

Issue: Ignoring Voters

## Arizona GOP Legislators: Thwarting the Will of Voters

### GOP to voters: “We know better than you, and we don’t care what you want”

Imagine this scenario: You’ve worked hard and saved for the car of your dreams. It’s a beautiful little sports car, perfect for road trips with your sweetheart. You order it specially from the car dealer and wait for your customized ride to be delivered. The day arrives, you go to pick it up, and find... a station wagon. “But I ordered a sports car!” you protest. “We know your needs better than you do,” says the dealer. “Here’s your station wagon.”

That’s what the Republican-led legislature has been doing to Arizona’s voters for years. Never mind what the voters want, or how they vote on ballot initiatives. The legislature doesn’t care about the will of the voters. Instead, it caters to the will of the extreme right-wing voters, their most lucrative source of funding...even though those voters are in the minority. Think this is an extreme statement? Read on.

The Republican-led legislature has ignored or done its best to work around the will of its constituents on a number of issues. Among those issues are the minimum wage, school funding, ease of voting, the ability of localities to tighten rules where appropriate, and the initiative process itself.

### It’s Been Going on a Long Time.... Hence the Arizona Voter Protection Act

Thwarting the will of the voters has long been a practice on the part of the Arizona legislature. In 1998, voters initiated the Arizona Voter Protection Act via Proposition 105, due to many instances where the legislature had ignored the will of the voters.<sup>1</sup> Passage of the Arizona Voter Protection Act has not deterred Republicans; they have repeatedly ignored its provisions.

### The Legislature Opposes Minimum Wage Increases Approved by Voters

In 2006, Arizona voters approved Proposition 202, the Arizona Minimum Wage Initiative, which set the state minimum wage to \$6.75/hour effective January 1, 2007. Prior to that initiative there had been no state minimum wage; Arizona used the US Federal minimum wage, which was then \$5.15/hour.<sup>2</sup> Proposition 202 also allowed other localities such as counties, cities or towns to set a higher minimum wage. In 2016, Proposition 206, another voter initiative to raise the minimum wage, was approved by the voters.<sup>3</sup> Proposition 206 set the statewide minimum wage at \$10/hour on January 1, 2017, rising to \$12 by January 1, 2020, and by the cost of living thereafter. As of January 1, 2022, the minimum wage is \$12.80/hour.

In 2013, the Arizona Legislature decided that the provision in Proposition 202 to allow localities to establish higher minimum wages or benefits should not be allowed. The Legislature passed HB 2280 to forbid cities or counties from setting a minimum wage that exceeds the state minimum wage.<sup>4</sup> Laws passed by states to explicitly prevent localities from passing ordinances that fit the circumstances of that locality are called preemption laws. See Box 1 for more information on preemption laws in AZ.<sup>5</sup>

HB 2280 was challenged in court by the Flagstaff Living Wage Coalition. The judge hearing the case in 2015 found that the statute conflicted with Proposition 202, because it violated the [Arizona Voter Protection Act](#), which says that “the state legislature is prohibited from amending voter-approved initiatives unless the amending bill receives a three-fourths vote and furthers the initiative’s purpose.”<sup>6</sup> In 2016 the Republican legislators and governor tried again to overrule—that is, preempt—the voters’ will, and passed HB 2579, preventing local governments from increasing employee non-wage benefits above the state minimums.<sup>7,8</sup> The UFCW (Union of Food & Commercial Workers) challenged HB 2579 and won the case in the Maricopa County Superior Court. The case then went to the Arizona Court of Appeals, which upheld the lower court’s decision in 2019. The decision noted that HB 2579, like HB 2280 before it, was a violation of [Arizona Voter Protection Act](#).<sup>9</sup>

