Colorado Department of State

Initiative Procedures & Guidelines

A Citizen's Guide to Placing an Initiative on the Ballot

Scott Gessler, Colorado Secretary of State

2011-2012

Revised 5/10/11

A MESSAGE FROM THE SECRETARY

Dear Citizen:

Thank you for taking the time to review or learn about Colorado's ballot initiative processes. This manual is designed to assist citizens in exercising their constitutional rights of initiative. With recent changes in legislation and rules, this manual is even more important as a tool to understand the initiative process.

An "Initiative" is a legal change proposed by eligible electors to amend or add to the Colorado Constitution or the Colorado Statutes using petitions.

It is essential to the integrity of the process that the constitutional and statutory provisions governing the initiative process are carried out fairly and efficiently. The guidelines in this manual are meant to assist you in this regard. The applicable provisions of the Constitution and Statutes should always be consulted throughout the duration of the initiative process. The Elections staff in my office is available to assist you by responding to any procedural questions that you may have.

Thank you again for your interest in this most important of citizens' rights.

Sincerely,

Scott Gessler
Secretary of State

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GUIDELINES FOR THE INITIATIVE PROCESS

The initiative process is complex and lengthy, but can be accomplished within a reasonable period of time if particular attention is paid to the requirements of each applicable statute and the Colorado Constitution.

The Secretary of State has prepared this summary to outline the various steps in the initiative process including the requirements for preparing and qualifying initiatives.

This document provides a general overview of the initiative process. It is not intended for petition entity licensing or circulator training requirements. For more detailed information please review Article V, Section 1 of the Colorado Constitution and Articles 40 and 41 of Title 1, C.R.S., and review the training guide for petition entity representatives and circulators available on the SOS website.

PREPARATION & DRAFTING

Any person interested in placing a constitutional amendment or statutory proposition on the statewide ballot must begin by drafting the initial language of his or her measure.

When writing a proposal, please keep in mind your targeted audience. It is best to use plain, non-technical language, and words with common and everyday meaning understandable to the average reader.

REVIEW & COMMENT MEETING

When the proponents of the measure have completed their typewritten draft, the text must be submitted to the Legislative Council Staff so that a review and comment meeting may be scheduled.

Proposals must designate the names and addresses of only two people who will represent the proponents. Telephone numbers, fax numbers, and e-mail addresses for the two designated representatives are necessary so that the proponents may be contacted on all matters related to the proposed initiative.

Proposals may be submitted in person, by mail, by fax, or by e-mail to:

Mike Mauer, Director
Colorado Legislative Council Staff
Room 029
State Capitol Building
Denver, Colorado 80203
Phone: 303-866-3521
Fax: 303-866-3855
E-mail: lcs.ga@state.co.us

Upon receipt of the draft language of the initiative, the Legislative Council Staff will assign a number to the proposed initiative for tracking purposes.

Additionally, Legislative Council Staff will schedule a public review and comment meeting to occur two weeks from the date of filing. The purpose of the meeting is to review the language of the initiative to ensure that the measure accomplishes the proponents' intent and to give public notice that a proposal is under consideration.

The Office of Legislative Legal Services and Legislative Council Staff prepare written comments of each proposal prior to the review and comment meeting and make them available

on the Legislative Council official website at: www.state.co.us/gov_dir/leg_dir/lcsstaff/

For more information, please see Article V, Section 1(5) of the Colorado Constitution and section 1-40-105, C.R.S.

OPPORTUNITY TO AMEND PROPOSAL

Following the review and comment meeting, proponents will have an opportunity to amend the proposed initiative before submission to the Secretary of State. Amendments may be based on some or all of the comments made by the directors of the Legislative Council Staff and Office of Legislative Legal Services.

If substantial amendments to the proposed initiative are made, other than amendments in direct response to the comments of the directors, proponents must submit a new draft of the measure to the Legislative Council Staff for a review and comment hearing.

FILING THE TEXT WITH THE SECRETARY OF STATE

After the review and comment meeting, and once any necessary amendments have been made, the proponents may file with the Secretary of State.

The following documents must be submitted to the Secretary of State:

1) The original typewritten draft submitted for a review and comment hearing;
2) The amended draft with changes highlighted; and
3) The original final typewritten draft which has the final language for printing of the proposed initiative.

Documents submitted to the Secretary of State must include the number assigned by Legislative Council and must clearly indicate the draft version (i.e. original draft, final draft, etc.)

Additionally, if no changes were made to the text after the review and comment hearing, proponents must submit the text along with a letter from the Legislative Council Staff stating that an additional review and comment meeting is not necessary.

At the time of filing, the names and addresses of the two designated representatives must be included along with their phone numbers, fax numbers and e-mail addresses. Proposals are filed with:

Scott Gessler
Secretary of State
1700 Broadway, Suite 200
Denver, Colorado 80290
Phone: 303-894-2200, ext. 6307
E-mail: initiatives@sos.state.co.us

If proposals are sent by e-mail, hard copies must also be mailed within 5 days.

For additional information, see sections 1-40-104 and 1-40-105(4), C.R.S.

BALLOT TITLE & TITLE BOARD HEARING

After a measure has been filed with the Secretary of State, the Initiative Title Setting Review Board (Title Board) will hold a public hearing.

The Title Board is comprised of designated officials from Legislative Council, the Attorney General's Office, and the Secretary of State's Office.

BALLOT TITLE REQUIREMENTS

In accordance with Colorado law, ballot titles:

- must be brief;
- cannot conflict with another ballot title selected for any petition previously filed for the same election;
- must be in the form of a question which may be answered:
  - "yes" (to vote in favor of the proposed statutory proposition or constitutional amendment); or
  - "no" (to vote against the proposed statutory proposition or constitutional amendment); and
- must unambiguously state the principle of the provision sought to be added, amended, or repealed.

SINGLE-SUBJECT REQUIREMENT

Every constitutional amendment or statutory proposition proposed by initiative must be limited to a single subject, which must be clearly expressed in its title. In other words, the text of the measure must concern only one subject and one distinct purpose.

For additional information relating to the single-subject requirement, see Article V, Section 1(5.5) of the Colorado Constitution and section 1-40-106.5, C.R.S.

TITLE BOARD HEARING

The Title Board will hold public hearings on the first and third Wednesdays of each month that an initiative is filed.

The first hearing of the Title Board is scheduled for the first Wednesday in December after the election and the last hearing of the Title Board will be no later than the third Wednesday in April in the year in which the measure is to be placed on the ballot. For example:

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1 TB	2	3	4
5	6	7	8	9	10	11
12	13	14	15 TB	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6 TB	7	8	9
10	11	12	13	14	15	16
17	18	19	20 TB	21	22	23
24	25	26	27	28	29	30

For the draft to be considered at such hearings, **it must be filed by 3:00 p.m. on the 12th day prior to the hearing** at which the draft is to be considered by the Title Board. For more information, please see the initiative calendar located on the Secretary of State website at the following location: http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

During the hearing, the Title Board will first determine whether the measure satisfies the single-subject requirements. If it does, the Title Board will set a title, ballot title, and submission clause.

In setting a title, the Title Board considers public confusion that might be caused by any misleading titles. Whenever possible, the Title Board avoids titles for which the general understanding of the effect of a "yes" or "no" vote will be unclear. Additionally, the Title Board must set a title that correctly and fairly expresses the true intent and meaning of the measure, and that clearly expresses a single subject.

To facilitate the creation of the ballot title, the Title Board will use a staff draft created by Legislative Legal Services. The staff draft is distributed by the Secretary of State's office before the meeting so that interested parties have a chance to review it.

For additional information relating to the ballot title and Title Board hearing, see Article V, Section 1(5.5) of the Colorado Constitution; and sections 1-40-106 and 1-40-106.5, C.R.S.

MOTION FOR REHEARING

The opportunity to file a motion for rehearing is available to the proponents or any registered elector who is not satisfied with either of the following:

- the Title Board's decision regarding whether a petition meets the single-subject requirement; or
- the titles and submission clause provided by the Title Board.

A motion for rehearing must specifically outline the problems with the titles and submission clause and/or the rulings of the Title Board. Additionally, the motion must be filed with the Secretary of State within seven days after the decision is made or the titles and submission clause are set. Please note that a motion for rehearing must be filed no later than 5:00 p.m. on the seventh day following the Title Board hearing.

If a motion for rehearing is received by the Secretary of State, a rehearing will be held at the next regularly scheduled meeting of the Title Board. However, if the titles and summary were set at the last meeting in April, the rehearing must be held within forty-eight hours of the expiration of the seven-day period to file motions.

For additional information, see section 1-40-107, C.R.S.

FILING AN APPEAL WITH THE COLORADO SUPREME COURT

Any person who has filed a motion for rehearing and is not satisfied with the rulings of the Title Board will have the opportunity to file an appeal with the Colorado Supreme Court.

Upon request, the Secretary of State will provide:

- a certified copy of the initiative with the titles and submission clause of the proposed statutory proposition or constitutional amendment; and
- a certified copy of the motion for rehearing and the ruling.

If the certified documents are filed with the clerk of the Supreme Court within five days from receipt, the matter will be docketed and placed at the head of the calendar to be disposed of promptly.

The Supreme Court will either affirm the action of the Title Board or reverse it. If the decision of the Title Board is reversed, the court will remand it with instructions for the Title Board.

For additional information, see section 1-40-107(2), C.R.S.

GUIDELINES & REQUIREMENTS FOR PETITIONS

PREPARING PETITION SECTIONS FOR CIRCULATION

After the titles have been set by the Title Board, the initiative proponents must submit a petition format to the Secretary of State for review. No petition format will receive final approval by the Secretary of State's Office until after the seven days to file a motion for rehearing with the Title Board have passed.

If no motion for rehearing is filed, the Secretary of State will approve or disapprove the petition format within forty-eight hours.

If a motion for rehearing is filed, then the petition format will not receive final approval by the Secretary of State's Office until after the final decision of the Title Board.

No petition may be printed, published or otherwise circulated until the form and the first printer's proof of the petition have been approved by the Secretary of State.

For additional information, see sections 1-40-110, 1-40-113, and 1-40-114, C.R.S.

PETITION FORMAT

Each petition section must be pre-numbered serially prior to circulation and include the following:

1) The names and mailing addresses of the two designated representatives.
2) Each page must contain:
    - the WARNING (to appear at the top of each page);
    - the title, ballot title and submission clause and the language of the proposed measure;
3) Registered elector signature lines.
    - ruled lines numbered consecutively that provide spaces for:
        - the signature and printed name of each signer;
        - the signer's residence address (including number and street) and city or town;
        - the signer's county; and
        - date and year of signing for each signer.
4) The last page of the section must include the affidavit to be signed by the petition circulator and notarized.

Please see the sample petition format available online at the Secretary of State website: http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

PETITION ENTITIES

The Colorado Revised Statutes define a petition entity as any person or issue committee that provides compensation to a circulator to circulate a ballot petition. As described below, petition entities are regulated by a specific set of state laws recently enacted by the legislature.

LICENSE REQUIREMENT

It is unlawful for any petition entity to provide compensation to a circulator to circulate a petition without first obtaining a license from the Secretary of State.

APPLICATION FOR LICENSE

To obtain a license, a petition entity must:

- submit an application for petition entity license;
- pay a nonrefundable licensing fee; and
- confirm that a current representative of the petition entity has completed the Secretary of State circulator training program relating to potential fraudulent activities in petition circulation.

The application for a petition entity license is available online at the Secretary of State website: http://www.sos.state.co.us/pubs/elections/PetitionEntities/petitionHome.html

DENIAL OF A LICENSE

The Secretary of State may deny a license if he or she finds that the petition entity or any of its principals have been found, in a judicial or administrative proceeding, to have violated the petition laws of Colorado or any other state and such violation involves authorizing or knowingly permitting any of the acts set forth in section 1-

40-135(2)(c)(I)-(VI), C.R.S., excluding subparagraph (V).

The Secretary of State will deny a license if no current representative of the petition entity has completed the training offered by the Secretary of State.

For additional information, see section 1-40-135(2), C.R.S.

REVOCATION OF LICENSE

The Secretary of State shall revoke a license if, at any time after receiving a license, a petition entity is determined to no longer be in compliance with the requirements of section 1-40-135(2)(a), C.R.S., or if the petition entity authorized or knowingly permitted any of the following:

1) Forgery of a registered elector's signature;
2) Circulation of a petition section, in whole or in part, by anyone other than the circulator who signs the affidavit attached to the petition section;
3) Use of a false circulator name or address in the affidavit;
4) Payment of money or other things of value to any person for the purpose of inducing the person to sign or withdraw his/her name from the petition; or
5) A notary public's notarization of a petition section outside the presence of the circulator or without the production of the required identification for notarization of a petition section.

COMPLAINT, HEARING & JUDGMENT

If a complaint is filed with the Secretary of State alleging that a petition entity was not licensed when it compensated any circulator, a hearing will be held in accordance with section 1-40-135(3)(a), C.R.S.

If a violation is determined to have occurred, the petition entity will be fined an amount not to exceed one hundred dollars ($100.00) per circulator for each day that the named individual or individuals circulated petition sections on behalf of the unlicensed petition entity.

If the petition entity is found to have violated a provision of section 1-40-135(2)(c), C.R.S., the Secretary of State will revoke the entity's license for not less than ninety days or more than one hundred eighty days. Furthermore, upon finding any subsequent violation of that section, the Secretary will revoke the petition entity's license for not less than one hundred eighty days or more than one year.

APPLICATION FOR REINSTATEMENT OF LICENSE

A petition entity whose license has been revoked may apply for reinstatement in accordance with section 1-40-135(3)(b) and (c), C.R.S.

DECISION ON APPLICATIONS FOR NEW OR REINSTATED LICENSE

The Secretary of State will issue a decision on any application for a new or reinstated license within ten business days after a petition entity files an application.

REGISTRATION REQUIREMENT

A licensed petition entity must also register with the Secretary of State prior to circulating a ballot petition. To register, the petition entity must complete and submit a Licensed Petition Entity Registration Form. This form is available online at the Secretary of State Petition Entity Licensing website:

http://www.sos.state.co.us/pubs/elections/PetitionEntities/petitionHome.html

To complete the Licensed Petition Entity Registration Form, the following information must be provided:

1) The ballot title of any proposed measure for which a petition will be circulated by circulators coordinated or paid by the petition entity;
2) The current name, address, telephone number, and electronic mail address of the petition entity; and
3) The name and signature of the designated agent of the petition entity for the proposed measure.

*Note: a petition entity must notify the Secretary of State within twenty days of any change in the registration information submitted.

CIRCULATION OF PETITION: GATHERING SIGNATURES

Petitions may be circulated after the petition format has been approved by the Secretary of State and the petition entity has been licensed and registered with the Secretary of State's office if petition circulators will receive compensation.

SOS TRAINING FOR PETITION ENTITY REPRESENTATIVES & PETITION CIRCULATORS

The Secretary of State circulator training program provides an overview of the steps and processes involved with circulating petitions and how to avoid potential fraudulent activities. In addition, the training provides a summary of circulator rights and responsibilities to help prepare them for gathering signatures.

The proponents of an initiative petition or the representatives of a petition entity must inform paid and volunteer circulators that training is available.

Completing the training program is one way that a circulator may comply with the requirement in the circulator's affidavit that a circulator has read and understands the laws pertaining to petition circulation.

To obtain a petition entity license as described in this manual, at least one representative of a petition entity is required to participate in the Secretary of State training program.

A link to the current training guide, which constitutes the circulator training program, is available online at the Secretary of State Petition Entity Licensing website.
http://www.sos.state.co.us/pubs/elections/PetitionEntities/petitionHome.html

Petition representatives and circulators should review Article 40, Title 1, C.R.S., and the instructions outlined in this manual.

FILING THE PETITION FOR VERIFICATION OF SIGNATURES

To be placed on the ballot, a petition must receive 5% of the total votes cast for all candidates for the Office of Secretary of State at the previous general election.

Equation:

(total votes cast) x (.05) = (requirement)

Example:

Using the total number of votes cast at the November 2, 2010 General Election:

(1,722,096) x (.05) = (86,105)

Therefore, the signature requirement for state initiatives for 2011-2012 is: 86,105

Signature Requirements for State Initiatives: http://www.sos.state.co.us/pubs/elections/Initiatives/files/SigReq20112012V2.pdf

Initiative petitions must be filed with the Secretary of State within six months from the date of the final language set by the Title Board. Additionally, the Colorado Constitution requires petitions to be filed no later than 3 months before the election.

ALL INITIATIVE PETITIONS MUST BE FILED BY 3:00 P.M. ON THE DAY OF FILING.

If the initiative language is appealed to the Colorado Supreme Court, signatures may be collected during the appeal process. However, if the court decision includes changes in the wording of the initiative titles, the signatures collected during the appeal process are not valid.

For additional information, see Article V, Section 1(2) of the Colorado Constitution and sections 1-40-107 and 1-40-108(1), C.R.S.

STATEMENT OF SUFFICIENCY OR INSUFFICIENCY

No later than thirty calendar days after the petition has been filed, the Secretary of State will issue a statement of sufficiency or insufficiency. This statement indicates whether a sufficient number of valid signatures appear to have been submitted to certify the petition to ballot.

In the event that the Secretary of State fails to issue a statement of sufficiency or insufficiency within thirty calendar days, the petition will be deemed sufficient.

For additional information, see section 1-40-117, C.R.S.

OPPORTUNITY TO CURE INSUFFICIENCY

If the Secretary of State issues a statement of insufficiency, the designated representatives may cure the insufficiency by filing an addendum to the original petition for the purposes of offering an additional number of signatures.

The addendum must be filed with the Secretary of State within fifteen days of the statement of insufficiency and no later than the applicable deadlines for filing an initiative petition.

ALL FILINGS MUST BE SUBMITTED BY 3:00 P.M. ON THE DAY OF FILING.

Reminder: please keep the petition filing deadline in mind. If the petition is filed on the deadline and the Secretary of State issues a statement of insufficiency, the opportunity to cure will no longer be available.

If an addendum is filed, the Secretary of State will determine whether it cured the insufficiency found in the original petition. Within ten calendar days, the Secretary of State will issue a new statement of sufficiency or insufficiency.

PUBLIC ACCESS TO FILED PETITIONS

While the petition is being examined by the Secretary of State for sufficiency (a period of no more than thirty days from the date of submission), the petition will not be available to the public. After the Secretary of State has issued a statement of sufficiency or insufficiency, the petition will be available for copy. For an addendum that is filed to cure an insufficiency, the addendum will be reviewed by the Secretary of State for a period of ten days and will not be available for public inspection during that time.

For additional information, see sections 1-40-116(2) and 1-40-117(3)(b), C.R.S.

PROTESTING THE SECRETARY OF STATE'S DETERMINATION

Any registered elector may appeal the Secretary of State's determination of sufficiency by filing a protest in the Denver District Court.

The protest must be:

- filed with the Court within thirty days of the statement of sufficiency or insufficiency;
- in writing;
- under oath; and
- the protester must submit three copies to the Court.

For additional information, see section 1-40-118, C.R.S.

PLACEMENT ON THE BALLOT

Once a petition is found sufficient, the ballot title and submission clause set by the Title Board is placed on the ballot. The proposal is numbered according to the requirements outlined in section 1-5-407, C.R.S.

WITHDRAWAL OF AN INITIATIVE PETITION

The designated representatives may withdraw their initiative from consideration by filing a letter with the Secretary of State requesting that the initiative not be placed on the ballot.

The letter must be signed and acknowledged by both designated representatives before a notary public. Additionally, the letter must be filed no later than sixty days prior to the election at which the initiative is to be voted upon.

For additional information, see section 1-40-134, C.R.S.

ONLINE RESOURCES

General initiative information, including the 2011-2012 Initiative Calendar, is available on the Secretary of State website via the following link:

- Initiative Information

http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

COLORADO SECRETARY OF STATE CONTACT INFORMATION

If you need more information or further assistance, please contact:

Secretary of State's Office
1700 Broadway, Suite 200
Denver, CO 80290
Phone: (303) 894-2200, press "3"
Fax: (303) 869-4861
www.sos.state.co.us
initiatives@sos.state.co.us

APPENDIX

GLOSSARY OF COMMON TERMS

Ballot Title: the language that is printed on the ballot that contains the submission clause and title.

Constitutional Amendment: a proposed change to the Colorado Constitution.

Initiative: a measure proposed by petition of eligible electors to amend or add to the Colorado Constitution or the Colorado Statutes.

Petition Circulator: a person who represents a petition to place a measure on the ballot and collects the signatures of other electors who may be interested in signing it.

Petition Entity: any person or issue committee that provides compensation to a circulator to circulate a ballot petition. [Section 1-40-135, C.R.S.]

Statutory Proposition: a proposed change to the Colorado Revised Statutes.

Submission Clause: phrase that precedes the ballot title after it is set, which asks voters whether the statutory proposition or constitutional amendment should be adopted as proposed.

PROCEDURES REGARDING PETITION FORMAT APPROVAL – STATEWIDE INITIATIVES

GENERAL PROCESS & TIMELINE

- No petition format will receive final approval by the Secretary of State's Office until after the 7 days has passed to file a motion for rehearing with the title board. [Section 1-40-107(1), C.R.S.]
- If, after 7 days, no motion for rehearing has been filed, and the petition format has been submitted for approval, then the Secretary of State's Office will review the petition format and approve or disapprove within 48 hours after the 7th day.
- If, after 7 days, no motion for rehearing has been filed, and the petition format has not been submitted for approval, then the Secretary of State's Office will review the petition format and approve or disapprove within 48 hours after the submittal of the format.
- If a motion for rehearing is filed within 7 days, then the petition format will not receive final approval by the Secretary of State's Office until after the final decision of the Title Board.
- If a motion for rehearing is filed within 7 days and is withdrawn prior to the rehearing, and the petition format has not been submitted, then the Secretary of State's Office shall have 48 hours after submittal of the petition format to issue final approval or disapproval of the petition format.
- If a motion for rehearing is filed within 7 days and is withdrawn prior to the rehearing, and the petition format has been submitted to the Secretary of State's Office, the Secretary of State's Office shall have 48 hours from the date of withdrawal of the motion to issue final approval or disapproval of the petition format.

CONSTITUTION OF THE STATE OF COLORADO

ARTICLE V
Legislative Department

Law reviews: For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007).

Section 1. General assembly - initiative and referendum. (1) The legislative power of the state shall be vested in the general assembly consisting of a senate and house of representatives, both to be elected by the people, but the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly and also reserve power at their own option to approve or reject at the polls any act or item, section, or part of any act of the general assembly.

(2) The first power hereby reserved by the people is the initiative, and signatures by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election shall be required to propose any measure by petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions for state legislation and amendments to the constitution, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state at least three months before the general election at which they are to be voted upon.

(3) The second power hereby reserved is the referendum, and it may be ordered, except as to laws necessary for the immediate preservation of the public peace, health, or safety, and appropriations for the support and maintenance of the departments of state and state institutions, against any act or item, section, or part of any act of the general assembly, either by a petition signed by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of the secretary of state at the previous general election or by the general assembly. Referendum petitions, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly that passed the bill on which the referendum is demanded. The filing of a referendum petition against any item, section, or part of any act shall not delay the remainder of the act from becoming operative.

(4) The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon, and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed. This section shall not be construed to deprive the general assembly of the power to enact any measure.

(5) The original draft of the text of proposed initiated constitutional amendments and initiated laws shall be submitted to the legislative research and drafting offices of the general assembly for review and comment. No later than two weeks after submission of the original draft, unless withdrawn by the proponents, the legislative research and drafting offices of the general assembly shall render their comments to the proponents of the proposed measure at a meeting open to the public, which shall be held only after full and timely notice to the public. Such meeting shall be held prior to the fixing of a ballot title. Neither the general assembly nor its committees or agencies shall have any power to require the amendment, modification, or other alteration of the text of any such proposed measure or to establish deadlines for the submission of the original draft of the text of any proposed measure.

(5.5) No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls. In such circumstance, however, the measure may be revised and resubmitted for the fixing of a proper title without the necessity of review and comment on the revised measure in accordance with subsection (5) of this section, unless the revisions involve more than the elimination of provisions to achieve a single subject, or unless the official or officials responsible for the fixing of a title determine that the revisions are so substantial that such review and comment is in the public interest. The revision and resubmission of a measure in accordance with this subsection (5.5) shall not operate to alter or extend any filing deadline applicable to the measure.

(6) The petition shall consist of sheets having such general form printed or written at the top thereof as shall be designated or prescribed by the secretary of state; such petition shall be signed by registered electors in their own proper persons only, to which shall be attached the residence address of such person and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached an affidavit of some registered elector that each signature thereon is the signature of the person whose name it purports to be and that, to the best of the knowledge and belief of the affiant, each of the persons signing said petition was, at the time of signing, a registered elector. Such petition so verified shall be prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors.

(7) The secretary of state shall submit all measures initiated by or referred to the people for adoption or rejection at the polls, in compliance with this section. In submitting the same and in all matters pertaining to the form of all petitions, the secretary of state and all other officers shall be guided by the general laws.

(7.3) Before any election at which the voters of the entire state will vote on any initiated or referred constitutional amendment or legislation, the nonpartisan research staff of the general assembly shall cause to be published the text and title of every such measure. Such publication shall be made at least one time in at least one legal publication of general circulation in each county of the state and shall be made at least fifteen days prior to the final date of voter registration for the election. The form and manner of publication shall be as prescribed by law and shall ensure a reasonable opportunity for the voters statewide to become informed about the text and title of each measure.

(7.5) (a) Before any election at which the voters of the entire state will vote on any initiated or referred constitutional amendment or legislation, the nonpartisan research staff of the general assembly shall prepare and make available to the public the following information in the form of a ballot information booklet:

(I) The text and title of each measure to be voted on;

(II) A fair and impartial analysis of each measure, which shall include a summary and the major arguments both for and against the measure, and which may include any other information that would assist understanding the purpose and effect of the measure. Any person may file written comments for consideration by the research staff during the preparation of such analysis.

(b) At least thirty days before the election, the research staff shall cause the ballot information booklet to be distributed to active registered voters statewide.

(c) If any measure to be voted on by the voters of the entire state includes matters arising under section 20 of article X of this constitution, the ballot information booklet shall include the information and the titled notice required by section 20 (3) (b) of article X, and the mailing of such information pursuant to section 20 (3) (b) of article X is not required.

(d) The general assembly shall provide sufficient appropriations for the preparation and distribution of the ballot information booklet pursuant to this subsection (7.5) at no charge to recipients.

(8) The style of all laws adopted by the people through the initiative shall be, "Be it Enacted by the People of the State of Colorado".

(9) The initiative and referendum powers reserved to the people by this section are hereby further reserved to the registered electors of every city, town, and municipality as to all local, special, and municipal legislation of every character in or for their respective municipalities. The manner of exercising said powers shall be prescribed by general laws; except that cities, towns, and municipalities may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten percent of the registered electors may be required to order the referendum, nor more than fifteen percent to propose any measure by the initiative in any city, town, or municipality.

(10) This section of the constitution shall be in all respects self-executing; except that the form of the initiative or referendum petition may be prescribed pursuant to law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 37. **L. 10, Ex. Sess.:** Entire section amended, p. 11. **L. 79:** Entire section amended, p. 1672, effective upon proclamation of the Governor, **L. 81,** p. 2051, December 19, 1980. **L. 93:** (5.5) added, p. 2152, effective upon proclamation of the Governor, **L. 95,** p. 1428, January 19, 1995. **L. 94:** (7) amended and (7.3) and (7.5) added, p. 2850, effective upon proclamation of the Governor, **L. 95,** p. 1431, January 19, 1995.

Editor's note: The "legislative research and drafting offices" referred to in this section are the Legislative Council and Office of Legislative Legal Services, respectively.

Cross references: For statutory provisions regarding initiatives and referenda, see article 40 of title 1; for distribution of governmental powers, see article III of this constitution; for proposing constitutional amendments by convention or vote of the general assembly, see article XIX of this constitution; for the procedure and requirements for adoption of home rule charters, see § 9 of article XX of this constitution; for apportionment of members of the general assembly, see parts 1 and 2 of article 2 of title 2; for organization and operation of the general assembly, see part 3 of article 2 of title 2.

COLORADO REVISED STATUTES (2010)

INITIATIVE AND REFERENDUM, ARTICLE 40

INITIATIVE AND REFERENDUM

ARTICLE 40

Initiative and Referendum

Editor's note: This article was numbered as article 1 of chapter 70, C.R.S. 1963. The substantive provisions of this article were amended with relocations in 1993, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Cross references: For amendments to the state constitution by the general assembly, see art. XIX, Colo. Const.

Law reviews: For article, "Structuring the Ballot Initiative: Procedures that Do and Don't Work", see 66 U. Colo. L. Rev. 47 (1995); for comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

1-40-101. Legislative declaration. (1) The general assembly declares that it is not the intention of this article to limit or abridge in any manner the powers reserved to the people in the initiative and referendum, but rather to properly safeguard, protect, and preserve inviolate for them these modern instrumentalities of democratic government.

