

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

SEP - 8 2011

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

SENATOR JIM WILSON,)
)
 Plaintiff,)
v.)
)
 STATE OF OKLAHOMA ex rel. STATE)
 ELECTION BOARD, and)
)
 PAUL ZIRIAX, in his capacity as)
 SECRETARY of the Oklahoma State Election)
 Board;)
)
 Defendants;)
)
 OKLAHOMA STATE SENATE,)
)
 Intervening Defendant.)

Case No. CJ-2011-6249
Judge Lisa T. Davis

OKLAHOMA STATE SENATE'S
MOTION TO INTERVENE AND BRIEF IN SUPPORT

MOTION TO INTERVENE

Oklahoma State Senate, Intervenor, moves for leave to intervene as an additional defendant in this action. This Motion is made pursuant to 12 Okla. Stat. § 2024(A)(2) because Intervenor has a significant interest in the proper application of the Senate Redistricting Act of 2011 in the forthcoming elections, as is contemplated by the unanimous decision of the Oklahoma Supreme Court issued on September 1, 2011. *Wilson v. Fallin*, No. 109652 (Okla. Sup. Ct. Sept. 1, 2011) (Supreme Court Opinion, 2011 OK 76, attached hereto as Exhibit A). Alternatively, this Motion is made pursuant to 12 Okla. Stat. § 2024(B)(2), as common questions of law and fact exist between the claims and defenses the Oklahoma State Senate seeks to assert and the pending matter. Furthermore, intervention will not delay this action or prejudice the rights of the original parties.

BRIEF IN SUPPORT

In support thereof, the Senate states:

1) This action concerns the State Senate redistricting plan to be followed for purposes of the 2012 Oklahoma elections and the State Election Board's ability to properly and timely conduct these elections. The Oklahoma State Senate has an interest in this subject in that the Oklahoma Supreme Court has ruled unanimously that the Senate Redistricting Act of 2011, Enrolled S.B. 821 §§ 2-6, signed by the Governor on May 20, 2011, is constitutional and complies with Okla. Const. Art. V, § 9A. *See* Supreme Court Opinion ¶¶ 0, 1, 20, 22-23. Plaintiff's Petition for declaratory and injunctive relief seeks to have this Court improperly circumvent the Supreme Court's Order, as well as set aside a valid legislative enactment.

2) As set forth in the proposed Motion to Dismiss, this Court lacks jurisdiction over Plaintiff's Petition, as Plaintiff's exclusive remedy for challenging a reapportionment plan lay in the Oklahoma Supreme Court, as provided by Okla. Const. Art. V, §§ 11C and 11D. Moreover, the unanimous Oklahoma Supreme Court already has definitively ruled on the precise issue that Plaintiff raises in this action. In doing so, the Supreme Court expressly noted the State Election Board's need to prepare for the forthcoming elections and denied Plaintiff relief on his claim that the State Senate Redistricting Act of 2011 violates Section 9A.

3) Intervention of Right: The Oklahoma State Senate should be granted leave to intervene as a matter of right because it has an interest that is the subject of the pending proceeding against Defendants. Absent intervention the Senate's interest will not be adequately protected. Okla. Stat. tit. 12 § 2024(A)(2) provides:

A. INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action:

....

(2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest.

"[I]ntervention in an action is mandatory . . . where the intervenor claims an interest relating to the property or transaction which is the subject of the action and the disposition of the action may impair or impede his ability to protect that interest." *Nicholas v. Morgan*, 2002 OK 88, ¶ 20, 58 P.3d 775, 782 (emphasis added). The Oklahoma Supreme Court has described four requirements for a motion to intervene: "(1) the motion to intervene must be timely; (2) the intervenor must claim a significant protectable interest relating to the property or transaction that is the subject of the action; (3) the disposition of the action may, as a practical matter, impair or impeded the applicant's ability to protect its interest; and (4) the existing parties may not adequately represent the applicant's interest." *Brown v. Patel*, 2007 OK 16, ¶ 17, 157 P.3d 117, 124.

4) Permissive Intervention: In the alternative, 12 Okla. Stat. § 2024(B) entitles the Oklahoma State Senate to permissively intervene and provides:

B. PERMISSIVE INTERVENTION. Upon timely application anyone may be permitted to intervene in an action:

....

(2) When an applicant's claim or defense and the main action have a question of law or fact in common.

"Permissive intervention is left to the sound legal discretion of the trial court based upon the nature of the controversy and the facts and circumstances of each case." *Tulsa Rock Co. v.*

Williams, 1982 OK 10, ¶ 5, 640 P.2d 530, 532. Courts liberally construe the "common question" requirement for purposes of permissive intervention. *See, e.g., SEC v. U.S. Realty & Improvement Co.*, 310 U.S. 434, 460 (1940).

5) Unless the Senate is allowed to intervene as an additional defendant, this Court's disposition of the action may as a practical matter impair or impede the Senate's ability to protect its interest in the proper redistricting of the State Senate and in enforcement and application of the Senate Redistricting Act of 2011, 14 Okla. Stat. §§ 80.35 *et seq.* Further, as outlined in the Senate's proposed Motion to Dismiss, the Senate's claims and defenses share complete overlap of factual and legal questions with the main action, as Plaintiff asserts to this Court the same claim he unsuccessfully alleged against the Oklahoma State Senate when he sought relief from the Oklahoma Supreme Court in Case No. 109652.

6) Attached as Exhibit B is a copy of Intervenor's proposed Motion to Dismiss.

WHEREFORE, Intervenor Oklahoma State Senate moves for leave to intervene as an additional defendant in this action.

Respectfully submitted,



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ATTORNEYS FOR INTERVENOR-
DEFENDANT
OKLAHOMA STATE SENATE

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 2011, a true and correct copy of the foregoing was served by first class mail to the following:

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Robert G. McCampbell, OBA # 10390
Elizabeth J. Barnett, OBA #21102

Exhibit A

TAYLOR, C.J.

¶1 This is a proceeding to review the State Senate Redistricting Act of 2011 (the Redistricting Act), Enrolled Senate Bill 821, sections 2 through 6, signed by the Governor on May 20, 2011. Two threshold first impression legal questions are presented: (1) What part, if any, of the apportionment formula in section 9A, Article V of the Oklahoma Constitution¹ remains in effect, and 2) What is the extent of a review proceeding authorized in section 11C, Article V of the Oklahoma Constitution? Our answer to the first question is that the population-based aspect of the apportionment formula in section 9A remains in effect, while the county-based aspect of the apportionment formula is invalid. Our answer to the second question is that the extent of a review proceeding authorized by section 11C is limited by section 11D to a review for compliance with section 9A's population apportionment formula. Having reviewed the filings, contentions, and arguments herein, we determine and hold that the Senate Redistricting Act of 2011 complies with the population apportionment formula in section 9A, Article V of the Oklahoma Constitution.

¶2 Oklahoma State Senator Jim Wilson, a resident of Cherokee County, Oklahoma, filed a petition pursuant to section 11C for review of the Redistricting

¹ All section references are to Article V of the Oklahoma Constitution unless otherwise stated.

Act.² Senator Wilson named as respondents Mary Fallin, the Governor of Oklahoma;³ Kris Steele, the Speaker of the Oklahoma House of Representatives; Brian Bingman, President Pro Tempore of the Oklahoma Senate; and Paul Ziriak, Secretary of the Oklahoma Election Board. As required by section 11C, Senator Wilson filed a proposed apportionment plan that he contends more closely complies with Article V than does the Redistricting Act.

¶3 Senator Wilson alleges that the Redistricting Act does not comply with section 9A because it “fails to create Senate districts which as nearly as possible provide for compactness, political units, historical precedents, economic and political interests.” Senator Wilson does not explicitly identify every district in the Redistricting Act that he contends is not in compliance with section 9A but claims that he has identified such districts by the maps provided in his appendix.⁴ Senator Wilson’s petition prays that this Court direct the Apportionment Commission to modify the Redistricting Act “to achieve conformity with” the Oklahoma Constitution.

² Senator Wilson initiated this proceeding as a qualified elector, not in his official capacity as a state senator. Section 11C, Article V of the Oklahoma Constitution authorizes any qualified elector to petition the Supreme Court for a review of apportionment legislation.

³ The Honorable Mary Fallin, Governor of the State of Oklahoma, moved to be dismissed. The Governor’s motion to dismiss is rendered moot by our resolution of this proceeding.

⁴ Senator Wilson explicitly identifies his senate district 3 as a redrawn district in the Redistricting Act that does not comply with section 9A. Senator Wilson alleges that the Redistricting Act unnecessarily divided three counties in drawing district 3 and removed the heart of the Cherokee Nation from district 3.

¶4 Senator Wilson points out what he considers the primary differences in the Redistricting Act and his proposed apportionment plan. He states that the largest district in the Redistricting Act has 78,943 persons and the largest district in his plan has 78,929 persons—a difference of fourteen persons—⁵ and that the smallest district in both plans has 77,350 persons. Based on a method that compares a district's boundaries to a circle, Senator Wilson posits that the Redistricting Act's average district compactness is 58.9% and that his plan's average district compactness is 65.5%. Senator Wilson points out that the Redistricting Act splits counties eighty times but that his plans split counties only sixty-two times.

