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 Attorney General Respondent.	)	Case No.: 112867

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

CARA N. RODRIGUEZ, OBA #21794
ASSISTANT SOLICITOR GENERAL

PATRICK R. WYRICK, OBA #21874
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

JUNE 16, 2014

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.	)	Case No.: 112867
MARY FALLIN, Governor of the State of Oklahoma Attorney General	)	
Respondent.	)	

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

CARA N. RODRIGUEZ, OBA #21794
ASSISTANT SOLICITOR GENERAL

PATRICK R. WYRICK, OBA #21874
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

JUNE 16, 2014

TABLE OF CONTENTS & TABLE OF AUTHORITIES

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

Respondent Governor Mary Fallin hereby requests that the Court assume original jurisdiction and reject the Petition on the merits. The following brief is provided in support.

Introduction

Petitioner asks the Court to hold—for the first time in its history—that Article 5, Section 33 applies not just to legislation that creates new taxes or increases the rate of existing taxes, but also to legislation that reduces or even eliminates taxes. Petitioner does so in an attempt to invalidate SB 1246, which everyone agrees has the primary purpose of *reducing* tax revenues.

While Petitioner's target might be *this* particular tax cut, the broader implications of what Petitioner urges the Court to do cannot be ignored. If the Court holds for the first time that Article 5, Section 33 applies even to tax cuts, the Court will be reading into Oklahoma's Constitution a requirement that will make it virtually impossible for Oklahomans to ever again see their taxes reduced. Indeed, the Court would in effect be saying that when Oklahomans went to the polls in 1992 and with State Question 640 ("SQ 640") added the super-majority requirement to Article 5, Section 33, they were actually voting in favor of making it vastly more difficult for their government to *reduce* their taxes. That defies common sense, and *cannot* be the case.

Instead of reaching that counterintuitive result, which flies in the face of both legislative practice and with decisions from this Court and the Oklahoma Court of Civil Appeals, this Court should instead confirm what everyone has always seemed to understand: that Article 5, Section 33 applies only to legislation with the primary purpose of *increasing* tax revenues. That result would not only be consistent with this Court's prior Article 5, Section 33 cases, but would also

reinforce the expectations of the Oklahoma voters who went to the polls in 1992 and cast votes in favor of adding the super-majority requirement to Article 5, Section 33.

Background

Senate Bill 1246 ("SB 1246"), which was signed into law on April 23, 2014, amends 68 O.S.2012, § 2355, modifying the tax rate of certain categories of taxable income. 68 O.S.2012, § 2355(C)(1), Ex. 1, at 14. Specifically, SB 1246 reduces the top marginal income tax rate beginning in fiscal year 2016, so long as certain revenue growth targets are achieved. § 2355(C)(1)(f), Ex. 1, at 15; *see also* Fiscal Impact Statement, Ex. 2, at 2. That is, if the State Board of Equalization certifies that the total general revenue fund for fiscal year 2016 is greater than or equal to the total general revenue fund for fiscal year 2014, then the top marginal income tax rate of 5.25 percent will be reduced to 5 percent. § 2355(C)(1)(f), Ex. 1, at 15. If the funds for fiscal year 2016 are not greater than or equal to the funds for fiscal year 2014, then the top marginal income tax rate will remain unchanged. § 2355.1F, Ex. 1, at 18; *see also* Fiscal Impact Statement, Ex. 2, at 2. A similar process is employed to further reduce the top marginal income tax rate for fiscal years 2017 and 2018. § 2355.1G, Ex. 1, at 19; *see also* Fiscal Impact Statement, Ex. 2, at 2.

The Oklahoma Tax Commission ("OTC") analyzes the fiscal impact of legislation relating to taxation. After analyzing SB 1246, the OTC concluded that the bill had a significant negative effect on revenues, and reported as much to the Legislature. Fiscal Impact Statement, Ex. 2, at 1. Specifically, the OTC concluded that—assuming the revenue targets are hit, and the cuts are triggered—SB 1246 will reduce general revenue in fiscal year 2016 by $57,048,000. *Id.* Likewise, if the tax cuts for fiscal years 2017 and 2018 are triggered, those years will see general revenue decrease by $146,995,000 and $198,770,000, respectively. *Id.* If the tax cuts are not

triggered, SB 1246 is revenue neutral, as the tax rates would remain as they were before. Under no circumstances does SB 1246 have the effect of increasing tax revenues.

