first inquiry is the plain text of the statute as the "Legislature is presumed to have expressed its intent in the text of the statute." *W.R. Allison,* 2013 OK 24, ¶ 14, 301 P.3d 407. The rules of statutory construction "are employed only where the legislative intent cannot be ascertained from the statutory language, *i.e.* in cases of ambiguity or conflict." *McClure ConocoPhillips Co.*, 2006 OK 42, ¶ 12, 142 P.3d 390.

of construction to determine meaning." *State ex rel. Bd. of Regents of Univ. of Oklahoma v. Lucas*, 2013 OK 14, ¶ 15, 297 P.3d 378, 387.

Here, this Court's fundamental inquiry should begin and end with the clear language in Title 34, which specifically provides particular timeframes for the various procedural hurdles that must be accomplished ***before*** being placed on the ballot. A brief review of Title 34 shows that the statutory scheme is replete with specific, definite timeframes that control the initiative petition process, including:

- 34 O.S. § 1: requiring that referendum petitions be filed not more than ninety (90) days after the adjournment of the session of the legislature which passed the bill on which the referendum is demanded.
- 34 O.S. § 2: noting that the time for filing an initiative petition expires ninety (90) days from the date the petition begins circulation.
- 34 O.S. § 4: prohibiting the Secretary of State from opening the sealed petitions prior to 9:00 a.m. on the day after the petitions are filed; noting that additional signature sheets shall not be accepted after 5:00 p.m. on the ninetieth (90^{th}) day.
- 34 O.S. § 8(B): providing a ten (10) business day window after filing, but before circulation, in which any citizen may file a protest to the constitutionality of the petition.
- 34 O.S. § 8(D): affording other citizens the ability to revive a challenge, if abandoned by the original challenger, within five (5) business days.
- 34 O.S. § 8(E): directing the Secretary of State to set the date for circulation of signatures and requiring that the date be "no less than fifteen (15) days nor more than thirty (30) days from the date when all appeals, protests and rehearings have been resolved or expired."
- 34 O.S. § 8(H): directing the Secretary of State, after review of the filed petition pamphlets, to certify to the Supreme Court the total number of signatures counted and the relevant total number of votes cast at the last general election, whereafter the Supreme Court makes the determination of the numerical sufficiency or insufficiency of the signatures reviewed by the Secretary of State.
- 34 O.S. § 8(F): noting that signed copies of referendum petitions must be filed with the Secretary of State no later than ninety (90) days after the adjournment of the relevant legislative session.

- 34 O.S. § 8(I): providing a ten (10) business day window, upon order of the Supreme Court, wherein any citizen or citizen of the state may file an objection to the signature count or to a ballot title rewritten by the Attorney General, if applicable, pursuant to the terms of 34 O.S. §§ 9-10.

- 34 O.S. § 9(D)(1): requiring the Attorney General to provide notice of whether the proposed ballot title complies with applicable laws within five (5) business days of receipt and providing the Attorney General with ten (10) business days to prepare and file a ballot title which complies with the law.

- 34 O.S. § 9(D)(2): requiring the Secretary of State to transmit and certify the official ballot title to the Secretary of the State Election Board within ten (10) business days after the completion of the review or, if appealed pursuant to 34 O.S. § 10, the ballot title which is approved by the Supreme Court.

- 34 O.S. § 10: providing a ten (10) business day window where any person who is dissatisfied with the wording of the ballot title may appeal to the Supreme Court.

- 34 O.S. § 12: requiring the Secretary of State to notify the Governor, so that the Governor may issue a proclamation setting forth the substance and election date of the measure, ***after*** an initiative petition has been (1) properly filed, (2) obtained sufficient signatures and (3) "all objections or protests have been resolved or the period for filing such has expired".

As is clear from an even cursory review of the procedural steps outlined above, the initiative Petition process is ***replete*** with very particular deadlines that control every step of the process, whether it relates to filing, circulation, review of the ballot title, or even the days within which the Secretary of State must set the circulation period after completion of the first (of two) protest periods. These definitive procedural steps and timelines ensure that the initiative process is uniform and fair in its application—not favoring any particular class or group of citizens.

