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HOUSE COMMITTEE ON STATE AFFAIRS

**RECAP OF
HJR 3**

Authorize Const. Amend't by Initiative

Received January 9, 1989
by Rep. Martin

Heard April 27, 1989
Heard April 10, 1990

Passed Out of Committee April 10, 1990
4 Do Pass

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HJR 3: Authorize Const. Amend't by Initiative

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Item 2

FISCAL NOTE

REQUEST:

Revision Date: 4/9/90 Agency Affected: Office of the Governor
 Title: Authorizing the use of the initiative to amend the Constitution BRU: Elections
 Sponsor: Martin Components: II- Primary & General Elections
 Requestor: Martin

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.2*	-0-	-0-	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2*	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	2.2*	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The fiscal impact for FY 90 is -0-
 * Costs included cover 2 to 3 pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote counting purposes.

Prepared by: Linda Edgeworth Phone: 465-4611
 Division: Division of Elections Date: _____

Approved by Commissioner: [Signature] Date: 4.9.90
 Agency: Division of Elections

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. HJR 3

However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2

Under these circumstances the fiscal note would be:

53.4

Item 3

REP. TERRY MARTIN

ELECTIVE DISTRICT 13
MOUNTAIN VIEW
RUSSIAN JACK SPRINGS
NUNAKA VALLEY
ELMENDORF A.F.B.
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Alaska House of Representatives

April 12, 1989

MEMORANDUM

To: H.A. "Red" Boucher, Chairman
House State Affairs Committee

From: Rep. Terry Martin *T.M.*

Subject: HJR 3 - Allowing initiated changes in constitution

Thank you for scheduling HJR 3 for a hearing. I think the members of your committee will find it an interesting and informative discussion. Attached you will find the following back-up information:

- Sponsor statement
- Fiscal note from division of elections
- A list of the 17 states that currently allow amendment of their constitutions through initiative
- A quote from Thomas Jefferson regarding the need for constitutions to be able to change with changing times.
- A portion of a study of direct legislation done for the California Roundtable in the early 1980s
- A list of all amendments proposed to the Alaska constitution between statehood and the general election of 1982



SPONSOR STATEMENT

HJR 3 - Proposing amendments to the constitution of the State of Alaska authorizing the use of the initiative to amend the Constitution of the State of Alaska.

This resolution would place before the voters of the state an amendment to the state constitution that would have the effect of allowing the constitution to be amended by direct popular initiative.

Currently, amendments to the constitution can be proposed only by approval of two-thirds vote of each house of the legislature, and then approved by affirmative vote of the majority of the voters in the next general election following passage of the measure by the legislature.

HJR 3 would still require approval of all proposed constitutional amendments by a majority of the voters, but would allow amendments to be proposed in the same way that a statute may be initiated. Sponsors of an initiative would be required to obtain a number of signatures on their petition equal to 10% of the number of voters who had voted in the preceding gubernatorial election. They would have one year to gather signatures and file the petition. The signators would have to be verified to be qualified voters from at least two-thirds of the election districts of the state. And the legislature would retain the ability to supercede an initiative by passing substantially the same proposed change.

This is a fair step forward in placing faith in the genius of the people and in their ability to correct and update their constitution as experience and maturity of our society dictates.

Article I, Section 2 of the constitution states, "All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole." Furthermore, in Article 1, Section 6, we find, "the right of the people peaceably to assemble, and to petition the government shall never be abridged." Yet, in other sections of the constitution - such as those delegating powers to the three branches of government - we see that the foundations of power of the people have been seriously eroded, and their abilities to regain these rights are prohibited.

FISCAL NOTE

REQUEST:

Revision Date: 4/12/89
Title: Authorizing the use of the initiative to amend the Constitution
Sponsor: Martin
Requestor: Martin

Agency Affected: Office of the Governor
BRU: Division of Elections
Components: II-Elections
Primary & General Elections

EXPENDITURES/REVENUES: (Thousand: of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	-0-	2.2*	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	2.2*	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	2.2*	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	2.2*	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

* Costs included cover 2 to 3 pages in each Official Election Pamphlet for printing and typesetting, and costs estimated to cover computer programming requirements for vote (Continued)

Prepared by: Linda Edgeworth Phone: 465-4611
Division: Elections Date: _____

Approved by Commissioner: [Signature] Date: 4-12-89
Agency: Division of Elections

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HJR 3

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2.

Under these circumstances the fiscal note would be:

53.4

Table 1.3
CONSTITUTIONAL AMENDMENT PROCEDURE: BY INITIATIVE
Constitutional Provisions

<i>State</i>	<i>Number of signatures required on initiative petition</i>	<i>Distribution of signatures</i>	<i>Referendum vote</i>
Arizona.....	15% of total votes cast for all candidates for governor at last election.	None specified.	Majority vote on amendment.
Arkansas.....	10% of voters for governor at last election.	Must include 5% of voters for governor in each of 15 counties.	Majority vote on amendment.
California.....	8% of total voters for all candidates for governor at last election.	None specified.	Majority vote on amendment.
Colorado.....	5% of total legal votes for all candidates for secretary of state at last general election.	None specified.	Majority vote on amendment.
Florida.....	8% of total votes cast in the state in the last election for presidential electors.	8% of total votes cast in each of 1/2 of the congressional districts.	Majority vote on amendment.
Illinois(a).....	8% of total votes cast for candidates for governor at last election.	None specified.	Majority voting in election or 3/5 voting on amendment.
Massachusetts(b).....	3% of total votes cast for governor at preceding biennial state election (not less than 25,000 qualified voters).	No more than 1/4 from any one county.	Majority vote on amendment which must be 30% of total ballots cast at election.
Michigan.....	10% of total voters for all candidates at last gubernatorial election.	None specified.	Majority vote on amendment.
Missouri.....	8% of legal voters for all candidates for governor at last election.	The 8% must be in each of 2/3 of the congressional districts in the state.	Majority vote on amendment.
Montana.....	10% of qualified electors, the number of qualified electors to be determined by number of votes cast for governor in preceding general election.	The 10% to include at least 10% of qualified electors in each of 2/5 of the legislative districts.	Majority vote on amendment.
Nebraska.....	10% of total votes for governor at last election.	The 10% must include 5% in each of 2/5 of the counties.	Majority vote on amendment which must be at least 35% of total vote at the election.
Nevada.....	10% of voters who voted in entire state in last general election.	10% of total voters who voted in each of 75% of the counties.	Majority vote on amendment in two consecutive general elections.
North Dakota.....	4% of population of the state.	None specified.	Majority vote on amendment.
Ohio.....	10% of total number of electors who voted for governor in last election.	At least 5% of qualified electors in each of 1/2 of counties in the state.	Majority vote on amendment.
Oklahoma.....	15% of legal voters for state office receiving highest number of voters at last general state election.	None specified.	Majority vote on amendment.
Oregon.....	8% of total votes for all candidates for governor at last election at which governor was elected for four-year term.	None specified.	Majority vote on amendment.
South Dakota.....	10% of total votes for governor in last election.	None specified.	Majority vote on amendment.

(a) Only Article IV. The Legislature, may be amended by initiative petition.

(b) Before being submitted to the electorate for ratification, initiative

measures must be approved at two sessions of a successively elected legislature by not less than one-fourth of all members elected, sitting in joint session.

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ome men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. I knew that age well. I belonged to it, and labored with it. But I know also that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered, and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the times.

— Thomas Jefferson, letter

Source: The Initiative and Referendum: A Study and Evaluation of Direct Legislation
Presented as a working paper to the California Roundtable
November, 1981 by Dr. Alfred Balitzer

CHAPTER II

THE THEORY OF DIRECT LEGISLATION REVIEWED AND CRITIQUED

With the increasing use of direct legislation in both statutory and constitutional matters, it is well to examine the theory behind such legislation—the underlying assumptions of the advocates of the initiative and referendum.

A short review of the philosophy of governmental "reform" will assist in comprehending of the impulse behind direct legislation. Our system of government, it is said, is unresponsive to the needs of the people. The distance between elected representatives and electors is too great. Moreover, between the voters and the representatives are many intervening structures—including corporations, political parties, and political machines—that act as "special interests" and unduly influence the governors to the detriment of the governed. Too often, special interests constitute well-organized and well-financed elites whose agents are able to corrupt legislators. The laws made by corrupt political officials lack legitimacy in the eyes of the people, so that the people become alienated from their government.

The initiative and referendum, on the other hand, close the gap between the people and their government, circumvent the power of special interests, encourage representatives to be honest and attentive (because the threat of the initiative process is always present), and provide the ultimate degree of democratic legitimacy for laws and political decisions. Governor Hiram Johnson of California, in the midst of the battle over adoption of the initiative and referendum in his state, expressed the Progressive position, saying: "There are two kinds of government, government in secret, the spring of which no man knows, and government in the open—government that takes into confidence all the people of all the state all the time."

It would be grossly inaccurate to assume that the Progressive champions of

direct legislation were only reacting to the power of money in politics. It is true that their ire was raised in part by their perception of special-interest money and its ill effects on the political system; underlying this perception, however, was their peculiar view of the relationship between democracy and egalitarianism. They drew their political philosophy of participatory and egalitarian democracy from many sources, including elements of the American religious tradition, experiments with utopian communities, the popular utopian literature, the works of the French philosopher Jean Jacques Rousseau and the German Karl Marx, the budding industrial labor movements, and the ideas of America's small but articulate Socialist Party. Indeed, the Progressives believed that their political philosophy represented a furthering of the American political tradition which was, from its inception, devoted to the equal rights of all men.

In fact, the Progressive belief in the equality of all men led to their insistence on direct democracy and to their implicit distrust of representative government. Their views, expressed early in the twentieth century, represented the continuation of a debate that was first heard in the eighteenth, between the advocates of the new Constitution and those who had opposed it. During the debates between the Federalists and the anti-Federalists, the latter offered the opinion that popular government is only secure in a small country where the people can meet to administer government directly. Many anti-Federalists believed that a scheme of representative government, necessary in a large country, was subversive of the principle of popular government, and held the seed of despotism. Although the advocates of the Constitution won the day, the arguments of the anti-Federalists faintly persisted down through the decades, from time to time growing more influential when taken up by able leaders battling for a good cause.

Underlying the reformist philosophy of the Progressives was a sentimental and romantic vision of the democratic citizen. According to the historian Richard

Hofstadter:

At the core of their conception of politics was a figure quite as old-fashioned as the figure of the little competitive entrepreneur who represented the most commonly accepted economic ideal. This old-fashioned character was the Man of Good Will, the same innocent, bewildered, bespectacled, and mustached figure we see in the cartoons today labeled John Q. Public. . . . In a great deal of Progressive thinking the Man of Good Will was abstracted from association with positive interests; his chief interests were negative. He needed to be protected from unjust taxation, spared the high cost of living, relieved of the exactions of the monopolies and the grafting of the bosses. . . . The problem was to devise such governmental machinery which would empower him to rule. Since he was dissociated from all special interests and biases and had nothing but the common weal at heart, he would rule well. He would act and think as a public-spirited individual, unlike all the groups of vested interests that were ready to prey on him.

According to this view, such democratic citizens, when left to their own devices, would freely meet, deliberate, and arrive at decisions that furthered the best interests of society as a whole. However, when confronted by well-organized and well-financed elites, the noble citizen would withdraw from public participation, leaving the government to the oligarchs; alienated himself, he would deny to the democracy its most valuable assets--his public spiritedness and innate good sense. At the heart of the Progressive reform philosophy, then, was a desire to elevate this mythical model citizen to power.

Of course, public spiritedness and innate good sense may not be sufficient to guide society in an age of technological progress and industrial expansion. According to Progressive thought, the social and economic problems that arise as a result of these forces are too complex for sensible but simple men. Thus, communities of democratic citizens need the expertise of professional and technical advisers--specialists who are devoted to sharing their special knowledge of social structure, economics, government management, and physical science. It is no wonder that so many leaders of the Progressive movement were middle-class technocrats, managers, lawyers, journalists, and other professionals whose educational attainments and general background prepared them to lead the movement.

Indeed, they elected themselves a President of the United States--Woodrow Wilson, formerly the president of Princeton University.

The Progressives in general believed strongly in the virtues of enlightened public discussion. They advocated the creation of public forums for the discussion of topics of the day. These forums, they thought, would create a climate conducive to honesty in government. The Progressives also tried to establish civic and fraternal clubs of bankers, businessmen, lawyers, and others who would devote their energies to informing the public about corruption and about proposed reforms in government and elsewhere. These self-appointed elites, once organized, encouraged government officials to address the people both directly and through the press--all in the hope that a better-informed people would be better able to affect their government in a positive fashion.

The union of sentimental, democratic idealism with a faith in professionalism and technical expertise generally suggests the intellectual character of the Progressives. This union also suggests the ultimate aspirations for society of those who advocated the initiative and the referendum. In its prime, Progressivism represented a great movement for the creation of "apolitical politics."

Although the initiative and referendum are supposedly intended to defend the rights of the people, they represent a significant departure from the American political tradition as it relates to representative government. While they were first designed as corrections to misuses of power in the representative system, it is now claimed by some that the initiative and referendum threaten the procedural safeguards of the legislative process under the representative system. "Without these safeguards the rights of minorities, and civil liberties generally, are acutely vulnerable to oppression by an anonymous majority of voters." In today's political environment, marked by extensive media influence and by a substantial degree of political polarization, the danger increases.

The danger posed to minority rights and civil liberties by direct popular rule was a subject on which the American Founders spoke and wrote at length. The Founding Fathers recognized that direct democracy posed a profound threat to individual rights and liberty. Not only the Federalist Papers, but the records of the Federal Constitutional Convention, show that the Constitution was designed to provide a system of government that would prevent either a tyranny of the majority or a tyranny of the few. James Madison described the danger as one of "faction," as he warned against the power of a majority or a minority of the population "united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interest of the community."

History had taught Madison that factionalism was the undoing of all previous experiments in popular government.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote: It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government on the other hand enables it to sacrifice to its ruling passion or interest, both the public good and the rights of other citizens. To secure danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our enquiries are directed: Let me add that it is the great desideratum, by which alone this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

The history of popular rule, from ancient Greece to Rome to the city-states of Renaissance Italy, offered numerous examples of turmoil, anarchy, and finally tyranny. In sum, the history of free government until the American experiment was a sordid and unhappy one. Direct democracy, Madison believed, only exacerbated the problem of faction. On the other hand, he thought a representative government promised a remedy for the illness. Madison was keenly aware that the attempt to create a union of the states under a republican constitution was an action

unprecedented in modern history. Boldly, Madison urged Americans to undertake the Herculean effort to rescue the reputation of popular government by creating political structures that would secure and preserve both majority rule and minority rights.

Although the danger of factionalism was manifest, Madison did not seek to extirpate factions from society. Faction, he held, was "sown in the nature of man"; any effort to extirpate it would require a tyranny sufficient to destroy all liberty. Madison and his fellow Federalists did not pretend to possess a "final solution" for the chief problem of democracy. Rather, as Alexander Hamilton said: "We are now forming a republican government. Real liberty is neither found in despotism or the extremes of democracy, but in moderate governments."

The effort to create moderate government culminated in the establishment of representative government--a republic. Direct democracy was avoided partly because it exacerbated the tensions between factions by pitting one group of citizens against another in an open, public forum. This inevitably led to "confrontational" politics. If one group of citizens proved to be a majority, it would act for its own sake, disregarding the rights of the minority. Minorities, by contrast, would seek to compel the whole of society to support their special interests. The New England town meeting was no model of popular government, as far as Madison was concerned. Rather, popular government was best when the sphere of territory subject to popular government was enlarged. This necessitated a scheme of representation, and also enlarged the number of interests competing for the public's support.

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of Republican, than of Democratic Government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former, than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals

composing a majority; and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.

Madison expected that a "multiplicity of interests" would provide for political freedom in America, just as the multiplicity of sects provided for religious freedom. A multiplicity of interests would force each interest to moderate its views as it sought, through compromise, to satisfy its desires in the legislative process. Representative government, in short, allowed for consideration of a great many interests in the lawmaking process, whereas direct or "pure" democracy allowed a bare majority to set the rules for society.

What Madison was saying, in effect, was that direct democracy, including the rule of the people as lawmakers, hold no answer to the problem of special interest. Rather, he believed that the solution to the problem of special interest lay in creating those circumstances--geographic, cultural, economic, and political--that would allow for the development of a multiplicity of interests, and for their subsequent competition through the vehicle of representative government. Madisonian theory, applied to the realities of today's politics, raises troubling questions about the initiative and referendum.

The issue is clearly joined by Justice Hugo Black's often-quoted statement regarding referenda: "Provisions for referendums demonstrate devotion to democracy, not to bias, discrimination or prejudice." Setting aside the fact that a successful referendum or initiative campaign represents an unadulterated victory for the larger part of the electorate over the lesser part, it should be pointed out that, in California at least, referenda and initiatives have been used most frequently by special interest groups seeking to influence "life styles" and to legislate morality. Throughout the 1960's, when racial tension was especially high, local and statewide

direct legislation was used, according to many commentators, to maintain segregated neighborhoods. These same commentators point to the use of direct legislation to continue patterns of racial segregation in public schools. Likewise, initiatives have been used to try to limit the employment opportunities of homosexuals in education. Popular measures aimed at homosexuals possess the same "moral tone" as initiatives of an earlier period that sought to restrict drinking and gambling.

Madison feared the direct injection of religious and moral issues into the political process. These are the most inflammatory kinds of issues, sharply dividing society, and sometimes creating a "civil war"-like atmosphere. They are the kinds of issues that dominated European politics throughout the Middle Ages, producing zealots for political leaders and subjecting whole societies to the rule of organized elites. Although Madison strongly believed in the need for moral and religious principles among democratic peoples, he felt that the development and inculcation of these principles was best left to men in their private capacities as educators, religious leaders, and molders of public opinion. The American Founders consciously rejected the medieval approach to politics, seeing in the distinction between state and moral order, and in the processes of representative government, the guarantee of the civil liberties of all men.

While initiatives and referenda have often had a negative impact on racial and ethnic minorities, it is also true that these devices have often adversely affected the business community. The initiative has been particularly popular among a coalition of special-interest groups, including consumer advocates, environmentalists, educators, and some lawyers, who see business--especially "corporate America"--as the single greatest impediment to a better "life style" for the American people. This coalition, which one critic has termed the coalition of the "utopian coercives," has, in the name of a moral vision, sought to curtail "business as

usual." Their antagonism is most often aimed at the "private sector" and at the "profit motive," which they see as corrupting forces that threaten to destroy basic human values. When the "utopian coercives" speak politically, it is usually against the influence of corporations. Opposing private profits with moral values, they seek to involve the people directly. They tend to reject the representative system, because too often they see their designs frustrated by the compromises that are a necessary part of representative government.

This special-interest coalition also possesses a class bias and seeks to promote a class interest. For example, environmentalists tend to consider environmental quality more important than the production of energy; many also appear more sensitive to the quality of animal life than to the quality of human life (understood in terms of jobs and economic well-being). The environmentalist can usually afford the luxury of his position, but what then becomes of the economic rights of the poor, of disadvantaged racial minorities, and of the business community? By their very nature, initiatives and referenda can seldom balance moral principles and class interests in the same way as a legislative act may balance such principles and interests. Not only is direct legislation absolute, but as with direct or pure democracy itself, it is insensitive to the issues and differences separating economic classes and moral perspectives. Rather than producing reconciliation and consensus, an initiative often hardens class differences. The sophisticated politics that bridges class interests for the sake of the commonweal is sometimes totally absent in the politics of the initiative and referendum.

The foregoing argument is not intended to suggest that initiatives and referenda do not often carry with them a subtle "hidden agenda." For example, Blacks are often disliked by lower-class whites who feel their economic security threatened by the prospect of Black advancement. It has been noted, also, that many of those who seek to prevent the further development of natural resources and

productive capacity, in order to protect a particular "life style," do so out of base motives. As one observer has stated: "It is clear . . . that direct legislation is used effectively by residents of homogenous middle-class communities to prevent unwanted development--especially development that portends increased size or heterogeneity of population." The argument was stated differently by another observer: "Comparison of the voters and nonvoters confirms that direct democracy also has a distinct social bias. Because of low turnouts, local referenda are likely to have more class bias than major elections."

The popularity of the initiative and referendum among those who seek to legislate "life styles" and morality is no accident. Not only is an initiative or a referendum an absolute measure--requiring in California only a simple majority of the votes for passage--but once it becomes law, it is very difficult to repeal. Opposition by the legislature to a successful measure, for example, is tantamount to opposing majority rule and "the will of the people." Generally, the legislative process, filtering legislation through committees and other mechanisms that encourage deliberation and compromise, tends to produce laws that are less stringent and less likely than direct legislation to impede individual choice. The legislative process usually requires more than a mere numerical majority of the representatives in order to produce legislation as restrictive and severe as that which can come from the initiative and referendum.

James Madison believed that irresponsible majorities would be controlled by the legislative process as established under a representative form of government. In a legislature, numerical support for a proposal can be roughly determined in advance of a formal vote, as can the comparative strength of various competing interests. A representative must determine what a given measure means to his constituency in terms of the votes he might win or lose in the next election. The voter in the initiative process does not have to make such a judgment.

One may argue that the media and public debate are the only checks on the initiative process, and, indeed, are the only real checks left against unjust measures. This may be true enough—but it is also true that public debate is especially effective in a representative system. Representative government enlarges and refines public discussion through such devices as committee hearings and other public hearings, the testimony of expert witnesses and interested parties, the production of studies by government and private agencies, and the "give and take" of legislators in debate as they express differing views and partisan opinions. Such processes and devices regularly attract the attention of the media, giving any particular measure greater exposure than it might receive as a statewide ballot proposition (except in the case of an occasional "Proposition 13"). In fact, the ambiguity of many initiatives, the "hidden agendas" that underlay them, the technical nature and wording of some propositions, the extraordinary length of many ballots, and the widespread lack of interest in off-year elections, often discourage public debate, not to mention media coverage of the issues and personalities involved in an initiative campaign.

The problem, then, persists: How does the American body politic protect itself against irresponsible initiatives and referenda? The use of the initiative and referendum to legislate "life styles" and morality promises to grow more widespread in the decade of the 1980's. Supporters of the "Moral Majority," of the "Right to Life" and of environmental causes—including opponents of nuclear power and of economic growth and development—will continue to create a circus-like atmosphere in the political arena. The initiative and referendum are not now, and will not become, the exclusive tools of the "right" or the "left," of conservatives, liberals, radicals, or reactionaries. From Jerry Falwell to Tom Hayden, initiatives and referenda are contemplated as instruments for purifying private and public life. Given the expanded use of the initiative and referendum that is almost certain to

take place in the future, how are the interests of majorities and minorities to be protected against unwise, selfish, irresponsible, or unjust pieces of direct legislation?

The Madisonian concern with the problems of direct democracy reminds us that any effort to improve the processes of direct legislation must focus attention on the questions of majority rule and minority rights. Because there are no standing or permanent majorities in American politics, initiatives and referenda can become the instruments of special interests on both the "right" and the "left." On the other hand, there are permanent rights in this country, promised to all Americans by the Declaration of Independence, the Constitution, the Bill of Rights, and by subsequent Constitutional Amendments. Thus, in considering the present standing of the initiative and referendum, and their possible future improvement, it is necessary to set aside partisan and class interests in favor of attention to those structures that, in providing for majority rule, also protect the rights of individuals and minorities.

If improvements are to be contemplated in the process of direct legislation, they should begin by making possible a clearer expression of the will of the majority. For example, efforts should be made to distinguish more clearly between measures promoted by special interests and elite organizations and measures that are genuinely popular. This can be accomplished by changing in the way that direct legislation reaches the ballot. Such change may also give greater protection to minority rights. Specific suggestions for change, and possible alternate approaches to direct legislation, will be discussed in a later chapter. These discussions will focus on what may be the most important question in American politics: how to truly determine and implement the will of the majority while protecting the rights of the individual and the minority.

CONSTITUTIONAL AMENDMENTS APPEARING ON
THE BALLOT IN ALASKA

	<u>For</u>	<u>Against</u>
August 23, 1966 SJR 1 - Residence Requirement to Vote for President	36,667	12,383
August 27, 1968 HJR 74 - Judicial Qualifications, Commission and Remedial Powers	32,481	12,823
August 27, 1968 Compensation of Judicial Qualification Commission	27,156	17,467
August 25, 1970 Establishing Voting Age at 18 years	36,590	31,216
August 25, 1970 English Eliminated as Requisite for Voting	34,079	32,578
August 25, 1970 Secretary of State Designated Lieutenant Governor	46,102	18,781
August 25, 1970 Chief Justice Election by Supreme Court	44,055	19,583
August 25, 1970 Term of Office for Judicial System Administrator	43,462	18,651
August 22, 1972 Residency Requirement for Voting	31,130	20,745
August 22, 1972 Prohibition of Sexual Discrimination	43,281	10,278
August 22, 1972 Right of Privacy	45,539	7,303
August 22, 1972 Borough Assemblies	30,132	19,354
August 22, 1972 Limited Entry Fisheries	39,837	10,761
August 27, 1974 Time of Voting on Constitutional Amendments	56,017	20,403

	<u>For</u>	<u>Against</u>
November 2, 1976		
Capital Site Selection Ballot Measure		
Larson Lake	33,170	
Mount Yenlo	16,169	
Willow	56,219	
November 2, 1976		
Action on Veto of Bills	71,829	39,980
November 2, 1976		
Permanent Fund From Non-Renewable Resource Revenue	75,588	38,518
November 2, 1976		
Administration and Review of State Land Disposals	46,652	64,744
November 2, 1976		
Direct Financial Aid to Students	54,636	64,211
November 7, 1978		
Powers of Legislative Interim Committees	48,078	68,403
November 4, 1980		
Legislative Annulment of Regulations	58,808	32,010
November 4, 1980		
Disqualification of Legislators	47,054	99,705
November 4, 1980		
Interim and Special Legislative Committees	41,868	102,270
November 4, 1980		
Appointment and Confirmation of Members	56,316	90,506
November 2, 1982		
Veterans' Housing Bonding Authority	111,460	69,497
November 2, 1982		
Changes in Commission on Judicial Qualifications	123,172	53,424
November 2, 1982		
Amendment Limiting Increases in Appropriations	110,669	71,531

Chapter - Initiative.

All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole." So declares section 2, Article 1 (Declaration of Rights) in the Constitution of the State of Alaska. In section 6 of this same article, "The right of the people peaceably to assemble, and to petition the government shall never be abridged" is guaranteed. Now before one becomes too comfortable in these expressions of freedom and power it is most important to read other provisions of the constitution that seriously diminishes this concept in the foundation of power or one's expressed freedom of speech through the initiative or referendum process as a means of petitioning the government.

Let's take a look at section 7 of Article XI - XI - restrictions. "The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenues, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety." Do you now get the feeling that perhaps too much power may have been given to the elected? Even when the people are successful in passing an initiative or referendum it may be amended at any time by the legislature and even be repealed after two years. What other limitations are there in your supposed rights to petition the government? Would you believe in the age of enlightenment Alaskans do not have direct access to changing their Constitution? No, in this state you must get permission through the legislature.

Why was there ever such limitations imposed? Generally there seems to have been a paranoiac amount of little faith in the people of Alaska during the writing of her Constitution. Some said government functions would be totally disrupted if the electorate, through the initiative, could direct how municipal revenues are to be expended or utilized.

Other arguments made to limit the rights of petition are:
(1) The true beneficiary of direct legislation will not be the people but the special interests. This however fails when evaluating the power of special interest groups and individuals who can afford to go to Juneau to lobby for special legislation or appropriations.

(2) Direct legislation will result in an unreasonably complex ballot and "frivolous" propositions. Welling over the ballot propositions that the legislature has proposed doesn't any superior ability in writing initiatives.

(3) Voters are ill-equipped to understand complicated proposals and unprepared to grapple with the confusing campaigns and appeals which are a part of the initiative process. What an indirect way to say the voters are not as intelligent as those they elected.

(4) The legislative process is a much better way to make public policy! Oh! Are those elected better equipped to say what is best for society. Were they not once average citizens?

(5) Direct legislation will not educate the voters nor will it increase interest in government. Well, then how does indirect legislation educate the public?

(6) Direct legislation will endanger democracy and undermine representative government. Wow! Would the founding father like to hear this one. James Madison was once quoted to say "the best medicine for a sick or weak democracy is more democracy"

Now before we become too depressed there are those over the years who have shown tremendous faith in the abilities of the people to govern themselves. They argue:

(1) Direct legislation will reduce the power of political parties and political bosses.

(2) Direct legislation will reduce the power of special interests.

(3) Direct legislation will educate the people and allow them to develop civic virtue.

(4) Citizens are better (or at least equally) suited to decide public policy questions than are elected representatives.

(5) Citizens want to decide public policy issues directly, and permitting them to have full participation will decrease public apathy and dissatisfaction with government.

Why is that the people of Alaska surrender their right of direct legislative power? Was it the rush and hype of becoming a State? Were they afraid of becoming controversial and jeopardizing the efforts of statehood? Did they only read Article I sections two and six and become secured in the knowledge of their maximum and always final action of making and repealing laws. Had no one explained to the people or even the press not concern itself with the later expressed superior powers of the created legislature?

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