

ORIGINAL

2026 OK 4



FILED  
SUPREME COURT  
STATE OF OKLAHOMA

FEB - 3 2026

SELDEN JONES  
CLERK

KYLE ALLISON; VERNON MCKOWN, JR.  
DAVID NIMMO; and PHILIP QUINN,

Petitioners/Appellees,

v.

PAMELA SUE MCCOY-POST; PAUL  
THOMAS ARCAROLI; and RICHARD  
LORENZ SONDAG,

Respondents/Appellants.

Rec'd (date)	2-3-26
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No. 122,946

FOR OFFICIAL PUBLICATION

**APPEAL FROM DISTRICT COURT OF CLEVELAND COUNTY,  
OKLAHOMA, HONORABLE JEFF VIRGIN**

¶ 0 The trial court granted Protestants' Protest to the Legal Sufficiency of Referendum Petition 2425-1, finding the gist of Referendum Petition 2425-1 legally insufficient. On appeal, we affirm.

**APPEAL PREVIOUSLY RETAINED ON MOTION OF PETITIONERS;  
ORDER OF THE TRIAL COURT AFFIRMED**

Robert E. Norman, Oklahoma City, for Respondents/Proponents/Appellants.

Glenn Coffee, Michael Fields, and Denise Lawson, Glenn Coffee and Associates PLLC, Oklahoma City, Oklahoma; Sean Paul Rieger and Daniel Sadler, Reiger Sadler Joyce LLC, Norman, Oklahoma; and Scott Henderson and Spencer F. Smith, McAfee & Taft, Oklahoma City, for Petitioners/Protestants/Appellees.

**KUEHN, V.C.J.:**

¶ 1 Referendum Proponents appeal the Cleveland County trial court's order granting the Protest to the Legal Sufficiency and Signature Count of Referendum Petition 2425-1, Ordinance No. 2425-2 City of Norman, Oklahoma

filed by Protestants. We affirm the trial court's finding that the gist of Referendum Petition 2425-1 is legally insufficient.

### **Background**

¶ 2 In November of 2023, the City of Norman adopted a resolution to consider approving the Rock Creek Entertainment District Project Plan. In general, the Rock Creek Plan would expand the University North Park area to add additional hotel, office, residential, and retail spaces with a multipurpose arena and a public plaza east of I-35 between Rock Creek Road and Tecumseh Road.

¶ 3 On September 17, 2024, the City adopted Municipal Ordinance No. O-2425-2 to create two tax increment financing districts: a sales tax incremental district, "TIF District 4," and an *ad valorem* increment tax district, "TIF District 5," to support the construction of the multipurpose arena, a parking garage, and related infrastructure as part of the Rock Creek Plan. Three percent of TIF District 4's gross proceeds or receipts would be collected from the City's non-dedicated sales/use taxes and allocated to the Rock Creek Plan. Ordinance O-2425-2, § 9, Protest, Ex. B, Record on Appeal (ROA), 44. *Ad valorem* taxes in excess of base-assessed values in TIF District 5 would be apportioned to pay for the project costs. *Id.*, § 10; ROA, 45. The increments from both TIF Districts would remain active until the first of three occurrences: (1) when funds have been provided to allow non-City parties to service debt in an amount of \$230,000,000 in principal plus interest; (2) when a total of

\$600,000,000 in public assistance is provided; or (3) after the passage of twenty-five years from the creation of the TIF Districts. *Id.* at §§ 9, 10 (citing Rock Creek Project Plan, § IX).<sup>1</sup> The City adopted the Ordinance without voter approval.

¶ 4 On September 20, 2024, Proponents submitted Referendum Petition 2425-1 to the Norman City Clerk.<sup>2</sup> By the Petition, Proponents seek an election for voters of Norman to approve or reject the Ordinance. On October 17, 2024, Proponents submitted 10,689 signatures to the Norman City Clerk. On November 18, 2024, Protestants filed a Protest to the Legal Sufficiency and Signature Count of Referendum Petition 2425-1, Ordinance No. O-2425-2, City of Norman, Oklahoma in Cleveland County District Court, Case No. CV-2024-3374. Judge Jeff Virgin heard argument on the Protest and held that the gist contained in the Petition was insufficient for the reasons stated in Protestants' pleadings and oral presentation, invalidated the Petition, and ordered RF 2425-1 stricken.

