ORIGINAL

2026 OK 81

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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SUPREME COURT
STATE OF OKLAHOMA
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SELDEN JONES
CLERK

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

Petitioners,

vs.

BENJAMIN LEPAK, in his official capacity as Oklahoma Secretary of State, and GENTNER DRUMMOND, Attorney General,

Respondents.

Case No. 123,179

FOR OFFICIAL PUBLICATION

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APPLICATION TO ASSUME ORIGINAL JURISDICTION

¶ 0 Petitioners challenge the constitutionality of Senate Bill 1027, an act relating to initiative and referendum petitions, which introduces several additional controls on the petition process. On November 18, 2025, the Court assumed original jurisdiction. We now hold that several key sections of S.B. 1027 violate the Oklahoma Constitution, are legally void, and lack enforceability. Because we conclude the unconstitutional provisions of the Act are not severable, the Act as a whole is deemed unconstitutional.

ORIGINAL JURISDICTION PREVIOUSLY ASSUMED; PETITION FOR DECLARATORY RELIEF GRANTED

Randall J. Yates and Melanie Wilson Rughani, Crowe & Dunlevy, P.C., for Petitioners Steven Craig McVay, Amy Cerato, Kenneth Ray Setter and Anthony Stobbe.

Gary M. Gaskins, II, Zach West, Cullen D. Sweeney, and Will Flanagan, Office of Attorney General, for Respondents Ben Lepak and Gentner Drummond.

Bob Burke for *Amicus Curiae* the Hon. Robert Henry.

Whitney N. Humphrey, GableGotwals for *Amicus Curiae* the League of Women Voters of Oklahoma.

Colleen L. McCarty for *Amicus Curiae* Oklahoma Appleseed Center for Law and Justice.

Robert G. McCampbell and Amelia A. Fogleman, GableGotwals for *Amicus Curiae* Oklahoma Academy for State Goals.

Ryan Haynie, OCPA Center for Law & Liberty, and Cheryl Plaxico and Austin Moseley for *Amici Curiae* the Hon. Frank Keating, the Hon. E. Scott Pruitt, and the Hon. John M. O'Connor.

Trevor Pemberton, Pemberton Law Group, and Jordan Sekulow, Stuart J Roth, Andrew J. Ekonomou, Benjamin P. Sisney, and Nathan Moelker, American Center for Law and Justice, for *Amici Curiae* Sixty-Five Members of the Oklahoma Senate and House of Representatives.

GURICH, J.

¶ 1 In Oklahoma, "[a]ll political power is inherent in the people." OKLA. CONST. art. II, § 1. As such, Oklahomans have a constitutional right and "power to propose laws and amendments to the Constitution and to enact or reject the same at the polls *independent of the Legislature*...." OKLA. CONST. art. V, § 1 (emphasis added). "The first power reserved by the people is the initiative...." OKLA. CONST. art. V, § 2. Petition circulation has been held to be "core political speech" because it involves "interactive communication concerning political change." *Buckley v. Am. Const. L. Found., Inc. (ACLF)*, 525 U.S. 182, 186 (1999) (internal quotation marks omitted). "'[T]he right to petition for a vote of the people by Initiative... is a sacred right to be carefully preserved.'" *In re Initiative Petition No. 348*, 1991 OK 110, ¶ 5, 820 P.2d 772, 775 (quoting *In re*

Referendum Petition No. 18, State Question No. 437, 1966 OK 152, ¶ 11, 417 P.2d 295, 297).

¶ 2 Senate Bill 1027 (S.B. 1027 or the Act), effective May 23, 2025, contains seven sections, and the Title of the Act indicates that it, among other things, relates to

> signatures for petitions and ballot title; ... establishing requirements for gist of proposition; requiring inclusion of certain statement on petition; requiring Secretary of State to make affirmation about certain language; authorizing certain removal for violation; adding qualification for persons circulating petition for signatures; requiring certain notice; providing that signature serves as certain attestation; requiring Secretary of State to establish procedures for removal of certain signatures; requiring certain disclosures; establishing requirements for certain contributions or compensation; requiring report of certain expenditures; requiring publication of certain reports on Secretary of State website; modifying requirements for certain signatures; updating certain vote requirement; ... adding requirement for ballot title; ....

Act of May 23, 2025, Ch. 275, 2025 Okla. Sess. Law Serv. 987, 987 (West). The Act amended 34 O.S. §§ 3, 6, 8, and 9. Respondents indicate that the amendments are intended to "protect the integrity of Oklahoma's initiative petition process", to "encourage initiative campaigns to go into suburban and rural counties for signatures to kick-start an initiative or referendum,"[1] and to ensure transparency, accuracy, and intelligibility of petitions. Resp. in Opp'n at 1, 12, 17.

[1] The use of "referendum petitions" throughout this opinion refers to citizen-initiated referendum petitions.

¶ 3 On June 12, 2025, Petitioners filed an Application to Assume Original Jurisdiction and Petition for Declaratory Judgment, Writ of Prohibition or Other Appropriate Relief ("AAOJ").[2] Petitioners assert that S.B. 1027 "tramples" Oklahomans' right to petition "through a series of unjustified restrictions that contradict constitutional text, violate separation of powers, ignore equal protection, and burden core political speech and association" and request that it be declared unconstitutional. Pet'rs' Br. at 1. Petitioners also ask the Court to issue a writ prohibiting the enforcement of any provision of S.B. 1027.

¶ 4 On July 3, 2025, Josh Cockroft, in his official capacity as the Oklahoma Secretary of State,[3] and Gentner Drummond, in his official capacity as the Oklahoma Attorney General, opposed Petitioners' Application to Assume Original Jurisdiction.

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[2] Petitioners separately filed a Motion for Stay, Preliminary Injunction and Other Necessary Interim Relief ("Motion for Stay") alongside their AAOJ. On September 15, 2025, this Court denied Petitioners' Motion for Stay.

A related original action, Case No. 123,180, challenges the retroactivity clause of S.B. 1027 and, in particular, its application to pending State Question 836. As such, on September 15, the Court entered a temporary stay in Case No. 123,180 which stayed "the effectiveness of S.B. 1027 as to State Question No. 836." During this stay, "S.B. 1027 shall not be enforced as to State Question No. 836."

The next day the Court issued an opinion in *In re INITIATIVE PETITION NO. 448, STATE QUESTION NO. 836*, 2025 OK 56, 577 P.3d 276, which determined that State Question 836 is legally sufficient for submission to the People of Oklahoma for signatures.

[3] Josh Cockroft resigned as Oklahoma Secretary of State effective October 2, 2025. Benjamin Lepak became interim Secretary of State on October 2, 2025, until he was confirmed by the Senate in April 2026. This change has been noted in the case caption.

¶ 5 Several *Amicus Curiae* Statements have been filed. The Honorable Robert Henry, the League of Women Voters of Oklahoma, the Oklahoma Appleseed Center for Law and Justice, and the Oklahoma Academy for State Goals filed statements in support of Petitioners. Sixty-Five Members of the Oklahoma Senate and House of Representatives and the Honorable Frank Keating, the Honorable E. Scott Pruitt, and the Honorable John M. O'Connor filed statements in support of Respondents. Petitioners and Respondents filed responses accordingly.

¶ 6 On November 18, 2025, the Court heard oral arguments from Petitioners and Respondents. That same day the Court assumed original jurisdiction.

