

SUPREME COURT OF ARIZONA

Arizona Together v. Brewer

214 Ariz. 118 (2007) (Ariz. 2007) · No. CV-06-0277-AP/EL · Decided January 12, 2007

SUMMARY

The Supreme Court of Arizona held that Proposition 107, a proposed constitutional amendment concerning marriage and marriage-like legal statuses, satisfied Arizona's separate amendment rule under Article 21, Section 1. The court concluded that the measure's provisions were both topically related and sufficiently interrelated to constitute a single amendment. The court also rejected a strictly procedural interpretation of the separate amendment rule and abandoned the reasonable-voter analysis as an independent factor.

CASE DETAILS

COURT	Supreme Court of Arizona
WRITING FOR THE COURT	Chief Justice McGregor; Ruth V. McGregor; Rebecca White Berch; Michael D. Ryan; Andrew D. Hurwitz; W. Scott Bales
JURISDICTION	Arizona
DECIDED	January 12, 2007
DOCKET	CV-06-0277-AP/EL
DISPOSITION	affirmed
PROCEDURAL POSTURE	Opponents of Proposition 107 brought an action under A.R.S. § 19-122.C seeking to enjoin the Secretary of State from placing the proposed constitutional amendment on the ballot. The superior court held that Proposition 107 complied with Arizona's separate-amendment rule. The Arizona Supreme Court affirmed.
STANDARD OF REVIEW	De novo review of the legal question whether a voter initiative complies with the separate-amendment rule of Article 21, Section 1 of the Arizona Constitution.
PRECEDENTIAL VALUE	Published, precedential opinion of the Arizona Supreme Court, decided en banc.
PARTIES	Arizona Together, Kaitlin Meadows, Albert Lannon, Amalia Antonioli, Frank Montoya, Al Brezney, Maxine Piatt, Paul Knobbe, Teresa Hewitt, Glen Cromer, Rebecca Miller v. Janice K. Brewer, in her official capacity as Secretary of State for the State of Arizona

TOPICS

election law

ballot access

constitutional law

marriage

family law

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Proposition 107 complied with Article 21, Section 1 of the Arizona Constitution's separate-amendment rule.
2. Whether the separate-amendment rule imposes substantive limits requiring proposed constitutional-amendment provisions to share a common purpose or principle, rather than merely prescribing ballot-submission procedures.
3. Whether the court should continue to consider a reasonable-voter factor in determining whether proposed amendment provisions are sufficiently interrelated.

HOLDINGS

1. Proposition 107 complied with Article 21, Section 1 because its provisions were sufficiently related to a common purpose or principle: preserving and protecting marriage through an exclusive definition and a prohibition on substantially similar legal statuses for unmarried persons.
2. Article 21, Section 1 imposes substantive limits on proposed constitutional amendments and requires judicial review of whether the provisions constitute separate amendments; it is not merely a procedural instruction concerning ballot preparation.
3. The court abandoned the reasonable-voter inquiry as an alternative factor in Arizona separate-amendment jurisprudence.

KEY QUOTATIONS

“We now ask whether the provisions of a proposed amendment “are sufficiently related to a common purpose or principle that the proposal can be said to ‘constitute a consistent and workable whole on the general topic embraced,’ that, ‘logically speaking, . . . should stand or fall as a whole.’” (149 P.3d at 744-745)

“This “common purpose or principle” test requires us to analyze two components. First, the proposed amendment’s provisions must be topically related: All the provisions must embrace the same “general topic.”” (149 P.3d at 745)

“Because it appears that the reasonable voter inquiry has led to substantial confusion among litigants, has added nothing to assure consistency in outcome, and provides little more than a tautological justification for a conclusion best reached by applying the topicality and interrelatedness approach to assess whether a common purpose or principle joins various provisions of a proposed amendment, we can no longer justify using the reasonable voter alternative as a part of our separate amendment jurisprudence.” (149 P.3d at 749)

FACTUAL BACKGROUND

Proposition 107 was a voter-initiated proposed constitutional amendment that would have added Article 30 to the Arizona Constitution. It defined marriage as only a union between one man and one woman and prohibited the state and its political subdivisions from creating or recognizing a legal status for unmarried persons similar to marriage. Arizona Together contended that the measure combined separate provisions concerning marriage, same-sex marriage, civil unions, domestic partnerships, and benefits for domestic partners.

PROCEDURAL HISTORY

Arizona Together challenged Proposition 107 before the 2006 general election, arguing that the measure improperly combined multiple constitutional amendments. After a hearing, the superior court rejected the challenge under the test announced in *Kerby v. Luhrs*. The Arizona Supreme Court entered an order affirming on August 31, 2006, and issued this opinion explaining its reasoning. Arizona voters later rejected Proposition 107 at the November 7, 2006, election.

DISPOSITION

affirmed

CASES CITED

- *Kerby v. Luhrs*, 44 Ariz. 208, 36 P.2d 549 (1934)
- *Clean Elections Inst., Inc. v. Brewer*, 209 Ariz. 241, 99 P.3d 570 (2004)
- *Korte v. Bayless*, 199 Ariz. 173, 16 P.3d 200 (2001)
- *Slayton v. Shumway*, 166 Ariz. 87, 800 P.2d 590 (1990)
- *Tilson v. Mofford*, 153 Ariz. 468, 737 P.2d 1367 (1987)
- *State ex rel. Jones v. Lockhart*, 76 Ariz. 390, 265 P.2d 447 (1953)
- *Taxpayer Prot. Alliance v. Arizonans Against Unfair Tax Schemes*, 199 Ariz. 180, 16 P.3d 207 (2001)
- *Derendal v. Griffith*, 209 Ariz. 416, 104 P.3d 147 (2005)
- *State ex rel. Adams v. Herried*, 10 S.D. 109, 72 N.W. 93 (1897)
- *Barrows v. Garvey*, 67 Ariz. 202, 193 P.2d 913 (1948)
- *State ex rel. Hudd v. Timme*, 54 Wis. 318, 11 N.W. 785 (1882)
- *State ex rel. McClurg v. Powell*, 77 Miss. 543, 27 So. 927 (1900)
- *People ex rel. Elder v. Sours*, 31 Colo. 369, 74 P. 167 (1903)
- *Hammond v. Clark*, 136 Ga. 313, 71 S.E. 479 (1911)
- *League of Or. Cities v. State*, 334 Or. 645, 56 P.3d 892 (2002)
- *Legislature v. Eu*, 54 Cal. 3d 492, 816 P.2d 1309 (1991)