

INTRODUCTION

The Second Amendment to the US Constitution was enacted to ensure the rights of law-abiding firearms owners. For years, Oklahoma firearms owners have sought protection for their rights under the Second Amendment by the enactment of Constitutional Carry, a law already enacted in 15 other states. Constitutional Carry allows a law-abiding, non-incapacitated adult to carry a firearm without the Government having the ability to suppress that right by denial or delay in obtaining permission for such carry. On February 13, 2019, the Oklahoma House of Representatives enacted Constitutional Carry, House Bill 2597 (hereinafter “HB2597”), by an overwhelming vote of 70 Yes and just 30 No. On February 27, 2019, the Oklahoma Senate enacted HB2597 by a similarly lopsided vote of 40-6. The same day, Governor Stitt signed HB2597. App. Tab. 1.

Now, just three individuals, Joshua Harris-Till, The Honorable Jason Lowe, and Jennifer Birch, seek to reverse this historic legislative achievement and suppress the Second Amendment rights of Oklahomans by filing Referendum Petition 26, proposed State Question 803, which seeks to refer the provisions of HB2597 to a vote of the People for their approval or rejection. App. Tab 2. If their Petition is declared valid, and they collect the requisite number of signatures by the prescribed deadline, then the provisions of HB2597 will not go into effect on November 1, 2019, as enacted by the Legislature, and the Second Amendment rights of Oklahomans shall remain less protected than those of the citizens of 15 other states, unless and until approved by the voters an entire year later at the next general election.

Proponents certainly have the right to seek a referendum. However, before the whim of just three individuals can prevent the acts of a supermajority of elected Oklahoma legislators from taking effect in a timely manner, and before the whim of those three individuals can

suppress the Second Amendment rights of Oklahomans by delaying the day those rights can be more fully exercised, those three individual Proponents must comply with basic statutory requirements. Proponents have not done so here.

On August 12, 2019, Proponents filed, pursuant to 34 O.S. §3, a blank copy of the signature sheet they have since circulated. At the top of that page is a short statement of the “gist” of the Petition, which reads as follows:

This Referendum Petition would veto House Bill 2597 which has loosely been referred to as “Permit-less carry.” House Bill 2597 legalizes the concealed or unconcealed carrying of loaded or unloaded firearms by any person twenty-one (21) years of age or older, or eighteen (18) years of age or older if the person is a current military member or veteran, without any additional licensing requirements, if the person is not otherwise disqualified from firearm possession by state or federal law, and into any location where carrying firearms is not specifically prohibited. House Bill 2597 also legalizes possession of firearms and other weapons in defined areas of colleges, universities, and technology centers; criminalizes possession of firearms by aliens illegally in the United States; requires law enforcement to ask whether a person possesses a firearm during an arrest, detention, or traffic stop, rather than requiring the person to disclose the firearm; and makes failure to disclose a firearm to law enforcement a citation offense with a maximum fine of one-hundred dollars (\$100.00).

See App. Tab 2. Because the “gist” of the Petition fails to accurately explain the effects of HB2597 as required by law, and, worse, because each of the 6 separate clauses of the gist set forth blatantly false, inaccurate, misleading, deceitful, and inflammatory statements in order to deceive voters into signing Referendum 26, Protesters/Petitioners Oklahoma Second Amendment Association (“OK2A”), Oklahoma Taxpayers Unite! Inc. (“OTU”), Oklahoma Conservative Political Action Committee (“OCPAC”), Members of the Oklahoma House of Representatives Speaker Charles McCall, Jon Echols, Kevin West, Sean Roberts, Terry O’Donnell, Zack Taylor, Avery Frix, Josh West, Mark LePak, Brad Boles, Tom Gann, JJ Humphrey, Lewis Moore, Rusty Cornwell, Jim Olsen, Kenton Patzowsky, Todd Russ, Tammy Townley, Kevin McDugle, Denise Crosswhite-Hader, Mark Lawson, and Jay Steagall, and members of the Oklahoma Senate Kim

David, Nathan Dahm, Joe Silk, David Bullard, Mark Allen, Paul Scott, Casey Murdock, James Leewright, Gary Stanislawski, Julie Daniels, Chuck Hall, Marty Quinn, Roger Thompson, and Michael Bergstrom, respectfully request that the court declare State Question 803, Referendum Petition 26, to be legally insufficient.

ARGUMENT AND AUTHORITIES

Although the “Legislative authority of the State” is vested in the Legislature, the Oklahoma Constitution reserves for the People the ultimate power to “propose laws” and to “approve or reject at the polls any act of the Legislature.” Art. V, §1. A referendum on a measure proposed by the Legislature may be ordered by the Legislature itself, or “by petition signed by five per centum of the legal voters.” Art. V, § 2. If a referendum is properly invoked, the measure shall become law only “when it shall have been approved by a majority of the votes cast thereon and not otherwise.” Art. V, § 3.