In 2016, while this jurisdictional drama was going on, the voters of Flagstaff approved Proposition 414, gradually raising the local minimum hourly wage from \$8.05/hour in 2016 to \$15 by 2021.<sup>10</sup> The Republican-dominated legislature continued its efforts to thwart the will of the voters. The Arizona Republicans passed HB 2756 in 2019, which “requires the state to calculate the cost to Arizona’s government when cities and counties raise the minimum wage above the statewide rate. If the state has to pay more for services in those communities because of a higher minimum wage, legislators could force local governments to cover the additional costs.”<sup>11</sup> In 2021 the state, ignoring the fact that state employees were specifically exempt from Flagstaff’s minimum wage requirement, attempted to collect \$1.1 million from Flagstaff in “indirect costs.” In October 2021, a municipal court judge blocked that attempt, ruling for the city on a technical deadline issue and finding that the state wasn’t authorized under any state law to collect “indirect costs” because the July 31 filing deadline had passed.<sup>12</sup> He did not address the constitutional issue of whether the state’s claim for indirect costs violated Proposition 202 and the [Voter Protection Act](#), but indicated his belief that this would be so. This case is ongoing. In November, 63% of the voters of Tucson approved their own initiative to set a higher minimum wage. Will the state try to collect “indirect costs” again? Stay tuned.

### Box 1. Arizona’s 2016 Blanket Preemption Law

Arizona has an overarching, or blanket, preemption law that applies to all policy domains. SB 1487, enacted in 2016, handed incredible power to individual state legislators and to the attorney general.

This law:

1. Enables any individual member of the state legislature to compel the state attorney general to investigate whether a local government’s ordinance or official action conflicts with state law, and
2. Causes the withholding of state revenue-sharing funds that would otherwise have been distributed to the locality if the attorney general, at his sole discretion, finds a violation and the local government refuses to come into compliance.

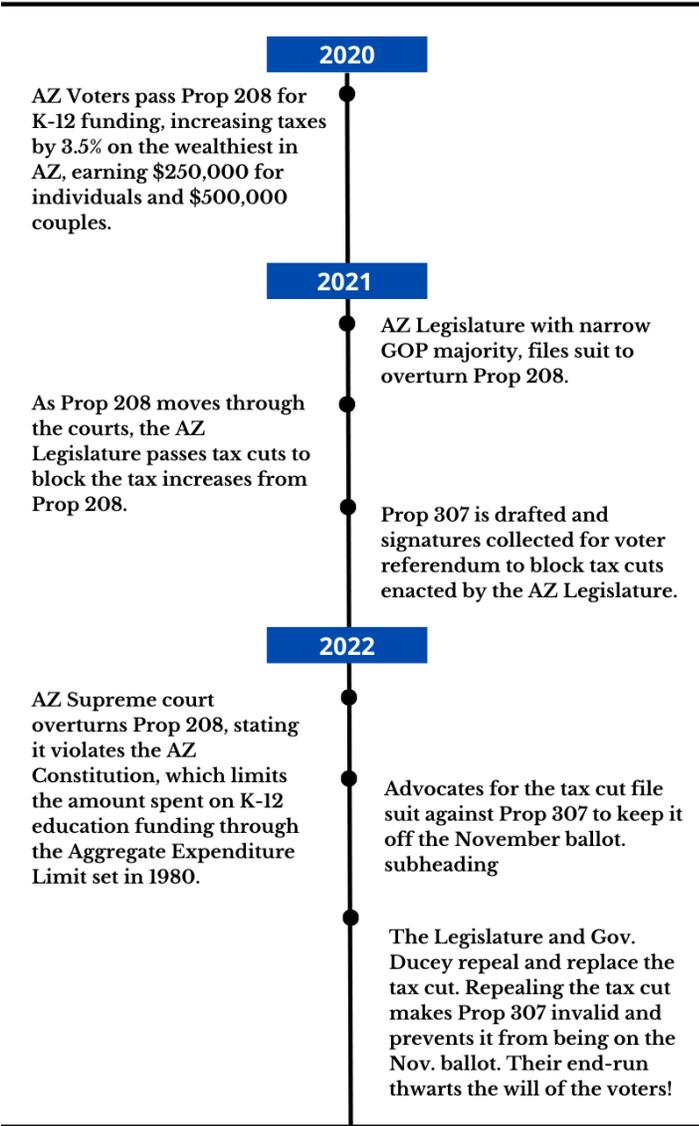
## The Republicans Don't Want Taxes to Fund Schools

In the 2020 election, a 51.7% majority of Arizona voters approved Proposition 208, the “Tax on Incomes Exceeding \$250,000 for Teacher Salaries and Schools Initiative.” This measure required a 3.5% surcharge on high-income Arizonans: individuals making \$250,000 or more a year and couples making at least \$500,000. Public schools were the designated recipients of the new funds.

