No. 13-1314

In The
Supreme Court of the United States

ARIZONA STATE LEGISLATURE, APPELLANT

v.

ARIZONA INDEPENDENT
REDISTRICTING COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

BRIEF FOR LEAGUE OF WOMEN VOTERS OF ARIZONA, INTER TRIBAL COUNCIL OF ARIZONA, INC., ARIZONA ADVOCACY NETWORK, DENNIS M. BURKE, AND BART TURNER AS AMICI CURIAE SUPPORTING APPELLEES

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The League of Women Voters of Arizona, the Inter Tribal Council of Arizona, Inc., the Arizona Advocacy Network, Dennis M. Burke, and Bart Turner respectfully submit this brief as amici curiae in support of appellees.[1]

INTEREST OF AMICI CURIAE

Amici are individuals and organizations that support Proposition 106, a voter initiative enacted in 2000 to create the Arizona Independent Redistricting Commission and give it primary responsibility for congressional and state legislative redistricting. Amici believe that Proposition 106 was an important and valuable reform of the redistricting process in Arizona and one fully within the constitutional authority of the people of the State to enact. The amici are as follows:

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[1] Letters from the parties granting blanket consent to the filing of amicus curiae briefs have been filed with the Clerk of the Court. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than amici curiae, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

The **League of Women Voters of Arizona** (LWVAZ) is a non-profit organization that works to encourage the informed and active participation of citizens in government. Since 1967, LWVAZ has advocated for use of an independent commission to redistrict legislative and congressional districts in Arizona at regular intervals, subject to judicial review.

The **Inter Tribal Council of Arizona, Inc.** (ITCA) is a private, non-profit Arizona corporation established to provide its 21 Member Tribes with a means for action on matters that affect them collectively and individually. For decades, ITCA has promoted Native American voting rights in Arizona and provided voter education programs for its members. The reservations of ITCA Tribes often cross state boundaries and span several Arizona counties. In the past, the Arizona Legislature has attempted to split tribal reservations into multiple legislative and congressional districts, which would have resulted in confusion of Indian voters and dilution of the potential power of their votes. ITCA thus has a direct interest in the process and integrity of the Arizona Independent Redistricting Commission.

The **Arizona Advocacy Network** is a non-profit organization that supports the voter-established Independent Restricting Commission and its goal of creating more legitimate legislative and congressional districts for Arizona than the Arizona Legislature had drawn when it had primary responsibility for redistricting. The Arizona Advocacy Network believes the

Commission was properly created by voter initiative pursuant to Arizonans' reserved lawmaking power.

Dennis M. Burke and Bart Turner were two of the three principal drafters of Proposition 106. At that time, Mr. Burke was Executive Director of Arizona Common Cause, and Mr. Turner was Executive Director of the Valley Citizens League.

INTRODUCTION AND SUMMARY OF ARGUMENT

The position of the Arizona Legislature in this case is incompatible with Arizona's fundamental constitutional values and, if adopted, would place a cloud of constitutional doubt over longstanding, popularly-enacted election regulations in the State.

The Legislature ignores the fact that "one of the most distinct features of the Arizona Constitution is its focus on and trust in forms of direct democracy." Paul F. Eckstein, *The Debate Over Direct Democracy at the Arizona Constitutional Convention*, Arizona Attorney, Feb. 2012, at 32. That focus goes back to the very beginning of the State's history, when the people of the Arizona Territory drafted and approved a proposed state constitution expressly reserving lawmaking power for the people, to be exercised through voter initiative and referendum. The original Arizona constitution—enacted by the people, not the Legislature—also included a number of provisions directly regulating federal elections in the State.

Over the course of the century since the constitution's adoption, the people of Arizona have repeatedly "exercised their privilege to enact laws as a basic exercise of their democratic power[,] * * * bypass[ing] public officials who were deemed not responsive to the concerns of a majority of the voters." *Schuette v. Coalition to Defend Affirmative Action*, 134 S. Ct. 1623, 1636 (2014) (plurality opinion). In particular, Arizonans have repeatedly used their reserved

lawmaking power to enact constitutional amendments and statutes to regulate elections in the State.

Proposition 106, which established the Arizona Independent Redistricting Commission, is therefore just one example of Arizonans' use of their initiative power to address agency problems that inhere in election regulation when exercised by politically-interested elected officials. Redistricting during the decades before enactment of the proposition was marred by legislative gridlock, partisan conflict, attempts to divide Indian reservations into separate districts, and, ultimately, the resort to judicially-crafted redistricting plans. Given the failure of the people's representatives in the Legislature to properly superintend the redistricting process, the people reasonably decided to vest that responsibility in an independent commission. That exercise of the people's reserved lawmaking power was consistent with the State's long history of direct lawmaking and was therefore well within the people's federal and state constitutional authority.

ARGUMENT

I. FROM THE BEGINNING, THE PEOPLE OF ARIZONA HAVE RESERVED LAWMAKING POWER FOR THEMSELVES

From its entry into the Union, the people of Arizona have reserved lawmaking power for themselves, to be exercised concurrently with that of the Legislature. As explained below, this reservation is a

foundational feature of the State's constitution, and it was born of Arizona's distinctive history.

A. The Tools Of Direct Democracy Were Central To The Arizona Constitution At The Time Of Its Adoption

Arizona endured nearly a half-century as a federally-governed territory before statehood, a fact that left those writing and voting on the State's proposed constitution "determined to reverse that tradition of unrepresentative government." John D. Leshy, The Arizona State Constitution 15 (2d ed. 2013); *see id.* at 6-7.[2]

1. State Constitutional Convention of 1910

In 1910, Congress finally enacted a statehood enabling act for Arizona. *See* Act of June 20, 1910, 36 Stat. 557. That statute authorized the "qualified electors of the Territory of Arizona" to elect delegates for a state constitutional convention, which was "authorized to form a constitution and provide for a state government for said proposed State." *Id.* at 568-69 (§§ 19-20).

Arizonans subsequently met in county conventions to elect delegates to the state constitutional

[2] The Arizona territory was first organized in 1863, and as early as 1872, Arizona residents began agitating for statehood so that they could have a government responsive to local concerns. *See* Leshy, *supra*, at 4. In 1891, they went so far as to approve a proposed state constitution, but the effort failed. *See id.* at 4-5.

convention. Many of those county conventions also adopted platforms with provisions they wanted included in the state constitution, and delegates from those conventions pledged their support for those platform provisions. *See* Leshy, *supra*, at 8-9. Among the "principal issues captured in these [county convention] platforms" were the initiative (through which voters could initiate and adopt constitutional provisions and statutes), the referendum (through which voters could approve or disapprove measures passed by the legislature), and the recall of elected officials. *See id.* at 8. At that time, nine States had already adopted the initiative and referendum, and they were key planks in the reform agenda of the progressive movement, which was ascendant in western States. *See* Eckstein, *supra*, at 33; Leshy, *supra*, at 12.

Given the county-level platforms, large numbers of delegates arrived at the state convention in Phoenix in October 1910 having pledged to support those "tools of direct democracy" that they viewed as necessary to ensure a fully responsive and accountable state government. Leshy, *supra*, at 12. There was thus never any doubt that these provisions would be included in the state constitution. *See ibid.*

"The people have expressed their wish that a check be placed upon the abuses by the legislature and this is our only opportunity to do so," Mulford Winsor of Yuma County told his fellow delegates. The Records of the Arizona Constitutional Convention of 1910, at 2, 193 (John S. Goff ed., 1991) [hereinafter

Records]. "It has been necessary to have some means of checking the actions of the legislature of Arizona as well as other states," he continued, "and this is the very reason for the agitation for the initiative and referendum." *Id.* at 193.

Delegate A.C. Baker of Maricopa County told the convention that initiative and referendum "initiate[ ] a true republican form of government, and will enable the people of this state to hold the government within their control." *Id.* at 2, 189. Baker observed that the people of Arizona would be voting to approve the state constitution as an original matter and, "[i]f they have the ability to pass upon it as a whole, they certainly would have the ability to pass upon any amendment to that constitution." *Id.* at 190.

The handful of opponents of initiative and referendum at the convention offered virtually no substantive criticisms of the devices. Instead, they made constitutional and political arguments. *See* Eckstein, *supra*, at 34. Opponents principally contended that inclusion of initiative and referendum in the state constitution would violate the Guarantee Clause of the federal Constitution, U.S. Const. art. IV, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government * * * .").

For example, Samuel Kingan of Pima County opined that the "republican government" addressed by the Guarantee Clause was limited to "a government by representatives chosen by the people." *Records*, *supra*, at 2, 199. He contended that it was a

category of government distinct from monarchy on the one side and, on the other, "democracy, in which the people or community as an organized whole wield sovereign powers of government." *Id.* at 199. Including initiative and referendum in the Arizona constitution, Kingan argued, would render the State's government an unconstitutional "democracy." *Ibid.*; *see also id.* at 198-205.

