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So You Want to Amend the Florida Constitution? A Guide to Initiative Petitions

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I. INTRODUCTION

Residents of Florida have a specific right that citizens of many other states do not have.¹ They have the power to amend their state constitution by gathering a set number of signatures on petitions calling for an amendment to be placed on a statewide ballot for ratification.²

This is called the initiative method.³ Prior to the 1968 revision of the Florida Constitution, amendments could be proposed only by Constitutional Convention⁴ or in resolutions adopted by the Florida Legislature.⁵ The

* Jim Smith was elected Florida's 21st Secretary of State on November 8, 1988, after serving 15 months as interim secretary by appointment of the governor. He was re-elected to a full term on November 6, 1990, becoming one of the few officials in state history elected to a different Cabinet post. Smith previously served two terms as Attorney General.

A native Floridian, he was born on May 25, 1940, in Jacksonville and attended public schools there until his father's work took the family to North Africa and Spain. He completed high school at an American school in Zaragosa, Spain and upon his return to the states attended Florida State University, earning a degree in Government and Public Administration. Commissioned in the Army Reserve in 1962, Smith served two years as a tank officer and then returned to Florida to earn a law degree at Stetson University.

Before being elected Attorney General in 1978, Smith spent 10 years in private and high level government service, including posts as Deputy Secretary of State, Deputy Secretary of Commerce, Senior Executive Assistant to the Governor and member of the Board of Regents of the State University System.

1. *See generally* TALBOT D'ALEMBERTE, THE FLORIDA STATE CONSTITUTION: A REFERENCE GUIDE 146-52 (1991).

2. FLA. CONST. art. XI, § 3.

3. *Id.*

4. FLA. CONST. of 1885, art. XVII, § 2 (1966).

5. FLA. CONST. of 1885, art. XVII, § 4 (1964).

1968 revision added an automatic meeting of the Constitution Revision Commission (the "Commission") ten years after the adoption of the revised constitution and every twenty years thereafter.⁶ The first Commission was organized in 1977 and submitted eight amendments to voters. All were rejected. The next Commission is scheduled to begin deliberations in 1997.

Still another way to amend the constitution was adopted by the voters in 1988 when they created the Florida Tax and Budget Reform Commission to review taxation and budget issues decennially.⁷ The Commission was given authority to put amendments on the ballot.⁸

The Commission met for the first time in 1990⁹ and, after two years of public hearings, placed four amendments on the 1992 general election ballot. One amendment was removed by the Supreme Court of Florida prior to the election;¹⁰ two of the three that appeared on the ballot were adopted.

Earlier Florida Constitutions provided for a referendum to amend or revise the constitution.¹¹ A referendum is first proposed by the Legislature and then decided by the voters at a general election.¹² Initiatives, by contrast, originate with the people and do not require legislative approval.¹³

Amendments by the initiative process are increasingly popular. As of January 1994, there were nineteen constitutional initiative committees at work collecting signatures around the state.¹⁴ However, this is not an easy task. Since 1976, only ten of some sixty-five attempts have accrued the required number of signatures. Of them, two were removed by the Supreme Court of Florida prior to the general election for not meeting the legal requirements for initiatives.¹⁵ Five of the remaining eight were adopted.

6. FLA. CONST. art. XI, § 2(a).

7. *Id.* § 6(a).

8. *See id.* § 6(c).

9. *Id.* § 6(a).

10. *Smith v. American Airlines, Inc.*, 606 So. 2d 618, 622 (Fla. 1992).

11. *See* FLA. CONST. of 1885, art. XVII, § 4 (1964).

12. *See id.*

13. *See* FLA. CONST. art. XI, § 3.

