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Background Brief on...

Initiative and Referendum Process

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Background

Since 1902, the Oregon Constitution has provided voters with two methods of directly affecting changes to the Oregon Revised Statutes and the Oregon Constitution. Those methods are the Initiative and the Referendum. While they differ somewhat in the process of getting to the ballot, the initiative and referendum place the ultimate authority to change the law in the hands of the people.

The Initiative

The initiative process gives direct legislative power to the voters to enact new laws, change existing laws, or amend the Oregon Constitution. Any citizen, acting individually or on behalf of an organization, may be a chief petitioner of an initiative petition. Chief petitioners are the individuals who sponsor initiatives, and an initiative may have up to three chief petitioners.

For an initiative to qualify for the next regularly scheduled general election (the first Tuesday after the first Monday of November in even-numbered years), chief petitioners must receive written approval from the Secretary of State to circulate signature sheets in order to collect signatures from registered voters. Chief petitioners must then obtain the necessary number of valid signatures and submit them to the Secretary of State no later than four months prior to the date of the next regularly scheduled general election.

The number of signatures required to qualify an initiative to the ballot is based on the number of votes cast during the most recent gubernatorial election – 6% for statutory amendments and 8% for constitutional amendments. The total vote count at the November 5, 2002 General Election was 1,260,497. To place an initiative on the November 2, 2004, General Election ballot, the chief petitioners were required to gather at least 75,630 valid signatures for a measure that amends the Oregon Revised Statutes, or at least 100,840 valid signatures for a measure that amends the Oregon Constitution.

The Referendum

The referendum process allows voters the opportunity to reject legislation (Acts) adopted by the Oregon Legislature. The only Acts exempt from a referendum are those with an emergency clause – Acts that the Legislature

declares are necessary for the immediate preservation of the public peace, health or safety, and the support of state government and its existing institutions. Acts with emergency clauses typically have effective dates earlier than other legislation.

Any citizen, acting individually or on behalf of an organization, may become a chief petitioner of a referendum petition. Chief petitioners are the individuals who sponsor referenda, and a referendum may have up to three chief petitioners.

For a referendum to qualify for the next regularly scheduled general election, chief petitioners must receive written approval from the Secretary of State to circulate the text of the Act among registered voters. Chief petitioners must then obtain the necessary number of valid signatures and submit them to the Secretary of State not later than 90 days after the legislature adjourns.

The number of signatures required to qualify a referendum to the ballot is 4% of the number of votes cast during the most recent gubernatorial election. To place a referendum on the November 2, 2004, General Election ballot, the chief petitioners were required to gather at least 50,420 valid signatures.

History of Initiative and Referendum in Oregon

In 1902, 91 percent of voters approved an amendment to the Oregon Constitution to allow for the initiative and referendum process. According to the 2003-2004 Oregon Blue Book, since 1902, the people have passed 99 of 288 initiative measures on the ballot and 25 of the 61 referenda on the ballot. During the same period, the legislature has referred 363 measures to the people, of which 206 have passed.

At the 2000 General Election, in addition to 7 legislative referrals, voters had the opportunity to vote on 18 initiatives and one referendum. For the 2002 General Election, 183 initiatives were filed with the Secretary of State; however, only 7 qualified for the ballot and the legislature referred 5 measures. For the 2004 General Election, the legislature has referred 2 measures and an unknown number of initiatives will qualify for the ballot. A court ruling in September of 2000 determined that private property owners could restrict signature collection on their

property, which may have had an effect on the ability of chief petitioners to gather the required number of signatures.

Implementation of Ballot Measure 26

Measure 26 was approved by voters at the November 2002 General Election. The measure amended the Oregon Constitution to prohibit the compensation or receipt of compensation on a per-signature basis for signatures collected on all initiative and referendum petitions. Prior to Measure 26, the law did not prohibit payment or compensation to petition circulators on the basis of the number of signatures gathered.

Differences in the Initiative and Referendum Process Between States

Oregon is one of 24 states that have an initiative process. Other states with an initiative process are: Alaska; Arizona; Arkansas; California; Colorado; Florida; Idaho; Illinois; Maine; Massachusetts; Michigan; Mississippi; Missouri; Montana; Nebraska; Nevada; North Dakota; Ohio; Oklahoma; South Dakota; Utah; Washington; and Wyoming. Some notable differences between states' laws are:

- Alaska, Idaho, Maine, Utah, Washington, and Wyoming only allow for initiatives that amend statute;
- Florida, Illinois, Mississippi, only allow for initiative that amend their constitutions;
- Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Oregon, and South Dakota have direct initiative processes where proposals that qualify go directly to the ballot;
- Alaska, Maine, Massachusetts, Michigan, Mississippi, Nevada, Ohio, Utah, Washington, and Wyoming have indirect or partially indirect initiative processes where some or all proposals must be submitted to the legislature first;
- Some states have a waiting period, ranging from 3-5 years, for re-filing a defeated initiative;
- The percentage of voters' signatures required to qualify an initiative to the ballot varies by state, some states having a geographic disbursement restriction on the number of signatures required from counties or congressional districts.

Political Advocacy

A group of two or more individuals may fit the definition of a political committee if they are soliciting contributions or making expenditures that support or oppose a candidate, measure or political committee.

In order to identify whether or not a communication is considered to be supportive or in opposition, it is important to look at the language used. Previously, “express words of advocacy” such as “vote for” or “defeat,” were required to make the communication a reportable expenditure. Since the 1999 Court of Appeals decision *State ex rel. Crumpton v. Keisling*, the use of express words of advocacy is no longer the threshold for determining whether or not a communication made by a person would cause the person to be considered a political committee. This new standard takes into consideration what action the reader is requested to take, as well as the circumstances surrounding the statement, such as the naming of one or more specific candidates, as well as the timing of the communication in regard to an election where the candidate or issue will appear on the ballot.

Campaign Finance in Oregon

Prior to 1994, there were no restrictions on campaign contributions in Oregon. During the November 1994 General Election, voters had the opportunity to vote on Ballot Measure 6, a proposal to establish geographical limits for campaign contributors, and Ballot Measure 9, which placed limits on both contributions and expenditures. Both measures were approved by voters. However, each was overturned by the courts.

Ballot Measure 9, approved in 1994, did the following:

- Established \$100 individual contribution limit for state legislative candidates and \$500 contribution for statewide candidates;

- Put a cap on the amount that political parties could contribute to candidates;
- Established other contribution limits;
- Established voluntary expenditure limits;
- Prohibited contributions from corporations and unions.

In February 1997, the Oregon Supreme Court ruled that mandatory contribution limits violate the Oregon Constitution’s protection of free speech. Therefore, in subsequent elections, contributions have not been limited. Voluntary spending limits were not ruled unconstitutional but were repealed by the 1999 Legislative Assembly.

In January 2004, Secretary of State Bill Bradbury appointed the Campaign Finance Full Disclosure Panel to review Oregon’s campaign finance disclosure laws. The panel is co-chaired by former Secretaries of State Mark O. Hatfield, Barbara Roberts, Phil Keisling, and Norma Paulus. The panel will make recommendations for legislation in the 2005 session to close loopholes and improve enforcement of disclosure laws.

Staff and Agency Contacts:

Secretary of State Initiative and Referendum webpage -

<http://www.sos.state.or.us/elections/other.info/irr.htm>

2004 State Initiative and Referendum Manual –

<http://www.sos.state.or.us/elections/manuals.htm>

Secretary of State Campaign Finance webpage-

<http://www.sos.state.or.us/elections/other.info/ce.htm>

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