ballot measures; challenges

State of Arizona Senate Fifty-sixth Legislature Second Regular Session 2024

SENATE CONCURRENT RESOLUTION 1041

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE IV, PART 1, SECTION 1, CONSTITUTION OF ARIZONA; RELATING TO BALLOT MEASURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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44 45 Be it resolved by the Senate of the State of Arizona, the House of Representatives concurring:

1. Article IV, part 1, section 1, Constitution of Arizona, is proposed to be amended as follows if approved by the voters and on proclamation of the Governor:

1. Legislative authority; initiative and referendum

Section 1. (1) Senate; house of representatives; reservation of power to people. The legislative authority of the state shall be vested in the legislature, consisting of a senate and a house of representatives, but the people reserve the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature; and they also reserve, for use at their own option, the power to approve or reject at the polls any act, or item, section, or part of any act, of the legislature.

- (2) Initiative power. The first of these reserved powers is the initiative. Under this power ten percent of the qualified electors shall have the right to propose any measure, and fifteen percent shall have the right to propose any amendment to the constitution.
- (3) Referendum power; emergency measures; effective date of acts. The second of these reserved powers is the referendum. Under this power the legislature, or five percent of the qualified electors, may order the submission to the people at the polls of any measure, or item, section or part of any measure, enacted by the legislature, except laws immediately necessary for the preservation of the public peace, health or safety, or for the support and maintenance of the state the departments of government and state institutions; but to allow opportunity for referendum petitions, no act passed by the legislature shall be operative for ninety days after the close of the session of the legislature enacting such measure, except such as require earlier operation to preserve the public peace, health or safety, or to provide appropriations for the support and maintenance of the departments of the state and of state institutions; provided, that no such emergency measure shall be considered passed by the legislature unless it shall state in a separate section why it is necessary that it shall become immediately operative, and shall be approved by affirmative votes of two-thirds of the members elected to each house of the legislature, taken by roll call of ayes and nays, and also approved by the governor; and should such measure be vetoed by the governor, it shall not become a law unless it

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shall be approved by the votes of three-fourths of the members elected to each house of the legislature, taken by roll call of ayes and nays.

- (4) Initiative and referendum petitions; filing. All petitions submitted under the power of the initiative shall be known as initiative petitions, and shall be filed with the secretary of state not less than four months preceding the date of the election at which the measures so proposed are to be voted upon. All petitions submitted under the power of the referendum shall be known as referendum petitions, and shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislature which shall have passed the measure to which the referendum is applied. The filing of a referendum petition against any item, section or part of any measure shall not prevent the remainder of such measure from becoming operative.
- of (5) Effective date initiative and referendum measures. Any measure or amendment to the constitution proposed under the initiative, and any measure to which the referendum is applied, shall be referred to a vote of the qualified electors, and for an initiative or referendum to approve a tax, shall become law when approved by sixty percent of the votes cast thereon and upon proclamation of the governor, and not otherwise and for all other initiatives and referendums, shall become law when approved by a majority of the votes cast thereon and upon proclamation of the governor, and not otherwise.
- (6) (A) Veto of initiative or referendum. The veto power of the governor shall not extend to an initiative measure to approve a tax that is approved by sixty percent of the votes cast thereon or to a referendum measure to approve a tax that is decided by sixty percent of the votes cast thereon and for all other initiatives and referendums, the veto power of the governor shall not extend to initiatives and referendums approved by a majority of the votes cast thereon.
- (6) (B) Legislature's power to repeal initiative or referendum. The legislature shall not have the power to repeal an initiative measure to approve a tax that is approved by sixty percent of the votes cast thereon or to repeal a referendum measure to approve a tax that is decided by sixty percent of the votes cast thereon and for all other initiatives and referendums, the legislature shall not have the power to repeal an initiative measure approved by a majority of the votes cast thereon and shall not have the

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44 45 power to repeal a referendum measure decided by a majority of the votes cast thereon.

