



**STATE OF ARIZONA**  
**OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>THOMAS C. HORNE ATTORNEY GENERAL</p> <p>September 25, 2014</p>	<p>No. I14-006 (R14-008)</p> <p>Re: Procedures for disincorporating a municipality as set forth in A.R.S. §§ 9-211 through 9-226</p>
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To: Britt W. Hanson  
Chief Civil Deputy County Attorney, Cochise County

**Questions Presented**

You requested an opinion concerning the following questions regarding disincorporation under Arizona Revised Statutes (“A.R.S.”) §§ 9-211 through 9-226:

1. Do the provisions in A.R.S. §§ 9-212 and 9-215 that require those who petition for and those who vote on the disincorporation of a city or town to be property taxpayers in the municipality violate the Fourteenth Amendment to the United States Constitution’s Equal Protection Clause?
2. Is A.R.S. § 9-215’s requirement that to vote in a disincorporation election, one must have resided in the municipality for the six months preceding the election unconstitutional?
3. What do A.R.S. § 9-212(A)’s provisions requiring that those who sign a disincorporation petition be “bona fide residents” and “electors” mean?

### Summary Answers

1. Yes. By precluding nontaxpayers from petitioning for and voting on disincorporation, A.R.S. §§ 9-212 and 9-215 severely burden the right that the Equal Protection Clause confers on these citizens to participate in state elections on an equal basis with other citizens in the jurisdiction. The State must therefore demonstrate that the provisions are narrowly tailored to further a compelling state interest. Because nontaxpayers are just as interested in and just as affected by disincorporation as taxpayers, the State cannot establish that it has a compelling interest that justifies treating the two groups differently. Section 9-212's provisions that limit disincorporation petitioners and electors to property taxpayers and A.R.S. § 9-215's provision that limits disincorporation electors to property taxpayers therefore violate the Equal Protection Clause. This determination does not completely vitiate A.R.S. §§ 9-212 and 9-215, however, because their unconstitutional provisions are severable from their constitutional ones.
2. Yes. Section 9-215 establishes the qualifications for voting in a disincorporation election. Its requirement that electors have lived in the municipality for the six months preceding the election is unconstitutional because it violates the right to participate in state elections on an equal basis with other citizens in the jurisdiction as well as the right to travel. When this unconstitutional provision and the unconstitutional provision limiting disincorporation electors to property taxpayers are severed, A.R.S. § 9-215 requires that electors "possess the qualifications of electors for county officers." Section 16-101(B) establishes the requirements for being a "resident" and A.R.S. § 16-121(A) establishes the requirements for being a "qualified elector" for purposes of county officer elections.

3. (a) There is no definition of the term “bona fide residents” in A.R.S. §§ 9-211 through 9-226, and no other Arizona statute defines the term. But A.R.S. § 16-101(B) defines the term “resident” for voter registration purposes as a person who has an actual physical presence in Arizona (or for purposes of a political subdivision, an actual physical presence in the political subdivision), combined with an intent to remain. Because A.R.S. § 16-101(B) deals with the same general subject matter as A.R.S. § 9-212(A), the two should be construed together and the term “bona fide resident” in A.R.S. § 9-212(A) should be given the same meaning as the term “resident” in A.R.S. § 16-101(B).
- (b) There is no definition of the term “electors” in A.R.S. §§ 9-211 through 9-226 that would apply to petition signers under A.R.S. § 9-212(A). But A.R.S. § 16-121(A) provides that a “qualified elector for any purpose for which such qualification is required by law” is one who is at least eighteen years old on or before the election date, is qualified to register to vote under A.R.S. § 16-101, and is properly registered to vote. Since both statutes deal with electors, the two should be construed together and the term “elector” in A.R.S. § 9-212(A) should be given the same meaning as the term “qualified elector” in A.R.S. § 16-121(A).

### **Background**

Sections 9-211 through 9-226 establish a procedure that enables a city or town to choose to be disincorporated by the county board of supervisors and to then be reincorporated under a board of trustees form of government.<sup>1</sup> See A.R.S. § 9-211. The statutes initially require that a petition requesting disincorporation that is signed by “one half or more of the property taxpayers

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<sup>1</sup> There are two distinct sets of disincorporation statutes: A.R.S. § 9-102 and A.R.S. §§ 9-211 through 9-226. Section 9-102 applies to the complete termination of a municipal corporation without further reincorporation, and A.R.S. §§ 9-211 through 9-226 apply to disincorporation followed by reincorporation. Ariz. Att’y Gen. Op. I62-64-L.

who are bona fide residents and electors appearing on the last assessment roll of an incorporated city or town” be presented to the board of supervisors. A.R.S. § 9-212(A). After receiving the petition, the board of supervisors publishes a notice calling for an election concerning the disincorporation issue by the “qualified electors of the corporation who are property taxpayers therein.” A.R.S. § 9-212(B). It also appoints “bona fide resident electors” who are property taxpayers to be officers, inspectors, and clerks of the disincorporation election. A.R.S. § 9-213(A). Under A.R.S. § 9-215, electors shall “possess the qualifications of electors for county officers, and shall have resided in the corporation six months next preceding the election, and shall be property taxpayers in the corporation, and their names shall appear upon the assessment or tax rolls of the corporation next preceding the day of election.”

If a majority of votes is cast in favor of disincorporation, the county board of supervisors appoints three qualified electors to serve on the newly incorporated city or town’s board of trustees for staggered terms of one, two, and three years. A.R.S. § 9-217(A). The trustee whose term expires in one year is the board of trustees’ president. *Id.* One year after the city or town is reincorporated, an election to replace the trustee whose term is expiring and to choose the city or town’s elective officers is held. A.R.S. § 9-218(A). The board of trustees has broad general powers to govern the city or town, which include enacting ordinances to protect the public health, safety, and peace and prescribing punishments for violating those ordinances, A.R.S. § 9-219; levying taxes, A.R.S. § 9-220; and regulating voter registration, A.R.S. § 9-225. The board of trustees also appoints to serve at its pleasure a clerk of the board, A.R.S. § 9-222, a marshal, A.R.S. § 9-223, and a treasurer, A.R.S. § 9-224.

