



## **Initiative and Referendum: The View from Other States**

**By Nancy Ekberg**

**Twenty-four states** have approved the initiative procedure of allowing citizens the right to bypass legislators in their effort to enact legislation and provide direct democracy.

But the Legislatures in those states can affect the initiatives to varying degrees. California has the least amount of legislative control. Wyoming has the most. Arkansas, Arizona, Michigan, North Dakota, Oregon, Colorado, Idaho, Oklahoma, South Dakota, Utah, Washington, Illinois, Nevada, Florida, Alaska, Missouri, Montana, Nebraska, Ohio, Mississippi, Maine and Massachusetts fall somewhere in between, with Arkansas closest to California and Massachusetts closest to Wyoming.

We have received information from Leagues in four states, describing their view of their state's initiative (or lack there of) and their recommendations.

Those Leagues are: Oregon, Minnesota, Wyoming, Colorado and California.

**This is what the Oregon League said.** *I have paraphrased their words*

Individuals or groups have been able to distill citizen discontent into term limit, tax reform and getting-tough-on-crime. They have been successful in putting such measures on the ballot and sometimes passing them. Some recent initiatives cut revenue, shifted responsibilities among governments or carried high price tags. These have limited the flexibility of the Legislature and governor in budgeting. Other initiatives that proposed changes in taxation or spending have put the governor, Legislature and other elected officials on the defensive, working to defeat measures rather than forwarding their own agendas.

But not all initiatives reflect voter discontent. Some have set national precedence such as physician assisted suicide, vote by mail and open adoption records. Others are similar to initiatives in other states. Examples include efforts to regulate hunting and trapping, legalize marijuana and reform campaign financing.

People hold a variety of views on whether recent initiatives have been good or bad for Oregon. The high number of initiatives has generated talk of reforming the process. The legislature has referred measures to the voters that require a certain percentage of the signatures from each congressional district and increase the number of signatures needed to qualify. Voters rejected these proposals. Voters also rejected a counterpart: an initiative that would have **prohibited** the Legislature from asking voters to consider proposals like these to make the process more difficult

Most change has come via the courts. On the one hand, the U.S. Supreme Court has ruled that restrictions on petitioners are violations of freedom of speech which opened the door to the paid petitioner business.

On the other hand, the Oregon Supreme Court has made it more difficult to write constitutional amendments and to find places to collect signatures.

The initiative process is not a perfect system and laws regulating it may need change. But for 98 years, the system has given a direct voice to the people of Oregon.

Their conclusions were based on the following:

- In November of 2000 Oregonians voted on 26 ballot measures, 18 of which were initiatives drafted by citizens.
- Petitioners filed 166 proposed initiatives with the Secretary of State.
- One organized taxpayer group filed more than one fourth of the initiatives and qualified six for the ballot
- More than a quarter of the Oregon Supreme Court's caseload was devoted to initiatives following 2000,
- Initiative sponsors spent between \$65,000 and \$400,000 per initiative to gather the number of signatures
- Fifteen political action committees supporting or opposing initiatives spent more than \$400,000. One of them, which opposed two initiatives, spent \$4.8 million.
- Voters approved five of the initiatives
- Opponents have challenged the constitutionality of two of those five initiatives.

The sheer number of initiatives and associated activities has raised questions about the initiative process.

One problem is that the text of the proposed law or constitutional amendment is solely up to the sponsors. Although the Secretary of State recommends getting legal advice, initiative writers are not required to do so. This contrasts with the legislative process for writing laws and constitutional amendments. Before the House and Senate vote, committees hold hearings, lobbyists and citizens comment, legislative councils review and legislators negotiate. The checks and balances of this system can help clarify ambiguous language, remove unintended consequences and address constitutional issues.

Traditionally more initiatives were written as statutory law. But in every election since 1994, over half of the initiatives have been constitutional amendments, and in 2000, two thirds were constitutional amendments. This clutters up the Oregon Constitution, which should be the basic framework of government and not cluttered with things that might otherwise be statutes.

Few of the initiatives filed with the Secretary of State go on to signature collection. Many are filed to stake out political positions such as threatening to counter another initiative...or are multiple forms of the same subject.

Because only the official ballot title appears on the ballot, initiative sponsors and opponents closely examine these. Supporters and opponents filed 92 challenges involving 67 measures before the Oregon Supreme Court in the last election cycle.

