



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA
FILED
COURT OF CIVIL APPEALS
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.)

Sup. Ct. Case No. 123,179

FILED
SUPREME COURT
STATE OF OKLAHOMA

JUL 28 2025

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CLERK

PETITIONERS' RESPONSE BRIEF TO BRIEF OF *AMICI CURIAE* SIXTY-FIVE
(65) MEMBERS OF THE OKLAHOMA SENATE AND HOUSE OF
REPRESENTATIVES

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SB1027's signature collection caps violate the Oklahoma Constitution's equal protection guarantee by treating similarly situated legal voters differently—granting the initiative right to some, and denying it to others. Legislative Amici¹ seek to justify these caps on the ground that, “if one is disenfranchised, another is enfranchised.” Br at 3. But redistribution of fundamental rights is not a compelling—or even legitimate—government interest, and SB1027's caps are not narrowly tailored to achieve that interest in any event. And unequal treatment is just one of many ways the caps are unconstitutional.

Notably, and to their credit, Legislative Amici at least try to defend the law based on what it actually says. The bill's authors make no attempt to support Respondents' primary defense: that the signature caps are not so bad because lawmakers *did not really mean what they wrote*. While Respondents claim that, although SB1027 uses the term “collected,” Legislators really meant “count[ed],” and although SB1027 uses the general term “initiative petition,” Legislators really meant only those initiative petitions not governed by Article V, § 6 (which requires more signatures than SB1027's caps allow), *see* Resp. Br. at 7-8, Legislative Amici say nothing of the sort. In fact, they confirm the plain reading of SB1027 as a cap on “[t]he total number of signatures collected from a single county.” Br. at 2; *see also id.* at 3 (agreeing that the collection caps work as a “limitation” on some voters' right to sign a petition, but trying to justify it as providing “an opportunity to sign” for others). Regardless, whether the right is entirely denied or merely severely burdened, neither can withstand constitutional scrutiny.

ARGUMENT

I. SB1027's county-based signature caps violate the equal protection guarantee in the Oklahoma Constitution.

Oklahoma's equal protection analysis asks whether a law treats similarly situated individuals

¹ Legislative Amici are 65 members of the Oklahoma Senate and Oklahoma House of Representatives.

unequally and, if so, whether the differential treatment involves fundamental rights that trigger strict scrutiny. The answer here is plainly yes, rendering SB1027 unconstitutional.

At the outset, Legislative Amici's argument warrants clarification on two points:

First, Legislative Amici focus on the standard of review under the Equal Protection Clause of the Fourteenth Amendment. *See* Br. at 1, 3. Petitioners, however, do not bring a federal equal protection claim; instead, they invoke the Oklahoma Constitution's own equal protection principle as recognized in *Ross v. Peters*, 1993 OK 8, 846 P.2d 1107, 1114, n. 29. Whether initiative participation constitutes a fundamental right under federal equal protection—and what level of review applies—divides federal circuit courts. But this Court has clearly established that the right of initiative constitutes a “fundamental” right under the Oklahoma Constitution. *See, e.g., In re Initiative Petition No. 426*, 2020 OK 44, ¶ 5, 465 P.3d 1259, 1262. Thus, strict scrutiny applies.

Second, Legislative Amici misconceive the nature of Petitioners' equal protection claim. Petitioners challenge the unequal treatment of identical legal voters both within the same state and *within the same county*. Take, for example, two neighbors in Harper County, both legal voters. Say there have already been 133 signatures collected in Harper County. The first neighbor signs the petition. Under SB1027, the second neighbor instantly becomes ineligible to have her signature collected. Surely these neighbors are “similarly situated”—same county, same status, same entitlement. Yet the two are treated differently in the exercise of a fundamental right.

A. SB1027's signature caps treat similarly situated legal voters differently in exercising the right of the initiative.

The pertinent characteristic defining the relevant class here is “legal voter” status under Article V, § 2, which is the same classification used in voting rights cases. Legislative Amici are correct to apply the principle of “one-person, one vote” to guide the constitutional analysis. *See* Br. at 4. Under the Oklahoma Constitution, both the right to vote and the right to sign initiative petitions turn on the same thing: legal voter status. This Court has determined that “legal voter”

under Article V, § 2, means a qualified elector meeting the conditions of Article III, § 1. *In re Initiative Petition No. 142*, 1936 OK 209, ¶ 34, 55 P.2d 455, 459. So, quite simply, if a citizen may vote on the ballot measure, then that citizen may sign the petition.

