

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

In Re: Initiative Petition No. 397, )  
State Question 767, )  
 )  
TAKE SHELTER OKLAHOMA )  
AND KRISTI CONATZER, )  
 )  
Petitioners, )  
 )  
vs. )  
 )  
STATE OF OKLAHOMA, ex rel., )  
ATTORNEY GENERAL E. SCOTT )  
PRUITT, )  
 )  
Respondent. )

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

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THE APPELLATE COURTS

Case No. 112264

**ATTORNEY GENERAL'S COMMENT ON THE  
APPLICABILITY OF *In re INITIATIVE PETITION NO. 315* ON  
PROPONENTS' REQUEST FOR AN EXTENSION OF THE 90-  
DAY PERIOD FOR CIRCULATING THEIR  
INITIATIVE PETITION**

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INITIATIVE PETITION**

**Introduction.**

In 1982, in the case of *In re Initiative Petition No. 315, State Question No. 553*, 649 P.2d 545, 553 (Okla. 1982), this Court held that:

The 90-day period for circulation does not begin until the proposed title has been reviewed by the Attorney General, the 10-day appeal period has expired, and any appeals timely filed, exhausted.

Intervening changes in the statutory law regarding the initiative process has rendered this Court's 1982 holding wholly inapplicable to today's initiative petition process.

Under today's law the ballot title is no longer part of the petition, and an extension of the 90-day signature gathering period is only available when a protest to the petition is made.

If the Court's 1982 holding were still law, the 90-day circulating period for the Petitioners to gather signatures has not even begun and will not begin until the Court decides the ballot title appeal presently before it. **The result of concluding that this Court's 1982 holding is still controlling law is that the Petitioners would have been prematurely circulating their Petition,** and accordingly, the signatures gathered to date should be held invalid.

A comparison of the 1982 Initiative and Referendum statutes with today's Initiative and Referendum statutes demonstrates that the Court's 1982 holding regarding the beginning of the Petitioners' signature-gathering period has **no application in ballot title appeals** brought under current law.

### PROPOSITION I

**This Court's Holding Regarding the Signature Gathering 90-Day Period Beginning After the Completion of a Ballot Title Appeal Was Based on 1982 Law Which is No Longer Applicable Because:**

1. **In 1982 the Ballot's Title Was Part of the Petition Itself. Today, however, the Ballot Title is Separate and is Not Part of the Petition Packet.**
2. **Rather, in 1985 the Legislature Required That a Statement of the Gist of the Proposition be Printed at the Top of a Petition's Signature Sheet.**
2. **In 1982 There Was a Discretionary Procedure Available to Proponents Under Which They Could Voluntarily Submit Their Proposed Ballot Title for PreCirculation Approval.**

**No Such Voluntary Procedure is Available Under Present Law. Nor is it Necessary, Because the Ballot Title is No Longer Part of the Petition.**

In 1982, the ballot title was part of the petition to be circulated, and was required to contain a gist of the proposition, as provided in Laws 1975, Chapter 363, Section 1, which read, in pertinent part:

A. When a measure is proposed as a constitutional amendment or legislative enactment by the Legislature, when a referendum is ordered against any measure passed by the Legislature, or when any measure is proposed by initiative petition, whether as an amendment to the Constitution or as a statute, it shall be the duty of the parties submitting such proposition to prepare and file one copy of same with the Secretary of State and one copy with the Attorney General, such **copies to contain a ballot title of not exceeding one hundred fifty words, which shall contain the gist of the proposition** couched in language that may be readily understood by persons not engaged in the practice of law.

*Id.* (emphasis added).

Under today's law, however, the ballot title is **not** part of the petition. Indeed, the current version of Section 9 of Title 34, makes it clear that the ballot title is **not** part of the Petition:

The parties submitting the measure **shall also submit a suggested ballot title which shall be filed on a separate sheet of paper and shall not be deemed part of the Petition.**

34 O.S. 2011, § 9(B) (emphasis added).

Further, under today's initiative process laws, the Petition's signature sheets are required to contain a summary of the gist of the proposition, which unlike the ballot title is not limited to 200 words. 34 O.S. 2011, § 3. Today it is the gist — not the ballot's title — that provides citizens with a summary of the proposition being presented, when they are asked to sign a petition.

