

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED In The
Office of the Court Clerk
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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

LYNNE MILLER,)
ROBERT "BOB" THOMPSON,)
WILLIAM "BILL" NATIONS, and)
DICK REYNOLDS,)
)
Petitioners/Protestants,)
)
v.)
)
STEPHEN ELLIS,)
)
Respondent/Proponent.)

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CV-2020-122

PROTEST TO THE LEGAL SUFFICIENCY AND SIGNATURE COUNT
OF REFERENDUM PETITION 1920-1, ORDINANCE NO. O-1920-24, CITY OF
NORMAN, OKLAHOMA
AND BRIEF IN SUPPORT

Pursuant to 62 O.S. § 868(C), Lynne Miller, Bob Thompson, Bill Nations, and Dick Reynolds (collectively, the "Former Mayors") hereby protest the legal sufficiency and signature count of Referendum Petition 1920-1, Municipal Ordinance No. O-1920-24, City of Norman, Cleveland County, Oklahoma (the "Referendum Petition") filed with the Norman City Clerk on December 23, 2019. See Ex. A, Referendum Petition 1920-1.

I.
INTRODUCTION

A referendum petition has the extraordinary effect of suspending a legislatively enacted ordinance until the ordinance can be voted upon by the people. Thus, the law is tightly structured as to how a referendum petition is put forth. The law requires that a referendum petition contain: (1) an exact copy of the ordinance; (2) the date of the election when the referendum will be voted upon; and (3) a complete and accurate gist of the petition. Each of these items is independently

essential, but inclusion of the gist specifically alerts signatories to the contents of the referendum and could be considered the most important part.

Referendum Petition No. 1920-01 failed as to each one of these essential statutory requirements:

- (1) it did not include an *exact copy* of the ordinance;
- (2) it misled potential signatories by including an incorrect election date; and
- (3) it did not include a gist.

As to the third failure, those who signed the Referendum Petition had no opportunity to read a clear and accurate description summarizing the important contents of the ordinance at issue. Based upon this exclusion, signatories were thus forced to make the choice of either reading the entirety of the (albeit, incomplete) ordinance or accepting whatever the circulator of the Referendum Petition verbally told them. *This is why a written gist on the signature page itself is so essential. This is why its inclusion is a fundamental statutory requirement.*

Based on the three failures noted above, separately and collectively, Protestants ask the Court to: (1) strike the Referendum Petition as wholly insufficient as a matter of law; (2) declare the signature pages invalid as they do not comply with the requirements of 34 O.S. § 3; and/or (3) strike the Referendum Petition for failure to substantially comply with the mandatory statutory requirements.

II. BACKGROUND

1. In May of 2006, the City of Norman (the “City”), acting pursuant to the Oklahoma Local Development Act, 62 Okla. Stat. § 850, et seq. (the “Local Development Act”), created a tax increment financing or “TIF” district (the “TIF District”). *See* Ex. B, Ordinance No. O-1920-24, First Recital. The TIF District is a contiguous area of real property located within the City’s

geographical limits and situated east of I-35, west of the Westheimer Airport, north of West Robinson Street, and south of West Tecumseh Road. See Ex. B, Ordinance No. O-1920-24, Section 2(B) of the Amended and Restated Project Plan (attached as Exhibit A to the Ordinance). Although the TIF District is formally known as Increment District No. 2, City of Norman, it is generally referred to colloquially as “University North Park” or UNP.

2. The Court is likely familiar with tax increment financing. However, the Former Mayors believe it is helpful to review the manner in which the TIF economic development tool is designed to work generally, and the specific provisions of the UNP TIF District specifically.

3. In general terms, tax increment financing allows a city or county to designate an area “where investment, development and economic growth is difficult, but is possible if the provisions of the [Local Development Act] are available.” 62 O.S. § 852(1). The city or county understands that, if development occurs within the designated area, then real property values will increase and/or new jobs will be created that will ultimately increase *ad valorem* tax revenues and/or sales tax revenue. Tax increment financing permits the city or county to direct that all or a portion of future *incremental* tax revenues generated within the designated area (i.e., future tax revenues in excess of the tax revenues being generated as of the creation of the TIF district) must be used within the area to, among other things, pay for infrastructure and other public improvements or provide assistance in development financing to incentivize private development. 62 O.S. § 853(14). In certain instances, the city or county (or a public trust established to administer the TIF) may use borrowed funds to pay for the public improvements or provide the financing assistance, and then pay back the debt with the future incremental tax revenues. 62 O.S. § 863.

4. In 2006, the City desired to promote and develop the University North Park area in order to make possible additional development, attract new businesses, create new employment and stimulate private investment. *See* Ex. B, Ordinance No. O-1920-24, Second Recital. The Norman City Council determined to use tax increment financing to assist in the development of the area and, in accordance with the Local Development Act, created the UNP TIF District by approving the University North Park Tax Increment Finance District Project Plan (Ordinance No. O-0506-66) (the “Original Project Plan”). *See* Ex. B, Ordinance No. O-1920-24, Title, and 62 O.S. § 856. The Original Project Plan authorized the expenditure of up to \$54.725 million in incremental *ad valorem* and sales tax revenues generated within the UNP TIF District to be used for specified public infrastructure, assistance in development financing, and other economic development costs to attract new business to the UNP TIF District (collectively, the “Project Costs”). *See* Ex. C, City Staff Report, Page 2.

