ORIGINAL

FILED
SUPREME COURT
STATE OF OKLAHOMA
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JOHN D. HADDEN
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STEVEN CRAIG MCVAY, AMY CERATO, KENNETH RAY SETTER, and ANTHONY STOBBE,

Petitioners,

v.

JOSH COCKROFT, in his official capacity as Oklahoma Secretary of State, and GENTNER DRUMMOND, in his official capacity as Oklahoma Attorney General,

Respondents.

Sup. Ct. Case No. #123179

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PETITIONERS' APPLICATION TO ASSUME ORIGINAL JURISDICTION AND PETITION FOR DECLARATORY JUDGMENT, WRIT OF PROHIBITION, OR OTHER APPROPRIATE RELIEF

Oklahoma's bill of rights begins: "All political power is inherent in the people." Okla. Const. Art. II, § 1. This case concerns the people's reserved constitutional right to initiate and enact legislation independently of the Legislature. This Court has consistently described the initiative and referendum power as a "sacred right" to be "carefully preserved." *In re Referendum Petition No. 348*, 1991 OK 110, ¶ 6, 820 P.2d 772, 775. Senate Bill 1027 ("SB1027") imposes a series of new, overlapping restrictions that burden, fragment, and ultimately nullify that right.

By erecting barriers without constitutional authority, and without evidence of corruption or abuse in the existing (and already extraordinarily restrictive) process, SB1027 infringes the people's reserved rights under Article 5 — and several other fundamental guarantees enshrined in both the Oklahoma and U.S. Constitutions, including restrictions on legislative authority, separation of powers, equal protection, and political speech and association.

Petitioners respectfully request that this Court assume original jurisdiction, declare SB1027 unconstitutional, and prohibit its enforcement.

BACKGROUND

1. The Oklahoma Constitution, adopted in 1907, reserves the powers of initiative and

referendum to the people. Article 5, Sections 1 and 2 guarantee that "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." From the beginning, these rights have been treated as fundamental features of Oklahoma's democratic structure.

2. Oklahoma's current initiative and referendum process is demanding. Proponents must draft legally compliant petitions, submit them for administrative review, survive a legal protest period, gather hundreds of thousands of signatures within a limited 90-day window, ensure enough of the signatures collected are actually counted under the statute's strict validity requirements, potentially defend the petition against more legal challenges, obtain an election date, and ultimately secure majority voter approval after a hard-fought campaign, which — by the very nature of it — is often opposed by the political establishment. *See* App'x Tab B, England Decl. ¶¶ 14, 24, 51, 55-56. Each stage of the process carries its own procedural requirements and legal risks, and failure at any prevents a measure from reaching the ballot.

3. Indeed, Oklahoma's initiative and referendum petition process is one of the hardest, if not *the* hardest, in the nation. *See* App'x Tab B, England Decl. ¶¶ 14, 24, 55-56. Among the states that guarantee their citizens this right, Oklahoma has one of the highest signature thresholds yet by far the shortest window for circulating signatures, at just 90 days. Several states, such as Washington, Michigan, and California, allow six months. Alaska, Mississippi, Montana, and North Dakota have a circulation period of one year. Florida, Arizona, Oregon, and Nebraska permit up to two years. And Arkansas and Ohio do not have any time limit at all.[1]

4. Between 2000 and 2025, Oklahoma voters attempted 86 citizen initiatives. Of those, 75 failed to qualify for the ballot, mostly for failure to gather enough signatures. Among the 11 that

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1 *See* Fisher, N., *Signature-gathering periods for initiatives vary by state: From 90 days to no limit* (Sept. 25, 2024), https://news.ballotpedia.org/2024/09/25/signature-gathering-periods-for-initiatives-vary-by-state-from-90-days-to-no-limit/ (last visited May 27, 2025).

did, only 5 were ultimately approved by voters.[2] In short, in modern times, citizen initiatives succeed only about 5.8% of the time. *See* App'x Tab B, England Decl. ¶ 61.

5. The Legislature has already passed numerous laws that prevent fraud and corruption in this process, such as requiring a prominent "warning" on the outer page of each petition pamphlet that "[i]t is a felony for anyone to sign an initiative or referendum petition with any name other than his or her own, or knowingly to sign his or her name more than once for the measure, or to sign such petition when he or she is not a legal voter of this state" (34 O.S. § 3); requiring the circulator to verify the signature pages (34 O.S. § 6); and providing an opportunity to challenge the validity of the signatures in court (34 O.S. § 8). The Oklahoma Attorney General also has the power to prosecute fraud and corruption in the initiative and referendum process.

6. In the 2025 legislative session, SB1027 was introduced to amend Oklahoma's initiative and referendum petition laws. Legislative debates and committee records contain no findings of fraud, corruption, or systemic abuse in the initiative process. Nor were any prosecutions for initiative-related fraud identified. In fact, the bill's sponsors stated that they were "***not*** saying there is [corruption]" under the current system.[3] *See* App'x Tab B, England Decl. ¶ 61.

7. Nevertheless, SB1027 was passed by the Legislature and signed by the Governor on May 23, 2025, and took effect immediately. SB1027 also purports to apply retroactively to petitions already pending. *See* SB1027, §§ 6, 7.

