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INITIATIVE & REFERENDUM INSTITUTE

The Initiative Process in America
An Overview of How It Works Around the Country [1]

Testimony of M. Dane Waters, President of the Initiative & Referendum Institute, to the Speaker's Commission on the Initiative Process. The Initiative & Referendum Institute is a 501(c)(3) non-profit, non-partisan, educational and research organization that analyzes the initiative and referendum process. This testimony is provided for informational purposes only.

TESTIMONY

First let me thank the commission for inviting me here today to speak on a subject that is very important to me as well as thank Speaker Hertzberg for establishing this public commission. Far too often state legislatures have looked at reforming the initiative process without talking with the people most affected by their actions and in many cases have made changes that have done little to address the legitimate concerns associated with the initiative process.

I am here today not as a supporter of the initiative process but to serve only as a resource to you in your efforts. My goal in being here today is not to sway you in any way towards one form of initiative versus another but simply to point out some of the pros and cons of the various rules and regulations governing the use of the initiative process around the country. Though I am by no means an expert on how each state regulates its initiative process, I do have a good understanding of how the initiative process is regulated in each of the various states.

There is a lot of information to cover and I will by no means be able to discuss everything in the handouts that you have been given, so I will just spend the next few minutes discussing the high points and then take questions to clarify any of my remarks.

Some History

There is a long and rich history of the citizens utilizing the initiative process in this country (a complete listing of initiatives that have appeared on the ballot since 1904 and that will be appearing on future ballots is available at http://www.iandrinstitute.org and http://www.ballotwatch.org). Since the first statewide initiative on Oregon's ballot in 1904, citizens in the 24 states with the initiative process have placed approximately 1,987 statewide measures on the ballot and have only adopted 821 (41%). In 1996, considered by many to be the "high water mark" for the initiative process, the citizens placed 102 measures on statewide ballots and adopted 45 (44%). In contrast,

[1] The information contained in this testimony was compiled from numerous sources including the ***Book of States***, The Texas Interim Report on Initiative and Referendum, and independent research conducted by the Initiative & Referendum Institute.

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the state legislatures that same year in those same 24 states adopted over 17,000 laws. Additionally, it is important to point out that very few initiatives actually make it to the ballot. In California, according to political scientist Dave McCuan, only 26% of all initiatives filed have made it to the ballot and only 8% of those filed actually were adopted by the voters. During the 2000 election cycle, over 350 initiatives were filed in the 24 initiative states and 76 made the ballot – about 22%.

Since the first statewide initiative appeared on the ballot in Oregon in 1904, the initiative process has been through periods of tremendous use as well as periods in which it was rarely utilized. From 1904 to 1976, the use of the initiative steadily declined from its peak of 291 from 1911-1920 to its low of 78 in 1961-1970. Many factors contributed to this, but the distraction of two World Wars, the Great Depression and the Korean War are largely responsible. However, in 1978, with the passage of California's Proposition 13 (an initiative that cut state property taxes by nearly 60%), the people began to realize the power of the initiative process once again and its use began to climb. Since 1978, the two most prolific decades of initiative use have occurred 1981-90 (289 initiatives) and 1991- 2000 (approximately 396).

DECADES WITH THE LOWEST NUMBER OF STATEWIDE INITIATIVES ON THE BALLOT	NUMBER PROPOSED	NUMBER ADOPTED	PASSAGE RATE
1941-1950	131	53	40%
1951-1960	109	44	41%
1961-1970	78	33	42%

Even though 24 states have some form of statewide initiative, almost 60% of all initiative activity has taken place in just five states – Oregon, California, Colorado, North Dakota and Arizona.

STATES WITH THE HIGHEST NUMBER OF STATEWIDE INITIATIVES ON THE BALLOT (1904 – 1998 ONLY)	NUMBER PROPOSED	NUMBER ADOPTED	PASSAGE RATE
Oregon	314	105	33%
California	260	92	35%
Colorado	174	72	41%
North Dakota	165	77	47%
Arizona	144	58	40%

Since 1996, the number of initiatives actually making the ballot seems to be decreasing. Many argue that this is due to increased regulation of the process. In 1998, only 66 initiatives actually made the ballot - the lowest in a decade. In 2000 a total of 76 initiatives found their way to statewide ballots, though more than 1998, this number is still off pace with previous election cycles this decade. Even though the decade of 1991 - 2000 will go into the record books as the most prolific - with close to 400 initiatives making the ballot, it is uncertain what the future holds for the I&R process.

DECADES WITH THE HIGHEST NUMBER OF STATEWIDE INITIATIVES ON THE BALLOT	NUMBER PROPOSED	NUMBER ADOPTED	PASSAGE RATE
1991-2000	396	194	48%
1911-1920	291	117	40%
1981-1990	289	127	44%

There is no doubt that the desire to use the process is high with the public, with poll after poll showing on average 70% support for the process, but the new regulations and restrictions being placed on the process - like the prohibition on signature collection at post offices - have shown that the citizens are having a much harder time utilizing this important tool.

Comparison of Initiative Processes

Although the initiative process is different in every state, there are certain aspects of the process that are common to all. The five basic steps to any initiative process are:

1) Preliminary filing of a proposed initiative with a designated state official;
2) Review of the initiative for compliance with statutory requirements prior to circulation;
3) Circulation of the petition to obtain the required number of signatures;
4) Submission of the petition signatures to the state elections official for verification of the signatures;
5) The placement of the initiative on the ballot and subsequent vote

Twenty-four states have the initiative process. Of the 24, 18 allow ***constitutional initiatives***. 16 of the 18 allow through the direct initiative process and 2 allow constitutional initiatives through the indirect initiative process. The direct initiative process is where the initiative is placed directly on the ballot once the petition signatures are certified and the indirect is where the initiative must be considered by the state legislature first. In the indirect process, the legislature is given a certain amount of time to act on the initiative. If the legislature rejects it, submits a different proposal or takes no action, the initiative automatically goes on the ballot of the next general election.

21 of the 24 initiative states allow ***statutory initiatives***. 14 of the 21 allow statutory initiatives through the direct initiative process and 9 allow statutory initiatives through the indirect initiative process. I know that adds up to 23 – which is greater than the universe of 21 states that allow statutory initiatives. The reason for the difference is that 2 states – UT and WA – allow statutory initiatives through the direct and indirect process.

In every state, statutory initiatives require a simple majority of those voting to adopt the measure.

The Indirect Initiative Process

As stated above, the indirect initiative process is available in some form in 10 states: Alaska, Maine, Massachusetts, Michigan, Mississippi, Nevada, Ohio, Utah, Washington, and Wyoming. Included in the packet of information that was provided to each of you is a concise run down of each state that has the indirect process and a brief description of how it operates in each of those states. It is a very good and concise overview and was prepared by Fred Silva.

In 7 of the 10 states, the citizens must collect the full number of signatures required before the initiative is placed before the legislature for consideration. In the other three states (Massachusetts, Utah, and Ohio) the citizens must collect a smaller number of signatures for the initiative to be considered by the legislature. If the legislature doesn't adopt the initiative then they must collect additional signatures to place the measure on the ballot.

This two-step process would in theory seem to lead to large numbers of initiatives being proposed since initiative sponsors would only have to collect half of the number of signatures normally required to get their issued addressed by their lawmakers, but in reality that hasn't occurred. This is due to the fact that very rarely do state legislatures actually adopt the initiatives that are placed before them through the indirect process. California and South Dakota, which had both direct and indirect initiative, repealed the indirect initiative in 1966 and 1988, respectively, for lack of use. The Utah Legislature has never adopted an initiative measure and the Massachusetts Legislature, according to the Secretary of State's Office, hasn't adopted an initiative measure in the last decade. The Maine Legislature has only adopted two laws placed before them.

