Approved February 14,1991
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Representative Kathleen Sebelius at
Chairperson

1:30 ~~a.m.~~/p.m. on Wednesday, January 30, 1991 in room 526-S of the Capitol.

All members were present except:
Representative Arthur Douville - Excused
Representative Joan Wagnon - Excused
Representative Dale Sprague - Excused
Committee staff present:
Lynne Holt - Kansas Legislative Research Department
Mary Galligan - Kansas Legislative Research Department
Mary Torrence - Office of the Revisor
Connie Craig - Secretary to the Committee

Conferees appearing before the committee:

Chair Sebelius called the meeting to order.

Chair Sebelius requested a motion to introduce the Governor's proposal to initiate statutes, the proposal to initiate constitutional amendments, and the proposal for a referendum. Representative Sam Roper so moved, Representative Sherman Jones seconded the motion, and the motion carried on a voice vote.

Chair Sebelius had the committee refer to the Background Information on Initiatives and Referenda Study compiled by Kansas Legislative Research Department that was handed out at the January 29, 1991, committee meeting, which will be Attachment #1 of these minutes.

Committee Discussion:

1. Out of the 23 states with Initiative, 8 states have indirect initiative, not including Wyoming.

2. Oklahoma spent approximately $675,000 for a special election under initiative and referendum, which is high compared to some states. One explanation given was that this could be because of the number of propositions on the ballot.

3. The decision of whether to have indirect or direct intiatives was discussed in regards to what role the Legislature should have in the Initiatives and Referenda process. Information from Attachment #1, page 18, was discussed to help clarify the matter.

4. In regards to limiting proposals that go on the ballot, it was suggested that a provision could be in the resolution to provide for limitations. It was also pointed out that any limitations and restrictions put into the initiative resolution could be altered by another initiative.

5. The table for voter approval rates for intiatives and legislative propositions for all states found on page 43, Attachment #1, was discussed.

6. In regards to whether or not specific language is used, Lynne Holt, Kansas Legislative Research Dept., directed the committee's attention to Attachment #1, page 30, which compares different states and their choices on this matter.

7. Lynne Holt stated that of all the states that have initiative and referendum, none have done away with it.

8. There is a high number of litigations regarding intiatives and referenda due to signature questions, and terminology or language used in the proposition. The state defends by involving either the Supreme Court or the Attorney General.

9. In regards to voter participation, page 9 and 10 of Attachment #1 gave the proponent and opponent argument, which was discussed.

10. The U.S. Supreme Court has overturned restrictions on financing professional signature gatherers and campaign finance limitations for initiative and referenda laws. The point was made that campaign finance regulations could be imposed and signature purchases could be prohibited until challenged. See page 45 and 46, Attachment #1.

11. Concerning the argument that initiatives and referenda discriminates against the poor and uneducated, and that voter turnout is directly related to education and income level, the committee referred to page 12, Attachment #1. This also brought up the issue that some legislation could be punitive. Geographic and organization/agency discrimination was also discussed.

12. Reviewing the language of measures prior to their placement on the ballot, page 26 of Attachment #1 was used as a source of information for discussion.

13. On page 19 of Attachment #1, the restrictions on subject matterr would be an issue the legislature would need to decide on. Discussion centered around initiatives and referenda being used to tamper with the judicial system or in regards to bill that would need appropriations.

Chair Sebelius stated that hearings would be scheduled next week for the Governor's proposals and then it would be the Chair's intention to ask a subcommittee of this committee to work on drafting a recommendation to bring back to the full committee.

Chair Sebelius asked if there were any requests for bill introductions; seeing none, the meeting was adjourned at 2:53.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE 1/30/91

(PLEASE PRINT) NAME	ADDRESS	WHO YOU REPRESENT
ROBERT ANDERSON		MID CONT OIL & GAS
DAN STEVENS	TULSA	TEXACO
Warren Parker	Manhattan	Ks. Farm Bureau
Byron Patten	Topeka	Kansans For Fair Taxation
TREVA POTTER	"	PEOPLES NAT. GAS
Michelle Liester	"	John Peterson & Associates
ART BROWN	ICC mm	ICS LPR Dealer GSA
Jim Edwards	Topeka	KCCI
Mike Beam	"	Ks Lvstk Assn.
Thomas McBride	Lawrence	observer
[illegible]	Topeka	Observer
Bill Newman	Topeka	DOA Cam
Joe Wootton	Topeka	Speaker
Cindy Gilpin	Topeka	Budget Division
Jim Ludwig	"	KPL
Rebecca Bassemeyer	"	SOS
G. T. Sopek	"	CRG

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE 1-29-91

(PLEASE PRINT) NAME	ADDRESS	WHO YOU REPRESENT
Jim McBride	Topeka	Ob Server
Allen Pickert	Lawrence	Rep. Carl Holmes
Jack Burger	Topeka	KFFT
Donald W Cook	Topeka Ks	KFFT
Michael Wolf	"	Common Cause
Warren Parker	Manhattan	Kansas Farm Bureau
Kay Coles	Topeka	KNEA
Jackie Clark	KC	Hallmark
Chris Wilson	Topeka	KS Grain & Feed Ass'n
ART Brown	K.C. mo	KS. USA Dealers Assn.
Tom Wagner	KPR	
Bill Newman	DOA	STATE
Molly Peach	Lawrence	Reporter
Joy Lindberg	Lawrence	Whiteman
Dan Conan	Kansas City	KC. STAR
Pat Baker	Topeka	KASB
John Koepke	Topeka	KASB
J. Edwards	Topeka	KCCI
Carl Lee	Topeka	KMCA
Dan Haas	Overland Park	KCPL
Rebecca Rosenberger	Topeka	SOS
Yael Wenk	Topeka	Rep
Jack Wempe	"	"
W. Weins	Marden	KFFT
~~JERI DEGRAFFENREID~~	TOPEKA	KPOA
Thomas E McBride Jr.	Lawrence	Observer

BACKGROUND INFORMATION ON INITIATIVES AND REFERENDA

Kansas Legislative Research Department
Room 545-N -- Statehouse
Topeka, Kansas 66612

(913) 296-3181

January 28, 1991

TABLE OF CONTENTS

INTRODUCTION

This memorandum has five parts. First, it defines the most frequently used terms related to the initiatives and referenda. Second, it provides some background information on the use of these mechanisms in other states. Third, it presents arguments for and against the use of initiatives and referenda. Fourth, it sets forth policy issues to be considered by lawmakers in their deliberations on these mechanisms. The implications of each policy issue also are explained. Finally, this memorandum examines some of the costs incurred by state agencies of five states in implementing these mechanisms.

SECTION I: DEFINITIONS[1]

The predominant feature of government in the United States at all levels -- federal, state, and local -- is representative democracy. By contrast, initiative and referendum processes are examples of direct or participatory democracy.

Initiative. The **initiative** process enables voters to propose, or initiate, a law or a constitutional amendment by filing a petition signed by a specified number of voters. There are three types of initiatives:

1. **A direct initiative** permits electors to propose laws or constitutional amendments by petition and enact them by majority vote in a subsequent election[2]. This procedure bypasses the legislature and is not subject to executive veto.
2. **In an indirect initiative** electors propose by petition that a legislature pass a desired law. If the legislature amends or enacts legislation which is acceptable to sponsors of the initiative, the proposed initiative would not be placed on the ballot. However, if the legislature fails to act within a specified period of time or rejects the proposed measure, the measure would then appear on the election ballot for the voters to decide. Usually this is automatic if no action from the legislature is forthcoming. In some states and localities, sponsors of a proposed law must repeat the petition process to qualify the measure for an election ballot. In another variant of the indirect initiative, the legislature is authorized to suggest changes to the proposal or pass an amended version of the proposed law. If the citizen sponsors of the original initiative object to the changes, however, they may petition to have the original version of the proposal placed on an election ballot.
3. An **advisory initiative** is one in which the outcome is a nonbinding expression of public opinion.

Referendum. A **referendum** relates to the referring of legislation enacted by the legislature for electorate approval or rejection. There are three categories of referenda:

1. A **citizen petitions referendum** may be called a "petition," "protest," or "popular" referendum. For purposes of this memorandum, this type of referendum will be referred to as "petition referendum." This referendum enables electors, once a specified minimum number of petition signatures is gathered, to require a popular vote on whether or not a law already passed by the legislature shall remain in effect or take effect. In essence, voters exercise a form of veto power over the actions of their legislators. In the states and localities where this type

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[1]Most of Section I is derived from an explanation of definitions included in the *State of Wisconsin Legislative Reference Bureau* (hitherto referred to as Wisconsin LRB), pages 1-2.

[2]As will be discussed in Section IV, some states specify conditions for approval that are in addition to a majority vote.

of referendum exists, if a majority of those voting reject a law in question, it is repealed or does not become effective.

2. **The obligatory or compulsory referendum** requires by state constitutions or state statutes that a legislature submit an enacted measure on a specific subject, such as ratification of amendments to the state constitution, approval of the contracting of certain types or amounts of government debt, or tax issues, to a vote of the electorate. Measures, particularly constitutional amendments, which are referred by legislatures, are the most common ballot propositions. The outcomes of such referenda are binding.

3. **Contingent and advisory referenda** are called at the will of the legislature. With respect to a contingent referendum, the legislature decides that a law it has passed will only take effect upon ratification by the voters. An advisory referendum is called to seek the opinion of the electorate. With respect to this type of referendum, the voters indicate their preference for general policy and the legislature can handle the statutory and constitutional steps needed to implement and administer that policy. However, the results of the advisory referendum are not binding on the legislature.

SECTION II: BACKGROUND

What is Permissible in Kansas

The Kansas Legislature has self-executing powers and, therefore, cannot currently delegate its decision-making authority to voters. There are, however, two exceptions.

1. The Legislature is required to hold referenda on issues involving amendments to the *Kansas Constitution*. Examples include referenda held in 1986 on liquor by the drink, the lottery, and parimutuel betting.

2. The Kansas Legislature is authorized pursuant to K.S.A. 25-3601 *et seq.* to delegate its decision-making authority to local units of government on certain local issues (bonds for local purposes, local tax increases etc.).

With those two exceptions, no other type of referendum is authorized. The *Kansas Constitution* provides no authority for voters to initiate either a law or a constitutional amendment, even if the initiated proposition would be subject to legislative modification and action (indirect initiative). Nor does the *Kansas Constitution* provide authority for the voters to initiate referenda to change or repeal statutes enacted by the Kansas Legislature or for the Legislature to refer legislation on statewide issues to the voters for their approval or disapproval.

