

ALASKA LEGISLATURE

2624

HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

LEGAL SERVICES

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MEMORANDUM

March 3, 2003

SUBJECT: Initiative and Referendum Petitions
(HB 31, Work Order No. 23-LS0201\A)

TO: Representative Bill Williams
Attn: Tim Barry

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Changes the statutory signature requirements for filing an initiative petition with the lieutenant governor. Requires that the petition be signed by residents of at least three-fourths of the house districts in the state (an increase from two-thirds), and requires that the number of signatures from voters in each of those house districts be equal to at least seven percent of the number of people who voted in that district in the preceding general election.

Section 2. Makes the same changes as in section one to the corresponding statute relating to referenda.

Section 3. Makes the act effective only if a constitutional amendment to the same effect is passed by the voters at the 2004 general election.

Section 4. Makes the act effective the same date as the constitutional amendment, if the act takes effect.

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03-059.lmb

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ARTICLE XI

or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

§ 14. **Local Government Agency.** An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law.

§ 15. **Special Service Districts.** Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

**ARTICLE XI
Initiative, Referendum, and Recall**

Sec.

1. Initiative and Referendum.
2. Application.
3. Petition.
4. Initiative Election.
5. Referendum Election.
6. Enactment.
7. Restrictions.
8. Recall.

§ 1. **Initiative and Referendum.** The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum.

§ 2. **Application.** An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred qualified voters as sponsors, and shall be filed with the lieutenant governor. If he finds it in proper form he shall so certify. Denial of certification shall be subject to judicial review. [Amendment approved August 25, 1970 - Effective October 10, 1970]

§ 3. **Petition.** After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by qualified voters, equal in number to ten per cent of those who voted in the preceding general election and resident in at least two-thirds of the house districts of the State, it may be filed with the lieutenant governor. [Amendment approved August 25, 1970 - Effective October 10, 1970; Amendment approved November 3, 1998 - Effective January 3, 1999]

§ 4. **Initiative Election.** An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred-twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void. [Amendment approved August 25,

1970 - Effective (

§ 5. **Referendum.** A referendum petition may be filed after adjournment at which the act w governor shall p proposition summar place them on the wide election held eighty days after sion. [Amendme 1970 - Effective (

§ 6. **Enactment.** An act cast on the prop the initiated meas erty of the votes cas the rejection of ar. The lieutenant g election returns. effective ninety da subject to veto, ar the legislature wi tive date. It may An act rejected by days after certific dures for the initi be prescribed byk August 25, 1970 1970]

§ 7. **Restriction.** No money shall be used to dedic peal appropriatio jurisdiction of co or enact local or s erendum shall no of revenue, to app cial legislation, c immediate prese health, or s:

ARTICLE XII

referendum. The act laws by the subject acts of the 1.

tive or referendum contain- or the act to be all be signed by qualified voters d with the lieu- : in proper form of certification view. [Amend- 970 - Effective

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n initiative peti- e. The lieuten- . ballot title and ie proposed law, e ballot for the . more than one adjournment of wing the filing. nentially the same , the petition is ve August 25,

1970 - Effective October 10, 1970]

§ 5. Referendum Election. A referendum petition may be filed only within ninety days after adjournment of the legislative session at which the act was passed. The lieutenant governor shall prepare a ballot title and proposition summarizing the act and shall place them on the ballot for the first state-wide election held more than one hundred-eighty days after adjournment of that session. [Amendment approved August 25, 1970 - Effective October 10, 1970]

§ 6. Enactment. If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification. Additional procedures for the initiative and referendum may be prescribed by law. [Amendment approved August 25, 1970 - Effective October 10, 1970]

§ 7. 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 revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety.

§ 8. Recall. All elected public officials in the State, except judicial officers, are subject to recall by the voters of the State or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by the legislature.

ARTICLE XII

General Provisions

Sec.

1. State Boundaries.
2. Intergovernmental Relations.
3. Office of Profit.
4. Disqualification for Disloyalty.
5. Oath of Office.
6. Merit System.
7. Retirement Systems.
8. Residual Power.
9. Provisions Self-Executing.
10. Interpretation.
11. Law-Making Power.
12. Disclaimer and Agreement.
13. Consent to Act of Admission.
14. Approval of Federal Amendment to Statehood Act Affecting an Interest of the State Under that Act.

§ 1. State Boundaries. The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, included in the Territory of Alaska upon the date of ratification of this constitution by the people of Alaska.

MEMORANDUM

TO: Members of the House Finance Committee
FROM: Tim Barry, Aide to Representative Bill Williams
RE: HB31/HJR5 Constitutional Convention Minutes
DATE: 04/28/03

Attached are excerpts from the Alaska Constitutional Convention regarding the Initiative process. I pulled these minutes from the Department of Law's website. Delegates spent the better part of two and a half days at the Convention discussing the issues of Initiative and Referendum. I have read through all of this discussion, and have pulled out what I consider to be the most relevant parts of it. It is long, but helpful in understanding the thinking of the delegates on the issue.

Comments of interest:

Taylor, p.4: Talks about the fact that they designed the Article to try to protect the state from pressure groups.

Taylor, p.10: Talks about local legislation and the concept of limiting the number of signatures from one area.

Taylor, p.26: Talks about the discussion the committee had regarding geographical signature requirements, decided against them.

Pages 24 to 29: Discussion among delegates regarding geographical signature requirements, and the vote in favor of 2/3rds.

Page-by-Page synopsis:

Pages 1,2: Collins reads across proposed Initiative language (Note the top of Page 2, where it says the initiative can not be used "for special or local laws that are of interest to only one group of people or people in only one portion of the state.")

Pages 2,3: Taylor – history in other states, how Committee came up with plan, why Initiative is good

Page 4: Taylor – influence of pressure groups, need for Initiative system

Page 5: Taylor, Egan - Referendums

Page 6: Taylor, Egan – Appropriations not allowed

Page 7: Taylor, Davis - Governor can't veto Initiative; Can't amend Constitution

Page 8: Taylor, McLaughlin - Need ten sponsors, 8% of voters to get on ballot; A.G. approves language; Emergency acts

Pages 8,9: Hinckel - Why 10 petition sponsors are needed; Taylor – that's a safeguard

Page 9: Taylor, Buckalew - Bonding; what other states do

Page 10: Taylor – Signatures from various parts of state

Page 11: Barr – do we need an Initiative process?; Why 8% statewide? Taylor – It's a good number

Page 12: Smith – Problems California had, benefits of Initiative; V. Rivers, Hinckel – Referendum to reverse Legislative act; Emergency Acts

Page 13: Taylor - Percent of voters' signatures needed, other states
Page 14: Marston - speech urging Initiative process
Page 15: Taylor, Coghill - speeches supporting Initiative
Page 16: McNealy - opposes Initiative process; Kilcher - history; Metcalf - support Initiative
Page 17: Barr - we need initiative, can't trust legislators. Lobbyists, crackpots. Opposes initiative
Page 18: McCutcheon - supports;
Page 19: Buckalew - opposes; Hurley - supports; Gray - suggest increasing from 8 to 10%; Johnson - move increase from 8 to 15%;
Page 20: Sundborg - that's high; Marston - average elsewhere is 8%
Page 21: V. Rivers, Taylor - 15% too high; Marston, Hurley - 8% good; Boswell - 15% good
Page 22: Londborg - 15% good
Page 23: Hilscher - 85 good; Hinckel, McNealy - 15% good; Vote - 15% wins, 25 to 23.
Page 24: Johnson - motion requiring 2/3rds of precincts; Marston - it's needed
Page 25: Londborg - 2/3rds is good
Page 26: Johnson - amend to "2/3rds of election districts"; Smith - opposed; Taylor, Hinckel - opposed, should leave it to legislature; Cooper - support; Londborg - Missouri, with 5% of 2/3rds of districts, is harder;
Page 27: Hermann - oppose, leave it to legislature; Sundborg - good idea to require statewide signatures, support 2/3rds; Buckalew - Oppose, leave it to legislature; Smith - support
Page 28: Johnson - 2/3rds is a good safeguard
Page 29: Kilcher - Could legislature require more signatures? Johnson - No; Kilcher - I think legislature can make changes, so I support; Vote - 2/3rds passes (38 to 13)
Pages 30-32: Taylor moves to change 15% statewide requirement to 10%; discussion of this idea, comparisons to other states, Vote, 10% passes (29 to 21)
Pages 33-34: V. Rivers moves to change from 2/3rds of districts to 1/2 of districts. Discussion, Kilcher says the legislature can change it later to increase signature requirements. Vote, motion fails (26 to 26)
Page 35: McNealy moves Reconsideration of vote to drop 15% statewide to 10%
Page 36: Marston - 15% is too high; Buckalew, Boswell - support 15%
Page 37: V. Rivers, Cooper - what the numbers mean; Vote - 10% passes (27 to 23)
Page 38: Londborg moves to require 3% of voters in each of 2/3rds of districts, talks about need to get enough statewide support
Page 39: Hurley, V. Rivers - opposed, there are enough safeguards
Page 40: Vote - 3% fails (17 to 31)

ALASKA CONSTITUTIONAL CONVENTION

December 16th, 1955

THIRTY-NINTH DAY

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COLLINS: We have submitted that to you, a committee report. It was okayed by the seven members of this Committee. Yet perhaps there was some individual feeling of members that their idea was not properly expressed in this report, and it was decided to place this report back to the Convention for the consideration of each individual member here for a full expression of his opinion, and we want to hear his opinion, and the committee itself will not feel bad about any amendment that is germane to the principles that are set forth in this report. I would like to have the different articles, I would like to read the comments of the Committee. Perhaps it might give some enlightenment into the questions that you would ask about that report. It will take very little time. Now on the commentary of the Committee on the Article of Initiative, Referendum and Recall.

"(Section 1 Initiative) The initiative is the power of the people to initiate laws themselves and to provide for a referendum on such laws without action by the legislature. This section reserves the authority of the people to initiate laws by petition and vote of the people directly.

(Section 2 Referendum) This section permits the people to require that laws passed by the Legislature be referred to a vote of the people before taking effect. This power is known as the Referendum.

(Section 3 Procedure) Many constitutions, in the states which make provision for the use of the initiative and referendum, contain a great degree of detail relating to the exercise of the initiative and referendum. This section permits the legislature to provide by law for some details, but provides that the Legislature may not restrict the substantive rights guaranteed in Section 4, nor to require procedures more difficult than provided in Section 4.

(Section 4 Petition, ballot title; election; vote required) This section sets forth certain substantive provisions and minimum procedures affecting the exercise of the initiative and referendum. To prevent waste of money on elections for laws that are unconstitutional, sponsors are required to submit a proposed law to the Attorney General for certification of its constitutionality, subject to court review, prior to the circulation of petitions. The provision is intended to stop, at the initial stage, the circulation of petitions for laws that would, even if approved by the voters, result in expensive court action.

If the legislature adopts a measure that is the subject of the initiative, the measure does not have to be submitted to the people.

Additional details of procedure may be provided by the legislature subject to the limits imposed by this section. The procedure outlined has the advantage of brevity while insuring the substantive rights to the people.

(Section 5 Restrictions) The exercise of the initiative is a fundamental right of the people, but special interest groups should not be permitted to unduly hamper the operation of the government. The restrictions in Section 5 will prevent the abuses and problems that have sometimes arisen in the states permitting initiative and referendum. Neither the initiative nor referendum can be used with regard to emergency legislation, appropriations, or measures earmarking taxes and other revenues, or for special or local laws that are of interest to only one group of people or people in only one portion of the state.

(Section 6 Recall) The right of the people to remove elected officials is preserved. The Legislature is directed to provide the methods to be used.

Commentary on the Article on Amendment and Revision

(Section 1 Methods) This section outlines three methods by which the constitution may be amended or revised. By action of two separate legislatures directly; (2) by action of one legislature and referral to the people; and (3) by constitutional convention.

(Section 2 Proposals by Legislature) The Legislature, by a two-thirds vote, may submit a proposed amendment to a vote at a general election. Use of general election is intended to insure a substantial vote on the question.

An alternate method is provided which permits the legislature, by a two-thirds vote, to submit a proposed amendment to the next legislature, but not to a succeeding session of the same legislature. If the second legislature adopts the amendment by a two-thirds vote it becomes part of the constitution without referring it to a vote of the people.

(Section 3 Constitutional Convention) The legislature is empowered to call a convention, but if the legislature does not provide for a convention each ten years, the question is submitted to the people at the following general election.

The legislature is authorized to prescribe the procedures and powers of a convention; but if it does not make such provisions, the law calling this convention will be followed insofar as practical."

That is the commentary on the articles which your Committee has put before you in the substitute report. Now on December 4, to settle the line of the Committee itself, we have drafted this as short as possible, as plain as possible, and if there is any amendments to come forth, the Committee will have no feeling. We have seven on our Committee and the Committee will answer the questions that might be put forth to members of this Committee.

CHAIRMAN R. RIVERS: Mr. Victor Rivers.

V. RIVERS: I would like to direct a question to Mr. Collins. Mr. Collins, there seems to be some difference of opinion as to whether or not the principle of the initiative and the referendum is a desirable and necessary one. I would like to have the comments or through you the comments of your Committee as to whether or not you feel the use of the initiative and referendum in any way circumscribes the idea of republican form of government, and if so is the principle of the initiative and referendum a desirable one for inclusion in the constitution as your Committee sees it.

COLLINS: I tried to infer that the draft that submitted this report would come to one thought on the matter, and I think we got together on that, and to prevent a minority report, and I think the Committee itself is pretty well satisfied with this report as presented. Now to give the individual thought of the members on this, we spent hours on it, and I don't think that the Convention would gain a great deal by that, but it would take up a lot of time. This is plain English language and to the point, and Mr. Taylor is the Vice Chairman of that. If you wish to make an explanation, Mr. Taylor, I would be glad for you to.