(2) (a) The general assembly finds, determines, and declares that:

(I) The initiative process relies upon the truthfulness of circulators who obtain the petition signatures to qualify a ballot issue for the statewide ballot and that during the 2008 general election, the honesty of many petition circulators was at issue because of practices that included: Using third parties to circulate petition sections, even though the third parties did not sign the circulator's affidavit, were not of legal age to act as circulators, and were paid in cash to conceal their identities; providing false names or residential addresses in the circulator's affidavits, a practice that permits circulators to evade detection by persons challenging the secretary of state's sufficiency determination; circulating petition sections without even a rudimentary understanding of the legal requirements relating to petition circulation; and obtaining the signatures of persons who purported to notarize circulator affidavits, even though such persons were not legally authorized to act as notaries or administer the required oath;

(II) The per signature compensation system used by many petition entities provides an incentive for circulators to collect as many signatures as possible, without regard for whether all petition signers are registered electors; and

(III) Many petition circulator affidavits are thus executed without regard for specific requirements of law that are designed to assist in the prevention of fraud, abuse, and mistake in the initiative process.

(b) The general assembly further finds, determines, and declares that:

(I) Because petition circulators who reside in other states typically leave Colorado immediately after petitions are submitted to the secretary of state for verification, a full and fair examination of fraud related to petition circulation is frustrated, and as a result, the secretary of state has been forced to give effect to certain circulator affidavits that were not properly verified and thus were not prima facie evidence of the validity of petition signatures on affected petition sections; and

(II) The courts have not had authority to exercise jurisdiction over fraudulent acts by circulators and notaries public in connection with petition signatures reviewed as part of the secretary of state's random sample.

(c) Therefore, the general assembly finds, determines, and declares that:

(I) As a result of the problems identified in paragraphs (a) and (b) of this subsection (2), one or more ballot measures appeared on the statewide ballot at the 2008 general election even though significant numbers of the underlying petition signatures were obtained in direct violation of Colorado law and the accuracy of the secretary of state's determination of sufficiency could not be fully evaluated by the district court; and

(II) For the initiative process to operate as an honest expression of the voters' reserved legislative power, it is essential that circulators truthfully verify all elements of their circulator affidavits and make themselves available to participate in challenges to the secretary of state's determination of petition sufficiency.

Source: L. 93: Entire article amended with relocations, p. 676, § 1, effective May 4. **L. 2009:** Entire section amended, (HB 09-1326), ch. 258, p. 1169, § 2, effective May 15.

Editor's note: This section is similar to former § 1-40-111 as it existed prior to 1993, and the former § 1-40-101 was relocated. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 1-5.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This statute is constitutional. Zaner v. City of Brighton, 899 P.2d 263 (Colo. App. 1994).

The legislative intent of article 40 primarily is to make the initiative process fair and impartial. In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Legislation may not restrict right to vote. Legislative acts which prescribe the procedure to be used in voting on initiatives may not restrict the free exercise of the right to vote. City of Glendale v. Buchanan, 195 Colo. 267, 578 P.2d 221 (1978).

1-40-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Ballot issue" means a nonrecall, citizen-initiated petition or legislatively-referred measure which is authorized by the state constitution, including a question as defined in sections 1-41-102 (3) and 1-41-103 (3), enacted in Senate Bill 93-98.

(2) "Ballot title" means the language which is printed on the ballot which is comprised of the submission clause and the title.

(3) (Deleted by amendment, L. 95, p. 430, § 2, effective May 8, 1995.)

(3.5) "Circulator" means a person who presents to other persons for possible signature a petition to place a measure on the ballot by initiative or referendum.

(4) "Draft" means the typewritten proposed text of the initiative which, if passed, becomes the actual language of the constitution or statute, together with language concerning placement of the measure in the constitution or statutes.

(5) (Deleted by amendment, L. 95, p. 430, § 2, effective May 8, 1995.)

(6) "Section" means a bound compilation of initiative forms approved by the secretary of state, which shall include pages that contain the warning required by section 1-40-110 (1), the ballot title, and a copy of the proposed measure; succeeding pages that contain the warning, the ballot title, and ruled lines numbered consecutively for registered electors' signatures; and a final page that contains the affidavit required by section 1-40-111 (2). Each section shall be consecutively prenumbered by the petitioner prior to circulation.

(7) (Deleted by amendment, L. 95, p. 430, § 2, effective May 8, 1995.)

(8) "Submission clause" means the language which is attached to the title to form a question which can be answered by "yes" or "no".

(9) (Deleted by amendment, L. 2000, p. 1621, § 3, effective August 2, 2000.)

(10) "Title" means a brief statement that fairly and accurately represents the true intent and meaning of the proposed text of the initiative.

Source: L. 93: Entire article amended with relocations, p. 676, § 1, effective May 4; (1) amended, p. 1436, § 126, effective July 1. **L. 95:** (3) to (7) and (9) amended, p. 430, § 2, effective May 8. **L. 2000:** (6) and (9) amended, p. 1621, § 3, effective August 2. **L. 2009:** (3.5) added, (HB 09-1326), ch. 258, p. 1170, § 3, effective May 15.

Editor's note: This section is similar to former § 1-40-100.3 as it existed prior to 1993, and the former § 1-40-102 (3)(b) was relocated to § 1-40-107 (5).

ANNOTATION

Title was not a brief statement that fairly and accurately represented the true intent and meaning of the proposed initiative where the title and summary did not contain any indication that the geographic area affected would have been limited, and therefore there would be a significant risk that voters statewide would have misperceived the scope of the proposed initiative. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996).

The titles and summary were not misleading since they tracked the language of the initiative, and any problems in the interpretation of the measure or its constitutionality were beyond the functions assigned to the title board and outside the scope of the court's review of the title board's actions. Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997)

1-40-103. Applicability of article. (1) This article shall apply to all state ballot issues that are authorized by the state constitution unless otherwise provided by statute, charter, or ordinance.

(2) The laws pertaining to municipal initiatives, referenda, and referred measures are governed by the provisions of article 11 of title 31, C.R.S.

(3) The laws pertaining to county petitions and referred measures are governed by the provisions of section 30-11-103.5, C.R.S.

(4) The laws pertaining to school district petitions and referred measures are governed by the provisions of section 22-30-104 (4), C.R.S.

Source: L. 93: Entire article amended with relocations, p. 677, § 1, effective May 4. **L. 95:** Entire section amended, p. 431, § 3, effective May 8. **L. 96:** (3) and (4) added, p. 1765, § 53, effective July 1.

Editor's note: Provisions of the former § 1-40-103 were relocated in 1993. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Petition was circulated within the period specified by law. See Baker v. Bosworth, 122 Colo. 356, 222 P.2d 416 (1950).

1-40-104. Designated representatives. At the time of any filing of a draft as provided in this article, the proponents shall designate the names and mailing addresses of two persons who shall represent the proponents in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed.

Source: L. 93: Entire article amended with relocations, p. 677, § 1, effective May 4.

Editor's note: The former § 1-40-104 was relocated to § 1-40-108 (1) in 1993.

ANNOTATION

The designation requirement is a procedural one, so the proponents' failure to designate two persons to receive mail notices did not deprive the board of jurisdiction. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

1-40-105. Filing procedure - review and comment - amendments - filing with secretary of state. (1) The original typewritten draft of every initiative petition for a proposed law or amendment to the state constitution to be enacted by the people, before it is signed by any elector, shall be submitted by the proponents of the petition to the directors of the legislative council and the office of legislative legal services for review and comment. Proponents are encouraged to write such drafts in plain, nontechnical language and in a clear and coherent manner using words with common and everyday meaning which are understandable to the average reader. Upon request, any agency in the executive department shall assist in reviewing and preparing comments on the petition. No later than two weeks after the date of submission of the original draft, unless it is withdrawn by the

proponents, the directors of the legislative council and the office of legislative legal services, or their designees, shall render their comments to the proponents of the petition concerning the format or contents of the petition at a meeting open to the public. Where appropriate, such comments shall also contain suggested editorial changes to promote compliance with the plain language provisions of this section. Except with the permission of the proponents, the comments shall not be disclosed to any person other than the proponents prior to the public meeting with the proponents of the petition.

(2) After the public meeting but before submission to the secretary of state for title setting, the proponents may amend the petition in response to some or all of the comments of the directors of the legislative council and the office of legislative legal services, or their designees. If any substantial amendment is made to the petition, other than an amendment in direct response to the comments of the directors of the legislative council and the office of legislative legal services, the amended petition shall be resubmitted to the directors for comment in accordance with subsection (1) of this section prior to submittal to the secretary of state as provided in subsection (4) of this section. If the directors have no additional comments concerning the amended petition, they may so notify the proponents in writing, and, in such case, a hearing on the amended petition pursuant to subsection (1) of this section is not required.

(3) To the extent possible, drafts shall be worded with simplicity and clarity and so that the effect of the measure will not be misleading or likely to cause confusion among voters. The draft shall not present the issue to be decided in such manner that a vote for the measure would be a vote against the proposition or viewpoint that the voter believes that he or she is casting a vote for or, conversely, that a vote against the measure would be a vote for a proposition or viewpoint that the voter is against.

(4) After the conference provided in subsections (1) and (2) of this section, a copy of the original typewritten draft submitted to the directors of the legislative council and the office of legislative legal services, a copy of the amended draft with changes highlighted or otherwise indicated, if any amendments were made following the last conference conducted pursuant to subsections (1) and (2) of this section, and an original final draft which gives the final language for printing shall be submitted to the secretary of state without any title, submission clause, or ballot title providing the designation by which the voters shall express their choice for or against the proposed law or constitutional amendment.

Source: L. 93: Entire article amended with relocations, p. 677, § 1, effective May 4; (1) amended, p. 994, § 1, effective June 2. **L. 2000:** (4) amended, p. 1622, § 4, effective August 2.

Editor's note: This section is similar to former § 1-40-101 as it existed prior to 1993, and the former § 1-40-105 was relocated to § 1-40-109.

Cross references: For the general assembly, powers, and initiative and referendum reserved to the people, see also § 1 of art. V, Colo. Const.; for recall from office, see art. XXI, Colo. Const.

ANNOTATION

I. General Consideration.

II. People's Right to Enact Own Legislation.

III. Review and Comment by Legislative Agencies.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 16 Am. Jur.2d, Constitutional Law, §§ 16, 19, 30; 42 Am. Jur.2d, Initiative and Referendum, §§ 16, 18, 21, 40.

C.J.S. See 82 C.J.S., Statutes, § 128.

Law reviews. For article, "Popular Law-Making in Colorado", see 26 Rocky Mt. L. Rev. 439 (1954).

Annotator's note. (1) The following annotations include cases decided under former provisions similar to this section.

(2) For additional cases concerning the initiative and referendum power, see the annotations under § 1 of article V of the state constitution.

The purpose of the initiative and referendum embodied in the constitution was to expeditiously permit the free exercise of legislative powers by the people, and the procedural statutes enacted in connection therewith

were adopted to facilitate the execution of the law. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938); Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

And the procedural sections enacted in connection therewith were adopted to facilitate the execution of the law. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

Provisions relating to the initiative should be liberally construed to permit, if possible, the exercise by the electors of this most important privilege. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938); Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

Citizen held not to have an "interest in the matter in litigation" in mandamus proceedings. Where on protest the secretary of state refused to file or refile a tendered petition to initiate a measure under the initiative and referendum act, and mandamus is brought to compel him to file, a citizen who feels he will be injured by the measure has not such an "interest in the matter in litigation" or "in the success of either of the parties to the action", as gives him the right to intervene in the mandamus proceeding. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

II. PEOPLE'S RIGHT TO ENACT OWN LEGISLATION.

People have reserved to themselves right of initiative in § 1 of art. V, Colo. Const. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980).

No discretion rests with administrative officials to pass upon the validity of an act proposed by the people. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

The people then undertake to legislate for themselves. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

And the initiative and referendum laws, where invoked by the people, supplant the city council or representative body. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

And in the exercise of their right to vote upon such proposal, wisely adopt or reject it. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

And the town or city clerk is required to perform certain statutory duties in connection therewith, for failure of which he is subject to penalties. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

Because it is not within the discretion of the clerk and city council to question the acts of their principal, the people. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

The people express their sanction and approval of the ordinance by their vote, and its enforcement is attempted by one whose rights are affected, then the courts are open to pass upon the question of its validity. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

But a proposed ordinance is clothed with the presumption of validity and its constitutionality will not be considered by the courts by means of a hypothetical question, but only after enactment. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

And neither the supreme court nor any other court may be called upon to construe or pass upon a legislative act until it has been adopted. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

The only exception to this rule is the constitutional provision authorizing the general assembly to propound interrogatories to the supreme court upon important questions upon solemn occasions (§ 3 of art. VI, Colo. Const.). City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

Therefore, it is clear from the provisions of the initiative and referendum act and the penalties provided thereby that the legislature has been careful and diligent to safeguard the primary right of the people to propose and enact their own legislation. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

III. REVIEW AND COMMENT BY LEGISLATIVE AGENCIES.

Any proposed initiative must be submitted to the legislative research office and the legislative drafting office before it is submitted to the initiative title-setting board regardless of whether it is substantially similar to a previously proposed initiative. Without such submittal, the board lacks jurisdiction to set a title. In re Title Pertaining to "Tax Reform", 797 P.2d 1283 (Colo. 1990); In re Amendment Concerning Limited Gaming in the Town of Idaho Springs, 830 P.2d 963 (Colo. App. 1992).

But where legislative service agencies indicate that they have no additional comments beyond those made on first version of essentially the same proposal, it is not necessary to convene a second review and comment hearing. In re Second Proposed Initiative Concerning Uninterrupted Serv. by Pers. Employees, 613 P.2d 867 (Colo. 1980).

And where one feature of a proposal is not specifically pointed out by legislative service agencies, but is included in titles and summary, the measure needs not be remanded. Matter of Proposed Initiative for an Amendment Entitled "W.A.T.E.R.", 875 P.2d 861 (Colo. 1994).

No resubmission of the amended proposed initiative was required by subsection (2) since the amendments made by the proponents to the original proposed initiative were made in response to the comments of the directors of the legislative council and the office of legislative legal services. Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

Where changes in final version of initiative submitted to secretary of state were in direct response to substantive questions and comments raised by directors of the legislative council and the office of legislative legal services, the proponents of the initiative were not required to resubmit the initiative to the directors. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

While particular change was not made in direct response to the directors' questions, court concludes that, in the context of the amendment as a whole, it was a clarification and not a substantive change. Accordingly, change did not require resubmission to the directors. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

Change made in response to director's comment about a suggested grammatical change and comment regarding the overlap of terms used in the proposed initiative did not require proponents to resubmit initiative. In re Ballot Title 2007-2008 No. 57, 185 P.3d 142 (Colo. 2008).

Proponents' failure to indicate changes as specified in subsection (4) justified board's refusal to set a title. Matter of Proposed Initiative 1997-98 No. 109, 962 P.2d 252 (Colo. 1998).

1-40-106. Title board - meetings - titles and submission clause. (1) For ballot issues, beginning with the first submission of a draft after an election, the secretary of state shall convene a title board consisting of the secretary of state, the attorney general, and the director of the office of legislative legal services or the director's designee. The title board, by majority vote, shall proceed to designate and fix a proper fair title for each proposed law or constitutional amendment, together with a submission clause, at public meetings to be held at the hour determined by the title board on the first and third Wednesdays of each month in which a draft or a motion for reconsideration has been submitted to the secretary of state. To be considered at such meeting, a draft shall be submitted to the secretary of state no later than 3 p.m. on the twelfth day before the meeting at which the draft is to be considered by the title board. The first meeting of the title board shall be held no sooner than the first Wednesday in December after an election, and the last meeting shall be held no later than the third Wednesday in April in the year in which the measure is to be voted on.

(2) (Deleted by amendment, L. 95, p. 431, § 4, effective May 8, 1995.)

(3) (a) (Deleted by amendment, L. 2000, p. 1620, § 1, effective August 2, 2000.)

(b) In setting a title, the title board shall consider the public confusion that might be caused by misleading titles and shall, whenever practicable, avoid titles for which the general understanding of the effect of a "yes" or "no" vote will be unclear. The title for the proposed law or constitutional amendment, which shall correctly and fairly express the true intent and meaning thereof, together with the ballot title and submission clause, shall be completed within two weeks after the first meeting of the title board. Immediately upon completion, the secretary of state shall deliver the same with the original to the parties presenting it, keeping the copy with a record of the action taken thereon. Ballot titles shall be brief, shall not conflict with those selected for any petition previously filed for the same election, and shall be in the form of a question which may be answered "yes" (to vote in favor of the proposed law or constitutional amendment) or "no" (to vote against the proposed law or constitutional amendment) and which shall unambiguously state the principle of the provision sought to be added, amended, or repealed.

Source: L. 93: Entire article amended with relocations, p. 679, § 1, effective May 4. **L. 95:** (1), (2), and (3)(a) amended, p. 431, § 4, effective May 8. **L. 2000:** (3) amended, p. 1620, § 1, effective August 2. **L. 2004:** (1) amended, p. 756, § 1, effective May 12. **L. 2009:** (1) amended, (HB 09-1326), ch. 258, p. 1170, § 4, effective July 1.

Editor's note: This section is similar to former § 1-40-101 as it existed prior to 1993, and the former § 1-40-106 was relocated. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For the general assembly, powers, and initiative and referendum reserved to the people, see also § 1 of art. V, Colo. Const.; for recall from office, see art. XXI, Colo. Const.

ANNOTATION

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 16 Am. Jur.2d, Constitutional Law, §§ 16, 19, 32; 42 Am. Jur.2d, Initiative and Referendum, §§ 16, 18, 21, 40.

C.J.S. See 82 C.J.S., Statutes, § 128.

Law reviews. For article, "Popular Law-Making in Colorado", see 26 Rocky Mt. L. Rev. 439 (1954).

Annotator's note. (1) The following annotations include cases decided under former provisions similar to this section.

(2) For cases concerning the people's right to enact their own legislation, see the annotations under § 1-40-105.

(3) For additional cases concerning the initiative and referendum power, see the annotations under §1 of article V of the state constitution.

Flexible level of scrutiny applies to challenge of article V, section 1(5.5), of the Colorado Constitution and the statutory title-setting procedures implementing it. Under this standard, courts must weigh the "character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against the "precise interests put forward by the State as justifications for the burden imposed by its rule", taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights". Anderson v. Celebrezze, 460 U.S. 780, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983); Campbell v. Buckley, 11 F. Supp.2d 1260 (D. Colo. 1998).

Single-subject requirement in article V, section 1 (5.5), of the constitution and the statutory title-setting procedures implementing it do not violate initiative proponents' free speech or associational rights under the first amendment nor do they discriminate against proponents in violation of the fourteenth amendment's equal protection clause. Campbell v. Buckley, 11 F.
Supp.2d 1260 (D. Colo. 1998), aff'd, 203 F.3d 738 (10th Cir. 2000).

The summary, single subject and title requirements serve to prevent voter confusion and promote informed decisions by narrowing the initiative to a single matter and providing information on that single subject. Campbell v. Buckley, 203 F.3d 738 (10th Cir. 2000).

The requirements serve to prevent a provision that would not otherwise pass from becoming law by "piggybacking" it on a more popular proposal or concealing it in a long and complex initiative. Campbell v. Buckley, 203 F.3d 738 (10th Cir. 2000).

The 12-day notice requirement in subsection (1) only governs the time requirement for submitting a draft of the text of the initiative. Subsection (1) does not require that any proposed amendments or modifications to the title or submission clause be submitted to the board at least twelve days prior to the hearing. Proposed additions or deletions from the title and submission clause may be offered by any registered elector during the public hearing or rehearing before the board. In re Proposed Initiated Constitutional Amendment, 877 P.2d 329 (Colo. 1994).

"Substantial compliance" is the standard by which to judge compliance with the fiscal impact information filing requirements of subsection (3)(a). Invalidation of the board's actions when the fiscal impact information was filed five minutes late, then refiled three hours later to correct a calculation error, would impermissibly infringe on the fundamental right of initiative. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000) (decided under law in effect prior to 2000 amendment).

The purpose of the title setting process is to ensure that person reviewing the initiative petition and voters are fairly advised of the import of the proposed amendment. In re Title, Ballot Title and Submission Clause, 910 P.2d 21 (Colo. 1996).

Applied in Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

II. FILING.

The filing of a petition to initiate a measure under the initiative and referendum statute is a

ministerial act, and the secretary of state has discretion in the first instance to determine its sufficiency to entitle it to be filed. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938) (decided under former law).

III. STATUTORY BOARD.

It is the duty of those to whom the duty is assigned to prepare a title to an initiated measure to use such language as shall correctly and fairly express the true intent and meaning of the proposal to be submitted to the voters. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

But the action of the statutory board empowered to fix a ballot title and submission clause is presumptively valid. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958); In re Proposed Initiative "Automobile Insurance Coverage," 877 P.2d 853 (Colo. 1994); In re Proposed Initiative 1997-1998 No. 75, 960 P.2d 672 (Colo. 1998); In re Proposed Initiative 1997-1998 No. 105, 961 P.2d 1092 (Colo. 1998); Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

And those who contend to the contrary must show wherein the assigned title does not meet the statutory requirement. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

The reason being that, under our system of government, the resolution of these questions, when the formalities for submission have been met, rests with the electorate. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

Title board had discretion to set the titles and summary of proposed initiative despite proponents' failure to indicate all of the differences between the original and final versions of the measure submitted to the secretary of state. Matter of Prop. Init. Const. Amend. 1996-3, 917 P.2d 1274 (Colo. 1996).

Board was created by statute to assist the people in the implementation of their right to initiate laws. In re Proposed Initiative Concerning Drinking Age, 691 P.2d 1127 (Colo. 1984).

Deputy attorney general. Because the title board is created by statute, the attorney general may designate, pursuant to § 24-31-103, a deputy to serve in her place. Amendment to Const. Section 2 to Art. VII, 900 P.2d 104 (Colo. 1995).

Delegation. Because the title board is created by statute, the attorney general, pursuant to § 24-31-103, and the secretary of state, pursuant to § 24-21-105, may designate deputies to serve in their place. Matter of Title, Ballot Title & Sub. Cl., 900 P.2d 121 (Colo. 1995).

The provisions of this statute, rather than those of the Administrative Procedure Act, govern the Board's action in designating and fixing the title, ballot title and submission clause, and summary of a proposed initiative measure. In re Proposed Initiative Entitled W.A.T.E.R., 831 P.2d 1301 (Colo. 1992).

Plaintiff has a liberty right to challenge the decision of the title board. This section and § 1-40-101 insufficiently provide for the notice required by the United States Constitution to protect this liberty interest, thereby depriving plaintiff of her constitutional rights. Montero v. Meyer, 790 F. Supp. 1531 (D. Colo. 1992).

As to all initiatives and referenda hearings governed by this section occurring after April 27, 1992, defendants are ordered to publish pre-hearing and post-hearing notices to electors at least sufficient to meet the fair notice requirements of due process of law under the Fourteenth Amendment to the United States Constitution. Montero v. Meyer, 790 F. Supp. 1531 (D. Colo. 1992).

Neither the secretary of state nor any reviewing court should be concerned with the merit or lack of merit of a proposed constitutional amendment. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

And a board acts wisely in refusing to use words in a title which would tend to color the merit of the proposal on one side or the other. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

The burden of proving procedural noncompliance rests with the petitioner, not with the proponents of the initiative. A presumption exists that the secretary of state properly determined the sufficiency of the filing of a petition to initiate a measure. Because the petitioner has not shown any defect in the proceeding that would destroy the board's jurisdiction in the matter, the petitioner's jurisdictional challenge is rejected. In re Petition on Campaign and Political Finance, 877 P.2d 311 (Colo. 1994).

Board is not required to give opinion regarding ambiguity of a proposed initiative, nor is it necessary for the board to be concerned with legal issues which the proposed initiative may create. Matter of Title, Ballot Title, Etc., 797 P.2d 1275 (Colo. 1990).

Task of the board is to provide a concise summary of the proposed initiative, focusing on the most critical aspects of the proposal, not simply to restate all of the provisions of the proposed initiative. Board not required to include every aspect of a proposal in the title and submission clause. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Board may be challenged when misleading summary of amendment prejudicial. A misleading summary of the fiscal impact of a proposed amendment is likely to create an unfair prejudice against the measure and is a sufficient basis, under this section, for challenging the board's action. In re An Initiated Constitutional Amendment, 199 Colo. 409, 609 P.2d 631 (1980).

Request for agency assistance at board's discretion. The decision of whether and from which of the two state agencies to request information is within the discretion of the board. Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

Technical correction of proposed initiative permitted. Allowing a technical correction of the proposed initiative to conform with the intent of the proponents does not frustrate the purpose of the statute. Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

Purpose of statutory time table for meetings of initiative title setting review board is to assure that the titles, submission clause, and summary of an initiated measure are considered promptly by the board well in advance of the date by which the signed petitions must be filed with the secretary of state. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980); Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

Section not frustrated by next-day continuance of statutory date for last meeting. A continuance to the next day following the statutory date for the last meeting in order to comply fully with other statutory requirements does not frustrate the purpose of this section. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980).

Initiative did not qualify for November 1997 election. The requisite signatures had to be filed in the first week of August, but the title setting was not until the third week in that month and the board could not meet to consider the initiative before the third Wednesday in May of 1998. Matter of Title, Ballot Title for 1997-98 No. 30, 959 P.2d 822 (Colo. 1998).

Board had the authority to set a title, ballot title and submission clause, and summary for the proposed constitutional amendment at issue, but the question of the board's jurisdiction to set titles for a ballot issue in an odd-numbered year was premature, as the secretary of state, not the board, has the authority to place measures on the ballot. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Board had the authority to set the titles and summary of an initiative filed June 20, 1997, because the measure was eligible, at the earliest, for placement on the ballot in the November 1998 general election. In re Initiative #25A Concerning Hous. Unit Construction Limits, 954 P.2d 1063 (Colo. 1998).

Hearings on motions to reconsider. Even in odd numbered years, hearings on motions to reconsider decisions entered during the last meeting in May must be held within 48 hours of filing of the motion. Byrne v. Title Bd., 907 P.2d 570 (Colo. 1995); Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

When board may hold meetings. Under this section, the title setting board is subject to two specific prohibitions with regard to the timing of its meetings: (1) The board may not meet between an election and the first Wednesday in December in any year in which an election is held, and (2) the board may not meet after the third Wednesday in May to consider measures that will be voted on in the upcoming November election. Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

Meetings in July and August are proper when considering titles for a measure that will not be placed on the ballot until November of the following year. Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

Actions of state officers under this statute upheld. Bauch v. Anderson, 178 Colo. 308, 497 P.2d 698 (1972).

The board did not intrude on the jurisdiction of the supreme court by correcting two transcription errors in the summary after the matter was on appeal before the court. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

IV. TITLE; BALLOT TITLE AND SUBMISSION CLAUSE.

A. Sufficiency of Titles.

1. In General.

The purpose of the title-setting process is to ensure that both the persons reviewing an initiative petition and the voters are fairly and succinctly advised of the import of the proposed law. In re Proposed Initiative on Education Tax Refund, 823 P.2d 1353 (Colo. 1991); Matter of Title, Ballot Title & S. Clause, 872 P.2d 698 (Colo. 1994).

Initiated measure's title, as set by review board, must be proper and fair and must correctly and fairly express the true intent and meaning of the proposed measure. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980); In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990).

Ballot title shall correctly and fairly express the true intent and meaning of the proposed measure and shall unambiguously state the principle of the provision sought to be added, amended, or repealed. In re Proposed Initiative for 1999-2000 No. 29, 972 P.2d 257 (Colo. 1999); Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

The titles must be fair, clear, accurate, and complete, but they need not set out every detail of the

initiative. Court reviews titles set by the board with great deference and will only reverse the board's decision if the titles are insufficient, unfair, or misleading. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006).

In fixing titles and summaries, the board's duty is to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice. In re Ballot Title 1999-2000 No. 29, 972 P.2d 257 (Colo. 1999); Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 37, 977 P.2d 845 (Colo. 1999); Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 38, 977 P.2d 849 (Colo. 1999).

It is not the court's function to write the best possible titles. Only if the Board's chosen language is clearly inaccurate or misleading will the court reverse it. Nor is it the court's function to speculate on the future effects the initiative may have if it is adopted. Whether the initiative will indeed have the effect claimed by petitioners is beyond the scope of the court's review. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

Title and summary fail to convey to voters the initiative's likely impact on state spending on state programs, therefore, they may not be presented to voters as currently written. Title and summary are not clear perhaps because the original text of the proposed initiative is difficult to comprehend. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 37, 977 P.2d 845 (Colo. 1999).

