



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Case No. 123179

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.

AMICUS CURIAE BRIEF
OF THE HONORABLE ROBERT HENRY ON BEHALF OF THE PETITIONERS

BOB BURKE, OBA # 1329
512 North Broadway Avenue,
Suite 300
Oklahoma City, OK 73102
405-802-1495
bob@bobburkelaw.com

ATTORNEY FOR AMICUS CURIAE
THE HONORABLE ROBERT HENRY

July 7, 2025

CONTENTS

Interest of the Amicus Curiae	3
Statement of the Case	4
PROPOSITION I:	
The right of initiative was at the forefront of the founders' minds at the Oklahoma Constitutional Convention	5
<u>Constitutional Sections Cited:</u>	
Art. II, § 4	5
Art. III, § 5	5
Art. V, § 1	5-6
Art. V, § 2	5
<u>Other sources:</u>	
www.okhistory.org/publications/enc/entry?entry=IN025	6
PROPOSITION II:	
This Court has consistently honored the intent of the founders and protected the right of the power of the people.	6
<u>Cases Cited:</u>	
<i>In re Initiative Petitions 112, 114, 117, 118, 1931 OK 769, 6 P.2d. 703</i>	6
<i>In re Initiative Petition No. 348, 1991 OK 110, 820 P.2d 772</i>	7
<i>In re Initiative Petition No. 382, 2006 OK 45, 142 P.3d 400</i>	7
PROPOSITION III:	
The initiative or state question process has a proven track record to give Oklahomans a direct voice in the state's democracy.	8
<u>Other sources:</u>	
www.okpolicy.org/oklahomas-initiative-petition-process-is-vital-to-oklahomas-democracy-lawmakers-should-keep-it-accessible	8
Conclusion	8

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STEVEN CRAIG MCVAY, AMY CERATO, KENNETH)
RAY SETTER, AND ANTHONY STOBBE,)

Petitioners,)

v.)

123179

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

Respondents.)

AMICUS CURIAE BRIEF
OF THE HONORABLE ROBERT HENRY ON BEHALF OF THE PETITIONERS

COMES NOW, Bob Burke, counsel for the Honorable Robert Henry, and submits the following Argument and Authorities in support of the Petitioners' challenge to the constitutionality of S.B. 1027, 60th Leg., 1st Reg. Sess. (Okla. 2025).

INTEREST OF THE AMICUS CURIAE

Vox Populi, Vox Dei, "The voice of the people is the voice of God," was heavy on the minds of delegates to the Oklahoma Constitutional Convention in 1906. It also has been a guiding principle in the life of Judge Henry and his family for generations. Selecting a candidate and encouraging voters to affirm their right to select their leaders was a passion of his grandfather, Tom Henry, an educator. Judge Henry's father, Lloyd Henry, after being wounded

three times in the Battle of the Bulge, came home to Oklahoma, went to law school, and became a legendary lawyer. He served as county attorney and district judge in Pottawatomie County.

This Honorable Court is well aware of the career in public service of Judge Henry. Following the advice of his father, "Public service is the rent you pay for the space you occupy," Judge Robert Henry was in his last semester of law school when he chose to successfully run for a seat in the Oklahoma House of Representatives. He was chairman of the House Judiciary Committee and the subcommittee regarding judicial appropriations. In 1986, he was elected Attorney General of Oklahoma where he upheld the Rule of Law and the right of the people to be directly involved in their government. He left his post as Attorney General to become Dean of the Oklahoma City University School of Law. In 1994, he followed Judge William Holloway, Jr., as an active judge of the U.S. Court of Appeals for the Tenth Circuit. He then served as president of Oklahoma City University.

STATEMENT OF THE CASE

In the interest of time and to avoid duplicity, Judge Henry adopts the specific arguments enunciated by the Petitioners to challenge the constitutionality of S.B. 1027, 60th Leg., 1st Reg. Sess. (Okla. 2025). It is sad that the Legislature has chosen to restrict and contradict the clear language of the Constitution. In the process of adopting the legislation, separation of powers is violated and the constitutional promise of free and equal elections is scrapped in favor of diluting the power of the people and throwing by the wayside the First Amendment right of political speech and association.