Legislative Amici assert that “residents of a rural county” and “residents of populous counties” are not “similarly situated,” and that “population unit-based” distinctions among legal voters are thus permissible. Br. at 3, 4. But the Oklahoma Constitution establishes the relevant “geographic unit” for purposes of statewide initiative petitions as the “State at large.” Article V, § 5. As the U.S. Supreme Court recognized in *Gray v. Sanders*, “[o]nce the geographical unit ... to be chosen is designated, all who participate in the election are to have an equal vote.” 372 U.S. 368, 379 (1963). The same concept applies to initiatives in Oklahoma: Article V, § 5 draws a clear distinction between statewide initiatives, which operate at the level of the “State at large,” and local initiatives, which are “reserved to the legal voters of every county and district therein.” For statewide measures—like those governed by SB1027—the Constitution designates the entire state as the operative geographic unit, not individual political subdivisions.

But even if, as the Legislative Amici suggest, the relevant geographic unit was counties, SB1027’s collection caps create differential treatment among similarly situated legal voters *within the same county*, based purely on timing. The law discriminates among legal voters who possess identical constitutional status, reside in the same political subdivision, and seek to exercise the same fundamental right on the same initiative measure. Once a county reaches its signature cap under SB1027, legal voters are categorically prohibited from having their signatures collected, while their neighbors who signed earlier retain full constitutional rights. This timing-based discrimination transforms initiative rights into a “first-come, first-served” system that violates the principle that all legal voters within the designated geographic unit must be treated equally.

B. The right of the initiative is a fundamental right under the Oklahoma Constitution.

The Oklahoma Constitution establishes the initiative petition as a fundamental right. It is the first power reserved to the People. In *Initiative Petition No. 426*, this Court expressly recognized the “fundamental” nature of initiative petition rights under the state constitution. 2020 OK 44, ¶ 5, 465 P.3d 1259, 1262. This determination builds on decades of precedent treating the reserved right of initiative as “sacred” and requiring that it be “carefully preserved” against legislative encroachment. *In re Referendum Petition No. 348*, 1991 OK 110, ¶ 6, 820 P.2d 772.

Again to their credit, Legislative Amici embrace the initiative’s status as a fundamental right. *See* Br. at 4 (noting that “[n]ominating petitions for candidates and for initiatives both implicate the fundamental right to vote,” and adopting cases applying strict scrutiny to such “fundamental rights”). They simply assert that SB1027 was “drafted to stop treating unequal counties as if they were equal” with respect to this right. Br. at 7-8. But, of course, fundamental rights are inherently individual. *Ross v. Peters*, 1993 OK 8, 846 P.2d 1107, 1114 n.34 (“[a] fundamental right is one of a uniquely personal nature”). And “[t]he right to sign an initiative petition is a personal privilege.” *In re Initiative Petition No. 364*, 1996 OK 129, ¶ 36, 930 P.2d 186, 196. Political subdivisions cannot possess or invoke fundamental rights—only individuals. And SB1027 treats individual legal voters unequally with respect to this fundamental right.

C. Denying the right of the initiative to any individual Oklahoma voter is a severe burden on a fundamental right.

SB1027’s signature collection caps impose a severe burden on the fundamental right of initiative and referendum petition. SB1027 categorically prohibits legal voters from exercising their constitutional right once county collection limits are reached. A legal voter whose signature cannot be “collected” due to SB1027’s caps suffers total deprivation of her right under Article V, § 2. When the state bars qualified legal voters from exercising fundamental constitutional rights, it has

imposed the ultimate burden that triggers the strictest constitutional scrutiny. No constitutional burden can be more severe than outright denial of the right itself.

Legislative Amici correctly acknowledge that vote-dilution in contravention of the “one-person, one-vote” principle triggers strict scrutiny, Br. at 5, but claim that SB1027 avoids this by “implementing caps, not floors,” Br. at 6. Quite the opposite. SB1027’s signature caps are more problematic than the floor requirements struck down in precedent cited by Amici. Floors, while often creating unequal burdens across geographic areas, at least permit all qualified legal voters to exercise their constitutional right to sign petitions. SB1027’s caps, by contrast, directly prohibit legal voters from exercising their constitutional right once arbitrary limits are reached. In *Idaho Coalition United for Bears v. Cenarrusa*, where a proportional system was also at issue, the problem was that a voter’s signature *starts* to count only after a county threshold was reached. 342 F.3d 1073, 1078 (9th Cir. 2003). Constitutionally, it is no better that a voter’s signature *stops* counting—or cannot be collected in the first place—after a county cap is reached. *See* Amici Br. at 7. Again, a legal voter denied participation due to SB1027’s caps suffers a complete deprivation of his right, not merely a dilution of it. Indeed, the most direct way to violate the “one-person, one-vote” principle is to take away the right entirely, leaving that “one person” with “no votes.”

