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IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

MAY 18 2026

SELDEN JONES
CLERK

CAEDMON BROOKS, et al.

***Protestants/Petitioners*,**

v.

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

***Respondents*.**

Case No. 123,982

Received:
Docketed: 5-18-26
Marshal:
COA/OKC:
COA/TUL:

REPLY BRIEF OF PROTESTANTS/PETITIONERS

ROBERT G. MCCAMPBELL, OBA NO. 10390
TRISHA E. BUNCE, OBA NO. 36585
GABLEGOTWALS
499 W. SHERIDAN AVE., SUITE 2200
OKLAHOMA CITY, OKLAHOMA 73102
TEL 405-235-5500 | FAX 405-235-2875
RMCCAMPBELL@GABLELAW.COM
TBUNCE@GABLELAW.COM

ATTORNEYS FOR PROTESTANTS/PETITIONERS

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INDEX

I. INTRODUCTION

On April 15, 2026, the ten Protestants/Petitioners ("Protestants") filed their Petition, Brief-in-Chief, and Appendix protesting the constitutionality of Initiative Petition 455/State Question 836. ("IP 455"). On May 5, 2026, the three Proponents who originally filed IP 455 ("Proponents") filed their response. ("Response Brief") Protestants now file this Reply Brief as permitted by the Court's Order of May 6, 2026.

Section II below will show that Proponents' primary argument is at odds with (i) settled case law of this Court and (ii) the right of voters to amend the Constitution. In the decades after Article XII-A was adopted in 1936, Oklahoma voters adopted multiple other constitutional provisions which are squarely in conflict with Article XII-A including Article X, §§ 8, 8B, 8C, 8D, 8E, 8F, 9, 9C and 9D. The Court should reject Proponents' position that the will of the voters who adopted these provisions should be a nullity.

Section III addresses uniformity of taxation and equal protection. Section IV addresses other issues arising from the Response Brief.

II. ARTICLE XII-A (1936) CANNOT NULLIFY THE VOTERS' INTENT IN ADOPTING MORE RECENT AMENDMENTS.

Protestants' Brief-in-Chief demonstrates that Article XII-A is inapplicable based upon its plain language. Article XII-A applies to action by "the Legislature" but makes no similar provision as to initiative petitions, which involve notably different procedure. Proponents' assertion, at p. 3, that this is a "technical construction" of Article XII-A is inaccurate. Protestants ask merely that Article XII-A be construed according to its plain language.

Even if Art. XII-A was intended to apply to petitions, Proponents cannot succeed. Proponents directly state their argument at p. 5 of the Response Brief: "Proponents argue that unless a subsequently-enacted Constitutional measure explicitly repeals a prior Constitutional measure, then the earlier measure is not repealed."[1] The law from this Court is squarely to the contrary. This Court has repeatedly held that when constitutional provisions are in conflict, the more recent provision prevails regardless of whether there is an explicit repeal. *E.g.*, *City of Guymon v. Butler,* 2004 OK 37, ¶ 12, 92 P.3d 80, citing *In re Init. Pet. 259*, 1957 OK 167, 316 P.2d 139 ("A new constitutional provision that contains some of the same subject matter will suspend inconsistent former provision whether or not those provisions are specifically mentioned."); *Eastern Oklahoma Bldg. Council v. Pitts*, 2003 OK 113, ¶ 10, 82 P.3d 1008, 1012, internal quote omitted, ("If the proposed amendment is amendatory of any section of the Constitution it would, if adopted, amend any section of the Constitution in conflict therewith whether mentioned or not."); *In re Init. Pet. 259*, at ¶ 23, ("[S]ince the proposed amendment would, if adopted, amend any section of the Constitution in conflict therewith, we conclude that is not necessary for the text of the proposed amendment to refer to the Constitution or any section thereof."); *Adams v. City of Hobart*, 1933 OK 646, ¶ 22, 27 P.2d 595 ("If a constitutional amendment does not in terms expressly repeal a constitutional provision, yet if it covers the same subject . . . the amendment will be regarded as a substitute for it and suspending it.")

