

**Amendment 38
Petitions**

1 **Amendment 38 is an amendment to the Colorado Constitution that:**

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

9 **Summary and Analysis**

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

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

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

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Table 1. Procedures Related to Title, Petition Forms, and 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?	State - Must be brief Municipal - 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 district for secretary of state in the last full-term general election for the office
How are signatures checked?	Signatures are counted and verified against voter registration files to ensure the signer is a registered voter.	Signatures are counted. They are presumed to be valid by state and local election officials.
Under what circumstances is a signature not counted?	A duplicate or incomplete signature, or the signature of an individual who is not a registered voter is not counted.	An individual signature that is protested and proven invalid is not counted. Signatures cannot be disqualified for technical defects or minor variations or omissions.
When can a protest of signatures be filed?	<u>State</u> – A protest must be filed within 30 days after the secretary of state verifies the petition signatures. <u>Municipal</u> – A protest must be filed within 40 days of petition filing.	A protest must be filed within 10 days of petition filing.

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

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Issue	Current Process for State, City, and Town Governments	Amendment 38 Process for All Governments
<p>3 What types of measures 4 may appear on the ballot 5 by petition in November 6 elections?</p>	<p>Any measure in even-numbered years; only fiscal measures in odd-numbered years</p>	<p>Any measure at any November election</p>
<p>7 May voter-approved laws 8 proposed by petition be 9 changed by governing 10 bodies?</p>	<p>Yes</p>	<p>Only with voter approval, unless otherwise provided in the law</p>
<p>11 What voter information 12 materials are required? 13 14 15 16 17 18</p>	<p><u>State</u> – An analysis written by the General Assembly's nonpartisan staff and reviewed by legislators that includes arguments for and against each measure; <u>Municipal</u> – For fiscal measures only, two summaries, up to 500 words each, of comments written by the proponents and opponents</p>	<p>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</p>
<p>19 May government officials 20 and employees use 21 government resources to 22 discuss pending ballot 23 measures? 24 25</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; procedural information required by law or court cases is permitted.</p>

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Arguments For

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28 1) Amendment 38 makes local elected officials more responsive to constituents
29 by extending the petition process to all state and local governments. It ensures that public
30 policy issues of concern to the voters will be addressed at the appropriate level of
31 government. Proposals to change laws by petition are subject to months of public debate
32 leading up to an election, encouraging voter interest and participation. Citizens will gain
33 an expanded voice in government actions that affect their lives with a greater likelihood
that officials will focus on their concerns.

1 2) Amendment 38 streamlines petition procedures and creates a uniform process.
2 The procedural changes make the petition process more workable for proponents and more
3 helpful to voters. Specifically, the proposal limits the length of ballot titles. It clarifies the
4 requirements for petition signatures, and simplifies and shortens time frames related to
5 court challenges, so rulings are made before ballots must be printed. Amendment 38
6 guarantees that signatures on petition forms are counted unless protested by clear and
7 convincing evidence. Additionally, proponents and opponents of a measure will assume
8 the primary role in the information that is distributed to voters for all issues placed on the
9 ballot by petition.

10 3) Amendment 38 supports the existing constitutional right of the people to reject
11 new laws passed by elected officials in Colorado. In the past five years, over 60 percent
12 of enacted state laws could not be challenged by voters because they contained a safety
13 clause. Amendment 38 limits the number of laws that may be exempted from possible
14 challenge. Further, Amendment 38 requires governing bodies to respect the decisions of
15 voters on measures that get on the ballot through the petition process by requiring a vote
16 of the people before changing that voter-approved policy.

17 4) Amendment 38 encourages changing statutory, not constitutional law. Under
18 Amendment 38, state laws proposed by citizens and approved by voters will require voter
19 approval to be modified or repealed, unless the law itself allows legislative changes.
20 Amendment 38 also allows the legislature to reduce the number of signatures needed to
21 propose changes to state statute, further encouraging changes to statutes, rather than to the
22 constitution.

23 **Arguments Against**

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

32 2) The proposal invites abuse of the petition process by eliminating current
33 safeguards. For example, presuming signatures to be valid and shortening the time for
34 protesting signatures increases the likelihood that invalid signatures will be counted.
35 Eliminating the state requirements that each petition signature page include the ballot title
36 and that petition circulators be residents of Colorado also lessens the credibility of the
37 process. By easing current requirements, the citizen petition process could become a tool
38 for special interests to place numerous measures on the ballot. A sound petition process
39 should include sufficient checks and balances to maintain public trust.

1 3) The proposal may result in voters having to decide an increasing number of
2 complex policy issues with less analysis than they have today. An impartial analysis or
3 summary of a proposed measure is not permitted, and background information or
4 assistance currently provided by government officials and employees is restricted.
5 Important issues may be oversimplified by individuals with an interest in the success or
6 failure of a measure, with long-term implications overlooked. Further, proponents will
7 determine how much information is provided on both sides of the issue because opponents'
8 comments are limited to the length of the comments submitted by proponents.

9 4) Amendment 38 limits governments' ability to respond to changing
10 circumstances, economic conditions, or emergencies. Unless specifically provided in the
11 law, lawmakers cannot amend any law adopted by voters through the petition process, even
12 if an event occurs that requires a change. Rather, lawmakers would have to wait until the
13 next November election in an even-numbered year to submit the issue to the voters again.
14 Further, under the provisions for challenging laws, timetables for holding elections can
15 delay the implementation of laws and create a way for a small group of citizens to stall the
16 legislative process.

17 **Estimate of Fiscal Impact**

18 Amendment 38 is expected to increase the number of statewide ballot issues
19 proposed, which will increase state expenditures for state courts to review disputes over
20 ballot titles and for the Secretary of State to review and approve petitions. In total, state
21 expenditures are expected to increase by \$119,000 in even-numbered years (for general
22 election years) and by \$269,000 in other years. The proposal also imposes a \$3,000 fine
23 for certain offenses related to government officials discussing pending ballot issues, which
24 may increase fine revenue to the state.

25 Local governments that do not currently have a petition process in place will be
26 required to establish such a process, incurring administrative and computer programming
27 costs. Those governments with a process in place may expect an increase in the number
28 of petitions received. Costs depend upon the number of petitions filed.