

THE NATIONAL CONFERENCE OF STATE LEGISLATURES' ATTEMPT TO REFORM THE INITIATIVE PROCESS: WHAT NEVADA NEEDS TO DO TO HEED THE NCSL'S ADVICE

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I. INTRODUCTION

Imagine a group of at least one hundred individuals enjoying a Memorial Day picnic, sitting in groups of fifteen to twenty.¹ When you look closer you see that these individuals are rotating petitions among themselves, each taking a turn forging signatures.² They pass the petitions among themselves to make the false signatures more discreet, but, ultimately, they are unconcerned with having duplicate signatures because they know that the petition's proponent will pay them for every signature whether or not the Secretary of State validates it.³ This particular signature party occurred at Lake Mead⁴ and is only one example of the problems plaguing the initiative process in Nevada and all across the country.

To assist states with combating problems in the initiative process like the Lake Mead signature party, the National Conference of State Legislatures ("NCSL") drafted a list of recommendations.⁵ Although Nevada has started to implement the NCSL's recommendations to reform its initiative process, Nevada must go further and adopt more of the NCSL's suggestions in order to strengthen its initiative process.

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¹ While proponents of a Nevada initiative were trying to gain enough signatures to get the initiative on the ballot, one of the circulators of that initiative witnessed a signature party at Lake Mead. He witnessed at least one hundred people, attending a Memorial Day picnic, sitting in groups of fifteen to twenty individuals copying signatures from one petition to another. Additionally, this circulator said that he knew more parties like the Lake Mead signature party occurred. *Minutes of the Assemb. Comm. on Elections, Procedures, Ethics, and Constitutional Amendments*, 74th Sess. 23 (Nev. 2007) (statement of Danny Thompson, representing the Nev. AFL-CIO), available at <http://www.leg.state.nv.us/74th/Minutes/Assembly/EPE/Final/762.pdf>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ NAT'L CONFERENCE OF STATE LEGISLATURES, INITIATIVE AND REFERENDUM IN THE 21ST CENTURY: FINAL REPORT AND RECOMMENDATIONS OF THE NCSL I&R TASK FORCE (2002).

In Part II, this Note will look at the history of the initiative process, the initiative process in Nevada, in particular, and the NCSL recommendations. Part III will analyze which recommendations Nevada has adopted, which recommendations Nevada still needs to adopt, and will suggest one other solution overlooked by the NCSL that Nevada should consider adopting. Part IV will conclude with an overall summation of how Nevada has improved its initiative process and what reforms Nevada still needs to make.

II. BACKGROUND

A. *History of the Initiative Process*

The initiative process first became popular in Europe in the late 1700s.⁶ Within the United States, the initiative process was first adopted in 1898 by South Dakota.⁷ Subsequently, in 1912, through an amendment to the state constitution, Nevada adopted the initiative process.⁸ Currently, twenty-four states utilize the initiative process in one form or another⁹ as a popular process for their citizens to directly voice their opinion on what laws they want passed.¹⁰

There have always been opponents to the initiative process. Not all states that considered the initiative process adopted it.¹¹ Additionally, the U.S. Constitution does not recognize a direct legislative process at the federal level.¹² In fact, the Founding Fathers chose a representative system over a direct legislative system¹³ because they wanted to ensure that elected officials developed and passed laws rather than the public, whose opinions sway with the times.¹⁴ Furthermore, James Madison did not support a direct legislative process saying that “‘temporary errors and delusions’ beset the people at ‘particular moments,’ causing them to ‘call for measures which they themselves will afterwards be the most ready to lament and condemn.’”¹⁵ Indeed, the Founding Fathers wanted “careful deliberation and compromise in the legislative process, rather than hasty, undesirable execution of what the people desire at the moment.”¹⁶ Notably, the U.S. Supreme Court has refused to determine the constitutionality

⁶ Richard B. Collins & Dale Oesterle, *Structuring the Ballot Initiative: Procedures That Do and Don't Work*, 66 U. COLO. L. REV. 47, 54 (1995).

⁷ Dina E. Conlin, Note, *The Ballot Initiative in Massachusetts: The Fallacy of Direct Democracy*, 37 SUFFOLK U. L. REV. 1087, 1087 (2004).

⁸ Kateri Cavin, *The Initiative in Nevada*, NEV. LAW., Aug. 1996, at 16, 16.

⁹ Collins & Oesterle, *supra* note 6, at 49.

¹⁰ Justin Henderson, Comment, *The Tyranny of the Minority: Is It Time to Jettison Ballot Initiatives in Arizona?*, 39 ARIZ. ST. L.J. 963, 963 (2007).

¹¹ Collins & Oesterle, *supra* note 6, at 54.

¹² Henderson, *supra* note 10, at 964.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ John Gildersleeve, Note, *Editing Direct Democracy: Does Limiting the Subject Matter of Ballot Initiatives Offend the First Amendment?*, 107 COLUM. L. REV. 1437, 1452 (2007) (quoting THE FEDERALIST NO. 63, at 327 (James Madison) (George W. Carey & James W. McClellan eds., 2001)).

¹⁶ Henderson, *supra* note 10, at 964 (internal quotation marks omitted).

of the initiative process, labeling it a political question not appropriate for the Court to decide.¹⁷

However, the initiative process has its supporters and has become a popular tool for some states.¹⁸ For example, both Theodore Roosevelt and Woodrow Wilson were strong supporters of the initiative process.¹⁹ Wilson called it a “safeguard of politics” not “a substitute for representative institutions, but only . . . a means of stimulation and control.”²⁰ The popularity of the initiative process in those states that have adopted it makes it unlikely to face repeal.²¹

B. *The Nevada Initiative Process*²²

While most states’ initiative processes are very similar,²³ each state has its own requirements and individualized processes, including Nevada.²⁴ In Nevada, the first step is to file the initiative petition, along with a 200-word description, with the Secretary of State.²⁵ Each initiative must address only a single subject²⁶ and if the initiative requires the expenditure of money, it must also provide provisions for raising that revenue.²⁷ Once the initiative’s proponent has filed the petition, he or she may begin circulating it in each county.²⁸ When he or she has obtained the required number of signatures in a county, he or she then must file, on the same day, the circulated petition and signatures with the county clerk or registrar for verification.²⁹ Next, the county clerk or registrar will give the initiative’s proponent a receipt stating the number of pages filed and the number of signatures collected in that county.³⁰ Once the

¹⁷ Conlin, *supra* note 7, at 1089-90 (citing *Pac. States Tel. Co. v. Oregon*, 223 U.S. 118, 150-51 (1912)).

¹⁸ John Gastil, Justin Reedy & Chris Wells, *When Good Voters Make Bad Policies: Assessing and Improving the Deliberative Quality of Initiative Elections*, 78 U. COLO. L. REV. 1435, 1438 (2007); Gildersleeve, *supra* note 15, at 1443.

¹⁹ Gildersleeve, *supra* note 15, at 1441.

²⁰ *Id.* at 1442 (internal quotation marks omitted).

²¹ Gastil et al., *supra* note 18, at 1438. This Note suggests that Nevada adopt reforms to the initiative process rather than completing doing away with it. While this Note recognizes that the initiative process is flawed, it is still a useful process for state citizens to pass laws that the legislature may otherwise stray away from, such as term limits.

²² Nevada also has a referendum process but this Note only focuses on Nevada’s initiative process.

²³ Robin E. Perkins, Comment, *A State Guide to Regulating Ballot Initiatives: Reevaluating Constitutional Analysis Eight Years After Buckley v. American Constitutional Law Foundation*, 2007 MICH. ST. L. REV. 723, 728 (2007).

²⁴ The NCSL’s Initiative and Referendum Task Force Report includes examples of different states’ initiative processes. See NAT’L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 12-14, 57-62.

²⁵ NEV. SEC’Y OF STATE, INITIATIVE AND REFERENDUM GUIDE 2 (2010), available at <http://nvsos.gov/Modules/ShowDocument.aspx?documentid=1357>.

²⁶ NEV. REV. STAT. § 295.009 (2007).

²⁷ NEV. CONST. art. XIX, § 6.

²⁸ NEV. SEC’Y OF STATE, *supra* note 25, at 2.

²⁹ *Id.* Nevada also requires proponents to collect signatures in at least seventy-five percent of Nevada’s counties (thirteen of Nevada’s seventeen counties). See NEV. CONST. art. XIX, § 2, cl. 2. However, the Ninth Circuit Court of Appeals has held that this requirement is unconstitutional. See *ACLU of Nev. v. Lomax*, 471 F.3d 1010, 1021 (9th Cir. 2006).

