

CALIFORNIA'S STATEWIDE INITIATIVE PROCESS

By

Charlene Wear Simmons, Ph.D.

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DIGEST

This report discusses California's statewide initiative process, its history, public attitudes toward the process and current reform proposals. The research was conducted at the request of Assemblymember Brett Granlund.

In California, initiatives are state or local legislative measures placed on the ballot by a group of citizens, by means a petition signed by a specified percentage of voters, and enacted by a majority of the voters. The initiative process has been called California's fourth branch of government,¹ a frank recognition of the important role it plays in setting the state's policy agenda. For example, in the last 20 years, California state initiatives have:

- reduced property taxes and indexed income taxes;
- adopted a state lottery;
- enacted campaign finance reform;
- guaranteed schools funds;
- raised tobacco taxes;
- regulated toxic materials;
- rolled back auto insurance rates;
- reformed the criminal justice system;
- protected wildlife;
- adopted term limits for state elected officials;² and
- eliminated state affirmative action programs.

California appears to be moving toward a new balance between representative and direct democracy. The number of initiatives qualifying for the California ballot has increased dramatically in the last 25 years. Initiatives enacted by the voters have significantly impacted state and local governance and policy. This trend may increase in the future. A recent *Sacramento Bee*³ column projects an election scenario in the year 2004 in which voters might confront 200 ballot choices, including 35 statewide initiatives and even more local initiatives and elected offices. (Local initiatives are not discussed in this paper; they merit a separate review).

In the last decade, a number of researchers and several commissions have examined California's initiative process, identified perceived weaknesses and recommended reforms. A summary of key recommendations is included in this report.

¹ California Commission on Campaign Financing, *Democracy By Initiative: Shaping California's Fourth Branch of Government*, Center for Responsive Government, 1992.

² *Ibid.*, page 8.

³ Peter Schrag, "The Election of 2004," *Sacramento Bee*, April 2, 1997, page B6.

A BRIEF HISTORY

Enactment

In its modern form, the initiative was developed in Switzerland in the 1860s, drawing on an ancient rural tradition of town meetings in which men would vote on local policies. Direct democracy also has strong roots in the American tradition. Many colonial New England towns held annual town meetings to debate and adopt policies. Most state constitutions were approved by voters, beginning with Massachusetts in 1778.

The “rapid changes brought about by the Industrial Revolution--explosive urban growth, industrial expansion, the railroads, political corruption, labor strikes, and land evictions--led to increasing demands for social and political reforms in the late 1800s.”⁴ The U.S. labor movement promoted the initiative and referendum as a peaceful way to achieve union objectives. Populists in the Midwest advocated the initiative and referendum to restore control of a corrupt government to the people. In 1897, Nebraska allowed cities to include the initiative and referendum in their charters. In 1898, South Dakota became the first state to enact a statewide initiative and referendum amendment, followed by Oregon in 1899. In 1904, Oregonians voted on and approved the first two initiatives to appear on a state ballot. Montana, Oklahoma, Maine and Michigan passed initiative and referendum amendments in the next 4 years, as did many local governments.

In California, the initiative process was advocated by the Progressives, with the support of the labor movement, as a means to circumvent a state government in which the Southern Pacific Railroad and special interests were perceived as having too much power. By 1907, Los Angeles, Pasadena, San Diego, San Bernardino, Fresno, Sacramento and Vallejo had adopted city initiative and referendum ordinances. In 1911, voters followed the lead of Progressive Governor Hiram Johnson and California became the tenth state to enact the initiative, referendum and recall.

Twenty four states and the District of Columbia have adopted the initiative (the majority are west of the Mississippi). Every state except Wyoming has some form of local voting on ballot propositions, including bond measures. California and Oregon are the heaviest users of the initiative process, followed by Colorado and Arizona with half as many.

Article II of the California Constitution contains provisions relating to voting, the initiative, referendum and recall. Section 1 states the following premise as the justification for government, and indirectly for direct democracy:

Purpose of government: All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.

⁴ David D. Schmidt, *Citizen Lawmakers: The Ballot Initiative Revolution*, Temple University press, Philadelphia, 1989, pg. 7.

Section 8 of the California Constitution, which establishes the initiative, reads as follows:

Initiative. (a) The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.

(b) An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by electors equal in number to 5 percent in the case of a statute, and 8 percent in the case of an amendment to the Constitution, of the votes for all candidates for Governor at the last gubernatorial election.

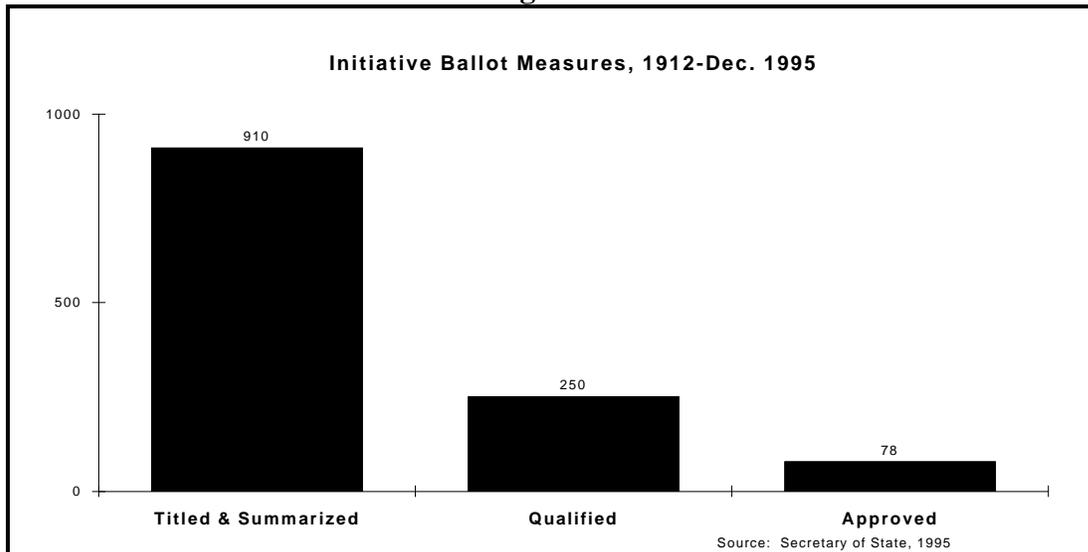
(c) The Secretary of State shall then submit the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

(d) An initiative measure embracing more than one subject may not be submitted to the electors or have any effect.

California's Experience with the Initiative

Between 1912 and December 1995, 910 initiatives were submitted for statewide circulation in California,⁵ only 8.5 percent of which were eventually adopted. Of the 250 initiative measures which actually qualified for the ballot, California voters approved 78 (31 percent). Twenty eight of those measures were constitutional revisions, 46 were statutory revisions, and 4 contained both constitutional and statutory provisions.