The requirement that gist statements be printed on petition packets was added in 1985, three (3) years after this Court's decision in *In re Initiative Petition No. 315*, in the following amendment to 34 O.S. § 3:

SECTION 1. AMENDATORY 34 O.S. 1981, Section 3, is amended to read as follows:

Section 3. Each initiative petition and each referendum petition shall be duplicated for the securing of signatures, and each sheet for signatures shall be attached to a copy of the petition. Each copy of the petition and sheets for signatures is hereinafter termed a pamphlet. On the outer page of each pamphlet shall be printed the word "Warning", and underneath this in ten-point type the words, "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 such petition when he is not a legal voter". A simple statement of the gist of the proposition shall be printed on the top margin of each signature sheet. Not more than (40) signatures on one sheet shall be counted. Any signature sheet not in substantial compliance with this section shall be disqualified by the Secretary of State.

1985 Session Law, c.288, § 1 (underlining indicates added language).

Because the ballot title is no longer a part of the Petition, its validity has no effect upon the circulation of the Petition and there is no longer any reason for signature gathering period to be controlled by the timing of the ballot title appeal.

Such was not the case in 1982, because in 1982 the statutes specifically provided for a **voluntary, precirculation determination of a ballot title**, which made sense, as the ballot title was part of the petition. In providing for the voluntary, precirculation ballot title determination, the provisions of 34 O.S. § 8, as they existed in 1982, provided:

D. **Persons proposing to circulate an initiative or referendum petition may file** with the Attorney General, within ten (10) days after filing a true and exact copy of said petition in the office of the Secretary of State, **a copy of a proposed ballot title prior to the circulation of the initiative or referendum petition, which ballot title shall be processed as otherwise provided in this act prior to the circulation of the initiative or referendum petition** and in which event it need not be submitted for any further approval thereafter.

Laws 1975, Chapter 263, § 1(D) (emphasis added).

There is no doubt that the 1982 case involved the Proponents taking advantage of the **voluntary, precirculation approval of the ballot title**, as the Court references this prior to the holding at issue, the Court stating:

The **proponents filed** the petition with the Secretary of State, and **the ballot title with the Attorney General for precirculation approval** on August 18, 1980. The Attorney General approved the ballot title August 21, 1980.

649 P.2d 545 at 553 (emphasis added).

Unlike the 1982 law, today's initiative petition statutes do not contain a voluntary, precirculation ballot title procedure. Nor is there a need for such procedure, because under current law — unlike in 1982 — the ballot title is no longer part of the petition to be circulated among voters.

For the reasons outlined above, this Court's 1982 holding that the 90-day period for circulation of initiative petitions does not begin until the proposed ballot title review is complete and any timely appeal has been exhausted, is no longer applicable. If it were, however, such would **not** entitle the Proponents to an extension of their 90-day petition circulation period, because under 1982 law, Proponents' circulation period will not begin until this Court rules on the ballot title appeal presently before it. If the 1982 case still controls, the Court should rule that the Proponents' **premature circulation** of the Initiative Petition was a nullity, and accordingly, all signatures gathered prematurely should be held invalid.

## PROPOSITION II

**Petitioners' Request That Under the Present Day Provisions of 34 O.S. Section 8(E), the Court Should Grant the Proponents an Additional Ninety 90 Days in Which to Secure Signatures on Its Initiative Petition is Without Merit Because:**

- 1. The Provisions of Section 8(E) of Title 34, Authorizing the Extension of the 90-Day Period to Collect Petition Signatures Apply Only to Proceedings Challenging the Sufficiency of the Petition, and are Not**

Applicable to Challenges to the Ballot's Title,  
and

2. **Any Public Confusion Regarding the Proponents' Proposed Measure Has Been Created by the Proponents Themselves, as the Result of the Media Grandstanding of the Proponents' Lead Counsel, Mr. Slane.**

Under the provisions of 34 O.S. 2011, § 8, and related statutes, there are three (3) separate types of proceedings related to the Initiative and Referendum process that may be filed in the Supreme Court:

1. **Protests to the constitutionality of the petition itself, as authorized in Subsection B, Section 8 of Title 34, which in pertinent part provides: "any citizen or citizens of the state may file a protest as to the constitutionality of the petition, by written notice to the Supreme Court . . .",**
2. **A protest to the ballot's title as authorized by Subsection B, Section 8 of Title 34, which in pertinent part provides that: "any citizen or citizens of the state may file a protest to the constitutionality of the petition, . . . or as to the ballot title as provided in Section 10 of this title", and**
3. **An objection to the signature count made by the Secretary of State under the provisions of Subsection H of Section 8 in Title 34, which in pertinent part provides: "any citizen or citizens of the state may file an objection to the count made by the Secretary of State, by written notice to the Supreme Court . . ."**

The matter presently before the Court is **not** an objection to the signature count — as the count has not yet occurred —, **nor is it a protest to the constitutionality of the Initiative Petition itself**. Rather, the matter before this Court is a protest as to the ballot title.

