

Approved 3-23-92
Date

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS

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

1:30 ~~am~~/p.m. on March 17, 1992 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:

Jim Edwards, Kansas Chamber of Commerce and Industry
Mark Tallman, Kansas Association of School Boards
Ron Smith, Kansas Bar Association
Mary E. Turkington, Kansas Motor Carriers Association
Tom Brungardt, Junction City, Kansas
Written Testimony, Warren Parker, Kansas Farm Bureau
Written Testimony, Kansas Livestock Association
Others attending: see attached list.

The meeting was called to order shortly after 1:30 p.m by Chairman Sallee.

Jim Edwards, Kansas Chamber of Commerce and Industry, appeared in opposition to SCR-1637 noting no state has adopted the initiative process since 1972. Mr. Edwards further noted the legislative process was hindered by decisions on issues being decided by slick advertising campaigns rather than substance, i.e. issues are decided by very small numbers of persons. (Attachment 1)

Mark Tallman, Kansas Association of School Boards, appeared in opposition to SCR-1637 noting his organization does not oppose the bill of the people but did 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. (Attachment 2)

Ron Smith, Kansas Bar Association, appeared in opposition to SCR-1637 noting "Initiative is not the strongest form of government in a democracy, nor does it promote the best form of civic involvement." (Attachment 3)

Mary Turkington, Kansas Motor Carriers Association, appeared in opposition to SCR-1637 with her written testimony listing 6 reasons for such opposition. (Attachment 4)

Tom Brungardt, Government Teacher, Junction City, Kansas, appeared in opposition to SCR-1637 noting he was testifying as an object lesson to his visiting students that any citizen could appear before a legislative committee. Secondly, Mr. Brungardt noted his desire to demonstrate the principal that this type amendment is not necessarily an order for citizens to participate in the law making process. He further noted the legislative process is designed to throw light on an issue, not a process designed to produce heat. The legislative process is designed for complex reflection on complex issues, Initiative is not. He also stated he can influence by calling and writing legislators, attend public meetings and in the end assign responsibility, even to the extent of running for political office.

Written testimony was presented by Warren Parker, Kansas Farm Bureau. (Attachment 5) Mr. Parker noted Initiative and/or Referendum place our representative form of government at risk. The checks and balances of the Executive, Legislative, and Judicial branches of government exist for good reason.

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 1:30 ~~xxx~~ p.m. on March 17, 1992

Mike Beam, Kansas Livestock Association, presented written testimony in opposition to SCR-1637 noting it pertains to "laws relating to taxation and expenditures by the state and taxing subdivisions". He noted this approach circumvents the important decision making process of elected officials and allows a select group of taxpayers to write major state or local tax policy proposals. (Attachment 6)

The meeting adjourned at 1:57 p.m.

GUEST LIST

SENATE ELECTIONS COMMITTEE

DATE March 17, 1992

(PLEASE PRINT)

NAME AND ADDRESS

ORGANIZATION

Michael Wolf

CCRS

Ron Smith

KBA

MARY E TURKINGTON

Kansas Motor Charters Assn

Jim Edwards

KCCI

Jill LaTone

SOS

Donna Annweis

AI

~~Tom~~

Tom BREWCARDT - Junction City

Sangeeta - Junction City

Jolana Jubilee - Manhattan

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 1637

March 17, 1992

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 to express our opposition to SCR 1637, which proposes to amend the Kansas Constitution and permit the enactment of laws through direct action by the voters.

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.

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Attachment 1

The issue of direct access to a state's constitution is one that should be as natural as motherhood, apple pie and the American flag. After all, states began permitting its use just around the start of the century. In fact, 19 of the 23 states that permit initiative formulated the process prior to 1918. However, none have adopted the initiative process since 1972. Those who support this elective procedure say these states have enhanced their legislative process. In actuality, they hindered it. They have hindered it by removing the legislature from any direct action on an issue...they have hindered it by allowing decisions on issues to be decided by slick advertising campaigns rather than substance...they have hindered it by having issues decided by a very small number of persons.