## Analysis

### **I. Excluding Nontaxpayers from Petitioning for and Voting on Disincorporation Violates the Equal Protection Clause, but This Determination Does Not Completely Vitiating A.R.S. §§ 9-212 and 9-215 Because Their Unconstitutional Provisions Are Severable from Their Constitutional Ones.**

#### **A. Although There Is No Constitutional Right to Vote on Municipal Corporation Matters, If the Legislature Provides for Elections Concerning Such Matters, the Procedures that It Establishes Must Satisfy Equal Protection Requirements.**

Municipal corporations are subdivisions of the State, and the Legislature has broad powers over them. *Goodyear Farms v. City of Avondale*, 148 Ariz. 216, 218, 714 P.2d 386, 388 (1986). As long as the Legislature complies with state and federal constitutional requirements, it may take any action that it deems appropriate with respect to municipal corporations. *Id.* This includes creating them, expanding or contracting their boundaries, or abolishing them. *Id.* There is no state or federal constitutional requirement that the Legislature seek the consent of state citizens before taking any action concerning a municipal corporation. *Id.* at 218-19, 714 P.2d at 388-89 (citing *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178-79 (1907)); *Skinner v. City of Phoenix*, 54 Ariz. 316, 320, 95 P.2d 424, 425 (1939)). State citizens therefore have no constitutional right to vote on decisions concerning municipal corporations. *See City of Tucson v. Pima Cnty.*, 199 Ariz. 509, 515, 19 P.3d 650, 656 (App. 2001); *Goodyear Farms*, 148 Ariz. at 219, 714 P.2d at 389. Although the Legislature does not have to subject decisions concerning municipal corporations to a vote, if it chooses to do so, it must comply with the Fourteenth Amendment to the United States Constitution's Equal Protection Clause. *See Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 629 (1969); *Goodyear Farms*, 148 Ariz. at 219, 714 P.2d at 389.

**B. Laws that Severely Burden the Constitutional Right to Participate in State Elections on an Equal Basis with Other Citizens in the Jurisdiction Must Satisfy Strict Scrutiny Review by Being Narrowly Tailored to Further a Compelling State Interest.**

The Equal Protection Clause's command that no State shall "deny to any person within its jurisdiction the equal protection of the laws" requires States to treat similarly situated persons alike.<sup>2</sup> *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). It does not as a general rule create any substantive rights or liberties, but instead establishes "a right to be free from invidious discrimination in statutory classifications and other governmental activity." *Harris v. McRae*, 448 U.S. 297, 322 (1980). There is, however, an exception in the voting rights area. The United States Constitution does not confer any general right to vote in state elections. *Id.* n.25; *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 34 n.74, 35 n.78 (1973). But its Equal Protection Clause does confer the substantive right to participate in state elections on an equal basis with other citizens in the jurisdiction. *Harris*, 448 U.S. at 322 n.25; *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972).

Although this right to vote on an equal basis with other citizens "is of the most fundamental significance under our constitutional structure," the Supreme Court has recognized that it is not an absolute right. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). Because the United States Constitution also gives States the power to prescribe the time, place, and manner of holding elections for United States senators and representatives, U.S. Const. art. I, § 4, cl. 1, the Court has acknowledged that States have the authority to regulate their own elections, *Burdick*, 504 U.S. at 433. It has also recognized that state election laws, whether they govern "the

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<sup>2</sup> The Arizona Supreme Court has construed the Arizona Constitution's Equal Privileges and Immunities Clause as having essentially the same effect as the United States Constitution's Equal Protection Clause. *Coleman v. City of Mesa*, 230 Ariz. 352, 361, 284 P.3d 863, 872 (2012). Arizona's clause provides as follows: "No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations." Ariz. Const. art. 2, § 13.

registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself,” will inevitably affect an individual’s right to vote. *Id.* (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)). It has further recognized that subjecting every state law that imposes any burden on the right to vote to the strict scrutiny standard of review, which requires that laws be narrowly tailored to further a compelling state interest, “would tie the hands of States seeking to assure that elections are operated equitably and efficiently.” *Id.* It has therefore rejected applying strict scrutiny to every law that burdens the right to vote and has instead adopted “a more flexible standard.” *Id.* at 434; *see also Chavez v. Brewer*, 222 Ariz. 309, 320, 214 P.3d 397, 408 (App. 2009) (acknowledging the flexible standard); *Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm’n*, 211 Ariz. 337, 345-48, 121 P.3d 843, 851-54 (App. 2005) (applying the flexible standard).

Under this standard, a court considering a challenge to a state election law must weigh “the character and magnitude” of the injury that the law imposes on the plaintiff’s constitutional rights against “the precise interests” that the State has identified as justifying that burden. *Burdick*, 504 U.S. at 434 (internal quotation marks omitted). In doing so, the court must consider the extent to which the State’s interests make it necessary to burden the plaintiff’s rights. *Id.* The level of scrutiny that a court applies under this standard depends upon the extent to which the law burdens the plaintiff’s rights. *Id.*; *Ariz. Minority Coal.*, 211 Ariz. at 346, 121 P.3d at 852. An election law that severely burdens the plaintiff’s constitutional rights will be upheld only if the State demonstrates that it satisfies strict scrutiny because it is narrowly tailored to further a compelling state interest. *Burdick*, 504 U.S. at 433-34; *Ariz. Minority Coal.*, 211 Ariz. at 346, 121 P.3d at 852. An election law that imposes only a reasonable, nondiscriminatory restriction on a plaintiff’s constitutional rights will be upheld if the State demonstrates that the

restriction serves important state regulatory interests. *Burdick*, 504 U.S. at 434; *see also Chavez*, 222 Ariz. at 320, 214 P.3d at 408 (acknowledging this standard).

