

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

MICHELLE TILLEY NICHOLS AND MICHELLE )  
JONES, )

Petitioners, )

v. )

PAUL ZIRIAX, SECRETARY OF THE OKLAHOMA )  
STATE ELECTION BOARD; TOM MONTGOMERY, )  
CHAIRMAN OF THE OKLAHOMA STATE )  
ELECTION BOARD; TIM MAULDIN, VICE )  
CHAIRMAN OF THE OKLAHOMA ELECTION )  
BOARD; HEATHER MAHIEU CLINE, MEMBER OF )  
THE OKLAHOMA ELECTION BOARD; JERRY )  
BUCHANAN, ALTERNATE MEMBER OF THE )  
OKLAHOMA ELECTION BOARD; DEBI THOMPSON, )  
ALTERNATE MEMBER OF THE OKLAHOMA )  
ELECTION BOARD; and THE HONORABLE J. KEVIN )  
STITT, GOVERNOR OF OKLAHOMA, )

Case No. \_\_\_\_\_

Respondents. )

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**BRIEF IN SUPPORT OF PETITIONERS' EMERGENCY APPLICATION TO  
ASSUME ORIGINAL JURISDICTION AND PETITION FOR WRIT OF  
MANDAMUS**

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MELANIE WILSON RUGHANI, OBA # 30421  
CROWE & DUNLEVY  
A Professional Corporation  
Braniff Building  
324 N. Robinson Ave., Suite 100  
Oklahoma City, Oklahoma 73102  
(405) 235-7714  
(405) 272-5284 (Facsimile)  
melanie.rughani@crowedunlevy.com

August 22, 2022

**ATTORNEY FOR PETITIONERS**

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Article V, Section 3 of the Oklahoma Constitution makes clear that, if an initiative petition is signed by the requisite number of Oklahoma voters, it “shall” be submitted to a vote of the People “at the next election held throughout the state.” This constitutional mandate provides for only one exception: when the Governor calls an earlier special election for the initiative. Here, Proponents submitted an initiative petition signed by the requisite number of voters more than four months before the next general election, and no special election has been called. Nevertheless, the Election Board refuses to commit to placing the initiative on the next general election ballot unless the Governor says so. What’s worse, the reason the Election Board offers for its refusal to comply with the plain text of the Constitution is an alleged time crunch—a time crunch created entirely by the government’s own inefficiency.

Petitioners/Proponents Michelle Tilley Nichols and Michelle Jones (“Proponents”) respectfully request that this Court issue a writ of mandamus, directing Respondents to print and include SQ820 on the November 8, 2022 general election ballot (and/or any other relief the Court deems proper to ensure that SQ820 is duly submitted to a vote of the People at the November 2022 general election<sup>1</sup>). Proponents also respectfully request that the Court expedite its consideration and resolution of this matter, including setting an expedited briefing and hearing schedule, to give the Election Board time to comply.

### **BACKGROUND**

On January 4, 2022, the first business day of the year, Proponents filed Initiative Petition 434, State Question 820 (“SQ820”), an initiative petition that, if approved by the People, would amend the Oklahoma Statutes to generally decriminalize (and instead tax and

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<sup>1</sup> For example, if the Court concludes that early review of the Attorney General’s ballot title is advisable prior to the Election Board printing the ballots, then Proponents respectfully request that the Court conduct that review and either approve or amend the Attorney General’s ballot title or prepare its own.

regulate) adult use marijuana. If the petition garnered sufficient signatures in the statutory 90-day period, it was to “be submitted to the legal voters of the State of Oklahoma for their approval or rejection at the next regular general election.” 34 O.S. §§ 2, 25; *see also* App. Tab A (Init. Pet.). The next regular general election was set for November 8, 2022—more than 11 months away. Proponents were confident that, with due diligence, they could complete the initiative process in time for the November ballot.

After an unsuccessful *pro se* challenge to the legality of the measure, *see In re: S.Q. No. 820, Init. Pet. No. 434*, 2022 OK 30, Proponents were allowed to begin collecting signatures on May 3, 2022—15 days after the legal protest was resolved by this Court and the period for rehearing had expired. *See* App. Tab B (Apr. 19, 2022 letter from Sec. of State).

