



KATIE HOBBS
SECRETARY OF STATE

August 12, 2020

VIA EMAIL

Michael S. Catlett
Deputy Solicitor General
Office of the Arizona Attorney General
michael.catlett@azag.gov

Re: 2020 Ballot Initiatives – Revised Ballot Language

Dear Mr. Catlett,

Thank you for providing the Secretary of State with feedback from the Attorney General's Office on the ballot language for three of the four citizen initiatives that filed with our Office. While the AGO's feedback is appreciated, as detailed below, the Secretary disagrees with certain of the comments and proposed revisions and provides the attached revised language for the Attorney General's approval.

As you noted, A.R.S. § 19-125(D) states that the official form of the ballot shall include "a descriptive title...which shall be prepared by the secretary and approved by the attorney general." This descriptive title shall contain "a summary of the principal provisions of the measure, not to exceed fifty words." *Id.* The Secretary also prepares "a brief phrase, approved by the attorney general, stating the essential change in the existing law should the measure receive a majority of votes cast." *Id.* In drafting this language, the Secretary attempted "to provide necessary and appropriate information to the voting public," and certainly did not use "false or clearly misleading language." *Quality Educ. & Jobs Supporting I-16-2012 v. Bennett*, 213 Ariz. 206, 209, ¶¶ 10, 12 (2013). Indeed, the Arizona Supreme Court has made clear that even where the language is "fairly debatable and potentially subject to differing interpretations[,] . . . that does not mean the language fails to comply with § 19-125(D)." *Id.* at 209, ¶12. The AGO's insistence otherwise is inconsistent with Arizona law.

In any event, we have made a good faith effort to address some of the concerns alleged by the AGO in the following responses and revised ballot language below, and are hopeful that the revised ballot language can be promptly approved by the AGO.

Responses to Global Changes

- The Secretary will not object to the AGO’s revision of the opening phrase for the yes/no language to exactly mirror the language in A.R.S. § 19-125(D). However, in addition to needlessly lengthening the language when space on the ballot is at a premium, the revision is unnecessary as the Arizona Supreme Court has expressly applied a substantial compliance standard to A.R.S. § 19-125(D). *Quality Educ. & Jobs Supporting I-16-2012*, 213 Ariz. at 209, ¶ 12. Further, the current elected Attorney General himself, as recently as 2018, approved use of the verbatim opening phrase in the Secretary’s proposed language. *See* Exhibit A. The AGO’s insistence that this revision is necessary to comply with statute is misguided and—unless the AGO is applying a different standard to this Secretary than prior ones—inconsistent with the AGO’s own prior practice.
- The Secretary will not object to the AGO’s revision of the “no” language to simply state that a “no” vote would retain existing law. However, the AGO’s assertion that this revision will make the language consistent with past practice is factually inaccurate, as evidenced by “no” language previously approved by the current elected Attorney General. *See, e.g.*, Exhibits B and C.

Smart and Safe Arizona Act (I-23-2020)

- While the Secretary believes her proposed ballot language for this initiative complied with A.R.S. § 19-125(D) and the AGO’s revisions are unnecessary to provide “necessary and appropriate information to the voting public,” in an effort to expedite finalizing the language, the Secretary is willing to accept those revisions, as they do not inject “false or clearly misleading language.” *See Quality Educ. & Jobs Supporting I-16-2012*, 213 Ariz. at 209, ¶¶ 10, 12.

Stop Surprise Billing and Protect Patients Act (I-24-2020)

- The AGO’s inclusion of a parenthetical indicating that the pre-existing condition exclusion in this Act is “consistent with state and federal law” is unnecessary, and in fact, inaccurate and misleading. For example, A.R.S. § 20-123’s prohibition on pre-existing condition exclusions does not take effect unless a court, on or before June 30, 2023, invalidates the Patient Protection and Affordable Care Act. *See [S.B. 1397 § 2, 54th Leg., 2nd Sess. \(Az. 2020\)](#)*. And, even if that were to occur, state law specifies that short-term limited duration insurance need not comply with “state coverage mandates” in Title 20, *see* A.R.S. § 20-1384. Further, a “yes” vote would apply the protections of the Voter Protection Act to the Act’s prohibition on pre-existing condition exclusions, which does not currently exist in state or federal law. Indeed, as the AGO stated in your own review of the ballot language for the Smart and Safe Arizona Act: “Because the ballot language should only include ‘the essential change in the existing law,’ the language should not explain . . . rights will remain as they currently exist.” Because this provision of the Act does change state law, the

parenthetical is not only unnecessary (by the AGO’s own standard) even if it were accurate, but is in fact inaccurate and misleading in this instance. Therefore, we have removed the parenthetical and made a couple other minor, non-substantive edits to improve clarity.

