Direct Democracy in the States:
A 50-State Survey of the Journey to the Ballot

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Published: November 2023
Acknowledgements

This Report benefited from input from colleagues at the State Democracy Research Initiative at the University of Wisconsin Law School, including former Senior Staff Attorney Dustin Brown; from graphic design by Skye Xollo; and from excellent research assistance by Judith Cusack, Lydia Dal Nogare, Jennifer Gisi, Taylor Hatridge, Alex Kaplan, Anika Lillegard-Bouton, Jacob Neeley, Thomas Tretheway, and Julia Valgento.
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Defining Direct Democracy for this Report

Direct democracy provides an opportunity for the people to vote directly on law and policy decisions.* While direct democracy can take a variety of forms, this Report focuses on three kinds of statewide ballot measures:

- **Initiatives (Constitutional and Statutory).** The initiative power allows voters to propose statutes and/or amendments to the state constitution, sometimes with limitations as to subject matter. Some states have both statutory and constitutional initiatives, while others have just one or the other.
  - For statutory initiatives, most states have the *direct initiative*, meaning an initiative proposal is submitted directly to the electorate after voter petitions are properly filed. However, a handful of states offer the *indirect initiative*, in which sponsors first submit the proposal to the state legislature, and the proposal goes to voters only if the legislature rejects it.

- **Veto Referendums.** The veto referendum allows voters to propose a popular vote on a measure enacted by the legislature, thereby giving the people an opportunity to reject or “veto” the legislation. Some states exclude appropriations, emergency bills, or other laws from the veto referendum power. Many states also limit the time period within which the power can be invoked after a challenged statute’s enactment.

- **Legislatively Referred Amendments.** The legislatively referred amendment authorizes voters to approve or reject state constitutional amendments proposed by the state legislature. Every state constitution except for Delaware establishes this form of constitutional amendment.

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* See, e.g., Elliot Bulmer, Int’l Inst. for Democracy & Electoral Assistance, Direct Democracy: International IDEA Constitution-Building Primer 3 3 (2d ed. 2017), https://www.idea.int/sites/default/files/publications/direct-democracy-primer.pdf (“Direct democracy describes those rules, institutions and processes that enable the public to vote directly on a proposed constitutional amendment, law, treaty or policy decision.”)
Executive Summary

Introduction

Direct democracy has our collective attention. Statewide ballot measures, established to allow for popular self-rule independent of state legislatures, have gained renewed salience in the wake of U.S. Supreme Court decisions like Dobbs v. Jackson Women’s Health Organization and Rucho v. Common Cause, as well as perceived gaps between state legislative policymaking and popular preferences. Advocates are turning to the states to protect rights and democracy, and to pursue popular policies that their state legislatures will not.

As initiative campaigns have risen in prominence, so too have attempts by state officials to undermine them. Take Ohio. In November 2023, electors will vote on a constitutional initiative to protect abortion rights. To thwart this initiative, the state legislature proposed a constitutional amendment requiring future amendments to receive a supermajority of votes. The legislature scheduled this supermajority proposal for a special election in August 2023, fitting it in prior to the November election, even though the legislature had recently passed a law prohibiting most August special elections. The special election went forward despite a legal challenge, and voters defeated the supermajority proposal. Yet conflict in Ohio over the upcoming initiative did not end there. Later, controversy arose around the abortion measure’s ballot language. The language was initially drafted by Ballot Board member and Ohio Secretary of State, Frank LaRose, who campaigned vigorously in favor of the supermajority requirement and openly opposed the abortion amendment. Initiative proponents brought a lawsuit contending that this language deceptively stacked the deck against the measure.

The events in Ohio are not isolated. State legislatures in Arizona, Arkansas, Missouri, and South Dakota have also recently attempted to raise voter approval thresholds, although with the exception of a tax-specific amendment in Arizona, most of these efforts to date have failed. In addition, state legislatures and officials have imposed other new burdens on the initiative process or have leveraged under-the-radar features of their current processes to thwart initiatives. In Montana, the legislature passed bills in 2021 and 2023 to impose more onerous signature requirements, a mandatory “Warning” statement on initiative petitions that the Attorney General determines are “likely cause significant material harm” to business interests, a $3,700 filing fee, and additional checkpoints that must be cleared in the state’s substantive review of the initiative. In Idaho, the legislature passed a bill in 2021 that would have required initiative petition signatures from all 35 of the state’s counties, which the Idaho Supreme Court ultimately invalidated as a violation of the people’s fundamental right to the initiative. This year, the Idaho Senate sought to constitutionalize the very provisions that had been struck down, although the effort was blocked in the state’s House of Representatives. The Arkansas legislature recently made an inverse move: After trying and failing to pass a constitutional amendment to increase
the number of counties from which organizers must collect signatures (from 14 to 45),\textsuperscript{19} it passed a statute imposing a new 50-county requirement, which is now being challenged in court.\textsuperscript{20} In North Dakota, the legislature has proposed a constitutional amendment, to be voted on next year, which would require voters to approve constitutional initiatives twice to take effect: once at a primary election and again at a general election.\textsuperscript{21}

These recent efforts to undermine direct democracy reflect not only political conflicts, but also constitutional and legal ones. They implicate—and sometimes violate—a complex set of constitutional, statutory, and regulatory provisions. Yet there are few legal resources for evaluating these legal conflicts. The law of direct democracy across the country is rarely documented and seldom analyzed.

This white paper, the first in a series, is an effort to remedy that inattention. It highlights that the obscure set of state laws governing ballot measures is a consequential new battlefield. State law shapes whether voters have meaningful access to direct democracy and how they can exercise those powers. Among other things, state law determines the timing of elections on ballot measures, the information voters receive about the questions before them, and the state actors responsible for developing such information. Understanding this legal landscape is essential to identifying and evaluating conflicts over direct democracy today.

Conflict around ballot measures, and especially fights around ballot wording, also sheds new light on broader and longstanding questions about direct democracy: Do these powers truly belong to the people?\textsuperscript{22} Do voters have what they need to cast informed votes?\textsuperscript{23} As our research helps illuminate, these are, in part, contingent questions of process and design. For instance, what information appears on the ballot, and who prepares it? What standards exist, if any, to ensure that ballot language is clear and impartial? When, and how, can courts step in?

To address these questions, this paper offers a 50-state survey of the current direct democracy landscape across the country, with an emphasis on policies relating to voter participation and understanding.\textsuperscript{24} This Executive Summary highlights key findings and proceeds as follows. Part I synthesizes our 50-state survey findings on the types of direct democracy available in each state, the timing of direct democracy elections, the information made available to voters, and the involvement of the state judicial branch. Part II draws upon the 50-state survey to identify possible pitfalls through which state policies might undermine direct democracy. Part III concludes and suggests avenues for continued research. Our state-by-state summaries follow, allowing readers to navigate directly to individual states.
I. Survey Findings: A Varied Picture Across the States

This Part offers key takeaways of the 50-state findings detailed in the individual state summaries. We highlight four aspects of the journey to the ballot: the forms of direct democracy in each state; the timing of direct democracy elections; the information made available to voters, on the ballot and in other state materials; and the role of judicial review in vetting ballot language and other materials. Reviewing state laws on direct democracy reveals 50 different policy landscapes. While there are interesting echoes across states, no two states have identical systems.

A. Types of Direct Democracy

The forms of direct democracy available to voters vary, as displayed in the graphic below. In every state except for Delaware, the people have the power to vote on constitutional amendments proposed (or “referred” to voters) by the state legislature. For 23 states, this power of the legislatively referred amendment is the only form of direct democracy available for purposes of this Report. The legislatively referred amendment power is more limited—and less “direct”—than the other three direct democracy powers considered herein, because the measure submitted to voters is developed by the legislature, not initiated by voter petition.

In contrast, 26 states provide for one or more of three other direct democracy powers: the constitutional initiative, the statutory initiative, or the veto referendum. In 15 states, all three of these voter-initiated powers are available. An additional six states provide the initiative power, but only for statutory law—not for constitutional amendments. In contrast, three states provide the initiative power for constitutional amendments, but do not provide for statutory initiatives. And finally, the states of Maryland and New Mexico provide for the veto referendum, but not the initiative.

While these four forms of statewide direct democracy are the focus of this Report, other forms of direct democracy might be available in any given state, including bond referendums or other matters referred to voters by the state legislature; recall elections; constitutional conventions; or local ballot measures. Additionally, several states authorize a state commission to propose a measure for a popular vote. For instance, Florida and New Mexico authorize commissions to propose constitutional amendments, which are referred to voters similar to legislatively referred amendments. In some states, a commission on salaries for elected state officers may recommend updates to the salaries of elected officials; such recommendations may be referred for a popular vote.
## Types of Direct Democracy by State

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- ⚫ Indirect statutory initiative
- ⚫** Direct and indirect statutory initiative
- ⚫*** Yes / No. See Butler v. Watson, 338 So. 3d 599 (Miss. 2020) (holding that the state's ballot initiative process was insuperable due to a reduction in the state's number of congressional districts).
B. Election Timing
As scholars have established, the timing of an election can significantly affect turnout and eventual results. States vary in their legal requirements governing when elections on ballot measures must occur. More than half of all states (32) require ballot measures votes to occur at general elections, but there are many exceptions across and within states, as the graphic below illustrates.

In states with multiple types of direct democracy, the timing requirements can vary based on the type of ballot measure at issue. For instance, Arkansas allows voters to petition for a special election on a veto referendum, but requires other measures to be submitted to voters at regular statewide elections. In Montana, the legislature may call a special election on a statutory initiative or veto referendum, whereas a constitutional amendment must be submitted to voters at a regular statewide election. In Missouri and Washington, the legislature may order a special election with respect to a veto referendum, but different timing rules apply to other kinds of measures. In various other states with voter initiatives, including Florida, Michigan, Nebraska, Ohio, Oklahoma, and South Dakota, the legislature may call a special election with respect to legislatively referred amendments.

In a smaller number of states, it is the governor, not the legislature, with the power to
call a special election. For instance, in Missouri (where the legislature may call a special election for a veto referendum), the governor may call a special election for a proposed constitutional amendment, whether initiated by voters or referred by the legislature. In Oklahoma, the governor may call a special election for an initiative or a veto referendum. And in North Dakota and Utah, the governor may call a special election for a veto referendum.

There are other policy variations affecting the timing of elections. In some states that provide only legislatively referred amendments, the law simply gives the legislature the authority to set an election date. In contrast, other states require some measures to be submitted at specific general elections, such as elections for members of the state house of representatives, Governor, or U.S. House of Representatives, or elections in even numbered years.

C. Voter Information

There is significant interstate variety regarding the information states provide voters about ballot measures—including on the ballot and in other voter materials—as well as the players responsible for preparing those materials. Most states tend to require preparation of some information for voters beyond the proposed law itself, with input from multiple decisionmakers, as well as publication of notice of ballot measures in one or more state newspapers. Beyond that, details vary significantly.

1. Information States Must Share

First, states vary widely on what information they share with voters—on the ballot itself and sometimes in separate materials. On the ballot, some states provide voters with a bare-bones description and/or ballot question, whereas others provide extensive information about each measure. Requirements can vary not just between states, but also within states, with some states requiring more ballot information for initiatives and/or veto referendums than for legislatively referred amendments. This includes fiscal impact statements, which are more common for initiatives and veto referendums than for legislatively referred amendments.

To inform voters without overloading the ballot, many states provide for a voter information pamphlet or some other supplemental publication containing additional details. The information that states include in such materials ranges from barebones to quite comprehensive. States including Arizona, California, Idaho, Maine, and Oregon allow members of the public to submit comments and/or arguments for or against a measure and compile these comments in the pamphlet. In some states, members of the public known to support or oppose a measure may be appointed to a committee responsible for developing such arguments, or otherwise allowed to participate in the process of preparing voter informational materials. A variety of states that require preparation of a fiscal impact estimate also print such estimates or statements in the voter information pamphlet. Oregon also provides for the inclusion of a racial and ethnic impact statement for certain measures likely to have an effect on the criminal justice system.
Some states require distribution of the voter information pamphlet to registered voters and/or its display in public locations, whereas others simply require making the pamphlet available online or by request. States that require compilation of a voter information pamphlet tend to include information about all forms of ballot measures in such a pamphlet, with some exceptions.

States’ baseline practices of providing a ballot question and sometimes a pamphlet may be insufficient to inform voters about complex issues. States that go further have tried a number of options to encourage public participation and education. For instance, various states provide opportunities for members of the public to attend and/or provide testimony in state hearings pertaining to a specific ballot measure or a measure’s financial impact.
2. State Decisionmakers

States also vary a great deal as to who develops ballot language and other voter materials. The entities involved in the development of voter information materials may include the legislature (or a committee thereof), nonpartisan legislative reference bureaus or similar entities, the Governor or Lieutenant Governor, the Secretary of State, the Attorney General, a state elections board or official, a measure’s sponsors, and/or other commissions or committees. In a supermajority (40) of states, two or more entities play a role at some point in the process of developing the ballot contents and/or other voter informational materials. In many states with multiple types of direct democracy, the involved entities differ depending on the type of measure at hand.50

A narrower range of actors prepares the ballot language itself, though it is still common for multiple actors to be involved. In approximately 21 states, two or more entities develop ballot content, regardless of the type of ballot measure at hand. In approximately 20 states, the legislature has the primary authority to develop the ballot language for legislatively referred amendments.

In ten states with initiatives and/or veto referendums, the process for developing ballot language varies depending on whether the measure is initiated by voter petition or referred by the legislature. In most of these ten states, the legislature has authority over ballot language for legislatively referred amendments, while two or more entities share
responsibility for initiatives and/or veto referendums. One exception is South Dakota, where the Attorney General develops ballot language for all ballot measures, including legislatively referred amendments (the process nevertheless varies based on the type of measure, including because the state requires additional fiscal impact information, prepared by Director of the Legislative Research Council, for certain initiatives and veto referendums).\textsuperscript{51}

In Maine, the legislature has the authority to draft the ballot question for legislatively referred amendments as well as legislative alternatives to statutory initiatives, whereas the Secretary of State drafts the question for initiatives and veto referendums.\textsuperscript{52} In Nevada, the Nevada Legislative Counsel Bureau prepares the ballot question for a legislatively referred amendment, but the Secretary of State prepares the statement for initiatives and veto referendums, in consultation with the Attorney General.\textsuperscript{53} In Florida, the ballot title for a legislatively referred amendment must be included by the legislature in the underlying joint resolution, whereas a ballot summary for a constitutional initiative is drafted by the proposal’s sponsors and approved by the Secretary of State.\textsuperscript{54}

As noted above, various states allow members of the public to participate in the process of preparing voter informational materials in some fashion.\textsuperscript{55} Oregon has adopted a further innovative approach to public deliberation, which has also been tested in pilot form elsewhere: Citizen Initiative Review (CIR) Panels.\textsuperscript{56} While the CIR process may
likewise prove imperfect, it stands as a notable example of states experimenting with ways to foster a meaningful direct democracy scheme. The Oregon legislature first adopted the CIR process in 2009 to help the public make informed decisions about initiatives. Under this process, a special commission randomly selects a group of 18 to 24 Oregon voters to form a citizen panel to review a selected initiative. Over the course of several days, the panel must conduct its own hearings about the initiative, then collectively prepare statements that appear in the Oregon voter information pamphlet, along with other information appearing about all measures, such as a fiscal impact statement and explanatory statement. Panelists are compensated for their participation.

Political scientists have suggested that CIR panels reflect a “mini-public” or a microcosm of the broader Oregon voting public, whose deliberative statements in turn invite wider public deliberation. Empirical research indicates that the citizen panel statements are factually accurate, and that a significant subset of Oregon voters value and rely upon the statements. Compared to pamphlet materials developed by state entities, citizen panel statements have been found to consist of “more pointed analysis,” including things like complex pros and cons and policy impacts. Oregon voters have reported that reading a Citizen Initiative Review statement increases the likelihood that they will participate in the direct democracy process, while also indicating that additional public awareness about the process and how panelists are selected may help increase public trust in the citizen panel statements.

3. Newspapers and Other Media
Most states require that information about legislatively referred amendments, at least, be published in a designated newspaper or newspapers, though there are a limited number of exceptions in which no newspaper publication is required. Many states with initiatives and veto referendums also require that newspaper publications be made about these measures, as well. The precise contents of these publications vary by state (and sometimes, by type of measure), with some states requiring publication of the full text of an underlying measure, others requiring nothing more than the ballot language, and still others requiring something else, like a website where more information about a measure can be found, a financial impact estimate, or other explanatory materials.

Other states require the sharing of information through other channels. Washington requires the Secretary of State to “supplement” newspaper publications “with an equivalent amount” of radio and television broadcasts about any state ballot measure submitted to voters at a general election. Several other states allow officials to arrange for radio and/or television broadcasts but do not require them to do so. Georgia requires the Secretary of State to issue a press release announcing the availability of a summary of a proposed amendment, which must be shared with print as well as broadcast media.

D. Judicial Review
In addition to affecting whether and how voters are informed about ballot measures, state laws structuring direct democracy may also affect whether and how courts are
involved in the process. Challenges to ballot measures may address a range of topics, including the petition form, validity of signatures, and voter challenges to circulator eligibility. This Report, however, focuses on challenges to the wording of ballot measures or similar voter materials—a question that relates closely to whether direct democracy is empowering voters or misleading them.

Our survey reveals variety in state court involvement. In 16 states, state law does not explicitly provide for judicial review of direct democracy ballot contents or related materials, though judicial review may still be available through other channels, like mandamus. In the other 33 states, statutory or constitutional provisions explicitly allow (and guide) legal challenges to ballot measures or related materials, though not always to legislatively referred amendments. Some of these states allow any dissatisfied person or voter to file a challenge, whereas others limit legal challenges to an initiated measure’s sponsors or opponents. Massachusetts provides that a petition may be brought by any group of 50 voters.

There is also variety regarding the venue and timing of judicial review. In some states, challenges must be brought in a trial court, while in other states, the state supreme court has original jurisdiction to consider challenges. There is also variety in terms of when in the process courts may be involved, with some states providing explicitly for pre-election review, and others providing explicitly for post-election review.

In terms of substance, state courts tend to review ballot language to determine if it is unclear or misleading or otherwise in violation of state constitutional and/or statutory provisions. Most commonly, these standards for ballot language are set out in a state’s statutes. However, some state constitutions also set forth standards around ballot language. And in approximately eleven states, the operative sufficiency standard comes from case law, either because the constitutional and statutory provisions are silent, or because the case law goes beyond the positive-law requirements. Finally, in some states, there does not appear to be state case law on direct democracy ballot language or related issues.

II. Takeaways and Patterns

In the absence of current empirical data, this Report does not draw conclusions about specific best practices for states’ direct democracy laws. Instead, this Part draws upon the 50-state survey to identify ways in which a state’s legal framework for direct democracy may have negative consequences. In particular, this Part flags ways that the design of the legal framework may undermine direct democracy’s objective of empowering voters to make policy choices.

For instance, in some states, state actors can game election timing provisions to submit measures to the voters in elections expected to have a comparatively low turnout. Elsewhere, a lack of well-calibrated checks in the direct democracy process, including judicial review, may allow interested actors to coopt the process for their own ends by supplying argumentative or misleading language. There are particularly few checks on legislatively referred amendments in many states. In contrast, some states impose
so many checks on voter-initiated measures that they may become insurmountable obstacles.

**A. Gaming Election Timing**

State provisions on the timing of direct democracy elections can have a significant impact on how many people will cast a vote on any given proposal. It is well-documented that voters tend to turn out for primary elections at substantially lower rates than for general elections. Special election turnout rates can also be quite low. While recent experience reflects that voters will turn out for special elections to vote on popular issues, there are additional organizational costs necessary to educate the public that a special election is even taking place. Submission of direct democracy measures to voters at non-general elections may also be more likely to exclude historically marginalized communities, including voters of color. Evidence from the city of Colorado Springs suggests that Black and Hispanic individuals are significantly underrepresented in off-cycle elections (there, elections taking place in April of odd-numbered years) compared to November even-year elections.

The self-governance purpose of direct democracy is better realized when more voters participate in an election. This purpose is undermined when states game election timing provisions in order to submit a measure during a low-turnout election. As noted above, just 17 states require that all direct democracy measures be submitted to voters in general elections. Thus, in the other 32 states, submission at a general election may not be required, at least under some circumstances. In 28 of these states, ordering a special election is a policy lever that the legislature or governor can use in a way that undermines popular participation.

The attempted gaming of special elections has been on display recently in Ohio, as discussed above, and also in the state of Kansas. Following the *Dobbs* decision, the Kansas legislature proposed a constitutional amendment to restrict abortion rights. The state legislature placed the measure on the ballot in a special election “alongside the previously scheduled primaries, where, traditionally, only party-affiliated voters are allowed to vote,” which advocates argued could leave the approximately 29% of Kansas voters without a partisan affiliation unaware that they could cast a vote. In this instance, the legislature failed to shift the outcome based on the timing of the election: Kansans still turned out in high numbers and voted to reject the legislatively referred amendment.

Pennsylvania offers another example. The Pennsylvania legislature determines the manner and time at which a legislatively referred amendment is up for vote and may order a special election. As of 2022, 49 legislatively referred amendments had reached Pennsylvania voters since the state constitution was adopted in 1968, with voters approving 43 of those 49 proposals. Yet, only 14 of those 49 proposals “appeared during presidential or gubernatorial election years, races that typically see higher turnouts;” and the “overwhelming majority” of the adopted amendments were approved by voters in off-cycle elections.
B. Insufficient Checks on Legislatures

Our survey reflects interstate variety with respect to the checks and balances states establish in the direct democracy process. This is understandable: There is a potential tension between wanting to create healthy checks and wanting to avoid excessive burdens, and between wanting some judicial review and wanting to avoid disruptive judicial involvement. In general, states have ample room to experiment with the right balance.

That said, there may be special risks of action that undermines the popular will when state law imposes few checks on legislatively referred amendments. In Texas, West Virginia, and Wisconsin, states where legislatively referred amendments are the only form of direct democracy, the legislature prepares its own ballot language and has the authority to call a special election. And with the exception of Texas, none of these states explicitly provides for judicial review of direct democracy ballots or related materials.

Related, a number of states that offer both legislatively referred amendments and initiatives impose meaningful checks only on the latter. For example, in Idaho, Illinois, Nebraska, and Wyoming, the legislature has substantial control over the ballot language of a legislatively referred amendment. Further, although these states explicitly provide for judicial review with respect to an initiative or veto referendum, there is no comparable provision for challenges to legislatively referred amendment ballot language. Oklahoma goes even further, declaring statutorily that the ballot title challenge process available for initiatives and veto referendums is not available for legislatively referred amendments.

Short of an outright prohibition like Oklahoma’s, the absence of an explicit cause of action does not necessarily insulate the actions of state officials in the direct democracy process from judicial review. For example, in Idaho, the statute allowing for ballot title challenges explicitly pertains to initiatives and veto referendums, but not to legislatively referred amendments. Even so, the state supreme court has suggested that a pre-election petition for extraordinary relief may be brought to challenge ballot materials pertaining to a legislative referendum. However, other state courts have taken a different, more hands-off approach. For instance, the Georgia Supreme Court has held it lacks jurisdiction to consider pre-election challenges relating to proposed amendments, such as actions to enjoin measures from appearing on the ballot.

This discussion does not suggest that judicial review is the only available check or is an unmitigated good. State courts have sometimes reached implausible rulings that undermine the people’s direct democracy authority. Mississippi is the most notorious. In 2021, the Mississippi Supreme Court held the state’s constitutional initiative provision was rendered inoperable after the state lost a congressional seat in the wake of decennial redistricting, because the constitutional initiative provision referenced Mississippi’s five congressional districts, rather than the current four. In a dissenting opinion, Justice James Maxwell opined that the majority had “judicially kill[ed]” the state’s initiative power. Still, a system in which one interested actor has the only word raises risks of error or abuse of power that may be avoidable through modest checks.
C. Burdensome Checks on Voter-Initiated Measures
In contrast, some states make the initiative or referendum petition processes so cumbersome that even proposals backed by popular support are thwarted. As Miriam Seifter and Jessica Bulman-Pozen observe in *The Right to Amend State Constitutions*, some states have ratcheted up signature requirements and pre-circulation reviews.\(^\text{116}\) They describe, for example, Montana’s various layers of reviews that must take place before signature gathering: including development of a fiscal note, if needed; a review which may result in a “WARNING” being placed on the petition to indicate that an initiative “will likely cause significant harm to one or more business interests in Montana,” if so determined by the Attorney General; as well as reviews by the Secretary of State and legislative entities.\(^\text{117}\) They conclude that these and other “veto points” might derail an initiative.\(^\text{118}\)

Oklahoma provides another example of how a state’s petition-related policies can thwart direct democracy. As Professors Seifter and Bulman-Pozen note, although “Oklahoma has one of the country’s shorter signature gathering periods, at just 90 days,” organizers have nevertheless successfully teed up various ballot measures in the last ten years.\(^\text{119}\) The state legislature, in turn, has attempted to restrict the process. While the “most draconian” of its efforts have failed, a “seemingly modest adjustment” was passed in 2020 to require that petition signatures be verified rather than simply tabulated.\(^\text{120}\)

In 2022, this policy change resulted in a problematic signature verification process that “took nearly seven weeks, instead of the traditional two to three weeks.”\(^\text{121}\) As a result of this delay, the signatures for a marijuana legalization initiative were deemed verified too late, and the state supreme court held there was no duty to place the measure on the ballot for the general election.\(^\text{122}\) The Governor then certified the measure for a special election in which only 20% of eligible voters turned out and defeated the measure.\(^\text{123}\) Oklahoma’s experience illustrates that even when new petition-related requirements do not completely block a measure from reaching voters, they can be paired with other policy mechanisms like the special election to undermine democratic participation.
III. Conclusion

Our 50-state survey paints a complex, varied picture of the law of direct democracy in the states. The report canvasses the legal landscape that is defining a new wave of efforts to both utilize and burden direct democracy, and it highlights design factors that may affect the extent to which direct democracy empowers and informs voters. This snapshot is current through November 2023. As discussed above, direct democracy policies can and do change in real time.124

To be sure, levels of voter participation and understanding are affected by myriad factors beyond the written law governing state ballot measures. For one thing, a state’s other election laws affect who may participate in direct democracy elections, including through things like voter ID requirements, voter registration requirements, and absentee voting restrictions, which vary greatly state to state.125 Each state’s direct democracy environment is also affected by its unique landscape of players, including but not limited to civic organizations as well as journalists and other members of the media. All policies being equal, voters are likely to receive informational benefits where there is a robust, resourced community of civic organizations and journalists with the capacity to communicate about statewide ballot measures.126 Legal structures form an important piece of the puzzle, but not the only piece.

In the absence of current empirical data, this Report does not seek to offer best practices, but has flagged various trends as well as policy pitfalls that can undermine direct democracy—such as the manipulation of election timing, checks and balances problems, and processes that are particularly onerous for voter-initiated measures.

Future research could seek to measure empirically the relationship between the state policies examined herein and voter participation and understanding. Further work could also incorporate comparative input from states with different models or could engage in qualitative analysis with front-line practitioners. For now, one thing seems clear: The law of direct democracy is the site of important conflicts in the United States today, and a better understanding of the legal framework and its consequences is worth pursuing. This Report aims to contribute to that objective.
Endnotes


3 E.g., Benjamin I. Page & Martin Gilens, Democracy in America? What Has Gone Wrong and What We Can Do About It 53–54 (The Univ. of Chic. Press 2020).


8 See Derek Clinger, August Vote, supra note 6. After trying but failing to change state law to expressly authorize August special elections for legislatively referred amendments more broadly, the legislature nevertheless passed a joint resolution to authorize the August 2023 special election. See id.

9 See id. (noting the court held that the legislature retained its constitutional authority to set the election date by joint resolution “regardless of what statutory law says”)


12 The initiative’s proponents challenged the ballot summary as deceptive on various grounds: including its altering of the proposal’s term “fetus” to “unborn child;” its inversion and misstatement of the proposal’s protections in indicating the proposal would “always allow an unborn child to be aborted;” and its omission of the four other rights, apart from abortion, which would be protected under the proposal: “contraception, miscarriage care, fertility treatment, and continuing one’s pregnancy.” See Ohio Capital Journal Staff, supra note 11.


14 See, e.g., Ariz. Const. art. XXI, § 1; art. IV, pt. 1, § 1(5)–(6), (13)–(14) (requiring a 60% approval threshold for any ballot measure to approve a tax); Ark. State Legislature, HJR1005 – A CONSTITUTIONAL AMENDMENT TO BE KNOWN AS THE “CONSTITUTIONAL AMENDMENT AND BALLOT REFORM AMENDMENT”, https://www.arkleg.state.ar.us/Bills/Detail?id=HJR1005&ddBienniumSession=2021%2F2021R (last visited Oct. 31, 2023); Arkansas Sec’y of State, November 8, 2022 General Election and Nonpartisan Judicial Runoff Election, https://results.en.clari-tyelections.com/AR/115767/web/307039/#/summary (last visited Oct. 30, 2023) (showing the Constitutional Amendment and Ballot Initiative Reform Amendment’s defeat); Jason Rosenbaum, Missouri Republicans Are Still Trying To Make the State Constitution Harder To Amend, NPR (June 20, 2023 at 3:00 AM), https://www.npr.org/politics-elections-and-government/2023-06-20/misouri-republicans-are-still-trying-to-make-the-state-constitution-harder-to-amend (discussing H.J. Res. 43, 102d Gen. Assemb., 1st. Reg. Sess. (Mo. 2023), which ultimately failed to pass); South Dakota Secretary of State, June 7, 2022 Primary Ballot Question Informational Pamphlet (June 7, 2022), https://sdsos.gov/elections-voting/assets/BallotQuestionPamphlet2022Primary.pdf (explaining Constitutional Amendment C, which would have required a 3/5 majority approval of ballot measures imposing taxes or obligating more than $10 million); South Dakota Secretary of State, 2022 Primary Election Official State Canvass Results 9 (June 14, 2022), https://sdsos.gov/elections-voting/assets/2022PrimaryStateCanvassResults.pdf (showing Constitutional Amendment C’s defeat).

15 See 2023 Mont. Laws 647; 2021 Mont. Laws 554.

16 2021 Idaho Sess. Laws Ch. 255.


23 See id. at 33–34; see, e.g., Craig M. Burnett, Information and Direct Democracy: What Voters Learn About Ballot Measures and How It Affects Their Votes, 57 Electoral Studs. 223, 224 (2019) (concluding that voter knowledge varies by ballot measure and type of knowledge, but “in general, knowledge of a ballot measure’s specifics is low”).

24 Our snapshot does not consider the entirety of state policies governing direct democracy. For instance, policies governing the circulation of voter petitions, geographic distribution of petition signatures, or signature verification or challenge processes, are not discussed at length herein. State legislatures have sought to alter some of these processes in recent years, including by dramatically increasing signature requirements or adding signature verification requirements which can drag out the process and in turn negatively impact policy campaigns. See Butler v. Watson, 338 So.3d 599 (Miss. 2021) (holding the ballot initiative process to be inoperable due to a reduction in the state’s number of congressional districts).

25 See Bulman-Pozen & Seifter, Right to Amend, supra note 13, at *17–20.

26 See Bulman-Pozen & Seifter, supra note 13, at *6.

27 In one of these states, Mississippi, the constitutional initiative is not currently available. See Butler v. Watson, 338 So.3d 599 (Miss. 2021) (holding the ballot initiative process to be inoperable due to a reduction in the state’s number of congressional districts).

28 See Fla. Const. art. XI, §§ 2 (providing for a constitution review commission to convene every 20 years, which may recommend a revision to the state constitution or any part thereof), § 6 (providing for a taxation and budget reform commission to examine the state’s budgetary and related processes; such commission may
propose recommended statutory changes or constitutional revisions), 5 (providing that constitutional amendments or revisions referred by a commission must be submitted to voters for a popular vote); N.M. Const. art. XIX, § 1 (providing that amendments may be proposed by an independent commission established by law for such purpose, and that such proposed amendments are referred for a popular vote).

28 See, e.g., Ariz. Const. art. V, § 12 (requiring that commission recommendations be submitted to voters for adoption); Wash. Rev. Code §§ 43.03.305, -310 (5) (providing that "[s]tate laws regarding referendum petitions shall apply to [commission proposed] schedules to the extent consistent with Article XXVIII, section 1 of the state Constitution"). See also Legislative Compensation Setting, National Conference of State Legislatures (June 6, 2022), https://www.ncsl.org/about-state-legislatures/legislative-compensation-setting.

29 See Sarah F. Anzia, Timing and Turnout: How Off-Cycle Elections Favor Organized Groups 12 (Univ. of Chicago Press 2014) ("moving local elections from off-cycle to the same day as presidential elections is three times more effective at increasing turnout than the most effective mode of mobilization") (emphasis in original); Brian F. Schaffner et al., Hometown Inequality: Race, Class, and Representation in American Local Politics 23-24 (Cambridge Univ. Press 2020). See also infra Part II.A.

30 See Ark. Const. art. 5, § 1; Ark. Code Ann. § 7-11-201 et seq.

31 See Mont. Const. art. III, § 6 (pertaining to statutory initiatives and veto referendums); id. art. XIV, §§ 8-9 (pertaining to proposed constitutional amendments).

32 See Mo. Const. art. III, § 52(b) (pertaining to veto referendums), art. XII §§ 2(a)-2(b) (pertaining to proposed constitutional amendments); Mo. Rev. Stat. § 16.334(3) (pertaining to statutory initiatives). See also Wash. Const. art. II, §§ 1(d) (pertaining to referendums), 1(a) (pertaining to initiatives), art. XXIII, § 1 (pertaining to legislatively referred amendments).

33 See Fla. Const. art. XI, § 5(a) (providing the legislature may call a special election for a legislatively referred amendment with a 3/4 supermajority vote); Mich. Const. art. XII, § 1 (providing that a legislatively referred amendment is submitted to voters at least 60 days after it is approved by a 2/3 supermajority of the legislature, either "at the next general election or special election as the legislature shall direct."); Neb. Const. art. XVI, § 1 (providing that the legislature may call a special election with 4/5 supermajority support); Neb. Rev. Stat. §§ 49-201, 49-235 (providing that any special election must fall on a Tuesday and be not less than 60 days after passage of the act calling for the election); Ohio Const. art. XVI, § 1 (providing that a legislatively referred amendment must be approved by a 3/5 supermajority of the legislature; it is then submitted at the next general election or a special election as the General Assembly may prescribe); Okla. Const. art. XXIV, § 1 (providing that the legislature may call a special election for a legislatively referred amendment with a 2/3 supermajority vote); S.D. Codified Laws § 12-13-27 (providing that the legislature may set a special election for a legislatively referred amendment).

34 See Mo. Const. art. III, § 52(b), art. XII, § 2(b).


36 See N.D. Const. art. III, § 5; Utah Code Ann. § 20A-7-301(1)(b).

37 See, e.g., N.C. Const. art. XIII, § 4 (providing that a proposed constitutional amendment "shall be submitted at the time and in the manner prescribed by the General Assembly"); Pa. Const. art. XI, § 1 (providing that a proposed amendment shall be submitted to voters "in such manner, and at such time at least three months after approval by the legislature for the second time" as the General Assembly shall prescribe"); Tex. Const. art. XVII, § 1(a) (providing that the date of an election on a legislatively referred amendment "shall be specified by the Legislature").

38 Ky. Const. § 256; S.C. Const. art. XVI, § 1.

39 Tenn. Const. art. XI, § 3.

40 Md. Const. art. XVI, § 2 (pertaining to veto referendums). Note that a legislatively referred amendment in Maryland must be submitted at a general election. See id. art. XIV, § 1.


43 See generally Hillary C. Shulman, et al., Predicting Vote Choice and Election Outcomes from Ballot Word- ing: The Role of Processing Fluency in Low Information Direct Democracy Elections, 39 Pol. Commc’n 652,
54 Fla. Stat. § 101.161(1)–(3).
55 See, e.g., Ariz. Rev. Stat. § 19-123(A)(3)–(4), (D) (allowing any person or organization to file an argument advocating for or against a ballot measure); Cal. Elec. Code §§ 303, 9084(c), 9067, 9041–42 (providing for submission of arguments for and against a ballot measure); Colo. Const. art. V, § 1(75)(a)(II) (providing that any person may file written comments for consideration by the research staff during preparation of the analysis for the voter information booklet); Colo. Rev. Stat. § 1-40-124.5(1.7)(a) (providing that before the booklet is finalized, the legislative research director must hold a public meeting, and may then modify the booklet in response to public comments); Neb. Rev. Stat. § 32-1405.01 (indicating sponsors as well as opponents and other sources may provide information for purposes of the arguments developed by the Secretary of State); Nev. Rev. Stat. § 293.252(1), (5)(c) (providing that arguments are drafted by committees appointed by the Secretary of State, and that committees may seek and consider comments from the general public); Or. Rev. Stat. § 251.255(1)–(2)(a), allowing any person to file arguments supporting or opposing a measure if they submit either a $1,200 filing fee or a petition containing the signature of 500 active electors).
57 Id. at 69–70.
59 See Or. Rev. Stat. §§ 250.139(1), (4)(a), 250.137. Factors involved in selecting initiatives to feature in this process include the fiscal impact of the measure, whether the measure would amend the state constitution, the availability of funds to conduct reviews, and other criteria established by the state’s Citizen Initiative Review Commission by rule. Id. § 250.139(2).
60 The CIR panel must receive information from two designated proponents of the measure, as well as two opponents appointed by the state commission. Id. § 250.139(6).
61 Panels prepare statements including statements for and against the measure, an impartial summary of the panel’s key findings (which may also include a tally of how many panelists agree with such findings), and a statement of additional or fiscal considerations related to the measure (if supported by at least 3/4 of the citizen panelists). Or. Rev. Stat. §§ 250.139, 250.141.
62 For any kind of state ballot measure, the voter information pamphlet must also include, among other things, an impartial explanatory statement prepared by a committee of five people: two selected by the measure’s proponents; two selected by the Secretary of State from opponents, if any; and a fifth member selected by the other four. Or. Rev. Stat. §§ 251.185(I)(c), 251.215., 251.205(5). Once this explanatory statement is drafted, a public hearing is held, and members of the public may submit suggested changes or other information. Id. §§ 251.215, 251.225.
63 See generally Or. Rev. Stat. § 250.139.
64 Gastil et al., Vicarious Deliberation, supra note 56, at 62–63.
65 See id. at 72–75.
66 Id. at 73.
68 States that do not require newspaper publications about ballot measures include Arizona, New Hampshire, and South Carolina. Additionally, the states of Alaska and Maine do not require newspaper publications with respect to legislatively referred amendments (although public notice of some kind is required with respect to initiatives). See Alaska Stat. § 15.45.195 (for initiatives, requiring the Lieutenant Governor to hold public hearings and provide public notice of the same); Me. Stat. tit. 21-A, §§ 905-A, 907 (for initiatives, requiring publication of the ballot question in newspapers, as well as public hearings).


71 See, e.g., Ind. Code §§ 3-10-3-1(b), 5-3-1-15; Minn. Stat. § 204D.16; Neb. Rev. Stat. § 32-1413.

72 See, e.g., Ark. Code Ann. §§ 7-9-113(b)(2)(B), (c)(2)(A)-(B) (providing that for initiatives and veto referendums, the publication must contain the measure’s popular name, ballot title, and a website where the full text of the measure is published); Fla. Stat. §§ 100.371(13)(c), (e)(5) (providing for online publication of financial impact estimate related information, with respect to initiatives); Ga. Code Ann. § 50-12-100 (requiring publication of a summary of the proposed constitutional amendment prepared by the Attorney General, Legislative Counsel, and Secretary of State); Md. Code Ann., Elec. Law § 7-105(a), (c) (requiring publication or distribution of a sample ballot); Mass. Gen. Laws ch. 54, § 53 (requiring publication of the ballot contents as well as fiscal impact statements); N.Y. Elec. Law §§ 4-116(2), 4-108(1)(d), (3) (requiring publication of an abstract prepared by the State Board of Elections, with the advice of the Attorney General); Nev. Rev. Stat. § 293.253 (requiring publication of the full text, ballot language, as well as arguments for and against the measure and any fiscal note); Tex. Const. art. XVII, § 1(b); Tex. Elec. Code §§ 274.022–274.023 (requiring publication of the ballot language as well as a brief explanatory statement prepared by the Secretary of State and approved by the Attorney General).


75 GA. CODE § 21-2-4(b).


77 See Full Report State Summaries infra pp. 32 (pertaining to AL), 66 (GA), 69 (HI), 80 (IN), 85-86 (KS), 134-35 (NH), 138 (NJ), 141 (NM), 146 (NC), 165-66 (PA), 168-69 (RI), 178 (TN), 187 (VT), 190 (VA), 198 (WV), 201 (WI).

78 See, e.g. State ex rel. Anderson v. Shanahan, 327 P.2d 1042, 1043, 1047 (Kan. 1958) (accepting an original proceeding in quo warranto seeking to oust the secretary of state from publishing a proposed constitutional amendment; holding the secretary of state was required to publish the constitutional amendment in full on the ballot); State ex rel. Clark v. State Canvassing Bd., 888 P.2d 458, 462–65 (N.M. 1995) (issuing a writ of mandamus and holding a constitutional amendment approved by the electorate violated the state’s single-purpose requirement; also suggesting that a ballot title prepared by the Secretary of State should be intelligible and impartial); City & Cnty. of Honolulu v. State, 431 P.3d 1228, 1235–37 (Haw. 2018) (describing how the court granted a pre-election petition for extraordinary writ based on an invalid ballot question).

