

**IN THE
SUPREME COURT
STATE OF ARIZONA**

ARIZONA TOGETHER, an
unincorporated association; KAITLIN
MEADOWS; ALBERT LANNON;
AMALIA ANTONIOLI; FRANK
MONTOYA; AL BREZNEY;
MAXINE PIATT; PAUL KNOBBE;
TERESA HEWITT; GLEN
CROMER; and REBECCA MILLER,

Plaintiffs-Appellants,

v.

JANICE K. BREWER, in her official
capacity as Secretary of State for the
State of Arizona,

Defendant-Appellee,

and

PROTECT MARRIAGE ARIZONA,
an unincorporated association,

Real Party in Interest.

Arizona Supreme Court
No. CV-06-0277-AP/EL

Maricopa County Superior Court
No. CV 2006-010505

***AMICUS CURIAE* BRIEF OF THE
INSTITUTE FOR JUSTICE
ARIZONA CHAPTER**

**FILING NEUTRALLY, NOT ON
BEHALF OF EITHER PARTY**

**INSTITUTE FOR JUSTICE
ARIZONA CHAPTER**

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INTEREST OF AMICUS CURIAE

The Institute for Justice is a nonprofit, public interest law firm committed to defending the basic foundations of a free society by litigating to reinvigorate the rights and liberties guaranteed by our state and federal constitutions. The Institute has a particular interest in ensuring that courts uphold constitutional principles based on the text and the framers' original intent. The present controversy concerning the meaning and application of the separate amendment provision of Article 21, section 1 of the Arizona Constitution implicates these dual interests. The Institute therefore submits this brief, not on behalf of either party, but strictly as a friend of the Court to assist the Justices' understanding of the framers' intent and the history surrounding the inclusion of the separate amendment provision in the Arizona Constitution. The Institute takes no position regarding the substance of the proposed constitutional amendment or a suggested outcome of this litigation.

STATEMENT OF THE CASE AND STATEMENT OF FACTS

The present case is one of two cases currently pending before this Court that allege proposed constitutional amendments violate the separate amendment provision. That provision says that "[i]f more than one proposed amendment shall be submitted at any election, such proposed amendments shall be submitted in such manner that the electors may vote for or against such proposed amendments

separately.” Ariz. Const. art. 21, § 1 (Appendix 1). The Institute’s historical research and analysis apply equally to both cases.

SUMMARY OF THE ARGUMENT

The Arizona Constitution’s separate amendment provision requires the Secretary of State to submit proposed constitutional amendments “in such manner that the electors may vote for or against such proposed amendments separately.” Ariz. Const. art. 21, § 1. Contrary to this Court’s historic interpretation, the provision neither imposes a so-called “single subject” limitation on constitutional amendments that citizens propose through initiative, nor does it authorize courts to strike proposed constitutional amendments from the ballot for failure to comply with the rule. The rule is directed solely at the Secretary of State, whose duty it is to submit constitutional amendments so that voters can consider them separately.

The text of the separate amendment provision, read in the context of Article 21’s other procedural mandates, demands a conclusion that the provision is a procedural requirement and not a substantive limitation on proposed constitutional amendments. The history surrounding the drafting of the separate amendment provision found in the records of the Constitutional Convention, including our founders’ understanding and definition of the term logrolling, their passion for direct democracy and the reservation of the initiative power as the “first right” of the people, demonstrate the provision is purely procedural.

Providing a mechanism for this Court to strike proposed constitutional amendments from the ballot is inconsistent with text and history of Arizona's Constitution. The history surrounding the founding of Arizona demonstrates that the separate amendment provision is a procedural command to the Secretary of State regarding the manner in which constitutional amendments are submitted to a vote of the electors at elections. This Court's role is to review the Secretary's compliance with this constitutional duty.