Figure 1

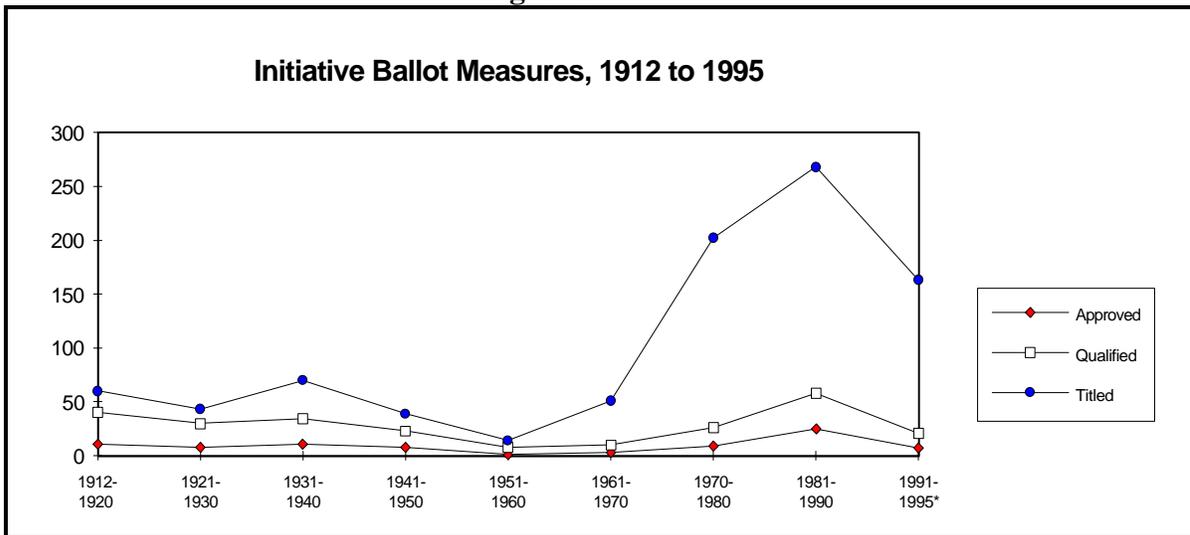


⁵ Bill Jones, *History of the California Initiative Process*, California Secretary of State, 1995, page 8.

The California voter confronts a much longer ballot than the number of initiative measures suggests, as the legislature regularly places bond and constitutional measures on the ballot. Californian's voted on 261 statewide propositions from 1974-90, of which 74 were initiatives and 187 were placed on the ballot by state legislative action.⁶ There were 555 legislative propositions on the ballot between 1924 and 1984, and they had a much higher rate of passage than initiative measures (67 percent vs. 31 percent).⁷

As Figures 2 and 3 show, there has been considerable variation in initiative activity over time. The number of initiatives circulated and enacted has increased substantially since a low in the 1950s. For example, 48 percent of the initiative measures placed on the ballot during the 1980s were enacted, more than 1940 through 1979 combined. In contrast, the referendum has not been used statewide since 1952.

Figure 2



Source: Secretary of State, 1995

*3 of the initiatives which qualified in 1994, and all in 1995, were placed on the 1996 ballot, whose outcome is not included here.

Figure 3

Historic Qualification and Passage Rates, California Initiatives, 1912-1988

Election Year	Number Titled	Number Qualified	Percent Qualified	Number Adopted	Percent Adopted
1912-1919	44	30	68	8	27
1920-1929	53	35	66	10	29
1930-1939	67	37	55	10	28
1940-1949	42	20	48	6	30
1950-1959	17	12	71	2	17
1960-1969	38	9	24	3	33
1970-1979	139	22	16	7	32
1980-1989	263	46	17	21	48

Source: Dubois and Feeney, page 77.

⁶ James M. Snyder, Jr. "Constituency Preferences: California Ballot Propositions, 1974-90," *Legislative Studies Quarterly*, Volume XXI, Number 4, November 1996, pages 463-288.

⁷ John R. Owens and Larry L. Wade, "Campaign Spending on California Ballot Propositions, 1924-1984: Trends and Voting Effects," *Western Political Quarterly*, Volume 39, No. 4, December 1986, page 676.

Originally the California Constitution included a provision for an indirect statutory initiative, by which voters could submit a measure to the legislature for adoption; the measure would appear on the ballot if the legislature failed to enact it. Only 4 out of 19 proposed indirect initiatives qualified. Of those, the legislature enacted one proposal. The indirect initiative was eliminated in 1966. Nine states continue to use indirect initiatives, 3 for statutes only.

Prior to 1960, initiative measures appeared only on general election ballot. Since then they can appear on primary ballots and special statewide elections called by the Governor. Some analysts question whether initiatives should be decided in typically lower turnout special and primary elections. For example, in the June 1990 primary, "...measures passed by a vote of only 20 percent of registered voters, less than 15 percent of eligibles."⁸

Legislative deadlock, in which the legislature fails to take action on key issues of popular concern, is often mentioned as one possible cause of the growth in initiatives. California has had politically divided state government for 22 of the last 30 years--Republican governors and Democratic legislatures. Some analysts contend that this division motivates interest groups and officeholders to seek voter approval of initiative proposals rather than legislative and gubernatorial agreement. It may be easier to enact a constitutional amendment by initiative than to achieve the required two-thirds legislative vote, for example. Eugene Lee notes that "Volunteer grassroot organizations, single-interest economic groups, political parties and elected officials, farmers, organized labor, environmentalists, doctors and lawyers--all have been a part of the contemporary initiative scene."⁹

Other factors identified by researchers as possible contributing factors to the growth in initiatives include lack of confidence or trust in state government, the popularity of measures such as Proposition 13, the impact of money on the legislative process and the initiative, the use of initiatives by political candidates to advance their candidacies, the increasing number of issues placed on the public agenda, and the ease of hiring experts to secure signatures. Voters in statewide elections (especially the lower turnout primary and special elections) may represent a different cross-section of citizens, and alternative political viewpoints, than the local pluralities in a majority of legislative districts which determine legislative leadership, leading to diverse policy results.¹⁰

Elected officials are major sponsors of initiatives. One third of all initiatives qualifying for the ballot between 1966 and 1988 were sponsored by elected officials.¹¹ Researchers note that initiative campaigns do not have the restrictions on campaign contributions that

⁸ Ibid. page 251.

⁹ Eugene Lee, "The Initiative Process," *California Policy Choices*, University of Southern California, Vol. 6, 1990, page 229.

¹⁰ See Elisabeth R. Gerber, "Legislatures, Initiatives, and Representation; The Effects of State Legislative Institutions on Policy,," *Political Research Quarterly*, Vol. 49, Number 2, June 1996, pages 263-286.

¹¹ Charles Bell and Charles Price, "Are Ballot Measures the Magic Ride to Success?" *California Journal*, September 1988, pages 380-381.

candidates have and question whether “...these different rules create artificial incentives...”¹²

Californians have used the initiative process most frequently to address questions of government and taxation, but have raised multiple policy concerns over time.

