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NOTE

CONSIDERING AN INITIATIVE'S DELEGATION OF LEGISLATIVE AUTHORITY

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Introduction

In the fall of 2023, an initiative petition was filed with the Oklahoma Secretary of State's Office that, if passed into law, could potentially shape the course of State history. Initiative Petition 446 (a.k.a. State Question 832) would raise the State's minimum wage each year until 2030 when the minimum wage would then be tied to the U.S. Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers.[1] Oklahoma currently matches the federal minimum wage at $7.25 per hour,

* Juris Doctor Candidate, Oklahoma City University School of Law, May 2025. This Note is dedicated to the memory of my great-grandmother, Vera Peters, who gracefully endured the Dust Bowl and Great Depression in Western Oklahoma. In her, I saw true grit, resilience, and a deep love for others that flowed from a meaningful relationship with her Savior. I would like to thank Professor Andrew Spiropoulos for his thoughtful guidance and constructive feedback throughout the writing process. Additionally, I would like to thank the members of the Oklahoma City University Law Review for their tireless work on this Note.

1. Initiative Petition No. 446, State Question No. 832, filed with the Oklahoma Secretary of State Oct. 27, 2023, https://kfor.com/wp-content/uploads/sites/3/2023/11/Stquestion832.pdf [https://perma.cc/23EY-C2QF].

but upon passage of State Question 832, and after 2030, the minimum wage would automatically increase every year based on increases reflected in the Consumer Price Index.[2]

Oklahoma's potential mandatory connection to the Consumer Price Index is the real issue here. According to the U.S. Bureau of Labor Statistics, "[t]he Consumer Price Index (CPI) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services."[3] The key word here is "urban." Those opposed to Initiative Petition 446 fear the reality of Oklahoma's minimum wage potentially depending on an index that is based on urban consumers. CEO and President of the State Chamber of Oklahoma, Chad Warmington, noted that the proposal is "linked to a federal government-produced index that is based upon cost-of-living rates in cities like New York or San Francisco. Those areas are not reflective of the actual cost of living in Oklahoma."[4]

The State Chamber of Oklahoma and the Oklahoma Farm Bureau Legal Foundation challenged the proposed initiative petition on two different grounds. First, the challengers contested the constitutionality of the initiative petition's gist.[5] Second, the challengers contested the constitutionality of the initiative's proposed delegation of legislative authority to a federal entity.[6] Specifically, the challengers were most concerned about the initiative's delegation of policy-making authority to the U.S. Department of Labor's Consumer Price Index.[7] If the initiative had delegated legislative authority to a *state* agency, the state legislature

2. Barbara Hoberock, *Oklahoma minimum wage petition can move forward, court rules*, OKLA. VOICE (Mar. 4, 2024, 6:09 PM), https://oklahomavoice.com/2024/03/04/initiative-petition-to-increase-oklahomas-minimum-wage-to-15-a-hour-is-constitutional-court-rules/ [https://perma.cc/9RA5-WJ5E].

3. *Consumer Price Index*, U.S. BUREAU OF LAB. STAT. (emphasis omitted), https://www.bls.gov/cpi/ [https://perma.cc/7VNX-JEQ6].

4. Ray Carter, *In Minimum-Wage Case, Oklahoma Supreme Court Defies Judicial Norms*, OCPA (Mar. 6, 2024), https://ocpathink.org/post/independent-journalism/in-minimum-wage-case-oklahoma-supreme-court-defies-judicial-norms [https://perma.cc/629K-Q3FW].

5. Application to Assume Original Jurisdiction, *In re* State Question No. 832, Initiative Petition No. 446, 2024 OK 60 (Nov. 21, 2023), https://kfor.com/wp-content/uploads/sites/3/2023/11/Stquestion832.pdf [https://perma.cc/NEP8-JL9E].

6. *Id.*

7. *Id.*

would have a significant means of controlling that state agency's actions.[8] However, because the initiative delegated legislative authority to a *federal* agency, the state legislature would be left virtually powerless to determine the actions of an outside entity.[9]

In *State Chamber of Oklahoma v. Cobbs*, the Oklahoma Supreme Court held only that "Initiative Petition No. 446 does not clearly or manifestly violate either the Oklahoma or United States Constitution."[10] Although this holding seemed to fly in the face of Oklahoma Supreme Court precedent, the most shocking aspect of *Cobbs* was its brevity. Instead of explaining its legal reasoning as to *why* Initiative Petition 446 was legally sufficient, the Oklahoma Supreme Court simply stated that it *was*.[11] This begs two questions: Should state courts review the substantive constitutionality of initiatives before they are put to a vote of the people? And what should the proper rule be for delegating legislative authority?

First, this Note will present the background and history of the initiative process in the State of Oklahoma. Next, this Note will analyze *Cobbs*, as well as other Oklahoma Supreme Court precedents concerning the constitutionality of delegation of legislative authority. Then, this Note will consider how other state courts analyze the nondelegation doctrine. Lastly, this Note will articulate a rule for the legal sufficiency of initiative petitions and the proper delegation of legislative authority.

I. Background

Before analyzing the legal sufficiency of initiative petitions, it is necessary to gain an understanding of the initiative process and how it gained its popularity in the State of Oklahoma. The initiative process is a form of direct democracy and the most objectively potent form at that.[12]

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8. *See* OKLA. STAT. tit. 75, § 250.2(B) (2023) (explaining that the Legislature creates agencies, designates their functions and purposes, and reserves to itself "[t]he right to retract any delegation of rulemaking authority unless otherwise precluded by the Oklahoma Constitution").

9. *See* United States v. Washington, 596 U.S. 832, 838 (2022) (explaining that the U.S. Supreme Court has "interpreted the Constitution as prohibiting States from interfering with or controlling the operations of the Federal Government").

10. State Chamber of Okla. v. Cobbs, 2024 OK 13, ¶ 1, 545 P.3d 1216, 1216 (citations omitted).

11. *Id.*

12. GARY MONCRIEF & PEVERILL SQUIRE, WHY STATES MATTER: AN INTRODUCTION TO STATE POLITICS 208 (Traci Crowell & Deni Remsberg eds., 3rd ed. 2020) (citation omitted).

An initiative measure is a piece of legislation that is initiated by a voter or group of voters.[13] After a proposed initiative measure has gained the required number of signatures (in Oklahoma, the signature requirement is equal to 15% of the number of votes cast for governor in the last gubernatorial election), it then qualifies for the ballot as a state question.[14] If the majority vote is reached, the voter-authored legislation becomes a valid law with the same force and effect as a piece of legislation that has been voted on by both houses and signed by the Governor.[15]

The initiative petition gained its popularity at the end of the nineteenth and at the beginning of the twentieth century as a result of the populist movement.[16] Born out of a distrust of state legislatures that were controlled by interest groups and lobbyists, the populist movement was characterized by a shift in the management of government away from state legislatures directly to the people of the state.[17] For groups that did not trust the government, or at the very least felt underrepresented by the government, initiative petitions were a powerful tool that could be used "to bypass the state legislature and the legislative process" entirely.[18] In 1907, the people of Oklahoma voted to adopt the initiative process by an overwhelming 71% majority vote, making Oklahoma the first state to include the initiative and popular referendum in its original constitution.[19] Today, twenty-four of the fifty states provide for the citizen initiative, allowing citizens to completely bypass their state legislature when creating new laws.[20]

Supporters of initiative petitions argue that the initiative process allows voters to implement policy change where state legislators have

13. DANIEL R. MANDELKER ET AL., STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM 908 (Carolina Academic Press, 9th ed, 2021).

14. *State Question*, OKPOLICY, OKLA. POL'Y INST. (Oct. 4, 2024), https://okpolicy.org/state-question/ [https://perma.cc/4A4B-6TJ4].

15. *State Questions*, OKLA. SEC'Y OF STATE, https://www.sos.ok.gov/gov/state_questions.aspx# [https://perma.cc/U6PH-GEHL].

16. MANDELKER, *supra* note 13, at 907.

17. *Id.*

18. MONCRIEF & SQUIRE, *supra* note 12, at 208.

19. *History of initiative and referendum in the U.S.*, BALLOTPEDIA, https://ballotpedia.org/History_of_initiative_and_referendum_in_the_U.S [https://perma.cc/F4QQ-TNXQv].

20. K.K. DuVivier, *Out of the Bottle: The Genie of Direct Democracy*, 70 ALB. L. REV. 1045, 1046 (2007).

been unable or unwilling to do so.[21] In this way, voters are given the chance to act as their own legislators, using the initiative process as an effective tool for curbing the government's power while simultaneously holding it accountable.[22] While critics of the ballot initiative argue that the initiative process undermines the democratic process, supporters of the ballot initiative see the initiative process as another "check in our system of checks and balances."[23] Further, advocates of the ballot initiative champion the initiative process as a key to higher voter turnout.[24] When voters are passionate about an issue on the ballot and realize that they are directly responsible for making policy regarding that issue in their state, they are quick to cast their vote.

Critics of initiative petitions argue that the initiative is simply a tool used by well-financed special interest groups to further their respective political agendas.[25] In other words, instead of the initiative being used as a grassroots effort to cause effective change within a state as its populist fathers intended, it has been weaponized and exploited by special interest groups who use their power and influence to sway voters.[26] Further, critics of ballot initiatives argue that the initiative is not subject to the same deliberative process or public debate that ordinary legislation goes through before being passed into law.[27] As the Ninth Circuit explained in *Jones v. Bates*:

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21. Sabine Brown, *Oklahoma's state question process should be protected*, OKPOLICY, OKLA. POL'Y INST. (Nov. 28, 2022), https://okpolicy.org/oklahomas-state-question-process-should-be-protected/ [https://perma.cc/HD2G-B6BC].

22. M. Dane Waters, *Do Ballot Initiatives Undermine Democracy?*, CATO POL'Y REP., July/August 2000, at 7, https://www.cato.org/sites/cato.org/files/serials/files/policy-report/2000/7/initiatives.pdf [https://perma.cc/3JTY-RG36].