79 Delaware is excluded from this number because it does not require that constitutional amendments proposed by the legislature be submitted to the voters.

80 Sometimes, these explicit provisions provide for judicial review of the ballot contents of initiatives and/or veto referendums, but not for legislatively referred amendments. See generally infra Part III.A.2. And in Oklahoma, the applicable statute expressly indicates that judicial review is not available with respect to legislatively referred amendments. See Okla. Stat. tit. 34, § 10(B).

Attorney General or an Attorney General determination that a petition was legally deficient or sufficient) and Utah Code Ann. §§ 20A-7-209(4), 20A-7-308(4) (providing for a challenge to the short title and/or summary prepared by the Office of Legislative Research and General Counsel by at least three sponsors of an initiative or veto referendum).

83 E.g., Wash. Rev. Code §§ 29A.72.080, 29A.36.060, 29A.32.040(3), 29A.72.028 (allowing for challenges in Thurston County Superior Court); Ky. Rev. Stat. Ann. § 120.280(1) (providing for post-election challenges filed in Franklin Circuit Court); Neb. Rev. Stat. §§ 32-1412(1), (4), 32-1410(3) (allowing any person to bring a challenge in the Lancaster County District Court, with respect to the placement of an initiative or veto referendum on the ballot and/or a ballot title developed by the Attorney General); Wyo. Stat. Ann. §§ 22-24-321, 22-24-418 (allowing actions in the Laramie County District Court pertaining to a determination of the Secretary of State or Attorney General with respect to an initiative or veto referendum).
84 E.g., Mont. Code Ann. § 13-27-316(1)–(2) & 2023 Mont. Laws 647 § 39 (providing for judicial review of ballot statements via original actions filed with the Montana Supreme Court); N.D. Const. art. III, § 7 (providing the North Dakota Supreme Court with original jurisdiction to review all decisions of the Secretary of State in the initiative and/or veto referendum petition process); Ohio Const. art. XVI, § 1 (providing the Ohio Supreme Court with original, exclusive jurisdiction to hear challenges pertaining to the sufficiency of a petition and/or to a ballot); see S.C. Code Ann. §§ 7-13-2130 (providing the South Carolina Supreme Court with original, exclusive jurisdiction over proceedings to challenge an explanation of a proposed amendments’ meaning and effect prepared by the state’s Constitutional Ballot Commission).
85 For example, the Commonwealth of Kentucky explicitly provides for post-election challenges filed within 15 days after election results are returned. Ky. Rev. Stat. Ann. § 120.280(1). The court has dismissed a pre-election challenge for lack of standing. See Ward v. Westerfield, 653 S.W.3d 48, 51–58 (Ky. 2022). In contrast, the North Dakota Constitution provides for pre-election proceedings to challenge a decision of the Secretary of State with respect to initiatives and veto referendums, but indicates that if such decision is being reviewed at the time the ballot is prepared, “the secretary of state shall place the measure on the ballot and no court action shall invalidate the measure if it is approved at the election by a majority of the votes cast thereon.” N.D. Const. art. III, § 7.
86 See State Summaries infra. There are several known exceptions to this general trend. For example, in Georgia and Indiana, courts ask only whether a measure was identifiable compared to other measures. See Donaldson v. Dep’t of Transp., 414 S.E.2d 638, 640 (Ga. 1992); Oviatt v. Behme, 147 N.E.2d 897, 899–900 (Ind. 1958). In Virginia, statutes make clear that the failure to comply with the statutory standards will not affect the validity of a legislatively referred amendment. Va. Code Ann. § 30-19.9. See also Goldman v. State Bd. of Elections, No. 201067, 2020 WL 5498497 (Va. Sept. 9, 2020) (dismissing petition for writ of mandamus against Board had no role in determining ballot question language and would not have a clear duty to reject it even if defective). And in Oklahoma, a statute explicitly prohibits judicial review of ballot language with respect to legislatively referred amendments. See Okla. Stat. tit. 34, § 10(B).
Additionally, in some states, no sufficiency standard was identified in the constitution, statutory provisions, or case law. This includes the states of: Connecticut, North Carolina, Texas, Vermont, and West Virginia. This also includes Illinois with respect to legislatively referred amendments (with respect to constitutional initiatives, a sufficiency standard can be found in Ill. Comp. Stat. § 20/2(b)).
88 Ala. Const. § 285; Colo. Const. art. V, § 1(5.5); Haw. Const. art. XVII, § 3; Kan. Const. art. XIV, § 1; Ky. Const. § 256; Me. Const. art. IV, pt. 3, § 20; Mass. Const. amend. art. XLVIII; Ohio Const. art. XVI, § 1; art. II, § 10; Wash. Const. art. II, § 19; Wis. Const. art. XII, § 1; Wyo. Const. art. III, § 24. See also Wis. Just. Initiative, Inc. v. Wis.
Elections Comm’n, 2023 WI 38, 407 Wis. 2d 87, 990 N.W.2d 122 (holding a “not fundamentally counterfactual” standard stems from the Wisconsin Constitution’s “submission” requirement).

See, e.g., Quality Educ. & Jobs Supporting I-16-2012 v. Bennett, 292 P. 3d 192, 194 (Ariz. 2013) (determining whether statutory initiative ballot language was false or clearly misleading, a standard not found in the state constitution or statutes) (citing Ariz. Rev. Stat. § 19-125); League of Women Voters Minn. v. Ritchie, 819 N.W.2d 636, 644 (Minn. 2012) (requiring that a ballot question not “be so misleading that it violates the Minnesota Constitution because it deprives voters of the constitutional right to cast a vote for or against the proposed constitutional amendment” although Minn. Const. art. IX, § 1 requires only that proposed amendments be “submitted to the people”); Stander v. Kelley, 250 A.2d 474, 480 (Pa. 1969) (asking whether “the question as stated on the ballot fairly, accurately and clearly apprize the voter of the question or issue to be voted on[,]” a standard that does not appear in the constitution or the relevant statute).

See, e.g., Becker v. Riviere, 641 S.W.2d 2, 4 (Ark. 1982) (requiring that initiative ballot titles be “intelligible, honest, and impartial” where the relevant statute requires only that ballot titles “briefly and concisely state the purpose of the proposed measure”); Stop Slots MD 2008 v. State Bd. of Elections, 34 A.3d 1164, 1189 (Md. 2012) (articulating several standards for ballot language sufficiency as developed in case law which go beyond standards provided for in constitutional and statutory provisions); Gormley v. Lan, 438 A.2d 519, 525 (N.J. 1981) ("There is another requirement that the brief statement must satisfy. It must be fair. Although there is no statutory provision to that effect, courts have so ruled in similar contexts["]’); Indigenous Lifeways v. N.M. Compilation Comm’n Advisory Comm., 528 P.3d 678, 689 (N.M. 2023) (“[A] ballot title should be intelligible, and impartial . . . and ‘be free from any misleading tendency whether of amplification, of omission, or of fallacy.’”) (quoting Clark, 888 P.2d at 464 (N.M.1995)) (articulating ballot language sufficiency standard beyond what appears in the state’s veto referendum provisions).

See, e.g., Full Report State Summaries infra pp. 83 (pertaining to IA), 178 (pertaining to TN), 187 (pertaining to VT).


See e.g., Turnout as a Percentage of Voting-Age Population in Five Types of Texas Elections and Presidential Elections Nationwide, 1970-2022, The Tex. Pol. Project at Univ. of Tex. at Austin, https://texaspolitics.utexas.edu/educational-resources/comparing-turnout-constitutional-elections (last visited Oct. 30, 2023) (showing that special constitutional elections have, with few exceptions, yielded lower voter turnout compared to other Texas and national elections); Daniel Nichanian, Oklahomans Reject Recreational Weed in Low-Turnout Election, BOLTS (Mar. 8, 2023), https://boltsmag.org/oklahoma-rejects-recreational-marijuana/ (noting that turnout in a spring 2023 special election for a proposed amendment was 37% lower than turnout on a proposed amendment in a June 2018 election, which coincided with a primary election); Danielle Ohl, A Complete Guide and Amendment Tracker for Proposed Changes to Pennsylvania’s Constitution, Spotlight PA, https://www.spotlightpa.org/news/2022/01/pennsylvania-constitution-amendments-tracker-complete-guide/ (last visited Oct. 9, 2023) ("Since 1968, the year Pennsylvania’s current constitution went into effect, voters rejected only six of 49 proposed amendments that reached them. Only 14 of those ballot questions appeared during presidential or gubernatorial election years, races that typically see higher turnouts."); Adam Edelman, Ohio Banned August Elections. Then the GOP Planned One That Could Help Preserve an Abortion Ban, NBC News (May 27, 2023, 4:00 AM), https://www.nbcnews.com/politics/elections/ohio-banned-august-elections-gop-planned-one-help-preserve-abortion-ba-rcna85635 (reporting that in early 2023, “Ohio Republicans enacted a law that effectively scrubbed August special elections from the state’s calendar, calling them overly expensive, low turnout endeavors that weren’t worth the trouble”).

turnout the state usually sees in general elections”).

95 See, e.g., Greg R. Lawson, Ohio Should Limit Tax Levy Questions to General Election Ballots: Interested Party Testimony to Ohio Senate Local Government and Elections Committee re: Ohio House Bill 458, The Buckeye Institute (Nov. 29, 2022), https://www.buckeyeinstitute.org/research/detail/the-buckeye-institute-ohio-should-limit-tax-levy-questions-to-general-election-balloons (arguing that “[o]ff-cycle elections empower a small but motivated fraction of voters to hold sway over the vast majority of voters who are likely unaware that a question has even been asked, let alone put on a ballot”).

96 See generally, Alex Burness, To Boost Turnout, Some Cities Just Synced Up Their Local Elections With National Cycles, BOLTS (Nov. 22, 2022), https://boltsmag.org/even-year-local-elections/ (noting that, “[c]ompared to the larger electorate that votes in a presidential or midterm year, off-cycle elections tend to see depressed turnout and draw a wealthier and whiter electorate, which can skew whose interests are spoken for in local politics, research shows”); Schaffner, supra note 29.

97 See Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgment at 13, Citizens Project v. Colo. Springs (No. 1:22-cv-1365-CNS-MDB), available at https://static1.squarespace.com/static/60a559b59cf-c63389f67f892/t/64de2d0e26ec771b3a019030/1692282127210/Pls+Opp+SJ.pdf (“Black and Hispanic individuals constitute about 7% of the electorate in municipal elections compared to roughly 13% of the pool of registered voters . . . This stark racial disparity—an underrepresentation of around 6 percentage points (or close to 50%)—shrinks significantly in November even-year elections. In these elections, Black and Hispanic individuals comprise 9% to 11% of the electorate, so their underrepresentation falls to 2 to 4 percentage points (or as low as 15%).”)

98 States providing for special elections in at least some ballot measure elections, as determined by the legislature and/or governor include the following. In addition to these, in Arkansas, a veto referendum may be submitted at a special election if 15% of all legal voters petition for a special election, Ark. Const. art. 5, § 1:

a. Alabama. Ala. Const. art. XVIII, § 284; Ala. Code § 17-6-26(b);

b. Alaska (allowing for special elections with respect to initiatives and veto referendums). Alaska Const. art. X, §§ 4-5; Alaska Stat. §§ 15.45.190, 15.45.420;

c. Arizona (with respect to proposed constitutional amendments, whether initiated or referred). Ariz. Const. art. XXI, § 1; Ariz. Rev. Stat. § (B); 19–124(B);

d. California (with respect to initiatives and veto referendums). Cal. Const. art. II, §§ 8(c), 9(c); Cal. Elec. Code §§ 9040, 357;

e. Florida. Fla. Const. art. XI, § 5(a);

f. Iowa. Iowa Code art. 10, § 1; Iowa Code § 49A.5;

g. Kansas. Kan. Const. art. 14, § 1;

h. Louisiana. La. Const. art. XIII, § 1(A)(1);

i. Maine. Me. Const. art. IV, pt. 3, § 17(3), art. IV, pt. 3, § 18(2);

j. Michigan. Mich. Const. art. XII, § 1;

k. Mississippi (providing the legislature may fix the date of the election on a legislatively referred amendment). Miss. Const. art. 15, § 273(2);

l. Missouri. Mo. Const. art. III, § 22(b), art. XII, §§ 2(a)–2(b);

m. Montana. Mont. Const. art. III, § 6;


o. Nevada (providing the legislature may fix the data of the election on a legislatively referred amendment). Nev. Const. art. 16, § 1(1);

p. New Mexico (with respect to legislatively referred amendments). N.M. Const. art. XIX, § 1;

q. North Carolina (providing the legislature with authority to prescribe the election date). N.C. Const. art. XIII, § 4;

r. North Dakota (with respect to veto referendums, if called by the Governor). N.D. Const. art. III, § 5;

s. Ohio (with respect to legislatively referred amendments). Ohio Const. art. XVI, § 1;


u. Oregon. Or. Const. art. IV, § 1(4)(c), art. XVII, § 1;


w. South Dakota (with respect to legislatively referred amendments). S.D. Const. art. XXIII, §§ 1, 3; S.D. Codified Laws §§ 12-13-27, 12-13-1;

x. Texas (allowing the legislature to specify the election date). Tex. Const. art. XVII, § 1(a);
y. Utah (with respect to veto referendums, if called by the governor). Utah Code Ann. §§ 20A-7-301(1)(b), 20A-7-303(2)(a);

z. Washington (with respect to veto referendums, if called by the legislature). Wash. Const. art. 11, § 1(d); Wash. Rev. Code §§ 29A.72.030, 29A.72.130;


ab. Wisconsin (providing elections will take place “in such manner and at such time as the legislature shall prescribe.”). Wis. Const. art. XII, § 1.

Statutes that explicitly allow statewide ballot measures to be submitted at primary elections include Alabama, Alaska, and Pennsylvania. In addition to these, some states like Mississippi, Nevada, and Texas provide the legislature may fix the date of the election for a legislatively referred amendment, without limit. See Miss. Const. art. 15, § 273(2); Nev. Const. art. 16, § 1(1); Tex. Const. art. XVII, § 1(a).


100 Id.

101 See Chang, supra note 8.

102 Ohl, supra note 94.

103 Id.


105 On one hand, judicial review can protect the integrity of the direct democracy processes and the people’s broader direct democracy rights. See, e.g., Scott L. Kafker & David A. Russcol, The Eye of a Constitutional Storm, 2012 Mich. St. L. Rev. 1279, 1296–1300. It can ensure that the proper procedures have been followed—which “serves the people and not just the proponents of the proposal.” Id. at 1326. Disruptive judicial review might include review which overturns the will of voters. This happened in South Dakota in 2020, when voters approved an amendment legalizing marijuana for recreational and medical uses, but the state supreme court declared the amendment invalid due to a violation of the requirement that an amendment only embrace a single subject. Decision Issued in Thom, Miller v. Barnett and In re Election Contest as to Amendment A, South Dakota Unified Judicial System (Nov. 24, 2021), https://ujs.sd.gov/uploads/news/NUZ_RSRC_20211124095253.pdf; South Dakota’s Supreme Court Rules Against Legalization of Recreational Marijuana, The Associated Press (Nov. 24, 2021, 1:08 PM), https://www.npr.org/2021/11/24/1058884032/south-dakota-supreme-court-rules-against-legalization-of-recreational-marijuana. At the same time, pre-election litigation can be costly and disruptive to organizing efforts. See, e.g., Michael Moline, ACLU to FL Supreme Court on Marijuana Initiative: Remember Your Place, Fla. Phoenix (July 24, 2023, 4:55 PM), https://floridaphoenix.com/2023/07/24/aclu-to-fl-supreme-court-on-marijuana-initiative-remember-your-place/. And overzealous or inconsistent judicial review may block measures that are backed by popular support from reaching the ballot at all. See id.

106 Tex. Const. art. XVII, § 1(a); Tex. Elec. Code §§ 41.001(a), 52.072, 274.001(a)(b), 274.003; W. Va. Const. art. XIV, § 2; W. Va. Code § 3-11-2; Wis. Const. art. XII, § 1; Wis. Stat. §§ 5.64(2)(am), 13.175.

107 In Texas, any question relating to the “validity or outcome of a constitutional amendment election may be raised in an election contest,” which is the “exclusive method for adjudicating such questions.” Tex. Elec. Code § 233.014. Any such contest must be filed before the final canvass of election results is completed. Id.


109 See, e.g., Idaho Code § 34-1809(3) (providing for judicial review with respect to an initiative or veto referendum); 10 Ill. Comp. Stat. §§ 5/28-4, 5/28-5, 5/10-8 (providing for judicial review pertaining to the submission of an initiated constitutional amendment); Neb. Rev. Stat. §§ 32-1412(1) (allowing for challenges if the Secretary of State refuses to place an initiative or veto referendum on the ballot), 32-1412(2) (allowing for challenges on the basis that a petition is not legally sufficient), 32-1410(3) (allowing for challenges to ballot titles developed by the Attorney General); Wyo. Stat. Ann. §§ 22-24-321, 22-24-418 (providing for challenges with respect to initiatives and veto referendums).

110 See Okla. Stat. tit. 34, § 10(A), (B).
See Idaho Code § 34-1809(3).


*Butler v. Watson*, 338 So.3d 599 (Miss. 2021).

*Id.* at 616, ¶ 52 (Maxwell, J., dissenting) (“The majority confidently and correctly points out that ‘[n]ow—here therein does the Constitution allow amendment by the Supreme Court.’ . . . Yet the majority does just that—stepping completely outside of Mississippi law—to employ an interpretation that not only amends but judicially kills Mississippi’s citizen initiative process.”) (citation omitted).


*Id.* at *21 (citing 2023 Mont. Laws 647 § 30).

*Id.*

*Id.* at *21–22.

*Id.* at *22.

*Id.* at *23 (citing *Nichols v. Ziriax*, 518 P.3d 883, 885 (Okla. 2022)).

*Id.*

See supra text accompanying note 13.


# State Summaries

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Alabama does not have statewide initiatives or veto referendums but has legislatively referred amendments. Proposed amendments may be submitted to voters at either the next general election following legislative approval, or another day appointed by the legislature, if it is at least three months following adjournment of the approving legislature. Although the legislature is responsible for drafting the official ballot language, a commission comprised of eighteen members prepares a more comprehensive voter guide or “ballot statement” that is made available to the public before the election. Individual legislators are also permitted to submit statements supporting or opposing a proposed amendment, which are posted on the same state webpage as the commission’s ballot statement. Alabama’s provisions governing legislatively referred amendments do not explicitly provide for judicial review of ballot language or related materials, but review may be available under other channels, such as actions for declaratory and/or injunctive relief.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Alabama**

Alabama does not have statewide initiatives or veto referendums but has legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**

- **Legislatively Referred Constitutional Amendments**
  
  An amendment to the state constitution proposed by the legislature must be approved by Alabama voters. Ala. Const. art. XVIII, § 284.

**Election Timing**

After approval by 3/5 of all members elected to each house of the legislature, a proposed constitutional amendment is submitted to Alabama voters at either the next general election following legislative approval, or “upon another day appointed by the
legislature, not less than three months after the final adjournment of the session of the legislature at which the amendments were proposed.” Ala. Const. art. XVIII, § 284. State statutes indicate that a legislatively referred amendment may be submitted at a primary election. See Ala. Code § 17–6–26(b).*

**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for any proposed constitutional amendment in Alabama must display the following.

- A description of the substance or subject matter of the proposed amendment that clearly indicates the nature of the amendment. Ala. Const. art. XVIII, § 285; Ala. Code § 17–6–41. This description is prepared by the legislature. See id.

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

Under the state constitution, the Governor must publish a proclamation that provides notice of the election and the full text of the proposed amendment in every county in “such manner as the legislature shall direct.” See Ala. Const. art. XVIII, § 284. Publication must be made for at least four successive weeks before the election. See id.

**Voter Information Pamphlet**

The Alabama Fair Ballot Commission is responsible for creating a guide or “ballot statement.” See Ala. Code § 17–6–81(b). The Commission is made up of eighteen members, including the Governor, Lieutenant Governor, Commissioner of Agriculture and Industries, Speaker of the House of Representatives, and the Secretary of State (or their designees), persons from specified academic institutions, both attorney and non-attorney citizen members appointed by the political members, and others. See id. sub. (a)(2). The Commission’s ballot statement must be adopted by a majority of present members; to the extent that a majority cannot agree, the Commission is to publish any portions which can be agreed upon. See id. sub. (d)–(e).

The ballot statement must include the following information, which must be “written in plain, nontechnical language and in a clear and coherent manner using words with common and every day meaning that are understandable to the average reader.” See Ala. Code § 17–6–81(c). Further, the statement must be “true and impartial statements of the effect of a vote for and a vote against the measure in language neither intentionally argumentative nor likely to create prejudice for or against” the proposal. Id.

- The full text of the proposed amendment (to include sponsors, cosponsors, and the text of the question that will appear on the official ballot). See id. sub. (b)(1).
- A summary and a full copy of any implementing legislation directly related to the

proposed amendment. See id. sub. (b)(2).

• The placement of the proposal on the statewide ballot. See id. sub. (b)(3).

• A “plain language summary” of the proposal, which must include “at a minimum, the legal or constitutional authority for its passage, the effect of the . . . measure if it is passed, including its cost and source of funding, and the effect of the . . . measure if it is defeated.” See id. sub. (b)(4).

• With respect to the financial impact, the statement must “include language as to whether the measure will increase, decrease, or have no impact on taxes, including the specific category of tax.” Id. sub. (c).

The ballot statement must be published on the Secretary of State’s website at least 60 days before the election and must also be distributed in the same manner provided for distribution of sample ballots; in addition, at least 55 days before the election, copies must be made available for public distribution at the office of the Secretary of State or at the office of each probate judge. See Ala. Code § 17-6-81(b), (e).

In addition to the Commission’s ballot statement, any member of the legislature or their designee may post individual statements supporting or opposing a proposed constitutional amendment on the same portion of the Secretary of State’s website where the ballot statement is posted. See Ala. Code § 17-6-81(g). Each individual statement must not exceed 300 words and must be submitted for posting at least ten days prior to the election. Id.

JUDICIAL REVIEW
When and how can the court step in?

Alabama’s provisions governing legislatively referred amendments do not explicitly provide for judicial review of ballot language or related materials, but review may be available under other channels, such as actions for declaratory and/or injunctive relief.

Sample case: Chappell v. State, 810 So. 2d 639 (Ala. 2001) (rejecting a voter challenge to the ballot description; holding the ballot description clearly indicated the nature of the proposed amendment, and that the description is not required to describe the entire substance or subject matter of the proposed amendment).
Alaska has statutory initiatives (but not constitutional initiatives), veto referendums, and legislatively referred amendments. Alaska is distinct in the sense that initiatives and veto referendums may be voted upon at a special and/or primary election, as directed by the Lieutenant Governor, whereas legislatively referred amendments must be voted upon at the next general election. Across all kinds of ballot measures, the Alaska Lieutenant Governor plays the central role in developing ballot language and a voter information pamphlet, and the determinations of the Lieutenant Governor are generally subject to pre-election judicial review.

**Statewide Ballot Measures in Alaska**

Alaska has statutory voter initiatives, veto referendums, and legislatively referred amendments.

- **Initiatives – Statutory**
  The people of Alaska have the initiative power to propose and enact legislation. Alaska Const. art. XI, § 1.

- **Initiatives – Constitutional**

- **Veto Referendums**
  Alaskans have the referendum power to require that any act of the legislature be submitted to the voters for their approval or rejection. Alaska Const. art. XI, §§ 1, 5. A veto referendum petition must be submitted within 90 days of adjournment of the legislative session in which the act was passed. Id. § 5.

- **Legislatively Referred Amendments**
  An amendment to the state constitution proposed by the legislature must be approved by Alaska voters. Alaska Const. art. XIII, § 1.
Election Timing
The timing of an election on a ballot measure can vary depending on the form of direct democracy.

- An initiative may be submitted at any statewide election (including a special election and/or a primary election), as directed by the Lieutenant Governor, but the election must take place at least 120 days following the adjournment of the legislature to convene after the petition has been filed. Alaska Const. art. XI, § 4; Alaska Stat. § 15.45.190.
- A veto referendum may be submitted at any statewide election (including a special election and/or a primary election), as directed by the Lieutenant Governor, but the election must take more than 180 days following adjournment of the legislative session in which the act was passed. Alaska Const. art. XI, § 5; Alaska Stat. § 15.45.420.
- A legislatively referred amendment must be submitted to Alaska voters at the “next general election” after it is approved by 2/3 of all members elected to each house of the legislature. Alaska Const. art. XIII, § 1.

BALLOT PREPARATION
What is included on the ballot, and who prepares it?
Ballot requirements vary slightly depending on whether the measure is initiated via voter petition or submitted by the legislature. Regardless of the type of measure, ballot language is subject to readability requirements, which take into account syllables in addition to words. See Alaska Stat. § 15.80.005. However, a court may not enjoin an election for failing to comply with readability requirements. Id. sub. (d).

- The ballot for an initiative or veto referendum must contain the following information.
  - Ballot title (25 words or less).
  - The title must indicate the general subject of the measure.
  - Ballot proposition (50 words or less per section for referendum proposals, 50 words or less on average per section for initiative proposals).
  - The proposition must give a true and impartial summary of the measure.


- The ballot for a legislatively referred amendment must contain the following information.
  - Ballot title (6 words or less).
  - The title must indicate the general subject of the measure.
  - Ballot proposition (100 words or less).
  - The proposition must give a true and impartial summary of the measure.

See Alaska Stat. § 15.50.020. A proposed version of the ballot language is prepared by the Lieutenant Governor within 30 days of adjournment of the legislative session;
the draft is made available publicly and mailed to each member of the legislature. Alaska Const. art. XIII, § 1; Alaska Stat. §§ 15.50.010–15.50.020. Then, a qualified voter or legislator acting through the legislative council may submit an objection to the Lieutenant Governor’s proposed language within 15 days. Alaska Stat. § 15.50.025. The Lieutenant Governor must consider each objection before issuing the final language. Id.

INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication

✓ For initiatives only, the Lieutenant Governor must hold two or more public hearings concerning an initiative in each judicial district in the state and must provide public notice of these hearings using print or broadcast media. Alaska Stat. § 15.45.195. The public hearing must include written or oral testimony of one supporter and one opponent of the initiative and if feasible, must be livestreamed on a government website. Id.

✗ Alaska law does not generally require that information about veto referendums or legislatively referred amendments be published in a newspaper or similar media.

Voter Information Pamphlet

The Lieutenant Governor must prepare and distribute an election pamphlet before each election (including any primary and/or special election). The guide must include the following information about each ballot measure (whether an initiative, veto referendum, or legislatively referred amendment):

• Full text of the proposition.
• Ballot title and summary.
• Neutral summary of the proposition, prepared by the Legislative Affairs Agency.
• Submitted statements advocating voter approval or rejection of the proposition (500 words or less each).

➢ For initiatives and veto referendums only, a statement of the costs to the state of implementing the proposed initiative, or of rejecting the act referred by veto referendum.

Alaska Stat. §§ 15.58.010–020. The Lieutenant Governor must mail a pamphlet to every registered voter and must also assist in preparing a recording of the pamphlet that is made available through the state library. Id. § 15.58.080.

Additionally, for all ballot measures, the Director of Elections must provide each local board with a copy of the proposition (whether the proposed law, the referred act, or the legislative resolution proposing a constitutional amendment) for display in a conspicuous place in the polling room. Alaska Stat. §§ 15.45.200, -430, 15.50.040.
JUDICIAL REVIEW
When and how can the court step in?

➢ For an initiative or veto referendum, any person aggrieved by a determination of the Lieutenant Governor (such as a determination regarding ballot language) may bring a challenge in superior court within 30 days of such determination. See Alaska Stat. §§ 15.45.240, 460.

**Sample case:** *State v. Vote Yes for Alaska's Fair Share*, 478 P.3d 679, 690 (Alaska 2021) (opining that a ballot summary “must be free from any misleading tendency, whether of amplification, of omission, or of fallacy, and . . . it must contain no partisan coloring . . .”; holding that the Lieutenant Governor’s ballot summary was misleading to voters, because instead of disclosing there were remaining questions about how the initiative would be implemented, the summary suggested an answer to one such open question).

➢ For a legislatively referred amendment, a qualified voter or legislator acting through the legislative council who filed an objection to the ballot language proposed by the Lieutenant Governor and who believes the language as finally prepared does not provide a true and impartial summary of the amendment may bring an action in the superior court, within 45 days of the Lieutenant Governor mailing the proposed version of the ballot language to each member of the legislature. See Alaska Stat. § 15.50.025-15.50.027.
Arizona has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments. Arizona ballot measures to approve a tax must receive 60% of votes in order to be adopted. The Arizona legislature has the power to call a special election for a vote on a proposed constitutional amendment, regardless of whether the amendment is proposed via initiative or by the legislature. It is the Secretary of State, however, that drafts ballot language and compiles a voter information pamphlet, with input from the Legislative Council. Arizona law specifies that people using the initiative and veto referendum processes must strictly comply with all process requirements and allows any person to legally challenge a measure based on a lack of strict compliance.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Arizona**

Arizona has statutory and constitutional initiatives, veto referendums, as well as legislatively referred amendments. Arizona ballot measures to approve a tax must receive 60% of votes in order to be adopted. Ariz. Const. art. XXI, § 1; art. IV, pt. 1, §§ 1(5)–(6), (13)–(14).

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
  - The people of Arizona have reserved the initiative power to propose and enact laws and/or constitutional amendments independently of the legislature. Ariz. Const. art. IV, pt. 1, § 1(1)–(2).

- **Veto Referendums**
  - Arizonans have the referendum power to require that any law (or any part of any law) passed by the legislature be put to a popular vote, except for certain emergency laws passed with a legislative supermajority. Ariz. Const. art. IV, pt. 1, § 1(1), (3).

- **Legislatively Referred Amendments**
  - An amendment to the state constitution proposed by the legislature must be approved by Arizona voters. Ariz. Const. art. XXI, § 1.
Election Timing
The timing of an election on a ballot measure can vary depending on the form of direct democracy. For proposed constitutional amendments, the legislature may call a special election, regardless of how the amendment is proposed.

- An initiative or veto referendum must generally be submitted to voters at the next general election. See Ariz. Const. art. IV, pt. 1, § 1(10).
- However, for constitutional initiative, the legislature may order a special election. See Ariz. Const. art. XXI, § 1, Ariz. Rev. Stat. § 19-124(B).
- A legislatively referred amendment is submitted to voters after it is approved by a majority of all members elected to each house of the legislature. Ariz. Const. art. XXI, § 1. It is submitted at the next general election unless the legislature calls a special election. Id.; Ariz. Rev. Stat. § 19-124(B).

BALLOT PREPARATION
What is included on the ballot, and who prepares it?
The ballot for a state ballot measure must include the following.

- Descriptive title summarizing the measure’s principal provisions (50 words or less). Ariz. Rev. Stat. § 19-125(D).
- The title is prepared by the Secretary of State and approved by the Attorney General. Id.
- The title must include two brief phrases to complete form language on the effect of a “yes” and “no” vote, which must describe the essential change in existing law resulting from each. Alternatively, the ballot may include the full text of the proposition. See Ariz. Rev. Stat. § 19-125(D), (F).

- (For initiatives or veto referendums only) A warning notice that the measure cannot be changed in the future if approved on the ballot, except by a 3/4 vote of members of each house of the legislature, by initiative petition, or by referendum. Id. § 19-125(E)–(F).

INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
- Arizona law does not generally require that information about ballot measures be published in a newspaper or similar media.
- For initiatives only, once an initiative qualifies for the ballot, the Secretary of State is charged with holding three public meetings/hearings on the measure, in at least three different counties. The hearings must provide an opportunity for proponents, opponents, and the general public to provide testimony and request information. Ariz. Rev. Stat. § 19-123(E).
Voter Information Pamphlet

The Secretary of State must prepare a Publicity Pamphlet that is posted on a government website and mailed to every registered voter. Ariz. Rev. Stat. § 19-123(B). (Pamphlets may also be emailed at the option of the voter.) Id. The pamphlet must contain the following information.

  - Any person and/or organization may file an argument advocating for, or opposing, any ballot measure. Arguments are filed with the Secretary of State subject to a filing fee and other SOS instructions and subject to statutory deadlines. Each signer’s name and town are included in the publicity pamphlet. Ariz. Rev. Stat. § 19-124(A).
  - For initiatives, the petition’s sponsor may file an argument advocating for the measure at the same time they file their petition. Any argument by the sponsor is included first; thereafter, arguments are displayed in the order in which they are filed with the Secretary of State. Ariz. Rev. Stat. § 19-124(A), (D).
  - For legislatively referred amendments in which the legislature has ordered a special election, as soon as practicable after a special election has been ordered, the Secretary of State “shall prominently post on its website the dates on which the analysis, if any, and the arguments advocating or opposing the measure are due and the date of the election.” Ariz. Rev. Stat. § 19-124(B).
  - The analysis “shall include a description of the measure and shall be written in clear and concise terms avoiding technical terms wherever possible.” Ariz. Rev. Stat. § 19-124(C).
  - The analysis may contain background information, including the measure would have on existing law. Id.

- For statutory initiatives and veto referendums: A warning notice that the measure cannot be changed in the future if approved on the ballot, except by a 3/4 vote of members of each house of the legislature, by initiative petition, or by referendum. Ariz. Rev. Stat. § 19-123(A)(7).
- For statutory initiatives: Summary of a fiscal impact statement prepared by the joint legislative budget committee (300 words or less). Ariz. Rev. Stat. § 19-123(A)(6), (E).
  - The joint legislative budget committee staff must also provide a fiscal impact presentation on the measure at public hearings held by the Secretary of State in at least three different counties before the election date. Id. sub. (E).
JUDICIAL REVIEW
When and how can the court step in?

For initiatives and veto referendums, the Arizona legislature has made clear that persons using the initiative/referendum processes must strictly comply with all constitutional and statutory requirements. See Ariz. Rev. Stat. §§ 19-101.01 (pertaining to veto referendums), -102.01 (initiatives). In addition, these requirements must be strictly construed by state courts. See id. §§ 19-101.01, 102.01.

In addition to legal actions by sponsors, Arizona allows any person to bring an action to contest the validity of an initiative or veto referendum: including based on actions of the Secretary of State or the measure’s sponsors’ lack of strict compliance with process requirements. See Ariz. Rev. Stat. § 19-122(A), (C). The Supreme Court of Arizona has stopped measures from being submitted to voters due to a lack of strict compliance with procedural requirements. See, e.g., Molera v. Reagan, 428 P.3d 490, 492 (Ariz. 2018). In recent years, the court has not invalidated ballot language crafted by the Secretary of State. See, e.g., Quality Educ. & Jobs Supporting I-16-2012 v. Bennet, 292 P.3d 192, 194 (Ariz. 2013).

Sample case: Compare Molera v. Reagan, 428 P.3d 490, 492 (Ariz. 2018) (holding initiative proponents did not comply with the requirements of § 19-102(A) because the petition description of initiative’s principal provisions omitted material provisions and created a significant danger of confusion or unfairness to signers) with Molera v. Hobbs, 474 P.3d 667, 677 (Ariz. 2020) (finding petition summary sufficient to permit measure to qualify for ballot). See also Quality Educ. & Jobs Supporting I-16-2012 v. Bennett, 292 P.3d 192, 194 (Ariz. 2013) (rejecting challenge to ballot language drafted by Secretary of State, after considering whether the chosen language would be “misleading, inaccurate, lacking in neutrality, or argumentative”) (citation omitted).

For legislatively referred amendments, Arizona law provides that an expedited challenge as to a proposed amendment’s legal sufficiency may be filed in the superior court of Maricopa County within ten days (in even numbered years) or 20 days (in odd numbered years) after the amendment is filed with the Secretary of State. See Ariz. Rev. Stat. § 19-161(A)(1)–(2). The legislature may participate in the lawsuit. Ariz. Rev. Stat. § 19-161(D). This statute has been utilized to challenge a proposed amendment as violating a single-subject requirement. E.g., Hoffman v. Reagan, 429 P.3d 70, 72 (Ariz. 2018).
Arkansas has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments. The timing of an election can vary depending on the kind of ballot measure; while measures are generally submitted at regular general elections, the people may petition for a special election on a veto referendum. The process for developing ballot language also varies depending on whether a ballot measure is initiated via voter petition or referred by the legislature. While Arkansas’ constitutional and statutory provisions contain few explicit guidelines as to the ballot language content, pre-election judicial review may be sought by any registered voter, regardless of the type of ballot measure, and the Arkansas Supreme Court has held that, at a minimum, ballot language may not be fraudulent.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Arkansas**

Arkansas has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
  The people of Arkansas have reserved the initiative power to propose and enact laws and/or amendments to the state constitution independently of the legislature. Ark. Const. art. 5, § 1. The Arkansas Constitution also provides that no measure approved by a vote of the people shall be amended or repealed by the General Assembly except upon a vote of 2/3 of all members elected to each house. See *id.*

- **Veto Referendums**
  Arkansans also have the referendum power to approve or reject any act of the General Assembly, or any section thereof, or any item of an appropriation bill. See Ark. Const. art. 5, § 1.

- **Legislatively Referred Amendments**
  An amendment to the state constitution proposed by the Arkansas legislature
must be approved by voters. See Ark. Const. art. 19, § 22.

Election Timing
The timing of an election can vary depending on the kind of ballot measure. While measures are generally submitted at regular general elections, the people may petition for a special election on a veto referendum.

- An initiative must be submitted at a “regular” election, which Arkansas statutes define to mean a regular general election at which state and county officers are elected to general terms. See Ark. Const. art. 5, § 1; Ark. Code Ann. § 7-9-101(4).
- A veto referendum may be submitted at a regular election but may also instead be submitted at a special election called by the proper election official, if 15% of all legal voters petition for a special election. Ark. Const. art. 5, § 1; see also Ark. Code Ann. § 7-11-201 et seq.
- A legislatively referred amendment must be submitted to Arkansas voters at the “next general election for Senators and Representatives” after it is approved by a majority of all members elected to each house of the legislature. Ark. Const. art. 19, § 22.

**BALLOT PREPARATION**
*What is included on the ballot, and who prepares it?*

The ballot for any statewide ballot measure in Arkansas must display the following.

- Ballot title. Id. sub. (b).
  - For initiatives and veto referendums, the ballot title must “briefly and concisely state the purpose of the proposed measure.” Ark. Code Ann. § 7-9-107(d)(2). The full text, the popular name, and the proposed ballot title are submitted by sponsors when initially filing their petition to the Attorney General, before petitions are circulated for signatures. See Ark. Const. art. 5, § 1; Ark. Code Ann. § 7-9-107.
  - Within ten days, the Attorney General must certify that the sponsor filed the ballot title and popular name in compliance with the law, or substitute and certify “a more suitable and correct” title and popular name. Ark. Code Ann. § 7-9-107(d)(1). If the Attorney General finds the ballot title and popular name submitted by sponsors to be misleading, they may “reject the entire ballot” and “instruct the petitioners to redesign the proposed measure and the ballot title and popular name in a manner that would not be misleading.” Id. sub. (e).
- For legislatively referred amendments, the legislature’s underlying joint resolution may designate the popular name and ballot title. Ark. Code § 7-9-204.
INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
For any state ballot measure, the Secretary of State is charged with publishing notice in two weekly issues of some newspaper in each county. Ark. Code § 7-9-113(a)(1), (b)(1). The details of the publication vary somewhat based on the type of ballot measure, as follows.

- For initiatives and veto referendums, publication of notice must commence eight weeks before the election. Ark. Code § 7-9-113(b)(2)(B). At least one notice must contain the measure’s number, popular name, ballot title, and a website where the full text of the measure can be found. Id. sub. (c)(2)(A)-(B). The measure’s sponsors must reimburse the Secretary of State for publication expenses. See id. at sub. (a)(2); see also Ark. Const. art. 5, § 1.

Voter Information Pamphlet
- Arkansas law does not require a state voter information pamphlet about specific state ballot measures.
- Although Arkansas law does not require a formal voter information pamphlet, for initiatives and veto referendums, the Arkansas Attorney General must provide a concise abstract of the contents of the measure. Ark. Code Ann. § 7-9-114(a). The abstract must be printed and posted conspicuously in polling places. Id. at sub. (b).

JUDICIAL REVIEW
When and how can the court step in?

- For initiatives and veto referendums, any registered voter (or a measure’s sponsor) has a right to petition to the Arkansas Supreme Court to challenge the Secretary of State’s determination of insufficient signatures on a petition. Ark. Code Ann. § 7-9-112(a). The court must act expeditiously to review the sufficiency of the signatures. Id. sub. (b).

