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2026 OK 71

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

CAEDMON BROOKS, RICKEY GOWIN, DAWN REITAN-BROCKMAN, SHELLEY ARROTT, CARL TESREAU, LATASHA BROADHEAD, SHERRI CHRISTIAN, CLAUDIA SWISHER, TRACI THORPE, and ADAM LEAMING,

Petitioners/Protestants,

vs.

MICHAEL D. REYNOLDS, REPRESENTATIVE JAY STEAGALL, SENATOR SHANE JETT,

Respondents.

FILED
SUPREME COURT
STATE OF OKLAHOMA
OCT - 5 2026
SELDEN JONES
CLERK

For Official Publication

Case No. 123,982

Rec'd (date) 10-5-26
Posted
Mailed
Distrib
Publish X yes ___ no

BLACKWELL, S.J., with whom KUEHN, V.C.J., and KANE, J., join, dissenting:

¶ 1 Since 1975 this Court has assumed original jurisdiction to opine on the constitutionality of the people's *proposed* laws. Because such premature action—striking down not law, but the embryonic *notion* of law—is wholly inconsistent with the text, the history, and the structure of the Oklahoma Constitution, I respectfully dissent.

¶ 2 From the founding of our State until 1975, this Court rightly refused to involve itself in passing on the substance of laws or constitutional amendments proposed by the people unless and until those proposals actually became law. In *Threadgill v. Cross*, 1910 OK 165, 109 P. 558, decided just three years post-statehood (and concerning a constitutional amendment proposed by the people), this Court unanimously "refrain[ed] from expressing any opinion

whatever upon what the effect of such amendment will be, if adopted." *Id.* ¶ 23, 563. The Court rightly saw that "[t]he duty of determining what law shall be enacted and what law shall not be enacted rests neither upon the executive nor the judicial department." *Id.* ¶ 19, 562. It is axiomatic that the act of making law is a legislative function, granted to the legislature, and in our state, also reserved by the people. OKLA. CONST. art. V, § 1. Indeed, "[t]he *first* power reserved by the people is the initiative ...." *Id.* § 2 (emphasis added).

¶ 3 The Court held steadfast to the rule of *Threadgill,* unanimously decided by the same men that had a heavy hand in drafting the very text they were then interpreting,[1] until its retreat in 1975 when it unceremoniously determined, without any significant analysis, that the Court "may consider the constitutionality of matters to be considered under the initiative and referendum process as to procedure form (sic) *and subject matter,* when raised, and if in this court (sic) opinion such a determination could prevent a costly and unnecessary election." *In re Supreme Court Adjudication of Initiative Petitions in Norman,*

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[1] The author of *Threadgill* was Justice Samuel W. Hayes, an original member of the Oklahoma Supreme Court who was unanimously elected as a delegate to Oklahoma's Constitutional Convention, held in Guthrie in 1906. Delegate Hayes "wielded much influence in the deliberations and work of that historic assembly, in which he served as chairman of the legal advisory committee and the committee on schedules, besides being a member of the important judiciary committee and that on Federal relations." Joseph B. Thoburn, A STANDARD HISTORY OF OKLAHOMA, VOL. IV (available at https://sites.rootsweb.com/~oktttp/history/volume_4/samuel_w_hayes.htm) (last visited October 1, 2026). *Threadgill* was unanimous, with Justices Matthew J. Kane, Jesse J. Dunn, Robert L. Williams, and John B. Turner, all concurring. Justices Kane and Williams also both served as delegates to Oklahoma's Constitutional Convention prior to statehood. Reportedly, Justice Williams, later Oklahoma's third governor, "took an active part in the deliberations of the Convention and was the author of many of the most advanced and progressive features of the constitution which it framed." Ann Maloney, *A Brief History of Oklahoma,* https://sites.rootsweb.com/~oknowata/williams.htm (last visited October 1, 2026).

Oklahoma Numbered 74-1 & 74-2, 1975 OK 36, ¶ 19, 534 P.2d 3, 8 (emphasis supplied) (hereinafter *Norman*).[2]

¶ 4 In the years since the Court's about-face in *Norman*, several members of this Court have encouraged the Court to return to its proper role. *See, e.g., In re Initiative Petition No. 349, State Question No. 642*, 1992 OK 122, ¶ 5, 838 P.2d 1, 16 (Wilson, J., dissenting in part) ("[T]he plain words of our state constitution forbid the use of judicial power to prevent or interfere with the legislative process invoked by the initiative petition.... The only course available to this Court is to determine the validity of the count of electors signing the initiative petition and the legality of the ballot title."); *In re Initiative Petition No. 358, State Question No. 658*, 1994 OK 27, ¶ 2, 870 P.2d 782, 788 (Opala, J., concurring in the result) ("I would not undertake to test the validity of a measure's content *before* its adoption by a vote of the people. My commitment to the *undiluted force* of *Threadgill v. Cross continues with undiminished fervor.*" (footnotes omitted)); *Oklahoma Indep. Petroleum Ass'n v. Potts*, 2018 OK 24, ¶ 12,