- (6) (C) Legislature's power to amend initiative or referendum. The legislature shall not have the power to amend an initiative measure to approve a tax that is approved by sixty percent of the votes cast thereon, or to amend a referendum measure to approve a tax that is decided by sixty percent of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature. by a roll call of ayes and nays, vote to amend such measure. For all other initiatives and referendums, the legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon and shall not have the power to amend a referendum measure decided by a majority of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure.
- (6) (D) Legislature's power to appropriate or divert funds created by initiative or referendum. The legislature shall not have the power to appropriate or divert funds created or allocated to a specific purpose by an initiative measure that also approves a tax that is approved by sixty percent of the votes cast thereon, or by a referendum measure that also approves a tax that is decided by sixty percent of the votes cast thereon, unless the appropriation or diversion of funds furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to appropriate or divert such funds. For all other initiatives and referendums, the legislature shall not have the power to appropriate or divert funds created or allocated to a specific purpose by an initiative measure approved by a majority of the votes cast thereon and shall not have the power to appropriate or divert funds created or allocated to a specific purpose by a referendum measure decided by a majority of the votes cast thereon, unless the appropriation or diversion of funds furthers the purposes of such measure and three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to appropriate or divert such funds.
- (7) Number of qualified electors. The whole number of votes cast for all candidates for governor at the general election last preceding the filing of any initiative or

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44 45 referendum petition on a state or county measure shall be the basis on which the number of qualified electors required to sign such petition shall be computed.

- (8) Local, city, town or county matters. The powers of the initiative and the referendum are hereby further reserved to the qualified electors of every incorporated city, town and county as to all local, city, town or county matters on which such incorporated cities, towns and counties are or shall be empowered by general laws to legislate. Such incorporated cities, towns and counties may prescribe the manner of exercising said powers within the restrictions of general laws. Under the power of the initiative fifteen percent of the qualified electors may propose measures on such local, city, town or county matters, and ten percent of the electors may propose the referendum on legislation enacted within and by such city, town or county. Until provided by general law, said cities and towns may prescribe the basis on which said percentages shall be computed.
- (9) Form and contents of initiative and of referendum petitions: verification. Every initiative or referendum petition shall be addressed to the secretary of state in the case of petitions for or on state measures, and to the clerk of the board of supervisors, city clerk or corresponding officer in the case of petitions for or on county, city or town measures; and shall contain the declaration of each petitioner, for himself, that he is a qualified elector of the state (and in the case of petitions for or on city, town or county measures, of the city, town or county affected), his post office address, the street and number, if any, of his residence, and the date on which he signed such petition. Every initiative measure shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an initiative measure which shall not be expressed in the title, such initiative measure shall be void only as to so much thereof as shall not be embraced in the title. Each sheet containing petitioners' signatures shall be attached to a full and correct copy of the title and text of the measure so proposed to be initiated or referred to the people, and every sheet of every such petition containing signatures shall be verified by the affidavit of the person who circulated said sheet or petition, setting forth that each of the names on said sheet was signed in the presence of the affiant and that in the belief of the affiant each signer was a qualified elector of the state, or in the case of a city, town or county

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 measure, of the city, town or county affected by the measure so proposed to be initiated or referred to the people.

- (10) Official ballot. When any initiative or referendum petition or any measure referred to the people by the legislature is filed, in accordance with this section, with the secretary of state, the secretary of state shall cause to be printed on the official ballot at the next regular general election the title and number of said measure, together with the words "yes" and "no" in such manner that the electors may express at the polls their approval or disapproval of the measure.
- (11) Publication of measures. The text of all measures to be submitted shall be published as proposed amendments to the constitution are published, and in submitting such measures and proposed amendments the secretary of state and all other officers shall be guided by the general law until legislation shall be especially provided therefor.
- (12) Conflicting measures or constitutional amendments. If two or more conflicting measures or amendments to the constitution shall be approved by the people at the same election, the measure or amendment receiving the greatest number of affirmative votes shall prevail in all particulars as to which there is conflict.
- (13) Canvass of votes; proclamation. It shall be the duty of the secretary of state, in the presence of the governor and the chief justice of the supreme court, to canvass the votes for and against each such measure or proposed amendment to the constitution within thirty days after the election, and upon the completion of the canvass the governor shall forthwith issue a proclamation, giving the whole number of votes cast for and against each measure or proposed amendment, and declaring such measures or amendments to approve a tax as are approved by sixty percent of those voting thereon to be law and for all other measures or amendments, declaring such measures as are approved by a majority of those voting thereon to be law.
- (14) Reservation of legislative power. This section shall not be construed to deprive the legislature of the right to enact any measure except that the legislature shall not have the power to adopt any measure that supersedes, in whole or in part, any initiative measure to approve a tax that is approved by sixty percent of the votes cast thereon or any referendum measure to approve a tax that is decided by sixty percent of the votes cast thereon unless the superseding measure furthers the purposes of the initiative or referendum

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 measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to supersede such initiative or referendum measure. For all other initiatives and referendums, the legislature shall not have the power to adopt any measure that supersedes, in whole or in part, any initiative measure approved by a majority of the votes cast thereon and shall not have the power to adopt any measure that supersedes, in whole or in part, any referendum measure decided by a majority of the votes cast thereon, unless the superseding measure furthers the purposes of the initiative or referendum measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to supersede such initiative or referendum measure.