23. William A. Niskanen, *Do Ballot Initiatives Undermine Democracy?*, CATO POL'Y REP., July/August 2000, at 6, https://www.cato.org/sites/cato.org/files/serials/files/policy-report/2000/7/initiatives.pdf [https://perma.cc/A5K9-RVYT].

24. Danielle Root & Liz Kennedy, *Increasing Voter Participation in America: Policies to Drive Participation and Make Voting More Convenient*, CTR. FOR AM. PROGRESS (July 11, 2018), https://www.americanprogress.org/article/increasing-voter-participation-america/.

25. NAT'L CONF. OF STATE LEGISLATURES, INITIATIVE AND REFERENDUM IN THE 21ST CENTURY at 4 (July 2002), https://documents.ncsl.org/wwwncsl/Elections/IandR-report-2002.pdf [https://perma.cc/82FZ-5LFX].

26. *Id.* at vii.

27. Rachel Downey et al., *Direct Democracy: A Survey of the Single Subject Rule as Applied to Statewide Initiatives*, 13 J. CONTEMP. LEGAL ISSUES 579, 592 (2004).

> Before an initiative becomes law, no committee meetings are held; no legislative analysts study the law; no floor debates occur; no separate representative bodies vote on the bill; no reconciliation conferences are held; no amendments are drafted; no executive official wields a veto power and reviews the law under that authority; and it is far more difficult for the people to "reconvene" to amend or clarify the law if a court interprets it contrary to the voters' intent. The public also generally lacks legal or legislative expertise—or even a duty (as legislators have under Article VI) to support the Constitution. It lacks the ability to collect and to study information that is utilized routinely by legislative bodies.[28]

Since statehood, Oklahomans have passed hundreds of ballot initiatives on issues ranging from cockfighting to criminal sentencing reform.[29] For better or for worse, the initiative petition has shaped the course of Oklahoma's history. For instance, in 2018, Oklahoma voters passed State Question 788 which legalized medical marijuana in the State.[30] State Question 788 left Oklahoma (arguably one of the most conservative states in the U.S.) with the most liberal marijuana legislation in the country.[31] One hundred years earlier, Oklahoma voters used the initiative process to "grant[] women the right to vote two years before the 19th Amendment was ratified."[32] In 2018, the citizens' initiative was used

28. Jones v. Bates, 127 F.3d 839, 860 (9th Cir. 1997) (footnotes omitted).

29. *Search State Questions*, OKLA. SEC'Y OF STATE, https://www.sos.ok.gov/gov/questions.aspx [https://perma.cc/22RQ-4MTJ].

30. *Oklahoma State Question 788, Medical Marijuana Legalization Initiative (June 2018)*, BALLOTPEDIA, https://ballotpedia.org/Oklahoma_State_Question_788,_Medical_Marijuana_Legalization_Initiative_(June_2018)#:~:text=What%20did%20State%20Question%20788,a%20board%2Dcertified%20physician's%20signature [https://perma.cc/L3TV-H2QW].

31. Paul Demko, *How One of the Reddest States Became the Nation's Hottest Weed Market*, POLITICO (Nov. 27, 2020, 7:09 AM), https://www.politico.com/news/magazine/2020/11/27/toke-lahoma-cannabis-market-oklahoma-red-state-weed-legalization-437782.

32. Caroline Joseph, *17 Ballot Measures From History That Might Never Have Become Law*, REPRESENTUS (July 27, 2022), https://act.represent.us/sign/17-ballot-measures-history-might-never-have-become-law [https://perma.cc/63ZA-KACY].

to legalize liquor-by-the-drink in Oklahoma.[33] This ended a seventy-seven-year prohibition against the "open saloon" and allowed individual counties the power to decide whether or not to approve on-premise liquor consumption.[34]

Needless to say, the initiative process is powerful. Time and time again, Oklahoma voters have shown up to the polls to take policy matters into their own hands. As *Cobbs* indicates, Oklahoma voters may soon have the opportunity to substantially raise the minimum wage in the State. Instead of Oklahoma's minimum wage matching the federal minimum wage at the current $7.25 per hour, the minimum wage would increase gradually every year, eventually reaching $15 per hour in 2029.[35] Starting in 2030, the annual minimum wage increases would then be tied to the Consumer Price Index for Urban Wage Earners and Clerical Workers.[36] The next section of this Note will analyze *Cobbs*, as well as other Oklahoma Supreme Court precedent regarding delegation of powers to federal entities.

II. *State Chamber of Oklahoma v. Cobbs*

On October 27, 2023, Kelsey Cobbs and Dustin Phelan filed a proposed initiative petition with the Oklahoma Secretary of State's Office.[37] If passed, the initiative petition would amend the Oklahoma Minimum Wage Act (OMWA), tying Oklahoma's minimum wage to the

33. Jim Young, *Voters OK Liquor-by-the-Drink Prohibition Years End*, THE OKLAHOMAN (Sept. 19, 1984, 12:00 a.m.), https://www.oklahoman.com/story/news/1984/09/19/voters-ok-liquor-by-the-drink-prohibition-years-end/62789930007/ [https://perma.cc/VBQ2-XKLF].

34. *Id.*

35. Anna Pope, *Signature collection for Oklahoma minimum wage state question can begin this week*, KOSU (Apr. 14, 2024, 5:10 AM), https://www.kosu.org/local-news/2024-04-15/signature-collection-for-oklahoma-minimum-wage-state-question-can-begin-this-week.

36. *OKFP praises attorney general for defending wage determination process*, OKLA. FARM BUREAU (Dec. 15, 2023), https://www.okfarmbureau.org/news/okfb-praises-attorney-general-for-defending-wage-determination-process/ [https://perma.cc/A4BX-RYAP].

37. Initiative Petition No. 446, State Question No. 832, filed with the Oklahoma Secretary of State Oct. 27, 2023, https://kfor.com/wp-content/uploads/sites/3/2023/11/Stquestion832.pdf [https://perma.cc/23EY-C2QF].

U.S. Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI) after 2029.[38]

On November 20, 2023, the State Chamber of Oklahoma, Oklahoma Farm Bureau Legal Foundation, Chad Warmington, and Tommy Salisbury filed an application to assume original jurisdiction and protest the initiative petition.[39] The petitioners requested that the Oklahoma Supreme Court assume original jurisdiction and declare the initiative petition "legally insufficient for submission to the voters."[40] In their Brief in Support of Application to Assume Original Jurisdiction and Protest of Initiative Petition No. 446, the petitioners argued the legal insufficiency of the initiative petition on two different grounds.[41] First, the petitioners claimed Initiative Petition 446 unconstitutionally delegated legislative authority to determine the State's minimum wage to federal officials.[42] Second, the petitioners claimed that Initiative Petition 446 boasted a gist that would mislead voters.[43]

On March 4, 2024, the Oklahoma Supreme Court released its opinion on the constitutionality of Initiative Petition 446.[44] In a concise opinion that spanned less than a page, the Court assumed original jurisdiction and denied relief to the petitioners.[45] With little to no legal reasoning or analysis, the court stated that "Initiative Petition No. 446 does not clearly or manifestly violate either the Oklahoma or United States Constitution," and "Initiative Petition No. 446 is legally sufficient."[46]

Justice Kuehn wrote separately to concur in part and dissent in part.[47] She agreed with the majority in that the initiative petition "should go to a vote of the people," but she disagreed with the majority's decision to "determine whether the [Initiative] Petition itself violates the Oklahoma

38. *Id.* at 1-2.

39. Application to Assume Original Jurisdiction, In re State Question No. 832, Initiative Petition No. 446, 2024 OK 60 (Nov. 21, 2023), https://www.sos.ok.gov/documents/questions/832.pdf [https://perma.cc/C8XG-9UVN].

40. *Id.* at 1.

41. Brief in Support of Application to Assume Original Jurisdiction and Protest of Initiative Petition No. 446, *In re* State Question No. 832, Initiative Petition No. 446, 2024 OK 60 (Nov. 21, 2023), https://www.sos.ok.gov/documents/questions/832.pdf [https://perma.cc/C8XG-9UVN].

42. *Id.* at 4.

43. *Id.* at 10.

44. State Chamber of Okla. v. Cobbs, 2024 OK 13, ¶ 1, 545 P.3d 1216.

45. *Id.*

46. *Id.* (citations omitted).

47. *Id.* ¶¶ 1-15, 545 P.3d at 1216-19 (Kuehn, J., concurring in part, dissenting in part).

