

November 8 Meeting: Constitutional Amendment Process in Florida -- Citizen Initiative

This memorandum provides some background about Florida's citizen initiative process and issues that may be considered in reviewing that process. It is not intended to advocate any positions for reform.

Citizen Initiative Process: Twenty-four states authorize citizen initiatives. In most states, those initiatives apply to amendments to state law or both state law and the constitution. After they have been determined to comply with state law, initiatives are placed directly on the ballot for popular vote. Eight of the 24 states authorize indirect initiative procedures. An indirect initiative process gives the state legislature an opportunity to act on the proposed amendment before the initiative can be placed on the ballot.

Florida adopted the initiative process in 1968. It is one of 16 states that authorizes citizens the use of direct initiatives to amend the state constitution. In Florida, the citizen initiative process applies only to constitutional amendments and not to state statutes. Moreover, this process is one of five methods used to place on the ballot for popular vote a proposed amendment to the Florida Constitution. The other methods allow proposals to be initiated by revision commission, constitutional convention, legislature, and taxation and budget reform commission.

Citizen Initiative Procedures in Florida: Each state has its own procedures for addressing ballot preparation and qualification. Florida follows several steps. First, the sponsor of an initiative must register as a political committee with the Florida Division of Elections. The person or group circulating the initiative petition must then submit a format of the petition to the Division of Elections (after January 7, 2003, by the custodian of state records) before the amendment may be circulated for signatures. The Division must review the proposed petition for format only. By law, the ballot title may be no longer than 15 words and the summary no more than 75 words.

Proponents may begin circulating the petition once the format is approved. This can be done by volunteers, by firms that are paid to obtain signatures or by a combination of the two. The minimum number of signatures needed for an initiative to be placed on the ballot must equal 8 percent of the number of the ballots cast in the last presidential election. Moreover, the signatures cannot come from people living in only one or two locations; the number must come from at least half of the state's congressional districts. Once signatures are collected from 10 percent of the required number and at least one-fourth of half the state's congressional districts, the petition is submitted to the Supervisors of Elections in the appropriate counties for signature verification. The Secretary of State, in turn, must automatically submit the petition to the Attorney General if: 1) the sponsor has complied with registration and submittal requirements and 2) the sponsor has obtained a letter from the Division of Elections confirming that the petition signatures have been verified by the appropriate Supervisors of Elections.

Within 30 days of receiving the proposed amendment, the Attorney General must petition the Supreme Court and request an advisory opinion regarding compliance with the proposed ballot and substance requirements. The Supreme Court has no deadline for issuing an opinion. If the Court approves the petition, the proponents must gather the rest of the signatures needed to place

the initiative on the ballot. The Court may disallow an initiative for several reasons, but the primary ones are because it is unconstitutional or it violates Florida's strict single subject requirement.

Although the number of signatures collected must meet constitutional requirements outlined above, many more signatures than required have been collected in past years for those initiatives that ultimately appeared on the ballot. In each election cycle as many as one-quarter of the names are rejected by the Secretary of State's office. In most cases, these names were duplicative, came from out-of-state residents, were improperly recorded or were out-of-date.

History of Initiatives in Florida: The first initiative appeared on the ballot in 1976 and was passed. From 1976 to 2000, sixteen amendments were placed on the ballot by initiative and eleven passed. Among these were amendments to the Sunshine Law, establishment of a state operated lottery, establishment of English as Florida's official language, term limits for state officials, changes in the homestead valuation limitation, creation of the Everglades Trust Fund and a proposal for a statewide high speed metrorail. Initiative amendments that were defeated included two on casino gambling, limitation of damages in civic actions and a fee on sugar production. According to the Secretary of State's office, seven initiative amendments were removed from the ballot by the Supreme Court. In every election since 1976, petitions have been circulated to include amendments by initiative on the ballot; however, most of them failed to get the required number of signatures. (Source: Brenda Milton, Florida Division of Elections, "Florida Constitutional Amendment History.")

2002 Ballot: This year five initiatives appeared on the November ballot and all passed. These initiatives will affect management of the state's university system, public education (pre-K education and class size reductions), pregnant pigs and workplace smoking. Only on the class size reduction amendment was the vote close; the rest were passed with wide margins.

Issues: The purpose of the initiative in Florida, as in the other states that allow this process, is to give citizens a chance to put issues before the voters that the state government has failed or declined to address. A conference sponsored by the University of Virginia two years ago identified several issues as worthy of concern for both supporters and opponents of the initiative process (*State Legislatures*, Sept. 2000). The summary of those issues includes information from *Initiative and Referendum in the 21st Century, Final Report and Recommendations of the National Conference of State Legislatures (NCSL) I&R Task Force*, July 2002.

a. *the cost of the initiative process.* Gathering the required signatures is increasingly "big-business," as is developing broad-based support for an amendment. Many grassroots groups believe that their participation has been hampered by national consulting groups which dominate the process. In the 2002 election cycle, initiative supporters have spent millions to gather voter signatures and more money will be spent on advertising. (Gannett News Service, July 8, 2002)

b. *lack of deliberation about initiative amendments.* Since citizen-initiated proposals do not go through the same hearing process as proposals initiated by the legislature or the constitutional revision commission, voters only learn about the pros and cons of those

proposals through the media or advertising. However, public hearings could be injected into the process. For example, a law recently enacted in Oregon requires a committee of five (representing both proponents and opponents) to draft the explanatory statement for the initiative or referendum, to be included in the voters' pamphlet. The law requires the Secretary of State to hold hearings on the suggested changes to the statement. The committee considers testimony at the hearing and based on that input may file a revised statement with the Secretary of State no later than 90 days before the election (NCSL Report, pp. 50-51).