A Survey of States' Uses of Initiatives and Referenda

The distribution and implementation of initiatives and referenda is highly heterogeneous throughout the country. This memorandum will focus solely on initiatives and referenda for state, and not local, issues. Twenty-six states currently provide some form of initiative or petition referendum. Twenty-three states and the District of Columbia authorize some type of initiative. Of that number, 15 states and the District of Columbia make provisions only for the direct form of initiative. Five states allow for the use of either the direct or indirect form of initiatives. Only three states -- Maine, Massachusetts, and Wyoming -- authorize the exclusive use of indirect initiatives.[3] With respect to the 23 states and District of Columbia that permit initiatives, all but Illinois and Florida provide for initiatives, called "statutory initiatives," which allow voters to propose laws and

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[3]The Wyoming Legislature is required to convene and adjourn after a petition has been submitted on an initiative but prior to an election at which the proposed measure would be voted upon. This would afford the Legislature an opportunity to take action on all issues subject to the initiative/referendum process. Some political scientists consider this type of initiative to be direct because there is no express requirement that the Legislature take action on the issue prior to its appearance on the ballot. Others consider it to be indirect because of the timing and specific reference to legislative session. In this memorandum it is considered indirect. Massachusetts is a less ambiguous example of a state which authorizes indirect initiatives. In that state, for example, a voter-initiated constitutional amendment can only appear on a ballot if the proposed amendment first receives an affirmative vote of one-fourth of the Legislature for two consecutive sessions prior to its submittal to the voters. (Magleby, page 44)

circulate petitions to get proposals on the ballot. Seventeen states (including Illinois and Florida) allow initiatives to amend their constitutions.[4]

All states which authorize initiatives, with the exception of Florida, authorize petition referenda. Twenty-five states and the District of Columbia authorize petition referenda. Eleven states which authorize petition referenda also authorize referenda generated by the Legislature. The states of Wisconsin, Connecticut, and New Jersey authorize legislatively-generated referenda, but not petition referenda. With the exception of Delaware, all states, including Kansas, authorize referenda for amendments to their respective constitutions. (See Attachment I for a map of the 50 states, indicating their use or nonuse of initiatives, referenda, and recall mechanisms. Attachment II lists mechanisms by state.)

Historical Background

Much has been written about the origins of initiatives and referenda. These mechanisms were first adopted in states where turn-of-the-century populist and progressive reformers viewed state and local lawmakers as politically and financially corrupt, controlled by political machines or beholden to special interests like railroads, banks, timber and mining interests, and private utility companies (Jost, page 466). For example, in California, initiatives were championed by reformers in 1911 as a means of breaking the hold of the Southern Pacific Railroad and other special interest groups over the state Legislature.

Attachment III lists all the states in which the initiative and referendum have been adopted. The first state to adopt the initiative was South Dakota in 1898. Through 1918, legislation or constitutional amendments to establish the initiative and referendum process had been approved by voters in 22 states. The states which added proposition mechanisms since World War I include: Alaska (1959), Florida (1968), Wyoming (1968), and Illinois (1970). The District of Columbia also adopted the initiative in 1977. Since 1970, no other states have adopted initiative or referendum mechanisms. In two states (Minnesota in 1980 and Rhode Island in 1986), voters defeated proposed constitutional amendments to authorize the use of initiatives and referenda. In no state with initiative and referendum authority has that authority ever been retracted once it has been granted.

Disposition of Measures in States and Subject Matters

What is the disposition of measures which have been included on ballots throughout the country? Since the inception of direct legislation in 1898 there have been more than 17,000 statewide propositions (Magleby, page 70). Of hundreds of initiative petitions which have been circulated in recent years, only about 20 percent have qualified for inclusion on the ballot (Cronin, page 205).

Propositions to appear most frequently on the ballot are legislatively-generated referenda to amend the constitution, followed in order of prevalence by: statutory initiatives; initiatives to amend the constitution; petition referenda; and legislatively-generated referenda to amend statutes (conversation with John Keast, Institute for Government and Politics, January 21, 1991). Between 1968 and 1978, 2,315 statewide propositions were placed on the ballot. About one-

[4]Illinois allows for the use of referenda for constitutional amendments but only for structural and procedural subjects contained in Article IV of the *Illinois Constitution*.

third of all statutory and constitutional initiatives placed on the ballot from 1898 through 1979 period were approved by voters. Of those states with initiative authority, Nebraska has the lowest approval rate -- 7 percent. In only six states have 50 percent or more initiatives been approved. Oregon voters have decided more statewide initiatives than voters in any other state which authorize initiatives. The other five states with the heaviest usage are California, North Dakota, Colorado, Arizona, and Washington (Magleby, page 70). Nevada has perhaps one of the most restrictive provisions concerning constitutional initiatives; voters have to approve constitutional initiatives twice in successive elections before they can take effect (Schmidt, page 251).

Several thousand legislatively-generated measures have been placed on the ballot, and at least 60 percent of these have won voter approval. Attachment IV illustrates the voter approval rates for referenda generated by Legislatures (first three columns) and voter initiatives (last three columns) (Magleby, page 73). As this table indicates, voters are more likely to approve a statute or constitutional amendment proposed by a Legislature than one proposed through the initiative process (Magleby, page 72).

What types of subject matter most frequently appear on proposition ballots? A study of the topics of statutory initiatives and referenda in 12 states (1976-1980) disclosed that procedural questions (legislative arrangements, executive commissions, financial disclosure, and others), environmental questions and tax questions surfaced most often. These were followed by questions related to parimutuel betting, lottery, and gambling; vice regulation (*e.g.*, drinking, obscenity); financing other than taxes; and education (Zisk, pages 16-17). With respect to constitutional amendments initiated by voters in 23 states from 1976-1980, voters in every state considered amendments related to procedural topics and tax and revenue issues. Regulatory issues and environmental issues were likewise important, followed in order of prevalence by criminal justice issues; lottery, bingo, and gambling; and school issues (Zisk, pages 17-19).

SECTION III: INITIATIVES AND REFERENDA -- ARGUMENTS PRO AND CON

The following arguments have been made for and against direct legislation. The terms "proponents" and "opponents" are used to reflect two contrasting positions. It should be noted, however, that in reality certain proponents might be critical of some aspects of the direct legislative process whereas certain opponents might see some virtue in aspects of the process. Finally, certain arguments presented below under one category will overlap with arguments presented under other categories.

Voters' Acceptance of Government

Proponents believe that the people, and not only their elected representatives, should have the direct power to make laws (Benenson, page 786). In this instance, direct democracy is a supplement to, and not a substitute for, the regular legislative process (State of Wisconsin LRB, page 18). Indeed, in those areas where direct democracy mechanisms are used, 98 or 99 percent of the laws are produced by legislators (Cronin, page 228). Moreover, the legitimacy of the government is enhanced when voters make a decision through the referendum or initiative process because they will more likely support and obey those laws in which they have been actively involved in creating (Wisconsin LRB, page 18). Finally, it is noted that courts, including the U.S. Supreme Court, have consistently ruled that these measures are permissible under the *United States Constitution* -- a fact that might cause the public to accept more readily the legitimacy of such mechanisms.

Opponents argue that giving this power to the people undermines the system of representative government (Benenson, page 786). The delicate system of checks and balances built into the legislative process is lost and those individuals who are most experienced in lawmaking are bypassed (Wisconsin LRB, page 19). In addition, the founders of the American republic consciously rejected direct democracy as extreme, vulnerable to demagoguery, and potentially anti-democratic (Magleby, page 181).

Voter Participation

Proponents contend that initiatives and referenda increase voter participation by stimulating public debate about issues and giving the public a direct role in deciding them (Jost, page 463). Although its findings are subject to debate, one study disclosed that in each of five election years (1976, 1978, 1980, 1982, and 1984), turnout was higher in states with initiatives on the ballot than it was in states without initiatives. In 1982, the peak year for initiatives in the period 1934 to 1987, turnout was one-sixth higher in states with initiatives on the ballot (Schmidt, page 27).[5]

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[5]A researcher from Sangamon University, David Everson, disputed this claim after he had compared election cycles over a 20-year period and focused on voter turnout in northern initiative states, as opposed to noninitiative states. Mr. Everson concluded that the differences in turnout were so small as to be insignificant (League of Women Voters -- hitherto referred to as LWV, pages 55-56).

Evidence cited by Thomas Cronin in his book *Direct Democracy* supports the opponents' position that electors vote on fewer state ballot issues than on candidate races on the same ballot (Cronin, pages 66-68). A study on direct democracy (1978-1982) in four states -- California, Massachusetts, Michigan, and Oregon -- disclosed that the opportunity for direct participation on major issues did not appear to have "galvanized" large numbers of voters (Zisk, page 250). Moreover, those who are sufficiently interested and informed to vote on these measures are not representative of the general public. They are usually more affluent and educated. The underrepresentation of persons with low education and income in decisions involving most direct democracy propositions is more marked than that of such individuals in other election decisions (*i.e.*, elections of candidates) (Magleby, page 108).

Voter Comprehension

Concerning an issue related to voter participation, proponents note that on most issues, especially well-publicized ones, voters better grasp the meaning of an issue on which they are asked to vote, and that they therefore act competently. Research on direct ballot voting suggests that: "long ballots do not seem to cause consistent patterns of either negative voting or a drop in participation. Nor do 'difficult' propositions (in substance or in wording) invariably evoke negative reactions" (Zisk, page 192). Supporters of the referendum and initiative process likewise point out that (to quote an observation from two analysts regarding the competence of Oregon voters in the 1950s): "Over the long period, the electorate is not likely to do anything more foolish than the legislature is likely to do. The legislature emerges from the people and clearly cannot differ too radically from it . . . both the legislature and the electorate have had and will have their periods of legislative 'sagacity' . . . both of them have 'erred' and will 'err'" (Cronin, page 89). "Like voters, legislators are not experts on every issue" (Cronin, page 210).

Opponents take the position that voters are frequently confused when confronted with issues that are complex and technical. Examples of such issues include an oil-refinery measure, a measure to create a Massachusetts Power Authority, and a measure to regulate electric utility charges and permit peak load pricing. One political scientist observed that evidence from scattered surveys and newspaper interviews indicated a very low degree of voter sophistication (except among a very small group of voters) about complex economic issues, such as tax caps, as well as about "style" issues, such as smoking regulation and gun control (Zisk, page 246). A survey of 508 registered voters in California (October 4-6, 1990) also disclosed that only 4 percent of those voters considered statewide ballot initiatives to be understandable. Another 17 percent said that most were understandable. The remaining 78 percent considered some or only a few of the propositions to be understandable to most voters (The Field Institute, October 24, 1990).

Less educated individuals from a disadvantaged socio-economic background experience difficulties in comprehending the issues underlying propositions on ballots (Benenson, page 787). As David Magleby, a political science professor at Brigham Young University, observed: "The politics of the initiative process is largely emotive rather than rational." According to Professor Magleby, who conducted a study on voter profiles, "people who are less educated or from lower income, more disadvantaged backgrounds are going to be much less likely to comprehend the process and effectively translate their policy views into their votes" (Benenson, page 787).

In addition, voter information pamphlets which are issued in nine states, while sometimes praised, have also been criticized for "impenetrable prose," class bias, and for not being widely read (Cronin, pages 80-82). A study conducted on the "readability" of voters' pamphlets

disclosed that descriptions of referred and initiated ballot measures were written on an 18th grade level (college plus two years) in California and Oregon and on a 15th grade level (three years of college) in Massachusetts and Rhode Island (Benenson, page 787).[6]

Furthermore, voters on propositions are most likely to think in the short-term and in their own self-interest. Finally, because ballot propositions are decided individually, they are frequently difficult to integrate into an overall assessment of popular will, or even a coherent public policy. Voters are not required to integrate their opinions on one issue with their opinions on others and could, on the one hand, vote to reduce taxes and, on the other, to increase salary levels (Magleby, page 183).

Information about Ballot Measures

Proponents argue that civic knowledge and pride will increase as people educate themselves about the issues so that they can responsibly exercise their power to make policy choices. The argument proceeds as follows: people will gather information from public news sources and discuss the political choices with their family, friends, and co-workers. Furthermore, such private discourses will produce more intelligent decisions on initiative and referendum questions (Wisconsin LRB, page 18). For instance, substantial news media coverage on initiatives concerning nuclear power (1976), taxes (1978-1986), and the nuclear weapons freeze (1982) raised voter awareness nationwide (Schmidt, page 29). In a study on media coverage, Professor Zisk noted that ballot question coverage by major regional newspapers in mostly large metropolitan areas was quite comprehensive during many campaigns, at least on controversial issues. Most of these newspapers carried extensive background features, articles supporting or opposing measures, news items on press conferences and rallies, and multiple editorials on legal issues (Zisk, page 247).

