

The Courts and the Initiative Process

By Kenneth P. Miller¹¹³

A great irony of initiative lawmaking is that *judges* have become the system's most important players. The citizen's initiative process was designed to establish "pure democracy." Instead, it is controlled and often thwarted by undemocratic and countermajoritarian courts.

A prominent example of the conflict between initiative voters and the courts comes from the term limits movement. Between 1990 and 1994, voters in over 20 states used the initiative process to impose term limits on Members of Congress and state elected officials. This blitz was a powerful, coast-to-coast exercise of direct democracy. In 1995, however, the U.S. Supreme Court dealt the movement a decisive setback. In *U.S. Term Limits, Inc. v. Thornton*¹¹⁴ the court overturned the will of millions of voters by declaring Congressional term limits unconstitutional. Several state courts meanwhile struck down term limits on state officials.¹¹⁵

The term limits saga demonstrates that citizen lawmakers can bypass legislatures and other institutions of representative government to enact "the will of the people," but they cannot bypass the courts. Courts are the one institutional check on the people's initiative power.

Judicial invalidation of voter-approved initiatives is remarkable, but it is not rare. Courts have struck down (in whole or in part) many landmark measures, including initiatives to regulate campaign finance, establish a "blanket" primary system, restrict the rights of illegal immigrants, and impose tough criminal penalties, just to name a few. Indeed, a recent study of four high-use initiative states over the past four decades confirms that voter-approved initiatives are challenged in court *more often than not* – and courts invalidate roughly half of all challenged initiatives in part or in their entirety.¹¹⁶ Clearly, courts exercise a powerful institutional check on the initiative process.

Why are so many initiatives invalidated?

There are at least three important reasons why so many initiatives have trouble in the courts: (1) the subject matter of many initiatives; (2) the polarized process of initiative lawmaking; and (3) the growing hostility of some courts toward the initiative process.

First, the *subject matter* of many initiatives invites legal challenge. Initiatives often tackle issues involving constitutional rights and other norms – the very things American courts seek to protect. A survey of voter-

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¹¹⁴ 514 U.S. 779 (1995).

¹¹⁵ See, e.g., *Gerberding v. Munro*, 134 Wash. 2d 188 (1998); *Lehman v. Bradbury*, 333 Ore. 231 (2002).

¹¹⁶ Kenneth P. Miller, "Judging Initiatives: A Unique Role for Courts," unpublished paper presented at the 2000 Annual Meeting of the Western Political Science Association, San Jose, CA, March 2000.

approved initiatives indicates that some (e.g., those related to environmental protection, taxation, and economic regulation) address areas where courts generally defer to policymakers. Such initiatives are rarely challenged on substantive grounds, and rarely invalidated. However, a larger percentage of initiatives touch on areas courts closely guard, such as the rights of criminal defendants or racial or other protected minorities, political rights (e.g., campaign contributions or expenditures), and the institutions of representative government. These types of initiatives are challenged and invalidated at high rates.¹¹⁷

Second, the process of initiative lawmaking encourages litigation. Kelly Clark, a former Oregon state legislator and supporter of the initiative process, observes: “As a legislator over a decade ago, I was constantly amazed at how any piece of legislation with ‘sharp edges’ – that is to say legislation that really rocked the status quo – ran into a quick death in the legislative process. What would come out would be some ‘moderate’ version of the previously radical or conservative legislation. The initiative process offers no such softening. It offers extremes of both the Left and the Right. It is supposed to do that.”¹¹⁸

While this may be so, one effect of a polarized process is that it increases the likelihood of litigation. If an initiative’s opponents have no opportunities to “soften” the proposal, their only remaining options are to defeat the measure at the polls or try to kill it in court.

Third, evidence suggests that judges in a number of states have grown increasingly hostile toward the initiative process. Over a decade ago, former California Supreme Court Justice Stanley Mosk wrote: “The initiative process is out of control in California.”¹¹⁹ Increasing numbers of judges in other states have expressed similar sentiments. How is judicial hostility toward the initiative process manifested? One way is through strict enforcement of technical rules for initiative lawmaking, such as the rule that an initiative may contain only one subject. As UCLA Law Professor Daniel H. Lowenstein has argued, “single subject” rules are “infinitely malleable” – if a court chooses to strictly enforce such a rule, it can strike down almost any ballot measure.¹²⁰ In 1998, the Oregon State Supreme Court issued a landmark decision in *Armatta v. Kitzhaber*¹²¹, which established a strict new interpretation of the state constitution’s rule that each amendment to the constitution requires a separate vote. This landmark Oregon case, and other tough “one amendment” or “single subject” decisions in states such as Florida, Montana, Colorado, Washington, and California, have created new opportunities for those challenging initiatives in court.