Pre-Circulation Filing Requirements and Review

Prior to circulating a petition, the proposed initiative and a request to circulate must be submitted to the designated public officer such as the lieutenant governor, attorney general or secretary of state for approval. Nine states require the proposed initiative to be submitted with a certain number of signatures – ranging from five in Montana to 100 in Alaska. Three states require a deposit that is refunded when the completed petition has been filed – Alaska ($100), Washington State ($5), and Wyoming ($500).

Depending, on the state the petition may be reviewed for form, language and/or constitutionality. Ten states require the secretary of state's office or the attorney general to review initiatives for proper form only.

Eleven states (CO, AR, FL, ID, MS, MT, NE, OR, SD, UT, WA) and the District of Columbia ***require*** some form of pre-circulation/certification review regarding

language, content or constitutionality. However, in all but four of these states, the results of the review are advisory only. In Arkansas, the attorney general has authority to reject a proposal if it utilizes misleading terminology. In Utah, the Attorney General can reject an initiative if it is patently unconstitutional, nonsensical, or if the proposed law could not become law if passed. In Oregon, the Attorney General can stop an initiative from circulating if he believes it violates the single amendment provision for initiatives and in Florida, the State Supreme Court – during its mandatory review – can stop an initiative if it is unconstitutional or violates the state's very strict single subject requirement for initiatives.

At two points in the petition process, an official summary and title must be prepared. A circulation title must be prepared for the signature collection phase, and a ballot title must be prepared for the voter pamphlet (if there is one) and the actual ballot. Typically, the circulation and ballot titles are the same.

Procedures for writing the circulation title vary. Some states allow the sponsors to write the title; other states use a committee (see attached chart). Eleven states provide for expedited court challenges to the circulation title.

Every initiative state requires review and approval of the election-day ballot title, caption and summary. Arizona, Arkansas, Florida, Illinois, Ohio and Oklahoma permit proponents to write the ballot title, but it is subject to approval by the attorney general or secretary of state. Oklahoma additionally requires that the ballot title be certified by the superintendent of public instruction for readability at the eighth-grade level. Eleven states (AK, CA, ID, MS, MO, MT, NE, OR, UT, WA, WY) place responsibility for drafting the ballot title and summary with the attorney general, secretary of state or comparable official. Five states (CO, IL, MI, NV, SD) assign the task to a special committee or drafting board. Colorado, Oregon and Washington, DC allow public comment in drafting the ballot title. Fourteen states make available expedited court review of contested ballot title wording.

Subject Limitations

Every state prohibits initiatives from adopting policies that are beyond the permissible boundaries of the legislature. Some states have prohibited initiatives in the subject areas of taxes or appropriations. Nevada, for example, forbids any appropriation by initiative unless the measure also includes a tax sufficient to cover the appropriation. Alaska, Wyoming and Washington, DC prohibit initiatives from dedicating revenues, making or repealing appropriations, creating courts, and affecting the judicial process. Several states, like Montana, distinguish between constitutional amendments, which are permitted and constitutional revisions, which are not.

Several States impose a single subject rule for initiatives. Single subject rules are of the greatest concern to supporters of the initiative process and are

proving to be a serious obstacle to the use of the initiative process. However, the Institute supports the concept of requiring that initiatives be limited to a single subject, be we believe that; a) a standard interpretation of what constitutes a violation of single subject needs to be adopted, b) single subject requirements should apply to laws proposed by the state legislature as well, c) single subject challenges should be brought prior to circulation so initiative proponents are not "blind sided" after spending substantial resources in qualifying a measure for the ballot and d) the courts should offer a remedy to initiative proponents when they are in violation of the single subject laws so proponents know what would pass judicial review versus having to guess time and time again.

Limits on the Number and Frequency of Ballot Measures

Four states (IL, MS, NE, OK and WY) place restrictions on the number and frequency of ballot measures.

In Nebraska, an initiative petition may not be filed that is substantially the same as one that failed on the ballot within the preceding three years. Wyoming has a similar provision, except the time period is five years.

Mississippi limits the number of initiative proposals to five: the first five measures meeting the submission requirements will be placed on the ballot. Initiatives rejected by the voters cannot be placed on the ballot for two years after the election.

Petition Circulator Requirements

Up until early 1999, several states required that petition circulators be registered voters. The U.S. Supreme Court in ***Buckley v. ACLF*** ruled that states couldn't require circulators to be registered voters. However, almost all of the states with prior registered voter requirements have now adopted laws requiring that circulators be residents of the state. This new law will most likely be litigated as well.

Circulation Period

Circulation periods range from as brief as 64 days in Massachusetts to an unlimited duration – though there are limits on how long a petition signature is valid. Most states also have deadlines for submitting initiative petitions, so that officials will have time to verify the signatures, publish the initiative, and prepare the ballot.

Arkansas, Ohio, Oregon, and Utah – have no time limit for signature gathering. Oklahoma at 90 days, California at 150 days, and Massachusetts at 64 days have the shortest circulation periods.

Signature Requirements

Central to the initiative process is getting the required number of valid signatures. Although the requirements and formulas may differ, all states set the signature threshold at some percentage of the voting public, rather than an absolute number of signatures. Some states require that the number of signatures match a predetermined percentage of the registered voters for the state. Others require a percentage of a previous vote for a designated office to qualify. Signature thresholds vary from a high of 15 percent of qualified voters based on votes cast in the last general election in Wyoming to a low of two percent of the state's resident population in North Dakota.

Most states, which have both constitutional and statutory initiatives, require a higher percentage of signatures for constitutional initiatives with Colorado and Nevada being the exceptions.

Geographic Distribution Requirements

Thirteen states require some geographic distribution of signatures, often a specified number of signatures from each of a certain number of counties or districts. Distribution requirements can be a deterrent to the use of the initiative process. Over 60% of all initiative activity has taken place in just five states (AZ, CA, CO, ND and OR) – all without a geographic distribution requirement.

States with severe distribution requirements (ID, MS and WY) rarely have initiatives on their ballot.

Verification of Petition Signatures

There are three methods to verifying signatures: presumed valid, random sampling, and full certification. Three states (ND, OH, OK) use the presumed valid test. This means that the state simply counts the names and assumes that all of the signatures are legitimate. Twelve states (AK, AR, FL, IL, ME, MA, MS, MT, NE, SD, UT, WY) require full certification and ten states (AZ, DC, CA, CO, ID, MI, MO, NV, OR, WA) use the random sampling method.

Publication of Initiatives

Fourteen states (AK, AZ, CA, CO, ID, ME, MA, MS, MT, NV, OH, OR, UT, WA) distribute a voter pamphlet. Fourteen states also inform the electorate about ballot measures through publication in major newspapers. Five states (ID, MT, OH, UT, WY) use both methods. States that use the newspaper as their medium for voter information use a variety of styles and format. Some states will publish the entire initiative text in the newspaper; most publish an impartial analysis along with an argument for and against.

The voter pamphlet usually includes the official ballot title, an "impartial" analysis by public official and arguments and rebuttals for and against each

measure. States that do not include arguments in the ballot pamphlet or newspaper notice are: Maine, Michigan, Nevada, North Dakota, and Wyoming. Five states (CA, ME, NV, OR, UT) specifically mandate that a fiscal impact statement be printed in the pamphlet. All states, except Ohio, print the entire text of all propositions in their voter pamphlet.

Both Oregon and Montana use a committee system to draft the voter pamphlet analyses. In Oregon, the committee is two proponents and two opponents selected by the secretary of state. These individuals then select a fifth committee member. Montana establishes a similar committee for each analysis, however the fifth committee member is the attorney general.

Massachusetts makes full use of legislative hearings to assist in voter information. A summary of the majority and minority reports of the legislative committee that conducted public hearings on the proposal is printed in the pamphlet. Committee members representing both the majority and minority opinions on the issue draft a brief summary of their reasons for supporting or opposing the measure.

The majority of states produce a voter pamphlet essentially at state expense with the exception of Alaska, Arizona, and Oregon. Alaska does not charge to print ballot measure arguments, but it does charge political parties and candidates a "per page" fee to have information included in the pamphlet. Arizona charges $100 per argument printed in its pamphlet. Oregon charges $500 per argument. This fee may be waived if the submitter collects 2,500 valid signatures in support of the argument.

