



ISSUE NUMBER 3

(Referred to the people by the Arkansas General Assembly)

Changing Arkansas' Citizen Initiative Process, Votes Required for Legislative Proposals, and Publication Requirements

POPULAR NAME: A constitutional amendment to amend the process for the submission, challenge, and approval of proposed initiated acts, constitutional amendments, and referenda

BALLOT TITLE: An amendment to the Arkansas Constitution to amend the process for the submission, challenge, and approval of proposed initiated acts, constitutional amendments, and referenda.

What is being proposed?

Voters are being asked to approve changes to Arkansas' citizen initiative process, the number of votes required for legislative ballot issues, and publication requirements for legislative ballot titles.

Specifically, this amendment would change Article 5, Section 1 of the Arkansas Constitution, known as "Initiatives and Referendum." The proposed changes would:

1. Change the date when voter signatures are due for statewide ballot measures proposed by the public. Instead of four months ahead of the general election, the due date would be set as January 15 of the election year.
2. Increase the number of counties where voter signatures must be collected for statewide ballot measures and referendums proposed by the public, from 15 counties to 45 counties.
3. Establish April 15 of the election year as the deadline for filing lawsuits challenging statewide ballot measures proposed by the public.

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QUICK LOOK: What does your vote mean?

FOR: A FOR vote means you are in favor of changing the Arkansas Constitution regarding the process for the submission, challenge, and approval of proposed initiated acts, constitutional amendments, and referenda. This includes moving up the date voter petitions are due, increasing the number of counties where voter signatures must be collected for all citizen-initiated ballot measures, establishing a deadline for lawsuits challenging ballot measures, eliminating extra time allowed to collect additional voter signatures at the state and local level, and increasing the number of votes from state lawmakers to place their proposals on the ballot.

AGAINST: An AGAINST vote means you are not in favor of changing the Arkansas Constitution regarding the process for the submission, challenge, and approval of proposed initiated acts, constitutional amendments, and referenda.

4. Eliminate the ability of statewide ballot issue groups to collect and submit additional signatures from voters to put a proposed constitutional amendment, state law or referendum on the ballot if the first round of signatures submitted to the Secretary of State do not meet the threshold. This is often called a “cure period.”
5. Eliminate the cure period for local ballot measures on a city or county-wide ballot if the first round of signatures submitted to the city or county clerk does not meet the threshold.
6. Eliminate a section requiring that a person challenging the validity of a ballot issue petition in court has the burden to prove the petition is invalid. The impact of this change is not clear.
7. Add a sentence to the constitution that extends a deadline that falls on a weekend or holiday, to the next day that isn't a Saturday, Sunday or legal holiday.

The proposed amendment would also make changes to Article 19, Section 22 of the Arkansas Constitution, known as “Miscellaneous Provisions.” The proposed changes would:

1. Increase the number of votes needed by state legislators to refer a constitutional amendment to voters, from a simple majority of legislators in each house of the General Assembly to 3/5 of the members in each house. This is a change from 50% to 60% of legislators in each house.
2. Delete a requirement that constitutional amendments proposed by the legislature be published in a newspaper in each county for six months ahead of the election. Instead, the proposed amendment would be published “in a manner provided by law.” No additional definition is provided.

The proposed amendment would also make changes to Amendment 70, Section 2 of the Arkansas Constitution impacting proposed constitutional amendments changing salaries of elected state officials:

1. Add a sentence to the constitution that would require constitutional amendments proposed under this section to comply with requirements in Article 19, Section 22. This would effectively increase the number of votes needed by state legislators to refer salary-based constitutional amendments to voters from a simple majority of legislators in each house to 3/5 of all members in each house. This is a change from 50% to 60% of legislators in each house.
2. Delete a requirement that proposed constitutional amendments affecting the salary of statewide elected officials and legislators be published in a newspaper in each county for six months ahead of the election. Similar to proposed changes to Article 19 listed above, an amendment proposed under this section would be

published “in a manner provided by law.” No additional definition is provided.

How did this issue get on the ballot?

The Arkansas Senate and House of Representatives voted to place Issue 3 on the 2020 General Election Ballot. The Arkansas Constitution grants the legislature the right to include up to three constitutional amendments on the general election ballot.

Constitutional amendments require the approval of a majority of voters in a statewide election. Election Day is Nov. 3, 2020.

Who were the main sponsors of this amendment?

Rep. DeAnn Vaught of Horatio and Sen. Matthew Pitsch of Fort Smith.