One of the most repugnant provisions of S.B. 1027, 60th Leg., 1st Reg. Sess. (Okla. 2025). is the immediate reduction in the pool of eligible initiative petition signers from 2,470,437 to 132,627, excluding 95 percent of the state's registered voters. That one provision disenfranchises

2.3 million registered voters and abolishes their right to initiate legislation or amend the Constitution. That flies in the face of the founders of our nation and state.

I. THE RIGHT OF INITIATIVE WAS AT THE FOREFRONT OF THE
FOUNDERS' MIND AT THE OKLAHOMA CONSTITUTIONAL
CONVENTION

The original text and intent of the Constitution is clear. Throughout the Constitution, the founders recited their strong belief that the power of the people was paramount, that the right of voters to decide issues that affected their lives should be protected.

In fact, the Constitution reserves only one **First Power**. "The **first** power reserved by the people is the initiative..." Okla. Const. art. V, § 2. Added to that sacred reservation of power comes "the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the Legislature and also reserve power at their own option to approve or reject at the polls any act of the Legislature." Okla. Const. art. V, § 1.

Access to the ballot box is protected in other provisions. Okla. Const. art. III, § 5 provides:

*All elections shall be free and **equal**. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage, and electors shall, in all cases, except for treason, felony, and breach of the peace, be privileged from arrest during their attendance on elections and while going to and from the same.*
(Emphasis added)

The intent is crystal clear. The right of suffrage must be equal and no interference to that right will be tolerated. Okla. Const. Art. II, § 4, provides:

No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage by those entitled to such right. (Emphasis added)

We know from the history of the Constitutional Convention that the great power reserved to the people grew from delegates' concerns about big government and corporations intruding upon and controlling their lives. Oklahoma was the first state to add initiative and referendum in its original constitution.

Initiative is a tool of direct democracy that was tied to citizen impatience and frustrations over the uncertainty of society that existing as Oklahoma became the 46th state. Historian John David Rausch wrote:

As the state entered the Union during the Progressive Era, it is not surprising that the Oklahoma Constitution includes direct democracy. The Progressives saw direct democracy as an obstacle to special interest-group control of government.

www.okhistory.org/publications/enc/entry?entry=IN025.

The framers consistently intended for the voice of the people to be heard. Indeed, Oklahoma voters in earlier times voted for more state office holders than any other state, including a State Mine Inspector and Commissioner of Charities and Corrections. The number of statewide ballot positions has been diminished, but only by a vote of the people.

II. **THIS COURT HAS CONSISTENTLY HONORED THE INTENT OF THE FOUNDERS AND PROTECTED THE RIGHT OF THE POWER OF THE PEOPLE.**

The Supreme Court recognized in a 1931 case that since statehood, the right of initiative was protected by judicial decisions. Justice Robert Hefner wrote in *In re Initiative Petitions* 112, 114, 117, 118, 1931 OK 769, 6 P.2d. 703:

¶4 *In the case of Cress v. Estes et al., 43 Okla. 213, 142 P. 411, this court in the second paragraph of the syllabus stated:*

"The power to propose and adopt a proposition of any nature and to amend their Constitution is vested in the people of the state, and in the exercise of such power they constitute the legislative branch of the government and are not subject to interference or control by the judiciary."

The Legislature also cannot dilute or abrogate the right of the people to be heard.

In 1991, *In re Initiative Petition No. 348*, 1991 OK 110, 820 P.2d 772, Justice Lavender surveyed cases from the first 80 years of Oklahoma as a state and wrote for the majority:

¶5 The people's right to institute change through the initiative process is a fundamental characteristic of Oklahoma government. Oklahoma's constitution Article V, § 1 provides:

"The Legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives; but the people reserve to themselves the power to propose laws and amendments to the Constitution and to enact or reject them independent of the Legislature, and also reserve power at their own option to approve or reject at the polls any act of the Legislature."

... In other words, ... it is universally conceded that the people are sovereign and that they have power to adopt a constitution and to change their own work at will. (Emphasis added)

¶6 ... The people reserved to themselves the power to propose laws and amendments to the Constitution. ... This power so reserved to the people should not be crippled, avoided, or denied by technical construction by the courts. It 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.