Second Chances, Rehabilitation, and Public Safety Act (I-32-2020)

- We have accepted the AGO’s listing of crimes excluded from the definition of “nondangerous offense,” but have re-ordered the listing to reflect the order in which they actually appear in the initiative language, leading with the largest exclusion—dangerous offenses.
- We have accepted the AGO’s edit removing reference to good behavior and participation in programs as requirements for earned release credits. We note, however, that these requirements are prescribed by Arizona Department of Corrections orders and regulations (*see, e.g., DOC Order 1002*), as specifically contemplated by A.R.S. § 41-1604.07(A). We therefore included this reference as necessary and appropriate information for voters to understand that earned release credits are not automatically accrued based solely on time served. To avoid this misleading suggestion, therefore, we specified that earned release credits are granted “pursuant to requirements adopted by the director,” which is specified in the initiative language.
- The Act specifically states that, “when imposing a sentence for a nondangerous offense, a court may impose any sentence less than the sentencing ranges . . . *if the court determines it is in the interest of justice.*” *See* Proposed Section 13-719 (emphasis added). Therefore, we have included that language in both the descriptive title and the description of the effects of a “yes” vote. Omitting this context from the ballot language would give voters a false and misleading impression about what the Act actually requires for the court to have discretion to impose a reduced sentence for a nondangerous offense.
- We have reworked the AGO’s language regarding repetitive offenders to provide voters with a clearer description of how the amendment to the sentencing statute will work.
- We have made other minor, non-substantive edits to improve clarity, which are tracked in our updated proposed ballot language below.

Included below is the Secretary’s updated ballot language for your approval pursuant to A.R.S. § 19-125(D). These revisions take into account the AGO’s feedback while revising proposed edits from the AGO that result in false, misleading, or confusing language.

Additionally, the Secretary requests that the AGO promptly provide its feedback regarding her proposed ballot language for the Invest in Education Act (I-31-2020). As we assume the AGO is aware, the initiative committee has filed an appeal with the Arizona Supreme Court. Unless and until there is a final order from the Supreme Court removing the measure from the ballot, the Secretary is committed to fulfilling her statutory responsibilities and requests the same from the Attorney General. As you know, County Recorders are required to verify a sample of petition signatures for each initiative pursuant to A.R.S. 19-212.02. This is a significant undertaking, but County Recorders will continue to verify petition signatures for the Invest in Education Act, despite their many other election-related responsibilities at this time, because pausing this process during ongoing litigation would interfere with their ability to meet applicable deadlines. Drafting

and approval of the ballot language pursuant to A.R.S. § 19-125(D) should be treated no differently. Withholding the AGO's feedback until after a decision is reached by the Arizona Supreme Court in that case only serves to hinder state and county election officials' ability to comply with statutory and operational deadlines, including those for printing of the publicity pamphlet and general election ballots.

Thank you in advance for your consideration and attention to this important matter. Please do not hesitate to call me with any questions or concerns.

Very truly yours,



Sambo (Bo) Dul
State Elections Director
Arizona Secretary of State Katie Hobbs
bdul@azsos.gov
602.542.8683

SD
Enclosures

**STOP SURPRISE BILLING AND PROTECT PATIENTS ACT (I-24-2020)
(TENTATIVE) PROPOSITION 208**

DESCRIPTIVE TITLE

THE LAW WOULD PROHIBIT HEALTH INSURERS FROM DENYING COVERAGE BASED ON PRE-EXISTING CONDITIONS; RESTRICT HEALTH INSURERS TO FOUR STATUTORY FACTORS WHEN CHARGING PREMIUMS ~~AND PROHIBIT PRE-EXISTING CONDITION EXCLUSIONS~~; CAP SURPRISE OUT-OF-NETWORK MEDICAL AND AMBULANCE BILLS; SET WAGE INCREASES AND “MINIMUM WAGES” FOR PRIVATE HOSPITAL WORKERS; AND REQUIRE PRIVATE HOSPITALS TO MEET NATIONAL SAFETY STANDARDS.

A “YES” vote shall have the effect of prohibiting health insurers from denying coverage based on pre-existing conditions; restricting health insurers to four factors when charging premiums (individual or family coverage, age, geography, and tobacco use); prohibiting health insurers from imposing a pre-existing condition exclusion (consistent with state and federal law); establishing a cap on certain surprise out-of-network medical bills and prohibiting balance billing for ambulance services; amending the surprise out-of-network bill dispute process; requiring wage increases and setting new “minimum wages” for workers at private hospitals; requiring private hospitals to meet national safety standards for preventing hospital-acquired infections; and establishing a fund for administration and enforcement of the infection standards with fees paid by private hospitals.

A “NO” vote shall have the effect of retaining existing law relating to health insurance and hospitals.

**STOP SURPRISE BILLING AND PROTECT PATIENTS ACT (I-24-2020)
(TENTATIVE) PROPOSITION 208**

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THE LAW WOULD PROHIBIT HEALTH INSURERS FROM DENYING COVERAGE BASED ON PRE-EXISTING CONDITIONS; RESTRICT HEALTH INSURERS TO FOUR STATUTORY FACTORS WHEN CHARGING PREMIUMS; CAP SURPRISE OUT-OF-NETWORK MEDICAL AND AMBULANCE BILLS; SET WAGE INCREASES AND “MINIMUM WAGES” FOR PRIVATE HOSPITAL WORKERS; AND REQUIRE PRIVATE HOSPITALS TO MEET NATIONAL SAFETY STANDARDS.