Opponents argue that, with respect to civic pride, states without direct democracy mechanisms have citizens whose pride matches those with such mechanisms. With respect to information sources, one study on Proposition 15 in California (1976) revealed that 46 percent of those who voted received their information from television advertising. This percentage exceeded that of newspapers (31 percent of voters) and voters' pamphlets (13 percent) (Magleby, page 132). Advertising has been used to confuse voters by relying heavily on emotionally loaded slogans which can be misleading and lead to policy based on appeals to emotions rather than rational argument. This is apparently true of advertising associated with both one-sided and two-sided high spending campaigns (Cronin, page 119). In addition, television and radio, unlike many newspapers, devote little time to news or editorial coverage of issues except for colorful and highly controversial events (Zisk, page 247). Finally, voters' pamphlets, which are touted by many advocates of direct democracy to be an objective means of educating voters on ballot issues, did not, at least in Michigan, create a markedly different kind of campaign or set of outcomes than would have been expected without the availability of such pamphlets (Zisk, page 246).

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[6] There seems to be consensus about the difficulty for most voters to understand state voters' pamphlets. See Betty Zisk, page 153 and David Magleby, pages 166-167.

Racial and Ethnic Minority Rights

An argument by **proponents** maintains that since 1900, when direct democracy procedures were enacted in several states, few measures that would have the effect of narrowing civil rights and liberties have been put before voters, and most have been defeated. On those occasions when limiting or narrowing measures have been approved, there is little evidence that state Legislatures would have acted differently and some evidence that state legislators or Legislatures actually encouraged the result (Cronin, page 92).

Opponents contend that a bias toward better educated voters of a higher socio-economic class and well-funded special interest groups (a minority of voters who are not representative of most of the population in this country) is inherent in direct democracy, which lacks the safety valves of the checks and balances of a governmental system. Racial and ethnic minorities are most likely to suffer the consequences of such bias. An example is a law prohibiting racial discrimination by realtors and owners of apartment houses and homes built with public assistance, which was passed by the California Legislature in the early 1960s. California's real estate interests, which had opposed the legislation, sought the repeal of the law with a heavily funded 1964 initiative campaign. The realtors won a two-to-one victory, with almost 96 percent of Californians voting on the measure (Cronin, page 94).

On a more philosophical note, the argument is made (akin to the one under the category of "voters' acceptance of government") that the practice of direct legislation runs counter to representative democracy envisioned by the founding fathers. It was intended that representative democracy minimize the impact of momentary and transitory majorities. Direct democracy does just the opposite. It elevates a momentary majority to a pre-eminent position, exacerbates the problem of factionalism, and in a real sense institutionalizes "mob rule" (Magleby, page 30).

Legislative Responsiveness and Systemic Flexibility

Proponents note that consumer and reform groups are forced into the initiative process, when it is available as a recourse, because of frequent defeats of bills they support which oppose a particular industry or threaten legislators' personal political interests (Jost, page 464). Moreover, there are some issues that defy compromise and that are very controversial and are unlikely to be resolved by Legislatures (Jost, page 465). Examples include the following: women's suffrage, which was approved in several western states via the initiative process; abolition of poll taxes; and in more recent times, nuclear power and tax reduction issues (Cronin, page 199). Legislatures also make faulty decisions that result in further amendments to enacted legislation. Indeed, one third of each new legislative session is spent amending legislation passed during previous sessions; courts also have thrown out as unconstitutional hundreds of measures passed by state and local Legislatures (Jost, page 473).

Opponents take the position that lawmakers can construct compromises between competing pieces of proposed legislation, whereas voters can only choose between "yes" or "no" when confronted with initiatives on the ballot. They further point out that institutions that require compromise make better laws (Jost, page 465). With respect to controversial legislation, the availability of direct legislation might actually encourage legislative inertia in that legislators know they can leave decisions on controversial issues to voters (Benenson, page 786). Alternatively and perhaps ironically, legislators may even resort to initiatives and referenda to bypass the legislative process, particularly if Legislatures have refused to act on their pet policies (Cronin, page 203).

Moreover, legislators are elected to look into the details of issues and have more information available to them than does the average citizen (Jost, page 465). Finally, the language of proposed laws can be amended during a legislative session, which it often is, but an initiative cannot be changed once it is on the ballot (Benenson, page 786-7).

Frequency of Use

Proponents claim that, even at peak use, the initiative is a relatively rare legal device; in fact, the electorate, through the initiative process, passes on average less than one state law per state in any given election year (Schmidt, page 39). Most efforts to qualify initiatives for the ballot fail; and voters reject approximately half or more of the initiatives (Jost, pages 463-4).

Opponents argue that initiatives are a tactic used too often and that it is too easy to get measures on the ballot (Jost, page 463). This is particularly the case in states which have low signature thresholds. The findings of one study disclosed that high signature thresholds will generally limit the number of initiatives qualifying for the ballot, and low thresholds will likely mean that greater numbers of initiatives will qualify (Magleby, page 42). For example, in North Dakota, where the signature threshold is 2 percent for statutory initiatives and petition referenda and 4 percent for constitutional initiatives, 67 initiative and petition referendum measures (more than in any other state authorizing one or more such mechanisms) have appeared on the ballot within the period, 1950-1980 (Magleby, page 43).

Special Interest Spending

Even assuming that, on occasion, well-financed special interest groups can affect voters' decisions, **proponents** argue that lobbyists also have potential to sway legislative decisions and that, when compared to nonlobbyists, they enjoy disproportionate access to the Legislature. In addition, according to one study, campaign spending could be judged a decisive factor in only about 23 or one-eighth of all campaigns. In commenting on this point, one author noted:

> Money, or the lack of it, is certainly a factor in the outcome of all Initiative campaigns, but other factors -- like the strength of initial public support for the Initiative, the credibility of opponent and proponent groups, and advertising strategy -- are usually more decisive than money alone (Schmidt, pages 35-36).

Initiatives can overcome well-financed industry campaigns and may sometimes offer the only way to overcome entrenched business lobbies. As examples, proponents point to the success of the tobacco tax measure on the California ballot in 1986, the passage of Proposition 103, the auto insurance rate rollback, in 1988 (Jost, page 464), and the failure of efforts to repeal and modify rent control laws in 1980 (Cronin, page 109).[7] Other examples include Michigan's mandatory bottle

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[7] One example, that of the 1980 proposal to limit local rent control in California, is discussed in detail in Betty Zisk's book (pages 117-118). This issue involved a one-sided campaign on behalf of a proposition favoring business interests. As Professor Zisk noted, supporters espousing business interests outspent opponents by 37:1, but the supporters lost decisively, in part because their campaign strategies backfired.

deposit initiative in 1976 and anti-nuclear initiatives in Montana in 1978 and in Oregon in 1980, all of which succeeded against lopsided spending to oppose such initiatives (Jost, page 467).

The counterargument by opponents is that special interests dominate the initiative process by using their superior financial resources to mount media campaigns that can defeat popular ideas on Election Day. Examples of "one-sided spending" which resulted in defeat of measures include the 1978 anti-smoking measure and the 1980 "Tax Big Oil" campaign, both in California. Another example is the expenditure of $2 million for a campaign waged in 1987 in Washington, D.C. against the mandatory bottle deposit initiative which was defeated by a 10 percentage point margin (Jost, page 464). Possession of considerable resources appears to carry most weight when "big money" opposes a poorly funded ballot measure, in which case the wealthier side has a 75 percent or better chance of prevailing (Cronin, page 109). This point is confirmed by Professor Zisk's study of 50 measures in four states. In 40 of the 50 measures (or 80 percent), the high-spending side won at the polls. This outcome occurred, for the most part, regardless of whether campaign spending exceeded $500,000 or was less than $50,000. Moreover, in 17 of 32 cases (1976-1980) where poll information was available for purposes of that study, voter preferences were reversed in the high-spending direction during the campaign. In all but two cases, this was enough to change the outcome (Zisk, page 108). In California in recent years, well financed "Vote No" campaigns have succeeded in defeating measures 80 to 90 percent of the time (Cronin, page 215).

State efforts to impose limitations on individual or corporate spending for campaigns for a given proposition have been struck down by the U.S. Supreme Court, as have state prohibitions against payments for signature gatherers (see Attachment V). With respect to unlimited campaign contributions, it is argued that "big money" could exercise a disproportionate amount of influence on an election. With respect to prohibitions against payment for signature gatherers, it is argued that, particularly in states like California, petition by paid professionals has become a profit-making big business; therefore, signatures should be gathered by volunteers (Cronin, page 242). Signature gathering firms usually charge a flat fee per signature and have become adept at qualifying almost any proposal for the ballot (Wisconsin LRB, page 20).[8] While they acknowledge that there has been a trend toward greater professionalism in ballot measure campaigns, proponents contend that this

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[8]Indeed, given the difficulty initiators of propositions have in reaching the required minimum threshold for signatures in California and other populous states, professional firms have become more instrumental in gathering signatures, thus displacing volunteer efforts. Moreover, the growth of these businesses has occurred simultaneously with a dramatic increase in the average cost of qualifying an initiative from $81,668 in the 1976 general election to between $780,000 and $1.1 million per initiative in all four elections (two primary and two general) in 1984 and 1986 (Berg and Holman, page 456). Well-financed sponsors can afford to use direct mailings to collect signatures. Prior to the 1978 general election in California, not more than 4 percent of all funds spent on qualifying ballot measures was expended for professional services. This percentage increased to 76 percent in 1978 and 91 percent in 1989 (Berg and Holman, page 459). However, one might argue, with some plausibility, that the expenses incurred in California to qualify measures would most likely not apply to Kansas. In a panel discussion on this and other issues, David Schmidt speculated: "The initiative industry has reached its full extent in California, but will probably be seen occasionally in some other states as well in the coming years. Still, I predict the grass roots initiatives will continue to be the norm except in states with the very highest petition requirements (Ohio and California)" (McGuigan, pages 109-110). This observation was echoed by the Secretary of State in Nebraska, Allen J. Beermann in a telephone conversation with staff on January 7, 1991.

is a reality for modern politics in general and likewise affects candidate races. However, this trend dilutes the "grass-roots" rationale for initiatives and referenda.

Finally, litigation involving voter initiatives offers a way for a well-financed opponent of an initiative to drain resources from a poorly financed initiative campaign. Many challenges in the courts relate to compliance with state requirements concerning signatures and subject matter ("Assessing the Initiative Process," page 25).

Popular Reaction to the Initiative Process

Proponents note that the initiative process enjoys popular support. A Gallop Organization survey conducted in 1987 found that two-thirds of the 1,009 persons surveyed believed that voters should be able to vote directly on some state and local laws. In California, a poll conducted by Common Cause and the University of Southern California's Institute of Politics and Government in 1985 found that 71 percent of those surveyed opposed elimination of the initiative system (Jost, page 470). An earlier poll conducted in 1979 by the Field Institute revealed that 85 percent of Californians considered initiative elections to be a good idea (Magleby, page 9).[9]

Other surveys and polls, however, point to a position taken by **opponents** who criticize direct democracy. For example, a poll by the Eagleton Institute of Politics at Rutgers University found that two-thirds or more of the respondents agreed that the job of making laws should be left to elected representatives, that many people would not be able to cast an informed vote, that many issues were too complicated for a yes or no vote, and that special interests would gain power through the initiative process by spending more money. In another survey conducted in California, it was disclosed that two-thirds of those responding believed elected representatives were better suited than voters to decide highly technical or legal policy matters. Only 27 percent viewed the voting public as better suited for this task (Magleby, pages 8-9).