5. The Original Project Plan provided that 50 percent of the incremental *ad valorem* tax revenues and up to 60 percent of the incremental sales tax revenues would be used to pay Project Costs or repay indebtedness incurred to pay Project Costs. The remaining incremental *ad valorem* revenues were reserved to the local taxing jurisdictions in accordance with their usual sharing ratios, and the remaining incremental sales tax revenues were reserved to the City.

6. In order to implement the provisions of the Original Project Plan, the City and other parties (including the private landowners within the UNP TIF District) entered into a series of long-term development agreements. *See* Ex. D, Memorandum of Understanding, Recital (F).

7. Prior to creation of the UNP TIF District in 2006, the subject area was undeveloped land with no infrastructure and many environmental challenges. It generated no sales tax or *ad valorem* tax revenue. Since its creation, the UNP TIF District has generated more than \$82 million

in incremental sales tax revenues and more than \$20 million in incremental *ad valorem* tax revenues. *See* Ex. B, Ordinance No. O-1920-24, Fifth Recital. Approximately \$59 million of these revenues have been allocated to the City and other local taxing jurisdictions in accordance with the Original Project Plan. Approximately \$29.6 million of these incremental revenues have been used to fund Project Costs, and the remaining increment is available to pay future Project Costs. *See* Ex. D, Memorandum of Understanding, Recital (M), and Ex. B, Ordinance No. O-1920-24, Sixth Recital.

8. Notwithstanding the financial success of the UNP TIF District, some Norman citizens have recently expressed a desire to, borrowing their own parlance, “End the TIF.” The motivation behind these efforts is varied, and in some instances unclear. The City has also expressed a desire to end the tax increment associated with the UNP TIF District in order to alleviate a shortfall in the City’s struggling overall budget by re-directing sales tax revenues specifically from the TIF to the City’s General Revenue Fund and Capital Fund. *See* Ex. D, Memorandum of Understanding, Recital (U), and Ex. E, “City Finds Savings, Approves Budget,” Norman Transcript, June 12, 2019 (quoting City Finance Director Anthony Francisco as stating that, if the TIF persists, the City will be short approximately \$3.1 million in the General Revenue Fund and \$600,000 in the Capital Fund for the fiscal year ending June 30, 2020).

9. In connection with the City’s expressed desire to reduce or eliminate the tax increment associated with the UNP TIF, the private parties to which obligations are still owed under the Development Agreements engaged in lengthy discussions and negotiations with the City concerning amendments to the Original Project Plan, as well as related amendments to the corresponding Development Agreements. *See* Ex. C, City Staff Report, Page 2.

10. As a part of these discussions, the Norman City Council adopted Resolution R-1819-83 and approved a Memorandum of Understanding (“MOU”) on March 26, 2019 (*see* Ex. D), which contained a process for ending the increment associated with the UNP TIF District and addressing General Fund issues as well as basic terms of desired amendments to the Original Project Plan and Development Agreements. *See* Ex. C, City Staff Report, Page 3.

11. Consistent with the MOU, on Tuesday, November 26, 2019, after more than ten months of deliberation, community input, negotiations, and public hearings to consider terms, the Norman City Council adopted several amendments to the Original Project Plan and its corresponding Development Agreements. The amendments to the Original Project Plan were approved through the adoption of Ordinance No. O-1920-24 (the “Ordinance”). *See* Ex. B Ordinance No. O-1920-24, and Ex. C, City Staff Report, Page 3.

12. The material changes to the Original Project Plan approved by the Ordinance were: (a) a reduction of \$7.8 million in the total authorized Project Costs; (b) a change in the categories of Project Costs and the amounts to be spent on each category; and (c) a change in the manner in which remaining Project Costs would be funded. If allowed to go forward, the Ordinance would reduce the amount of remaining Project Costs from approximately \$25 million to approximately \$17 million and change the allocation of the remaining Project Costs among various categories (including \$5 million allocated to the City of Norman as supplemental funding for two Norman Forward projects). In addition, the sales tax increment used to fund these expenditures would retroactively end as of June 30, 2019, and the *ad valorem* increment would end on the earlier of (a) the date on which \$17 million of sales tax and *ad valorem* tax increment is available to pay remaining Project Costs or (b) April 30, 2020. *See* Ex. C, City Staff Report.

13. This compromise allows the City of Norman to utilize the financially successful UNP TIF tax revenues to improve its struggling overall budget by receiving *all* of the incremental sales tax revenues generated within the UNP TIF District after June 30, 2019, which is necessary to immediately address a \$3.1 million shortfall in the City’s General Fund and a \$600,000 shortfall in the City’s Capital Fund. *See* Ex. E, “City Finds Savings, Approves Budget,” Norman Transcript, June 12, 2019.

