IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

JERRY R. FENT, as a resident taxpayer, of the State of Oklahoma, and all other similar persons, Petitioner, V. MARY FALLIN, Governor of the State of Oklahoma, and STATE OF OKLAHOMA, ex. Rel., Oklahoma Tax Commission Respondents.	)	Case No.: 112976

RESPONDENT'S RESPONSE TO THE APPLICATION TO ASSUME ORIGINAL JURISDICTION, PETITION, AND BRIEF IN SUPPORT

PATRICK R. WYRICK, OBA #21874
SOLICITOR GENERAL

CARA N. RODRIGUEZ, OBA #21794
ASSISTANT SOLICITOR GENERAL

OKLAHOMA OFFICE OF THE ATTORNEY GENERAL
313 NE 21ST STREET
OKLAHOMA CITY, OK 73105
(405) 522-3116 PHONE
(405) 522-4534 FAX
cara.rodriguez@oag.ok.gov
patrick.wyrick@oag.ok.gov

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RESPONDENTS' RESPONSE TO THE APPLICATION, PETITION, AND BRIEF IN SUPPORT

Respondents Mary Fallin, in her official capacity as the Governor of the State of Oklahoma, and the State of Oklahoma, ex. rel., Oklahoma Tax Commission, hereby request that the Court deny the relief requested in the Petition.

Introduction

For decades, Oklahoma law has provided various tax incentives for oil and gas exploration. Since 1990, the incentives have included temporarily reduced tax rates for horizontally-drilled wells. For example, while the standard gross production tax is 7%, Oklahoma law incentivized the drilling of new horizontal wells by offering a reduced rate of 1% for the first 48 months of the well's life. These and other related incentives are set to expire on July 1, 2015, which will mean that the gross production tax on many types of oil and gas production will revert to the standard 7% rate, an increase of 600% over the incentivized rate that producers and royalty owners have enjoyed in recent years.

Concerned with the negative effect such a sudden, massive spike in the tax rate might have on the State's oil- and gas-driven economy, the Legislature moved to implement a new set of incentived tax rates, and did so a year prior to the actual expiration of the previous set of incentives, so as to create stability and certainty for the oil and gas industry, as it begins to budget and plan where it intends to spend its exploration dollars in 2015 and beyond.

The new incentives were added by House Bill 2562 ("HB 2562"). The incentives implemented by HB 2562 are not identical to those that have been in place, but like the old incentives, the new incentives reduce, or eliminate altogether, the standard 7% gross production tax on certain types of production:

Tax Incentives created by HB2562	Description of the Tax Incentive	Tax Rate after June 30, 2015 if HB 2562 does not go into effect	Tax Rate after June 30, 2015 if HB 2562 goes into effect
1(B) Codified at	5% reduction in the tax rate for production from ***all*** new wells spudded on or after July 1, 2015 for the first 36 months of production	7%	2%
1(D)(1)	Tax exemption for production from secondary recovery projects for the project's first 5 years	7%	0%
1(D)(2)	Tax exemption for production from tertiary recovery projects until project reaches payback, but not to exceed 10 years	7%	0%
1(E)	Loosens eligibility requirements for the 6% reduction in the tax rate for production from certain horizontally drilled wells	7%	1%
1(F)	Tax exemption for first 28 months of production from a previously inactive well	7%	0%
1(G)	Tax exemption for incremental production from production enhancement projects for the project's first 28 months	7%	0%
1(H)(2)(a)	Extends for one year the tax exemption for production from deep wells between 12,500 and 14,999 feet in depth, for the well's first 28 months	7%	2%