Voter Approval

Once an initiative is on the ballot, the general requirement for passage is a majority vote. Exceptions are Nebraska, Massachusetts and Mississippi. These states require a majority, provided the votes cast on the initiative equals a percentage of the total votes cast in the election (35 percent in Nebraska, 30 percent in Massachusetts, and 40 percent in Mississippi.) Wyoming requires "an amount in excess of 50 percent of those voting in the preceding general election." An initiated constitutional amendment in Nevada must receive a majority vote in two successive general elections. Washington requires a simple majority approval for all measures except those concerning gambling (which requires 60 percent affirmative vote for passage.)

Conflicting Measures

Most states have adopted a policy addressing conflicting propositions especially in states that allow the state legislature to place an "alternative" measure on the ballot. Fifteen states have determined that if two or more conflicting initiatives receive voter approval, the one with the most affirmative vote controls.

In Utah, the governor makes the initial decision whether provisions conflict and declares which proposal controls based on the highest number of votes. Voters may challenge this determination within 30 days.

In Washington, voters are asked to express two preferences: first, between either measure or neither; second, between one or the other. Maine also forces voters to choose between competing propositions or against both, with a warning that a "yes" vote for both measures will invalidate the ballot. In Massachusetts, the legislature designates prior to the election which initiatives conflict. Voters are then encouraged to choose between one or the other.

Amending Initiative Statutes and Veto Authority

In no state does the governor have the right to veto laws passed by initiative. In California, Florida and Mississippi the legislature may not repeal or amend the initiative. Eleven states (CO, ID, ME, MA, MO, MT, NE, OH, OK, OR, SD) allow their legislatures to amend or repeal an initiative statue at any time after its adoption by a simple majority vote of both houses. Nine states (AK, AR, AZ, MI, NV, ND, UT, WA, WY) impose restrictions on changes to initiative statutes. Nevada, for example, prohibits legislative amendment or repeal for three years after passage of the initiative. Alaska and Wyoming permit simple majority amendments at any time but prohibit a legislative repeal of the initiative for two years after its passage. Michigan requires a three-fourths vote of the legislature to amend to repeal an initiative (unless otherwise specified by the initiative.) Arkansas imposes a two-thirds legislative vote requirement, and North Dakota requires a two-thirds legislative vote but only in the first seven years after enactment.

What reforms should be considered

Now that we have fully discussed the way the initiative process works in each state, we should discuss what reforms, if any, should be considered. First let's look at what concerns have been raised about the process.

1) It has become a tool of rich special interests and is no longer a tool of the average citizen as envisioned by the creators of this process;

2) Legislators don't have any say in legislation proposed through the initiative process thus creating legislation that does not take into account the potential impact on the day-to-day operation of the state;

3) Initiatives are not well drafted, thought out and thus should be vetted more before they are placed on the ballot.

As I said at the beginning of my testimony, I am not going to argue whether these are legitimate concerns or not, but will do my best to recommend

changes to the process that could help address some of these issues if you believe they need to be addressed.

First, the issue of money in the initiative process. When considering changes to the process, the natural tendency is to first look at how to take money out of the initiative process – don't try, it is a waist of time. The courts have consistently ruled that you can't do anything that limits the amount of money being spent in initiative campaigns. You can't limit contributions. You can't limit donations to only individuals within the state. You can't limit the amount of money paid to signature gatherers and you can't limit the method in which signature gatherers are paid. Additionally, no matter what you do to limit individuals with money from using the process, they will always be able to use it – they will just spend more money. The people who will be harmed the most by the attempts to stop the money flow are the average citizens who do not have access to the tremendous financial resources necessary to tackle all the hurdles put in place that were designed to limit moneyed special interest.

In regard to the other concerns discussed above, here are a few changes to consider. These changes would: give more flexibility to the state in reviewing initiatives prior to being placed on the ballot, be constitutional, allow more citizen activist to participate in the process, and stop many of the post circulation/election lawsuits that clog the courts and make the citizens skeptical of the process.

1) **Establish the indirect initiative process that has a two-tier step of signature collection.** This would allow grassroots activist an opportunity to participate since they no longer have a tremendous number of signatures to collect. However, given the history in Utah and Washington State where citizens can chose between the direct and indirect methods and have rarely chosen the indirect path, I would advise that you abolish the direct initiative process and simply allow for indirect initiatives.

2) **Allow initiatives only on general election ballots.** Voter turnout at primary elections is historically low. Initiatives, as well as referred measures from the legislature, should appear on ballots with the highest voter involvement - typically a state's general election ballot.

3) **Lengthen the circulation period and allow ongoing certification of signatures.** It makes no sense that California has decreased its circulation period while its population has grown to representing 10% of the nation's population. I would change the system so that the citizens can submit their petition language the January after the election and have until 10 days prior to the convening of the legislature to submit 50% of the required number of signatures. Then if the legislature doesn't act then the proponents would be required to collect the additional 50% as long as they are

submitted four months prior to the general election. Also, by allowing signature turn-ins on a regular basis it would allow initiative proponents to know how many valid signatures they have on an ongoing basis and would help county clerks avoid "the last minute rush".

4) **Resolve single subject, ballot title and other technical challenges prior to circulation and require expedited judicial review with the judiciary required to offer a remedy.** The worst thing in the world is for an initiative proponent, especially a grassroots effort, to collect all of their signatures and then get thrown off the ballot by a technical challenge. All technical challenges should be resolved prior to circulation and when the challenges occur the reviewing authority, whether it is the Attorney General of the state or the state courts, should be required to act within a specified amount of time and offer a remedy to the initiative proponents.

5) **Require pre-circulation review by state.** The legislative counsel that reviews laws proposed by the legislature for sufficiency prior to introduction should also review initiatives that are filed and before circulation begins provide "advisory only" comments on what changes should be made to the initiative to make it consistent with state law and better accomplish the goal of the initiative.

6) **Require post circulation public hearings**. Hold public hearings when initiatives are certified in each of the Congressional Districts of the state so the citizens have a chance to hear about the measures and webcast these public hearings via the Secretary of State's website.

7) **Consider limiting number of initiatives on the ballot**. The natural concern is that by making it easier to qualify an initiative for the ballot that the number of initiatives making the ballot would increase. Not that I believe this is a bad thing but for those who do then you should consider addressing that concern by placing a limit on the number and/or frequency of initiatives qualifying for the ballot. First, limit initiatives only to general election ballots. Second, limit the number of initiatives to five each election cycle and third, require that no initiative rejected by the voters can be placed on another ballot for three years after the election. However, I believe that whatever limitations you place on the number of initiatives appearing on the ballot that the same standard should be applied to measures placed on the ballot by the legislature.

These are just a sampling of changes that could be considered when discussing reforms to the initiative process. However, whether you consider these reforms or others I would recommend that you apply the following test first before adopting any changes.

1) Will the change pass constitutional challenge if the court applies strict scrutiny?
2) Will it decrease the cost of utilizing the initiative process?
3) Will it increase the ability of average citizens to utilize the process?
4) Is the same standard being applied to laws proposed by the state legislature?

If you can answer yes to all of these then in most cases it would be a reform supported by initiative supporters and most likely be a positive step in addressing some of the legitimate concerns about the process.

Conclusion

The initiative process is a powerful tool – as we all know - and a tool that is strongly supported by the people. However, like all aspects of governing, it must be constantly monitored to make certain that it operates fairly, effectively and accurately and as its creators envisioned. But we must be careful not to regulate the process so much that we end up making it less of a tool of the people and more of a tool of a privileged segment of our society – which is what I would argue already has occurred through previous attempts to regulate the process.

