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SUPREME COURT
STATE OF OKLAHOMA

JUL -3 2025

No. 123,179

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CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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

Petitioners,

v.

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

Respondents.

RESPONSE IN OPPOSITION

Received:	7-3-25
Docketed:	
Marshal:	
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TABLE OF CONTENTS AND AUTHORITIES

INTRODUCTION.....	1
-------------------	---

Case

<i>In re Initiative Petition No. 379</i> , 2006 OK 89, 155 P.3d 32	1
---	---

BACKGROUND.....	1
-----------------	---

Other Authorities

Press Release, <i>More than 40,000 marijuana plants, 1,000 lbs. of processed marijuana seized in Organized Crime Task Force sting in Mayes, Craig counties</i> , OKLA. ATT'Y GEN. (June 26, 2025)	2
--	---

Statement of Speaker of the House of Representatives Kyle Hilbert, House First Regular Session, Day 53 (May 7, 2025)	1, 3
---	------

ARGUMENT.....	5
---------------	---

I. SB 1027's geographical restrictions are constitutional.	6
---	---

Cases

<i>Draper v. State</i> , 1980 OK 117, 621 P.2d 1142.....	6
---	---

<i>Moody v. NetChoice, LLC</i> , 603 U.S. 707 (2024)	6
---	---

<i>Reherman v. Okla. Water Res. Bd.</i> , 1984 OK 12, 679 P.2d 1296.....	6
---	---

<i>State ex rel. Okla. State Dep't of Health v. Robertson</i> , 2006 OK 99, 152 P.3d 875	7
---	---

Constitutional Provisions

ARK. CONST. art. V, § 1	8
-------------------------------	---

FLA. CONST. art. XI, § 3.....	8
-------------------------------	---

MASS. CONST. art. 48, Gen. Provisions, II.....	8
--	---

NEB. CONST. art. III, § 2	8
---------------------------------	---

OHIO CONST. art. II, § 1(g)	8
-----------------------------------	---

OKLA. CONST. art. V, § 2.....	8
-------------------------------	---

OKLA. CONST. art. V, § 6.....	8
-------------------------------	---

a. SB 1027 complies with Article V of the Oklahoma Constitution.....	9
--	---

Cases

<i>Darnell v. Chrysler Corp.</i> , 1984 OK 57, 687 P.2d 132	10
<i>Reberman v. Okla. Water Res. Bd.</i> , 1984 OK 12, 679 P.2d 1296	9

Constitutional Provisions

OKLA. CONST. art. V, § 1	9
OKLA. CONST. art. V, § 2	9
OKLA. CONST. art. V, § 3	9
OKLA. CONST. art. V, § 8	9-10

Other Authorities

<i>Suitable</i> , CAMBRIDGE DICTIONARY	10
b. The county caps comply with the First Amendment.	10
c. The county caps comport with equal protection.	11

Cases

<i>City of Cleburne v. Cleburne Living Ctr.</i> , 473 U.S. 432 (1985)	12
<i>Mass. Pub. Interest Rsch. Grp. v. Sec'y of Com.</i> , 375 N.E.2d 1175 (Mass. 1978)	12
<i>Reberman v. Okla. Water Res. Bd.</i> , 1984 OK 12, 679 P.2d 1296	12
II. SB 1027's gist requirements and review process are lawful.	12
a. The Secretary of State's review conforms with the separation of powers.	12

Statutes

ARKANSAS CODE § 7-9-103(a)	15
CAL. ELEC. CODE § 9001	13
IDAHO CODE § 34-1807	15
MO. REV. STAT. § 116.334	13

Constitutional Provisions

OKLA. CONST. art. V, § 3	13
b. SB 1027's substantive gist requirements aid the public in exercising their rights.	13

Cases

<i>Brown v. Carnahan</i> , 370 S.W.3d 637 (Mo. 2012)	14
---	----

<i>In re Initiative Petition No. 344</i>	
1990 OK 75, 797 P.2d 326	14
<i>In re State Question No. 820</i>	
2022 OK 30, 507 P.3d 1251	14
<i>Planned Parenthood of Alaska v. Campbell,</i>	
232 P.3d 725 (Alaska 2010)	14
<i>San Francisco Forty-Niners v. Nisbioka,</i>	
89 Cal. Rptr. 2d 388 (Cal. Ct. App. 1999)	14
III. SB 1027's restrictions on out-of-state participation protect the integrity of the initiative process and are constitutional.	14
a. The prohibition on nonresident circulators protects the validity of the process.	14

Cases

<i>Commonwealth v. Cross,</i>	
726 A.2d 333 (Pa. 1999)	16
<i>Hart v. Sec'y of State,</i>	
715 A.2d 165 (Me. 1998)	15
<i>In re Initiative Petition No. 379,</i>	
2006 OK 89, 155 P.3d 32	15, 16
<i>Initiative & Referendum Inst. v. Jaeger,</i>	
241 F.3d 614 (8th Cir. 2001)	15
<i>Reherman v. Okla. Water Res. Bd.,</i>	
1984 OK 12, 679 P.2d 1296	16
<i>Soares v. State,</i>	
545 P.3d 871 (Wyo. 2024)	16
<i>Yes on Term Limits, Inc. v. Savage,</i>	
550 F.3d 1023 (10th Cir. 2008)	16

Statutes

ARK. CODE § 7-9-103(a)	15
IDAHO CODE § 34-1807	15
b. The prohibition on out-of-state contributions is constitutional.	16

Cases

<i>Bluman v. FEC,</i>	
800 F. Supp. 2d 281 (D.D.C. 2011) (Kavanaugh, J.), <i>aff'd</i> , 565 U.S. 1104 (2012)	17
<i>Foley v. Connelie,</i>	
435 U.S. 291 (1978)	17
<i>State v. Alaska C.L. Union,</i>	

