

“Democracy is Coming”

(From the song “Democracy” on “The Future” album by Leonard Cohen.)

by Lloyd Marbet

In 1902 the people of Oregon adopted a constitutional amendment creating the initiative and referendum process. In recent time, the initiative process has been under considerable attack by a coalition of interests promoting various restrictions in the name of reform. The initiative process is not sacrosanct. Like the Legislature, it contains the good, the bad and the ugly but what the initiative process provides is an irreplaceable check and balance to the Legislature. Without it we face a concentration of legislative power in the hands of vested interests which are more than capable of thwarting any real alternatives to change.

As an anti-nuclear activist I have experienced this first hand, spending considerable time in the Oregon State Legislature trying to overcome the powerful and effective lobbying effort of Oregon’s major private utilities, Portland General Electric and Pacific Power and Light. While there are those who champion Legislature as responsive to the will of the people, anyone who has taken on major corporate interests in Oregon knows too well who really prevails. These are the same corporate interests who are promoting some of the more prevalent themes critical of the initiative process.

One of these themes is “paid petitioning.” When the initiative process was first adopted in Oregon there was paid petitioning. It was not until the 1930's that it was made illegal and until the 1980's when the US Supreme Court overturned this prohibition as an unconstitutional violation of free speech. Now paid petitioning is legal and considered by some critics to be a great evil. This seems to be especially the case for legislators who pay both in and out of state campaign workers, pollsters, as well as media consultants to further their own re-election efforts. While these legislators point the finger at paid petitioning, they conveniently forget how they are daily confronted by paid lobbyists who earn huge sums of money manipulating how they vote.

Neither paid nor unpaid petitioners force citizens to sign petitions and the fact that petitioners are paid does not guarantee that initiatives get on the ballot. Those who point the finger at Bill Sizemore forget that he raised issues of great enough concern to the public that they provided the necessary signatures to put his initiatives on the ballot and vote them into law. This was not the fault of paid petitioning. The Legislature had more than an ample opportunity to address the issues being raised by Bill Sizemore but they failed to act. Petitioning is not easy work and petitioners face harassment, rejection and even arrest when they try and gather signatures. Not everyone who tries to petition can overcome these kind of problems. There are people who do not have the time to petition, due to work and family commitments, but who have the financial resources to support those who can devote time to petitioning. What is the harm in connecting these people together? Oregon already has effective laws against petitioning fraud. If we don't like the laws which are passed by initiative, is it paid petitioning that is at fault or the voters who pass those laws? In a democracy do voters, and yes, even legislators, have the right to make mistakes?

In both the 1995 and 1997 legislative sessions, bills were sponsored by state legislators to make signature gatherers paid employees with a guaranteed minimum wage greater than that paid to other workers.¹ Was this suddenly a concern over the economic plight of paid petitioners or a way to address petitioning fraud? If it was the former, one must ask why the economic plight of signature gatherers is greater than that of any other kind of worker. If it was the latter, how does being paid by the hour remove the economic motivation to commit fraud? A signature gatherer would still face the

¹ See 1995 Senate Bill 637 and House Bill (HB) 2550. See 1997 HB 3646.

possibility of not being paid or not being employed if failing to gather a certain number of signatures or meeting some kind of bonus system. Regardless of the individual motives behind these legislative proposals there are two realities that cannot be ignored: 1) The U. S. Supreme Court has ruled that paid petitioning is constitutional; and 2) When Kings killed the messengers who brought bad news, it still didn't kill the bad news. Like the King's messengers "Paid petitioning" is being used as a scapegoat to kill the initiative process.

Another theme, frequently expressed by opponents of the initiative process, is concern for what is characterized as the overwhelming number of initiatives on the ballot. If the Legislature was truly responsive to the issues being raised by its constituents there would be far fewer initiatives on the ballot and much less justification for the so called initiative process reforms. Furthermore, according to the Secretary of State's Blue Book:

Since 1902 the people have passed 99 of 288 initiative measures on the ballot and 25 of 61 referenda on the ballot. During this same period the legislature has referred 363 measures to the people, of which 206 have passed.²

In 95 years we have had 288 initiative measures on the ballot while during the same time frame the Legislature has referred 363 measures to a vote of the people. If we are concerned about too many measures being on the ballot perhaps we should do something about the Legislature.

