

Initiative Process



Fig. 1

Introduction

Colorado is one of 16 states where citizens can bypass the legislature and place proposed changes to state law and proposed constitutional amendments on the ballot. Colorado's signature threshold for citizen initiatives to qualify for the ballot is among the lowest in the country (see Figure 1), and is the same for proposed statutes and proposed amendments.

Citizens and special-interest groups (many from out-of-state) regularly utilize the process and, according to the Initiative & Referendum Institute, Colorado has seen more citizen initiatives than all but two other states.



Increasingly, initiatives are being used to amend our state constitution. Since 2005, Colorado voters have been presented with more than two dozen Initiated Amendments and just 2 Initiated Statutes. Conflicting policies that have been placed into our constitution as amendments make it exceedingly difficult for state officials to follow voters' directions.

Challenges

For 2 distinct mechanisms, same low bar exists for ballot qualification and passage.

The state constitution provides a framework for government and protects fundamental rights, while statutes are intended to address how government functions and how citizens interact within that framework. Over time, however, amendments have been made to our constitution that would more appropriately be placed in statute, creating longer-term consequences that are now difficult to correct. Our state constitution – at nearly 75,000 words and with more than 150 amendments – is now among the longest in the nation; and considerably longer than the roughly 8,000-word U.S. Constitution, which has 27 amendments.

- Colorado is one of only 3 states that has the same requirements (signature-gathering to qualify for a ballot and a simple-majority vote for passage) for both citizen-initiated constitutional amendments and citizen-initiated statutory changes. As a result, campaigns increasingly propose amendments to the constitution because they are more difficult to change in the future.
- Signatures for citizen initiatives can be gathered from anywhere, meaning campaigns concentrate in urban areas and little, if any, consideration may be given to how a measure might impact our diverse state.

Insufficient information for voters

- The wisdom of any amendment to the constitution or statutes which the public adopts is dependent upon the public's understanding of the issue and the proposed change. This understanding can be hindered by difficult-to-find details on proponents and opponents of a measure; the complexity of the issues and technical ballot language.
- Disclosure and public-notice rules aren't streamlined for the internet era.

Conflicting and unsustainable policies.

Well-intended but narrowly-focused amendments to our constitution have inadvertently created conflicting and unsustainable policies.

- For example, both Amendment 20 (medical marijuana) and Amendment 64 (recreational marijuana) allow some form of unlicensed growing. As such, it is difficult to know who is



"legitimately" growing marijuana in the unlicensed system, and who is growing it to sell to minors or ship out of state -- thereby undermining the promise that legalizing marijuana would shut down the black market.

- And, according to the [2011 "Financing Colorado's Future" study by the University of Denver and the Colorado Futures Center at CSU](#) (updated in 2013), fiscal policy amendments embedded into our constitution have created a structural imbalance in our state budget that will result in only enough money to fund K-12 education, Medicaid and correctional facilities by 2024. Put another way, unless something is done, the state won't have the money to pay for highways, its state patrol, courts, higher education, human services and many other functions the public expects of government.

Difficulty addressing conflicting constitutional amendments.

The "Single-Subject" requirement was created to prevent ballot proponents from packaging unrelated issues into one ballot measure; however, it also makes it extremely difficult to address conflicts in our constitution which have arisen through the passage of multiple amendments over time. To correct such constitutional conflicts, the Single-Subject rule requires separate amendments be pursued and adopted simultaneously, which is difficult and, should one or more fail, could make the situation worse.

Policy Options for the Initiative Process

1. Maintain current policy.

Challenges addressed: none

Pros

- Regular use of Citizens Initiatives is evidence of its need and popularity.
- Unfavorable public policies can be removed or amended by statewide vote.
- Surveys show Coloradans strongly support Citizen Initiative process.
- Making it more difficult to pursue Citizen Initiatives won't stop well-funded special interests from using ballot to achieve their policies.

Cons

- The initiative process is over-used and has cluttered our constitution with short-sighted public policies which result in unintended consequences.
- The constitution is bogged down with the vast number of constitutional amendments including everything from spending mandates and revenue limitations to wildlife management policies. Some of these amendments are not appropriate for a foundational governing document like the constitution and should be placed in state statutes.



- Low signature requirements and a simple-majority vote requirement to pass measures makes Colorado a target for out-of-state special interests to test their policy agendas.

2. Require a supermajority vote of legislature to amend citizen-initiated STATUTES within 3 years of adoption.

Challenge addressed: For 2 distinct mechanisms, same low bar exists for ballot qualification and passage.