Proponents were aware that time was of the essence. Although Oklahoma statutes require only that absentee ballots be mailed to voters by September 23, 2022 (45 days before the November 8 election, *see* 26 O.S. §§ 14-118 and 14-144), in conversations with the Election Board, Proponents were told that, as a *practical matter*, the measure should be finalized by August 26 to ensure sufficient time to prepare and print the ballots. App. Tab C (Decl. of Michelle Tilley Nichols).<sup>2</sup> Accordingly, Proponents raised *substantial* resources—indeed, more than a million dollars—to expedite the printing of nearly 225,000 double-sided pages of petition pamphlets, quickly marshal and train volunteers, and timely locate and hire the numerous experienced organizers and circulators needed to collect, notarize, and internally verify at least 94,911 valid signatures—with the goal of doing so in *fewer* than the (already brief) 90 days legally prescribed for circulation. *Id.*

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<sup>2</sup> *See also, e.g.*, App. Tab D (June 22, 2022 letter from P. Ziriaux to K. Stitt, outlining this “practical” deadline).

Fortunately, public support for the measure was enormous, and with sufficient financial and organizational investment, Proponents were ultimately able to meet and even surpass their goal. On **July 5, 2022**—nearly a month before their signatures were due, and with nearly two months remaining until the Election Board’s unofficial ballot-printing deadline—Proponents delivered 118 boxes of pamphlets containing more than 164,000 presumptively valid<sup>3</sup> signatures to the office of the Secretary of State. App. Tabs C, G.<sup>4</sup>

Turning in signed petitions more than four months before the November election,<sup>5</sup> nearly three months before the statutory deadline for mailing absentee ballots, and nearly two months before the Election Board’s internal ballot-printing deadline gave the State ample time to complete the ministerial steps required to count and verify the signatures and finalize the measure for the upcoming general election ballot. Traditionally, the Secretary of State’s office has taken only 2-3 weeks to complete its duty to count and verify signatures and report to the

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<sup>3</sup> See, e.g., *In re Init. Pet. No. 317, SQ556*, 1982 OK 78, ¶ 28, 648 P.2d 1207, 1214 (“When an initiative petition is being challenged, the signatures thereon are presumed to be valid, and the challenger has the burden of overcoming that presumption.”).

<sup>4</sup> See also, e.g., <https://www.news9.com/story/62c5032473a954122ebe71c8/recreational-marijuana-closer-to-november-ballot-secretary-of-state-verifying-signatures>.

<sup>5</sup> Although each state’s law is different, most direct democracy states have signature submission deadlines no earlier than four months before the election—meaning four months is widely considered to be ample time for state administrators to complete the counting, verification, and ballot printing process. See, e.g., <https://www.ncsl.org/research/elections-and-campaigns/initiative-and-referendum-processes.aspx#/>, citing numerous state laws, including A.R.S. Const. Art. 21 § 1; A.R.S. § 19-121 (allowing 24 months for collection with a deadline for filing signatures of four months before the election); Ark. Const. Art. 5, § 1; A.C.A. § 7-9-11 (allowing unlimited time for collection with deadline for filing signatures of four months before election); MCA 13-27-301; 13-27-202; MT CONST Art. 3, § 4 (allowing one year for circulation, with signature filing deadline of three months prior to the applicable election); Neb.Rev.St. § 32-1407 (allowing two years for collection, and setting deadline for signature filing of four months prior to the general election); NDCC Const. Art. 3, § 5; NDCC, 16.1-01-09 (allowing one year for signature collection, and setting filing deadline of 120 days before the election); OR CONST Art. IV, § 1; O.R.S. § 250.105 (filing deadline of four months prior to the general election); RCWA 29A.72.030 (allowing six months to collect and setting submission deadline four months out from the general election).

Court, even for constitutional measures involving *double* the number of signatures.<sup>6</sup> By turning in signatures a month early, with nearly two months remaining before even the runoff primary election, Proponents ensured that there was plenty of time to complete the signature count and finalize the ballot title before any impending general election ballot deadlines.

