IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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

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.

Case No. 123179

AMICUS CURIAE BRIEF OF THE OKLAHOMA ACADEMY FOR STATE GOALS

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I. INTRODUCTION

Comes now the Oklahoma Academy for State Goals ("Oklahoma Academy") as *amicus curiae* and files this brief in support of Petitioners. This brief will focus in particular on the changes SB 1027 (2025) would make to 34 O.S. § 3 which states the requirements for the gist that must appear at the top of each petition presented to a potential signatory. SB 1027's amendments to 34 O.S. § 3 are unconstitutional in multiple respects:

1. The new section 3 would allow a gist to be stricken based on vague criteria including whether the gist contains words which are deemed to be "code words," are "euphemisms," have a "special meaning," or are "an apparent attempt to deceive."

2. The determination of whether a gist conforms to the requirements of the new section 3 would be made not by a court but by the Secretary of State—an executive branch official.

3. The new section 3 would force a petition circulator to make three types of compelled speech to a potential signatory: the circulator must provide (a) the gist as approved by the Secretary of State, (b) a fiscal impact statement, and (c) a written warning that signatures are public pursuant to the Open Records Act.

As discussed below, the interaction between a petition circulator and a potential signatory is a particularly sensitive time under the First Amendment. SB 1027 would unconstitutionally intrude on that interaction in violation of the First Amendment, U.S. CONST., and OKLA. CONST., art. II; § 22 ("First Amendment"), and would unconstitutionally impede Oklahomans' right to proceed through initiative petition, OKLA. CONST., art. V, § 2.

II. THE *AMICUS CURIAE*

The Oklahoma Academy is a nonpartisan, independent, non-profit organization devoted to addressing public policy issues in Oklahoma. www.okacademy.org. For 40 years, the Academy has worked to encourage Oklahoma citizens to participate directly in civic affairs. One way the Academy achieves these goals is through holding Town Halls in which Oklahomans can directly interact with each other and with state leaders on policy issues.

Participants in the Town Halls are chosen to reflect the variety of the sociodemographic spectrum in our state, in order to ensure that a range of interests are represented. The Academy works to empower Oklahomans with the goal of enhancing their ability to take a direct, proactive role in civic affairs.

One important way in which Oklahomans can take a direct, proactive role in shaping public policy is through exercising their constitutional right to pursue an initiative petition. This Court has recognized that "[t]he people's right to institute change through initiative process is a fundamental characteristic of Oklahoma government" and "a sacred right to be carefully preserved." *In re Initiative Pet. No. 348*, 1991 OK 110 ¶ 5, 820 P.2d 772, 775 (citation omitted). The Academy appreciates this opportunity to file a brief with the Court.

III. ARGUMENT AND AUTHORITIES

A. Introduction

SB 1027 (2025) limits the essential right of initiative in a number of material and troubling ways that have been analyzed in other briefing, any one of which is enough to prohibit the statute's enforcement. However, as stated in the Application to file this brief, the brief will focus on showing SB 1027's new requirements for the "gist" of a petition are unconstitutional.

The U.S. Supreme Court has recognized that the interaction between a petition circulator and a person asked to sign the petition is a particularly sensitive time under the First Amendment. "[T]he circulation of a[n] [initiative] petition involves the type of interactive communication concerning political change that is appropriately described as 'core political speech.'" *Meyer v. Grant*, 486 U.S. 414, 421 (1988); *see Buckley v. Am. Const. Law Found.*, 525 U.S. 182, 186 (1999). The Court further explained that "the most effective, fundamental, and perhaps economical avenue of political discourse [is] direct one-on-one communication."

Grant, 486 U.S. at 424. During this crucial discourse, "the importance of First Amendment protections is at its zenith." *Id.* at 425 (internal quotes omitted). However, SB 1027 both compels certain speech by petition proponents to potential signatories and also severely limits what they may say in the gist, negatively impacting these core political communications.