While some states do have prohibitions on direct initiative, most states that permit initiative use the direct form. This process assures that you usually have issues that are extremes and not compromises. That is why in states that have initiative today, you will find that single-issue, well-financed special interest groups are the ones that place issues on the ballot. And when the process works this way, the public is not well served.

As eluded to above, initiative campaigns must be well-financed if they are to be effective. What you find then is a system of legislative action based on a media blitz. And for those unlucky enough to have an initiative filed that effects them directly, they must also run a campaign to ensure its defeat. It has been shown in states that permit initiative that if one side does not mount an effective campaign it will suffer in the election.

Last, but certainly not least, the drop-off rate in almost all recent initiative elections is high enough to make most persons shudder. The drop-off rate is the difference between the number of people voting in the election and those voting on the ballot issue. Imagine if you can that 17.6% of those voting in the 1984 elections in Missouri did not vote on a ballot issue deciding utility rates. While this is a high figure, you should know that the average is 10% for all states and for all issues. A

sheet listing the drop-off rates for states in 1984 elections is attached to this testimony. Thomas Cronin, author of "Direct Democracy: The Politics of Initiative, Referendum and Recall," once noted that "about 10% of the 50% that usually vote don't vote on ballot issues and that 10% of those voting for ballot issues really don't know what they are voting on."

My testimony can be summed up best by reminding you of a quote by a Sacramento County (CA) official who stated that "The entire initiative process has become a high-tech business in competition with the legislature. It's no longer limited to tax-limitation initiatives but includes all types of initiatives which substitute or compete with the legislative process."

We urge you to oppose this issue. I would stand for questions.

