IN THE SUPREME COURT OF ARIZONA

KAREN FANN, *et al.*, Plaintiffs/Appellants, v. STATE OF ARIZONA, *et al.*, Defendants/Appellees. INVEST IN EDUCATION (Sponsored by AEA and Stand for Children); and DAVID LUJAN, Intervenor-Defendants/Appellees.	No. CV-21-0058-T/AP Arizona Court of Appeals, Division One No. 1 CA-CV 21-0087 Maricopa County Superior Court No. CV2020-015495 CV2020-015509 (Consolidated)

BRIEF OF AMICI CURIAE POTENTIAL BALLOT INITIATIVE PROPONENTS

James E. Barton II
Jacqueline Mendez Soto
BARTON MENDEZ SOTO PLLC
401 West Baseline Road, Suite 205
Tempe, Arizona 85283
james@BartonMendezSoto.com
jacqueline@BartonMendezSoto.com

Attorneys for Amici Curiae

Table of Contents

Table of Citations

Page(s)

Cases

Constitutional Provisions

Other Authorities

Pursuant to ARCAP 16(b)(1)(A), Arizona Advocacy Network, Arizona Wins!, Ballot Initiative Strategy Center, and Living United for Change in Arizona (collectively Potential Ballot Initiative Proponents) hereby file this brief as amici curiae in support of Intervenor-Defendant/Appellee Invest in Education (sponsored by AEA and Stand for Children) (the "Committee").

INTEREST OF AMICI CURIAE

Amici curiae are civic organizations and coalitions committed to state-level policy change through, among other techniques, exercising the state of Arizona's constitutionally enshrined direct-democracy tools. They seek to improve public policy for working families, impacted communities, and others whose voices are not heard by politicians by, among other things, promoting ballot measures that advance their causes.

INTRODUCTION

Arizona's founders provide the following warning introducing our rights our state constitution protect: "A frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government."[1] No principle provides greater security of individual rights or more strongly protects the perpetuity of free government for

[1] Ariz. Const. art. II, § 1.

Arizonans than the tools of direct democracy enshrined in its Constitution. While politicians in state government—the natural enemies of citizen power—wage a relentless war on these protections of free government and individual rights, Proposition 208's opponents urge the Court to join in that assault and wrest from Arizonans the power to legislate that they have reserved for themselves—ironically enough through a tortured reading of limitations the citizens placed on state politicians. The undersigned amici ask the Court to decline this invitation and to instead protect the tools Arizona's founders put in place to guard against power hungry politicians who fail to respond to the needs and petitions of their constituents.

ARGUMENT

Proposition 208's political opponents, having failed to disqualify hundreds of thousands of valid signatures to put the question before the voters, and having unsuccessfully argued to Arizonans to vote against desperately needed funding for its struggling education system, now seek to accomplish through a tortured misreading of the law what they could not through political means. Worse, at least two of their tactics also threaten the health of Arizona's bedrock tools of direct democracy. First, by turning the citizen measure limiting the Legislature's ability to raise taxes, they seek to completely remove *the citizen's* authority to raise taxes. Second, they seek to expand the Court's authority to ignore the severability clause passed by

the voters, again employing an up-is-down logic claiming that the Court should do this because the Court cannot be sure the citizens intended to make the clause in question severable, and therefore the Court should ignore the severability clause, which the voters unquestionably voted for. Both amount to a significant, unmerited shift in power that is unsupported by the law or Arizona's historic commitment to direct democracy.

A. Arizona's Historic Commitment to Direct Democracy

Arizonans have never feared Arizonans. Unlike the East Coast founders of our country who feared that "a pure democracy," wherein citizens "assemble and administer the government," would ultimately be "incompatible with personal security or the rights of property,"[2] Arizona's founders, located as one Congressmen put it, in "the wild and woolly and untrammeled West,"[3] put the lawmaking power of the citizens ahead of that of the elected politicians in the State Constitution.[4] Indeed, our founders delayed our entry into the Union because of their insistence on including in our constitution one aspect of direct democracy: recall of judges.

In debating Arizona's admittance into the Union, it became clear that the elitism and distrust of "the power of the rabble" persisted well into the

[2] James Madison, Federalist No. 10
[3] Congressional Record, Vol. XLVII, part 2, at 1246 (Mr. Martin of Colorado).
[4] *Compare* Ariz. Const. Article IV, Part 1 and Ariz. Const. Article IV, Part 2.

twentieth century.[5] The proponent of Arizona's acceptance attempted to rebut the claim that recall of judges would go so far as to mean that Arizona did not have a republican form of government.[6] Our supporters noted that even according to James Madison, in a representative form of government, representatives served for a fixed term or "at the will of the people."[7] Within a republican form of government, an official could be impeached and, they argued, "recall is only an impeachment by the people."[8] When pressed further, the committee unearthed a definition of the republican form of government that would have set well with our state founders, and informs this case today. A republican form of government is one in which "the supreme power resides in the body of the people."[9] While the Congress was convinced, President Taft ultimately vetoed the admission of Arizona into the Union due to this direct democracy provision.[10]

Following President Taft's veto, a conditional resolution was passed allowing Arizona to enter the Union on the condition that it removed recall

---

[5] *Annual Publication of the Historical Society of Southern California*, Vol. 9 (1912-1913) ("HSSC") at 150. ("Those opposing the recall held (1) that the independence of judicial officers would be curtailed, (2) that the power of the rabble would influence judicial opinions, and (3) that in time of passion, the safety of the majority would not be secured by the cool deliberation of the minority.")

[6] Congressional Record, Vol. XLVII, part 2, page 1245 (Mr. Martin of Colorado).

[7] *Id.*

[8] *Id.*

[9] *Id.* (Mr. Humphreys of Mississippi quoting without citation *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419, 457, 1 L.Ed. 440 (1793) (opinion of Wilson, J.).

of judges from its Constitution.[11] On December 12, 1911 the citizens accepted this compromise, and on February 14, 1912 Arizona became a state.[12] On April 27, 1912, the first act of the Arizona Legislature was to refer an amendment to its constitution to the citizens restoring the right to recall judges.[13] On November 5, 1912, Arizonans approved the Amendment, thereby returning the recall of judges to the Constitution effective December 15, 1912.[14]

Attacks on Arizona's tools of direct democracy are attacks on Arizona's core principles.

B. Arizona Voters Unambiguously Restricted the Legislature and Themselves Differently.

Arizonans have restricted the ability to raise taxes. In 1992, the voters provided the following restriction on the Legislature's raising of taxes: "An act that provides for a net increase in state revenues, as described in subsection B is effective on the affirmative vote of two-thirds of the members of each house of the legislature." Ariz. Const. art. IX, § 22. (Emphasis added.) This amendment describes conditions if the revenue increase is vetoed by the Governor, something that cannot happen to initiative measures, and the publicity pamphlet

---

[10] *HSSC* at 153.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Notes for Ariz. Const. art. VIII, Pt. 1 § 1.

arguments focused only on revenue increases passed by the Legislature.[15]

In 2003, the Legislature referred a measure to the voters to limit the voter's ability to raise costs and thereby indirectly raising taxes: "An initiative or referendum measure that proposes a mandatory expenditure of state revenues for any purpose, establishes a fund for any specific purpose or allocates funding for any specific purpose must also provide for an increased source of revenues sufficient to cover the entire immediate and future costs of the proposal." Ariz. Const. art. IX, § 23. (Emphasis added.) The referendum language and the arguments in the publicity pamphlet focused exclusively on the burden it would put on "unfunded mandates," but nowhere was it suggested that the measure would somehow revoke the citizens ability to establish programs through initiative—they would just have to provide a funding source.[16]

Voters approved both the citizen-initiated limit on the Legislature's power to increase taxes, and the Legislature-initiated limit on the citizens' power to increase costs and thus taxes indirectly.

As is well-argued by the Committee below and in its answer before this Court, the two amendments are consistent in using "act" to refer to legislation passed by the Legislature, and "measure" to refer to legislation passed by the

[15] *State of Arizona, Publicity Pamphlet* (2004) at 14-17, https://azmemory.azlibrary.gov/digital/collection/statepubs/id/24380.
[16] *State of Arizona, Publicity Pamphlet* (1992) at 45-50, https://azmemory.azlibrary.gov/digital/collection/statepubs/id/35613.

citizens.[17] Nothing found in the (1) text of the limitation on the Legislature, (2) the publicity around the measure, or (3) the language on the ballot suggested it would apply to citizen measures.[18] Similar attempts to import restrictions on Legislative acts into the analysis of citizen measures have been rejected by this court.[19] The distinction between the treatment of legislative acts and citizen measure is further supported by Article IV, Section 24 of the Arizona Constitution, which requires different enacting clauses for each type of legislation. The rules for legislative acts do not and never have governed the rules for citizen initiative.

If the Court were to nonetheless entertain the notion that Section 22 applies to citizen measures, then the Legislature's referring Section 23 to the voters either meant that (1) the Legislature believed the citizens still had the power to raise taxes because in Section 23 it was requiring them to do so, or (2) the Legislature in requiring the citizens to include a funding source for new programs in their initiatives restored the citizens' power to raise taxes.[20] In either circumstance, the attack levied against Proposition 208 in this case fail.

---

[17] *See, e.g.,* Answering Brief ¶¶ 88-103.

[18] *See, e.g.,* "A 'no' vote shall have the effect of continuing to permit the Legislature to increase state revenues by a simple majority vote." *State of Arizona, Publicity Pamphlet* (1992) at 50.

[19] *Arizona Chamber of Commerce v. Kiley*, 242 Ariz. 533, 542 ¶33 (2017) (Single Subject Rule); *Wilhelm v. Brewer*, 219 Ariz. 45, 47, 192 P.3d 404, 406 (2008) (quoting *Meyers v. Bayless*, 192 Ariz. 376, 378, ¶ 10, 965 P.2d 768, 770 (1998)) (no requirement for measure title other that "*some* title").

The more sinister implication of this attack is the rank deception that it imputes onto the Legislature's referring Article IX, Section 23 to the voters. The opponents of Proposition 208 in effect suggest that when the Legislature referred the measure to the voters, it was not merely referring a requirement that any new programs enacted through initiative also include a revenue source—that is, the Revenue Source Rule—but was in fact an absolute prohibition on the citizens ever enacting programs that require state funding because they would be (1) required to include a funding source and (2) powerless to include a funding source due to the limitations found in Section 22. Because citizens unquestionably had the right to enact programs like this before the Revenue Source Rule was referred to them, this reading means that the Legislature was referring a repeal of the right of citizens to enact new programs through the initiative process. It is certainly true that repeal by implication is generally disfavored, but in this case the repeal would be the product of willful deception of the voters, literally tricking them into turning their prior limitation on the Legislature into a complete repeal of their own authority. There is no reason for the Court to adopt this reading legislation by Trojan Horse reading of the Revenue Source Rule.

C. The Court Should Respect Proposition 208's Severability Clause

The opponents of Proposition 208 hope to reverse the will of Arizona

---

[20] *State of Arizona, Publicity Pamphlet* (2004) at 14-17.

voters by following a strained argument that the Committee cannot provide a clarification about the treatment of Proposition 208 funds, with a strained argument that striking this clarification from the measure cannot be severed from the rest of the measure despite the voter approved severability clause. The Amici here focus on only the dangers of expanding the exception to honoring a voter approved severability clause.

As a preliminary matter, the Court should maintain the *Randolph-Myers* test for severability in context of an initiative measure:

> We will first consider whether the valid portion, considered separately, can operate independently and is enforceable and workable. If it is, we will uphold it unless doing so would produce a result so irrational or absurd as to compel the conclusion that an informed electorate would not have adopted one portion without the other.[21]

Next, analysis of the Clean Elections case cited by Proposition 208's opponents helpfully illuminates how the rule has been applied. In that case, the issue was not whether the matching funds provision could be severed from the measure—the Clean Elections system remains in force in Arizona today—but whether portions of the matching funds provision could be severed away, while leaving other matching funds intact.[22] The federal court in *McComish* applied the

[21] *Randolph,* 195 Ariz. 423, 427 ¶ 15 (1999); *Myers,* 196 Ariz. 516, 522 ¶ 23 (2000)

[22] *McComish v. Brewer*, No. CV-08-1550-PHX-ROS, 2010 WL 2292213, at *10 (D. Ariz. Jan. 20, 2010).

Randolph-Myers test and concluded that, given various regulatory changes would be required, eliminating some matching funds—those related to individual spending—but allowing others to stand—those triggered by independent committee expenditures—would not be workable.[23]

Proposition 208's opponents ask this Court in this case, what would have amounted to eliminating the entire Clean Elections system over a defect in the matching funds provision in *McComish*. Indeed, the matching funds were a major funding source for participating candidates. [24] Once the U.S. Supreme Court struck down matching funds, participating candidates had access to only 1/3 of the funds that were ultimately available to them prior to the decision.[25] This is very analogous to the situation in Proposition 208 should the Court determine that the grant definition is somehow unenforceable. The supporters of Clean Elections would have preferred the candidates have access to the full amount of funds originally designated—which included matching funds—but the courts saw no reason to find that it would be irrational or absurd for voters to also support a lesser amount going to participating candidates. Likewise, Proposition 208 supporters would prefer all of the funds collected to support education immediately be distributed for that purpose, but it is not irrational or

[23] *Id.* at *11.

[24] *Arizona Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 729–30 (2011) (explaining the operation of matching funds and cap at twice the original grant).

absurd for those voters to also support a lesser amount going to that purpose. What is more, the money will not vanish, but will remain in place for a future Legislature—one that responds to the petitions of its constituents perhaps—to take action that will distribute the funds. If reducing the maximum candidate grant by 67% in Clean Elections did not make it so unworkable that the matching funds provision could not be severed, it is difficult to see how potentially requiring action from a future Legislature makes severing the grant provision of Proposition 208 unworkable.

It will always be the case that a measure's supporters would prefer that none of its provisions be held unenforceable. Thus, under the rule proposed by the opponents of Proposition 208, no provision is severable because the Court cannot know for sure if the voters would have still supported the measure. This upside-down reasoning, if adopted by the Court, will jeopardize the viability of Arizona's initiative system because every flaw will become a measure's Achille's heel. While this serves the interests of those who seek to deprive Arizonans of the Constitutionally enshrined power of initiative, it is inconsistent with the core values of the State.

CONCLUSION

For the foregoing reasons, the Court should uphold the ruling of the superior court and thereby leave in place the citizens' initiative power, one of our

---

[25] *Id.*

"fundamental principles [] essential to the security of individual rights and the perpetuity of free government."[26]

Respectfully submitted this 22th day of March, 2021.

/s/ James E. Barton II

Attorneys for Amici Curiae

[26] Ariz. Const. art. II, § 1.

ARIZONA SUPREME COURT

KAREN FANN, *et al*., Plaintiffs/Appellants, v. STATE OF ARIZONA, *et al*., Defendants/Appellees. INVEST IN EDUCATION (Sponsored by AEA and Stand for Children); and DAVID LUJAN, Intervenor-Defendants/Appellees.	No. CV-21-0058-T/AP Arizona Court of Appeals, Division One No. 1 CA-CV-210087 Maricopa County Superior Court No. CV2020-015495 CV2020-015509 (Consolidated)

APPENDIX

James E. Barton II (#023888)
Jacqueline Mendez Soto (#022597)
BARON MENDEZ SOTO PLLC
401 West Baseline Road,
Suite 205
Tempe, Arizona 85283
(480) 580-5165
James@BartonMendezSoto.com
Jacqueline@BartonMendezSoto.com

Attorneys for Amici Curiae

APPENDIX TABLE OF CONTENTS

RESPECTFULLY SUBMITTED this 22nd day of March, 2021.