ARGUMENT

Currently, this Court determines compliance with the separate amendment provision by imposing upon the amendment's drafters the "common principle or purpose" test, which asks whether the provisions in a challenged amendment "are sufficiently related to a common purpose or principle that the proposal can be said to 'constitute a consistent and workable whole on the general topic embraced,' that, 'logically speaking, . . . should stand or fall as a whole.'" Korte v. Bayless, 199 Ariz. 173, 176-77, 16 P.3d 200, 204 (2001) (quoting Kerby v. Luhrs, 44 Ariz. 208, 221, 36 P.2d 549, 554 (1934)); see also Slayton v. Shumway, 166 Ariz. 87, 90-91, 800 P.3d 590, 593-94 (1990) (holding the Kerby test involves determining whether all the provisions "relate to, and are germane to, one general subject"); and Clean Elections Institute, Inc. v. Brewer, 209 Ariz. 241, 246, 99 P.3d 570, 575

(2004) (“We apply the common purpose or principle test of Korte and Kerby to the operative sections of” the constitutional amendment in question.).

This Court invited commentary on the continued viability of the Kerby test when Justice Hurwitz recently wrote he had “substantial doubts about the continued utility of the ‘common principle or purpose’ test.” Clean Elections Institute, Inc., 209 Ariz. at 248, 99 P.3d at 577 (Hurwitz, J., concurring). Former Chief Justice Zlaket expressed similar doubts in his Korte dissent, arguing that compliance with this Court’s separate amendment rule depends on how broadly the Court defines the “subject” of the proposed amendment. The Chief Justice also noted that judges may differ about whether one subject is more or less vague than another subject. Korte, 199 Ariz. at 179, 16 P.3d at 206 (Zlaket, C.J., dissenting) (“I am not sure, however, which of the following is less vague—‘state trust lands,’ ‘land management,’ ‘quality growth,’ or ‘conservation.’ Virtually anything having a relationship to one or more of these broad descriptive categories could be patched together under the majority’s ‘common purpose’ analysis.”).

Because the parties in Clean Elections Institute, Inc. did not argue or brief the need for a new test, Justice Hurwitz was “reluctant to consider altering our traditional approach in the absence of briefing and argument on the subject” and therefore left “for another day whether that test should continue to govern our separate amendment jurisprudence.” 209 Ariz. at 248, 99 P.3d at 577 (Hurwitz, J.,

concurring). That day has come. The uncertainty in predicting compliance with the Court's existing jurisprudence interpreting the separate amendment rule may chill citizens' participation in proposing constitutional amendments, particularly given the time and expense involved in the process. It deserves close examination and so the Institute for Justice offers the following historical and textual analysis of what the framers intended the separate amendment provision to mean.

I. FRAMEWORK FOR CONSTITUTIONAL ANALYSIS

“The cardinal rule of constitutional construction is to follow the text and the intent of the framers, where it can be ascertained.” Fain Land & Cattle Co. v. Hassell, 163 Ariz. 587, 595, 790 P.2d 242, 250 (1990). “[N]o constitutional provision is to be construed piece-meal, and regard must be had to the whole of the provision and its relation to other parts of the Constitution.” State ex rel. Jones v. Lockhart, 76 Ariz. 390, 397, 265 P.2d 447, 453 (1953). While this Court looks first to the plain text, it “may also consider the provision’s history” to support its determination of the framers’ intent. Empress Adult Video & Bookstore v. Tucson, 204 Ariz. 50, 55, 59 P.3d 814, 819 (Ct. App. 2002). “When constitutional questions have arisen, the court has availed itself of pertinent records of the Constitutional Convention for an insight into the effect intended from the provision in question.” Ward v. Stevens, 86 Ariz. 222, 229, 344 P.2d 491, 495 (1959).

II. BASED ON ITS PLAIN TEXT, THE SEPARATE AMENDMENT PROVISION IS A PROCEDURAL MANDATE TO THE SECRETARY OF STATE.

A plain reading of Article 21, Section 1 compels a finding that our framers intended the separate amendment provision as a procedural directive to the Secretary of State. No fair reading of the text can support a conclusion that our framers intended it as a limitation on the subject of proposed constitutional amendments thus allowing courts to strike proposed amendments from the ballot.