Initiatives and Voter Turnout in 1984

Measuring Voter "Drop-off" on Ballot Measures

Election Turnout Compared to Initiative Votes

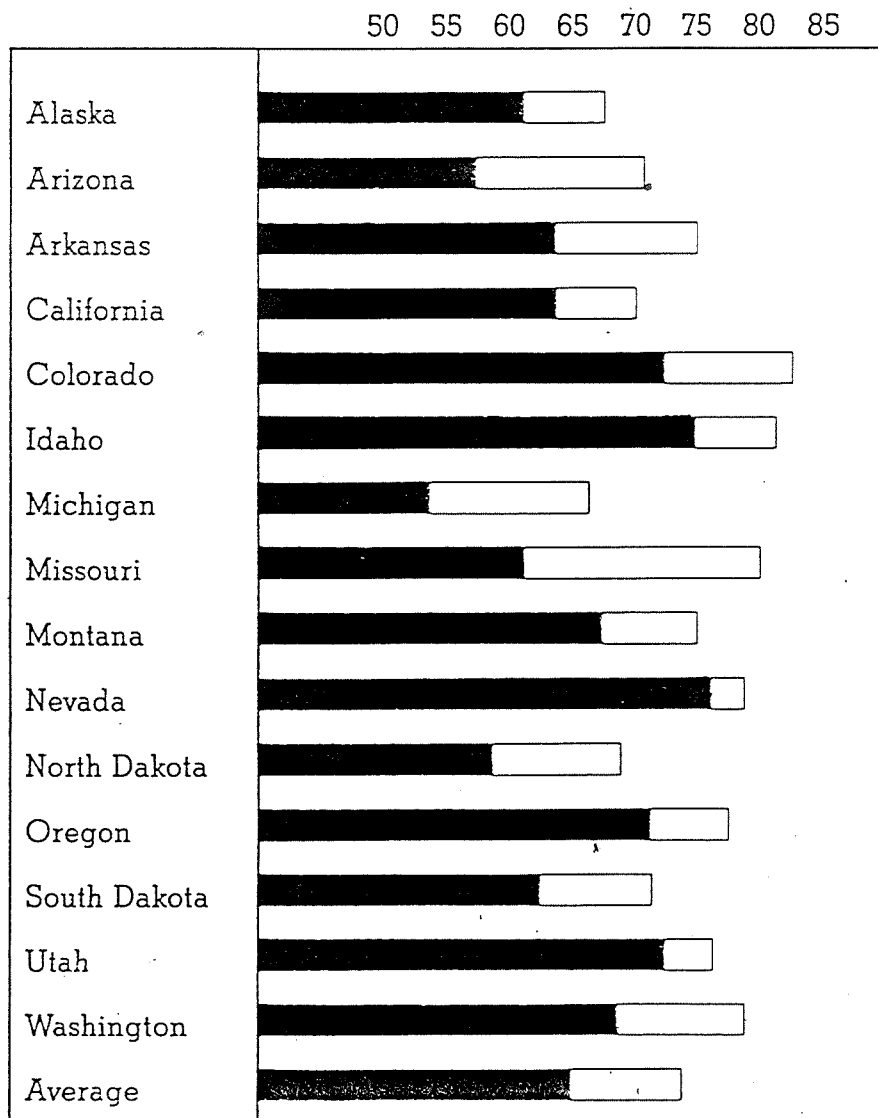


Figure 1.
 % Registered Voters Voting on Initiatives (Average)
 % Registered Voters Voting in Election

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



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

**Testimony on S.C.R. 1637
before the
Senate Committee on Elections**

by

**Mark Tallman
Coordinator of Governmental Relations
Kansas Association of School Boards**

**On behalf of:
Kansas Association of School Boards
Schools for Quality Education**

March 17, 1992

Mr. Chairman and members of the Committee:

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

The supporters of initiative say 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 previous proposals - would fundamentally alter the way we govern ourselves.

We do not believe that initiative 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;

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Attachment 2

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 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 the people of states with initiative 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.

If there is no evidence that initiative produces a more satisfied electorate, we do not believe the risks it entails is worth it.



Thomas A. Hamill, President
William B. Swearer, President-elect
Dennis L. Gillen, Vice President
Linda S. Trigg, Secretary-treasurer
Robert W. Wise, Past President

**KANSAS BAR
ASSOCIATION**

Marcia Poell, CAE, Executive Director
Karla Beam, Marketing-Media Relations Director
Ginger Brinker, Administrative Director
Elsie Lesser, Continuing Legal Education Director
Patti Slider, Communications Director
Ronald Smith, General Counsel
Art Thompson, Public Service/IOLTA Director

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

FROM: Ron Smith, KBA Legislative Counsel

SUBJ: Initiative and Referendum

DATE: March 17, 1992

Background

Staff has outlined well the issues you will consider. KBA does not oppose Governor Finney's well-intentioned belief in Initiative. The KBA has a century-old history of promoting the involvement of citizens in those activities that promote the rule of law. Lawmaking is fundamental to the rule of law, and the central pillar of a democracy. Lawyers in great numbers have served in this and other legislatures, and we hope they will continue to do so.

Initiative is, of course, one means of governing a democracy. With all due respect to the proponents, our 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 reason, we oppose the concept of initiative.

Summary of Reasons

- 1) **The progressive-era reason for initiative is not valid in Kansas in 1992.**
- 2) **Before you can adopt initiative, you should make a personal decision that the 1992 Kansas legislature is incapable of speaking to the needs of all Kansans.**
- 3) **Initiative restricts critical examination of complex issues. Voters tend to make decisions quickly without access to information.**
- 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) lobbyists and media consultants, who run media-oriented campaigns.**

1200 Harrison • P.O. Box 1037 • Topeka, Kansas 66601-1037 • FAX (913) 234-3813 • Telephone (913) 234-5696

BOARD OF GOVERNORS: Charles E. Wetzler, John L. Vratil, David J. Waxse, District 1 • John C. Tillotson, District 2 • Hon. Tim Brazil, District 3
Doyle E. White, District 4 • E. Dudley Smith, Dale L. Somers, District 5 • Anne Burke Miller, District 6 • Philip L. Bowman, Warren R. Southard, Mary K. Babcock
Hon. Herb Rohleder, District 8 • Wayne R. Tate, District 9 • Hon. Charles E. Worden, District 10 • Thomas L. Boeding, District 11
Robert B. Abbott, Young Lawyers Section President • Jack E. Dalton, Association ABA Delegate • Glee S. Smith, Jr., ABA Delegate
Christel Marquardt, Association ABA Delegate • Richard C. Hite, Kansas ABA Delegate • Hon. James P. Buchele, KDJA Representative.