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[9]A recent poll taken of 614 California adults (August, 1990) revealed that 66 percent of Californians feel that initiative elections are a good idea. While still a majority of Californians express this sentiment, it is definitely a decline from the earlier poll (The Field Institute, September 13, 1990).

SECTION IV: LEGISLATIVE POLICY DECISIONS

The first policy decision the Legislature needs to make is whether it wants to enact a concurrent resolution to amend the *Kansas Constitution* since referenda and initiatives are not presently authorized by the *Constitution*. This resolution must be adopted by at least two-thirds of the legislators in each chamber. As required by Section 1, Article 14 of the *Constitution*, this resolution must contain the proposed amendment to the *Constitution*. In addition to the proposed amendment and in accordance with Section 1, Article 14, the concurrent resolution must contain a title and a brief nontechnical statement expressing the intent or purpose of the proposition and the effect of a vote for and a vote against the proposition.

The proposed amendment may include general policy and authorize the Legislature to enact legislation to implement the policy. Alternatively, the resolution could be very specific in setting forth terms for implementation so that further legislation might not be needed. (This option is addressed further in No. 21, below.) Historically, the Kansas Legislature has chosen to adopt concurrent resolutions amending the *Constitution* which have set forth policy guidelines. In ensuing sessions, legislation generally has been enacted to address specific provisions. Although there have been numerous attempts to have resolutions on this issue adopted in Kansas, no resolution has ever been adopted to date by committees in both houses.[10]

Whether contained in the concurrent resolution or in ensuing legislation, certain issues must be addressed concerning implementation. The first policy issue (below) is perhaps the most important because it can affect the ensuing policy decision issues which deal with the process of qualifying measures and setting up a mechanism for voter response. Before these issues are raised, a few words about the initiative and referendum process may be in order.

In most states the process follows these steps. Proponents of a measure (initiative or petition referendum) file a copy of the proposal with the secretary of state or some other state official. The proposal is then given a title and a short description that is required to be on the petition. In some states, proponents are responsible for assigning titles and preparing summaries; in other states, these tasks fall to assigned agencies. Petitioners are then given a certain amount of time to collect signatures, which are in many states subject to validation and which are counted by a designated entity to ensure that the number of signatures meets specified threshold requirements. The petition is also certified by a designated entity before the proposal can appear on the ballot, usually in summarized form. Many states specify when an election for an initiative or referendum can be held, as well as the procedure to be used for contesting results. The list of decision points below is not exhaustive but it does attempt to highlight the major policy issues that will have to be addressed in drafting a resolution on initiatives or referenda, or subsequent legislation for the administration of the direct democracy process, if needed. Much of the information about states' practices and requirements in this section is derived from *The Book of the States 1990-1991 Edition*. The sources of the information compiled in *The Book of the States* are the various state election administration offices, which are most commonly part of secretary of state's offices. The information presented in this section is based on reports by states and, therefore, may not be a complete compilation of all state implementation activities with respect to initiatives and referenda.

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[10]H.C.R. 2, which was adopted in 1909 by the House and died in Senate Committee, would have authorized direct initiatives and referenda.

1. Measure to be Authorized. The Legislature must decide what measure or measures it wishes to allow on the ballot. Does it want to authorize initiatives? If it does, should those initiatives pertain to changes in the *Kansas Constitution*, or statutes, or both? Should initiatives be direct or indirect or both? Does the Legislature want to authorize petition referenda, legislatively-generated referenda, or contingent or advisory referenda? Should the outcome of a proposition ballot election be binding on or only advisory to the Legislature?

There are many different options to consider for the implementation of these mechanisms. In Kansas, for example, two of the most recent concurrent resolutions introduced on initiatives and referenda took very different approaches. 1989 H.C.R. 5022, which was referred to the House Federal and State Affairs Committee and died in Committee, would have authorized voters of the state to propose laws and amendments to the *Kansas Constitution* and enact or reject these proposals at the polls. This bill would have provided that the voters' actions take effect unless they were rejected by a majority of each body of the Legislature within a specified period of time during the following Legislative Session. By contrast, 1990 S.C.R. 1635, which was adopted by the Senate Elections Committee and died on General Orders, would have authorized voters to initiate proposals for amendments to the *Kansas Constitution* (only the Legislature can initiate such amendments at present). Unlike H.C.R. 5022, this resolution did not address statutory changes, nor did it grant the Legislature any authority to override voters' decisions at the polls.

Implications. Most of the debate revolves around what role, if any, a Legislature should have in the initiative and referendum process. Advocates of indirect initiatives or legislatively-generated referenda, which by definition are subject to some sort of legislative action, contend that the mechanisms allow an opportunity for hearings, legislative input, and possible elimination of drafting problems and resulting confusion. Five states authorize another procedure for legislative involvement. In the states of Maine, Massachusetts, Michigan, Nevada, and Washington, the Legislatures are authorized to place a substitute proposition on the referendum ballot whenever an initiative proposition appears on the ballot (Zimmerman, page 22). Moreover, in the case of initiatives, if the Legislature decides to adopt a proposal, the cost of an expensive ballot campaign would be avoided. Opponents argue that legislative involvement often results in delays which can reduce support for an initiative. Moreover, there is a concern that legislative activity could subvert the original intent of a measure.

Another decision needs to be made on whether the outcome of elections on initiative or referendum measures should be advisory or binding. For example, Illinois allows petitions for advisory questions of public policy to be submitted to voters of the entire state. These petitions must be signed by at least 10 percent of the registered voters in the state. Such public policy petitions are advisory to the Legislature. Massachusetts authorizes the Legislature to place "advice seeking" questions on the ballot for an opinion vote of the people. Such questions are nonbinding and require further action for implementation. An example of a measure of this type which appeared on the 1990 ballot was a question referred by the Legislature asking whether the people favor or oppose requiring radio and television broadcast outlets to give free and equal time to all

certified candidates for public office in the state. Wisconsin also authorizes advisory referenda. Two examples are a 1982 referendum regarding a reduction of and moratorium on nuclear weapons and a 1983 election regarding the location of a nuclear waste site. In support of advisory measures is David Magleby who notes: "The advantage of this approach is that the public can indicate its preference and the Legislature can handle the statutory or constitutional steps necessary for the implementation and administration of the policy" (Magleby, page 195). Voters would be encouraged to provide policy guidance but the Legislature would be responsible for drafting and formulating specific laws. An argument against this approach is that there is no assurance that the Legislature will implement desired legislation.

2. Subject Matter of Legislation. The Legislature must decide what restrictions, if any, it wishes to impose on subject matters permissible for initiatives or referenda. Most states that authorize petition referenda restrict the subject matter of legislation that may be referred to voters. Only Arkansas, Idaho, and Nevada do not have restrictions. Most states exempt emergency legislation and appropriations from referenda. In addition, slightly less than half the states which permit initiatives restrict the subject matter to be voted upon. The most common examples of such restrictions are that initiatives must cover only one subject matter and that they cannot concern the judiciary (Magleby, page 45).

Implications. If, on the one hand, the Legislature does not limit subject matters, petitioners will have great latitude in determining the types of issues to bring to the ballot. By restricting issues that may appear on the ballot, the Legislature preserves more control over the policy-making process. With respect to limiting ballot measures to one subject, voters would be placed less often in the position of deciding for or against certain measures, including some they may oppose along with some they support. (Admittedly, this problem also could occur even if a proposition is limited to one subject.) However, as Daniel H. Lowenstein, author of a legal journal article on ballot propositions, wrote about the single subject limitation, "it is impossible to conceive of a measure that could not be broken down in parts, which could in turn be regarded as separate subjects" (LWV, page 63).

3. Criteria for Signatures. To initiate legislation through the initiative or petition referendum process, citizens must demonstrate that the proposal has a certain minimal level of support among the electorate. Evidence of support must assume the form of signatures given by eligible voters.[11] The basis used by states for calculating the required number of signatures could be a prescribed percentage of: the state's total resident population; the total number of eligible voters; the

[11]Some states with indirect initiatives have a two-phase petition drive. The first phase involves gathering signatures to submit the proposal to the legislature. The second phase involves placing it on the ballot if the legislature fails to take action. In Massachusetts, Ohio, and Utah, additional signatures must be collected (part of the second phase) prior to placing a proposition on the ballot (Zimmerman, page 20).

number of votes cast in the immediately preceding general election; the number of votes cast in a designated election, either for governor or secretary of state; or the total number of votes cast for the office receiving the highest number of votes in the immediately preceding general election.

The Legislature needs to determine the basis for calculating required signatures and the minimum percentage of signatures required to qualify a measure for the ballot. The most common requirement for proposed constitutional initiatives is 10 percent of the votes cast in the most recent gubernatorial election, but it is 5-8 percent for statutory initiatives. However, the percentage requirement varies considerably among states with, at one end of the spectrum, only 2 percent of the voting-age resident population required for proposed statutory initiatives in North Dakota, and, at the other end of the spectrum, 15 percent of the number of total votes cast in the last general election for proposed statutory initiatives in Wyoming.

The most common requirement for the petition referendum is 5 percent. As with initiatives, states vary in their range of signature requirements with respect to referenda from 2 percent of the total population (North Dakota) to 15 percent of the total votes cast in the last general election (Wyoming).

In addition to determining the percentage of acceptable signatures and the type of election upon which such percentage is based, the Legislature might consider requiring signatures to be tied to geographic distribution criteria. At least nine states permitting the initiative and referendum require some form of geographic distribution for petition signatures. Massachusetts, for example, stipulates that no more than 25 percent of the signatures may come from any one county. Arizona requires that 5 percent of signatures come from 15 different counties. In Montana, for statutory initiative measures to qualify, signatures must be collected from five percent of the voters in at least a third of the state's legislative districts. Nebraska requires that a minimum of 5 percent of the electorate come from each of two-fifths of the counties in the state.

Implications. A signature threshold higher than 8 percent may restrict ballot access, particularly to grass-roots organizations without large funding sources. It is assumed that high signature thresholds serve to keep off the ballot those initiatives that are frivolous and lacking in wide appeal. In states with high thresholds those measures that make it onto the ballot are more likely to be acceptable to voters. However, in states where measures are allowed easier access to the ballot, voters have historically rejected a higher percentage of initiatives. The number of propositions submitted to voters can be expected to increase when a low signature threshold is adopted (Magleby, pages 42-44).

The type of election upon which to base the percentage threshold for signatures can likewise affect the number of measures which qualify for ballots. For example, an 8 percent threshold requirement based upon the last gubernatorial race might translate into a far larger number of required signatures than would the same threshold if it were based on the last secretary of state's race.

Finally, an argument in support of geographic requirements is that, in the absence of such requirements, more populated parts of a state could exercise a disproportionate amount of influence in the initiative or referendum process, one far exceeding the locality's representation in the state Legislature. An argument against such a requirement is that it makes the initiative and referendum more difficult and expensive to use (Cronin, page 236). It also may place a burden on certain low budget grass-root efforts (Zisk, page 262).

4. Number of Measures on the Ballot. The Kansas Legislature may wish to limit the number of initiative and referendum measures that can appear on a ballot at any given election. For example, a limit of three measures could be set and the secretary of state could be authorized to certify the first three valid petitions which are submitted within a specified period of time. Those measures which are submitted thereafter would be rendered null and void.

