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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

ARIZONA FREE ENTERPRISE CLUB, *et al.*, Plaintiffs, v. KATIE HOBBS, in her capacity as the Secretary of State of Arizona, Defendant, and INVEST IN ARIZONA (SPONSORED BY AEA AND STAND FOR CHILDREN), Real Party in Interest.	No. CV2021-011491 **PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** (***Expedited Hearing Requested***) (Assigned to the Hon. Katherine Cooper)

Pursuant to A.R.S. §§ 19-122(C), 12-1801, and Arizona Rule of Civil Procedure 65, Plaintiffs respectfully request the entry of a preliminary injunction prohibiting the Secretary of State from accepting for filing any petition in support of referendum numbers R-03-2021, R-04-2021, and R-06-2021 (hereafter, the "Proposed Referenda"), or from certifying any of

these referendum measures for placement on the November 8, 2022 general election ballot. As set forth below, the statutes that the Proposed Referenda seek to refer are "for the support and maintenance" of the state government, and thus are immune from the referendum. *See* ARIZ. CONST. art. IV, pt. 1, § 1(3). Preliminary relief is necessary to enforce the strictures governing the right of referendum; vindicate the constitutionally ordained equilibrium between the sovereign Legislature and a countermajoritarian effort to suspend duly enacted laws; and permit the timely implementation of economically vital tax relief approved by the people's elected representatives.

FACTUAL BACKGROUND

In the days before its adjournment, the First Regular Session of the Fifty-Fourth Arizona Legislature passed, and Governor Ducey signed, three tax reform measures. Senate Bill 1828, the omnibus appropriations bill for fiscal year 2022, includes a provision that would trigger a "flat" income tax rate of 2.5%, if state General Fund revenues reach certain specified targets. *See* 2021 Ariz. Laws ch. 412, §§ 13, 15; Verified Compl. Ex. A. Section 4 of Senate Bill 1827 prescribes a maximum overall effective marginal tax rate of 4.5% on individual income. *See* 2021 Ariz. Laws ch. 411, § 4; Verified Compl. Ex. C. Senate Bill 1783 allows certain Arizona small business owners to choose to pay a new alternative tax on income received from their business. Eligible electing taxpayers then may deduct small business taxable income from their personal gross income for purposes of computing their personal income tax liability. *See* 2021 Ariz. Laws ch. 436; Verified Compl. Ex. E.

Invest in Arizona (Sponsored by AEA and Stand for Children) (the "Committee") applied for and received from the Secretary of State serial numbers for referenda on all three measures. *See* Verified Compl. ¶¶ 13–14, 16–17, 19-20; Ex. B, D, F. Petition circulators acting on behalf of the Committee currently are in the field and amassing signatures. The

Committee intends to file petitions in support of the Proposed Referenda by late September. *See id.* ¶¶ 21–22.

ARGUMENT

In considering a motion for preliminary relief, this Court evaluates (1) the likelihood that the movant will succeed at trial on the merits, (2) the possibility of irreparable injury to the movant not remediable by damages if the requested relief is not granted, (3) whether the balance of hardships favors the movant, and (4) whether public policy favors an injunction. *See generally Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410–411, ¶ 10 (2006); *Apache Produce Imports, LLC v. Malena Produce, Inc.*, 247 Ariz. 160, 164, ¶ 10 (App. 2019); *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990).

Importantly, the moving party need not establish all four elements. Rather, the factors are considered on a sliding scale, and a movant is entitled to injunctive relief if it establishes "*either* (a) probable success on the merits and the possibility of irreparable injury; *or* (b) the presence of serious questions and 'the balance of hardships tip sharply' in his favor." *Shoen*, 167 Ariz. at 63 (emphasis added); *Smith*, 212 Ariz. at 410–411. All four considerations—whether evaluated individually or in any given permutation—impel the issuance of preliminary relief.

I. Plaintiffs Will Succeed on the Merits Because the Proposed Referenda Seek to Refer Measures That Are "For the Support and Maintenance" of State Government, and Hence Are Unconstitutional and *Ultra Vires* Exercises of the Referendum Power

A. Claims That a Proposed Measure Is Outside the Scope of the Referendum Power are Ripe and Justiciable Prior to the Filing of Any Petition

Arizona law authorizes "[a]ny person" to contest not just the legal sufficiency of a ballot measure petition, but also the "validity of an initiative or referendum" itself. A.R.S. § 19-122(C). Preliminarily, it bears noting that the Plaintiffs claims are ripe and amenable to judicial resolution prior to the November 2022 general election—and even prior to the filing of any petitions in support of the Proposed Referenda. Embedded in the governing case law is an abiding distinction between challenges to the constitutionality of a ballot

measure's substantive terms (which are not justiciable unless and until the measure is actually enacted) and claims arising out of fatal facial deficiencies in a ballot measure or supporting petition; the latter are actionable—and indeed ***must*** be raised—as early as possible.