In approaching the question as to whether a title is a proper one, all legitimate presumptions should be indulged in favor of the propriety of an attorney general's actions. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958); Matter of Title, Ballot Title, Etc., 850 P.2d 144 (Colo. 1993).

And if reasonable minds may differ as to the sufficiency of a title, the title should be held to be sufficient. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

Only in a clear case should a title so prepared be held insufficient. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

Burden for invalidating an amendment because of an alleged misleading ballot title, after adoption by the people in a general election, is heavy since the general assembly has provided procedures for challenging a ballot title prior to elections. Unless the challengers to the amendment can prove that so many voters were actually misled by the title that the result of the election might have been different, the challenge will fail. City of Glendale v. Buchanan, 195 Colo. 267, 578 P.2d 221 (1978).

And under the provisions of this section to the effect that an initiative petition shall contain a "submission clause" before being signed by electors, a petition which contains a ballot title together with the words "yes" and "no" and blank spaces opposite thereto, may be deemed to comply with the requirements of this section concerning submission clauses. Noland v. Hayward, 69 Colo. 181, 192 P. 657 (1920) (decided under former law).

The board need not and cannot describe every feature of a proposed measure in the titles and submission clause. In re Proposed Initiative Concerning State Pers. Systems, 691 P.2d 1121 (Colo. 1984); In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

To require an item by item paraphrase of the proposed constitutional amendment or statutory provision would undermine the intended relatively short and plain statement of the board that sets forth the central features of the initiative. The aim is to capture, succinctly and accurately, the initiative's plain language to enable informed voter choice. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

Title board not required to include every aspect of a proposal in the title and submission clause, to discuss every possible effect, or provide specific explanations of the measure. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Board has discretion in resolving interrelated problems of length, complexity, and clarity in designating a title and ballot title and submission clause. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

The board is charged with the duty to act with utmost dedication to the goal of producing documents which will enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal. In re Proposed Initiative Concerning "State Personnel System", 691 P.2d 1121 (Colo. 1984); Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Duty to voters is paramount. Board should not resolve all ambiguities in favor of proponents when to do so would come at the expense of other, equally important duties. Board is statutorily required to exercise its authority to protect against public confusion and reject an initiative that cannot be understood clearly enough to allow the setting of a clear title. In re Proposed Initiative 1999-2000 No. 25, 974 P.2d 458 (Colo. 1999).

The board must avoid titles for which a general understanding of a "yes" or "no" vote would be unclear. In re Proposed Initiative Concerning "Automobile Insurance Coverage," 877 P.2d 853 (Colo. 1994).

Explanation of effect on existing law permitted. The board is not precluded from adopting language which explains to the signers of a petition and the voter how the initiative fits in the context of existing law, even though the specific language is not found in the text of the proposed statute. In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982).

Although every possible effect need not be included. There is no requirement that every possible effect be included within the title or the ballot title and submission clause. In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

And the board is not required to explain the relationship between the initiative and other statutes or constitutional provisions. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

In considering whether the title, ballot title and submission clause, and summary accurately reflect the intent of the proposed initiative, it is appropriate to consider the testimony of the proponent concerning the intent of the proposed initiative that was offered at the public meeting at which the title, ballot title and submission clause, and summary were set. In re Proposed Initiated Constitutional Amendment Concerning Unsafe Workplace Environment, 830 P.2d 1031 (Colo. 1992).

Initiated measure's title will be rejected only if it is misleading, inaccurate, or fails to reflect the central features of the proposed initiative. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

It is well established that the titles and summary of a proposed initiative need not spell out every detail of a proposed initiative in order to convey its meaning accurately and fairly. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

In setting titles, the board must correctly and fairly express the true intent and meaning of the proposed initiative and must consider the public confusion that might be caused by misleading titles. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Title and summary are sufficient if a voter would not be confused about the nature of the initiative or its provisions regarding election information. Where the summary for an initiative concerning the procedures to be used to provide the public with information about a judge standing for a retention or removal election fully sets forth the information that will be provided to the public and discloses that no judicial performance commission reviews will be published, a voter would not be confused about the initiative or the provisions regarding election information. Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

2. Titles Held Sufficient.

The adoption of article X, section 20 of the Colorado constitution does not obligate the board to disclose every ramification of a proposed tax measure. Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

There is no requirement that the board state the effect an initiative will have on other constitutional and statutory provisions or describe every feature of a proposed measure in the titles. In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the Town of Burlington, 830 P.2d 1023 (Colo. 1992); In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in Manitou Springs, 826 P.2d 1241 (Colo. 1992); Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993); Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994); In re Petition on Campaign and Political Finance, 877 P.2d 311 (Colo. 1994).

Failure to mention existing similar statute of no effect. The failure to mention the existence of a statute addressing the same or similar subject as that of a proposed amendment does not have any effect on the acceptability of the titles, summary, and submission clause. In re Proposed Initiative on Transf. of Real Estate, 200 Colo. 40, 611 P.2d 981 (1980).

No requirement that provisions of section to be repealed must be set out in the ballot title and submission clause. Matter of Proposed Constitutional Amendment, 757 P.2d 132 (Colo. 1988).

Where an initiative includes language that states, "This section was adopted by a vote of the people at the general election in 1998", the title board need not include this language in the summary or title. The general assembly may amend or repeal statutory provisions regardless of whether they are voter approved or not. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Board had no duty to reveal in the title, ballot title and submission clause, and summary the alleged irrepealability of initiative during a certain period where initiative did not state anywhere that it was "irrepealable" and petitioner failed to provide any evidence of proponent's intent to effect an irrepealability clause. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

Reference does not have to be made in the ballot title to the purpose of the initiative. The fact that disability benefits were to be provided at a reasonable cost to employers was not essential for title setting purposes. The Title Setting Board is not required to describe every feature of a proposed measure in the title or submission

clause. Matter of Proposed Initiated Constitutional Amendment Concerning the Fair Treatment of Injured Workers Amendment, 873 P.2d 718 (Colo. 1994).

Subsection (3)(b) requires that conflicting ballot titles distinguish between overlapping or conflicting proposals. Petitioners' claim that the board had erred by not specifying that the proposed amendment conflicted with the Workers' Choice of Care Amendment was rejected. The court held that there was no "discernible conflict" between the two ballot titles. Matter of Proposed Initiated Constitutional Amendment Concerning the Fair Treatment of Injured Workers Amendment, 873 P.2d 718 (Colo. 1994).

Board was not required to interpret meaning of two conflicting provisions in initiative or indicate whether they would conflict where two conflicting amendments may be proposed or even adopted at same election and where board disclosed both provisions in the title and submission clause. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

Although the texts of two initiatives are similar, the titles and submission clauses set by the board accurately reflect an important distinction between them. Voters comparing the titles and submission clauses for the two measures would be able to distinguish between the measures and would not be misled into voting for or against either measure by reason of the words chosen by the board. In re Proposed Initiated Constitutional Amendment, 877 P.2d 329 (Colo. 1994).

Although the first clause of the title for two conflicting measures is the same, the subsequent clauses are different and reflect the distinctions between the two measures; therefore, the titles of the two measures do not conflict. In re Ballot Title 2007-2008 No. 61, 184 P.3d 747 (Colo. 2008).

The title board's failure to include a reference to other related proposed initiatives in title and summary of initiative do not make them misleading. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Not specifying where gambling would be lawful or which city ordinances would be applicable was not essential to nor fatal to the title. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

It is not the function of the Board to disclose every possible interpretation of the language of the initiative. In Re Prop. Init. "Fair Fishing", 877 P.2d 1355 (Colo. 1994).

The title, submission clause, and summary must reflect the intent of the initiative as drafted. They need not reflect intentions of the proponents that are not expressed in the measure itself. In re Proposed Initiative on Water Rights, 877 P.2d 321 (Colo. 1994).

Board is not required to give opinion regarding ambiguity of a proposed initiative, nor is it necessary for the board to be concerned with legal issues which the proposed initiative may create. Matter of Title, Ballot Title, Etc., 797 P.2d 1275 (Colo. 1990).

Board is not required to consider and resolve potential or theoretical disputes or determine the meaning or application of proposed amendment. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

Board's duty is merely to summarize central features of initiated measure in the title, ballot title and submission clause, and summary in a clear and concise manner. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

There is no requirement that ballot title and submission clause identify any articles or sections which are amended. Matter of Title, Ballot Title, Etc., 797 P.2d 1275 (Colo. 1990).

No clear case presented for the invalidation of titles fixed by the board where the wording of the titles attributes a meaning to the text that is reasonable, although nor free from all doubt, and relates to a feature of the proposed law that is both peripheral to its central purpose and of limited temporal relevance. In re Proposed Initiative Concerning Drinking Age, 691 P.2d 1127 (Colo. 1984).

Titles were not insufficient for failure to contain the general subject matter of the proposed constitutional amendment or because the provisions of the proposed amendment were listed chronologically rather than in order of significance. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

The fact that the ballot title contains two separate paragraphs that are not identical does not make the ballot title ambiguous for purposes of this section. The relevant determination is whether the two paragraphs are sufficiently different such that a voter reasonably could vote in favor of the question as presented in one paragraph and yet decide to vote against the question as presented in the other paragraph. It is implausible to suggest that a voter reasonably could have considered voting in favor of one paragraph in the ballot title and against the other paragraph where the only difference between the two paragraphs is that one paragraph is slightly more detailed than the other. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994).

All three of the main tax issues were set forth in the title, submission clause, and summary with sufficient particularity to apprise voters that the proposed amendment would increase taxes on cigarettes and tobacco products. Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

It was within the board's discretion to omit information from the title or submission clause regarding

the creation of a citizen's commission on tobacco and health and that spending categories and required appropriations contained in the proposed amendment could only be changed by a subsequent constitutional amendment since neither were central features to the proposal. Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

Absence of definitions was distinguishable from situation in In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990), since although the definitions may have been broader than common usage in some respects and narrower in others, they appeared to be included for sake of brevity and they would not adopt a new or controversial legal standard which would be of significance to all concerned with the issues surrounding election reform. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

The titles are not required to include definitions of terms unless the terms adopt a new or controversial legal standard that would be of significance to all concerned with the initiative. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

And the board is not usually required to define a term that is undefined in the proposed measure. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

A title and summary that repeat or reword much of the language of the proposed initiative and contain complex clauses are not insufficient if they fairly express the intent and meaning of the proposed initiative. Percy v. Hayes, 954 P.2d 1063 (Colo. 1998).

Titles are fair, sufficient, and clear. Titles track the language of the proposed initiative. By using general language suggesting initiative limited to "tax or debt campaigns", titles fairly put public on notice that provision applies to any election that affects taxes or the creation of public debt. Although titles do not mention "pass-through" or "pooling" provisions of proposed initiative, these provisions are not central features of the measure. Finally, because titles state that any election that violates provisions of the initiative is void, titles that fail to disclose that district must refund moneys collected in violation of initiative are not confusing, and voters would not be misled. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006).

Title is fair, clear, and accurate and includes the central features of the proposed initiative. In re Ballot Title 2007-2008 No. 57, 185 P.3d 142 (Colo. 2008).

3. Titles Held Insufficient.

A title and submission clause do not fairly and accurately reflect the intent and purpose of an initiative if the voters are not informed that the intent is to prevent the state courts from adopting a definition of obscenity that is broader than under the U.S. Constitution. In re Proposed Initiative on "Obscenity," 877 P.2d 848 (Colo. 1994).

Titles set by board create confusion and are misleading because they do not sufficiently inform the voter of the parental-waiver process and its virtual elimination of bilingual education as a viable parental and school district option. In re Ballot Titles 001-02 No. 21 & No. 22, 44 P.3d 213 (Colo. 2002).

Failure of title, ballot title, and submission clause to include definition of abortion which would impose a new legal standard which is likely to be controversial made title, ballot title, and submission clause deficient in that they did not fully inform signers of initiative petitions and voters and did not fairly reflect the contents of the proposed initiative. In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990); In re Proposed Initiative Concerning "Automobile Insurance Coverage", 877 P.2d 853 (Colo. 1994).

Titles set by the board were insufficient in that they did not state that the proposal would impose mandatory fines for willful violations of the campaign contribution and election reforms, they did not state that the proposal would prohibit certain campaign contributions from certain sources, they did not state that the proposal would make both procedural and substantive changes to the petition process, and they did not specifically list the changes to the numbers of seats in the house of representatives and the senate. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Ballot title was misleading because of the order in which the material was presented. The court held that in order to correctly and fairly express the true intent and meaning of the initiative all provisions concerning the city of Antonito must be grouped together. Further, the board could arrange the title to reflect the subject matter at issue. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

Repetition of the language from the initiative itself in the title and submission clause does not necessarily ensure that the voters will be apprised of the true intent and purpose of the initiative. In re Proposed Initiative on "Obscenity," 877 P.2d 848 (Colo. 1994); In re Ballot Titles 2001-02 No. 21 & No. 22, 44 P.3d 213 (Colo. 2002).

Where the board deferred to the proponents' statements of intent and attempted to set a title reflective of such intent, but the record showed that the board itself did not fully understand the measure, title was not sufficiently clear and board was directed to strike the title and return the measure to the proponents. In re Proposed Initiative 1999-2000 No. 25, 974 P.2d 458 (Colo. 1999).

Ballot title found insufficient. The title "Petition Procedures" fails to convey the fact that the initiative would create numerous "fundamental rights" retroactively to 1990 unrelated to procedural changes. Amendment to Const. Section 2 to Art. VII, 900 P.2d 104 (Colo. 1995).

Ballot title found insufficient and misleading. In re Tax Reform, 797 P.2d 1283 (Colo. 1990).

In a proceeding involving the sufficiency of a ballot title and submission clause for a proposed initiative amendment to the state constitution, it was held that the title as fixed by the statutory board was deficient as indicated, and the title was amended in conformity with a stipulation of the parties, and as amended, approved. Jennings v. Morrison, 117 Colo. 363, 187 P.2d 930 (1947).

Title was misleading as to the true intent and meaning of the proposed initiative where the title and summary did not contain any indication that the geographic area affected would have been limited, and therefore there would be a significant risk that voters statewide would have misperceived the scope of the proposed initiative. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996).

Title was misleading because combination of language specifying that parents of non-English speaking children could opt out of an English immersion program in favor of a bilingual education program and lack of language specifying that school districts would be prohibited from requiring schools to offer bilingual education programs had the potential to mislead voters into thinking parents would have a choice between English immersion and bilingual education programs when bilingual programs actually might not be available in many instances. In re Ballot Title 1999-2000 No. 258(A), 4 P.3d 1094 (Colo. 2000).

Title board directed on remand to fix the ballot title and submission clause of proposed initiatives where the language of the designated titles is inconsistent with their summaries. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000).

The title and summary on an initiative concerning judicial personnel held unclear. Title and summary contain contradictory language regarding the definition of personnel, and a voter would not be able to determine which judicial personnel were included in the initiative. Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

The title and summary on an initiative concerning the procedure used to remove a judge held unclear. Language in the summary, which was repeated verbatim from the language of the initiative but was not explained or analyzed in the summary, creates confusion and ambiguity and is therefore insufficient. Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

B. Submission Clause.

To submit means to present and leave to the judgment of the qualified voters. Noland v. Hayward, 69 Colo. 181, 192 P. 657 (1920).

The submission clause is the one that appears on the ballot at the election and upon which the electorate may vote for or against the proposed amendment. Dye v. Baker, 143 Colo. 458, 354 P.2d 498 (1960); Henry v. Baker, 143 Colo. 461, 354 P.2d 490 (1960).

But the expression "submission clause" was used in referring to a ballot title or to the matter which went upon the ballot and which was before the electors at the time they cast their respective votes for or against the initiated measure. In People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55, 1914D Ann. Cas. 1154 (1913).

Nevertheless, it should fairly and succinctly advise the voters what is being submitted, so that in the haste of an election the voter will not be misled into voting for or against a proposition by reason of the words employed. Dye v. Baker, 143 Colo. 458, 354 P.2d 498 (1960).

C. Catch Phrases.

"Catch phrases," or words which could form the basis of a slogan for use by those who expect to carry on a campaign for or against an initiated constitutional amendment, should be carefully avoided by the statutory board in writing a ballot title and submission clause. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

The title board should avoid the use of catch phrases or slogans in the title, ballot title and submission clause, and summary of proposed initiatives. In re Ballot Title 1999-2000 No. 258(A), 4 P.3d 1094 (Colo. 2000).

"Catch phrases" are forbidden in ballot titles. Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

And where a catch phrase was used in the submission clause by the statutory board in fixing a submission clause and ballot title to a proposed constitutional amendment, the supreme court, on review, remanded the matter to the board with instruction to revise the submission clause by elimination of the catch phrase. Henry v. Baker, 143 Colo. 461, 354 P.2d 490 (1960); Dye v. Baker, 143 Colo. 458, 354 P.2d 498 (1960).

Words "rapidly and effectively as possible" are a prohibited "catch phrase" because they mask the policy question of whether the most rapid and effective way to teach English to non-English speaking children is through an English immersion program and tip the

substantive debate surrounding the issue to be submitted to the electorate. In re Ballot Title 1999-2000 No. 258(A), 4 P.3d 1094 (Colo. 2000).

The words "adjusted net proceeds" and "adjusted gross proceeds" are not prohibited "catch phrases". The fact that such phrases were not defined in the initiative reflected the proponent's intent that the legislature interpret their meaning. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

The phrase "be on" the water is not misleading and is sufficiently clear. In Re Prop. Init. "Fair Fishing", 877 P.2d 1355 (Colo. 1994).

Because the proposed amendment contains no definition of the term "strong public trust doctrine", such a definition must await future judicial construction and cannot appropriately be included in the title or submission clause. In re Proposed Initiative on Water Rights, 877 P.2d 321 (Colo. 1994).

The phrase "refund to taxpayers" is not an inherently prohibited catch phrase. The term "refund" may be characterized inaccurately when read in isolation. When read in the context in which the term is used in the titles and summary and in the proposed initiative, however, the special sense of "refund" is adequately clarified. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Deterioration of a group of terms into an impermissible catch phrase is an imprecise process. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Use of the phrase "to preserve . . . the social institution of marriage" in titles and summaries of measures to recognize marriage between a man and a woman as valid does not constitute an impermissible catch phrase that may create prejudice in violation of this section. In re Ballot Title 1999-2000 Nos. 227 and 228, 3 P.3d 1 (Colo. 2000).

The phrase "concerning the management of growth" is neutral, with none of the hallmarks that have characterized catch phrases in the past. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

"Term limits" is not a catch phrase. In re Ballot Title 2005-2006 No. 75, 138 P.3d 267 (Colo. 2006).

"Criminal conduct" is not a catch phrase. The phrase does not contain an appeal to emotion that would prejudice a vote; it is simply a descriptive term. In re Ballot Title 2007-2008 No. 57, 185 P.3d 142 (Colo. 2008).

D. When Ballot Title and Submission Clause Fixed.

The titles and submission clause of an initiated measure were fixed and determined within the meaning of this section on the date that the three designated officials convened and fixed a title, ballot title and submission clause, and not on the date that the right of appeal from their decision expired. Baker v. Bosworth, 122 Colo. 356, 222 P.2d 416 (1950).

E. Brevity Required.

Ballot title and submission clause of proposed initiative measure must be brief. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980).

The board is given considerable discretion in resolving the interrelated problems of length, complexity, and clarity in designating a title and submission clause. In re Proposed Initiative Concerning State Personnel System, 691 P.2d 1121 (Colo. 1984); Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

If a choice must be made between brevity and a fair description of essential features of a proposal, where a complex measure embracing many different topics is involved and the titles and summary cannot be abbreviated by omitting references to the measure's salient features, the decision must be made in favor of full disclosure to the registered electors. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Ballot title and submission clause did not comply with the brevity requirement where the ballot title and submission clause for proposed constitutional amendment, as fixed by the administrative board, contained 369 words while the proposed amendment itself contained but 505 words. Cook v. Baker, 121 Colo. 187, 214 P.2d 787 (1950).

F. Scope of Review.

The court's scope of review is limited to ensuring that the title, ballot title and submission clause and summary fairly reflect the proposed initiative so that petition signers and voters will not be misled. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

There is a presumption in favor of decisions made by the title board. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Board's actions are presumptively valid, and this presumption precludes the court from second-guessing every decision the board makes in setting a title. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

The court gives great deference to the board's drafting authority. Matter of Title, Ballot Title for 1997-98 No. 80, 961 P.2d 1120 (Colo. 1998); In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

It is not the function of the court to rewrite the titles and summary to achieve the best possible statement of the proposed measure's intent, and the court will reverse the board's action in setting the titles only when the language chosen is clearly misleading. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

While subsection (3)(b) requires that the title "correctly and fairly express the true intent and meaning" of the initiative, it is not the court's role to rephrase the language adopted by the board to obtain the most precise and exact title. Matter of Increase of Taxes on Tob. Prod. Initiative, 756 P.2d 995 (Colo. 1988); In re Ballot Title 2007-2008 No. 61, 184 P.3d 747 (Colo. 2008).

The title board's function is extremely important in light of the court's limited scope of review of the board's actions, and the court will not address the merits of a proposed initiative, interpret its language, or predict its application. In re Proposed Election Reform Amend., 852 P.2d 28 (Colo. 1993); In re Proposed Initiative on Fair Treatment of Injured Workers, 873 P.2d 718 (Colo. 1994); In re Petition on Campaign & Political Fin., 877 P.2d 311 (Colo. 1994); Matter of Title, Ballot Title and Submission Clause, and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

Court will not rewrite the titles or submission clause for the board. Also, the court will reverse the board's action in preparing the title or submission clause only if the title and submission clause contain a material omission, misstatement, or misrepresentation. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998); In re Ballot Title 1990-2000 No. 29, 972 P.2d 257 (Colo. 1999).

Not within the purview of the court to determine the efficacy, construction, or future application of an initiative in the process of reviewing the action of the title board in setting titles for a proposed initiative. Such matters are more appropriately addressed in a proper case if the voters approve the initiative. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Upon review, supreme court treats actions of board as presumptively valid. Supreme court will not address the merits of a proposed initiative, interpret its language, or predict its application. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Presumption of validity precludes supreme court from second-guessing every decision board makes in setting titles. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Supreme court's review of title board's actions is limited, and the court will not address the merits of a proposed initiative or construe the future legal effects of an initiative. The court will, however, when necessary, characterize a proposal sufficiently to enable review of the board's actions and to determine whether the initiative contains incongruous or hidden purposes or bundles incongruous measures under a broad theme. In re Ballot Title 2005-2006 No. 55, 138 P.3d 273 (Colo. 2006).

V. SUMMARY AND FISCAL IMPACT STATEMENT.

Impartiality required in summary. The summary prepared by the board must be true and impartial statement of intent of proposed law and must not be an argument, nor likely to create prejudice either for or against the measure. In re Branch Banking Initiative, 200 Colo. 85, 612 P.2d 96 (1980); In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

And summary is to include estimate of any fiscal impact upon the state or any of its political subdivisions with an explanation thereof. In re Second Initiated Constitutional Amendment, 200 Colo. 141, 613 P.2d 867 (1980); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

Unless fiscal impact cannot be determined. Where the fiscal impact upon local government could not be determined because of the variables involved, a definitive statement concerning fiscal impact is not required. Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

School districts and school boards are "political subdivisions of the state" as to which fiscal impact is to be estimated. Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

Purpose of including fiscal impact statement in the summary is to inform the electorate of fiscal implications of proposed measure. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

In formulating a fiscal impact statement, the board is not limited to information submitted by the department of local affairs or the office of state planning and budgeting. Nor is the board required to accept at face value the information provided to it. Percy v. Hayes, 954 P.2d 1063 (Colo. 1998).

Faced with conflicting evidence regarding the fiscal impact, the board's determination that the proposed measure "may" have a negative fiscal impact on certain local governments was consistent with its statutory authority. Percy v. Hayes, 954 P.2d 1063 (Colo. 1998).

The fiscal impact statement was adequate, and the title board was within its discretion in not speculating in that statement about whether the transportation commission

would impose tolls. Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

The fiscal impact statement adequately described impact because it estimated current costs, included a one time cost for a water pump prior to the effective date of the initiative, included no speculation of the water district's obligation to the department of wildlife for fish and wildlife expenses, and provided an estimate for possible litigation costs because of the measure. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Fiscal impact statement not incomplete or inaccurate because it did not include any long range estimate of the costs of elections through the year 2013. The title board was not required to provide a further elaboration of the costs through the year 2013, even though the department of local affairs presented an estimate in a letter. The board had discretion to omit the estimate from the fiscal impact statement. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

The board is not required to determine the exact fiscal impact of each proposed measure; if the board finds that the proposed initiative will have a fiscal impact on the state or any of its political subdivisions, the summary must include an estimate and explanation. Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

The board may properly exercise its judgment in concluding that the fiscal impact upon local government cannot be determined because of the variables involved. In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982); Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

The board may properly find that certain costs are indeterminate because of the variables and uncertainties involved. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

The title board is not required to spell out every detail of a proposed initiative in order to convey its meaning accurately and fairly. Only where the language chosen is clearly misleading will the court revise the title board's formulation. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

Omission of a sentence describing the proposed initiative's legislative declaration does not render the summary clearly misleading to the electorate. In re Ballot Title 1999-2000 No. 265, 3 P.3d 1210 (Colo. 2000).

A separate explanation of the fiscal impact of a measure is not required when the fiscal impact cannot be reasonably determined from the materials submitted to the board due to the variables or uncertainties inherent in the particular issue. In re Title Pertaining to Tax Reform, 797 P.2d 1283 (Colo. 1990); Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994); In re Proposed Initiative on "Trespass - Streams With Flowing Water", 910 P.2d 21 (Colo. 1996); Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

Given the disparate conclusions regarding the fiscal impact of the measure, the board acted within its authority in making the decision to include in the summary the statement that the net effect of the changes on state or local governments was not known. Matter of Title, Ballot Title & S. Clause, 872 P.2d 689 (Colo. 1994).

If provisions of measure do not produce a separate and conflicting impact and the aggregate impact is known, each provision of the proposed amendment need not be addressed individually in the statement of fiscal impact. Where the board cannot determine the aggregate fiscal impact of a proposed measure, but has adequate information to assess the impact of a particular provision, the board should state with specificity which provision will have fiscal impacts that are capable of being estimated and which are truly indeterminate. In re Petition on Campaign and Political Finance, 877 P.2d 311 (Colo. 1994).

Explanation of fiscal impact not required given the complexity of the issues and uncertainty expressed by the department of revenue. The board's conclusion that the fiscal impact was indeterminate was reasonable. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

Lack of specificity held justified. The Board has no independent fact-finding ability and its choice of language was judicious and within its authority. The fiscal impact could not reasonably be determined because of inherent uncertainties in the text of the amendment. In Re Prop. Init. "Fair Fishing", 877 P.2d 1355 (Colo. 1994).

Statement of fiscal impact was insufficient since, although the board was not required to include a definitive estimate of any fiscal impact on the state or its political subdivisions when that impact cannot be determined because of the variables involved, where the indeterminacy resulted from the multitude of provisions having separate and sometimes conflicting fiscal impacts producing an indeterminate aggregate impact and the board had sufficient information to assess the fiscal impact of each provision in isolation, the board should state with specificity which provisions will have fiscal impacts which are capable of being estimated, and which are truly indeterminate. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Board has discretion in exercising its judgment in how to best communicate that a proposed measure will have a fiscal impact on government without creating prejudice for or against the measure. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

Statement of fiscal impact was insufficient where it did not include estimates of the initiative's impact on school boards. Matter of Title Concerning Sch. Impact Fees, 954 P.2d 586 (Colo. 1998).

Fiscal impact statement was inaccurate description of the fiscal impact of initiative where the office of state planning and budgeting prepared two cost estimates based on two possible scenarios. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996).

Request for agency assistance at board's discretion. The decision of whether and from which of the two state agencies to request information is within the discretion of the board. Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

Summary need not mention the effect of the amendment on an existing statute addressing the same or a similar subject as the proposed amendment. In re Mineral Prod. Tax Initiative, 644 P.2d 20 (Colo. 1982).

Board is not required to explain meaning or potential effects of proposed initiative on the present statutory scheme in the summary. Matter of Title, Ballot Title & S. Clause, 875 P.2d 207 (Colo. 1994).

The board is not required to provide lengthy explanations of every portion of a proposed constitutional amendment as overly detailed titles and submission clauses could by their very length confuse voters. In re Proposed Initiative Concerning State Personnel Systems, 691 P.2d 1121 (Colo. 1984).

Mere ambiguity of a summary, if not clearly misleading, does not require disapproval by court. In re .Proposed Initiative Concerning State Personnel System, 691 P.2d 1121 (Colo. 1984).

Board may be challenged when misleading summary of amendment prejudicial. A misleading summary of the fiscal impact of a proposed amendment is likely to create an unfair prejudice against the measure and is a sufficient basis, under this section, for challenging the board's action. In re An Initiated Constitutional Amendment, 199 Colo. 409, 609 P.2d 631 (1980).