Kingan also observed that, at the time of the Arizona convention, a Guarantee Clause challenge to the Oregon constitution's initiative and referendum provisions was pending in the United States Supreme Court.[3] He predicted that the pendency of that case would lead President Taft to delay approval of Arizona's constitution, and, if the Court invalidated Oregon's initiative and referendum provisions, to reject Arizona's constitution. *Id.* at 205.

Supporters of initiative and referendum countered both the constitutional and political objections. A.F. Parsons of Cochise County addressed the Guarantee Clause question, arguing that the "republican form of government" guaranteed by that provision was meant only "to abolish the old form of government, * * * commonly called a monarchy" and to ensure government "from the consent of the

[3] In that case, the Court ultimately held that the challenge presented a non-justiciable political question. *See Pacific States Tel. & Tel. Co. v. Oregon*, 223 U.S. 118, 151 (1912). The decision came five days after Arizona was admitted as a State. *See* Leshy, *supra*, at 12 n.32.

governed." *Id.* at 2, 747. "I do not believe," Parsons stated, "it will be seriously contended that the manner of the expression of that consent, whether in person or by representatives, was deemed material." *Id.* at 747; *see also ibid.* (arguing that "a republican form of government is one where the people at large retain the supreme power and act either collectively or by representation").

Parsons contended that the constitutional argument against initiative and referendum was illogically based on "the unique legal proposition * * * that an agent has more power than a principal who has supreme power." *Id.* at 747-48. "The statement of this proposition is its own refutation. If their argument be tenable then the creature may be greater than his creator, all of which we deny." *Id.* at 748.

Foreshadowing this Court's holding two years later, *see supra* note 3, Parsons also observed that enforcement of the Guarantee Clause was "not a question for judicial determination" and instead was a political question for Congress. *Records*, *supra*, at 748. He pointed out that Congress had already addressed the question by "recogniz[ing] the right of the senators and representatives from the several states which have adopted the initiative and referendum." *Ibid.*

Initiative and referendum supporters also rejected opponents' prediction that those provisions would provoke a constitutional objection from President Taft. Lamar Cobb of Graham County pointed out

that President Theodore Roosevelt had supported statehood for Oklahoma, even though that State's original statehood constitution included initiative and referendum. *See id.* at 2, 744-45; *see also* Eckstein, *supra*, at 33. Indeed, Taft, then a member of President Roosevelt's cabinet, had been dispatched to Oklahoma to make policy arguments against adoption of its constitution, but, as Cobb noted, "not one word did he say, not the slightest intimation or suggestion that it might be unconstitutional." *Records*, *supra*, at 745. Cobb assured his fellow delegates that they should have "no fear of losing or delaying statehood by incorporating these provisions in our constitution." *Ibid.*

The Reverend Crutchfield, the convention's chaplain, also sought to reassure delegates on this point, stating in one of his opening prayers during the last week of the convention: "Oh Lord, we are not willing to believe President Taft will turn down our constitution on account of such a small matter as the Recall, Initiative and Referendum which is written in the constitution as the people of the great State of Arizona desire to be governed by." *Id.* at 714.

In the end, initiative and referendum had overwhelming support at the convention. Article IV of the constitution, which includes those provisions, was approved by a vote of 42-8. *Id.* at 906. The convention subsequently approved the constitution as a whole, and Arizona voters did the same by a three-to-one margin. *See* Leshy, *supra*, at 22.

2. Congress and President Taft

In August 1911, Congress overwhelmingly approved a joint resolution admitting Arizona as a State, and it did so with full knowledge of the initiative and referendum provisions in its constitution. *See* 47 Cong. Rec. 1529 (1911) (House); 47 Cong. Rec. 3742 (1911) (Senate); *see also* Appellees' Br. 49 n.27. Congress also approved statehood for Arizona with full knowledge that the popularly enacted constitution contained provisions regulating federal elections. *See infra* pp. 16-18.

The statehood enabling act had required that the Arizona constitution "be republican in form." 36 Stat. at 569 (§ 20). Some members of Congress contended that the initiative and referendum provisions in the Arizona constitution violated that requirement and represented a "distinct departure from the fundamental principles of a representative government." 47 Cong. Rec. 4121 (statement of Sen. Bailey); *see also, e.g.*, 47 Cong. Rec. 1501 (statement of Rep. Littleton).

Other members, however, successfully countered that initiative and referendum were entirely consistent with not only the Guarantee Clause but also with the principles of popular sovereignty underlying the federal constitution. For example, Representative McGuire stated that he did not "believe that the provisions for the initiative and referendum are repugnant to the Constitution of the United States." 47 Cong. Rec. 1499. He explained that the "evident purpose of these provisions" was consistent with popular

sovereignty, i.e., giving the people the right to "direct legislative bodies by themselves initiating the kind and character of legislation desired" and to "pass judgment upon important legislation, and approve or disapprove at the ballot box legislative acts before they become effective." *Ibid.*; *see* 47 Cong. Rec. 1506 (statement of Rep. Jackson) ("[W]hat harm can result in these States, in adopting their constitutions, if they wish to devolve certain powers of legislating upon their people?").

Congress did not have the last word, however, because the statehood enabling act included an unusual provision requiring the consent of the President as well. 36 Stat. at 571-72 (§§ 22-23); *see* Leshy, *supra*, at 6. President Taft used that power to veto the joint resolution, and he did so for a single reason: his opposition to the state constitution's provision allowing for popular recall of state judges. *See* Veto Message Returning Without Approval a Joint Resolution for the Admission of the Territories of New Mexico and Arizona into the Union as States (Aug. 22, 1911), *in* 16 A Compilation of the Messages and Papers of the Presidents 7636, 7636-37 (n.s. 2010); *see id.* at 7637 (calling that provision "destructive of independence in the judiciary"). President Taft expressed no concern about initiative and referendum. *See id.* at 7636-44; *see also* 47 Cong. Rec. 4230 (statement of Rep. Davenport) ("No question [was] raised by the President as to the initiative and referendum.").

Almost immediately, Congress sent President Taft a modified joint resolution, making statehood conditional on Arizona voters' deletion of the judicial recall provision from the state constitution. *See* Leshy, *supra*, at 22. "Having been forcefully apprised of the price of admission, the Arizona voters dutifully removed the recall by a margin of nearly nine to one" in December 1911. *Ibid.*

On February 14, 1912, President Taft signed a proclamation admitting Arizona as a state. *Ibid.*[4]

B. The Arizona Constitution's Terms And Structure Expressly Reserve Lawmaking Power For The People

The core provisions of the Arizona constitution addressing initiative and recall, which are largely unchanged from their enactment as described above, are expressly based on the principle that the State's lawmaking power was *both* delegated to the Legislature and reserved by the people.

Article III of the constitution, titled "Distribution of Powers," provides that governmental power in Arizona is divided into "three separate departments": the legislative, executive, and judicial. Ariz. Const. art. III. Article IV, governing the "Legislative Department," has separate parts on initiative and

[4] Later in 1912, Arizona voters approved an amendment to the state constitution (by a margin of nearly 50 to one) adding back the deleted judicial recall provision. *See* Leshy, *supra*, at 23.

referendum (Part 1) and the Legislature (Part 2). As this structure demonstrates, initiative and referendum are part of the "legislative department" of the State. *See id.* art. IV; *see also Winkle v. City of Tucson*, 949 P.2d 502, 504 (Ariz. 1997) (describing "the people's power to create legislation through initiative" as "[p]art of [the] legislative process" of the State); *Queen Creek Land & Cattle Corp. v. Yavapai Cnty. Bd. of Supervisors*, 501 P.2d 391, 393 (Ariz. 1972) ("[T]he constitutional reservation of initiative and referendum powers establishes the electorate as a coordinate source of legislation with the constituted legislative bodies.").

The constitution again makes that understanding express when it provides:

> The legislative authority of the State shall be vested in the Legislature, consisting of a Senate and a House of Representatives, but the people reserve the power to propose laws and amendments to the Constitution and to enact or reject such laws and amendments at the polls, independently of the Legislature; and they also reserve, for use at their own option, the power to approve or reject at the polls any Act, or item, section, or part of any Act, of the Legislature.

Ariz. Const. art. IV, pt. 1, § 1(1); *see id.* § 1(2) ("The first of these reserved powers is the Initiative."); *id.* § 1(3) ("The second of these reserved powers is the Referendum."); *see also id.* art. XXII, § 14 ("Any law which may be enacted by the Legislature under this

Constitution may be enacted by the people under the Initiative. Any law which may not be enacted by the Legislature under this Constitution shall not be enacted by the people.").