This dichotomy derives from structural attributes of the separation of powers. When a proposal is presented to a legislative body (whether the elected Legislature or the electorate acting in a plebiscite), courts must refrain from preemptively determining the measure's constitutional validity or its practical application to particular litigants. Such questions must await post-election proceedings controverted by parties with the requisite stake in the outcome. *See, e.g.*, *Winkle v. City of Tucson*, 190 Ariz. 413, 415 (1997) ("Voter initiatives, part and parcel of the legislative process, receive the same judicial deference as proposals before the state legislature—courts are powerless to determine their substantive validity unless and until they are adopted."); *Wilhelm v. Brewer*, 219 Ariz. 45, 48, ¶ 12 n.1 (2008) ("We do not address what [proposed initiative] would mean if the measure is approved by the voters and becomes law."); *State v. Osborn*, 16 Ariz. 247, 251 (1914) (holding that plaintiff was "precluded in this proceeding from questioning the constitutionality of such proposed law" until it became enacted).

Carrying a far different complexion, though, are cases such as this one, which pivot on whether a proposed ballot measure is embraced by the constitutional right of initiative or referendum ***at all***. In other words, the constitutional integrity of a putative ballot measure's substantive terms is irrelevant if the measure is of a kind that cannot be presented to the electorate in the first place. Recognizing this conceptually subtle but vital distinction, Arizona courts have repeatedly acted to interdict from the ballot proposals that did not constitute referrable legislative acts. *See Transamerica Title Ins. Co. Trust Nos. 8295, 8297, 8298, 8299, 8300 & 8301 v. City of Tucson*, 157 Ariz. 346, 348 (1988) (finding challenge to proposed initiative to be ripe after serial number had been issued but before any petition had been offered for filing); *Garvey v. Trew*, 64 Ariz. 342, 345 (1936) (holding that Secretary of State acted properly when he "declined to accept the petitions" proffered in

support of a non-referrable legislative appropriation); *Fritz v. City of Kingman*, 191 Ariz. 432 (1998) (adjudicating prior to the election whether municipal rezoning ordinance could be the subject of a referendum); *Respect the Promise in Opposition to R-14-02—Neighbors for A Better Glendale*, 238 Ariz. 296, 303-04, ¶¶ 29-30 (App. 2015) (finding that filing officer acted properly in refusing to accept petition in support of non-referrable enactment); *Stop Exploiting Taxpayers v. Jones*, 211 Ariz. 576, 578, ¶ 3 (App. 2005) (city clerk refused to verify and certify petition filed in support of ordinances that court concluded were not referrable); *Robertson v. Graziano*, 189 Ariz. 350, 353 (App. 1997) (noting that, "in some instances, our courts have determined in advance of an election that the subject matter is not one on which a city or its voters may legislate").

These cases can be distilled to the proposition that the electorate may adopt an improvident or even constitutionally suspect law when acting within the scope of the initiative and referendum power secured by Article IV, Part 1 of the Constitution. When, however, an ostensible ballot measure presents a matter that is, by its facial terms, not an initiable or referrable legislative act, then it is intrinsically a legal nullity. In such circumstances, the judiciary may—and, in fact, must—foreclose the filing and certification of the functional equivalent of a mere "public opinion poll." *Saggio v. Connelly*, 147 Ariz. 240, 241 (1985).

In short, because the gravamen of this lawsuit is that the Proposed Referenda are *ultra vires* acts, the Plaintiffs' claims are now justiciable. The Committee's aspirations to refer S.B. 1828, S.B. 1827 and S.B. 1783 have been reified into formal petition drives; the Secretary of State has assigned serial numbers to each one, petition circulators are in the field, and it is presumably undisputed that the Committee will exert its best efforts to collect and file the requisite number of signatures by the end of September. If Plaintiffs are correct on the merits, then the Secretary must be enjoined from accepting for filing any petition in support of the Proposed Referenda. *See Garvey*, 64 Ariz. at 345 (petition to refer a non-referrable law should not be accepted for filing); *Respect the Promise*, 238 Ariz. at 99, ¶ 30 (recounting "well-established case law upholding the rejection of petitions [offered for

filing] for referenda challenging non-legislative acts"). Given that constellation of circumstances, this case is ripe for immediate judicial resolution. *See Transamerica Title Ins. Co.*, 157 Ariz. at 348 (rejecting argument that challenge to proposed initiative was not ripe prior to the filing of the petition).

