



INITIATIVES AND REFERENDA — AN UPDATE ON THEIR USE

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The general election of 2004 represented a departure from the even-numbered elections in recent years. In 2004 there were six statewide ballot questions before the voters, about one-half the average number in the previous six elections. In contrast, there were 13 proposals voted on in 1992, 12 each in 1996 and 2000, 11 each in 1994 and 1998, and 10 in 2002. The average number of ballot questions from 1992 through 2004 was 11.5 for even-numbered elections.

The three decades of the 1970s, 80s, and 90s, plus the elections of 2000 through 2004, show substantial use of the state's initiative and referendum processes, with a sharp increase in the number of initiatives particularly notable, even with a fewer number in 2004. In the elections of the 1990s, there were 38 initiatives on the state ballots, compared with a total of 33 for the 1970s and 80s combined.¹ From 2000 to 2004, a total of 33 proposals have been on the ballot (18 initiatives and 15 referred questions).

This paper presents data on the frequency of use of the initiative and referendum in Colorado since 1970 and lists the topics covered in statewide ballot questions since 1990. It updates earlier issue briefs by including results through the 2004 statewide election.

Number of proposals. Since the election of 1970, there have been 158 statewide ballot proposals, both

initiated and referred. The increased number of ballot issues shows an increased use of the initiative, with 56 initiatives on the ballot since 1990 compared with 33 in the ten elections between 1970 and 1988. Table 1 shows the increase in use of the initiative in statewide elections from 1970 through the 2004 election.

Table 1
Statewide Ballot Proposals from 1970 through the 2004 Election

	1970s	1980s	1990s	2000-2004	Total
Total Proposals	39	30	56	33	158
Initiated	18	15	38	18	89
Referred	21	15	18	15	69

Success of proposals. As for success of proposals in pass-fail rates, voters are much more likely to approve referenda than initiatives. Table 2 shows the pass-fail results for the initiatives and referenda proposed by decade since 1970.

Table 2
Success of Statewide Ballot Proposals

Decade	Referenda (Approved/ Rejected)	Initiatives (Approved/ Rejected)
1970s	21 (16/5)	18 (6/12)
1980s	15 (13/2)	15 (6/9)
1990s	18 (12/6)	38 (14/24)
2000 through 2004	15 (8/7)	18 (6/12)
Totals	69 (49/20)	89 (32/57)

1. The initiative is the process by which citizens can place proposals on the ballot for Colorado citizens 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 elections. State statutes and the Colorado Constitution are subject to amendment by the initiative and referendum.

The overall approval of referenda of nearly three to one contrasts sharply with the failure rate of initiatives of almost two to one. Several reasons might be offered for this disparity, but the pattern of more of the legislative measures approved and more of the initiatives rejected has been consistent since 1970.

Constitutional and statutory proposals. Of the 158 ballot proposals presented to the voters since 1970, a substantial number — 120 — have been submitted as amendments to the Colorado Constitution. Three were strictly TABOR questions for approval of debt, and the remaining 35 were amendments to 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 number for constitutional amendments is 66 approved, 54 rejected; statutory proposals resulted in 13 approved, 22 rejected. Two of the three TABOR questions were approved.

Topics of ballot proposals since 1990. The grouping of the statewide proposals on the ballot since 1990 may take many forms. The table which follows lists them in broad categories, beginning with the categories that had the most proposals. The category with the greatest number of proposals concerns tax questions and Taxpayer's Bill of Rights issues (17 proposals). The next two categories — elections and the political process and gaming — have had 15 and 10 proposals, respectively.

The number of proposals referred by the General Assembly has increased slightly in recent years. There were 18 referred measures in the 1990s, and 15 thus far in the 2000s. In contrast, there were 15 referred measures in the 1980s. There are two reasons that the number of referred measures in recent years is as high as it is. First, TABOR, adopted in 1992, requires voter approval of tax increase questions and long-term debt obligations; second, elections in odd-numbered years are provided for TABOR issues. In all, 17 TABOR-related proposals have been on the ballot since 1990, first to adopt TABOR and to then seek permission to raise taxes, retain a portion of the surplus, exempt money from TABOR, or issue bonds for various projects. Some of these proposals probably would not have been on the ballot had voter approval not been required.

Many of the controversial issues on a ballot are the result of the initiative process. For example, questions on abortion, animal protection, and water in the San Luis Valley were initiated proposals. In contrast, some of the referred issues have been technical issues or limited in scope, such as the removal of obsolete constitutional provisions and qualifications of county sheriffs and coroners. Also note that there has been diminished interest in initiated proposals for gaming in various cities and counties, with the high point reached in 1992 (four proposals). Since 1992 only one gaming proposal has been on the ballot, that being an initiated proposal to allow video lottery at race tracks and casinos. That proposal was defeated in 2003.

