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INITIATIVE & REFERENDUM INSTITUTE

Citizen Lawmaking In-Depth

Part of the Citizen Lawmaker Series of Educational Tools

Initiative
and
Referendum
in the United States

— A Primer —

An Overview of What it is
and
How it Works Around the Country

Edited by M. Dane Waters

Citizen Lawmaker Press

Washington, D.C.

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The Initiative and Referendum Process in America – A Primer

An Overview of What it is and How It Works Around the Country

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What is the Initiative & Referendum Institute?

In 1998, in recognition of the initiative and referendum process' influence on America, the Initiative & Referendum Institute was founded. The Institute, a 501(c)(3) non-profit non-partisan research and educational organization, is dedicated to educating the citizens about how the initiative and referendum process has been utilized, bringing litigation when necessary to protect it, and in providing information to the citizens so they understand and know how to utilize the process. No other organization does what we do.

The Initiative & Referendum Institute extensively studies the initiative and referendum process and publishes papers and monographs addressing its effect on public policy, citizen participation and its reflection of trends in American thought and culture. We also research and produce a state-by-state guide to the initiative and referendum process that can be used by activists, and we work to educate and update the public on how the process is being utilized across the country. We analyze the relationship between voters and their elected lawmakers and when and why the people turn to initiative and referendum to enact changes in state and local law. Already, the Initiative & Referendum Institute has garnered significant media attention. We have been interviewed or cited by numerous media outlets including, ABC News, Voter News Service, CBS Radio, Pacific Radio Network, CNN, *The Washington Post*, *The New York Times*, *The Chicago Tribune*, Fox News Channel, *The Christian Science Monitor*, The News Hour with Jim Lerher, *The National Journal*, *The Wall Street Journal*, *Governing Magazine*, *USA Today*, Court TV's "Supreme Court Watch" and "Washington Watch", *The Economist*, National Public Radio, *Campaigns and Elections Magazine*, *U.S. News and World Report*, *Congressional Quarterly*, and dozens of other publications, newspapers and radio stations around the world.

The Institute is uniquely qualified to undertake this mission. Comprising the Institute's Board of Directors, Advisory Board and Legal Advisory Board are some of the world's leading authorities on the initiative and referendum process, including prominent scholars; experienced activists - who know the nuts and bolts of the process and its use; skilled attorneys; and political leaders - including six governors - who have seen first hand the necessity of having a process through which citizens can directly reform their government.

Visit our two award winning websites at http://www.iandrinstitute.org and http://www.ballotwatch.org for additional information or contact Dane Waters, President of the Initiative & Referendum Institute via email at mdanewaters@iandrinstitute.org or by calling 202.429.5539.

Introduction

For whatever reason, many elected officials are still not always doing what's in the people's best interest. Fortunately, for the citizens in the 24 states with the initiative process, the people have a mechanism to propose reforms when elected officials will not act. Unfortunately, the citizens in the other 26 states without the initiative process still do not have an outlet to bypass a legislature paralyzed by inaction or self-interest.

For 100 years, the initiative and referendum process has been THE critical tool to check the power of unresponsive and unaccountable government at the state and local level. Governor William Janklow of South Dakota – the state that has the distinction of being the first to adopt statewide initiative and popular referendum – had this to say about the process, "it is a tool of true democracy to allow citizens to participate directly in making the laws that affect their lives. People can define and decide the issue themselves if their elected officials aren't doing things to their satisfaction."

After 100 years of initiative use we know the citizens do not support the initiative process as a way to destroy or abolish our representative democracy – they support it because it ensures that they, the people, are the ultimate sovereigns as envisioned by our Founding Fathers.

This report is designed to give you a basic understanding of the initiative and referendum process. It provides information on the history of the process as well as the requirements to use the process. It also includes information on the major legal and legislative challenges the process has faced. More in-depth information regarding the initiative and referendum process can be obtained through the Initiative & Referendum Institute's main website at http://www.iandrinstitute.org.

I hope you find this information helpful and please do not hesitate to contact the Institute if you need any additional information.

Section One [1]
A Look at the History of the Initiative and Referendum Process

Before we can undertake a meaningful discussion of initiative and referendum, we must first agree on what we mean when we use the term initiative and referendum. Almost every academic, reporter and activist has his or her own definition.

In many states, citizens have the ability to adopt laws or to amend the state constitution. This is commonly referred to as the initiative process (possible in 24 states — see Table 1.1). In many of the same states, as well as others, the citizens have the ability to reject laws or amendments proposed by the state legislature. This process is commonly referred to as the referendum process. There are two types of referendum in this country — popular and legislative. Popular referendum (possible in 24 states) is when the people have the power to refer, through a petition, specific legislation that was enacted by their legislature for the people to either accept or reject. Legislative referendum (possible in all states) is when the state legislature, an elected official, state appointed constitutional revision commission or other government agency or department submits propositions (constitutional amendments, statutes, bond issues, etc.) to the people for their approval or rejection. This is either constitutionally required, as in proposing constitutional amendments, or because the legislature, government official or agency voluntarily chooses to submit the proposal to the people (however, not all states allow their state legislature to place statutes on the ballot for voter approval or rejection). Every state but Delaware requires that constitutional amendments proposed by the legislature be submitted to the citizenry via legislative referendum for approval or rejection. The initiative process is used much more frequently than the referendum process and is considered by many the more important and powerful of the two processes. Additionally, there is no national initiative or referendum process in the United States.

The local initiative process is available in thousands of counties, cities and towns across the country and is utilized far more frequently than statewide I&R. Almost every major city in the country has this process including New York City, Houston, Philadelphia and New Orleans. Many states, like Louisiana and New York, have the initiative process at the local level but not statewide and 356 home rule cities in Texas have the process but the state as a whole does not.

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

There is a long and rich history of the citizens utilizing the initiative process in this country (a complete listing of initiatives that have appeared on the ballot since 1904 and that will be appearing on future ballots is available at http://www.iandrinstitute.org and http://www.ballotwatch.org).

Since the first statewide initiative on Oregon's ballot in 1904, citizens in the 24 states with the initiative process have placed approximately 1,987 statewide measures on the ballot and have only adopted 821 (41%).

In 1996, considered by many to be the "high water mark" for the initiative process, the citizens placed 102 measures on statewide ballots and adopted 45 (44%). In contrast, the state legislatures that same year in those same 24 states adopted over 17,000 laws.

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

Since the first statewide initiative appeared on the ballot in Oregon in 1904, the initiative process has been through periods of tremendous use as well as periods in which it was rarely utilized. From 1904 to 1976, the use of the initiative steadily declined from its peak of 291 from 1911-1920 to its low of 78 in 1961-1970.

Many factors contributed to this, but the distraction of two World Wars, the Great Depression and the Korean War are largely responsible. However, in 1978, with the passage of California's Proposition 13 (an initiative that cut state property taxes by nearly 60%), the people began to realize the power of the initiative process once again and its use began to climb. Since 1978, the two most prolific decades of initiative use have occurred 1981-90 (289 initiatives) and 1991- 2000 (approximately 396).

