



ORIGINAL

FILED
SUPREME COURT
STATE OF OKLAHOMA
JUL 21 2025
JOHN D. HADDEN
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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

Petitioners,

v.

Sup. Ct. Case No. 123179

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

Respondents.

Received:	7.21.25
Docketed:	
Marshal:	JM
COA/OKC:	
COA/TUL:	

**AMICUS CURIAE BRIEF OF THE HONORABLE FRANK KEATING, THE
HONORABLE E. SCOTT PRUITT, AND THE HONORABLE JOHN M.
O'CONNOR IN SUPPORT OF RESPONDENTS**

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INTRODUCTION

“It has been observed . . . that a pure democracy, if it were practicable, would be the most perfect government. Experience has proved, that no position in politics is more false than this. The ancient democracies . . . never possessed one feature of good government. Their very character was tyranny; their figure deformity.”¹ Alexander Hamilton was right to reject the idea of direct democracy—but how much more would he have rejected direct democracy so untethered from participation of large parts of the body politic?

When it passed SB 1027, the Legislature acted within its authority and subject to an important government interest. For this reason, as well as the reasons stated in Respondent’s brief, this Court should deny Petitioners’ the relief sought.

INTEREST OF AMICUS CURIAE

Amici have served Oklahoma at all levels of state and federal government including both chambers of the state legislature, attorney general’s office, and the governor’s office. They have observed firsthand the deficiencies of the prior initiative petition framework, with Oklahomans continuing to lose their voice at the hands of outside special interest groups.

¹ “New York Ratifying Convention. First Speech of June 21 (Francis Childs’s Version), [21 June 1788],” *Founders Online*, National Archives, <https://founders.archives.gov/documents/Hamilton/01-05-02-0012-0011>.

As native Oklahomans, and current Oklahoma residents, the Honorable Frank Keating, the Honorable E. Scott Pruitt, and the Honorable John M. O'Connor, support legislation that empowers each Oklahoman's voice. SB 1027's geographical limitation safeguards against populous counties with widespread out-of-state influence from singlehandedly determining Oklahoma law without any input from individuals residing in rural counties.

ARGUMENT AND AUTHORITIES

I. Geographic diversity requirements serve an important state interest.

Oklahoma is one of twenty six states that recognizes the right of citizens to propose legislation through the initiative petition process.² States that allow initiated legislation by ballot measure have a key interest in ensuring that a broad spectrum of their citizens have an opportunity to influence the process, including rural voters. Accordingly, many of the states which permit initiative petitions already have various geographical limitations to establish *statewide* support.³

² See *State-by-State List of Initiative and Referendum Provisions*, Initiative & Referendum Institute, <https://www.initiativeandreferenduminstitute.org/dd-in-your-state> (listing 26 states) (last visited July 18, 2025).

³ See *Signature, Geographic Distribution and Single Subject (SS) Requirements for Initiative Petitions, Initiative & Referendum* Institute, <http://www.iandrinstitute.org/docs/Almanac-Signature-and-SS-and-GD-Requirements.pdf> (last visited July 18, 2025).

These geographic diversity requirements—like those in SB 1027—serve important state interests. They are designed to ensure that important changes in a state’s legal landscape—especially constitutional amendments—are vetted by more than just voters in the state’s largest handful of counties (or even a single county) before being placed on the ballot. Without a requirement of attaining a modicum of support from a wide cross-section of voters, rural counties in particular are entirely shut out of the process.

For instance, an initiative petition proposing a legislative matter in Oklahoma would currently require 92,263 signatures.⁴ There are over five times that number of registered voters in Oklahoma County alone.⁵ In other words, a sponsor of a ballot measure could attain all the required signatures in just one of Oklahoma’s seventy-seven counties. Almost half of Oklahoma’s registered voters live in its four most populous counties. Given the investment of time and resources involved in sponsoring a ballot measure, it would make little sense for sponsors to canvass for signatures in the state’s most rural counties. Thus, when the legislature decided to ensure more participation from Oklahoma voters, it set a minimal

⁴This number is 8% of 1,153,284—the number of votes cast in the last gubernatorial election.

⁵ See *Current Registration Statistics by County*, (January 15, 2025)

<https://oklahoma.gov/content/dam/ok/en/elections/voter-registration-statistics/2025-vr-statistics/vrstats-county-jan15-2025.pdf>

requirement that a certain signature threshold be met in less than a third of Oklahoma's seventy-seven counties.