TAYLOR: Mr. Rivers, I might say we, the Committee, went into the historical background of the initiative and referendum. North Dakota was the first state to adopt the initiative and referendum so as to reserve to the people the power of initiating laws or either accepting or rejecting laws that have been passed by the legislature. Now, in our deliberations, I believe that we went through the laws, the constitutions of various states that have the initiative and referendum of which there are 19, and it was between about 1898 and 1928, I believe it was, that the states, practically all of the states that now have the initiative and referendum adopted the same. And in reviewing the history of the use of the referendum, I think the Committee members had differences of opinion as to whether or not the initiative and referendum should be included in the constitution. Although it has not been used a great deal in the last few years in some of the states that did use it before, the initiative and referendum is there and it serves a useful purpose in this way that the legislature does know that the people have reserved to them the right to initiate legislation and the right to pass upon legislation that has been passed by the legislature, so that ultimately they can, if they deem fit, can guide the legislature or guide the lawmaking in certain particulars. Now in practically all the states that have the initiative and referendum there are certain limitations put upon the matters that can be

acted upon by those measures. Now appropriations are not subject to the initiative or the referendum. Some states made a great mistake by not restricting the initiative measures and allowed pressure groups to gather great numbers of signatures to a petition and that petition would require the expenditure of large amounts of money, perhaps a great deal more than the state could possibly afford and sometimes they would also initiate some legislation to raise money, a revenue measure and then directed that the proceeds of that measure would be utilized for a particular purpose. In other words, it took the making of revenue measures and expenditure of the funds away from the legislature and in some instances the governmental functions and governmental institutions suffered a great deal. And it was necessary within as short a time as possible to undo the damage that has been done. Now in this present proposal as the Committee returned it, and I might say as Mr. Collins, our Chairman has said, that this does constitute, you may say, the compromise thought of the Committee. We were several weeks. We had differences of opinion. Some of the members of the Committee thought that all the details of the proposal, or all the details of the matter, should be spelled out to the minute degree, and others felt that they should have the bare outline of granting the right to reserve powers to the people and then letting the legislature set up the machinery for implementing, so we have included in this proposal the least number of details that we could. Now of course our first sections there is the right of the people.

V. RIVERS: May I ask a question. Before I go into the sections I was trying to determine, I think it is absolutely essential before we include anything in the constitution or in the laws that we determine three things: first, the desirability; second, the need; and third, the workability. Now I have gathered from what you said that your Committee considers the initiative and referendum desirable in the constitution.

TAYLOR: Well, I think on the matter that we have it in here now it is, because it is in a way that it cannot do any harm. It cannot interfere with the appropriations or raising of revenue. It cannot affect the disbursements of state funds.

V. RIVERS: Could I ask this? You say it cannot do any harm. Is it good and is it actually needed in this particular approach?

TAYLOR: I might say, Mr. Rivers, I went into that quite carefully. I find out that all initiative and referendum bills, or states that adopted that method of direct legislation, there has been none since 1928. Some of those states have attempted to repeal that provision of their constitution, and others have used it little if any. Now there was quite a fine treatise on that subject by a professor of political science and he reviewed the history of the initiative and referendum in Oregon over a period of ten years, 1938-1948. He took the measures one by one which had been either initiated or which had been referred, and when he summed up his opinion after a very long study and a thorough study of the proposition, he said in all probability the legislature would have done the same things that the initiative and referendum accomplished. Of course, now we know in some states the exercise of the initiative and referendum was perhaps warranted by one act maybe that it put through. One of them was in California. The Civil Service Act for state employees was put through by means of the initiative measure. The legislature had been importuned for year after year for civil service status of the employees, and it was only in that way that they finally got it. Of course, if the proper safeguards are not put around the type of legislation that can be initiated by the people. As I said before, they can do a lot of harm. There was one in California that within a year they found out it was bankrupting the state, and they had to get out another initiative and do away with the first one. Colorado had the same experience, and the State of Washington, because they were levying taxes under those bills and directing where these taxes were going, and the State of Washington in a period of about eighteen months found themselves with not only losing a 60,000,000 dollar surplus that it had in the treasury but also 120,000,000 dollars in the hole. Colorado was about the same way.

V. RIVERS: With certain safeguards the Committee considers it useful and desirable. Now what about the workability? Do you figure it is workable in a territory like Alaska, of this size and widespread population? I would like some comments on that.

TAYLOR: We took that into consideration, Mr. Rivers, in drawing this up. I might say in our initiative we have left a small percentage of the voters who voted for the governor in the previous election for the amount necessary to initiate a petition. So then I might say in another way that we have tried to protect the

voters and state from pressure groups is the fact that before a petition can be circulated, ten sponsors of that petition must have it up and submit it to the attorney general not only as certifying as to whether the proposition is set out properly on the ballot but also as to its constitutionality, and if he does not give that certificate as to its constitutionality and the proper setting out of the ballot on that, they cannot circulate it and that will overcome the arguments against the initiative and referendum. In some states due to the fact that pressure groups could get the required signatures and they could file it with the secretary of state regardless of whether it had the proper designation of the matter that was to be acted on, regardless of the constitutionality of it, even if it did pass, the court could throw it out, so we have that for safeguards.

V. RIVERS: Your Committee, I assume, thinks it is workable for the Territory in its present form?

TAYLOR: I believe it would.

V. RIVERS: One other question, on the basis of the general application of this act, before we go into detail, do you think that in our Organic Act it says, "We shall have a republican form of government." Does this in any way circumscribe the idea the republican form of government which is legislation through the elected representative rather than direct from the people?

TAYLOR: I know that argument has been advanced. It might be the exception that if our republican form of government did perhaps fall down, that the general public will have a vast interest in it with their reserve powers, if the powers to exercise, if the right to exercise that power is restricted to certain things, I don't believe it is a departure from our republican form of government.

JOHNSON: Mr. Chairman, may I address a question to Mr. Taylor? In this connection, Mr. Taylor, it is my understanding from looking at Committee Proposal No. 5 that the Committee on Legislation recommended that we hold meetings of the legislature each year. Now with the legislature meeting that frequently, do you think it is still necessary to have some safeguards such as this as you propose, or would there be a sufficient check on the legislative procedure meeting once a year?

TAYLOR: I believe it would be, Mr. Johnson, in this way. It might be some very badly needed legislation but which the legislature would refuse to act upon. I could see a number of reasons which we don't have to elaborate on that but there might be some pressure groups. Well, if that was the case, and the people had the right to initiate this legislation they could possibly cure the ills that were existing by reason of the legislature not working.

JOHNSON: Don't you think these so-called pressure groups might exercise just as much influence on the legislature?

TAYLOR: Absolutely they might, but if the legislature did not act, after the legislature adjourned at any time in the future, then they could initiate the legislation which the legislature had refused maybe even if they had been petitioned, not initiative petition but other petitions.

EGAN: Mr. Chairman, may I address a question to Mr. Taylor?

CHAIRMAN R. RIVERS: You may, Mr. Egan.

EGAN: Mr. Taylor, in the article on Direct Legislation, Section 1, it says, "The people reserve the power by petition to propose laws and to enact or reject such laws at the polls." Now the reading of that section would imply that the people through the power of the initiative would not have the right to reject any laws that they themselves had not already put on the books, in that order.

TAYLOR: That would come under Section 2, Mr. Egan. That is the referendum, after a law is passed, then they could by a petition have a vote upon that.

EGAN: My question was, Mr. Taylor, that under this particular provision of the initiative with relation to the initiative power of the people, they could not attempt to reject a law that was already on the books. They could only attempt to reject a law that had been passed by the initiative provision.

TAYLOR: That is right, that would be the only thing, now I think in that first section, Mr. Egan, is the fact that they can petition, they file this petition. It then is referred to the people, and the people can reject it or adopt it.

EGAN: Then, Mr. Taylor, if a law is passed by the people through the use of the proposed initiative when would the law become a law?

TAYLOR: In 120 days I believe we have in here no, 90 days, and any referendum petition would necessarily have to be filed with the secretary of state within the 90 days after the law is enacted.

EGAN: Where does it say that?

TAYLOR: Page 2, line 6. The first part of the word "referendum" starts at the end of that line. Referendum petitions shall be filed within 90 days after adjournment of the legislative session at which the measure was passed."

EGAN: That does not say that is when the law will become enacted through the initiative. It just says that is when they shall be filed.

TAYLOR: If that is filed, that suspends them, but it does not suspend an emergency act. If there is an emergency clause upon a bill, the referendum is not operable.

EGAN: In Section 5 it says, "Neither the initiative nor referendum may be used as a means of making or defeating appropriations of public funds or earmarking of revenues nor for local or special legislation." But it says nothing in there denying the people the right to go to the polls and do away with a particular tax, say, that had been levied by the legislature. Did you mean that the people could, through the use of the initiative, go to the polls and nullify any act that they might so choose? I am thinking if that is true what might happen in some cases where a certain appropriation had been made but you would not be voting against the appropriation, but if the people went to the polls, if there was not some restriction there, and did away with the tax measure that the legislature had deemed absolutely necessary to provide the revenues, it could cause chaos until that situation was corrected.

TAYLOR: If the use of those moneys was so imperative, Mr. Egan, I think the legislature could very easily attach an emergency measure on that and take it out of the provisions of the referendum.

EGAN: Could the legislature do that or would it be necessary to add some wording in Section 5 in order to be certain that through the action of the general public at the polls that they might do away with enough revenue that would cripple some program that they had no intention of crippling?

TAYLOR: I don't believe they would have the right to take away revenue unless they could show some methods of raising the same amount of revenue from different matters. As your question states, it might be to clarify this matter that if we could amend this to show, to carry out the intent you ask, that it could not impair the revenue structure that had been passed by the legislature.

CHAIRMAN R. RIVERS: Mr. Doogan.

DOOGAN: I would like to ask Mr. Taylor a question. I would like to carry Mr. Egan's thought just a little bit further, Mr. Taylor, and I would like to carry it where one legislature has imposed, say the property tax and then another legislature comes along and abolishes that property tax. I notice according to your Section 1 and Section 5 that I don't consider that there is anything in there that would allow the people either, through the initiative, to oppose the abolishing of that property tax by the legislature.

TAYLOR: Not unless it indirectly affected the appropriations.

DAVIS: I would like to ask some questions of Mr. Taylor. Would you refer to the last sentence of Section 4 in line 19 of the proposal, "No law passed by the initiative may be vetoed by the Governor nor amended or repealed by the legislature for a period of three years." As I read that, it is possible to infer there that the governor might have a right to veto such a law after three years, and I wonder if that is what you intended or if you meant that the governor would have no right to veto it at all, but the legislature might have a right to amend or repeal after three years?

TAYLOR: I think Mr. Davis that all legislatures, the governor must veto a bill within a certain number of days, and he couldn't wait for another year and the legislature for a period of three years would not be able to repeal that law by an act of the legislature, but there would be nothing to prevent the people, if they felt that the act that they had initiated was wrong, why they can then by the appropriate petition can repeal it.

.....

DAVIS: It isn't your intention in any event, that the governor shall have any right to veto any matter that is initiative?

TAYLOR: No, sir. It is only the people that can do it and the legislature after three years.

DAVIS: Well, as long as I'm on my feet, then let me ask a question on a couple of other sections about the same place. Section 5, line 24. has to do with restrictions on the use of the initiative. It says that the initiative may not be used for various things including, "as a means of making or defeating appropriations of public funds or earmarking of revenues nor for local or special legislation." Now I take it that what you intended there was rather than defeating or earmarking of revenues, that the initiative may not earmark revenues?

TAYLOR: They cannot.

DAVIS: That was your intention?

TAYLOR: That is right.

DAVIS: It was suggested in conversations among some of us this morning that it might be possible since you have listed various things that cannot be initiated and have not included an amendment of the constitution, that it might be inferred that then one could amend the constitution by initiative. It was also argued along that line that since you have along with this put in a bill concerning amendments to the constitution, which does not include an initiative procedure, that the Committee did not intend that the constitution should be amended by initiative.

TAYLOR: We have specifically excluded that, Mr. Davis. We felt that the initiative was not the proper way to amend the constitution. We took a shorter and perhaps a less expensive way of amending the constitution.

DAVIS: The reason then that you have not included the amending of the constitution in this Section 5 among the things which the initiative may not do is the fact that you have covered that subject in the section on the amendment of the constitution?

TAYLOR: That is right.

MCLAUGHLIN: I have a question, Mr. Taylor. Regarding your attention to Section 4, the first two sentences: "Prior to general circulation, an initiative petition shall be signed by ten qualified electors as sponsors and have the constitutionality certified by the Attorney General. Certification shall be reviewable by the courts." First, sir, is that provision found in any one of the 19 states that have initiative and referendum?

TAYLOR: No, I think this is the first one I have run across. We felt that should be to prevent, you might say cycloramic group from putting these petitions out, and we know it has been done in many states. We put that on there and the attorney general passed on it, but they have the right to go to the courts to test the validity of the petition that they are going to get out.

MCLAUGHLIN: May I ask another question? Mr. Taylor, assuming that ten electors get together and present this petition to the attorney general and the attorney general makes a ruling that the act sought to be certified is constitutional, does that preclude the courts thereafter from finding it unconstitutional?

TAYLOR: I think any interested taxpayer could have it reviewed, and I think whether the certification was unfavorable or favorable, I think that an interested taxpayer could review that.

MCLAUGHLIN: Mr. Taylor, would there be more of a saving to the government if it were required that the eight per cent sign the petition before they submit it to the attorney general rather than having any ten persons submit it to the attorney general for an opinion? Would the government suffer any loss if it required the eight per cent of the total voters to secure the petition before they present it to the attorney general?

TAYLOR: Mr. McLaughlin, in this particular instance we went over all the states that have the initiative and referendum and some of them require considerable percentage of the number of votes that were cast for the governor at the preceding election, and this eight per cent that we arbitrarily set was put at that figure. It is low, it is among the lowest. Because of the size of the Territory, the limited population in proportion of the size, we felt an eight per cent after it is certified as to its constitutionality is okay and also that the ballot is properly described.

MCLAUGHLIN: Had the Committee discussed how many states in the Union authorized their highest appellate courts to give advisory opinions on constitutionality where the question hasn't arisen?

TAYLOR: I don't know. Some of them were referred to the secretary of state who no doubt, we felt would certify the question to the attorney general for an opinion. Unless the secretary of state was an attorney he would be a little hard put to pass upon the constitutionality, but I suppose he would do that through the attorney general of the state.

CHAIRMAN R. RIVERS: Point of clarification. This says the attorney general shall pass upon that.

TAYLOR: That is right in here, but a lot of states have said just the secretary of state, so we put it the attorney general who is the law officer of the state and he passes on it without having to go to somebody else.

MCLAUGHLIN: Did the Committee consider how long normally, assuming that this process went into immediate operation, how long it would take for the supreme court of Alaska or the superior court, after an appeal from the superior court, to determine the constitutionality of an abstract question presented by ten citizens?