- a. **Article 21, Section 1 outlines only procedural rules for amending the Constitution, not substantive limitations on the subjects of amendments citizens may propose.**

Article 21, Section 1 details the “mode of amending” the Constitution and is concerned only with procedural aspects of the amending process. All of the provisions surrounding the separate amendment provision in Article 21, Section 1 outline the procedural requirements for amending the Constitution. Not one of these provisions limits the subjects of proposed amendments.

- b. **Complying with the separate amendment rule is the Secretary of State’s duty because only the Secretary “submits” initiatives for “electors . . . at elections,” whereas citizens “propose” initiatives or “file” them.**

This Court interprets provisions of the same law consistently, “especially when they use identical language.” Wyatt v. WehmueLLer, 167 Ariz. 281, 284, 806 P.2d 870, 873 (1991). The separate amendment provision requires that “[i]f more than one proposed amendment shall be submitted at any election, such proposed

amendments shall be submitted in such manner that the electors may vote for or against such proposed amendments separately.” Ariz. Const. art. 21, § 1. To determine *who* has the duty to submit such proposals separately, this Court should consider other constitutional provisions that require someone to “submit” initiatives “at elections.” This textual analysis reveals that the separate amendment provision is directed at the Secretary of State, not citizen drafters, because only the Secretary “submits” initiatives to “electors . . . at elections,” whereas citizens “propose” initiatives or “file” them with the Secretary of State.

The word “submit” appears in Article 21, Section 1 twice before the word “submitted” in the separate amendment provision. The Secretary of State must *submit* proposed amendments to the people at the general election, except the Secretary must *submit* such amendments at a special election whenever called for by the legislature. Ariz. Const. art 21, § 1. “Submitted” also appears in Article 21, Section 2, requiring amendments proposed by the legislature be submitted to voters on referendum. See Ariz. Const. art 21, § 2 (Appendix 2). Additionally, “submit” appears several times in other Articles of the Constitution, assigning procedural duties to the Secretary of State regarding initiatives. For example, the Secretary must *submit* referendum petitions according to general law and have them published as proposed constitutional amendments. Ariz. Const. art. 4, pt. 1, § 1(11) (Appendix 3).

Our Constitution never requires citizens to “submit” constitutional amendments; rather, citizens *propose* constitutional amendments. Ariz. Const. art. 21, § 1 (“Any amendment or amendments to this constitution may be *proposed* . . . by initiative petition”) (emphasis added). Or citizens *file* proposed constitutional amendments with the Secretary of State. Ariz. Const. art. 21, § 1 (requiring Secretary of State to submit amendments for vote at elections “when any elector or electors shall *file* with the secretary of state any proposed amendment or amendments”) (emphasis added); Ariz. Const. art. 4, pt. 1, § 1(10) (Appendix 4) (requiring Secretary of State to have measures printed on the ballot “[w]hen any initiative or referendum petition or any measure referred to the people by the legislature shall be *filed*, in accordance with this section, with the secretary of state”) (emphasis added).

Citizens never submit or present proposed amendments to “electors” or “at elections.” Citizens only propose amendments in the abstract or file them with the Secretary of State. By contrast, it is the Secretary of State’s duty to submit proposed amendments “to the vote of the people.” Ariz. Const. art. 21, § 1. A fair reading of the context and plain language of the separate amendment provision demonstrates that our framers directed the Secretary of State, not citizens who draft proposed amendments, to comply with the requirement that such proposed amendments be submitted separately to the voters at elections. Moreover, nothing

in the text allows the Secretary of State to alter proposed amendments before submitting them to electors.

- c. **The separate amendment provision contains no language permitting the Court to withhold proposed amendments from the voters.**

Distinguishing it from other related constitutional provisions, the separate amendment provision does not provide a consequence if proposed amendments deal with more than one subject. The Constitution explains the consequences for violating the single subject provision, Ariz. Const. art. 4, pt. 2, § 13 (Appendix 5), requiring that legislative acts embrace only the subject expressed in the act's title. When the legislature violates this rule, all provisions in the act become law except those not embraced in the title. Similarly, the Constitution's "conflicting measures" rule says that when voters adopt conflicting initiatives the initiative with more votes becomes law. Ariz. Const. art. 4, pt. 1, § 1(12) (Appendix 6). In contrast, the separate amendment provision does not provide that this Court should block any proposed amendment from the ballot for encompassing more than one subject. Given that the Constitution favors protecting citizen initiatives from being voided or altered in any way, see Ariz. Const. art. 4, pt. 1, § 1(6) (Appendix 7) (denying the legislature and the governor power to repeal, veto, amend, or divert funds from any initiative the voters pass), removing proposed amendments from the ballot is facially inconsistent with the intent of the framers.