Figure 4 Qualifying California Initiatives By Subject Matter 1912-1995	
<i>Topics</i>	<i>Number</i>
Bond Issues (some overlap with other topics)	11
Campaign Reform	6
Courts, Law and Order	18
Education	17
Elected Officials and Civil Service	9
Elections	14
Energy	5
Environmental	23
Fiscal Matters	12
Gambling	10
Government Regulation	21
Health/Medicine/Science	27
Labor	15
Miscellaneous	17
Municipal Government	23
Reapportionment	9
Social and Welfare Aid, Pensions	14
Taxation	41
Source: Secretary of State, 1995.	

The courts are the principal check on the initiative process, given lack of legislative review and scrutiny. Their role is increasingly controversial. From 1964 to 1996, state and/or federal courts either partially or fully struck down 18 of the 41 constitutional and statutory initiative measures approved by California voters.¹³ Recent examples of initiatives undergoing judicial review include: Propositions 140 (state term limits), 187 (services for immigrants), 184 (“Three Strikes”), 208 (campaign finance reform), 209 (affirmative action), 213 (uninsured motorists) and 218 (local taxes).

The following are some key court findings that affect the initiative process:

- The Supreme Court has occasionally ordered the Secretary of State not to place a measure on the ballot due to an improper topic (*American Federation of Labor v. Eu*, 1982).
- The courts will not intervene prior to an election to settle the issue of constitutionality (*Brosnahan v. Eu*, 1982).

¹² Philip L. Dubois and Floyd F. Feeney, *Improving the California Initiative Process: Options for Change*, California Policy Seminar, University of California, 1992, page 50.

¹³ Dan Smith, “Ballot box loses to power of courts,” *The Press-Enterprise*, October 20, 1996, page A01.

- Litigation about the Constitution’s single-subject rule has resulted in a broad interpretation that initiative provisions must be “reasonably germane to each other, and to the general purpose or object of the initiative” (*Brosnhan v. Brown*, 1982).¹⁴
- If an initiative measure affects multiple parts of the constitution, it may be invalid as a “constitutional revision,” which Article XVIII specifies can only be accomplished through constitutional convention or legislative proposal.
- When the voters approve two propositions on the same ballot on the same subject, the one with the most votes prevails--no part of the lower-vote initiative survives (*Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Com.*, 1990).
- States cannot prohibit paid signature solicitors (*Meyer v. Grant*, 1988), limit campaign contributions (*Buckley v. Valeo*, 1976), nor bar corporate contributions and expenditures to initiative campaigns (*Citizens Against Rent Control v. City of Berkeley*, 1982).¹⁵
- Petitioners have the right to circulate petitions on private property open to the public, such as shopping centers (*Diamond v. Bland*, 1970).

THE QUALIFICATION PROCESS IN CALIFORNIA

The California State Federation of Labor was a strong proponent of the referendum, initiative and recall. However the Federation found during its first initiative campaign that:

The securing and filing of sufficient signatures to petitions...have proved no easy undertaking. Now that the first real test of the Initiative and Referendum, as adopted in California, has been made, the difficulties that lie in the paths of those who desire to correct existing evils by this method are made plain. Depending on volunteer work alone has proven to be very unsatisfactory, and the lack of funds to pay persons for soliciting signatures, precincting [specifying voter precincts as was required] and filing same, printing, postage and correspondence, cuts a very important figure in the failure of many proposed reforms to secure a position on the ballot.¹⁶

Procedural difficulties cited by the Federation included a short circulation time, a requirement that all petitions circulated in a county be filed on the same day, a requirement that a voter know the number of his election precinct, and lack of registration and properly notarized affidavits for signature gatherers. In the case of a poll tax initiative, “...hundreds of solicitors were put in the field, money was freely used, and...as high as 15 cents per name was paid for soliciting and precincting. It is rumored that the securing of the

¹⁴ Joseph R. Grodin, Calvin R. Massey, Richard B. Cunningham, *The California State Constitution: A Reference Guide*, Greenwood Press, Connecticut, 1993, page 70.

¹⁵ In *First National Bank v. Bellotti*, 1978, the U.S. Supreme Court found that the “..risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue.” As quoted in California Commission on Campaign Financing, page 292.

¹⁶ *Proceedings of the State Federation of Labor*, 1912, pages 91-92.

necessary names for one successful petition cost in the neighborhood of \$10,000.”¹⁷ The Federation concluded that:

If it is necessary, on account of the aforementioned restrictions, in the future to expend this much, or even one-quarter of \$10,000, to place proposed Constitutional Amendments on the ballot, the object for which the Initiative and Referendum was proposed will fail, as under all ordinary circumstances none but rich corporations, or other large business interests, can afford to avail themselves of its provisions.¹⁸

Initiatives are proposed by a number of sources, including current and ex-elected officeholders, private individuals, business and labor interests and citizen groups. Many hire specialized petition attorneys who are skilled in formulating law, while others draft the proposals themselves. Political lawyers also draft ballot-pamphlet arguments and ensure proper disclosure of campaign spending. Major initiative sponsors run focus groups and polls prior to drafting a measure in order to maximize public support. Coalition-building among initiative supporters (or log rolling, to use a more negative term) can affect the provisions of an initiative proposal; recent examples include park and rail bond issues and campaigns for increased tobacco and alcohol taxes.

Before circulating a measure, initiative proponents must submit their proposal to the Attorney General’s office. The Attorney General obtains a fiscal analysis from the Department of Finance and the Joint Legislative Budget Committee and then provides the proponent with a title and 100 word summary which must be printed at the top of each petition. Proponents pay a \$200 fee (an amount established in 1942) which is refunded if the initiative qualifies for the ballot. Initiative proponents have the option of submitting their measure to a review by the Legislative Counsel, but they rarely do so. After filing, no further changes may be made in a measure.¹⁹

In contrast, 4 states automatically refer an initiative proposal to a legislative drafting office, which reviews and makes suggestions. Proponents may accept the suggestions or not, but in 2 states the recommendations become part of the public record. The District of Columbia review process exercises more control and may require changes. Massachusetts and Oregon allow “perfecting amendments” to cure drafting defects.

Proponents need to obtain signatures equivalent to 5 percent of the vote in the last gubernatorial election for statutory initiatives and 8 percent for constitutional initiatives. The original requirement was 8 percent for both. The 5 percent requirement was enacted in 1966 to encourage the use of statutory initiatives relative to constitutional initiatives. Nevertheless, the number of constitutional initiatives has also increased, in part because of California’s relatively “easy” qualification process.²⁰

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Dubois and Feeney, page 29.

²⁰ Ibid. page 66.

While the number of registered voters has increased over the years, the number actually voting for governor varies. The current number of signatures required (for the June 1998 primary) is 433,269 for a statutory initiative and 693,230 for a constitutional initiative. So far (April 1997), 7 initiatives have qualified for the June 2, 1998 ballot. Initiative proposals have until January 22, 1998 to qualify for the June 1998 ballot.

