



ORIGINAL

IN THE SUPREME COURT OF OKLAHOMA

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

v.

GENTNER DRUMMOND,
Attorney General for the
State of Oklahoma, AND
JOSH COCKROFT,
Secretary of State for the
State of Oklahoma
Respondents.

FILED
SUPREME COURT
STATE OF OKLAHOMA

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Sup. Ct. Case No. 123179

On Petitioners'
application to assume
original jurisdiction and
petition for declaratory
judgment and prohibition
writ of prohibition

BRIEF OF *AMICUS CURIAE* OKLAHOMA APPLESEED CENTER FOR LAW
AND JUSTICE IN SUPPORT OF PETITIONERS

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Marshal:	
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COLLEEN L. MCCARTY
Oklahoma Bar No. 34410
OKLAHOMA APPLESEED CENTER
FOR LAW AND JUSTICE
822 E. 6th St.
Tulsa, OK 74120
Telephone: 918-519-5750
colleen@okappleseed.org

July 7, 2025

COUNSEL FOR *AMICUS CURIAE*
OKLAHOMA APPLESEED
CENTER FOR LAW AND JUSTICE

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FOR LAW AND JUSTICE
822 E. 6th St.
Tulsa, OK 74120
Telephone: 918-519-5750
colleen@okappleseed.org

COUNSEL FOR *AMICUS CURIAE*
OKLAHOMA APPLESEED
CENTER FOR LAW AND JUSTICE

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The right to initiative petition is precious and shall not be infringed. The framers embedded it into the Oklahoma Constitution as a cornerstone of the people's political power. Weakening that cornerstone jeopardizes Oklahomans' access to direct democracy intended by the framers.

This case is about the fundamental and Constitutional right of the people to petition for legislative change weighed against the power of the legislature to procedurally limit Oklahomans' rights to the initiative petition process. Oklahomans' fundamental First Amendment right to petition is no less part of their right to franchise than their right to vote. No such fundamental rights are not borne to the legislature, nor is the power to restrict the people's franchise. The Petitioners' request for declaratory relief should be granted because SB1027 unlawfully and unreasonably, perhaps even arbitrarily, violates Oklahomans' fundamental rights to the initiative petition process.

BACKGROUND

The framers of the Oklahoma Constitution included the right to the initiative petition process in Article V, § 5. The right to initiative petition includes:

“The powers of the initiative and referendum reserved to the people by this Constitution for the State at large, are hereby further reserved to the legal voters of every county and district therein. . .”

Okla. Const. art. V, § 5.

SB1027, signed into law on May 23, 2025, purports to require gists of initiative petitions to be simplified and in plain language. It requires petitioners to provide a fiscal impact for any proposed ballot initiative, and gives power to the Secretary of State to verify the gist meets these requirements. It further requires all signature circulators to be registered voters in the state and to display whether they are being paid to circulate

petitions. All signature circulators would be required to report to the Secretary of State all expenditures and attest personally that all expenditures were made from sources inside the state.

The bill requires the total number of signatures collected from a single county required to amend a statute be no more than 11.5% of the number of votes cast in that county during the most recent statewide general election for Governor. The total number of signatures collected from a single county to amend the Oklahoma Constitution shall not exceed 20.8%. By restricting the number of people who can participate in the petition process, SB1027 effectively diminishes the political power of 80-89% of Oklahomans: the voice of all petitioners who are not in the first 11.5% or 20.8% are discounted, excluded by law, and silenced in violation of their Constitutional right, and without government justification.

ARGUMENT

I. Voting and the Right to Initiative Petition Are Fundamental Rights in Oklahoma.

Voting and the right to vote is a fundamental First Amendment right inherent in the federal Constitution and the Oklahoma Constitution. *Reynolds v. Sims*, 377 U.S. 533 (1964); Okla. Const. art. III, § 5. “No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage.” As it is specifically enumerated in the Oklahoma Constitution, the right to initiative petition is also a fundamental right guaranteed to the people of Oklahoma. *In re Initiative Petition No. 420, State Question No. 804*, 458 P.3d 1088 (2020).