I. Standing

¶ 7 Standing is a preliminary issue that must be adjudicated prior to an examination of the merits. "Standing refers to a person's legal right to seek relief in a judicial forum." *Fent v. Contingency Rev. Bd.*, 2007 OK 27, ¶ 7, 163 P.3d 512, 519. Traditionally, there are three basic elements of standing: (1) a legally protected interest suffering an injury that is actual or imminent, concrete, and not conjectural in nature; (2) a causal connection between the injury and the complained-of conduct; and (3) a likelihood, as opposed to mere speculation, that the injury is capable of being redressed by a favorable court decision. *Id.* Petitioners assert that they have standing as registered Oklahoma voters who have participated in the initiative petition process in the past and plan to do so

in the future. Petitioners Stobbe and Setter are named proponents of State Question 836. All Petitioners assert that the statutory amendments enacted through S.B. 1027 make the petition process prohibitively expensive and violate their fundamental rights to propose and sign petitions. Respondents do not challenge Petitioners' standing. We hold that Petitioners have sufficient standing to challenge the constitutionality of these provisions.

II. Original Jurisdiction

¶ 8 The Supreme Court's general "superintending control," *see* OKLA. CONST. art. VII, § 4, gives it original "jurisdiction to provide declaratory relief so as to afford a party a means to vindicate a judicially cognizable interest." *Ethics Comm'n v. Cullison*, 1993 OK 37, ¶ 6, 850 P.2d 1069, 1073. Nevertheless, the Court only exercises its original jurisdiction in extraordinary circumstances, *see Indep. Sch. Dist. No. 12 of Okla. Cnty. v. State ex rel. State Bd. of Educ.*, 2024 OK 39, ¶¶ 21–22, 565 P.3d 23, 30–32 (citing cases), and "the determination whether to assume original jurisdiction in a particular case is discretionary." *Edmondson v. Pearce*, 2004 OK 23, ¶ 10, 91 P.3d 605, 613. "[I]t is the **rare** case that will be entertained on original jurisdiction that requests declaratory relief." *Id.* ¶ 11, 91 P.3d at 614 (emphasis in original).

¶ 9 "A fairly consistent theme running through most of our cases where original jurisdiction has been assumed has been that the matter must be affected with the public interest and there must be some urgency or pressing

need for an early determination of the matter." *Keating v. Johnson*, 1996 OK 61, ¶ 10, 918 P.2d 51, 56. This Court is more inclined to exercise its original jurisdiction where the dispute concerns a purely legal issue that is of great importance to the people of Oklahoma, such as "whether a recently enacted law is constitutional." *See, e.g., Tobacco Settlement Endowment Tr. Fund v. Stitt*, 2026 OK 1, ¶ 11, 583 P.3d 280, 286 (citing cases).

¶ 10 This case presents one of those rare circumstances appropriate for the assumption of original jurisdiction. Petitioners ask us to assess a matter of first impression: do the statutory amendments enacted via S.B. 1027 violate the First Amendment or other constitutional provisions establishing the right of petition? The Act itself underscores the urgency of the Court's determination: S.B. 1027 applies to all initiative and referendum petitions, even those that were pending during the adoption of the Act if the Secretary of State had not previously set the date for circulation of the petition for signatures. At the time of oral argument, there were two[4] pending initiative petitions that were subject to the statutes at issue. And Petitioner Cerato has expressed an imminent intent to pursue an initiative related to the Oklahoma turnpike system. Pet'rs' App., Tab F, Decl. of Amy Cerato ¶¶ 5–7.[5] Further, S.B. 1027 placed a number of new

[4] This figure does not include State Question No. 836 as the Court stayed S.B. 1027's effectiveness as to that particular initiative petition. *See supra* note 2.

[5] Pursuant to Oklahoma Supreme Court Rule 1.191, appendices with affidavits presenting

statutory requirements on the petition process that are a matter of immediate statewide public importance that only this Court can definitively resolve. Moreover, Petitioners raise a pure question of law. There is no need for fact-finding or to develop a further record; the existing appellate record and briefing sufficiently enable our facial review as the issue here is purely constitutional and presents no disputed facts. The lack of any factual issue, the potential for immediate and significant alteration of the petition process, and the statewide implications warrant this Court's speedy decision on this constitutional question.

III. Constitutionality of S.B. 1027

¶ 11 The First Amendment provides that "Congress shall make no law... abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. Amend. I. "The freedom of speech and of the press, which are secured by the First Amendment against abridgement by the United States, are among the fundamental personal rights and liberties which are secured to all persons by the Fourteenth Amendment against abridgment by a State." *Thornhill v. Alabama*, 310 U.S. 88, 95 (1940). Included among First Amendment rights is "the circulation of an initiative petition," which the U.S. Supreme Court has said "necessarily constitutes 'core political speech,' for

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facts not of record in the Supreme Court may be submitted in original jurisdiction proceedings before the Supreme Court.

which First Amendment protection is at its zenith." *Meyer v. Grant*, 486 U.S. 414, 414 (1988).

¶ 12 Legislation which limits First Amendment rights poses difficult legal questions. "States allowing ballot initiatives have considerable leeway to protect the integrity and reliability of the initiative process...." *ACLF*, 525 U.S. at 191. But there is "'no litmus paper test'" to "separate valid ballot-access provisions from invalid interactive speech restrictions; we have come upon 'no substitute for the hard judgments that must be made.'" *Id.* at 192 (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)). "[T]he First Amendment requires us to be vigilant in making those judgments, to guard against undue hindrances to political conversations and the exchange of ideas." *Id.* "'[S]tatutes that limit the power of the people to initiate legislation are to be closely scrutinized and narrowly construed.'" *Meyer*, 486 U.S. at 423 (1988) (quoting *Urevich v. Woodard*, 667 P.2d 760, 763 (Colo. 1983)). Acts of legislation which seek to restrict First Amendment speech in the signature or circulation of initiative petitions are therefore subject to strict scrutiny. *Id.* at 420–21. "Under the strict-scrutiny test, [Oklahoma has] the burden to prove" S.B. 1027 is "(1) narrowly tailored, to serve (2) a compelling state interest." *Republican Party of Minn. v. White*, 536 U.S. 765, 774–75 (2002). "Strict scrutiny—which requires a restriction to be the least restrictive means of achieving a compelling governmental interest—is the most demanding test known to constitutional

law." *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 484 (2025) (internal quotation marks omitted).[6]

¶ 13 Similarly, restrictions on the signature or circulation of petitions invoke several rights inherent in the Oklahoma Constitution. First, "[e]very person may freely speak, write, or publish his sentiments on all subjects...; and no law shall be passed to restrain or abridge the liberty of speech or of the press." OKLA. CONST. art. II, § 22. The right to assemble is also a fundamental right in the Oklahoma Constitution. OKLA. CONST. art. II, § 3 ("The people have the right peaceably to assemble for their own good, and to apply to those invested with the powers of government for redress of grievances by petition, address, or remonstrance."). And Oklahomans reserved to themselves a constitutional right to petition for a vote of the people by initiative or referendum. OKLA. CONST. art. V, §§ 1-2.