Arkansas statutes used to provide a similar right of action to challenge ballot title determinations. See H.B. 1320, 94th Gen. Assemb., Reg. Sess. § 4 (Ark. 2023) (amending Ark. Code Ann. § 7-9-112(a)). But now, only a measure’s sponsors may petition the Arkansas Supreme Court to challenge a ballot title determination made by the Attorney General. Ark. Code Ann. § 7-9-107(f). In challenges to the sufficiency of ballot title or popular name language under a prior version of the statute which allowed
for challenges regarding ballot language sufficiency, the Arkansas Supreme Court asked whether the title adequately describes the proposed measure and whether the measure is misleading as opposed to intelligible, honest, and impartial. See, e.g., *Armstrong v. Thurston*, 652 S.W.3d 167, 175–77 (Ark. 2022).

**Sample cases:** *Kurrus v. Priest*, 29 S.W.3d 669, 675, 678 (Ark. 2000) (holding ballot title failed to convey the scope and import of the measure and was misleading; enjoining placement on the ballot); *Armstrong v. Thurston*, 652 S.W.3d 167, 174, 178 (Ark. 2022) (holding the State Board of Election Commissioners lacked authority under the state constitution to decline to certify a ballot title as insufficient and finding challenged ballot title to be sufficient).

- For *legislatively referred amendments*, any qualified elector may file an action in any court of competent jurisdiction to challenge the sufficiency of the legislative resolution, including the text of the proposed amendment itself, the ballot title, and the popular name. See Ark. Code § 7-9-205. In reviewing the ballot language, the Arkansas Supreme Court has asked whether the language sufficiently distinguishes and identifies the legislatively proposed constitutional amendment and whether it is a manifest fraud upon the public. See, e.g., *Steele v. Thurston*, 609 S.W.3d 357, 362–63 (Ark. 2020).

**Sample case:** *Steele v. Thurston*, 609 S.W.3d 357, 363 (Ark. 2020) (finding ballot title was sufficient and did not reflect "manifest fraud" upon the public).
California has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments. The timing of an election on a California ballot measure can vary somewhat depending on the kind of ballot measure, but special elections are allowed regardless of the type of ballot measure. All statewide ballot measures are subject to similar requirements governing ballot language, which is largely prepared by the Attorney General, as well as detailed voter guides that include information compiled by multiple state entities. California requires arguments in favor of and in opposition to each measure to be displayed on the ballot, in addition to an official title and summary and a fiscal impact statement. California provides multiple opportunities for public review and public comment before the opportunity to vote on the measure at the polls.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in California**

California has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
  - The people of California have the initiative power to propose and enact statutes and/or amendments to the state constitution. Cal. Const. art. II, § 8, art. XVIII, § 3.
- **Veto Referendums**
  - Californians also have the referendum power to approve or reject any statute, or any part thereof, except “urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the state.” Cal. Const. art. II, § 9.
- **Legislatively Referred Amendments**
  - An amendment to the state constitution proposed by the legislature must be approved by California voters. Cal. Const. art. XVIII, §§ 1, 4.
**Election Timing**

The timing of an election on a California ballot measure can vary somewhat depending on the kind of ballot measure. For initiatives and veto referendums, the Governor may call a special election, which must take place before the next general election. However, legislatively referred amendments must be submitted at the next statewide election (whether a general or special election).

- An *initiative* must be submitted at the next general election, held at least 131 days after the initiative qualifies for the ballot, or at any special statewide election held prior to that general election. Cal. Const. art. II, § 8(c). “The Governor may call a special statewide election for the measure.” *Id.*
- A *veto referendum* must be submitted at the next general election held at least 31 days after it qualifies for the ballot, or at any special statewide election held prior to that general election. Cal. Const. art. II, § 9(c). The Governor may call a special statewide election for the measure. *Id.*
- A *legislatively referred amendment* must be submitted to voters at the “first statewide election occurring at least 131 days after the adoption of the proposal by the Legislature.” Cal. Elec. Code § 9040. A statewide election “is an election held throughout the state.” See *id.* § 357.

**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for any statewide ballot measure in California must contain the following information.

  - The condensed ballot title and summary (100 words or less) is prepared by the Attorney General, after inviting and considering public comment. *Id.* § 9051(a) (1), (f).
  - It must be true and impartial and neither an argument nor likely to create prejudice for or against the measure. *Id.* § 9051(e).
  - The fiscal impact summary is prepared by the Legislative Analyst as part of its impartial analysis of the measure. See Cal. Elec. Code § 9087(a).
  - It must describe the estimated increase or decrease in revenue or cost of a measure; to the extent practicable, the Legislative Analyst must use a uniform method so that the average voter may draw comparisons among the fiscal impacts. See *id.* § 9087(b); Cal. Gov. Code § 88003.
  - Arguments are also included in the voter information guide, discussed below.
INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
California’s limited publication requirements pertain to two facets of its direct democracy processes.

- In the event that no argument has been submitted for and/or against any measure, the Secretary of State must release a general press release at least 120 days before the election to invite any voter or group to submit the missing argument(s). Cal. Elec. Code §§ 9060–9061, 9044.
  - Any such press release must include a summary of the essential nature or purpose of the measure.
    - For initiatives and veto referendums, the circulating summary prepared by the Attorney General is used.
    - For legislatively referred amendments, the Legislative Counsel Bureau prepares a summary. Id. §§ 9062–9063.
- For initiatives and veto referendums only, the Attorney General must draft a circulating title and summary even before a petition may be circulated for signatures. The Attorney General must post the text of the measure on its website and invite written public comments. See Cal. Elec. Code § 9002. In addition, before a petition for an initiative or veto referendum is circulated for signatures, the Attorney General must send a copy of the text of the measure and the circulating title and summary to the state legislature. See id. § 9007. The appropriate committees of each house may hold public hearings on the subject of the measure. Id.

Voter Information Pamphlet
The California Secretary of State must compile a voter information guide containing the following information about each state ballot measure.

  - For legislatively referred amendments, the top of the voter guide must also include the total number of votes cast for and against the measure in each house of the legislature. Id. § 9086(a)(1)(C).
- Concise summary of the measure prepared by the Legislative Analyst. Id. §§ 9082.7(b)(1), 9085(a).
  - The concise summary must describe the general meaning and effect of a “yes” and “no” vote on the measure. Id. § 9085(b).
- Campaign finance–related disclosures, as follows. Id. § 9082.7(b)(2)–(4).
  - Total amount of contributions made supporting and opposing the measure. Id. sub. (b)(2).
  - Current list of top ten contributors supporting and opposing the measure, compiled by the Fair Political Practices Commission. Id. sub. (b)(3).
• List of each committee formed primarily to support or oppose the measure. *Id.* sub. (b)(4).

• Legislative Analyst’s impartial analysis of the measure, including the fiscal impact analysis (discussed above). See Cal. Elec. Code §§ 9084(d), 9087.

• The analysis must “be written in clear and concise terms, so as to be easily understood by the average voter” and avoid technical terms whenever possible. It “may contain background information, including the effect of the measure on existing law . . . and shall generally set forth in an impartial manner the information the average voter needs to adequately understand the measure.” Cal. Elec. Code § 9087(b); Cal. Gov. Code § 88003.

• The Legislative Analyst may contract with professional writers and may request the assistance of any state department. Cal. Elec. Code § 9087(c); Cal. Gov. Code § 88003. It must also submit its analysis for review by a committee of five people, to confirm its clarity and easy comprehension to the average voter. Cal. Elec. Code § 9087(d).

• The review committee is drawn from the public, and one member must be a specialist in education, one must be bilingual, and one must be a professional writer. *Id.*

• Arguments submitted for and against the measure, and rebuttals. *Id.* § 9084(c).

• Arguments by a measure’s sponsor are prioritized; also, compared to individual voters, the statement of *bona fide* associations of citizens are prioritized. See *id.* §§ 9067, 9041–9042.

• Those submitting arguments must also submit information identifying the person/entity submitting the argument. See *id.* § 9065.

• Any page containing arguments must include a statement that arguments are the opinions of the authors and have not been checked for accuracy by any official agency. *Id.* § 9086(g).

• The measure’s full text. *Id.* § 9084(a).

• The voter information guide must also include a conspicuous notice identifying the state website displaying the specific constitutional or statutory provision that the measure would repeal or revise. *Id.* § 9084(b)(1).

• The Voter Bill of Rights, plus a conspicuous notice indicating that additional copies of the guide will be mailed by county election officials on request. *Id.* § 9084(f), (h).

• “Tables of contents, indexes, artwork, graphics, and other materials that the Secretary of State determines will make the [guide] easier to understand or more useful for the average voter.” *Id.* sub. (e).

The Secretary of State is responsible for compiling, printing, and recording the voter guide, and for mailing it to all registered voters at specified times. See Cal. Elec. Code §§ 9082.7, 9094. The Secretary of State must allow voters to opt out of the mailing, including opting out for electronic mailing. See *id.* § 9094.5.
JUDICIAL REVIEW
When and how can the court step in?

At least 20 days before the voter information guide is to be printed, the Secretary of State must submit it for public examination. Any elector may seek a writ of mandate, which may be granted “upon clear and convincing proof that the copy in question is false, misleading, or inconsistent with [statutory requirements] . . . , and that issuance of the writ will not substantially interfere with the printing and distribution” of the guide. Cal. Elec. Code § 9092. This statute has been interpreted as permitting pre-election challenges to the ballot language. E.g., Yes on 25, Citizens for an On-Time Budget v. Superior Court, 118 Cal. Rptr. 3d 290, 295 (Cal. Ct. App. 2010).

Colorado has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments. The state constitution was amended in 2016 to make constitutional amendment a “more difficult” process and now requires a supermajority threshold for voter approval. All ballot measures must be submitted to voters at a regular general election. For all ballot measures, ballot language is prepared by a special board consisting of the Secretary of State, the Attorney General, and the Office of the Legislative Legal Services. In addition, a nonpartisan legislative research director is charged with making detailed information available about each state ballot measure. Judicial review of ballot language is available, though it is deferential to the board’s title decisions.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Colorado**

Colorado has statutory and constitutional initiatives, veto referendums, as well as legislatively referred amendments.

- **Initiatives – Statutory**
  
  The people of Colorado have reserved the initiative power to propose and enact statutes. Colo. Const. art. V, § 1(1)-(2).

- **Initiatives – Constitutional**
  
  The people of Colorado also have the initiative power to propose and enact amendments to the state constitution. Colo. Const. art. V, § 1(1), (2.5). Constitutional amendments are subject to a 55% voter approval threshold. See id. art. XIX, § 2(1)(b).

- **Veto Referendums**
  
  Coloradans have the referendum power to require that any law passed by the legislature, or any section thereof, be put to a popular vote, except “as to laws necessary for the immediate preservation of the public peace, health, or safety, and appropriations for the support and maintenance of . . . state institutions.” Colo. Const. art. V, § 1(1) & (3).
Legislatively Referred Amendments

An amendment to the state constitution proposed by the legislature must be approved by Colorado voters. Colo. Const. art. XIX, § 2. Constitutional amendments, including those proposed by the legislature, are subject to a 55% voter approval threshold unless they are repealing a constitutional provision. See id. § 2(1)(b).

Election Timing

The precise timing of an election on a ballot measure depends on the form of direct democracy, but all state ballot measures must be submitted to voters at a general election.

- An initiative or veto referendum must be submitted at a biennial regular general election. Colo. Const. art. V, § 1(4)(a)–(b).
- A legislatively referred amendment must be submitted at the “next general election for members of the general assembly” after it is approved by 2/3 of all members elected to each house of the legislature. Colo. Const. art. XIX, § 2(1)(a).

BALLOT PREPARATION

What is included on the ballot, and who prepares it?

The ballot for any Colorado ballot measure must contain the following information.

- The ballot title is prepared by the Title Board and certified for the ballot by the Secretary of State. See Colo. Rev. Stat. §§ 1-40-106, -122.
  - The Title Board includes the Secretary of State, the Attorney General, and the Director of the Office of Legislative Legal Services, or their designees. Colo. Rev. Stat. § 1-40-106(1). The Board must act by majority vote. See id.
  - The ballot title must “correctly and fairly express the true intent and meaning” of the measure; it must be brief and in the form of a yes or no question or similar; it must “unambiguously state the principle of the provision sought to be added, amended, or repealed”; additionally, the Title Board “shall consider the public confusion that might be caused by misleading titles.” See id. sub. (3)(b). See also Colo. Const. art. V, § 1(5.5), art. XIX, § 2(3) (requiring that a measure’s subject be “clearly expressed” in the ballot title).
- (If applicable) For initiatives that either increase or decrease the individual income tax rate, the ballot title must include a table summarizing the fiscal impact across tax brackets, prepared by the director of research of the legislative council. Colo. Rev. Stat. §§ 1-40-106(3)(j), 1-40-105.5(1.5)(a)(V), 1-40-124.5(1)(b)(III).
INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
In addition to compiling the voter information booklet described below, the nonpartisan director of research of the legislative council must publish the full text, title, and ballot language of each measure that will be submitted to voters. Colo. Const. art. V, § 1(7.3); Colo. Rev. Stat. § 1-40-124. Publication must be made at least once in at least one publication of general circulation in each county, at least 15 days before the final date of voter registration. Id.

Voter Information Pamphlet
The nonpartisan legislative research director must compile a ballot information booklet containing the following information about each state ballot measure.

• The measure’s title. Colo. Const. art. V, § 1(7.5)(a)(I).
• The measure’s text. Id.
• A fair and impartial analysis of the measure. Id. sub. (7.5)(a)(II).
  • The analysis must include a summary of the major arguments for and against the measure, and any other information which may assist voters in understanding the purpose and effect of the measure. Id.
  • Any person may file written comments for consideration by the research staff during preparation of the analysis. Id. Before the booklet is finalized, the legislative research director must hold a public meeting, and may then modify the booklet in response to public comments. Colo. Rev. Stat. § 1-40-124.5(1.7)(a).
  • Before any arguments are displayed, the booklet must include a link to the Secretary of State’s website providing additional information about each ballot measure. Id. sub. (1.7)(b)(II).
    • The director of research of the legislative council shall prepare a summary of the fiscal impact, including a preliminary estimate of any change in state and government revenues, expenditures, taxes, or other fiscal liabilities. See id. sub. (1)(b)(I); id. § 1-40-105.5(1.5)(a)(I).(1.5)(a)(I).
    • (If applicable) If the measure would change tax liabilities, a table showing exactly how the measure would impact the total tax burden for each income bracket. Colo. Rev. Stat. § 1-40-124.5(1)(b)(III).

While the booklet is compiled by the research director, the legislative council may modify the draft booklet with a 2/3 affirmative vote of the members of the legislative council. Colo. Rev. Stat. § 1-40-124.5(1.7)(a).
Once the booklet is finalized, the research director is charged with distribution, which must include mailing the booklet to all active registered voters at least 30 days before the election and may also include publishing it in a newspaper of general circulation subject to standard bidding processes. See Colo. Rev. Stat. § 1-40-124.5(2); Colo. Const. art. V, § 1(7.5)(b).

**JUDICIAL REVIEW**

*When and how can the court step in?*

A petition sponsor or any elector dissatisfied with a decision of the Title Board may file a challenge claiming the ballot title is unfair or that it does not fairly express the true meaning and intent of the proposed state law or constitutional amendment. Colo. Rev. Stat. § 1-40-107. This “motion for rehearing” must be filed within 7 days of the Title Board’s decision. *Id.* Judicial review is deferential to decisions of the Title Board. *In re Title, Ballot Title, Submission Clause, Summary for 2005–2006 No. 73*, 135 P.3d 736 (Colo. 2006).

**Sample case:** *In re Title, Ballot Title, Submission Clause, Summary for 2005–2006 No. 73*, 135 P.3d 736, 740 (Colo. 2006) (noting that the court reviews decisions of the Title Board with great deference and will only reverse the Board’s decision if the titles are insufficient, unfair, or misleading, and holding that details omitted from titles were not central features of the measure).
In Connecticut, legislatively referred amendments are the only form of statewide direct democracy. In addition to the legislature, the Secretary of State also plays a role in the preparation process by drafting a portion of the ballot language that will appear to voters and by creating an educational voter guide. Judicial review is available to challenge decisions of the Secretary of State, but there is no express provision for judicial review of the portion of the ballot language drafted by the legislature. All legislatively referred amendments are presented to voters at a general election in an even-numbered year.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Connecticut**

Connecticut does not have statewide initiatives or veto referendums but has legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**
- **Legislatively Referred Amendments**
  
  An amendment to the state constitution proposed by the legislature must be approved by Connecticut voters. Conn. Const. art. 12.

**Election Timing**

A proposed amendment is presented to voters after either: (1) it is approved by a 3/4 supermajority of each house, or (2) it is approved by a majority of each house, in two consecutive general assemblies. It is presented to voters at the general election to be held in November of the next even-numbered year. Conn. Const. art. 12.
**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for a proposed amendment to the Connecticut Constitution must include the following.


**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

Localities must provide notice or a “warning” of an election, which must include that a purpose of the election is to vote for the approval or disapproval of any proposed amendment. Conn. Gen. Stat. § 9-369. Warnings are published in a local newspaper and the town’s internet website between five and fifteen days before the early voting period begins. See S.B. 1185, 2023 Gen. Assemb., Jan. Reg. Sess. (Conn. 2023) (amending Conn. Gen. Stat. § 9-225 (West, Westlaw, through 2023 S.B. 1185)).

**Voter Information Pamphlet**

By the first of October each election year, the Secretary of State must prepare a voter guide in consultation with the State Elections Enforcement Commission. Conn. Gen. Stat. § 9-4a(a). The guide must include the following information about each proposed amendment appearing on the ballot.

- Concise explanatory text as to its content and purpose.
  - The Office of Legislative Research must prepare this text, subject to the approval of the joint standing committee of the legislature having cognizance of constitutional amendments. Conn. Gen. Stat. §§ 9-4a(b)(10), 2-30a(a).

The Secretary of State must publish the voter guide online and cause the explanatory text to be printed and sent to localities “for public distribution,” including in the form of polling place posters. Conn. Gen. Stat. §§ 9-4a(a), 2-30a(a)–(b).

**JUDICIAL REVIEW**

*When and how can the court step in?*

Any person “claiming to have been aggrieved by any ruling of any election official in connection with a referendum” may bring an action in a superior court. See Conn. Gen. Stat. § 9-371b. This statute presumably authorizes actions claiming aggrievement by the Secretary of State. However, Connecticut’s direct democracy provisions do not explicitly provide for judicial review of ballot language prepared by the legislature. See, e.g., Conn. Gen. Stat. §§ 9-374, 9-371b. The provisions also provide a few guidelines as to the
Delaware is a national outlier in that proposed amendments to the state constitution are not submitted to voters for their approval or rejection. Instead, amendments are adopted after approval by two consecutive legislatures, separated by a general election. Delaware does require that notice of proposed amendments be given to the public, but the state supreme court has held that only substantial requirements with these publication requirements is required.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Delaware**

Delaware does not have statewide initiatives, veto referendums, or legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**
- **Legislatively Referred Amendments**

Voter approval is not required to amend the Delaware Constitution, making Delaware a national outlier. Instead, an amendment must be agreed to by 2/3 of the members elected to each house of the legislature, in two consecutive general assemblies. Del. Const. art. XVI, § 1.

Delaware lacks all forms of statewide direct democracy that are the focus of this report. Similar to other states, the Delaware legislature may submit to voters the question of whether to hold a constitutional convention. See Del. Const. art. XVI, § 2.

**Election Timing**

As noted, constitutional amendments are not submitted to Delaware voters. However, the constitution requires that there be one general election between the amendment being proposed and the amendment being approved by a subsequent general assembly. Del. Const. art. XVI, § 1.
BALLOT PREPARATION
What is included on the ballot, and who prepares it?

× Not applicable

INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
After a proposed amendment is agreed to by each house of the legislature for the first time, the proposed amendment must be disseminated to the public not less than 90 days before the next general election and not more than 120 days before the next general election “as provided for by an act of the General Assembly.” S.B. 38, 152d Gen. Assemb., 1st Reg. Sess. (Del. 2023) (amending Del. Const. art. 16, § 1).

A statute further specifies the qualifications of eligible newspapers through which the proposed amendment may be disseminated and requires that the proposed amendment be disseminated online. Del. Code Ann. tit. 29, § 914(a)–(b).* The statute further designates the Secretary of the Senate and the Chief Clerk of the House of Representatives to disseminate amendments proposed by Senate bills and House bills respectively, provides for notices to be reviewed and approved by the Secretary of the Senate, the Chief Clerk of the House of Representatives, the State Election Commissioner, and the Director of the Division of Research, and requires the designated individual disseminating the notice to provide notice of dissemination to several state officials and indicate which newspapers and websites the disseminated notice has been published Id. sub. (c)–(e). sub. (c)–(e).

Voter Information Pamphlet
× Not applicable

JUDICIAL REVIEW
When and how can the court step in?

× Not applicable with respect to ballots or voter informational materials

The Delaware Supreme Court has opined that only substantial compliance with the state’s publication requirements is required; literal compliance is not, so long as the electorate has not been misled and the rationale behind publication has been fulfilled.

Sample case: Opinion of the Justices, 275 A.2d 558 (Del. 1971) (advisory opinion) (upholding the validity of constitutional amendments which were published, though tardily; but finding that proposed amendments that were not published at all—for which there was no compliance—were not valid constitutional amendments).

Florida does not have statutory initiatives or veto referendums but does have constitutional initiatives and legislatively referred amendments. The timing of an election on a proposed constitutional amendment depends on whether it originates via initiative petition or the legislature; for legislatively referred amendments, a special election may be called with a legislative supermajority. Ballot contents also vary depending on the proposed amendment’s origins. For initiatives, detailed financial information compiled by a 4-member Financial Impact Estimating Conference must be provided on the ballot and elsewhere. For both constitutional initiatives and legislatively referred amendments, the ballot title and summary are subject to similar accuracy standards, but different entities are responsible for drafting the contents. Florida law also requires pre-election judicial review of initiatives, but not of legislatively referred amendments.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Florida**

Florida does not have statutory initiatives or veto referendums, but voters may propose constitutional amendments via initiative petition, and a popular vote is required to pass amendments proposed by the state legislature.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
  - Voters have the initiative power to amend the state constitution. Fla. Const. art. XI, § 3.
- **Veto Referendums**
  - **Legislatively Referred Amendments**
    - An amendment to the state constitution proposed by the legislature must be approved by Florida voters. Fla. Const. art. XI, §§ 1, 5.

**Election Timing**

The timing of an election on a proposed amendment to the Florida Constitution depends on whether it originates via initiative petition or the legislature; for legislatively referred
amendments, a special election may be called with a supermajority.

- **Constitutional initiatives** shall be placed on the ballot for the general election, provided the petition has been timely filed and verified. See Fla. Const. art. XI, § 5(b); Fla. Stat. § 100.371(1).
- **Legislatively referred amendments** shall be submitted at the next general election held more than 90 days after the joint resolution is filed, except that with a 3/4 supermajority vote of each house, the legislature may call an earlier special election held more than 90 days after such filing. Fla. Const. art. XI, § 5(a).

### BALLOT PREPARATION

**What is included on the ballot, and who prepares it?**

The ballot for any proposed constitutional amendment must contain the following.

- **Ballot title** (15 words or less). Fla. Stat. § 101.161(1)(d), (3)(a).
  - The title must be the caption by which the measure is commonly referred to or spoken of. *Id.* sub. (1)(d).

- **Ballot summary** (75 words or less). Fla. Stat. § 101.161(1), (3)(a).
  - The summary must explain the proposed amendment’s chief purpose in clear and unambiguous language. *Id.*

- For **constitutional initiatives**, the ballot title and summary are drafted by the sponsor and approved by the Secretary of State. *Id.* § 101.161(2).

- For **legislatively referred amendments**, the ballot title and summary must be included in the underlying legislative resolution. *Id.* § 101.161(3)(a). If any Florida appellate court finds such language to be defective, it may order the Attorney General to prepare new language to correct the deficiency. See *id.* sub. (3)(c)(2). “The revised ballot summary may exceed 75 words in length.” *Id.*

  - The Financial Impact Estimating Conference must describe the estimated increase or decrease in any revenues or costs to state or local governments and the overall impact to the state budget resulting from the proposal. Fla. Stat. § 100.371(13)(a).
  - The Conference consists of a designee of the Governor, a coordinator from the Office of Economic and Demographic Research, a House professional staff member, and a Senate professional staff member. *Id.* sub. (13)(c)(1). The Conference must reach a majority consensus. *Id.* sub. (13)(c)(2).
  - The Conference must allow any representatives of the sponsors, interested parties, or opponents of the initiative to submit information, and may request information from any other entity, including the Office of Economic and Demographic Research. *Id.* sub. (13)(b).
INFORMATION TO VOTERS

What information is provided to voters before the election, and how?

Publication
Under the Florida Constitution, any proposed constitutional amendment, as well as the pertinent election date, must be published in one newspaper of general circulation in each county in which a newspaper is published: once in the tenth week, and again in the sixth week before the election. Fla. Const. art. XI, § 5(d).

- For constitutional initiatives, there are various public notice requirements pertaining to the financial information prepared by the Financial Impact Estimating Conference. See Fla. Stat. § 100.371(13)(c), (e)(5). Local elections officials must publish the Conference’s financial information summary in one county newspaper before the election, and the publication must also include the internet addresses for the Secretary of State and Office of Economic and Demographic Research’s websites where additional information can be found. See id. sub. (13)(e)(5); Fla. Stat. § 101.20.
- In the event a special election is held for a legislatively referred amendment, a notice of the election must be published on a website or in a newspaper of general circulation at least twice: once in the fifth week and once in the third week prior to election being held. Fla. Stat. § 100.342.

Voter Information Pamphlet

- Florida law does not require a state voter information pamphlet for constitutional amendments.

- Although Florida law does not require a formal voter information pamphlet, for initiatives, the Financial Impact Estimating Conference compiles a more complete analysis beyond what is provided on the ballot, which is known as the Initiative Financial Information Statement. Fla. Stat. § 100.371(13)(e)(3). The statement must include the following.
  - Summary of the fiscal impacts (500 words or less).
  - Assumptions the Conference made to develop the financial impacts.
  - A description, in greater detail than what is included on the ballot, of any estimated increase or decrease in revenues or cost resulting from the initiative.
  - The statement may include both estimated dollar amounts as well as contextual descriptions of these amounts.

Id. All meetings of the Financial Impact Estimating Conference must be open to the public. Fla. Stat. § 100.371(13)(c). The Conference’s full statement must be posted online by the Secretary of State and the Office of Economic and Demographic Research. (13)(e)(5). In addition, the summary portion must be posted on the website of each local elections’ supervisor with a website. Id. The summary must also be printed by the Department of State and furnished to each local supervisor for placement at each polling place. Id. sub. (13)(e)(4).
JUDICIAL REVIEW
When and how can the court step in?

- For initiatives only, after the required number of petition signatures have been verified, the Secretary of State submits the initiative to the Attorney General. Fla. Stat. § 15.21. Within 30 days, the Attorney General must petition the Florida Supreme Court for an advisory opinion as to whether the proposed constitutional initiative complies with Florida Constitution Article XI, § 3, whether it is facially invalid under the United States Constitution, and whether the ballot title and substance comply with Fla. Stat. § 101.161. See Fla. Stat. § 16.061(1); Fla. Const. art. IV, § 10; art. V, § 3(b)(10). The petition may enumerate any specific factual issues that the Attorney General believes require determination. Fla. Stat. § 16.061(1).

  The Florida Supreme Court has on occasion stricken a proposed constitutional initiative before the election on the grounds that its ballot summary is misleading and therefore not in compliance with statutory requirements. Advisory Op. to the Att’y Gen. re: Adult Use of Marijuana, 315 So.3d 1176, 1177, 1185 (Fla. 2021).

  Sample case: Advisory Op. to the Att’y Gen. Re: Adult Use of Marijuana, 315 So.3d 1176, 1177, 1185 (Fla. 2021) (opining in mandatory advisory opinion that ballot summary indicating the proposed amendment would “permit” use of recreational marijuana was misleading in that it suggested that activities would be legal under federal law and striking the proposed amendment).

Florida statutes also contemplate Florida Supreme Court review of materials prepared by the Financial Impact Estimating Conference. See, e.g., Fla. Stat. §§ 100.371(13)(c)(3), 16.061(3). However, the Florida Supreme Court has held it lacks jurisdiction under the state constitution to review the validity of financial impact statements prepared by the Conference. See Advisory Opinion to the Attorney General re: Raising Florida’s Minimum Wage, 285 So.3d 1273, 1277–78 (Fla. 2019).

- For legislatively referred amendments, although the Florida Constitution does not explicitly provide for judicial review of ballot language, Florida statutes provide for actions for expeditious judicial determinations that a ballot statement embodied in a legislative resolution is defective. See Fla. Stat. § 101.161(3)(c)(1)–(2). Such actions may be commenced within 30 days after the joint resolution is filed with the Secretary of State. Id. The Florida Supreme Court has held that the ballot language for legislatively referred amendments must fairly inform voters of the chief purpose of the amendment and must not be misleading. Fla. Educ. Ass’n v. Fla. Dep’t of State, 48 So.3d 694, 699–701 (Fla. 2010).

  Sample case: Armstrong v. Harris, 773 So.2d. 7, 12, 21 (Fla. 2000) (holding that ballot language for legislatively referred amendment is subject to accuracy requirements, implicit in the constitutional provision requiring that amendments be submitted to electors; and holding that, here, ballot summary did not state the proposed amendment’s main effect or chief purpose, was misleading for “flying under false colors,” and “hiding the ball”).
If the court finds the legislature’s ballot statement to be defective “and further appeals are declined, abandoned, or exhausted, unless otherwise provided in the joint resolution, the Attorney General shall, within 10 days, prepare and submit to the Department of State a revised ballot title or ballot summary that corrects the deficiencies identified by the court[.]” Fla. Stat. § 101.161(3)(c)(2). The court retains jurisdiction over any ballot language prepared by the Attorney General, and a new challenge may be filed within 10 days after a revised ballot title or summary is submitted to the Department of State. See id.
Georgia does not have statewide initiatives or veto referendums but has legislatively referred amendments. Following approval by a legislative supermajority, a proposed amendment must be submitted to voters at the next general election falling on an even-numbered year. The legislature may draft the ballot language. A summary of the amendment is jointly prepared by the Attorney General, Legislative Counsel, and Secretary of State, for publication in newspapers before the election. Georgia’s provisions governing legislatively referred amendments do not explicitly provide for judicial review of ballot language or related materials, and the state supreme court has held that it lacks jurisdiction to consider pre-election challenges to proposed amendments. The court has also shown great deference to ballot language prepared by the state legislature.

BACKGROUND INFORMATION
What forms of direct democracy are available, and when?

Statewide Ballot Measures in Georgia
Georgia does not have statewide initiatives or veto referendums but has legislatively referred amendments.

- Initiatives – Statutory
- Initiatives – Constitutional
- Veto Referendums
- Legislatively Referred Amendments
  An amendment to the state constitution proposed by the state legislature must be approved by Georgia voters. Ga. Const. art. X, § 1, ¶ ¶.

Election Timing
A proposed constitutional amendment must first be approved by a 2/3 supermajority of the members elected to each house of the General Assembly. The proposed amendment is then submitted to Georgia voters “at the next general election which is held in the even-numbered years.” See Ga. Const. art. X, § 1, ¶ ¶.
BALLOT PREPARATION  
What is included on the ballot, and who prepares it?

The ballot for any proposed constitutional amendment in Georgia must display the following:

- A short title or heading (15 words or less, printed in boldface). See Ga. Code § 50-12-101(c).
  - The title must “describe in summary form the substance of the proposal.” Id.
  - It is prepared by the Constitutional Amendments Publication Board: comprised of the Governor, Lieutenant Governor, and Speaker of the House of Representatives. See id. § 50-12-100. The title must be approved by at least two of these three members. See id.
  - Under the state constitution, the General Assembly may provide this language in its underlying resolution, but if not, the ballot form shall be “in such language as the Governor may prescribe.” Ga. Const. art. X, § 1, ¶ II. Pursuant to statutes, however, if the General Assembly fails to provide the brief form, it “shall be determined by the Secretary of State.” Ga. Code §§ 21-2-285(f), 50-12-101(c).

INFORMATION TO VOTERS  
What information is provided to voters before the election, and how?

Publication
A summary of the amendment is prepared by the Attorney General, Legislative Counsel, and Secretary of State, and is published in the official publication of each county once a week for three consecutive weeks before the election. See Ga. Const. art. X, § 1, ¶ II. If deemed advisable by the Constitutional Amendments Publication Board—comprised of the Governor, Lieutenant Governor, and Speaker of the House of Representatives—the summary is also published in “not more than 20 other newspapers in the state.” See id; see also Ga. Code § 50-12-100.

Once the summary is prepared, the Secretary of State must issue a press release stating that a summary is available for distribution to interested citizens and advising them how to request a copy. See id. § 21-2-4(b). The Secretary must distribute this press release to print and broadcast media throughout the state and must actively seek cooperation from the media in publicizing the availability of a summary. See id. The Secretary may also post a copy on the internet and/or release a copy via audio tapes, CDs, or other media. Id. sub. (d).

Voter Information Pamphlet
As noted, a summary of the proposed amendment prepared by the Constitutional Amendments Publication Board is published in newspapers before the election. See Ga. Const. art. X, § 1, ¶ II. The summary must provide an explanation of each proposed amendment “in language free of legalistic and technical terms, to the end that [it] may be read and understood by the majority of citizens[.]” Ga. Code § 21-2-4(a). The summary
must also indicate that the full text of the proposed amendment is available in the office of the probate court judge in each county. Ga. Const. art. X, § 1, ¶ II. In addition to publishing this summary, the Secretary of State must print and provide copies to local election officials, who must distribute a copy to any citizen who requests one. See Ga. Code § 21-2-4(a), (c).

Beyond this summary, Georgia law does not require a comprehensive state voter information pamphlet for proposed constitutional amendments.

**JUDICIAL REVIEW**

*When and how can the court step in?*

Georgia’s provisions governing legislatively referred amendments do not explicitly provide for judicial review of ballot language or related materials, but limited judicial review may be available under other channels. The Georgia Supreme Court has held it lacks jurisdiction to consider pre-election challenges to proposed amendments, such as actions to enjoin proposed amendments from appearing on the ballot. See *O’Kelley v. Cox*, 604 S.E.2d 773, 774 (Ga. 2004). In post-election challenges, the court has held that ballot language prepared by the General Assembly need only be adequate to indicate which amendment was subject to a vote. See, e.g., *Donaldson v. Dep’t of Transp.*, 414 S.E.2d 638, 640 (Ga. 1992).

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**Sample case:** *Donaldson v. Dep’t of Transp.*, 414 S.E.2d 638 (Ga. 1992) (rejecting a post-election challenge arguing a proposed amendment’s ballot language was misleading; holding the only limitation on the General Assembly in drafting ballot language is that the language be adequate to enable voters to ascertain which amendment they are voting on: a standard that was undoubtedly met in this case).
Hawaii does not have statewide initiatives or veto referendums but has legislatively referred amendments. Following approval by a legislative supermajority, a proposed amendment must be submitted to voters at the next general election. The ballot language is prepared by the legislature. The Attorney General, in consultation with the legislative reference bureau, also prepares an explanatory statement in both English and Hawaiian that is distributed to the county clerks and made available at polling places and other public offices. Pre-election judicial review of ballot language may be available via actions for injunctive relief or petitions for extraordinary writ. While applying the statutory standard that ballot language be clear and not misleading, the Supreme Court of Hawaii has indicated that a pivotal inquiry is whether the language generates a knowing and deliberate expression of voter choice.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

### Statewide Ballot Measures in Hawaii

Hawaii does not have statewide initiatives or veto referendums but has legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**
- **Legislatively Referred Amendments**
  
  An amendment to the state constitution proposed by the state legislature must be approved by Hawaii voters. Haw. Const. art. XVII, § 3.

### Election Timing

A proposed constitutional amendment must be approved by a 2/3 supermajority of each house of the legislature, voting after the Governor has received at least ten days’ notice of the proposal. See Haw. Const. art. XVII, § 3. The legislature may alternatively propose amendments to the constitution with or without notice to the Governor “by a majority vote of each house on final reading at each of two successive sessions.” *Id.* Thereafter,
the proposed amendment is submitted to Hawaii voters at the next general election. *Id.*

**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for any proposed constitutional amendment in Hawaii must display the following.

- The question must be included by the legislature in the underlying resolution proposing the amendment. See *id*.
- The language and meaning of the amendment must be clear, and it must not be misleading or deceptive. See *id*.

Proposed constitutional amendments must be submitted on a separate ballot. Haw. Const. art. XVII, § 3.

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

The proposed amendment (full text) must be published in at least one newspaper of general circulation in each senatorial district in which a paper is published, within two months of the general election. See Haw. Const. art. XVII, § 3. The Hawaii Supreme Court has invalidated an amendment based on the state’s failure to comply with the publication requirements set forth in the state constitution. See *Watland v. Lingle*, 85 P.3d 1079, 1090–92 (Haw. 2004).

**Voter Information Pamphlet**

The Attorney General, in consultation with the legislative reference bureau, must prepare an explanatory statement in English, Olelo Hawaii, and other languages required under the Voting Rights Act, which the Attorney General distributes to the state office of elections and county clerks for further distribution at polling places, other public offices, and on a state website. See S.B. 1076, 32d Leg., Reg. Sess. § 3 (Haw. 2023) (amending Haw. Rev. Stat. § 11-118.5(b)(1)–(3)). The statement must be written in language that is clear, and must indicate the purpose, limitations, and effects of the proposed amendment. See *id*, sub. (1).

The office of elections must prepare a digital voter information guide and post it in a screen-reader-accessible format to its website. S.B. 1076, 32d Leg., Reg. Sess. § 2 (Haw. 2023) (statute to be designated). The digital voter guide must be translated into Olelo Hawaii, and it must be printed and distributed to public libraries for viewing by the public. *Id.* The digital voter guide must include the explanatory statement of the proposed constitutional amendment provided that the Attorney General submits the required materials the office of elections no later than seventy-five days before the general election. *Id.*
JUDICIAL REVIEW
When and how can the court step in?

Hawaii’s provisions governing legislatively referred amendments do not explicitly provide for judicial review of ballot language or related materials, but pre-election judicial review may be available via an action for injunctive relief and/or petition for extraordinary writ. See City & Cnty. of Honolulu v. State, 431 P.3d 1228, 1235-37 (Haw. 2018) (describing how the court granted a pre-election petition for extraordinary writ based on an invalid ballot question). While applying the statutory standard that ballot language must be clear and not misleading, the Supreme Court of Hawaii has indicated that a pivotal inquiry is whether the language “generates a knowing and deliberate expression of voter choice.” Id. at 1238 (citing Kahalekai v. Doi, 590 P.2d 543, 550 (Haw. 1979)).

**Sample case:** City & Cnty. of Honolulu v. State, 431 P.3d 1228, 1236 (Haw. 2018) (ordering that no votes be counted due to the ballot question’s failure to comply with the requirement that proposed constitutional amendment language and meaning must be clear and not misleading).
Idaho has statutory initiatives (but not constitutional initiatives), veto referendums, and legislatively referred amendments. Both statutory initiatives and legislatively referred amendments must be submitted to voters at general elections pursuant to the state constitution; in contrast, veto referendums may be submitted at any “regular, biennial” election. The information included on the ballot and in other informational materials varies depending on the type of ballot measure. While the Attorney General and Secretary of State play key roles in preparing voter information pertaining to statutory initiatives and veto referendums, the Legislative Council plays a more central role for legislatively referred amendments. Idaho law explicitly provides for judicial review of initiative and veto referendum ballot titles. Although there is no explicit provision for judicial review of legislatively referred amendment ballots or related materials, case law suggests that review may be available, including but not limited to post-election judicial review in cases alleging a defect that was misleading to voters.

**BACKGROUND INFORMATION**

**What forms of direct democracy are available, and when?**

**Statewide Ballot Measures in Idaho**

Idaho has statutory initiatives (but not constitutional initiatives), veto referendums, and legislatively referred amendments.

- **Initiatives – Statutory**
  The people of Idaho have the initiative power to propose and enact legislation independent of the legislature. Idaho Const. art. III, § 1.

- **Initiatives – Constitutional**

- **Veto Referendums**
  Idahoans have the referendum power to demand that any act of the legislature be submitted to the voters for their approval or rejection. Idaho Const. art. III, § 1.

- **Legislatively Referred Amendments**
  An amendment to the state constitution proposed by the legislature must be approved by Idaho voters. Idaho Const. art. XX, § 1.
Election Timing

Both initiatives and legislatively referred amendments must be submitted to voters at general elections, while veto referendums may be submitted at other “regular, biennial” elections.

- An initiative must be submitted at a general election. See Idaho Const. art. III, § 1.
- A veto referendum election is to take place “in such manner as may be provided by acts of the legislature.” See Idaho Const. art. III, § 1.
  - Pursuant to statutes, a veto referendum must be submitted to voters statewide “at the biennial regular election” following the filing of the petition with the Secretary of State. Idaho Code § 34-1803. The statute does not explicitly require that such a regular election be a general election as opposed to a primary election. Id.
- A legislatively referred amendment must be submitted to Idaho voters at the “next general election” after it is approved by 2/3 of all members elected to each house of the legislature, voting separately. Idaho Const. art. XX, § 1.

