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Initiatives and Referendums

Ideally, initiatives and referendum enhance democracy by allowing citizens to become more directly involved with making policy decisions in their states. The experience to date suggests that this is not necessarily the case.

Types of Initiatives and Referendums

Initiatives allow citizens to place a proposed statute on a ballot, by gathering a required number of petition signatures. Referenda are propositions placed on the ballot by legislators, requiring voter approval to become law. States vary with regard to their initiatives and referendum procedures:

- "49 states (all except Delaware) require voter approval of constitutional amendments through constitutional referendums" (Bibby and Holbrook 1999, p. 102)
- "19 states require that certain legislative issues, normally bond and debt authorizations, be approved through *constitutionally mandated referendums*" (Bibby and Holbrook 1999, p. 102)
- 24 states allow the legislature to put measures on the ballot through *legislative referendum*
- 23 states have *petition referendums*, which allow the public via a petition to force a law passed by the legislature on the ballot (Bibby and Holbrook 1999, p. 102)
- 20 states have *direct legislative initiatives*, which allow citizens to put measures on the ballot
- 3 states have *indirect legislative initiatives*, which allow citizens to put a measure before the legislature. If the legislature does not pass the measure, the question is then put to the voters (Bibby and Holbrook 1999, p. 102)

High Levels of Knowledge Required of Voters for Informed Decisions

Studies have found that many voters skip voting on ballot issues because such questions are either too long or too difficult to understand (Rosenthal, 1998). The reading level of the average referendum ballot question in Massachusetts and Rhode Island was estimated to be at the third year of college. This contributes to an average ballot drop-off rate between 14% and 17% in three states surveyed (California, Washington, and Massachusetts).

Information on ballot issues is also imperative to make intelligent decisions. It is argued that legislators have much more information available to them than the average citizen does. The relationship between ballot issues and other policies enacted by the state is also of importance, "legislators decide on proposals in context, while voters face measures that are separated from one another" (Rosenthal, 1998 p.41).

Participation in Initiatives and Referenda

Initiatives and referendums have not been shown to improve the level of voter turnout. In a survey of northern states between the years 1960-1980, it was discovered that states with initiatives recorded no higher voter

turnout than states without initiatives. Recently, a study in California concluded that initiatives failed to make government more responsive to the demands of the populace (Lascher et al. 1996).

Role of Money and Interest Groups in the Initiative and Referendum Process

Money plays a significant role in the initiatives and referendum and may be the most important factor in determining whether a ballot question is passed. For example, according to the Center for Responsive Politics, it is estimated that it costs sponsors approximately 2 million dollars to get the 10 measures on the Oregon ballot in 1988 (Currinder, 1998). According to the Oregon Secretary of State's office, sponsors paid approximately 2.5 million dollars to petition circulators to qualify initiatives for the 1996 general election. In contrast, for those petitions circulated by volunteers, not one made the 1996 ballot (Oregon Secretary of the States Office, 1997)

Once initiatives and referenda are permitted in a state, the states cannot regulate the money spent on ballot proposition campaigns. In *First National Bank of Boston V. Bellotti*, the Supreme Court ruled that state governments could not place any restrictions on campaign spending surrounding initiatives and referendums. This creates an imbalance which allows large businesses and powerful organizations to use large sums of money that enable them to have an unfair advantage of getting or preventing an initiative from being passed. This money can be used towards circulating petitions and advertising campaigns. Since most voters have little knowledge of ballot questions, they are susceptible to influence from advertising campaigns purchased with this money (Gierzynski, forthcoming).

Current State Action

Nebraska:

Nebraska's unicameral legislature cause initiatives to be seen as the "second house" because it gives people the right to act as a quasi-legislature. However, legislators have recently proposed several bills limiting the use of initiatives by Nebraska's citizens. A bill proposed by Senator DiAnna Schimek would require the Secretary of State to determine if an initiative violates the Constitution before the petition drive can begin. Presently, the courts decide the constitutionality of a measure after it has been approved by the voters. The purpose of this bill according to Schimek, is to save supporters and opponents time and money on initiatives that may turn out to be unconstitutional (Tysvner 1999). Amendments are currently pending in the legislature concerning this bill (Nebraska Unicameral 1999).