Of particular relevance here is the final step in this process—the statutory directive found in 34 O.S. § 12—stating in whole:

> When an initiative or referendum petition has been ***properly filed with sufficient signatures thereon***, as provided in this title, and ***all objections or protests have been resolved or the period for filing such has expired***, the Secretary of State shall, in writing, notify the Governor, who shall issue a

> proclamation setting forth the substance of the measure and the date on which the vote will be held.

(emphasis added). Read closely, the plain language of this provision directs two individuals to act after a particular sequence of events has transpired: (1) the Secretary of State is required to notify the Governor ***after*** the final completion of the procedural steps necessary for an initiative petition to be placed on the ballot, and (2) the Governor is required to issue a proclamation setting the election date after receiving such notice. In other words—the final step to make it to the ballot (the Governor's proclamation) can only come after all objections or protests have been resolved or become time-barred.

But Proponents' request this Court ignore that directive. As Petitioners acknowledge, SQ 820 has yet to clear the totality of the statutory hurdles mentioned above. Although SQ 820 is undoubtedly close, it still has yet to complete a handful of procedural steps necessary to make it to the ballot, including a protest period for citizens who wish to challenge the rewritten ballot title or the signature count certified by the Secretary of State.

Put in context, on August 22, 2022, the Oklahoma Secretary of State, pursuant to the directives in 34 O.S. § 8(H), made the proper filing with this Court, certifying the total number of signatures verified, and providing the total number of votes cast for the office of Governor at the last General Election in November 2018. *See In re Petition 343, State Question 820*, Oklahoma Supreme Court (Case No. IP-120,641). But the next required step in this process has not yet been taken as of the filing of this Brief. Specifically, after the Secretary of State's filing, the statute instructs this Court to review the Secretary of State's determinations. 34 O.S. § 8(I). In completing this step, the Court will make a determination of the numerical sufficiency or insufficiency of the signatures and issue an order directing the Secretary of State to publish notice of the ten (10) business day window wherein citizens can file a protest related

to the determination of the numerical sufficiency or related to the rewritten ballot title. 34 O.S. § 8(I). Then, only ***after*** any protests filed pursuant to the statutory protest period are fully "resolved"[2] or after the "period for filing has expired" can the Secretary of State provide notice to the Governor, and the question be set for the ballot. 34 O.S. § 12.

In other words, the statutory directives are clear—the state question is only placed on the ballot (by virtue of a gubernatorial proclamation) ***after*** it has completed the final protest period. Legislative enactments, such as Title 34, must be interpreted in accordance with their plain and ordinary meaning according to the import of the language used therein. *Alfalfa Elec. Coop., Inc. v. First Nat. Bank and Trust Co. of Oklahoma City*, 1974 OK 98, 525 P.2d 644. Where the language of a statute is plain and unambiguous, there is no room for construction thereof. *Cavett v. Geary Bd. of Ed.,* 1978 OK 152, 587 P.2d 991. Applied here, the plain statutory language requires adherence to the mandatory steps of the process—steps that cannot be bypassed by a mere desire to make it to the ballot in the face of conflicting statutory directives.

Here, Petitioners request this Court to fully ignore the plain and unambiguous requirements of Title 34 and take the unprecedented action of placing SQ 820 on the ballot, despite the fact that the Court has yet to complete the mandatory statutory procedure outlined above—which they acknowledge. Petitioners' request should be denied as it has no basis in law and is a mere extra-statutory request for special treatment under the law—just as the Court

[2] Notably, even after this Court decides the merits of a protest, protestants are generally afforded the right to request rehearing within the usual 20-day period allowed by Oklahoma Sup. Ct. R. 1.13. There have been cases where this Court has granted requests to shorten that period to five or six business days upon application, but if not requested the general 20-day period applies. *See, e.g. Oklahoma Ass'n of Optometric Physicians v. Raper*, 2018 OK 13, 412 P.3d 1160; *OCPA Impact v. Sheehan*, 2016 OK 84, 377 P.3d 138. When combined with the time allotted for the filing of protests, the responsive filings, a hearing and the decision from this Court, the period of time from the *beginning* of the protest period until the "*completion*" of such period often is measured in months, not weeks.

