THE ROLE OF COURTS IN THE INITIATIVE PROCESS: A SEARCH FOR STANDARDS

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I. INTRODUCTION

What happens when the American political system's most majoritarian process runs up against its most counter-majoritarian institution? The situation arises when voter-approved ballot initiatives are challenged in the courts.[1] After hundreds of thousands or even millions of citizens cast their votes to enact a statewide initiative, the losers in the campaign more often than not go to court to overturn the election by invalidating the law.[2] When initiatives are challenged, what is the court's appropriate role?

This paper argues that the court's role in the initiative process is uniquely important and can be distinguished from its role in reviewing laws passed by legislatures. This is because (1) in the legislative process, judicial review is but the last of many redundant institutional checks and balances, whereas in the initiative process, it is the *only* effective institutional check (*i.e.*, the relative importance of the judicial check is greater in the initiative process than in the legislative process); and (2) judicial review is invoked much more regularly for initiatives than for "ordinary legislation" (*i.e.,* courts have assumed a presence in the initiative process that far exceeds their role in the legislative process.) In effect, courts have become the meta-check on the initiative process, the one institutional filter through which most initiatives must pass.[3] Moreover, this judicial filter has impact. Courts invalidate roughly half of all challenged initiatives in their entirety or in part, most often on the basis that they unconstitutionally violate individual rights, but also sometimes because they have run afoul of structural or procedural rules – a number of which are unique to the initiative process.[4] Courts very often "cut and paste" initiatives to excise invalidated provisions and preserve a remainder. Even when upholding initiatives, courts sometimes through interpretation "re-write" them to cure constitutional defects.

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[1] Direct democracy exists in various forms in several states (*see* note 24, *infra*, and accompanying text) and in many local jurisdictions. The scope of this paper is limited to direct initiatives placed on the ballot by petition signatures (either statutory initiatives or initiated constitutional amendments) at the state-wide level.

[2] In the sample studied in this paper, more than half of all voter-approved initiatives were challenged in court. *See* Table 2, *infra*.

[3] It is important to note that some states, such as Colorado, have established elaborate procedures for review of initiatives prior to the election. In Colorado, a three-member Title Board reviews proposed initiatives to determine whether they comply with the state's formal requirements (including, importantly, the state's so-called "single subject rule.") The process provides an opportunity for interested parties to appeal the Title Board's decisions to the state Supreme Court, and thus the court has a formal filtering role prior to the election. However, in Colorado and other states, the courts generally refrain from passing judgment on the validity of an initiative's substantive provisions prior to the election. In some states, such as California, pre-election review of initiatives on any grounds is disfavored, and with few exceptions is routinely denied. This paper focuses on post-election review of voter-approved initiatives.

[4] *See* Tables 3 and 22, *infra*, and accompanying text.

In performing this unique role of vetting the otherwise unfiltered "will of the people," judges must decide how much deference to pay initiatives. Courts are divided on the answer to this normative question. The U.S. Supreme Court has ruled that the standard of review for ballot initiatives should be exactly the same as it is for laws enacted by legislatures.[5] But a reading of cases from the lower federal courts and state courts, where most legal battles over initiatives are waged, indicates many judges recognize that the process for adopting initiatives is radically different from standard legislative proceedings and – one way or another – those differences are a factor to be considered when reviewing challenges to initiatives.

The cases demonstrate that two competing views have emerged in the courts. Some judges argue that courts should assume what I call an ***"accomodationist"*** approach (giving as much deference as possible to the "will of the people") while others openly imply that courts should play what I call a ***"watchdog"*** role (vigorously exercising their authority as the only institutional check on the initiative process' otherwise unfiltered majoritarianism.)

Section II of this paper reviews this theoretical debate by examining the competing views in more detail and exploring how they compare to "activism" and "restraint," standard categories for describing judicial review of legislative enactments. The balance of the paper examines actual outcomes of initiative challenges in three high-use initiative states (California, Oregon and Colorado) over the past four decades to attempt to measure how the competing roles play out in practice. Section III describes the study's case selection and methodology – as well as its statistical limitations. Section IV presents the study's findings in detail. Finally, Section V summarizes the trends in the courts and offers a cautionary note regarding the courts' expanding role in the initiative process.

The study's findings can be summarized as follows: In the three states over the four-decade period:

- Initiative lawmaking has grown dramatically. The number of initiatives adopted by voters has sharply increased over the past four decades – with no end in sight.

- The rate of legal challenges to voter-approved initiatives is very high (presumably much higher than for "ordinary legislation") and has more than kept pace with the growth of the initiative process. In the past decade, over half (54%) of all voter-approved initiatives have been challenged in court.

- In more than half of the cases (55%), courts have invalidated part or all of the challenged initiative.

- On the other hand, in several cases courts have saved initiatives by interpreting them so as to cure constitutional or other defects.

[5] In a 1981 case reviewing a local initiative, the Court declared: "It is irrelevant that the voters rather than the legislative body enacted [the challenged law.]" *Citizens for Rent Control v. City of Berkeley*, 454 U.S. 290, 295 (1981).

- There are variations between states. California, the most active initiative state, also has more challenges to initiatives than the other states in the study (both in absolute and percentage terms). Over the past four decades, nearly two-thirds of initiatives approved by California voters (65%) have been challenged in court, as opposed to slightly less than half in the other two states.

- There are variations between initiative litigation in state and federal court. Roughly twice as many initiatives have been challenged in state court than federal court (46 vs. 24), but initiatives challenged in federal court have been somewhat more likely to be invalidated in whole or in part (60 percent vs. 50 percent.)

- To a large extent, invalidations of initiatives have correlated to the subject matter of the initiative. For example, environmental protection and tax initiatives have been far less likely to be invalidated than initiatives that target minorities or restrict political speech.

- More than half of the invalidated initiatives have been struck down (in whole or in part) on the basis that they unconstitutionally violated individual rights.

- A large minority of invalidated initiatives have been struck down (in whole or in part) because they ran afoul of a structural or procedural requirement. Stricter enforcement of procedural rules for initiatives appears to be a trend (at least in some states), which would evidence a growing initiative watchdog role for the courts.

II. Judicial Review of Initiatives: Competing Approaches

An extensive literature is devoted to the theoretical problem of judicial review in the context of *representative* government. (In contrast, as discussed further below, remarkably little has been written about judicial review of initiatives, and empirical studies are virtually non-existent.) To understand the unique character of the courts' role in the initiative process, it is useful to compare it to their role in reviewing legislative enactments. The conventional judicial review literature analyzes how a "counter-majoritarian difficulty" arises when insular courts overturn the policies of popularly-elected legislatures. See, e.g., Bickel (1962), Ely (1980). Scholars have debated the appropriate role of the courts and proper standards of judicial review – and, more specifically, whether courts should be "activist" in overturning legislative enactments or whether they should exercise "judicial restraint." In this century, judicial activism has passed through several phases. During the *Lochner* era, *laissez-faire* conservatives in the courts overturned liberal-progressive economic regulations (including much New Deal legislation). Following the landmark 1938 U.S. Supreme Court case of *U.S. v. Carolene*

Products,[6] the courts withdrew from defending unregulated capitalism and judicial activism became the province of liberals. In the *Carolene Products* case, the court carved out a role for itself as defender of (1) constitutional rights as set forth in the Bill of Rights or the 14th Amendment; (2) the nation's political processes; and (3) minorities and unpopular groups who cannot defend themselves at the polls.[7] This mandate energized the liberal judicial activism of the Warren era. More recently, there has been a resurgence of conservative judicial activism as the courts have invalidated liberal legislation such as affirmative action and redistricting designed to maximize minority representation in legislatures. Judicial activism can be (and has been) used by liberal judges to overturn conservative legislation and by conservative judges to overturn liberal laws.

Debate over the legitimacy of judicial review is almost always premised on the assumption that the court is overturning the act of a *legislature* – i.e., it is a conflict between two coordinate branches of government. Judicial review of direct democracy creates a different dynamic – in this case the courts are in conflict with the people themselves. Obviously, this creates a more acute form of the counter-majoritarian difficulty. And it also raises novel questions regarding the appropriate standards of judicial review. Conventional canons of judicial review maintain that courts should defer to a legislature's policy judgments in part because the legislature (through its institutional information-gathering, drafting, deliberation, and consensus-building structures) has a comparative advantage over the courts in developing policy. According to this theory, courts should exercise activism and overturn judgments of the legislature only when the legislature has trespassed against constitutional rights.

But the assumptions that give rise to judicial deference in the legislative context are often totally inapposite in the context of initiatives. Specifically, the initiative process lacks many of the comparative institutional advantages of the legislative process (*i.e.,* checks and balances and opportunities for deliberation, refinement, compromise) – and thus it lacks much of the *standard* rationale for judicial deference. In addition, initiatives often require an added layer of judicial review. Courts must not only scrutinize the challenged measure's substantive provisions, but also the *process* that enacted the law. Frequently courts are asked to strike down initiatives for procedural defects, such as for irregularities in the petition-gathering process deficiencies in the ballot pamphlet or for violation of a state's "single subject rule."[8]

One may assume that, with respect to their review of the initiative's substantive provisions, courts are guided by the judicial philosophies they apply in reviewing the substantive provisions of laws enacted by legislatures (*i.e.,* if they are "activist" in

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[6] 304 U.S. 144 (1938).

[7] *Id.* at 152, n. 4.

[8] Adaptation of judicial canons is also necessary in the context of judicial *interpretation* of initiatives. Here again, many courts are reluctant to declare that initiatives should be treated differently than regular legislation, so they awkwardly attempt to apply the same tools of statutory interpretation to initiatives as they do to legislative statutes (e.g., attempting to discern the "intent" of the enacting body.) As discussed by Schacter (1995) and Frickey (1997), such efforts are unrealistic. The problem of judicial interpretation of initiatives is largely beyond the scope of this paper, but deserves further study.

attacking legislative enactments that favor governmental power at the expense of individual liberties, they are likely to apply the same philosophy to initiatives that have similar substantive provisions.)[9] But the judge's stance regarding the process itself adds an additional dimension to these standards of review. More specifically, if a judge is inclined to support the initiative process and regularly seeks to give initiatives the benefit of the doubt, that judge can be considered an "initiative accomodationist." When reviewing a challenged initiative, the accomodationist judge might be expected to apply an extra layer of restraint on top of his or her standard framework of judicial review. In contrast, if the judge is inclined to distrust the initiative process and regularly looks for procedural or other flaws in laws enacted by initiative, that judge can be considered an "initiative watchdog." When reviewing an initiative the watchdog might be expected to apply an extra layer of scrutiny or an extra check onto his or her regular framework for reviewing legislation.[10]

Judicial decisions contained in the study quickly reveal examples of both attitudes toward the initiative process.

The accommodationist view was clearly expressed by Justice Richardson of the California Supreme Court, who argued that initiatives are entitled to "very special and very favored treatment."[11] Over several decades, most of Justice Richardson's colleagues on the California Supreme Court have consistently held that extra deference should be given to laws when they are enacted by the people through the initiative process. At various times, that court has declared: "It is our solemn duty jealously to guard the initiative power, it being one of the most precious rights of our democratic process;"[12] and "[t]he [state] Constitution's initiative and referendum provisions should be liberally construed to maintain maximum power to the people;"[13] and "the initiative power must be liberally construed to promote the democratic process … Mere doubts to validity are insufficient; such measures must be upheld unless their constitutionality clearly, positively and unmistakably appears."[14] Similarly, in the opinion reversing a district court's invalidation of California Proposition 209 (which bans affirmative action) a federal appellate judge voiced an accomodationist view: "A system which permits one judge to block with the stroke of a pen what 4,736,180[15] state residents voted to enact as law tests the integrity of our constitutional democracy."[16]

The watchdog view is not expressed as often or as forcefully as the accomodationist position – understandably so, especially for state court judges who must face in retention

[9] This is perhaps a testable hypothesis, but is beyond the scope of my current research.
[10] *See* Eule (1990) pp. 1556, *et seq.* for a discussion of how this layering can work in practice.
[11] *Legislature v. Deukmejian*, 34 Cal. 3d 658, 683 (1983) (pre-election invalidation of a redistricting initiative), Richardson, J., dissenting.
[12] *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208 (1978) (upholding Prop. 13 property tax reduction and limitation).
[13] *Carlson v. Cory*, 139 Cal.App.3d 724, 728 (1983) (upholding Prop. 6 repeal of gift and inheritance tax).
[14] *Legislature, et al. v. Eu, et al.*, 54 Cal. 3d 492 (1991) (upholding Prop. 140 state term limits).
[15] Actually 5,268,462
[16] *Californians for Economic Equity, et al. v. Wilson, et al.*, 122 F.3d 692 (9th Cir. 1997). (Cert. denied, 522 U.S. 963 (1997).

elections the same voters who enact initiatives -- but it sometimes surfaces and certainly exists (Uelmen, 1997). An example of this view can be found in the recent opinion of federal Ninth Circuit Judge Stephen Reinhardt in *Jones v. Bates*.[17] Reinhardt declared California's state term limits invalid, arguing that the initiative violated the U.S. Constitution because key elements of the initiative process (*e.g.,* the materials contained in the ballot pamphlet) did not provide voters adequate notice that the measure's term limits constituted a "lifetime ban."[18] (This decision later was sharply criticized and reversed by the Ninth Circuit *en banc.*) *Brosnahan v. Brown*,[19] a 1983 California Supreme Court case that upheld California Proposition 8 (1982) (the so-called "Victim's Bill of Rights"), offers further evidence of judicial hostility toward the initiative process. In that case, Chief Justice Rose Bird, one of three dissenting justices, wrote:

> [I]nitiatives are drafted only by their proponents, so there is usually no independent review by anyone else. There are no public hearings. The draftsmen so monopolize the process that they completely control who is given the opportunity to comment on or to criticize the proposal before it appears on the ballot. This private process can and does have some detrimental consequences. The voters have no opportunity to propose amendments or revisions… [the] only expression left to all other interested parties who are not proponents is the 'yes' or 'no' vote they cast. Since they only people who have input into the drafting of the measure are its proponents, there is no opportunity for compromise or negotiation. The result of this inflexibility is that more often than not a proposed initiative represents the most extreme form of law that is considered politically expedient.[20]

In the same case, Justice Mosk, joined by Justice Broussard, wrote:

> [I]nitiative promoters may obtain signatures for any proposal, however radical in concept and effect, and if they can persuade 51 percent of those who vote at an ensuing election to vote "aye," the measure becomes law regardless of how patently it may offend constitutional limitations. The new rule is that the fleeting whims of public opinion and prejudice are controlling over specific constitutional provisions….[21]

In another initiative challenge case, Justice Mosk complained: "The initiative process is out of control in California."[22]

Some initiative watchdog judges (most notably former Oregon Supreme Court Justice Hans A. Linde) have gone so far as to suggest that, especially when initiatives are used to

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[17] 127 F.3d 839 (9th Cir. 1997).
[18] *Id*. at 844.
[19] 32 Cal. 3d. 236 (1982).
[20] *Id.* at 265-266 (internal quotations and citations omitted.)
[21] *Id.* at 298.
[22] *Legislature, et al. v. Eu, et al.,* 54 Cal. 3d. 492 (1991) (state decision upholding California's term limits.)

oppress minorities, the initiative process itself may violate the U.S. Constitution's guarantee of a republican form of government (Article IV, section 4), and that a court may strike down a ballot measure on those grounds. (Linde 1994).[23]

Although the two competing views have repeatedly surfaced in reported opinions, courts have not settled on a doctrine that consistently distinguishes standards of review for initiatives. Accordingly, it is necessary to analyze the outcomes of a range of cases to discern judicial behavior when reviewing inititatives.