14. In addition to these fiscal benefits, the amendments to the Original Project Plan provide other benefits to the community. Specifically, the amendments provided for two Norman Forward projects (the Multi-Sport Facility and the Indoor Aquatic Facility) to purchase sites at a reduced price in the UNP TIF District and obtain supplemental funding through the UNP TIF District funds. Further, the amendments provided for traffic and roadway projects to be expedited and funded in the areas of West Tecumseh Road and North Flood Avenue, and West Robinson and Crossroads Boulevard. *See* Ex. C, City Staff Report.

Parties

1. Lynne Miller is a former Mayor of the City of Norman, and a resident and qualified elector residing at 801 48th Avenue SE, Norman, Oklahoma, 73026.
2. Robert “Bob” Thompson is a former Mayor of the City of Norman, and a resident and qualified elector residing at 1905 Banbury Court, Norman, Oklahoma, 73072.
3. William “Bill” Nations is a former Mayor of the City of Norman, and a resident and qualified elector residing at 2328 Parkland Way, Norman, Oklahoma, 73069.
4. Dick Reynolds is a former Mayor of the City of Norman, and a resident and qualified elector residing at 4204 Brookfield Drive, Norman, Oklahoma, 73072.

5. Protestants are citizens of this State and qualified electors of Norman, Oklahoma, and are therefore qualified to bring this action.

6. Respondent Stephen Ellis is the Proponent of the Referendum Petition.

Jurisdiction

7. Venue is proper in Cleveland County, Oklahoma pursuant to 62 O.S. § 868(C).

This Court has jurisdiction to review the sufficiency of this petition. *Id.*

III. SUMMARY OF THE ARGUMENT

The Referendum Petition is fatally flawed for the following reasons:

- (1) it fails to include a gist to the petition and is thus legally insufficient and the signatures attached thereto are invalid;
- (2) it misled potential signatories by including an inaccurate election date; and
- (3) it fails to include an exact copy of Ordinance No. O-1920-24, as required by law.

IV. ARGUMENTS AND AUTHORITIES

Article 10, Section 6(C) of the Oklahoma Constitution provides that “[t]he Legislature . . . may grant incorporated cities, towns, or counties the ability to provide incentives, exemptions and other forms of relief from taxation for historic preservation, reinvestment, or enterprise areas that are exhibiting economic stagnation or decline,” OKLA. CONST. art. 10, § 6(C). The Oklahoma Local Development Act, 62 O.S. § 851, was implemented and executed pursuant to that constitutional provision.

Further, Article 10, Section 6(C) of the Oklahoma Constitution requires the [statutory] law to “provide for the local . . . referendum of the people,” § 6(C)(A), a right reserved “to the people of every municipal corporation” in Oklahoma pursuant to Article 18, Section 4(a) of the Oklahoma

Constitution. Accordingly, the Legislature enacted a statute within the Local Development Act—Title 62, Section 868—which sets forth the specific procedure for a referendum petition in cases such as the one before the Court. Section 868 requires that the form of the referendum petition be substantially the same as the form provided in Title 34, Sections 1 and 2 of the Oklahoma Statutes governing referendum petitions generally.

That is, Section 868 of the Local Development Act, much like its sister statute for general municipal petitions (Title 11, Section 15-103) expressly states that referendum petitions must strictly follow the form requirements for state petitions as set forth at Title 34, Sections 1 and 2. Additionally and by implication, the form requirements for signature pages are identified at Title 34, Section 3 of the Oklahoma Statutes and must be incorporated by reference into the state form requirements of Sections 1 and 2. The Oklahoma Attorney General explains in Attorney General Opinion 2003-12:

Although 11 O.S. 2001, § 15-103, dealing with municipal petitions, only expressly adopts the form requirements for State petitions set forth in 34 O.S. 2001, §§ 1 and 2, the form requirements for State petitions in 34 O.S. 2001, § 3 are made applicable to municipal petitions by 11 O.S. 2001, § 15-102, which says the procedure for exercising initiative and referendum power is governed by the Oklahoma Constitution and general State law to the extent said procedures do not conflict with 11 O.S. § 2001, §§ 15-101 through 15-110, and so long as the municipality has not promulgated such procedures by charter or ordinance.

OKAG Opin. 2003-12, n.3; *see also Cmty. Gas & Serv. Co. v. Walbaum*, 1965 OK 118, 404 P.2d 1014, 1016 (holding an initiative petition invalid on its face for failure to comply with the warning requirements of 34 O.S. § 3). As such, absent municipalities providing specific procedures in charter or ordinance for initiative and referendum petitions and absent a conflict with Title 11, Sections 15-101 through 15-110 of the Oklahoma Statutes, the form requirements for referendum petitions in cases such as this one follow Sections 1 through 3 of Title 34. *See* OK AG Op. 2003-12, ¶ 2.