¹¹⁷ *Id.*

¹¹⁸ Kelly Clark, “Who Owns the Constitution?: Term Limits, Measure 7, and the Oregon Supreme Court” (2002).

¹¹⁹ *Legislature v. Eu*, 54 Cal. 3d 492, 536 (1990), Mosk, J., dissenting.

¹²⁰ Daniel H. Lowenstein, “California Initiatives and the Single Subject Rule”, 30 *UCLA Law Rev.* 936, 967 (1983).

¹²¹ 327 Ore. 250 (1998).

How much deference should courts give to initiatives and the initiative process?

Although the U.S. Supreme Court has held that judges should apply the same level of review to ballot initiatives as they do to any other law¹²², a lively debate continues over how courts should treat initiatives. Some believe courts should defer more to initiatives than to “ordinary legislation” because initiatives more closely reflect the “pure” will of the people.¹²³ Others, such as the late Professor Julian Eule, have argued just the opposite, namely that courts should give less deference to initiatives than to ordinary legislation, because unlike a legislature, the initiative process lacks checks and balances; since courts are the only institutional check in the process, judges need to be extra-vigilant in reviewing initiatives.¹²⁴

Over the past century, with some exceptions, courts have given both the initiative process and individual initiatives a large measure of deference. Importantly, courts have expressly rejected invitations to declare the initiative process itself in violation of Art. IV, Section 4 of the U.S. Constitution, which guarantees each state a “Republican Form of Government.”¹²⁵ And in other decisions, courts have declared their strong desire to uphold individual ballot measures. For example the California Supreme Court, upheld the state’s landmark Proposition 13 tax-cutting initiative against a multi-pronged legal challenge, arguing: “It is our solemn duty to jealously guard the initiative power, it being one of the most precious rights of our democratic process.”

Recent signs of judicial hostility in Oregon and elsewhere, however, suggest that a growing number of judges are adopting a less deferential approach.

Potential for voter backlash against the courts

Aggressive invalidation of initiatives creates risks for courts. If judges continue to strike down voter-approved initiatives at high rates, there is a good possibility that initiative activists will seek revenge. The filing of initiatives across the country designed to alter and change the way the judiciary operates, as well as the undertaking of recall campaigns for judges who strike down initiatives, has emphasized this point. These efforts will further politicize the judiciary and many people believe threaten its independence. The courts are a powerful check on initiative lawmaking, but also a vulnerable one.

¹²² See, *Citizens for Rent Control, Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290, 295 (1981).

¹²³ See, e.g., former Supreme Court Justice Hugo Black’s comments in oral argument, *Reitman v. Mulkey*, 387 U.S. 369 (1967) in *64 Landmark Briefs of the Supreme Court of the United States: Constitutional Law 668* (Phillip B. Kurland and Gerhard Caspar, eds., 1975).

¹²⁴ Julian N. Eule, “Judicial Review of Direct Democracy,” 99 *Yale L.J.* 1503 (1990).

¹²⁵ *Pacific States Telephone and Telegraph Co. v. Oregon*, 223 U.S. 118 (1912). In this case, the U.S. Supreme Court held that a “Guarantee Clause” challenge to the initiative process is a non-justiciable political question. See also, *Hartig v. City of Seattle*, 53 Wash. 432 (1909), and *Kaddery v. City of Portland*, 74 P. 710 (Ore 1903), rejecting Guarantee Clause challenges.

Amalgamated Transit Union Local 587 v. State of Washington (99-2-27054-1 SEA) (2000) Superior Court of the State of Washington in and for the County of King

This case struck down initiative I-695, which had been adopted by the voters, as violating the state's single subject requirement for initiatives. The ruling was appealed to the Washington State Supreme Court, which affirmed the lower court's decision.

Armatta v. Kitzhaber, S44955 (1998)

The Oregon Supreme Court invalidated a criminal justice initiative on the grounds that it involved multiple changes to the constitution that should have been considered separately by voters.