This Court has repeatedly ruled that when a later constitutional provision conflicts with an earlier provision, the more recent expression of the voters' will control. *E.g. IRAP v. ABLE*, 2020 OK 5, ¶ 19, 457 P.3d 1050. The Court has described it as a "repeal by implication," *e.g. Adams*, *supra*, at ¶ 37, that the previous provision has been "suspended," *e.g. City of Guymon*, *supra* at ¶ 12, or has described the principle using other language. The Court, however, has not strayed from the <u>principle</u>: When the voters, adopt a constitutional principle which is in conflict with an earlier constitutional provision, the later expression of the voters' will takes

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1 Proponents repeat the argument at p. 5 of the Response Brief.

precedence. *Eastern Oklahoma Bldg. Council, supra*; *Adams, supra*; *IRAP, supra*; and *In re Init. Petition 259, supra.*

Proponents' argument that Art. XII-A continues to control because it was not explicitly repealed is too clever by half. Article V, § 50, Okla. Const., provides that the Legislature is not able to exempt property from taxation unless the Constitution has provided for the exemption. Article V, § 50 was adopted as part of the original Constitution in 1907 and, even though Article XII-A conflicts with Article V, § 50, Article XII-A did not expressly repeal it. Under Proponents' reasoning, Article XII-A would be a nullity since it did not expressly repeal Article V, § 50. Instead of getting tied up in knots on whether there was an express repeal, this Court should simply apply the rules it has always applied: (i) When faced with conflicting constitutional provisions the more recent expression of the voters' will controls. (ii) An express repeal of the previous provision is not required.

An argument that Article XII-A could be harmonized with the later amendments could not succeed. The amendments concerning ad valorem taxation adopted after 1936 squarely conflict with Article XII-A. To provide a few *examples*:

Oklahoma Constitution:	**Under IP455, if saved by Art. XII-A:**
Under Art. X, § 9(b) and (c) "all taxable property in the county [or district] shall be levied" to support schools.	The tax would not be levied on "all the taxable property" in the county or district.
Under Art. X, § 8 "Real property shall not be assessed for ad valorem taxation at a value less than eleven percent (11%) . . . of its fair cash value . . . ."[2]	Homestead real property would not be assessed for ad valorem taxation at 11% of its fair cash value.
Art. X, § 8 is "a prohibition against undervaluation of property when it taxed ad valorem."[3]	Would require undervaluation of homestead property when it is taxed ad valorem.

2 "Fair cash value" is "the price it would bring at a fair voluntary sale."

3 *Save Ad Valorem Funding v. ODEQ*, 2006 OK CIV APP 53, ¶ 9, 135 P.3d 823 (approved for publication by Sup.Ct.); *accord, Matter of Assessment for 2003*, 2006 OK CIV APP 147, ¶ 18, 150 P.3d 399 (approved for publication by Sup.Ct.).

Art. X, § 8B requires that when a homestead subject to the 3% limit on increase in value is transferred it must be reassessed based on fair cash value.	Would require that the homestead property not be assessed based on fair cash value even after a transfer.
Art. X, § 8C(A) requires that for certain senior citizens homestead property value would be frozen at its value when the homeowner turned 65.	Would require that the homestead property be valued at zero, not at its value when the homeowner turns 65.
Art. X, §§ 9C and 9D provide that voters "shall be entitled" to "authorize a tax levy" for emergency services and waste management services.	Would prohibit voters from authorizing a tax levy on homestead properties and would deny voters the entitlement to authorize a tax on homestead property.

As discussed in the Brief-in-Chief, there are multiple other provisions in the current Constitution that would be violated if IP 455 were deemed to be constitutional.

Proponents' argument, Response Brief at p. 5, that the IP 455 could now cause the meaning of words in the Constitution to change cannot succeed. For example, an argument that "all the taxable property in the district" as used in Article X, § 9, or "real property" as used in Article X, § 8 could somehow morph in meaning so as to not include homestead property cannot succeed. A constitutional provision must be interpreted as understood by the framers and the voters at the time it was adopted. *EOG Res. Mktg., v. State Bd. of Equalization,* 2008 OK 95, ¶ 16; *In re Okla. Capitol Improvement Auth.,* 2003 OK 59, ¶ 17. In *Fent v. Fallin,* 2014 OK 105, ¶ 13, 345 P.3d 1113, the Court explained "[T]he issue becomes what would the ordinary person who voted on the 1992 amendment . . . understand they were approving regarding the generation of State revenue." The Court should honor the will of the voters who adopted the relevant provisions.

III. UNIFORMITY OF TAXATION AND EQUAL PROTECTION

IP 455—which proposes a statute—cannot avoid the tax uniformity requirements of Article X, § 5 and Article V, § 59. Proponents cannot avoid *Cantrell v. Sanders*, 1980 OK 43, *State ex rel. Poulos*, 1982 OK 68, and *Fair School Finance v. Oklahoma,* 1987 OK 114, all of which held that the applicable class under Article X, § 5 was "all real property."