D. Strict scrutiny applies to laws burdening fundamental rights.

While not every election-related law triggers strict scrutiny, when a law imposes severe burdens on fundamental rights and creates classifications among similarly situated individuals, strict scrutiny applies. *Dunn v. Blumstein*, 405 U.S. 330, 353 (1972) (concluding that “the waiting period is not the least restrictive means necessary for preventing fraud [given] that Tennessee has ... a variety of criminal laws that are more than adequate to detect and deter whatever fraud may be feared.”); *Ross v. Peters*, 1993 OK 8, ¶ 18, 846 P.2d 1107, 1115 (noting that unequal treatment burdening a “fundamental right ... demands strict scrutiny.”); *Davis v. Oklahoma Dep’t of Corr.*, 2016 OK CIV

APP 23, ¶ 20, 370 P.3d 1231, 1238 (applying strict scrutiny in an equal protection challenge under the Oklahoma Constitution when a fundamental right was at stake).

Legislative Amici invoke truisms such as fundamental rights being “not absolute” or “line-drawing” being “inevitable,” *see* Br. at 3, but these general statements, standing alone, cannot avoid strict scrutiny. Few rights are absolute, for example, while the right to speech is not absolute, speech restrictions routinely trigger strict scrutiny. *See, e.g., Reed v. Town of Gilbert*, 576 U.S. 155 (2015) (applying strict scrutiny to content-based speech restrictions despite acknowledging speech protection limitations). The same principle applies to initiative petition rights. The fact that the right may be subject to some regulation does not permit severe restrictions on constitutional rights without compelling justification (and narrow tailoring by the least-restrictive means).

E. SB1027 cannot survive strict scrutiny.

Under strict scrutiny, SB1027 must serve compelling governmental interests through narrowly tailored means using the least restrictive alternatives available. The law fails this demanding standard on every element.

SB1027 serves no compelling interest recognized under Oklahoma constitutional law. The Oklahoma Constitution limits legislative regulatory authority over initiative petitions to “prevent[ing] corruption in making, procuring, and submitting initiative and referendum petitions.” Article V, § 8. Notably, Legislative Amici do not now claim that the county signature caps serve any corruption-prevention function. And for good reason: there is no such evidence in the legislative record, and the bill’s sponsor (and a signatory to the brief) even admitted during debates that he was “not saying there is corruption” that SB1027 was trying to solve. *See* Pet.’s Appl. at 3 n.3.

Legislative Amici instead stake the government interest in a “redistribution” theory: “if one is disenfranchised, another is enfranchised.” Br. at 3. Unlike Respondents,² Legislative Amici readily admit that SB1027 disenfranchises certain legal voters, but they claim that this disenfranchisement is justified by theoretical enfranchisement of others. The Constitution, however, does not permit such trade-offs. As the U.S. Supreme Court recognized, lawmakers may not “restrict the political participation of some in order to enhance the relative influence of others.” *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 191 (2014). Legislative Amici’s “redistribution” theory would permit the Legislature to deny constitutional rights to any group of citizens—by age, race, gender, religion, residence, hat size—so long as it theoretically benefits another group. The Supreme Court rejected this approach in *Students for Fair Admissions v. Harvard College*, which struck down Harvard’s practice of denying equal treatment to some applicants to enhance opportunities for others based on racial classifications. 600 U.S. 181, 230 (2023).³

Even if promoting geographic diversity through redistribution of rights were a compelling interest, SB1027 is not narrowly tailored to achieve it. Numerous less restrictive alternatives could address any legitimate concerns about geographic participation without denying constitutional rights. The Legislature could extend the 90-day signature gathering period, implement electronic

² Respondents claim no disenfranchisement since everyone has the same odds of having their rights denied.

³ The claim that this enfranchises anyone is also dubious as it is. Before SB1027, nothing *in the law* prevented voters in rural counties from circulating or signing initiative petitions or referenda. True, the *practicalities* of the law—in particular, the legislatively-imposed 90-day window—forced petition organizers to focus signature collection in high-population areas as a matter of efficiency. But nothing stopped rural voters who wanted to participate in the process from signing a petition, launching an initiative, or collecting signatures—and indeed, many have done so. See, e.g., <https://www.sos.ok.gov/documents/questions/832.pdf> (wage proposal initiated by voters from Mayes and Canadian counties); <https://www.sos.ok.gov/documents/questions/782.pdf> (abortion proposal initiated by voter from Noble, Oklahoma, in Cleveland County); <https://www.sos.ok.gov/documents/questions/780.pdf> (criminal justice reform measure proposed by voter from Pottawatomie County). Ultimately, SB1027 (*the law itself*) disenfranchises voters by slashing the pool of potential signatories and by making petitions so expensive and unlikely to succeed that it reduces the total quantum of initiatives at the front-end.

signature collection, or facilitate rural participation—for example, making signature sheets available at every county seat and city hall. These alternatives would promote geographic diversity while preserving, rather than burdening, individual rights.