Bates v. Director of the Office of Campaign and Political Finance, SJC-08677 (2002)

In this Massachusetts case, the Supreme Judicial Court for the County of Suffolk ruled that the state legislature must provide funding to implement the Clean Elections Law, which was passed by popular initiative. It is the first case in which a state high court has ordered a legislature to fund a ballot measure.

Bernbeck v. Moore, 96-3503 (1997) United States Court of Appeals for the Eighth Circuit, No. 96-3503

On October 9, 1997 the 8th U.S. Court of Appeals struck down a Nebraska law that required petitioners to be registered voters in Nebraska for at least 30 days before circulating an initiative petition. The court ruled the voter registration requirement violated the First Amendment.

Bernzen v. Boulder, 186 Colo. 81, 525 P.2d 416 (1974)

In this case, the court ruled that recall, as well as initiative and referendum, were fundamental rights of a republican form of government that the people have reserved unto themselves.

Bilofsky v. Deukmajian, 124 Cal.App.3d 825 (1981) Civ. No. 60462. Court of Appeals of California, Second Appellate District, Division Four. October 21, 1981.

The court upheld as constitutional a California statute that prevents the use of names gathered on initiative petitions. The statute prohibits the proponent and circulator from communicating by mail with signers by obtaining their names and addresses from the petition, whether or not the communication relates to the subject of the initiative petition.

¹²⁶ A copy of these decisions are available in the legal section on the Initiative & Referendum Institute's website at www.iandrinststitute.org.

Boyette v. Galvin (No. 98-CV-10377-GAO) (2000)

On March 3, 1998, The Becket Fund filed a lawsuit on behalf of a group of Massachusetts's citizens challenging provisions of the Massachusetts constitution that forbid citizens from using the initiative process for issues pertaining to private school funding. In September 1998, a federal judge signed an order permitting a petition to be circulated for signatures while the court challenge was pending. In 1999, more than 78,000 signatures were certified, easily surpassing the minimum requirement. But in order for the petition to come before the legislature, and henceforth the voters, the Attorney General must certify that it is proper for the legislators to take it up. In a letter of September 1, 1999, he declared that one of the very constitutional provisions being challenged prohibits him from doing so. The Federal Court upheld the state's constitutional prohibition on prohibiting initiatives that pertain to religion and by extension private school funding.

U. S. Supreme Court

Buckley v. American Constitutional Law (97-930), 120 F.3d 1092 (1999)

The question before the court in Buckley was whether the State of Colorado may constitutionally regulate the process of circulating initiative petitions by requiring that: (1) petition circulators who verify the signatures of petition signers must be registered electors; (2) petition circulators must wear identification badges; and (3) proponents of an initiative must file reports disclosing the amounts paid to circulators and the identity of petition circulators. The U.S. Supreme Court ruled on January 12, 1999 striking down Colorado's regulation and restrictions on their initiative process as "undue hindrances to political conversations and the exchange of ideas," according to Justice Ruth Bader Ginsburg who wrote for the court.

U.S. Supreme Court

Buckley v. Valeo, 424 U.S. 1 (1976)

Landmark First Amendment protection case pertaining to campaign spending. The ruling helped establish the fact that spending on ballot measure campaigns cannot be limited.

California Trial Lawyers Assn. v. Eu, 200 Cal.App.3d 351 (1988) No. C003936. Court of Appeals of California, Third Appellate District. April 15, 1988.

This case was the first successful pre-ballot challenge to a California initiative under the single subject rule. The court prohibited the Secretary of State from qualifying or placing on the ballot a lengthy measure embracing several subjects.

Campbell, Hamilton, Initiative & Referendum Institute, et al v. Buckley, 98-1329 (1998) United States Court of Appeals, Tenth Circuit, No. 98-1329

Appeal from the United States District Court for the District of Colorado (D.C. No. 98-K-1022)

This case was filed in 1998 and challenged Colorado's constitutional, statutory, and administrative procedures for review of initiative measures before they are placed on the ballot. The lower court ruled against the complaint.

Canvasser Services v. Employment Department, 997-TAX-00099; CA A100171 (1999) Filed: October 13, 1999, in the Court of Appeals of the State of Oregon

In this Oregon case, the courts ruled that signature gatherers cannot be independent contractors and must be paid as employees.

