



Anti-Oil and Gas Initiatives Move Forward

By [Jim Martin](#)

Citizens of Colorado may directly initiate legislation through the process of ballot initiatives, either as state statutes or amendments to the Colorado Constitution. The sponsors of four different constitutional amendments have gained approval to begin collecting the signatures necessary to place one or more of those measures on the statewide ballot this November. Any one of these measures would erect enormous obstacles to development of oil and gas in much of the state.

A group called Coloradans Resisting Extreme Energy Development (CREED) is the sponsor for three of the four initiatives—Initiatives 63, 75, and 78. Initiative 63 would declare that every natural (as opposed to corporate) person has a fundamental and inalienable right to a healthy environment. Initiative 63 would grant to any local government the power to enact laws to protect those fundamental rights. Initiative 63 would operate as reverse preemption, because it would declare that in any case where any local law is more stringent than a state law, the local law would prevail. Obviously, this has the potential to undermine the comprehensive state oil and gas regulations already in place. Finally, this initiative would grant to any person or government the right to enforce this new fundamental right, and would authorize punitive damages for reckless disregard of this new constitutional provision. There is vast ambiguity in Initiative 63’s language, which would create tremendous uncertainty not just for the oil and gas industry, but for any business which one might argue compromises a “healthy environment.”

Initiative 75 is more direct and to the point. It would grant to any local government the power to regulate oil and gas exploration, production, and processing, including the power to adopt prohibitions, moratoria, or limits on oil and gas activity. It would not only allow local regulation that is more stringent than comparable state requirements, but it also would protect local government regulation of oil and gas from preemption by state regulation or statute.

New mandatory setbacks from oil and gas facilities is the hallmark of Initiative 78. It would require wells or oil and gas facilities to be located a minimum of 2,500 feet (nearly one-half mile) from any occupied structure, broadly defined, as well as from any water source, irrigation canal, riparian area, open space, or park. In addition, this initiative would allow local governments to establish greater setbacks. If approved, Initiative 78 will operationally prevent production of a substantial amount of hydrocarbons in the state.

Coloradans for Community Rights sponsored the fourth and final initiative: Initiative 40. Initiative 40 is at once the broadest and vaguest of all of the initiated measures. It would declare that people have an inherent right of self-government, including the right not only to establish the rights of natural persons but also to establish, define, alter, or eliminate competing rights of corporations. As such, this initiative would grant to local governments vast power to regulate or prohibit virtually any form of business activity.

The sponsors, CREED and Coloradans for Community Rights, have until early August to turn in petitions containing at least 98,492 valid signatures in order to qualify any of the initiatives for the ballot. Industry representatives have participated throughout this process, and will continue to do so to ensure that the initiative sponsors comply with all provisions of law in collecting signatures. We anticipate significant opposition to any of these measures that make it to the ballot.

For more information, please contact [Jim Martin](#).