TAYLOR: Well, it might take some little time. It might be given a priority, like if it was something that affected the entire electorate of the state.

MCLAUGHLIN: Mr. Taylor, may I inquire of you personally if it's proper, in your experience in determination of constitutionality of questions presented and appealed to the highest courts of any states, what is the average time lapse from the time the question is first presented until the time it is determined?

TAYLOR: I would say if it went through the superior court, the supreme court would take at least six months.

MCLAUGHLIN: That would be under extremely ideal conditions.

TAYLOR: That would be without any particular brakes being put on it.

MCLAUGHLIN: What is the meaning in Section 5, last sentence, "Emergency acts are not subject to referendum." What are emergency acts?

TAYLOR: Well, if an act that has passed the legislature and is of such a nature that the legislature feels that it should be passed immediately, they can, by two-thirds majority, declare that an emergency exists and that law shall become effective immediately upon its passage and approval, which means that as soon as the governor signed it, that became a law of the state.

MCLAUGHLIN: Could you tell me offhand, Mr. Taylor, how many of the acts of the Territorial legislature normally are emergencies? What percentage?

TAYLOR: It would be a guess, but I would say half or more of them are declared emergency legislation.

MCLAUGHLIN: How many states in their initiative and referendum proposals provide that emergency acts are exempted?

TAYLOR: Most of them.

CHAIRMAN R. RIVERS: Mr. Hinckel.

HINCKEL: I would like to answer one of the questions Mr. McLaughlin asked of Mr. Taylor which I think was answered incorrectly. He asked if there were any state that had such a provision as this small number of people asking for certification, sponsoring, and this will not be the first state to have it. The State of Massachusetts has it, and the object of it in the article that I read regarding that, aside from the fact I knew it to be a fact, was that it would prevent people, prevent one person from circulating a petition which would have no real value and possibly be unconstitutional at the same time, and bothering people with getting this thing circulated and signed and presented and causing nothing but trouble, and if it was done this way it would eliminate that and also it would prevent the circulation of petitions in a secret manner that as soon as the petition was submitted to the attorney general, why it would become a public matter and it has considerable advantage in my opinion. I was the person on the Committee that suggested it be included and our advisory group concurred. They thought it a very good idea. He asked another question that I wanted to answer too, but I can't think right now.

TAYLOR: Mr. Speaker, I am glad Mr. Hinckel brought that up. He might have misunderstood me. I said this was one of the lower. Some are ten, some are fifteen, some twenty per cent. I think the higher brackets make it impossible.

CHAIRMAN R. RIVERS: Mr. Hinckel was talking about the ten sponsors, Mr. Taylor, and pointing out that Massachusetts requires a certain number of sponsors before the petition is circulated.

TAYLOR: Oh yes, that is right. I did not mean to say none of them have it. None of them I knew of at the time. We were putting a safeguard around people being importuned by these groups who wanted signatures and they had to get quite a number of them, and if it was an unconstitutional proposition they were advancing or if they did not have the proposition properly set out on the ballot, they could not circulate it.

CHAIRMAN R. RIVERS: The point is clear now. Mr. White.

WHITE: I would like to direct a question to the Chairman of the Committee on Direct Legislation.

TAYLOR: I am not the Chairman, but Mr. Collins has asked me.

WHITE: In that case, Mr. Taylor, referring again to Section 5, it says "the referendum may not be used as a means of making appropriations of public funds. Could that be construed as saying that the legislature could not put to the people by a referendum, a bond issue proposition?"

TAYLOR: No. They could approve the bond, but I think they could possibly reappropriate a bond but they could not direct where the money went to.

WHITE: In passing a bond issue it is inherent under the situation that appropriation of public funds must subsequently be made to retire the bonds. It would seem to me that in the sense of this section it would forbid the legislature from putting bond issues to the public referendum.

CHAIRMAN R. RIVERS: Bonding would be to borrow, Mr. White. Appropriating would be taking money presently available.

TAYLOR: It would be pledging the credit of the state. I doubt very much whether a bond issue could possibly be because the bond issue would necessarily have to be for a particular purpose. Now in many of the states the provisions in regard to initiative and referendum do not apply to any moneys of the state for the purpose of carrying on the function of government. The universities, school systems, orphan homes, penitentiaries, those are all exempt because those are functions of the government that have to be carried on, so they don't get, you might say, some chance of trying to nullify those institutions by cutting off appropriations for them, and that is the reason that the safeguard is put in here, the same as it is in practically all the states.

BUCKALEW: Mr. Taylor, is it not true that only 19 states have adopted this?

TAYLOR: I believe that is all there is at the present time.

BUCKALEW: Is it also not true that the last state to adopt such measures was some 30 years ago?

TAYLOR: 1928 I believe it was.

BUCKALEW: Do you know what state?

TAYLOR: No I don't. Practically all of the initiative referendum was adopted in a period around 20 years, between 1898 and 1918 was the time they were in popular favor of the states at that time.

DOOGAN: I would like to ask Mr. Taylor, you provided for the initiative and referendum, but don't you feel that the power that is left to the people as provided by this article is only in what you might call minor lawmaking?

TAYLOR: No, I would not think so.

DOOGAN: The reason I point that out is that you allow no initiative or referendum for raising money. You don't allow them to prevent the legislature at times, as they have done, to stop them from removing some of the taxes that they have already applied, when it might be felt by the people that the legislature was subject to a great deal of pressure to do so, and consequently my particular feeling is that what is left for the people to do is very minor legislation, and something that would hardly be worth their while to go into anyhow.

TAYLOR: What particular part of this proposal, Mr. Doogan, are you referring to?

DOOGAN: Section 1 and Section 5 which seem to me to be most of the meat of the proposal as it is.

TAYLOR: Well, there is a lot of local legislation, like if the legislature, or some people up here wanted to have money appropriated by the legislature to put another bridge across the Chena River, and they got an initiative addition out, that would not be acted upon because it is strictly expenditure of money for local

purposes. That would only apply to particular subjects or particular people or particular areas, so then they would not be allowed to circulate petitions.

CHAIRMAN R. RIVERS: Mrs. Sweeney.

SWEENEY: I would like to ask Mr. Taylor a question. On Section 4, the last line on page 1 and going to the top of page 2 it provides that you will have eight per cent of the number of votes cast for governor in the preceding general election, at which the governor was elected. I am wondering if your Committee considered the possibility of a restriction in there similar to the one that is in the mo constitution requiring that only a certain percentage of those signatures can come from a certain district. That is, that the petition must represent a large area rather than a restricted area.

TAYLOR: We did talk that over. We gave it consideration. We felt that with the geographical limitations of the state of Alaska, we felt that in view of the size of Alaska, the geographical size of it in proportion to the population, that if we put a limitation upon the number of voters that could come from any political subdivision or of any particular area, that it would make it very difficult up here by reason of the great sparsely populated areas, we did not hold that up. We felt it would make it very difficult if 25 per cent of, say 25 or 30 per cent of the petitions had to be from one division or one part of a division. Well, you could go in there and get those all right, but it is so difficult to circulate those petitions in the outlying precincts.

SWEENEY: On the other hand, I feel that, if just speaking of divisions now, if one division, for instance the Southeast, had a bit of legislation they wanted passed, they could get the eight per cent of the votes very easily and yet we would be imposing, if the legislature then passed whatever it was we wanted, we would be imposing our will on the whole of Alaska, and it seems to me that a portion should be required to come from another division, perhaps a third or even half from another section.

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TAYLOR: Mr. Chairman, I would like to answer Mrs. Sweeney's question in this way. Although as she states the eight per cent of the voters, of the number of voters that cast their votes for the governor at the previous election was secured in one division, that does not make it a law because that then is submitted, if they get the sufficient number of signatures on there, then it is submitted to the entire electorate and then it can be defeated by the voters of other divisions or political subdivisions whichever they might be, because the entire electorate then votes upon what eight per cent of the electorate initiated.

CHAIRMAN R. RIVERS: Mr. McNealy.

MCNEALY: I would like to ask Mr. Taylor a question. As I understand it, Mr. Taylor, there are two procedures to put into effect on the initiative. One is written in the bill here, and the other form is for the people to petition the legislature by initiative to enact certain laws. I was wondering if your Committee had considered the one I just mentioned by the people petitioning the legislature to enact laws rather than taking it direct as set out in the bill.

TAYLOR: I think the right of the people to petition the legislature is one of our rights as guaranteed us by the Constitution and requires no special law for that purpose. We can all petition the legislature.

CHAIRMAN R. RIVERS: Mr. Barr.

BARR: I would like to ask Mr. Taylor two or three questions on the initiative. I can see for the recall and referendum, but the initiative seems to me to be a very cumbersome and unnecessary procedure. Will you please convince me that it is necessary. And I would like to point out to you as a member of the legislature, over 200 bills were introduced, and many of them were introduced by request. It is a very easy matter to ask a member of the legislature to introduce a bill. Why is this cumbersome procedure necessary?

TAYLOR: Well, this is not for the legislature to do it. This is to have the questions submitted to the voters as to whether that becomes a law or not -- to vote on it.

BARR: Providing the legislature does not pass the act before that time?

TAYLOR: Yes.

BARR: In other words, if the legislature refuses to act, then it goes for a referendum. Well, in our present form of government the people elect the legislators to represent them, and I have never known a case where they did not do what they thought the people wanted. I don't think they ever would.

TAYLOR: Did you read the history of the State of California and the Southern Pacific Railroad, Mr. Barr?

BARR: You mean some special group wanted something done?

TAYLOR: And they got it.

BARR: Don't you believe that with all these restrictions even, that it is still easy to have a petition signed and that any special group could have a petition of this sort signed very easily and submitted?

TAYLOR: I think eight per cent of the voters would be quite a sizeable petition, especially if say 15,000 votes were cast for the governor in the governor's election, this last one we had 27,000 votes. It would take eight per cent of those 27,000 votes that were cast for a particular man. How many were cast for the candidates that were running for governor, the entire election for governor?

CHAIRMAN R. RIVERS: Did we have an election for governor?

TAYLOR: I mean if we did.

BARR: Mr. Taylor, eight per cent would make a large number of petitioners. If there was some little group in one town who wanted something on some question, something that was Territorial wide, such as fish traps, statehood or groups representing one type of school against another type of school, don't you think eight per cent would be a fairly small number of petitioners?

TAYLOR: I do not believe it would be a very small number, and then another thing, Mr. Barr, carrying your arguments further, you say a small group in a particular locality that wanted something, they are barred because that would be local legislation.

BARR: That is what I pointed out. But I am speaking of something now that is Territorial wide, some question, and there are a large group of people on both sides of the question, and eight per cent would not be many signatures.

TAYLOR: No, that is only to say whether an election is going to be held, Mr. Barr. I don't think we should put undue restrictions upon having an election because then the whole electorate has got to come out and say whether or not that proposition is going to prevail or whether it is to go down in defeat.

CHAIRMAN R. RIVERS: Mr. Smith.

SMITH: I would like to call attention to the fact that we have had a perfect illustration here of the fact that in considering any proposal, or section by section, we are apt to see only the section before us and not take into consideration that every preceding section may also affect those following. Now I refer specifically to the fact that Section 1 and Section 5 have been said to be the meat of this proposal. Actually Section 3 is fully as significant as any of the others. Section 3 says, "The legislature shall prescribe the procedures to be followed in the exercise of the powers of initiative and referendum, subject to the specific authority reserved herein." Now going back to the questions raised several times as to the percentage of the number of votes required to initiate a measure and the fact that they might all originate in one certain district, we

have left the power with the legislature to provide that those signatures may be required within the various districts, may require that they may be scattered throughout the various districts.

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SMITH: Mr. Chairman, there are a lot of questions that have been brought up, and I am just going to touch on some of them very briefly. Referring back to the survey of Oregon's experience, the report states that the measures initiated were on the whole not much better or worse than the products of the legislature. The people of Oregon had been considerably burdened with decisions on all manner of measures, some of them nuisance proposals that kept reappearing time after time. The people were not notably better educated politically than before. However, they had exercised their responsibility in a fairly conservative manner. They had been rather free to alter the structure of the government, had not been financially irresponsible and had been rather conservative on policies in the general field of public welfare. Now I think Mr. Victor Rivers brought up a question as to whether, if the initiative were included in the constitution we would then have a republican form of government. I think it would take a constitutional lawyer to answer that question, but I imagine that the people in the states who do have this provision feel they do have a republican form of government. We go back to the question as to the accomplishments of the initiative and referendum which have been covered to a certain extent. I go back, possibly because it is more realistic to me, to the fact that Washington and Oregon for many years tried to get their legislatures to eliminate fish traps with no success. Through the initiative measure they were both successful. Now Mr. Barr's suggestion that it would be easy to get the legislature to take action if they were asked goes back to the fact that California again tried for years to get their state legislature to set up a civil service system. They were unsuccessful. Through the initiative right the people of California instituted a civil service system. Now I believe Mr. Doogan asked a question. I am not sure. Someone brought up the point - I believe it was Mr. Davis that the right of the initiative as outlined here might be construed as allowing the people to amend the constitution. I would call your attention to Section 1 which is preceded by the word "initiative" and following, "The people reserve the power by petition to propose laws and to enact or reject such laws at the polls." And I don't think that could be construed as amendments to the constitution.

V. RIVERS: Do you yield for a question, Mr. Smith? In your study of Oregon, did you find that by referendum the people of Oregon had defeated a statewide sales tax seven times?

SMITH: Yes, now that you call it to mind, I do very distinctly.

V. RIVERS: Do you also believe that if we had this clause in here which says, "emergency action not be subject to referendum", that we would eliminate practically nine-tenths of all the acts of the legislature including such as things as sales tax if it carried that clause?

SMITH: I have had considerable worry over that fact, Mr. Rivers, and I think it is a thing which is very open to question.

V. RIVERS: Do you believe that if we have the initiative and referendum in the constitution it will make it more palatable from the point of view of some of the legislators or senators in Congress for approving this act?

SMITH: That is one of the chief reasons why I support very strongly the inclusion of the initiative process in the constitution, even though it is not used, it is there. I think that the legislators, if they know it is there, they will be very careful in ignoring the will of the people.

V. RIVERS: Do you believe that approval of the act subject to referendum, any of those emergency acts shall not be subject to referendum, could be covered by a different clause such as the acts that are necessary for the immediate preservation of the public peace, health, safety, etc., would that be better than just saying those that carry an emergency clause?

