



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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

Petitioners,

vs.

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

Respondents.

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STATE OF OKLAHOMA

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**BRIEF OF *AMICI CURIAE* SIXTY-FIVE (65) MEMBERS OF THE OKLAHOMA
SENATE AND HOUSE OF REPRESENTATIVES IN SUPPORT OF RESPONDENTS**

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July 21, 2025

*Not admitted in this jurisdiction.

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Comes now *Amici Curiae*, Sixty-Five (65) Members of the Oklahoma Senate and House of Representatives led by Senator David Bullard and Speaker Kyle Hilbert,¹ as authorized by Order of the Chief Justice of Oklahoma, pursuant to Oklahoma Supreme Court Rules 1.12 and 1.191, and files this *Amici Curiae* brief in support of the Respondents and the constitutionality of Senate Bill 1027 (hereinafter “SB 1027”), signed into law by Governor Stitt on May 27, 2025.

I. Introduction

Amici possess a clear interest in the integrity of their duly passed legislation, here, SB 1027, enacted pursuant to their express obligations and authority. Further, *Amici* possess a clear interest in the defense and proper application of SB 1027, consistent with and pursuant to a proper understanding and application of the equal protection principles guaranteed by the Constitutions of the United States and the State of Oklahoma.

Article V, § 1, of the Oklahoma Constitution created the Legislature and simultaneously reserved to the People “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.” Article V, § 3 granted the Legislature the authority to pass laws facilitating that right and imposed on it the

¹ *Amici* are sixty-five (65) Members of the Oklahoma Senate and House of Representatives led by Senator David Bullard and Speaker Kyle Hilbert, and include Senators Brian Guthrie, Kendal Sacchieri, Christi Gillespie, Julie Daniels, Dusty Deevers, Julie McIntosh, Lisa Standridge, Jack Stewart, Avery Frix, Dana Prieto, Bryan Logan, Kristen Thompson, and Representatives Danny Williams, Robert Manger, Bob Ed Culver, Derrick Hildebrant, Ryan Eaves, Tim Turner, John George, T.J. Marti, Justin Humphrey, Kevin West, Kenton Patzkowsky, Nick Archer, Rusty Cornwell, Carl Newton, Marilyn Stark, Chad Caldwell, Mark Lawson, David Smith, Mark Lepak, Scott Fetgatter, Anthony Moore, Chris Banning, Cody Maynard, Denise Crosswhite Hader, Mike Dobrinski, Stacey Jo Adams, Jay Steagall, Neil Hays, Jonathan Wilk, Josh Cantrell, David Hardin, Eddy Dempsey, Brian Hill, Gerrid Kendrix, Rob Hall, John Pfeiffer, Emily Gise, Mark Tedford, Jim Grego, Molly Jenkins, Tammy Townley, Dick Lowe, Chris Sneed, Ty Burns, Steve Bashore, Jim Olsen, Jason Blair, Gabe Woolley, Mark Chapman, and Trey Caldwell, and Clay Staires.

express duty to protect the initiative and referendum process from corruption. OKLA. CONST. art. V, §§ 1, 8. This obligation reflects an acknowledgement that the petition process must be implemented in a regulated manner, balancing competing interests, and that it is susceptible to that corruption. SB 1027, which passed 39-7 in the Senate and 70-21 in the House of Representatives, was enacted pursuant to these duties.

Among other provisions clarifying the “gist” requirements for petitions, SB 1027 requires:

- Any person circulating a petition to be a registered voter in the state and to display whether he or she is being paid to circulate the petition.
- Any person receiving payment to submit a report to the Secretary of State that details such expenditures and that attests that all donated funds were received from sources in this state.
- The total number of signatures collected from a single county as it pertains to amending statutes to not exceed 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 as it pertains to amending the Oklahoma Constitution to not exceed 20.8% of the number of votes cast in that county during the most recent statewide general election for Governor.²

II. Petitioners’ arguments are unpersuasive and lack the weight of authority.

While Petitioners contend SB 1027 “tramples” the petition right found in the Oklahoma Constitution, *see* Pet’r’s Br. 1, SB 1027 actually *preserves and protects that right*, and ensures its availability to *more* Oklahomans, regardless of county population or whether they reside in a population center where signatures are more easily and quickly gathered, than the code previously accomplished. The Legislature assessed that residents of rural counties are unduly excluded from the signature gathering process and included provisions in SB 1027 to rectify that discrepancy. Contrary to Petitioners’ contention, increasing access to the exercise of a

² 59th Leg., 1st. Sess., SB 1027 Bill Summary (Okla. 2025), <https://tinyurl.com/4z85jpkv>.

constitutional right is no mere policy preference, *see* Pet'r's' Br. 3, but instead, is an imminently legitimate interest of the Legislature. *Amici* focus this Brief on the provisions imposing percentage caps, included in SB 1027 to ensure more Oklahoma residents have an opportunity to participate in the signature-gathering process for petitions, regardless of whether they reside in less populous counties or in the more populous counties. *See* Pet'r's Br. 2-4.