The provisions of Subsection E of Section 8 of Title 34 relied on by Proponents are **not applicable to protest as to the ballot title**. The language of Subsection E of Section 8 of Title 34 makes it abundantly clear that an extension of time in which to gather signatures **applies only to proceedings in which a protest to the sufficiency of the Initiative Petition itself is being determined by the Supreme Court**, Subsection E providing:

**Within ninety (90) days after such filing of an initiative petition or determination of the sufficiency of the petition by the Supreme Court as provided in this section, whichever is later, the signed copies thereof shall be filed with the Secretary of State**, but the signed copies of a referendum petition shall be filed with the Secretary of State within ninety (90) days after the adjournment of the Legislature enacting the measure on which the referendum is invoked or determination of the sufficiency of the petition by the Supreme Court as provided in this section, whichever is later. Each elector shall sign his or her legally registered name, address or post office box, and the name of the county of residence. Any petition not filed in accordance with this provision shall not be considered. The proponents of a referendum or an initiative petition, any time before the final submission of signatures, may withdraw the referendum or initiative petition upon written notification to the Secretary of State.

34 O.S. 2011, § 8(E) (emphasis added).

Subsection 8(E)'s signature-gathering extension is not applicable to ballot title protests. The ballot title is simply the language that will appear on the election ballot should

the Proponents obtain enough signatures on a proposed measure. As noted above, “the parties submitting the measure shall also submit **a ballot title which shall be filed on a separate sheet of paper and shall not be deemed part of the petition.**” 34 O.S. 2011, § 9(B) (emphasis added). **Not being properly part of the Petition, the ballot title has nothing to do with the Petition’s circulation, and accordingly, the provisions of Subsection E of Section 8 of Title 34 do not provide for an extension of the 90-day signature-gathering period in ballot title appeals.** Petitioners’ claim that Subsection E is applicable here is without merit.

Equally without merit is Petitioners’ claim that the Attorney General’s ballot title has hampered their signature gathering efforts by creating public confusion. If there is any public confusion here, it is confusion of Petitioners’ own making. The Attorney General’s filing of his ballot title review letters and ballot title with the Secretary of State did not create any public confusion. Any public confusion here has been created by the grandstanding, media statements and hyperbole of the Proponents’ attorney, David R. Slane, Esq. It is Mr. Slane’s shameless play to the media, complete with his conspiracy theories, that have garnered public attention to this ballot title measure — not any action on the part of the Attorney General.

### **CONCLUSION**

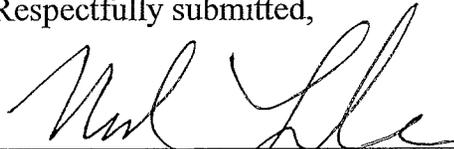
In sum, if this Court’s 1982 holding were still controlling law, the Petitioners would not be entitled to an extension of their 90-day circulation period, as the period would not begin until after this Court’s ruling on the ballot title appeal. Further, if the 1982 holding

Title 34, as extensions under the provision only apply to challenges to the sufficiency of the petition itself, and is wholly inapplicable to challenges to the ballot title.

Finally, there is no justification for extending the 90-day circulation period based upon any “public confusion,” because any public confusion regarding the Proponents’ measure has been created by the Proponents themselves, as a result of the media grandstanding of the Proponents’ lead counsel, Mr. Slane.

Wherefore, the Attorney General respectfully requests that this Court enter its Order denying Proponents’ request for an extension of their 90-day signature gathering period.

Respectfully submitted,



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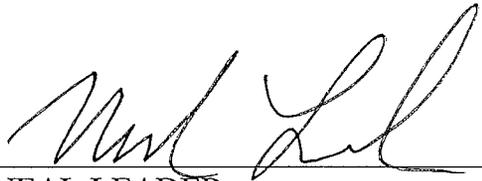
**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of November, 2013 a true and correct copy of the foregoing instrument was mailed to the following:

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