



FROM IDEA TO LAW: ARIZONA'S INITIATIVE PROCESS

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What is an initiative?

The Arizona initiative process is the mechanism by which the citizens themselves directly work to propose new state statutes, amend existing statutes, or amend the state constitution.

The first example of this was in 1912 when Arizona made use of newly acquired initiative and referendum rights in order to pass women's suffrage. Two years later in 1914, Arizona's initiative process took off as a total of 15 initiatives appeared on the ballot as part of an effort to support organized labor. According to Citizens in Charge, a nonprofit advocacy organization, this number of initiatives set a record for the state of Arizona regarding the use of the initiative process.³ Looking at the publicity pamphlets on the Arizona Memory Project website one can decipher the intentions of some of the initiatives during this session, which included: prohibiting the use of blacklisting union members, establishing a pension plan for elderly workers and mothers, and another established a state government contract system.⁷

As citizens of Arizona, it is possible to initiate legislation as either a state statute or a constitutional amendment. While initiatives are a form of direct democracy and are "of the people," all three branches of government are involved, each with a different role. The courts would hear challenges to the proposed measure or elections process. The executive branch responsibilities are carried out by the Secretary of State, who, as the chief election officer, is responsible for verifying filings. On the fourth Monday following the election, the canvass occurs, whereby the Secretary of State, in the presence of the governor and the chief justice of the supreme court, presents the results to be certified and proclaimed by the Governor into law.

The legislature, which establishes elections law, also conducts a budget analysis by the Joint Legislative Budget Committee. In addition, Arizona is one of the few states that offers "initiative



proposal review” during the drafting process of the initiative. This allows the authors of the initiative to have members from the Arizona Legislative Council examine and review the language, content, and any inconsistencies of the proposed legislation before it is circulated in the form of petitions. The Arizona Legislative Council can also offer constructive guidance to the proponents, who may dismiss or welcome this advice at their own discretion.⁴ Opponents of the initiative measure are afforded the same review process. Failure to seek pre-circulation review, or failure to adopt the Legislative Council’s recommendations, may affect the legal proceedings if the initiative measure is later challenged in court.

How does an initiative get approved for the ballot?

Once the initiative has been drafted, the supporting group must form a political committee via the Arizona Secretary of State’s online system. The other option is to designate an existing political action committee to act as the petition sponsor.

In conjunction with designating a sponsoring committee, the proponents must file an application for a serial number with the Secretary of State’s Office. The serial number must be placed on the petition forms to be verified once the petition process is over.

While circulating statewide petitions, it is important to make sure that any out-of-state or paid circulators have registered with the Secretary of State’s Office and, if paid, make that disclosure on the petition sheet itself. Moreover, the state of Arizona prohibits the use of a pay-per-signature method of payment for circulators as of 2017, when Governor Doug Ducey signed House Bill 2404 into law.

To be eligible to circulate petitions in the state of Arizona, one does not have to be a registered voter. A circulator must only be able to qualify to register to vote, meaning that out-of-state circulators have to meet all the qualifications for voter registration other than residency.

Once the proponents of the initiative believe it is ready to be introduced to the public, they will start gathering signatures. The information that is collected on the petitions includes: signature, printed first and last name, residential address, and date signed. Additionally, the signatures must be in black or blue ink, within the applicable boxes. When turning in the petitions the circulator must sign their full legal name, county of circulation or residence, and address including city, state, and zip code. Post office boxes are not allowed. There is a mechanism for withdrawal of a signature if the voter later regrets signing the petition.

For a statutory initiative to qualify for the general election ballot in the 2020 election cycle, it needed to receive at least 237,645 valid signatures from eligible voters in the state of Arizona according to the Arizona Constitution. Constitutional amendments this cycle were required to received 356,467 valid signatures.⁴ The necessary number of signatures is determined by the votes cast in the most recent gubernatorial election. A number of signatures equivalent to ten percent of the gubernatorial vote total is required for a statutory initiative, while fifteen percent of the gubernatorial vote total is required for an initiated constitutional amendment.



Signed petitions must be turned in to the Secretary of State's Office before the statutory deadline, four months before the general election. In the 2020 election cycle, the deadline was July 2.

