

SUPREME COURT OF OKLAHOMA

In re: State Question No. 805, Initiative Petition No. 421

2020 OK 45 · No. 118774 · Decided May 26, 2020

SUMMARY

The Oklahoma Supreme Court assumed original jurisdiction and granted extraordinary relief to the proponents of Initiative Petition 421, State Question 805. The Court issued a writ of mandamus directing the Oklahoma Secretary of State to accept the signed petitions for filing and promptly begin and complete the signature-counting process despite the COVID-19 emergency.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Chief Justice Gurich; Vice Chief Justice Darby; Justice Kauger; Justice Edmondson; Justice Combs; Justice Kane; Justice Rowe
JURISDICTION	Oklahoma
DECIDED	May 26, 2020
DOCKET	118774
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Proponents of Initiative Petition 421 sought extraordinary relief in the Oklahoma Supreme Court's original jurisdiction, requesting a writ of mandamus directing the Secretary of State to accept the signed petitions for filing and begin the signature-counting process.
STANDARD OF REVIEW	The Court exercised original jurisdiction and determined whether the Secretary of State had a clear, ministerial, and mandatory duty under the Oklahoma Constitution and 34 O.S. Supp. 2015, § 8(G).
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion
PARTIES	Theodis Manning, Gene Rainbolt v. Michael Rogers, Oklahoma Secretary of State, in his official capacity

TOPICS

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PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Oklahoma Supreme Court should assume original jurisdiction over the proponents' publici juris request for extraordinary relief.
2. Whether the Secretary of State had a mandatory statutory duty to accept the signed petitions for filing and begin the signature-counting process under 34 O.S. Supp. 2015, § 8(G).
3. Whether the Secretary's tolling of the signature-gathering deadline during the COVID-19 emergency altered the proponents' statutory rights under § 8(G).
4. Whether practical and safety concerns related to the COVID-19 pandemic justified refusing or delaying performance of the Secretary's ministerial duties.

HOLDINGS

1. The Oklahoma Supreme Court may assume original jurisdiction over a publici juris controversy when urgency and the need for a judicial determination are present.
2. The Secretary of State has a clear, ministerial, and mandatory duty to accept for filing initiative petitions tendered in compliance with the statute and to begin the signature-counting process.
3. The Secretary of State's temporary tolling of the signature-gathering deadline did not alter the proponents' statutory rights under 34 O.S. Supp. 2015, § 8(G).
4. The Secretary of State's asserted practical and safety concerns did not establish that the signature-counting process could not be performed efficiently with necessary safety precautions and did not justify withholding performance of the mandatory duties.

KEY QUOTATIONS

“When initiative petitions submitting a proposed measure to the people for their ratification or rejection are offered to the Secretary of State for filing, “it is his duty to file same.” (¶ 2)

“The duties imposed upon the Secretary of State regarding the initiative and referendum is ministerial, and is mandatory.” (¶ 6)

FACTUAL BACKGROUND

The proponents of Initiative Petition 421 tendered signed petitions to the Oklahoma Secretary of State and certified the statutory conditions for terminating the circulation period. The Secretary had temporarily tolled the signature-gathering deadline on March 18, 2020, with the Governor's approval during the statewide COVID-19 emergency. The Secretary raised concerns that beginning the signature-counting process during the pandemic would create practical and safety difficulties, while the proponents offered to secure a suitable facility at their own expense.

PROCEDURAL HISTORY

The proponents tendered signed petitions for filing after the Secretary of State had tolled the signature-gathering deadline during the COVID-19 emergency. The Secretary expressed concern that counting signatures during the emergency would create practical and safety difficulties. The Supreme Court assumed original jurisdiction and granted mandamus relief.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The Secretary of State was directed to accept for filing the signed petitions for Initiative Petition 421, State Question 805, within ten calendar days of the order and thereafter begin and complete the signature-counting process expeditiously.

CASES CITED

- Fent v. Contingency Review Board, 2007 OK 27, ¶ 11, 163 P.3d 512
- Threadgill v. Cross, 1910 OK 165, ¶ 5, 109 P. 558
- In re Initiative Petition No. 349, State Question No. 642, 1992 OK 122, 838 P.2d 1
- In re Initiative Petition No. 397, State Question No. 767, 2014 OK 23, ¶ 9, 326 P.3d 496
- Norris v. Cross, 1909 OK 316, 105 P. 1000

OPINION

PER CURIAM.

IN RE: STATE QUESTION NO. 805 INITIATIVE PETITION NO. 421 Skip to Main Content
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PETITION NO. 4212020 OK 45Case Number: 118774Decided: 05/26/2020THE SUPREME
COURT OF THE STATE OF OKLAHOMA Cite as: 2020 OK 45, __ P.3d __ NOTICE: THIS
OPINION HAS NOT BEEN RELEASED FOR PUBLICATION.

UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL. IN RE: STATE
QUESTION NO. 805, INITIATIVE PETITION NO. 421. THEODIS MANNING and GENE
RAINBOLT, Petitioners/Proponents, v. MICHAEL ROGERS, OKLAHOMA SECRETARY OF
STATE, in his Official Capacity, Respondent. ORDER ¶1 Original jurisdiction is assumed. Fent v.
Contingency Review Bd., 2007 OK 27, ¶11, 163 P.3d 512 (the Court may assume jurisdiction in a
publici juris controversy where there is an urgency and need for a judicial determination).

