No. 20220991-SC

IN THE
SUPREME COURT OF THE STATE OF UTAH

League of Women Voters of Utah, et al.,
Appellees and Cross-appellants (Plaintiffs),
v.
Utah State Legislature, et al.,
Appellants and Cross-appellees (Defendants).

Reply Brief of League of Women Voters of Utah, Mormon Women for Ethical Government, Stephanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, and Jack Markman

On Plaintiffs' Petition (Consolidated No. 20220998-SC)
Appeal from the Third Judicial District Court, Salt Lake County,
Honorable Dianna M. Gibson, District Court No. 220901712

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INTRODUCTION

The Legislature advances the breathtaking claim that it holds the power, by majority vote, to overrule the people's right to initiate legislation. Make no mistake: Utah legislators contend that the initiative right—which this Court has deemed "sacrosanct" and "fundamental"—is a paper right that exists only at their discretion. The irony is especially bitter here, where the repealed initiative would have further protected the people's right to choose their representatives through an impartial electoral process.

By demanding veto authority over citizen-initiative laws, Defendants seek to negate the people's role as a check on the Legislature. And by using that negation to then gerrymander Utah's districts, the Legislature seeks to dictate election outcomes. These claims require the court to decide between popular supremacy and legislative supremacy. The Legislature claims to have the latter, but that claim is utterly inconsistent with Utah's constitutional scheme. The notion that the Legislature could make itself unanswerable to the people by repealing initiated laws and gerrymandering would have been unthinkable to Utah's founders and ratifiers, who declared that "[a]ll political power is inherent in the people." Utah Const. art. I, § 2.

Yet the Legislature urges the Court to shutter the courthouse doors to any claimant who challenges the post hoc negation of their initiative rights or the extreme manipulation of Utah's electoral process. This is wrong. Utahns divided

the legislative power of the State "to prevent the Legislature" from "infringing the [people's] inalienable rights." *Utah Power & Light Co. v. Provo City*, 74 P.2d 1191, 1202 (Utah 1937) (Larson, J., concurring). The Court should uphold Utahns' initiative rights—and the guarantee of a democratic electoral process.

ARGUMENT

I. The Legislature Cannot Negate Initiative-Enacted Laws

The Utah Constitution prohibits the Legislature from repealing or otherwise nullifying initiative-enacted laws. That prohibition flows directly from the Constitution's text, which gives the initiative sacrosanct status and protects the people's sovereign authority to establish a government reflecting their will. To enforce these guarantees, this Court has invalidated substantive restrictions on initiatives and forbidden the Legislature from imposing undue burdens on the initiative process. (Opening Br. 20-40.)

Resisting this basic premise, the Legislature argues for unfettered power over initiatives after their enactment. (Resp. Br. 13-26.) Although the Legislature recognizes limitations on its power to interfere with the people's right to *enact* laws, it argues that it has unlimited authority *after* the people have spoken. It assumes the unstated power to nullify initiated laws in any way and for any reason, making it impossible for the people to actualize their initiative rights. That argument is untenable.

A. The Legislature's power does not extend to repealing initiatives

As explained in the opening brief (at 5-6, 21-27, 36), the Utah Constitution was "motivated by a wariness of unlimited legislative power" that arose from a Progressive Era desire "to limit legislative power and prevent special interest abuse." *Gregory v. Shurtleff*, 2013 UT 18, ¶ 32 n.18, 299 P.3d 1098 (quotations omitted). Utah's ratifiers viewed legislatures with "fear and distrust rather than [as] repositories of residual power." *See* Bruce Hafen, *The Legislative Branch in Utah*, 1966 Utah L. Rev. 416, 418 (1966). They understood the need to create "[a] government based upon the will of the people" that "must ever keep such authority within reach of the people's will," because "[l]egislatures are but the agents of the people." *United States v. Church of Jesus Christ of Latter-Day Saints*, 15 P. 473, 477 (Sup. Ct. Territory Utah 1887). And they decided in their first constitutional amendment to reserve the initiative power as a "vehicle by which the people can govern themselves" to "act[] as the people's check against the legislature." *Count My Vote, Inc. v. Cox*, 2019 UT 60, ¶ 94, 452 P.3d 1109 (Himonas, J., concurring).

In response, the Legislature principally argues that Utahns "reserve[d] only limited legislative power for themselves," and nothing in the text expressly forbids the Legislature's repeal of initiatives. (Resp. Br. 26; *id.* 14-15.) That argument lacks merit.

As an initial matter, the Constitution is not silent on this subject, despite the Legislature's claim. (Resp. Br. 13-14, 24). The Constitution guarantees that "[a]ll

political power is inherent in the people" through their enforceable "right to alter or reform their government." Utah Const. art. I, § 2. And it provides that Utahns reserved for themselves "[t]he Legislative power of the State" to "initiate any desired legislation" that can be "adopt[ed] upon a majority vote" of the people—apart from the Legislature or the Governor. Utah Const. art. VI, § 1.

In exercising these rights, "the people do not act under the authority of the legislature." *Carter v. Lehi City*, 2012 UT 2, ¶ 30, 269 P.3d 141. Rather, they seek to independently "wield[] the legislative power" so that "the people [can] govern themselves in a democracy unfettered by the distortions of representative legislatures." *Id.* ¶ 23. Because the people "are the father of the Legislature, its creator," they "provided that [the Legislature's] voice should never silence or control the voice of the people in whom is inherent all political power." *Id.* ¶ 30 n.20 (quoting *Utah Power*, 74 P.2d at 1205 (Larson, J., concurring)). These principles mean the Legislature cannot exercise an assumed power—like the power to repeal initiatives—that effectively nullifies the people's will.

Any ambiguity must be resolved in favor of the people, not the Legislature. The "residuum of liberty reposes in the people," who are "not limited to the exercise of rights specifically enumerated" in the Constitution. *In re J.P.*, 648 P.2d 1364, 1372 (Utah 1982) (discussing Utah Const. art. I, §§ 2, 25); *accord Provo City v. Anderson*, 367 P.2d 457, 461 (Utah 1961) (applying article I, section 2 to reinforce voters' residual power). Thus, "any rights not specifically granted to

state government are already retained by the people." *Sevier Power Co. v. Bd. of Sevier Cnty. Comm'rs*, 2008 UT 72, ¶ 5, 196 P.3d 583.

Moreover, "the circumstances[] which brought [the constitutional provisions] into being and the purposes sought to be accomplished" confirm that the people desired to reserve an effective initiative power. *See Utah Farm Bureau Ins. Co. v. Utah Ins. Guar. Ass'n*, 564 P.2d 751, 754 (Utah 1977). The history reflects Utahns' desire to restore the people's power to force the Legislature to enact laws regardless of its own preferences, ensuring that the people—not the Legislature—have the last word. (Opening Br. 2-10.) The Legislature fails to rebut this history, which is incompatible with the unfettered repeal power that it claims.

There is nothing aberrational about the people's decision to deny the Legislature a veto over initiatives, even if repeal authority is, in other contexts, part of the "ordinary understanding of the legislative power." (Resp. Br. 14.) The gubernatorial veto is likewise part of the ordinary understanding of executive power. Indeed, "[a]ll American Constitutions give to the chief executive a formal and official role in the legislative process"—usually in the form of a presentment requirement and veto authority. 1 Sutherland Statutory Construction § 16:1 (7th ed. Nov. 2022). But the Governor has no power to veto initiative-enacted laws, despite no express limit in the Constitution. *Carter*, 2012 UT 2, ¶ 22 n.10; *Grant v. Herbert*, 2019 UT 42, ¶ 23, 449 P.3d 122.