What are initiated acts, constitutional amendments, and referenda?

Initiated acts are state laws proposed by the public. Constitutional amendments are changes to the state constitution. Referenda refers to special elections requested by voters on state laws passed by the legislature. Collectively, these are often called ballot measures or ballot issues.

Once passed, constitutional amendments cannot be changed without a vote of the people, unless the amendment specifically gives legislators or others authority to make changes. Initiated acts, which are state laws, can be changed or repealed by a two-thirds vote of both houses of the General Assembly.

Who can propose constitutional amendments?

The legislature and Arkansas citizens can change the existing state constitution through the ballot issue process.

Legislators have the right to refer ballot issues to the public. They can propose up to three amendments on the General Election ballot. Legislators also have the authority to propose a fourth amendment if it deals with legislative salaries.

The ability for citizens to petition voters was first put in place in 1910, though it wasn't cemented in law until 1925 when the Arkansas Supreme Court upheld Amendment 7 of 1920 that spelled out the citizen initiative process that is in the Constitution today.

Arkansas is one of 15 states that allow citizens the ability to collect voter signatures to put a proposed state law, constitutional amendment, or referendum on the ballot for voters to decide. A ballot issue group must file a statement of organization with the Arkansas Ethics Commission if any

The following statements are examples of what supporters and opponents have made public either in media statements, campaign literature, on websites or in interviews with Public Policy Center staff. The University of Arkansas System Division of Agriculture does not endorse or validate these statements.

What do supporters say?

- In Arkansas, out-of-state interest groups have taken advantage of the current initiative process by buying signatures in the parts of Arkansas that have large populations and predominantly one type of ideology. By collecting signatures there, these interest groups can affect governance to the left when our state has predominantly gone middle to the slightly middle right. Entities like casinos, marijuana, higher minimum wage, and things that were introduced to the state by large special interest groups; things that the liberal-type entities want to get across our country.
- The Arkansas Constitution should be held as our sacred governing document, and should not be easily changed by outside influence. Issue 3 would build a layer of protection around the constitution.
- This proposal requires a specified number of citizens in 60% of the counties to sign a petition or yes votes by 60% of the legislature to put a measure on the ballot. These changes seek to ensure that the only measures placed on the ballot will have been considered important by a significant number of Arkansans.
- Both the Courts and electors benefit from a deadline to file lawsuits. The court is given ample time to rule on the proposal and if a proposal is removed from the ballot by the court, it should be done before money has been raised and spent to support or oppose a measure.

What do opponents say?

- It will make it virtually impossible to get a petition on the ballot and that's their goal.
- If the politicians, the lobbyists at the State Chamber and the Farm Bureau wanted to protect our constitution then they should have proposed an amendment to restrict the number of amendments that they can refer since over 80% of the amendments originated with the legislature. But they did not, and the reason that they did not is that this is not about the number of amendments to the constitution that have been approved by voters. It is an attempt by the politicians to take power away from the people.
- If everyday Arkansans couldn't propose ballot measures, the minimum wage in Arkansas would still only be \$8.50 an hour. But in 2018, because of a citizen-led ballot measure, over 68 percent of Arkansas voters approved an increase in the pay of hardworking people.
- It would make it much more difficult for citizen-led ballot measures to collect the signatures they need to get their proposal on the ballot. It would more than double the requirement for the number counties where signatures would be collected, from 15 to 45 counties. More signatures required means more money would have to be spent to collect signatures; so only the biggest, best-financed campaigns could succeed in moving their measure forward. It would also decrease the amount of time citizens can collect signatures for ballot measure petitions by about six months, adding yet another barrier to signature collection.

money is raised or spent on a campaign.

According to historical sources, Arkansas legislators referred 124 constitutional amendments to voters between 1884 and 2018¹. Voters approved 71 of those measures and rejected 53 proposals.

The same sources show that between 1912 and 2018, citizen-led groups succeeded in putting 77 amendments on the ballot for voters to decide. Voters approved 36 of those measures and rejected 41.

Citizen-led groups also proposed 31 state laws. Voters approved 16 of the measures and rejected 15 proposals. During that same time period, seven state laws adopted by the legislature were put on the ballot as referendums. Voters decided to keep two of the laws and overturned the rest.

Many of the proposals made since 1874 have dealt with similar subject matter. For example, taxes, casino gaming and term limits have been the subject of multiple proposals over the decades.

What is the signature collection process now?