Here, Proponents have filed a proposed Referendum Petition with respect to HB2597, seeking to refer each of its provisions to a vote of the People for their approval or rejection. If this Petition is declared legally sufficient, Proponents file with it the requisite number of valid signatures (here, less than 60,000) by the prescribed deadline, then the effectiveness of HB2597 will be suspended, and its provisions will not become law unless and until they are approved by the People at the next general election (or at a special election called by Governor). Art. V, §3. In other words, if a referendum petition is properly constructed and filed, the will of only a few thousand signers can override-at least temporarily-the will of more than 50% of both Houses of the Legislature and the Governor.

This is an important power, guaranteed by the State Constitution. But the right of initiative and referendum, while certainly protected, “is not absolute. There are limits, both

constitutional and statutory, on the process. “ *In re Initiative Petition No. 344*, 1990 OK 75, ¶ 14, 797 P .2d 326, 330. Where, as here, the form of the referendum petition is insufficient, it must be declared invalid, such that HB2597 may be permitted to timely take effect.

I. THE GIST OF THE PETITION IS BLATANTLY FALSE, INACCURATE, MISLEADING, DECEITFUL, INFLAMMATORY, AND INSUFFICIENT

A. Legal standard: the “gist” must put potential signatories and voters on notice of the changes being made and disclose the effect of the petition

Title 34, §3 requires that, when an initiative or referendum petition is filed, “[a] simple statement of the gist of the proposition shall be printed on the top margin of each signature sheet.” As this Court has long explained, the purpose of the “gist” is to “prevent fraud, deceit, or corruption” in the initiative and referendum process. *In re Initiative Petition 409*, 2016 OK 51, ¶ 3, 376 P .3d 250 (*emphasis in original*). The gist provides a shorthand explanation of the measure for potential signatories and voters, and helps safeguard the referendum process. *Id.*

The requirements for a proper gist are limited, but critical. At a minimum, the gist must (1) “be sufficient that the signatories are at least put on notice of the changes being made,” and (2) accurately “explain the proposal’s effect.” *McDonald v. Thompson*, 2018 OK 25, ¶ 6, 414 P .3d 367, 371 (citing *In re Initiative Petition 384*, 2007 OK 48, ¶ 7, 164 P .3d 125). It also may not be “misleading,” “deceitful,” or “prevent potential voters from making an informed decision.” *McDonald*, 2018 OK 25, ¶ 10. In short, the gist must, at a minimum, succinctly but accurately “apprise[] the voters of what the proposed measure is intended to do.” *Id.*, ¶ 15; see also *Initiative Petition 384*. 2997 OK 48, ¶ 7 (“voters, after reading the gist and the ballot title, should be able to cast an informed vote”).

B. 2 of the 6 clauses of the gist are blatantly false, inaccurate, misleading, deceitful, and inflammatory, and the remaining 4 clauses are inaccurate and misleading.

The “gist” of the referendum effectively contains six separate clauses, two of which are blatantly false, inaccurate, misleading, and inflammatory, and the remaining four of which are inaccurate, misleading and inflammatory.

1. 2 of the 6 clauses of the gist are blatantly false, inaccurate, misleading, deceitful, and inflammatory

Gist Clause 3. “House Bill 2597 also legalizes possession of firearms and other weapons in defined areas of colleges, universities, and technology centers.” **Blatantly false, inaccurate, misleading, deceitful, and inflammatory.** This statement in the gist is a false and misleading attempt to obtain more signatures on the Petition by preying on the fears of those with children in educational settings. Nowhere does HB2597 expand the legal ability to carry a firearm or other weapon on any educational campus. The opposite is true. The actual language of HB2597 reads, in pertinent part relating to colleges, universities, and technology centers,

1. No person in possession of a valid handgun license issued pursuant to the provisions of the Oklahoma Self-Defense Act or who is carrying or in possession of a firearm as otherwise permitted by law or who is carrying or in possession of a machete, blackjack, loaded cane, hand chain or metal knuckles shall be authorized to carry the ~~handgun~~ firearm, machete, blackjack, loaded cane, hand chain or metal knuckles into or upon any college, university or technology center school property, except as provided in this subsection.

