

Issue 3

As has become a time-honored tradition in American legislatures, the legislatively referred constitutional amendment (LRCA) known as the Arkansas Religious Freedom Amendment, or simply Issue 3 on your ballot this November, accomplishes little in the way of its stated objective.

Although the widespread abuse of citizens exercising their freedom of religion and assembly by their governments was certainly one of the most horrifying and egregious injustices perpetrated during the Covid-19 pandemic, this ballot initiative drafted in response to these violations is unfortunately sloppy in its language.

The language of the amendment acknowledges that the freedom of religion is enumerated in Article 2 § 24, as well as the Religious Freedom Restoration Act of 1993, which in effect protects the citizens against religious liberty infringement by the federal government, and the subsequent Act 975 passed by the Arkansas state government, which added protections against state and local government infringements. Much of the language of the proposed amendment is taken from the text of Act 975, most notably the requirement that government not “burden a person’s freedom of religion even if the burden results from a rule of general applicability,” unless it is for a “compelling government interest,” and “is the least restrictive means of furthering that compelling government interest.”

While the instinct to codify such important legislation into a constitutional amendment to protect it from future legislatures is understandable, the distinct lack of prescription against violations in the text of Issue 3 turns this initiative into a toothless, superfluous, glorified resolution. With the lack of teeth in this amendment, it does not appear to expand on the religious rights enumerated in the Arkansas Constitution’s Declaration of Rights in any meaningful way.

In addition to the legal ramifications, there are philosophical concerns regarding the language included, as well as the necessity of such an amendment in the first place. Libertarians hold the unalienable rights and liberties of the individual as the highest possible good, and so do not recognize the existence of any “government interest” compelling enough to warrant the infringement of these rights and liberties, as long as the individual is not violating the rights of others. Adding such language into our state constitution would erode the grand, absolutist language surrounding the freedom of religion included in the Declaration of Rights. Further, it is worth noting that the violations of the religious freedom of countless Arkansans occurred despite the various enumerations of these rights included in the Arkansas Constitution, United States Constitution, Religious Freedom Restoration Act of 1993, and Act 975 of 2015. Not only will adding another amendment to the Arkansas Constitution reasserting these rights will certainly not serve as an impediment to such violations of rights in the future, but may be

construed as a concession that the atrocious tyranny perpetrated by state and local governments during Covid-19 were legal or acceptable due to a loophole or legal oversight. Rather than adding toothless language and cluttering our state constitution, our efforts may be better spent enforcing the rights already present in our constitution and holding legally responsible all those who violated those rights.

Though the proposed Issue 3 was likely made with good intentions, the philosophical shortcomings vs the essentially nonexistent legal benefits earn this initiative a "Vote No" recommendation from the Libertarian Party of Arkansas.