1(H)(2)(f)	Sunsets a 3% reduction in the tax rate for production from July 1, 2011 and July 1, 2015 from deep wells between 15,000 and 17,499 feet in depth	7%	2%
1(H)(2)(f)	Sunsets a 3% reduction in the tax rate for production from July 1, 2011 and July 1, 2015 from deep wells deeper than 17,500 feet in depth	7%	2%
1(I)	Sunsets a tax exemption for production from new discovery wells, for a period of 28 months	7%	2%
1(J)	Sunsets a tax exemption for production from wells located within the boundaries of a 3-D seismic shoot, for a period of 18-28 months	7%	2%
2(B)	Tax refund for economically at-risk oil or gas lease	7% or 4%	1%

Petitioner agrees that "HB2562…lowers the gross production tax rate for all forms of oil and natural gas production[.]" *See* Pet'r's App. Ex. 2. Petitioner thus attacks HB 2562 on a legal theory identical to that he raises in *Fent v. Fallin*, No. 112,687—a case currently pending before this Court—where Petitioner theorizes that Article 5, Section 33 applies even to legislation whose primary purpose is to *reduce* tax rates. Indeed, like the income tax cut bill at issue in *Fent v. Fallin*, HB 2562 does not create any new tax, nor increase tax rates. HB 2562 is a tax *incentive* bill that greatly reduces the standard gross production tax rate, and which implements a range of temporarily *reduced* tax rates for particular types of oil and gas production. As such, the tax incentives in HB

2562 were not passed by the Legislature for the primary purpose of raising new tax revenues. Thus, HB 2562 does not satisfy the almost century-old test for whether Article 5, Section 33 applies. Because Article 5, Section 33 has no application, the Petition should be rejected on the merits.

Background

1. HB 2562 passed the House 61-34, and then the Senate 30-14 on May 22, 2014, and was promptly referred to the Governor, who signed it on May 28, 2014. The bill has an emergency effective date of July 1, 2014. HB 2562 amends 68 O.S. § 1001, the statute governing the gross production tax on "asphalt, ores, oil and gas, and royalty interests." *See* HB 2562, 2014 Okla. Sess. Law Serv. Ch. 346, App. 1.[1]

2. 68 O.S. § 1001 was added in 1963, and establishes a baseline 7% tax on oil and natural gas production. Section 1001 has been amended dozens of times since 1963. Most of the amendments have been for the purpose of implementing various exceptions to the standard 7% tax rate, for the purpose of incentivizing certain types of oil and gas production. At least 18 of the bills amending Section 1001 originated in the Senate, and at least 12 of the bills were passed in the last five days of a legislative session. In fact, of the 31 bills amending Section 1001, it appears that no more than nine would have complied with Article 5, Section 33's requirements. *See* Table of Bills Amending 68 O.S. § 1001, App. 2.

3. For example, 1990 Okla. Sess. Law Serv. 229 (S.B. 534), whose title describes it as "an Act relating to revenue and taxation; amending 68 O.S.1981, SECTION 1001...which relates to gross production tax; providing certain exemption for horizontally drilled wells...", originated in the

[1] While the bulk of HB 2562 is devoted to amending 68 O.S. § 1001, Section 2 of HB 2562 makes a minor amendment to 68 O.S. § 1001.3a, and Section 3 amends 68 O.S. § 1004 to delineate how revenues collected at the 2% rate will be apportioned.

Senate. App. 3. SB 534 was the first implementation of the tax incentive for horizontally-drilled wells.

4. A few years later, 1993 Okla. Sess. Law Serv. Ch. 273 (S.B. 336), whose title describes it as "[a]n Act relating to corporations, public finance and revenue and taxation; amending...68 O.S. [§]1001...which relates to gross production taxes...modifying production which is exempt from gross production taxes; specifying dates of projects to which such exemption applies...", also originated in the Senate. App. 4. SB 336 tightened the eligibility requirements for the gross production tax incentives first implemented in 1990.