Any inference must be that the Legislature likewise lacks veto authority. Indeed, the principle applies with greater force to the Legislature because the initiative process exists precisely to empower the people to enact laws when the Legislature refuses to act or acts contrary to their will. Because the Legislature is "the creation of the people, created and set up by them for specific purposes," it "is of necessity limited in its powers by the conditions and purposes of its creation." *Duchesne Cnty. v. State Tax Comm'n*, 140 P.2d 335, 340 (Utah 1943) (opinion of Larson, J.). It cannot act "apart from its governmental powers and function," and "it cannot well perform acts or assert rights or have duties which are not a part or exercise of its governmental obligations or prerogatives." *Id.* Accordingly, "[a]ny powers not enumerated in that grant may be presumed retained by the people." *Save Beaver Cnty. v. Beaver Cnty.*, 2009 UT 8, ¶ 16, 203 P.3d 937; *Matheson v. Ferry*, 641 P.2d 674, 697 (Utah 1982) (Stewart, J., concurring in part) (explaining that "if the people have not conferred a power" on the Legislature "they do not have it").

Thus, the grant of authority in article VI, section 1's "manner and conditions" clause to facilitate the initiative *process* reflects the extent of the Legislature's authority. (Opening Br. 29-34.). The Legislature is "limited … to the role of providing for the orderly and reasonable use of the initiative power." *Sevier Power*, 2008 UT 72, ¶ 10. "Unless and until the people give the legislature the constitutional authority to suspend or forbid the use of the initiative power," the

repeal of an initiative is simply "beyond the power of the legislature." *See id.* ¶ 11; *accord Rampton v. Barlow*, 464 P.2d 278, 378 (Utah 1970) (prohibiting "attempts to go beyond the power granted to the legislature"). Inventing an atextual veto authority in the Legislature would render "illusory" the people's "reservation of the initiative power [that] was intended to be effective." *Sevier Power*, 2008 UT 72, ¶ 10.

The Legislature separately argues that recognizing a restriction on its authority to negate initiatives would confer on initiatives an inappropriate "super" status. (Resp. Br. 13.) That argument fares no better.

First, it ignores the fact that this Court has *already* recognized the special status protecting the people's initiative rights. This Court has described the initiative power as "sacrosanct," explaining that Utah courts must "maintain it inviolate." *Gallivan v. Walker*, 2002 UT 89, ¶ 27, 54 P.3d 1069. It has explained that "the people's initiative power may have 'superior advantages' to the legislature's power." *Carter*, 2012 UT 2, ¶ 22 n.10 (quoting *Utah Power*, 74 P.2d at 1202 (Larson, J., concurring)); *Gallivan*, 2002 UT 89, ¶ 59 n.11. And it has reinforced that, because the initiative power "is a creature of the people," it "is for the people"—not the Legislature—"to determine when, if, and how it is to be modified." *Sevier Power*, 2008 UT 72, ¶ 16. This Court would break no new ground in recognizing that initiative-enacted laws, like Proposition 4, merit special solicitude under our constitutional framework.

Second, the Legislature misunderstands the scope of Plaintiffs' arguments. Plaintiffs do not contend, for example, that initiative-enacted laws take on quasi-constitutional status. Such laws remain subject to other constitutional requirements—as determined by the Utah judiciary (not the Legislature).[1] *Id.* ¶ 10. (*Infra* at 23-27.)

Plaintiffs also do not contend that initiative-enacted legislation is totally immune from amendment by the Legislature. For example, Plaintiffs believe the Legislature could have amended Proposition 4's private cause of action to enforce its anti-partisan gerrymandering prohibition by requiring claims to be adjudicated by a three-judge district court. Such an amendment would likely survive constitutional scrutiny because it would not frustrate the purposes of the initiative. But the Legislature is restricted from doing what it did here—repealing or nullifying an initiative.

B. The Legislature misapprehends this Court's precedents

As explained in the opening brief (at 21-25), this Court has not previously resolved the Legislature's power to repeal initiatives. But the principles underlying the caselaw prohibiting the Legislature from frustrating the people's lawmaking power *before* an initiative becomes law likewise prohibit the

[1] Because constitutional amendments must garner the Legislature's approval, Utahns' initiative rights provide the people's only lawmaking means of independently checking the Legislature. Utah Const. art. XXIII, §§ 1, 2.

Legislature from negating the people's initiative power *after* the fact. The Legislature's contrary arguments lack merit.

First, the Legislature takes the wrong lesson from this Court's cases describing the people's lawmaking power as coequal with the Legislature's authority. (Resp. Br. 16, 29 (citing *Gallivan*, 2002 UT 89, ¶ 23 and *Carter*, 2012 UT 2, ¶ 22)). In using the terms "coequal," "coextensive," and "parallel," this Court has recognized only that laws may originate from either the people or the Legislature, and each can legislate to the same *substantive* extent. (Opening Br. 37-38.) For example, this Court has recognized that constitutional references to "the Legislature"—as in article IX, section 1—indicate that a topic is legislative and eligible for citizen initiative. *See Carter*, 2012 UT 2, ¶¶ 79-80; *Mawhinney v. City of Draper*, 2014 UT 54, ¶¶ 15-18 & n.25, 342 P.3d 262. The relevant language merely means that if a subject is eligible for a bill, it is also eligible for a citizen initiative. *See, e.g.*, *Pro. Engineers in California Gov't v. Kempton*, 155 P.3d 226, 243 (Cal. 2007) (describing "coextensive" in terms of substantive scope, not repeal authority).

The equivalent subject-matter authority does not mean the Legislature's power is equal to the people's power in every respect. As explained above (at 7-8), this Court has already concluded that initiative lawmaking "has a different character in our constitutional system" that is "superior" to that of the Legislature. *Gallivan*, 2002 UT 89, ¶¶ 23, 59 n.11 (in part quoting *Utah Power*, 74 P.2d at 1205 (Larson, J., concurring)). For instance, the Governor cannot veto initiatives. (*Supra*

at 5-6.) And "if an act enacted by the Legislature and one enacted by the people through the Initiative conflict, the enactment by the people controls[.]" *Utah Power*, 74 P.2d at 1202 (Larson, J., concurring); *accord Carter*, 2012 UT 2, ¶¶ 60, 64.

Moreover, the Constitution expressly grants only the people the right to repeal Legislature-originating laws, and there is no corollary grant to the Legislature. (Opening Br. 34-35.) The Legislature is thus wrong when it argues (at 15) that the people's referendum power is not a repeal power. *See, e.g.*, *Gricius v. Cox*, 2015 UT 86, ¶ 7, 365 P.3d 1198 (voters "repeal [acts of the Legislature] through the voice of the people."); *Duchesne Cnty.*, 140 P.2d at 340 (similar). To protect this repeal power, the Court has adopted decisions from sister states ruling that the Legislature cannot unlawfully evade voters' referenda authority. *Utah Power & Light Co. v. Ogden City*, 79 P.2d 61, 63 (Utah 1938) (adopting, e.g., *In re Megnella*, 157 N.W. 991, 992 (Minn. 1916)). The Legislature likewise cannot circumscribe the initiative power.

Thus, although coequal in terms of subject, "the legislative power of the people directly through the ballot is superior to that of the representative body," and only the former can negate the latter. *Utah Power*, 74 P.2d at 1202 (Larson, J., concurring). The Legislature's contrary argument would condemn the initiative power to lesser status. Due to collective action and other barriers to enacting initiatives—and, even more so, reenacting them after the Legislature's repeal—the

Legislature will *always* have the final say if the Court embraces the Legislature's misinterpretation.[2]

Second, the Legislature understates the significance of this Court's cases prohibiting it from substantively limiting Utahns' initiative rights *ex ante* or categorically. *See, e.g.*, *Sevier Power*, 2008 UT 72, ¶¶ 10-11. As Defendants admit (at 8-9, 32-33), the Legislature nullified Proposition 4 based on a (misguided) substantive disagreement. It acknowledges (at 18) that it could not respond to that disagreement by prohibiting the people from passing an initiative addressing the issue. But it believes that, to avoid the constitutional limits on negating initiatives, it can achieve the same result so long as it waits until *after* the people have exercised their right to enact an initiative. (Resp. Br. 17-19.)

