

Amendment 38 Petitions

1 **Amendment 38 proposes a change to Article VII of the Colorado Constitution that:**

- 2 ◆ expands the ability of citizens to propose changes to state and local laws;
- 3 ◆ modifies current procedures for proposing changes to laws;
- 4 ◆ limits governing bodies' ability to change, enact, or repeal measures proposed
5 by citizens and decided by voters; and
- 6 ◆ limits the number of measures governing bodies may exempt from voter
7 challenge.

8 **Summary and Analysis**

9 The Colorado Constitution currently provides two ways for citizens to propose
10 changes to state, city, or town laws. In both processes, citizens collect a certain number
11 of signatures on a petition to place a law change on the ballot. For one process, citizens
12 *propose* a change that becomes law if voters approve it. For the second process, citizens
13 *challenge* a law approved by elected officials. A challenged law takes effect only if voters
14 approve it.

15 Amendment 38 expands the ability of citizens to propose and challenge laws at all
16 levels of state and local government, including school districts, counties, special districts,
17 authorities, and other special purpose government entities. Amendment 38 also changes
18 existing procedures for placing a measure on the ballot by petition and applies them to all
19 levels of government. Amendment 38 does not affect measures that governing bodies refer
20 to voters. Tables 1 through 3 summarize differences between current procedures and the
21 proposal. While the tables reflect local procedures in state law, procedures may vary under
22 city or town charters or by local ordinance.

23 ***Table 1 — procedures related to ballot titles and petition signatures.*** Before
24 proponents may begin collecting petition signatures, a ballot title for the measure must be
25 set. A ballot title tells voters how the law will change if the measure passes. It appears on
26 petition forms and on the ballot. A certain number of signatures of registered Colorado
27 voters must be collected to place a measure on the ballot. The signatures are counted and
28 verified, and any protests are resolved, before the measure appears on the ballot.

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Table 1. Procedures Related to Ballot Titles and Petition Signatures

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Issue	Current Process for State, City, and Town Governments	Amendment 38 Process for All Governments
Is the length of a ballot title limited?	<u>State</u> - Must be brief; <u>Municipal</u> - No limit	Yes, 75 words
How are ballot title disputes resolved?	<u>State</u> – The title is reconsidered by a three-member title board, then appealed to the Supreme Court. <u>Municipal</u> – The process is established at the local level and disputes are appealed through the courts.	The Supreme Court finally decides all title disputes within 7 days of filing; no other appeals are allowed.
How many signatures are required to place a measure on the ballot?	<u>State</u> – 5 percent of votes cast for secretary of state in the last general election, including vacancy elections; <u>Municipal</u> – Between 5 and 15 percent of registered electors	Not more than 5 percent of votes cast in the state or local government for secretary of state in the last full-term general election for the office
How are petitions verified to place a measure on the ballot?	Signatures are counted and verified against voter registration files using random sampling or a check of each signature to ensure the signer is a registered voter. A duplicate or incomplete signature, or the signature of an individual who is not a registered voter, is not counted. Protests may be filed.	Signatures are counted. Protests may be filed. An individual signature that is protested and proven invalid by clear and convincing evidence is not counted. Random sampling may not be used to exclude signatures. Signatures cannot be disqualified for technical defects or minor variations or omissions.
What are the deadlines for protesting signatures?	<u>State</u> – A protest must be filed within 30 days after verification of the petition signatures and resolved within 30 days of commencement of a hearing. <u>Municipal</u> – A protest must be filed within 40 days of petition filing and resolved within 65 days after the petition is filed.	A protest must be filed within 10 days of petition filing and resolved within 10 days thereafter.
How much time are proponents allowed to gather signatures to propose laws?	Up to 6 months	12 months
What happens if proponents do not turn in signatures in time for the upcoming election?	The proposed measure is not placed on the ballot and any signatures collected are void.	All signatures collected within the 12-month period can be submitted for the next November election.