Chandler v. City of Arvada, CO, Federal District Court for the State of Colorado, 00-N-0342 (2001)

This case struck down as unconstitutional a local ordinance requiring petition circulators to be residents of the city.

Chemical Specialties Manufacturers Assn., Inc. v. Deukmejian, 227 Cal.App.3d 663 (1991) No. A048489. First Dist., Div. Three. Feb. 8, 1991.

The California Appellate Court found Proposition 105, which required disclosure in a wide variety of areas (campaigns, hospitals, South African contracts, etc.), to violate the single subject rule of the state constitution.

U.S. Supreme Court

Citizens Against Rent Control v. Berkeley, 454 U.S. 290 (1981) Appeal from the Supreme Court of California, No. 80-737. Argued October 14, 1981, decided December 14, 1981

The U.S. Supreme Court held that a California city's ordinance to impose a limit on contributions to committees formed to support or oppose ballot measures violated the First Amendment. The Court based its decision on the right of individuals to bear and obtain information. In doing so, it equated free political spending with free speech.

Citizens for Jobs & Energy v. Fair Political Practices Commission, 16 Cal.3d 671 (1976) [S.F. No. 23391. Supreme Court of California. April 7, 1976.]

The California Supreme Court declared that the Political Reform Act couldn't limit expenditures by ballot measure committees.

Dale v. Keisling (98C-18552; CA A105873) (2000) FILED: May 24, 2000 IN THE COURT OF APPEALS OF THE STATE OF OREGON

The Oregon Court of Appeals ruled that "a constitutional initiative or referral is invalid (and none of its provisions take effect, regardless of the vote), unless the court determines that voters would necessarily have approved every single element of the measure, if those elements were stated separately."

Finn v. McCuen, 303 Ark. 418, 798 S.W. 2d 34 (1990)

Since the title of a lottery measure was misleading, the court ruled that the measure should not be allowed on the ballot.

U.S. Supreme Court

First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978) APPEAL FROM THE SUPREME JUDICIAL COURT OF MASSACHUSETTS, No. 76-1172. Argued November 9, 1977, decided April 26, 1978

The Supreme Court has supported the notion that one-sided spending is not a crucial factor in ballot issue elections. In this case, the U.S. Supreme Court invalidated a Massachusetts statute prohibiting business corporations from making contributions or expenditures "... for the purpose of ... influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation."

Hardie v. Eu, 18 Cal.3d 371 (1976) S.F. No. 23450. Supreme Court of California. November 29, 1976.

The California Supreme Court found unconstitutional the Political Reform Act's cap on expenditures for qualifying ballot measures since it violated First Amendment rights.

Hartig v. City of Seattle, 53 Wash. 432, 102 P. 408 (1909)

In 1909, the Washington Supreme Court considered whether I&R violated the Guarantee Clause of the Federal Constitution. The Washington court did not think the question of representative government was relevant at all to the question of whether a form of government was republican. They stated: "[I]t can scarcely be contended that this plan is inconsistent with a republican form of government, the central idea of which is a government by the people. Whether the expression of the will of the people is made directly by their own acts or through representatives chosen by them is not material. The important consideration is a full expression."

H-CHH Associates v. Citizens for Representative Government, 193 Cal.App.3d 1193 (1987) No. B019051. Court of Appeals of California, Second Appellate District, Division One. July 28, 1987.

The California Appellate Court ruled that an indoor shopping mall cannot ban petition gatherers but can impose reasonable rules on circulators.

Initiative & Referendum Institute, Idaho Coalition United for Bears, et al v. Cenarussa, D.C. No. 00-0668-S-BLW (2001)

The U.S District Court struck down Idaho state laws that required signatures from 6% of each of Idaho's 22 counties, prohibited the payment of circulators on a per-signature basis, and prohibited circulators from willfully

making a false statement to obtain signatures, but upheld the law that requires circulators to be residents of the state.

Initiative & Referendum Institute v. Costco (California State District Court BC 18052) (1998)

This case was filed in 1998 and sought to require Costco stores to adhere to existing California law and establish standard and reasonable time, place and manner restrictions for petitioners. The case was decided in favor of Costco.

Initiative & Referendum Institute v. Ralph's (California State District Court BC 187162) (1998)

This case was filed in 1998 and sought to require Ralph's stores to adhere to existing California law and establish standard and reasonable time, place and manner restrictions for petitioners. The case was decided in favor of Ralph's.