Background

Since it takes the same number of signatures to qualify for the ballot and the same simple-majority needed to pass both a constitutional amendment and a statutory initiative (amendment to state law), there is an incentive for initiative proponents to pursue amendments to the constitution rather than statutes because constitutional amendments are more difficult to change in the future. This is because making changes to the constitution requires another vote of the people, whereas the legislature can change state statutes.

Pros

- Extra "protection" for citizen-initiated amendments to statute may encourage initiative proponents to pursue changes to state law rather than amendments to the constitution.
- Allows legislature more flexibility to address unforeseen consequences.

Cons

- Extra "protection" of initiated statutes is unnecessary because the legislature is already inherently discouraged from amending the people's amendments to statute because to do so is politically unpopular.
- Higher threshold of protection should be longer than 3 years.



3. For citizen-initiated amendments to the constitution, require signatures from different geographic areas (such as congressional or legislative districts).

Challenge addressed: For 2 distinct mechanisms, same low bar exists for ballot qualification and passage.

Background

Currently, there is no geographic distribution requirement for the collection of signatures. Supporters of initiatives may collect all the required number of signatures from the more populated areas of the state without involving other areas of the state which may be equally-affected by the proposed measures. There are states, such as Nevada and Florida, that require a percentage of signatures to be collected from each congressional District.

Pros

- Requires some measure of support from all areas of state in order to qualify for the ballot.
- Applying this geographic requirement ONLY to constitutional changes may encourage initiative proponents to pursue statutory changes instead.

Cons

- Doesn't impact which measures end up on ballot, based on other states' experiences.
- Can hinder "grassroots" campaigns due to increased costs and logistics for signature-gathering.



Policy Options 4a - 4e: Provide More Information to the Public About Proposed Initiated Amendments

Challenge addressed: Insufficient information for voters

Modifying the constitution requires thoughtful public consideration. While the current process is technically open to the public, most citizens do not involve themselves enough to fully understand ballot measures. Some contend that there needs to be a more robust process for the public to learn about proposed initiatives.

4a. For citizen-initiated amendments to the constitution, require a 60-day public review process AFTER 25% of signatures are gathered and BEFORE the issue is approved for the ballot. During that time the legislature hosts public hearings to educate the public and invite arguments both for and against the proposed amendments.

Pros

- Provides for a broad discussion of the matter, ensuring pros and cons can be heard.
- There should be more connection between legislature and the citizen-initiative process as lawmakers can offer insight based on experience.
- Waiting until after 25% of signatures are gathered limits this to proposals with a good chance of making ballot and gives proponents option of amending their proposal based on new input.

Cons

- Ballot title-setting process already provides an opportunity for public review and input.
- Citizen-initiatives allow public to design and implement laws and giving the legislature a role in the process could diminish impact.
- Could limit time proponents have to collect signatures.



4b. Implement Citizens' Initiative Review process to provide voters additional perspective on selected citizen-initiated constitutional amendments.

Background

This process, which is used in Oregon, provides voters with unbiased and factual information by appointing a panel of randomly-selected citizens to evaluate and offer their perspective on ballot measures after consideration of the facts as presented by policy experts, proponents and opponents. At the conclusion of the review, panelists collectively draft a statement highlighting the most important fact-based findings about the measure as well as the most relevant pro and con arguments.

Pros

- Panelists represent the demographic and geographic diversity of the electorate.
- Provides voters with factual and easily understood information.

Cons

- Cost concerns may limit the number of issues reviewed.
- Blue Book already provides voters with factual information regarding ballot initiatives.

4c. Make ballot language simple and understandable by requiring the Title Board to adopt a standard for ballot language that is simple, clear and can be understood by the average voter.

Pros

- Helps voters to better understand issues and could lead to fewer unintended consequences.

Cons

- Title Board already reviews proposed ballot language and makes suggestions for clarification.
- Introduces a subjective standard that will just lead to litigation and increased costs.



4d. Create "one-stop shop" on Secretary of State's website for ballot initiative financial disclosure.

Pros

- Being able to see amounts raised by supporters and opponents is helpful to voters.
- Knowing identity of donors helps voters determine interests behind campaigns.
- Making data accessible in a central location ensures it reaches a wider audience.

Cons

- Would take more time and money from Secretary of state's limited resources.
- Disclosure could be conceived as a political act designed to benefit or harm a ballot initiative.

4e. Require ballot language to be published on State and County websites (with link to Blue Book) as well as newspapers.

Pros

- Increases opportunity for voters to see ballot information.

Cons

- Additional cost incurred by state.
- Blue books explaining ballot initiatives are already mailed to voters.



