

**SUPREME COURT OF ARIZONA**

MAKE ELECTIONS FAIR,

Plaintiff/ Appellee,

v.

BEN TOMA, et al.,

Defendants/ Appellants.

Arizona Supreme Court  
No. CV-24-0187-AP/EL

Maricopa County  
Superior Court  
No. CV2024-018789

**SEPARATE APPENDIX TO THE ATTORNEY GENERAL'S AMICUS  
BRIEF**

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The appendix page number matches the electronic PDF page number. This Appendix complies with the bookmarking requirements of ARCAP 13.1(d)(3).

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HONORABLE MELISSA IYER JULIAN

CLERK OF THE COURT  
A. Delgado  
Deputy

MAKE ELECTIONS FAIR

MARY R O'GRADY

v.

BEN TOMA, et al.

BRUNN W ROYSDEN III

RHONDA L BARNES  
ANDREW W GOULD  
KARA MARIE KARLSON  
ANDREW GEORGE PAPPAS  
JUDGE JULIAN  
DOCKET CV TX

**UNDER ADVISEMENT RULING**

**Re: Verified Petition for Special Action  
(Challenge to Publicity Pamphlet Analysis)**

The issue presented in this case is whether the Legislative Council's analysis of Initiative No. I-14-2024 (the "Make Elections Fair Arizona Act" or "Initiative") complies with A.R.S. § 19-124(C). Section 19-124(C) requires the Council to "prepare and file with the secretary of state an impartial analysis" that describes the Initiative and is "written in clear and concise terms." To satisfy this duty, the Council's analysis must be "completely free from any misleading tendency." *Tobin v. Rea*, 231 Ariz. 189, 195, ¶ 18 (2013) (quotations omitted).

Here, the Council's analysis selectively emphasizes the Initiative's voter ranking provisions. In so doing, the analysis inaccurately suggests that its enactment would mandate the use of voter ranking to determine the winning candidate in all future elections. This is misleading to voters and, therefore, violates section 19-124(C). As a result, the analysis must be revised.

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**PROCEDURAL HISTORY**

Plaintiff, Make Elections Fair, a political action committee (the “Committee”) filed its Verified Complaint for Special Action together with an Application for Order to Show Cause on July 17, 2024. This Court held a return hearing on the show cause application on July 19, 2024, at which time the parties agreed to proceed on this matter through expedited briefing on cross-motions for summary judgment in lieu of an evidentiary hearing. The parties further agreed that the exhibits attached to the Verified Complaint for Special Action are the only relevant documents needed to adjudicate this matter on the merits so that neither party would be filing a separate fact statement.

The parties’ motion and cross-motion were fully briefed as of August 8, 2024. This Court also considered the Attorney General’s Amicus Curiae Brief in Support of Plaintiff, filed July 30, 2024. This Court heard oral argument on the pending cross-motions on August 9, 2024.

After considering the arguments of the parties and the entire record in this matter, this Court finds, and orders as follows on the merits of the Application and Verified Complaint.

**MATERIAL FACTS**

A. The Initiative

The Committee is an Arizona political action committee that sponsored the Initiative. The Initiative would amend several sections of the Arizona Constitution for the purpose of eliminating “partisan politics” from primary elections and to “provide[] additional flexibility regarding general elections.” (Compl., Ex. 1 at § 2.) First, the Initiative would amend Article VII, section 2 of the Arizona Constitution to provide that Arizona citizens’ right to vote may not be denied on account of “political party affiliation or nonaffiliation,” and to guarantee that no person be “denied a ballot for public office nor be restricted from selecting any candidates for public office based on the person’s political party affiliation or nonaffiliation.” The Initiative next proposes to amend Article VII, section 7 to provide that the section “does not prohibit the use of voter rankings to determine which person or persons received the highest number of legal votes.”

The Initiative would also amend Article VII, section 10 of the Arizona Constitution, requiring changes to the State’s direct primary election law. Among other things, those changes would require that (1) all qualified electors be able to vote in the primary election regardless of the qualified elector’s, or any candidate’s, political party affiliation; (2) that all candidates who qualify for election to an office be placed on the same ballot for the primary election regardless of the candidate’s political party affiliation; (3) that all candidates for an office, regardless of

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political party affiliation, have the same signature requirements to qualify for the primary election ballot; and (4) that all qualified electors be able to sign a candidate nomination petition without regard to the elector's or the candidate's political party affiliation.

The same section of the Initiative—section 5—would prescribe a range of the number of candidates who may advance from the primary to the general election, subject to determination or amendment by the Legislature, the Secretary of State, or the people through initiative or referendum. The next section of the Initiative—section 6—would amend Article VII, section 11 of the Constitution, regarding general elections. The Initiative provides that if the Legislature, the Secretary of State, or the people decide that “only two candidates may advance to the general election for an office to which one candidate will be elected, the candidate who receives the majority of votes cast for that office at the general election is elected.” On the other hand, if the Legislature, the Secretary of State, or the people decide that “three or more candidates may advance from the primary election to the general election for an office to which one candidate will be elected,” then “voter rankings shall be used to determine which candidate is elected for that office at the general election.” The section provides minimum requirements for the voter-ranking process, and authorizes the use of voter rankings “in other elections as provided by law.”

The final substantive section of the Initiative—section 7—prohibits the use of public monies to “administer political party elections,” but makes an exception for a Presidential Preference Election that is open to persons registered as no party preference or independent or with a political party that is not qualified for representation.

B. Duties of Legislative Council

The Council is a statutory agency in the legislative branch of Arizona state government, with professional staff and duties related to “bill drafting, research and other services to the legislature deemed necessary or advisable by the council to improve the quality of legislation.” *See* A.R.S. § 41-1301 to -1307. Its members are Senators and Representatives who are selected to represent all geographic regions of the state and reflect a bipartisan composition. *See* A.R.S. § 41-1301. The Council has multiple duties specific to initiatives, referenda, and proposed constitutional amendments, including optional text review of an initiative or referendum, A.R.S. § 19-111.01, and “prepar[ing] and fil[ing] with the secretary of state an impartial analysis of the provisions of each ballot proposal of a measure or proposed amendment.” A.R.S. § 19-124(C).