BARTON MENDEZ SOTO PLLC

By /s/ James E. Barton II
James E. Barton II
Jacqueline Mendez Soto
Attorneys for Amici Curiae

CONGRESSIONAL RECORD:

CONTAINING

THE PROCEEDINGS AND DEBATES

OF THE

SIXTY-SECOND CONGRESS, FIRST SESSION.

VOLUME XLVII.

WASHINGTON:
1911.

the majority, and then say, with reference to the recall of the judiciary in Arizona that this question can be submitted to the voters of Arizona at the same time with the election of State and other officers at an election to be called in conformity with the provisions in the enabling act, in order to save the delay and expense of two elections in Arizona, which is precisely what the majority propose in the case of the New Mexico amendment.

There will be no two elections in either case. The election upon these amendments will be held at the same time and place as the election for State officers. They will have the same election officers. There will be absolutely no delay and very little additional expense entailed by the fact that they are required to vote on this constitutional amendment at the same time that they are required to vote for their State officers.

EXEMPTING JUDICIARY ONLY.

But it would be most interesting to know by what line of constitutional reasoning the majority of the minority arrived at the conclusion that a constitution providing for the recall of all executive and legislative officers is republican in form, while the recall of judicial officers, to quote their own language, is "fundamentally destructive of republican form of government."

I lay no claims to being a constitutional lawyer, but it is my understanding that the fundamental fact in the structure of our Government is that the three departments are coordinate and of equal power and dignity within their respective spheres, and, so far as I am concerned, I would see the entire institution of the recall fall to the ground before I would ever give my consent to the proposition recognized by the report of the minority that one of these departments is so superior in character, function, and dignity that it is to be exempt by the fundamental law of the land from provisions by which the people undertake to control the tenure of office of the other two departments, or in any other material respect. [Applause on the Democratic side.] I do not take the position that the merits of the recall is not a debatable question. All reforms are debatable. I believe with ex-President Roosevelt that the experiment ought to be permitted to the people of a State who express a desire to undertake it, and I hope that its results will be beneficial and the institution permanent.

WHAT IS A REPUBLICAN FORM OF GOVERNMENT?

Mr. HAMILTON of Michigan. Will the gentleman yield?

Mr. MARTIN of Colorado. I will.

Mr. HAMILTON of Michigan. Article IV, section 4, of the Federal Constitution provides that "the United States shall guarantee to every State in this Union a republican form of government." In the course of the gentleman's investigation, has he run across a definition of what constitutes a republican form of government—one that satisfies him—in contradistinction to a democracy?

Mr. MARTIN of Colorado. I believe there was a satisfactory definition of a republican form of government given before the committee——

Mr. HAMILTON of Michigan. I would not want to accept that as authority.

Mr. MARTIN of Colorado. It was made, not on the authority of the gentleman who made the statement, but he took it from Madison. "A republican form of government is one whose officers serve during good behavior for a fixed period or at the will of the people."

Mr. HAMILTON of Michigan. So far as Madison's definition goes, a republican form of government is a representative form of government, is it not?

Mr. MARTIN of Colorado. I should not say it necessarily means representative.

Mr. HAMILTON of Michigan. The gentleman did not quote the whole of the definition. He speaks of officers in a republican form of government, and those under the definition of Madison were elective officers.

Mr. MARTIN of Colorado. I want to say this, that I believe the initiative and referendum, which is in the Arizona constitution—and it is not proposed to keep that Territory out on account of that provision—is much nearer to the question of representative government the gentleman is driving at than that of the recall, because the recall is only another method of removing an officer. We have the method of impeachment at the hands of the legislature, and the recall is only an impeachment by the people.

The initiative and referendum goes directly to the question of representative government, and I think we had the initiative and referendum form of government existing locally at the time the Constitution was adopted, and that that form is permissible under the Constitution of this country.

Mr. HAMILTON of Michigan. I want to say that I did not rise for the purpose of undertaking to discuss the merits or demerits of the initiative and referendum, but I wanted to get the gentleman's definition of what constitutes a republican form of government as contradistinguished from a democracy.

Mr. MARTIN of Colorado. Several States in the West, I will say, have a republican form of government and are operating under the so-called "nostrum."

Mr. HAMILTON of Michigan. Would the gentleman be kind enough to give me his definition of what constitutes a republican form of government?

Mr. MARTIN of Colorado. I can give the gentleman a concrete illustration. I think the people of Arizona have adopted a republican form of government in their constitution.

Mr. HAMILTON of Michigan. Oh, that is begging the question. I suppose the gentleman concedes the high authority of the fathers of the Republic, and I supposed that the gentleman, when he was discussing this profoundly important question, might be able to lay his hand upon some definition of a republican form of government.

Mr. MARTIN of Colorado. I believe that government by consent of the governed is a republican form of government.

Mr. HAMILTON of Michigan. Oh, but a pure democracy is that.

Mr. FLOOD of Virginia. If the gentleman from Michigan would like to have Madison's definition, I have got it here.

Mr. HAMILTON of Michigan. I would like to have the gentleman read it.

Mr. MARTIN of Colorado. Well, Mr. Chairman, if the gentleman will extend my time, I would be glad to yield to the chairman, who has been so kind to me. I want to say, however, that I will never yield to the proposition that the word "republican," as used in the Constitution of the United States, has any such restricted meaning as the gentleman contends for, and if it has, every form of democracy in this country would be unconstitutional.

Mr. HAMILTON of Michigan. Will the gentleman yield further?

Mr. MARTIN of Colorado. Yes.

Mr. HAMILTON of Michigan. Is it not fair reasoning that when the framers of the Constitution adopted that language—that the United States should guarantee to every State a republican form of government—they meant that the United States would guarantee the form of representative government which already existed in the thirteen States?

Mr. MARTIN of Colorado. No, sir; it meant to guarantee them a free form of government, in which the people were supreme.

Mr. HAMILTON of Michigan. Is not that the construction put upon it by the commentators on the Constitution from the beginning down to now? I do not accept the Arizona constitution or the opinion of some gentlemen who appeared before the Committee on Territories. I am asking the gentleman to give us what lawyers concede to be authority, not somebody's speculation.

Mr. HUMPHREYS of Mississippi. Mr. Chairman, will the gentleman yield for a moment?

Mr. MARTIN of Colorado. I yield to the gentleman from Mississippi.

Mr. HUMPHREYS of Mississippi. The delegate in the Constitutional Convention who was the author of that section of the Constitution which guaranteed to each State a republican form of government afterwards became a judge of the Supreme Court of the United States, and he gave a definition of what, in his opinion, was a republican form of government, and I will read that to the gentleman from Michigan if he would like to hear it.

Mr. HAMILTON of Michigan. Who was that?

Mr. HUMPHREYS of Mississippi. James Wilson, of Pennsylvania.

Mr. HAMILTON of Michigan. I hope the gentleman will read the whole of it.

Mr. HUMPHREYS of Mississippi. I will read a part of it.

Mr. HAMILTON of Michigan. I want the gentleman to read that part which shows that it is a representative form of government.

Mr. HUMPHREYS of Mississippi. I will read the gentleman exactly what he says. Speaking of the State of Georgia, he said:

> As a citizen, I know the government of that State to be republican, and my short definition of such a government is one constructed on this principle, that the supreme power resides in the body of the people.

Mr. MARTIN of Colorado. Mr. Chairman, I think that definition ought to satisfy the gentleman from Michigan [Mr. HAMILTON] until such time as he gets the floor in his own right. [Laughter.]

GROUNDS FOR RECALL OF JUDGES.

Mr. LITTLETON. Mr. Chairman, will the gentleman yield?

Mr. MARTIN of Colorado. Yes.

Mr. LITTLETON. I would like to have the gentleman from Colorado indicate, if he will, upon what grounds, or what character of grounds, he thinks a recall of a judge should take place.

Mr. MARTIN of Colorado. Well, I think it may properly take place on the same grounds for which he could be impeached by a legislative body. Sometimes some of them are sought to be impeached and the proceeding is a failure when it ought to succeed. Perhaps if the people had the impeaching of some judges, the procedure would not result so invariably in a whitewash, as congressional impeachments have resulted.

Mr. COOPER. Will the gentleman from Colorado yield until I may answer the gentleman's question?

Mr. MARTIN of Colorado. Certainly.

Mr. COOPER. I think a ground for a recall of a judge, where there have been proper safeguards thrown around it, would be such grounds as were exposed repeatedly in the case of New York City Judges Barnard and Cordoza, who often and corruptly made orders in favor of the Tweed ring and were impeached and removed from office, but not impeached until long after their corruption had become known to the general public and had disgusted the people of the city of New York, and, indeed, of the whole of the United States.

Mr. MARTIN of Colorado. Mr. Chairman, I did not intend that this discussion should go off into New York politics. [Laughter.] We are away off now in the wild and woolly and untrammeled West.

Mr. LITTLETON. Mr. Chairman, will the gentleman from Colorado yield?

Mr. MARTIN of Colorado. I will yield to the gentleman from New York.

Mr. LITTLETON. May I ask the gentleman from Colorado—and by that angle may I reach the gentleman from Wisconsin [Mr. COOPER]—if he charges that the trial of Cordoza and Barnard, however corrupt they may have been and however much they may have prostituted the public service, should have been had without charges and without a hearing? [Applause.]

Mr. COOPER. Mr. Chairman——

The CHAIRMAN. Does the gentleman yield?

Mr. MARTIN of Colorado. I do.

Mr. COOPER. I do not, I say to the gentleman from New York; and I will say further that his question involves the well-known fallacy of a begging of the whole question. The American people, reading as they do, considering and understanding public questions as they do, are not going to be stampeded into the removal of a judge without charges and without the charges being established. But I have not committed myself to the granting of the right of recall as to the judiciary. I was simply seeking to answer the question propounded by the gentleman from New York [Mr. LITTLETON] to the gentleman from Colorado. Now, I would like to ask the gentleman from Colorado one question, or, rather, to answer one other question which has been propounded to him as to a republican form of government.

Mr. MARTIN of Colorado. I yield to the gentleman.

Mr. COOPER. Abraham Lincoln, one of the most profound lawyers the country ever knew, one of the highest-minded patriots, gave a definition, I think, of what this Government is, which is a definition of a republican form of government—a government of the people, by the people, and for the people.

Mr. HAMILTON of Michigan. Did he say that was a republican form of government?

Mr. COOPER. No; but he said this was a government of the people, by the people, and for the people.

Mr. HAMILTON of Michigan. Will the gentleman yield to me?

Mr. MARTIN of Colorado. Yes.

Mr. HAMILTON of Michigan. Mr. Chairman, those phrases have been rolled off from the lips of gentlemen on Fourth of July orations ever since Lincoln uttered them. I was asking someone as a lawyer to give a distinction between a republican form of government and a democracy, and the gentleman from Wisconsin simply quotes those words, which are beautiful and true, but they do not give the distinction, and the gentleman knows it.

Mr. COOPER. Mr. Chairman——

Mr. MARTIN of Colorado. I think the gentleman from Wisconsin has stated his case fully and eloquently——

Mr. HAMILTON of Michigan. Eloquently; yes.

RECALL SHOULD APPLY TO ALL OR NONE.

Mr. MARTIN of Colorado. And I want him to let it rest at that. I say I am not taking the position that the recall of the judiciary, for example, or of any other officer, is not a debatable question, but I do take the position that the unwisdom of subjecting all of the officers of one department of the government to this method of removal from office and exempting all the officers of another department is beyond argument, and if carried to a logical conclusion would make the judiciary what it was never intended by the fathers and what ought not to be—superior to the other departments of government. And in this connection I make note of the fact that a lesser status was given to the judiciary of the United States when it was made appointive and not elective.

The executive and legislative departments of government hold their commission from the people, but the judiciary holds its commission from the Executive, with the consent of the legislative. And of these, the legislative is incontestably the first. This Government was not created by the executives or by judges, but by legislators. The legislature, not courts or executives, is the palladium of our liberties. The executives and judges are properly the ministers and servants of the law-making power to do those things which it has ordained but which it can not execute or interpret, and it may even remove them, but can not be removed by them. [Applause on the Democratic side.] Our friends, therefore, not merely seeking to meet the presidential objection to the constitution of Arizona, as we have done, but basing their objection upon a fundamental ground, should have leveled it against the entire proposition. Now, Mr. Chairman, I want to hasten on. I want to refer briefly to some of the provisions——

Mr. RAKER. Mr. Chairman, will the gentleman yield for a question?

The CHAIRMAN. Does the gentleman yield?

Mr. MARTIN of Colorado. I do.

Mr. RAKER. Under your resolution, on page 12, commencing on line 24, after the word "constitution," in substance is that if this constitutional provision should fail of adoption by the people of Arizona the original provision in regard to the recall of the judiciary would remain in the constitution as it is now presented to Congress for its action. Is that correct?

Mr. MARTIN of Colorado. Yes.

Mr. RAKER. Now, if the people of Arizona fail to thus carry this amendment as proposed——

Mr. MARTIN of Colorado. I see what the gentleman is driving at——

Mr. RAKER. There is another stronger than that, and it is this: Is not it a fact that when the people of Arizona fail to adopt this proposed constitutional amendment it will come back to the President, and it must require his approval before Arizona can be admitted as a State?

Mr. MARTIN of Colorado. No; we do not understand that anything will come back from Arizona or New Mexico to the President for his approval or disapproval. The returns will be certified to him of the elections in Arizona and New Mexico, but we only require them to furnish evidence that the vote was had on the amendments under the resolution.

Mr. RAKER. But under your enabling act it requires the affirmative act of the President to bring it in as a State. Is not that right?

Mr. MARTIN of Colorado. Under the enabling act it does; yes.

Mr. RAKER. How are you going to overcome that by this proposed amendment in regard to the recall when it goes back to the people?

Mr. MARTIN of Colorado. This resolution is going to the President. This resolution that we are considering now is going to the President, and if the President approves this resolution, which we hope and believe he will, the State is admitted when it complies with it. There will be no further approval or disapproval of it by the President. He will accept the returns certified to him by the governors of Arizona and New Mexico and issue his proclamations accordingly.

Mr. RAKER. Without his approval under the original enabling act?

Mr. FLOOD of Virginia. The enabling act is repealed where it is in conflict with this.

Mr. MARTIN of Colorado. We contend that if he signs this resolution it will be an approval of those constitutions, with the condition attached to it just as it is imposed by Congress.

Mr. RAKER. Then, in other words, the gentleman claims that this amended resolution does away with the affirmative approval of the Arizona Constitution by the President?

Mr. MARTIN of Colorado. We claim that when he signs this resolution he will, in effect, affirm in every respect, save that which in Congress disapproves, which is tantamount, however, to an entire disapproval of the constitutions until the condition imposed is complied with.

Mr. MANN. Will the gentleman yield?

The CHAIRMAN. Does the gentleman yield to the gentleman from Illinois?

Mr. MARTIN of Colorado. Yes.

Mr. MANN. What the gentleman says is true, but it does not quite cover the case. Is not this resolution based upon the proposition now that Congress has the power to admit any Territory as a State regardless of the provision in the enabling act with reference to the approval of a constitution?

Mr. MARTIN of Colorado. It is.

Mr. MANN. You are not requiring the approval of the constitution at all, but you consider it as a republican form of government and admit the State?