Under this structure, "the Legislature and the people constitute the lawmaking power." *Allen v. State*, 130 P. 1114, 1118 (Ariz. 1913). "The people did not commit to the Legislature the whole lawmaking power of the state, but they especially reserved in themselves the power to initiate and defeat legislation by their votes." *Ibid.*; *see Tilson v. Mofford*, 737 P.2d 1367, 1369 (Ariz. 1987) ("Under our constitution, * * * [t]he legislative power of the people is as great as that of the legislature."). The two lawmaking bodies do not have equal power, however, for the power of the Legislature is expressly "subordinated to the superior right of the people to themselves legislate at the polls." *Home Builders Ass'n of Cent. Ariz., Inc. v. Riddel*, 510 P.2d 376, 378 (Ariz. 1973).[5]

[5] In 1998, Arizona voters initiated a constitutional amendment that prohibits the Legislature from repealing any voter-initiated measure. *See* Ariz. Const. art. IV, pt. 1, § 1(6)(B). The same constitutional amendment prohibits the Legislature from amending any initiative measure without a three-fourths vote in each house, and only if the amendment furthers the purposes of the measure. *See id.* § 1(6)(C). These provisions "substantially restrict[ ] the power of the legislature to tinker with popularly approved measures." Leshy, *supra*, at 131.

II. FROM THE BEGINNING, THE PEOPLE OF ARIZONA HAVE DIRECTLY ENACTED MEASURES TO REGULATE ELECTIONS

From the moment of statehood, Arizonans have exercised their direct lawmaking power to regulate elections. They did so by enacting election regulations as part of the original constitution, by subsequently amending that constitution through initiative and referendum, and by enacting election statutes through the same mechanisms. Voters in many other States have likewise regulated elections through use of their initiative power. *See* Appellees' Br. 51-54 & App. B.

This Court long ago observed that questions of constitutional interpretation involving allocation of government power "ought to receive a considerable impression" from "the practice of the government." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 401 (1819); *see also NLRB v. Noel Canning*, 134 S. Ct. 2550, 2560 (2014) ("[T]his Court has treated practice as an important interpretive factor even when the nature or longevity of that practice is subject to dispute, and even when that practice began after the founding era."). In this case, the consistent practice in Arizona (and other States) has been to regulate elections through use of the people's reserved law-making power.

A. The Arizona Constitution As Originally Adopted By The People Regulated Elections

As the history recounted above explains, the Arizona constitution was approved by the people in a popular referendum—not by the Legislature. That original constitution included several provisions regulating elections in the State—none of which appears to have elicited any objection when the constitution was before Congress and President Taft as they considered statehood for Arizona.

Among the provisions in the original constitution were those laying the essential building blocks of all future elections in the State. Most fundamentally, the constitution provided that the candidate who received the most votes would be the winner. *See* Ariz. Const. art. VII, § 7. It required election by secret ballot. *See id.* § 1. The constitution established an at-large election for the State's (at that time) sole member of the House of Representatives. *See id.* art. XXII, § 12. And it provided that "[a]ll elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." *Id.* art. II, § 21.

The Arizona constitution as originally enacted also required direct primary elections (as opposed to conventions) "for the nomination of candidates for all elective State, county, and city offices, including candidates for United States Senator and for Representative in Congress." *Id.* art. VII, § 10. This was a

"distinctly progressive innovation in 1910, recognizing that general elections could be made meaningless if political machines hand-picked the candidates." *Leshy*, *supra*, at 239. Additionally, the original constitution prohibited loss of residency for purposes of voting for anyone who moved out of state while serving in the military or attending school. *See* Ariz. Const. art. VII, § 3.

B. The People Of Arizona Have Repeatedly Amended Their Constitution To Regulate Elections

The Arizona constitution may be amended only by the people, Ariz. Const. art. XXI, §§ 1-2, and they have done so more than 150 times since its enactment, *see* Leshy, *supra*, at 3. Many of those amendments have involved regulation of elections and voting, *see infra* App. A (listing amendments), and at least some of them would seemingly be thrown into constitutional doubt as applied to federal elections if the Legislature's position in this case were to prevail.

In 1912, Arizonans went to the polls for the first time as residents of a State. On their ballots was a voter-initiated measure to extend the right to vote to women, and they enacted it by a 2-1 margin. Through an exercise of popular lawmaking, Arizona thus allowed women to vote eight years before ratification of the Nineteenth Amendment. *See* Toni McClory, Understanding the Arizona Constitution 34 (2d ed. 2010).

Arizonans have used their initiative power over the constitution to expand the franchise in other ways as well. For example, Arizona voters in 1998 approved Proposition 103 to allow registered independents, persons with no party preference, and minor party members to vote in major party primaries, including those for federal office. *See* Ariz. Const. art. VII, § 10; Leshy, *supra*, at 240. "A number of states have adopted such measures in recent years, both in recognition of the growing number of political independents and on the theory that allowing them the franchise will tend to lead to more centrist candidates than would otherwise emerge from partisan primaries." Leshy, *supra*, at 240.

The people of Arizona have also amended the constitution to provide for the filling of congressional vacancies. As originally adopted, the Arizona constitution was silent on this issue. In 1962, voters approved an amendment establishing a primary and general election for the election of a U.S. Senator or Representative in Congress when a vacancy occurs through resignation or any other cause. *See* Ariz. Const. art. VII, § 17; Leshy, *supra*, at 244.

Other constitutional amendments have also regulated elections. *See* Ariz. Const. art. XXII, § 18; Leshy, *supra*, at 430 ("resign-to-run" amendment enacted in 1980 and prohibiting occupant of a salaried elective office from running for or being appointed to any other public office, except during the final year of the term); Ariz. Const. art. VII, § 3; Leshy, *supra*, at 237 (2000 amendment to update provision from

original constitution on voting residence of federal employees and others temporarily outside the State).

C. The People Of Arizona Have Repeatedly Enacted Statutes To Regulate Elections

The people of Arizona have also used their initiative power to enact statutes to regulate elections in the State. *See infra* App. B. Again, the constitutionality of these measures, which were not enacted by the Legislature, would seemingly be thrown into doubt were the Legislature's interpretation of the Elections Clause to prevail in this case.

In response to poor voting turn-out in the 1980 presidential election and the high numbers of unregistered Arizonans, voters initiated and passed Proposition 202—the Motor Voter Initiative—as an additional means for people to register and maintain their voter registration. Rose Mofford, Ariz. Sec'y of State, 1982 Publicity Pamphlet, http://azmemory.azlibrary.gov/cdm/ref/collection/statepubs/id/10531 (last visited Jan. 22, 2015). The Motor Voter Initiative, codified at Ariz. Rev. Stat. § 16-112, allows every person qualified to vote to register when applying for a driver's license.

In 2004, Arizona voters adopted Proposition 200, "a ballot initiative designed in part 'to combat voter fraud by requiring voters to present proof of citizenship when they register to vote and to present identification when they vote on election day.'" *Arizona v. Inter Tribal Council of Ariz., Inc.*, 133 S. Ct. 2247, 2252 (2013) (quoting *Purcell v. Gonzalez*,

549 U.S. 1, 2 (2006) (per curiam)). "Proposition 200 amended the State's election code to require county recorders to 'reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship.'" *Ibid.* (quoting Ariz. Rev. Stat. § 16-166(F)).

Like the Motor Voter Initiative, voters initiated and passed Proposition 200, which regulates federal elections, without the Legislature's participation. It is telling that, despite being subject to extensive litigation, the initiative was never challenged as invalid because it was not enacted by the Legislature. *See, e.g.*, *id.* at 2253-60 (holding that, by operation of the Elections Clause, the National Voter Registration Act preempted Arizona's proof-of-citizenship requirement).

III. THE INDEPENDENT REDISTRICTING COMMISSION IS JUST A RECENT EXAMPLE OF A VOTER-INITIATED AND APPROVED ELECTION REFORM IN ARIZONA

As the discussion above shows, Arizonans' use of their initiative power to enact Proposition 106, the redistricting measure at issue in this case, was not at all novel. That proposition was in fact just one of the latest examples of voters' use of the initiative power to identify and correct problems with Arizona elections.

A. Before Enactment Of Proposition 106, The Arizona Legislature Failed To Fulfill Its Redistricting Responsibilities

Before enactment of Proposition 106 in 2000, Arizona "had experienced a troubled redistricting history." Bruce E. Cain, *Redistricting Commissions: A Better Political Buffer?*, 121 Yale L.J. 1808, 1830 (2012). Indeed, the decades before enactment of Proposition 106 saw grave "[r]edistricting controversies" recurring like clockwork every ten years. Barbara Norrander & Jay Wendland, *Redistricting in Arizona*, *in* Reapportionment and Redistricting in the West 177, 178 (Gary Moncrief ed., 2011).

The plan adopted by the Legislature after the 1970 census was invalidated by a district court "for splitting the Navajo tribe reservation into three separate state legislative districts." Cain, *supra*, at 1830. The court replaced the Legislature's plan with a judicially drawn one, which placed the Navajo reservation in a single district. *See ibid.*; Norrander & Wendland, *supra*, at 178.

In 1981, the Legislature adopted redistricting maps, but they were vetoed by the Governor. The Legislature then overrode the veto. Its plan, however, was rejected by a district court "for diluting the Native American vote and failing to achieve sufficiently equal population." Cain, *supra*, at 1830. In particular, the rejected legislative plan would have divided the San Carlos Apache Reservation into three legislative districts and three congressional districts.