III. ARIZONA'S FRAMERS DID NOT INTEND THE SEPARATE AMENDMENT RULE TO PREVENT LOGROLLING AS COURTS INTERPRET IT TODAY.

A fundamental premise of this Court's separate amendment jurisprudence is that the framers intended the provision to prevent "logrolling." Kerby, 44 Ariz. at 214, 36 P.2d at 551. This Court's understanding of the term logrolling differs dramatically from the definition the framers assigned it. Because courts must construe constitutions "in the light of the exigencies and conditions which they [were] intended to meet and deal with," Kerby, 44 Ariz. at 214, 36 P.2d at 551, understanding that the framers did not use the contemporary definition of logrolling sheds new light on the separate amendment provision.

- a. **Arizona's framers understood logrolling to mean legislators exchanging votes for different measures, not combining unrelated matters to entice voters into approving provisions they do not support.**

This Court defines logrolling as the practice of placing several unrelated matters together in one piece of legislation to force voters to approve provisions with which they may disagree in order to secure the parts they support. See, e.g., Korte, 199 Ariz. at 180, 16 P.3d at 206 (Zlaket, C.J., dissenting). This definition of logrolling is inconsistent with our framers' understanding, who used the term to describe the practice of legislators making deals to vote for or against one piece of legislation in exchange for an agreement to vote for or against separate legislation.

Arizona’s framers defined logrolling in the Records of the Constitutional Convention and the Journals of the Legislative Assembly. At the Convention, the delegation considered a proposed “Pledge Against Log Rolling.”¹ In the pledge, each legislator was to promise to vote solely upon his own judgment “without any understanding . . . in any form with any member or person that I will aid or be friendly in a measure in which he is interested because he will or may be inclined to aid one in which I am interested.” Records of the Arizona Constitutional Convention of 1910 at 1043-44 (John S. Goss ed., Supreme Court of Arizona). The pledge is not surprising considering that only fifteen years earlier, at the Ninth Legislative Assembly, the governor expressed concern with the “pernicious practice of legislation based on combination of trading, whereby a certain number of members agree to pass an act providing they receive as compensation the passage of another act.” Journals of the Ninth Legislative Assembly 74 (1877).

- b. **To the extent the framers were concerned with the modern concept of logrolling, they addressed their concerns in the single subject provision; such concerns do not apply to citizen initiatives.**

Based on the Records of the Convention and the Journals of the Assembly, when our founders referred to the “pernicious practice” of logrolling, they intended to reference legislators agreeing to trade their votes with each other to secure

¹ The framers removed the requirement from the substitute proposition which they ultimately adopted in the Constitution. Compare RECORDS OF THE ARIZONA CONSTITUTIONAL CONVENTION OF 1910 at 1043-44 (Proposition No. 6, § 23), with *id.* at 1045-50 (Substitute Proposition No. 6) and Ariz. Const. art. IV, pt. 2.

support for different legislative proposals. The framers were reasonably concerned with such practices among legislators. Unlike legislators, however, citizen-voters are strangers to each other and have no incentive to strike *quid pro quo* deals.

To the extent the framers contemplated modern “logrolling,” i.e., combining unrelated matters in a single measure to secure approval of matters legislators do not support, the single subject rule addresses those issues. See Ariz. Const. art. 4, pt. 2, § 13. The single subject rule does not apply to initiatives, Clean Elections Institute, Inc., 209 Ariz. at 243, 99 P.3d at 572, and there is no similar language limiting the subjects of citizen initiatives. There is no evidence that the framers were concerned with citizens combining matters and therefore no reason to believe the framers intended the separate amendment provision of Article 21, Section 1 to operate as a “single subject” restriction on proposed amendments.