³⁰ NEV. SEC’Y OF STATE, *supra* note 25, at 2

initiative's proponent has filed the petition with the county clerk or registrar, he or she can no longer collect additional signatures in that county, and any person who has signed the initiative can contact the county clerk or registrar to have his or her name removed.³¹ Once the county clerk or registrar has determined the number of signatures is sufficient, the Secretary of State will transmit the initiative to the Legislature for action, if it is a statutory initiative.³² If the Legislature chooses to adopt the statutory initiative and the Governor signs it, it becomes law.³³ However, if the Legislature rejects the statutory initiative or fails to act on it within forty days of the Legislature convening, then the Secretary of State will submit the statutory initiative for a vote by the people in the next general election.³⁴ If the initiative is a constitutional amendment, the Secretary of State will submit it to a public vote in the next general election once the petition has a sufficient number of signatures.³⁵ The voters must approve all constitutional initiatives in two consecutive general elections.³⁶

C. NCSL's Recommendations

The NCSL is a bipartisan organization that assists the legislators of all fifty states with research and gives them the opportunity to discuss the most prominent issues within their states.³⁷ In 2001, the NCSL formed a task force to look at the growing use of initiatives across the country and the improvements that states could make to those initiative processes.³⁸ The task force included legislators, legislative staff, and industry representatives working within initiative states.³⁹ Essentially, this task force determined that an initiative process, which once served "as a grassroots tool to enhance representative democracy," was now often being "exploited by special interests."⁴⁰ As a result, the task force created a list of recommendations to assist the initiative states with improving their initiative processes.⁴¹ Chiefly, the NCSL recommended, in its first section of recommendations, that if a state did not already have an initiative process, it should not adopt one because so many of the initiative states have had numerous difficulties with initiatives.⁴² The NCSL then provided recommendations to states with initiative processes, assembled into seven additional sections.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 4.

³⁶ *Id.* The Nevada Supreme Court has held that the initiative process is constitutional. *See generally, Ex parte Ming*, 181 P. 319, 324 (Nev. 1919).

³⁷ About The National Conference of State Legislatures, <http://www.ncsl.org/AboutUs/tabid/305/Default.aspx> (last visited May 22, 2010).

³⁸ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at vii.

³⁹ *Id.* at v.

⁴⁰ *Id.* at vii.

⁴¹ *Id.* This Note discusses the majority of the NCSL's recommendations, but not all of them because some do not apply to Nevada. For instance, Nevada has already adopted the initiative process, so the NCSL's first section of suggestions for states that have not adopted the initiative process would not apply. Also, some of the NCSL recommendations are small suggestions that Nevada has already adopted.

⁴² *Id.* at 6.

In the second section, the NCSL focused its recommendations on getting state legislatures involved in the initiative process in their states.⁴³ Specifically, it recommended that each state adopt an indirect initiative process,⁴⁴ which gives the legislature the opportunity to act on an initiative before it is presented to the voters.⁴⁵ Additionally, the NCSL suggested that each state conduct a public hearing on each initiative prior to an election.⁴⁶ The public hearing allows legal experts, opponents, and proponents to voice their opinions on the initiative subject, creating a public record that courts or voters can later use to determine the purpose of the initiative and to determine the proponent's intent in putting it on the ballot.⁴⁷ The NCSL also recommended that if the legislature disagrees with the initiative, the legislature should have the ability to place an alternative question on the ballot.⁴⁸

In its third section of recommendations, the NCSL provided suggestions for limiting the subject matter of initiatives.⁴⁹ First, the NCSL suggested that the states limit each initiative to a single subject.⁵⁰ Requiring a single subject per initiative encourages "clarity and transparency in the initiative process."⁵¹ The NCSL also suggested that the states place a time limit on when a failed initiative subject may reappear on the ballot, in an effort to decrease the number of initiatives showing up on ballots.⁵²

The NCSL's fourth section of recommendations included four suggestions to aid states with the drafting phase of the initiative process.⁵³ The NCSL first recommended that each state require a state agency to review an initiative prior to a proponent filing it and for the designated state agency to go as far as reviewing the initiative's content instead of just reviewing the initiative's language.⁵⁴ The NCSL suggested this so that initiative proponents can avoid technical mistakes, unintended consequences, and unconstitutional provisions.⁵⁵ Second, the NCSL suggested that a state agency or official draft the ballot title for each initiative in order to "identify the principal effect of the proposed initiative" and to ensure that the ballot title is "unbiased, clear, accurate, and written so that a 'yes' vote changes current law."⁵⁶ Third, the NCSL recommended

⁴³ *Id.* at 12.

⁴⁴ *Id.* Nevada has an indirect initiative process for statutory initiatives. NEV. CONST. art. XIX, § 2, cl. 3.

⁴⁵ Collins & Oesterle, *supra* note 6, at 50.

⁴⁶ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 13.

⁴⁷ *Id.*

⁴⁸ *Id.* at 14. Because Nevada already gives the Legislature this ability, this Note will not specifically address this NCSL recommendation in the analysis section. NEV. CONST. art. XIX, § 2, cl. 3.

⁴⁹ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 15.

⁵⁰ *Id.* at 16. Nevada already has a single-subject requirement for initiatives. NEV. REV. STAT. § 295.009 (2007).

⁵¹ *Minutes of the Assemb. Comm. on Elections, Procedures, Ethics, and Constitutional Amendments*, *supra* note 1, at J-1, Exhibit J.

⁵² NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 16.

⁵³ *Id.* at 22.

⁵⁴ *Id.* at 22-23. Nevada has adopted a portion of this suggestion by requiring that the Secretary of State review the initiative for technical mistakes. *Id.* at 23.

⁵⁵ *Id.* at 22.

⁵⁶ *Id.* at 24.

that a state agency or state official review the initiative and draft a fiscal impact statement for placement on the ballot with the initiative.⁵⁷ The NCSL's last recommendation regarding the drafting phase of the initiative process suggested that states create a process in which citizens can challenge the ballot title or fiscal impact statement of any initiative, in an effort to decrease the number of initiatives that are struck down post-enactment by courts for technical mistakes in the ballot title or fiscal impact statement.⁵⁸

The NCSL's fifth section of recommendations addressed the signature-gathering phase of the initiative process.⁵⁹ Its second recommendation, intended to safeguard the initiative process against fraud,⁶⁰ was that each initiative circulator disclose to citizens signing the initiative whether the initiative proponent is paying the circulator to gather signatures.⁶¹ However, it is important to note that, in 1999, the U.S. Supreme Court found that it is unconstitutional for a state to require the disclosure of a circulator's name and paid status; therefore, the NCSL's suggestion is of questionable constitutionality.⁶² The NCSL also recommended that states require a higher number of signatures for a constitutional amendment than the number of signatures required for a statutory initiative in order to show respect for "the sanctity of state constitutions."⁶³ Lastly, the NCSL suggested that states establish a uniform verification process for signatures.⁶⁴

One of the biggest complaints about initiatives is the idea that voters are not sophisticated enough to vote on new laws.⁶⁵ Accordingly, the NCSL addressed this issue in its sixth set of recommendations dealing with the information provided to the voting public.⁶⁶ Specifically, the NCSL suggested that each state provide its voters with a manual and a pamphlet informing them about the initiative process and initiatives that are on the next ballot.⁶⁷ The

⁵⁷ *Id.* at 27. Nevada requires that the Secretary of State consult with the Fiscal Analysis Division of the Legislative Counsel Bureau to determine if an initiative will have a fiscal impact, and if it does, then the Fiscal Analysis Division will draft a fiscal impact statement for inclusion on the sample ballot. NEV. REV. STAT. § 295.015 (2007).

⁵⁸ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 28. Nevada does not have a process for citizens to challenge the ballot title or fiscal impact statement of an initiative. *Minutes of the Assemb. Comm. on Elections, Procedures, Ethics, and Constitutional Amendments*, *supra* note 1, at J-4, Exhibit J.

⁵⁹ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 33.

⁶⁰ *Id.* at 35.

⁶¹ *Id.*

⁶² *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 204 (1999).

⁶³ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 37. While Nevada does not require a higher number of signatures for a constitutional amendment initiative than the number of signatures required for a statutory initiative, Nevada does require voters to pass constitutional amendment initiatives in two consecutive general elections. NEV. CONST. art. XIX, § 2, cl. 4.

⁶⁴ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 40. Nevada has a uniform verification process for signatures. NEV. REV. STAT. § 295.260 (2007).

⁶⁵ Gastil et al., *supra* note 18, at 1446-47.

⁶⁶ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 44.

⁶⁷ *Id.* at 44-46. Nevada distributes a sample ballot to voters that lists the initiatives on the ballot with a brief description of the initiative, the proponent's arguments for the initiative, the opponent's arguments for the initiative, and the fiscal impact the initiative will have. *Id.*

NCSL also suggested states go a step further and provide voters with other opportunities to gain information on an initiative that is on the ballot.⁶⁸

In the NCSL's seventh section of recommendations, it gave the states suggestions for dealing with financial disclosures.⁶⁹ The NCSL suggested that each state require financial disclosures of any money spent over a threshold amount to support or oppose any initiative on the ballot because "[s]tates have a responsibility to ensure that voters receive high-quality, transparent information about the sponsorship and financial support of initiative proponents and opponents."⁷⁰ States can achieve this through the mandatory registration of ballot advocacy groups, requiring each group of supporters or opponents for an initiative in the next election to register as a ballot advocacy group with a designated state agency.⁷¹ Then, the state agency would make such information available to the public.⁷² The NCSL also suggested that the minimum financial donation triggering a financial disclosure for initiatives should equal the amount that triggers a financial disclosure requirement for candidates.⁷³

In the last section of recommendations, the NCSL suggested changes to the general voting process on initiatives.⁷⁴ It first suggested that each state place initiatives on the ballot only in general elections because less people vote during special elections and if a state allows an initiative on the ballot during a special election, the state is allowing a minority to enact laws for the majority.⁷⁵ Second, it suggested that if the initiative would limit the legislature by requiring a supermajority to pass certain types of laws or if the legislature is already required to pass that type of law by a supermajority, then the voters must pass the initiative with that supermajority.⁷⁶ In its last suggestion, the NCSL recommended that each state adopt a process for dealing with conflicting initiative measures adopted at the same time.⁷⁷ Often an individual or group will place a conflicting initiative on the ballot in an effort to confuse

at 48; see also *Minutes of the Assemb. Comm. on Elections, Procedures, Ethics, and Constitutional Amendments*, *supra* note 1, at J-9, Exhibit J.

