

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2026-030486

08/07/2026

HONORABLE DAVID MCDOWELL

CLERK OF THE COURT
K. Johanson
Deputy

WARREN PETERSON, et al.

JOSEPH KANEFIELD

v.

ADRIAN FONTES, et al.

KARA MARIE KARLSON

NATHAN T ARROWSMITH
JUDGE MCDOWELL

UNDER ADVISEMENT RULING

Pending before the Court is Plaintiffs Warren Petersen and Steve Montenegro's July 24, 2026 *Verified Special Action Complaint*. The *Complaint* seeks a declaration that the descriptive title and "yes/no" language for Proposition 145 violates A.R.S. §19-235(D); an injunction preventing the Secretary of State from printing the current descriptive title and "yes/no" language for Proposition 145 on the official ballot; and a writ of mandamus compelling the Attorney General to approve a descriptive title and "yes/no" language for Proposition 145 that complies with A.R.S. §19-125(D).

The Secretary of State and the Attorney General oppose the *Complaint* and the relief sought by Plaintiffs. The Attorney General, arguing for both Defendants, asserts the descriptive title and the "yes/no" language complies with A.R.S. §19-125(D) and is neither false nor misleading and it provides necessary and appropriate information to the voting public.

The parties stipulated that an evidentiary hearing was not required and the *Complaint* could be resolved by the Court as a matter of law. The Court considered each party's *Opening Brief* filed July 31, 2026, each party's *Answering Brief* filed August 4, 2026; the *Amicus Brief* of the Arizona Education Association; and the supplemental authority submitted by the parties on August 4, 2026. Oral argument was held on August 4, 2026.

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The Court finds the descriptive title and “yes/no” language for Proposition 145 does not comply with A.R.S. §19-125(D). The reference to Proposition 212 in the title and the “yes/no” language is not a reference to existing law. Therefore, the Secretary of State is enjoined from using the currently proposed title and “yes/no” language on the official ballot.

PROPOSITION 145 AND PROPOSITION 212

Proposition 145 is a proposed Constitutional Amendment adding a new section to Article XI (Education). This proposed new section entitled “Scholarship accounts; confiscation of monies prohibited; voidability of future bills or measures; definitions.” The proposed section has three operative provisions:

- the Insulation provision, states, in summary that the “State may not confiscate monies from any scholarship account of any student who is a child of a military family” that can be used for tuition or fees at eligible postsecondary institutions.
- the Anti-Severance provision, states in part, that any “entire bill or measure” enacted into law or approved by the voters is void if any part of it violates the insulation provision.
- the Retroactivity provision makes the Insulation and Anti-Severance provisions retroactive to November 1, 2026.

Important for this matter, the Retroactivity provision of Proposition 145 makes the Insulation and Anti-Severance provisions retroactive to November 1, 2026, two days before the November 3, 2026 election at which the voters will decide whether to approve Proposition 212.

Proposition 212 is an initiative petition intended to reform the Empowerment Scholarship Account program. One of the provisions of Proposition 212 allows the State to recoup ESA funds from participants including children of military families.

TITLE AND YES/NO LANGUAGE

The Secretary of State and the Attorney General prepared the following title and yes/no language for Proposition 145:

WOULD NULLIFY PROPOSITION 212 (BELOW) IF VOTERS ENACT IT
THIS ELECTION; PROHIBITS THE STATE FROM SWEEPING FUNDS
FROM CERTAIN STATE-RUN SCHOLARSHIP ACCOUNTS IF THE
STUDENT’S PARENT HAS PROVIDED CERTAIN ACTIVE-DUTY
MILITARY SERVICE; NULLIFIES ALL LAWS THAT WOULD SWEEP ANY
SUCH FUNDS INCLUDING UNRELATED PROVISIONS OF THOSE LAWS

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A "yes" vote shall have the effect of amending the Arizona Constitution to (1) nullify Proposition 212, which imposes spending and income limits on the Empowerment Scholarship Account (ESA) program, if the people enact that Proposition during this election; (2) prohibit the state from sweeping funds from certain state-run scholarship accounts if the student's parent has provided certain active-duty military service; and (3) nullify all parts of any law that would sweep any such funds, including unrelated provisions of those laws, applying retroactively to all laws enacted on or after November 1, 2026.

A "no" vote shall have the effect of maintaining current constitutional provisions related to scholarship accounts and allowing Proposition 212 to go into effect if voters enact it this election.

Plaintiffs argue the references to Proposition 212 in the title and "yes/no" language for Proposition 145 violates A.R.S. §19-125 because it is not a reference to "existing law" and constitutes "partisan, argumentative, and non-neutral" language. *Plaintiff's Opening Brief*, page 2, line 20.

A.R.S. §19-125(D) provides:

D. A descriptive title shall be printed on the official ballot immediately below the number of the measure and the official title of each measure. The descriptive title shall contain a summary of the principal provisions of the measure, not to exceed fifty words, which shall be prepared by the secretary of state and approved by the attorney general and shall include the following or the ballot shall comply with subsection F of this section:

A "yes" vote shall have the effect of _____.

A "no" vote shall have the effect of _____.