Once again, the will of voters was disregarded. The legislature sued the Arizona State Treasurer and the Director of the Department of Revenue, asserting that setting new taxes is exclusively the purview of the legislature. The defendants argued that the surcharge was a grant for schools, not a tax. In 2021 and 2022, two state court decisions and an Arizona State Supreme Court decision scuttled the effort to increase school funding. The Supreme Court’s logic: the Arizona Constitution sets spending limits for K-12 education according to its Aggregate Expenditure Limit (AEL), which was set in 1980. The AEL creates an expenditure limit for public schools (but not charter schools) based on aggregate spending for all districts, adjusted for attendance and inflation.<sup>13</sup>

Several court decisions concluded that enforcing Proposition 208 could exceed the limits. In March, Maricopa County Superior Court Judge John Hannah found that it would exceed those limits.<sup>14</sup> He also noted, however, that the plaintiffs’ arguments effectively reduced the power of the electorate and allowed the legislature more latitude to thwart the will of the voters: “... the logic of Fann [the lawsuit] entirely relieves the legislature of any political responsibility for accommodating the policy decisions the electorate makes by initiative. If legislators can find a legal flaw in a measure they disagree with as a matter of policy, their incentive is now not to fix it but instead to exploit it. They can then point to the political obstacles created by their own opposition as a reason for the courts to stop the political fight and declare the legislature the winner.”<sup>15</sup>

### AZ Voters are Repeatedly Blocked by GOP Legislators from Increasing K-12 Funding



As Proposition 208 was moving through the courts, the state legislature's narrow Republican majority moved to upend the voters' will by enacting tax-cut measures designed to shield high-income citizens from the impact of Proposition 208, should it survive the court challenges.<sup>16</sup> In response, proponents of increasing taxes to pay for public school expenses got enough signatures for a new ballot measure to block the tax cuts: Proposition 307, the "Invest in Arizona" initiative.<sup>17</sup>

When advocates for tax cuts went to court to block the new referendum, another Maricopa County Superior Court judge, Katherine Cooper, rejected the claim that the tax cut bill was not subject to a voter referendum. In late April 2022, the Arizona state Supreme Court overruled Judge Cooper, just two days after hearing arguments. The Court offered no reasoning for their decision overruling Judge Cooper.

Arizona law doesn't allow voter-approved propositions to overturn measures for the "support and maintenance" of state government. Even though Proposition 307 sought to overturn a measure because it reduced funds for state government—Judge Cooper's reason for allowing the referendum to go forward—the high court rejected her logic. The consequence is that the state's income tax rate will drop over the next several years, significantly reducing the funds available to already-underfunded public schools.<sup>18</sup> Their written decision, thwarting voters' ability to make decisions, is pending. It should be noted that five of the seven State Supreme Court Justices were appointed by the current governor, Republican Doug Ducey. According to Arizona Central, "The immediate impact is Arizona's income tax is on track to drop to 2.5% for all taxpayers by 2024, and Proposition 307, championed by education and civic groups, is off the ballot."<sup>19</sup>

## **The Republican-Controlled Legislature Isn't Concerned about Climate Change**

One of the responsibilities of the Arizona Corporation Commission (ACC) is to regulate Arizona's public utilities. Unlike in many states, the five members of the Arizona ACC are not appointed by the governor or legislature but are directly elected by the voters. At the moment, three of the commissioners are Republicans and two are Democrats. After months of hearings and negotiations among the ACC, the Arizona utilities, large and small businesses, environmental groups and even faith leaders, a set of proposed rules to address climate change was rolled out in 2021. The rules set deadlines for energy production to become carbon-free by certain dates (50% carbon free by 2035; 100% carbon free by 2070) and for companies to invest in renewable energy sources for homeowners and to consider siting of new renewable energy plants in place of old, shuttered or soon-to-be-shuttered coal plants. This last item would have been an economic boon to the Tribes, because the coal plants had been on reservation land.<sup>20</sup> The two Democrats and the Republican chair of the Commission were expected to vote "Yes."

