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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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STATE OF OKLAHOMA

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ELDON MERKLIN and CLAIRE ROBINSON DAVEY, Protestants/Petitioners, v. ANDREW MOORE, JANET ANN LARGENT and LYNDA JOHNSON, Respondents/Proponents.	)	Sup. Ct. Case No. 118,686

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RESPONDENTS/PROPONENTS ANDREW MOORE, JANET ANN LARGENT AND LYNDA JOHNSON'S BRIEF IN RESPONSE TO APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION AND REVIEW THE GIST OF INITIATIVE PETITION NO. 426

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INTRODUCTION

As foreshadowed at the oral argument in the *last* challenge to this proposal to reform Oklahoma's redistricting process, Protestants have once again raised a challenge to the "gist" of the Petition. In addition to an assertion of "inaccuracy" that is itself inaccurate, Protestants have come up with several new details they now believe are particularly "important" about the Petition, and thus should have been included in the gist. As previously noted, however, there are an unlimited number of details in a well-crafted, comprehensive initiative petition that are "important" to someone (otherwise, they would not have been included in the Petition in the first place)—and thus, an unlimited number of ways to challenge any gist. The short, simple statement at the top of the signature page was designed to prevent fraud in the initiative process, not to serve as a mechanism for litigants to run out the clock on an initiative through serial gist challenges.

The gist here accurately states the role of the Chief Justice in "designat[ing]" the panel of retired judges and justices who will participate in the Commissioner-selection process. It expressly notes that the Commission must achieve a "required level of consensus" within a set timeframe or the Court will select a plan. And it properly identifies, briefly, the various criteria the Commission must seek to maximize when creating a redistricting plan; it need not also *define* those criteria. The "gist" of the Petition here is precisely what it should be: a short, "simple" statement of the "gist" of the proposal.

At bottom, Protestants' objections boil down to *policy arguments* best suited for the public debate about the initiative—not for the few summary sentences at the top of the signature page. Proponents respectfully request that the Court deny this second gist challenge and permit the signature-gathering process to begin, so the Petition may timely proceed to a vote of the People.

ARGUMENT AND AUTHORITIES

I. Standard of Review: The Statement of the Gist Must, and Need Only, Be Simple

"The first power reserved by the people is the initiative." Okla. Const. Art. 5, § 2. Time and time again, this Court has thus recognized that "[t]he right of initiative is precious to the people," and "one which the courts are zealous to preserve to the fullest tenable measure of spirit as well as letter." *In re Init. Pet. No. 348*, 1991 OK 110, ¶5, 820 P.2d 772. "The people reserved to themselves the power to propose laws and amendments to the Constitution," and this reserved power "should not be crippled, avoided, or denied by technical construction by the courts." *Id.* ¶ 6 (citation omitted). Accordingly, "[a]ll doubt as to the construction of pertinent provisions is to be resolved in favor of the initiative." *Id.* ¶ 5.

Pursuant to Oklahoma statute, an initiative petition must contain a "simple statement of the gist of the proposition . . . on the top margin of each signature sheet." 34 O.S. § 3. The statute sets forth no substantive requirements for this "gist," other than that it be "simple." *Id.* This Court has noted that the gist "should be sufficient that the signatories are at least put on notice of the changes being made," and "must explain the proposal's effect." *McDonald v. Thompson*, 2018 OK 25, ¶ 6, 414 P.3d 367, 371 (internal quotation marks omitted). However, this Court has also made clear that "[t]he gist need not satisfy the more extensive requirements for ballot titles," *In re Init. Pet. No. 362*, 1995 OK 77, ¶ 10, 899 P.2d 1145, and "[i]t is not necessary for each signator to be fully aware of every detail of a petition." *In re Init. Pet. No. 347*, 1991 OK 55, ¶ 37, 813 P.2d 1019. "The gist need only convey the practical, not the theoretical, effect of the proposed legislation, and it is not required to contain every regulatory detail so long as its outline is not incorrect." *In re Init. Pet. No. 409*, 2016 OK 51, ¶ 3, 376 P.3d 250 (internal quotation marks omitted). "[A]ny alleged flaw created by an omission of details in the gist must be reviewed to determine whether such

omission is **critical** to protecting the initiative process." *In re Init. Pet. No. 420*, 2020 OK 10, ¶ 4, __ P.3d __ (emphasis added).

