Background Brief on …

Initiative and Referendum Process

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Since 1902, the Oregon Constitution has provided voters with two methods of directly affecting changes to the Oregon Revised Statutes and the Oregon Constitution: 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 person 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.

Article IV, Section 1 of the Oregon Constitution establishes the number of signatures required to qualify an initiative to the ballot, and is based on the number of votes cast for Governor during the most recent gubernatorial election – six percent for statutory amendments and eight percent for constitutional amendments. The total vote count at the November 2006

General Election was 1,399,650. To place an initiative on the November 2010 General Election ballot, the chief petitioners will be required to gather 82,769 valid signatures for a measure that amends the Oregon Revised Statutes, or 110,358 valid signatures for a measure that amends the Oregon Constitution. The required number of signatures for the 2012 and 2014 cycles will not be determined until after the 2010 General Election.

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 Legislative Assembly 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 person 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 no later than 90 days after the Legislature adjourns.

The Constitution also sets the number of signatures required to qualify a referendum to the ballot at four percent of the number of votes cast during the most recent gubernatorial election. To place a referendum on the November 2010 General Election ballot, chief petitioners are required to gather 55,179 valid signatures. The required number of signatures for the 2012 and 2014 cycles will not be determined until after the 2010 General Election.

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. As of April 2010, the people have passed 118 of 348 initiative measures on the ballot and 23 of 64 referenda on the ballot. During the same period, the legislature has referred 419 measures to the people, of which 244 have passed.

Differences in the Initiative and Referendum Process between States

Oregon is 1 of 27 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, Wyoming, and U.S. Virgin Islands. Some notable differences between states' laws are:

- Alaska, Idaho, Maine, Utah, Washington, and Wyoming only allow for initiatives that amend statute.
- Florida, Illinois, and Mississippi only allow for initiatives 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, Wyoming, and U.S. Virgin Islands 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 three to five 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 have 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 of *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, Oregon did not have restrictions on campaign contributions. 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 that placed limits on both contributions and expenditures. Both measures were approved by voters.

In February 1997, the Oregon Supreme Court ruled that mandatory contribution limits violated 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.

During the November 2006 General Election, voters approved Ballot Measure 47, a statute that created campaign contribution and expenditure limits. The Secretary of State, in consultation with the Attorney General, determined that Ballot Measure 47 will be ineffective until the Oregon Constitution is found to allow, or is amended to allow, limitations on campaign contributions and expenditures.

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Additional Resources

Oregon Secretary of State

2010 State Initiative and Referendum Manual

ORESTAR Campaign Finance Database