**C. Section 9-212(A)'s Petition Procedure Implicates the Constitutional Right to Participate in State Elections on an Equal Basis with Other Citizens in the Jurisdiction Because It Allows Property Owners to Prevent an Election from Being Held.**

Under A.R.S. § 9-212(A), at least half the property taxpayers “who are bona fide residents and electors appearing on the last assessment roll of an incorporated city or town” must present a petition requesting disincorporation to the county board of supervisors before the board can call for a disincorporation election. This raises the threshold question whether A.R.S. § 9-212(A)'s petition procedure implicates the right to participate in an election on an equal basis with other citizens in the jurisdiction. Arizona courts have not addressed this issue with respect to A.R.S. § 9-212(A)'s petition procedure, but in *Goodyear Farms*, the Arizona Supreme Court considered whether A.R.S. § 9-471 violated equal protection principles by providing that only property owners could sign annexation petitions. 148 Ariz. at 218, 714 P.2d at 388. The statute required that a petition requesting annexation be submitted to the interested municipal corporation's governing body and that it be signed by the owners of “not less than one-half in value of the real and personal property” that would be subject to taxation if the annexation was completed. *Id.* The governing body then had complete discretion to decide whether to enact an ordinance annexing the territory in question. *Id.* at 221, 714 P.2d at 391. The plaintiffs contended that A.R.S. § 9-471's petition procedure was analogous to an election and that precluding them from signing a petition because they did not own any property therefore violated their right to vote. *Id.* at 219, 714 P.2d at 389.

In determining that this particular petition procedure was not analogous to an election, the supreme court cited *Gillard v. Estrella Dells I Improvement District*, 25 Ariz. App. 141, 146, 541



P.2d 932, 937 (1975), which concerned a statute that allowed the county board of supervisors to consider a petition signed only by real property owners requesting the creation of a county improvement district. *Goodyear Farms*, 148 Ariz. at 221, 714 P.2d at 391. The statute gave the board complete discretion after receiving such a petition to decide whether to create a district. *Gillard*, 25 Ariz. App. at 143-44, 541 P.2d at 934-35. The court of appeals rejected the argument that the petition procedure was analogous to an election, noting that creating county improvement districts was a legislative function, that the Legislature did not have to require that improvement districts be created by election, and that instead of providing for an election in this statute, it had provided for “petitioning procedures to an executive body performing a delegated legislative duty.” *Id.* at 143, 146-47, 541 P.2d 934, 937-38. The court of appeals therefore concluded that the petition procedure did not implicate the right to vote. *Id.* at 146-48, 541 P.2d at 937-39.

In addition to citing *Gillard* in *Goodyear Farms*, the supreme court cited several cases from other jurisdictions that had upheld annexation schemes similar to Arizona’s after determining that because they did not involve an election and they committed the final decision concerning annexation to a board or commission rather than to the voters, they did not implicate any equal protection voting rights concerns. 148 Ariz. at 221-22, 714 P.2d at 391-92 (citing *Carlyn v. City of Akron*, 726 F.2d 287, 289-90 (6th Cir. 1984); *Berry v. Bourne*, 588 F.2d 422, 424-25 (4th Cir. 1978); *Twp. of Jefferson v. City of W. Carrollton*, 517 F. Supp. 417, 420-21 (S.D. Ohio 1981); *Doenges v. City of Salt Lake City*, 614 P.2d 1237, 1239 (Utah 1980)). The supreme court concluded that Arizona’s annexation scheme did not implicate any equal protection voting rights concerns either. *Goodyear Farms*, 148 Ariz. at 222, 714 P.2d at 392. It

therefore determined that the annexation scheme was not subject to strict scrutiny and upheld it under rational basis review. *Id.* at 222-23, 714 P.2d at 392-93.

In reaching its conclusion, the supreme court distinguished *Curtis v. Board of Supervisors*, 501 P.2d 537 (Cal. 1972). *Goodyear Farms*, 148 Ariz. at 220, 714 P.2d at 390. The statute challenged in *Curtis* allowed the owners of fifty-one percent of the total assessed value of the property within the boundaries of an area that had been proposed for incorporation to file protests that would block an election in which all of the registered voters who had lived within the boundaries for a specified period could vote on incorporation. 501 P.2d at 541. The court held that the statute was subject to strict scrutiny because it burdened the right to vote by giving property owners the power to halt an election, thereby preventing all qualified voters from voting. *Id.* at 545-46. The statute at issue in *Curtis* differs from A.R.S. § 9-212(A), which makes submitting a petition a necessary condition to—rather than a veto of—a disincorporation election and allows only property taxpayers to vote on disincorporation. But the statutes are alike in the significant respect that they both allow property owners to block an election. Courts in other jurisdictions have also held that petition procedures that allow property owners to block an election implicate equal protection voting rights concerns. *See Murray v. Kaple*, 66 F. Supp. 2d 745, 747, 750 (D.S.C. 1999); *City of Seattle v. State*, 694 P.2d 641, 644-47 (Wash. 1985). Because A.R.S. § 9-212(A)'s petition procedure—like the procedure at issue in *Curtis* and unlike the procedure at issue in *Goodyear Farms*—allows property taxpayers to block an election, it implicates equal protection voting rights concerns.

**D. Provisions that Preclude Nontaxpayers from Petitioning for or Voting on Disincorporation Are Subject to Strict Scrutiny Review Because They Severely Burden Nontaxpayers' Rights to Participate in State Elections on an Equal Basis with Other Citizens in the Jurisdiction.**

The initial inquiry under the *Burdick* standard is the “character and magnitude” of the burden that the provisions of A.R.S. §§ 9-212 and 9-215 precluding nontaxpayers from voting on disincorporation and the provision of A.R.S. § 9-212 precluding nontaxpayers from petitioning for disincorporation impose. *See Burdick*, 504 U.S. at 434 (internal quotation marks omitted). Complete preclusion obviously imposes the severest of burdens on nontaxpayers’ right to vote on an equal basis with other citizens in the jurisdiction. *Ayers-Schaffner v. DiStefano*, 860 F. Supp. 918, 921 (D.R.I. 1994) (“A complete denial of the right to vote is a restriction of the severest kind.”). These provisions will therefore be upheld under the *Burdick* standard only if they satisfy strict scrutiny. *See Burdick*, 504 U.S. at 433-34; *Ariz. Minority Coal.*, 211 Ariz. at 346, 121 P.3d at 852; *see also Lemons v. Bradbury*, 538 F.3d 1098, 1103-04 (9th Cir. 2008) (stating that the Supreme Court has subjected the voting regulations of geographically defined governmental units that condition voting in unit-wide elections on property ownership to strict scrutiny because such regulations impose severe restrictions on the right to vote).