### **Standard of Review**

¶ 5 The first power reserved by the people is the initiative and the second is the referendum. Okla. Const. art. V, § 2. The right to petition by initiative and referendum is a sacred right. *Oklahoma's Child., Our Future, Inc.*

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<sup>1</sup> See Rock Creek Entertainment District Project Plan, § IX(A)(2), Protest, Ex. C, ROA, 51.

<sup>2</sup> Protestants informed the district court of their intention to forgo their signature challenge and instead focus their challenge solely on the gist. Petitioners'/Protestants' Pre-Hearing Brief, at 5, ROA, 374.

*v. Coburn*, 2018 OK 55, ¶¶ 7–8, 421 P.3d 867, 869–70. Because of the sanctity of that right, the power of initiative and referendum “should not be crippled, avoided, or denied by technical construction by the courts.” *In re Initiative Petition No. 420, State Question No. 804*, 2020 OK 9, ¶ 12, 458 P.3d 1088, 1093. A challenger “bears a heavy burden to establish any infirmity” with a petition and any doubt is resolved in favor of the petition. *In re State Question No. 813, Initiative Petition No. 429*, 2020 OK 79, ¶ 6, 476 P.3d 471, 473.

¶ 6 The Ordinance was enacted pursuant to the Local Development Act, 62 O.S. § 850, *et seq.* The Act allows a city or county to finance an approved project plan in areas where economic growth is difficult through increment tax financing, a tax increment financing mechanism that dedicates increments from certain local taxes to the project costs. 62 O.S. §§ 852(1–2), 853(14). The apportioned increments are used to pay the tax apportionment bonds. 62 O.S. § 863(B). The procedures for a referendum petition under the Act require petitioners to submit a proposed ballot title which “may be filed with the clerk or secretary prior to circulating the petition” and shall “contain the gist of the proposition couched in language that may be readily understood by persons not engaged in the practice of law.” 62 O.S. § 868(D)(1).<sup>3</sup> The clerk forwards the ballot title to the city attorney, who reviews the ballot title and notifies the

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<sup>3</sup> See 62 O.S. § 868(B)(1) (“For purposes of this section, the form of the petition for either initiative or referendum shall be substantially as provided in Sections 1 and 2 of Title 34 of the Oklahoma Statutes.”); *cf.* 34 O.S. 2020 § 3(4) (“A simple statement of the gist of the proposition shall be printed on the top margin of each signature sheet.”).

clerk whether or not the proposed ballot title is in legal form and in harmony with the law. 62 O.S. § 868(D)(2). If the city attorney determines that the proposed ballot title is not in proper form, the city attorney shall prepare and file a ballot title that does conform to the law.<sup>4</sup> *Id.* A party may file a protest to the petition, the signature count, or the ballot title in the district court in the county in the situs of the city. 62 O.S. § 868(C), (E).

¶ 7 Section 868 of Title 62 does not require that a referendum petition include a gist. Because Proponents included a gist with Referendum Petition 2425-1, this Court considered whether the gist included was legally sufficient. See *Miller v. Ellis*, 2020 OK 52, 467 P.3d 691. The legal sufficiency of the gist is a question of law subject to the Court's *de novo* review. *Miller v. Ellis*, 2020 OK 52, ¶ 1, 467 P.3d 691, 692. The purpose of the petition's gist is to provide

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<sup>4</sup> On September 23, 2024, the city attorney provided a revised ballot title. The ballot title provides:

Ordinance O-2425-2 adopts the "Rock Creek Entertainment District Project Plan," which includes assistance in development financing for construction of a multipurpose arena, parking garage, and related infrastructure. That Plan anticipates that \$230 million will be borrowed for these projects. The Plan establishes two increment districts to support development of these projects.

Increment District 4 will start on May 1, 2025, allocating all non-dedicated sales tax revenue, 3% of taxable sales, within the District, to project costs. Increment District 5 will begin on December 31, 2026, allocating increased ad valorem tax revenue within the District to project costs.

Both districts will remain active until either \$230 million in principal plus interest is repaid to the lender, \$600 million in public assistance is provided, or 25 years pass, whichever occurs first.

