

**ORIGINAL**



2024 OK 13

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

STATE CHAMBER OF OKLAHOMA, )  
 OKLAHOMA FARM BUREAU, CHAD )  
 WARMINGTON and TOMMY SALSBUURY, )  
 )  
 Petitioners, )  
 )  
 vs. )  
 )  
 KELSEY COBBS and DUSTIN PHELAN, )  
 )  
 Respondents. )

**FILED**  
**SUPREME COURT**  
**STATE OF OKLAHOMA**  
 MAR - 4 2024  
 JOHN D. HADDEN  
 CLERK

No. 121,777

**FOR OFFICIAL PUBLICATION**

Rec'd (date)	3-4-24
Posted	KE
Mailed	KE
Distrib	KE
Publish	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no

**ROWE, V.C.J., DISSENTING:**

¶1 Today, the Court has reached a fork in the judicial road. We must either follow our precedent and take the difficult step of striking an initiative petition for constitutional infirmities before it is even submitted to the voters. Or we must overrule our precedent in order to permit the initiative petition to move forward—but in doing so, bind ourselves to a new precedent of deferring judgment on these matters until after submission to the voters. The Court’s desire to have its cake—by allowing the petition to proceed—and eat it too—by blatantly defying our precedent, confounds good judicial reasoning.

¶2 In the present matter, we are asked to consider whether the proposed initiative petition would violate the non-delegation doctrine, a constitutional principle which prohibits delegation of the authority to determine law and policy to persons or institutions other than the Legislature. See *Hill v. American Medical Response*, 2018 OK 57, ¶ 33, 423 P.3d 1119, 1131-32. In applying the non-

delegation doctrine, we are mindful of the “important distinction between the Legislature adopting a set of fixed standards as law vs. delegating legislative authority to another entity that might promulgate and change those standards on an ongoing basis.” *Id.* ¶ 35, 423 P.3d at 1132. Violations of the non-delegation doctrine occur in the latter circumstance. *Id.* We have previously held that the non-delegation doctrine “applies to enactments by the people in the same manner it applies to enactments by the Legislature.” *In re Initiative Petition No. 366, State Question No. 689*, 2002 OK 21, ¶ 17, 46 P.3d 123, 129.

¶3 In *In re Initiative Petition No. 366, State Question No. 689*, 2002 OK 21, 46 P.3d 123, we considered a pre-election challenge to an initiative petition based, in part, on the non-delegation doctrine. The petition at issue in that case designated English as Oklahoma’s official language. *Id.* ¶ 1, 46 P.3d at 125. However, the petition also permitted the use of other languages in state-supported public schools under rules promulgated by the State Board of Education and the State Board of Regents of Higher Education, while failing to provide any direction as to what those rules should have been. *Id.* ¶ 16, 46 P.3d at 128. We deemed the initiative petition legally insufficient for submission to a vote in part because we found this provision to be an improper delegation of policy-making authority. *Id.* ¶ 19, 46 P.3d at 129.

¶4 The initiative petition at issue here arguably delegates even greater policy-making authority than Initiative Petition No. 366. This initiative petition would incrementally increase the state minimum wage to fifteen dollars (\$15) per

hour by 2029, and then, starting in 2030, the minimum wage will increase every year based on the CPI-W, an inflation index published by the U.S. Department of Labor (“USDOL”). This would effectively permit the USDOL to substantially determine our State’s minimum wage. More importantly, though, the initiative petition does not provide any set standards that would impose limits on USDOL’s ability to impact wages in Oklahoma. The policy implications here also far exceed that of Initiative Petition No. 366, either directly or tangentially affecting every working-age person’s income. The majority has chosen to ignore these very real non-delegation issues and permit the petition to proceed to a vote of the people.

¶5 I recognize and appreciate our constitutional underpinnings of reserving in the people the right of initiative petition, and I am opposed to this Court serving as a pre-election gate-keeper on this fundamental right, regardless of the political winds for or against a given initiative petition. The power to make law directly is a fundamental right of the people of Oklahoma. *Oklahoma Independent Petroleum Association v. Potts*, 2018 OK 24, ¶13, 414 P.3d 351, 361 (Wyrick J., concurring). Article II, Section 1 of the Oklahoma Constitution makes clear that all political power is derived from the people.<sup>1</sup> When the people of Oklahoma established their government, they endowed the branches of government with various powers, but the people reserved certain powers for themselves. *Potts*,

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<sup>1</sup> Article II, Section 1 states, “All political power is inherent in the people; and government is instituted for their protection, security, and benefit, and to promote their general welfare; and they have the right to alter or reform the same whenever the public good may require it: Provided, such change be not repugnant to the Constitution of the United States.”

2018 OK 24, ¶ 3, 414 P.3d at 361 (Wyrick J. concurring). Among the powers the people retained for themselves is the right of initiative petition. *Id.* Specifically, Okla. Const. art. V, § 1 states:

The Legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives; but the people reserve to themselves the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the Legislature, and also reserve power at their own option to approve or reject at the polls any act of the Legislature.

As Justice Wyrick pointed out in *Potts*, because the initiative power is not conferred on the people by the Constitution, the Constitution does not define the scope of that power but rather sets out what limitations, if any, the people chose to place on the initiative power. *Potts*, 2018 OK 24, ¶ 5, 414 P.3d at 362 (Wyrick J. concurring).

¶6 Still yet, the Legislature vested this Court by statute with pre-election jurisdiction to weigh upon the constitutionality of initiative petitions,<sup>2</sup> and our extant jurisprudence is clear that we scrutinize initiative petitions for violations of the non-delegation doctrine just the same as we would actions of the Legislature. *In re Initiative Petition No. 366*, 2002 OK 21, ¶ 17, 46 P.3d at 129. If the Majority wishes to explicitly overrule our precedent—and adopt a jurisprudence of pre-election non-

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<sup>2</sup> Title 34, Section 8(B) of the Oklahoma Statutes, states:

It shall be the duty of the Secretary of State to cause to be published, in at least one newspaper of general circulation in the state, a notice of such filing and the apparent sufficiency or insufficiency of the petition, and shall 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 Supreme Court and to the proponent or proponents filing the petition.** Any such protest must be filed within ten (10) business days after publication. A copy of the protest shall be filed with the Secretary of State.

intervention in these matters going forward—I would find that outcome more intellectually defensible. However, permitting this petition to move forward in spite of what appear to be clear constitutional infirmities stands to weaken our jurisprudence and devalue our precedent going forward. Accordingly, I respectfully dissent.