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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.

6) Initiative denigrates the legislative process.

1
The progressive-era reason for
initiative is invalid in Kansas
in 1992.

The late 19th Century progressive movement tried to give voters a direct say in lawmaking and to circumvent unresponsive legislatures. Today, however, this reform has become a problem.

Historically, Kansas was one of the more progressive populist states of the William Jennings Bryan/Teddy Roosevelt era. During that time they implemented all sorts of workers compensation reforms and other progressive platforms. It was the heyday of William Allen White's Progressive Republicanism. Yet our legislature found no need to create or even submit the initiative issue to the people during this era.^{1/}

We believe previous Kansas legislatures did not submit an initiative issue to voters because they felt they were responsive to the demands of their constituents. You have inherited that tradition. We believe that situation is true today.

2
Before you adopt initiative,
you should make a personal
decision that the 1992 Kansas
legislature is incapable of
speaking to the state's needs.

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

¹Amendments and Proposed Amendments to the State Constitution, pp. 147-154.

that goes with every difficult issue, and an unwillingness of a legislature to deal with an issue. What issues have proponents raised as examples of an inattentive legislature? Educational reform? Tort Reform? Reappraisal and classification?

No. The dominant issues raised yesterday were taxes and governmental ethics. I submit you will deal with those issues in this session. It may require compromise, but strident initiatives will not pass the people, either. The fact some voters may not like legislative compromises produced in the immediate past is not legislative inaction.

The theory of initiative is a "participatory" rather than a "representative" form of democracy. Initiative is contrary to the type of government the Founding Fathers created 200 years ago. Initiative is modeled on the French Revolution, where Citizens participate directly in decisions. Americans chose a structured, institutionalized representative democracy where the will of the people is channelled through representatives. The latter has proven to be a stronger form of government, more responsive to gradual change, than the "politics of the moment."

3

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

With initiative and referendum, will the electorate know what they are voting on?

A study of voter-initiated ballot propositions during the 1970's in California, Massachusetts, Oregon and Rhode Island found the measures averaged 1,588 words in length and, using standard measures of readability, voter-initiative ballot propositions in California and Oregon were readable at the 18th grade level -- a collegiate bachelor's degree plus two additional years. Massachusetts and Rhode Island were at the 15th level year (3 years of college).

Explanatory material in voter handbooks is not easier. They were calculated at the 15th year readability level. One might conclude from these facts that initiative is designed to exclude the less-well educated or minority voter.

Highly technical legislation requires thought and expertise. Time does not always lend itself to such deliberative processes in the voting booth. That basically means simplis-

tic media-driven appeals for votes must be made even on highly technical matters.

Initiative voting patterns show a drop off in participation between those who vote for candidates and those who vote for initiatives. We believe this means voters generally are more interested or understand their ability to choose a good person to represent their interests than to make direct choices on the wisdom of legislation in general.

Initiative is costly government. If we aren't going to fund judicial salaries or margin of excellence and if we're slashing government expenditures, why fund a sort of government whereby people can not only create programs without regard to budgeting functions, but lock in minimum appropriation levels, too?²/ On the other hand, if you write controls into the initiative resolution -- disallowing the drafting of appropriations to fund an initiative -- the legislature can defeat a successful initiative simply by not funding it.

The representative form of democracy includes the Governor's veto power, which sometimes is needed to check a runaway legislative process. The initiative process excludes gubernatorial veto power.

The 1902 Kansas legislature was among the first states to give its governors line-item veto power. Initiative processes may create legislation that costs money against which a Governor cannot exercise this veto function. It may be constitutional, but we question the wisdom of that process.

In short, the informed debate, legislative compromise, and check and balance processes -- so vital in peaceful change in a pluralistic democracy -- are lost in the initiative process.

²Unless prohibited from doing so in the Initiative law itself.