Prior to the passage of SB 1027, the Oklahoma Statutes included one sentence regarding the gist: "A simple statement of the gist of the proposition shall be printed on the top margin of each signature sheet." 34 O.S. § 3 (2021). In SB 1027, the Legislature removed the word "simple" from this requirement and adopted detailed provisions regulating what the gist can—and cannot—say. Under SB 1027, the gist "shall"

1. Explain in basic words, which can easily be found in dictionaries of general usage, the effect of the proposition;

2. Not contain any words which have a special meaning for a particular profession or trade not commonly known to the citizens of this state;

3. Not contain euphemisms, words, or phrases regarded in popular parlance as code words, or an apparent attempt to deceive voters;

4. Not reflect partiality in its composition;

5. Indicate whether a proposed measure will have a fiscal impact on the state and if so, the potential source of funding including, but not limited to, federal funding, legislative appropriation, taxes, or elimination of services.

34 O.S. § 3(A) (2025). But SB 1027 does not stop there. It also requires that each petition must contain a "statement . . . printed under the gist of the proposition that provides notice that a copy of the petition and all signatures on such petition are public records subject to the Oklahoma Open Records Act." *Id.* § 3(B). Finally, SB 1027 empowers the Secretary of State to "remove any gist that violates the requirements of this section and direct the proponents of the petition to submit a gist that complies with all the requirements of this section." *Id.* § 3(C).

"The First Amendment 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" *Grant*, 486 U.S. at 421 (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)). But, as shown below, SB 1027 wrongly dictates the contents of core political speech and vests an Executive Branch official with almost limitless authority to reject that speech. These provisions are both dangerously vague and impermissibly restrictive, violating the First Amendment and infringing on the right to proceed by initiative petition.

These burdens concerning the gist are sufficient on their own to render the statute unconstitutional. However, even if the issues with the gist would not be sufficient on their own, because of the other, additional burdens to constitutional rights briefed in this case, the combined effect would require a finding of unconstitutionality. *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 applicable election regulations,' and not measure the effect of each statute in isolation.").

B. SB 1027's vague requirements give the Secretary of State largely unfettered discretion to reject a gist.

SB 1027 empowers the Secretary of State to interpret and apply the gist requirements. The Secretary of State must "affirm that any gist conforms with the requirements" and may "remove any gist" that fails to comply and require the proponents to submit a new gist that meets the requirements. 34 O.S. § 3(C). SB 1027's vague requirements give the Secretary excessively broad discretion. In particular:

- The gist cannot include ***words that "have a special meaning*** for a particular profession or trade" or which are "not commonly known." *Id.* § 3(A)(2).
- SB 1027 precludes the use of "***euphemisms***, words, or phrases regarded in popular parlance as ***code words*** . . . ." *Id.* § 3(A)(3).

- The gist cannot reflect "***an apparent attempt to deceive voters***." *Id.*
- The gist cannot "***reflect partiality***" or argue "for or against the measure." *Id.* § 3(A)(4).

(emphasis added) Each of these requirements is ambiguous and subject to multiple interpretations. These murky provisions give rise to two separate constitutional flaws.

First, the provisions are unconstitutional because they are vague. In *Wyoming Gun Owners v. Gray,* 83 F.4th 1224 (10th Cir. 2023), the court explained that a statute is unconstitutionally vague ***either*** where it "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits" ***or*** "if it authorizes or even encourages arbitrary and discriminatory enforcement.'" *Id.* at 1233 (quoting *Hill v. Colo.*, 530 U.S. 703, 732 (2000)). SB 1027 does both. The statute provides virtually no guidance to initiative proponents as to what language is permissible in a gist. Further, a Secretary of State will have almost unfettered discretion to strike a gist for whatever arbitrary reason he or she chooses. Thus, the gist requirements are void for vagueness.

Second, the vagueness of these provisions also causes them to infringe upon the core political speech of initiative proponents, violating the First Amendment, *see* U.S. CONST. amend I, **and** the voters' right to proceed by initiative petition under the Oklahoma Constitution, OKLA. CONST. art. V, § 2. SB 1027 will have a chilling effect on the political speech of proponents, who must self-censor their gist based on their best guess as to what the Secretary of State will accept. Further, the open-ended discretion gives the Secretary control over the substance of the gist, which should reflect the views of the proponents.