Initiative & Referendum Institute et al v. Alvin Jaeger, 99-3434 (2001) Appeal from the Federal District Court for the State of North Dakota, Initiative & Referendum Institute et al v. State of North Dakota, A1-98-70 (1998)

This case sought to overturn North Dakota's prohibition on paying circulators on a per-signature basis and the requirement that circulators be eligible North Dakota voters. The District Court upheld the state laws. The case was appealed to the U.S. Court of Appeals for the 8th Circuit, which affirmed the lower court's ruling.

Initiative & Referendum Institute et al v. Secretary of State of Maine (Federal District Court for the State of Maine, Civil No. 98-104-B-C, 1999)

The Federal judge upheld the state's residency and voter registration requirements for petition circulators but ruled that the state's law on banning a petitioner's pay on a per signature bases was unconstitutional.

Initiative & Referendum Institute et al v. State of Utah (2-00-cv-837) (2000) United States District Court for the District of Utah, Central Division

This case asked the court to review, declare unconstitutional and enjoin enforcement of Proposition 5, the 1998 legislatively sponsored amendment to the Utah Constitution. The amendment requires any citizen ballot initiative involving wildlife to pass with a two-thirds supermajority vote of the Utah electorate. The Court ruled the law was constitutional. An appeal is pending.

Initiative & Referendum Institute v. United States Postal Service, 1:00CV01246 (2000) In the United States District Court for the District of Columbia

The suit seeks to overturn the USPS regulation prohibiting citizens from collecting petition signatures on initiative petitions on postal property. The new postal regulation severely limits the ability of citizens around the country to place issues before their fellow voters.

Insurance Industry Initiative Campaign Com. v. Eu, 203 Cal.App.3d 961 (1988) No. C004348. Court of Appeals of California, Third Appellate District. August 12, 1988.

The court ruled that an initiative measure can be prevented from being circulated if it violates the single subject rule.

In re Pfahler, 150 Cal. 71, 88 P. 270 (1906)

In this case, the California Supreme Court upheld a local initiative law against a Guarantee Clause challenge while implying that similar measures on the state level would be constitutional as well. The court stated: "In saying this, we do not wish to be understood as intimating that the people of a state may not reserve the supervisory control as to general state legislation afforded by the initiative and referendum, without violating this provision of the federal constitution."

Jordon v. City of Seattle (Washington Supreme Court No. 68805-2) (2001)

In this case, citizens submitted a petition with the requisite number of signatures to the Seattle City Council on a proposed ordinance regarding the funding of neighborhood branch library facilities. The Seattle City Council amended the initiative in such a way as to nullify it and adopted the amended version. The City refused to place the initiative on the ballot, and the case is now on appeal to the Washington State Supreme Court. The issue is the right of referendum over local ordinances.

Joytime Distributors v. State of South Carolina (1999) In the Supreme Court of the State of South Carolina, Opinion No. 25007 Heard October 12, 1999 - Filed October 14, 1999

In this case, the South Carolina Supreme Court ruled that the state legislature did not have the authority to place statutes on the ballot for a general vote of the people.

Kadderly v. City of Portland, 44 Or. 118, 74 P. 710 (1903)

In this case, the Oregon Supreme Court sustained initiative and referendum against a Guarantee Clause attack. The court states, "The initiative and referendum amendment does not abolish or destroy the republican form of government, or substitute another in its place. The representative character of the government still remains. The people have simply reserved to themselves a larger share of legislative power, but they have not overthrown the republican form of the government, or substituted another in its place."

Kean, Initiative & Referendum Institute, et al v. Clark, 56 F. Supp. 2d 719 (S. District of Miss. 1999)

In this Mississippi case, the Federal District Court concluded that although a voter registration requirement for petition circulators would be unconstitutional, a residency requirement was permissible. They also ruled that changes to the state's initiative laws couldn't be applied retroactively.

Lehman v. Bradbury, SC S48771 (2002)

The Oregon State Supreme Court struck down term limits on state elected officials as being unconstitutional. The Court ruled that the constitutional amendment, passed in 1992, violated the state's requirement that initiative amendments could not affect more than one section of the state constitution.

LIMIT v. Maleng, 874 F. Supp. 1138 (W.D. Wash., 1994)

In this Washington State case, the Federal District Court found that the state's prohibition against paying circulators on a per-signature basis was an unconstitutional infringement on freedom of political speech.