Mr. MARTIN of Colorado. It is an entirely new proposition, admitting these States when they do the thing enjoined on them, but as framed the President must first sign it.

The CHAIRMAN. The time of the gentleman has again expired.

Mr. FLOOD of Virginia. Mr. Chairman, the gentleman has been interrupted so much that I desire to yield such time to him as may be necessary for him to conclude his remarks.

Mr. MANN. Oh, we can never get through at that rate.

Mr. FLOOD of Virginia. I will yield the gentleman such time as he may desire to finish his speech.

PRESIDENT HAS NOT DECLARED RECALL UNREPUBLICAN.

Mr. FERRIS. Will the gentleman yield?

The CHAIRMAN. Does the gentleman yield to the gentleman from Oklahoma?

Mr. MARTIN of Colorado. Yes.

Mr. FERRIS. I observe on page 6 of the majority report that the controlling reason of the committee for proposing this change was the objection of the President to the recall provision of the Arizona constitution, so far as it applies to the judiciary, and the belief on the part of the committee that if the recall as applied to the judiciary was again submitted to the people of Arizona it would meet the objections of the President?

Mr. MARTIN of Colorado. Yes.

Mr. FERRIS. I wanted to ask if the gentleman knows—and I do not want to embarrass him if he does not—whether the President put that on the ground that it would render the constitution not republican in form, or whether he said it is on account of his own personal objection?

Mr. MARTIN of Colorado. I have never heard any expression attributed to the President from any source to the effect that he believed the recall of the judiciary to be unrepublican in form. He is very much opposed to it as a matter of policy, and he thinks it very unwise and very unfair to the judiciary. He thinks it will subject them to popular clamor, and all that sort of thing; but I do not understand that the President has ever stated anywhere to anybody that it is in violation of the Constitution of this country.

THE NEW MEXICO REFERENDUM.

Now, Mr. Chairman, I will proceed, if I may, without interruption. I want to refer to a few features of the constitution of New Mexico which indicate that there is some method in the apparent hog tying of that constitution in the manner in which it is hog tied in the article on amendments, and that is the only expression that occurs to my mind to fitly characterize what they have done to that constitution in that regard. New Mexico is not so backward or reactionary as some gentlemen might infer, as will be admitted when it is known that 51 of the 100 members of her constitutional convention were elected upon a pledge for the initiative and referendum. But something happened. I do not know what it was. Things frequently happen in conventions, and sometimes in more dignified bodies than conventions, where gentlemen go pledged to certain propositions, and then change their minds. They have no initiative at all in the New Mexico constitution, and this is what they have now in the way of a referendum: Ten per cent of the qualified electors in three-fourths of the counties, constituting not less than 10 per cent of the qualified electors of the State, may sign a petition to submit a legislative act to the voters at the next election, and 40 per cent of the total votes cast at such election, not upon the law, but for governor or other high officer, whatever the high vote may be—and you can rest assured it would be the high vote—are requisite to annul the act.

To suspend the act before it becomes effective—before it takes effect—requires the petition within 90 days of not less than 25 per cent of the electors in three-fourths of the counties in the State, being not less than 25 per cent of the total votes cast, and 40 per cent, as before, to annul. And annulment revives the former law.

But now listen to this provision in the New Mexico referendum:

> It shall be a felony for any person to sign any such petition with any name other than his own, or to sign his name more than once to any measure, or to sign any such petition when he is not a qualified elector in the county specified in such petition.

The intent and object of that provision is obvious. It was obviously intended to scare the voters out of signing any such petition. It strikes me that a simpler and more effective way of getting at the desired result would have been to make it a misdemeanor to sign such a petition. I would like to stay in Congress until a legislative act was suspended under the provisions of the New Mexico referendum. But that is not all. There are some exemptions in the referendum in New Mexico. First, the general appropriation laws, then laws for the preservation of public peace, health, and safety. I have no quarrel with these. But listen to this exemption:

> Laws for the payment of the public debt or interest thereon or the creation or funding of the same.

Now, if there is any one power which has been universally reserved to the electors of the States from time immemorial it is that of funding public debts or creating bond issues. To create such State debts this power is reserved to the people of the State. To create such county debts it is reserved to the people of the county.

To create such municipal debts it is reserved to the people of the municipality. I may safely say that that is the universal rule. It is true there are exceptions in the New Mexico constitution, but the State is starting out with several millions—about four millions—of Territorial, county, and railroad indebtedness, and may contract other huge indebtedness, in the funding or refunding of which the people will have no referendum.

LEGISLATIVE AND JUDICIAL GERRYMANDER.

Then take the matter of legislative apportionment. The districts are so gerrymandered that 4 of the 26 counties will control the legislature politically. I would not complain of this, but it is further provided that only after each decennial census may the legislature reapportion the State. This insures the Republican Party control of the New Mexico Legislature for the next 10 years, no matter what political changes may occur, and will probably render a reapportionment impossible even far beyond that time. The State is judicially gerrymandered and tied up in the same way.

STATE CORPORATION COMMISSION.

Article 11 creates a State corporation commission, to which is given exclusive power and jurisdiction over railway, express, telegraph, telephone, sleeping-car, and other transportation and transmission companies and common carriers. After defining the powers of this State corporation commission comes the following extraordinary provision:

> In case of failure or refusal of any person, company, or corporation to comply with any order within the time limit therein, unless an order of removal shall have been taken from such order by the company or corporation to the supreme court of this State, it shall immediately become the duty of the commission to remove such order, with the evidence adduced upon the hearing, with the documents in the case, to the supreme court of this State.

In other words, this constitutional provision, which is to be found in no other State constitution, acts as an automatic injunction in every case, no matter how trivial, and upon every order, no matter how well settled the principles or issues involved. This is supposed to be a certain remedy for the use of injunctions against corporation commissions, and I should think it would be. It is only necessary for the defendant to ignore the order of the commission until the time set for its execution expires, when the whole matter will be removed automatically to the supreme court. As if to render this alleged corporation commission still more ornamental in character, the supreme court may try every appealed case de novo, taking new evidence. The function of the corporation commission, therefore, is purely advisory, and the supreme court will be the real corporation commission of New Mexico. The commission can not even subpœna witnesses or punish for contempt except through the medium of the courts.

ARIZONA CONSTITUTION COMPARED.

Contrast with this provision that of the constitution of Arizona, which, in addition to giving its corporation commission full power to regulate all public-service corporations within the State, also empowers it to enforce the attendance of witnesses and the production of evidence and to punish for contempt, and which further provides that the rules, regulations, orders, or decrees of the commission shall remain in force pending the decision of the courts.

Which of these constitutional provisions approximates the latest expression of Congress as prescribed in the recent amend-

ARIZONA'S ADMISSION TO STATEHOOD

Author(s): ARCHA MALCOLM FARLOW

Source: *Annual Publication of the Historical Society of Southern California*, 1912-1913, Vol. 9, No. 1/2 (1912-1913), pp. 132-153

Published by: University of California Press on behalf of the Historical Society of Southern California

Stable URL: https://www.jstor.org/stable/41168902

ARIZONA'S ADMISSION TO STATEHOOD.

BY ARCHA MALCOLM FARLOW.

I. THE HISTORY AND RESOURCES OF ARIZONA.

If the history of Arizona[1] were presented in one great drama it would represent a remarkable variation.[2] Its earliest inhabitants, numerous and agricultural, left their only annals in their remains—old systems of irrigation and primitive implements now and then yielded by the soil. The Pima Indians gladdened the hearts of the padres by faithful devotion, while the Apaches were cruel and treacherous. Cabeza de Vaca sought succor and received it; Coronado, gold and found it not; the Jesuits, service and gave it in full measure. The American pioneers here reached the last frontier. They came to possess the land and though many perished[3] they represent the last scene in the drama, no longer that of motley adventurers, fleeting shadows of conquistadores or unwritten tragedies of the desert, but a land of safety and promise.

The conquest of Peru by Almagro and Pizarro was similar to that of the occupation of Mexico by Hernando Cortez. Each added galleons of treasure to the coffers of Spain. This state rendered strong by the union of Castile and Aragon through the marriage of Ferdinand and Isabella in 1469, thus raised to a position of affluence and respect, became a reckoning factor among the nations of Europe. Wealth, thus easily gained, led to extravagance and unwise enterprises that might have been less destructive had caution and moderation prevailed. Spanish diplomacy engendered hatred instead of friendship.[4]

The policy of Philip II. shattered Spanish dreams of empire and the full measure of the draught of wealth and power in her goblet of silver and gold was never quaffed. The blood of the Inca and

1. Authorities differ as to the origin of the name. It is a corruption of "Arazuma" first applied to the country by the early Spanish explorers. Some maintain that the word is of Pima origin, and means "Little Creek," while others hold that its derivation is from two Pima words. "Ari," a maiden, and "Zon," a valley or country, having reference to the traditionary maiden queen who once ruled over all the Pima nation.—Patrick Hamilton, Resources of Arizona, 21.

2. Id., 10.

3. In the ten years from 1864 to 1874 it is estimated that not less than one thousand victims of savage atrocity found bloody graves in Arizona.—Id., 25.

4. Effects of the Inquisition. Id., 85.

Montezuma was avenged. Beholding in pride her scepter over the world was but the mirage that vanished as quickly as did the dreams of her freebooters who chased imaginary eldorados always vanishing from their outstretched hands. Yet before the folly of Spain had clouded so roseate a future her trusted leaders* in America, enthused by the marvellous attainments of Pizarro and Cortez traversed the inhospitable sands of the desert, anticipating, day by day, on their toilsome marches, some undiscovered realm rivaling the barbaric splendor of Mexico and Peru. One who was especially ardent in seeking riches was Vasquez de Coronado. In 1539, Padre Marco de Niza set out from Culiacan to verify the stories told by De Vaca. His description of the "Seven Cities of Cibola," fabulously rich in all that might satisfy the very prince of Spanish adventurers, so wrought upon the desires[1] of Coronado that he, the next year, 1540, with a company of followers numbering a thousand, made an expedition into what is now the State of Arizona. He named the ruins of Chichitilaca "Casa Grande," visited the Pima on the Gila, then passed on to the ingenious Moqui and Zuñi. They proved to be peaceful and hospitable. Their pueblos, still interesting products of semi-civilization, doubtless led De Niza to conclude that the goal of Spanish ambition was near.[2]

After remaining two years among the Indians in vain search for gold, bootless in spoil, richer in wisdom and withal less credulous of the stories told by his subordinates, Coronado returned to Mexico. The places he had visited gave him a vision of a part of what would become Arizona. Here came the holy fathers led by the dauntless Fathers Eusebio Francisco Kino and Juan Maria Salvatierra. The former died after a life that stands out in strong contrast to the rapacious spirit that impelled the fearless though disappointed Coronado. The natives, however, did not all conform to the type of the Zuñi and Pimas. The Apaches resented the intrusion of the Spaniards by a resistance that did not abate until they were removed to Florida.

In May, 1768, the Franciscans succeeded the Jesuits. The missions became ruins until only San Xavier del Bac is the one alone remaining in a state of preservation.

---

* The public mind throughout New Spain was wrought up to a high pitch of excitement by the news which Padre de Niza brought on his return. The desire to extend the dominion of the Cross produced in the breasts of the fathers a feeling of holy adventure; and the thirst for gold and glory possessed the belted knight and the sturdy man-at-arms.—Patrick Hamilton, Resources of Arizona, 15.

1. The Grand Canyon was discovered by Don Garcia Lopez de Cardenas, who appears to have given no more than ordinary attention to a scene that has no counterpart in all the titanic wonders of nature.

2. The expedition by water was led by Alaroon, who discovered the Gulf of California, which he named the Sea of Cortez.

In the end the missionaries poorly succeeded, for the Pimas in 1751 revolted. The Apaches were the destroyers of Tumacacori, at one time the richest of Arizona missions. They were good neophytes only in death when their treachery could no longer harm their self-sacrificing benefactors. However strong the opposition, there was no yielding to discouragement, and the Franciscans remained during the long period that subsequently contributed nothing to history from the land of the pueblos. The missions did not grow and prosper, but in due respect to the sincere motives of the fathers this tribute is due them—the faith they strove to establish is still found where they toiled. When Arizona was admitted as a state in 1911 the number of Catholics exceeded all other religious denominations taken together.[1]

Previous to 1846 the history of Arizona was that of the missions, the struggle between the padres and the natives whose antipathy could neither be overcome by force nor by the persuasion of religion. So far as the rest of the world was concerned Arizona was apart as fully as was the New World subsequent to the explorations of the Norsemen and previous to the coming of the caravels of Columbus.

In 1853 the Gadsden Purchase was added to the territories of Arizona and New Mexico. The United States had acquired the Mexican Cession in 1848, which included the remainder of Arizona, it being considered a part of the Great American Desert. Fourteen years after its acquisition it contained only 6,500 whites, and these were, for the most part, those who either going to or returning from California, had prospected over the plains and mountains and had found some hitherto undiscoverable charm that caused them to cast their lots in a land of grandeur if not of plenty. Since 1862 the population has steadily increased, reaching, inclusive of Indians and Mexicans, 204,354, according to the census of 1910.

The minerals of Arizona are no more remarkable in variety and abundance than are the rock strata in general. In no very remote geological age, this country was the recipient of considerable rainfall as evidenced by its old lake beds and its primeval forests, some of whose gigantic trees are preserved in agatized and silicified forms. These phenomena that indicate an age of greater humidity, also in silent speech tell of a meteoric change due to the formation of mountains which deprived these inland areas of moisture-laden winds. The age of these forests must be considerable, for had Arizona been

1. Church membership in Arizona in 1903: Protestant Episcopal, 1742; Methodist Episcopal, 1142; Fifth Avenue Christian, 200; Methodist Episcopal (S), 782; Roman Catholic, 40,000; Presbyterian, 2012; Congregational, 334; Baptist, 558; Free Methodist, 50; total, 46,820.—Compiled from Report of the Governor of Arizona, 78 and 79, 1903.

a land of rainfall in recent geological time, the precipitous sides of the cañons would have been smoothed by the action of the water.

The pine region is favored with a delightful climate and considerable moisture. At Flagstaff the average rainfall is twenty-four inches, while Yuma is almost devoid of rain.

Miners acquainted with Arizona declare the mineral wealth of the state is yet unknown.[1] Undeveloped by lack of railway facilities properties lie dormant that will eventually yield abundance of silver, gold, lead, tungsten and precious stones. In 1908 Arizona ranked first in the production of copper; in 1909 Montana led, but in 1910 Arizona again led all copper-producing states.[2]

So far as it is possible to determine, the illimitable mineral wealth of the territory remained hidden from the Spaniards. Had they discovered and developed the mines there possible, the treasure ships of Spain's halcyon days would have been poor in comparison to the amount of wealth revealed. As the French overlooked the true soil of Louisiana, thus did the Spaniards fail to find the real eldorado of their dreams.

In 1906 Charles D. Walcott, Director of the United States Geological Survey, stated that there were 72,792,320 acres of land in Arizona of which 254,945 acres were irrigated at that time, and that 500,000 acres more could be brought under the canals. Since, however, it is considered possible to irrigate 2,000,000 acres. The water of the Colorado contains fertilizing sediment[3] six times as rich as the Nile. Since Belgium maintains one inhabitant to the acre, there is a possible population of 2,000,000 in Arizona.