978 P.2d 597 (Alaska 1999)	17
IV. SB 1027's notice and disclosure requirements for circulation are constitutional.....	17
a. The disclosure requirement of expenditures on circulation is permissible.....	17
<u>Cases</u>	
<i>Americans for Prosperity Found. v. Bonta,</i> 594 U.S. 595 (2021)	18
<i>Buckley v. Valeo,</i> 424 U.S. 1, 81 (1976)	18
<i>McConnell v. FEC,</i> 540 U.S. 93 (2003)	18
<i>McDaniel v. Spencer,</i> 457 S.W.3d 641 (Ark. 2015)	18
<i>Osterberg v. Peca,</i> 12 S.W.3d 31 (Tex. 2000)	18
<i>Wyo. Gun Owners v. Gray,</i> 83 F.4th 1224 (10th Cir. 2023)	18
b. The requirement that circulators disclose that they are paid is constitutional.....	18
<u>Cases</u>	
<i>Buckley v. Am. Const. Law Found., Inc.,</i> 525 U.S. 182 (1999)	19
<i>League of Women Voters of Mich. v. Sec'y of State,</i> 975 N.W.2d 840 (Mich. 2022)	19
V. The prohibition on per-signature compensation is lawful.	19
<u>Cases</u>	
<i>Ariz. Petition Partners LLC v. Thompson ex rel. Cnty. of Maricopa,</i> 530 P.3d 1144 (Ariz. 2023)	19
<i>Pierce v. Jacobsen,</i> 44 F.4th 853 (9th Cir. 2022)	19
VI. SB 1027 is not a special law.	19
<u>Cases</u>	
<i>Williamson v. Lee Optical,</i> 348 U.S. 483 (1955)	20
VII. Any and all provisions of the Act are severable.....	20

Cases

<i>Fent v. Contingency Review Bd.</i> , 2007 OK 27, 163 P.3d 512	20
CONCLUSION	20

INTRODUCTION

Oklahoma Senate Bill 1027 (“SB 1027”) establishes procedures to protect the integrity of Oklahoma’s initiative petition process and thus, the integrity of Oklahoma’s laws and Constitution. Perhaps most prominently, SB 1027 sets uniform county caps that encourage initiative campaigns to go into suburban and rural Oklahoma counties for signatures to kick-start an initiative or referendum. Nothing in our Constitution, nor in the federal Constitution, prohibits the Legislature from implementing such a basic and commonsense effort. Citizens from the entire State—rather than just its two largest counties—deserve to participate fully in initiating changes to Oklahoma laws and the State’s foundational document.

Nothing prohibits Oklahoma from making the other changes enshrined in SB 1027, either. Ensuring “the Oklahoma residency of circulators,” for example, is something this Court unanimously deemed “[p]ivotal to the integrity of the circulation process” just 19 years ago. *In re Initiative Petition No. 379*, 2006 OK 89, ¶ 3, 155 P.3d 32, 34. Thus, for the reasons that follow and more, this Court should deny Petitioners the relief they seek.

BACKGROUND

Frustrations with Oklahoma’s initiative petition process have skyrocketed in recent years, snowballing in rural (and suburban) Oklahoma especially. Voters outside of Oklahoma’s two biggest metro areas have increasingly felt “disenfranchised”¹ from the entire process, as professional initiative campaigns and signature gatherers—often from outside the state—have focused on placing issues on the ballot that drastically affect rural voters without making serious efforts to obtain rural support or buy-in. *See* Respondents’ Appendix B (“R.A.B”), Declaration of

¹ Statement of Speaker of the House of Representatives Kyle Hilbert, House First Regular Session, Day 53, May 7, 2025, 11:16:16–18 (May 7, 2025). *Available at* https://sg001-harmony.sliq.net/00283/Harmony/en/PowerBrowser/PowerBrowserV2/20250507/-1/55254?mediaStartTime=20250507104035#agenda_.

Anthony J. Ferate, ¶ 13; R.A.C, Declaration of Conner Alford, ¶¶ 7–8, 14; R.A.D, Declaration of Michael Kelsey, ¶¶ 5–7. Take medical marijuana, for example. It is difficult to imagine an issue that has had more of an effect—much of it negative—on rural areas in Oklahoma than the introduction of legalized marijuana. *E.g.*, R.A.D, Kelsey Decl., ¶ 6. Just last week, Oklahoma’s Organized Crime Task Force seized more than 40,000 marijuana plants and 1,000 pounds of processed marijuana from an illegal grow operation in Mayes and Craig counties, an operation allegedly run by a Chinese national. Press Release, *More than 40,000 marijuana plants, 1,000 lbs. of processed marijuana seized in Organized Crime Task Force sting in Mayes, Craig counties*, OKLA. ATT’Y GEN. (June 26, 2025).² Marijuana grows have put an “overwhelming burden on rural water systems” and forced rural cattlemen to “drastically change their pasture and forage management practices.” R.A.D, Kelsey Decl., ¶ 6. Yet rural voters believe, and not unreasonably so, that they have had very little say in the initiative process for such questions. *E.g., id.*, ¶ 5 (“as far as I can tell, literally no one has seen or been approached by a signature gatherer in their home area”); R.A.D, Alford Decl., ¶¶ 14, 18 (“I cannot recall having ever been contacted by a petition drive”).

These types of frustrations led to SB 1027. Among other changes (listed in detail in the State’s stay response earlier), SB 1027 sets caps for the number of signatures that can be collected from each county to start an initiative petition. Each county is treated the same, with their cap set by the vote total in that county in the previous gubernatorial election. Thus, SB 1027 does not prohibit campaigns from focusing on the most populous counties. Rather, it just means they cannot collect *all* their necessary signatures from residents of those counties; they must branch out, at least a little. “This is a voter empowerment bill,” the Speaker of the House emphasized on the House floor, as it empowers more “voters to be part of the petition process.”³ On May 23,

² Available at <https://tinyurl.com/marijuana-bust>.

