



CELDF REPORT

What Wasn't Voted On: The Undermining of Direct Democracy and How Covid-19 Exacerbated Attacks on Ballots Measures in 2020

A new Community Environmental Legal Defense Fund report details the repression of ballot initiatives in 2020.

~November 2020~

Gerrymandering, voter suppression, and state legislatures' centralization of power have cut off and delayed democratic change in most states. In response, movements have turned to direct democracy ballot initiatives to introduce new ideas, make gains and resist reactionary agendas. We see this dynamic in states like Florida, Missouri, Arizona, Arkansas, North Dakota, South Dakota, and others.

The ballot initiative process, fought for by anti-corporate movements a century ago, has become a key mechanism-of-last-resort for social movement campaigns hoping to tax the rich, rein in corporate power, end gerrymandering, protect the right to vote, ban fracking, raise the minimum wage, protect workers and otherwise propose new ideas. Ballot initiatives advanced by communities partnering with the Community Environmental Legal Defense Fund (CELDF) have faced similar obstruction in Ohio, Washington and Oregon, including Columbus, Ohio's 2020 *Columbus Community Bill of Rights* city charter amendment to assert the right of people and ecosystems to "clean water, air, and soil." These initiatives all challenge some of the most reactionary and regressive legal doctrines practiced in the United States.¹

Not surprisingly, as these movements turn to direct democracy, the political establishment has taken an increased interest in the process *itself*. The Ballot Initiative Strategy Center recently documented a nationwide attack by state legislators on the ballot initiative process in 2019. That year, the Strategy Center found 120 bills introduced in 16 states to weaken the ballot initiative process.

Beyond the legislative attack on the *process*, we observe the political application of administrative law and pre-election court rulings to keep anti-establishment ballot initiatives off the ballot—stopping votes from taking place. These tactics have all obstructed a wave of direct democracy initiatives from appearing on ballots across the nation.

Covid-19 has exacerbated these dynamics. As the virus hit, many ballot initiative campaigns were forced to temporarily suspend signature gathering. However, remedies to protect the process were few and far between. Courts and states generally ruled that the process did not need to be protected, forcing many campaigns to suspend their efforts.

This CELDF report provides a (non-comprehensive) survey for 2020, of ballot initiatives that have been censored from their respective ballots. It also offers a look at some 2020 efforts to undermine the process *itself*.

¹ CELDF is supporting seven Ohio communities, representing Rights of Nature and anti-corporate power ballot measures, in a federal civil rights case against the State of Ohio. The case has been appealed to the Sixth Circuit. Plaintiffs are petitioners for initiative campaigns that involved thousands of volunteer hours to successfully qualify measures, which often faced legal opposition from the oil and gas industry. The measures were systematically blocked from the ballot by an election apparatus controlled by the Ohio Secretary of State and backed by Ohio's courts. (*Beiersdorfer v. La Rose, et al.* – No. 20-3557)

Each 2020 initiative below is the result of thousands of volunteer hours. Neighbors faced a community problem, and then took action to address that problem. Government and corporate attorneys then took their own action, against the proposed laws.

The following examples exemplify this modern dynamic.

Censored Ballot Initiatives - 2020

Arizona - Defending Public Education, Decarceration, Democracy Reform [COVID-19]

After Covid-19 hit, a federal judge rejected a request by Arizona ballot measure campaigns to collect signatures online. The request was supported by Arizona Secretary of State Katie Hobbs. The federal judge said the state constitution requires signatures to be collected in person. This halted the following ballot initiative efforts:

- The Save Our Schools Act, which seeks to limit the amount of state tax dollars parents can take through vouchers to send their children to private or religious schools.
- A decarceration reform to allow judges to impose shorter prison sentences and release “non-dangerous” inmates after serving 50 percent of their time, rather than the current 85 percent.
- A democracy reform championed by Arizonans for Fair Elections that would amend the state constitution so as to ban politicians from receiving gifts from lobbyists and special interests, expand voting hours, and increase the number of polling sites. “Without being able to safely collect our signatures online,” the organization wrote in an email, “we do not see a path forward without going back into the field and putting our community’s health at risk.”²

