

Jim's Perspective...

Government by the People

As we all know, a fundamental characteristic of a democracy is that laws and the governing of society are ultimately controlled by, and rest with the people, not a monarch or dictator. One of the basic tools used by the people to manage laws and government is the initiative and referendum process. We recently saw the people change Nebraska state law with the initiative process by approving gambling casinos at race tracks in Nebraska, something the Legislature could never agree on.

The “initiative” is the first power reserved by the people and is found in Article III, Section 2 of the Nebraska Constitution. An initiative is defined as a petition in which the voters can potentially create laws or amend the Nebraska Constitution.

The second power reserved by the people is the “referendum” and is found in Article III, Section 3 of the Nebraska Constitution. A referendum is defined as a petition in which the voters can strike down or repeal an existing statute. The referendum can only be used to repeal laws passed within the most recent legislative session.

The right to a state initiative or referendum process is not a right guaranteed by the United States Constitution, but is a right created by state law. In 1897, Nebraska became the first state to authorize initiatives and referendums by permitting cities to put the procedures in their charters (municipal code or municipal law). It was not until 1907 that two cities (Lincoln and Omaha) finally adopted the initiative and referendum process in their city codes. In 1912, Nebraska allowed citizens to use initiatives and referendums on a statewide level. At that time, the Populist Party in Nebraska was at its zenith and three sections dealing with initiatives and referendums were adopted by constitutional amendment by a nearly thirteen to one margin. The most famous initiative adopted in Nebraska was the 1934 passage of an initiative measure intended to amend the Nebraska Constitution and create the Nebraska Unicameral Legislature.

The procedure to get an initiative or referendum petition on the ballot is substantial. Sponsors who have an idea for an initiative or referendum must deliver to the Secretary of State a statement of the object of the petition and the text of the measure along with the names of all sponsors of the petition. Once received by the Secretary of State, the petition is sent to the Revisor of Statutes who prepares a written review of the petition and suggested changes so that the petition conforms to statutory principles of draftsmanship. Once the sponsors accept the suggestions of the Revisor, they may then print copies of the petition on forms as described in state law, and proceed to collect signatures on the forms.

For an initiative that proposes a law, it must be signed by seven percent of registered voters in the state before it can be placed on the general election ballot. An initiative to amend the constitution must be signed by ten percent of registered voters in Nebraska. For a referendum, the required number of signatures is five percent, but if the referendum is attempting to suspend a law from taking effect, ten percent of registered voters must sign the petition.

Signed petitions must be filed no later than four months prior to the election. Signatures are verified by the Secretary of State through working with local county election commissioners. Once signatures are verified and the percentages achieved, the petition is certified to be on the ballot. Once certified, the Secretary of State must send a copy of the petition to the Attorney General who prepares a ballot title for the petition that cannot exceed one hundred words (a tough thing for any attorney to do!). All petitions are submitted and appear to the public in a format that is strictly nonpartisan, and without any indication that the petition may have been endorsed by any political party. Prior to the election, the Secretary of State is required to notify voters of the existence of the petition ballot measure in the following three different ways:

1. Publication of an informational pamphlet that includes arguments both for and against the petition. This process also involves input from sponsors. The informational pamphlets are then distributed to county election commissioners and county clerks.
2. The Secretary of State must hold at least one public hearing on the petition in each Nebraska Congressional District. The hearings must be held at least eight weeks prior to the general election.
3. The ballot title and the entire text of the petition must be published in all legal newspapers in the state once each week for three consecutive weeks immediately prior to the general election.

After the election, the petition votes are certified and then sent to the Governor who then issues a proclamation declaring that the voters have approved (or denied) the petition.

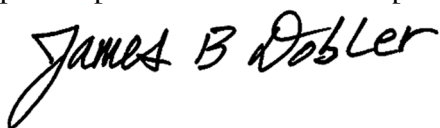
As you can see, the initiative or referendum process is not easy. Sponsors of petitions will be very busy prior to the November 8, 2022 general election. It is shaping up to be a banner year for initiative petitions.

First, we will once again have an initiative petition to legalize medical marijuana. It appears that there may be two petitions on this issue. One will require the Legislature to pass new laws that protect doctors who recommend or prescribe medical marijuana, and patients who possess it, from criminal prosecution, and a second initiative that requires the Legislature to pass a law to protect private entities that produce and supply medical marijuana from criminal prosecution. Senator Anna Wishart is once again supporting this proposal.

Second, there is a petition circulating to provide for a government issued photo I.D. to be used for voting. Senator Julie Slama is involved in this petition.

Third, there is a petition drive to raise the state minimum wage from \$9 to \$15. Senator Terrell McKinney and Senator Megan Hunt are both involved in this proposal.

As you can see, we will have a lot of significant proposed changes in Nebraska law. They are proposed by the people of Nebraska, not the Legislature. We will have a lot of legal and philosophical issues to contemplate in the fall of 2022!



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Questions or Comments? Please email jbdobler@outlook.com