5. Likewise, 2011 Okla. Sess. Law Serv. Ch. 157 (S.B. 885), whose title described it as "[a]n Act relating to gross production tax; amending 68 O.S. 2001, Section 1001...which relates to the tax on certain types of production; providing for application of a tax rate for a specified time period on certain horizontally-drilled wells; providing for application of certain tax rates for a specified time periods on wells drilled to specified depths...", also originated in the Senate. App. 5. SB 885 makes production from certain wells, which previously were totally exempt from the gross production tax for 48 months, subject instead to an incentivized 1% rate for 48 months. SB 885 is the legislation that implemented the current set of incentives that are set to expire on July 1, 2015, and which HB 2562 is designed to replace.

6. And just last year, 2013 Okla. Sess. Law Serv. Ch. 401 (S.B. 166), whose title describes it as "[a]n Act relating to revenue and taxation; amending 68 O.S. 2011, Sections 1001 and 1001.1, which relate to gross production tax in lieu of ad valorem tax...", also originated in the Senate and was passed in the last five days of the 2013 legislative session. App. 6. SB 166 expanded the scope of certain tax exemptions offered in 68 O.S. § 1001.

7. Pursuant to Section 1004 of Title 68, gross production tax revenues from levies at the full 7% are allocated 85.72% to the State's General Revenue Fund, while 7.14% are allocated "to the various county treasurers to be credited to the County Highway Fund", and the remaining 7.14% are allocated to local school districts. 68 O.S. § 1004(A)(2). All tax revenues from levies at the 1% incentivized rate, however, are allocated 50% to the "to the various county treasurers to be credited to the County Highway Fund", and 50% to local school districts. *Id.* at 1004(A)(4). All tax revenues from levies at the 2% incentivized rate are allocated 50% to the State's General Revenue Fund, 25% to the "to the various county treasurers to be credited to the County Highway Fund", and 25% to local school districts. *Id.* at 1004(A)(5). In other words, the revenues from the incentived tax rates created by HB 2562 are not primarily for the support of state government, but rather are equally or entirely used to support political subdivisions.

8. The Oklahoma Tax Commission ("OTC") analyzes the fiscal impact of proposed legislation relating to taxation. After analyzing HB 2562, the OTC reported to the Legislature that the bill would have a neutral effect on revenues.[2] *See* OTC Fiscal Impact Statement, App. 7.

Summary of the Argument

I. As best we can tell, no Oklahoma court has ever applied Article 5, Section 33 to a tax cutting incentive bill, and rightly so. Article 5, Section 33 protects the people from tax *increases*. It makes little sense to apply this protection to instances where the Legislature is attempting to stimulate the economy by reducing tax rates. That is why this jurisdiction, like most others, has construed Article 5, Section 33 narrowly, and has applied the provision only to legislation with the primary purpose of generating new tax revenues, and which levy a tax in the strict sense. In fact, we

[2] The OTC appears to have reasoned that reversion to the base 7% tax rate would disincentivize exploration and production in state such that overall gross production tax revenues would remain the same, despite the higher tax rate. In other words, while production would be subject to a higher tax rate, there would be less production to tax.

can find no instance where any court in this jurisdiction has ever applied Article 5, Section 33 to legislation with the primary purpose of reducing tax rates, nor can we find any commentary or authority from any jurisdiction holding that Article 5, Section 33 applies to such legislation. To be sure, this Court has rarely had the occasion to determine whether Article 5, Section 33 applies to tax reducing legislation, as tax reductions are so rarely challenged. But the great weight of authority in this jurisdiction indicates that Article 5, Section 33 applies only to legislation with the primary purpose of generating new tax revenues, and the Court of Civil Appeals has explicitly held as much. There simply is no compelling reason for the Court to now announce a new rule in order to strike down these tax incentives, particularly where that new rule will have the broader implication of cementing into Oklahoma's Constitution a requirement that makes it virtually impossible for Oklahomans to see their taxes cut in the future, and will disrupt the expectations of Oklahomans who went to the polls in 1992 and approved SQ 640.