Implications. A limit on the number of measures that can appear on a ballot at any given election might reduce voter confusion and allow voters to focus more carefully on just a few issues. For example, one of the criticisms of Californians with the direct democracy process in that state is the number of initiatives on the ballot (The Field Institute, September 13, 1990). Arguments against this type of restriction are the following:

a. Some timely issues might be submitted too late to appear on the ballot and could be subject to a delay of one or two years. From the sponsors' perspective, the issue to be addressed by the proposed measure might become even more problematic and more difficult to resolve at a later time.

b. "Grass roots" organizations, which are not well financed, might be limited in their access to the process because better financed organizations could afford to hire signature collectors to gather the requisite number of signatures.

5. Signature Validation Procedures, Petition Certification. The Kansas Legislature must first decide on an acceptable procedure for signature verification (designated verification entity, time frames, provisions, if any, for incomplete or unacceptable petitions) and for certification of petitions. In addition, the Kansas Legislature might want to consider a requirement for random sample surveys of collected signatures as a means of ensuring authentication of such signatures. For example, California, Oregon, Missouri, and North Dakota are authorized to conduct random sample surveys of signatures for verification purposes. Oregon will do a random check of 10 percent of the signatures on a petition, followed by a second random check of 25 percent of signatures if there is a possibility that the number of valid signatures on a petition are insufficient.

With the exception of North Dakota, which does not register voters and which permits all citizens to sign initiative petitions, all states which authorize initiatives, referenda, or both stipulate that only registered voters may sign petitions to place

such measures on the ballot. To be counted as valid, signatures must be attested to by designated public officials. In most states the responsibility of signature verification falls to local officials, such as county clerks or county registrars who carry out their tasks under the general oversight of the secretary of state's office. However, in some states this responsibility is assigned to the secretary of state, sometimes in conjunction with another agency. Some states require a time frame within which signatures must be validated by the designated party and within which an incomplete or unacceptable petition may be completed after it has been filed. Moreover, most states designate some entity, usually the secretary of state, to certify a petition for ballot. Certification occurs when the required number of signatures for an initiative or referendum have been submitted by the filing deadline and are determined to be valid.

Implications. Requirements for validation procedures ensure, to the greatest extent feasible, that those individuals who sign petitions are registered to vote in the state in which the issue will appear on the ballot. However, validation procedures cost money and the more elaborate the procedure, the higher the cost. The time period allowed for validation is also a consideration. For example, a staff contact at the Secretary of State's office in Colorado reported that 21 days for signature verification places great pressure on the office to comply. In states with time limitations, such limitations range from 2 weeks in Illinois and Massachusetts to as many as 105 days in California. (California reports a range of 25 to 105 days allowable for verification.)

6. **Titles and Summaries-Petitions. The Kansas Legislature needs to determine whether it should require a title and summary for petitions on initiatives and referenda and, if such determination is affirmative, the entity or entities to be designated to write titles and summaries.**

In some states the petition initiators are allowed to title and describe their own proposals. However, most states require the organizers of the petition to file the complete text of the proposal with the secretary of state or other designated official. After that submittal, the proposal is referred to the attorney general, secretary of state, or other state officer who gives it an official title and writes a summary. Nineteen states report requirements for the imposition of titles for initiatives. In at least nine states the title is determined solely by the attorney general; the remaining ten states authorize the proponents of the initiatives, other agencies, or more than one agency (sometimes in conjunction with the attorney general) to determine titles for the petition. Eighteen states report designating an entity or entities to write the summary of the initiative proposition for the petition. In at least ten states, the summary is the exclusive responsibility of the attorney general; in the remaining states, this responsibility is delegated to others or to the attorney general in conjunction with others.

Title and summary requirements for petitions on referenda are similar to those for initiatives, although the secretary of state's office appears to play a much greater role with respect to referenda. Both the offices of the secretary of state and attorney general are most frequently responsible for titles and summaries.

Implications. If petition initiators are assigned responsibilities for determining titles and writing summaries, they could conceivably consider it in their best interest to mislead the public about their intentions in an effort to garner more support. However, if these responsibilities are delegated to other parties, inaccuracies might result. An example is a title given by California's Attorney General in 1972 to an initiative related to pollution which resulted in misleading voters (Magleby, page 54).

7. **Voters' Handbooks.** **The Kansas Legislature might want to consider a requirement for the distribution of voters' handbooks to address any and all direct democracy measures proposed by the Legislature. If the Legislature decides to require the dissemination of handbooks, a subsequent decision needs to be made on mechanisms to determine its content.**

The states of Arizona, California, Idaho, Illinois, Massachusetts, Montana, North Dakota, Oregon, and Washington require the distribution of voters' handbooks which contain a description of the propositions on the ballot, as well as arguments in support of and in opposition to such propositions.[12] In California and Oregon, for example, handbooks even contain an estimated cost to the state for enforcing given propositions.

Implications. By requiring such handbooks all eligible voters are ensured, at least in theory, of receiving information about both sides of the issues appearing on the ballot. As has been discussed in Section III, the arguments against requirements for handbooks relate to their readability level and their relatively low level of use. In addition, handbooks can be very expensive. In Oregon, the cost of printing and disseminating the most recent batch of handbooks exceeded $800,000.

8. **Time Period Allowed for Petition Circulation.** **The Kansas Legislature needs to determine if time requirements should be imposed on sponsors for gathering signatures. If it is determined that such requirements be needed, should the time frames vary with respect to the kind of measures adopted?**

Fifteen states report requiring a maximum time period within which petitions on initiatives may be circulated for signatures prior to being filed with the secretary of state or, in the case of two states, the lieutenant governor. The petition circulation period begins when petition forms have been approved and provided to sponsors (those individuals granted permission to circulate a petition and assume responsibility for the validity of each signature on a given petition). In two states (Nevada and Washington) that limitation varies according to the type of initiative. For the most part, states authorize sponsors one year or up to two years to gather the requisite number of signatures. The shortest period of time is 90 days (Oklahoma), followed by six months (Colorado and Washington, with

[12]Other states, such as Maine, issue voters' handbooks but only a limited number are printed and distributed upon request.

respect to direct initiatives, only). With respect to referenda, 12 states report requirements for time period limitations. The shortest period of time is 90 days after enactment of a bill (California, Massachusetts, and South Dakota) and, in the case of three states (Alaska, Arizona, and Washington) the time frame must be within 90 days after their respective legislative sessions.

Implications. By limiting the number of days for petition circulation to a short period of time (*i.e.*, for initiatives, 90 days or six months) issues might be more timely to voters. However, a longer petition circulation period might assist grass-roots efforts which are not so well financed in gathering support for their proposals.

9. **Removal of Signatures from Petition. The Kansas Legislature needs to determine if it wants to take a position on authorizing or, conversely, prohibiting the removal of signatures from petitions.** With respect to initiatives, 11 states report authorizing the removal of signatures from petitions; one (Oklahoma) does not. With respect to referenda, eight states report authorizing the removal of signatures from petitions; three states (Oklahoma, Oregon, and South Dakota) do not have such authorization. In all states with this authorization, individuals who wish to remove their names from petition would need to make that request in writing to the official with whom the petition is filed.

Implications. On the one hand, authorization for removal of signatures from petitions permits voters who did not understand a proposition when they signed it to remove their signatures if they later realize that the proposition does not reflect their views. On the other hand, such a provision could make the process of signature counting and validation more cumbersome and costly.

10. **Time Period Required between Filing of Petition and Election. The Kansas Legislature needs to determine if a requirement should be imposed for the minimum period of time a completed petition for initiative should be filed prior to election. With respect to referenda, a determination needs to be made which would tie submittal of a petition to a specified number of days after a legislative session has ended or to a specified number of days prior to a general election.**

At least 18 states specify how many days are allowed for the filing of a completed petition for an initiative prior to an election on that proposition. In most states, the requirement is three to four months, with the shortest period being 60 days (Wyoming) and the longest period being one year (South Dakota, initiatives related to amending the *Constitution*). Requirements for referenda are different; most states (15) reporting authority to hold referenda require petitions to be filed within 90 days after their respective legislative sessions have ended. Three states condition filing upon a set period of time prior to the next general election.

Implications. A longer time period prior to an election might facilitate matters for state agencies charged with implementation of the validation and review processes. According to a staff person at the Secretary of State's Office in Colorado, the requirement to have a completed petition filed three months prior

to the election is insufficient. However, a shorter time period serves to expedite the process and ensure the timeliness of the proposition under consideration.

11. **Penalty for Falsifying Petitions.** **The Kansas Legislature needs to decide whether to impose penalties for petition falsification.** Eleven states report the imposition of penalities with respect to initiatives for petition falsification. These penalties vary considerably. They are considered misdemeanors in three states, a class IV felony in one state, and fines coupled with jail terms in seven states. The degree of severity of penalties ranges from, on the one hand, $500 and a six months jail term in Montana to, on the other hand, $10,000 and one to ten years imprisonment in Nevada. At least 12 states impose penalties with respect to referenda for petition falsification. In most states, the same penalties apply to falsification of petitions for referenda as they do to falsification of petitions for initiatives.

Implications. Assuming that such penalties function as a deterrent, they might prevent sponsors of petitions from misrepresenting or making false statements about their petitions and for filing petitions known to contain false signatures.

12. **Deposits for Circulating Petitions.** **The Kansas Legislature might consider the need for and desirability of requiring fee deposits.** Three states report that they require deposits after permission to circulate a petition has been granted. Alaska and Wyoming require a $100 fee for petitions on both referenda and initiatives and California requires a $200 fee for initiatives. The filing fee is refunded when the completed petition has been filed correctly.

Implications. A filing fee might discourage frivolous or publicity-seeking petitions. However, a counterargument is that it makes it more costly for petition initiators to get an issue on the ballot.

13. **Reports on Financial Contributions.** **The Kansas Legislature should make a determination as to the need for disclosure requirements. In doing so, consideration might be given to requirements which address the timing for such disclosures (*i.e.*, a sufficient fixed time period prior to the election; final disclosures after the election; and immediate disclosures for large contributions). The Legislature might decide to extend the Kansas Campaign Finance Laws (K.S.A. 25-4180 *et seq.*) to campaigns on these measures.**

In the vast majority of states, a list of financial contributors and the amount of their contributions must be submitted to the specified state officer with whom the petition for an initiative or a referendum is filed. With respect to initiatives, 20 states report that they require disclosure of financial contributions; two states (Arkansas and Utah) do not have reporting requirements. Nevada requires reports only on expenditures made in excess of $500 for the purpose of advocating the passage or defeat of a measure. In North Dakota, reports are only required if the amount is over $100 in aggregate for a calendar year. With

respect to referenda, 19 states report that they require financial disclosure and two (Arkansas and Utah) do not.

Implications. In support of disclosure, arguments can be made that the public has the right to know who is supporting and who is opposing a ballot measure. The public has the right to know the size and source of income for a measure so that excessive influence of money on election outcomes can be prevented (Cronin, pages 238-239). The counterargument to disclosure requirements is that some of the heaviest spending occurs immediately prior to or after the election which is too late to have much impact on voter decisions. In addition, even when extremely high levels of spending have been publicized, as in the multimillion dollar campaigns involving tobacco, bottling, or gun manufacturers, there has been, for the most part, no major public reaction to such spending (Zisk, pages 262-3).

14. **Drafting Advice on Language for Proposition.** **The Legislature may wish to assign a board or agency the responsibility of reviewing the language of measures prior to their placement on the ballot. This could be either a binding or nonbinding form of assistance.**

Some states, such as Colorado, provide a review board to examine draft language and eliminate language which could prove misleading, confusing, or potentially unconstitutional. The attorney general's office or a legislative counsel or reference service might likewise offer that service.

