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RECENT CHANGES TO THE INITIATIVE AND REFERENDUM PROCESS

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In recent years, numerous changes have been proposed to state law and the Colorado Constitution concerning the initiative and referendum process.¹ This issue brief discusses efforts to reform the initiative and referendum process at the constitutional level, and changes to statutes governing the process.

Constitutional Reform

In 2008, the voters rejected Referendum O, a bipartisan-initiated measure that contained many recommendations from the General Assembly's Joint Select Committee on Constitutional Reform, convened earlier that year. The referendum would have decreased the number of signatures required to place a measure on the ballot that makes changes to statutes, while increasing the number of signatures required to place a measure on the ballot changing the state constitution. Referendum O would have also required that 8 percent of signatures gathered for constitutional initiatives be gathered from each congressional district, and would have raised the vote threshold for the General Assembly to change statutes put in place by initiative from a majority to a two-thirds vote for five years after the statute takes effect. Subsequent

efforts similar to Referendum O were not approved by the General Assembly. Since the failure of Referendum O, the General Assembly has passed several bills making changes to components of the initiative and referendum process.

Changes to Statutes Governing Initiatives and Referenda

Ballot language. House Bill 09-1326 made changes in several areas of the initiative process, including how initiative language appears on the ballot. The bill requires a constitutional ballot issue to be identified as an "amendment," and a statutory issue to be identified as a "proposition," with language at the top of the ballot explaining the difference between the two. The bill also requires the ballot to indicate before the measure's title whether a statewide measure changes the state constitution or statutes. The bill changed the numbering and lettering of statewide measures on ballots, so that constitutional initiatives begin with 60, statutory initiatives begin with 101, constitutional referenda begin with the letter P, and statutory referenda are double-lettered, beginning with AA. The sequenced lettering and numbering continues during subsequent elections. Finally, the bill changed the order in which measures appear on the ballot. This order was further changed by Senate Bill 10-216, so they now appear in the following order: referred amendments, initiated amendments, referred propositions, and initiated propositions. House Bill

¹The initiative is the process by which citizens can place proposals on the ballot for voters to approve or reject. The referendum refers to the process by which the General Assembly refers proposals to the voters in statewide elections. Both state statutes and the Colorado Constitution are subject to amendment by the initiative and referendum.

12-1089 changed the voting options on the ballot for statewide measures from "Yes" or "No" to "Yes/For" or "No/Against."

Ballot information booklet. House Bill 09-1326 requires the ballot information booklet ("blue book") to direct readers to information on the Secretary of State's website about issue committees that support or oppose measures. The bill also requires those who submit written comments about the blue book during the drafting stage to identify themselves and any organizations they represent or with whom they are affiliated. House Bill 11-1035 requires the blue book to inform readers that the ballot title of a referred measure was drafted by legal staff of the General Assembly and referred to voters by a vote of the General Assembly. The bill requires the blue book to inform readers that the ballot title for an initiative was drafted by staff of the Secretary of State, Attorney General, and General Assembly, and the initiative text was drafted by its proponents, who collected signatures to place it on the ballot.

Initiative proponents and issue committees. House Bill 10-1370 requires issue committees spending more than \$1,000 on communications to disclose within the communication the name of the issue committee making the expenditure.

House Bill 11-1072 requires designated initiative representatives to:

- appear in person at the title board hearing in order for the initiative title to be set;
- sign a notarized affidavit stating that the proponent is familiar with laws governing the initiative process and duties as representative;
- submit the printer's proof of the petition to the Secretary of State for approval; and
- deliver the signed petition sections to the Secretary of State.

Initiative petitions. House Bill 09-1326 made a number of changes to the process for circulating initiative petitions, including:

- allowing a petition signer to withdraw his or her signature from the petition on or before the day the petition is filed;
- making it unlawful to pay a petition circulation more than 20 percent of his or her pay on a per signature or petition section basis;
- requiring the Secretary of State to develop petition circulator training;
- requiring entities that compensate circulators to acquire a license from the Secretary of State. A license may be denied if no representative of an applying entity has completed the circulation training, and a license is revokable for circulation violations;
- requiring a petition circulator to be present when a notary public notarizes the affidavit attached to a petition section, and to present certain personal information, including identification. Any petition notarized in violation of these requirements is invalid, and violators are subject to criminal penalties;
- requiring petition proponents to provide to the Secretary of State, along with the petition, a list of participating circulators and notaries public, including their addresses;
- changing the process for protesting a petition to include fraud, using a noncompliant signature form, and violating laws that prevent fraud, abuse, or mistakes as grounds for challenging signature sufficiency. The bill allows complainants to pursue attorney fees if a court determines fraud resulted in invalid signatures, and invalidates petition sections if a circulator is not available for proceedings pertaining to alleged fraud; and
- requiring the statement at the top of each petition page to indicate that signing the petition indicates support for including the proposed change on the ballot, and that a sufficient number of signatures will result in the issue appearing on the ballot.