That argument makes little sense. The entire point of the initiative is to enact popular laws despite the Legislature's resistance. *Carter*, 2012 UT 2, ¶¶ 23-25, 63; *Gallivan*, 2002 UT 89, ¶ 59 n.11. The Legislature will predictably resist initiatives any time voters seek to curtail its power, such as Proposition 4 sought to do.

It makes no constitutional difference whether the Legislature limits the initiative *ex ante* by categorical rule or *ex post* by individual negation. The

[2] The Legislature's suggestion that Utahns simply reenact the same initiative to resist a repeal is empty. (Resp. Br. 19.) At best, it would require Utahns to continue conducting successive but costly initiative campaigns, only to be negated by the Legislature until the voters give up. In any event, reenactment was not an option here because the Legislature enacted S.B. 200 to repeal Proposition 4 on March 28, 2020, leaving voters insufficient time to launch a successful initiative before the 2020 election and 2021 redistricting.

Legislature's repeal of initiated laws imposes no less of a substantive restraint than the restriction ruled unconstitutional in *Sevier Power*, 2008 UT 72, ¶ 10. And it infringes on Utahns' rights even more than the burdensome process restrictions invalidated in *Gallivan*, 2002 UT 89, ¶ 27.[3] As the Court has long held, the Legislature cannot "do indirectly that which could not be done directly." *State v. Armstrong*, 53 P. 981, 983 (Utah 1898). In either case, substantively limiting the voters' reserved lawmaking power "is void, as in excess of legislative authority." *See id.*

Third, Defendants misconstrue *Carter* and other cases interpreting the initiative power. To start, Defendants are wrong to suggest (at 16, 18, 32) that *Carter* already settled the Legislature's power to repeal initiatives. That question was not presented in *Carter*, which instead addressed how to differentiate permissible legislative enactments from administrative actions. 2012 UT 2, ¶¶ 16-17. The sentence in *Carter* on which the Legislature relies is simply the Court

[3] Post-enactment protections for initiatives are even more deserving of this Court's defense "against encroachment," and the Court should resolve all "reasonable doubts in" the voters' favor. *Gallivan*, 2002 UT 89, ¶ 27 (quotations omitted). Post-enactment, the initiative is an expression of the people's will—a will that is particularly strong given the difficulties of qualifying for the ballot and passing initiatives in Utah. *See* Br. of Amicus Ballot Initiative Strategy Center at 15-21 (Apr. 7, 2023).

reciting, without adopting, how Oregon has interpreted its own distinct constitutional provisions. *See id.* ¶ 27.[4]

Defendants also exaggerate (at 16-17) the relevance of *Grant v. Herbert*, 2019 UT 42. *Grant* addressed the Governor's authority to call special sessions and it interpreted the constitutional provision exempting from referenda legislation passed by a two-thirds supermajority. *Id.* ¶ 10. But *Grant* cannot support the Legislature's arguments here because the decision did not address these issues. If anything, *Grant* supports Plaintiffs by reinforcing that the Governor cannot veto initiatives. *Id.* ¶ 23. And the Court emphasized in its reasoning that it was the express textual limit on the people's referenda power when a bill passes by two-thirds majority that favored rejecting the *pro se* plaintiffs' claims. *Id.* ¶ 32. *Grant* also involved only an *amendment* and to a much lesser degree than the repeal of Proposition 4. *Id.* ¶ 5. And the healthcare subject of Proposition 2 does not fall within the narrower category of government-reform initiatives that article I, section 2 specifically protects. (*Infra* at 19-28.)

The Legislature similarly misreads *Utah Power* and Justice Larson's concurrence. (Resp. Br. 17.) Although the plurality sidestepped the question,

[4] The Legislature's attempt (at 14-15) to resurrect dicta from *Dewey v. Doxey-Layton Realty Co.*, 277 P.2d 805 (1954), is similarly misconceived. As *Carter* recognized in abrogating *Dewey*, the decision's analysis was improperly "based on an assertion that the people's initiative power is delegated to them by the legislature." *Carter*, 2012 UT 2, ¶ 83. That foundational misinterpretation, among other errors, renders *Dewey* inapposite.

Justice Larson rejected the possibility of a legislative body nullifying enacted initiatives. 74 P.2d at 1200-01 (plurality); *id.* at 1202-06 (Larson, J., concurring); *see also Ogden City*, 79 P.2d at 73 (Larson, J., concurring in part, dissenting in part). "[W]hen the people, by the proper exercise of the initiative, … have spoken on a matter," Justice Larson concluded, "the master has spoken and even the voice of the [Legislature], though it may be recalcitrant, is stilled." *Utah Power*, 74 P.2d at 1205.

C. The Legislature misapplies other state court decisions on initiatives

The Legislature also errs in arguing (at 20-26) that sister state law supports its position. As explained in Plaintiffs' opening brief (at 31-34), nearly all other states adopting citizen initiatives in the early twentieth century copied the first initiative provision in South Dakota's Constitution, stating, in some variation, that the initiative power does not "deprive the Legislature or any member thereof of the right to propose any measure." [Add. A (collecting provisions).] Utahns declined to adopt similar language.

Barring contrary historical evidence—and Defendants cite none—this difference suggests that Utahns excluded any grant of repeal authority to the Legislature. *See Patterson v. State*, 2021 UT 52, ¶¶ 145-51, 504 P.3d 92.[5] Defendants'

[5] Contrary to Defendants' misreading (at 15, 19), Plaintiffs rely on *Patterson*'s reasoning to explain why these textual differences are significant, not just the general *expressio unius* canon. Though Plaintiffs' claims do not turn on that canon, it supports their argument and has a longstanding pedigree in this Court. *N. Point Consol. Irrigation Co. v. Utah & Salt Lake Canal Co.*, 46 P. 824, 826 (Utah 1896).

attempt (at 24-25) to downplay this omitted language as non-substantive "rules of construction" contradicts the numerous decisions recognizing that such text grants the substantive authority to repeal initiatives.[6]

The other state cases Defendants cite are unpersuasive or distinguishable, and they "are by no means binding on" this Court. *Zimmerman v. Univ. of Utah*, 2018 UT 1, ¶ 19, 417 P.3d 78.

Defendants' primary case, *Kadderly v. City of Portland*, does not help them. 74 P. 710 (Or. 1903). The pertinent question in *Kadderly* was whether a constitutional amendment authorizing initiatives and referenda violated the *federal* Guarantee Clause. *Id.* at 719-20 (discussing U.S Const. art. IV, § 4). In answering that question, the *Kadderly* Court did not consider any actual initiative repeal; it engaged in an abstract discussion of initiatives and referenda and simply remarked that initiatives could be repealed by the Legislature. *Id.* That off-hand conclusion was not analyzed and was based on a perceived need to avoid conflict with the Guarantee Clause, a dubious interpretation of federal law for which the "foundation ... is remarkably slender" and that other courts have disavowed. Akhil Reed Amar, *The Central Meaning of Republican Government: Popular*

[6] *State ex rel. Halliburton v. Roach*, 130 S.W. 689, 693 (Mo. 1910); *State ex rel. Drain v. Becker*, 240 S.W. 229, 232 (Mo. 1922); *id.* at 234-35 (Graves, J., concurring); *In re Senate Resol. No. 4*, 130 P. 333, 336 (Colo. 1913); *State v. Hooker*, 98 P. 964, 969 (Okla. 1908); *Oklahoma Tax Comm'n v. Smith*, 610 P.2d 794, 798 (Okla. 1980); *Willard v. Hubbs*, 248 P. 32, 33 (Ariz. 1926); *see also State v. Alderson*, 142 P. 210, 212 (Mont. 1914) (noting language); 1986 S.D. Op. Att'y Gen. 218 (1986) (same).