Constitution."[48] In Justice Kuehn's view, it was "wildly premature" for the court to intervene with the initiative petition.[49] Relying on title 34, sections 8 and 10 of the Oklahoma Statutes, the Oklahoma Constitution, and *Threadgill v. Cross*, Justice Kuehn argued that the judiciary should not interfere with the initiative petition process by determining its constitutionality before it is put to a vote of the people.[50] Justice Kuehn articulated her position by explaining that the Oklahoma Supreme Court was exceeding its constitutional mandate by deciding for itself what should or should not be on the ballot.[51] She explained that Oklahoma's populist Constitution was written to intentionally "provide[] twin paths to lawmaking."[52] The State legislature, and a vote of the people via the initiative petition process, are the "twin paths" that Justice Kuehn is referring to. Justice Kuehn reasoned that, just as it would be inappropriate for the Court to intervene with the State legislature's proposals before they become law, it is inappropriate for the Court to strike down an initiative petition before it is ever put up for a vote of the people.[53] Justice Kuehn advanced the idea that "if a manifestly unconstitutional petition becomes law, the law may be challenged and this Court has both the duty and the authority to correct the error."[54]

Chief Justice Kane argued that the proposed initiative petition was faulty in three ways: it was a violation of the nondelegation doctrine, it was not capable of correction by severance, and it had a misleading gist.[55] First, regarding the nondelegation doctrine, Justice Kane wrote that "Initiative Petition 446 is facially an unconstitutional delegation of legislative authority to federal officials in direct contravention of this Court's jurisprudence in *City of Oklahoma City v. State ex rel. Department of Labor*."[56] He explained that, just like the Prevailing Wage Act violated the nondelegation doctrine in *City of Oklahoma City*, the Consumer Price Index (employed by Initiative Petition 446) violates the nondelegation doctrine in the same way by giving the federal government the authority

48. *Id.* ¶ 1, 545 P.3d at 1216 (Kuehn, J., concurring in part, dissenting in part).
49. *Id.* ¶ 15, 545 P.3d at 1219 (Kuehn, J., concurring in part, dissenting in part).
50. *Id.* ¶¶ 1-15, 545 P.3d at 1216-17 (Kuehn, J., concurring in part, dissenting in part).
51. *Id.* ¶¶ 3-6, 545 P.3d at 1217 (Kuehn, J., concurring in part, dissenting in part).
52. *Id.* ¶¶ 11-15, 545 P.3d at 1218-19 (Kuehn, J., concurring in part, dissenting in part).
53. *Id.* (Kuehn, J., concurring in part, dissenting in part).
54. *Id.* ¶ 8, 545 P.3d at 1218 (Kuehn, J., concurring in part, dissenting in part).
55. *Id.* ¶¶ 1-6, 545 P.3d at 1220 (Kane, C.J., dissenting).
56. *Id.* ¶ 3, 545 P.3d at 1220 (Kane, C.J., dissenting).

to increase the minimum wage in Oklahoma.[57] Second, Justice Kane pointed out that, although Initiative Petition 446 has a severability clause that could potentially eliminate the unconstitutional or faulty portions of the initiative petition, Initiative Petition 446 was "not susceptible to correction by severance."[58] Initiative Petition 446 is controlled by the Consumer Price Index, which is a federal benchmark. Justice Kane argued that if the Consumer Price Index portion of Initiative Petition 446 was removed, "the spirit of the measure has been breached," proving that Initiative Petition 446 is not severable.[59] Third, Justice Kane articulated the two different ways he believed Initiative Petition 446 boasted a misleading gist.[60] First, he argued that the gist would mislead voters because it gives them the impression that the proposed initiative petition would create an exemption for federal workers, but federal workers are already exempt under existing law.[61] Second, Justice Kane reasoned that the initiative petition's gist also misleads voters by failing to properly inform them of an exemption under the Oklahoma Minimum Wage Act for "[s]ome employers with ten or fewer employees."[62] The exemption stated in the gist is worded as if it would apply if the business has less than ten employees at any one location, but in reality, the exemption only applies if the business has less than ten employees at any one location *and* the business has an annual gross revenue of less than $100,000.[63]

Justice Rowe also wrote a separate dissenting opinion.[64] In his dissent, he focused on *In re Initiative Petition No. 366, State Question No. 689*.[65] In that case, the Oklahoma Supreme Court made a pre-election ruling on the legal sufficiency of a certain provision in Initiative Petition 366.[66] The provision in that case permitted the use of languages other than English in state-supported schools, but the rules for this were to be promulgated by the State Board of Education and the State Board of Regents of Higher Education.[67] The Court held that the initiative petition failed to provide

57. *Id.* (Kane, C.J., dissenting).
58. *Id.* ¶¶ 6-10, 545 P.3d at 1221 (Kane, C.J., dissenting).
59. *Id.* ¶¶ 10-14, 545 P.3d at 1222 (Kane, C.J., dissenting).
60. *Id.* ¶¶ 10-20, 545 P.3d at 1222-23 (Kane, C.J., dissenting).
61. *Id.* ¶¶ 14-20, 545 P.3d at 1223 (Kane, C.J., dissenting).
62. *Id.* ¶ 18, 545 P.3d at 1223 (Kane, C.J., dissenting).
63. *Id.* (Kane, C.J., dissenting).
64. *Id.* ¶¶ 1-6, 545 P.3d at 1223-25 (Rowe, V.C.J., dissenting).
65. *Id.* ¶¶ 1-5, 545 P.3d at 1223-25 (Rowe, V.C.J., dissenting).
66. *Id.* (Rowe, V.C.J., dissenting).
67. *Id.* (Rowe, V.C.J., dissenting).

direction as to what these rules should have been, and that was an improper delegation of policy-making authority.[68] Justice Rowe argued that Initiative Petition 446 "arguably delegates even greater policy-making authority than Initiative Petition No. 366" that the Court ruled legally insufficient for submission to voters.[69] He supported his argument by pointing to the Consumer Price Index.[70] Justice Rowe explained that Initiative Petition 446 would eventually allow the U.S. Department of Labor through the Consumer Price Index to determine Oklahoma's minimum wage without imposing any kind of a limit on the Department of Labor's authority to do so.[71]

III. Delegation of Legislative Authority

A. Federal Nondelegation

The differing approaches that courts have taken to the nondelegation doctrine are numerous, and the approach that federal courts have taken to the doctrine should be considered among them. At the federal level, the purpose of the nondelegation doctrine is "to prevent Congress from ceding its . . . legislative power to other entities" that are not vested with constitutional legislative authority.[72] Our Founding Fathers were well aware of the dangers of allowing the same people who *create* laws to wield the power of *enforcing* them. As James Madison wrote in *Federalist No. 47*, "[t]here can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates."[73]

The nondelegation doctrine does not require that the three branches of government have a complete separation of powers, but it does attempt to distinguish constitutional delegations of power from unconstitutional grants of legislative power that violate separation of powers principles.[74]

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68. *Id.* (Rowe, V.C.J., dissenting).
69. *Id.* ¶ 4, 545 P.3d at 1224 (Rowe, V.C.J., dissenting).
70. *Id.* ¶¶ 1-6, 545 P.3d at 1223-25 (Rowe, V.C.J., dissenting).
71. *Id.* (Rowe, V.C.J., dissenting).
72. *Artl.S1.5.1 Overview of Nondelegation Doctrine*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/constitution-conan/article-1/section-1/overview-of-nondelegation-doctrine [https://perma.cc/T9D5-77W8].
73. THE FEDERALIST NO. 47 (James Madison).
74. *Artl.S1.5.1 Overview of Nondelegation Doctrine*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/constitution-conan/article-1/section-1/overview-of-nondelegation-doctrine [https://perma.cc/T9D5-77W8].

In *Mistretta v. United States*, the Supreme Court held that "Congress generally cannot delegate its legislative power to another Branch."[75] However, the Court also addressed the "intelligible principle" standard, holding that "[s]o long as Congress 'shall lay down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform, such legislative action is not a forbidden delegation of legislative power.'"[76]

The Court stated its practical reasoning for adopting the broad intelligible principle standard in *Mistretta*: "Congress simply cannot do its job absent an ability to delegate power under broad general directives."[77] In other words, Congress will be unable to operate effectively and efficiently without a means of delegating the power to make good law to other branches of government. With this principle in mind, the Court has been extremely reluctant to strike down legislation on the grounds of an impermissible delegation of legislative authority.[78] In fact, the Court has not struck down any legislation as an impermissible delegation of legislative authority since 1935,[79] leading many constitutional law scholars to believe that the federal nondelegation doctrine is dead.[80]

In 2001, the Court reaffirmed the established federal approach to the nondelegation doctrine in *Whitman v. American Trucking Associations*.[81] In *Whitman*, the Court considered an allegedly unconstitutional delegation of legislative authority by Congress to the Administrator of the Environmental Protection Agency (EPA).[82] Justice Scalia authored a thoughtful opinion analyzing the constitutionality of § 109(b)(1) of the Clean Air Act (CAA).[83] This section states that the EPA must set "ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on [the] criteria [documents of §108] and allowing an adequate margin of safety, are requisite to protect the

75. Mistretta v. United States, 488 U.S. 361, 372 (1989) (citing Field v. Clark, 143 U.S. 649, 692 (1892)).

76. *Id.* (citing J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 409 (1928)).

77. *Id.* (citation omitted).

78. *See Artl.S1.5.2 Origin of the Intelligible Principle Standard*, LEGAL INFO. INST., CORNELL L. SCH., https://www.law.cornell.edu/constitution-conan/article-1/section-1/origin-of-the-intelligible-principle-standard [https://perma.cc/MUU7-BYEN].

79. *Id.*

80. Paul J. Larkin, *Revitalizing the Nondelegation Doctrine*, 23 FEDERALIST SOC'Y REV. 238, 244 n.24 (2022).

81. Whitman v. Am. Trucking Ass'ns, 531 U.S. 457, 472 (2001).

82. *Id.* at 462.