Implications. In support of binding or nonbinding arrangements for assistance is the argument that poor drafting might be avoided. This could reduce the level of confusion voters might experience at the polls and the number of contestations of measures, as well as prevent litigation and court intervention after the election (Cronin, pages 234-235). A survey of 614 California adults, conducted by the Field Institute in August, 1990, disclosed that by a 69 percent to 23 percent ratio, the public favored the idea of requiring sponsors to first submit their initiative to the Secretary of State for review and comment. The Secretary would check conformity with present state law and evaluate the clarity of the initiative's language before a petition for that measure could be circulated for signatures (The Field Institute, September 13, 1990). The opposing position, particularly if a drafting arrangement is binding, is that it could be construed as advance censorship (Zisk, page 259). Moreover, it is argued that a potential conflict of interest exists, particularly if the attorney general assumes this responsibility. Apparently even more objectionable to some opponents is Massachusetts' practice of giving its attorney general the power to seek judicial review of an initiative before a vote (Jost, page 471). Opponents of drafting advice requirements also argue that initiatives are generally not that poorly written because sponsors have an incentive to draft them well so that the opposition does not use minor language flaws in the proposition as campaign ammunition. As one writer reported, of 40 state-level initiatives passed by voters in 1980-1982, only two were ruled wholly unconstitutional, and only one was ruled unconstitutional in part (Schmidt, page 34).

15. **Conditions for Approval of Initiatives and Referenda. The Kansas Legislature needs to decide if conditions other than that of a majority affirmative vote should be the basis for approval of initiatives and referenda.**

As a condition for passage, propositions in six states are subject to certain requirements in addition to approval by a majority of those voting on a proposition. In Massachusetts, Nebraska, and Washington, not only must there be more affirmative votes than negative votes but the affirmative votes cannot be less than 30 percent, 35 percent, and 33 percent, respectively, of those who turn out to vote. Idaho requires a majority of the number of votes cast for governor. Maine requires an affirmative vote of a majority of those who turn out. Wyoming requires an affirmative vote equal to at least 50 percent of the total vote in the preceding general election (Magleby, page 46).

Implications. Such requirements ensure that decisions are legitimate expressions of the popular will, at least to the greatest extent feasible. The counterargument may be made that in most candidate elections in the United States, only a plurality is needed to win an election. Elected officials may win with less than 50 percent of the vote if they receive more votes than their opponents. Therefore, additional requirements to approval by majority vote for propositions may seem excessive.

16. **Ballot Titles and Summaries. The Kansas Legislature needs to determine whether it should require a title and summary on ballots for initiative and referendum measures and, if such determination is affirmative, the entity or entities to be designated to assume those responsibilities.**

In some states the ballot titles and summaries will differ from those on petitions. In addition, in a few states, parties involved in making determinations on ballot titles and summaries will differ from those assigned to such responsibilities for petitions. An example is Nevada, where the proponent is responsible for the title and summary for the petition on an initiative but those responsibilities are assigned to the Secretary of State and Attorney General for purposes of the ballot. As with petitions, responsibilities for ballot titles and summaries seem to be the domain of the secretary of state and attorney general in the majority of states.

Implications. Establishing requirements for titles and summaries on ballots have the same implications as those of establishing requirements for petitions. (Also see Section IV, No. 6.)

17. **Timing of Elections. The Kansas Legislature might wish to make a determination on when elections on initiative and referendum measures should be held.** Most states report having requirements for when elections are to be held on initiative and referendum measures. Eighteen states report requirements for initiatives to be voted upon at general elections (in two states general elections are one option of two or more permissible types of elections). In four of those states, certain conditions govern that requirement. The other states with

such requirements for elections are either not specific about the type of election but use instead time criteria (next biennial election -- Colorado; or the first statewide election at least 120 days after a legislative session -- Alaska) or allow for elections other than general elections. The majority of states report requirements for referenda to be voted on at general elections. Fifteen states require that the vote take place on referenda exclusively at general elections. In particular, petition referendum propositions appear only on the general election ballot (Zimmerman, page 20). The option for special elections exists in five states with other requirements governing the policies of two states.

Implications. Confining votes on these measures to general elections would: (a) save money if special elections are not held; and (b) result in a higher voter turnout. The counterargument is that general elections tend to have many issues on the ballot and propositions therefore might get "short shrift." For example, in such states as California a restriction to hold only general elections for these measures would be totally unworkable (Jost, pages 470-471).

18. Disposition of Approved Initiatives. The Kansas Legislature needs to decide what policy, if any, it wishes to adopt concerning the disposition of approved initiatives, the refiling of rejected initiatives, and the number of days which are required to elapse (if any) before a measure can take effect after voter approval.

Many states have implemented policies concerning the disposition of initiatives after voter approval. Ten states report authorization for approved initiatives to be amended by the Legislature after they take effect.[13] Two states impose conditions. In North Dakota the amendment must be made within seven years of approval and in Washington, measures cannot be amended for at least two years after voter approval. At least 18 states expressly prohibit a gubernatorial veto of an approved initiative. Only Massachusetts reports authorization for vetoes. At least 11 states expressly authorize repeal by the Legislature of an approved initiative although four of those states impose time constraints. Four states expressly prohibit repeal by the Legislature of voter-initiated laws. Finally, 17 states report that refiling of defeated initiatives is permissible, although four of those states condition that refiling upon some type of time limitation.

States also vary with respect to the effective dates of approved initiative or referendum measures. For example, in Arizona and Oklahoma, initiative and referendum measures are reported to take effect immediately after voter approval. Other states require that a certain number of days elapse between the election and the date an approved measure takes effect. This ranges from only one day in South Dakota to as many as 90 days for initiative measures in Wyoming.

Implications. On the one hand, restrictions for and prohibitions against legislative amendments and authorization for gubernatorial vetoes and repeals by

[13]Certain states, such as California, which report authorization for legislative amendments to initiatives restrict such amendments to statutory initiatives.

the Legislature might be considered inappropriate on the premise that a direct vote of the people is the most accurate expression of public will and should not be tampered with by the Legislature and the executive branch. On the other hand, such restrictions or prohibitions reduce potential for checks and balances. If there are problems with an initiative, it might be very difficult to address them. For example, in some states, voters might have to be called upon to make changes, however minor, to statutes adopted by initiative years earlier (LWV, page 71). The argument against unlimited ability to reinitiate defeated proposals is that voters may have recently rejected a proposition and there is no reason to believe that the outcome will change within a short period of time. An argument for granting such authority is that sponsors should be allowed the opportunity to amend a proposed measure to respond to objections raised in an earlier campaign on the same or a similar proposal.

19. **Contestation of Election Results on Referenda.** **The Kansas Legislature should consider whether to specify a time period within which election results can be contested.** Fourteen states report the number of days allowed for individuals to contest the results of a referendum vote. The number of days permitted for contestation after a given election vary from as few as two days (Michigan) to as many as 60 days (Arkansas). Of the states which set time limits, seven require that the election be contested within ten or fewer days and the other half require election results to be contested within 15 days (one state), 30 days (three states), 40 days (two states), and 60 days (one state). In Alaska, an individual has five days to request recount with appeal to the court within five days after recount.

Implications. Electoral results should not be contested after too much time has elapsed and a measure has been implemented because if there is a change in outcome, it might be cumbersome and costly to halt program implementation.

20. **Requirements for Hearings.** **The Kansas Legislature might consider requiring legislative hearings on direct initiative proposals.** Indirect initiatives involve legislative input but if the Kansas Legislature opts for direct initiatives, it might require legislative hearings on all ballot measures once petitions for them get the necessary number of valid signatures. In California, for example, efforts have been made in recent years to hold hearings (in fact, the California Elections Code requires that such hearings be held), but these efforts, according to some observers, have not lived up to expectations (Cronin, page 237; LWV, page 37).

Implications. An argument in support of requirements for hearings is that the Legislature could explore the arguments in support of or against the measure under consideration, the fiscal implications of the measure, and its potential impact on policies and laws already in effect. Hearings could also play a useful educational role, assuming that they are reported in the media. A counterargument is that legislative hearings on a measure may delay the referendum process and might not be taken very seriously by the Legislature, especially if the Legislature is not authorized to approve, amend, or reject the initiative.

21. **Constitutional Provisions for Initiative and Referendum.** The Kansas Legislature needs to decide whether constitutional provisions for these measures should provide a bare framework or whether they should be self-executing and sufficiently detailed to allow for implementation without additional statutory provisions.

Ten states were reviewed: Alaska, Arizona, Arkansas, California, Colorado, Florida, Maine, Nebraska, Oklahoma, and Oregon. Of those states, three (Florida, Nebraska, and Oklahoma) have constitutions which contain only the most basic provisions for initiative and referendum. However, all ten states have enacted at least some statutory provisions relating to initiative and referendum. Four of the states (Arizona, Arkansas, Colorado, and Nebraska) have constitutional provisions stating that they are self-executing.[14] All states but one (Arizona) authorize supplementing legislation. In addition, three other states (Alaska, California, and Oklahoma), which are not self-executing, authorize enactment of additional legislation.

The constitutions of the ten states researched have in common certain features:

a. all contain the required number of petition signatures, a deadline for filing the petition, and the effective date of the initiative and referendum measure;

b. with the exception of Florida, all states deal with the question of whether initiative or referendum measures are subject to veto, amendment, or repeal;

c. six states (Alaska, Arizona, Arkansas, California, Nebraska, and Oklahoma) contain exceptions or limits as to subject matter, or specify that there are none; and

d. five states (Arizona, Arkansas, California, Maine, and Nebraska) specify the method of resolving conflicting provisions adopted by initiative or referendum.

Implications. On the one hand, if state constitutional provisions contain only a bare framework, time would be allowed for interim review by the Legislature prior to enactment of statutory provisions governing most aspects of implementation. On the other hand, self-executing constitutional provisions may expedite implementation of the initiative and referendum processes.

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[14]The term "self-executing" means that the constitutional amendment authorizing initiative or referendum mechanisms would take effect, if approved by voters, even if the Legislature fails to pass implementing legislation. Apparently, the Legislature did not pass implementing legislation in Idaho. Because there was no self-executing provision in that state's constitution, no initiatives were placed on the ballot for 25 years (Schmidt[a], page 13).

SECTION V: FISCAL IMPACTS OF IMPLEMENTATION IN OTHER STATES

This section briefly summarizes the implementation procedures for initiatives and referenda in the states of Oklahoma, Nebraska, Oregon, Colorado, and Maine. The fiscal impacts of implementation of these mechanisms also are addressed. Fiscal impacts can vary considerably within a state from one fiscal year to another depending upon the number of ballot measures, the length of a proposition's text, the number of challenges regarding a ballot measure, and other factors. The states were selected because they present different implementation schemes and because three of the states are contiguous to Kansas. These states also were chosen because, unlike more notorious examples as California and Massachusetts, they have smaller populations and some significant rural populations.

1. Oklahoma

In Oklahoma, both laws and constitutional amendments can be initiated by voters. In addition, laws can be referred to the voters either by petition or by the Legislature. The basis used for signatures for initiatives and petition referenda is the total votes for office receiving the greatest number of votes cast in the last general election. Percentage thresholds are: for constitutional initiatives, 15 percent; for statutory initiatives, 8 percent; and for petition referenda, 5 percent.

All signatures necessary for an initiative petition must be gathered within 90 days from the date of filing an approved and accepted ballot title with the Secretary of State. A petition referring legislation to the voters must be filed with the Secretary of State within 90 days after adjournment of the Legislature. The Secretary of State conducts a preliminary review of the signatures to "weed out" nonsignatures or signatures from other states. There is no signature validation procedure unless the validity of signatures is called into question. In that case, the validation procedure would be undertaken by the Oklahoma Supreme Court. The Supreme Court counts the signatures to ensure that the number of signatures meets the required percentage threshold. The Supreme Court directs the Secretary of State to publish, within at least one newspaper of general circulation in the state, a notice of filing and instructions for the procedures to be followed in cases of protest.