B. Statutes That Impose and Prescribe Taxes and Tax Rates Are "For the Support and Maintenance" of Government and Hence Not Referrable

While certainly solicitous of the right of referendum, the framers of the Arizona Constitution were acutely aware of its antimajoritarian and disruptive potentialities. To that end, they tempered Article IV, Part 1's robust referral mechanism with a categorical exemption of enactments that raise or spend revenues—the metaphorical beating heart of the state government organism. While voters may veto substantive statutes that structure the framework within which spending decisions are made, disagreements with the Legislature's chosen mechanisms of raising and appropriating revenues must be mediated through political channels or remedied by an initiative.[1]

This equilibrium finds its expression in Section 1(3) of Article IV, Part 1, which states, in relevant part:

> Under this [referendum] power the legislature, or five per centum of the qualified electors, may order the submission to the people at the polls of any measure, or item, section, or part of any measure, enacted by the legislature, ***except laws*** immediately necessary for the preservation of the public peace, health, or safety, or ***for the support and maintenance of the departments of the state government and state institutions***; but to allow opportunity for referendum petitions, no act passed by the legislature shall be operative for ninety days after the close of the session of the legislature enacting such measure, except such as require earlier operation to preserve the public peace, health, or safety, or to provide appropriations for the support and

[1] For purposes of this lawsuit, Plaintiffs accept that voters may impose, repeal, raise, or cut taxes through an initiated law or constitutional amendment, as they have done in the past. In addition, the Plaintiffs' claims do not implicate the Legislature's constitutional ability to *sua sponte* refer its own bills to the electorate, which is not encumbered by the same limitations that attached to voter-initiated referenda. *See* ARIZ. CONST. art. IV pt. 1, § 1(15) ("Nothing in this section shall be construed to deprive or limit the legislature of the right to order the submission to the people at the polls of any measure, item, section, or part of any measure.").

> maintenance of the departments of the state and of state institutions [emphasis added]

Tax laws are "for the support and maintenance" of state government. *See Wade v. Greenlee County*, 173 Ariz. 462 (App. 1992). Affirming the trial court's conclusion that a county measure enacting a new sales tax was not eligible for referral, the Court of Appeals explained that the "support and maintenance" exemption is not confined only to appropriations, but extends equally to "both the acquisition and allocation of funds." *Id.* at 463. Like the tax ordinance in *Wade*, each of the statutes underlying the Proposed Referenda prescribes a tax and a tax rate. Importantly, the revenue-raising attributes of the Proposed Referenda are not merely "incidental," *see Garvey*, 64 Ariz. at 355 (indicating that the referendum may be used when an appropriation is only "incidental" to the measure). The enactments at issue are, in their character and effect, revenue laws; they operate directly and solely to generate funds "for the support and maintenance" of the state government. It follows that they cannot be the subject of voter-initiated referenda. *See also* Ariz. Op. Atty. Gen. No. I97-007 (July 17, 1997) (suggesting that if statute at issue were "a tax measure," it could have been "excluded from referendum on that basis").

C. The Non-Referability of a Tax Law Is Not Contingent Upon Whether It Is Predicted to Prospectively Increase or Decrease Net Revenues Relative to Some Existing Baseline

The Committee presumably will attempt to evade the controlling force of *Wade* by arguing that the *Wade* ordinance increased taxes, while the Proposed Referenda provide tax relief and thus, *ceteris paribus*, will cause tax receipts to fall. This distorted conception of the "support and maintenance" exemption, however, is textually unsupported, historically unsound, and conceptually dubious.