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

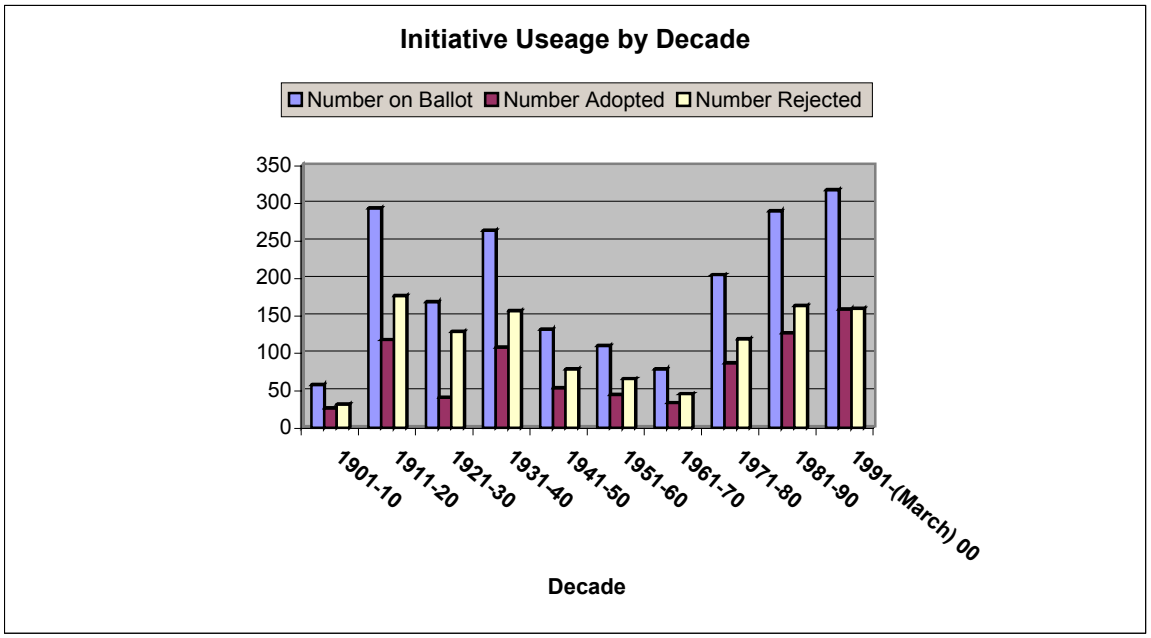
Even though 24 states have some form of statewide initiative, almost 60% of all initiative activity has taken place in just five states – Oregon, California, Colorado, North Dakota and Arizona.

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

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

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

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



Section Two
Comparison of Initiative Processes

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

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

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

21 of the 24 initiative states allow ***statutory initiatives***. 14 of the 21 allow statutory initiatives through the direct initiative process and 9 allow statutory initiatives through the indirect initiative process. I know that adds up to 23 – which is greater than the universe of 21 states that allow statutory initiatives. The reason for the difference is that 2 states – UT and WA – allow statutory initiatives through the direct and indirect process. In every state, statutory initiatives require a simple majority of those voting to adopt the measure.

The Indirect Initiative Process

As stated above, the indirect initiative process is available in some form in 10 states: Alaska, Maine, Massachusetts, Michigan, Mississippi, Nevada, Ohio, Utah, Washington, and Wyoming.

In 7 of the 10 states, the citizens must collect the full number of signatures required before the initiative is placed before the legislature for

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

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

Pre-Circulation Filing Requirements and Review

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

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

Eleven states (CO, AR, FL, ID, MS, MT, NE, OR, SD, UT, WA) and the District of Columbia ***require*** some form of pre-circulation/certification review regarding language, content or constitutionality. However, in all but four of these states, the results of the review are advisory only. In Arkansas, the attorney general has authority to reject a proposal if it utilizes misleading terminology. In Utah, the Attorney General can reject an initiative if it is patently unconstitutional, nonsensical, or if the proposed law could not become law if passed. In Oregon, the Attorney General can stop an initiative from circulating if he believes it violates the single amendment provision for initiatives and in Florida, the State Supreme Court – during its mandatory review – can stop an initiative if it is unconstitutional or violates the state's very strict single subject requirement for initiatives.

At two points in the petition process, an official summary and title must be prepared. A circulation title must be prepared for the signature collection phase, and a ballot title must be prepared for the voter pamphlet (if there is one) and the actual ballot. Typically, the circulation and ballot titles are the same. Procedures for writing the circulation title vary. Some states allow the sponsors to write the title; other states use a committee (see attached chart). Eleven states provide for expedited court challenges to the circulation title.

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

Subject Limitations

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

Several states impose a single subject rule for initiatives. Single subject rules are of the greatest concern to supporters of the initiative process and are proving to be a serious obstacle to the use of the initiative process. However, the Institute supports the concept of requiring that initiatives be limited to a single subject, be we believe that; a) a standard interpretation of what constitutes a violation of single subject needs to be adopted, b) single subject requirements should apply to laws proposed by the state legislature as well, c) single subject challenges should be brought prior to circulation so initiative proponents are not "blind sided" after spending substantial resources in qualifying a measure for the ballot and d) the courts should offer a remedy to initiative proponents when they are in violation of the

single subject laws so proponents know what would pass judicial review versus having to guess time and time again.

Limits on the Number and Frequency of Ballot Measures

Five states (IL, MS, NE, OK and WY) place restrictions on the number and frequency of ballot measures. In Nebraska, an initiative petition may not be filed that is substantially the same as one that failed on the ballot within the preceding three years. Wyoming has a similar provision, except the time period is five years.

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

Petition Circulator Requirements

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

Circulation Period

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

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

Signature Requirements

Central to the initiative process is getting the required number of valid signatures. Although the requirements and formulas may differ, all states set the signature threshold at some percentage of the voting public, rather than an absolute number of signatures. Some states require that the number of signatures match a predetermined percentage of the registered voters for the state. Others require a percentage of a previous vote for a designated office to qualify. Signature thresholds vary from a high of 15

percent of qualified voters based on votes cast in the last general election in Wyoming to a low of two percent of the state's resident population in North Dakota.

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

Geographic Distribution Requirements

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

Verification of Petition Signatures

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

Publication of Initiatives

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

The voter pamphlet usually includes the official ballot title, an "impartial" analysis by public official and arguments and rebuttals for and against each measure. States that do not include arguments in the ballot pamphlet or newspaper notice are: Maine, Michigan, Nevada, North Dakota, and Wyoming. Five states (CA, ME, NV, OR, UT) specifically mandate that a fiscal impact statement be printed in the pamphlet. All states, except Ohio, print the entire text of all propositions in their voter pamphlet.

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

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

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

Voter Approval

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

Conflicting Measures

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

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

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

Amending Initiative Statutes and Veto Authority

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

LIMITS ON THE NUMBER AND FREQUENCY OF BALLOT MEASURES

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

INITIATIVE SUBJECT RESTRICTIONS

STATE	RESTRICTIONS
Alaska	Single subject only. No revenue measures, appropriations, acts affecting the judiciary, or any local or special legislation. Also, no laws affecting peace, health or safety.
Arizona	Single subject only; legislative matters only.
Arkansas	Limited to legislative measures.
California	Single subject only.
Colorado	Single subject only.
Florida	Single subject only.
Idaho	No restrictions.
Illinois	Legislative matters only. Must also only deal with structural and procedural subjects.
Maine	Any expenditure in excess of appropriations is void 45 days after legislature convenes.
Massachusetts	No measures involving religion, the judiciary, local or special legislation, or specific appropriations.
Michigan	Applicable to statutes that Legislature may enact.
Mississippi	No modifications of bill of rights and no modifications of public employees' retirement system or labor-related items. Initiatives rejected by the voters cannot be placed on the ballot for two years after the election.
Missouri	Single subject only; no appropriations without new revenue, and nothing that is prohibited by the constitution.
Montana	Single subject only; no appropriations, and no special or local legislation.
Nebraska	Single subject only. Limited to matters that can be enacted by the legislature. Same subject can't appear on the ballot more than once in three years.
Nevada	No appropriations or expenditures of money, unless the measure includes a sufficient tax not prohibited by Nevada's constitution.
North Dakota	No emergency measures, or appropriations for support and maintenance of state departments and institutions.
Ohio	Single subject only. No measures involving property taxes. Legislative matters only.
Oklahoma	Single subject only. The same subject cannot appear on the ballot more than once every three years. Legislative matters only.
Oregon	Single subject only. Legislative matters only.
South Dakota	Except laws as necessary for the immediate preservation of public peace, health or safety support of state government and existing public institutions.
Utah	Legislative matters only.
Washington	Single subject only. Limited to legislative matters.
Wyoming	Single Subject. No earmarking, making or repealing appropriations, creating courts, defining jurisdiction of courts or court rules, and no local or special legislation. No measure that is similar to a measure that has been defeated at the ballot within 5 years.