III. The Study / Case Selection and Methodology

Despite a dramatic increase in initiative litigation virtually no empirical analysis of legal challenges to initiatives exists. Almost all of the scholarly analysis of the problem is at the level of theory and in the pages of law reviews (*e.g*., Bell, 1978; Eule, 1990; Eule, 1991; Baker 1991; Charlow 1994; Tushnet 1997; Vitiello and Glendon, 1998). In one law review article (Holman and Stern, 1998) (discussed further below) the authors included some empirical findings regarding outcomes of challenges to California initiatives in state and federal court, but few other such studies exist. My research seeks to expand the body of empirical research in this area by analyzing judicial behavior in reviewing initiatives.

The research presented in this paper analyzes each state-wide ballot initiative adopted by voters in three states (California, Oregon and Colorado) during the past four decades (1960–1998) and the legal challenges – if any – mounted against these measures. California, Oregon and Colorado were selected from the 26 states (mainly in the West and Midwest) that currently use the initiative process in some form.[24] Initiative use varies widely among states. A report by the National Conference of State Legislatures indicates that over the history of the initiative process, the amount of use (*i.e.,* the number

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[23] *See also* opinion of Oregon Supreme Court Justice Durham in *State of Oregon ex rel. Huddleston v. Sawyer*, dissenting with respect to the court's holding that the petitioner's Guaranty Clause challenge to Oregon Measure 11 (1994) is non-justiciable. 324 Ore. 597, 643-653 (1997) (upholding Oregon Measure 11 of 1994). The U.S. Supreme Court has declared U.S. Constitution Art. IV, Section 4 (the "Guaranty Clause" or the "Republican Form of Government Clause") non-justiciable. *Pacific Telephone Co. v. Oregon*, 23 U.S. 118 (1912). Some judges and commentators believe, however, that this ruling does not prevent state courts from entertaining challenges to initiatives based on the Guaranty Clause. *Id.* at 645.

[24] The initiative process was first adopted at the state level by South Dakota in 1898. Currently, twenty-six state constitutions authorize voters to initiate legislation or to demand a referendum on legislative enactments. In 21 states (Alaska, Arizona, Arkansas, California, Colorado, Idaho, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington and Wyoming, citizens may initiate and enact ordinary statutes. (Some of these states provide for the indirect initiative, which involves the legislature in the process.) In three states (Kentucky, Maryland and New Mexico), as well as in the preceding 21, voters can require the legislature to refer enactments to the electorate for approval or rejection. In two other states (Florida and Illinois), the voters' rights are limited to initiation of state constitutional amendments. This right is also reserved by citizens of 15 of the states that allow statutory initiatives (Arizona, Alaska, California, Colorado, Maine, Michigan, Montana, Nebraska, Nevada, Ohio, Oklahoma, Oregon and South Dakota.) The District of Columbia also provides for voter initiative and popular referendum. (Magelby 1984, pp. 38-9; Cronin 1989, p. 51; Butler and Ranney 1978, p. 226; Gerber 1999, pp. 15-19.)

of state-wide initiatives on the ballot) ranges from Oregon with 314 to Mississippi with one. (Drage, 1999). Oregon and California (with 265) are by far the highest use initiative states. The second tier includes Colorado[25], North Dakota, Arizona, Washington and Arkansas. The decision to select multiple states for analysis was based on a number of considerations. One of the biggest challenges in researching initiatives is collecting a large enough sample to make any findings statistically significant. Even high-use states like California or Oregon provide a relatively small sample of cases, and studies based on a single state (*e.g.,* Holman and Stern 1998) have been criticized for drawing conclusions from too small a sample (Hasen 1998). Moreover, variations exist in states' initiative procedures and legal cultures. A multi-state study allows for comparisons of these variations. The period of the study (1960 – 1999) was selected to reach back beyond the current period of relatively high initiative use (1980s and 1990s) to the relatively low-use period that preceded it (1960s and 1970s) to discern trends across the two periods. Constraints of time and resources made it necessary to limit the study to a subset of the initiative states. Given these constraints, the study focused on a high-use states because it was assumed they would provide the maximum variety of initiatives by subject matter (thus, it was hoped, making the sample more representative of the range of initiatives adopted in other states) and enough cases within a single state court system to discern trends over time.

The three states yielded a sample of 127 voter-approved initiatives during the 40-year period, and 69 challenges to those initiatives. Analyzing the nature and outcomes of those 69 challenges produces smaller groupings. The result is that in some instances, the sample has too small an *n* to produce statistically significant results. Adding more states to the sample would increase the study's statistical significance. (This paper does not include tests for statistical significance; once the study is enlarged to include more states, it will be important to perform statistical analysis.) In the meantime, however, the data analyzed in this paper suggest interesting findings that warrant further research.

The data set is attached to the paper as Appendices A-C. In a separate table for each of the three states, the data set lists chronologically each initiative approved by voters between 1960 and 1998; indicates the year of adoption; notes the measure's number as it appeared on the ballot; categorizes the initiative into one of seven types (*i.e.,* initiatives regarding government/political reform, tax, criminal justice, environment, minorities, economic regulation or "miscellaneous"); indicates whether it was an initiative statute or constitutional amendment (or, in a few cases, both); lists the percentage of the affirmative votes the measure received; notes whether or not the measure was challenged in court (and, if so, whether in state or federal court); lists the caption(s) for the case(s) challenging the initiative (specifically, the case's last reported decision); summarizes the

[25] The study indicated that Colorado have qualified 175 initiatives for the ballot since the state adopted the process in 1910. Colorado's records regarding initiative use (e.g., the Secretary of State's Abstracts of the Vote) are not as detailed as in some other states. For example, for many years, the records did not distinguish between ballot measures (called "Amendments" in Colorado) that were placed on the ballot by the Legislature, and measures initiated by citizen petition. Scholars researching the history of Colorado initiatives are urged to exercise caution when compiling data. I am indebted to Dan Smith of the University of Denver and and Rich Braunstein of the University of Colorado at Boulder for helping me assemble an accurate list of initiatives adopted by Colorado voters between 1960 and 1998.

key issues presented in the case; indicates the outcome (*i.e.,* whether the initiative was upheld, invalidated in part or invalidated in its entirety); and summarizes the basis for the court's decision.

Creation of the data set raised some methodological issues. One problem was how to categorize initiatives by subject matter. An initial review of the 127 measures approved by voters in these states since 1960 revealed many repetitive themes and it turned out that most initiatives could be placed into one of six major categories (*i.e.,* initiatives related to political/government reform, tax, criminal justice, environment, economic regulation, or minorities.) The relatively small remainder was designated "miscellaneous." Rarely but sometimes, initiatives contained provisions that could fall into more than one category.[26] In this and other cases, the initiative was categorized in accordance with its apparent primary purpose.

A second issue related to the categorization of litigation outcomes. Specifically, there is wide variation within the category: "Invalidated in Part." In some cases a court invalidated all the major provisions of an initiative but left in tact a relatively insignificant remainder. In other words, the court gutted the initiative.[27] In other cases, a court's decision cut an initiative into roughly equal parts, invalidating one half and sparing the other.[28] In a third group of cases, the court invalidated only a minor part of the initiative, leaving most of the measure intact.[29] It would be useful to distinguish between these different types of cases. But in many instances, it is unclear how to characterize a partial invalidation – what may appear on its face to be a minor provision

[26] An example is California Proposition 105 (1988) (the so-called "Public's Right to Know" Initiative.) One of this measure's provisions required sponsors of ballot initiatives to make disclosures to the public (i.e., political reform). But the majority of its provisions required private industry to make disclosure to consumers (i.e., economic regulation). The California Court of Appeals invalidated this initiative in its entirety for violation of the state Constitution's single subject rule. *Chemical Specialties Manufacturer's Assn., Inc., et al. v. Deukmejian, et al*., 27 Cal. App. 3d 663 (1991) (Petition for review denied by California Supreme Court, 1991 Cal LEXIS 1790.)

[27] An example of this is the challenge to California's Proposition 187, in which a federal district judge invalidated all of the initiative's major provisions, including its denial of public benefits to undocumented immigrants and its requirements that state employees report suspected undocumented immigrants to federal immigration officials. After the court struck down these provisions, the initiative's only remnant was a provision creating increased penalties for making or using fraudulent identification. *LULAC, et al. v. Wilson et al.,* 1998 U.S. Dist. LEXIS 3368 (C.D. Cal., 1998).

[28] An example is *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), the case that struck down in part initiatives in Colorado and Oregon which imposed term limits on state elected officials and members of Congress (Oregon Measure 3 1992 and Colorado Amendments 5 of 1990 and 17 of 1994). This decision invalidated these initiatives' provisions limiting Congressional terms but left state term limits intact. The same case also struck down in its entirety California's congressional term limits initiative, Prop. 164 (1992), as well as congressional term limit provisions in 19 other states.

[29] An example is the state court challenge to California Proposition 140 (1990). That initiative imposed term limits on state elected officials, reduced the budget for the state legislature by 20 percent, and restricted pension rights for members of the legislature. The California Supreme Court upheld the measure's term limits provisions, its budget cut for the legislature, and its restriction on pension benefits for future legislators, but declared invalid (as an impairment of contract) its restriction of incumbent legislators' pension rights. While invalidating a relatively minor provision, the court substantially upheld the initiative. *Legislature, et al. v. Eu, et al*., 54 Cal. 3d 492 (1991).

could have great importance. For this reason, this study lumps together a wide range of outcomes into the category "Invalidated in Part."

Another coding issue was how to categorize challenges to initiatives that were brought in both state and federal court. This situation arose most often in cases where an initiative was first challenged in state court and the case was later appealed to the United States Supreme Court. The study categorizes such cases as "state challenges." In addition, it was possible for an initiative to be challenged in *separate* suits in state and federal court. An example of this is California Proposition 140 (1990) which first was challenged in a mandamus proceeding in the California Supreme Court. As noted above, in 1992 the state Supreme Court upheld most of Proposition 140's provisions, including term limits for state elected officials.[30] Several years later, however, new plaintiffs (including a term limited state legislator) filed suit in federal district court challenging the initiative's term limit provisions on federal constitutional grounds. *Bates v. Jones*.[31] Over the state's *res judicata* objections, federal courts reviewed that challenge through the trial and appellate process, eventually upholding the initiative's term limit provisions.[32] In some instances, this study double-counts Proposition 140 to indicate the separate decisions in state and federal court. Each instance of double-counting is noted on the appropriate table.

IV. Analysis of the Data / Trends

We return to the question: What role have courts played in the initiative process? Initially, the question can be separated into two parts. First, how active have the courts been in reviewing initiatives? And second, when courts have reviewed initiatives, how have they treated them?

A. Court Involvement

The study indicates that there has been a sharp increase in the absolute number of initiative challenges, although the percentage of initiatives challenged has remained remarkably steady (at a high rate) over the four-decade period. During the 1960s only three initiatives (two in California and one in Colorado) were challenged in court, while in the 1990s 36 initiatives from the three states faced legal challenges. But the increase in challenges can be largely explained by the explosive growth in the use of the initiative process itself. As Table 1 indicates, during this period the number of successful

Table 1: Initiatives Adopted by Voters 1960-99 (by state and decade)

Decade	California	Oregon	Colorado	Total
1960s	3	--	3	6
1970s	7	7	6	20
1980s	21	14	6	41

[30] *Legislature, et al. v. Eu, et al.,* 54 Cal. 3d. 492 (1991).
[31] *Bates, et al. v. Jones, et al*., 958 F. Supp. 1446 (N.D. Cal. 1997).
[32] *Jones, et al. v. Bates, et. al*., 131 F.3d 843 (1997).

1990s	24	22	14	60
Total	55	43	29	127

initiatives has increased dramatically in all three states. Whereas voters in these states approved only six initiatives during the 1960s (three each in California and Colorado and none in Oregon), in the 1990s they approved 60. Obviously, the greater the number of initiatives, the more opportunities for court challenges. As Table 2 indicates, in aggregate in the three states, ballot measures have been challenged at a near-constant rate over the four-decade period (roughly half of all initiatives adopted in these states were challenged throughout the period, with an upswing in the last decade).[33] There has been some variation between states. For example, throughout the period, California initiatives were challenged at a higher rate than initiatives from Oregon or Colorado, and Oregon has seen a greater percentage increase in initiative litigation than the other two states. Despite a high percentage of initiative challenges over time, the 1990s have emerged as the Golden Age of initiative litigation. During this decade, 35 voter-approved initiatives from these states have faced court challenges, nearly 60 percent of the total. The sheer number of challenges and the crucial policy significance of many of the cases have now fully established the courts as an important component of the initiative process.

Table 2: Initiatives Challenged in the Courts 1960-99 (by decade)

Decade	California	Oregon	Colorado	Total
1960s	2 of 3 (67%)	0 of 0 --	1 of 3 (33%)	3 of 6 (50%)
1970s	6 of 7 (86%)	1 of 7 (14%)	3 of 6 (50%)	10 of 20 (50%)
1980s	13 of 21 (62%)	6 of 14 (43%)	2 of 6 (33%)	21 of 41 (51%)
1990s	15 of 24 (63%)	12 of 22 (55%)	8 of 14 (57%)	35 of 60 (58%)
Total by State 1960s-1990s	36 of 55 (65%)	19 of 43 (44%)	14 of 29 (48%)	69 of 127 (54%)

B. Outcomes

The outcomes of cases suggest ways in which courts have played their filtering role in the initiative process. The following tables provide a scorecard of how courts have treated challenges to initiatives in the three states over the past four decades.[34] Over this period, voters in California, Oregon and Colorado have adopted 127 initiatives and 69 of them

[33] The largest exceptions were Oregon in the 1970s (where only one of seven adopted measures was challenged in court) and Colorado in the 1980s (where only two of six adopted measures were challenged.)
[34] This study analyzes challenges to initiatives approved by the voters and, except incidentally, does not address pre-election challenges. *See* note 3, *supra*.

have been challenged in court. Final judgments have been entered in 61 of the the 69 cases; eight cases are still pending. As Table 3 indicates, of the 61 cases decided, courts have upheld the challenged initiative 28 times (46%). Fourteen initiatives have been invalidated in their entirety (23%) and 19 initiatives (31%) have been invalidated in part.[35] Over the past four decades courts have invalidated, in part or in their entirety, over half (54%) of the initiatives approved by voters in California, Oregon and Colorado.

Table 3: Outcome of Court Challenges 1960-1999 (combined states)

Decade	Initiatives Adopted	Initiatives Challenged	Upheld	Invalidated in Part	Invalidated in Entirety	Pending
1960s	6	3	--	--	3 (100%)	--
1970s	20	10	5 (50%)	5 (50%)	--	--
1980s	41	21	11 (52%)	6 (29%)	4 (19%)	--
1990s	60	35	11 (42%)	8 (31%)	7 (27%)	9
Total	127	69	27 (45%)	19 (32%)	14 (23%)	9

1. Outcome by State

Disaggregating by state suggests that the outcomes of initiative challenges are similar in the three states. Although as noted above the percentage of initiatives challenged in California was higher than in the other two states, challenges yielded similar outcomes across the board. Over the period, with several cases still pending, challenged initiatives were invalidated in part or in their entirety at a high rate: 50% of the time in Oregon, 55% in California and 58% in Colorado. The following tables list the outcome of challenges to ballot initiatives by state.