14. American Dream in Florida, American Family Political Committee of Florida, The Campaign for Florida's Future, Committee to Elect the Public Service Commission, Citizens for a Safe Florida, Citizens Protecting Their Rights to Elect Florida Sheriffs, Education First Committee, Enough is Enough, Fair Ballot Access Committee, Florida Pension Reform Committee, Florida State Lodge - Fraternal Order of Police, Home Rule Committee, The Human Rights Task Force, Save Our Everglades Political Action Committee, Save Our Sealife Committee, SOS Foundation, Inc., Take Back America, Tax Cap Committee (filed three separate petitions), Taxpayer Association.

15. *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984); *Fine v. Firestone*, 448 So. 2d 984, 993 (Fla. 1984).

The following made ballot position:

- 1976 Ethics in Government: Adopted¹⁶
- 1978 Casino Gambling: Not adopted
- 1984 Citizens' Choice on Government Revenue: Removed from ballot by court¹⁷
- 1984 Citizens' Rights on Civil Actions: Removed from ballot by court¹⁸
- 1986 State Operated Lotteries: Adopted¹⁹
- 1986 Casino Gambling: Not adopted
- 1988 Limitation of Non-Economic Damages: Not adopted
- 1988 English is the Official Language of Florida: Adopted²⁰
- 1992 Eight is Enough: Adopted
- 1992 Save Our Homes: Adopted

II. A STEP-BY-STEP GUIDE TO AMENDING FLORIDA'S CONSTITUTION BY INITIATIVE

1. Contact the Department of State's Division of Elections²¹ and request a free packet of information. You will receive a packet which includes the 1994 initiative petition information, a handbook for committees, all pertinent laws and rules, and necessary forms for filing as a political committee.

2. Sponsors must register as a political committee with the Division of Elections,²² before circulating a petition.²³ The division will furnish the sponsors with all necessary information on how to form a committee and the duties of a committee.

Committees are advised to begin work at least four years before the election in order to have sufficient time to gather the necessary signatures

16. FLA. CONST. art. II, § 8.

17. *Fine*, 448 So. 2d at 993.

18. *Evans*, 457 So. 2d at 1355.

19. FLA. CONST. art. X, § 15.

20. *Id.* art. II, § 9.

21. The Division of Elections' address is 1801 The Capitol, Tallahassee, Florida 32399-0250; telephone (904) 488-7690; fax (904) 488-1768.

22. As required by section 106.03 of the Florida Statutes. *See* FLA. STAT. § 106.03 (1991).

23. *Id.* § 106.03(1).

and deal with any legal challenges that might arise. However, some committees have made ballot position in less than two years.

3. Sponsors must submit the text of the proposed amendment to the Secretary of State²⁴ for review.²⁵ The Secretary approves the form of the petition, but not its legal sufficiency.²⁶ The form will be checked for completeness,²⁷ for the correct number of words in the ballot title (fifteen or less) and in the summary (seventy-five or less),²⁸ and for correct size and format of the petition.²⁹ Once approved, the petition can be circulated to obtain signatures of registered voters.³⁰

4. When at least ten percent of the required number of signatures from one-quarter of the congressional districts is collected, the Secretary of State shall submit the petition language to the Attorney General, who will then forward the petition to the Supreme Court of Florida for an advisory opinion on whether the text conforms to the requirements of article XI, section 3 of the Florida Constitution.³¹ The court will also determine if the ballot title and summary of the amendment comply with section 101.161 of the Florida Statutes.³²

5. Sponsors must deliver the petitions to the supervisors of elections in order for the signatures to be verified,³³ a process that can take several weeks or longer if the supervisor's staff is extremely busy. Verification will usually take less time if signature cards are submitted as they are collected and the final group is submitted several months before the deadline.

Once certified as having obtained the necessary number and distribution of signatures of registered voters, certification is sent to the Division of Elections by the supervisor of elections. The actual petitions are retained

24. The Secretary of State's responsibilities for initiatives are handled by the Division of Elections of the Department of State.

25. FLA. STAT. § 100.371(3) (1991); FLA. ADMIN. CODE ANN. r. 1S-2.009(1) (1990).

26. FLA. ADMIN. CODE ANN. r. 1S-2.009(1) (1990).

27. *See id.* r. 1S-2.009.