After an initiative is certified by the Secretary of State's Office as having received the requisite number of valid signatures, it will be placed on the general election ballot, unless removed by the courts.

For the November 2020 election, there were four initiatives that commenced the above outlined process. Of the four, one did not meet the threshold requirements regarding signatures and another failed to pass the legal challenge brought against it. Therefore, there were two initiatives, Proposition 207 and Proposition 208, that appeared on the ballot in November 2020

Other considerations on the path to the ballot

After the statewide initiative petitions are turned in to the Secretary of State's Office, they are then reviewed by various County Recorders and the Secretary of State. This is to determine the validity of the signatures received and to ensure that sufficient numbers of signatures were collected to be placed on the ballot. When this is done, the proposed legislation is then susceptible to legal challenges through A.R.S. § 19-121.03 regarding the county recorders' work and § 19-122 regarding the Secretary of State's decisions.⁴ If the language in the summary of the measure put forth by the proponents or the legislature in the voter guide is misleading and could cause voter confusion, there could also be legal repercussions. A measure does not fully secure its spot on the ballot until the court finalizes the decisions on challenges and appeals of the initiative, which is typically in August. Additionally, any proposed measure is subject to challenges on its constitutionality if it passes.

The Joint Legislative Budget Committee and Arizona Legislative Council will also issue an analysis on any initiatives, which are viewable to the public. This gives citizens voting on the measure a better idea of the financial, legal, and policy impact it might have.

Unlike some other states, Arizona does not have subject matter restrictions on proposed initiatives. However, if the proposed matter mandates state expenditures, then it is required also to designate a funding source.

When looking towards what the initiative must look like, House Bill 2244, which was signed into law in 2017, has to be taken into consideration. Careful drafting needs to be done in order to create an initiative that won't be rejected because it does not strictly follow election laws. The legislation changed the previous judicial standard from "substantial compliance" with the election laws for the initiative to be placed on the ballot to "strict compliance." Supporters of the move to strict compliance argue the more stringent judicial standard was necessary because legislators are severely limited in their ability to adopt changes to voter-approved initiatives, and so that voters can be assured that the initiatives will be held to the same high standard as legislatively-initiated measures.

The Arizona Constitution has a provision to resolve conflicting initiatives. In Article 21, Section 1, the constitution states that if there are two measures that conflict, then the measure with the



larger number of affirmative votes supersedes the measure with fewer votes on any points on which they conflict. Additionally, the Arizona Constitution has a separate amendment rule that states an initiative may only have one proposed constitutional amendment. The separate amendment rule applies to constitutional initiatives but not to statutory initiatives.

What issues arise with the process?

As with many aspects within our government, there are both positives and negatives to the initiative process. Proponents of the initiative process highlight the ability to have a direct impact in the way the government runs and makes decisions. As opposed to representative democracy, voting on an initiative gives citizens the opportunity to have a larger impact per person on government policy. When an initiative, whether proposing a statutory change or a constitutional amendment, is put on the ballot, participating voters can vote directly on the issue at hand. However, there are some potential downsides to this process.

Lack of geographic distribution of petition signatures

Arizona does not have a geographic distribution requirement, which means that signatures can be collected without regard to where the signer resides. For example, if an initiative's supporters chose, they could collect all their signatures from one city or county. Some argue this risks dampening the collective voice of rural Arizona and amplifying the voice of the metro areas. Others argue that simply gathering the requisite number of signatures to secure a place on the ballot is evidence of a measure's popular support.

Thirteen states have a geographic distribution requirement, ranging from limitations on how many signatures can originate from a single county or requiring that a minimum number of signatures originate from a certain number of legislative or congressional districts.

Logrolling

Arizona statutory measures can address multiple subjects. This practice, typically referred to as logrolling, means that campaigns can include less popular provisions in the same measure as a more popular provision to try and create sweeping reform.

A potential reform to address this issue would be applying the same single subject rule to citizen-initiated measures that currently applies to the legislature-initiated measures and proposed constitutional amendments. This would prohibit the use of logrolling, working to eliminate confusion for voters at the polls regarding hidden provisions.