Before a measure can appear on the ballot, a ballot title must be submitted to the Attorney General for final review. (The sponsors of a measure suggest the ballot titles.) This title is subject to appeal to the Supreme Court. Once a decision has been made on the title, the Secretary of State notifies the Governor who, in turn, issues a proclamation which describes the measure and the date on which the vote is to take place (this can be at a special election). The Secretary of State must publish once in two newspapers of opposite political persuasion issued in each county (if there are two such newspapers in each county) a copy of all ballot measures and an explanation of how to vote for or against ballot measures.

The Governor notifies the State Election Board which is responsible for arranging the election (general or special). The Board also is required to keep a record of all election returns.

In the past ten years, six or seven special elections were held on ballot issues. The cost of holding a special election in Oklahoma is approximately $675,000.[15] Other identifiable costs are those incurred by the Secretary of State in determining the sufficiency of signatures on a petition and in publishing notices about the propositions, as required by law. In particular, the requirement to publish notices in two papers with opposing political persuasions in each county (there are 77 counties) has resulted in expenditures of $40,000 related to four initiatives for the first half of FY 1991. (This is apparently an atypical year; ballot activity is usually less hectic. Moreover, the Legislature appropriated only $10,000 for this purpose.) Costs incurred by the Secretary of State for counting signatures for "weeding" purposes have totaled in FY 1991 over $3,000 to date. The Supreme Court and Attorney General also incur costs but these are not easily identifiable. The Supreme Court uses existing staff to count or, if needed, validate signatures, hear protests against the measures, challenge petitions, and other matters. The Attorney General reviews ballot titles and sometimes evaluates the wording of questions on propositions. (Contact: Kathy Jekel, Secretary of State; Lans Ward, State Election Board; Howard Conyers, Courts)

2. Nebraska

Authorized measures include direct constitutional and statutory initiatives and petition referenda. The basis used for signatures for the referendum is total votes cast for governor at the last election. For initiatives it is eligible voters. Percentage thresholds are: for constitutional initiatives, 10 percent; for statutory initiatives, 7 percent; and for referenda, 5 percent. There also is a geographical restriction that 5 percent of votes must be received for each measure from two-fifth or 38 of all 93 counties.

Petitioners are required to file copies of signed petition forms with the Secretary of State. Validation of signatures is primarily the responsibility of county clerks and election commissioners who must compare all the signatures on the petition with voter registration records and certify them. The Secretary of State totals the valid signatures and determines if they are sufficient to satisfy the signature threshold requirements. If the requirements have been met, the Secretary of State certifies the petition. The Attorney General establishes the ballot title, which is subject to appeal, and also prepares a summary for each measure. The Secretary of State places the measure on the general election ballot. (Initiative and referendum measures can be voted on only at general elections.) Initiative petitions are filed with the Secretary of State not less than four months prior to a general election. Petitions invoking referenda are filed with the Secretary of State within 90 days after adjournment of the Legislature, which had acted upon the referred measure.

Immediately preceding any general election at which a ballot measure is to be submitted to voters, the Secretary of State publishes in all legal newspapers in the state once each week for three weeks a copy of a title and complete text for each measure.

In contrast to Oklahoma, Nebraska delegates counting and validation of signatures on petitions to counties. In addition, counties print their own ballots. These costs are not readily

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[15] In Kansas, the Secretary of State estimates that it would cost $120,000- $170,000 to add to the ballot a proposal to amend the *Kansas Constitution*, authorizing initiative and referendum measures in the state, if that proposal is voted upon at the presidential primary election in April, 1992 and if the proposed constitutional amendment can be written on the same ballot as the other measures. If a special election is held for this purpose, however, it would be much more expensive.

identifiable but are covered by the counties. For its administrative activities, the Secretary of State expends approximately $5,000 to $7,000 in preparation for an election. In addition, the Secretary of State expends approximately $200,000 every other year to publish titles and texts of ballot measures in 220 legal newspapers throughout the state over a period of three weeks. According to the Secretary of State, FY 1990 was unusual because there were seven measures (including a very lengthy one) on the ballot[16] and newspaper expenditures totaled approximately $600,000.

The Attorney General also expends several hundred dollars to determine titles and prepare summaries. (Contact: Allen J. Beermann, Secretary of State)

3. Oregon

In Oregon, both laws and constitutional amendments can be initiated by the voters. Laws can be referred to the voters either by petition or by the Legislature. The basis for signatures used for initiatives and referenda is the total votes cast in the last election for governor. The percentage thresholds for signatures are: for constitutional initiatives, 8 percent; for statutory initiatives, 6 percent; and for petition referenda, 4 percent.

Oregon requires petitioners to file a prospective petition for a state measure with the Secretary of State, including a statement declaring whether the signature gatherers are to be paid for their services. Once the prospective petition has been filed with the Secretary of State, the Secretary authorizes the circulation of another petition for signatures. An initiative petition must be filed with the Secretary of State not less than four months before an election on the proposed measure. A referendum petition must be filed with the Secretary of State not more than 90 days after the end of the session during which the act is passed. The Secretary of State also sends two copies of the approved prospective petition to the Attorney General who provides a draft title for the measure. (With respect to referred measures, the Legislature may prepare ballot titles.) Ballot titles are subject to appeal to the Oregon Supreme Court.

Once the Secretary of State receives a copy of the ballot title, the Secretary provides a statewide notice of the measure and requests written comments. County clerks are responsible for verifying signatures with voter registration records and notifying the Secretary of State of the results. The Secretary of State then processes petitions using a statistical sampling technique and determines whether the required number of signatures have been submitted to meet the threshold requirements. Another responsibility of the Secretary is that of preparing voters' pamphlets. As a means of informing the public about a measure, the Secretary is authorized to supplement the use of these pamphlets with radio and television.

All ballot measures are voted upon at a regular biennial election unless the Legislative Assembly orders another date.

The cost of implementing the process, at least with respect to signature verification and providing information, is higher in Oregon than in many other states. This is in large part due to the

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[16]The Secretary of State's observation appears to be confirmed by the historic use of these measures in Nebraska. According to David Schmidt, "Nebraskans have been infrequent Initiatives users, placing 27 such measures on state ballots in 70 years - an average of less than one per election." (page 250)

high level of ballot activity in the state. Historically, Oregon has held records for the greatest aggregate number of statewide initiatives (244 from 1902 to 1990, 92 of which have been adopted). Since 1902, voters in Oregon have challenged laws adopted by the Legislature 50 times through petition referenda. Seventeen of the referred measures have been adopted. In 1990, 11 initiatives and two referenda appeared on the ballot.

The Secretary of State has expenditures for: developing forms for ballots; writing manuals for prospective petitioners on formulating initiatives; drafting ballot titles (this is the responsibility of the Attorney General but the Secretary of State pays that office $100 per hour for the service); making public announcements and issuing news releases about measures; payments to courts and for attorney fees if a measure is challenged, and preparing the voters' handbook. It is estimated that manuals on how the process works and forms each cost $3 for printing alone. Processing costs associated with prospective and completed petitions are estimated at $1,000 for the biennium, FY 1990 and FY 1991.[17] The cost of printing and disseminating the most recent batch of voters' handbooks was $813,160. They were disseminated to 1,402,000 households at a cost to the state of $.58 each. The state recouped slightly more than 10 percent of total expenditures from candidates and individuals who submitted arguments in favor of or in opposition to a measure, for inclusion in the voters' handbook. Three existing staff positions (one manager, one public service representative, and one clerical support staff) devote a portion of their time to responsibilities associated with initiatives and referenda. (Contact: Dorothy Pick, Secretary of State's Office)

4. Colorado

Colorado authorizes direct statutory and constitutional initiatives, petition referenda, and legislatively-generated referenda. The basis for signatures for initiatives and referenda is the total number of votes cast for the Secretary of State. The percentage threshold is 5 percent for both types of initiatives and petition referenda.

Initiative petitions are filed with the Secretary of State at least three months prior to the next biennial election. Petitions for referenda are filed with the Secretary of State not more than 90 days after the adjournment of the Session during which the bill was enacted. Petition sponsors are required to file with the Secretary of State the names and addresses of all circulators who are paid to circulate any section of the petition. An original draft of the text of the proposed constitutional amendment or law is submitted to the Legislative Council and the Office of Legislative Legal Services for review and comment. These comments, which are not binding on sponsors of the measure, are rendered to proponents no later than two weeks after submission of an original draft. The ballot title is determined after comments have been rendered.

The Secretary of State then convenes a board composed of the Secretary of State, the Attorney General, and the Director of the Office of Legislative Legal Services or designee to determine a ballot title, formulate a submission clause, and prepare a summary, which contains an estimate of the fiscal impact with an explanation of that impact. Provisions are included in the statutes for hearings, appeals, and rehearings of titles, submission clauses, and summaries. The

[17] This estimate is calculated upon 100 hours of staff time at $10 per hour. It includes staff time involved after the prospective petition has been filed but not staff time prior to the filing of the prospective petition. It does not include staff time outside the Secretary of State's office, nor costs associated with postage and photocopying for mailings or inquiries.

Secretary of State has ultimate responsibility for both the verification of signatures and the certification that the number of signatures are sufficient to meet the signature threshold requirements.

The fiscal impact of implementation of the initiative and referendum process has been estimated to date at $350,000 in FY 1991. There were five issues on the ballot in November, 1990 (three initiatives and two legislatively-generated referenda). The major expense incurred by the Secretary of State was for publications to notify the public about the propositions ($250,000). The Secretary of State also hired approximately 20 temporary personnel (working two shifts per day for 21 days) to verify all signatures at a rate of $6.20 per hour. In contrast to Oregon's law, Colorado's law makes no provision for sampling of signatures, thus making the signature verification procedure more costly. Total expenditures for signature verification in FY 1991 were $75,000-$100,000. Finally, an undetermined amount in expenses were incurred to prepare for and hold hearings on the proposed titles, submission clauses, and summaries. (Donnetta Davidson, Secretary of State's Office)

5. Maine

Authorized measures include indirect statutory initiatives (allowing for legislative action prior to measures appearing on the ballot), petition referenda, and legislatively-generated referenda. No direct initiatives are authorized, nor are indirect initiatives authorized for constitutional amendments. The basis for signatures for initiatives and referenda is 10 percent of total votes cast for governor in the last election.

Petitions for referenda are filed with the Secretary of State within 90 days after the legislative session during which the bill was enacted. Signatures are validated at the local level but the Secretary of State is responsible for counting signatures to ensure that the number of signatures meets the required threshold. Ballot issues must be voted upon at general elections unless otherwise authorized by the Legislature.