Arizonan scenery is picturesque, varied and beautiful, blending with all the sublime in a measure not found elsewhere in the United States. The desert scenes of Van Dyke have called from the idea of desert wastes to a desert beautiful denoting charm and utility. From Yuma, 400 feet above the sea level, to the San Francisco Mountains 14,000 feet above, there are marvellous changes in conditions. At and near Flagstaff 12,000,000 feet of pine lumber are

---

1. "With a judicious expenditure, the annual output in gold, silver, copper and lead is capable of indefinite expansion, to say nothing of the known deposits of iron, manganese, coal and other minerals—onyx, building stone, etc.—which will eventually be developed and utilized."—Thomas Tonge, The Mineral Resources of Arizona, Engineering Magazine, Vol. XIII, 781.

2. The gross production for the year 1910 was as follows: Copper, 295,275,527 lbs.; lead, 1,068,093 lbs.; zinc, 6,134,418 lbs.; gold, 142,252.803 ozs.; silver, 2,092,-738.461 ozs. Gross valuation, $42,229,282.56.—Report of the Governor of Arizona to the Secretary of the Interior, 1911, 25.

3. "While the Gila river and its affluents, the San Pedro, Salt and Hassayampa, which run dry occasionally, furnish only a limited quantity, the mighty Colorado river carries a volume of water not only six times as rich in fertility as that of the Nile, but of almost limitless and continuous supply."—B. F. Fernow (Ph. G., LL. D.), National Geographic Magazine, 8, 219.

produced annually. Congress has become alarmed lest the natural beauty of this part of the state be marred and has set apart large forests that will preserve nature's rarest charms. The species of pine represented, known as *pinus ponderosa,* does not produce the best quality of lumber, only about six per cent. being perfect, yet the state is supplied with its own building material and furnishes both herself and California with ties.

In an area of 113,929 square miles there are only 1,994.36 miles of railway. Coal is mined in small quantities, yet there is enough in sight to promote all dependent industries. Here and there are found mineral springs, sandstone, marble and granite. Of precious stones turquoises, venadium and garnets are abundant. So free is the land of the state to entrants that only 5,200,000 acres out of 72,792,320 are privately owned. Mining stands pre-eminently first among the state's industries; however, the northern mesas and elevated portions are composed of excellent pasture lands. Thus many resources of the state do not appear as tangible commodities, yet are of priceless worth in building up a commonwealth and in bringing a large population to its plains and valleys. The air is of rare purity, attracting the sufferer from pulmonary affections and restoring to health and vigor.

Containing an area as extensive as the New England States and New York combined, a variation of altitude almost as great as that of Colorado, forests that greet the eye in refreshing coolness, flocks and herds that rival those of Abraham on the plains of Jordan, Arizona has much to offer. Adding to this are mineral deposits estimated to cover 30,000,000 acres,[1] which the world's markets will take and pay for liberally.

Educational institutions of the state are commensurate with every other field of progress. Teachers' salaries are exceeded only by those of California and Nevada. The state university is located at Tucson, and two normal schools are situated at Tempe and Flagstaff.

The state is essentially democratic in political vision and during the session of its legislative assembly, 1908-9, a direct primary law was passed; also a law providing for a state historian.[2] It is evident that the western spirit of government by the people animates the citizenship of the state. Though the population is scattered and

1. Congressional Record, Vol. 38, Pt. 6, 5105 (1904).

2. "The historian has during the year done a great deal of extensive research work and has succeeded in obtaining valuable data not hitherto available for future use in the compilation of an accurate and comprehensive history of the Territory."—Report of the Governor of Arizona to the Secretary of Interior, 19, 1911.

only forty-seven per cent. of pupils of school age is enrolled, the state provides splendid conditions for educational advancement.

As only about one twenty-fifth[2] of the area of the state can be irrigated, primal characteristics will, to a great extent, remain. The forest and streams beheld by De Soto in his expedition through the south have been transformed, but the scenes that opened to the sight of Coronado, Espejo and De Vaca show little appreciable change. The metamorphosis that follows in the wake of civilization is not so prominent here where centuries hence nature will still safeguard her pristine landscapes as jealously as she has since Spanish wanderlust and dreams of gold and empire led through perils to failure and death.

The crops of the United States for 1912 approximate $9,000,000,000, in comparison with which the fondest hope of the Spanish gold-hunter becomes insignificant. The rich soil that would become a perpetual source of revenue was ignored.

In considering briefly thus the history, resources and physiography of Arizona, we may inquire what the United States added to its material wealth when the enabling act of Congress permitted Arizona's star to be placed in the national emblem. This is necessary and lends interest in following the steps that finally led to admission.

First came the proposition to admit Arizona and New Mexico as a single political unit and the consequent failure to bring the desired consummation to pass on the part of its adherents. It is interesting to consider the causes, controversies and results of the measure proposing joint statehood which was destined to perish.

II. THE JOINT STATEHOOD BILL OF 1906.

When Senator Hamilton of Oklahoma in 1906 brought before the Fifty-eighth Congress a bill providing joint statehood for Oklahoma and Indian Territory, also Arizona and New Mexico, it became apparent that the merging of the latter would not be accomplished as peacefully as had been entertained by the large state advocates. On November 6, 1906, an election was held to determine the attitude of the people of both Arizona and New Mexico toward joint union. In the former the vote was 3,141 for, to 19,406 against; in the latter 26,195 for, to 14,735 against the plan proposed. In Arizona and New Mexico conditions existed territorially and racially that, even though they might be subordinated to a single constitution, would result in relations uncomfortable and inimical to both. States whose stars have long adorned the flag have been and are now

2. Estimates vary. See Congressional Record, Vol. 38, Pt. 6, 5105 (1904).

disturbed by local incongruities.[1] Legislation desired by the people of western Tennessee does not provide necessary laws for those in the eastern section. Such differences often lead to political aspersion, resulting in riot and bloodshed.[2] The mountaineers of Eastern Kentucky plotted the assassination of Governor Goebel, claiming that their will had been subverted by the Democratic party in that state. Owing to the diversity of interests in California there has been a strong sentiment favoring state division.[3] The people of Southern California have asserted that they do not receive a proportionate share of the state's revenues and that the Tehachapi should be made the northern boundary of a new state. Another noteworthy example is found in the division of Virginia into two commonwealths, the result of geographical conditions and industrial differences.

Territorial government[4] did not attract settlers. When admission was agitated there was a noticeable increase of land entries as stated by Governor Sloan in his report to the Secretary of the Interior. The laws of the Territory had failed to secure justice in taxation. The Tombstone Consolidated Mining Company was incorporated for $15,000,000. Six million dollars worth of its bonds had been actually sold, yet the company was assessed for only $79,000. Another, the United Verde Copper Company, owned principally by Senator Clark of Montana, yielded $10,000,000 and was taxed on $895,423. To correct these inequalities a state government was necessary, for, said Senator Hamilton, "Under present conditions a territory cannot purge itself as well as a state can. The governor of a territory is an appointive officer. He is not responsible to the electorate."

Santa Fé, the second oldest city founded in the United States, is a monument to Antonio de Espejo. Here Spanish institutions were

---

1. J. P. Widney, The Californian, Vol. III, 124 (1881).

2. In ten months Tennessee raised fifty regiments for the Southern Confederacy, while five or six were recruited for the Union.

3. "Among the minor considerations leading to the separation are the questions of the difficulty of framing state legislation to suit communities so widely differing in interests as the northern and southern portions of California; questions of local inequalities and injustices in taxation; the undue centering of State institutions and expenditures of State moneys in the San Francisco Bay counties, although the people of Southern California are ceasing to care about this; they say they prefer now to wait and build up their own institutions; the difficulty of gaining any influence in Congress, and of securing Government aid for harbor improvements and public works; the desire to be free from the controlling and corrupting influence of San Francisco in State politics—for the new state would be essentially an agricultural and pastoral one, without any one great city within its borders to overshadow with its influence the purer vote of the country."—J. P. Widney, The Californian, III, 124.

4. Arizona is a state without a history. One of the departments in the new state government is that of State Historian. Governor Sloan, in his report to the Secretary of the Interior, 1911, stated that progress was being made in the collection of data and that a suitable history of the State would be written.

planted and the blood of Castile and Aragon was made an inseparable part of the territory. In 1906, eight out of every fourteen inhabitants were Spanish-American. The people of Arizona, almost entirely American, and with seventy-five per cent. of their school teachers graduates of higher schools of learning, did not look with favor upon the ideals* necessarily different from their own; for, since Arizona was inferior in numbers to New Mexico in 1906, should joint union be effected, their policies would be dictated by New Mexico. Submission to political impotency that would prevent the fulfilment of her plans and purposes was the basis of Arizona's most bitter protest.

The territories are naturally separated by mountains and deserts which constitute an effectual barrier to intercourse. These have excluded any sympathetic relations as fully as was the effect of the Alps in differentiating the civilizations of the Po and the Rhine. The railroad builder, the pioneer and the prospector alike shun these inhospitable fastnesses by making long detours to the north and south. This impassable frontier has determined the people and their commercial affiliations. The merchants of Arizona go to Los Angeles and the Pacific to trade, while those of New Mexico go to Denver and El Paso. Thus there were no common interests to cause a desire for union.

Before San Bernardino County, California, was created out of territory formerly a part of San Diego County, a resident of Riverside desiring to pay his taxes, would bid his family adieu and start on a week's journey, *via* Los Angeles, to his county seat, San Diego. Frequently the sum paid did not exceed the outlay necessary in making the trip. More remarkable still would have been the journey of a citizen of greater Arizona from Yuma to Santa Fé whose car-fare would be $40.25.[1] From Phoenix to the proposed new capital he would be obliged to travel 661 miles and consume 26 hours.[2] The time occupied in making the trip would exceed the fast train schedules between New York and Chicago.[2] In addition many would have to make long journeys to the nearest railroad. Added to the loss of time and great expense would have been the tardiness of news from Santa Fé and a consequent failure to wield a proper influence in prohibiting and securing legislation.

---

* Governor Otero of New Mexico said: "There is no doubt that the great majority of people in New Mexico are opposed to joining New Mexico and Arizona into one commonwealth, as proposed by pending legislation. Even a small per cent who would acquiesce in such legislation prefer single and separate statehood for each territory. This is not due to any innate animosity between the two territories, but to inherent difference in population, in legislation, in industries, in ideals, and from an historical and ethnological standpoint."

1. J. W. Babcock, The Independent, Vol. LX, 506.

2. The fastest schedule between New York and Chicago is eighteen hours, and between Phoenix and Santa Fe, twenty-six hours.

One of Edmund Burke's strongest pleas for conciliation between England and America was the failure of Parliament to deal effectively with the American colonies, owing to their great distance from the source of authority. Even granting that civilization takes with it modern appliances, they are in the rear and cannot annihilate distance until they reach the vanguard. When Arizona and New Mexico were territorially separated in 1863, the distance was so great and travel so hazardous that the people of the former were deprived of the right to participate in the territorial legislature which met at Santa Fé.

The financial system of Arizona had been much better than that of New Mexico, her bonds frequently selling above par. Just how to equitably apportion the indebtedness of the territories was a difficult matter to settle. The financial policy of New Mexico prior to 1906 had been lacking in economy and farsightedness.[1] On the other hand Arizona had displayed frugality and thrift. With joint admission the heaviest burden would fall upon the more prosperous territory. In this was added another reason why Arizona was not willing to join with a people who would place the heavier burden of debt upon the shoulders of both.

Had the joining of the two territories into one state been consummated the area resulting would have been 235,280 square miles, and would have exceeded every other state except Texas, which contains 265,896 square miles. The Thirty-ninth Congress, admitting the last named state provided for its future subdivision whenever its people should decide that such a course would be for the best interests of the state, considering it too extensive to become a permanent political unit. The combined area of the two territories would have been only 30,516 square miles less than that of Texas. Two senators, Bayard of Delaware, and Sprague of Rhode Island, were members of both the Twenty-ninth and Thirty-seventh Congresses. These members had voted on the bill to admit Texas, which was a measure of great national concern. They had also participated in the creation of the Territory of Arizona, there being no question raised concerning its size. In the Twenty-ninth Congress such a question was raised and provision was made for the subsequent division of a state whenever the people thereof deemed it expedient, *at the time such state was created.*

The people of Arizona claimed that the act of Congress bestow-

1. "County, school and municipal debts of Arizona were funded under the authority of an act of Congress, while no such funding law exists in New Mexico, and several of the counties are insolvent as evidenced by discredited securities which the owners hope the new state would assume."—House Reports, 59th Congress, Miscellaneous, II, 2656.

ing territorial rights upon them during Lincoln's administration also conferred separate statehood whenever they might be entitled to this honor, and that any action derogatory thereto jeopardized their welfare, being counter to the intentions of that Congress which gave them territorial existence. The usual clause, under which they claimed immunity is as follows:

"That said government shall be maintained and continued until such time as the people residing in said territory shall apply for and obtain admission as a state on equal footing with the original states."

The words "said territory" was interpreted as granting the "inchoate right of ultimate statehood."

It was claimed by those advocating joint statehood that there were citizens in Arizona who believed that in giving the state federal offices and congressional representation, they could, by direct participation or influence, secure immunities and benefits for themselves and that this could not be done in case the territories were linked together in one state. This was vigorously denied by those who stood for separate statehood.

After the bill had passed the House and was about to become a law, the Arizonans began to organize for effectual resistance and every section of the territory became strenuously active in framing resolutions and presenting them to Congress. A delegation of leading citizens proceeded to Washington to stay the passage of the measure. At the Annual Fair held at Phoenix, where twenty-five hundred spectators were assembled in a large grandstand, petitions were circulated which were signed by ninety-eight per cent of those present in thirty minutes. Thus the people registered their protests everywhere.

The Bar Association sent a delegation to Washington bearing the following resolutions:

"We profoundly believe that the union of the two Territories as one state would be inimical to the best and highest interest of both, and because of differences in our history, laws, customs and races, and because of the geographical division which naturally separate and divide us such union would be particularly harmful to the people of Arizona.

"We believe that the complications which would inevitably result from an attempt to adjust impartially the burdens of the debts of the territories and the various counties and municipalities thereof would result in irreconcilable difference, and that the prosperity and welfare of the various Territorial institutions would be endangered."

Such protests began to take effect, and the Senate, convinced by the overwhelming opposition, deferred action, leaving the bill in the Committee on Territories whence it never emerged.

The people of New Mexico were quiescent. They had yet a work to perform in securing statehood.[1]

Arizona was rich in fact and richer in prospects. Her citizens were aware of a future of no uncertain importance—a future of developed resources. The committees that pleaded with Congress not to impose upon them a union unnatural and undesirable and prayed that the ban to such a marriage of unwilling parties might be prohibited, expressed a patient resignation in the matter of future admission. They were willing to bide their time, confident that Congress would soon be convinced of their fitness for statehood.

Those who opposed separate admission argued that Arizona was a vast territory with only a population of one and one-tenth to the square mile, that it would be unjust to other states to confer equal senatorial power on a civic body so insignificantly small in comparison with other states, that, though the people of Arizona differed from those of New Mexico, the breaking down of racial inequalities would be most salutary from a national standpoint.

The committees sent to Washington thus found in the eagle's nest a trembling dove. Peace reigned and the marriage of hostile interests was not consummated. Much had been said and much learned of the wonderful south-west. Congress had these formally presented facts brought before it, namely: that Arizona contained the largest forest area in the United States, embracing more than six and one-half million acres, that the character of the people was of a high order, there being only one per cent. of illiteracy, that much rich farming land had been reclaimed with three times as much to be added,[2] that the precious mineral belt is scarcely yet prospected, notwithstanding that $43,000,000 is produced annually. Such facts spoke eloquently for statehood, and after a lapse of only four years, Congress again entertained a bill for the admission of the Territory.