The blank spaces shall be filled with 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 in that particular manner. In the case of a referendum, a "yes" vote shall have the effect of approving the legislative enactment that is being referred. The "yes" and "no" language shall be posted on the secretary of state's website after being approved by the attorney general and before the date on which the official ballots and the publicity pamphlet are sent to be printed. Below the statement of effect of a "yes" vote and effect of a "no" vote there shall be printed the corresponding words "yes" and "no" and a place for the voter to put a mark as defined in § 16-400 indicating the voter's preference.

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Defendants argue Proposition 212 could become law simultaneously with Proposition 145 and the proposed language provides “the voting public with necessary and appropriate information regarding Prop 145’s effect.” *Defendants’ Joint Opening Brief*, page 7, lines 7-8.

The Court acknowledges its role is not to determine whether the proposed title and “yes/no” language is the best or most reasonable description but to determine whether it complies with the statute and is not false nor misleading and provides necessary and appropriate information to the voting public. See *Quality Education & Jobs Supporting I-16-2012 v. Bennett*, 231 Ariz 206 (2013). Plaintiffs’ only argument about misleading or non-neutral language is the reference to Proposition 212.

The court finds the reference to Proposition 212 in the proposed ballot language for Proposition 145 does not comply with A.R.S. §19-125(D). This statute requires a statement of the effect of the ballot measure on existing laws. The reference to Proposition 212 is not a “stat[ement of] the essential change in the existing law”. Proposition 212 remains subject to the vote of the electorate and only becomes law if approved. Even if the Court were to measure what is an “existing” law as of the date of voting, Proposition 212 would not be an existing law. It may or may not become a law, but that determination isn’t made until all votes are cast. If Proposition 212 does not receive the required number of votes it does not become law and Proposition 145 would have no effect on it.

Adoption of Defendants’ proposal would require the Court to approve something that is not within the plain language of the statute. That the Court cannot do. A.R.S. §19-125(D) does not authorize reference to other ballot measures or a description of the effect one ballot measure would have on another. Courts will not inflate, expand, stretch, or extend a statute to matters not falling within its expressed provisions. *Arizona Preservation Foundation v. Pima Community College District Board*, 259 Ariz. 539 (2025). Inserting provisions into a statute would not constitute interpretation of the statute as written, but would instead constitute rewriting the statute -- that is a legislative, not a judicial, function. *First Nat. Bank of Arizona v. Superior Court of Maricopa County*, 112 Ariz. 292 (1975).

Defendants argue the Court should consider *Lane v. City of Scottsdale*, 258 Ariz. 460 (App. 2024) where the ballot language commented on a tax rate that existed but would expire the day before the effective date of the proposed new tax rate. Defendants argue the ballot measure in *Lane* must be referring to a future situation. However, the tax rate at issue in *Lane* was in existence and was subject to expiration when the ballot language was written and the ballots printed. The ballot language in *Lane* indicated the existing tax rate and also indicated it would expire before the effective date of the new tax rate. *Lane* did not address a situation, such as this, where another proposition on the same ballot would be affected by a vote on the subject proposition if both passed.

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Defendants also submitted language from a 2024 ballot measure which proposed, if passed, to invalidate the votes cast on another portion of the ballot. Neither Defendants nor Plaintiffs indicated that ballot language had been challenged or how any court interpreted it. While the 2024 proposition may be an example of the Secretary submitting language in the past that commented on voting on another issue on the ballot, the fact such ballot language was submitted previously does not establish it meets the requirements of A.R.S. §19-125.

Defendants argue the proposed language is an attempt to provide information to the voting public, and while that is a laudable purpose, the reference to other propositions exceeds the statutory authority under A.R.S. §19-125(D) which requires that the statements concern existing law. The legislature wrote A.R.S. §19-125(D) and the legislature must amend it if they intended to give the Secretary the authority to address the relationship between ballot measures.

IT IS ORDERED granting Plaintiffs' request for declaratory judgment in part, and injunctive relief in full and entering judgment in favor of Plaintiffs.

IT IS ORDERED enjoining Defendants and their agents from putting the proposed Title for Proposition 145 and the proposed "yes/no" language on the November 2026 general election ballot..

In addition to seeking injunctive relief, Plaintiffs brought this matter as a special action seeking a writ of mandamus compelling the Attorney General to prepare ballot language which complies with A.R.S. §19-123(D).

Mandamus relief is appropriate when the state actor has a non-discretionary legal duty to perform some act and fails to do so. Here Defendants provided the required language for inclusion on the ballot. Plaintiffs argue the language submitted demonstrates Defendants have acted arbitrarily, unjustly and in the abuse of discretion thus enabling the Court to act. The Court does not agree. If there were established case law on the issue of reference to other ballot measures, the Court might find Defendants acted in the abuse of its discretion, but there is not. This was a debatable issue. Further the injunction issued above will solve Plaintiffs' concern that Defendants may proceed by placing the proposed language on the November 2026 general election ballot.

IT IS ORDERED denying the request to issue a writ of mandamus.

IT IS ORDERED Plaintiffs must submit an application for attorney fees on or before **August 21, 2026**.

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No further matters remain pending. The Court enters this ruling as a final judgment pursuant to Rule 54(c), Ariz.R.Civ.Proc..

A handwritten signature in blue ink, appearing to read "D. McDowell", is positioned above a horizontal line.

HONORABLE DAVID MCDOWELL
JUDICIAL OFFICER OF THE SUPERIOR COURT