BALLOT PREPARATION

What is included on the ballot, and who prepares it?

- The ballot for an initiative or veto referendum must contain the following information, prepared by the Secretary of State on a separate, official ballot. See Idaho Code § 34-906(3).
  - A ballot title, prepared by the Attorney General before a petition is circulated for signatures. See Idaho Code § 34-1809(2)(a), (c). The Attorney General’s title must be true and impartial and must not be intentionally an argument or likely to create prejudice for or against the measure. Id. sub. (2)(e). A ballot title includes both:
    - A distinctive short title, by which the measure is commonly referred to or spoken of (20 words or less). Id. sub. (2)(d)(i).
    - A general title expressing the measure’s purpose (200 words or less). Id. sub. (2)(d)(ii).
  - A clear and concise statement as to the effect of a “yes” and “no” vote, prepared jointly by the Attorney General and the Secretary of State. Idaho Code § 34-1810(1)(b).
  - (For initiatives only) A fiscal impact statement summary, prepared by the Division of Financial Management (100 words or less). See Idaho Code § 34-1812(1), (3).
    - A more detailed statement of the fiscal impact is included in a voter information pamphlet (discussed below). The fiscal impact statement and summary must be written in clear and concise language, avoiding legal and technical terms whenever possible. Id. sub. (2).
    - The summary must, in a good faith and unbiased manner, describe any projected change in revenues, costs, expenditures, or indebtedness that the state or local governments will experience if the ballot measure is
approved by the voters, which can include both estimated dollar amounts and a description placing these into context. See id. sub. (1)-(2).

- The initiative sponsor’s proposed funding source information, which is submitted to the Secretary of State before a petition is circulated for signatures. See Idaho Code §§ 34-1812(3), -1804(2).

The ballot for a legislatively referred amendment must contain:
- A brief statement setting forth in simple, understandable language the meaning and purpose of the proposed amendment and the result to be accomplished thereby, prepared by the Legislative Council. Idaho Code § 67-453(1)(a). The Secretary of State includes this information on a separate general election ballot form for constitutional amendments and other ballot issues. See id. § 34-906(3).

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

- Idaho law does not generally require that information about initiatives or veto referendums be published in a newspaper or similar media, except for voter information pamphlets (discussed below).

- For legislatively referred amendments, the Secretary of State must publish the following information three times, in each newspaper qualified to print legal notices: first no more than six weeks before the election, and finally no more than seven days before the election. See Idaho Const. art. XX, § 1; Idaho Code § 67-913.
  - The full text of the proposed amendment. See id.
  - The ballot statement of the amendment’s meaning and purpose of the amendment, prepared by the Legislative Council. See id.; see also Idaho Code § 67-453(1)(a).
  - Major arguments for and against the amendment, also prepared by the Legislative Council, and discussed in further detail below. See also Idaho Code §§ 67-913, 67-453(1)(b).

**Voter Information Pamphlet**

Idaho’s policies with respect to voter information pamphlets vary depending on the type of ballot measure.

- For each initiative and veto referendum, by September 25 before the election at which the measure is to be submitted to voters, the Secretary of State must cause to be printed, and distributed to every household statewide, a voter information pamphlet containing the following information. See Idaho Code § 34-1812C.
  - A complete copy of the measure’s text, including the title. Idaho Code § 34-1812C(1)(a).
  - The ballot title, prepared by the Attorney General. See id.
• An argument for and against the measure (500 words or less, each), including a rebuttal argument (250 words or less, each). Idaho Code §§ 34-1812C(1)(c), 34-1812A, 34-1812B.
• Any voter or group may file an argument for or against the measure by July 20. See Idaho Code § 34-1812A. If more than one argument for and/or against is received, the Secretary of State must select which one to include in the voter pamphlet, giving priority to the measure’s sponsor, then to bona fide associations of citizens, and lastly to individual voters. See id.
• Any voter or group submitting an argument for or against the measure must also receive an opportunity to submit a rebuttal argument. See id. § 34-1812B. Rebuttal arguments are printed in the same manner as direct arguments, with each rebuttal to immediately follow the direct argument it seeks to rebut. Id.
• (For initiatives only)
  • The fiscal impact summary and complete fiscal impact statement prepared by the Division of Financial Management. See id. §§ 34-1812C(1)(b), -1812.
  • The sponsor’s proposed funding source information. See id. sub. 1(c); §§ 34-1812(3), -1804(2).

Idaho law does not require that information about legislatively referred amendments be included in the voter information pamphlet prepared for initiatives and veto referendums. However, for each legislatively referred amendment, the Legislative Council prepares a concise summary of the major arguments advanced by both proponents and opponents. See also Idaho Code § 67-453(1)(b). This summary of major arguments is included in the Secretary of State’s pre-election publications in Idaho newspapers (along with the ballot language and the proposed amendment’s full text). See id. § 67-913. The statement must represent the arguments as fairly as possible. See id. § 67-453(1)(b). In preparing it, the Legislative Council may seek advice or suggestions of known supporters and opponents, or any other persons or groups, and may in its sole discretion use any of the suggested arguments, without providing recognition. See id.

**JUDICIAL REVIEW**

*When and how can the court step in?*

➢ For an initiative or veto referendum, any person dissatisfied with the ballot titles provided by the Attorney General may appeal to the state supreme court to petition for a different title. See Idaho Code § 34-1809(3). The petition must be made within 20 days of the ballot title being filed with the Secretary of State and is to set forth the reason why the title is insufficient or unfair. See id. The Idaho Supreme Court must hear arguments and certify to the Secretary of State a ballot title and short title to use on the ballot. See id. sub. (3)(c).
Sample case: *Idahoans for Open Primaries v. Labrador*, 533 P.3d 1262 (Idaho 2023) (holding that initiative ballot titles prepared by the Attorney General failed to comply with statutory requirements, including in that titles did not accurately describe the initiative and were likely to prejudice the initiative; ordering Attorney General to provide new ballot titles for review).

- Idaho laws do not explicitly provide for judicial review of ballot language or related materials for *legislatively referred amendments*, but review may be available under other channels, including post-election challenges alleging a defect that was misleading to voters or even pre-election petitions for extraordinary relief. See, e.g., *Idaho Watersheds Project v. State Bd. of Land Commrs.*, 982 P.2d 358, 360-62 (Idaho 1999) (citing *Nez Perce Tribe v. Cenarrusa*, 867 P.2d 911, 912 (Idaho 1993)).
Illinois has constitutional initiatives and legislatively referred amendments but does not have statutory initiatives or veto referendums. The precise timing of an election depends on whether the amendment was proposed by an initiative petition or by the legislature, but regardless, it must be submitted to voters at a general election. The contents of the ballot are also the same regardless of the amendment’s source, although the entity responsible for drafting the contents is different. In addition to an explanation of the amendment, the ballot also includes arguments for and against each amendment. Voters are also sent an informational pamphlet on each proposed amendment. However, only information about legislatively referred amendments is required to be published in newspapers. Illinois law explicitly contemplates judicial review relating to constitutional initiatives. While no explicit provision is made for judicial review of legislatively referred amendment ballots or related materials, review may be available under other channels.

**BACKGROUND INFORMATION**
*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Illinois**
Illinois has constitutional voter initiatives and legislatively referred amendments but does not have statutory initiatives or veto referendums.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
  - The people of Illinois reserve a limited, initiative power to amend the state constitution. Ill. Const. art. XIV, § 3. The power is limited in the sense that constitutional initiatives “shall be limited to structural and procedural subjects contained in Article IV,” which pertains to the state legislature. See *id.*; Ill. Const. art. IV.
- **Veto Referendums**
- **Legislatively Referred Amendments**
  - An amendment to the state constitution proposed by the legislature must be approved by Illinois voters. Ill. Const. art. XIV, § 2.
**Election Timing**

The precise timing of an election on a proposed constitutional amendment depends on whether it is proposed by an initiative petition or by the legislature, but in all cases, proposed amendments must be submitted to voters at a general election.

- A *constitutional initiative* must be submitted to voters at a general election to be specified in the petition, which must be filed with the Secretary of State at least six months before such general election. See Ill. Const. art. XIV, § 3.
- A *legislatively referred amendment* must be submitted to voters at the next general election occurring at least six months after the proposed amendment is approved by 3/5 of all members elected to each house of the legislature. Ill. Const. art. XIV, § 2.

**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for any proposed constitutional amendment in Illinois must display the following information. See 10 Ill. Comp. Stat. § 5/16-6. Proposed constitutional amendments are submitted to voters on their own ballot, separate from the candidate ballot. See id.

- A brief caption indicating the article or section of the constitution that is to be amended, above the “yes” or “no” options. See 10 Ill. Comp. Stat. § 5/16-6.
  - For a *constitutional initiative*, this caption appears to be prepared by the State Board of Elections as the relevant election authority. See 10 Ill. Comp. Stat. §§ 5/16-7, 5/28-4.
  - For a *legislatively referred amendment*, this is included in the underlying legislative resolution. See 5 Ill. Comp. Stat. § 20/2(a).

- A brief explanation of the proposed amendment. 10 Ill. Comp. Stat. § 5/16-6; see also id. §§ 5/16-7, 5/28-1.
  - For a *constitutional initiative*, this explanation is approved or prepared by the Attorney General. 10 Ill. Comp. Stat. § 5/16-6. The proponents first draft an explanation and submit it to the Attorney General, who may re-write it for accuracy and fairness. See 5 Ill. Comp. Stat. § 20/2(b).
  - For a *legislatively referred amendment*, the explanation is prepared by the General Assembly. See 10 Ill. Comp. Stat. § 5/16-6; 5 Ill. Comp. Stat. § 20/2(a).

- An argument for and an argument against the proposed amendment. See 5 Ill. Comp. Stat. § 20/2(a)–(b).
  - For a *constitutional initiative*, the initiative’s proponents draft the argument favoring the amendment and the argument against it is drafted by a legislative opponent (or, if none, by another opponent designated by the General Assembly). See 5 Ill. Comp. Stat. § 20/2(a)–(b). Draft arguments are first submitted to the Attorney General, who may re-write for accuracy and fairness. See id. sub. (b).
  - For a *legislatively referred amendment*, the argument in favor is prepared by
the General Assembly; the opposing argument is prepared by the legislative minority (or, if none, by another opponent designated by the General Assembly). See 5 Ill. Comp. Stat. § 20/2(a).

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

✗ Illinois law does not generally require that information about *constitutional initiatives* be published in newspapers or similar media, except for voter information pamphlets (discussed below).

✓ For *legislatively referred amendments*, after a proposed amendment has been passed by the General Assembly and at least two months before the next election of General Assembly members, the Secretary of State must publish the following information in qualifying newspapers in each county, for three consecutive weeks. See Ill. Const. art. XIV, § 2(b); 5 Ill. Comp. Stat. § 20/2(c)-(d).

- The full text of the proposed amendment. See 5 Ill. Comp. Stat. § 20/2(c).
- The form in which the proposed amendment will appear on the ballot. See id.
- The election at which the proposed amendment will be submitted to voters. See id.

**Voter Information Pamphlet**

For each proposed constitutional amendment—whether proposed by initiative petition or by the legislature—the Secretary of State must prepare a voter information pamphlet containing the following information. See 5 Ill. Comp. Stat. § 20/2(d).

- The full text of the proposed amendment.
- The existing form of the constitutional provision that would be amended.
- The caption/form by which the proposed amendment will be submitted to voters.
- The explanation of the amendment that will appear on the ballot.
- The arguments for and against the amendment that will appear on the ballot.

See id. The pamphlet must be published on the Secretary of State’s website, including an audio version, and must also be available in print on request. Id. Further, a copy must be sent to each mailing address in the state, unless provision is made for distributing a condensed, postcard version. See id. sub. (e)-(f). The pamphlet is typically included in a larger voter guide prepared by the State Board of Elections. See generally 10 Ill. Comp. Stat. § 5/12A-5(10).

**JUDICIAL REVIEW**

*When and how can the court step in?*

➢ With respect to the submission of a *constitutional initiative*, Illinois statutes provide that any legal voter of the state may seek judicial review. See generally 10 Ill. Comp. Stat. §§ 5/28-4, 5/28-5, 5/10-8. Objections to initiative petitions must be filed within 42 business days after the petition is filed; the State Board of Elections is
tasked with being the first entity to review such objections. See 10 Ill. Comp. Stat. § 5/28-4.

For legislatively referred amendments, Illinois law does not explicitly provide for judicial review of ballot language or related materials, but review may be available under other channels. See, e.g., Am. Nat. Bank & Trust Co. of Chi., 372 N.E.2d 66, 74 (Ill. 1977) (rejecting a post-election argument that information provided to voters about legislatively referred amendment was false and misleading, without foreclosing similar arguments in the future).
In Indiana, legislatively referred amendments are the only form of statewide direct democracy available for the purposes of this report. The legislature generally controls how proposed amendments are submitted to voters. For instance, it may supply the ballot language (including whether or not to include explanatory text in addition to the ballot question); when it does so, this language is given great deference by the court. However, the legislature may not order a special election, as under the state constitution, proposed amendments must be submitted to voters at the next general election.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Indiana**

*Indiana does not have statewide initiatives or veto referendums but has legislatively referred amendments.*

- **X** Initiatives – Statutory
- **X** Initiatives – Constitutional
- **X** Veto Referendums

- **✓ Legislatively Referred Amendments**
  - An amendment to the state constitution proposed by the legislature must be approved by Indiana voters. Ind. Const. art. 16, § 1(b)-(c).

**Election Timing**

A proposed amendment must first be approved by a majority of members elected to each house, in two consecutive General Assemblies. Ind. Const. art. 16, § 1(b). It is then submitted to Indiana voters “at the next general election.” *Id.*
BALLOT PREPARATION

What is included on the ballot, and who prepares it?

The ballot for a proposed constitutional amendment must contain the following.

- Statement of the question.
- (Only as required by the legislature) Explanatory text, if applicable.

Indiana law generally allows the General Assembly to prescribe the form of the ballot. If the legislature does not prescribe the form of the ballot, the Indiana Election Commission must “prepare a brief statement of the public question in words sufficient to clearly designate it and have the statement printed on the state ballot.” Ind. Code § 3-10-3-2(a); see also Ind. Code § 3-11-2-15.

INFORMATION TO VOTERS

What information is provided to voters before the election, and how?

Publication

County election boards must publish notice of a constitutional amendment ballot question to a qualified newspaper no later than 21 days before Election Day. If such newspaper maintains a website, the notice must also appear online. See generally Ind. Code §§ 3-10-3-1(b), 5-3-1-1.5, 5-3-1-2.

Voter Information Pamphlet

Indiana law does not require a state voter information pamphlet for ballot measures.

JUDICIAL REVIEW

When and how can the court step in?

Indiana’s direct democracy provisions do not explicitly provide for judicial review of ballot contents or related materials, though review may be available under other channels. Particularly where the legislature prescribes the form of a ballot question, the court has indicated it will not strike down an amendment based on its submission method “[s]o long as the amendment is sufficiently identified and is not confused with any other amendments.” Oviatt v. Behme, 147 N.E.2d 897, 900 (Ind. 1958).

Sample case: Oviatt v. Behme, 147 N.E.2d 897, 899–900 (Ind. 1958) (rejecting argument that a constitutional amendment was improperly submitted and thus not properly ratified; nothing required legislature to submit full text to electors).
In Iowa, legislatively referred amendments are the only form of statewide direct democracy available for the purposes of this report. The Iowa legislature may call a special election for a vote on a proposed amendment, but otherwise, the amendment will be submitted to voters at the next general election. The ballot language is drafted not by the legislature, but by the State Commissioner of Elections, who must publish and accept written comments before finalizing the same. In addition, the full text of the proposal must appear on the ballot; or if it does not fit on the ballot, it must be posted in each polling place. Iowa law explicitly provides for pre-election judicial review of proposed constitutional amendments.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Iowa**

Iowa does not have statewide initiatives or veto referendums but has legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**
- **Legislatively Referred Amendments**
  
  An amendment to the state constitution proposed by the legislature must be approved by Iowa voters. Iowa Const. art. 10.

**Election Timing**

A proposed amendment must first be approved by a majority of members elected to each house, in two consecutive General Assemblies. Iowa Const. art. 10, § 1. Unless otherwise provided, it is then submitted to the people at the next general election. Iowa Code § 49A.4. However, the General Assembly may call for a special election to submit a proposed amendment to the people. *Id.* § 49A.5.
BALLOT PREPARATION
What is included on the ballot, and who prepares it?

The ballot for a proposed constitutional amendment must contain the following information.

- **Summary.**
  - The summary is prepared by the State Commissioner of Elections. Iowa Code §§ 49.44, 52.25.
  - The Commissioner shall review timely-submitted comments and make any changes deemed to be warranted in the description. Id. sub. (3)(b)–(c).

- (If applicable) Proposed amendment’s text.
  - However, if the complete text will not fit on the ballot, it must be posted inside the voting booth, and a copy must be included with absentee ballots. Iowa Code § 49.44.

- Notice to inform voters as to proposed amendment’s location on the ballot.
  - The notice is prepared by the State Commissioner of Elections. Iowa Code § 49.48.

INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

**Publication**
Iowa law requires two publications, as follows.

- After a proposed amendment is agreed to by each house of the legislature for the first time and has been referred to the succeeding legislature, it must be published once a month for three months in two newspapers of general circulation in each congressional district, and on an internet site of the legislature. Iowa Const. art. 10, § 1; Iowa Code § 49A.1.
  - However, an amendment agreed to by two consecutive General Assemblies cannot be deemed invalid by reason of an error or omission with this publication required between general assemblies. Iowa Code §§ 49A.10(2), 49A.1.

- The Secretary of State must publish a notice between four and twenty days before the election, which must include the full text of each proposed amendment. The notice must be published in at least one newspaper in each county or political subdivision; for general elections, the notice must be published in at least two newspapers in the county, where available. Iowa Code § 49.53(1)–(2).
Voter Information Pamphlet

Iowa law does not require a state voter information pamphlet for legislatively referred amendments.

JUDICIAL REVIEW

When and how can the court step in?

Whenever a proposed amendment is to be submitted to voters, any Iowa taxpayer may challenge its validity, legality, or constitutionality in district court. Iowa Code § 49A.10.

Sample case: No reported cases under Iowa Code § 49A.10 have been identified to date. For a related case involving a local bond referendum election, see Honohan v. United Cmty. Sch. Dist. of Boone and Story Cntrys., 137 N.W.2d 601, 602–03 (Iowa 1965) (invalidating a local bond referendum due to a fatal defect in the substance of the ballot, where ballot referenced a “high school” while underlying proposal and notice of election referenced a “schoolhouse”).
In Kansas, legislatively referred amendments are the only form of statewide direct democracy available for the purposes of this report. The legislature has substantial control over the process, including the ability to call a special election to vote on a proposed amendment as well as control over the ballot language. The Secretary of State is involved in a limited capacity only, including publishing the proposed amendment in newspapers. Kansas’s direct democracy provisions do not explicitly provide for judicial review of ballot language or related materials, but review may be available under other channels.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Kansas**

Kansas does not have statewide initiatives or veto referendums but has legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**
- **Legislatively Referred Amendments**
  
  An amendment to the state constitution proposed by the legislature must be approved by Kansas voters. Kan. Const. art. 14, § 1.

**Election Timing**

After approval by 2/3 of all members elected to each house of the legislature, a proposed amendment is submitted to voters at the next election for representatives or a special election called by the underlying legislative resolution. Kan. Const. art. 14, § 1.
BALLOT PREPARATION

*What is included on the ballot, and who prepares it?*

The ballot for a proposed amendment to the Kansas Constitution must include the following.

- Full text of the proposed amendment.
- Ballot title.

The ballot title is specified in the underlying legislative resolution and must “be a brief nontechnical statement expressing the intent or purpose of the proposition and the effect of a vote for and a vote against the proposition.”


INFORMATION TO VOTERS

*What information is provided to voters before the election, and how?*

**Publication**

The Secretary of State must publish the full text of the legislative resolution proposing a constitutional amendment in one newspaper in each county (or, if no newspaper is published, then a Kansas newspaper of general circulation) once each week for the three consecutive weeks preceding the election. Kan. Stat. Ann. § 64-103(b)(1). The Secretary of State may supplement this publication by radio and television broadcast during the week immediately preceding the election (but failure to do so is not subject to legal challenge). Kan. Stat. Ann. § 64-112.

In addition, county election officers must publish a notice of election, both in newspapers and on each county election office’s respective website, which must indicate any ballot propositions including constitutional amendments that will be voted upon. 2023 Kan. Sess. Laws 79 (amending Kan. Stat. Ann. § 25-105).

The Secretary of State must also provide each county election officer with a copy of the legislative resolution, and at least two copies thereof must be posted in each polling place. Kan. Stat. Ann. §§ 25-606, -607.

**Voter Information Pamphlet**

KS Kansas law does not require a state voter information pamphlet for *legislatively referred amendments.*

**JUDICIAL REVIEW**

*When and how can the court step in?*

Kansas’s direct democracy provisions do not explicitly provide for judicial review of ballot language or related materials, but review may be available under other channels, such as a proceeding *quo warranto.* See *State ex rel. Anderson v. Shanahan,* 327 P.2d 1042, 1043, 1047 (Kan. 1958) (accepting an original proceeding in *quo warranto* seeking to oust the
secretary of state from publishing a proposed constitutional amendment; holding the secretary of state was required to publish the constitutional amendment in full on the ballot).
In Kentucky, legislatively referred amendments are the only form of statewide direct democracy available. A proposed amendment—including its full text—must be submitted to voters at the next general election for members of the House of Representatives. The legislature may draft the ballot question, but it must be calculated to inform the electorate of the substance of the amendment. Kentucky law contemplates judicial review after the election, but it does not explicitly provide for judicial review of ballot language before the election.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Kentucky**

Kentucky does not have statewide initiatives or veto referendums but has legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**

- **Legislatively Referred Amendments**
  
  An amendment to the state constitution proposed by the legislature must be approved by Kentucky voters. Ky. Const. § 256.

**Election Timing**

A proposed amendment is submitted to voters after it is approved by a 3/5 vote of all members elected to each house of the legislature. Ky. Const. § 256. It is submitted at the next general election for members of the House of Representatives, which must take place at least 90 days from the final passage of the underlying legislative resolution. *Id.*
**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for a proposed amendment must contain the following.

- Full text of the proposed amendment. See Ky. Const. § 256.
- The question may be drafted by the General Assembly. If the General Assembly does not formulate the ballot question, the Attorney General must do so. *Id.* sub. (2).

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

The Secretary of State must publish the proposed amendment, the ballot question, and the election date in one newspaper of general circulation not later than the second Monday after the second Tuesday in August preceding the election. Ky. Const. § 257; Ky. Rev. Stat. Ann. § 118.415(3).

**Voter Information Pamphlet**

- Kentucky law does not require a state voter information pamphlet for ballot measures.

**JUDICIAL REVIEW**

*When and how can the court step in?*

Kentucky law provides for post-election challenges pertaining to constitutional amendments by any elector who voted on the amendment. Ky. Rev. Stat. Ann. § 120.280(1). Challenges must be filed in Franklin Circuit Court within fifteen days after the election results are returned. *Id.* Kentucky’s provisions on constitutional amendments do not explicitly provide for judicial review of ballot language before the election, but review may be available under other channels.

**Sample cases:** *Westerfield v. Ward*, 599 S.W.3d 738, 743–44, 751–52 (Ky. 2019) (invalidating a “Marsy’s Law” constitutional amendment that had been adopted where the full text of the amendment was omitted from the ballot and the pre-election publication, in a case that was originally brought in advance of the election). *See also Ward v. Westerfield*, 653 S.W.3d 48, 51–58 (Ky. 2022) (finding an absence of taxpayer standing in pre-election challenge where petitioners did not contend they misunderstood the contents of the ballot question or that they were personally impacted by the substantive provisions of the subsequent Marsy’s Law amendment).
In Louisiana, legislatively referred amendments are the only form of statewide direct democracy available for the purposes of this report. The legislature designates the timing of the election in the underlying resolution, which must receive the support of a 2/3 supermajority. The legislature is also charged with drafting the ballot language. The full text of the proposed amendment is made available to voters, and the Secretary of State also drafts an explanatory statement that is posted publicly. State law provides for judicial review of the submission of a proposed amendment to voters.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Louisiana**

Louisiana does not have statewide initiatives or veto referendums but has legislatively referred amendments.

- ✗ *Initiatives – Statutory*
- ✗ *Initiatives – Constitutional*
- ✗ *Veto Referendums*
- ✓ *Legislatively Referred Amendments*
  
  An amendment to the state constitution proposed by the legislature must be approved by Louisiana voters. La. Const. art. XIII, § 1.

**Election Timing**

A proposed amendment must first be approved by 2/3 of the members elected to each house of the legislature, whether at a regular or special session, and is also subject to certain prefiling requirements. La. Const. art. XIII, § 1(A)(1). The joint legislative resolution must specify the statewide election at which the proposed amendment will be submitted to voters, which may be a special election. *Id.*
BALLOT PREPARATION
What is included on the ballot, and who prepares it?

The ballot for a proposed amendment to the Louisiana Constitution must contain the following information.

- Full text of the proposed amendment. La. Const. art. XIII, § 1(B)–(C).
  - The title must be "comprised of simple, unbiased, concise, and easily understood language and be in the form of a question." Id.
  - The title is drafted by the legislature, but the Secretary of State is responsible for ensuring that the language complies with statutory requirements. See La. Const. art. XIII, § 1(B); La. Rev. Stat. § 18:1299.1(B).

INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
The Secretary of State is responsible for two publications.

- Between 30 and 60 days before the election, each proposed amendment—including the ballot title and full text—must be published in the official journal of each parish. La. Const. art. XIII, § 1(A)(1).
- The Secretary of State must also publish on its website an explanatory statement on the scope and nature of each proposed amendment. La. Rev. Stat. § 18:431(C).

Voter Information Pamphlet
As noted, the Secretary of State must publish on its website an explanatory statement on the scope and nature of each proposed amendment to the state constitution.

- The statement is drafted by the Secretary of State and approved by the Attorney General. See La. Rev. Stat. § 18:431(C).
- The statement must be in simple, unbiased, concise, and easily understood language. Id.
- In addition to being posted online, the statement must be distributed to localities before instructional courses for election officials are offered. See id. § 18:552(A) (2).

JUDICIAL REVIEW
When and how can the court step in?

Louisiana law provides that an election contest to any proposed amendment to the state constitution may be brought against the Secretary of State. La. Rev. Stat. § 18:1402(B)(1)(a); see also id. § 18:1403. Any eligible voter may also apply for injunctive relief to prohibit the placing of a proposition on the ballot if notice is not timely received by the Secretary.
Sample case: *Shepherd v. Schedler*, 209 So. 3d 752 (La. 2016) (finding that an amendment to the state constitution was not validly adopted when the language presented to voters was not the precise language adopted by the legislature; language presented to voters did not incorporate certain provisions that had been accepted and enacted by the legislature via amendment to the underlying resolution), *aff’d on reh’g* No. 2015CA1750, slip op. (La. May 2, 2016) (per curiam).
Maine has indirect statutory initiatives (but not constitutional initiatives), veto referendums, and legislatively referred amendments. For the indirect statutory initiative, if the legislature does not enact the voters’ proposal, the legislature may submit to voters a different measure on the same subject alongside it. While initiatives and legislatively referred amendments must be referred to the people in November elections, veto referendums may be submitted at any statewide election that takes place at least 60 days following a gubernatorial proclamation of the election. The ballot for any of these measures generally must contain similar information, with variation as to who prepares the language. Maine law sets forth detailed standards for judicial review of initiatives and veto referendum ballots; while no explicit provision is made for judicial review of legislatively referred amendments, review may be available under other channels, such as petitions for declaratory and/or injunctive relief.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Maine**

Maine has indirect statutory voter initiatives (including legislative alternatives), veto referendums, and legislatively referred amendments.

- **Initiatives – Statutory (Indirect)**
  The people of Maine have the power to propose a statute to the legislature via initiative petition. If the legislature fails to enact the proposal without change, it is submitted to the voters. Me. Const. art. IV, pt. 3, §§ 18(1)–(2), 19.

  The legislature may offer an amended or substitute proposal (a.k.a., “legislative alternative” measure). If so, both measures are submitted to voters “in such manner that the people can choose between the competing measures or reject both.” Id. sub. (2).

- **Initiatives – Constitutional**

- **Veto Referendums**
  Mainers have the referendum power to demand that any non-emergency act of the legislature, or any part thereof, be referred to the voters for their approval or
Legislatively Referred Amendments
An amendment to the state constitution proposed by the legislature must be approved by Maine voters. Me. Const. art. X, §4.

Election Timing
The timing of an election may depend on the kind of ballot measure. While initiatives and legislatively referred amendments must be referred to the people in November elections, veto referendums may be submitted at any statewide election to take place at least 60 days following a gubernatorial proclamation of the election.

For an initiative, the Governor must order that any measure timely submitted to the legislature, and not enacted by the legislature without change must be “referred to the people at an election to be held in November of the year in which the petition is filed.” Me. Const. art. IV, pt. 3, §18(3). If the Governor fails to make such proclamation, the Secretary of State must do so. Id.

• If the initiative is submitted to voters with a legislative alternative, and neither the initiative nor the legislative alternative receives a majority of the total votes cast on both, but one of them receives more than 1/3 of the votes, the proposal receiving more votes must be submitted by itself at “the next statewide election to be held not less than 60 days after the first vote.” Id. sub. (2).

For a veto referendum, the petition must be filed by the ninetieth day after the legislative recess. The Governor must issue a proclamation giving notice of the election, “which shall be at the next statewide or general election, whichever comes first, not less than 60 days after such proclamation.” Me. Const. art. IV, pt. 3, §17(3).

• If a statute passed via voter initiative is subjected to a veto referendum, the Legislature may order a special election. Id. art. IV, pt. 3, §18(2).

A legislatively referred amendment must first be approved by 2/3 of both Houses of the legislature and is then referred to an “election of Senators and Representatives” on the Tuesday after the first Monday in November following the passage of the legislative resolution. Me. Const. art. X, §4.

BALLOT PREPARATION
What is included on the ballot, and who prepares it?
The ballot for a statewide ballot measure in Maine must contain the following. Ballot requirements vary slightly depending on the kind of ballot measure.

• A ballot question. The entity responsible for preparing the question varies depending on the type of ballot measure.
  ➢ For an initiative or veto referendum, the ballot question is prepared by the Secretary of State. Me. Stat. tit. 21-A, §§ 901(4), 905-A. The question must
be written “in a clear, concise, and direct manner that describes the subject matter” of the measure as simply as possible. Id. § 906(6)(B); see also Me. Const. art. IV, pt. 3, § 20.

- (For initiatives only)
  - The ballot question must be phrased so an affirmative vote is a vote in favor of the initiative. Me. Stat. tit. 21-A, § 906(6)(C).
  - The Secretary of State must provide a 30-day period for public comment on a proposed ballot question, which is posted online and published in newspapers. See id. § 905-A.
  - For a legislative alternative that is submitted to voters alongside an initiative, the Supreme Judicial Court of Maine has held the legislature has the authority to formulate a ballot question. See Lockman v. Sec’y of State, 684 A.2d 415 (Me. 1996) (holding that legislatively-drafted ballot question was not misleading).
  - For a legislatively referred amendment, Maine statutes do not specify that the ballot question must be prepared by the Secretary of State. See, e.g., Me. Stat. tit. 21-A, § 906(6)(A). The state high court has held the legislature has the authority to formulate the ballot question for a legislatively referred amendment. See Lockman, 415 A.2d at 418–19.

  - The estimate must summarize the measure’s impact on state revenues, appropriations, and allocations, including its aggregate impact on various state funds and amounts to be distributed by the State to local governments. See id.

- (For a veto referendum or legislatively referred amendment)
  - The Secretary of State must include portions of an explanatory statement prepared by the Attorney General describing what a “yes” vote favors and what a “no” vote opposes. See Me. Stat. tit. 1, § 353. These statements must appear directly below the ballot question. Id. tit. 21-A, § 906(8).
  - Referendum questions may be printed on the same or a separate ballot, as determined by the Secretary of State. Id. sub. (1-A).

**INFORMATION TO VOTERS**

What information is provided to voters before the election, and how?

**Publication**

- For initiatives, the Secretary of State may publish a proposed ballot question for one day in newspapers with general circulation in the state. Me. Stat. tit. 21-A, § 905-A. In addition, a public hearing is held by the joint standing committee of the legislature having jurisdiction over the subject matter, or a special committee established for that purpose by the Legislative Council. Id. § 907. The requirement to hold a public hearing may be waived by a vote of 2/3 of the legislature. Id.

- Maine law does not generally require that information about veto referendums be
published in newspapers or similar media, beyond the required voter information pamphlet (discussed below).

The Maine Constitution suggests that inhabitants must be notified of a resolution proposing a legislatively referred amendment. See Maine Const. art. X, § 4. However, Maine law does not require that information about proposed constitutional amendments be published in newspapers or similar media, beyond the required voter information pamphlet (discussed below).

Voter Information Pamphlet
For any state ballot measure that may be presented to the people—whether an initiative, veto referendum, or legislatively referred amendment—the Secretary of State must prepare a voter information pamphlet to include the following information. The pamphlet is published online and distributed to municipalities. Me. Stat. tit. 1, § 354.

- An explanatory statement prepared by the Attorney General with the assistance of the Secretary of State. Id. § 353.
  - This statement that must “fairly describe the intent and content and what a ‘yes’ vote favors and a ‘no’ vote opposes.” Id. As noted above, this statement is included on the ballot for veto referendums and legislatively referred amendments (but not for initiatives).
- The fiscal impact estimate prepared by the Office of Fiscal and Program Review, which is also included on the official ballot. Id.
- Public comments submitted by proponents and opponents. Id. § 354.
  - A person filing a public comment for publication must pay a $500 fee and must comply with other rules set forth by the Maine Secretary of State, including word limit requirements. Id.; see also 29-250-520 Me. Code R. § 1.

JUDICIAL REVIEW
When and how can the court step in?

- Maine statutes provide that persons listed in the application for a petition for an initiative or veto referendum may appeal any decision of the Secretary of State, including decisions regarding ballot questions. See, e.g., Me. Stat. tit. 21-A, § 901(7). In addition, for initiatives, any voter aggrieved by the final ballot question prepared by the Secretary of State may appeal it using procedures that may also be used to challenge determinations as to the validity of petition signatures. Id. §§ 905-A, 905.
- Actions must commence in the Superior Court within ten days of the Secretary of State’s decision. The lower court is to “determine whether the description of the subject matter is understandable to a reasonable voter reading the question for the first time and will not mislead a reasonable voter who understands the proposed legislation into voting contrary to that voter’s wishes.” Id. § 905(2).
- Any aggrieved party may appeal the Superior Court’s decision to the Supreme Judicial Court within three days of the lower court’s decision. Id. sub. (3). The high court must issue its decision within 30 days of the Superior Court’s decision. Id.
When reviewing a ballot question, the Maine Supreme Judicial Court considers whether the question is misleading to voters. See generally Olson v. Sec’y of State, 689 A.2d 605 (Me. 1997).

**Sample case:** Jortner v. Sec’y of State, 293 A.3d 405 (Me. 2023) (use of the term “quasi-governmental” in the ballot question resulted in the question not being understandable to a reasonable voter reading the question for the first time, and thus ballot question did not satisfy statutory requirement).

- With respect to *legislatively referred amendments*, Maine law does not explicitly provide for judicial review of ballot measure language or related materials, but review maybe be available under other channels, such as petitions for declaratory and/or injunctive relief. See, e.g., Lockman v. Secy of State, 684 A.2d 415 (Maine 1996) (holding in a pre-election challenge that a legislatively-drafted ballot question for a competing measure to a citizen initiative was not misleading).
Maryland is one of just two states where the people have the power of the veto referendum but not the initiative. Maryland also has legislatively referred amendments. The timing of an election on a Maryland ballot measure may depend on whether it is a veto referendum or a legislatively referred amendment; a veto referendum is submitted at the next election for the U.S. House of Representatives, whereas a legislatively referred amendment is submitted at the next ensuing general election. The ballot for any statewide question is prepared by the Secretary of State, and the content requirements are similar for both kinds of ballot questions, except that for veto referendums, the full text of the referred act must be included or summarized. Maryland also requires public notice and a summary be provided about both kinds of questions for voter education purposes. For legislatively referred amendments, this summary may be drafted by the legislature. Maryland law explicitly provides for pre-election judicial review of veto referendum ballot language, but not for legislatively referred amendments.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Maryland**

Maryland is one of just two states in which the people have the power of the veto referendum but do not have the power of the initiative. Maryland also has legislatively referred amendments.

- ✗ *Initiatives – Statutory*
- ✗ *Initiatives – Constitutional*
- ✓ *Veto Referendums*
  
  The people of Maryland reserve the power of the veto referendum to approve or reject any act of the General Assembly, or part thereof, except as to laws making appropriation for maintaining the state government, or for maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose. Md. Const. art. XVI, §§ 1–2.

- ✓ *Legislatively Referred Amendments*
  
  An amendment to the state constitution proposed by the legislature must be
approved by Maryland voters. Md. Const. art. XIV, § 1.

Election Timing
The timing of an election on a Maryland ballot measure may depend on whether it is a veto referendum or a legislatively referred amendment; a veto referendum is submitted at the next election for the U.S. House of Representatives, whereas a legislatively referred amendment is submitted at the next ensuing general election.

- For a veto referendum, following the proper filing of a petition, an election must take place “at the next ensuing election held throughout the State for Members of the House of Representatives of the United States.” Md. Const. art. XVI, § 2.
- For a legislatively referred amendment, after approval by 3/5 of the members elected to each house of the legislature and publication as required by law, a legislatively referred amendment is submitted to voters at “the next ensuing general election.” Id. art. XIV, § 1.

BALLOT PREPARATION
What is included on the ballot, and who prepares it?

The ballot for any statewide ballot question in Maryland must display the following information, which is prepared by the Secretary of State. See Md. Code Ann., Elec. Law § 7-103(c)(1).

- Brief descriptive title in boldface type. Id. sub. (b)(3).
- Condensed statement of the question’s purpose. Id. sub. (b)(4).
- Voting choices that the voter has. Id. sub. (b)(5).

(For veto referendums only) The full text of the referred act of the legislature, unless it is more than 200 words, in which case, the Secretary of State must prepare and submit a ballot title in such form as to present the purpose of the measure concisely and intelligently; this may be the legislative title. Md. Const. art. XVI, § 5(b).
- Maryland statutes also provide that the ballot information for state veto referendums may be prepared before the petitions are certified. Md. Code Ann., Elec. Law §§ 7-103(c)(5), 6-208.

INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
For any statewide ballot question, a local elections board must provide notice in one of two ways: (1) by mailing a sample ballot at least one week before the election (or before early voting, if applicable); or (2) by publication/mass communication during the three weeks immediately preceding the election. See Md. Code Ann., Elec. Law § 7-105(a), (c). Regardless of the method, the notice must include the following.

- Ballot contents (described above). See Id. sub. (b)(1).
• Brief statement summarizing the question. See id.
• The statement must be in clear and concise language and devoid of technical and legal terms to the extent practicable. Id.

☑ In addition, for legislatively referred amendments, the notice’s summary of the question may be contained in an enactment by the General Assembly, if it clearly specifies that the statement is to be used on the ballot. See id. sub. (b)(3)(i).
☑ Additionally, the Maryland Constitution provides that any bill proposing a constitutional amendment must be, by order of the Governor, published in at least two newspapers in each county where papers are published, and at least three newspapers in the City of Baltimore, once a week for four weeks (or as otherwise ordered by the Governor) immediately preceding the election. Md. Const. art. XIV, § 1.

The complete text of any ballot question must be posted for public inspection at the State Board of Elections and each local board for 65 days prior to the election, and at each polling place. Md. Code Ann., Elec. Law § 7-105(d)(1)–(2). Any individual may receive without charge the complete text of all constitutional amendments and questions from a local election board in-person, by mail, or electronically. Id. sub. (d)(3).

Voter Information Pamphlet
While Maryland law does not require a formal voter information pamphlet, as noted, a brief summary of the question is published alongside the ballot contents or distributed via mail alongside a sample ballot. The statement must be in clear and concise language and devoid of technical and legal terms to the extent practicable. Md. Code Ann., Elec. Law § 7-105(b)(1).

☑ For veto referendums, this statement is prepared by the Department of Legislative Services and approved by the Attorney General. Id. sub. (b)(2)(i)–(ii).
☑ For legislatively referred amendments, this statement may be included in the enactment by the General Assembly. Id. sub. (b)(3)(i). Otherwise, the statement is prepared by the Department of Legislative Services and approved by the Attorney General. Id. sub. (b)(2)(i)–(ii).

JUDICIAL REVIEW
When and how can the court step in?

☑ For veto referendums, Maryland statutes provide that any person aggrieved by a determination as to the ballot contents may seek judicial review in the Circuit Court for Anne Arundel County. See Md. Code Ann., Elec. Law § 6-209(a)(1)(i).