The extraordinary relief sought by Proponents of Initiative Petition 421, State Question 805 is granted. ¶2 Okla. Const. Art. 5, § 2 provides that the first power reserved by the people is the initiative. Respondent's integral role and non-discretionary duties with respect to the initiative process are plainly set forth in the Constitution.

Under Okla. Const. Art. 5, § 3, initiative petitions "shall be filed with the Secretary of State." See also Okla. Const. Art. 5, § 4. When initiative petitions submitting a proposed measure to the people for their ratification or rejection are offered to the Secretary of State for filing, "it is his duty to file same." Threadgill v. Cross, 1910 OK 165, ¶5, 109 P. 558, distinguished on other grounds by In re Initiative Petition No. 349, State Question No. 642, 1992 OK 122, 838 P.2d 1 (noting there is no controversy about the nature of this duty and there can be none). ¶3 Pursuant to 34 O.S.

Supp. 2015, § 8(G), proponents of a referendum or initiative petition may terminate the circulation period any time during said period by certifying to the Secretary of State (1) the petitions have been filed with the Secretary of State, (2) no petitions are in circulation, and (3) proponents will not circulate any more petitions. Proponents have tendered for filing the signed petitions in the instant cause.

Therefore, pursuant to the text of the statute, Respondent "shall begin the counting process." Id. ¶4 While the signature-gathering deadline was temporarily halted, or tolled, by Respondent on March 18, 2020, with the approval of the Governor under the latter's emergency powers pursuant to the statewide COVID-19 emergency, this does not alter Proponent's statutory rights under 34 O.S.

Supp. 2015, § 8(G). The circulation period began, but it has not ended, and thus we are still within the circulation period. In re Initiative Petition No. 397, State Question No. 767, 2014 OK 23, ¶9, 326 P.3d 496 (goal of statutory construction is to ascertain legislative intent from a plain and ordinary reading of the statute). ¶5 The Court notes Respondent has expressed concerns that commencing the signature-counting process amid the COVID-19 Pandemic and current state of emergency will present practical difficulties.

There is also the foremost desire and duty to protect the safety and welfare of all of those involved in the process. In this regard, beginning in mid-March, the Governor issued Executive Orders authorizing state agencies to make necessary emergency acquisitions to fulfill the purpose of the emergency declaration, and requiring the promulgation of emergency rules necessary to respond to the emergency. ¶6 Based on the materials provided, the Court finds Respondent has not established the signature-counting process cannot be performed in an efficient manner, while also taking the necessary safety precautions for those involved.

The Court is not convinced Respondent would be unable to procure the tools to carry out the signature-counting process. To this end, the Court notes Proponents have offered to secure a

suitable facility (where social distancing guidelines are more capable of being observed) at their own expense.

The duties imposed upon the Secretary of State regarding the initiative and referendum is ministerial, and is mandatory. *Norris v. Cross*, 1909 OK 316, syll., 105 P. 1000. ¶7 Accordingly, a Writ of Mandamus is hereby issued directing the Respondent to accept for filing the signed petitions for Initiative Petition 421, State Question 805, within ten (10) calendar days of this Order, and to thereafter begin and complete the signature-counting process expeditiously. ¶8
DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 26TH DAY OF MAY, 2020. /S/CHIEF JUSTICE Gurich, C.J., Darby, V.C.J., Kauger, Edmondson, Combs, JJ., concur; Kane and Rowe, JJ., dissent; Winchester, J., not voting; Colbert, J., not participating.

Citationizer© Summary of Documents Citing This Document Cite Name Level None Found.
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1992 OK 122, 838 P.2d 1, 63 OBJ 2386, Initiative Petition No. 349, State Question No. 642, In reDiscussed 1909 OK 316, 105 P. 1000, 25 Okla. 287, NORRIS et al. v. CROSS Secretary of State.Discussed 1910 OK 165, 109 P. 558, 26 Okla. 403, THREADGILL v. CROSSDiscussed 2007 OK 27, 163 P.3d 512, FENT v. CONTINGENCY REVIEW BOARDDiscussed 2014 OK 23, 326 P.3d 496, IN RE: INITIATIVE PETITION NO. 397, STATE QUESTION NO. 767Discussed Title 34.

Initiative and Referendum CiteNameLevel 34 O.S. 8, Filing Copy of Proposed Petition - Publication - Protest - Hearing and Determination - Signature Gathering DeadlineDiscussed oscn EMAIL: webmaster@oscn.net Oklahoma Judicial Center 2100 N Lincoln Blvd. Oklahoma City, OK 73105 courts Supreme Court of Oklahoma Court of Criminal Appeals Court of Civil Appeals District Courts decisions New Decisions Supreme Court of Oklahoma Court of Criminal Appeals Court of Civil Appeals programs The Sovereignty Symposium Alternative Dispute Resolution Early Settlement Mediation Children's Court Improvement Program (CIP) Judicial Nominating Commission Certified Courtroom Interpreters Certified Shorthand Reporters Accessibility ADA Contact Us Careers Accessibility ADA