¶ 14 Ordinarily, "[d]emonstrating a statute's unconstitutionality is a heavy burden that requires a showing the statute is clearly, palpably, and plainly inconsistent with the Constitution" and "[e]very presumption is to be indulged in favor of the constitutionality of a statute." *Kiesel v. Rogers*, 2020 OK 65, ¶ 6, 470 P.3d 294. But this "usual presumption favoring the constitutional validity of legislation generally is not operative against statutory restriction of the

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[6] The burden to justify statutes which encroach upon such vigorously protected rights has been described by the U.S. Supreme Court as "well-nigh insurmountable." *Meyer*, 486 U.S. at 425.

preeminent freedoms secured by the [F]irst [A]mendment. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions." *State ex rel. Dep't of Transp. v. Pile*, 1979 OK 152, ¶ 9, 603 P.2d 337, 340. As such,

> any system of prior restraints of expression comes to the bar for judicial review bearing a heavy presumption against its Constitutional validity. Accordingly, any attempt to restrict [First Amendment] liberties must be justified by a clear public interest clearly and presently threatened by the activity sought to be regulated. The freedoms of speech and of... assembly... may only be encroached upon after it is shown the restriction is necessary to prevent a grave and immediate danger to interests the state may lawfully protect. These rights rest on firmer ground than, for instance, due process, which mandates a rational connection between the remedy provided legislatively and the evil to be forestalled. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at an appropriate time and place, must have clear support in public danger. Only the gravest of abuses engendering paramount interests give occasion for limiting legislation. It is therefore our tradition to allow the widest latitude for discussion and the narrowest range for its restriction. This court has stated that in order for prior restraints to withstand constitutional attack they must be narrowly drafted so as to suppress only that speech presenting a clear and present danger of serious and substantial evil.

Id. ¶ 9, 603 P.2d at 340–41 (internal citations omitted).

¶ 15 Because the right of initiative and referendum petitions is sacred, "[i]t is the duty of the courts to construe and preserve this right as intended by the people in adopting the Constitution, and thereby reserve unto the people this power." *Ruth v. Peshek*, 1931 OK 674, ¶ 25, 5 P.2d 108, 112. As such, with respect to the right of petition provided by the Oklahoma Constitution, we have applied an undue burden test and weighed the statute's regulatory benefits

against its constitutional burdens. *See, e.g., Gentges v. State Election Bd.*, 2018 OK 39, 419 P.3d 224.

A. Requirement that Circulators Are Registered to Vote in Oklahoma — S.B. 1027, §§ 2, 3.

¶ 16 S.B. 1027 amended 34 O.S. §§ 6 and 8 to require petition circulators to be registered to vote in Oklahoma. 34 O.S.2025, § 6 ("Any person who circulates a sheet of the petition shall be a registered voter of this state..."; "That I am... a registered voter of this state..."); 34 O.S.2025, § 8(E) ("Any person who circulates the petition to collect signatures shall be a registered voter in this state..."). Respondents concede, both in their Notice of Correction and at oral argument, that the U.S. Supreme Court's decision in *Buckley v. ACLF*, directly addressed such a requirement and controls. In *ACLF*, the U.S. Supreme Court determined that a Colorado law requiring petition circulators to be registered to vote in Colorado violated the First Amendment. 525 U.S. at 192–97. S.B. 1027 seeks to impose the same restriction. As such, S.B. 1027's registered-voter circulator requirements are unconstitutional.

B. County-Specific Signature Collection Caps — S.B. 1027, § 3.

¶ 17 By constitutional mandate, "eight per centum of the legal voters shall have the right to propose any legislative measure, and fifteen per centum of the legal voters shall have the right to propose amendments to the Constitution by

petition...." OKLA. CONST. art. V, § 2.[7] But S.B. 1027 introduced limitations, referred to by both parties as "caps", on the number of signatures that can be collected in any county:

> 1. The total number of signatures **collected** to meet the requirements for an initiative petition or referendum petition, amending the Oklahoma Statutes, from a single county shall not exceed eleven and five-tenths percent (11.5%) of the number of votes cast in that county during the most recent statewide general election for Governor....
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> 2. The total number of signatures **collected** to meet the requirements for an initiative petition or referendum petition, amending the Oklahoma Constitution, from a single county shall not exceed twenty and eight-tenths percent (20.8%) of the number of votes cast in that county during the most recent statewide general election for Governor....

34 O.S.2025, § 8(H) (emphasis added).[8]

¶ 18 Petitioners take issue with these limitations. "Currently, all 2,470,437 registered Oklahoma voters can exercise their constitutional right to sign petitions." Pet'rs' Br. at 4.[9] The caps limit maximum participation to a percentage of each county's last gubernatorial votes, and, in doing so, would presently

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[7] The number and percent of "legal voters" is "based upon the total number of votes cast at the last general election for the Office of Governor." OKLA. CONST. art. V, § 2.

[8] Respondents insist that the caps operate to limit the number of signatures that will be counted, *not* the number of signatures that can be collected. *See* Resp. in Opp'n at 7. We find this argument inconsistent with the plain language of 34 O.S.2025, §8(H) and analyze the effect of the caps as the text indicates—that the "the total number of signatures **collected**... shall not exceed" the designated cap.

[9] *See also* Oklahoma State Election Board, Annual Voter Registration Statistics, Archived 2025 Oklahoma Voter Registration Statistics by County, https://oklahoma.gov/content/dam/ok/en/elections/voter-registration-statistics/2025-vr-statistics/vrstats-county-jan15-2025.pdf.

"deny 2,337,809 Oklahomans (94.63% of legal voters) their constitutional right to participate in the initiative process." *Id.*[10] Petitioners argue that these caps "violate the First Amendment by prohibiting legal voters from signing the petition—core First Amendment activity—once the caps are reached." *Id.* at 2.

¶ 19 We agree with Petitioners that the caps pose broad First Amendment problems. As an initial matter, the caps do not accomplish the stated goal of rural participation. The caps prohibit the collection of any signatures beyond a specified percentage of a county's latest gubernatorial votes. In doing so, the caps prohibit legal voters from signing petitions once their county's signature maximum is met. This restriction will be most severe in the least populated counties. For example, as of January 1, 2026, there were 1,378 registered voters in Harmon County.[11] Before the caps, *all* of these registered voters were eligible to sign a petition. With the caps, only seventy-five (75) will be allowed to sign a given statutory initiative or referendum petition. Pet'rs' App., Tab B, Decl. of Amber England ¶ 10. Not only does this disenfranchise the 1,303

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[10] This figure represents the number of Oklahoma voters who would be prohibited from signing a petition amending the Oklahoma Statutes, as 11.5% of the 1,153,284 votes in the 2022 gubernatorial election is approximately 132,628 eligible signatories statewide. *See* OK Election Results, https://results.okelections.gov/OKER/?elecDate=20221108 (last visited November 9, 2026).

For petitions amending the Constitution, a maximum of approximately 239,883 (20.8% of 1,153,284) registered Oklahoma voters would be allowed to sign the petition, and 2,230,554 registered Oklahomans would be prohibited from signing. *Id.*

[11] Oklahoma State Election Board, 2026 Annual Voter Registration Statistics, https://oklahoma.gov/content/dam/ok/en/elections/voter-registration-statistics/2026-vr-statistics/2026-01-15_%20vrstats-county.pdf.