On collecting signatures, petitioners must turn in the required number of signatures four months before the election to qualify for the ballot. In 2000, the Secretary of State had to verify 2.4 million signatures on initiatives.

The U.S. Supreme Court ruled that Colorado's ban on paid petitioners was unconstitutional and thus petitioners may be paid. By 2000 15 of the 18 qualifying campaigns used paid petitioners.

The U.S. Supreme court also ruled in a Colorado case, that states cannot require petitioners to be registered voters. Signers must be, but the petition gatherers do not need to be.

Some government agencies have tried to restrict petitioners and have been sued for doing so.

One organized organization led by a citizen runs a vertically integrated organization that prepares initiatives, raises funds from large and small donors, collects signatures on his own and others' initiatives and has his petitioners carry multiple petitions when they seek signatures.

Opponents have outspent proponents of measures by nearly 3.5 to 1.

Over nearly a century of initiative use, voters have approved fewer than 40% of them.

Opponents took to court nearly half of the initiatives that voters approved in the last quarter century. And already two of the five initiatives approved in 2000 are being challenged in court. The courts have invalidated in whole or in part, nearly half of the Oregon initiatives that have been challenged in the last 25 years.

**In Minnesota, the League says:** *I am paraphrasing them*

Their study was done in 1979, and they arrived at their position in opposition to most forms of initiative in early 1980. This is their position:

Support of the continuation of legislative initiative and compulsory voter referendum on constitutional amendments; opposition to most forms of voter initiative and referendum on statutes; opposition to recall by voters of members of the Legislature and state constitutional officers; support of strict procedural limits on any process of initiative, referendum or recall.

They sent a response to the Minneapolis StarTribune in 2004, when a legislator supported initiative and reform in the state, with these words. *Again I am paraphrasing them.*

Following a study by our members 18 years ago, the League took a position in opposition to initiative and referendum. At every biennial state convention since then our membership has reaffirmed our opposition to initiative and referendum and we have testified against the proposition in several House and Senate committees over the years, including this year's session

Consideration and enactment of complex public policy is most appropriately done in the legislative arena. Our elected representatives reflect a wide range of political views, can hear arguments, study implications, make judgments and vote accordingly. Rare is the citizen who has access to as much information and as many viewpoints as well as the time to devote to careful consideration of opposing points of view.

Initiative and referendum bypass legislative scrutiny and ask citizens to vote yes or no on complex issues without the possibility of amendments, without the discussion and debate inherent in legislative procedures. Citizens have ample opportunity to impact the legislative process through writing letters, calling legislators, testifying at hearings, contacting their legislators in their districts and ultimately by voting.

We feel initiative and referendum:

- Weaken representative government by circumventing the legislative process. In the states that use these processes, ballot issues become as important as the election of candidates. If controversial issues are left to the public, legislators can avoid making difficult decisions.
- Have the potential to disrupt whole bodies of law. Ballot initiatives deal with issues in isolation, sometimes resulting in bad public policy .
- Allow unlimited spending on ballot issues, that might extend to groups which are excluded from spending on election campaigns opening a loophole in campaign finance laws.
- Have lost their populist roots and become a tool of special interests. Ballot campaigns are now big business. In many states, marketing has become the final determinant of a ballot issue's success or failure. Special interests, because of their ability to provide funding, can have great advantages.
- Do not protect minority low-income or other groups that may not have access to the media or funding to promote viewpoints.

**Wyoming said:** *I am paraphrasing again.*

An interesting result situation happened when an initiative requiring term limits was passed by citizens, but it was ultimately repealed (and that repeal was supported by the League.)

Our Wyoming Legislature has made our already tough initiative process nearly impossible. Right now it is virtually impossible to get anything on Wyoming's ballot without having professional organizers and paid signature gatherers.

**Maine is studying Initiative and Referendum now.**

**Colorado said they have had the initiative process in place since 1910.** Initially, it was used a great deal and then used minimally throughout the years until the 1970's. Since that time, the initiative process has been used quite regularly with anywhere from 7-10 initiatives on the ballot every two years. The legislature typically puts anywhere from 2-5 referenda on the ballot every two years. It is a lot for voters to digest. Citizens are allowed to get an initiative on the ballot as long as they have the required signatures and have reviewed their proposal with a legislative council title-setting process. LWVCO studied the issue 5 years ago to decide if the supermajority voting was good for constitutional changes and decided it was. They decided also there should be more signatures on a petition to change the constitution versus just statutory change. And they decided there should be a waiting period after a statutory initiative is passed before the legislature can mess it up.