A second bill would require people to vote twice on amendments to the Constitution. The House Speaker, Doug Kristensen, has declared this issue a Speaker Priority Bill (Nebraska Unicameral 1999).

Oregon:

In Oregon, voters have amended the state constitution 19 times and changed statutes 13 times since 1994. This has created a bipartisan effort in the state legislature to make it harder to put constitutional amendments or law changes on the ballot. "Its extremely easy to get a shot at the dartboard that our constitution has become," said chairman of the House Rules, Elections and Public Affairs Committee, Mark Simmons (Suo, 1999). There is also a ballot referral that would require a three-fifths majority vote to pass constitutional amendments by initiative.

Louisiana:

In Louisiana, Governor Foster is touting a plan that would allow the Legislature to put citizen referendums on the ballot (Advocate).

Supreme Court Limits on States Power to Regulate Initiatives and Referenda Process

As noted earlier, the Supreme Court ruled in *First National Bank of Boston et al V. Bellotti* (435 U.S. 765, 1978) that states could not limit business spending on ballot initiatives and referenda.

Recently, the Supreme Court has further limited the states' ability to regulate the initiative and referendum process. On January 12, 1999, in *Buckly vs. American Constitutional Law Foundation* (97 U.S. 930), the Supreme Court rejected Colorado's effort to restrict the process of getting initiatives on the ballot, stating that the regulations impeded on the 1st Amendment value of uninhibited "communication with voters" (Greenhouse, 1999). The three provisions rejected by the Supreme Court were:

- that people who circulate petitions must be registered Colorado voters
- that circulators must wear badges of identification
- that sponsoring organizations employing paid petition circulators must include in the monthly and final reports, the name, address, and compensation of each worker

This ruling has implications for the many states using initiatives and referenda on ballots. At least half of the 24 states allowing initiatives have a requirement that petition circulators be registered voters (NCSL, 1999).

Sources

Bibby, John F. and Thomas M. Holbrook. 1999. "Parties and Elections," in Virginia Gray, Russell L. Hanson, and Herbert Jacob (editors) *Politics in the American States*, Seventh Edition (Washington D.C. Congressional Quarterly Books)

Currinder, Marian. "Losing the Initiative," *Capital Eye: A Close -up Look at Money in Politics*, September 15, 1998, pp.2-3

First National Bank of Boston v. Bellotti 435 U.S. 765 (1978)

Gierzynski, Anthony. Forthcoming. *Money Rules* (West View Press).

Greenhouse, Linda, 1999, "Court turns back an effort to limit ballot initiatives." *New York Times*, January 12.

Janda, Kenneth, Jeffrey Berry, and Goldman, Jerry. 1997. *The Challenge of Democracy*. (Boston: Houghton Mifflin).

Lascher, Edward L. et al. 1996. "Gun Behind the Door? Ballot Initiatives, State Policies, and Public Opinion." *Journal of Politics* 58: 760-775.

Magleby, David B. 1994. *Direct Legislation: Voting on Ballot Propositions in the United States*. (Baltimore and London: The Johns Hopkins University Press).

Naisbitt. *Megatrends*, p. 176-177.

National Conference of State Legislatures. 1999. "Colorado Initiative Restrictions Struck Down," January 1.

Oregon Secretary of States Office, "Secretary of State Studies Money in Initiative Signature-Gathering: Almost \$2.5 Million Paid in 1996 Election Cycle," News Release, March 31, 1997, <http://www.sos.state.or.us/executive/pressrel/970331.htm>

Rosenthal, Alan. 1998. *The Decline of Representative Democracy*. (Washington D. C.: Congressional Quarterly Press).

Scott, Steve. 1996. "Ballot Bulge." *California Journal*, July.

Suo, Steve. 1999. "Lawmakers Take on the Initiative System". *The Oregonian*. April 7.

Tyvser, Robynn. 1999. "Initiative Changes Proposed State Senators Consider Four Measures that would Add Requirements for Ballot Issues." *Omaha World-Herald*. Feb 19. p.15

<http://www.theadvocate.com/news/story.asp?storyid=5590>

<http://www.theadvocate.com/opinion/story.asp?storyid=965>

<http://www.theadvocate.com/news/story.asp?storyid=5438>

Updated April 29, 1999 by Chad Ryan, Stacey Kupperman and Anthony Turi (from a report originally produced by Ben Sternthal and Anne Casey in 1998)