IV. THE HISTORY OF OUR CONSTITUTION SUPPORTS READING THE SEPARATE AMENDMENT PROVISION AS A PROCEDURAL MANDATE.

Reserving powers to the citizens is a dominant theme throughout Arizona’s history, Convention, and Constitution. The people’s power was arguably “the most constant thread running through the Arizona Constitution,” John D. Leshy, The Making of the Arizona Constitution, 20 ARIZ. ST. L.J. 1, at 59 (1988), a constitution which may have been “the most Progressive of the day,” Toni McClory, Understanding the Arizona Constitution 26 (Univ. of Arizona Press

2001). Not only did Arizona’s framers emphasize a radically expansive role for their citizens, McClory, *supra*, at 26, but even today, “Arizona’s direct democracy procedures have no counterpart in the national government,” and “[f]ew states give their citizens as much power.” McClory, *supra*, at 71.

The initiative was and remains the “first” power reserved to the people. Ariz. Const. art. 4, pt. 1, § 1(1-2) (Appendix 8). This despite warnings by some representatives that providing an initiative process would prevent Arizona’s acceptance into the Union. See Leshy, *supra*, at 102. The framers intended to place few, if any, restrictions on citizens’ power to propose amendments by initiative.

Proposition 14 included the first proposal for a separate amendment rule at Arizona’s Constitutional Convention. The proposition stated:

Provided that it shall be the duty of the Secretary of State to have such amendment or amendments published for a period of at least ninety days previous to the date of said election in at least one newspaper in every county of the State in which a newspaper shall be published in such manner as may be provided by law. And provided further, that if more than one proposed amendment shall be submitted, at any election, the amendments shall be submitted in such manner that the electors may vote for or against such amendments separately.

Records of the Arizona Constitutional Convention of 1910 at 1063 (emphasis added). The text of this proposition clearly shows that the framers’ conception of the separate amendment provision was to make it “the duty of the Secretary of

State” to submit proposed amendments “in such manner that the electors may vote for or against such amendments separately.”

Proposition 14 became Section 1 of Proposition 54, which the Convention passed. Records of the Arizona Constitutional Convention of 1910 at 692; *id.* at 880-81. The framers did make stylistic changes from Proposition 14 to the language adopted. For example, the framers referenced the “Secretary of State” using lower-case in the final version instead of capital letters. They also replaced “provided by law” with “prescribed by law” and inserted a comma before the modifier, “in such manner as may be prescribed by law.” The only revision that was not purely stylistic was a minor modification adding a condition for the Secretary of State to publish amendments in county newspapers only “until a method of publicity is otherwise provided by law.”

In the adopted provision, the framers also shortened the wordy clause, “provided that it shall be the duty of the Secretary of State,” to the more concise, “the secretary of state shall.” The framers then made the corresponding stylistic modification to the separate amendment provision by omitting the needless introduction, “[a]nd provided further, that” By leaving the language and context of the separate amendment virtually unchanged from the time the delegation first proposed it, the framers clearly intended the original meaning of the separate amendment requirement to remain unchanged. As further evidence,

the framers did not debate or discuss any of these changes at the Convention, signifying that they did not intend for the revisions to transform the meaning of the separate amendment requirement.

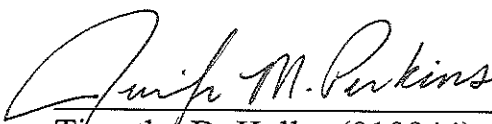
Considering our founders' emphasis on providing expansive powers to the people, applying the separate amendment provision to strike proposed amendments from the ballot is wholly inconsistent with the principles our founders so cherished.

V. CONCLUSION

Arizona's separate amendment provision is a procedural command requiring the Secretary of State to present proposed constitutional amendments to the voters separately at elections. The Institute for Justice respectfully urges this Court to interpret the separate amendment provision consistent with the plain text and history of the Constitution.

Respectfully submitted this 16th day of August, 2006 by

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APPENDIX 1

Ariz. Const. art. 21, § 1

Any amendment or amendments to this Constitution may be proposed in either House of the Legislature, or by Initiative Petition signed by a number of qualified electors equal to fifteen per centum of the total number of votes for all candidates for Governor at the last preceding general election.

