

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

NOV 12 2015

MICHAEL S. RICHIE
CLERK

#11442 5

No. _____

OCPA IMPACT, INC.,
AND BOND,

PETITIONERS,

v.

SHAWN SHEEHAN, LINDA REID,
AND MELVIN MORAN,

RESPONDENTS.

APPLICATION TO ASSUME ORIGINAL JURISDICTION

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November 12, 2015

ATTORNEYS FOR PETITIONERS,
OCPA IMPACT, INC. AND DAVID BOND

Come now the Petitioners and ask this Court to assume original jurisdiction to review the constitutionality of Initiative Petition No. 403, State Question 779 (“the Petition”) which was filed with the Oklahoma Secretary of State on October 21, 2015. 34 Okla. Stat. § 8(B); Okla. Sup. Ct. R. 1.194. As will be shown in the brief supporting this application, Initiative Petition No. 403 is unconstitutional because it embraces more than one general subject in violation of Article XXIV, § 1 of the Oklahoma Constitution.

PARTIES

1. OCPA Impact, Inc. is a 501(c)(4) corporation incorporated with the Secretary of State of the State of Oklahoma and having its headquarters at 1400 North Lincoln, Oklahoma City, Oklahoma County, State of Oklahoma. The mission of OCPA Impact, Inc. is to empower Oklahoma taxpayers and families to apply appropriate pressure on their state lawmakers to remove our state’s remaining barriers to job growth, business growth and individual opportunity.

2. Petitioner David Bond is a citizen of Oklahoma, lives in Canadian County, Oklahoma, has lived in Oklahoma for 20 years and will continue to live in Canadian County. He is a registered voter in Canadian County. He will have to pay the sales tax provided for in Initiative Petition No. 403.

3. Respondent Shawn Sheehan signed the Initiative Petition as a Proponent.

4. Respondent Linda Reid signed the Initiative Petition as a Proponent.

5. Respondent Melvin Moran signed the Initiative Petition as a Proponent.

THE COURT’S JURISDICTION

6. The Petition was filed with the Oklahoma Secretary of State on October 21, 2015 and a copy of that Petition is included as Item “A” to the Appendix.

7. The Petitioners are citizens of this State qualified to protest the constitutionality of the Petition. 34 O.S. § 8(B).

8. The Notice of the Petition was published by the Secretary of State on Wednesday, October 28, 2015. This Petition is filed within the ten business days permitted for a challenge. Pursuant to 34 O.S. § 8(B), the Petitioner has ten business days in which to file a challenge. Counting business days (excluded the intervening Saturdays and Sundays as well as November 11, Veterans Day, which is a recognized state holiday) the tenth day is November 12, 2015.

9. This Court's jurisdiction to review a challenge to the Initiative Petition is set forth in 34 O.S. § 8. Pursuant to Rule 1.194 of this Court, a challenge to an initiative petition shall be treated as an original action in this Court.

MERITS

10. According Okla. Const. art. XXIV, § 1, a proposed amendment to the Oklahoma Constitution must "embrace one general subject." This rule is applicable to initiative petitions, *In re Initiative Petition 314*, 1980 OK 174, ¶ 46, 625 P.2d 595, 601, and applies even to proposed amendments "by article." *In re Initiative Petition No. 344*, 1990 OK 75, ¶¶ 2, 5, 797 P.2d at 327–28; *In re Initiative Petition No. 342*, 1990 OK 76, ¶¶ 1–3, 797 P.2d 331, 332. "The purpose of the one general subject criteria is to prevent deceit or the presentation of a misleading proposal and to prevent logrolling, the combining of unrelated proposals." *In re Initiative Petition No. 342*, 1990 OK 76, ¶ 4, 797 P.2d at 332.

11. In violation of Article XXIV, Section 1, this Petition has more than one general subject.

12. The general subject is a \$5,000 pay raise for teachers in common education. Petition, § 4.

13. However, in order to obtain the \$5,000 pay raise for teachers, the voters have to agree to a tax increase in which over 40% of the money will go for something other than teacher pay raises. Petition, § 3. Of the total tax increase estimated to be \$570 million, only \$342 million can be used for teacher pay raises. Petition, § 3(A)(1)(b); Memorandum of Oklahoma Office of Management and Enterprise Services, Re: Initiative Petition 403, October 22, 2015 (cited in Warren Vieth & Nate Robson, *Penny Increase Would Make Oklahoma No. 1 in Sales Taxes*, *The Oklahoma*, Nov. 1, 2015, at A17). Under the terms of this Petition, the remaining \$228 million, over 40% of the total, must be used for topics other than teacher pay raises. Petition, § 3. For example, \$110 million would have to be spent on higher education even though a 2011 poll showed that less than 5% of Oklahomans favor a tax increase for higher education spending. Petition, § 3(A)(2); *Oklahoma Voters in Favor of Making Changes to Higher Education Administration*, SoonerPoll.com (Mar. 6, 2011), <http://soonerpoll.com/oklahoma-voters-in-favor-of-making-changes-to-higher-education-administration/> (last accessed Nov. 9, 2015).

14. The third subject is that voters who favor the teacher pay raise must accept that it would be funded through an additional sales tax which would give Oklahoma the highest sales tax rate in the United States. Petition, § 2; Scott Drenkard & Jared Walczak, *State and Local Sales Tax Rates, Midyear 2015*, Fiscal Fact No. 473, The Tax Foundation, at 4 (July 2015), available at http://taxfoundation.org/sites/taxfoundation.org/files/docs/TaxFoundation_FF474_0.pdf; Joseph Henchman, *Oklahoma May Vote on Higher Sales Tax*, *The Tax Policy Blog*, The Tax Foundation (Oct. 27, 2015), <http://taxfoundation.org/blog/oklahoma-may-vote-higher-sales-tax>. Voters favoring the

teacher pay raise might prefer that it be funded through income tax, property tax, or savings in other areas.


15. The fourth subject is that the Petition would force voters who favor the teacher pay raise to accept a constitutional restructuring of the appropriations process in which four members of the Board of Equalization would have the power to give instructions to the Legislature about education funding and to prevent the Legislature from funding other agencies until those instructions are met. Petition, § 5.

16. The Petition represents a textbook example of logrolling.

CONCLUSION

This Court should (1) assume original jurisdiction of this matter and (2) for the reasons set for in the Brief in Support, this Court should rule that the Petition should not be presented for a vote of the people.

Respectfully submitted,



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**ATTORNEYS FOR PETITIONERS,
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November, 2015, a true and correct copy of the forgoing Application for Original Jurisdiction was served as follows:

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