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) lobbyists and media consultants, who hire out to run media-oriented campaigns.

Contrary to the initiative theory, special interest power is enhanced by initiative, not controlled. Initiative began in an era before massive electronic media advertising campaigns. Dependence of modern campaigns on media advertising means initiative will foster the campaigns of those who spend more, not less.^{3/}

While those with money do not always prevail, the presence of money can give opponents, especially, the ability to persuade the public that initiative should not pass. Opponents with money can mount a last-minute campaign and it is highly successful.^{4/} Proponents of initiative put lawmaking directly into the hands of media manipulators and lobbyists of special interests. Few initiatives in California or anywhere else are decided without monied special interests wading in.

5

While initiative serves as a political safety valve, the price is polarization, confrontation and single-issue, message-sending protest rather than compromise, accommodation and fine-tuned legislation.

Initiative's value, proponents say, is that it serves as

³Prof. Eugene Lee, Berkeley, quoted in "California Tried Democracy, and Look What Happened," New York Times, November 18, 1990, E-18.

⁴Examples: 1978 anti-smoking measure in California, and the 1980 "Tax Big Oil" campaign. A major way of combating the Initiative is to portray the issues as no longer "people-oriented."

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.

- ** The first woman governor was elected based on a campaign of property tax reform.^{5/}
- ** Almost a third of the 1991 Kansas House of Representatives were new.
- ** Democrats control the House of Representatives, for only the third time this century.

That is hardly the legacy of a state whose voters feel powerless, or a state system of government for which the only cure is initiative and referendum.

6
Initiative denigrates the legislative process.

Finally, the other major problem is that initiative has the potential to take a historically responsive legislature like this one and transfer that responsiveness over to 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. But that's not the best way to govern.

In all facets of life, whether it be education, jobs, football games or the legislative process, somebody has to referee and manage the process. In government, that is your job. And that's why we prefer the representative form of government.

⁵Initiative was not a major issue because both Governor Finney and Governor Hayden agreed on the concept.

MEMORANDUM OPPOSING INITIATIVE AND REFERENDUM (SCR 1637)
KANSAS MOTOR CARRIERS ASSOCIATION - TOPEKA, KANSAS
Mary E. Turkington, Executive Director

- - - - -
Senate Elections Committee
Senator Don Sallee, Chairman

March 17, 1992 - 1:30 p.m.

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 proposal before the Senate Elections 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.

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Senate Elections
March 17, 1992
Attachment 4



PUBLIC POLICY STATEMENT

SENATE ELECTIONS COMMITTEE

Re: S.C.R. 1637

March 17, 1992
Topeka, Kansas

Presented by:
Warren Parker
Assistant Director
Public Affairs Division

Mr. Chairman and members of the Committee:

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 S.C.R. 1637.

We believe there is a very lengthy list of reasons that no state has instituted Initiative or 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 the debacle in California to argue their case. We believe that argument has merit. Expensive media campaigns, misinformation, and lengthy, hard to understand ballots have not been a service to the California electorate.

Criticism, though, has been expressed closer to home. The House of Representatives soundly rejected a similar proposal last year, as have other Committees and Legislatures in Kansas dating back decades.

These lawmakers have realized that Initiative or 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 professional signature gatherers have been turned back by the Supreme Court.

You represent your constituents with a tremendous amount of information at your disposal. You will not make a decision based on one side's ability to generate "catchy 30 second sound bites" used to influence your vote, as the general public would in making their decision. We think your ability to discern information makes for better law.

The issues of Initiative and/or Referendum are unique in that it makes no difference whether you are wealthy, poor, urban, rural, special interest or general public. With Initiative and/or Referendum you are at risk. That is because measures such as the one before you place our representative form of government at risk. The checks and balances of the Executive, Legislative, and Judicial branches of government exist for good reason. If we truly believe in what our founding fathers created, expanded Initiative or Referendum will not be a part of our Constitution. Thank you for your time.

ISSUE ANALYSIS....

INFORMATION on PUBLIC POLICY

*Prepared as a Service to Members by the
Public Affairs Division, Kansas Farm Bureau*



INITIATIVE AND REFERENDUM: Power to the people???