**E. Because Nontaxpayers Are as Interested in and as Affected by Disincorporation and Reincorporation Under A.R.S. §§ 9-211 through 9-226 as Property Taxpayers Are, the State Has No Compelling Interest that Would Justify Precluding Them from Petitioning for or Voting on Disincorporation.**

To satisfy strict scrutiny, the provisions of A.R.S. §§ 9-212 and 9-215 that permit only property taxpayers to petition for and vote on disincorporation must be narrowly tailored to further a compelling state interest. *Burdick*, 504 U.S. at 433-34. Governmental entities have sometimes attempted to justify statutory or regulatory classifications based on property ownership by arguing that property owners are more interested in, more affected by, or more

qualified to deal with the statute's or regulation's subject matter than those who own no property are. *See, e.g., Quinn v. Millsap*, 491 U.S. 95, 107 (1989) (stating that the defendants sought to justify a state law that allowed only real property owners to sit on a board charged with reorganizing local government by arguing that real property owners had “first-hand knowledge of the value of good schools, sewer systems and the other problems and amenities of urban life” and had a tangible stake in the long-term future of their areas); *Hill v. Stone*, 421 U.S. 289, 298-99 (1975) (stating that the defendants sought to justify provisions that limited the right to vote in city bond elections to property taxpayers by arguing that the provisions gave “some protection to property owners, who [would] bear the direct burden of retiring the city’s bonded indebtedness” through property taxes); *Cipriano v. City of Houma*, 395 U.S. 701, 704 (1969) (stating that the city sought to justify a state law that allowed only property owners to vote in elections to approve the issuance of municipal utility revenue bonds by arguing that property owners had a special pecuniary interest in such bonds because the utility system’s efficiency directly affected property and property values and placed the basic security of property owners’ investments in their property at stake). The Supreme Court has generally rejected such justifications, *see, e.g., Quinn*, 491 U.S. at 108-09; *Hill*, 421 U.S. at 299-01; *Cipriano*, 395 U.S. at 705-06, and has stated that classifications based on property ownership, like those based on wealth or race, “are traditionally disfavored,” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 668 (1966).

In the elections context, the Court has explained that when a statutory classification limits the right to vote to citizens who are allegedly primarily interested in or primarily affected by the election in question, the governmental entity will not be able to establish that the exclusion is necessary to achieve the articulated compelling state interest unless all those whom the classification excludes are in fact substantially less interested in or less affected by the election.

*Kramer*, 395 U.S. at 632. The Court has normally held that classifications based on property ownership were not narrowly tailored enough to satisfy this standard. See, e.g., *City of Phoenix v. Kolodziejski*, 399 U.S. 204, 209-11 (1970) (holding that those who owned no property were as interested in and as affected by general obligation bond elections as property owners were because (1) all city residents had a substantial interest in the city's facilities and services and (2) the election would affect those who owned no property as well as property owners even if the bond debt service obligations were completely met by property taxes because rental property owners would pass higher property taxes on to their tenants in the form of higher rent and commercial property owners would pass higher property taxes on to their customers in the form of higher goods and services prices); *Kramer*, 395 U.S. at 623, 630-33 & n.15 (holding that a statute that limited eligibility to vote in school board elections to those who owned or rented taxable real property in the school district or had children enrolled in district schools did not include all of those who were primarily interested in the elections because the fact that property taxes supported the school districts did not mean that only real property owners or renters felt the tax burden and the categories of persons who were allowed to vote excluded "interested and informed residents" who also had "a distinct and direct interest" in decisions concerning local schools); cf. *Quinn*, 491 U.S. at 107-09 (holding in a nonelection context that excluding those who owned no property from membership on a state board charged with reorganizing local government whose work would affect all citizens regardless of property ownership constituted invidious discrimination that did not satisfy rational basis review because "an ability to understand the issues concerning one's community does not depend on ownership of real property" and however reasonable it might be to assume that real property owners are attached to

their communities, a State could not rationally presume that anyone who did not own real property lacked such an attachment).

In the context of elections concerning municipal corporations, courts have noted that all citizens have an interest in the structure of local government, *Curtis*, 501 P.2d at 550; *City of Seattle*, 694 P.2d at 647-48, and that changes to the entire structure of local government interest and affect property owners and those who own no property alike, *Hayward v. Clay*, 573 F.2d 187, 190 (4th Cir. 1978). They have therefore concluded that governmental entities cannot establish that they have any compelling interest in limiting elections on matters such as annexation and incorporation to property owners.<sup>3</sup> See *Hayward*, 573 F.2d at 190; *Curtis*, 501 P.2d at 546-50; *Bd. of Lucas Cnty. Comm'rs v. Waterville Twp. Bd. of Trs.*, 870 N.E.2d 791, 800-01 (Ohio App. 2007); *City of Seattle*, 694 P.2d at 647-48.<sup>4</sup>

As the background section of this Opinion discusses, A.R.S. §§ 9-211 through 9-226 establish a procedure that enables a city or town to choose to be disincorporated by the county board of supervisors and to then be reincorporated under a board of trustees form of government. Because this is the type of fundamental change to the structure of local government that interests and affects all citizens, not just property taxpayers, the State has no compelling interest that

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<sup>3</sup> The Equal Protection Clause does not prohibit treating some voters differently from others with respect to special interest elections. Such elections involve entities (1) that are created for a limited purpose, (2) that do not exercise the full range of normal governmental powers, and (3) that perform functions that have a disproportionately greater effect on the specific class of people who are permitted to vote with respect to them than they do on the class of people who are excluded from voting with respect to them. *Ball v. James*, 451 U.S. 355, 362-71 (1981); *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719, 725-35 (1973); *Kessler v. Grand Cent. Dist. Mgmt. Ass'n*, 158 F.3d 92, 100-08 (2d Cir. 1998). Because the disincorporation of a city or town and its reincorporation under a board of trustees form of government involve changes to the basic structure of local government that do not have a disproportionately greater effect on property taxpayers than they do on nontaxpayers, this exception does not apply here.

