**Initiative/Referendum/Recall**

This material is developed using three sources of information. First, it relies on Arizona law. That means the Arizona Constitution, Article IV, Part 1, Section 1(8), and Article VIII, Part 1.. It also include Arizona Revised Statutes, Title 19, Chapter 1, Article 4 found at A.R.S. §§ 19-141 to 143. The second major source of information is Arizona case law and Attorney General Opinions. Finally, the State of Arizona Elections Procedures Manual is a comprehensive resource providing significant guidance on the processes that are the subject of this material. <https://azsos.gov/elections/arizona-election-laws-publications> (follow “Election Procedure Manual” hyperlink).

**Background Information and Basic Rules**

1. Types of Direct Citizen Action for Arizona’s Municipal Clerks

 A. *Initiatives*. – Statutory

A “statutory initiative” is brought about by petition and represents the citizens’ effort to amend, add, or strike a statute. An affirmative vote by the electorate means the proposed measure will become law.

 B. *Referenda* – Council referral

A “statutory referral” is a statutory measure referred to the general election ballot by the legislative body. An affirmative vote by the electorate means the proposed measure will become law.

 C. *Referenda* – Citizen referral

A “citizen referendum” is brought about by petition and represents the citizens’ effort to veto a bill recently passed by the Arizona Legislature or other local government body. In this case, the committee that puts the measure to a vote asks the citizens to vote “no,” and thereby prevent the measure from taking effect.

 D. *Recall*.

A recall petition seeks to remove an elected official, including someone appointed to an elected position, by setting a new election for that office. The officer holder is automatically on the ballot. Challengers may qualify for the ballot and the individual receiving the most votes takes or remains in office.

1. Limitations on Direct Action
2. Administrative versus Legislative Action.

When a council is acting as an executive body, its actions are not subject to referral. Such actions cannot be referred. Town clerks have been upheld in their decision not to accept petitions for such unreferrable matters. Most recently, when a group opposing a casino attempted to refer the city council's approval of a resolution supporting the casino, the Court of Appeals ruled this was not a legislative action and supported the clerk’s decision to reject the petition. *Respect Promise in Opposition to R-14-02-Neighbors for a Better Glendale v. Hanna*, 238 Ariz. 296, 360 P.3d 92 (App. 2015)

1. Emergency Clause?

“An emergency measure shall not become immediately operative unless it states in a separate section the reason why it is necessary that it should become immediately operative, and unless it is approved by the affirmative vote of three-fourths of all the members elected to the city or town council, taken by ayes and noes, and also approved by the mayor.” A.R.S. § 19-142 (B).

 C. Appropriations?

 D. Unconstitutional measures?

 E. Self-Funding Requirement?

 F. Single Subject Rule or Separate Amendment?

1. Does the Voter Protection Act Apply?

**Mechanics of Getting on the Ballot**

1. How to Initiate or Refer a Law.
2. Paperwork and Formalities.
* Establish or designate a political committee that will act as the initiative or referendum sponsor;
* Apply for an initiative or referendum serial number;
* Obtain an approved initiative or referendum petition form from the filing officer; and
* File a sufficient number of valid petition signatures on the approved form by the applicable deadline.
1. Committee Formation

Committee formation is governed by Title 16. Specifically, A.R.S. § 16-905 provides the requirement to register, which includes a ballot measure committee, and §§ 16-906 & 907 contain requirements for the statement of organization and officers.

1. The application for a serial number

The county officer in charge of elections or the city or town clerk serves as the filing officer. The filing officer issues the serial number if the committee provides the appropriate description (100-word for initiative and referendum; 200-word for recall) and the underlying action is capable of being initiated, referred or recalled.

1. The 100-word description

The filing officer’s sole responsibility of the 100-word description, 200-word for recall, is to verify the word limit is not exceeded. Any challenge to the sufficiency of the description is a matter for courts.

1. Title and Text

The filing officer’s responsibility here is to establish what is the “official” copy of the title and text by stamping each page of the document. Although A.R.S. § 19-111 provides guidance on the font requirements for the title & text along with how it should be formatted, the filing officer should not evaluate this at the time of filing.

Similarly, there are multiple sources available for initiative sponsor concerning titling their actions. The Elections Procedures Manual provides guidance, as does the Legislature’s Bill Drafting Manual.

Referred matters must include the equivalent of the formal chaptered version of the statute. The filing officer should provide this text to the Committee.

1. The petition form

Under A.R.S. § 19-102.01(B), the filing officer is now required to provide an initiative petition that “strictly complies with the requirements of § 19-121.” This may require coordination with the Secretary of State’s Office.

1. Recent changes in naming convention

There is no longer a requirement to have the measure’s name in the ballot measure committee’s name. The requirement remains to include the name of a committee’s sponsor in the committee name.

“Sponsor” means any person that establishes, administers or contributes financial support to the administration of a political action committee or that has common or overlapping membership or officers with that political action committee. A.R.S. § 16-901(47)

1. Dual purpose committees

On filing a statement of organization, a political action committee or political party may perform any lawful activity, including making contributions, making expenditures or conducting issue advocacy, without establishing a separate committee for each activity or specifying each activity in its statement of organization. A.R.S. § 16-906(G)

1. Statewide only rules, including circulators.

Title 19 requires paid circulators to register with the Secretary of State, but only for statewide measures. All out-of-state circulators must register with the Secretary of State in any jurisdiction. A.R.S. § 19-118(A).