The limited scrutiny this Court applies to the gist (as opposed to, e.g., the separate ballot title) must be considered against the backdrop of the required form of the petition. Each page containing the gist must be followed by "twenty numbered lines for signatures." 34 O.S. § 2. By necessity, then, "[t]he gist of a proposition must be short," and "can contain no more than a shorthand explanation of a proposition's terms." *Init. Pet. No. 362*, 1995 OK 77, ¶ 10; *see also Okla. Indep. Petroleum Ass'n v. Potts*, 2018 OK 24, ¶ 7, 414 P.3d 351 (Wyrick, J. concurring). Further, the gist appears on a signature sheet that is *attached to the Petition itself.* The summary in the top margin thus prevents "fraud" or "deceit" in the petition process by ensuring that a blank signature sheet is not circulated under the guise of an unrelated matter and then attached to the petition; however, its purpose is not to explain every aspect of the proposal. If signatories have questions concerning issues raised in the gist, they need only turn the page and review the complete text of the proposed law. *Thompson*, 2018 OK 25, ¶ 10; *see also Initiative Pet. No. 365*, 2000 OK 47, ¶7, 9 P.3d 78. Absent clear misstatements, then, the risk of a signatory being "misled" by the gist is limited, and scrutiny of the gist therefore is as well. *Id.*

II. The Statement of the Gist is Accurate

Protestants accuse Proponents of drafting an "affirmatively inaccurate" gist designed to "actively mislead" voters because, they assert, the gist "reflects that the Panel is designated by the Chief Justice when in fact the Panel is selected by random drawing." Br. at 1, 7. But the only thing "inaccurate" and "mislead[ing]" here is Protestants' description of IP426.

In a handy chart, Protestants purport to compare the language of the gist to that of IP426. *See* Br. at 1. But their selective quotation of the Petition ***leaves out rather important parts***:

Protestants' Excerpt (Br. at 1)	**Full Text of IP426**, § 4(B)(4)(b)
"The Panel shall consist of three Judges or Justices who have retired from the Oklahoma Supreme Court or the Oklahoma Court of Civil Appeals, and who are able and willing to serve on **the Panel, selected by random drawing**."	"No later than December 15 of 2020, and no later than December 1 of each subsequent year ending in zero, the Chief Justice of the Oklahoma Supreme Court shall designate a Panel to review the applications. 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**. If fewer than three state appellate Judges or Justices who are able and willing to serve have been identified, then the Chief Justice shall appoint a retired Oklahoma Federal District Court Judge who accepts such appointment."

Proponents summarized the actual Panel-selection provision (and the rest of the Commissioner selection process) in the gist, as follows:

> [I]n 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.

App. A. This summary is entirely correct.

Protestants, by contrast, propose a different summary of the Panel-selection process. Based on their selective reading of § 4(B)(4)(b), they would have put it this way:

> [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.

Br. at 5. *This* description, however, would have been inaccurate.

As is clear from reading the full text of § 4(B)(4)(b), the Panel is "designated by the Chief Justice" according to a specified process, which may ***or may not*** involve random selection. If the Chief Justice is able to find more than three retired appellate judges who are able and willing to serve on the Panel, then she must indeed choose randomly among them. But if only three such judges are available, then no randomization is employed. And if, as is rather likely, there are not enough retired Oklahoma appellate judges who are able and willing to fill the Panel, then the Chief Justice must select a retired federal district court judge, according to her discretion. App. A, § 4(B)(4)(b). Protestants' proposed gist might have accurately described *their* version of § 4(B)(4)(b), but it does not accurately describe the *actual Petition.*

Protestants object to the gist's use of the term "designated." Br. at 4. In another artful quotation, they state that this Court previously found "that saying the Panel was 'designated by the Chief Justice' is inconsistent with saying the Panel is 'selected by random drawing.'" Br. at 4. Of course, as explained above, "selected by random drawing" is not an accurate description of the Petition's panel-selection process. In any event, the Court found no such thing. In their prior challenge, Protestants urged that the "definitions" provision of IP420, then-§ 4(A)(7), was inconsistent with § 4(B)(4)(b), the operative provision quoted above, because it had said the Panel was "*chosen*" by the Chief Justice—a word that, in their view, foreclosed any use of random selection. *See, e.g.*, Prot. Reply Br., Sup. Ct. No. 118,406 (filed Jan. 2, 2020). The Court suggested that this perceived inconsistency between these two provisions should be "clarified"—which Proponents did in IP426, by eliminating the source of any confusion (the word "chosen" in the definition section), and simply citing the selection process set forth in detail in § 4(B)(4). *See* App. A, § 4(A)(7).