1 **Table 2 — challenges to laws.** Registered electors may, by petition, challenge a
 2 law passed by elected officials unless the measure contains a "safety clause" stating that
 3 the law is necessary for the immediate preservation of the public peace, health, and safety.

4 **Table 2. Challenges to Laws**

Issue	Current Process for State, City, and Town Governments	Amendment 38 Process for All Governments
How are measures exempted from voter challenge?	<u>State</u> – A majority of the legislature passes a measure with a safety clause; <u>Municipal</u> – Three-fourths of the governing body passes a measure with a description of the emergency justifying the exception	Three-fourths of the governing body passes a measure with a description of the emergency justifying the exception
How many measures may each governing body exempt from voter challenge?	No limit	12 per year
If voters reject a measure, may a governing body enact a mostly similar measure in the future?	Yes	Only with voter approval

19 **Table 3 — elections and voter information materials for measures placed on the**
 20 **ballot by petition.** Specific voter information materials are required at the state and
 21 municipal level.

22 **Table 3. Elections and Voter Information Materials for Measures Placed on the Ballot by Petition**

Issue	Current Process for State, City, and Town Governments	Amendment 38 Process for All Governments
What types of measures may appear on the ballot by petition at November elections?	<u>State</u> – Any measure in even-numbered years; only fiscal measures that increase government revenue in odd-numbered years; <u>Municipal</u> – Varies	Measures by petition may only appear on the ballot at a November election, but they may appear at any November election.
May voter-approved laws proposed by petition be changed by governing bodies?	Yes	Only with voter approval, unless otherwise provided in the law
What voter information materials are required?	<u>State</u> – An analysis, written by the state legislature's nonpartisan staff and reviewed by legislators, that includes arguments for and against each measure; <u>Municipal</u> – For fiscal measures only, two summaries, of up to 500 words each, of comments written by the proponents and opponents	Comments of up to 1,000 words from proponents, and a summary of comments from opponents limited to the number of words submitted by proponents

Issue	Current Process for State, City, and Town Governments	Amendment 38 Process for All Governments
<p>1 May government officials 2 and employees use 3 government resources to 4 discuss pending ballot 5 measures? 6 7</p>	<p>As long as they are not advocating for a particular measure, government officials and employees may respond to questions from the public and provide factual summaries, including arguments for and against a proposal.</p>	<p>Government officials and employees may not use government resources to discuss any measure after petition forms are ready for signatures; information required for court cases, on election procedures, or required by law is permitted.</p>

8 **Arguments For**

9 1) Amendment 38 makes local elected officials more responsive to constituents
10 by extending the petition process to all state and local governments. It ensures that public
11 policy issues of concern to the voters will be addressed at the appropriate level of
12 government. It encourages citizen reforms to improve government. Laws proposed by
13 citizens are subject to months of public debate leading up to an election, encouraging voter
14 interest and participation. Citizens will gain an expanded voice in government actions that
15 affect their lives, with a greater likelihood that officials will focus on their concerns.

16 2) Amendment 38 streamlines petition procedures and creates a uniform process.
17 All measures to propose or challenge a law by petition will be before voters at a November
18 election, which helps avoid special elections at the local level and may improve voter
19 turnout. Additionally, the procedural changes make the petition process more workable
20 for proponents and more helpful to voters. Specifically, Amendment 38 limits the length
21 of ballot titles. It clarifies the requirements for petition signatures. It simplifies and
22 shortens time frames related to court challenges, so rulings are made before ballots must
23 be printed. It requires that signatures on petition forms count unless protested by clear and
24 convincing evidence. Additionally, proponents and opponents of a measure will assume
25 the primary role in providing the information that is distributed to voters for all issues
26 placed on the ballot by petition.