JANUARY, 1991

THE ISSUE

The laws now in the statute books of the state of Kansas were voted on and enacted by members of the Kansas Senate and Kansas House of Representatives, then signed by the Governor of the state. Some issues, such as changes in the Kansas constitution, must be approved by at least a 2/3 majority of the Senate and House, plus be approved by a vote of the people. Initiative and referendum, also known as direct legislation, is a process by which a specified number of eligible voters may, through a process, bring to a ballot any issue of interest. Some believe this addition to or bypass of the legislative process is a means of strengthening the people's control over their government. The new Governor of Kansas, the Hon. Joan Finney, was elected on a populist platform and is a strong supporter of the initiative and referendum process. She has vowed to make its passage a top priority of her administration. Obviously, there are two sides to the issue.

BACKGROUND

While the Kansas Constitution does not include general initiative and referendum provisions, in 1959 the legislature enacted a law which does apply to cities. With a few exceptions, the statute provides that a proposed ordinance may be submitted to a city's governing body if accompanied by a petition containing a request that the governing body either pass the ordinance or submit it to a vote. Such petition must be signed by 25% of the electorate in first class cities or 40% of the electo-

rate in second or third class cities who voted in the last regular city election. Also, Kansas cities have been authorized to conduct referenda with regard to specific subjects. Article 12, Section 5 of the Kansas Constitution authorizes referendum upon the filing of a protest petition or upon the governing bodies own volition with regard to charter ordinances. Similar requirements are provided with respect to the city's home rule power of taxation.

For each argument in favor of initiative and referendum on the state level there is an argument against, and vice-versa. Ironically, some of the arguments for and against are the same. For example, some believe direct legislation lessens the influence of "special interest" groups. Advocates say that influencing public policy is more difficult when a mass of voters must be persuaded rather than individual legislators. This view, however, does not apply in a modern age, say opponents. The belief by those against direct legislation is that passage of such a law would actually hand over control to "special interests". Given the ability to reach the masses through the media, questionable information provided by a well financed few would create an uninformed electorate and laws that truly benefit only the "special interests". Also, the individual legislator being persuaded is held in check by the fact that he or she must eventually answer to hometown constituents. To look more closely at the issue, it may be helpful to separate the pros and cons. The following are paraphrased excerpts from "State and Local Govern-

ment" by Russell W. Maddox and Robert F. Fuquay. Though these arguments aren't new, they remain valid today.

THE CASE FOR—

"Direct legislation was conceived as a means of strengthening the people's control over their government at a time when a feeling was widespread that legislative bodies often were not motivated by concern for the public welfare.

It is asserted that direct legislation influences legislative bodies in at least two ways. Where voters may enact legislation, legislators may be motivated to take action on matters that otherwise would be neglected because of inertia or selfish interests. Secondly, the initiative and referendum, particularly the latter, function to "check" the legislature by preventing enactment of legislation that does not meet popular approval.

Direct legislation may also stimulate the interest of persons on public issues, even though voters may sometimes act on the basis of emotion rather than reason."

THE CASE AGAINST—

"Direct legislation is often seen as a means to undermine if not destroy representative government. Closely related to the foregoing criticism is the claim that direct legislation impairs the sense of responsibility of a legislative body. Such a development may stem from two closely related factors. A sense of "timidity" may develop on the part of the individual legislators, resulting in the referral of "hot" issues to the voters.

The use of initiative and referendum serve to increase the length of the ballot with drawn out and sometimes difficult to understand proposals and result in poorly drafted legislation.

Many voters do not go to the polls on election day, and among those who vote on candidates there are many who fail to vote on propositions. As a result, critics of direct legislation argue that it often produces laws enacted by a minority.

The cost of operating under initiative and referendum is generally believed to be high in comparison with the enactment of laws by legislative bodies."

