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.

RESPONSE IN OPPOSITION TO PETITIONERS' MOTION FOR STAY, PRELIMINARY INJUNCTION, AND OTHER INTERIM RELIEF

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INTRODUCTION

Oklahoma Senate Bill 1027 ("SB 1027") establishes certain procedures to protect the integrity of Oklahoma's initiative petition process and thus, the integrity of Oklahoma's Constitution itself. As part of their original jurisdiction lawsuit against SB 1027, Petitioners have asked this Court for preliminary relief—namely, a stay or an injunction. But Petitioners admit that their alleged injury cannot be remedied through a stay of SB 1027. Instead, the alleged injury can be remedied only by the stay of the signature gathering process for State Question 836 ("SQ 836")—which is not the focus of this lawsuit. On top of that, the continued validity of SQ 836 is currently being debated at this very Court, in a separate lawsuit, with the outcome uncertain. Thus, Petitioners' request for a stay or an injunction relating to SQ 836 is simultaneously improper (wrong case), hypothetical (potentially wrong outcome), and unripe (wrong time). This Court should therefore deny the motion.

BACKGROUND

Two of the Petitioners (Kenneth Ray Setter and Anthony Stobbe) filed a proposed state question on January 3, 2025—State Question 836—relating to open primaries. Prior to the end of the statutory protest period, the Oklahoma Republican Party challenged the constitutionality of the proposed question as well as the question's gist. *See Okla. Republican Party v. Setter*, No. 123,007 (Okla.). The challenge has been fully briefed and will be argued before this Court tomorrow, on June 24, 2025.

On May 23, 2025, Governor Stitt signed SB 1027 into law.[1] SB 1027 instituted a number of reforms in the initiative and referendum petition processes, including the following:

- The gist on the top of each signature sheet must explain the effect of the proposition in

[1] *Available at* https://www.oklegislature.gov/BillInfo.aspx?Bill=sb1027&Session=2500.

basic words; avoid uncommon words, euphemisms, code words, and any "apparent attempt to deceive voters"; avoid partiality; and explain the proposition's fiscal impact on the state and its potential source of funding. SB 1027, §§ 1, 4.

- A statement must be printed under the gist providing notice that a copy of the petition and signatures are public records. (The Secretary of State was given authority to "remove any gist that violates" these first two requirements.) SB 1027, § 1.
- Only registered Oklahoma voters may circulate a petition for signatures. SB 1027, § 2.
- Petition circulators must display a notice during signature collection indicating whether and by whom the person is being paid to circulate the petition. SB 1027, § 3
- Signatories must identify their county of residence. *Id.*
- Signatories must verify that they read the gist in full or had it read to them. *Id.*
- Individuals must be able to have their signatures removed from a petition. *Id.*
- Petition circulators must "disclose to the Secretary of State any employer or entity that is compensating the person for the circulation of the petition." *Id.*
- Compensation for circulators cannot be "based on number of signatures collected, number of signature sheets submitted, or any other similar incentives." *Id.*
- Persons or entities who do not reside or do business in Oklahoma cannot contribute to or compensate a person for circulation of a petition. *Id.*
- Employers of petition circulators must follow federal labor standards. *Id.*
- Anyone "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." (And "[t]he Secretary of State shall publish such reports on the Secretary's website until the vote on the measure has occurred.") *Id.*

- Of the total signatures collected for a statutory petition, the amount "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." *Id.*
- Of the total signatures collected for a constitutional petition, the amount "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." *Id.*
- The Secretary of State shall certify to this Court the total number of votes cast for the office of Governor at the last general election. *Id.*

The Legislature also insisted that "[t]he provisions of this act shall be severable and if any section, subsection, sentence, or clause of this act is for any reason held to be invalid such holding shall not affect the validity of the remaining portions thereof." SB 1027, § 5. Because SB 1027 contains an emergency clause, it went into effect immediately on May 23, 2025. *Id.* § 7. Under the terms of the statute, the amended rules apply to all proposed initiative petitions that the Secretary of State has not yet set the schedule for gathering signatures. *Id.* § 6. This includes SQ 836 because it has not reached the stage where the Secretary of State sets the signature schedule.