In Oklahoma, the right to initiative petition is interpreted as “precious,” and carries the same weight as the right to vote itself. *In re Initiative Petition No. 882, State Question No.*

729, 2006 OK 45, 13, 142 P.3d 400. The right to petition one's government is core political speech, which is not to be infringed other than to eliminate the risk of corruption or fraud. *Yes On Term Limits, Inc. v. Savage*, 550 F.3d 1023 (10th Cir. 2008).

II. Courts look to the Government's stated rationale when considering restrictions to the people's fundamental rights.

In order to determine whether a government action meets the strict scrutiny required, courts must look to the Government's stated justification for the restriction. *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

When weighing the Government's compelling interest in limiting a fundamental right of the people, the Court must take the Government at their word and consider any and all statements made about the need for the rights constriction. *Crawford v. Marion County Election Board*, 553 U.S. 181, 191 (2008). It is the burden of the Government to show a compelling interest such that the right may be constrained. In *Crawford*, the Supreme Court stated, "A court evaluating a constitutional challenge to an election regulation weigh[s] the asserted injury to the right to vote against the precise interests put forward by the State as justifications for the burden imposed by its rule." 553 U.S. 181 (2008).

In *Crawford*, the Court found that the Government's interest in requiring voter identification was a compelling interest allowed to stand. Alternatively, in-state citizenship requirements, bans on per-signature payments, and disclosure of or prohibitions on outside payment sources have all been found to be undue burdens on the citizen's right to petition. *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 186-87 (1999); *Yes On Term Limits, Inc. v. Savage*, 550 F.3d 1023 (10th Cir. 2008).

On the date SB1027 passed the Oklahoma Senate Judiciary Committee, Senator David Bullard released to the press the following statement:

“These are much-needed changes to protect Oklahoma’s initiative petition process from out-of-state interest groups who want to change our state laws and constitution, . . . We need clear transparency and common-sense guardrails on how initiative petition campaigns collect signatures, who’s behind them and who’s funding them.”

Oklahoma Senate Press Release, March 5th, 2025.

Further, when SB1027 was passed off the House Floor, House Speaker Kyle Hilbert, the bill’s primary house author stated:

“For too long, rural Oklahomans have been left out of deciding what state questions appear on the ballot. That ends now. This critical legislation improves the integrity of the initiative petition process by empowering voters from all parts of the state to stay engaged every step of the way.”

Oklahoma Senate Press Release, May 21st, 2025.

The history of Oklahoma ballot initiatives *infra* contradicts that reasoning.

III. The Court employs a strict scrutiny standard when determining if a First Amendment violation will survive

In order to successfully restrict or regulate a fundamental right, the Government must articulate a compelling interest that holds up to strict scrutiny. *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621 (1969). In order to meet strict scrutiny, the Government must show that the law or regulation is necessary to achieve a compelling state interest, and that the law is narrowly tailored to achieve these results. It must use the “least restrictive means” to achieve that result. *Shelton v. Tucker*, 364 U.S. 479 (1960).

Not only is SB1027 excessively restrictive, past initiatives show that it is not needed at all.

IV. The Government's stated justification for SB1027 is based on a false premise, and thus cannot support a fundamental rights restriction.

A. An examination of successful ballot measures shows the initiative petition is truly Oklahoma citizens' vehicle for policy change, rather than a tool for out-of-state interests.

Despite the government's stated justification for constructively ending Oklahoma's initiative petition process, it is presently not easy for anyone—outsiders or insiders—to get a state question on the ballot in Oklahoma. Oklahoma has the shortest signature collection period in the country.¹ Since 2010, only nine state questions have been placed on the ballot by the citizens of Oklahoma. Of those nine, only four were approved by popular vote.

Those four were: State Questions 780 & 781 (reducing low level felonies to misdemeanors and creating the County Community Justice Reinvestment Fund), State Question 788 (medical marijuana), and State Question 802 (Medicaid expansion). All of these measures had strong in-state support from large grassroots coalitions. Even getting a measure on the ballot is difficult; passing one at the ballot box without strong in-state networks of support would be impossible.