Proponents' response with respect to the 14th Amendment is equally unpersuasive. Proponents cite *Williams Natural Gas v. State Bd. of Education*, 1994 OK 150, 891 P.2d 1219, for the proposition that Oklahoma's classification system "presents no equal protection violation." Response Brief at p.9. However, what *Williams* actually states is that "Oklahoma's classification <u>of railroads and airlines</u> presents no equal protection violation." *Id.* at ¶ 28 emphasis added. *Williams* pointed out that railroads and airlines were different from other public service companies because federal legislation had been passed requiring reduction of the tax burden on railroads and airlines. *Id.* at ¶ 8-10, citing the Railroad Revitalization and Reform Act, 49 U.S.C. § 11503 (1988), and Tax Equity and Fiscal Resp. Act, 49 U.S.C. App. § 1513 (1988). As noted in *Williams,* at ¶ 18, "the Legislature was required to recognize the supremacy of federal law." Nothing similar to the federal legislation at issue in *Williams* has occurred in this case. The Court should continue to follow *Cantrell* and its progeny.

There is no basis to treat a homeowner more favorably than one who rents. In *City of Phoenix v. Kolodziejski,* 399 U.S. 204 (1970), the Court held that it was an equal protection violation for voting on general obligation bonds to be limited to property owners. 399 U.S. at 212-13. The Court recognized that property owners would treat taxes as a business expense and "normally will be able to pass all or a large part of this cost on to the tenants in the form of higher rent." 399 U.S. at 210. The same reasoning should apply in this case.

IV. <u>OTHER ISSUES</u>

1. <u>Loss of Revenue</u>. Proponents' assertion, Response Brief at p. 8, that Protestants "greatly exaggerate the revenue impact of SQ 843" is provided without support and is inaccurate. The fact that an exemption for homesteads will result in a decrease in tax revenue

of over $1.5 Billion per year comes directly from the Oklahoma Tax Commission. The estimate, signed by three OTC officials, was provided as item F in Protestants' Appendix.

2. Forston v. Heisler. Respondents cite *Forston v. Heisler*, 1959 OK 122, 341 P.2d 252, for the proposition that exemptions are distinct from assessment ratios. Response Brief at p. 8. However, *Forston* is irrelevant to this case. *Forston* addressed the right of appeal from a valuation order by the County Board of Equalization. The opinion discusses " right of appeal" or "right to appeal" in paragraphs 0, 3, 4, 9, 10, 11, 12, 14, 16, 17, 18, 21, 23, and 25. The holding in *Forston*, at ¶ 25, was that the County Assessor has a right of appeal. *Forston* does not analyze the relationship between exemptions and assessment ratios.

3. Legislative Action. As discussed in Protestants' Brief in Chief, at p. 11-12, since Article X, § 8 was amended in 1996 to require assessment to be made based on fair cash value, the Legislature has routinely adopted new exemptions through the constitutional amendment procedure. Currently, State Question 847, which would reduce the maximum property tax increase for homesteads, will be on the ballot on November 3 of this year. This exemption too is being pursued by the Legislature through the constitutional amendment procedure. See SJR 39 (2026). Proponents provide no explanation of why the Legislature has proceeded through the constitutional amendment process when it could, under Proponents' theory, simply pass legislation.

V. CONCLUSION

The will of Oklahoma voters adopting Article X, §§ 8, 8B, 8C(A), 8E, 8F, 9(b), 9(c), 9C, and 9D should not be nullified based on Article XII-A adopted in 1936. This Court should continue to follow *City of Guymon*, *Eastern Oklahoma Building Co.*, *Adams*, and *In re Init. Pet. 259*, and hold that the more recent expression of Oklahoma voters controls even if there was not an express repeal clause in the later adopted provisions.

Respectfully submitted,

Robert McCampbell

Robert G. McCampbell, OBA No. 10390
Trisha E. Bunce, OBA No. 36585
GABLEGOTWALS
499 West Sheridan Avenue, Suite 2200
Oklahoma City, Oklahoma 73102
Tel (405) 235-5500 | Fax (405) 235-2875
Email RMcCampbell@Gablelaw.com
TBunce@Gablelaw.com

Attorneys for Protestants/Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of May 2026, a true and correct copy of the above and forgoing was served by first class mail, and email where indicated, as follows:

Micheal D. Reynolds
2609 SW 107th Street
Oklahoma City, OK 73170
Mike@oklahomadata.com

Senator Shane Jett
2313 Augusta Drive
Shawnee, OK 74801
shane.jett@oksenate.gov

Rob Standridge
2600 Technology Place
Norman, OK 73071
Rob.Standridge@gmail.com

Representative Jay Steagall
12504 SW 9th Street
Yukon, OK 73099
jay.steagall@okhouse.gov

Secretary of State's Office
State of Oklahoma
2300 N. Lincoln Blvd., Suite 101
Oklahoma City, OK 73105-4897
amy.canton@sos.ok.gov

Robert McCampbell

Robert G. McCampbell
Trisha E. Bunce