Table 4: California Initiatives: Outcome of Challenges 1960-99 (by decade)

Decade	Initiatives Adopted	Initiatives Challenged	Upheld	Invalidated in Part	Invalidated in Entirety	Litigation Pending
1960s	3	2	--	--	2	--
1970s	7	6	2	4	--	--
1980s	21	13	6	4	3	--
1990s	24	15	6	3	2	4
Total	55	36	14 (44%)	11 (34%)	7 (22%)	4

[35] As noted above, the category "Invalidated in Part" ranges from upholding most of an initiative and invalidating only a minor provision, to gutting all of the major provisions of an initiative and leaving only a small remnant behind. *Compare, e.g., Legislature, et al. v. Eu, et al.,* 54 Cal. 3d. 492 (1991) with *LULAC, et al. v. Wilson et al.,* 1998 U.S. Dist. LEXIS 3368 (C.D. Cal., 1998).

Table 5: Oregon Initiatives: Outcome of Court Challenges 1960-99 (by decade)

Decade	Initiatives Adopted	Initiatives Challenged	Upheld	Invalidated in Part	Invalidated in Entirety	Litigation Pending
1960s	--	--	--	--	--	--
1970s	7	1	--	1	--	--
1980s	14	6	4	1	1	--
1990s	22	12	4	2	3	3
Total	43	19	8 (50%)	4 (25%)	4 (25%)	3

Table 6: Colorado Initiatives: Outcome of Court Challenges 1960-99 (by decade)

Decade	Initiatives Adopted	Initiatives Challenged	Upheld	Invalidated in Part	Invalidated in Entirety	Litigation Pending
1960s	3	1	--	--	1	--
1970s	6	3	3	--	--	--
1980s	6	2	1	1	--	--
1990s	14	8	1	3	2	2
Total	29	14	5 (42%)	4 (33%)	3 (25%)	2

2. Outcomes: Federal v. State Courts

A recent article (Holman and Stern 1998) compared challenges to California initiatives in state and federal court. The authors suggested that federal judges (unlike California state court judges) have shown insufficient deference to initiatives. They and others (Uelmen 1977; Vitiello and Glendon 1998; Grodin 1989) offer explanations for why federal judges might be more willing to overturn voter-approved initiatives, the strongest being that federal judges have lifetime tenure and thus enjoy a large measure of insulation from public opinion, while state judges typically must face the voters in retention elections and thus are more wary about offending the electorate by overturning popular initiatives.[36] Holman and Stern also noted a trend in California in the early 1990s: Initiative opponents increasingly by-passed the state courts and instead filed suit in federal court. Part of this strategy allegedly included "forum shopping" – *i.e.,* seeking to file suit in a federal district court that would be more likely to invalidate the initiative. As the following tables indicate, in California, there indeed has been a significant shift toward filing initiative challenges in federal court.

[36] In considering this argument, it should be remembered that in the 1980s California voters removed three Supreme Court Justices, Rose Bird, Joseph Grodin and Cruz Reynoso.

Table 7: California Initiatives: Federal Court Challenges 1960-99 (by decade)[37]

Decade	Initiatives Adopted	Initiatives Challenged	Upheld	Invalidated in Part	Invalidated in Entirety	Litigation Pending
1960s	3	--	--	--	--	--
1970s	7	1	--	1	--	--
1980s	21	1	--	1	--	--
1990s	24	7	3	1	1	2
Total	55	9	3 (43%)	3 (43%)	1 (14%)	2

Table 8: California Initiatives: State Court Challenges 1960-99 (by decade)

Decade	Initiatives Adopted	Initiatives Challenged	Upheld	Invalidated in Part	Invalidated in Entirety	Litigation Pending
1960s	3	2	--	--	2	--
1970s	7	5	2	3	--	--
1980s	21	12	6	3	3	--
1990s	24	9	4	2	1	2
Total	55	28	12 (46%)	8 (31%)	6 (23%)	2

During the four-decade period, the first suit challenging a voter-approved California initiative filed in federal district court was the challenge to Proposition 73 (1988), a measure enacting campaign finance reform.[38] Overall during the 1980s, 12 voter-approved initiatives were challenged in California state courts, while Proposition 73 was the only one challenged in federal court. This pattern changed dramatically in the 1990s. The number of initiatives challenged in state court declined from twelve in the 1980s to nine during the 1990s, while the number of initiatives challenged in federal court has jumped from one to seven.[39]

The strategy of challenging initiatives in federal court was highly effective at the district court level, but less so when cases reached the court of appeal. Specifically, challengers were able to persuade federal district judges to invalidate or stay part or all of five initiatives: Propositions 73 (1988) (campaign finance reform); 140 (1990) (term limits); 187 (1994) (restrictions on illegal immigrants); 208 (1996) (campaign finance reform);

[37] In Tables 7 and 8, California Proposition 140 is double-counted – once for the state case that partially invalidated it and again for the later federal case that upheld the remainder.

[38] During this period but prior to 1988, the U.S. Supreme Court heard cases that involved or affected three California initiatives: *Reitman v. Mulkey*, 387 U.S. 369 (1967) reviewing Proposition 14 (1964); *Furman v. Georgia*, 408 U.S. 238 (1972), in effect invalidating in part Proposition 17 (1972); and *State of California v. Ramos*, 463 U.S. 992 reviewing Proposition 7 (1978); but no suits were brought in federal court in California challenging these measures.

[39] As noted above, California Proposition 140 (1990) faced separate challenges in state and federal court, and thus is double-counted in this analysis. California Proposition 164 (congressional term limits was invalidated by the U.S. Supreme Court in a case that originated in Arkansas, *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).

and 209 (1996) (ban on affirmative action). However, on appeal the Ninth Circuit reversed the district courts' rulings invalidating Propositions 140 and 209 (in both cases, sharply criticizing earlier decisions to invalidate the initiatives), and in both of these cases, the U.S. Supreme Court denied the challengers' petitions for *writs of certiorari*. To date, the Proposition 73 challenge has been the only case invalidating provisions of an initiative that has been upheld on appeal by the Ninth Circuit; the State of California decided to drop its appeal in the Proposition 187 case[40] and the Proposition 208 challenge is still pending, as is a federal court challenge to Proposition 227 (an anti-bilingual education initiative). Accordingly, the experience of the past decade shows that federal district judges have overturned five controversial California initiatives while upholding only one, Proposition 198 (blanket primary) and denying a motion for a preliminary injunction in the other, Proposition 227. But the Ninth Circuit has been more accommodating toward initiatives, upholding 140 and 209, as well as 198, on appeal. Thus, while the federal district courts in California have been highly unfriendly toward challenged initiatives during the past decade – practically creating a killing field – the Circuit Court of Appeal has moderated this impact to the point where federal court outcomes in ballot initiative cases are more closely aligned with aggregate outcomes in the state courts. Moreover, the push in California toward filing initiative challenges in federal court may be ebbing. Of the four challenges to California ballot initiatives adopted by voters in 1998, three have been filed in state court.

This study's results suggest that the trend in California toward challenging initiatives in federal court has not been mirrored in Oregon. As the following tables indicate, the ratio of state to federal court challenges to Oregon initiatives has remained steady over the past two decades. In the 1980s four of six challenges to initiatives were brought in state court and in the 1990s it was eight of twelve. Challengers to Oregon initiatives have fared somewhat better in federal than in state court, although the number of cases is small and differences are not stark.[41]

Table 9: Oregon Initiatives: Federal Court Challenges 1960-99 (by decade)

Decade	Initiatives Adopted	Initiatives Challenged	Upheld	Invalidated in Part	Invalidated in Entirety	Litigation Pending
1960s	--	--	--	--	--	--
1970s	7	--	--	--	--	--
1980s	14	2	1	1	--	--
1990s	22	4	1	1	1	1
Total	43	6	2 (40%)	2 (40%)	1 (20%)	1

[40] Following his election as California governor in 1998, Gray Davis (an opponent of Proposition 187) used a mediation process in the Ninth Circuit effectively to drop the state's appeal of the district court's decision. See further discussion of this case, *infra*.

[41] Of the six Oregon initiatives challenged in federal court in the past two decades, five were challenged in federal district court. The other, Measure 3 (1992), which imposed congressional term limits, was invalidated in part by the U.S. Supreme Court in *U.S. Term Limits, Inc. v. Thornton*.

Table 10: Oregon Initiatives: State Court Challenges 1960-99 (by decade)

Decade	Initiatives Adopted	Initiatives Challenged	Upheld	Invalidated in Part	Invalidated in Entirety	Litigation Pending
1960s	--	--	--	--	--	--
1970s	7	1	--	1	--	--
1980s	14	4	3	--	1	--
1990s	22	8	3	1	2	2
Total	43	13	6 (55%)	2 (18%)	3 (27%)	2

Of the five cases brought in U.S. District Court in Oregon, federal judges invalidated three measures in whole or in part. These were Measure 4 (1984) (requiring utilities to provide customers certain information); Measure 6 (1994) (restricting use of political contributions from out-of-district residents); and Measure 16 (1994) (authorizing physician-assisted suicide). The district court upheld two measures. These were Measure 13 (1986) (establishing a 20-day pre-election cut-off for voter registration) and Measure 60 (1998) (providing for voting by mail.)[42] As it did with initiative cases arising from California, the Ninth Circuit moderated the district court's watchdog approach in Oregon by reversing the lower court's decision to invalidate the physician-assisted suicide initiative. Setting aside the U.S. Supreme Court's partial invalidation of Oregon's term limits initiative in *Thornton*, of the five suits brought in federal court in Oregon challenging Oregon initiatives, two have resulted in the initiative's partial or total invalidation. That roughly parallels the outcomes of ballot challenges brought in Oregon state courts during the 1980s and 1990s, where four of 12 initiatives have been invalidated in part or in their entirety (with two cases still pending.) Given the similarities in these ratios and the small number of cases, there is little evidence that federal judges in Oregon are more likely to invalidate initiatives than are judges in the Oregon state courts.

Colorado is different from both states in that, unlike in California or Oregon, more Colorado initiatives have been challenged in federal court (9) than in state court (5).

Table 11: Colorado Initiatives: Federal Court Challenges 1960-99 (by decade)

Decade	Initiatives Adopted	Initiatives Challenged	Upheld	Invalidated in Part	Invalidated in Entirety	Litigation Pending
1960s	3	1	--	--	1	--
1970s	6	1	1	--	--	--
1980s	6	2	1	1	--	--
1990s	14	5	1	3	--	1
Total	29	9	3 (38%)	4 (50%)	1 (12%)	1

[42] The Oregon Measure 60 case is currently on appeal in the Ninth Circuit, and thus is listed as "pending."

Table 12: Colorado Initiatives: State Court Challenges 1960-99 (by decade)

Decade	Initiatives Adopted	Initiatives Challenged	Upheld	Invalidated in Part	Invalidated in Entirety	Litigation Pending
1960s	3	--	--	--	--	--
1970s	6	2	2	--	--	--
1980s	6	--	--	--	--	--
1990s	14	3	--	--	2	1
Total	29	5	2 (50%)	--	2 (50%)	1

Two of the five Colorado initiatives challenged in federal court during the 1990s contained provisions limiting congressional terms (Amendment 5 of 1990 and Amendment 17 of 1994), and thus these initiatives were invalidated in part by *Thornton*. Of the remaining three Colorado initiatives facing federal court challenges, Amendment 15 (1996) (establishing campaign finance reform) was invalidated in part and Amendment 16 (1996) (setting new rules for management of state trust lands) was upheld. The last case (challenging Amendment 12 of 1998, which would require parental notification for abortion) is pending.[43] These figures suggest that the federal courts have been relatively hostile to Colorado initiatives in the past decade, but it is hard to compare these outcomes with those in Colorado state courts, given the small number of cases filed in state court (*i.e.,* only three cases, two of which invalidated initiatives in their entirety, the other still pending.)

Overall, the study indicates that the trend in the 1990s toward increased reliance on federal courts to strike down initiatives and (and the success of that strategy) was more prominent in California than in other states, and has been modified even there through decisions of the federal Court of Appeals.

3. Outcomes Based on Subject Matter of Initiative

The study classifies the initiatives adopted in the three states over the period into six substantive categories and one category designated as "miscellaneous." The number of initiatives assigned to each category is indicated in Table 13.

Table 13: Initiatives Adopted by Voters 1960-99 (by subject matter)

[43] The most famous Colorado initiative during the decade, Amendment 2 of 1992, which prohibited anti-discrimination laws based on sexual orientation, was declared unconstitutional by the U.S. Supreme Court in *Romer v. Evans*, 517 U.S. 620 (1996). But in my methodology the challenge to Amendment 2 is categorized as a state case because it first brought in the Colorado state courts, which also declared it unconstitutional. *See*, *Evans, et al. v. Romer, et al*., 882 P.2d 1335 (1994).

State	Gov't / Political Reform	Tax	Criminal Justice	Environ-ment	Minorities	Economic Regulation	Misc.
California	13	9	6	6	7	5	9
Oregon	11	3	9	7	1	4	8
Colorado	15	1	--	5	3	--	5
Total	39	13	15	18	11	9	22

The study indicates that these different categories vary widely in their rates of invalidation.

The initiatives that have fared the best in terms of surviving legal challenges are those that protect the environment. As noted in Table 14, voters in the three states have adopted 17 environmental protection initiatives during the period, including initiatives that protect the coast, restrict toxics, fund nature conservation, and protect wildlife. Only four of the 17 environmental protection measures have been challenged in the courts and none has been even partially invalidated.

Table 14: Environmental Initiatives 1960-99 (California, Oregon, Colorado)

Approved by Voters	Challenged in Court	Upheld	Invalidated in Part	Invalidated in Entirety	Pending
17	4	4 (100%)	--	--	--

Tax initiatives have enjoyed a slightly less dramatic but still strong success rate. Most of the 13 initiatives in this category have reduced or limited taxes – sometimes in sweeping fashion. Two exceptions are California initiatives that increase taxes on cigarettes and other tobacco products (Proposition 99 of 1988 and Proposition 10 of 1998). As Table 15 indicates, nine of 13 voter-approved tax initiatives have been challenged in the courts; seven have been upheld and one has been invalidated in part. The only one that was struck down in its entirety (California Proposition 5 of 1982, which would have repealed the state's gift and inheritance taxes) was invalidated only because it was in conflict with a similar, competing measure on the same ballot (Proposition 6) and received fewer votes than the competing measure. (Proposition 6 was challenged and upheld.)[44]

Table 15: Tax Initiatives 1960-99 (California, Oregon, Colorado)

Approved by Voters	Challenged in Court	Upheld	Invalidated in Part	Invalidated in Entirety	Pending
13	9	7	1	1	--

[44] *Carlson v. Cory*, 139 Cal.App.3d 724 (1983).

This evidence strongly indicates that courts have given deference to environmental and tax initiatives.

By comparison, courts have filtered criminal justice initiatives more aggressively. In general, the 15 voter-approved initiatives in this category have sought to protect victims' rights and punish criminals more harshly. Among other things, they have authorized the death penalty, increased minimum sentences, restricted parole and modified evidentiary rules and other criminal justice procedures. Eleven of the 15 measures have been challenged in court (usually state court), sometimes on federal constitutional grounds, but also often on the basis of technical or procedural state requirements. In nearly half of those challenges (five of 11 challenges), courts have invalidated the initiative whole or in part.