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

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

STATE	ASSISTANCE
Utah	Attorney General reviews for constitutionality and will reject the measure if it is patently unconstitutional, nonsensical; or if the proposed law could not become a law if passed.
Washington	Mandatory review by Code Reviser. The sponsor may accept or reject any recommendations.
Wyoming	Secretary of State reviews for form only.

CIRCULATION TITLE AND SUMMARY

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

State	Title and Summary	Expedited Review
North Dakota	No caption; summary drafted by Secretary of State, subject to approval by Attorney General.	No
Ohio	Proponents write caption and summary, subject to approval by Attorney General.	No
Oklahoma	No caption, proponent writes summary.	No.
Oregon	Attorney General writes caption and summary after receiving public comments.	Supreme Court
South Dakota	No caption or summary.	No
Utah	No caption or summary.	No
Washington	Attorney General writes caption and summary.	Superior Court
Wyoming	No caption; Secretary of State writes summary.	District Court

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

State	Title and Summary Procedures	Expedited Review
Oregon	Attorney General drafts preliminary caption and summary, receives public comments and writes final version.	Yes
South Dakota	Drafted by State Board of Elections.	No
Utah	Attorney General writes caption and summary.	Yes
Washington	Attorney General writes caption and summary.	Yes
Wyoming	No caption; Secretary of State, with assistance of Attorney General, writes summary.	Yes

LEGISLATIVE AND EXECUTIVE POWER TO CHANGE OR REPEAL INITIATIVE LAWS

State	Legislative Power	Executive Power
Alaska	Can repeal only after two years; can amend anytime. (ALC. XI, §6)	Cannot veto.
Arizona	Cannot repeal; but, can amend an initiative law if the amending legislation furthers the purposes of such measure and at least three-fourths of both houses, by a roll call vote, vote to amend the measure. (Const. Art. 4, pt. 1, §1 (6) Also, see *Adams v. Bolin*, 74 Ariz. 269, 247 P.2d 617 (1952.))	Cannot veto.
Arkansas	Can repeal or amend by a 2/3 vote of each house. (C.A. No. 7)	Cannot veto.
California	Can not repeal or amend unless permitted by the initiative (Const. art. 2, §10(c))	Cannot veto.
Colorado	Can repeal and amend. (*Zimmerman v. Herder*, 122 Colo. 456, 233 P.2d 197 (1950))	Cannot veto.
Florida	Florida's initiative process only allows constitutional amendments.	Cannot veto.
Idaho	Can repeal (by court ruling, see *Luker v. Curis*, 64 Idaho 703, 136 P. 2d 978 (1943)) and amend (by common practice.)	Cannot veto.
Maine	Can both repeal and amend. (By common practice.)	Cannot veto.
Massachusetts	Can repeal and amend. (Mass. Const. amend. Art. 48)	Cannot veto.
Michigan	Can repeal and amend by a ¾ vote of each house or as otherwise provided by the initiative (Mich. Const. art. 2, §9)	Cannot veto.
Mississippi	Mississippi's initiative process only allows constitutional amendments.	Cannot veto.
Missouri	Can both repeal and amend. (*Halliburton v. Roach*, 230 Mo. 408, 130 S.W. 689 (1910))	Cannot veto.
Montana	Can both repeal and amend. (By common practice.)	Cannot veto.
Nebraska	Can both repeal and amend. (By common practice.)	Cannot veto.
Nevada	Can only repeal or amend after three years of enactment. (Nevada Const. art. 19, §2)	Cannot veto.
North Dakota	Can repeal or amend by a 2/3 vote of each house for seven year after passage, majority vote thereafter. (N.Dak. Const. art. III, §8)	Cannot veto.
Ohio	Can both repeal and amend. (*Singer v. Canledge*, 129 Ohio St. 279, 195 N.E. 237 (1935))	Cannot veto.
Oklahoma	Can both repeal and amend. (*Expane Haley*, 202 Okla. 101, 210 P.2d 653 (1949))	Cannot veto.
Oregon	Can both repeal and amend. (*Pierce v. Shisher*, 119 Or. 141, 249 P. 358 (1926))	Cannot veto.

State	Legislative Power	Executive Power
South Dakota	Can both repeal and amend. (*Richards v. Whisman*, 36 S.D. 260, 154 N.W. 707 (1915))	Cannot veto.
Utah	Can amend only at subsequent sessions. (Utah code Ann. §20-11-6).	Cannot veto.
Washington	Can repeal or amend by a 2/3 vote of each house during the first two years of enactment, majority vote thereafter. (Wash. Const. art. 11, §41)	Cannot veto.
Wyoming	Cannot repeal for at least two years after enactment, but may amend at any time. (Wy. Const. art. 3, §52(f))	Cannot veto.

Section Three
A State-by-State Account of The Indirect Initiative Process

By Fred Silva [2]

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

Alaska[3]

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

Maine[4]

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

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[2] Fred Silva is a Senior Fellow at the Public Policy Institute of California

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

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

Massachusetts[5]

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

Michigan[6]

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

Mississippi[7]

Mississippi is the only state in which the indirect initiative process is used for constitutional amendments only. To qualify an amendment for consideration, the number of collected signatures must equal 12% of all votes cast for governor in the last election. These initiatives always appear on the ballot, whether the legislature adopts, rejects, or proposes alternatives to them. If it is amended, both the amended version and the

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

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

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

original one are submitted to the ballot. The Legislature is empowered to both repeal and amend these initiatives following enactment. This procedure was adopted in Mississippi in 1995, but has been used only very rarely.

Nevada[8]

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

Ohio[9]

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

Utah[10]

Utah (along with Washington) is one of only two states that allow the initiative sponsor to choose whether they wish to use the direct process or indirect initiative process. In Utah, there is an incentive to use the indirect initiative, since indirect initiatives can go before the legislature with signatures equal to five percent of the last vote, while the direct initiative requires twice that number. If the legislature rejects the indirect initiative, its advantages are lost, however, because sponsors must come up with signatures equal to another 5% of the vote. Only statues can be proposed

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

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

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

and signatures that total at least 5% of all votes cast for governor in the last election are required. The proposed law can only be enacted or rejected without change or amendment by the Legislature. Following enactment, the Legislature can both amend and repeal initiatives.

Washington[11]

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

Wyoming[12]

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

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

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

Section Four
Major Cases Regarding the Funding of Ballot Measure Campaigns

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

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

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

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

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

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

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

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

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

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

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

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

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

The district court accepted the contentions of the I-125 opponents, ruling that at least as applied, the measure infringed the First Amendment rights of speech and association of those subject to its prohibitions; it was not narrowly tailored to address only the spending of large corporations; requiring corporations to fund ballot-issue campaign speech through segregated funds impermissibly deprived them of their ability to communicate political ideas directly to the electorate; the measure prevented the electorate from being exposed to diverse political viewpoints on matters

of public policy; and the proponents' evidence did not establish domination of the initiative process through corporate expenditures. Accordingly, the court concluded that the corporations were entitled to defend their economic interests by using their treasuries to fund their participation in ballot initiative campaigns.