5. Require more petition signatures for initiated amendments than for initiated statutes.

Challenges addressed: For 2 distinct mechanisms, same low bar exists for ballot qualification and passage.; Insufficient information for voters; Conflicting and unsustainable policies

Background

Currently, the same number of petition signatures is required for both constitutional and statutory amendments. Given that constitutional amendments are often permanent changes to the constitution, some argue that more petition signatures should be required than for initiating state statute.

Pros

- Provides for additional protection of the constitution which is the durable framework of our government.
- Might encourage initiative proponents to pursue changes to statute rather than changes to our constitution.

Cons

- Initiatives allow citizens to participate in government, and erecting additional barriers is wrong.
- Increases cost of petition signature-gathering and unlikely to deter number of measures. (If supporters have money for a statutory amendment, they most likely have it for a constitutional amendment.)

Policy Options 6a and 6b: Create a Higher Threshold for Adopting Constitutional Amendments Compared to Statutory Changes

Challenges addressed: For 2 distinct mechanisms, same low bar exists for ballot qualification and passage.; Conflicting and unsustainable policies

Since it takes the same number of signatures and the same simple-majority to pass both a constitutional amendment and a statutory amendment, there is an incentive for initiative proponents to pursue amendments to the constitution rather than statute because it is more difficult to change in the future: making changes to the constitution requires another vote of the people, whereas the legislature can make such changes to state statutes.



6a. Require future constitutional amendments to be approved by a supermajority vote, but allow fixes/changes to existing language to be approved by the same simple-majority threshold by which it was adopted initially.

Pros

- Provides for additional protection of the constitution which is the durable framework of our government. Changing the constitution should be more difficult than changing state law.
- Might encourage initiative proponents to pursue changes to statute rather than changes to our constitution.
- Fair to allow changes by a simple majority vote to existing constitutional amendments that were passed by a simple majority vote.

Cons

- Constitution has always been amended with simple-majority and does not need to change.
- With such a high bar, it could be difficult to ever adopt constitutional amendments.

6b. Require that initiated constitutional amendments be adopted in TWO consecutive elections; passage in first year would automatically qualify them for ballot in subsequent election.

Pros

- Provides the public with ample time to learn about proposed changes to the constitution.
- Might encourage initiative proponents to pursue changes to statute rather than changes to our constitution.

Cons

- Increases financial burden on initiative proponents who would have to win two campaigns.
- Public could tire of hearing about proposal for two election cycles and disengage.



Policy Options 7a - 7c: Allow exemption from the single subject requirement

Challenges addressed: Conflicting and unsustainable policies; Difficulty addressing conflicting constitutional amendments.

Each amendment to our constitution is limited to addressing only a single subject. Currently, there are fiscal requirements in the constitution that conflict with one another; these measures were placed into the constitution as separate "single-subject" amendments at different times or before the single-subject requirement was approved by the voters. In order to address conflicting sections of the constitution (because of the single-subject limitation), separate amendments must be pursued and adopted simultaneously. However, it is even more difficult to simultaneously secure multiple amendments to the constitution and, in some cases, removing only PART of the conflicting language could actually make the state's fiscal situation WORSE.

7a. Exempt legislative referendums from single-subject requirement.

Pros

- Allows legislature to propose (and voters the option to adopt) solutions to existing constitutional conflicts, which may involve multiple subject areas.
- Already requires $\frac{1}{2}$ vote from legislature to refer constitutional amendments for public vote.

Cons

- Provides legislature with authority above what is given to people.
- Allows the legislature (with $\frac{2}{3}$ vote) to "package" unrelated unpopular items with popular items and force voters to approve both if they want either.



7b. Exempt legislative referendums from single-subject rule ONLY for amending/repealing items which are currently in the constitution.

Pros

- Allows legislature to recommend (and voters the option to adopt) changes to the constitution involving multiple subjects.
- Limits authority of legislature to ONLY recommending changes to EXISTING constitutional language, thus maintaining single-subject limit on any new additions to constitution.

Cons

- Provides legislature with authority above the single subject requirement imposed on citizens initiating constitutional amendments.
- Partisan politics in the legislature will not result in any better recommendations for needed changes in the constitution than will ballot initiatives.

7c. Establish a non-partisan citizen commission to periodically review constitution and recommend to voters changes to update/repeal existing amendments (recommendations would be exempt from single-subject requirement).

Pros

- Commission can tackle conflicting provisions in a constructive, non-partisan manner.
- Commissioners could represent various regions/viewpoints from throughout state.
- Limits authority of of the Commission to ONLY recommending changes to EXISTING constitutional language, thus maintaining single-subject limit on any new additions to constitution.

