



5 March 2020

State	Allows severability clauses in ballot initiatives?	Allows legislature to review a ballot initiative after a court challenge (when it has been severed) and prior to placement on the ballot?
Arizona	Yes: Confirmed in response from legislative staff in AZ. State supreme court has held that they will only consider procedural challenges to ballot initiatives pre-election, and will not consider substantive validity even if the proposed measure may conflict with the state constitution (League of Arizona Cities and Towns v. Brewer, 146 P.3d 58)	No: Confirmed in response from legislative staff
Arkansas	Yes: Confirmed in response from legislative staff in AR, and discussed in AR Supreme Court case law (see U.S. Term Limits, Inc. v. Hill, 316 Ark. 251(1994))	No: Response from legislative staff: “The Arkansas General Assembly does not have a role in ballot initiatives, that process is independent of the legislative process with no intersections. Our General Assembly could amend or repeal an initiated act after passage but it has no involvement prior to passage.”
California	Yes: Inferred from case law and state guidance on ballot initiative process. California case law indicates presumption against pre-election review of constitutionality of initiative measures (see Independent Energy Producers Ass’n v. McPherson, 136 P.3d 178)	
Colorado	Response from legislative staff: “Colorado does not allow an initiative to be severed prior to placement on the ballot. We have a single subject	

	<p>requirement and extensive laws regarding staff review of text, setting of ballot titles, and placement of text on petition forms. The text on the petition forms is the text of the measure that will be considered in the election and cannot be modified at that point (though it can be withdrawn).” Colorado case law also indicates that Supreme Court will not review merits/substance of proposed initiatives before enactment (see Matter of Title, Ballot Title and Submission Clause for 2013–2014 #90, 328 P.3d 155)</p>	
Florida	<p>Yes: Confirmed in response from legislative staff in FL. See also Ray v. Mortham, 742 So.2d 1276 (1999).</p>	<p>No: Confirmed in response from legislative staff. FL Supreme Court reviews all proposed initiatives for form.</p>
Idaho	<p>Yes: Confirmed in response from legislative staff in ID. See also example of recent ballot initiative (Section 5).</p>	
Maine	<p>Yes: Confirmed in response from legislative staff.</p>	
Massachusetts	<p>Yes: Confirmed in response from legislative staff. Recent examples of initiatives containing severability clauses can be found here.</p>	<p>Response from legislative staff: “Article XLVIII Part VI of the Massachusetts Constitution provides for how “Conflicting or Alternative Measures” are dealt with by the general court in the case that “any judicial proceeding, provisions of constitutional amendments or of laws approved by the people at the same election are held to be in conflict” – while this doesn’t mention review after an initiative has been severed, it explains how the legislature would proceed in this case.</p>
Michigan	<p>Yes: Confirmed in response from legislative staff. (example here at Sec. 17</p>	

Mississippi	Could not identify any statutes or case law that spoke to this issue. Did locate case law that states Mississippi courts will not review constitutionality of proposed initiatives prior to passage (Hughes v. Hosemann, 68 So.3d 1260)	
Missouri	Yes: Indicated in case law considering severability clauses in initiatives. Missouri courts have held “Pre-election review of a constitutional challenge to an initiative petition ballot measure can only be conducted when challenge satisfies two criteria: challenge must be to a threshold issue that affects the integrity of the election itself and is so clear as to constitute a matter of form.” (Missouri Electric Cooperatives v. Kander, 497 S.W.3d 905)	
Montana	Yes: Confirmed in response from legislative staff. Note, Montana courts will not consider pre-election challenges to initiatives except in the case of a challenges to proposed ballot statements or attorney general’s legal sufficiency determinations (Montana AFL-CIO v. McCulloch, 380 P.3d 728)	No: Confirmed in response from legislative staff.
Nebraska	Yes: Severability clauses appear in past ballot initiatives (example , Sec. 4). From legislative staff: “severability must be explicitly included in the initiative. This is not provided for in the constitution or statute, it is based on legal precedent.”	No: Confirmed in response from legislative staff.
Nevada	Yes: Indicated in case law applying severability clauses in ballot initiatives. Nevada Supreme Court held “challenges to an initiative's substantive validity will not be considered as part of the court's preelection review of an initiative, because such challenges are not ripe for judicial review until an initiative becomes law.” (Nevadans for Protection of Property Rights v. Heller, 122 Nev. 894 (2006))	

<p>North Dakota</p>	<p>Yes: Confirmed in response from legislative staff.</p>	<p>No: Response from legislative staff: “No, the North Dakota Legislative Assembly does not have authority to review or modify an initiated measure before placement on the ballot. Article III, section 8 of the Constitution gives the Legislative Assembly limited authority to repeal or amend a measure after it has been approved by electors. Specifically, that provision says “A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house.”</p>
<p>Oklahoma</p>	<p>Yes: Indicated in case law through state supreme court reviewing initiatives. Courts in Oklahoma also apply presumption that “where questioned provision of initiative petition is severable, and resolution of constitutional issues prior to act becoming law would not prevent costly and potentially unnecessary election, question of constitutionality is not ripe for determination.” (In re Initiative Petition No. 347, 813 P.2d 1019)</p>	
<p>Ohio</p>	<p>Yes: Confirmed in response from legislative staff. Example of approved initiative with severability clause here.</p>	<p>No: Response from legislative staff: “I’m not sure how to answer your second question in this context because a statute or constitutional amendment can’t be held partially invalid by a court, and then “severed,” until after it has been enacted. The General Assembly does have a given time period to review and enact a statute proposed by initiative before it may be placed on the ballot.”</p>

Oregon	Yes: Confirmed in response from legislative staff. Example of approved initiative with severability clause here . (Sec. 5)	
South Dakota	Yes: Example of approved ballot question with severability clause here (section 15)	
Washington	Yes: Confirmed in response from legislative staff and examples of recent initiatives. (example : see Sec. 15). From legislative staff: “Additionally, Washington courts do not engage in substantive review of ballot measures before voter approval, so severability clauses are not invoked before an initiative appears on the ballot. Courts will review whether an initiative contains matter outside the scope of the legislative power.”	No: Response from legislative staff: “No, Washington provides no process for the Legislature to review a ballot initiative before it’s placed on the ballot. In cases of initiatives to the Legislature, where the Legislature adopts an alternative measure or amends the initiative, the initiative as presented to the Legislature appears alongside the measure as passed both chambers on the ballot.”
Wyoming	Yes: Confirmed in response from legislative staff and indicated in case law considering applicability of severance clauses (see Wyoming National Abortion Rights Action League v. Karpan, 881 P.2d 281).	