Sovereignty, Majority Rule, and the Denominator Problem, 65 U. Colo. L. Rev. 749, 756-59 (1994); *In re Pfahler*, 88 P. 270, 273-74 (Cal. 1906).

Other cases Defendants cite are unpersuasive. Their analyses, like *Kadderly*, rely on *ipse dixit* conclusions about the Legislature's ability to repeal, and they often rely on policy disagreements with initiative lawmaking. For example, in *State v. Whisman*, the court was concerned for policy reasons "that an ill-advised ... law might be placed upon our statute books" via initiative and could not be undone fast enough. 154 N.W. 707, 710 (S.D. 1915). The *Luker v. Curtis* majority dismissed the initiative power "as an afterthought." 136 P.2d 978, 980 (Idaho 1943), *abrogated by Reclaim Idaho v. Denney*, 497 P.3d 160 (Idaho 2021). And the *State v. Stewart* court reached its conclusion by uncritically adopting *Kadderly,* while also describing at length the Legislature's perception of the repealed initiative's policy defects. 187 P. 641, 642, 649-50 (Mont. 1920).

Answering these questions at the core of Utahns' sovereign lawmaking demands more than the underdeveloped conclusions or policy rationales that shape other state court decisions. And, as *Carter* emphasized, it is not the government's role to "question[] the wisdom or efficiency" of the initiative power. 2012 UT 2, ¶ 61. Utahns already resolved those questions by enacting the provision, and the judiciary's role is "to enforce that decision, not to second-guess it." *Id.* ¶ 63.

Moreover, the dissents in these sister state cases have the better of the argument. The Legislature cannot frustrate the initiative power by "do[ing] *indirectly*, by repeal, what it cannot do *directly*" through ex ante substantive restrictions. *Luker*, 136 P.2d at 984 (Holden, C.J., dissenting); *accord State ex rel. Singer v. Cartledge*, 195 N.E. 237, 240-41 (Ohio 1935) (Day, J., dissenting). And, critically, none of the cases Defendants cite considered any provision analogous to article I, section 2 concerning the Legislature's ability to repeal initiatives.

D. The Legislature misconstrues the history of prior initiative amendments

As explained in the opening brief (at 35-36), the Legislature's repeal of Proposition 4 was unprecedented, and that novelty, itself, suggests that the Legislature lacks such authority.

Although Defendants claim examples where the Legislature has, to some degree, amended initiated laws (at 5-6, 20), such examples do not support an atextual constitutional power to negate initiatives.

Defendants focus on the recent amendment history of Initiative A (2000). But the Legislature's most significant amendments, which came in 2021, were part of only the recent trend of significantly altering initiated laws starting in 2018. That example is hardly the type of "[l]ong settled and established practice" that could inform the Court's constitutional interpretation. (*Cf.* Resp. Br. 20.) As this Court has reasoned elsewhere, such recent action by the Legislature "cannot be controlling so as to amend the Constitution," especially where "[s]uch assumed

power ... has never before been brought before this court for determination as to its constitutionality." *Rampton*, 464 P.2d at 382.[7]

For other initiatives, almost all of the amendments Defendants identify are more minor and likely furthered, rather than frustrated, the purposes of the initiated law. For instance, the minimal 1997 amendments to Initiative A (1960) to compensate sheriff merit system commissioners is consistent with the voters' will to make those commissions effective. (Resp. Br. Attachment15-16). So, too, for the 2002 amendments to the 1976 Compulsory Fluoridation Initiative, which added voter-approval requirements before removing fluorine from drinking water, on top of their existing power over adding fluorine. (Resp. Br. Attachment24-25). And the 2004 amendments to the Uniform Forfeitures Procedures initiative to *increase* "substantive and procedural protections for claimants of seized property" is undoubtedly on track with the voters' objective. (*Cf.* Resp. Br. 20).

In short, none of the initiative amendments Defendants cite compare to the complete negation of Proposition 4. None can be said to violate the specific protections of initiatives that directly implicate the people's right to alter or reform their government, which Proposition 4 indisputably does. And, most importantly, none was approved by this Court.

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[7] Even still, the treatment of Proposition 4 stands out as more severe and constitutionally suspect. At least the core of Initiative A—"English is declared to be the official language of Utah"—remains intact; repealing that directive may have been tantamount to the Legislature's complete elimination of Proposition 4's binding anti-gerrymandering provisions.

II. The Legislature Cannot Repeal an Initiative Enacted Pursuant to the People's "Right To Alter or Reform Their Government"

As explained in the opening brief (at 40-50), the category of citizen initiatives that engage Utahns' core "right to alter or reform their government" and secure their "inherent" "political power" are protected from repeal, regardless of whether the Legislature may repeal some initiatives. All the authorities described above apply with equal—if not greater—force to protect this narrower category.

Defendants do not contest that Proposition 4 is a "government reform" initiative. Instead, they argue that Utahns have no judicially enforceable means to vindicate their article I, section 2 rights. (Resp. Br. 27-34.) These arguments are meritless.

A. Article I, section 2 is self-executing

Defendants argue (at 27-32) that article I, section 2 is not self-executing, but their arguments are extreme and bear no relationship to the text of the Constitution or this Court's precedent. Article I, section 2 has all the hallmarks of a self-executing provision.

To begin, under article I, section 26, the provision "does not contain express words declaring that it is not 'mandatory and prohibitory.'" *Jensen ex rel. Jensen v. Cunningham*, 2011 UT 17, ¶ 62, 250 P.3d 465. Rather, like other provisions deemed self-executing, it is in the Declaration of Rights, and it is prohibitory and mandatory in that it forbids the government from infringing voters' "right to alter

or reform their government" that secures the "political power ... inherent in the people." *See id.*

In this way, article I, section 2 is distinct from the Free Market Clause, which was deemed not self-executing in *Tesla Motors UT, Inc. v. Utah Tax Commission*, 2017 UT 18, ¶¶ 52-54, 398 P.3d 55. (Resp. Br. 27.) That provision's text states no more than the general "policy of the state." Utah Const. art. XII, § 20. Article I, section 2 also is distinct from the other provisions Defendants cite, which include language providing, for example, that the provision applies "as the Legislature by statute may establish." (*Cf.* Resp. Br. 30.)

Next, article I, section 2 also has "been defined and enforced on numerous occasions in the absence of implementing legislation." *Jensen*, 2011 UT 17, ¶ 61. (Opening Br. 44-46.) In *Sevier Power*, this Court emphasized article I, section 2 as "significan[t]" among the "specifically reserved rights" barring the Legislature's substantive limits on citizen initiatives. 2008 UT 72, ¶¶ 5-6. In *Salt Lake City v. International Association of Firefighters*, the Court similarly applied the provision as a limit ensuring that the Legislature acts "consonant with the concept of representative democracy." 563 P.2d 786, 789-90 (Utah 1977).[8] Additionally, other

[8] Defendants' suggestion (at 32-33) that *International Association of Firefighters* casts doubt on the constitutionality of Proposition 4's independent redistricting commission does not pass scrutiny. The Legislature's unconstitutional delegation in that case impermissibly insulated the government *from the people's control*. 563 P.2d at 790. But in Proposition 4, the people devised an independent commission precisely to retain control against the Legislature's excesses.

state courts have applied analogous constitutional provisions to prevent the government from infringing the people's political power, including as exercised through citizen initiative.[9]

To the extent it is relevant, history confirms that article I, section 2 is self-executing.[10] The constitutional convention *rejected* efforts to remove the provision because it was purportedly superfluous or unenforceable. (Opening Br. 45-46). Defendants' citation of those unsuccessful arguments (at 28) is unavailing.

