

**IN THE SUPREME COURT
STATE OF ARIZONA**

RAISE THE WAGE AZ, *et al.*,
Plaintiffs/Appellants,

v.

STATE OF ARIZONA, *et al.*,
Defendants/Appellees.

No. CV-24-0178-AP/EL

Maricopa County Superior Court
No. CV2024-016116

**BRIEF OF *AMICI CURIAE* WARREN PETERSEN, PRESIDENT OF THE
ARIZONA STATE SENATE, AND BEN TOMA, SPEAKER OF THE
ARIZONA HOUSE OF REPRESENTATIVES**

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Pursuant to A.R.S. § 19-161(D), Warren Petersen, in his official capacity as President of the Arizona State Senate, and Ben Toma, in his official capacity as Speaker of the Arizona House of Representatives, respectfully submit this brief as *amici curiae* in support of Appellee Arizona Restaurant Association.

This Court rejected the premise of Appellants’ challenge to Senate Concurrent Resolution 1040 more than ninety years ago. The title requirement in Article IV, Part 2, Section 13 of the Arizona Constitution is textually and logically inapplicable to constitutional amendments proposed under Article XXI. *See Barth v. White*, 40 Ariz. 548, 556 (1932). In any event, SCR1040’s official title identifies the provisions of the Arizona Constitution it would amend, and denotes in a single, neutral phrase—*i.e.*, “relating to wages”—its subject matter. Appellants cannot translate their personal, subjective dissatisfaction with the amendment’s internal short title, the “Tipped Workers Protection Act,” into a redressable legal claim. The Court accordingly should affirm the trial court’s conclusion that SCR1040’s title is legally sufficient.

INTEREST OF THE *AMICI*

Ben Toma is the Speaker of the Arizona House of Representatives, and Warren Petersen is the President of the Arizona State Senate. Arizona law affords the Speaker and Senate President the right to intervene, file briefs, and otherwise “be

heard” in any action contesting the sufficiency of a constitutional amendment proposed by the Legislature. *See* A.R.S. § 19-161(D).

Further, *amici* wish to call this Court’s attention to binding authority the trial court may not have considered but that reinforces its ultimate disposition, *see Barth*, 40 Ariz. at 556.

ARGUMENT

Constitutional amendments proposed by the Legislature to the statewide electorate need not bear a “title” of any kind. *See* ARIZ. CONST. art. XXI, § 1. Tacitly recognizing the absence of any textual predicate for their claim, the Appellants unveil a novel title requirement for constitutional amendments, which they jerry-rig by conjoining a constitutional provision concerning only *statutory laws* with a common law anti-fraud safeguard for verbiage included on petition sheets. This doctrinal Frankenstein, however, trips over its own feet. The bill titling requirement in Article IV, Part 2, Section 13 is inapplicable to *constitutional amendments*, and SCR1040—as a legislative referral—does not entail the circulation of any petition. Finally, even if the titling rubric in Article IV could and did extend to proposed constitutional amendments, SCR1040 conforms to it by identifying the affected constitutional provisions and the measure’s subject matter.

I. There Is No Title Requirement At All for Constitutional Referrals

Appellants' disquisition on titling procedures for statutes obscures that these various standards are irrelevant to constitutional amendments proposed by the Legislature to the electorate. The Court already decided this question nearly a century ago. Surveying other jurisdictions' analyses of cognate clauses in their own constitutions, the Court noted that "these courts have held that constitutional provisions such as sections 13 and 14, part 2, article 4 . . . do not apply to proposed constitutional amendments submitted by the Legislature to the people," adding that "we have been unable to find a single case holding or even suggesting that constitutional limitations of this nature apply to proposed [*sic*] constitutional amendments." *Barth*, 40 Ariz. at 556.¹

Even if *Barth* did not dispose of the issue, though, Appellants' theory remains textually unsustainable. "When interpreting a constitutional provision, '[courts] begin with the text,'" *Fann v. State*, 251 Ariz. 425, 441, ¶ 59 (2021), and must "construe the text, when possible, in accord with its plain meaning." *Burns v. Ariz. Pub. Serv. Co.*, 254 Ariz. 24, 30, ¶ 23 (2022). The notion that an amendment must contain a "title"—let alone any metric by which the sufficiency of such title could