The titles and summary were not misleading since they tracked the language of the initiative, and any problems in the interpretation of the measure or its constitutionality were beyond the functions assigned to the title board and outside the scope of the court's review of the title board's actions. Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

Proposed initiative violates the single-subject requirement because it (1) provides for tax cuts and (2) imposes mandatory reductions in state spending on state programs. Matter of Proposed Initiative 1997-98 No. 86, 962 P.2d 245 (Colo. 1998).

Use of the word "of" in the initiative summary instead of the word "by" does not create confusion on how directors of a board are selected. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Failure of title and summary to specify which taxpayers would receive a refund if one is necessary does not render the title or summary confusing. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Title summary not misleading because it identified uncertainties of the effect of the measure by noting that a surplus may be created by the payments under the initiative and any surplus may be refunded to the taxpayers under TABOR, article X, § 20, of the Colorado Constitution. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

1-40-106.5. Single-subject requirements for initiated measures and referred constitutional amendments - legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Section 1 (5.5) of article V and section 2 (3) of article XIX of the state constitution require that every constitutional amendment or law proposed by initiative and every constitutional amendment proposed by the general assembly be limited to a single subject, which shall be clearly expressed in its title;

(b) Such provisions were referred by the general assembly to the people for their approval at the 1994 general election pursuant to Senate Concurrent Resolution 93-4;

(c) The language of such provisions was drawn from section 21 of article V of the state constitution, which requires that every bill, except general appropriation bills, shall be limited to a single subject, which shall be clearly expressed in its title;

(d) The Colorado supreme court has held that the constitutional single-subject requirement for bills was designed to prevent or inhibit various inappropriate or misleading practices that might otherwise occur, and the intent of the general assembly in referring to the people section 1 (5.5) of article V and section 2 (3) of article XIX was to protect initiated measures and referred constitutional amendments from similar practices;

(e) The practices intended by the general assembly to be inhibited by section 1 (5.5) of article V and section 2 (3) of article XIX are as follows:

(I) To forbid the treatment of incongruous subjects in the same measure, especially the practice of putting together in one measure subjects having no necessary or proper connection, for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits;

(II) To prevent surreptitious measures and apprise the people of the subject of each measure by the title, that is, to prevent surprise and fraud from being practiced upon voters.

(2) It is the intent of the general assembly that section 1 (5.5) of article V and section 2 (3) of article XIX be liberally construed, so as to avert the practices against which they are aimed and, at the same time, to preserve and protect the right of initiative and referendum.

(3) It is further the intent of the general assembly that, in setting titles pursuant to section 1 (5.5) of article V, the initiative title setting review board created in section 1-40-106 should apply judicial decisions construing the constitutional single-subject requirement for bills and should follow the same rules employed by the general assembly in considering titles for bills.

Source: L. 94: Entire section added, p. 73, § 1, effective January 19, 1995.

Editor's note: Section 2 of chapter 22, Session Laws of Colorado 1994, provided that the act enacting this section was effective on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of SCR 93-004, enacted at the First Regular Session of the Fifty-ninth General Assembly. The date of the proclamation of the Governor announcing the approval of SCR 93-004 was January 19, 1995.

ANNOTATION

Law reviews. For article, "The Single-Subject Requirement For Initiatives", see 29 Colo. Law. 65 (May 2000).

In determining whether a proposed measure contains more than one subject, the court may not interpret the language of the measure or predict its application if it is adopted. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

In order to violate the single subject requirement, the text of the measure must relate to more than one subject and have at least two distinct and separate purposes which are not dependent upon or connected with each other. The single subject requirement is not violated if the matters included are necessarily or properly connected to each other. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

In order to pass constitutional muster, a proposed initiative must concern only one subject. In other words, it must effectuate or carry out only one general object or purpose. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006); In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006).

The intent of the requirement that an initiative be limited to a single subject is to ensure that each proposal depends on its own merits for passage. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996); Matter of Title, Ballot Title for 1997-98 No. 105, 961 P. 2d 1093 (Colo. 1998).

Subsection (1)(a)(I) prohibits the joinder of incongruous subjects in the same petition. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P. 2d 1093 (Colo. 1998).

The intent of the single-subject requirement is to prevent voters from being confused or misled and to ensure that each proposal is considered on its own merits. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

The single-subject requirement must be liberally construed so as not to impose undue restrictions on the initiative process. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

The single-subject requirement is not violated simply because an initiative with a single, distinct purpose spells out details relating to its implementation. As long as the procedures specified have a necessary and proper relationship to the substance of the initiative, they are not a separate subject. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998); In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

A proposed measure that tends to effect or to carry out one general purpose presents only one subject. Consequently, minor provisions necessary to effectuate the purpose of the measure are properly included within its text. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

Just because a proposal may have different effects or that it makes policy choices that are not invariably interconnected does not mean that it necessarily violates the single-subject requirement. It is enough that the provisions of a proposal are connected. Here, the initiative addresses numerous issues in a detailed manner. However, all of these issues relate to the management of development. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

To evaluate whether or not an initiative effectuates or carries out only one general object or purpose, supreme court looks to the text of the proposed initiative. The single-subject requirement is not violated if the "matters encompassed are necessarily or properly connected to each other rather than disconnected or incongruous". Stated another way, the single-subject requirement is not violated unless the text of the measure "relates to more than one subject and has at least two distinct and separate purposes that are not dependent upon or connected with each other". Mere implementation or enforcement details directly tied to the initiative's single subject will not, in and of themselves, constitute a separate subject. Finally, in order to pass the single-subject test, subject of the initiative should also be capable of being expressed in the initiative's title. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006); In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006).

Subjecting proposed initiative to a limitation imposed by the U.S. constitution, as interpreted by the U.S. supreme court, does not violate single-subject requirement. All state statutory and constitutional measures are subject to implicit limitation that the U.S. constitution, as interpreted by the U.S. supreme court, may require otherwise; a finding that such limitation violates the single-subject requirement would result in no measure satisfying the single-subject requirement. In re Ballot Title 2007-2008 No. 61, 184 P.3d 747 (Colo. 2008).

Likewise, provision allowing state to act in accordance with the U.S. constitution, as interpreted by U.S. supreme court, does not violate single-subject requirement. In re Ballot Title 2007-2008 No. 61, 184 P.3d 747 (Colo. 2008).

Measure is not deceptive or surreptitious merely because its content depends on the U.S. constitution, as interpreted by the U.S. supreme court. In re Ballot Title 2007-2008 No. 61, 184 P.3d 747 (Colo. 2008).

The fact that provisions of measure may affect more than one statutory provision does not itself mean that measure contains multiple subjects. Where initiative requiring background checks at gun shows also authorizes licensed gun dealers who conduct such background checks to charge a fee, the initiative contains a single subject. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

Single-subject requirement eliminates the practice of combining several unrelated subjects in a single measure for the purpose of enlisting support from advocates of each subject and thus securing the enactment of measures that might not otherwise be approved by voters on the basis of the merits of those discrete measures. In re Petitions, 907 P.2d 586 (Colo. 1995); In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

A proposed measure impermissibly includes more than one subject if its text relates to more than one subject and if the measure has at least two distinct and separate purposes that are not dependent upon or connected with each other. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996); In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Grouping the provisions of a proposed initiative under a broad concept that potentially misleads voters will not satisfy the single-subject requirement. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996); In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Neither this section nor §1(5.5) of article V of the state constitution creates any exemptions for initiatives that attempt to repeal constitutional provisions. Also, no special permission exists for initiatives that seek to address constitutional provisions adopted prior to the enactment of the single-subject requirement. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

The term "measure" includes initiatives that either enact or repeal. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

In cases of repeal, the underlying constitutional provision to be repealed must be examined in order to determine whether the repealing and reenacting initiative contains a single subject. If a provision contains multiple subjects and an initiative proposes to repeal the entire underlying provision, then the initiative contains multiple subjects. On the other hand, if an initiative proposes anything less than a total repeal, it may satisfy the single-subject requirement. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

The single-subject requirement does not apply to municipal initiatives. Bruce v. City of Colo. Springs, 200 P.3d 1140 (Colo. App. 2008).

Title-setting board has no duty to advise proponents concerning possible solutions to a single-subject violation. Comment by the board is within its sound discretion; requiring comment would unconstitutionally expand the board's authority and shift initiative-drafting responsibility from proponents to the

board. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

If the title-setting board rejects an initiative for violating the single-subject requirement, then proponents may pursue one of two courses of action. They may either (1) commence a new review and comment process, or (2) present a revised title to the board. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

Single-subject requirement for ballot initiatives met where provisions in initiative make reference to the initiative's subject and the provisions are sufficiently connected to the subject. Matter of Title, Ballot Title, 917 P.2d 292 (Colo. 1996).

An election provision in a measure does not constitute a separate subject if there is a sufficient connection between the provision and the subject of the initiative. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Title board is vested with considerable discretion in setting the title, ballot title and submission clause, and summary. In reviewing actions of the title board, court must liberally construe the single-subject and title requirements for initiatives. Matter of Title, Ballot Title, 917 P.2d 292 (Colo. 1996); Matter of Title, Ballot Title, Submission Clause, 917 P.2d 1277 (Colo. 1996).

Proposed initiative contains only one subject. Although initiative is comprehensive, all of its numerous provisions relate to the single subject of reforming petition rights and procedures. Matter of Petition for Amend. to Const., 907 P.2d 586 (Colo. 1995).

Proposed initiative that applies a $60 tax credit contains only one subject, even though it applies the credit to more than one tax and requires the state to replace monthly local government revenues lost because of the tax credit. Matter of Proposed Petition for an Amendment to the Constitution Adding Paragraph (d) Section (8) of Section 20 of Article X (Amend TABOR No. 32), 908 P.2d 125 (Colo. 1995).

The texts of the initiatives encompass the single subject of gaming activities conducted by nonprofit organizations. The initiatives detail what games of chance may be conducted, who may conduct such games, and how such games may be conducted. In re Proposed Init. Bingo-Raffle Lic. (I), 915 P.2d 1320 (Colo. 1996).

Proposed initiative did not violate the single-subject requirement where "the public's interest in state waters" was sufficiently narrow and connected with both a "public trust doctrine" and the assignment of water use rights to the public or a watercourse. Matter of Title, Ballot Title, Submission Clause, 917 P.2d 1277 (Colo. 1996).

Proposed initiative did not contain more than one subject merely because it provided for alternative ways to accomplish the same result. The alternate ways were related to and connected with each other and plainly did not violate the single-subject requirement. Matter of Proposed Initiative 1996-17, 920 P.2d 798 (Colo. 1996).

Initiative that assessed fees for water pumped from beneath trust lands and then allocated the pumping fees for school finance was not considered two subjects by the court because the theme of the purpose of state trust lands and the educational recipient provide a unifying thread. Matter of Title, Ballot Title for 1997-98 No. 105, 961 P.2d 1092 (Colo. 1998).

Proposed initiative concerning uniform application of laws to livestock operations was upheld without opinion against challenges on basis of single-subject requirement and on other grounds. Matter of Proposed Initiative 1997-98 No. 112, 962 P.2d 255 (Colo. 1998).

Measure to recognize marriage between a man and a woman as valid does not contravene the single subject requirement of this section. In re Ballot Title 1999-2000 Nos. 227 and 228, 3 P.3d 1 (Colo. 2000).

Proposed initiative that employs a growth formula limiting the rate of future development, delineates a system of measurement to determine the "base developed" area of each jurisdiction, allows for alternative treatment of commenced but not completed projects, excludes low-income housing, public parks and open space, and historic landmarks, and establishes a procedure for exemptions does not violate the constitutional prohibition against single subjects. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Proposed initiative that prohibits school districts from requiring schools to provide bilingual education programs while allowing parents to transfer children from an English immersion program to a bilingual program does not contain more than one subject. In re Ballot Title 1999-2000 No. 258(A), 4 P.3d 1094 (Colo. 2000).

Enforcement provision under which election will be declared void and revenues collected pursuant to election will be refunded is directly tied to initiative's purpose of eliminating pay-to-play contributions and, therefore, is not a separate subject. Clause in question should be interpreted as nothing more than an enforcement or implementation clause that does nothing more than incorporate inherent right of taxpayers to challenge tax, spending, or bond measures when they have standing to do so. Thus, enforcement provision is not a separate subject but rather is tied directly to initiative's single subject. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006).

Proposed initiative contains more than one subject. Citizen initiative that retroactively creates substantive fundamental rights in charter and constitutional amendments approved after 1990, requires the word "shall" in such amendments be mandatory regardless of the context, establishes standards for judicial review of filed petitions, provides that challenges to petitions can be

upheld only if beyond a reasonable doubt by a unanimous supreme court, and contains other substantive and procedural provisions relating to recall, referendum, and initiative petitions contains more than one subject. Amendment to Const. Section 2 to Art. VII, 900 P.2d 104 (Colo. 1995).

Proposed initiative that establishes a tax credit and sets forth procedural requirements for future ballot titles contains more than one subject. Matter of Title, Ballot Title & Sub. Cl., 900 P.2d 121 (Colo. 1995).

Initiative that contains both tax cuts and mandatory reductions in state spending on state programs violates the single subject requirement. Matter of Title, Ballot Title for 1997-98 No. 88, 961 P.2d 1106 (Colo. 1998).

Proposed initiative that repealed the constitutional requirement that each judicial district have a minimum of one district court judge; deprived the city and county of Denver of control over Denver county court judgeships; immunized from liability persons who criticize a judicial officer regarding his or her qualifications; and altered the composition and powers of the commission on judicial discipline contains more than one subject. Matter of Title, Ballot Title for 1997-98 No. 64, 960 P.2d 1192 (Colo. 1998); Matter of Title, Ballot Title for 1997-98 No. 95, 960 P.2d 1204 (Colo. 1998).

Proposed initiative that also proposed to make all municipal court judges subject to its term of office and retention provisions and expanded the jurisdiction of the commission on judicial discipline to include municipal court judges contains more than one subject. Matter of Title, Ballot Title for 1997-98 No. 95, 960 P.2d 1204 (Colo. 1998).

Proposed initiative that creates a tax cut, imposes new criteria for voter approval of tax, spending, and debt increases, and imposes likely reductions in state spending on state programs contains at least three subjects. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 37, 977 P.2d 845 (Colo. 1999).

Proposed initiative that creates a tax cut and imposes new criteria for voter approval of tax, spending, and debt increases contains multiple subjects. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 38, 977 P.2d 849 (Colo. 1999).

Proposed initiative has more than single subject and, therefore, is unconstitutional. Initiative presents multiple subjects: (1) Time limits for tax measures; (2) time limits for public debt authorizations; and (3) time limits for voter-authorized relief from spending limits. While voters may well be receptive to a broadly applicable 10-year limitation upon the duration of any tax increases, they may not realize that they will be simultaneously limiting their ability to incur multiple-fiscal year district debt obligation to fund public projects. Voters would also be limiting prospectively the duration of all future ballot issues designed to provide relief from TABOR's wholly independent spending caps. Voters are entitled to have each of these separate subjects considered upon its own merits. In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006).

Initiative that proposed the creation of a new Colorado department of environmental conservation and the creation of a mandatory public trust standard that would have required the department to resolve conflicts between economic interest and public ownership and public conservation values in lands, waters, public resources, and wildlife in favor of public ownerships and public values contained multiple subjects. In re Ballot Title 2007-2008 No. 17, 172 P.3d 871 (Colo. 2007).

1-40-107. Rehearing - appeal - fees - signing. (1) Any person presenting an initiative petition or any registered elector who is not satisfied with a decision of the title board with respect to whether a petition contains more than a single subject pursuant to section 1-40-106.5, or who is not satisfied with the titles and submission clause provided by the title board and who claims that they are unfair or that they do not fairly express the true meaning and intent of the proposed state law or constitutional amendment may file a motion for a rehearing with the secretary of state within seven days after the decision is made or the titles and submission clause are set. The motion for rehearing shall be heard at the next regularly scheduled meeting of the title board; except that, if the title board is unable to complete action on all matters scheduled for that day, consideration of any motion for rehearing may be continued to the next available day, and except that, if the titles and submission clause protested were set at the last meeting in April, the motion shall be heard within forty-eight hours after the expiration of the seven-day period for the filing of such motions.

(2) If any person presenting an initiative petition for which a motion for a rehearing is filed, any registered elector who filed a motion for a rehearing pursuant to subsection (1) of this section, or any other registered elector who appeared before the title board in support of or in opposition to a motion for rehearing is not satisfied with the ruling of the title board upon the motion, then the secretary of state shall furnish such person, upon request, a certified copy of the petition with the titles and submission clause of the proposed law or constitutional amendment,

together with a certified copy of the motion for rehearing and of the ruling thereon. If filed with the clerk of the supreme court within five days thereafter, the matter shall be disposed of promptly, consistent with the rights of the parties, either affirming the action of the title board or reversing it, in which latter case the court shall remand it with instructions, pointing out where the title board is in error.

(3) The secretary of state shall be allowed a fee which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., for certifying a record of any proceedings before the title board. The clerk of the supreme court shall receive one-half the ordinary docket fee for docketing any such cause, all of which shall be paid by the parties desiring a review of such proceedings.

(4) No petition for any initiative measure shall be circulated nor any signature thereto have any force or effect which has been signed before the titles and submission clause have been fixed and determined as provided in section 1-40-106 and this section.

(5) In the event a motion for rehearing is filed in accordance with this section, the period for filing a petition in accordance with section 1-40-108 shall not begin until a final decision concerning the motion is rendered by the title board or the Colorado supreme court; except that under no circumstances shall the period for filing a petition be extended beyond three months and three weeks prior to the election at which the petition is to be voted upon.

(6) (Deleted by amendment, L. 2000, p. 1622, § 5, effective August 2, 2000.)

(7) (Deleted by amendment, L. 95, p. 432, § 5, effective May 8, 1995.)

Source: L. 93: Entire article amended with relocations, p. 680, § 1, effective May 4. **L. 95:** (1) and (7) amended, p. 432, § 5, effective May 8. **L. 98:** (2) amended, p. 635, § 9, effective May 6. **L. 2000:** (1), (2), (4), and (6) amended, pp. 1621, 1622, §§ 2, 5, effective August 2; (6) amended, p. 297, § 1, effective August 2. **L. 2004:** (1) amended, p. 756, § 2, effective May 12. **L. 2009:** (1) and (5) amended, (HB 09-1326), ch. 258, p. 1171, § 5, effective July 1.

Editor's note: This section is similar to provisions of several former sections as they existed prior to 1993, and the former § 1-40-107 was relocated to § 1-40-113. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For the general assembly, powers, and initiative and referendum reserved to the people, see also § 1 of art. V, Colo. Const.; for recall from office, see art. XXI, Colo. Const.

ANNOTATION

Am. Jur.2d. See 16 Am. Jur.2d, Constitutional Law, §§ 16, 19, 32; 42 Am. Jur.2d, Initiative and Referendum, §§ 16, 18, 21, 40.

C.J.S. See 82 C.J.S., Statutes, §§ 116, 117, 121, 128.

Law reviews. For article, "Popular Law-Making in Colorado", see 26 Rocky Mt. L. Rev. 439 (1954).

Annotator's note. (1) The following annotations include cases decided under former provisions similar to this section.

(2) On rehearing by the title-setting board or review by the supreme court under this section, many of the same concerns will be relevant as are relevant to the initial setting of titles under § 1-40-106. To avoid excessive duplication, most of the annotations to cases construing § 1-40-106 are not repeated here. Please see the annotations under § 1-40-106 for additional cases concerning the sufficiency of titles, and the authority and powers of the title-setting board, and the compliance of the title-setting board with statutory requirements.

(3) For additional cases concerning the initiative and referendum power, see the annotations under § 1 of article V of the state constitution.

Subsection (1) allows an objector to bring only one motion for rehearing to challenge the titles set by the title board. The title board properly denied an objector's second motion for rehearing based on lack of jurisdiction. In re Ballot Title 1999-2000 No. 219, 999 P.2d 819 (Colo. 2000).

This section provides a special statutory process that overrides claim preclusion or law of the case principles. Consequently, the title board and the supreme court must review an initiative challenged under this section even if its language is identical to the language of a previous initiative. In re Ballot Title 2005-2006 No. 55, 138 P.3d 273 (Colo. 2006).

In a proceeding under this statute: (1) the supreme court must not in any way concern itself with the merit or lack of merit of the proposed amendment since, under our system of government, that resolution rests with the electorate; (2) all legitimate presumptions

must be indulged in favor of the propriety of the board's action; and (3) only in a clear case should a title prepared by the board be held invalid. Bauch v. Anderson, 178 Colo. 308, 497 P.2d 698 (1972); In re An Initiated Constitutional Amendment, 199 Colo. 409, 609 P.2d 631 (1980); In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982); In re Proposed Initiated Constitutional Amendment, 682 P.2d 480 (Colo. 1984); In re Proposed Initiative Concerning State Personnel System, 691 P.2d 1121 (Colo. 1984); In re Proposed Initiative Concerning Drinking Age, 691 P.2d 1127 (Colo. 1984); In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990).

In reviewing the board's title-setting process, the court does not address the merits of the proposed initiative and should not interpret the meaning of proposed language or suggest how it will be applied if adopted by the electorate; should resolve all legitimate presumptions in favor of the board; will not interfere with the board's choice of language if the language is not clearly misleading; and must ensure that the title, ballot title, submission clause, and summary fairly reflect the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the board. In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the Town of Burlington, 830 P.2d 1023 (Colo. 1992); Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993); In re Proposed Initiative Concerning "Automobile Insurance Coverage," 877 P.2d 853 (Colo. 1994).

Court will not address the merits of proposed initiatives nor interpret the meaning of proposed language. It is beyond the scope of the court's review to interpret or construe the language of a proposed initiative. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

So long as the language chosen by the board fairly summarizes the intent and meaning of the proposed amendment, without arguing for or against its adoption, it is sufficient. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

The board is not required to state the effect that an initiative may have on other constitutional provisions and the initiative summary is not intended to fully educate people on all aspects of the proposed law. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

Court will not rewrite the titles or submission clause for the title board. Also, the court will reverse the title board's action in preparing the title or submission clause only if they contain a material and significant omission, misstatement, or misrepresentation. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

And the mere fact that, after an appeal has been taken and a court has had the benefit of the additional labor bestowed upon the ballot title by counsel, a court may be able to write a better ballot title than the one prepared by an attorney general constitutes no reason for discarding his title. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958).

Because the purpose of an appeal is not to secure for the bill the best possible ballot title, but to eliminate one that is insufficient or unfair, if it should develop that the one submitted by an attorney general is of that kind. Say v. Baker, 137 Colo. 155, 322 P.2d 317 (1958); In re Branch Banking Initiative, 200 Colo. 85, 612 P.2d 96 (1980); Matter of Educ. Tax Reform, 823 P.2d 1353 (Colo. 1991).

Court's function limited. It is not the function of the supreme court to rephrase the language of the summary and title in order to achieve the best possible statement of the intent of the amendment. In re Mineral Prod. Tax Initiative, 644 P.2d 20 (Colo. 1982).

Actions of the title setting review board will not be reversed just because a better title could have been adopted. Matter of Proposed Initiated Constitutional Amendment Concerning Suits Against Nongovernmental Employers Who Knowingly and Recklessly Maintain an Unsafe Work Environment, 898 P.2d 1071 (Colo. 1995).

Review limited to whether intent of initiative properly reflected. On review, the supreme court can only consider whether the titles, summary, and submission clause reflect the intent of the initiative, not whether they reflect all possible problems that may arise in the future in applying the language of the proposed initiative. In re Proposed Initiative on Transf. of Real Estate, 200 Colo. 40, 611 P.2d 981 (1980); In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982); In re Proposed Initiative on Confidentiality of Adoption Records, 832 P.2d 229 (Colo. 1992); In re Proposed Initiative on Sch. Pilot Program, 874 P.2d 1066 (Colo. 1994); Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

And interpretation of initiative not permitted. It is not the function of the supreme court in the review proceeding, nor is it the board's function, to determine the meaning of the language of the initiative: A judicial interpretation of the meaning of the initiative must await an adjudication in a specific factual context. Spelts v. Klausing, 649 P.2d 303 (Colo. 1982); In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990).

Court will not rewrite the titles or submission clause for the title board. Also, the court will reverse the title board's action in preparing the title or submission

clause only if they contain a material and significant omission, misstatement, or misrepresentation. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

Title language employed by the title board will be rejected only if it is misleading, inaccurate or fails to reflect the central features of the proposed measure. In re Ballot Title 1999-2000 No. 215 (Prohibiting Certain Open Pit Mining), 3 P.3d 11 (Colo. 2000).

Title, ballot title, and submission clause of an initiative measure were not unfair or misleading where a term was not defined that would have required detailed statutory explanation. The board's omission of a definition in its title and summary is not an abuse of discretion where the definition is complex and would be impossible to define within the title and summary of the initiative without a detailed statutory explanation, even though the term is obscure and not within the common knowledge of most voters. Matter of Title, Ballot Title for 1997-98 No. 75, 960 P.2d 672 (Colo. 1998).

Title set by the title board was misleading and inaccurate and would be modified where the intent of the proposed measure was to prohibit the modification of certain mining permits to allow the expansion of mining operations but the title could be construed as prohibiting the expansion of mining operations under an existing, unmodified mining permit. In re Ballot Title 1999-2000 No. 215 (Prohibiting Certain Open Pit Mining), 3 P.3d 11 (Colo. 2000).

Issues of whether initiative violated article X, section 20, of the Colorado Constitution are premature and the court will not address them since that determination would necessarily require the court to interpret its language or predict its application if adopted by the electorate. Matter of Proposed Initiative 1997-98 No. 10, 943 P.2d 897 (Colo. 1997).

Although this section provides for supreme court review of citizen initiatives before they are submitted to the general electorate, it does not confer jurisdiction on the supreme court to review the constitutionality of legislative referenda prior to enactment. Thus, the supreme court lacked jurisdiction to review a legislative referendum for compliance with the single-subject requirement prior to enactment of the referendum. Polhill v. Buckley, 923 P.2d 119 (Colo. 1996).

Judicial determination of retroactive application of proposed amendment. If a controversy arises in a specific factual context, then judicial determination of retroactive application may be appropriate, but it is not relevant to the determination of the accuracy of the language of the titles, summary, and submission clause of a proposed amendment. In re Proposed Initiative on Transf. of Real Estate, 200 Colo. 40, 611 P.2d 981 (1980); In re Proposed Initiative on Confidentiality of Adoption Records, 832 P.2d 229 (Colo. 1992).

Where a proposed amendment uses the term "strong public trust doctrine" but does not define it, such a definition must await future judicial construction and cannot appropriately be included in the title or submission clause. In re Proposed Initiative on Water Rights, 877 P.2d 321 (Colo. 1994).

The board is not required to state the effect that an initiative may have on other constitutional provisions, and the court may not address the potential constitutional interpretation implications of the initiative in the court's review. In re Proposed Initiative on Water Rights, 877 P.2d 321 (Colo. 1994).

As a general rule, court will reject the board's actions only where the language it has adopted is so inaccurate as to clearly mislead the electorate. In re Petition on Campaign and Political Finance, 877 P.2d 311 (Colo. 1994).

Burden for invalidating an amendment because of an alleged misleading ballot title, after adoption by the people in a general election, is heavy since the general assembly has provided procedures for challenging a ballot title prior to elections. Unless the challengers to the amendment can prove that so many voters were actually misled by the title that the result of the election might have been different, the challenge will fail. City of Glendale v. Buchanan, 195 Colo. 267, 578 P.2d 221 (1978).

In considering whether the title, ballot title and submission clause, and summary accurately reflect the intent of the proposed initiative, it is appropriate to consider the testimony of the proponent concerning the intent of the proposed initiative that was offered at the public meeting at which the title, ballot title and submission clause, and summary were set. In re Proposed Initiated Constitutional Amendment Concerning Unsafe Workplace Environment, 830 P.2d 1031 (Colo. 1992).

Once petitioners file their petitions for review with the supreme court pursuant to subsection (2), the board loses jurisdiction to make substantive changes to the titles and summary. The board properly refused to consider a motion for rehearing filed by one opponent that raised substantive issues when the other opponents had already filed petitions for review with the supreme court; any action by the board to make substantive changes to the summary after the matter was before the supreme court on review would impermissibly intrude on the court's jurisdiction over the case. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

The time for filing an appeal to a decision of the title board is five days after the board denies the motion for rehearing and not five days from the date the secretary of state certifies the documents requested for

appeal. Five days from the board's denial of a motion for rehearing is final action by the board regardless of whether an appeal is filed. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

For a timely appeal, it must be filed within five days from the board's denial of a motion for rehearing and must be construed with C.A.R. 26, thus clarifying the computation of five days to exclude Saturday and Sunday. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

Initiative proponents may circulate petitions for signatures after the title board has taken its final action in regard to the ballot titles and summary, pursuant to subsections (1) and (5), and while an appeal of that action to the supreme court is pending pursuant to subsection (2). Setting of titles and summary becomes a final title board action upon denial of a rehearing petition or upon expiration of the time for filing a rehearing petition with the title board. Armstrong v. Davidson, 10 P.3d 1278 (Colo. 2000).

