

REFERENCE TITLE: ballot measures; challenges.

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HCR 2049

Introduced by
Representative Carter

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)

1 Be it resolved by the House of Representatives of the State of Arizona,
2 the Senate concurring:

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

6 1. Legislative authority; initiative and referendum

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

17 (2) Initiative power. The first of these reserved
18 powers is the initiative. Under this power ten percent of the
19 qualified electors shall have the right to propose any
20 measure, and fifteen percent shall have the right to propose
21 any amendment to the constitution.

22 (3) Referendum power; emergency measures; effective
23 date of acts. The second of these reserved powers is the
24 referendum. Under this power the legislature, or five percent
25 of the qualified electors, may order the submission to the
26 people at the polls of any measure, or item, section or part
27 of any measure, enacted by the legislature, except laws
28 immediately necessary for the preservation of the public
29 peace, health or safety, or for the support and maintenance of
30 the departments of the state government and state
31 institutions; but to allow opportunity for referendum
32 petitions, no act passed by the legislature shall be operative
33 for ninety days after the close of the session of the
34 legislature enacting such measure, except such as require
35 earlier operation to preserve the public peace, health or
36 safety, or to provide appropriations for the support and
37 maintenance of the departments of the state and of state
38 institutions; provided, that no such emergency measure shall
39 be considered passed by the legislature unless it shall state
40 in a separate section why it is necessary that it shall become
41 immediately operative, and shall be approved by the
42 affirmative votes of two-thirds of the members elected to each
43 house of the legislature, taken by roll call of ayes and nays,
44 and also approved by the governor; and should such measure be
45 vetoed by the governor, it shall not become a law unless it

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

4 (4) Initiative and referendum petitions; filing. All
5 petitions submitted under the power of the initiative shall be
6 known as initiative petitions, and shall be filed with the
7 secretary of state not less than four months preceding the
8 date of the election at which the measures so proposed are to
9 be voted upon. All petitions submitted under the power of the
10 referendum shall be known as referendum petitions, and shall
11 be filed with the secretary of state not more than ninety days
12 after the final adjournment of the session of the legislature
13 which shall have passed the measure to which the referendum is
14 applied. The filing of a referendum petition against any
15 item, section or part of any measure shall not prevent the
16 remainder of such measure from becoming operative.

17 (5) Effective date of initiative and referendum
18 measures. Any measure or amendment to the constitution
19 proposed under the initiative, and any measure to which the
20 referendum is applied, shall be referred to a vote of the
21 qualified electors, and for an initiative or referendum to
22 approve a tax, shall become law when approved by sixty percent
23 of the votes cast thereon and upon proclamation of the
24 governor, and not otherwise and for all other initiatives and
25 referendums, shall become law when approved by a majority of
26 the votes cast thereon and upon proclamation of the governor,
27 and not otherwise.

28 (6) (A) Veto of initiative or referendum. The veto
29 power of the governor shall not extend to an initiative
30 measure to approve a tax that is approved by sixty percent of
31 the votes cast thereon or to a referendum measure to approve a
32 tax that is decided by sixty percent of the votes cast thereon
33 and for all other initiatives and referendums, the veto power
34 of the governor shall not extend to initiatives and
35 referendums approved by a majority of the votes cast thereon.

36 (6) (B) Legislature's power to repeal initiative or
37 referendum. The legislature shall not have the power to
38 repeal an initiative measure to approve a tax that is approved
39 by sixty percent of the votes cast thereon or to repeal a
40 referendum measure to approve a tax that is decided by sixty
41 percent of the votes cast thereon and for all other
42 initiatives and referendums, the legislature shall not have
43 the power to repeal an initiative measure approved by a
44 majority of the votes cast thereon and shall not have the

1 power to repeal a referendum measure decided by a majority of
2 the votes cast thereon.

3 (6) (C) Legislature's power to amend initiative or
4 referendum. The legislature shall not have the power to amend
5 an initiative measure to approve a tax that is approved by
6 sixty percent of the votes cast thereon, or to amend a
7 referendum measure to approve a tax that is decided by sixty
8 percent of the votes cast thereon, unless the amending
9 legislation furthers the purposes of such measure and at least
10 three-fourths of the members of each house of the legislature,
11 by a roll call of ayes and nays, vote to amend such
12 measure. For all other initiatives and referendums, the
13 legislature shall not have the power to amend an initiative
14 measure approved by a majority of the votes cast thereon and
15 shall not have the power to amend a referendum measure decided
16 by a majority of the votes cast thereon, unless the amending
17 legislation furthers the purposes of such measure and at least
18 three-fourths of the members of each house of the legislature,
19 by a roll call of ayes and nays, vote to amend such measure.