In *Brown v. Yost*, 133 F.4th 725 (6th Cir. 2025), the Sixth Circuit recently addressed a situation similar to this case and found the statute to likely be unconstitutional. *Brown* considered an Ohio law purporting to regulate the contents of the "petition summary" in

initiative petitions. The "petition summary," like the "gist" in Oklahoma, summarizes the substance of the initiative petition. *Id.* at 732. The Ohio law required the Ohio Attorney General to examine each summary to determine if "the summary is a fair and truthful statement of the proposed . . . constitutional amendment." *Id.* at 728. The court described the summary as

> a form of advocacy material used by initiative supporters to persuade electors to sign their petition. * * * Essentially, the summary is the leading description of the proposed amendment that initiative circulators can rely on to persuade the public to sign the petition.

Id. at 732. The court held the summary was "like the protected advocacy documents that petition supporters use to promote initiatives, and which the Supreme Court has recognized are protected by the First Amendment." *Id.* at 734 (citing *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1995)). Thus, the court held that a state's efforts to "'alter or disrupt' a party's 'own expressive activity' in the petition summary or to "direct[]" a proponent to "accommodate messages it would prefer to exclude" from the summary were subject to strict scrutiny. *Id.* at 733 (quoting *Moody v. NetChoice, LLC*, 603 U.S. 707, 728, 731 (2024)).

The Ohio provision at issue in *Brown* required that before an initiative petition could be presented to the voters, the Attorney General must certify that the petition summary was "fair and truthful." The Sixth Circuit held that this law—although containing far fewer vague requirements and prohibitions than SB 1027—gave the Attorney General too much control over an initiative petition's content and likely severely limited the First Amendment rights of proponents. The court held that the Ohio law

> requires that the Attorney General decide what goes into Plaintiff's circulated petition summary. . . . In enforcing the statute, the Attorney General can take issue with how petition supporters characterize the proposed amendment, requiring them to include or exclude certain language based on whether, 'in [his] opinion,' the summary fairly and truthfully reflects the text of the proposed amendment. . . . ***Effectively, the law allows the Attorney General to control the content of that petition.***

13 F.4th at 732-33 (emphasis added). By requiring initiative proponents "to undergo content-based review of their proposed petition summary," the Ohio law "affect[ed] their core political speech by forcing them to alter the message that they wish to share on a key advocacy document—the initiative petition." *Id.* at 736. The same is true of SB 1027, which gives the Secretary of State "editorial control over the contents of" initiative petitions, allowing him to decide "what can be excluded or included in the petition." *See id.* at 733. This control "implicates the First Amendment" and subjects SB 1027's gist requirement to strict scrutiny. *Id.* at 733, 737. SB 1027 presents more problems than the Ohio statute because it contains even more vague, open-ended requirements.

The argument here is ***not*** that a Secretary of State is not to be trusted with important governmental decisions. Indeed, that is his or her job. But reviewing a gist to determine if it conforms with the law is a ***judicial*** function and should not be performed by an ***executive*** branch official. *See* OKLA. CONST. art. IV, § 1 (None of the three branches shall "exercise powers properly belonging to either of the others."). The Secretary of State is specified to be an officer in the executive branch, OKLA. CONST. art. VI, § 1(A), and is an appointee of the Governor. OKLA. CONST. art VI, § 1(B). Under SB 1027, the Secretary assumes the role formerly held by the judicial branch to evaluate the legal sufficiency of the gist. SB 1027 does not provide for judicial review of the Secretary's decision, thus requiring initiative proponents to seek injunctive or extraordinary relief to obtain neutral review.

Nothing in SB 1027 prevents the Secretary from rejecting the gist of a petition multiple times until the proponents either give up or run out of time to get on an election ballot. The prospect of multiple rejections by an executive branch official is not hypothetical. In *Brown*, the Ohio Attorney General rejected the petition summary proposed by the plaintiffs ***eight times***

as "not fair and truthful" on grounds the court found to be "increasingly dubious." 133 F.4th at 729 (citation omitted). SB 1027 provides even more possible grounds for "dubious" denials.

Content-based regulations of speech "are presumably unconstitutional and may be justified only if the government proves that they narrowly tailored to serve compelling state interests." *Nat'l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755, 766 (2018) (quoting *Reed v. Gilbert*, 576 U.S. 155, 163 (2015)); *see also McIntyre*, 514 U.S. at 346. Thus, the standard of review here is strict scrutiny. The State cannot meet this constitutional burden.

