

## Affirmative-action initiative fails to make ballot

by *Matthew Benson and Glen Creno* - Aug. 22, 2008 12:00 AM  
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An initiative that would amend the Arizona Constitution to ban affirmative-action programs in the state was disqualified from the ballot Thursday by Secretary of State Jan Brewer.

Proposition 104, known as the Arizona Civil Rights Initiative, becomes the third measure this year to be booted from the ballot because of failure to submit enough valid signatures to the state. Prop. 104 proponents vowed to appeal, probably early next week.

In other action Thursday, Maricopa County Superior Court Judge Mark Aceto dealt a setback to supporters of a proposed transportation initiative as he refused to restore the measure to the ballot. Supporters of the TIME initiative, dealing with signature problems similar to the civil-rights measure, now plan to appeal to the state Supreme Court.

The Arizona Civil Rights Initiative initially submitted 334,735 signatures to the state. But following petition reviews by the Secretary of State's Office and the state's 15 county recorders, that number was whittled

down to 194,961 valid signatures. That's short of the 230,047 required for a Constitutional amendment.

The proposal is spearheaded by California businessman Ward Connerly and modeled after propositions in California and other states. In Arizona, the measure would ban preferential treatment on the basis of race, sex, color, ethnicity or national origin in public employment, education and contracts.

The initiative was drawn into the national spotlight in July when Arizona Sen. John McCain, the GOP's presumptive presidential nominee, said he was supportive. A decade earlier, McCain in speaking to Hispanic leaders condemned as "divisive" a ballot measure proposed by an Arizona lawmaker to ban affirmative action, though he never cited the referendum by name.

Now, Arizona Civil Rights Initiative Chairman Max McPhail is hopeful that a careful re-examination of the signatures initially deemed invalid may result in enough being overturned to qualify the measure for the ballot.

That already happened once earlier this month. The Medical Choice for Arizona Act was restored to the November ballot following a court challenge by advocates who were able to salvage enough signatures that had been ruled invalid.

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The future is far murkier for a transportation-tax initiative that's also appealing in a last-gasp attempt to make the ballot.

The state Supreme Court may have the last word on whether the \$42.6 billion statewide transportation plan, known as the TIME initiative, is put to voters. The court is expected to decide whether to take up the case next week.

It would be a final stop in a complex legal process that began when the secretary of state disqualified the TIME Coalition's initiative, saying it hadn't submitted the necessary 153,365 valid signatures.

TIME, a collection of business, political and other groups supported by Gov. Janet Napolitano, filed suit to overturn that decision.

But the group lost Thursday when Aceto agreed with Brewer's request to dismiss the portion of the case against her office. Aceto said afterward that it would be pointless to argue the side of the case against Maricopa County because there weren't enough disputed signatures there to put TIME on the ballot, even if TIME prevailed entirely.

Next, the state Supreme Court will decide whether to review the case and make a ruling or refuse jurisdiction.

The initiative calls for a one-cent-per-dollar increase in the state sales tax starting in 2010. Revenue would pay for freeways, highways, buses and trains all over the state.

TIME's acronym has proved to be fateful. Much of the group's legal challenge now revolves around deadlines and disputes about when TIME should have filed its legal challenge.

The deadlines for printing ballot-publicity brochures and other election materials are next week. If the Supreme Court decides that Aceto made a mistake, the case goes back to Aceto for resolution. So the whole issue could come down to the wire in a courtroom.

"Of course I'm worried about the squeeze," TIME attorney Paul Eckstein said Thursday.

Thursday's decision likely doesn't bode well for a trust-land reform initiative. It's backed by Napolitano and a host of environmental groups but also was found to have submitted an insufficient number of valid signatures to qualify for the ballot.

Thus far, seven measures have been certified for the ballot. Signatures for one additional measure are still being verified by the counties.

**Republic staff reporter Mary Jo Pitzl contributed to this article.**

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