Now, neither the gist nor § 4(A)(7) uses the offending term. Instead of "chosen," a word with a connotation that arguably foreclosed any use of randomization at all,[1] the gist of IP426 uses the term "designated."[2] This term was taken directly from this Court's prior opinion, *see Init. Pet.* 420, 2020 OK 10, ¶ 7, which was taken directly from the operative provision of the Petition itself, *see* § 4(B)(4)(b). And this term *accurately* describes a selection process that requires the Chief Justice to recruit and name to the Panel three retired judges, selected according to a specified procedure that *may* employ randomization, *may* employ deliberate choice, and *may* employ a little bit of both. *See supra* n.2[3]; *McDonald*, 2018 OK 25 at ¶ 9 (noting that "the gist properly mirrors the petition").

Nor is it "inaccurate" to note that it is the Chief Justice who does this designating. Indeed, last time around, Protestants urged that this information was "crucial." *See* Prot. Br., Sup. Ct. No. 118,406, at 3 (filed Nov. 15, 2019) (arguing the gist was insufficient because it was "silent as to who will be responsible for selecting the Commissioners"); *see also Init. Pet. 420*, 2020 OK 10, ¶¶ 1-2 (Winchester, J. concurring) (agreeing it is important for the gist to note that "the Chief Justice will 'designate' a panel consisting of a group of retired Judges or Justices who will oversee the creation of the Commission" to put signatories on notice of

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[1] *See, e.g.*, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/choose (defining "choose" as, *inter alia*, "to select freely and after consideration" or "to have a preference for").

[2] *See, e.g.*, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/designate (defining "designate" as, *inter alia*, "to indicate and set apart for a specific purpose, office, or duty"; to "specify" or "denote").

[3] To the extent the accuracy of the gist depends upon dueling definitions of the word "designated," moreover, the Court need not engage in such parsing: under established law, any doubt as to interpretation and construction should be resolved in favor of the initiative. *See, e.g.*, *Init. Pet. No. 420*, 2020 OK 10, ¶ 2 ("Because the right of the initiative is so precious, **all doubt as to the construction of pertinent provisions is resolved in favor of the initiative. The initiative power should not be crippled, avoided, or denied by technical construction by the courts**.") (quoting *Init. Pet. No. 403*, 2016 OK 1) (emphasis in original).

the increased role of the Court in redistricting under the proposal). Their suggestion now that any mention of the Chief Justice should be *omitted* from the gist (Br. at 5, 7) is thus puzzling. The gist does not, as Protestants say, "trade on the authority and prestige of this Court." Br. at 7. It simply notes—correctly, and as Protestants previously demanded—that it is the Chief Justice of the Supreme Court, and not, e.g., the Governor or the Legislature, who is responsible for designating the Panel.

III. The Statement of the Gist Is Legally Sufficient

Accuracy established, the remainder of Protestants' arguments go, once again, to whether *additional details* should be included in the gist. And as explained above, Proponents are entitled to substantial deference with respect to such decisions.

A. The Gist Need Not Describe Every Detail of the Process to Select the Members of the Panel

Protestants contend that the precise mechanism for how the Panel is selected, which may or may not include randomization, "is a very significant piece of information for a potential signatory" because the composition of the Panel, which narrows the pools of applicants and runs the process for selecting the actual Commissioners, is "extremely important." Br. at 7. Although their expressed concern about the "unfettered discretion" of Panel members (Br. at 6) is a bit overblown,[4] Proponents do agree that the Panel's makeup is important—which is why, as part of their effort to remove bias from the process as much as reasonably possible, the Panel is comprised of retired judges and justices instead of partisan

[4] Proponents take issue with the notion that retired judges and justices, who devoted their careers to serving as neutral and impartial decisionmakers, will abdicate these values—and their legal duties—when narrowing the pool of applicants from which Commissioners will be randomly chosen. *Contra* Br. at 6-7. A judge's "gravitas" and ability to make "non-partisan and just" decisions, Br. at 7, does not suddenly evaporate upon retirement. Protestants' assertion (*id.*) that "no public official is involved" in selecting the Panel is flatly incorrect, and a group of retired judges of the Oklahoma appellate courts—however selected—can hardly be compared to "potluck."

politicians, and the method of selecting among these judges takes advantage of randomization to the extent the authors deemed feasible. The exact same thing could be said, however, for nearly *every other provision in the Petition.*

Proponents took great pains to draft a thoughtful, comprehensive proposal to reform Oklahoma's redistricting process. *Every* detail in the Petition is "extremely important" to someone: *that's how it got there in the first place*. This does not mean, however, that every such detail must be set forth in the gist at the top of the signature page. *See, e.g., In re Init. Pet. No. 363*, 1996 OK 122, ¶ 20, 927 P.2d 558 (emphasis in original) ("*The measure's gist is not required to contain every regulatory detail so long as its outline is not incorrect.*").