Here, the City of Norman is a municipal corporation. NORMAN CHARTER, art. 1, § 1. Its charter provides that “[a]ll legislative powers except the initiative and referendum shall be vested in a Council. . .” NORMAN CHARTER, art. 2, § 1. The City of Norman has clearly not opted to provide its own specific procedures so the state law requirements of Title 34 that specify the form of referendum petitions apply to Referendum Petition No. 1920-1. *In re Referendum Petitions No. 0405-1, 0405-2, 0405-3 of City of Norman*, 2007 OK CIV APP 19, ¶ 9, 155 P.3d 841, 843; see also *Cornell v. Sherrer*, 1964 OK 236, 397 P.2d 105. And no conflict on the basis of Title 11, Sections 15-101 through 15-110 exists.

The Referendum Petition must be examined within the framework provided by Oklahoma’s constitutional provisions and statutes, and against that framework, this Referendum Petition is clearly insufficient as a matter of law.

A.
Referendum Petition No. 1920-01 must be stricken because
Proponent wholly failed to include any gist of the Petition.

1.
Omission of a gist causes the Referendum Petition to be
legally insufficient.

Most frequently, challenges to the gist of a petition allege that the gist is deficient or misleading for particular reasons. The reviewing court must then carefully determine which of the petition’s contents are most vital to voters—and that often is no easy task. But here, the case is much more straightforward. This Court does not even need to venture into the realm of judicial line-drawing because *no gist of any form was included in the Referendum Petition at issue here.*

While the Oklahoma Local Development Act provides that the powers of initiative and referendum are specifically reserved to the people when the tax relief, incentives, exemptions, or increments identified by Article 10, Section 6(C) are proposed, 62 O.S. § 868(A), the Act requires

the form for referendum petitions to be “substantially” as set forth at Title 34. In addition, the provisions of Title 11 apply to municipal referendum petitions generally and provide that the procedure for exercising initiative and referendum power is governed by the Oklahoma Constitution and general State law to the extent said procedures do not conflict with 11 O.S. §§ 15-101 through 15-110, and so long as the municipality has not promulgated such procedures by charter or ordinance. *See* 11 O.S. § 15-102, and discussion above.

Critically, Title 34, Section 3 strictly requires that each referendum petition pamphlet contain the following, in pertinent part:

A simple statement of the gist of the proposition shall be printed on the top margin of each signature sheet. Not more than twenty (20) signatures on one sheet on lines provided for the signatures shall be counted. Any signature sheet not in substantial compliance with this act shall be disqualified by the Secretary of State.¹

(emphasis added). The pamphlet circulated for signatures absolutely must include a “gist” describing the effect of the petition for those considering whether to sign. *See id.*

And the Oklahoma Supreme Court (“Supreme Court”) has repeatedly rejected gists that misrepresent or omit relevant changes proposed by a petition. *In re Initiative Petition 409*, 2016 OK 51, 376 P.3d 250 (rejected the gist because it failed to include information about limits on grocery store wine licenses); *In re Initiative Petition 344*, 1990 OK 75, 797 P.2d 326, 330 (rejected the gist because it failed to provide information regarding changes being made to the Executive Branch); *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 12, 164 P.3d 125 (rejected the gist because it “failed to alert potential signatories to the effect the proposed statute would have on the balance of power between local school boards and the state.”). At a minimum, the gist must

¹ Each of the requirements in 34 O.S. § 3 is indispensable. “While clerical and technical defects in an initiative petition are to be disregarded . . . failure to comply substantially with statutory requirements renders such petition invalid. *Cnty. Gas & Serv. Co. v. Walbaum*, 1965 OK 118, 404 P.2d 1014, 1015 (invalidating a municipal initiative petition for failure to include the warning clause required by 34 O.S. § 3).

succinctly but accurately “apprise[] voters of what the proposed measure is intended to do.” *McDonald v. Thompson*, 2018 OK 25, ¶ 6, 414 P.3d 367, 371; *see also Initiative Petition 384*, 2007 OK 48, ¶ 7 (“voters, after reading the gist and the ballot title, should be able to cast an informed vote.”).

In fact, the Supreme Court recently held a 2018 referendum petition was legally insufficient because of important omissions in the gist of the Petition. In *Oklahoma's Children, Our Future, Inc. v. Coburn*, proponents of Referendum Petition No. 25 sought to refer House Bill No. 1010xx to a vote of the people for their approval or rejection. 2018 OK 55, 421 P.3d 867. The Court, however, held that the Petition’s failure to include in the gist any mention of two of the five taxes that the referendum sought to repeal (the little cigar tax and the hotel motel tax) was fatal. The Court reasoned:

Potential signatories may be aware that by signing the petition and then rejecting HB 1010xx at the polls, they would be removing some tax increases. ***But without even a brief mention in the gist of all of the taxes they will be rejecting, they are fundamentally unable to cast an informed vote, because they are not being put on notice of the changes being made and will not be aware of the entire practical effect of the petition.***