There are, of course, several possible procedural outcomes following this Court's resolution of the separate and independent challenge to SQ 836. The Court could hold that SQ 836 is unconstitutional or that the gist is misleading—thereby completely mooting the stay/preliminary injunction request in the present lawsuit. Alternatively, the Court could uphold the constitutionality and gist of that initiative. But even if it does so, the Secretary of State would then be required to set the 90-day period for Petitioners to gather signatures for SQ 836. *See* 34 O.S. § 8(E). That period must start between 15 and 30 days *after* the Court has resolved the legal challenge. *Id.* In other words, even if this Court rules in the SQ 836 case in favor of the two Petitioners in this case, there would still be over two weeks at minimum before those Petitioners

would be able to start gathering signatures. Nevertheless, Petitioners have asked for preliminary relief staying the signature collection period for SQ 836 and staying enforcement of SB 1027.

In this motion, Petitioners have identified two sets of alleged injuries that an injunction and stay would purportedly remedy. The first alleged injury, which constitutes the primary thrust of the motion, consists of the harm of SB 1027 applying immediately to SQ 836 and the resulting uncertainty of the applicable procedural requirements pending this Court's resolution of this case. Pets.' Mot. for Stay. at 3. This alleged injury is the same injury that is relied on in Petitioners' companion case challenging the immediate application of SB 1027. *See Setter v. Cockroft*, No. 123,180 (Okla.).[2] The second asserted injury is that two of the Petitioners are chilled from their stated plan "to participate in the initiative process, including potentially filing a new initiative petition." Pets.' Mot. for Stay at 3. Petitioners offer no details about these alleged plans, however.

ARGUMENT

A preliminary injunction is "an extraordinary remedy, not to be granted lightly." *Matter of Estate of Foresee*, 2020 OK 88, ¶ 10, 475 P.3d 862, 865. The party seeking such relief must demonstrate "1) the likelihood of success on the merits; 2) irreparable harm to the party seeking injunction relief if the injunction is denied; 3) [the] threatened injury outweighs the injury the opposing party will suffer under the injunction; and 4) the injunction is in the public interest." *Id.*

This Court should deny Petitioners' request for a stay for several critical reasons. Most importantly, Petitioners have admitted that a stay of SB 1027 is not sufficient to alleviate their alleged harm. Instead, Petitioners' alleged harm is primarily wrapped up in SQ 836's procedure, which is not before the Court in this action. And that alleged harm is not even ripe yet. The

[2] Given that these two cases involve "a common question of law or fact" and essentially the same counsel and parties, it would likely benefit the Court and the parties to consolidate the actions pursuant to 12 O.S. § 2018(C). Although this statute addressing consolidation applies only to district courts, this Court possesses the authority to resolve unsettled points of procedure that are not addressed by statutes. *See* Sup. Ct. R. 1.1(c); *see also* Sup. Ct. R. 1.27(d).

challenge to the constitutionality of SQ 836 has not yet been resolved; indeed, the oral argument does not even take place until tomorrow. And if resolved in Petitioners' favor, there will still be several weeks before the signature collection period begins. The only other injury alleged—that two Petitioners are chilled from potentially filing a new petition—is far too speculative to justify enjoining a duly enacted state law. Finally, Petitioners have failed to demonstrate a likelihood of success on the merits, especially in light of the severability of SB 1027's provisions.

I. An injunction of SB 1027 will not remedy Petitioners' alleged SQ 836 injury.

Petitioners admit: "[P]reventing enforcement of SB 1027 while this controversy is being litigated will not fully protect Petitioners." Pets.' Mot. for Stay at 4. As Petitioners' own motion makes clear, Petitioners will not suffer an irreparable injury if their motion is denied because an injunction of SB 1027 would not address their alleged injury. Petitioners' primary injury is being forced "to go forward and collect signatures [for SQ 836] . . . without knowing what law will ultimately be determined to apply to the signatures they collect." *Id.* A stay of SB 1027 has no bearing on whether that injury occurs. As Petitioners acknowledge, "even if the Court prevents enforcement of SB 1027 while this original action is pending, and even if the Court ultimately strikes the law down as unconstitutional," Petitioners' alleged injury still occurs "if SQ 836's 90-day signature circulation period is allowed to begin before the challenges to SB 1027 are finally resolved." *Id.* As a result, even if this Court were to enjoin SB 1027, Petitioners would practically still have to comply with its requirements because a final judgment has not yet been entered addressing their simultaneous attacks on SB 1027.