Table 16: Criminal Justice Initiatives 1960-99 (California, Oregon, Colorado)

Approved by Voters	Challenged in Court	Upheld	Invalidated in Part	Invalidated in Entirety	Pending
15	11	6 (55%)	4 (36%)	1 (9%)	--

Initiatives imposing economic regulations include such things as banning pay television (California Proposition 15 of 1964), regulating the practice of denture technology (Oregon Measure 5 of 1978), rolling back automobile insurance rates (California Proposition 103 of 1988), and increasing the minimum wage (Oregon Measure 36 of 1996 and California Proposition 210 of 1996). Only three of nine initiatives in this category have been challenged in court, but rather unexpectedly, in all three of those cases the challenged initiatives were invalidated in part or in their entirety. The small number of cases and the idiosyncratic nature of the measures makes it difficult to draw conclusions regarding judicial attitudes toward initiatives in this category.

Table 17: Economic Regulation Initiatives 1960-99 (California, Oregon, Colorado)

Approved by Voters	Challenged in Court	Upheld	Invalidated in Part	Invalidated in Entirety	Pending
9	3	--	1 (33 %)	2 (67%)	--

Initiatives affecting racial or other minorities constitute perhaps the most contentious category. Most often, these initiatives represent conservative backlash against liberal legislation designed to protect or promote the interests of racial or other minorities (*e.g.,* homosexuals). These ballot measures are among the most troublesome to those who fear that the initiative process can be used to oppress unpopular minorities and who argue that the courts should be vigilant in protecting minority rights against majoritarian attack through the initiative process. (Bell 1978, Linde 1989, Eule 1990). The eleven initiatives in this category have included a ban on state efforts to prohibit "private" racial discrimination in housing (California Proposition 14 of 1964); restrictions on busing to

desegregate public schools (California Proposition 21 of 1972 and Colorado Amendment 8 of 1974); restriction on state efforts to protect the rights of homosexuals (Oregon Measure 8 of 1988 and Colorado Amendment 2 of 1992); establishment of English as the state's official language (California Proposition 63 of 1986 and Colorado Amendment 1 of 1988); restrictions on illegal immigrants (California Proposition 187 of 1994); ban on state affirmative action for women and minorities (California Proposition 209 of 1996); and restrictions on bilingual education (California Proposition 227 of 1998). Opponents challenged nine of these 11 initiatives in court.[45] How did the courts respond to these challenges?

Table 18: Initiatives Affecting Minorities 1960-99 (California, Oregon, Colorado)

Approved by Voters	Challenged in Court	Upheld	Invalidated in Part	Invalidated in Entirety	Pending
11	9	3 (38%)	2 (25%)	3 (38%)	1

As indicated in Table 18, courts invalidated three of these measures (the California anti-Fair Housing initiative and the initiatives in Oregon and Colorado restricting state efforts to protect homosexual rights) in their entirety. Two of these measures were invalidated in part. These were California's anti-busing initiative (where the California Supreme Court held that the people could repeal the existing desegregation law but could not ban future racial desegregation efforts) and California's anti-illegal immigrant initiative (which the federal district court invalidated virtually in its entirety). Courts upheld three initiatives in the category. These were Colorado's anti-busing initiative (which a federal court in Colorado recently declined to invalidate although it had been superceded in Denver for two decades by a federal desegregation order); the Colorado official English initiative (a symbolic measure which the court declined to invalidate on procedural grounds) and, most significantly, California's anti-affirmative action initiative (which the federal district court invalidated but the Ninth Circuit upheld on appeal.) The challenge to California's anti-bilingual education initiative is still pending. Despite these exceptions, the evidence indicates that in reviewing initiatives that affect racial and other minorities, courts most often have assumed the role of watchdog, checking the majority and defending minority interests.

The last category of initiatives consists of those measures seeking to enact political or government reform. Defenders of the initiative process often cite this category as a justification for the initiative process because elected officials have an interest in preserving institutional status quo and the initiative process is the only effective way of enacting political or government reform.[46] In the past four decades, voters in the three states have adopted numerous initiatives that fall under this category. They include:

[45] The only initiatives in this category not challenged in the courts were two symbolic measures related to official English (California Proposition 38 of 1984 and Proposition 63 of 1986.)

[46] The most telling example of this is term limits. Initiative states now uniformly have term limits for state elected officials and non-initiative states uniformly do not.

reapportionment (Colorado Amendments 7 of 1962, 4 of 1966 and 9 of 1974); rules for legislative procedures (California Proposition 24 of 1984 and Colorado Amendment 8 of 1988); campaign finance reform (California Propositions 9 of 1974, 68 of 1988, 73 of 1988, 208 of 1996, Colorado Amendment 15 of 1996 and Oregon Measures 6 and 9 of 1994); and term limits (Colorado Amendment 5 of 1990 and 17 of 1994, California Propositions 140 of 1990 and 164 of 1992, and Oregon Measure 3 of 1992 As Table 19 indicates, courts have been quite hard on initiatives enacting political or government reform.

Table 19: Political / Government Reform Initiatives 1960-99 (California, Oregon, Colorado)

Approved by Voters	Challenged in Court	Upheld	Invalidated in Part	Invalidated in Entirety	Pending
39	26	5 (24%)	10 (48%)	6 (29%)	5

During this period, two-thirds of the political and government reform initiatives approved by voters in California, Oregon and Colorado have been challenged; and the courts have invalidated most of the challenged measures in whole or in part (62% with five cases still pending).

If these figures are remarkable, consider a subset of this category: initiatives to enact campaign finance reform. In the past four decades, voters in the three states have approved eight such measures (four in California, three in Oregon and one in Colorado) but the courts have decimated these initiatives. Five challenges to voter-approved campaign finance reform initiatives have reached final judgment, and in *all* five cases the initiative has been invalidated in part or in its entirety. The other three campaign finance reform initiatives (California Proposition 208 of 1996, Colorado Amendment 15 of 1996 and Oregon Measure 62 of 1998) are still tied up in the courts.

Table 20: Campaign Finance Reform Initiatives 1960-99 (California, Oregon, Colorado)

Approved by Voters	Challenged in Court	Upheld	Invalidated in Part	Invalidated in Entirety	Pending
8	8	--	3 (60%)	2 (40%)	3

This sub-category provides an example where the courts appear to be squarely at odds with "the will of the people" as expressed over several decades through multiple initiatives. In California, this mismatch is especially strong. Voters have approved strong campaign finance regulations through the initiative process four times (in 1974,

twice in 1988 and in 1996), but (aside from disclosure requirements), California has virtually no regulation of campaign contributions or expenditures. Some of the responsibility for this outcome (and that in other states) can be assigned to the U.S. Supreme Court, which held in *Buckley v. Valeo*[47] that campaign contributions and expenditures are "speech" protected by the First Amendment. It is difficult to draft a campaign finance reform initiative that fits within the allowable parameters set forth by the court in that case – but it is not impossible, and some of the initiatives in this category arguably meet the *Buckley* requirements. Yet they all have been struck down or otherwise gutted by the courts.

The categorization of initiatives by subject matter helps illustrate that the judicial filter treats different types of initiatives differently. Courts tend to apply exacting review toward some types of ballot initiatives (such as initiatives affecting racial and other minorities or initiatives regulating campaign finance) while accommodating others (such as tax initiatives or initiatives protecting the environment.) The variation in outcomes based on subject matter is roughly consistent with the general standards of judicial review set forth in *Carolene Products – i.e.,* initiatives that infringed on individual rights or targeted certain protected minority groups were invalidated more frequently than initiatives that regulate taxation or the environment.[48]

C. Bases For Invalidation

1. Violation of Individual Rights vs. Structural / Procedural Rules

In each case in the study, the court issued a written opinion setting forth its rationale for upholding or invalidating the challenged initiative. A review of these opinions provides data regarding the bases for invalidation of initiatives. The bases for invalidation can be broadly categorized as either (1) violation of individual rights or (2) violation of a structural or procedural rule. Individual rights involved in these cases are protected by either the federal or state constitutions (or both) and include the right of free speech, the right against cruel and unusual punishment, the right of equal protection of the laws and rights of procedural and substantive due process. These individual rights can be contrasted with structural and procedural rules, which include: a requirement that an initiative not contain more than a single subject; a rule that an initiative cannot revise the state constitution; a rule that if two competing initiatives are in conflict, the one receiving the larger number of affirmative votes prevails over the one receiving fewer votes; a

[47] 424 U.S. 1 (1976).

[48] Interestingly, thus far there has been little evidence of conservative judicial activism in the initiative context. Setting aside campaign finance reform, which does not fit neatly onto a "left-right" scale, the sample contained no prominent examples of conservative judges overturning liberal initiatives. (In one complex case, *Calfarm Insurance Company, et al. v. Deukmejian, et al., 48 Cal.3d. 805 (1989),* the California Supreme Court invalidated in part California Proposition 103 of 1988, a consumer-advocate-sponsored insurance reform initiative. But as discussed below, the court worked to preserve key portions of the initiative, and it is difficult to characterize the case as an example of conservative activism.) One could envision, however, conservative courts invalidating liberal environmental initiatives on property rights grounds (as unconstitutional "takings"), or overturning stringent gun control initiatives on the grounds that they violated the Second Amendment.

requirement that states cannot impose additional qualifications for members of Congress beyond those contained in the U.S. Constitution; and a rule that states cannot enact laws that directly conflict with federal law. In all but one case, the basis (-es) for invalidating the initiative fell exclusively into one of these two broad categories.[49] In some cases where the initiative violated individual rights, the court indicated that it violated more than one right.[50]

Courts have invalidated in whole or in part 35 initiatives approved by voters in the three states during this period. The courts cited 41 specific bases for invalidating these initiatives. These specific bases are indicated in Table 21.

Table 21: Bases for Invalidating Initiatives, 1960-1999 (California, Oregon, Colorado)

A: Federal Constitution

1st A.	5th A.	8th A.	14th A.	Supremacy Clause	Qualifications Clause	Contracts Clause	Rules for Amendment
6	1	1	9	1	4	2	1

B: State Constitutions

Due Process	Free Speech	Crim. Rights	Revision	Single Subject	Separate Vote	2 in Conflict	Legis-lature's Powers	Other[51]
2	2	2	1	1	1	2	2	3

Grouping these specific bases into the two broad categories (*i.e.,* violations of individual rights or violations of structural or procedural rules) and combining multiple bases for invalidation of a single initiative produces the following results.

Table 22: Bases for Invalidating Initiatives, 1960-1999 (Colorado, Oregon, Colorado) (by state and general category)

	Individual Rights	Structural / Procedural Rules	Both	Total
California	9	8	1	18

[49] The exception was California Proposition 103, which fell into both categories. One provision of Proposition 103 was invalidated for violating the 14th Amendment due process clause (*i.e*., individual rights); another provision was invalidated for violating a California constitutional restriction on naming a private corporation to perform a public function (*i.e.,* structural / procedural rules.)

[50] Courts cited multiple constitutional provisions most often in cases where the initiative violated a provision of the federal bill of rights (usually the 1st Amendment) that applies to the states through its incorporation into the due process clause of the 14th Amendment.

[51] "Other" state constitutional bases for invalidating initiatives were: (1) California prohibition on referenda regarding tax levies (Proposition 62 of 1986); (2) California prohibition on naming a private corporation to perform a public function (Proposition 103 of 1988) and (3) California prohibition on "Nevada-style" gaming (Proposition 5 of 1998).

Oregon	6	2	--	8
Colorado	3	4	--	7
Total	18 (51%)	16 (46%)	1 (3%)	35

Specifically, as noted in Table 22, slightly more than half of the initiatives that courts invalidated in whole or in part violated individual rights. This finding indicates that (as the *Carolene Products* doctrine would suggest) courts are highly sensitive to initiatives' substantive violation of individual rights and will frequently invalidate initiatives on that basis.

The data also indicate that courts will sometimes scrutinize procedural or structural problems with initiatives.

2. An Alternative Basis for Invalidation: Strict Enforcement of Structural / Procedural Requirements

Judicial scrutiny of procedural defects in the enactment of initiatives provides an extra "hook" for invalidating an initiatives – and suggests one specific way in which judges might apply a different standard of review for initiatives than for legislative enactments. In close cases, a judge's position on these types of procedural challenges can help reveal his or her attitude toward initiatives. Courts give great deference to legislative procedures and generally will not strike down laws on technical, procedural grounds. But courts have split on whether to give similar deference to initiatives. The issue of judicial deference to initiative procedures arises most frequently in the context of initiative challenges based on alleged violations of the "single subject rule."

Each of the three states in the study has a state constitutional provision requiring that initiatives not address more than a single subject.[52] The term "subject" can be defined either narrowly or very broadly – and the differences can have significant impact. (Lowenstein 1983.) California courts have consistently applied a liberal standard for interpreting the single subject rule whereas recent cases suggest the Colorado courts are applying that state's new single rule much more strictly. Specifically, in California the Supreme Court has rejected eight single subject rule challenges to initiatives. In *FPPC v. Superior Court*[53] the state Supreme Court upheld against single subject attack a complex political reform initiative (Proposition 9 of 1974) (invalidated in part on other grounds.) The court adopted the liberal standard that an initiative will be upheld against a single subject challenge if its provisions are "reasonably germane" to each other and to the general object of the initiative. Noting that it is the duty of the courts to "jealously guard" the people's right of initiative, the court reasoned that "voters may not be limited

[52] California Constitution Article IV, section 1(c); Oregon Constitution Article IV, section 1(2)(d); Colorado Constitution Article V, section 1(5.5).
[53] 25 Cal.3d 33 (1979).

to brief general statements but may deal comprehensively and in detail with an area of law. Although the initiative measure before us is wordy and complex, there is little reason to expect that claimed voter confusion could be eliminated or substantially reduced by dividing the measure into four or ten separate propositions. Our society being complex, the rules governing the initiative will necessarily be complex. Unless we are to repudiate or cripple use of the initiative, risk of confusion must be borne."[54] In *Brosnahan v. Brown*[55] the court upheld a multi-part criminal justice initiative against single subject attack. In dissent, three judges charged that the majority had "obliterate[d] a section of the state constitution by effectively repealing the single subject rule."[56] In all, California courts have invalidated only two initiatives on single subject grounds and their liberal approach toward interpretation of the single subject rule reinforces their reputation as being accomodationist toward initiatives.[57]

The Supreme Court of Colorado, however, has more strictly enforced the state's single subject rule. The Colorado single subject rule is quite new – it was proposed by the legislature and approved by voters in 1994. To the chagrin of initiative advocates, the Colorado Supreme Court has chosen to enforce it more strictly than it enforces the single subject rule for legislative enactments. In contrast to California where pre-election challenges to initiatives are disfavored, Colorado has a regular process for pre-election challenges to initiatives on procedural grounds – including alleged violations of the single subject rule. Over the past several years, the Colorado Supreme Court has struck down numerous proposed initiatives for violation of the single subject rule, to the point where it is clear the court has defined the term "subject" very narrowly.[58] As the California Supreme Court recognized, strict enforcement of the single subject rule can effectively cripple use of the initiative. Recognizing this, initiative proponents in Colorado have brought suit in federal court challenging Colorado's procedures for pre-election review of initiatives and, specifically, its strict enforcement of the single subject rule. The case is still pending in the Tenth Circuit.[59] Through pre-election invalidation of numerous proposed ballot measures on single subject grounds, the Colorado Supreme Court is increasingly adopting a "watchdog" approach toward initiatives.