Summary of the Argument

I. Article 5, Section 33 protects the people from the government reaching into their pockets to collect taxes. It makes little sense to apply this protection even to instances where the government is attempting to put money *back into* the peoples' pockets. 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 increasing tax revenues, and which levy a tax in the strict sense. In fact, we can find no instance where any court in this jurisdiction has ever applied Article 5, Section 33 to legislation with the primary purpose of decreasing tax revenues, 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 cuts, seeing as the citizenry generally welcomes such tax cuts with open arms, rather than running to the court to object.[1] But the great weight of authority in this jurisdiction indicates that Article 5, Section 33 applies only to legislation with the primary purpose of increasing 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 this tax cut, 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.

[1] As best we can tell, only this Petitioner has ever raised this sort of claim, but in the one prior instance where he did, the Court had no occasion to reach the Article 5, Section 33 question. *See Fent v. Fallin*, 2013 OK 107, ¶ 7 n.1, 315 P.3d 1023 (where the Court struck down the challenged legislation on single subject rule grounds).

II. Because the Legislature did not pass SB 1246 to generate new tax revenue, but rather to decrease tax revenue, Article 5, Section 33 does not apply. In other words, *even if* SB 1246 levies a tax in the strict sense, its primary purpose is *not* to generate tax revenue, and thus it is not a "bill for raising revenue" for purposes of Article 5, Section 33. And even if Petitioner's definition of "raising" applied (i.e., "to assemble or collect, as money"), SB 1246 still would not be a "bill for raising revenue," because the Legislature did not pass SB 1246 with the primary purpose of "assembling or collecting" taxes, but rather with the primary purpose of *cutting* taxes.

III. Even if the Court agrees with Petitioner, and announces a new rule that Article 5, Section 33 applies even to legislation like SB 1246, which has the primary purpose of *decreasing* tax revenues, the Court should give its holding only prospective application. Given that the Legislature would have reasonably concluded, based on existing precedents, that Article 5, Section 33 did not apply to SB 1246, it would be particularly inequitable to apply a newly announced rule to SB 1246.

Argument and Authorities

The highest burden placed on any litigant in any context is the burden placed on litigants bringing facial challenges to the constitutionality of duly-enacted statutes. *See Davis v. Fieker*, 1997 OK 156, ¶ 35, 952 P.2d 505 ("A facial challenge to a Legislative Act is, of course, the most difficult to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.") (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)); *Schmitt v. Hunt*, 1960 OK 257, ¶ 6, 359 P.2d 198, 200 (A legislative act must be upheld unless "its unconstitutionality is shown beyond a reasonable doubt.").

To meet the extraordinarily high burden of definitively establishing that there are "no set of circumstances" in which the law can ever be lawfully applied, "[a] party challenging the constitutionality of legislation has a heavy burden of showing its infirmity by persuasive

argument and analysis . . . ." *Fent v. Contingency Review Bd.*, 2007 OK 27, ¶ 22, 163 P.3d 512. Such "convincing" argument must be "firmly supported by legal authority," *id.* at ¶ 22, 163 P.3d at 525, and citation to legal authority is required. *Id.*; *see also* OKLA. SUP. CT. R. 1.11(k)(2) ("Argument without supporting authority will not be considered."). "Naked argument . . . is without merit . . . ." *Okla. City Urban Renewal Auth. v. City of Okla. City*, 2005 OK 2, ¶ 7 n.9.

Petitioner's argument—that Article 5, Section 33 should be applied even to legislation with the principle purpose of reducing tax revenues—is based on nothing more than a single definition of the word "raise" that he found in an old version of a Webster's Dictionary, that he says defines "raise" as "to assemble or collect, as money."[2] But even assuming that Petitioner's definition is correct, the primary purpose of SB 1246 is clearly *not* to "assemble or collect" tax revenue, but rather to reduce the amount of tax revenue that the State will assemble or collect under its existing income tax statutes. Petitioner has thus failed to meet his high burden of showing that SB 1246 is unconstitutional.

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 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)

[2] While we did not have access to the Webster's dictionary that Petitioner cites, the version of Merriam-Webster's dictionary that we consulted 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 "raising" 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."

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.[3] 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.* at ¶ 11 (internal quotation omitted); *see also Leveridge v. Oklahoma Tax Commission*, 1956 OK 77, ¶ 8, 294 P.2d 809.