C. SB 1027 directly regulates and compels the speech of Oklahoma citizens.

By imposing numerous requirements as to the substance of the gist, SB 1027 also directly prescribes what initiative proponents can and cannot say to their fellow citizens.

SB 1027 ***compels*** speech by a petition circulator in three important respects. The circulator is required to provide to a potential signatory (1) the Secretary-of-State-approved gist, (2) a statement regarding "whether a proposed measure will have a fiscal impact on the state and if so, the potential source of funding," and (3) a warning to the signatory that "a copy of the petition and all signatures on such petition are public records subject to the Oklahoma Open Records Act." *Id.* 34 O.S. §§ 3(A)(5), 3(B). The harm of these provisions is not limited to the fact that SB 1027 compels speech in communication that is subject to the highest constitutional protection. The harm is compounded by the fact that these items of compelled speech do not have a neutral effect. Instead, the fiscal impact statement and the Open Records warning may—and indeed, are likely to—cause citizens to decline to sign the petition.

Like the statutes at issue in *McIntyre* and *Brown*, SB 1027 is a "direct regulation of the content of speech" by initiative proponents. *McIntyre*, 514 U.S. at 346; *Brown*, 133 F.4th at 733. Strict scrutiny applies, and the State must meet a "well-nigh insurmountable' burden to

justify such severe intrusion into [this] core political speech." *Brown*, 133 F.4th at 737 (quoting *Grant*, 486 U.S. at 425). The State has failed to meet this extremely high burden.

The provision forcing the proponents to include a written warning that signatories' name will be public is particularly problematic. Of all the statutes potentially applicable to initiative petitions, SB 1027 picks the one most likely to deter potential signatories. The Supreme Court has long recognized the sensitivity involved in requiring disclosure of the identity of those exercising political rights. Indeed the Court has held that the First Amendment protects citizens' right to engage *anonymously* in core political speech and association. *See, e.g.*, *McIntyre*, 514 U.S. at 341-43; *Nat'l Ass'n for Advancement of Colored People v. State of Ala., ex rel. Patterson*, 357 U.S. 449, 462 (1958) (holding that an order requiring the NAACP to produce its membership list was likely a "substantial restraint" on its members' "right to freedom of association."). In *Buckley v. American Constitutional Law Foundation*, 585 U.S. 182 (1999), the Court held a requirement that petition circulators wear identification badges was unconstitutional because it "***discourages participation*** in the petition circulation process by forcing name identification without sufficient cause." *Id.* at 200 (emphasis added). By requiring a written warning that signatories' names will be public, SB 1027 "discourages participation" by potential signatories. By deterring Oklahomans from signing initiative petitions, SB 1027 infringes on both (1) the First Amendment rights of initiative proponents to associate with the potential signatories and (2) the rights of Oklahomans to proceed by initiative under the Oklahoma Constitution, OKLA. CONST. art. V, § 2.

In *Meyer v. Grant,* 486 U.S. 414, 423 (1988), the Court held that a prohibition on paid petition circulators violated the First Amendment because it "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." *Id.* at 423. The Supreme Court noted that by effectively limiting the number of petition circulators, the law at issue had "the inevitable effect of reducing the total quantum of speech on a public issue." *Id.* SB 1027 has the same effect. Each of SB 1027's flaws discussed in this brief (*i.e.*, its vagueness, compelled speech, and signatory-deterrent warning) reduces the quantum of free speech. Together, though, their impact is draconian and far-reaching, drastically restricts free speech on public issues and initiative petitions in this State.

IV. CONCLUSION

SB 1027 would impose a list of new, content-based requirements stating what (a) can, (b) cannot, and (c) must be disclosed in the gist, injecting the government into the protected political discussions among proponents and fellow citizens. The Oklahoma Academy respectfully requests that the Court declare SB 1027 is unconstitutional, prohibit its enforcement, and strike it down in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on July 21, 2025, a true and correct copy of the foregoing was mailed in United States mail with postage prepaid thereon to the following:

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