SMITH: I feel it would, Mr. Rivers.

CHAIRMAN R. RIVERS: Mr. Hinckel.

HINCKEL: I would like to speak on that subject. We had numerous drafts of this article and among them we had somewhere the wording I thought was better, and it is quite possible that in trying to condense it that we went a little too far, and some of the things we originally had written in the article and took out in condensing may have to be put back in. Mr. McNealy asked a question which has been incorrectly answered. He asked had we considered the indirect method of putting through a bill, and you will notice that on lines 13 and 14, page 2, that it says that these conditions shall exist, "unless the legislature enacts the measure initiated during the session." So we did include the indirect method of approach which we thought was the economical way to do it.

CHAIRMAN R. RIVERS: Mr. Hellenenthal.

HELLENTHAL: A question of Mr. Taylor. Mr. Taylor, is it not possible that the California fiasco where the legislature was dominated by the railroad could have been due to the fact that the California Legislature as then constituted was not truly representative of the people?

TAYLOR: That is entirely possible, Mr. Hellenenthal.

HELLENTHAL: Is it not possible that some of the domination of the Alaska Territorial Legislature in ancient times might have been due to the fact that it also was not representative of the people?

TAYLOR: That is true.

LONDBORG: Mr. Chairman, may I direct a question to Mr. Taylor? According to statistics I believe the other states require from eight to fifteen per cent of the qualified electorate to initiate. Is that not true?

TAYLOR: They have different ways. I think the majority of them that have it there is a percentage of the votes cast for the governorship at the previous election.

LONDBORG: The votes cast? I was referring to the report where it said that eight to fifteen per cent of the qualified electorate, and I wanted to have it clarified. Here we have eight per cent of the votes cast which would be a considerable lower percentage of the qualified electorate than eight per cent. I thought we might have that open for consideration.

TAYLOR: That would be the number of votes cast for the governorship, not the particular man who won the race.

LONDBORG: That would still be a considerable amount less than eight per cent of the qualified electorate, and I am wondering if other states do have it reading the governor.

TAYLOR: There is quite a few of them who have it. I might state why that is, because it's ordinary, there might be instances where three people would be running for the governorship, usually it is two. Most people who go to the polls would vote for one of those two candidates for governor so they take the combined vote for governor and then eight per cent if it is in the law or fifteen per cent if it is in the law. Now there is one state I think that has only five per cent.

LONDBORG: I see that. That is eight per cent of the total number of votes cast, but I was wondering about that if the states used that or if they used the percentage of qualified electors as was referred. Perhaps the PAS report was in error on that.

CHAIRMAN R. RIVERS: Mr. Fischer, could you throw some light on that?

V. FISCHER: I might read from the Hawaiian Manual. "Six states require a number of signatures to be based on previous vote for governor. Two states require number of signatures to be based on previous vote for supreme court justice. One state requires number of signatures to be based on previous vote for secretary of state, one state requires number of signatures to be based on state office which receives the highest vote at previous election, and then a few leave it up to the legislature to determine and two states specify in the constitution the exact number of signatures required."

LONDBORG: They did not give the percentages at all there, did they?

V. FISCHER: Yes, they do. Arizona ten per cent based on governor; Arkansas eight per cent on governor; California eight per cent on governor. Eight per cent is the most common.

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MARSTON: I am going to make a speech in favor of the initiative, referendum and recall which has not been made yet, and you have made up your minds practically here without the thing being properly presented, and don't let for one minute, gentlemen and ladies, this kind of talk you heard make up your minds on so vital a piece of legislation. Delegates who make a remark about "this foolish piece of work", I think it is unbecoming to this audience and this group of people to talk that way about a thing so fundamental as we have here. If you don't trust the people I don't know where you are going. That means if you vote down the initiative, referendum and recall you do not trust the people, and the people are the people, and that is the only reason we are here, and if you can't trust them I would hesitate to go back home before your committees and talk to them. I think the passage of the initiative, referendum and recall will sell a lot of these constitutions. When a man says "I don't like that", you can say "You have a right." The people themselves can go into the courts of the land to have your word made law by a certain procedure. I hope that we pass the initiative, referendum and recall, and I hope we never have the occasion to use it. I think it is a great thing to have it in the hands of the people, and you will notice that the Western states are the ones that passed and used the initiative, referendum and recall, and we are Western and Northern, the same kind of people. We are explosive people. We like to express ourselves, and I can see miners back in the camps thinking over things that have not been right, and fishermen in their little boats wondering why. Now they can say, "We can correct that thing", and though they never use it is a great healthy thing to have in the hands of the people. It has been used in some 15 states, and they have it in their constitutions. It is constitutional, fundamental law, and I hope that you people keep an open mind here and don't let this talking on here affect you because it is vital. You are sent here with a great duty to carry out the wishes of the people back home, and if you turn down this kind of legislation you are going to be in for a lot of embarrassment and a lot of criticism, and I don't like the way it has been carried on here. This Committee was not in agreement that made this document, and it was said so here, and I think all the members of the Committee should be heard on this before you make up your minds. I am for the initiative, referendum and recall, and I hope that you people open your minds again which you had it practically closed up here and were ready to close off by a certain group of people here, and think very seriously on this matter. It is fundamental law and I am going to ask the Chair right now to call on the rest of the Committee that worked on this direct legislation. That is all I have to say.

CHAIRMAN R. RIVERS: Committee members and others may be heard. Mr. Cross.

CROSS: I have been thinking quite seriously on this. I made up my mind that if you can't trust your legislature this cumbersome machinery is not going to help it very much, and I don't think we are going to help matters by taking a more cumbersome way of deciding things. We are here to set up machinery for legislation. And if we can't set up machinery that will work, I doubt very much if we can find any other way of doing it.

CHAIRMAN R. RIVERS: Mr. Taylor.

TAYLOR: Mr. Chairman, I agree with Colonel Marston. I believe he has stated it perhaps more eloquently than I can, about the desirability of having the initiative and referendum. I can not go along with Mr. Cross's statement that if the legislature.

doesn't do something there is no use trying to let anybody else do anything, but I believe if we do have this additional safeguard that worthwhile legislation will be enacted in case the legislature did not, that we are only saving to the people a power which they may never exercise, but the mere fact that the power is there and is available for the electorate to initiate some measure for the benefit of all the people, they should have the right to do it. Now perhaps Mr. Doogan says this is a silly piece of work. I wish Mr. Doogan would have been on the Committee because there were seven of us on there and we worked for three weeks and we met practically every day, and as I said before, we had studied and examined the initiative and referendum provisions of practically all the states that have the initiative and referendum, and to come into this Convention with a recommended article on those particular provisions, some of us sacrificed our convictions that all the details of the law should be spelled out in the Convention. Some of us sacrificed our convictions that just the framework should be drawn up by this Convention and the details filled in entirely by the legislature, and we finally met upon the common grounds which is here before us. And with the study that I have given to this and I think the other six members have given to it, that the cry of "silly" or "ill-advised legislation" or "ill-advised article" doesn't sound too good. If Mr. Doogan had been on that Committee perhaps we would have come up with a masterly article which we could pass without any amendments, without any discussion, but the men of limited mentality who composed this Committee were not able to do so. I feel that we should have as a curb, if nothing else, a power that might never be used but is still there. We should have that in the constitution. And a power that can be implemented by the legislature to whatever extent they wish, subject to the limitations that this Committee has put in the bill.

CHAIRMAN R. RIVERS: Mr. Coghill.

COGHILL: Mr. Chairman, I feel along the same lines that were just spoken. I think that probably the biggest majority of people here had to run to be elected for this Constitutional Convention, and probably if they were faced with the issue from the voters, and I believe a poll was taken, that a majority of the delegates was in favor of the initiative, referendum and recall. Was it a vote-getter? Were you fooling the people when you told them? Are you standing up to your convictions? I think that the people of the Territory need assurance that they are going to have individual rights restored to them. We under Territorial status have seen some awful reckless things happen during the realm of Secretary Ickes, Chapman, and now McKay. I think that you will find that under this form of government, a non-representative form of government, that the people are quite sensitive to their individual rights, their individual thoughts, as far as government is concerned. Woodrow Wilson put the phrase quite masterfully when he said that, "These three forms of controlling your government are the gun behind the door assuring direct legislation for the people." - think it is basic and I admire the work that was done on the Committee.

CHAIRMAN R. RIVERS: Mr. Knight.

KNIGHT: Mr. President, I agree with Mr. Marston and Mr. Taylor and also Mr. Coghill. Why should we take any power away from the people? The people put us here. However, Mr. Marston is wrong when he said there were 15 states that had this on their books now, there are 19. The last one was the State of Maine, January of this year, and I am going to favor this act.

CHAIRMAN R. RIVERS: Mr. Hinckel.

HINCKEL: I would like to state that it is not a clumsy procedure, that it is a very simple procedure up to at least the point where the legislature may or may not act upon it, and they are in the end of it, they pass it and if it goes beyond that point why it may become a little bit complicated and expensive, but I don't think that very many times it will. I think that with the provisions as set up in this article that probably the legislature will handle the subject of the initiative due to the fact that they will be convinced that they are a large number of the people who desire that it be taken care of and probably that will be about as far as it will go in most cases.

MCNEALY: I had not intended to speak here, but there have been one or two things said that probably require a little clarification. I would like first to mention that there are 19 and only 19 states that have the initiative and out of the 19 there are only 11 of them with the direct initiative. The other eight have their initiative to the legislature. And as to what we promised the voters, one of my statements, that there were

not many things that were conflicted here among the candidates, but here in the Fourth Division in Fairbanks, maybe I should confine it out of respect to Delegate Coghill here, but that was one of the issues of initiative and referendum, and I came out strongly opposed to the initiative and at quite a large meeting held in the public high school here, every candidate who was running for this Convention, whether this means anything or not but all the candidates who stood up and said they were for the initiative are not present in this body today, whether that means anything or not. The point is I think it is a cumbersome system and outmoded system. It was popular 50 years ago, and I don't feel too strongly on it because in looking back, outside of the expense that it has cost the states in a lot of elections that came to naught, and far more of the propositions advanced on the initiative were defeated by the voters at great expense to the public than were ever passed, and that goes without contradiction. I feel that the proponents of this measure felt that in the early days it would cure everything, and those who were opposed to it thought it would be the end of government. Neither instance has happened. You might put it this way, it is not particularly good constitutional material and it is not particularly bad. For that reason, at least as to the initiative, I am opposed to it.

KILCHER: I have to disagree with Mr. McNealy on more than one point. For one thing, there are luckily quite a few of the candidates present here who in the campaign have advocated initiative and referendum. I might say in a lot of respects they have proven to be the more progressive ones. This referendum and initiative can only, with a stretch of the imagination, be called something outmoded, or you would have to call democracy itself outmoded. If we look at the history of the thing we can see that it coincides very closely with a whole series of progressive political movement of the late 19th century extending into the early part of the 20th century. If we look at the little map of the United States and see, here we can see which states they are. They are preferably the Northern and Western states and not the others. Some are known as the more progressive of our states, so consequently I think we have very good precedence, and we have nothing to worry about if we adopt initiative and referendum. Also the cost involved in an occasional election I think is cheap money for political education. It will in my opinion tend to decrease what Governor Gruening has called "the political illiteracy". It will greatly increase the interests of the people and the faith in themselves and their laws.

DOOGAN: Mr. Chairman, if I trod on the feelings of the integrity of any members of the Committee that drafted this thing individually, I am sorry. To say that the initiative and referendum is outmoded, I consider this impossible. As I read this, to be specific, a man brought up the suggestion of fish traps. If the legislature wanted to provide for the abolition of fish traps by referendum, it could not be done. You could not initiate for it either. I don't think it will work. I was one of the candidates that was asked whether I was for the initiative and referendum and I said "yes" and I am here. The thing is, the reason I changed my motion is just in general conversation I find that there is quite a difference of opinion, which I did not know before, and so as far as I am concerned the thing to settle first is, do we want the initiative and referendum, before we go on amending a bill we might later throw out, and I will abide by the decision.

CHAIRMAN R. RIVERS: Mr. Metcalf.

METCALF: Mr. Chairman, if I may make a few brief remarks on this matter, I was one of the Committee members that worked with Mr. Collins and Mr. Taylor, and we worked out this compromise on the initiative and referendum. It is far from perfect I know, but personally speaking I am in favor of the initiative and the referendum. Missouri saw fit in its revision in 1945 to spell it out pretty much. We copied or took some of our provisions from the Missouri article, and that was the 1945 revision. Another reason that makes me strongly in favor of the initiative and referendum is the fact, so I am told, that you are having a strongly centralized executive department. He is going to appoint administrative officers, much stronger than the average, and so in adjusting our system of checks and balances I feel the people should have an extra hold in this system of checks and balances. Speaking about the legislature, I believe Mr. Cross mentioned that why can't the legislature take care of everything. This talk about the legislature frankly has me confused here. Some people on one day say, "You can trust the legislature." The next day they say "You can't trust the legislature." Then there is the old man, Public Enemy No. 1, the lobbyist. So I am confused what to think about the legislature, and I think this system of the people having their hold on the checks and balances should be just as accurate and just as perfect as when you go to the bank to borrow some money on a homestead, you don't expect the banker to hand you out some money without you signing

up the mortgage, as a matter of banking routine. He gives you the money and you sign up, and it is just the same way with the initiative and referendum here. The people ought to have it in black and white, just what the rights are and not leave it to guesswork. I believe as Mr. Kilcher does, that if these matters, the initiative and referendum, are left to the people to study, it would reduce the political illiteracy that we now have, and I wish and urge everyone too vote to keep the initiative and referendum.

CHAIRMAN R. RIVERS: Mrs. Hermann.

HERMANN: I merely want to ask a question and that is, could any of the members of the Committee that formulated this committee proposal tell me how many of the 19 states that do have the initiative and referendum, have provided for such in the constitution, as opposed by the legislature?

CHAIRMAN R. RIVERS: Miss Awes.

AWES: I think perhaps I can answer Mrs. Hermann's question. I have before me the PAS pamphlet. It says that, altogether there are 19 state constitutions which provide for some form of statutory initiative." So evidently it is provided for by the constitution in all the 19 states.

