

State Question 750 eases initiative petition requirements

By Patrick B. McGuigan

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If enacted by voters, State Question 750 would establish a consistent signature requirement benchmark for placing questions on the statewide ballot in Oklahoma's initiative petition process. In combination with significant federal decisions, passage of the referred ballot question this year would continue a recent trend easing initiative and referendum strictures in the Sooner State.

Currently, the Oklahoma Constitution requires that an initiative petition be signed by a set percentage of legal voters based upon the total number of votes cast at the last general election for the office receiving the highest number of votes.

For a popular referendum (a yes/no vote, allowing voters to repeal a new bill), that target is currently 5 percent. It is 8 percent for statutory initiatives, 15 percent for proposed constitutional changes via an initiative, and 25 percent to get a second shot at a previously rejected initiative or referendum measure.

Due to higher voter turnout in presidential years, initiative petition drives have faced a much higher hurdle following a presidential election than after the gubernatorial elections which always occur during a presidential mid-term.

For example, in the 2008 presidential election, there were 1,462,661 votes cast in Oklahoma. In comparison, there were 926,462 votes cast in Oklahoma's 2006 gubernatorial race.

As a result, the signature threshold for putting an initiative petition on the ballot after 2008 was far higher than the number of signatures required after the 2006 elections.

Under State Question 750, the signature requirements would be based on the turnout in gubernatorial election, i.e. always non-presidential elections. As a result, signature requirements would change only every four years and would be permanently tied to the lower-turnout gubernatorial elections. This would make it easier for Oklahomans to gather enough signatures to send questions to the ballot through initiative petitioning while also reducing the dramatic fluctuation in signature requirements every two years.

The number of signatures currently required to put an initiative on the ballot based on the 2008 voter turnout would be 117,013. If State Question 750 was in place today, that threshold would be 74,117 voter signatures.

Critics have said Oklahoma's laws regulating citizen initiatives, taken as a whole, are some of the strictest in the country. For example, under existing law, Oklahomans have just 90 days to gather signatures for a citizen-led initiative petition – currently the second-shortest period in the nation.

Still, citizens have successfully used the initiative process in the past, putting major reforms on the ballot. For example, the petition process allowed voters to establish term limits for state lawmakers after a petition drive in the early 1990s.

But challenges facing initiative organizers increased for several years, thanks in large measure to court rulings.

In 2006, the Oklahoma Supreme Court tossed out an initiative petition effort to put a “taxpayers’ bill of rights” (or TABOR) on the ballot. The measure would have placed greater restrictions on state spending, limiting annual increases in the state budget to the rate of inflation plus population growth, and redirecting any excess funds back to taxpayers.

The court ruled many signatures garnered for that petition drive were invalid because they had been gathered by “professional” signature collectors from out-of-state. Legally, at the time those collecting signatures had to be residents of Oklahoma.

Advocates of the TABOR measure asserted they had met traditional residency requirement and therefore were valid petitioners. However, Attorney General Drew Edmondson asserted a more limited interpretation and sought to prosecute three leaders of the TABOR drive. Ultimately, activists for a subsequent petition drive successfully challenged the state’s residency requirements.

In the past, use of professional signature gatherers had been common because those involved, if living in the state during petitioning, were considered “residents.” The state had ruled that merely living in the state did not mean an individual was a “resident” of Oklahoma. Edmondson pressed an expansive interpretation of this in the controversial case of the “Oklahoma Three.”

Similar objections had been raised in 2001 when opponents of cockfighting gathered enough signatures to put a question banning the sport on the ballot. An Oklahoma Supreme Court referee at the time said that nearly half of the signatures collected were not valid due to the use of out-of-state officials to gather signatures, but the justices overruled their referee and put the question before voters.

When the same objections were raised in the TABOR controversy, the Oklahoma Supreme Court reversed course and struck down the initiative based on complaints about out-of-state petitioners. Ultimately, however, that state judicial ruling did not withstand federal court scrutiny.

The legacy of past state court rulings have clearly made it more difficult to gather enough signatures for initiative petitions, which may be one reason 11 of the 12 statewide ballot questions facing voters this November 2010 were placed on the ballot by the Oklahoma Legislature and not through the initiative process.

That one initiative is State Question 744, the controversial initiative promoted by the Oklahoma Education Association, the state's largest labor union. The measure is being touted for popular approval with the help of a \$3 million contribution that came a few weeks ago from other affiliates of the National Education Association.

Residency requirements for Oklahoma petition drives eroded due to a late 2008 decision from the U.S. Court of Appeals for the Tenth Circuit, which slapped down Oklahoma's version of residency requirements.

The consideration of qualifications for petition circulators aside, state lawmakers now apparently support the effort to make the initiative process easier for citizens.

Senate Joint Resolution 13, which placed State Question 750 on this November's ballot, passed the Oklahoma House of Representatives on a bipartisan 78-17 vote in 2009. The measure cleared the state Senate by an overwhelming 42-2 vote.