27 3) Amendment 38 supports the existing constitutional right of the people to reject
28 new laws passed by elected officials in Colorado. In the past ten years, roughly 76 percent
29 of enacted state laws could not be challenged by voters because they contained a safety
30 clause. Amendment 38 limits the number of laws that may be exempted from possible
31 challenge, allowing voters to respond to and challenge most of the decisions of their
32 elected officials. Further, Amendment 38 requires governing bodies to respect the
33 decisions of voters on measures that get on the ballot through the petition process by
34 requiring a vote of the people before changing that voter-approved policy.

35 4) Amendment 38 encourages changing statutory, not constitutional law. Under
36 Amendment 38, state laws proposed by citizens and approved by voters will require voter
37 approval to be modified or repealed, unless the law itself allows legislative changes.
38 Amendment 38 also allows the legislature to reduce the number of signatures needed to

1 propose changes to state statute, further encouraging changes to statutes, rather than to the
2 constitution.

3 **Arguments Against**

4 1) Amendment 38 weakens representative government. Citizens elect
5 representatives to consider all points of view on issues, to make policy decisions, and to
6 change those decisions when necessary. Under Amendment 38, more laws may be enacted
7 that have not received sufficient refinement and that cannot be changed without another
8 vote of the people. Voters will ultimately be ill-served by expanded petition use that limits
9 the authority of their governing bodies. Further, under Amendment 38, city and town
10 election laws and charter provisions that have been approved at the local level will be
11 voided through a statewide measure.

12 2) The proposal invites abuse of the petition process by eliminating current
13 safeguards. For example, limiting the ability of election officials to check petition
14 signatures and shortening the time for protesting signatures increases the likelihood that
15 invalid signatures will be counted. Eliminating the state requirement that each petition
16 signature page include the ballot title could result in voters not knowing which petition
17 measure they are signing. By easing current requirements, the citizen petition process
18 could become a powerful mechanism for placing numerous measures on the ballot. A
19 sound petition process should include sufficient checks and balances to maintain public
20 trust.

21 3) The proposal may result in voters having to decide an increasing number of
22 complex policy issues with less analysis than they have today and may result in laws that
23 conflict with others laws, are unconstitutional, or create budgetary problems. An impartial
24 analysis or summary of a proposed measure is not permitted, and background information
25 or assistance currently provided by government officials and employees is restricted.
26 Important issues may be oversimplified by individuals with an interest in the success or
27 failure of a measure, with long-term implications overlooked. Further, proponents will
28 determine how much information is provided on both sides of the issue because opponents'
29 comments are limited to the length of the comments submitted by proponents.

30 4) Amendment 38 limits governments' ability to respond to changing
31 circumstances, economic conditions, or emergencies. Unless specifically provided in the
32 law, lawmakers cannot amend any law adopted by voters through the petition process, even
33 if an event occurs that requires a change. For example, state lawmakers trying to respond
34 to an emergency situation might have to wait up to two years to ask the voters to change
35 a law. Further, under the new provisions for challenging laws, timetables for holding
36 elections at the local level can delay the implementation of laws and create a way for a
37 small group of citizens to stall the legislative process.

1 **Estimate of Fiscal Impact**

2 ***State spending and revenue.*** Amendment 38 is expected to increase the number
3 of statewide ballot petitions by two in each even-numbered year and eight in each
4 odd-numbered year. Currently, the state budgets for eight petitions in an even year and two
5 in an odd year. Costs will increase due to a greater number of petitions, and because state
6 courts must review ballot disputes within newly established deadlines. Costs will decrease
7 to approve each petition because signatures will only be counted and not verified. Overall,
8 state spending will increase by \$119,000 annually in even-numbered years and \$269,000
9 in odd-numbered years. Amendment 38 also imposes a \$3,000 fine for certain offenses
10 related to government officials discussing pending ballot issues, which may increase fine
11 revenue to the state. Total fine revenue has not been quantified.

12 ***Local government spending.*** Local governments without a petition process will
13 be required to establish such a process, incurring administrative and computer
14 programming costs. Local governments may experience an increase in the number of
15 petitions received. Costs will depend upon the number of petitions filed.