BARR: Since Mr. Metcalf is a bit confused about the legislature, I might be able to clear up a few points for him. The legislature is elected by the people and the legislature is that the people make it. If you vote for the right people you have the right kind of a legislature. Therefore, it goes directly back to the people, and Mr. Marston says, "Can't we trust the people?" Well, certainly, but the question is, "Can the people trust the legislature? If they can, there is no need for any initiative, and they still have the referendum, and that is their check on the actions of the legislature. Now we do not have a democracy here. This is a republican form of government. If we had a democracy, of course the people would do everything directly. Since we have chosen the republican form of government, in which the legislation is taken care of by representatives chosen directly by the people, I think we should retain that form of government. It has worked out pretty well so far. Of course, I believe the referendum is necessary, but the initiative is not necessary. It is cumbersome, at least it is more so than our usual method of introducing bills in the legislature, and I know there are lots of them introduced by request. I have introduced some and have fought for them. Of course, if one is introduced by Sweeney and Sweeney does not fight for it that is a different proposition, but I think they should be fought for or not introduced in the first place. I am concerned about the initiative for several reasons. One, bringing up the old bugaboo of lobbyists again. There have been legislatures that have been dominated by lobbyists. I suppose in Alaska and other states also, but that is because perhaps the people did not vote for the right men. I do know for a fact, that a good many years ago the people of Alaska were more politically illiterate than they are today, and things are improving steadily, and as they improve, we will have better people in the legislature. And of course there will be an added cost if we have the initiative and have elections, and I am sure that we will have many elections because it is so easy to get a petition signed and it is not always a little group that wants to initiate some particular piece of legislation. It is usually eight or ten per cent of the people or more. And I believe that under our present system when the people elect certain representatives they try to pick out, I won't say a better man than they are, but one who is experienced and one who has good judgment, and when you group these people together in a legislature, if they approve of a certain bill, it is generally a pretty good one. I have seen some bum ones passed, but when you take in all the people of the Territory, counting the lobbyists, crackpots and individuals with special interests, etc., we can have any type of legislation we want. Of course, there are restrictions under this Committee report here which would tend to alleviate that condition somewhat, but I don't believe that it would correct the matter altogether. So I believe that under our present system we are getting along very well, and I was reading the model state constitution here, and I noticed on their commentary on it that was the sentiment there too, although there is a provision in the model constitution for both referendum and initiative, if I could find it I would like to read it.

METCALF: Page 29.

BARR: Page 29. In one paragraph in the right-hand side of page 30 it says, "Recent experiments in several states with the attempts of certain groups to employ these agencies to place in the constitution controversial matters". Now "controversial matters" of course does not necessarily mean that it might be promoted by a

certain industry. "Controversial matters of an economic nature have led to a wave of criticism of direct legislation and to numerous suggestions for restrictions on the use of the initiative and referendum." We have the restrictions in this report, but I don't think that restrictions cure it altogether. I just don't believe in the basic principles of the initiative, not under the republican form of government where everything is as streamlined and as efficient as we have it today to promote legislation.

CHAIRMAN R. RIVERS: Mr. Collins.

COLLINS: I would like to speak in behalf of the report of the Committee. This Committee was appointed, seven men from various sections of the Territory of Alaska. Two propositions covering the questions that were sent to our Committee was considered. We brought in for consultation the advisors that we brought here, Mr. Elliott and others. We went over this report of ours with them, trying to unify the different thoughts that the members had, and I want to say in behalf of that Committee that their work, their endeavor, a result of their study, was not "foolish legislation". I resent that statement. I am not going to get personal. Supposing I were taking the floor and had thrown that at the report of the Judiciary Committee - "foolish legislation". Any member of this Convention has the right to express his own individual opinion. He has the right to vote that opinion and I want to say in behalf of the members of this Committee that in submitting this report they have given the study, have gone over all questions you have heard here today, and we met on a common ground and we don't consider it "foolish legislation". We come back to you people to the Convention to see whether you are going to accept our report. You have the right to submit amendments, this is true. This is no gag rule nor is it no star chamber proceedings, and I think the quicker we get back into Convention and let the members express their individual views by appropriate amendments, and let this body pass on it, the quicker we will get the result of our endeavors.

UNIDENTIFIED DELEGATE: question.

CHAIRMAN R. RIVERS: May I address a question to Mr. Egan? Must the question be put when called for? When somebody who wants to talk further, may he have the floor?

EGAN: He may have the floor.

CHAIRMAN R. RIVERS: Mr. Victor Rivers was trying here several times.

V. RIVERS: I merely wanted to say that I would like to be sure of the form in which the question is put because if we say, "Will the question of initiative be considered?" it means that it takes 28 votes to say it will be. Actually, we have it before us, so the question should be, "Will the consideration of the initiative be stricken?" and that is the way I want to be sure the motion is made. "Will we strike the consideration of the initiative?"

CHAIRMAN R. RIVERS: Well, I make a point of order that the motion before us is worded in the manner previously read and that the delegates may consider your interpretation of it. Mr. LONDBORG.

LONDBORG: I would just like to bring this up. I feel that after a committee has made a long study of it and come up with something there must be some merit in it. Now in about two hours we hear the whole story and have to be rushed to a decision on it. I will have to admit that on this particular item I would like to hear more or have a little time to think about it. I have been on both sides of the question myself, and I don't feel qualified to vote on it yet. I would rather abstain from voting myself right now.

CHAIRMAN R. RIVERS: Mr. McCutcheon.

MCCUTCHEON: Mr. Chairman, I would like to point out that insofar as I personally am concerned, the initiative was a device that was created some years back for specific situations. The outline of our new legislature makes that need much less imperative than it was 35 years ago. There are several devices in the legislative article here which I think would preclude the necessity of having an initiative. Bills can be introduced into the legislature by request, and even though they fail, assuming that this article is adopted substantially in its form as it is presented, even though those bills fail it may go out to referendum, so it

does not preclude the possibility of people initiating some type of legislation without going through the cumbersome form of an election.

BUCKALEW: I am just going to take a second. I want to tell Mr. Collins that I think he and his Committee did a good job of presenting their material. I am going to vote against it, not because I have any objections as to the way the work was done, but I don't think the initiative is necessary. I was interested in Colonel Marston's speech about the people. I remember in the Third Division there was not any issue at all that any of the candidates campaigned on. Most of the candidates came out that they were for a constitution and it should confine itself to fundamental law and that was the only comments that I recall any of the candidates making. I think I am the only candidate that came out for an 18-year-old franchise, and that was defeated, and for myself I got a lot of criticism in the Third Division because I said that the constitution should be in the English language and in readable form. There were no issues before the people in the Third Division. Forty or fifty years ago this type of legislation was considered progressive. I don't think it is considered progressive legislation any more. I think it is costly. I don't think we need it, and that is the reason I am going to vote against it. Now as far as the referendum, I am in favor of an optional referendum as drawn in the legislative article which provides if the legislature wants to they can refer a vote to the people. I am going to vote against it.

HURLEY: Mr. Chairman, I did not realize that people would be against this. so I am forced to speak by saying in very simple language I am in favor of the initiative, referendum and recall. I have always been in favor of it, I could stay here for 24 hours and I'd still be in favor of it. I think it is a basis of democracy, even if we have a republican form of government. My thinking is summed up completely in section 1, "The people reserve the power by petition to propose laws and to enact or reject such laws at the polls." I do think that some of the items in here need amending to meet my full approval, but I am in favor of the initiative.

CHAIRMAN R. RIVERS: Mr. Gray.

GRAY: I feel much like Mr. Londborg. I agree with everybody. I say that from the point that I am agreeing in principle with one faction and I am agreeing in practice with the other faction. I believe that the real value of the initiative is not in its use. It is in the fact it is there. It is a threat. That is the real value of the initiative. I will say that I believe that the initiative is expensive and it probably will not have the due consideration that the same bill will be put through legislature. I will say that an initiative that is precipitated by one per cent of the voters would be a great nuisance. On the other hand, I will say that the initiative that had 50 per cent of your electoral voters, these are maximum, there is no question about it -- the legislature would have to do it. It seems to me that if we can find limitations that preclude uselessness and cumbersome of minor matters and make your requirements such that we will say that if 25 per cent of the electors desired a particular measure, I doubt very, very much whether any legislature would hesitate about passing it. I believe that in the articles of the constitution that the initiative is a positive part of our government, but it is not a desirable part of legislation, and I would like to see the qualifications of numbers. I don't know why we have eight or ten per cent. Maybe some person on the Committee could explain why the particular ten per cent. But before it was thrown out I would like to see the percentage raised and keep the initiative.

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PRESIDENT EGAN: Mr. Johnson, did you have an amendment?

JOHNSON: Yes, I do.

PRESIDENT EGAN: The Chief Clerk will please read Mr. Johnson's amendment.

CHIEF CLERK: "Page 1, Section 4, line 18. Strike word 'eight' at the end of the line and insert in lieu thereof the word 'fifteen'."

JOHNSON: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Johnson moves the adoption of the proposed amendment.

MCNEALY: I second the motion.

GRAY: I would like to ask the mover how he arrived at the figure "fifteen". I had in mind "twenty-five" but I don't know what the difference is between eight, ten, or fifteen per cent.

JOHNSON: I suppose I arrived at my fifteen like you arrived at your twenty-five. It was simply an estimate of what I thought would be a far better percentage of the electorate needed to initiate a proposal under this act. It seemed to me that eight percent was a little bit low.

SUNDBORG: I think we should all be clear that all that this figure refers to is the percentage of the electors or of those voting at the last election who would have to sign a petition in order to get it voted upon. It does not mean that eight or fifteen percentage means it goes into effect. It just puts it on the ballot. I venture if we change this to fifteen there would be very few initiative measures would ever get on the ballot. That is quite a high percentage to get when you carry petitions around.

LONDBORG: If you can't get fifteen per cent to put it on the ballot they certainly would not get enough to pass it when it does come out. I think it should be a little bit higher than eight per cent because its not eight per cent of the qualified electors, it's only eight per cent of the ones that voted and I think we ought to have it a little bit higher to preclude any possibility of throwing in legislation that might also call for special elections and a lot of expense.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, I am not an authority on the subject, but I understand there are other states who have as high a percentage as 15 and I believe one has as high as 20 per cent. I can't quote the number of states. I would like to hear from some of the Committee that has investigated that.

MARSTON: Mr. Chairman, the average requirement is eight per cent of the states that have this form of law. The average is eight per cent.

PRESIDENT EGAN: Mr. Kilcher, did you want the floor?

KILCHER: Yes. I advise that this amendment be defeated. It is exorbitantly high and I intend to suggest an amendment at a much lower figure than this. The average is slightly less than eight per cent, as for as my figures show. Considering the distance and geography of Alaska, we should rather have a figure lower than eight or leave it as it is. That defeats the purpose of the measure.

GRAY: I feel that this is an important figure. I feel that this is the one place, if this is a constitutional measure, to insure that the people want the measure rather than some small group in one locality. I believe that this figure should be sufficiently high. Under a republican form of government we are going to legislate through our legislature. We want to keep the principle of the law ultimately belongs to the people, and I think the figure should denote and be used only at a time that the legislature is not conforming to the wishes of the people, and that is why I believe this figure is very important, and by this figure I think we save the initiative for the constitution or we lose it due to the cumbersome expenses of practice of possibly poor legislation.

PRESIDENT EGAN: If there is no further discussion -- Mr. Barr?

BARR: Mr. President, as I stated before, I am against the basic idea of an initiative but I realize it has some value if it is in the constitution. In fact it may be a deterrent on the actions of legislature if they know it is there and could be used, but my main fear was it would be used too often for no good purpose. I may change my mind and vote for it if this figure of fifteen per cent is adopted.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I think that possibly the adoption of this 15 per cent motion would make the program of the initiative unworkable. I notice that the states that used the initiative for statutory purposes, there are none of them that are above ten. Now I will grant that for purposes of amending the constitution there are some states that go as high, I believe, as thirty. I think it would be an error to adopt this fifteen per cent because of the fact it would be practically impossible to get that number of signatures on the petition required to initiate an initiative.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, now they call this a petition by the voters, how to get a certain per cent of it. Now looking at it another way, it is a motion by a certain percentage of the electors that they would like to have something voted on. Now you say eight per cent is too much, but as important as this session is, less than two per cent of the body of this house can initiate anything they want to before this body and have it voted on, so why should you have to have the electors, eight per cent or fifteen per cent more. Eight per cent I think is a fair compromise. We discussed that considerably in the Committee, but when you figure that less than two per cent in here can start something, all a man has to do is to make a motion. That one man is less than two per cent and everybody considers it, so I think if we have eight per cent on this initiative, that is plenty.

PRESIDENT EGAN: Mr. Marston.

MARSTON: Eight per cent is a little higher than the average state that uses this law. Now we know how hard it was to go out and get 250 names on a paper to get the chance to run for this Constitutional Convention. It was a lot of work for most of us to go out and do it ourselves. To get one of these initiative measures before the people it takes over 2,000 people to sign up. You would not get any place if you had to get 2,000. You would not be here and neither would I. It's a hurdle high enough if they feel that 2,000 votes to get on the ballot is what you have to get, they have a cause and then the people have a chance to say "yes" or "no". I think eight per cent is right.

BOSWELL: I wondered if the Committee had studied the statistics of voting and about what eight per cent would require. Is that the figure -- 2,000?

MARSTON: My recollection is 27,000 votes here all over Alaska. Eight per cent of that is 2,160.

BOSWELL: I would speak in favor of a higher figure than eight per cent. It seems to me that one of the things, one of the abuses is that a number of bills could get introduced with a few voters and with only 2,000 it seems to me that it would be very easy for one locality to get 2,000 votes on a particular issue. That is why I would favor a higher figure, and I think fifteen per cent is about right.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: If Alaska had a static population I would be inclined to agree, but I feel we have an expanding population, and by the time we become a state, the people that are concerned with introducing proposals, our population and our voting population will be such that eight per cent will be a reasonable figure.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, talking about the difficulty of getting that number of signatures to a petition, I maintain it is pretty easy to get a petition signed. I know of one candidate to this Constitutional Convention who merely typed up some petitions and mailed them to friends and he got 800 signatures with no effort on the part of himself.

PRESIDENT EGAN: Mr. Gray.

