

Court hears gross production tax initiative challenges

By: Catherine Sweeney The Journal Record March 1, 2018

OKLAHOMA CITY – A push to raise oil and gas production taxes is seeing legal challenges before it has secured a place on the ballot.

Oklahoma charges a gross production tax, which is levied as a percentage of each barrel's worth. The default rate is 7 percent, but the rate is 2 percent for the first 36 months, which is intended to be an incentive period. Restore Oklahoma Now Inc. is pushing to raise that incentive period by 5 percent and use the new revenue to pay for teacher and school staff members to get a pay raise.

The Oklahoma Supreme Court heard oral arguments Thursday on two challenges to the petition. One focused on the gist, a summary attached to the petition that explains the measure to potential signers. The other challenge accused the proposal of violating the state's single-subject rule.

The Oklahoma Independent Petroleum Association, a trade group, filed a lawsuit challenging the provision on Jan. 10. Attorneys argued it was misleading because it focused on teacher pay raises, which are politically popular, but downplayed the fact that administrative workers would also get a pay raise. They also argued that a typo and vague language made it difficult to determine which wells would be affected and that it could be construed as an illegally retroactive tax increase.

Robert McCampbell, of GableGotwals, represented the OIPA. Many of his arguments hinged on the idea that limited information would prevent residents from knowing what they were signing. Justices said that argument on its face wouldn't work.

"The gist inherently has to omit things," Justice Patrick Wyrick said. "That's why it's a gist."

As the hearing progressed, those issues morphed into one before the bench: Is this document too difficult for potential signers to understand?

Justices noted that if there is any confusion in the gist, residents could simply turn a few pages and read the whole initiative. McCampbell said that although the potential signers would have that ability, many wouldn't take it.

"It's going to have to have at least 124,000 signatures," he said. "We're not going to have 124,000 voters read this petition word for word."

Justice Noma Gurich said that gists – which have a character limit, have to fit one page and allow enough room for 20 signature lines to fit below it – exist to protect against specific problems.

"The gist is to prevent fraud, corruption and deceit," she said. "Those are intentional acts."

She asked McCampbell whether he believed petitioners were engaging in any of those behaviors. He said he didn't, but that the text still wasn't clear enough for residents to make a good decision.

Several justices raised concerns that they had trouble differentiating when the law would take effect because of ambiguous writing and omissions. Wyrick and Yvonne Kauger said it would be in the petitioners' and voters' best interest for the language to be clear.

Ryan Ray, of Wohlgemuth Chandler Jeter Barnett & Ray, argued on behalf of the petitioners. His argument hinged on the idea that regardless of clarity issues or any errors, the court was tasked with deciding whether the law at hand would violate the constitution.

"Is it clearly and manifestly unconstitutional?" he said. "If it is not, it is to be submitted."

He said there wouldn't be time to get the issue on the November ballot if the organization had to restart the process. He also said that if the organization did so, there would likely be another complaint.

The OIPA filed another lawsuit the same day that argued the measure would violate the single-subject rule. Glenn Coffee of Glenn Coffee & Associates represented the organization. He compared the measure to the 2016 state question that would have raised sales taxes to pay for a teacher pay raise. He said that he wanted to vote for a salary increase but couldn't because of his stance on taxes.

"The only option I had was an all-or-nothing proposal," he said. "Here, I'm tasked with the same impossible choice. I have to agree to bind future generations to this base level of funding."

He said the measures within the initiative should be spread into several pieces. Wyrick said the Oklahoma Constitution requires all tax increases to be passed with an explanation of how that money will be spent.

Ray also represented the organizers during this lawsuit. He said the court would go against decades of precedence to vote down the petition for that reason.

"This is an interlocking package," he said. "All of the parts are dependent on one another."

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