

# **To Vote or Not to Vote: should that be a question submitted to the electorate?**

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# Referendum Petition on a Referred Measure: Tragedy or Comedy?

- Act I - Background - City's regulation of Short-Term Rentals
- Act II - Referendum Power
- Colorado Law: Constitution, Statutes, Charter
  - Case Law: legislative v. administrative analysis
  - Municipal Powers over initiatives and referenda
- Act III - District Court case
- Act IV - Takeaways
- Act V - Epilogue



# Act I

## Steamboat Springs regulates STRs in 2022

June 2021 Moratorium

November 2021 City Council elections

- SSCPA campaign
- SSCPA endorsed candidates all lost

2022 Ordinance creating unrestricted, restricted (caps), and prohibited zones

STR tax question referred July 19

- Brown Ranch gift—rate went from 1-4% to up to 9%

# Act I

**“Lord what fools these mortals be.”**

SSCPA reacts . . .

- Referendum petition filed July 21
- Petitions to recall 3 City Council Members
- City Clerk has 5 business days to approve or reject the petitions

# Rejecting a Referendum Petition

City Clerk rejected the referendum petition on July 28 on three grounds

- Petition concerned the calling of a special election (Charter exception to the right of referendum)
- Petition did not address “municipal legislation”, but instead the levy of taxes and the calling of a special election
- Petition improperly summarized the ordinance

# Act II

## The Referendum Power: Constitutional Reservation

Referendum reserved for state issues with two exceptions:

- Laws for the immediate preservation of the public peace, health, or safety
- Appropriations for support and maintenance of state depts. and institutions

Article V, § 1(9) reserves initiative and referendum power reserved “by this section” to registered electors of every city, town, and municipality.

- Applies to all local, special, and municipal legislation of every character
- Cities, towns, and municipalities may provide for the manner of exercising
- Not more than ten percent of registered electors may be required to order referendum



# The Referendum Power: Steamboat Springs Charter Provisions

Referendum applies to “any ordinance”.

Includes signature requirement of 10% of registered voters.

Includes exceptions for ordinances calling special elections and for certain financial acts: capital program, budget, appropriations, issuing securities, levying taxes, and fulfilling contractual obligations.

Special election exception is a minority (approximately 20 home rule examples).

Financial act exception is more common (approximately 55 home rule examples):  
Assessments, improvements and improvement districts, salaries, economic dev.



# The Referendum Power: Election Codes

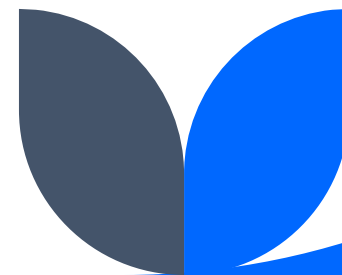
Title 1, Uniform Election Code

Title 31, Art. 10 and 11 Municipal Election Code and Initiative and Referenda

- C.R.S. 31-11-105 special election exception to referenda

City of Steamboat Springs Election Code Adopted in 2021

- Clarified applicability of state statutes
- Circular references to Uniform and Municipal Election Codes
- Procedures for Initiatives and Referenda
- Campaign Finance enforcement after SB 19-232





# The Referendum Power: Appellate Decisions

Charter and Constitution reservations are independent. *Burks v. Lafayette*, 349 P.2d 692 (Colo. 1960)

“Emergency” or “safety clause” exception permitted by Constitution does not apply unless expressly adopted. *Id.*

Reference in home rule charter to “any ordinance” construed to be limited to legislative acts. *City of Aurora v. Zwerdinger*, 571 P.2d 1074 (Colo. 1977)



# The Referendum Power: Appellate Decisions Legislative v Administrative

## Legislative Actions

*Witcher v Canyon City*, 716 P.2d 445 (Colo. 1986) Three part test:

- Permanent and general vs. temporary
- New declaration of public policy
- If original act was legislative, then amendment is also legislative

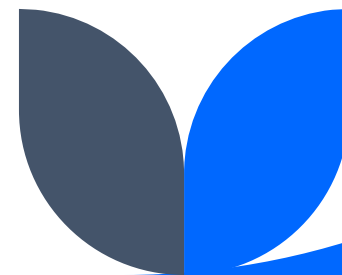
Zoning and re-zoning, *Margolis v District Ct.*, 638 P.2d 297 (Colo. 1981); *Citizens v. City of Steamboat Springs*, 807 P.2d 1197 (Colo.App. 1990).

