

**IN RE INITIATIVE PETITION NO. 395, STATE QUESTION NO. 761**

2012 OK 42

Case Number: 110545

Decided: 04/30/2012

**THE SUPREME COURT OF THE STATE OF OKLAHOMA**

Cite as: 2012 OK 42, \_\_ P.3d \_\_

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS.  
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In re Initiative Petition No. 395, State Question No. 761

## ORDER

¶1 Upon consideration of the Protestants' challenge to the legal sufficiency of Initiative Petition No. 395 which proposes to amend the Oklahoma Constitution in the above styled and numbered cause, THE COURT FINDS:

1. The people of Oklahoma have reserved to themselves "the power to propose laws and amendments to the Constitution." Okla. Const. art. 5, § 1.
2. The proposals, however, are subject to the constitutional limitation that "such changes be not repugnant to the Constitution of the United States." Okla. Const. art. 2, § 1.
3. Therefore, "[a] pre-submission determination of the constitutionality of [an] initiative petition is appropriate and necessary where the proposal is facially unconstitutional and is justified when a costly and futile election may be avoided." In re Initiative Petition No. 349, State Question 642, 1992 OK 122, ¶ 16, 838 P.2d 1, 8. In 2009, the Oklahoma Legislature codified that holding. A protest to the legal sufficiency of an initiative petition must now be heard by this Court in advance of a challenge to the numerical sufficiency of the initiative petition. See Okla. Stat. tit. 34, § 8 (2011).
4. The United States Supreme Court has spoken on this issue. The measure is clearly unconstitutional pursuant to Planned Parenthood v. Casey, 505 U.S. 833 (1992). The states are duty bound to follow its interpretation of the law. Twenty years ago, this Court was presented with an initiative which facially conflicted with the Casey decision. This Court held: "The issue of the constitutionality of the initiative petition is governed by the United States Supreme Court's pronouncement in Casey."
5. The only course available to this Court is to follow what the United States Supreme Court, the final arbiter of the United States Constitution has decreed. In re Initiative Petition 349, 1992 OK 122, ¶ 8, 838 P.2d 1, 5.
6. The mandate of Casey is as binding on this Court today as it was twenty years ago. Initiative Petition No. 395 conflicts with Casey and is void on its face and it is hereby ordered stricken.

¶2 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, that Initiative Petition No. 395 is void on its face and it is hereby ordered stricken. DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE this 30th day of April, 2012.

/S/CHIEF JUSTICE

ALL JUSTICES CONCUR.