1. There Is No Textual Distinction Between Tax Increases and Tax Reform

The lodestar of all constitutional questions is the text adopted by the framers and approved by the electorate. *See generally Jett v. City of Tucson*, 180 Ariz. 115, 119 (1994)

("When interpreting the scope and meaning of a constitutional provision, we are guided by fundamental principles of constitutional construction . . . . If the language is clear and unambiguous, we generally must follow the text of the provision as written."). The Constitution does not except from the referendum only those laws that "increase" the "support and maintenance" of state government relative to some external temporal baseline, such as the immediately preceding fiscal year. Rather, the framers' choice of the pliable preposition "for" is a semantic signal of the exemption's expansive reach. Any law that prescribes or imposes a tax or tax rate is innately "for" the financing of state government. Even if the statute has the extrinsic effect of reducing overall tax receipts year-to-year, it still generates revenues that are "for" the "support and maintenance" of the state budget.

In short, any construction of the "support and maintenance" clause that exempts only tax hikes from the referendum can be sustained only by importing linguistic limitations that are absent from the Constitution's plain text. *See generally Phelps v. Firebird Raceway, Inc.*, 210 Ariz. 403, 405, ¶ 10 (2005) ("When a constitutional provision is unambiguous, it 'is to be given its plain meaning and effect.' 'Nothing is more firmly settled than under ordinary circumstances, where there is involved no ambiguity or absurdity, a statutory or constitutional provision requires no interpretation.'" (citations omitted)).

2. The Framers Understood the "Support and Maintenance" Clause as Exempting Tax Law Reforms

The historical record confirms what the constitutional text independently ordains: all variants of revenue-raising laws are immune from the referendum. *See generally State v. Mixton*, 250 Ariz. 282, ¶ 28 (2021) ("Our primary purpose when interpreting the Arizona Constitution is to 'effectuate the intent of those who framed the provision.' . . . . We may examine its history, if necessary, to determine the framers' intent." (internal citations omitted)).

As the *Wade* court noted briefly, *see* 173 Ariz. at 464, the original incarnation of Article IV, Part 1 excluded from the referendum only "appropriations for the support and maintenance of the Departments of State and State institutions," along with emergency

measures. John S. Goff ed., THE RECORDS OF THE ARIZONA CONSTITUTIONAL CONVENTION OF 1910 (1991) at 1020 (reprinting "Proposition 4"). This proposal, however, was eventually displaced by a substitute endorsed by the Committee on Legislative Department, Distribution of Powers and Apportionment, which augmented the clause to include laws "for . . . the departments of the State Government and State institutions," *id.* at 1025-26, which in turn evolved into the text ultimately adopted by the Convention.[2]

While not dispositive, the sentiments of the inaugural Legislature and its immediate successors can illuminate the contemporaneous public understanding of constitutional provisions. *See Brewer v. Burns*, 222 Ariz. 234, 241, ¶ 33 (2009) (citing rules of the First Legislature, noting that "[l]ong-established practices, accepted by other branches of government, may be relevant in construing constitutional provisions"). In convoking the First Legislature, Governor George P. Hunt enumerated the items within its remit, which included "[p]roviding sources of revenue for the support and maintenance of state institutions and departments of state"—fortifying the textual inference that the "support and maintenance" clause of Article IV, Part 1, Section 1(3) encompasses revenue laws. *See Duncan Arizonian*, May 29, 1912 (reprinting proclamation).

While the First Legislature deployed a "support and maintenance" proviso in certain enactments prescribing new taxes, it seemingly understood the phrase in a capacious and malleable sense that enveloped laws designed to reform and make more efficient the existing tax code. For example, among the body's first acts was to repeal a mining tax imposed in 1907 by the Territorial Legislature, in favor of a new property tax regime, which the Legislature declared would "provide funds for appropriations for the support and maintenance of the departments of State and all State institutions." 1912 Ariz. Laws ch. 11, § 2. Another statute invoking the "support and maintenance" disclaimer levied a new tax

[2] To be sure, the second appearance of the phrase "support and maintenance" in Article IV, Part 1, Section 1(3) is modified by the term "appropriations." The *Wade* court acknowledged this "inconsisten[cy]," but ratified the more expansive construction connoted by the first clause, *see* 173 Ariz. at 463, presumably recognizing that the discrepancy was likely a vestigial artifact of the text's metamorphosis during the Convention.

on private car companies. Notably, however, the Legislature explained the rationale not in terms of aggregate revenue increases; rather, it deemed the amendment necessary "for a more equal and uniform system of assessment and apportionment of taxes, and for the efficient collection of State taxes and revenue." 1912 Ariz. Laws ch. 39, § 8. In other words, a law that directly reforms, streamlines or recalibrates tax assessments or rates is necessarily "for" the "support and maintenance" of state government, and hence is not referable—irrespective of whether it does or does not increase overall tax receipts in the immediately succeeding fiscal year.

