

The Current Situation with Initiative Petition Signature Verification

In 2010, proposed initiative #25 brought to light a potentially problematic difference between the way that the Colorado Revised Statutes treat initial initiative petition submissions and subsequent cure petition submissions.

In order for a proposed initiative to be placed on the 2010 November ballot the proponents are required to submit 76,047 signatures. The proponents of proposed initiative #25 submitted 79,648 signatures in their initial filing. Upon receiving the initial submission this office randomly selected 4,000 signatures to verify as part of the statutorily required random sample. Of the 4,000 signatures 3,031 were found to be valid. From the random sample this office determined that the projected number of sufficient signatures was 60,357 or 79.37% of the total number of signatures submitted.

- Had the projected number of sufficient signatures fallen between 90% and 110% (68,443 – 83,651) of the required 76,047 this office would have been required to conduct a line-by-line review of every signature submitted.
- Had the projected number of sufficient signatures been greater than 110% (83,652) the petition would have automatically been deemed sufficient.

Pursuant to section 1-40-117, C.R.S., a proponent has fifteen days from receiving a statement of insufficiency to cure an initiative petition. The proponents of proposed initiative #25 were able to collect 47,114 signatures which they submitted as their cure to the statement of insufficiency. As required by statute all 47,114 signatures were individually reviewed within ten days. The cure resulted in an additional 35,527 valid signatures.

Reviewing each of the 47,114 signatures in ten calendar days proved to be an organizational and financial challenge for this office. The total cost of reviewing both the initial random sample and the cure for proposed initiative #25 was \$47,201.69, or approximately \$0.92 per verified signature. Had the initial submission required a line-by-line review the cost could have easily doubled (this would have happened if the initial projected number of signatures would have fallen within the 90 to 110% threshold).

In addition to the financial burden, the cure submission raised many questions regarding duplicate signatures. This office has received informal complaints, and allegations have been made, that the circulators for the proposed initiative #25 had many of the people who signed the original petition sign the cure. A random sample of the initial petition submission was verified and therefore at this time we do not know the number of duplicate signatures that exist within the cure. This is problematic of any cure to which the initial signature count is a “projected” count.

This office has drafted potential options to address the problems brought to light by the experience of reviewing the petition sections for proposed initiative #25.

Option A

- Change section 1-40-116 to require a line-by-line review of every signature submitted in the initial filing.
- Keep section 1-40-117 as it currently reads (line-by-line).

Pros

- The result of enacting this option would be to create a database of every signature submitted so that all duplicate signatures could be found.
- Currently any random sample that shows a projection in the 90-110% range requires a line-by-line review.

Cons

- An automatic line-by-line review would be expensive.
- An automatic line-by-line review would be time consuming.
 - Currently this office has 30 days from the date of submission to review an initial petition filing. When more than one petition is filed on the same day a review of every signature of each petition filed could become an impossible task. It is possible that seven petitions could be filed on August 2, 2010 – reviewing merely the random samples for each of these petitions would prove challenging.

Option B

- Keep section 1-40-116 as it currently reads
 - Insufficient <90% - 110% of random sample requires a line-by-line review<
 - Sufficient
- Change section 1-40-117 to require that signatures be examined in the same manner provided for verifying the original petitions.
 - The threshold would likely need to be changed (5% or 4000 whichever is greater) because a cure could conceivably require fewer than 4000 signatures.
 - Example: the threshold could be 4000 or if fewer than 4000, all signatures submitted would be reviewed.

Pros

- This change would create a consistent standard that is manageable and cost efficient.

Cons

- Finding duplicate signatures would not be an option.
- The legislature changed the statute from language similar to the proposal above to require a line-by-line review in 1993.

Option C

- Do not make any changes to section 1-40-116 or section 1-40-117.
- The personhood amendment was merely an anomaly and this is not a problem that will likely occur again.

Pros

- A legislative change is not required.

Cons

- It is impossible to predict whether or not this will happen again.
- The risk of a scenario where this office does not have the resources to verify a petition (or multiple petitions at the same time) is conceivable and therefore proper preparations should be made.

Option D

- Do not make any changes to section 1-40-116
- Change section 1-40-117 to require that the initiative proponents pay for the cost of reviewing a cure.

Pros

- This does not fix any of the technical or statistical problems; however it does help the financial problem.

Cons

- A cost shifting solution of this nature does not address the issue of fraud or duplicate signatures.
- Creating a financial burden to accessing the ballot could be problematic.

Option E

- Repeal section 1-40-117
- Proponents could use the protest statute (section 1-40-118) as a means of appealing a statement of insufficiency.

Pros

- This solution eliminates any problems, potential or proven, with the cure provisions.
- From a financial point of view this is a favorable solution.
- Currently major party candidates who petition onto the ballot are not given a cure option and they use the protest process at their own cost.
 - In 2010 candidates in Denver, Elbert, and Teller counties protested statements of insufficiency.
- The availability of a cure period allows a proponent to knowingly submit less than their best effort on the initial submission – do it right the first time or don't do it at all.

Cons

- If providing the option of curing an insufficient petition submission is good public policy then the proposed change would be in direct opposition.
- The only petition proponents who would try to “game” the system are proponents who have previously experienced the initiative process in Colorado. Most first time proponents are unaware to the time it takes to complete a successful initiative.

Additional Consideration

- The cure provisions will not apply to the majority of petition proponents in 2010 because a number of proposed initiatives for the 2009-2010 petition cycle waited until February 2010 to submit their initiative language to the Title Board.
 - A proponent has six months from the day that the ballot title and submission clause are set to circulate the petition, however no petition may be circulated within three months of the day of the election (August 2, 2010).
 - By waiting until February or later to set a ballot title the proponents not only limit the amount of time that they can circulate, but also the amount of time if any that they could cure.
 - Initiatives 37 - 98 would not have been able to take advantage of the entire six months circulation period.
 - Of the 21 petition formats submitted for circulation, 10 would not have been able to take advantage of the entire six month circulation period.

Criminal Penalty Option

A potential tool for fighting duplicate signatures could be the addition of a criminal penalty:

- Neither the cure section (1-40-117) nor the penalty section (1-40-130) addresses a criminal penalty for submitting duplicate signatures. Creating a criminal penalty in 1-40-130, C.R.S., for submitting duplicate signatures might create a deterrence to prevent proponents from trying to game the system with duplicate signatures.
 - For Example: the following language could be added to section 1-40-130
 - (1) It is unlawful:
 - (m) For any person to knowingly submit duplicate signatures as part of a petition filing.