

Colorado initiative process reaches a tipping point

Lawmakers and analysts believe Colorado's ballot-initiative process desperately needs reform. Can they get voters to agree with them?

By John Tomasic 4/16/09 7:34 AM



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Colorado voters are making too much law and the wrong kind of law at the ballot box, according to a growing list of elected officials, analysts and experts. Critics of the state's famously loose ballot initiative process agree it unnecessarily opens up the state constitution to improperly vetted amendments, which are extremely difficult to rework or repeal. The result: Bad laws that bog down government and generate extended and expensive lawsuits.

"We're such a die-hard initiative state," said state Rep. Lois Court, a Denver Democrat who has been watching the ballot initiative process in Colorado for the past two decades. "We believe strongly in direct democracy here ... but the initiative process needs fixing."

Court says the state's infamous monster ballots, where lists of candidates are supplemented by growing numbers of complicated paragraph-titles describing proposed laws, are just a symbol.

“We just make way too much law in Colorado. That’s the basics of it. And it’s not the best way to make law.”

When “direct democracy” doesn’t work

Court says that Colorado may have finally reached a tipping point on the issue and that citizens may be ready to accept reform. Amendments like the state’s famous Taxpayers’ Bill of Rights or TABOR, which strictly shapes how lawmakers can raise revenue and complicates stand-alone constitutional and statutory spending requirements, like Amendment 23, exemplify the problem.

“It’s a fundamental question about the kind of government the founders of the country established. They designed a democratic republic, where the people have the ultimate sovereignty but where the people elect representatives to make decisions in their place.

“If we in Colorado agree on that, then we can agree also that we are now struggling to function according to that design. Right now we’re at a bit of loggerheads. As lawmakers, on so many issues our hands are tied and our ability to make government work is increasingly diminished.”

State lawmakers address petition fraud

Court has sponsored a ballot-initiative reform bill, H.B. 1326, with House Speaker Terrance Carroll this month, legislation that would better clarify the enigmatic initiative process and restore integrity by preventing fraud. The strong bipartisan support for the bill underlines a growing consensus among leaders in the state that “direct democracy” here — where laws are passed by voters at the ballot box rather than by elected officials in the legislature — has become a problem.

Most analysts agree that fraud is tainting the petition process, where signatures are gathered in support of placing initiatives on the ballot. Indeed, petitioning problems have been widely reported, some of the instances glaring. At a hearing in March, Carroll and Court introduced their reform bill with video of a 14-year-old girl being paid to gather signatures in clear violation of several of the state’s laws. A long list of examples of forged signatures and faked state residencies colored the hearing.

But the problem goes well beyond petition fraud.

Citizen-initiated constitutional amendments cause more problems

“The core problem here is just how easy it is to amend the state constitution,” said Doug Friednash, one of the state’s top constitutional attorneys who has been hired to contest a series of laws made through the initiative process.

Statutory law — law mostly written by legislators to clarify or help carry out government responsibilities — can be changed, updated, strengthened or weakened through layered vetting processes, which include public debate and review by the state’s Legal Services attorneys. That’s the kind of law voters should be encouraged to propose, according to Court and Friednash.

By contrast, once citizens vote to amend the constitution, it's much more difficult to address any subsequent problems.

"You don't want to make constitutional changes without seriously vetting the proposals," Friednash said. "If there are fundamental problems [with an amendment], we're basically stuck with it. We can't fix it."

Friednash is presently representing anti-Amendment 54 plaintiffs challenging the so-called clean government amendment passed last November, which concerns campaign contributions and, according to supporters of the amendment, aims to combat pay-to-play political corruption. The action following the amendment's passage is a sort of suspended animation, as the amendment goes into effect at the same time the suit to prevent it goes forward.

Ballot measures have become tools of special interests

Campaign finance-related corruption is exactly the kind of complicated topic best addressed through statutes not constitutional amendments, according to Jennie Drage Bowser, an elections expert with the National Conference of State Legislatures and a member of a special Initiative and Referendum task force put together by the NCSL in 2002.

"Legislators and initiative proponents really should work together. Proponents who have an idea should get in touch with lawmakers. Nine out of ten times [proponents don't] ask lawmakers what they think or how they think it would be best to approach the issue."

Bowser says legislators and legislative staff are in office basically to work on the often-complex issues that concern proponents and to introduce solid legislation on behalf of constituents.

"Lawmakers have all of these resources at their disposal," she said. "They can lean on institutional memory, case law. They can get experts in the building to help write law based on what the proponent has in mind."

Bowser says the explosion in popularity of the initiative process coincided with a political tension that rose up in the fractiously partisan 1990s, a tension that continues to this day. And that process has steered citizens away from lawmakers, who they see as gatekeepers who will thwart their plans.

"You saw that antagonism grow in the Clinton years. All of the sudden, you have mutual antipathy where you should have cooperation."

You also have special interests, she said, organizations and movements that use the process to circumvent legislative scrutiny.

"Advocates of the initiative process will argue that the role of special interests is exaggerated. But that's not what we found [on the NCSL task force]. On the left and the right, if you follow the money, you will see that a lot of the ideas originate outside the state."

Anti-abortion and anti-gay initiative campaigns of the 1990s in Colorado, for example, were organized and bankrolled by the national Christian Coalition. Although there's nothing illegal about that, it goes against the conception of direct democracy that wins the support of citizens.

"Initiatives are often not what you would typically consider the result of a 'grassroots' movement," Bowser said. "It's worth seriously considering whether that's how you want laws and policies created in your state."

The NCSL task force Bowser contributed to included advisers from many areas of expertise and across the political spectrum. In the end, it recommended against states adopting the initiative process. It concluded that the initiative was now often a tool of special interests; that the parties looking to make law through the process were often anonymous, their motives unclear, their proposals shielded against routine debate, deliberation and compromise; that there weren't enough checks and balances built into the process; and that the laws made through the ballot box often hampered the ability to develop policy in a "comprehensive manner," where proposed law didn't end up contradicting or unnecessarily complicating existing law.