Regardless, this Court has rejected Defendants' suggestion (at 28) that the original constitutional understanding can be discerned from the views of one or two delegates. *S. Salt Lake City v. Maese*, 2019 UT 58, ¶ 19 & n.6, 450 P.3d 1092. Rather, the historical context discussed in the opening brief (at 2-10)—which the Legislature does not dispute—suggests that the people ratifying article I, section 2 sought an enforceable "right to alter or reform their government" as a bulwark against government unresponsiveness.

The Legislature's position is independently problematic because it would dramatically limit Utahns' constitutional rights. Defendants claim that "[m]ost

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[9] *See Urevich v. Woodard*, 667 P.2d 760, 762 (Colo. 1983); *McKee v. City of Louisville*, 616 P.2d 969, 972 (Colo. 1980); *Montana Democratic Party v. Jacobsen*, 2022 MT 184, ¶¶ 36-37, 410 Mont. 114, 518 P.3d 58; *Faipeas v. Anchorage*, 860 P.2d 1214, 1219 n.8 (Alaska 1993); *Doe v. Nelson*, 680 N.W.2d 302, 311 (S.D. 2004) (applying as limit on Governor's pardon power); *cf. Sonneman v. State*, 969 P.2d 632, 640 (Alaska 1998) (acknowledging provision is a limit but rejecting claim); *Libertarian Party of Oregon v. Roberts*, 750 P.2d 1147, 1152 (Or. 1988) (same).

[10] This Court in *Jensen* did not apply this component of the self-executing analysis, suggesting it is not mandatory. 2011 UT 17, ¶¶ 62-64.

provisions" are too general and that "only a handful of constitutional provisions" are enforceable apart from the Legislature. (Resp. Br. 27.) That position is incompatible with the very notion of having a declaration of rights. As Judge Cooley explained long ago, "courts tread upon very dangerous ground" when they render constitutional provisions directory; they instead must "be regarded in the light of limitations upon the power to be exercised." Thomas Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 93-94 (5th ed. 1883). Because the Constitution "enshrines principles, not application of those principles," it is this Court's role to enforce them. *Maese*, 2019 UT 58, ¶ 70 n.23. Defendants' alternative view would impermissibly leave the Constitution to be "habitually disregarded" by the Legislature, "equivalent to saying that it is not law at all." Cooley, *supra*, at 181.

For this reason, Utah's ratifiers wisely anticipated the Legislature's efforts to consolidate power, making explicit that constitutional provisions are "mandatory and prohibitory, unless" expressly declared otherwise. Utah Const. art. I, § 26. Thus, the rights encapsulated in the Declaration of Rights—including article I, section 2—are to be "rivet[ed] ... into the fundamental law of the State and ... enforceable in a court of law," not left to the whim of the Legislature. *Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 676 (Utah 1985).

B. The Legislature improperly minimizes this Court's role and competence

Defendants' glancing reference to justiciability concerns (at 31) is misplaced. As the Legislature does in its partisan gerrymandering appeal, it again argues that the question is too great for this Court, and the Legislature is empowered to encroach on the judiciary's fundamental role to interpret the Constitution. Defendants contend, for example, that the Legislature was justified in repealing Proposition 4 because some legislators believed it had constitutional defects. (Resp. Br. 12, 32-33.).[11] But redistricting laws are, like any other, subject to initiatives.[12] The reference to "Legislature" in article IX, section 1 only reinforces that Proposition 4 properly exercised the voters' legislative authority to reform redistricting. (*See supra* at 9.)

Defendants also complain that Proposition 4 drew the Chief Justice into the redistricting process as a backup. (Resp. Br. 33.) If the Legislature had merely

[11] Beyond the legal deficiencies of Defendants' argument, they misconstrue what Proposition 4 requires. (*E.g.* Resp. Br. 6-7.) For example, the bar on considering partisan data *during* the mapmaking process is entirely consistent with the application of partisan symmetry measures *after* a redistricting plan is proposed. *See* Utah Code § 20A-19-103(4)-(5). This enables Utahns to avoid the type of "politically mindless approach [that] may produce, whether intended or not, the most grossly gerrymandered results." *Gaffney v. Cummings*, 412 U.S. 735, 752-54 (1973).

[12] Numerous courts have upheld voters' lawmaking authority concerning redistricting. *Salazar v. Davidson*, 79 P.3d 1221, 1226 (Colo. 2003); *State ex rel. Davis v. Hildebrant*, 114 N.E. 55, 57 (Ohio 1916), *aff'd*, 241 U.S. 565 (1916); *Brown v. Sec'y of State of Fla.*, 668 F.3d 1271, 1274-81 (11th Cir. 2012). This includes structural reforms against partisan gerrymandering. *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 796-98, 817-18 (2015); Br. of Amicus Common Cause, at 8-15 (May 19, 2023).

removed the Chief Justice from the redistricting process, this argument might be taken seriously. But the Legislature instead cut the heart out of Proposition 4 by annulling its core purpose—to completely ban partisan gerrymandering by statute. *See* Utah Code §§ 20A-19-103(3), -301, *repealed by* Laws 2020, c. 288, § 12, eff. March 28, 2020. Far from correcting perceived isolated "defects," the Legislature negated this quintessential exercise of the voters' power to serve as a check on the Legislature. *See* Utah Const. art. I, § 2; art. VI, § 1.

In any event, the constitutionality of Proposition 4 was not the Legislature's question to answer. "The power and duty of ascertaining the meaning of a constitutional provision resides exclusively with the judiciary." *Utah Sch. Bds. Ass'n v. Utah State Bd. of Educ.*, 2001 UT 2, ¶ 9, 17 P.3d 1125. It is this Court, not the Legislature, that ensures an initiated law is not "otherwise forbidden by the constitution." *Sevier Power*, 2008 UT 72, ¶ 10. Utahns' decision to create a statutory initiative process indicates that they sought to subject initiated laws to constitutional restraint and this Court's judicial review. Given Utahns' focus on protecting the constitutional rights of minority groups to gain statehood, it is unsurprising that they entrusted courts to ensure that initiatives by the majority are themselves constitutional. And courts have accordingly not hesitated to reject unconstitutional initiated laws. *E.g.*, *Evans v. Romer*, 882 P.2d 1335 (Colo. 1994).

The Legislature can resist an initiative proposal in public debates, as it did with Proposition 4 and which the people rejected. (Opening Br. Add. J 4-5.) But

the task of "balancing ... constitutional concerns" belongs to the Court. (Resp. Br. 33.) Ruling otherwise would—in addition to "confiscat[ing] to itself the bulk of, if not all, legislative power," *Gallivan*, 2002 UT 89, ¶ 52—enable the Legislature to claim for itself the "inherent role of the judiciary to interpret constitutional provisions," *Jenkins v. Swan*, 675 P.2d 1145, 1149 (Utah 1983). This would present significant separation-of-powers concerns. Utah Const. art. V, § 1; art. VIII §§ 2, 3.

Defendants are also wrong when they assert the Utah judiciary "lacks the tools" to resolve this case. (Resp. Br. 31.) The question before this Court is not whether Proposition 4 or S.B. 200 better "reflects the true will of the people." (Resp. Br. 31.) Rather, the question is whether the Legislature acted unlawfully when it repealed Proposition 4 because the Constitution prohibits the Legislature from repealing, at minimum, government-reform initiatives.

This is not a hard case because there is no legitimate dispute that the Legislature repealed Proposition 4. (Opening Br. 10-15.) But the Court also does not "lack[] the tools" in closer cases to distinguish between alterations that are consistent with the citizen initiative and those—like S.B. 200—that are not. In other contexts, it has successfully distinguished adjacent amendments from amendments that are effectively repeals. *See In re Gestational Agreement*, 2019 UT 40, ¶ 4 n.4, 449 P.3d 69; *Nelden v. Clark*, 59 P. 524, 525-26 (Utah 1899). And other

state courts have developed doctrines to differentiate permissible from impermissible initiative amendments. (Opening Br. 39.)