2018 OK 55, ¶ 23, 421 P.3d 867, 874 (emphasis added).

Here, Respondent included a single line at the top of the signature page of his Referendum Petition which states: “Referendum on the 2019 UNP Tax Increment Finance District Project Plan amendments.” ***This single line of twelve words is not a gist—it is a mere header, and not even an informative one at that.*** Those mere twelve words did not even inform the signors what the Petition was seeking to do about the “amendments.” The header did not inform the signors whether they were being asked to revoke, affirm, modify, enlarge, reduce, clarify, or anything about the “amendments.” Indeed, not only were the amendments not even described or summarized in a gist, the request of what was being asked to do with them was not even remotely inferred. Literally,

no information of any kind in any degree as to the “amendments” was provided in any gist anywhere on any signature page - nothing. This fact, on its own, is fatal to the Petition.

Further, because a ballot title is no longer statutorily required in a petition pamphlet, the gist is “the *only* shorthand explanation of the proposal’s effect.” *In re Initiative Petition No. 409*, 2016 OK 51, ¶ 4, 376 P.3d 250, 253 (emphasis added). A ballot title corresponds with and runs in tandem with a gist—the ballot title informs voters of the purpose and effect of the petition at the ballot box, and the gist informs potential signatories of the purpose and effect of the petition at the time of signing the petition. The Supreme Court has explained:

[T]he statement on the petition [the gist] and the ballot title must be brief, descriptive of the effect of the proposition, not deceiving but *informative and revealing of the design and purpose of the petition*. The limitations ... are necessary to prevent deception in the initiative process.... The voters, after reading the statement on the petition and the ballot title, should be able to cast an informed vote. (emphasis added)

McDonald v. Thompson, 2018 OK 25, ¶ 6, 414 P.3d 367 (internal quotations omitted). Voters can hardly be expected to cast an informed ballot or signature when there is no gist whatsoever. Further, in the matter at hand, in addition to *not* being shown a gist, the signatories also were *not* provided an exact of the Ordinance that included the title—or summary—of the Ordinance. Thus, the signatories had neither a gist nor a complete copy of the Ordinance to refer to when confronted with the request to sign the Petition.

Finally, like a ballot title, the purpose of the gist “is to prevent, fraud, deceit, or corruption in the initiative process.” *In re Initiative Petition No. 409, State Question No. 785*, 2016 OK 51, ¶ 3 (internal quotation omitted). Although not required to contain “every regulatory detail,” the gist should explain the proposal’s effect, putting voters on notice of the changes being made. *Id.* Likewise, a gist must be “free from the taint of misleading terms or deceitful language.” *Id.* (internal quotation omitted). At a minimum, and “[f]undamentally, the need for voters to be given

enough information to make an informed decision is why [the Oklahoma Supreme Court] has historically taken a dim view of excluding important changes made to the law from the gist of a petition.” *Oklahoma’s Children, Our Future, Inc.*, 2018 OK 55, ¶ 24.

The Proponent’s twelve-word header in this case achieves none of these policy goals or requirements. It does not put signatories or voters on notice of the effect of the Referendum Petition. It does not put voters or signatories on notice of whether they are being asked to revoke, affirm, modify, enlarge, reduce, clarify, or anything about the Ordinance. It does not provide signatories or voters a summary of what is included in Ordinance No. O-1920-24 (indeed, it does not even cite to any specific ordinance by name or number). Instead, voters are left to guess as to what the “2019 UNP Tax Increment Finance District Project Plan” includes, and to speculate as to what a “yes” or “no” vote on such a matter would mean.

As in this case when no gist is included, the potential that a signatory could be misled by a petition’s circulators presents a real danger. Without a clear and accurate description of the contents of a petition, signatories must read the entire pamphlet—often many, many pages long and presented in places like parks, parking lots, bustling lobbies, or other frenetic venues—or trust that the circulator has accurately described the petition’s contents to the signatory. There is thus vast potential for deceit and fraud. Further, with only verbal descriptions provided to potential signatories, there is no evidentiary record of any kind for a city or court to subsequently verify that such descriptions were not deceitful, fraudulent, or misleading, and no ability to verify that the descriptions were consistent as being said by the many persons out collecting the signatures. In other words, the written gist acts as a check against deceit—signatories can confirm that what the circulator tells them is accurate by simply reading the top of the page that they are being asked to sign. *For this reason, among others, the Supreme Court views the gist requirement strictly.*

By contrast, the ballot title to the Referendum Petition, as approved by the Norman City Attorney (with only slight modifications from the proposed text by Proponent) reads as follows:

This measure amends the University North Park Project Plan. A yes vote reduces the authorized Town Center (previously called Lifestyle Center) costs, reduces authorized Recreational Facilities (previously called Cultural Facilities) costs, reduces authorized Economic Development costs, reduces authorized Legacy Park costs, adds authorized Traffic and Roadway costs, and authorizes Miscellaneous costs. Altogether it reduces the total authorized costs by \$7.8 million. A yes vote ends the sales tax increment collection effective June 30, 2019 and the ad valorem tax increment collection effective April 30, 2020. A no vote leaves the University North Park Project Plan as adopted in ordinance O-0506-66 and amended by ordinance O-0809-8 in place. Shall the measure be approved?