See Goddard v. Babbitt, 536 F. Supp. 538, 541 (D. Ariz. 1982). The post-1980 litigation was ultimately resolved when the parties agreed to submit stipulated revisions to redistricting plans, which were approved by the court. The stipulated revisions placed the San Carlos Apache Reservation into a single legislative and congressional district. *Id.* at 543.

After the 1990 census, the Arizona House of Representatives and the Arizona Senate failed to agree on a redistricting plan and thus did not enact one. Years of litigation commenced. "All together, the 1992 redistricting experience included sharp partisan divisions delaying the adoption of a legislatively drawn plan, a court imposed plan for congressional districts, rejection of the state legislative district plan by the Department of Justice, plans adopted or imposed during an election year, and a total of five court cases." Norrander & Wendland, *supra*, at 179.

B. Arizonans Enacted Proposition 106 To Address Failures In Redistricting By The Legislature

Given the Legislature's poor redistricting track record, many Arizonans by the late 1990s were ready to use their reserved lawmaking power to delegate that responsibility to a different entity. They therefore placed on the ballot and enacted a measure, Proposition 106, delegating the power to redistrict to an independent, five-member commission. *See* Ariz. Const. art. IV, pt. 2, § 1; *see also* Norrander &

Wendland, *supra*, at 180 (noting that Proposition 106 "passed by a healthy margin: 56 to 44").[6]

The amendment provides that the leadership of the Arizona Legislature must choose four of the five Commission members, selecting from a slate of candidates nominated by a state nominating commission. *See* Ariz. Const. art. IV, pt. 2, § 1(3)-(7). The fifth member, not a member of either major political party, is chosen by the other four from the same slate of candidates. *See id.* § 1(8). Each Commission member is required to be "committed" to fulfilling his or her redistricting responsibilities "in an honest, independent and impartial fashion and to upholding public confidence in the integrity of the redistricting process." *Id.* § 1(3).

The Commission is required to draw districts that: are "geographically compact and contiguous to the extent practicable"; "respect communities of interest to the extent practicable"; and, "[t]o the extent practicable, * * * use visible geographic

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[6] Before enactment of the proposition, the Legislature passed a bill requiring the Legislature or "any entity that is charged with recommending or adopting legislative or congressional district boundaries" to use population data from the United States Census Bureau. *See* H.R. 2698, 44th Leg., 1st Reg. Sess. (Ariz. 1999) (codified at Ariz. Rev. Stat. § 16-1103). The Legislature included the "any entity" language in anticipation that Arizona voters would approve an independent redistricting commission. *See* David K. Pauole, *Race, Politics & (In)Equality: Proposition 106 Alters the Face and Rules of Redistricting in Arizona*, 33 Ariz. St. L.J. 1219, 1236 (2001).

features, city, town and county boundaries, and undivided census tracts." *Id.* § 1(14). Additionally, the initiative requires that "[t]o the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals." *Ibid.*

The redistricting commission is required to put its proposed district maps out for public comment. The Legislature may then make recommendations to the Commission, and those recommendations "shall be considered" before the Commission adopts final district lines. *Id.* § 1(16).

1. Proposition 106 had bipartisan support

Support for Proposition 106 was bipartisan. *See* Norrander & Wendland, *supra*, at 180. For example, the elected Superintendent of Public Instruction, a Republican who had previously served in the Legislature, supported Proposition 106, explaining:

> We need a simpler and fairer way to draw voting districts. Currently districts are drawn to promote single party dominance and protect incumbents resulting in reduced voter confidence. * * * The public will continue to be barred from meaningful participation in the process until we create an independent redistricting commission. * * * Current district maps are contorted boundaries lacing together isolated pockets of special interest to form bulletproof districts for incumbents. Decisions, if any, are made in

> the primary elections. Opponents argue a redistricting commission would eliminate public accountability. To the contrary, there is no public accountability now. District maps are secretly drawn by powerful party leaders, hidden from the public. Even other members of the legislature are barred from viewing the maps until they are essentially complete.

2000 Ballot Propositions: Proposition 106, at 56-57 (Nov. 7, 2000), *available at* http://www.azsos.gov/election/2000/info/pubpamphlet/english/prop106.pdf.

Janet Napolitano, then the Democratic Attorney General and later Governor, also urged voters to support Proposition 106, stating:

> It allows you, the citizen, to have a voice in drawing the boundaries of your legislative and congressional districts. Through open meeting throughout the state—not backroom dealing—we will have a process run by the public. * * * This initiative is fair to all Arizonans because it opens up the system to public scrutiny; it eliminates conflicts of interest by taking the process of redistricting out of incumbents' hands; and, it just might encourage more people to run for public office.

Id. at 57. In addition to elected officials, numerous civic groups and organizations supported Proposition 106. *See id*. at 57-58.

2. Arizona's Indian Tribes supported Proposition 106

Proposition 106 also had wide support from the 21 Indian Tribes with reservations in Arizona. As discussed above, redistricting by the Legislature from the 1970s to the 1990s was characterized by repeated efforts to dilute the voting power of Arizona's Indians and, in particular, divide reservations into separate districts. Those efforts occurred against a backdrop of Arizona Indians' long struggle for full voting rights.

Given the strong federal role in Indian affairs, congressional redistricting, and its impact on representation in Congress, is an issue of paramount concern for Tribes. Congress has plenary power over federally recognized Tribes on reservations. *See Choate v. Trapp*, 224 U.S. 665, 671 (1912); *see also* U.S. Const. art. I, § 8, cl. 3 (express control over commerce with Indian Tribes); *id.* cl. 1 (power to make expenditures for the general welfare); *id.* art. IV, § 3, cl. 2 (control over the property of the United States). Moreover, in Arizona, law enforcement on Reservations is the responsibility of federal and tribal governments.[7]

Indians' struggle to gain the right to register and vote in Arizona has been long and difficult. In 1924,

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[7] Indian Reservations constitute approximately 27 percent of Arizona's land, which is the highest percentage of Indian Reservation land in any State. *See Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684, 687 (D. Ariz. 1992).

Congress conferred citizenship on Arizona's Indians, but not the right to vote in the State. *See* Indian Citizenship Act of 1924, 43 Stat. 253. Four years later, the Arizona Supreme Court held that Indians in Arizona were under federal guardianship and, for that reason, had no right to vote guaranteed by the state constitution. *See Porter v. Hall*, 271 P. 411, 419 (Ariz. 1928). The Arizona Supreme Court did not overrule that decision until 1948. *See Harrison v. Laveen*, 196 P.2d 456, 463 (Ariz. 1948). Under the Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437, Arizona was required to submit proposed congressional districts to the United States Department of Justice for approval because of the State's history of discrimination against certain minorities, including Indians.

Given this history, it is not surprising that the State's Indian Tribes strongly supported Proposition 106. Because the independent redistricting commission is required to "respect communities of interest to the extent practicable," Ariz. Const. art. IV, pt. 2, § 1(14), the Tribes viewed it as a means of keeping reservations within single districts instead of dividing them, as the Legislature had repeatedly attempted to do.

C. The Arizona Independent Redistricting Commission Has Performed Better Than The Legislature

Given the complexities of redistricting, no system for drawing district lines will be perfect. Redistricting by the Commission has been no exception. Yet the

Commission's track record has been far superior to the abysmal one put together by the Legislature in the decades preceding the Commission's creation.

The Commission has delivered district maps on time, drawn more compact districts, and created more competitive congressional seats. *See* Peter Miller & Bernard Grofman, *Redistricting Commissions in the Western United States*, 3 U.C. Irvine L. Rev. 637, 661, 663-64, 666 (2013); *see also* Nicholas Stephanopoulos, *Reforming Redistricting: Why Popular Initiatives to Establish Redistricting Commissions Succeed or Fail*, 23 J.L. & Pol. 331, 339-40 (2007) (discussing empirical evidence showing that independent redistricting commissions, like Arizona's, create more competitive districts).

Moreover, in the experience of amici, the Commission has conducted its affairs faithfully and transparently. It has encouraged public participation, creating a marked contrast to the closed door sessions dominated by a select few when the Legislature was in charge of redistricting. The most recent redistricting process conducted by the Commission included 43 public hearings conducted throughout the State, attended by thousands of people. Almost every meeting was live-streamed online, allowing for even more participation. The Commission's website also provided an interactive mapping function.

To the extent the Commission can be improved, Arizona's voters stand ready to use their reserved lawmaking power to do so. Their ability to adopt

such additional reform measures involving elections should not be eliminated.

CONCLUSION

For these reasons, and those provided by Appellees, the judgment of the district court should be affirmed.

Respectfully submitted,

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APPENDIX A: Provisions From Arizona Constitution Regulating Elections

[Deletions are indicated by strikethrough. Additions are indicated by all caps.]

