ORIGINAL

No. 123,179

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.

OKLAHOMA'S RESPONSE TO AMICUS CURIAE BRIEF OF THE LEAGUE OF WOMEN VOTERS OF OKLAHOMA

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INTRODUCTION

Just like Petitioners, the League of Women Voters ("the League") ignores the heavy burden required for this Court to find a state law unconstitutional. But try as they might, neither the League nor Petitioners can avoid this high hurdle in challenging Senate Bill 1027 ("SB 1027"). "In deciding the constitutionality of statutes, a legislative act is presumed to be constitutional and will be upheld unless it is clearly, palpably and plainly inconsistent with the Constitution." *Reherman v. Okla. Water Res. Bd.*, 1984 OK 12, ¶ 11, 679 P.2d 1296, 1300. Petitioners and their amici have not met this standard. Here, the League focuses on attacking SB 1027's regulation of campaign expenditure disclosures and circulator pay, arguing that these provisions violate the First Amendment. But these provisions do not burden the free speech rights of Oklahomans. The disclosure requirements merely encourage a more informed electorate, and the prohibition on per-signature compensation reduces the incentives for circulators to rush, commit fraud, or browbeat Oklahomans into signing. These provisions are constitutional, they are supported by case law, and the League's reliance on inapplicable precedent is unavailing.

I. SB 1027's disclosure requirements foster an informed electorate and conform with the First Amendment.

The League asserts that SB 1027's disclosure requirements are unconstitutional without grappling with the limited scope of the provisions. It appears that the League takes issue with two particular provisions of this stripe: (1) the weekly reporting requirement for people and entities funding the circulation of a petition, and (2) the requirement that circulators display a notice declaring whether they are paid and by whom they are paid. Neither requirement stretches as far as the League claims, and both are constitutional.

a. The weekly reporting argument is constitutional.

This provision states that "[a]ny person or entity expending funds on the circulation of a petition shall submit a weekly report to the Secretary of State that details such expenditures and

that attests that all donated funds were received from sources in this state." SB 1027, § 3. The provision only applies to people or entities that spend money on the circulation of a petition. And those entities only must disclose their *own* spending on the circulation of the petition. They do not have to disclose advertisement purchases, payments to campaign strategists, or even their individual donors. Practically speaking, the League's stated concern that this disclosure requirement would be triggered by individuals spending paltry sums of money to photocopy petitions is alleviated by Petitioners' own declarant, Amber England. England admits that initiative campaigns are "hir[ing] professional signature gathering firms, and rais[ing] significant funds to do so." Petitioners' Appendix B at ¶ 24. Indeed, "there has not been a single successful initiative petition in Oklahoma over the past decade that has qualified for the ballot without hiring a professional signature gathering firm and/or paid signature collectors." *Id.* Campaigns are raising money to hire out-of-state firms to collect signatures. It is these national firms that are photocopying petitions, not individual and independent volunteers. All this disclosure requirement does, then, is require those campaigns to detail their "significant" spending on petition circulation.

In arguing that the disclosure provision is facially unconstitutional, the League relies on cases involving laws that require nonprofits to disclose individual donors. For example, *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010), involved an as-applied challenge to a Colorado law that required groups spending money supporting or opposing a ballot initiative to "report the names and addresses of anyone who contributes $20 or more." *Id.* at 1249. The Tenth Circuit held that this requirement could not be constitutionally applied to an activist group's $782.02 expenditure for signs—largely because the amount spent was so small that it could not be considered a "disproportionate level of influence over the political process." *Id.* at 1254. That case is plainly different than this one. First, Petitioners here have brought a facial challenge. In a facial challenge, it is not enough to argue that a possible application of SB 1027 is unconstitutional—for instance,

that some hypothetical individual photocopier would be overly burdened; rather, Petitioners must establish that "the law's unconstitutional applications substantially outweigh its constitutional ones." *Moody v. NetChoice, LLC*, 603 U.S. 707, 723–24 (2024). They have not done so, or even acknowledged the facial standard. Indeed, the vast majority of applications of SB 1027's provisions will consist of initiative campaigns reporting how much they are spending on signature collection firms—applications that are certainly constitutional. Second, the Colorado law was far more onerous than SB 1027. It required campaigns to list *names* and *addresses* of contributors. That is a far cry from SB 1027, which requires campaigns to disclose expenditures on signature circulation—not donors. On the donor front, campaigns must only "attest[] that all donated funds were received from sources in this state," SB 1027, § 3, which does not require identifying donors.