2

<https://www.phoenixnewtimes.com/news/judge-boots-arizona-k-12-funding-initiative-off-november-ballot-1485029>
<https://www.verdenews.com/news/2020/may/13/state-supreme-court-ballot-initiative-signatures-m/>
<https://www.azcentral.com/story/news/politics/arizona/2020/04/17/judge-arizona-ballot-measure-backers-must-collect-signatures-person/5157830002/>

Arizona - Health Care Workers

An initiative to raise pay for some health care workers and to “rein in the practice known as surprise billing by medical companies” was removed from the November 2020 ballot by a judge. The judge said the short summary of the measure was misleading.³

Arkansas - Gerrymandering Reform and Ranked Choice Voting

In August, the Arkansas Supreme Court “tossed two ballot initiatives that would have enacted constitutional amendments creating a legislative redistricting commission and a system of open primaries and ranked choice voting.” The court said the campaigns had not properly communicated how signature gatherers had passed criminal background checks. The campaigns communicated that background checks had “been timely acquired.” The court said campaigners should have communicated that signature gatherers had “passed” background checks. A dissenting judge wrote that one of the decisions “disenfranchised more than 90,000 citizens.”⁴

Columbus, Ohio - Water Protections, Rights of Nature [COVID-19]

In March, residents were forced to suspend a petition campaign for a *Columbus Community Bill of Rights* city charter amendment that would assert the right of people and ecosystems to “clean water, air, and soil, and to be free from activities that would violate this right.” Petitioners sued to save the petition, but were denied by the courts. CELDF has supported their efforts.⁵

Idaho - Funding Public Education by Taxing the Rich [COVID-19]

Signature gathering was originally suspended in March for a measure designed to help fund K-12 public education by increasing corporate taxes and personal income tax rates for people making over \$250,000 per year. The campaign won a court case in July to extend the deadline to turn in signatures, but that decision was later reversed and they were forced to suspend the effort.⁶

Maine - Referendum on \$1 Billion Central Maine Power Corridor

In August, the Maine Supreme Judicial Court took the historic step of removing a peoples’ referendum on the \$1 billion Central Maine Power corridor project from the November ballot. The project is part of the New England Clean Energy Connect, which would transport electricity from Hydro-Quebec’s highly controversial dam, into New England.

3

<https://www.azcentral.com/story/news/politics/elections/2020/08/14/arizona-judge-health-care-pay-billing-initiative-november-ballot/5587887002/>

⁴ <https://talkbusiness.net/2020/08/arkansas-supreme-court-disqualifies-redistricting-open-primaries-efforts/>

⁵ <https://columbusbillofrights.org/our-initiative/>

<https://celdf.org/2020/06/lawsuit-columbus-oh-must-take-action-to-preserve-direct-democracy-during-the-pandemic/>

⁶ <https://www.idahoednews.org/news/reclaim-idaho-suspends-education-funding-initiative/>

The removal of the referendum signals a structural change for Maine's referendum and initiative process. Previously, pre-election constitutional challenges had not removed measures from the ballot.⁷

Michigan - Progressive Income Tax Amendment [COVID-19]

Due to Covid-19, an initiative to introduce a more progressive income tax system in Michigan had to suspend its signature gathering efforts.⁸

Michigan - Lobbying Limits and Disclosures [COVID-19]

Due to Covid-19, the campaign Close Lansing Loopholes was forced to suspend its signature gathering. The initiative aimed to limit the revolving door between lobbying offices and the state legislature, and make lobbying in the state more transparent.⁹

Minneapolis, Minnesota - Disbanding the Police

The judge-appointed volunteer Minneapolis Charter Commission voted to veto a City Council proposal to place structural policing reforms on the November 2020 ballot. The measure would create a plan to replace the city's police department with a "holistic, public health-oriented" Department of Community Safety & Violence Prevention.¹⁰