Marijuana Policy Project et al v. DC Board of Elections and Ethics et al, Civil Action No. 01-2595 (2002)

In this precedent setting case, the U.S. District Court for the District of Columbia overturned the Barr Amendment (so named because it was sponsored by Congressman Bob Barr), which prohibited the District of Columbia from expending any monies to decrease the penalties for use or distribution of a Schedule I controlled substance. The amendment would have prohibited validation of the election results of a medical marijuana initiative. The court found the Barr Amendment unconstitutional as applied to ballot initiatives and stated that Congress had overstepped its bounds and had improperly infringed upon the First Amendment Rights of the initiative proponents.

McIntire v. Bradbury, A0006-06252 (2000) In the circuit court of the State of Oregon, in and for the County of Multnomah

The plaintiffs in this Oregon case alleged that state election officials had violated their constitutional rights by declaring certain voters to be "inactive," thereby making them ineligible to sign initiative petitions. They requested a temporary injunction against this declaration, but it was denied.

U.S. Supreme Court

McIntyre v. Ohio Elections Commission, 115 U.S. 1511 (1995) Certiorari to the Supreme Court of Ohio, No. 93-986. Argued October 12, 1994, decided April 19, 1995

The U.S. Supreme Court upheld as constitutional an Ohio statute which prohibits the distribution of campaign literature that does not contain the name and address of the person or campaign official issuing the literature.

U.S. Supreme Court

Meyer v. Grant, 486 U.S. 414 (1988) Appeal from the United States Court of Appeals for the Tenth Circuit, No. 87-920. Argued April 25, 1988, decided June 6, 1988

The states of Colorado, Idaho and Nebraska each passed laws prohibiting the payment of petition circulators. The United States Supreme Court overturned these laws in this 1988 decision. Such a law, the Court ruled unanimously, restricts freedom of expression guaranteed by the First Amendment and that it restricts access to the most effective fundamental and perhaps economical avenue of political discourse, direct one-on-one communication.

Michigan Chamber of Commerce v. Austin, 832 F. 2d 947 (1987)

The federal appellate court ruled that Michigan's provisions limiting corporate contributions to ballot measure campaigns violated the right of association and free speech guarantees of the First Amendment. Another portion of the Michigan statute, prohibiting corporations from making independent expenditures on behalf of political candidates from general treasury funds, was upheld by the U.S. Supreme Court in Austin v. Michigan State Chamber of Commerce, U.S., 110 S. Ct. 1391 (1990)

Michigan United Conservation Coalition v. Secretary of State, No. 119274 (2001)

In this case the Michigan State Supreme Court ruled that a concealed weapons law could not be referred because it included a clause for financial appropriations, which are not subject to referral. The dissent argued that the legislature had included the appropriations clause only to prevent the law from being referred.

Missourians to Protect Initiative Process v. Blunt, 799 S.W. 824 (1990)

The Missouri Supreme Court ruled an initiative off the ballot because it violated the single subject rule.

Montana Chamber of Commerce v. Argenbright, U.S. 9th 98-36256 (2000) U.S. 9th Circuit of Appeals 98-36256, Opinion issued September 26, 2000

The court of appeals affirmed judgments of the district court. The court held that the First Amendment does not permit restricting corporate expenditures as a means of expression on public issues presented through a state's ballot initiative process.

U.S. Supreme Court

Pacific States Telephone & Telegraph Co. v. State of Oregon, 223 U.S. 118 (1912)

This U.S. Supreme Court case addressed whether Oregon's initiative and referendum system violated the Guarantee Clause of the U.S. Constitution. The Court sidestepped the issue by holding that whether a state has a republican form of government is a political question and therefore non-justiciable. The court concluded that any such determination should be made by Congress, which seemed to settle the issue at the federal level.

Planning and Conservation League, Inc., et al, v. Daniel A. Lungren 38 Cal. App. 4th 497, (1995) No. C016761, Court of Appeal of California, Third Appellate District, September 22, 1995

This case invalidated a legislative attempt to regulate the fashion in which initiatives could qualify for the ballot.

U.S. Supreme Court

Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980) Appeal from the Supreme Court of California, No. 79-289 Argued March 18, 1980, decided June 9, 1980.