83. *Id.* at 463-72.

public health."[84] The court of appeals found that this statutory language did not provide an adequate intelligible principle to the Administrator of the EPA in guiding their exercise of authority in setting national ambient air quality standards (NAAQS).[85] The Court, however, disagreed.[86] The Court found that "[t]he scope of discretion § 109(b)(1) allows is in fact well within the outer limits of our nondelegation precedents."[87] The Court ultimately held that, because § 109(b)(1) required the EPA to set air quality standards at the level necessary "to protect the public health with an adequate margin of safety," Congress had sufficiently declared an intelligible principle according to Supreme Court precedent.[88] Although § 109(b)(1) left a considerable amount of discretion to the Administrator of the EPA to "protect the public health with an adequate margin of safety," the Court held that the federal nondelegation doctrine had not been violated, and the judgment of the court of appeals was reversed.[89]

Recently, however, Justice Gorsuch attacked the Court's lax approach to the nondelegation doctrine.[90] In *Gundy v. United States*, the Court considered the constitutionality of the Sex Offender Registration and Notification Act (SORNA).[91] SORNA was passed by Congress as an attempt to make the patchwork system of sex offender registration systems "more uniform and effective."[92] In *Gundy*, the scope of § 20913(d) of SORNA was at issue.[93] Section 20913(d) focused on sex offenders who had been convicted prior to SORNA's passage ("pre-Act offenders") and allowed the Attorney General to "specify the applicability" of SORNA registration requirements and "to prescribe rules for [their] registration."[94] The petitioner in this case, a pre-Act offender named Herman Gundy, argued that § 20913(d) of SORNA unconstitutionally delegated legislative power to the Attorney General by giving them the power to "specify the applicability" of SORNA's registration requirements to pre-Act

84. 42 U.S.C. § 7409(b)(1).
85. *Whitman*, 531 U.S. at 472.
86. *Id.*
87. *Id.* at 474.
88. *Id.* at 476.
89. *Id.*
90. Johnathan Hall, Note, *The Gorsuch Test: Gundy v. United States, Limiting the Administrative State, and the Future of Nondelegation*, 70 DUKE L. REV. 175, 178-79 (2020).
91. Gundy v. United States, 588 U.S. 128, 132 (2019).
92. *Id.* (citation omitted).
93. *Id.* at 132-33.
94. *Id.* at 133-34.

offenders.[95] The Court recognized that it had, in the past, upheld objectively broad delegations of authority.[96] The Court ultimately held that "the delegation in SORNA easily passes muster," meaning there was no nondelegation doctrine violation.[97] The Court reasoned that the delegation in SORNA only gave the Attorney General "temporary authority" when it required that the Attorney General have pre-Act offenders register "as soon as feasible."[98]

In his dissenting opinion, Justice Gorsuch, joined by Chief Justice Roberts and Justice Thomas, began by pointing out that the plurality "insists there is nothing wrong with Congress handing off so much power to the Attorney General."[99] Justice Gorsuch noted the careful consideration the framers of the Constitution placed on a proper separation of powers.[100] Justice Gorsuch stated that:

> The framers understood, too, that it would frustrate "the system of government ordained by the Constitution" if Congress could merely announce vague aspirations and then assign others the responsibility of adopting legislation to realize its goals. Through the Constitution, after all, the people had vested the power to prescribe rules limiting their liberties in Congress alone. No one, not even Congress, had the right to alter that arrangement.[101]

Further, Justice Gorsuch reminded his audience that the framers insisted on a distinct separation of powers, in part, because "[t]hey believed the new federal government's most dangerous power was the power to enact laws restricting the people's liberty."[102] As a "faithful guardian[] of the Constitution," Justice Gorsuch suggested a much more rigorous approach to nondelegation than what is currently being employed by federal courts.[103] Using precedent, Justice Gorsuch articulated a test

95. *Id.* at 134.
96. *Id.* at 146.
97. *Id.*
98. *Id.* at 146-47.
99. *Id.* at 149 (Gorsuch, J., dissenting).
100. *Id.* at 153-57 (Gorsuch, J dissenting).
101. *Id.* at 153 (Gorsuch, J., dissenting) (footnote omitted).
102. *Id.* at 154 (Gorsuch, J., dissenting) (footnote omitted).
103. *Id.* at 157 (Gorsuch, J., dissenting) (footnote omitted).

that would deem a delegation of legislative authority unconstitutional unless it fell within one of the three following categories.[104] First, "as long as Congress makes the policy decisions when regulating private conduct, it may authorize another branch to 'fill up the details.'"[105] In other words, another branch may "fill up the details" once Congress has declared the "controlling general policy."[106] Justice Gorsuch noted that the Court had upheld statutes that announced the controlling general policy yet allowed courts to make "alterations and additions" because this did no more than fill in the details.[107] Second, Justice Gorsuch stated that "once Congress prescribes the rule governing private conduct, it may make the application of that rule depend on executive fact-finding."[108] Essentially, this means that Congress may pass legislation that ultimately turns on the discretion of an executive agent.[109] Third, Justice Gorsuch remarked that "Congress may assign the executive and judicial branches certain non-legislative responsibilities."[110] This category is Justice Gorsuch's acknowledgment that, at times, the constitutional powers of each branch may overlap with one another, but "no separation-of-powers problem may arise if 'the discretion is to be exercised over matters already within the scope of [a branch's] power.'"[111] Justice Gorsuch's test gives teeth to the nondelegation doctrine and is substantially more severe than the loose intelligible principle standard.

B. Nondelegation in the States

Unlike the nondelegation doctrine at the federal level, the use of the nondelegation doctrine in the states is alive and well.[112] State courts are more likely than federal courts to strike down legislation as an impermissible delegation of legislative authority, in part, because the states are applying their respective state constitutions to these challenges,

104. *Id.* (Gorsuch, J., dissenting).
105. *Id.* (Gorsuch, J., dissenting).
106. *Id.* (Gorsuch, J., dissenting).
107. *Id.* at 157-58 (Gorsuch, J., dissenting).
108. *Id.* at 158 (Gorsuch, J., dissenting).
109. *Id.* at 158-59 (Gorsuch, J., dissenting).
110. *Id.* at 159 (Gorsuch, J., dissenting).
111. Gundy v. United States, 588 U.S. 128, 159 (2019) (Gorsuch, J., dissenting) (citing David Schoenbrod, *The Delegation Doctrine: Could the Court Give It* Substance, 83 MICH. L. REV. 1223, 1260 (1985)).
112. Keith E. Whittington & Jason Iuliano, *The Nondelegation Doctrine: Alive and Well*, 93 NOTRE DAME L. REV. 619, 626 (2017).

which are significantly different than the U.S. Constitution.[113] Some state constitutions contain strong separation of powers provisions and others include express nondelegation language.[114] While the nondelegation doctrine at the federal level usually applies to cases involving delegation of legislative authority to an agency, states employ the use of the nondelegation doctrine in a variety of different contexts.[115] State courts apply the nondelegation doctrine to issues involving delegations to private parties, to other state governments, and to different types of interbranch delegations.[116] Further, state courts apply the nondelegation doctrine in a variety of different manners.[117] One comprehensive study of the different manners of state nondelegation doctrines found that some states have a "strict" nondelegation standard that requires state legislatures to provide legislation with definite and clear standards.[118] Some states have "loose" nondelegation standards that allow the state legislature or administrative agency to operate under a broad delegation doctrine.[119] Other states operate under an even broader form of nondelegation, requiring only "that the administrative agency either has in place, or has adopted, procedural safeguards to follow when making a decision."[120]

C. Nondelegation Doctrine Applications by State

As previously mentioned in this Note, the application of the nondelegation doctrine can differ drastically from state to state. This section will offer different general approaches to nondelegation that showcase the wide variety of applications by states.

113. Joseph Postell & Randolph J. May, *The Myth of the State Nondelegation Doctrines*, 74 ADMIN L. REV. 263, 266, 277 (2022).
114. *Id.* at 277.
115. Benjamin Silver, *Nondelegation in the States*, 75 VAND. L. REV. 1211, 1214 (2022).
116. *Id.*
117. *See generally* Gary J. Greco, *Standards or Safeguards: A Survey of the Delegation Doctrine in the States*, 8 ADMIN. L.J. AM. U. 567 (1994) (explaining the different manners in which states employ the nondelegation doctrine).
118. *Id.* at 579-80.
119. *Id.* at 580.
120. *Id.*

i. Florida

In 2016, the Supreme Court of Florida issued an advisory opinion to the Attorney General regarding the validity of a proposed citizen initiative amendment to the Florida Constitution that would establish the right of electricity consumers to own or lease solar equipment installed on their property to generate electricity for their own use.[121] Opponents of the proposed initiative argued that if passed, the amendment would "remov[e] the ability of the State to delegate its regulatory powers to its political subdivisions and prohibit[] the State from revoking any powers it delegated to local governments before the adoption of the proposed amendment."[122] The Florida Supreme Court found the proposed initiative valid and recognized that it "would have a possible effect on the operation of the executive and legislative branches, but it does so only in the general sense that any constitutional provision does."[123] The Court further stated that "it [is] difficult to conceive of a constitutional amendment that would not affect other aspects of government to some extent."[124]

In 2015, the Attorney General of Florida requested that the Florida Supreme Court issue an advisory opinion concerning the validity of an initiative petition that allowed for the medical use of marijuana for individuals with debilitating medical conditions.[125] If passed, this amendment would give the Department of Health the authority to "register and regulate centers that produce and distribute marijuana for medical purposes and . . . issue identification cards to patients and caregivers."[126] The Florida Supreme Court found that upon passage of the amendment, "the Department of Health would perform regulatory oversight, which would not substantially alter its function or have a substantial impact on legislative functions or powers."[127] Further, the Court held that "the Department of Health would not be empowered under this proposed

121. Advisory Op. to the Att'y Gen. re Rts. of Elec. Consumers Regarding Solar Energy Choice, 188 So. 3d 822, 825-26 (Fla. 2016).

122. *Id.* at 829.

123. *Id.* at 830.

124. *Id.* (citing Advisory Op. to Att'y Gen. re Ltd. Casinos, 644 So.2d 71, 74 (Fla. 1994)).

125. Advisory Op. to the Att'y Gen. re Use of Marijuana for Debilitating Med. Conditions, 181 So. 3d 471, 473-76 (Fla. 2015).

126. *Id.* at 476.