⁶⁸ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 45. Nevada requires the Secretary of State to include initiatives on his website. *Minutes of the Assemb. Comm. on Elections, Procedures, Ethics, and Constitutional Amendments*, *supra* note 1, at J-9, Exhibit J. The Secretary of State must also publish constitutional amendment initiatives in newspapers in each county but does not have to publish statutory initiatives in newspapers. NEV. CONST. art. XIX, § 2, cl. 4.

⁶⁹ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 53.

⁷⁰ *Id.* at 53-54.

⁷¹ *Id.* at 54. Nevada has required ballot advocacy group registration and reporting since 2007. NEV. REV. STAT. §§ 294A.150, 294A.220, 294A.373 (2007).

⁷² NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 55.

⁷³ *Id.* at 54. Nevada has different disclosure amounts for initiative support and candidate support. NEV. REV. STAT. §§ 294A.120, 294A.283.

⁷⁴ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 57.

⁷⁵ *Id.* at 57. Because Nevada only places initiatives on the ballot in general elections, this Note will not discuss this NCSL recommendation in the analysis section. See *Minutes of the Assemb. Comm. on Elections, Procedures, Ethics, and Constitutional Amendments*, *supra* note 1, at J-5, Exhibit J.

⁷⁶ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 58-59.

⁷⁷ *Id.* at 60. Nevada will only implement the conflicting initiative that receives the highest number of votes. NEV. CONST. art. XIX, § 2, cl. 5.

voters and in the hopes that neither of the conflicting initiatives is enacted.⁷⁸ Therefore, it is important that a state has a way to deal with conflicting initiatives.⁷⁹

III. ANALYSIS

For the most part, Nevada has jumpstarted the improvement of its initiative process by adopting many of the NCSL recommendations. However, there are seven additional NCSL recommended improvements that Nevada has not addressed and one non-NCSL improvement Nevada should address. First, Nevada should adopt procedures to encourage legislative and agency involvement in the initiative process. Second, Nevada should adopt limitations to the subject matter of initiatives. Third, Nevada should create procedures to ensure only well-drafted initiatives and ballot titles make it onto the ballot. Fourth, Nevada should adopt a payment per signature prohibition and a new process for verifying signatures. Fifth, Nevada should increase its efforts to educate voters on initiatives before the voters vote on them. Sixth, while Nevada has not completely complied with the NCSL's suggestions regarding financial disclosures for money spent in support of or in opposition to initiatives, the system it has in place is sufficient. Seventh, Nevada should adopt voting requirements for specific types of initiatives. Lastly, Nevada should adopt a residency requirement for petition circulators, which the NCSL never addressed.

A. *State Legislature and Agency Involvement Procedures Nevada Should Adopt*

Nevada should consider altering its indirect initiative process to make it more effective and to fulfill the purpose behind the NCSL's suggestions. The NCSL advocates an indirect initiative process because "it allows for more public debate and deliberation, and it involves the legislature, with its professional research and bill drafting staff, in the process."⁸⁰ There are three changes Nevada should adopt to fulfill this purpose: (1) amend its indirect initiative process to encourage more legislative involvement; (2) re-adopt an indirect initiative process for constitutional amendments;⁸¹ and (3) require the Secretary of State to hold public hearings on all initiatives before voters vote on it.

Nevada currently has an indirect initiative process for statutory initiatives, requiring the Legislature to consider the statutory initiative before the Secretary of State places it on the ballot.⁸² However, if the State Legislature decides not to act on the proposed initiative, it goes straight to the ballot for voter approval without further consideration.⁸³ This encourages the Legislature to ignore most initiatives in an effort to keep its hands clean through noninvolvement and

⁷⁸ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 60.

⁷⁹ *Id.*

⁸⁰ *Id.* at 7.

⁸¹ Before 1962, Nevada had an indirect initiative process for constitutional amendments. *Id.* at 8.

⁸² *Id.*

⁸³ *Id.* at 7.

essentially defeats the purpose of the indirect initiative.⁸⁴ As Sue Tupper, a political consultant, stated, “Those elected to office, when threatened with an initiative, act like deer in the headlights and choose to dump the controversial issues on the voters.”⁸⁵ “They end up either frozen in fear, or, cynically, have learned to use the process.”⁸⁶ Nevertheless, in a rare instance, Legislators in the Seventy-Fifth Regular Session of the Nevada Legislature begrudgingly considered and enacted a statutory initiative increasing room taxes in counties over a specific population, which only affected two counties.⁸⁷ Many State Legislators felt that initiative petitions were an improper way to pass a tax because they could not amend the initiative.⁸⁸ Yet, they felt forced to pass it because of the State’s extreme budget deficit.⁸⁹ Because this was an extreme circumstance and State Legislators are not fond of enacting a law in this manner,⁹⁰ it is unlikely the Legislature will fully review many statutory initiatives in a similar way.

An example of issues that arise when the Legislature fails to fully consider an initiative is its failure to act on Ballot Question 11.⁹¹ In 1996, Ballot Question 11 became law, requiring a supermajority in each house of the Nevada Legislature or voter approval to raise any revenue, including taxes.⁹² When this constitutional amendment initiative came before the Legislature, the Legislature held hearings but subsequently failed to act on the initiative, even though the Legislature had some concerns that the end result would allow a minority of Legislators to control the state budget by creating a legislative deadlock on revenue measures.⁹³ If the Legislature had acted on this concern by proposing an alternative measure tailored to the realities of the state budgetary process, the law resulting from Ballot Question 11 may not have produced two Nevada Supreme Court cases: one attempting to fix a standoff between Legislators wanting new taxes and the minority that did not,⁹⁴ and the second attempting to clarify how and when the Nevada Supreme Court can override a requirement like Ballot Question 11’s requirement.⁹⁵

Therefore, Nevada should adopt an indirect initiative process that is more like the process already in place in Massachusetts, Ohio, and Utah. Whereas in Nevada an initiative goes straight to the ballot if Legislators refuse to act on it,⁹⁶ these three states require that proponents of an initiative to collect addi-

⁸⁴ See Jennifer Drage, *Taming the Initiative Beast*, ST. LEGISLATURES MAG., Sept. 2000, at 26.

⁸⁵ *Id.*

⁸⁶ *Id.* (quoting Sue Tupper).

⁸⁷ Ed Vogel, *Room Tax OK’d, but Gibbons Won’t Sign*, LAS VEGAS REV. J., Mar. 11, 2009, at 1A.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ See *Guinn v. Legislature of Nev.*, 76 P.3d 22, 29-30 (Nev. 2003).

⁹² *Id.* at 29. While Ballot Question 11 was a constitutional amendment initiative, it is discussed here to emphasize the importance of the State Legislature considering both constitutional and statutory initiatives after they pass the public vote the first time.

⁹³ *Id.* at 30.

⁹⁴ *Id.* at 29.

⁹⁵ *Guinn v. Legislature of Nev.*, 71 P.3d 1269, 1272 (Nev. 2003).

⁹⁶ NEV. CONST. art. XIX, § 2, cl. 3.

tional signatures to gain ballot placement for their initiative after the legislature has failed to act on it or rejected it.⁹⁷ If Nevada adopts a similar process to this, it will encourage the Legislature to consider initiatives and act on the ones it feels are worthy. Otherwise, the Legislature would risk the possibility that worthy initiatives would never make it on the ballot because the proponent may not be able to collect the additional signatures required.⁹⁸ Furthermore, if the initiative did make it to the ballot, the voting public would know that the Legislature had failed to act on it or rejected it, indicating to the public that elected officials likely disapproved of the proposal.⁹⁹ One may argue that the Legislature will still refuse to act on initiatives before them; however, adding these additional signature requirements will likely encourage the Legislature to act more than it has acted in the past. Although Nevada has partially complied with the NCSL's indirect initiative suggestion, it needs to do more. If the Legislature does not adopt an initiative, Nevada should require additional signatures for an initiative to make it on the ballot to ensure the indirect initiative process is actually meeting its purpose.

Nevada should also consider re-adopting an indirect initiative process for its constitutional amendment initiatives. Although Nevada's initiative process originally included an indirect process, voters abolished this requirement in 1962 and replaced it with the requirement that "constitutional amendment[s] be approved by a majority vote in two successive elections."¹⁰⁰ Nevertheless, because amending the Nevada Constitution can make drastic changes in the way the state functions,¹⁰¹ the state should apply the indirect initiative process to constitutional amendment initiatives in addition to the 1962 requirement.

Furthermore, Nevada should adopt the NCSL's recommendation that the state hold a public hearing on each initiative before ballot placement. The Nevada Legislature considered this suggestion in 2007, but ultimately removed the language from the final bill.¹⁰² The state legislators removed the NCSL suggestion because of two concerns: (1) it would create a fiscal impact for the bill under consideration, which would have delayed the rest of the bill; and (2) it would require the Legislative Counsel Bureau ("LCB") to hold the public hearing, which could possibly jeopardize the LCB's nonpartisanship because the LCB would have to hold hearings so close to the election that the hearings would be presumed political.¹⁰³ The concerns over the LCB and nonpartisanship arose because the language in the bill also required the LCB to hold these

⁹⁷ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 7-8.