- (15) Legislature's right to refer measure to the people. Nothing in this section shall be construed to deprive or limit the legislature of the right to order the submission to the people at the polls of any measure, item, section or part of any measure.
- (16) Self-executing. This section of the constitution shall be, in all respects, self-executing.
- (17) CHALLENGES TO THE CONSTITUTIONALITY OF INITIATIVE MEASURES OR AMENDMENTS. AT ANY TIME AFTER A PETITION IN SUPPORT OF A CONSTITUTIONAL AMENDMENT OR INITIATIVE MEASURE IS FILED WITH THE SECRETARY OF STATE, A PERSON MAY BRING AN ACTION IN SUPERIOR COURT AT LEAST ONE HUNDRED DAYS BEFORE THE DATE OF THE ELECTION AT WHICH THE MEASURE OR AMENDMENT WILL BE VOTED ON TO CONTEST THE CONSTITUTIONALITY OF THE MEASURE OR AMENDMENT ON THE GROUNDS THAT, IF ENACTED, THE MEASURE OR AMENDMENT VIOLATES THE CONSTITUTION OF THE UNITED STATES OR THIS CONSTITUTION. ANY PARTY MAY APPEAL TO THE SUPREME COURT WITHIN FIVE CALENDAR DAYS AFTER THE SUPERIOR COURT ENTERS IF, IN ANY ACTION BROUGHT UNDER THIS SUBSECTION AT JUDGMENT. LEAST ONE HUNDRED DAYS BEFORE THE DATE OF THE ELECTION AT WHICH THE MEASURE OR AMENDMENT WILL BE VOTED ON, A COURT OF COMPETENT JURISDICTION ENTERS A JUDGMENT FINDING THAT THE MEASURE OR AMENDMENT VIOLATES THE CONSTITUTION OF THE UNITED STATES OR THIS CONSTITUTION, THE SECRETARY OF STATE OR OTHER OFFICER SHALL NOT CERTIFY OR PRINT THE MEASURE OR AMENDMENT ON THE OFFICIAL BALLOT.

Sec. 2. Findings and declaration of purpose

The legislature finds and declares as follows:

1. All laws, regardless of how the laws were enacted, must conform to the Arizona Constitution and the United States Constitution. See $\underline{\text{Fann}}$ $\underline{\text{v. State}}$, 251 Ariz. 425 (2021).

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- 2. The Arizona Supreme Court has long maintained, however, that it lacks authority to adjudicate challenges to the constitutionality of an initiative unless and until the initiative is adopted. See <u>League of Ariz. Cities and Towns v. Brewer</u>, 213 Ariz. 557 (2006). One result of this inability to obtain preelection judicial review is that voters and advocacy organizations are compelled to invest time and resources supporting or opposing proposals that may be intrinsically invalid.
- 3. This amendment expressly authorizes challenges to the constitutional validity of proposed initiative measures or constitutional amendments at any time after a petition is filed with the secretary of state. If an action is commenced at least one hundred days before the election, the court must hear and decide the case immediately and, if the court determines that the measure or amendment is unconstitutional, enjoin it from placement on the ballot.
- 4. This amendment supplements and expands access to the courts to adjudicate the constitutionality of proposed initiative measures or constitutional amendments. It does not repeal, limit or preempt any other express or implied claim, cause of action or remedy that the legislature or the courts have provided or may provide in the future.
- 5. This amendment does not preclude, limit or abrogate any claim, cause of action or remedy provided or authorized by law or in equity to challenge the validity or legal sufficiency of an initiative measure, referendum or constitutional amendment or any petition filed in support of any of the foregoing.
- 2. The Secretary of State shall submit this proposition to the voters at the next general election as provided by article XXI, Constitution of Arizona.

PASSED BY THE HOUSE JUNE 12, 2024.

PASSED BY THE SENATE MARCH 11, 2024.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 13, 2024.

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