Next, the League relies on *Wyoming Gun Owners v. Gray*, 83 F.4th 1224, 1230 (10th Cir. 2023), which involved a Wyoming law that required organizations that spend over a certain amount on campaigning to notify the state and "file a statement *identifying the donors* whose contributions made the communication possible." (emphasis added). Echoing the U.S. Supreme Court, the Tenth Circuit held that Wyoming possessed a substantial informational interest in the public "knowing who speaks through" interest groups. *Id.* at 1245. After all, such a disclosure "allows voters to place each candidate [or ballot initiative] in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches." *Buckley v. Valeo*, 424 U.S. 1, 81 (1976), *superseded on other grounds by statute as recognized in McConnell v. FEC*, 540 U.S. 93 (2003). The Wyoming law failed the narrow tailoring prong of exacting scrutiny, however, because the statute required the disclosure of donations "which relate to an independent expenditure or electioneering communication." *Id.* at 1247. The Court held that the "relate to" language imposed severe burdens on the nonprofit because it required the organization to either

employ a sophisticated bookkeeping system to determine how each individual donation was used or to simply disclose all its donors. *Id.*

SB 1027 imposes none of the burdens found in *Wyoming Gun Owners*. Again, SB 1027's disclosure provisions do not require the disclosure of individual donors to the campaign. Similarly, initiative campaigns do not have to keep track of how they spend particular donations. They are only required to submit a weekly report outlining their own expenditures on signature circulation and attest that they are not accepting out-of-state money. SB 1027, § 3. This requirement does not place a heavy burden on initiative campaigns, and it is telling that the League is forced to rely on such dissimilar cases in making its own case. Surely a law cannot be "clearly, palpably, and plainly" unconstitutional, *Reherman*, 1984 OK 12, ¶ 11, 679 P.2d at 1300, when there is no apparent case law on point in the League's favor? To the contrary, courts in other states have upheld similar statutory requirements. *See, e.g.*, *State v. Evergreen Freedom Found.*, 432 P.3d 805, 814 (Wash. 2019) ("Given the State's important governmental interest in informing the public about the influence and money behind ballot measures, and the [law's] vital role . . . in advancing that requirement, the disclosure requirement . . . satisfies the exacting scrutiny standard."); *Osterberg v. Peca*, 12 S.W.3d 31, 42, 44 (Tex. 2000) (Texas's reporting requirements were "a reasonable and minimally restrictive method of furthering First Amendment values by opening the basic processes of the election system to public view." (citation omitted)).

The League's attempts to manufacture ambiguity in the disclosure provisions are unconvincing. The League claims that it is unclear "how and to what degree . . . expenditures are to be 'detailed.'" League Br. at 6 (quoting SB 1017, § 3). This provision is not unclear—certainly not vague enough to rise to the level of unconstitutionality. *See, e.g.*, *United States v. Williams*, 553 U.S. 285, 306 (2008) ("What renders a statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved; but rather the

indeterminacy of precisely what that fact is."). The provision merely requires disclosing how much money the campaign spends on circulation and how that money is spent. Surely these are not difficult concepts to grasp. The League next complains that it is unclear how campaigns should rectify an error in a previous report. League Br. at 6. This concern is hard to take seriously. Whether a campaign files an amendment later or clarifies the error in a future week's filing has no bearing on whether the campaign's First Amendment rights are violated.