Another commonality among these four successful ballot initiatives is that the executive and legislative branches acted to overturn or restrictively regulate all four. Both branches have shown a pattern of resisting and denying the people's political power as exercised through the initiative process. SB1027 repeats that pattern and shows the Government's true motive: the dilution and eventual elimination of the initiative petition process.

1. SQs 780 & 781

¹ Length of Signature Gathering Periods for Ballot Initiatives, BALLOTPEDIA. *Available at:* https://ballotpedia.org/Length_of_signature_gathering_periods_for_ballot_initiatives

SQ780 and 781 were Oklahoma driven. SQs 780 and 781 were wildly popular across Oklahoma, garnering a passage rate of 58% across party lines in November 2016. The policy contained in SQ780 and 781 was direly needed in Oklahoma. At the time of passage, Oklahoma had risen to number one in incarceration in the world.²

These state questions spoke to both rural and urban Oklahomans, many of whom have family members touched by mass incarceration and addiction.³ The campaign was driven by over twenty Oklahoma organizations as well as several high profile Oklahomans including Clay Bennett (owner of the Oklahoma City Thunder) and Kris Steele (former Speaker of the Oklahoma House).⁴ Rural turnout for the vote was widespread, with the State Questions gaining approval in many rural counties such as Alfalfa, Woods, Kiowa, and Greer.⁵ Polling since passage of SQs 780 and 781 indicates that the policy has increased in popularity.⁶ Seventy-five percent of Republicans supported the policy and supported applying it retroactively. Despite widespread support from the people, since 2016, the legislature has run

² Taylor Miller Thomas and Megan McCrink, "How Oklahoma Popped its Prison Bubble," POLITICO, (Apr. 23, 2020). Available at <https://www.politico.com/interactives/2020/justice-reform-decarceration-in-oklahoma/#:~:text=In%202016%2C%20Oklahoma%20had%20the,have%20populations%20similar%20in%20size>.

³ Oklahoma City and Tulsa rank in the top ten American cities for marijuana, cocaine, heroin and meth use, as well as top ten for overall drug use. "Highest Drug Use by City," American Addiction Centers. Available at <https://americanaddictioncenters.org/blog/substance-abuse-by-city>

⁴ "Oklahoma Reclassification of Some Drug and Property Crimes as Misdemeanors, State Question 780," Ballotpedia. Available at [https://ballotpedia.org/Oklahoma_Reclassification_of_Some_Drug_and_Property_Crimes_as_Misdemeanors,_State_Question_780_\(2016\)](https://ballotpedia.org/Oklahoma_Reclassification_of_Some_Drug_and_Property_Crimes_as_Misdemeanors,_State_Question_780_(2016))

⁵ "Oklahoma Question 780 –Reduce Criminal Sentences – Results: Approved," NEW YORK TIMES, (Aug. 1, 2017). Available at: <https://www.nytimes.com/elections/2016/results/oklahoma-ballot-measure-780-reduce-criminal-sentences>

⁶ "New Poll Shows Strong, Bipartisan Support for More Criminal Justice Reform in Oklahoma," PUBLIC OPINION STRATEGIES, (Jul. 23-25, 2022). Available at https://pos.org/wp-content/uploads/2022/09/OK-poll-memo_Final.pdf

nine bills intended to undo or undermine the policy passed in State Question 780, dissatisfied with the results approved by the people of Oklahoma.⁷

2. *State Question 788*

Oklahoma's medical marijuana state question came at a time in the United States when cannabis policy at the state level was changing drastically. To date, eighteen states have changed their policies via ballot initiative to allow for medical marijuana use. Another twenty have allowed medical marijuana via a legislative change.⁸ In Oklahoma, SQ 788 passed with 56% of the vote. Counties—including rural counties—across the state voted yes and approved the measure.⁹ The change in attitudes toward legal cannabis is an example of participatory government and using states as “laboratories of democracy”. (“A single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.” *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932)).