Petitioners portray the percentage caps as limitations on the right of any qualified Oklahoma voter to sign a petition as if this occurred in a vacuum. It does not. No limitation on any voter's signature is imposed that is not simultaneously an opportunity to sign ensured to a resident of another voting unit, *i.e.*, another county. If the right of the one is restricted, the right of the other is provided. If one is disenfranchised, another is enfranchised.

Petitioners incorrectly cast these provisions of SB 1027 as "timing based," and as "first come, first served" restrictions violating equal protection. Pet'r's Br. 2-3. First, Petitioners cite no authority articulating *how* it violates equal protection other than a cite to *Ross v. Peters*, 1993 OK 8, ¶29, 846 P.2d 1107, for the proposition that arbitrary discrimination is bad (even though that case recognized the principle that equal protection is not absolute and that discrimination against any class must ground on a rational basis, *id.* at ¶17; its analysis recognized the key element of a similar situation for a claimant, *id.* at ¶28; and that "line-drawing is an inevitable attribute of the legislative function," *id.* at ¶30). Second, SB 1027's capping provisions here are not timing-based. They are, instead, population unit-based. And while Petitioners suggest that legislative regulation of petition processes in consideration of geography (which is in actuality a population unit in the form of counties), is inappropriate, Pet'r's Br. 3, ample caselaw refutes this suggestion and makes clear that use of counties as

electoral units is appropriate. *See, e.g., Moore v. Ogilvie*, 394 U.S. 814, 818-19 (1969); *Gray v. Sanders*, 372 U.S. 368, 379-81 (1963).

The flaw in Petitioners' argument is captured in one key sentence in their Brief, followed by its explanation:

And they violate equal protection by creating arbitrary distinctions among identical voters. Under SB 1027, signatures from any county cannot exceed 11.5% (statutory initiatives) or 20.8% (constitutional initiatives) of that county's gubernatorial votes. This creates a constitutionally impermissible "first-come, first-served" system *where identical legal voters* receive different treatment based solely on timing—those who sign before the cap versus those who sign after.

Pet'r's Br. 2-3 (emphasis added). Here is the problem for Petitioners: for purposes of equal protection analysis in cases like this, residents of a rural county are not "identical" to, nor similarly situated with residents of populous counties—and *vice versa*. This distinction is well supported in jurisprudence explaining why rational basis, not heightened scrutiny, is the proper constitutional standard for evaluating this challenge.

III. Rational basis, not strict scrutiny, should apply to SB 1027.

The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985). The one man, one vote principle articulated in voting cases like *Gray v. Sanders*, 372 U.S. 368 (1963), and *Reynolds v. Sims*, 377 U.S. 533 (1964), has been extended "to the collection of signatures on nominating petitions." *Idaho Coal. United for Bears v. Cenarrusa*, 342 F.3d 1073, 1077 (9th Cir. 2003). "Nominating petitions for candidates and for initiatives both implicate the fundamental right to vote, for the same reasons and in the same manner, and the burdens on both are subject to the same analysis under the Equal Protection Clause." *Id.* If a State regulates in an *unconstitutionally* discriminatory way that substantially burdens

fundamental rights, it could still violate the Equal Protection Clause. But even there, strict scrutiny applies only when the right to vote is subjected to severe restrictions. *Burdick v. Takushi*, 504 U.S. 428, 432 (1992).³ However, “when a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State’s important regulatory interests are generally sufficient to justify the restrictions.” *Id.* at 434. Critically, in an Equal Protection referendum case, the Supreme Court flatly rejected “the erroneous assumption that a law that imposes any burden upon the right to vote must be subject to strict scrutiny.” *Id.* at 432. It described this premise as “flawed.” *Id.* at 438. Clearly, not every law that impacts a right to vote (or engage in a signature petition) violates Equal Protection, nor is every such law subject to strict scrutiny.