See Ex. F, Ballot Title Memo. The Proponent of the Petition certainly could have included a similar statement as a gist on each signature page, but they did not. Rather, the details provided in the ballot title glaringly emphasize the deficiency and complete absence of any substance in Respondent's twelve-word header at the top of the Referendum Petition's signature page.

The Referendum Petition is thus insufficient as a matter of law, in which case the only appropriate remedy is to strike the measure from the ballot. “[T]he Legislature has deemed the gist a necessary part of the pamphlet and we are not at liberty to ignore that requirement, since we must presume that the Legislature ‘expressed its intent’ in creating the gist requirement and ‘that it intended what it so expressed.’” *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 13, 164 P.3d at 130. The gist of the petition is the key element to educating voters about the true nature of the measure, and thus is “***indispensable and noncompliance is fatal.***” *In re Initiative Petition No. 342*, 1990 OK 76, 797 P.2d at 333 (emphasis added). The gist of referendum and initiative petitions is not subject to amendment by this Court, and as a result, the only remedy is to strike the Petition. *In re Initiative No. 409*, 2016 OK 51, ¶ 7, 376 P.3d 250. Due to the total omission of a gist of Referendum Petition 1920-01, the only appropriate legal remedy is for the Court to strike it from the ballot.

2.

Because Proponent failed to include a gist, the signature pages are invalid pursuant to 34 O.S. § 3.

Most frequently, protestants will challenge individual signatures because, among other reasons, the signatory is not a registered voter or due to an invalid notarization. But this is not your typical signature challenge. Here, the entire lot is invalid.

Title 34, Section 3 of the Oklahoma Statutes contains merely three requirements for petition pamphlets and compliance with each requirement is essential for the signatures thereon to be valid. As indicated at Part (A)(1) above, one such requirement is that “[a] simple statement of the gist” be included, 34 O.S. § 3, and “[a]ny signature sheet not in substantial compliance with this act *shall be* disqualified . . .,” *id.* (emphasis added).

When determining which signatures should not be included in the physical count, the municipal clerk examines the statutory list of excluded signatures.² Title 34, Section § 6.1(A)(1)-(7) of the Oklahoma Statutes provides for seven categories of signatures that should be excluded. But as explained by Oklahoma Attorney General Opinion 2003-12, the list of seven categories of disqualified signatures in 34 O.S. § 6.1(A)(1)-(7) “is not exhaustive.” In addition to those seven categories, the Opinion points to the three additional categories of excluded signatures pursuant to 34 O.S. § 3. Paragraph 7 of the Opinion explains:

Section 3 cited above, provides for three additional categories of signatures which shall not be included in the clerk's physical count of signatures. These additional three categories are not included in the list set forth in 34 O.S. 2001, § 6.1 (A)(1)-(7). The additional three categories of signatures which a clerk shall not count are: . . . (3) *all signatures on a signature sheet that does not contain a simple statement of the gist of the proposition on the top margin of the signature sheet.*

OK AG Op. 2003-12 (emphasis added). *In other words, signatures affixed to signature pages that do not contain a gist of the petition in the top margin must be excluded from the count.*

² “The signatures to each petition shall be verified in the manner provided by law.” 62 O.S. § 868(B)(2).

In the instant case, the Proponent submitted 4,148 signatures. After completing its count in a cursory review of matters such as whether the signor wrote a Norman address, the Norman municipal clerk determined that the Petition received 4,070 valid signatures. *See* Ex. G, Notice of Filing of Referendum Petition, published on January 3, 2019. ***But because all signature pages failed to include a gist of the petition, all pages must be determined to be invalid by this Court.***

In *Community Gas and Service Co. v. Walbaum*, 1965 OK 118, 404 P.2d 1014 (1965), the town clerk of the town of Hinton (in his capacity as the municipal chief clerk) invalidated the signatures on a petition that did not contain the warning statement required by 34 O.S. § 3, and thus found that the petition had insufficient signatures for submission to a vote of the local electorate. After the trial court affirmed the decision of the town clerk, proponents of the petition appealed to the Supreme Court. In relevant part, the Supreme Court stated:

While clerical and technical defects in an initiative petition may and should be disregarded, 34 O.S.1961, § 24, a material departure from the statutory form renders an initiative petition ineffective and void. If a statutory provision [is] essential to guard against fraud, corruption or deception in the initiative and referendum process, such provision must be viewed as an indispensable requirement and failure to substantially comply therewith is fatal.

We therefore hold that the failure to comply with the provisions of 34 O.S.1961, § 3, requiring an initiative or referendum petition to contain on the outer page of each pamphlet a warning clause admonishing a signatory of the penal sanctions imposable by law for placing multiple, false, fraudulent and unauthorized signatures, renders an initiative petition invalid on its face.

