

Approved 4-26-91
Date

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS

The meeting was called to order by SENATOR DON SALLEE at
Chairperson

12:30~~xxx~~/p.m. on April 12, 1991 in room 529-S of the Capitol.

All members were present ~~except~~ or excused:

Committee staff present:

Pat Mah, Legislative Research Department
Ardan Ensley, Office of the Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Lynn Holt, Legislative Research Department
Senator Edward Reilly
Senator Phil Martin
Michael Woolf, Common Cause
Kenneth Huff, Winfield, KS
Christy Young, Topeka Chamber of Commerce
Jim Edwards, Kansas Chamber of Commerce and Industry as well as Kansas Society of Association Executives
Mark Tallman, Association of School Boards
Warren Parker, Kansas Farm Bureau
Ron Smith, Kansas Bar Association

The meeting was called to order at 12:30 p.m. with chairman Sallee presiding.

The Chairman noted for the record that a quorum was present.

Lynn Holt, Legislative Research, presented Attachments 1 and 2, Background Information on Initiatives and Referenda as well as a Memorandum comparing SCR 1624 and SCR 1625.

Senate Concurrent Resolution 1624 authorizes voters to propose and enact laws relating to taxation and expenditures of the state and taxing subdivisions of the state. Direct Initiative permits electors to propose laws or constitutional amendments by petition and enact them by majority vote in a subsequent election. This procedure bypasses the legislature and is not subject to executive veto.

Indirect initiative is when electors propose by petition that a legislature pass a desired law.

Advisory initiative is one in which the outcome is a nonbinding expression of public opinion.

Senate Concurrent Resolution 1625 would authorize the legislature to refer legislative measures to voters. Kansas requires that measures to amend the Constitution be submitted to voters. This is the only type of state referendum recognized by our Constitution. However, our Constitution has no provision for statutory referendum. Senate Concurrent Resolution 1625 authorizes the legislature to refer any measures, if approved by a 2/3 vote in each house, to the voters at the next statewide election following passage of the bill. The measure may be submitted in entirety or in some reform.

A majority vote is necessary for the law to take effect but is not subject to a gubernatorial veto. However, any amendments or repeals by the legislature are subject to gubernatorial veto.

Senator Reilly presented testimony concerning SCR-1624 and SCR-1625. (Attachment 3) He noted these concurrent resolutions had come about in an effort to craft something less offensive to the legislature in the sense that it was taking away from them their authority or power for oversight.

Initiative was crafted to require a 2/3 vote of the legislature to place the issue on the ballot and it requires 2/3 vote for the people to pass the issue.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS

room 529-S, Statehouse, at 12:30 ~~xxx~~/p.m. on April 12, 1991

Senator Martin told the committee that SCR-1625 dealing with referendum leaves it up to the legislature where they may submit legislative measures to the voters of this state and may be submitted as other bills are except that it takes a 2/3 vote to pass such a measure. Senator Martin noted safeguards had been injected in an attempt to address concerns of people concerning referendum.

Michael Woolf, Common Cause, presented testimony in support of SCR-1624 and SCR-1625 telling members that it is the belief of Common Cause that initiative provides voters with a tool to make public policy when the legislature is unresponsive to public opinion, either because the legislature has a self-interest in opposing certain measures or because the legislature or a legislative committee is more responsive to special interests than to public interests. Concerning referendum Mr. Woolf noted presently special interest groups pour millions of dollars into the current system through campaign contributions every election, through entertaining legislators and gifts to public officials. This is no different than wealthy special interest groups having an advantage in the legislative process. Attachment 4

Kenneth W. Huff, a private appeared in opposition of SCR-1624 and SCR-1625 noting that our government is based on democracy and initiative and referendum is not the logical progression of representative democracy but of pure democracy. He further noted initiative and referendum relies on accurate information being given by the media to citizens to make an intelligent choice in voting but this does not happen since advertisers wishes often come first. (Attachment 5)

Christy Young, Vice President of Government Relations, Greater Topeka Chamber of Commerce, appeared in opposition to to SCR-1624 and SCR 1625 noting her organization firmly believes in our current representative form of Kansas government. Ms. Young noted the business community has input to their delegation, legislative committees, other legislative friends and the Governor's office at many junctures in the legislative process. It was noted no complaints have been received due to lack of access to such people. (Attachment 6)

Jim Edwards, Director of Chamber and Association Relations, Kansas Chamber of Commerce and Industry, appeared in opposition to SCR 1624 and SCR-1625 noting they tear at our system of representative government and would replace it with a system of legislation through media blitz. (Attachment 7) Mr. Edwards noted the legislature was elected by constituents to represent them, and not to pass the act of governance to them.

Mark Tallman, Kansas Association of School Boards, appeared in opposition to SCR-1624 and SCR-1625 noting supporters of initiative and referendum suggested that these measures are necessary to empower the people. His organization oppose the undermining of a system of representative government based on checks and balances that has endured for 130 years in Kansas. (Attachment 8)

Warren Parker, Kansas Farm Bureau, appeared in opposition to SCR-1624 and SCR-1625 noting no state has instituted initiative and referendum in nearly 20 years and only a handful adopted it since early this century. He further noted such measures place our representative form of government at risk. (Attachment 9)

Ron Smith, Kansas Bar Association, appeared in opposition to SCR-1624 and SCR-1625 noting this was one form of controlling democracy but it was not felt to be the strongest form nor does it promote the best form of civic involvement. He noted tax and spending issues are most critical and the legislature can best handle such issues. (Attachment 12)

Mary E. Turkington, Kansas Motor Carriers Association, appeared in opposition to SCR-1624 and SCR-1625 noting such departures from representative government were opposed for six reasons as listed in Attachment 10.

Jim Edwards presented testimony to the committee for the Kansas Society of Association Executives in opposition to SCR-1624 and SCR-1625 noting such constitutional amendment would have a major impact on the management of trade and professional voluntary organizations as they play a vital role in the policy process in the Kansas legislature. (Attachment 11)

Jack Alexander, Legislative Liaison to Governor Finney, told those present that on behalf of the Governor, she was a strong believer on the issue which had been discussed and he urged passage of such legislation.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS,
room 529-S, Statehouse, at 12:30 ~~xxxx~~ p.m. on April 12, 1991

Speaking as a private citizen, Mr. Alexander noted the two resolutions were very restrictive, much more so than those which were introduced in the house and was at a loss to understand how much the legislature would actually be giving up should such bills be passed.

Senator Martin moved to pass SCR-1624 and SCR-1625 out favorably.

The chairman told those present he was hesitant to allow a vote without a quorum being in committee noting he had told members who had to attend other committees no vote would be taken during their absence. He further noted the bill would remain "alive" and the committee could possibly meet on Saturday, April 13, or perhaps during the veto session.

Senator Martin withdrew his motion.

The meeting adjourned at 1:37 p.m.

GUEST LIST

SENATE ELECTIONS COMMITTEE

DATE April 12, 1991

(PLEASE PRINT)

NAME AND ADDRESS

ORGANIZATION

Warren Ficker - Manhattan

Ks. Farm Bureau

Michael Walt - Topeka

CC/KS

Kenneth W Huff

None

Jim Edwards

KCCI

Christy Young, Topeka

Topeka Chamber of Commerce

Ron Smith "

Ks Bar Assoc.

**BACKGROUND INFORMATION ON INITIATIVES
AND REFERENDA**

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

(913) 296-3181

January 28, 1991

Senate Elections Committee
April 12, 1991
Attachment 1

TABLE OF CONTENTS

INTRODUCTION	1
SECTION I: DEFINITIONS	3
Initiative	3
Referendum	3
SECTION II: BACKGROUND	5
What is Permissible in Kansas	5
A Survey of States' Uses of Initiatives and Referenda	5
Historical Background	6
Disposition of Measures in States and Subject Matters	6
SECTION III: INITIATIVES AND REFERENDA -- ARGUMENTS PRO AND CON	9
Voters' Acceptance of Government	9
Voter Participation	9
Voter Comprehension	10
Information about Ballot Measures	11
Racial and Ethnic Minority Rights	12
Legislative Responsiveness and Systemic Flexibility	12
Frequency of Use	13
Special Interest Spending	13
Popular Reaction to the Initiative Process	15
SECTION IV: LEGISLATIVE POLICY DECISIONS	17
Measure to be Authorized	18
Subject Matter of Legislation	19
Criteria for Signatures	19
Number of Measures on the Ballot	21
Signature Validation Procedures, Petition Certification	21
Titles and Summaries-Petitions	22
Voters' Handbooks	23
Time Period Allowed for Petition Circulation	23
Removal of Signatures from Petition	24
Time Period Required between Filing of Petition and Election	24
Penalty for Falsifying Petitions	25
Deposits for Circulating Petitions	25
Reports on Financial Contributions	25
Drafting Advice on Language for Proposition	26
Conditions for Approval of Initiatives and Referenda	27
Ballot Titles and Summaries	27
Timing of Elections	27
Disposition of Approved Initiatives	28
Contestation of Election Results on Referenda	29
Requirements for Hearings	29
Constitutional Provisions for Initiative and Referendum	30

SECTION V: FISCAL IMPACTS OF IMPLEMENTATION IN OTHER STATES	31
Oklahoma	31
Nebraska	32
Oregon	33
Colorado	34
Maine	35
Conclusion -- State Profiles	35
ATTACHMENT I	37
ATTACHMENT II	39
ATTACHMENT III	41
ATTACHMENT IV	43
ATTACHMENT V	45
BIBLIOGRAPHY	47

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: DEFINITIONS¹

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 election². 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

¹Most 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.

²As 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

³The 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-

⁴Illinois 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

⁵A 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).

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

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

⁸Indeed, 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).

⁹A 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.

¹⁰H.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

¹¹Some 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

¹²Other 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 penalties 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

¹³Certain 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.

¹⁴The 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

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 ballot¹⁶ 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

¹⁶The 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.

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: 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
<i>Statutory proposals</i>						
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%
<i>Constitutional proposals</i>						
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.