II. Because the Legislature did not enact HB 2562 to generate new tax revenue, but rather to offer lower, incentivized tax rates, Article 5, Section 33 does not apply. In other words, *even if* HB 2562 levies a tax in the strict sense, its primary purpose is stimulus of the economy through a reduction in tax rates, and *not* to generate tax revenue. Thus HB 2562 is not a "bill for raising revenue" for purposes of Article 5, Section 33. And even if Petitioner's specialized definition of "raising" applied (i.e., "to assemble or collect, as money"), HB 2562 still would not be a "bill for raising revenue," because the Legislature did not pass HB 2562 with the primary purpose of "assembling or collecting" revenues for the support of state government, but rather with the primary purpose of reducing tax rates in order to incentivize oil and gas exploration and stimulate the economy. Additionally, because a majority of the revenues from incentivized tax rates implements

by HB 2562 do not go into the State's coffers, but rather in local coffers, the "primary" object of HB 2562 was not to generate revenues for the support of *State* government.

III. Even if the Court agrees with Petitioner, and announces a new rule that Article 5, Section 33 applies even to legislation like HB 2562, which has the primary purpose of reducing a tax rate, the Court should give its holding only prospective application. Given that the Legislature would have reasonably concluded—based on existing precedents and its half-century long practice of amending 68 O.S. § 1001 without adherence to Article 5, Section 33's requirements—that Article 5, Section 33 did not apply to HB 2562, it would be particularly inequitable to apply a newly-announced rule to invalidate HB 2562.

Argument and Authorities

I. Article 5, Section 33 applies only to legislation that has the primary purpose of generating *new* tax revenue.

A. In its original form, Article 5, Section 33 was understood to apply only to legislation with the primary purpose of generating new tax revenues.

Article 5, Section 33 has been part of Oklahoma's Constitution since statehood. Originally, it contained only a single section, which required that "bills for raising revenue" (1) originate in the House of Representatives, rather than the Senate, and (2) that such bills be passed prior to the last five days of the legislative session.

Shortly after enactment of that provision, this Court held that "bills for raising revenue" are "those laws only whose principal object is the raising of revenue, and not those under which revenue may incidentally arise." *Anderson v. Ritterbusch*, 1908 OK 250, ¶ 11, 98 P. 1002. Since *Ritterbusch*, the rule has always been that Article 5, Section 33 only applies to legislation (1) "whose principal object is the raising of revenue" and (2) that "lev[ies] taxes in the strict sense of the word." *Id.* (internal quotation omitted); *see also Leveridge v. Oklahoma Tax Commission*, 1956 OK 77, ¶ 8, 294 P.2d 809. Petitioner accurately points out that in *Ritterbusch* there is some dicta that favorably

references an Alabama case that applied Alabama's origination clause to a revenue bill that levied a new tax, but also relieved certain railroad property from taxation and, therefore, was potentially revenue negative in net effect. 1908 OK 250, ¶ 15. That language is pure dicta, and in any event, as the *Ritterbusch* opinion makes clear, the Alabama legislation did in fact create and levy a brand new tax for the support Alabama's state government, which makes that legislation distinct from the legislation at issue here.

Proving that the *Ritterbusch* Court did not adopt Alabama's expansive view of its originations clause, in the years following *Ritterbusch,* this Court consistently took a narrow view of what constituted a "revenue bill," and consistently declined to apply Article 5, Section 33 to invalidate revenue-related legislation that either originated in the Senate or was passed in the last five days of the legislative session. *See, e.g., In re Lee*, 1917 OK 458, 168 P. 53; *Dickey et al. v. State ex rel. City of Tulsa*, 1923 OK 414, 217 P. 145, 147; *Ex parte Sales*, 1924 OK 668, 233 P. 186; *Ex parte Tindall*, 1924 OK 669, 229 P. 125; *In re Protest of Chicago, R. I. & P. Ry. Co.*, 1929 OK 263, 279 P. 319; *Wallace v. Gassaway*, 1931 OK 210, 298 P. 867; *Meek v. State*, 1933 OK CR 30, 22 P.2d 933; *Thompson v. Huston*, 1935 OK 17, 39 P.2d 524; *Pure Oil Co. v. Okla. Tax Comm'n*, 1936 OK 516, 66 P.2d 1097; *Leveridge v. Okla. Tax Comm'n*, 1956 OK 77, 294 P.2d 809; *accord* 1 Sutherland Statutory Construction § 9:6 (7th ed.) ("The general tendency favors narrow construction of what constitutes a revenue bill…[and] [a]lthough the U.S. Supreme Court has not passed directly upon the revenue bill provision, it has indicated a preference to restrict the provision to the narrowest possible terms.").