Proposed Initiatives and Referenda by Subject — 1990 through 2004

- (A) Taxes and Taxpayer's Bill of Rights Issues**
 - "Amendment 1, " (TABOR) adoption - 1990 (not adopted), 1992 (adopted)
 - Sales tax for tourist-related purchases – 1993
 - Tobacco taxes – 1994
 - Financial obligations – nonstate prisons – 1995
 - Unemployment compensation – 1996
 - Property tax – exempt property – 1996
 - Taxes and fees for highway construction – 1997
 - State retention of excess state revenues – 1998
 - Financing state transportation projects – 1999
 - Tax cuts: reductions in specified taxes each year – 2000
 - Property tax reduction for senior citizens – 2000
 - Approval of bonds by Great Outdoors Colorado – 2001
 - Surplus revenues to test I-70 fixed guideway – 2001
 - Revenue bonds for water projects – 2003
 - Taxable value of residential property - Amend Gallagher – 2003
 - Tobacco tax increase for health-related purposes – 2004
- Total 17**
- (B) Elections and the Political Process**
 - Term Limits – 1990, 1992, 1996, 1998, 2002
 - Presidential primary – 1990
 - Campaign finance – 1994, 1996, 2002
 - Mailing ballot information booklets – 1994, 1996
 - Mail ballot elections – 2002
 - Eliminate neighborhood caucus – 2002

Election day voter registration – 2002
Selection of presidential electors based on
percentage of votes cast per candidate – 2004

Total 15

(C) Gaming Proposals

Permit gaming in various cities – 1990, 1992
(4), 1994, 1996
Local vote after statewide vote – 1992
Multi-state lotteries – 2000
Video lottery at race tracks - tourism promotion
– 2003

Total 10

(D) Education

Vouchers – 1992
Education reform – sales tax – 1992
Income tax credit for education – 1998
Funding for public schools – 2000
Excess state revenue for math and science
grants – 2000
English language immersion program – 2002

Total 6

(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) Process for Amendments – Initiatives and
Referenda**

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

Total 4

(G) Open Space, State Lands, and Growth

Lottery revenues for parks, recreation, wildlife
– 1992
State trust lands – 1996
Voter approval of growth plans – 2000

Total 3

(H) Abortion

Partial birth abortions – 1998
Parental notification – 1998
Requirements for consent prior to an abortion
– 2000

Total 3

(I) Bill of Rights Amendments

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

Total 3

(J) Animal Protection

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

Total 2

(K) Criminal Procedures

Rights of crime victims – 1992
Post conviction bail – 1994

Total 2

(L) Other Topics

Labor – workers choice of care – 1994
Medicaid – state medical assistance – repayment
– 1994
County sheriffs – qualifications – 1996
Broomfield – creation of city and county – 1998
Private/public ownership of local health care
services – 1998, 2002
Selection of county surveyors – 2000
Background checks at gun shows – 2000
Medical use of marijuana – 2000
County coroners – qualifications – 2002
Cesar Chavez state holiday – 2002
Revise state personnel system – 2004
Construction liability - recovery of damages –
2004
Renewable energy: requires certain portion of
electric power from renewable resources – 2004

Total 14

(M) Technical Amendments

Removal of obsolete constitutional provisions –
1990, 1992, 2000, 2002, 2004
Legislative reapportionment timetable – 2000

Total 6

Changes in Procedures

Constitutional changes, 1992 and 1994. Four constitutional changes were 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 state elections

(1992); state and local governments are required to prepare ballot analyses that are mailed to every household with registered voters (1994); and the mailing date for local ballot booklets was changed to allow the coordinated mailing of local and state booklets (1996).

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 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.

Statutory changes, 2000 and 2001. Additional changes were made in the 2001 and 2002 sessions, the most notable being the following: establishment of a numbering system for initiated measures using consecutive numbers through 99 before starting over with 1; inclusion of fiscal impact statements on all proposals in the ballot information booklet; and clarification of procedures for rehearing and appeals of decisions regarding the single subject requirement for initiated proposals.

U.S. Supreme Court Decisions, 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* (119 S. Ct. 636 (1999)), the court rejected one constitutional and two statutory requirements in Colorado law: that petition circulators be registered voters; that circulators of petitions wear identification badges indicating whether they are being paid or are volunteers seeking signatures on petitions; and that sponsors of initiatives file monthly reports that 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.

10th Circuit Court Decision, 2000. The constitutionality of the single subject requirement for

initiated proposals was upheld by the 10th Circuit Court of Appeals on February 10, 2000. In *Campbell vs. Buckley* (203 F.3rd 783 (2000)), the Court held that it was ". . .satisfied that the state's reasons for its procedures [relating to the single subject requirements] are sufficiently weighty to justify the procedures."