The number of signatures required to qualify an initiative proposal for the ballot ranges from a “low of 2 percent of the voting age population in North Dakota to a high of 15 percent of the gubernatorial vote in the preceding election in Wyoming.”²¹ The median state signature requirement for statutory initiatives is 8 percent of those voting in the previous gubernatorial election and 10 percent for constitutional initiatives. With the exception of Arizona, fewer initiatives qualify in states with high signature requirements (10-15 percent). However states with higher thresholds (10 percent and above) pass more of the measures that do qualify (50 percent) compared to lower threshold states (one third pass).

Professional petitioning has long been part of California politics. An impressive array of consulting firms specialize in qualifying and passing both statewide and local initiative proposals. This initiative industry facilitates and encourages individuals and organizations to undertake initiatives and is responsible for most successful petition drives: “Even the California State Employee Association (CSEA), with over 100,000 members, employed a signature gathering firm to help place its proposition concerning increased benefits to public employees on the 1972 ballot.”²² Both paid and volunteer signature solicitors encourage quick signing, not discussion or explanation.

Commentators contend that virtually any initiative can be qualified if the backers have enough money. It currently requires more than \$1 million to qualify a California statewide initiative using paid circulators, up from about \$800,000 in 1988. For example, it cost about \$1.75 million to qualify the California Civil Rights Initiative (Proposition 209) for the November 1996 ballot.²³ In contrast, Proposition 208 (Campaign Finance Reform), which relied half on volunteers and half on paid signature gathers, cost approximately \$450,000 to qualify. At a minimum, all campaigns need to support salaries for regional coordinators and training, petition printing, mailing, polls, focus groups and verification costs.

An analysis of the November 1992, primary found that all 7 initiatives which qualified for the ballot were managed by one of California’s two large signature companies: Kimball Petition Management of Los Angeles or American Petition Consultants of Sacramento. Between 1982 and 1992, nearly 75 percent of all initiatives on the California ballot were

²¹ David B. Magleby, “Ballot Access for Initiative and Popular Referendums: The Importance of Petition Circulation and Signature Validation Procedures,” *Journal of Law & Politics*, Fall 1985, pg. 290.

²² Ibid. pg. 298.

²³ Carolyn Lochhead, “Killing California’s Quotas: Can’t Count On It,” *The Weekly Standard*, October 2, 1995, page 33.

qualified by one of these two companies.²⁴ To make money, the companies prefer handling packages of multiple initiatives. If time is short and there are a lot of circulating initiative proposals, they may charge \$2 or more per signature. An analysis of the cost per signature for the 49 initiatives qualifying from Fall 1980-Fall 1988 found costs ranging from \$38.92 to \$.05 per signature. The median cost was \$1.41.²⁵ Signature gathering crew chiefs, operating as independent contractors, earn about 10 cents for each signature gathered under their supervision; solicitors receive about 45 cents per signature. A good solicitor can make \$30 to \$40 dollars an hour. Campaigns also solicit signatures by using direct mail targeting, a much more expensive method (as much as \$10-\$20 per signature).

Nearly 80 percent of the money contributed to successful qualifying initiatives in November 1992, came from contributors giving more than \$10,000. Malgeby concludes that, "Reliance on the initiative industry accentuates the tendency of direct legislation to be used by groups with specialized interests or ample resources."²⁶ Others assert that money is all that separates failed proposals from successful qualifiers. California initiative petitions do not disclose the identities of the initiative's principal financial supporters

Some states require that petition circulators file with the secretary of state prior to the circulation of petitions. Oregon, for example, requires proponents to indicate whether paid signature gathers will be used. Ohio requires sponsoring committees to disclose the amount paid or promised for circulating petitions within 30 days of filing completed petitions. Several states require notarized petitions (discouraging direct mail petitioning); officials may invalidate petitions that do not comply with requirements for notarized circulators' signatures. Other states have rules on the geographic distribution of signatures, qualifications of signature gatherers, and paid signature solicitation.

California law allows initiative supporters 150 days from the date of filing to gather the required number of signatures. Before 1943, proponents could circulate a petition for an unlimited period of time (10 states still do not impose a time limit). In 1943, the California legislature enacted a 2 year limit and in 1973, the legislature limited the circulation time to 150 days (the third shortest circulation period of any state). An initiative proposal currently in circulation would require that initiative and referendum petitions be posted on the Internet; interested voters would contact the county elections officer to obtain a signature postcard and, if needed, a voter registration application.

Petition signature validation is handled by the county clerk. Due to the number of initiative petitions circulated in California, and the large number of required signatures, the law was changed in 1976 to allow random sample verification. County clerks must examine at least 500 or 3 percent of the signatures, whichever is greater. The Secretary of State projects the rate for each county, totals the projected valid signatures from all 58 counties, and qualifies the initiative if there are 110 percent or more of the needed signatures. If the total falls between 95 and 110 percent, each signature must be

²⁴ There are as many as 3 dozen firms which handle initiative qualifications for state and local ballots. For example, the firm of Masterson and Wright charged \$.75 per signature for qualifying Proposition 208.

²⁵ Charles Price, "Afloat on a Sea of Cash," *California Journal*. Vol. 19, no. 11, Nov. 1988, page 484.

²⁶ Magleby, pg. 311.

individually verified; below 95 percent, the initiative does not qualify. The Secretary of State must verify the signatures at least 131 days before the next statewide election in order for the initiative to be placed on that ballot.

INITIATIVE CAMPAIGNS

Given the importance and complexity of many propositions, ideal voting decisions would be made in the context of extensive debate and deliberation. However ballot measure proponents and/or opponents may not have an incentive to provide clear information to voters. One analysis suggests that the temporary nature of the organizations which run initiative campaigns may make it “easier for them to mislead voters,” as there is no long term cost.²⁷ In contrast, political parties have an interest in future electoral involvement.

Reliable sources of information that are relatively easy to obtain and understand are particularly important in initiative campaigns. Voters primarily receive information about ballot measures from three primary sources: the ballot pamphlet, “free” media reporting (newspaper, radio, television) and paid advertisements. A recent analysis found that (free) press coverage is sparse and virtually nonexistent for some ballot measures.²⁸ Poor press coverage is unfortunate since voters rely heavily on the mass media for information about initiative proposals, given the absence of party or incumbency, cues that assist voters to choose among candidates. California requires that informational legislative hearings be held on initiative proposals. Observers suggest that the hearings and reports are informative but garner minimal press attention.²⁹

The ballot pamphlet is written for a 12 to 14 grade comprehension and reading level, higher than is possessed by the average voter. Research has found that relatively few voters consult the pamphlet for information about ballot measures. In 1990, 78 percent of the respondents to a *Los Angeles Times* poll opined that some or only a few of the propositions are understandable to most voters.³⁰ Political scientists use the term “voter fatigue” to describe voter reaction to lengthy and complex ballots. (The word length of the 36 initiatives on the ballots in 1988 and 1990, varied from 15,633 to 95 words.) There is a drop-off in voting from the top of the ticket, with fewer voters voting for many propositions than candidates. Research suggests that poorer and less educated voters are less likely to vote.³¹

²⁷ Elisabeth R. Gerber and Arthur Lupia, “Campaign Competition and Policy Responsiveness in Direct Legislation Elections,” *Political Behavior*, Vol. 17, No. 3, 1995, pages 287-306.