BIBLIOGRAPHY

- "Assessing the Initiative Process." *State Policy Reports*, Volume 8, Issue 22, November 1990, pages 24-25.
- Benenson, Robert. "Initiatives and Referendums," *Editorial Research Reports*. Congressional Quarterly, Inc., Volume 11, No. 15, October 1982, pages 775-792.
- Berg, Larry L. and C. B. Holman. "The Initiative Process and its Declining Agenda-Setting Value." *Law & Policy*, Volume 11, No. 4, October 1989, pages 451-469.
- The Book of the States: 1990-91 Edition*. Lexington: The Council of State Governments, Volume 28, 1990.
- Cronin, Thomas E. *Direct Democracy: The Politics of Initiative, Referendum, and Recall*. Cambridge: Harvard University Press, 1989.
- DiCamillo, Mark and Mervin Field. California Poll 1566. The Field Institute, San Francisco California, October 24, 1990.
- Dresang, Dennis L. and James J. Gosling. *Politics, Policy and Management in the American States*. New York: Longman, Inc., 1989.
- Field, Mervin and Mark DeCamillo. California Poll 1557. The Field Institute, San Francisco, California, September 13, 1990.
- Jaksha, Edward A. "State Laws, Court Cases, Exhibits." *Of the People: Democracy and the Petition Process*. Omaha: Simmons-Boardman Books, 1988.
- Jost, Kenneth. "Initiatives: True Democracy or Bad Lawmaking?" *Editorial Research Reports*. Congressional Quarterly, Inc., Volume 1, No. 20, August 17, 1990, pages 462-475.
- Keast, John P. "Seizing the Initiative." *Empowerment*. January 1991, pages 1-2.
- League of Women Voters of California, *Initiative and Referendum in California: A Legacy Lost*. Sacramento, 1984.
- Magleby, David B. *Direct Legislation: Voting on Ballot Propositions in the United States*. Baltimore: Johns Hopkins University Press, 1984.
- McGuigan, Patrick B. *The Politics of Direct Democracy in the 1980s: Case Studies in Popular Decision Making*. Washington, D.C.: Institute for Government and Politics, 1985.
- Schmidt, David D., (editor)^a *Ballot Initiatives: History, Research, and Analysis of Recent Initiatives and Referendum Campaigns*. INR Special Report. Arlington: Capitol Publications, Inc., 1984.
- Schmidt, David D. *Citizen Lawmakers: The Ballot Initiative Revolution*. Philadelphia: Temple University Press, 1989.

State of Wisconsin Legislative Reference Bureau. *"Let the People Decide" - Initiative and Referendum in Wisconsin and Other States*. Information Bulletin LRB-90-3, April 1990.

Zimmerman, Joseph F. "Initiative, Referendum, and Recall: Government by Plebescite?" *Intergovernmental Perspective*, Volume 13, No. 1, Winter 1987, pages 20-24.

Zisk, Betty H. *Money, Media, and the Grass Roots: State Ballot Issues and the Electoral Process*. Newbury Park, California: Sage Publications, 1987.

MEMORANDUM

Kansas Legislative Research Department

Room 545-N -- Statehouse
Topeka, Kansas 66612-1586
(913) 296-3181

April 10, 1991

To: All Interested Parties

Re: Comparison Between S.C.R. 1624 and S.C.R. 1625

<u>S.C.R. 1624</u>	<u>S.C.R. 1625</u>
1. Authorization for statutory initiatives relates to taxation and expenditures by the state and taxing subdivisions of the state.	1. Authorization for referenda relates to statutory measures.
2. Initiatives may not make or repeal appropriations or contain more than one subject.	2. There is no subject restriction.
3. Attorney General must give a written determination within 30 days as to proper form and legality of petition, proposed law, and proposed ballot summary.	3. Not applicable.
4. Grievance with a determination involves filing a proceeding in quo warranto with the Kansas Supreme Court.	4. Not applicable.
5. Signature threshold -- 5 percent of registered voters.	5. As a precondition for referral to the voters, a bill must be approved by a two-thirds vote of each house of the Legislature.
6. Sixty percent of the signatures must be equally apportioned among Kansas Congressional Districts.	6. Not applicable.
7. Signatures must be obtained within 365 days of Attorney General's determination.	7. Not applicable.

Senate Elections Committee
April 12, 1991
Attachment 2

S.C.R. 1624

S.C.R. 1625

8. Signed petitions must be filed with the Secretary of State who would have 60 days to validate the petitions.
9. Ballot summaries of up to two propositions may be submitted to voters at the next general election for state representatives held 130 or more days after petitions are filed.
10. Approval by voters of an initiative would be based on a majority vote.
11. A proposition rejected by voters could not be proposed again by initiative unless proposed by a petition containing signatures of registered voters equal to 25 percent of registered voters.
12. The Legislature may amend or repeal any laws enacted via initiative; however, a two-thirds vote of each house is required to amend or repeal such laws during the first Legislative Session following enactment.
13. Any legislation to amend or repeal a law enacted via initiative would be subject to gubernatorial veto.

8. Not applicable.
9. Ballot summaries or the entire text of up to two propositions may be submitted to voters at the next statewide general election following passage of the bill.
10. Approval by voters of a referred measure would be based on a majority vote.
11. Not applicable.
12. The Legislature may amend or repeal any laws enacted via referendum.
13. Any legislation to amend or repeal a law enacted via referendum would be subject to gubernatorial veto.

THANK YOU MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE BEING PASSED OUT TO YOU IS A PROPOSAL THAT WILL GIVE ANOTHER OPPORTUNITY TO THE LEGISLATURE IN PARTICULAR THE SENATE TO ADDRESS THE INITIATIVE AND REFERENDUM ISSUES.

A NUMBER OF PROPOSALS WE KNOW HAVE BEEN INTRODUCED EARLY IN THIS SESSION ARE BEFORE THE SENATE ELECTIONS COMMITTEE THAT TRACK SOMEWHAT CLOSELY WITH THE PROPOSAL THAT WAS CONSIDERED BY THE HOUSE OF REPRESENTATIVES.

THIS PROPOSAL TAKES AN ENTIRELY DIFFERENT APPROACH AND HAS BEEN DEVELOPED BY A NUMBER OF US WHO FELT OTHER EFFORTS SHOULD BE MADE TO CONSIDER GIVING KANSANS A GREATER VOICE IN THEIR GOVERNMENT WHILE AT THE SAME TIME PROVIDING THE NECESSARY CHECKS AND BALANCES TO INSURE THAT WE DO NOT DEVELOP THE TYPE INITIATIVE SITUATION WE HAVE READ ABOUT AND THAT HAVE CAUSED MANY TO QUESTION THE WISDOM OF THE INITIATIVE.

THIS INITIATIVE PROPOSAL WOULD RESPOND TO THOSE CONCERNS OF LEGISLATORS, AS WELL AS PROVIDE A VETO BY THE LEGISLATURE.

IT GUARANTEES KANSANS A VOICE IN THEIR GOVERNMENT LIKE ALL OF OUR SURROUNDING STATES CURRENTLY ENJOY.

IT RECOGNIZES THAT KANSANS ARE A RESPONSIBLE GROUP OF CITIZENS AND THAT THEY DESERVE NO LESS THAN THE OPPORTUNITY TO EXPRESS THEMSELVES ON THE COURSE OF THEIR GOVERNMENT.

IT ZEROS IN ON TWO MAJOR POLICY DECISIONS AFFECTING KANSANS AND CONTINUING TO DOMINATE THE DISCUSSIONS OF THIS LEGISLATURE, TAXES AND SPENDING.

IT RECOGNIZES THAT BOTH POLITICAL PARTIES, REPUBLICANS AND DEMOCRATS, HAVE ENDORSED THE PRINCIPAL IN THEIR RESPECTIVE

Senate Elections
April 12, 1991
Attachment 3

PLATFORM OF INITIATIVE AND REFERENDUM.

IT RECOGNIZES THAT BOTH FORMER GOVERNOR HAYDEN AND GOVERNOR FINNEY ENDORSED AND MADE THE INITIATIVE AND REFERENDUM A PART OF THEIR CAMPAIGN AND THE KANSAS PEOPLE APPARENTLY AGREE.

IT RECOGNIZES THAT MOST PUBLIC OPINION POLLS INDICATE A DESIRE BY OUR CITIZENS TO HAVE A GREATER VOICE IN THE DECISIONS OF THEIR GOVERNMENT TODAY.

IT RECOGNIZES THAT OUR FELLOW KANSANS WERE INTELLIGENT ENOUGH TO SELECT THOSE WHO REPRESENT THEM AND THUS ARE INTELLIGENT ENOUGH TO ALSO HELP GUIDE THE FUTURE COURSE OF KANSAS HISTORY AND ITS FUTURE.

ELEMENTS EMBODIED IN THIS PROPOSAL:

THE PROPOSAL IS RELATIVELY SIMPLE IN THAT IT PROVIDES FOR STATUTORY INITIATIVE ONLY NOT CONSTITUTIONAL INITIATIVE.

IT PROVIDES THAT THE VOTERS THROUGH THE PETITION PROCESS AND THE FORMULA THE HOUSE SUBCOMMITTEE WORKED ON DILIGENTLY COULD PROPOSE STATUTORY CHANGES.

IT PROPOSES THAT THE LEGISLATURE WILL HAVE AN OPPORTUNITY TO REVIEW THOSE CHANGES AFTER THEIR PASSAGE AND TO REJECT THEM BY A TWO-THIRDS VOTE OF EACH HOUSE RESPECTIVELY.

IT PROPOSES PROTECTION FOR THE EXECUTIVE DEPARTMENT OF GOVERNMENT THAT IF THE GOVERNOR DISAGREES WITH THE LEGISLATURE'S ACTION, SHE MAY VETO THAT REJECTION, AND IT PROPOSES THE LEGISLATURE COULD OVERRIDE THE GOVERNOR'S VETO.

IT PROPOSES THAT ONLY TWO SUBJECTS COULD BE PLACED ON THE BALLOT AT THE GENERAL ELECTION AND DEALING WITH THE ISSUE OF TAXATION OR SPENDING.

IT PROPOSES THAT IF THE MATTERS FAIL, THEY MAY NOT BE SUBMITTED FOR FOUR YEARS.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THIS PROPOSAL AFFORDS AN ENTIRELY DIFFERENT APPROACH FOR THE LEGISLATURE TO CONSIDER WITH REGARDS TO THE STATUTORY INITIATIVE WHILE RECOGNIZING IMPORTANCE OF OUR FELLOW CITIZENS AND THEIR RIGHT TO HAVE A VOICE IN THEIR GOVERNMENT. THE EFFORT TO FIND SOME COMPROMISE IS THE RESULT OF A GREAT DEAL OF WORK AND EFFORT ON THE PART OF A NUMBER OF MEMBERS OF THIS SENATE CONVINCED THAT THE PEOPLE OF THIS STATE WANT CONFIDENCE IN THIS SYSTEM RESTORED AND DO WANT AN OPPORTUNITY TO VOICE THEMSELVES WHILE AT THE SAME TIME INSURING THAT AN ORDERLY MEANINGFUL PROGRESS EVOLVES IN STABILITY FOR OUR STATE. IT IS FOR THAT REASON THAT WE HAVE DELIBERATELY AVOIDED THE ISSUE OF A CONSTITUTIONAL INITIATIVE WHICH IS A PROPOSAL THAT WAS CONSIDERED BY THE HOUSE OF REPRESENTATIVES, THAT ON A NUMBER OF OCCASIONS HAS BEEN INTRODUCED IN THE SENATE. WE SINCERELY HOPE YOU WILL GIVE SERIOUS CONSIDERATION TO INTRODUCING THIS PROPOSAL AND ALLOWING OUR FELLOW KANSANS A VOICE.

Office of the Governor

M E M O R A N D U M

TO: Senator Reilly
FROM: Patrick Higgins, Governor's Fellow
DATE: April 1, 1991

The Secretary of State reports that there are 1,204,574 registered voters in the state of Kansas. The following is a breakdown of these registered voters by Congressional District and the number of signatures that would be required in each district for the initiative to be placed on the ballot.