To put a proposed constitutional amendment, state law or referendum on the statewide ballot, a citizen must first file the proposed ballot title with the Secretary

¹Goss, Kay. (2011). The Arkansas Constitution. P 21-25. Arkansas Secretary of State. Historical Initiatives & Referenda Election Results (1938-2018). Accessed from <https://bit.ly/3gTUtXe>

of State's Office. Only after this initial step is completed can they begin to ask voters to sign their petition.

Some ballot issue groups rely on volunteers to ask voters for their signatures while others pay companies to send canvassers out across the state.

For constitutional amendments, Arkansas' Constitution requires groups obtain voter signatures equaling 10% of the number of people who voted in the last governor's election. For state laws, they must have signatures equaling 8%. For referendums, they must have signatures equaling 6%.

For 2020, petitions for constitutional amendments must contain at least 89,151 voter signatures. Those 89,151 signatures must come from at least 15 different counties. In those 15 counties, ballot issue groups are required to collect signatures from at least 5% of the number of people who voted for governor in that county.

For example, if 1,000 people voted for governor in a particular county, a petition from that county must have at least 50 valid voter signatures to count as one of the 15 required counties.

The Secretary of State's office is charged with verifying signatures to ensure the correct number of valid signatures have been submitted for the issue to appear on the ballot.

How would this amendment change the signature collection process for statewide ballot measures?

If approved, this amendment would make three substantial changes to the signature collection process for statewide ballot measures:

1. Ballot issue groups must collect signatures from voters in 30 additional counties. The total number of signatures submitted would have to come from at least 45 counties instead of 15 counties as currently required.
2. More signatures would be needed to offset invalid signatures, such as duplicates, those with illegible signatures or identifying information, or when people who aren't registered to vote sign petitions. While the number of total signatures required wouldn't change, the proposed amendment would eliminate the ability for groups to collect additional signatures to offset any that are eliminated. That additional time is often called a "cure period."
3. Signatures would have to be submitted earlier in the year. The proposal sets January 15 of the election year as a new due date for signatures, rather than early July of the election year, which is four months ahead of the general election.



Does signing a petition mean you are in favor of the ballot measure passing?

No. By signing a petition, you are expressing support for putting the proposed measure on a statewide or local ballot for Arkansas voters to decide during an election.

How would this amendment change the process legislators use to refer constitutional amendments to voters?

Issue 3 would increase the number of votes required to put their proposed constitutional amendments on the ballot for voters to decide.

- An additional 3 senators – from 18 of 35 senators to 21 of 35 senators – would have to vote yes to put an amendment on the ballot.
- An additional 9 representatives in the House – from 51 of 100 representatives to 60 of 100 representatives – would have to vote in favor of referring an amendment to voters.
- Overall, this is a total of 12 additional votes needed from the General Assembly to refer a proposed constitutional amendment to voters.

Does voting to place a constitutional amendment on the ballot mean a legislator is in favor of the ballot measure passing?

No. While some legislators may support a constitutional amendment, many have said in media interviews they want voters to decide an issue.

How would this amendment affect lawsuits related to ballot measures?

Issue 3 includes two changes affecting lawsuits related to ballot measures.

1. The proposed amendment would remove a section of the constitution that states a person challenging the validity of a ballot issue petition in court has the burden

to prove the petition is invalid. The language is part of a larger section Issue 3 proposes to delete regarding “cure periods.”

The impact of deleting this language regarding burden of proof is not immediately known. However, even without that language, the burden of proof in most civil lawsuits is on the plaintiff who brings the suit. So, if the opponent of a petition files a lawsuit challenging the validity of a petition, it is still likely that the opponent would have the burden to prove the petition’s invalidity except where other existing Arkansas laws put the burden on the sponsor.

2. The amendment would create a deadline by which lawsuits challenging citizen-initiated statewide ballot measures must be filed. The deadline would be April 15 of the election year.

Currently there are no deadlines for when someone must file a lawsuit regarding statewide ballot measures. Lawsuits related to ballot measures are typically filed within a few months or weeks of Election Day because the Secretary of State certifies voter signatures and the official ballot in late August. However, under the proposed amendment, which eliminates the cure period for collecting additional signatures, all signatures would be due by January 15 of the election year. So, if approved, people would have three months to file lawsuits challenging citizen-initiated statewide ballot measures. The April 15 deadline would not apply to proposed amendments referred by the legislature.