Provision	Relevant Constitutional History
Article II, § 21 Free and equal elections	**Original Arizona Constitution (adopted Dec. 9, 1910)**: All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. **No Constitutional Amendments.**
Article IV, pt. 2, § 1 Senate; house of representatives; members; special session upon petition of members; congressional and legislative boundaries; citizen commissions	**Original Arizona Constitution (adopted Dec. 9, 1910)**: Until otherwise provided by law, the Senate shall consist of 19 members, and the House of Representatives of 35 members, and Senators and Representatives shall be apportioned among the several counties, as follows: Apache county, 1 Senator, 1 Representative; Cochise county, 2 Senators, 7 Representatives; Coconino county, 1 Senator, 1 Representative; Gila county, 2 Senators, 3 Representatives; Graham county, 1 Senator, 2 Representatives; Greenlee county, 1 Senator, 2 Representatives; Maricopa county, 2 Senators, 6 Representatives; Navajo county, 1

Provision	Relevant Constitutional History
	Senator, 1 Representative; Pima county, 2 Senators, 3 Representatives; Pinal county, 1 Senator, 1 Representative; Santa Cruz county, 1 Senator, 1 Representative; Yavapai county, 2 Senators, 4 Representatives; Yuma county, 1 Senator, 2 Representatives. **Proposed by Initiative Petition, filed July 7, 1932 (approved election Nov. 8, 1932, eff. Nov. 28, 1932). It replaced Article IV, pt. 2, § 1 in its entirety with the following**: (1) The Senate shall consist of nineteen members, apportioned among the several. counties as follows: Apache County, one senator; Cochise County, two senators; Coconino County, one senator; Gila County, two senators; Graham County, one senator; Greenlee County, one senator; Maricopa County, two senators; Mohave County, one senator; Navajo County, one senator; Pima County, two senators; Pinal County, one senator; Santa Cruz County, one senator; Yavapai County, two senators; Yuma County, one senator. There shall be elected from each county at large the number of

Provision	Relevant Constitutional History
	senators to which such county is entitled, and there shall be elected from each county, in the manner hereinafter directed, one representative for each 2,500 votes, or major fraction thereof, cast in such county for the office of governor at the last preceding general election, to be determined from the official canvass of all votes cast in all counties for such office of governor; and provided that each county shall be entitled to have one representative and no county shall have a less number of representatives than it would otherwise be entitled to if the number thereof should be computed in the manner above set forth upon the total vote cast in such county for the office of governor at the general election held in the year 1930. Within twelve months from the time this amendment is declared adopted, the Board of Supervisors of each county entitled to more than one representative shall divide such county into as many legislative districts as there may be representatives to be elected from such county, and each of such districts shall be entitled to elect one representative. Such division shall be so made that the legislative districts

Provision	Relevant Constitutional History
	within a County shall contain, as nearly as may be, the same voting population. Such districts shall be compact in form, and no such district shall include non-contiguous portions of any county. Before establishing such district, the Board of Supervisors shall give at least thirty days' notice of their intention so to do, by publishing the same in two successive issues of some newspaper of general circulation published in such county. The order of the Board of Supervisors establishing such districts shall clearly and explicitly define the boundaries thereof, and shall be entered at large on the official records of the proceedings of such Board. Any such county shall be redistricted by such Board of Supervisors not less than six months prior to each regular election for representatives, when by reason of the number of votes therein cast for the office of governor at the last preceding general election, it shall be entitled to a greater number of representatives. In counties entitled to but one representative, such representative shall be elected from the County at large. . . .

Provision	Relevant Constitutional History
	Laws 1953, Senate Congressional Resolution ("S.C.R.") No. 1, § 1 (approved election Sept. 29, 1953, eff. Oct. 31, 1953). It replaced Article IV, pt. 2, § 1(1) in its entirety with the following: The Senate shall consist of two members from each county elected at large. Beginning with the Twenty-second Legislature the House of Representatives shall be composed of not to exceed eighty members, to be apportioned to the counties according to the number of ballots cast in each county at the preceding general election for governor in the manner herein provided. Such apportionment shall be made every four years and shall be on the basis of one Representative for each county and one additional Representative for each thirty-five hundred and twenty ballots cast at the last preceding general election, according to the official canvass of the votes cast in each county. In the event that on the basis prescribed the number of Representatives so determined shall exceed eighty, the unit of apportionment

Provision	Relevant Constitutional History
	shall be increased by ten or such multiple of ten as will reduce the number of Representatives to eighty. Not less than eight months prior to the regular general election following such apportionment at which Representatives are to be chosen, the secretary of state shall notify the board of supervisors of each county the number of Representatives such county will be entitled to elect, and the board shall not less than six months prior to such election, divide the county into as many legislative districts as there are Representatives to be elected. The district shall have as nearly as may be an equal voting population, be compact in form and include no noncontiguous territory. The board shall give not less than thirty days' notice of intention to divide the county into legislative district by publication in two successive issues of a newspaper of general circulation published in the county." **Laws 1972, S.C.R. No. 1001 (approved election Nov. 7, 1972, eff. Dec. 1, 1972). It replaced Article IV, pt. 2, § 1(1) in its entirety with the following**: The Senate shall be composed of one member elected from each of

Provision	Relevant Constitutional History
	the thirty legislative districts established by the legislature. The House of Representatives shall be composed of two members elected from each of the thirty legislative districts established by the legislature. . . . ” **Prop. 106 (approved election Nov. 7, 2000, eff. Nov. 27, 2000). It replaced Article IV, pt. 2, § 1 in its entirety with the following**: (1) The senate shall be composed of one member elected from each of the thirty legislative districts established pursuant to this section. The house of representatives shall be composed of two members elected from each of the thirty legislative districts established pursuant to this section. (2) Upon the presentation to the governor of a petition bearing the signatures of not less than two-thirds of the members of each house, requesting a special session of the legislature and designating the date of convening, the governor shall promptly call a special session to assemble on the date specified. At a special session so called the subjects which may be considered by the legislature shall not be limited.

Provision	Relevant Constitutional History
	(3) By February 28 of each year that ends in one, an independent redistricting commission shall be established to provide for the redistricting of congressional and state legislative districts. The independent redistricting commission shall consist of five members. No more than two members of the independent redistricting commission shall be members of the same political party. Of the first four members appointed, no more than two shall reside in the same county. Each member shall be a registered Arizona voter who has been continuously registered with the same political party or registered as unaffiliated with a political party for three or more years immediately preceding appointment, who is committed to applying the provisions of this section in an honest, independent and impartial fashion and to upholding public confidence in the integrity of the redistricting process. Within the three years previous to appointment, members shall not have been appointed to, elected to, or a candidate for any other public office, including precinct committeeman or committeewoman but not including school board member or officer, and shall not have served

Provision	Relevant Constitutional History
	as an officer of a political party, or served as a registered paid lobbyist or as an officer of a candidate's campaign committee. (4) The commission on appellate court appointments shall nominate candidates for appointment to the independent redistricting commission, except that, if a politically balanced commission exists whose members are nominated by the commission on appellate court appointments and whose regular duties relate to the elective process, the commission on appellate court appointments may delegate to such existing commission (hereinafter called the commission on appellate court appointments' designee) the duty of nominating members for the independent redistricting commission, and all other duties assigned to the commission on appellate court appointments in this section. (5) By January 8 of years ending in one, the commission on appellate court appointments or its designee shall establish a pool of persons who are willing to serve on and are qualified for appointment to the independent redistricting commission. The pool of candidates shall consist of twenty-five nominees,

Provision	Relevant Constitutional History
	with ten nominees from each of the two largest political parties in Arizona based on party registration, and five who are not registered with either of the two largest political parties in Arizona. (6) Appointments to the independent redistricting commission shall be made in the order set forth below. No later than January 31 of years ending in one, the highest ranking officer elected by the Arizona house of representatives shall make one appointment to the independent redistricting commission from the pool of nominees, followed by one appointment from the pool made in turn by each of the following: the minority party leader of the Arizona house of representatives, the highest ranking officer elected by the Arizona senate, and the minority party leader of the Arizona senate. Each such official shall have a seven-day period in which to make an appointment. Any official who fails to make an appointment within the specified time period will forfeit the appointment privilege. In the event that there are two or more minority parties within the house or the senate, the leader of the largest minority party by

Provision	Relevant Constitutional History
	statewide party registration shall make the appointment. (7) Any vacancy in the above four independent redistricting commission positions remaining as of March 1 of a year ending in one shall be filled from the pool of nominees by the commission on appellate court appointments or its designee. The appointing body shall strive for political balance and fairness. (8) At a meeting called by the secretary of state, the four independent redistricting commission members shall select by majority vote from the nomination pool a fifth member who shall not be registered with any party already represented on the independent redistricting commission and who shall serve as chair. If the four commissioners fail to appoint a fifth member within fifteen days, the commission on appellate court appointments or its designee, striving for political balance and fairness, shall appoint a fifth member from the nomination pool, who shall serve as chair. (9) The five commissioners shall then select by majority vote one of their members to serve as vice-chair.