After approval and filing with the Secretary of State, the analysis is then printed in the official publicity pamphlet mailed to each voter under the heading “Analysis by Legislative Council.” *See* A.R.S. § 19-123(A)(4). The full text of the proposed amendment, the proponent’s “purpose and intent” statement, any “for” and “against” arguments, a descriptive title, and “yes”

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and “no” language are also printed in the publicity pamphlet, so voters have multiple different sources of information from which to make an informed decision. *See* A.R.S. § 19-123(A)(4).

C. Approval of the Initiative’s Draft Analysis

On July 3, 2024, the Council’s staff released draft analyses of 14 referendum and initiative measures, including the Initiative. The Initiative’s analysis was distributed to all ninety members of the Legislature and the attorneys for the Make Elections Fair committee, and also posted on the Council’s website. The Council met on July 8, 2024, to consider the draft analysis.

The Committee’s attorney spoke about the draft analysis at the Council’s July 8<sup>th</sup> meeting. He stated that the “substance” of the analysis was “generally quite good” and limited his comments to the “order” of the analysis. He said that section 1’s placement is “potentially confusing to voters” and requested moving section 1 to after section 5.<sup>1</sup>

The Council ultimately approved the draft analysis without adopting the Committee’s requested change. This lawsuit followed.

Notably, the Council’s members are now divided on whether the analysis should be revised. In response to the Committee’s pending motion for summary judgment, several Council members filed a brief supporting the Committee’s request to revise the analysis. Several other Council members oppose the Committee’s requested changes, and those members filed the pending response and cross-motion. The Council members supporting and opposing the Committee’s requested revision appear to be divided along party lines.

D. Challenged Portions of the Council’s Analysis

The Council’s legislative analysis begins with a description of the existing law governing primary and general elections and then discusses the provisions of the Initiative. The Committee contends that the following portions of the analysis are both misleading and biased:

The Arizona Constitution currently requires the Legislature to enact a direct primary election law for the nomination of candidates for all elective state, county, and city offices, including federal congressional offices. The candidates from each political party who advance from the primary election then face each

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<sup>1</sup> *See* Meeting of the Legislative Council (Jul. 8, 2024) available at <https://www.azleg.gov/videoplayer/?eventID=2024071002> (last visited Aug. 11, 2024).

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other in the general election, where the candidate receiving the highest number of legal votes is declared elected.

Proposition \_\_\_ would amend the Arizona Constitution to:

1. Allow for the use of voter rankings at all elections held in this state to determine which candidate received the highest number of legal votes (see also paragraph 4 below).

....

4. Revise the general election procedures as follows: . . . .

....

(c) The Legislature may enact a law to determine the process to be used for voter rankings. If the Legislature does not enact a law on voter rankings, the Secretary of State shall determine the process to be used for voter rankings. At a minimum, the voter rankings process must allow a voter to rank all candidates for an office in order of the voter's preference.

(Compl. at Ex. 3.)

The Committee alleges these portions of the ballot analysis violate section 19-124(C) by: (1) improperly amplifying changes the Initiative allows while understating the Initiative's required changes and (2) erroneously implying that the Initiative will automatically require the use of voter rankings. (Committee Motion at 2.) The Committee seeks an order enjoining the Arizona Secretary of State from including the Legislative Council's analysis in the Publicity Pamphlet for the 2024 election and also seeks an order compelling the Legislative Council to adopt an analysis that complies with section 19-124(C). The Council disputes these claims, asserting that its analysis is neutral, accurate, and "substantially complies" with the statutory requirements.

LEGAL ANALYSIS

A. Standard for Statutory Compliance and Judicial Review

A.R.S. § 19-124(C) requires the Council to "prepare and file with the secretary of state an impartial analysis" that describes the Initiative measure "in clear and concise terms." "[T]he purpose of the required analysis is to assist voters in rationally assessing an initiative proposal by providing a fair, neutral explanation of the proposal's contents and the changes it would make if adopted." *Tobin*, 231 Ariz. at 193, ¶ 10 (quoting *Fairness & Accountability in Ins. Reform v. Greene*, 180 Ariz. 582, 590 (1994)). Arizonans have a "right to expect a completely neutral

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summary, without advocacy or argument.” *Citizens for Growth Mgmt. v. Groscost* (“CGM”), 199 Ariz. 71, 73 ¶ 11 (2000).

To achieve that purpose, “the legislative council [must] eschew advocacy and . . . adopt, instead, an evenhanded assessment that neither omits, exaggerates, nor understates material provisions of an initiative measure.” *Tobin*, 231 Ariz. at 194, ¶ 12 (quoting *Greene*, 180 Ariz. at 593). The analysis also “must be free from any misleading tendency, whether of amplification” or otherwise. *Id.* (quoting *Greene*, 180 Ariz. at 590). Thus, an analysis that “selectively emphasize[s]” one feature of an initiative, even if accurate, may violate section 19-124(C) by “impermissibly advocat[ing] against the measure.” *Id.* at 197, ¶ 33.

Nevertheless, it is not “the prerogative” of the judiciary “to act in place of the agency to achieve that result.” *Greene*, 180 Ariz. at 593. “By their very nature, most disputes over ballot proposals are contentious. Thus, proponents and opponents are often dissatisfied with the Council’s analyses. [Courts] cannot settle each of these disputes. . . .” *Ariz. Leg. Council v. Howe*, 192 Ariz. 378, 383, ¶ 17 (1998) (citation omitted). When reviewing challenges to the Council’s analyses, this Court “do[es] so reluctantly and with reservation.” *Tobin*, 231 Ariz. at 197, ¶ 34. The standard of judicial review is “substantial compliance” and “the question is ‘whether reasonable minds could conclude that the Council met the requirements of the law, not whether [courts] believe the judicial system could itself devise a better analysis.’” *Tobin*, 231 Ariz. at 193 ¶ 11 (quoting *Howe*, 192 Ariz. at 383, ¶ 17).

