

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

AUG 27 2004

In Re)
LEGISLATIVE REFERENDUM NO. 334,)
STATE QUESTION 711)

MICHAEL S. RICHIE
CLERK

Case No. _____

#101136

APPLICATION TO ASSUME ORIGINAL
JURISDICTION AND PETITION FOR WRIT OF MANDAMUS

COME NOW the Petitioners and state to the Court that:

1. Petitioners challenge Legislative referendum 334 State Question 711 and seek a determination by the Supreme Court of the constitutional validity and legal sufficiency of Legislative Referendum No. 334 State Question No. 711; Petitioners request a ruling by this Court denying and rejecting said proposed State Question, an Order in Mandamus prohibiting the State Election Board from presenting the proposed State Question in its current form on the general election ballot of November 2, 2004, and any other related and appropriate relief as the Court may order;
2. This Court has original jurisdiction concerning this matter pursuant to Okl. Const. Art. 7 Sec. 4, 34 Okl. Stat. §8, and Okl. Sup. Ct. R. 1.194;
3. The Petitioners are all Oklahoma electors and taxpayers.

The Petitioner Terry Gatewood is an openly gay man and is a political activist He

desire to have access to the right of marriage, civil union, domestic partnership, or the incidents of marriage with a member of the same sex..

The Petitioner Keith B. Smith is an openly gay man and is a political activist He desire to have access to the right of marriage, civil union, domestic partnership, or the incidents of marriage with a member of the same sex..

Petitioners John L. Watts III and Darin Moore are a married couple who were married by virtue of a license of the Commonwealth of Massachusetts and who desire to have recognition of their marriage in their adopted state of Oklahoma.

Petitioners Donald J. Chabot and James E. Nimmo are an openly gay couple who have lived in a committed relationship in Oklahoma for more than 28 years. They desire to have the incidents of marriage, marriage, civil union, or domestic partnership.

Petitioners Albert William Martin, Jr., and Annie Beatrice Martin are a married couple who challenge this measure in their capacity as Oklahoma electors.

Petitioners Frances L. McDonald and Donna P. Breman are an openly lesbian couple who have lived in a committed relationship in Oklahoma for more than 25 years. They desire to have the incidents of marriage, marriage, civil union, or domestic partnership.

Petitioners Robin Hazlett and Traci Hazlett are an openly lesbian couple who have lived in a committed relationship in Oklahoma for more than five years. They desire

to have the incidents of marriage, marriage, civil union, or domestic partnership.

They are raising two children.

4. The legislative history of Legislative Referendum 334 State Question 711 is as follows: State Question 711 springs from HB 2259, which was a criminal Act dealing with protecting minors from rape, sodomy and other lewd acts. In the House HB 2259 went through all required readings and emerged from Committee "do pass." The full House passed the bill, upon referral to the Senate it went through the first two readings and came out of Senate Committee with a "do pass recommendation." Throughout this period HB 2259 remained essentially the same bill, with only relatively minor amendments and changes. However, at final (3rd) reading after coming out of Committee in the Senate, a Senator struck the Act in its entirety (except for the title identifying it as a criminal measure) and instead inserted the current Legislative referendum 334 State Question 711 with its alleged "marriage protection content" in its place. No language from the original HB 2259 was retained except as to part of the title, and the Legislative Referendum was never reviewed in committee nor made subject to any normal legislative process with public input. The entire existence of the Legislative Referendum from the first time it was announced or "introduced" by amendment at the last reading in the Senate until it had been approved by both houses, was only one week. During that time it was not read as required by the Oklahoma Constitution, nor subject to any committee or public

oversight.

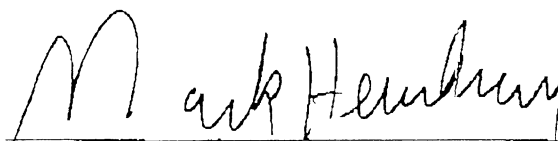
5. The proposed state question in its final form reads deals with a multitude of independent and not necessarily related subjects. One of the major objections raised in this challenge is that the Question is not clear as to exactly what it does do, but at least, without limitation, it deals with the following subjects:

- (a) prohibition of same-sex marriage;
- (b) apparent prohibition of serial marriages;
- (c) apparent prohibition of “common-law” or other unions of “unmarried couples or groups”;
- (d) denial of certain unascertained and undefined “benefits of marriage” to certain citizens including without limitation persons coming under the above referenced and indefinitely described categories;
- (e) denial of certain unascertained and undefined “incidents thereof” to certain citizens including without limitation persons coming under the above referenced and indefinitely described categories;
- (f) denial of recognition and comity as to certain marriages, unions, and “benefits” of “incidents thereof” to persons having been granted certain rights and recognition in other states;
- (g) prohibition of and criminalizing of issuance of marriage license(s) under certain indefinitely described conditions.

6. Petitioners allege that Legislative Referendum 334 State Question 711 is constitutionally invalid and legally insufficient:
- (a) that it is vague, confusing and overbroad;
 - (b) that it embraces more than one general subject;
 - (c) that it is defective and tainted as a result of irregular legislative enactment;
 - (d) that it violates federal and state Due Process and equal Protection Clauses
7. Petitioners have standing as domiciled citizens of Oklahoma and because the enactment of the proposed Constitutional Amendment as set forth in Legislative Referendum 334 State Question 711 would affect upon the Petitioners and other members of the public of Oklahoma

WHEREFORE, Petitioners ask the Supreme Court should assume original jurisdiction, declare the State Question *with its current language and in its current form* as constitutionally invalid under the Oklahoma and United States Constitutions and legally insufficient, and accordingly to issue its Order for a Writ of Mandamus prohibiting the State Election Board from presenting the said Question on the November 2, 2004, general election ballot, and for all such other relief as may be just, lawful and appropriate.

Respectfully submitted this 27th day of August, 2004.



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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the within and foregoing Application to Assume Original Jurisdiction and Petition for Writ of Mandamus was mailed this 27th day of August, 2004, to:

Drew Edmondson, Esq.
Attorney General, State of Oklahoma
State Capitol Building
Oklahoma City, Oklahoma

by depositing it in the U.S. Mails, first class postage prepaid thereon.


MARK HENRICKSEN