Objector may not raise in a second motion for rehearing a challenge that the objector could have raised in the first motion for rehearing. Case-by-case analysis of the interests involved in setting the titles to an initiative is not required. In re Ballot Title 1999-2000 No. 215, 3 P.3d 447 (Colo. 2000).

Applied in Matter of Proposed Initiative 1997-98 No. 86, 962 P.2d 245 (Colo. 1998); Matter of Proposed Initiative 1997-98 No. 109, 962 P.2d 252 (Colo. 1998); Matter of Proposed Initiative 1997-98 No. 112, 962 P.2d 255 (Colo. 1998).

1-40-108. Petition - time of filing. (1) No petition for any ballot issue shall be of any effect unless filed with the secretary of state within six months from the date that the titles and submission clause have been fixed and determined pursuant to the provisions of sections 1-40-106 and 1-40-107 and unless filed with the secretary of state no later than three months and three weeks before the election at which it is to be voted upon. A petition for a ballot issue for the election to be held in November of odd-numbered years shall be filed with the secretary of state no later than three months and three weeks before such odd-year election. All filings under this section must be made by 3 p.m. on the day of filing.

(2) (Deleted by amendment, L. 95, p. 433, § 6, effective May 8, 1995.)

Source: L. 93: Entire article amended with relocations, p. 682, § 1, effective May 4; (1) amended, p. 1437, § 127, effective July 1. **L. 95:** Entire section amended, p. 433, § 6, effective May 8. **L. 2000:** (1) amended, p. 1622, § 6, effective August 2. **L. 2009:** (1) amended, (HB 09-1326), ch. 258, p. 1171, § 6, effective May 15.

Editor's note: This section is similar to former § 1-40-104 as it existed prior to 1993, and the former § 1-40-108 was relocated to § 1-40-115.

Cross references: For computation of time under the "Uniform Election Code of 1992", articles 1 to 13 of this title, see § 1-1-106; for computation of time under the statutes generally, see § 2-4-108.

ANNOTATION

Am. Jur.2d. See 26 Am. Jur.2d, Elections, §§ 216-220.

C.J.S. See 82 C.J.S., Statutes, § 121.

Law reviews. For comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The requirement that petitions be circulated within a six-month period is not an unreasonable burden on the rights of either the proponents of the petition or of the voting public. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

The six-month deadline set forth in subsection (1) is a reasonable, nondiscriminatory ballot access regulation; it does not offend the first and fourteenth amendments of the United States Constitution. The requirement preserves the integrity of the state's elections, maintains an orderly ballot, and limits voter confusion. The requirement advances those interests by establishing a reasonable window in which proponents must demonstrate support for their causes. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on

other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Petition for initiative may be filed or circulated anytime after previous general election. Matter of Title, Ballot Title, Etc., 850 P.2d 144 (Colo. 1993) (decided under former §1-40-104 prior to 1993 amendments).

Applied in Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

1-40-109. Signatures required - withdrawal. (1) No petition for any initiated law or amendment to the state constitution shall be of any force or effect, nor shall the proposed law or amendment to the state constitution be submitted to the people of the state of Colorado for adoption or rejection at the polls, as is by law provided for, unless the petition for the submission of the initiated law or amendment to the state constitution is signed by the number of electors required by the state constitution.

(2) (Deleted by amendment, L. 95, p. 433, § 7, effective May 8, 1995.)

(3) Any person who is a registered elector may sign a petition for any ballot issue for which the elector is eligible to vote. A registered elector who signs a petition may withdraw his or her signature from the petition by filing a written request for such withdrawal with the secretary of state at any time on or before the day that the petition is filed with the secretary of state.

Source: L. 93: Entire article amended with relocations, p. 682, § 1, effective May 4. **L. 94:** (2) amended, p. 1180, § 73, effective July 1. **L. 95:** (2) and (3) amended, p. 433, § 7, effective May 8. **L. 2009:** (3) amended, (HB 09-1326), ch. 258, p. 1172, § 7, effective May 15.

Editor's note: This section is similar to former § 1-40-105 as it existed prior to 1993, and the former § 1-40-109 was relocated. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, § 24.

C.J.S. See 82 C.J.S., Statutes, § 119.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Applied in Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

1-40-110. Warning - ballot title. (1) At the top of each page of every initiative or referendum petition section shall be printed, in a form as prescribed by the secretary of state, the following:

WARNING:

IT IS AGAINST THE LAW:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR AND ELIGIBLE TO VOTE ON THIS MEASURE. TO BE A REGISTERED ELECTOR, YOU MUST BE A CITIZEN OF COLORADO AND REGISTERED TO VOTE.

Before signing this petition, you are encouraged to read the text or the title of the proposed initiative or referred measure.

By signing this petition, you are indicating that you want this measure to be included on the ballot as a proposed change to the (Colorado constitution/Colorado Revised Statutes). If a sufficient number of registered electors sign this petition, this measure will appear on the ballot at the November (year) election.

(2) The ballot title for the measure shall then be printed on each page following the warning.

Source: L. 93: Entire article amended with relocations, p. 682, § 1, effective May 4. **L. 95:** IP(1) amended, p. 433, § 8, effective May 8. **L. 2000:** (1) amended, p. 1622, § 7, effective August 2. **L. 2009:** (1) amended, (HB 09-1326), ch. 258, p. 1172, § 8, effective May 15.

Editor's note: This section is similar to former § 1-40-106 as it existed prior to 1993, and the former § 1-40-110 was relocated to § 1-40-121 (1).

ANNOTATION

I. General Consideration.
II. Constitutional Construction.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 26-28.

C.J.S. See 82 C.J.S., Statutes, § 119.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Subsection (2) (now § 1-40-111) prohibited the court from validating the signatures collected for an initiative when its title and submission clause were found to be misleading. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

II. CONSTITUTIONAL CONSTRUCTION.

Section 1-40-106 must be construed so as to allow qualified electors of the ages of eighteen through twenty to participate in the initiative process. Colo. Project-Common Cause v. Anderson, 178 Colo. 1, 495 P.2d 220 (1972).

Liberal construction must be given to statutes implementing initiative provisions of constitution. Billings v. Buchanan, 192 Colo. 32, 555 P.2d 176 (1976).

1-40-111. Signatures - affidavits - notarization - list of circulators and notaries. (1) Any initiative or referendum petition shall be signed only by registered electors who are eligible to vote on the measure. Each registered elector shall sign his or her own signature and shall print his or her name, the address at which he or she resides, including the street number and name, the city and town, the county, and the date of signing. Each registered elector signing a petition shall be encouraged by the circulator of the petition to sign the petition in ink. In the event a registered elector is physically disabled or is illiterate and wishes to sign the petition, the elector shall sign or make his or her mark in the space so provided. Any person, but not a circulator, may assist the disabled or illiterate elector in completing the remaining information required by this subsection (1). The person providing assistance shall sign his or her name and address and shall state that such assistance was given to the disabled or illiterate elector.

(2) (a) To each petition section shall be attached a signed, notarized, and dated affidavit executed by the person who circulated the petition section, which shall include his or her printed name, the address at which he or she resides, including the street name and number, the city or town, the county, and the date he or she signed the affidavit; that he or she has read and understands the laws governing the circulation of petitions; that he or she was a resident of the state, a citizen of the United States, and at least eighteen years of age at the time the section of the petition was circulated and signed by the listed electors; that he or she circulated the section of the petition; that each signature thereon was affixed in the circulator's presence; that each signature thereon is the signature of the person whose name it purports to be; that to the best of the circulator's knowledge and belief each of the persons signing the petition section was, at the time of signing, a registered elector; that he or she has not paid or will not in the future pay and that he or she believes that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix his or her signature to the

petition; that he or she understands that he or she can be prosecuted for violating the laws governing the circulation of petitions, including the requirement that a circulator truthfully completed the affidavit and that each signature thereon was affixed in the circulator's presence; and that he or she understands that failing to make himself or herself available to be deposed and to provide testimony in the event of a protest shall invalidate the petition section if it is challenged on the grounds of circulator fraud.

(b) (I) A notary public shall not notarize an affidavit required pursuant to paragraph (a) of this subsection (2), unless:

(A) The circulator is in the physical presence of the notary public;

(B) The circulator has dated the affidavit and fully and accurately completed all of the personal information on the affidavit required pursuant to paragraph (a) of this subsection (2); and

(C) The circulator presents a form of identification, as such term is defined in section 1-1-104 (19.5). A notary public shall specify the form of identification presented to him or her on a blank line, which shall be part of the affidavit form.

(II) An affidavit that is notarized in violation of any provision of subparagraph (I) of this paragraph (b) shall be invalid.

(III) If the date signed by a circulator on an affidavit required pursuant to paragraph (a) of this subsection (2) is different from the date signed by the notary public, the affidavit shall be invalid. If, notwithstanding sub-subparagraph (B) of subparagraph (I) of this paragraph (b), a notary public notarizes an affidavit that has not been dated by the circulator, the notarization date shall not cure the circulator's failure to sign the affidavit and the affidavit shall be invalid.

(c) The secretary of state shall reject any section of a petition that does not have attached thereto a valid notarized affidavit that complies with all of the requirements set forth in paragraphs (a) and (b) of this subsection (2). Any signature added to a section of a petition after the affidavit has been executed shall be invalid.

(3) (a) As part of any court proceeding or hearing conducted by the secretary of state related to a protest of all or part of a petition section, the circulator of such petition section shall be required to make himself or herself available to be deposed and to testify in person, by telephone, or by any other means permitted under the Colorado rules of civil procedure. Except as set forth in paragraph (b) of this subsection (3), the petition section that is the subject of the protest shall be invalid if a circulator fails to comply with the requirement set forth in this paragraph (a) for any protest that includes an allegation of circulator fraud that is pled with particularity regarding:

(I) Forgery of a registered elector's signature;

(II) Circulation of a petition section, in whole or part, by anyone other than the person who signs the affidavit attached to the petition section;

(III) Use of a false circulator name or address in the affidavit; or

(IV) Payment of money or other things of value to any person for the purpose of inducing the person to sign the petition.

(b) Upon the finding by a district court or the secretary of state that the circulator of a petition section is unable to be deposed or to testify at trial or a hearing conducted by the secretary of state because the circulator has died, become mentally incompetent, or become medically incapacitated and physically unable to testify by any means whatsoever, the provisions of paragraph (a) of this subsection (3) shall not apply to invalidate a petition section circulated by the circulator.

(4) The proponents of a petition or an issue committee acting on the proponents' behalf shall maintain a list of the names and addresses of all circulators who circulated petition sections on behalf of the proponents and notaries public who notarized petition sections on behalf of the proponents and the petition section numbers that each circulator circulated and that each notary public notarized. A copy of the list shall be filed with the secretary of state along with the petition. If a copy of the list is not filed, the secretary of state shall prepare the list and charge the proponents a fee, which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., to cover the cost of the preparation. Once filed or prepared by the secretary of state, the list shall be a public record for purposes of article 72 of title 24, C.R.S.

Source: L. 93: Entire article amended with relocations, p. 683, § 1, effective May 4; (2)(a) amended, p. 2049, § 1, effective July 1. **L. 95:** (2) amended, p. 433, § 9, effective May 8. **L. 2007:** (2) amended, p. 1982, § 34, effective August 3. **L. 2009:** (2) amended and (3) and (4) added, (HB 09-1326), ch. 258, p. 1172, § 9, effective May 15.

Editor's note: This section is similar to former § 1-40-106 as it existed prior to 1993, and the former § 1-40-111 was relocated to § 1-40-101.

ANNOTATION

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 26-28.

C.J.S. See 82 C.J.S., Statutes, §§ 119, 120, 122.

Law reviews. For comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Section 1-40-106 (2) (now this section) prohibited the court from validating the signatures collected for an initiative when its title and submission clause were found to be misleading. Matter of the Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the City of Antonito, 873 P.2d 733 (Colo. 1994).

II. CONSTITUTIONAL CONSTRUCTION.

Section 1-40-106 must be construed so as to allow qualified electors of the ages of eighteen through twenty to participate in the initiative process. Colo. Project-Common Cause v. Anderson, 178 Colo. 1, 495 P.2d 220 (1972).

Liberal construction must be given to statutes implementing initiative provisions of constitution. Billings v. Buchanan, 192 Colo. 32, 555 P.2d 176 (1976).

III. REQUIRED DATA.

The purpose of the required data is that those interested in protesting may be apprised of that which will enable them conveniently to check the petition. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

And therefore, the careful entry of the residence (not mere post-office address) of each person with each name should be made at the time of the signing, and should show, in all cities and towns where there are street numbers, the street number of the residence of the signer. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

This is a very important provision. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

And it is the most efficient provision against fraud in this section. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

Also it is essential to an intelligent protest and should always be carefully obeyed. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

And the entry of the date of the signature is only less important. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

But both residence and date of the signature are mandatory by the provisions of § 1 of art. V, Colo. Const. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

Therefore, signatures to a petition, where the signer's residence can be identified by street and number, should be rejected if these are lacking. Miller v. Armstrong, 84 Colo. 416, 270 P. 877 (1928).

But the residence and date of signing may be added by a person other than the petitioner. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

Because neither the constitution nor this section specifically requires the signer to add his address and date of signing. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

Such additions, although preferably done by the petitioner, may be done by another. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

And failure of signers to insert residences is not ground for rejection. There is nothing in the constitution, statutes, or decisions justifying the rejection of signatures solely by reasons of the failure of signers, under the circumstances prevailing, to insert in the petition streets and numbers of their residences. Case v. Morrison, 118 Colo. 517, 197 P.2d 621 (1948).

And also omission of year from date petition signed was held immaterial. In considering the sufficiency of a petition, the fact that the year is omitted from the date upon which a signer affixed his signature to the petition is immaterial, where the document as a whole

conclusively establishes the year in which the petition was signed. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934), distinguishing Miller v. Armstrong, 84 Colo. 416, 270 P.877 (1928).

Moreover, until filed with the secretary of state, a petition for the initiation of a law is in no sense a public document, and may be checked and corrected by the sponsors before filing. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

Computation of residency applicable for municipal referendum. Computation of residency by looking to the date of signature and then to the date of the prospective election to determine whether the durational requirement is satisfied is applicable to a municipal referendum residency requirement. Francis v. Rogers, 182 Colo. 430, 514 P.2d 311 (1973).

IV. SIGNATURES.

Where two or more signatures on a petition are in the same handwriting, all such must be rejected. Miller v. Armstrong, 84 Colo. 416, 270 P. 877 (1928).

So also where sections of a petition have been tampered with after the signatures have been affixed thereto, they must be rejected. Miller v. Armstrong, 84 Colo. 416, 270 P. 877 (1928).

Newspaper pages cut and reassembled for inclusion in petition. Where newspaper pages, on which were printed petition forms in three parts which were used to secure signatures in support of a petition to place a proposed constitutional amendment on the ballot, were cut into the separate parts and then reassembled and bound together for inclusion in the petition presented to the secretary of state, this procedure did not invalidate the signatures since there was no showing or intimation that the separation of the forms involved any alteration, irregularity, or fraud. Billings v. Buchanan, 192 Colo. 32, 555 P.2d 176 (1976).

V. CIRCULATORS.

Since there was little in the record to support plaintiffs' claim that the affidavit requirement in subsection (2) significantly burdens political expression by decreasing the pool of available circulators, exacting scrutiny is not required. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Given the responsibility circulators bear in ensuring the integrity of elections involving ballot issues, and given the fact that the affidavit requirement is a reasonable, nondiscriminatory restriction, subsection (2) is not unduly burdensome and unconstitutionally vague. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

The requirements of this section are justified by the state's compelling need for the names and addresses of the circulators and the requirement is sufficiently narrowly drawn to be constitutional. The affidavit requirement has the primary purpose of providing the opportunity for an adequate hearing on the sufficiency of the signatures for the petition for other matters relevant to placing the measure on the ballot. There is a compelling necessity to be able to summon circulators to provide testimony at a hearing on challenges to the validity of the signatures and for other matters relevant to the petitioning process. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd on other grounds, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

"Read and understand" requirement is a formal requirement to which the court will not apply strict scrutiny in a constitutional challenge: Although requirements limit the power of initiative, the limitation is not substantive. Loonan v. Woodley, 882 P.2d 1380 (Colo. 1994).

"Read and understand" requirement enhances the integrity of the election process and does not unconstitutionally infringe on the right to petition. Loonan v. Woodley, 882 P.2d 1380 (Colo. 1994).

"Read and understand" requirement is not unconstitutionally vague. Loonan v. Woodley, 882 P.2d 1380 (Colo. 1994).

Subsection (2) is sufficiently definite because it explicitly endorses the lay circulator's own interpretation of "understanding", and does not invest law enforcement officers with sweeping, unrestrained discretion. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Omission of required affidavit language demonstrated that circulators of the petition did not read and understand the statute as required by this section. Loonan v. Woodley, 882 P.2d 1380 (Colo. 1994).

The circulator of a petition for the initiation of a measure can make a positive affidavit that a signature thereon is genuine by reason of its having been written in his presence or through his familiarity with the signer's handwriting, the pertinent law requiring only that the affidavit state that each signature is the signature of the person whose name it purports to be. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

But this section makes it a felony for one person to sign for another. Miller v. Armstrong, 84 Colo. 416, 270 P.877 (1928).

And a circulator who makes oath to the genuineness of such signatures, if done with knowledge, is guilty of perjury. Miller v. Armstrong, 84 Colo. 416, 270 P.877 (1928).

Since "purport" means to have the appearance or convey the impression of being. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And in a proceeding to determine the sufficiency of a petition, the contention that portions of the petition, although not vulnerable otherwise, should be discarded because circulators, as shown by other sections, had so deported themselves that they were unworthy of belief, overruled. Haraway v. Armstrong, 95 Colo. 398, 36 P.2d 456 (1934).

Substantial compliance is the standard the court must apply in assessing the effect of the deficiencies that caused the district court to hold petition signatures invalid. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

Discrepancies in the day or month of the circulator's date of signing and the date of notary acknowledgment render the relevant petitions invalid absent evidence that explains the differences in question. Petitions containing such discrepancies do not provide the necessary safeguards against abuse and fraud in the initiative process. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

Absent evidence that the change in signing was the product of the signing party, changes to a circulator's signing date do not represent substantial compliance with subsection (2) and serve to invalidate the signatures within the affected petitions. The district court properly held invalid signatures that were tainted by a change in the circulator's date of signing, where the date of signing was not accompanied by the initials of the circulator or other evidence in the record establishing that the circulator made the change. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

The district court erred in invalidating petitions that did not contain a notary seal. The purpose of the notarized affidavit provision in subsection (2) was substantially achieved despite the proponents' failure to secure a notary seal on petitions affecting 92 signatures. The record contains evidence that the affidavits with omitted seals were notarized by individuals with the same signature and commission expiration found on other affidavits with proper seals. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

The initiative proponents substantially complied with the requirements for a circulator's affidavit even though the circulator did not include a date of signing. When the circulator simply omits the date of signing, there is no reason to believe that the affidavit was not both subscribed and sworn to before the notary public on the date indicated in the jurat. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

1-40-112. Circulators - requirements - training. (1) No person shall circulate a petition for an initiative or referendum measure unless the person is a resident of the state, a citizen of the United States, and at least eighteen years of age at the time the petition is circulated.

(2) (a) A circulator who is not to be paid for circulating a petition concerning a ballot issue shall display an identification badge that includes the words "VOLUNTEER CIRCULATOR" in bold-faced type that is clearly legible.

(b) A circulator who is to be paid for circulating a petition concerning a ballot issue shall display an identification badge that includes the words "PAID CIRCULATOR" in bold-faced type that is clearly legible and the name and telephone number of the individual employing the circulator.

(3) The secretary of state shall develop circulator training programs for paid and volunteer circulators. Such programs shall be conducted in the broadest, most cost-effective manner available to the secretary of state, including but not limited to training sessions for persons associated with the proponents or a petition entity, as defined in section 1-40-135 (1), and by electronic and remote access. The proponents of an initiative petition or the representatives of a petition entity shall inform paid and volunteer circulators of the availability of these training programs as one manner of complying with the requirement set forth in the circulator's affidavit that a circulator read and understand the laws pertaining to petition circulation.

(4) It shall be unlawful for any person to pay a circulator more than twenty percent of his or her compensation for circulating petitions on a per signature or petition section basis.

Source: L. 93: Entire article amended with relocations, p. 684, § 1, effective May 4. **L. 2007:** Entire section amended, p. 1982, § 35, effective August 3. **L. 2009:** (3) and (4) added, (HB 09-1326), ch. 258, p. 1174, § 10, effective July 1.

Editor's note: Subsection (1) is similar to former § 1-40-106 (3) as it existed prior to 1993, and the former § 1-40-112 was relocated to § 1-40-122 (1).

ANNOTATION

Law reviews. For article, "Colorado's Citizen Initiative Again Scrutinized by the U.S. Supreme Court", see 28 Colo. Law. 71 (June 1999). For comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

Annotator's note. Since § 1-40-112 is similar to § 1-40-106 as it existed prior to the 1993 amendment of title 1, article 40, which resulted in the relocation of provisions, see the annotations under former § 1-40-106 in the 1980 replacement volume.

Identification badge requirement violates the first and fourteenth amendments to the United States constitution. The requirement substantially affects the number of potential petition circulators which translates into a corresponding decrease in the amount of protected political speech. The state's articulated interests, an interest in honesty in public discussion of governmental issues and in demonstrating grassroots support for an initiative, are not compelling and the restriction has not been narrowly drawn to further those interests. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd on other grounds, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L.Ed.2d 599 (1999).

Badge requirement discourages participation in the petition circulation process by forcing name identification without sufficient cause. Buckley v. Am. Constitutional Law Found., 525 U.S. 182, 119 S. Ct. 636, 142 L.Ed.2d 599 (1999).

Because the requirement in subsection (1) that circulators be registered voters is not narrowly tailored to a compelling state interest, it unconstitutionally impinges on free expression. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd, 525 U.S. 182, 119 S. Ct. 636, 142 L.Ed.2d 599 (1999).

The age requirement is a neutral restriction that imposes only a temporary disability-it does not establish an absolute prohibition but merely postpones the opportunity to circulate petitions. Exacting scrutiny is not required. Because maturity is reasonably related to Colorado's interest in preserving the integrity of ballot issue elections, the first amendment challenge fails. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L.Ed.2d 599 (1999).

Subsection (2) is not narrowly tailored to serve the state's interest. Conditioning circulation upon wearing an identification badge is a broad intrusion, discouraging truthful, accurate speech by those unwilling to wear a badge, and applying regardless of the character or strength of an individual's interest in anonymity. Additionally, the badges are but one part of the state's comprehensive scheme to combat circulation fraud. Article 40 of title 1 provides other tools that are much more narrowly tailored to serve the state's interest. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L.Ed.2d 599 (1999).

All circulators of initiative petitions must be registered electors, as required in both section 1 of article V of the state constitution and this section. Although the secretary of state was at one time enjoined by federal action from enforcing this requirement, after the injunction was lifted, she properly disallowed petitions circulated by nonregistered voters. McClellan v. Meyer, 900 P.2d 24 (Colo. 1995).

1-40-113. Form - representatives of signers. (1) Each section of a petition shall be printed on a form as prescribed by the secretary of state. No petition shall be printed, published, or otherwise circulated unless the form and the first printer's proof of the petition have been approved by the secretary of state. Each petition section shall designate by name and mailing address two persons who shall represent the signers thereof in all matters affecting the same. The secretary of state shall assure that the petition contains only the matters required by this article and contains no extraneous material. All sections of any petition shall be prenumbered serially, and the circulation of any petition section described by this article other than personally by a circulator is prohibited. Any petition section circulated in whole or in part by anyone other than the person who signs the affidavit attached to the petition section shall be invalid. Any petition section that fails to conform to the requirements of this article or is circulated in a manner other than that permitted in this article shall be invalid.

Editor's note: This version of subsection (1) is effective until January 1, 2011.

(1) (a) Each section of a petition shall be printed on a form as prescribed by the secretary of state. No petition shall be printed, published, or otherwise circulated unless the form and the first printer's proof of the petition have been approved by the secretary of state. Each petition section shall designate by name and mailing address two persons who shall represent the signers thereof in all matters affecting the same. The secretary of state shall assure that the petition contains only the matters required by this article and contains no extraneous material. All sections of any petition shall be prenumbered serially, and the circulation of any petition section described by this article other than personally by a circulator is prohibited. Any petition section circulated in whole or in part by anyone other than the person who signs the affidavit attached to the petition section shall be invalid. Any petition section that fails to conform to the requirements of this article or is circulated in a manner other than that permitted in this article shall be invalid.

(b) The secretary of state shall notify the proponents at the time a petition is approved pursuant to paragraph (a) of this subsection (1) that the proponents must register an issue committee pursuant to section 1-45-108 (3.3) if two hundred or more petition sections are printed or accepted in connection with circulation of the petition.

Editor's note: This version of subsection (1) is effective January 1, 2011.

(2) Any disassembly of a section of the petition which has the effect of separating the affidavits from the signatures shall render that section of the petition invalid and of no force and effect.

(3) Prior to the time of filing, the persons designated in the petition to represent the signers shall bind the sections of the petition in convenient volumes consisting of one hundred sections of the petition if one hundred or more sections are available or, if less than one hundred sections are available to make a volume, consisting of all sections that are available. Each volume consisting of less than one hundred sections shall be marked on the first page of the volume. However, any volume that contains more or less than one hundred sections, due only to the oversight of the designated representatives of the signers or their staff, shall not result in a finding of insufficiency of signatures therein. Each section of each volume shall include the affidavits required by section 1-40-111 (2), together with the sheets containing the signatures accompanying the same. These bound volumes shall be filed with the secretary of state.

Source: L. 93: Entire article amended with relocations, p. 684, § 1, effective May 4. **L. 95:** (1) and (3) amended, p. 434, § 10, effective May 8. **L. 2009:** (1) amended, (HB 09-1326), ch. 258, p. 1175, § 11, effective May 15. **L. 2010:** (1) amended, (HB 10-1370), ch. 270, p. 1240, § 2, effective January 1, 2011.

Editor's note: (1) This section is similar to former § 1-40-107 as it existed prior to 1993, and the former § 1-40-113 was relocated to § 1-40-123.

(2) Section 8 of chapter 270, Session Laws of Colorado 2010, provides that the act amending subsection (1) applies to any ballot issue petition that has a ballot title fixed by the title board on or after January 1, 2011.

Cross references: For the legislative declaration in the 2010 act amending subsection (1), see section 1 of chapter 270, Session Laws of Colorado 2010.

ANNOTATION

C.J.S. See 82 C.J.S., Statutes, §§ 116, 117, 121.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

There is a substantial compliance with the requirements that petitions for the initiation of measures shall be printed on pages eight and one-half inches wide, and fourteen inches long with a margin of two inches at the top for binding, where the pages of the protested document are eight and one-half inches wide, thirteen and fifteen-sixteenths inches long, and the top margin varies from one and five-sixteenths inches to two and one-sixteenth inches on the various sheets. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And the separation and alteration of sections of a petition to initiate a measure, destroys the integrity of each one so separated and altered, and renders it worthless. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926); Miller v. Armstrong, 84 Colo. 416, 270 P. 877 (1928).

Applied in Leach & Arnold Homes, Inc. v. City of Boulder, 32 Colo. App. 16, 507 P.2d 476 (1973).

1-40-114. Petitions - not election materials - no bilingual language requirement. The general assembly hereby determines that initiative petitions are not election materials or information covered by the federal "Voting Rights Act of 1965", and therefore are not required to be printed in any language other than English to be circulated in any county in Colorado.

Source: L. 93: Entire article amended with relocations, p. 685, § 1, effective May 4.

Editor's note: This section is similar to former § 1-40-107.5 (3) as it existed prior to 1993, and the former § 1-40-114 was relocated. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Law reviews. For comment, "Montero v. Meyer: Official English, Initiative Petitions and the Voting Rights Act", see 66 Den. U. L. Rev. 619 (1989). For comment, "Another View of Montero v. Meyer and the English-Only Movement: Giving Language Prejudice the Sanction of the Law", see 66 Den. U. L. Rev. 633 (1989).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Minority language provisions of the federal "Voting Rights Act" not applicable to initiative petitions. With respect to initiative petitions, electoral process to which the minority language provisions of the "Voting Rights Act" would apply did not commence under state law until the measure was certified as qualified for placement on the ballot. Furthermore, the signing of petitions did not constitute "voting" under the act. Montero v. Meyer, 861 F.2d 603 (10th Cir. 1988) (decided prior to enactment of this section).