³ Statement of Speaker of the House of Representatives Kyle Hilbert, House First Regular Session, Day 53, May 7, 2025, 12:09:15–17 (May 7, 2025).

2025, Governor Stitt signed SB 1027 into law.⁴ It went into effect immediately on May 23, 2025.

Petitioners have now sued, claiming that this Court should exercise original jurisdiction to prevent the State from enforcing SB 1027 in its entirety, even though it has a severability clause and they do not challenge every provision as unconstitutional. But in doing so, Petitioners and their declarants make some eye-opening admissions. For example, their primary declarant admits that “Oklahoma initiative campaigns typically rely on national firms that employ experienced circulators from across the country.” Petitioners’ Appendix B (“P.A.B”), ¶ 28; *see also id.* ¶ 58 (“Out-of-state funding” is “a critical source of financial support.”). And she then complains that, under SB 1027, campaigns will have to “recruit and train inexperienced Oklahoma residents.” *Id.* ¶ 29. Heaven forbid campaigns use Oklahomans to support changes to Oklahoma’s Constitution. *See* R.A.B, Ferate Decl., ¶ 26 (“I highly doubt that the alleged ineptness of Oklahomans can stand as a basis to find an Oklahoma law unconstitutional.”).

This same declarant complains that, under SB 1027, “signatures must now be spread across multiple counties,” P.A.B, ¶ 15, which essentially concedes that campaigns do *not* currently seek signatures across multiple counties. To drive this point home further, she elsewhere objects that campaigns will now have to “[d]eploy more circulators across a much wider geographic area.” *Id.* ¶ 25. Inconsistently, she also claims campaigns have “made an effort to gather signatures from across the state.” *Id.* ¶ 16. Petitioners cannot have their cake and eat it, too. If they are already gathering “signatures from across the state,” then county caps cannot be that burdensome. And if they are *not* seeking signatures “across multiple counties,” then they should be.

Petitioners’ primary declarant also protests that SB 1027’s prohibition on paying these out-of-state signature collectors per signature forbids campaigns from “incentiviz[ing] signature

⁴ *Bill Information for SB 1027*, OKLA. STATE LEGISLATURE, *Available at* <https://www.oklegislature.gov/BillInfo.aspx?Bill=sb1027&Session=2500>.

collectors to maximize productivity.” *Id.* ¶ 33. This effectively confesses that, currently, signature collectors are mostly (and possibly entirely) pay-for-play mercenaries, which is in tension with Petitioners’ claim that these collectors are having their free speech rights violated.

In any event, even amidst her most strident rhetoric (with which the State disagrees), Petitioners’ declarant also tacitly admits that some campaigns will still be able to succeed under SB 1027. For example, she says that signature gathering will be “practically impossible for *most* initiative campaigns,” *id.* ¶ 34 (emphasis added), which is a roundabout way of conceding that some campaigns will move forward regardless. Same goes for her statement that SB 1027 “would prevent *many* petition campaigns in this state from succeeding,” *id.* ¶ 37 (emphasis added), and her claim that “*many* grassroots initiatives would be unable to gather the required signatures within the 90-day window,” *id.* ¶ 39 (emphasis added). Although this declarant’s perception of the failure rate is skewed, *see* R.A.A., Farmer Decl., ¶ 25, it has been the state of play since time immemorial that petition campaigns often fail. *See id.*, ¶¶ 25–28. Some campaigns succeed, but many do not. No campaign is guaranteed a path to success. Our Constitution, like any other, is not easy to amend, nor should it be. *Id.* ¶ 30. Indeed, Petitioners’ declarant admits that even before SB 1027 Oklahoma initiatives have had a “low success rate.” P.A.B., ¶ 61. This is to be expected, given the immense importance of changing laws. The success rate is no different than the relatively low success rate of bills introduced in the legislature. *See* R.A.A., Farmer Decl., ¶ 28.

Troublingly, Petitioners’ declarant includes—as failures—initiatives that the people of Oklahoma have voted down. P.A.B., ¶ 61. This is a failure of logic. Any initiative that made it to a vote is a success in terms of signature-gathering and legal process, which are the points at issue here. The fact that the People then voted certain initiatives down is merely a sign that, contrary to indications from the signature process, the topics did not actually have support from the people of Oklahoma. *See id.*, ¶ 26. That Oklahomans rejected numerous initiatives in the ballot box cannot

possibly be used as ammunition to argue that future regulations of the initiative petition process are unconstitutional.

In response to Petitioners' witnesses, the State offers four declarants of its own, all of whom have substantial knowledge of or experience with Oklahoma's initiative process and the interests of rural Oklahomans. Rick Farmer, a Ph.D. who has studied and published on Oklahoma's historical initiative practice, testifies that "SB 1027 is wholly in line with the principles of direct democracy" and that changing Oklahoma law "should require buy-in from across the State." R.A.A, Farmer Decl., ¶ 30. A.J. Ferate, a former Oklahoma Republican Party Chairman who has previously opposed efforts like SB 1027, testifies that the "time has come for such changes" since "rural interests in Oklahoma are bearing the brunt of developments that they have little to no input or control over." R.A.B, Ferate Decl., ¶ 7. Conner Alford, who teaches political science at Southeastern Oklahoma State and has extensive involvement in Oklahoma campaigns, testifies that SB 1027 "is necessary to ensure policies enacted through the initiative or referendum process are consistent with the general welfare and public interest of the state as a whole." R.A.C, Alford Decl., ¶ 27. And Michael Kelsey, who interacts with and advocates for thousands of rural members of the cattle industry, testifies that "SB 1027 is a welcome balance to upright the petition initiative process in Oklahoma and make it fairer and more inclusive." R.A.D, Kelsey Decl., ¶ 5. These witnesses also respond at length to the claims made by Petitioners' declarants. And they are assuredly not alone in their views, as anyone who has spent time in rural Oklahoma can attest.