We should not be afraid of the people and the people using the initiative process. We may not always like what they propose and pass through the initiative process but it is their right – they are the sovereigns. As William Jennings Bryon said in 1920: "[w]e have the initiative and referendum; do not disturb them. If defects are discovered, correct them and perfect the machinery … make it possible for the people to have what they want … we are the world's teacher in democracy; the world looks to us for an example. We cannot ask others to trust the people unless we are ourselves willing to trust them."

Thank you for having me today.

A State-by-State Account of The Indirect Initiative Process By Fred Silva

The indirect initiative is a process by which voters can submit a measure to their state legislature for consideration. In general, the legislature has a set period of time to adopt or reject the proposal. If it is adopted by the legislature, the measure becomes law (albeit one subject to referendum). If the measure is rejected or the legislature fails to act within a set period of time, the measure is generally placed on the ballot at the next general election. Currently, the constitutions and provisions of ten states provide for an indirect initiative process: Alaska, Maine, Massachusetts, Michigan, Mississippi, Nevada, Ohio, Utah, Washington, and Wyoming. Their respective indirect initiative processes are described below.

1. Alaska[2]

Alaska uses a form of the indirect initiative called the legislature's option, and only statutes are eligible. Here, after collecting the proper amount of signatures (10% of those who voted in the preceding election), the petitioners must submit their request prior to the beginning of the legislative session. The legislature is not required to consider the measure, however, and if it does not, the measure goes on the next ballot. If the legislature adopts the measure or a measure that is substantially similar, the initiative does not go on the ballot. Other than Wyoming, Alaska is the only state in which the legislature may vary indirect initiative statutory proposals without creating the possibility of a vote on the amended measure.

2. Maine[3]

After Massachusetts, Maine is the second largest user of the indirect initiative. Only statutes are allowed. The required number of signatures is 10% of the total votes cast for governor in the last election. The legislature has the entire session in which to act and may decide to place an alternative proposal or recommendation on the ballot. If it chooses to do this, it must construct the ballot so that voters can choose between competing versions (one or more) or reject both. The Legislature can also reject the initiative, in which case it is placed on the ballot. Following enactment, the Legislature can both repeal and amend initiatives.

3. Massachusetts[4]

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[2] Alaska Constitution Article XI; Dubois, Philip L. and Floyd Feeney, *Lawmaking by Initiative: Issues, Options and Comparisons.* New York: Agathon Press, 1998.

[3] Maine Constitution Article IV; Dubois, Philip L. and Floyd Feeney, *Lawmaking by Initiative: Issues, Options and Comparisons.* New York: Agathon Press, 1998.

[4] Massachusetts Constitution amendment article XLVIII, Initiative part 5 (statutes), part 4 (cons. Amendment); Dubois, Philip L. and Floyd Feeney, *Lawmaking by Initiative: Issues, Options and Comparisons.* New York: Agathon Press, 1998.

Massachusetts is by far the largest user of the indirect initiative. Both constitutional amendments and statutes may be proposed, and signatures that total only 3% of the entire vote cast for Governor are required. The Massachusetts procedure for constitutional amendments is the most indirect of any American initiative procedure, as the proponents have no right to submit their proposal to a vote of the people unless the legislature places the measure on the ballot. The process involves a two-step procedure. In the first step the sponsor must obtain a fairly low number of signatures (3 percent) to have the legislature consider the proposal. Initiative amendments are acted upon by a joint session of the House and Senate; the Legislature can only amend the initiative by a ¾ majority vote in a joint session of both houses. If the legislature fails to adopt the proposal, the sponsors must seek additional signatures to get on the ballot. An initiative amendment to the Constitution will not appear on the ballot if, when it comes to a vote in either joint session, less than 25% of the legislators vote in favor of it or if no vote is taken before the legislative term ends. Following enactment, the Legislature can both repeal and amend initiatives. In practice, the indirect initiative process is rarely used for constitutional amendments.

4. Michigan[5]

Only statutes may be proposed in Michigan's indirect initiative process, and the number of signatures required to qualify is at least 8% of the total votes cast for Governor in the last general election. Once submitted, the legislature has 40 days to act on a petition and may also place an alternative on the ballot. It can approve or reject an initiative, but it cannot amend one. However, it can submit an alternative to an initiative to the ballot. If rejected, the measure can be placed on the next ballot. Following enactment, the Legislature can both repeal and amend initiatives.

5. Mississippi[6]

Mississippi is the only state in which the indirect initiative process is used for constitutional amendments only. To qualify an amendment for consideration, the number of collected signatures must equal 12% of all votes cast for governor in the last election. These initiatives always appear on the ballot, whether the legislature adopts, rejects, or proposes alternatives to them. If it is amended, both the amended version and the original one are submitted to the ballot. The Legislature is empowered to both repeal and amend these initiatives following enactment. This procedure was adopted in Mississippi in 1995, but has been used only very rarely.

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[5] Michigan Constitution Article II; Dubois, Philip L. and Floyd Feeney, *Lawmaking by Initiative: Issues, Options and Comparisons.* New York: Agathon Press, 1998.

[6] Mississippi Constitution Section 273; Dubois, Philip L. and Floyd Feeney, *Lawmaking by Initiative: Issues, Options and Comparisons.* New York: Agathon Press, 1998.

6. Nevada[7]

Nevada requires that 10% of the total number of voters in the last general election sign a petition in order for it to be considered by the Legislature. After submission, the Legislature has 40 days to act on a petition and may also place an alternative on the ballot. If the measure is rejected by the Legislature or if no action is taken is 40 days, the measure is placed on the ballot. The Legislature can only repeal or amend an approved initiative three years after enactment. Nevada used an indirect procedure for initiative constitutional amendments until 1962. Since then, Nevada has required that initiative constitutional amendments be approved at two separate elections but has allowed the amendments to go directly on the ballot. Because of the two separate elections requirements, the legislature still has an opportunity to deal with any matter proposed before a final ballot. As a result, some see this as really being an "indirect" procedure.

7. Ohio[8]

Ohio is one of two states (along with Massachusetts) that have a two-step procedure in the indirect initiative process. In the first step the sponsor must obtain a fairly low number of signatures (3 percent of the total vote cast for governor in the last election) to have the legislature consider the proposal. Only statutes are permitted. If the legislature fails to adopt the proposal (or does not act on it), the sponsors must seek additional signatures to get on the ballot. The Legislature may amend the proposed measure.

8. Utah[9]

Utah (along with Washington) is one of only two states that allow the initiative sponsor to choose whether they wish to use the direct process or indirect initiative process. In Utah, there is an incentive to use the indirect initiative, since indirect initiatives can go before the legislature with signatures equal to five percent of the last vote, while the direct initiative requires twice that number. If the legislature rejects the indirect initiative, its advantages are lost, however, because sponsors must come up with signatures equal to another 5% of the vote. Only statues can be proposed and signatures that total at least 5% of all votes cast for governor in the last election are required. The proposed law can only be enacted or rejected without change or amendment by the Legislature. Following enactment, the Legislature can both amend and repeal initiatives.

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[7] Nevada Constitution Article XIX; Dubois, Philip L. and Floyd Feeney, *Lawmaking by Initiative: Issues, Options and Comparisons.* New York: Agathon Press, 1998.

[8] Ohio Constitution Article II; Dubois, Philip L. and Floyd Feeney, *Lawmaking by Initiative: Issues, Options and Comparisons.* New York: Agathon Press, 1998.

[9] Utah Code Ann. Sections 2-A-7-201, -208 (Supp. 1994); Dubois, Philip L. and Floyd Feeney, *Lawmaking by Initiative: Issues, Options and Comparisons.* New York: Agathon Press, 1998.

9. Washington[10]

Washington (along with Utah) is one of the two states that allow voters to choose between the indirect and direct initiative. The number of signatures required for each type of initiative is the same (8% of the votes cast for governor in the last election); thus, the sponsor chooses the type that seems most advantageous. In practice voters overwhelmingly choose the direct variant. Only statutes can be considered in the indirect process. Following submission to the legislature, the Legislature can approve an amended version of the proposed legislation, in which case both the amended version and the original proposal must be placed on the next state general election ballot. If the Legislature adopt the measure without amending it, it automatically becomes law. After enactment, the Legislature can repeal or amend an initiative by a ¾ vote of each house during the first two years of enactment, and a majority vote thereafter.