Provision	Relevant Constitutional History
	(10) After having been served written notice and provided with an opportunity for a response, a member of the independent redistricting commission may be removed by the governor, with the concurrence of two-thirds of the senate, for substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office. (11) If a commissioner or chair does not complete the term of office for any reason, the commission on appellate court appointments or its designee shall nominate a pool of three candidates within the first thirty days after the vacancy occurs. The nominees shall be of the same political party or status as was the member who vacated the office at the time of his or her appointment, and the appointment other than the chair shall be made by the current holder of the office designated to make the original appointment. The appointment of a new chair shall be made by the remaining commissioners. If the appointment of a replacement commissioner or chair is not made within fourteen days following the presentation of the nominees, the commission on appellate court

Provision	Relevant Constitutional History
	appointments or its designee shall make the appointment, striving for political balance and fairness. The newly appointed commissioner shall serve out the remainder of the original term. (12) Three commissioners, including the chair or vice-chair, constitute a quorum. Three or more affirmative votes are required for any official action. Where a quorum is present, the independent redistricting commission shall conduct business in meetings open to the public, with 48 or more hours public notice provided. (13) A commissioner, during the commissioner's term of office and for three years thereafter, shall be ineligible for Arizona public office or for registration as a paid lobbyist. (14) The independent redistricting commission shall establish congressional and legislative districts. The commencement of the mapping process for both the congressional and legislative districts shall be the creation of districts of equal population in a grid-like pattern across the state. Adjustments to the grid shall then be made as necessary to accommodate the goals as set forth

Provision	Relevant Constitutional History
	below: A. Districts shall comply with the United States Constitution and the United States voting rights act; B. Congressional districts shall have equal population to the extent practicable, and state legislative districts shall have equal population to the extent practicable; C. Districts shall be geographically compact and contiguous to the extent practicable; D. District boundaries shall respect communities of interest to the extent practicable; E. To the extent practicable, district lines shall use visible geographic features, city, town and county boundaries, and undivided census tracts; F. To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals. (15) Party registration and voting history data shall be excluded from the initial phase of the mapping process but may be used to test maps for compliance with the above goals. The places of residence of

Provision	Relevant Constitutional History
	incumbents or candidates shall not be identified or considered. (16) The independent redistricting commission shall advertise a draft map of congressional districts and a draft map of legislative districts to the public for comment, which comment shall be taken for at least thirty days. Either or both bodies of the legislature may act within this period to make recommendations to the independent redistricting commission by memorial or by minority report, which recommendations shall be considered by the independent redistricting commission. The independent redistricting commission shall then establish final district boundaries. (17) The provisions regarding this section are self-executing. The independent redistricting commission shall certify to the secretary of state the establishment of congressional and legislative districts. (18) Upon approval of this amendment, the department of administration or its successor shall make adequate office space available for the independent redistricting commission. The treasurer of the state shall make $6,000,000 available for

Provision	Relevant Constitutional History
	the work of the independent redistricting commission pursuant to the year 2000 census. Unused monies shall be returned to the state's general fund. In years ending in eight or nine after the year 2001, the department of administration or its successor shall submit to the legislature a recommendation for an appropriation for adequate redistricting expenses and shall make available adequate office space for the operation of the independent redistricting commission. The legislature shall make the necessary appropriations by a majority vote. (19) The independent redistricting commission, with fiscal oversight from the department of administration or its successor, shall have procurement and contracting authority and may hire staff and consultants for the purposes of this section, including legal representation. (20) The independent redistricting commission shall have standing in legal actions regarding the redistricting plan and the adequacy of resources provided for the operation of the independent redistricting commission. The independent redistricting commission shall have sole authority to determine whether

Provision	Relevant Constitutional History
	the Arizona attorney general or counsel hired or selected by the independent redistricting commission shall represent the people of Arizona in the legal defense of a redistricting plan. (21) Members of the independent redistricting commission are eligible for reimbursement of expenses pursuant to law, and a member's residence is deemed to be the member's post of duty for purposes of reimbursement of expenses. (22) Employees of the department of administration or its successor shall not influence or attempt to influence the district-mapping decisions of the independent redistricting commission. (23) Each commissioner's duties established by this section expire upon the appointment of the first member of the next redistricting commission. The independent redistricting commission shall not meet or incur expenses after the redistricting plan is completed, except if litigation or any government approval of the plan is pending, or to revise districts if required by court decisions or if the number of congressional or legislative districts is changed.

Provision	Relevant Constitutional History
Article VII, § 1 Method of voting; secrecy	**Original Arizona Constitution (adopted Dec. 9, 1910)**: All elections by the people shall be by ballot, or by such other method as may be prescribed by law; Provided, that secrecy in voting shall be preserved. **No Constitutional Amendments.**
Article VII, § 2 Qualifications of voters; disqualification	**Original Arizona Constitution (adopted Dec. 9, 1910)**: No person shall be entitled to vote at any general election, or for any office that now is, or hereafter may be, elective by the people, or upon any question which may be submitted to a vote of the people, except school elections as provided in Section 8 of this Article, unless such person be a male citizen of the United States of the age of twenty-one years or over, and shall have resided in the State on year immediately preceding such election. **Proposed by Initiative Petition, filed July 5, 1912 (approved election Nov. 5, 1912, eff. Dec. 5, 1912). It replaced Article VII, § 2 in its entirety with the following**: No person shall be entitled to vote at any general election, or for any office that now is, or hereafter may be, elective by the people, or upon any question which may be

Provision	Relevant Constitutional History
	submitted to a vote of the people, unless such person be a citizen of the United States of the age of twenty-one years or over, and shall have resided in the State one year immediately preceding such election. The word "citizen" shall include persons of the male and female sex. The rights of citizens of the United States to vote and hold office shall not be denied or abridged by the state, or any political division or municipality thereof, on account of sex, and the right to register, to vote and to hold office under any law now in effect, or which may hereafter be enacted, is hereby extended to, and conferred upon males and females alike. No person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony, be qualified to vote at any election unless restored to civil rights. **Laws 1962, House Concurrent Resolution ("H.C.R.") No. 6 (approved election Nov. 6, 1962, eff. Nov. 26, 1962)**: No person shall be entitled to vote at any general election, or for any office that now

Provision	Relevant Constitutional History
	is, or hereafter may be, elective by the people, or upon any question which may be submitted to a vote of the people, unless such person be a citizen of the United States of the age of twenty-one years or over, and shall have resided in the State one year immediately preceding such election, provided that qualifications for voters at a general election for the purpose of electing presidential electors shall be as prescribed by law. The word "citizen" shall include persons of the male and female sex. The rights of citizens of the United States to vote and hold office shall not be denied or abridged by the state, or any political division or municipality thereof, on account of sex, and the right to register, to vote and to hold office under any law now in effect, or which may hereafter be enacted, is hereby extended to, and conferred upon males and females alike. No person under guardianship, non-compos mentis, or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony, be qualified to vote at any election unless restored to civil rights.

Provision	Relevant Constitutional History
	Laws 2000, H.C.R. No. 2004, § 1, Prop. 101 (approved election Nov. 7, 2000, eff. Nov. 27, 2000). A. No person shall be entitled to vote at any general election, or for any office that now is, or hereafter may be, elective by the people, or upon any question which may be submitted to a vote of the people, unless such person be a citizen of the United States of the age ~~of twenty-one~~ EIGHTEEN years or over, and shall have resided in the state one year immediately FOR THE PERIOD OF TIME preceding such election AS PRESCRIBED BY LAW, provided that qualifications for voters at a general election for the purpose of electing presidential electors shall be as prescribed by law. The word "citizen" shall include persons of the male and female sex. B. The rights of citizens of the United States to vote and hold office shall not be denied or abridged by the state, or any political division or municipality thereof, on account of sex, and the right to register, to vote and to hold office under any law now in effect, or which may hereafter be enacted, is hereby extended to, and conferred upon males and females alike.