GRAY: I have to rise a second time because of that 200-vote deal. The gentleman on that pointed directly at me. I wish to cite right now the principle of the thing. On the extraneous, unimportant matters, we don't care what the percentage is, two per cent, but on these important matters we must raise it to a higher value.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I would just like to say that the effect of the amendment, if it is adopted, would be that in Alaska right now in order to get any measure up before the people on an initiative basis, it would require 4,050 signatures on petitions. That is a lot of signatures to try to go out and get in Alaska. That is what fifteen per cent of 27,000 is. This is not going to carry the proposition. This is what is required to simply get it on the ballot so the people can have a chance to vote on it. The eight per cent now in there, as Mr. Marston said, would require slightly over 2,000, so that is what we are voting on.

ROSSWOG: Mr. Chairman, I would like to say a few words.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: I think it should be hard to get these petitions out and have them filled out, and I would be in favor of a little higher figure than the eight per cent.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: I am recalling the other arguments that have been made prior to this particular question. And if you will recall various people stated "Well, when the legislature fails to enact some necessary legislation the people can put the blocks to them. If the legislature has fallen down that much, it is not going to be any trouble at all to get fifteen per cent because they are all going to be up in arms. If the legislature has fallen down that much and they have to resort to the initiative, I think you can get fifteen per cent, if it's that important.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: I take my second turn here. I still believe it should be a lot higher. If that small percentage can throw the wheels in motion and perhaps calls for a special election and have \$40,000 every time a few people get together and want it if it does not happen to fall on a primary or general election, I think it should be relatively hard to do it because if it is something that that many people want, I am sure you can get the signatures. There have been various experiments performed on the idea of getting people to sign their names, and they say in cities that one out of ten will refuse to sign their signatures on a petition and perhaps not even look at the petition.

COOPER: I would like to point out that the figure fifteen per cent as used in the proposal, the figures that were presented on the floor were fifteen percent of 27,000 votes, and the last general election, as I recall I am not letter perfect on these figures -- was over 40,000. Is that correct? Might I ask if any of the delegates know?

PRESIDENT EGAN: Twenty seven thousand the Chair believes, or something like that.

COOPER: Of the general election?

PRESIDENT EGAN: Twenty seven thousand, six hundred and something.

COOPER: I just wanted to point out in argument that the delegate that was elected at large with the greatest number of votes, Territory wide, received 7,000 votes, which in effect would be a signature. The 15 per cent of the 27,000 votes then would be over 4,000 signatures. I believe it is a little high.

R. RIVERS: That delegate was running in a field of seven candidates. The 27,000 reflects the number of votes cast per delegate, I believe.

HILSCHER: According to the report of PAS slightly less than eight per cent seems to be the average in the states where this provision applies. Those states have a far more static population than we have. They are closely allied through transportation, through numerous radio stations, telephones, and it is much easier to get your message across. Here in Alaska where we have such a large area, the great distances between our towns and communities, our lack of communications comparable to those in the states places an additional penalty upon our people. So if we are to adopt the fifteen per cent, we might in essence from the standpoint of inconvenience, be setting it up almost at 25 per cent. I am in favor of the figure as it stands at the present time in Section 4, at eight per cent.

HINCKEL: I originally proposed or composed an article in which I set forth fifteen per cent. In Committee they changed my mind and I agreed to the eight per cent. In view of the fact that we have now removed all restrictions on the voters, a voter does not have to be able to read, etc., the qualified elector who would be permitted to sign this petition, I now favor that we raise the percentage back to a higher figure than eight -- possibly as high as fifteen.

UNIDENTIFIED DELAGATE: Question.

TAYLOR: I would like to say too that some of the states don't favor too large petitions. New York with three or four million voters, you can't present a petition that has more than 50,000 signatures, so it is a very small percentage of the voters that are on the petition because they are too bulky, there is too much trouble checking them. So in New York State you can't get more than 50,000 people on which would be a small percentage.

MCNEALY: I had not intended to speak on this, but everybody is taking a turn. The point is that I have some amendments to offer here which if the fifteen per cent went through I would be inclined to go along with the initiative and not offer my proposed amendments. Mr. Taylor speaks of New York. I think there are others here in the body who talked with Congressman O'Brien from New York. He said in one of his last words of parting from a little meeting, he said, "Don't get stuck like the State of New York with an initiative system or you will be spending out a good percentage of the Territory's money. You will find that your initiative elections will cost you far more than your regular elections. As a Congressman from New York I sincerely hope you do not write the initiative into the constitution." I think this fifteen per cent would be somewhat of a safeguard against too many elections at least.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Johnson be adopted by the Convention?" That is changing "eight per cent" to read "fifteen per cent". All those in favor of the adoption of the amendment will signify by saying "aye", all opposed by saying "no".

SWEENEY: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 25 - Armstrong, Awes, Barr, Boswell, Buckalew, Cross, Doogan, V. Fischer, Gray, Hinckel, Johnson, Laws, Londborg, McCutcheon, McNealy, Nerland, Nolan, Poulsen, Reader, Rosswog, Sweeney, Walsh, White, Wien, Mr. President.

Nays: 23 - Coghill, Collins, Cooper, Davis, Emberg, Harris, Hermann, Hilscher, Hurley, Kilcher, Knight, Lee, McLaughlin, McNees, Marston, Metcalf, Nordale, Peratrovich, R. Rivers, V. Rivers, Smith, Stewart, Taylor.

Absent: 7 - H. Fischer, Hellenthal, King, Riley, Robertson, Sundborg, VanderLeest.)

CHIEF CLERK: 25 yeas, 23 nays and 7 absent.

PRESIDENT EGAN: And so the motion has carried and the amendment is ordered adopted.

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ALASKA CONSTITUTIONAL CONVENTION

December 17, 1955

FORTIETH DAY

.....

PRESIDENT EGAN: The Chief Clerk will please read Mr. Johnson's amendment.

CHIEF CLERK: Do you want this one taken up next?

JOHNSON: Yes, please.

CHIEF CLERK: "Page 2, line 3. Section 4, after word 'chosen' add new sentence, 'The petition shall be from two-thirds of the voting precincts.'"

JOHNSON: Mr. President, I move the adoption of the amendment.

PRESIDENT EGAN: "The petition shall be from two-thirds of the voting precincts" -- where, Mr. Johnson, of the Territory?

JOHNSON: Of course it would be from the state.

PRESIDENT EGAN: The Chair stands corrected.

CHIEF CLERK: Do you want to add that?

JOHNSON: It is not necessary.

PRESIDENT EGAN: Do you move the adoption of the proposed amendment?

JOHNSON: I do.

ROBERTSON: I second the motion.

JOHNSON: I might explain, Mr. President, that it occurs to me that under the present wording that a petition could be circulated in one large population area and the required number of signatures be obtained from that one population area, and I believe that it would be better or equitable to have the petitions circulated in at least two-thirds of the voting precincts and signatures obtained all around the state rather than just in one locality.

PRESIDENT EGAN: Mr. Marston.

MARSTON: We went all through this, and in this big land of Alaska we said the other day one voting precinct was bigger than 40 of the states, and we concluded it was not fair if we want the initiative to work, to chase them all over the great land of Alaska to get these petitions. You nullify it. Here is one man with five petitions here. It is not improving this thing. If you want to nullify it, this is one way to do it. We worked on it for about four weeks, good men, even if I was on there, the rest of them anyway, and we decided that some of these people -- we had it in there. We took it out. It was too big a land to chase them over the mountains and across the rivers and the oceans to get this scattered vote, so I wish if you want this initiative and referendum you would hold back on a lot of these amendments. They are not improving it. That is the reason we did not put it in there. We considered Mr. Johnson's amendment carefully. I would like to hear some of the other Committees on this.

PRESIDENT EGAN: The question is, "Shall Mr. Johnson's proposed amendment be adopted by the Convention?" Mr. Davis.

DAVIS: May I ask Mr. Johnson a question? If I understood your explanation correctly, Mr. Johnson, what you intended was that the petition should be circulated or that signatures should be secured from at least two-thirds. It seems to me the form does not quite carry out what you are trying to do. I am in favor of the suggestion that I think you are trying to make there.

JOHNSON: We could add the words "shall be circulated in at least two-thirds of the voting precincts." I will accept Mr. Davis' suggested amendment, and insert, "The petition shall contain signatures from at least two-thirds of the election districts of the State."

PRESIDENT EGAN: Mr. Davis, do you offer that proposed amendment?

DAVIS: Yes.

PRESIDENT EGAN: Is there objection to Mr. Davis's proposed amendment to the amendment? Mr. McLaughlin.

MCLAUGHLIN: Are you substituting the word "circulating" and do not require signing, Mr. Davis?

DAVIS: Either "circulated" or "signatures should be secured from". Either one would be all right from my standpoint. But as it reads it says, "it shall be from" and I think it is meaningless.

MCLAUGHLIN: I am just anxious to know what the amended amendment is.

DAVIS: I will say "circulated" as an amendment.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Mr. President, I have the same question in mind, and in my mind it would have been at least two-thirds of the voting precincts that would be represented, and that would indicate at least one vote from at least two-thirds of the voting precincts in Alaska.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: I can certainly see a value in having signatures from that many of the precincts. That would be one of the best ways to get the people all over the State of Alaska acquainted with what is coming up, otherwise many people will have to depend on radio or newspapers, etc., to find out and first thing you know there is a special election and a lot of them will have the initiative before them to vote and come to the polls and probably have not had a chance to talk it over and can't read, and we are going to have a lot of confusion, but if it can be circulated around I think it is going to stimulate a lot of interest and a lot of study on the initiative.

.....

PRESIDENT EGAN: The Convention will come to order. Mr. Johnson.

JOHNSON: Mr. President, I ask leave by unanimous consent to withdraw my original amendment and substitute in lieu thereof a different wording which I have placed on the Secretary's desk.

PRESIDENT EGAN: Mr. Johnson asks unanimous consent that he be allowed to withdraw his original amendment and substitute another amendment. Is there objection? If there is no objection it is so ordered, and the Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Page 2, line 3, Section 4, after word 'chosen' add a new sentence, 'The petition shall contain signatures from at least two-thirds of the election districts of the State.'"

JOHNSON: I move the adoption of the amendment as read.

ROBERTSON: I second it.

PRESIDENT EGAN: The motion is open for discussion. Mr. Smith.

SMITH: Mr. President, my recollection of the Committee discussion on this question was that under Section 3 the legislature would have the authority to require that signatures be obtained from as many legislative districts as they might deem necessary. The Committee felt, that is my version of the Committee feeling was, that due to the changes which will inevitably come, that the legislature could safely make those requirements. They could change those requirements to meet changing conditions and, therefore, I am opposing the amendment.

TAYLOR: I would just like to substantiate the remarks of Mr. Smith. We went over this quite carefully. We argued pro and con as to whether we should put anything in about where the petition was to be circulated, how many names to it, studied the other states' provisions along these same lines, and we felt due to our geographical limits that it would be better to leave that to the legislature. Now that is an untried thing in Alaska, and if we put this in here the legislature then would be unable to change it. It would take a constitutional amendment to make any change in the method of getting the signatures or where you got them from. So we thought we would leave this thing in the fluid stage so if there was an attempt to irritate legislation by this method, and they found out that the provision by law pursuant to the article was unwieldy, cumbersome, and made it practically impossible to get a measure through, that the legislature could change it at the first session if they realize it should be done. So we purposely left that out. We felt it would be better to leave it fluid so by trial and error we can find out what is the best manner to handle this, so I would think that the amendment should be defeated.

PRESIDENT EGAN: Mr. Hinckel.

HINCKEL: I was going to state for the advocacy of the delegates that the original wording we had in there was that not over 25 per cent of the signatures on a petition should come from any one political subdivision, and we all agreed that it would probably be adequate but as Mr. Taylor has said, we finally decided that we might be wrong and it would be better to leave it to the legislature so it could be amended or changed without all the trouble of going through constitutional amendment.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Line 25 on page 2, actually Section 5, says this measure of the initiative shall not pertain to local or special legislation. Therefore, I don't think the amendment is in any way, shape or form out of order. If the people of the state at-large are to be affected by eventual legislation, then I believe that petition should be distributed within at least two-thirds of the voting precincts.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: There seems to be a feeling here that this is making it too hard to get an initiative. I would like to call the attention to the initiative provision in the State of Missouri where they not only ask that it be circulated in two-thirds of the congressional districts of the state, but that it be signed by a certain per cent of the legal voters. Now in the case of the constitutionality amendment it is eight per cent. In case of the law it is five per cent, which I think would compare to our fifteen per cent of those who voted. This is five per cent of the legal voters and it shall be signed by five per cent of the voters in each of two-thirds of the districts, so they certainly have their initiative a lot harder than we are proposing here.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: Mr. President, I think we are losing sight of one of the main things to be considered in connection with this proposal. These amendments and others that have already been adopted, as well as some of the sections themselves, are clearly attempts to replace fundamental law with statutory law, and I think that the whole thing of setting up the procedure for initiative and referendum, which is now being clumsily done by the body, should be left in the hands of the legislature. I have said once on this floor, if I have said it once I have said it a dozen times and probably will say it that many more, we have got to leave things to the legislature that belong among the legislature's functions, and instead of trying to write statutory law into the constitution of the State of Alaska let's get down to brass tacks and write the fundamental law on which the legislature may base its actions. I am against the amendment.

SUNDBORG: I have to take a view opposite to that of Mrs. Hermann's, something which I do not often do, for the reason that this provision would cover not only initiative petitions but referendum petitions, and I do not believe it proper to leave in the hands of the legislature the writing of basic provisions on how petitions which would override and defeat actions which the legislature has taken would have to be handled. Now under your view it is open here if we don't mention it, and it is open to the legislature to put up any kind of a provision it wants, it could require that there would have to be signatures from every voting precinct in the state which would defeat it because it would be impossible to get such signatures, and I don't believe that if we are going to have the referendum at all which is the process for the people to say, "We don't want this law which the legislature has just passed. We don't want to leave it to the legislature to set up the ground rules of how those things are going to be handled. I think that the amendment as now submitted does not require very much. All it says is that the petition shall contain signatures from at least two-thirds of the election districts of the state. The Apportionment Committee is bringing out a report which is going to set up 24 election districts in the state. This would require that anyone who wants to get a matter on the ballot would only have to have signatures from 16 of those election districts. Say that we need 4,000 as it is in Alaska today, he could have 3,985 signatures from the City of Anchorage and he could get one each from the other 16 election districts and he's on the ballot. Now I don't think that is going to restrict very many initiative or referendum petitions.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: I certainly agree with Mrs. Hermann. It seems to me a lot of delegates, and I have had the same idea myself up to this point, that you can't write into the constitution provisions that are going to take care of every imaginary evil that might come up. I think you can trust the legislature. We are going to trust the judges. We have created judges. We have given to the judges the power to incarcerate people and even hang them, and it is not any more illogical to trust the legislature. I might say that I offered an amendment which I think will cure all of this discussion, and I don't mean any reflection on Mr. Collins or his Committee, but I certainly agree with Mrs. Hermann. Now you can see the hassle we have gotten into over whether it is going to be ten or fifteen per cent, and it is all legislation, and if it proves to be unworkable you have got to amend the constitution to change it, and Mrs. Hermann is absolutely right.