The Alaska Supreme Court, for example, identifies as an unlawful "repeal" those amendments that alter an initiative's "provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." *Warren v. Thomas*, 568 P.2d 400, 402 (Alaska 1977). In *Warren*, for example, the court upheld amendments to a public officials disclosure scheme where they merely refined the initiative and still "effectuate[d] the intent of the electorate" to ensure transparency. *Id.* at 403.

Arizona courts apply similar rules. In *Arizona Early Childhood Development & Health Board v. Brewer*, for example, an amendment allowing the Legislature to divert revenue from a new tax was invalid because it was "not consistent with the purpose of the initiative" to "ensure that revenues serve the specific program aims of the initiative." 212 P.3d 805, 809 (Ariz. 2009); *accord State v. Maestas*, 417 P.3d 774, 778 (Ariz. 2018) (similarly rejecting amendment). On the other hand, in *Arizona Citizens Clean Election Commission v. Brain*, the court upheld an amendment that increased campaign contribution limits where the court determined that the people's initiative sought to establish a formula for limits, not a fixed number. 322 P.3d 139, 145 (2014).

Under these cases and others, permissible amendments either (i) refine the law while still effectuating the intent of the electorate, or (ii) make necessary

adjustments to laws outside the four corners of the initiated laws. This framework offers breathing room for technical and conforming changes while ensuring that the voter-initiated laws are not negated. And it rebuts the Legislature's claim that Plaintiffs' constitutional interpretation raises justiciability concerns. Courts can identify and apply manageable standards to determine when a legislative amendment goes too far.[13]

C. Legislative action is no substitute for actions by popular initiative

The Legislature acknowledges that "the Constitution allows the people to alter the government *within* the guardrails of its constitutional structure by statute (whether legislative or initiative)" as the public welfare may require. (Resp. Br. 34.) But while the Legislature gives lip-service to the idea that "the people are the ultimate sovereign" (at 26), its entire brief is an attempt to enthrone itself as sovereign. Its core argument is that where, as here, the people and their legislature differ on what the public welfare requires, *the Legislature knows best and is supreme*. That is no system of government where "all political power is inherent in the people." Utah Const. art. I, § 2.

It is no answer that voters can separately effectuate their right to reform their government by voting out recalcitrant representatives. Utahns' "need not await

[13] Neither of the early U.S. Supreme Court cases the Legislature cites (at 31) suggest otherwise. Those cases held only that the federal Guarantee Clause does not provide a basis for a justiciable claim. But the Court has subsequently backed off that holding. *See New York v. United States*, 505 U.S. 144, 185 (1992). And, of course, Plaintiffs do not raise claims under that clause.

legislative action before asserting a fundamental right" such as article I, section 2, which "depend[s] on the outcome of no elections." *Obergefell v. Hodges*, 576 U.S. 644, 677 (2015). That is particularly true here, where the very purpose of the initiated reforms was to prevent representatives from insulating themselves from electoral accountability.

Thus, Utahns desired to secure the ultimate political "voice of the people sounded through the ballot box" by *both* electing their representatives and, separately, directly enacting laws through "their own constitutional bailiwick." *Utah Power*, 74 P.2d at 1204-05 (Larson, J., concurring). Using the initiative to reform the government provides a distinct and independent constitutional check on the Legislature that elections for representatives (particularly those under partisan gerrymandered conditions) are insufficient to achieve. Article I, section 2 protects these rights, and the district court erred in failing to address them.

CONCLUSION

The Court should reverse the district court's order dismissing Count V and remand for further consideration in light of this Court's ruling.

DATED this 16th day of June, 2023.

RESPECTFULLY SUBMITTED,

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Certificate of Compliance

I hereby certify that:

1. This brief complies with the word limits set forth in Utah R. App. P. 24(g)(1) because this brief contains 6,997 words, excluding the parts of the brief exempted by Utah R. App. P. 24(g)(2).

2. This brief complies with Utah R. App. P. 21(h) regarding public and non-public filings.

DATED this 16th day of June, 2023.

/s/ Troy L. Booher

Certificate of Service

This is to certify that on the 16th day of June, 2023, I caused the *Reply Brief of League of Women Voters of Utah, Mormon Women for Ethical Government, Stephanie Condie, Malcolm Reid, Victoria Reid, Wendy Martin, Eleanor Sundwall, and Jack Markman* to be served via email on:

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Addendum A

Compilation of historical initiative and referenda provisions

Addendum A*

S.D. Const. art. 3, § 1 (1898)

Section 1. The legislative power shall be vested in a Legislature which shall consist of a Senate and House of Representatives. Except that the people expressly reserve to themselves the right to propose measures, which measures the Legislature shall enact and submit to a vote of the electors of the state, and also the right to require that any laws which the Legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect (except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions).

Provided, that not more than five per centum of the qualified electors of the state shall be required to invoke either the initiative or the referendum.

This section shall not be construed so as to deprive the Legislature or any member thereof of the right to propose any measure. The veto power of the executive shall not be exercised as to measures referred to a vote of the people. This section shall apply to municipalities. The enacting clause of all laws approved by vote of the electors of the state shall be: "Be it enacted by the people of South Dakota." The Legislature shall make suitable provisions for carrying into effect the provisions of this section.

* The text of the state constitutional provisions cited in this Addendum were reproduced in Charles A. Beard & Birl E. Shultz, *Documents on the State-Wide Initiative, Referendum, and Recall* (1912). All emphases added.

Or. Const. art. IV, § 1 (1902)

Section 1. The legislative authority of the State shall be vested in a Legislative Assembly, consisting of a Senate and House of Representatives, but the people reserve to themselves power to propose laws and amendments to the Constitution and to enact or reject the same at the polls, independent of the Legislative Assembly, and also reserve power at their own option to approve or reject at the polls any act of the Legislative Assembly. The first power reserved by the people is the initiative, and not more than eight per cent of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the Secretary of State not less than four months before the election at which they are to be voted upon. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health, or safety), either by the petition signed by five per cent of the legal voters, or by the Legislative Assembly, as other bills are enacted. Referendum petitions shall be filed with the Secretary of State not more than ninety days after the final adjournment of the session of the Legislative Assembly which passed the bill on which the referendum is demanded. The veto power of the Governor shall not extend to measures referred to the people. All elections on measures referred to the people of the State shall be had at the biennial regular general elections, except when the Legislative Assembly shall order a special election. Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise. The style of all bills shall be: "Be it enacted by the people of the State of Oregon." **This section shall not be construed to deprive any member of the Legislative Assembly of the right to introduce any measure.** The whole number of votes cast for Justice of the Supreme Court at the regular election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. Petitions and orders for the initiative and for the referendum shall be filed with the Secretary of State, and in submitting the same to the people he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor.

Mont. Const. art. V, § 1 (1906)

Section 1. The Legislative Authority of the State shall be vested in a Legislative Assembly, consisting of a Senate and House of Representatives; but the people reserve to themselves power to propose laws, and to enact or reject the same at the polls, except as to laws relating to appropriations of money, and except as to laws for the submission of constitutional amendments, and except as to local or special laws, as enumerated in Article V, Section 26, of this Constitution, independent of the Legislative Assembly; and also reserve power at their own option, to approve or reject at the polls, any Act of the Legislative Assembly, except as to laws necessary for the immediate preservation of the public peace, health or safety, and except as to laws relating to appropriations of money, and except as to laws for the submission of constitutional amendments, and except as to local or special laws, as enumerated in Article V, Section 26, of this Constitution. The first power reserved by the people is the Initiative and eight per cent of the legal voters of the State shall be required to propose any measure by petition; provided, that two-fifths of the whole number of the Counties of the State must each furnish as signers of said petition eight per cent of the legal voters in such county, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the Secretary of State, not less than four months before the election at which they are to be voted upon.