ARGUMENT

Petitioners face an incredibly high hurdle in their effort to challenge the constitutionality of 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." *Reberman v. Okla. 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.* The presumption of constitutionality poses an even greater hurdle when—as here—plaintiffs bring a facial pre-enforcement challenge. Because “‘facial challenges threaten to short circuit the democratic process’ by preventing duly enacted laws from being implemented in constitutional ways,” the U.S. Supreme Court has “made facial challenges hard to win.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024) (citation omitted)). Petitioners’ efforts to clear this hurdle are unavailing.⁵

I. SB 1027’s geographical restrictions are constitutional.

As Oklahoma’s witnesses attest, the current initiative petition process largely excludes rural Oklahomans on the front end. *See* R.A.B, Ferate Decl., ¶¶ 7, 12–13; R.A.C, Alford Decl., ¶¶ 7–8, 14; R.A.D, Kelsey Decl., ¶¶ 5–7. Indeed, Petitioners’ own witness admits the current signature collection process focuses on a few metro counties. *See supra* p.3. By limiting the number of signatures an initiative campaign can count from one county, the Legislature has opened the door further for all of Oklahoma—urban and rural—to participate in the process to determine which initiative petitions reach the ballot. This reform supports the goals of both the Oklahoma Constitution and the U.S. Constitution. *See* R.A.A, Farmer Decl., ¶ 30; R.A.B, Ferate Decl., ¶ 36; R.A.C, Alford Decl., ¶ 27.

⁵ If this Court were inclined to grant original jurisdiction, this would be an appropriate case in which to allow the parties the opportunity for more thorough briefing before ruling. There are numerous issues here, and it is difficult to do them justice without further briefing.

Petitioners' arguments to the contrary rest primarily on an erroneous interpretation of SB 1027. They argue that SB 1027 prohibits them from gathering more than the allotted number that can be counted for a particular county. Pets.' Br. at 4–5. But this is wrong. SB 1027's language provides that "[t]he total number of signatures collected to meet the requirements . . . 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." SB 1027, § 3. This provision merely caps how many signatures from each county may count towards the number required to go on the ballot. It does not prohibit campaigns from gathering more than that number (a "buffer") in case some signatures are unable to be verified. In this provision, "collected" must be read in congruence with the phrase following it: "to meet the requirements." See *State v. Robertson*, 2006 OK 99, ¶ 7, 152 P.3d 875, 878 ("Words and phrases of a statute are to be understood and used not in an abstract sense, but with due regard for context and they must harmonize with other sections of the act to determine the purpose and intent of the legislature.") (citation omitted). That phrase indicates that this provision is solely focused on limiting how many signatures count towards getting the initiative onto the ballot. A campaign may gather more than that number. The extra just will not count. R.A.A, Farmer Decl., ¶ 14; R.A.B, Ferate Decl., ¶¶ 21–22. Petitioners' "most problematic" portion of SB 1027, P.A.B, ¶ 20, is a fiction. R.A.B, Ferate Decl., ¶¶ 21–22.

Petitioners also claim that the county restrictions make it impossible to obtain enough signatures to reach the 25 percent required to submit a petition that was previously rejected in the last three years. Pets.' Br. at 5. This argument is meritless for the simple reason that the county-by-county caps do not apply to those particular initiative petitions. The Oklahoma Constitution treats those petitions as distinct from initiative petitions proposing original ideas—as indicated by the fact that the two types of petitions are discussed in separate constitutional provisions. Compare OKLA. CONST. art. V, § 2 with *id.* § 6. Thus, SB 1027's county caps do not apply to renewed

petitions that failed at the ballot within the preceding three years.⁶

Finally, as the State's witnesses discuss at length, Petitioners have overstated the difficulty imposed by SB 1027 in gathering enough signatures to make the ballot. Petitioners complain that they will no longer be able to focus primarily on metro counties. P.A.B. ¶ 15. While the law encourages campaigns to involve more counties in the process, it does not make the signature-collecting especially difficult on that front. *See* R.A.A, Farmer Decl., ¶¶ 29–30; R.A.B, Ferate Decl., ¶¶ 11–20. For example, signatures collected from the two most populous counties, Oklahoma and Tulsa, can still make up over half of all the signatures collected. R.A.B, Ferate Decl., ¶ 10. And, by counsel's calculation, the six most populous counties can make up roughly 77% of the signatures needed for a successful effort. SB 1027 merely requires that a modest percentage of the signatures—23 percent—come from the 71 smaller counties. It does not create an overly difficult barrier, R.A.B, Farmer Decl., ¶¶ 29–30; R.A.B, Ferate Decl., ¶¶ 11–20, nor is this type of requirement unique to Oklahoma. Various other states also place geographic restrictions on the signature process for initiatives. *See, e.g.*, ARK. CONST. art. V, § 1; MASS. CONST. art. 48, Gen. Provisions, II; NEB. CONST. art. III, § 2; OHIO CONST. art. II, § 1(g); FLA. CONST. art. XI, § 3.