MCLAUGHLIN: Without committing myself either way, I am just a little bit puzzled. Under Mrs. Hermann's suggestion it would all be left to the legislature. If the legislature exercises its authority under Section 3 prescribing the procedures to be followed in the exercise of powers of initiative and referendum, it makes it an emergency act, and you can't have a referendum on your referendum.

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, the only value for the initiative and referendum procedure is if there is a clear channel for enactment of legislation by the people. That is, if it goes directly from the people bypassing the legislature. If you give the legislature the power to block that channel, then you just as well as have no initiative and referendum at all. Now this is the second time I have had to change my mind on the question that is concerned with this, but I will now support the amendment offered.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: I think, in answering Mr. Smith's objections, he possibly loses sight of the fact that this Convention, if we adopt this proposal would be bound by it, as it says "No law shall be enacted to hamper, restrict or impair the exercise of powers reserved herein...by the people." They have got to pass the legislation. It has got to be introduced. It has got to be implemented by the proper legislative measure. Let us trust the legislature. Let us leave this just as much as basic law as we possibly can. Otherwise, we are coming out of here with a constitution that the voters will not ratify. Maybe some of these amendments are put in for the purpose of defeating the constitution.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, I want to say that I agree, strange as it may seem, with what Mrs. Hermann has said here. I think a good deal that is in this bill as written is legislation. The amendment which Mr. Johnson offered and which I supported was a matter to amend something that is legislation in my opinion to make the thing clearer and more nearly responsive to the will of the people of the whole rather than one section. That was the reason for offering the amendment. I would agree right off that if this part of Section 4 could be stricken as legislation.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Mr. President, I resent the implication that I have offered any amendments for the purpose of defeating this constitution. I don't believe that Delegate Taylor had any right to make such an inference. I think that any delegate here has the right to offer amendments as long as they feel they are justified and it is part of the subject matter at hand. Now certainly in this instance, the constitutions that have been read to us, clearly indicate that this provision which is now before us by way of amendment is not unusual. There is nothing strange about it, and as Delegate Sundborg points out, it is not an impractical proposition because you can get, as he says, 3,995 signatures in Anchorage and get the rest of them, one signature from the other 15 voting precincts, so it is not an impractical proposition. It still acts as an additional safeguard on the misuse of the initiative. Yesterday I was opposed to the initiative principle, but the delegation in the Committee of the Whole voted to support the principle, and it is now in our constitution and will be I assume, but I still think that we have the right to make it as strong as possible because certainly it can be very easily misused as has been pointed out, and a special election under the initiative could cost the taxpayers \$40,000 and you might have a number of those special elections every year, and it runs into money, and I don't think we are going to have any too much money after we become a state, at least not for awhile, so I believe it is a reasonable safeguard and that the amendment should be passed.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: Mr. President, I am a strong advocate of leaving matters to the legislature, but I want to point out that when you start writing legislation into the constitution then you have got to write more legislation in order to supplement the legislation that you already have written in, and I too want to call attention to Section 3, the last line where it states, "No law shall be enacted to hamper, restrict, or impair the exercise of powers reserved herein by the people. If this is left blank, the percentage of the voters who must sign the petition, and if it is left in the blank about what districts they shall be signed in, then I can foresee and very clearly there will be untold litigation, because if the legislature attempted to pass a bill and required fifteen per cent of the signatures, the people, or a small segment, would attack it on the grounds that it was hampering or restricting or impairing the voters. If the legislature attempted to say that the petitions had to be secured in certain districts they could always refer back to this clause here of hampering, restricting, or impairing. I think as long as we started writing legislation into this, unless the matter is clearly spelled out in the bill and left up to the legislature, then we must spell out these things in order to protect against future court action.

PRESIDENT EGAN: The Chair is going to adhere to the rule, Mr. Taylor, that each delegate is allowed two times around. Mr. Kilcher.

KILCHER: Point of information. I would like to address a question to Mr. Johnson. If Mr. Johnson's amendment should be adopted, would that leave enough power to the legislature later on to determine the percentage of signatures required in each of the two-thirds of the legal subdivisions?

JOHNSON: Offhand, I would say no, but it seems to me that it might be construed that if the legislature should determine later that each voting precinct would have to produce a proportionate share of the signatures, that might be in contravention of the constitutionality. I am not enough of a constitutional lawyer to know, but my offhand opinion is that this provision as it is now before us would make it flexible, and if the legislature attempted to put any restrictions on that flexibility, that it would not be improper.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Personally I think that the legislature would be entitled to make further specifications that are not limited by any of the constitutional sections, and I hope that it will. and provided that I am right in my assumption, I am in favor of Mr. Johnson's amendment.

ARMSTRONG: If Section 4 is to stay in the act, it seems to me that we have to have this provision. I want to revert back to the thing that Mr. Marston constantly talks about, the people. I have a feeling so often that when I vote on the wrong side of an issue that I am voting against the people because that word has been underscored so emphatically. I think that to eradicate sectionalism and provincialism from Alaska we must have an expression from as many sections of the state as possible. I think one of the great things that is hampering us now is the feeling that one area wants to dominate another area, and I will vote for this amendment because of my inner feeling that this is bridging all of these depressions of sectionalism. It is asking for a widespread opinion on a piece of legislation. If folks say "Well, we are not intelligently" enlightened on this enough so that we can sign this petition, then let them dig into it before they sign it. It will probably give a wider base of opinion when it comes to a vote. We can probably vote on it more intelligently. I will support this amendment if we are keeping in Section 4.

BOSWELL: I move the previous question.

HERMANN: I second the motion.

PRESIDENT EGAN: The question is, "Shall the previous question be ordered?" All those in favor of the question will signify by saying "aye", all opposed by saying no. The "ayes have it and the previous question is ordered. The question is, "Shall Mr. Johnson's proposed amendment be adopted by the Convention?" All those in favor --

TAYLOR: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll. Will the Chief Clerk please read the amendment.

CHIEF CLERK: "Page 2, line 3, Section 4, after the word 'chosen' add a new sentence, 'The petition shall contain signatures from at least two-thirds of the election districts of the State.'"

PRESIDENT EGAN: The question is, "Shall the proposed amendment be adopted by the Convention?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 38 - Armstrong, Barr, Boswell, Coghill, Collins, Cooper, Davis, Doogan, H. Fischer, Gray, Harris, Hellenthal, Hilscher, Johnson, Kilcher, Knight, Laws, Lee, Londborg, McLaughlin, McNealy, McLees, Marston, Nolan, Poulsen, Reader, R. Rivers, Robertson, Rosswoog, Smith, Stewart, Sundborg, Sweeney, VanderLeest, Walsh, White, Wien, Mr. President.

Nays: 13 - Awes, Buckalew, Emberg, Hermann, Hinckel, Hurley, King, Metcalf, Nordale, Peratrovich, Riley, V. Rivers, Taylor.

Absent: 4 - Cross, V. Fischer, McCutcheon, Nerland.)

CHIEF CLERK: 38 yeas, 13 nays and 4 absent.

.....

PRESIDENT EGAN: The Chief Clerk will read the proposed amendment.

CHIEF CLERK: "Page 1, Section 4, strike lines 13 to 18 inclusive, and lines 1 to 5 inclusive, on page 2 and substitute the following: 'Section 4. Prior to general circulation, an initiative petition containing a draft of the proposed law in bill form shall be signed by ten qualified electors as sponsors and have its sufficiency as to form certified by the attorney general. Denial of certification shall be reviewable by the court. If certified to be sufficient the initiative or referendum petition containing a summary of the subject matter prepared by the attorney general may then be circulated and must be signed by qualified electors equal to 15% of the number of votes cast for governor in the preceding general election at which the governor was chosen. The petition shall contain signatures from at least two-thirds of the election districts of the State. The petition may be filed with the attorney general who shall prepare a ballot title or proposition designating and summarizing the substance of the proposed law which proposition shall go upon the ballot as hereinafter provided.

PRESIDENT EGAN: Is there a second to the motion by Mr. Ralph Rivers?

BARR: I second the motion.

PRESIDENT EGAN: It has been moved and seconded, and the motion is open for discussion. Mr. Taylor.

TAYLOR: I have an amendment to offer. It is on the desk, an amendment changing "15" as a per cent in the unnumbered lines here, but it is the last word in the original proposal, changing the "15%" to "10%".

PRESIDENT EGAN: Your amendment is out of order at this time. This motion is before us. A new amendment is on the floor at this time.

TAYLOR: Amending the amendment though.

PRESIDENT EGAN: Amending the "15%" to "10%"? Mr. Taylor then offers an amendment to the amendment seeking to change to read "10%". Is there a second?

MARSTON: I second the motion.

SWEENEY: I object.

PRESIDENT EGAN: The question is on the amendment to the amendment seeking to make it ten per cent of the number of votes cast. Mrs. Sweeney.

SWEENEY: This matter was voted on in the Committee of the Whole last night, and in coming into the plenary session we adopted the oral report of the Committee. Now I don't feel that we can vote on that issue again any more than we can vote on the 19 or 20 years again.

PRESIDENT EGAN: Mrs. Sweeney, the Chair does not recall that we ever voted on ten per cent. But anything that happened in the Committee of the Whole session would just come to the plenary session as a recommendation. That is all. Mr. Sundborg

SUNDBORG: Mr. President, I believe Mrs. Sweeney's recollection is perhaps incorrect and that we did in plenary session amend from the figure eight to fifteen per cent. I don't believe we discussed that matter at all in Committee of the Whole.

PRESIDENT EGAN: No one could again offer the amendment and be in order to make it eight per cent, Mrs. Sweeney, but the Chair will have to rule that the particular amendment to the amendment offering ten per cent as the figure is in order. Mr. Taylor.

TAYLOR: I would like to speak briefly. I think this has been argued pro and con at the time that the original proposal was eight per cent. I think a number of the Committee have spoken against the fifteen per cent on the grounds that it would positively make it impossible or so difficult to circulate a petition for an initiative that it would render the law inoperative. Now as Mr. Londborg said, this morning he was reading some statistics in Missouri, and to initiate a law it only requires five percent. Now, of course, we realize that in Missouri it is much easier to get petitions circulated. The transportation problem is nothing. The people who circulate them can drive around different places and counties and get them signed. Here with the vast distances and the difficulties of transportation, it would be a little bit difficult. So that would leave us, if we adopt the ten per cent, still twice as high as the State of Missouri where transportation is very easy. So I think ten per cent would be a good compromise.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: I think if we read the Missouri Constitution carefully we will find that it is "five per cent of the qualified electors". We are only asking for a certain per cent of the governor's vote. There is a lot of difference because I don't think half or maybe a third of the people who can vote go out and vote. So actually five per cent in Missouri would be equivalent to maybe fifteen or twenty per cent here. Not only that, they also require five per cent of the electors in each of two-thirds of the voting precincts. We are saying that they can get all but fourteen, I believe it is, in one precinct and then just go out and spot enough so that they qualify in the two-thirds in the other.

PRESIDENT EGAN: Mrs. Sweeney.

SWEENEY: I don't go along with Mr. Taylor that this is going to be such a difficult task to get the fifteen per cent. Every petition will have at least ten sponsors, and if they know it is going to have to come from two-thirds of the legislative districts, those ten sponsors will in all likelihood come from ten different districts or maybe five. If you have 4,000 votes to get it requires each sponsor to secure 400 votes, and I believe it should be left at fifteen per cent.

MARSTON: The 19 states who have the initiative and referendum laws have averaged a little below eight per cent requirement. We went over this document and this figure with the experts here. It was in keeping with their thinking, and eight per cent is higher than the average of the 19 states who have this, and it is the right number. I want to warn the people here of one thing I see coming up. The person or persons who are issuing most of these amendments are people against initiative and referendum. I know that.

PRESIDENT EGAN: The Chair will have to hold from here on that the Chair will have to declare any one out of order if they allude to the motives behind any delegate.

MARSTON: Can I say who is for and against? It has been said on the floor.

PRESIDENT EGAN: This does not particularly refer to your statements, but the Chair is going to have to hold firm on allusions as to what might be the motives of other delegates on the floor.

MARSTON: Eight per cent is above the average required. If you want the initiative and referendum to work, if you want the people of Alaska to have a chance to initiate and recall laws, keep it at eight per cent. That is the right figure. Ten per cent would be plenty high. Fifteen per cent rules it out. It is not effective.

PRESIDENT EGAN: Mr. Harris.

HARRIS: I am both in agreement and in disagreement with Mr. Taylor's proposal. Ten per cent at the present time with our present voting population perhaps would be a little low. Also, I have an amendment on the desk, and if Mr. Taylor would adopt the latter part of my amendment, I think maybe we would

straighten this situation out. I would go ten per cent provided however that no petition shall have less than 5,000 signatures.

SUNDBORG: Question.

COOPER: I move the previous question.

PRESIDENT EGAN: Mr. Cooper moves the previous question.

BUCKALEW: I second the motion.

PRESIDENT EGAN: The question is, "Shall the previous question be ordered?" All those in favor of ordering the previous question will signify by saying "aye", all opposed "no". The ayes have it and the previous question has been ordered. The question is, "Shall Mr. Taylor's proposed amendment to the amendment be adopted by the Convention?"

JOHNSON: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 29 - Coghill, Collins, Davis, Doogan, Emberg, H. Fischer, Harris, Hermann, Hinckel, Hurley, Kilcher, King, Knight, Lee, McLaughlin, McNealy, McNees, Marston, Metcalf, Nordale, Peratrovich, Riley, R. Rivers, V. Rivers, Smith, Stewart, Sundborg, Taylor, VanderLeest.

Nays: 21 - Armstrong, Awes, Barr, Boswell, Buckalew, Cooper, Gray, Hellenthal, Johnson, Laws, Londborg, Nolan, Poulsen, Reader, Robertson, Rosswog, Sweeney, Walsh, White, Wien, Mr. President.