The problem with Protestants' proposed standard is aptly illustrated by the redline in their appendix, where they identify details that (in their opinion) are ***un***important, and thus need not be included in the gist. App. C (redline); Br. at 14 (deeming redlined items "surplusage" and "not necessary"). Protestants see no need for any reference to the Petition's various public notice and open meeting provisions; however, these provisions are "extremely important" to many public policy analysts, who believe one of the most problematic parts of the current redistricting process is that it occurs almost entirely in secret.[5] Protestants see no need to reference the Special Master; however, this job is arguably as important as Panel membership, particularly in the event the fallback mechanism becomes necessary. Protestants profess no need to mention "funding," but one can only imagine what they would have said had the gist actually failed to mention the proposal would cost money. And while Protestants now see no need to explain that the purpose of the various Commissioner qualifications is "to

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[5] *See, e.g.*, Nicholas Kusnetz, *Redistricting: GOP and Dems Alike Have Cloaked the Process in Secrecy* (Nov. 2012), https://publicintegrity.org/politics/state-politics/redistricting-gop-and-dems-alike-have-cloaked-the-process-in-secrecy/.

avoid conflicts of interest," last time around, they demanded—and the Court specifically required—such a statement. *See Init. Pet. 420*, 2020 OK 10, ¶ 8 & n.6. Clearly, importance is in the eye of the beholder. And this is precisely why Proponents have traditionally been afforded deference in making such determinations.

In any event, it is important to remember that, under IP426, the power to make decisions about the drawing of district lines is vested in the *Commissioners*, not the Panel.[6] The gist makes clear that the nine-member Commission is designed to be politically balanced, with three members selected from each of three pools of applicants sorted by political affiliation. The gist makes clear that the Commissioners are selected randomly from each of these pools. The gist makes clear that the Petition sets forth various qualifications for Commissioners, designed to prevent conflicts of interest. The gist also makes clear that the people who narrow the pools of applicants and then randomly select therefrom are reasonably neutral decisionmakers: not the Governor, not the Legislature, but a Panel of retired judges and justices designated by the Chief Justice. The gist does not purport to set out every detail of the Commissioner-selection process.[7] Nevertheless, it gives the basic "gist": that various insulating devices—political balance requirements, conflict-of-interest

[6] Protestants point to an Ohio case, *State ex rel. Voters First v. Ohio Ballot Bd.*, 978 N.E.2d 119, 127 (Ohio 2012), to elevate the importance of "who does the appointing." Br. at 8. Certainly, as discussed above, the Panel is important. This does not mean, however, that every detail of its selection must be in the gist. As noted in the last challenge, the *Voters First* case interpreted Ohio law regarding the sufficiency of a ***ballot title***—a *far* more exacting standard. *See In re Init. Pet. No. 384*, 2007 OK 48, ¶ 9, 164 P.3d 125; *In re Init. Pet. No. 362*, 1995 OK 77, ¶10; *In re Initiative Pet. No. 363*, 1996 OK 122, ¶¶18-20; *In re Init. Pet. No. 341*, 1990 OK 53, ¶24, 796 P.2d 267. *Voters First*, moreover, was in the opposite procedural posture. It was not an endeavor to keep a measure *off* the ballot: rather, the *proponents* of an initiative challenged the condensed ballot title drafted by the state ballot board, which they felt did not adequately communicate the benefits of their chosen process for selecting Commissioners.

[7] To the contrary: the gist is very clear that the Commissioners are "selected according to a detailed process set forth by the Article," summarized only "in brief" in the gist. App. A.

limitations, randomization, and the involvement of retired judges rather than politicians in the selection process—work together to ensure the reasonable balance and neutrality of the Commissioners.