Other, similar tools are available for watchdog judges who want to rein in initiatives on technical or procedural grounds. They include rules that initiatives can only amend the

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[54] *Id.* at 41-42.
[55] 32 Cal. 3d. 236 (1982).
[56] *Id.* at 306.
[57] One initiative, Proposition 105 (1988) was a true grab-bag initiative that included disclosure regarding ballot initiatives, nursing homes and investments in apartheid South Africa *Chemical Specialties Manufacturers, Inc., et al. v. Deukmejian, et al*., 227 Cal. App. 3d 663 (1991) Petition for review by California Supreme Court denied, 1991 Cal LEXIS 1790.) The other was a complex insurance initiative that the California Supreme Court removed from the ballot prior to the election in 1988. *California Trial Lawyers Association, Inc., et al. v. Eu, et al*., 200 Cal. App. 3d 351 (1988).
[58] *See, e.g., Public Rights in Waters II*, 898 P.2d 1076 (Colo. 1995); *Outcelt v. Bruce*, 962 P.2d 245 (Colo. 1998); *Outcelt v. Bruce*, 961 P.2d 456 (Colo. 1998); *In re Title, Ballot Title and Submission Clause*, 959 P.2d 822 (Colo.1998); *Aisenburg v. Campbell*, 960 P.2d 1204 (1998); *Aisenberg v. Campbell*, 960 P.2d 1192 (Colo. 1998); *Aisenberg v. Campbell*, 975 P.2d 180 (Colo. 1999);
[59] *Campbell, et al. v. Buckley et al.,* Tenth Circuit Court of Appeals Case No. 98-1329.

constitution and not revise it[60], and that each amendment to the constitution must be enacted through a separate vote.[61] The no-revision rule was invoked just once during the period, by the California Supreme Court, to invalidate in part a portion of Proposition 115 of 1990, an initiative that promoted the rights of crime victims and restricted the rights of criminal defendants. The Supreme Court held that the initiative's provision restricting the rights California can grant criminal defendants to the minimum guaranteed under the Federal constitution constituted a revision of the state constitution.[62] But the California Supreme Court rejected claims that, among other things, Proposition 140's term limits and Proposition 13's massive restructuring of the state's revenue system constituted revisions to the state's constitution. Oregon's separate vote requirement for constitutional amendments was recently enforced by the state's Supreme Court in a challenge to Measure 40 of 1996 (an initiative that promoted the rights of crime victims and restricted the rights of criminal defendants.) The court indicated that it would enforce the separate vote requirement for constitutional amendments more strictly than the state's single subject rule, thus making it more difficult to use the initiative process to adopt complex amendments to the state's constitution than to enact statutes by initiative.[63]

Lowenstein (1983) argued that courts should not strictly enforce technical requirements as a "back-door" means for invalidating initiatives with which they disagree. But it is apparent that these requirements can provide courts with tools to do just that, if they are so inclined. Increasingly strict enforcement of requirements may signal the growing strength of initiative watchdogs.

D. An Accomodationist Use of the Judicial Filter: Reformation of Flawed Initiatives

During the period there were several instances where courts saved initiatives from invalidation through "reformation" -- essentially using the court's power of interpretation to re-write an initiative rather than striking it down. One example is California Proposition 103 of 1988. That complex regulatory initiative, among other things, rolled back automobile insurance rates by 20 percent and imposed restrictions on procedures for subsequent rate adjustments. The initiative was challenged on several grounds, including that the rate roll-back and subsequent adjustment procedures violated the state and federal due process clauses.[64] The court held that the roll-back was facially constitutional, but struck down the procedures for individual adjustments. However, the court saved the initiative in large part by severing its invalid provisions and interpreting the remainder to guarantee insurers the right to a "fair and reasonable rate of return" – a compromise position that did not appear in the text of the initiative.[65] When it was asked in *Kopp, et*

[60] *See,* California Constitution Article XVIII.
[61] Oregon Constitution Article XVII, section 1.
[62] *Raven v. Deukmejian*, 52 Cal.3d 553 (1991).
[63] *Armatta v. Kitzhaber*, 327 Ore. 250 (1998).
[64] *Calfarm Insurance Company, et al. v. Deukmejian, et al., 48 Cal.3d. 805 (1989).*
[65] *Id.* at 825.

al. v. FPPC[66] to reform Proposition 73 (the campaign finance initiative that was invalidated nearly in its entirety by the federal courts), the California Supreme Court declined to do so, but noted: "We reject the notion that a court lacks authority to rewrite a statute to preserve its constitutionality."[67] The Oregon Supreme Court used its powers of statutory interpretation to save Measure 7 of 1984, an initiative that required the death penalty or a mandatory sentence for aggravated murder. The U.S. Supreme Court held that the Oregon initiative was unconstitutional to the extent that it failed to require the jury to consider of mitigating circumstances in the penalty portion of a capital case.[68] On remand, instead of striking down the initiative, the Oregon Supreme Court interpreted it to require jury instructions regarding mitigation – a requirement that did not appear in the text of the initiative.[69] In dissent, Justice Linde, an initiative watchdog, argued that the court had gone too far "construct[ing] a statute of its own different from that enacted by the voters."[70] This sort of reformation in the form of generous interpretation or "re-drafting" of initiatives is evidence of judicial accommodation of initiatives.

E. The State's Role in the Judicial Filtering Process: A Recent Twist

Judicial review of challenged initiatives is unique in part because the state's attorneys are expected to defend all voter-approved initiatives against legal challenge – even when the state's top officials (including the governor and attorney general) oppose the law enacted by the people. This conflict can occur in the initiative process because initiatives by their nature bypass elected officials and can be enacted regardless of the officials' objections. The situation recently arose in California with respect to Proposition 187, the 1994 initiative designed to restrict illegal immigration in the state. Specifically, the initiative required state law enforcement, health care, social service and public education employees to: (1) check the immigration status of arrestees, applicants for social services and health care, and public school students and their parents; (2) notify individuals that they are apparently in the United States unlawfully and that they must "either obtain legal status or leave the United States"; (3) report individuals' immigration status information to state and federal authorities and cooperate with the INS; and (4) deny social services, health care services and public education to individuals based on immigration status. The measure also increased criminal penalties for falsifying immigration documents.[71] Immigration is an issue that can stir up passions and is subject to demagogic manipulation. Governor Pete Wilson, facing reelection and trailing badly in the polls, seized on Proposition 187 as a "wedge" issue in the campaign, and stirred anti-immigrant sentiment in the state. In November 1994, after a particularly divisive and emotional campaign, California voters approved the initiative by a 59% vote. Immediately after the election, opponents filed suits in federal court to stay its implementation. District Court

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[66] 1 Cal. 4th 607 (1995).
[67] *Id.* at 615.
[68] *Wagner v. Oregon*, 492 U.S. 914 (1989). In a summary decision, the Court remanded the case to the Oregon Supreme Court with instructions to review the case in light of the Court's decision in *Penry v. Lynaugh*, 109 S. Ct. 2934 (1989), which required jury consideration of mitigating circumstances.
[69] *Oregon v. Wagner*, 305 Oregon 115 (1988) ("*Wagner II*").
[70] *Id*. at 20.
[71] *LULAC, et al. v. Wilson*, *et al.,* 908 F.Supp. 755, 763-764 (1995).

Judge Marianna Pfaelzer issued a temporary restraining order followed by a preliminary injunction.

Litigation in the district court lasted three and a half years, and the state's attorneys defended the initiative throughout this period. For a time, the state's lawyers seemed to persuade the district judge to sever what she considered the invalid portions of the initiative and preserve a significant remainder.[72] In March 1998, however, she declared the entire initiative invalid, with the minor exception of the increased penalties for falsifying immigration documents.[73] The state appealed. Later that year, however, Wilson was replaced in office by Gray Davis. Davis opposed Proposition 187 and many of his supporters urged him to drop the state's appeal, then pending in the Ninth Circuit. Davis knew that if the state withdrew from the case, there would be no one to pursue the appeal, since the original sponsors of the initiative had not timely intervened as a party to the case. The governor elected to submit the appeal to mediation in the Ninth Circuit. The mediation resulted in a settlement where the parties agreed to accept the terms of the district court's decision and withdraw their appeals.[74] As a result, with the exception of the penalties for falsifying IDs, Proposition 187 apparently is dead and will not receive a full hearing by the appellate courts.

The case's neo-Madisonian substantive result (the checking of unfiltered majoritarianism and protection of minority rights) may in time be overshadowed by the process by which it was reached. A review of the cases in this study indicated no precedent for the state dropping its defense of a challenged initiative prior to final judgment in the state's highest court or in a federal appellate court. The outcome of the Proposition 187 litigation introduces a new variable in judicial review of initiatives – *i.e.*, cases where instead of navigating the initiative through the judicial filter, the state in effect assists efforts to kill the measure in the courts. It is too early to tell the full implications of this case and the extent to which it will set a precedent that will strengthen the hand of initiative watchdogs, but it is a development worth watching.

V. Conclusion

This review of legal challenges to initiatives adopted by voters in three states over the past forty years indicates that courts play a uniquely important role in the initiative process – in some ways distinct from their role in reviewing "ordinary legislation." Courts provide the only institutional check on the initiative process' otherwise unfiltered majoritarianism. Moreover, their participation has enormous impact. The study indicates that courts invalidate in whole or in part more than half of all challenged initiatives – and re-write others in order to save them. That is a *powerful* filter. Some judges attempt to temper the court's impact in the initiative process by adopting an "accommodationist"

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[72] *LULAC, et al. v. Wilson, et al.,* 997 F.Supp. 1244, 1250 (1997).
[73] *LULAC, et al, v. Wilson*, *et al.,* 1998 U.S. District LEXIS 3368.
[74] Opponents of Proposition 187 had cross-appealed the district court's decision to sever the initiative and uphold its provisions related to penalties for falsified identification.

approach to reviewing initiatives (seeking where possible to accede to the "will of the people") while other judges are willing to act as watchdogs, actively checking ballot initiatives. Recent cases suggest that the watchdog approach is gaining ground in the courts. But judicial vigilance potentially comes at the cost of voter outrage. As initiative lawmaking becomes more prevalent (and there are no signs that the dramatic increase in initiatives is abating), the stakes for the courts increase. If courts continue to invalidate voter-approved initiatives at a high rate, there is a danger that public resentment against the judiciary will grow. State court judges may face increasing pressures in retention elections, and in general the courts' legitimacy may suffer. At present, the courts stand virtually alone in filtering the initiative process – and it is a heavy load to bear. Reformers should consider ways in which the initiative process can be modified (for example through non-judicial procedures for pre-election vetting of initiatives) to mitigate some of the factors that give rise to initiative challenges and thereby partially relieve this burden on the courts.

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Appendix A

CALIFORNIA:
Initiatives Approved by Voters, 1960-1998

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
1964	14	Bans Housing Anti-Discrimination Laws	Minori-ties	C.A.	65%	Y	S	Reitman v. Mulkey, 387 U.S. 369 (1967) [on appeal from Cal. S.Ct. and Orange Co. Superior Ct.]	• U.S. Const. 14th A. Equal Protection Clause	Invalidated in its Entirety	Individual Rights: State's authorization of private discrimination constitutes state action and violates Equal Protection Clause.	U.S. Supreme Court affirms Cal. Supreme Ct., which invalidated Prop. 14, 64 Cal. 2d 529 (1966).
1964	15	Prohibits Fees for TV	Econ. Reg.	Stat.	66%	Y	S	Weaver v. Jordan, 64 Cal 2d. 235 (1966) [on appeal from Sacramento Superior Ct.] [cert. denied, 385 U.S. 844 1966]	• Cal. Const. • U.S. Const. Free speech and press guarantees, Equal protection clauses	Invalidated in its Entirety	Individual Rights: Proposition violates state and federal free speech and press guarantees.	Dissent: Mosk: This is merely economic regulation, not a 1st Amendment case.
1964	17	Regulates Railroad Train Crews	Econ. Reg.	Stat.	68%	N	--	--	--	--	--	--

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
1972	17	Declares that California Death Penalty does not Constitute Cruel and Unusual Punishment and that California's Death Penalty Statutes In Effect as of Feb. 17, 1972 Are in Full Force and Effect	Crim.	C.A.	67%	Y	F	Furman v. Georgia, 408 U.S. 238 (1972)	• U.S. Const. 5th, 8th, 14th Amendments	Invalidated in Part	Individual Rights: Furman decision does not hold that capital punishment is per se unconstitutional. (Therefore, provision in Cal. Const. that death penalty does not constitute cruel and unusual punishment survives.) However Cal. death penalty statutes in effect on Feb. 17, 1972 violate Furman and to that extent, Prop. 17 is invalid.	Pre-election challenge: White v. Brown, 468 F.2d 301 (9th Cir. 1972) denied. Proposition 17 was enacted in response to 1972 Cal. Supreme Court decision that Cal. death penalty is unconstitutional.
1972	20	Protects California Coastal Zone	Env.	Stat.	55%	Y	S	CEEED, et al. v. California Coastal Zone Conservation Commission, et al., 43 Cal. App. 3d. 306	• U.S. Const. 14th Amendment Due Process Clause (substantive), Procedural	Upheld	Proposition survives each of these challenges.	Ct. discusses issue of majority trampling minority's (property) rights.

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
								(1974) [on appeal from Orange Co. Superior Ct.] [no further appeal]	Due Process at permitting stage, 5th A. Takings Clause, Right to Travel			
1972	21	Bans Racial Assignments in Public Schools	Minori-ties	Stat.	63%	Y	S	Santa Barbara School Dist. v. Superior Court, 13 Cal. 3d 315 (1975) [on appeal from Santa Barbara Co. Superior Ct.] [no further appeal]	• U.S. Const. 14th Amendment Equal Protection Clause	Invalidated in Part	Individual Rights: Court upholds repeal of state's existing desegregation laws, but holds that prohibition on racial assignments in public schools violates Equal Protection Clause.	
1974	9	Establishes Political Reform Act (Campaign Finance, Lobbying, Conflict of Interest Regulations)	Govt./Pol. Reform	Stat.	57%	Y	S	Citizens for Jobs & Energy, et al. v. Fair Political Practices Commission, 16 Cal.3d 671 (1976) [Original mandamus	• U.S. Const. 1st Amendment • Cal. Const. Art. I, sec. 2 (free speech)	Invalidated in part	Individual Rights: Expenditure limits on ballot initiatives, lobbyist contribution ban and some reporting requirements	

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
								proceeding] [no further appeal]			violate 1st Amendment. Court cites Buckley v. Valeo, 424 U.S. 1 (1976).	
							S	Hardie v. Eu, 18 Cal.3d 371 (1976) [Original mandamus proceeding] [cert denied, 430 U.S. 969 (1977)]	• U.S. Const. 1st A.	Invalidated in Part	Individual Rights: Limitations on expenditures for initiative petition gathering violate 1st A.	
							S	FPPC v. Superior Court, 25 Cal.3d 33 (1979) [on appeal from L.A. Superior Ct.] [cert. denied, 444 U.S. 1049]	• Cal. Const. Art. IV, sec. 1(c) single subject rule • U.S. Const. 1st Amendment	Upheld	Court upholds Proposition 9 against SSR challenge (reversing Superior Court, which had invalidated entire initiative on SSR grounds.)	Cal. Supreme Court adopts "liberal construction" of single subject rule. "Our society being complex, the rules governing it whether adopted by legislation or initiative will necessarily be complex. Unless we are to cripple use of the initiative, risk of confusion

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
												must be borne." Id. at 41-42.
1978	7	Provides for Death Penalty	Crim.	Stat.	71%	Y	S/F	People v. Ramos, 37 Cal. 3d 136 (1984) [originally on appeal from Orange Co. Superior Ct.] [on remand from U.S. S.Ct., 463 U.S. 992 (1983)] [final action, cert. denied, 523 U.S. 1027 (1998)]	• U.S. Const. 5th, 8th, 14th Amendments • Cal. Const. Due Process Clause	Invalidated in Part (Largely Upheld)	Individual Rights: Proposition's rules for jury instructions at penalty stage ("Briggs Instructions") violate Cal. Const. Due Process Clause.	Cal. Supreme Court had held that Briggs Instructions violate U.S. Const.; on appeal, U.S. Supreme Court reversed and remanded. Cal. S. Ct. then held that Briggs Instruction violates Cal. Const.
1978	13	Reduces, Limits Property Taxes	Tax	C.A.	65%	Y	S/F	Amador Valley Joint Union H.S. Dist. v. State Board of Equalization, 22 Cal.3d 208 (1978) [Original jurisdiction] [no further appeal]	• Cal. Const. Revision Single Subject Rule • U.S. Const. 14th A. Equal Protection Clause, Right to Travel, Contracts Clause • Technical title and	Upheld	Proposition survives each challenge. Provisions do not constitute a revision; they are "reasonably germane"; meet rational basis test; meet other state and federal requirements.	"[I]t is our solemn duty to jealously guard the initiative power, it being one of the most precious rights of our democratic process." Id. at 248, citations and internal quotations omitted.

