



KATIE HOBBS
SECRETARY OF STATE

August 19, 2020

VIA EMAIL

Michael S. Catlett
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Office of the Arizona Attorney General
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Re: 2020 Ballot Initiatives – Revised Ballot Language

Dear Mr. Catlett,

I write in response to your letters dated August 14, 2020 and August 18, 2020. Thank you for approving the Secretary of State's updated ballot language for I-24-2020 (Stop Surprise Billing and Protect Patients Act). Further, the Secretary will accept the Attorney General's proposed edits to the ballot language for I-32-2020 (Second Chances, Rehabilitation, and Public Safety Act)¹ and, as previously indicated, I-23-2020 (Smart and Safe Arizona Act). The final ballot language for these three initiatives, should they qualify for the ballot, are enclosed.

We also appreciate the Attorney General's feedback on the Secretary's proposed ballot language for I-31-2020 (Invest in Education Act). However, as explained below, the Secretary disagrees with certain of the comments and proposed revisions and provides revised language for the Invest in Education Act 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

¹ We have made two minor non-substantive edits to the language for I-32-2020, as shown in the attached file. We do not believe this will impact the AGO's approval of that ballot language.

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, as we did for the other three measures, 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, and are hopeful that the revised ballot language can be promptly approved by the AGO.

- As before, the Secretary will not object to the AGO’s revision of the opening phrase for the yes/no language or the AGO’s revision of the “no” language. However, as previously explained in my letter dated August 12, 2020, the revisions are unnecessary to comply with A.R.S. § 19-125(D) and inconsistent with past language approved by the current elected Attorney General.
- The AGO’s assertion that the Arizona Supreme Court has established a “best practice” for articulating tax rates is misguided. The 100-summary language at issue in *Molera v. Reagan*, 245 Ariz. 291 (2018), explicitly stated that it would “raise” certain income taxes by specified percentages (3.46% and 4.46%). The Court concluded that the use of straight percentages *to describe the increases* was mathematically incorrect, or at the very least, ambiguous as to whether it referred to an absolute percentage point increase or a relative percentage increase. In that context, the Court noted that using the term “percentage points” would have made it clear the change was an absolute, rather than relative, change. *Id.* at 298. In contrast to the language at issue in *Molera v. Reagan*, the Secretary’s proposed ballot language clearly conveys to voters that a 3.5% surcharge (a correct usage of a straight percentage) would apply to taxable income above the specified levels. There is no ambiguity or danger of confusion. Indeed, this use of a straight percentage is consistent with the use of a straight percentage in the ballot language for the Smart and Safe Arizona Act, which the AGO has already approved. There’s no legitimate basis for requiring “percentage point” here when it was unnecessary for Smart and Safe. Accordingly, and out of consideration for limited ballot space, we have retained references to percent, rather than “percentage point.”
- The AGO is also incorrect that information about current tax rates are needed “to adequately explain the essential change in existing law.” Again, the Act would establish a new 3.5% surcharge on certain taxable income. This is the essential change in the law. As the AGO insisted with regard to the ballot language for the Smart and Safe Arizona Act, the language should include only the essential changes in the law and need not describe provisions of law that remain unchanged. Accordingly, the entirety of the description of existing taxes and resulting “total tax rate” should be deleted. Doing so would be consistent

with recent court rulings in the legal challenges to the analyses drafted by Legislative Council for both the Invest in Education Act and the Stop Surprise Billing and Protect Patients Act, which struck parentheticals for adding confusion or bordering on advocacy. However, in an effort at compromise, we have proposed line edits that communicate that the 3.5% surcharge is in addition to already existing tax rates but omit the lengthy, unnecessary, and potentially confusing discussion of existing rates and the resulting total tax rate.

Along with the final ballot language for the other three initiatives, the Secretary has enclosed updated ballot language for the Invest in Education Act 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.

As you know, we initially provided the AGO with the Secretary's proposed ballot language for the Invest in Education Act, along with the three other measures, on July 10, 2020. Despite our urging that the AGO not needlessly withhold feedback on that language while litigation proceeds, we did not receive feedback on Invest in Education until yesterday, August 18, 2020. As you know, the Secretary of State's Office has a deadline of August 21, 2020 to finalize the print file for the Publicity Pamphlet and we need to have a version of the file prepared that includes the Invest in Education Act. **Accordingly, we respectfully request approval of the enclosed ballot language by 12:00 p.m. on August 20, 2020. If any discussion is needed, please do not hesitate to call me directly.**

Thank you in advance for your consideration and attention to this important matter.

Very truly yours,



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Enclosures