¶5 Respondent Paul Ziriaux, Secretary of the Oklahoma State Election Board, filed a preliminary statement, contending that the review of legislative apportionment provided in section 11C is limited in section 11D to a review for “compliance with the formula as set forth in this Article.” Secretary Ziriaux questions whether there is a manageable standard for adjudication of challenges brought under section 11C because a large part of section 9A was declared unconstitutional in *Reynolds v. State Election Bd.*, 233 F.Supp. 323, 329 (W.D.Okla. 1964), and then reinstated in an emasculated form in *Ferrell v. State ex rel. Hall*, 339 F.Supp. 73, 74 (W.D.Okla. 1972). Secretary Ziriaux asks this Court to address whether this proceeding is a

⁵ Based on the 2010 United States census, Oklahoma has a population of 3,751,351 persons. United States Census 2010, 2010 Census Data, <http://2010.census.gov/2010census/data/> (last visited Aug. 2, 2011). Dividing the state's total population by the total senate districts, the ideal senate district would contain 78,153 persons.

superficial contest between the Legislature's redistricting map and Senator Wilson's proposed redistricting map.⁶ Secretary Ziriak urges that this matter be quickly resolved so that his office might adequately prepare for the 2012 election cycle.

¶6 Respondent Brian Bingman, President Pro Tempore of the Oklahoma State Senate, in his recommendations to this Court, also advances threshold issues: what is the proper standard or test for determining whether apportionment legislation complies with Article V as required by section 11D; whether and to what extent section 9A is viable after being declared unconstitutional in *Reynolds v. State Election Bd.* and then declared partially constitutional in *Ferrell v. State ex rel. Hall*; whether population is the only mandatory criterion in section 9A; which issues presented herein are justiciable; and what is the Court's role in this review proceeding. The President Pro Tempore also suggests a procedure for taking evidence in this proceeding, if needed. Respondent Kris Steele, Speaker of the Oklahoma House of Representatives, filed a report adopting the procedure suggested by the President Pro Tempore.

¶7 Responding to the respondents' suggestions, Senator Wilson admits that

⁶ Secretary Ziriak also asks this Court to address whether tribal boundary lines are a proper consideration, particularly since the Cherokee Nation's Indian country is a patchwork quilt collection of trust land and restricted allotments scattered throughout fourteen counties. Because in this special review proceeding before this Court, pursuant to § 11C, art. V, Okla. Const., we conclude that the constitutional apportionment formula must be based on population and that the Redistricting Act complies with the population-based formula, we need not address whether tribal areas or historic precedents should be considered in apportionment.

he is not asserting a claim under the Voting Rights Act, 42 U.S.C. §§ 1973, *et seq.*; states there is no need for a briefing schedule in this proceeding; and opposes any order issued by this Court that would allow the Election Board to prepare for the 2012 election under the Redistricting Act. The President Pro Tempore asks to file a brief on issues relevant to the 2012 election in reply to Senator Wilson.

¶8 We agree with the respondents that we must address, for the first time, the application of sections 9A, 11C, and 11D of the apportionment provisions in Article V of the Oklahoma Constitution. Sections 9A, 10A, and 11A through 11E were added to Article V by State Question 416, Referendum Petition No. 142, adopted at a special election held May 26, 1964. The 1963 Legislature proposed State Question 416 in Senate Joint Resolution No. 4, 1963 Okla. Sess. Laws, p. 736, to establish constitutional reapportionment formulas for both houses. In the joint resolution, the Legislature resolved that county-based apportionment, with consideration given to “the federal analogy, history, economics, custom, territory, and similar and related factors,” was a proper method of providing adequate and fair representation of groups with like political, social, and economic interests and of avoiding divesting segments of the population of their representation.

¶9 Section 9A provides for forty-eight state senate districts to be based on the most recent federal decennial census. It provides that each of the nineteen most populous counties constitutes a senate district and the fifty-eight less populous counties be joined into twenty-nine two-county districts. It further provides that

population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other factors are to be considered to the extent feasible in apportioning the state senate. Section 9A fixes the term of the senate office as four years with one-half of the senators elected at each general election.

¶10 Section 11C authorizes any qualified voter to petition the Supreme Court for review of any apportionment by the Legislature or the Apportionment Commission⁷ within sixty days from the filing thereof. It provides that the petition must set forth a proposed apportionment more nearly in accordance with Article V and requires that the review petition be given precedence over other cases pending before the Supreme Court. Section 11D directs that this Court “shall determine whether or not the apportionment order of the Commission or act of the legislature is in compliance with the formula as set forth in this Article. . . .” Section 11D further directs the Supreme Court to remand the matter to the Apportionment Commission if the Court determines that the apportionment order or act is not in compliance with the formula as set forth in Article V.

¶11 When the county-based apportionment formula in section 9A was

⁷ Section 11A establishes the Apportionment Commission and provides for it to act whenever the Legislature refuses to make the apportionment within ninety legislative days after convening the first regular session of the Legislature following the Federal Decennial Census. Amended in 2010, a seven member Bipartisan Commission on Legislative Apportionment replaced the Apportionment Commission. State Question 748, Legislative Referendum 349, adopted November 2, 2010.

submitted to a vote of the people, many states' legislative districts were based on units of local government and rural/urban distinctions. Several states, including Oklahoma, had failed to reapportion and redistrict for decades. Many states were involved in litigation challenging the legislative apportionment. The state courts had declined to resolve apportionment complaints, considering them to be nonjusticiable political matters, and many state apportionment schemes were challenged in federal court. Then the United States Supreme Court handed down its opinion in *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962), abandoning the established rule that legislative apportionment and congressional districts are purely legislative or political matters. *Baker v. Carr* determined that the Tennessee voters presented a justiciable claim under the Equal Protection Clause of the Fourteenth Amendment. Three decades later, the United States Supreme Court made it clear that state courts may exercise jurisdiction over legislative apportionment and that federal courts should defer to state action over questions of state apportionment by state legislatures and state courts. *Grove v. Emison*, 507 U.S. 25, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1993).

¶12 Two years after *Baker v. Carr*, the opinion in *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), determined the standard for implementing *Baker v. Carr*. In *Reynolds v. Sims*, Alabama residents and taxpayers alleged that the state legislature had failed to reapportion since the beginning of the twentieth century, that the apportionment among the counties was uneven, and that

the voters were victims of serious discrimination under the Equal Protection Clause of the Fourteenth Amendment and the Civil Rights Act, 42 U.S.C. § 1983. Recognizing that the right to vote is fundamental in our free and democratic society, the *Reynolds* opinion focused on the impermissible impairment of the constitutionally protected right to vote. The *Reynolds* opinion determined that population, and not location, must be the controlling criterion for judgment in legislative apportionment controversies, 377 U.S. at 568, 84 S.Ct. at 1384, and held that “as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis.” *Id.* The *Reynolds* opinion concluded that an apportionment plan based on political subdivisions of the state is impermissible under the Equal Protection Clause. 377 U.S. at 576, 84 S.Ct. at 1389. Emphasizing that the overriding objective of apportionment must be substantial equality of population so that each vote is equal in weight to every other vote, the *Reynolds* opinion recognized that some deviation in population may be permissible, but factors such as history and economic or group interests may not be used to justify population disparities or to stray from the equal-population or one-man-one-vote principle. 377 U.S. at 579-580, 84 S.Ct. at 1391. Rejecting any apportionment scheme not controlled by population,⁸ the *Reynolds*

⁸ In addition to *Reynolds*, in 1964, the Supreme Court struck down the legislative apportionment of several other states, such as Maryland in *Maryland Comm. for Fair Representation v. Tawes*, 377 U.S. 656, 84 S.Ct. 1429, 12 L.Ed.2d 595 (1964); Virginia in *Davis v. Mann*, 377 U.S. 678, 84 S.Ct. 1441, 12 L.Ed.2d 609 (1964); and Colorado in *Lucas v. Forty-Fourth General Assembly*, 377 U.S. 713, 84 S.Ct. 1459, 12 L.Ed.2d 632

opinion explained that it makes no difference under the Equal Protection Clause whether the apportionment scheme is established by statute or state constitution. 377 U.S. at 584, 84 S.Ct. at 1393.

¶13 Oklahoma had been involved in apportionment litigation before a three-judge panel in the federal district court for several years when the United States Supreme Court handed down its opinion in *Reynolds v. Sims*. In light of *Reynolds v. Sims*, the three-judge panel ruled that the legislative apportionment provisions in section 9A are null and void. *Reynolds v. State Election Bd.*, 233 F.Supp. 323 (1964). The three-judge panel specifically left standing only the provision in section 9A that established the forty-eight senatorial offices with the four-year terms and the provision that one-half of the senatorial offices will be elected every two years. 233 F.Supp at 329. The three-judge panel further ruled that the provisions in sections 11A through 11E, establishing the Apportionment Commission and providing for Supreme Court review and exercise of original jurisdiction, do not conflict with the federal constitution and are valid. *Id.* In 1972, another three-judge panel in *Ferrell v. State of Oklahoma*, 339 F.Supp. 73, 76 (1972), reconsidered the validity of the provisions in section 9A and ruled that it is permissible, but not

(1964), for failing to be population-based contrary to the Equal Protection Clause of the Fourteenth Amendment. Also, the *Reynolds* opinion noted that suits had been instituted challenging the apportionments in thirty-four states, 84 S.Ct. at 1378-1379, n. 30, and that it had remanded several cases to the courts below for reconsideration in light of *Baker v. Carr*, listing *Scholle v. Hare*, 369 U.S. 429, 82 S.Ct. 910, 8 L.Ed.2d 1 (challenging a Michigan apportionment), and *WMCA, Inc. v. Simon*, 370 U.S. 190, 82 S.Ct. 1234, 8 L.Ed.2d 430 (challenging a New York apportionment).

mandatory, for the Legislature to consider the factors of compactness, area, political units, historical precedents, economic and political interests, and contiguous territory set out in section 9A in apportioning legislative districts. As will be discussed, we reach a conclusion that is similar in several respects to the conclusions reached in *Reynolds v. State Election Bd.* and *Ferrell v. State of Oklahoma*.

¶14 Although we have discussed the apportionment provisions of Article V in deciding a challenge to congressional redistricting, *Alexander v. Taylor*, 2002 OK 59, 51 P.3d 1204, this is the first time, since its adoption, we have addressed the validity and meaning of the language in sections 9A, 11C, and 11D of Article V. We construe the relevant constitutional provisions mindful of the general rules that a constitutional provision must be construed and applied according to the intent of the people adopting the provision, and absent ambiguity, the intent must be determined from the language. *Okla. Elec. Coop., Inc. v. Okla. Gas and Elec. Co.* 1999 OK 35, ¶7, 982 P.2d 512, 514.

¶15 As to section 9A, it is clear that the county-based apportionment formula is rendered a nullity by the basic constitutional standard that state legislative districts must be based on equality in the total population under the Equal Protection Clause of the Fourteenth Amendment and *Reynolds v. Sims*, 377 U.S. at 533, 84 S.Ct. at 1362, and its progeny. There is no doubt that the voters intended "compactness, area, political units, historical precedents, economic and political interests, and contiguous territory" in section 9A to require that local interests be considered in

pairing the lesser-populated counties. However, *Reynolds v. Sims* teaches that if “divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviation from the equal-population principle are constitutionally permissible. . . .”⁹ 377 U.S. at 579, 84 S. Ct. at 1391. While the language defining the county-based aspect of the apportionment formula must be severed, the other provisions in section 9A can be left standing.

¶16 The presumption that legislation is constitutional and should be sustained against challenge where it is possible to do so applies to constitutional provisions. *Local 514 Transport Workers Union of America v. Keating*, 2003 OK 110, ¶15, 83 P.2d 835, 839. Where, as here, state constitutional language is contrary to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the invalid language should not nullify the valid provisions, *City of Spencer v. Rayburn*, 1971 OK 38, ¶6, 483 P.2d 735, 737, if they are severable. *Elk City v. Johnson*, 1975 OK 97, ¶12, 537 P.2d 1215, 121. Unless we determine that the valid provisions are dependent upon and inseparably connected to the invalid

⁹ We note that the United States Supreme Court has recognized some flexibility in drawing state legislative districts based on equality in the total population. *Abate v. Mundt*, 403 U.S. 182, 91 S.Ct. 1904, 29 L.Ed.2d 399 (1971). In doing so, the Court rejected application of local interests to justify deviations from population for apportionment of state legislative districts. The Court recognized that “deviations from population equality must be justified by legitimate state interests” and that “state interests offered to justify deviations from population equality” must be carefully scrutinized. 403 U.S. at 185, 91 S.Ct. at 1906-1907.

provision or that the valid provisions standing alone are incomplete and incapable of being executed, they are severable. 75 O.S.2001, § 11a; *In re Application of Okla. Dept. of Transp.*, 2002 OK 74, ¶27, 64 P.3d 546, 553.

¶17 The invalid language defining the county-based apportionment formula is presumed to be severable, *In re Application of Okla. Dept. of Transp.*, at ¶31, and no party argues otherwise. Accordingly, we find the language defining the county-based apportionment formula in section 9A to be severable without the necessity of a severability analysis.

¶18 The remaining language in section 9A provides a population appropriation formula for apportioning senate districts. A population apportionment formula necessarily requires equality in the state's total population so that the forty-eight senate districts have only minimal deviation from the ideal district population determined by the most recent Federal Decennial Census. However, we recognize that local interest factors such as compactness, political units, and economic and political interests are considered under the totality of the circumstances principle in racially-motivated gerrymander and minority-vote dilution claims under the federal Voting Rights Act, 42 U.S.C. §§ 1973, *et seq.*, which are not presented herein.

¶19 The opinions in *Reynolds v. Sims* and its progeny do not affect sections 11C and 11D. Notwithstanding, we consider sections 11C and 11D because they control this proceeding. Section 11C reads:

Any qualified elector may seek a review of any apportionment

order of the Commission, or apportionment law of the legislature, within sixty days from the filing thereof, by filing in the Supreme Court of Oklahoma a petition which must set forth a proposed apportionment more nearly in accordance with this Article. Any apportionment of either the Senate or the House of Representatives, as ordered by the Commission, or apportionment law of the legislature, from which review is not sought within such time, shall become final. The court shall give all cases involving apportionment precedence over all other cases and proceedings; and if said court be not in session, it shall convene promptly for the disposal of the same.

Section 11D reads:

Upon review, the Supreme Court shall determine whether or not the apportionment order of the Commission or act of the legislature is in compliance with the formula as set forth in this Article and, if so, it shall require the same to be filed or refiled as the case may be with the Secretary of State forthwith, and such apportionment shall become final on the date of said writ. In the event the Supreme Court shall determine that the apportionment order of said Commission or legislative act is not in compliance with the formula for either the Senate or the House of Representatives as set forth in this Article, it will remand the matter to the Commission with directions to modify its order to achieve conformity with the provisions of this Article.

¶20 Reading section 11C in conjunction with section 11D,¹⁰ the review proceeding in this Court authorized in section 11C is limited to a claim that the apportionment does not comply with the population formula in section 9A. Section 11C contemplates that the petitioning qualified voter will demonstrate in the proposed apportionment 1) where the challenged apportionment does not comply with section 9A's apportionment formula and 2) where the proposed apportionment

¹⁰ General rules of statutory construction are used in construing the constitution such as the rule that provisions in *pari materia* should be construed together. *Cowart V. Piper Aircraft Corp.*, 1983 OK 66, ¶4, 665 P.2d 315, 317.

is more nearly in accordance with section 9A's apportionment formula. Section 11D contemplates that this Court will consider the petition, the proposed apportionment, and the challenged apportionment legislation for compliance with Article V as a matter of law. Our reading of sections 11C and 11D leaves the fact-intensive challenges to legislative apportionment and congressional districts, such as racially-motivated gerrymander claims, minority-vote dilution claims, and other voter discrimination claims under the Equal Protection Clause of the Fourteenth Amendment or the Voting Rights Act, 42 U.S.C. §§ 1973 *et seq.*, to the plenary jurisdiction of the district courts.

¶21 In his initial filings, Senator Wilson asked for evidentiary and briefing schedules, asserting that no deference may be given to the senate districts in the Redistricting Act and that the respondents must bring forth evidentiary support for the districts. This assertion is incorrect. Every statute is presumed constitutional. *Local 514 Transport Workers Union of America v. Keating*, 2003 OK 110, ¶15, 83 P.3d 835, 839. We treat the State Senate Redistricting Act of 2011 in Enrolled Senate Bill 821 at sections 2 through 6, to be codified as sections 80.35 through 80.35.4 of Title 14 of the Oklahoma Statutes, as valid statutes until their nonconformity to the constitution is clearly shown. *TXO Production Corp. v. Oklahoma Corp. Comm.*, 1992 OK 39, ¶7, 829 P.2d 964, 968. Further, the cases Senator Wilson relied on, *United States v. Village of Port Chester*, 704 F.Supp.2d 411(S.D.N.Y. 2010), and *Hunt v. Cromartie*, 526 U.S. 541, 119 S.Ct. 1545, 143

L.Ed.2d 731 (1999), are inapposite. *Village of Port Chester* was a vote dilution challenge to local legislative districts brought on behalf of the Hispanic vote under the federal Voting Rights Act. In that case, the federal district court considered the list of factors set out by the Senate Judiciary Committee as guideposts in the broad-based inquiry of the totality of the circumstances under the Voting Rights Act. *Hunt* was a challenge to racially-motivated gerrymander in drawing a North Carolina congressional district. In *Hunt*, the United States Supreme Court recognized that assessing motive requires the court to inquire into all available circumstances and evidence. This case does not present, and in section 11C review proceedings we do not consider, minority-vote dilution claims or racially-motivated gerrymander claims, nor do we assess legislative motive.¹¹

¶22 Turning to the challenge to the Redistricting Act, Senator Wilson effectively agrees that the apportionment therein is based on population, but he complains that it was drawn with little or no regard for compactness and local political and economic interests. Senator Wilson admits that the district with the most population (78,943) in the challenged act includes only fourteen more people than his most populous district with 78,929. He also admits that the least populous district in both the challenged act and his proposed plan has 77,350 people. Senator Wilson makes no showing that the challenged act does not comply with the

¹¹ We hereby deny Senator Wilson's motion for a briefing schedule and evidentiary hearing, even though after filing the motion, he admitted there was no need for a briefing schedule.

population formula in section 9A.

¶23 We conclude that the population apportionment formula set out in section 9A, Article V, Oklahoma Constitution, remains in effect. We also conclude that a review proceeding authorized by section 11C, Article V, Oklahoma Constitution, is limited by section 11D, Article V, Oklahoma Constitution, to a review for compliance with the population apportionment formula set out in section 9A, Article V, Oklahoma Constitution, as a matter of law. We find the petitioner has failed to clearly demonstrate that the presumed constitutional State Senate Redistricting Act of 2011 does not comply with section 9A, Article V of the Oklahoma Constitution. We determine and hold that the State Senate Redistricting Act of 2011 complies with the population apportionment formula set out in section 9A, Article V of the Oklahoma Constitution.