Cons

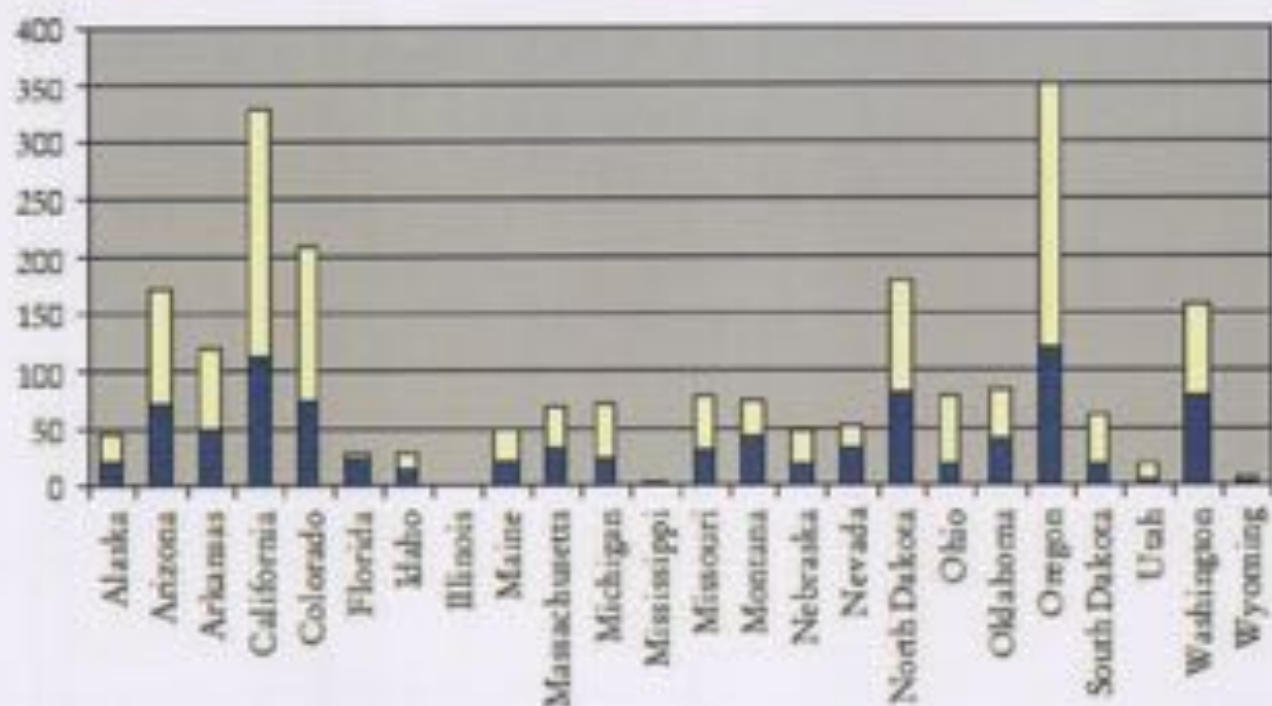
- Difficult to appoint and to determine what entity oversees the Commission's progress.
- An appointed commission should not have more authority than legislature.
- Allowing any exemption from current single-subject limit could result in proposed changes to constitution that are difficult to understand.



Constitutional Initiatives			Statutory Initiatives	
State	Signature Formula	Geographic Distribution	Signature Formula	Geographic Distribution
AZ	15% of votes cast for governor in last election	None	10% of votes cast for governor in last election	None
AR				
CA	8% of votes cast for governor in last general election	None	8% of votes cast for governor in last general election	None
CO	5% of votes cast for Sec. of State in last election	None	5% of votes cast for Sec. of State in last election	None
FL	8% of total votes cast statewide in last presidential election	8% in at least 13 of the state's 25 congressional districts	N/A	
MI	10% of votes cast for governor in last election	None	8% of votes cast for governor in last election	none
NV	10% of total votes cast in last general election	10% of total votes cast in each congressional district	10% of total votes cast in last general election	10% of total votes cast in each congressional district
OK	15% of votes cast for office receiving highest number of votes in last state election	None	8% of votes cast for office receiving highest number of votes in last state election	
OR	8% of votes cast for governor in last election	None	8% of votes cast for governor in last election	None
WA	10% of votes cast for governor in last election	None	N/A	

Fig. 2 Comparing Colorado's Signature-gathering Requirement to Other States

(Source: http://www.ncsl.org/Portals/1/Documents/legismgt/elect/2012_SigReqs.pdf)



*White = Total put before voters. | *Blue= Passed

Fig. 3 State Comparison of Number of Initiatives to Date (Source: Initiative & Referendum Institute)