127. *Id.* at 477.

amendment to make the types of primary policy decisions that are prohibited under the doctrine of non-delegation of legislative power."[128]

ii. Colorado

In *Amica Life Insurance Company v. Wertz*, the Supreme Court of Colorado considered whether the Colorado General Assembly could delegate power to an administrative commission to approve insurance policies sold in Colorado under a standard that differed from a Colorado statute.[129] The central dispute in this case involved an insurance company's refusal to pay the life insurance benefits of a policyholder, the appellant, who had committed suicide.[130] The life insurance policy was issued in compliance with the Interstate Insurance Product Regulation Commission standard which contained a two-year suicide exclusion that would not allow a policyholder who had committed suicide to collect his or her benefits.[131] The appellant committed suicide more than one year after the life insurance company's issuance of the policy; however, the appellant argued that the two-year suicide exclusion was unenforceable due to its conflict with a Colorado statute that forbade insurance companies from withholding the payment of a life insurance policy from policyholders who had committed suicide.[132] The appellant's principal argument was that the Colorado General Assembly could not properly delegate the authority to enact a standard that would override the Colorado statute to the Interstate Insurance Product Regulation Commission.[133]

The Court analyzed the facts of the case through the lens of the nondelegation doctrine.[134] Similar to the U.S. Constitution, the Colorado Constitution includes provisions noting the distinction between the three separate branches of government —Legislative, Executive, and Judicial.[135] These provisions emphasize that the branches are separate, distinct, and that "no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, *except as in this*

128. *Id.* at 478.
129. Amica Life Ins. Co. v. Wertz, 462 P.3d 51, 52 (Colo. 2020).
130. *Id.* at 52.
131. *Id.*
132. *Id.*
133. *Id.*
134. *Id.* at 54.
135. *Id.*

Constitution expressly directed or permitted."[136] The Court established that, although it is a general rule that a legislative body may not delegate the power to make or define the law, the legislature is not "absolutely preclude[d] . . . from delegating certain kinds of authority to an administrative agency."[137] Using Colorado precedent, the Court explained the limits of the legislature's power to delegate to administrative agencies.[138] In one case, an administrative regulation gave participants in a union election certain rights to challenge the rights of other voters in the election; however, the regulation was struck down due to its contradiction to an established statute.[139] Thus, the Court established the rule that administrative regulations that circumvent the clear terms of a statute may be struck down.[140] In another case, however, the Court held that "the legislature does not improperly delegate its lawmaking function when it establishes a definite framework for the law's operation and then delegates 'the details of rulemaking to an administrative agency to carry out that operation.'"[141]

Ultimately, the Supreme Court of Colorado invoked the nondelegation doctrine and held that "the General Assembly may not delegate to an interstate administrative agency the authority to adopt regulations that effectively override Colorado statutory law."[142] Here, the Colorado legislature delegated the power to adopt a suicide-exclusion standard to a Commission that would override an already enacted Colorado statute.[143] The Court held that this kind of "action would amount to the improper delegation of legislative authority" under longstanding Colorado law.[144]

iii. Arizona

In the Arizona Supreme Court case, *Dennis v. Jordan*, the Court dealt with an issue involving an allegedly improper delegation of power via initiative petition.[145] The Public Employees' Retirement Act (Act) was

136. *Id.* (emphasis added).
137. *Id.*
138. *Id.* at 54-56.
139. *Id.* at 55.
140. *Id.*
141. *Id.* (citation omitted).
142. *Id.* at 58.
143. *Id.* at 56.
144. *Id.* at 58-59.
145. Dennis v. Jordan, 229 P.2d 692, 700 (Ariz. 1951).

proposed by initiative petition and voted into law in 1949.[146] Opponents of the Act argued that it was unconstitutional and void, in part, due to the fact "that it delegates authority to the Board and to the 'governing body' of each municipality, i.e., 'counties, cities, towns, and school corporations' to make class legislation" through the use of actuarial tables.[147] Further, the opponents contended that the Act "delegates to city councils the power to arbitrarily tear down and eliminate existing retirement plans."[148] The Court held that the Act did not unlawfully delegate legislative power, but it "merely authorize[d] the board of trustees, with the aid of their actuary, to find the necessary actuarial facts and prescribe the executive details for carrying out and giving effect to the legislation, and to enact rules and regulations for its administration, all subject to reasonably designated limitations."[149] The Court reasoned that an overall analysis of the Act justified a standard for the adoption of the actuarial tables used.[150] Further, the Court explained that the use of the actuarial tables was merely "an exercise of administrative discretion," and not an improper delegation of legislative authority.[151]

iv. California

In 2024, the Court of Appeals for the Fifth District of California considered a case that dealt with an issue involving an alleged improper delegation of legislative power to the Governor of California.[152] In *Ghost Golf, Inc. v. Newsom,* Governor Gavin Newsom and the California Department of Public Health implemented "the Blueprint" for managing "restrictions on activities during the COVID-19 pandemic."[153] The Blueprint implemented by the Governor and the California Department of Health restricted business activities, as well as customer capacity limitations.[154] The authority for the implementation of the Blueprint was granted to the Governor under the Emergency Services Act (ESA).[155]

146. *Id.* at 694.
147. *Id.* at 699.
148. *Id.*
149. *Id.* at 700.
150. *Id.* at 701.
151. *Id.*
152. Ghost Golf, Inc. v. Newsom, 321 Cal. Rptr. 3d 203, 206-07 (Cal. Ct. App. 2024).
153. *Id.* at 94.
154. *Id.*
155. *Id.*

The plaintiffs in *Ghost Golf* were California businesses and their owners that were allegedly harmed by the implementation of this system by the Governor and the California Department of Health.[156] The plaintiffs contended that the Governor and the California Department of Health lacked the statutory authority to impose restrictions on businesses, thus violating the California Constitution's nondelegation doctrine.[157] The plaintiffs' primary argument was that the ESA gave the Governor the authority to enforce existing laws but not to make new laws.[158] Therefore, the Governor lacked the power to enact the Blueprint, and allowing the ESA to give him quasi-legislative power in the case of an emergency would be an unconstitutional delegation of legislative authority.[159]

In *Ghost Golf*, the court's analysis was controlled by *Newsom v. Superior Court* (Gallagher),[160] an earlier California Court of Appeals case that dealt with the issue of an improper delegation of legislative authority to the Governor.[161] In *Gallagher*, the court established a basic framework for delegations of legislative power: "[a]n unconstitutional delegation of authority occurs only when a legislative body (1) leaves the resolution of fundamental policy issues to others or (2) fails to provide adequate direction for the implementation of that policy."[162] Further, the *Gallagher* court established that:

> Only in the event of a total abdication of power, through failure either to render basic policy decisions or to assure that they are implemented as made, will [a] court intrude on legislative enactment because it is an "unlawful delegation." . . . Thus, the Legislature does not unconstitutionally delegate legislative power when the statute provides standards to direct implementation of legislative policy.[163]

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156. *Id.*
157. *Id.*
158. *Id.* at 98.
159. *Id.*
160. Newsom v. Superior Court (Gallagher), 278 Cal. Rptr. 3d 397 (Cal. Ct. App. 2021).
161. *Ghost Golf, Inc.*, 321 Cal. Rptr. 3d at 98.
162. *Gallagher*, 278 Cal. Rptr. 3d at 407 (quoting Gerawan Farming, Inc. v. Agric. Lab. Rels. Bd., 405 P.3d 1087, 1100 (Cal. 2017)).
163. *Id.* (citations omitted).

The *Ghost Golf* court explained that, in their view, the Legislature had resolved the fundamental policy for the exercise of the Governor's emergency power.[164] The court pointed to a section of the ESA that specified that, in the event of an emergency, the state has a responsibility to mitigate harm, and the Governor should be in charge of leading this effort.[165] Because COVID-19 was an unprecedented emergency, the Governor had a responsibility "to protect the health and safety and preserve the lives . . . of the people of the state."[166] Ultimately, the court found that the delegation in the *Ghost Golf* case was a "fundamental policy resolution that satisfies what the non-delegation doctrine requires."[167]

D. The Force of the Nondelegation Doctrine in Oklahoma

In *Democratic Party of Oklahoma v. Estep*, the Oklahoma Supreme Court established the force of the nondelegation doctrine within the State, stating that, "[w]hile the constitutional doctrine of nondelegation has been somewhat relaxed in several jurisdictions, its force in this state remains undiminished. The doctrine teaches that the legislature must establish its policies and set out definite standards for the exercise of an agency's rulemaking power."[168]

Article IV of the Oklahoma Constitution addresses the separation of powers regarding the three branches of state government. Section 1 of Article IV provides:

> The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive, and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others.[169]

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164. Ghost Golf, Inc. v. Newsom, 321 Cal. Rptr. 3d 203, 206-07 (Cal. Ct. App. 2024).
165. *Id.* at 105-06.
166. *Id.* at 106 (quoting CAL. GOV'T CODE § 8550) (West 2016)).
167. *Id.* (citing *Gerawen Farming, Inc.*, 405 P.3d at 1087).
168. Democratic Party of Okla. v. Estep, 1982 OK 106, ¶ 16, 652 P.2d 271, 277-78 (footnotes omitted).
169. OKLA. CONST. art. IV, § 1.

Article V of the Oklahoma Constitution gives the state legislature policy-making authority. Article V, section 1 of the Oklahoma Constitution provides:

> The Legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives; but the people reserve to themselves the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the Legislature, and also reserve power at their own option to approve or reject at the polls any act of the Legislature.[170]

In re Initiative Petition No. 366 addressed the issue of nondelegation regarding legislation drafted through the initiative process:

> Articles 4 and 5 of the Oklahoma Constitution provide the basis for Oklahoma's non-delegation doctrine. Article 4 addresses the separation of the three branches of government. Article 5, section 1 charges the Legislature with policymaking for the state. The non-delegation doctrine prevents the Legislature from abdicating its policy-making role by delegating its authority to an agency. The Legislature "must establish its policies and set out definite standards for the exercise of any agency's rulemaking power." The non-delegation doctrine applies to enactments by the people in the same manner it applies to enactments by the Legislature.[171]

IV. Oklahoma Precedent

As Justice Kane and Justice Rowe pointed out in their respective dissents, the Oklahoma Supreme Court's holding in *Cobbs* seemed to fly in the face of established Oklahoma precedent.[172] Justice Kane

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170. OKLA. CONST. art. V, § 1.

171. *In re* Initiative Petition No. 366, 2002 OK 21, ¶ 12, 46 P.3d 123, 128-29 (footnotes omitted).