⁹⁸ *See id.* at 7.

⁹⁹ Indirect initiatives can expand the context of the political discussion on an initiative and increase the length of time those voting on an initiative discuss it. Thomas Gais & Gerald Benjamin, *Public Discontent and the Decline of Deliberation: A Dilemma in State Constitutional Reform*, 68 TEMP. L. REV. 1291, 1310 (1995).

¹⁰⁰ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 8.

¹⁰¹ Many states have a supermajority requirement to amend their constitutions because many people believe that a change to the constitution should only be made after "careful deliberation." *Id.* at 58.

¹⁰² *Minutes of the S. Comm. on Legis. Operations and Elections*, 74th Sess. 36-37, 39 (Nev. 2007), available at <http://leg.state.nv.us/74th/Minutes/Senate/LA/Final/1003.pdf>.

¹⁰³ *Id.* at 36-37.

public hearings on each initiative not long before each general election.¹⁰⁴ The sponsor of the bill charged the LCB with this responsibility because it was one of the suggested bodies the NCSL recommended.¹⁰⁵ Nevertheless, the NCSL also suggested charging the Secretary of State with such a responsibility.¹⁰⁶ Therefore, if the State Legislature is concerned about jeopardizing the LCB's nonpartisanship, it should choose to give such responsibility to the Secretary of State's office, which already deals with initiatives.¹⁰⁷ It is essential for Nevada to implement this suggestion because it will give both voters and courts more background information on the intent and the purpose of each initiative.¹⁰⁸ This is important because "it is unlikely that voters paid much attention to the language of the law [when voting for the initiative], yet courts often look exclusively at the language in determining 'popular intent.'"¹⁰⁹ Therefore, not only will a public hearing on each initiative help educate the voters, but it will also give the courts more background when interpreting a law passed through the initiative process.¹¹⁰

B. Limitations Nevada Needs to Place on the Subject Matter of Initiatives

One of the most important NCSL recommendations that Nevada has already adopted is the single subject per initiative rule and Nevada has done an impressive job of interpreting this rule, whereas other states have not.¹¹¹ Most states have upheld this restriction "laxly."¹¹² For example, the Supreme Court of Missouri stated, "When reviewing a single subject challenge to an initiative petition, this Court must liberally and non-restrictively construe the petition in such a way that the provisions connected with or incident to the central purpose of the proposal are harmonized and not treated as separate subjects."¹¹³ However, Nevada has not been one of the states to fall victim to such lax interpretation of this requirement.¹¹⁴ In 2006, the Nevada Supreme Court, after determining that an initiative failed to fulfill the single-subject requirement,

¹⁰⁴ *Id.* at 36.

¹⁰⁵ *Id.* at 38; *Minutes of the Assemb. Comm. on Elections, Procedures, Ethics, and Constitutional Amendments*, *supra* note 1, at 9-10.

¹⁰⁶ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 13.

¹⁰⁷ The Secretary of State receives copies of initiatives before and after they are circulated. NEV. CONST. art. XIX, § 2, cl. 3. The Secretary of State verifies the number of signatures on an initiative petition sent to it by the county clerks. NEV. REV. STAT. §§ 293.1276, 293.1277, 293.1278 (2007). The Secretary of State hears appeals when it has determined that an initiative did not have enough signatures. NEV. REV. STAT. §§ 293.12793, 293.12795. The Secretary of State is charged with giving initiatives to the Fiscal Analysis Division of the LCB for determination of fiscal impact and with placing initiatives on its website. NEV. REV. STAT. § 295.015. The Secretary of State shall pass regulations dealing with initiatives. NEV. REV. STAT. § 295.055.

¹⁰⁸ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 13.

¹⁰⁹ Henderson, *supra* note 10, at 978.

¹¹⁰ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 13.

¹¹¹ Nevada adopted this in 2005. NEV. REV. STAT. § 295.009. See *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 141 P.3d 1235 (Nev. 2006).

¹¹² *Comm. for a Healthy Future, Inc. v. Carnahan*, 201 S.W.3d 503, 511 (Mo. 2006) (en banc).

¹¹³ *Id.*

¹¹⁴ *Nevadans for the Prot. of Prop. Rights, Inc.*, 141 P.3d 1235.

severed the provisions of an initiative that did not fall under the same subject as the rest of the initiative.¹¹⁵ The court determined that the appropriate test in determining whether all provisions of an initiative fulfill a single subject is to determine if each provision is “germane” and “functionally related” to the rest of the provisions of an initiative.¹¹⁶ Therefore, Nevada has interpreted the single-subject requirement in such a way that the requirement fulfills the purpose of the NCSL’s suggestion.

Despite Nevada’s adherence to the single subject per initiative rule, Nevada needs to do more to limit the subject matter of initiatives. Accordingly, Nevada should adopt the reappearance prohibition of failed initiatives suggested by the NCSL.¹¹⁷ This prohibition keeps the number of initiatives on the ballot to a minimum¹¹⁸ by prohibiting failed initiatives from reappearing on the ballot year after year, saving voters’ time and money. Five states currently have adopted a subject-repetition waiting period to prohibit the reappearance of a subject for a certain period after the voters have denied it.¹¹⁹ “Subject repetition waiting periods have occasioned [little] controversy.”¹²⁰ Although Nevada has not yet considered this suggestion, Nevada does prohibit the Legislature from repealing a passed initiative for three years after its passage.¹²¹ To accompany this existing legislative prohibition, Nevada should adopt a similar restriction on failed initiatives by implementing a subject-repetition waiting period.

C. Changes Nevada Needs to Make to the Drafting Phase of the Initiative Process

Although Nevada has a state agency review each initiative, per the NCSL’s recommendation, it needs to take additional steps to fulfill the purpose of the NCSL suggestion, which is to adopt the most clear, concise, and well-thought out laws. As currently implemented in Nevada, the state agency review requirement is intended to catch technical mistakes¹²² and provide voters with sufficient information about the initiative, including its fiscal impact. However, Nevada should also use the state agency review process to assist petitioners in drafting the initiative and ensuring that the ballot title correctly reflects the topic of the initiative. Finally, Nevada should allow citizens to challenge the accuracy of the ballot title in court. Although the current law allows citizens to challenge the 200-word description of the initiative, the accuracy of the ballot title is equally important and should be subject to judicial review.

Nevada requires that a proponent of an initiative submit the initiative to the Secretary of State, whose office then reviews the initiative for any technical

¹¹⁵ *Id.* at 1245.

¹¹⁶ *Id.* at 1243.

¹¹⁷ NAT’L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 16.

¹¹⁸ *Id.*

¹¹⁹ Gildersleeve, *supra* note 15, at 1451.

¹²⁰ *Id.*

¹²¹ NEV. CONST. art. XIX, § 2.

¹²² NAT’L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 23.

mistakes.¹²³ Reviewing initiatives for technical mistakes is important because “[l]egislation enacted through initiative is often poorly drafted and lacks any meaningful legislative history for courts to rely on when interpreting statutes or constitutional amendments passed through initiative.”¹²⁴ The Nevada Supreme Court determined that the requirement of filing with the Secretary of State also serves the purpose of putting all citizens on notice as to what initiatives are under consideration and what their purposes are in *Nevadans for Nevada v. Beers*.¹²⁵ Specifically, the court determined that the requirement “serves the important purpose of providing sufficient information so that voters can intelligently evaluate whether to sign an initiative petition, so that interested persons may make an informed decision to support or oppose the petition, [and] so that the measure’s proponents and opponents may examine the initiative, develop arguments, and disseminate information relevant to their positions.”¹²⁶

Nevertheless, the Legislature could go a step further and provide for more than just review based on technical mistakes; it should offer review of the initiative’s content.¹²⁷ For example, California allows proponents of initiatives to bring their petition to the legislative counsel to get help in drafting the initiative.¹²⁸ This is helpful because “[i]ssues that petitioners had not considered might be brought to their attention upon review by a governmental body with more expertise.”¹²⁹ Although Nevada has taken the initial step of ensuring clearer initiatives through technical review, it needs to follow through by adopting a system similar to California’s system and offer each initiative proponent the opportunity to have the legislative counsel review the initiative to ensure that only the most clear and concise laws are passed through the initiative process.

Nevada should also take steps to ensure that the ballot title of an initiative informs voters on the topic of the initiative. In order to do this, the NCSL suggests that a state agency or official draft the ballot title to ensure that the ballot title does not mislead voters.¹³⁰ Nevada has taken steps to prevent initiatives from misleading voters by requiring the 200-word description of the initiative’s effect be visible on each page of a petition circulated for signatures.¹³¹ However, Nevada needs to take further steps in ensuring that the ballot title itself does not mislead voters or those signing the petition. A 2008 Oregon case, *Frazzini v. Myers*, demonstrates the importance of this suggestion.¹³² In that case, the ballot title of an initiative informed voters that it was repealing a legislative act, when it was in reality both repealing that act and replacing it

¹²³ *Id.*

¹²⁴ Henderson, *supra* note 10, at 978.

¹²⁵ *Nevadans for Nev. v. Beers*, 142 P.3d 339, 347 (Nev. 2006).

¹²⁶ *Id.*

¹²⁷ NAT’L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 23.

¹²⁸ Henderson, *supra* note 10, at 988-99.

¹²⁹ *Id.* at 988.

