

OIPA challenges GPT petition

Initiative would raise tax on oil and natural gas production by 5%

THE OIPA IS CHALLENGING

a recently filed constitutional amendment that would eliminate the state's two-tiered gross production tax system, resulting in a 250 percent, potentially retroactive, tax increase on the state's oil and natural gas industry.

The OIPA filed two challenges to State Question 795 on Jan. 10 with the state Supreme Court. The court is scheduled to hear oral arguments in the case on March 1.

"The two-tiered gross production tax that starts at 2 percent and moves to 7 percent after 36 months for all new wells in Oklahoma is a key driver in encouraging continued investment in Oklahoma's oil and natural gas fields, and is the reason our state continues to see revenue higher than projections over the past several months," OIPA President Tim Wigley said.

"The oil and natural gas industry is Oklahoma's defining industry and any tax increase, such as the proposed constitutional change, which will hamper investment and have a detrimental effect on the industry and the state economy as a whole is a bad idea."

In its challenges, the OIPA argued that the "gist of the proposition" filed with the Secretary of State is unclear and includes biased language that could impact the decision of potential signers. The OIPA also challenged the state question's language that would make the tax retroactive and maintains that the question, as written, violates the state constitution's single-subject rule.

"Singling out one industry for a constitutionally enacted tax increase is not only unprecedented, it is bad public policy," said OIPA Vice President of Regulatory Affairs A.J. Ferate, who also represents OIPA as an attorney on the filings. "By setting such a precedent, this state question could open

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A.J. FERATE
OIPA V.P. OF REGULATORY AFFAIRS

the door to placing similar tax increases in the constitution on other Oklahoma industries like agriculture, manufacturing or aerospace."

SQ 795 would place an additional 5 percent gross production tax in the Constitution.

There are multiple issues within the language of the initiative that would cause problems, Ferate said.

The language includes the source of the funding and the destination of the funding, which could create conflict in the minds of voters if they support the tax but not the destination, or vice versa.

"Maybe you don't like the tax on oil and gas, but you want to give teachers a pay raise," Ferate said. "That creates a conflict in voters' minds. They should not be required to vote for multiple different items.

"There is case law in existence in which groups have put out multiple state questions to resolve this. For example, with State Question 780 and 781, one created a new mechanism for dealing with the county jail and the other created the funding mechanism. That's the sort of issue we're raising in regard to this single-subject rule."

The second filing relates to the gist of the question. The "gist" is the explanation



Gable Gotwals attorneys Robert McCampbell, right, and Jake Krattiger, along with OIPA Vice President of Regulatory Affairs A.J. Ferate, deliver to the Oklahoma Supreme Court documentation relating to OIPA's challenge of the ballot initiative to raise the gross production tax. Adam Doverspike from the firm's Tulsa office also worked on the filings.

PREPARING THE DEFENSE

on the initiative form that describes the full state question and what it would do if put into effect. The gist is required to be neutral and non-biased and provide enough information about the question to create a full understanding in a voter's mind.

"We've raised six different issues with the existing gist," Ferate said. "There are some significant problems with that. They continue to say 'teachers' will receive a \$4,000 raise, but the truth is all certified personnel in a public school district other than the superintendent will receive that raise. In legal terms, that's a pretty big problem because it's not explanatory enough.

"They also don't explain that the tax they would place on oil and natural gas would actually go into the Constitution. That's a fatal flaw on its own. I think we have put together a package that should at least get serious consideration from the Supreme Court."

The text of the question also contains a scrivener's error that reads the question would go into effect at the date of Article 13, which has been in existence since statehood.

"So that means any wells since statehood, arguably, would be subject to this additional 5 percent tax," unless the error is corrected, Ferate said. "We haven't seen them respond to that yet."

"Whether we ultimately face this measure or not, we have to prepare to face it," Wigley said. "Taking a wait-and-see approach is a fatal mistake."

To that end, OIPA recently conducted a statewide poll to judge voters' views on oil and natural gas and related issues. The poll took the views of 500 voters who voted in at least three of the past four elections.

The poll showed about 55 percent of voters currently support the ballot initiative to raise the gross production tax by 5 percent.

"The age-old rule on ballot measures is, when you're going for a 'yes' vote, if you don't start at around 63-65 percent, it's really hard to pass it," he said. "It's much easier to get 'no' votes than it is to get 'yes' votes.

"And when voters start hearing the messages that this would almost triple the tax on oil and gas, the 'yes' numbers fall down into the 30s."

Respondents overwhelmingly believed the state should tax wind before increasing taxes on oil and natural gas.

"The key there is, a lot of people just don't know that wind is not taxed," Wigley said. "So in all of our messaging, we're trying to drive that home: Why are they not at the table?"

The industry's favorability numbers go up when voters know oil and natural gas is the largest taxpayer in the state and is made up mostly of small companies.

The Oilpatch Proud campaign is designed to show lawmakers and the general public outside the oil and natural gas business just how broadly support for the industry runs.

"Oilpatch Proud" yard signs arrived at the OIPA offices in late January. Along

with bumper stickers, window decals and hardhat stickers, they're available for free to any OIPA member or to their companies. "Oilpatch Proud" T-shirts are for sale to support the campaign.

Contact the OIPA at 405-942-2334 or come by the office at Lincoln Boulevard and Fourth Street in Oklahoma City to pick up the gear to show your Oilpatch Pride. ♠



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