IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STEVEN CRAIG MCVAY, AMY CERATO, KENNETH RAY SETTER, AND ANTHONY STROBBE,

Petitioners,

vs.

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

Respondent.

Sup. Ct. Case No. 123179

AMICUS CURIAE BRIEF OF THE LEAGUE OF WOMEN VOTERS OF OKLAHOMA IN SUPPORT OF PETITIONERS

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INTRODUCTION

As *amicus curiae*, the League of Women Voters of Oklahoma ("LWVOK"), a nonpartisan, grassroots organization and the state affiliate of the League of Women Voters of the United States, which has worked to enhance and shape public policy through education and advocacy for more than 100 years, is committed to empowering Oklahoma citizens' thoughtful participation in the democratic process. Central to Oklahoma's democratic process is the right of the people to initiate legislation and political change, "a sacred right to be carefully preserved." *In re Initiative Petition No. 348*, 1991 OK 110, ¶ 5 820 P.2d 772, 775. Senate Bill 1027 ("SB 1027") implements several changes to the initiative process that impermissibly hinders this right and unjustifiably burdens key privileges protected by the First Amendment.

Collecting signatures to qualify ballot measures is core political speech protected by the First Amendment. *Meyer v. Grant*, 486 U.S. 414 (1988). First Amendment protection is "at its zenith" where initiative petitions are concerned, for "the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as 'core political speech.'" *Id.* at 421–22, 425. This Brief, by analyzing SB 1027's circulation restrictions that impose unconstitutional barriers on citizen lawmaking, supports Petitioners' position that SB 1027 should be declared unconstitutional and struck down in its entirety.

ARGUMENTS AND AUTHORITIES

The First Amendment, as incorporated against the states by the Fourteenth Amendment, protects individual rights of association for the advancement of political beliefs and ideas. *See NAACP v. Alabama*, 357 U.S. 449, 462 (1958): "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces

freedom of speech." While a state has "considerable leeway to protect the integrity and reliability of the ballot-initiative process," such ballot-access controls must be "guard[ed] against undue hindrances to political conversations and the exchange of ideas." *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 183 (1999). When a state places a significant burden on a core political right, as Oklahoma has done here through SB 1027, the state faces a "well-nigh insurmountable" obstacle to justify the burden. *Meyer*, 486 U.S. at 425. The disclosure requirements and ban on performance-based compensation imposed by SB 1027 are impermissible, unjustifiable chills on core political speech in violation of the protected privileges afforded by the First Amendment.

I. The Disclosure Requirements of SB 1027 Run Afoul of Freedom and Privacy of Association Rights Protected Under the First Amendment.

Through its mandated financial disclosures, SB 1027 compels speech and chills association without any demonstrated need. Protected association "is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). "An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed." *Id.*

There exists a "vital relationship between freedom to associate and privacy in one's associations." *NAACP*, 357 U.S. at 462. The right to privacy in association cannot be impeded by compelled disclosure "when exposure of that association will make it less likely that association will occur in the future, or when exposure will make it more difficult for members of an association to foster their beliefs." *In re Motor Fuel Temperature Sales Pracs. Litig.*, 641 F.3d 470, 489 (10th Cir. 2011). In the context of political contribution or expenditures,

compelled disclosure of donors "'pose[s] a significant threat to associational freedom' by disincentivizing political activity that would trigger disclosure requirements and exposing citizens to public scrutiny." *Wyoming Gun Owners v. Gray*, 83 F.4th 1224, 1243 (10th Cir. 2023) (citation omitted).

Compelled disclosure requirements in the electoral context are reviewed under the exacting scrutiny standard. *Gray*, 83 F.4th at 1244; *Sampson v. Buescher*, 625 F.3d 1247, 1255 (10th Cir. 2010). To survive exacting scrutiny, the government must not only "demonstrate a substantial relation between a disclosure scheme's burden and an important governmental interest, [but] it must also show that the regime is 'narrowly tailored to the government's asserted interest.'" *Gray*, 83 F.4th at 1244 (quoting *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 608 (2021)). A "legitimate and substantial" state interest "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Bonta*, 594 U.S. at 609.

In *Sampson*, the Tenth Circuit struck down a Colorado state law requiring ballot-initiative committees to report the name and address of any person contributing $20 or more, as well as the occupation and employer of any person contributing $100 or more, for lack of any proper governmental interest in imposing disclosure requirements that justified the burden those requirements imposed on such committees. 625 F.3d at 1249–50. The court particularly emphasized the fact that the legitimate reasons for regulating candidate campaigns (i.e., protecting against the risk of corruption) do not translate to ballot-issue campaigns where the "risk of corruption . . . simply is not present." *Id* (quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 790 (1978)). The state's governmental interest was therefore deemed "minimal, if not nonexistent, in light of the small size of the contributions." *Id.* at 1261. *See also McIntyre*

v. Ohio Elections Comm'n, 514 U.S. 334, 351–52 (1995) (finding an Ohio state law prohibiting the distribution of anonymous campaign literature placed unreasonable burdens on voters' First Amendment rights that was not justified by any compelling state interest where the prohibition "applies not only to elections of public officers, but also to ballot issues that present neither a substantial risk of libel nor any potential appearance of corrupt advantage").