¹³⁰ NAT’L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 24.

¹³¹ *Minutes of the Assemb. Comm. on Elections, Procedures, Ethics, and Constitutional Amendments*, *supra* note 1, at J-1, Exhibit J.

¹³² *Frazzini v. Myers*, 189 P.3d 1227, 1231 (Or. 2008) (en banc).

with new language that banned same-sex domestic partner benefits.¹³³ In order to prevent similar problems, the Oregon Attorney General certifies the ballot title to guarantee that it is a “simple and understandable statement of not more than 25 words that describes the result if the state measure is approved.”¹³⁴ Oregon also requires that the caption to the ballot title be no more than fifteen words and “inform potential petition signers and voters of the sweep of the measure” and “should not understate or overstate the scope of the legal changes that the proposed measure would enact.”¹³⁵ Colorado has a similar system that requires a ballot title review board to approve ballot titles before circulation.¹³⁶ Nevada should adopt a similar requirement for a state agency or official to review or draft the ballot title to ensure the ballot title does not mislead voters as to the future effect of the initiative.

In accordance with the NCSL’s suggestion on fiscal impact statements, Nevada has already taken steps to ensure voters are educated as to the fiscal impact of an initiative by requiring the Secretary of State to consult with the Fiscal Analysis Division of the LCB to determine if an initiative will have a fiscal impact.¹³⁷ If it does, then the LCB’s Fiscal Analysis Division drafts a fiscal impact statement that is included on the sample ballot with the initiative.¹³⁸ This allows the voting citizen to make an educated decision when voting on initiatives that will have a fiscal impact on the state and, consequently, the citizens themselves.¹³⁹ Additionally, Nevada requires that any initiative requiring an appropriation must also provide for the means of raising revenue to support the initiative.¹⁴⁰ However, opponents to this suggestion argue that this requirement only “weaken[s] the power of the initiative process.”¹⁴¹ All the same, Nevada will likely keep this requirement, and should keep this requirement, considering a Nevada court has already discussed the fiscal impact statement without invalidating it.¹⁴²

While Nevada should not create a process for challenging the fiscal impact statement attached to initiatives, as suggested by the NCSL, it should allow residents to challenge the ballot title the same way it allows residents to challenge the initiative’s description.¹⁴³ Under Nevada law, residents can challenge the 200-word description¹⁴⁴ or the legality of the initiative in the First District Court of Nevada within fifteen days of the initiative’s filing with the Secretary of State.¹⁴⁵ Nevada should amend this procedural process to also

¹³³ In this case, the court held that the ballot title the Attorney General approved did not meet the requirements of OR. REV. STAT. § 250.035 (2007). *Frazzini*, 189 P.3d at 1231, 1233.

¹³⁴ *Id.* at 1231.

¹³⁵ *Id.* at 1230 (internal quotation marks omitted).

¹³⁶ *Outcalt v. Golyansky*, 917 P.2d 292, 294 (Colo. 1996) (en banc).

¹³⁷ NEV. REV. STAT. § 295.015 (2007).

¹³⁸ *Id.*

¹³⁹ *Smith v. Coal. to Reduce Class Size*, 827 So. 2d 959, 964 (Fla. 2002).

¹⁴⁰ *Nevadans for Nev. v. Beers*, 142 P.3d 339, 350 (Nev. 2006) (citing *Rogers v. Heller*, 18 P.3d 1034 (Nev. 2001)).

¹⁴¹ *Coal. to Reduce Class Size*, 827 So. 2d at 963.

¹⁴² See generally, *Nevadans for Nev.*, 142 P.3d 339.

¹⁴³ NEV. REV. STAT. § 295.061.

¹⁴⁴ *Id.* § 295.061; see *id.* § 295.009 (200-word description requirement).

¹⁴⁵ *Id.* § 295.061.

allow a person to challenge the ballot title because the ballot title is the first, and sometimes the only, thing a voter will read and it should be as clear and concise as possible.¹⁴⁶ However, Nevada should not allow a challenge to the fiscal impact statement because the LCB's Fiscal Analysis Division, who has expertise in drafting fiscal impact statements, drafts the fiscal impact statement.¹⁴⁷ By allowing challenges to the fiscal impact statement, Nevada would just open the door to more delay tactics for opponents to initiatives to use.¹⁴⁸ While all three of these elements of an initiative are important, and hopefully considered by voters, the 200-word description and ballot title are likely the things voters focus on the most, and experts do not draft them; therefore, it is increasingly important that individuals have the opportunity to challenge them before they go on the ballot.

D. Changes Nevada Should Make to the Signature Gathering and Verifying Phase of Its Initiative Process

Throughout initiative states across the country, one of the biggest problems facing the initiative process is the possibility of fraud during the signature phase.¹⁴⁹ There are several different examples of fraud possible during the signature process, such as circulators copying names out of phone books hoping they copy down enough registered voters' names to qualify for the ballot, circulators reattaching signatures obtained from other petitions, or initiative opponents offering the circulators money to destroy validly gathered signatures rather than submit them.¹⁵⁰ Fraud is probably the biggest issue facing initiative states today.¹⁵¹ While Nevada likely cannot adopt the NCSL's recommendation concerning circulator's disclosures of paid status, Nevada has started to adopt procedures to prevent fraud. However, Nevada needs to go even further by adopting a payment-per signature prohibition, a requirement that constitutional amendment initiatives have more signatures than statutory initiatives, and a better system for validating signatures.

Nevada has taken some steps to prevent fraud in the initiative process by requiring all circulators to sign a notarized affidavit that states that to the best of their knowledge they collected each signature validly.¹⁵² Nevada takes this requirement seriously and requires that in order for an initiative to gain placement on the ballot, the circulator must substantially comply with the affidavit requirements.¹⁵³ In 2008, the Nevada Supreme Court held that even using an incorrect circulator affidavit form could disqualify an initiative from ballot

¹⁴⁶ *Frazzini v. Myers*, 189 P.3d 1227, 1230 (Or. 2008) (en banc).

¹⁴⁷ NEV. REV. STAT. § 295.015.

¹⁴⁸ "[P]re-election review of initiative petitions delays and burdens the initiative process . . ." M. Sean Radcliffe, Comment, *Pre-Election Judicial Review of Initiative Petitions: An Unreasonable Limitation on Political Speech*, 30 TULSA L.J. 425, 444 n.164 (1994).

¹⁴⁹ Richard J. Ellis, *Signature Gathering in the Initiative Process: How Democratic Is It?*, 64 MONT. L. REV. 35, 84 (2003).

¹⁵⁰ Collins & Oesterle, *supra* note 6, at 74.

¹⁵¹ Ellis, *supra* note 149, at 84.

¹⁵² NEV. ADMIN. CODE § 295.020 (2006).

¹⁵³ *Las Vegas Convention & Visitors Auth. v. Miller*, 191 P.3d 1138 (Nev. 2008).

placement.¹⁵⁴ Nevertheless, the NCSL suggests that Nevada go even further in preventing fraud.¹⁵⁵

Although Nevada likely cannot require a circulator to disclose to potential petition signers whether he is a paid circulator or not,¹⁵⁶ Nevada likely can prohibit an initiative's proponent from paying circulators per signature.¹⁵⁷ Although the NCSL suggests that states require circulators to disclose if they are paid, it is unlikely that the states can implement this suggestion because the U.S. Supreme Court has held that a state cannot require circulators to disclose such information.¹⁵⁸

However, there are other ways Nevada can discourage fraud on the part of paid circulators without directly dealing with the disclosure issue. The easiest way would be to prohibit payment by signature and only allow payment by hour, considering that the U.S. Supreme Court held in *Meyer v. Grant*¹⁵⁹ that one cannot prohibit payment to circulators.¹⁶⁰ Payment per signature encourages fraud by giving circulators the "incentive to obtain signatures by any possible means."¹⁶¹ However, there is a question as to whether a prohibition against payment per signature is constitutional under the First Amendment because only district courts,¹⁶² outside of Nevada, and circuit courts have considered the issue.¹⁶³

Four U.S. district courts¹⁶⁴ have determined that "payment on a per-signature basis is protected speech."¹⁶⁵ These holdings relied on the *Meyer* decision, which provided that restricting circulator payment

limits the number of voices who will convey [the proponents'] message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that [proponents] will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion.¹⁶⁶

¹⁵⁴ *Id.* at 1143-45.

¹⁵⁵ See NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 35.

¹⁵⁶ *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 204 (1999).

¹⁵⁷ *Person v. N.Y. State Bd. of Elections*, 467 F.3d 141, 143 (2d Cir. 2006); *Prete v. Bradbury*, 438 F.3d 949, 953, 971 (9th Cir. 2006); *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614, 618 (8th Cir. 2001).

¹⁵⁸ *Buckley*, 525 U.S. at 204; NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 35.

¹⁵⁹ *Meyer v. Grant*, 486 U.S. 414 (1988).

¹⁶⁰ *Id.* at 428.

¹⁶¹ *Term Limits Leadership Council, Inc. v. Clark*, 984 F. Supp. 470, 474 (D. Miss. 1997).

¹⁶² *Idaho Coal. United for Bears v. Cenarrusa*, 234 F. Supp. 2d 1159, 1165-66 (D. Idaho 2001); *On Our Terms '97 PAC v. Sec'y of State of Me.*, 101 F. Supp. 2d 19, 19-20 (D. Me. 1999); *Term Limits Leadership Council*, 984 F. Supp. at 470; *Limit v. Maleng*, 874 F. Supp. 1138, 1139 (D. Wash. 1994).