28. FLA. STAT. § 101.161(1) (1991).

29. FLA. ADMIN. CODE ANN. r. 1S-2.009(2) (1990).

30. *See id.*

31. FLA. STAT. § 16.061(1) (1991); *see also* FLA. CONST. art. XI, § 3 (listing the requirements).

32. *See infra* notes 49-53 and accompanying text.

33. FLA. STAT. § 15.21(3) (1991); *see also id.* § 99.097 (detailing the process by which signatures are verified).

by the supervisor of elections. Any initiative which receives the required number of signatures no later than ninety-one days prior to the general election will appear on the ballot, unless successfully challenged in court.³⁴

If an initiative comes under legal challenge, it is up to the sponsor or other interested persons to defend it in court. The deadline for the supervisors to submit signature verification to the Division is 5:00 p.m., August 9, 1994, for the November 1994 general election.

III. FREQUENTLY ASKED QUESTIONS

The following are frequently asked questions regarding the initiative process in Florida:

How are political committees formed?

A political committee is defined as two or more persons or individuals supporting or opposing candidates, issues, or political parties and which accepts contributions or makes expenditures of more than \$500 a year.³⁵ Furthermore, a sponsor of an amendment must always register as a political committee regardless of the number of persons involved and regardless of the amount of money raised or spent.³⁶

Under section 106.03(2) of the Florida Statutes, a political committee must furnish the following information when it files a statement of organization with the Division of Elections:

- (a) The name and address of the committee;
- (b) The names, addresses, and relationships of affiliated or connected organizations;
- (c) The area, scope, or jurisdiction of the committee;
- (d) The name, address, and position of the custodian of the books and accounts;
- (e) The name, address, and position of other principal officers, including officers and members of the finance committee, if any;
- . . .
- (g) Any issue or issues such organization is supporting or opposing;
- . . .
- (i) A statement of whether the committee is a continuing one;
- (j) Plans for the disposition of residual funds which will be made in the

34. FLA. CONST. art. XI, § 5(a).

35. FLA. STAT. § 106.011(1) (1991).

36. *Id.*

event of dissolution [of the committee];

(k) A listing of all banks, safe-deposit boxes, or other depositories used for committee funds; and

(l) A statement of the reports to be filed by the committee with federal officials, if any, and the names, addresses, and positions of such officials.³⁷

How many signatures must be collected?

The number of signatures must equal eight percent of the voters in the most recent presidential election.³⁸ Currently, the number is 429,428. To assure statewide coverage, the signatures must be from at least half the congressional districts,³⁹ currently twelve of the twenty-three districts.

How do I know how many votes are required from each district and how many registered voters are in each district?

That information is part of the initial informational packet provided by the Division of Elections..

How long are the signatures valid?

Every signature must be dated when made and is valid for four years from that date.⁴⁰

What appears on an initiative petition?

The Division of Elections has a rule providing the format of the constitutional amendment petition form.⁴¹ The minimum size of the petition is 3" x 5", the maximum size 8 ½" x 11". The form must contain the signature of the voter, the date signed, and the printed name of the voter including address, precinct number, congressional district and county. However, if the voter does not know the precinct number, congressional district and county, the supervisor of elections will certify the signature if the supervisor is able to ascertain that the person is a registered voter. The form must contain the ballot title, the ballot summary and the full text of the proposed amendment. There are no specifications on what kind of paper the petition should be on, but many sponsors have used card stock since the forms will be handled several times by various people. Only one signature

37. *Id.* § 106.03(2).

38. FLA. CONST. art. XI, § 3.

39. *Id.*

40. FLA. STAT. § 100.371(2) (1991); FLA. ADMIN. CODE ANN. r. 1S-2.009(1), (2) (1990).

41. FLA. ADMIN. CODE ANN. r. 1S-2.009 (1990).

can be on each form.⁴²

Does the Secretary of State's office assist in writing the petition language?