Opponents often file lawsuits to stop a measure from being placed on the ballot. Lawsuits typically (1) question the wording of a ballot measure or title, or (2) challenge the validity of voter signatures collected to put the measure on the statewide ballot.



For example, a September 2016 court challenge to a medical marijuana amendment resulted in the Arkansas Supreme Court striking the measure from the ballot after early voting started. The court agreed with opponents that more than 12,000 signatures shouldn’t have applied toward the signature requirement because canvassers (1) lacked the proper background checks or had other paperwork problems, or (2) voters used business addresses instead of residential addresses when signing petitions.

How does this amendment apply to local ballot issues?

Issue 3 would not increase the number of signatures required for local ballot measures submitted to cities or counties. But it would eliminate the “cure period” that local ballot issue groups currently have to obtain additional signatures after submitting their first petition.

How has the Arkansas Constitution changed over time?

Arkansas voters approved their state’s fifth constitution in 1874 during a period known as Reconstruction after the Civil War. Legislators and governors have made several major attempts since then to replace or modernize the Arkansas Constitution through Constitutional Conventions.

Proposals for new state constitutions were placed on the ballot in 1918, 1970 and 1980. Voters rejected the proposals each time for different reasons.

According to a book about the Arkansas Constitution, the 1918 vote came during World War I and the deadly flu pandemic. There was very low turnout with some precincts not reporting any votes, according to the book, *The Arkansas Constitution*, by Kay Goss.

Voters in 1968 authorized a Constitutional Convention but rejected a much shorter constitution presented to them two years later. The 1970 proposed constitution was rejected by a vote of 223,334 (43%) in favor to 301,195 against (57%)

Newly elected Gov. David Pryor led a push in 1975 for another attempt at replacing the constitution. Voters approved a new convention in 1976. Legislators worked on a new draft, with years of revision and public hearings. However, voters again rejected a new constitution in 1980 by a vote of 276,257 voters in favor (37%) to 464,210 against (63%).

The Arkansas Constitution now includes 100 amendments, some of which have since been voided by court decisions or altered by newer ballot measures.

Voters approved the state’s first amendment in 1884 and its 100th in 2018. The 1884 amendment, involving bond issues, was referred by legislators. The 100th amendment was a

result of a ballot issue petition to legalize casino gaming in certain parts of Arkansas.

When was the last time Arkansans voted on changing the ballot initiative process?

Voters approved Amendment 93 in 2014, which changed an important part of the citizen initiative process for campaigns. This amendment from the legislature created a new threshold for ballot issue groups to meet before they could gather additional voter signatures for their proposals under the “cure period” provisions.

Before the amendment, ballot issue groups automatically received 30 days to collect additional voter signatures after turning in their first batch of petitions to the Secretary of State’s Office. Groups would submit thousands of signatures but continue to canvass and ask voters to sign their petitions. They did this in case some of the signatures submitted were rejected due to being unreadable, involved fake names or were from people not registered to vote.

Because of the amendment, ballot issue groups must wait to hear from the Secretary of State if they qualify for that “cure period” time. Amendment 93 only allows that time if 75% of the signatures turned in are valid.

How does Arkansas’ citizen initiative process compare to other states?

Signature requirements, petition deadlines, and processes vary across the states that allow citizens to propose an amendment or new state law to voters. No state is exactly like Arkansas.

When it comes to the geographical spread of required voter signatures, some states require a certain number of signatures from congressional districts or state legislative districts. Some require a certain number of counties while others offer a simple prohibition of collecting all the signatures in one county. Like Arkansas, some states tie their requirements to the number of people who voted in a particular election, while other states require a certain percentage of registered voters.



For more information about the processes other states follow, you can find a 2019 analysis by the Public Policy Center at <https://bit.ly/32bv2wo>.

If passed, when would the changes in Issue 3 take effect?

The amendment would go into effect Jan. 1, 2021.

Where can I find more information?

The complete wording of this amendment can be found at www.uaex.edu/issue3

The following is the proposed constitutional amendment name and title as they will appear on the state’s November General Election ballot.

Issue No. 3

(Popular Name)

A Constitutional Amendment To Amend The Process For The Submission, Challenge, And Approval Of Proposed Initiated Acts, Constitutional Amendments, And Referenda

(Ballot Title)

An Amendment to the Arkansas Constitution to amend the process for the submission, challenge, and approval of proposed initiated acts, constitutional amendments, and referenda.

FOR ISSUE NO. 3

AGAINST ISSUE NO. 3