Because of a new electronic process instituted and used for the first time on this initiative, however, the Secretary’s signature count ended up taking *much* longer than anyone had anticipated. Instead of the 2-3 weeks expected by the parties (and by the Secretary’s office, as the undersigned counsel was informed prior to turn-in), the electronic signature verification and count—conducted by an inexperienced private vendor pursuant to a no-bid contract, *see* App. Tab C (Decl. Of Michelle Tilley Nichols); App. Tab E (contract)<sup>7</sup>—lingered on for **nearly 7 weeks**.

This administrative delay was both unexpected and inexplicable. Although billed as more “modern[]” and “efficient,”<sup>8</sup> the new electronic process was anything but: it ended up taking more than *twice* as long as the Secretary’s hand counts in prior years. Indeed, it took the

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<sup>6</sup> *See, e.g.*, Oklahoma Watch, State Contractor Verifying Petitions for Recreational Marijuana Initiative, Aug. 8, 2022, *available at* <https://oklahomawatch.org/2022/08/08/state-contractor-verifying-petitions-for-recreational-marijuana-initiative/>.

<sup>7</sup> Last session, the Legislature authorized the Secretary of State’s office to “**purchase** any tangible or intangible assets, including, but not limited to, software, necessary to carry out his or her duties” to verify and count the number of signatures on the petition, with “[s]uch **purchases**” being “exempt from the requirements of the Oklahoma Central Purchasing Act.” 34 O.S. § 6.1 (emphasis added). The Secretary did not, however, make any such purchases. Instead, it entered into a three-year, no-bid service contract with Western Petition Systems, LLC, a newly formed company founded by former Republican political candidate and current political pollster Bill Shapard. *See* Oklahoma Watch, *supra* n.6; App. Tab. E (contract). It is unclear what authority the Secretary believes allowed him to contract out such a basic governmental function.

<sup>8</sup> *See, e.g.*, <https://okhouse.gov/Media/ShowStory.aspx?MediaNewsID=5589>; *see also* <https://www.westernpetition.com/learn> (noting that “[i]n Oklahoma, Western Petition Systems spearheaded legislation that will modernize the age old, archaic petition system”).



new vendor almost as long to *count* the signatures as it took Proponents to *collect* them in the first place. *See* App. Tab C (Decl. Of Michelle Tilley Nichols) (explaining that the two months Proponents used to collect signatures similarly included a procedure to internally verify the signatures collected and match them to voter rolls to ensure their validity).

Again, recognizing that time was of the essence, Proponents did not just sit on their heels and watch the days pass by. When it became apparent that the Secretary’s original estimates were wrong and the vendor’s electronic process was taking much longer than expected, Proponents reached out to the Secretary of State, the Election Board, and even the Governor’s office to find ways to ensure that this administrative delay—incurred unexpectedly, and through no fault of Proponents—did not prevent the measure from being included on the November ballot.<sup>9</sup> Proponents were informed, however, that the Secretary of State’s office could do nothing to speed up the vendor’s data entry and electronic process. They were also informed that the Election Board would not include any measure on the November ballot that had not received a gubernatorial proclamation by August 26, 2022, unless ordered by the Court to do so. App. Tab C.

On August 22, 2022—47 days after receiving Proponents’ signed petitions—the Secretary of State’s office finally completed the signature count and transmitted its report to

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<sup>9</sup> To help speed up the signature counting process, Proponents offered, for example, to provide volunteers to enter data to speed the vendor’s data processing; they suggested that the computer process used to match signatures to the voter database be run early, before all data entry was complete, because it was likely the signatures had already crossed the 95,000 threshold; and they otherwise attempted to find ways to work around data processing delays. They also suggested ideas for gaining wiggle-room to the Election Board, noting that the AG’s ballot title (to which Proponents do not object) could be printed on a separate page, to be included or not depending on the measure’s status at the time of the statutory mailing deadline; or that it could do what Arkansas plans to do with another adult use marijuana initiative in November, and go ahead and include the measure on the ballot, and simply not count the results if the measure ultimately fails to qualify. *See* App. Tab C (Decl. Of Michelle Tilley Nichols).

this Court. The report confirmed that Proponents had indeed submitted *at least* 117,257 valid signatures of registered Oklahoma voters—far more than the 94,911 required to qualify for the November 2022 ballot. App. Tab I.