172. State Chamber of Okla. v. Cobbs, 2024 OK 13, ¶¶ 1-20, 1-6, 545 P.3d 1216, 1220-

acknowledged that the facts of the case in *Cobbs* draw incredible similarities to the facts of the case in *City of Oklahoma City v. State ex rel. Oklahoma Department of Labor*.[173]

In *City of Oklahoma City,* the central dispute concerned the constitutionality of Oklahoma's Minimum Wages on Public Works Act (Act).[174] The Minimum Wage on Public Works Act was first passed into law by the Oklahoma State Legislature in 1965, and it mirrored major provisions of the federal Davis-Bacon Act.[175] Under the federal Davis-Bacon Act, the U.S. Department of Labor determines prevailing wages for laborers and mechanics employed by contractors and issues regulations and standards to federal agencies that assist these construction projects through grants, loan guarantees, and insurance.[176] Similar to the federal Davis-Bacon Act, Oklahoma's Minimum Wage on Public Works Act left major wage determinations to the federal government, while very little power or discretion was left to the state government.[177] For example, the City of Oklahoma City (City) became concerned about the dramatic increases in the prevailing wage caused by the Minimum Wage on Public Works Act during a two-month period. After filing a "Request for a Hearing, Protest and Objection to the Validity of the Prevailing Wage Rate Act, and Request to Void or Amend the Prevailing Wage Rates" with the State Labor Commissioner because of the dramatic prevailing wage increase, the State Labor Commissioner explained that under the Minimum Wage on Public Works Act, wage determinations were made solely by the United States Department of Labor.[178] Therefore, the State Labor Commissioner lacked the statutory authority to investigate errors on inaccuracies in the federal determinations.[179]

The City filed an action at the district court level seeking, amongst other things, a petition for review of the State Labor Commissioner's

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25 (Kane, C.J., dissenting) (Rowe, V.C.J., dissenting); *In re Initiative Petition No. 366*, 2002 OK 21, 46 P.3d 123.

173. *Id.* at 1220 (Kane, C.J., dissenting).

174. City of Okla. City v. State *ex rel.* Okla. Dep't of Labor, 918 P.2d 26, 28 (Okla. 1995).

175. *Id.*

176. *Davis-Bacon and Related Acts*, U.S. DEPT. OF LABOR, WAGE AND HOUR DIVISION, https://www.dol.gov/agencies/whd/government-contracts/construction#:~:text=Davis%2DBacon%20Act%20and%20Related,similar%20projects%20in%20the%20area [https://perma.cc/NG5T-CWX5].

177. *City of Okla. City*, 918 P.2d at 28-29.

178. *Id.* at 28.

179. *Id.*

decision regarding prevailing wages.[180] The district court held that the wage determination was unconstitutional; however, it failed to articulate the bases of the Minimum Wage on Public Works Act's constitutional infirmities.[181] The State of Oklahoma brought the issue to the Oklahoma Supreme Court on appeal to determine the Act's constitutionality.[182]

The Oklahoma Supreme Court first explained the legislative history and purpose of the Minimum Wage on Public Works Act.[183] In 1965, the first version of the "Little Davis-Bacon Act" was passed.[184] This version of the Minimum Wage on Public Works Act was meant to serve the purpose of preventing state and local governments from driving down workers' wages through competitive bidding, and the legislature clearly declared that policy underlying its passage:

> It is hereby declared to be the policy of the State of Oklahoma that a wage of no less than the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed shall be paid to all workmen employed by or on behalf of any public body engaged in public works exclusive of maintenance work.[185]

The Oklahoma Supreme Court went on to explain the control that the Oklahoma Labor Commissioner originally had under the 1965 version of the Minimum Wage on Public Works Act to compile wage data and determine prevailing wages.[186] Before the Minimum Wage on Public Works Act was amended in 1981, the Oklahoma Labor Commissioner had the authority to make prevailing wage determinations independently from any determination made by the United States Department of Labor.[187] This early version of the Minimum Wage on Public Works Act allowed the Commissioner to consider the applicable wage rates established by collective bargaining agreements, it instructed the Commissioner on how to conduct hearings and object to wage determinations, and it gave the

180. *Id.* at 28.
181. *Id.*
182. *Id.* at 28.
183. *Id.* at 28-29.
184. *Id.* at 28.
185. *Id.* at 28-29 (citing OKLA. STAT. tit. 40, § 196.1 (repealed 2015)).
186. *Id.* at 29.
187. *Id.*

Commissioner subpoena power, as well as the authority to administer oaths.[188]

After the Minimum Wage on Public Works Act was amended in 1981, the standards that were so well articulated in the first version of the Act were lost.[189] Instead of giving the United States Department of Labor important safeguards to follow when implementing legislative policy, the second version of the Act left the federal agency responsible for determining prevailing wages unanswerable and unaccountable to the people of Oklahoma.[190] The Oklahoma Supreme Court found that the second version of the Act "leaves public entities with no Oklahoma forum in which to challenge the accuracy of the United States Department of Labor's wage determinations."[191] Further, the Court looked to the thirty-one other states with prevailing wage laws and found that "only Oklahoma's [prevailing wage law] delegates authority to the United States Department of Labor as the sole method of determining the prevailing wage" law.[192]

The Court also pointed out acceptable delegations in other prevailing wage law states.[193] In these states, "the wage determination is assigned to a state official, an appointed committee, or the authority awarding the contract. Therefore, challenges to the delegation of wage determinations in those states have involved delegation to entities other than the federal government."[194] The Court went on to note that the constitutional infirmities found in the Act were due to its lack of standards, and that it is not enough that the Legislature "declared its policy in the Act."[195] Ultimately, the Court held that because the "Act fail[ed] to articulate the necessary guidelines [and] standards for determining prevailing wages," legislative power was impermissibly delegated to the federal government.[196]

188. *Id.*
189. *Id.* at 30.
190. *Id.*
191. *Id.*
192. *Id.* at 30.
193. *Id.* at 30.
194. *Id.* (citation omitted).
195. *Id.* 30.
196. *Id.* 30.

V. Developing a Workable Rule for Nondelegation

The original questions, as presented in this Note, are now being considered. First, should the Oklahoma Supreme Court review the substantive constitutionality of initiatives before they are put to a vote? And second, what should the proper rule be for Oklahoma courts in determining whether a delegation of legislative authority is constitutional? To properly evaluate these questions, workable rules must be developed.

Although it is not the main focus of this Note, the issue of whether Oklahoma courts may determine the constitutionality of an initiative petition before it reaches the ballot must be briefly addressed in the context of what would make direct democracy most effective, as the framers of the Oklahoma Constitution intended. In Justice Kuehn's dissent in *Cobbs*, she argued that it was "wildly premature" for the Oklahoma Supreme Court to determine the constitutionality of an initiative petition before it is put to a vote of the people.[197] Justice Kuehn's basis for this argument is found partially in *Threadgill v. Cross*.[198] In *Threadgill*, the Oklahoma Supreme Court considered a challenge to an initiative petition but ultimately held that the Court should not consider the validity of an initiative petition before it is voted into law.[199] In her dissent, Justice Kuehn did recognize that the Court later overturned this precedent by holding that when an initiative violates the Oklahoma Constitution, and when a "costly and unnecessary election" could be prevented, the Court could intervene in the initiative process.[200]

The *Threadgill* holding placed a strain on the initiative process by allowing voters, lobbying groups, volunteers, signature collectors, and others to spend time, effort, and money on initiative petitions that were never constitutionally sufficient to begin with. Moving forward, Oklahoma courts should rule on the constitutional sufficiency of an initiative petition before it is put on the ballot for a vote of the people. This rule allows the courts to do their job of determining constitutionality while still allowing the people of Oklahoma to vote only on constitutionally sufficient state questions. This does place a check on the initiative process;

197. State Chamber of Okla. v. Cobbs, 2024 OK 13, ¶ 15, 545 P.3d 1216, 1219 (Kuehn, J., concurring in part, dissenting in part).

198. *Id.* ¶¶ 3, 12, 14, 545 P.3d at 1216-17.

199. Threadgill v. Cross, 109 P. 558, 562-63 (Okla. 1910).

200. *Cobbs*, ¶ 3, 545 P.3d at 1217 (Kuehn, J., concurring in part, dissenting in part) (quoting *In re* Supreme Court Adjudication of Initiative Petitions in Norman, Okla. Numbered 74-1 and 74-2, 534 P.2d 3, 8 (Okla. 1975)).

however, it is more efficient and effective for direct democracy in the long run.