Harmon County registered voters that will be prohibited from signing, but it also makes it *extremely* unlikely that signature collection efforts would ever step foot in Harmon County (or any other rural county) when they can only collect seventy-five of the more than ninety-two thousand signatures needed to make it on the ballot. *Id.* ¶ 8.[12] Even if the seventy-five smaller counties (all aside from Oklahoma and Tulsa County) all contributed their maximum number of signatures, an initiative petition would still fail to collect enough signatures to make it on the ballot without support from Oklahoma and Tulsa Counties. Oklahoma House of Representatives, Debate on S.B. 1027, May 7, 2025 at 10:43:13 AM – 10:43:44 AM (statement of Rep. Andy Fugate).[13] Moreover, even just in Oklahoma and Tulsa counties, the caps will prevent more than 800,000 registered Oklahoma voters from signing a statutory initiative or referendum petition. Never before have legal Oklahoma voters been outright prohibited from

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[12] At oral argument, counsel for Respondents conceded that, by their calculations, the requisite number of signatures could be obtained from as few as sixteen to eighteen of the most populated counties.

[13] The parties referenced this debate in their briefing and at oral argument. *See, e.g.*, AAOJ at ¶ 6 (providing a link to a video of the debate); Resp. in Opp'n at 1, 3 (providing a link to the same website for the debate). This Court can take judicial notice of facts capable of accurate and ready determination by sources whose accuracy cannot reasonably be questioned, including public records available from reliable sources on the internet. *See* 12 O.S. § 2202; *Indep. Sch. Dist. # 52 of Okla. Cnty. v. Hofmeister*, 2020 OK 56, 473 P.3d 475, *as corrected* (July 1, 2020). We therefore take notice of this entire debate.

signing an initiative or referendum petition. In short, this Act severely disenfranchises voters in all 77 counties.[14]

¶ 20 Respondents insist that rural voter involvement—*i.e.* "encourag[ing] initiative campaigns to go into suburban and rural Oklahoma counties for signatures"—is a compelling state interest that justifies the restriction. Resp. in Opp'n at 1, 6. But even if that goal was achieved by the caps—which it is not—enhancing rural representation does not justify severely burdening fundamental First Amendment rights. "[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment...." *Buckley v. Valeo*, 424 U.S. 1, 48–49 (1976). And even if Respondents believe the laws proposed by past, present or future initiative petitions are not representative of rural Oklahomans, First Amendment freedoms are not conditioned upon the popularity of the opinion being expressed. "The First Amendment is a value-free provision whose protection is not dependent on the truth, popularity, or social utility of the ideas and beliefs which are offered. The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind. In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from

[14] The caps further restrict political speech by making it immeasurably more difficult and expensive to gather the required number of signatures.

the false for us." *Meyer*, 486 U.S. at 419–20 (internal citations and quotation marks omitted). The caps of 34 O.S.2025, § 8(H) are therefore unconstitutional infringements on Oklahomans' First Amendment rights.

¶ 21 This disenfranchisement achieved by the caps also contradicts the Oklahoma Constitution's mandate that "legal voters shall have the right to propose" initiatives. *See* OKLA. CONST. art. V, § 2. Oklahoma's undue burden test balances regulatory benefits against constitutional burdens. The supposed goal of incorporating more rural voters at the signature gathering stage[15] would impose a significant burden on the right of petition: as discussed above, the caps seek to achieve the inclusion of some by *requiring* the exclusion of others. Here, the balance weighs in favor of the constitutional right. By denying qualified legal voters the right to participate in the petition process, the caps violate Oklahomans' constitutional right of petition.[16]

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[15] Respondents misconstrue the nature of an initiative petition signature—signing does not mean you support the statutory or constitutional provision proposed. Instead, it simply means you believe it should receive a statewide vote. By structuring the initiative petition process to require only a statewide minimum percentage of voter support to reach the ballot, the people of Oklahoma allow a relatively small group of voters to propose changes to the law, with the understanding that a proposal will not actually become law without the approval of a majority of the voters in a statewide election.

[16] All of the states Respondents indicate "also place geographic restrictions" on their initiative petition signatures, have done so through their state constitutions. *See* Resp. in Opp'n at 8. Further, most have *minimum* county representation thresholds, not caps. *See, e.g.*, ARK. CONST. art. V, § 1 ("Upon all initiative or referendum petitions..., it shall be necessary to file from at least fifteen of the counties of the State, petitions bearing the signature of not less than one-half of the designated percentage of the electors of such county."); OHIO CONST. art. II, § 1(g) ("Upon all initiative, supplementary, and referendum petitions provided for in any of

¶ 22 The caps are also flawed in that they make it facially impossible for proponents to collect enough signatures to reach the 25% signature threshold required by Article 5, Section 6 of the Oklahoma Constitution to propose a measure within three years of its previous rejection. At oral argument, the Respondents conceded this mathematical reality, and, instead, argued that the caps do not apply "to those particular initiative petitions" because they are "distinct" from initiative petitions proposing original ideas. Resp. in Opp'n at 7. But there is nothing in the Act itself that excludes the re-proposal of rejected measures under Article 5, Section 6. The caps eliminate Oklahomans' ability to re-propose a measure within three years of its rejection and plainly violate the Oklahoma Constitution.

¶ 23 We therefore find 34 O.S.2025, § 8(H) wholly unconstitutional.[17]

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the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county."); FLA. CONST. art. XI, § 3 ("The power to propose the revision or amendment of any portion or portions of this constitution by initiative... may be invoked by filing with the custodian of state records a petition... signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen."). These minimum thresholds are distinct, at least in that they do not prohibit anyone from signing the petitions.

[17] Petitioners also assert that the caps "violate equal protection by creating arbitrary distinctions among identical voters...—those who sign before the cap versus those who sign after." Pet'rs' Br. at 2–3. There very well might be other constitutional issues with the distinctions made by the caps, *i.e.,* special law, but, having already found the caps unconstitutional, we need not go through lengthy equal protection or special law analyses. We are concerned, however, that some legal voters may have been arbitrarily excluded from participating in their constitutional right to petition. Oklahoma law requires that "[e]very person

C. Additional Gist Requirements and Secretary of State Role in Monitoring Gists — S.B. 1027, § 1.

¶ 24 S.B. 1027 also introduced several new requirements for the gists of propositions. It struck the word "simple" from the requirement that a "simple statement of the gist of the proposition shall be printed on the top margin of each signature sheet" and mandated for the very first time that gists:

> 1. Explain in basic words, which can be easily found in dictionaries of general usage, the effect of the proposition; 2. Not contain any words which have a special meaning for a particular profession or trade not commonly known to the citizens of this state; 3. Not contain euphemisms, words, or phrases regarded in popular parlance as code words, or an apparent attempt to deceive voters; 4. Not reflect partiality in its composition or contain any argument for or against the measure; and 5. Indicate whether a proposed measure will have a fiscal impact on the state and if so, the potential source of funding including, but not limited to, federal funding or legislative appropriation which may require imposition of a new tax, increase of an existing tax, or elimination of existing services.

34 O.S.2025, § 3(A). In addition to these new substantive revisions to the content of the gists, 34 O.S.2025, § 3 also now requires the Secretary of State to "affirm that any gist conforms with the requirements of this section. The Secretary may remove any gist that violates the requirements of this section and direct the proponents of the petition to submit a gist that complies with all the requirements of this section." 34 O.S.2025, § 3(C).

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who is a qualified elector of the State of Oklahoma may sign a petition for the referendum or for the initiative for any measure upon which he is legally entitled to vote." 34 O.S. § 23.

¶ 25 Petitioners argue these content-based restrictions on core political speech violate both the First Amendment and Article II, Section 22 of the Oklahoma Constitution by both imposing "prior restraint[s] on favorable speech" and "compel[ing] favorable speech." Pet'rs' Br. at 6–7. We agree. As discussed, "the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as 'core political speech.'" *Meyer*, 486 U.S. at 421–22. Petition circulation is "an area in which the importance of First Amendment protections is at its zenith." *Id.* at 425 (internal quotation marks omitted).