The second power is the Referendum, and it may be ordered either by petition signed by five per cent of the legal voters of the State, provided that two-fifths of the whole number of the counties of the State must each furnish as signers of said petition five per cent of the legal voters in such County; or, by the Legislative Assembly as other Bills are enacted.

Referendum petitions shall be filed with the Secretary of State, not later than six months after the final adjournment of the Session of the Legislative Assembly which passed the Bill on which the Referendum is demanded. The veto power of the Governor shall not extend to measures referred to the people by the Legislative Assembly or by Initiative Referendum petitions.

All elections on measures referred to the people of the State shall be had at the biennial regular general election, except when the Legislative Assembly, by a majority vote, shall order a special election. Any measure referred to the people shall still be in full force and effect unless such petition be signed by fifteen per cent of the legal voters of a majority of the whole number of the counties of the

State, in which case the law shall be inoperative until such time as it shall be passed upon at an election, and the result has been determined and declared as provided by law. The whole number of votes cast for Governor at the regular election last preceding the filing of any petition for the Initiative or Referendum, shall be the basis on which the number of the legal petitions and orders for the Initiative and for the Referendum shall be filed with the Secretary of State ; and in submitting the same to the people, he, and all other officers, shall be guided by the General Laws and the Act submitting this amendment, until Legislation shall be especially provided therefor. The enacting clause of every law originated by the Initiative shall be as follows: "Be it enacted by the People of Montana:"

This Section shall not be construed to deprive any member of the Legislative Assembly of the right to introduce any measure.

Okla. Const. art. V, § 7 (1907)

Section 1. The Legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives; but the people reserve to themselves the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the Legislature, and also reserve power at their own option to approve or reject at the polls any act of the Legislature.

Section 2. The first power reserved by the people is the initiative, and eight per centum of the legal voters shall have the right to propose any legislative measure, and fifteen per centum of the legal voters shall have the right to propose amendments to the Constitution by petition, and every such petition shall include the full text of the measure so proposed. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health, or safety), either by petition signed by five per centum of the legal voters or by the Legislature as other bills are enacted. The ratio and per centum of legal voters hereinbefore stated shall be based upon the total number of votes cast at the last general election for the State office receiving the highest number of votes at such election.

Section 3. Referendum petitions shall be filed with the Secretary of State not more than ninety days after the final adjournment of the session of the Legislature which passed the bill on which the referendum is demanded. The veto power of the Governor shall not extend to measures voted on by the people. All elections on measures referred to the people of the State shall be had at the next election held throughout the State, except when the Legislature or the Governor shall order a special election for the express purpose of making such reference. Any measure referred to the people shall take effect and be in force when it shall have been approved by a majority of the votes cast thereon and not otherwise.

The style of all bills shall be: "Be it Enacted By the People of the State of Oklahoma."

Petitions and orders for the initiative and for the referendum shall be filed with the Secretary of State and addressed to the Governor of the State, who shall submit the same to the people. The Legislature shall make suitable provisions for carrying into effect the provisions of this article ; and, if the Legislature shall fail to make such provisions, or shall make inadequate provisions, then the Governor of the

State shall, by executive order, make such rules as may be necessary to carry these provisions into effect.

Section 4. The referendum may be demanded by the people against one or more items, sections, or parts of any act of the Legislature in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections, or parts of an act shall not delay the remainder of such act from becoming operative.

Section 5. The powers of the initiative and referendum reserved to the people by this Constitution for the State at large, are hereby further reserved to the legal voters of every county and district therein, as to all local and special legislation and action in the administration of county and district government in and for their respective counties and districts.

The manner of exercising said powers shall be prescribed by general laws, except that Boards of County Commissioners may provide for the time of exercising the initiative and referendum powers as to local legislation in their respective counties and districts.

The requisite number of petitioners for the invocation of the initiative and referendum in counties and districts shall bear twice, or double, the ratio to the whole number of legal voters in such county or district, as herein provided therefor in the State at large.

Section 6. Any measure rejected by the people, through the powers of the initiative and referendum, cannot be again proposed by the initiative within three years thereafter by less than twenty-five per centum of the legal voters.

Section 7. The reservation of the powers of the initiative and referendum in this article shall not deprive the Legislature of the right to propose or pass any measure, which may be consistent with the Constitution of the State and the Constitution of the United States.

Section 8. Laws shall be provided to prevent corruption in making, procuring, and submitting initiative and referendum petitions.

Mo. Const. art. IV, § 57 (1908)

Section 57. Initiative and referendum. The legislative authority of the State shall be vested in a Legislative Assembly, consisting of a Senate and House of Representatives, but the people reserve to themselves power to propose laws and amendments to the Constitution, and to enact or reject the same at the polls, independent of the Legislative Assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly. The first power reserved by the people is the initiative, and not more than eight per cent. of the legal voters in each of at least two-thirds of the congressional districts in the State shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the Secretary of State not less than four months before the election at which they are to be voted upon. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety and laws making appropriations for the current expenses of the State government, for the maintenance of the state institutions and for the support of public schools) either by the petitions signed by five per cent. of the legal voters in each of at least two-thirds of the congressional districts in the State, or by the Legislative Assembly, as other bills are enacted. Referendum petitions shall be filed with the Secretary of State not more than ninety days after the final adjournment of the session of the Legislative Assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people of the State shall be had at the biennial regular general elections, except when the Legislative Assembly shall order a special election. Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise. The style of all bills shall be: "Be it enacted by the people of the State of Missouri." **This section shall not be construed to deprive any member of the Legislative Assembly of the right to introduce any measure.** The whole number of votes cast for Justice of the Supreme Court at the regular election last preceding the filing of any petition for the initiative, or for the referendum, shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. Petitions and orders for the initiative and for the referendum shall be filed with the Secretary of State, and in submitting the same to the people he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor.

Ark. Const. art. V, § 1 (1910)

Section 1. The legislative powers of this state shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives, but the people of each municipality, each county, and of the state reserve to themselves power to propose laws and amendments to the Constitution and to enact or reject the same at the polls as independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly.

The first power reserved by the people is the Initiative, and not more than 8 per cent of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the Secretary of State not less than four months before the election at which they are to be voted upon.

The second power is the Referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety) either by the petition signed by 5 per cent of the legal voters or by the legislative assembly as other bills are enacted. Referendum petitions shall be filed with the Secretary of State not more than ninety days after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the Governor shall not extend to measures referred to the people. All elections on measures referred to the people of the State shall be had at the biennial regular general elections, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become a law when it is approved by a majority of the votes cast thereon and not otherwise.

The style of all bills shall be, "Be it enacted by the State of Arkansas." **This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure.** The whole number of votes cast for Governor at the regular election last preceding the filing of any petition for the Initiative or the Referendum shall be the basis on which the number of legal votes necessary to sign such petition shall be counted. Petitions and orders for the Referendum and Initiative shall be filed with the Secretary of State, and in submitting the same to the people he and all other officers shall be guided by the general election laws and the acts submitting this amendment until legislation shall be specially provided therefor.

Colo. Const. art. V, § 1 (1910)

Section 1. The legislative power of the State shall be vested in the General Assembly consisting of a Senate and House of Representatives, both to be elected by the people, but the people reserve to themselves the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the General Assembly, and also reserve power at their own option to approve or reject at the polls any act, item, section or part of any act of the General Assembly.