denied a similar extra-statutory request for relief in 2020. Specifically, in *Kiesel v. Rogers*, proponents of State Question 805 requested this Court to ignore the statutorily-mandated circulation period due to safety concerns in the wake of the COVID-19 pandemic. 2020 OK 65, 470 P.3d 294. Applicable and notable here, this Court rejected that request, noting that the duties and associated timelines imposed by 34 O.S. § 8 are "ministerial and mandatory" and thus not subject to judicial override. *Id.* at ¶ 4. Moreover, in the Court specifically rejected the argument that the statutory time period was unconstitutional or placed an "undue burden" on the right to initiative, even given the safety concerns present during that time. *Id.* at ¶ 6. *See also, In re Legislative Referendum No. 334,* 2004 OK 75, 107 P.3d 556, 558, as corrected (Sept. 28, 2004) (Kauger, J., concurring) (refusing to hear a protest filed beyond the statutory time limitation and noting the "necessary work required, the time consumed and the cost of causing the ballots to be printed.").

The same principle at play in *Kiesel* holds true here—the timelines and duties prescribed by statute are "ministerial and mandatory"—not "unduly burdensome" on an individual's right to engage in the initiative petition process. Accordingly, the mere fact that Petitioners failed to file SQ 820 early enough to make the November 2022 ballot does not justify abandoning these requirements or requiring the State to assume the burden and cost of printing a state question that has not yet completed the ***required*** process.

This exposes the primary weakness in this case—and the fundamental principle *amici* seek to protect—Petitioners' argument fundamentally undermines the notion of a uniform process, and, if successful, opens the door to future attempts to short-circuit the well-established process plainly laid out in statute. *Amicis*' central objective in the filing of this brief is to advocate for equal treatment of those engaged in the initiative or referendum

processes—for proponents of state questions as well as for those who oppose those efforts. For that reason, the uniformity established by Title 34 should not be chiseled away by those frustrated that the process does not meet their desired campaign timelines. Should the deadlines and procedures clearly established in Title 34 need revision, Petitioners should seek such relief from the Legislature, not the judicial branch.

Thus, because the rights and processes set forth in statute should apply equally to all participants based upon the plain language of the statute, *amici* respectfully urge this Court to deny Petitioner's request for extra-statutory relief.

b. Put in historical context, most state questions would not make it to the ballot if filed a mere eight (8) months prior to the deadline.

Petitioners make the spurious argument that because the petition was filed on "the first business day of the year" and the signatures were submitted "more than four months before the next general election . . . and nearly two months before the Election Board's internal ballot-printing deadline" that they are somehow ***entitled*** to be placed on the November 2022 ballot. Pet. Br., p. 1, 3. In order to effectuate this request, Petitioners call upon this Court to mandate such placement through the issuance of a writ of mandamus. But filing a state question a mere 8 months prior to the ballot printing deadline—or submitting signatures a mere 2 months prior to the deadline—is by no means a guarantee that the state question will have completed the requisite procedural hurdles. A brief review of the history of initiative petitions over the past decade makes this fact clear.

The table below provides a comparison of Petitioners' request with every state question that has been sent to a vote of the people in the last decade. The second column notes the date the state question was filed and compares it to the third column—the date the state question

had fully cleared the requisite procedural hurdles for placement on the ballot (as evidenced by the Governor issuing a Proclamation to such effect).

	Date Filed	Date of Proclamation placing SQ on the ballot	Total time between filing and proclamation
SQ 805	November 12, 2019	August 12, 2020	9 months
SQ 802	April 19, 2019	April 17, 2020	11 months, 29 days
SQ 793	March 21, 2017	July 23, 2018	1 year, 4 months, 2 days
SQ 788	April 11, 2016	January 4, 2018	1 year, 8 months, 24 days
SQ 781	January 27, 2016	August 22, 2016	6 months, 26 days
SQ 780	January 27, 2016	August 22, 2016	6 months, 26 days
SQ 779	October 21, 2015	August 22, 2016	10 months, 1 day
SQ 744	August 6, 2008	August 10, 2010	2 years, 4 days
SQ 723	September 23, 2004	April 27, 2005	7 months, 4 days