8. SB1027 sets strict county-level limits on signature collection for petitions. For statutory initiatives, "the total number of signatures collected" from a single county "shall not exceed" 11.5% of the number of votes cast in that county during the most recent statewide general election

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[2] *See* Oklahoma Secretary of State. *State questions*, https://www.sos.ok.gov/gov/questions.aspx.
[3] Oklahoma House of Representatives, Debate on SB 1027, at 11:18:00 AM (May 7, 2025), available at https://sg001-harmony.sliq.net/00283/Harmony/en/PowerBrowser/PowerBrowserV2/20250609/-1/55254#agenda_.

for Governor. For constitutional amendments, "the total number of signatures collected" from a single county "shall not exceed" 20.8% of the number of votes cast in that county during the most recent statewide general election for Governor. *See* SB1027, § 3(H)(1-2). Notably, these caps apply to the number of signatures "collected," not just "counted." *Id.*; *see also* App'x Tab C, Setter Decl. ¶ 17.

9. Statewide, SB1027 would immediately reduce the pool of eligible initiative petition signers from 2,470,437 to 132,627, thereby excluding 2,337,809 registered Oklahoma voters—nearly **95%**—from exercising their constitutional right to initiate legislation.[4] Likewise, it would exclude 2.1 million registered voters from signing a petition for constitutional amendments.[5]

10. SB1027's collection caps also make it extraordinarily difficult to collect the constitutionally required number of signatures. Because not all signatures *collected* will actually be *counted*, signature gathers need to collect a substantial buffer, or margin of error, of signatures to ensure that they meet the constitutionally required thresholds. In recent years, due to the enactment of even stricter validity requirements (e.g., signatures must match at least four out of five data points in the voter rolls), this margin of error has needed to be quite high.[6] *See* App'x Tab B, England Decl. ¶¶ 20-23, 58. SB1027 effectively eliminates proponents' ability to obtain the requisite signature buffer by limiting the "collect[ion]" of signatures per county. *See* SB1027, § 3(H).

11. Further, the need to collect a sufficient signature buffer has the practical effect of

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[4] *See* Allen, C., Oklahoma Policy Institute (2025, April 16; updated May 21, 2025). *SB1027 would exclude millions of registered voters from signing initiative petitions.* OK Policy Articles & Research, https://okpolicy.org/sb-1027-would-exclude-millions-of-registered-voters-from-signing-initiative-petitions/ (updated via Oklahoma State Election Board, Jan. 15, 2025); *see also Voter registration statistics: Voter registration as of January 15, 2025 by county* [PDF]. Retrieved from https://oklahoma.gov/content/dam/ok/en/elections/voter-registration-statistics/2025-vr-statistics/vrstats-county-jan15-2025.pdf.

[5] *Id.*

[6] Notably, only one initiative petition has successfully navigated a data point match requirement in Oklahoma — and at a time when proponents were required to match only three of five data points. After the Secretary of State's vendor-led verification process proved to be error-ridden and otherwise problematic, *see, e.g., Nichols v. Ziriax*, 2022 OK 76, ¶ 4, 518 P.3d 883, the Legislature ***increased*** the match requirement to four out of five data points — making the need for a buffer even greater. *See* 2024 Okla. Sess. Laws ch. 119, §§ 1–8 (enacted by S.B. 518).

forcing proponents to attempt to collect the maximum number of signatures allowed under SB1027 in each of Oklahoma's 77 counties. This dramatically increases the costs and time required for circulation, and imposes an enormous record-keeping burden. *See* App'x Tab B, England Decl. ¶¶ 20-23, 58.

12. Worse, regardless of any buffer, the collection caps of 11.5% and 20.8% make it **mathematically impossible** to collect enough signatures to reach the **25%** signature threshold **required by the Constitution** (Art. 5, § 6) to propose a measure previously rejected by the people.

13. At the same time SB1027 caps the number of total signatures that may be collected in favor of an initiative, it also requires that signors have an opportunity—potentially even after signatures are finally submitted—to remove their names from the petition. *See* SB1027, § 3(E). (It provides no similar opportunity for supporters to add their names.)[7]

14. SB1027 prohibits non-residents from circulating petitions. *See* SB1027, §§ 2, 3(E).

15. SB1027 prohibits individuals or entities who do not reside or do business in Oklahoma from contributing to or compensating petition circulators. *See* SB1027, § 3(G)(1).

16. SB1027 prohibits performance-based compensation models for circulators, banning payment based on the number of signatures collected or similar criteria. *See* SB1027, § 3(G)(1).

17. SB1027 requires petition circulators to create and display notices identifying whether they are paid and who compensates them. *See* SB1027, § 3(E).

18. SB1027 requires any person or entity expending funds on the circulation of a petition—regardless of the amount of the expenditure—to submit weekly reports to the Secretary of State that detail those expenditures and attests that all donated funds were received from sources in this state. Those reports are published on the Secretary of State's website until the vote on the measure

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[7] This would seem to raise the risk of misconduct. Opponents of the measure may sign petitions until the cap is reached, only to withdraw their signatures at the last moment with no time left to collect replacement signatures. SB1027 thus likely diminishes, not enhances, the integrity of the process.

occurs. *See* SB1027, § 3(G)(2).

19. SB1027 grants the Secretary of State unilateral authority to reject or remove proponents' "gist" statements on grounds that they are subjectively unclear, biased, or use prohibited language such as undefined euphemisms or code words. *See* SB1027, § 1(C). It also requires the gist to contain a fiscal impact statement, without providing any standards by which the fiscal impact can be determined. *Id.* Without an approved gist statement, proponents cannot begin gathering signatures.