Cong. District	Total Regist.Voters	Signatures Needed (approximate)
1st District	239,763	7,227
2nd District	231,087	7,227
3rd District	258,721	7,227
4th District	244,413	7,227
5th District	230,590	7,227
Signatures Needed From Any District		<u>24,094</u>
TOTAL SIGNATURES NEEDED		60,229

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THE SECOND PROPOSAL IS QUITE CLEAR, CONCISE AND DOES NOTHING BUT PERMIT THE VOTERS OF THIS STATE THE RIGHT TO APPROVE OR REJECT THOSE STATUTES WHICH WE WOULD SUBMIT TO THEM AS A LEGISLATURE BY A TWO-THIRDS/^{VOTE} OF EACH HOUSE AT A GENERAL ELECTION. THE REFERENDUM IS NOT A NEW ISSUE TO OUR NATION AND IS ENJOYED IN MANY STATES AND IS ANOTHER WAY IN WHICH THE LEGISLATURE MAY SEEK THE COUNSEL, WISDOM AND APPROVAL OF OUR FELLOW KANSAS CITIZENS WHETHER OR NOT THEY WISH TO HAVE A PARTICULAR LAW ENACTED.

THIS PROPOSAL LIKEWISE WOULD ALLOW THE GOVERNOR THE OPPORTUNITY TO VETO WHAT HAS BEEN APPROVED, IT WOULD ALSO PROVIDE THAT THE LEGISLATURE COULD OVERRIDE THAT VETO BY A TWO-THIRDS VOTE.

THE BUILD-IN PROTECTIONS OF BOTH THE STATUTORY INITIATIVE AND REFERENDUM ARE CLEAR. ONE EITHER HAS FAITH AND CONFIDENCE IN PEOPLE'S ABILITY TO PASS JUDGEMENT ON THOSE ISSUES THAT WE SUBMIT TO THEM JUST AS WE SUBMIT OUR NAMES TO THEM IN THE ELECTORATE PROCESS, OR ONE DOES NOT BELIEVE IN THE JUDGEMENT AND WISDOM OF THE VOTERS. WE SINCERELY HOPE THAT YOU WILL GIVE FAVORABLE CONSIDERATION TO THE INTRODUCTION OF THE REFERENDUM PROPOSAL. THANK YOU FOR YOUR CONSIDERATION OF BOTH OF THESE PROPOSALS WHICH WILL ENHANCE AND INSTILL FURTHER CONFIDENCE IN KANSAS GOVERNMENT.

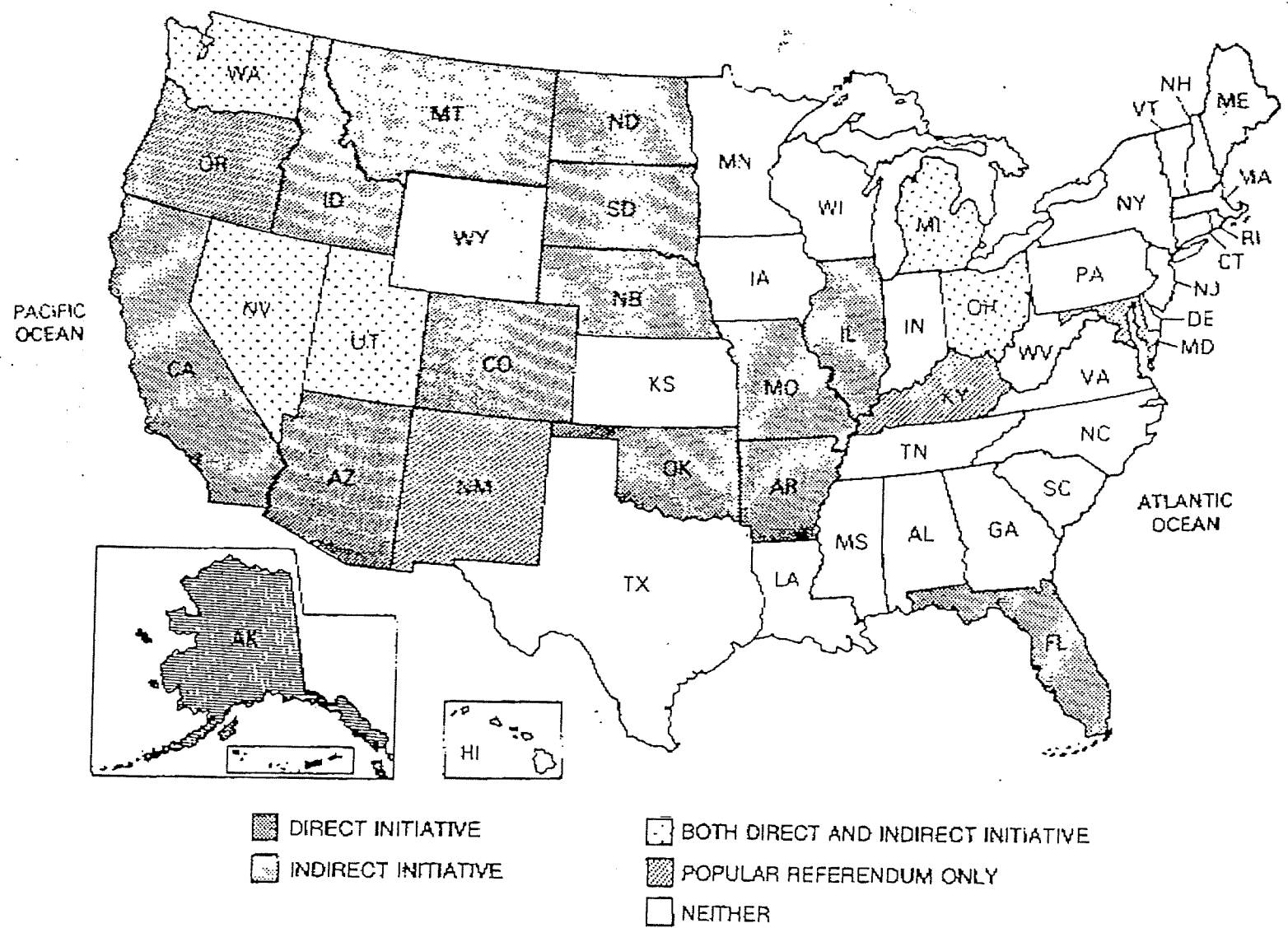


FIG. 3.1.
PROVISIONS FOR INITIATIVE AND POPULAR REFERENDUM IN THE UNITED STATES

Kansans deserve initiative

You can bet that if Kansas had initiative and referendum when the legislative pension fiasco was passed, that issue would have been on the ballot for voters to decide.

With initiative and referendum the property tax and reclassification would have been justly rectified by the voters, while the lawmakers continued to childishly bicker back and forth, holding out for their own special interests.

Initiative and referendum allow citizens to propose statutes or constitutional amendments by petition. Kansas needs this. — JUDITH L. WILSON, Topeka.

People are the real losers

The Capital-Journal carried a front-page headline March 23 to the effect that Gov. Finney suffered a defeat by the Legislature when it failed to pass the initiative and referendum bill.

It wasn't the governor who was defeated. It was the citizens of Kansas who were slapped down. This, on the day the Bill of Rights was exhibited in Topeka.

Let's face it. The politicians don't want the voter to have any say in how Kansas is mis-managed.

It is true Gov. Finney did promote the initiative bill. I think it should be remembered the governor was out in the field talking to the voters rather than putting ads on TV and running ads in newspapers. Perhaps the governor heard the people rather than having the people hear her.

Is the Legislature under the impression they alone can come up with legislation? Does the Legislature think only they are able to judge the merits of a proposed bill? Do the members of the Legislature think the voters are stupid? On reflection maybe they are correct. Look at who the voters elected. — BILL ENGLISH, Hiawatha.

Legislators ignore voters

It seems to me our elected officials have taken it upon themselves to interpret the will of the people.

It was quite apparent to me that Joan Finney won the election by an overwhelming majority, which meant the mandate of the people was for her and her programs to raise revenues by stopping sales tax exemptions.

This means of reducing the deficit was explored thoroughly during the last campaign and was approved of, along with Finney, by the votes that were cast.

Now, after the special interest lobbyists have plied our officials with food and drink and filled their campaign coffers, our officials say this won't work. Maybe it won't, but we will never know, because it has been decided by our legislators that we weren't knowledgeable enough to vote sensibly, so they would take away our vote and give us what they believe we deserve.

I firmly believe when we elect a person to govern us, we should give them and their programs a chance to work.

I would also remind legislators that after the scandalous pension plan pushed through earlier, that a lot of legislators are on thin ice and should listen more to constituents and not so much to lobbyists, who didn't elect them. — HOMER B. REPPART, Emporia.

Issue of initiative and referendum

Should the people be allowed to participate directly in the government?

Gov. Joan Finney says yes. In fact, one of her major campaign promises was to push for the initiative and referendum.

She's done that now, the first governor to testify directly before the House Federal and State Affairs Committee, at least in the chairman's memory.

Finney argues that Kansas people are stable, that their judgment is sound. In fact, she says, their personal insight and perception often demonstrate more intelligence and good judgment than those whom they elect to serve them.

Most of the 300 people packed into the committee hearing room agreed with Finney. Many of them wore white and blue stickers that read: "Vote for the Governor's Initiative & Referendum Legislation, HCR 5003, 5004, 5005."

Nearly 30 proponents testified for the measures last week. They argued that other states have successfully implemented such legislation; in fact, all the states surrounding Kansas have done so, leaving the state what Finney called "an island of unresponsiveness" to the citizenry.

The reasoning for such measures had several common themes. It would encourage citizen participation in government, especially for many who now feel powerless. It would encourage lawmakers to be more



CONNIE PARISH

Times Staff Writer

responsive to constituents.)

Some said as taxpayers, they wanted the right to put issues on the ballot, and many alluded to the property tax problem legislators failed to resolve last year.

Others reminded committee members government was designed to be "of the people, for the people and by the people," something they say lawmakers tend to forget.

Opponents the next day also had some compelling arguments. They argued that states that have initiative and referendum don't necessarily show greater citizen participation, based on the votes for the ballot issues.

They fear that it would lead to "government by 30-second sound bites," resulting in costly campaigns that would be won depending on who spent the most for the best media blitz.

They argue that citizens would have to make decisions quickly without the benefit of information that lawmakers have. They say compromise would also be impossible, which opponents say comes from reasoned and lengthy discussion of the issues.

Some argued that legislators

are already responsive to the public and have the common good in mind, rather than pet projects.

After hearing both sides, I still believe the Legislature will do the public a real disservice if it doesn't at least let people decide whether they want the measures. After all, that's all the resolutions would do — allow a vote on the issues.

Michael Woolf, executive director of Common Cause, a non-partisan citizens lobbying group, told the panel he favored the measures if they were accompanied by legislation to prevent abuse.

Since he didn't elaborate on what that might be, I contacted him. Here are three proposals he suggests:

- A voters' pamphlet — This would include public information outlining both sides of the issue, including a fiscal note.