B. The Selective Emphasis of Voter Ranking in Section 1 is Misleading.

First, the Committee argues that the analysis reflects the Council’s effort to dissuade voters from supporting the initiative by selectively emphasizing the Initiative’s voter ranking provisions in a manner that misleads voters into believing that “the Initiative on its own will automatically require the use of voter rankings.” (Committee Motion at 8.) In response, the Council urges that the sequence or structure of its analysis does not violate the statutory requirements unless the language used in its analysis is also “provocatively phrased.” (Rsp. at 7.) Because the analysis here used neutral language, the Council urges that it complied with its statutory obligations. The Council also asserts that it had “logical reasons” for discussing voter rankings “before the extended discussion of primary election procedures,” making its chosen sequence a matter this Court must defer to under the substantial compliance standard of judicial review. (Rsp. at 11.)

The Court agrees with the Council that the analysis here does not involve the use of “provocative phrasing” when it explains that the Initiative’s enactment would “[a]llow for the use of voter rankings at all elections held in this state to determine which candidate received the highest number of legal votes.” *See Tobin*, 231 Ariz. at 197, ¶ 33. Nor does the analysis’s use of

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the word “allow” instead of the phrase “does not prohibit” render the description inaccurate or biased. When considered in isolation from the remainder of the analysis, the phrasing used in section 1 of the analysis is not inaccurate or misleading.

Similarly, the Court is unpersuaded by the Committee’s argument that section 19-124(C) requires the Council’s analysis to describe the Initiative’s “required” provisions before it discusses things the Initiative merely “permits.” Evaluating statutory compliance does not permit this Court to micromanage the exact sequence or the specific words the Council chooses to use so long as its analysis is neutral, accurate, and easily understood.

But, as the Supreme Court recognized in *Tobin*, “even accurate statements can be misleading, argumentative, ‘tinged with partisan coloring,’ or otherwise lack the impartiality § 19-124[(C)] requires.” *Tobin*, 231 Ariz. at 196, ¶ 30 (citations omitted). This is particularly true where the analysis “selectively emphasizes” a particular initiative provision in a manner that would mislead voters about the impact it would have on existing laws. *See, e.g., Greene*, 180 Ariz. at 591-92 (misleading suggestion that existing law did not allow for control over civil lawsuits); *CGM*, 199 Ariz. at 72-73, ¶¶ 6-7 (“neutral description of current law” was improper as “rhetorical strategy” designed to suggest that Initiative was unnecessary); *Sotomayor v. Burns*, 199 Ariz. 81, 82, ¶ 4 (2000) (description of existing law as requiring “bilingual” instruction was misleading).

Much like the analyses at issue in *Greene*, *Sotomayor*, and *CGM*, the Council’s analysis is misleading. It first discusses that Arizona law currently provides that the candidate who receives the highest number of votes is declared the winner of a general election. The analysis then selectively emphasizes that the Initiative would “amend” the constitution to provide for the use of voter ranking to declare election winners. In so doing, the analysis misleadingly suggests that, if the Initiative is enacted, the candidate who receives the most votes would no longer be declared the victor in “all” Arizona elections. As the Committee points out, this is inaccurate.

Contrary to the analysis’s implication, the Initiative does not require the use of voter ranking in declaring an election winner in all instances. Instead, it allows for the use of voter ranking, but *only* if the Legislature, the Secretary of State, or the people decide to permit more than two candidates to advance from the primary election to the general election. If that never occurs, then the Initiative would effect no change in how the winner of an election is determined. The Council’s emphasis on voter ranking without this “significant contextual information,” renders the analysis misleading. *Tobin*, 231 Ariz. at 195, ¶ 19.

The cross-reference to paragraph 4 where the voter ranking provisions are discussed in further detail is another example of the way in which the analysis selectively emphasizes the voter ranking issue and compounds confusion about the Initiative’s operative provisions. By

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discussing voter ranking first and then directing readers immediately to paragraph 4, the reader is encouraged to skip over several key provisions in the Initiative that explain the circumstances under which more candidates may advance from the primary election and how voter ranking would be utilized in those limited circumstances. The Court finds that this is a “rhetorical strategy” devised to dissuade voters from supporting the Initiative by confusing when and how voter ranking would be used under the Initiative and implying that its use would result in the unfair election of candidates who did not receive the highest number of the votes. Such a strategy is “tinged with partisan coloring” and violates the requirement of neutrality.

In arguing that the Council’s selective emphasis on voter rankings does not violate section 19-124(C), the Council relies heavily on the Arizona Supreme Court’s opinion in *Ariz. Leg. Council v. Howe*, 192 Ariz. 378 (1998). In *Howe*, the Supreme Court upheld the Council’s analysis even though it selectively referenced “heroin, LSD, marijuana and certain analogs of PCP” as examples of the Schedule I drugs doctors could prescribe under the initiative at issue “to relieve the pain and suffering of a seriously ill or terminally ill patient.” *Id.* at 381-82, ¶ 7. In so doing, the Court emphasized that section 19-124 discourages the use of “technical terms” to ensure the analysis can be understood by voters. *Id.* at 384, ¶ 19. Using technical jargon such as “Schedule I substances” or referring to the drugs by their “scientifically complex” chemical compounds “might make the entire analysis incomprehensible” and undermine the primary purpose behind the Council’s analysis. *Id.* at 384, ¶¶ 18-19. Because the Council’s analysis reflected a “good faith effort to choose drugs to list in the analysis that the average voter probably can recognize,” its selective emphasis was not designed to mislead or persuade voters, but was for the proper purpose of helping them understand the initiative more clearly. *Id.*

The selective emphasis of voter ranking is not analogous to the issue presented in *Howe*. Here, the initial reference to voter ranking does nothing to assist the average voter in understanding its import because the specific explanation of when voter ranking could or would be utilized is not discussed until much later in the analysis. If anything, the summary reference to voter ranking being “allowed” to determine election winners makes the analysis *more* confusing as it implies voter ranking would supplant the current system where the person with the majority of votes wins the election. Unlike the analysis at issue in *Howe*, the selective emphasis of voter ranking does not reflect a “good faith effort” to make the Initiative easier to understand.