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
									summary rules			
								Nordlinger v. Hahn, 505 U.S. 1 (1992) [On appeal from Cal. Court of Appeals following denial of review by Cal. S. Ct.]	• U.S. Const. 14th A. Equal Protection Clause	Upheld	Proposition's acquisition value system survives rational basis review; no standing re right to travel.	
1979	4	Imposes State Spending Limit	Govt./Pol. Reform	C.A.	74%	N	--	--	--	--	--	--
1982	5	Repeals Gift / Inheritance Taxes	Tax	Stat.	62%	Y	S	Estate of Gibson v. Bird, 139 Cal.App.3d 733 (1983) [on appeal from Contra Costa Superior Ct.] [Cal Supreme Ct. denies petition for review.]	• Cal. Const. Art. II, sec. 10 (where two propositions are in conflict, the provisions of the measure receiving the highest affirmative vote shall	Invalidated in its Entirety	Structural/ Procedural Basis: Propositions 5 and 6 cannot be harmonized. Since Proposition 5 received fewer votes than Prop. 6, it is void.	

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
									prevail)			
1982	6	Repeals Gift / Inheritance Taxes	Tax	Stat.	64%	Y	S	Carlson v. Cory, 139 Cal.App.3d 724 (1983) [Original jurisdiction] [no further appeal]	• Cal. Const. Powers reserved to the Legislature, Prohibition against referenda on tax levies, Art. II, sec. 9 (a)	Upheld	Proposition survives state constitutional challenges. This is an initiative, not a referendum.	"The Constitution's initiative and referendum provisions should be liberally construed to maintain maximum power in the people." Id. at 728.
1982	7	Establishes Income Tax Indexing	Tax	Stat.	64%	N	--	--	--	--	--	--
1982	8	Enacts new rules regarding criminal sentencing, restitution, etc.	Crim.	C.A./ Stat.	56%	Y	S	Brosnahan v. Brown, 32 Cal.3d 236 (1982) [Original jurisdiction] [appeal for rehearing denied; no further appeal]	• Cal. Const. requirements regarding: Single Subject Rule, Revisions, Effect on essential government functions, Procedures for amending statutes	Upheld	Measure survives each of the state constitutional challenges. Single Subject Rule is to be construed liberally. Id. at 246. ("reasonably germane" standard) Ct. cites FPPC case (Prop 9). Interdependence	It is our solemn duty jealously to guard the sovereign people's initiative power…" Id. at 241, citations and internal quotations omitted. Strong dissent (Bird, Mosk, Broussard): The Court has effectively repealed the SSR. Id at 262. Critique of the initiative process.

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
											not required.	Id. at 266, et seq. Pre-election challenge, Brosnahan v. Eu, 31 Cal.3d. 1 (1982): Petition denied.
1982	12	Requires Governor to Ask President for a Freeze on Nuclear Weapons	Misc.	Stat.*	52%	N	--	--	--	--	--	*Instruction to Governor
1984	24	Enacts Rules for Legislature (Procedures, Spending, etc.)	Govt./Pol. Reform	Stat.	53%	Y	S	People's Advocate v. Superior Court, 181 Cal.App.3d 316 (1986) [on appeal from Sacramento Superior Ct.] [rehearing denied; no further appeal]	• Cal. Const. (Art. IV) Legislature's Powers • Severability	Invalidated in Part (Largely Invalidated)	Structural/ Procedural Basis: Most provisions violate Cal. Constitution's provisions regarding powers of the Legislature; provisions regarding secrecy of legislative proceedings are severable and valid.	Sac. Superior Ct. had declared entire initiative unconstitutional and unseverable.

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
1984	37	Establishes State Lottery	Misc.	C.A./ Stat.	58%	N	--	--	--	--	--	--
1984	38	Requires Governor to Request Federal Government Print Voting Materials Only in English	Minori-ties	Stat.*	71%	N	--	--	--	--	--	*Instruction to Governor
1986	51	Enacts Tort Reform	Misc.	Stat.	58%	Y	S	Evangelatos v. Superior Court, 44 Cal.3d 1188 (1988) [on appeal from L.A. Superior Ct.] [no further appeal]	• U.S. Const. • Cal. Const. Equal Protection and Due Process Clauses	Upheld	Proposition is facially constitutional, but does not apply retroactively.	
1986	62	Places Limits on Local Taxation	Tax	Stat.	58%	Y	S	Santa Clara County Local Transportation Authority v. Guardino, 11 Cal. 4th 220 (1995) [on appeal from Ct. of Apps. which exercised original	• Cal. Const. Art. II, sec. 9 (Rule against referenda on tax increases) • Severability	Invalidated in Part (Largely invalidated)	Structural/ Procedural Basis Proposition violates rule against referenda on tax levies. Remaining provisions	Court distinguishes Carlson, 139 Cal.App.3d 724 (1983), which upheld Prop 6 (1982) against a similar challenge.

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
								jurisdiction.] [rehearing denied; no further appeal]			severable.	
1986	63	Establishes English as the Official State Language	Minori-ties	C.A.	73%	N	--	--	--	--	--	See, Gutierrez v. Municipal Court, et al., 828 F.2d 1031 (9th Cir., 1988 for discussion of limits of Proposition 63 – it is a symbolic statement.)
1986		Establishes Restrictions and Notice Requirements for Toxic Substances	Env.	Stat.	63%	Y	S	National Paint & Coatings Assn., Inc., et al. v. State of California, 58 Cal.App.4th 753 (1997) [on appeal from L.A. Superior Ct.] [Cal. S. Ct. denies review, 1998 Cal LEXIS 140] Also see several cases, e.g., 53 Cal. App 4th 1373 (1997), 871 F. Supp. 1278	• Cal. Const. Separation of Powers Doctrine • Cal. and U.S. Const. Due Process Clauses • U.S. Const. Supremacy Clause	Upheld Upheld	Proposition's private enforcement provision does not violate separation of powers or due process requirements. Proposition survives various federal preemption challenges	Insert case names.

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
								(1994), 92 F.3d 807 (1996), 125 F.3d 1305 (1997)				
1988	68	Establishes Campaign Finance Reform (Including Public Funding)	Govt./Pol. Reform	Stat.	53%	Y	S	Taxpayers to Limit Campaign Spending v. Fair Political Practices Commission, 51 Cal.3d 744 (1990) [on appeal from Ct. of App.] [rehearing denied; no further appeal]	• Cal. Const Art. II, sec. 10(b) (where two ballot measures conflict, provisions of measure receiving the highest number of affirmative votes enforced)	Invalidated in its Entirety	Structural/ Procedural Basis: Proposition 68 is invalid because it received fewer votes than a competing, comprehensive regulatory scheme (Prop. 73) (despite the fact that Prop. 73 was enjoined and later largely invalidated by the federal courts).	In Gerken, et al. v. FPPC, et al., ___ Cal. 4th 707 (1993) Cal. Supreme Ct. held that Prop. 68 could not be revived, although Prop. 73 had been largely invalidated by the federal courts.
1988	70	Provides Bonds for Nature Conservation	Env.	Stat.	65%	N	--	--	--	--	--	--

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
1988	73	Establishes Campaign Finance Reform	Govt/Pol. Reform	Stat.	58%	Y	F	SEIU v. FPPC, 955 F.2d 1312 (9th Cir, 1992) [on appeal from USDC E.D.Cal.] [cert. denied, 505 U.S. 1230]	• U.S. Const. 1st and 14th Amendments • Severability	Invalidated in Part	Individual Rights: Proposition's limitations on contributions based on fiscal year and restrictions on transfers violate 1st and 14th Amendments. Some remaining provisions severable and valid.	See also, Kopp, et al. v. FPPC, 11 Cal 4th 607 (1995), denying request to "reform" Prop. 73 to make it constitutional. "We reject the notion that a court lacks authority to rewrite a statute in order to preserve its constitutionality…" Id. at 615, but cannot do so in this case.
1988	96	Provides for AIDS Testing/ Reporting	Misc.	Stat.	62%	Y	S	Johnetta J. v. Municipal Court, 218 Cal.App.3d 1255 (Cal.App.1st Dist. 1990) [petition for rehearing denied; no further appeal]	• Cal. Const. guarantee of right to privacy	Upheld	No undue privacy violation.	
1988	97	Restores Cal-OSHA	Govt./Pol. Reform	Stat.	54%	N	--	--	--	--	--	--

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
1988	98	Guarantees Minimum Percentage of State Budget for Public Schools	Govt./Pol. Reform	C.A./ Stat.	51%	N	--	--	--	--	--	--
1988	99	Imposes Cigarette, Tobacco Tax / Earmarks Revenues	Tax	C.A.	58%	Y	S	Kennedy Wholesale Inc. v. State Board of Equalization, 53 Cal.3d 245 (1991) [on appeal from Sac. Superior Ct. and Ct. of Apps.] [no further appeal]	• Cal Const. Single Subject Rule, Legislative powers, 2/3 vote requirement for tax increases	Upheld	Proposition meets "reasonably germane" standard (increased revenues directed to areas in which smoking has increased state's costs); voters can increase taxes though initiative without 2/3 vote.	
1988	103	Enacts Automobile Insurance Rate Rollbacks, Reform	Econ. Reg.	Stat.	51%	Y	S	Cal Farm Insurance Co., et al. v. Deukmejian, et al., 48 Cal.3d 805 (1989) [Original jurisdiction] [no further appeal]	• Cal. Const. Single Subject Rule, Prohibition on naming a private corporation to perform a function, Due Process Clause,	Invalidated in Part	Both Individual Rights and Substantive/ Procedural Basis: Proposition does not violate SSR (all provisions reasonably	Judicial reformation / surgery to save initiative.

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
									• U.S. Const. Contracts Clause, Due Process Clause • Severability		germane to subject of insurance rates and regulation.) -- Provision restricting opportunity for insurers' redress of "confiscatory rates" violates state and federal Due Process clauses. --Provision naming private corp. consumer advocate invalid. Remaining portions severable.	
1988	105	Requires Disclosure Regarding Household Toxics, Nursing Homes, Ballot Initiatives, Investment in Apartheid	Econ. Reg.	Stat.	55%	Y	S	Chemical Specialties Manufacturers Assn., Inc., et al. v. Deukmejian, et al., 227 Cal. App. 3d 663 (1991) [on appeal	• Cal. Const. Single Subject Rule	Invalidated in its Entirety	Structural/ Procedural Basis Provisions of Proposition 105 are neither reasonably germane nor functionally	In enacting the Single Subject Rule (in 1948) it was the will of the people that the initiative process not be abused. Id. at 667.

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
		South Africa, etc.						from SF Superior Ct.] [Cal Supreme Ct. denies petition for review, 1991 Cal LEXIS 1790]			related to one another or to the objects of the enactment.	
1990	115	Imposes New Criminal Penalties, Restrictions on Defendants' Rights	Crim.	C.A./ Stat.	57%	Y	S	Raven v. Deukmejian, 52 Cal. 3d 553 (1991) [Original jurisdiction] [no further appeal]	• Cal. Const. Single Subject Rule, Revision • Severability	Invalidated in Part	Structural/ Procedural Basis: Proposition's section 3, which limits rights California can grant criminal defendants to federal standard is a revision of the state constitution.	"It is our solemn duty jealously to guard the sovereign people's initiative power…" Id. at 340, citations omitted. Dissent: Mosk would invalidate entire initiative as violating the SSR.
1990	116	Provides for Rail Transportation Bonds	Misc.	Stat.	53%	N	--	--	--	--	--	--
1990	117	Provides Protection for Wildlife	Env.	Stat.	53%	N	--	--	--	--	--	--
1990	132	Restricts Use of Gilnets	Env.	Stat.	56%	Y	S	California Gilnetters Assn., et al. v. Dept. of Fish and Game, et	• Cal. Const. Single Subject Rule • U.S. Const. Equal	Upheld	Proposition survives all state and federal challenges.	Court should indulge all presumptions in favor of validity of initiative.

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
								al., 39 Cal. App. 4th 1145 (1995) [on appeal from S.D. Superior Ct.] [rehearing denied.] [Cal. Supreme Ct. denies review, 1996 Cal LEXIS 526]	Protection Clause, Due Process Clause, Guarantee Clause • Technical ballot requirements			
1990	139	Creates New Rules Authorizing Prison Inmate Labor	Crim.	C.A.	54%	N	--	--	--	--	--	--
1990	140	Limits Terms for Members of Legislature, State-wide Elected Officials; Reduces Legislature's Budget; Restricts Legislative Pensions	Govt./Pol. Reform	C.A./ Stat.	52%	Y	S	Legislature, et al. v. Eu, et al., 54 Cal. 3d 492 (1991) [Original jurisdiction] [cert denied, 503 U.S. 919 (1992)]	• Cal. Const. Single Subject Rule, Revision • U.S. Const. 1st and 14th Amendments, Prohibition on Bills of Attainder, Contracts Clause	Invalidated in Part (Largely upheld)	Individual Rights: Proposition upheld except for restriction on pensions for incumbent legislators, which violates federal Contracts Clause.	"[T]he initiative power must be liberally construed to promote the democratic process… Mere doubts to validity are insufficient; such measures must be upheld unless their unconstitutionality clearly, positively and unmistakably appears." Id. at 501.

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
												Dissent: Mosk: Prop. 140 violates SSR. Initiative process is out of control.
1990	140*	Limits Terms for Members of Legislature, State-wide Elected Officials; Reduces Legislature's Budget; Restricts Legislative Pensions *Federal challenge	Govt./Pol. Reform	C.A./ Stat.	52%	Y	F	Jones v. Bates, 131 F.3d 843 (9th Cir. 1997) [on appeal from 3-judge 9th Circuit panel; on appeal from U.S.D.C. N.D.Cal.] [cert. denied, 523 U.S. 1021 (1998)]	• U.S. Const. Due Process notice requirements (to voters) Federal voting rights / candidacy rights	Upheld	Any ambiguities in ballot pamphlet did not violate due process notice requirements. Lifetime ban does not violate either voting rights or candidacy rights.	9th Circuit en banc reverses 3-judge panel which held that Prop. 140 violated Constitutional due process notice requirement. There is no "ignorant voter clause" in Constitution.
1992	162	Regulates Public Employee Investments	Govt./Pol. Reform	C.A.	51%	N	--	--	--	--	--	--
1992	163	Repeals Snack Tax	Tax	C.A./ Stat.	67%	N	--	--	--	--	--	--
1992	164	Imposes Congressional Term Limits	Govt./Pol. Reform	Stat.	64%	Y	F	U.S. Term Limits v. Thornton, 514 U.S. 779 (1995) [on certiorari	• U.S. Const. Qualifications Clause (Art. I, secs. 2,3)	Invalidated in its Entirety	Structural/ Procedural Basis: State efforts to limit terms of	Case invalidated congressional term limits in 22 states.