10. Wyoming[11]

Wyoming, like Alaska, uses the "legislature's option" form of indirect initiative. Initiative sponsors must collect their signatures (15% of those voting in the last election) prior to the beginning of the next legislative session. Only statutes can be proposed using the indirect process. The legislature is not required to consider the measure, however. If it chooses not to consider the measure, it is placed on the next ballot. If the legislature adopts the measure or a measure that is substantially similar, the initiative does not go on the ballot. As mentioned above, Wyoming and Alaska are the only states in which the legislature may vary indirect initiative statutory proposals without creating the possibility of a vote on the amended measure. After a measure is enacted, the legislature can amend it, and repeal it after two years.

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[10] Washington Constitution Article II; Dubois, Philip L. and Floyd Feeney, *Lawmaking by Initiative: Issues, Options and Comparisons.* New York: Agathon Press, 1998.

[11] Wyoming Constitution Article III, Section 52; Dubois, Philip L. and Floyd Feeney, *Lawmaking by Initiative: Issues, Options and Comparisons.* New York: Agathon Press, 1998.

LIMITS ON THE NUMBER AND FREQUENCY OF BALLOT MEASURES

STATE	LIMITS ON FREQUENCY OF BALLOT MEASURES
Illinois	Limits the number of citizen initiated non-binding advisory questions to no more than three on the same ballot.
Mississippi	Limits the number of ballot initiatives on the same ballot to five. The first five measures meeting the submission requirements are the ones placed on the ballot. Additionally, an initiative rejected by the voters cannot be placed on another ballot for two years after the election.
Nebraska	The same subject cannot appear on the ballot more than once in three years.
Oklahoma	The same subject cannot appear on the ballot more than once in three years.
Wyoming	No measure can be put on the ballot that is similar to a measure that has been defeated at the ballot within 5 years.

INITIATIVE SUBJECT RESTRICTIONS

STATE	RESTRICTIONS
Alaska	Single subject only. No revenue measures, appropriations, acts affecting the judiciary, or any local or special legislation. Also, no laws affecting peace, health or safety.
Arizona	Single subject only; legislative matters only.
Arkansas	Limited to legislative measures.
California	Single subject only.
Colorado	Single subject only.
Florida	Single subject only.
Idaho	No restrictions.
Illinois	Legislative matters only. Must also only deal with structural and procedural subjects.
Maine	Any expenditure in excess of appropriations is void 45 days after legislature convenes.
Massachusetts	No measures involving religion, the judiciary, local or special legislation, or specific appropriations.
Michigan	Applicable to statutes that Legislature may enact.
Mississippi	No modifications of bill of rights and no modifications of public employees' retirement system or labor-related items. Initiatives rejected by the voters cannot be placed on the ballot for two years after the election.
Missouri	Single subject only; no appropriations without new revenue, and nothing that is prohibited by the constitution.
Montana	Single subject only; no appropriations, and no special or local legislation.
Nebraska	Single subject only. Limited to matters that can be enacted by the legislature. The same subject cannot appear on the ballot more than once in three years.
Nevada	No appropriations or expenditures of money, unless the measure includes a sufficient tax not prohibited by Nevada's constitution.

North Dakota	No emergency measures, or appropriations for support and maintenance of state departments and institutions.
Ohio	Single subject only. No measures involving property taxes. Legislative matters only.
Oklahoma	Single subject only. The same subject cannot appear on the ballot more than once every three years. Legislative matters only.
Oregon	Single subject only. Legislative matters only.
South Dakota	Except laws as necessary for the immediate preservation of public peace, health or safety support of state government and existing public institutions.
Utah	Legislative matters only.
Washington	Single subject only; limited to legislative matters.
Wyoming	Single Subject. No earmarking, making or repealing appropriations, creating courts, defining jurisdiction of courts or court rules, and no local or special legislation. No measure that is similar to a measure that has been defeated at the ballot within 5 years.

PRE-CIRCULATION STATE REVIEW OF CIRCULATION TITLE/ SUMMARY/BALLOT TITLE/CONSTITUTIONALITY/SINGLE SUBJECT

STATE	ASSISTANCE
Alaska	Lieutenant Governor reviews for form and legal restrictions on content.
Arizona	Secretary of State reviews for form only.
Arkansas	Attorney General may reject confusing title and summary and instruct petitioners to redesign proposal.
California	Optional assistance from Legislative Council.
Colorado	Mandatory content review by Legislative Council.
Florida	Supreme Court reviews for constitutionality and compliance to single subject after petitioners gather 10% of the signature requirements.
Idaho	Mandatory review of content by Attorney General.
Illinois	None
Maine	Secretary of State reviews for form only.
Massachusetts	Mandatory review of subject by Attorney General
Michigan	Optional public hearing on draft before the Board of State Canvassers.
Mississippi	The state makes advisory recommendations regarding the initiative language. The sponsor may accept or reject any of these recommendations.
Missouri	Attorney General reviews for form only.
Montana	Mandatory review of content by Legislative Council. The sponsor may accept or reject any of these recommendations.
Nebraska	The state makes advisory recommendations regarding the initiative

	language. The sponsor may accept or reject any of these recommendations.
Nevada	Secretary of State reviews for form only.
North Dakota	Secretary of State reviews for form only.
Ohio	Petitioners may revise draft after the indirect initiative legislative hearing.
Oklahoma	Secretary of State reviews for form only.
Oregon	Mandatory review for single subject.
South Dakota	Legislative Research Council reviews for style and form, and makes advisory recommendations regarding the initiative language.
Utah	Attorney General reviews for constitutionality and will reject the measure if it is patently unconstitutional, nonsensical; or if the proposed law could not become a law if passed.
Washington	Mandatory review by Code Reviser. The sponsor may accept or reject any recommendations.
Wyoming	Secretary of State reviews for form only.

CIRCULATION TITLE AND SUMMARY

State	Title and Summary	Expedited Review
Alaska	Proponent writes caption and summary, subject to approval by Lt. Governor.	Superior Court
Arizona	Proponent writes caption; no summary.	No
Arkansas	Proponent proposes caption and summary, subject to approval by Attorney General.	Supreme Court
California	Attorney General writes caption and summary.	No
Colorado	Drafting board prepares caption and summary in conduct of public hearings with input from proponent.	Rehearing: Supreme Court
Florida	Proponent writes caption and summary.	No
Idaho	Attorney General writes caption and summary.	Superior Court
Illinois	Proponent writes caption and summary, subject to approval by Board of Elections.	No
Maine	Ballot question written by Secretary of State; no summary.	No
Massachusetts	Proponent writes caption; Secretary of Commonwealth writes summary, subject to approval by Attorney General.	No
Michigan	Proponent writes caption; no summary	No
Mississippi	The Attorney General writes the title and summary.	District Court

Missouri	No caption or summary.	No
Montana	The Attorney General writes the title and summary.	District Court
Nebraska	No caption; proponents writes summary.	No
Nevada	No caption or summary.	No
North Dakota	No caption; summary drafted by Secretary of State, subject to approval by Attorney General.	No
Ohio	Proponents write caption and summary, subject to approval by Attorney General.	No
Oklahoma	No caption, proponent writes summary.	No.
Oregon	Attorney General writes caption and summary after receiving public comments.	Supreme Court
South Dakota	No caption or summary.	No
Utah	No caption or summary.	No
Washington	Attorney General writes caption and summary.	Superior Court
Wyoming	No caption; Secretary of State writes summary.	District Court