¹ The Court added that, pursuant to Article IV, Part 1, Section 1(9), constitutional amendments proposed through the petition process must "have *some* title and *some* text." *Barth*, 40 Ariz. at 556; *see also Leach v. Reagan*, 245 Ariz. 430, 437 ¶¶ 27–29 (2018). But there is no textual predicate for extending even this liberal "some title" rubric to legislatively-referred constitutional amendments.

be gauged—is nowhere to be found anywhere in Article XXI, Section 1. The single-subject and title limitations in Article IV, Part 2, Section 13 are confined to statutory “act[s]” of the Legislature. *See, e.g., Ariz. Sch. Bds. Ass’n. (“ASBA”) v. State*, 252 Ariz. 219, 227–28, ¶¶ 34–38 (2022). They are facially inapplicable to constitutional amendments, which the Legislature does not enact but merely “propose[s]” to the electorate for the latter’s adoption or rejection. *See Hoffman v. Reagan*, 245 Ariz. 313, 315–16 ¶¶ 9–11 (2018) (holding that single subject rule applies to *statutory* “enactments” of the Legislature).

Appellants’ interpretation actually would place Article IV, Part 2, Section 13 in direct conflict with Article XXI, Section 1. The former states that each statute “shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title”—a limitation denominated as the Single Subject Rule. By contrast, the Separate Amendment Rule in Article XXI, Section 1 provides that amendments to the Constitution must be submitted to the electorate “separately.” Despite some conceptual overlap, the Single Subject Requirement in Article IV for *statutory* enactments and the Separate Amendment Rule in Article XXI for *constitutional* changes are not legally or functionally equivalent to each other. *See Clean Elections Institute, Inc. v. Brewer*, 209 Ariz. 241, 244, ¶ 7 (2004) (“The separate amendment rule of Article 21 differs from the single-subject rule of Article 4.”), *abrogated in part on other grounds in ASBA*, 252 Ariz. at 228, ¶ 38.

This distinction necessarily extinguishes Appellants' claim, which relies on importing Article IV, Part 2, Section 13 into Article XXI, Section 1.

In the same vein, Article IV's Single Subject Rule is textually intertwined with its title requirement; the operative "subject" must be "expressed in the title." It follows that, to resuscitate the Appellants' theory, the Court would have to sever the title provision of Article IV from the rest of the Single Subject Rule (which, as noted above, does not apply to constitutional amendments), and then engraft it onto Article XXI—a feat of interpretive acrobatics that defies traditional canons of construction and common sense. *See Citizens Clean Elections Comm'n v. Myers*, 196 Ariz. 516, 521, ¶ 17 (2000) (“[T]he enumeration of certain specified things in a constitution will usually be construed to exclude all others not so enumerated” (citation omitted)).

More generally, this Court has vigilantly resisted efforts, such as the Appellants' here, to mix-and-match constitutional provisions constraining different actors (*i.e.*, the Legislature versus petition proponents) pursuing different lawmaking processes (*i.e.*, statutory changes versus constitutional amendments). *See Ariz. Chamber of Commerce & Indus. v. Kiley*, 242 Ariz. 533, 541, ¶ 31 (2017) (“This Court has long recognized that the Single Subject Rule applies only to acts by the

legislature; it does not apply to [statutory] initiatives.” (citing cases))²; *Fann*, 251 Ariz. at 442, ¶ 61 (“The Arizona Constitution repeatedly labels the legislature’s enactments differently than enactments by initiative.”); *see also Hoffman*, 245 Ariz. at 316, ¶¶ 13–17 (confirming that Single Subject Rule applies to all *statutory* measures approved by the Legislature).

In short, all statutory enactments—whether proposed or adopted by the voters or by the Legislature—must bear a “title.” ARIZ. CONST. art. IV, pt. 1, § 1(9), art. IV, pt. 2, § 13. By contrast, amendments to the Arizona Constitution proposed by the Legislature (such as SCR1040) need not contain a title of any kind. *See id.* art. XXI, § 1. This Court must “interpret [the] constitutional . . . provisions as they are written,” and is “constrained from rewriting the law under the guise of interpreting it even if [it] divine[s] a more desirable intended outcome than the text allows.” *Ariz. Free Enterprise Club v. Hobbs*, 253 Ariz. 478, 489, ¶ 38 (2022). Appellants’ title claim hence fails as a matter of basic constitutional interpretation.