The first power hereby reserved by the people is the Initiative, and at least eight per cent of the legal voters shall be required to propose any measure by petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions for State legislation and amendments to the Constitution shall be addressed to and filed with the Secretary of State at least four months before the election at which they are to be voted upon.

The second power hereby reserved is the Referendum, and it may be ordered, except as to laws necessary for the immediate preservation of the public peace, health, or safety, and appropriations for the support and maintenance of the department of state and state institutions, against any act, section or part of any act of the General Assembly, either by a petition signed by five per cent of the legal voters or by the General Assembly. Referendum petitions shall be addressed to and filed with the Secretary of State not more than ninety days after the final adjournment of the session of the General Assembly, that passed the bill on which the referendum is demanded. The filing of a referendum petition against any item, section or part of any act shall not delay the remainder of the act from becoming operative. The veto power of the Governor shall not extend to measures initiated by or referred to the people. All elections on measures referred to the people of the State shall be held at the biennial regular general election, and all such measures shall become the law or a part of the Constitution, when approved by a majority of the votes cast thereon, and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the Governor, but not later than thirty days after the vote has been canvassed. **This section shall not be construed to deprive the General Assembly of the right to enact any measure.** The whole number of votes cast for Secretary of State at the regular general election last preceding the filing of any petition for the initiative or referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted.

The Secretary of State shall submit all measures initiated by or referred to the people for adoption or rejection at the polls, in compliance herewith. The petition shall consist of sheets having such general form printed or written at the top thereof as shall be designated or prescribed by the Secretary of State; such petition shall be signed by qualified electors in their own proper persons only, to which shall be attached the residence address of such person and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached an affidavit of some qualified elector, that each signature thereon is the signature of the person whose name it purports to be, and that to the best of the knowledge and belief of the affiant, each of the persons signing said petition was at the time of signing a qualified elector. Such petition so verified shall be prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are qualified electors. The text of all measures to be submitted shall be published as constitutional amendments are published, and in submitting the same and in all matters pertaining to the form of all petitions the Secretary of State and all other officers shall be guided by the general laws, and the act submitting this amendment, until legislation shall be especially provided therefor.

The style of all laws adopted by the people through the Initiative shall be, "Be it Enacted by the People of the State of Colorado."

The initiative and referendum powers reserved to the people by this section are hereby further reserved to the legal voters of every city, town and municipality as to all local, special and municipal legislation of every character in or for their respective municipalities. The manner of exercising said powers shall be prescribed by general laws, except that cities, towns and municipalities may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten per cent of the legal voters may be required to order the referendum, nor more than fifteen per cent to propose any measure by the initiative in any city, town or municipality.

This section of the Constitution shall be in all respects self-executing.

Ariz. Const. art. IV, pt. I, § 1(14) (1912)

ARTICLE IV. LEGISLATIVE DEPARTMENT.
PART 1. INITIATIVE AND REFERENDUM

Section 1.
(1) The legislative authority of the State shall be vested in a Legislature[1], consisting of a Senate and a House of Representatives, but the people reserve the power to propose laws and amendments to the Constitution and to enact or reject such laws and amendments at the polls, independently of the Legislature; and they also reserve, for use at their own option, the power to approve or reject at the polls any act, or item, section, or part of any Act, of the Legislature.

(2) The first of these reserved powers is the Initiative. Under this power ten per centum of the qualified electors shall have the right to propose any measure, and fifteen per centum shall have the right to propose any amendment to the Constitution.

(3) The second of these reserved powers is the Referendum. Under this 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 maintenance of the Departments of[2] State and of State institutions; Provided, that no such emergency measure shall be considered passed by the Legislature unless it shall state in a separate section why it is necessary that it shall become immediately operative, and shall be approved by the affirmative votes of two-thirds of the members elected to each House of the Legislature, taken by roll call of ayes and nays, and also approved by the Governor; and should such measure be vetoed by the Governor, it shall not become a law unless it shall be approved by the votes of three-fourths of the members elected to each House of the Legislature, taken by roll call of ayes and nays.

(4) All petitions submitted under the power of the initiative shall be known as Initiative Petitions, and shall be filed with the Secretary of State not less than four months preceding the date of the election at which the measures so proposed are to be voted upon. All petitions submitted under the power of the Referendum shall be known as Referendum Petitions, and shall be filed with the Secretary of State not more than ninety days after the final adjournment of the session of the Legislature which shall have passed the measure to which the Referendum is applied. The filing of a Referendum Petition against any item, section, or part of any measure shall not prevent the remainder of such measure from becoming operative.

(5) Any measure or amendment to the Constitution proposed under the Initiative, and any measure to which the Referendum is applied, shall be referred to a vote of the qualified electors, and shall become law when approved by a majority of the votes cast thereon and upon proclamation of the Governor, and not otherwise.

(6) The veto power of the Governor shall not extend to Initiative or Referendum measures approved by a majority of the qualified electors.

(7) The whole number of votes cast for all candidates for Governor at the general election last preceding the filing of any Initiative or Referendum Petition on a State or county measure shall be the basis on which the number of qualified electors required to sign such petition shall be computed.

(8) The powers of the Initiative and the Referendum are hereby further reserved to the qualified electors of every incorporated city, town, and county as to all local, city, town, or county matters on which such incorporated cities, towns, and counties are or shall be empowered by general laws to legislate. Such incorporated cities, towns, and counties may prescribe the manner of exercising said powers within the restrictions of general laws. Under the power of the Initiative fifteen per centum of the qualified electors may propose measures on such local, city, town, or county matters, and ten per centum of the electors may propose the Referendum on legislation enacted within and by such city, town, or county. Until provided by general law, said cities and towns may prescribe the basis on which said percentages shall be computed.

(9) Every Initiative or Referendum petition shall be addressed to the Secretary of State in the case of petitions for or on State measures, and to the clerk of the Board of Supervisors, city clerk, or corresponding officer in the case of petitions for or on

county, city, or town measures; and shall contain the declaration of each petitioner, for himself, that he is a qualified elector of the State (and in the case of petitions for or on city, town, or county measures, of the city, town, or county affected), his post office address, the street and number, if any, of his residence, and the date on which he signed such petition. Each sheet containing petitioners' signatures shall be attached to a full and correct copy of the title and text of the measure so proposed to be initiated or referred to the people, and every sheet of every such petition containing signatures shall be verified by the affidavit of the person who circulated said sheet or petition, setting forth that each of the names on said sheet was signed in the presence of the affiant and that in the belief of the affiant each signer was a qualified elector of the State, or in the case of a city, town, or county measure, of the city, town, or county affected by the measure so proposed to be initiated or referred to the people.

(10) When any Initiative or Referendum petition or any measure referred to the people by the Legislature shall be filed, in accordance with this section, with the Secretary of State, he shall cause to be printed on the official ballot at the next regular general election the title and number of said measure, together with the words "Yes" and "No" in such manner that the electors may express at the polls their approval or disapproval of the measure.

(11) The text of all measures to be submitted shall be published as proposed amendments to the Constitution are published, and in submitting such measures and proposed amendments the Secretary of State and all other officers shall be guided by the general law until legislation shall be especially provided therefor.

(12) If two or more conflicting measures or amendments to the Constitution shall be approved by the people at the same election, the measure or amendment receiving the greatest number of affirmative votes shall prevail in all particulars as to which there is conflict.

(13) It shall be the duty of the Secretary of State, in the presence of the Governor and the Chief Justice of the Supreme Court, to canvass the votes for and against each such measure or proposed amendment to the Constitution within thirty days after the election, and upon the completion of the canvass the Governor shall forthwith issue a proclamation, giving the whole number of votes cast for and against each measure or proposed amendment, and declaring such measures or amendments as are approved by a majority of those voting thereon to be law.

(14) This section shall not be construed to deprive the Legislature of the right to enact any measure.

(15) This section of the Constitution shall be, in all respects, self-executing.