OFFICIAL BALLOT TITLE AND SUMMARY

State	Title and Summary Procedures	Expedited Review
Alaska	Written by Attorney General; but proponent may negotiate wording with Lt. Governor.	Yes
Arizona	Proponent writes the caption and the Secretary of State drafts the summary, subject to approval by Attorney General.	No
Arkansas	Proponent proposes caption and summary, subject to approval by Attorney General.	Yes
California	Attorney General writes caption and summary.	Yes
Colorado	Drafting Board prepares caption and summary in conduct of public hearings, with input from proponents.	Yes
Florida	Proponent writes caption and summary, subject to approval by Secretary of State.	No
Idaho	Attorney General writes caption and summary.	Yes
Illinois	Proponent writes caption and summary, subject to approval by Board of Elections.	No
Maine	Ballot question and summary written by Secretary of State.	No
Massachusetts	Secretary of Commonwealth writes caption and summary, subject to approval by Attorney General.	Yes
Michigan	No caption; Board of State Canvassers writes summary.	Yes
Mississippi	The Attorney General writes the title and summary.	Yes
Missouri	No caption, Attorney General writes summary.	Yes
Montana	Attorney General writes ballot title and summary.	Yes

Nebraska	Attorney General writes caption and summary.	Yes
Nevada	No caption; Secretary of State writes summary, subject to approval by the Nevada Legislative Commission.	No
North Dakota	No caption; summary drafted by Secretary of State, subject to approval by Attorney General.	No
Ohio	Proponent writes caption and summary, subject to approval by Attorney General and Secretary of State.	No
Oklahoma	Proponent proposes caption and summary, subject to approval by Attorney General.	Yes
Oregon	Attorney General drafts preliminary caption and summary, receives public comments and writes final version.	Yes
South Dakota	Drafted by State Board of Elections.	No
Utah	Attorney General writes caption and summary.	Yes
Washington	Attorney General writes caption and summary.	Yes
Wyoming	No caption; Secretary of State, with assistance of Attorney General, writes summary.	Yes

LEGISLATIVE AND EXECUTIVE POWER TO CHANGE OR REPEAL INITIATIVE LAWS

State	Legislative Power	Executive Power
Alaska	Can repeal only after two years; can amend anytime. (ALC. XI, §6)	Cannot veto.
Arizona	Cannot repeal; but, can amend an initiative law if the amending legislation furthers the purposes of such measure and at least three-fourths of both houses, by a roll call vote, vote to amend the measure. (Const. Art. 4, pt. 1, §1 (6) Also, see *Adams v. Bolin*, 74 Ariz. 269, 247 P.2d 617 (1952.))	Cannot veto.
Arkansas	Can repeal or amend by a 2/3 vote of each house. (C.A. No. 7)	Cannot veto.
California	Can not repeal or amend unless permitted by the initiative (Const. art. 2, §10(c))	Cannot veto.
Colorado	Can repeal and amend. (*Zimmerman v. Herder*, 122 Colo. 456, 233 P.2d 197 (1950))	Cannot veto.
Florida	Florida's initiative process only allows constitutional amendments.	Cannot veto.
Idaho	Can repeal (by court ruling, see *Luker v. Curis*, 64 Idaho 703, 136 P. 2d 978 (1943)) and amend (by common practice.)	Cannot veto.
Maine	Can both repeal and amend. (By common practice.)	Cannot veto.
Massachusetts	Can repeal and amend. (Mass. Const. amend. Art. 48)	Cannot veto.
Michigan	Can repeal and amend by a ¾ vote of each house or as otherwise provided by the initiative (Mich. Const. art. 2, §9)	Cannot veto.
Mississippi	Mississippi's initiative process only allows constitutional amendments.	Cannot veto.
Missouri	Can both repeal and amend. (*Halliburon v. Roach*, 230 Mo. 408, 130 S.W. 689 (1910))	Cannot veto.
Montana	Can both repeal and amend. (By common practice.)	Cannot veto.
Nebraska	Can both repeal and amend. (By common practice.)	Cannot

		veto.
Nevada	Can only repeal or amend after three years of enactment. (Nevada Const. art. 19, §2)	Cannot veto.
North Dakota	Can repeal or amend by a 2/3 vote of each house for seven year after passage, majority vote thereafter. (N.Dak. Const. art. III, §8)	Cannot veto.
Ohio	Can both repeal and amend. (*Singer v. Canledge*, 129 Ohio St. 279, 195 N.E. 237 (1935))	Cannot veto.
Oklahoma	Can both repeal and amend. (*Expane Haley*, 202 Okla. 101, 210 P.2d 653 (1949))	Cannot veto.
Oregon	Can both repeal and amend. (*Pierce v. Shisher*, 119 Or. 141, 249 P. 358 (1926))	Cannot veto.
South Dakota	Can both repeal and amend. (*Richards v. Whisman*, 36 S.D. 260, 154 N.W. 707 (1915))	Cannot veto.
Utah	Can amend only at subsequent sessions. (Utah code Ann. §20-11-6).	Cannot veto.
Washington	Can repeal or amend by a 2/3 vote of each house during the first two years of enactment, majority vote thereafter. (Wash. Const. art. 11, §41)	Cannot veto.
Wyoming	Cannot repeal for at least two years after enactment, but may amend at any time. (Wy. Const. art. 3, §52(f))	Cannot veto.

Major Cases Regarding the Funding of Ballot Measure Campaigns

There have been numerous attempts at regulating the amount of money spent on ballot measure campaigns. In most cases, the proposed laws have attempted to limit the amount of money corporations could spend in either support or opposition of ballot measures. State and Federal Courts, including the U.S. Supreme Court in 1977, have consistently ruled that you can not limit the amount of money in ballot measure campaigns. Their basic logic has been that you can't corrupt a piece of paper (the ballot measure) and therefore there is no need in limiting the amount of money spent on these campaigns. This is where they apply a different standard in those cases pertaining to contributions to candidate campaigns – the courts have upheld contribution limits to candidates because of the possibility of corruption. In short, any attempt to regulate the amount of money in ballot measure campaigns would be viewed as unconstitutional given the current case law.

Montana Chamber of Commerce v Argenbright (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.

In First National Bank of Boston v. Bellotti, 435 U.S. 765(1978), the Supreme Court struck down as violative of the First Amendment a state statute limiting corporate contributions or expenditures in the ballot-issue process (initiatives or referenda), made for the purpose of influencing or affecting the vote on any question submitted to the electorate, other than one materially affecting the property, business, or assets of the corporation. The invalidated statute had also provided that no issue submitted to the voters that solely concerned individual taxation issues could be deemed to affect a corporation's property, business, or assets.

However, the Court ruled in Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990) that a state statutory restriction on independent corporate expenditures in connection with candidate elections was permissible, when the statute permitted corporations to make such expenditures from segregated funds used solely for political purposes, and the state justified the burden on corporations' freedom of speech as a means of avoiding the corrosive and distorting effects of huge aggregations of corporate wealth that have little correlation to the public's support for the corporations' political ideas.

Montana voters approved Initiative 125 (I-125) in November 1996. I-125 prohibited direct corporate spending in connection with ballot issues (other than by nonprofit corporations formed solely for political purposes). The measure allowed a corporation to establish and administer a separate, segregated fund that could solicit contributions from shareholders, employees, or members of the corporation.

In July 1998, I-137 (restricting certain types of mining) was certified for the November ballot. Appellee Montana Mining Association (MMA) and other organizations subject to I-125 sought to delay and then invalidate the election in which Montana's voters

approved I-137 on the ground that I-125 unconstitutionally constrained their participation in the election process.

Appellee Montana Chamber of Commerce (MCC) brought a federal declaratory action, alleging that I-125 was unconstitutional, and sought an injunction against its enforcement.

MMA brought suit in September 1998, requesting a preliminary injunction that would either waive I-125 as applied to MMA, or delay a vote on I-137 until after the I-125 case was resolved. The district court consolidated the actions.

On summary judgment, the district court ruled that I-125 restricted core political speech, but concluded that a trial was necessary to determine whether a compelling state interest justified the restriction.

I-125 proponents contended that the effect of corporate spending on Montana initiatives was defeated measures.