In 1996 there were 23 measures on the ballot of which 16 were initiatives.³ Yet the historical record was actually set in 1912 when there were a total of 37 measures on the ballot, of which 28 were initiatives.⁴ Since 1902, there has been 11 years in which there have been 15 or more measures on the ballot: In 1908, 1910, 1912, 1914, 1926, 1952, 1960, 1974, 1986, 1994 and 1996. From 1914 to 1994 there have been no consecutive elections of 15 or more measures. At the beginning of the initiative process there were grass root movements proposing numerous legislative changes and we are experiencing similar movements in more recent times.

Opponents of the initiative process point to the size of the 1996 Voter's Pamphlet as another indication of how it has gotten out of hand. The Voter's Pamphlet is one of the few financially affordable opportunities that the general public can use to share their concerns with other citizens regarding the particular measures being voted on. The 1996 Voter's Pamphlet was split into two volumes, one devoted to candidates and the other devoted to ballot measures. The Secretary of State has announced that the 1998 voters pamphlet will also be split into two volumes even though there are fewer measures to be voted on. For some critics of the initiative process, this is too much information for voters to read and the Secretary of State has announced that he will offer a legislative proposal to streamline the Voters Pamphlet in order to make it "manageable." In a 1997 press conference with the Coalition for Initiative Rights, Ralph Nader was asked his opinion about the 1996 voters pamphlet and the number of measures on the ballot. He responded:

People have to ask themselves, is democracy worth a day or two of reading and thinking? And since there are people in this country who have lost their lives overseas trying to defend democracy in the past century, one would think that a day or two a year reading the ballot booklet, asking some questions and then going and voting is not too much of a

² 1997-98 Oregon Blue Book, page 348.

³ *Id.* at 369-70.

⁴ *Id.* at 351.

burden for people who count among their midst millions of Americans who spend twenty-five hours a week watching television.

And so, I think if people go to the effort of getting signatures to put an initiative on the ballot, that's a lot of work. People should respect that initiative to the point where they read the summaries and figure out how they are going to vote. **I still haven't gotten to the point where I think our country is suffering from too much direct democracy.** (Emphasis added.)⁵

There are critics of the initiative process who assert that people who use it represent the elite, the impatient, and the intolerant. I am a citizen of Oregon and I have extensively used the initiative process. If citizens using the initiative process truly belong to the elite we wouldn't need the initiative process, we would have the Legislature doing our bidding. For vested interests with power and money, the legislature is a much easier process to manipulate. As for being impatient, it is difficult to accept the idea that spending twenty years trying to get the Legislature to do something about nuclear power was not an adequate opportunity for them to act. Not only did the Legislature reject our initiative proposals but it also rejected compromise proposals as well. As a last resort we are accused of being a part of the intolerant. This is true if being intolerant means being unable to endure injustices. It is also true that there are people who use the initiative process to convey issues which are not tolerant of others. However, conveniently labeling people who use the initiative process as "intolerant" also makes it easier to attack those who legitimately express public concerns regarding the issues of the day. This makes it easy for those who would restrict the initiative process to accuse those who would use it of "institutional bashing."

There is an old saying that there are two things unpleasant to watch, how sausage is made and how legislators makes law. While this may be a fair characterization, I do not support doing away with the Legislature. In fact, I don't even support preventing the Legislature from amending statutory initiatives, as long as any substantive changes are referred back to a vote of the people. In the end it is important to preserve the checks and balances between the Legislature and the initiative process. One can view the Legislature similar to the way Rush Limbaugh views liberals, we need to keep the Legislature so we can remember why it is necessary to preserve the initiative process.

The Coalition for Initiative Rights (CIR) was formed in 1995. In 1996 we successfully fought Ballot Measure 24 which was supported by a coalition of big corporations, big labor unions and the Legislature. This legislatively referred constitutional amendment would have severely restricted the initiative process by requiring an equal percentage of the total number of required signatures be gathered from each of Oregon's Congressional Districts. Ironically one of the effects of Ballot Measure 24 would have been to promote the use of paid petitioners in order to gather the necessary signatures from each of Oregon's Congressional Districts. It would have turned the initiative process over to vested interests who could afford to bankroll petitioning campaigns far from home. Regardless of the polling results supporting passage of Measure 24 along with its slick media campaign, Oregonians defeated with 56% of the vote. Abraham Lincoln was right, you can't fool all the people all the time.