A handful of administrative steps remain in the statutory initiative process set forth in Title 34. The Attorney General has already, consistent with 34 O.S. § 9(D)(1), “prepare[d] and file[d] a ballot title which complies with the law.” App. Tab F. Once this Court issues its order of apparent sufficiency pursuant to 34 O.S. § 8(I), then, the Secretary of State will publish notice in a newspaper of general circulation, which will trigger a limited ten-day protest period. *Id.* Assuming no signature or ballot title challenge is filed, the measure will be final on or about September 7—only a few days after the “practical” ballot-printing deadline identified by the Election Board, and well in advance of the September 23 statutory mailing deadline set forth in 26 O.S. §§ 14-118 and 14-144. In the unlikely event that a post-circulation legal challenge is filed, moreover, it presumably would be resolved by this Court “with dispatch,” 34 O.S. § 8(K)<sup>10</sup>—meaning any challenge could likely still be resolved before absentee ballots must be mailed, and certainly before the November election.

The right of Oklahomans to enact laws through the initiative process is a fundamental right enshrined in our Constitution, and it should not be thwarted by the failure of our state

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<sup>10</sup> As the Attorney General has drafted a fair ballot title to which Proponents do not object, it is doubtful any other party would have standing to assert a challenge—much less a meritorious argument that the title is improper. And as Proponents submitted approximately 164,000 signatures—well in advance of the requisite 94,911—and the Secretary’s electronic verification process identified at least 117,257 matches with the Oklahoma voter rolls, it is difficult to imagine a non-frivolous signature protest. It is always possible that a party could nevertheless file a challenge for purposes of further delay. But the Legislature anticipated that the judicial process might be weaponized in an effort to keep a measure off a particular ballot, and to prevent such shenanigans from thwarting the will of the People, it not only made clear that any post-circulation challenges must be resolved “with dispatch,” 34 O.S. § 8(K); it also provided that, if “any objection to the count or protest to the petition is frivolous, the Court may impose appropriate sanctions, including an award of costs and attorneys fees.” *Id.* § 8(L).

agencies (or their no-bid contractors) to fulfill their ministerial duties in a timely manner. The hundreds of thousands of voters who signed this initiative petition should not have to endure two more years of unnecessary arrests, law enforcement waste, lost tax revenue, and incarceration before the measure is even put to a vote. Proponents thus respectfully request that the Court assume original jurisdiction and direct the Election Board to take any necessary steps to prepare for and include SQ820 on the November 8, 2022 general election ballot.

## **ARGUMENT AND AUTHORITIES**

### **I. This Court’s Intervention is Appropriate—and, Indeed, Required**

As this Court has oft repeated, the citizens’ right of initiative is a “precious” and “fundamental” one; indeed, it is the “first power reserved to the people” in our Constitution. *Okla. Ass'n of Optometric Physicians v. Raper*, 2018 OK 13, ¶ 7, 412 P.3d 1160, 1164; Okla. Const. Art. 5, § 2. Because the right of the initiative is so fundamental, “all doubt as to the construction of pertinent provisions is resolved in favor of the initiative.” *Id.* (also noting that “this Court is zealous to preserve to the fullest measure of the spirit and the letter of the law”).