2. For purposes of this subsection, the following property shall not be construed ~~as prohibited for persons having a valid handgun license to be college, university or technology center school property~~: Any property set aside for the use or parking of any vehicle, whether attended or unattended, provided the ~~handgun~~ firearm, machete, blackjack, loaded cane, hand chain or metal knuckles is carried or stored as required by law and the ~~handgun~~ firearm, machete, blackjack, loaded cane, hand chain or metal knuckles is not removed from the vehicle without the prior consent of the college or university president or technology centerschool administrator while the vehicle is on any college, university or technology center school property;

3. Any property authorized for possession or use of ~~handguns~~ firearms, machetes,

blackjacks, loaded canes, hand chains or metal knuckles by college, university or technology center school policy; and

4. Any property authorized by the written consent of the college or university president or technology center school administrator, provided the written consent is carried with the ~~handgun~~ firearm, machete, blackjack, loaded cane, hand chain or metal knuckles and the valid handgun license while on college, university or technology center school property.

The college, university or technology center school may notify the Oklahoma State Bureau of Investigation within ten (10) days of a violation of any provision of this subsection by a licensee.

Upon receipt of a written notification of violation, the Bureau shall give a reasonable notice to the licensee and hold a hearing. At the hearing, upon a determination that the licensee has violated any provision of this subsection, the licensee may be subject to an administrative fine of Two Hundred Fifty Dollars (\$250.00) and may have the handgun license suspended for three (3) months.

Nothing contained in any provision of this subsection shall be construed to authorize or allow any college, university or technology center school to establish any policy or rule that has the effect of prohibiting any person in lawful possession of a handgun license or any person in lawful possession of a firearm, machete, blackjack, loaded cane, hand chain or metal knuckles from possession of a ~~handgun allowable under such license~~ firearm, machete, blackjack, loaded cane, hand chain or metal knuckles in places described in paragraphs 1, 2 and 3 of this subsection.

Nothing contained in any provision of this subsection shall be construed to limit the authority of any college, university or technology center school in this state from taking administrative action against any student for any violation of any provision of this subsection.

Enrolled House Bill 2597 (2019), amending 21 O.S. 2011, Section 1277. (As with all legislation before the Oklahoma Legislature, underlined portions indicate the referenced statute is being amended by addition of the underlined words, and ~~crossed-out~~ portions indicate the law is being amended by deletion of the ~~crossed-out~~ words).

Thus, the relevant impact of the language of HB2597 is that “No person...shall be authorized to carry the ~~handgun~~ firearm, machete, blackjack, loaded cane, hand chain or metal knuckles into or upon any college, university or technology center school property, except as provided in this subsection.” And nothing in the subsection allows any additional right to carry a weapon onto the campus of a college, university or technology center school property. Thus, the gist of the Petition is blatantly false and misleading.

In fact, HB2597 actually increases the types of weapons which are *banned* from campuses of a college, university or technology center school property, as indicated by the underlined language above.

Therefore, the gist deliberately and substantially misleads those concerned about carry of a firearm on the campus of a college, university, or technology center to support the Petition based on false statements, when such persons would otherwise not wish to support the Petition.

Gist Clause 5. “[HB2597] requires law enforcement to ask whether a person possesses a firearm during an arrest, detention, or traffic stop, rather than requiring the person to disclose the firearm;” **Blatantly false, inaccurate, misleading, deceitful, and inflammatory.** Nowhere does HB2597 “require” a Law Enforcement Officer to ask if a person has firearms during an arrest, detention, or traffic stop. It remains the Officer’s discretion to ask if there are weapons present and the person is required to give a truthful answer.

Moreover, by failing to define terms such as “stop” and “detention,” the gist implies that in many interactions between citizens and police officers, which under current law do not require officers to spend their time asking if an individual has a firearm, House Bill 2597 will now *require* police officers to spend time and resources asking citizens if they have a firearm. To say that HB2597 *requires* “officers to ask if you have a firearm during every arrest, detention, or traffic stop,” would lead law enforcement officers to believe their workload would increase by having to ask *everyone* they encounter about weapons, even for instance during a large public gathering when large number of people are technically “stopped” or “detained” by officers crossing a street, for instance.

In addition, citizens who wish to carry a weapon would believe, based on this section, that HB2597 would impose an additional burden on them of having to answer to police officers

in situations where under current law such carrying citizens would not have to be asked if they have a firearm.

Moreover, the wording of the gist would lead readers to believe that any time a person is stopped, that law enforcement officers are required to ask such persons if they possess a firearm, not only in their immediate grasp at that time, but even if such person possesses a firearm at their home or other location. In other words, the wording of the gist would suggest that HB2597 requires a constant dragnet by police against firearm owners, which many of those who wish to carry firearms presumably would oppose. Thus the gist seeks to obtain signatures even from those who favor Constitutional Carry by misstating the facts of what HB2597 says.

2. The remaining four clauses of the “gist” are inaccurate and misleading.

Gist Clause 1. “This Referendum Petition would veto House Bill 2597 which has loosely been referred to as ‘Permit-less carry.’” **Inaccurate, misleading and inflammatory.** Past and current versions of the bill have been known by the name “Constitutional Carry.” By putting a label of “permit-less” on HB2597, the gist attempts to obtain more signatures on the Petition by employing an inflammatory term.