The campaign to support SQ 788 was run by Oklahomans for Health, a group focused on the medical benefits of cannabis based here in the state.

⁷ SB 512 (2017), HB 1482 (2017), SB 1674 (2020), SB 1587 (2020), SB 334 (2021), SB 1540 (2022), HB 4376 (2022), HB 2153 (2023), HB 3694 (2024); Shanna Gong, “Five Years of Defending State Question 780,” FWD.us. Available at <https://www.fwd.us/news/five-years-of-defending-state-question-780/>

⁸ The Evolution of Marijuana as a Controlled Substance and the Federal-State Policy Gap (2025), <https://www.congress.gov/crs-product/R44782>.

⁹ “Oklahoma State Question 788, Medical Marijuana Legalization Initiative (June 2018)” Ballotpedia. Available at [https://ballotpedia.org/Oklahoma_State_Question_788,_Medical_Marijuana_Legalization_Initiative_\(June_2018\)](https://ballotpedia.org/Oklahoma_State_Question_788,_Medical_Marijuana_Legalization_Initiative_(June_2018))

Efforts to create administrative rules to blunt the impact of SQ 788 were passed almost immediately following the vote without input from the public and against the State's Open Meeting Act.¹⁰

3. *State Question 802*

State Question 802 was the measure that passed Medicaid expansion in Oklahoma as a Constitutional amendment. Prior to the passage of SQ 802, 200,000, working Oklahomans were not covered by their employer's medical insurance.¹¹ In addition, Oklahoma turned away billions in federal aid yearly due to its refusal to expand the Medicaid program.¹²

SQ 802 passed at the ballot box by less than a percentage point—50.49%.¹³ Even though the margin was thin, the initiative was supported by a broad and varied group of Oklahomans across the state who wanted better access to life-saving healthcare.

The Governor and the Oklahoma Health Care Authority reacted as soon as SQ 802 was passed by creating a privatized managed care plan. This Court struck down that plan as unauthorized agency action in the absence of statutory authority.¹⁴

¹⁰ "Oklahoma: Attorney General Warns Regulators Acted Improperly When Amending Voter-Initiated Marijuana Measure" NORML, (Jul. 18, 2018). *Available at* <https://norml.org/blog/2018/07/18/oklahoma-attorney-general-warns-regulators-acted-improperly-when-amending-voter-initiated-marijuana-measure/>

¹¹ Medicaid Expansion: Ten Years of Unparalleled Return on Investment, Improved Outcome <https://okpolicy.org/medicaid-expansion-ten-years-of-unparalleled-return-on-investment-improved-outcomes/>

¹² Matthew Buettgens, "The Implications of Medicaid Expansion in the Remaining States, 2018 Update," p. 6, THE URBAN INSTITUTE and ROBERT WOOD JOHNSON FOUNDATION (May 2018). *Available at* https://www.urban.org/sites/default/files/publication/98467/the_implications_of_medicaid_expansion_2001838_2.pdf

¹³ "Oklahoma State Question 802, Medicaid Expansion Initiative (June 2020)" BALLOTPEDIA. *Available at*

[https://ballotpedia.org/Oklahoma_State_Question_802,_Medicaid_Expansion_Initiative_\(June_2020\)](https://ballotpedia.org/Oklahoma_State_Question_802,_Medicaid_Expansion_Initiative_(June_2020))

¹⁴ Andrea DenHoed, "Supreme Court strikes down Stitt's privatized managed care Medicaid plan," NONDOC, (June 2, 2021). *Available at* <https://nondoc.com/2021/06/02/supreme-court-strikes-down-stitts-privatized-managed-care-medicaid-plan/>

With every ballot measure passed by the people since 2010, our legislative and executive branches have acted in direct contravention to the will of the people. SB1027 is the Government's yet another attempt to defy Oklahoma's Constitution and dismantle the initiative petition process. SB1027 will mean death-by-regulation for all future ballot measures.

V. Even if the Government's justifications were based in fact, they do not rise to the level of strict scrutiny required to limit the franchise.