Opponents produced evidence indicating that many factors influenced election results, and that the side spending less money won 50 percent of the time. They also showed that the Montana political system was healthy and free of corruption.

In the I-137 phase, MMA showed that I-125 limited mining companies' ability to oppose I-137, and that the measure posed a significant economic threat to its members.

The district court accepted the contentions of the I-125 opponents, ruling that at least as applied, the measure infringed the First Amendment rights of speech and association of those subject to its prohibitions; it was not narrowly tailored to address only the spending of large corporations; requiring corporations to fund ballot-issue campaign speech through segregated funds impermissibly deprived them of their ability to communicate political ideas directly to the electorate; the measure prevented the electorate from being exposed to diverse political viewpoints on matters of public policy; and the proponents' evidence did not establish domination of the initiative process through corporate expenditures. Accordingly, the court concluded that the corporations were entitled to defend their economic interests by using their treasuries to fund their participation in ballot initiative campaigns.

Appellant Ed Argenbright, Montana's Commissioner of Political Practices, appealed from the district court's judgment for MCC, MMA and the other opponents of I-125.

[1] The constitutionality of I-125 came down to whether restricting corporate expenditures in the ballot issue process was controlled by Bellotti, even though I-125 (unlike the statute at issue in Bellotti) permitted corporations to establish segregated funds though which others might contribute.

[2] The risk of corruption perceived in cases involving candidate elections is not present in a popular vote on a public issue. To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade

the electorate is hardly a reason to suppress it. The Constitution protects expression that is eloquent no less than that which is unconvincing.

[3] I-125 was similar to the statutory scheme approved in Austin to the extent that both statutes allowed corporations to set up segregated funds. However, Austin did not turn on this difference from Bellotti as much as it did on the difference between expenditures for candidate elections and ballot issues. Even if Austin could be read as undermining Bellotti, that was for the Supreme Court to say. Austin cited Bellotti and did not overrule it. Bellotti controlled.

[4] I-125 unconstitutionally restricted public discussion in the ballot issue (initiative) process. A restriction so destructive of the right of the public discussion, without greater or more imminent danger to the public interest than existed in this case, is incompatible with the freedoms secured by the First Amendment. Its enforcement was therefore properly enjoined.

[5] The issue of whether the district court should have delayed or invalidated the I-137 election, together with the question whether MMA's pre-election request for injunctive relief should have been granted, were moot.

[6] Even though there was evidence that I-125 affected MMA's ability to campaign, there was also evidence that it had no substantial impact. And the state had a significant interest in avoiding the costs of a special election. It could not be said that the district court abused its discretion in failing to void the results of the election.

Judge McKeown concurred separately, writing to underscore that First Amendment protection of political contributions is not absolute, and that the articulation of a compelling state interest for restrictions on corporate spending in ballot issue elections could produce a different result.

Judge Hawkins dissented, concluding that Austin supported I-125's validity because Montana's initiative provided for corporate spending through a segregated fund.

Buckley v. American Constitutional Law Foundation (U.S. Supreme Court - 1999)

The Buckley case is the latest in a number of Supreme Court decisions asking how far States may go in regulating the conduct of ballot initiative campaigns. Since the success of term limit and tax limit initiatives, elected officials across the country have been restricting initiative campaigns. In 1988, the Supreme Court struck down Colorado's restriction on paid initiative signature collection, saying that initiative petitions were protected political speech. Meyer v. Grant, 486 U.S. 414 (1988). In Buckley, Colorado was asking that other restrictions on petitions be upheld.

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.

In other words, Colorado attempted to regulate the collection of signatures on initiative petitions by requiring signature collectors ("circulators") to be registered to vote in Colorado and to wear badges with their names and addresses, whether they are paid or volunteer, and, if paid, the name of the person or entity who is paying them, and requiring initiative proponents to file reports disclosing the names of and compensation paid to circulators. The U.S. Court of Appeals for the Tenth Circuit 120 F.3d 1092 (1997) struck down these requirements as unconstitutional infringements on political speech.

Petitioner Colorado claimed that it needed the restrictions to prevent fraud and preserve the integrity of the electoral process, and that the restrictions are permissible under the "flexible standard" applicable to regulation of the ballot. Burdick v. Takushi, 504 US. 428, 434 (1992). Colorado was supported by amici briefs from a group of State Attorneys General and by the Council of State Governments and a number of other governmental associations.

The respondents were a conservative legal organization and several individuals who have been involved in initiative campaigns (including Paul Grant, of Meyer v. Grant). Respondents contended that the fraud claims were a "facade," that the restrictions violated Meyer v. Grant and that the various restrictions violated petition circulators' and signers' free speech rights. Respondents were supported by a variety of organizations from across the philosophical spectrum, including the ACLU (click here to view amicus), the Initiative & Referendum Institute (click here to view amicus), and National Voter Outreach, a professional petition circulation firm. One of the amici's points was that Colorado law explicitly placed signature collection outside the electoral process (Montero v. Meyer, 861 F.2d 603 (10th Cir. 1988), cert. denied, 492 U.S. 921 (1989); accord, Delgado v. Smith, 861 F.2d 1489 (11th Cir. 1988), cert. denied, 492 U.S. 981 (1989)), making the proper standard for review the strict scrutiny applicable to private speech.

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.

The decision by the court had two major points: 1) initiative petition circulation is pure political speech and restrictions on circulation, especially at the time of discussions with voters who might potentially sign the petitions, is highly protected and 2) any restrictions on petition circulation must be justified by strong showings that the regulated practices hurt the integrity of the ballot process – in other words, that the restrictions help prevent actual fraud. This will be extremely difficult to do considering that no state has ever been able to show convincingly that rampant fraud exists during the petition process.

Planning and Conservation League, Inc., et al., Plaintiffs and respondents, vs. Daniel E. Lungren, as Attorney General, etc., Defendant and Appellant [No. C016761. COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT 38 Cal. App. 4th 497, 95 Cal. Daily Op. Service 7477, 45 Cal. Rptr. 2d

183, 95 Daily Journal DAR 12761, 1995 Cal. App. LEXIS 918 (September 22, 1995, Decided)]

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

Meyer v. Grant, 486 U.S. 414 (U.S. Supreme Court - 1988)

A handful of states sought to protect the integrity of the initiative process by prohibiting the payment of petition circulators. Colorado, Idaho and Nebraska each made it illegal to accept financial reward for signatures raised. The United States Supreme Court overturned these laws in the 1988 decision, Meyer v. Grant, 486 U.S. 414 (1988). Such a law, the Court ruled unanimously, restricts freedom of expression guaranteed by the First Amendment: it restricts access to the most effective fundamental and perhaps economical avenue of political discourse, direct one-on-one communication.

The case arose out of an initiative proposal sponsored by a group known as Coloradans for Free Enterprise, which wanted to remove motor carriers from the jurisdiction of the Public Utility Commission. Proponents had to raise 46,737 signatures to qualify the initiative. Because they lacked the necessary resources for a volunteer circulation effort, they filed suit seeking an injunction against enforcement of the state's criminal statute prohibiting paid signature gathering. A federal district court upheld the Colorado statute but its decision was reversed by the U.S. Supreme Court. In a unanimous decision, the Court concluded that the circulation of petitions is political expression of either dissent with existing public policy or a desire to create new policy. Justice Stevens buttressed the point with a description of the petition process that assumes extensive political discussion between solicitors and the public. The prohibition against paid circulators, Stevens wrote, is a violation of free speech because it curtails the number of [circulators'] voices that will convey appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach.