Based on this long line of cases, the prevailing understanding of Article 5, Section 33 was, and is, that it only applied to bills whose primary purpose was to *increase* tax revenues. *See, e.g.*, 4 A.L.R.2d 973, § 4 "Necessity that bill provide for increase of revenue—bills decreasing revenue"

(placing Oklahoma in the category of states that do not apply their origination clauses to bills that decrease revenue); Mark H. Ramsey, *What Is a "Revenue Bill" within the Meaning of Our Most Recent Constitutional Amendment?*, 63 OKLA. BAR J. 1567, 1567 (1992), App. 8 (stating that the as-amended Article 5, Section 33 "has been described as requiring most tax *increases* to be put to a vote of the people.").

B. State Question 640 amended Article 5, Section 33 to its current form, and the circumstances surrounding the passage of that amendment confirm that the as-amended Article 5, Section 33 does not apply to legislation with the primary purpose of decreasing tax revenues.

In 1992, anti-tax groups managed to get SQ 640 placed on the ballot. SQ 640 sought to amend Article 5, Section 33, primarily to add a requirement that tax increases be approved by a three-quarter majority of the Legislature, or by a vote of the people.

SQ 640 was hotly debated, and heavily scrutinized in the media, where it was overwhelmingly seen as an attempt to limit the Legislature's ability to *increase* taxes. *See, e.g.*, John Greiner, *SQ 640 Voters Yank Tax Rein*, THE OKLAHOMAN, Mar. 11, 1992 ("The approval makes Oklahoma one of the most restrictive states on tax hikes"); John Parker, *SQ 640 Shortfalls Predicted*, THE OKLAHOMAN, Feb. 26, 1992, at 94 (quoting then-budget director Paul Shinn as stating that Question 640, "if passed, would curb legislators' ability to pass tax increases."); Poll, *Most Legislators Take Stand against SQ 640*, THE OKLAHOMAN, Feb. 23, 1992, at 1 (showing that legislators of the day generally opposed allowing the people to vote on "most future state tax hikes"); Letter to the Editor, *640 Sounds Fair*, THE OKLAHOMAN, Feb. 23, 1992, at 12 ("Let the people themselves vote on tax increases when the legislators cannot decide it by a three-fourths margin.").

Our research reveals *no* indication that SQ 640 voters and proponents contemplated that the newly-amended Article 5, Section 33 would apply to legislation designed to reduce taxes, and would thus make it vastly more difficult for the Legislature to cut taxes in the future. The measure was

plainly seen as an anti-tax measure, not an anti-tax *cutting* measure. Ramsey, App. 8, at 1567 (stating that the amendment "has been described as requiring most tax *increases* to be put to a vote of the people"); 26 Okla. Op. Att'y Gen. 51 (1996) (concluding that the "Legislature's power to levy **additional** taxes was procedurally modified" by SQ 640) (emphasis added).

Confirming as much, when the sufficiency of the initiative petition was challenged before this Court, the Court made it clear that the to-be-amended Article 5, Section 33 would apply only to legislation that sought to generate *new* tax revenues. *In re Initiative Petition No. 348, State Question No. 640*, 1991 OK 110, & 1, 820 P.2d 772 ("The amendment would impose severe limitations upon the Legislature's ability to raise *new* revenue.") (emphasis added); *Id.* at 781 (Opala, C.J., concurring) ("The court declares today that the petition under consideration—which would impose limitations upon the legislature's power to raise *new* taxes—qualifies for submission to a vote of the electorate.") (emphasis added). Plainly, even this Court viewed the to-be-amended Article 5, Section 33 as only applying to measures that raised *new* revenues (i.e., measures that create new taxes, or increase the rate of existing taxes), and it gave no indication that it understood the amended Article 5, Section 33 would apply to measures that reduced the rate of already-existing taxes.