The League also asserts "that the legitimate reasons for regulating candidate campaigns . . . do not translate to ballot-issue campaigns." League Br. at 3. That is simply incorrect. The State possesses a weighty interest in "providing the voting public with the information with which to assess the various messages vying for their attention in the marketplace of ideas." *Evergreen Freedom Found.*, 432 P.3d at 814. If anything, that interest is higher in the context of the ballot initiative. *See Human Life of Wash. Inc., v. Brumsickle*, 624 F.3d 990, 1006 (9th Cir. 2010) ("[T]he high stakes of the ballot context only amplify the crucial need to inform the electorate that is well recognized in the context of candidate elections."). Unlike candidate elections, ballot initiatives involve discrete legal changes to address certain policies. Because of that, it can sometimes be difficult for voters to understand what exactly the proposed change would accomplish. Financial disclosures, then, provide valuable information as to which groups or special interests want that change. For example, finding out that a prison abolitionist group is paying for petition circulation provides a voter with substantially different information than finding out that a law enforcement advocacy organization is paying for circulation. Disclosure requirements lead to a more informed electorate and the State is within its constitutional bounds to require the availability of appropriate information to its voters.

b. The League's arguments against the notice requirement for petition circulators are unavailing.

SB 1027 requires all petition circulators to "display a conspicuous notice in any location where the person is collecting signatures whether the person is being paid to circulate the petition and if so, by what person or entity." SB 1027, § 3. Tellingly, the League does not challenge whether Oklahoma can impose such a requirement. Instead, the League claims only that this particular requirement is not narrowly tailored because its scope is unclear. League Br. at 6. But this requirement is clear. In the case where an individual compensates the circulator, the League expresses uncertainty whether the "disclosure of an individual compensator's first and last name alone suffice." *Id.* It would. Similarly, the League's question of whether a corporation's legal name will be sufficient if that corporation operates under multiple trade names has a straightforward answer: yes, of course that would suffice. To the extent that any questions remain, the Secretary of State will establish guidelines and practices governing these disclosures. The League cannot manufacture a constitutional infirmity by grasping at straws to find ambiguity that does not exist, and by ignoring that regulations will frequently clarify statutory commands even further.

II. SB 1027's prohibition on per-signature compensation does not burden core political speech.

SB 1027 provides that "[n]o compensation shall be based on number of signatures collected, number of signature sheets submitted, or any other similar incentives." SB 1027, § 3. The League argues that this prohibition "unduly burdens core political speech." League Br. at 6. In support, the League relies on the U.S. Supreme Court's holding unconstitutional a law making any payment of a circulator a felony. *See Meyer v. Grant*, 486 U.S. 414, 417 (1988). *Meyer* held that Colorado's prohibition restricted political expression in two ways: (1) "it limits the number of voices who will convey [the] message[,]" and (2) "it makes it less likely that [campaigns] will garner the number of signatures necessary to place the matter on the ballot." *Id.* at 422–23. SB 1027's

provision does neither of those things, as it is not a total ban on payment (or even close). Neither Petitioners nor the League has provided evidence that prohibiting compensation based on the number of signatures collected diminishes the number of people willing to circulate a petition. The closest Petitioners get is by stating that many national signature gathering firms "operate on a performance-based compensation model." Pets.' App. B at ¶ 33. But this does not mean that there will be a fewer number of circulators. Campaigns will either hire one of the national firms that does not use such a compensation model, or those firms will make the fix of not using that compensation model for Oklahoma initiative petitions. Similarly, Petitioners and the League have not provided any evidence that the prohibition on a per-signature compensation model will make it materially more difficult to amass the required number of signatures. SB 1027 is categorically different from the Colorado law at issue in *Meyer*. Thus, *Meyer* is inapplicable.

The League acknowledges that the Ninth Circuit rejected a challenge to a similar prohibition. *See Prete v. Bradbury*, 438 F.3d 949 (9th Cir. 2006). The Oregon law at issue in that case provided that "[i]t shall be unlawful to pay or receive money or other thing of value based on the number of signatures obtained on an initiative or referendum petition." *Id.* at 952 (quoting OR. CONST. art. IV, § 1b). The Ninth Circuit upheld the district court's findings that the Oregon law did not limit the number of circulators, did not limit the audience circulators could reach, and did not make it less likely that campaigns would gather enough signatures. *Id.* at 967.