To be sure, “regulations that contravene the principle of “one person, one vote” by diluting the voting power of some qualified voters within the electoral unit’ also are subject to strict scrutiny.” *Lemons v. Bradbury*, 538 F.3d 1098, 1104 (9th Cir. 2008) (quoting *Green v. City of Tucson*, 340 F.3d 891, 900 (9th Cir. 2003)). “Examples include laws that weigh votes from rural counties more heavily than votes from urban counties.” *Id.* (citing *Green*, 340 F.3d at 900). The cases surveyed there are *Moore v. Ogilvie*, 394 U.S. 814, 818-19 (1969) (state law requiring same floor/threshold number of signatures from both populous and rural counties, treating unequal counties equally); *Gray v. Sanders*, 372 U.S. 368, 379-81 (1963) (county unit

³ When strict scrutiny applies, the statute will be upheld only if the state can show that the statute is narrowly drawn to serve a compelling state interest. *See, e.g., Grutter v. Bollinger*, 539 U.S. 306 (2003) (racial classifications); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 627-28 (1969) (right to vote). Intermediate scrutiny applies if the statute draws distinctions based upon suspect classes, like gender (as opposed to substantially burdening fundamental rights). Under it, a statute will be upheld if the government can demonstrate that the classification “substantially furthers an important government interest.” *Kirchberg v. Feenstra*, 450 U.S. 455, 460 (1981). Rational basis review is the least exacting level of scrutiny, and under it, statutes will be upheld if they are rationally related to a legitimate governmental purpose. *Romer v. Evans*, 517 U.S. 620, 631 (1996).

system requiring candidates to obtain majority of county-unit votes to advance while giving rural counties more weight in tallying of county units); and *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (apportionment plan under which counties of unequal population were represented in equal numbers in the state legislature).⁴ Importantly, and contrary to Petitioners' arguments, none of those laws were struck down because they implemented a voting right via electoral unit/county unit systems; the problem was that they treated unequally situated county units equally – something SB 1027 carefully avoids by its direct proportionality approach of percentages and by implementing caps, not floors. Moreover, in those cases, the laws at issue actually violated the one man, one vote principle in ways which are not only distinguishable from SB 1027, but also in ways that *underscore the need for* SB 1027 to improve equal protection for all Oklahomans.

In *Moore v. Ogilvie*, the Illinois law at issue “required the same number of signatures (200) regardless of a county’s population,” *Cenarrusa*, 342 F.3d at 1078 (citing *Moore*, 394 U.S. at 818). “The constitutional flaw in the Illinois geographic distribution requirement was that, although the counties were of widely unequal population, the same ‘rigid, arbitrary formula’ was applied to all of them.” *Id.* at 1076 (quoting *Moore*, 394 U.S. at 818). This violated the Constitution because “[t]he idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government.” *Moore*, 394 U.S. at 819.

In *Cenarrusa*, the Ninth Circuit addressed an Idaho law requiring signatures totaling “a fixed percentage (six percent) of a county’s population” in every county to be reached for a

⁴ “In both [*Gray v. Sanders* and *Reynolds v. Sims*], the votes cast by voters residing in the counties with larger population had less effect than the votes of those who lived in more sparsely populated rural areas.” *Cenarrusa*, 342 F.3d at 1077 (citing *Gray v. Sanders*, 372 U.S. 368 (1963) and *Reynolds v. Sims*, 377 U.S. 533 (1964)). And *that* was the constitutional flaw. *Id.*

petition to clear the threshold. *Cenarrusa*, 342 F.3d at 1078. Critically, that created a floor/threshold requirement, *not a limitation cap like SB 1027*. There, signatures from a particular county *only counted* if that county's *floor percentage* was reached. Thus, "in the smallest county a 'vote' may count where 61 others sign, whereas in the largest county it may require up to 18,054 other signatures before the individual's 'vote' will count." *Cenarrusa*, 342 F.3d at 1078. It was not percentages that fated the Idaho law; it violated the Equal Protection Clause "because [it] allocate[d] equal power to counties of unequal population[.]" *Id.*

As SB 1027 does not suffer from these flaws, it does not substantially burden a fundamental right. Thus, strict scrutiny does not apply. Instead, it must only—and does—survive rational basis scrutiny based on the State's obvious and legitimate interests in the orderly development and efficient administration of government where there are geographic distinctions between populous and rural areas, increasing access to the petition process guaranteed by the Constitution to residents of rural counties and mitigating the monopoly held by two or three of Oklahoma's 77 counties, and protecting the petition process from corruption. *See Green v. City of Tucson*, 340 F.3d 891 (9th Cir. 2003) (distinguishing *Moore*, *Gray* and *Reynolds*, to apply rational basis scrutiny in upholding Arizona law restricting right to vote). SB 1027 is rationally related to the State's legitimate interests.