Any proposed amendment or amendments which shall be introduced in either House of the Legislature, and which shall be approved by a majority of the members elected to each of the two Houses, shall be entered on the journal of each House, together with the ayes and nays thereon. When any proposed amendment or amendments shall be thus passed by a majority of each House of the Legislature and entered on the respective journals thereof, or when any elector or electors shall file with the Secretary of State any proposed amendment or amendments together with a petition therefor signed by a number of electors equal to fifteen per centum of the total number of votes for all candidates for Governor in the last preceding general election, the Secretary of State shall submit such proposed amendment or amendments to the vote of the people at the next general election (except when the Legislature shall call a special election for the purpose of having said proposed amendment or amendments voted upon, in which case the Secretary of State shall submit such proposed amendment or amendments to the qualified electors at said

special election), and if a majority of the qualified electors voting thereon shall approve and ratify such proposed amendment or amendments in said regular or special election, such amendment or amendments shall become a part of this Constitution. Until a method of publicity is otherwise provided by law, the Secretary of State shall have such proposed amendment or amendments published for a period of at least ninety days previous to the date of said election in at least one newspaper in every county of the State in which a newspaper shall be published, in such manner as may be prescribed by law. If more than one proposed amendment shall be submitted at any election, such proposed amendments shall be submitted in such manner that the electors may vote for or against such proposed amendments separately.

APPENDIX 2

Ariz. Const. art. 21, § 2

No Convention shall be called by the Legislature to propose alterations, revisions, or amendments to this Constitution, or to propose a new Constitution, unless laws providing for such Convention shall first be approved by the people on a Referendum vote at a regular or special election, and any amendments, alterations, revisions, or new Constitution proposed by such Convention shall be submitted to the electors of the State at a general or special election and be approved by the majority of the electors voting thereon before the same shall become effective.

APPENDIX 3

Ariz. Const. art. 4, pt. 1, § 1(11)

(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.

APPENDIX 4

Ariz.Const. art. 4, pt. 1, § 1(10)

(10) **Official ballot.** When any Initiative or Referendum petition or any measure referred to the people by the Legislature shall be filed, in accordance with this section, with the Secretary of State, he 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.

APPENDIX 5

Ariz. Const. art. 4, pt. 2, § 13

Every Act 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 Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be embraced in the title.

APPENDIX 6

Ariz. Const. art. 4, pt. 1, § 1(12)

(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.

APPENDIX 7

Ariz. Const. art. 4, pt. 1, § 1(6)

(6)(A) **Veto of initiative or referendum.** The veto power of the Governor shall not extend to an initiative measure approved by a majority of the votes cast thereon or to a referendum measure decided by a majority of the votes cast thereon.

(B) **Legislature's power to repeal initiative or referendum.** The Legislature shall not have the power to repeal an initiative measure approved by a majority of the votes cast thereon or to repeal a referendum measure decided by a majority of the votes cast thereon.

(C) **Legislature's power to amend initiative or referendum.** The Legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon, or 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.

(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 approved by a majority of the votes cast thereon, or by a referendum measure decided by a majority of the votes cast thereon, unless the appropriation or diversion of funds

further 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.

APPENDIX 8


Ariz. Const. art. 4, pt. 1, § 1(1-2)

(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 per centum of the qualified electors shall have the right to propose any measure, and fifteen per centum shall have the right to proposed any amendment to the Constitution.

Certificate of Compliance

I certify that I have drafted this document and it meets the typeset and word-count requirements set forth in Rule 14, Ariz. R. Civ. App. P. The *Amicus Curiae* brief is double-spaced and uses the proportionately spaced typeface, Times New Roman, in 14-point size and consists of no more than fifteen pages.


Counsel for *Amicus Curiae* Institute
for Justice Arizona Chapter

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Institute for Justice Arizona Chapter's *Amicus Curiae* brief was filed in the Arizona Supreme Court on this 16th day of August, 2006 and transmitted via Electronic Mail and Regular U.S. Mail to following counsel of record:

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