Now, to answer the primary question presented in this Note: what should the proper rule be for Oklahoma courts in determining whether a delegation of legislative authority is constitutional? As previously mentioned, the force of the nondelegation doctrine in Oklahoma was firmly established in *Democratic Party of Oklahoma v. Estep*.[201] The force of the nondelegation doctrine in Oklahoma "remains undiminished"; therefore, Oklahoma courts should actively consider whether or not a proper delegation of legislative authority has occurred.[202] Although the force of the nondelegation doctrine allegedly "remains undiminished," it is clear that Oklahoma courts have not been consistent in their application of what exactly the rule for nondelegation is.[203]

To develop an effective rule for Oklahoma, it will be helpful to recognize the successes and failures of other state rules regarding nondelegation. In 2016, the Florida Supreme Court ruled that an initiative amendment allowing electricity consumers to own or lease solar equipment installed on their property to generate electricity for personal use was constitutionally valid.[204] In that case, the Florida Supreme Court applied a loose and standardless rule: the delegation is valid if it has only "a possible effect on the operation of the executive and legislative branches . . . in the general sense that any constitutional provision does."[205] The Supreme Court of Colorado adopted a rule for nondelegation that, although simplistic, may be necessary in articulating a rule for the State of Oklahoma. In *Amica Life Insurance Company v. Wertz*, the Supreme Court of Colorado considered a state agency enacted standard that would override an already enacted Colorado statute.[206] There, the Supreme Court of Colorado ruled that an improper delegation of authority is one that "effectively overrides Colorado statutory law."[207] Although somewhat apparent, it is necessary to develop a rule that does not allow a direct contradiction to established state law. The Arizona Supreme Court considered the constitutional validity of an initiative petition that allowed

201. Democratic Party of Okla. v. Estep, 652 P.2d 271, 277-78 (Okla. 1982).
202. *Id.* at 277 (footnote omitted).
203. *Id.*
204. Advisory Op. to Atty. Gen. re: Rights of Elec. Consumers Regarding Solar Energy Choice, 188 So. 3d 822, 825 (Fla. 2016).
205. *Id.* at 830.
206. Amica Life Ins. Co. v. Wertz, 462 P.3d 51, 52 (Colo. 2020).
207. *Id.* at 56.

the use of actuarial tables in making class legislation in *Dennis v. Jordan*.[208] In *Dennis*, the Arizona Supreme Court held that the use of actuarial tables was not an unlawful delegation of legislative power.[209] The Arizona Supreme Court's overly-broad rule in *Dennis* is that a delegation of legislative authority is proper so long as it is merely "an exercise of administrative discretion."[210] Recently, a California state court ruled on an allegedly improper delegation of legislative power to Governor Newsom.[211] In that case, the California court issued a detailed and thorough rule for delegations of legislative power: "[a]n unconstitutional delegation of authority occurs only when a legislative body (1) leaves the resolution of fundamental policy issues to others or (2) fails to provide adequate direction for the implementation of that policy."[212] Additionally, the California court ruled that "the Legislature does not unconstitutionally delegate legislative power when the statute provides standards to direct implementation of [that] policy."[213]

Taken together, the state rules on nondelegation are often oversimplified, broad, or standardless. To effectively rule on nondelegation, state courts must lean towards a more rigorous approach to the nondelegation doctrine. Oklahoma courts must develop a workable rule that considers the failures of the lax and overly broad nondelegation standards that are currently employed by other states.

The Oklahoma Supreme Court failed to evaluate *Cobbs* through the lens of *City of Oklahoma City*. However, *City of Oklahoma City* seems to be controlling Oklahoma precedent in the realm of the nondelegation doctrine. As was previously mentioned, in *City of Oklahoma City*, the Oklahoma Supreme Court held that Oklahoma's Minimum Wage on Public Works Act failed to articulate necessary guidelines or standards, thus impermissibly delegating legislative power.[214] In *City of Oklahoma City*, the Oklahoma legislature delegated its legislative authority to the U.S. Department of Labor to determine prevailing wages.[215] The Oklahoma Supreme Court found that the Minimum Wage on Public

208. Dennis v. Jordan, 229 P.2d 692, 701 (Ariz. 1951).
209. *Id.* at 700.
210. *Id.* at 701.
211. Ghost Golf, Inc. v. Newsom, 321 Cal. Rptr. 3d 203, 206-07 (Cal. Ct. App. 2024).
212. *Id.* at 212 (citation omitted).
213. *Id.* at 213 (citing Newsom v. Superior Court (Gallagher), 278 Cal. Rptr. 3d 397, 407 (Cal. Ct. App. 2021)).
214. City of Okla. City v. State *ex rel.* Dep't of Labor, 918 P.2d 26, 30 (Okla. 1995).
215. *Id.* at 29.

Works Act failed to articulate "definite standards," it left major policy determinations in the hands of "unelected bureaucrats," and it delegated its authority to "an administrative arm of the federal government."[216] Further, the Court found that the federal government would not be answerable to the will of the people of Oklahoma, and the Act left public entities with no Oklahoma forum "to challenge the accuracy of the United States Department of Labor's wage determinations."[217] The rule to be taken from *City of Oklahoma City* is that "[i]t is not enough that the Legislature declare[] its policy"; the legislation must also "articulate the necessary guidelines or standards" to avoid an impermissible delegation of legislative power.[218]

In comparison to other state rules, *City of Oklahoma City* set out a relatively exacting rule for nondelegation. Nevertheless, the rule could benefit from incorporating clear and successful state approaches to nondelegation, as well as Justice Gorsuch's implicit advice to err to the side of a rigorous approach to the nondelegation doctrine from the *Gundy* dissent. Aside from incorporating case law, an effective rule for nondelegation should focus on allowing the state legislature to set the underlying public policy. As *City of Oklahoma City* suggested, valid legislation must articulate definite standards on *how* public policy is to be implemented.[219] It is not enough that policy alone is declared in an act; explicit instructions for how the act is to be carried out should be stated.

Considering the foregoing, an effective rule for Oklahoma courts to apply regarding delegation of legislative authority could be stated as follows—a delegation of legislative authority is proper so long as:

> (1) the delegation does not effectively override Oklahoma statutory law;
> (2) the Legislature clearly states the general underlying public policy regarding the legislation;
> (3) the legislation articulates detailed guidelines or standards regarding direct implementation of that policy; and
> (4) another branch may "fill up the details" of the

216. *Id.* at 30.
217. *Id.*
218. *Id.*
219. *Id.*

> legislation, but only by explicit permission from the Legislature.

VI. Applying the Rule to State Question 832

In *Cobbs*, the controversial delegation of legislative authority that will occur upon passage of State Question 832 is the delegation of the power to determine Oklahoma's minimum wage. Currently, "Oklahoma law adopts the Federal minimum wage rate by reference to the Federal Statute."[220] Section 197.2 of the Oklahoma Minimum Wage Act establishes that:

> It shall be unlawful to employ workers in any industry or occupation within the State of Oklahoma under conditions of labor detrimental to their health or morals and it shall be unlawful to employ workers in any industry within the State of Oklahoma at wages which are not adequate for their maintenance. Except as otherwise provided in the Oklahoma Minimum Wage Act, no employer within the State of Oklahoma shall pay any employee a wage of less than the current federal minimum wage for all hours worked.[221]

The federal minimum wage is currently set at $7.25 per hour, and it has remained at $7.25 since 2008.[222] Although Oklahoma's minimum wage is tied to the current federal minimum wage, the Oklahoma Minimum Wage Act emphasizes that employers may not pay employees *less* than the current federal minimum wage.[223] This language sets a floor for the minimum wage while giving Oklahoma employers a choice as to whether or not to exceed the federal minimum wage. And therein lies the issue: the passage of State Question 832 does not give the Oklahoma legislature, nor the people of Oklahoma, any sort of a choice regarding

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220. LEGAL AID SERVS. OF OKLA., INC., *Minimum Wage Rates in Oklahoma*, OKLAW.ORG (Mar. 20, 2020), https://oklaw.org/resource/minimum-wage-rates-in-oklahoma [https://perma.cc/MUU7-BYEN].

221. OKLA. STAT. tit. 40, § 197.2.

222. Matt Patterson, *As SQ 832 advances, Oklahoma begins to debate minimum wage hikes*, NONDOC (Apr. 20, 2024), https://nondoc.com/2024/04/30/as-sq-832-advances-oklahoma-begins-to-debate-minimum-wage-hikes/ [https://perma.cc/2G5D-HW2V].

223. OKLA. STAT. tit. 40, § 197.2.

minimum wage. Instead of choosing whether to exceed the federal minimum wage established in Oklahoma's Minimum Wage Act, employers would be forced to comply with the standards set out by the U.S. Department of Labor's Consumer Price Index (CPI). Instead of allowing Oklahomans an opportunity to determine the wages of their employees, Oklahomans will be required to pay wages that are determined by the CPI. Unfortunately, this index is not reflective of the cost of living in Oklahoma, as it is based on large urban cities such as New York and San Francisco and only relies on data from roughly 32% of the U.S. population.[224]

If passed into law, State Question 832 would arguably delegate an even greater degree of authority than the delegation of legislative authority that occurred in *City of Oklahoma City*. The delegation by the Act in *City of Oklahoma City*, although improper, left a small amount of legislative authority to state officials to determine the prevailing wages.[225] The proposed state question at issue in *Cobbs* will completely delegate legislative authority in determining Oklahoma's minimum wage to the U.S. Department of Labor's Consumer Price Index within only five years of the state question's passage.[226] Similar to the unconstitutional delegation of authority that occurred in *City of Oklahoma City*, however, the passage of State Question 832 means a delegation of legislative authority to an unelected and unaccountable division of the federal government to govern the standards for the state's minimum wage by which Oklahoma employers must comply. Thus, like the Act at issue in *City of Oklahoma City*, State Question 832 violates Article IV, section 1 and Article V, section 1 of the Oklahoma Constitution by improperly "delegat[ing] the power to determine [] wages to a department of the

224. *Frequently Asked Questions*, U.S. DEP'T OF LAB., https://webapps.dol.gov/dolfaq/go-dol-faq.asp?faqid=98&topicid=6&subtopicid=116 [https://perma.cc/DW3Q-R6GW]; John Hayes, *Supporters and opponents of OK minimum wage petition react to upcoming deadline*, OKLAHOMA'S NEWS 4 (July 4, 2024, 6:24 PM), https://kfor.com/news/local/supporters-and-opponents-of-ok-minimum-wage-petition-react-to-upcoming-deadline/#:~:text=A%20July%2014%20deadline%20was,then%20finally%20%2415%20in%202029.

225. City of Okla. City v. State *ex rel.* Dep't of Labor, 918 P.2d 26, 29 (Okla. 1995).

226. Initiative Petition No. 446, State Question No. 832, filed with the Oklahoma Secretary of State Oct. 27, 2023, https://kfor.com/wp-content/uploads/sites/3/2023/11/Stquestion832.pdf [https://perma.cc/23EY-C2QF].

federal government without setting standards for the exercise of that determination."[227]

The use of the Consumer Price Index is clearly a delegation of legislative authority from the state legislature to the U.S. Department of Labor. However, applying the aforementioned rule to State Question 832 will determine whether an improper delegation of legislative authority has occurred. First, it must be considered whether State Question 832 effectively overrides Oklahoma statutory law. Upon passage, State Question 832 will amend the Oklahoma Minimum Wage Act.[228] The amendment will increase Oklahoma's minimum wage yearly, with an eventual permanent tie to the CPI.[229] This amendment may seem extreme, but unlike the Colorado court case, *Amica Life Insurance Company v. Wertz*, it does not directly contradict any Oklahoma statute.[230] Thus, State Question 832 passes the first prong of the rule.