II. SCR1040’s Official and Informal Titles Are Accurate and Legally Sufficient

Even if Article IV, Part 2, Section 13’s title requirement could be transplanted into Article XXI, SCR1040’s title would comply with it. Under this rubric, “[t]he

² In 2022, the voters amended the Constitution to extend the Single Subject Rule to statutory changes adopted through the initiative petition process. *See* ARIZ. CONST. art. IV, pt. 1, § 1(9).

title must be worded so that it puts people on notice as to the contents of the act,” although it need not “be a complete index to the act.” *State v. Sutton*, 115 Ariz. 417, 419 (1977). “In other words, a reasonable person should be expected to know what an act deals with based on its title.” *ASBA*, 252 Ariz. at 226, ¶ 26.

Here, the official title of SCR1040, which can be found easily in its header, notifies readers that it would “amend[] Article XVIII, Constitution of Arizona, by adding section 11; relating to wages.” This title format—*i.e.*, identifying the specific provisions being amended, followed by “a generalized description of a bill’s subject matter”—is facially permissible. *See ASBA*, 252 Ariz. at 227, ¶ 32. Crucially, Appellants do not allege that the official title omits reference to an amended provision or that SCR1040 pertains to anything other than “wages.”³

Instead of the official title, Appellants fixate on Section 2 of the resolution, headed, “Short Title,” which provides that “[t]his act may be cited as the ‘Tipped Workers Protection Act.’” Plaintiffs’ argument, however, is not viable for at least three reasons.

First, as noted above, the “Tipped Workers Protection Act” is not the official title of SCR1040. Rather, it is merely a provision embedded in the measure itself. Appellants tellingly are unable to furnish any authority for the notion that the

³ Separately, the Secretary of State must prepare a 50-word “descriptive title” for inclusion on the ballot, A.R.S. § 19-125(D), which is judicially reviewable, *see Quality Educ. & Jobs Supporting I-16-2012 v. Bennett*, 231 Ariz. 206 (2013).

Legislature cannot include an informal title into the text of an enactment, or that such unofficial titles are subject to any extrinsic limitation. *See Fairness and Accountability in Ins. Reform v. Greene*, 180 Ariz. 582, 587 (1994) (“[W]e remain convinced that a *measure’s text* is part of the legislative or political process and, before adoption, is not subject to this court’s review.” (emphasis in original)).

Second, the test that the Appellants attempt to enshrine in their newfound title doctrine—namely, that unofficial titles cannot “create[] a substantial danger of confusion or unfairness”—has never applied to the official titles of legislative acts. It is the standard that the Court has devised to evaluate the legal sufficiency of the 200-word summary the proponents of initiative measures must print on petition signature sheets they circulate. *See Molera v. Reagan*, 245 Ariz. 291, 297, ¶ 25 (2018); A.R.S. § 19-102(A). No court has ever employed this benchmark in connection with a legislative title, and Appellants proffer little more than their own say-so in urging this Court to blaze that trail.

Third, even in a world in which the *Molera* standard were controlling, SCR1040’s informal title comfortably conforms to it. The summary on petition sheets need not be “impartial” and may “describe[] the intended effects of the measure in a way that might appeal to prospective voters.” *Save Our Vote, Opposing C-03-2012 v. Bennett*, 231 Ariz. 145, 152, ¶ 28 (2013). SCR1040 undisputedly protects wages for tipped workers by codifying a constitutional guarantee—which

necessarily supersedes more transitory statutory enactments—that these employees are entitled to certain aggregate minimum compensation for their labor. Appellants’ personal appraisals of whether tipped workers will be, in fact, sufficiently “protected”—which necessarily rely on questionable assumptions about the immutability of current minimum wage statutes—are neither legally relevant nor judicially cognizable. “[T]he proper place to argue about the potential impact of an initiative is in the political arena,” not the courthouse. *Tilson v. Mofford*, 153 Ariz. 468, 473 (1987).

CONCLUSION

For the foregoing reasons, the Court should affirm the trial court’s judgment.

RESPECTFULLY SUBMITTED this 14th day of August, 2024.

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