1-40-115. Ballot - voting - publication. (1) Measures shall appear upon the official ballot by ballot title only. The measures shall be placed on the ballot in the order in which they were certified to the ballot and as provided in section 1-5-407 (5), (5.3), and (5.4).

(2) (a) All ballot issues shall be printed on the official ballot in that order, together with their respective letters and numbers prefixed in bold-faced type. Each ballot shall have the following explanation printed one time at the beginning of such ballot issues: "Ballot issues referred by the general assembly or any political subdivision are listed by letter, and ballot issues initiated by the people are listed numerically. A ballot issue listed as an 'amendment' proposes a change to the Colorado constitution, and a ballot issue listed as a 'proposition' proposes a change to the Colorado Revised Statutes. A 'yes' vote on any ballot issue is a vote in favor of changing current law or existing circumstances, and a 'no' vote on any ballot issue is a vote against changing current law or existing circumstances.". Each ballot title shall appear on the official ballot but once. For each ballot title that is an amendment, the amendment number or letter shall be immediately followed by the description "(CONSTITUTIONAL)". For each ballot title that is a proposition, the proposition number or letters shall be immediately followed by the description "(STATUTORY)". Each ballot title shall be separated from the other ballot titles next to it by heavy black lines and shall be followed by the words "yes" and "no" with blank spaces to the right and opposite the same as follows:

(HERE SHALL APPEAR THE BALLOT TITLE IN FULL)

YES _____ NO _____

(b) For purposes of preparing an audio ballot as part of an accessible voting system:

(I) In lieu of the parenthetical description preceding a ballot title that is an amendment required by paragraph (a) of this subsection (2), the audio ballot shall include the following: "The following ballot issue proposes a change to the Colorado constitution."; and

(II) In lieu of the parenthetical description preceding a ballot title that is a proposition required by paragraph (a) of this subsection (2), the audio ballot shall include the following: "The following ballot issue proposes a change to the Colorado Revised Statutes.".

(3) A voter desiring to vote for the measure shall make a cross mark (X) in the blank space to the right and opposite the word "yes"; a voter desiring to vote against the measure shall make a cross mark (X) in the blank space

to the right and opposite the word "no"; and the votes marked shall be counted accordingly. Any measure approved by the people of the state shall be printed with the acts of the next general assembly.

Source: L. 93: Entire article amended with relocations, p. 685, § 1, effective May 4. **L. 94:** (1) amended, p. 1180, § 74, effective July 1. **L. 95:** (3) amended, p. 434, § 11, effective May 8. **L. 97:** (2) amended, p. 189, § 17, effective August 6. **L. 2000:** (2) amended, p. 297, § 2, effective August 2. **L. 2009:** (2) amended, (HB 09-1326), ch. 258, p. 1175, § 12, effective January 1, 2010. **L. 2010:** (1) amended, (HB 10-1116), ch. 194, p. 840, § 28, effective May 5.

Editor's note: This section is similar to former § 1-40-108 (1) as it existed prior to 1993, and the former § 1-40-115 was relocated to § 1-40-127.

Cross references: For printing of session laws, see § 24-70-223.

ANNOTATION

Am. Jur.2d See 42 Am. Jur.2d, Initiative and Referendum, § 46.

C.J.S. See 82 C.J.S., Statutes, §§ 131, 132.

1-40-116. Verification - ballot issues - random sampling. (1) For ballot issues, each section of a petition to which there is attached an affidavit of the registered elector who circulated the petition that each signature thereon is the signature of the person whose name it purports to be and that to the best of the knowledge and belief of the affiant each of the persons signing the petition was at the time of signing a registered elector shall be prima facie evidence that the signatures are genuine and true, that the petitions were circulated in accordance with the provisions of this article, and that the form of the petition is in accordance with this article.

(2) Upon submission of the petition, the secretary of state shall examine each name and signature on the petition. The petition shall not be available to the public for a period of no more than thirty calendar days for the examination. The secretary shall assure that the information required by sections 1-40-110 and 1-40-111 is complete, that the information on each signature line was written by the person making the signature, and that no signatures have been added to any sections of the petition after the affidavit required by section 1-40-111 (2) has been executed.

(3) No signature shall be counted unless the signer is a registered elector and eligible to vote on the measure. A person shall be deemed a registered elector if the person's name and address appear on the master voting list kept by the secretary of state at the time of signing the section of the petition. In addition, the secretary of state shall not count the signature of any person whose information is not complete or was not completed by the elector or a person qualified to assist the elector. The secretary of state may adopt rules consistent with this subsection (3) for the examination and verification of signatures.

(4) The secretary of state shall verify the signatures on the petition by use of random sampling. The random sample of signatures to be verified shall be drawn so that every signature filed with the secretary of state shall be given an equal opportunity to be included in the sample. The secretary of state is authorized to engage in rule-making to establish the appropriate methodology for conducting such random sample. The random sampling shall include an examination of no less than five percent of the signatures, but in no event less than four thousand signatures. If the random sample verification establishes that the number of valid signatures is ninety percent or less of the number of registered eligible electors needed to find the petition sufficient, the petition shall be deemed to be not sufficient. If the random sample verification establishes that the number of valid signatures totals one hundred ten percent or more of the number of required signatures of registered eligible electors, the petition shall be deemed sufficient. If the random sampling shows the number of valid signatures to be more than ninety percent but less than one hundred ten percent of the number of signatures of registered eligible electors needed to declare the petition sufficient, the secretary of state shall order the examination and verification of each signature filed.

Source: L. 93: Entire article amended with relocations, p. 686, § 1, effective May 4. **L. 95:** (1) amended, p. 435, § 12, effective May 8.

Editor's note: This section is similar to former § 1-40-109 as it existed prior to 1993, and the former § 1-40-116 was relocated. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 28, 36.

Law reviews. For comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Subsection (1) is not unconstitutionally vague. The general reference to circulator affidavits in this section is controlled by the specific affidavit requirements in § 1-40-111(2). Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd in part and rev'd in part on other grounds, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

The secretary of state is deemed to have complied with the 30-day requirement for verifying signatures when he or she conducts the random sampling and issues a statement determining the petition to be either sufficient or insufficient, even though the sampling is later found to be erroneous. The petition is not automatically deemed sufficient even though final determination of the sufficiency of the petition occurs outside of the thirty-day
time frame. Buckley v. Chilcutt, 968 P.2d 112 (Colo. 1998).

If, based on a random sample, the secretary of state issues a good faith determination of insufficiency a

and a timely protest establishes that the petition contains more than 90% but less than 110% of the required signatures, the secretary of state is required to conduct a line-by-line examination of each signature. The results of the line-by-line count are subject to the protest and appeal process provided in § 1-40-118. Buckley v. Chilcutt, 968 P.2d 112 (Colo. 1998).

II. PRIMA FACIE EVIDENCE SIGNATURES GENUINE.

The statement in an affidavit attached to a petition for the initiation of a measure, that the signer "is a qualified elector", is prima facie evidence that the signatures thereon are genuine and that the persons signing are electors. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And the filing of a protest to the petition does not nullify this prima facie status nor relieve the protestants of the burden of establishing the insufficiency of the petition. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

Moreover, payment to circulators for procuring signatures held not to constitute fraud. A protest filed to a petition to initiate a measure, alleging fraud in the procurement of signatures, is not supported by the fact that circulators were paid a certain sum for signatures procured, there being nothing in the constitution or statutes prohibiting such practice. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

III. AMENDMENT AND WITHDRAWAL OF PETITION.

There is no provision permitting the amendment of a protest to a petition for the initiation of a measure after the expiration of the time allowed for filing the protest. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

The provision that a rejected petition for the initiation of a measure may be refiled "as an original petition" after amendment is to be construed, not that it must be refiled within the statutory time fixed for the initial filing of such petitions, but after being refiled it is to be considered "as an original petition". Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

Former subsection (2), which provided that a rejected petition may be amended and refiled as an original, did not subject a cured petition to the deadline set forth in Colo. Const. art. V, § 11 (2). Montero v. Meyer, 795 P.2d 242 (Colo. 1990) (decided under law in effect prior to 1989 amendment).

But where a petition for the initiation of a constitutional amendment is filed within the time fixed by statute, in the event of protest and rejection, the sponsors, at their election, are entitled to refile the petition

when amended within the 15 days allowed by this section. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

This is true even though the refiling date may fall beyond the six-month period fixed by §1-40-104 for the filing of original petitions. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And there is no statutory authorization for a protest against the filing, or refiling after withdrawal, of a petition, to initiate a measure under the initiative and referendum. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

Moreover, when a petition to initiate a measure under initiative and referendum is once withdrawn, it passes from official control and may be tampered with, amended, or destroyed. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932); Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

If the petition is withdrawn, no review can thereafter be prosecuted because without the petition no court could adjudicate its sufficiency. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

And an action to review an order of the secretary of state declaring a referendum petition insufficient cannot be left standing until the petition is amended and refiled, and later tried on an issue which did not exist when the cause was instituted. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

An action for review cannot survive a withdrawal to be further prosecuted on amendment and refiling because if refiled it comes back "as an original petition". Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

Therefore, the withdrawal of such a petition is equivalent to the dismissal of an action to review. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

And a demand for its withdrawal and a suit in mandamus to enforce that demand must necessarily have the same effect. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

Rule of the secretary of state regarding the procedure to determine the total number of valid petition signatures after submittal of additional signatures by addendum was authorized and is consistent with subsection (4). The rule increases the accuracy of sufficiency determination, enhances the integrity of the petition process, and assures compliance with the constitutionally prescribed minimum number of votes necessary to qualify for placement of a measure on the statewide ballot. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

IV. SUPPLEMENTS TO THE PETITION.

Section 1 of art. V. Colo. Const., fixes the time within which a petition must be filed with the secretary of state. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

And requires a certain number of signatures of legal voters to be affixed thereto before a matter can be submitted to the voters at an election. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Section 1 of art. V, Colo. Const., is a self-executing constitutional provision. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

So where there are insufficient signatures when a petition is originally presented, and too late filing when the supplements are presented, the petition for an initiated amendment to the constitution is not filed in compliance with § 1 of art. V, Colo. Const. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Because permitting the filing of late supplements containing enough signatures to satisfy the mandate of the constitution would be a circumvention of this fundamental document. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Moreover, § 1 of art. V. Colo. Const., mandatorily forecloses the acceptance of tardy supplements to a petition for an initiated amendment to the constitution. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

1-40-117. Statement of sufficiency - statewide issues. (1) After examining the petition, the secretary of state shall issue a statement as to whether a sufficient number of valid signatures appears to have been submitted to certify the petition to the ballot.

(2) If the petition was verified by random sample, the statement shall contain the total number of signatures submitted and whether the number of signatures presumed valid was ninety percent of the required total or less or one hundred ten percent of the required total or more.

(3) (a) If the secretary declares that the petition appears not to have a sufficient number of valid signatures, the statement issued by the secretary shall specify the number of sufficient and insufficient signatures. The secretary shall identify by section number and line number within the section those signatures found to be insufficient and the grounds for the insufficiency. Such information shall be kept on file for public inspection in accordance with section 1-40-118.

(b) In the event the secretary of state issues a statement declaring that a petition, having first been submitted with the required number of signatures, appears not to have a sufficient number of valid signatures, the representatives designated by the proponents pursuant to section 1-40-104 may cure the insufficiency by filing an addendum to the original petition for the purpose of offering such number of additional signatures as will cure the insufficiency. No addendum offered as a cure shall be considered unless the addendum conforms to requirements for petitions outlined in sections 1-40-110, 1-40-111, and 1-40-113 and unless the addendum is filed with the secretary of state within the fifteen-day period after the insufficiency is declared and unless filed with the secretary of state no later than three months and three weeks before the election at which the initiative petition is to be voted on. All filings under this paragraph (b) shall be made by 3 p.m. on the day of filing. Upon submission of a timely filed addendum, the secretary of state shall order the examination and verification of each signature on the addendum. The addendum shall not be available to the public for a period of up to ten calendar days for such examination. After examining the petition, the secretary of state shall, within ten calendar days, issue a statement as to whether the addendum cures the insufficiency found in the original petition.

Source: L. 93: Entire article amended with relocations, p. 687, § 1, effective May 4. **L. 2009:** (3)(b) amended, (HB 09-1326), ch. 258, p. 1176, § 13, effective May 15.

Editor's note: This section is similar to former § 1-40-109 as it existed prior to 1993.

ANNOTATION

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 28, 36.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. PRIMA FACIE EVIDENCE SIGNATURES GENUINE.

The statement in an affidavit attached to a petition for the initiation of a measure, that the signer "is a qualified elector", is prima facie evidence that the signatures thereon are genuine and that the persons signing are electors. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And the filing of a protest to the petition does not nullify this prima facie status nor relieve the protestants of the burden of establishing the insufficiency of the petition. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

Moreover, payment to circulators for procuring signatures held not to constitute fraud. A protest filed to a petition to initiate a measure, alleging fraud in the procurement of signatures, is not supported by the fact that circulators were paid a certain sum for signatures procured, there being nothing in the constitution or statutes prohibiting such practice. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

III. AMENDMENT AND WITHDRAWAL OF PETITION.

There is no provision permitting the amendment of a protest to a petition for the initiation of a measure after the expiration of the time allowed for filing the protest. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

The provision that a rejected petition for the initiation of a measure may be refiled "as an original petition" after amendment is to be construed, not that it must be refiled within the statutory time fixed for the initial filing of such petitions, but after being refiled it is to be considered "as an original petition". Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

Former subsection (2), which provided that a rejected petition may be amended and refiled as an original, did not subject a cured petition to the deadline set forth in Colo. Const. art. V, § 11 (2). Montero v. Meyer, 795 P.2d 242 (Colo. 1990) (decided under law in effect prior to 1989 amendment).

But where a petition for the initiation of a constitutional amendment is filed within the time fixed by statute, in the event of protest and rejection, the sponsors, at their election, are entitled to refile the petition

when amended within the fifteen days allowed by this section. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

This is true even though the refiling date may fall beyond the six-month period fixed by §1-40-104 for the filing of original petitions. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And there is no statutory authorization for a protest against the filing, or refiling after withdrawal, of a petition, to initiate a measure under the initiative and referendum. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

Moreover, when a petition to initiate a measure under initiative and referendum is once withdrawn, it passes from official control and may be tampered with, amended, or destroyed. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932); Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

If the petition is withdrawn, no review can thereafter be prosecuted because without the petition no court could adjudicate its sufficiency. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

And an action to review an order of the secretary of state declaring a referendum petition insufficient cannot be left standing until the petition is amended and refiled, and later tried on an issue which did not exist when the cause was instituted. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

An action for review cannot survive a withdrawal to be further prosecuted on amendment and refiling because if refiled it comes back "as an original petition". Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

Therefore, the withdrawal of such a petition is equivalent to the dismissal of an action to review. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

And a demand for its withdrawal and a suit in mandamus to enforce that demand must necessarily have the same effect. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

IV. SUPPLEMENTS TO THE PETITION.

Section 1 of art. V, Colo. Const., fixes the time within which a petition must be filed with the secretary of state. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

And requires a certain number of signatures of legal voters to be affixed thereto before a matter can be submitted to the voters at an election. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Section 1 of art. V, Colo. Const., is a self-executing constitutional provision. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

So where there are insufficient signatures when a petition is originally presented, and too late filing when the supplements are presented, the petition for an initiated amendment to the constitution is not filed in compliance with § 1 of art. V, Colo. Const. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Because permitting the filing of late supplements containing enough signatures to satisfy the mandate of the constitution would be a circumvention of this fundamental document. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Moreover, § 1 of art. V, Colo. Const., mandatorily forecloses the acceptance of tardy supplements to a petition for an initiated amendment to the constitution. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

1-40-118. Protest. (1) A protest in writing, under oath, together with three copies thereof, may be filed in the district court for the county in which the petition has been filed by some registered elector, within thirty days after the secretary of state issues a statement as to whether the petition has a sufficient number of valid signatures, which statement shall be issued no later than thirty calendar days after the petition has been filed. If the secretary of state fails to issue a statement within thirty calendar days, the petition shall be deemed sufficient. Regardless of whether the secretary of state has issued a statement of sufficiency or if the petition is deemed sufficient because the secretary of state has failed to issue a statement of sufficiency within thirty calendar days, no further agency action shall be necessary for the district court to have jurisdiction to consider the protest. During the period a petition is being examined by the secretary of state for sufficiency, the petition shall not be available to the public; except that such period shall not exceed thirty calendar days. Immediately after the secretary of state issues a statement of sufficiency or, if the petition is deemed sufficient because the secretary of state has failed to issue the statement, after thirty calendar days, the secretary of state shall make the petition available to the public for copying upon request.

(2) (a) If the secretary of state conducted a random sample of the petitions and did not verify each signature, the protest shall set forth with particularity the defects in the procedure used by the secretary of state in

the verification of the petition or the grounds for challenging individual signatures or petition sections, as well as individual signatures or petition sections protested. If the secretary of state verified each name on the petition sections, the protest shall set forth with particularity the grounds of the protest and the individual signatures or petition sections protested.

(b) Regardless of the method used by the secretary of state to verify signatures, the grounds for challenging individual signatures or petition sections pursuant to paragraph (a) of this subsection (2) shall include, but are not limited to, the use of a petition form that does not comply with the provisions of this article, fraud, and a violation of any provision of this article or any other law that, in either case, prevents fraud, abuse, or mistake in the petition process.

(c) If the protest is limited to an allegation that there were defects in the secretary of state's statement of sufficiency based on a random sample to verify signatures, the district court may review all signatures in the random sample.

(d) No signature may be challenged that is not identified in the protest by section number, line number, name, and reason why the secretary of state is in error. If any party is protesting the finding of the secretary of state regarding the registration of a signer, the protest shall be accompanied by an affidavit of the elector or a copy of the election record of the signer.

(2.5) (a) If a district court finds that there are invalid signatures or petition sections as a result of fraud committed by any person involved in petition circulation, the registered elector who instituted the proceedings may commence a civil action to recover reasonable attorney fees and costs from the person responsible for such invalid signatures or petition sections.

(b) A registered elector who files a protest shall be entitled to the recovery of reasonable attorney fees and costs from a proponent of an initiative petition who defends the petition against a protest or the proponent's attorney, upon a determination by the district court that the defense, or any part thereof, lacked substantial justification or that the defense, or any part thereof, was interposed for delay or harassment. A proponent who defends a petition against a protest shall be entitled to the recovery of reasonable attorney fees and costs from the registered elector who files a protest or the registered elector's attorney, upon a determination by the district court that the protest, or any part thereof, lacked substantial justification or that the protest, or any part thereof, was interposed for delay or harassment. No attorney fees may be awarded under this paragraph (b) unless the district court has first considered the provisions of section 13-17-102 (5) and (6), C.R.S. For purposes of this paragraph (b), "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

(c) A district court conducting a hearing pursuant to this article shall permit a circulator who is not available at the time of the hearing to testify by telephone or by any other means permitted under the Colorado rules of civil procedure.

(3) (Deleted by amendment, L. 95, p. 435, § 13, effective May 8, 1995.)

(4) The secretary of state shall furnish a requesting protestor with a computer tape or microfiche listing of the names of all registered electors in the state and shall charge a fee which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., to cover the cost of furnishing the listing.

(5) Written entries that are made by petition signers, circulators, and notaries public on a petition section that substantially comply with the requirements of this article shall be deemed valid by the secretary of state or any court, unless:

(a) Fraud, as specified in section 1-40-135 (2) (c), excluding subparagraph (V) of said paragraph (c), is established by a preponderance of the evidence;

(b) A violation of any provision of this article or any other provision of law that, in either case, prevents fraud, abuse, or mistake in the petition process, is established by a preponderance of the evidence;

(c) A circulator used a petition form that does not comply with the provisions of this article or has not been approved by the secretary of state.

Source: L. 93: Entire article amended with relocations, p. 688, § 1, effective May 4. **L. 95:** (1) to (3) amended, p. 435, § 13, effective May 8. **L. 2009:** (1) and (2) amended and (2.5) and (5) added, (HB 09-1326), ch. 258, p. 1176, § 14, effective May 15.

Editor's note: This section is similar to former § 1-40-109 as it existed prior to 1993, and provisions of the former § 1-40-118 were relocated to § 1-40-130.

ANNOTATION

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 28, 36.

C.J.S. See 82 C.J.S., Statutes, § 124.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

II. SPECIFICATION OF GROUNDS AND OATH.

The provisions of this section that a protest to a petition for the submission of an act of the general assembly to the people must specify the grounds of such protest, and be under oath, are jurisdictional. Ramer v. Wright, 62 Colo. 53, 159 P. 1145 (1916); Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And the secretary of state is without power to act in the absence of a substantial compliance therewith. Ramer v. Wright, 62 Colo. 53, 159 P. 1145 (1916); Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

There was not a substantial compliance where, appended to a protest, appeared the certificate of a notary public that certain persons each "deposes and says: That he subscribed the above protest after reading the same, and the contents thereof are true to the best of his knowledge, information and belief", but there was no statement that the persons named were sworn. Therefore, the secretary had no authority to entertain the protest. Ramer v. Wright, 62 Colo. 53, 159 P. 1145 (1916).

The requirement that the protest must be under oath is not so unreasonable as to invalidate the statute. Ramer v. Wright, 62 Colo. 53, 159 P. 1145 (1916).

III. AMENDED PROTEST.

Whether a protest should specify the names protested was not determined in Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

Amended protest was properly dismissed by the secretary of state despite the secretary's incorrect notification to the protestor that a protest could be filed by a specified date. The secretary of state lacked the authority to enlarge the protest period provided in former version of this section, and protestor cannot state claim for relief under theory of estoppel against a state entity on the basis of an unauthorized action or promise. Montero v. Meyer, 795 P.2d 242 (Colo. 1990) (decided under law in effect prior to 1989 amendment).

Petitioners properly sought district court review under this section and § 1-40-119 without first pursuing the administrative remedies outlined in § 1-40-132 (1). Section 1-40-132 (1) is inapplicable to determination whether a petition has a sufficient number of valid signatures to qualify for placement of an initiated measure on the ballot. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

IV. PROTESTS BEFORE SECRETARY OF STATE.

Where a petition is protested before the secretary of state, that official in making findings should specify the names or categories of names which should be rejected. Miller v. Armstrong, 84 Colo. 416, 270 P. 877 (1928).

The secretary of state improperly applied the perfect match rule in disallowing signatures where there was a discrepancy between the street directional or apartment number as they appeared on the petition and the master voting list. This information is not required under the statute and is therefore extraneous. McClellan v. Meyer, 900 P.2d 24 (Colo. 1995).

The secretary of state also erred in disallowing signatures based on discrepancies between the name of the town as included with the signature and as stated on the master voting list where the secretary had actual knowledge that the discrepancies were a result of the creation of a town that occurred after preparation of the master voting list. McClellan v. Meyer, 900 P.2d 24 (Colo. 1995).

The secretary of state properly disallowed signatures when the signer indicated or omitted a designation of junior or senior that was omitted from or

included on the master list. McClellan v. Meyer, 900 P.2d 24 (Colo. 1995).

Where an elector moves to a new residence and retains the same post office box as a mailing address, the signature should be rejected unless the elector is registered at a post office address and the post office address is the only address assigned to a particular residence. McClellan v. Meyer, 900 P.2d 24 (Colo. 1995).

V. REMEDY PROVIDED.

This section provides one special remedy and only one, a judicial review of "the findings as to the sufficiency" of the petition. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

However, this remedy is not compulsory. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

The parties may waive it, or abandon or dismiss it after beginning it. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

But where a petition is protested before the secretary of state, after whose decision the matter is taken into court, the case is before the court for review and not for trial de novo. Miller v. Armstrong, 84 Colo. 416, 270 P. 877 (1928).

And on dismissal of such an action, an order of the trial court that the petition be returned to the secretary of state is proper. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

If, based on a random sample, the secretary of state issues a good faith determination of insufficiency and a timely protest establishes that the petition contains more than 90 % but less than 110 % of the required signatures, the secretary of state is required to conduct a line-by-line examination of each signature. The results of the line-by-line count are subject to the protest and appeal process provided in this section. Buckley v. Chilcutt, 968 P.2d 112 (Colo. 1998).

VI. EFFECT ON OTHER TRIBUNALS.

This section sets up a special procedure for protesting petitions for the initiation of measures. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

But it does not deprive courts of equity of jurisdiction in such cases. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

And the statutory procedure outlined has no application to actions in equity courts. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

This section does not provide an exclusive and adequate remedy so as to deprive equity courts of jurisdiction. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

Section inapplicable to actions in court. The provisions of this section concerning the sufficiency of petitions for the initiation of laws have no application to action in court. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

And courts may interfere in matters preliminary to elections, such as determining the validity of a petition to initiate a measure. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

Proceedings before the secretary of state to determine the validity of a petition to initiate a measure is not another suit pending so as to oust a court of jurisdiction in an action to enjoin the placing of the measure on the ballot. And, where it does not appear on the face of a complaint that there is another suit pending, such objection may not be raised by demurrer. Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

VII. INJUNCTION FOR FRAUD.

Fraud may be the basis of an injunction against the submission of the subject of the petition to vote, which submission is also a preliminary of the election. Leckenby v. Post Printing & Publishing Co., 65 Colo. 443, 176 P. 490 (1918); Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

And if we do not hold in this way, we shall be compelled to say that if a petition with a sufficient number of names, on its face valid, should be laid before the secretary of state, it could not be successfully attacked even though every name were forged and every affidavit attached to it were false. Leckenby v. Post Printing & Publishing Co., 65 Colo. 443, 176 P. 490 (1918); Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

The petition is a preliminary to an initiated election, and if fraudulent, may not be given effect. Leckenby v. Post Printing & Publishing Co., 65 Colo. 443, 176 P. 490 (1918); Elkins v. Milliken, 80 Colo. 135, 249 P. 655 (1926).

1-40-119. Procedure for hearings. At any hearing held under this article, the party protesting the finding of the secretary of state concerning the sufficiency of signatures shall have the burden of proof. Hearings shall be had as soon as is conveniently possible and shall be concluded within thirty days after the commencement thereof, and the result of such hearings shall be forthwith certified to the designated representatives of the signers and to the

protestors of the petition. The hearing shall be subject to the provisions of the Colorado rules of civil procedure. Upon application, the decision of the court shall be reviewed by the Colorado supreme court.

Source: L. 93: Entire article amended with relocations, p. 689, § 1, effective May 4. **L. 95:** Entire section amended, p. 436, § 14, effective May 8.

Editor's note: This section is similar to former § 1-40-109 (2)(a) as it existed prior to 1993, and the former § 1-40-119 was relocated to § 1-40-132 (1).

ANNOTATION

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 28, 36.

C.J.S. See 82 C.J.S., Statutes, § 124.

Petitioners properly sought district court review under this section and § 1-40-118 without first pursuing the administrative remedies outlined in § 1-40-132 (1). Section 1-40-132 (1) is inapplicable to determination whether a petition has a sufficient number of valid signatures to qualify for placement of an initiated measure on the ballot. Fabec v. Beck, 922 P.2d 330 (Colo. 1996)

1-40-120. Filing in federal court. In case a complaint has been filed with the federal district court on the grounds that a petition is insufficient due to failure to comply with any federal law, rule, or regulation, the petition may be withdrawn by the two persons designated pursuant to section 1-40-104 to represent the signers of the petition and, within fifteen days after the court has issued its order in the matter, may be amended and refiled as an original petition. Nothing in this section shall prohibit the timely filing of a protest to any original petition, including one that has been amended and refiled. No person shall be entitled, pursuant to this section, to amend an amended petition.

Source: L. 93: Entire article amended with relocations, p. 689, § 1, effective May 4.

Editor's note: This section is similar to former § 1-40-109 (2)(b) as it existed prior to 1993.

ANNOTATION

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, §§ 28, 36.

C.J.S. See 82 C.J.S., Statutes, § 124.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The provision that a rejected petition for the initiation of a measure may be refiled "as an original petition" after amendment is to be construed, not that it must be refiled within the statutory time fixed for the initial filing of such petitions, but after being refiled it is to be considered "as an original petition". Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

Former section, which provided that a rejected petition may be amended and refiled as an original, did not subject a cured petition to the deadline set forth in Colo. Const. art. V, § 11 (2). Montero v. Meyer, 795 P.2d 242 (Colo. 1990) (decided under law in effect prior to 1989 amendment).

But where a petition for the initiation of a constitutional amendment is filed within the time fixed by statute, in the event of protest and rejection, the sponsors, at their election, are entitled to refile the petition when amended within the fifteen days allowed by this section. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

This is true even though the refiling date may fall beyond the six-month period fixed by § 1-40-104 for the filing of original petitions. Brownlow v. Wunch, 103 Colo. 120, 83 P.2d 775 (1938).