<sup>4</sup> *Hayward*, 573 F.2d at 189, *Curtis*, 501 P.2d at 544-46, and *City of Seattle*, 694 P.2d at 646, relied on decisions that the Supreme Court issued before it clarified in *Burdick* that only restrictions that severely burden the right to participate in state elections on an equal basis with other citizens in the jurisdiction trigger strict scrutiny review. But since *Hayward* concerned a provision that required property owners to approve an annexation, 573 F.2d at 188-89, and *Curtis*, 501 P.2d at 541, 545-46, and *City of Seattle*, 694 P.2d at 644, concerned provisions that allowed property owners to block elections, the provisions that all three addressed imposed severe burdens and would also be subject to strict scrutiny under *Burdick*, 504 U.S. at 434.

would justify excluding nontaxpayers from petitioning for or voting on disincorporation. The provisions of A.R.S. §§ 9-212 and 9-215 that do so therefore violate the Equal Protection Clause.

**F. The Determination that the Provisions Limiting Petitioning for and Voting on Disincorporation to Property Taxpayers Violate the Equal Protection Clause Does Not Vitiolate A.R.S. §§ 9-212 and 9-215 in Their Entirety Because Their Unconstitutional Provisions Are Severable from Their Constitutional Ones.**

When a court determines that part of a statute is unconstitutional, it will not declare the entire statute unconstitutional if two requirements are met. The first requirement is that the statute's invalid portion can be excised from its valid portion in a manner that leaves the valid portion effective and enforceable as a complete law standing alone. *State v. Watson*, 120 Ariz. 441, 445, 586 P.2d 1253, 1257 (1978); *State v. Superior Court*, 106 Ariz. 365, 369, 371, 476 P.2d 666, 670, 672 (1970); *McCune v. City of Phoenix*, 83 Ariz. 98, 106, 317 P.2d 537, 542 (1957). The statute's unconstitutional portions need not be contained in separate sections from its constitutional portions for severance to occur. *State v. Superior Court*, 106 at 369, 371, 476 P.2d at 670, 672; *McCune*, 83 Ariz. at 106, 317 P.2d at 542. If the portions of A.R.S. § 9-212 that allow only property taxpayers to petition for and to vote on disincorporation are deleted, the remainder of the statute would be effective and enforceable standing alone:

**A.** When one half or more of the ~~property taxpayers who are~~ bona fide residents and electors ~~appearing on the last assessment roll~~ of an incorporated city or town present a petition in writing to the board of supervisors for the disincorporation of the city or town, the board shall receive, and the clerk shall file the petition and record it at length in the record of the proceedings of the board.

**B.** Thereupon the board shall immediately publish, as provided by [A.R.S.] § 39-204, a notice which shall contain the petition at length, and designate a time and place within the corporation when and where a vote will be taken by the qualified electors of the corporation ~~who are property taxpayers therein~~ upon the question of granting or refusing the petition for disincorporation.

Excising similar language from A.R.S. § 9-215 also leaves it effective and enforceable standing alone:

Electors in order to vote at the election shall possess the qualifications of electors for county officers, and shall have resided in the corporation six months next preceding the election, ~~and shall be property taxpayers in the corporation, and their names shall appear upon the assessment or tax rolls of the corporation next preceding the day of election.~~

These statutes therefore satisfy the first severability requirement.

The second severability requirement is that the Legislature would have enacted the statute without its unconstitutional portion if the Legislature had known that the portion was invalid when it was enacting the statute. *State v. Pandeli*, 215 Ariz. 514, 530, 161 P.3d 557, 573 (2007); *Watson*, 120 Ariz. at 445, 586 P.2d at 1257; *State v. Fowler*, 156 Ariz. 408, 414, 752 P.2d 497, 503 (App. 1987). The Legislature sometimes includes a severability clause that expresses its intent that the constitutional portions of a statute or a statutory scheme remain in effect if a portion of the statute or scheme is determined to be unconstitutional. *See, e.g., Selective Life Ins. Co. v. Equitable Life Assurance Soc'y of the U.S.*, 101 Ariz. 594, 599, 422 P.2d 710, 715 (1967) (stating that courts give effect to severability clauses when possible). While such clauses are helpful in determining legislative intent with respect to severability, they are not a prerequisite for severability. *Norton v. Superior Court*, 171 Ariz. 155, 158, 829 P.2d 345, 348 (App. 1992) (stating that a severability clause provides “merely useful, not essential, evidence of legislative intent” and noting that Arizona courts have determined that numerous statutes were severable absent such a clause). There is no severability clause in A.R.S. §§ 9-211 through 9-226.

There is no legislative history with respect to the severability of A.R.S. §§ 9-211 through 9-226 either. In the absence of a severability clause or of clear legislative history concerning severability, it is not possible to be certain about the Legislature’s intent regarding severability.



That may be especially true with respect to a statutory scheme like the one at issue here that the Legislature initially enacted over a hundred years ago. But courts nevertheless uphold the constitutional portions of statutes that can be severed from the unconstitutional portions leaving a complete and enforceable law even when there is no severability clause and no legislative history to clearly reveal what those who enacted the statute would have intended concerning severability.

In *Randolph v. Groscost*, 195 Ariz. 423, 427, 989 P.2d 751, 755 (1999), the Arizona Supreme Court noted that when a severability issue concerning a statute that the voters have enacted by initiative arises, the courts have no legislative history to guide them in determining intent with respect to severability and each voter's intent with respect to it might differ from that of other voters. The court stated that it would nevertheless uphold the constitutional portion of statutes enacted by initiative that were complete and enforceable standing alone after their unconstitutional portions were severed unless "doing so would produce a result so irrational or absurd as to compel the conclusion that an informed electorate would not have adopted one portion without the other." *Id.*

With respect to statutes that the Legislature has enacted, when there is no severability clause and no legislative history concerning severability, courts examine the statute's language as being "the most reliable evidence" of legislative intent. *State v. Prentiss*, 163 Ariz. 81, 86, 786 P.2d 932, 937 (1989), *as modified on reconsideration* (1990); *State v. Ramsey*, 171 Ariz. 409, 414, 831 P.2d 408, 413 (App. 1992). In doing so, courts consider the statute's essential purpose. *See, e.g., Prentiss*, 163 Ariz. at 86, 786 P.2d at 937; *State v. Superior Court*, 106 at 371, 476 P.2d at 672; *State v. Dykes*, 163 Ariz. 581, 585, 789 P.2d 1082, 1086 (App. 1990). They will uphold the constitutional portion of a statute that is complete and enforceable standing

alone after its unconstitutional portion has been severed unless (1) the statute's valid and invalid portions are so intimately connected with each other that they raise the presumption that the Legislature would not have enacted one without the other or (2) the invalid portion of the statute was what induced the Legislature to enact the statute. *State ex rel. Napolitano v. Brown*, 194 Ariz. 340, 344, 982 P.2d 815, 819 (1999); *Watson*, 120 Ariz. at 445, 586 P.2d at 1257; *Eastin v. Broomfield*, 116 Ariz. 576, 586, 570 P.2d 744, 754 (1977).