**In California,** this is what the League said: *Again, I paraphrase*

California should retain the referendum and direct initiative and should adopt an indirect initiative procedure as an optional alternative to the direct initiative.

And they recommend the following:

- Initiative sponsors should be required to submit proposals to an official authority for an opinion on clarity, constitutionality and single subject.
- Initiative proposals should be limited to a single subject
- Initiatives dealing with timely subjects should expiration language
- Direct initiative statutes should contain 5 percent of the total vote for all candidates for governor in the last generational election and allow 150 days to collect signatures
- Direct initiative constitutional amendments should require 8 percent of the total vote for all candidates for governor in the last gubernatorial election and 150- days to collect signatures.
- The filing fee should reflect the cost of processing the proposals.
- Solicitation of signatures and campaign funds in the same mailing should be allowed.
- Limits should be imposed on contributions by individuals and groups to fund initiatives
- Limits should be imposed on expenditures by individuals and groups in initiative campaigns
- No public financing should be provided for initiative campaigns
- The legislature should conduct public hearings on initiative proposals.
- Analyses of initiative measures should be written for the reading level of the average citizen and should clearly indicate the effect of the vote
- Sponsors of an initiative and organizations which form a committee to support or oppose a measure should be required to be listed by name in the ballot pamphlet in mailings and in advertisements
- Principal contributors should be listed
- Committees should be required to use names that reflect their true economic or special interests.
- Voting on initiatives should take place at primary and general elections and not special elections
- An initiative statute or constitutional amendment appearing on the ballot should be approved by a simple majority of those voting on the measure
- An initiative statute or constitutional amendment which requires a super majority vote for passage of future related issues should be required to receive the same super majority vote
- State initiative measures should apply to the entire state, not only to those political subdivisions in which they are approved
- An initiative should not be allowed to provide for different outcomes depending on the percentage of votes cast in its favor.
- Approval by the voters should be required for any changes a made by legislature unless the statute permits change without voter approval
- Initiative proposals which do not win voter approval should be allowed to appear on subsequent ballots without restriction
- The definition of single subject should be redefined to ensure strict interpretation
- Constitutional challenges to voter approved initiatives being reviewed in the state courts should be heard by a three judge panel rather than a single judge.

***In Alabama 13 members of the House offered a bill in 2007, HB263, that would have allowed initiative to be allowed in Alabama as a constitutional amendment.***

The bill was not passed, but may be introduced again. It allowed a preliminary petition to be submitted with at least 1000 qualified Alabama voters together with a fee of \$1,000 to be filed with the Secretary of State. If certified, the Alabama Law Institute would prepare the full text of the initiative proposal and an official summary within 90 days of the request.

The proposal would then be submitted to the Legislature to see if any member would sponsor the initiative. If no member will, the registering agent then may take the petition to the voters and must receive signatures that represent at least seven percent of the total votes cast for Governor in the last preceding gubernatorial general election for a statute and 10 percent if it is a constitutional amendment.

In addition, each petition must contain a minimum number of signatures of qualified Alabama voters from each congressional district in the state equal to one percent of the total votes cast for Governor in the last preceding generational general election within each district. Once the signatures are obtained, the registered agent has two calendar years to qualify the proposal and summary for final filing. It shall then be treated as a bill.

The legislature may enact it, or it will go to the ballot for voter approval or rejection. The legislature may propose a competing proposal. If the initiative proposal and a legislative competing proposal are presented to voters at the same time, the ballot issue that receives the larger number of votes becomes law.

Initiatives must be presented to voters at general elections. Special elections may not be scheduled for initiatives.

No more than two initiative issues may appear on any one ballot during any one election. If more than two are submitted for placement on the ballot, the two with the greatest number of petition signatures will be selected.

Enactment of a bill that will become a constitutional amendment will require more voter approval than an initiative issue which would create or change a statute. No law adopted in the initiative shall be repealed or amended except by vote of the people.

**The bill does not address payment of petition solicitors.**

#### **Sources:**

LWV of California, <http://ca.lwv.org/>  
LWV of Colorado, <http://www.lwvcolorado.org/>  
LWV of Minnesota, <http://www.lwvmpls.org/>  
LWV of Oregon, <http://www.lwvor.org/>  
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