Woolf compares this to the information Legislative Research provides for lawmakers, which would be sent to the household of all registered voters. He says most states with initiative and referendum provide this service, which allows voters to make a reasoned choice, as they wouldn't have to rely only on a media blitz for their information.

- Full and timely disclosure of campaign expenses — Again, this is a measure Woolf says is common for states that have the measures. He argues that the public should have the right to know what special interest groups are

supporting measures and how much they paid to do so.

- Prohibition of paying people per signature to gather names for the measures — Actually, Woolf favors prohibiting people from paying people at all to gather signatures, but the Supreme Court has ruled this would be an infringement of free speech.

In a related issue, the Supreme Court also says special interest groups, corporations and individuals can't be limited as to how much they spend for such campaigns. Again, Woolf takes issue with the ruling. However, he notes that while individuals or groups can be limited to how much they contribute directly to a candidate, they are not prohibited from going outside the campaign to pay for ads, spots and other means of supporting their favorite.

However, Woolf reiterated a point he made to lawmakers about the role of special interest groups in terms of initiative and referendum. Opponents have argued wealthy special interest groups will rule the roost.

"But given the \$730,000 reported for lobbying expenses (last year), all the PAC (Political Action Committee) contributions, and all the help they give behind the scenes, special interest groups already have a lot of control over the process," Woolf said.

The real question, he says, is whether they would have more if the state adopted initiative and referendum. He thinks not.

ment was \$16,000 and the United

Your responsibility

The House of Representatives failed to approve three measures Friday that would have allowed people to initiate laws and constitutional amendments.

Each proposal needed 84 votes, or a two-thirds majority of the 125-member House, to win adoption.

One proposal would have amended the state constitution to allow Kansans to enact laws without going through the Legislature. It failed on a 70-54 vote, which means it fell 14 votes short.

Another would've permitted voters to submit proposed constitutional amendments to lawmakers. It was rejected by 18 votes, 66-58.

A third plan would have allowed the Legislature to put bills to a binding public vote. It was defeated 61-63.

Joan Finney opposed Gov. Mike Hayden on a platform that included giving the voters the initiative and referendum; voters, angry that the Legislature was unable to solve the property tax crisis, elected her to office.

The property tax crisis began in the fall of 1989. Well over a year later, it is still unresolved, and lawmakers also refuse to permit initiative and referendum.

Lawmakers insist that special interest groups would dominate initiative and referendum questions; essentially, they argue that voters are smart enough to elect politicians to office, but they aren't smart enough to help make the laws.

If that is the case, here is a message for the Legislature: You created the tax crisis. You fix it.

After Friday's vote in the House, it is your responsibility.

Political tools bring power to the people

By ROBERT P. SIGMAN
Of the Editorial Staff

Despite its early Populist leanings, Kansas has never embraced the initiative and referendum. That is a puzzle. Kansas' leadership in the people-oriented approach to politics embodied the very essence of the American constitutional system: that political power flows from the people to government, not the other way around.

The initiative and referendum are the mechanisms needed to carry out this principle. By gathering a prescribed number of signatures of their fellow citizens, the people can propose changes in their constitution and laws. The referendum can be used to put a law enacted by a legislative body to a public vote.

Together, these instruments are a fundamental and essential link in our democracy.

Thus if the governing body fails to respond to popular sentiment, citizens can take matters into their own hands. The people are, and should be, the final authority.

Many attempts have been made in the Kansas Legislature over the years to establish the initiative and referendum. All have failed. The forefront of the opposition has been the special-interest lobbies. They see their insider influence jeopardized by more people power.

The initiative and referendum cause appears to be on the rise this year. Enter Gov. Joan Finney, who rode to victory last year on the Populist theme. "Let the people decide," exclaimed Finney as she criss-crossed the state stumping for votes.

As governor, Finney has become an avid, avowed advocate of what she pledged in 1990. The new governor declares that she will veto appropriations bills for the state budget until the Legislature approves a proposed constitutional amendment on the initiative and referendum. A two-thirds vote of each house is needed for passage. Then the proposition would have to be submitted to a statewide vote. Lawmakers are studying the Finney-inspired legislation.

There is no mystery about why many lobbyists strongly oppose the initiative and referendum. It is much easier for vested interests to control 165 Kansas legislators, or a majority of them, than it is to control all the people of the state. Buying food and drink for lawmakers is expensive, but it is a drop in the bucket compared to the cost of trying to sway voting-age Kansans to their side.

The power of the lobbies makes the case for the initiative. They are such a dominant force that they can control legislation to the detriment of the people. Special interests, with their lobbyists working intensely in the Legislature, can bring pressures far out of proportion to their weight in the populace. This activity, along with the contributions that special interests make to lawmakers' campaigns, gives them tremendous power in pushing or blocking legislation.

When these forces manipulate the process beyond their fair place in society, as has happened, the people need an escape valve. They need the authority to bring balance to a system knocked askew by special interests.

The arguments against the initiative, when distilled, show a distrust of the people. The people, so the argument goes, will run away with themselves or become demonized by sinister knaves hidden from public view.

The California experience is always

on the ballot through the initiative. Far fewer initiative proposals are submitted in other states. Nationally, only about 38 percent of them are approved.

More recently the specter of television has been raised. Small groups of minacious malcontents, in this view, will amass great sums of money for commercials to mold public opinion in their image. These arguments insult the intelligence of the vox populi. The same electorate that votes on initiatives also elects its state representatives.

Obviously, voters make mistakes in the election of legislators. They can correct those errors by voting bad ones out of office. Similarly, the people can remedy any mistakes they make on the initiative.

The advantages are many. In addition to giving the public the final decision, the initiative and referendum can be used to force a legislature under the influence of lobbyists to act on issues sought by the public. If the politicians are not setting an agenda that reflects the public will, the people can, with the initiative, chart their own course. In an era of dwindling interest in politics, the initiative is a participatory activity that draws people into the political arena.

The initiative can be an effective anti-establishment tool. Giving the people the final

word also helps counter a legislature skewed by gerrymanders or the lack of new legislative blood because so many incumbents are re-elected. The initiative is the key to reforms sought by the people. Without it, a recalcitrant legislature can block progress.

The notion of the people having more access to their government became popular around the turn of the century. The initiative was part of the Progressive and Populist platforms. It developed in the more open, democratic style of politics west of the Mississippi River.

South Dakota was the first state to adopt the initiative, in 1898. The movement grew rapidly until the 1920s. By now the procedure is used in 23 states and the District of Columbia.

Elitism is foreign to the Kansas tradition. The initiative and referendum can inject an egalitarian quality that has been missing too long.



Legislature to get

By LAURA SCOTT
Of the Editorial Staff

If Gov. Joan Finney and Kansans soon vote for much of the initiative and referendum rights of the people directly to the ballot, there are valuable ways for voters to express their views. It also can be very dangerous if voters are not very careful about this new power. It is worse than the ill.

Drawbacks are evident in the initiative-crazy with proposals that conflict with each other.

Drawbacks also have been seen right next door to Kansas, where the initiative was used by the people and compared to the rest of the constitutional right. Yet, it has multiplied into a great anarchy by the General Assembly of Colorado.

If they adopt the Finney initiative, the legislature likely to find eventually that representative democracy will find that they have not get the Legislature to act on it. They will have given the Legislature the right to avoid voting on these issues.



COMMON CAUSE / KANSAS

701 Jackson, Room B-6 • Topeka, Kansas 66603 • (913) 235-3022

April 11, 1991

Statement in Support of Initiative and Referendum
Presented to the Senate Elections Committee
by Michael Woolf, Executive Director

Thank you Mr. Chairman, members of the Committee. Common Cause/Kansas welcomes the opportunity to appear before you today in support of the concept of initiative and referendum.

It is the belief of Common Cause that the initiative provides voters with a tool to make public policy when the legislature is unresponsive to public opinion, either because the legislature has a self-interest in opposing certain measures (such as bills to reduce the advantages of incumbents in elections), or because the legislature or a legislative committee is more responsive to special interests than to public interests.

Common Cause also believes that the voters should have the right to bring issues before the public for a vote if they can demonstrate that the issue is of interest to a substantial number of voters. In addition, the legislature may be more responsive to public opinion when voters have an option to take matters into their own hands if they become dissatisfied with the state legislature.

Common Cause also supports the referendum process which would allow the citizens of Kansas to accept or reject measures approved by the legislature.

One of the main arguments that you will hear against initiative and referendum is that wealthy special interest groups will have an advantage in the process.

I agree, they will. But the question must be: "Will they have a greater advantage under initiative and referendum than they have under the current system?"

Since special interest groups pour millions of dollars into the current system through campaign contributions every election, hundreds of thousands of dollars into the system every legislative session entertaining and wining and dining legislators, and thousands of dollars in gifts every year to public officials, I sincerely doubt that they will have a greater advantage than they currently have.

Senate Elections Comm.
April 12, 1991
Attachment 4

Mr. Chairman and members of this committee:

My name is Kenneth W. Huff. I am here from Winfield, Kansas.

Today, as a private citizen, I wish to oppose Senate Concurrent Resolutions, 1624 and 1625, and the whole concept of Initiative and Referendum.

Our form of government is based on democracy. A representative form of democracy and not pure democracy, as some have suggested. Initiative and Referendum is not the logical progression of representative democracy, but of pure democracy.

Representative democracy looks toward what is good for the state and not just the individual interest. Representative democracy addresses the social contract.

Representative democracy demands debate and therefore, information gathering, which is unbiased. Pure democracy does not.

Representative democracy demands accountability by the legislator. Pure democracy does not.

Initiative and Referendum relies on accurate information being given by the media to citizens to make an intelligent choice in voting. The media, with an Initiative and Referendum structure would be hard pressed to push any anti-business legislation. In today's world the media is much more sensitive to its advertiser's wishes and rightly so, if they are to continue doing business.

The Kassebaum, Williams Senate race speaks of some of the problems which will face the media. In one well known newspaper in this state coverage of that race would have been biased, no matter which position that newspaper would have taken. Mr. Williams' position papers were

Senate Elections Committee
April 12, 1991
Attachment 5

very good, whether you or I agreed with those positions. The fact remained, because of lack of funding in Mr. Williams' race, the newspaper would have been carrying Mr. Williams' positions free of charge! The newspaper would have been his campaign advertising. Would this have been fair to Kassebaum? The newspaper kept this race at low key. It was not possible to stay unbiased in this situation. It was a no win situation. For whom? The public.

Anyone reading that paper would of thought that the S&L scandal, the forecasted bank bailout, education, military spending, the federal-state relationship and numerous other issues were non-existent. I applaud that newspaper because of its wish in not wanting to become a primary factor in that election. Sadly, though I must admit, the public did not receive the needed information to make an informed vote. I believe this is the position that the media will find itself in, concerning an Initiative and Referendum structure. If special interest pays the big bucks, it will be heard. If there is opposition, it may or may not be heard if it does not pay for its own advertising. Is this a fair, informative avenue to pursue?