¶ 26 The amendments to 34 O.S.2025, § 3 both compel specific speech and also limit what may be said in the gist. In *Brown v. Yost*, 133 F.4th 725 (6th Cir. 2025), the Sixth Circuit recently addressed a similar Ohio statute regulating the contents of the "petition summary"[18] by having the Ohio Attorney General examine each summary and determine if it was "a fair and truthful statement of the proposed law or constitutional amendment." *Id.* at 732. The Sixth Circuit explained that "[i]ntrusions on petitioners' exercise of 'editorial control and judgment' over the content of those petitions severely infringe First Amendment interests." *Id.* at 732 (citing *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241,

[18] The summary is akin to Oklahoma's "gist" in that it is "a form of advocacy material used by initiative supporters to persuade electors to sign their petition.... Essentially, the summary is the leading description of the proposed amendment that initiative circulators can rely on to persuade the public to sign the petition." *Brown*, 133 F.4th at 732.

258 (1974)).[19] In application, the law "severely burdens" petitioners' "access to the ballot" by requiring them "to undergo content-based review of their proposed petition summary. This affects their core political speech by forcing them to alter the message that they wish to share on a key advocacy document—the initiative petition." *Id.* at 736 ("their First Amendment interests are burdened when the state subjects their participation in the ballot-initiative process to editorial review.") "Because the burden is severe, strict scrutiny applies." *Id.* at 737 (citing *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)); *see also Nat'l Inst. of Family & Life Advocs. v. Becerra*, 585 U.S. 755, 766 (2018) ("Content-based regulations... 'are presumptively unconstitutional and may be justified only if the government proves that they narrowly tailored to serve compelling state interest." (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015))).

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[19] The Sixth Circuit rejected the Ohio Attorney General's argument that the summary was government speech:

> When ascertaining whether speech can be attributed to the government—and therefore is immune from First Amendment review—the Supreme Court has instructed us to look at (1) "the history of the expression at issue," (2) "the public's likely perception as to who (the government or a private person) is speaking," and (3) "the extent to which the government has actively shaped or controlled the expression." *Shurtleff v. City of Boston*, 596 U.S. 243, 252, 142 S.Ct. 1583, 212 L.Ed.2d 621 (2022). None of those factors cuts in [the Attorney General]'s favor here.... [T]he whole purpose of a petition seems to be that citizens wish to influence their government, not to parrot its words.... Although [the Attorney General] has edited the summary, it is still initially and fundamentally the work of the petitioners. The public is not likely to conclude that the summary on a petition seeking legal change can be attributed to the government.

Id. at 734–35.

¶ 27 We find this analysis persuasive and applicable to the new gist requirements imposed in 34 O.S.2025, § 3(A). Respondents indicate that Oklahoma's interest in the new requirements is "to make sure that the gist is worded in a manner that will fairly inform potential signers of the contents of the proposal.... The gist requirements merely ensure that there is a neutral and non-deceptive summary for voters to read" Resp. in Opp'n at 12, 14. But Section 3(A) allows the government to commandeer political speech at a critical juncture of advocacy. As a result, we must apply strict constitutional scrutiny. Upon review, the new gist requirements are not narrowly tailored to serve the interest of simply informing potential signers. Oklahoma already permits challenges to potentially misleading gists, which are reviewed directly by the Oklahoma Supreme Court, and there is already extensive case law governing what constitutes a sufficient gist. *See, e.g.*, *In re Initiative Petition No. 344*, 1990 OK 75, ¶ 14, 797 P.2d 326, 330 (providing that the gist "must be brief, descriptive of the effect of the proposition, not deceiving but informative and revealing of the design and purpose of the petition"). Respondents have not provided any justification for further restrictions or requirements, especially at the expense of proponents' First Amendment rights. As such, the amendments to 34 O.S.2025, § 3(A) impose prior restraints and compelled speech burdens in violation of the First Amendment.

¶ 28 Petitioners also assert 34 O.S.2025, § 3(C) violates fundamental separation of powers principles by vastly increasing the influence the Secretary of State has over gists, but, having already found the new gist requirements unconstitutional, we find 34 O.S.2025, § 3(C) incapable of being executed independently, and thus void.

D. Incentive-Based Compensation Ban — S.B. 1027, § 3.

¶ 29 S.B. 1027 prohibits circulation compensation "based on number of signatures collected, number of signature sheets submitted, or any other similar incentives." 34 O.S.2025, § 8(G)(1). The U.S. Supreme Court case *Meyer v. Grant* is instructive in analyzing circulator compensation restrictions.

¶ 30 In *Meyer*, the Supreme Court struck down a Colorado statute which criminalized any payment of petition circulators. The Court determined that banning circulator payment severely burdened core political speech in two ways:

> First, it limits the number of voices who will convey appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion.

486 U.S. at 422–23. Because the statute limited political expression, the Court held that a strict, "exacting" scrutiny was applicable. *Id.* at 420. Ultimately, Colorado failed to meet the "well-nigh insurmountable" burden to justify the ban:

> The State's interest in protecting the integrity of the initiative process does not justify the prohibition because the State has failed to demonstrate that it is necessary to burden appellees' ability to communicate their message in order to meet its concerns. The Attorney General has argued that the petition circulator has the duty to verify the authenticity of signatures on the petition and that the compensation might provide the circulator with a temptation to disregard that duty. No evidence has been offered to support that speculation, however, and we are not prepared to assume that a professional circulator—whose qualifications for similar future assignments may well depend on a reputation for competence and integrity—is any more likely to accept false signatures than a volunteer who is motivated entirely by an interest in having the proposition placed on the ballot.

Id. at 426. The *Meyer* Court rejected arguments that other available means of political speech relieved the burden being placed by the compensation ban:

> Colorado's prohibition of paid petition circulators restricts access to the most effective, fundamental, and perhaps economical avenue of political discourse, direct one-on-one communication. That it leaves open "more burdensome" avenues of communication does not relieve its burden on First Amendment expression. The First Amendment protects appellees' right not only to advocate their cause but also to select what they believe to be the most effective means for doing so.

Id. at 424.

¶ 31 Here, Respondents primarily argue that there is no evidence Section 8(G)'s incentive-based compensation ban "burdens the initiative petition process in any meaningful manner." Resp. in Opp'n at 19. Respondents cite federal and other state courts[20] that have upheld pay-per-signature bans on

[20] Following *Meyer*, various pay-per-signature bans have been enacted and challenged. *See, e.g.*, *Limit v. Maleng*, 874 F. Supp. 1138 (W.D. Wash. 1994) (Washington statute prohibiting

the basis that they do "not categorically limit the pool of circulators" and argue there is "little reason to think this requirement makes it less likely a campaign will gain ballot access." *Id.* Respondents also suggest "the prohibition on per-signature compensation reduces the incentives for circulators to rush, commit fraud, or browbeat Oklahomans into signing." Resp. to Amicus Curiae League of Women Voters at 1.[21]

¶ 32 Although Section 8(G) does not ban paid circulators outright, Petitioners maintain that it bans common and cost-effective means of payment used in initiative campaigns.[22] One of Respondents' Declarants seemingly agrees,

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per-signature payment); *Term Limits Leadership Council, Inc. v. Clark*, 984 F. Supp. 470 (S.D. Miss. 1997) (Mississippi statute prohibiting per-signature payment of circulators); *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614 (8th Cir. 2001) (North Dakota law prohibiting payments on a basis related to the number of signatures obtained); *Prete v. Bradbury*, 438 F.3d 949 (9th Cir. 2006) (Oregon constitutional provision prohibiting payment of electoral petition signature gatherers on per-signature basis); *Citizens for Tax Reform v. Deters*, 518 F.3d 375 (6th Cir. 2008) (Ohio statute prohibiting payment on any basis other than time worked); *Pierce v. Jacobsen*, 44 F.4th 853 (9th Cir. 2022) (Montana statute prohibiting payment based upon number of signatures gathered); *Az. Petition Partners LLC v. Thompson ex rel. Cnty. of Maricopa*, 530 P.3d 1144 (Ariz. 2023) (Arizona statute prohibiting payment based on the number of signatures collected).