The second prong of the rule considers whether the legislature has clearly stated the general underlying policy regarding the legislation. This prong of the rule will not apply here because the Oklahoma legislature was not involved in any way with the drafting of State Question 832. Therefore, no general policy was ever stated.

Third, it is essential to consider whether State Question 832 articulates detailed guidelines or standards regarding direct implementation of policy. State Question 832 states:

> Except as otherwise provided in the Oklahoma Minimum Wage Act, no employer within the State of Oklahoma shall pay any employee a wage of less than: (1) beginning January 1, 2025, $9 per hour for all hours worked; (2) beginning January 1, 2026, $10.50 per hour for all hours worked; (3) beginning January 1, 2027, $12 per hour for all hours worked; (4) beginning January 1, 2028, $13.50

227. *City of Okla. City*, 918 P.2d at 28.

228. Brief in Support of Application to Assume Original Jurisdiction and Protest of Initiative Petition No. 446, *In re* State Question No. 832, Initiative Petition No. 446, 2024 OK 60 (Nov. 21, 2023), https://www.sos.ok.gov/documents/questions/832.pdf [https://perma.cc/M7SY-JSDJ].

229. *Id.* at 2-3.

230. Amica Life Ins. Co. v. Wertz, 462 P.3d 51, 55 (Colo. 2020).

> per hour for all hours worked; and (5) beginning January 1, 2029, $15 per hour for all hours worked.[231]

The State Question lists, with specificity, who the amendment will apply to, the amount that the minimum wage should be raised each year, and the date on which the minimum wage would be raised.[232] If State Question 832 ended there, sufficiently detailed guidelines or standards may be in place to support an argument that no violation of the nondelegation doctrine had occurred. The next line of State Question 832, however, says that:

> [b]eginning January 1, 2030, and on January 1 of successive years, the minimum wage for all hours worked shall be increased by the increase in the cost of living, if any. The increase in the cost of living shall be measured by the annual percentage increase, as of August of the preceding year, in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) or its successor index, as published by the U.S. Department of Labor or its successor agency, with the amount of minimum wage increase rounded to the nearest cent.[233]

The language in State Question 832 that indefinitely ties Oklahoma's minimum wage to the Consumer Price Index is the true issue here. The CPI's constant fluctuation and indefinite control by unelected federal bureaucrats does not allow for sufficient standards or guidelines to be implemented by the state.[234] Because of State Question 832's connection to the uncertain standards associated with the Consumer Price Index, the third prong of the rule fails; the delegation of legislative authority to the U.S. Department of Labor via the Consumer Price Index is improper.

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231. Initiative Petition No. 446, State Question No. 832, filed with the Oklahoma Secretary of State Oct. 27, 2023, https://kfor.com/wp-content/uploads/sites/3/2023/11/Stquestion832.pdf [https://perma.cc/23EY-C2QF].

232. *Id.*

233. *Id.* at 1-2.

234. Brief in Support of Application to Assume Original Jurisdiction and Protest of Initiative Petition No. 446, *In re* State Question No. 832, Initiative Petition No. 446, 2024 OK 60 (Nov. 21, 2023), https://www.sos.ok.gov/documents/questions/832.pdf [https://perma.cc/M7SY-JSDJ].

The fourth and final prong of the rule considers whether another branch has "filled up the details" of State Question 832. In State Question 832, another entity did much more than just "fill up the details" in the way Justice Gorsuch imagined in his dissent in *Gundy*.[235] State Question 832 gives enormous power to the *federal* Department of Labor to determine minimum wages for the *State* of Oklahoma. Upon the passage of State Question 832, the Oklahoma Legislature will have no say in setting the policy or legislation concerning the minimum wage. The issue will forever be in the hands of the unelected and unaccountable federal Department of Labor. Therefore, the final prong of the rule fails, and State Question 832 fails to pass the rule for a valid delegation of legislative authority.

VII. Challenges Created by the *Cobbs* Decision and the Passage of SQ 832

Like many state questions that are passed into law, State Question 832 has the potential to impact the course of state history. Although the writers of the Oklahoma Constitution intended for the initiative petition to be used as a tool to implement the will of the people of Oklahoma, too often, the initiative petition is used as a tool by special interest groups outside of Oklahoma to push their respective agendas within the state. Oftentimes, the passage of a state question depends on the amount of money that special interest groups are willing to spend on advertising and promotional efforts. Instead of making well-informed decisions on whether or not to vote "yes" or "no" on a state question, voters make ill-informed decisions based on well-spun social media campaigns that disguise the potentially devastating effects of the state question's passage.

Raise the Wage Oklahoma is no different. Raise the Wage organizers have championed the idea of "rais[ing] the wages for more than 320,000 hard-working Oklahomans" so that the people can "decide this issue for [them]selves."[236] Although the idea of raising the minimum wage for "hard-working Oklahomans" is a lovely idea in theory, the reality is the state question could deliver a devastating blow to the State of Oklahoma. The State Chamber of Commerce and Oklahoma Farm Bureau are adamantly opposed to State Question 832 for good reason. They argue that

235. Gundy v. United States, 588 U.S. 128, 157 (2019) (Gorsuch, J., dissenting).

236. *Raise the Wage Signature Turn In Rally!*, RAISE THE WAGE OKLA., https://www.mobilize.us/raisethewageoklahoma/event/643783/ [https://perma.cc/9AJS-2BXU].

if State Question 832 is passed into law, small businesses, farmers, ranchers, and communities in rural Oklahoma will fold under the financial burden imposed by the State Question's passage.[237] Oklahoma Farm Bureau Vice President of Public Policy, Steve Thompson, explained the organization's concerns on tying Oklahoma's minimum wage to the Consumer Price Index: "Taking a closer look at the CPI reveals it excludes all of rural Oklahoma . . . . One of our primary concerns is how the buying power of rural Oklahomans could be affected by an index that does not consider the unique needs of rural life."[238] The Oklahoma Farm Bureau has further emphasized its concerns as to the impact of a drastic minimum wage increase on the State, explaining that the passage of State Question 832 would decrease the value of what employees already make, causing all wages to lose value.[239] Agricultural producers would be forced to increase pay, resulting in higher costs for producers and increased costs for consumers.[240] The State Chamber of Commerce has criticized the effectiveness of State Question 832, saying that a mandatory tie to the Consumer Price Index would be "crippling" to the state.[241] In response to Raise the Wage Oklahoma's successful signature collection efforts and an upcoming signature collection deadline, Executive Director Ben Lepak of the State Chamber Research Foundation stated:

> We look forward to a vigorous campaign to educate Oklahomans about the disastrous policy that will crush working families through price increases on the heels of record inflation and put corner stores and family farms out of business. This ballot initiative is bad for workers, bad for business, and bad for Oklahoma, and we are confident the voters of the State of Oklahoma will concur with our position.[242]

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237. *OKFB Legal Foundation files court protest to protect Oklahoma's agricultural and rural economies*, OKLA. FARM BUREAU (Nov. 21, 2023), https://www.okfarmbureau.org/news/okfb-legal-foundation-files-court-protest-to-protect-oklahomas-agricultural-and-rural-economies/ [https://perma.cc/DS6G-4JLT].

238. *Id.*

239. *Id.*

240. *Id.*

241. Hayes, *supra* note 224.

242. *Id.*

The *Cobbs* decision ignored established Oklahoma precedent and set a new precedent for extreme leniency when delegating legislative power to federal officials. Instead of seriously considering the constitutionality of the authority delegated to the federal government by State Question 832, the Supreme Court of Oklahoma hastily declared the delegation of legislative authority to be proper. In the future, this tolerance of nondelegation doctrine violations by the Oklahoma Supreme Court could slowly ruin the split of power between the federal government and state government that many Oklahomans are quick to defend.

VII. Conclusion

The signature collection deadline to send State Question 832 to the ballot for a vote of the people occurred on July 14, 2024.[243] A Raise the Wage Oklahoma spokesperson was quoted as projecting that the number of required signatures to put the State Question on the ballot would exceed double the required amount; she was correct.[244] The question of whether Oklahoma's minimum wage is to be tied to the Consumer Price Index was originally set to be answered at the ballot box in November of 2024; however, Governor Kevin Stitt subsequently signed an executive order pushing the State Question's election date back to June of 2026.[245]

Although raising the minimum wage for Oklahomans may seem like a reasonable solution to combat inflation, the blow of tying the minimum wage to the Consumer Price Index for Wage Earners and Clerical Owners could be debilitating. In *Cobbs*, the Oklahoma Supreme Court ignored clearly established precedent, allowing a blatant violation of the nondelegation doctrine to potentially occur upon passage of State Question 832. The State Question violates the nondelegation doctrine by completely delegating legislative authority to the U.S. Department of Labor through the Consumer Price Index, allowing unelected bureaucrats to determine the wages of Oklahomans.

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243. *Id.*

244. *Id.*; Barbara Hoberock, *Oklahoma minimum wage petition supporters submit nearly double number of required signatures*, OKLA. VOICE (July 15, 2024, 10:52 AM), https://www.yahoo.com/news/oklahoma-minimum-wage-petition-supporters-155254693.html.

245. Sean Murphy, *Oklahoma governor delays vote on minimum wage hike until 2026*, ASSOCIATED PRESS (Sept. 12, 2024, 2:30 PM), https://apnews.com/article/oklahoma-minimum-wage-increase-petition-governor-stitt-4d63298cce03a6765863e946ad62fbb1.