Where, as here, the matter is “*publici juris*” and “there is an urgency and need for a judicial determination,” this Court may assume original jurisdiction and issue appropriate relief. *In re S.Q. No. 805, Init. Pet. No. 421*, 2020 OK 45, ¶ 1, 473 P.3d 466; *Fent v. Contingency Rev. Bd.*, 2007 OK 27, ¶ 11, 163 P.3d 512; *see also, e.g., Hallman v. Cnty. Election Bd. of Okla. Cnty.*, 1973 OK 24, 509 P.2d 459, 460 (issuing writ of mandamus, directing Election Board to conduct a hearing despite alleged “shortage of time” before election); *Arthur v. Payne Cnty. Election Bd.*, 1998 OK 86, ¶ 15, 964 P.2d 213, 217 (issuing writ of mandamus, directing Election Board to include petitioner’s name on the ballot); *In re S.Q. No. 805, Init. Pet. No. 421*, 2020 OK 45, ¶ 7, 473 P.3d 466, 467 (ordering Secretary of State to accept signed petitions, and to “thereafter begin and complete the signature-counting

process expeditiously,” despite claims that he lacked sufficient resources to conduct the count, because “[t]he duties imposed upon the Secretary of State regarding the initiative and referendum [are] ministerial, and [are] mandatory”).

## II. Proponents, and the People of Oklahoma, are Entitled to Vote on SQ820 on November 8, 2022—the Next General Election

By its text, Article V, Section 3 of the Oklahoma Constitution mandates that “[a]ll elections on measures referred to the people of the state *shall be had at the next election* held throughout the state, except when the Legislature or the Governor shall order a special election for the express purpose of making such reference.” (Emphasis added).<sup>11</sup> Title 34 likewise provides that, “[w]henever any measure shall be initiated by the people in the manner provided by law, ... same shall be submitted to the people for their approval or rejection *at the next regular election*; provided, the Governor shall have power, in his discretion, to call a special election to vote upon such questions, or to designate the mandatory primary election as a special election for such purpose.” 34 O.S. § 25 (emphasis added).

Proponents initiated and referred SQ820 to the People on July 5, 2022, when they filed ~164,000 presumptively valid signatures with the Secretary of State’s office. *See, e.g., In re Referendum Petition No. 1, Ordinance 6-B, City of Sand Springs*, 1950 OK 191, 203 Okla. 298, 304, 220 P.2d 454, 460 (noting that a matter is referred by proponents to the people on “the date of filing a valid petition for reference”).<sup>12</sup> The Governor has not called an earlier

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<sup>11</sup> This Court has found that the words “next election held throughout the state” mean “next regular general election.” *State ex rel. Williamson v Carter*, 1936 OK 468, ¶ 17, 59 P.2d 948, 950.

<sup>12</sup> *See also In re State Question No. 216 Referendum Petition No. 71*, 1937 OK 309, ¶ 11, 180 Okla. 122, 68 P.2d 424, 425 (explaining that a matter is referred to the people upon “the filing of the petition signed by the requisite number of legal voters”); *In re Init. Pet. No. 281, S.Q. No. 441*, 1967 OK 230, 434 P.2d 941, 952 (noting that the term “last general election” in Article V, Section 2 must have a “reference point concerning the time or event as of which it is to be determined,” and concluding that this point is clearly “the filing of an initiative petition which

special election to vote on the question. Under Article V, Section 3 and 34 O.S. § 25, then, the measure must be submitted to the people for a vote at the next regular general election, currently set for November 8, 2022.

Despite these clear constitutional and statutory provisions, the Secretary of the Election Board has stated that he does not plan to include SQ820 on the November general election ballot unless, by August 26, he receives a proclamation by the Governor setting it for that date. Yet, this Court has long held that, for general elections, such a proclamation is not required: “whether an initiated measure be a law or constitutional amendment, it *must be submitted to the people for a vote, at the next general election, with or without any act on the part of the Governor.*” *State v. State Election Bd. of Okla.*, 1957 OK 253, ¶ 4, 318 P.2d 422, 425 (emphasis added); *see also In re Init. Pet. No. 317*, 1982 OK 78, ¶ 11, 648 P.2d 1207, 1217 (Doolin, J. concurring). Indeed, this Court has made clear that a state question is submitted to a vote of the people at a general election by “direct operation of law,” and any proclamation from the Governor purporting to do the same would be mere “surplusage.” *Allen v. Burkhart*, 1962 OK 279, ¶ 62, 377 P.2d 821, 830. To be sure, the Governor is entitled to issue a proclamation setting a measure for an *earlier* special election, if he so desires. *See, e.g.*, 34 O.S. § 25; *Allen v. Burkhart*, 1962 OK 279, 377 P.2d 821, 827, 836. Absent such a proclamation, however, the measure automatically “shall be submitted to the people for their approval or rejection at the next regular election.” *Id.*; 34 O.S. § 25.

