

URGENT**FAX**

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SUBJECT: CV 2012-010717	DATE: August 6, 2012
COMMENTS:	

Under advisement ruling dated 8/6/12. (4 pages)

Michael K. Jeanes, Clerk of Court
*** Filed ***

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-010717

08/06/2012

HONORABLE MARK H. BRAIN

CLERK OF THE COURT
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Deputy

SAVE OUR VOTE OPPOSING C-03-2012, et al. MICHAEL T LIBURDI JR.

v.

KEN BENNETT, et al.

MICHELE LEE FORNEY

KIMBERLY ANNE DEMARCHI
ADAM E LANG
ERIC H SPENCER
WILLIAM G VOIT

RULING MINUTE ENTRY

This matter came before the Court for argument. Having considered the parties' papers and arguments, the Court rules as follows;

At issue is an initiative which calls itself the "Open Elections/Open Government Act." If approved, it would replace Article VII section 10 of the Arizona Constitution. Section 10 currently calls for a partisan primary election for many elective offices. The proposed amendment would replace this primary system with a non-partisan primary system for many elective offices in which: (1) all qualified candidates would appear on one primary ballot (as opposed to Republicans appearing on one ballot, Democrats on another ballot, and other parties exercising various means of nominating candidates); (2) all qualified voters would then vote on this ballot (as opposed to Republicans and Democrats voting only their respective ballots, and Independents choosing which ballot to vote); and (3) the first-place and second-place finishers would then square off in the general election.¹ Plaintiffs attack this initiative on two basic

¹ The Court recognizes that this is a somewhat simplified explanation of the proposed system. For example, where two officers are to be elected in a given district, the top four would appear on the general ballot. That said, this explanation is sufficient for purposes of the current discussion.

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grounds. First, they claim that it violates the Separate Amendment Rule (Ariz. Const. art. 21, § 1). Second, they claim that the description of the initiative given on the signature sheets violates A.R.S. § 19-102(A).

The Separate Amendment Rule provides, "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." Ariz. Const. art. 21, § 1. The goal of this rule is to prevent "log-rolling" (that is, enshrining something in the Constitution that would not otherwise obtain constitutional status by, for example, attaching it to a popular proposed amendment). Thus, initiatives are evaluated using the "common purpose or principle" test, which requires the proposed amendments to be topically related, and sufficiently interrelated so as to form a consistent and workable proposition that logically speaking should stand or fall as a whole. *Arizona Together v. Brewer*, 214 Ariz. 118, 121, 149 P.3d 742, 745 (2007).

Plaintiffs' protestations to the contrary notwithstanding, most of the provisions in the initiative easily meet the common purpose or principle test by setting up a workable open-primary ballot system. One provision does not: Section 3 would enshrine the following provision in the Constitution:

G. Rights of Political Parties. Nothing in this section shall restrict the right of individuals to join or organize into political parties or in any way restrict the right of private association of political parties. Nothing in this section shall restrict the parties' right to contribute to, endorse, or otherwise support or oppose candidates for elective office. Political parties may establish such procedures as they see fit to elect party officers, endorse or support candidates, or otherwise participate in all elections, *but no such procedures shall be paid for or subsidized using public funds.* (Emphasis added.)

Most of that paragraph restates what is obvious under the First Amendment: Of course individuals can organize into political parties, and of course those parties may establish their own procedures.² But the proposed prohibition of funding emphasized above is entirely different, and there is no good reason that a vote for or against that topic should be bundled with a vote on an open primary. The Open Government Committee claims that "[t]he only change is that the publicly funded partisan primary through which [the parties] selected those party officers in the

² The Court notes that § 10(g) also appears to foreclose plaintiffs' arguments that precinct committeemen would fall within the categories of elections listed in proposed § 10(a) so that, for example, Republicans would be voting on Democratic committeemen. See Plaintiffs' Opening Brief at pp. 11-13.

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past will no longer provide a venue to select those officers, because it will no longer exist.” Response Brief at footnote 21. But that’s not what the initiative says. It would be one thing if the initiative provided that candidates for such offices will no longer appear on the non-partisan primary ballot—such a provision would directly relate to how the primary election would work. Instead, this provision prohibits state assistance in any form or forum and at any time. The Court finds that its inclusion in the initiative results in a violation of the Separate Amendment Rule. For these reasons,

IT IS ORDERED: (1) Declaring that the Initiative measure known as the “Open Elections/Open Government Act” and designated C-03-2012 by the Secretary of State violates the Separate Amendment Rule of the Arizona Constitution; and (2) Entering an injunction prohibiting the Secretary of State from placing that initiative on the ballot.

IT IS FURTHER ORDERED signing this minute entry as a final, appealable judgment.

/S/ MARK H. BRAIN

JUDGE MARK H. BRAIN
ARIZONA SUPERIOR COURT
MARICOPA COUNTY

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.