Protest, Ex. E, ROA, 108.

potential signatories, looking only at the gist, with an outline or a rough sketch of the contents of the petition in order to prevent fraud, deceit, or corruption in the referendum process. *In re Initiative Petition No. 426, State Question No. 810*, 2020 OK 44, ¶¶ 7–8, 465 P.3d 1259, 1263; *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 12, 164 P.3d 125, 130. To accomplish this goal, the gist must briefly and accurately describe the purpose and practical effect of the proposition and be free from misleading terms or deceitful language. *Tay v. Green*, 2022 OK 37, ¶ 11, 508 P.3d 431, 435–36; *In re Initiative Petition No. 425, State Question No. 809*, 2020 OK 58, ¶ 9, 470 P.3d 284, 287–88.<sup>5</sup>

### **The Proposed Measure**

¶ 8 The gist of the Petition provides:

The referendum petition seeks an election for the voters of Norman to approve or reject City of Norman Ordinance 0-2425-2. This Ordinance adopts and approves the “Rock Creek Entertainment District Project Plan.” The Project Plan area is located between Interstate 35 and Max Westheimer Airport, and it runs south from Tecumseh Road to an area just south of Rock Creek Road.

The Project Plan creates two Tax Increment Financing (TIF) Districts. Increment District No. 4 allocates 100% of the City’s non-dedicated, general fund and capital improvement sales and use taxes generated in District 4, beginning May 1, 2025. Increment District No. 5 allocates 100% of certain ad valorem

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<sup>5</sup> Both Proponents and Protestants argue about how this legal standard should be applied. One argues that a gist fails only when it has clear signs of fraud, deceit, or corruption, and the other argues that a gist must include such details as numerical amounts and the public entities tasked with oversight responsibilities in order to be legally sufficient. The Court declines to either narrow or broaden the standard as advocated by the parties.

taxes (taxes in excess of the base assessed values of property within District 5) generated in District 5, beginning December 31, 2026. Both Districts would last a maximum of 25 years.

The Project Plan authorizes project costs of up to \$600,000,000 for administration, implementation, and assistance to the Project Developer in financing \$230,000,000 in costs related to the construction of an arena, a parking garage, and additional infrastructure. The incremental tax revenues generated and allocated in the TIF Districts, along with all potential state matching funds, would be used to pay for authorized project costs, and for no other purpose.

Protest, Ex. A, ROA, 37.

### **Analysis**

¶ 9 Proponents appeal the trial court's conclusion that the gist was legally insufficient, arguing that the gist was free from the taint of fraud, deceit, corruption, or misleading terms, and that it sufficiently informed potential signatories of what the Rock Creek Plan was intended to do.<sup>6</sup> Proponents argue that Protestants advocate for application of the higher ballot title standard, that omissions in the gist did not perpetuate fraud on the signatories, and the gist accurately conveyed the intent of the Ordinance and the Rock Creek Plan.

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<sup>6</sup> Proponents also ask this Court to determine if the district court erred in adopting the city attorney's revised ballot title and that the revised ballot title contained errors. This opinion is limited to the legal sufficiency of the gist of Referendum Petition 2425 without consideration of the sufficiency of the proposed ballot title or the city attorney's revised ballot title.

¶ 10 According to Protestants, the gist misstated the maximum amount of public assistance made to the Rock Creek Plan. Protestants contend that the gist inaccurately conveyed that the project would cost up to \$600,000,000 in costs plus \$230,000,000 in financing assistance to the project developer. Protestants argue that the gist should explain that, by the Ordinance, the City has not agreed to encumber other funds and the City's funding obligations terminate at the occurrence of the earliest of three triggering events.

¶ 11 A gist must provide sufficient information for a potential signatory, who may choose to look only at the gist before signing a petition, to make an informed decision about the Ordinance and the Rock Creek Plan. *In re Initiative Petition No. 384*, 2007 OK 48, ¶ 12, 164 P.3d 125, 130. A legally insufficient gist can therefore "contain[] too much and not enough information." *Id.* The gist in this case suggests that the incremental taxes would last for a period of up to twenty-five years, rather than ending at the first of three occurrences. The gist, therefore, does not provide potential signatories with a clear understanding of how long the obligation would last. Because of this omission, the gist "does not provide a potential signatory with sufficient information to make an informed decision about the true nature" of the Ordinance and the Rock Creek Plan. *In re Initiative Petition No. 409*, 2016 OK 51, ¶ 7, 376 P.3d 250, 254.