For statewide petitions, the petitions must be organized by county when turned in. The office prefers that they be organized by registered circulator as well. For counties, cities, and towns, petitions not organized by circulator may be rejected. A.R.S. § 19-121(C).

1. Deadlines.

 A. Initiative petitions: Initiative petitions must be filed at least 4 months prior to the next general election.

 B. Referendum petitions: Referendum petitions must be filed within 30 days after passage of the ordinance or resolution subject to the petition, and Charter amendments proposed by a city or town council must be filed with the city or town clerk at least 60 days before the election.

 C. Recall petitions: at least six months after taking office and within 120 days of obtaining the serial number.

1. Reviewing Signatures.
2. Number required based on type.

For counties, the number of required signatures is based on the total votes cast for governor in that county at the last general election. For initiatives 15%; for referenda 10%.

For cities and towns, the number is based on the total ballots case in the last citywide or townwide election. Again, for initiatives 15%; for referenda 10%.

For recall, the total number of signatures required is 25% of the total number of votes case *for the office* divided by the *number of open seats*.

Example: Assume there are five candidates who ran for three open city council seat. The candidates received the following:

Candidate A 1080

Candidate B 920

Candidate C 450

Candidate D 330

Candidate E 220

How many signatures would be required?

 B. Strict versus Substantial Compliance

 C. Facial Review

The first review that you make of the signatures is based on the face of the petition. A.R.S. § 19-141(A) These are identified in A.R.S. § 19-121.01. They are also covered in very specific detail by the Elections Procedures Manual pages 311 to 320.

This initial review includes review of the front and back of the petitions. Names are removed if, on the fact of the petition, it is clear that statutorily required information is missing.

After establishing which signatures are “eligible for verification” the filing officer must produce a random sample. Here is the guidance the Secretary of State’s Office has for local filing officers:

The Secretary of State’s review software is incapable of randomly selecting a signature line that is blank or had already been eliminated. If a local filing officer conducts a random sample in which a blank line or eliminated signature is selected, the filing officer must select the next line down (even if that requires going to the next petition sheet in sequence) on which an eligible signature line appears if that line has not already been selected for random sample. A.R.S. § 19-121.01(C). If the next eligible line is already being used in the random sample, the local filing officer must proceed back up the page from the signature line originally selected for the random sample to the next previous signature line eligible for verification. If that line is being used in the random sample, the local filing officer must continue moving down the page or to the next page and select the next eligible signature as a substitute. The local filing officer must use this process of alternatively moving forward and backward until a signature eligible for verification (and not already included in the random sample) can be selected and substituted. A.R.S. § 19-121.01(C).

 D. Voter Registration Review.

This review is performed by the county recorders. A.R.S. § 19-141(F). It is covered in A.R.S. § 19-121.02. The Elections Procedures Manual provides an excellent summary at page 331.

1. Insane Litigation Deadlines.

 A. Prophylactic lawsuits due to staggered deadlines.

 B. What happened to A.R.S. § 19-122(C).

**Mechanics of the Election**

1. The Official Ballot.

Local charter amendment, initiative, referendum, bond measure, or budget override: 400 series

1. Campaign Finance Issues Regarding Ballot Propositions.

Campaign finance issues concerning ballot measure committees are handled under Title 16 because ballot measure committees are treated like any other political action committee.

1. Campaign Disclosure Issues Related to Ballot Propositions.

Similarly to campaign finance matters, disclosure and disclaimer requirements come from Title 16. All committees now have the same paid-for-by requirements. From A.R.S. § 16-925:

A. A person that makes an expenditure for an advertisement or fund-raising solicitation, other than an individual, shall include the following disclosures in the advertisement or solicitation:

1. The words “paid for by”, followed by the name of the person making the expenditure for the advertisement or fund-raising solicitation.

2. Whether the expenditure was authorized by any candidate, followed by the identity of the authorizing candidate, if any.

A peculiarity of the new statute is that one must not whether authorized by a candidate even for ballot measures.

The new system also makes the requirement to disclose major funders the same for all committees. Material must disclose “the largest aggregate contributions to the political action committee making the expenditure and that exceed twenty thousand dollars during the election cycle.”

Finally, the following detail is provided for disclaimers, including exceptions:

D. If the advertisement is:

1. Broadcast on radio, the disclosure shall be clearly spoken at the beginning or end of the advertisement.

2. Delivered by hand or mail or electronically, the disclosure shall be clearly readable.

3. Displayed on a sign or billboard, the disclosure shall be displayed in a height that is at least four percent of the vertical height of the sign or billboard.

4. Broadcast on television or in a video or film, both of the following requirements apply:

(a) The disclosure shall be both written and spoken at the beginning or end of the advertisement, except that if the written disclosure statement is displayed for the greater of at least one-sixth of the broadcast duration or four seconds, a spoken disclosure statement is not required.

(b) The written disclosure statement shall be printed in letters that are displayed in a height that is at least four percent of the vertical picture height.

E. This section does not apply to:

1. Social media messages, text messages or messages sent by a short message service.

2. Advertisements that are placed as a paid link on a website, if the message is not more than two hundred characters in length and the link directs the user to another website that complies with this section.

3. Advertisements that are placed as a graphic or picture link, if the statements required in this section cannot be conveniently printed due to the size of the graphic or picture and the link directs the user to another website that complies with this section.

4. Bumper stickers, pins, buttons, pens and similar small items on which the statements required in this section cannot be conveniently printed.

5. A solicitation of contributions by a separate segregated fund.

6. A communication by a tax-exempt organization solely to its members.

7. A published book or a documentary film or video.