Gist Clause 2. “House Bill 2597 legalizes the concealed or unconcealed carrying of loaded or unloaded firearms by any person twenty-one (21) years of age or older, or eighteen (18) years of age or older if the person is a current military member or veteran, without any additional licensing requirements, if the person is not otherwise disqualified from firearm possession by state or federal law, and into any location where carrying firearms is not specifically prohibited.” **Inaccurate, misleading and inflammatory,** in that the term “into any location where carrying firearms is not specifically prohibited” leads readers to conclude that

unless they have a sign prohibiting firearms on their door, that a person can uninvited enter their home with a firearm.

Gist Clause 4. “[HB2597] criminalizes possession of firearms by aliens illegally in the United States;” **Inaccurate and misleading.** This portion of HB2597 reflects existing federal law. 18

USC §922(g) reads,

“It shall be unlawful for any person—

(1)

who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2)

who is a fugitive from justice;

(3)

who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4)

who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A)

is illegally or unlawfully in the United States; or

(B)

except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6)

who has been discharged from the Armed Forces under dishonorable conditions;

(7)

who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that—

(A)

was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B)

restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)

(i)

includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii)

by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9)

who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

18 USC §922(g) (*Emphasis added*). HB2597 does not “criminalize” firearm possession by aliens, because such possession is already criminal. Those in the country illegally are already prohibited the possession on a firearm by federal law. HB2597 simply restates that prohibition to make it clear within the bill itself that those here illegally may not carry firearms. This clause in the gist is an attempt to make it appear that Oklahoma is more aggressive in dealing with illegal immigration than other states, to play on the emotionally charged issue of immigration in order to obtain signatures under misleading pretenses.

Gist Clause 6. “and makes failure to disclose a firearm to law enforcement a citation offense with a maximum fine of one-hundred dollars (\$100.00).” **Inaccurate and misleading.** HB2597 only requires a person to disclose a firearm to law enforcement *if* law enforcement *asks* and the person has a firearm in their *immediate* possession at the time.

Specifically, HB2597 states, “No person shall be required to identify himself or herself as a handgun licensee or as lawfully in possession of any other firearm if the law enforcement officer does not demand the information. No person shall be required to identify himself or herself as a handgun licensee when no handgun is in the possession of the person or in any vehicle in which the person is driving or is a passenger.” Thus, under HB2597, if a person possesses a firearm NOT in their immediate possession, for instance at their home, or if law enforcement exercises its discretion not to ask, no disclosure is required.

The gist makes it sound as though HB2597 requires a firearm owner to walk around like a leper, shouting “unclean, unclean” to every law enforcement officer they encounter, whether or not the law enforcement officer asks about firearm possession, and whether or not the firearm owner actually has the firearm in their grasp or not. See *Leviticus* 13:45.

Like Hester Prynne with her scarlet “A”, firearm owners would practically have to sew a scarlet “G” for “gun” on their clothing to comply with what the gist claims is required of them under HB2597 regarding constant disclosure. Cf. Hawthorne, *The Scarlet Letter*. Thus the gist seeks to disparage HB2597 to firearm owners, and thereby gain signatures to the Petition by misleading the public.

This Court has repeatedly invalidated petitions where, as here, the “gist” is insufficient to adequately inform potential signatories and voters about the contents and effect of the measure. For example, *In re Initiative Petition 409*, 2016 OK 51, ¶ 7, the Court found an initiative petition legally insufficient because its “gist fails to alert potential signatories of the changes being made to the law and does not provide a potential signatory with sufficient information to make an informed decision.” Other cases have likewise invalidated petitions where their gists did not “at least” put potential signatories and voters “on notice of the changes being made.” *In re Initiative Petition 342*, 1990 OK 76, ¶ 14, 797 P .2d 331, 333; see also, e.g., *McDonald*, 2018 OK 25, ¶ 9; *Initiative Petition 384*, 2007 OK 48, ¶ 1] (“the gist must explain the proposal’s effect”).

Such blatantly false, misleading, and inflammatory clauses render the gist incomplete, one-sided, and misleading. Cf., e.g., *Initiative Petition 344*, 1990 OK 75, ¶ 15.

An improper gist is “fatal” to a petition. *In re Initiative Petition No. 403*, 2016 OK 1, ¶ 20, 367 P .3d 472, 485. Because the gist here is blatantly false, inaccurate, substantially misleading, deceitful, and inflammatory, Proponents’ petition must be declared legally insufficient.

CONCLUSION

Protestants thus respectfully request that the court declare State Question 803, Referendum Petition 26, legally insufficient.

Respectfully submitted,

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CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing was mailed, postage pre-paid, this 26th day of August 2019, to:

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