The Secretary of State assumes primary responsibility for implementation of the initiative and referendum process. Implementation responsibilities include, among others, administering prefiled applications, reviewing and approving petition forms, drafting ballot questions, providing instructions to be placed on the petitions, issuing voters' manuals, and notifying the public about ballot measures. It is estimated that a ballot with up to six questions costs $95,000 to prepare (includes all printing costs associated with ballot forms, notification, and manual on proposition). If there are more than six questions on the ballot, the estimated cost of each additional question is $65,000. The voter's manual is not distributed to each voter but only upon request. There are, on average, 4,000-5,000 copies printed for a total cost of $1,500-$2,000. These manuals contain the proposition text, explanation, and fiscal impact. In addition, it costs approximately $15,000-$20,000 to place notification of all ballot questions, explanations, and fiscal impacts in seven newspapers throughout the state. No additional staff are hired to administer the processes associated with initiative and referenda. The Attorney General's involvement is essentially confined to addressing legal questions. (Contact: Lorraine M. Fleury, Secretary of State's Office)

6. Conclusion -- State Profiles

To conclude, Oklahoma and Colorado authorize direct constitutional initiatives and statutory initiatives, as well as petition referenda and legislatively-generated referenda. Nebraska and

Oregon authorize both types of direct initiatives but only petition referenda. Maine, like Oklahoma and Colorado, authorizes both types of referenda but, unlike the other four states, authorizes indirect statutory initiatives. Of the five states, Colorado offers a basis for signature validation (5 percent of all votes cast for the Secretary of State) which is most hospitable to sponsors of initiatives and referenda. Maine and Oklahoma have the most stringent criteria in that regard. (in Maine, 10 percent of total votes cast for governor in the last election; in Oklahoma, 15 percent for constitutional initiatives and 8 percent for statutory initiatives.)

Each of the five states has a different procedure for implementing the initiative and referendum process. Nevertheless, in all five states, the Secretary of State has major responsibilities, such as involvement in the signature counting or validation process and in notification of the public about ballot propositions. In Maine and, to a lesser extent, Oregon, implementation activities appear to be centralized largely within the Secretary of State's office. In Oklahoma, Colorado, and Nebraska, these activities seem to be shared with other state agencies or, in the case of Nebraska, with local units of government. All the states, with the occasional exception of Oklahoma, hold referenda on ballot issues at general elections. For all states, the greatest operating expenditure for implementing the initiative and referendum process is printing associated with notification and, in the case of Oregon, with the voters' manual. To a lesser degree, the states incur expenses for signature counting and validation. Because these activities are mostly undertaken by existing personnel, the costs are difficult to segregate.

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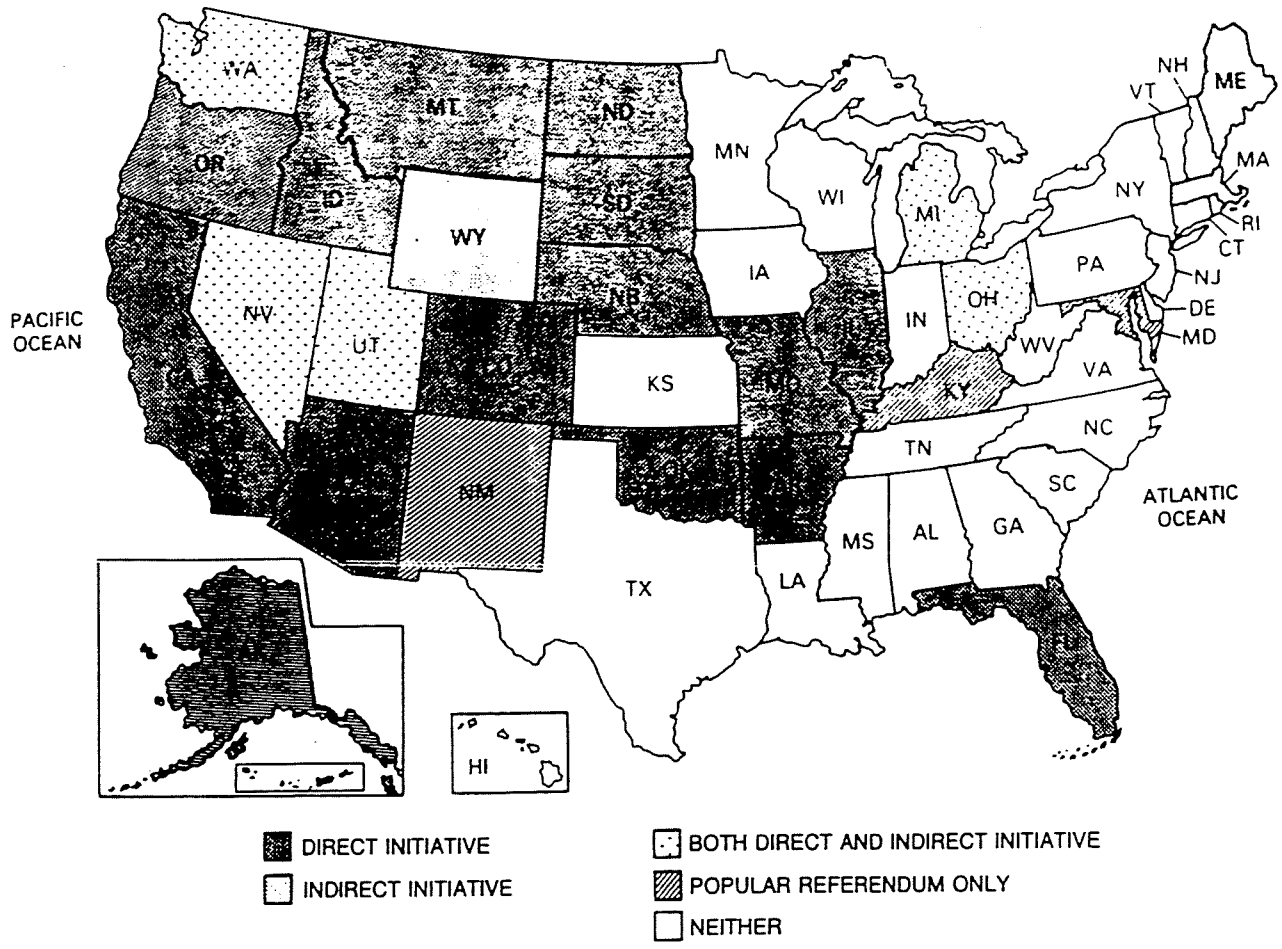
ATTACHMENT I



PROVISIONS FOR INITIATIVE AND POPULAR REFERENDUM IN THE UNITED STATES

ATTACHMENT II

CITIZENS' INITIATIVE

State	Constitutional	Statutory	Direct or Indirect*
Alaska		x	D
Arizona	x	x	D
Arkansas	x	x	D
California	x	x	D
Colorado	x	x	D
Florida	x		D
Idaho		x	D
Illinois	x		D
Maine		x	I
Massachusetts	x	x	I
Michigan	x	x	B
Missouri	x	x	D
Montana	x	x	D
Nebraska	x	x	D
Nevada	x	x	B
North Dakota	x	x	D
Ohio	x	x	B
Oklahoma	x	x	D
Oregon	x	x	D
South Dakota	x	x	D
Utah		x	B
Washington		x	B
Wyoming		x	I

*D = direct; I = indirect; B = both. *(Source: David B. Magleby,* Direct Legislation *(Baltimore, MD: Johns Hopkins University Press, 1984), pp. 38-39.*

ATTACHMENT III

State adoptions of initiative and referendum, 1898–1977

Year	State
1898	South Dakota
1900	Utah
1902	Oregon
1904	Nevada (referendum only)
1906	Montana
1907	Oklahoma
1908	Maine, Missouri
1910	Arkansas, Colorado
1911	Arizona, California, New Mexico (referendum only)
1912	Idaho, Nebraska, Nevada (initiative only), Ohio, Washington
1913	Michigan
1914	North Dakota
1915	Kentucky (referendum only), Maryland (referendum only)
1918	Massachusetts
1959	Alaska
1968	Florida (constitutional initiative only), Wyoming
1970	Illinois (constitutional initiative only)
1977	District of Columbia

Note: During the past 20 years Alabama, Connecticut, Delaware, Georgia, Hawaii, Kentucky, Minnesota, New Jersey, New York, Pennsylvania, Rhode Island, and Texas have considered direct legislation devices at constitutional conventions or in legislative debates and hearings. Governors in Alabama, Minnesota, New Jersey, and Texas have endorsed these measures. Voters in both Minnesota and Rhode Island came very close to adding the initiative and referendum to their constitutions in the 1980s.

ATTACHMENT IV

VOTER APPROVAL RATES FOR INITIATIVES AND LEGISLATIVE PROPOSITIONS FOR ALL STATES, 1898–1978

State	*Proposed by Legislatures*			*Proposed by Popular Petition*		
	Number Proposed	*Number Approved*	*Percentage Approved*	*Number Proposed*	*Number Approved*	*Percentage Approved*
Statutory proposals						
Alaska	4	2	50%	6	3	50%
Arizona	14	6	43	71	28	39
Idaho	4	3	75	11	5	45
Maine	124	89	72	12	4	33
Michigan	7	3	43	4	3	75
Montana	43	25	58	26	15	58
Nebraska	11	5	45	9	1	11
Ohio	16	3	19	6	2	33
Oklahoma	11	9	82	26	6	23
Oregon	35	18	51	119	39	33
Subtotal	269	163	61%	290	106	37%
Constitutional proposals						
Arizona	105	67	64%	46	19	41%
Arkansas	79	37	47	56	27	48
California	476	294	62	90	24	27
Michigan	93	59	63	34	8	23
Nebraska	243	167	69	15	7	47
Ohio	113	74	65	38	8	21
Oklahoma	159	73	46	42	10	24
Oregon	238	138	58	88	28	32
Subtotal	1,506	909	60%	409	131	32%
Total proposals	1,775	1,072	60%	699	237	34%

Sources: Austin Ranney, "United States," in Butler and Ranney, *Referendums*, 77. Much of Ranney's data are drawn. in turn, from Graham, *A Compilation of Statewide Initiative Proposals Appearing on Ballots through 1976.*

ATTACHMENT V

Regulation of Money Expended for Initiative and Referendum Measures

Two issues which arise with regard to money expended on initiative and referendum measures are the issue of paid petition circulators and the issue of expenditures and contributions in campaigns to promote or defeat initiative or referendum measures.

With regard to the first issue, some states have attempted to prohibit payment of persons who circulate initiative or referendum petitions. However, a Colorado statute making it a felony to pay persons to solicit signatures for an initiative petition was struck down by the United States Supreme Court in 1988. Meyer v. Grant, 486 U.S. 414 (1988). The court, in a unanimous decision, ruled that circulation of such a petition is a form of political expression clearly protected by the First Amendment guarantee of freedom of speech. In addition, the court found that the state's interests in assuring grass-roots support for an initiative measure and protecting the integrity of the initiative process are insufficient to justify the restraint on free speech.

The second issue, expenditures and contributions in initiative and referendum campaigns, has also been the subject of state restrictions. Among those have been prohibitions against or limitations on corporate expenditures in initiative campaigns. One such law was a Massachusetts statute prohibiting corporate contributions to campaigns not materially affecting the corporation's property, business or assets. In First National

Bank of Boston v. Bellotti, 435 U.S. 765 (1978), the U.S. Supreme court held such a prohibition to be a violation of free speech which was not justified by the state's interests in promoting active individual citizen participation and protecting rights of shareholders whose views were different from those of corporate management. The decision of the court was split 5-4, indicating a much less clear violation of free speech than in the Meyer case, but a violation nevertheless.

Another type of campaign restriction is one limiting the amount that a person may contribute to support or oppose an initiative measure. In Citizens Against Rent Control v. Berkeley, 454 U.S. 290 (1981), the court reviewed a city ordinance containing such a limit on contributions to committees formed to support or oppose ballot measures. The court, in an 8-1 decision, held the limit to be an unconstitutional infringement on freedom of speech and the right of association and distinguished the limit in this case from those imposed on contributions to candidates and candidate committees.

In summary, it appears that there are few restrictions on initiative and referendum campaign contributions and expenditures that would be constitutional. Requiring reporting of contributions and expenditures is one alternative that would aid detection of any abuses that may occur. But if abuses do in fact occur, it may be difficult to respond to them.

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