The question of 1910 was not whether admission was merited, but upon what conditions it should be granted.

---

1. "The statehood question, ever paramount in the public mind in New Mexico, was advocated at Washington by Mr. Andrews, and the bills for the admission of the territory, introduced by him, were handled so adroitly, that finally after more than sixty years of effort an enabling act for New Mexico and Arizona, admitting them into the Union as separate states, became law.—R. E. Twitchell, "Leading Facts of New Mexican History," 546.

2. Dwight B. Heard, The World Today, Vol. X, 415.

III. ADMISSION.

During the time that elapsed between 1906 and 1910 the people of Arizona and New Mexico did not cease in their efforts to secure separate statehood.* Congress was urged to take up the matter seriously. The people of Arizona had won at the last moment in the fight against joint statehood and now were courageous in renewing the conflict. The territory had received many complimentary reports from senators and representatives that dispelled the notion of scorching sands strewn with the bleaching bones and blasted hopes of misguided pioneers. These distorted fancies belonging to an age that would never return, were no longer prevalent. The lure of the mirage, the war-whoop of the Apache and the vanishing trail would no longer adorn the tales of travelers roaming the south-west.

Eastern states† with the lapse of time were less inclined to open the doors of statehood to aspiring territories. Their attitude toward New Mexico and Arizona knocking for admission was more critical than that displayed a half-century earlier when Nevada[1] was allowed to enter the Union with a population less than one-fourth that of Arizona in 1910.

During the time that elapsed between 1906 and 1910 the territorial delegate[2] from New Mexico had been active in bringing before Congress a bill for separate statehood. During this interim both joint and separate statehood bills had been proposed but had not been reported from the Committee on Territories. On January 15, 1910, Mr. Hamilton,[3] chairman of the House Committee on Terri-

---

* "On February 3, 1909, Hon. E. L. Hamilton, of Michigan, chairman of the house committee, who deserves a warm spot in the heart of every New Mexican on account of his constant friendliness to the territory, introduced House Bill No. 27,607 of the 60th Congress, being an enabling act for New Mexico, and one for Arizona, combined in one bill, but entirely separate in their operations. This was the conclusion of the house committee on the subject of statehood for the territories, after various hearings and full consideration during the greater part of two sessions."—P. L. Bradford, Struggle for Statehood, 122.

† In the debates of the 61st Congress, the population of the proposed territories of New Mexico and Arizona was the bone of contention. It was asserted that the average population of the states already admitted at that time was 1,500,000. The New England States were frequently referred to as being a unit against the proposed bill to admit. Mr. Gillette of Massachusetts was the champion of the opposing forces when the enabling act was debated in the House.

1. Nevada, 1870, 42,491; Arizona, 1910, 204,354.

2. Ralph Emerson Twitchell in his "Leading Facts of New Mexican History," Vol. II, 575, says of the New Mexican delegate, William H. Andrews, that he had labored indefatigably for the passage of a bill for separate statehood and that it was owing to the friends of Mr. Andrews in Congress, such as Mr. Quay of Pennsylvania, that statehood was made possible. He says that Mr. Andrews was often referred to as the "third senator from Pennsylvania."

3. Mr. Hamilton had piloted Oklahoma to statehood. In the debates on the enabling act, Mr. Cole of Ohio referred to Mr. Hamilton, who had ushered into the Union the lusty state of Oklahoma, as about to present the nation with twins.

tories, introduced the so-called Hamilton bill providing for the forming of constitutions and state governments on the part of New Mexico and Arizona. After being read the first and second times, the bill was referred to the Committee of the Whole House, and with the accompanying report ordered to be printed.

On January 17th Mr. Hamilton again brought forward the bill and moved that the rules be suspended, the committee discharged and the bill passed. This caused an animated discussion[4] in which the attitude of the members was set forth; however, at its termination, the vote was taken upon the measure without amendment. The applause that greeted the advocates of the bill made it plain that those opposed were in the minority. Ralph H. Cameron, delegate from Arizona,[1] addressed the House setting forth the fact that he had lived in the territory since 1883 and had not been able to cast a vote for the national candidate for president, and that this was true of the qualified voters of Arizona who at that time numbered more than thirty-seven thousand. He urged that favorable action be taken and that the injustice that had been caused by the inexcusable delay of Congress be thus in a measure atoned for.

The friends of the bill held that the population of the territory far exceeded the anticipations of statesmen when Texas was admitted, among whom was Daniel Webster,[2] that the banking interests of the territories had trebled in ten years, and that the vote for delegate in 1908 was double that of 1900. From a legislative standpoint it was urged that the entire west demanded more representation in the Senate because of its rapid settlement and development and the consequent need of a great amount of legislation in that section, and that the attitude of the New England States, less than either of the proposed states in size, with six states and twelve senators, was unfair, and that in justice the west should be permitted to equalize to some extent the power exercised by eastern and western commonwealths. The opposition held that the statistics setting forth the population and resources of the territory were not reliable, which

---

4. Congressional Record, 61st Congress, Vol. XIV, Pt. I, 702-714.

1. In the debate Mr. Cameron said that he objected to one clause of the enabling act. This he said was from a Democratic standpoint and was the power conferred upon the governor, secretary of state and chief justice, all Republicans, who were authorized to establish districts from which delegates to the constitutional convention would be chosen.

2. In Mr. Webster's speech before the United States Senate on March 23, 1848, he said, "As to New Mexico, its population is not likely to increase. It is a settled country; the people living along in the bottom of the valley on the sides of a little stream, a garter of land on one side, and the other filled by coarse land-holders and miserable peons. There will, then, be two Senators for 60,000 inhabitants in New Mexico to the end of our lives and to the end of the lives of our children."

was refuted on the ground that the national census next previous had given the lowest per cent. of illiteracy to Arizona of any state or territory in the Union. The expediency of admitting states with an average population of 300,000 was questioned when the average population of states already admitted was 1,500,000. The vast systems of irrigation were doubted to be of proven value, and the 9,000,000,000 tons of coal supposed to be in Arizona, based upon a statistical report presented, was compared to 9,000,000,000 tons of ice in Alaska, which, said Mr. Gillette of Massachusetts, would be worth as much per ton as coal in some places. It was claimed that lawyers' arguments had to be translated to juries due to the large numbers of foreigners in the territory. In reply it was stated that in many places in New England the percentage of foreigners was much greater than in Arizona.

The limit of discussion being reached, the question was put to vote, the necessary two-thirds majority was secured according to the opinion of the speaker, the committee was discharged and the bill passed. On the next day it was referred to the Senate to be approved or rejected by the Committee on Territories, of which Mr. Beveridge was chairman.

On March 14th, the bill was placed on the Senate calendar and on June 16th was brought before that body to be acted upon together with the amendments proposed, of which the following were the most important:

(1) The elimination of the educational qualification clause which, being drastic, was considered an injustice to the Spanish-American element and opposed to the provisions of the Treaty of Guadaloupe-Hidalgo.

(2) A change in the election clause which gave the power to disfranchise a voter to the state election board.

(3(The denial of the right to sell government lands to pay the territory and county debts.

(4) That not only polygamy as stated in the bill, but polygamous marriages be prohibited.

As is seen, these amendments provided a more generous treatment of all classes and safeguarded the Territory's resources.

The bill as amended passed the Senate the same day by a vote of 42 to 19. There was some apprehension lest the House might disapprove the measure, which proved groundless, as the House concurred by unanimous vote on June 18th. President Taft signed the bill on the 20th and a territory that had been made a part of the Southern Confederacy and was saved to the Union by troops sent out by California, after more than sixty years struggle was thus secure in an honorable place in the galaxy of sovereign commonwealths.

In accordance with the provisions of the enabling act, Richard E. Sloan* on June 28th issued a proclamation for an election of fifty-two delegates to a constitutional convention.

These being duly qualified met at Phoenix, October 10, 1910, and organized by electing George W. P. Hunt,[1] president, and A. W. Cole, secretary, and began to draft a constitution that would be best suited to the needs and conditions of their constituents.

The delegates[2] to the convention[3] having organized by electing officers and twenty-one committees, began their work by excluding from the floor of the convention, all visitors who were not entitled to attend the sessions unless by the unanimous consent of the members present. Lobbying was forbidden and the daily sessions were ordered from 9 A. M. to 12 M., and from 2 to 5 P. M. The committee on boundaries reported those formed territorially to be accurate and that California had fixed upon the midpoint of the channel of the Colorado as a boundary, this being set forth in her state constitution. A press dispatch to the *Arizona Democrat* from the Census Bureau gave the population of the territory as 204,354, this being an increase of 91,243 or 66.2 per cent. for the decade between 1900 and 1910. Proposition No. 97[4] provided for the canvass of the voters for their choice of United States senators, which was idefinitely postponed since the purpose for which it was created was secured by Proposition No. 4, providing the initiative and referendum. The separate conventions of New Mexico and Arizona took

---

* Governor Sloan was not in harmony with the new proposed constitution. He is quoted as follows: "There has been a big change in sentiment since the delegates to the convention were elected and I am confident that the proposed constitution will be badly defeated at the polls. It is about the worst affair ever turned out, and objectionable to all classes."—Los Angeles Times, December 8, 1910.

1. Mr. Hunt's work in the convention led to his election as first governor of the new state.

2. Fred T. Coulter, Apache County; C. C. Hutchinson, Edward M. Doe, Coconino County; E. E. Ellinwood, Thomas Feeney, John Bolan, A. F. Parsons, R. B. Sims, P. F. Connelly, E. A. Tourea, D .L. Cunningham, C. M. Roberts, S. B. Bradner, Cochise County; George W. P. Hunt, J. J. Keegan, Alfred Kinney, Jacob Weinberger, John Langdon, Gila County; Lamar Cobb, Mit Simms, A. M. Tuthill, A. R. Lynch, W. T. Webb, Graham County; A. C. Baker, B. B. Moeur, Orrin Standage, F. A. Jones, Sidney P. Osborn, Alfred Franklin, John P. Orme, Lysander Cassidy, James E. Crutchfield, Maricopa County; William Morgan, James Scott, Navajo County; E. W. Coker, Thomas N. Wills, Pinal County; Samuel L. Kingan, William F. Cooper, Carlos C. Jacome, George Pusch, James C. White, Pima County; Bracey Curtis, Santa Cruz County; Ed. W. Wells, M. G. Cunniff, Albert M. Jones, H. R. Wood, Morris Goldwater, A. A. Moore, Yavapai County; Mulford Windsor, Fred L. Ingraham, E. L. Scott, Yuma County. Of these, twelve were Republicans and forty Democrats.

3. See Minutes of the Constitutional Convention of the Territory of Arizona, 1910.

4. Minutes of Constitutional Convention of Arizona, 210.

occasion to send friendly greetings[2] to each other, the former territory's constitutional convention being in session at Santa Fé at the same time that of the latter was deliberating at Phoenix. The kind offers of free copies of the Journal of the Oklahoma Constitutional Convention were made by William H. Murray, who had served as its president. The acceptance of the generous tender was wired by President Hunt requesting fifty-two copies, one for each member.

Governor Sloan occupied the attention of the delegates for a time during their deliberations. That he was hostile[1] to the work of the convention was evident from the quotations of the press. On December 7th, the following resolution was offered by Mr. Roberts:

"Whereas, the Governor of Arizona publicly expressed through the press of Washington, December 5th, his opinion 'that the Constitution which is being formed will never be adopted,' Resolved by the Constitutional Convention of Arizona that as no part of the Constitution had been finally completed on the date above mentioned, no honest or intelligent opinion could be expressed, it deplores the unfair and presumptuous statement of the governor as tending to influence Congress and the President in granting the wishes of the people of Arizona as expressed in the election of delegates to the Convention; that a copy of this Resolution be transmitted to the President and Congress by telegraph."

The resolution was not passed, but action was indefinitely postponed. It expressed the feeling of the members whose responsibility was to the people who elected them. How well they had represented their constituents would be known when the vote to adopt would show the will of the people in accepting or rejecting the proposed constitution.

---

2. Santa Fe, N. M., October 14, 1910.

Honorable George W. P. Hunt, President,
Constitutional Convention,
Phoenix, Arizona.

Sir: On behalf of and under its direction by resolution unanimously adopted by the Constitutional Convention of New Mexico, I send the greetings of the delegates thereof to your Convention, and the best wishes of this Convention for the highest degree of success in the great work you have undertaken in forming a govrnment of, by, and for the people.

(Signed) CHARLES A. SPIESS,
Pres. Cons. Conv. of New Mexico.

Phoenix, Ariz., October 15, 1910.

Honorable Charles A. Spiess, President,
Constitutional Convention,
Santa Fe, New Mexico.

Sir: The Constitutional Convention of Arizona, now organized and in session, begs to express by unanimous vote its appreciation of the kind greeting received today from the Constitutional Convention of New Mexico, and to exetnd felicitations upon the common opportunity of New Mexico and Arizona to secure the high privilege of statehood. Many of the interests of the two states will be similar, whatever the divergencies may be, and the Constitutional Convention of Arizona assures the Constitutional Convention of New Mexico of its confidence that New Mexico will do her share, as Arizona will do here, to co-operate in the noble task of building up the great Southwest.

(Signed) GEORGE W. P. HUNT,
Pres. Cons. Conv. of Arizona.

1. Officials of the territory were appointive, which accounts for the attitude of Governor Sloan and Congressional Delegate Cameron, who were in sympathy with President Taft and averse to the progressive ideas of the people.

The Governor in his annual report of 1910 declared that the benefits anticipated would stimulate activities of every kind in the Territory's limits and be so conducive to prosperity that delay would be a matter of grave concern. The prospect of speedy admission alone had led to a noticeable increase in homestead entries, not only in irrigated districts, but in sections where the dry farming method is used.[1] The convention set to work without delay so that the Governor was able to order an election to adopt or reject the instrument created on February 9th, 1911. The vote was canvassed by the Governor, Chief Justice and Secretary of the Interior, constituting the state board. The official vote declared was 12,534 for, to 3,920 against adoption.[2] According to custom, copies of the constitution thus accepted and indorsed by the people was sent to the President, Vice-President and Speaker of the House of Representatives respectively. When these reached Washington, Congress was very busy with accumulated business that always renders the closing days of its session full of long-continued and strenuous work. Therefore no action was taken by either the President or Congress prior to adjournment on March 4, 1911.

The constitution contained some salient features, among which were the following: (1) the provision for the preservation of valuable franchises, wherein corporations would be compelled to submit to the majority of qualified electors by their will expressed at a general or special election. (2) the specifying of a day's labor under Article XVIII. to be eight hours, also making it imperative that the legislature of the new state provide an employers' liability act to protect workingmen from contributory negligence on the part of corporations or individuals. (3) forbidding the bartering or selling or giving of alcoholic drinks to the Indians. (4) an amendment having passed each branch of the legislature by a majority vote and being placed in the hands of the Secretary of State together with a petition for the same signed by fifteen per cent. of all the votes cast for governor at the last preceding election, a special election shall be called and a majority vote determine the fate of the measure. (5) the initiative and referendum providing ten per cent. of the qualified electors petition for the former and five per cent. for the latter. (6) the recall of public officers when twenty-five per cent. of the qualified electors petition for the same and such petition is upheld by majority vote at the election called thereby.