Ours is a government which rests upon the will of the governed. The initiative and referendum is the machinery whereby self-governing people may express their opinion in concrete form upon matters of public concern. If the people are to be self-governed, it is essential that they shall have a right to vote upon questions of public interest and register the public will. (Emphasis added)

In 2006, *In re Initiative Petition No. 382*, 2006 OK 45, ¶ 3, 142 P.3d 400, the Supreme Court summarized nearly a century of holdings:

The right of the initiative is precious, and it is one which this Court is zealous to preserve to the fullest measure of the spirit and the letter of the law.

Because the right of the initiative is so precious, all doubt as to the construction of pertinent provisions is resolved in favor of the initiative. The initiative power should not be crippled, avoided, or denied by technical construction by the courts.

III. **THE INITIATIVE OR STATE QUESTION PROCESS HAS A PROVEN TRACK RECORD TO GIVE OKLAHOMANS A DIRECT VOICE IN THE STATE'S DEMOCRACY.**

Oklahoma's initiative petition process has been successful to change policy when the Legislature would not act. A successful initiative in 1942 established retirement pensions for school teachers. In 1946, state questions were passed to allow for increased property taxes to support public schools.

Initiative petitions have been used to limit the Legislature's ability to raise taxes, to create an independent Oklahoma Ethics Commission, and to bring about criminal justice reform.

Public policy expert Cole Allen wrote in 2023:

As it currently exists, the initiative petition process in Oklahoma is an effective and secure way for citizens to make the changes they want to see — and vote down the ones they don't. It exists as both a tool for everyday citizens to have their voices directly heard on the issues that matter most to them, as well as an important check on our lawmakers to ensure that legislative action aligns with the will of the people. Making the initiative petition process less accessible hurts Oklahoma's democracy. Our lawmakers should continue to protect the state question process and allow Oklahoma voters to directly voice their opinion on policies that affect their lives.

www.okpolicy.org/oklahomas-initiative-petition-process-is-vital-to-oklahomas-democracy-lawmakers-should-keep-it-accessible.

CONCLUSION

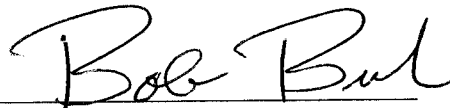
Oklahoma's Bill of Rights, under the heading of "Purpose of government," began with a recitation of the reservation of the power of direct democracy. Okla. Const. art. II, § 1 provides:

All political power is inherent in the people; and government is instituted for their protection, security, and benefit, and to promote their general welfare; and they have the right to alter or reform the same whenever the public good may require it: Provided, such change be not repugnant to the Constitution of the United States.

In *Black's Law Dictionary*, "inherent" means intrinsic or belonging by nature or habit. It signifies something that is an essential part of a thing's nature, not something added or acquired externally. *Black's Law Dictionary*, 2nd edition, 2025.

The right of initiative is an essential part of the nature of our democracy in Oklahoma. S.B. 1027, 60th Leg., 1st Reg. Sess. (Okla. 2025) unconstitutionally and severely limits that fundamental right.

Judge Henry requests this Honorable Court to declare the law unconstitutional.



BOB BURKE, OBA # 1329
512 North Broadway Avenue,
Suite 300
Oklahoma City, OK 73102
405-802-1495
bob@bobburkelaw.com

ATTORNEY FOR AMICUS CURIAE
THE HONORABLE ROBERT HENRY

CERTIFICATE OF MAILING

I certify that I mailed a copy of this Brief by U.S. Mail, postage prepaid, to:

Hon. Gentner Drummond, Attorney General
Ellen Carr, Esq.
William Patrick Flanagan, Esq.
Gary Michael Gaskins, Esq.
Cullen Dean Sweeney, Esq.
Zach West, Esq.
313 NE 21st St.
Oklahoma City, OK 73105

Hon. Josh Cockroft
Secretary of State
State Capitol
Oklahoma City, OK 73105

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

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

Melanie Wilson Rughani, Esq.
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102

Randall John Yates, Esq.
222 North Detroit Ave., Suite 600
Tulsa, OK 74120