No. Anyone considering sponsoring an amendment should consult an attorney for assistance in wording the proposal.

May the petitions be in a language other than English?

Some petitions have been circulated with English on one side of the form and Spanish on the other. In 1988, voters adopted a constitutional initiative proclaiming English as the official language of Florida.⁴³ However, there have been no judicial decisions indicating whether a petition must be in English.

How are the signatures verified?

Employees in the local supervisor of elections' office compare the signatures, names and addresses to voter rolls.⁴⁴ In some counties, they must be compared by hand. Other counties have voter information on computer file. Signatures of persons who are not registered voters of the county, who were purged from the voter rolls for not voting in two years⁴⁵ or who have signed the petition more than once are rejected. People who did not furnish complete information (missing an address, for example), whose signatures do not match those on file or who have illegible handwriting may prevent the supervisor from being able to determine the person's voter registration status.

When verification is completed, the supervisor sends the Division of Elections a certificate detailing how many signatures were submitted, how many were valid and the distribution by congressional district. If committee members want to know how many signatures have been verified, it must contact the Division of Elections. The supervisor of elections will explain why signatures were rejected if requested.

How much does it cost to have the signatures verified?

Either the actual cost to the supervisor or ten cents per name, whichever is less.⁴⁶ If a political committee states that it is unable to pay

42. *See id.*

43. FLA. CONST. art. II, § 9.

44. FLA. STAT. § 99.097 (1991).

45. Op. Div. Elect. Fla. 91-04, 91-01, 88-38, 88-10, 87-16.

46. FLA. STAT. § 99.097(4) (1991).

for the verification due to financial hardship, payment is waived after certification of this is made to the supervisor.⁴⁷

How long does it take to verify signatures?

It varies, but committees should keep in mind that as the election date approaches, the supervisor's office becomes increasingly busy. If petitions are submitted too close to the deadline, it is possible that there will not be sufficient time to check them all. Several weeks lead time is recommended at a minimum.

On what basis are most constitutional initiatives challenged in court?

Some initiatives have encountered court challenges alleging that they do not comply with the single-subject requirements of article XI, section 3 of the Florida Constitution⁴⁸ and the ballot title and summary requirements of section 101.161 of the Florida Statutes.⁴⁹

In 1972 the constitution was amended to limit initiative amendments to "one subject and matter directly connected therewith," better known as the single-subject requirement, and to provide that such an amendment or revision could be made to any "portion or portions" of the constitution rather than to a section.⁵⁰ In addition, section 101.161 of the Florida Statutes requires that any constitutional amendment or other public measure submitted to the vote of the people must:

1. Be answered by a yes or no response. A yes vote indicates approval of the proposal; a no vote indicates rejection of the proposal.
2. Along with the actual wording of the amendment, have a summary of no more than seventy-five words and a title of no more than fifteen words.
3. The summary must be in "clear and unambiguous language."⁵¹

How can an amendment be protected from a court challenge?

Prior to 1987, there was no way to get any type of court review before an initiative made ballot position. The Legislature then amended chapters 15 and 16 of the Florida Statutes, relating to the Secretary of State and Attorney General, to provide that when ten percent of the necessary

47. *Id.*

48. *See, e.g., Fine*, 448 So. 2d at 985.

49. *See, e.g., Smith*, 606 So. 2d at 621.

50. FLA. CONST. art. XI, § 3.

51. FLA. STAT. § 101.161(1) (1991).

signatures is obtained from twenty-five percent of the congressional districts required, the Secretary will submit the petition to the Attorney General.⁵² Within thirty days after receipt, the Attorney General petitions the Supreme Court of Florida requesting an advisory opinion on the initiative's conformity with article XI, section 3 of the Florida Constitution and with section 101.161 of the Florida Statutes.⁵³ In addition, the Attorney General may enumerate any specific factual issues that require a judicial determination.⁵⁴

52. *Id.* § 15.21.

53. *Id.* § 16.061(1).

54. *Id.*