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[2] The Court appears to have justified its claim of this new power by a legislative change to the process of proposing a new law or amendment. Previously, a challenge to the "form" or "sufficiency" of the proposed law—*i.e.*, to ensure the proper procedures had been followed and that the signatures were sufficient—fell to the Secretary of State, with an appeal lying to the Supreme Court. 34 O.S.1971, § 8. (At that time, there could be no challenge to a ballot measure prior to the collection of signatures.) In 1973, however, the legislature lessened the secretary's role and "legislated directly" to the Supreme Court the duty to check the form and sufficiency of the petition, if the same be challenged. *Norman*, ¶ 19, 8; Okla. Sess. Laws 1973, Ch. 78, H.B. 1030, § 1. The *Norman* Court seems to have taken issue with these new duties, stating: "We believe this court is not limited solely to the duties of an administrative officer or act." *Norman*, ¶ 19, 8. Nothing in the 1973 law, however, suggests the legislature intended any change to the review the Court had limited the secretary to in 1910: a review of the form and sufficiency of the petition only. The Court manufactured its newly found authority to review the *substance* of the law without any authority from the legislature.

414 P.3d 351, 365 (Wyrick, J., concurring specially) (offering a detailed and persuasive analysis as to why this Court "lack[s] the power to judge the constitutionality of a measure before it actually becomes the law"); *State Chamber of Oklahoma v. Cobbs*, 2024 OK 13, ¶ 6, 545 P.3d 1216, 1217–18 (Kuehn, J., concurring in part, dissenting in part) ("[N]either the Oklahoma Constitution nor the initiative petition statute compels this Court to address such a challenge before it is ripe—before there is any law to discuss."); *Brooks v. Reynolds*, 2026 OK 71, ¶ 6 (Rowe, C.J, dissenting) (dissenting in this case and rightly noting: "When the Legislature is in session and bills proposing new laws or amendments to existing laws are introduced, we do not intervene to determine the constitutionality of those proposed measures before they are enacted. Why, then, should we afford the people any less deference when they exercise legislative power reserved to them?").

¶ 5 I need not recapitulate the sound analysis offered by these fine jurists. Their reflections, which I find persuasive, speak for themselves. Here, I only join my sojourning voice with theirs, suggesting that this Court does not have the power to declare nascent, unpassed, non-law unconstitutional. Our power is derived solely from our state Constitution, and nowhere does that document claim to give this body the power to declare invalid the *thought* or *idea* or *hope* of a law.[3]

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[3] I would also note that this Court has routinely, as it does today, cited language in 34 O.S. § 8 as supplying the necessary grant of jurisdiction to this Court. But that language does nothing of the sort. The relevant language—stating only that the Secretary of State's *notice* of the filing of a petition "shall include notice that any citizen or citizens of the state

¶ 6 I urge this Court to reexamine whether it should continue to determine the constitutional viability of *would-be* laws. Because its present course is wholly inconsistent with our Constitution, I respectfully dissent. This Court should deny the petitioner's request that the Court assume original jurisdiction and thereby allow the respondent's petition to proceed.

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may file a protest as to the constitutionality of the petition," 34 O.S. § 8(B)—is not a grant of jurisdiction. Rather, that language is nothing more than legislative acquiescence of this Court's 1975 theft of the people's retained power to author their own law, whether constitutional or not.

Indeed, the cited provision was not even contained in the law at the time of the *Norman* Court's silent revolution but was unceremoniously passed in *2009*. *See* 2009 Okla. Sess. Law, Ch. 318, S.B. 800, § 1. When the legislature grants statutory jurisdiction to this Court under the fallback provision contained in article 7, section 4 of our Constitution—"[t]he Supreme Court ... may exercise such other and further jurisdiction as may be conferred by statute," OKLA. CONST. art. VII, § 4—this Court should require a clear grant. Such clauses are not difficult to write, and the legislature has proven time and time again that it is capable in this regard. *See, e.g.,* 19 O.S. § 24 ("Exclusive, original jurisdiction is hereby conferred upon the Supreme Court of Oklahoma over all controversies that may arise under the provisions of this act ...."); 19 O.S. § 896 (same); 2 O.S. § 4011 (same); 62 O.S. § 57.12 (same); 20 O.S. § 14 (same); 20 O.S. § 14.1 (same); 19 O.S. § 87 (same); 82 O.S. § 882 (same); 69 O.S. § 1718 (same). The language of 34 O.S. § 8(B) does not use any such language but tacitly acknowledges the jurisdiction the Court granted *to itself* in 1975 and instructs the secretary to provide notice thereof. However, as discussed herein, the Court lacks the authority to assume jurisdiction to declare non-law unconstitutional. As such, this legislative acquiescence accomplishes nothing.