20. Even before SB1027's passage, due to the short 90-day timeframe to collect signatures imposed by the Legislature, proponents were effectively required to hire professional petition circulation firms to manage the signature-collection effort, at great expense. *See* App'x Tab B, England Decl. ¶¶ 24-25.

21. Petitioners received price quotes from multiple professional circulation businesses before and after the introduction of SB1027. Following the introduction of SB1027, quoted prices from professional petition circulation companies to conduct a statewide Oklahoma initiative drive increased by ***nearly $2 million*** on average. *See* App'x Tab D, Stobbe Decl. ¶¶ 12-13. And this was for the originally introduced version of SB1027: the version actually passed makes circulation even harder, and will likely increase costs even more—assuming circulation firms are willing to engage under such conditions at all. *See* App'x Tab B, England Decl. ¶ 26.

22. Petitioners are unaware of any large-scale professional petition circulation companies based in Oklahoma — presumably because the Oklahoma initiative process is already so restrictive that there are not enough initiatives and referenda to make such a business viable. Historically, successful initiative campaigns in the state have relied on national firms with professional reputations to manage compliance and minimize fraud risk. *See* App'x Tab B, England Decl. ¶ 28. By prohibiting out-of-state contributions and circulation services, SB1027 forces proponents to rely on less experienced, less formal, and likely less efficient signature-gathering operations. Ad hoc efforts tend

to result in higher rates of technical errors, disqualified signatures, and potential misconduct, undermining the integrity of the initiative process rather than protecting it. *See* App'x Tab B, England Decl. ¶¶ 30-32.

23. The combined effect of geographic signature caps, residency restrictions, funding bans, and compensation limits dramatically increases the financial costs of organizing a successful petition campaign. At the same time, these provisions cause the odds of successfully collecting enough signatures to go down substantially. *See* App'x Tab B, England Decl. ¶¶ 57-60, 63; App'x Tab C, Setter Decl. ¶ 12.

24. As a result of SB1027's combined restrictions, the probability that a citizen initiative will successfully collect the required number of valid signatures within the allotted 90-day window will substantially decrease. Even before SB1027, only a handful of citizen initiatives succeeded in becoming law (a total of 5 laws in 25 years). *See* App'x Tab B, England Decl. ¶ 61. The geographic caps, circulator restrictions, funding bans, compensation prohibitions, and administrative hurdles imposed by SB1027 lower that already slim probability substantially, making it a practical (and in some cases mathematical) impossibility for any future measure to qualify for the ballot. *See* App'x Tab C, Setter Decl. ¶ 18.

PARTIES AND STANDING

Respondent Josh Cockroft is the appointed Oklahoma Secretary of State. The Secretary of State is the Oklahoma official charged with administering the initiative and referendum process. Title 34 requires the Secretary of State to set circulation dates, approve gist statements, certify signatures, and implement the procedures that SB1027 modifies. He is sued in his official capacity.

Respondent Gentner Drummond is the Oklahoma Attorney General. The Attorney General is vested with authority to prosecute violations of 34 O.S. § 23. He is sued in his official capacity.

Petitioner Steven Craig McVay is a registered Oklahoma voter and a resident of Canadian County. He has in the past participated in the initiative petition process in various capacities, including

as a signatory and voter, and intends to continue doing so in the future. *See* App'x Tab E, McVay Decl.

Petitioner Amy Cerato is a registered Oklahoma voter and a resident of Cleveland County. She is currently in the process of formulating and planning to pursue an initiative petition that would comprehensively reform the Oklahoma turnpike system and place guardrails on the Oklahoma Turnpike Authority. *See* App'x Tab F, Cerato Decl.

Petitioners Anthony Stobbe and Kenneth Ray Setter are registered Oklahoma voters and named proponents of State Question 836, a measure that would amend the Oklahoma Constitution to adopt an open primary system for electing certain officials without regard to the party affiliation of the voters or the candidates. *See* App'x Tabs C, D, Setter and Stobbe Decl.

Petitioners have standing to bring this action because they are legal voters in Oklahoma; have concrete plans to engage in the referendum and initiative process, including proposing, authoring, signing, circulating, and donating to initiative measures; raising funds from in-state and out-of-state sources; and collecting signatures by hiring signature collection professionals some of which use performance-based compensation models and employ people from other states. They are directly and adversely affected by SB1027's restrictions on the exercise of their constitutional rights. Additionally, public interest standing is appropriate because SB1027 materially affects the initiative and referendum process, a matter of great public importance. *See Kiesel v. Rogers*, 2020 OK 65, ¶ 1, 470 P.3d 294, 295; *In re: State Question No. 805*, 2020 OK 45, ¶ 1, 473 P.3d 466.

BASIS FOR ORIGINAL JURISDICTION

The Oklahoma Supreme Court should exercise original jurisdiction under Article 7, Section 4 of the Oklahoma Constitution, which authorizes the Court to exercise "such other and further jurisdiction as may be conferred [upon it by law]."

Original jurisdiction is appropriate and necessary here for several reasons:

1. **Novel and Important Constitutional Questions**: The validity of SB1027 raises urgent

and novel questions of constitutional law concerning the reserved powers of initiative and referendum under Article 5 of the Oklahoma Constitution.