The Tenth Circuit recently reviewed a Wyoming statute's disclosure regime requiring organizations that spend over $1,000 in issuing a message aimed at advocating for or against a candidate to, among other things, identify donors whose contributions "made the communication possible," and the court ultimately found that such disclosure regime was not narrowly tailored as applied to the challenging advocacy group. *Gray*, 83 F.4th at 1230, 1250.

Unlike *Sampson*, in *Gray*, the state demonstrated a substantial relation between the disclosure scheme's burdens and an important government interest, namely the beneficial interest to the public in gathering information on candidate constituencies, and the court determined the state law's disclosure requirements did not particularly burden the challenging organization because the challenging organization "is regulated for the functional equivalent of express advocacy rather than issue advocacy" and the state law "does not set a **terribly low disclosure trigger** like the $20 amount in *Sampson*; instead, the statute requires reporting donors whose contributions exceed $100." 83 F.4th at 1246 (emphasis added). However, the state failed to justify why it could not use less intrusive tools to further its legitimate interests in light of the statute's ambiguous language that created uncertainty as to its reporting requirements, and, therefore, the statutory disclosure regime was not narrowly tailored to survive exacting scrutiny. *Id.* at 1250: "[Plaintiff] has no way to comply with the reporting requirements without overdisclosing. . . . To comply with the First Amendment, a disclosure

regime must offer appropriate and **precise guidance**, defining how actors—sophisticated or otherwise—should structure internal accounting mechanisms." (emphasis added).

SB 1027's disclosure regime cannot survive exacting scrutiny. As noted in *Sampson*, a state's interest in disclosure for ballot issues is minimal; Oklahoma cannot demonstrate a substantial interest in compelling disclosure of expenditures and contributions associated with the circulation of initiative petitions. Moreover, any compelling state interest that SB 1027 may advance cannot possibly balance the constitutional burdens its disclosure regime places on those who are forced to comply with its statutory requirements. For example, a crucial feature of the Wyoming law struck down in *Sampson* was the "terribly low disclosure trigger" amount of $20. *Gray*, 83 F.4th at 1246; *Sampson*, 625 F.3d at 1249. Here, SB 1027 has no minimum threshold whatsoever to trigger its expenditure disclosure requirements. As the Petition points out on p. 12, SB 1027's weekly reporting and public disclosure requirements would thus be triggered where a person spends merely $5 to photocopy petitions—that is an "undue burden" in every sense of the phrase.

Likewise, the ambiguous statutory text of SB 1027's disclosure requirements demonstrates the Bill's disclosure regime is not narrowly tailored to any asserted state interest. *See Gray*, 83 F.4th at 1247–48:

> A disclosure statute that burdens an advocacy group with muddling through ambiguous statutory text that fails to offer guidance on compliance does not afford that precision. It offers only uncertainty. This uncertainty is particularly problematic in the First Amendment context. "Narrow tailoring is crucial where First Amendment activity is chilled—even if indirectly—'[b]ecause First Amendment freedoms need breathing space to survive.'" *Bonta*, 141 S. Ct. at 2384 (quoting *Button*, 371 U.S. at 433, 83 S.Ct. 328).

SB 1027 certainly does not afford any precision as to its mandated source funding disclosures. For example, in considering a petition circulator's obligation to "display a conspicuous notice in any location where the person is collecting signatures whether the person is being paid to

circulate the petition and if so, by what person or entity," would disclosure of an individual compensator's first and last name alone suffice? Would disclosure of a corporation's legal name suffice where the corporation operates under multiple trade names registered with the Oklahoma Secretary of State? In considering the weekly expenditure report obligations placed on any "person or entity expending funds on the circulation of a petition," how and to what degree are such expenditures to be "detailed"? If there is an expenditure-related numerical error in a weekly report that needs to be rectified, would an amendment to the previously filed weekly report be the proper mechanism or can the correction be addressed via the most current weekly report? These provisions are far from precise and are, as the *Gray* opinion puts it, particularly problematic in the First Amendment context.

The SB 1027 disclosure requirements ultimately cannot survive a constitutionality test, as they are not narrowly tailored to any compelling state interest that *may* be advanced by such requirements and place an undue burden on the freedom and privacy of association rights protected by the First Amendment. Consequently, SB 1027 must be struck down.

II. SB 1027's Ban on Performance-Based Compensation Places an Unjustifiable Burden on Core Political Speech.

SB 1027 further places an impermissible restriction on core political speech by limiting how petition circulators may be compensated. Among SB 1027's circulation restrictions is a ban on any circulator compensation that is "based on number of signatures collected, number of signature sheets submitted, or any other similar incentives." Prohibiting any form of incentive-based compensation to petition circulators unduly burdens core political speech.