²⁸ Edward L. Lascher, Jr., “Press Coverage of Propositions is Sparse in California,” *Public Affairs Report*, Institute of Governmental Studies, University of California, Berkeley, Vol. 38, No. 2, March 1997, pg. 9-10.

²⁹ Dubois and Feeney, page 36.

³⁰ Jerry Roberts, “Few Voters Able to Understand State’s Wordy Ballot Measures,” *San Francisco Chronicle*, October 24, 1990, page A5.

³¹ Eugene Lee, citing David Magleby, page 240.

Even with extensive press attention, research indicates that most voters do not pay attention to ballot measures until just before the election. For example, polls showed that more than half the voters in Los Angeles had not heard of Proposition 209 (a heavily debated initiative eliminating state affirmative action programs) until just before the election.³² A Field Poll conducted the week before the November 1992, election found that proportions of California voters ranging from 33 percent to 63 percent had not seen, read or heard anything about 6 key ballot measures.³³ Lack of voter attention amplifies the importance of last minute advertising.

Paid media advertising reaches the largest audience and is designed to persuade, not educate. Access to paid media requires substantial financial resources. Researchers contend that while initiative proponents generally are not able to “spend their way into law, well-financed opponents exercise substantial veto power.”³⁴ One analysis found that spending was disproportionate in 17 of the 29 California initiative campaigns from November 1980 to June 1988. The high spending side won 76 percent of the elections.³⁵ A 1978 analysis examining 16 initiatives nationwide found that the side with corporate support outspent its opponents in 12 campaigns, in 8 cases by 10 to 1. The side spending the most won in 11 of the campaigns.³⁶

Figure 5 shows that political action committees (PACs), corporate and labor contributions dominate California initiative campaigns (82 percent of all funds raised in 1992).

³² Hugo Martin, “76% Have Not Heard of Charter Measure,” *Los Angeles Times*, April 3, 1997, page B1.

³³ Field Poll, *Voter Awareness Remains Relatively Low on State Ballot Initiatives*, Release #1659, October 31, 1992.

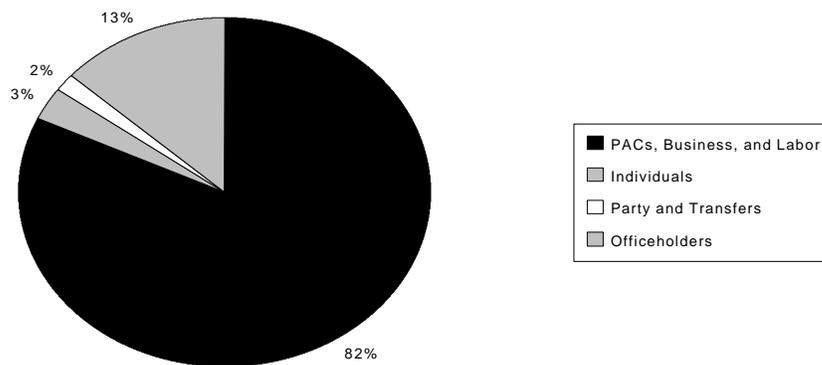
³⁴ A.D. Ertukel, “Debating Initiative Reform: A Summary of the Second Annual Symposium on Elections at The Center for the Study of Law and Politics,” *Journal Of Law & Politics*, Fall 1985, page 324. For an extensive analysis of related data, see Dubois and Feeney, pages 147-151.

³⁵ Charles Price, pg. 486.

³⁶ Steven D. Lyndenberg, *Bankrolling Ballots: The Role of Business in Financing State Ballot Questions Campaigns*, page 1.

Figure 5

**Source of Contributions of \$100 or More:
Ballot Measure Committees 1992**

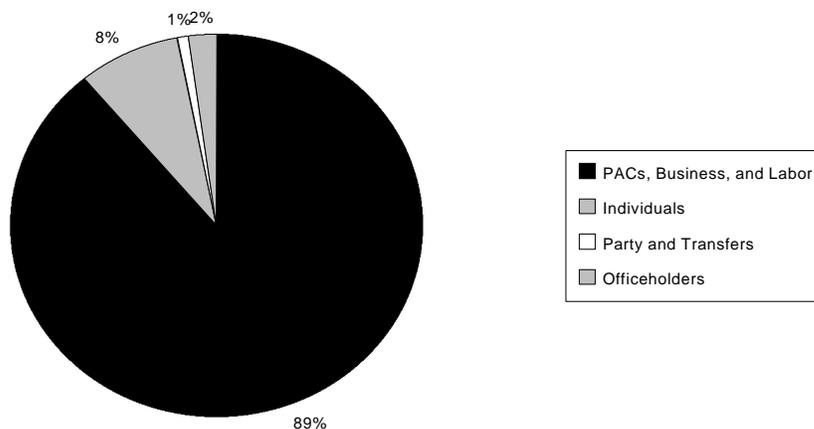


Source: Corey Cook, *Campaign Finance Reform*, California Research Bureau

A study of the highest spending initiative campaigns found that PACs, business, and labor supply almost 90 percent of the money used to support or oppose these ballot measures.³⁷

Figure 6

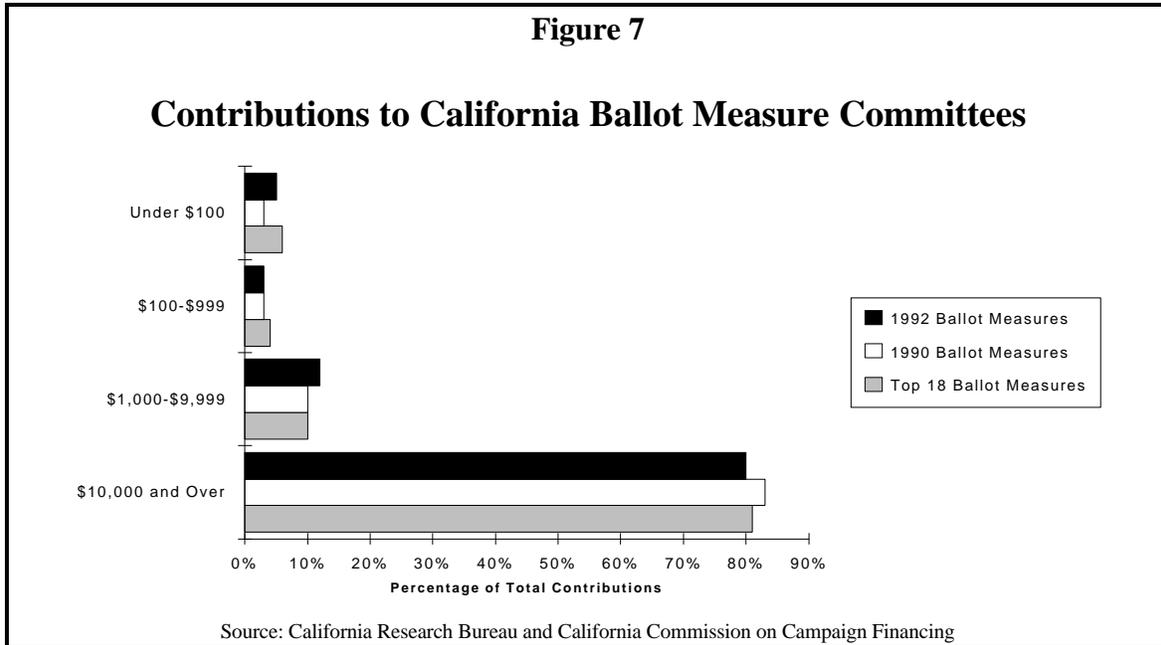
**Source of Contributions of \$100 or More:
18 Highest-Spending Initiative Campaigns (1912-1992)**