This is more than enough information for most voters to decide whether the measure is an improvement over the status quo—and certainly enough to decide whether it should be *placed on the ballot*. *Cf., e.g., Init. Pet. 420*, 2020 OK 10, ¶ 7 (concluding that the "selection process and composition of the Commission" should be mentioned, but "the selection process need not be detailed"); *see also Potts*, 2018 OK 24, ¶ 7 (Wyrick, J. concurring) ("Crafting a statement of the gist is … an inherently subjective exercise, requiring judgment calls as to what stays and what gets cut in order to boil down a lengthy proposition … into a simple statement of 'the pith of the matter' capable of fitting in the 'top margin' of a signature page."). If the minute details of *how* the Chief Justice is to select from the various retired judges and justices available to serve on the Panel are uniquely important to a potential signatory, then he or she can—as the gist itself instructs—turn the page and "review [the] attached Petition for further details." App. A; *see also Init. Pet. No. 365*, 2000 OK 47, ¶7 (the requirement that all signature sheets be attached to the petition is to ensure voters are able to examine the exact text of the proposal).

B. The Gist Provides Sufficient Notice of the Consensus Requirement

Protestants' next submit that the gist "omits any notice of the two supermajority requirements needed for the Commission to take action." Br. at 9. They are mistaken. Proponents used the term "consensus" rather than "supermajority" in the gist; however, it is quite clear from the gist that something more than a simple majority vote is required.

The gist explains that IP426 "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." App. A. One of the many details of this "approval" process—set forth at length in § 4(E) of the Petition, entitled "Approval of the Plans"—is the Article's consensus requirement. Under § 4(E)(1), an "affirmative vote of at least six (6) of the nine (9) Commissioners is required to approve a Plan, including at least one (1) Commissioner affiliated with each of the two (2) largest political parties in the state and one (1) Commissioner who is unaffiliated with either of the two largest political parties in the state." App. A. This consensus requirement is *specifically referenced* in the gist: "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." *Id.* (emphasis added).

Because Protestants' brief does not acknowledge this language in the gist, is not clear what, precisely, they believe is missing from it. To the extent they contend that the gist must spell out in minute detail exactly *what* level of consensus is required by § 4(E)(1)—a provision Protestants themselves needed three full lines of text to summarize, *see* Br. at 9—they offer no reason why such details are "**critical** to protecting the initiative process." *Cf. Init. Pet. 420*, 2020 OK 10, ¶ 4 (emphasis added). The gist makes clear that, if the Commission "cannot reach the **required level of consensus** within a set timeframe," then the "Supreme Court" will serve as a "fallback" and "select a plan." App. A (emphasis added). This puts potential signatories on notice that, as Protestants put it, "the Commission cannot approve a plan based on majority vote as would ordinarily be the case." Br. at 10. There is no reason a lengthy recitation of specific voting thresholds is also required. *Cf., e.g., Init. Pet. No. 363*, 1996 OK 122, ¶¶ 19-20; *Thompson*, 2018 OK 25, ¶ 1 (Kauger, J. concurring).

On the other hand, to the extent Protestants contend that the gist must explain their policy arguments against the Petition—that, in their view, the level of consensus required is *too high*, and thus "significantly increase[s] the likelihood of the Supreme Court having to make the legislative decision to adopt a particular plan," Br. at 10—they are simply wrong. Protestants believe the structure of the Commission process will likely result in its failure, and thus ultimately require the Supreme Court to select a plan. They are entitled to their opinion. They are also entitled to share that opinion far and wide to the public, when they campaign against the ballot measure. But their speculation about the likelihood of the fallback mechanism being employed is nothing but that—sheer speculation—and it need not be discussed in the gist. *Cf., e.g., In re Init. Pet. No. 409*, 2016 OK 51, ¶ 6 n.15, 376 P.3d 250 ("We decline to engage in speculation in our consideration of the validity of the gist."); *see also, e.g., Thompson*, 2018 OK 25, ¶ 14 (rejecting similar argument by counsel that "these changes upset the balance of power and usurp a role traditionally held by the Legislature," and concluding this argument was "in reality little more than policy argument[] against the proposal, and would be more appropriately made to the public").

This Court has approved gists with far less detail about the procedures set forth in an initiative. Indeed, this Court has upheld a gist that simply put signatories on notice that the initiative would, *e.g.*, "define procedures," without any information *at all* about what those procedures might be. *In re Init. Pet. 362*, 1995 OK 77, ¶ 10 & n.8. The gist here goes much further, not only noting that the Petition would set out a "process" for "approval," but also specifically explaining that part of this process is that the Commission must achieve a certain "required level of consensus within a set timeframe," or the Supreme Court will select a plan.

This is more than sufficient for the "short" statement of the "gist" of the Petition at the top of the signature page.