Out-of-state petition circulators

As mentioned previously, the state of Arizona allows for out-of-state petition circulators, which causes additional issues to arise within the initiative process. To circulate a petition in Arizona, one must only satisfy all the requirements needed to register to vote in the state. This allows for outside interests to bring in out-of-state circulators to further their agenda. There have been many issues regarding the validation of signatures, and out-of-state circulators not responding to



subpoenas. (Since 2014, a failure to respond to a subpoena and appear in court may invalidate all of that circulator's signatures). One proposed fix would be not to allow for out-of-state circulators to participate in the Arizona initiative signature collection process, limiting signature-gathering only to Arizona residents. However, the 9th Circuit Court decision in 2008, *Nadar v. Brewer*, deemed this unconstitutional.

Fifty percent plus one or supermajority?

For a statutory change or constitutional amendment to win passage in Arizona via the initiative process, the prevailing side must only get one more 'yes' vote than 'no' votes.

Some states require a prevailing side to secure more than a simple majority (50 percent plus 1) of the vote to adopt a constitutional amendment, but there is no such provision in Arizona law.⁵

Florida, for example, requires 60 percent of the vote to approve a constitutional amendment for it to pass. Colorado constitutional amendments must secure at least 55 percent of the vote for passage. In Illinois, there are two paths to passage for constitutional amendments: 1) the measure earns 60% of the votes in favor, or 2) the measure secures more than 50% of the total votes cast in the entire election.⁶

Some states also have alternative vote thresholds that apply to statutory initiatives as well as constitutional amendments, while others apply supermajority rules only to statutory initiatives.

For example, in Massachusetts, statutory initiatives and constitutional amendments can pass with a simple majority, but only if the total number of votes cast on the measure equals at least 30 percent of the total votes cast in the entire election. As explained by the National Council of State Legislatures, this means that if 100 voters cast votes in the election, at least 30 of them must cast a 'yes' or 'no' vote on the initiative. If that minimum number of participatory votes is not achieved, the initiative fails.

The path to victory in Arizona can prove uniquely attractive to proponents of tax increases.

According to the voter-approved Proposition 108 adopted in 1992, revenue increases via the legislative process must receive a 2/3 supermajority of the state House and state Senate. No such supermajority provision exists for revenue increases via the ballot box.

One election for passage

Additionally, in Arizona voters must adopt a statutory initiative or constitutional amendment only once for it to become law. Contrast this with Nevada, where voters must adopt a constitutional amendment initiated by citizens by a simple majority in two successive general elections.⁶ A constitutional amendment referred to the ballot by Nevada lawmakers, however, must only pass once. The consecutive election rule does not apply to statutory proposals, but such citizen-initiated measures must first be considered by the Nevada state Legislature. The measure proceeds to the ballot if the legislature and governor reject it.



Preserving progress or harm?

Under the Voter Protection Act, which voters passed in 1998 via Proposition 105, the state Legislature would be allowed to make changes to a voter-approved measure only if the amendment “furthers the purpose” of the measure. Even if the Legislature meets that ambiguous threshold, the proposed amendment made by legislators would have to pass by a three-quarters vote in both the Arizona House of Representatives and Senate.⁴ Another protection accorded to voter-approved measures is that the Legislature cannot reallocate or divert funds that were part of the initiatives. It is also protected from legislative repeal and gubernatorial veto.

Critics of the Voter Protection Act argue it prevents elected legislators from acting to remedy a harmful consequence, while supporters argue it prevents legislators from subverting the will of the people.

Are outside interest groups too prevalent in Arizona’s initiative process?

Each year interest groups, some from outside Arizona, lobby the state Legislature to address various issues. Just as out-of-state interest groups can lobby the Legislature, they can take their case directly to Arizona voters.

As discussed above, the process for securing an initiative’s spot on the ballot can be complicated, but the barriers to entry are not overly restrictive. If they can collect enough valid signatures and survive whatever legal challenges it might encounter, initiative proponents can bypass the traditional legislative process entirely and go straight to the ballot box.

Additionally, initiative proponents might view the initiative process as the best route to lasting change since, after all, the ability for the state Legislature to amend or overturn a voter-approved measure is extremely limited.