And there is no statutory authorization for a protest against the filing, or refiling after withdrawal, of a petition, to initiate a measure under the initiative and referendum. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

Moreover, when a petition to initiate a measure under initiative and referendum is once withdrawn, it passes from official control and may be tampered with, amended, or destroyed. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932); Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

If the petition is withdrawn, no review can thereafter be prosecuted because without the petition no court could adjudicate its sufficiency. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

And an action to review an order of the secretary of state declaring a referendum petition insufficient cannot be left standing until the petition is amended and refiled, and later tried on an issue which did not exist when the cause was instituted. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

An action for review cannot survive a withdrawal to be further prosecuted on amendment and refiling because if refiled it comes back "as an original petition". Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

Therefore, the withdrawal of such a petition is equivalent to the dismissal of an action to review. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

And a demand for its withdrawal and a suit in mandamus to enforce that demand must necessarily have the same effect. Robinson v. Armstrong, 90 Colo. 363, 9 P.2d 481 (1932).

1-40-121. Receiving money to circulate petitions - filing. (1) The proponents of the petition or an issue committee acting on behalf of the proponents shall file with the official who receives filings under the "Fair Campaign Practices Act", article 45 of this title, for the election a report stating the dates of circulation by all circulators who were paid to circulate a section of the petition, the total hours for which each circulator was paid to circulate a section of the petition, and the gross amount of wages paid for such hours. The filing shall be made at the same time the petition is filed with the secretary of state. A payment made to a circulator is an expenditure under article 45 of this title.

(2) (Deleted by amendment, L. 2007, p. 1983, § 36, effective August 3, 2007.)

Source: L. 93: Entire article amended with relocations, p. 690, § 1, effective May 4. **L. 95:** (1) and IP(2) amended, p. 436, § 15, effective May 8. **L. 98:** (1) amended, p. 815, § 2, effective August 5. **L. 2007:** Entire section amended, p. 1983, § 36, effective August 3. **L. 2009:** (1) amended, (HB 09-1326), ch. 258, p. 1178, § 15, effective May 15.

Editor's note: Subsection (1) is similar to former § 1-40-110 as it existed prior to 1993.

ANNOTATION

Law reviews. For article, "Colorado's Citizen Initiative Again Scrutinized by the U.S. Supreme Court", see 28 Colo. Law. 71 (June 1999). For comment, "Buckley v. American Constitutional Law Foundation, Inc.: The Struggle to Establish a Consistent Standard of Review in Ballot Access Cases Continues", see 77 Den. U. L. Rev. 197 (1999).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Ban of "inducement" overly broad. The language of this section is too broad to survive strict scrutiny. The ban of any "inducement" to petition circulation sweeps far too broadly. Urevich v. Woodward, 667 P.2d 760 (Colo. 1983).

Section construed to delete "inducement". This section must be narrowed to delete the word "inducement". Urevich v. Woodward, 667 P.2d 760 (Colo. 1983).

Section unconstitutional. This section violates the first and fourteenth amendments to the U.S. constitution by imposing a direct and substantial restriction on the right to political speech, employing unnecessarily broad prohibitions. Grant v. Meyer, 828 F.2d 1446 (10th Cir. 1987), aff'd, 486 U.S. 414, 108 S. Ct. 1886, 100 L. Ed. 2d 425 (1988).

Given the business of circulation for hire, there is an interest in compelling disclosure by the proponents of the persons or entities being hired, not only to prevent fraud but to give the public information concerning who the principal proponents are and what kind of financial resources may be available to them. That legitimate interest, however, is not significantly advanced by disclosure of the names and addresses of each person paid to circulate any section of the petition. What is of interest is the payor, not the payees. Upon elimination of the

provision requiring identification of the circulators, the burden on proponents is slight. This requirement as modified is valid. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd, 120 F.3d 1092 (10th Cir. 1997), aff'd, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

To the extent the monthly report requirement includes the name and residential and business addresses of each of the paid circulators, it is unconstitutional. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Requiring proponents to provide a detailed roster of all who were paid to circulate compromises the expressive rights of paid circulators, but sheds little light on the relative merit of the ballot issue. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Compelling detailed monthly disclosures while the petition is being circulated chills speech by forcing paid circulators to surrender the anonymity enjoyed by their volunteer counterparts. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Since the state has failed to demonstrate how monthly reports meet the stated objectives of preventing fraud as compared with the final report to be filed when the petitions are submitted to the designated election official, the monthly reports are restrictions on core political speech and are invalid. Preparation of the monthly reports is burdensome and involves an additional expense to those supporting an initiative or referendum petition. Testimony was presented showing that the monthly reports affect the circulation process and therefore the amount of core political speech. Am. Constitutional Law Found., Inc. v. Meyer, 870 F. Supp. 995 (D. Colo. 1994), aff'd, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

Compelling the disclosure of the identities of every paid circulator chills paid circulation, a constitutionally protected exercise. Although the fact that disclosure is made at the time the proponents file the petition lessens the burden of the disclosure, the law fails exacting scrutiny because the interests asserted by the state either already are or can be protected by less intrusive measures. Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd on other grounds, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999).

1-40-122. Certification of ballot titles. (1) The secretary of state, at the time the secretary of state certifies to the county clerk and recorder of each county the names of the candidates for state and district offices for general election, shall also certify to them the ballot titles and numbers of each initiated and referred measure filed in the office of the secretary of state to be voted upon at such election.

(2) Repealed.

Source: L. 93: Entire article amended with relocations, p. 690, § 1, effective May 4. **L. 95:** (2) repealed, p. 436, § 16, effective May 8.

Editor's note: Subsection (1) is similar to former § 1-40-112 as it existed prior to 1993.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Secretary of state properly certified initiated measure for general election ballot, even though a challenge to the measure had been filed with the secretary pursuant to former § 1-40-109 (2). Montero v. Meyer, 795 P.2d 242 (Colo. 1990).

Secretary of state has sole authority to set election dates or place initiated measures on ballot, and title setting board has no such authority. Matter of Title, Ballot Title, Etc., 850 P.2d 144 (Colo. 1993)

1-40-123. Counting of votes - effective date - conflicting provisions. The votes on all measures submitted to the people shall be counted and properly entered after the votes for candidates for office cast at the same election are counted and shall be counted, canvassed, and returned and the result determined and certified in the manner provided by law concerning other elections. The secretary of state who has certified the election shall, without delay, make and transmit to the governor a certificate of election. The measure shall take effect from and after the date of the official declaration of the vote by proclamation of the governor, but not later than thirty days after the votes have been canvassed, as provided in section 1 of article V of the state constitution. A majority of the votes cast thereon shall adopt any measure submitted, and, in case of adoption of conflicting provisions, the one that receives the greatest number of affirmative votes shall prevail in all particulars as to which there is a conflict.

Source: L. 93: Entire article amended with relocations, p. 691, § 1, effective May 4. **L. 95:** Entire section amended, p. 436, § 17, effective May 8.

Editor's note: This section is similar to former § 1-40-113 as it existed prior to 1993.

ANNOTATION

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, § 37.

C.J.S. See 82 C.J.S., Statutes, § 135.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section enhances rather than limits the right of the people to amend the Colorado constitution. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

Conflicting constitutional amendments. Amendment nos. 6 and 9, proposed constitutional amendments relating to reapportionment on the ballot at the general election held on November 5, 1974, are in conflict where the former, a housekeeping amendment, among many other things, provides that the general assembly is to establish district boundaries and that there is to be no more than a five percent population deviation from the mean in each district while the latter, dealing exclusively with reapportionment, provides for a commission to promulgate a plan of reapportionment which the supreme court either approves or, in effect, orders modified as required by the court and for a maximum five percent deviation between the most populous and the least populous district in each house. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

One with most votes prevails. In order to carry out the meaning and purpose of § 1 of art. V, Colo. Const., the one of two inconsistent amendments which received the most votes must prevail. That, in the view of the supreme court, is what the "republican" form of government means with respect to the right of the people to amend the constitution. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

It is the duty of the court, whenever possible, to give effect to the expression of the will of the people contained in constitutional amendments adopted by them. In re Interrogatories Propounded by the Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975); Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

When two constitutional amendments are simultaneously adopted, the court should not resort to rules that give effect to one provision at the expense of the other unless there is an irreconcilable, material, and direct conflict between the two amendments. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

When constitutional amendments enacted at the same election are in such irreconcilable conflict, the one which receives the greatest number of affirmative votes shall prevail in all particulars as to which there is a conflict. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

The test for the existence of a conflict is: Does one authorize what the other forbids or forbid what the other authorizes? Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

1-40-124. Publication. (1) (a) In accordance with section 1 (7.3) of article V of the state constitution, the director of research of the legislative council of the general assembly shall cause to be published at least one time in at least one legal publication of general circulation in each county of the state, compactly and without unnecessary spacing, in not less than eight-point standard type, a true copy of:

(I) The title and text of each constitutional amendment, initiated or referred measure, or part of a measure, to be submitted to the people with the number and form in which the ballot title thereof will be printed in the official ballot; and

(II) The text of each referred or initiated question arising under section 20 of article X of the state constitution, as defined in section 1-41-102 (3), to be submitted to the people with the number and form in which such question will be printed in the official ballot.

(b) The publication may be in the form of a notice printed in a legal newspaper, as defined in sections 24-70-102 and 24-70-103 (1), C.R.S., or in the form of a publication that is printed separately and delivered as an insert in such a newspaper. The director of research of the legislative council may determine which form the publication will take in each legal newspaper. The director may negotiate agreements with one or more legal newspapers, or with any organization that represents such newspapers, to authorize the printing of a separate insert by one or more legal newspapers to be delivered by all of the legal newspapers participating in the agreement.

(c) Where more than one legal newspaper is circulated in a county, the director of research of the legislative council shall select the newspaper or newspapers that will make the publication. In making such selection, the director shall consider the newspapers' circulation and charges.

(d) The amount paid for publication shall be determined by the executive committee of the legislative council and shall be based on available appropriations. In determining the amount, the executive committee may consider the newspaper's then effective current lowest bulk comparable or general rate charged and the rate specified for legal newspapers in section 24-70-107, C.R.S. The director of research of the legislative council shall provide the legal newspapers selected to perform printing in accordance with this subsection (1) either complete slick proofs or mats of the title and text of the proposed constitutional amendment, initiated or referred measure, or part of a measure, and of the text of a referred or initiated question arising under section 20 of article X of the state constitution, as defined in section 1-41-102 (3), at least one week before the publication date.

(e) If no legal newspaper is willing or able to print or distribute the publication in a particular county in accordance with the provisions of this subsection (1), the director of research of the legislative council shall assure compliance with the publication requirements of section 1 (7.3) of article V of the state constitution by causing the printing of additional inserts or legal notices in such manner and form as deemed necessary and by providing for their separate circulation in the county as widely as may be practicable. Such circulation may include making the publications available at government offices and other public facilities or private businesses. If sufficient funds are available for such purposes, the director may also contract for alternative methods of circulation or may cause circulation by mailing the publication to county residents. Any printing and circulation made in accordance with

this paragraph (e) shall be deemed to be a legal publication of general circulation for purposes of section 1 (7.3) of article V of the state constitution.

(2) (Deleted by amendment, L. 95, p. 437, § 18, effective May 8, 1995.)

Source: L. 93: Entire article amended with relocations, p. 691, § 1, effective May 4. **L. 94:** (1) amended, p. 1688, § 1, effective January 19, 1995. **L. 95:** Entire section amended, p. 437, § 18, effective May 8. **L. 2000:** (1) amended, p. 298, § 3, effective August 2. **L. 2004:** (1) amended, p. 961, § 1, effective May 21.

Editor's note: (1) This section is similar to former § 1-40-114 (1) and (2) as it existed prior to 1993.

(2) Section 5 of chapter 284, Session Laws of Colorado 1994, provided that the act amending subsection (1) was effective on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of Senate Concurrent Resolution 94-005, enacted at the Second Regular Session of the Fifty-ninth General Assembly. The date of the proclamation of the Governor announcing the approval of Senate Concurrent Resolution 94-005 was January 19, 1995.

ANNOTATION

I. General Consideration.
II. Publication.
I. Newspapers of General Circulation.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 42 Am. Jur.2d, Initiative and Referendum, § 37.

C.J.S. See 82 C.J.S., Statutes, § 129.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The facts upon which depend the question whether an amendment proposed to the constitution has received the approval of the people will be judicially noticed and the court will resort to all sources of information which may afford satisfactory evidence upon the question. Harrison v. People ex rel. Whatley, 57 Colo. 137, 140 P. 203 (1914).

II. PUBLICATION.

The purpose of the provision that the full text of a proposed amendment be published in a newspaper of general circulation is to acquaint the voters, before they enter the polling booths, as to the contents of measures submitted. Cook v. Baker, 121 Colo. 187, 214 P.2d 787 (1950).

And to require that the text of an amendment or a substantial portion thereof be again printed on the official ballot, is contrary to all precedent, could serve no useful purpose, and was not within the contemplation of the general assembly. Cook v. Baker, 121 Colo. 187, 214 P.2d 787 (1950).

The timely publication of a constitutional amendment in 62 counties of the state, with only five days' delay in the sixty-third county and that without fault of either the proponents of the amendment or of the secretary of state, is a substantial compliance with the requirement of the statute. Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952).

And where publication was in compliance with the provisions of the section, the supreme court makes no determination as to the validity of the statutory provisions requiring such publication. Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952).

III. NEWSPAPERS OF GENERAL CIRCULATION.

The phrase "newspaper of general circulation in each county" means that an amendment must be published in one newspaper in each county in the state, which is published, and has a general circulation, in that county. In re House Resolution No. 10, 50 Colo. 71, 114 P. 293 (1911).

The phrase "general circulation" is descriptive of the character of the newspaper. In re House Resolution No. 10, 50 Colo. 71, 114 P. 293 (1911).

And it must be one of general, not special, or limited circulation. In re House Resolution No. 10, 50 Colo. 71, 114 P. 293 (1911).

The newspaper may not be a mere advertising sheet, or a newspaper restricted or devoted to some particular trade or calling, or branch of industry. In re House Resolution No. 10, 50 Colo. 71, 114 P. 293 (1911).

1-40-124.5. Ballot information booklet. (1) (a) The director of research of the legislative council of the general assembly shall prepare a ballot information booklet for any initiated or referred constitutional amendment or legislation, including a question, as defined in section 1-41-102 (3), in accordance with section 1 (7.5) of article V of the state constitution.

(b) The director of research of the legislative council of the general assembly shall prepare a fiscal impact statement for every initiated or referred measure, taking into consideration fiscal impact information submitted by the office of state planning and budgeting, the department of local affairs or any other state agency, and any proponent or other interested person. The fiscal impact statement prepared for every measure shall be substantially similar in form and content to the fiscal notes provided by the legislative council of the general assembly for legislative measures pursuant to section 2-2-322, C.R.S. A complete copy of the fiscal impact statement for such measure shall be available through the legislative council of the general assembly. The ballot information booklet shall indicate whether there is a fiscal impact for each initiated or referred measure and shall abstract the fiscal impact statement for such measure. The abstract for every measure shall appear after the arguments for and against such measure in the analysis section of the ballot information booklet, and shall include, but shall not be limited to:

(I) An estimate of the effect the measure will have on state and local government revenues, expenditures, taxes, and fiscal liabilities if such measure is enacted;

(II) An estimate of the amount of any state and local government recurring expenditures or fiscal liabilities if such measure is enacted; and

(III) For any initiated or referred measure that modifies the state tax laws, an estimate of the impact to the average taxpayer, if feasible, if such measure is enacted.

(c) Repealed.

(1.5) The executive committee of the legislative council of the general assembly shall be responsible for providing the fiscal information on any ballot issue that must be included in the ballot information booklet pursuant to section 1 (7.5) (c) of article V of the state constitution.

(1.7) After receiving written comments from the public in accordance with section 1 (7.5) (a) (II) of article V of the state constitution, but before the draft of the ballot information booklet is finalized, the director of research of the legislative council of the general assembly shall conduct a public meeting at which the director and other members of the legislative staff have the opportunity to ask questions that arise in response to the written comments. The director may modify the draft of the booklet in response to comments made at the hearing. The legislative council may modify the draft of the booklet upon the two-thirds affirmative vote of the members of the legislative council.

Editor's note: This version of subsection (1.7) effective until January 1, 2011.

(1.7) (a) After receiving written comments from the public in accordance with section 1 (7.5) (a) (II) of article V of the state constitution, but before the draft of the ballot information booklet is finalized, the director of research of the legislative council of the general assembly shall conduct a public meeting at which the director and other members of the legislative staff have the opportunity to ask questions that arise in response to the written comments. The director may modify the draft of the booklet in response to comments made at the hearing. The legislative council may modify the draft of the booklet upon the two-thirds affirmative vote of the members of the legislative council.

(b) (I) Each person submitting written comments in accordance with section 1 (7.5) (a) (II) of article V of the state constitution shall provide his or her name and the name of any organization the person represents or is affiliated with for purposes of making the comments.

(II) The arguments for and against each measure in the analysis section of the ballot information booklet shall be preceded by the phrase: "For information on those issue committees that support or oppose the measures on the ballot at the (date and year) election, go to the Colorado secretary of state's elections center web site hyperlink for ballot and initiative information (appropriate secretary of state web site address).".

Editor's note: This version of subsection (1.7) is effective January 1, 2011.

(2) Following completion of the ballot information booklet, the director of research shall arrange for its distribution to every residence of one or more active registered electors in the state. Distribution may be accomplished by such means as the director of research deems appropriate to comply with section 1 (7.5) of article V of the state constitution, including, but not limited to, mailing the ballot information booklet to electors and insertion of the ballot information booklet in newspapers of general circulation in the state. The distribution shall be performed pursuant to a contract or contracts bid and entered into after employing standard competitive bidding practices including, but not limited to, the use of requests for information, requests for proposals, or any other standard vendor selection practices determined to be best suited to selecting an appropriate means of distribution and an appropriate contractor or contractors. The executive director of the department of personnel shall provide such technical advice and assistance regarding bidding procedures as deemed necessary by the director of research.

(3) (a) There is hereby established in the state treasury the ballot information publication and distribution revolving fund. Except as otherwise provided in paragraph (b) of this subsection (3), moneys shall be appropriated to the fund each year by the general assembly in the annual general appropriation act. All interest earned on the investment of moneys in the fund shall be credited to the fund. Moneys in the revolving fund are continuously appropriated to the legislative council of the general assembly to pay the costs of publishing the text and title of each constitutional amendment, each initiated or referred measure, or part of a measure, and the text of a referred or initiated question arising under section 20 of article X of the state constitution, as defined in section 1-41-102 (3), in at least one legal publication of general circulation in each county of the state, as required by section 1-40-124, and the costs of distributing the ballot information booklet, as required by subsection (2) of this section. Any moneys credited to the revolving fund and unexpended at the end of any given fiscal year shall remain in the fund and shall not revert to the general fund.

(b) Notwithstanding any law to the contrary, any moneys appropriated from the general fund to the legislative department of the state government for the fiscal year commencing on July 1, 2007, that are unexpended or not encumbered as of the close of the fiscal year shall not revert to the general fund and shall be transferred by the state treasurer and the controller to the ballot information publication and distribution revolving fund created in paragraph (a) of this subsection (3); except that the amount so transferred shall not exceed five hundred thousand dollars.

(c) Notwithstanding any law to the contrary, any moneys appropriated from the general fund to the legislative department of the state government for the fiscal year commencing on July 1, 2008, that are unexpended or not encumbered as of the close of the fiscal year shall not revert to the general fund and shall be transferred by the state treasurer and the controller to the ballot information publication and distribution revolving fund created in paragraph (a) of this subsection (3).

(d) Notwithstanding any law to the contrary, any moneys appropriated from the general fund to the legislative department of the state government for the fiscal year commencing on July 1, 2009, that are unexpended or not encumbered as of the close of the fiscal year and that are in excess of the amount of one million forty-two thousand dollars shall not revert to the general fund and shall be transferred by the state treasurer and the controller to the ballot information publication and distribution revolving fund created in paragraph (a) of this subsection (3); except that the amount so transferred shall not exceed one million one hundred twenty-nine thousand six hundred seven dollars.

(e) Notwithstanding any provision of this subsection (3) to the contrary, on August 11, 2010, the state treasurer shall deduct one million one hundred twenty-nine thousand six hundred seven dollars from the ballot information publication and distribution revolving fund and transfer such sum to the redistricting account within the legislative department cash fund.

Source: L. 94: Entire section added, p. 1688, § 2, effective January 19, 1995. **L. 96:** (2) amended, p. 1511, § 35, effective July 1. **L. 97:** (3) added, p. 384, § 1, effective April 19. **L. 2000:** (1) and (3) amended and (1.5) added, p. 298, § 4, effective August 2; (1) amended, p. 1623, § 8, effective August 2. **L. 2001:** (1) amended, p. 223, § 1, effective August 8. **L. 2004:** (3) amended, p. 410, § 3, effective April 8. **L. 2005:** (3)(a) amended, p. 759, § 6, effective June 1; (1)(c) repealed and (1.7) added, p. 1371, §§ 2, 1, effective June 6. **L. 2007:** (3)(b) amended, p. 2124, § 2, effective April 11. **L. 2008:** (3)(b) amended, p. 2325, § 2, effective April 7. **L. 2009:** (3)(c) added, (SB 09-224), ch. 441, p. 2445, § 2, effective March 20. **L. 2010:** (3)(d) added, (HB 10-1367), ch. 430, p. 2240, § 2, effective April 15; (3)(e) added, (HB 10-1210), ch. 352, p. 1639, § 14, effective August 11; (1.7) amended, (HB 10-1370), ch. 270, p. 1240, § 3, effective January 1, 2011.

Editor's note: (1) Section 5 of chapter 284, Session Laws of Colorado 1994, provided that the act enacting this section was effective on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of Senate Concurrent Resolution 94-005, enacted at the Second Regular Session of the Fifty-ninth General Assembly. The date of the proclamation of the Governor announcing the approval of Senate Concurrent Resolution 94-005 was January 19, 1995.

(2) Amendments to subsection (1) by Senate Bill 00-172 and House Bill 00-1304 were harmonized.

(3) Section 8 of chapter 270, Session Laws of Colorado 2010, provides that the act amending subsection (1.7) applies to any ballot issue petition that has a ballot title fixed by the title board on or after January 1, 2011.

Cross references: For the legislative declaration in the 2010 act amending subsection (1.7), see section 1 of chapter 270, Session Laws of Colorado 2010.

1-40-125. Mailing to electors. (1) The requirements of this section shall apply to any ballot issue involving a local government matter arising under section 20 of article X of the state constitution, as defined in section 1-41-103 (4), for which notice is required to be mailed pursuant to section 20 (3) (b) of article X of the state constitution. A mailing is not required for a ballot issue that does not involve a local government matter arising under section 20 of article X of the state constitution, as defined in section 1-41-103 (4).

(2) Thirty days before a ballot issue election, political subdivisions shall mail at the least cost and as a package where districts with ballot issues overlap, a titled notice or set of notices addressed to "all registered voters" at each address of one or more active registered electors. Except for voter-approved additions, notices shall include only:

(a) The election date, hours, ballot title, text, and local election office address and telephone number;

(b) For proposed district tax or bonded debt increases, the estimated or actual total of district fiscal year spending for the current year and each of the past four years, and the overall percentage and dollar change;

(c) For the first full fiscal year of each proposed political subdivision tax increase, district estimates of the maximum dollar amount of each increase and of district fiscal year spending without the increase;

(d) For proposed district bonded debt, its principal amount and maximum annual and total district repayment cost, and the principal balance of total current district bonded debt and its maximum annual and remaining local district repayment cost;

(e) Two summaries, up to five hundred words each, one for and one against the proposal, of written comments filed with the election officer by thirty days before the election. No summary shall mention names of

persons or private groups, nor any endorsements of or resolutions against the proposal. Petition representatives following these rules shall write this summary for their petition. The election officer shall maintain and accurately summarize all other relevant written comments.

(3) The provisions of this section shall not apply to a ballot issue that is subject to the provisions of section 1-40-124.5.

Source: L. 93: Entire article amended with relocations, p. 692, § 1, effective May 4; (1) amended, p. 1437, § 128, effective July 1. **L. 2000:** (1) and IP(2) amended and (3) added, p. 299, § 5, effective August 2.

1-40-126. Explanation of effect of "yes" or "no" vote included in notices provided by mailing or publication. In any notice to electors provided by the director of research of the legislative council, whether by mailing pursuant to section 1-40-124.5 or publication pursuant to section 1-40-124, there shall be included the following explanation preceding any information about individual ballot issues: "A 'yes' vote on any ballot issue is a vote in favor of changing current law or existing circumstances, and a 'no' vote on any ballot issue is a vote against changing current law or existing circumstances."

Source: L. 93: Entire article amended with relocations, p. 692, § 1, effective May 4. **L. 2000:** Entire section amended, p. 299, § 6, effective August 2.

Editor's note: This section is similar to former § 1-40-114 (3), which was added by House Bill 93-1155. (See L. 93, p. 266.)

ANNOTATION

C.J.S. See 82 C.J.S., Statutes, § 129.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The facts upon which depend the question whether an amendment proposed to the constitution has received the approval of the people will be judicially noticed and the court will resort to all sources of information which may afford satisfactory evidence upon the question. Harrison v. People ex rel. Whatley, 57 Colo. 137, 140 P. 203 (1914).

1-40-127. Ordinances - effective, when - referendum. (Repealed)

Source: L. 93: Entire article amended with relocations, p. 692, § 1, effective May 4. **L. 95:** Entire section repealed, p. 437, § 19, effective May 8.

Cross references: For current provisions relating to municipal government ordinances, their effective dates, and related referendums, see § 31-11-105.

1-40-128. Ordinances, how proposed - conflicting measures. (Repealed)

Source: L. 93: Entire article amended with relocations, p. 693, § 1, effective May 4. **L. 95:** Entire section repealed, p. 438, § 20, effective May 8.

Cross references: For current provisions relating to proposing municipal government ordinances and conflicting measures, see § 31-11-104.

1-40-129. Voting on ordinances. (Repealed)

Source: L. 93: Entire article amended with relocations, p. 694, § 1, effective May 4. **L. 95:** Entire section repealed, p. 438, § 21, effective May 8.

1-40-130. Unlawful acts - penalty. (1) It is unlawful:

(a) For any person willfully and knowingly to circulate or cause to be circulated or sign or procure to be signed any petition bearing the name, device, or motto of any person, organization, association, league, or political party, or purporting in any way to be endorsed, approved, or submitted by any person, organization, association, league, or political party, without the written consent, approval, and authorization of the person, organization, association, league, or political party;

(b) For any person to sign any name other than his or her own to any petition or knowingly to sign his or her name more than once for the same measure at one election;

(c) For any person to knowingly sign any petition who is not a registered elector at the time of signing the same;

(d) For any person to sign any affidavit as circulator without knowing or reasonably believing the statements made in the affidavit to be true;

(e) For any person to certify that an affidavit attached to a petition was subscribed or sworn to before him or her unless it was so subscribed and sworn to before him or her and unless the person so certifying is duly qualified under the laws of this state to administer an oath;

(f) For any officer or person to do willfully, or with another or others conspire, or agree, or confederate to do, any act which hinders, delays, or in any way interferes with the calling, holding, or conducting of any election permitted under the initiative and referendum powers reserved by the people in section 1 of article V of the state constitution or with the registering of electors therefor;

(g) For any officer to do willfully any act which shall confuse or tend to confuse the issues submitted or proposed to be submitted at any election, or refuse to submit any petition in the form presented for submission at any election;

(h) For any officer or person to violate willfully any provision of this article;

(i) For any person to pay money or other things of value to a registered elector for the purpose of inducing the elector to withdraw his or her name from a petition for a ballot issue;

(j) For any person to certify an affidavit attached to a petition in violation of section 1-40-111 (2) (b) (I);

(k) For any person to sign any affidavit as a circulator, unless each signature in the petition section to which the affidavit is attached was affixed in the presence of the circulator;

(l) For any person to circulate in whole or in part a petition section, unless such person is the circulator who signs the affidavit attached to the petition section.

(2) Any person, upon conviction of a violation of any provision of this section, shall be punished by a fine of not more than one thousand five hundred dollars, or by imprisonment for not more than one year in the county jail, or by both such fine and imprisonment.

Source: L. 93: Entire article amended with relocations, p. 694, § 1, effective May 4. **L. 2009:** (1)(h) and (2) amended and (1)(i), (1)(j), (1)(k), and (1)(l) added, (HB 09-1326), ch. 258, p. 1178, § 16, effective May 15.