The U.S. Supreme Court ruled that state constitutional provisions that permit political activity at a privately owned shopping center do not violate federal constitutional private property rights of the owner.

Roberts v. Priest, 00-485 (2000) Original Action Petition, Arkansas Supreme Court

The Arkansas Supreme Court prohibited the Secretary of State from placing an initiative on the ballot because the language of the proposal was misleading. The Court said that the wording must be specific and the effects clear before a proposal can be submitted to the voters.

San Francisco Forty-Niners v. Nishioka, 75 Cal.App.4th 637 (1999) No. A083687. First Dist., Div. One. Oct 6, 1999. Superior Court of the City and County of San Francisco, No. 995661

In this case the San Francisco superior court issued a writ of mandate prohibiting respondent San Francisco Director of Elections from qualifying an initiative measure for the ballot. The writ was issued on the grounds that the circulating initiative petition contained false statements intended to mislead voters and induce them to sign the petition.

Senate of the State of California v. Bill Jones, SO83194 (1999) Filed 12/13/99, in the Supreme Court of California

This 1999 decision struck an initiative off the California primary ballot because it violated the state's single subject provision for initiatives.

Stanson v. Mott, 17 Cal.3d 206 (1976) L.A. No. 30567. Supreme Court of California. June 22, 1976.

The California Supreme Court ruled that the use of public funds for election campaigning to promote or oppose a ballot measure is illegal.

State ex rel. Nelson v. Jordan, 104 Ariz. 193 (1969)

The Arizona Supreme Court ruled that when two initiatives conflict, it is the duty of the court to harmonize both.

Stenberg v. Moore, 258 Neb. 199 (1999) Filed November 19, 1999. No. S-98-983.

The Nebraska Supreme Court dealt with the constitutionality of a Nebraskan statute that required that the information a voter puts on an initiative petition (signature, address, etc.) be an exact match of what is in the voter registration records in order for the signature to be counted as a valid signature. The Nebraska Supreme Court ruled that this law was facially unconstitutional.

Stranahan v. Meyer (CC 9110-06504; CA A88372; SC S45547) (2000) In the Supreme Court of the State of Oregon Argued and submitted November 5, 1999. Filed: September 14, 2000

In this case the Oregon State Supreme Court reversed one of its earlier decisions and ruled that the collection of signatures is banned on all private property.

Taxpayers to Limit Campaign Spending v. Fair Political Practices Commission, 51 Cal.3d 744 (1990) No. S012016. Supreme Court of California. Nov 1, 1990.

The California Supreme Court finds that when two initiatives covering the same topic appears on the same ballot, the one initiative receiving the most votes supersedes the other measure in all respects, even though some of the provisions of the one initiative with fewer voters do not conflict with the provisions of the other measure receiving the higher number of votes.

Telford v. Thurston County Board of Commissioners, No. 23559-5-II (1999)

In November 1996, Paul Telford filed a lawsuit against the Thurston Board of County Commissioners, the Washington State Association of Counties (WSAC), and the Washington State Association of County Officials (WACO) to prevent their use of public funds in political campaigns. The trial court filed a memorandum opinion and an order granting partial summary judgment in favor of Telford, ruling that WSAC and WACO are "quasi-public agencies" subject to RCW 42.17 and therefore cannot use their funds to oppose ballot measures.

Thomas J. Walsh et al v. Secretary to the Commonwealth, SCJ-07986 (1999) Dates: May 7, 1999. - July 16, 1999. Civil action commenced in the Supreme Judicial Court for the county of Suffolk on January 6, 1999

This litigation pertained to the validity of a petition and petition signatures if the petition had been altered in any way. The court ruled that signatures on petitions could be invalidated just because a coffee stain appeared on the petition.

Walmart v. Progressive Campaigns, Inc., 67029-3 (1999) Filed December 16, 1999 in the Supreme Court of the State of Washington

The State Supreme Court ruled that grocery stores do not have to allow initiative petitioning on their property.

WIN v. Warheit, 98-35412 (2000) U.S. 9th Circuit Court of Appeals, No. 98-35412; D.C. No. CV-97-05427-RJB Appeal from the United States District Court for the Western District of Washington Argued and Submitted February 16, 2000--Seattle, Washington Filed May 25, 2000

The court struck down as unconstitutional the Washington State requirement that requires disclosure of the names, addresses and salaries of people hired to gather signatures for ballot initiatives.