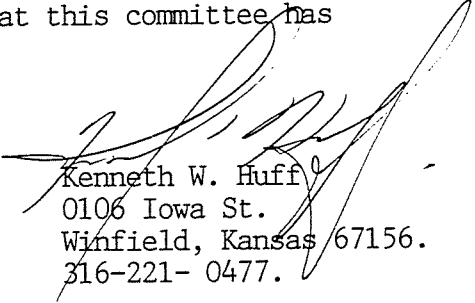
I am surprised that Governor Finney is the main proponent of Initiative and Referendum. The governor has complained of the medias' continued mis-statements and misquotes, concerning her positions. If this is so- these mis-statements and misquotes; then how can we as the voters expect any different from the media? How can we make an intelligent decision based on the same mis-statements and mis-quotes?

I will continue to offer my challenge to the legislature. If the legislature can do away with the Legislative Research Dept. for the period of a year, with legislators relying on the media for its only

source of information and still be able to complete its work with quality; then I would concede that the Initiative and Referendum could work. I believe this is similar to what we the voters of Kansas are being asked to do.

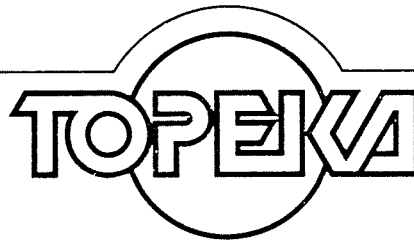
Could there be such a thing as an emotional vote, in dealing with an Initiative and Referendum structure? It is my belief that this situation could exist. After the tax protest last year there were a lot of emotions running at a high level. It might be useful to point out that Adolph Hitler used referendums quite successfully- a 95% affirmation rate. Were those votes based on emotion or not?

I thank this committee for its time and I hope that this issue will be carefully considered for its value, such as what this committee has done in considering ethics reform.



Kenneth W. Huff
0106 Iowa St.
Winfield, Kansas 67156.
316-221- 0477.

**Greater Topeka
Chamber of Commerce**
Three Townsite Plaza
120 East Sixth Street
Topeka, Kansas 66603
913/234-2644



Senate Elections Committee
April 11, 1991
Initiative and Referendum, SCR's 1624, 1625

Mister Chairman and Members of the Committee; I am Christy Young, Vice President of Government Relations for the Greater Topeka Chamber of Commerce. Thank you for this opportunity to address the issue of initiative and referendum.

The Topeka Chamber understands that legislation dealing with initiative has been proposed by the Governor and some legislators with the best of intentions. And, we also recognize the frustration individuals feel when an issue is not addressed during a particular legislative session to that person's satisfaction. Our chamber has also been discontent at times. However, the Topeka Chamber firmly believes in our current representative form of Kansas government.

Our chamber and members of the Topeka/Shawnee County business community have opportunities for input to our delegation, legislative committees, other legislative friends and the Governor's office at many junctures in the legislative process. Legislators, whether they have been in agreement with us or not, have always listened to our concerns and positions on various issues. I have never had one complaint from a business person or individual that their representatives have not been accessible and willing to listen. Maybe this speaks well of our Shawnee County Delegation, but I believe this access to representative government is prevalent across our great state.

Like you, we have heard the stories from other states of the formidable problems initiatives on a ballot can create and the cost of defending or supporting an issue in the electronic and print media. And frankly, these stories frighten us. Our local business and industry are faced with the growing realities of a global market and global competition. Diverting precious resources to battle issues in the media where it is difficult and expensive to present the full picture is of great concern. In our competitor countries, business and industry is held in high regard, big businesses are considered national treasurers. It is no secret that American business, including Kansas business is laden with greater regulation, higher costs and a somewhat negative perception. Adding the cost of initiative and referendum on top of this will only tie the arms of business tighter to the borders of our state and our country. Yes, business will pass additional costs on wherever they can but this again affects their competitive edge and the pocketbooks of their customers and clients.

The Topeka Chamber of Commerce considers this issue a very important one. Our Kansas citizens have access to legislative representatives who give a great deal of time to learn both sides of an issue, who take seriously their task of shaping public policy for our state, and who have the utmost integrity as a legislative body in their concern and vigilance to do the right thing for their constituents and their state. We do not believe it is necessary or timely to embrace the initiative process of government.

We ask you to vote down these two bills and any others that advocate similar changes in our representative form of government.

*Senate Elections
April 12, 1991
Attachment 6*

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

SCR 1624 & 1625

April 11, 1991

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Elections Committee

by

Jim Edwards

Director of Chamber and Association Relations

Mr. Chairman and members of the Committee:

I am Jim Edwards, Director of Chamber and Association Relations for the Kansas Chamber of Commerce and Industry. I appreciate the opportunity to appear before you today in opposition to SCRs 1624 and 1625, both of which tear at our system of representative government and would replace it with a system of legislation through media blitz, or if you will, laws through 30-second sound bytes.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

Senate Elections Com.
April 12, 1991
Attachment 7

I find the best defense for not having constitutional initiative or statutory initiative or referendum is to just take a close look at those states which have it and the problems that arise from it. I have lobbied against this issue for the nine years that I have been with KCCI and through those years have compiled a wealth of information against it. It is ironic that this information comes from states that have initiative. In fact, one of the major sources of material comes from the National Center for Initiative Review, an organization working directly with states that have the initiative process. In my testimony today I will address the reasons that the proponents have used to promote initiative and give you a different view using actual data rather than perceived results.

1. "Initiative and referendum involves citizens in government."

The method by which states with initiative or referendum judge voter interest in ballot measures is to look at the number of votes cast in the election versus the number of votes cast for an initiative measure. The resulting figure is referred to as the "drop-off rate."

Initiative Quarterly, a publication of NCIR stated that in their analysis of the 1982 elections, although initiative measures were frequently top vote-getters amongst ballot measures, NONE surpassed the vote totals for candidate offices in the same election. The average drop-off rate for the 1982 elections was 10% (chart 1). This figure was for the 15 states that had ballot measures during 1982.

The average drop-off rate for 1984 was 9.8% with our neighbor to the east, Missouri, leading the pack with an average drop-off rate for ballot issues at 19.9%. In fact, the top vote-getter in the Missouri 1984 election was an initiated measure which would regulate utility rates. Out of the 2.97 million registered voters in Missouri, only 2.39 million voted in that election and only 1.97 million voted on the initiated utility measure. This represents an issue drop-off rate of 17.5%. To emphasize this point even more, only 44.4% of the registered voters in Missouri decided this issue. The lowest vote-getter on Missouri ballot questions in 1984 dealt with medical benefits. It interested voters so much that 1.8 million voters

flocked to the polls to decide this issue...a drop-off rate of 23%. Only 30.9% of the registered voters in Missouri decided this issue. In 1988, the drop-off rate was 12.1%.

Our neighbors to the west (Colorado) did a little better in that they had an average drop-off rate of 12.8% in 1984. Their high vote-getter was an issue dealing with abortion funding. It had a drop-off rate of 6.9%. In effect, 39.1% of Colorado's registered voters decided this issue. In the 1990 elections, 66% of their registered voters voted. Out of those persons, 21% did not vote on the initiative issues. The issues included tax limitations, gambling and limiting legislative terms. Thomas Cronin, a Colorado College political scientist and author of "Direct Democracy: The Politics of Initiative, Referendum and Recall" stated it best when he said "10% to 15% of the voters who go to the polls (often only 50% of the electorate) do not vote on ballot issues and another 10% really don't know what they're voting on."

2. "Initiative and referendum strengthen confidence in government."

If this is a truism, why did we see that initiatives dealing with governmental and political reform amounted to 10% of the total ballot measures appearing on state ballots between 1978 and 1984 (chart 2)? Why did we see the ballot measures dealing with term limitations for state legislatures (Oklahoma & Colorado 1990) appear? Why did we see a host of states have ballot questions dealing with legislative pay and pensions in 1988 and 1990?

If anything, initiative and referendum comes into play when persons DON'T have confidence that government will take care of their pet project(s).

3. "The benefits of initiative and referendum far outweigh the costs."

As a rule, two-thirds of the issues proposed through initiative fail at the ballot box. This failure is not simply because people voted them down but more often because campaigns, sometimes massive, were implemented to defeat the initiatives. As an example, in 1982 Colorado had three issues placed on the ballot and all of

them were defeated. The cost of defeat was not cheap though as there were over \$1.5 million spent in campaigns in fight the measures. What could that \$1.5 million have been spent on in Colorado if it had not been spent on this?

Not always do "costs" have to refer to economic charges. What about the costs to citizens of Maine had a proposed nuclear plant shutdown passed? This plant produces one-third of the energy required by the state. Who would have been responsible for providing a reliable source of energy to schools, hospitals, business and the public had this passed. Would this have been a cost to the citizens of Maine? You better believe it. Fortunately, for the citizens of Maine this measure failed but unfortunately for the citizens of Maine this ended up being a \$1.2 million campaign.

4. "Kansas is an island in states with initiative."

To be honest, this is one where I would have to agree with the proponents. But, might I remind you that we have been an island for almost the last eight decades. In referring to the chart that lists initiative provisions by state, you will notice that Missouri passed their initiative provisions in 1906, Oklahoma in 1907, Colorado in 1910 and Nebraska in 1912.

However, when we address this we must look at whether being an island has really hurt the State of Kansas. While I have only been a resident of Kansas for the last 14 years, I can't believe that we have been left out in the cold on any issue because we didn't have the option of initiative. We may not have had issues addressed as soon as we would have liked, but the making of laws that will have an impact on us and future generations must be a deliberate and cautious process. In some instances, KCCI, like many groups, might not like the way an issue comes out, but would rather build a better case for future years than opt for the quick fix, 30-second sound byte path to legislation.

At a recent meeting sponsored by the Eagleton Institute of Politics at Rutgers, the University of New Jersey and NCSL, John Mutz, Indiana, stated it best when he said,

"The thing that has always impressed me about the legislative process has been the interaction among human beings, the debate, the exchange and compromise. Those sort of things are only possible in a deliberative body. They can't be accomplished on a television screen; they can't be done in advertising efforts. Debate, exchange and compromise have to be retained."

I remind you that you were elected by your constituents to represent them and not pass the act of governance to them. There are no compelling reasons for initiative or referendum. There are only persons who feel you have not done your job in handling their pet projects and they want a quick fix. The State of Kansas does not need quick fix legislation.

I appreciate the opportunity to appear before you today and would urge your defeat of these resolutions. I will remain standing for questions.

Initiatives and Voter Turnout in 1984

Measuring Voter "Drop-off" on Ballot Measures

The commonly accepted method of judging voter interest in ballot measures is to look at the number of votes cast in the election versus the number of votes cast for an initiative measure. The difference between these figures is the "drop-off" rate.

Election results from the 15 states voting on initiatives in 1984 are shown in the chart *1984 Ballot Measure Voting Results*, on pages 8 - 10. All ballot measures are ranked in the chart from the lowest drop-off to the highest. Once again, it is the rule, rather than the exception, that initiatives were the most popular kinds of measures on the ballot. But, in every instance, ballot measures (whether legislatively referred or citizen initiated) tallied fewer votes than the race for the top-line office.