These cases come to varying conclusions, largely depending on the evidence of fraud presented in support of the payment restriction and the scope of the restriction. *See, e.g.*, *Citizens for Tax Reform*, 518 F.3d at 386 ("With the broader ban on the types of payment and harsher criminal sanctions for violations, Ohio's provision lies closer to the complete ban in *Meyer* than the partial bans in the other circuit court cases.").

[21] One of Respondents' Declarants indicates that the ban is "presumably... an effort to prevent fraud and hasty actions. The incentive under the previous system as to put as many names on the form as possible as quickly as possible." Resp'ts' App., Tab A, Decl. of Rick Farmer ¶ 17.

[22] Pet'rs' App., Tab B, Decl. of Amber England ¶¶ 33–35 (incentive-based compensation is "a standard industry practice used by many professional signature gathering firms. Many national signature gathering services operate on a performance-based compensation model,

indicating he has "reviewed bids for signature gathering in Oklahoma several times, and while a per-signature price is common, it is not out of the question to receive a day rate for paid gatherers. Admittedly such a contract may be more costly." Resp'ts' App., Tab B, Decl. of A.J. Ferate ¶ 28. But, he argues, "the economics that factor into a signature gathering effort are not, and should not, be a concern of the Court." *Id.* at ¶¶ 23, 28. We disagree. Per *Meyer*, that S.B. 1027 leaves open more costly, and potentially less-effective, avenues of communication does not relieve its burden on First Amendment expression. And notably, Section 8(G) bans compensation based not only on the number of signatures collected, but also the "number of signature sheets submitted, *or any other similar incentives*." 34 O.S.2025, § 8(G)(1) (emphasis added). In doing so, Section 8(G) burdens political speech. The State therefore cannot avoid its burden to justify the statute by demonstrating that the Legislature had a compelling state interest for adopting the ban. Even assuming the compelling state interest is the deterrence of fraud, Respondents have not cited any portion

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where circulators are paid for each valid signature collected, in an effort to incentivize signature collectors to maximize productivity, ensure signatures are collected from registered voters, and verify that all required information is properly completed. By prohibiting this compensation structure, SB 1027 will further reduce the already limited pool of professional signature gathering services willing to work in Oklahoma. This performance-based compensation ban, combined with the residency requirement and county caps, creates a triple barrier that makes successful signature gathering practically impossible for most initiative campaigns. Based on my experience with petition campaigns, I estimate that these restrictions would dramatically increase the cost of signature gathering while simultaneously reducing the pool of available vendors and making it more difficult, if not impossible to reach the threshold within the 90-day window.").

of the legislative record[23]—or any other evidence—to show the existence of any fraud in our previous system, which allowed incentive-based pay, and we are not prepared to assume that a circulator compensated based on some metric other than time—including the number of *verified* signatures collected—is any more likely to accept false signatures than a circulator paid by the hour. In the absence of any indication of fraud, Respondents have failed to justify the burden Section 8(G) places on protected speech, particularly in view of the protections against fraud already in place through Oklahoma's criminalization of false signatures[24] and signature verification process. *See* 34 O.S.2024, § 2(B) (requiring four out of the five following data points to be matched to the voter's registration file for a signature to be approved and counted: the voter's

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[23] In fact, in response to questions regarding whether there are any documented cases of corruption in Oklahoma's initiative petition signature gathering process, Speaker of the Oklahoma House of Representatives Kyle Hilbert indicated "any corruption—if there was any, *and I'm not saying there is*—but it's going to be exposed because signature gatherers are going to have to disclose if they're being paid to collect signatures." Oklahoma House of Representatives, Debate on S.B. 1027, May 7, 2025 at 11:16:57 AM – 11:18:09 AM (emphasis added); *see* AAOJ at ¶ 6 (citing this statement).

[24] "Any person signing any name other than his own to any petition, or knowingly signing his name more than once for the same measure at one election, or who is not at the time of signing the same a legal voter of this state, or whoever falsely makes or willfully destroys a petition or any part thereof, or who signs or files any certificate or petition knowing the same or any part thereof to be falsely made, or suppresses any certificate or petition or any part thereof which has been duly filed or who shall violate any provision of this statute, or who shall aid or abet any other person in doing any of said acts; any person violating any provision of this chapter shall, upon conviction thereof, be guilty of a Class D3 felony offense and shall be punished by a fine of not exceeding Five Hundred Dollars ($500.00), or by imprisonment as provided for in subsections B through F of Section 20P of Title 21 of the Oklahoma Statutes, or by both such fine and imprisonment in the discretion of the court before which such conviction shall be had." 34 O.S. § 23.

legal first name, legal last name, zip code, house number, and numerical month and day of birth); *see also Nichols v. Ziriax*, 2022 OK 76, ¶ 4, 518 P.3d 883 (detailing the time-consuming signature verification process when only three data points needed to be matched). We therefore find the incentive-based compensation ban unconstitutional.

E. Out-of-State Contribution Ban — S.B. 1027, § 3.

¶ 33 S.B. 1027 also bans any "person or entity who does not reside or do business in this state" from "contribut[ing] to or compensate[ing] a person for circulation of a petition." 34 O.S.2025, § 8(G)(1). Relatedly, the weekly reports discussed below in subsection F are required to "attest[] that all donated funds were received from sources in this state." 34 O.S.2025, § 8(G)(2).

¶ 34 Respondents argue that this out-of-state ban "protect[s] the integrity of the initiative-petition process" by "minimiz[ing] the risk that in-state voices and advocates will be drowned out by a large volume of purely out-of-state participants." Resp. in Opp'n at 14, 17. Respondents argue that the ban is not overly burdensome because it (1) only prohibits out-of-state participation if the person or entity does not "do business in" Oklahoma, which Respondents assert is a broad, easily-met standard;[25] and (2) only prohibits the *funding of*

[25] Respondents do not, however, venture to explain what it takes to meet this vague requirement. Does an entity have to be registered with the Oklahoma Secretary of State? Does a person have to do business in Oklahoma in their individual capacity, or can they be an owner of an entity that does business in Oklahoma? Is it enough to sell a single product

circulation and not "supporting the petition through advertisements or" other forms of "advocacy." *Id.* at 16–17.[26]

¶ 35 Respondents arguments are flawed in several respects, many of which are addressed in *Citizens United v. Federal Election Commission*, where the U.S. Supreme Court struck down a federal law prohibiting corporations and unions from making independent expenditures for speech advocating for or against a candidate. 558 U.S. 310 (2010). In *Citizens United*, the Court reasoned that banning financial contributions towards political communication bans speech. *Id.* at 339. The Court then went on to indicate "restrictions distinguishing among different speakers, allowing speech by some but not others" are prohibited. *Id.* at 340–41 ("We find no basis for the proposition that, in the context of political speech, the Government may impose restrictions on

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into Oklahoma? Does the "business" have to be independent from a specific initiative petition? Surely, hiring Oklahomans to be petition circulators was not intended to be considered "doing business" in Oklahoma or else the provision would have no meaning at all.