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

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

[2] The risk of corruption perceived in cases involving candidate elections is not present in a popular vote on a public issue. To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it. The Constitution protects expression that is eloquent no less than that which is unconvincing.

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

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

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

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

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

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

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

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

The question before the Court in Buckley was: Whether the State of Colorado may constitutionally regulate the process of circulating initiative petitions by requiring that: (1) petition circulators who verify the signatures of petition signers must be registered electors; (2) petition circulators must wear identification badges; and (3) proponents of an initiative must file reports disclosing the amounts paid to circulators and the identity of petition circulators.

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

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

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

The U.S. Supreme Court ruled on January 12, 1999 striking down Colorado's regulation and restrictions on their initiative process as "undue hindrances to political conversations and the exchange of ideas," according to Justice Ruth Bader Ginsburg who wrote for the court.

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

Planning and Conservation League, Inc., et al., Plaintiffs and respondents, vs. Daniel E. Lungren, as Attorney General, etc., Defendant and Appellant [No. C016761. COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT 38 Cal. App. 4th 497, 95 Cal. Daily Op. Service 7477, 45 Cal. Rptr. 2d 183, 95 Daily Journal DAR 12761, 1995 Cal. App. LEXIS 918 (September 22, 1995, Decided)]

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

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

A handful of states sought to protect the integrity of the initiative process by prohibiting the payment of petition circulators. Colorado, Idaho and Nebraska each made it illegal to accept financial reward for signatures

raised. The United States Supreme Court overturned these laws in the 1988 decision, Meyer v. Grant, 486 U.S. 414 (1988). Such a law, the Court ruled unanimously, restricts freedom of expression guaranteed by the First Amendment: it restricts access to the most effective fundamental and perhaps economical avenue of political discourse, direct one-on-one communication.

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

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

The federal appellate court rules that Michigan's provisions limiting corporate contributions to ballot measure campaigns violates the right of association and free speech guarantees of the First Amendment. Another portion of the Michigan statute, prohibiting corporations from making independent expenditures on behalf of political candidates from general treasury funds, was upheld by the U.S. Supreme Court in Austin v. Michigan State Chamber of Commerce, U.S., II0 S. Ct. 1391 (1990)

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

In Citizens Against Rent Control v. Berkeley, the U.S. Supreme Court held that a California city's ordinance to impose a limit on contributions to committees formed to support or oppose ballot measures violated the First Amendment. The Court determined that the Berkeley ordinance imposed "...a significant restraint on the freedom of expression of groups and those individuals who wish to express their views though commit tees," and that "The tradition of volunteer committees for collective action has manifested itself in myriad community and public activities; in the political process it can focus on a candidate or on a ballot measure." In a forceful passage the Court said, "Whatever may be the state interest or degree of that interest in

regulating and limiting contributions to or expenditures of a candidate or a candidate's committee there is no significant state or public interest in curtailing debate and discussion of a ballot measure. Placing limits on contributions that in turn limit expenditures plainly impairs freedom of expression. The integrity of the political system will be adequately protected if contributions are identified in a public filing revealing the amounts contributed..." Again, the Court based its decision on the right of individuals to bear and obtain information. In doing so, it equated free political spending with free speech.

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

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

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

In the view of some, the Court was naive in its understanding of ballot measure campaign finance matters. As of 1985, Michigan was the only state still attempting to implement a statute limiting corporate contributions to ballot measure campaigns. The limitation was $40,000 in volunteer services and/or financial support "to each ballot question committee for the

qualification, passage, or defeat of a particular ballot question?' A corporation could make an independent expenditure for the qualification, passage, or defeat of a ballot question, but, if it did so, the corporation would be considered "a ballot question committee" for the purposes of the act. "Corporations formed for political purposes" were not subject to the provision. The limit on corporate financial participation in ballot questions was a provision of a broader statute regulating campaign finance in Michigan.

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

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

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

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

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

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

Section Five
Important Court Cases
Relating to the Initiative and Referendum Process
(Chronological Listing)

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

The Initiative & Referendum Institute and a coalition of citizen groups and individuals from across the political spectrum filed a legal complaint on June 1, 2000 in the U.S. District Court for the District of Columbia against the U.S. Postal Service (USPS). The suit seeks to overturn the USPS regulation prohibiting citizens from collecting petition signatures on initiative petitions on postal property. The new postal regulation severely limits the ability of citizens around the country to place issues before their fellow voters. The case number is 1:00CV01246.

The Institute also filed a temporary restraining order request due to the urgency in needing to have this prohibition rescinded during the last two months of the 2000 petitioning season. Surprisingly, the U.S. Postal Service voluntarily agreed to not enforce the regulation prior to July 31, 2000 effectively giving initiative proponents the opportunity to utilize postal property during this critical stage in the petition process. As of publication, a final ruling had not been reached.

Initiative & Referendum Institute v. State of Utah
United States District Court of Utah (2-00-CV-837)

This case, filed in the United States District Court for the District of Utah on October 23, 2000, seeks the court to review, declare unconstitutional and enjoin enforcement of Proposition 5, the 1998 legislatively sponsored amendment to the Utah Constitution, Article VI, Section 1. The amendment to the Utah Constitution requires any citizen ballot initiative involving wildlife to pass with a two-thirds supermajority vote of the Utah electorate.

Initiative & Referendum Institute v. State of Idaho
United States District Court of Idaho (Case No. 00-668-SMHW)

This case, filed in the United States District Court for the District of Idaho on November 12, 2000, seeks the court to review, declare unconstitutional and enjoin enforcement of the state's requirement that signatures for initiative petitions must be obtained from every one of Idaho's Counties as well as other provisions of Idaho's initiative regulations. The plaintiffs argue that these requirements are unnecessary and represent a burden on the citizen's First Amendment right of Freedom of Speech.

On Our Terms '97 Pac, Plaintiffs v. Secretary of State of State of Maine United States District Court District of Maine Civil No. 98-104-B-DMC (2000)

In early 1999, the Initiative & Referendum Institute brought a lawsuit in the U.S. District Court of Maine challenging Maine's prohibition on the payment of signature-gatherers on a per-signature basis (instead of by salary). Although the Court ruled that the Institute did not have standing to bring the case (because the Institute was not engaged in any initiative campaigns in that state), the Court did allow two other plaintiffs to remain.

Even though the Initiative & Referendum Institute did not have standing in the case, the Institute was the organization that controlled the legal strategy, coordinated the lawsuit and funded the legal challenge. On December 10, 1999 the U.S. District Court ruled (in On Our Terms '97 PAC, et al., v. Secretary of State of State of Maine) that the prohibition was unconstitutional. The remaining plaintiffs, U.S. Term Limits (a group trying to get an initiative on Maine's ballot) and On Our Terms (a group contracted to collect the signatures and run the ballot campaign) argued that the regulation was so restrictive (in that it made it very difficult to collect signatures) that it caused them to stop collecting signatures and cancel their campaign, and was thus an unconstitutional burden on core political speech. Furthermore, they argued that due to the burden of the regulation they would never do an initiative in Maine until the law was changed. The State of Maine argued that the regulation was necessary to prevent fraud because paying petitioners by the number of signatures they gather encourages them to forge signatures. They also argued that while U.S. Term Limits and On Our Terms stopped their campaigns, other groups went on to qualify issues for the ballot and therefore the regulation was not burdensome.