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bore the signatures of the requisite percentage of the legal voters of Oklahoma,” and noting that Title 34’s “supplemental legislation” setting forth procedures for initiatives “must not curtail the rights reserved” in the constitution but “must be construed in harmony” therewith, and “those statutory provisions do not change the time or event as of which, according to the Constitution, the question of which general election for state officers is ‘the last general election’”—or, presumably, the “next” one, either—is determined).

It is true that, because of the extraordinary delay in the Secretary of State’s signature count, the ten-day period in which any challenge to the ballot title or signature count must be raised, *see* 34 O.S. § 8(I), will not have expired by the Election Board’s August 26 internal printing goal. But neither the Constitution nor Title 34 establishes any particular date by which a ballot measure must be finalized for inclusion on the next general election ballot, and the Election Board has issued no rules purporting to establish one, either. Indeed, the only mandatory ballot deadline set forth in Oklahoma law is September 23, 2022—the date absentee ballots must be mailed. *See* 26 O.S. §§ 14-118 and 14-144.

Certainly, the Election Board needs a reasonable amount of time to print and otherwise prepare ballots before this mailing date. But the August 26 date identified by the Election Board as the deadline for ballot printing is an artificial “practical” deadline only; it is not one mandated by law.<sup>13</sup> And where, as here, the Election Board has a plain legal duty to submit a question to a vote at the “next general election,” assertions of inconvenience or expense are no excuse for a failure to comply—especially where, as here, the time crunch creating the inconvenience and expense is of the government’s own making. *See Hallman v. Cnty. Election Bd. of Okla. Cnty.*, 1973 OK 24, 509 P.2d 459, 460 (issuing writ of mandamus, directing Election Board to conduct a hearing to determine qualifications of a candidate, acknowledging that “it takes time to conduct proceedings ... and to prepare for an election,” but that “the

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<sup>13</sup> The Election Board previously advised the Governor that, if he issues a proclamation setting a measure for a ballot, he should do so by EOD August 26, 2022, in order to facilitate ballot printing. App. Tab D. The letter does suggest that another statute, 26 O.S. § 12-116, imposes a “technical[.]” statutory deadline of August 29, 2022, which is 70 days from the November 8, 2022 general election. *Id.* This statute, however, applies only to *special* elections called by the Governor, not *general* elections. *See* 26 O.S. § 12-116 (“In the event the Governor or the Legislature shall call for a special statewide election on any measure to be submitted to a vote of the people, the election shall be held not fewer than seventy (70) days from the date the election is called.”). Because the November 8 general election is not a special election, only the 45-day deadline of 26 O.S. § 14-118 and § 14-144 applies.

shortness of time should not preclude an election board from” completing its legal duties). On top of that, it is well within the Board’s power to take steps to prepare for the submission of SQ820 and mitigate any potential inconvenience.

Indeed, the Election Board has previously extended its internal ballot printing deadlines where necessary to accommodate legal processes. For example, although the Election Board had previously stated that the deadline to finalize and print the ballot for the August 23, 2022 primary runoff Election was Monday, June 13, 2022, *see* App. Tab D, it was forced to make alternate arrangements when Oklahoma County District Attorney candidate Kevin Calvey requested a hand recount of the DA primary election, and thus made it impossible to finalize the primary runoff ballot by that date. The recount was not actually completed until July 13, 2022, a month later (and a month past the previously announced ballot printing deadline).<sup>14</sup> Yet, upon information and belief, the Election Board was able to deal with this contingency by preemptively printing a runoff ballot that included the Calvey/Geiger runoff race, and preparing to either quickly print a new ballot or simply not count the votes of that race if the result of the recount ultimately showed a runoff vote was improper.