20 (6) (D) Legislature's power to appropriate or divert
21 funds created by initiative or referendum. The legislature
22 shall not have the power to appropriate or divert funds
23 created or allocated to a specific purpose by an initiative
24 measure that also approves a tax that is approved by sixty
25 percent of the votes cast thereon, or by a referendum measure
26 that also approves a tax that is decided by sixty percent of
27 the votes cast thereon, unless the appropriation or diversion
28 of funds furthers the purposes of such measure and at least
29 three-fourths of the members of each house of the legislature,
30 by a roll call of ayes and nays, vote to appropriate or divert
31 such funds. For all other initiatives and referendums, the
32 legislature shall not have the power to appropriate or divert
33 funds created or allocated to a specific purpose by an
34 initiative measure approved by a majority of the votes cast
35 thereon and shall not have the power to appropriate or divert
36 funds created or allocated to a specific purpose by a
37 referendum measure decided by a majority of the votes cast
38 thereon, unless the appropriation or diversion of funds
39 furthers the purposes of such measure and at least
40 three-fourths of the members of each house of the legislature,
41 by a roll call of ayes and nays, vote to appropriate or divert
42 such funds.

43 (7) Number of qualified electors. The whole number of
44 votes cast for all candidates for governor at the general
45 election last preceding the filing of any initiative or

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

4 (8) Local, city, town or county matters. The powers of
5 the initiative and the referendum are hereby further reserved
6 to the qualified electors of every incorporated city, town and
7 county as to all local, city, town or county matters on which
8 such incorporated cities, towns and counties are or shall be
9 empowered by general laws to legislate. Such incorporated
10 cities, towns and counties may prescribe the manner of
11 exercising said powers within the restrictions of general
12 laws. Under the power of the initiative fifteen percent of the
13 qualified electors may propose measures on such local, city,
14 town or county matters, and ten percent of the electors may
15 propose the referendum on legislation enacted within and by
16 such city, town or county. Until provided by general law,
17 said cities and towns may prescribe the basis on which said
18 percentages shall be computed.

19 (9) Form and contents of initiative and of referendum
20 petitions; verification. Every initiative or referendum
21 petition shall be addressed to the secretary of state in the
22 case of petitions for or on state measures, and to the clerk
23 of the board of supervisors, city clerk or corresponding
24 officer in the case of petitions for or on county, city or
25 town measures; and shall contain the declaration of each
26 petitioner, for himself, that he is a qualified elector of the
27 state (and in the case of petitions for or on city, town or
28 county measures, of the city, town or county affected), his
29 post office address, the street and number, if any, of his
30 residence, and the date on which he signed such petition.
31 Every initiative measure shall embrace but one subject and
32 matters properly connected therewith, which subject shall be
33 expressed in the title; but if any subject shall be embraced
34 in an initiative measure which shall not be expressed in the
35 title, such initiative measure shall be void only as to so
36 much thereof as shall not be embraced in the title. Each sheet
37 containing petitioners' signatures shall be attached to a full
38 and correct copy of the title and text of the measure so
39 proposed to be initiated or referred to the people, and every
40 sheet of every such petition containing signatures shall be
41 verified by the affidavit of the person who circulated said
42 sheet or petition, setting forth that each of the names on
43 said sheet was signed in the presence of the affiant and that
44 in the belief of the affiant each signer was a qualified
45 elector of the state, or in the case of a city, town or county

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

3 (10) Official ballot. When any initiative or referendum
4 petition or any measure referred to the people by the
5 legislature is filed, in accordance with this section, with
6 the secretary of state, the secretary of state shall cause to
7 be printed on the official ballot at the next regular general
8 election the title and number of said measure, together with
9 the words "yes" and "no" in such manner that the electors may
10 express at the polls their approval or disapproval of the
11 measure.

12 (11) Publication of measures. The text of all measures
13 to be submitted shall be published as proposed amendments to
14 the constitution are published, and in submitting such
15 measures and proposed amendments the secretary of state and
16 all other officers shall be guided by the general law until
17 legislation shall be especially provided therefor.

18 (12) Conflicting measures or constitutional amendments.
19 If two or more conflicting measures or amendments to the
20 constitution shall be approved by the people at the same
21 election, the measure or amendment receiving the greatest
22 number of affirmative votes shall prevail in all particulars
23 as to which there is conflict.

24 (13) Canvass of votes; proclamation. It shall be the
25 duty of the secretary of state, in the presence of the
26 governor and the chief justice of the supreme court, to
27 canvass the votes for and against each such measure or
28 proposed amendment to the constitution within thirty days
29 after the election, and upon the completion of the canvass the
30 governor shall forthwith issue a proclamation, giving the
31 whole number of votes cast for and against each measure or
32 proposed amendment, and declaring such measures or amendments
33 to approve a tax as are approved by sixty percent of those
34 voting thereon to be law and for all other measures or
35 amendments, declaring such measures as are approved by a
36 majority of those voting thereon to be law.

37 (14) Reservation of legislative power. This section
38 shall not be construed to deprive the legislature of the right
39 to enact any measure except that the legislature shall not
40 have the power to adopt any measure that supersedes, in whole
41 or in part, any initiative measure to approve a tax that is
42 approved by sixty percent of the votes cast thereon or any
43 referendum measure to approve a tax that is decided by sixty
44 percent of the votes cast thereon unless the superseding
45 measure furthers the purposes of the initiative or referendum

1 measure and at least three-fourths of the members of each
2 house of the legislature, by a roll call of ayes and nays,
3 vote to supersede such initiative or referendum measure. For
4 all other initiatives and referendums, the legislature shall
5 not have the power to adopt any measure that supersedes, in
6 whole or in part, any initiative measure approved by a
7 majority of the votes cast thereon and shall not have the
8 power to adopt any measure that supersedes, in whole or in
9 part, any referendum measure decided by a majority of the
10 votes cast thereon, unless the superseding measure furthers
11 the purposes of the initiative or referendum measure and at
12 least three-fourths of the members of each house of the
13 legislature, by a roll call of ayes and nays, vote to
14 supersede such initiative or referendum measure.