404 P.2d at 1016–17 (emphasis added) (internal citations omitted).

This holding reaffirms a strict interpretation of 34 O.S. § 3, which specifically calls for the invalidation of signatures affixed to petitions which do not meet the statutory requirements. This exacting treatment serves as a safeguard, ensuring the public is informed, thus guarding against deceit and fraud. *Id.* The gist of the petition is the key element to educate voters about the true

nature of the measure, and thus is “*indispensable and noncompliance is fatal.*” *In re Initiative Petition No. 342*, 1990 OK 76, 797 P.2d at 333 (emphasis added).

Because the Proponent failed to include any gist—a strict requirement under Title 34, Section 3—Protestants respectfully ask the Court to find the submitted signature sheets invalid and hold that Petition No. 1920-1 received insufficient signatures to be placed onto the ballot pursuant to 62 O.S. § 868(B)(2).

B.

Referendum Petition No. 1920-01 should be stricken because Proponent misled potential signatories by including an incorrect election date.

The Referendum Petition misled potential signatories by stating that the referendum election shall be “at the special election to be held on the seventh day of April, 2020.” To the contrary, the referendum election—were one to be held—would be statutorily required to be held in February of 2022 to coincide with the next mayoral election. *Given the financial implications of the differences between an election in 2020 and 2022 as would affect the City of Norman’s budget shortfall, this misrepresentation alone is a basis for finding this Referendum Petition invalid.*

Article 5, Section 3 of the Oklahoma Constitution provides, in relevant part: “All elections on measures referred to the people of the state shall be had at the next election held throughout the state ...” The procedure for municipal referenda “shall be as nearly as practicable the same as those for measures relating to the people of the state at large.” 11 O.S. § 15-102. *In other words, a municipal referendum shall be at the next election held throughout the city (rather than the state).*

Moreover, and most specifically, pursuant to 62 O.S. § 868(H) under the Local Development Act, the specific statute on referendums as they address tax increment finance

matters such as the Ordinance at issue here, “[w]henver a referendum is demanded against any measure passed by the city, town or county governing body, ... the question ***shall be submitted to the registered voters of the city, town or county for their approval or rejection at the next general municipal or county election.***” (emphasis added). In *Neidy v. City of Chickasha*, 2008 OK 61, 188 P.3d 128, the Supreme Court specifically discussed the question of what qualified as a “next general” municipal election, and noted that a specially called election would not qualify as such because a special election is “not a regularly scheduled election to choose officers of the city.”

In Norman, the only regular elections at which voters ***throughout the city*** are eligible to vote are mayoral elections. Articles 5 and 6 of the City Charter provide that mayoral elections are held “in 2007 and each third year thereafter.” The last mayoral election was in 2019. The next will be in 2022. Notably, the City Clerk correctly used the last mayoral race to determine the number of signatures necessary for the Referendum Petition—25 percent of the “total number of votes cast at the next preceding election,” as required by Okla. Const. art 18, § 4(b) — and not the last, more recently called city-wide special election. Absent a citywide mayoral race, only voters in ward elections are eligible to vote and do so on an even- or odd-numbered basis. For example, under the Norman municipal charter, ward elections for City Council members in Wards 2, 4, 6, and 8 are held in even-numbered years and in Wards 1, 3, 5, and 7 in odd-numbered years. NORMAN CITY CHARTER art. II, §§ 5 and 6. ***In this instance, the next general municipal election held throughout the city will thus be the 2022 mayoral election.***

In contrast, and in clear error (or misrepresentation), the Referendum Petition made its own call for a “special election” in 2020—an assertion not within the power of the Proponent to impose, and not allowable by any means or anyone under the confines of 62 O.S. § 868(H), which specifically mandates that a referendum as to a TIF matter such as this “***shall be*** submitted to the

registered voters of the city, town or county for their approval or rejection at the *next general municipal* or county election.” (emphasis added).

Consequently, a prospective signatory of the Referendum Petition cognizant of the City’s looming budgetary shortfalls may well have decided to sign or not sign the Referendum Petition based on whether the matter would be determined in a few months rather than a few years. The Referendum Petition misled such potential signatories by proposing a date that is not even allowed under the applicable Oklahoma statute.

The election date on the Referendum Petition is so material to the financial impact of the Referendum Petition that this alone suffices to find the Petition legally insufficient.

C.

Referendum Petition No. 1920-01 should be stricken because Proponent fails to include an exact copy of the text of Ordinance No. O-1920-24.