Missouri - Marijuana Legalization [COVID-19]

Due to Covid-19, petitioners for marijuana legalization initiatives in Missouri had to suspend signature gathering.¹¹

Montana - Transition Away From Fossil Fuels [COVID-19]

Initiative-187 sought to force investor-owned electric utilities to transition away from fossil fuels. It would have also funded programs for laid off coal workers. After suspending signature gathering, the campaign was eventually allowed to collect signatures through the mail, but they were not able to gather enough signatures this way.¹²

Nebraska - Medical Marijuana

7

<https://bangordailynews.com/2020/08/13/politics/maine-high-court-rules-anti-cmp-corridor-referendum-is-unconstitutional/>

<https://www.themainewire.com/2020/08/in-ending-referendum-on-cmp-corridor-maines-high-court-limits-future-use-of-maines-ballot-initiative-process/>

⁸ [https://ballotpedia.org/Michigan_Graduated_Income_Tax_Initiative_\(2020\)](https://ballotpedia.org/Michigan_Graduated_Income_Tax_Initiative_(2020))

⁹ [https://ballotpedia.org/Michigan_Lobbying_Limits_and_Disclosure_Initiative_\(2020\)](https://ballotpedia.org/Michigan_Lobbying_Limits_and_Disclosure_Initiative_(2020))

¹⁰ <https://www.startribune.com/charter-commission-blocks-plan-to-remake-police-from-ballot/572016392/>

¹¹ [https://ballotpedia.org/Missouri_Marijuana_Legalization_Initiative_\(2020\)](https://ballotpedia.org/Missouri_Marijuana_Legalization_Initiative_(2020))

¹² [https://ballotpedia.org/Montana_I-187_Renewable_Energy_Initiative_\(2020\)](https://ballotpedia.org/Montana_I-187_Renewable_Energy_Initiative_(2020))

“A last-minute legal challenge from a local sheriff” led to the removal of a medical marijuana ballot initiative from Nebraska’s November 2020 ballot. The campaign had successfully gathered and submitted over 182,000 signatures.¹³

Nebraska - Redistricting Commission

Due to Covid-19, Nebraskans for Independent Redistricting were forced to end signature gathering for an initiative to curb partisan gerrymandering.¹⁴

Nevada - Gerrymandering Reform [Covid-19]

An effort to protect against partisan gerrymandering in Nevada did not gather enough signatures, likely due to Covid-19.¹⁵

Ohio - Voting Rights [COVID-19]

Due to Covid-19, Ohioans for Secure and Fair Elections had to suspend their signature-gathering campaign. Their initiative aimed to protect the right to vote by easing registration and absentee ballot deadlines, automatically registering citizens at DMV offices (unless they opt out), allowing people to register to vote at the polls and establishing early voting.¹⁶

Oregon - Clean-Energy and Forestry

In what chief petitioner and executive director of NAACP Eugene/Springfield called an unconstitutional and an “egregious abuse of power,” Oregon Secretary of State Bev Clarno rejected two clean-energy ballot initiatives. Clarno also rejected three forestry-related initiatives that seek more protections for forest waters.¹⁷

Washington - No Initiatives [COVID-19]

Due to Covid-19, 2020 was the first presidential election since 1928 not to include a citizen-initiated ballot measure in Washington State.

¹³

<https://norml.org/blog/2020/09/10/nebraska-supreme-court-invalidates-proposed-2020-medical-marijuana-legalization-initiative/>

¹⁴ [https://ballotpedia.org/Nebraska_Redistricting_Commission_Initiative_\(2020\)](https://ballotpedia.org/Nebraska_Redistricting_Commission_Initiative_(2020))

¹⁵

<https://news.ballotpedia.org/2020/08/06/fair-maps-nevada-did-not-turn-in-signatures-for-its-redistricting-initiative-by-the-extended-august-3-deadline/>