Something similar could be employed here. If the Election Board cannot simply wait a few days to print the November election ballots, it could instead preemptively print an additional ballot page for SQ820—to be used only if, as it appears, the petition indeed bears sufficient signatures and the AG’s ballot title is proper.<sup>15</sup> Certainly, this approach might

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<sup>14</sup> *See, e.g.*, <https://www.oklahoman.com/story/news/2022/07/13/oklahoma-county-da-race-runoff-still-on-kevin-calvey-gayland-gieger/65372953007/>.

<sup>15</sup> If the Election Board is concerned about printing the Attorney General’s ballot title before the protest period expires and then potentially having to re-print an amended one later, it could always ask the Court to review the ballot title now: the Court has the ultimate authority to “correct or amend the ballot title before the court” or “draft a new one” as it deems appropriate, 34 O.S. § 10, and it can even do so *sua sponte*. *See In re Init. Pet. No. 315, S.Q. No. 553*, 1982 OK 15, ¶ 26, 649 P.2d 545, 553 (reviewing and amending a ballot title prior to ballot printing,

inconvenience the government, and it could result in some extra expense if it necessitates the payment of overtime or the printing of an additional page.<sup>16</sup> But this marginal inconvenience and expense on the part of the Election Board pales in comparison to the burdens on Proponents and the People of Oklahoma. If, due to extraordinary delays in governmental processes, SQ820 is not included on the November 2022 ballot, then Proponents—who filed the initiative on January 4, 2022, and did all they could to timely marshal it through Oklahoma’s unwieldy initiative process—and the People of Oklahoma—who have expressed overwhelming support for the measure—will potentially have to wait until *November 2024* before it is put to a vote.

Of course, there is a possibility that, if a signature challenge<sup>17</sup> is raised in the ten-day protest period, that challenge may not be resolved by the September 23, 2022 ballot mailing

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even though no party had challenged it, because “when questions of a general public nature are involved, which affect the state at large, the people of the state become indirect parties and their interests must be protected to prevent a possible ‘practical injustice’ even if the person who might have objected is silent”). As such, the Court need not wait for the ten-day protest period in order to approve the Attorney General’s ballot title, included here at App. Tab F, or to draft an appropriate ballot title itself. *See id.*; *see also* 34 O.S. § 24 (“The procedure herein prescribed is not mandatory, but if substantially followed will be sufficient. If the end aimed at can be attained and procedure shall be sustained, clerical and mere technical errors shall be disregarded.”).

<sup>16</sup> A letter from the Election Board to Governor Fallin in 2018 indicated that printing an additional ballot page for that gubernatorial election would cost approximately \$350,000. *See* App. Tab H. Upon information and belief, the Election Board requested—and received—additional money for printing ballots this year because it appeared, during the legislative session, that a large number legislative referendums and other state questions would in fact be voted on this November. Because none of the legislative referendums ultimately passed and no other initiative has collected the requisite signatures, to Proponents’ knowledge, SQ820 is the only state question that can appear on the November election ballot.

<sup>17</sup> A signature challenge generally takes far longer to resolve than a ballot title challenge. The result of a signature challenge is different as well. If a signature challenge is successful, then the initiative simply fails, and any vote thereon is a nullity. If the ballot title prepared by the Attorney General is ultimately deemed incomplete or misleading, however, then the remedy is for the Court to amend the ballot title. Here, if the AG’s ballot title were printed on the November 2022 absentee ballots but somehow later shown to be so incomplete or misleading that a vote thereon would be invalid, then the measure would have to be submitted to a vote using a proper ballot title at the November 2024 general election (or an earlier special election,