The Republicans in the legislature were not happy about this proactive action. They introduced HB 2248 and SB 1175<sup>21</sup> which would have stripped authority from the ACC (elected by the voters) and given it to the legislature, effectively blocking the ACC from adopting carbon-free deadlines. The bills did not pass—but not for lack of trying—and the ACC kept its authority. However, the Republican ACC Commissioner changed his position and in May 2021 the ACC voted 3-2 to reject the new rules to help mitigate climate change.<sup>22</sup>

The state's largest utility, Arizona Public Service, has said it would keep its vow to provide 100% clean energy by 2050 despite the rules package being defeated.<sup>23</sup> Tucson Electric Power has also stated that the proposed rules were consistent with its own plans.<sup>24</sup> It is not clear whether other utilities will follow suit.



In 2020 the Republicans passed HB 2686, preempting the actions of localities to fight climate change on a local level in the absence of state action. The new law states that natural gas utilities shall not be “subject to further regulation by a municipality” and that, in effect, building permits could not be issued with restrictions on the energy utility that would provide power to them. The cities of Tucson and Phoenix both opposed the bill.<sup>25</sup>

## **The Republicans don’t like Voter Initiatives! They don’t want voters to affect laws!**

Two bills currently making their way through the legislature are specifically designed to make it more difficult to get a voter initiative on the ballot. The Arizona Constitution currently says that a petition campaign must receive a number of signatures equivalent to at least 10% of those who voted in the last gubernatorial campaign, and 15% if it’s a change to the Constitution. This is difficult and expensive enough already, but nothing compared to the proposed changes.

House Concurrent Resolution 2014 (and its companion bill Senate Concurrent Resolution 1025) would require that the percentage requirement be met in each of the state’s 30 legislative districts, rather than statewide.<sup>26</sup> Furthermore, House Concurrent Resolution 2015 says that once an initiative is placed on the ballot, it would have to pass by a supermajority of at least 60% of voters to become law.<sup>27</sup>

## **Conclusion: If You Want to Have a Say in Your Representation, Elect Democrats**

Remember that new car, where you asked for one model and got another? That’s exactly what the Republicans have been doing in Arizona for decades. If Republicans are in control of the Legislature and Governor’s office, they’ll keep working to please their campaign donors, not their constituents. If you want to have a say in Arizona life, put Democrats back in power. Vote! Every office matters.

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<sup>1</sup> [https://ballotpedia.org/Arizona\\_Minimum\\_Wage,\\_Proposition\\_202\\_\(2006\)](https://ballotpedia.org/Arizona_Minimum_Wage,_Proposition_202_(2006))

<sup>2</sup> <https://www.azleg.gov/jlbc/06prop202fn.pdf>

<sup>3</sup> [https://ballotpedia.org/Arizona\\_Minimum\\_Wage,\\_Proposition\\_202\\_\(2006\)](https://ballotpedia.org/Arizona_Minimum_Wage,_Proposition_202_(2006))

<sup>4</sup> [https://ballotpedia.org/Arizona\\_Minimum\\_Wage,\\_Proposition\\_202\\_\(2006\)](https://ballotpedia.org/Arizona_Minimum_Wage,_Proposition_202_(2006))

<sup>5</sup> <https://legiscan.com/AZ/text/SB1487/id/1374373>

<sup>6</sup>

[https://ballotpedia.org/Arizona\\_Minimum\\_Wage,\\_Proposition\\_202\\_\(2006\)#Flagstaff\\_Living\\_Wage\\_Coalition\\_v.\\_Arizona\\_.282015.29](https://ballotpedia.org/Arizona_Minimum_Wage,_Proposition_202_(2006)#Flagstaff_Living_Wage_Coalition_v._Arizona_.282015.29)