The Council’s proffered “logical” reason for emphasizing voter ranking at the beginning of its analysis is equally unavailing. The Council asserts that it decided to reference voter ranking first because it is a “material change in the law that applies to all types of elections.” (Rsp. at 11.) But the Arizona Constitution at Article 7, section 7 makes no reference to voter ranking at all. Accordingly, the fact that the Initiative amends that provision to provide that it does not “prohibit” voter ranking is not necessarily a “material change.”

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Even setting aside the issue of whether voter ranking is a material change to the constitution, the voter ranking provision is not the only provision of this Initiative that “applies to all elections.” The Initiative’s nondiscrimination provisions also apply to all elections, but were nevertheless discussed separately at the conclusion of the analysis.

Despite this internal inconsistency, the Council insists that these other provisions were placed last because they are “abstract.” But a provision that precludes voter discrimination on the basis of a person’s political party affiliation or non-affiliation is no more or less “abstract” than a provision that “does not prohibit” the use of voter ranking in declaring election victories. The Council’s post hoc justifications are unpersuasive in demonstrating a good faith or rational basis for the analysis’s selective emphasis of voter ranking at the beginning of the analysis.

The Court finds that the analysis’s emphasis on voter ranking at page 1, lines 7-8 of the analysis reflects the use of an improper rhetorical strategy that is also misleading to voters when considered together with the introductory paragraph and the cross-reference to section 4. In this regard the analysis violates A.R.S. § 19-124(C).

C. Section 4(c) is not Misleading.

The Committee’s motion also asserts that section 4(c) of the analysis is misleading because “it falsely suggests voter rankings will automatically be used if the Initiative passes.” (Committee Motion at 12.) This Court disagrees. Unlike section 1, section 4(c) follows immediately after subsections 4(a) and (b), which explain neutrally and clearly that voter ranking would be used only if “three or more candidates advance to the general election.” Section 4(c) complies with A.R.S. § 19-124(C).

**ORDERS**

**IT IS THEREFORE ORDERED** granting the Committee’s Motion for Summary Judgment, filed July 23, 2024.

**IT IS FURTHER ORDERED** denying the Cross Motion for Summary Judgment, filed by Defendants Toma, Petersen, Bolick, Borrelli, Kerr, Grantham, Martinez, and Nguyen on August 1, 2024.

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**IT IS FURTHER ORDERED** entering judgment on the Verified Complaint, filed July 17, 2024, as follows:

- (1) The Secretary of State is hereby enjoined from printing the legislative analysis of Initiative No. I-14-2024 in the publicity pamphlet in the form approved by the Legislative Council and attached to the Verified Complaint as Exhibit 3.
- (2) On or before August 29, 2024, the Council is directed to revise its analysis of Initiative No. I-14-2024 to comply with A.R.S. § 19-124(C) to correct the portion found by this order to be misleading to Arizona voters.

The Court expressly determines that, with respect to its ruling herein granting summary judgment and entering judgment on the Verified Complaint for Special Action, there is no just reason for delay. Therefore, the court directs the entry of judgment, making this is a final, appealable order. Ariz. R. Civ. P. 54(b).

**IT IS FURTHER ORDERED** that, within 20 days of the filing date of this minute entry, counsel for the Committee shall submit a verified statement of taxable costs along with a proposed form of judgment awarding costs. The proposed judgment shall leave a blank space for the amount of costs awarded and shall include Rule 54(c) language. After considering any objections to the cost statement and form of judgment, this Court will enter final judgment in this matter.



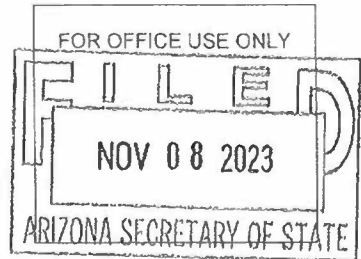
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Honorable Melissa Iyer Julian  
Maricopa County Superior Court Judge



STATE OF ARIZONA

Application for Serial Number Initiative Petition A.R.S. § 19-111



The undersigned intends to circulate and file an initiative petition and hereby makes application for the issuance of an official serial number to be printed in the lower right-hand corner of each side of each signature sheet of such petition. Attached hereto is the full title and text, in no less than eight point type, of the measure or constitutional amendment intended to be initiated at the next general election.

Statutory Measure [ ] Constitutional Amendment [x]

Date of Application 11/08/2023
Signatures Required 383,923
Deadline for Filing 07/03/2024
Serial Number Issued I-14-2024

This Constitutional amendment expands choices in primaries. eliminates party-based restrictions on election participation, and applies the same rules to candidates for the same office. It prohibits using public monies for party elections, including presidential preference elections not open to all voters. For primaries for state, county, and Congressional offices, candidates for the same office have the same signature requirements and appear on the same ballot. Everyone eligible to vote for an office may vote for any candidate and sign any candidate petition regardless of party affiliation. Parties may support candidates. Law may allow candidates to list party affiliation, as provided in amendment. For 1-winner races, 2 to 5 candidates may advance to the general, as provided by law. For multi-winner races, additional candidates advance. If 3 or more candidates may advance in 1-winner races, voter rankings are used at the general. If implementing legislation isn't operative by 11/1/2025, Secretary of State decides how many candidates advance and the voter ranking process, if any, subject to legislative modification as provided in the amendment. Legislature may change the number of candidates for an office who advance once every 6 years. Amendment is exempt from revenue source requirement.