The U.S. District Court ruled, citing Meyer v. Grant, that the circulation of an initiative or referendum petition "involves the type of interactive communication concerning change that is appropriately described as core political speech" and citing Buckley v. ACLF, that a state may not, consistent with the First Amendment, severely burden such speech unless the regulation at issue is "narrowly tailored to serve a compelling state interest." The Court ruled that although the regulation didn't have the effect of halting all initiative and referendum activity in Maine (and that the proponents probably could have put their initiative on the ballot if they had worked harder and spent more), that the Statute nevertheless severely burdened the plaintiffs' attempt to mount their drive.

Furthermore, because the State of Maine could not provide any proof of rampant fraud in the Maine initiative process through out its history or provide proof that petitioners paid by the signature, instead of salary, were more likely to commit fraud, the State fell short of demonstrating that the

Statute was narrowly tailored to meet a compelling state interest. The court added that Meyer v. Grant "makes clear that, in the context of strict scrutiny, a state's assumptions cannot be accepted at face value."

Boyette v. Galvin
Federal District Court for the District of Massachusetts (No. 98-CV-10377-GAO 2000)

On March 3, 1998, The Becket Fund filed a lawsuit on behalf of a group of Massachusetts's citizens challenging provisions of the Massachusetts Constitution which forbid citizens from petitioning the legislature for private school funding. Several provisions in the Massachusetts constitution stood in the way: the Anti-Aid Amendment, which barred any portion of the common school fund from going to "sectarian" schools, adopted at the height of anti-immigrant and anti-Catholic fervor during the 1850s; and a 1917 amendment that expanded the earlier amendment to include higher education and non-profit groups, and also created initiative and referendum procedures for the state while explicitly forbidding the use of them to amend the Anti-Aid Amendment. A separate background sheet prepared by the Beckett Fund provides more detail and is available by going to http://www.becketfund.org.

In September 1998, a federal judge signed an order permitting a petition to be circulated for signatures while the court challenge was pending. Nearly 59,000 signatures were gathered, but several thousand were disqualified, leaving the effort just short of the 57,100 needed. Another petition drive was launched in 1999, and this time more than 78,000 were certified, easily surpassing the minimum requirement. But in order for the petition to come before the legislature, and henceforth the voters, the Attorney General must certify that it is proper for the legislators to take it up. In a letter of September 1, 1999, he declared that one of the very constitutional provisions being challenged prohibits him from doing so. And thus, on April 6, 2000, The Becket Fund asked the federal district court in Boston to order the Attorney General to certify the petition so that it can be taken up by legislators before the May 10, 2000 deadline. The judge decided against the preliminary injunction request.

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

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

Waremart Inc. v. Progressive Campaigns Inc.
Washington State Supreme Court 67029-3 (2000)

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

Senate of the State of California et al., Petitioners v. Bill Jones, Respondents
California State Supreme Court S083194 (1999)

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

Stenberg v. Moore
Nebraska State Supreme Court No. S-98-983 (1999)

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

Thomas J. Walsh v. Secretary of the Massachusetts Commonwealth
Massachusetts State Supreme Court (1999)

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

San Francisco Forty-Niners v. Nishioka
San Francisco County Superior Court Ct. No. 995661-1999

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

Joytime Distributors v. The State of South Carolina
South Carolina State Supreme Court (1999)

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

Buckley v. American Constitutional Law Foundation
United States Supreme Court (1999)

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

The question before the court in Buckley was whether the State of Colorado may constitutionally regulate the process of circulating initiative petitions by requiring that: (1) petition circulators who verify the signatures of petition signers must be registered electors; (2) petition circulators must wear identification badges; and (3) proponents of an initiative must file reports disclosing the amounts paid to circulators and the identity of petition circulators.

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

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

The respondents were a conservative legal organization and several individuals who have been involved in initiative campaigns (including Paul Grant, of Meyer v. Grant). Respondents contended that the fraud claims were a "facade," that the restrictions violated Meyer v. Grant and that the various restrictions violated petition circulators' and signers' free speech rights. Respondents were supported by a variety of organizations from across the philosophical spectrum, including the ACLU, the Initiative & Referendum Institute, and National Voter Outreach, a professional petition

circulation firm. One of the amici's points was that Colorado law explicitly placed signature collection outside the electoral process (Montero v. Meyer, 861 F.2d 603 (10th Cir. 1988), cert. denied, 492 U.S. 921 (1989); accord, Delgado v. Smith, 861 F.2d 1489 (11th Cir. 1988), cert. denied, 492 U.S. 981 (1989)), making the proper standard for review the strict scrutiny applicable to private speech.

The U.S. Supreme Court ruled on January 12, 1999 striking down Colorado's regulation and restrictions on their initiative process as "undue hindrances to political conversations and the exchange of ideas," according to Justice Ruth Bader Ginsburg who wrote for the court.

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

Canvasser Services, Inc. v. Employment Department
Oregon State Supreme Court (1999)

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

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

This case was filed in 1998 and seeks to require Costco stores to adhere to existing California law and establish standard and reasonable time, place and manner restrictions for petitioners. The case is pending and waiting a decision.

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

This case was filed in 1998 and seeks to require Ralph's stores to adhere to existing California law and establish standard and reasonable time, place and manner restrictions for petitioners. The case is pending and waiting a decision.

Campbell, Hamilton, Initiative & Referendum Institute et al. v. Buckley
Federal District Court for the State of Colorado 98B 1022 (1998)

This case was filed in 1998 and challenges Colorado's constitutional, statutory, and administrative procedures for review of initiative measures before they are placed on the ballot. The current regulations violate the First Amendment rights of petition proponents and voters. The lower court ruled against the complaint and has been appealed to the U.S. Supreme Court.

Initiative & Referendum Institute v. State of North Dakota
Federal District Court for the State of North Dakota A1-98-70 (1998)

This case seeks to overturn North Dakota's prohibition on paying circulators on a per-signature-basis and the requirement that circulators be "electors." The case is pending and waiting a decision.

Bernbeck v. Moore
8th U.S. Court of Appeals (1997)

On October 9, 1997, in Bernbeck v. Moore, the 8th U.S. Court of Appeals struck down a Nebraska law that required petitioners to be registered voters in Nebraska for at least 30 days before circulating an initiative petition. The court ruled the voter registration requirement violated the First Amendment. The court based its decision on the U.S. Supreme Court decision, Meyer v. Grant, which ruled that a ban on paid petitioners violated freedom of expression guaranteed by First Amendment.

The court further stated that nothing in Nebraska law makes it illegal for anyone to hire out-of-state campaign consultants, out-of-state printers, out-of-state canvassers, or out-of-state lobbyists. The state may still require petition circulators to provide, under penalty of perjury, their temporary and permanent addresses, so if they may be located later if necessary. Therefore, Nebraska has no compelling need to require petitioners to be registered voters.

Planning and Conservation League v. Lungren (1995)

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

Chemical Specialties Manufacturers v. Deukinejian (1991)

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

Missourians to Protect Initiative Process v. Blunt (1990)

The Missouri Supreme Court rules an initiative off the ballot because it is in violation of the single subject rule.

Finn v. McCuen (1990)

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

Taxpayers to Limit Campaign Spending v. FPPC (1990)

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

Meyer v. Grant
United States Supreme Court (1988)

Colorado had passed a law making it illegal to accept financial reward for signatures collected. The United States Supreme Court overturned this law. Such a law, the Court ruled unanimously, restricts freedom of expression guaranteed by the First Amendment and it restricts access to the most effective fundamental and perhaps economical avenue of political discourse, direct one-on-one communication.