¹⁶³ *Person v. N.Y. State Bd. of Elections*, 467 F.3d 141, 143 (2d Cir. 2006); *Prete v. Bradbury*, 438 F.3d 949, 953 (9th Cir. 2006); *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614, 615 (8th Cir. 2001).

¹⁶⁴ *Idaho Coal. United for Bears*, 234 F. Supp. 2d at 1165-66; *On Our Terms '97 PAC*, 101 F. Supp. 2d at 19-20; *Term Limits Leadership Council*, 984 F. Supp. at 470-71; *Limit*, 874 F. Supp. at 1142.

¹⁶⁵ *Idaho Coal. United for Bears*, 234 F. Supp. 2d at 1165.

¹⁶⁶ *Term Limits Leadership Council*, 984 F. Supp. at 471 (quoting *Meyer v. Grant*, 486 U.S. 414, 422-23 (1988)).

Moreover, two of these district courts also determined that there is no evidence that paying circulators on a payment per signature basis encourages more fraud.¹⁶⁷

Nevertheless, three circuit courts have upheld the prohibition.¹⁶⁸ In *Initiative & Referendum Institute v. Jaeger*, the North Dakota Legislature passed the payment per signature ban after hearing about instances of circulators copying names out of phone books.¹⁶⁹ The Eighth Circuit Court of Appeals held that there was “sufficient evidence regarding signature fraud to justify the State’s prohibition on commission payments” and that because “appellants . . . produced no evidence that payment by the hour, rather than on commission, would in any way burden their ability to collect signatures” it did not violate the constitution because it was not a complete prohibition on paid circulators.¹⁷⁰ In dicta, the Ninth Circuit Court of Appeals upheld the payment per signature ban, stating it “imposed no severe or substantial burdens on the circulation of initiative or referendum petitions.”¹⁷¹ The Second Circuit Court of Appeals joined the Eighth and Ninth Circuits in upholding the payment per signature ban, affirming that just because a payment per signature basis was best from the business perspective of those in the business of circulating initiatives, it is not enough to counter the states’ interest in preventing fraud.¹⁷² Therefore, even though this issue has not been resolved clearly, Nevada should follow the circuit courts’ rationale and adopt a payment per signature prohibition to safeguard against fraud.

Nevada also needs to require a higher number of signatures for a constitutional amendment initiative than a statutory initiative, as recommended by the NCSL.¹⁷³ This secures the sanctity of state constitutions by making it more difficult to amend state constitutions than state laws.¹⁷⁴ Currently, in Nevada, the signature requirement for statutory initiatives and constitutional amendment initiatives is the same.¹⁷⁵ Nevada is one of the only initiative states that does not require more signatures for constitutional amendment initiatives.¹⁷⁶ However, some argue that even in the states that do require a larger number of signatures, this rarely keeps a constitutional amendment initiative off the ballot.¹⁷⁷ Nevertheless, to show that the sanctity of Nevada’s Constitution is more important than its state laws, Nevada should adopt a higher signature requirement for constitutional amendment initiatives than for statutory initiatives. Furthermore, Nevada should do this in addition to its requirement that voters pass constitutional amendment initiatives in two consecutive general elec-

¹⁶⁷ *On Our Terms '97 PAC*, 101 F. Supp. 2d at 26; *Limit*, 874 F. Supp. at 1140.

¹⁶⁸ *Person*, 467 F.3d at 143; *Prete*, 438 F.3d at 971; *Initiative & Referendum Inst.*, 241 F.3d at 618.

¹⁶⁹ *Initiative & Referendum Inst.*, 241 F.3d at 618.

¹⁷⁰ *Id.* at 617-18.

¹⁷¹ *Prete*, 438 F.3d at 953.

¹⁷² *Person*, 467 F.3d at 143.

¹⁷³ NAT’L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 37.

¹⁷⁴ *Id.*

¹⁷⁵ *Minutes of the Assemb. Comm. on Elections, Procedures, Ethics, and Constitutional Amendments*, *supra* note 1, at J-3, Exhibit J.

¹⁷⁶ NAT’L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 37.

¹⁷⁷ *Id.*

tions¹⁷⁸ and in addition to re-adopting an indirect initiative process for constitutional amendment initiatives. Some may argue that the requirement to pass these initiatives in two consecutive general elections already shows the importance of the Nevada Constitution; however, by also requiring a larger number of signatures, Nevada will reaffirm the importance of the Nevada Constitution.

Nevada should also come up with a better system for verifying valid signatures on initiatives. Nevada has adopted the NCSL suggestion of a uniform verification process.¹⁷⁹ The County Clerk randomly samples 500 signatures or five percent of the signatures submitted and verifies those signatures.¹⁸⁰ This system is similar to how many states verify signatures.¹⁸¹ Some worry that this results in invalidation of valid signatures through technical problems and human error in the county clerk/registrar office.¹⁸² However, there is also the chance that there are not enough valid signatures gathered because every signature is not checked.¹⁸³ Many states go beyond random sampling and check the validity of each signature turned in.¹⁸⁴ For example, Florida checks the validity of each signature and charges the proponents of the initiative \$0.10 for each signature to cover the costs.¹⁸⁵ By contrast, Alaska does not verify each signature turned in; instead, it verifies each signature until that initiative meets the minimum number required.¹⁸⁶ Nevada should consider adopting a verification process similar to Alaska's in which the state verifies each signature until the initiative meets the minimum number of signatures required in that county.¹⁸⁷ Nevada should adopt Alaska's system rather than Florida's to save time and money by only requiring the county clerk to validate the requisite number of signatures instead of having to validate each signature submitted. However, Nevada should also adopt the element of Florida's system that requires the proponents of the initiative to subsidize the verification process¹⁸⁸ to ease the costs associated with this kind of verification system. Although Nevada has adopted NCSL's recommendation of having a uniform verification system, it ought to revise this system to ensure that each initiative meets the required number of signatures.¹⁸⁹

¹⁷⁸ NEV. CONST. art. XIX, § 2.

¹⁷⁹ NEV. REV. STAT. § 295.260(2) (2007); NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 40, 42.

¹⁸⁰ NEV. REV. STAT. § 295.260(2).

¹⁸¹ *See, e.g.*, Collins & Oesterle, *supra* note 6, at 75.

¹⁸² *Id.*

¹⁸³ Nevada only conducts a random sampling of the signatures collected. NEV. REV. STAT. § 295.260(2).

¹⁸⁴ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 41-42.

¹⁸⁵ *Id.* at 41.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ In Nevada, an initiative must have at least the number of signatures, in each county, equal to fifteen percent of the voters who voted in the last general election in that county. NEV. REV. STAT. § 295.095(2) (2007).

E. Nevada Has Made a Good Effort to Inform Voters on Initiatives

Nevada has taken the first step in educating voters before they vote on initiatives. Nevada distributes a sample ballot to voters listing the initiatives on the ballot, a brief description of the initiatives, the proponent's arguments, the opponent's arguments, and a fiscal impact summary.¹⁹⁰ Nevertheless, some argue that voters never take the time to actually read through the information on the initiatives that the state sends to them.¹⁹¹ This is especially true in states where there are multitudes of initiatives on each ballot. For example, a California study showed that it would take the average person five hours just to do an initial read of the pamphlet sent to voters, which averages about 150 pages.¹⁹² However, Nevada is a smaller state with fewer initiatives on each ballot than California.¹⁹³ Additionally, a study of Washington voters receiving a similar information packet showed that 89.6% of voters remembered receiving the packet and, out of that number, 94.8% of voters said they had read the informational packet.¹⁹⁴ Therefore, it is likely that the sample ballot sent to Nevadans is informing voters about the initiatives on the ballot.

Nevertheless, Nevada needs to take it a step further and attempt to inform voters even more about the initiatives on the ballot, as recommended by the NCSL.¹⁹⁵ Some say that voters are not sophisticated enough to vote on laws.¹⁹⁶ Others worry that initiatives confuse voters because initiatives are too long and written in legalese.¹⁹⁷ While Nevada has taken an additional step to educate voters by placing the initiatives on the Secretary of State's website,¹⁹⁸ Nevada needs to go even further to ensure voters are well-versed enough to vote on the future laws of the state. For example, in Colorado, newspapers across the state publish each initiative.¹⁹⁹ While the Nevada Secretary of State publishes constitutional amendment initiatives in newspapers in each county of the state, the Secretary does not do so for statutory initiatives.²⁰⁰ The NCSL also suggests that states hold public hearings and provide for public debates on initiatives, as well as giving out information on public access television.²⁰¹

¹⁹⁰ NEV. REV. STAT. § 293.565 (2007); *Minutes of the Assemb. Comm. on Elections, Procedures, Ethics, and Constitutional Amendments*, *supra* note 1, at J-9, Exhibit J.

¹⁹¹ Henderson, *supra* note 10, at 981.

¹⁹² *Id.* at 981-82.