Figure 1 gives a graphic expression of drop-off by showing both total ballots cast (election turnout) and total ballots cast on initiatives as percentages of registered voters.

Drop-off rates are slightly higher for legislatively referred measures than for initiatives. **Table 1** compares drop-off for legislative measures and initiatives and gives the combined rate. Despite the higher drop-off rate for legislative measures, voters followed historical trends by approving a higher percentage of these than of initiated measures.

In 14 of the 15 states, initiatives were the top vote-getters. As in 1982, however, most succumbed to negative votes, with 10 of the top 14 being defeated. And even some of the most popular ballot measures were snubbed by a significant part of the electorate. **Table 2** lists the most popular initiatives, showing drop-off rates and margins of victory or defeat.

Election Turnout Compared to Initiative Votes

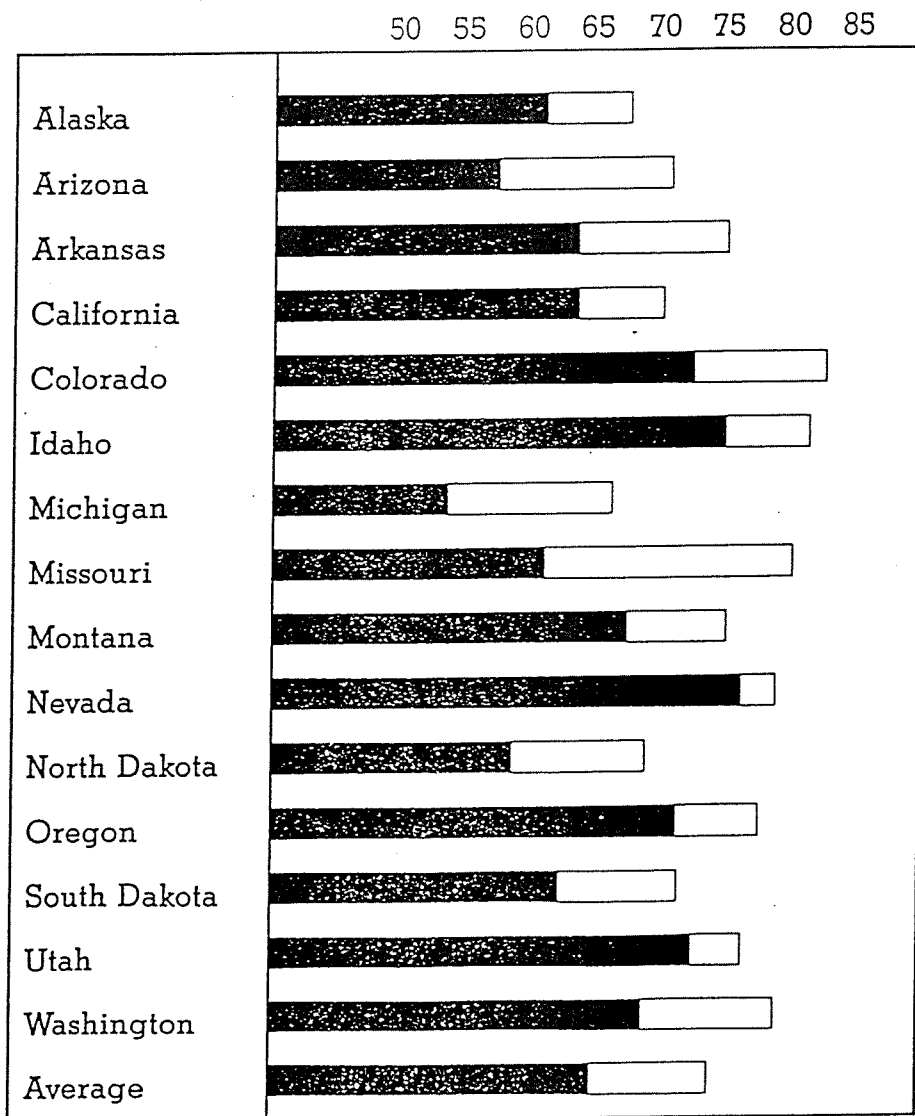


Figure 1.
 % Registered Voted Voting on Initiatives (Average)
 % Registered Voters Voting in Election

TABLE 1

**Comparison of Drop-Off Rates Between Legislative
Measures and Initiatives, November 6, 1984**

State	Voter Turnout % RV Voting	Average Voter Drop-Off Rate*					
		Legislative		Initiatives		Combined	
		No.(P/F)	ADO	No.(P/F)	ADO	No.	ADO
Alaska	69.1%	3(2/1)	7.5	1(1/0)	7.4	4	7.4%
Arizona	71.9%	13(1/12)	20.0	2(0/2)	13.1	15	18.9%
Arkansas	76.3%	2(1/1)	15.2	3(1/2)	11.8	5	12.7%
California	70.6%	10(9/1)	8.9	6(2/4)	5.8	16	7.7%
Colorado	83.2%	2(2/0)	17.6	3(2/1)	9.7	5	12.8%
Idaho	83.0%	2(1/1)	14.1	1(0/1)	6.1	3	11.3%
Michigan	66.0%	2(1/1)	19.0	1(0/1)	12.2	3	16.7%
Missouri	80.4%	3(3/0)	21.0	2(1/1)	18.4	5	19.9%
Montana	75.0%	2(2/0)	13.9	2(1/1)	7.3	4	10.5%
Nevada	79.7%	11(3/8)	8.7	1(0/1)	2.6	12	8.1%
North Dakota	68.9%	2(1/1)	15.3	2(1/1)	9.8	4	12.4%
Oregon	78.7%	1(1/0)	10.4	8(6/2)	6.3	9	6.7%
South Dakota	71.8%	—	—	3(2/1)	8.8	3	8.8%
Utah	77.0%	5(5/10)	9.1	1(0/1)	4.6	6	8.3%
Washington	78.6%	—	—	3(2/1)	10.0	3	10.0%
Total Average	75.3%	58(32/26)	12.0	39(19/20)*	9.8	6.5	11.6%

*The initiative in the District of Columbia is not included in this table.

Initiatives and Voter Turnout in 1984

#1B

	Ballot Number	Yes	No	Total	% Yes	% No	Total Votes Cast in Election	% of Total Not Voting On Issue	Total Registered Voters	% Reg. Voters Deciding Issue
ALASKA (VOTER TURNOUT: 69.1%) (AVERAGE VOTER DROPOFF: 7.4%)										
Mortgage Bonds	Prop A	145,263	53,519	198,782	73.1%	26.9%	211,009	5.8%	305,262	47.6%
Legislative Sessions	BM 2	151,001	46,102	197,103	76.7%	23.4%		6.6%		49.5%
Transportation Issue	BM 3	116,893	78,665	195,558	59.8%	40.2%		7.3%		38.3%
Legislative Authority	BM 1	91,174	98,856	190,030	48.0%	52.0%		9.9%		32.4%
ARIZONA (VOTER TURNOUT: 71.9%) (AVERAGE VOTER DROPOFF: 18.9%)										
*Health Care Costs	No.200	375,982	553,676	929,658	40.4%	59.6%	1,051,339	11.6%	1,462,818	37.8%
*Health Care Regulation	No.110	372,879	547,279	920,158	40.5%	59.5%		12.5%		37.4%
Public Employees	No.102	397,439	501,745	899,184	44.2%	55.8%		14.5%		34.3%
Hospital Rates	No.109	385,724	511,013	896,737	43.0%	57.0%		14.7%		34.9%
Legislative Spending	No.101	350,744	532,309	883,053	39.7%	60.2%		16.0%		36.4%
Jury Composition	No.103	337,187	545,197	882,384	38.2%	61.8%		16.1%		37.3%
Initiative Process	No.100	353,835	528,151	881,986	40.1%	59.9%		16.1%		36.1%
Hospital Rate Limit	No.302	432,913	444,651	877,564	49.3%	50.7%		16.5%		30.4%
Corporation Commission	No.104	291,622	575,301	866,923	33.6%	66.4%		17.5%		39.3%
Securities; Corp. Comm.	No.105	326,630	526,439	853,069	38.2%	61.7%		18.9%		36.0%
Hospital Funding	No.301	397,463	420,162	817,625	48.6%	51.4%		22.2%		28.7%
State Spending Limits	No.108	356,570	430,363	786,933	45.3%	54.7%		25.1%		29.4%
Union Wages-Public Works	No.300	398,051	386,479	784,530	50.7%	49.3%		25.4%		27.2%
Corporation Commission	No.107	365,967	390,350	756,317	48.4%	51.6%		28.1%		26.7%
Corporate Commission	No.106	375,809	378,857	754,666	49.8%	50.2%		28.2%		25.9%
ARKANSAS (VOTER TURNOUT: 76.3%) (AVERAGE VOTER DROPOFF: 12.7%)										
*Casino Gambling	Am.66	216,625	561,825	798,450	29.6%	70.4%	884,406	9.7%	1,159,588	48.5%
*Game/Fish Sales Tax	Am.67	250,276	434,114	684,390	44.7%	55.3%		11.3%		37.4%
*4-Year Terms	Am.64	499,083	277,735	776,818	64.2%	35.8%		12.2%		43.0%
Tax Structure	Am.63	309,811	452,612	762,423	40.6%	59.4%		13.8%		39.0%
Bonding	Am.62	395,336	342,404	737,740	53.6%	46.4%		16.6%		34.1%
CALIFORNIA (VOTER TURNOUT: 70.6%) (AVERAGE VOTER DROPOFF: 7.7%)										
*Lottery	Prop 37	5,248,052	3,812,402	9,060,454	57.9%	42.1%	9,232,746	1.9%	13,073,630	40.1%
*English Ballots	Prop 38	6,207,657	2,573,476	8,781,133	70.7%	29.3%		4.9%		47.5%
*Save Prop 13	Prop 36	3,941,286	4,764,792	8,706,078	45.3%	54.7%		5.7%		36.4%
Water Cleanup	Prop 25	6,325,520	2,352,634	8,678,154	72.9%	27.1%		6.0%		48.4%
*Reapportionment	Prop 39	3,875,866	4,790,147	8,666,013	44.7%	55.3%		6.1%		36.6%
Drinking Water	Prop 28	6,328,391	2,281,141	8,609,532	73.5%	26.5%		6.8%		48.4%
Senior Citizen Centers	Prop 30	5,744,539	2,855,845	8,600,384	66.8%	33.2%		6.8%		43.9%
Veteran Home Loans	Prop 29	5,686,321	2,884,906	8,571,227	66.3%	33.7%		7.2%		43.5%
School Leasing	Prop 26	5,190,887	3,354,902	8,545,789	60.7%	39.3%		7.4%		39.7%
*Welfare Reform	Prop 41	3,155,385	5,363,984	8,519,369	37.0%	63.0%		7.7%		41.0%
Hazardous Waste Removal	Prop 27	6,127,169	2,383,435	8,510,604	72.0%	28.0%		7.8%		46.9%
CALIFORNIA, continued										
*Campaign Contributions	Prop 40	3,025,179	5,480,743	8,505,922	35.6%	64.4%	9,232,746	7.9%	13,073,630	41.9%
Elderly Property Tax	Prop 33	6,929,082	1,505,503	8,434,585	82.2%	17.8%		8.6%		53.0%
Amend Prop 13	Prop 31	4,170,563	4,044,893	8,215,456	50.8%	49.2%		11.0%		31.9%
Amend Prop 13	Prop 34	3,880,878	4,305,288	8,186,166	47.4%	52.6%		11.3%		32.9%
State Supreme Court	Prop 32	4,643,351	3,195,841	7,839,192	59.2%	40.8%		15.1%		35.5%
COLORADO (VOTER TURNOUT: 83.2%) (AVERAGE VOTER DROPOFF: 12.8%)										
*Abortion Funding	No. 3	628,684	616,296	1,244,980	50.5%	49.5%	1,337,897	6.9%	1,607,936	39.1%
*Casino Gambling	No. 5	406,989	819,533	1,226,522	33.2%	66.8%		8.3%		51.0%
*Voter Registration	No. 4	705,725	447,803	1,153,528	61.2%	38.8%		13.8%		43.9%
*Elector Term	No. 2	811,130	304,208	1,115,338	72.7%	27.3%		16.6%		50.4%
Insurance Commissioner	No. 1	641,587	449,362	1,090,949	58.8%	41.2%		18.5%		39.9%
WASHINGTON, DC (VOTER TURNOUT: N/A) (AVERAGE VOTER DROPOFF: N/A)										
*Overnight Shelter	#17	109,080	42,159	151,239	72.1%	27.9%	N/A		N/A	
IDAHO (VOTER TURNOUT: 83.0%) (AVERAGE VOTER DROPOFF: 11.3%)										
*Tax-Free Food	IP No.1	186,505	210,054	396,559	47.0%	53.0%	421,992	6.0%	508,296	41.3%
Legislative Districts	HJR 5	148,383	216,201	364,584	40.7%	59.3%		13.6%		42.5%
State Water Plan	SJR 117	192,229	169,087	361,316	53.2%	46.8%		14.4%		37.8%
MICHIGAN (VOTER TURNOUT: 66.0%) (AVERAGE VOTER DROPOFF: 16.7%)										
*Voters Choice	Prop C	1,376,141	2,035,867	3,412,008	40.3%	59.7%	3,884,854	12.2%	5,888,808	34.6%
Natural Resources	Prop B	2,066,554	1,120,794	3,187,348	64.8%	35.1%		18.0%		35.1%
Administrative Rules	Prop A	1,280,948	1,827,677	3,108,625	41.2%	58.8%		20.0%		31.0%
MISSOURI (VOTER TURNOUT: 80.4%) (AVERAGE VOTER DROPOFF: 19.9%)										
*Utility Rates	Prop B	650,895	1,317,444	1,968,339	33.1%	66.9%	2,386,130	17.5%	2,969,300	44.4%
Lottery	Am. 5	1,369,910	590,648	1,960,558	69.9%	30.1%		17.8%		46.1%
*Pari-Mutuel Betting	Am. 7	1,157,664	771,437	1,929,101	60.0%	40.0%		19.2%		39.0%
Cost of Living Increase	Am. 1	1,144,445	715,076	1,859,521	61.5%	38.5%		22.1%		38.5%
Medical Benefits	Am. 3	918,596	917,812	1,836,408	50.0%	50.0%		23.0%		30.9%
MONTANA (VOTER TURNOUT: 75.0%) (AVERAGE VOTER DROPOFF: 10.5%)										
*Milk Price Decontrol	I-96	145,342	222,200	367,542	39.5%	60.5%	395,006	7.0%	526,841	42.2%
*Dentistry	I-97	194,285	171,448	365,733	53.1%	46.9%		7.4%		36.9%
Judicial Discipline	C-13	287,926	68,251	356,177	80.8%	19.2%		9.8%		54.7%
Congressional Districts	C-14	214,956	109,813	324,769	66.2%	33.8%		17.8%		40.8%
NEVADA (VOTER TURNOUT: 79.7%) (AVERAGE VOTER DROPOFF: 8.1%)										
*Tax Limitation	Quest.12	132,683	143,877	276,560	48.0%	52.0%	283,941	2.6%	356,384	40.4%
Food Tax Exemption	Quest. 1	225,619	45,281	270,900	83.3%	16.7%		4.6%		63.3%
Public Library Bond	Quest. 9	152,253	114,572	266,825	57.1%	42.9%		6.0%		42.7%