Of particular interest, of the 9 initiative petitions that have made it to the ballot in the last decade, ***only 3*** petitions have made it to the ballot more expeditiously than Petitioners demand SQ 820 go to the ballot. The remaining 6 state questions saw a duration of 9 to 24 months between filing and placement on the ballot. Put into context, SQ 820 was filed on January 4, 2022—approximately 7 months and 23 days prior to the deadline (August 26, 2022) to be placed on the November ballot. Only SQ 723, 780 and 781 made it to the ballot within that timeframe—merely 33% of the initiative petitions that made it to the ballot in the last decade.

Of the state questions that made it to the ballot more expeditiously—SQ 723, 780 and 781—none were challenged more than once. Specifically, SQ 780 and 781 only faced a ballot title challenge, but neither faced a challenge to the legal sufficiency of the petition. This aspect

highlights the key takeaway clear from the chart above—because each state question faces a different path, with numerous potentials for various delays or challenges, the question of how long a state question will take to complete the statutory process is entirely fact-dependent. Although some challenges are able to be resolved with dispatch,[3] others take months to years to fully resolve,[4] particularly if a challenge is made at more than one stage (i.e., if a challenge is filed to both the legal sufficiency as well as the ballot title or signature count). Thus, it matters very little whether delays were experienced in the counting process or during the protest periods—there are simply no guaranteed timelines attached to each procedural hurdle.

In sum, the statutory process for initiative petitions entails numerous deadlines associated with the particular step in the process, but to be clear, there is no anticipated statutory timeline for the petition ***itself***. The only directive under the Constitution and relevant statutes is that the question, upon completion of the aforementioned hurdles, will be placed on the "next [statewide] election" unless ordered by the Governor to appear on a special election ballot. Okla. Const. art. 5, § 3. Indeed, there is no legal assurance, either in statute or the Constitution, that a petition filed by a certain date will make it on to the ballot that year—or even the following year. But by requesting the Court preemptively order SQ 820 on the November general election ballot, Petitioners are, in effect, asking this Court to create such an assurance where none currently exists. In net effect, Petitioners are asking the Court to judicially-establish an artificial deadline to mandate the question's presence on the ballot,

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[3] *See Steele v. Pruitt*, 2016 OK 87, 378 P.3d 47, the ballot title challenges to SQ 780 and 781. The ballot title challenge was filed by proponents on July 8, 2016, and the Court issued its opinion on August 8, 2016—a mere 30 days later. Of interest, the AG filed a petition for rehearing related to SQ 780 on August 11, 2016, and the Court issued its denial 8 days later on August 19, 2016. The state questions then proceeded to the ballot by proclamation of the Governor on August 22, 2016.

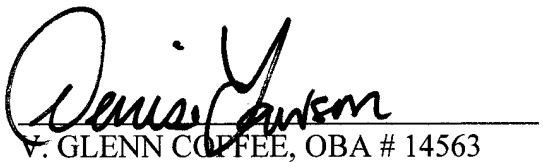
[4] *See, e.g., Oklahoma Ass'n of Optometric Physicians v. Raper*, 2018 OK 13, 412 P.3d 1160—the decision related to the legal sufficiency challenge to SQ 793. The challenge to the legal sufficiency was filed on April 7, 2017, and oral argument held on May 4, 2017. The official decision from the Court later issued on February 6, 2018—almost 10 months after the challenge was filed.

despite the question having not yet completed the Title 34 procedural process. This Court should decline to do so, both out of respect for the current statutory scheme and to head off endless future requests by frustrated state question proponents (and opponents) to alter the clear statutory process. Because Petitioners' request stands in contradiction to both law and history, *amici* respectfully urge the Court to reject it.

IV. CONCLUSION

For the foregoing reasons, the *amici* respectfully request the Court reject Petitioners' claims and rule in favor of Respondents.

Respectfully submitted,



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I hereby certify that on this 25th day of August, 2022, a true and correct copy of the foregoing was mailed by First Class U.S. Mail, postage prepaid, addressed to the following:

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