The League argues that *Prete* is distinguishable because the Oregon law specifically stated that it does not prohibit any form of compensation that "is not based, either directly or indirectly, on the number of signatures obtained." *Id.* at 952. But on this front, there is no daylight between the Oregon law and SB 1027. SB 1027 only prohibits compensation "based on number of signatures collected, number of signature sheets submitted, or any other similar incentives." SB 1027, § 3. The League interprets the phrase "any other similar incentives" to mean that "any form

of incentive-based compensation" is prohibited. League Br. at 9. This is wrong. That phrase must be interpreted in light of the *ejusdem generis* canon of construction which states that "where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." *Cir. City Stores, Inc. v. Adams*, 532 U.S. 105, 114–15 (2001). The phrase "any other similar incentives" only prohibits incentives that are variations of payment per signature or per signature sheet. SB 1027 does not prohibit other incentives such as providing a bonus for working multiple days in a row or overtime pay for working particularly long hours in one day, to give just a few examples. With this interpretation in mind, the League's attempt to distinguish *Prete* falls apart. Indeed, the Ninth Circuit later reaffirmed *Prete,* and the Eighth and Second Circuits reached the same holding (as did the Arizona Supreme Court). *Pierce v. Jacobsen*, 44 F.4th 853, 864 (9th Cir. 2022); *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614, 618 (8th Cir. 2001); *Person v. N.Y. State Bd. of Elections,* 467 F.3d 141 (2d Cir. 2006); *Az. Petition Partners LLC v. Thompson ex rel. Cnty. of Maricopa*, 530 P.3d 1144, 1150 (Ariz. 2023). The weight of precedent favors upholding this provision.

Finally, the League relies on *Citizens for Tax Reform v. Deters*, 518 F.3d 375 (6th Cir. 2008). There, the Court held that Ohio's law requiring that circulators be paid only on the basis of time worked was unconstitutional. *Id.* at 388. This case was wrongly decided, in Oklahoma's view, and against the weight of the authority just referenced. Regardless, this case is also distinguishable in several ways. For example, the Ohio law did not allow for the other types of incentives that SB 1027 allows. And the plaintiffs in that case provided evidence that several circulators refused to work in Ohio because of the prohibition on incentive-based pay. There is no evidence in the record here that SB 1027 would have a similar effect. That lack of evidence should foreclose Petitioners' claim—especially in light of their burden to prove that the provision "is clearly, palpably and plainly inconsistent with the Constitution." *Reherman*, 1984 OK 12, ¶ 11.

CONCLUSION

If this Court decides that original jurisdiction is appropriate, it should deny the petition.

Respectfully submitted,

GARRY M. GASKINS, II, OBA # 20212
Solicitor General
ZACH WEST, OBA # 30768
Director of Special Litigation
CULLEN D. SWEENEY, OBA # 30269
WILL FLANAGAN, OBA # 35110
ELLEN CARR, OBA # 36074
Assistant Solicitors General

OFFICE OF THE ATTORNEY GENERAL
STATE OF OKLAHOMA
313 N.E. 21st Street
Oklahoma City, OK 73105
Main: (405) 521-3921
Garry.Gaskins@oag.ok.gov
Zach.West@oag.ok.gov
Cullen.Sweeney@oag.ok.gov
William.Flanagan@oag.ok.gov
Ellen.Carr@oag.ok.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the OKLAHOMA'S RESPONSE TO AMICUS CURIAE BRIEF OF THE LEAGUE OF WOMEN VOTERS OF OKLAHOMA was mailed this 14th day of July 2025, by depositing it in the U.S. Mail, postage prepaid to:

Randall J. Yates
CROWE & DUNLEVY
222 North Detroit Avenue, Suite 600
Tulsa, Oklahoma 74120

Counsel for Petitioners

Melanie Wilson Rughani
CROWE & DUNLEVY
Braniff Building
324 North Robinson Avenue, Suite 100
Oklahoma City, Oklahoma 73102

Counsel for Petitioners

Brent Rowland, Esq.
Colleen McCarty, Esq.
822 E. 6th St.
Tulsa, OK 74120

Counsel for Amicus Curiae

Whitney Humphrey, Esq.
110 North Elgin Ave., Suite 200
Tulsa, OK 74120

Counsel for Amicus Curiae

Bob Burke
512 N. Broadway Avenue, Suite 300
Oklahoma City, OK 73102

Counsel for Amicus Curiae

WILL FLANAGAN, OBA # 35110
Assistant Solicitor General