Tellingly, two states whose constitutions were forebearers of Arizona's organic law likewise have rejected any reliance on judicial suppositions concerning the ostensible effects of a tax law on future revenues when determining its referability. The Supreme Court of Washington ratified a flexible conception of the cognate provision in its own constitution, holding that it inoculated from a referendum a statute that extended an existing assessment but incrementally decreased the tax rate, spurning "the[] speculative argument that incremental reductions in the tax rate will reduce revenues." *Andrews v. Munro*, 689 P.2d 399, 401 (Wash. 1984); *see also Kotterman v. Killian*, 193 Ariz. 273, 305, ¶ 128 (1999) ("Washington cases interpreting their constitution are persuasive authority with respect to our constitution"). The South Dakota Supreme Court likewise declined to displace legislative judgments with its own fiscal forecasts, holding that a statute that offset an increase of one tax with a decrease in another was non-referable. As the court observed, in reasoning that engrafts well onto this case, "[t]hough an act may not be intended to produce additional revenues, facts and circumstances nevertheless may render the enactment of such a revenue measure necessary for the support of state government." *State ex rel. Botkin v. Morrison*, 249 N.W. 563, 564 (S.D. 1933); *see also Arizona Together v. Brewer*, 214 Ariz. 118, 125-26, ¶ 26 (2007) (citing the influence of the South Dakota constitution on certain facets of Arizona's ballot measure process).

In sum, the term "for the support and maintenance" denotes all statutes (or particular provisions of statutes) that prescribe a tax—which, by definition, generates revenue; the

actual or prophesized effect of the tax on future net revenues relative to some selected baseline is not a constitutionally germane or judicially cognizable consideration.

3. Limiting the "Support and Maintenance" Clause to Only Putative Net Revenue Increases Is Unprincipled and Impractical

To posit that the "support and maintenance" clause protects from the referendum only statutes that ostensibly increase year-over-year net revenues is to transpose onto the constitutional text normative considerations and economic prognostications that lie beyond the judicial purview. For example, it is undisputed that the relevant provisions of Senate Bill 1828 and Senate Bill 1827 would reduce Arizona's highest effective marginal tax rates relative to 2021 levels. The Committee presumably will contend that these enactments will decrease state revenues, and hence may be referred. Putting aside the textual and historical defects that pervade this interpretive theory of the "support and maintenance" clause, the argument clings to a factually dubious premise—namely, that tax rates bear a perfect positive correlation with aggregate net revenues. In reality, the association between taxes and revenues is complex and influenced by an array of confounding variables, including population trends, macroeconomic conditions, and tax rates in neighboring states.

Further, the effects of tax reform legislation on resulting revenues can depend in part on the time horizon assessed. Tax cuts may induce a short-term diminution of revenues that is more than offset over the long term by their stimulative effect. (Conversely, punitive tax hikes can dissipate revenue streams by disincentivizing productive work.[3]) In assessing the relationship between Senate Bills 1827 and 1828 and revenues, does the Committee expect the Court to surmise their ostensible effects on overall tax receipts over a one-year time

[3] Presumably even the Committee would concede that, at some point, tax rates become so onerous that they deter the economic activity necessary to generate tax revenues. Any conception of the "support and maintenance" clause that pivots on whether a tax statute will "increase" or "decrease" net revenues effectively tasks the Court with computing the optimal tax rate that maximizes revenues without depressing economic activity—a question that has long bedeviled even seasoned economists.

frame, a five-year time frame, or some other temporal rubric? And what, exactly, in the constitutional text impels that choice?

Senate Bill 1783 engrafts an additional complication. That legislation contemplates a ***new***, optional tax on certain small business income. On its face, Senate Bill 1783 presumptively will increase tax receipts by creating a new potential revenue stream. Any argument that it will, on net, reduce revenues must rely on conjectural suppositions of how many eligible taxpayers will elect to pay the alternative tax, and how this new assessment will affect their overall year-to-year tax liabilities relative to a hypothetical world in which Senate Bill 1783 were never enacted. In the same vein, the Committee's "revenue-increasing versus revenue-decreasing" theory invites the courts to disentangle the interplay between different provisions of a single tax infrastructure. For example, suppose the Legislature enacts a statute that offsets a reduction of income tax rates with a corresponding increase in the transaction privilege tax, with the objective of maintaining aggregate revenues roughly at their current level. Under the Committee's approach, what would be referrable? The income tax cut only? Both provisions? Neither provision?