¹⁹³ California had twelve statewide initiatives on its 2008 ballot. JENNIE DRAGE BROWSER, NAT'L CONFERENCE OF STATE LEGISLATURES, *BALLOT MEASURES PREVIEW 2008* (2008), <http://www.ncsl.org/default.aspx?tabid=16467>. Nevada had one statewide initiative on its 2008 ballot. Nevada 2008 Ballot Measures, http://ballotpedia.org/wiki/index.php/Nevada_2008_ballot_measures (last visited May 22, 2010); *see also*, Initiative and Referendum Database, NCSL, <http://ecom.ncsl.org/programs/legismgt/elect/dbintro.htm> (select "Nevada," "Any Topic Area," "2008," "Initiative," and "Any" under "Election" then "Submit Query") (last visited May 22, 2010).

¹⁹⁴ Gastil et al., *supra* note 18, at 1453.

¹⁹⁵ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 45.

¹⁹⁶ Gastil et al., *supra* note 18, at 1446-47.

¹⁹⁷ Collins & Oesterle, *supra* note 6, at 91.

¹⁹⁸ *Minutes of the Assemb. Comm. on Elections, Procedures, Ethics, and Constitutional Amendments*, *supra* note 1, at J-9, Exhibit J.

¹⁹⁹ Collins & Oesterle, *supra* note 6, at 70.

²⁰⁰ NEV. CONST. art. XIX, § 2.

²⁰¹ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 45.

Because “most voters receive their information about initiatives through television, largely through advertisements,”²⁰² public access television might be a good option. Therefore, Nevada needs to find ways to confer information to the public, either through newspapers or public access television that will better educate voters and help break down the legalese of initiatives so voters can easily understand the ramifications of voting for or against an initiative.

F. Nevada Has Done a Respectable Job Requiring Financial Disclosures of Money Spent on Initiatives

Nevada has taken the proper steps to ensure that initiative advocates and opponents provide a financial disclosure to the state²⁰³ and therefore to the public.²⁰⁴ As stated by Dina Conlin, “[T]he amount of money spent on initiative campaigns throughout the United States is the single most significant factor in their success at the ballot box.”²⁰⁵ In modern elections, individuals and groups advocating or opposing initiatives spend millions of dollars to have their opinion of the initiative heard by the voters.²⁰⁶ “In California, spending on initiatives has outstripped funding for candidates for political office since at least 1996, with corporations the dominant source of funding.”²⁰⁷ Therefore, while limiting expenditures spent on initiatives is unconstitutional,²⁰⁸ it is important that the state require initiative advocates and opponents to disclose to the state and the public how much money they are spending on initiatives when their funding exceeds a certain amount. However, one can argue that a financial disclosure does not actually assist the voter in his or her decision as to whether or not to vote on an initiative²⁰⁹ because “[g]roups often choose names that are intentionally ambiguous or generic, and the groups are often set up specifically for the purpose of promoting the initiative.”²¹⁰ “The voter therefore has no knowledge of anything other than the fact that the group supports the measure.”²¹¹ Nevertheless, Nevada has taken a step in the right direction by forcing these groups to report what they are spending on initiatives and giving the public at least some access as to the identity of the initiative’s proponent.²¹²

However, Nevada has not followed the NCSL’s suggestion completely because it does not set the disclosure amount for initiative support at the same amount one has to disclose for supporting a candidate for public office.²¹³ The state requires donors to disclose any donation made to a candidate over

²⁰² Henderson, *supra* note 10, at 981.

²⁰³ NEV. REV. STAT. § 294A.283 (2007).

²⁰⁴ Such disclosures are available to the public on the Nevada Secretary of State’s website. NEV. SEC’Y OF STATE, *supra* note 25, at 17.

²⁰⁵ Conlin, *supra* note 7, at 1100.

²⁰⁶ “Today, ballot initiatives are a big business in the United States, accounting for hundreds of millions of dollars in nationwide spending every election year.” *Id.* at 1096.

²⁰⁷ Henderson, *supra* note 10, at 969.

²⁰⁸ Gildersleeve, *supra* note 15, at 1446-47.

²⁰⁹ Henderson, *supra* note 10, at 983.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² NEV. REV. STAT. § 294A.283 (2007).

²¹³ *Id.* §§ 294A.120, 294A.283.

\$100.²¹⁴ For initiatives, any group opposing or supporting an initiative that receives over \$10,000 total in donations has to report every donation of over \$1000.²¹⁵ The Nevada Legislature considered the NCSL's suggestion in the Seventy-Fourth Regular Session, but the Senate Committee on Legislative Operations and Elections decided to set the limit at \$1000, instead of \$100, after hearing testimony concerning retaliation against those supporting or opposing an initiative when the names of the financial donors are listed as supporters or opponents.²¹⁶ Additionally, the Committee heard testimony that many people may give \$100 but few give \$1000 and those that give \$1000 are more likely to be prepared to have their names reported.²¹⁷ Because the Legislature has already considered and rejected this suggestion²¹⁸ but was able to fulfill NCSL's overall suggestions dealing with financial disclosures and initiatives, Nevada does not need to change the minimum disclosure amount to match that of candidate donation disclosures.

G. Guidelines Nevada Should Adopt to Regulate Voting on Initiatives

Although Nevada has taken steps to ensure that the vote threshold²¹⁹ required for an initiative to pass is fair, it needs to take one more step to ensure that initiative proponents are held to the same supermajority requirement that they are trying to impose on the Legislature.²²⁰ These requirements are placed on the Legislature because the voters believe these types of laws are important enough to need the supermajority to pass and therefore "deserve special protection, and should not be easily or hastily changed" and, therefore, the same "assumption [about this additional protection] should extend to the initiative process as well."²²¹ Like the NCSL recommends, Nevada requires that an initiative meet the same vote threshold as a bill of a similar nature would require in the Legislature.²²² While Nevada has met that recommendation, it should heed the advice of the NCSL and adopt a requirement that if an initiative would limit the Legislature by requiring a supermajority to pass certain types of laws, then that initiative must pass by the same supermajority.²²³ For example, the State will only adopt an initiative requiring 75% of the Legislature to vote affirmatively on that type of bill if 75% of the voters vote affirmatively on the initiative.

Nevertheless, Nevada has done an outstanding job ensuring that the state does not enact conflicting initiatives together.²²⁴ When a group disagrees with

²¹⁴ *Id.* § 294A.120.

²¹⁵ *Id.* § 294A.283.

²¹⁶ *Minutes of the Assemb. Comm. on Elections, Procedures, Ethics, and Constitutional Amendments*, *supra* note 1, at 8-9.

²¹⁷ *Id.* at 17.

²¹⁸ *Id.*

²¹⁹ NEV. REV. STAT. § 295.012.

²²⁰ Some states have required that a constitutional amendment initiative needs a supermajority of votes to pass. Henderson, *supra* note 10, at 987. However, Nevada likely does not need to go that far.

²²¹ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 59.

²²² NEV. CONST. art. XIX, § 2.

²²³ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 60.

²²⁴ NEV. CONST. art. XIX, § 2.

an initiative it has become common practice across the country for that group to place many conflicting initiatives on the ballot in an effort to confuse voters, therefore making it more likely they will vote negatively on all of the initiatives.²²⁵ One solution to this problem is to allow revisers to harmonize the initiatives.²²⁶ However, Nevada's solution to the problem is probably the best option. Nevada, like Arizona,²²⁷ will only implement the conflicting initiative receiving the highest number of votes, therefore, invalidating the conflicting initiative with the least amount of votes.²²⁸ Nevada's solution to this problem is an excellent solution that other states should be encouraged to adopt.

H. Nevada Should Adopt a Residency Requirement for Petition Circulators

A non-NCSL suggested solution Nevada may want to consider adopting is a requirement that all initiative circulators be residents of the state. There is "[a] major fear of citizens in states with ballot initiatives . . . that out-of-state special interest groups will come into their state and change the political climate by enacting laws and altering constitutions while avoiding any of the negative effects such changes could create."²²⁹ For example, during the 2006 election cycle, a New York real estate developer funded initiatives in fourteen states that would increase the rights of private developers using professional circulation firms that bring many circulators in from out of state.²³⁰ If the voters had enacted his initiatives, he would have affected fourteen states' laws without ever casting his own vote in one of those states.²³¹ "As former Chief Justice Rehnquist stated, '[s]tate ballot initiatives are a matter of state concern, and a State should be able to limit the ability to circulate initiative petitions to those people who can ultimately vote on those initiatives at the polls.'"²³²

Such a requirement serves as a check on fraud in the initiative process by ensuring that every circulator circulating initiatives within the state will be subject to the Secretary of State's subpoena power.²³³ However, some worry that such a requirement will encourage out-of-state circulators to steal another's identity and register that identity within the state so he or she can circulate petitions locally.²³⁴ Identity theft is a much more serious crime than initiative fraud;²³⁵ therefore, it seems unlikely that the everyday circulator would be will-

²²⁵ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 60; Henderson, *supra* note 10, at 975.

²²⁶ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 60.

²²⁷ Henderson, *supra* note 10, at 974.

²²⁸ NEV. CONST. art. XIX, § 2.

²²⁹ Perkins, *supra* note 23, at 729.

²³⁰ *Id.* at 731-32.

²³¹ If he had "been successful in his campaigns . . . he would have had a direct, and possibly devastating, effect on states without ever casting a vote or being affected by the statutes passed." *Id.* at 732.

²³² *Id.* at 729.

²³³ Idaho Coal. United for Bears v. Cenarrusa, 234 F. Supp. 2d 1159, 1163 (D. Idaho 2001).

²³⁴ "[O]ne petition circulator actually stole the identity of a man living in Washington State and used his identity to become a resident of Maine for the express purpose of signature gathering." Perkins, *supra* note 23, at 733.