Additionally, Merriam-Webster's dictionary defines "raise" as "to lift or move (something or someone) to a higher position; to lift or move (something or someone) to a standing or more upright position; to increase the amount or level of (something)." "Raise." Merriam-Webster.com. Merriam-Webster, n.d. Web. 15 June 2014. <http://www.merriam-webster.com/dictionary/raise>. So to the extent Petitioner is claiming that the word "raise" is not defined as "increasing," he is flatly wrong. To be fair, a fourth alternative definition is "to get together for a purpose: *collect*" *Id.* But it certainly seems obvious that in common parlance, the word "raising" connotes "increasing." If Petitioners' specialized, fourth alternative definition of "raise" were to be imported into Article 5, Section 33,

then this Court's decision in *In re Initiative Petition No. 348, State Question No. 640*, would have been flatly wrong, as the ballot title approved by the Court in that case did not specially define "raise" as required by 34 O.S. § 9(B), which mandates that proposed ballot titles "[s]hall not contain any words which have a special meaning[.] *Id.* Because this Court allowed the proposed ballot title without requiring that the word's purportedly specialized meaning be explained, the common meaning of "raise" is what applies, and that common meaning is "to increase."

SQ 640 was approved on March 10, 1992, and Article 5, Section 33 has remained as amended since. The pervasive viewpoint—that the as-amended Article 5, Section 33 applies only to tax increases—has carried forward to present day. For example, in a recent article for StateImpact Oklahoma, President Pro Tempore Brian Bingman stated that the Legislature is particularly careful about passing tax cuts because, due to SQ 640, "[i]t would [be] very difficult to raise those taxes." Joe Wertz, *The Legacy and Challenges of a State Question that Shapes Bills Decades Later*, STATEIMPACT OKLAHOMA, May 27, 2014.[3]

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[3] *See also* G. Alan Tarr, *The State of State Constitutions*, 62 La. L. Rev. 3, 4 n.7 (2001) ("Three states have established a supermajority requirement for the enactment of **tax increases**. *See* OKLA. CONST. art. 5, § 33; ARIZ. CONST. art. IX, § 22; NEV. CONST. art. IV, § 18.") (emphasis added); G. Alan Tarr, *Models and Fashions in State Constitutionalism*, 1998 Wis. L. Rev. 729, 743 (1998) (describing Oklahoma as a state "requiring a super-majority in the legislature for the enactment of **tax increases**") (emphasis added); Mark S. Grossman, *Oklahoma School Finance Litigation: Shifting from Equity to Adequacy*, 28 U. Mich. J.L. Reform 521, 548 (1995) ("Through the initiative petition and referendum process, anti-tax groups later managed to pass a constitutional amendment providing that **new** taxes could not be enacted except by a vote of a three-fourths majority in both chambers of the state legislature or by a popular vote.") (emphasis added); Dennis W. Arrow, *Representative Government and Popular Distrust: The Obstruction/Facilitation Conundrum Regarding State Constitutional Amendment by Initiative Petition*, 17 Okla. City U. L. Rev. 3, 6 n.7 (1992) ("Oklahoma has gone still further in the area of structural reform, and has recently adopted a constitutional initiative depriving its legislature of the power to **raise taxes** absent popular ratification, unless three-fourths supermajorities in both houses concur.") (emphasis added); *Andy KERR, Colorado State Representative, et al., Plaintiffs-Respondents, v. John HICKENLOOPER, Governor of Colorado, in his Official*