OTHER STATES

Twenty-three states have some form of initiative and referendum. But of that number, only four have adopted provisions in the last seventy years, the last being Florida in 1972. An argument used many times by opponents pointing to the failure of initiative and referendum is what some describe as the debacle in California. The restrictions on what can appear on a ballot in California are quite liberal, and the general belief is that voters may be asked to cast their vote on a number of issues in any given election that are poorly explained and possibly misrepresented. Recently, the famous "Big Green" environmental initiative was on the California ballot. An expensive media war was fought over the merits of the issue. It was seen by opponents of initiative and referendum as a classic example of "special interest" legislation. While care of the environment is of vital concern, the many facets of "Big Green" were eventually seen as unrealistic, crippling to the economy of California, and having an adverse affect on much of the rest of the country. The measure was defeated, but opponents maintain that without a large outlay of money to fight the issue through the media, "Big Green" could well have become a devastating law for California, and the nation. Somewhat ironically, several believe parts of "Big Green" had merit, but without the availability of legislative

debate and compromise, a vote was forced on the issue as a whole, the result was a total defeat, and the exposure of the proposal was negative, making another attempt at passage difficult. Criticism has also been focused closer to home.

In 1972, when the initiative and referendum process was brought before the Kansas legislature for consideration, failures in other states were cited. Then Kansas Senator Steadman Ball told a Special Committee on Elections of events in the neighboring states of Nebraska and Missouri. In his testimony he 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."

Ball added to his remarks:

"Any Kansas citizen who accuses members of our legislature of listening too much to lobbyists and special interest groups should take a good look at how much more effectively they (lobbyist, etc.) can manipulate the public as a whole. Our legislators know lobbying when they meet it. It is much easier for lobbyists to hide their identities and activities when they get others to front for them in a public crusade."

This and other testimony heard by the Special Elections Committee in 1972 was characterized as overwhelming. The committee voted unanimously to recommend no action be taken by the 1973 legislature on the question of initiative and referen-

dum provisions for the Kansas constitution.

Another resolution to adopt initiative and referendum was forwarded to the Senate Elections Committee as recently as 1990. It also failed to garner any substantial support.

Whether a workable approach to initiative and referendum in Kansas can be developed is sure to be debated in the 1991 legislature. Many factors, such as the percentage of voters required to bring an issue to the ballot etc., will determine if a proposed measure will prove acceptable. The provisions of direct legislation in those states which have it vary substantially. Expectedly, opinions also vary on whether any of those present systems are considered successful.

KFB POLICY

Your policy shows concern for possible problems and misuse of initiative and referendum:

"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."

Prepared by: Warren Parker

Initiative and Referendum

GOV-5

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Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

March 17, 1992

TO: Senate Elections Committee
Senator Don Sallee, Chairman

FROM: Mike Beam, Executive Secretary, Cow-Calf/Stocker Division

RE: SCR 1637

The Kansas Livestock Association opposes the Initiative and Referendum concept. We believe the present form of "democracy by representative" is sound and offers the best protection for our state's citizens. Some claim the Initiative process dilutes the power of so called "special interest" groups. It's our belief, the Initiative concept would allow narrowly focused groups, with substantial financial interests, to have an undue influence on important state policy matters.

It appears that SCR 1637 pertains to an Initiative process limited to "laws relating to taxation and expenditures by the state and taxing subdivisions" (lines 23-25 on page 1). This approach circumvents the important decision making process of elected officials and allows a select group of taxpayers to write major state or local tax policy proposals.

Even though the subject restrictions in Section One apply to taxing and expenditures, this would likely be subject to interpretation by the Attorney General and/or the courts. Social programs, our educational system, transportation plans, and environmental activities could conceivably be construed as "taxing or expenditures" subjects. Do we really want to adopt such a risky policy?

KLA would much rather have important policy decisions debated and considered in the legislature by responsible, conscientious, and objective lawmakers. To change this system could put our future in the hands of campaign consultants and highly financed groups or organizations.

In summary, KLA believes the Initiative and/or Referendum process is not the best form of democracy. We support our founding fathers idea of "democracy by representation" and urge the committee to not pass SCR 1637. Thank you.

MB/sa

Senate Elections
March 17, 1992
Attachment 6