HCHH Associates v. Citizens for Representative Government (1987)

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

Michigan Chamber of Commerce v. Austin (1987)

The federal appellate court rules that Michigan's provisions limiting corporate contributions to ballot measure campaigns violates the right of association and free speech guarantees of the First Amendment.

Bilofsky v. Deukmejian (1981)

California statute upheld as constitutional that prevents the use of names gathered on initiative petitions.

Citizens Against Rent Control v. Berkeley (1981)

In Citizens Against Rent Control v. Berkeley, the U.S. Supreme Court held that a California city's ordinance to impose a limit on contributions to committees formed to support or oppose ballot measures violated the First Amendment. The Court determined that the Berkeley ordinance imposed ". . . a significant restraint on the freedom of expression of groups and those individuals who wish to express their views though commit tees," and that "The tradition of volunteer committees for collective action has manifested itself in myriad community and public activities; in the political process it can focus on a candidate or on a ballot measure." In a forceful passage the Court said, "Whatever may be the state interest or degree of that interest in regulating and limiting contributions to or expenditures of a candidate or a candidate's committee there is no significant state or public interest in curtailing debate and discussion of a ballot measure. Placing limits on contributions that in turn limit expenditures plainly impairs freedom of expression. The integrity of the political system will be adequately protected if contributions are identified in a public filing revealing the amounts contributed."

Pruneyard Shopping Center v. Robins
United States Supreme Court (1980)

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

First National Bank of Boston v. Bellotti
United States Supreme Court (1977)

In First National Bank of Boston v. Bellotti, the U.S. Supreme Court invalidated a Massachusetts statute prohibiting business corporations from making contributions or expenditures ". . . for the purpose of . . . influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation." In reviewing the Massachusetts law, the Court said, "If the speakers here were not corporations, no one would suggest that the state could silence their proposed speech. It is the type of speech indispensable to decision-making in a democracy, and this is no less true because the speech comes from a corporation rather than an individual. The inherent worth of the speech in terms of its capacity for informing the public does not depend on the identity of its source?" The Court rejected Massachusetts' claim that the statute preserved the integrity of the electoral process and public confidence in democratic government with this often quoted passage: "The risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular Vote on a public issue. To be sure, corporate

advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it . . . Moreover, the people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider in making their judgment, the source and credibility of the advocate."

Hardie v. Eu
California State Supreme Court (1977)

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

Citizens for Jobs and Energy v. Fair Political Practices Commission
California State Supreme Court (1976)

The California Supreme Court declares that the Political Reform Act may not limit expenditures by ballot measure committees.

Stanson v. Mott
California State Supreme Court (1976)

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

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

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

State ex. rel. Nelson v. Jordan
Arizona State Supreme Court (1969)

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

Pacific States Tel. & Tel. Co. v. Oregon
United States Supreme Court 223 U.S. 118 (1912)

This case addressed whether Oregon's I&R system violated the Guarantee Clause of the U.S. Constitution. The court sidestepped the issue by holding that whether a state had a republican form of government is a political question, and therefore non-justiciable. The court was motivated in part by

reluctance to conclude that adoption of the initiative and referendum destroyed all government republican in form in Oregon. The Court stated "[t]his being so, the contention, if held to be sound, would necessarily affect the validity, not only of the particular statute which is before us, but of every other statute passed in Oregon since the adoption of the initiative and referendum." Any such determination should, the court concluded, be made by Congress. This seemed to settle the issue at the federal level.

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

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

In re Pfahler
California State Supreme Court 150 Cal. 71, 88 P. 270 (1906)

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

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

In this case, the Oregon Supreme Court sustained initiative and referendum against a Guarantee Clause attack. The court stated, "The purpose of this provision of the Constitution is to protect the people of the several states against aristocratic and monarchical invasions, and against insurrections and domestic violence, and to prevent them from abolishing a republican form of government. Cooley, Const. Lim. (7th Ed.) 45; 2 Story, Const. (5th Ed.) § 1815. But it does not forbid them from amending or changing their Constitution in any way they may see fit, so long as none of these results is accomplished. No particular style of government is designated in the Constitution as republican, nor is its exact form in any way prescribed."

The court acknowledged that James Madison had described republican government as representative, but stated, "Now, the initiative and referendum amendment does not abolish or destroy the republican form of government, or substitute another in its place. The representative character of the government still remains. The people have simply reserved to themselves a larger share of legislative power, but they have not overthrown the republican form of the government, or substituted another in its place. The government is still divided into the legislative, executive, and judicial departments, the duties of which are discharged by representatives selected by the people. Under this amendment, it is true, the people may exercise a legislative power, and may, in effect, veto or defeat bills passed and approved by the Legislature and the Governor; but the legislative and executive departments are not destroyed, nor are their powers or authority materially curtailed."

Section Six
Major Initiative and Referendum Legislation Since 1998

Because the people have turned to the initiative process to get real reform, the initiative process has fallen prey to its own success. Lawmakers, who feel the initiative process has taken away their power and who have been most affected by this citizen's tool, have struck back by imposing new regulations on the process. Even though it can be stated that the initiative process is in need of review and possibly reform – state legislators seem to be acting in a vacuum and have not taken the time to truly understand the effects of their regulations on the initiative process. Following is a brief overview of some of the major legislation that has been considered by state legislatures that negatively impacts the initiative and referendum process.

1998 Legislation

- Mississippi: Passed legislation requiring that only a person who is a resident of the state may circulate an initiative petition or obtain signatures on an initiative petition.

- Missouri: Changed the deadline for submitting initiative petitions from four months prior to the election to six months prior — effectively decreasing the circulation period by two months.

- Utah: Amended constitution to require a two-thirds vote of the people in order to adopt by initiative any state law allowing, limiting, or prohibiting the taking of wildlife or the season for or method of taking wildlife.

- Wyoming: Required initiative proponents to not only gather signatures equal to 15% of the number of voters in the last general election, but to gather signatures equal to 15% of the number of voters in the last general election in 2/3 of Wyoming counties — making petitioners have to collect an impossible number of signatures in very sparsely populated areas.

1999 Legislation

- Arkansas: Legislation requires the reporting of state funds in excess of $100 used to support or oppose a ballot measure.

- Arkansas: Gives the Arkansas Supreme Court original jurisdiction to determine the sufficiency of initiative and referendum petitions and proposed constitutional amendments.

- Arizona: Required that all petition circulators must be qualified to be registered to vote (i.e. a resident of the state, etc.)

- Idaho: Required that all petition circulators be a resident of the state.

- Missouri: Required that all petition circulators must be residents of the state. Also required that all signature-gatherers register with the state and provided that all signatures gathered by unregistered circulators be declared invalid.

- Montana: Required that employers of paid signature gatherers file financial disclosure reports.

- Montana: Gave Attorney General the authority to deny certification of an improper ballot measure.

- Nebraska: Passed legislation providing that in order for a constitutional amendment to become law it must be approved twice by the voters in separate elections. Also requires that initiative petitions be filed with the Secretary of State eight months prior to an election, rather than the existing requirement of four months. (Defeated by voters on November 7, 2000.)

- Oregon: Passed legislation increasing the number of signatures needed to get a constitutional amendment on the ballot from eight to twelve percent. (Defeated by voters on May 16th, 2000.)

- Oregon: Passed legislation extending the time period for the Secretary of State to verify signatures on petitions from 15 to 30 days. (Adopted by voters on May 16th, 2000.)

- South Dakota: Provided a procedure for opponents of an initiative to contest the validity of signatures.

- Utah: Required that political issues committees for initiatives and employers of paid signature gatherers file financial disclosure reports.

- Utah: Required that circulators must be a resident of the state.