Absent: 5 - Cross, V. Fischer, Hilscher, McCutcheon, Nerland.)

MCNEALY: I would like to change my vote to "yes".

AWES: I just wanted to inquire as to if my vote was listed as "no". I said both.

CHIEF CLERK: Yes, it was.

PRESIDENT EGAN: Did Mr. Barr want to change his vote? BARR: No, I wanted to inquire about Miss Awes.

CHIEF CLERK: 29 yeas, 21 nays and 5 absent.

PRESIDENT EGAN: And so the "ayes" have it and the proposed amendment to the amendment has been adopted by the Convention.

.....

V. RIVERS: I have an amendment on the Secretary's desk on Section 4.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Section 4, amendment to R. Rivers amendment. change 'two-thirds of the election districts of the State' to 'one-half of the election districts of the State'."

PRESIDENT EGAN: What is your pleasure, Mr. Rivers?

V. RIVERS: I move and ask unanimous consent that we adopt that amendment.

PRESIDENT EGAN: Mr. Victor Rivers moves that the proposed amendment be adopted.

JOHNSON: I object.

V. RIVERS: I so move.

SMITH: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Victor Rivers.

V. RIVERS: Mr. President, it seems to me in view of the geographical distribution of the country and in view of the varied interests, economic and otherwise, that we would be defeating practically the purpose of the initiative and referendum if we require two-thirds of the districts to be represented on this petition. I think that half is a fair figure. It seems to me that if you were going to have an initiative or referendum on mining matters that in all probability it would be very hard to get votes for that initiative in two-thirds of the districts where their main interests perhaps would lie in fish, or fur, or timber. I put this amendment in in all sincerity, because I think it will make the initiative and referendum more workable and more fair if we allow it to go through.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I would like to say that we are talking not about precincts here, which at the present time there are something like 400 in the Territory, but about election districts under the constitution, and my understanding is that the Committee on Apportionment will bring in a proposal which will specify there will be 24 election districts. That would mean if we leave it the way it is that it would require at least one person's signature only from 16 of the districts to be among either ten or fifteen per cent as we may vote tomorrow on Mr. McNealy's motion to reconsider. The way Mr. Rivers would propose to change it, it would be necessary to get signatures from only 12 different districts, that is 12 signatures would be necessary, one from each district, making up a total of around 4,000 at the present time. I feel that as it is it is not at all cumbersome or difficult. If we had required that a large number had to be obtained from the districts, it might be, but all that is necessary is one lone signature from each district.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Fellow delegates, I hope that most of you are more aware of this issue that is getting more and more confused than I am. As I have shown on the last vote, and I want to be well aware that those among you who are in favor of the initiative in principle should see that any other attempt to emasculate the initiative as such should be voted down, and I see that Mr. Rivers' amendment is in favor of reinjecting some strength in the initiative. Since Section 3 has been amended to take more rights away from the people, since the first sentence will give the legislature the right to prescribe procedures, it is only fair that we reduce the "two-thirds" to one-half" because if those that are opposed now and in the future to the initiative will have their way, they will have the legislature immediately to go about and have strict procedures established, for instance that in two-thirds of all the election districts we will have to have the full 15 per cent of signatures prorated in each district. I think the legislature will try to do that, and if they try to do it, if it is unconstitutional, it will have to be the people who go to the court and prove that such an act by the legislature would be unconstitutional. I think the legislature would get away with it and I wouldn't blame them for trying. It is not true that it will take only eleven signatures, one signature from each of the other eleven districts, and the one that tries to "railroad" something, I have no doubt whatsoever that those elements opposed to the initiative in the legislature will circumscribe the necessary procedure where we would end up by having two thirds of all the election districts required to furnish 15 per cent of the signatures. They would not rest quiet before they have that. Consequently, they will make the initiative unworkable. Consequently I am in favor of Mr. Rivers' amendment that only half of the election districts be required to furnish signatures. I have no doubt that before long they will be required to furnish each 16

per cent of the signatures, and be well aware of that, that attempt will be made, and all in favor of the initiative in principle should vote in favor of Mr. Rivers' amendment.

PRESIDENT EGAN: The question is -- Mr. Victor Rivers.

V. RIVERS: I ask that the roll be called.

PRESIDENT EGAN: The question is, "Shall the proposed amendment offered by Mr. Victor Rivers be adopted by the Convention?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 26 - Awes, Coghill, Doogan, Emberg, H. Fischer, Gray, Harris, Hermann, Hilscher, Hinckel, Hurley, Kilcher, King, Knight, Lee, McNees, Marston, Nordale, Peratrovich, Riley, R. Rivers, V. Rivers, Smith, Stewart, Taylor, VanderLeest.

Nays: 26 - Armstrong, Barr, Boswell, Buckalew, Collins, Cooper, Davis, V. Fischer, Hellenthal, Johnson, Laws, Londborg, McLaughlin, McNealy, Metcalf, Nolan, Poulsen, Reader, Robertson, Rosswog, Sundborg, Sweeney, Walsh, White, Wien, Mr. President.

Absent: 3 - Cross, McCutcheon, Nerland.)

CHIEF CLERK: 26 yeas, 26 nays and 4 absent.

PRESIDENT EGAN: So the motion has failed of adoption. Mr. Buckalew.

BUCKALEW: Mr. President, I have an amendment to offer to Mr. Rivers' amendment.

PRESIDENT EGAN: The Chief Clerk will please read Mr. Buckalew's proposed amendment.

CHIEF CLERK: "Strike the entire sentence of R. Rivers' amendment beginning with 'The petition shall, etc.,' and substitute, 'The petition shall contain signatures of qualified electors resident in at least two-thirds of the election districts of the State.'"

BUCKALEW: I move its adoption.

PRESIDENT EGAN: Mr. Buckalew moves the adoption of the proposed amendment.

AWES: I second it.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Buckalew be adopted by the Convention?" Will the Chief Clerk please read the amendment once more.

CHIEF CLERK: This is an amendment to Mr. Rivers' amendment on Section 4. "Strike the entire sentence beginning with 'The petition shall, etc.,' and substitute 'The petition shall contain signatures of qualified electors resident in at least two thirds of the election districts of the State.'"

BUCKALEW: I will ask unanimous consent. The only reason I offered this amendment is the way it is drawn, it is ambiguous. What they meant, in the preceding sentence they refer to qualified electors and then they get down and refer to only signatures and what they mean is qualified electors resident in the districts, and I think it clears the ambiguity.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Point of information. That affects just the one sentence? I think it is a good improvement.

PRESIDENT EGAN: Unanimous consent has been asked. Is there objection? Hearing no objection it is ordered adopted.

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ALASKA CONSTITUTIONAL CONVENTION
December 18, 1955
FORTY-FIRST DAY

.....

DAVIS: Mr. President, there is one thing hanging fire that will prevent any final work in connection with this and that is Mr. McNealy's motion for reconsideration. I think we ought to take that up before noon recess. It won't affect what the Committee is going to try to do.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: I move and ask unanimous consent that my reconsideration of last Saturday be voted upon at this time.

PRESIDENT EGAN: Mr. McNealy moves that his reconsideration be acted upon at this time. The motion in itself opens the proposed amendment to debate. Mr. Riley.

RILEY: Just to be consistent with the rule. I would ask unanimous consent that it may be allowed. It has been encountered before, as you recall.

MCLAUGHLIN: Could the question be fully stated prior to debate so we will know?

PRESIDENT EGAN: Do our rules say it is not debatable, Mr. Riley?

RILEY: It has to be under the suspension of the rules.

PRESIDENT EGAN: Then if there is no objection, it may be open to debate. Mr. McLaughlin?

MCLAUGHLIN: Mr. President, may the full question be stated so the delegates will know what it is about?

PRESIDENT EGAN: Would the Chief Clerk please read the proposed amendment?

CHIEF CLERK: I didn't bring it down but I think it was the one changing fifteen per cent to ten.

PRESIDENT EGAN: The proposed amendment that changed fifteen per cent of the voters to read "ten per cent of the number of votes."

CHIEF CLERK: No, it was to change "eight" to "fifteen".

PRESIDENT EGAN: No, it was changing "fifteen" to "ten".

TAYLOR: It was changed to "fifteen" and upon my amendment which carried it was reduced to "ten per cent". The question now is whether the ten per cent is going to remain or whether it goes back up to fifteen per cent. I think we have had sufficient argument on this. I think I have pointed out several times, and others too, that due to our geographical circumstances that fifteen per cent would possibly be an undue burden upon the people who wanted to launch an initiative proposition and that ten per cent would be more in line with the proportion of the voters in the other states, some of them as low as five per cent and a great many eight per cent, and the fact that eight per cent seems to be the prevailing percentage in a great many of the states, that to practically double that would place, as I say, an undue burden upon the voters, and I feel that since the majority of the Convention yesterday felt that ten per cent was the proper amount, I

believe that we should retain that figure.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: I won't take up time in debate on this. When we had it at fifteen per cent it removed largely any objections that I had, and several others that I talked to, it removed our objection to the initiative system because we felt it would not be misused. I think possibly I am going to vote to retain the fifteen per cent but possibly somewhere between ten and fifteen per cent would be common ground. I feel that ten per cent, however, is too low, and that the bill then, and with one or two other proposed amendments as to the dates of holding election, would make this one of the finest bills in the Convention. If we cut the requirement down too low it will not do us any particular good.

PRESIDENT EGAN: Mr. Marston.

MARSTON: I think if you hold that to where Mr. McNealy moves it, it removes the possibility of the law ever functioning. It is too high. Nineteen states have it averaged under eight per cent. We had one of our main parts taken out by the delegate on my left here and it threw it back to protect the legislature. The lady will have to stand responsible to the people for that and answer that question, why they took it away from the people. Now when you go into a bill before the legislature, and its vital corporations have a lobby which goes in and protects those corporations, the people do not have a lobby and cannot go down and work and defend their bills. I am for holding that at not one point above ten per cent. If you do, the law is practically unworkable, and I am on the side of the people and I am going to stay on the side of the people, and they are not going to take the laws away from the people too far. This initiative and referendum is important. It is a wholesome law, and the people should have it. And the amendments shoved in here have surprised me, and I am surprised at the people that would do that, attack a law of the people as viciously as they have and made it so difficult to work. I think the law should be workable. We should take up the pattern after the nineteen states who have adopted them. I believe that men of good will toward the initiative and referendum by the people will keep that at ten per cent because they have no chance, the people have no chance to go down and lobby. They have not the money or the ability to do it; while big corporations can and others can go down and lobby and take care of themselves. I hope I never have to talk on this again.

BUACKALEW: I was going to suggest (this is no reflection on Colonel Marston) I was going to suggest that we get a record, "Battle Hymn of the Republic and we'll play it at this time. According to Delegate Marston anybody who votes for fifteen per cent are against the people. I am going to vote for fifteen per cent and I think I am protecting the people. I think I am protecting the people from a costly machine that is going to bog down and perhaps might even destroy the State of Alaska. Sometimes I think some of the delegates think maybe we ought to abolish the legislature and do everything by initiative. That would be one way to do it, and it might work. I am going to vote for fifteen per cent.

PRESIDENT EGAN: Mr. White.

WHITE: I was going to talk on much the same vein, so I'll be brief. I wish to point out that the delegates who supported most of these motions, amendments to the proposed article, do so because they think they are protecting the interests of the people, and I would like further to say that the motion made by the lady at Delegate Marston's left was concurred in by the majority of the Convention. I am one of the majority and I'll support it along with her.

PRESIDENT EGAN: Mr. Boswell.

BOSWELL: It seems to me one feature we have not considered in this percentage deal is the number that it is the percentage of. We are comparing a number of states that perhaps have several million voters. One per cent of that vote would be equivalent to fifteen per cent of our Alaskan vote. It does not seem to me that the argument holds just because nineteen other states' average is eight per cent that that is a valid reason for setting our figure at that percentage, because we are dealing with an entirely different figure. Fifteen per

cent when Alaska gets several million people would certainly not be a good figure, but until we reach that time and I would think we should hold it at fifteen per cent, and when we have another Constitutional Convention if Alaska has three or four million people, then we would naturally lower it, but until that time I think it should remain somewhere between ten and fifteen per cent.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, along that line I might point out that the states when they adopted their initiative and referendum in their constitutions many of them, seventeen states had less population than Alaska has at this time. We have seen no drastic abuse with the safeguards we have in this act. I also want to point out that regardless of the thinness of our population, now requiring signatures from two-thirds of the districts would require that our people at a minimum cover an area of approximately 300,000 square miles, which is somewhat about three times of the area of the average state, which is in the neighborhood of 80,000 square miles. We have placed handicaps here in the matter of getting signatures so great that when the fifteen or even a lesser figure, I feel we have robbed the initiative and referendum of a good deal of its usefulness. I think ten should be an absolute maximum, and I feel also that it could well go below that and not be abused but a useful instrument in the hands of the voting populace.

PRESIDENT EGAN: Mr. Cooper.

COOPER: I do not concur that ten per cent is an absolute maximum. The percentage of people initiating an initiative or referendum on the fifteen per cent basis, based on the last general election, would be 2.12 per cent of the total population in Alaska. That is based on a figure of estimated population of 180,000. I have those figures from Mr. George Rogers who has served here as a consultant. The ten per cent would mean that seven-tenths of one per cent of the people, the total population of Alaska, could bring about legislation through an initiative or referendum, and I believe that the small percentage of people that could affect the over-all population should be at least 2.12 per cent, the fifteen per cent required.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: If there is no further discussion, the question is, "Shall fifteen per cent be changed to read ten per cent?"

TAYLOR: I think you put that wrong. The vote passed and put it to ten per cent. Now Mr. McNealy is trying to get it changed.

PRESIDENT EGAN: That brings us back to the original question, Mr. Taylor. The question is to the delegates, Shall we change 'fifteen per cent' to read 'ten per cent'?" Mr. Harris.

HARRIS: Mr. President, I request a roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 27 - Coghill, Collins, Davis, Doogan, Emberg, Harris, Hermann, Hilscher, Hinckel, Hurley, Kilcher, King, Knight, Lee, McLaughlin, McNees, Marston, Metcalf, Nordale, Peratrovich, Riley, R. Rivers, V. Rivers, Smith, Stewart, Taylor, VanderLeest.

Nays: 23 - Armstrong, Awes, Barr, Boswell, Buckalew, Cooper, Cross, V. Fischer, Gray, Johnson, Laws, Londborg, McNealy, