

Approved: 3-6-96
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on February 22, 1996 in Room 519-S of the Capitol.

All members were present except: Representative Bill Mason, Absent
Representative Britt Nichols, Absent

Committee staff present: Mary Galligan, Legislative Research Department
June Evans, Committee Secretary

Conferees appearing before the committee: Representative Doug Mays
Ida True Terry, State Director, United We Stand America of
Kansas, Inc.
Jim Edwards, KCCI
John Koepke, Kansas Association of School Boards
Christy Caldwell, Greater Topeka Chamber of Commerce
Ron Smith, General Counsel, Kansas Bar Association
Mary E. Turkington, Kansas Motor Carriers Association

Others attending: See attached list

The Chairperson announced that hearings on **HB 2885** would be continued on Monday, February 26.

The Chairperson opened the hearing on **HCR 5039** - State constitutional amendment authorizing voters to propose and enact state law and **HCR 5043** - State constitutional amendment authorizing voters to propose and adopt constitutional amendments.

Representative Doug Mays testified in support of **HCR 5039** and **HCR 5043** that would place two initiative questions on the 1996 general election ballot. **HCR 5039** involves proposition for the amendment of this constitution may be initiated by petition of registered voters for their approval or rejection, while **HCR 5043** would allow initiative for constitutional amendments. (See Attachment #1)

Ida Terry, State Director, United We Stand America of Kansas, Inc., testified they strongly support initiative; however, if **HCR 5039** and **HCR 5043** should pass as they stand, loaded with restrictions, would make it extremely difficult if not impossible for citizens to exercise their right to petition. (See Attachment #2)

Jim Edwards, Director, Chamber and Association Relations, Kansas Chamber of Commerce and Industry, testified in opposition to **HCR 5039** and **HCR 5043** as KCCI has opposed, and will continue to oppose, any legislative process which builds its foundation on creating laws or amending the constitution through media blitz and voter hysteria. KCCI believes that the legislative process that has served Kansas and its citizens throughout the years is a good one. The system of legislative review and consideration of important state issues is something that should be honored rather than tossed aside only to be replaced with a system in which laws are made through one-sided advertising campaigns. (See Attachment #3)

John E. Koepke, Executive Director, Kansas Association of School Boards, testified in opposition of **HCR 5039** and **HCR 5043**, stating the Association has a long standing policy in opposition to the injection of the procedure commonly called "initiative and referendum" into our representative form of government. The Kansas Association of School Boards fears is the undermining of a system of representative government based on checks and balances which has endured in this state for over 130 years. It is not felt the representative system of government is broken and therefore does not require the fix this measure would provide. (See Attachment #4)

Christy A. Caldwell, Vice President Government Relations, Greater Topeka Chamber of Commerce, testified in opposition of **HCR 5039** and **HCR 5043**. The Topeka Chamber recognizes the frustration individuals feel when an issue is not resolved by the legislature to that person's satisfaction. However, firmly believe in the representative form of government and the process involving information gathering and debate that the legislature pursues as it considers changes to the Kansas constitution and statutes. Safeguards, within

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
Statehouse, at 1:30 p.m. on February 22, 1996.

the representative system, creating checks and balances are not included in initiative; rather, they are "popular" elections. (See Attachment #5)

Ron Smith, General Counsel, Kansas Bar Association, testified opposing HCR 5039 and HCR 5043 stating there needs to be a system of checks and balances on legislation, therefore, a two-house Congress was created. (See Attachment #6)

Mary E. Turkington, Executive Director, Kansas Motor Carriers Association, strongly opposed HCR 5039 and HCR 5043. Issues affecting public policy in Kansas now can be adequately and appropriately addressed through the legislative process now in place. Initiatives are most often used by well-financed, single-issue organizations. 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. Initiatives provide "taxation without representation" opportunities. The solution is not to draw a narrow initiative authorization. The diversified interest of the people of Kansas can only be well served through wise and informed representative government exercised through the legislation process. (See Attachment #7)

The Chairperson closed the hearings on HCR 5039 and HCR 5043.

The meeting adjourned at 2:55 p.m.

The next meeting is scheduled for February 26, 1996.

FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE: Feb 22, 1996

NAME	REPRESENTING
Glen O. Thompson	Stand Up For Kansas
Mary E. Turkington	Kc. Motor Carriers Assn
Jim Edwards	KCCCT
Christy A. Caldwell	Topeka Chamber Commerce
Isla Jane Perry	United We Stand America
Andee C. Shalton	American Heart Association
Mary Joanne Hellebrust	Kansas Smokers Kids Initiative
Brian J. Miller	American Cancer Society
Theresa Cat Whitehead	K.S. Smokers Kids Initiative
Dorosa Menauer	HIAA
Lee Wilt	Farmers Ins. Group
Amy Russell	Pat Heubell
John W. Kuehn	KASTB
Mark Zapp	S.O.S.
David Lopez	U.T.U.
Pam McVicoe	Leadership Olathe
Jaya Fuller	Leadership Olathe
Jack Chees	EP Pugh
Joe Urbanek	Pages

FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE: 2-22-96

NAME	REPRESENTING
JL Geisler	PUGH
Ben Bernoth	Pugh
Tom Bruno	Allenci Assoc
Tom Burgess	Burgess & Assoc.

DOUG MAYS
 REPRESENTATIVE, FIFTY-FOURTH DISTRICT
 SHAWNEE COUNTY
 1920 SW DAMON CT.
 TOPEKA, KANSAS 66611-1926
 (913) 266-4885
 STATE CAPITOL—ROOM 182-W
 TOPEKA, KS 66612-1504
 (913) 296-7668



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 CHAIRMAN — RULES AND JOURNAL
 VICE CHAIRMAN — LOCAL GOVERNMENT
 MEMBER — TAXATION
 JUDICIARY
 CHAIRMAN — SHAWNEE COUNTY DELEGATION

House Concurrent Resolutions 5039 & 5043

Testimony of Representative Doug Mays

HCR 5039 and 5043 would place on the 1996 general election ballot two initiative questions. HCR 5039 involves citizen initiated of statues, while HCR 5043 would allow initiative for constitutional amendments. Both measures were heard and passed favorably out of this committee during the session of 1994. HCR 5043 is identical to the resolution amended and adopted by the House with 85 votes that same session.

Initiative is a concept widely embraced by the voting public. This is very true in Kansas. (If it were not, would its opponents strive so vigorously to block its placement on the ballot.) Surveys in my own district have consistently indicated support in excess of 75%. I believe this to be typical statewide.

It is a concept so simple, and so true to the populous roots of our beloved Kansas, that I sometimes have difficulty understanding why anyone with an appreciation of this state's history would not embrace it in at least some form. Unfortunately, it is easy for elected officials to reject this proposition outright. After all, what did they elect us for? Indeed, didn't the people place with us a certain trust to always do their will, and when that will is not so easily discerned, then what we believe to be best for the whole?

This same notion of trust, is the foundation upon which the theory of citizen initiative is based. Trust not in a system, a government, or an institution, but in something more fundamental. Trust not by others in us, the elected ones; but by us, in others.

The others of which I speak are people. Not "The People." Just people. For I believe that when one uses that phrase "The People," one implies that they are speaking of faceless mob, consisting of everyone but us and our friends. It is a paternalistic term at best, a cynical statement often seized to imply that Kansans are somehow too dumb, too ignorant, or too naive to decide major issues correctly by themselves. Like little children, if left alone, sooner or later they'll burn the house down.

But if one believes in people, and more specifically Kansas people, it becomes easier to make the leap of faith that citizen initiative requires of elected officials in order to support it. This leap, however, should not be difficult, for Kansans have demonstrated again and again an inherent wisdom and intelligence that has kept this state on a steady course forward for over one hundred and thirty years.

I believe in citizen initiative. I believe in Kansas people. And I believe they have earned our trust.

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 Atch #1



UNITED WE STAND AMERICA OF KANSAS, INC.

10734 W. 116th Street / Overland Park, Kansas 66210 / Phone: 913-339-6434 / Fax: 913-696-0013

February 22, 1996

Testimony in Support of Initiative
before the
House Federal and State Affairs Committee

by
Ida True Terry, State Director

Mr. Chairman and members of the Committee

I thank you for this opportunity to appear today in support of initiative.

United We Stand America of Kansas is very pleased that you are again addressing the issue of the citizens right to petition through the initiative process.

Although we strongly support initiative, these bills if passed as they stand, loaded with restrictions, will make it extremely difficult if not impossible for citizens to exercise their right to petition.

These restrictions include:

- The huge number of signatures required, more than double the original bill:
 - 8% of the total registered voters for a Constitutional amendment = 105,138.
With only 180 days to gather signatures that means 585 signatures per day.
 - 5% of the total registered voters for a statute = 65,711 signatures.
With only 180 days to gather signatures, that means 366 signatures per day.
- The unusual mix of required numbers unnecessarily complicates the counting process for the petition gatherers and the Secretary of States' verification process:
 - 80% from each Senate district = 2103
 - 60% from each Senate district = 986
 - 1% of registered voters in each county.
- The single-subject provision. This has repeatedly been used as an excuse to strike down initiatives that voters have already approved.
- The exclusion of an initiative that dictates any revenue or repeals any appropriation.

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Atch #2

We strongly object to the provision that allows the legislature to easily amend or repeal an initiative only 41 days into the next legislative session -- only seven months after it has been approved by the voters and the Attorney General has declared it legal and constitutional. This would reduce the initiative to no more than a survey.

Your voters will be very pleased that you have seen fit to give them initiative, but how will they feel when they learn the details, realize it will be almost impossible to implement, and can be changed so easily by you?

We also believe that the public's right to know is vital to the democratic process. Therefore we make the following recommendation:

Any group supporting or opposing an initiative must include the name of their sponsoring organization in all promotional materials including print, radio or TV.

However, If due to the recent U.S. Supreme Court decision, initiative sponsors or detractors cannot be required to reveal who they are, we would make the following recommendation for inclusion in these bills:

In fairness to Kansas voters it is recommended that all promotional media and printed materials for, or against, the initiative petition include the name of the sponsoring organization.

Arguments have been made that narrow interest groups will have the power to design laws behind closed doors with no public input, expert testimony, or public debate. There seems to be an assumption that the public and the press will have no knowledge of an initiative, and will blindly vote for anything. We disagree.

First, if the issue is too narrow, too radical, or poorly understood it will be impossible to get enough signatures to put it on the ballot.

Second, this argument assumes there would be no opposition. But it's hard to imagine that any initiative will appear on the ballot without a lot of debate by the public, experts, the press, elected officials and anyone who opposes the initiative. Unless everyone is wholeheartedly in favor of an initiative, it will be carefully scrutinized. The public will know far more about the issue than they do about most of the bills you pass.

Initiative does not negate your power to legislate, but it does allow your constituents to act on issues important to them if you do not act. A perfect example is the current gambling issue. During the '94 election, all the gubernatorial candidates stated that they thought the people should decide. And why shouldn't they? I'm sure you, and the press, will see to it that the public gets the facts on both sides before they vote.

The hot button topic in Washington is sending control back to the states. With the current amount of voter discontent, it's time to also give this small bit of power back to the people.

We are not asking for the right to petition, for we have that right.

We are asking that the right to petition through the initiative process, be formalized and stated within the Constitution of the State of Kansas.

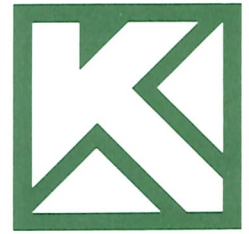
If this is truly a free government, founded on the inherent right of the citizens and on their authority as stated in the Kansas Constitution, all that is required is a fair and formal set of rules to establish an orderly, timely process by which the citizens of Kansas may exercise a right already guaranteed to them by the Constitution of the United States of America and the Kansas Constitution.

Any attempt to limit access or impose undue restrictions will deny citizens their guaranteed right. A governments only purpose, and reason to exist, is to serve the people since only through citizen consent does it exist at all.

Thank You

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732
HCR 5039 and HCR 5043

February 22, 1996

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
House Federal and State Affairs

by
Jim Edwards
Director, Chamber and Association Relations

Chairman Boston and members of the Committee:

I thank you for the opportunity to appear before you today and express KCCI's opposition to HCR 5039, which proposes to amend the Kansas Constitution and provide for statutory initiative and referendum as well as our opposition to HCR 5043, which proposes to amend the Kansas Constitution and provide for constitutional initiative and referendum.

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 46% of KCCI's members having less than 25 employees, and 77% 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.

KCCI has opposed, and will continue to oppose, any legislative process which builds its foundation on creating laws or amending the constitution through media blitz and voter hysteria. Likewise, it will continue to oppose any legislative system which reinforces issue campaigns created

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single issue, special interest forces who don't want to deal with the creation of laws in the time proven manner but instead want to do it with well-financed advertising campaigns.

KCCI believes that the legislative process that has served Kansas and its citizens throughout the years is a good one. Our system of legislative review and consideration of important state issues is something that should be honored rather than tossed aside only to be replaced with a system in which laws are made through one-sided advertising campaigns. Usually, initiatives are polarized in their introductions and are put on the ballot in that fashion. Unfortunately, the debate and compromise that take place in our current legislative process is lost. The issues would only be an up-or-down vote only by the voters.

For many years, KCCI has emphasized that initiative and referendum is most often used by single issue forces and this has at times been met with skepticism. We only have to look at testimony provided in the last couple of years by proponents and comments made by members of the legislature during floor debate to give credence to this point. After all, what do property taxes, school vouchers, the death penalty, statutory initiative and term limits have in common? One, they are all issues that had lengthy hearings, public debate and input and roll call votes by the Kansas House of Representatives and/or the Kansas Senate. Two, they did not have the outcome that was acceptable to some. It is no surprise that those who are pressing for the passage of the initiative legislation often point to those single pet issues and the failure to have those issues addressed to their liking as being the reason for their support. This same point was emphasized also in a recent discussion that I had with a representative of the Mississippi Secretary of State's office. He pointed out that the issues that have been introduced in Mississippi since they approved the initiative process have been spearheaded by elected officials that did not see their issues fair well in the legislative process.

In concluding my testimony I want to address several other points.

- **Only 21 other states permit the use of statutory initiative. (Attachment #3)**
- **Only 19 other states permit the use of constitutional initiative. (Attachment #3)**
- **Initiative and referendum does not increase the interest in voting. The number of persons voting on ballot issues is almost always lower than those voting for the top candidate at the same election. In fact, states that permit the use of initiative describe this vote difference as the drop-off rate. The average drop-off rate is greater than 10% for all states. We only have to look to our neighbors in Missouri to fully understand this point. One ballot issue, which would determine utility rates, had 17.6% fewer persons voting on it than the top candidate on that same ballot. (For Kansas results, see Attachment #2)**
- **Initiative is most often used today by individuals or groups of persons that have a single issue and can fund that issue with large sums of money. In fact, initiative is commonly known as legislation through media blitz.**
- **Voters will have problems understanding the issues. In a study of the initiative process in California, it was found that: 1) Ballot pamphlets often fail to communicate information accurately and concisely; 2) Media campaigns disseminate incorrect or deceptive information; and, 3) Initiatives are most often too long and complex. In addition to the issues being long and complex, they also provide no alternative.**

I hope that I have presented to you today a reasonable alternative to both of these issues. That reasonable alternative would be to refuse to allow either HCR 5039 or HCR 5043 to pass from this committee. By doing this, you would be emphasizing and recognizing your obligation to the voters in your district and that is to serve as their representative in our system of representative democracy. I would be happy to stand for questions.

10 Good Reasons Why Kansas Should Not Adopt the Initiative Process

Reason 1

The initiative form of government is one by which citizens can put either constitutional amendments or changes to state statutes directly on a ballot without prior legislative consideration or consent.

Reason 2

There are 24 states that authorize the use of initiative for constitutional change or for the enacting of statutes. Nineteen of these states provided for the use of initiative prior to 1918. Of the other five states, Mississippi was the last to provide for the use of initiative in 1993.

Reason 3

Initiatives do not generate more people voting in elections. Initiatives usually have a vote total substantially lower than the votes for candidate races on the same ballot. In a study of initiative use in California, 10% of the persons going to the polls will not vote on initiated legislation. In most states, the drop-off rate is even higher.

Reason 4

Initiated proposals are generated in a vacuum. There is little, if any, opportunity to determine the impact of the proposal on existing laws. Also, there is no opportunity for amendment or compromise, leaving the measure to be accepted or rejected.

Reason 5

Initiatives are used most often by well-financed, single-issue organizations or individuals. They are not the legislative tool for the under represented that they were originally designed to be.

Reason 6

Initiatives waste money. They waste money and time by requiring efforts to combat unsound proposals or controversial proposals repeatedly submitted.

Reason 7

Initiatives undermine legislative responsibilities. Legislators can sit back and not take an active role in serving as a representative of their constituents.

Reason 8

Initiatives can have a drastic impact on state fiscal matters. They can either increase spending without providing revenues or can cut spending but provide no source of funding for necessary programs.

Reason 9

Special initiative elections do not increase voting. Usually, less than 1/3 of those eligible to vote do so.

Reason 10

Regulation of business ranks as #2 among initiative measures.

1986 Kansas General Election

(1,158,738 registered to vote)

(1,942,635 eligible to vote)

Voted in Governor's Race

840,605

(27.5% of registered voters did not vote)

(56.7% of those eligible to vote did not vote)

Voted on Classification Amendment

787,922 (6.3% drop-off)

(32% of registered voters did not vote)

(59.4% of those eligible to vote did not vote)

Voted on Lottery Amendment

807,304 (4% drop-off)

(30.4% of registered voters did not vote)

(58.5% of those eligible to vote did not vote)

Voted on Liquor by the Drink Amendment

815,151 (3.1% drop-off)

(29.7% of registered voters did not vote)

(58% of those eligible to vote did not vote)

Voted on Pari-mutuel Wagering Amendment

808,087 (3.9% drop-off)

(30% of registered voters did not vote)

(58.4% of those eligible to vote did not vote)

Voted on Education Amendment

750,328 (10.8% drop-off)

(35.3% of registered voters did not vote)

(61.4% of those eligible to vote did not vote)

Source: Election Statistics
State of Kansas
1986 Primary and General Elections

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Facts on States With Initiative

State	Constitutional	% to Qualify	Statutory	% to Qualify
Alaska			X (D)	10 LTV
Arizona	X (D)	15 LGV	X (D)	10 LGV
Arkansas	X (D)	10 TV-LGE	X (D)	8 TV-LGE
California	X (D)	8 LGV	X (D)	5 LGV
Colorado	X (D)	5 LSV	X (D)	5 LSV
Florida	X (D)	8 LPV		
Idaho			X (D)	10 LGV
Illinois	X (D)	8 LGV		
Maine			X (I)	10 LGV
Massachusetts	X (I)	3 LGV	X (I)	3 LGV
Michigan	X (D)	10 LGV	X (I)	8 LGV
Mississippi	X (D)	?		
Missouri	X (D)	8 LGV	X (D)	5 LGV
Montana	X (D)	10 LGV	X (D)	5 LGV
Nebraska	X (D)	10 LGV	X (D)	7 LGV
Nevada	X (D)	10 LTV	X (I)	10 LTV
North Dakota	X (D)	4 VAP	X (D)	2 VAP
Ohio	X (D)	10 LGV	X (I)	3 LGV
Oklahoma	X (D)	15 LHV	X (D)	8 LHV
Oregon	X (D)	8 LGV	X (D)	6 LGV
South Dakota	X (D)	10 LGV	X (I)	5 LGV
Utah			X (D) (I)	10 LGV
Washington			X (D) (I)	8 LGV
Wyoming	X (D)	15 LTV	X (D)	15 LTV
States - 24	Direct - 18 Indirect - 1	Ave. - 9.3	Direct - 13 Indirect - 6 Both - 2	Ave. - 7.3

TV-LGE total votes cast at last election at which office of Governor was included
 LGV..... total votes cast for all candidates for Governor in last election
 LSV total votes cast for Secretary of State in last election
 LPV total votes cast for President in last election
 VAP..... voting age population in last federal census
 LHV..... total votes cast for office receiving highest vote total in last election
 LTV total votes cast in last general election
 RV registered voters

Source: National Center for Initiative Review



Testimony on HCR 5039
before the
House Committee on Federal and State Affairs

by
John W. Koepke, Executive Director
Kansas Association of School Boards

February 22, 1996

We appreciate the opportunity to appear before you on behalf of the member boards of education of the Kansas Association of School Boards regarding this important matter. Our organization has a long standing policy in opposition to the injection of the procedure commonly called "initiative and referendum" into our representative form of government. We would therefore express our opposition to the adoption of HCR 5039.

We do not take this position because we fear the voice of the people, as some would suggest. School board members are elected by the people, just as you are. What we do fear is the undermining of a system of representative government based on checks and balances which has endured in this state for over 130 years. The proposal before you would fundamentally alter the way we govern ourselves. Our political tradition holds that such changes should not be made easily, which is why constitutional amendments require an extraordinary legislative majority before submission to the people. We are not convinced that our representative system of government is broken and therefore does not require the fix this measure would provide.

We believe that it is easier for citizens to have legislation introduced by individuals or committees than to solicit petition signatures. We believe that it is easier for citizens to receive a fair hearing in the legislative process than to wage a media campaign. The role of interest groups, money and media is greater under the initiative process than in the legislative process.

However frustrating it seems at times, we believe that the legislative process, with its checks and balances, forces issues to be considered whole, in context, and with due consideration to all interests. If citizens are disillusioned by this process, perhaps it is because our demands of government are often at cross purposes. As an educational organization, we know that people don't like taxes and most favor limitations on government spending. But, we also know people want good schools for their children and communities, just as they want health and safety services. The essence of our democracy is a constant conflict over these and other values. We do not believe that initiative and referendum can resolve such conflicts. Rather, we fear that the initiative process will divert time, resources and attention away from the hard work of legislating meaningful compromises toward a handful of controversial issues, usually placed on the ballot through someone's narrow agenda.

In short, we believe that initiative and referendum is at best a shortcut, and there are no shortcuts to better government. I would be happy to respond to any questions.

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Testimony before the House Federal & State Affairs Committee

By Christy A. Caldwell

Vice President Government Relations

Greater Topeka Chamber of Commerce

February 22, 1996

The Greater Topeka Chamber of Commerce would like to express our opposition to the resolutions for initiative, HCR 5039 and 5043.

The Topeka Chamber recognizes the frustration individuals feel when an issue is not resolved by the legislature to that person's satisfaction. Our chamber has also been discontent at times. However, we firmly believe in the representative form of government and the process involving information gathering and debate that the legislature pursues as it considers changes to the Kansas constitution and statutes. Safeguards, within the representative system, creating checks and balances are not included in initiative; rather, they are "popular" elections.

As we look at other states who have initiative, we see the difficulties this form of government causes: lengthy questions are not read by the voting public; issue elections are won or lost in the media, depending on the most dollars spent; ramifications of changing or adding new laws are not debated creating unintended consequences; propositions placed on the ballot lack opportunity for amendment; initiative has not generated greater participation by the electorate, there is documented drop off of voters voting on ballot questions. Tom Peters, author of "In Search of Excellence" quotes in his newspaper column (June 26, 1992): "Teledemocracy, (The New Republic magazine says), means the Madisonian system would be replaced by the Geraldo system; checks and balances by applause meter." Frankly, the costs to business in defending itself from ballot questions is of great concern. Kansas businesses are faced with the realities of a global market and global competition. Now is not the time to divert precious resources away from capital improvements and human resources to battle issues in the electronic and print media.

In 1994, Question 1 on the Massachusetts ballot would have prohibited every business corporation in Massachusetts, and most non-profit corporations, from contributing or expending money to promote or defeat any initiative, referendum or other question submitted to the voters in a state or local election. This question was defeated that November, the cost for business to fight this issue was \$3.1 million. In fact, there were several other anti-business questions, totally business shelled out \$6 million to tell their side of the story on those initiatives. Six million dollars that could have been used for business expansions, raises or maybe new equipment. The

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year before the business community spent \$5.9 million to fight a packaging initiative which would have caused products in that state to be packaged differently than anywhere else in the country. The business community barely won.

Other issues you may want to think about are what does a citizen do if they sign a petition in the heat of the moment only to realize later that they really didn't agree with the petition. It happened here in Topeka in 1991. Citizens signed a local petition calling for a grand jury to investigate a list of issues. Residents who signed the petition called the Kansas attorney general's office, the Shawnee County District Court clerk, and the local newspaper. They wanted their names removed from the petition. They said they were unaware of the scope of the investigation when they signed the petition, in fact, they said they had been told the petition would do something about property taxes and reappraisal.

In the second instance in Shawnee County, there was a local petition circulated that would impose term limits on local elected officials. After the petition was submitted to the Election Commission and the signatures were checked, it was found, many of the names had been forged on the petition. In fact, even the Shawnee County Election Commissioner's name appeared on the petition - it had been forged as well.

Mr. Chairman and committee, Kansas citizens have access to their government and the ability to shape Kansas laws and regulations. It is not necessary or timely to embrace the initiative process. We respectfully request both HCR 5039 and 5043 be defeated.

Testimony on HCR 5039
Initiative and Referendum

Ron Smith, General Counsel
Kansas Bar Association
February 22, 1996

KBA opposes this constitutional amendment. It is ironic this hearing comes on George Washington's birthday. I doubt that Washington was much of a populist. In 1792 as part of his writings on the First Amendment's petitioning clause and noting the lack of a written English constitution on the unchecked powers of Parliament, Washington's close friend, James Madison, wrote of the need for written constitutions and unalterable rights, free from the unguided or misguided passions of a majority. It is the "tyranny of the majority that I fear most." Jefferson wrote Madison, Madison and Jefferson felt written guarantees were needed in constitutional form because the body politic might often produce undesirable results if permitted to govern exclusively by majority rule.

Madison preferred a system of elected lawmakers who exercise their best collective judgment, and that those lawmakers not be bound to petitions and instructions from home. In that regard, the federal constitution disallows initiative and referendum, preserving instead a "republican" form of government.

Madison did not oppose petitioning and instruction forms of lawmaking. Petitioning and instruction was a form of initiative and referendum, and was common in the 18th Century colonies. Unlike petitioning, which requires no vote, initiative and referendum puts issues in front of voters for their decision. This was not unlike the French system of the day, where the French revolution that led the aristocratic Bourbons to the guillotine and then made new laws through "citizen committees." Madison and many of the founding fathers were shocked by this form of direct government, and wanted no part of it.

They wanted a system of checks and balances on legislation so they created a two-house Congress, and used the makeup of the Senate, and the veto power of the President to control the House of Representatives. Most of all Madison made it hard to enact a law, because he feared the lawmaking branch of government above all others. He wanted the factions – the special interests – to control each other through debate and compromise. His theories haven't always been right, but for 205 years the lawmaking process he created has worked well.

States were free to adopt other forms of government. Many have, including our neighbors. After the civil war, initiative and referendum began in the populist era when legislatures were perceived as being unresponsive to the needs of the time. That is not, and has not been, the situation in Kansas. Generally this state has had a very responsive and responsible legislative system. While some Kansans believe the legislature may not have always acted in their best interest, they can rarely criticize or point to legislation that was necessary that was not enacted because the legislature was controlled by "special interests."

Initiative is one way of governing a state. Our problem with this concept is that we do not believe it is the best way to govern a state. Initiative and referendum is not the answer to those who feel a legislature has not done the right thing.

The least valid reason to enact initiative and referendum is the number of other states with the law. In states with initiative and referendum it often makes ballot counting more difficult and leads to ballot confusion. Sometimes contradictory issues are on the same ballot, and pass not on their merits but because voters were confused. The concept also can be lead to extreme positions by the majority of voters who react to fear campaigns.

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As was stated by the National Association of Attorneys General in a 1988 position paper on individual rights: "It is an unfortunate fact of American history that if the rights of blacks, Indians, women, Hispanics, Italians, or Jewish citizens were put up to a popular vote at particular stages of history, the results would be catastrophic." A deliberative legislative body has, in the past, been an instrument of discrimination. One need only look to the old jim crow segregation laws of the 1890s for validation. While a legislature is not a guarantor against discrimination, it is easier to hold legislators accountable for their votes than to hold the public accountable for misleading statements and tactics in media oriented initiative and referendum campaigns.

The major beneficiaries of initiative and referendum are newspapers and media who benefit from the advertising. Other beneficiaries include political operatives who hire out to manage media campaigns. Studies in California and other initiative states show it is the special interests who use initiative and referendum as offensive weapons. The other beneficiaries are the lawyers, since in states with initiative many lawsuits are filed to enjoin action or the implementation of such laws, lawsuits which do not necessarily arise in a legislative system. All you have to do to confirm this fact is read the Pacific 2nd Advance sheets reporting the new cases in Arizona, Oregon, Washington, California, Colorado, and some of the western states with Initiative and Referendum. Someone is always filing suit.

Initiative allows the following things to happen, which we feel are not virtues of lawmaking:

- laws that are edicts, and without the crucible of compromise.
- less well-crafted laws (these people will not have benefit of the reviser's office)
- demagoguery
- discrimination against minorities
- it mostly benefits urban areas, since that is where the votes are. The process forcing urban-rural compromise is lost.

The process also burdens the election process. My brother lives in Los Angeles. The voter guide to initiative issues in California was 146 pages long. It was mailed to each registered voter. Someone had to put it together and pay for it. Then you get five minutes to vote on all that material. The drop off rate between the number of people who vote for candidates and those who vote for issues is considerable. Most people believe they can make character judgments among representatives. Most others do not feel qualified to decide important and complex issues at the ballot. That's what they send you here to do for them.

William Allen White once wrote, "If anything important happens in America, it first happens in Kansas." Over the years, that has proven true. Kansas was among the first states to regulate lobbying (1909), enact workers compensation laws (1911) and regulate child labor (1911?). We were among the first states to provide for the property rights of married women (1859, 1868). A list of the issues submitted by the legislature for constitutional ratification are listed below. The list does not contain an initiative or referendum constitutional amendment – we think – because Kansans historically have found their legislative process responsive and responsible, and that initiative and referendum was not that important.

In my years here, I have found that historically there are three power points in government: (1) the legislature, (2) the governor, and (3) the people, acting collectively. When any two of these three entities get together – no matter what the issue – something happens. Initiative and referendum does not improve that equation. Absent a showing that the Kansas Legislature is historically unresponsive to the people it serves, we do not believe initiative and referendum is needed nor is it desirable. Thank you.

STATEMENT OPPOSING CONSTITUTIONAL INITIATIVE

Kansas Motor Carriers Association
Mary E. Turkington - Executive Director

Presented to the House Federal and State Affairs
Committee, Rep. Garry Boston, Chairman; Statehouse,
Topeka, February 22, 1996.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

On behalf of the highway transportation industry and the Kansas Motor Carriers Association, I wish to express our strong opposition to the proposed constitutional initiative represented by HCR 5039. 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 deliberate, 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.

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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 diversified interests of the people of Kansas can only be well served through wise and informed representative government exercised through the legislative process. We respectfully ask you to reject HCR 5039. ⁵⁰⁴³ The people of Kansas will thank you.

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