**STATE SENATE REDISTRICTING ACT OF 2011 COMPLIES WITH
SECTION 9A, ARTICLE V, OKLAHOMA CONSTITUTION.**

Taylor, C.J., Colbert, V.C.J., (by separate writing), and Kauger, Watt, Winchester, Edmondson, Reif, Combs, and Gurich, JJ., concur.

2011 OK 76
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Senator Jim Wilson,)
)
Petitioner,)
)
v.) No. 109,652
) For Official Publication
Mary Fallin, Governor of the State of)
Oklahoma, Kris Steele, Speaker of)
the Oklahoma House of)
Representatives, Brian Bingman,)
President Pro Tempore of the)
Oklahoma State Senate, Paul Ziriaux,)
Secretary of the Oklahoma State)
Election Board,)
)
Respondents.)

CLERK

COLBERT, V.C.J., with whom Watt, Combs, and Gurich, JJ. join, concurring

¶ 1 By an election held May 26, 1964, the people of Oklahoma added a formula for redistricting in Section 9A of Article V of the Oklahoma Constitution. The formula provided for nineteen Senate districts with one Senator from each of the most populous counties along with twenty-nine two-county districts from the fifty-eight less populous counties. It also listed several social, geographic, and political factors to be considered by providing that “[i]n apportioning the State Senate, consideration shall be given to population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other major factors, to the extent feasible.” Okla. Const. Art. V, § 9A.

¶ 2 Less than one month after that election, the United States Supreme Court handed down Reynolds v. Simms, 377 U.S. 533 (1964), which established that in order to pass constitutional muster, population rather than location must be the predominate consideration in the apportionment of electoral districts. Reynolds specifically rejected an approach in which population is the only factor, noting that “[m]athematical exactness or precision is hardly a workable constitutional requirement.” 377 U.S. at 577. The Reynolds Court acknowledged the legitimate function of such factors as compactness, area, political units, historical precedents, and economic and political interests when it stated:

A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering. . . . Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State.

Id. at 578-579.

¶ 3 By today’s decision, this Court strikes only the county-based aspect of the Section 9A formula to meet the requirement of Reynolds that population be the controlling criterion in evaluating a redistricting plan. The remaining “population apportionment formula” includes the Section 9A factors of “compactness, area, political units, historical precedents, economic and political interests, contiguous

territory, and other major factors.”

¶ 4 Today’s decision recognizes that factors other than population can be the tool for achieving voter equality as well as the tool for its circumvention. The problem is not in the tool. Rather it is in its application. That is why those factors continue to be utilized by states in their constitutional and statutory redistricting schemes¹ and by state and federal courts in evaluating whether a redistricting plan unconstitutionally furthers invidious discrimination. See, e.g., Voinovich v. Quilter, 507 U.S. 146 (1993)(applying several of the factors listed in Section 9A to a claim of racial gerrymandering). The proper focus of redistricting and judicial review of redistricting plans is voter equality rather than mathematical uniformity of population among the districts because “the achieving of fair and effective representation for all citizens is . . . the basic aim of legislative apportionment.” Reynolds, 377 U.S. at 565-566.

¶ 5 In this matter, no claim of gerrymandering based on race or economic status has been asserted. The claim is that political gerrymandering was involved in the redistricting. In 2004, the United States Supreme Court in Vieth v. Jubelirer, 541 U.S. 267, held all claims of political gerrymandering to be nonjusticiable in federal court because no judicially discernable and manageable

¹ New Jersey, for example, has a special commission to establish Congressional redistricting. N.J. Const. Art.II, § 2. Iowa has very specific protections against gerrymandering. Iowa’s redistricting standards mandate the use of a set of factors that include population, compactness, area, political units, political interests, and contiguous territory. Iowa Code § 42.4.

standards for adjudicating such claims exist. The clear implication of Vieth is that if a state court has judicially discernable and manageable standards, it is justified in adjudicating claims of political gerrymandering. Those standards, however, are derived from a states statutory and/or constitutional scheme for redistricting. By contrast, claims of racial or economic gerrymandering are subject to strict scrutiny under the 14th Amendment.

¶ 6 In this political gerrymandering claim, the problem is that the fact specific factors listed in Section 9A are not sufficient to provide discernable and manageable standards by which this Court may adjudicate a claim of political gerrymandering in an Article V, Section 11C review proceeding. However, the factors are sufficient to guide the District Court in making the fact determinations necessary to determine whether political gerrymandering has occurred or whether some form of voter discrimination has been perpetrated in contravention of the 14th Amendment or the Voting Rights Act.

Exhibit B

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

SENATOR JIM WILSON,)	
)	
Plaintiff,)	
)	
v.)	Case No. CJ-2011-6249
)	Judge Lisa T. Davis
STATE OF OKLAHOMA ex rel. STATE)	
ELECTION BOARD, and)	
)	
PAUL ZIRIAX, in his capacity as)	
SECRETARY of the Oklahoma State Election)	
Board;)	
)	
Defendants;)	
)	
OKLAHOMA STATE SENATE,)	
)	
Intervening Defendant.)	

**INTERVENOR DEFENDANT'S
MOTION TO DISMISS AND BRIEF IN SUPPORT**

MOTION TO DISMISS

Intervenor Defendant Oklahoma State Senate hereby moves to dismiss Plaintiff Senator Jim Wilson's Petition for injunctive and declaratory relief, pursuant to 12 Okla. Stat. § 2012(B)(1).

This Court lacks subject matter jurisdiction over this action for three reasons:

1. The exact same claim by this Plaintiff has already been determined by the Oklahoma Supreme Court, and the Supreme Court's exercise of jurisdiction and resolution of Plaintiff's challenge divests this Court of jurisdiction to hear a relitigation of the same claim.

2. The Plaintiff asserts a claim that the State Senate Redistricting Act of 2011 is in violation of Article V, § 9A, but the exclusive forum for that claim is an original jurisdiction proceeding in the Supreme Court, not an action in district court. (The Plaintiff, of course, has already pursued his exclusive remedy before the Supreme Court and lost.)

3. A claim that apportionment legislation violates Article V of the Oklahoma Constitution can be brought only within a mandatory time limit of sixty (60) days from that legislation being signed into law. Oklahoma Constitution Article V, § 11C. Although the Plaintiff's first action was within the sixty-day period, the instant case was filed after the sixty-day limit had passed.

Plaintiff's Petition constitutes an improper attempt to circumvent the Supreme Court's unanimous and unfavorable ruling against Plaintiff and to seek further review of a challenge that already has been definitively and finally resolved by the Oklahoma Supreme Court. The instant case should be dismissed.

BRIEF IN SUPPORT

I. The Plaintiff Has Already Litigated and Lost

On July 7, 2011, Plaintiff filed his first challenge to the Senate Redistricting Act of 2011 (the "2011 Act") in the Oklahoma Supreme Court, alleging that the Act fails to comply with Okla. Const. Art. V, § 9A (Okla. Sup. Ct. Case No. 109652). (Supreme Court Opinion, attached as Ex. A to Motion to Intervene). The Oklahoma Supreme Court severed one provision of Section 9A as unconstitutional (a ruling not at issue here) and then unanimously denied Plaintiff relief on his claim, expressly holding that the 2011 Act complies with the remaining, constitutional portion of Section 9A. Supreme Court Opinion ¶¶ 0, 1, 20, 22-23.

The claim asserted in the instant case is the same claim asserted before the Supreme Court:

Claim in This Court:

"Said apportionment act does not comply with Okla. Const. art V, § 9(A)"

Dist. Ct. Pet. ¶ 4.

Claim in Oklahoma Supreme Court:

"Said apportionment act does not comply with Okla. Const. art V, § 9(A)"

Appl. to Assume Original Jurisdiction & Pet. to Review Apportionment of the Okla. State Senate ¶ 4.

The Supreme Court unanimously and explicitly rejected the Plaintiff's claim:

Claim in This Court:

"Said apportionment act does not comply with Okla. Const. art V, § 9(A)"

Dist. Ct. Pet. ¶ 4.

Unanimous Opinion of the Oklahoma Supreme Court:

"This Court finds that the petitioner has failed to show that the State Senate Redistricting Act of 2011 does not comply with the provisions of section 9A." ¶ 0

"State Senate Redistricting Act of 2011 complies with Section 9A, Article V, Oklahoma Constitution." ¶ 0

"State Senate Redistricting Act of 2011 complies with Section 9A, Article V, Oklahoma Constitution." ¶ 23

This Court, of course, lacks jurisdiction to relitigate matters decided by the Supreme Court. *Reynolds v. Dist. Ct. of Washington Cnty.*, 1946 OK 355, ¶ 13, 177 P.2d 830, 832 (noting that "after the Supreme Court definitely and explicitly decides issues in controversy and renders its judgment" "the trial court is without authority to review the record, opinion, or judgment of the Supreme Court"); *Welch v. Welch*, 1936 OK 311, ¶ 0, 58 P.2d 896, 897 ("When this court in a former appeal definitely and explicitly decides the issues in controversy . . . the trial court is thereafter without authority . . . to enter a judgment contrary to such decision."). *Porter v. Oklahoma City*, 1968 OK 144, supp. op. ¶ 15, 446 P.2d 384, 396 ("It is a rule of this jurisdiction that where this court has once determined the issues arising out of a transaction the same issues may not thereafter be presented to a court of lesser jurisdiction where the probable result of such subsequent litigation would be an

intolerable conflict between this court's opinion and the decision of the court of lesser jurisdiction.").

II. The Supreme Court Has Exclusive Jurisdiction to Determine Whether Apportionment Legislation Violates Article V, Okla. Const.

Plaintiff had sought review of the 2011 Act pursuant to the mechanism prescribed in Article V of the Oklahoma Constitution. Sections 11C and 11D provide in relevant part:

Any qualified elector may seek a review of any ... apportionment law of the legislature, **within sixty days** from the filing thereof, **by filing in the Supreme Court of Oklahoma** a petition which must set forth a proposed apportionment more nearly in accordance with this Article.

Upon review, **the Supreme Court shall determine** whether or not the ... act of the legislature is in compliance with the formula as set forth in **this Article** ...

Okla. Const. Art. V, §§ 11C and 11D (emphasis added).

The responsibility for determining the 2011 Act's compliance with Article V is vested by law in the Supreme Court alone. The Oklahoma Constitution and Statutes provide no other method for a plaintiff to advance a claim that an apportionment act fails to comply with Article V, § 9A than through review in the Oklahoma Supreme Court. Plaintiff himself acknowledged that Section 11C "places exclusive jurisdiction" over challenges to apportionment acts in the Oklahoma Supreme Court; "the controlling standard is the Oklahoma Constitution." Okla. Sup. Ct. Preliminary Br. 2, 5 (emphasis added) (attached hereto as Ex. B-1); Okla. Sup. Ct. Appl. (attached hereto as Ex. B-2). Plaintiff noted in his Application and Preliminary Brief, both requesting that the Oklahoma Supreme Court assume original jurisdiction over his reapportionment challenge, that the Supreme Court's jurisdiction over a challenge to an apportionment plan is expressly provided by Section 11C, and the Supreme Court's jurisdiction over such a review is "mandatory."

Plaintiff therefore has exercised fully his sole and exclusive remedy to challenge the 2011 Act's compliance with Article V, § 9A. The Oklahoma Supreme Court assumed original jurisdiction, examined the merits of the case, and held that the 2011 Act complied with Article V of the Oklahoma Constitution. Supreme Court Opinion ¶ 20.

Plaintiff cites the Supreme Court Opinion (as a whole) and Okla. Const. Article II, § 6 for the proposition that jurisdiction properly lies in this court. Neither of these, however, support this Court's exercise of subject matter jurisdiction over this case. First, nowhere in the Opinion did the Supreme Court suggest that a district court would have subject matter jurisdiction over a hypothetical petition brought by the same challenger, making the same claim, and attempting to bypass that Court's unanimous ruling on that issue. Nowhere did the Supreme Court suggest that a person dissatisfied with apportionment legislation is entitled to multiple, independent actions to assert a violation of Article V, § 9.

Article II, § 6 does not provide a basis for subject matter jurisdiction over Plaintiff's Petition in this court. While Section 6 provides the courts of this State with broad powers to fashion remedies, this provision cannot supply a justiciable case or controversy here, where the Constitution prescribes that the sole jurisdiction for an Article V, § 9A challenge lies outside of the district court. The jurisdiction of Oklahoma district courts is limited to "justiciable matters." Okla. Const. Art. VII, § 7. Because jurisdiction over a Section 9A constitutional challenge lies exclusively in the Oklahoma Supreme Court, Plaintiff's cause of action is not justiciable in this court. Plaintiff cannot attempt to bypass that forum, ignore its determination, and again raise his arguments here.

To be sure, the Opinion of the Court discusses the notion that some claims not arising under Article V could be brought at the district court level. At most, the Supreme Court

indicated that the state district courts may have jurisdiction over certain voter discrimination claims, which Plaintiff undisputedly does not assert here. "[F]act-intensive challenges to legislative apportionment and congressional districts, such as racially motivated gerrymander claims, minority-vote dilution claims, and other voter discrimination claims under the Equal Protection Clause of the Fourteenth Amendment or the Voting Rights Act, 42 U.S.C. §§ 1973 *et seq.* [are left] to the plenary jurisdiction of the district courts." Opinion of the Court ¶ 20. In this case, however, the Plaintiff has not asserted a fact-intensive claim under "the Equal Protection Clause of the Fourteenth Amendment or the Voting Rights Act."

Although the Plaintiff may argue that some dicta from the concurring opinion indicate that further litigation may be appropriate, the Opinion of the Court shows otherwise. As written in 1964, Article 9A is unquestionably unconstitutional under the one person -- one vote principle. The Opinion of the Court examines *Reynolds v. Sims*, 377 U.S. 533, (1964); *Reynolds v. State Election Board*, 233 F. Supp. 323 (W.D. Okla. 1964) and *Ferrell v. State of Oklahoma*, 339 F. Supp. 73 (W.D. Okla. 1972) to analyze how much of Section 9A has survived. As the Opinion of the Court explains, population equality is now the controlling constitutional consideration. For example, the Opinion of the Court notes that in *Ferrell* the court construed Section 9A to read that it is "permissible, **but not mandatory** for the Legislature to consider factors of compactness, area, political units, historical precedents, economic and political interests, and contiguous territory set out in Section 9A in apportioning legislative districts." Opinion of the Court ¶ 13 (emphasis added). The Opinion of the Court then explains that the Court reaches a conclusion similar to the conclusions reached in *Ferrell*. *Id.* ¶ 13.

Following the analysis of *Reynolds v. Sims*, *Reynolds v. State Election Board*, and *Ferrell*, the Opinion of the Court explains in paragraph 18 that a population formula is all that is left for consideration in Section 9A and that although factors such as political units, economic interests, etc. can be relevant in certain claims, none of those claims are presented in this case.

The remaining language in section 9A provides a population appropriation formula for apportioning senate districts. A population apportionment formula necessarily requires equality in the state's total population so that the forty-eight senate districts have only minimal deviation from the ideal district population determined by the most recent Federal Decennial Census. However, we recognize that local interest factors such as compactness, political units, and economic and political interests are considered under the totality of the circumstances principle in racially-motivated gerrymander and minority-vote dilution claims under the federal Voting Rights Act, 42 U.S. C. 1973 et seq., **which are not presented herein.**

Emphasis added.

In summary, Plaintiff asserts only a claim under Article V, § 9 of the Oklahoma Constitution and the Constitution places exclusive jurisdiction for that claim with the Supreme Court.

III. Even Presuming Plaintiff Could Bring This Challenge In This Court, the Petition Is Untimely Filed Now That 60 Days Have Passed.

Even presuming (a) that the Plaintiff had not already litigated his claim under Article V, § 9A, and (b) that Plaintiff was not limited by Section 11C to bringing his challenge before the Oklahoma Supreme Court, a petition for review of an apportionment law under Article V must be filed "within sixty days" of the law's filing; if "review is not sought within such time," the law "shall become final." Okla. Const. Article V, § 11C. The 2011 Act was signed into law on May 20, 2011, and thus the sixty-day deadline to file a challenge has long since passed.

Time limits are mandatory. *Henderson v. Maley*, 1991 OK 8, ¶ 28, 806 P.2d 626, 634. It is well established in Oklahoma that courts cannot extend statutory filing deadlines—there are no exceptions to meeting the statutory requirements for invoking a court's jurisdiction. 12 Okla. Stat. § 2006(B)(2) (a court "may not extend the time set forth in this title" for taking an appeal, seeking a new trial, or "to correct, open, modify, vacate or reconsider a judgment, decree, or appealable order"); 12 Okla. Stat. § 990A.

For example, the deadline for filing an appeal is jurisdictional—neither the Oklahoma Supreme Court nor the district courts can extend that deadline to permit an appeal to proceed if commenced once the prescribed period has passed. Failure to file within the statutory time is "fatal" and requires dismissal. *Stites v. DUIT Constr. Co.*, 1995 OK 69, ¶¶ 25, 28, 903 P.2d 293, 298 ("One cannot justify postponing an appeal by one's good-faith belief in the decision's invalidity."); *Hargrave v. Tulsa Bd. of Adjustment*, 2002 OK 73, ¶¶ 10-11, 55 P.3d 1088, 1092 (affirming dismissal for lack of subject matter jurisdiction due to fatal failure to properly file within time limit fixed by statute and city ordinance). Here, because the sixty day requirement is constitutional, it must be viewed as a jurisdictional mandate.

Another analogy would be an attack on an initiative petition. By statute, a protest of the constitutionality of a petition in the context of initiative petitions and referendums must be asserted by means of filing an original action before the Supreme Court, to which the Supreme Court is required to give priority. *See* 34 Okla. Stat. § 8(B), (C); Sup. Ct. R. 1.194. Analogous to Section 11C, a failure to timely file a protest under the statute will render "final" the Secretary of State's declaration of apparent sufficiency or insufficiency of the petition. *Covey v. Williamson*, 1953 OK 389, ¶ 3, 265 P.2d 457, 458.

The sixty-day limit on bringing a challenge that appointment legislation violates Article V is critically important because of the State's interest in finality for redistricting. The State has a profound interest in knowing what the district lines will be. Voters need to know where to vote; potential candidates need to know which Senate district they live in; Election officials need to prepare and fulfill their statutory duties. In this particular case, those issues are paramount. As has been explained by Paul Ziriak, Secretary of the State Election Board, because filing for office must occur in April of 2012, because the residency requirement is six months in advance of filing (October of 2011), and because the precinct lines have to be drawn knowing where the State Senate district lines are, the State Election Board needs to start drawing precinct lines now in order to avoid chaos and confusion in the primary and general election cycle of 2012.