C. Article 5, Section 33's amendment did not alter this Court's long-settled definition of "bills for raising revenue."

In its current, as-amended form, Article 5, Section 33 refers both to "bills for raising revenue" and "revenue bills," OKLA. CONST. art. 5, § 33(A), (C), but these terms are used interchangeably. *Calvey v. Daxon*, 2000 OK 17, ¶ 9, 997 P.2d 164. Therefore, to the extent this Court has construed "revenue bills," SQ 640 did not alter that construction. And just as it did prior to the amendment, this Court has continued to narrowly construe that phrase, consistently declining to apply Article 5, Section 33 to invalidate legislation. *See, e.g.*, *Fent v. Okla. Capitol Improvement Auth.*, 1999 OK 64, ¶ 11, 984 P.2d 200; *Calvey*, 2000 OK 17, ¶ 14; *Walters v. State ex rel. Okla. Tax Comm'n*, 1996 OK CIV APP 154, ¶ 9, 935 P.2d 398.

In *Walters v. State ex rel. Oklahoma Tax Commission*, the Court of Civil Appeals reviewed Senate Bill 1121—a measure deemed to create tax equity by "assuring that non-residents and part-year residents pay tax on their Oklahoma income based on the rate determined by their total taxable income, just as full-time Oklahoma residents do." 1996 OK CIV APP 154, ¶ 3. The *Walters* court articulated the two-pronged test in the following manner:

> The accepted test for a "revenue bill" is the two-pronged analysis stated by the court in *Leveridge*: A revenue bill is one whose principal purpose is to ***increase*** state tax revenue and which levies a tax in the strict sense.

Id. at ¶ 7. (emphasis added). The *Walters* court, therefore, confirmed the established understanding—traceable back to *Leveridge* and then *Ritterbusch*—that Article 5, Section 33 applies only to

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Capacity, Defendant-Petitioner, No. 12-1445, 2013 WL 1790398 (10th Cir. Apr. 17, 2013), Brief of Amicus Curiae Colorado Parent Teacher Association at 16 n.14 ("States with supermajority requirements for **tax increases** include Arizona, Ariz. Const. art. IX, § 22 (two-thirds); California, Calif. Const. art. 13A, § 3 (two-thirds); Mississippi, Miss. Const. art. 4, § 70 (three-fifths); Oklahoma, Okla. Const. art. 5, § 33 (three-fourths); and South Dakota, S.D. Const. art. XI, §§ 13-14 (two-thirds).") (emphasis added).

legislation with the primary purpose of increasing state tax revenues.

While this Court has not since had occasion to confirm this principle, this case presents it with just that opportunity. The Court can and should confirm the holding of the *Walters* court—making it unmistakably clear that Article 5, Section 33 has no application to legislation like HB 2562, which has the primary purpose of decreasing tax revenues.

II. HB 2562 has the primary purpose of incentivizing oil and production—and thus stimulating the economy—through temporarily reduced gross production tax rates.

Once "revenue raising" is defined as applying only to tax increases, Petitioner's case fails on the first prong of this Court's Article 5, Section 33 test. As discussed *supra*, HB 2562 is a tax incentive bill that exempts certain types of oil and gas production from the standard 7% gross production tax.

For the last half century, the Legislature has enacted similar legislation offering various exemptions to the gross production tax without complying with Article 5, Section 33's requirements, and correctly so. Because the principal object of HB 2562 is to exempt certain production from the standard 7% tax rate, and because the revenues collected from the incentivized tax rates go either entirely or equally to political subdivisions, rather than the State, Article 5, Section 33 does not apply. *See, e.g.*, Okla. Att'y Gen. Op. No. 77-202 (Oct. 11, 1977) ("the prohibition contained in Section 33 of Article V appears to only apply to bills for raising revenue for *state* government and has no reference to bills which authorize a subdivision of the state to raise revenue[.]") (emphasis added) (citing *Dickey v. State, ex rel. City of Tulsa*, 90 Okl. 106, 217 P. 145 (1923); *see also*, *Ramsey*, 63 OKLA. BAR J. 1567, 1576 (noting that whether "the bill seek[s] to raise money for the operation of *state* government generally or for only a discrete part of the government" is relevant to application of Article 5, Section 33) (emphasis added).