#2

Table 1 compares the 42 initiatives that appeared to be headed for the November ballot in 16 states plus the District of Columbia with initiative activity in the previous six years. The summary in Table 1 listing subject classifications since 1978 shows that the level of activity has dropped in 1984 in the categories of governmental reform, taxes, regulation of business, and national policy questions, while activity increased in the categories of public morality, health/welfare, civil liberties, and education.

Table 1. Initiative Ballot Measures On State Ballots
1978-1984 — By Category

CATEGORY	1978		1979		1980		1981		1982		1983		1984		TOTAL	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Government/Political Reform	1	2	--	--	6	14	1	17	6	10	1	20	5	12	20	10
Public Morality Issues	6	16	--	--	5	12	--	--	3	5	--	--	9	21	23	12
Revenue/Taxes/Bonds	14	36	1	33	19	44	1	16	14	24	1	20	7	16	57	29
Regulation-Business/Labor	9	23	--	--	9	21	3	50	16	28	1	20	8	19	46	23
Health/Welfare/Housing	1	3	--	--	1	2	--	--	--	--	--	--	2	5	4	2
Civil Liberties/Rights	4	10	--	--	--	--	--	--	2	3	1	20	5	12	12	6
Environmental/Land Use	3	8	2	64	2	5	--	--	9	16	1	20	2	5	19	10
Education	1	2	--	--	1	2	1	16	--	--	--	--	2	5	5	3
National Policy Issues	--	--	--	--	--	--	--	--	8	14	--	--	2	5	10	5
TOTAL	39	100	3	100	43	100	6	100	58	100	5	100	42	100	196	100

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

Joint Testimony on S.C.R. 1624 and 1625
before the
Senate Committee on Elections

by

Mark Tallman
Coordinator of Governmental Relations
Kansas Association of School Boards

April 11, 1991

On behalf of

Kansas Association of School Boards
Schools for Quality Education
United School Administrators
USD 512 (Shawnee Mission)
USD 229 (Blue Valley)
USD 501 (Topeka)

On behalf of the organizations listed above, I appreciate the opportunity to share our concerns about the constitutional amendments under consideration by this committee.

The supporters of initiative and referendum suggested that these measures are necessary to empower the people. School board members are elected by the people--just as you are. We do not oppose the will of the people; but we do oppose the undermining of a system of representative government based on checks and balances that has endured for 130 years in Kansas and over 200 years in our federal union. The proposals before you - although more limited than other proposals - would fundamentally alter the way we govern ourselves.

Senate Elections Committee
April 12, 1991
Attachment 8

We do not believe that initiative and referendum will further empower the people of Kansas. We believe it is much easier for citizens to have legislation introduced by individuals or committees than to solicit petition signature; to receive a fair hearing in the legislative process rather than to wage a media campaign; and to oppose proposals that threaten their basic interests by balanced government rather than by an election that may depend on voter turn-out, campaign spending and sloganeering.

We believe that Kansas government is responsive to clear, overwhelmingly popular positions, because the voters directly, by majority vote, choose the governor and other state office-holders, the legislature, over 300 county commissioners, over 2,000 school board members, and literally thousands of other local officials. When dissatisfied, they choose new ones. Proponents of initiative seem to suggest there are answers to problems simply waiting to be voted in. But most issues cannot be reduced to simple yes or no questions - especially in the area of taxation. The legislative process - slow, cumbersome and frustrating to those who demand immediate action - forces issues to be considered whole, in context, and with due consideration of all interests.

The individual voter tends to look primarily after his or her own interests. This is only natural. But someone has to look after everyone's interests, to determine the common interest. That is the role of the legislature, and why the founders of this nation believed representative democracy was the foundation of liberty. They deliberately rejected government based on simple, instant majority sentiment; dividing power instead by bi-cameral legislatures, staggered terms of

office, divided constituencies, and separation of powers - all designed to protect minority interests from oppression by majorities. The founders feared the tyranny of the majority as well as the tyranny of the few, because they knew at any time, any one of us can be in the minority.

If citizens are disillusioned, perhaps it is because our demands of government are often at cross-purposes. As educational organizations, we know people don't like taxes and most favor limiting government spending. But we know people also want good schools for their children and communities; just as they want health and safety services and a reasonable social "safety net." The essence of democracy is a constant conflict over values. The question is, how best do we resolve them? We do not believe initiative and referendum can resolve such conflicts; instead we fear such votes will polarize the public toward extremes. The initiative process will divert time, resources, and attention away from the hard work of legislating toward a handful of controversial issues, usually placed there through someone's narrow agenda.

We have seen no evidence that states with initiative and referendum are any happier with their taxes than Kansans. We do know that states which have used initiative to limit taxes and spending have experienced real problems in funding government services - and the public doesn't like that either.

In short, initiative and referendum is at best a shortcut; but there are no shortcuts to better government.



PUBLIC POLICY STATEMENT

SENATE ELECTIONS COMMITTEE

RE: S.C.R. 1624 and 1625 - Initiative and Referendum

April 11, 1991

Topeka, Kansas

Presented by:
Warren Parker, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Mr. Chairman and members of the Committee:

My name is Warren Parker, I am the Assistant Director of Public Affairs for Kansas Farm Bureau. Thank you for the opportunity to express the views of our farmer and rancher members in each of the 105 counties of Kansas in opposition to initiative and referendum.

We believe there is a very lengthy list of reasons that no state has instituted initiative and referendum in nearly 20 years, and that only a handful have adopted it since early this century.

Many opponents of initiative and referendum use what some describe as a debacle in California to argue their case. We believe that argument has merit. For many reasons initiative and referendum in California have become prime examples of what not to do in state government. Criticism, though, has been expressed closer to home. Before the House of Representatives soundly rejected similar proposals this year, initiative and referendum was brought before the Kansas Legislature for consideration in, among other years, 1972. At that time, failures in other states were cited. Then Kansas Senator Steadman Ball told a Special Committee on Elections of events in the

Senate Elections Committee
April 12, 1991
Attachment 9

neighboring states of Nebraska and Missouri. In his testimony

stated:

"Not many years ago the legislative leaders in Nebraska decided it was time to quit financing state government from the property tax and turn to income tax as a source of revenue for that purpose. The people voted in favor of cutting off property tax for state operations and against the use of income tax for such purpose, all at the same election. After a long struggle, during which the very survival of the state was at stake, the state finally got some money to keep it alive.