In considering the application of the recall to the judiciary we come to that part of the new constitution that aroused interest everywhere owing to the fact that the President and Congress had never been called upon to approve such a clause when other states

1. Report Governor of Arizona to Secretary of State, in 1910.

were admitted. In the Constitutional Convention of Arizona the recall was incorporated into that instrument by a vote of thirty-five to eleven. As the constitution was subsequently indorsed the measure reflected the sentiment of the electorate. The question was, in the step taken, whether there had been a too liberal exercise of democratic privilege.

On April 4, 1911, Joint House Resolution No. 14 was placed in the hands of the Committee on Territories, and on May 12th, Mr. Flood of Virginia reported the same with amendment referring the resolution with a report on the same to the Committee of the Whole House. The report stated that the President had not acted on the proposed constitution of Arizona, that its provisions were republican in form, that it provided civil and political rights without distinction as to race or color, that it was agreeable to the Constitution of the United States, and the Declaration of Independence, and in conformity to the enabling act. The Committee offered a substitute resolution providing that the clause proposing to apply the recall to the judiciary be again submitted to the electors of Arizona for their ratification or rejection at the first general election. This it was hoped would remove the objection of the President on account of which was the "controlling" reason in proposing the change. The minority report submitted was not agreeable to merely requiring a vote of the electorate of Arizona to reconsider the recall, but resolved that it be made mandatory that the recall be renounced.[1] The committee[2] whence issued both the majority and minority reports contained the two Territorial delegates from Arizona and New Mexico. On May 16, there began a series of debates of unusual ardor in Congress. The realization that the executive and legislative branches were contending for authority spurred on the members in the contest that followed.

---

1. Sec. 2. That the Territory of Arizona be admitted into this Union as a state with the constitution which was formed by the Constitutional Convention of the Territory of Arizona elected in accordance with the terms of the enabling act, approved June 20th, anno Domini nineteen hundred and ten, which constitution was subsequently ratified and adopted by the duly qualified voters of the Territory of Arizona at an election held according to law on the ninth day of February, anno Domini nineteen hundred and eleven, upon the fundamental condition, however, that article eight of the said constitution of Arizona in so far as it relates to the "recall of public officers," shall be held and construed not to apply to judicial officers, and that the people of Arizona shall give their assent to such construction of article eight of said constitution.—Part of Minority Report. The members composing the committee were as follows: W. H. Draper, manufacturer; F. E. Guernsey, attorney; J. N. Langham, attorney; F. B. Willis, attorney; W. H. Andrews, farmer; and R. H. Cameron, miner and stockman.—Congressional Dictionary, 62nd Congress, 1st Session, May, 1911.

2. The Committee on Territories reported as follows: "The controlling reason of the committee for proposing this change was the objection of the President of the United States to the recall provision of the Arizona constitution so far as it applies to the judiciary, and the belief on the part of the committee that if the recall as applied to the judiciary was again submitted to the people of Arizona it would meet the objection of the President."

Those favoring a liberal policy in their attitude toward the Territory insisted that the President was overreaching his constitutional authority in placing conditions upon the people of Arizona whose proposed constitution had passed inspection and been found to contain all the requisites necessary to conform with the Constitution of the United States.. Mr. Martin[1] of Colorado, held that the legislature, not the courts or executive,[2] was the palladium of liberty, and that government was created by legislators. That Congress acted upon the 'controlling" influence which was the firm stand of the President in planning ways to harmonize the views entertained, showed the members ready to admit the territory without delay.

Those opposing the recall held (1) that the independence of judicial officers would be curtailed, (2) that the power of the rabble would influence judicial opinions, and (3) that in time of passion, the safety of the majority would not be secured by the cool deliberation of the minority.

The amended resolution submitting the proposed constitution to the people of Arizona to reconsider by vote, but not making it mandatory that it be rejected, passed the House May 23d and was referred to the Senate Committee on Territories on May 25th. With minor amendments the resolution was voted on and passed by the Senate, fifty-three to eighteen, on August 8th, and was vetoed by the President on August 15th, at which time a message setting forth the reasons for such action was sent to the House. The recall provided for a petition of twenty-five per cent of the total number of votes cast at the previous general election and was applicable to all elective officers, including the judiciary. Within five days after the petition is filed the officer petitioned against might resign. A space for two hundred words setting forth the reasons for recall, also a like space in which the accused might make his defense, was reserved on the ballot. If the majority vote was received by the incumbent he was not removed from office. Of this President Taft said: "This provision of the Arizona constitution in its application to the county and state judges, seems to me so pernicious in its effect, so destructive of independence in the judiciary, so likely to subject the rights of the individual to the possible tyranny of a popular majority, and, therefore, to be so injurious to the cause of free government, that I must disapprove a constitution containing it."

The objections were substantially as follows: (1) The rule of

1. Congressional Record, 62d Congress, Vol. XLVII, Pt. 2, 1246.

2. President Taft in his Special Message, Returning Without Approval House Joint Resolution No. 14, asserting the prerogatives of an executive, said: "But now I am discharging my constitutional function in respect to the enactment of laws, and my discretion is equal to that of the Houses of Congress."

the majority, in passion, is perilous; (2) judges, to fill their offices properly, must be independent, the recall renders them subservient; (3) the recall would remove a judge who may have the courage to render an unpopular decision; (4) no period of delay is allowed for the abatement of popular feeling; (5) it would prevent self-respecting men accepting judicial office; (6) an elective judiciary has proved successful, then why change to a system so full of danger?[1]

Communications were received from leading citizens of Arizona assuring their friends in Congress that they would be willing to sacrifice whatever advantages the recall might bring to them if by so doing a speedy admission might be provided. The debates had reached the point, however, where the purposes of the legislators were directed toward establishing precedents[2] which would be of more value than the immediate relief of the territory. The Republican members, together with the President, constituted the greater part of the opposition, therefore the Democratic members received many expressions of thanks from all parts of the territory.

Mr. Owen[3] representing the Committee on Territories in the Senate favoring the recall, expressed his views in its favor in part by holding that there was a tendency among the states to abbreviate the terms of judges, that the favor of minority rule has been inspired by special privilege, and that majority rule is honest, that judges in Oregon favor the recall, and the people there have not abused it, that the people are conceded to have abundant intelligence to justify them in nominating and in electing judges, therefore are qualified to exercise the recall when necessary, that judges are fallible the same as other public officials, that judicial decisions reflect political bias when emanating from the Supreme Court, that the Supreme Court has assumed prerogatives denied by the Constitution creating it, and that in the higher courts there is a drift toward "judicial oligarchy." Further that when a judge becomes mentally, physically or morally disqualified, "Impeachment is so difficult as to be confessedly valueless."

On August 17th, two days after President Taft had vetoed and presented his objections to Congress, Mr. Smith of Michigan, as directed by the Senate Committee on Territories, introduced Senate

---

1. Special Message of the President of the United States, Returning Without Approval, House Joint Resolution No. 14.

2. (Page 32.) This board canvassing the vote purposely delayed action, being hostile to the proposed constitution, and thus not only prevented immediate action by Congress but put off the first state election two years.

3. Calendar No. 86, 62d Congress, Report 100, Pt. 2.

Joint Resolution No. 57[2] for the admission of the territory, which provided that the people of Arizona should change their proposed constitution by voting out the clause containing the recall at the price of securing coveted statehood. As the situation appeared at this time, the Senate that had voted more than three to one providing statehood by the mere presenting of the recall to the people for their reconsideration now demanded that such a reconsideration must result in a vote to eradicate. After long delay and patient labor, the way that the President had advised was finally up for ratification or rejection. In the debates that followed references to the President more or less uncomplimentary[1] were frequent, and the expression of the House that had voted four to one to relieve Arizona from the ordeal through which she was about to pass was especially free in vilifying the resolution about to be considered. The measure passed the Senate on August 18th, and the House on th following day.

On the 22d it was signed by the President, whereupon Governor Sloan issued a proclamation for an election to be held December 12th, and provided for the election of a full state ticket and a member of Congress. Previous to this election the first primary under the new state constitution was held on October 24th, resulting in the choice of W. P. Hunt and Thomas F. Weedin by the Democrats, and E. W. Wells and George W. Young by the Republicans. The Democrats elected the entire ticket and a majority of the legislature. At this general election an advisory vote was taken for two United States Senators, resulting in a majority for Marcus Smith, who had served the territory eight terms as delegate to Congress, and Henry Ashurst. The vote to eliminate the recall as provided in the constitution was practically unanimous. The population of the new state entitled her to one member in the House of Representatives, to which office Carl Hayden was duly elected.

---

2. That part of Senate Joint Resolution making it mandatory upon the people of Arizona to reject the recall in order to be admitted is as follows: "If a majority of the legal votes cast at said election upon said amendment shall be in favor thereof, the said canvassing board shall forthwith certify said result to the governor of the territory, together with the statement of votes cast upon the question of the ratification or rejection of said amendment; whereupon the governor of said territory shall, by proclamation, declare the said amendment a part of the constitution of the proposed state of Arizona, and thereupon the same shall become and be a part of said constitution; and if the said proposed amendment to Section 1 of Article 8 of the constitution of Arizona is not adopted and ratified as aforesaid, then, and in that case, the territory of Arizona shall not be admitted into the Union as a state, under the provisions of this act."—Statutes of the United States of America, 1st Session, 62d Congress, 43.

1. Congressional Record, 62d Congress, 1st Session, Vol. XLVII, 4118-4141, and Vol. XLVIII, 4212-4242.

On April 2d the recently elected Senators[1] took the oath of office and entered upon their duties in the third session of the Sixty-second Cougress.

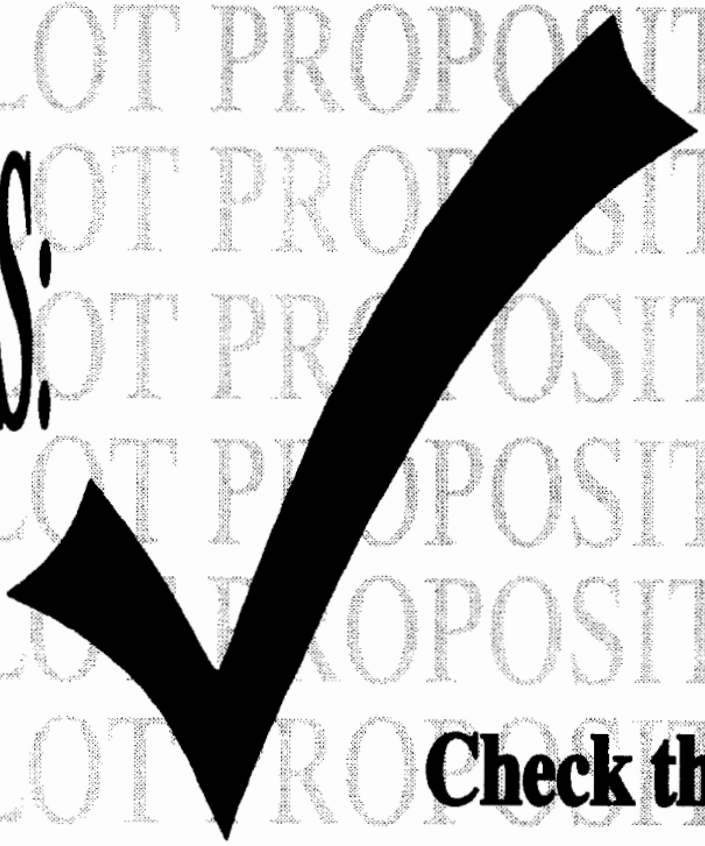
Following the admission to statehood thus attained by the renunciation of the recall the legislature and the people had the power to re-incorporate the feature that had been objected to so strenuously by President Taft. On April 27, 1912,[2] an amendment for the recall of judges, which was the first bill introduced in the first legislature, was passed, the vote being unanimous in the House and only two members dissenting in the Senate, these being Hubbell and Smith. On November 5, 1912, the recall of the judiciary was adopted by the people and thus after a two years' war in the halls of Congress and more than sixty years of zealous endeavor, the goal of territorial ambition had been attained. Thus did the Territory of Arizona pass *sub jugum* into the Federal Union and by so doing she enjoyed the rare privilege of exercising a spirit of humility denied her sister states.

1. The terms of the two senators was determined by lot; Mr. Smith thus received the short term expiring March 3, 1915, and Mr. Ashurst the long term, which will end March 3, 1917.

2. The facts here in set forth were obtained from the daily newspapers immediately following the events considered. Access to the files of the Los Angeles Evening Express was obtained through the courtesy of the editor and the librarian. The Arizona Blue Book for 1911 has been issued recently but its data pertains exclusively to events that happened previous to admission.

BALLOT PROPOSITIONS

VOTERS:



Check this out!

STATE OF ARIZONA

GENERAL ELECTION
NOVEMBER 3, 1992

Compiled by the Secretary of State

INFORMATION

CAPITALS indicate additions to the text of the propositions.

~~Strikeouts~~ indicate deleted language.

The referendum petitions seeking to put PROPOSITION 302 on the 1992 General Election ballot had not been filed at the time of the printing of this pamphlet.

Please review the sample ballot to be delivered to your household before the General Election to determine whether or not PROPOSITION 302 has qualified for the ballot.

****

Persons with disabilities who are either physically or visually impaired or who are unable to read or to understand the contents of the ballot may be accompanied into the voting booth by a person of their choice or a representative of each major political party for the purpose of assisting them in casting their ballots.

Persons with disabilities may call the Secretary of State's Office at 1-800-458-5842 regarding information available in alternate formats.

Sample ballots may be brought to the voting place and may be taken into the voting booth on the day of the election.

Qualified voters who at 7:00 P.M. are in the line of waiting voters shall be allowed to prepare and cast their ballots.

TABLE OF CONTENTS

PROPOSITION 108

OFFICIAL TITLE

AN INITIATIVE MEASURE

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE IX, CONSTITUTION OF ARIZONA, BY ADDING SECTION 22; RELATING TO PUBLIC DEBT, REVENUE, AND TAXATION.

TEXT OF PROPOSED AMENDMENT

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

The following amendment of Article IX, Constitution of Arizona, by adding Section 22, is proposed to become valid when approved by a majority of the qualified electors voting thereon and on proclamation of the Governor:

Section 22. Vote required to increase state revenues; application; exceptions

(A) An act that provides for a net increase in state revenues, as described in Subsection B is effective on the affirmative vote of two-thirds of the members of each house of the legislature. If the act receives such an affirmative vote, it becomes effective immediately on the signature of the governor as provided by Article IV, Part 1, Section 1. If the governor vetoes the measure, it shall not become effective unless it is approved by an affirmative vote of three-fourths of the members of each house of the legislature.

(B) The requirements of this section apply to any act that provides for a net increase in state revenues in the form of:

1. The imposition of any new tax.
2. An increase in a tax rate or rates.
3. A reduction or elimination of a tax deduction, exemption, exclusion, credit or other tax exemption feature in computing lax liability.
4. An increase in a statutorily prescribed state fee or assessment or an increase in a statutorily prescribed maximum limit for an administratively set fee.
5. The imposition of any new state fee or assessment or the authorization of any new administrative set fee.
6. The elimination of an exemption from a statutorily prescribed state fee or assessment.
7. A change in the allocation among the state, counties or cities of Arizona transaction privilege, severance, jet fuel and use, rental occupancy, or other taxes.
8. Any combination of the elements described in paragraphs 1 through 7.