In *Clay v. Town of Gilbert*, 160 Ariz. 335, 337, 773 P.2d 233, 235 (App. 1989), *review denied* (1989), qualified electors of the town of Gilbert challenged the results of a special election in which the majority of voters had voted in favor of the town acquiring an electricity distribution system. The challengers contended that the election was invalid because although A.R.S. § 9-514 provided that only qualified electors "who are taxpayers of the municipal corporation" could vote on whether the town could acquire public utility property, the town had allowed nontaxpayers to vote on the acquisition issue. *Id.* at 341, 773 P.2d at 239. The court of appeals affirmed the trial court's determination that limiting such an election to taxpayers would have violated equal protection principles because nontaxpayers would be just as interested in and as affected by the town's acquisition and operation of an electricity distribution system as taxpayers would be. *Id.*

The challengers argued that the trial court nevertheless had no authority to sever the words "who are taxpayers" from the statute because doing so "would totally change the focus of the remaining portion of the statute." *Id.* (internal quotation marks omitted). The court of appeals rejected this argument and instead agreed with the trial court that the words were severable because the Legislature had enacted A.R.S. § 9-514 to enable citizens who had an interest in whether the town would engage in the business of operating a public utility to have a

say on the issue. *Id.* at 342, 773 P.2d at 240. It apparently based its determination concerning the statute's purpose on the statute's language because it did not state that there was any legislative history that supported its determination. *See id.* Based on its determination of the statute's purpose, it held that excising the words "who are taxpayers" from the statute did not contravene legislative intent and that the election did not have to be invalidated because nontaxpayers had voted in it. *Id.*

A similar analysis applies here. As the background section of this Opinion discusses, A.R.S. §§ 9-211 through 9-226 establish a procedure that enables a city or town to choose to be disincorporated by the county board of supervisors and to then be reincorporated under a board of trustees form of government. This statutory scheme originated before statehood and has been retained in essentially the same form until the present. *See* Historical and Statutory Notes following A.R.S. §§ 9-211 through 9-226, which identify the sections of the 1901, 1913, 1928, and 1939 Codes at which these provisions previously appeared. The statutory scheme reflects the view—which was apparently widely held across the country until the Supreme Court began to declare it unconstitutional—that only real property owners should be permitted to vote on measures that might affect their property taxes. *See, e.g.,* the cases that subsection I(E) of this Opinion discusses.

But applying the previously discussed test that Arizona courts apply to determine severability in the absence of a severability clause or of clear legislative history, nothing in the statutory scheme indicates (1) that the provisions of the statutory scheme that allow only taxpayers to petition for and vote on disincorporation are so intimately connected with the scheme's valid provisions that they raise a presumption that the Legislature would not have enacted one without the other or (2) that the Legislature was induced to enact the statutory

scheme or to create the board of trustees form of government to benefit property taxpayers. That being the case, the statutory scheme indicates that the Legislature enacted A.R.S. §§ 9-211 through 9-226 to allow the residents of cities and towns to be able to choose whether to disincorporate and to reincorporate under the board of trustees form of government and that it would still have wanted them to be able to make that choice if it had known that it had to allow nontaxpayers to participate in the decision. The portions of the statutory scheme that remain after the provisions that allow only taxpayers to petition for and vote on disincorporation are severed should therefore be upheld. *See also Bd. of Lucas Cnty. Comm'rs*, 870 N.E.2d at 803 (holding that although it might seem that the Legislature had intended that only electors who owned township land outside the boundaries of the incorporated portion of the township should be permitted to petition to erect a new township, the language imposing that restriction could be severed because the statute's "actual paramount purpose and intent" was "to allow only those electors residing in the unincorporated parts of the township to determine the form of their government without the influence of any incorporated villages or municipalities lying within that township").<sup>5</sup>

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<sup>5</sup> Section 9-213(A) requires that to be appointed disincorporation election officers, inspectors, and clerks, citizens must be electors and property taxpayers. While this provision does not need to satisfy strict scrutiny because it does not burden the right to vote, the State would not be able to establish that the property taxpayer requirement should be upheld under an equal protection analysis because it serves important state interests. *See Burdick*, 504 U.S. at 434. This provision can be severed because it meets the severability requirements that subsection I(F) of this Opinion discusses:

A. The board shall thereupon, by written order entered at length of record, appoint from the bona fide resident electors of the corporation, ~~who shall be property taxpayers therein,~~ officers, inspectors and clerks of election, to take the vote on the question of granting or rejecting the petition.

**II. The Portion of A.R.S. § 9-215 that Requires Electors to Have Resided in the Municipality for the Six Months Preceding an Election Violates the Right to Participate in State Elections on an Equal Basis with Other Citizens in the Jurisdiction as Well as the Right to Travel, but This Determination Does Not Vitate the Entire Statute Because Its Unconstitutional Portion Is Severable from Its Constitutional One.**

**A. The Portion of A.R.S. § 9-215 that Requires Electors to Have Resided in the Municipality for the Six Months Preceding an Election Is Unconstitutional.**

Section 9-215 establishes the qualifications for voting in the disincorporation election. After its unconstitutional provisions limiting electors to property taxpayers are severed as subsection I(F) of this Opinion discusses, it provides that to vote in a disincorporation election, electors must “possess the qualifications of electors for county officers” and must “have resided in the corporation six months next preceding the election.”

The requirement that electors have resided in the municipality for the six months preceding the election is unconstitutional. In *Dunn v. Blumstein*, 405 U.S. 330, 343-44 (1972), the Supreme Court noted that States could constitutionally require that voters be bona fide residents of their relevant political subdivisions because that requirement “may be necessary to preserve the basic conception of a political community.” The Court distinguished bona fide residence requirements from durational residence requirements, however, noting that requirements that citizens have lived in the relevant political subdivision for a lengthy period to be eligible to vote severely burden not only the fundamental right to participate in state elections on an equal basis with other citizens in the jurisdiction but also the fundamental right to travel.<sup>6</sup> *Id.* at 344. It therefore stated that such restrictions must be examined separately from bona fide residence requirements to determine whether they satisfy strict scrutiny. *Id.* at 336-43.