To be sure, Petitioners and their declarants also complain extensively about the additional costs for campaigns that will allegedly be imposed by SB 1027. But “tying cost to constitutionality would seemingly mean factors such as inflation could affect a law’s constitutionality.” R.A.B, Ferate Decl., ¶ 8. That cannot be correct. Oklahoma does not protect initiative campaigns from unwanted costs. Money is always a consideration, and some campaigns will move forward with their efforts, and others will not. *Id.* Indeed, one of Respondents’ witnesses has already been contacted in the past several weeks by persons interested in potentially moving forward with

⁶ Even if SB 1027 did apply to renewed petitions, that would only be relevant for an as-applied challenge by proponents of a renewed petition, but not for this facial challenge.

initiative campaigns, even under SB 1027. *See* R.A.B, Ferate Decl., ¶ 20. In any event, Petitioners at most identify “inconveniences” in the initiative petition process, not “true impossibilities.” R.A.A, Farmer Decl., ¶ 29.

a. SB 1027 complies with Article V of the Oklahoma Constitution.

Petitioners argue that Article V of the Oklahoma Constitution prohibits the Legislature from imposing a county-by-county cap on the number of signatures. It does not. Petitioners strain to create a prohibition in the Constitution that does not exist. *See Reberman*, 1984 OK 12, ¶ 12 (“[W]e 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.”). Through Article V, “the people reserve[d] to themselves the power to propose laws and amendments to the Constitution.” OKLA. CONST. art. V, § 1. Article V provides that for statutory initiatives eight percent of the number of voters in the previous gubernatorial election is required for the initiative to be placed on the ballot. *Id.* § 2. For constitutional changes, that number is fifteen percent. *Id.* It then sketches out how the process works in broad strokes: petitions must be filed with the Secretary of State but submitted to the people for a vote through the Governor. *Id.* § 3. Besides this outline, Article V is silent as to the process required to implement initiative petitions. To fill in these gaps, it provides that “[t]he Legislature shall make suitable provisions for carrying into effect the provisions of this article.” *Id.* The Legislature is also tasked with enacting laws “to prevent corruption in making, procuring, and submitting initiative and referendum petitions.” *Id.* § 8.

Petitioners’ assertion that the Legislature’s power to govern the initiative petition process is limited solely to preventing corruption is unmoored from the text of Article V. *Pets.’ Br.* at 3. It is true that Article V requires the Legislature to enact anticorruption laws. OKLA. CONST. art. V, § 8. But Article V separately authorizes the Legislature to “make suitable provisions” for implementing initiative petitions. *Id.* § 3. If the phrase “suitable provisions” was limited to only

anticorruption measures, Section 8 would be meaningless surplusage. Such an interpretation would run counter to this Court's dictate that "[e]very provision of the Constitution and statutes of Oklahoma is presumed to have been intended for some useful purpose and every provision should be given effect." *Darnell v. Chrysler Corp.*, 1984 OK 57, ¶ 5, 687 P.2d 132, 134.⁷ By granting the Legislature the authority to implement "suitable" provisions, Article V grants the Legislature considerable power to regulate the process for initiative petitions. "Suitable" is defined as "acceptable or right for someone or something." *Suitable*, CAMBRIDGE DICTIONARY.⁸ This indicates that the Legislature may make policy judgments about what processes are appropriate for initiative petitions. If the drafters of Article V intended to limit legislative authority to the degree advocated by Petitioners, they could have done so. They did not.

Because Article V delegated policymaking authority to the Legislature, this Court should grant deference to the Legislature's considered policy judgments. Here, the Legislature determined, correctly, that rural Oklahomans are being excluded from signature-gathering campaigns. *See* R.A.B, Ferate Decl., ¶ 13; R.A.B., Alford Decl., ¶¶ 7–8, 14; R.A.B, Kelsey Decl., ¶¶ 5–7. In response, it ensured some modicum of participation for the more sparsely populated counties. The county caps are reasonably related to a legitimate governmental goal—indeed, a compelling governmental interest—and they do not contradict the provisions of Article V.

b. The county caps comply with the First Amendment.

Petitioners argue that "[t]he caps also violate the First Amendment by prohibiting legal voters from signing the petition . . . once the caps are reached." Pets.' Br. at 2. This argument rests

⁷ Petitioners also argue that interpreting Section 3 to grant the Legislature general regulatory authority would render Section 6's anticorruption provision surplusage. Pet. at 11. This argument misunderstands Section 6. While Section 3 requires the Legislature to use its judgment to enact generally "suitable provisions[.]" Section 6 specifically ensures that the Legislature *will* enact anticorruption legislation. The provisions work together. One tells the Legislature to govern the process. The other makes sure that the process will include anticorruption measures.

⁸ Available at <https://dictionary.cambridge.org/us/dictionary/english/suitable>.

entirely on the mistaken view that initiative petition campaigns are prohibited from gathering more than the number of signatures that can count towards the petition making the ballot. As explained above and in Oklahoma's declarations, this is not the case. *Supra* Section I. Under SB 1027, every registered voter may sign a petition. Thus, this claim must fail.

c. The county caps comport with equal protection.

Petitioners next claim that the county caps violate equal protection by treating voters differently "based solely on timing and geography." Pets.' Br. at 3. The complaint is that a signature is more significant when it comes before the voter's county has reached the county maximum than a different voter's signature after the county reached the maximum. This is meritless. That type of phenomenon is inherent in any process that requires a certain number of signatures. *See* R.A.A., Farmer Decl., ¶ 10. For example, the Oklahoma Constitution requires that 15 percent of eligible voters sign an initiative petition attempting to amend the Constitution before it can be placed on the ballot. This means that signatures cease "mattering" once that number has been reached. But it would be absurd to argue that this system disenfranchises those that sign after the campaign has gathered sufficient signatures, or that 14 percent of voters are disenfranchised when the 15-percent threshold isn't reached. And yet that is where the logic of Petitioners' argument leads.