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

The federal appellate court rules that Michigan's provisions limiting corporate contributions to ballot measure campaigns violates 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., ll0 S. Ct. 1391 (1990)

Citizens Against Rent Control v. Berkeley, 454 U.S. 290 (1981)

In Citizens Against Rent Control v. Berkeley, 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 determined that the Berkeley ordinance imposed "...a significant restraint on the freedom of expression of groups and those individuals who wish to express their views though commit tees," and that "The tradition of volunteer committees for collective action has

manifested itself in myriad community and public activities; in the political process it can focus on a candidate or on a ballot measure." In a forceful passage the Court said, "Whatever may be the state interest or degree of that interest in regulating and limiting contributions to or expenditures of a candidate or a candidate's committee there is no significant state or public interest in curtailing debate and discussion of a ballot measure. Placing limits on contributions that in turn limit expenditures plainly impairs freedom of expression. The integrity of the political system will be adequately protected if contributions are identified in a public filing revealing the amounts contributed..." Again, 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.

First National Bank of Boston v. Bellotti, 435 U.S. 765 (1977)

The Supreme Court has supported the notion that one-sided spending is not a crucial factor in ballot issue elections. Before 1976, 18 states had laws prohibiting or limiting corporate contributions or spending in initiative campaigns. But the Court found most of these laws to violate the First and Fourteenth Amendments.

In First National Bank of Boston v. Bellotti, 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." In reviewing the Massachusetts law, the Court said, "If the speakers here were not corporations, no one would suggest that the state could silence their proposed speech. It is the type of speech indispensable to decision-making in a democracy, and this is no less true because the speech comes from a corporation rather than an individual. The inherent worth of the speech in terms of its capacity for informing the public does not depend on the identity of its source..?' The Court rejected Massachusetts' claim that the statute preserved the integrity of the electoral process and public confidence in democratic government with this often quoted passage: 'The risk of corruption perceived in cases involving candidate elections ... simply is not present in a popular Vote on a public issue. To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it ... Moreover, the people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider in making their judgment, the source and credibility of the advocate.

In the view of some, the Court was naive in its understanding of ballot measure campaign finance matters. As of 1985, Michigan was the only state still attempting to implement a statute limiting corporate contributions to ballot measure campaigns. The limitation was $40,000 in volunteer services and/or financial support "to each ballot question committee for the qualification, passage, or defeat of a particular ballot question?' A corporation could make an independent expenditure for the qualification, passage, or defeat of a ballot question, but, if it did so, the corporation would be considered "a ballot question committee" for the purposes of the act. "Corporations formed for political purposes" were not subject to the provision. The limit on corporate financial participation in ballot questions was a provision of a broader statute regulating campaign finance in Michigan.

In view of some critics, such as Western Illinois University political science Professor John S. Shockley writing in the May 1985 issue of the University of Miami Law Review, the Court was naive in its understanding of ballot measure campaign finance matters. At the time be published his article, Michigan was the only state still attempting to implement a statute limiting corporate contributions to ballot measure campaigns. The limitation was $40,000 in volunteer services and/or financial support "...to each ballot question committee for the qualification, passage, or defeat of a particular ballot questions' A corporation could make an independent expenditure for the qualification, passage, or defeat of a ballot question, but, if it did so, the corporation would be considered "a ballot question committee" for the purposes of the act. "Corporations formed for political purposes" were not subject to the provision. The limit on corporate financial participation in ballot questions was a provision of a broader statute regulating campaign finance in Michigan. In his article, Professor Shockley thought that the Michigan statute might withstand judicial scrutiny, as the state government, in a test case, attempted to justify the limitation on corporate funding of ballot question committees with a sophisticated body of evidence on the pattern of corporate financial influence on Wolverine State ballot question campaigns. The ballot contribution limit was invalidated by the U.S. District Court decisions Michigan State Chamber of Commerce v. Austin, 637 F. Supp. 1192 (E.D. Mich. 1986) and Michigan State Chamber of Commerce v. Austin, 642 F. Supp. 1078 (Efl. Mich. 1986). However, 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., ll0 S. Ct. 1391 (1990).

In the Austin case, the Supreme Court eroded the high level of First Amendment protection accorded campaign spending in the landmark Buckley v.Valeo. 424 U.S. 1 (1976). The distinction in the litigation on the Michigan statute is important; the federal judiciary has given a greater measure of First Amendment protection to expenditures for ballot questions than for campaigns for office. With the invalidation of the portion of the Michigan campaign finance law limiting corporate contributions to ballot measure campaigns, the last significant state government effort to restrict special interest initiative and referendum related expenditures failed.

Hardie v. Eu, 18 Cal. 3d 371 (1977)

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

Stanson v. Mott, 17 Cal. 3d 206 (1976)

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

Table: 1.1

States with Direct (DA)[i] and In-direct (IDA)[ii] Initiative Amendments; Direct (DS)[iii] and In-direct (IDS)[iv] Initiative Statutes a

States where some form of Initiative or Popular Referendum is available	Date process was adopted [vii]	Type of process available		Type of *Initiative* process available		Type of Initiative process used to propose Constitutional Amendments	
		Initiative	Popular Referendum	Constitutional Amendment	Statute	Direct (DA)	In-direct (IDA)
Alaska	1956	X	X	O	X	O	O
Arizona	1911	X	X	X	X	X	O
Arkansas	1910	X	X	X	X	X	O
California[viii]	1911/66	X	X	X	X	X	O
Colorado	1910	X	X	X	X	X	O
Florida	1972	X	O	X	O	X	O
Idaho	1912	X	X	O	X	O	O
Illinois [ix]	1970	X	O	X	O	X	O
Kentucky	1910	O	X	O	O	O	O
Maine	1908	X	X	O	X	O	O
Maryland	1915	O	X	O	O	O	O
Massachusetts	1918	X	X	X	X	O	X
Michigan	1908	X	X	X	X	X	O
Mississippi [x]	1914/92	X	O	X	O	O	X
Missouri	1908	X	X	X	X	X	O
Montana[xi]	1906/72	X	X	X	X	X	O
Nebraska	1912	X	X	X	X	X	O
Nevada	1905	X	X	X	X	X	O
New Mexico	1911	O	X	O	O	O	O
North Dakota[xii]	1914	X	X	X	X	X	O
Ohio	1912	X	X	X	X	X	O
Oklahoma	1907	X	X	X	X	X	O
Oregon	1902	X	X	X	X	X	O
South Dakota[xiii]	1898/72/88	X	X	X	X	X	O
Utah	1900/17	X	X	O	X	O	O
Washington	1912	X	X	O	X	O	O
Wyoming	1968	X	X	O	X	O	O
Totals	***27 states***	***24 states***	***24 states***	***18 states***	***21 states***	***16 states***	***2 states***

i Direct Initiative amendment (DA) is when constitutional amendments proposed by the people are directly placed on the ballot and then submitted to the people for their approval or rejection.
ii In-direct Initiative amendment (IDA) is when constitutional amendments proposed by the people must first be submitted to the state legislature during a regular session.
iii Direct Initiative statute (DS) is when statutes (laws) proposed by the people are directly placed on the ballot and t hen submitted to the people for their approval or rejection.
iv In-direct Initiative statute (IDS) is when statutes (laws) proposed by the people must first be submitted to the state legislature during a regular session.
v Popular Referendum (PR) is the power to refer to the ballot, through a petition, specific legislation that was enacted by the legislature for their approval or rejection.
vi This list does not include the states with Legislative Referendum (LR). Legislative Referendum is when a state le gislature places an amendment or statute on the ballot for voter approv constitutional amendments to be placed on the ballot for voter approval or rejection.
vii This date represents the date that the citizens of the state voted to adopt the process.
viii In 1966 California repealed indirect Initiative for statutes.
ix In Illinois, the subject matter of a proposed constitutional amendment is severely limited to legislative matters. Consequently, Initiatives seldom appear on the ballot.
x Mississippi first adopted initiative and referendum in 1914 but a court ruling nullified the vote. The voters then adopted it again in 1992.
xi In 1972 Montana adopted a provision that allows for directly initiated constitutional amendments.
xii In North Dakota prior to 1918, constitutional amendments could be initiated only indirectly.
xiii In 1972 South Dakota adopted a provision that allows for directly initiated constitutional amendments. In 1988 South Dakota repealed In-direct Initiative for Statutes.