Sarah Smallhouse

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Make Elections Fair PAC

Committee Name
101454
Committee ID No.
Sarah Smallhouse
Chairperson
Chuck Coughlin
Treasurer
830 North 4th Avenue
Committee Address
Phoenix AZ 85003
City State Zip
(602) 528-3684
Committee Telephone Number
info@makeelectionsfairaz.com
Committee E-mail Address

By submitting this Application for Serial Number and checking all boxes below, I acknowledge the following:

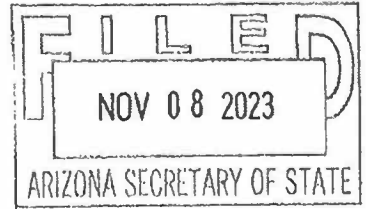
- That I have received and will review the accompanying Instructions for Statewide Initiatives, including the Secretary of State's recommended best practices for printing copies of the Statewide Initiative Petition to be circulated.
That at the time of filing, I was provided instructions regarding accurate completion of the Statewide Initiative Petition form.

Signature of Sarah Smallhouse

Applicant Signature

11-7-23

Date



**OFFICIAL TITLE**

**AN INITIATIVE MEASURE**

AMENDING ARTICLE VII, SECTIONS 2, 7, 10 AND 11, CONSTITUTION OF ARIZONA; AMENDING ARTICLE VII, CONSTITUTION OF ARIZONA, BY ADDING SECTION 19; RELATING TO ELECTIONS.

**TEXT OF PROPOSED AMENDMENT**

Be it enacted by the People of the State of Arizona:

**Section 1. Short Title**

This Constitutional Amendment shall be known as the "Make Elections Fair Arizona Act".

**Sec. 2. Purpose and intent**

The Make Elections Fair Arizona Act is intended to ensure that all voters are treated equally and all candidates for an office compete according to the same rules; that the People of Arizona freely choose their elected officials, without the controlling influence of partisan politics; and that elected officials are accountable to the People rather than political parties. To accomplish these goals, this Constitutional Amendment creates a primary system in which people may vote for the candidate of their choice, regardless of the political party of the voter or the candidate. It also provides additional flexibility regarding general elections.

**Sec. 3. Article VII, section 2, Constitution of Arizona, is amended to read:**

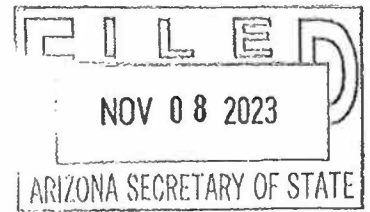
**2. Qualifications of voters; disqualification**

Section 2. A. No person shall be entitled to vote at any general election, or for any office that now is, or hereafter may be, elective by the people, or ~~upon~~ ON any question ~~which~~ THAT may be submitted to a vote of the people, unless such person be a citizen of the United States of the age of eighteen years or over, and shall have resided in the state for the period of time preceding such election as prescribed by law, provided that qualifications for voters at a general election for the purpose of electing presidential electors shall be as prescribed by law. The word "citizen" shall include persons of the male and female sex.

B. The rights of citizens of the United States to vote and hold office shall not be denied or abridged by the state, or any political division or municipality thereof, on account of sex OR OF POLITICAL PARTY AFFILIATION OR NONAFFILIATION, and the right to register, to vote and to hold office under any law now in effect, or ~~which~~ THAT may hereafter be enacted, is hereby extended to, and conferred ~~upon~~ ON males and females alike.

C. NO PERSON SHALL BE DENIED A BALLOT FOR PUBLIC OFFICE NOR BE RESTRICTED FROM SELECTING ANY CANDIDATES FOR PUBLIC OFFICE BASED ON THE PERSON'S POLITICAL PARTY AFFILIATION OR NONAFFILIATION.

E.D. No person who is adjudicated an incapacitated person shall be qualified to vote at any election, nor shall any person convicted of treason or felony, be qualified to vote at any election unless restored to civil rights.



Sec. 4. Article VII, section 7, Constitution of Arizona is amended to read:

7. Highest number of votes received as determinative of person elected; voter rankings

Section 7. In all elections held by the people in this state, the person, or persons, receiving the highest number of legal votes shall be declared elected. THIS SECTION DOES NOT PROHIBIT THE USE OF VOTER RANKINGS TO DETERMINE WHICH PERSON OR PERSONS RECEIVED THE HIGHEST NUMBER OF LEGAL VOTES.

Sec. 5. Article VII, section 10, Constitution of Arizona is amended to read:

10. Direct primary election law

Section 10. A. The Legislature shall enact a direct primary election law that complies with the requirements of this section and that provides for the nomination of candidates for all elective State, AND county, and city offices, AND candidates for United States Senator and for Representative in Congress. ~~Any person who is registered as no party preference or independent as the party preference or who is registered with a political party that is not qualified for representation on the ballot may vote in the primary election of any one of the political parties that is qualified for the ballot.~~

B. ALL QUALIFIED ELECTORS WHO ARE OTHERWISE ELIGIBLE TO VOTE FOR AN OFFICE MAY VOTE IN THE PRIMARY ELECTION REGARDLESS OF THE QUALIFIED ELECTOR'S, OR ANY CANDIDATE'S POLITICAL PARTY AFFILIATION OR NONAFFILIATION.

