

Use of electronic signatures on petitions for Home Rule Charter amendments

The Colorado Constitution provides that the General Assembly “shall provide by statute” the manner in which a home rule charter is adopted or amended. Colo. Const. Art. XX, sec.9(2) The resulting “HR statute” is located at C.R.S. 31-2-201 to 407. Colorado courts have clarified that home rule municipalities may adopt their own procedures for amending their charters that do not conflict with the State statutes. The courts have defined “conflict” in this context as existing “only if the ordinance authorizes what the statute forbids, or forbids what the statute authorizes.” In the two principal cases in this area, Colorado courts have upheld local ordinances that the court characterized as “working in tandem with” and “complimenting” the state home rule statutes. (For the foregoing generally, see: *Mc Carville v. City of Colo. Spgs.*, 338 P3d 1033, (Colo. App. 2013) and *Colo. Spgs. Citizens for Com. Rts. v. City of Colo. Spgs.*, 360 P3d 271(Colo. App. 2015)).

The home rule statutes plainly contemplate the traditional system of electors signing petitions in the presence of a circulator who then submits an affidavit with the petition stating that s/he witnessed the signature and other matters. C.R.S. 31-2-220,221,223 and 225.

Should Boulder wish to utilize electronic signatures on charter amendments, the safest way to avoid a conflict would be to seek a legislative modification of the HR statutes to expressly permit electronic signatures. Absent such a change, the City would have to argue that use of electronic signatures does not conflict with the HR statutes, arguing, for example, that the use of electronic signatures “compliments” the HR statutes in that it serves the same larger objective of those statutes: to assure that the public has a credible way to initiate charter amendments through a petition process. Of course, a court may not agree with this argument, and we would then be left with our first option of asking the General Assembly to change the law.