Source: California Commission on Campaign Financing, *Democracy by Initiative*

³⁷ Ibid.

The highest-spending initiative campaigns typically involve issues critical to the business community.³⁸ For example, in 1988, \$80 million was spent to conduct campaigns favoring or opposing five insurance initiatives, the vast majority of which was contributed by the insurance industry, trial lawyers, and other political action committees and corporations.³⁹ Large contributors play a central role in financing initiative campaigns.



Although the amount of money spent on initiative campaigns has increased significantly over time, so has California's population. An analysis in the mid-1980s found that when overall initiative spending was adjusted for population growth and inflation, it had not increased significantly since the mid-1930s.⁴⁰ (A study of state legislative campaign spending, similarly adjusted, found a decrease between 1980 and 1992.⁴¹) Of course spending varies considerably depending on the initiative and its sponsors.

All but one of the jurisdictions that use the initiative process require some form of campaign finance disclosure of contributions and expenditures. Campaign committees must register in California and disclose contributors and expenditures over \$100. Individuals must disclose expenditures over \$500. This information is filed with the Secretary of State in paper form that is not easily accessible to voters. (The Secretary of State recently announced a voluntary demonstration project to post candidate campaign finance information for the 1998 elections on its Internet Website. See <http://www.ss.ca.gov/> See also discussion of SB 7 and SB 49 below).

³⁸ Corey Cook, *Campaign Finance Reform*, California Research Bureau, California State Library, 1994, page 6.

³⁹ California Commission on Campaign Financing, 1992.

⁴⁰ Owens and Wade, page 680.

⁴¹ Cook, 1994, page 30.

As amended by Proposition 208, California law requires that ballot measure advertisements identify any person whose cumulative contributions are \$50,000 or more (or the two highest donors). Further, any committee that supports or opposes a ballot measure must name and identify itself using a name or phrase that “clearly identifies the economic or other special interest of its major donors of \$50,000 or more...” and is clearly identified in ads (Section 84504). Violation of these provisions can result in civil or administrative action, including a fine of up to 3 times the cost of the advertisement. Plaintiffs will receive 50 percent of the amount recovered, an enforcement incentive, with the remainder to be deposited in the state’s General Fund. The constitutional issues raised by these provisions are not settled (see *McIntrye v. Ohio Elections Commission*, 1995).

No state provides public financing for initiative campaigns; Oregon and Alaska give tax credits.

IMPLEMENTATION AND AMENDMENT

California initiatives take effect when passed, unlike regular legislation which is effective January 1 of the following year (urgency legislation, which takes effect immediately, requires a 2/3 legislative vote). Other states delay initiative implementation from 5 to 90 days.

California requires an initiative statute to be amended by a vote of the people unless the initiative provides otherwise. Initiative statutes that provide for legislative amendment often require a supermajority vote. In contrast, 12 states allow the legislature to amend or repeal initiative statutes at any time, although research suggests that such action is rare.⁴² Four states allow immediate amendment but delay repeal for 2 or 3 years. Arizona prohibits legislative amendment or repeal.

CALIFORNIANS’ VIEW OF THE INITIATIVE PROCESS

A 1992 analysis of public opinion surveys by Dubois and Feeney found that: “California voters have consistently expressed strong support for the concept of voting on statewide initiatives.”⁴³ Although that support diminished from 83 percent in 1979, to 73 percent in 1989 and 66 percent in 1990, a substantial majority still approves of the process.

A 1982 Field poll found that:

- 86 percent of the public believed that initiatives allow the public to decide issues where public officials are hesitant to act for fear of offending certain groups;
- 66 percent believed that citizens should be able to vote directly on important issues and policies;

⁴² Dubois and Feeney, page 44.

⁴³ Dubois and Feeney, page 8.

- 84 percent believed that many people don't follow politics regularly and may not always be able to make informed decisions; and
- 80 percent regarded statewide propositions as good for California, while only 6 percent of the voting public looked upon them as bad.⁴⁴

Polls also indicate that California voters support significant reform of the initiative process. A 1990 *Los Angeles Times* poll found that:

- 72 percent of those surveyed agreed that “the initiative process has gotten out of control in California elections”;
- 84 percent agreed “that an average voter cannot make an intelligent choice” on so many issues; and
- 60 percent agreed that “it is better for laws to be written in Sacramento by the Legislature and the Governor.”⁴⁵

An earlier 1990 *Los Angeles Times* survey found that voters believed that the main reason for so many ballot measures was the failure of the legislature to “do its job.” Other “culprits” included “special interests who use initiatives to get around the Legislature,” and a qualification process which makes it “too easy to qualify a proposition on the ballot.”⁴⁶

Dubois and Feeney reviewed polling results over time and found voter support for specific reform proposals, including:

- 69 percent support for submitting an initiative proposal to the Secretary of State for review and comment on legal conformity and clarity prior to circulation (1990); and
- 87 percent support for requiring full disclosure of the sponsoring industry or group in campaign advertisements (1985).

In contrast, less than a majority supported proposals to:

- limit the number of initiatives on the ballot (49 percent support in 1985);
- increase the number of signatures to qualify (49 percent support in 1985); or
- reinstate the indirect initiative (41 percent support in 1990).

In comparison, public opinion ratings of the California Legislature have generally been decreasing over the last 15 years. A September 1992, Field Poll found that more people rated the legislature's performance as Poor/Very Poor (49 percent) than Excellent/Good (11 percent) and Fair (35 percent) combined. However a majority approved of their own legislators' performance (62 percent Excellent/Good or Fair). This suggests a concern about institutional performance.

⁴⁴ Ertukel, page 331

⁴⁵ George Skeleton, “Voters Say Initiatives are ‘Out of Control’,” *Los Angeles Times*, November 4, 1990, page A1.

⁴⁶ Ibid.