In other words, by their own admission, Petitioners' SQ 836 injury can only be addressed by staying SQ 836's signature gathering process—which would be improper here, given that SQ 836 is not at issue in this case. The alleviation of their entire stated injury turns on that determination. If SQ 836's signature-gathering process is stayed, it does not matter whether SB

1027 is enjoined because it would not operate on SQ 836 until this challenge is resolved. Similarly, if SQ 836 is not stayed, it does not matter whether SB 1027 is enjoined because Petitioners would still be operating with uncertainty about its eventual status.

In the end, the relief Petitioners are truly seeking is a stay of SQ 836's signature-collection period *if* they prevail in the challenge to that question. That is the only thing that would address the alleged harm they face. This request places the Court in a strange place in this case, where SQ 836 is not at issue. At issue here is the lawfulness of SB 1027. Because SQ 836 is not before this Court in this action, it would be improper for the Court to stay its processes here—particularly when SQ 836 is squarely before the Court in a different case. *See Okla. Republican Party v. Setter*, No. 123,007 (Okla.). To be sure, this Court could potentially resolve the issues underlying this stay motion simply by waiting to issue its decision in *Oklahoma Republican Party* until it is also ready to issue its final decision in this case—*i.e.*, the Court could issue both decisions simultaneously, which would eliminate the need for a stay of any kind. But that is an approach within the sound discretion of this Court, and beyond the ability of Respondents to demand unilaterally in this case.

II. Petitioners' stay request is clearly premature.

Even if Petitioners' motion were procedurally proper, it is still flawed due to its prematurity. The ripeness doctrine guards "against the decision of abstract or hypothetical questions." *French Petroleum Corp. v. Okla. Corp. Comm'n*, 1991 OK 1, ¶ 7, 805 P.2d 650, 652–53. This doctrine prevents courts "from entangling themselves in abstract disagreements over administrative policies" and limits "judicial interference until . . . decisions have been formalized and their effects felt in a concrete way by the parties." *Id.* When considering ripeness, this Court examines "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Id.*

The question of a stay or injunction here is not fit for a judicial decision. The alleged harm

Petitioners seek to avoid—uncertainty over the state of the law governing the signature gathering period for SQ 836—is undeniably speculative at this point. Again, this Court is currently considering a challenge to the legality of that initiative. *See Okla. Republican Party v. Setter*, No. 123,007 (Okla.). Even under Petitioners' theory, the proponents of SQ 836 can only be harmed if the Court determines that the petition is constitutional. And if the Court decides that SQ 836's proposed changes to the primary process were unconstitutional, this present request would be moot. While that decision is pending, the effects of SB 1027 are not "felt in a concrete way by the parties." *French Petroleum Corp.*, 1991 OK 1, ¶ 7. Moreover, even if this Court upholds SQ 836, Petitioners have admitted that signature gathering will not begin for *at least* 15 days after the Court's decision (and up to 30 days)—further underscoring the lack of ripeness for a stay or an injunction to be issued here. Accordingly, Petitioners have failed to demonstrate the irreparable injury required to obtain an injunction. *See Estate of Foresee*, 2020 OK 88, ¶ 10.

III. Petitioners' purported injury about a potential new initiative petition is too speculative for relief.

The second asserted injury allegedly justifying the extraordinary relief of a preliminary injunction is that SB 1027 will chill two of Petitioners' "plans to participate in the initiative process, including potentially filing a new initiative petition." Pets.' Mot. for Stay. at 3. This injury is remarkably speculative. Petitioners have not provided any details of activities that are chilled. In fact, Petitioners do not even claim that they will file a new petition in the future. They just *might* do so at some unspecified point down the road. These vague, conclusory allegations do not meet Petitioners' burden to demonstrate that they will experience irreparable harm if a preliminary injunction is not issued. *Estate of Foresee*, 2020 OK 88, ¶ 10. Indeed, these speculative allegations do not even suffice to establish standing on their own. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992) ("Such 'some day' intentions—without any description of concrete plans, or indeed even any specification of when the some day will be—do not support a finding of the 'actual or

imminent' injury that our cases require.").