2. **Publici Juris Doctrine**: The people's reserved right to propose and enact laws independently of the Legislature implicates matters of public interest and importance sufficient to warrant the Court's immediate attention. *See Fent v. Contingency Review Bd.*, 2007 OK 27, ¶ 11, 163 P.3d 512.

3. **Need for Prompt Resolution**: Initiative petitions are currently being prepared. Delays caused by the uncertainty of ordinary litigation routes would create irreparable harm by chilling the exercise of constitutional rights and preventing timely access to the ballot.

4. **Legal Issues**: This case presents facial constitutional challenges that do not require further factual development. Judicial intervention is needed to definitively resolve these purely legal questions.

The Court has consistently exercised original jurisdiction in cases affecting the initiative and referendum process, including *Kiesel* and *State Question No. 805*. The same urgency and public importance are present here, and warrant declaratory and prohibitory relief. *See, e.g., Fent v. Contingency Review Bd.*, 2007 OK 27, ¶ 11, 163 P.3d 512; *Drummond ex rel. State v. Okla. State Virtual Charter School Bd.*, 2024 OK 53, 558 P.3d 1; *Minnesota Mining and Manufacturing v. Smith,* 1978 OK 99, ¶ 22.

PETITION FOR EXTRAORDINARY RELIEF

I. SB1027 Imposes an Undue Burden on the Constitutional Right of Initiative.

While SB1027 is unconstitutional in many ways, the undue burden it imposes on the right of initiative and referendum guaranteed by the Oklahoma Constitution alone provides a sufficient basis for striking down the law in its entirety without needing to analyze other constitutional violations.

An undue burden exists where a regulation places substantial obstacles in the path of exercising a constitutional right without sufficient justification, and where less restrictive alternatives are

available. In balancing the government's interest against the infringement on constitutional rights, the Court considers both the severity of the burden and the availability of less restrictive means. *Ashcroft v. Am. C.L. Union*, 542 U.S. 656, 666 (2004). The Legislature has been vested with the authority to enact laws to prevent corruption in the process. *See* Okla. Const. Art. 5, § 8. Here, any purported interest in preventing corruption must be weighed against the sweeping, cumulative burdens SB1027 imposes, which make it extraordinarily difficult — and in reality, impossible — for citizen initiatives to succeed. To justify infringing a constitutional right, the harm sought to be cured must be real, not speculative, and the cure proportional to that demonstrable harm. *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 664 (1994) (the government "must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way."); *see also Home Box Office, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) ("[A] regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist."). The threat must therefore be so great as to justify reducing the right to nearly nothing. Yet the Legislature made no findings of corruption at all.

Meanwhile, far less restrictive alternatives are available. Chief among them would be extending the circulation period beyond the current 90-day limit. A longer signature-gathering window would directly relieve the supposed concerns underlying SB1027 — such as rushed procedures, uneven geographic outreach, or temptation for misconduct — without imposing severe new obstacles on citizens seeking to exercise their constitutional rights. Longer circulation periods would naturally incentivize broader outreach across the state, because any successful measure must ultimately secure majority support statewide at the ballot box. Given the need for majority support statewide, proponents have every incentive to reach out across the state even without geographic signature caps.

But they cannot do so now because of artificially restrictive time constraints, set by the Legislature.[8]

Because far less restrictive means were available, and because SB1027 instead imposes burdens that suppress the people's reserved right, it cannot survive constitutional scrutiny.

II. SB1027's County-Based Signature Caps Are Unconstitutional.

As more fully set forth in Petitioners' brief, SB1027's signature caps create an undue burden, contradict the Oklahoma Constitution, and violate First Amendment and equal protection guarantees.

The Legislature does not enjoy the same broad police power over the initiative and referendum as it does in other contexts. Although the Oklahoma Constitution grants the government general authority to set the public policy of the state, *see* Art. II, § 1, it explicitly reserves the powers of initiative and referendum from the Legislature to the people, Art. V, §§ 1-2. The Constitution then charges the Legislature with two narrow mandates, not broad grants of discretion. The first is administrative and the second is regulatory. Article 5, Section 3 directs the Legislature to "make suitable provisions for carrying [the initiative and referendum] into effect." And Article 5, Section 8 returns limited regulatory authority, requiring lawmaking "to prevent corruption in making, procuring, and submitting initiative and referendum petitions." The express mention of this specific anti-corruption regulatory function and no other, under the *expressio unius est exclusio alterius* canon, excludes any broader authority to impose regulations to achieve other interests, such as the Legislature's stated goal of geographic diversity. If the Legislature had full police power here, then the grant of anti-corruption authority would have been mere surplusage, which is never assumed.

Geographic diversity goals do not "prevent corruption." Nor does the text and structure of

[8] Extending the circulation period would not only reduce alleged corruption risks; it would also significantly decrease the financial cost of organizing initiative campaigns. Petition proponents would have more time to recruit and manage local circulators, reducing the need for expensive rapid deployment efforts that drive up costs and require out-of-state participation. This reform would expand participation, enhance integrity, and lower economic barriers — advancing both the Legislature's stated interests and the people's constitutional rights at the same time.

the Constitution support grounding an interest in geographic boundaries. To the contrary, initiative and referendum are anti-gerrymandering by design, enabling direct legislation by majority vote when district-based representation thwarts popular will. By requiring only statewide percentages without geographic distribution, the framers ensured majority will prevails regardless of district boundaries. The historical context reinforces this textual understanding. At the time of founding, in 1907, communication and transportation barriers made it natural for initiative efforts to begin within individual communities. The framers recognized this reality when reserving the initiative power to the people without imposing geographic restrictions. SB1027's attempt to introduce county-based ceilings disregards this original understanding.