Provision	Relevant Constitutional History
	C. No person ~~under guardianship, non compos mentis, or insane~~ WHO IS ADJUDICATED AN INCAPACITATED PERSON shall be qualified to vote at any election, nor shall any person convicted of treason or felony, be qualified to vote at any election unless restored to civil rights.
Article VII, § 3 Voting residence of federal employees and certain others	**Original Arizona Constitution (adopted Dec. 9, 1910)**: For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, or while a student at any institution of learning, or while kept at any alms house or other asylum at public expense, or while confirmed in any public jail or prison. **Laws 2000, H.R.C. No. 2004, § 2, Prop. 101 (approved election Nov. 7, 2000, eff. Nov. 27, 2000)**: For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of ~~his presence or absence~~ BEING PRESENT OR ABSENT while employed in the service of the United States, or while a student at any institution of learning, or while kept at any ~~alms-house or other asylum~~ INSTITUTION OR OTHER SHELTER

Provision	Relevant Constitutional History
	at public expense, or while confined in any public jail or prison.
Article VII, § 7 Highest number of votes received as determinative of person elected	**Original Arizona Constitution (adopted Dec. 9, 1910)**: In all elections held, by the people, in this State, the person, or persons, receiving the highest number of legal votes shall be declared elected. **Laws 1988, S.C.R. No. 1011, Prop. 105 (approved election Nov. 8, 1988, eff. Dec. 5, 1988)**: EXCEPT FOR OFFICES DESIGNATED IN ARTICLE V, SECTION 1, in all elections held, by the people, in this state, the person, or persons, receiving the highest number of legal votes shall be declared elected. **Laws 1991, H.C.R. No. 2001, Prop. 100 (approved election Nov. 3, 1992, eff. Nov. 23, 1992)**: ~~Except for offices designated in article V, section 1~~, In all elections held, by the people, in this State, the person, or persons, receiving the highest number of legal votes shall be declared elected.
Article VII, § 10 Direct primary election law	**Original Arizona Constitution (adopted Dec. 9, 1910)**: The Legislature shall enact a direct primary election law, which provides for the nomination of candidates for all elective, State, county and city

Provision	Relevant Constitutional History
	offices, including candidates for United States Senator and for Representative in Congress. **Laws 1998, S.C.R. No. 1014, Prop. 103 (approved election Nov. 3, 1998, eff. Nov. 23, 1998)**: The Legislature shall enact a direct primary election law, which shall provide for the nomination of candidates for all elective State, county, and city offices, including candidates for United States Senator and for Representative in Congress. ANY PERSON WHO IS REGISTERED AS NO PARTY PREFERENCE OR INDEPENDENT AS THE PARTY PREFERENCE OR WHO IS REGISTERED WITH A POLITICAL PARTY THAT IS NOT QUALIFIED FOR REPRESENTATION ON THE BALLOT MAY VOTE IN THE PRIMARY ELECTION OF ANY ONE OF THE POLITICAL PARTIES THAT IS QUALIFIED FOR THE BALLOT.
Article VII, § 11 General elections; date	**Original Arizona Constitution (adopted Dec. 9, 1910)**: There shall be a general election of representatives in congress, and of state, county, and precinct officers on the first Tuesday after the first Monday in November of the first even numbered year after the year in which

Provision	Relevant Constitutional History
	Arizona is admitted to statehood and biennially thereafter. **No Constitutional Amendments.**
Article VII, § 14 Fee for placing candidate's name on ballot	**Original Arizona Constitution (adopted Dec. 9, 1910)**: No fee shall ever be required in order to have the name of any candidate placed on the official ballot for any election or primary. **No Constitutional Amendments.**
Article VII, § 15 Qualifications for public office	**Original Arizona Constitution (adopted Dec. 9, 1910)**: Every male person elected or appointed to any office of trust or profit under the authority of the State or of any political division of the State, or any male deputy of such officer, shall be a qualified elector of the political division in which said person shall be elected or appointed. **Laws 1912, Official Ballot Nos. 300 and 301 (approved election Nov. 5, 1912, eff. Dec. 5, 1912)**: Every ~~male~~ person elected or appointed to any office of trust or profit under the authority of the state, or any political division ~~of the State~~, or any ~~male deputy of such officer~~ MUNICIPALITY THEREOF, shall be a qualified elector of the political division OR MUNICIPALITY in which said person shall be elected or appointed.

Provision	Relevant Constitutional History
	Laws 1948, H.C.R. No. 5, § 1, Official Ballot Nos. 104-195 (approved election Nov. 2, 1948, eff. Nov. 22, 1948): Every person elected or appointed to any office of trust or profit under the authority of the state, or any political division or any municipality thereof, shall be a qualified elector of the political division or municipality in which said person shall be elected or appointed; PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT APPLY TO THE CITY MANAGER IN INCORPORATED CITIES OPERATING UNDER A CITY MANAGER FORM OF GOVERNMENT. **Laws 1971, S.C.R. No. 9, § 1, Prop. 102 (approved election Nov. 7, 1972, eff. Dec. 1, 1972)**: Every person elected or appointed to any ELECTIVE office of trust or profit under the authority of the state, or any political division or any municipality thereof, shall be a qualified elector of the political division or municipality in which ~~said~~ SUCH person shall be elected. ~~or appointed; provided, however, that this section shall not apply to the city manager in incorporated cities operating under a city manager form of government.~~

Provision	Relevant Constitutional History
Article VII, § 17 Vacancy in Congress	**Original Arizona Constitution (adopted Dec. 9, 1910)**: § 17 did not exist. **Laws 1961, S.C.R. No. 13, § 1, Prop. 101 (approved election Nov. 6, 1962, eff. Nov. 26, 1962)**: There shall be a primary and general election as prescribed by law, which shall provide for nomination and election of a candidate for United States Senator and for Representative in Congress when a vacancy occurs through resignation or any other cause.
Article VII, § 18 Term limits on ballot appearances in congressional elections	**Original Arizona Constitution (adopted Dec. 9, 1910)**: § 18 did not exist. **Prop. 107 (approved election Nov. 3, 1992, eff. Nov. 23, 1992)**: The name of any candidate for United States senator from Arizona shall not appear on the ballot if, by the end of the current term of office, the candidate will have served (or, but for resignation, would have served) in that office for two consecutive terms, and the name of a candidate for United States representative from Arizona shall not appear on the ballot if, by the end of the current term of office, the candidate will have served (or, but

Provision	Relevant Constitutional History
	for resignation, would have served) in that office for three consecutive terms. Terms are considered consecutive unless they are at least one full term apart. Any person appointed or elected to fill a vacancy in the United States congress who serves at least one half of a term of office shall be considered to have served a term in that office for purposes of this section. For purposes of this section, terms beginning before January 1, 1993 shall not be considered.
Article VII, pt. 1, § 1 Officers subject to recall; petitioners	**Original Arizona Constitution (adopted Dec. 9, 1910)**: Every public officer in the State of Arizona, holding an elective office, either by election or appointment, is subject to recall from such office by the qualified electors of the electoral district from which candidates are elected to such office. Such electoral district may include the whole State. Such number of said electors as shall equal twenty-five per centum of the number of votes cast at the last preceding general election for all of the candidates for the office held by such officer, may by petition, which shall be known as a Recall Petition, demand his recall. **Change required by the United States government as a condition**

Provision	Relevant Constitutional History
	for admission as a state. Approved by electors, Dec. 12, 1911. Every public officer in the State of Arizona, EXCEPT MEMBERS OF THE JUDICIARY, holding an elective office, either by election or appointment, is subject to recall from such office by the qualified electors of the electoral district from which candidates are elected to such office. Such electoral district may include the whole State. Such number of said electors as shall equal twenty-five per centum of the number of votes cast at the last preceding general election for all of the candidates for the office held by such officer, may by petition, which shall be known as a Recall Petition, demand his recall. **Laws 1912, Ch. 9, § 1, Official Ballot Nos. 101 and 102 (approved election Nov. 5, 1912, eff. Dec. 5, 1912)**: Every public officer in the State of Arizona, ~~except members of the judiciary~~, holding an elective office, either by election or appointment, is subject to recall from such office by the qualified electors of the electoral district from which candidates are elected to such office. Such electoral district may include the whole State. Such number of said electors as shall

Provision	Relevant Constitutional History
	equal twenty-five per centum of the number of votes cast at the last preceding general election for all of the candidates for the office held by such officer, may by petition, which shall be known as a Recall Petition, demand his recall.
Article VIII, pt. 1, § 2 Recall petitions; contents; filing; signatures; oath	**Original Arizona Constitution (as originally adopted, Dec. 9, 1910)**: Every recall petition must contain a general statement, in not more than two hundred words, of the grounds of such demand, and must be filed in the office in which petitions for nominations to the office held by the incumbent are required to be filed. The signatures to such recall petition need not all be on one sheet of paper, but each signer must add to his signature the date of his signing said petition, and his place of residence, giving his street and number, if any, should he reside in a town or city. One of the signers of each sheet of such petition, or the person circulating such sheet, must make and subscribe an oath on said sheet, that the signatures thereon are genuine. **No Constitutional Amendments.**
Article VIII, pt. 1, § 3	**Original Arizona Constitution (adopted Dec. 9, 1910)**: If said officer shall offer his resignation it

Provision	Relevant Constitutional History
Resignation of officer; special election	shall be accepted, and the vacancy shall be filled as may be provided by law. If he shall not resign within five days after a Recall Petition is filed, a special election shall be ordered to be held, not less than twenty, nor more than thirty days after such order, to determine whether such officer shall be recalled. On the ballots at said election shall be printed the reasons as set forth in the petition for demanding his recall, and, in not more than two hundred words, the officer's justification of his course in office. He shall continue to perform the duties of his office until the result of said election shall have been officially declared. **Laws 1973, S.C.R. No. 1022, § 1, Prop. 101 (approved election Nov. 5, 1974, eff. Dec. 5, 1974)**: If ~~said~~ SUCH officer shall offer his resignation it shall be accepted, and the vacancy shall be filled as may be provided by law. If he shall not resign within five days after a Recall Petition is filed AS PROVIDED BY LAW, a special election shall be ordered to be held, ~~not less than twenty, nor more than thirty days after such order~~, AS PROVIDED BY LAW, to determine whether

Provision	Relevant Constitutional History
	such officer shall be recalled. On the ballots at ~~said~~ SUCH election shall be printed the reasons as set forth in the petition for demanding his recall, and, in not more than two hundred words, the officer's justification of his course in office. He shall continue to perform the duties of his office until the result of ~~said~~ SUCH election shall have been officially declared.
Article VIII, pt. 1, § 4 Special election; candidates; results; qualification of successor	**Original Arizona Constitution (adopted Dec. 9, 1910)**: Unless he otherwise request, in writing, his name shall be placed as a candidate on the official ballot without nomination. Other candidates for the office may be nominated to be voted for at said election. The candidate who shall receive the highest number of votes, shall be declared elected for the remainder of the term. Unless the incumbent receive the highest number of votes, he shall be deemed to be removed from office, upon qualification of his successor. In the event that his successor shall not qualify within five days after the result of said election shall have been declared, the said office shall be vacant, and may be filled as provided by law.