Sample case: Anne Arundel Cty v. McDonough, 354 A.2d 788 (Md. 1976) (with respect to a local referendum, holding the challenged summary “did not set forth, ‘in understandable language,’ ‘the contents and purpose of the proposed’ referendum with that clarity and objectivity required to permit an average voter, in a meaningful manner, to exercise an intelligent choice”(citation omitted)).
For legislatively referred amendments, Maryland’s direct democracy provisions do not explicitly provide for judicial review of ballot language before the election, but review may be available under other channels.
Massachusetts has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments. The initiative process is indirect: before being submitted for a vote, a petition is transmitted to the state legislature (or “General Court”), which may pass a substitute proposal that is submitted to voters alongside the initiative. The timing of an election on a ballot measure may depend on the type of measure, but the Massachusetts Constitution does not explicitly require that any measures be submitted at general elections. Regardless of the type of ballot measure, the ballot itself must include statements drafted by the Attorney General and State Secretary. The State Secretary is also charged with distributing a detailed voter guide, which includes a fiscal effect statement prepared by the Secretary of Administration and Finance. Massachusetts allows a group of 50 voters to petition for high court review of ballot language and voter information materials, regardless of whether the measure is initiated via petition or a legislatively referred amendment.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Massachusetts**

Massachusetts has indirect statutory and constitutional initiatives and veto referendums, in addition to legislatively referred amendments.

- **Initiatives – Statutory (Indirect + legislative alternatives)**
- **Initiatives – Constitutional (Indirect + legislative alternatives)**

  The people of Massachusetts reserve the initiative power to propose statutes and constitutional amendments for popular approval or rejection. See Mass. Const. amend. art. XLVIII, Init., as amended by amend. art. LXXIV & amend art. LXXXI. The Massachusetts Constitution excludes certain matters from the initiative process, such as propositions inconsistent with specified individual rights. See id. amend. art. XLVIII, Init., pt. 2, § 2.

  Massachusetts’ initiative process is indirect in that, before being submitted for a vote, a petition is transmitted to the legislature (or “General Court”).
See generally id. amend. art. XLVIII, Init., pts. 3–5. The legislature may offer a substitute proposal, which is submitted to voters as an alternative to the initiative. Id. amend. art. XLVIII, Init., pt. 3, § 2.

✔ Veto Referendums
The people of Massachusetts also reserve the referendum power to submit laws enacted by the General Court for popular ratification or rejection. See Mass. Const. amend. art. XLVIII, Ref., as amended by amend. arts. LXXIV, LXXXI. Certain matters are excluded from the referendum process. See id. amend. art. XLVIII, Ref., pt. 3, § 2 (excluding, e.g., laws relating to religion and appropriations for ordinary commonwealth expenses).

✔ Legislatively Referred Amendments
An amendment to the state constitution proposed by the legislature must be approved by Massachusetts voters. Mass Const. amend. art. XLVIII, Init., pt. 4, §§ 4–5, as amended by amend. art. LXXXI, § 1.

Election Timing
The exact timing of an election on a ballot measure may depend on the type of measure, but the Massachusetts Constitution requires that measures be submitted at “state elections.” Massachusetts statutes distinguish state elections from primaries, e.g., Mass. Gen. Laws ch. 54, § 43A, and do not contemplate state ballot questions being submitted to voters at special elections. See generally Mass. Gen. Laws ch. 54.

➤ A statutory initiative petition is first transmitted to the state legislature. Mass. Const. amend art. XLVIII, Init., pt. 3, § 1. If the legislature fails to enact the proposal by the first Wednesday in May, a group of voters (at least 0.5% of those voting for Governor in last biennial election) may submit a petition to place the initiative on the ballot during a specified period in June and July. Id. amend. art. LXXXI, § 2. After receiving this (second) petition, the State Secretary must place the initiative on the ballot at the “next state election.” Id.

➤ The State Secretary must submit a veto referendum to the people at the next state election to take place at least 60 days after the referendum petition is filed. Id. amend. art. XLVIII, Ref., pt. 3, § 3; id. amend. art. LXXXI, § 4.

➤ For constitutional initiatives and legislatively referred amendments, the proposed amendment is first brought before a joint legislative session. Id. amend. art. LXXXI, § 1. A proposed amendment is referred to the subsequent General Court, and then to voters, as follows. Id. amend. art. XLVIII, Init., pt. 4, §§ 4–5.

➤ A constitutional initiative is referred to the next General Court if it receives the affirmative votes of at least ¼ of all elected members. Mass. Const. amend. art. XLVIII, Init., pt. 4, § 4. If it again receives the approval of at least ¼ of all members, it is submitted to the people at the “next state election.” Id. § 5.

• Any legislative substitute amendments must also be approved by ¼ of all members of the General Court. Id.

• Unlike legislatively referred amendments, constitutional initiatives must be approved by not just a majority of the electors voting thereon, but also by
at least 30% of the total number of ballots cast, election wide. See id.

A legislatively referred amendment is referred to the next General Court if it receives the affirmative votes of a majority of all elected members. Id. amend. art. XLVII, Init., pt. 4, § 4. If it again receives the approval of a majority of all elected members, it is submitted to voters at the “next state election.” Id. § 5.

**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for any statewide ballot measure in Massachusetts must include the following.

- Fair, concise summary of the measure prepared by the Attorney General.
- Fair and neutral, one-sentence statements describing the effect of a yes or no vote, prepared jointly by the Attorney General and the State Secretary.


**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

Under Massachusetts statutory law, by the second Wednesday in May, the State Secretary must publish in the Massachusetts Register a copy of all ballot question titles, one-sentence statements describing the effect of a yes or no vote, and fiscal effect statements: which triggers a judicial review period, discussed below. See Mass. Gen. Laws ch. 54, § 53.

In addition, before every state election, the State Secretary must send each measure’s ballot form to every Massachusetts newspaper listed in the Directory of New England Newspapers and Periodicals, to be used at the discretion of said newspapers. Id. § 52.

**Voter Information Pamphlet**

The State Secretary must print and send a guide to residential addresses included on compiled lists of registered voters. Mass. Gen. Laws ch. 54, § 53; Mass Const. amend. art. XLVII, Gen. Provs., pt.4; id. amend. art. LXXIV, § 4. For each statewide ballot measure, the guide must include the following.

- Fair and neutral, one-sentence statements describing the effect of a yes or no vote, prepared jointly by the Attorney General and the State Secretary. Id.
- Fiscal effect statement describing the measure’s consequences for state and
municipal government finances, prepared by the Secretary of Administration and Finance. *Id.*

- Arguments may be submitted on or before the tenth day after the measure is received by the State Secretary for submission to voters. Mass. Gen. Laws ch. 54, § 54.
- The State Secretary must seek arguments from the principal proponents and opponents of each initiative, referendum, legislative amendment, or legislative substitute. See *id.* If no argument is submitted, the State Secretary must supply the missing argument. *Id.*

- (If applicable, for initiatives only) The majority and minority reports generated by the legislative committee to which the initiative was first transmitted, including the names of each legislative member. Mass Const. amend. art. XLVIII, Init., pt. 3, § 1; *id.* amend. art. LXXIV, § 4.

**JUDICIAL REVIEW**

*When and how can the court step in?*

The State Secretary must publish in the Massachusetts Register, and make available to the public, a copy of all ballot question titles, one-sentence statements describing the effect of a yes or no vote, and fiscal effect statements. Mass. Gen. Laws ch. 54, § 53. Any group of 50 voters may petition the Supreme Judicial Court for Suffolk County to require that a title or statement be amended, so long as the petition is filed within 20 days after the publication. See *id.* The court may issue an order requiring amendment by the Attorney General and the State Secretary “only if it is clear that the title, 1-sentence statement or fiscal effect statement in question is false, misleading or inconsistent with the requirements” of the relevant provisions. *Id.* The court has indicated it does not have authority to order amendment of the Attorney General’s summary, however. See, e.g., *Hensley v. Attorney General*, 53 N.E.3d 639, 654 & n.26 (Mass. 2016).

**Sample case:** *Hensley v. Attorney General*, 53 N.E.3d 639 (Mass. 2016) (finding that Attorney General’s summary of initiative measure was not unfair, but that one-sentence “yes” statement and ballot title were clearly misleading).
Michigan has indirect statutory initiatives, constitutional initiatives, veto referendums, and legislatively referred amendments. For indirect statutory initiatives, if the legislature does not enact voters’ proposal, it may submit to voters a different measure on the same subject alongside it. Many of Michigan’s processes for initiatives and veto referendums also apply to legislatively referred amendments. However, the legislature may call a special election for a legislatively referred amendment, rather than submitting it to voters at the next general election, as required for other ballot measures. In addition, Michigan law only requires publication of certain explanatory materials for initiatives and veto referendums, not for legislatively referred amendments.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Michigan**

Michigan has constitutional initiatives, indirect statutory initiatives, veto referendums, and legislatively referred amendments.

- **Initiatives – Statutory (Indirect + legislative alternatives)**
  The people of Michigan can propose a statute to the legislature via initiative petition. The legislature must then either enact or reject the proposal “without change or amendment.” If the legislature rejects the measure or fails to enact it within 40 legislative session days, the measure is submitted to voters. Mich. Const. art. II, § 9.

  The legislature may reject the measure and propose a different measure on the same subject (a.k.a., “legislative alternative” measure), in which case both measures are submitted to voters. *Id.*

- **Initiatives – Constitutional**
  Michiganders may propose amendments to the state constitution independently of the legislature. Mich. Const. art. XII, § 2.

- **Veto Referendums**
  Michiganders have reserved the power to approve or reject laws enacted by the legislature, except for acts making appropriations for state institutions or to

✓ **Legislatively Referred Amendments**

An amendment to the state constitution proposed by the legislature must be approved by Michigan voters. Mich. Const. art. XII, § 1.

**Election Timing**

The timing of an election on a Michigan ballot measure may depend on the form of direct democracy; for legislatively referred amendments, a special election may be called.

➢ Measures proposed via popular petition must be submitted to voters at the next general election.
   • A statutory initiative rejected by the legislature is submitted at the next general election alongside any legislative alternative measure on the same subject (if applicable). Mich. Const. art. II, § 9.
   • A veto referendum is likewise submitted at the next general election. See id.
   • A constitutional initiative is submitted at the next general election, which must also take place at least 120 days after the petition is first filed. Id. art. XII, § 2.

➢ A legislatively referred amendment is submitted to voters at least 60 days after it is approved by a 2/3 supermajority of the members elected to and serving in each house of the legislature. It is to be submitted at the next general election or a special election as the legislature shall direct. Mich. Const. art. II, § 1.

**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for any state ballot measure must contain the following.

• Statement of purpose (100 words or less). Mich. Comp. Laws § 168.32.
   • The statement must be a true, impartial statement of the measure’s purpose, in language creating no prejudice for or against the measure. Id.
   • The statement is prepared by the Director of Elections, with approval of the Board of State Canvassers (“The Board”). Id. The Board consists of four members, two from each political party, who are appointed by the Governor with the advice and consent of the Michigan senate. Id. § 168.22.
   • The Board of State Canvassers holds a public meeting to consider and approve the statement, and a measure’s sponsors may address the meeting. Id. § 168.22e.

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

The Board must provide 3 business days’ notice to the public of a meeting held to consider and approve any ballot measure’s statement of purpose. Mich. Comp. Laws § 168.22e. The Secretary of State shall furnish copies of the full text of each proposed
measure and its statement of purpose to the localities; these materials must be posted in conspicuous locations in polling places. Mich. Comp. Laws § 168.480.

- Additionally, for initiatives and veto referendums, the following additional provisions apply.
  - Within 2 business days of receiving a filed petition, the Secretary of State must post a summary of the measure on its website. Id. § 168.475(1).
  - Petitions circulated to voters must also include a petition summary, which is subject to similar requirements as the ballot statement of purpose (described above). See id. § 168.482b(3).
  - If a measure’s sponsors opt to use a process for approving a petition summary before circulation for signatures, the summary published by the Secretary of State must match the summary pre-approved by the Board through such process. See id. § 168.482b.
  - Every 30 days after a petition is filed, the Secretary of State must post an update on the petition’s status on its website. Id. § 168.475(1).
  - Once a petition has been certified as sufficient by the Board, the Secretary of State must send copies of the ballot statement of purpose “to several daily and weekly newspapers . . . with the request that the newspapers give as wide publicity as possible to the proposed amendment or other question.” Id. § 168.477(1).
  - The following requirements apply only to initiatives.
    - For all initiatives, the Secretary of State must make the most recently filed petition language available on its website. Id. § 168.483a(3).
    - For constitutional initiatives only, publication must also include the proposed amendment (full text) and any existing provisions of the constitution that would be altered or abrogated by the amendment. See Mich. Const. art. XII, § 2; see also Protect Our Jobs v. Bd. of State Canvassers, 822 N.W.2d 534 (Mich. 2012).

Voter Information Pamphlet

- Michigan law does not require a state voter information pamphlet for ballot measures, beyond the published information described above.

**JUDICIAL REVIEW**

*When and how can the court step in?*

Any person who feels aggrieved by a determination of the Board may seek review by mandamus or other appropriate remedy in the state supreme court. Mich. Comp. Laws § 168.479. This encompasses challenges to Board determinations as to ballot statements of purpose, as well as determinations of the sufficiency of submitted, signed petitions. See id.; see also id. §§ 168.32, 168.476.

- For initiatives and veto referendums, if sponsors use the optional process to pre-approve a petition summary, the Board may not later consider a petition challenge based on a misleading or deceptive summary. Id. § 168.482b(1).
In Minnesota, legislatively referred amendments are the only form of statewide direct democracy available. Proposed constitutional amendments must be submitted to voters at general elections. Ballot language is generally prepared by the Secretary of State. Ballot titles must also be approved by the Attorney General. Minnesota statutes allow any individual to petition for judicial review of errors in the preparation of the ballot.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Minnesota**

Minnesota does not have initiatives or veto referendums but has legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**

- **Legislatively Referred Amendments**
  An amendment to the state constitution proposed by the legislature must be approved by Minnesota voters. Minn. Const. art. IX, § 1. Specifically, amendments must be approved by a majority of all the electors voting at the election (not just those voting for the amendment). See *id.*

**Election Timing**

Legislatively referred amendments must be submitted to voters at a general election after they are approved by a majority of members elected to each house of the legislature. Minn. Const. art. IX, § 1.
**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for each proposed constitutional amendment must contain the following information.

- Appropriate ballot title (1 line of text or less, immediately above the question). Minn. Stat. § 204D.15(1).
  - Pursuant to statute, the ballot title is provided by the Secretary of State and approved by the Attorney General. *Id.* However, the Minnesota Supreme Court has held that when the legislature supplies a title, this is the “appropriate” title that the Secretary of State must use. *Limmer v. Ritchie*, 819 N.W.2d 622 (Minn. 2012).
- Concise statement of the nature of the question. Minn. Stat. § 204B.36(3).
  - Ballot language must be prepared in a manner that enables the voters to understand which questions are to be voted upon. *Id.* § 204B.35(2). The provisions do not indicate that anyone other than the Secretary of State is involved in preparing this statement.
- Conspicuous notice that a voter’s failure to vote on a constitutional amendment has the effect of a negative vote. *Id.* § 204D.15(1).

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

Between two to fifteen days before the election, each county auditor must publish a sample ballot in a newspaper of general circulation in the count. Minn. Stat. § 204D.16. The Secretary of State is responsible for ensuring that information about constitutional amendments is provided to each county auditor. *Id.* § 204D.15(2).

Additionally, Minnesota law requires the Secretary of State to operate a toll-free voter information hotline, which must include election-related information considered by the Secretary of State to be useful to the public. Minn. Stat. § 204B.27(8).

**Voter Information Pamphlet**

- Minnesota law does not require a state voter information pamphlet for constitutional amendments.
JUDICIAL REVIEW
When and how can the court step in?

Minnesota statutes allow any individual to petition for judicial review of errors in the preparation of the ballot or wrongful acts or omissions of any state or local election official. See Minn. Stat. § 204B.44(a)(2)–(4).

Sample case: *League of Women Voters v. Ritchie*, 819 N.W.2d 636 (Minn. 2012) (noting that a “high standard” is required for a court to find language to be misleading, and rejecting argument that the ballot question was misleading).
The Mississippi constitution provides for constitutional initiatives, but the Mississippi Supreme Court in 2021 found the provision to be inoperable. As a result, the constitutional initiative is not currently available to Mississippi voters. Legislatively referred amendments are now the only form of statewide direct democracy in the state. The Mississippi legislature may fix the date of the election for legislatively referred amendments; there is no requirement that voting take place at a general election. The legislature also drafts the explanatory statement that appears on the ballot. The Mississippi Secretary of State is involved only to provide public notice of the amendment and the election. Mississippi’s provisions governing legislatively referred amendments do not explicitly provide for judicial review of ballot language or related materials, but review may be available under other channels.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Mississippi**

Mississippi does not have statutory initiatives or veto referendums, and the Mississippi Supreme Court has rendered the constitutional initiative inoperable, so legislatively referred amendments are currently the only available form of direct democracy.

- ✗ **Initiatives – Statutory**

- ✓/✗ **Initiatives – Constitutional**
  
  The Mississippi Constitution provides an initiative power to propose and enact constitutional amendments. Miss. Const. art. 15, § 273(3).

  However, the Mississippi Supreme Court has found this constitutional provision to be inoperable because the provision references five congressional districts, and the state now only has four. *Butler v. Watson*, 338 So. 3d 599 (Miss. 2021). As a result of this decision and the legislature’s failure to date to restore the initiative power, the power is currently not available to Mississippi voters.

- ✗ **Veto Referendums**

- ✓ **Legislatively Referred Amendments**
Amendments to the state constitution proposed by the legislature must be approved by Mississippi voters. Miss. Const. art. 15, § 273(2).

Election Timing
A legislatively referred amendment must first be approved by a supermajority of 2/3 of both houses of the legislature. Miss. Const. art. 15, § 273(2). The legislative resolution may fix the date of the election at which the proposed amendment is to be voted upon; there is no mandate that voting take place at a general election. See id.

BALLOT PREPARATION
What is included on the ballot, and who prepares it?
The ballot for a legislatively referred amendment in Mississippi must display the following information.

• An explanatory statement indicating the substance of the proposed amendment (75 words or less). Miss. Code Ann. § 23-15-369(1)(b).
• The statement must be printed in clear and unambiguous language, and whenever possible, it must avoid the use of legal terminology or jargon in favor of simple, ordinary, everyday language. Id. sub. (a)–(b).
• The statement is prepared by the legislature and included in the underlying resolution. Id. sub. (b).

INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
Under the Mississippi Constitution, the Secretary of State must provide public notice of an election at which a legislatively referred amendment will be submitted to voters, at least thirty days before such election. Miss. Const. art. 15, § 273(2).

In addition, the Secretary of State must have the full text of the proposed amendment published in newspapers in each county in the state at least two weeks before the election. Miss. Code Ann. § 7-3-39. This full text must also be posted prominently in all polling places. Id. § 23-15-369(1)(c).

Voter Information Pamphlet
Mississippi law does not require a state voter information pamphlet for legislatively referred amendments.

JUDICIAL REVIEW
When and how can the court step in?
Mississippi’s provisions governing legislatively referred amendments do not explicitly provide for judicial review of ballot language or related materials, but review may be available under other channels.
Missouri has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments. The timing of an election on a ballot measure may depend on the form of ballot measure. While any statewide ballot measure may be submitted at a general election, the Governor may order a special election on a proposed constitutional amendment (whether voter-initiated or legislatively referred), and the legislature may order a special election on a veto referendum. Missouri law requires similar ballot content for all statewide ballot measures, but the entity responsible for drafting the ballot language may vary based on whether the measure is initiated by voters or the legislature. For proposed initiatives and veto referendums that have been certified as having a valid number of signatures, the Joint Committee on Legislative Research must hold a hearing to take public comments. For any statewide ballot measure, any dissatisfied Missouri citizen may bring an action in the Cole County Circuit Court to challenge the official ballot title or the fiscal note.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Missouri**

Missouri has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
  
  The people of Missouri have reserved the initiative power to propose and enact laws and amendments to the state constitution independently of the legislature. Mo. Const. art. III, § 49; see also id. art. XII, § 2(b). The power cannot be used for the appropriation of money, except for any new revenues created by the initiative. Id. art. III, § 51.

- **Veto Referendums**
  
  Missourians also have the referendum power to approve or reject any act of the General Assembly, except for emergency laws. See Mo. Const. art. III, §§ 49, 52(a).
✓ **Legislatively Referred Amendments**

An amendment to the state constitution proposed by the state legislature must be approved by Missouri voters. Mo. Const. art. XII, § 2(b).

**Election Timing**

The timing of an election may depend on the type of ballot measure at issue. While any statewide ballot measure may be submitted at a general election, the Governor may order a special election on a proposed constitutional amendment (whether voter-initiated or referred by the legislature), and the legislature may order a special election on a veto referendum.

- A constitutional initiative must be submitted “at the next general election, or at a special election called by the governor prior thereto.” Mo. Const. art. XII, § 2(b).
- A veto referendum may be submitted at a general election or a special election if ordered by the General Assembly. Id. art. III, § 52(b).
- A legislatively referred amendment must first be approved by a majority of the members elected to each house; it is then submitted “at the next general election, or at a special election called by the governor prior thereto.” Id. art. XII, §§ 2(a)-(b).

**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for any statewide ballot measure in Missouri must display the following information, which is collectively referred to as the “official ballot title.” See Mo. Rev. Stat. § 116.010(4). While Missouri law contains similar ballot content requirements for all statewide ballot measures, the entity responsible for drafting the language can vary depending on whether the measure is initiated by voters or referred by the legislature.

- A ballot summary statement, which cannot be intentionally argumentative or likely to create prejudice for or against the measure. See Mo. Rev. Stat. §§ 116.334(1), 116.155(2).
  - For an *initiative* or *veto referendum*, the statement is prepared by the Secretary of State, with approval by the Attorney General as to legal content. Id. § 116.334(1). Prior to releasing the statement, the Secretary of State must accept public comments on the proposed measure for a period of 15 days. Id. The summary statement must be drafted in the form of a question and must not exceed 100 words. Id.
  - For a *legislatively referred amendment*, the statement may be prepared by the General Assembly in its underlying resolution. Id. § 116.155(1). A statement prepared by the General Assembly must be limited to 50 words (excluding articles) and must be a true and impartial statement of the purpose of the measure. Id. sub. (2).
- If the General Assembly does not include an official summary statement, it
is prepared by the Secretary of State. See id. § 116.160(1). The Secretary of State may seek advice from the sponsoring legislator or other designated legislators. Id.

• A fiscal note summary stating the measure’s estimated cost or savings, if any, to state or local government entities, in language that is neither intentionally argumentative nor likely to create prejudice for or against the measure (50 words or less, excluding articles). See id. §§ 116.155(2), 116.175(3).
  ➢ For an initiative or veto referendum, this summary is prepared by the State Auditor and approved by the Attorney General. Id. § 116.175(4), (5).
  ➢ For a legislatively referred amendment, this summary may be prepared by the General Assembly in its underlying resolution; otherwise, it is prepared by the State Auditor. See id. §§ 116.155, 116.160, 116.170.

INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
The full text of each statewide ballot measure must be published once a week for two consecutive weeks in two newspapers in each county. Mo. Rev. Stat. § 116.260; see also Mo. Const. art. XII, § 2(b). The final publication must take place between 15–30 days before the election. Id. The Secretary of State must designate the publications; if possible, the two newspapers in each county must be of different political faiths. Id. Two copies of the published notice must also be posted in each polling place. Mo. Rev. Stat. § 116.290(3).
  ➢ In addition, for initiatives and veto referendums, after a petition is found to contain a valid number of signatures, the Joint Committee on Legislative Research must hold a hearing to take public comments on the measure. Mo. Rev. Stat. § 116.153; see also id. ch. 610. A summary of the hearing must be made available to the public on the Secretary of State’s website. Id. § 116.153.

Voter Information Pamphlet
Missouri law does not explicitly call for preparation of a voter information pamphlet for statewide ballot measures, but nevertheless requires development of the following informational materials.

• Fair ballot statements, which must be true and impartial statements of the effect of a vote for and against the measure, in language neither intentionally argumentative nor likely to create prejudice for or against the measure. Mo. Rev. Stat. § 116.025.
  • Fair ballot statements are prepared by the Secretary of State, with approval by the Attorney General as to legal content and form. Id. The statements are posted along with sample ballots and two complete copies of each proposed measure in each polling place. Id. §§ 116.025, 116.290(3).
  • Full fiscal impact note, which states the measure’s estimated cost or savings, if
any, to state or local government entities. *Id.* § 116.175(3).

• Unlike the fiscal note summary appearing on the ballot, which may be prepared by the General Assembly for legislatively referred amendments, the full fiscal note is always prepared by the State Auditor. See *id.* §§ 116.175, 116.160, 116.170.

Missouri law does not require that these materials be distributed directly to voters.

**JUDICIAL REVIEW**

*When and how can the court step in?*

For any statewide ballot measure, any dissatisfied Missouri citizen may bring an action in the Cole County Circuit Court to challenge the official ballot title or the fiscal note. Mo. Rev. Stat. § 116.190(1). The petition for relief must state the reasons why the summary statement, the fiscal note, and/or the fiscal note summary is insufficient or unfair, and it must request alternative language. *Id.* sub. (3). The action must be brought within ten days after the Secretary of State certifies the official ballot title. *Id.* sub (1).

**Sample case:** *Pippens v. Ashcroft*, 606 S.W.3d 689 (Mo. Ct. App. 2020) (in a pre-election challenge, holding a summary statement drafted by the General Assembly was insufficient and unfair, and certifying an alternative summary statement for inclusion on the official ballot; noting the summary statement must inform voters of the central features of the corresponding measure).
Montana has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments. Election timing may vary depending on the form of ballot measure; while proposed constitutional amendments must be submitted at regular and/or general elections, the legislature may order a special election for a statutory initiative or veto referendum. All statewide ballot measures are subject to similar ballot content requirements, although the entity responsible for drafting the ballot statements may vary depending on whether the measure is initiated by voters or referred by the legislature. The Secretary of State is charged with compiling a voter information pamphlet regarding all statewide ballot measures. Among other things, the pamphlet contains arguments crafted by committees appointed to advocate for or against each measure. Montana law explicitly provides for judicial review of ballot statements and other determinations by the Attorney General via original actions filed with the Montana Supreme Court, which considers whether statutory requirements have been satisfied while affording the Attorney General a degree of discretion.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Montana**

Montana has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
  
  The people of Montana have reserved the initiative power to propose and enact laws and/or constitutional amendments independently of the legislature. See Mont. Const. art. III, § 4; id. art. XIV, § 9. Initiatives cannot be used to make appropriations of money or to create special laws. See id. art. III, § 4.

- **Veto Referendums**
  
  Montanans also have the referendum power to approve or reject any act of the General Assembly, except for an appropriation of money. See Mont. Const. art. III, § 5.
Legislatively Referred Amendments
An amendment to the state constitution proposed by the legislature must be approved by Montana voters. Mont. Const. art. XIV, § 8.

Election Timing
The timing of an election on a Montana ballot measure depends on the form of direct democracy. While proposed constitutional amendments must be submitted to voters at regular and/or general elections, the legislature may order a special election to submit a statutory initiative or veto referendum.

- A statutory initiative or veto referendum must be submitted to voters at a general election unless the legislature orders a special election. Mont. Const. art. III, § 6.
- A constitutional initiative must be submitted at the “next regular state-wide election” after the petition signatures have been deemed valid. See Mont. Const. art. XIV, § 9.
- A legislatively referred amendment must first be approved by a 2/3 supermajority of all members elected to the legislature; it is then submitted “at the next general election.” Mont. Const. art. XIV, § 8.

BALLOT PREPARATION
What is included on the ballot, and who prepares it?

The ballot for any statewide ballot measure in Montana must display the following information. All statewide ballot measures are subject to similar content requirements, but the entity responsible for drafting the content may vary depending on whether the measure is initiated via voter petition or referred by the legislature.

- Ballot statements, which must include the following.
  - A statement of the measure’s purpose and implication, if not otherwise listed as the title (135 words or less). 2023 Mont. Laws 647, §§ 2, 48 (to be codified at Mont. Code Ann. §§ 13-27-501(2)(f), 13-27-212(2)).
  - “Yes” and “no” statement to indicate that a “yes” vote indicates support for the issue and a negative vote indicates opposition. See § 3 (to be codified at Mont. Code Ann. § 13-27-213).
  - For initiatives and veto referendums, the measure’s proponents submit draft ballot statements to the Secretary of State before petitions are circulated. Id. §§ 5–7 (to be codified at Mont. Code Ann. §§ 13-27-216, 13-27-217, 13-27-218). The draft is reviewed by the Legislative Services Division, which may recommend revisions to the proponents; these recommendations are non-binding. See id. § 10 (to be codified at Mont. Code Ann. § 13-27-225). The statements are then reviewed by the Attorney General for legal sufficiency: including compliance with constitutional and statutory requirements. See id. §§ 1(7), 11 (to be codified as amended at Mont. Code Ann. §§ 13-27-110(7), 13-27-226). If the Attorney General determines the ballot statements are not in compliance, the Attorney General shall prepare a revised version. Id. § 11(3)(c) (to be codified at Mont. Code Ann. § 13-27-226(3)(c)).
• For initiatives, following review by the Attorney General, the proposal is then subject to a public hearing held by the relevant legislative committee. See *id.* § 13(2) (to be codified at Mont. Code Ann. § 13-27-228(2)). The committee votes regarding whether to support or not support the placement of the proposed initiative on the ballot. *Id.* §§ 5(8)(b), 7(8)(b) (to be codified at Mont. Code Ann. §§ 13-27-216(8)(b), 13-27-218(8)(b)).

➢ For legislatively referred amendments, the ballot statements may be drafted by the legislature, but if the legislature declines to do so, they are drafted by the Attorney General. See *id.* § 9(3)(a) (to be codified at Mont. Code Ann. § 13-27-220(3)(a)).

• The following content may also appear on the ballot, if applicable.
  • If the measure has an effect on state revenues, expenditures, or liability, the Budget Director shall determine whether a fiscal note is necessary and if so, prepare the note in cooperation with any state agencies affected by the measure. See *id.* §§ 5(5), 6(5), 7(5), 12 (to be codified at Mont. Code Ann. §§ 13-27-216(5), 13-27-217(5), 13-27-218(5), 13-27-227(1)). See also Mont. Code Ann. § 5-4-205.
  • If this fiscal note indicates a fiscal impact, the Attorney General must prepare a fiscal statement for the ballot. 2023 Mont. Laws 647, § 11(4) (to be codified at Mont. Code Ann. § 13-27-226(4)).
  • A separate ballot title. *Id.* § 48(2)(c) (to be codified at Mont. Code Ann. § 13-27-501(2)(c)).
  • Typically, the ballot title is the same as the statement of purpose and implication. See *id.* § 2(3)(to be codified at § 13-27-212(3)). However, if a court has ordered the use of another title, this court-approved title must also appear on the ballot. See *id.*
  • A statement that the ballot measure conflicts with one or more measures also appears on the ballot, if the Attorney General so determines. See *id.* §§ 11(5), 48(2)(h) (to be codified at Mont. Code Ann. §§ 13-27-226(5), 13-27-501(2)(h)).

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

✓ In Montana, only constitutional ballot measures are subject to publication requirements. Specific requirements vary depending on whether a proposed amendment is initiated via voter petition or referred by the legislature.
For constitutional initiatives, the Secretary of State must have the full proposed initiative published twice per month for two months before the election, in at least one newspaper of general circulation in each county. See Mont. Const. art. XIV, § 9(2); 2023 Mont. Laws 647, § 38(1) (to be codified at Mont. Code Ann. § 13-27-311(1)).

For legislatively referred amendments, the Secretary of State may arrange for newspaper publication or radio or television broadcast in each county. See 2023 Mont. Laws 647, § 38(2)(a) (to be codified at Mont. Code Ann. § 13-27-311(2)(a)). If the Secretary of State opts for newspaper publication, it is sufficient to solely publish the ballot statements (including the statement of purpose and implication and the “yes” and “no” statements); the full proposal need not be published. See id. § 38(2)(b) (to be codified at Mont. Code Ann. § 13-27-311(2)(b)).

Montana law does not generally require that information about statutory initiatives or veto referendums be published in a newspaper or similar media, except for voter information pamphlets (discussed below).

Voter Information Pamphlet
For all statewide ballot measures, the Secretary of State is charged with preparing and printing a voter information pamphlet containing the following information. See generally 2023 Mont. Laws 647, § 41 (to be codified at Mont. Code Ann. § 13-27-401). A copy of the pamphlet must be delivered to each residence with a registered voter, at least 110 days before the election. See generally id. § 47 (to be codified at § 13-27-410).

- A copy of the ballot title (typically, the statement of purpose and implication), and the form in which the measure will appear on the ballot. Id. § 41(1)(a)–(b) (to be codified at Mont. Code Ann. § 13-27-401(1)(a)–(b)).
- The fiscal statement, if applicable. Id. § 41(1)(a) (to be codified at Mont. Code Ann. § 13-27-401(1)(a)).
- The complete text of the measure to be voted upon. Id.
  - Each argument is limited to a single page and must include only written materials rather than pictures. Arguments must be submitted at least 105 days before the election at which the measure will be submitted to voters. See id. § 44 (codified as amended at Mont. Code Ann. § 13-27-406).
  - Each committee advocating approval or rejection may file a rebuttal argument,
which is limited to one-half the size of the originally submitted argument. Discussion in the rebuttal is confined to the subject matter raised in the argument being rebutted. *Id.* § 45 (to be codified at Mont. Code Ann. § 13-27-407).

Committees charged with argument and rebuttals are subject to composition requirements, depending on the type of measure, as follows.

- For *initiatives*, a committee advocating approval comprised of three members is appointed by the initiative’s proponents. See *id.* § 42(4)(a) (to be codified at Mont. Code Ann. § 13-27-402(4)(a)). A committee advocating rejection is comprised of five members; the Governor, Attorney General, and the presidents of both legislative houses each appoint a member, and a fifth member is appointed by the first four. See *id.* § 42(5) (to be codified at Mont. Code Ann. § 13-27-402(5)).

- For *veto referendums*, a committee advocating approval of the underlying legislative act is comprised of one senator and one representative, appointed by the president of each house, plus a third member (who need not be a legislator) appointed by the first two. See *id.* § 42(2)(a) (to be codified at Mont. Code Ann. § 13-27-402(2)(a)). A committee advocating the underlying act’s rejection is comprised of three members appointed by the proponent of the veto referendum. See *id.* § 42(4)(b) (to be codified at Mont. Code Ann. § 13-27-402(4)(b)).

- For *legislatively referred amendments*, both the committee advocating approval and that advocating rejection must be comprised of one senator and one representative, appointed by the president of each chamber, plus a third member appointed by the first two members (who need not be a legislator). See *id.* § 42(2)(a) (to be codified at Mont. Code Ann. § 13-27-402(2)(a)).

**JUDICIAL REVIEW**

*When and how can the court step in?*

Montana law explicitly provides for judicial review of ballot statements via original actions filed with the Montana Supreme Court. A measure’s proponents or opponents may challenge the adequacy of ballot statements approved by the Attorney General, or an Attorney General determination that a petition was legally deficient or sufficient. See 2023 Mont. Laws. 647, § 39(1)-(2) (to be codified at Mont. Code Ann. § 13-27-316(1)-(2)). Such challenges must be brought within ten days of the Attorney General’s determination. See *id.* They are to take precedence over other cases and the court is to render a decision as soon as possible. See *id.* sub. (3)(c)(i) (to be codified at Mont. Code Ann. § 13-27-316(3)(c)(i)).

An action challenging ballot statements must set forth how the statements do not satisfy the statutory requirements and must propose alternate statements. See *id.* sub. (3)(b). If the court determines the ballot statements do not satisfy the statutory requirements, it may order the Attorney General to revise them within five days or certify its own
statements to the Secretary of State for inclusion on the ballot. See id. sub. 3(c)(ii). The court has noted that the statutory process affords the Attorney General with a degree of discretion in the development of ballot statements and has declined to intervene absent noncompliance with the statutes. See Montanans Against Tax Hikes v. State by and through Fox, 423 P.3d 1078, 1081 (Mont. 2018).

Montana law further provides that if the court finds the Attorney General incorrectly determined a petition to be sufficient, the measure may not appear on the ballot. 2023 Mont. Laws 647, § 39(3)(c)(iii) (codified as amended at 13-27-316(3)(c)(iii)). If the court finds the Attorney General incorrectly determined a petition to be insufficient, the Attorney General shall prepare ballot statements within five days of the court’s decision. Id. sub. (3)(c)(iv).

Sample case: Montanans Against Tax Hikes v. State by and through Fox, 423 P.3d 1078 (Mont. 2018) (rejecting a challenge that initiative ballot statements were deficient, despite mathematical misstatement that measure would be a “33% tax increase” when tax rate would increase from 50% to 83%; noting that “[t]he standard of review in these matters is not whether a better statement could have been approved, but rather whether the statement complies with [statutory requirements]”).
Nebraska has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments. The timing of the election may depend on the type of measure. While initiatives and veto referendums must be submitted at a general election, a 2/3 supermajority of the legislature may order a special election for a legislatively referred amendment. The ballot must include a statement explaining “in clear and concise language” the significance of a vote in either direction, but the entity responsible for drafting the ballot language varies depending on whether the measure is initiated by voters or referred by the legislature. For initiatives and veto referendums, a voter information pamphlet—which includes arguments for and against the measure—is distributed before the election; no similar requirement exists for legislatively referred amendments. Pre-election judicial review is available in district court.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Nebraska**

Nebraska has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
  The people of Nebraska have reserved the initiative power to enact laws and adopt constitutional amendments independently of the legislature. Neb. Const. art. III, §§ 1, 2. The Nebraska Constitution further provides that the legislature shall not amend, repeal, modify, or impair a law enacted by the initiative without a vote of at least a 2/3 majority of all members of the legislature. *Id. § 2.*

- **Veto Referendums**
  The people have also reserved the power to invoke a referendum against any act of the legislature except for those making state appropriations. Neb. Const. art. III, § 3

- **Legislatively Referred Amendments**
  An amendment to the state constitution proposed by the legislature must be

Election Timing
The timing of an election may depend on the type of ballot measure; while initiatives and veto referendums must be submitted to voters at a general election, a legislatively referred amendment may be submitted at a special election if agreed to by a legislative supermajority.

- For both initiatives and veto referendums, the filing of the sample petition with the Secretary of State triggers the election timeline. Neb. Rev. Stat. § 32-1405.
  - An initiative is placed on the ballot “at the next general election occurring at least four months after” a filing with the Secretary of State prior to obtaining signatures, as long as “the signed petitions are found to be valid and sufficient.” Neb. Rev. Stat. § 32-1407(1), (2); Neb. Const. art. III, § 2.
  - A veto referendum is placed on the ballot at the first general election held at least 30 days after the petition is filed. Neb. Const. art. III, § 3.

- After a legislatively referred amendment is agreed to by three-fifths of the legislature’s members, it is submitted to the electors at the next election of legislators or at a special election called by four-fifths of the legislature. Neb. Const. art. XVI, § 1; Neb. Rev. Stat. § 49-201. If a special election is called, the date specified by the Legislature must fall on a Tuesday and be not less than 60 days after passage of the act calling for the election. Neb. Rev. Stat. § 49-235.

BALLOT PREPARATION
What is included on the ballot, and who prepares it?

- Initiative and veto referendum measures must be submitted “in a nonpartisan manner without any indication or suggestion on the ballot that they have been approved or endorsed by any political party or organization.” Neb. Rev. Stat. § 32-1411(2). The ballot for these measures must display the following information.
  - A ballot title that expresses the measure’s purpose and does not resemble any title previously filed for that election (100 words or less). Neb. Rev. Stat. §§ 32-1410(1), (2), 32-1411(2). The ballot title is prepared by the Attorney General. Id. § 32-1410(1). The wording depends on whether the measure is an initiative or a referendum:
    - For an initiative, the title shall be worded so “those in favor of adopting the measure shall vote For and those opposing the adoption of the measure shall vote Against.” Neb. Rev. Stat. § 32-1410(1).
    - For a veto referendum, the title shall be worded so “those in favor of retaining the measure shall vote Retain and those opposing the measure shall vote Repeal.” Neb. Rev. Stat. § 32-1410(2). In addition, the ballot title for a referendum “may be distinct from the legislative title of the measure.” Id.
  - A statement prepared by the Attorney General, printed in italics immediately preceding the ballot title, explaining the effect of a vote in either direction

- The ballot for a legislatively referred amendment in Nebraska must display the following.
  - A statement explaining the effect of a vote for or against the proposal in clear and concise language, prepared by the Executive Board of the Legislative Council. The language cannot “be intentionally an argument or likely to create prejudice either for or against the proposal.” Id. § 49-202.01(1).

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

- The Secretary of State is responsible for having the ballot title and text of an initiative or veto referendum published “in all legal newspapers in the state once each week for three consecutive weeks” before the election at which the measure is submitted to voters. Neb. Rev. Stat. § 32-1413. In addition, within eight weeks of the election, the Secretary of State “shall hold one public hearing in each congressional district” to hear public comments on the measure. At least five days before the hearing, notice “shall be published once in such newspapers as are necessary to provide for general circulation” within that district. Neb. Rev. Stat. § 32-1405.02.