¹⁶ [https://ballotpedia.org/Ohio_Voting_Requirements_Initiative_\(2020\)](https://ballotpedia.org/Ohio_Voting_Requirements_Initiative_(2020))

¹⁷ <https://www.opb.org/news/article/secretary-of-state-bev-clarno-improperly-rejected-ballot-measures/>
<https://www.registerguard.com/news/20200109/secretary-of-state-sued-over-clean-energy-ballot-measures>
<https://www.pdxmonthly.com/news-and-city-life/2020/10/coronavirus-killed-the-ballot-measure-in-oregon>

Attacks on the Process Itself

LEGISLATIVE

Arizona - 'Blatant Power Grab' - Signed By Governor

Continuing a national trend, in 2019 the Arizona legislature took steps to restrict and control the ballot initiative process. This came after #RedForEd teacher activists and other redistributive campaigns have begun to propose a slew of proposals in Arizona.¹⁸

Florida - Limits to Ballot Initiative Process - Signed by Governor

SB1794 was passed in 2020 to make it harder to amend Florida's state constitution using the ballot initiative process.

Those opposing the bill included League of Women Voters of Florida, Florida Conservation Voters, 1000 Friends of Florida, ACLU of Florida, Common Cause Florida, Florida AFL-CIO, LatinoJustice PRLDEF, NAACP Florida State Conference, Organize Florida, Progress Florida, Sierra Club Florida, SPLC Action Fund and The New Florida Majority.¹⁹

ON THE BALLOT

Florida - Requiring Constitutional Amendments Be Approved Twice - DEFEATED

After activists began turning to FLorida's ballot process to make more gains, the legislature placed the amendment on the ballot to make it harder for residents to amend the state constitution.²⁰

Arkansas - Limiting the Process - DEFEATED

The Arkansas State Legislature placed Issue 3 on the November 2020 ballot to make it harder for people to propose direct democracy initiatives in the state. A coalition called Protect AR Rights, is opposing it. The coalition includes the Arkansas Education Association, the NAACP Arkansas State Conference and the League of Women Voters of Arkansas.²¹

18

<https://azcapitoltimes.com/news/2019/02/14/republican-bill-makes-citizen-initiative-process-more-difficult/>
https://tucson.com/news/local/arizona-house-oks-more-hurdles-to-initiative-process/article_50a79ffc-7b75-50b1-96fb-21b23e23196d.html

19

<https://floridapolitics.com/archives/324792-coalition-of-organizations-urges-ron-desantis-to-veto-bill-raising-citizen-initiative-thresholds>

20

[https://ballotpedia.org/Florida_Amendment_4_Require_Constitutional_Amendments_to_be_Passed_Twice_Initiative_\(2020\)](https://ballotpedia.org/Florida_Amendment_4_Require_Constitutional_Amendments_to_be_Passed_Twice_Initiative_(2020))

²¹ <https://katv.com/news/local/november-ballot-issues-affect-highway-funding-term-limits-initiative-process>
<https://www.arkansasonline.com/news/2020/oct/01/group-forms-oppose-proposed-arkansas-initiative-li/>

North Dakota - Controlling the Process - DEFEATED

North Dakota Legislative Assembly put a measure on the ballot to give it control over citizen-initiated constitutional amendments. The reform would give the Assembly the power to review and approve citizen-initiated constitutional amendments.

ProtectND opposed it, saying “it would effectively [give] lawmakers veto power over what citizens want.”²²



CELDF has been partnering with grassroots groups and local governments for decades, to stand up for their communities and fight back—building a movement to secure the authority of people and their communities to establish strong protections for civil, human, and ecosystem rights. The Covid-19 pandemic makes such bottom-up governance even more essential.

For more information please reach out to us at CELDF.org.

This report was prepared by Simon Davis-Cohen with help from his colleagues.

~END~

²²

<https://apnews.com/article/legislature-constitutions-north-dakota-archive-constitutional-amendments-01603f0281cbbd2bcc4369d6b9951e9c>