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Initiatives and Referenda in the 1990s -- An Update

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Colorado voters who have the impression that the number of statewide ballot initiatives seems to be on the increase are correct. With the 1998 General Election, the number of initiatives presented to the voters in the decade of the 1990s, a total of 35, surpassed the total number in the 1970s and 1980s combined, a total of 34.

The initiative is the process by which citizens can place proposals on the ballot for Colorado voters to approve or reject. The referendum, as used in this paper, means the process by which the General Assembly refers proposals to the people in a statewide election. Both the state statutes and the constitution may be amended by the initiative or referendum in Colorado.

The purpose of this paper is to present data on the frequency of use of the initiative and referendum in Colorado in the last 30 years and to review the topics covered in statewide ballot initiatives in the 1990s. This issue brief updates information contained in a 1996 Issue Brief covering the period of 1970 through 1996.

Number of Proposals. Beginning with the election of 1970, there have been 124 statewide ballot proposals, both initiated and referred. The table below illustrates that the increased number of ballot issues in the 1990s is due to the increased use of the initiative, with 35 proposals on the five General Election ballots since 1990 and 34 in the nine elections between 1970 and 1988. The data show the increase in use of the initiative in recent elections:

Statewide Ballot Proposals in Last 30 Years

	1970s	1980s	1990s	Total
Total Ballot Proposals	39	30	55	124
Initiated	19	15	35	69
Referred	20	15	20	55

As for success of proposals in pass-fail, voters are much more likely to approve referenda than initiatives. The following table shows the pass-fail results for the initiatives and referenda proposed by decade since 1970:

Success of Statewide Ballot Proposals

Decade	Referenda (Approved/ Rejected)	Initiatives (Approved/ Rejected)
1970s	20 (16/4)	19 (6/13)
1980s	15 (13/2)	15 (6/9)
1990s	20 (13/7)	35 (12/23)
Totals	55 (42/13)	69 (24/45)

The overall approval of referenda of better than 3-1 contrasts sharply with the failure rate of initiatives of almost 2-1. Several reasons might be offered for this disparity but the tendency in approving more of the legislative measures and in rejecting more of the initiatives has been consistent in each of the three decades.

Constitutional and Statutory Proposals. Of the 124 ballot proposals presented to the voters since 1970, the overwhelming number - 98 - were submitted as amendments to the Colorado Constitution, with 26 being amendments to the Colorado statutes. Over half of the Constitutional proposals have been approved in contrast to less than half of the statutory amendments being approved. The pass-fail rate for constitutional amendments is 56 approved, 42 rejected; statutory proposals resulted in 10 approved, 16 rejected.

Topics of Ballot Proposals - 1990-1998. The grouping of the statewide proposals on the ballot in the 1990s may take many forms. The table which follows lists them in 12 broad categories, beginning with the categories that had the most proposals. Elections and the political process had nine proposals; there are eight proposals under two topics -- "gaming" and Taxpayer's Bill of Rights. A heading added this year of agriculture and livestock has four listings, all from issues in the 1998 General Election. A new heading concerning abortion lists two proposals from the 1998 ballot.

Proposed Initiatives and Referenda

by Subject Area -- 1990 through 1998

(A) Elections and the Political Process

Term limits - 1990, 1992, 1996, 1998

Presidential primary - 1992

Campaign finance - 1994, 1996

Mailing ballot information booklets - 1994, 1996

Total 9

(B) Gaming Proposals

Permit gaming in various cities -
1990, 1992 (4), 1994, 1996

Local vote after statewide vote - 1992

Total 8

(C) Taxpayer's Bill of Rights Issues

"Amendment 1," adoption - 1990, 1992

Exemptions from Amendment 1:

Sales tax for tourist-related purchases - 1993

Tobacco taxes - 1994

Financial obligations - nonstate prisons - 1995

Unemployment compensation - 1996

Taxes and fees for highway construction - 1997

State retention of excess state revenues - 1998

Total 8

(D) Process for Amendments - Initiatives and Referenda

Election reform ("Amendment 12") - 1994
Single subject requirement - 1994
Voter approval (60% requirement) - 1996
Petitions - 1996

Total 4

(E) Agriculture and Livestock

Uniform regulation of livestock operations - 1998
Regulation of commercial hog facilities - 1998
Water meters in the San Luis Valley - 1998
Payments for water by the Rio Grande Water Conservation District - 1998

Total 4

(F) Bill of Rights Amendments

No protected status ("Amendment 2") - 1992
Obscenity - First Amendment - 1994
Parental rights - 1996

Total 3

(G) Animal Protection

Black bear hunting - 1992
Prohibited methods of taking wildlife - 1996

Total 2

(H) Education

Vouchers - 1992

Education reform - sales tax - 1992

Income tax credit for education - 1998

Total 3

(I) Open Space and State Lands

Lottery revenues for parks, recreation, wildlife - 1992

State trust lands - 1996

Total 2

(J) Criminal Procedures

Rights of crime victims - 1992

Post conviction bail - 1994

Total 2

(K) Abortion

Partial birth abortions - 1998

Parental notification - 1998

Total 2

(L) Other Topics

Removal of obsolete provisions - 1990, 1992

Labor - workers choice of care - 1994
Medicaid - state medical assistance - repayment - 1994
Property tax - exempt property - 1996
County sheriffs - qualifications - 1996
Broomfield - creation of city and county - 1998
Private/public ownership of local health care services - 1998

Total 8

Constitutional Changes, 1992 and 1994. Four constitutional changes have been adopted in the 1990s relating to the initiative and referendum. The single subject requirement for bills in the General Assembly is now required for initiatives and referenda (1994), referred and initiated Taxpayer's Bill of Rights questions are allowed in odd-year statewide elections (1992), and state and local governments are required to prepare ballot analyses that are mailed to every household with registered voters (1994). An adjustment in the mailing date for local ballot booklets was approved in 1996 to allow for the coordinated mailing of local and state booklets.

Statutory Change, 1996. Another change in the ballot information process affects the content of the ballot information booklet mailed to all voter households in the state. Legislation enacted by the General Assembly in 1996 directs that information on the performance of judges and justices of the Supreme Court be included in the booklet for the trial and appellate judges seeking retention. This information is prepared by the Commissions on Judicial Performance.

U. S. Supreme Court Decision, 1999. On January 12, the U. S. Supreme Court upheld a decision of the 10th Circuit Court of Appeals pertaining to initiatives in Colorado. In *Buckley vs. American Constitutional Law Foundation (ACLF)* (case #97-930), the court rejected one constitutional and two statutory requirements in Colorado law: that petition circulators be registered voters; that circulators of petitions must wear identification badges indicating whether they are being paid or are volunteers seeking signatures on petitions; and that sponsors of initiatives must file monthly reports which identify their paid circulators and disclose how much they have been paid. The Court held that these requirements interfered with the petitioner's right to "core political speech."

The Court sustained the constitutionality of other provisions of the Colorado initiative process. Petition circulators must be at least 18 years of age; circulators must attach an affidavit to each petition disclosing their name, address, and verification that the signatures were witnessed by the circulator; and the limit of six months is valid as the time in which signatures are to be collected.

A challenge to the constitutional requirement that initiatives contain a single subject is pending in the 10th Circuit Court of Appeals. It is expected that, whatever the outcome, the decision in this case will be appealed to the U. S. Supreme Court.

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