Is the process too susceptible to out-of-state interests? Should the experiment with direct democracy be revisited? Some view the specifics of Arizona’s initiative as virtuous, while other Arizonans are more skeptical. In either case, due to the implications of Proposition 105, the initiative process is a particularly high stakes form of lawmaking.

Areas for potential reexamination

- Signature quantity and geographic distribution – There is no provision in Arizona law requiring initiative petition signatures to be collected from a geographically diverse representation of the state, which risks diminishing the participation of rural Arizona in determining whether a statutory initiative or constitutional amendment should advance to the ballot.
- Logrolling – certain statutory initiatives contain clauses and policies not necessarily germane to the purpose of the initiative, lumping together policies that would be reasonably considered unrelated.
- Out-of-state interests – because Arizona allows out-of-state residents to place items on the ballot and to collect signatures, ballot measures can be spearheaded by organizations and individuals without necessarily having Arizona’s best interests in mind.



- Difficult to address unintended consequences – the Voter Protection Act makes it nearly impossible for the elected state Legislature to change voter-passed measures.

How other states have approached the initiative process

Lawmakers and voters contemplating a reform of Arizona’s initiative process could look to other states. Reforms to Arizona’s citizen initiative process could potentially mimic those states where constitutional amendments and statutory initiatives must achieve a supermajority of affirmative votes in order to pass.⁶ Additionally, Arizona could consider requiring that statutory initiatives and constitutional amendments not only receive a majority of affirmative votes, but must also receive a certain number of ‘yes’ or ‘no’ votes relative to the total number of votes cast in the entire election.

CONSTITUTIONAL INITIATIVE PROCESS COMPARISON

	SIMPLE MAJORITY	55 PERCENT MAJORITY	60 PERCENT MAJORITY	PASSAGE IN TWO CONSECUTIVE ELECTIONS	SIMPLE MAJORITY + MINIMUM NUMBER OF TOTAL VOTES
NEBRASKA	✗	✗	✗	✗	✓
MASSACHUSETTS	✗	✗	✗	✗	✓
ARIZONA	✓	✗	✗	✗	✗
COLORADO	✗	✓	✗	✗	✗
FLORIDA	✗	✗	✓	✗	✗
NEVADA	✓	✗	✗	✓	✗
ILLINOIS*	✓	✗	✓	✗	✗

*Illinois has two paths to initiative victory, either securing 50% of the total votes cast in the entire election OR receiving 60 percent of votes in favor.

NCSL has a helpful chart regarding initiative processes in different states:
<https://www.ncsl.org/research/elections-and-campaigns/supermajority-vote-requirements.aspx>

Another model exists in Nevada, which requires that a statutory initiative or constitutional amendment secure a simple majority of the votes to pass. In the case of a citizen-initiated constitutional amendment, though, it must pass in two consecutive general elections.

Florida voters in 2020 decided whether to adopt a reform similar to Nevada’s. Florida Amendment 4 sought to require any initiative that proposed an amendment to the state constitution to pass by 60

percent in two consecutive elections.² Voters rejected the proposal.

Possible reforms to the process

If Arizona voters and lawmakers reassess the state’s initiative system, potential reforms could include the following:

- A more rigorous signature-gathering process. This could include requiring that more signatures be collected than the current number and/or requiring that some minimum number of signatures come from every legislative or congressional district.
- Raise the voter passage threshold. This could include requiring a supermajority for passage, requiring that an amendment be passed in two consecutive general elections, or requiring a statutory initiative or amendment to secure a minimum number of votes relative to the total number of votes cast in the election.
- Impose a uniform single-subject rule. Require citizen initiatives to meet the same single subject rule that applies to the legislature-initiated measures and proposed constitutional amendments.



- Re-establish ability of the legislature to repeal, amend, or otherwise alter passed initiatives. This could mirror, with alterations, what Arizona law reflected pre-1998 when the Voter Protection Act was passed into law via initiative. Such a reform could require a legislative supermajority in order to alter a voter-approved law, for example.
- Impose a sunset provision that would act as a time limit on initiatives and require voters to reauthorize passed initiatives after a set period of time.

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