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
								from Arkansas Supreme Court]			Members of Congress violates Qualifications Clause. Federal Constitutional Amendment is required to limit congressional terms.	
1994	184	Enacts "Three Strikes" Criminal Sentencing Rule	Crim.	Stat.	72%	Y	S	People v. Superior Court, 13 Cal. 4th 497 (1996) [on appeal from S.D. Superior Ct. and Ct. of Apps., 4th App. Dist.] [rehearing denied; no further appeal]	• Cal. Const. separation of powers doctine	Upheld	Case is challenge to 3-strikes statute, but statute's language is equivalent to initiative. 3-strikes law does not restrict power of judge to strike allegations of prior convictions sua sponte. If it did, it would violate Const.	
1994	187	Restrictions on Services to Illegal Immigrants	Minori-ties	Stat.	59%	Y	F	League of United Latin American Citizens v. Wilson, 1998 U.S. Dist. LEXIS 3368	• U.S. Const. Supremacy Clause (Preemption by federal immigration laws)	Invalidated in Part (Settled through mediated agreement)	Structural/ Procedural Basis: All provisions of Proposition 187 are	Case was in District court for 4 years. Court attempted to sever (cut and paste) additional portions of the initiative, but

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
								(USDC C.D.Cal. 1998) [see also 9th Cir. decision approving mediated settlement.]			preempted and invalid except for imposition of new penalties for false IDs.	eventually held that this was impossible because the state was unable to write valid implementing regulations, especially after passage of 1996 federal immigration law. Case was appealed to 9th Circuit, but new Governor Gray Davis moved to have appeal be resolved through mediation. Proponents sought writ in Cal. S. Ct. to block mediation, but petition was denied.
1996	198	Establishes Blanket Primary	Govt./Pol. Reform	Stat.	60%	Y	F	California Democratic Party, et al. v. Jones, 169 F.3d 646 (9th Cir. 1999) [on appeal from U.S.D.C. (E.D.Cal.)] [no further appeal (ck)]	• U.S. Const. 1st, 14th A. (Right of Association)	Upheld	State's interests outweigh parties' and party officials' associational rights.	9th Cir. adopts Dist. Judge Levy's decision, 984 F.Supp. 1288 (1997) as its own

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
1996	208	Regulates Campaign Finance	Govt./Pol. Reform	Stat.	61%	Y	F	California Pro-life Action Council Political Action Committee, et al. v. Scully, et al., 164 F 3d. 1189 (1999) [On appeal of preliminary injunction, 989 F.Supp. 1282 (U.S.D.C. E.D. Cal, 1998)]	• U.S. Const. 1st A. (freedom of speech)	Enjoined (further litigation pending)	Pending.	In preliminary injunction, District Judge (Karlton) declares that Proposition's contribution limits are too low and violate the 1st Amendment. He directs the parties to seek review by the California Supreme Ct. to "rewrite" statute to make it constitutional. 9th Circuit vacates this order. Litigation pending in federal district court.
1996	209	Restricts Use of Racial / Gender Preferences in State Contracting, Hiring, University Admissions	Minori-ties	C.A.	55%	Y	F	Californians for Economic Equity, et al. v. Wilson, et al., 122 F.3d 692 (9th Cir. 1997) [on appeal from U.S.D.C. N.D. Cal.)] [cert. denied, 522 U.S. 963 (1997)]	• U.S. Const. 14th A. Equal Protection Clause (political structure theory), Supremacy Clause (Title VII Civil Rights Act of 1964)	Upheld	Appellate court rejects political structure theory, other challenges.	9th Circuit overturns District Court (Judge Thelton Henderson), which had invalidated the measure on Equal Protection grounds. "A system which permits one judge to block with the stroke of a pen what 4,736,180

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
												residents voted to enact as law tests the integrity of our constitutional democracy." Id. at 699.
1996	210	Increases Minimum Wage	Econ. Reg.	Stat.	62%	N	--	--	--	--	--	--
1996	213	Restricts Lawsuits by Uninsured Motorists, Drunk Drivers, Fleeing Felons	Misc.	Stat.	77%	Y	S	Yoshioka v. Superior Court, 58 Cal. App. 4th 972 (1997) [on appeal from L.A. Superior Ct.] [no further appeal]	• Cal. Const. Single Subject Rule • U.S. and Cal. Const. Due Process and Equal Protection Clauses	Upheld	Meets "reasonably germane" standard, rational basis test; no basis for procedural due process claim.	"It is our solemn duty to jealously guard the precious initiative power…" Id. at p. 986, citing Legislature v. Eu, 52 Cal. 3d at 501. Measure applies both prospectively and retroactively.
								Quackenbush v. Superior Court, 60 Cal.App. 4th 454 (1997) [on appeal from S.F. Superior Ct.] [rehearing denied] [Cal. Supreme Ct. denies review,	•Above claims, plus • U.S. Const. 1st A. Right to petition government for redress of grievances, Right to travel	Upheld	Additional claims dismissed.	

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
								1998 Cal. LEXIS 1963]				
1996	215	Authorizes Medical Use of Marijuana	Misc.	Stat.	56%	N	--	--	--	--	--	Note: See U.S.v. Cannibis Cultivators' Club, et al., 1999 U.S. Dist. LEXIS 2259 (N.D. Cal. 1999). Court does not rule on constitutionality of Prop. 215, but indicates that medical use of marijuana violates federal law.
1996	218	Requires Voter Approval for Local Government Taxes	Tax	C.A.	57%	Y	S	Consolidated Fire Protection District v. Howard Jarvis Taxpayers' Assn, et al., 63 Cal.App.4th 211 (1998) [on appeal from L.A. Superior Ct.] [no further appeal]	• Cal. Const. Prohibition against referenda on tax levies, Art. II, sec. 9 (a) • U.S. Const. Contracts Clause	Upheld	Not an unconstitutional referendum (citing Guardino); No vested contract rights therefore no unconstitutional impairment.	
1998	225	Requires Disclosure on Ballot re Candidate's	Govt./Pol. Reform	Stat.	53%	Y	S	Bramberg v. Jones, Cal. Supreme Court No.		Case Pending		

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
		Position on Congressional Term Limits						5076787 [Original proceeding]				
1998	227	Replaces Bilingual Programs with English Immersion in Public Schools	Minori-ties	Stat.	61%	Y	F	Valeria G. v. Wilson, 12 F. Supp. 2d 1007 (U.S.D.C., N.D. Cal.1998)	• U.S. Const. 14th A. Equal Protection Clause (political structure theory), Supremacy Clause (Federal Civil Rights and Education laws)	Preliminary Injunction Denied / Litigation pending	Inadequate showing of violation to support a facial challenge.	
1998	4	Bans Animal Traps	Env.	Stat.	58%	N	--	--	--	--	--	--
1998	5	Provides New Authorization for Indian Gaming Casinos	Misc.	Stat.	63%	Y	S	Hotel Employees and Restaurant Employees International Union v. Davis, et al., Cal. Supreme Court Case No. S074850	• Cal. Const. Prohibition on Nevada-style Casino Gambling	Invalidated in its Entirety	Structural / Procedural Basis: Proposition's authorization of Indian gaming violates state constitutional prohibition on Nevada-style gambling, enacted as part of the lottery initiative	See Cortez et al. v. Wilson et al. Case No. S074851

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
											(Proposition 37 of 1984).	
1998	6	Prohibits Slaughter and Sale of Horsemeat	Env.	Stat.	59%	N	--	--	--	--	--	--
1998	10	Imposes Tobacco Tax, Directs Revenue to Child Development Programs	Tax	C.A./ Stat.	51%	Y	S	California Assn. of Tobacconists (CART) v. Davis, Cal. Supreme Court Case No. S075809 2 other cases pending in Superior court (San Diego and Sacramento) (Tobacconists Assn. and Cigarettes Cheaper)	• Cal. Const. Single Subject Rule [other issues] • U.S. and Cal. Const. Equal Protection Clauses and Due Process Clauses, • Cal. Const. SSR, Restriction on gift of public money, prohibition on naming private corp. to perform a public function.	Pending. Application for stay and petition for writ of mandate denied (no res judicata effect)		

Appendix B

OREGON:
Initiatives Approved by Voters, 1960-1998

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
1970	9	Protects Scenic Waterways	Env.	Stat.	65%	N	--	--	--	--	--	--
1972	7	Repeals Governor's Retirement Act	Govt./Pol. Reform	Stat.	66%	N	--	--	--	--	--	--
1972	8	Changes Succession to Office of Governor	Govt./Pol. Reform	C.A.	82%	N	--	--	--	--	--	--
1974	15	Prohibits Purchase or Sale of Steelhead	Env.	Stat.	63%	N	--	--	--	--	--	--
1978	5	Authorizes, Regulates Practice of Denture Technology	Econ. Reg.	Stat.	78%	N	--	--	--	--	--	--
1978	8	Authorizes Death Penalty, Other Penalties	Crim.	Stat.	66%	Y	S	State v. Quinn, 290 Ore. 383 (1981)	• Ore. Const. Art. I, sec. 11 (requiring right to jury trial for all facts constituting crime)	Invalidated in Part	Individual Rights: Measure violates Art. I, sections 11, 16	

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
								State v. Shumway, 291 Ore. 153 (1981)	Art. I, sec. 16 (all penalties shall be proportional to the offense.) • Ore Const. Art. I, sec. 16 • Severability	Invalidated in Part	Individual Rights: Minimum 25-year penalty for murder violates provision that "all penalties shall be proportional to offenses." Provisions are severable.	
1978	9	Limits Public Utility Rate Base	Econ. Reg.	Stat.	69%	N	--	--	--	--	--	--
1980	7	Requires Voter Approval / Waste Disposal Facility for Nuclear Plant Licensing	Env.	Stat.	53%	N	--	--	--	--	--	--

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
1982	4	Urges Mutual Nuclear Weapons Freeze	Misc.	--*	62%	N	--	--	--	--	--	*Required Communication to Federal Officials
1984	3	Creates Board to Represent Interests of Utility Consumers	Govt./Pol. Reform	Stat.	53%	Y	F	Oregon Independent Telephone Ass'n, et al. v. Citizens' Utility Board of Oregon, et al., 1985 U.S. Dist. LEXIS 16128 (U.S. Dist. Ct., Dist. Ore. 1985)	• U.S. Const. 1st, 5th, 14th Amendments • Ore. Const. (Art. I, sections 8, 18)	Invalidated in Part	Individual Rights: Portions of initiative violate utilities' free speech rights.	--
1984	4	Establishes State Lottery, Commission, Profits for Economic Development	Misc.	C.A.	66%	N	--	--	--	--	--	Pre-election challenge: Ecumenical Ministries of Oregon, et al. v. Paulus, 298 Ore. 62.
1984	5	Implements State Lottery (If Measure 4 Authorized)	Misc.	Stat.	66%	N	--	--	--	--	--	--
1984	6	Exempts Death Sentences From State Constitutional Protections	Crim.	C.A.	56%	Y	S	State v. Wagner, 305 Ore. 115 (1988) "Wagner I"	• U.S. Const. 14th A. Equal Protection Clause Art. IV, sec. 4 (Guarantee	Upheld	No federal equal protection violation (no fundamental right or suspect	See also: Wagner v. Oregon, 492 U.S. 914 (1989) Remand with instruction to

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
		Against Vindictive Judgments and Cruel and Unusual Punishments							Clause) • State law requirements for ballot info •Various other provisions of state law		classification.) Guarantee Clause Issue insufficiently plead. Remedy for ballot defects is pre-election injunction. Other state law challenges rejected.	review in light of Penry v. Lynaugh, 492 U.S. __, 109 S. Ct. 2934 (1989) (re mitigation). See also: State v. Montez, 309 Ore. 564 (1990)
1984	7	Requires Death or Mandatory Sentence for Aggravated Murder	Crim.	Stat.	75%	Y	S	State v. Wagner, 309 Ore 5 (1990) "Wagner II"	• U.S. Const. 8th A., 14th A. Equal Protection and Due Process Clauses • State Constitutional Protections	Upheld	Ore. S.Ct. interprets (re-writes?) initiative to require jury consideration of mitigating circumstances. Under this interpretation, the Measure meets federal constitutional requirements. State const. challenges rejected.	Dissent argues that Court goes too far in interpreting initiative to cure constitutional defects.
1984	9	Creates Requirements for Disposing Waste	Env.	Stat.	56%	N	--	--	--	--	--	--

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
		Containing Naturally-Occurring Radioactive Isotopes										
1986	8	Regulates Telephone Services.	Econ. Reg.	Stat.	80%	N	--	--	--	--	--	
1986	10	Establishes Criminal Victims' Rights, Creates New Rules Regarding Evidence, Sentencing, Parole.	Crim.	Stat.	75%	Y	S	State v. Guzek, 322 Ore. 245 (1995)	• U.S. Const. 8th A., 14th A. Equal Protection and Due Process Clauses • Ore. Const. protections for criminal defendants	Upheld	Court interprets Measure's provisions re. victim impact statements not to apply to capital cases, and declares them valid.	
1986	13	Establishes 20-day Pre-election Cut-off for Voter Registration	Govt./Pol. Reform	C.A.	67%	Y	F	Barilla, et al. v. Ervin, et al., 886 F.2d 1514 (9th Cir. 1989)	U.S. Const. 14th A. Equal Protection Clause, Due Process Clause	Upheld	20-day pre-election voter registration cut-off survives applicable standard of scrutiny (i.e., not a "substantial burden" on the right to vote.)	
1988	4	Requires Full Sentences Without Parole for Certain Repeat	Crim.	Stat.	79%	N	--	--	--	--	--	--

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
		Offenses										
1988	7	Protects Oregon Scenic Waterways	Env.	Stat.	56%	N	--	--	--	--	--	See City of Klamath Falls v. Babbitt, 947 F. Supp. 1 (not a challenge to the initiative, but details the history of the Ore. Initiative Process.)
1988	8	Repeals State Executive Branch Ban on Discrimination Based on Sexual Orientation	Minori-ties	Stat.	53%	Y	S	Merrick v. Board of Higher Education, 116 Ore. App. 258 (Ore. Ct. of Apps. 1992)	• Ore. Const. Article I, sections 8, 20 • U.S. Const. 1st and 14th Amendments	Invalidated in its Entirety	Individual Rights: Measure 8 violates Oregon Const. Art. I, section 8 (regarding freedom of expression.) Court does not reach federal constitutional issues.	
1990	5	Limits Property Taxes	Tax	C.A.	52%	Y	S	Savage v. Munn, 317 Ore. 283 (1993)	• U.S. Const. 14th Amendment Equal Protection Clause	Upheld	Meets rational basis test. Court cites Nordlinger v. Hahn, 505 U.S. 1 (1992).	Pre-election challenge: Crumption v. Roberts, et al., 310 Ore. 381 (1990) Fact that signature petitions did not

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
												include information regarding paid petition gatherers not sufficient grounds to enjoin election.
1990	7	Establishes Work in Lieu of Welfare Benefits Program (6-County Pilot.)	Misc.	Stat.	58%	N	--	--	--	--	--	--
1990	9	Requires Use of Safety Belts	Misc.	Stat.	54%	N	--	--	--	--	--	--
1992	3	Sets Term Limits for Members of Congress, State Legislature, Statewide Offices	Govt./Pol. Reform	C.A.	70%	Y	F	U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995)	• U.S. Const. Art I, sections 2,3 (Qualifi-cations Clause)	Invalidated in Part	Structural/ Procedural Issues: State imposition of congressional term limits violates Qualifications Clause. State term limits survive.	
1994	6	Restricts Use of Contributions	Govt./Pol. Reform	C.A.	53%	Y	F	VanNatta, et al. v. Keisling, et	•U.S. Const. 1st Amendment	Invalidated in its Entirety	Individual Rights:	--

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
		from Out-of-District Residents						al., 151 F.3d 1215 (9th Cir. 1996)			Violates U.S. Const. 1st Amendment – burdens free speech; insufficient state interest; not narrowly tailored.	
1994	8	Requires State Employees to Contribute to Pension Benefits, etc.	Govt/Pol. Reform	C.A.	50%	Y	S	Oregon State Police Officers' Assn., et al. v. State of Oregon, et al, 323 Ore. 356 (1996)	• U.S. Const. Art. I, sec. 10 (Contracts Clause)	Invalidated in its Entirety	Individual Rights: New requirements for state employees' contracts affect vested rights, violate federal contracts clause.	
1994	9	Establishes Mandatory Political Contribution Limits / Voluntary Expenditure Limits, Other Campaign Finance Regulations	Govt./Pol. Reform	Stat.	72%	Y	S	Van Natta, et al. v. Keisling, 324 Ore. 514 (1996)	• Oregon Const. Art. I, sec. 18 (re free speech) • Severability	Partially Invalidated	Individual Rights: Mandatory Contribution limits violate Ore. Const. Some remaining provisions	Oregon places more stringent constitutional restrictions on campaign finance regulation than Buckley v. Valeo requires.