Petitioners' geography arguments fare no better. Under SB 1027, counties are treated the same, proportionally, 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 voting share from each county. A person in one county possesses a meaningfully equal chance of being able to sign a petition before the cap is reached as any person in any other 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.").

That explains why the Massachusetts Supreme Court upheld a similar statutory scheme that set a cap for how many signatures one county could contribute to place an initiative petition on the ballot. There, the Court noted that “[t]he county-distribution rule in no way affects the right of qualified voters to cast their votes for or against an initiative proposal properly on the ballot.” *Mass. Pub. Interest Rsch. Grp. v. Sec’y of Com.*, 375 N.E.2d 1175, 1181 (Mass. 1978). The Court then determined that the Massachusetts’ scheme was “reasonably calculated” to ensure that only questions of statewide concern reached the ballot. *Id.* at 1183. Similarly, here, the Act is reasonably calculated to ensure that the less populous counties have a say in the process. Certainly, Petitioners have not established that SB 1027 is “clearly, palpably and plainly inconsistent with the Constitution.” *Reberman*, 1984 OK 12, ¶ 11.

II. SB 1027’s gist requirements and review process are lawful.

SB 1027 reforms the gist requirements to make sure that the gist is worded in a manner that will fairly inform potential signers of the contents of the proposal. It does so by providing more guidelines for the gist itself and by authorizing the Secretary of State to review the gist for conformity with the statute. The gist must “[e]xplain in basic words ... the effect of the proposition.” SB 1027, § 1. It may not use jargon, any words that suggest “an apparent attempt to deceive voters” and may not reflect “any argument for or against the measure.” *Id.* The gist must also include a statement of the initiative’s potential fiscal impact on the state. In other words, the gist must seek to neutrally inform voters. These are perfectly reasonable and suitable provisions.

a. The Secretary of State’s review conforms with the separation of powers.

Determining whether a gist is written in basic language and is phrased neutrally is not an inherently judicial act. Instead, it requires administering and implementing clear legislative guidelines—something that executive officials are well situated to do. Several other states have delegated the task of determining whether the gist of an initiative is sufficient or even drafting the

gist to an executive official. *See e.g.*, CAL. ELEC. CODE § 9001; MO. REV. STAT. § 116.334; OHIO REV. CODE § 3519.01. One compelling reason states have made this decision is that courts possess limited jurisdiction. They only decide cases and controversies. Thus, a court will only review a gist if someone challenges it in court. By placing the responsibility with the Secretary of State, the Legislature has ensured that each gist will be reviewed for compliance regardless of whether someone challenges it. And this conforms with historical practice in Oklahoma, where the original ballot titles were written by the Secretary of State. R.A.A, Farmer Decl., ¶ 20(b).

Contrary to Petitioners' arguments, SB 1027's review process does not contradict the Oklahoma Constitution's statement that "[t]he veto power of the Governor shall not extend to measures voted on by the people." OKLA. CONST. art. V, § 3. The gist review is not a veto. It merely provides a check to make sure that the public is not misinformed by the substance of the gist. The Secretary of State is not authorized to disapprove of the gist for policy reasons. If an initiative petition is ultimately approved by the people, it still cannot be vetoed.

b. SB 1027's substantive gist requirements aid the public in exercising their rights.

Petitioners appear to believe that the First Amendment prohibits the Legislature from imposing any restrictions on the substance of the gist. They argue that requiring neutral language in a gist consists of content-based, viewpoint discrimination. Pets.' Br. at 7. Taken to its logical conclusion, Petitioners' argument would mean that initiative proponents must be allowed to campaign through the words of the gist. But the First Amendment requires no such thing. There is a well-settled practice of courts upholding anti-misinformation measures targeted at initiative petitions. Indeed, "[n]umerous decisions have supported the invalidation of initiative measures for Elections Code violations resulting in voter confusion or misinformation." *San Francisco Forty-Niners v. Nishioka*, 89 Cal. Rptr. 2d 388 (Cal. Ct. App. 1999) (citations omitted). Courts across the country have upheld and implemented requirements that gists are written in an impartial manner.

See, e.g., *Planned Parenthood of Alaska v. Campbell*, 232 P.3d 725, 729–30 (Alaska 2010); *Brown v. Carnahan*, 370 S.W.3d 637, 646 (Mo. 2012). This Court has also acted vigorously to make sure that each gist is written fairly. See *In re Initiative Petition No. 344, State Question No. 630*, 1990 OK 75, ¶ 14, 797 P.2d 326. Moreover, SB 1027’s gist regulations do not impede or regulate direct communication between the circulator and any potential signers. The circulator may still use persuasive language to convince people to sign. The gist requirements merely ensure that there is a neutral and non-deceptive summary for voters to read. See *id.*

Petitioners take issue with the requirement that the gist include an indication of any potential fiscal impacts on the state. Petitioners argue that this requires proponents “to highlight only negative fiscal impacts.” Pets.’ Br. at 7. This is incorrect. Some proposals would likely raise revenue—a fiscal positive—and others might have no foreseeable fiscal effect on the State. This provision merely ensures that registered voters are knowledgeable about the petition they are asked to sign. The Court has applied previous gist regulations that require the gist to “inform signers of the initiative petition of the ‘potential effects’ so those signers understand the changes that would be made.” *In re State Question No. 820, Initiative Petition No. 434*, 2022 OK 30, ¶ 6, 507 P.3d 1251, 1253. SB 1027, in short, protects Oklahoma signers and voters from misinformation.

III. SB 1027’s restrictions on out-of-state participation protect the integrity of the initiative process and are constitutional.