A “YES” vote shall have the effect of prohibiting health insurers from denying coverage based on pre-existing conditions; restricting health insurers to four factors when charging premiums (individual or family coverage, age, geography, and tobacco use); establishing a cap on certain surprise out-of-network medical bills and prohibiting balance billing for ambulance services; amending the surprise out-of-network bill dispute process; requiring wage increases and setting new “minimum wages” for workers at private hospitals; requiring private hospitals to meet national safety standards for preventing hospital-acquired infections; and establishing a fund for administration and enforcement of the infection standards with fees paid by private hospitals.

A “NO” vote shall have the effect of retaining existing law relating to health insurance and hospitals.

**SECONDS CHANCES, REHABILITATION, AND PUBLIC SAFETY ACT (I-32-2020)
(TENTATIVE) PROPOSITION 209**

DESCRIPTIVE TITLE

THE LAW WOULD EXPAND THE EARNED ~~EDING OF~~ RELEASE CREDITS PROGRAM TO ALLOW THOSE CONVICTED OF STATUTORILY-DEFINED “NONDANGEROUS OFFENSES” TO REDUCE PRISON TIME BY UP TO 50% ~~FOR THOSE CONVICTED OF STATUTORILY DEFINED “NON DANGEROUS OFFENSES”~~; AUTHORIZE JUDGES TO IMPOSE LOWER SENTENCES ~~WHEN SENTENCING~~ FOR “NON DANGEROUS OFFENSES” WHEN IN THE INTEREST OF JUSTICE; AND ESTABLISH A FUND FOR VICTIMS/FIRST RESPONDERS.

A “YES” vote shall have the effect of ~~creating a new category of offense defin~~ing ~~as a~~ nondangerous offense to exclude any crime determined by the jury or court to be a dangerous offense, which includes all crimes except molestation of a child, ~~a dangerous crimes~~ against children, first or second degree murder, or sexual assault, ~~or any crime determined by the jury or the court to be a dangerous offense~~; expanding the current earned release credit program to require the Arizona Department of Corrections, Rehabilitation and Reentry to grant earned release credits to those incarcerated for a nondangerous offense to reduce ~~prison~~their time ~~in prison~~ by up to 50% pursuant to requirements adopted by the director; allowing a judge, when imposing a sentence for a nondangerous offense, to impose ~~any prison~~ sentence less than the statutory minimum or no prison sentence if the judge finds it is in the interest of justice, considering ~~statutory~~ factors ~~and such as the~~ input of victims, family members, and experts; changing the circumstances under which earned release credits can be taken away; ~~changing the conditions under which an individual is considered a repetitive offender~~limiting prior convictions considered for sentencing enhancements to those that occurred prior to the present offense; eliminating the literacy requirement to be eligible for early release; and establishing a new fund for services for crime victims and first responders by transferring funds from the Medical Marijuana Fund.

A “NO” vote shall have the effect of retaining existing law relating to early prison release and criminal sentencing.

**SECONDS CHANCES, REHABILITATION, AND PUBLIC SAFETY ACT (I-32-2020)
(TENTATIVE) PROPOSITION 209**

DESCRIPTIVE TITLE

THE LAW WOULD EXPAND THE EARNED RELEASE CREDITS PROGRAM TO ALLOW THOSE CONVICTED OF STATUTORILY-DEFINED “NONDANGEROUS OFFENSES” TO REDUCE PRISON TIME BY UP TO 50%; AUTHORIZE JUDGES TO IMPOSE LOWER SENTENCES FOR “NON DANGEROUS OFFENSES” WHEN IN THE INTEREST OF JUSTICE; AND ESTABLISH A FUND FOR VICTIMS/FIRST RESPONDERS.

A “YES” vote shall have the effect of defining a nondangerous offense to exclude any crime determined by the jury or court to be a dangerous offense, molestation of a child, dangerous crimes against children, first or second degree murder, or sexual assault; expanding the current earned release credit program to require the Arizona Department of Corrections, Rehabilitation and Reentry to grant earned release credits to those incarcerated for a nondangerous offense to reduce prison time by up to 50% pursuant to requirements adopted by the director; allowing a judge, when imposing a sentence for a nondangerous offense, to impose a sentence less than the statutory minimum or no prison sentence if the judge finds it is in the interest of justice, considering factors such as the input of victims, family members, and experts; changing the circumstances under which earned release credits can be taken away; limiting prior convictions considered for sentencing enhancements to those that occurred prior to the present offense; eliminating the literacy requirement to be eligible for early release; and establishing a new fund for services for crime victims and first responders by transferring funds from the Medical Marijuana Fund.

A “NO” vote shall have the effect of retaining existing law relating to early prison release and criminal sentencing.