Moreover, even if diversity, geographic or otherwise, were a legitimate legislative concern — which under the Constitution it is not — SB1027 would not achieve it. In practice, the measure would cripple initiatives statewide. Regardless of where an idea for a measure originates, any successful initiative must still gather large numbers of signatures from the most populous counties, where the greatest share of Oklahoma's voters reside, and do so in a short amount of time. By capping contributions, SB1027 does not spread participation across the state. It instead imposes insurmountable logistical burdens, massively inflates costs, and prevents both rural and urban proponents from gathering the required number of signatures within the 90-day circulation period. In short, artificially capping signatures (particularly in major population centers) doesn't promote statewide participation; it suppresses citizen lawmaking altogether.

III. SB1027's Gist Provisions Are Unconstitutional.

Having exceeded its limited authority by imposing artificial geographic barriers on citizen lawmaking, the Legislature compounded the constitutional harm by transferring judicial and reserved legislative functions to the executive branch. SB1027 unconstitutionally grants the Secretary of State veto power over proposed initiatives by authorizing the Secretary of State to approve or reject the

proponents' gist statements. This usurps judicial functions and erects unconstitutional executive-branch gatekeeping reserved to the people, violating fundamental separation of powers principles.

The Oklahoma Constitution provides that "the veto power of the Governor shall not extend to measures voted on by the people," Art. 5, § 3, and it mandates separation among the legislative, executive, and judicial branches, Art. 4, § 1. For more than a century, courts — not executive officials — have exercised the authority to review initiative petitions for legal sufficiency. SB1027 unlawfully transfers this function to the executive. And the executive branch has had only an administrative, not gatekeeping, function of the reserved right under the Oklahoma Constitution. The Constitution certainly has never been understood to allow the Governor's subordinate to wield a preemptive veto.

On top of that, SB1027 imposes unconstitutional content-based restrictions on private political speech. The gist statement represents proponents' communication with potential signers, not government speech. Oklahoma's statutory framework attributes the gist to proponents, who must file it when they desire to circulate a petition. 34 O.S. § 8(A). The gist's private attribution is affirmed by SB1027. It requires that electors read or hear the gist from circulators at the precise point of political advocacy for change in law, *i.e.*, "core political speech." *Brock v. Thompson*, 1997 OK 127, ¶ 41, 948 P.2d 279, 295 (as corrected Apr. 3, 1998). By way of contrast, the distinction between the gist and the official ballot title — the latter reviewed and approved by the Attorney General and read at the ballot box, not a point of advocacy — underscores that the gist, unlike the ballot title, is inseparable from private advocacy and is not a government statement. SB1027 has the government commandeer and alter this message at a critical juncture of advocacy.

The people — not the political branches of government — hold the first and last word in the initiative process. Because the gist is private political speech, any censorship, compelled content, or subjective approval by an executive official triggers strict constitutional scrutiny. As more fully set forth in the brief, SB1027 goes too far in imposing prior restraints and compelled speech burdens,

violating both the First Amendment and the Oklahoma Constitution at Art. II, § 22.

IV. Circulation, Compensation, and Funding Restrictions Are Unconstitutional.

SB1027 does not stop at unlawfully shifting power to the executive; it also imposes direct and sweeping restrictions on the people's ability to speak, organize, and advocate for initiatives. It restricts who may circulate petitions, how they may be compensated, and who may support petition drives financially — each independently reducing the quantum of speech without sufficient justification violating the First Amendment and Article II, § 22 of the Oklahoma Constitution.

- **Ban on non-resident circulators**: Previously struck down as unconstitutional in *Yes on Term Limits v. Savage*, 550 F.3d 1023 (10th Cir. 2008).
- **Ban on out-of-state contributions**: Inconsistent with *Citizens United v. FEC*, 558 U.S. 310 (2010), which bars speaker-based restrictions on political expression.
- **Ban on performance-based pay**: Impermissible burden on initiative advocacy under *Meyer v. Grant*, 486 U.S. 414 (1988).
- **Mandatory disclosure mandates**: Chilling effect on political participation condemned in *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021).

The Legislature imposed these burdens without identifying any concrete evidence of corruption or fraud in Oklahoma's initiative process, in direct violation of Article 5, Section 8's limitation on legislative regulation.

Beyond their individual defects, these restrictions work together to make citizen initiatives impossible in practice. Funding dries up. Costs skyrocket. Hiring circulators becomes prohibitively expensive. The available workforce shrinks. Organizers must chase signatures inefficiently across sparsely populated areas. Weekly disclosure mandates deter participants. The Secretary of State's power to censor chills initiative efforts before they even begin. Each burden compounds the others, creating a system no rational citizen would attempt to navigate. The Constitution forbids the Legislature from erecting barriers so burdensome that ordinary citizens conclude it is not worth exercising their fundamental rights. **That is the very definition of chilling.**

V. The Cumulative Effect Is a De Facto Repeal of the Right to Initiative.

Even if viewed in isolation, each of SB1027's challenged provisions imposes an unconstitutional burden: all reduce the quantum of speech and the exercise of initiative and referendum rights without justification. *Meyer*, 486 U.S. at 423–24. Viewed together, their cumulative effect is devastating: they render the constitutional right formally available but practically unusable.