The Coalition for Initiative Rights (CIR) also believes that the initiative process can be improved. We support voluntary access to Legislative Counsel for people who are drafting initiatives. Instead of criticizing the quality of proposed ballot measures, let us provide the same assistance we freely provide legislators. Open up Legislative Counsel so that people can get feedback on the language they would draft into law. CIR also supports the Legislature's review of proposed initiatives but not in the elaborate and disingenuous way it has been promoted. The Legislature already has the power to form a committee

⁵ Coalition for Initiative Rights Press Conference with Ralph Nader, November 20, 1997.

to review any initiative petition that is filed with the Secretary of State. There is no need for special legislation or new regulatory bodies to conduct legislative review of initiatives.

When we listen to critics of the initiative process and ballot measure campaigns, we hear little being said about the public's right to hear both sides of an issue. It wasn't that long ago that the Federal Communications Commission had a Fairness Doctrine which required broadcasters to provide both sides of a public issue on the public airwaves if only one side could afford to purchase the air time. Now there is no Fairness Doctrine and only the side with enough money to buy air time can be heard. Another problem which needs to be addressed is the increasing evidence of election campaigns being held captive by big money interests. To a large extent big corporations, who do not have the right to vote, have taken over our electoral process. Rather than bash the initiative process we need to promote fairness in election campaigns in order to make democracy work.⁶

Finally, the Coalition for Initiative Rights has sponsored two initiative petitions, one of which has been withdrawn. The first initiative would have prevented business associations from making financial contributions to ballot measure campaigns. In the process of circulating this initiative a flaw was uncovered in its language and even though approximately 5,000 signatures had been collected, CIR chose to withdraw it from circulation. It could be said that this is an example of how the deliberative process for initiatives works and that sponsors are capable of recognizing drafting errors and voluntarily stopping their signature gathering efforts.

The second initiative would prevent the Oregon Legislature from altering the initiative process. In the 1995 legislative session, 59 bills were sponsored restricting the initiative process in one form or another. In the 1997 legislative session over a 100 bills were sponsored. Legislators are threatened by the initiative process as it prevents them from having sole control over the legislative powers of the people. Therefore, the Legislature has a strong conflict of interest in regulating the very initiative process it is threatened by. This should not be allowed to continue. The power of government rightfully comes from the people. In the words of Thomas Jefferson:

I know no safe depository of the ultimate powers of the society, but the people themselves. And if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion.

Lloyd Marbet is a long-time anti-nuclear activist who has extensively used the initiative process in his efforts to address the problems of the nuclear fuel cycle. He helped sponsor two ballot measures to force Teledyne Wah Chang in Albany to move its radioactive sludge ponds off the floodplain of the Willamette River. One of these measures, 1984 Ballot Measure 9, created the most stringent radioactive waste disposal laws in the nation. In 1986, 1990 and 1992, he helped sponsor a ballot measure to close the Trojan Nuclear Plant, all of which failed to pass. In each of these elections, Portland General Electric broke the state record for expenditures on ballot measures campaigns. Since 1995 he has been the Chairperson of the Coalition for Initiative Rights, a coalition made up of people and organizations from across the political spectrum who are concerned with protecting the integrity of Oregon's Initiative, Referendum and Recall Process. According to Don McIntire, a member of CIR and a conservative tax activist, meetings of the Coalition for Initiative Rights resemble the bar room scene in the first Star Wars movie. Regardless of his assertion, it is yet to be definitively proved that aliens have taken over Oregon's Initiative Process.

⁶ It is time to assert our sovereignty as suggested by Richard L. Grossman in his eloquent article "Reclaiming Our Sovereignty, Reestablishing Control Over the Corporation." A copy of this article is available on the Internet at www.teleport.com/~dweezil/cir1.htm or by calling 503-637-6130.