- A legislatively referred amendment must be published by the Secretary of State once each week for three consecutive weeks, in at least one newspaper designated by the Governor in each county where a newspaper is published, immediately preceding the election on the amendment. Neb. Const. art. XVI, § 1; Neb. Rev. Stat. § 49-202. The publication must also include the ballot statement explaining the effect of a vote for or against the proposal, prepared by the Executive Board of the Legislative Council. Neb. Rev. Stat. § 49-202.01(1).

**Voter Information Pamphlet**

- The Secretary of State develops and prints an informational pamphlet on all initiatives and veto referendums to be placed on the ballot. Neb. Rev. Stat. § 32-1405.01. The pamphlet must include the following information.
  - The ballot title and text.
  - The full text of each measure.
  - Arguments for and against each measure of no more than 250 words. The arguments are written by the Secretary of State, but sponsors of the measure, as well as opponents and other sources, may provide information for the arguments.

At least six weeks before the election, the Secretary of State is to distribute the pamphlets to election commissions and county clerks—who, in turn, are to make them available in their offices and at least three other public locations. Neb. Rev. Stat. § 32-1405.01(3).

Nebraska law does not require a state voter information pamphlet for legislatively referred amendments.

**JUDICIAL REVIEW**

*When and how can the court step in?*

- For initiatives or veto referendums, if the Secretary of State refuses to place on the ballot a measure that was presented in the required time frame, “any resident” may apply to the district court of Lancaster County for a writ of mandamus. Neb. Rev. Stat. § 32-1412(1). The Secretary “shall order the issue placed upon the ballot at the next general election” if the court decides that the petition is legally sufficient. See *id*.

A suit can also be filed to prevent such a measure from being placed on the ballot. If the initiative or veto referendum petition is shown to be “not legally sufficient,” “the court, on the application of any resident, may enjoin the Secretary of State and all other officers” from including the measure on the ballot. Neb. Rev. Stat. § 32-1412(2).

In addition, “any person” who is dissatisfied with the ballot title prepared by the Attorney General may appeal to the district court by filing a petition within ten days of the Attorney General’s decision, asking for a different title and explaining why the prepared title is insufficient or unfair. Neb. Rev. Stat. § 32-1410(3). The district court may then certify a ballot title to the Secretary of State after hearing arguments and examining the measure. See *id*. The district court of Lancaster County has jurisdiction over all such litigation. Neb. Rev. Stat. § 32-1412(4).

**Sample case:** *Thomas v. Peterson*, 948 N.W.2d 698, 706-708 (Neb. 2020) (holding that ballot title prepared by the Attorney General was not insufficient or unfair due to description of licensees as “payday lenders,” where the term was commonly known by the general public and there was no evidence it created unfairness or would deceive or mislead voters regarding the proposal).

- Nebraska’s provisions governing legislatively referred amendments do not explicitly provide for judicial review of ballot language or related materials, but review may be available under other channels, such as petitions for writ of mandamus.

**Sample case:** *State ex rel. Loontier v. Gale*, 853 N.W.2d 494 (Neb. 2014) (barring a proposed constitutional amendment’s placement on the upcoming ballot because it contained two separate proposals in violation of the constitution’s requirement that voters be able to vote on them separately).
Nevada authorizes indirect statutory initiatives, constitutional initiatives, veto referendums, and legislatively referred amendments. For indirect statutory initiatives, if the legislature rejects voters’ proposal, the Governor and the legislature can together propose an alternative to be submitted to voters alongside it. An initiative or veto referendum is submitted to voters at the next general or statewide election after filing of a petition, whereas a legislatively referred amendment is submitted to voters as prescribed by the legislature. In general, the official ballot for a statewide ballot measure only contains a ballot question, known as a “condensation.” However, the state provides for the compilation of “sample ballots” containing additional information, which are distributed to registered voters. Nevada law explicitly provides for legal challenges to the description of an initiative or veto referendum appearing on the petition circulated for signatures, but does not explicitly provide for judicial review of ballot contents. However, review may be available under other channels, such as petitions for injunctive or other extraordinary relief.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Nevada**

Nevada has indirect statutory initiatives, allowing for the legislature to propose alternatives with the approval of the Governor; constitutional initiatives; veto referendums; and legislatively referred amendments.

- **Initiatives – Statutory (Indirect)**

  The people of Nevada have reserved the initiative power to propose and enact statutes. Nev. Const. art. 19, § 2. A proposed statutory initiative is first transmitted to the legislature, which may enact or reject it. Nev. Const. art. 19, § 2(3). If the legislature rejects the proposal, the Governor may recommend, and the legislature may, with the Governor’s approval, propose a legislative alternative measure. *Id.* If so, both measures are submitted to voters. *Id.*

  A statutory initiative cannot make an appropriation or otherwise require expenditure of money unless it also imposes a sufficient tax or otherwise constitutionally provides for raising the necessary revenue. See Nev. Const.
art. 19, § 6. A statutory initiative approved by voters may not be amended or repealed by the legislature within three years of taking effect. Id. § 2(3).

✓ **Initiatives – Constitutional**

Nevadans also have the initiative power to propose and adopt amendments to the state constitution. Nev. Const. art. 19, § 2. To be adopted, a constitutional initiative must be approved by voters in two successive general elections. Id. § 2(4).

✓ **Veto Referendums**

Nevadans also have the referendum power to approve or reject any statute or resolution of the legislature, or any part thereof. Nev. Const. art. 19, § 1.

✓ **Legislatively Referred Amendments**

An amendment to the state constitution proposed by the legislature must be approved by Nevada voters. Nev. Const. art. 16, § 1.

**Election Timing**

The timing of an election may vary depending on the type of ballot measure at issue. Initiatives and veto referendums are submitted to voters at the next general or statewide election after filing of the petition, whereas a legislatively referred amendment is submitted to voters as prescribed by the legislature.

- An initiative must be submitted to voters at the next general election. Nev. Const. art. 19, § 2.
  - A constitutional initiative must be approved by voters in two successive general elections in order to be adopted. Nev. Const. art. 19, § 2(4).
- A veto referendum must be submitted to voters at the next statewide election following the filing of the petition. Nev. Const. art. 19, § 1.
- A legislatively referred amendment is submitted to voters after it is approved by a majority of all members elected to each house, in two consecutive legislatures. Nev. Const. art. 16, § 1(1). It is then submitted to voters “in such manner and at such time as the Legislature shall prescribe.” Id.

**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for a statewide ballot measure in Nevada must display the following.

  - For initiatives and veto referendums, the condensation is prepared by the Secretary of State in consultation with the Attorney General. Id. § 293.250(5).
  - For legislatively referred amendments, the condensation is prepared by the Nevada Legislative Counsel Bureau at the request of the underlying legislative committee. Id. § 218D.810(2).
For statutory initiatives in which the legislature has proposed an alternative measure with the Governor’s approval, a statement indicating that particular measures reflect alternative approaches to the same issue and to please only vote for one or the other. Id. § 293.267(5).

INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
✓ For proposed amendments (constitutional initiatives and legislatively referred amendments), each county clerk must cause certain information to be published three times in a newspaper of general circulation, beginning on or before the first Monday in October. Nev. Rev. Stat. § 293.253; Nev. Const. art. 19, § 2(3). The publication must include the following items, many of which are described in further detail in the next section.
   • The full text of the proposed amendment.
   • The “condensation” or question that will appear on the official ballot.
   • An explanation of the measure.
   • Arguments for and against the measure, as well as rebuttal arguments, discussed in further detail below.
   • A fiscal note, if applicable.


✗ For statutory initiatives and veto referendums, Nevada law does not generally require that information be published in newspapers or similar media, except for sample ballots (discussed below).

Voter Information Pamphlet
Nevada law requires the Secretary of State to prepare a “sample ballot.” Nev. Rev. Stat. §§ 293.250(1)(a), 293.565. The sample ballot must include the following items, each of which must be reasonable in length and written in easily understood language. Id. §§ 293.250(5), 218D.810(3).

  ➢ For initiatives and veto referendums, the Fiscal Analysis Division of the Nevada Legislative Counsel Bureau prepares a fiscal note if it determines the measure may have an anticipated financial effect on the state or local governments. Id. § 295.015(3)(b). The note is prepared before petitions are circulated for signatures. Id.
  ➢ For legislatively referred amendments, the Fiscal Analysis Division of the Nevada Legislative Counsel Bureau prepares the fiscal note at the request of the underlying legislative committee, which may review the drafts and make changes as needed. Nev. Rev. Stat. § 218D.810(2)(d), (4).
• An explanation of the measure, including a digest. Nev. Rev. Stat. §§ 293.565(1)
(c), 293.250(5).

- The digest must include a concise and clear summary of any existing law directly relating to the measure, as well as a summary of how the measure adds to, changes, or repeals such existing laws. *Id.* §§ 293.250(5), 218D.810(3). For any measure that generates, increases, or decreases any public revenue, the digest must also include a statement to so indicate. *Id.*

- For *initiatives* and *veto referendums*, the explanation is prepared by the Secretary of State in consultation with the Attorney General. *Id.* § 293.250(5).

- For *legislatively referred amendments*, the explanation is prepared by the Legal, Research, and Fiscal Analysis Divisions of the Nevada Legislative Counsel Bureau at the request of the underlying legislative committee, which may review and make any changes as necessary. *Id.* § 218D.810(2)(b), (5).


- For *initiatives* and *veto referendums*, the Secretary of State appoints two committees to draft arguments and rebuttals: one composed of three persons favoring the measure, and the other composed of three persons opposing. *Id.* § 293.252(1). The arguments and rebuttals must address the measure’s fiscal impact, its environmental impact, and its impact on public health, safety and welfare. *Id.* sub. (5)(f).

- Each committee may seek and consider comments from the general public. *Id.* § 293.252(5)(c).

- The statute provides the Secretary of State with guidance as to the selection of committee members, as well as the discretion to revise committee language as appropriate. *Id.* § 293.252(2)-(4), (7)-(8).

- For *legislatively referred amendments*, as well as *legislative alternative measures for statutory initiatives*, arguments and rebuttals are prepared by the Nevada Legislative Counsel Bureau at the request of the underlying legislative committee, which may review the drafts and make changes as needed. *Id.* § 218D.810(2)(b)-(c), (5).

- For *constitutional initiatives* and *legislatively referred amendments*, the full text of each proposed amendment. Nev. Rev. Stat. § 293.565(1)(e).

County clerks distribute sample ballots to registered voters by mail, although a clerk may also establish a system to distribute sample ballots electronically to voters opting for electronic distribution. Nev. Rev. Stat. § 293.565(3)-(5). Mailed, paper copies may omit the full text of a proposed constitutional amendment if it would significantly reduce costs and other requirements are met. *Id.* sub. (3)(a).

**JUDICIAL REVIEW**

*When and how can the court step in?*

- With respect to *initiatives* and *veto referendums*, Nevada law explicitly provides for challenges to the description of a measure which appears on the petition that

Sample case: Choose Life Campaign 90 v. Del Papa, 801 P.2d 1384 (Nev. 1990) (interpreting a similar, prior version of Nevada Revised Statutes § 293.250, finding an implicit duty of the Secretary of State to make a good faith effort to fairly present information presented on a ballot and/or sample ballot).

➢ In contrast, for legislatively referred amendments, the state’s direct democracy provisions do not explicitly provide for judicial review of ballots or sample ballots, though review may be available under other channels, such as petitions for injunctive or other extraordinary relief.
Legislatively referred amendments are the only form of statewide direct democracy available in New Hampshire. Proposed amendments must be submitted to voters at the “next biennial November election,” following approval by a 3/5 vote of each legislative house, and are only adopted after approval of a 2/3 supermajority of voters. The legislature has the power to draft the ballot language, and the Joint Committee on Legislative Facilities determines whether or not to issue a voter information guide. In addition to the full text of the proposed amendment, New Hampshire law requires the ballot question to include a breakdown of the legislative votes on the underlying resolution. The provisions otherwise provide few standards regarding ballot contents and related materials. However, the New Hampshire Supreme Court has held that ballot language must not be misleading, even when this has meant invalidating a proposed amendment approved by voters.

BACKGROUND INFORMATION

What forms of direct democracy are available, and when?

Statewide Ballot Measures in New Hampshire
New Hampshire does not have initiatives or veto referendums but has legislatively referred amendments.

- Initiatives – Statutory
- Initiatives – Constitutional
- Veto Referendums

- Legislatively Referred Amendments
  An amendment to the state constitution proposed by the legislature must be approved by New Hampshire voters. N.H. Const. art. 100(a), (c). It is only adopted after approval by a 2/3 supermajority of electors voting on the subject. Id. sub. (c).

Election Timing
Amendments proposed by the New Hampshire General Court must be submitted to voters at the next biennial November election, following approval by a 3/5 vote of the
entire membership of each legislative house. N.H. Const. art. 100(a), (c).

**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for a constitutional amendment proposed by the New Hampshire General Court must include the following information.

- Ballot question.
- Full text of the article of the constitution, as it is proposed to be amended.
- Results of the underlying legislative vote taken on the proposed amendment.


Although ballots are prepared by the New Hampshire Secretary of State, id. § 656:1, the legal provisions governing constitutional amendments suggest the legislature is responsible for preparing the ballot language, see *id.*; *id.* § 17-A:8; N.H. Const. art. 100(a), (c). The question of whether to approve a proposed constitutional amendment may be submitted on a special and separate ballot. N.H. Rev. Stat. Ann. §§ 656:14, 663:2.

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

- New Hampshire law does not require that information about ballot measures be published in a newspaper or similar media, beyond the voter guide described below.

**Voter Information Pamphlet**

Pursuant to statute, the Joint Committee on Legislative Facilities may authorize the printing or distribution of a voter’s guide. If there is a voter’s guide, it must include the underlying legislative resolution proposing the constitutional amendment. N.H. Rev. Stat. Ann. § 663:3-a(I).

**JUDICIAL REVIEW**

*When and how can the court step in?*

New Hampshire’s constitutional and statutory provisions governing constitutional amendments do not explicitly provide for pre-election judicial review of ballot language or related issues, but review may be available via other channels, including advisory opinion. See, e.g., *Opinion of the Justices,* 333 A.2d 714 (N.H. 1975). The legal provisions also provide few clear standards with respect to ballot language and related materials. However, post-election, the New Hampshire Supreme Court has struck down a constitutional amendment for which the ballot language was misleading. See *Gerber v. King,* 225 A.2d 620 (N.H. 1967).
Sample case: *Gerber v. King*, 225 A.2d 620 (N.H. 1967) (in a case predating current constitutional and statutory provisions, finding, post-election, that legislatively referred amendment was not properly adopted where ballot language was misleading, in that it failed to notify voters that time limit referenced legislative days instead of calendar days and conveyed the idea that a new limit would be imposed; also finding that separate constitutional amendment was effectively adopted, where meaning was clear from ballot question and voter guide).
In New Jersey, legislatively referred amendments are the only available form of statewide direct democracy. Under the state constitution, a proposed amendment must be submitted to voters at the next general election after a public hearing and legislative approval, whether in one legislative session (via a supermajority vote) or two sessions (via two simple majority votes). The legislature may set forth the contents of the ballot, but the Attorney General has discretion to add a ballot statement if the legislature has not clearly set forth the true purpose of the proposed amendment and a brief statement interpreting the same. Each county clerk must mail the full text of each proposed amendment to registered voters before the election, as well as other materials designated by the Attorney General as necessary to inform voters of the proposition’s effect. Judicial review is likely to be available, and in addition to applying the standards found explicitly in state constitutional and statutory provisions, New Jersey courts have also asked whether the ballot’s contents are fair.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in New Jersey**

New Jersey does not have initiatives or veto referendums but has legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**
- **Legislatively Referred Amendments**

  An amendment to the state constitution proposed by the legislature must be approved by New Jersey voters. N.J. Const. art. IX, § 4.

**Election Timing**

Under the New Jersey Constitution, a proposed amendment must be submitted to voters at the next general election, but the precise timing depends on the level of support for the proposal in the legislature. If, following a public hearing, a proposed
amendment is approved by 3/5 of all members of each house, it is submitted to voters at the next general election. See N.J. Const. art. IX, § 1. In contrast, if it is approved by a majority of all members, but less than a 3/5 supermajority, it is first referred to the next consecutive legislature; if a majority of all members of this consecutive legislature approve, the proposed amendment is then submitted to voters at the next general election. Id.

Regardless of the level of legislative support, the proposed amendment must be submitted at the next general election to occur at least 70 days following the final action of the legislature. Id. sub. (4), art. II, § 1, ¶ 2.

**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for a proposed constitutional amendment in New Jersey must display the following.

- A ballot question, which clearly sets forth the true purpose of the matter to be voted on, in simple language easily understood by the voter.
- A brief statement interpreting the amendment, also in simple language.

N.J. Rev. Stat. § 19:3-6. The legislature may include these in the underlying statute proposing a constitutional amendment. However, if the underlying statute does not contain a public question clearly setting forth the true purpose of the proposal and a brief statement interpreting the same, the Attorney General may prepare a brief statement interpreting the proposed amendment and setting forth the true purpose of the matter being voted upon. See Gormley v. Lan, 438 A.2d 519 (N.J. 1981). The Attorney General’s statement is included on the ballot alongside the statement set forth by the legislature. See id.

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

The legislature must cause the text of the proposed amendment to be published at least once in one or more newspapers in each county where newspapers are published, not less than three months before the amendment is submitted to the people. N.J. Const. art. IX, § 3.

In addition, the text of the ballot question must be published at least once in one or more newspapers in each county where newspapers are published, at least 60 days before the election, “and the results of the vote upon a question shall be void unless the text thereof shall have been so published.” N.J. Const. art. II, § 1, ¶ 2.

**Voter Information Pamphlet**

New Jersey requires each county clerk to mail the full text of a proposed constitutional amendment...
amendment to all registered voters (or in counties with less capacity, to all registered
voters who have responded to a confirmation notice), along with a sample ballot. See

The text is to include any portion of the constitution necessary to clearly disclose to
voters the relation of the proposal to the existing constitution, and it must clearly indicate
which portion of the language would be new and/or omitted. Id. §§ 19:14-28, -29. The
Attorney General must designate in writing to the Secretary of State which portions of
the constitution must be included, which the Secretary of State must provide to county
clers at least 20 days before the election. Id. §§ 19:14-30, -32. However, in addition
to or in place of including the relevant constitutional provisions, the Attorney General
may decide to prepare and include a summary statement of the existing constitutional
provisions on the subject as necessary to inform voters of the effect of the adoption or
rejection of the proposition. See id.; § 19:14-31.

JUDICIAL REVIEW
When and how can the court step in?

While New Jersey provisions governing legislatively referred amendments do not
explicitly provide for judicial review of ballot language or related materials, review is likely
to be available under other channels, such as actions for declaratory and/or injunctive
relief. In addition to applying the statutory standards, New Jersey courts have asked
whether the ballot’s contents are “fair.” See, e.g., Gormley v. Lan, 438 A.2d 519, 525 (N.J.

Sample case: Gormley v. Lan, 438 A.2d 519 (N.J. 1981) (finding the interpretive statement
prepared by the Attorney General was unfair and “clearly unbalanced,” and providing a
replacement to avoid additional litigation).
New Mexico is one of just two states that authorizes the veto referendum but not the initiative. The state also provides for legislatively referred amendments and amendments proposed by an independent commission. A veto referendum is submitted to voters at the next general election after a petition is filed, whereas a legislatively referred amendment is submitted at a regular election or a special election, if provided by the legislature. The Secretary of State is responsible for preparing ballots, which primarily include a ballot question along with other identifying information. New Mexico’s direct democracy provisions do not require creation of a voter information pamphlet, nor do they explicitly provide for judicial review of ballot contents. However, judicial review may be available under other channels, such as writs of mandamus.

BACKGROUND INFORMATION
What forms of direct democracy are available, and when?

Statewide Ballot Measures in New Mexico
New Mexico is one of just two states in the country in which the people have the power of the veto referendum but do not have the power of the initiative. New Mexico also has legislatively referred amendments, as well as amendments referred by an independent commission established to propose amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
  New Mexico does not have initiatives (statutory or constitutional). The New Mexico Constitution provides that if ever it is amended to adopt the initiative power, such power shall be limited to laws that could also be passed by the legislature. See N.M. Const. art. XIX, § 3.

- **Veto Referendums**
  The people of New Mexico reserve the power of the veto referendum to reject (or approve) any act of the legislature, except general appropriation laws or laws maintaining public institutions; laws providing for the preservation of public peace, health, or safety; and certain laws creating or funding debts. N.M. Const. art. IV, § 1.
**Legislatively Referred Amendments**

An amendment to the state constitution proposed by the legislature must be approved by New Mexico voters. N.M. Const., art. XIX, § 1. The same constitutional provision states that amendments may also be proposed by an independent commission, and any amendments so proposed must also be approved by a popular vote. See id.

**Election Timing**

The timing of an election may depend on the form of ballot measure. A veto referendum is submitted to voters at the next general election after a petition is filed, whereas a legislatively referred amendment is submitted at a regular election or a special election, if provided by the legislature.

- A *veto referendum* must be submitted to voters at the next general election following the filing of the petition. See N.M. Const. art. IV, § 1. A referred law will be annulled only if a majority, and at least 40% of all votes cast in the general election, vote for the law’s rejection. See id.
- A *legislatively referred amendment* is submitted to voters after it is approved by a majority of all members elected to each house. See N.M. Const. art. IV, § 1. It must be submitted at an election held at least six months after adjournment of the legislature: whether at the next general election, or at a special election at such time and in such manner as the legislature may provide. See id.

**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for a statewide ballot measure in Nevada must display the following.

- **Ballot question.**
  - The question must contain “such information necessary to give a reasonably prudent voter notice” of the proposal. N.M. Code R. § 110.16.8(A); see also N.M. Stat. Ann. §§ 1-16-7. The ballot question is prepared by the Secretary of State. See N.M. Code R. § 110.16.8(B).
- **Brief descriptive title.**
  - The descriptive title is also prepared by the Secretary of State. See N.M. Code R. § 110.16.8(D), (G).
- **Brief designation of the source of the question.**
  - The designation is also prepared by the Secretary of State. See N.M. Code R. § 110.16.8(D), (G).
- **(For veto referendums only) Popular name of the law being referred.**
  - The referendum’s sponsors may suggest a popular name, which the Secretary of State may approve or reject in favor of a “more suitable and correct” popular name prepared by the Secretary of State. See N.M. Stat. Ann. §§ 1-17-8(B)(I)–1-17-9.
- **(For legislatively referred amendments only) The full title of the joint resolution proposing the amendment (including a number assigned by the Secretary of**
INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
For both veto referendums and legislatively referred amendments, the Secretary of State must cause information to be published for four consecutive weeks, culminating no more than two weeks before the election. N.M. Const. art. XIX, § 1; N.M. Stat. Ann. § 1-17-14. The publication must be made in at least one newspaper in every county in which newspapers are published, in English as well as Spanish if newspapers in both languages are published in the county. See id.

The publication must contain the following information.

• Full text of the amendment or the legislation that is the subject of the referendum. See N.M. Const. art. XIX, § 1; N.M. Stat. Ann. § 1-17-14.
• Notice of the content and purpose of the measure. See N.M. Const. art. XIX, § 1; N.M. Stat. Ann. § 1-17-14.

➢ For veto referendums, this notice must include the ballot title and the certified popular name of the legislation being referred to voters. N.M. Stat. Ann. § 1-17-14.

Voter Information Pamphlet

✗ New Mexico law does not require a state voter information pamphlet for ballot measures.

JUDICIAL REVIEW
When and how can the court step in?

New Mexico’s direct democracy provisions do not explicitly provide for judicial review of ballot contents, though review may be available under other channels, such as petitions for writs of mandamus. See, e.g., State ex rel. Clark v. State Canvassing Bd., 888 P.2d 458 (N.M. 1995).

Sample case: State ex rel. Clark v. State Canvassing Bd., 888 P.2d 458 (N.M. 1995) (issuing a writ of mandamus and holding a constitutional amendment approved by the electorate violated the state’s single-purpose requirement; also suggesting that a ballot title prepared by the Secretary of State should be intelligible and impartial).
In New York, legislatively referred amendments are the only available form of statewide direct democracy. New York is distinctive in that once an amendment is first proposed by the legislature, it is referred to the Attorney General for a written opinion on the amendment’s effects; it must then be approved by two consecutive General Assemblies, and only then is it submitted to New York voters in a general election. With the advice of the Attorney General, the State Board of Elections prepares the ballot language as well as an abstract explaining the amendment’s purpose and effect. The ballot form or the abstract may be contested by any person eligible to vote on the amendment.

BACKGROUND INFORMATION
What forms of direct democracy are available, and when?

Statewide Ballot Measures in New York
New York does not have initiatives or veto referendums but has legislatively referred amendments.

☒ Initiatives – Statutory
☒ Initiatives – Constitutional
☒ Veto Referendums
✓ Legislatively Referred Amendments
   An amendment to the state constitution proposed by the legislature must be approved by New York voters. NY Const. art. XIX, § 1.

Election Timing
New York provisions require that legislatively referred amendments be submitted to voters at general elections. Under the New York Constitution, after an amendment is first proposed in either house of the legislature, it is referred to the Attorney General. Within 20 days, the Attorney General must render an opinion to both houses “as to the effect of such amendment or amendments upon other provisions of the constitution.” NY Const. art. XIX, § 1. Thereafter, the proposed amendment is voted upon and must be approved by a majority of the members elected to each house. See id. The proposed amendment is then referred to, and must be approved by, a majority of the members elected to the
next consecutive legislature. See id.

After approval by two consecutive legislatures, the amendment is referred to voters “in such manner and at such times as the legislature shall prescribe.” Id. New York statutes provide that a constitutional amendment is to be submitted to voters at a general election. See N.Y. Elec. Law § 4-108.

**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for a proposed constitutional amendment in New York must display the following.

- Abbreviated ballot title. N.Y. Elec. Law § 4-108(2).
  - The title must indicate “generally and briefly, in a clear and coherent manner using words with common and every-day meanings, the subject matter of the amendment.” Id.
  - The title is prepared by the State Board of Elections, but the Attorney General must advise in the preparation. Id. sub. (3).

- Instructions on how to vote on the question, which must indicate that if the voter makes a mistake or want to change their vote, they may ask a poll worker for a new ballot. N.Y. Elec. Law § 7-104(15).

- If the question appears on the back of the ballot, the front of the ballot must include words or a symbol to indicate that the voter should turn the ballot over. Id. sub. (16).

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

New York law requires several publications pertaining to proposed constitutional amendments. The state constitution requires that a proposed amendment be published after its initial approval by a General Assembly. NY Const. art. XIX, § 1. The Secretary of State must publish the resolution once a month for three months before the next General Assembly is chosen, in a newspaper in each county. See N.Y. Elec. Law § 4-116(1).

In the week before the election, the State Board of Elections must make a publication containing the following information, in one newspaper of general circulation in each county. Id. sub. (2)-(3).

- An abstract of the amendment. N.Y. Elec. Law § 4-116(2).
  - The abstract is prepared by the State Board of Elections, with the advice of the Attorney General, and is discussed in further detail below. Id. § 4-108(1)(d), (3).
  - A brief statement of the law or proceedings authorizing the submission to voters. Id. § 4-116(2).
  - The ballot form. Id. § 4-116(2).

New York law also requires that a sample ballot be mailed to each eligible voter within
three days of the elections or published within one week of the election in newspapers or on the local board of election’s website. See N.Y. Elec. Law § 7-118.

**Voter Information Pamphlet**

As noted, the State Board of Elections—with the advice of the Attorney General—must prepare an abstract of each proposed constitutional amendment, which is included in a pre-election publication. N.Y. Elec. Law §§ 4-116(2), 4-108(1)(d), (3). The abstract must concisely state the purpose and effect of the amendment in a clear and coherent manner, using words with common and everyday meanings. Id. § 4-108(1)(d). Beyond this published abstract, New York does not require a state voter information pamphlet for ballot measures.

**JUDICIAL REVIEW**

*When and how can the court step in?*

Pursuant to New York statutes, the ballot form or the abstract may be contested by any person eligible to vote on the amendment. See N.Y. Elec. Law § 16-104(2). The proceeding must be brought within 7 days after the last day to certify the wording of the ballot form and abstract, and if possible, a final order must be made at least five weeks before the election. See id. sub. (3); § 4-108.

**Sample case:** *Leib v. Walsh*, 992 N.Y.S.2d 637 (N.Y. Sup. Ct. 2014) (in an action challenging the ballot form and abstract pertaining to a proposed amendment on redistricting, finding that using the word “independent” to describe the redistricting commission was misleading, and directing the State Board of Elections to omit the word “independent” from both the ballot form and abstract.)
In North Carolina, legislatively referred amendments are the only available form of statewide direct democracy. Legislatively referred amendments are submitted “at the time and in the manner prescribed by the General Assembly.” North Carolina provisions are silent as to specific contents that must be included on the ballot but require that all ballots must be readily understandable and that any questions must be presented in a fair manner. A special commission made up of the Secretary of State, Attorney General, and Legislative Services Officer is tasked with preparing an explanation of the proposed amendment. North Carolina’s direct democracy provisions do not explicitly provide for judicial review of ballot measure language or related materials, but review may be available under other channels.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in North Carolina**

North Carolina does not have statewide initiatives or veto referendums but has legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**

- **Legislatively Referred Amendments**
  
  An amendment to the state constitution proposed by the legislature must be approved by North Carolina voters. See N.C. Const. art. XIII, § 4.

**Election Timing**

Legislatively referred amendments are submitted to voters after approval of a 3/5 supermajority of each house of the legislature. See N.C. Const. art. XIII, § 4. The election takes place “at the time and in the manner prescribed by the General Assembly”, and there is no explicit requirement that proposed amendments be submitted at general elections. *Id.*
BALLOT PREPARATION
What is included on the ballot, and who prepares it?

The North Carolina Constitution provides that the manner of the election is to be prescribed by the General Assembly, and state provisions are silent as to specific contents that must be included on the ballot. See N.C. Const. art. XIII, § 4. However, pursuant to statute, all North Carolina ballots must be “readily understandable by voters” and must present questions “in a fair and nondiscriminatory manner.” N.C. Gen. Stat. § 163-165.4(1)-(2).

The state entity responsible for drafting a publicly available explanation of the amendment—the Constitutional Amendments Publications Commission (“the Commission”)—also prepares a short caption for the amendment that is used on the ballot. See Constitutional Amendments Publication Commission, Secretary of State of North Carolina, https://www.sosnc.gov/divisions/general_counsel/constitutional_amendments_publication_commission (last visited April 18, 2023). The Commission sits within the Department of the Secretary of State, and consists of the Secretary of State, the Attorney General, and the Legislative Services Officer. N.C. Gen. Stat. § 147-54.8.

INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
At least 75 days before the election, the Commission must prepare an explanation of the proposed amendment in “simple and commonly used language.” N.C. Gen. Stat. § 147-54.10. The Secretary of State must send a copy of this explanation, along with a news release, to each county board of elections. See id. § 147-54.10(b). The Secretary of State must also provide a copy to any registered voter or representative of the media, but only upon request. Id. North Carolina law also requires that a copy of a sample ballot be posted at all polling places. See N.C. Gen. Stat. §§ 163-166.7A, 163-165.2.

Voter Information Pamphlet
As noted, at least 75 days before the election, the Constitutional Amendments Publication Commission prepares an explanation of the proposed amendment in simple and commonly used language, which is generally only required to be distributed to the local election boards. See N.C. Gen. Stat. § 147-54.10. Beyond this explanation, North Carolina law does not require a state voter information pamphlet for legislatively referred amendments.

JUDICIAL REVIEW
When and how can the court step in?

North Carolina’s direct democracy provisions do not explicitly provide for judicial review of ballot measure language or related materials, but review may be available under other channels.
North Dakota has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments. The timing of an election may vary depending on the type of ballot measure; while most ballot measures must be submitted to voters at a regular statewide election, the Governor may call a special election for a veto referendum. All ballot measures are subject to the same ballot content requirements, which include a financial impact estimate compiled following public hearings, as well as information prepared by the Secretary of State in consultation with the Attorney General. The Secretary of State must also consult with the Attorney General to prepare an analysis that is published in newspapers before the election. North Dakota law explicitly provides for pre-election judicial review of actions of the Secretary of State pertaining to initiatives and veto referendums, but not for legislatively referred amendments. The state constitution protects against judicial review which would invalidate an initiative or veto referendum after it has been submitted to and adopted by the electorate.

BACKGROUND INFORMATION
What forms of direct democracy are available, and when?

Statewide Ballot Measures in North Dakota
North Dakota has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
  The people of North Dakota have reserved the initiative power to propose and enact laws and/or constitutional amendments independently of the legislature. N.D. Const. art. III, §§ 1, 9.
- **Veto Referendums**
  North Dakotans also have the referendum power to approve or reject any act of the legislature, or parts thereof. N.D. Const. art. III, § 1. The veto referendum power extends to any law; the submission of a veto referendum petition suspends the operation of the challenged law, except with respect to emergency measures and appropriation measures for the support and
maintenance of state institutions. See id. § 5.

**Legislatively Referred Amendments**

An amendment to the state constitution proposed by the legislature must be approved by North Dakota voters. N.D. Const. art. IV, § 16.

**Election Timing**

The timing of an election on a ballot measure may vary depending on the form of direct democracy; while most ballot measures must be submitted to voters at a regular statewide election, the Governor may call a special election with respect to a veto referendum.

- An *initiative* must be submitted to voters at a “statewide election.” N.D. Const. art. III, §§ 5, 9. The state constitution provides that an initiative petition must be filed at least 120 days before the statewide election in which it will be submitted to voters. See id. § 5. North Dakota statutes governing notice to voters suggest that an initiative is submitted at a general election. See N.D. Cent. Code §§ 16.1-01-07, 16.1-13-05.
- A *veto referendum* is submitted to voters at a “statewide election or a special election called by the Governor.” N.D. Const. art. III, § 5. For a veto referendum submitted at a regular “statewide election,” North Dakota statutes governing notice to voters contemplate submission at a general election. See N.D. Cent. Code §§ 16.1-01-07, 16.1-13-05.
- A *legislatively referred amendment* must be submitted to voters after it is approved by a majority of the members of each legislative house. N.D. Const. art. IV, § 16. North Dakota statutes governing notice to voters seems to contemplate, but does not expressly require, submission at a general election. See N.D. Cent. Code §§ 16.1-01-07, 16.1-13-05.

**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for any statewide ballot measure in North Dakota must display the following information.

- The full measure, or a concise summary thereof.
  - If the Secretary of State concludes the measure is too long to practicably print in full, she is to prepare a concise summary of the measure in consultation with the Attorney General. N.D. Cent. Code § 16.1-06-09(1).
  - A concise summary must be written in plain, clear, understandable language, using words with common, everyday meaning; and it must fairly represent the substance of the measure. See *id*.
- Estimate of the measure’s financial impact.
  - This estimate is prepared by the Legislative Council following public hearings at which public testimony is presented, as well as consultations with implicated state institutions. See N.D. Cent. Code § 16.1-01-17; see also *id* § 16.1-06-09(1).
  - For any measure that is adopted, an estimate of the measure’s *actual* fiscal
impact is similarly prepared after one fiscal year. See N.D. Cent. Code § 16.1-01-17.

- Concise statement of the effect of an affirmative or negative vote.
  - The concise statement is prepared by the Secretary of State in consultation with the Attorney General. N.D. Cent. Code § 16.1-06-09(1).
  - Like the concise summary, the concise statement must also be written in plain, clear, understandable language, using words with common, everyday meaning. *Id.*

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

County auditors must publish an election notice in their official county newspaper once per week for the two consecutive weeks before an election; such notice must include notice of any ballot measure that will appear before the voters, as well as a sample ballot. See N.D. Cent. Code §§ 16.1-13-05, 16.1-01-07, 16.1-13-12. This publication must also be available at each polling location. *Id.* § 16.1-06-19. Additionally, for two consecutive weeks before this notice is published, the Secretary of State must publish an analysis of any ballot measure that will appear before voters, prepared by the Secretary of State in consultation with the Attorney General, “in columns to enable the electors to become familiar with the effect of the proposed constitutional amendment or . . . measure.” *Id.* § 16.1-01-07.

**Voter Information Pamphlet**

While North Dakota law does not require a formal Voter Information Pamphlet, as noted, an analysis of a ballot measure, prepared by the Secretary of State in consultation with the Attorney General, is included in a pre-election publication. See N.D. Cent. Code § 16.1-01-07. This published analysis serves to allow electors to become familiar with the proposal’s effects. See *id.*

**JUDICIAL REVIEW**

*When and how can the court step in?*

- With respect to an *initiative* or *veto referendum*, the state constitution provides the North Dakota Supreme Court with original jurisdiction to review “all decisions of the Secretary of State in the petition process,” in a proceeding filed no later than 75 days before the statewide election at which the measure is to be voted on. N.D. Const. art. III, § 7. This may include actions to enjoin the Secretary of State from placing a measure on the ballot. See, *e.g.*, *Haugen v. Jaeger*, 948 N.W.2d 1 (N.D. 2020) (enjoining the Secretary of State from certifying a ballot question due to problems with the underlying petition circulated for signatures). However, the state constitutional provision makes clear that if the Secretary of State’s decision “is being reviewed at the time the ballot is prepared, the Secretary of State shall place the measure on the ballot and no court action shall invalidate the measure if it is approved at the election by a majority of the votes cast thereon.” N.D. Const.
With respect to a *legislatively referred amendment*, North Dakota’s direct democracy provisions do not explicitly provide for judicial review of ballots or related materials, but review may be available under other channels.
Ohio has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments. Its direct democracy processes vary somewhat depending on whether a measure is initiated by voters or referred by the legislature. For instance, the legislature may call a special election for a legislatively referred amendment, rather than submitting it to voters at the next general election as required for other ballot measures. Ohio also provides additional requirements for certain popular initiatives, including those involving levying a tax or spending government funds. Notwithstanding these differences, the Ohio Ballot Board plays a role in developing ballot language for all ballot measures, and the Ohio Constitution provides the state supreme court with original jurisdiction over legal challenges.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Ohio**

Ohio has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
  
  The people of Ohio have reserved the initiative power to propose and enact laws and/or amendments to the state constitution independently of the legislature. Ohio Const. art. II, §§ 1-1b, 1e, 1g.

- **Veto Referendums**
  
  Ohioans have the referendum power to approve or reject any law passed by the General Assembly, or section thereof, or any item in any law appropriating money, except for certain laws including emergency laws necessary for the immediate preservation of public peace, health, or safety. Ohio Const. art. II, §§ 1-1b, 1c-1e, 1g.

- **Legislatively Referred Amendments**
  
  A constitutional amendment proposed by the state legislature must be approved by Ohio voters. Ohio Const. art. XVI, § 1.
**Election Timing**

The timing of an election on an Ohio ballot measure may depend on the form of direct democracy; for legislatively referred amendments, a special election may be called.

- An *initiative* or *veto referendum* must be submitted to voters at the next regular or general election occurring more than 125 days after the petition is filed. Ohio Const. art. II, §§ 1a-1b. This includes general elections occurring on even- or odd-numbered years. Ohio Rev. Code Ann. § 3501.01(A).
- A *legislatively referred amendment* is submitted to voters after it is approved by a three-fifths supermajority of members elected to each house of the legislature. It is then submitted at the next general election or a special election as the General Assembly may prescribe. Ohio Const. art. XVI, § 1.

**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for any state ballot measure must contain the following information.

  * The ballot title is prepared by the Secretary of State.
  * It must give a true and impartial statement of the measure, in language not likely to create prejudice for or against it.
- **Ballot language identifying substance of proposal to be voted upon.** Ohio Const. art. XVI, § 1; id. art. II, § 1q.
  * This language is prescribed by a majority of the Ohio Ballot Board (“Board”). The Board is comprised of the Secretary of State plus four other members, not more than two of whom shall be members of the same political party. See Ohio Rev. Code Ann. § 3505.061. The Board must provide public notice of its meetings. See id. sub. (D).

- **(If applicable, for constitutional initiatives only)** If the Board determines that a constitutional amendment proposed by popular petition would “grant or create a monopoly, oligopoly, or cartel, specifies or determines a tax rate, or confers a commercial interest, commercial interest, license, or right that is not available to other similarly situated persons,” an extra question must be submitted to voters for their approval. See Ohio Const. art. II, § 1e.

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

For any measure that will appear on the ballot, the Secretary of State at the direction of the Ohio Ballot Board (“Board”) must publish a notice once per week for three consecutive weeks before the election, in at least one newspaper of general circulation in each county where a newspaper is published. Notice must contain the following.

- **Text of proposal.**
• Ballot language.
• Explanation of proposal (discussed below).
• Arguments for and against proposal (discussed below).

See Ohio Const. art. II, § 1g; id. art. XVI, § 1; see also Ohio Rev. Code Ann. § 3505.062.

In addition, as noted, the Board must provide public notice of any meetings, including meetings to determine ballot language. See Ohio Rev. Code Ann. § 3505.061(D).

Voter Information Pamphlet
While Ohio law does not require compilation of a formal pamphlet, each pre-election publication must contain the following materials.