In this case, of course, the system under the Oklahoma Constitution worked. The Plaintiff brought a claim that the Redistricting Act violated Article V of the Oklahoma Constitution within sixty days, and the Supreme Court promptly ruled on that claim. To allow the Plaintiff to not only relitigate but to initiate a duplicative case after the sixty-day requirement has expired and to inject uncertainty into the electoral process is precisely what the language of Article V guards against.

CONCLUSION

The Court should address these jurisdictional issues at the outset of this case for two reasons. First, at a Democratic Party meeting in Tulsa on August 12, 2011, Senator Wilson explained his actual intent in challenging the Redistricting Act:

"They want to know what Jim Wilson wants," Wilson said, referring to Senate Republicans. "I'm term-limited. I don't want anything – except to screw with them."

Randy Krehbel, "Lame Ducks Can Quack Loudly, Redistricting Plan's Foe Knows," *Tulsa World*, Aug. 13, 2011, p. A22 (Ex. B-3). In our political system, there is a place for political gamesmanship. However, this Court is not it. Before the Plaintiff is allowed to use this proceeding to "screw with" his political opponents, the Court should determine whether it has jurisdiction.

The second reason the Court should examine the jurisdictional issue at the outset arises under Title 12. Under 12 Okla. Stat. § 2012(F)(3), this court must examine whether it has subject matter jurisdiction over the action and "shall dismiss" the suit "whenever it appears" that such jurisdiction is lacking.

For the foregoing reasons, Intervenor-Defendant Oklahoma State Senate requests that this Court dismiss Plaintiff's Petition for lack of subject matter jurisdiction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 2011, a true and correct copy of the foregoing was served by email and by first class mail to the following:

Mark Hammons

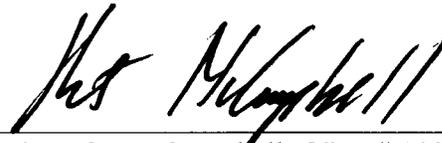
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EXHIBIT B-1

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

SENATOR JIM WILSON,

Petitioner,

v.

MARY FALLIN, Governor of the
State of Oklahoma,

KRIS STEELE, Speaker of the
Oklahoma House of Representatives,

BRIAN BINGMAN, President Pro Tempore of
the Oklahoma State Senate,

PAUL ZIRIAX, Secretary of the Oklahoma
State Election Board,

Respondents.

SC#
#109652

**PRELIMINARY BRIEF IN SUPPORT OF ORIGINAL JURISDICTION
SUPREME COURT PROCEEDING TO SET ASIDE THE OKLAHOMA STATE
SENATE REAPPORTIONMENT PLAN**

RESPECTFULLY SUBMITTED THIS 7th DAY OF JULY, 2011.

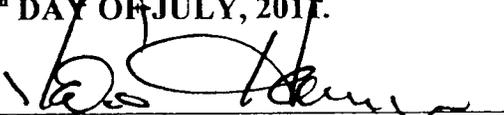

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**PRELIMINARY BRIEF IN SUPPORT OF ORIGINAL JURISDICTION
SUPREME COURT PROCEEDING TO SET ASIDE THE OKLAHOMA STATE
SENATE REAPPORTIONMENT PLAN**

COMES NOW THE PETITIONER and shows this Court as follows:

I. - STANDING OF THE PETITIONER AND JURISDICTION OF THE COURT

Although the concepts of standing and jurisdiction are not the same, they will be commonly addressed because both standing and jurisdiction are expressly provided by Okla. Const. art V, § 11(C).

Under both the Oklahoma constitution and pre-existing common law, there can be no doubt that Senator Wilson has standing to bring this action. Okla. Const. art V, § 11(C) which (emphasis supplied) provides as follows:

Any qualified elector may seek a review of any apportionment order of the Commission, or apportionment law of the legislature, within sixty days from the filing thereof, by filing in the Supreme Court of Oklahoma a petition which must set forth a proposed apportionment more nearly in accordance with this Article. Any apportionment of either the Senate or the House of Representatives, as ordered by the Commission, or apportionment law of the legislature, from which review is not sought within such time, shall become final. The court shall give all cases involving apportionment precedence over all other cases and proceedings; and if said court be not in session, it shall convene promptly for the disposal of the same.

While no special showing of harm is necessary to grant a qualified elector standing to challenge an apportionment plan, this Court has long recognized— even prior to this constitutional provision-- that malapportionment is a harm in and of itself sufficient to grant standing:

Respondents next argue that petitioner may not maintain this action because he shows no injury to himself. . . Each citizen has a right to have the state apportioned in accordance with the provisions of the Constitution, and to be governed by a Legislature which fairly represents the whole body of the electorate, elected as required by the provision of the Constitution. . .

Jones v. Freeman, 193 Okl. 554, 146 P.2d 564, 561 (1943) (internal citations omitted).

While it sometimes stated that the issue of gerrymandering is non-justiciable, this is not correct. Even as a matter of federal law— where the courts are of limited jurisdiction—

“intentional discrimination against an identifiable political group” (ie: gerrymandering) is justiciable. *Davis v. Bandemer*, 478 U.S. 109, 127 (1986).

Even prior to the present constitutional provision, this Court has held that such issues are within the province of this Court to decide:

We are of the opinion, and hold, that under article 7, sec. 2, above, we have jurisdiction of the present action. As has been well said of similar constitutional provisions, that section gives the Supreme Court original jurisdiction to issue the named writs to safeguard the ‘sovereignty of the state, its franchises or prerogatives or the liberties of its people.’ *State v. Frear*, 148 Wis. 456, 134 N. W. 673, L. R. A. 1915B, 569; 7 R. C. L. 1075; 14 *Am. Jur.* 457. And, as was impliedly held by the New York court in the *Sherill v. O’Brien Case*, above, [former] article 5, sec. 10 (j), above, was not intended to deprive the courts of jurisdiction to pass upon the constitutionality of apportionment acts under authority contained in other provisions of the Constitution. . .

Jones, 146 P.2d at 561.

Thus, Okla. Const. art V, § 11(C) clearly provides that challenges to apportionment acts are justiciable and places exclusive jurisdiction over such questions in this Court.

WHEREFORE, Senator Wilson has standing to bring this action and this Court has exclusive jurisdiction to determine the action.

II. - OKLAHOMA’S CONSTITUTIONAL REQUIREMENTS

The Oklahoma Constitution uniquely provides for consideration of factors designed to reduce, if not eliminate, the impact of partisan politics in the election of State Senators.

Okla. Const. art V, § 9(A), emphasis supplied, provides as follows:

The state shall be apportioned into forty-eight senatorial districts in the following manner: the nineteen most populous counties, as determined by the most recent Federal Decennial Census, shall constitute nineteen senatorial districts with one senator to be nominated and elected from each district; the fifty-eight less populous counties shall be joined into twenty-nine two-county districts with one senator to be nominated and elected from each of the two-county districts. **In apportioning the State Senate, consideration shall be given to population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other major factors, to the extent feasible.**

“Constitutional provisions are mandatory unless it appears from the express terms

thereof or by necessary implication in the language used, that they are intended to be directory only.” *State ex rel. Ogden v. Hunt*, 1955 OK 125, 286 P.2d 1088, 1091 (quoting *Jones v. Freeman*, 193 Okl. 554, 146 P.2d 564, 566 (1943)). Notably, *Jones v. Freeman* is a constitutional apportionment case. *Cf. In re Request for Grand Jury*, 1996 OK CIV APP 150, 935 P.2d 1189, 1193 (“The word ‘shall’ [in the constitutional provision] is mandatory and leaves no room for discretion.” *Citing State ex rel. Ogden v. Hunt*, 286 P.2d 1088 (Okla. 1955)).

Nor can it fairly be said that the use of the word “consideration” transforms the mandatory “shall” into a matter unbridled discretion not subject to review. A meaningful interpretation of the constitutional provision is incumbent on this Court for “[o]therwise, the constitutional prohibition is dormant, meaningless, and dependent upon legislative discretion”. *Texas Co. v. State*, 198 Okla. 565, 577, 180 P.2d 631, 643 (Okla. 1947).

An elementary rule of constitutional construction is that, where possible, effect should be given to each word and every part, and unless there is some clear reason to the contrary, no portion of the fundamental law should be treated as superfluous nor should a constitutional provision be rendered meaningless by the courts.

Oklahoma Cotton Ginners' Ass'n v. State, 174 Okla. 243, 260, 51 P.2d 327, 346 (Okla. 1935). *Accord Kiowa Cnty Excise Bd v. St. Louis-San Francisco Ry Co.*, 1956 OK 157, 301 P.2d 677, 683 (“Courts should avoid a construction which would render any portion of the constitution meaningless.” Quoting *Oklahoma Natural Gas Co. v. State ex rel. Vassar*, 187 Okl. 164, 101 P.2d 793, 796 (Okla. 1940)).

In this regard, the Oklahoma Constitution provides meaningful standards to be applied by requiring “consideration [of the named factors] to the extent feasible.” Both the terms “feasible” and “to the extent feasible” have clear meanings:

. . . According to **Webster's Third New International Dictionary of the English Language** 831 (1976), ‘feasible’ means ‘capable of being done, executed, or effected.’ **Accord**, the **Oxford English Dictionary** 116 (1933) (‘Capable of being done, accomplished or carried out’); **Funk & Wagnalls New ‘Standard’ Dictionary of the English Language** 903 (1957) (‘That may

be done, performed or effected’). . . .
Am. Textile Mfrs. Inst. v. Donovan, 452 U.S. 490, 508-509 (1981).