C. The Gist Need Not Define the Redistricting Criteria at Length

Section D of IP426 sets forth several criteria the Commission must satisfy or seek to maximize when it creates a redistricting plan. App. A. One of the criteria the Commission must seek to maximize is "political fairness." *Id.* § (D)(1)(c)(iii). Like the other criteria set forth in Section D, the Petition provides a brief description of "political fairness": "No Plan should, when considered on a statewide basis, unduly favor or disfavor a political party. 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." *Id.* Protestants submit that, because "political fairness" can have many different meanings in the context of redistricting, this definition of this term should also be included in the gist. They offer no authority for this assertion.

Indeed, in *Initiative Petition No. 384*, 2007 OK 48, ¶ 12, the Court noted that the proponents had defined in the gist a particular term "in mind-numbing detail taken directly from the statute," but the Court in no way suggested this was required. To the contrary, it found the definition's inclusion in the gist to be *problematic*: "the inclusion of one overly detailed definition without any definition of the other term creates an imbalance at odds with the purpose of the gist." *Id.* n.4. Here, as the gist points out, there are quite a few different criteria the Commission must consider when preparing its redistricting plans (including, *inter alia*, "communities of interest," "racial and ethnic fairness," "contiguity," and "compactness," App. A). It would have been impossible, logistically speaking, to define all of these terms in the top margin of an initiative petition's signature page. Yet, if Proponents had in fact chosen to define "political fairness," but not, e.g., "racial and ethnic fairness,"

"contiguity," and "communities of interest," then they similarly could have been accused of creating a misleading imbalance in the gist. *Cf. id.*

It is of course true that "political fairness" (like the other criteria) can be interpreted in different ways in different circumstances. Even as defined in the Petition, there is a certain amount of leeway for the Commission to determine how best to interpret and implement that term. But while the U.S. Supreme Court has noted that "political fairness" can have different meanings depending on the circumstances, it has never suggested that the concept cannot be properly interpreted or implemented—just that the *federal courts*, in fashioning absolute constitutional standards, should not ordinarily be making such judgments in the first instance. *See, e.g., Rucho v. Common Cause*, __ U.S. __, 139 S.Ct. 2484, 2499 (2019) (emphasizing that "federal courts are not equipped to apportion political power as a matter of fairness, nor is there any basis for concluding that they were authorized to do so"). This *is*, however, a proper role for the Commission—a politically balanced group of decisionmakers without conflicts of interest, who would be constitutionally tasked with this role by the People, the ultimate source of legislative authority. *See, e.g., Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, __ U.S. __, 135 S.Ct. 2652 (2015).

In any event, the precise meaning of "political fairness" need not be the subject of lengthy discussion in the gist. The gist makes clear that the Commission will be tasked with maximizing various specified criteria, including but not limited to political fairness. If Protestants wish to argue that this standard (or any other) is unclear, unworkable, or otherwise problematic, they can certainly do so—to the public, when advocating against the measure. But the time and place for such discussion is during the campaign, in the public forum—not in the "short" statement of the gist of the Petition at the top of the signature page.

As this Court has previously put it, Protestants "would require too much of the gist of an initiative petition." *In re Initiative Petition No. 362*, 1995 OK 77, ¶ 10. For obvious reasons, Protestants prefer that the Legislature retain control over redistricting, and that this control not be cabined by any legal standards or criteria. But the gist of the petition is no place for Protestants' policy arguments. "While the statement must put voters on notice of the changes being made," it need not make Protestants' "arguments for them by delineating each policy argument for and against the proposed legislation." *In re Init. Pet. No. 384*, 2007 OK 48, ¶ 10 (internal quote marks omitted); *see also In re Init. Pet. No. 347*, 1991 OK 55, ¶ 23 (refusing to entertain objection on ground that gist did not inform voters of changes it would make to the state appropriation system). Such arguments are best made to the public, in the ordinary course of debating the merits of the initiative—not in the few sentences in the top margin of a signature page.

CONCLUSION

For every initiative petition, there are an infinite number of details and policy arguments that could be included, or not included, in the short summary statement of the "gist"—and thus an infinite number of challenges that could be raised, *seriatim*, thereto. The People's power of initiative petition is precious, and serial gist challenges should not be able to be used as a mechanism to keep measures from timely reaching the ballot. The statement of the gist of Initiative Petition No. 426 is accurate and legally sufficient, and Proponents respectfully request that the Court allow the initiative to proceed timely to the next stage of the initiative petition process.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was served by U.S. Mail, postage prepaid, this 12th day of March, 2020 to:

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