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
											severable.	
1994	10	Requires 2/3 Vote in Legislature to Reduce Voter-Approved Sentencing Rules	Crim.	Stat.	65%	N	--	--	--	--	--	In Huddleston, 324 Ore. 597 (1997), Court references potential for challenge to Measure 10, but says it is not at issue in that case.
1994	11	Sets Mandatory Sentences	Crim.	Stat.	66%	Y	S	State ex rel. Huddleston v. Sawyer, 324 Ore. 597 (1997)	• Ore. Const. Criminal justice provisions • U.S. Const. 14th Amendment Equal Protection Clause, Guarantee Clause	Upheld	Measure meets requirements of Oregon Const. and Federal Equal Protection Clause (rational basis test). Guarantee Clause challenge is non-justiciable.	Lengthy discussion and dissent on Guarantee Clause issue. Huddleston is a facial challenge to the Measure. Subsequent cases attack Measure 11 as applied to particular individual defendants, but the Measure remains in force.
1994	16	Authorizes Physician-Assisted Suicide	Misc.	Stat.	51%	Y	F	Lee, et al. v. State, et al., 107 F.3d 1382	• U.S. Const. 14th Amendment Equal	Upheld	District court had held that Measure violated 14th A.	

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
								(9th Cir. 1996)	Protection and Due Process Clauses, 1st A. Free Exercise, Freedom of Association Clauses • Federal Statutes (e.g. Americans with Disabilities Act)		Equal Protection Clause (failed to survive rational basis test). 9th Cir. reversed on this issue and dismissed other challenges to the Measure.	
1994	17	Requires Prison Inmates to Work Full-Time	Crim.	C.A.	71%	N	--	--	--	--	--	--
1994	18	Restricts Methods for Hunting Bears, Cougars	Env.	Stat.	52%	N	--	--	--	--	--	--
1996	36	Increases Minimum Wage	Econ. Reg.	Stat.	57%	N	--	--	--	--	--	--
1996	40	Increases Rights of Crime Victims / Expands Admissible Evidence / Limits Pre-trial Release	Crim.	C.A.	59%	Y	S	Armatta v. Kitzhaber, 327 Ore. 250 (1998)	• Ore. Const. Art. XVII, sec. 1 (Separate Vote Requirement for Constitutional	Invalidated in its Entirety	Structural/ Procedural Basis. Measure violates separate vote requirement.	Separate vote requirement is more stringent than single subject rule.

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
									Amendments)			
1996	44	Adds Cigarette / Tobacco tax	Tax	Stat.	56%	Y	S	Nelson v. Keisling, 155 Ore. App. 388 (1998)	• State requirements for qualifying Measures	Upheld	Signature gathering violations did not affect decision of electorate; election results should not be invalidated.	
1996	47	Reduces / Limits Property Taxes	Tax	C.A.	52%	N	--	--	--	--	--	Repealed by Measure referred by Legislature (Measure 50) in special election, 1997.
1998	58	Requires State to Provide Adoptees Access to Birth Certificate	Misc.	Stat.	57%	Y	S	Doe v. State of Oregon	• U.S. Const. and Oregon Const. Contracts Clause Due Process, Religious Freedom and Privacy Rights	Pending. Upheld by trial court (7/16/99) Stay remains in place while appeal pending.		
1998	60	Provides for Vote by Mail	Govt./Pol. Reform	Stat.	69%	Y	F	VIPI v. Kiesling (U.S. District Court.)		Pending. Dist. Ct upheld measure on state's motion for summary judgment.		See also SFIR v. Keisling in Marion County Circuit Court (Ore. State court.)

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
										Appeal pending before 9th Circuit Ct. of Appeals.		
1998	62	Requires Campaign Finance Disclosure, Regulates Signature Gathering	Govt./Pol. Reform	C.A.	68%	Y	S	Swett v. Keisling [Marion County Circuit Court] Sizemore v. Keisling [Marion County Circuit Court – pending].		Pending. Upheld by trial court on state's motion for summary judgment. Pending. State's motion for summary judgment on one claim granted (law upheld). Preliminary injunction bars enforcement until judgment entered.		
1998	63	Requires Measures Proposing Super-Majority Voting Requirements to Receive Same Super-Majority for	Govt./Pol. Reform	C.A.	55%	N	--	--	--	--	--	--

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
		Passage										
1998	66	Allocates Lottery Money for Beaches, Habitat Wetland Protection	Env.	C.A.	67%	N	--	--	--	--	--	
1998	67	Authorizes Medical Use of Marijuana	Misc.	Stat.	55%	N	--	--	--	--	--	--

Appendix C

COLORADO:
Initiatives Approved by Voters, 1960 – 1999

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
1962	7	Enacts Plan for Reapportionment	Govt. Reform	C.A.	64	Y	F	Lucas v. 44th General Assembly, 377 U.S. 713 (1964) [direct appeal from U.S. Dist. Ct., Dist. Colo.]	• U.S. Const. 14th A. Equal Protection Clause	Invalidated in its Entirety	Individual Rights: Unequal representation in Colorado's upper house violates Equal Protection Clause.	U.S. Supreme Court cites Reynolds v. Sims, 377 U.S. 576 (1964) (decided same term.) It makes no difference that the Colo. plan was approved by the

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
												electorate. [Fed. Dist. Ct. had upheld initiative.]
1966	3	Sets Rules for Annexations	Govt./Pol. Reform		53	N						
1966	4	Sets Standards for Reapportionment (Equal population, etc.)	Govt. Reform	C.A	70	N						
1972	8	Prohibits State from Taxing, Borrowing or Spending Funds for Purposes of 1976 Winter Olympic Games	Misc.	C.A.	59	N						
1972	9	Creates New Rules for Open Meetings, Financial Disclosure by Public Officials, Lobbyist Registration, etc. "Sunshine Act"	Pol. / Govt. Reform	Stat.	60	Y	S	Cole v. State of Colorado, et al., 673 P.2d 345 (S. Ct. Colo. 1983) [on appeal from Denver District Ct.]	• Col. Const. Art. V, secs. 12, 14: Legislature's powers; Art II, sec. 10 (freedom of speech and association) • U.S. Const. 1st and 14th Amendments	Upheld	Reasonable restraints on speech and association; does not unduly burden Legislature.	

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
1974	1	Establishes Rules (Including Voting Requirements) for Annexations "Poundstone Act"	Govt. Reform	C.A.	58	Y	S	City of Glendale, et al. v. Buchanan, et al., 195 Colo. 267 (1978) [on appeal from Denver Dist. Ct.]	• Colo. Requirements regarding Accuracy of ballot title, Voter confusion, Timing of challenge, Conflict with another Amendment on ballot	Upheld	Challenge to Ballot Title should be made prior to vote; insufficient showing of voter confusion; can be harmonized with other Amendment re annexation.	
1974	8	Prohibits Racial Assignments in Public Schools "Busing Clause"	Minori-ties	C.A.	69	Y	F	Keyes, et al. v. School Dist. No. 1, et al, 119 F.3d 1437 (10th Cir., 1997)	• U.S. Const. 14th A. Equal Protection Clause, Article III Jurisdiction (Case and Controversy)	Upheld (Not invalidated)	Upon lifting of 2-decade old Denver school desegregation order, appellants requested ct. ruling on validity of the Busing Clause. Dist. Ct. held that it did not violate 14th A.; Appellants appealed on this point and 10th Cir. held that the court's determination was dicta; that	

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
											there was no case or controversy on this point, and that the court lacked jurisdiction on this question.	
1974	9	Establishes Reapportionment Commission	Govt. Reform	C.A.	60	N	--	--	--	--	--	--
1974	10	Restricts Detonation of Nuclear Devices	Misc.	C.A.	58	N	--	--	--	--	--	--
1980	3	Establishes Rules for Annexations	Govt. Reform	C.A.	57	N	--	--	--	--	--	--
1980	6	Provides for Election of Directors of Transportation District	Govt. Reform	Stat	56	N	--	--	--	--	--	--
1984	3	Prohibits Public Funding for Abortion	Misc.	C.A.	50	Y	F	Hern, et al. v. Beye, 57 F.3d 906 (10th Cir., 1995) [on appeal from U.S. Dist. Ct., Dist. Colo.]	• Title XIX Social Security Act of 1965 (Federal Medicare Law)	Invalidated in Part	Structural / Procedural Basis: Because Colorado participates in Medicare Program, it must comply with federal rules for	

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
											funding abortions for Medicare-eligible women (funding required in cases of rape or incest.)	
1984	4	Allows Voters To Register with DMV ("Motor Voter")	Govt. / Pol. Reform	Stat.	61	N	--	--	--	--	--	--
1988	1	Establishes English as Official Language	Minori-ties	C.A.	61	Y	F	Montero, et al. v. Meyer, et al., 13 F.3d 1444 (10th Cir., 1994) [on appeal from U.S. Dist. Ct. Dist Colo.] [cert denied, 1994 U.S. LEXIS 6554]	• U.S. Const. 1st A. Petition Clause 14th A Due Process and Equal Protection Clauses • Voting Rights Act (post-election effort to invalidate initiative based on pre-election procedures)	Upheld	Plaintiffs had sufficient opportunity to challenge Amendment prior to the election.	

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
1988	8	Requires Hearing for All Bills Referred to Committee "GAVEL Amendment"	Govt. Reform	C.A.	72	N	--	--	--	--	--	Colorado Common Cause, et al. v. Bledsoe, et al, 810 P.2d 201 (Colo. S. Ct 1991) (Court discusses relationship between GAVEL Amendment and Colorado Const. Art. V, sec. 16-- Speech and Debate Clause)
1990	4	Legalizes Limited Gaming	Misc.	C.A.	57	N	--	--	--	--	--	--
1990	5	Imposes Term Limits for State Elected Officials and Members of Congress	Pol. / Govt. Reform	C.A.	71	Y	F	U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995) [on cert. from Arkansas Supreme Ct.]	• U.S. Const. Art. I, secs. 2,3 (Qualifica-tions Clause)	Invalidated in Part	Structural / Procedural Basis: State imposition of Congressional term limits violates Qualifications Clause.	
1992	1	Requires Voter Approval for Tax Increases /	Tax	C.A.	54	N	--	--	--	--	--	See Bolt v. Arapahoe City School Dist,

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
		Caps Taxing and Spending "TABOR Amendment"										898 P.2d 526 (Col. S. Ct., 1995) (Court interprets Amendment 1 to have retroactive application)
1992	2	Prohibits Anti-Discrimination Laws for Sexual Orientation	Minori-ties	C.A.	53	Y	S*	Romer v. Evans, 517 U.S. 620 (1996) [on appeal from Colo. Supreme Ct.]	• U.S. Const. 14th A. Equal Protection Clause	Invalidated in its Entirety	Individual Rights: Amendment violates equal protection rights of homosexuals.	Colo. S. Ct. had declared Amendment 2 unconstitu-tional. Affirmed. See Scalia dissent.
1992	8	Designates Lottery Money for Preserving Wildlife, Parks, Open Spaces, etc.	Env.	C.A.	58	N	--	--	--	--	--	
1992	10	Restricts Taking of Black Bears	Env.	Stat.	70	N	--	--	--	--	--	--
1994	17	Imposes Shorter Term Limits For Members of Congress and Extends Term Limits to Local Elected Officials	Pol./ Govt. Reform	C.A.	51	Y	F	U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995) [on writ of certiorari from Arkansas	• U.S. Const. Art. I, secs. 2,3 (Qualifica-tions Clause)	Invalidated in Part	Structural / Procedural Basis: State imposition of Congressional term limits violates	

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
								Supreme Ct.]			Qualifications Clause.	
1996	12	Places "Scarlet Letter" on Ballot for Candidates Who Fail to Endorse Federal Constitutional Amendment Establishing Congressional Term Limits	Pol./ Govt. Reform	C.A.	54	Y	S	Morrissey v. Colorado, 951 P.2d 911 (1998) [Colo. Supreme Ct. Original proceeding]	• U.S. Const. Article V (Rules for Amendment)	Invalidated in its Entirety	Structural / Procedural Basis: Coercion of Representa-tives violates Article V Amendment provisions	
1996	14	Bans Leg-hold Traps	Env.	C.A.	52	N	--	--	--	--	--	--
1996	15	Establishes Regulations for Campaign Finance	Pol. Reform	Stat.	66	Y	F	Colorado Right to Life Committee, Inc., et al. v. Buckley, 1998 U.S. Dist. LEXIS 17247 (U.S.D.C. Dist. Colo. 1998)	• U.S. Const. 1st A. Free speech clause; 14th A. Due Process and Equal Protection Clauses • Sever-ability	Invalidated in Part	Individual Rights: Voluntary expenditure limits, independent expenditure rules survive; required notice of failure to accept limits (in campaign literature and ballot pamphlet) violate 1st A. Free Speech	[Status]

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
											protections.	
1996	16	Sets New Rules for Management of State's Trust Lands	Env.	C.A.	52	Y	F	Branson School District RE-82, et al. v. Romer, et al., 161 F.3d 619 (10th Cir., 1998). [on appeal from U.S. Dist. Ct., Dist. Colo.]	• U.S. Const. Art. VI (Supremacy Clause)	Upheld	Amendment's alterations of management principles guiding state's trusteeship of state lands conform to terms of a trust established by Congress in 1875, thus no violation of Supremacy Clause.	
1998	12	Requires Parental Notification for Minor's Abortion	Misc.	Stat.	55	Y	F	Planned Parenthood of the Rocky Mountains, et al. v. Owens, et al. [U.S. Dist. Ct. Dist. Colo. Case No. 99-WM-60]		Pending		
1998	14	Places Environmental Regulations on Commercial Swine Feeding	Env.	Stat.	64	N	--	--	--	--	--	--

Year	#	Subject	Type	Stat./ C.A.	% Yes	Suit?	F/S	Case Name	Key Issues	Outcome	Basis	Notes
		Operations										
1998	18	Allows for Candidate Declaration on Ballot re Federal Term Limits	Pol./Govt. Reform	C.A.	50	Y	S	Morrissey II		Pending in Denver Dist Ct.		