REFORM PROPOSALS

A number of scholars, elected officials and journalists and commissions have examined the initiative process over the last decade. Many have proposed recommendations for reform (see Appendix), motivated by the extraordinary impact of initiatives on the state's governing process. They cite concerns about the quality of the deliberative process (limited voter information, deceptive media campaigns), the lack of legislative review, poor drafting, inflexibility, the impact of money on qualifying and campaigns, self-interested promotion by candidates, declining voter participation, lengthy and complex ballots, ease of amending the constitution, counter initiatives that confuse voters, and questions of legality raised by court intervention. The Legislative Analyst Office has voiced concerns about fiscal inflexibility and earmarking of state general funds via the initiative process.⁴⁷

Proposals for reform begin with the premise that the initiative is an important and valued safety valve: "Initiatives provide the public a way to apply pressure for solutions to major public problems when the legislature and governor are unresponsive."⁴⁸ This rationale was the original impetus behind the adoption of the initiative and still stands. However many observers feel that the initiative process has serious flaws that require improvement.

The Citizen's Commission on Ballot Initiatives (ACR 13, Resolution Chapter 120, 1991, Costa) reviewed and evaluated the statewide initiative process, examining concerns that the initiative process has been "overused," that ballots measures are overly complex and confusing to voters, and that the process has become a tool of "special interests."⁴⁹

Important aspects of the state's political agenda are being set, not by its elected leaders, but by unaccountable single-interest groups, operating in a fragmented, uncoordinated, and frequently contradictory manner. (Eugene Lee)⁵⁰

The California Commission on Campaign Financing found that, "Some thoughtful observers have expressed concern that ballot initiatives are undermining party responsibility and the traditional forms of representative government in this state, discarding its checks and balances and its deliberateness in favor of ill-conceived, rash and poorly drafted schemes...voters...[are] overwhelmed by the growing number of measures on the ballot, confused by poor drafting, deceived by misleading campaigns, bewildered by counter initiatives and frustrated by court rulings declaring provisions unconstitutional."⁵¹

⁴⁷ California Legislative Analyst's Office, "Ballot Initiatives and Constitutional Constraints: Impact on the State Budget and Budgeting Process," Joint Legislative Budget Committee, October 26, 1990.

⁴⁸ California Constitution Revision Commission, *Recommendations of the California Constitution Revision Commission to the Governor and the Legislature*, Sacramento, August 1996, pages 25-28.

⁴⁹ Citizen's Commission on Ballot Initiatives, *Report and Recommendations on the Statewide Initiative Process*, Sacramento, January 1994, page 2.

⁵⁰ Eugene Lee, pages 248-249.

⁵¹ Commission, page 2.

Detailed recommendations for reform proposed by the California Commission on Campaign Financing, the Citizen's Commission on Ballot Initiatives, Professors Dubois and Feeney for the California Policy Seminar, and Professor Eugene Lee are included in the Appendix. A sample of other reform proposals is summarized below.

Los Angeles Times

- Tighten up the single subject rule.
- Make initiatives statutory rather than constitutional and allow the legislature to amend.
- Establish a nonpartisan, appointed panel to review initiative proposals before they go on the ballot and make non-binding suggestions for improvement.
- Require the panel or the Legislature to hold meaningful, well-publicized hearings.
- Require that the true financial sponsors (not vague umbrella committees) be listed on petitions.⁵²

Sacramento Bee

- Require full disclosure of the “big-money interests bankrolling these measures.”
- Increase the signature threshold for constitutional amendments from 8 to 12 percent of the votes cast in the last gubernatorial election.
- Require voter initiatives that impose spending obligations to include a dedicated revenue source--tax or fees-- and eliminate special funds and spending mandates.⁵³

California Constitution Revision Commission

- Place initiatives on the November ballot, and on primary and special election ballots only by a two-thirds vote of the legislature and approval of the governor.
- Allow amendment of statutory initiatives after 6 years.
- Allow the legislature to add clarifying and technical amendments to initiatives that have qualified for the ballot with the agreement of a majority of the initiative's proponents.⁵⁴

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Establish an indirect initiative process. Initiative proponents would be required to collect half the number of signatures now required to qualify a measure, and the measure would then be processed through the legislature and submitted to a vote by both houses. Should the legislature not pass the proposal, initiative proponents could collect the rest of the signatures and put the measure to a vote of the people.⁵⁵

⁵² *Los Angeles Times*, “Initiative: The Monster that Threatens California Politics; Out of Control, the Process Itself Now Needs to be Reformed,” November 12, 1990, page B4.

⁵³ *Sacramento Bee*, “What Others Say,” November 8, 1996, page B8. Also, “Fixing California,” May 8, 1994, page F04.

⁵⁴ California Constitution Revision Commission, *Recommendations of the California Constitution Revision Commission to the Governor and the Legislature*, Sacramento, August 1996, pages 25-28.

⁵⁵ Ertukel, page 332

Finally, a recent scholarly analysis concludes that, “more responsive (initiative) policy outcomes require enhanced voter competence,” implying the value of reforms such as rigorous disclosure of campaign receipts and expenditures or “well-enforced truth-in-advertising laws.”⁵⁶

LEGISLATIVE REFORM PROPOSALS

Over 300 bills have been introduced since 1911 to reform the initiative process. The following analysis summarizes an important reform proposal debated in the 1995-1996 legislative session and identifies and describes bills introduced in the 1997-1998 session (as of April, 1997; check for more recent bills and amendments).

SCA 11 (Costa and Kopp) and SB 925 (Costa); 1995-1996 Session

Senator Costa based this legislation (and his earlier ACA 40) on the recommendations of The Citizens Commission on Ballot Initiatives, chaired by A. Alan Post. ACA 40 passed both houses but died on the Assembly Unfinished Business file. SCA 11 and SB 925 did not pass the Assembly. (SB 925 was later amended and enacted as an insurance measure.)

SCA 11 proposed to establish a process for legislative adoption and enactment of certified initiative measures. If the legislature failed to adopt or amend and adopt a measure, it would proceed to the ballot. Should legislative committees recommend amendments, the proponents of the initiative could amend the initiative prior to its inclusion on the ballot (the process is detailed in SB 925). Should the legislature enact the initiative, or an amended measure endorsed by a majority of its proponents, it would be withdrawn from the ballot.

1997-1998 Session

AB 44 (Murray)

This bill would require the Secretary of State to design, develop and implement a digital electoral system for the collection, storage and processing of electronically generated and transmitted digital messages to permit any eligible person to register to vote, sign any petition, and vote in any election using the digital system. A willful manipulation of the digital electoral system would be a crime.

⁵⁶ Gerber and Lupia, page 288.

AB 63 (Cunneen)

This bill requires the Secretary of State to develop a process whereby reports and statements required to be filed with the Secretary of State by the Political Reform Act of 1974, could be filed electronically and viewed by the public at no cost by way of the largest nonproprietary, cooperative public computer network. Beginning in 1999, candidates, committees and slate mailer organizations would be required to file if their total amount of reportable items is \$50,000 or more in an election cycle; or \$5,000 or more in a calendar year for lobbyists, lobbyist employers and lobbying firms. Civil and administrative penalties are imposed for misuse of the data. \$750,000 is appropriated to develop the reporting system.