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 which must originate in the lower

[3] While Petitioner argues that *Ritterbusch* "has no application" to this case, Petr's Br. at 7, we would be remiss in failing to note for the Court 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. While that language is pure dicta, it is the only language from any Oklahoma case that even arguably supports Petitioner's position.

house...[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), Ex. 3 (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 to read as follows:

> A. All bills for raising revenue shall originate in the House of Representatives. The Senate may propose amendments to revenue bills.
>
> B. No revenue bill shall be passed during the five last days of session.
>
> C. Any revenue bill originating in the House of Representatives shall not become effective until it has been referred to the people of the state at the next general election held throughout the state and shall become effective and be in force when it has been approved by a majority of the votes cast on the measure at such election and not otherwise, except as otherwise provided in subsection D of this section.
>
> D. Any revenue bill originating in the House of Representatives may become law without being submitted to a vote of the people of the state if such bill receives the approval of three-fourths (3/4) of the membership of the

> House of Representatives and three-fourths (3/4) of the membership of the Senate and is submitted to the Governor for appropriate action. Any such revenue bill shall not be subject to the emergency measure provision authorized in Section 58 of this Article and shall not become effective and be in force until ninety days after it has been approved by the Legislature, and acted on by the Governor.

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, Ex. 4 ("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, Ex. 5 (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, Ex. 6 (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, Ex. 7 ("Let the people themselves vote on tax increases when the legislators cannot decide it by a three-fourths margin."); Letter to the Editor, *Boondocks Residents Not Stupid*, THE OKLAHOMAN, Mar. 7, 1992, at 8, Ex. 8 ("Those of us who support SQ 640 do so because we believe the only way to restore good business practices to state government is to put a limit on their ability to continue to raise taxes . . . .").

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 not only make it vastly more difficult for the Legislature to raise taxes in the future, but also make it vastly more difficult for the Legislature to cut them. The measure was plainly seen as an anti-tax measure, not an anti-tax *cutting* measure. Ramsey, Ex. 1, 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.

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, Ex. 9.[4]

[4] *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. V, § 33; ARIZ. CONST. art. IX, § 22; NEV. CONST. art. IV, § 18.") (emphasis

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.

---

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 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. V, § 33 (three-fourths); and South Dakota, S.D. Const. art. XI, §§ 13-14 (two-thirds).") (emphasis added).

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 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 SB 1246, which has the primary purpose of decreasing tax revenues. Indeed, Oklahoma voters' well-founded and well-reasoned expectations would be frustrated if such a definition is not now adopted.

II. SB 1246 has the primary purpose of decreasing tax revenues, so Article 5, Section 33 does not apply.

Once "revenue raising" is defined as applying to tax increases alone, Petitioner's case fails on the first prong of this Court's Article 5, Section 33 test. As discussed *supra*, SB 1246 proposes a .25 percent tax cut to the top marginal individual income tax rate, contingent on certain revenue growth. Depending on state revenues, that tax rate would reduce from 5.25 percent to 5 percent beginning with tax year 2016, and then further reduce to 4.85 percent in subsequent tax years. The OTC's Fiscal Impact Statement shows that projected revenue would

dramatically decrease with the passage of SB 1246. Fiscal Impact Statement, 1, Ex. 2. Indeed, in fiscal year 2016 alone, projected revenue would decrease by $57,048,000, and would only continue to decrease in fiscal years 2017 and 2018. *Id.* Unquestionably, therefore, SB 1246 proposes tax ***cuts*** and would not increase state revenues.

Since the principal object of SB 1246 is a reduction in taxes, then Article 5, Section 33 does not apply. 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 SB 1246 with the primary purpose of "assembling or collecting" taxes, but rather with the primary purpose of *cutting* 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 SB 1246 solely with the purpose of cutting an existing tax rate. Petitioner's attacks on SB 1246—that it did not originate in the House and did not pass with a super-majority—are thus entirely moot. The requirements of Article 5, Section 33 simply do not prevent these tax cuts from taking effect, ensuring that Oklahomans—both now and in the future—keep more of their money.

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 reducing tax revenues, that holding will be the first such holding in the State's 107-year history. The equities are strongly in favor of giving this sudden change in the law prospective application only, such that SB 1246 is not invalidated.

In other words, given the backdrop against which SB 1246 was enacted, it would be particularly harsh to strike down SB 1246 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 SB 1246 was procedurally sound.[5] Thus, if the Court concludes that Article 5, Section 33 applies even to tax cuts, the Court should give that newly-announced rule only prospective application.

Conclusion

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

Patrick R. Wyrick, OBA #21874
Solicitor General
Oklahoma Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
(405) 521-3921
(405) 522-0669 (facsimile)
patrick.wyrick@oag.ok.gov
Attorney for Respondents

[5] Particularly noteworthy is the fact that the House made no procedural objection to the bill being introduced in the Senate. If the House had thought its origination power was being infringed, wouldn't that chamber have objected?

CERTIFICATE OF MAILING TO PARTIES

I certify that a true and correct copy of the foregoing instrument was mailed this 16st day of June, 2014, by email and U.S. Mail, postage prepaid, to:

Jerry R. Fent, OBA #2868
1830 N.W. 18th Street
Oklahoma City, OK 73106

PATRICK R. WYRICK