[26] Respondents also draw attention to *State v. Alaska Civil Liberties Union*, 978 P.2d 597 (Alaska 1999)—which upheld various campaign contribution laws, including one prohibiting entities from making independent expenditures to support or oppose candidates—and liken S.B. 1027's out-of-state contribution ban to prohibiting foreign citizens from influencing how voters cast their ballots. Resp. in Opp'n at 17. We find these arguments unpersuasive. The Alaska decision predates *Citizens United* and substantively relies upon *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), which was overturned in *Citizens United*. And S.B. 1027 does not apply exclusively to foreign citizens, and, instead, applies to non-Oklahoman, United States citizens with First Amendment rights. *See Citizens United*, 558 U.S. at 362 (holding that because the law "is not limited to corporations or associations that were created in foreign countries or funded predominately by foreign shareholders" it "would be overbroad even if we assumed, *arguendo*, that the Government has a compelling interest in limiting foreign influence over our political process.").

certain disfavored speakers.").[27] Further, the Court dispelled the argument that the availability of alternative methods of advocacy (*e.g.*, through a PAC) negated the burden being placed on freedom of speech. *Id.* at 337. Ultimately, the Court determined that the law burdened political speech and could not withstand strict scrutiny "which requires the Government to prove that the restriction 'furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Id.* at 340 (quoting *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 464 (2007) (opinion of ROBERTS, C.J.)).

¶ 36 We find the analysis in *Citizens United* applicable to the out-of-state contribution ban in Section 8(G). Petition circulation is political speech. Preventing out-of-state persons and entities from financially contributing is a restriction on political speech that distinguishes between different speakers. And the availability of other forms of advocacy, such as advertising, or the ability to "do business" in Oklahoma does not alleviate the burden being placed on First Amendment rights. Prohibiting all persons and entities out-of-state from contributing any money to help fund the circulation of a petition is not a narrowly tailored means to minimize the risk that in-state voices will be drowned out by out-of-state voices, even if we assume, *arguendo*, that it is a compelling state interest. As such, the out-of-state contribution ban is unconstitutional.

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[27] *See also id.* at 340 ("Speech restrictions based on the identity of the speaker are all too often simply a means to control content.").

F. Disclosure Requirements — S.B. 1027, § 3.

¶ 37 S.B. 1027 also amended several statutes to add new disclosure requirements. Petitioners argue that these disclosure requirements will unconstitutionally chill First Amendment rights to free speech and association by infringing on privacy of association and making both the donation and circulation process more burdensome. Although all of the following can be described as "disclosure requirements," we will analyze the subsection compelling contemporaneous, public speech separately from those subsections mandating new disclosure or reporting to the State of Oklahoma.

i. Circulator Payment Public Notice

¶ 38 S.B. 1027 amended 34 O.S. § 8(E)[28] to require that all initiative petition circulators publicly disclose, at the time they deliver their political message, whether they were paid or unpaid and by whom.[29] As such, this subsection not only compels speech, but the content of that speech is also directly regulated. Moreover, the category of speech burdened is specific to its content—the notice requirement does not apply to circulators of other sorts of petitions, such as

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[28] "Any person who circulates the petition to collect signatures... shall 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." 34 O.S.2025, § 8(E).

[29] In *ACLF*, the U.S. Supreme Court expressly disclaimed any opinion on the "constitutionality of... the 'requirements that the badge disclose whether the circulator is paid or a volunteer, and if paid, by whom.'" 525 U.S. at 197, 200.

candidate petitions,[30] but only applies to those who circulate initiative petitions. Content-based regulation of speech in a public forum must be narrowly tailored to a compelling state interest. *See, e.g., Boos v. Barry,* 485 U.S. 312, 321 (1988). Respondents' main justification for the new disclosure requirements is to keep citizens informed as to which persons and special interest groups are funding and promoting an initiative petition. We are not convinced this notice requirement is narrowly tailored to meet that end. Both parties suggest that most initiative petition circulators are paid through professional signature gathering firms—in which case, disclosure of whether a circulator is paid and by whom (*i.e.*, their employer) will provide little to no insight into who stands to benefit from the initiative. We therefore conclude that the Section 8(E) public notice requirement is not narrowly tailored to serve the stated interest and therefore unconstitutionally violates First Amendment rights.

ii. Circulator Payment Disclosure to the Secretary of State and Weekly Expense Reports

¶ 39 S.B. 1027 amended 34 O.S. § 8(G) to require that "[a]ny person who circulates the petition to collect signatures shall disclose to the Secretary of State any employer or entity that is compensating the person for the circulation of the petition." It also amended 34 O.S. § 8(G) to require that "[a]ny person or

[30] Pursuant to 26 O.S. § 5-112, a declaration of candidacy may by accompanied by a petition supporting a candidate's filing "signed by not fewer than two percent (2%) of the number of registered voters in the district, county or state, as appropriate for the office sought" in lieu of a filing fee.

entity expending funds on the circulation of a petition shall submit a weekly report to the Secretary of State that details such expenditures...." These expense reports are then published by the Secretary of State "on the Secretary's website until the vote on the measure has occurred." 34 O.S.2025, § 8(G)(2). The U.S. Supreme Court has "repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Valeo*, 424 U.S. at 64. Here, there is no qualifying dollar threshold to these reporting requirements. A circulator paid $7.25 to circulate a petition for one hour must disclose their payor to the Secretary of State. And if a petition proponent spends even $1 a week on circulation for the ninety days of circulation—they are required to submit *thirteen* expense reports. The burden of these reports is severe and, as stated by Justice Brennan for a plurality in *Massachusetts Citizens for Life,* may "create a disincentive... to engage in political speech," especially from grassroot and volunteer supporters. *Fed. Election Comm'n v. Mass. Citizens for Life,* 479 U.S. 238, 254 (1986) (plurality opinion). "Detailed recordkeeping and disclosure obligations, along with the duty to appoint a treasurer and custodian of records, impose administrative costs that many small entities" or individuals "may be unable to bear." *Id.*

¶ 40 But not all disclosure burdens are unconstitutional. Disclosure requirements can pass constitutional muster if there is "a 'substantial relation'

between the disclosure requirement and a 'sufficiently important' governmental interest." *Citizens United*, 558 U.S. at 366–67 (quoting *Valeo*, 424 U.S. at 64, 66). To withstand this scrutiny, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 744 (2008). We must therefore look at the governmental interest in disclosure and weigh it against the burden being placed on First Amendment rights.

¶ 41 Generally, the Supreme Court has recognized three potential categories of sufficiently important governmental interests which justify reporting and disclosure requirements. First, when disclosure requirements "are an essential means of gathering the data necessary to detect violations of... contribution limitations...." *Valeo*, 424 U.S. at 68. Second, when disclosure will "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures"—"[a] public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return." *Id.* at 67–68. Third, when disclosure will allow "voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches." *Id.* at 67.