2000 Legislation

- Alaska: Prohibits initiatives that permit, regulate or prohibit the taking or transportation of wildlife, or prescribes seasons or methods for the taking of wildlife. (Defeated by voters on November 7, 2000.)

- Arizona: Requires a supermajority vote of the people for all future wildlife and hunting initiatives. (Defeated by voters on November 7, 2000.)

- Arizona: Allows a person to withdraw their signature from a petition.

- Minnesota: Senate Committee kills legislation passed by the House in 1999 allowing the citizens to vote on the establishment of initiative and referendum at the state level.

- South Dakota: Changes South Dakota's circulation period for collecting signatures by not allowing collection time to roll over to future ballots. For example, South Dakota's current circulation period is one year. It use to be that if you started collecting signatures in January and the deadline to make the upcoming ballot was May and you didn't have enough signatures by then, you could keep petitioning until your one year time limit was up — and the measure would go on the next available ballot. Now you still have one year, but no matter when you start you only have until the deadline for the closest election ballot to gather signatures.

- Wyoming: Requires petition circulators be registered voters and citizens of the state.

Appendix A: Table: 1.1

States with Direct (DA)[13] and In-direct (IDA)[14] Initiative Amendments; Direct (DS)[15] and In-direct (IDS)[16] Initiative Statutes and Popular (PR)[17] Referendum[18]

States where some form of Initiative or Popular Referendum is available	Date process was adopted [19]	Type of process available		Type of *Initiative* process available		Type of Initiative process used to propose Constitutional Amendments		Type of Initiative process used to propose Statutes (Laws)	
		Initiative	Popular Referendum	Constitutional Amendment	Statute	Direct (DA)	In-direct (IDA)	Direct (DS)	In-direct (IDS)
Alaska	1956	X	X	O	X	O	O	O	X
Arizona	1911	X	X	X	X	X	O	X	O
Arkansas	1910	X	X	X	X	X	O	X	O
California[20]	1911/66	X	X	X	X	X	O	X	O
Colorado	1910	X	X	X	X	X	O	X	O
Florida	1972	X	O	X	O	X	O	O	O
Idaho	1912	X	X	O	X	O	O	X	O
Illinois [21]	1970	X	O	X	O	X	O	O	O
Kentucky	1910	O	X	O	O	O	O	O	O
Maine	1908	X	X	O	X	O	O	O	X
Maryland	1915	O	X	O	O	O	O	O	O
Massachusetts	1918	X	X	X	X	O	X	O	X
Michigan	1908	X	X	X	X	X	O	O	X
Mississippi [22]	1914/92	X	O	X	O	O	X	O	O
Missouri	1908	X	X	X	X	X	O	X	O
Montana[23]	1906/72	X	X	X	X	X	O	X	O
Nebraska	1912	X	X	X	X	X	O	X	O
Nevada	1905	X	X	X	X	X	O	O	X
New Mexico	1911	O	X	O	O	O	O	O	O
North Dakota[24]	1914	X	X	X	X	X	O	X	O
Ohio	1912	X	X	X	X	X	O	O	X
Oklahoma	1907	X	X	X	X	X	O	X	O
Oregon	1902	X	X	X	X	X	O	X	O
South Dakota[25]	1898/72/88	X	X	X	X	X	O	X	O
Utah	1900/17	X	X	O	X	O	O	X	X
Washington	1912	X	X	O	X	O	O	X	X
Wyoming	1968	X	X	O	X	O	O	O	X
Totals	***27 states***	***24 states***	***24 states***	***18 states***	***21 states***	***16 states***	***2 states***	***14 states***	***9 states***

[13] Direct Initiative amendment (DA) is when constitutional amendments proposed by the people are directly placed on the ballot and then submitted to the people for their approval or rejection.

[14] In-direct Initiative amendment (IDA) is when constitutional amendments proposed by the people must first be submitted to the state legislature during a regular session.

[15] Direct Initiative statute (DS) is when statutes (laws) proposed by the people are directly placed on the ballot and then submitted to the people for their approval or rejection.

[16] In-direct Initiative statute (IDS) is when statutes (laws) proposed by the people must first be submitted to the state legislature during a regular session.

[17] Popular Referendum (PR) is the power to refer to the ballot, through a petition, specific legislation that was enacted by the legislature for their approval or rejection.

[18] This list does not include the states with Legislative Referendum (LR). Legislative Referendum is when a state legislature places an amendment or statute on the ballot for voter approval or rejection. Every state but Delaware requires state constitutional amendments to be placed on the ballot for voter approval or rejection.

[19] This date represents the date that the citizens of the state voted to adopt the process.

[20] In 1966 California repealed indirect Initiative for statutes.

[21] In Illinois, the subject matter of a proposed constitutional amendment is severely limited to legislative matters. Consequently, Initiatives seldom appear on the ballot.

[22] Mississippi first adopted initiative and referendum in 1914 but a court ruling nullified the vote. The voters then adopted it again in 1992.

[23] In 1972 Montana adopted a provision that allows for directly initiated constitutional amendments.

[24] In North Dakota prior to 1918, constitutional amendments could be initiated only indirectly.

[25] In 1972 South Dakota adopted a provision that allows for directly initiated constitutional amendments. In 1988 South Dakota repealed In-direct Initiative for Statutes.

Appendix B: Table: 1.2
Signature, Geographic Distribution and Single-Subject Requirements for Direct (DA)[i] and In-direct (IDA)[ii] Initiative Amendments; Direct (DS)[iii] and In-direct (IDS)[iv] Initiative Statutes

State	Type	SS[v]	Net Signature Requirement for Constitutional Amendments	Net Signature Requirement for Statutes	Geographic Distribution	Deadline for Signature Submission	Circulation Period
AK	DS	Yes	Not allowed by state constitution	10% of votes cast in last general election.	At least 1 signature in 2/3 of Election Districts	Prior to the convening of the legislature[vi]	1 year
AZ	DA/DS	Yes	15% of votes cast for Governor	10% of votes cast for Governor	No geographical distribution	Four months prior to election	20 months
AR	DA/DS	No	10% of votes cast for Governor	8% of votes cast for Governor	5% in 15 of 75 counties	Four months prior to election	Unlimited
CA	DA/DS	Yes	8% of votes cast for Governor	5% of votes cast for Governor	No geographical distribution	To be determined by state each year[vii]	150 days
CO	DA/DS	Yes	5% of votes cast for SOS	5% of votes cast for SOS	No geographical distribution	Three months prior to election	6 months
FL	DA	Yes	8% of ballots cast in the last Presidential election	Not allowed by state constitution	8% in 12 of 23 Congressional Districts	90 days prior to election[viii]	4 years
ID	DS	No	Not allowed by state constitution	6% of registered voters	6% in each of the 22 counties	Four months prior to election	18 months
ME	IDS	No	Not allowed by state constitution	10% of votes cast for Governor	No geographical distribution	To be determined by state each year[ix]	1 year
MA	IDA/IDS	No	3% of votes cast for Governor	3½% of votes cast for Governor[x]	No more than 25% from a single county	To be determined each year by state[xi]	64 days
MI	DA/IDS	No	10% of votes cast for Governor	8% of votes cast for Governor	No geographical distribution	Constitutional amendment[xii] Statute[xiii]	180 days
MS	IDA	No	12% of votes cast for Governor	Not allowed by state constitution	20% from each Congressional District	90 days prior to the convening of the legislature	1 year
MO	DA/DS	Yes	8% of votes cast for Governor	5% of votes cast for Governor	5% in 6 of 9 Congressional Districts	Eight months prior to election	18 months
MT	DA/DS	Yes	10% of votes cast for Governor	5% of votes cast for Governor	Statute: 5% in 34 of 50 Legislative Districts Amendment: 10% in 40 of 50 Legislative Districts	Second Friday of the fourth month prior to election	1 year
NE	DA/DS	Yes	10% of registered voters	7% of registered voters	5% in 38 of 93 counties	Four months prior to election	1 year
NV	DA/IDS	No	10% of registered voters	10% of votes cast in last general election.	10% in 13 of 17 counties	Constitutional amendment[xiv] Statute [xv]	CA: 11 months[xvi] Statute: 10 months[xvii]
ND	DA/DS	No	4% of population	2% of population	No geographical distribution	90 days prior to election	1 year
OH	DA/IDS	Yes	10% of votes cast for Governor	6% of votes cast for Governor[xviii]	Statute: 1½% in 44 of 88 counties Amendment: 5% in 44 of 88 counties	Constitutional amendment[xix] Statute[xx]	Unlimited
OK	DA/DS	Yes	15% of votes cast for Governor	8% of votes cast for Governor	No geographical distribution	Eight months prior to election [xxi]	90 days
OR	DA/DS	Yes	8% of votes cast for Governor	6% of votes cast for Governor	No geographical distribution	Four months prior to election	Unlimited
SD	DA/DS	No	10% of votes cast for Governor	5% of votes cast for Governor	No geographical distribution	Constitutional amendment[xxii] Statute[xxiii]	1 year
UT	DS/IDS	No	Not allowed by state constitution	Direct statute: 10% of votes cast for Governor In-direct statute: 10% of votes cast for Governor [xxiv]	10% in 20 of 29 counties	Direct statute[xxv] In-direct statute[xxvi]	Direct: Unlimited In-direct: Unlimited
WA	DS/IDS	No	Not allowed by state constitution	8% of votes cast for Governor	No geographical distribution	Direct: statute[xxvii] In-direct statute[xxviii]	Direct: 6 months In-direct: 10 months
WY	DS	Yes	Not allowed by state constitution	15% of votes cast in the last general election.	15% of total votes cast in the last election from at least 2/3 of the counties	One day prior to the convening of the legislature[xxix]	18 months

