

HB 119

1962 **20A-11-1202. Definitions.**

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1968 (2) "Ballot proposition" means constitutional amendments, initiatives, referenda,
1969 judicial retention questions, opinion questions, bond approvals, or other questions
submitted to

1970 the voters for their approval or rejection.

...

2027 (12) "Proposed initiative" means an initiative proposed in an application filed under
2028 Section 20A-7-202 or 20A-7-502.

2029 (13) "Proposed referendum" means a referendum proposed in an application filed
2030 under Section 20A-7-302 or 20A-7-602.

2090 **20A-11-1205. Use of public email for a political purpose.**

2091 (1) Except as provided in Subsection (5), a person may not send an email using the
2092 email of a public entity:

2093 (a) for a political purpose;

2094 (b) to advocate for or against a ~~[ballot proposition]~~ proposed initiative, initiative,
2095 proposed referendum, or referendum; or

2096 (c) to solicit a campaign contribution.

Section 1205 currently prohibits anyone from using a public entity email from advocating for or against a ballot proposition. HB 119 would make the significant change to modify the point at which this speech restriction becomes effective. Essentially, this places a "gag order" on public employees the moment an application is filed.

1. Sponsors must file an application with the local clerk. U.C.A. § 20A-7-602.
2. The local budget officer and legal counsel prepare an estimate of the fiscal and legal impact. U.C.A. § 20A-7-602.5
3. A referendum petition is created for gathering signatures in support of the proposed referendum. U.C.A. § 20A-7-603.
4. Petition packets must be prepared by the clerk and/or sponsors. The packets include the referendum petition, copies of the petition, and signature sheets. U.C.A. § 20A-7-604.
5. Sponsors must gather signatures of legal voters residing in the jurisdiction. U.C.A. § 20A-7-605.
6. Sponsors must turn in signatures for certification by the county clerk by the specific deadline. U.C.A. § 20A-7-606.
7. The county clerk shall send the packets to the local clerk to determine sufficiency. U.C.A. § 20A-7-606.
8. Finally, assuming the procedures and requirements are met, "a petition determined to be sufficient in accordance with this section is qualified for the ballot." U.C.A. § 20A-7-607(5).
9. The municipal clerk ensures that the qualified referenda will "appear on the next regular general election ballot." U.C.A. § 20A-7-609.

Why this matters

The Utah Supreme Court has already held that restrictions on public entities related to referendums do not arise until *after* the referendum has qualified for the ballot. *Riverton Citizens for Constitutional Gov't v. Beckstead*, 631 P.2d 885, 887 (1981).

The Utah Supreme Court has already urged us to be cautious on the very restrictions on employee free speech advocated by Respondents. If a referendum petition could be validly filed in advance of the required check and certification of voters' signatures, the opponents of a legislative measure could suspend the action of duly elected lawmakers without first producing verified signatures demonstrating the support of the prescribed number of qualified voters in the jurisdiction. The law-making power of a governmental unit should not be subject to question or supersede without strict compliance with that vital step.

Once a governmental policy is adopted by a legislative body, the governmental staff is charged with implementing the policy. Providing information regarding the reasons for government actions is crucial for transparency. Oftentimes on matters of larger policy implementation, communication with the public is required for successful implementation. This is especially true in public transportation matters which require ridership to meet fiscal projections for viability. This language would allow a new and expanded tool to impede successful implementation of governmental program by improperly chilling government speech.

Restricting speech and communication related to ordinances and laws validly passed should not be taken lightly. It can create an impedance of the successful implementation of programs and policies that could put millions of dollars at risk.

To burden any governmental body by restricting speech based on the *potential* placement of an item on the ballot prior to qualification for the ballot is exactly the type of burden warned of in the *Riverton* decision.

In sum: This bill attempts to prevent speech against a proposed referendum (as opposed to current law which prevents public speech advocating for or against referendum that has been deemed legally sufficient, i.e. gathered signatures and legally subject to referendum). That is not altogether bad. However, the problem is that it gives a tool for any person that opposes a validly passed law to get in the way of communications supporting that law and restricts government employee speech when they are simultaneously tasked with executing the law.