Editor's note: Subsection (1) is similar to former § 1-40-118 (2), and subsection (2) is similar to former § 1-40-118 (3), as they existed prior to 1993.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

It is clear from the provisions of the initiative and referendum act and the penalties provided thereby that the general assembly has been careful and diligent to safeguard the primary right of the people to propose and enact their own legislation. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

And the initiative and referendum laws, when invoked by the people, supplant the city council or representative body. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

Because the people undertake to legislate for themselves. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

And the town or city clerk is required to perform certain statutory duties, in connection therewith, for failure of which he is subject to penalties. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

1-40-131. Tampering with initiative or referendum petition. Any person who willfully destroys, defaces, mutilates, or suppresses any initiative or referendum petition or who willfully neglects to file or delays the delivery of the initiative or referendum petition or who conceals or removes any initiative or referendum petition from the possession of the person authorized by law to have the custody thereof, or who adds, amends, alters, or in any way changes the information on the petition as provided by the elector, or who aids, counsels, procures, or assists any person in doing any of said acts commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111. The language in this section shall not preclude a circulator from striking a complete line on the petition if the circulator believes the line to be invalid.

Source: L. 93: Entire article amended with relocations, p. 695, § 1, effective May 4.
Editor's note: This section is similar to former § 1-40-118.5 as it existed prior to 1993.

1-40-132. Enforcement. (1) The secretary of state is charged with the administration and enforcement of the provisions of this article relating to initiated or referred measures and state constitutional amendments. The secretary of state shall have the authority to promulgate rules as may be necessary to administer and enforce any provision of this article that relates to initiated or referred measures and state constitutional amendments. The secretary of state may conduct a hearing, upon a written complaint by a registered elector, on any alleged violation of the provisions relating to the circulation of a petition, which may include but shall not be limited to the preparation or signing of an affidavit by a circulator. If the secretary of state, after the hearing, has reasonable cause to believe that there has been a violation of the provisions of this article relating to initiated or referred measures and state constitutional amendments, he or she shall notify the attorney general, who may institute a criminal prosecution. If a circulator is found to have violated any provision of this article or is otherwise shown to have made false or misleading statements relating to his or her section of the petition, such section of the petition shall be deemed void.

(2) (Deleted by amendment, L. 95, p. 439, § 22, effective May 8, 1995.)

Source: L. 93: Entire article amended with relocations, p. 695, § 1, effective May 4. **L. 95:** Entire section amended, p. 439, § 22, effective May 8.
Editor's note: Subsection (1) is similar to former § 1-40-119 as it existed prior to 1993.

ANNOTATION

Subsection (1) is inapplicable to determination whether a petition has a sufficient number of valid signatures to qualify for placement of an initiated measure on the ballot. Read in context, subsection (1) addresses violations that involve criminal culpability. The administrative hearing required by subsection (1) is applicable to general proceedings regarding a sufficiency determination. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

1-40-133. Retention of petitions. After a period of three years from the time of submission of the petitions to the secretary of state, if it is determined that the retention of the petitions is no longer necessary, the secretary of state may destroy the petitions.

Source: L. 93: Entire article amended with relocations, p. 696, § 1, effective May 4. **L. 95:** Entire section amended, p. 439, § 23, effective May 8.

1-40-134. Withdrawal of initiative petition. The designated representatives of the proponents of an initiative petition may withdraw the petition from consideration as a ballot issue by filing a letter with the secretary of state requesting that the petition not be placed on the ballot. The letter shall be signed and acknowledged by both designated representatives before an officer authorized to take acknowledgments and shall be filed no later than sixty days prior to the election at which the initiative is to be voted upon.

Source: L. 98: Entire section added, p. 632, § 1, effective May 6. **L. 2009:** Entire section amended, (HB 09-1326), ch. 258, p. 1179, § 17, effective May 15.

1-40-135. Petition entities - requirements - definition. (1) As used in this section, "petition entity" means any person or issue committee that provides compensation to a circulator to circulate a ballot petition.

(2) (a) It is unlawful for any petition entity to provide compensation to a circulator to circulate a petition without first obtaining a license therefor from the secretary of state. The secretary of state may deny a license if he or she finds that the petition entity or any of its principals have been found, in a judicial or administrative proceeding, to have violated the petition laws of Colorado or any other state and such violation involves authorizing or knowingly permitting any of the acts set forth in paragraph (c) of this subsection (2), excluding subparagraph (V) of said paragraph (c). The secretary of state shall deny a license:

(I) Unless the petition entity agrees that it shall not pay a circulator more than twenty percent of his or her compensation on a per signature or per petition basis; or

(II) If no current representative of the petition entity has completed the training related to potential fraudulent activities in petition circulation, as established by the secretary of state, pursuant to section 1-40-112 (3).

(b) The secretary of state may at any time request the petition entity to provide documentation that demonstrates compliance with section 1-40-112 (4).

(c) The secretary of state shall revoke the petition entity license if, at any time after receiving a license, a petition entity is determined to no longer be in compliance with the requirements set forth in paragraph (a) of this subsection (2) or if the petition entity authorized or knowingly permitted:

(I) Forgery of a registered elector's signature;

(II) Circulation of a petition section, in whole or part, by anyone other than the circulator who signs the affidavit attached to the petition section;

(III) Use of a false circulator name or address in the affidavit;

(IV) Payment of money or other things of value to any person for the purpose of inducing the person to sign or withdraw his or her name from the petition;

(V) Payment to a circulator of more than twenty percent of his or her compensation on a per signature or per petition section basis; or

(VI) A notary public's notarization of a petition section outside of the presence of the circulator or without the production of the required identification for notarization of a petition section.

(3) (a) Any procedures by which alleged violations involving petition entities are heard and adjudicated shall be governed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S. If a complaint is filed with the secretary of state pursuant to section 1-40-132 (1) alleging that a petition entity was not licensed when it compensated any circulator, the secretary may use information that the entity is required to produce pursuant to section 1-40-121 (1) and any other information to which the secretary may reasonably gain access, including documentation produced pursuant to paragraph (b) of subsection (2) of this section, at a hearing. After a hearing is held, if a violation is determined to have occurred, such petition entity shall be fined by the secretary in an amount

not to exceed one hundred dollars per circulator for each day that the named individual or individuals circulated petition sections on behalf of the unlicensed petition entity. If the secretary finds that a petition entity violated a provision of paragraph (c) of subsection (2) of this section, the secretary shall revoke the entity's license for not less than ninety days or more than one hundred eighty days. Upon finding any subsequent violation of a provision of paragraph (c) of subsection (2) of this section, the secretary shall revoke the petition entity's license for not less than one hundred eighty days or more than one year. The secretary shall consider all circumstances surrounding the violations in fixing the length of the revocations.

(b) A petition entity whose license has been revoked may apply for reinstatement to be effective upon expiration of the term of revocation.

(c) In determining whether to reinstate a license, the secretary may consider:

(I) The entity's ownership by, employment of, or contract with any person who served as a director, officer, owner, or principal of a petition entity whose license was revoked, the role of such individual in the facts underlying the prior license revocation, and the role of such individual in a petition entity's post-revocation activities; and

(II) Any other facts the entity chooses to present to the secretary, including but not limited to remedial steps, if any, that have been implemented to avoid future acts that would violate this article.

(4) The secretary of state shall issue a decision on any application for a new or reinstated license within ten business days after a petition entity files an application, which application shall be on a form prescribed by the secretary. No license shall be issued without payment of a nonrefundable license fee to the secretary of state, which license fee shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., to cover the cost of administering this section.

(5) (a) A licensed petition entity shall register with the secretary of state by providing to the secretary of state:

(I) The ballot title of any proposed measure for which a petition will be circulated by circulators coordinated or paid by the petition entity;

(II) The current name, address, telephone number, and electronic mail address of the petition entity; and

(III) The name and signature of the designated agent of the petition entity for the proposed measure.

(b) A petition entity shall notify the secretary of state within twenty days of any change in the information submitted pursuant to paragraph (a) of this subsection (5).

Source: L. 2009: Entire section added, (HB 09-1326), ch. 258, p. 1179, § 18, effective May 15.

ODD-YEAR ELECTIONS, ARTICLE 41

ODD-YEAR ELECTIONS
ARTICLE 41

Odd-year Elections

1-41-101. Legislative declaration. The general assembly hereby finds, determines, and declares that section 20 of article X of the state constitution requires that a ballot issue election be held on the first Tuesday in November of odd-numbered years; that the provisions of section 20 (2) and 20 (3) of said article X are unclear as to what issues can be submitted to a vote in the odd-year election; that section 20 of article X did not amend

preexisting provisions of the state constitution on the initiative, the referendum, and the submission of constitutional amendments by the general assembly, and repeal or amendment of such provisions by implication is not presumed; that this legislation implements section 20 of article X of the state constitution, which article is entitled "Revenue" and concerns exclusively government revenue raising and appropriations; that section 20 of article X requires public votes on additional government taxes, spending, or debt; that the language of section 20 of article X evinces the public's desire to have more opportunity to vote on government tax, spending, and debt proposals; that a construction of section 20 of article X that limits local government electors' opportunities to vote on tax, spending, debt, or other proposals would be inconsistent with the ballot title of and the voters' intention in adopting said amendment; that state and local election officials need guidance as to how to administer the November 1993 election; and that, in view of the issues set out in this section, the general assembly should exercise its legislative power to resolve the ambiguities in section 20 of article X in a manner consistent with its terms.

Source: L. 93: Entire article added, p. 1993, § 1, effective June 8.

ANNOTATION

Interpretations of § 20 of article X of the state constitution which would limit the right of the electorate to vote on tax, spending, debt, or other proposals are not favored. Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

1-41-102. State ballot issue elections in odd-numbered years. (1) At the statewide election to be held on the first Tuesday of November in 1993, and in each odd-numbered year thereafter, the following issues shall appear on the ballot if they concern state matters arising under section 20 of article X of the state constitution and if they are submitted in accordance with applicable law:

(a) Amendments to the state constitution submitted by the general assembly in accordance with article XIX of the state constitution;

(b) State legislation and amendments to the state constitution initiated in accordance with section 1 of article V of the state constitution and article 40 of this title;

(c) Measures referred to the people by the general assembly in accordance with section 1 of article V of the state constitution;

(d) Measures referred to the people pursuant to petitions filed against an act or item, section, or part of an act of the general assembly in accordance with section 1 of article V of the state constitution;

(e) Questions which are referred to the people by the general assembly in accordance with the law prescribing procedures therefor;

(f) Questions which are initiated by the people in accordance with the law prescribing procedures therefor.

(2) If no questions concerning state matters arising under section 20 of article X of the state constitution are referred or initiated as provided in subsection (1) of this section, no statewide election shall be held on the first Tuesday of November in 1993, or on the first Tuesday in November of any subsequent odd-numbered year.

(3) As used in this section, a "question" means a proposition which is in the form of a question meeting the requirements of section 20 (3) (c) of article X of the state constitution and which is submitted in accordance with the law prescribing procedures therefor without reference to specific state legislation or a specific amendment to the state constitution.

(4) As used in this section, "state matters arising under section 20 of article X of the state constitution" includes:

(a) Approval of a new tax, tax rate increase, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain pursuant to section 20 (4) (a) of article X of the state constitution;

(b) Approval of the creation of any multiple-fiscal year direct or indirect state debt or other financial obligation without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years pursuant to section 20 (4) (b) of article X of the state constitution;

(c) Approval of emergency taxes pursuant to section 20 (6) of article X of the state constitution;

(d) Approval of revenue changes pursuant to section 20 (7) of article X of the state constitution;

(e) Approval of a delay in voting on ballot issues pursuant to section 20 (3) (a) of article X of the state constitution;

(f) Approval of the weakening of a state limit on revenue, spending, and debt pursuant to section 20 (1) of article X of the state constitution.

Source: L. 93: Entire article added, p. 1994, § 1, effective June 8.

ANNOTATION

Board had the authority to set a title, ballot title and submission clause, and summary for the proposed constitutional amendment at issue, but the question of the board's jurisdiction to set titles for a ballot issue in an odd-numbered year was premature, as the secretary of state, not the board, has the authority to place measures on the ballot. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

1-41-103. Local ballot issue elections in odd-numbered years. (1) At the local election to be held on the first Tuesday of November in 1993, and in each odd-numbered year thereafter, the following issues shall appear on the ballot if they concern local government matters arising under section 20 of article X of the state constitution and if they are submitted in accordance with applicable law:

(a) Amendments to the charter of any home rule city or home rule county initiated by the voters or submitted by the legislative body of the home rule city or county in accordance with said charter;

(b) Ordinances, resolutions, or franchises proposed in accordance with section 1 of article V of the state constitution and section 31-11-104, C.R.S.;

(c) Measures referred to the people pursuant to petitions filed against an ordinance, resolution, or franchise passed by the legislative body of any local government in accordance with section 1 of article V of the state constitution and section 31-11-105, C.R.S.;

(d) Questions which are referred to the people by the governing body of the local government in accordance with the law prescribing procedures therefor;

(e) Questions which are initiated by the people in accordance with the law prescribing procedures therefor.

(2) As used in this section, "local government" means a county, a municipality as defined in section 31-1-101 (6), C.R.S., a school district, or a special district as defined in sections 32-1-103 (20) and 35-70-109, C.R.S.

(3) As used in this section, a "question" means a proposition which is in the form of a question meeting the requirements of section 20 (3) (c) of article X of the state constitution and which is submitted in accordance with the law prescribing procedures therefor without reference to a specific ordinance, resolution, franchise, or other local legislation or a specific amendment to the charter of a home rule city or home rule county.

(4) As used in this section, "local government matters arising under section 20 of article X of the state constitution" includes:

(a) Approval of a new tax, tax rate increase, mill levy above that for the prior year, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain pursuant to section 20 (4) (a) of article X of the state constitution;

(b) Approval of the creation of any multiple-fiscal year direct or indirect debt or other financial obligation without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years pursuant to section 20 (4) (b) of article X of the state constitution;

(c) Approval of emergency taxes pursuant to section 20 (6) of article X of the state constitution;

(d) Approval of revenue changes pursuant to section 20 (7) of article X of the state constitution;

(e) Approval of a delay in voting on ballot issues pursuant to section 20 (3) (a) of article X of the state constitution;

(f) Approval of the weakening of a local limit on revenue, spending, and debt pursuant to section 20 (1) of article X of the state constitution.

(5) The submission of issues at elections in November of odd-numbered years in accordance with this section, or at other elections as provided in section 20 (3) (a) of article X of the state constitution, shall not be deemed the exclusive method of submitting local issues to a vote of the people, and nothing in this section shall be construed to repeal, diminish, or otherwise affect in any way the authority of local governments to hold issue elections in accordance with other provisions of law.

(6) and (7) Repealed.

Source: L. 93: Entire article added, p. 1995, § 1, effective June 8. **L. 94:** (1)(b) and (1)(c) amended, p. 1622, § 6, effective May 31. **L. 95:** (1)(b) and (1)(c) amended, p. 439, § 24, effective May 8. **L. 2001:** (6) and (7) added, p. 273, § 31, effective March 30. **L. 2010:** (6) and (7) repealed, (HB 10-1116), ch. 194, p. 840, § 29, effective May 5.

ANNOTATION

Proposed amendments to home-rule charters and local initiated or referred measures concerning issues arising under the provisions of article X, § 20, of the state constitution may be submitted to the people for a vote at a local election held on the first Tuesday of November in odd-numbered years. The provisions of article X, § 20 (3), apply only to issues of government financing, spending, and taxation governed by article X, § 20. Zaner v. City of Brighton, 917 P.2d 280 (Colo. 1996).

Legislation that furthers the purpose of self-executing constitutional provisions or that facilitates their enforcement is permissible. The general assembly did not exceed its authority by enacting legislation to resolve the ambiguity in article X, § 20, of the state constitution. Zaner v. City of Brighton, 917 P.2d 280 (Colo. 1996).

The term "referred measure" is defined in § 1-1-104 (34.5) to include any ballot question or ballot issue submitted to its eligible electors by any local governmental entity. Such referred measures encompass approval of revenue changes pursuant to § 20 (7) of article X of the state constitution referenced in subsection (4)(d). Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

COLORADO SECRETARY OF STATE, ELECTION RULES

[8 CCR 1505-1]

Rule 15. Rules Concerning Preparation Filing, and Verification of Statewide Initiative Petitions [As amended 04/18/11]

15.1 Registration, license, and filing procedures.

15.1.1 In accordance with section 1-40-135, C.R.S., any person or issue committee that intends to compensate petition circulators must register with, and obtain a petition entity license from the Secretary of State prior to compensating any circulator.

15.1.2 To register and apply for a license the designated agent of a petition entity must pay a fee and submit a signed application including:

a. The ballot title for which a petition will be circulated by paid circulators,

b. The name, address, telephone number, and email address of the petition entity,

c. The name of the designated agent,

d. An affirmation that the entity will not pay any circulator more than 20% of his or her compensation on a per signature or per petition basis; and

e. An affirmation that at least one representative of the entity has read and understands Colorado petition laws as outlined in article 40, title 1, C.R.S., and has completed the circulator training program provided by the Secretary of State.

15.1.3 Determinations regarding the denial of an application or revocation of a license will be made, or the resolution of alleged violations involving petition entities shall be addressed, in accordance with the requirements of section 1-40-135, C.R.S.

15.1.4 At the time the petition is filed, the proponents shall file with the Secretary of State a copy of the list of circulators and a copy of the list of notaries required by section 1-40-111(4), C.R.S., as well as the campaign finance disclosure report required by section 1-40-121(1), C.R.S.

15.2 No petition shall be accepted which lists proponents other than the two identified as petition representatives pursuant to section 1-40-104, C.R.S.

15.3 Proponents may begin circulating a petition for signatures at any time after the final decision of the title board, including disposition of any motion for rehearing or the expiration of the time for filing a motion for rehearing, and after the Secretary of State has approved the format of the petition as provided in section 1-40-113 (1), C.R.S., whether or not an appeal is filed with the Supreme Court pursuant to section 1-40-107 (2). If an appeal is filed with the Supreme Court, the six-month period specified in section 1-40-108 (1) shall begin on the date that the first signature is affixed to the petition or on the date that the decision of the Supreme Court becomes final, whichever date occurs first. Signatures shall be counted only if affixed to the petition during the period provided in this rule.

15.4 Only one filing of a petition or an addendum is allowed. After a petition or an addendum is filed, the petition or the addendum may not be supplemented with additional signatures. If additional signatures are submitted after the original filing, such signatures shall not be counted, even if such signatures are submitted within the time permitted by law for the filing of the original petition or addendum.

15.5 Verification by Random Sample

15.5.1 Each petition section shall be verified according to the procedures set forth in Rule 17.1.

15.5.2 Preliminary count and generation of random numbers.

a. After the entries have been counted for each petition section, a data entry clerk shall enter the following data into the database; the petition identification number, the petition section number, the page number and the number of entries on the page.

b. A record shall then be created for each entry, which record shall contain the petition identification number, petition section number, page number and the entry number. The total number of entries submitted for the petition shall be tallied.

c. If the number of entries is less than the total number of signatures required to certify the measure to the ballot, a statement of insufficiency shall be issued.

d. A series of random numbers shall be generated by the database which is the greater of four thousand (4,000) signatures or five percent (5%) of the total number of entries.

15.5.3 Verification of Selected Entries

a. The random numbers selected shall be matched with the appropriate petition section, page number, and entry number.

b. Each entry generated shall be checked for validity in accordance with Rule 17.1.

c. Each reason for rejection of an entry shall be recorded by separate code and a master record of the rejected entries shall be maintained. A master record shall also be maintained of each entry that is accepted.

15.5.4 Checking the circulator's affidavit. The circulator's affidavit shall be checked for each entry in accordance with Rule 17.2. If the affidavit is not attached and completed, all entries in the section shall be rejected.

15.5.5 Checking individual signatures. Each individual signature shall be checked in accordance with Rule 17.3.

15.5.6 Computation of total accepted signatures.

a. A tally shall be made of the number of accepted signatures and the number of rejected signatures.

b. The Secretary of State shall determine the range of signatures by multiplying the constitutionally required number of signatures by 0.90 to compute ninety percent (90%) of the required signatures and by 1.10 to compute one hundred and ten percent (110%) of the required signatures. This number shall be calculated after the general election at which the Secretary of State was elected.

c. After completing a petition, the number of signatures checked shall then be divided into the number of accepted signatures. This number will be the percentage of accepted signatures which were submitted.

d. The percentage calculated in paragraph c of this Rule 15.5.6 shall then be multiplied by the total number of entries which were previously tallied. This number will be the number of presumed valid signatures which were submitted.

e. If the number generated is ninety percent (90%) or less of the constitutionally required number of signatures as calculated in paragraph b of this Rule 15.5.6,

then the Secretary of State shall issue a statement of insufficiency. If the number generated is one hundred and ten percent (110%) or more of the constitutionally required number, then the Secretary of State shall issue a statement of sufficiency.

f. If the number generated is more than ninety percent (90%) but less than one hundred and ten percent (110%) of the required number, the Secretary of State shall order that each signature on the petition be verified to determine whether the issue or question should be certified to the ballot.

Rule 16. Rules Concerning Verification by Random Sample of Statewide Initiative Petitions - Repealed

Rule 17. General Rules Concerning Verification of Petitions [As amended 04/18/11]

17.1 General procedures concerning verification of petitions.

17.1.1 No petition shall be accepted which lists proponents other than those authorized by law.

17.1.2 When the petitions are received, each section shall be date-stamped and consecutively numbered with a four digit number. The number may be printed by a printer, hand-stamped with a manual stamp, or handwritten.

17.1.3 Each petition shall be either an individual sheet for signatures or multiple sheets that are stapled together.

17.1.4 Each section shall be checked for evidence of disassembly. If it appears that the section was disassembled, all entries in the section shall be rejected.

17.1.5 The lines on each petition section shall be consecutively numbered. The block of information which consists of the printed last name, first name, middle initial, county, signing date, street address, city, and signature is considered a line.

17.1.6 If the number of entries is less than the total number of signatures required to certify the measure to the ballot, a statement of insufficiency shall be issued.

17.1.7 Each line with writing shall be counted on each petition and shall be considered an entry. The number of entries for each page of the section shall be written on the page and the total entries for the section shall be written on the face of the petition section.

a. A line that has no writing or marks on it shall not be considered an entry.

b. A line that has writing on it but is completely crossed out shall not be considered an entry.

c. A line which has writing on it but is incomplete or on its face contains an invalid signature or which is partially crossed out shall be considered an entry to be included in this count.

17.2 Checking the circulator's affidavit.

17.2.1 The circulator's affidavit shall be checked for each entry. If the affidavit is not

attached and completed, all entries in the section shall be rejected.

17.2.2 The notary clause at the end of the affidavit shall be checked for each entry. If any information is missing, or if the date on the notary clause is not the same date as the circulator signed the affidavit, all entries in the section shall be rejected.

17.2.3 The circulator's affidavit shall be checked to assure it has been completed in accordance with the statutory requirements listed below. If the affidavit was not completed in accordance with the requirements listed below, all entries in the section shall be rejected.

a. For candidate petitions, the circulator's affidavit shall be completed in accordance with section 1-4-905(1) and (2), C.R.S.

b. For initiative petitions, the circulator's affidavit shall be completed in accordance with section 1-40-111(2), C.R.S.

17.3 Checking individual signatures.

17.3.1 Each individual entry shall be checked against the master voter registration files to assure that the elector was an eligible elector in the political subdivision at the time the petition was signed.

17.3.2 Each reason for rejection of an entry shall be recorded by separate code and a master record of the rejected entries shall be maintained. A master record shall also be maintained of each entry that is accepted.

17.3.3 If the information on the current voter registration file does not match the information on the entry, the elector's voter registration history shall be checked to determine if the information on the entry matches the voter registration file at the time the entry was signed.

17.3.4 Name of eligible elector. To be accepted, the name on the entry must be in a form similar to that found on the voter registration record. Signatures that are common variants of the name found on the voter record shall be counted. If the signer of the petition is not found on the voter registration file, or if applicable, the county assessors' list, the entry shall be rejected.

17.3.5 Middle initial and additional terms.

a. If the middle initial or middle name is not part of either the signature line or the voter record but is included on the other document, if the first and last name are the same on both documents, the entry shall be accepted.

b. If the middle initial or middle name on the signature line is different than the middle initial or middle name on the voter record, the entry shall be rejected.

c. If an indicator such as Jr., Sr., or II is present or omitted from the petition or the voter record, the entry shall be accepted. If two persons with the same name reside at the same address as found on the master voter list, the entry shall be rejected, unless the identity of the signer can be conclusively determined.

17.3.6 Address of eligible elector.

a. If the address written on the line does not match the address on the voter record or on the voter history for the date when the signature was taken, the entry shall be rejected.

b. If the address on the petition either includes or omits a letter or number identifying an apartment or the directional location of a street, such as "E" for east, "SW" for southwest, etc., the entry shall be accepted.

c. If the signer gave a post office box for the address, the entry shall be rejected.

17.3.7 Incomplete information. If the line of the petition is incomplete, with at least one piece of information omitted, the entry shall be rejected.

17.3.8 Date of signing.

a. If a signature is placed on the petition prior to the final approval of the petition format by the designated election official, the entry shall be rejected.

b. If the signer was not an eligible elector in the political subdivision at the time of signing, the entry shall be rejected.

c. If a signature is placed on the petition after the date on the circulator's affidavit, the entry shall be rejected.

17.3.9 Assistance to signer. If assistance appears to have been given to the signer and a statement of assistance does not accompany the signature or mark explaining the variance in the script, the entry shall be rejected.

17.3.10 Illegible signature. If the signature and printed name are illegible so that the voter record cannot be verified, the entry shall be rejected.

17.3.11 Duplicate signature. If the elector has previously signed the same petition, the first valid entry shall be counted and all other entries shall be rejected.

17.3.12 Where an elector may sign more than one petition, the first signature(s) filed up to the maximum allowed, shall be the ones that are counted.

17.4 Final Tally. After all of the sections have been checked, a final tally of all valid signatures shall be prepared and the statement of sufficiency or insufficiency issued.

Rule 18. Rules Concerning Statement of Sufficiency for Petitions [Effective 11/30/07]

18.1 Within the time required by statute, the designated election official shall issue a statement of sufficiency or insufficiency.

18.2 The statement shall contain the name of the petition, the proponents, and the date the petition was submitted for verification.

18.3 The statement shall indicate the total number of entries, the total number of entries accepted, and the total number of entries rejected.

18.4 The statement shall indicate whether an insufficient number of entries were submitted, the number of presumed valid signatures if a random sample was conducted, and the number of valid signatures counted if every entry was counted.

18.5 Records. The designated election official shall assure that a record of all signatures rejected and the reasons for each rejection be maintained as public records.

Rule 19. Rules Concerning Cure for Statewide Petitions [Effective 07/30/06]

19.1 Cure of petitions deemed insufficient.

19.2 If the proponents submit additional signatures within the permitted time, all signatures submitted in the addendum shall be checked using the process delineated in Rule 16 and Rule 17.

19.3 If the number of valid signatures in the addendum when added to the number of valid signatures given in the statement of insufficiency equals 110% or more of the required signatures, a statement of sufficiency shall be issued.

19.4 If the number of valid signatures in the addendum when added to the number of valid signatures given in the statement of insufficiency equals more than 90% but less than 110% of the required signatures and the initial check was by random sample, all of the previously submitted entries shall be checked. The total of valid signatures in the original petition shall then be added to the number of valid signatures submitted in the addendum.

19.5 If the initial check was of every entry, then the total of valid signatures shall be added to the number of valid signatures submitted in the addendum.

19.6 The designated election official shall then issue a new statement of insufficiency or sufficiency which reports the total number of valid signatures submitted.

Rule 20. Rules Concerning Protests [Effective 09/01/08]

20.1 A protest shall specifically state the reasons for the challenge to the determination of sufficiency or insufficiency.

20.1.1 A protest that alleges specific statutes or rules were improperly applied shall clearly state the specific requirements that were improperly applied.

20.1.2 A protest that alleges that entries were improperly accepted or rejected shall clearly identify the specific individual entries at issue and the reason the entries were improperly accepted or rejected.

20.2 The protest shall be deemed insufficient for each entry or class of entries challenged where the individual entry is not listed or the reason for the challenge is not given.

20.3 Where a petition verified by random sample is protested, proponents and opponents may protest the process by which the numbers used in the calculations were generated.

20.4 Individual entries which were not checked by the Secretary of State may not be challenged as sufficient or insufficient.

Rule 21. Rules Concerning Ballot Issue Elections [Effective 07/30/06]

21.1 Placing measures on the ballot for coordinated odd-year elections.

21.1.1 For statewide elections, the Secretary of State shall be responsible for determining whether the proposed initiative concerns state matters arising under Section 20 of Article X of the State Constitution and is eligible to appear on the ballot at an odd-year election.

21.1.2 For elections concerning counties or other political subdivisions, if the election is held as a coordinated election, each political subdivision shall determine whether the proposed initiative or referred measure is a local government matter arising under Section 20 of Article X of the State Constitution.

21.2 Written comments concerning ballot issues submitted to the designated election official for the political subdivision shall not be withdrawn after the end of the business day on the last Friday immediately preceding the forty-fifth day before the election.