¶ 12 Additionally, the gist's phrasing that the "Project Plan authorizes project costs of up to \$600,000,000 for administration, implementation, and



assistance to the Project Developer in financing \$230,000,000 in costs” inaccurately describes the maximum amount of public financial assistance. While a gist need not include “every regulatory detail” in the gist, the outline provided in the gist must be accurate in order to be legally sufficient. *In re Initiative Petition No. 425*, 2020 OK 58, at ¶ 9, 470 P.3d at 288. The phrasing of the authorized costs in the gist inaccurately conveys that the Ordinance and the Rock Creek Plan authorize \$600,000,000 in project costs in addition to \$230,000,000 in financing instead of \$600,000,000 and \$230,000,000 as two of three separate triggers. The outline provided in this gist is inaccurate and thus legally insufficient.

¶ 13 Protestants assert that the gist misidentifies the categories of incremental sales/uses taxes allocated to the Rock Creek Plan so a potential signatory might believe that three categories of taxes—non-dedicated taxes, general fund taxes, and capital improvement taxes—would be allocated to the Rock Creek Plan and that the gist should inform potential signatories that three percent of the City’s sales tax rate would be allocated to the Rock Creek Plan. When reviewing the sufficiency of a gist, this Court does not require a detailed description of restrictions or limitations. *See In re Initiative Petition No. 420, State Question No. 804*, 2020 OK 10, ¶ 8, 458 P.3d 1080, 1085. If a potential signatory would like to know the categories of taxes and the exact percentage allocated to the Rock Creek Plan, a potential signatory may review the text of the petition for further details. *In re Initiative Petition No. 426, State Question*

No. 810, 2020 OK 44, ¶ 6, 465 P.3d 1259, 1263 (citing *McDonald v. Thompson*, 2018 OK 25, ¶ 10, 414 P.3d 367 and noting that “ballot titles have specific statutory requirements that are more stringent than a gist because a ballot title is all a voter will see in the voting booth”). Inclusion of the percentage and a description of the categories of non-dedicated taxes are not required to make the gist legally sufficient.

¶ 14 Protestants argue that the gist contains multiple other deficiencies, including the use of highly technical and complicated terms and omissions of the public entities that will oversee the Rock Creek Plan; that the City will not issue any public debt; that the principal objectives of the Rock Creek Plan are not listed; that the project would include hotel, office, residential, and retail spaces; and that the Rock Creek Plan is a pay-as-you-go plan. We disagree that the gist must include all the information advocated for by Protestants. As noted, a gist need not contain every regulatory detail so long as the outline itself is not incorrect. *In re Initiative Petition No. 420, State Question No. 804*, 2020 OK 10, ¶ 4, 458 P.3d 1080, 1084. Further, “the gist need not describe policy arguments for or against the proposal . . . .” *Miller v. Ellis*, 2020 OK 52, ¶ 4, 467 P.3d 691, 693. These details are not critical to protecting the referendum process. *In re Initiative Petition No. 420, State Question No. 804*, 2020 OK 10, ¶ 4, 458 P.3d 1080, 1084.

## **Conclusion**

¶ 15 We agree that the gist misstates the maximum amount of public assistance made to the Rock Creek Plan and omits that the TIF Districts will remain active until the first of the three triggering events. The misstatement and omission of the three triggering events makes the gist incorrect and misleading. We hold, on these grounds, that Referendum Petition 2425-1 is legally insufficient.

¶ 16 Proponents' Motion for *En Banc* Oral Argument is denied.

**PREVIOUSLY RETAINED ON MOTION OF PETITIONERS;  
ORDER OF THE TRIAL COURT AFFIRMED.**

CONCUR: KUEHN, V.C.J., and WINCHESTER, EDMONDSON, COMBS,  
GURICH, DARBY, KANE and JETT, JJ.

DISSENT: ROWE, C.J. (by separate writing).