From this sensible premise, the United States Supreme Court rejected the argument that the words “‘to the extent feasible’ provide no meaningful guidance to those who will administer the law.” *Id.*, 452 U.S. at 546 (Rehnquist, J., dissenting). To the contrary, the United States Supreme Court found that such words provide adequate guidance:

[Such language] directs the Secretary to issue the standard that ‘most adequately assures . . . that no employee will suffer material impairment of health,’ limited only by the extent to which this is ‘capable of being done.’...
Id., at 509.

Similarly, the Legislature was required in drawing Senate lines to apply “compactness, area, political units, historical precedents, economic and political interests, contiguous territory”, Okla. Const. art V, § 9(A), “limited only by the extent to which this is ‘capable of being done.’”. *Am. Textile Mfrs*, at 509.

There are, of course, limitations on the extent to which considerations of compactness, political subdivisions and community interests can be accommodated. The United States Constitution requires that legislative districts be apportioned with “one-man, one-vote” being the primary consideration. Nonetheless, the United States Supreme Court in *Karcher v. Daggett*, 462 U.S. 725, 741 n. 11 (1983) noted that courts “have consistently recognized that small deviations [in the population of districts] could be justified.”

Any number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives. As long as the criteria are nondiscriminatory. . . these are all legitimate objectives that on a proper showing could justify minor population deviations.

Karcher, 462 U.S. at 740 (internal quotation omitted).

Under these considerations,

the Legislature may not completely and entirely disregard compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other major factors in subsequent redistricting so long as *population* is given primacy.

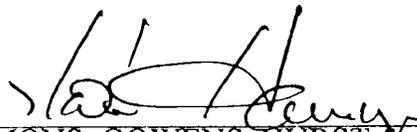
Ferrell v. Oklahoma, 339 F. Supp. 73, 84 (W.D. Okla. 1972) (emphasis by the Court, vacated in part by *Davis v. Bandemer*, 478 U.S. 109 (1986)).

Petitioner would agree that under federal standards, the considerations imposed by the Oklahoma Constitution would not be controlling. Here, however, the issue one of state legislative districts and the controlling standard is the Oklahoma Constitution.

Although in some jurisdictions, the political motivation of the Legislature in re-drafting districts cannot be challenged, Oklahoma's Constitution specifically offers protections against pure, partisan politics and offers relief against gerrymandering. Our Constitution recognizes that the very bizarre and arbitrary shape of the districts provides evidence that the districts were drawn for improper purposes and in contravention of constitutional mandates. *Cf. Hunt v. Cromartie*, 526 U.S. 541, 548 n. 3 (1999) (agreeing "that proof of a district's 'bizarre configuration' gives rise equally to an inference that its architects were motivated by politics or race."). Here, the question before the Court does not expressly require determination of the motive (although that may be relevant) because a successful challenge can be made by merely showing that the Legislature *could have* drawn districts which respected not only population equality but also county and city lines, compactness and communities of interest. The only burden imposed by the Oklahoma Constitution is that the Petitioner offer a map showing that more appropriate districts can be drawn. It is clear that the Senate disregarded these constitutionally mandated considerations in favor of other reasons having no constitutional protection.

WHEREFORE, this Court should hear the matter, determine that the Oklahoma Constitution was not followed and take the appropriate action to correct such failure.

Signed and executed by:



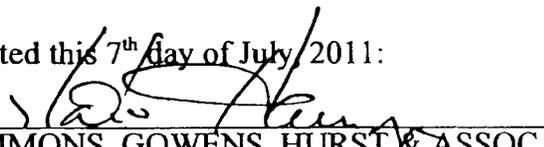
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325 Dean A. McGee Avenue
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Facsimile: (405) 235-6111
mark@hammonslaw.com

CERTIFICATE OF SERVICE

A true copy of the foregoing was filed and served by hand-delivery and by US mail, postage prepaid, with notice as provided by Supreme Court Rule 1.301 and Form No. 14, on this 7th day of July, 2011:

MARY FALLIN, Governor of the State of Oklahoma,
KRIS STEELE, Speaker of the Oklahoma House of Representatives,
BRIAN BINGMAN, President Pro Tempore of the Oklahoma State Senate, and
PAUL ZIRIAX, Secretary of the Oklahoma State Election Board
by mail and hand-delivery to their duly appointed counsel
E. SCOTT PRUITT, Attorney General for the State of Oklahoma
313 Northeast 21st Street
Oklahoma City, Oklahoma 73105

Attested this 7th day of July, 2011:



HAMMONS, GOWENS, HURST & ASSOC.
Mark Hammons, OBA # 3784
325 Dean A. McGee Avenue
Oklahoma City, Oklahoma 73102
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mark@hammonslaw.com

Attorney for the Petitioner

EXHIBIT B-2

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

SENATOR JIM WILSON,)
)
 Petitioner,)
)
 v.)
)
 MARY FALLIN, Governor of the)
 State of Oklahoma,)
)
 KRIS STEELE, Speaker of the)
 Oklahoma House of Representatives,)
)
 BRIAN BINGMAN, President Pro Tempore of)
 the Oklahoma State Senate,)
)
 PAUL ZIRIAX, Secretary of the Oklahoma)
 State Election Board,)
)
 Respondents.)

SC

#109652

**APPLICATION TO ASSUME ORIGINAL JURISDICTION
AND PETITION TO REVIEW THE REAPPORTIONMENT OF THE
OKLAHOMA STATE SENATE**

COMES NOW SENATOR JIM WILSON, Petitioner, and shows this Court as follows:

1. The Petitioner, State Senator Jim Wilson, is a qualified elector, residing in Cherokee County, State of Oklahoma and registered to vote therein.
2. The Respondents are:
 - A. Mary Fallin in her capacity as Governor of the State of Oklahoma;
 - B. Kris Steele, in his capacity as Speaker of the Oklahoma House of Representatives, and
 - C. Brian Bingman, in his capacity as President Pro Tempore of the Oklahoma State Senate, and
 - D. Paul Ziriax, in his capacity as Secretary of the Oklahoma State Election

Board.

3. This action is to challenge the reapportionment of the Oklahoma State Senate as set out in the State Senate Redistricting Act of 2011, Senate Bill 2011, enacted, engrossed and filed on or about May 20, 2011.
4. Said apportionment act does not comply with Okla. Const. art V, § 9(A) which (emphasis supplied) provides as follows:

The state shall be apportioned into forty-eight senatorial districts in the following manner: the nineteen most populous counties, as determined by the most recent Federal Decennial Census, shall constitute nineteen senatorial districts with one senator to be nominated and elected from each district; the fifty-eight less populous counties shall be joined into twenty-nine two-county districts with one senator to be nominated and elected from each of the two-county districts. **In apportioning the State Senate, consideration shall be given to population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other major factors, to the extent feasible.**

5. Such reapportionment plan fails to create Senate districts which as nearly as possible provide for compactness, political units, historical precedents, economic and political interests. See Appendix Ex 2 (map showing 2011 Senate District lines). By way of example only, and without limiting the deficiencies, the following are illustrations of where the Senate apportionment plan fails to comply with Oklahoma's Constitution:

- A. **Senate District 3**. The present Senate District 3 is relatively compact and contiguous and importantly preserves the heart of the Cherokee Nation within a single district. See Appendix Ex 3. In contrast the newly apportioned Senate District 3 [Appendix Ex 4] is neither compact nor contiguous and unnecessarily divides Cherokee, Delaware and Mayes Counties while removing the heart of the Cherokee Nation

from this district. Such division serves only partisan purposes and disregards constitutional standards, whereas Petitioner's proposal [Appendix Ex 1, maps and affidavit] meets these standards.

- B. **Senate District 9.** Senate District 9 [Appendix Ex 5] is neither compact nor contiguous and it places the City of Tahlequah into a district with Muskogee which have significantly different community and culture interests. In contrast, Petitioner's proposal respects such community interests and is compact and contiguous. This is explained not only facially by the maps but also by the affidavit showing how county and city lines received more appropriate respect while maintaining compact, contiguous districts of constitutionally equal population. Appendix Ex 1 (maps and affidavit).
- C. **Oklahoma County:** As shown by Appendix Ex 6, Oklahoma County is divided into a series of odd shaped district which are neither compact, contiguous nor do they share community interests. Prime examples of this are Senate Districts 47, 40, 44, 46, 45, 15 and 17. Senate District 17 [Appendix Ex 7] can only be explained in by partisan gerrymandering and similarly Senate District 15 [Appendix Ex 8] combines parts of Oklahoma City, Choctaw, Jones, Luther and Shawnee into a district which is not only misshapen but which ignores communities having common interest. Again, Petitioner's proposal more fully respects such interests and is more compact and contiguous.
- D. **Canadian County.** The present plan divides Canadian County into four Senate Districts and divides the City of Yukon and Yukon

Community into two separate senate districts. See Appendix Ex 9. Under Petitioner's proposal this County would have two districts and the City of Yukon would be preserved intact.

E. **Cleveland County**. The present plan divides Cleveland County between Districts 15 and 16 [Appendix Ex 10] on a basis that can only be explained as political gerrymandering having no regard for the constitutional standards. Again, Petitioner's proposal is rational, compact and contiguous.