• Explanation of proposal, which may include purpose and effects. (300 words or less).
  ➢ For initiatives and veto referendums, explanation may be prepared by measure’s sponsoring committee. If they fail to do so, the Board shall do so or designate a group of persons to do so. See Ohio Rev. Code Ann. § 3519.03.
  ➢ For legislatively referred amendments, explanation is prepared by the Board. Ohio Const. art. XVI, § 1; Ohio Rev. Code Ann. §§ 3505.062(C), 3505.063.
• Arguments for or against proposal (300 words or less, each).
  ➢ For initiatives, arguments in favor may be prepared by the measure’s sponsoring committee. Ohio Rev. Code Ann. § 3519.03(A). Arguments in opposition shall be prepared by persons named by the General Assembly if it is in session, and if not, by the Governor. Id.
  ➢ For veto referendums, arguments opposing the referred law may be prepared by measure’s sponsoring committee, while arguments in favor shall be prepared by persons named by the General Assembly if in session (or by Governor, if not). Id.
  • If the sponsoring committee and/or designated legislative members fail to prepare an argument, the Board shall supply the omission(s) or designate a group of persons to do so. Id. § 3519.03(B).
  ➢ For legislatively referred amendments, the joint legislative resolution may designate a group or groups of members to prepare the arguments for and against the measure, but if these members fail to prepare the argument, the Board shall do so or designate a group of persons to do so. Ohio Rev. Code Ann. § 3505.062(E). See also, generally, Ohio Const. art. II, § 1g; id. art. XVI, § 1.
  ➢ (If applicable) For any initiative proposing either the (1) levy of any tax or (2) expenditure of any state/local government funds:
  • The Secretary of State must request that the Office of Budget and Management prepare an estimate of annual expenditure of public funds, and/or that the Tax Commissioner prepare an estimate of the annual yield of any proposed taxes (as applicable). The Secretary of State must post any such estimate on its website for thirty (30) days before the election. Ohio Rev. Code Ann. § 3519.04.
JUDICIAL REVIEW
When and how can the court step in?

Under the state constitution, the Ohio Supreme Court has original, exclusive jurisdiction to hear certain challenges relating to ballot measures.

- For initiatives and veto referendums, the court has jurisdiction over challenges to the sufficiency of a petition, which must be filed at least 95 days before the election. Ohio Const. art. II, § 1g.
  - However, no proposal that has already been submitted to and approved by voters shall be held void based on insufficiency of the petition. See id.; Ohio Rev. Code Ann. § 3519.22.
- For proposed amendments (including constitutional initiatives and legislatively referred amendments), the court has jurisdiction over challenges to the adoption or submission of a proposed constitutional amendment, which must be filed at least 64 days before the election. Ohio Const. art. XVI, § 1.
  - However, ballot language shall not be held invalid unless it is such as to mislead, deceive, or defraud the voters. Id.
- For legislatively referred amendments only, an election cannot be stopped or invalidated because the explanation, arguments, or other information is faulty in any way. Id.

Sample case: State ex rel. Voters First v. Ohio Ballot Board, 978 N.E.2d 119 (Ohio 2012) (compelling state to update ballot language describing constitutional initiative to establish an independent redistricting commission, because the challenged ballot (1) omitted the material information of who selects commission members; (2) omitted the material information of the criteria used to adopt new districts; and (3) inaccurately described the funding of the commission).
Oklahoma has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments. The timing of an election may depend on the type of ballot measure. An initiative or veto referendum is submitted to voters at the next statewide election (which need not be a general election) unless the Governor calls a special election. A legislatively referred amendment is submitted at the next general election unless a special election is called by a 2/3 supermajority of the legislature. Oklahoma statutes provide detailed guidance regarding the content of ballots and the procedures by which these contents are compiled; these procedures vary depending on whether the measure is initiated by voters or referred by the legislature. Oklahoma law allows for judicial review of the ballot title or petition for initiatives or veto referendums, but explicitly bars judicial review of legislatively referred amendments.

BACKGROUND INFORMATION
What forms of direct democracy are available, and when?

Statewide Ballot Measures in Oklahoma
Oklahoma has statutory and constitutional initiatives, veto referendums, as well as legislatively referred amendments.

- **Initiatives – Statutory**

- **Initiatives – Constitutional**
  The people of Oklahoma have reserved the initiative power to propose and enact laws and/or constitutional amendments independently of the legislature. Okla. Const. art. V, §§1-2, art. XXIV, §3.

- **Veto Referendums**
  Oklahomans have the referendum power to require that any act passed by the legislature, or any part thereof, be put to a popular vote, except for laws passed for the immediate preservation of public peace, health, or safety. See Okla. Const. art. V, §§1-2, 4.

  In addition to veto referendums, which are initiated via voter petition, the Oklahoma Constitution also authorizes the state legislature to itself refer an act to the people. See Okla. Const. art. V, §2.
Legislatively Referred Amendments

An amendment to the state constitution proposed by the legislature must be approved by Oklahoma voters. See Okla. Const. art. XXIV, § 1.

Election Timing

The timing of an election may depend on the type of ballot measure. An initiative or veto referendum is submitted to voters at the next statewide election (which need not be a general election) unless a special election is called by the Governor. A legislatively referred amendment is submitted at the next general election unless a special election is called by a 2/3 supermajority of the legislature.

- An initiative or veto referendum is submitted to voters at the next regular, statewide election after a petition is filed, unless a special election is called by the Governor. Okla. Stat. tit. 34, § 25;* see also Okla. Const. art. V, § 3. The Governor may designate that a primary election serves as said special election. See Okla. Stat. tit. 34, § 25.

- A legislatively referred amendment is submitted to voters after it is approved by a majority of all members elected to each legislative house. Okla. Const., art. XXIV, § 1. It is then submitted to voters at the next regular, general election, unless a 2/3 supermajority of the legislature orders a special election. See id.

BALLOT PREPARATION

What is included on the ballot, and who prepares it?

The ballot for a statewide ballot measure in Oklahoma must display the following information. See Okla. Stat. tit. 34, § 9.

- Ballot title (consisting of 200 words or less if the measure would not have a fiscal impact, and 300 words or less if it would). See id. § 9(B)(1).
  - The ballot title must explain the effect of the proposition in basic words that can easily be found in dictionaries of general usage. Id. § 9(B)(2). The ballot title must not contain any words with a special meaning that is not commonly known. Id. § 9(B)(3).
  - The ballot title must indicate if the measure will have a fiscal impact on the state and if so, indicate the potential source of funding (included but not limited to federal funding, a tax increase of some kind, and/or elimination of existing services). See id. § 9(B)(7).
  - The ballot title must be impartial and must not contain any argument for or against the measure. See id § 9(B)(4). It must also be written such that a “yes” vote is in favor of the measure. See id. § 9(B)(5)-(6).
  - The process for establishing a ballot title varies depending on whether the measure is initiated via voter petition or referred by the legislature.

- For an initiative or veto referendum, the measure’s sponsors file a suggested ballot title with the Secretary of State. Id. § 9(B). The Attorney

* Title 34 of the Oklahoma Statutes can be found online. See OKLAHOMA SENATE, Oklahoma Statutes Title 34. Initiative and Referendum, [https://oksenate.gov/sites/default/files/2019-12/os34.pdf](https://oksenate.gov/sites/default/files/2019-12/os34.pdf) (last accessed Oct. 29, 2023).
General reviews this proposed title for legal correctness. Id. § 9(D)(1). Within five business days, the Attorney General must notify the Secretary of State whether the proposed title is compliant, stating any defects with specificity. See id. If the Attorney General finds the proposed title to be defective, she then has ten business days to prepare a new, compliant ballot title. See id. For a legislatively referred amendment, the Secretary of State prepares a proposed ballot title, which is submitted to the Attorney General to review for legal correctness. Okla. Stat. tit. 34, § 9(C)(1). Within five business days, the Attorney General must notify the Secretary of State as well as the Senate President Pro Tempore, Speaker of the House of Representatives, and the bill’s principal authors as to whether the proposed ballot title is compliant, stating any defects with specificity. See id. If defective, the Attorney General then has ten business days to prepare a preliminary ballot title, which is shared with the same group of officials. The Attorney General may consider comments of the Senate President Pro Tempore or the Speaker of the House of Representatives made within five business days and must respond to any such comments in writing. See id. The Attorney General must furnish a final ballot title to the Secretary of State within 15 business days after providing the preliminary ballot title. See id.

INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
For any statewide ballot measure, the Secretary of State must make a publication at least five business days before the applicable election, in two statewide newspapers as well as one newspaper of general circulation in each county. See Okla. Stat. tit. 34, § 17. The publication must include the ballot language, as well as an explanation of how to vote for and against the measure. See id. In the event of a failure to publish, any elector may petition the district court for a writ of mandamus to require publication. See id. § 18.

Additionally, for an initiative or veto referendum, the following additional publications are also required.

• After a proposed petition is filed for the first time, before it is circulated for signatures, the Secretary of State must make a publication in at least one statewide newspaper. See Okla. Stat. tit. 34, § 8(B). This publication must indicate the apparent sufficiency or insufficiency of the petition and must also provide notice that any citizen may file a protest as to the petition’s constitutionality with the Oklahoma Supreme Court within ten business days. See id. § 8(B)-(C).

• After signed copies of the petition are timely filed, upon order of the Oklahoma Supreme Court, the Secretary of State must publish in at least one statewide newspaper a notice that signed petitions were filed and the apparent sufficiency or insufficiency thereof, as well as the text of the ballot title
approved or rewritten by the Attorney General. See id. § 8(I). This publication
must also provide notice that any citizen may file an objection to the Secretary
of State’s signature count within ten business days. See id.

Voter Information Pamphlet

Oklahoma law does not require a state voter information pamphlet about ballot
measures.

JUDICIAL REVIEW

When and how can the court step in?

The extent of judicial review depends on whether the measure is an initiative or veto
referendum or a legislatively referred amendment. With respect to an initiative or
veto referendum, Oklahoma law allows for judicial review of the ballot title or petition.
However, state statutes expressly bar judicial review of ballot contents pertaining to a
legislatively referred amendment.

- With respect to an initiative or veto referendum, any person who is dissatisfied
  with the wording of a ballot title may file a petition appealing the title, along with
  a proposed substitute title, to the Oklahoma Supreme Court within ten business
days of the Secretary of State’s publication of the ballot title notice pursuant to
such an appeal, the court may amend the ballot title, accept the substitute, or
draft a completely new title. See id. § 10(A).

Sample case: OCPA Impact, Inc. v. Sheehan, 377 P.3d 138, 143 (Okla. 2016) (finding the
ballot title was misleading and failed to refrain from partiality, and drafting a completely
new title, holding “[t]he test is whether it is written so that voters are afforded an
opportunity to fairly express their will and whether it apprises voters with substantial
accuracy what they are asked to approve”).

In addition, even before an initiative or veto referendum petition is circulated for
signatures, any elector may file a protest as to its legal sufficiency with the Oklahoma
Supreme Court within ten business days of the petition notice being published in a
statewide newspaper for the first time. See Okla. Stat. tit. 34, § 8(B)-(D). Thus, electors
may challenge the sufficiency of the summary or “gist” of the measure that is required
to appear on the voter petition circulated for signatures. See id. § 3; see also Oklahoma’s
Children, Our Future, Inc. V. Coburn, 421 P.3d 867 (Okla. 2018) (holding the “gist”
statement required to appear on the petition was legally insufficient).

- With respect to a legislatively referred amendment, Oklahoma statutes make clear
  that no ballot title appeal is allowed. See Okla. Stat. tit. 34, § 10(B).
Oregon has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments. Oregon is distinctive in its use of citizen juries to create public education materials about selected voter initiatives. This gives members of the public the opportunity to participate in the process beyond simply voting in the election. Aside from the use of citizen juries (for initiatives only), there are only slight differences in processes for ballot measures initiated by voter petition and those for legislatively referred amendments. Judicial review is available at multiple points throughout the process and may be initiated by any interested person.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Oregon**

Oregon has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
  
  The people of Oregon have reserved the initiative power to propose and enact laws and/or amendments to the state constitution independently of the legislature. Or. Const. art. IV, § 1(2)(a).

- **Veto Referendums**
  
  Oregonians also have the referendum power to approve or reject any act, or part thereof, of the Legislative Assembly. Or. Const. art. IV, § 1(3)(a).

- **Legislatively Referred Amendments**
  
  An amendment to the state constitution proposed by the legislature must be approved by Oregon voters. Or. Const. art. XVII, § 1.

**Election Timing**

Ballot measures in Oregon are submitted at a general election, unless the legislature orders otherwise.

- Elections on *initiatives* and *veto referendums* “shall be held at the regular general
elecitions, unless otherwise ordered by the Legislative Assembly.” Or. Const. art. IV, § 1(4)(c).

- Elections for *legislatively referred amendments* occur after an amendment is approved by the majority of the members of each legislative house, “at the next regular general election, except when the legislative assembly shall order a special election for that purpose.” Or. Const. art. XVII, § 1.

Special elections for statewide ballot measures have been rare in recent history.

**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for a statewide ballot measure in Oregon must display the following.

- **Ballot title:** including a caption, statements of election effects, and impartial summary. Or. Rev. Stat. § 250.035(2).
  - A brief caption that reasonably identifies the subject matter (15 words or less).
  - Two simple, understandable statements describe the result if the measure is approved and the result if the measure is rejected (25 words or less, each).
  - A concise, impartial summary summarizes the measure and its major effect (125 words or less).

- For *initiatives* and *veto referendums*, the title is drafted before the measure qualifies for the ballot. After a prospective petition is filed, the Attorney General creates a draft title, which the public then has the right to comment on. The Attorney General is to consider the public comments and may revise the draft title. Or. Rev. Stat. §§ 250.065(3)-(4), 250.067(2)(a).

- For *legislatively referred amendments*, the title may be drafted by the legislature. (But, if a title is not prepared by the legislature, the Attorney General must provide one.) See id. § 250.075.

- **Financial estimate.**
  - For measures involving expenditures or revenues, a financial estimate is prepared by the Financial Estimate Committee (composed of Secretary of State, State Treasurer, Director of the Department of Revenue, Director of the Department of Administrative Services, and a local government representative). See Or. Rev. Stat. § 250.125(1), (10). The Committee must also consult with the Legislative Revenue Officer, who must prepare an estimate of any indirect fiscal effects. Id. sub. (4). The estimate must be impartial, simple, and understandable. Id. sub. (5). A public hearing is held, and proposed changes or other information may be submitted by any member of the public. See id. § 250.127.

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

The Secretary of State may supplement the special or general election voters’ pamphlet (discussed below) by arranging for radio or television broadcasts during the 4 weeks

In addition, notice must be provided for the public comment period for ballot titles, and for public hearings pertaining to financial estimates and other voter education materials. E.g., Or. Rev. Stat. §§ 250.067(1), 250.127(2), 251.215(2).

**Voter Information Pamphlet**

The Secretary of State compiles and mails a voter information pamphlet to each post office mailing address in Oregon at least 20 days before the election. The Secretary of State “shall use any additional means of distribution necessary to make the pamphlet available to electors.” Or. Rev. Stat. § 251.175. The pamphlet must contain the following information and cannot contain obscene language or incite or advocate hatred, abuse, or violence toward any person. Id. § 251.055(1).

- Copy of ballot title (including caption, yes/no vote statements, and summary, as described above). Id. § 251.185(1).
- Full text of each measure. Id. § 251.185(1).
- Financial estimate and statement (if applicable). Id. § 251.185(1)(b).
  - If the Financial Estimate Committee deems necessary, it may prepare a summary explaining the financial effects of the measure (500 words or less). Id. § 250.125(8). This statement appears in the pamphlet along with the financial estimate. (Only the estimate appears on the ballot.) Id.
- Explanatory statement that is impartial, simple, and understandable (500 words or less). Id. §§ 251.185(1)(e), 251.215.
  - The statement is prepared by a committee of five people. Two are selected by the measure’s proponents, and two are selected by the Secretary of State from the opponents, if any. The fifth is selected by the other four members. At least three members must approve the explanatory statement. Id. §§ 251.205, 251.215.
  - When a statement is drafted, a public hearing is held, and the public can submit suggested changes or other information. The committee may revise its statement. Id. § 251.215.
  - If the committee does not approve a statement, a statement prepared by the Legislative Council Committee is used instead. Id. § 251.225.
- Arguments relating to the measure filed with the Secretary of State. Id. § 251.255.
  - Within a specified time period, any person may file arguments supporting or opposing a measure if they submit either (1) a filing fee of $1,200 or (2) a petition containing the signatures of 500 active electors. For the latter option, each elector who signs the petition must “subscribe to a statement that the person has read and agrees with the argument.” Id.
  - For proposals referred by the legislature, the legislature may submit its own argument in favor, which is prepared by an appointed group of legislators. Id. § 251.245.
- Any racial and ethnic impact statement prepared under Oregon Revised Statute § 137.685, which provides for bipartisan requests for the Oregon Criminal Justice Commission to prepare a statement describing the racial impact of a measure
related to crime and likely to have an effect on the criminal justice system. Id. § 251.185(1)(e).


• The demographic makeup of each panel must, to the extent possible, fairly reflect the Oregon electorate (e.g., with respect to location, party, voting history, and age; can also consider gender, ethnicity, and other criteria). See id. § 250.139(b)-(c).
• Each panel conducts public hearings, then prepares the following statements (no more than 250 words each):
  • Statement in favor of measure.
  • Statement opposed to measure.
  • Statement that “no panelist took this position,” if the panel is unanimous in either supporting or opposing a measure.
  • Statement of panel’s key findings, summarized in an impartial manner (which may include a tally of how many panelists agreed with key findings).
  • Statement of additional policy considerations describing the subject matter of, or any fiscal considerations related to, the measure (must be supported by at least ¾ of the panelists).
See id. §§ 250.139, 250.141.

JUDICIAL REVIEW
When and how can the court step in?

Judicial review by the Oregon Supreme Court is available at multiple points throughout the direct democracy process.

• Ballot titles.
  • Any voter dissatisfied with a ballot title—whether it is drafted by the legislature or the Attorney General—“may petition the [Oregon] Supreme Court seeking a different title.” Or. Rev. Stat. § 250.085(1)-(2). When examining whether a title meets the requirements detailed above, the court applies a substantial compliance standard. Id. sub. (5).

• Financial estimates.
  • If the correct process for creating a financial estimate is not complied with, any person may file a petition seeking that the required procedures be followed. Id. § 250.131. However, the petition may not challenge an estimate’s contents or whether an estimate should be prepared. Id.

• Voter information pamphlets.
  • As noted above, explanatory statements about each measure are drafted for the voter information pamphlet by a committee following a public hearing. If suggested changes are offered at the public hearing, any person dissatisfied with the explanatory statement may petition the Oregon Supreme Court seeking a different statement and stating the reasons why the proposed
statement is insufficient or unclear. Id. § 251.235.

**Sample case:** *Markley v. Rosenblum*, 413 P.3d 966 (Or. 2018) (holding ballot title was deficient with respect to its caption, statements explaining effect of “yes” and “no” votes, and summary, referring certified ballot title to the Attorney General for modification).
In Pennsylvania, legislatively referred amendments are the only form of statewide direct democracy available. For a typical, “non-emergency” constitutional amendment, the Pennsylvania legislature is to determine the manner and time at which a proposed amendment is voted upon and may order a special election. The Secretary of State is tasked with preparing the ballot question, and the Attorney General is charged with preparing a “plain English statement” of the amendment, which is published before the election and available at the polling place. Pennsylvania provisions governing legislatively referred amendments do not explicitly provide for judicial review of ballot language or related materials, but review may be available under other channels, such as actions for declaratory and/or injunctive relief or original jurisdiction actions.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Pennsylvania**

Pennsylvania does not have initiatives or veto referendums but has legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**
- **Legislatively Referred Amendments**
  
  An amendment to the state constitution proposed by the legislature must be approved by Pennsylvania voters. PA Const. art. XI, § 1.

**Election Timing**

A proposed amendment must first be approved by a majority of members elected to each house, in two consecutive General Assemblies. It is then submitted to Pennsylvania voters “in such manner, and at such time at least three months after” approval by the legislature for the second time “as the General Assembly shall prescribe.” See PA Const. art. XI, § 1. No provision restricts the legislature from prescribing a special election.

The Pennsylvania Constitution provides an alternative procedure for a proposed
amendment that is required due to a major emergency; such an “emergency amendment” must be approved by a single General Assembly, but with a 2/3 supermajority threshold, and is then submitted to voters at least one month following legislative approval. See id. sub. (a)-(b).

BALLOT PREPARATION

What is included on the ballot, and who prepares it?

The ballot for a legislatively referred amendment in Pennsylvania must display the following.

- Brief form of the ballot question (75 words or less), prepared by the Secretary of State.


INFORMATION TO VOTERS

What information is provided to voters before the election, and how?

Publication

The Pennsylvania Constitution provides that proposed constitutional amendments must be published at least twice: once after approval by the General Assembly for the first time, and again after approval for the second time. Pa. Const. art. XI, § 1. The Secretary of State is to publish each proposed amendment in at least two newspapers in every county in which newspapers are published. See id.

In addition to the text of the proposed amendment, the publication must also contain a “plain English statement” prepared by the Attorney General, discussed in further detail below. 25 Pa. Stat. Ann. § 2621.1. At least three copies of the statement are posted in or about the polling place. See id. The Secretary of State also sends this statement to each county board of elections for inclusion in a notice of election, which is published in a county newspaper at least three days before the election. See 25 Pa. Stat. Ann. §§ 2621.1, 3041, 2606.

Voter Information Pamphlet

The Secretary of State must publish a “plain English statement” prepared by the Attorney General. 25 Pa. Stat. Ann. § 2621.1. This statement must indicate “the purpose, limitations, and effects of the ballot question on the people” of Pennsylvania. Id. Beyond this plain English statement, Pennsylvania does not require a state voter information pamphlet for ballot measures.

JUDICIAL REVIEW

When and how can the court step in?

While Pennsylvania provisions governing legislatively referred amendments do not explicitly provide for judicial review of ballot language or related materials, review may be available under other channels, such as actions for declaratory and/or injunctive relief or original jurisdiction actions quo warranto.
Sample case: *Grimaud v. Com.*, 865 A.2d 835 (Pa. 2005) (finding the Attorney General's explanatory statement was sufficient, rejecting an argument that it should have included additional details).
In Rhode Island, legislatively referred amendments are the only form of statewide direct democracy available. Proposed amendments are submitted to voters at the next general election, including the amendment’s full text and a statement of the question prepared by the Secretary of State. The Secretary of State is also charged with preparing a voter information pamphlet that is distributed to each residence. Rhode Island’s provisions governing legislatively referred amendments do not explicitly provide for judicial review of ballot language or related materials, but review may be available under other channels, such as actions for declaratory and/or injunctive relief.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Rhode Island**
Rhode Island does not have initiatives or veto referendums but has legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**
- ✓ **Legislatively Referred Amendments**
  An amendment to the state constitution proposed by the legislature must be approved by Rhode Island voters. R.I. Const. art. XIV, § 1.

**Election Timing**
Legislatively referred amendments must be submitted to voters at “the next general election as provided in the resolution”, after approval by a majority of members elected to each house of the legislature. R.I. Const. art. XIV, § 1. Rhode Island statutes define a general election as one taking place in even-numbered years for the election of members of the General Assembly or other specified offices. R.I. Gen. Laws § 17-1-2.
**BALLOT PREPARATION**

*What is included on the ballot, and who prepares it?*

The ballot for a proposed constitutional amendment in Rhode Island must display the following.

- Clear and concise statement of the nature of the question, prepared by the Secretary of State.
- Full text of the proposed amendment as adopted by the General Assembly.


**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

The Rhode Island Constitution provides that a legislatively referred amendment must be published in such a manner as the General Assembly shall direct. R.I. Const. art. XIV, § 1. Statutes provide for “publication” in the form of a distributed voter information pamphlet, discussed below. See R.I. Gen. Laws § 17-5-3.

**Voter Information Pamphlet**

The Secretary of State must print and send a voter information packet to each residential unit in Rhode Island. R.I. Gen. Laws § 17-5-3. The packet must contain the following information.

- The full text of the legislative resolution, or a description of the text prepared by the Secretary of State.
- A brief caption of the question.
- A brief explanation of the measure that is the subject matter of the question.
- A notice that voter fraud is a felony.
- (If applicable, if the proposal contemplates indebtedness or other financial obligations) The estimated cost of the project (including financing, legal, and other costs) and other related information, as provided by the agency or department impacted by the indebtedness.


**JUDICIAL REVIEW**

*When and how can the court step in?*

Rhode Island’s provisions governing legislatively referred amendments do not explicitly provide for judicial review of ballot language or related materials, but review may be available under other channels, such as actions for declaratory and/or injunctive relief.
South Carolina does not have statewide initiatives or veto referendums but has legislatively referred amendments. A proposed amendment must be submitted to voters at the next general election for state representatives. The state legislature prepares the ballot question itself. Additionally, a Constitutional Ballot Commission made up of the Attorney General, State Election Commission Director, and Legislative Council Director prepares an explanation of the proposed amendment’s meaning and effect if it decides such explanation is necessary; the explanation is printed on the ballot or available in print at polling places. The explanation must be provided to members of the media upon request, but otherwise, advance publication or distribution is not required. State law provides for both pre-election legal challenges to explanations prepared by the Constitutional Ballot Commission, as well as post-election challenges based on insufficient ballot language.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in South Carolina**

South Carolina does not have statewide initiatives or veto referendums but has legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**
- **Legislatively Referred Amendments**
  
  An amendment to the state constitution proposed by the legislature must be approved by South Carolina voters. S.C. Const. art. XVI, §1.

**Election Timing**

A legislatively referred amendment is submitted to voters after it is approved by a 2/3 supermajority of the members of each legislative house. S.C. Const. art. XVI, §1. It is then submitted at the next general election for state representatives. See *id.*
BALLOT PREPARATION

What is included on the ballot, and who prepares it?

The ballot for a proposed constitutional amendment must display the following.

- Ballot question that instructs the voter on the substance of the proposed amendment. See S.C. Code § 7-13-400.*
- South Carolina law does not specify an entity other than the legislature as being responsible for preparing the ballot question. See S.C. Const. art. XVI, § 1; S.C. Code § 7-13-400
- (Where applicable) Explanation of the meaning and effect of the proposed amendment, if its nature is such that it might not be clearly understood by voters. See S.C. Code §§ 7-13-2110, -2120.
  - The explanation is placed on the ballot, unless mechanical voting devices are used, in which case, printed copies are made available at each voting precinct. See S.C. Code § 7-13-2110.
  - The South Carolina Constitutional Ballot Commission—composed of the Attorney General, State Election Commission Director, and Legislative Council Director—is charged with determining whether an explanation is needed. See S.C. Code § 7-13-2120. This Commission is then responsible for preparing the explanation. The phrasing must be approved by a majority of the three members. See id.
  - The explanation can be simplified or more detailed, as appropriate. Id.

South Carolina law also provides that the full text of a proposed amendment must be posted conspicuously in each voting precinct on Election Day. See S.C. Code § 7-13-180.

INFORMATION TO VOTERS

What information is provided to voters before the election, and how?

Publication

South Carolina law does not generally require that information about proposed constitutional amendments be published in newspapers or similar media.

The South Carolina Election Commission is required to make the Constitutional Ballot Commission’s explanation available to the news media upon request at least ten days before the general election. See S.C. Code § 7-13-2120(2).

Voter Information Pamphlet

South Carolina law does not require a state voter information pamphlet regarding proposed constitutional amendments.

JUDICIAL REVIEW

When and how can the court step in?

South Carolina statutes allow for proceedings to challenge an explanation of a proposed amendment’s meaning and effect prepared by the Constitutional Ballot Commission. See S.C. Code § 7-13-2130. The South Carolina Supreme Court has original, exclusive jurisdiction over these proceedings, which may take place before the applicable general election. Id.; see also Taylor v. Roche, 248 S.E.2d 580, 583 (S.C. 1978). In addition, the South Carolina Supreme Court has held that an election may be contested on the grounds of insufficient ballot language through a post-election challenge filed with the Board of Canvassers, whose decision may be appealed to the state supreme court. See Taylor v. Roche, 248 S.E.2d 580, 583 (S.C. 1978) (referencing S.C. Code § 7-17-270).

South Dakota has statutory and constitutional initiatives, veto referendums, and legislatively referred amendments. The timing of an election may vary depending on the type of ballot measure; while most ballot measures must be submitted to voters at a general election, the legislature may call a special election for a vote on a legislatively referred amendment. The ballot contents and related processes vary somewhat depending on the type of ballot measure: A fiscal note may be required for an initiative or veto referendum (but not a legislatively referred amendment), and the Attorney General must consider public comments only with respect to initiative ballot statements. Regardless of the type of measure, however, the ballot title and explanation are prepared by the Attorney General. This ballot statement may be challenged in court by a measure’s proponents or opponents, but the South Dakota Supreme Court has described its review as limited and affords discretion to the Attorney General.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in South Dakota**

South Dakota has statutory and constitutional initiatives, veto referendums, as well as legislatively referred amendments.

- **Initiatives – Statutory**

- **Initiatives – Constitutional**
  
  The people of South Dakota have reserved the initiative power to propose and enact laws and constitutional amendments independently of the legislature. See S.D. Const. art. III, § 1, art. XXIII, §§ 1, 3.

- **Veto Referendums**

  South Dakotans also have the referendum power to approve or reject any law passed by the legislature, except for laws necessary for the immediate preservation of public peace, health, or safety; or for support of the state government and its existing public institutions. S.D. Const. art. III, § 1.
Legislatively Referred Amendments
An amendment to the state constitution proposed by the legislature must be approved by South Dakota voters. See S.D. Const. art. XXIII, §§ 1, 3.

Election Timing
The timing of an election may vary depending on the form of direct democracy; while most ballot measures must be submitted to voters at a general election, the legislature may call a special election for a vote on a legislatively referred amendment.

- An initiative is submitted to voters at the next general election following a timely filing of the petition. See S.D. Codified Laws §§ 2-1-1.1, 2-1-1.2. See also S.D. Const. art. XXIII, § 1.
- A veto referendum is also submitted to voters at a general election following a timely filing of the petition. See S.D. Codified Laws § 2-1-3.1 (requiring that petitions be within 90 days after adjournment of the legislature that passed the law being referred to the people).
- A legislatively referred amendment must be submitted to voters after it is approved by a majority of the members of each legislative house. See S.D. Const. art. XXIII, §§ 1, 3. South Dakota statutes allow the legislature to call a special election for a vote on a legislatively referred amendment; otherwise, the proposed amendment is submitted to voters at a general election. See S.D. Codified Laws §§ 12-13-27, 12-13-1.

BALLOT PREPARATION
What is included on the ballot, and who prepares it?

The ballot for a statewide ballot measure in South Dakota must display the following information. The contents and related processes vary somewhat depending on the type of ballot measure.

- Statement of the Attorney General, consisting of two parts, as follows. See S.D. Codified Laws §§ 12-13-25.1 (governing initiatives), 12-13-9 (governing veto referendums and legislatively referred amendments).
  - (1) Ballot title, which must be a concise statement of the subject of the measure.
  - (2) Explanation (200 words or less), which must be an objective, clear, and simple summary to educate the voters of the measure’s purpose and effect. The Attorney General must also describe the legal consequences, including any likely exposure of the state to liability if the measure were adopted.
- With respect to an initiative, the Attorney General’s statement is prepared even before a petition may be circulated for signatures. See S.D. Codified Laws §§ 2-1-1.1(3), 2-1-1.2(3). Sponsors must file a copy of the proposed measure with the Attorney General. See id. §§ 12-13-25.1, 12-13-24 (providing that initiated measures must be drafted in a clear and coherent manner, similar to other legislation, and must not be misleading). Within 60 days, the Attorney General must publish a draft of her statement online; file
it with the Secretary of State; and issue a press release indicating the draft has been posted for public comment. *Id.* The Attorney General must then accept comments for ten days and may revise her statement in response to the comments as deemed necessary. See *id.*

- (If applicable, for an *initiative* or *veto referendum*) Fiscal note and/or fiscal note summary, prepared by the Director of the Legislative Research Council (50 words or less). See S.D. Codified Laws §§ 12-13-25.1, 2-9-30 (governing initiatives), 12-13-9, 2-9-32 (governing veto referendums).
  - With respect to an *initiative*, a fiscal note is prepared even before a petition may be circulated for signatures. See *id.* §§ 12-13-25, 2-1-1.1, 2-1-1.2. Sponsors must file a copy of the proposed initiative with the Director for review and comment before a petition may be circulated for signatures. *Id.* § 12-13-25. If the Director determines that the measure may have an impact on state revenues, expenditures, or fiscal liability, she must prepare a fiscal note estimating this impact. *Id.* § 2-9-30. This estimate must also include any impact on the prison or jail population. *Id.* State institutions must provide information requested by the Director to prepare the fiscal note. See *id.*
  - For a *veto referendum*, fiscal note information must be included only if the Legislative Research Council Director prepared a fiscal note before the law was passed by the legislature. See *id.* § 2-9-32. If the original fiscal note exceeded 50 words, the sponsors must request that the Director prepare a summary that does not exceed 50 words. See *id.*

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

**Publication**

Before any election at which a statewide ballot measure is to be submitted to voters, county auditors must make a publication in each of their county’s official newspapers. See S.D. Codified Laws §§ 12-13-2—12-13-3, 12-13-27. The publication must run once, between two to four weeks before the election. See *id.* It must include the certified, complete copy of the proposed measure, as well as the title and explanation prepared by the Attorney General. See *id.*; *id.* § 12-13-1.

**Voter Information Pamphlet**

The Secretary of State must publish a pamphlet that includes the following “public information” about each ballot measure. See S.D. Codified Laws § 12-13-23.

- Statements in favor of and against the measure (300 words or less, each), written by the measure’s proponents and opponents, respectively, if any can be identified.
- The Secretary of State is not responsible for the contents, objectivity, or accuracy of these statements. However, state statutes make it a misdemeanor to knowingly disseminate false or misleading information about ballot measures. See *id.* § 12-13-16.
• Attorney General’s statement, including the title and explanation.
• The number of pages and sections in the proposed and/or referred measure.
• (If applicable) Fiscal note.

The statute directs that the Secretary of State must “distribute” this pamphlet but does not specify a particular distribution method. See S.D. Codified Laws § 12-13-23.

**JUDICIAL REVIEW**

*When and how can the court step in?*

For any type of ballot measure, South Dakota statutes allow a measure’s proponents or opponents to challenge the Attorney General’s statement, including the title and/or explanation, as being inadequate pursuant to the statutory requirements. See S.D. Codified Laws § 12-13-9.2 (referencing id. §§ 12-13-9, 12-13-25.1). A challenger must file an action in circuit court within seven days of the Attorney General’s statement being delivered to the Secretary of State. See id. Any party appealing the circuit court order to the South Dakota Supreme Court must file a notice of appeal within five days. Id. The South Dakota Supreme Court views its reviewing role as “limited,” noting: “We merely determine if the Attorney General has complied with his statutory obligations and we do not sit as some type of literary editorial board.” Ageton v. Jackley, 878 N.W.2d 90, 93, 96 (S.D. 2016) (citation omitted).

**Sample case:** Ageton v. Jackley, 878 N.W.2d 90 (S.D. 2016) (rejecting a challenge to the Attorney General’s statement, including argument that the explanation improperly combined the measure’s purpose and effect; holding the Attorney General did not abuse his discretion).

For a proposed constitutional amendment, South Dakota statutes also allow interested parties to appeal a decision by the Secretary of State not to certify a proposed amendment on single-subject grounds. See S.D. Codified Laws § 12-13-26.2.
In Tennessee, legislatively referred amendments are the only form of statewide direct democracy available. Proposed amendments must be submitted to voters at a general election for the Governor. The Tennessee legislature drafts the ballot question, which is presented on the ballot alongside a summary of the proposal drafted by the Attorney General. The state’s direct democracy provisions do not explicitly provide for judicial review of ballot measure language or related materials, but review may be available through other channels.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Tennessee**

Tennessee does not have statewide initiatives or veto referendums but has legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**
- **Legislatively Referred Amendments**
  
  An amendment to the state constitution proposed by the legislature must be approved by Tennessee voters. Tenn. Const. art. XI, § 3.

**Election Timing**

A proposed amendment must first be approved by a majority of all members elected to each house and is then referred to the next General Assembly. If approved by 2/3 members of each house of that succeeding General Assembly, the amendment is then submitted to the electors “at the next general election in which a governor is to be chosen.” Tenn. Const., art. XI, § 3. To be adopted, an amendment must receive the approval of the majority of citizens voting in the election for the Governor. *Id.*
BALLOT PREPARATION
*What is included on the ballot, and who prepares it?*

The ballot for a proposed amendment to the Tennessee Constitution must include the following.

- Question to be submitted to the people.
  - The statute does not specify that any entity other than the state legislature is involved in drafting the question. See Tenn. Code Ann. § 2-5-208(f)(1).
- Brief summary of the proposal (200 words or less).
  - The Attorney General is to draft the summary in a clear and coherent manner using words with common everyday meanings. Tenn. Code Ann. § 2-5-208(f)(2)(B).

INFORMATION TO VOTERS
*What information is provided to voters before the election, and how?*

Publication
Under the Tennessee Constitution, publication of a proposed amendment is required after it is approved by the first General Assembly and referred to the next General Assembly to be elected. The amendment “shall be published six months previous to the time of making such choice[.]” Tenn. Const. art. XI, § 3.

Establishing standing has been an obstacle to enforcing the publication requirement. See Am. Civ. Liberties Union v. Darnell, 195 S.W.3d 612 (Tenn. 2006). In its opinion dismissing the case on standing grounds, the Tennessee Supreme Court suggested it is within the purview of the legislature to determine how to fulfill the publication requirements of the Tennessee Constitution. Id. at 626 & n.12.

Voter Information Pamphlet
- Tennessee law does not require a state voter information pamphlet for constitutional amendments.

JUDICIAL REVIEW
*When and how can the court step in?*

Tennessee’s provisions governing legislatively referred amendments do not explicitly provide for judicial review of ballot language or related materials, but review may be available under other channels.
In Texas, legislatively referred amendments are the only form of statewide direct democracy available. The legislature has substantial control over how proposed amendments are submitted to voters. For instance, the legislature may call a special election and may supply the ballot language. The Secretary of State, with the approval of the Attorney General, prepares a statement to explain the nature of the proposed amendment that is published in newspapers. Judicial review of proposed amendments has historically been limited, but may be available if, for instance, the ballot proposition is missing a core feature of the amendment.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Texas**

Texas does not have statewide initiatives or veto referendums but has legislatively referred amendments.

- ✕ **Initiatives – Statutory**
- ✕ **Initiatives – Constitutional**
- ✕ **Veto Referendums**
- ✓ **Legislatively Referred Amendments**
  
  An amendment to the state constitution proposed by the legislature must be approved by Texas voters. Tex. Const. art. XVII, § 1(a).

**Election Timing**

A proposed amendment is submitted to voters after it is approved by a 2/3 vote of all members elected to each house of the legislature. “The date of the elections shall be specified by the legislature.” Tex. Const. art. XVII, § 1(a). See also Tex. Elec. Code § 41.001(a) (requiring uniform election dates for general or special elections).
BALLOT PREPARATION
What is included on the ballot, and who prepares it?

The ballot for a proposed amendment must contain the following.

- (If applicable) Tax-related information. Id. sub. (e).
  - If the proposal involves imposing or reducing a tax, either:
    - Amount of maximum tax rate for which approval is sought.
    - Amount of rate reduction or tax rate for which approval is sought.

The ballot language is generally prescribed by the legislature, but if the legislature fails to do so, the Secretary of State “must describe the proposed amendment in terms that clearly express its scope and character.” See Tex. Elec. Code §§ 52.072, 274.001(a)-(b), 274.003. Texas statutes also require the Secretary of State to include appropriate ballot translation language, as required under federal law. See Tex. Elec. Code § 274.003(c).

INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
The Secretary of State must publish notice twice in each newspaper required to publish official notices: first 50-60 days before the election, then again on the same day of the following week. Notice must include the election date and:

- Brief explanatory statement of the nature of the proposed amendment, prepared by the Secretary of State and approved by the Attorney General.
- Ballot proposition language.

Tex. Const. art. XVII, § 1(b); Tex. Elec. Code §§ 274.022-274.023.

Additionally, the Governor’s proclamation ordering the election must include the ballot proposition language. Tex. Elec. Code § 274.001(c).

The Secretary of State must also send the text of each proposed amendment to county clerks, who must post a full and complete copy in a public place at least 30 days prior to the election. Tex. Const. art. XVII, § 1(b).

Voter Information Pamphlet
Texas law does not require a formal state voter information pamphlet for ballot measures. However, as noted above, a brief explanatory statement of the nature of the proposed amendment, prepared by the Secretary of State and approved by the Attorney General, is published in newspapers.
JUDICIAL REVIEW
When and how can the court step in?

Any question relating to the “validity or outcome of a constitutional amendment election may be raised in an election contest”, which is the “exclusive method for adjudicating such questions.” Any such contest must be filed before the final canvass of election results is completed. Tex. Elec. Code § 233.014(g).