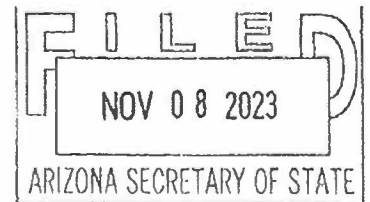
C. ALL CANDIDATES WHO QUALIFY FOR ELECTION TO AN OFFICE SHALL BE PLACED ON THE SAME BALLOT FOR THE PRIMARY ELECTION REGARDLESS OF THE CANDIDATE'S POLITICAL PARTY AFFILIATION OR NONAFFILIATION.

D. ALL CANDIDATES FOR AN OFFICE, REGARDLESS OF POLITICAL PARTY AFFILIATION OR NONAFFILIATION, SHALL HAVE THE SAME SIGNATURE REQUIREMENTS TO QUALIFY FOR THE PRIMARY ELECTION BALLOT FOR THE OFFICE. AN OTHERWISE QUALIFIED ELECTOR MAY SIGN A CANDIDATE NOMINATION PETITION WITHOUT REGARD TO THE POLITICAL PARTY AFFILIATION OR NONAFFILIATION OF THE QUALIFIED ELECTOR OR THE CANDIDATE.

E. THIS SECTION DOES NOT PROHIBIT A POLITICAL PARTY FROM ENDORSING OR OTHERWISE SUPPORTING A CANDIDATE AS PROVIDED BY LAW.

F. IF APPLICABLE LAW ALLOWS A CANDIDATE TO LIST THE CANDIDATE'S POLITICAL PARTY AFFILIATION NEXT TO THE CANDIDATE'S NAME ON THE BALLOT, THE BALLOT MUST ALSO INCLUDE A STATEMENT THAT A CANDIDATE'S POLITICAL PARTY AFFILIATION IS NOT AN INDICATION THAT A CANDIDATE HAS BEEN NOMINATED OR ENDORSED BY THAT POLITICAL PARTY, BUT ONLY REFLECTS THE POLITICAL PARTY REGISTRATION OF THE CANDIDATE.

G. AS PROVIDED BY LAW, FOR ANY OFFICE TO WHICH ONE CANDIDATE IS TO BE ELECTED, NOT FEWER THAN TWO CANDIDATES AND NOT MORE THAN FIVE CANDIDATES MAY ADVANCE FROM THE PRIMARY ELECTION TO THE GENERAL ELECTION. FOR ANY OFFICE TO WHICH TWO CANDIDATES ARE TO BE ELECTED, NOT FEWER THAN FOUR CANDIDATES AND NOT MORE THAN SEVEN CANDIDATES MAY ADVANCE FROM THE PRIMARY ELECTION TO THE GENERAL ELECTION. FOR ANY OFFICE TO WHICH THREE CANDIDATES ARE TO BE ELECTED, NOT FEWER THAN SIX CANDIDATES AND NOT MORE THAN EIGHT CANDIDATES MAY ADVANCE FROM THE PRIMARY ELECTION TO THE GENERAL ELECTION. A CANDIDATE'S POLITICAL PARTY



AFFILIATION OR NONAFFILIATION CANNOT BE CONSIDERED WHEN DETERMINING HOW MANY OR WHICH CANDIDATES ADVANCE FROM THE PRIMARY ELECTION TO THE GENERAL ELECTION.

H. IF THE LEGISLATURE DOES NOT ENACT A LAW UNDER SUBSECTION G OF THIS SECTION THAT BECOMES OPERATIVE ON OR BEFORE NOVEMBER 1, 2025, THE SECRETARY OF STATE SHALL DETERMINE THE NUMBER OF CANDIDATES FOR EACH OFFICE WHO MAY ADVANCE FROM THE PRIMARY ELECTION TO THE GENERAL ELECTION, CONSISTENT WITH THE REQUIREMENTS SET FORTH IN SUBSECTION G OF THIS SECTION. IF THREE OR MORE CANDIDATES MAY ADVANCE FROM THE PRIMARY ELECTION TO THE GENERAL ELECTION FOR AN OFFICE TO WHICH ONE CANDIDATE WILL BE ELECTED, AND THE LEGISLATURE HAS NOT PRESCRIBED BY LAW A PROCESS BY WHICH VOTER RANKINGS ARE USED TO DETERMINE WHICH CANDIDATE IS ELECTED TO AN OFFICE AT THE GENERAL ELECTION, THE SECRETARY OF STATE SHALL PRESCRIBE A PROCESS THAT COMPLIES WITH SECTION 11 OF THIS ARTICLE. LEGISLATION MAY AMEND THE SECRETARY OF STATE'S DETERMINATIONS MADE PURSUANT TO THIS SUBSECTION, EXCEPT THAT THE LEGISLATURE MAY NOT MODIFY THE SECRETARY'S DETERMINATION AS TO THE NUMBER OF CANDIDATES THAT MAY ADVANCE FROM THE PRIMARY ELECTION TO THE GENERAL ELECTION LESS THAN SIX YEARS AFTER THE SECRETARY'S DETERMINATION IS MADE. THIS SUBSECTION DOES NOT RESTRICT THE POWER OF QUALIFIED ELECTORS TO CHANGE, THROUGH AN INITIATIVE OR REFERENDUM, THE NUMBER OF CANDIDATES WHO MAY ADVANCE FROM THE PRIMARY ELECTION TO THE GENERAL ELECTION.