Amid growing concern across many states of out-of-state influence in ballot initiatives, the Legislature took several steps to protect the integrity of the initiative-petition process. It did so in two primary ways. First, SB 1027 requires all signature collectors to be a registered Oklahoma voter. SB 1027, § 3. Second, it prohibits any “person or entity who does not reside or do business in this state [from] contribut[ing] or compensat[ing] a person for circulation of a petition.” *Id.*

a. The prohibition on nonresident circulators protects the validity of the process.

The initiative process exists for Oklahoma voters to propose changes to Oklahoma law.

The animating principle for its existence is to allow Oklahomans to directly influence policy when enough of them are motivated to organize a petition. A ballot initiative is not an ordinary petition. It is an instrument of the Oklahoma government that is used to change foundational State laws that bind everyone in the State—rural and urban alike. Thus, it must be preserved for Oklahomans.

This Court has applied the residency requirement to strike an initiative from the ballot. *In re Initiative Petition No. 379, State Question No. 726*, 2006 OK 89, ¶ 42, 155 P.3d 32, 50. There, this Court—with no dissents—held that “the Oklahoma residency of circulators” is “[p]ivotal to the integrity of the circulation process.” *Id.* ¶ 16. As the Court explained, “[r]esidency requirements 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. This Court was not alone. The Eighth Circuit agreed that a state “has a compelling interest in preventing fraud and that [a similar] regulation does not unduly restrict speech” *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614, 616 (8th Cir. 2001). The Maine Supreme Court also upheld a prohibition on nonresidents circulating initiative petitions. *Hart v. Sec’y of State*, 715 A.2d 165, 168 (Me. 1998). There, the Maine Supreme Court echoed this Court’s reliance on the state’s need to have jurisdiction over circulators to adjudicate signature disputes, but also added that “[r]esidence enhances the integrity of the initiative process by ensuring that citizens initiatives are brought by citizens of Maine.” *Id.* Similarly, other states have implemented a residential requirement for circulators. *See* ARK. CODE § 7-9-103(a); IDAHO CODE § 34-1807.

In response, Petitioners rely on a Tenth Circuit case ruling against a previous Oklahoma residential requirement. *See* Pets.’ Br. at 9 (citing *Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023 (10th Cir. 2008)). But that case is not binding on this Court. *See e.g., Soares v. State*, 545 P.3d 871, 877 (Wyo. 2024) (“this Court is ‘not bound by a federal circuit court decision’”); *Commonwealth v. Cross*, 726 A.2d 333, 338, n.4 (Pa. 1999) (holding that the Pennsylvania Supreme Court was only

bound by the U.S. Supreme Court on federal law). And the Tenth Circuit's decision was wrongly decided. This Court has already held that restricting circulators to Oklahoma residents is crucially important "to the integrity of the circulation process." *In re Initiative Petition No. 379*, 2006 OK 89, ¶ 17. That *is* binding. As a result, it is hard to imagine how this provision could be "clearly, palpably and plainly inconsistent with the Constitution." *Reherman*, 1984 OK 12, ¶ 11.

The Tenth Circuit failed to consider Oklahoma's other compelling interests in ensuring that petitions are being brought by Oklahoma residents. As Mr. Alford testifies, he has "often been frustrated in efforts to identify opportunities for my students to professionally engage in political causes precisely because many of the paid positions have been outsourced." R.A.D, Alford Decl., ¶ 25. "[T]he campus communities of Oklahoma" alone "represent an untapped pool of literally thousands of Oklahomans who would be willing to engage in petition circulation services were they not being routinely passed up for out-of-state forces." *Id.* SB 1027 thus "stands to directly and professionally benefit these young professionals and future leaders of our state by shifting a regulatory system which has historically ... advantaged out of state firms to one that encourages equitable petitioning practices which employee Oklahomans across the state." *Id.* In short, there are *numerous* compelling reasons to restrict signature-gathering to change Oklahoma laws to Oklahomans only.

b. The prohibition on out-of-state contributions is constitutional.

As an initial matter, this provision does not stretch nearly as far as Petitioners suggest. In full, this provision states that "[n]o person or entity who does not reside or do business in this state shall contribute to or compensate a person for circulation of a petition." SB 1027, § 3. This provision does *not* prohibit out-of-state entities from supporting a petition through advertisements or advocacy. It prohibits those entities only from donating money *for the circulation of petitions*. Similarly, the scope is further limited by its application to people and entities that do not do

business in the state. *Countless* people and groups do business in Oklahoma. For example, a national advocacy organization that regularly engages within Oklahoma would likely count as doing business within the State. This provision seemingly, then, only reaches those who have practically no connection to Oklahoma whatsoever.

With that in mind, this limited prohibition is constitutional. In upholding a similar restriction on out-of-state donations, the Alaska Supreme Court held that such restrictions “limit the ‘potential for distortion.’” *State v. Alaska C.L. Union*, 978 P.2d 597, 617 (Alaska 1999). The restriction does so by minimizing the risk that in-state voices and advocates will be drowned out by a large volume of purely out-of-state participants. In the same vein, federal courts have upheld a prohibition on foreign citizens “from participating in the campaign process that seeks to influence how voters will cast their ballots in the election.” *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (Kavanaugh, J.), *aff’d*, 565 U.S. 1104 (2012). These limitations are “part of the sovereign’s obligation to preserve the basic conception of a political community.” *Foley v. Connelie*, 435 U.S. 291, 295–96 (1978) (citation omitted). That same rationale applies to Oklahoma’s interest in limiting participation in its law-making process to Oklahoma residents.

IV. SB 1027’s notice and disclosure requirements for circulation are constitutional.

SB 1027 imposes several requirements to better inform the public during the initiative petition process. These provisions are all constitutional.

a. The disclosure requirement of expenditures on circulation is permissible.