The State's interest in placing geographical limitations to protect the rights of all citizens, not just urban voters, "indicate[s] a desire for intelligent expression of views on subjects relating to . . . the entire population." *Dusch v. Davis*, 387 U.S. 112, 116-17 (1967). Without SB 1027 the rural community will continue to be excised from its constitutionally protected right. That is an important state interest worthy of the Court's deference. *See also Associated Indus. of Okla. v. Okla. Tax Comm'n*, 1936 OK 156, ¶ 8, 176 Okla. 120, 122 (noting that the Court "does not concern itself with the expediency or wisdom of laws, but only their legality."); *Eggers v. Evnen*, 48 F.4th 561, 566 (8th Cir. 2022) (acknowledging that placing geographical limitations on the initiative process supports the state's "interest in limiting ballot initiatives to those with a reasonable chance of success so that voters' attention is not distracted by initiatives without a reasonable chance of success.").

II. Geographic diversity requirements advance the policy that initiative petitions arise from support of the people—not special interest groups.

The Oklahoma Constitution proclaims, "[a]ll political power is inherent in the people," OKLA. CONST. art. II, § 1 (emphasis added), and further states

“[t]he first power reserved by *the people* is the initiative.” OKLA. CONST. art. V, § 2 (emphasis added). The framers of the Oklahoma Constitution believed “the people” are the people of *Oklahoma*, and the Oklahoma Legislature has a legitimate interest in reserving the right of the initiative to those people.

The initiative petition process was created as a means for Oklahomans to directly influence and create policy. Indeed, this Court acknowledged “the real purpose of an initiative petition is to secure a vote of *the people* upon a proposed law or constitutional amendment.” *In re Initiative Petition No. 281, State Question No. 441*, 1967 OK 230, ¶ 12, 434 P.2d 941, 947 (emphasis added). However, too often, initiative petitions are influenced by groups who are “not even residents of the states whose laws and constitutions they are rewriting[.]”⁶

Amici here are not so naïve as to think that any particular policy will keep money out of Oklahoma politics as suggested by the Hon. Robert Henry. That is neither practical nor desirable, per se. Petitioners’ brief, on the other hand, already concedes that ballot initiatives are expensive for their proponents, and public records support that proposition (as well as the fact that out-of-state money is often injected into those campaigns). SB 1027

⁶ David S. Broder, *Democracy Derailed: Initiative Campaigns and the Power of Money* (2000).

requires that even a well-funded campaign succeeds based on broader support than finances alone.

III. From the earliest days of statehood, the Oklahoma Legislature has legislated on the topic of initiative petition and referendum.

The Legislature's power is "supreme, except as limited by the *express provisions* of our state Constitution." *Dobbs v. Bd. of County Com'Rs*, 1953 OK 159, ¶ 16, 208 Okla. 514, 516 (emphasis added). Therefore, unlike the federal framework where the legislature may only act under its limited and enumerated powers, the Oklahoma "Legislature is sovereign and . . . *its legislative power has no limitation*" unless expressly provided. *Glasco v. State ex rel. Okla. Dep't of Corr.*, 2008 OK 65, ¶ 27, 188 P.3d 177, 186 (emphasis added). *See also State ex rel. Caldwell v. Hooker*, 1908 OK 244, ¶ 6, 22 Okla. 712, 719 (noting that the legislature is "intrusted with the general authority to make laws at discretion").

Article V of the Oklahoma Constitution enshrines the Legislature's policymaking authority to "make suitable provisions" for regulating the initiative petition process. OKLA. CONST. art. V, § 3. This Court has explicitly acknowledged the Legislature's power to enact legislation restricting initiative petition procedure. *See In re Initiative Petition No. 281, State Question No. 441*, 1967 OK 230, ¶ 49, 434 P.2d 941, 952; *Associated*

Indus. of Okla. v. Okla. Tax Comm'n, 1936 OK 156, ¶ 11, 176 Okla. 120, 124; *Kiesel v. Rogers*, 2020 OK 65, ¶ 6, 470 P.3d 294, 296. And rightfully so. Title 34—dealing with “Initiative and Referendum”—dates back to 1910.

With this foundation, the Legislature has placed various limitations on the initiative petition process, including restrictions limiting circulation deadlines. *See e.g.* Okla Stat. tit. 34, § 8. Thus, recognizing the Legislature’s undisputed authority to enact legislation unless specifically prohibited and the Legislature’s prior legislation restricting the initiative petition process, the Legislature’s geographical limitations on initiative petitions is well within the purview of its policymaking umbrella.

CONCLUSION

For the foregoing reasons, as well as those laid out in Respondents’ brief, Governor Keating, General Pruitt, and General O’Connor respectfully request the Court declare SB 1027 constitutional.

Respectfully submitted,

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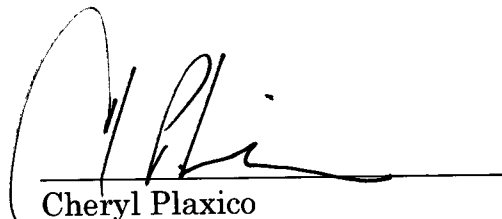
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