Not too many years ago the Missouri legislature raised the gasoline tax. Immediately, referendum petitions were circulated and the raise was voted down. When their roads and highways got so bad they were a public disgrace, the last session of the Missouri legislature was able to raise the gasoline tax."

This was among the testimony characterized by the Special Elections Committee in 1972 as overwhelming. The Committee unanimously voted to recommend no action be taken by the 1973 legislature on the question of initiative and referendum provisions for the Kansas constitution. Mr. Chairman and members of the Committee, it was true in 1972, and remains true today.

The list of problems is long. Initiative and referendum provide the danger of a well-financed few outspending the opposition and misleading the public into passing bad law. They allow for law by emotion, rather than reason. Other states which have tried to control contributions to initiative campaigns and payments to signature gatherers were turned back by the Supreme Court. The proposals before you allow for the legislature to amend or repeal approved measures. We believe this defeats the purpose. If you as legislators are going to decide the fate of the legislation, we believe the state should save the tremendous expense incurred by initiative and referendum, and let you do the job you were elected to do.

The issues of initiative and referendum are unique in that it makes no difference whether you are wealthy, poor, urban, rural,

special interest or general public. With initiative and referendum you are at risk. That is because these measures place our representative form of government at risk. The checks and balances of the Executive, Legislative, and Judicial branches of government are in place for good reason. If we truly believe in what our founding fathers created, initiative and referendum will not be a part of our Constitution. Thank you for your time, I would be happy to try to respond to any questions.

KANSAS FARM BUREAU POLICY

Initiative and Referendum**GOV-4**

Direct legislation, through the initiative and referendum procedure, is believed by some to be a means of strengthening the people's control over their government. Advocates of direct legislation through the initiative and referendum procedure generally hold two beliefs: Legislative bodies are not motivated by the public good and welfare; and special interest groups have an undue influence on public policy.

We believe the initiative and referendum procedure undermines our representative form of government. We believe direct legislation impairs the responsiveness and responsibility of a legislative body. We believe direct legislation, generally proposed by a zealous special interest group, results in bad law enacted by an uninformed electorate.

We respect and believe in the checks and balances now in place for the Executive, Legislative and Judicial branches of government in Kansas. We oppose the use of the initiative and referendum procedure because it will impair legislative responsibility, impair representative government, lengthen the ballot and result in poorly drafted legislation.

MEMORANDUM OPPOSING INITIATIVE AND REFERENDUM
KANSAS MOTOR CARRIERS ASSOCIATION - TOPEKA, KANSAS - Mary E. Turkington
Executive Director

April 12, 1991

On behalf of the highway transportation industry and the Kansas Motor Carriers Association, I wish to express our strong opposition to the proposed initiative and referendum proposals before the Federal and State Affairs Committee. We oppose such departures from representative government for the following reasons:

1. Issues affecting public policy in Kansas now can be adequately and appropriately addressed through the legislative process now in place. Kansas can be proud of the system of representative government that permits deliberative, fair and knowledgeable consideration of public policy issues.
2. Initiatives are most often used by well-financed, single-issue organizations. Voters have to accept issues as they appear on the ballot with no opportunity for debate, discussion or compromise. The vote has to be "yes" or "no". Most important public policy issues are not that clear cut nor would the people voting have an opportunity for input. The current legislative process offers citizens a far greater opportunity, through their elected representatives, to have a voice in the enactment of laws that govern their actions.
3. Initiatives also can result in a costly process for informing voters fully about an issue to permit the voter to make an intelligent decision when the voter casts his or her ballot. Valuable resources often must be committed to defeat an unsound proposal or controversial proposals that are repeatedly submitted. The process simply represents a waste of money, time and related resources when such matters can more properly be addressed through existing legislative channels.
4. Initiatives provide "taxation without representation" opportunities. The people who now elect their representatives and have access to those elected officials, have a voice in fiscal choices. Initiatives can impose increased spending requirements without providing for revenues to pay for such ballot choices. The risks such a system generates are not protective of the "public's interest,"
5. The solution is not to draw a narrow initiative authorization. That would be like declaring one "just a little bit pregnant." Initiatives can be expanded by initiatives. The process should not be authorized.
6. The current problem with the classification and appraisal of property in this state may be the classic reason why not to authorize initiative or referendum processes. Think of the debate, the research, the spectrum of property situations, and the need for informed, deliberative decisions to be made in this crucial area through the legislative process. The people of Kansas are unhappy with their own vote at the polls on this issue. Their diversified interests can only be served through wise and informed representative government exercised through the legislative process.

#####

Senate Elections Committee
April 12, 1991
Attachment 10

April 12, 1991

TO: Senate Elections Committee

FROM: Jeanne Patterson, Executive Director, Kansas Society of
Association Executives

RE: Position Statement in Opposition to Initiative and
Referendum (SCR 1624 and 1625)

The Kansas Society of Association Executives (KSAE) is an individual membership organization made up of over 350 association executives and suppliers. Our professional members represent 100 different trade, professional, philanthropic and advocacy organizations.

KSAE's primary purposes are to promote the common interests of association executives, to develop and encourage high standards of service and conduct for association executives, to increase public understanding of associations and their economic importance, and promote the accomplishments of voluntary associations. The society will occasionally adopt a policy position regarding state legislative and/or regulatory issues affecting association management.

(more)

Senate Elections Committee
April 12, 1991
Attachment 11

KSAE has reviewed and discussed the Initiative and Referendum issue and has adopted a policy in opposition to such proposals. It's apparent that an Initiative or Referendum constitutional amendment would have a major impact on the management of trade and professional voluntary organizations.

Individual associations play a vital role in the policy process in the Kansas legislature. Our members constantly compile and supply information to their members and to lawmakers as they study and draft legislation.

Input by associations frequently allow legislators to consider amendments and clarification to our statutes. The Initiative procedure will often not allow for changes or compromises on major state policy matters.

Many of our individual members have small budgets to represent their association's views in the legislative arena. These members will find it even more difficult if they are forced to participate in statewide massive public information campaigns to tell their side of the story. We are frightened by the prospect of having to generate millions of dollars on initiative proposals that can more effectively be addressed by well-informed legislators elected by the people of Kansas.

In summary, KSAE supports the current representative form of government in Kansas and strongly opposes Initiative and Referendum proposals.

End

lobbyists and media consultants, who run media-oriented campaigns.

Contrary to the theory of returning power to the people, special interest power is enhanced by initiative. Initiative began in a simpler era. Modern campaigns depend on media advertising. Thus initiatives often depend on who spends more, not less.^{2/} True, those with money do not always prevail. But money does play an important role.

5) While initiative serves as political safety valves, the price is polarization, confrontation and single-issue, message-sending protest rather than compromise, accommodation and fine-tuned legislation. Proponents say Initiative's value is its service as a safety valve for the political "outs." We submit that general elections provide the same function. We have no better example than the 1990 Kansas campaign.

6) Initiative denigrates the Legislative Process. There is an old curse that says "be careful what you wish for, because you may get it." Initiative has the potential to take a historically responsive legislature like this one and transfer that responsiveness over to unresponsive voter initiatives.

You are elected by your constituents to do a difficult job. I would like to make that job easier on you by giving part of your powers to someone else. That may be good politics, but it is not the best way to govern.

Senate Elections
April 12, 1991
Attachment 12

²Prof. Eugene Lee, Berkley, quoted in "California Tried Democracy, and Look What Happened," New York Times, November 18, 1990, E-18.

POSITION STATEMENT
From the Kansas Bar Association

April 12, 1991

TO: Sen. Don Sallee, Chair
Members, Senate Elections Committee

FROM: Ron Smith, KBA Legislative Counsel

SUBJ: Initiative and Referendum

KBA does not oppose well-intentioned beliefs in Initiative and Referendum. The KBA has a century-old history of promoting the involvement of citizens and lawyers in those activities that promote the rule of law. Lawmaking is fundamental to the rule of law, and a central activity to a democracy.

Initiative is, of course, one means of governing a democracy. KBA's concern is that Initiative is not the strongest form of government in a democracy, nor does it promote the best form of civic involvement. For that and the following reasons, KBA opposes the concept of initiative and referendum.

1) The progressive-era reason for initiative is not valid in Kansas in 1991.

Our forefathers saw in the 1780s the need for a strong government to unite highly diverse economic and social sections of the country. The founding fathers settled on a republican form of government, and guaranteed it in the U.S. Constitution.

Our so-called "Gilded Age" in the late 19th Century saw rather weak central governments and, consequently, tremendous power ceded to large corporations and business trusts. The abuses of power during this time were well-documented. The response was the Sherman Anti-Trust Act, stronger government regulation, and the trust busting Teddy Roosevelt.

Historically, Kansas was one of the more progressive populist states. During that time we implemented all sorts of workers compensation reforms and other progressive platforms. Yet our legislature found no need to create or even submit the initiative issue to the people during this era.¹/ Dick Snider aside, we think that is because Kansans generally view their government as responsive. Consequently there was no need for Kansas initiative and referendum. Initiative is a logical response to circumvent an unresponsive or weak state legislature. I know of no one who would categorize the Kansas legislature as generally weak or unresponsive.

2) Before you adopt initiative and referendum, you should decide the Kansas legislative process is incapable of speaking to the needs of Kansas.

Senator Reilly argues that these resolutions allow initiative and referendum only on tax and spending issues. Is he saying this legislature will not deal with these issues? Or that the resolution of these issues may not be in a manner in which he personally desires?

Many of California's problems in government finance stem from the Proposition 13 -- which was turning over taxing decisions to the populace who did not have the big picture in mind. Consequently, local governments are even more dependent on the California assembly for handouts.

Allowing tax and spending issues on the initiative ballot will generate class warfare in Kansas -- the haves verses the have nots. That possibili-

¹See Amendments and Proposed Amendments section of the State Constitution, pp. 147-154.

ty -- majoritarian rule -- is precisely why the founding fathers carefully crafted representative democracy to speak to difficult issues like taxes. Because each legislator needs other legislators on pet projects and bills, you cannot afford to alienate each other in this process. Thus you compromise -- and in that compromise, minority interests are protected in ways that are unavailable in simple balloting on initiative issues.

A democracy does not guarantee a citizen that government will be run to each citizens' express desires. It guarantees that we all have an equal voice in the process. We believe a call for initiative should be based on a **demonstrated inability or unwillingness of a legislature to deal with tough issues.** We think it is important that the legislature distinguish between the legislative compromise that goes with every difficult issue, and an unwillingness of a legislature to deal with an issue.

3) Initiative restricts critical examination of complex issues. Voters tend to make decisions quickly without access to information.

With initiative and referendum, will the voters know what they are voting on? Ballot propositions are hard to read and understand. Explanatory material in voter handbooks is not easier. One study calculates them at the 15th year readability level.

Highly technical legislation requires thought and expertise. Time does not always lend itself to such deliberative processes in the voting booth. That basically means simplistic media-driven appeals for votes must be made even on highly technical matters.

4) The beneficiaries of initiative are (a) news media advertising, (b) "well financed industries and lobbies" who use it to write law without the hindrance of legislative compromise, and (c)