In *Meyer v. Grant*, the Supreme Court held that Colorado's statute prohibiting and criminalizing payment to petition circulators "involves a limitation on political expression" in violation of the First Amendment by "limit[ing] the number of voices who will convey

appellees' message and the hours they can speak and, therefore, limit[ing] the size of the audience they can reach" and by "mak[ing] it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion." 486 U.S. at 422–23. The Court applied "exacting scrutiny" because the statute because the circulation of an initiative petition "necessarily constitutes 'core political speech,' for which First Amendment protection is at its zenith." *Id.* at 414. *See also Independence Institute v. Gessler*, 936 F.Supp. 2d 1256, 1270, 1280 (D. Colo. 2013) (alternately applying both strict scrutiny and a balancing test to render unconstitutional a Colorado statute prohibiting payment per signature on the basis that paying circulators by the signature is protected under the First Amendment).

Where a state provision aims to limit only one type of compensation to petition circulators, the magnitude of the burden on core political speech is moderate. *See Prete v. Bradbury*, 439 F.3d 949, 962 (9th Cir. 2006) (distinguishing *Meyer* because the statute banning per-signature compensation simply "prohibit[ed] one method of payment"). However, the burden on core political speech is higher where a state provision places broader limitations on circulator compensation. *See Citizens for Tax Reform v. Deters*, 518 F.3d 375, 383 (6th Cir. 2008) (distinguishing *Prete* in striking down an Ohio statue as unconstitutional because it "banned all remuneration to circulators except on a per-time basis").

In *Prete*, the Ninth Circuit considered an Oregon state statute prohibiting anyone from "pay[ing] or receiv[ing] money or any other thing of value based on the number of signatures obtained on an initiative or referendum petition." 438 F.3d at 952. Unlike SB 1027, the statute before the court in *Prete* specifically stated that it does not prohibit any form of compensation that "is not based, either directly or indirectly, on the number of signatures obtained." *Id.*

Applying a balancing test, the Ninth Circuit found the provision did not impose a severe burden on First Amendment rights because it "barr[ed] only the payment of petition circulators on the basis of the number of signatures gathered." *Id.* at 968.

Contrast the Ninth Circuit's decision in *Prete* with that of the Sixth Circuit in *Deters* where the court struck down an Ohio provision making it a felony to pay anyone for gathering signatures on initiative petitions on any basis other than time worked as an unjustifiably significant burden on petitioners' core political speech rights. 518 F.3d at 377. Acknowledging the state has a compelling state interest to eliminate election fraud, the court determined the compensation ban was not narrowly drawn for lack of evidence that "even more than a de minimus number of circulators who were paid by signature engaged in fraud in the past." *Id.* at 387. Noting that just as a person who gets paid by the hour is incentivized to pad hours, so too is a person who gets paid by the signature incentivized to pad signatures, the court reasoned that there was little evidence in the record to suggest someone faced with the incentive to pad signatures will actually act upon it. *Id* at 387–88 (quoting *Meyer*, 486 U.S. at 426): "[C]ourts should not be 'prepared to assume that a professional circulator—whose qualifications for similar future assignments may well depend on a reputation for competence and integrity—is any more likely to accept false signatures than a volunteer who is motivated entirely by an interest in having the proposition placed on the ballot."

Further, the plaintiff in *Deters* presented evidence of the increased costs a per-time-only payment system would generate for both proposing an initiative and qualifying the measure for a ballot, which the court weighed on in reaching its conclusion that the state statute was unconstitutional. The Sixth Circuit's conclusion is informative:

> [T]he State largely misses the point that free speech can be costly. By making speech more costly, the State is virtually guaranteeing that there will be less of

> it. Because its ban on all forms of payment to circulators except based on the amount of time worked would create a significant burden on CTR's and other petitioners' core political speech rights, the State must justify it with a compelling interest and narrowly tailored means. It fails to raise a genuine issue of material fact that [the statute] is narrowly tailored.

Id. at 388.

Here, the burden SB 1027's performance-based compensation ban imposes on core political speech is severe, for it does more than just prohibit per-signature compensation. SB 1027 prohibits any circulator compensation that is "based on number of signatures collected, number of signature sheets submitted, or any other similar incentives." By attempting to ban any form of incentive-based compensation to petition circulators, SB 1027 is attempting to limit the basis of payment to the amount of time worked, similar to the Ohio law that the Sixth Circuit determined to be unconstitutional in *Deters*. This limitation is far from narrowly tailored to any legitimate interest the state has in reducing election fraud, and SB 1027's prohibition on performance-based compensation is therefore an unjustifiable restraint on core political speech.

CONCLUSION

For the foregoing reasons, the League of Women Voters of Oklahoma respectfully requests that the Court declare SB 1027 unconstitutional, prohibit its enforcement, and strike it down in its entirety.

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July 2025, a true and correct copy of the above and forgoing was served by email and U.S. Mail postage prepaid as follows:

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