Title 34, Section 1 of the Oklahoma Statutes provides that *an exact copy of the text of the measure must be inserted in the referendum form*. But the Referendum Petition at issue does not include an exact copy of Ordinance No. O-1920-24. *See* Ex. B, Ordinance No. O-1920-24. Rather, the Referendum Petition: (1) does not include the title of Ordinance No. O-1920-24 above the full text of the Ordinance; (2) does not include the information at the end of the text of the Ordinance as to the date it was introduced and considered, passed by the City Council, and signed by the Mayor; and (3) does not include the signature lines for, or the signatures of, Mayor Breea Clark or the Attestation from Brenda Hall, City Clerk. *These omissions are materially at odds with the “exact copy” requirements of 34 O.S. § 1.*

In *Oklahoma’s Children, Our Future, Inc. v. Coburn*, 2018 OK 55, the Oklahoma Supreme Court reviewed a referendum petition that got much closer to substantial compliance than this Referendum Petition, and yet still the Court found it deficient. In that case, petitioners contended

that the proponents failed to include an exact copy of the text of the measure. *Id.* ¶ 2. In fact, proponents had only excluded the section symbols—21 characters out of approximately 80,000. *Id.* ¶ 2 (Wyrick, J., dissenting). Nevertheless, the Court held that “the Legislature intended it to be mandatory that an *exact copy* of the title and text of the measure was to be inserted in the petition and that substantial compliance with this portion of § 1 was no longer legally sufficient.” *Id.* ¶ 51 (emphasis in original).

Similarly, the Oklahoma Court of Civil Appeals upheld the invalidation of a municipal referendum petition from the City of Norman for failure to include an exact copy of the ordinance. In *In re Referendum Petitions No. 0405-1, 0405-2, 0405-3 of City of Norman*, 2007 OK CIV APP 19, 155 P.3d 841, the court held that “the Legislature intended it to be mandatory that *an exact copy of the title* and text of the measure was to be inserted in the petition and that substantial compliance with this portion of § 1 was no longer legally sufficient.” *Id.* at ¶ 16 (emphasis added).

The court further explained:

Strict compliance with the clear mandate in § 1 that an exact copy of the measure be inserted will obviate the need for a case by case determination as to how much of a measure must be included to satisfy a subjective substantial compliance rule. All parties, including the voters, will benefit because there will be nothing left to conjecture or speculation as to the content of the measure which is the subject of the petition. Additionally, strict compliance with this requirement will remove one portion of the petition process from the need for judicial review.

Id. at ¶ 19; *see also Matter of Referendum Petition No. 94-1*, 1996 OK CIV APP 50, 920 P.2d 531, 532 (“The rule of substantial compliance was intended to save a referendum petition from challenges grounded on technical and clerical defects, but cannot be invoked to excuse noncompliance with the critical requirement of notice to the electorate of the specific legislative act they are called upon to approve or repeal.”)

Review of this Referendum Petition is not a close call. Respondents did not include the full text or exact copy of the Ordinance. Petitioners urge this Court to follow established case law and find that the Referendum Petition is legally insufficient and must thus be stricken.

V. CONCLUSION

In sum, the Referendum Petition contains multiple deficiencies that show a pattern of disregard for the statutory rules and safeguards that seek to prevent deceit and fraud in the initiative petition process. First, the Referendum Petition wholly omits a gist at the top of the signature page. The gist is the vehicle used to provide voters with adequate information regarding the Petition's contents, thereby preventing fraud and deceit in the initiative process. *In re Initiative Petition No. 409*, 2016 OK 51, ¶ 3. Indeed, the gist is critically “indispensable and noncompliance is fatal.” *In re Initiative Petition No. 342*, 1990 OK 76, 797 P.2d at 333. And because the gist is so indispensable, failure to include a gist invalidates the signature pages attached to the Referendum Petition. 34 O.S. § 3.

Second, the Referendum Petition fails to include an accurate election date, which is especially misleading to signatories given the incredible financial implications of the difference between a 2020 and 2022 election to the City's budget.

Third and finally, the Referendum Petition fails to include an exact copy of the Ordinance, specifically excluding the title (or summary) of the Ordinance. This means that those who signed Referendum Petition 1920-1 were left without the opportunity to review the two most commonly-used summaries—the gist and the title of the Ordinance—when deciding whether to sign the Referendum Petition. This, of course, highlights the Supreme Court's holding that anything other than an “exact copy” of the text and title of a measure legally invalidates a Referendum Petition. *Oklahoma's Children, Our Future, Inc. v. Coburn*, 2018 OK 55, ¶ 51.

For the reasons given, Protestants ask this Court to declare the Referendum Petition insufficient as a matter of law and strike it from the ballot.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of January, 2020, a true and correct copy of the foregoing was personally served or mailed via certified mail, restricted delivery, to the following:

Stephen Ellis
633 Reed Ave
Norman, OK 73071

Brenda Hall
City Clerk, City of Norman
201 W Gray St.
Norman, OK 73069


Glenn Coffee

**EXHIBIT LIST FOR PROTEST TO REFERENDUM PETITION 1920-1, ORDINANCE
NO. O-1920-24, CITY OF NORMAN, OKLAHOMA**

Exhibit A		Referendum No. 1920-1
Exhibit B		Ordinance No. O-1920-24
Exhibit C		City Staff Report
Exhibit D		Memorandum of Understanding
Exhibit E		“City Finds Savings, Approves Budget,” Norman Transcript, June 12, 2019
Exhibit F		Ballot Title Memo
Exhibit G		Notice of Filing of Referendum Petition