

CHANGES TO THE BALLOT MEASURE PROCESS 2018-2019 LEGISLATIVE SESSION RECAP

Important and transformational progressive ballot initiatives have changed the landscape on critical issues and prompted conservative legislatures across the country to attempt to restrict the ballot measure process. These efforts attempt to make it harder to utilize citizen initiatives and to stop or change voter-approved ballot measures.

During the 2018-2019 legislative session, BISC provided support to state partners by tracking and analyzing proposed legislation that would change the ballot measure process, provided a national context for the attacks, and worked with coalitions to brainstorm strategy. We conducted presentations and created resources to educate different audiences about how the ballot measure process works.

In May 2019, BISC launched a Lawyers Guild which brings together attorneys who work on ballot measures from across the country to create a coordinated response to the legal threats to the ballot measure process. The Lawyers Guild is creating resources and sharing information to help state partners navigate potential legal challenges that may arise.

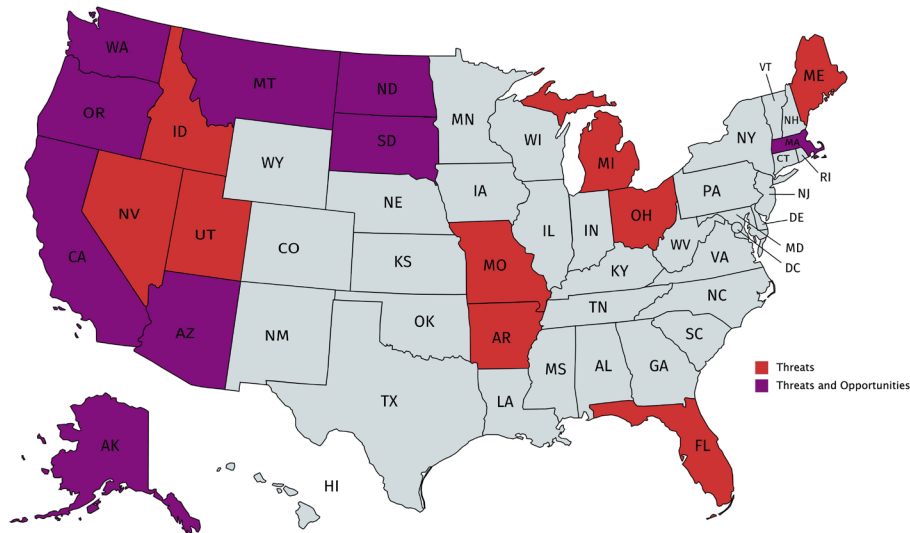
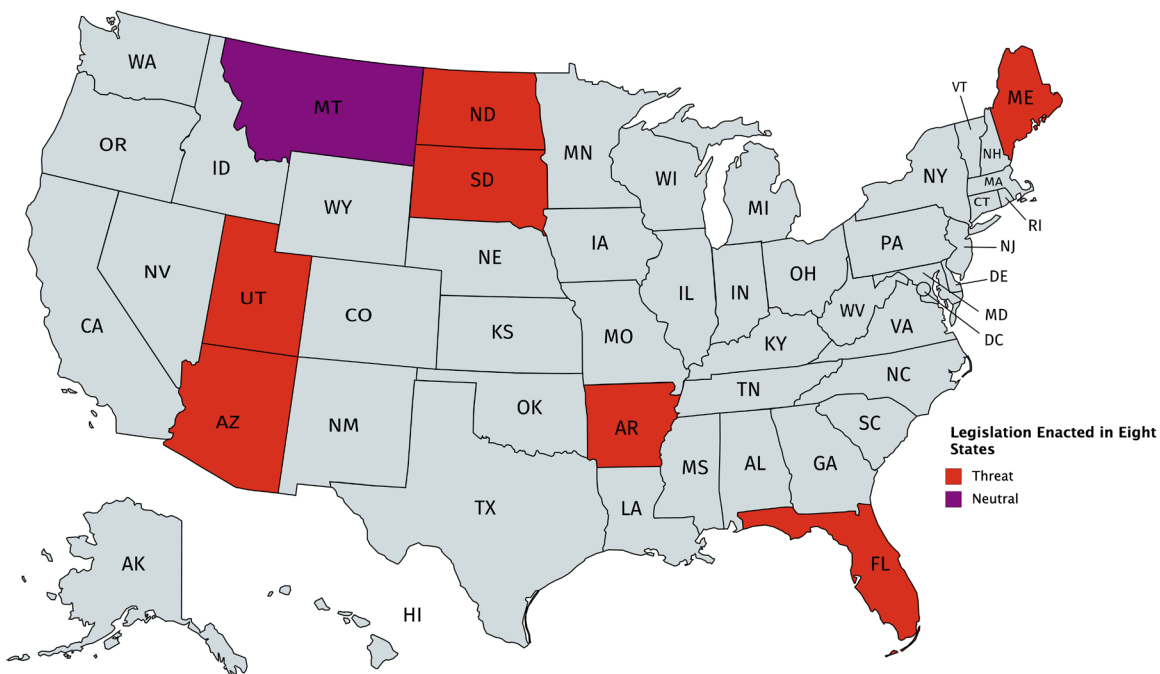