IV. SB 1027 is not only constitutional, but by *not* treating unequal counties equally, it actually eliminates constitutional weaknesses found in Oklahoma's current referendum process.

SB 1027 was drafted to *stop* treating unequal counties as if they were equal. *See Moore*, 394 U.S. at 819 ("The idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government."). Instead, SB 1027 treats unequal counties *unequally* – but in a reasonable way, providing for direct

proportionality through a percentage-based system. It recognizes and remedies the obvious differences between populous and rural counties, thereby mitigating the disproportionate “greater voting strength” enjoyed by one group, the two to three populous counties, over the other group, the 74 rural counties.

By implementing only cap (not floor) percentages—and caps that are directly proportional to the unequal populations of populous and rural counties—SB 1027 is specifically designed *not* to allocate equal power to counties of unequal population. Instead, it ensures that a populous county can no longer dominate the signatures-gathering process for a referendum. It gives voice to potential signors in rural counties, but in a way that still proportionately reflects the larger number of voters in more populous counties. In other words, it *avoids* the flaw that doomed the Idaho law in *Cenarrusa* and the Illinois law in *Moore*: granting equal power to unequal populations. *See Cenarrusa*, 342 F.3d at 1078 (“Both the Idaho and the Illinois requirements violate the Equal Protection Clause, because they allocate equal power to counties of unequal population”).

SB 1027 accomplishes what the state systems in *Moore* and *Cenarrusa* lacked, and even those in *Reynolds* and *Sanders*, failed to achieve. Under SB 1027, a populous county can no longer dominate signature gathering to the exclusion or diminishment of the less populous counties.⁵ It acknowledges the population differences among counties and assigns percentage caps that are directly proportional, balancing the interests of residents in both types of counties. Collectors may still gather more signatures in Oklahoma County than in Cimarron County, but residents in Cimarron County now have a greater opportunity to participate. And because SB 1027 imposes only a cap—not a floor—it does not dilute or lessen any person’s signature

⁵ Conversely, any single less populous, rural county, or group of such counties, could not dominate the signature process either.

beyond what is necessary to honor the “one man, one vote” principle for residents of all counties. Ironically, *prior to SB 1027*, rural county residents were arguably being denied their “one man, one vote” rights; with no cap on populous counties, residents of Oklahoma and Tulsa Counties could effectively place any referendum on the ballot with no regard for the affirmative *or negative* will of smaller counties. Put simply, the prior structure was more violative of “one man, one vote” than SB 1027 could even arguably be.

V. SB 1027 provides guardrails analogous to those provided by bicameralism.

SB 1027’s constitutionality (and practicality) makes sense when viewed through the lens of the ordinary legislative process – and the reason the Framers introduced bicameralism into the lawmaking branch. Across the board, Senate districts encompass larger populations than House districts. On the national level, the compromise model was designed to balance the interests of the different size states; larger states and smaller states both have equal power in the Senate, while larger states have greater power in the House.⁶ This same balancing model occurs at the state level, vis-à-vis districts and counties.

Lawmaking by referendum takes a different path. The “bill” does not reach a vote of the people unless it clears certain hurdles, including gathering signatures from the public. On this path, however, there is no bicameralism to provide the critical balancing check between the expressed (by providing one’s signature) or unexpressed (by declining to provide one’s signature) will of populous counties on one hand, and rural counties on the other. Populous counties will always have the ability to approve any petition they desire, without regard for the

⁶THE FEDERALIST NO. 62, 416-19 (James Madison) (explaining why “the government ought to be founded on a mixture of the principles of proportional and equal representation”). Among other benefits, the bicameral model provides a check against “the propensity of all single and numerous assemblies, to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders, into intemperate and pernicious resolutions.” *Id.*

rural counties. In this sense, SB 1027 adds a much needed “second chamber” to the process, serving a role analogous to the Senate’s function in ensuring that populous areas do not dominate the legislative process.⁷ SB 1027 constitutes a check and balance that actually preserves the “one man, one vote,” rather than violating it.

CONCLUSION

For reasons including those addressed above, *Amici* respectfully urge this Court to rule for the Respondents.

Dated: July 21, 2025.

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⁷ Drawing lines to balance the interests of rural and populous counties is not an anomaly. See 20 O.S. § 2, <https://law.justia.com/codes/oklahoma/title-20/section-20-2/>; *District Representation*, OKLA. SUP. CT., <https://oksc.oscn.net/district-representation/> (last visited July 18, 2025).

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2025, a true and correct copy of the above and foregoing document was served electronically and by express mail or hand-delivery on the following:

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