I. EACH CANDIDATE FOR OFFICES THAT HAVE PRIMARY ELECTIONS SUBJECT TO THIS SECTION MAY APPEAR ON THE GENERAL ELECTION BALLOT ONLY IF THE CANDIDATE QUALIFIES FOR THE GENERAL ELECTION THROUGH A PRIMARY ELECTION OR, THROUGH A PROCESS PRESCRIBED BY LAW, FILLS A VACANCY CREATED BY THE DEATH OR WITHDRAWAL OF A CANDIDATE WHO IS NOMINATED AT THE PRIMARY ELECTION

J. NOT MORE THAN ONCE EVERY SIX YEARS, THE LEGISLATURE MAY ENACT LEGISLATION CHANGING THE NUMBER OF CANDIDATES WHO MAY ADVANCE FROM THE PRIMARY ELECTION TO THE GENERAL ELECTION FOR AN OFFICE. THIS SUBSECTION DOES NOT RESTRICT THE POWER OF QUALIFIED ELECTORS TO CHANGE, THROUGH AN INITIATIVE OR REFERENDUM, THE NUMBER OF CANDIDATES WHO MAY ADVANCE FROM THE PRIMARY ELECTION TO THE GENERAL ELECTION.

K. THIS SECTION IS NOT SUBJECT TO THE REQUIREMENTS IN ARTICLE IX, SECTION 23.

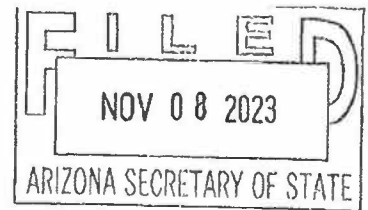
Sec. 6. Article VII, section 11, Constitution of Arizona is amended to read:

11. General elections; date; candidate ranking; definition

Section 11. A. There shall be a general election of representatives in congress, and of state, county, and precinct officers on the first Tuesday after the first Monday in November of the first even numbered year after the year in which Arizona is admitted to statehood and biennially thereafter.

B. IF ONLY TWO CANDIDATES MAY ADVANCE TO THE GENERAL ELECTION FOR AN OFFICE TO WHICH ONE CANDIDATE WILL BE ELECTED, THE CANDIDATE WHO RECEIVES THE MAJORITY OF VOTES CAST FOR THAT OFFICE AT THE GENERAL ELECTION IS ELECTED.

C. IF THREE OR MORE CANDIDATES MAY ADVANCE FROM THE PRIMARY ELECTION TO THE GENERAL ELECTION FOR AN OFFICE TO WHICH ONE CANDIDATE WILL BE ELECTED, VOTER RANKINGS SHALL BE USED TO DETERMINE WHICH CANDIDATE IS ELECTED FOR THAT OFFICE AT THE GENERAL ELECTION. THIS PROCESS, AT A MINIMUM, SHALL ALLOW A VOTER TO RANK ALL CANDIDATES FOR AN OFFICE IN ORDER OF THE VOTER'S PREFERENCE. IF A MAJORITY OF VOTES



CAST FOR THAT OFFICE AT THE GENERAL ELECTION DO NOT RANK A SINGLE CANDIDATE AS THE VOTERS' FIRST CHOICE PREFERENCE, THE PROCEDURES SHALL PROVIDE FOR THE TABULATION OF ALL VOTES LEGALLY CAST FOR THAT OFFICE AND TAKE INTO ACCOUNT VOTERS' RANKINGS OF CANDIDATES TO DETERMINE WHICH CANDIDATE IS ELECTED. VOTER RANKINGS MAY BE USED IN OTHER ELECTIONS AS PROVIDED BY LAW.

D. FOR THE PURPOSES OF THIS SECTION, "MAJORITY OF VOTES CAST" MEANS A MAJORITY OF ALL VOTES CAST FOR ALL CANDIDATES FOR A PARTICULAR OFFICE.

E. THIS SECTION IS NOT SUBJECT TO THE REQUIREMENTS IN ARTICLE IX, SECTION 23.

**Sec. 7. Article VII, Constitution of Arizona is amended to add a new Section 19 that reads:**

**19. Prohibition on Expenditure of Public Monies for Political Party Elections**

Section 19. A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, PUBLIC MONIES SHALL NOT BE SPENT TO ADMINISTER POLITICAL PARTY ELECTIONS, INCLUDING, WITHOUT LIMITATION, THE ELECTION OF PRECINCT COMMITTEE OFFICERS, THE PRESIDENTIAL PREFERENCE ELECTION, AND PARTISAN PRIMARY ELECTIONS TO NOMINATE A CANDIDATE FOR PUBLIC OFFICE. THIS SECTION APPLIES TO ALL JURISDICTIONS IN THIS STATE, INCLUDING CHARTER CITIES.

B. PUBLIC MONIES MAY BE USED TO ADMINISTER A PRESIDENTIAL PREFERENCE ELECTION IF ALL PERSONS WHO ARE REGISTERED AS NO PARTY PREFERENCE OR INDEPENDENT AS THE POLITICAL PARTY OF PREFERENCE OR WHO ARE REGISTERED WITH A POLITICAL PARTY THAT IS NOT QUALIFIED FOR REPRESENTATION ON THE BALLOT MAY VOTE IN THE ELECTION OF ANY ONE OF THE POLITICAL PARTIES THAT ARE QUALIFIED FOR THE BALLOT.

**Sec. 8. Severability**

The People of Arizona declare their intention that the provisions of this Constitutional Amendment are severable. If any provision of this Constitutional Amendment is held to be invalid for any reason by a court, the remaining provisions of this Amendment will be severed from the void portion and given the fullest possible force and application.

**Sec. 9. Applicability**

If approved by the voters, this Constitutional Amendment shall apply to elections occurring after July 1, 2026.

**Sec. 10. Legal Defense**

The People of Arizona desire that this Constitutional Amendment be defended if it is challenged in court. They therefore declare that the political committee registered to circulate petitions in support of this Constitutional Amendment, or any of its members, shall have standing to defend this Constitutional Amendment on behalf of and as the agent of the People of Arizona in any legal action brought to challenge the validity of this Constitutional Amendment or any of its provisions.