Figure 1: States that had legislation introduced to change the ballot measure process

During the 2018-2019 legislative session, there were more bills introduced to change the ballot measure process than the previous two years combined. As of July 2019, 124 bills to change the process were introduced in 18 of the 24 states that allow citizen initiatives; 15 bills in nine states were introduced to create an initiative process. Of the introduced legislation, 78 (63%) are threats to accessing direct democracy, one is an opportunity to improve the ballot measure process, 30 (24%) are both threats and opportunities, and 14 (11%) appear neutral (depending on interpretation). Opportunities are defined as legislation that has the potential to improve the ballot measure process by making it more accessible. As of July 2019, 19 bills have been enacted in eight states and two have been vetoed in Idaho. Legislation in Arizona, Arkansas, Florida, and Utah made multiple changes to the ballot measure process.



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Figure 2: States where legislation was enacted



APPROACHES TO LEGISLATIVELY ATTACK THE BALLOT MEASURE PROCESS

State legislators and other government officials are using a number of approaches to attack the ballot measure process. State legislators in Missouri launched a “kitchen sink” approach where a record number of bills were introduced to change the ballot measure process. During the 2018 lame duck session, Michigan lawmakers ignored the will of voters by altering voter-approved ballot measures and passed a law that lumped multiple changes into one bill. In Florida, legislation about the ballot measure process was snuck into an unrelated tax bill.

A record number of bills were also introduced in Utah and Arizona. In some states, legislation was passed that appears neutral or even positive on its face but the intent and potential effect is to slow down progress via ballot measures. For example, in Maine, a bill requiring hearings for proposed ballot measures is intended to slow down progressive ballot measures.

The full impact of these bills has not yet been fully realized. In Maine, North Dakota, and South Dakota legislation was passed that has a potential effect of slowing down or preventing progressive ballot measures from getting in front of voters or being implemented. In Arkansas and North Dakota, bills that change the ballot measure process have been referred to voters in the 2020 election.

To further harm the ballot measure process, we have seen the implementation of legislation be delayed, inconsistent, or fraught with problems. Complying with newly-created rules becomes harder when the mechanisms in place to ensure enforcement are problematic. HB 5 in Florida created a website where paid petition gatherers must register. However, the website has crashed multiple times and resources for addressing the concerns are delayed. Lack of compliance may later be used against even those who have attempted to meet all required standards. In states with indirect initiated measures, another technique is to adopt and amend legislation related to the subject matter going on the ballot. If legislation is passed that is substantially similar, the ballot measure cannot go in front of voters.