AB 73 (Bordonaro)

This bill would require every person who receives payment or anything of value for circulating, or obtaining signatures to, an election petition or affidavit of registration, to first obtain an annual permit as a “Paid Political Circulator” from county elections officials or the Secretary of State. Any person, group, organization or entity offering to pay for obtaining signatures would also receive a permit, identify its principals, maintain specified records (including information about paid political circulators and payments), and verify information on signed affidavits of registration. Applications for permits would be signed under penalty of perjury and could be revoked. First violations would be a misdemeanor and subsequent violations a misdemeanor or felony.

AB 677 (Aguiar)

This bill would declare the intent of the Legislature to require a non-binding advisory opinion by a panel of 3 independent judges regarding the constitutionality of a proposed initiative measure. The opinion would “be made available” to registered voters.

AB 679 (Caldera)

This bill would require separate ballot headings for measures submitted to the voters: “These Measures Were Placed On The Ballot By The Legislature” and “These Measures Were Placed On The Ballot By The Circulation of Petitions.” Legislative measures would precede petition measures on the ballot.

AB 935 (Vincent)

This bill would require the proponents of a statewide initiative measure, at the time of submitting the request to the Attorney General for preparation of a title and summary, to submit a certification that the proposed measure has been reviewed by legal counsel for sufficiency as to legal form, clarity of language, and proper drafting style. The State Bar would be required to design and implement a program, pursuant to which an appropriately

organized committee could review and certify proposed statewide initiative measures for sufficiency as to legal form, clarity of language, and proper drafting style.

AB 1233 (Granlund)

This bill would require paid petition circulators to notify potential signers of an initiative petition if they are being paid, the amount, and by whom. The Attorney General would include in the circulating summary and title an estimate of the amount, or an opinion as to whether, the measure would cause a substantial net change in state or local revenues. The estimate would be prepared by the Joint Legislative Budget Committee and the Department of Finance. In addition, the Attorney General would determine “whether it would serve the public interest to have a legal opinion on the constitutional validity of the proposed measure, or any part thereof, prepared prior to its circulation for signatures.” If so, the Legislative Counsel would prepare the legal opinion, the conclusions of which would be included by the Attorney General in the title and summary. Committees formed primarily to support or oppose the passage, qualification or defeat of a state ballot measure, and state general purpose committees, would be required to file a campaign statement within 5 days of the official summary date for the prior 90 day period.

AB 1336 (Vincent)

This bill would require all committees that are formed for the purpose of supporting or opposing the qualification, passage, or defeat of any ballot measure to form a separate committee for each ballot measure and to file required preelection statements. In addition, superior court judges would continue to file copies of their campaign statements with county clerks, but not with the Secretary of State as is currently required.

AB 1359 (Bowen)

This bill would prohibit paying petition circulators on the basis of the number of signatures obtained, and would require persons, companies or other organizations employing signature gatherers to file specified information concerning their payments, under penalty of perjury. The proponents of statewide initiatives would include a notice at the top of the petition stating that the measure might be amended at a later time. Proponents of a qualified initiative could submit proposed amendments to the Attorney General, after a legislative committee issued recommendations on the measure; the amendments would be incorporated into the text on the ballot. A notice would be printed above the titles and summaries should the Attorney General determine that measures potentially conflict with each other; the Secretary of State would group those measures together on the ballot. This bill is tied to ACA 11 and is a successor to Senator Costa’s legislation last session.

ACA 11 (Bowen)

Each house of the Legislature, following certification of an initiative measure for the ballot, would hold and complete a committee hearing on the measure at least 125 days prior to the election. The hearing committees could recommend legislative adoption of

the measure or the adoption of an amended measure. If these actions were not taken the measure would appear on the ballot. Should a majority of the measure's proponents approve of an enacted amended measure in writing, or should the measure be enacted by the legislature without change, it would be removed from the ballot (no later than 117 days prior to the election). The effective day of the enacted measures would be the day after certification of the election results by the Secretary of State. (See AB 1359.)

SB 7 (Kopp)

This bill would require the Secretary of State to develop a process whereby specified reports and statements (including for ballot measures) that are required by the Political Reform Act of 1974 to be filed with the Secretary of State could be filed electronically and viewed by the public at no cost by way of the Internet. A voluntary filing program would commence in July 1, 1999. Defined persons would be required to file electronically commencing January 1, 2000.

SB 49 (Karnette)

This bill would require the Secretary of State to develop a process whereby reports and statements (including for ballot measures) required by the Political Reform Act of 1974 to be filed with the Secretary of State would be filed electronically at no cost on an online disclosure system, beginning with the state primary election in the year 2000.

SB 109 (Kopp)

This bill would prohibit a foreign government or principal from making any contribution, expenditure, or independent expenditure in connection with the qualification or support of, or opposition to, any state or local initiative or referendum measure. Domestic subsidiaries of foreign corporations would be exempt if the decision to contribute or expend funds is made by an employee who is a U.S. citizen or legal immigrant. Violators would be guilty of a misdemeanor and subject to a fine equal to the amount contributed.

SB 159 (Brulte)

This bill would prohibit a candidate, committee, or other organization from expending campaign funds (directly or indirectly) to pay for similar telephone calls of 1,000 or more in number that advocate support of, or opposition to, a candidate, ballot measure, or both, without disclosing the name of the paying organization. Volunteer callers, candidates and candidate managers would be excluded. Any phone bank vendor under contract to provide such services would be required to disclose the funding source during the call.

SB 561 (Burton)

This bill would require that a slate mailer state, as to any ballot measure endorsed in the mailer and whose endorsement differs from the official endorsement of the political party that the mailer appears to represent, that the endorsement is not the official position of the political party. The notice would be printed at the top of each side in 8-point contrasting boldface type, in a printed or drawn box, and would state: “NOTICE TO VOTERS THIS DOCUMENT WAS PREPARED BY (XXXX), NOT AN OFFICIAL POLITICAL PARTY ORGANIZATION. All candidates and ballot measures designated by \$\$\$ have paid for their listing in this mailer. A listing in this mailer does not necessarily imply endorsement of other candidates or measures listed in this mailer.”

SCA 5 (Karnette, Lewis, Maddy, Polanco)

This measure would provide that an initiative embraces one subject when each provision is reasonably germane to the general objective or purpose of the measure and is reasonably interdependent with all other provisions.

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APPENDIX--RECOMMENDATIONS FOR REFORM

1. A CPS brief “Improving the California Initiative Process: Options for Change” by Philip L. Dubois and Floyd Feeney, Vol. 3, No. 10, November 1991.
2. “The Initiative Process” by Eugene Lee, in California Policy Choices, Vol. 6, 1992.
3. “Democracy by Initiative: Shaping California’s Fourth Branch of Government,” Report and Recommendations of the California Commission on Campaign Financing.
4. “Report and Recommendations on the Statewide Initiative Process,” Citizen’s Commission on Ballot Initiatives, January 1994.

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