Courts recognize that cumulative burdens on a constitutional right can render it void in practice. *See Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). Oklahoma's initiative success rate already hovers around 5.8% even without these new restrictions. SB1027 overlays this system with geographic caps, workforce restrictions, funding bans, disclosure mandates, and executive censorship.

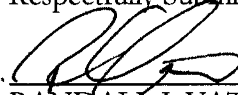
SB1027 does not prevent corruption or carry into effect the initiative and referendum process as the Oklahoma Constitution permits. It creates multiple, overlapping barriers that nullify the people's reserved right to propose and enact laws independently of the Legislature. These burdens, individually and cumulatively, transform the constitutional right of initiative into an empty shell. Regulations that make the right impossible to meaningfully exercise violate not only the text of the Constitution but also its structure and original purpose. The Court must recognize and strike down this *de facto* repeal of the initiative power.

The Oklahoma Constitution protects the people's direct lawmaking power as a sacred right to be carefully preserved. SB1027 defies that constitutional command at every turn. It must be declared unconstitutional to prevent erosion of one of the most fundamental rights guaranteed to Oklahomans.

WHEREFORE, Petitioners respectfully request that this Court:

1. Assume original jurisdiction over this matter;
2. Enter a declaratory judgment that Senate Bill 1027 is unconstitutional in its entirety;
3. Prohibit the enforcement of Senate Bill 1027; and
4. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was mailed this 12th day of June, 2025, by depositing it in the U.S. Mail, postage prepaid, to:

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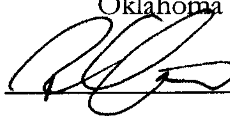

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PETITIONERS' MOTION FOR STAY, PRELIMINARY INJUNCTION, AND OTHER NECESSARY INTERIM RELIEF

Senate Bill 1027 ("SB1027") imposes numerous severe restrictions upon the citizens' fundamental right of initiative petition—and purports to do so retroactively, to petitions already well along in the petition process. SB1027 is currently subject to multiple legal challenges that are likely to eventually succeed. Nevertheless, because it contains an emergency clause that made it effective immediately upon the Governor's signature, SB1027 is currently in full force and effect.

Because Title 34 establishes a strict timeline for circulation of initiative petitions based on events beyond proponents' control, Petitioners Kenneth Setter and Anthony Stobbe, proponents of pending Initiative Petition 448, State Question 836 ("SQ836"), may well find themselves forced to begin circulating the petition while the challenges to SB1027 are still being litigated. Attempting to comply with SB1027's many new and burdensome requirements during this period will jeopardize proponents' ability to collect enough valid signatures to qualify the measure for the ballot. Failure to comply, however, also risks failure of the measure—and carries potential criminal penalties, to boot. Requiring proponents of SQ836 to begin their 90-day signature collection window while this and other legal challenges to SB1027 are being litigated will cause irreparable harm.

Likewise, enforcement of SB1027 while these actions are pending effectively chills any other initiative petition activity, including budgeting, fundraising, engaging signature collection firms, and generally preparing to complete the challenging initiative petition process. It also chills the filing of other initiative petitions that are currently being planned.

Petitioners thus respectfully request that this Court preliminarily enjoin the enforcement and stay the effectiveness of SB1027; stay the setting of the date for circulation of signatures for SQ836 until the challenges to SB1027 are fully and finally resolved; and grant any other interim relief necessary to ensure the right of initiative petition is not impaired while these actions are pending.

BACKGROUND

On January 3, 2025, nearly six months ago, Petitioner Setter, along with two other citizen proponents, filed SQ836. This measure, if approved by a vote of the People, would amend the Oklahoma Constitution to establish a system of open primaries.

Title 34, Section 8 establishes a 90-day protest period in which any citizen may challenge the legality of a proposed initiative petition. On April 9, 2025[1], the very last day of this protest period, protestants filed an original action challenging the constitutionality and the "gist" of SQ836. *See Okla. Rep. Party et al. v. Setter et al.*, Sup. Ct. No. 123,007. The case is fully briefed, and it has been set for oral argument before this Court *en banc* on June 24, 2025.

Once the legal challenge to SQ836 is resolved, 34 O.S. § 8(E) requires the Secretary of State to set the 90-day window in which proponents may circulate their initiative petition. This circulation period must begin no less than 15 and no more than 30 days from the date the legal protest is resolved. *Id.* Then, proponents will have just **90 days** in which they must collect the 172,993 valid signatures needed to qualify their initiative for the ballot.

[1] 34 O.S. § 8(B) requires the Secretary of State to publish notice of the filing of an initiative petition in statewide newspapers, and any legal protest to the petition must be filed within 90 days of the publication date. Notice of the petition was not filed until January 9; thus, the final day of the 90-day protest period was April 9.

On Saturday, May 25, 2025, the Governor signed SB1027—a bill that radically changes how citizens may exercise their fundamental right of initiative. As discussed at length in the briefs filed contemporaneously with this motion, SB1027 places enormous burdens on proponents of future initiative petitions. SB1027 also purports to apply retroactively to initiative petitions that were already pending when the law was enacted, so long as the Secretary had not yet set a date for circulation pursuant to 3 O.S. § 8. This includes SQ836.