F. **Tulsa County**. The present plan divides Tulsa County and the City of Tulsa into district which again are neither compact, contiguous or based on common communities of interest. See Districts 35, 37, 39, 25 and 33. Appendix Ex 11. District 33 gerrymanders community lines to combine dissimilar urban and rural communities. Appendix Ex 12. Again, Petitioner's proposal is rational, compact and contiguous.

4. Petitioner has filed, with this Petition, a proposed apportionment that is more closely in accordance with Okla. Const. art V, § 9(A) than the apportionment plan passed by the Oklahoma Legislature. See Appendix Ex 1 (Petitioner's Proposed Map with supporting affidavit). In particular Petitioner's plan complies with the requirements of Okla. Const. art V, § 9(A) by giving consideration to "population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory" than does the present apportionment plan and it preserves the same population guidelines within the present plan. Appendix Ex 1 (affidavit).
5. This action is timely brought within sixty (60) days of the filing of the signed

law as provided by Okla. Const. art V, § 11(C).

6. This Court has original jurisdiction over Petitioner's Petition. Such jurisdiction is, in this case, mandatory rather than discretionary as provided by Okla. Const. art V, § 11(C) which (emphasis supplied) provides as follows:

Any qualified elector may seek a review of any apportionment order of the Commission, or apportionment law of the legislature, within sixty days from the filing thereof, by filing in the Supreme Court of Oklahoma a petition which must set forth a proposed apportionment more nearly in accordance with this Article. Any apportionment of either the Senate or the House of Representatives, as ordered by the Commission, or apportionment law of the legislature, from which review is not sought within such time, shall become final. The court shall give all cases involving apportionment precedence over all other cases and proceedings; and if said court be not in session, it shall convene promptly for the disposal of the same.

Additionally jurisdiction is supplied by Okl. Const. art VII, § 4 which, in its relevant part, provides as follows:

. . . The original jurisdiction of the Supreme Court shall extend to a general superintending control over all inferior courts and all Agencies, Commissions and Boards created by law. The Supreme Court, Court of Criminal Appeals, in criminal matters and all other appellate courts shall have power to issue, hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and such other remedial writs as may be provided by law and may exercise such other and further jurisdiction as may be conferred by statute. Each of the Justices or Judges shall have power to issue writs of habeas corpus to any part of the State upon petition by or on behalf of any person held in actual custody and make such writs returnable before himself, or before the Supreme Court, other Appellate Courts, or before any District Court, or judge thereof in the State. The appellate and the original jurisdiction of the Supreme Court and all other appellate courts shall be invoked in the manner provided by law.

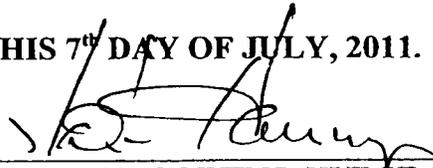
7. Petitioner pray that this Court conduct an evidentiary hearing as is authorized by Supreme Court Rule 1.192 and thereupon determine that his petition is "more nearly in accordance with" the Oklahoma Constitution than that adopted by the Legislature. Pursuant to Okla. Const. art V, § 11(D) this Court should thereupon direct that the Apportionment Commission to modify the act of

apportionment “to achieve conformity with” the Oklahoma Constitution in a manner no less compliant than that set out in Petitioner’s proposed apportionment.

WHEREFORE, Petitioner prays that this Court:

1. Set appropriate schedules for briefing and evidentiary hearings,
2. At the conclusion of such hearing determine that the legislative apportionment is not in conformity with the Oklahoma Constitution, and
3. Direct a new order of apportionment to be conducted in the manner required by the Oklahoma Constitution and to generate Senate Districts at least as compliant with the provisions of the Oklahoma Constitution as the districts set out in Petitioner’s map.

RESPECTFULLY SUBMITTED THIS 7th DAY OF JULY, 2011.



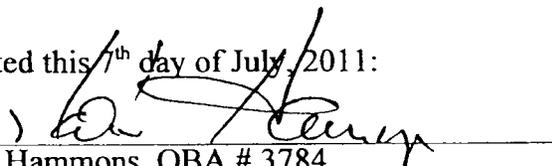
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313 Northeast 21st Street
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Attested this 7th day of July, 2011:



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Attorney for the Petitioner

EXHIBIT B-3



Justin Barr, the OSU County Extension educator for Ellis County, examines large cracks in the dirt in what was once a stock pond on his land near Vici last month. JIM BECKEL/The Oklahoman file

Conference aims to help drought-affected farmers

• Experts will offer ideas on what to do once it starts raining again.

BY BRYAN PAINTER
The Oklahoman

OKLAHOMA CITY — Wayne Taggart of Fort Cobb has seen the dark thunderstorm clouds, even the lightning in the last few days. But they've yielded no rain for the second-generation farmer and rancher.

While some areas have received a little rain in recent days, the precipitation total for Fort Cobb is 12.5 inches below normal since Jan. 1 and 13.6 inches below normal since Oct. 1, according to the Oklahoma Climatological Survey.

The U.S. Drought Monitor report shows that 93 percent of the state is now in an extreme to exceptional drought.

Grandfield, in southwestern Oklahoma, has gone more than 80 days with less than a tenth of an inch of rain on any one day.

Taggart plans to attend the Oklahoma Farm Bureau's drought recovery conference Aug. 30. The event will advise Oklahoma's farmers and ranchers on what actions to take with their operations once the drought begins to subside.

"It will rain again, and we want to be ready from both a personal and business standpoint," Oklahoma Farm Bureau President Mike Spradling said. "This is an extremely important meeting for our producers as we hope to provide meaningful help during this critical time."

The one-day meeting in Oklahoma City will feature grassland and economic experts from the Noble Foundation, state Agriculture Secretary Jim Reese, Associate State Climatologist Gary McManus, sociologist Duane Gill of Oklahoma State University, Andrea Braeutigam, Oklahoma Agriculture Mediation Program executive director, and Francie Tolle, Oklahoma Farm Service Agency executive director.

Taggart's father, the late Luther Lee Taggart, moved to the family farm northeast of Fort Cobb in the late 1930s or early 1940s.

Now, much of what has been accomplished is slipping out of Wayne Taggart's 67-year-old hands.

The family members worked all their lives to build a cattle herd, and now it looks like in the next two or three weeks they'll be dispersing that herd. Hay is hard to come by, and the ponds are drying up.

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Drought recovery conference

What: The Oklahoma Farm Bureau event will advise farmers and ranchers on what actions to take with their operations once the drought begins to subside.

When: 9 a.m. Aug. 30
Where: Oklahoma Farm Bureau, Oklahoma City
For more, or to register: Staci Armstrong, 405-523-2320; Kelli Beall, 405-523-2470; or tulsaworld.com/droughtsummit

"We may be able to keep a small number of cattle, but it sets us back tremendously," Taggart said. "It's a hard situation when you've selected and you've culled and tried to build a herd that you could be proud of, and now when you have to get rid of them it's kind of traumatic to people."

"I know a lot of farmers and ranchers who are

older than I am that are in the same situation, and they feel like their whole life is in this, and now it's going to be gone."

He also raises wheat and hopes to plant in mid-September. There's still time, but significant rains are needed.

Taggart said some work was needed behind his house that required digging a hole 6 feet deep. The soil was powder dry all the way down; there was no subsoil moisture, he said.

Taggart said he thinks the meeting at the end of the month will help provide some direction.

"The meeting is to help people with a situation like this and give us an idea of what the experts think is going to happen in order to help us make some plans," he said.

"Also, maybe it'll relieve a little of the stress that we have. That would be great if we could do that."

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Lame ducks can quack loudly, redistricting plan's foe knows

BY RANDY KREHBIEL
World Staff Writer

State Sen. Jim Wilson, D-Tablequah, took his fight against Oklahoma's redrawn state Senate districts to Tulsa County Democrats on Friday.

Wilson, who is term-limited and cannot seek re-election, has filed suit asking the Oklahoma Supreme Court to rule the new districts violate the state constitution.

Wilson says some of the districts, which were drawn by Republican political consultant Karl Ahlgren at a cost to taxpayers of more than \$120,000, do not conform to Article 5 of the state constitution, which specifies that "consideration shall be given to population, compactness, area, political units, historical precedents, economic and political interests, (and) contiguous territory ..."

The state constitution also specifies that 19 of the 48 state Senate seats are to be divided among the 19 largest counties by population, with the remaining 58 counties sharing the other 29 Senate seats.

Speaking at the county party's monthly lunch meeting, Wilson cited Districts 1 and 3 in northeastern Oklahoma and District 30 in Oklahoma City and the manner in which he said the city of Yukon was unnecessarily "cut in half" by Districts 22 and 23.

District 3, now represented by Wilson, has been redrawn from a rough rectangle encompassing Cherokee and Adair counties and the northern part of Sequoyah County into an irregular shape that cuts Cherokee County in half, adds the eastern half of Delaware County and attaches an appendage that follows U.S. 412 to the Verdigris River between Inola and Catoska.

District 1, represented by Fairland Democrat Charles Wyrick, is now shaped like the numeral 1 — Ottawa and



NO FEAR
State Sen. Jim Wilson: "I'm term-limited. I don't want anything — except to screw with them."

figured so that it stretched from midtown Tulsa to the Mayes-Delaware county border. Duncan was put in the same district as Moore.

Wilson said Democratic legislators are hesitant to challenge the new districts out of fear they will be "punished" by the Republican leaders. Wilson said he isn't worried because he's term-limited.

"They want to know what Jim Wilson wants," Wilson said, referring to Senate Republicans. "I'm term-limited. I don't want anything — except to screw with them."

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