In Michigan, lawmakers adopted bills related to minimum wage and paid sick leave, so they were no longer on the ballot. During lame duck session, both of these bills were gutted. A lawsuit is moving through the courts to determine the legality of such a maneuver.

ATTACK FLASHPOINTS

In states where the citizen initiative process exists, legislatures zeroed in on few topics: geographic distribution requirements, increasing the threshold for passage, increasing the number of signatures required to get on the ballot, more rules around paid signature gatherers and signature gathering, and what information is required to be shared about citizen-initiated ballot measures and where.



GEOGRAPHIC DISTRIBUTION REQUIREMENTS

In eight states, legislation related to geographic distribution requirements, creating or amending rules about from what part of the states signatures must be collected, were introduced. The eight states were Arkansas, Arizona, Florida, Idaho, Maine, Missouri, Montana ¹, and Utah. Of these, Arizona and Maine would have created new requirements. In the other five states, existing geographic distribution requirements would have been changed if legislation had been passed to make it harder to gather signatures. Fortunately, legislation failed in Arizona, Florida, Maine, and Missouri. Legislation was referred to voters and will appear on the 2020 ballot in Arkansas. Legislation was vetoed in Idaho. Legislation was enacted in Utah.

¹ Legislation passed in Montana, but the change was not significant; it merely brought requirement up to code.



INCREASED SIGNATURES REQUIRED TO QUALIFY AND/OR THRESHOLD FOR PASSAGE

Legislation was introduced in seven states to increase the total number of signatures required to qualify for the ballot or increased the threshold for passage. Florida, Missouri, North Dakota, and Washington legislatures introduced bills that would have created supermajority requirements for some citizen initiated ballot measures; they failed in all four states. Maine legislators introduced a bill that would have required 60% approval from total votes cast for an initiative to pass. This bill also failed. The Idaho and Montana legislatures introduced bills that increased the percentage of total signatures required to get on the ballot. The bill was vetoed in Idaho. In Florida, Idaho, Maine, Missouri, and Montana these bills included an effort to intensify or create geographic distribution requirements which can make it harder and more expensive to gather signatures. We have seen ballot measures with similar language being circulated in Florida and Missouri.



PAID SIGNATURE GATHERERS AND/OR SIGNATURE GATHERING

Nine states had legislation proposed that focused either on the signature gatherers or the signature gathering process. Arizona, Arkansas, California, Florida, Maine, Massachusetts, Missouri, South Dakota, and Utah were the states where these bills were introduced. Legislation passed in Arizona and Florida. It was legislatively referred to voters for the 2020 election in Arkansas.



INFORMATION ABOUT CITIZEN INITIATIVES

Some state legislatures introduced bills that would change how citizen initiatives appear on the ballot and/or what information about initiatives is publicly available. For example, some states introduced legislation requiring additional information, like a fiscal impact statement, to appear on the ballot or ballot summaries to be published on secretary of states' websites. These were introduced in the following ten states: Arizona, Arkansas, Florida, Idaho, Maine, Missouri, North Dakota, Oregon, Utah, and Washington. Legislation was passed in Arizona, Florida, Idaho (although, it was vetoed by the governor), North Dakota, and Utah. Legislation was referred to voters for the 2020 election in Arkansas.



WHAT'S NEXT?

There were some important wins in the ballot integrity landscape. In Missouri, despite a record number of bills being introduced, no legislation was passed that would change the ballot measure process. In Idaho, the governor vetoed bills that would have been harmful to the ballot measure process. However, as progress at the ballot and engagement of new and infrequent voters continues, we expect to see the number, types, and frequency of attacks on the ballot measure process increase. In upcoming sessions, it will be important to continue educating state legislators about the impact of proposed changes, organizing to protect access to direct democracy, and fighting for the implementation of voter-approved measures.

State specific information is available upon request. Please contact bisc@ballot.org for more information.