Collecting 172,993 valid signatures in just 90 days was a monumental task even before SB1027. As discussed at length in the accompanying Application and Petition and Brief in Support, however, SB1027 makes it completely infeasible—effectively nullifying the right of initiative petition.

If the 90-day signature circulation period for SQ836 begins before this Court has finally determined whether SB1027 is constitutional and applies to their measure, then the proponents of SQ836 will face an impossible choice. They will have to either proceed with the herculean task of signature collection without knowing what law applies, or they will have to abandon their petition altogether. This is the epitome of irreparable harm.

Likewise, as set forth in the Application and Petition, Petitioners McVay and Cerato also have concrete plans to participate in the initiative process, including potentially filing a new initiative petition. While SB1027 is in force, however, their exercise of their initiative petition and First Amendment rights are effectively chilled—more irreparable harm.

To ensure their right to initiative is not chilled or effectively foreclosed while this original action is pending, Petitioners respectfully requests that the Court preliminarily enjoin or stay the effectiveness of SB1027, as well as stay or suspend the setting of the 90-day signature circulation period for SQ836, until the challenges to the constitutionality of SB1027 are fully and finally resolved.

ARGUMENT AND AUTHORITIES

When the constitutionality of a legislative enactment is credibly challenged in an original proceeding, this court undoubtedly has the authority to—and should—stay the effectiveness of that law while it considers the legal challenge. *See, e.g.*, *Draper v. State*, 1980 OK 117, ¶ 3, 621 P.2d 1142, 1145; *Hunsucker v. Fallin*, 2017 OK 100, ¶ 39, 408 P.3d 599, 612; *Hunsucker v. Fallin*, 2017 OK 84, 464 P.3d 135; *see also Sw. Bell Tel. Co. v. Oklahoma Corp. Comm'n*, 1994 OK 142, ¶ 7, 897 P.2d 1116, 1119 ("Courts have historically used their equitable powers to give parties temporary relief from the enforcement of challenged rules, ordinances, and statutes, so that rights are protected during litigation").

As set forth in the Application and Petition, Petitioners all have concrete plans to participate in various aspects of the initiative petition process in the near future. These activities include circulating and signing pending petitions, advocating for measures, participating in fundraising efforts, and potentially filing a new initiative petition. All of these activities—exercises of core and fundamental rights of citizens—are effectively chilled while SB1027 is in effect. Allowing SB1027 to be enforced while this challenge is pending, and to apply to initiative petitions filed or activity that occurs in the interim, frustrates Petitioners' constitutional rights and constitutes irreparable harm.

Furthermore, merely preventing enforcement of SB1027 while this controversy is being litigated will not fully protect Petitioners Setter and Stobbe or the other citizen proponents of SQ836. *Even if* the Court prevents enforcement of SB1027 while this original action is pending, and *even if* the Court ultimately strikes the law down as unconstitutional, if SQ836's 90-day signature circulation period is allowed to begin before the challenges to SB1027 are finally resolved, then proponents will have to go forward and collect signatures during that period without knowing what law will ultimately be determined to apply to those signatures. This will create a host of uncertainty and potential legal issues. For example:

- Where and how do the proponents circulate the petition? SB1027 § 3 places strict caps on the number of signatures that may be collected in each county. What if, while the law is stayed, they exceed this cap in a county? If SB1027 is later determined to apply to SQ836, will those signatures be disqualified? Must the proponents comply with the county caps even when SB1027 is not in effect to ensure they obtain enough signatures that will actually be counted?

- Who can circulate the petition? SB1027 §§ 2 and 3 prohibit the circulation of petitions by individuals who are not registered voters of this State. What if, while the law is stayed, the petition is circulated by non-residents or Oklahomans who are not registered to vote? If SB1027 is ultimately determined to apply to SQ836, will the signatures collected by those circulators be thrown out?

- What information must circulators display while circulating? SB1027 § 3 creates a new requirement that petition circulators conspicuously display a notice stating whether they are being paid to circulate the petition, and if so by whom. What if, while the law is on hold, circulators collect signatures without such a display? Will the otherwise valid signatures they collected ultimately be counted?

- What type of signature buffer must (and can) circulators collect? SB1027 § 3 directs the Secretary to create a process for electors to remove their signatures from the petition after signing it. Do petition organizers need to collect an additional buffer of signatures in order to account for the potential removal of some number of valid signatures after submission? *Can* they, given SB1027's strict county collection caps?

- How do petition organizers go about budgeting and fundraising for the signature collection effort? SB1027 § 3 prohibits persons or entities who do not reside or do business in Oklahoma from contributing to compensation of petition circulators. Will proponents be able to accept—and expend—funds from out-of-state contributors? If they accept and use such contributions while the law is stayed, but SB1027 is ultimately determined to apply to SQ836, will they have to return the money? What if they already spent it? Will any signatures collected using those out-of-state funds be disqualified?

- And how much do the proponents need to raise in the first place? Do they need to ensure they have sufficient funds and personnel to cover circulation of the petition under the law in effect when they filed their petition, or do they need to also raise the millions of additional dollars and engage the numerous additional personnel they would need to circulate signatures under the SB1027 requirements?

- Do the proponents need to comply with the reporting mandates established by SB1027? SB1027 § 3 requires any person or entity expending funds on the circulation of a petition to submit weekly reports to the Secretary of State that detail those expenditures and attest that all donated funds were received from sources in state. Does the campaign need to attempt to gather and submit this information (despite the fact that no form or procedure for making such reports exists yet)?