Provision	Relevant Constitutional History
	Laws 1988, S.C.R. No. 1011, Prop. 105 (approved election Nov. 8, 1988, eff. Dec. 5, 1988): Unless ~~he~~ THE INCUMBENT otherwise ~~request~~ REQUESTS, in writing, ~~his~~ THE INCUMBENT'S name shall be placed as a candidate on the official ballot without nomination. Other candidates for the office may be nominated to be voted for at said election. IF THE OFFICE IS ONE DESIGNATED IN ARTICLE V, SECTION 1, THE CANDIDATE WHO RECEIVES A MAJORITY OF THE VOTES CAST IS ELECTED FOR THE REMAINDER OF THE TERM. IF NO PERSON RECEIVES A MAJORITY OF THE VOTES CAST, A SECOND ELECTION SHALL BE HELD AS PRESCRIBED BY LAW BETWEEN THE PERSONS RECEIVING THE HIGHEST AND SECOND HIGHEST NUMBER OF VOTES CAST. THE PERSON RECEIVING THE HIGHEST NUMBER OF VOTES AT THE SECOND ELECTION IS ELECTED FOR THE REMAINDER OF THE TERM. The candidate FOR AN OFFICE WHICH IS NOT DESIGNATED IN ARTICLE V, SECTION 1 who shall receive the highest number of votes; shall be declared elected for the

Provision	Relevant Constitutional History
	remainder of the term. Unless the incumbent receive RECEIVES the ~~highest~~ number of votes PRESCRIBED IN THIS SECTION, ~~he~~ THE INCUMBENT shall be deemed to be removed from office, upon qualification of ~~his~~ THE successor. In the event that ~~his~~ THE successor shall not qualify within five days after the result of said election shall have been declared, the said office shall be vacant, and may be filled as provided by law. **Laws 1991, H.C.R. No. 2001, Prop. 100 (approved election Nov. 3, 1992, eff. Nov. 23, 1992)**: Unless the incumbent otherwise requests, in writing, the incumbent's name shall be placed as a candidate on the official ballot without nomination. Other candidates for the office may be nominated to be voted for at said election. ~~If the office is one designated in article V, section 1, the candidate who receives a majority of the vote cast is elected for the remainder of the term. If no person receives a majority of the votes cast, a second election shall be held as prescribed by law between the persons receiving the highest and second highest number of votes cast.~~

Provision	Relevant Constitutional History
	~~The person receiving the highest number of votes at the second election is elected for the remainder of the term. The candidate for an office which is not designated in article V, section 1 who shall receive~~ WHO RECEIVES the highest number of votes shall be declared elected for the remainder of the term. Unless the incumbent receives the highest number of votes ~~prescribed in this section~~, the incumbent shall be deemed to be removed from office, upon qualification of the successor. In the event that the successor shall not qualify within five days after the result of said election shall have been declared, the said office shall be vacant, and may be filled as provided by law.
Article VIII, pt. 1, § 5 Recall petitions; restrictions and conditions	**Original Arizona Constitution (as originally adopted, Dec. 9, 1910)**: No recall petition shall be circulated against any officer until he shall have held his office for a period of six months, except that it may be filed against a member of the legislature at any time after five days from the beginning of the first session after his election. After one recall petition and election, no further recall petition shall be filed against the same officer during the term for which he was elected,

Provision	Relevant Constitutional History
	unless petitioners signing such petition shall first pay into the public treasury which has paid such election expenses, all expenses of the preceding election. **No Constitutional Amendments.**
Article XXII, § 12 Election of representative in congress	**Original Arizona Constitution (originally adopted, Dec. 9, 1910)**: One Representative in the Congress of the United States shall be elected from the State at large, and at the same election at which officers shall be elected under the Enabling Act, approved June 20, 1910, and, thereafter, at such times and in such manner as may be prescribed by law. **No Constitutional Amendments.**
Article XXII, § 13 Continuation in office until qualification of successor	**Original Arizona Constitution (originally adopted, Dec. 9, 1910)**: The term of office of every officer to be elected or appointed under this Constitution or the laws of Arizona shall extend until his successor shall be elected and shall qualify. **No Constitutional Amendments.**
Article XXII, § 18 Nomination of incumbent public	**Original Arizona Constitution (originally adopted, Dec. 9, 1910)**: A State Examiner, who shall be a skilled accountant shall be appointed by the Governor, by

Provision	Relevant Constitutional History
officers to other offices	and with the advice and consent of the Senate, for a term of two years. The State Examiner shall examine the books and accounts of such public officers, and perform such other duties, and have such other powers, as may be prescribed by law. **Repealed by Laws 1968, H.C.R. No. 2, Official Ballot No. 107 (approved election Nov. 5, 1968, eff. Dec. 4, 1968)** **Laws 1980, S.C.R. No. 1002, Prop. 100 (approved election Nov. 4, 1980, eff. Nov. 24, 1980)**: Except during the final year of the term being served, no incumbent of a salaried elective office, whether holding by election or appointment, may offer himself for nomination or election to any salaried local, State or federal office.

APPENDIX B: Statutes Regulating Elections Passed or Amended by Initiative

Initiative	Summary/Relevant Legislative History
The Motor Voter Initiative **A.R.S. § 16-111** Definitions **A.R.S. § 16-112** Driver license voter registration	**Summary of Initiative**: allowing a person who is applying for a driver license or renewal to also, at the same time and place, register to vote. The proposition delegates to the Director of the Department of Transportation and Secretary of State, after consultation with county recorders, the authority to implement a system of permitting driver's license applicants to register to vote. **Legislative History**: Added by Initiative Petition, Proposition ("Prop.") 202 (approved election Nov. 2, 1982, eff. Nov. 30, 1982).
The Campaign Contribution Limit Initiative **A.R.S. § 16-905** Contribution limitations; civil penalty; complaint; reductions	**Summary of Initiative**: limiting campaign contributions, providing for penalties and removal from office for violation of campaign contribution provisions, and prescribing definitions for Chapter 6 of Title 16.

	Legislative History: Added by Initiative Petition, Prop. 200 (approved election Nov. 4, 1986, eff. Dec. 16, 1986).
The Citizen Clean Elections Act Initiative **A.R.S. § 16-940 to -961** **A.R.S. § 16-901.01** Limitations on certain unreported expenditures and contributions	**Summary of Initiative**: establishing a system for public funding of election campaigns for political candidates who voluntarily participate in a system to limit campaign spending and fundraising in statewide and state legislative election. The proposition also reduces by twenty percent the amount per individual that can currently be contributed to a candidate if they opt not to receive the public funding. It further establishes a Citizens Clean Election Commission that consists of five members, appointed by both the Governor and the highest ranking statewide officeholder who is not from the same political party as the Governor. The Commission enforces and administers the clean elections system. **Legislative History**: Title 16, Chapter 6, Article 2, consisting of §§ 16-940 to -961, and A.R.S. § 16-901.01 were added by Initiative Petition,

	Prop. 200, (approved election Nov. 3, 1998, eff. Nov. 23, 1998).
The Arizona Tax Payer and Citizen Protection Act Initiative **A.R.S. § 16-152** Registration form **A.R.S. § 16-166** Verification of registration **A.R.S. § 16-579** Procedure for obtaining ballot by elector	**Summary of Initiative Amendment**: revising the voter registration form to require a statement that the applicant shall submit evidence of United States citizenship with the application and that the registrar shall reject the application if no evidence of citizenship is attached. It further requires electors to present a valid form of identification before receiving a ballot. **Legislative History**: A.R.S. §§ 16-152, -166 and -579 amended by Initiative Petition, Prop. 200 (approved election Nov. 2, 2004, eff. Dec. 8, 2004).