At bottom, the Committee's "revenue-increasing versus revenue-decreasing" dichotomy would require courts to forecast how tax reform legislation may or may not intersect with extrinsic economic and behavioral factors to impact net tax receipts over some unspecified period of time. This endeavor, in turn, inevitably intersects with competing polemical theories postulating various relationships between the object of a tax (*e.g.*, income versus consumption), tax rates, and resulting government revenues. Such ruminations may be well-suited to the faculty lounge of a university's economics department, but they are not a judicial competency. *See Andrews*, 689 P.2d at 401 ("We do not speculate whether the lowering of the tax rate from 6.5 percent to 5 percent between 1984 and 1988 would lessen or increase the support of state government. Such a venture on the part of this court is both inappropriate and irrelevant.").

The Court need not and should not immerse itself in such quicksand. A return to the basic constitutional text conduces a linear and straightforward inquiry instead. A statutory

provision cannot be referred by the voters if it is "for the support and maintenance" of the state government. *See* ARIZ. CONST. art. IV, pt. 1, § 1(3). The relevant portions of Senate Bills 1827, 1828 and 1783 inarguably will produce revenues because they prescribe taxes. These revenues, in turn, will be used "for the support and maintenance" of Arizona government. The statutes hence are not referrable.

II. Plaintiffs and the Arizona Electorate Will be Injured by the Filing and Processing of Invalid Referendum Petitions

The hazards of indulging a facially *ultra vires* exercise of the referendum power is not merely theoretical. This "extraordinary" prerogative "permits a minority to hold up the effective date of legislation which may well represent the wishes of the majority." *W. Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 429 (1991) (quoting *Direct Sellers Ass'n v. McBrayer*, 109 Ariz. 3 (1972)). Permitting intrinsically defective referenda efforts to indefinitely suspend valid, tax relief measures approved by elected representatives derogates a core constitutional limitation on the ballot measure process, inflicting a harm that is not redressable by monetary damages.

III. The Balance of Equities and Public Policy Imperatives Support the Issuance of Injunctive Relief

As noted above, the judicial toleration of impermissible referenda efforts "allow[s] a small percentage of the electorate, in Arizona 5%, effectively to prevent the operation of government." *Wade*, 173 Ariz. at 463. An injunction against the acceptance for filing of petitions in support of the Proposed Referenda, conversely, would exact no articulable burden on either the Secretary or the Committee. The former actually would be *relieved* of her statutory duty to expend time and taxpayer resources on the processing and verification of thousands of petition sheets and signatures. *Cf. Transamerica Title Ins. Co.*, 157 Ariz. at 348 (citing "interests of judicial economy and conservation of public resources" in deeming ripe a challenge to a proposed initiative prior to the filing of the supporting petition); *Respect the Promise*, 238 Ariz. at 100, ¶ 30 (reasoning that pre-election judicial

review averted "the illogical result of requiring municipalities to incur the expense of conducting referendum elections on non-legislative measures").

Similarly, a preliminary injunction against the Secretary has no immediate legal effect on the Committee, which can continue to circulate petitions and collect signatures without limitation. If the Committee ultimately prevails on the merits, then it may proceed to file the signatures it has amassed. Conversely, if the Court agrees with Plaintiffs that the Proposed Referenda are constitutionally unviable, then an injunction will have ensured the timely implementation of Senate Bills 1828, 1827 and 1783 and prevented a subversion of the referendum process. *See generally Molera v. Reagan*, 245 Ariz. 291, 294, ¶ 11 (2018) ("[A]lthough our decisions safeguard the voters' legislative power, this Court in many cases has invalidated citizen initiatives and referenda that did not comply with applicable requirements."); *Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, ¶ 27 (2020) (holding that "public policy and the public interest are served by enjoining" actions inconsistent with election laws).

IV. Request for Consolidation with Trial on the Merits

Given that Plaintiffs' claims present pure questions of constitutional construction and are anticipated to entail few, if any, material factual disputes, Plaintiffs request that any hearing on this Motion be consolidated with a trial on the merits, pursuant to Arizona Rule of Civil Procedure 65(a)(2).

CONCLUSION

For the foregoing reasons, the Court should enter an injunction prohibiting the Secretary of State from accepting for filing any petition in support of any of the Proposed Referenda.

RESPECTFULLY SUBMITTED this 28th day of July, 2021.

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