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<sup>6</sup> The Supreme Court has consistently recognized that the right to travel is a fundamental right, but has debated its precise textual source in the United States Constitution. *Jones v. Helms*, 452 U.S. 412, 417-19 (1981). When a statutory classification “impermissibly interferes with the exercise of a fundamental right,” it must satisfy strict scrutiny review under equal protection analysis. *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 312 (1976).

The Court rejected the argument that lengthy residence requirements were necessary to prevent nonresidents from fraudulently voting, noting that voter registration requirements and criminal penalties would better serve that purpose. *Id.* at 345-48, 353-54. The Court also rejected the argument that lengthy residence requirements were necessary to further the goal of having knowledgeable voters, noting that campaign and voter education activities in the month immediately preceding an election ensure that voters are informed about the candidates and issues. *Id.* at 354-60. The Court held that Tennessee's requirements that citizens have resided in the State for one year and in the county for three months before they could register to vote were not necessary to further any compelling state interest. *Id.* at 360. In doing so, it noted that while "[f]ixing a constitutionally acceptable period" was "a matter of degree," a thirty-day residency requirement appeared to be sufficient to allow a State "to complete whatever administrative tasks are necessary to prevent fraud." *Id.* at 348. Lower courts have subsequently held that six-month residency requirements are unconstitutional under *Dunn*. See, e.g., *Nicholls v. Schaffer*, 344 F. Supp. 238, 243 (D. Conn. 1972); *Mathews v. State Election Bd.*, 582 P.2d 1318, 1321 (Okla. 1978). The portion of A.R.S. § 9-215 that requires electors to have resided in the municipality for the six months preceding the election is therefore unconstitutional.

**B. The Determination that a Portion of A.R.S. § 9-215 Is Unconstitutional Does Not Vitate the Entire Statute Because Its Unconstitutional Portion Is Severable from Its Constitutional Portion.**

As subsection I(F) of this Opinion discusses, a determination that a portion of a statute is unconstitutional does not require that the entire statute be invalidated if two requirements are met. The first requirement is that the unconstitutional portion is severable from the constitutional portion. *Watson*, 120 Ariz. at 445, 586 P.2d at 1257. Severing the six-month

residency requirement along with the previously discussed property taxpayer requirement from A.R.S. § 9-215 leaves a statute that is effective and enforceable standing alone:

~~Electors in order to vote at the election shall possess the qualifications of electors for county officers, and shall have resided in the corporation six months next preceding the election, and shall be property taxpayers in the corporation, and their names shall appear upon the assessment or tax rolls of the corporation next preceding the day of election.~~

The second severability requirement is that the Legislature would have enacted the statute without its unconstitutional portion if the Legislature had known that the portion was invalid when it was enacting the statute. *Watson*, 120 Ariz. at 445, 586 P.2d at 1257. As discussed in subsection I(F) of this Opinion, where there is no severability clause or clear legislative history concerning severability, it is not possible to be certain about the Legislature's intent regarding severability. That may be especially true with respect to a statutory scheme like the one at issue here that the Legislature initially enacted over a hundred years ago. But courts will nevertheless uphold the constitutional portion of a statute that is complete and enforceable standing alone after its unconstitutional portion has been severed even without a severability clause or clear legislative history concerning severability unless (1) the statute's valid and invalid portions are so intimately connected with each other that they raise the presumption that the Legislature would not have enacted one without the other or (2) the invalid portion of the statute was what induced the Legislature to enact the statute. *Brown*, 194 Ariz. at 344, 982 P.2d at 819; *Watson*, 120 Ariz. at 445, 586 P.2d at 1257; *Eastin*, 116 Ariz. at 586, 570 P.2d at 754.

Applying that test here, nothing in the statutory scheme indicates (1) that the provision of the statutory scheme that allows only those who have resided in the municipality for the six months before the election to vote on disincorporation is so intimately connected with the scheme's valid provisions that it raises a presumption that the Legislature would not have

enacted one without the other or (2) that the Legislature was induced to enact the statutory scheme or to create the board of trustees form of government to benefit those who had resided in the municipality for the six months before the election. That being the case, the statutory scheme indicates that the Legislature enacted A.R.S. §§ 9-211 through 9-226 to allow the residents of cities and towns to be able to choose whether to disincorporate and to reincorporate under the board of trustees form of government and that it would still have wanted them to be able to make that choice if it had known that it had to allow those who had resided in the municipality for less than six months before the election to participate in the decision. The portions of the statutory scheme that remain after the provision that allows only those who have resided in the municipality for the six months before the election to vote on disincorporation is severed should therefore be upheld.

**C. To Vote in a Disincorporation Election Under A.R.S. § 9-215, One Must Satisfy A.R.S. § 16-101(B)'s Requirements for Being a "Resident" and A.R.S. § 16-121(A)'s Requirements for Being a "Qualified Elector."**

Once A.R.S. § 9-215's unconstitutional property taxpayer and six-month residency requirements are excised, it provides that "[e]lectors in order to vote at the election shall possess the qualifications of electors for county officers." County officers are elected in a general election held "[o]n the first Tuesday after the first Monday in November of every even-numbered year" for the election of, among others, county officers "whose terms expire at the end of the year in which the election is being held or in the following year." A.R.S. § 16-211. The qualifications to vote in that election are established by A.R.S. § 16-121(A), which provides that a "qualified elector for any purpose for which such qualification is required by law" is one who



is at least eighteen years old on or before the election date, is qualified to register to vote under A.R.S. § 16-101, and is properly registered to vote.<sup>7</sup>

To be qualified to register to vote under A.R.S. § 16-101(A), one must be a United States citizen, be at least eighteen years old on or before the date of the next regular election following registration, have been an Arizona resident for the twenty-nine days preceding the election (except as A.R.S. § 16-126 provides with respect to voting in a presidential election after one has left the state), be able to write or make one's mark unless a physical disability prevents one from doing so, not have been convicted of treason or a felony (unless one's civil rights have been restored), and not have been adjudicated an incapacitated person. Section 16-101(B) defines "resident" as a person who has an actual physical presence in Arizona (or for purposes of a political subdivision, an actual physical presence in the political subdivision), combined with an intent to remain. It further provides that a person can have only one residence for purposes of A.R.S. title 16.<sup>8</sup>

Under A.R.S. § 16-120, an elector must have "been registered to vote as a resident within the boundaries or the proposed boundaries of the election district for which the election is being conducted" and the county recorder or his designee must have received the registration before midnight of the twenty-ninth day preceding the election.