- What do the proponents do about the gist? SB1027 imposes a number of new requirements for the summary of the petition that appears on the signature page, including a requirement that it contain a fiscal impact statement. Do the proponents go forward during their designated 90-day collection window and collect signatures using the gist they submitted with their petition, which contains no such statement? Or do they prepare a new gist with a fiscal impact statement now, and hope that it gets promptly approved by the Secretary before they have to print petitions and begin circulation? What if it doesn't?

Unless this Court resolves the challenges to SB1027 before the 90-day signature circulation window is set (or makes clear that the stay prevents application of SB1027 to any initiative petition for which a circulation period is set while the challenges to SB1027 are pending), the uncertainty surrounding the applicability of SB1027 will force Petitioner and the other proponents of SQ836 to make an impossible choice. They can either proceed with circulation under the assumption that the law in effect at the time they filed their petition applies, notwithstanding the express language of SB1027—potentially subjecting their measure to disqualification (and themselves to potential criminal prosecution under 34 O.S. § 23) if they are wrong; or they can endeavor to comply with SB1027 under conditions that dramatically increase the cost and render success highly unlikely. Requiring them to circulate their petition under these circumstances, or else abandon it altogether, effectively nullifies their right of initiative petition and constitutes irreparable harm. *Cf., e.g.*, *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) ("[w]hen an alleged constitutional right is involved, most courts hold that no further showing of irreparable harm is necessary").

The People's reserved right of initiative petition, described by this Court as "vital," "precious," and "sacred," is enshrined in the Constitution. *See* Okla. Const. Art. V, §§ 1-2. The circulation timeline set forth in 34 O.S. § 8, by contrast, is statutory. This statutory timeline has previously been suspended when extraordinary circumstances made its enforcement untenable. *See* Order, *In re State Question No. 805, Init. Pet. No. 421*, Sup. Ct. No. 118,719 (Mar. 18, 2020) (ordering, based on the Secretary of State's letter tolling the signature circulation period during a declared emergency, that the "statutory signature-gathering deadline of 34 O.S. Supp. 2015, § 8(E) is tolled until the Governor lifts the declared state of

emergency and the Secretary of State calculates a new deadline). Petitioners respectfully submit that this timeline should likewise be suspended here[2], while this Court resolves these legal challenges, in order to preserve the initiative right. *C.f., e.g., Johnson v. Bd. of Governors of Registered Dentists of State of Okla.*, 1996 OK 41, ¶ 13, 913 P.2d 1339, 1344 ("Statutory procedures can be circumvented when there is a constitutional question, inadequate administrative relief, and threatened or impending irreparable injury.").

In considering whether to grant a stay or preliminary injunctive relief, the Court generally weighs four factors: 1) the likelihood of success on the merits; 2) irreparable harm to the party seeking the relief if the injunction is denied; 3) their threatened injury outweighs the injury the opposing party will suffer under the injunction; and 4) the injunction is in the public interest. *See, e.g., Edwards v. Bd. of Cty. Comm'rs of Canadian Cty.*, 2015 OK 58, ¶ 12, 378 P.3d 54; Sup. Ct. R. 1.15(c)(2). All these factors favor Petitioner here.

As shown in their accompanying Application and Petition and Brief in Support, Petitioners are highly likely to succeed on the merits. And as discussed above, enforcing SB1027 during the course of this litigation, and/or requiring proponents of SQ836 to proceed with signature circulation while the constitutionality and applicability of SB1027 are in question, will substantially impede Petitioners' right of initiative—as well as the rights of all Oklahoma citizens who desire to participate in the process. This harm is necessarily irreparable: the violation of a constitutional right like the right of initiative cannot be meaningfully compensated with monetary damages. By contrast, the requested

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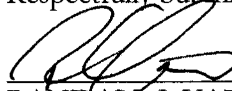
[2] Of course, a stay that results in too significant a delay of Petitioners' ability to circulate their petitions also impedes the initiative right. Oklahoma's initiative petition process is lengthy (particularly after another recent legislative act extended the legal and signature protest periods to 90 days each, or twice as long as Petitioners are afforded to actually circulate the petition), and it must be completed before the August 2026 ballot printing deadline in order to qualify the measure for the next general election ballot. If SQ836 misses the November 2026 ballot, the measure may well not be set for a vote until November 2028—nearly ***four years*** after proponents filed their initiative. Thus, Petitioners would also respectfully request that this Court resolve the legal challenge expeditiously, such that the stay of signature collection does not also infringe the exercise of their initiative right.

relief will cause no irreparable harm to Respondents, who would merely need to continue operating under the law as it existed a few months ago. And a stay would serve the interests of the public, who would be ensured that their right to participate in the initiative petition process is not rendered a nullity by an unconstitutional law or by the operation of statutory procedure.

CONCLUSION

Petitioners respectfully request that this Court preliminarily enjoin or stay the effectiveness of SB1027, as well as stay or suspend the setting of the 90-day signature circulation period for SQ836, until the legal challenge to SB1027 is fully and finally resolved. Petitioners also respectfully request that this Court resolve this challenge expeditiously, so that the delay in the initiative petition timeline caused by the enactment of an unconstitutional law does not itself have the effect of impeding the right of initiative petition.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was mailed this 12th day of June, 2025, by depositing it in the U.S. Mail, postage prepaid, to:

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