**PROPOSITION \_\_**  
**[I - 14 - 2024]**

**Make Elections Fair Arizona Act**

**ANALYSIS BY LEGISLATIVE COUNCIL**

1           The Arizona Constitution currently requires the Legislature to enact a direct primary  
2 election law for the nomination of candidates for all elective state, county and city offices,  
3 including federal congressional offices. The candidates from each political party who advance  
4 from the primary election then face each other in the general election, where the candidate  
5 receiving the highest number of legal votes is declared elected.

6           Proposition \_\_ would amend the Arizona Constitution to:

7           1. Allow for the use of voter rankings at all elections held in this state to determine which  
8 candidate received the highest number of legal votes (see also paragraph 4 below).

9           2. Revise the primary election procedures as follows:

10          (a) All candidates who qualify for election to an office would be placed on the same  
11 primary election ballot regardless of each candidate's political party affiliation or nonaffiliation.  
12 Each of the candidates would have the same signature requirement to qualify for the primary  
13 election ballot. A qualified elector would be allowed to sign a candidate nomination petition  
14 without regard to the political party affiliation or nonaffiliation of the qualified elector or the  
15 candidate.

16          (b) All qualified electors eligible to vote for an office would be allowed to vote in the  
17 primary election, regardless of the political party affiliation or nonaffiliation of the qualified  
18 elector or the candidate.

19          (c) A political party may endorse or otherwise support a candidate as provided by law. If  
20 an applicable law allows a candidate's political party affiliation to be listed on the ballot next to  
21 the candidate's name, the ballot must include a statement that the listed affiliation is not an  
22 indication that the candidate has been nominated or endorsed by the listed political party.

23          (d) A candidate for an office that has a primary election may only appear on the general  
24 election ballot if the candidate qualifies through the primary election or fills a vacancy caused by  
25 the death or withdrawal of a candidate who was nominated at the primary election. (A candidate  
26 for an office that has a primary election would no longer be able to appear as a "write-in" candidate  
27 for the general election).

28          3. Provide a range of the number of candidates that may advance from the primary election  
29 to the general election, subject to a determination or amendment by the Legislature, the Secretary  
30 of State or the qualified electors, as follows:

31          (a) If one candidate for an office is to be elected in the general election, two to five  
32 candidates may advance from the primary election. If two candidates for an office are to be elected  
33 in the general election, four to seven candidates may advance from the primary election. If three  
34 candidates for an office are to be elected in the general election, six to eight candidates may  
35 advance from the primary election. A candidate's political party affiliation or nonaffiliation cannot  
36 be considered in determining which or how many candidates advance from the primary election.

1 (b) Within those ranges, the Legislature may enact a law to determine the actual number  
2 of candidates that would advance. The number of candidates advancing may differ for each  
3 specific office. If the Legislature does not enact a law that is operative on or before November 1,  
4 2025, the Secretary of State shall determine the actual number of candidates that would advance.  
5 After the initial determination is made by the Legislature or the Secretary of State, the Legislature  
6 may enact a law to amend the actual numbers not more than once every six years. The qualified  
7 electors, however, may amend the actual numbers through the existing initiative or referendum  
8 process at each general election.

9 4. Revise the general election procedures as follows:

10 (a) If two candidates advance to the general election for an office to which one will be  
11 elected, the candidate who receives the majority of votes cast is elected.

12 (b) If three or more candidates advance to the general election for an office to which one  
13 will be elected, voter rankings shall be used to determine which candidate is elected.

14 (c) The Legislature may enact a law to determine the process to be used for voter rankings.  
15 If the Legislature does not enact a law on voter rankings, the Secretary of State shall determine the  
16 process to be used for voter rankings. At a minimum, the voter rankings process must allow a  
17 voter to rank all candidates for an office in order of the voter's preference.

18 5. Prohibit the use of any public monies to administer political party elections (including  
19 precinct committee officer elections and partisan primary elections), except that public monies  
20 may be used to administer a presidential preference election if all persons who are registered as  
21 "no party preference" or independent, or who are registered with a political party that is not  
22 qualified for representation on the ballot, may vote in the presidential preference election of any  
23 one of the parties that is qualified for representation on the ballot.

24 6. Provide that the right of a United States citizen to vote and hold office in this state shall  
25 not be denied or diminished because of political party affiliation or nonaffiliation.

26 7. Provide that a person shall not be denied a ballot or be restricted from selecting a  
27 candidate based on the person's political party affiliation or nonaffiliation.

28 If approved by the voters, Proposition \_\_\_ would apply to elections occurring after July 1,  
29 2026.



STATE OF ARIZONA  
OFFICE OF THE GOVERNOR

KATIE HOBBS  
GOVERNOR

EXECUTIVE OFFICE

April 12, 2023

Representative Ben Toma  
Speaker of the House  
1700 W Washington St.  
Phoenix, AZ 85007

Re: HB 2552

Speaker Toma,

I have vetoed HB 2552. Ranked choice voting is an election process that is used successfully elsewhere in the country. As it is not currently utilized in Arizona, this bill is unnecessary.

Sincerely,

A handwritten signature in black ink, appearing to be "KH", with a long horizontal flourish extending to the right.

Katie Hobbs  
Governor  
State of Arizona

cc:

President Petersen  
Representative Smith  
Chief Clerk of the House  
Secretary of the Senate  
Secretary Fontes



STATE OF ARIZONA  
OFFICE OF THE GOVERNOR

KATIE HOBBS  
GOVERNOR

EXECUTIVE OFFICE

June 5, 2023

Senator Warren Petersen  
President of the Senate  
1700 W. Washington Street  
Phoenix, AZ 85007

Re: SB 1265

President Petersen,

I have vetoed SB 1265.

This bill contains the same provisions as HB 2552, which I have previously vetoed.

Sincerely,

A handwritten signature in black ink, appearing to be "KH", followed by a long horizontal flourish.

Katie Hobbs  
Governor  
State of Arizona

Cc:

Speaker Toma  
Senator Kern  
Secretary of the Senate  
Chief Clerk of the House  
Secretary Fontes