This is true even if Petitioner's definition of "raising" is applied (i.e., "to assemble or collect, as money"), because the Legislature did not pass HB 2562 with the primary purpose of "assembling or collecting" taxes, but rather with the primary purpose of *reducing* an existing tax rate. The fact that the statute being amended has the effect of "assembling or collecting" is merely an incidental effect. The question for purposes of Article 5, Section 33 focuses on the purpose of the particular piece of legislation, and there is no doubt here that the Legislature put pen to paper and drafted HB 2562 the purpose of offering lower tax rates to incentivize a particular type of economic activity—not to raise revenues for the support of state government.

III. Even if the Court finds that Article 5, Section 33 applies to legislation that cuts taxes, the Court should give its holding only prospective application.

If the Court agrees with Petitioner, and finds that Article 5, Section 33 even applies to legislation with the primary purpose of incentivizing economic activity by reducing tax rates, that holding will be the first such holding in the State's 107-year history. Additionally, such a holding would upset a decades long practice of amending 68 O.S. § 1001 to offer incentivized tax rates without complying with Article 5, Section 33. The equities are in favor of giving this sudden change in the law prospective application only, such that HB 2562 is not invalidated.

In other words, given the backdrop against which HB 2562 was enacted, it would be particularly harsh to strike down HB 2562 given that the Legislature would have had little reason to believe that it was acting unlawfully, and every reason to believe that the enactment of HB 2562 was procedurally sound. Thus, if the Court concludes that Article 5, Section 33 applies even to tax incentives, the Court should give that new rule only prospective application.

Conclusion

For these reasons, the Court should assume original jurisdiction and deny the Petition on the merits.

Respectfully submitted,

Patrick R. Wyrick, OBA #21874
Solicitor General
Cara N. Rodriguez, OBA #21794
Assistant Solicitor General
Oklahoma Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
(405) 521-3921 (telephone)
(405) 522-0669 (facsimile)
patrick.wyrick@oag.ok.gov
cara.rodriguez@oag.ok.gov

Attorney for Respondents

CERTIFICATE OF MAILING TO PARTIES

I certify that a true and correct copy of the foregoing instrument was mailed this 21st day of July, 2014, by email and U.S. Mail, postage prepaid, to:

A. Wayne Billings (Bar # 31483)
Fellers Snider Blankenship Bailey & Tippens P.C.
100 N. Broadway Avenue Suite 1700
Oklahoma City, OK 73102

Louis W. Bullock W(Bar # 1305)
Bullock Bullock & Blakemore PLLC
110 West 7th Street, Suite 707
Tula, OK 74119

Patricia E. Bullock (Bar # 9569)
Bullock, Bullock & Blakemore PLLC
110 West 7th St., Suite 707
Tulsa, OK 74119

Jerry R. Fent
1830 N.W. 18th Street
Oklahoma City, OK 73106

Robert G. Campbell
A. Wayne Billings
Fellers Snider Blankenship Bailey & Tippens P.C.
100 N. Broadway Avenue, Suite 1700
Oklahoma City, OK 73102-8820

Mark D. Christiansen
McAfee & Taft
10th Floor, Two Leadership Square
211 North Robinson
Oklahoma City, OK 73102

Dawn Cash
Commissioner and Service Agent for OTC
State of Oklahoma, Oklahoma Tax Commission
M.S. Conners Building, 5th Floor
2501 N. Lincoln Blvd.
Oklahoma City, OK 73152-3248

Legal Division, Oklahoma Tax Commission
First National Center
120 North Robinson, Suite 2000W
Oklahoma City, OK 73102-7801

PATRICK R. WYRICK