II. SB1027's signature caps are unconstitutional for several other reasons as well.

A. The caps are unconstitutional under Article V, § 2 of the Oklahoma Constitution.

SB1027's caps are also unconstitutional under Article V, § 2 alone—without reaching the equal protection question. Under the Oklahoma Constitution, “legal voters” are entitled to propose laws or amendments to the constitution independent of the legislature. *Id.* The Constitution contains no geographic distribution provision. As this Court explained in *In re Initiative Petition No. 142*, the basic principle that “[e]very person who is a qualified elector of the State of Oklahoma may sign a petition ... for the initiative for any measure upon which he is legally entitled to vote” is a matter that was long ago settled, not just by statute, but “by [the Constitution’s] own words.” 1936 OK 209, ¶¶ 34, 46-47, 55 P.2d 455, 459.

When SB1027 prohibits legal voters from having their signatures collected, it violates the Oklahoma Constitution’s guarantee of initiative and referendum rights for all legal voters. Indeed, the Constitution requires no less than that “[e]very” legal voter be allowed to sign initiative petitions to the same extent as they are allowed to vote on the underlying measure. *In re Initiative Petition No. 142*, 1936 OK 209, ¶¶ 46-47. Just as the Legislature cannot forbid a legal voter from having his vote collected and counted in elections, it cannot forbid a legal voter from having his signature collected and counted in initiative and referendum petitions.

B. The caps violate the First Amendment.

Initiative petition circulation receives the highest level of First Amendment protection as “core political speech.” The Supreme Court has established that “[t]he circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion

of the merits of the proposed change.” *Meyer v. Grant*, 486 U.S. 414, 421 (1988). More specifically, petition circulation “involves the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Id.* at 421-22.

This speech receives maximum constitutional protection because it is “at the core of our electoral process and of the First Amendment freedoms,” representing “an area of public policy where protection of robust discussion is at its zenith.” *Id.* at 425 (quoting *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182 (1999)). Accordingly, regulations that restrict initiative petition circulation are subject to stringent First Amendment scrutiny, as they burden political expression that lies at the heart of democratic participation and public discourse about proposed legal changes.

Legislative Amici tacitly admit (at 2) that, to move initiative proponents away from population centers where “signatures are more easily and quickly gathered,” the Legislature made the process slower and more difficult, while providing no corresponding increase in circulation time. It also drastically reduced the signature pool. As a result, the caps “makes 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.” *Meyer*, 486 U.S. at 423. SB1027’s signature caps thus cannot survive the First Amendment’s exacting scrutiny and may be struck down for this reason as well.

C. The caps impose an undue burden on the initiative and referendum right.

SB1027’s signature caps also impose an undue burden on the constitutional right of initiative, both independently and when combined with other provisions of the statute.

Courts must consider the combined impact of multiple restrictions, not evaluate each provision in isolation. *See Graveline v. Benson*, 992 F.3d 524, 536 (6th Cir. 2021) (recognizing that, when “a statutory scheme, in combination, imposes a burden on” certain rights, courts should “consider ‘the combined effect of the application election regulations,’ and not measure the effect

of each statute in isolation”). SB1027’s signature caps compound existing burdens that already make Oklahoma’s initiative process among the nation’s most restrictive: the shortest circulation period (90 days), high signature thresholds, strict validity requirements, and criminal penalties.

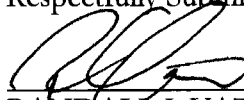
SB1027 then adds several more layers of restrictions, harming the rural voters it purports to “enfranchise.” Consider that rural citizens who want to sign petitions do so because they want measures to reach the ballot for a statewide vote. These rural citizens are harmed because SB1027 *reduces* the likelihood that these measures will get to a vote. Just do the math. Proponents face higher circulation expenses, fewer qualified circulators, restricted funding sources, expanded administrative requirements, executive gatekeeping, and multiple rounds of litigation, all while competing for a drastically smaller pool of eligible signers. This will drive down the already-low initiative success rate, meaning rural voters who want to participate in the process and vote on measures will have fewer opportunities because proponents (who have done this cost-benefit analysis) are far less likely to launch campaigns to begin with.

III. Amici’s bicameralism analogy is inapposite.

Legislative Amici’s bicameralism analogy directly contradicts the Oklahoma Constitution’s express design for initiative petitions. The initiative and referendum were designed to serve as the People’s check on government power. The Legislature cannot redirect initiative rights from the People’s check on government and toward a system where citizens check each other.

Bicameralism serves to prevent hasty or ill-considered legislation by requiring deliberation across multiple institutional bodies. But the “check and balance” against unwise citizen initiatives is the requirement that a majority of Oklahoma voters approve them at the ballot box. If the Legislature wants a further bicameral-esque structural check on the People’s reserved right, it must obtain an amendment to the constitution—with the consent of the People.

Respectfully Submitted,



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