IV. Petitioners are not likely to succeed on the merits.

For reasons Respondents will more thoroughly explore in 10 days, when this Court has requested a fuller response, Petitioners are not likely to succeed on the merits—especially in challenging SB 1027 as a whole. Petitioners have an incredibly high hurdle to surmount in their challenge to 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. Oklahoma Water Res. Bd.*, 1984 OK 12, ¶ 11, 679 P.2d 1296, 1300. Indeed, "[i]n ascertaining the constitutionality of a legislative act, we do not look to the Constitution to determine whether the Legislature is authorized to do an act but rather to see whether it is prohibited." *Id.* ¶ 12. "If there is *any doubt* as to the Legislature's power to act in any given situation, the doubt should be resolved in favor of the validity of the action taken by the Legislature." *Id.* (emphasis added) (quoting *Draper v. State*, 1980 OK 117, ¶ 10, 621 P.2d 1142, 1146). "Restrictions and limitations upon legislative power are to be construed strictly, and are not to be extended to include matters not covered or implied by the language used." *Id.* Petitioners' stay arguments fall short of these standards.

Petitioners' merits arguments are flawed in several respects. For example, Petitioners' equal protection arguments about the county-by-county caps on signatures suffer from the fatal flaw that all voters are still equally capable of signing an initiative petition. Under SB 1027, the counties are treated the same, and thus the people within the counties are treated the same. Proponents of an initiative petition may collect the same percentage of a county's population from each county. A person in Tulsa County is just as statistically likely to be able to sign, meaningfully, a petition as a person in Cimarron County. This is a far cry from the unequal treatment of similarly situated individuals which is at the heart of equal protection challenges. *See, e.g.*, *City of Cleburne v.*

Cleburne Living Ctr., 473 U.S. 432, 439 (1985) ("The Equal Protection Clause . . . is essentially a direction that all persons similarly situated should be treated alike."). And Petitioners' arguments against the prohibition on out-of-state signature collectors completely ignore existing Oklahoma Supreme Court precedent applying—without dissent—such a restriction to strike an initiative petition from the ballot because the circulators were not Oklahoma residents. *See In re Initiative Petition No. 379*, 2006 OK 89, ¶ 3, 155 P.3d 32, 34. There, this Court recognized that "the Oklahoma residency of circulators" is "[p]ivotal to the integrity of the circulation process." *Id.* ¶ 16. "Residency requirements," this Court definitively held, "ensure that when [] issues arise, the circulators will be Oklahoma residents who may be located within state lines and be subject to service for appearance in Oklahoma Courts." *Id.* ¶ 21. To be sure, later developments in the Tenth Circuit complicate matters, but Petitioners' failure to even acknowledge this precedent speaks volumes about the strength of their arguments here.

Finally, even were this Court inclined to grant a preliminary injunction against SB 1027, it must conduct a point-by-point analysis of the various provisions of the Act due to the severability of Oklahoma statutes generally and this law particularly. *See* 75 O.S. § 11a. Here, the Legislature stated that "[t]he provisions of this act shall be severable and if any section, subsection, sentence, or clause of this act is for any reason held to be invalid such holding shall not affect the validity of the remaining portions thereof." SB 1027, § 5. Petitioners have failed to detail which particular provisions allegedly require a preliminary injunction. In reality, some of the provisions are not related to the alleged irreparable harm and do not appear to be challenged in this lawsuit. For example, Petitioners do not appear to take issue with the requirement that people signing the petition provide their county of residence and attest that they have read the petition in full—or have had it read to them.[3] At a bare minimum, provisions of SB 1027 that Petitioners have not

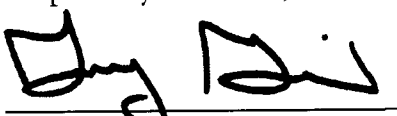
[3] Among other provisions, Petitioners also appear not to challenge the notice requirement that the

claimed are unlawful should remain in place.

CONCLUSION

Respondents respectfully request that this Court deny Petitioners' motion because it is improper, hypothetical, and unripe.

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

petition and gist are public records, the requirement that employers of circulators comply with federal labor standards, and the requirement that there be a process to remove signatures.

CERTIFICATE OF SERVICE

This certifies that on the 23rd day of June 2025, a true and correct copy of the foregoing RESPONSE IN OPPOSITION TO PETITIONERS' MOTION FOR STAY, PRELIMINARY INJUNCTION, AND OTHER INTERIM RELIEF was mailed, postage prepaid to the following:

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

GARRY M. GASKINS, II, OBA # 20212
Solicitor General