The Act provides that “[a]ny person or entity expending funds on the circulation of a petition shall submit a weekly report to the Secretary of State that details such expenditures and that attests that all donated funds were received from sources in this state.” SB 1027, § 3. The U.S. Supreme Court has held that law requiring the disclosure of expenditures in elections is a substantial government interest. Such laws “shed the light of publicity on spending that is

unambiguously campaign related but would not otherwise be reported because it takes the form of independent expenditures.” *Buckley v. Valeo*, 424 U.S. 1, 81 (1976), *superseded on other grounds by statute as recognized by McConnell v. FEC*, 540 U.S. 93 (2003). With regards to candidates for election, courts have acknowledged that donation disclosures “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.” *State v. Evergreen Freedom Foundation*, 432 P.3d 805, 814 (Wash. 2019) (en banc). This rationale holds true for initiative petitions. Knowing which entities support a petition is valuable information for a potential voter. Thus, several state supreme courts have upheld such requirements. *Id.*; *Osterberg v. Peca*, 12 S.W.3d 31, 43–44 (Tex. 2000). The cases Petitioners rely on to the contrary are unavailing. Pets.’ Br. at 10–11. Each case involves challenges to a law requiring nonprofits to disclose individual donors. *Wy. Gun Owners v. Gray*, 83 F.4th 1224, 1229 (10th Cir. 2023); *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 600 (2021). That is a far cry from SB 1027, which merely requires the entities directly funding the circulation to list their expenditures. The provision does not require a listing of the entity’s individual donors.

For similar reasons, the provision 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” is also lawful. SB 1027, § 3. As the Arkansas Supreme Court held in upholding a similar requirement, this places a “minimal burden” on circulators. *McDaniel v. Spencer*, 457 S.W.3d 641, 648 (Ark. 2015). Thus, the State’s interest in being “aware of the identity of people who are being paid to solicit signatures from citizens as well as how to locate them should problems arise” outweighs such a limited burden. *Id.*

b. The requirement that circulators disclose that they are paid is constitutional.

The Legislature has also required circulators to “display a conspicuous notice in any location where the person is collection signatures [showing] whether the person is being paid to

circulate the petition and if so, by what person or entity.” *Id.* § 3. This provision informs the public about which entities are bankrolling an initiative petition. In arguing that this provision is unconstitutional, Petitioners erroneously rely on *Buckley v. Am. Const. Law Found., Inc.*, 525 U.S. 182 (1999). There, the Supreme Court declared a law unconstitutional that required petition circulators to wear ID badges that stated their name, phone number, and whether they were paid. *Id.* at 188. The Court reasoned that the law chilled speech by requiring the release of personal information when advocating in the public. *Id.* at 199. SB 1027 requires no such thing. The circulator is only required to disclose whether he or she is paid—a distinction that the Michigan Supreme Court found dispositive. This disclosure “is so minimal that a governmental interest in increasing information for voters justifies the requirement.” *League of Women Voters of Mich. v. Sec’y of State*, 975 N.W.2d 840, 862 (Mich. 2022).

V. The prohibition on per-signature compensation is lawful.

SB 1027 prohibits initiative campaigns from paying circulators based on the number of signatures collected. This provision does not categorically limit the pool of circulators. *Pierce v. Jacobsen*, 44 F.4th 853, 864 (9th Cir. 2022). For that reason, the Ninth Circuit held that there was little reason to think that this requirement makes it less likely that a campaign will gain ballot access. *Id.* The Eighth Circuit and the Arizona Supreme Court reached the same conclusion. *Jaeger*, 241 F.3d at 618; *Az. Petition Partners LLC v. Thompson ex rel. Cnty. of Maricopa*, 530 P.3d 1144, 1150 (Ariz. 2023). Petitioners, here, also have not provided any evidence that this provision burdens the initiative petition process in any meaningful manner.

VI. SB 1027 is not a special law.

Finally, Petitioners argue that SB 1027 violates equal protection guarantees and constitutes an impermissible special law because it imposes restrictions on proponents of initiative petitions but not on campaigns opposing the petitions. There is a simple explanation for this. SB 1027 is

exclusively regulating the process for a petition to get on the ballot. At this stage in the process, there is rarely organized opposition. Opposing campaigns typically form once an initiative makes it onto the ballot. Regardless, the U.S. Supreme Court has long held that states possess wide latitude to address problems “one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.” *Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955). The Legislature became aware of issues with the signature gathering process, and it has taken steps to address those issues. The Constitution does not require that it address all aspects of the ballot initiative process at the same time. *Id.*

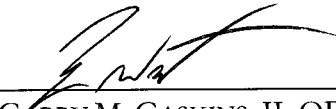
VII. All provisions of SB 1027 are severable.

The Legislature unambiguously stated that “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. The purpose of the severability analysis “is to determine whether non-offending statutory provisions may survive as valid after the clauses rejected as invalid are separated from the whole.” *Fent v. Contingency Review Bd.*, 2007 OK 27, ¶ 18, 163 P.3d 512, 523–24. “Survival of untainted statutory provisions that remain is appropriate when the valid and voided (as unconstitutional) provisions are not so ‘inseparably connected with and so dependent upon’ each other that the surviving provisions would not have otherwise been enacted.” *Id.* Here, the various provisions all operate independently. For example, the county-by-county cap is entirely independent. So too are the disclosure requirements and the various gist requirements. And there are certain provisions Petitioners have not even challenged. Thus, should any particular provision be deemed unconstitutional, this Court should sever it.

CONCLUSION

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

Respectfully submitted,



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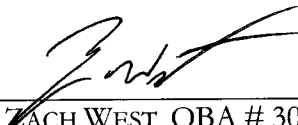
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the RESPONSE IN OPPOSITION was mailed this
3rd day of July 2025, by depositing it in the U.S. Mail, postage prepaid to:

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