<sup>7</sup> <https://www.azleg.gov/legtext/52leg/2r/laws/0203.pdf>

<sup>8</sup> <https://ogletree.com/insights/arizona-law-prohibiting-municipalities-from-enacting-employee-benefits-ordinances-held-unconstitutional/>

<sup>9</sup> [https://ballotpedia.org/Arizona\\_Minimum\\_Wage,\\_Proposition\\_202\\_\(2006\)#cite\\_note-case2-7](https://ballotpedia.org/Arizona_Minimum_Wage,_Proposition_202_(2006)#cite_note-case2-7)

<sup>10</sup> <https://catalog.results4america.org/program/living-wage-laws/gradual-minimum-wage-increase-flagstaff-arizona>

<sup>11</sup> <https://www.azcentral.com/story/news/politics/legislature/2019/08/19/arizona-legislature-house-bill-2756-minimum-wage-flagstaff/2014359001/>

<sup>12</sup> <https://www.usnews.com/news/best-states/arizona/articles/2021-10-11/judge-sides-with-flagstaff-over-state-in-minimum-wage-fight>

<sup>13</sup> <https://www.arizonaea.org/resource-library/arizonas-constitutional-aggregate-expenditure-limit-ael>

<sup>14</sup> [https://ballotpedia.org/Arizona\\_Proposition\\_208,\\_Tax\\_on\\_Incomes\\_Exceeding\\_\\$250,000\\_for\\_Teacher\\_Salaries\\_and\\_Schools\\_Initiative\\_\(2020\)](https://ballotpedia.org/Arizona_Proposition_208,_Tax_on_Incomes_Exceeding_$250,000_for_Teacher_Salaries_and_Schools_Initiative_(2020))

<sup>15</sup> <https://www.courthousenews.com/wp-content/uploads/2022/03/CV2020-015495-3.11.2022-Ruling.pdf>

<sup>16</sup> <https://azeconcenter.org/repeal-and-replace-tax-scheme-erases-prop-307-and-the-voice-of-arizona-voters/>

<sup>17</sup> <https://azeconcenter.org/repeal-and-replace-tax-scheme-erases-prop-307-and-the-voice-of-arizona-voters/>

<sup>18</sup> <https://www.azcentral.com/story/news/politics/arizona/2022/04/21/arizona-supreme-court-wont-let-citizens-vote-flat-tax-referendum/7403390001/>

<sup>19</sup> <https://www.azcentral.com/story/news/politics/arizona/2022/04/21/arizona-supreme-court-wont-let-citizens-vote-flat-tax-referendum/7403390001/>

<sup>20</sup> <https://www.usnews.com/news/best-states/arizona/articles/2022-01-26/arizona-utility-regulators-again-reject-clean-energy-rules>

<sup>21</sup> <https://azsolarcenter.org/energy-bills-2021>

<sup>22</sup> <https://www.sierraclub.org/arizona/blog/2021/05/arizona-corporation-commission-kills-energy-rules>

<sup>23</sup> <https://www.usnews.com/news/best-states/arizona/articles/2022-01-26/arizona-utility-regulators-again-reject-clean-energy-rules>

<sup>24</sup> [https://tucson.com/business/arizona-regulators-reject-new-clean-energy-rules-after-years-of-debate/article\\_44e39fb8-7ed6-11ec-a674-ab67a701fab9.html](https://tucson.com/business/arizona-regulators-reject-new-clean-energy-rules-after-years-of-debate/article_44e39fb8-7ed6-11ec-a674-ab67a701fab9.html)

<sup>25</sup> <https://www.phoenixnewtimes.com/news/natural-gas-protection-bill-southwest-gas-arizona-legislature-11442203>

<sup>26</sup> <https://www.azmirror.com/2022/02/10/house-panel-oks-new-gop-restrictions-on-citizen-initiatives/>

<sup>27</sup> <https://www.azcentral.com/story/news/politics/legislature/2021/02/17/arizona-lawmakers-target-voter-initiatives-referendums/6790074002/>