[i] Direct Initiative amendment (DA) is when constitutional amendments proposed by the people are directly placed on the ballot and then submitted to the people for their approval or rejection.

[ii] In-direct Initiative amendment (IDA) is when constitutional amendments proposed by the people must first be submitted to the state legislature during a regular session.

[iii] Direct Initiative statute (DS) is when statutes (laws) proposed by the people are directly placed on the ballot and then submitted to the people for their approval or rejection.

[iv] In-direct Initiative statute (IDS) is when statutes (laws) proposed by the people must first be submitted to the state legislature during a regular session.

[v] This column denotes whether or not a state has a requirement that every Initiative or Referendum be limited to one subject.

[vi] In Alaska, signatures must be submitted prior to the convening of the legislative session in the year in which the initiative is to appear on the ballot. The lieutenant governor shall place the initiative on the election ballot of the first statewide general, special, or primary election that is held after (1) the petition and any supplementary petition have been submitted, (2) a legislative session has convened and adjourned, and (3) a period of 120 days has expired since the adjournment of the legislative session.

[vii] In California, each year the Secretary of State will set a complete schedule showing the maximum filing deadline and the certification deadline by the counties to the Secretary of State. There is a recommended submission date for "full check" and "random check". These dates are only recommended. Notwithstanding any other provision of law, no initiative shall be placed on a statewide election ballot which qualifies less than 131 days before the date of the election.

[viii] In Florida, certification must be received by the Secretary of State from the county supervisors stating the number of valid signatures submitted by the initiative proponent no later than 90 days prior to the general election ballot for the initiative to be considered for that ballot. However, there are several additional criteria that must be met prior to the certification of an initiative for the ballot. This includes the requirement that the proposed initiative has been approved for the ballot by the state supreme court. An initiative can only be submitted to the court for review after 10% of the required number of signatures have been collected and certified to the Secretary of State by the county supervisors. The court is under no statutory time frame to render a decision. Therefore, there is no precise date in which the signatures must be submitted in order to insure that you qualify for any specific general election ballot.

[ix] In Maine, signatures must be submitted on or before the 50th day after the convening of the Legislature in the first regular session or on or before the 25th day after the convening of the Legislature in the second regular session.

[x] In Massachusetts, the initial petition must include three percent of the total votes cast for Governor. If the legislature has not passed an initiated statute by the first Wednesday in May, petitioners must file a supplementary petition with petitions equal in number to one-half of one percent of the total votes cast in the previous gubernatorial election to place the issue on the ballot.

[xi] In Massachusetts, the initial petition signatures shall be submitted no later than the first Wednesday in December in the year in which the Initiative was submitted. If the legislature has not passed the initiated statute by the first Wednesday in May, petitioners must file a supplementary petition with petitions equal in number to one-half of one percent of the total votes cast in the previous gubernatorial election no sooner than the first Wednesday in June and no later than the first Wednesday in July in order for the initiative statute to be placed on the ballot.

[xii] In Michigan, signatures for constitutional amendments must be submitted not less than 120 days prior to the general election.

[xiii] In Michigan, signatures for statutes must be submitted ten days prior to the start of the legislative session.

[xiv] In Nevada, signatures for constitutional amendments must be submitted 90 days prior to the election.

[xv] In Nevada, signatures for statutes must be submitted 30 days prior to the convening of the legislature.

[xvi] In Nevada, petition language for constitutional amendments can be filed no sooner than September 1 of the year preceding the election and all signatures are due 90 days prior to the election.

[xvii] In Nevada, petition language for statutes can be filed no sooner than January 1st of an even number year and signatures must be submitted no later than November 1st of that same even numbered year.

[xviii] In Ohio, the initial petition must include three percent of the total votes cast for Governor. A supplementary petition containing an additional three percent is required in the event the proposed statute is defeated, amended or left idle by the legislature.

[xix] In Ohio, signatures for amendments must be submitted 90 days prior to the election.

[xx] In Ohio, signatures for statutes must be submitted 10 days prior to the convening of legislature.

[xxi] In Oklahoma, an initiative must be submitted to the state Supreme Court for review before it can be certified for the ballot by the Secretary of State. Due to the fact that there is no statutory deadline for the court to make this determination, the state recommends that you submit your signatures eight months prior to the election that you desire the measure to be considered for.

[xxii] In South Dakota, signatures for amendments must be submitted at least one year prior to the election.

[xxiii] In South Dakota, signatures for statutes must be submitted by the first Tuesday in May in the general election year.

[xxiv] In Utah, direct statutes require signatures equal in number to 10 percent of the votes cast for all candidates for Governor in the next preceding gubernatorial election for the statute to be placed on the ballot. In-direct statutes must contain signatures from five percent of the votes cast for all candidates for Governor in the next preceding gubernatorial election. If the legislature rejects or does not enact the proposed statute, a supplemental petition contacting additional signatures equal in number to 5 percent of the votes cast for all candidates for Governor in the next preceding gubernatorial election for the statute to be placed on the ballot.

[xxv] In Utah, signatures for direct statutes must be submitted at least four months prior to the election.

[xxvi] In Utah, signatures for in-direct statutes must be submitted at least 10 days before the commencement of the annual general legislative session.

[xxvii] In Washington, signatures for direct statutes must be submitted four months prior to the election.

[xxviii] In Washington, signatures for in-direct statutes must be submitted ten days prior to the convening of the regular session of the legislature.

[xxix] In Wyoming, signatures must be submitted prior to the convening of the legislature. The state constitution states that the legislature shall convene at noon on the second Tuesday in January.

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