²³⁵ If the State of Nevada convicts a person of identity theft, that person is guilty of a category B felony and sentenced to one to twenty years in prison, with the possibility of an additional penalty of a \$100,000 fine. NEV. REV. STAT. § 205.463 (2007). If the State of

ing to commit such a crime in order to circulate an initiative within Nevada. Nevertheless, opponents of such a requirement argue that it makes it more costly and time consuming to collect signatures for a petition because it is harder to find in-state circulators to collect signatures.²³⁶ This seems unlikely because each Nevada resident will still be eligible to circulate initiatives within the state.²³⁷ Plus, this does not mean that out-of-state citizens cannot encourage the passage of an initiative within the state.²³⁸ They can still “speak to voters regarding particular measures; . . . train residents on the issues involved[;] . . . instruct them on the best way to collect signatures; and they may even accompany circulators.”²³⁹ An added benefit is that these residents will also be available to appear in court in case of a fraud investigation regarding the circulation of the initiative.²⁴⁰ Additionally, this requirement makes it so that only those individuals who live in the state may get a new law on the ballot, which means that, in order for an out-of-state individual to try and influence the laws within this state, he will have to first find enough support within the state to aid him in gathering signatures. One may argue that an individual trying to influence the laws in this state from out-of-state will still be able to do so by just paying in-state circulators; however, when this requirement is passed along side the payment-per-signature ban, it will make it very difficult to find people to pay to circulate petitions who do not believe in the change the petition will make.

While a court within Nevada has held, in 2004, that it is unconstitutional for the state to require circulators to be registered voters, it likely can still adopt a requirement that all circulators are residents of the state.²⁴¹ In *Heller v. Give Nevada a Raise, Inc.*,²⁴² the Secretary of State had invalidated thousands of signatures on two petitions because unregistered voters circulated them.²⁴³ Based off prior interpretations of the Nevada Constitution’s circulator requirements, the Secretary of State determined that in order to circulate an initiative for the ballot, the circulator had to be a registered voter or the unregistered voter had to work in a two-person team with a registered voter.²⁴⁴ The Nevada Supreme Court invalidated this requirement under the U.S. Supreme Court’s *Buckley* decision, by saying that these additional steps created an unconstitutional burden on political speech.²⁴⁵ The Nevada Supreme Court also reasoned that a voter registration requirement limited the number of people an initiative proponent could use, therefore limiting the proponent’s ability to get his mes-

Nevada convicts a person of obtaining signatures under false pretenses, that person is guilty of a category D felony and sentenced to one to four years in prison, with the possibility of an additional penalty of a \$5000 fine. *Id.* §§ 193.130, 205.390.

²³⁶ Initiative & Referendum Inst. v. Jaeger, 241 F.3d 614, 617 (8th Cir. 2001).

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ Idaho Coal. United for Bears v. Cenarrusa, 234 F. Supp. 2d 1159, 1163 (D. Idaho 2001).

²⁴¹ Heller v. Give Nev. a Raise, Inc., 96 P.3d 732, 738 (Nev. 2004).

²⁴² *Id.*

²⁴³ *Id.* at 734.

²⁴⁴ *Id.* at 736.

²⁴⁵ *Id.* at 735-36.

sage to the public.²⁴⁶ The court held that this violated core political speech because some citizens choose to not register to vote as a political statement.²⁴⁷ However, if Nevada implements a residency requirement instead of a voter registration requirement, then all Nevada residents will be able to participate as circulators and there will be more than enough voices to promote an initiative issue.²⁴⁸ The State then would only require circulators to have a valid Nevada driver's license or Nevada identification card with a valid Nevada address on it, therefore ensuring that only those who the initiative will affect are the ones who are circulating it. Furthermore, it is unlikely that one would interpret not having a driver's license or identification card as a political statement and therefore this requirement will not violate core political speech.²⁴⁹ Consequently, if Nevada revised its constitution to include a requirement that all circulators are residents of the State of Nevada it likely will not violate the Nevada Supreme Court's prior decision²⁵⁰ or the U.S. Supreme Court's precedent.²⁵¹

Furthermore, the U.S. District Court for the District of Idaho and the Eighth Circuit Court of Appeals have directly considered the circulator residency issue and held that it is constitutional.²⁵² These courts chose to address circulator residency directly because the U.S. Supreme Court declined to consider it directly in *Buckley*.²⁵³ In fact, the Eighth Circuit Court of Appeals said, "The Supreme Court assumed that a residency requirement would serve the state's goals better, and in a less restrictive way, because a residency requirement would allow the state to locate and subpoena circulators."²⁵⁴ Therefore, Nevada should take the chance that a residency requirement for circulators is constitutional and adopt it in an effort to ensure only issues the state's residents want on the ballot get on the ballot.

IV. CONCLUSION

Nevada has shown a commitment to making its initiative process a safe, reliable, and effective way for citizens to pass important laws. However, Nevada needs to follow through on this commitment and adopt most of the rest of the NCSL recommendations along with a residency requirement for circulators.

Nevada has taken the first steps in ensuring its initiative process is effective and free of fraud. It has adopted the single subject per initiative rule,²⁵⁵ along with requiring a fiscal-impact statement to accompany each initiative on

²⁴⁶ *Id.* at 735.

²⁴⁷ *Id.*

²⁴⁸ *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614, 617 (8th Cir. 2001).

²⁴⁹ If Nevada is worried that this is too much to require, it could also accept three months of bills with the circulator's name and local address as proof of residency.

²⁵⁰ *Heller*, 96 P.3d at 738.

²⁵¹ *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 204 (1999).

²⁵² *Initiative & Referendum Inst.*, 241 F.3d at 616; *Idaho Coal. United for Bears v. Cenarusa*, 234 F. Supp. 2d 1159, 1164 (D. Idaho 2001).

²⁵³ *Idaho Coal. United for Bears*, 234 F. Supp. 2d at 1163.

²⁵⁴ *Initiative & Referendum Inst.*, 241 F.3d at 616.

²⁵⁵ NEV. REV. STAT. § 295.009 (2007).

the ballot.²⁵⁶ It has also attempted to keep the voters informed about initiatives by sending them information on each initiative in sample ballots²⁵⁷ and by requiring some initiative supporters to disclose how much money they spend on backing the initiative.²⁵⁸ Additionally, Nevada's process for dealing with conflicting initiatives passed in the same election is one of the best in the country.

Nevertheless, there are still reforms Nevada should at least consider adopting, starting with the adoption of the NCSL recommendations that ensure the voters only vote on the best initiatives. Nevada should alter its indirect initiative process to encourage state legislators to actually act on initiatives in front of them, instead of letting them pass the responsibility off to the voters. Therefore, Nevada should require additional signatures if the Legislature fails to act on the initiative or rejects the initiative.²⁵⁹ Nevada should also adopt a subject-repetition waiting period to prohibit failed initiatives from reappearing on the ballot for a specific number of years.²⁶⁰

Furthermore, Nevada should adopt the NCSL recommendations ensuring voters are educated on the initiatives on which they are voting. Moreover, Nevada should hold public hearings on each initiative before placing it on the ballot to better educate the public and provide a public record for the judiciary to consider when interpreting the initiative-passed law.²⁶¹ Nevada should also try new ways to educate voters on initiatives through television and newspapers in an attempt to reach more voters and ensure that voters understand the initiative's potential effects.

Additionally, Nevada should adopt the NCSL recommendations that ensure initiatives and the ballot titles of initiatives are clear and accurate. Nevada should offer a process in which initiative drafters have the opportunity to meet with the LCB for help in drafting their initiative.²⁶² Nevada also needs to have a state agency or officer draft each initiative's ballot title so the title itself does not mislead voters.²⁶³

In addition, Nevada needs to make changes to the verification process of initiatives and to the signature and vote requirements on some initiatives. Accordingly, Nevada should adopt a verification process in which the State verifies each signature until the initiative meets the minimum number of signatures required rather than using a random sampling verification process that is only questionably effective. Nevada should also require proponents of an initiative to subsidize the verification process. Nevada should adopt a higher signature requirement for a constitutional amendment initiative than what is required for a statutory initiative because amending a constitution should be more difficult than passing a new law.²⁶⁴ Furthermore, Nevada should adopt a require-

²⁵⁶ *Id.* § 295.015.

²⁵⁷ NEV. REV. STAT. § 293.565 (2007).

²⁵⁸ NEV. REV. STAT. §§ 294A.150, 294A.220, 294A.373.

²⁵⁹ NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 5, at 7.

²⁶⁰ *Id.* at 16.

²⁶¹ *Id.* at 13.

²⁶² *Id.* at 22.

²⁶³ *Id.* at 24.

²⁶⁴ *Id.* at 37.

ment that if an initiative will require a supermajority for something to pass in the Legislature, then that initiative must also pass by the same supermajority.²⁶⁵

Lastly, Nevada should change its requirements regarding payments made to circulators and adopt restrictions on who can actually circulate a petition. In an effort to prevent fraud in the initiative process, Nevada should adopt a payment per signature prohibition. Nevada should also require that each circulator be a resident of Nevada to ensure only those who will feel the impact of the initiative are the ones doing the legwork to get it on the ballot.

If Nevada adopts all these recommendations, or at least a majority of them, it will not only have a safe, reliable, and effective initiative process, but also one of the best initiative processes in the country.

²⁶⁵ *Id.* at 59.