Even if Oklahoma's initiative petition process were inundated by outside influence, that would not give the Government a compelling reason to constructively end initiative petition.

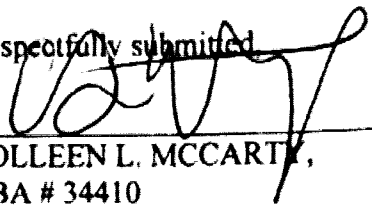
In *Buckley v. American Constitutional Law Foundation*, the U.S. Supreme Court found that requiring petition gatherers to be registered voters, requiring identification badges for petition gatherers, and requiring all paid circulators to be identified in a report violated the First Amendment's protections for political association. 525 U.S. 182, 186-87 (1999). The court has previously held that when petition gatherers are working to gather consensus on a proposed idea, that First Amendment protections are "at their zenith." *Meyer v. Grant*, 486 U.S. 414, at 422, 425 (1988).

Under American constitutional jurisprudence, the entire Oklahoma ballot initiative process could be run by individuals and organizations from outside Oklahoma, and that would not be enough to allow the Government to interfere with the deeply held and precious right to the initiative petition. As shown above, however, that is not the case. Oklahomans themselves for decades have used the initiative petition to move policy forward that benefits Oklahomans across the state. Many of these policies were attempted in the legislature for years until advocates took their efforts to the ballot.

CONCLUSION

The right to initiative petition is a fundamental, constitutionally enshrined power of the people of Oklahoma—one that exists independently of the legislature and cannot be diminished by legislative action absent a compelling, narrowly tailored justification. SB1027 does not meet that standard. The Government's fears of out-of-state influence are neither supported by the facts nor sufficient to override Oklahomans' rights to direct democracy. History shows that when Oklahomans successfully use the initiative petition process, it is driven by broad, in-state coalitions responding to unmet needs. SB1027 is an unconstitutional infringement on those rights and should be declared invalid.

Respectfully submitted



COLLEEN L. MCCARTY,
OBA # 34410
OKLAHOMA APPLESEED CENTER
FOR LAW AND JUSTICE
822 E. 6th St.
Tulsa, Oklahoma 74120
(918) 519-5750
colleen@okappleseed.org

-AND-

BRENT ROWLAND, OBA# 13415
OKLAHOMA APPLESEED CENTER
FOR LAW AND JUSTICE
822 E. 6th St.
Tulsa, Oklahoma 74120
(918) 519-5750
brent@okappleseed.org

Certificate of Service

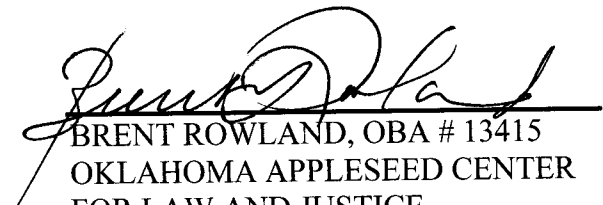
This is to certify that on July 7th, 2025, a true and correct copy of the foregoing was mailed in United States mail with postage prepaid thereon to the following:

Josh Cockroft
Oklahoma Secretary of State
2300 North Lincoln Boulevard, Suite 101
Oklahoma City, OK 73105

Gentner Drummond, Oklahoma Attorney General
Garry Gaskins, II, Solicitor General
Zach West, Director of Special Litigation
Ellen Carr, Assistant Solicitor General
Will Flanagan, Assistant Solicitor General
Cullen Sweeney, Assistant Solicitor General
313 NE 21st St
Oklahoma City, OK 73105

Randall J. Yates
Crowe & Dunlevy
222 N. Detroit Ave., Suite 600
Tulsa, OK 74120
Attorney for Petitioners

Melanie Rughani
Crowe & Dunlevy
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102
Attorney for Petitioners


BRENT ROWLAND, OBA # 13415
OKLAHOMA APPLESEED CENTER
FOR LAW AND JUSTICE
822 E. 6th St.
Tulsa, Oklahoma 74120
(918) 519-5750
brent@okappleseed.org