c. cost of the programs created through initiative. In twelve of the 24 states authorizing initiatives, fiscal impact statements must be drafted for any initiative that will have a fiscal impact on the state's budget (NCSL Report, p. 27). This has not been, however, a requirement in Florida. Therefore, citizens in Florida have never received any official information on the fiscal impacts of initiatives. On Tuesday Florida voters approved legislatively-initiated amendment that requires the Legislature to provide for statements of probable economic impact statements for any citizen-initiated proposals. The courts recently declared a state law requiring fiscal impact statements unconstitutional so this requirement could only be promulgated through a constitutional amendment.

d. lack of information about the process of qualifying an initiative amendment. Most citizens do not understand the initiative process. Voters are often asked to sign petitions while they are shopping and are given little or no explanation from the signature-gatherer about the process. To assist voters and potential initiative sponsors, most initiative states, including Florida, furnish information about their initiative procedures on the website.

e. lack of information about the subject matter of a certified initiative. Once the initiatives are certified to appear on the ballot, most initiative states require voter information pamphlets to be published or made available online, or both. At present, eighteen states make these pamphlets available to the public and 14 states enacted laws requiring publication of the pamphlets (NCSL Report, p. 46). In Florida, counties may prepare them but are not required to do so.

f. the potential for fraud. Several states have exposed fraudulent signature-gathering processes as well as a lack of disclosure about who is paying for the initiative campaign. As initiatives have become big business, the possibility of fraud increases. U.S. Supreme Court decisions have prohibited states from banning paid signature-gatherers and requiring that signature-gatherers be residents of the state in which the initiative is being circulated. These decisions affected several state laws imposing such restrictions. To counter potential fraud of this sort, several initiative states prohibit the giving or accepting of money or anything of value in exchange for signatures and require circulators to disclose whether they are paid or volunteer. (See NCSL Report, pp. 33-35.) Along those lines, Florida law provides that fraudulent signatures on initiative petitions are misdemeanors. In addition, Florida law deems that failure to provide for the name and

address of paid petition circulators on submitted petition forms is a violation and the political committee sponsoring the initiative is subject to civil penalties.

Possibilities of reform: The National Conference of State Legislatures appointed an Initiative and Referendum Task Force to study these issues and make recommendations that might improve the initiative and referendum process. These recommendations are outlined on pp. ix-xii of the Task Force's final report and are described in greater detail throughout the report. The Task Force found that "the opportunities for abuse of the [initiative and referendum] process outweigh its advantages." (p.ix) Members stated that the initiative process has evolved from a grassroots effort into a tool that is too often exploited by "special interests." (p.4) The NCSL Taskforce recommended, among other proposals, that:

- a. States with a constitutional initiative process should adopt a statutory process as well, since many of the subject areas covered by initiatives are not appropriate for inclusion in state constitutions. (Florida does not have a statutory process.) States should require a higher number of signatures for constitutional amendments than statutory ones.
- b. States should require a fiscal impact statement for each initiative that appears on the petition, voter information pamphlets and the ballot. (A constitutional amendment to require fiscal impact statements was approved on Tuesday.)
- c. States should require a review of the proposed initiative language by either the legislature or a state agency. The review should include non-binding suggestions for improving the initiative's technical format and content, and should be considered public information. Although Florida requires the Secretary of State to conduct a technical review of the initiative, there is no provision for drafting assistance to be offered. Eleven states do offer that type of assistance through a legislative office (NCSL Report, pp. 23-24.)
- d. States should enact strong financial disclosure requirements which include a statement on whether or not an organization is being paid for gathering signatures and which groups are supporting the amendment financially. (Florida law provides that fraudulent signatures on initiative petitions are misdemeanors. In addition, Florida law deems that failure to provide for the name and address of paid petition circulators on submitted petition forms is a violation and the political committee sponsoring the initiative is subject to civil penalties.)
- f. States should develop ways to create or improve debate, deliberation and compromise on initiatives. (Florida has no hearing process and publication of voter education pamphlets are left to the discretion of counties.)

The NCSL Report did not make a recommendation on timing of court challenges to ballot and substance requirements. As noted, Florida's Supreme Court does not have a deadline for issuing an opinion on compliance with those requirements. However, the report, citing Arkansas and Florida, noted that: "the timing and summary challenges in Arkansas and Florida is highly controversial and most initiative proponents regard it as unfair."(p. 29)

Advocates of the initiative and referendum process contend that this process is direct democracy at its best, while opponents believe that the process has become captive to well-funded special interests. Reflecting this continuing schism, there are groups in states such as California and Oregon which are working to severely limit the use of those measures at the same time as several other states are considering adopting initiative and referendum proposals. Despite criticisms about the process, no state which has adopted initiative and/or referendum processes has ever rescinded them. Therefore, it is unlikely that voters in states with direct democracy will reject them in the future or that the debate on their virtues and liabilities will be resolved. As we consider this topic further, we might ask these basic questions: Does the citizen initiative process in Florida need to be reformed? If reform is needed, which aspects of the process deserve further scrutiny?