(C) This section does not apply to:

1. The effects of inflation, increasing assessed valuation or any other similar effect that increases state revenue but in not caused by an affirmative act of the legislature.
2. Fees and assessments that are authorized by statute, but are not prescribed by formula, amount or limit, and are set by a state officer or agency.
3. Taxes, fees or assessments that are imposed by counties, cities, towns and other political subdivisions of this state.

(D) Each act to which this section applies shall include a separate provision describing the requirements for enactment prescribed by this section.

ANALYSIS BY LEGISLATIVE COUNCIL

(In compliance with A.R.S. section 19–124)

Proposition 108 would amend the State Constitution to require a two-thirds vote in each House of the Legislature to enact a net increase in state revenue through (1) enacting any new or increased tax or statutory fee, (2) reducing or eliminating any exemption or credit on a tax or fee or (3) making any change in the allocation of tax revenues among the state, counties and cities. If such a measure were passed and signed by

the Governor, it would be effective immediately. If the governor vetoes a measure increasing state revenues, it would not become effective unless the Legislature overrides the veto by at least a three-fourths vote in each House of the Legislature. Currently it is possible to enact these measures on a simple majority vote, with a two-thirds vote required to override a Governor's veto.

Under this proposition revenue measures would have to be enacted by the same process currently required for "emergency" laws, with the same supermajority requirements, becoming effective immediately on enactment and without the opportunity for a referendum on the revenue measure.

This proposition would not affect (1) increased revenues resulting purely from economic effects, such as inflation or increasing assessed valuations, (2) authorized fees and assessments that are not set or limited by law, such as university tuition, or (3) local taxes, fees or assessments.

LEGISLATIVE COUNCIL ARGUMENTS FAVORING PROPOSITION 108

Proposition 108 will make it more difficult to raise taxes and will end the string of almost annual tax increases during the past decade.

Some analyses rank Arizona as one of the highest taxed states in the nation. This reputation hinders economic development, discourages businesses from moving to this state, promotes migration of businesses from this state and places a competitive disadvantage on businesses remaining here. Growing government draws economic resources away from productive enterprises. Proposition 108 will help restrain growth in state government.

Tax increases are such a threat to taxpayers that they should be approved only with the agreement of two-thirds of our elected representatives. Proposition 108 ensures a board consensus on the necessity of any future tax increases.

LEGISLATIVE COUNCIL ARGUMENTS OPPOSING PROPOSITION 108

Ideally, taxes are increased only as a last resort in the face of an actual necessity. This proposition will make it extremely difficult for elected representatives to respond to emergency situations, court directives and federal requirements.

Also, when faced with a budget shortfall the Legislature could choose to shift costs to local governments by a simple majority vote. Such shifting could result in increased taxes at the local level.

Requiring a two-thirds vote would reduce the likelihood of meaningful tax reform or equalization among taxpayers because almost any tax reform measure requires raising some taxes while reducing or eliminating others.

Proposition 108 could greatly increase the power of a few legislators who would withhold their support for a tax increase until their own spending priorities are addressed. The more votes that are necessary, the higher the ultimate tax increase. Rather than holding the line on new government revenue, Proposition 108 could result in increased government spending.

If the Legislature enacts a tax increase with a two-thirds vote, Proposition 108 would not allow the voters the right to submit the act to a referendum. Instead, it would become effective immediately with no recourse for citizens.

ARGUMENT "FOR" PROPOSITION 108

The price Arizona farmers and ranchers receive for their agricultural products is determined by agricultural production around the world. We compete for markets with Australia on beef, Brazil on citrus and Europe on milk products. Arizona farmers and ranchers cannot automatically include increased costs, such as taxes, in the price of their product.

The state budget has mushroomed in the past 10 years, from $1.9 billion to over $3.6 billion. When the state's economy began to slow down, lawmakers continued increasing taxes on Arizonans — eight tax increases in the last 10 years.

Farmers and ranchers have had to tighten their belt as agricultural commodity prices continue to be depressed because of increasing world agricultural competition. It is time state government tightens its belt too. Requiring a 2/3 majority vote to increase taxes and fees will make the legislature prioritize spending as the first alternative rather than raising taxes.

Please vote yes on Proposition 108.

Cecil H. Miller, Jr.
President
Arizona Farm Bureau Federation
Phoenix

Andy Kurtz
Executive Secretary
Arizona Farm Bureau Federation
Phoenix

ARGUMENT "FOR" PROPOSITION 108

During the decade of the 1980's, the Arizona legislature enacted a series of tax increases that have moved our state from the position of having a favorable tax climate for growing businesses to one of the highest tax burden states in the nation.

The result of these tax increases is evident in higher unemployment, the loss of jobs to other states and the overall slowing in our state's growth rate.

Often these damaging tax increases were enacted by a slim majority, composed of tax and spend politicians, over the objections of fiscal conservatives and representatives of the business community in our legislature.

Proposition 108 would amend the Arizona Constitution to require a two-thirds majority vote of both houses of the Legislature to enact a net increase in state revenues. Future tax increases will only be possible when there is a clear consensus among all Arizonans of the need for the proposed change.

Although it does not undo the damage of the 1980's and fails to address the companion issue of increasing government spending, Proposition 108 is an important step toward preventing further damage to our state's competitive position.

I urge your support of Proposition 108.

Phil MacDonnell
Candidate for Congress
District 6
Mesa, Arizona

ARGUMENT "FOR" PROPOSITION 108

"For a conservative electorate, the realization comes hard: Arizona has become one of the premier tax and spend states in the nation."

These are the editorial words of Washington Times Insight Magazine, and unfortunately, the new national reputation of Arizona. Arizona has moved from 40th in the nation in the rate of taxation in 1980 to tied for 6th in the nation by 1990. This is the result of eight tax increases in nine years.

Now Arizona voters have a chance to do something about never ending tax increases.

The *It's TIME!* initiative will require a 2/3rds vote in the Legislature before taxes can be raised. This "super-majority" for tax increases idea has been implemented in eight other states, from California to Florida. In each instance taxes have remained lower as a percentage of income than in Arizona.

Some Legislators, who have voted for tax increases, argue that requiring a 2/3rds vote would cause higher taxes or say that defining a "tax increase" is too hard. Clearly they are out of touch with the facts in other states, and with their constituents.

To control never ending tax increases, please vote "YES" on Proposition #108 – the *It's TIME!* initiative.

Brad Gietz
Phoenix

Tim Mooney
Phoenix

It's TIME! Committee: John Shadegg, Chairman; Terry Sarvas, Treasurer

ARGUMENT "FOR" PROPOSITION 108

Nothing has as much of an impact on small business and families as government's ability to tax. In Arizona that power to tax has been liberally exercised to the point where Arizona is not tied for 6th highest in the nation, eclipsing even Massachusetts.

The National Federal of Independent Business/Arizona strongly supports the It's TIME! initiative to require a 2/3rds vote in the Legislature before taxes and fees can be raised again.

NFIB/Arizona's 7,000 plus small business members which employ over 80,000 Arizonans overwhelmingly support the super-majority requirement. When asked, over 87% of our members supported the It's TIME! initiative, and hundreds gathered signatures to place this measure before the voters.

They know that taxes should be raised only after wasteful spending habits are trimmed, and then only if there is a greater consensus of a dire need.

NFIB/Arizona urges support for Proposition 108, the It's TIME! initiative.

Timothy F. Mooney
State Director
National Federation of Independent Business/Arizona
Phoenix, Arizona

Monica Eberhardt
Assistant State Director
National Federation of Independent Business/Arizona
Phoenix, Arizona

ARGUMENT "FOR" PROPOSITION 108

On the heals of seven straight tax increases in a row, the Arizona legislature in 1990 passed the largest tax increase in state history, billing it as a "soak the rich" move that would not affect lower and middle income Arizonans.

Everyone knows that this was not the case. The increase was devastating to the elderly and the middle class and it wreaked havoc on the Arizona economy. A decade of unchecked spending and taxation has transformed our state from what was known as a fiscally sound state, to one of the leading tax and spend states in the nation.

Arizona now ranks number five nationally in total tax bite and third in the nation in rate of tax and spending INCREASES over the last ten years.

Because of this, we are locked in a struggle with neighboring states to attract new jobs to Arizona, and we are losing.

For this reason, the Lincoln Caucus has supported the It's TIME! initiative from the very beginning as a way to bring some fiscal sanity back to Arizona. Raising taxes must be looked at as a last resort – not the first.

The It's TIME! initiative has enabled the people of Arizona to draw the line. It will require a two thirds supermajority in the state legislature for tax increases, making it tougher to raise taxes. By voting yes, we will begin to take back control from a run-away tax and spend state legislature. It's time to take a stand. It's high noon in Arizona. Vote yes!

Tracy Thomas
Chairman
The Lincoln Caucus
Paradise Valley

Sydney Hoff
President
The Lincoln Caucus
Scottsdale

ARGUMENT "FOR" PROPOSITION 108

IT'S TIME! FOR 2/3 MAJORITIES

Requiring 2/3 majorities before the State Legislature can raise taxes or assess a fee is not a cure all. But it sure is a good start.

Our state has had eight tax increases in the last nine years. We have been rated seventh in the nation in taxes, higher than Massachusetts. When Arizona, the home of Barry Goldwater has higher taxes than Massachusetts, the land of Ted Kennedy, something is wrong.

Some of the good legislators at the State Capitol tried to pass the 2/3 majorities. They were blocked in committee. Over 250,000 fellow Arizonans signed the petition. The citizens of our state are saying enough is enough.

Our state is competing with others for jobs. Seven other states already have similar laws. When large companies plan they look ten to fifteen years down the road. This measure will show them that Arizona is a good place to invest since we've put an end to excessive tax increases.

This measure doesn't handcuff government. If there is a crisis or emergency, a great need for the poor or education, then a super-majority can be found. What this measure would do is change the emphasis in government. Rather than looking at where can we raise taxes, the legislature will now have to look at where we can cut spending.

The initiative drive was called "IT'S TIME!" as in "It's Time to limit taxes." A quarter of a million of our states residents felt it was a good idea. Now, it's time to bring fiscal responsibility back to our State government. Vote in favor on 2/3 majorities.

Doug Wead
Former Chairman
IT'S TIME!
Scottsdale

ARGUMENT "FOR" PROPOSITION 108

Dear Arizona Taxpayers:

I have been working at the grass roots level for years trying to play defense against the onslaught of higher taxation.

It's Time to go on the offense.

Yes, the demands for public spending are great. The intentions of most who argue for increased spending in education, health, job training and law enforcement are noble and genuine. But their is nothing noble about targeting the senior citizen or the working family to pay for ever increasing inefficiency and bureaucracy.

Government has a vital role to play in private life. It takes money for government to meet this role. But it takes human beings and families and businesses to produce the revenue that government desperately needs to find. We can no longer kill the goose that lays the golden egg. Economic growth, incentive to work, and governmental restraint are the only ways to efficiently fund the essential departments of government.

The taxpayer, the retiree, and the small business are not the enemy. Never again should their income be ravaged as a result of a single vote majority in the Legislature. It's Time will require a two thirds supermajority for new taxes.

Government will never look in earnest at its own inefficiencies or its own spending priorities until the taxpayer cries "ENOUGH!" It's Time we begin the cry.

Tom McGovern
Former Chairman
ENOUGH! Repeal the Tax Increase
Phoenix

BALLOT FORMAT

PROPOSITION 108

PROPOSED AMENDMENT TO THE CONSTITUTION BY THE INITIATIVE

OFFICIAL TITLE

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE IX, CONSTITUTION OF ARIZONA, BY ADDING SECTION 22; RELATING TO PUBLIC DEBT, REVENUE, AND ~~TAXATION.~~

DESCRIPTIVE TITLE

AMENDING ARIZONA CONSTITUTION TO REQUIRE A TWO-THIRDS VOTE OF THE LEGISLATURE FOR PASSAGE, AND A THREE-FOURTHS VOTE TO OVERRIDE A GOVERNOR'S VETO, OF ANY LEGISLATION THAT WOULD PROVIDE A NET INCREASE IN STATE REVENUES THROUGH CERTAIN CHANGES IN TAXES, TAX RATES, TAX DEDUCTIONS, FEES OR ASSESSMENTS.

PROPOSITION 108

A "yes" vote shall have the effect of requiring a greater number of votes in the Legislature to pass legislation providing for a net increase in state revenues.

YES ➡

A "no" vote shall have the effect of continuing to permit the Legislature to increase state revenues by a simple majority vote.

NO ➡

General Information

Ballot Propositions

Other Ballot Items

Removable Voter's Guide

Published by
Secretary of State Janice K. Brewer
1700 West Washington Street, 7th Floor
Phoenix, Arizona 85007

The Secretary of State is an equal opportunity employer.

Dear Arizona Voter:

Welcome to the *2004 General Election Publicity Pamphlet*. The *Publicity Pamphlet* is one of the most important tools that Arizonans use in deciding how to vote. There is a great deal of information here and it is my hope you will find it useful.

This pamphlet is divided into three parts: (1) general information about voting; (2) information about each proposition that will appear on the ballot, including the actual language of the measure followed by a description of what the measure does and arguments for and against the measure; and (3) the 2004 Voter Information Guide on the judges that will appear on the ballot.

The following are some important dates to remember:

• **Registration Deadline**: October 4, 2004 at midnight – For information about your registration, please call your county recorder's office. A list of each county recorders' contact information can be found on page 8;

• **Early Voting**: September 30 thru October 22, 2004, is the period when ballots will be mailed to registered voters who request early ballots. If you are registered and you would like to receive a ballot in the mail, call your county recorder's office for assistance (page 8); and

• **Election Day**: November 2, 2004 is Election Day – Polling places are open from 6:00 a.m. until 7:00 p.m. If you requested an early ballot, you have until 7:00 p.m., November 2, to return your ballot to your county recorder's office. Or, you may drop it off at any polling place in your county by 7:00 p.m. on Election Day.

If you are **military or an overseas citizen**, you may request an early ballot, receive voter registration materials, a Federal Post Card Application and ballot by mail or fax. For more information, please visit my Web site, www.azsos.gov, and click on the "Military and Overseas Voter" icon on the right side of the home page.

I encourage you to visit my Web site, www.azsos.gov, for more information about the 2004 General Election. Thanks to each of you for taking the time to study the issues and candidates on the ballot. And, more importantly, thank you for taking the time to make your voice heard by voting in this historic election.

Sincerely,

Janice K. Brewer

Janice K. Brewer
Secretary of State

PROPOSITION 101

OFFICIAL TITLE

HOUSE CONCURRENT RESOLUTION 2022

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE IX, CONSTITUTION OF ARIZONA, BY ADDING SECTION 23; RELATING TO INITIATIVE AND REFERENDUM MEASURES.

TEXT OF PROPOSED AMENDMENT

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

1. Article IX, Constitution of Arizona, is proposed to be amended by adding section 23 as follows if approved by the voters and on proclamation of the Governor:

23. Expenditures required by initiative or referendum; funding source

SECTION 23. A. AN INITIATIVE OR REFERENDUM MEASURE THAT PROPOSES A MANDATORY EXPENDITURE OF STATE REVENUES FOR ANY PURPOSE, ESTABLISHES A FUND FOR ANY SPECIFIC PURPOSE OR ALLOCATES FUNDING FOR ANY SPECIFIC PURPOSE MUST ALSO PROVIDE FOR AN INCREASED SOURCE OF REVENUES SUFFICIENT TO COVER THE ENTIRE IMMEDIATE AND FUTURE COSTS OF THE PROPOSAL. THE INCREASED REVENUES MAY NOT BE DERIVED FROM THE STATE GENERAL FUND OR REDUCE OR CAUSE A REDUCTION IN GENERAL FUND REVENUES.

B. IF THE IDENTIFIED REVENUE SOURCE PROVIDED PURSUANT TO SUBSECTION A IN ANY FISCAL YEAR FAILS TO FUND THE ENTIRE MANDATED EXPENDITURE FOR THAT FISCAL YEAR, THE LEGISLATURE MAY REDUCE THE EXPENDITURE OF STATE REVENUES FOR THAT PURPOSE IN THAT FISCAL YEAR TO THE AMOUNT OF FUNDING SUPPLIED BY THE IDENTIFIED REVENUE SOURCE.

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

ANALYSIS BY LEGISLATIVE COUNCIL

Currently, the Arizona Constitution does not require that an initiative or a referendum include a dedicated funding source for required expenditures.

Proposition 101 would amend the Constitution to require that if an initiative or referendum measure proposes a mandatory expenditure of state revenue, establishes a fund for a specific purpose or allocates funding for a specific purpose, the measure must also designate an increased source of revenues sufficient to cover the entire present and future costs of the measure. The increased revenues cannot come from the state's general fund or cause a reduction in general fund revenues. If the designated revenue source fails to cover the mandated spending in a fiscal year, the Legislature may reduce the expenditure of state revenues to the amount of funding actually supplied by the designated revenue source for that fiscal year.

ARGUMENTS "FOR" PROPOSITION 101

An "unfunded mandate," whether it comes from the Federal Government or from the State's own citizens, has the exact same effect. Money must be taken away from somewhere to finance a new project. If the citizen's demand that the legislature provide a specific benefit then they should also describe what benefits they are currently receiving that should be scaled back or eliminated as well.

A proposal of this nature is long overdue. Under the current measure for funding initiatives and referendums, funding comes from the general fund. As a result, the legislature is being hamstrung by the fact that over ½ of the general fund is being spent on initiatives and referendums. This is the reason that we find the state drowning in a sea of red ink. There is not enough money left to pay for the legitimate business of the state.

Making the process pay for itself and making sure that the public is aware of where the funds for the initiative are coming from is the right direction.

J P Melchionne, Secretary, Yuma Chapter, People for the USA, Yuma

Dale Marler, Vice President, Yuma Chapter, People for the USA, Yuma

Paid for by "Yuma Chapter, People for the USA"

The Arizona Farm Bureau supports proposition 101: We ask our government officials to take fiscal responsibility for their decisions and we should ask the same of voter approved initiatives. Almost two-thirds of what the state of Arizona now spends is beyond the purview of the legislature, and in no small manner, this situation exists through ballot initiatives, passed by voters, where the hard questions of funding were neither asked nor answered. In many instances, the costs of the programs have simply been pushed onto the general fund with no controls. Voters who wish to mandate new programs should understand how they are going to be paid for, and it is very reasonable to require the identification of the new sources of revenue to pay for the new or proposed program. As it is, the problem is pushed to our elected officials, and we create the illusion these things really do not have a price tag. Government does not create money and it costs to deliver its services. We need to slow the disconnect that exists between our demands upon government and the reality of how we cover its costs.

Vote YES on Proposition 101

Kevin Rogers, President, Arizona Farm Bureau, Mesa

Jim Klinker, Chief Administrative Officer, Arizona Farm Bureau, Higley

Paid for by "Arizona Farm Bureau"

The Arizona Chamber of Commerce urges a "yes" vote on Proposition 101.

Proposition 101 requires that a voter-mandated expenditure of taxpayer funds must designate a new source of revenue to cover the costs of the new program or benefit. If the designated revenue source falls short, the new spending can be scaled back to the actual amount raised by the designated funding source.

We agree with the principle that when government decides to create a new program or benefit, it must find a fair and responsible way to pay for the new spending. This common-sense principle should also apply to programs and benefits created through the initiative and referendum process.

Proposition 101 is simple and straightforward. The funding source identified by the people will support the program or benefit passed by the people on the ballot.

Proposition 101 is fiscally responsible and promotes honest initiative and referendum campaigns. That is why the Arizona Chamber of Commerce urges voters to vote "yes" on Proposition 101.

C.A. Howlett, Chairman, Board of Directors, Arizona Chamber of Commerce, Scottsdale

James J. Apperson, President & CEO, Arizona Chamber of Commerce, Scottsdale

Paid for by "Arizona Chamber of Commerce"

Arizona's state budget problems have been well documented in recent years. For four consecutive years the Legislature has struggled with significant budget deficits. The reasons for those budget deficits are many, including the impact that voter initiatives have had on the demand for limited resources.

Put simply, voter approved initiatives have done considerable damage to the Legislature's ability to do comprehensive budgeting. Too often, voters have passed initiatives creating new programs that place demands on the state general fund far exceeding what was sold to the voters on election day. Even when new funding was identified for a program, the costs have often outpaced the revenue, forcing the Legislature to cut funding for other programs like education, health care, and public safety.

To complicate Arizona's state budgeting challenges, Proposition 105, passed in 1998, strictly limits the power of the Legislature to make changes to initiatives, even to fix unintended consequences.

Make no mistake, the initiative process can be an excellent tool to facilitate a vigorous public debate about spending for new government programs. However, that debate should not be carried out in isolation of the revenues necessary to support that increased spending. Certainly, a more accurate reflection of the public's desire for higher government spending is when they are willing to pay for it.

In addition to promoting sound fiscal policy, Proposition 101 will help protect the programs that currently receive state funding. Funding for education, health care, and public safety should not be turned into lesser priorities through the initiative process.

The Arizona Tax Research Association encourages you to **Vote Yes** on Proposition 101.

Kevin R. Kinsall, Chairman, Arizona Tax Research Association, Phoenix

Kevin J. McCarthy, President, Arizona Tax Research Association, Gilbert

Paid for by "Arizona Tax Research Association"

For the last three years, Arizona has faced a series of budget crises that have threatened our state's fiscal solvency, put working families at risk for tax increases, and jeopardized vital state services like education, public safety, and CPS.

These budget emergencies were not an aberration, but the direct result of Arizona's initiative process, which allows ballot measures to mandate new state spending without requiring an accompanying funding source, forcing the state to fund ballot-approved measures at the expense of other programs.

Proposition 101 would prevent future budget crises and protect Arizona's working families from new taxes by establishing that if an initiative or referendum measure mandates new spending, it must also identify a specific source of revenue to pay for the expenditure.

In other words, existing programs like community colleges and universities will not be put at risk by ballot measures that mandate new spending without a funding source. Taxpayers will also be protected from massive tax hikes that may become necessary if this proposition fails.

The alternative to Proposition 101 is more budget crises and the possibility of future tax hikes or budget cuts.

It's an alternative that most Arizonans want to avoid.

Please support Proposition 101.

Russell K. Pearce, Chairman, Committee on Appropriations, House of Representatives, Mesa

ARGUMENTS "AGAINST" PROPOSITION 101

The League of Women Voters of Arizona opposes this referendum put on the ballot by the Legislature. We believe in the citizens right to initiative guaranteed in the Arizona constitution and this referendum would unduly restrict that right.

This proposition requires that all initiative and referendum measures that require the mandatory expenditure of state funds provide for an increased source of revenue, such as new taxes or new fines, that would cover all immediate and future expenditures for the proposal. These increased funds could not come from the General Fund or reduce General Fund revenues.

It would apply no matter the expenditure required, whether it was simply for the addition of two members to an already established commission or for a new health care initiative. We believe that at the very least this proposition should have included a threshold amount, permitting funds below that amount to come from the General Fund.

We urge a "No" vote on this attempt to limit the people's right to the initiative process.

Gini McGirr, President, League of Women Voters of Arizona, Tucson

Bonnie Saunders, 1st Vice President, League of Women Voters of Arizona, Sun City

Paid for by "League of Women Voters of Arizona"

VOTE NO ON PROPOSTION 101

The Arizona Legislature wants you to vote for a proposition that requires any voter-approved measure that expends state funds to provide its own special funding source (tax or fee). They say we have to do this because citizen initiatives have placed two-thirds of state spending beyond the legislature's control and they can't balance the budget.

This is a false argument designed to get you to vote away your constitutional right to make laws equal to the legislature's; a right we have employed responsibly since statehood (92 years). It's true that two-thirds of the budget isn't controlled by the legislature, but not because of citizen lawmaking. It's the result of legislatively imposed education formulas, federal mandates, and lawsuit settlements. Voter-approved spending accounts for no more than 5% of the state's general fund.

So, what have the voters been wasting money on? Health care and education. There have only been two voter-approved programs that spend any significant amount of general fund money, health care for the working poor (Healthy Arizona) and increased classroom education funding (Prop 301). Prop 301 was actually placed on the ballot by the legislature. Yes, this funding requirement applies to measures put on the ballot by the legislature, but not to bills passed by legislature.

Every new voter-approved program will require a new or increased tax or fee and a new special fund, just for that program. You think our tax code is complicated and unfair now? It doesn't matter if the program costs one dollar or a billion dollars, it means a new tax.

We need to stop this power grab by legislators who don't like the decisions made by voters. The Arizona Advocacy Network Foundation (AzAN), a coalition of nonprofit, public interest organizations, asks you to **vote No on Proposition 101**.

Joel Foster, President, Arizona Advocacy Network Foundation, Phoenix

Eric Ehst, Treasurer, Arizona Advocacy Network Foundation, Phoenix

Paid for by "Arizona Advocacy Network Foundation"

Vote no on Legislature's Attempt to Limit Important Constitutional Rights

Proposition 101 says that when an initiative or referendum requires expenditure of revenues (no matter how small and no matter whether or not it is temporary) it must also provide a new funding source. The funding source cannot be the general fund or impact the general fund. This may sound good in theory, but it effectively prohibits the public from directing the Legislature on how to spend any general fund revenues and also limits voters' ability to enact new programs that require perhaps a modest one time expenditure. It would have made it impossible to enact the Heritage Fund, which takes a portion of lottery revenues for parks and wildlife. Even banning cockfighting could require some kind of new tax or fee for any possible additional enforcement costs.

The trend at the Arizona Legislature has been to try and restrict citizens' rights to initiatives and referenda and to undo what the authors of the Arizona Constitution enacted. The trend for Arizona voters has been to restrict the Legislature's ability to tinker with initiatives as was manifested in the voters' support of the 1998 Voter Protection Act. This came after the Legislature repeatedly tried to undercut voter approved measures like the Heritage Fund, something voters approved overwhelmingly, but that the Legislature has tried to undercut repeatedly.

The initiative and referendum process in some form is older than our country itself — it dates back to the 1600's when citizens in town meetings voted on ordinances and other issues. The authors of the Arizona Constitution knew that it was important to provide citizens with this right in order to provide a check on the legislative branch.

Please vote no on Proposition 101. Say no to the Legislature's power grab.

Kenneth P. Langton, Chairperson, Sierra Club – Grand Canyon Chapter, Tucson

Don Steuter, Conservation Chair, Sierra Club – Grand Canyon Chapter, Phoenix

Paid for by "Sierra Club – Grand Canyon Chapter"

The Arizona constitution provides two separate and equal ways of creating state law, by legislative vote and concurrence of the governor, or by vote of the people through the process of initiative and referendum. The legislature has often refused to address important issues, especially those that affect women, minorities, or working people. The voters have had to resolve many of these issues at the ballot box. Recent examples are increased classroom education funding and health care for the working poor. Many legislators are jealous of the power of the voters to make decisions that they don't agree with, especially if it involves spending money on frivolous things like education and healthcare.

The legislature's proposition, which requires all voter-approved measures that spend any money whatsoever to include their own special funding source other than the state's general fund, is a power play designed to reduce the power of the voters. It will result in more complex and confusing propositions; a hodgepodge of new or increased taxes or fees, with their own little pots of earmarked money and accounting systems; and an increasingly complex and unfair tax code.

This requirement extends to propositions that result only in small administrative costs or one-time expenditures. There is no lower limit. If you spend one dollar, you need a new tax. Interestingly, this requirement also applies to propositions placed on the ballot by the legislature itself.

Proposition 101 won't solve any problems and will create a host of new ones while reducing the constitutional rights of the people to govern themselves. The Arizona National Organization for Women (NOW) urges you to **vote No on 101**.

Karen Van Hooft, State Coordinator, Policy/ Spokesperson, Arizona NOW, Scottsdale

Eric Ehst, State Coordinator, Political Action, Arizona NOW, Phoenix

Paid for by "Arizona NOW"

The Arizona League of Conservation Voters Education Fund opposes Proposition 101, which would limit citizens' constitutional rights to participate in government through the initiative process. An important part of the mission of the Education Fund is to encourage civic engagement, full participation in our democratic process, and to ensure access to the political system by citizens. Prop 101 places unnecessary restrictions on the public's ability to engage directly in policy making by initiative.

Since statehood, Arizona citizens have had the right to use the initiative and referendum processes as an additional form of checks and balances on government. When lawmakers are not responsive to the needs of citizens, the initiative and referendum processes provide a means of addressing those needs and forces government to act when political will is absent. Prop 101 requires that any program or measure passed by initiative must include a full, separate and new funding source for any expenses generated by the program, including any initial start-up costs, however minor. This would make it extremely difficult for citizens to pass any meaningful policy and could result in entirely new fees or taxes rather than reallocating existing revenues. Also, a program that addresses public needs may pass by initiative, but without any funding available to implement it, the citizens would be rendered powerless to affect any substantive change in policy.

The Legislature's repeated attempts to restrict the citizens' initiative process reflects a disturbing trend of increasing disconnection and antagonism between the people of Arizona the those elected to represent them. The response of the Legislature to budget constraints has been to attack citizens' rights to participate in the policy debate. This is inappropriate. Arizonans should reject this effort to restrict the constitutional rights of the people, and vote no on Prop 101.

Jeff Williamson, President, Arizona League of Conservation Voters Education Fund, Phoenix

Carolyn Campbell, Secretary, Arizona League of Conservation Voters Education Fund, Tucson

Paid for by "Arizona League of Conservation Voters Education Fund"

BALLOT FORMAT

PROPOSITION 101

PROPOSED AMENDMENT TO THE CONSTITUTION BY THE LEGISLATURE

OFFICIAL TITLE HOUSE CONCURRENT RESOLUTION 2022 PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE IX, CONSTITUTION OF ARIZONA, BY ADDING SECTION 23; RELATING TO INITIATIVE AND REFERENDUM MEASURES.
DESCRIPTIVE TITLE INITIATIVE OR REFERENDUM MEASURE PROPOSING STATE REVENUE EXPENDITURE, ESTABLISHING A FUND OR ALLOCATING FUNDING MUST PROVIDE FOR INCREASED REVENUES TO COVER COSTS OF THE PROPOSAL; REVENUES CANNOT COME FROM OR REDUCE THE GENERAL FUND; LEGISLATURE MAY REDUCE EXPENDITURES IF SOURCE FUNDING FAILS TO FUND MANDATED EXPENDITURE IN THAT FISCAL YEAR.

PROPOSITION 101

A "yes" vote shall have the effect of providing that initiative or referendum measures that mandate an expenditure of state funds, establish a fund or allocate funding for any specific purpose, must also provide for increased revenues to cover the costs, which cannot come from the general fund, and permits the legislature to reduce the expenditures of state revenues to the amount of funding supplied by the identified revenue source.	**YES** ☐
A "no" vote shall have the effect of not requiring initiatives and referendums to include a dedicated funding source for required expenditures.	**NO** ☐