deadline. If so, this Court could do what the Arkansas Supreme Court did recently, when faced with a similar situation. When it became clear that, because of the judicial calendar, a legal challenge to a marijuana-related measure would not be resolved in time to meet ballot deadlines, the court ordered that the proposal be certified and printed on the upcoming November ballot anyway—with the option to not count the results if it was later determined that the measure did not qualify for submission.<sup>18</sup> This is far from unprecedented in Oklahoma. Indeed, before the pre-election protest periods were established in Title 34, post-election legal challenges to initiative petitions were the norm, and votes on measures that turned out not to be qualified were nullified after-the-fact. *See, e.g., In re Init. Pet. No. 348, S.Q. No. 640*, 1991 OK 110, n.5, 820 P.2d 772, 782. The sequential pre-election procedures outlined in Title 34 were designed to avoid the unnecessary costs—to both the parties and the state—of an unnecessary election. But where, as here, the time crunch before the next general election is of the state’s (or its vendors’) own making, Proponents, and the People of Oklahoma, should not be penalized therefor.

## CONCLUSION

Since filing their initiative more than six months ago (and eleven months before the November 2022 election), Proponents have done everything in their power to expedite the unwieldy Oklahoma initiative petition process so the People of Oklahoma can exercise their

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if called by the Governor). As noted above, however, such a scenario can and should be avoided: if the Election Board believes that it cannot wait until the ballot title is finalized through the usual process to print a ballot page for SQ820, then the ballot title could be reviewed by the Court now. *See supra* n.16.

<sup>18</sup> *See, e.g.,* Alex Kienlen, “Recreational marijuana back on ballot, votes may not count,” Aug. 11, 2022, *available at* <https://www.kark.com/news/your-local-election-hq/recreational-marijuana-back-on-ballot-votes-may-not-count/>; *see also* <https://news.ballotpedia.org/2022/08/12/arkansas-marijuana-legalization-initiative-to-appear-on-november-ballot-votes-may-not-be-counted-pending-state-supreme-court-ruling/>.

right to vote on the measure at the next general election. Yet, they have been stymied by state officials (or their hand-picked vendors) who are either unable or unwilling to perform their administrative duties in a timely and efficient manner. This is a direct affront to the very purpose of the initiative process, which reserves to the People the power to circumvent such political and bureaucratic impediments and enact policies that otherwise enjoy strong popular support.

Article V, Section 3 of the Oklahoma Constitution guarantees citizens the right to refer initiated matters to a vote of the People “*at the next election* held throughout the state.” As this Court has made clear, “[t]he initiative power should not be crippled, avoided, or denied by technical construction by the courts”—or, presumably, by the other branches of state government. *In re Init. Pet. No. 426, S.Q. No. 810*, 2020 OK 43, ¶ 4, 23, 465 P.3d 1244, 1256. Proponents respectfully request that the Court assume original jurisdiction and grant a writ of mandamus, directing the Election Board to print and include SQ820 on the November 2022 general election ballot in a manner set forth above, or any other relief it deems proper to ensure the People are able to exercise their right to vote on SQ820 at the next general election.

Respectfully Submitted,

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MELANIE WILSON RUGHANI, OBA #30421  
CROWE & DUNLEVY  
A Professional Corporation  
Braniff Building  
324 North Robinson Avenue, Suite 100  
Oklahoma City, Oklahoma 73102  
(405) 235-7700  
(405) 239-6651 (Facsimile)  
melanie.rughani@crowedunlevy.com

**ATTORNEY FOR RESPONDENTS**

**CERTIFICATE OF SERVICE**

This is to certify that on the 22nd day of August, 2022, a true and correct copy of the foregoing was hand-delivered and emailed to the following:

The Honorable Paul Ziriaux  
Tom Montgomery  
Tim Mauldin  
Heather Mahieu Cline  
Jerry Buchanan  
Debi Thompson  
Oklahoma State Election Board  
State Capitol Building  
2300 North Lincoln Boulevard  
Room B6  
Oklahoma City, OK 73105

The Honorable J. Kevin Stitt  
Governor of Oklahoma  
State Capitol Building  
2300 North Lincoln Boulevard  
Room 212  
Oklahoma City, OK 73105

The Honorable John M. O'Connor  
Attorney General of Oklahoma  
313 Northeast 21st Street  
Oklahoma City, Oklahoma 73105

Thomas Schneider  
Oklahoma Attorney General's Office  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105  
Thomas.Schneider@oag.ok.gov

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