¶ 42 Here, the first and second justifications quickly fail. First, Oklahoma does not have contribution limitations for state question campaigns, so there's no

need to detect limitation violations. Ethics Comm'n Rule 2.36, 74 O.S.2025, Ch. 62, App. 1.[31] Second, the U.S. Supreme Court has repeatedly stated that, unlike individual candidate elections, the risk of corruption is remote in ballot initiatives. *See, e.g.*, *ACLF*, 525 U.S. at 203 ("ballot initiatives do not involve the risk of '*quid pro quo*' corruption present when money is paid to, or for, candidates"); *Meyer*, 486 U.S. at 427 ("the risk of fraud or corruption, or the appearance thereof, is more remote at the petition stage of an initiative than at the time of balloting"); *First Nat'l Bank of Bos. v. Bellotti,* 435 U.S. 765, 790 (1978) ("The risk of corruption perceived in cases involving candidate elections ... simply is not present in a popular vote on a public issue."). Respondents therefore rely on the third justification, providing context to help inform the public of the potential motives of a petition, to support both of Section 8(G)'s disclosure requirements.

¶ 43 Before we begin analyzing Section 8(G), we must address the U.S. Supreme Court's precedent regarding petition circulation disclosures. In *ACLF*, the U.S. Supreme Court seemingly endorsed requiring "sponsors of ballot initiatives to disclose who pays petition circulators, and how much." *See ACLF*,

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[31] "Any person not otherwise prohibited by law, including but not limited to individuals, partnerships, limited liability companies, corporations and labor unions, may make contributions in any amount to an unlimited committee organized exclusively for the purpose of advocating the approval or defeat of a state question." Ethics Comm'n Rule 2.36, Ch. 62, App. 1.

525 U.S. at 205.[32] But this endorsement was made in dicta, as that particular disclosure requirement was no longer at issue and the disclosure requirements that *were* at issue—(1) requiring circulators to wear name badges and (2) requiring initiative proponents to report the names and addresses of paid circulators and the amounts paid to each—were deemed unconstitutional burdens on First Amendment rights. *Id.* at 197–206.

¶ 44 While we acknowledge that there is a legitimate interest in keeping citizens informed as to who is financially supporting and promoting an initiative, we are not convinced Section 8(G)'s disclosure requirements meet this end. First, the informational benefit of these disclosure requirements becomes attenuated when the contributions and expenditures are slight. Disclosure of minor circulation payments and expenses are not likely to help inform potential voters about who influenced the legislation. Second, even with respect to larger expenses, Respondents indicate "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." Resp. to Amicus Curiae League of Women Voters at 3. Respondents are adamant that these "disclosure

[32] "[D]isclosure provides the electorate with information as to where political campaign money comes from and how it is spent, thereby aiding electors in evaluating those who seek their vote." *ACLF*, 525 U.S. at 202 (internal quotation marks omitted). "Disclosure of the names of initiative sponsors, and the amounts they have spent to gather support for their initiatives, responds to Colorado's substantial state interest in controlling domination of the initiative process by affluent special interest groups." *Id.* at 185.

provisions do not require the disclosure of individual donors to the campaign." *Id.* As such, these disclosures do not actually help the public identify the forces behind the initiative or assess the merits of the initiative. Not only does the burden of these disclosure requirements vastly outweigh the limited informational benefit gained, but we also conclude that Section 8(G)'s disclosures are not substantially related to Oklahoma's interest in an informed electorate. The disclosure requirements in Section 8(G) therefore unconstitutionally violate First Amendment rights.

IV. Severability of S.B. 1027

¶ 45 The Act contains a severability clause. This clause and 75 O.S. § 11a[33] require us to conduct a severability analysis. There are only a few provisions which we have not already addressed: 34 O.S.2025, § 3(B) (Open Records Act notice); 34 O.S.2025, § 8(E) (signatory attestation); 34 O.S.2025, § 8(E) (signature removal); 34 O.S.2025, § 8(G)(1) (federal labor standards); 34 O.S.2025, § 9(B) (extra ballot title requirement); S.B. 1027, § 6 (retroactivity clause); and a series of non-substantive, clean-up amendatory revisions found

[33] "If any provision or application of the act is found to be unconstitutional and void, the remaining provisions or applications of the act shall remain valid, unless the court finds: a. the valid provisions or application of the act are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannot presume the Legislature would have enacted the remaining valid provisions without the void one; or b. the remaining valid provisions or applications of the act, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent." 75 O.S. § 11a(1).

in 34 O.S.2025, §§ 3, 8(A), 8(B), 8(J)(2), 8(K), 8(N), and 9(A).[34] With the core foundation of the Act being deemed unconstitutional, we must look only at the remaining portions to see if they alone are (1) sufficiently disconnected and independent such that the Legislature would have enacted solely these provisions and (2) complete and capable of being executed in accordance with the stated legislative intent of the Act, as set forth *supra* in ¶ 2.[35]

¶ 46 Upon review, we are not prepared to presume the Legislature would have enacted the remaining provisions without those already deemed void. None of the remaining provisions relate to rural inclusion in the petition process. Although it could be argued that the extra ballot title requirement would help ensure that the state question is accurate and easily understood, ballot titles were already governed by a series of restrictions to ensure their clarity and were already reviewed in full and heavily scrutinized by the Attorney General—and this Court when challenged—to ensure that they are clear and not deceptive.

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[34] Although the amendment to 34 O.S. § 8(J)(2) is arguably substantive in that it changes the figure the Secretary of State provides to the Supreme Court for its signature sufficiency determination from the "number of votes cast for the state office receiving the highest number of votes cast at the last general election" to "the total number of votes cast for the office of Governor at the last general election," practically, these are the same figure due to the definition of legal voter found in OKLA. CONST. art. V, § 2. *See supra* note 6.

[35] S.B. 1027 is internally inconsistent: it insists it aims to encourage rural involvement and discourage out-of-state contributions, but it continues to make the initiative and referendum petition process more complicated (*e.g.*, weekly detailed reporting requirements) and costly (*e.g.*, banning incentive-based pay and requiring circulators to obtain signatures from increasingly sparsely populated counties in the same amount of time). The cost of compliance goes up with every new requirement, and the cumulative effect of the Act is to discourage all Oklahomans from using their constitutional right to file initiative or referendum petitions.

See 34 O.S.2021, § 9. We therefore conclude that the remaining provisions of S.B. 1027, standing alone, are unrecognizable and do not honor the intent of the Act.

V. Conclusion

¶ 47 The Court concludes Petitioners have standing. Several key aspects of Senate Bill 1027 violate the U.S. and Oklahoma Constitutions, and non-offending sections are incapable of being severed. We therefore conclude S.B. 1027 is unconstitutional and void in its entirety and lacks legal enforceability. Once a statute that amends or repeals an earlier statute is deemed unconstitutional (and thus void), it is as if it had never been passed. The earlier statute, as it stood prior to the invalid enactment, is unaffected. As such, the versions of 34 O.S. §§ 3, 6, 8, and 9 that existed before S.B. 1027 remain in full force and effect.

¶ 48 Should the parties choose to file a petition for rehearing, it must be done within ten days of the day this opinion is filed. Five additional days will be allowed for a response. This time limitation will not be extended.

ORIGINAL JURISDICTION PREVIOUSLY ASSUMED; PETITION FOR DECLARATORY RELIEF GRANTED

CONCUR: WINCHESTER, EDMONDSON, COMBS, GURICH, and DARBY, JJ.

DISSENT: ROWE, C.J., KUEHN (by separate writing), V.C.J., KANE (by separate writing), J. and HUBER (by separate writing), S.J.