15 (15) Legislature's right to refer measure to the people.
16 Nothing in this section shall be construed to deprive or limit
17 the legislature of the right to order the submission to the
18 people at the polls of any measure, item, section or part of
19 any measure.

20 (16) Self-executing. This section of the constitution
21 shall be, in all respects, self-executing.

22 (17) CHALLENGES TO THE CONSTITUTIONALITY OF INITIATIVE
23 MEASURES OR AMENDMENTS. AT ANY TIME AFTER A PETITION IN
24 SUPPORT OF A CONSTITUTIONAL AMENDMENT OR INITIATIVE MEASURE IS
25 FILED WITH THE SECRETARY OF STATE, A PERSON MAY BRING AN
26 ACTION IN SUPERIOR COURT TO CONTEST THE CONSTITUTIONALITY OF
27 THE MEASURE OR AMENDMENT ON THE GROUNDS THAT, IF ENACTED, THE
28 MEASURE OR AMENDMENT VIOLATES THE CONSTITUTION OF THE UNITED
29 STATES OR THE CONSTITUTION OF THIS STATE. IF A PERSON BRINGS
30 AN ACTION UNDER THIS SUBSECTION AT LEAST NINETY DAYS BEFORE
31 THE DATE OF THE ELECTION AT WHICH THE MEASURE OR AMENDMENT
32 WILL BE VOTED ON, THE COURT SHALL ADVANCE, HEAR AND DECIDE ON
33 THE ACTION AS SOON AS PRACTICABLE. ANY PARTY MAY APPEAL TO
34 THE SUPREME COURT WITHIN FIVE CALENDAR DAYS AFTER THE SUPERIOR
35 COURT ENTERS JUDGMENT. IF, IN ANY ACTION BROUGHT UNDER THIS
36 SUBSECTION AT LEAST NINETY DAYS BEFORE THE DATE OF THE
37 ELECTION AT WHICH THE MEASURE OR AMENDMENT WILL BE VOTED ON, A
38 COURT OF COMPETENT JURISDICTION ENTERS A JUDGMENT FINDING THAT
39 THE MEASURE OR AMENDMENT VIOLATES THE CONSTITUTION OF THE
40 UNITED STATES OR THE CONSTITUTION OF THIS STATE, THE SECRETARY
41 OF STATE OR OTHER OFFICER SHALL NOT CERTIFY OR PRINT THE
42 MEASURE OR AMENDMENT ON THE OFFICIAL BALLOT. THIS SUBSECTION
43 DOES NOT PRECLUDE OR LIMIT ANY CLAIM, CAUSE OF ACTION OR
44 REMEDY GIVEN BY LAW TO CHALLENGE THE VALIDITY OR LEGAL
45 SUFFICIENCY OF AN INITIATIVE MEASURE, REFERENDUM OR

1 CONSTITUTIONAL AMENDMENT, OR ANY PETITION FILED IN SUPPORT OF
2 AN INITIATIVE MEASURE, REFERENDUM OR CONSTITUTIONAL AMENDMENT.

3 2. Findings and declaration of purpose.

4 The legislature finds and declares as follows:

5 1. Like any other statute, laws enacted through the
6 initiative process must conform to the Arizona Constitution
7 and the United States Constitution. See *Fann v. State*, 251
8 Ariz. 425 (2021).

9 2. The Arizona Supreme Court has long maintained,
10 however, that it lacks authority to adjudicate challenges to
11 the constitutionality of an initiative unless and until the
12 initiative is adopted. See *League of Ariz. Cities and Towns*
13 *v. Brewer*, 213 Ariz. 557 (2006). One result of this inability
14 to obtain preelection judicial review is that voters and
15 advocacy organizations are compelled to invest time and
16 resources supporting or opposing proposals that may be
17 intrinsically invalid.

18 3. This amendment expressly authorizes challenges to
19 the constitutional validity of proposed initiative measures or
20 constitutional amendments at any time after a petition is
21 filed with the Secretary of State. If an action is commenced
22 at least ninety days before the election, the court must hear
23 and decide the case immediately and, if the court determines
24 that the measure or amendment is unconstitutional, enjoin it
25 from placement on the ballot.

26 4. This amendment supplements and expands access to the
27 courts to adjudicate the constitutionality of proposed
28 initiative measures or constitutional amendments. It does not
29 repeal, limit or preempt any other express or implied claim,
30 cause of action or remedy that the Legislature or the courts
31 have provided or may provide in the future.

32 2. The Secretary of State shall submit this proposition to the
33 voters at the next general election as provided by article XXI,
34 Constitution of Arizona.