Sample case: *Dacus v. Parker*, 466 S.W.3d 820, 826 (Tex. 2015) (invalidating an amendment to a city charter, where ballot language failed to inform voters of “chief feature” of measure). While *Dacus* involved a proposed amendment to a city charter, its analysis called into question prior case law indicating that a ballot must only allow voters to identify and distinguish different proposed constitutional amendments from one another.
Utah has statutory initiatives (but not constitutional initiatives), veto referendums, and legislatively referred amendments. For statutory initiatives, Utah allows sponsors to decide whether to submit their proposal directly to voters through the direct initiative, or to first submit it for the legislature’s consideration through the indirect initiative. Utah’s processes for voter-initiated measures are quite different from those for legislatively referred amendments. For instance, the ballot must contain more information about an initiative or veto referendum than a legislatively referred amendment, including a separate ballot insert to provide voters with an impartial summary of each ballot measure. Further, Utah’s direct democracy provisions explicitly provide for judicial review of initiatives and veto referendums, but not legislatively referred amendments.

BACKGROUND INFORMATION
What forms of direct democracy are available, and when?

Statewide Ballot Measures in Utah
Utah has both direct and indirect statutory voter initiatives, veto referendums, and legislatively referred amendments.

✓ Initiatives – Statutory (Direct and Indirect)
   The people of Utah have reserved the initiative power to propose and enact legislation. Utah Const. art. VI, § 1(2)(a).
   
   The people may petition for a proposed law to be submitted to voters at a general election (direct initiative) or submitted to the state legislature for its adoption (indirect initiative). Id.; Utah Code Ann. §§ 20A-7-102, 20A-7-208.

✗ Initiatives – Constitutional

✓ Veto Referendums
   Utahns have the referendum power to require that any law passed by the legislature be put to a popular vote, except for any law passed by a 2/3 supermajority vote. Utah Const. art. VI, § 1(2)(a)(i).

✓ Legislatively Referred Amendments
   An amendment to the state constitution proposed by the legislature must be
approved by Utah voters. Utah Const. art. XXIII, § 1.

**Election Timing**
The timing of an election on a ballot measure may depend on the form of direct democracy; while most ballot measures must be submitted to voters at a general election, the Governor may call a special election with respect to a veto referendum.

- An initiative must be submitted to voters at a regular, general election.
  - Sponsors may choose to submit it directly to the voters at a general election. See Utah Code Ann. § 20A-7-203(2)(a).
  - Alternatively, sponsors may submit an initiative to the legislature. If the legislature declines to enact it, it will be submitted at the next regular general election, so long as additional verified and certified signatures are submitted to bring total signatures up to the required threshold. Id. § 20A-7-208(2).
- A veto referendum may be submitted at a general election, or a special election called by the Governor. See id. §§ 20A-7-301(1)(b), 20A-7-303(2)(a).
- A legislatively referred amendment must be submitted to Utah voters at the “next general election” after it is approved by 2/3 of all members elected to each house of the legislature. Utah Const. art. XXIII, § 1.

**BALLOT PREPARATION**
*What is included on the ballot, and who prepares it?*

The ballot contents for a Utah ballot initiative depend on the type of measure at hand.

- The ballot for an initiative or veto referendum must contain the following.
    - The title generally describes the subject of the measure.
    - It is prepared by the Office of Legislative Research and General Counsel.
  - (For initiatives only) Fiscal impact estimate (100 words or less, + 100 words per revenue source that proposal creates or impacts). Id. §§ 20A-7-202.5, 20A-7-204.1.
    - The estimate must be unbiased, “good faith” initial estimate.
    - It is prepared by the Office of the Legislative Fiscal Analyst, which incorporates any changes to proposal following public hearings held by measure’s sponsors.
  - Statement to notify voters of separate ballot proposition handout with impartial summaries of any initiatives and veto referendums appearing on the ballot. Id. §§ 20A-7-209, 20A-7-308.

- The following information about an initiative or veto referendum must also be provided: whether on the ballot or a proposition insert provided to voters alongside the ballot. See Utah Code Ann. § 20A-7-209(2)(e), (d)(iii).
  - Impartial summary of measure’s contents (125 words or less), prepared by Office of Legislative Research and General Counsel. See Utah Code Ann. § 20A-7-209(2)(e), (2)(a)(ii)(B).
• Link to Lieutenant Governor’s website where voters may review additional information on each initiative or veto referendum, including the following. Utah Code Ann. § 20A-7-209(2)(e).
  • Information relating to the measure’s sponsors.
  • Full text of the measure.
  • Arguments from the Voter Information Pamphlet (discussed below).
See also generally Utah Code Ann. § 20A-7-308.

➢ The ballot for a legislatively referred amendment must contain the following.
    • Prepared by Legislative General Counsel.
    • Must summarize any legislation that is enacted and will become effective if the proposed amendment is approved by voters.

INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
Utah’s publication requirements vary depending on the type of ballot measure at issue.

➢ For initiatives, before a petition is circulated for signatures, sponsors must hold seven public hearings in designated regions and must publish notice of each hearing in a local newspaper at least three days beforehand (or take alternative steps to publicize the hearing). If the initiative proposes a tax increase, notice must include that the initiative seeks to increase a particular tax rate plus the percentage difference of the increase. Utah Code Ann. § 20A-7-204.1.

➢ For initiatives and veto referendums, arguments relating to each measure are included in a Voter Information Pamphlet (described below). The legislature may designate legislators to draft arguments opposing initiatives and veto referendums, but if not, the Lieutenant Governor must publish a public notice on their website to include instructions for how voters may submit written arguments for consideration. Id. §§ 20A-7-704, 20A-7-705.

➢ For legislatively referred amendments, the Lieutenant Governor must publish the full text of each proposed amendment in at least one newspaper in each county, where a newspaper is published, for two months immediately preceding the election. Utah Const. art. XXIII, § 1; Utah Ann. Code § 20A-7-103.

Voter Information Pamphlet
The Lieutenant Governor must publish a Voter Information Pamphlet that includes the following information about each ballot measure.

• Full text of measure being submitted to voters. Id.
• Impartial analysis prepared by the Office of Legislative Research and General Counsel (1,000 words or less). Id.
• The analysis is prepared in language that will be easily understood by the average voter, avoiding technical terms as much as possible. It must describe the effect of the measure on existing law, any potential conflicts with the U.S. or Utah Constitutions raised by the measure, the measure’s operation, and its fiscal effects over time. Id. § 20A-7-703.

• Arguments for and against the measure and rebuttal arguments (500 words or less, each). Id. § 20A-7-702.
  • For initiatives, arguments in favor are drafted by a designated sponsor. Arguments against may be drafted by a designated legislator, or if none, by an interested voter selected after public notice is provided. Id. § 20A-7-704.
  • For veto referendums and legislatively referred amendments, arguments in favor of adoption are drafted by one or more designated legislators who voted for the underlying proposal. Arguments against are drafted by one or more designated legislators who voted against it, or if none, by an interested voter selected after public notice is provided. Id. § 20A-7-705.

  ➢ For veto referendums only, final legislative vote on underlying legislation. Id. § 20A-7-702.

**JUDICIAL REVIEW**

*When and how can the court step in?*

➢ Together, at least three sponsors of an initiative or veto referendum may challenge the short title and/or summary prepared by the Office of Legislative Research and General Counsel. However, there is a presumption that the language prepared is impartial, and it may not be revised by a court unless the language is shown to be false or biased. Utah Code Ann. §§ 20A-7-209(4), 20A-7-308(4).

In addition, for initiatives only, at least three sponsors may challenge the initial fiscal impact estimate prepared by the Office of the Legislative Fiscal Analyst. However, there is a presumption in favor of the initial estimate, and the court may not revise or direct revision thereof unless it is shown that, taken as a whole, it is an inaccurate statement of the initiative’s estimated fiscal impact. Utah Code Ann. § 20A-7-202.5(4).

**Sample case:** *Snow v. Off. of Leg. Rsch and Gen. Couns.*, 167 P.3d 1051 (Utah 2007) (rejecting argument that ballot title for veto referendum was patently false because it did not reference a subsequent piece of related legislation).

➢ Utah’s provisions pertaining to legislatively referred amendments do not explicitly provide for judicial review of ballot contents or related materials, but review may be available under other channels.
In Vermont, legislatively referred amendments are the only form of statewide direct democracy available. Notably, constitutional amendments may only be proposed by the Vermont Senate, and only every four years. A proposed amendment must be submitted at a general election, on the first Tuesday in November, in even-numbered years. Vermont law requires publication to notify the public about a proposed constitutional amendment but provides few requirements with respect to ballot contents. Vermont’s direct democracy provisions also do not explicitly provide for judicial review of ballot measure language or related materials, but review may be available under other channels.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Vermont**

Vermont does not have statewide initiatives or veto referendums but has legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**
- **Legislatively Referred Amendments**

An amendment to the state constitution proposed by the legislature must be approved by Vermont voters. See Vt. Const. ch. II, § 72. Notably, constitutional amendments may only be proposed by the Senate, and only every four years. See id.

**Election Timing**

A legislatively referred amendment is submitted to voters after it is approved by a 2/3 supermajority of the members of each legislative house, followed by a majority of the members of each house of the next consecutive legislature. See Vt. Const. ch. II, § 72. Pursuant to statute, an amendment must be submitted at a general election, on the first Tuesday after the first Monday in November, in even-numbered years. See Vt. Stat. Ann. tit. 17, § 1842(a).
BALLOT PREPARATION

What is included on the ballot, and who prepares it?

Under the Vermont Constitution, the General Assembly has the authority to provide for the manner of voting on a proposed amendment, and state provisions are silent as to specific contents that must be included on the ballot. See Vt. Const. ch. II, § 72. The Secretary of State is charged with causing ballots to be prepared. See Vt. Stat. Ann. tit. 17, § 1844(b).

INFORMATION TO VOTERS

What information is provided to voters before the election, and how?

Publication
The Secretary of State must publish information about legislatively referred amendments in at least two newspapers of general circulation, between September 25 and October 1 preceding the general election. See Vt. Stat. Ann. tit. 17, § 1844. The publication must include the full text of the proposed amendment, as well as a summary of proposed changes prepared by the Secretary of State. See id. The Vermont Constitution also requires the Governor to issue a proclamation providing public notice of a proposed amendment before its submission to voters. See Vt. Const. ch. II, § 72; see also Vt. Stat. Ann. tit. 17, § 1841(b).

The Secretary of State must also publish information about a proposed amendment during the period between its initial approval and its approval by the next consecutive legislature. See Vt. Stat. Ann. tit. 17, § 1840.

Voter Information Pamphlet

Vermont law does not require a state voter information pamphlet for ballot measures.

JUDICIAL REVIEW

When and how can the court step in?

Vermont’s direct democracy provisions do not explicitly provide for judicial review of ballot measure language or related materials, but review may be available under other channels.
In Virginia, legislatively referred amendments are the only form of statewide direct democracy available. The legislature has substantial control over how proposed amendments are submitted to voters. It may determine the manner in which a proposed amendment will be presented, including the election timing. However, the State Board of Elections prepares a “Plain English” statement describing each amendment that is published online and distributed to polling places. There is no explicit provision for judicial review, and the statutes make clear that failure to comply with requirements pertaining to the ballot question or “Plain English” statement will not affect an adopted constitutional amendment’s validity.

BACKGROUND INFORMATION
What forms of direct democracy are available, and when?

Statewide Ballot Measures in Virginia
Virginia does not have statewide initiatives or veto referendums but has legislatively referred amendments.

- Initiatives – Statutory
- Initiatives – Constitutional
- Veto Referendums
- Legislatively Referred Amendments
  An amendment to the state constitution proposed by the legislature must be approved by Virginia voters. Va. Const. art. XII, § 1.

Election Timing
A proposed amendment must first be approved by a majority of members of each house, in two consecutive General Assemblies. It is then submitted to the people in such manner as the legislature shall prescribe, at least 90 days after final approval by the legislature. Va. Const. art. XII, § 1.

In recent history, proposed amendments have been submitted at general elections.
BALLOT PREPARATION
What is included on the ballot, and who prepares it?

The ballot for a proposed constitutional amendment must contain:

• Ballot question.


Virginia law is silent as to a ballot question’s contents and gives the legislature power to determine the manner in which an amendment will be submitted to voters. See Va. Const. art. XII, § 1; Va. Code Ann. §§ 30-19, 30-19.9.

INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
The State Board of Elections must publish an “explanation” of each proposed amendment on its website, and in newspapers meeting certain circulation requirements. Newspaper publication is made twice: once in the week before the close of voter registration and again in the week before the election. Va. Code Ann. § 30-19.9. The contents of the explanation must be approved by the General Assembly and are described in further detail below. Id.

Voter Information Pamphlet
As noted, the State Board of Elections must publish an “explanation” of each proposed amendment. Va. Code Ann. § 30-19.9. An explanation must include:

• Full text of proposed amendment. Id.
• Neutral statement on proposal written in “plain English” (500 words or less). Id.
  • The statement may briefly describe effect of “yes” and “no” votes but cannot include any arguments submitted by proposal’s sponsors or opponents. Id.
  • “Plain English” means statement must be “written in nontechnical, readily understandable language using words of common everyday usage” and avoiding legal and other terms with specialized, technical meanings. Id. § 30-19.10.

The explanation is first drafted by the Division of Legislative Services in consultation with other agencies, including the Attorney General, as appropriate. Va. Code Ann. § 30-19.9. It is approved by the first General Assembly then referred to the next General Assembly, which must approve it “for distribution as to form and content.” Id.

The State Board of Elections must distribute the explanation to county registrars for placement at each registration site and polling place. Id.
VIRGINIA JUDICIAL REVIEW
When and how can the court step in?

Virginia's direct democracy provisions do not explicitly provide for judicial review of ballot contents, and such review is limited by the clear discretion given to the legislature under Virginia law. Further, Virginia Code Annotated § 30-19.9 makes clear that failure to comply with its requirements pertaining to explanatory materials—including a ballot question—does not affect the validity of a constitutional amendment.

Sample case: Goldman v. State Bd. of Elections, No. 201067, 2020 WL 5498497 (Va. Sept. 9, 2020) (dismissing petition for writ of mandamus against State Board of Elections alleging that ballot question for proposed constitutional amendment was misleading; finding Board had no role in determining ballot question language and would not have a clear duty to reject it even if defective).
Washington has direct and indirect statutory initiatives (but not constitutional initiatives), veto referendums, and legislatively referred amendments. The timing of an election may vary depending on the type of ballot measure. Although submission at general elections is the norm, the legislature may order a special election for a veto referendum. The contents of the ballot also vary somewhat depending on the type of ballot measure, with an additional disclosure required for an initiative or veto referendum predicted to have a financial impact. Notably, Washington law requires the Secretary of State to supplement newspaper publications with an equivalent amount of radio and television broadcasts for any state ballot measure submitted to voters at a general election. The Secretary of State is also required to compile and distribute a detailed Voter Information Pamphlet, drawing on materials prepared by other entities. Washington statutes provide pathways for pre-election legal challenges to various materials—including ballot titles, public investment impact disclosures, and Voter Information Pamphlets—before the Superior Court of Thurston County, whose decisions are to be expeditious and considered final. In addition to pre-election statutory challenges before the Thurston County Superior Court, Washington courts may also consider constitutional claims post-enactment.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Washington**

Washington has both direct and indirect statutory initiatives, veto referendums, and legislatively referred amendments. Washington voters may not initiate a constitutional amendment.

- **Initiatives – Statutory (Direct and Indirect + Legislative Alternatives)**

  The people of Washington have the initiative power to propose and enact legislation. Wash. Const. art. II, § 1(a).

  The people may petition for a proposed law to be submitted directly to voters (direct initiative) or submitted to the state legislature for its adoption (indirect initiative). See *id*. With respect to an indirect initiative, the legislature may reject the measure and propose a different one dealing with the same subject, in which case, both measures are submitted to voters. See *id*.
Initiatives – Constitutional

Veto Referendums
Washingtonians have the referendum power to require that any act of the legislature, or any part thereof, be submitted to the voters for their approval or rejection, except for laws necessary for the immediate preservation of public peace, health, or safety; or for support of state government and its existing public institutions. See Wash. Const. art. II, § 1(b), (d).

In addition to veto referendums, which are initiated via voter petition, the Washington Constitution also authorizes the state legislature to itself refer an act to the people; but the legislature may not enact an indirect initiative and then refer it to the people. Wash. Const. art. II, § 1(b).

Legislatively Referred Amendments
An amendment to the state constitution proposed by the legislature must be approved by Washington voters. Wash. Const. art. XXIII, § 1.

Election Timing
The timing of an election on a ballot measure may vary depending on the form of direct democracy. Although submission at general elections is the norm, the legislature may order a special election with respect to a veto referendum.

- An initiative is submitted to voters at a general election, as follows:
  - Sponsors may choose to submit an initiative directly to the voters at a general election by filing the measure within ten months before the election and filing the required signature petitions not less than four months beforehand. See Wash. Const. art. II, § 1(a); Wash. Rev. Code §§ 29A.72.030, 29A.72.120.
  - Alternatively, sponsors may submit an initiative to the legislature by filing the measure within ten months prior to the next regular session of the legislature at which it is to be submitted and filing the required signature petitions not less than 10 days beforehand. Wash. Const. art. II, § 1(a); Wash. Rev. Code § 29A.72.030. If the legislature declines to enact it, the measure will be submitted at the next regular general election (along with any legislative alternatives). See Wash. Const. art. II, § 1(a).

- A veto referendum is submitted to voters at the next regular general election following the filing of a petition unless the legislature orders a special election. See Wash. Const. art. II, § 1(d); Wash. Rev. Code § 29A.72.030.

- A legislatively referred amendment must be submitted to Washington voters “at the next general election” after it is approved by 2/3 of all members elected to each house of the legislature. Wash. Const. art. XXIII, § 1.
BALLOT PREPARATION

What is included on the ballot, and who prepares it?

The ballot for a statewide ballot measure in Washington must display the following.

  - (1) Statement of the measure’s subject matter (10 words or less). This statement must be broad enough to encompass the subject matter and sufficiently precise to give notice. Id. §§ 29A.72.050(1), 29A.36.020(1).
  - (2) Concise description of the measure (30 words or less). This description must give a true and impartial description of the measure’s essential contents and clearly identify the proposition to be voted on; and it must not, to the extent reasonably possible, create prejudice for or against the measure. Id. §§ 29A.72.050(1), 29A.36.020(1).
  - (3) Question set forth to allow voters to indicate their approval or disapproval. See id. §§ 29A.72.050(1)(c); 29A.36.020(1)(c).
- The entity responsible for preparing the ballot title can vary depending on the type of ballot measure.
  - For an initiative or veto referendum, the ballot title is prepared by the Attorney General, except that for a legislative alternative pertaining to an indirect initiative, the legislature may draft the ballot title. See id. §§ 29A.72.050(7), 29A.72.060. In addition to appearing on the ballot, the ballot title also appears on the petition itself. See id. § 29A.72.090.
  - For a legislatively referred amendment, the ballot title may be specified by the legislature, but if the legislature fails to do so, the Attorney General prepares the missing information. See id. § 29A.36.020(3).
  - For an initiative or veto referendum, an additional disclosure is also required to appear on the ballot title, after the concise description and before the question, if the measure repeals, levies, or modifies any tax or fee (or the scope thereof) and the fiscal impact statement (discussed in further detail below) reveals it would cause a net change in state revenue. Wash. Rev. Code §§ 29A.72.027(1), 29A.72.025, 29A.72.050(2) (providing, “The disclosure is not . . . considered part of the ballot title and is not subject to any of the legal requirements for ballot titles under this chapter”).
  - (If applicable) Public investment impact disclosure, indicating whether the measure would increase or decrease funding for services. See id. § 29A.72.027(3).
    - The disclosure must include a description of the investments that would be affected (10 words or less; but 15 words or less if the impact is primarily to the state general fund, in which case, the description must list the top three categories of services funded by the general fund per the current budget). Id. § 29A.72.027(2). The description must use neutral language that cannot be reasonably expected to create prejudice for or against the measure. Id. § 29A.72.027(4). The disclosure is prepared by the Attorney General, who
may consult with the Office of Financial Management or other agencies as necessary to accurately draft the description. See id. § 29A.72.027(2).

INFO\NATION TO VOTERS

What information is provided to voters before the election, and how?

Publication

For any statewide ballot measure submitted to the people at a general election, the Secretary of State must publish notice of the measure up to four times during the four weeks immediately preceding that election, in every legal newspaper in the state: and at least four times for a legislatively referred amendment. See Wash. Const. art. XXIII, § 1; Wash. Rev. Code § 29A.52.330. On top of this, the Secretary of State must “supplement this publication with an equivalent amount of radio and television advertisements.” Id. § 29A.52.330. The publication and broadcast may set forth some or all of the following. See id. § 29A.52.340.

- Legal identification of the measure.
- Official ballot title.
- Brief statement explaining the law (or constitutional provision) as it presently exists.
- Brief statement explaining the effect of the measure, should it be approved.
- Total number of votes cast for and against the measure in the state legislature.

Voter Information Pamphlet

The Secretary of State must also publish a Voter Information Pamphlet that includes the following information about each ballot measure. Wash. Rev. Code § 29A.32.010.

- Legal identification of the measure (e.g., designation or number). Id. § 29A.32.070(1).
- Official ballot title (discussed above). Id. § 29A.32.070(2).
- Statements prepared by the Attorney General to explain: (a) the law as it presently stands, and (b) the effect of the proposed measure if it becomes law. Id. § 29A.32.070(3)–(4).
  - These two explanatory statements must be written in clear and concise language, avoiding legal and technical terms where possible. Id. § 29A.32.040(1).
- Fiscal impact statement. Id. § 29A.32.070(5).
- Arguments advocating for, and against, the measure, along with rebuttals and identification of the authors of such arguments. Id. § 29A.32.070(7)–(9).
  - Arguments and rebuttals are drafted by a committee. See id. § 29A.32.060. The first two committee members are appointed by the Secretary of State and the presiding officers of the Senate and the House of Representatives, considering statutory guidance. See id. The initial two members may select up to four additional members. See id.
  - Arguments may contain graphs and charts supported by factual statistical data and pictures; however, cartoons or caricatures are not permitted. Id. §
29A.32.060.

• Full text of the measure. Id. § 29A.32.070(10).

• (If applicable) The total number of votes cast for and against the measure in the legislature, if passed by the legislature. Id. § 29A.32.070(6).

➢ (For initiatives and veto referendums) The measure’s fiscal impact statement, including both a summary of 100 words or less as well as a more detailed statement. Wash. Rev. Code §§ 29A.32.070(5), 29A.72.025.

• The fiscal impact statement is prepared by the Office of Financial Management in consultation with the Secretary of State, the Attorney General, and any other appropriate state or local agency. Id. § 29A.72.025.

• The statement must describe any projected increase or decrease in revenues, costs, expenditures, or indebtedness that the state or local governments will experience if the measure is approved. Id. § 29A.72.025. It may include both estimated dollar amounts as well as a description placing the estimated dollars into context; it may also include easily understood graphics. Id. § 29A.72.025.

The Secretary of State must distribute printed copies of the Voter Information Pamphlet to each household in the state, public libraries, as well as other locations they deem fit. See Wash. Rev. Code § 29A.32.010. The Secretary must also make the Voter Information Pamphlet available online. See id. Additionally, the Secretary of State is required to distribute, upon an individual’s request, taped or Braille transcripts of the Voter Information Pamphlet. See id.

JUDICIAL REVIEW
When and how can the court step in?

Washington statutes provide pathways for pre-election legal challenges to various materials—including ballot titles, Voter Information Pamphlets, and public investment impact disclosures.

Any person dissatisfied with a ballot title may challenge or “appeal” the title to the Superior Court of Thurston County. See Wash. Rev. Code §§ 29A.72.080 (providing for ballot title appeals with respect to initiatives and veto referendums; also allowing for appeals to challenge the summary appearing on the petition), 29A.36.060 (providing for ballot title appeals with respect to proposed constitutional amendments). With respect to an initiative or veto referendum, such appeal must be filed within five business days of the filing of the ballot title; for constitutional amendments, this limit is ten business days. See id. §§ 29A.72.080, 29A.36.060. The decision must be rendered expeditiously and is considered final. See id.

Washington statutes also allow any dissatisfied person to challenge the explanatory statements prepared by the Attorney General which appear as part of the Voter Information Pamphlet. See Wash. Rev. Code §§ 29A.32.040(3), 29A.32.070(3)–(4). Such an appeal must be filed in the Superior Court of Thurston County within five days of the filing of the explanatory statements. Id. § 29A.32.040(2)–(3). The decision of the Superior Court must be rendered within the timelines identified by the Secretary of State.
and is considered final. Id. § 29A.32.040(3).

Similarly, a public investment impact disclosure for an initiative or veto referendum may be appealed by any dissatisfied person: also, to the Superior Court of Thurston County. See Wash. Rev. Code § 29A.72.028. This appeal must be made within three business days of the disclosure being filed with the Secretary of State. See id. The Superior Court must render a decision within five days, which shall be a final decision. See id.

In addition to pre-election, statutory challenges before the Superior Court of Thurston County, Washington courts may also consider constitutional claims post-enactment. See, e.g., *End Prison Indus. Complex v. King Cnty.*, 431 P.3d 998, 1005 (Wash. 2018). For statutory initiatives and veto referendums, this may include challenges based on Wash. Const. art. II, § 19, which requires that the subject of a bill must be expressed in its (ballot) title. See, e.g., *Amalgamated Transit Union Loc. 587 v. State*, 11 P.3d 762, 781 (Wash. 2000), as amended, opinion corrected, 27 P.3d 608 (Wash. 2001).

**Sample case:** *Amalgamated Transit Union Loc. 587 v. State*, 11 P.3d 762, 786–792 (Wash. 2000), as amended, opinion corrected, 27 P.3d 608 (Wash. 2001) (in the initiative context, finding the constitutional subject-in-title requirement is satisfied if the ballot title indicates the scope and purpose, but that it need not be an index to the measure’s contents; and holding the ballot title at issue failed to comply with this requirement, in that it used the word “tax,” which has a commonly understood meaning, despite the fact that the measure defined “tax” more broadly).
In West Virginia, legislatively referred amendments are the only form of statewide direct democracy available. The legislature has substantial control over how proposed amendments are submitted to voters. For instance, the legislature may decide to call a special election and may supply the ballot language. Judicial review is not explicitly available under the state’s direct democracy provisions but may be available under other channels.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in West Virginia**

West Virginia does not have statewide initiatives or veto referendums but has legislatively referred amendments.

- **Initiatives – Statutory**
- **Initiatives – Constitutional**
- **Veto Referendums**
- ✓ **Legislatively Referred Amendments**
  
  An amendment to the state constitution proposed by the legislature must be approved by West Virginia voters. W. Va. Const. art. XIV, § 2.

**Election Timing**

The legislature may order that a proposed amendment be submitted to voters at a special election, or at the next general election.

- After a proposed amendment is approved by 2/3 of the members of each house, the legislature must “provide by law for submitting the same to the voters of the state for ratification or rejection, at a special election, or at the next general election thereafter.” W. Va. Const. art. XIV, § 2; see also W. Va. Code § 3-11-2.
- The legislature may, by concurrent resolution adopted by 2/3 vote of the members elected to each house, withdraw the question from being submitted to the voters in any session prior to the election. W. Va. Code § 3-11-1.
BAlLOT PREPARATION  
What is included on the ballot, and who prepares it?

The ballot for a proposed amendment to the West Virginia Constitution must include the following:

- Title.
- Summary of proposed amendment’s purpose.

See W. Va. Code § 3-11-2. Both the title and summary shall be supplied by the legislature in its joint resolution proposing the amendment, but if the legislature fails to supply either or both, the Secretary of State must supply the omission(s). Id.

INFORMATION TO VOTERS  
What information is provided to voters before the election, and how?

Publication
The Secretary of State shall cause the proposed amendment (text), title, and summary to be published at least three months before the election, in a newspaper in every county in which a newspaper is printed. W. Va. Code § 3-11-3; see also W. Va. Const. art. XIV, § 2.

Voter Information Pamphlet

West Virginia law does not require a state voter information pamphlet for ballot measures.

However, when recommended by the Secretary of State, the State Election Commission must prepare and distribute nonpartisan educational materials, including to inform voters of the effect of any constitutional amendment. W. Va. Code § 3-1A-5(c).

JUDICIAL REVIEW  
When and how can the court step in?

West Virginia’s direct democracy provisions do not explicitly provide for judicial review of ballot measure language or related materials, but review may be available under other channels, such as W. Va. Code § 3-1-45 (providing for writs of mandamus to compel performance of duties).

Sample case: State ex rel. Cooper v. Caperton, 470 S.E.2d 162 (W. Va. 1996) (rejecting a challenge to a constitutional amendment approved by voters in 1994; finding “substantial compliance” with W. Va. Const. art. XIV, § 2 where state failed to publish the full text of the proposed amendment in the newspapers, but published the summary thereof; summary adopted by the legislature “fully, fairly, and accurately describe[d] the Amendment”, and was “sufficient to permit [voters] to make up their minds”, and there was no evidence it had misled voters, or that publication of full text would have made a difference).
In Wisconsin, legislatively referred constitutional amendments are the only available form of statewide direct democracy. A legislatively referred amendment must be approved by two consecutive sessions of the legislature and then submitted to the voters in the time and manner prescribed by the legislature. The proposed amendment must be filed with the agency responsible for preparing ballots no later than 70 days before the election. Wisconsin citizens are provided information about the referendum through a series of notices published by the clerks responsible for running the election. Wisconsin law provides no explicit avenue of judicial review for ballot questions, but actions for declaratory and/or injunctive relief may be available. The standard of review is deferential: Pursuant to a 2023 decision by the Wisconsin Supreme Court, ballot language is sufficient if it is not “fundamentally counterfactual[.]” See Wis. Just. Initiative, Inc. v. Wis. Elections Comm’n, 2023 WI 38, ¶ 5, 407 Wis. 2d 87, 990 N.W.2d 122. In addition to legislatively referred amendments, the Wisconsin Constitution also requires voter approval of statutes that extend the right of suffrage to additional classes.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Wisconsin**

Wisconsin does not have statewide initiatives or veto referendums but has legislatively referred amendments. Additionally, the Wisconsin Constitution also requires voter approval of statutes that extend the right of suffrage to additional classes.

- [x] Initiatives – Statutory
- [x] Initiatives – Constitutional
- [x] Veto Referendums
- [✓] Legislatively Referred Amendments

*An amendment to the state constitution proposed by the legislature must be approved by Wisconsin voters. Wis. Const. art. XII, § 1. In addition, laws “extending the right of suffrage to additional classes” must be ratified “by the people at a general election.” Wis. Const. art. III, § 2.*
Election Timing
A legislatively referred amendment must be approved by two consecutive sessions of the legislature and is then submitted “to the people in such manner and at such time as the legislature shall prescribe.” See Wis. Const. art. XII, § 1.

Once approved in the first legislative session, the proposed amendment “shall be published for three months” before the next legislative election is held. Wis. Const. art. XII, § 1. After the second legislature’s approval, the amendment must be “filed with the official or agency responsible for preparing the ballots for the election no later than 70 days prior to the election.” Wis. Stat. § 8.37.

BALLOT PREPARATION
What is included on the ballot, and who prepares it?
The ballot for any proposed constitutional amendment in Wisconsin must display the following:

- A concise statement of the question, prepared by the legislature, and “worded such that an affirmative vote will be in favor of the measure and a negative vote will vote against it.” Wis. Stat. §§ 5.64(2)(am), 13.175; Wis. Const. art. XII, § 1.
- If more than one amendment is proposed, each must appear separately to allow voters to vote for or against each. Wis. Const. art. XII, § 1.

INFORMATION TO VOTERS
What information is provided to voters before the election, and how?

Publication
Five types of election notices are produced by municipal and county clerks responsible for the election using forms prescribed by the Wisconsin Elections Commission. Wis. Stat. § 10.01(2). When an election includes a proposed constitutional amendment, several of those notices provide information about the proposal: including a notice of election and a notice providing instructions and a sample ballot. Wis. Stat. §§ 10.01(2) (a)–(b), 10.02. In addition, the Attorney General prepares a “notice of referendum,” which contains the referendum date, the entire text of the question and proposed enactment, and an explanatory statement of a “yes” or “no” vote. Wis. Stat. § 10.01(2)(c). The notice is published in a newspaper “as close as possible” to the Type B notice. Id.

When a proposed constitutional amendment is approved for the first time by the legislature, its text is published by the Legislative Reference Bureau on the internet no later than the August 1 preceding a general election. Wis. Stat. § 35.07.

Voter Information Pamphlet
Wisconsin law does not require a state voter information pamphlet for ballot measures. However, as noted above, the Attorney General is charged with preparing a notice of the referendum, which includes an explanatory statement as the effect of a vote.
JUDICIAL REVIEW
When and how can the court step in?

Wisconsin’s provisions governing legislatively referred amendments do not explicitly provide for judicial review of ballot language or related materials, but review may be available under other channels, such as actions for declaratory and/or injunctive relief.

Sample case: *Wis. Just. Initiative, Inc. v. Wis. Elections Comm’n*, 2023 WI 38, 407 Wis. 2d 87, 990 N.W.2d 122 (holding that a proposed amendment must accomplish “one general purpose” pursuant to the state’s single amendment requirement, and that ballot language must not be “fundamentally counterfactual such that voters [are] not asked to approve the actual amendment.”).
Wyoming has statutory initiatives, veto referendums, and legislatively referred amendments. Any of these statewide ballot measures must be submitted to voters in a general election. Ballot content requirements vary depending on whether the measure is initiated by voters or referred by the legislature, with additional fiscal impact details required for initiatives only. The ballot preparation process also varies, with the Attorney General involved in initiatives and veto referendums, but not legislatively referred amendments. Beyond the ballot materials, Wyoming law requires that more voter information be provided for legislatively referred amendments, including a voter information pamphlet that is not required for statutory initiatives or veto referendums. Wyoming statutes clearly provide for judicial review of determinations made by the Secretary of State or Attorney General regarding initiatives or veto referendums, but not regarding legislatively referred amendments, though review may be available under other channels.

**BACKGROUND INFORMATION**

*What forms of direct democracy are available, and when?*

**Statewide Ballot Measures in Wyoming**

Wyoming has statutory voter initiatives (but not constitutional initiatives), veto referendums, and legislatively referred amendments.

- **Initiatives – Statutory**
  
  The people of Wyoming have the initiative power to propose and enact legislation independent of the legislature. See *generally* Wyo. Const. art. III, § 52. The initiative power cannot be used to expend state revenues, to make or repeal appropriations, to create courts, or to enact legislation that the legislature would be prohibited from enacting under the state constitution. *Id.* § 52(g).

- **Initiatives – Constitutional**

- **Veto Referendums**

  Wyomingites have the referendum power to demand that any act of the legislature be submitted to the voters for their approval or rejection, except for dedications of revenue, appropriations, local or special legislation, or laws
necessary for the immediate preservation of public peace, health, or safety. See Wyo. Const. art. III, § 52(a), (g).

Legislatively Referred Amendments
An amendment to the state constitution proposed by the legislature must be approved by Wyoming voters. Wyo. Const. art. XX, § 1.

Election Timing
A statewide ballot measure must be submitted to voters in a general election.

- An initiative is submitted to voters at the next general election held more than 120 days after adjournment of the legislative session following the timely filing of an initiative petition. Wyo. Const. art. III, § 52(d); Wyo. Stat. Ann. § 22-24-319 (also providing that if the Attorney General determines that the legislature has enacted a law that is substantially the same as the proposed law after the petition is filed, the measure shall not be placed on the ballot).
- A veto referendum is submitted to voters at the next general election held more than 180 days after adjournment of the legislative session in which the referred law was passed, after the timely filing of a veto referendum petition. Wyo. Const. art. III, § 52(e); Wyo. Stat. Ann. § 22-24-416.
- A legislatively referred amendment must be submitted to voters after it is approved by a 2/3 supermajority of the members of each legislative house. See Wyo. Const. art. XX, § 1. The proposed amendment is then submitted to voters at the next general election. See id.

BALLOT PREPARATION
What is included on the ballot, and who prepares it?

Ballot content requirements vary depending on whether the measure is initiated via voter petition, or a legislatively referred amendment; additional fiscal impact details are required with respect to initiatives. The ballot preparation process also varies, with the Attorney General involved with respect to initiatives and veto referendums, but not for legislatively referred amendments.

- The ballot for an initiative or veto referendum must contain the following.
  - The ballot proposition must give a true and impartial summary of the measure. Id. §§ 22-24-317(a), 22-24-414.
  - (For initiatives only, if applicable)
    - An estimate (or estimated range) and explanation of the measure’s fiscal impact, prepared by the Secretary of State with the assistance of other state agencies as needed. See id. §§ 22-24-317(a), 22-24-309.
      - The explanation must indicate that the estimate excludes any impact on local subdivisions. See id. § 22-24-309(a).
      - The Secretary of State must render its estimate and explanation to the initiative’s sponsors; if the sponsors believe it is inaccurate, they
may submit their own estimate and explanation within 14 days. See id. § 22-24-309(b). The Secretary of State may revise its estimate if the sponsors demonstrate the initial estimate was inaccurate. See id.

- If the Secretary of State’s final fiscal estimate differs from the sponsors’ by more than $25,000, the ballot must include an estimated range of fiscal impact reflecting both estimates. Id. §§ 22-24-317(a), 22-24-309(b).
- (For measures relating to investment of permanent state funds) The estimated loss or gain in revenue (or range thereof) from the proposal prepared by the State Treasurer. Wyo. Stat. Ann. § 22-24-317(b).
- If the State Treasurer’s final estimated loss or gain differs from the sponsors’ by more than $25,000, the ballot must include a range of estimated loss or gain that includes both estimates. Id. § 22-24-317(b).

The ballot for a legislatively referred amendment must contain the following.

- The statement is prepared by the Secretary of State, but if the bill proposing the amendment provides this statement, the Secretary of State must adopt the legislature’s statement. See id.

**INFORMATION TO VOTERS**

*What information is provided to voters before the election, and how?*

Wyoming law requires that more voter information be provided with respect to legislatively referred amendments, including a voter information pamphlet that is not required for initiatives or veto referendums.

**Publication**

Wyoming law requires that pre-election publications be made about state ballot measures, with additional publications required for legislatively referred amendments compared to measures initiated via petition.

- For an initiative or veto referendum, the Secretary of State must publish the ballot proposition in a newspaper of general circulation in the state in the edition immediately preceding the general election. Wyo. Stat. Ann. §§ 22-24-318, 22-24-415. The publication must contain the ballot text along with a physical location and website where the entire text of the measure can be viewed. Id.
- For a legislatively referred amendment, the Secretary of State must publish the proposed amendment and a notice that it will be submitted at the next general election in a newspaper of general circulation in each county once a week for at least twelve consecutive weeks prior to the election, plus, if possible, one additional newspaper in the county for at least three consecutive weeks within 30 days of the election. Wyo. Stat. Ann. § 22-20-104(a); Wyo. Const. art. XX, § 1.
  - The Secretary of State may supplement the publications with radio and/or television broadcasts, which must include the proposed amendment or
question; the identifying letter it is assigned; the statement of purpose, which also appears on the ballot; and details about the newspaper publication. Wyo. Stat. Ann. § 22-20-104(b).

**Voter Information Pamphlet**

- Wyoming law does not require a state voter information pamphlet regarding initiatives or veto referendums.
- With respect to legislatively referred amendments, the Secretary of State must “print a reasonable number of pamphlets containing every proposed amendment and provide a copy of the pamphlet upon request to any person or organization.” Wyo. Stat. Ann. § 22-20-105.

**JUDICIAL REVIEW**

*When and how can the court step in?*

- With respect to an initiative or veto referendum, any person aggrieved by a determination of the Secretary of State or Attorney General may bring an action in the Laramie County District Court within 30 days of the date on which notice of the challenged determination was given. Wyo. Stat. Ann. §§ 22-24-321, 22-24-418. Wyoming statutes make clear that any initiative or veto referendum submitted to voters will not be voided on the basis of an insufficient application or petitions by which the submission to voters was procured. See id. §§ 22-24-320, 22-24-417.

In addition to statutory requirements, the Wyoming Supreme Court has suggested that an initiative’s ballot title and summary must comply with the state’s constitutional requirement that the title of a bill must contain its subject. See Wyo. Const. art. III, § 24; Wyoming Nat. Abortion Rights Action League v. Karpan, 881 P.2d 281, 289–291 (Wyo. 1994) (holding the title of the challenged initiative adequately expressed the substantive provisions included within the body of the measure).

**Sample case:** Wyoming Nat. Abortion Rights Action League v. Karpan, 881 P.2d 281, 289–291 (Wyo. 1994) (assuming that initiatives must comply with the subject-in-title requirement of Wyo. Const. art. III § 24, and finding the title of the challenged initiative adequately expressed the substantive provisions included within the body of the measure).

- With respect to a legislatively referred amendment, Wyoming’s direct democracy provisions do not explicitly provide for judicial review of ballots or related materials. The Wyoming Supreme Court has previously considered, but rejected, an argument that the ballot language for a legislatively referred amendment approved by voters was misleading. See Town of Pine Bluffs v. State Bd. of Equalization, 333 P.2d 700, 704–705 (Wyo. 1958).