## Administrative Actions

Temporary

Necessary to carry out existing public policy

- Utility rate ordinances, *City of Aurora v. Zwerdinger*, 571 P.2d 1074 (Colo. 1977)
- design and construction of a state highway entrance, *Vagneur v. City of Aspen*, 232 P.3d 222 (Colo. App. 2009); *Vagneur v. City of Aspen*, 295 P.3d 493 (Colo. 2013)(*Vagneur II*)



## ACT III

"The pound of flesh . . . 'tis mine and I will have it."

SSCPA filed its complaint and motion for preliminary injunction on August 1, 2022 (Craigén, Robin, et.al v. City of Steamboat Springs) seeking reversal of Clerk decision and tolling/restoration of the full thirty (30) day period to collect signatures.

**6 *Rathke factors*:** probability of success on the merits; irreparable injury; balance of equities, speedy remedy; serving the public interest, preserving the status quo. *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982)

Emphasis on equity in PI analysis helpful:

*"Plaintiffs have an adequate remedy at law if the court's denies the present motion. They may vigorously campaign against the STR Tax."*

## Act III

**"Many a man's tongue shakes out his master's undoing."**

Particularly because SSCPA makes an unfortunate admission in local newspaper:

“It is a significantly more expensive business to campaign against a ballot measure,” said Craigen. “While we appreciate that that’s an option, Steamboat is a community where you can still talk face-to-face with people.”

And does not present any evidence of irreparable injury.

# Argument:

## Charter expressly exempts calling a special election from acts that are subject to referendum

### CITY CHARTER

such power shall not extend to the budget, capital program, appropriation of any revenues, levy of taxes, calling a special election . . .

### SPECIAL ELECTION

“Special election” means any election called by a governing board for submission of ballot issues and other matters, as authorized by their enabling legislation. (C.R.S. § 1-1-104(46))

### REGULAR ELECTION

Regular municipal elections shall be held on the first Tuesday in November in the odd-numbered years commencing with 1975 and biennially thereafter. (City Charter)

# Argument:

## Cities can limit the exercise of the referendum

Cities may “provide for the manner of exercising the initiative and referendum powers as to their municipal legislation.” Colo. Const., art. V, § 1(9)

Example: Single subject restriction on municipal initiatives upheld in *Bruce v. City of Colo. Springs*, 252 P.3d 30 (Colo. App. 2010).

# Findings of Fact

On the FACTS (even-numbered year, nature of the election), the District Court found that the Ordinance called a special election and that plaintiffs had an adequate remedy at law:

“Plaintiffs have failed to demonstrate that the City has not called a special election. As such, there is no right of referendum on this issue.”

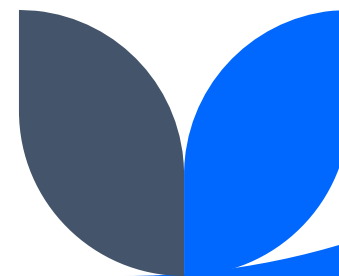
“Plaintiffs have an adequate remedy at law if the court denies the present motion. They may vigorously campaign against the STR Tax.”



# Conclusions of Law

**“Plaintiffs have not demonstrated that the City lacked the authority to make such exemptions. While they distinguish each of the cited cases, Plaintiffs do provide any authority holding that the calling of special elections and tax levies are improper exemptions from the right to referendum. Because these are clearly delineated exceptions, the court finds that it is within the City’s authority to exclude special elections and tax levies from the right to referendum ...”**

**“The court finds that ‘levy of taxes’ as used in the Charter necessarily includes the initial step in the TABOR process of seeking voter-approval of the tax. As such, even though presenting the question of a tax levy in the ballot is not the actual levy itself, it is part of the overall TABOR scheme.”**





# ACT IV

## “All’s Well That Ends Well?”

City had good facts:

- SSCPA was relying on an excessively literal interpretation of the right of referendum that would have effectively disenfranchised the voters
- SSCPA failed to articulate irreparable harm
- Well developed legislative record

Clear special election exception exists in City Charter and Municipal Election Code.

Decision does not rule out a referendum on a referred measure in all circumstances.

# Act V

## Epilogue

- Voters approved the STR tax with 62% voting in favor.
- City is now in the process of annexing Brown Ranch.
- Expecting ... a referendum.