Since the constitutional portion of A.R.S. § 9-215 requires that to vote in a disincorporation election, electors must "possess the qualifications of electors for county officers," one who satisfies the preceding requirements for voting in county officer elections will also satisfy A.R.S. § 9-215's requirements for voting in a disincorporation election.

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<sup>7</sup> Section 16-121(A) defines qualified electors for any purpose "except as provided in A.R.S. § 16-126[,]" which governs the qualifications necessary to vote in a presidential election after moving from Arizona.

<sup>8</sup> If a person's qualifications to vote are challenged on residency grounds under A.R.S. § 16-552(D) or A.R.S. § 16-591, A.R.S. § 16-593 provides the rules that govern the election board's determination of the person's residence.

**III. To Satisfy A.R.S. § 9-212(A)'s Requirements that One Must Be a Bona Fide Resident and an Elector to Sign a Disincorporation Petition, One Must Satisfy A.R.S. § 16-101(B)'s Requirements for Being a "Resident" and A.R.S. § 16-121(A)'s Requirements for Being a "Qualified Elector."**

Section 9-212(A) requires that those who sign disincorporation petitions be "bona fide residents" and "electors." Neither A.R.S. §§ 9-211 through 9-226 nor any other Arizona statutes define the term "bona fide resident." The term "bona fide" means "[m]ade in good faith," "without fraud or deceit," "sincere," or "genuine." *Black's Law Dictionary* 186 (8th ed. 2004). Although no statute defines the term "bona fide resident," A.R.S. § 16-101(B) defines "resident" for voter registration purposes as a person who has an actual physical presence in Arizona (or for purposes of a political subdivision, an actual physical presence in the political subdivision), combined with an intent to remain.

Statutes that deal with the same subject matter are deemed to be in pari materia and should be construed together as though they constitute a single law. *Reeves v. Barlow*, 227 Ariz. 38, 41-42, 251 P.3d 417, 420-21 (App. 2011) (looking to a different statute dealing with the same subject matter to help define a statutory term); *Heatec, Inc. v. R.W. Beckett Corp.*, 219 Ariz. 293, 295-96, 197 P.3d 754, 756-57 (App. 2008) (same). This is true even though the statutes were enacted at different times, do not refer to each other, and are located in different chapters of the Arizona Revised Statutes. *State v. Farley*, 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970). Construing the term "bona fide resident" in A.R.S. § 9-212(A) to have the same definition as the term "resident" in A.R.S. § 16-101(B) is particularly appropriate because in the context of other statutory schemes, Arizona courts have defined the term "bona fide resident" as "a person who is in Arizona to reside permanently, and who, at least for the time being, entertains no idea of having or seeking a permanent home elsewhere," *St. Joseph's Hosp. & Med. Ctr. v. Maricopa Cnty.*, 142 Ariz. 94, 99, 688 P.2d 986, 991 (1984) (quoting *Sneed v.*

*Sneed*, 14 Ariz. 17, 21, 123 P. 312, 314 (1912)). That definition is consistent with A.R.S. § 16-101(B)'s definition of "resident."

The same analysis applies with respect to the meaning of "electors" in A.R.S. § 9-212(A). Although A.R.S. § 9-215 establishes the qualifications for electors who can vote in the disincorporation election *after* the disincorporation petition has been filed, there is no definition of the term "elector" in A.R.S. §§ 9-211 through 9-226 that would apply to petition signers. Section 16-121(A) provides that a "qualified elector for any purpose for which such qualification is required by law" is one who is at least eighteen years old on or before the election date, is qualified to register to vote under A.R.S. § 16-101, and is properly registered to vote. Since both statutes deal with electors, the two should be construed together and the term "elector" in A.R.S. § 9-212(A) should have the same meaning as the term "qualified elector" in A.R.S. § 16-121(A). To sign a disincorporation petition under A.R.S. § 9-212(A), a person would therefore have to meet the requirements for being a qualified elector under A.R.S. § 16-121(A) that subsection II(C) of this Opinion discusses.

### Conclusion

The provisions in A.R.S. §§ 9-212 and 9-215 that allow only property taxpayers to petition for and to vote on disincorporation violate the Equal Protection Clause. This determination does not vitiate these statutes in their entirety because their unconstitutional provisions are severable from their constitutional ones.

Section 9-215 establishes the qualifications for voting in the disincorporation election. Its requirements that electors be property taxpayers and have lived in the municipality for the six months preceding the election are unconstitutional. When these unconstitutional provisions are severed, A.R.S. § 9-215 requires that electors "possess the qualifications of electors for county

officers.” Section 16-101(B) establishes the requirements for being a “resident” and A.R.S. § 16-121(A) establishes the requirements for being a “qualified elector” for purposes of county officer elections.

There are no definitions of the term “bona fide residents” in A.R.S. §§ 9-211 through 9-226, and no other Arizona statute defines the term. But A.R.S. § 16-101(B) defines “resident” for voter registration purposes as a person who has an actual physical presence in Arizona (or for purposes of a political subdivision, an actual physical presence in the political subdivision), combined with an intent to remain. The two statutes should be construed together, and the term “bona fide resident in A.R.S. § 9-212(A) should be given the same meaning as the term “resident” in A.R.S. § 16-101(B).

There is no definition of the term “electors” in A.R.S. §§ 9-211 through 9-226 that would apply to petition signers under A.R.S. § 9-212(A). But A.R.S. § 16-121(A) provides that a “qualified elector for any purpose for which such qualification is required by law” is one who is at least eighteen years old on or before the election date, is qualified to register to vote under A.R.S. § 16-101, and is properly registered to vote. The two statutes should be construed together and the term “elector” in A.R.S. § 9-212(A) should be given the same meaning as the term “qualified elector” in A.R.S. § 16-121(A).

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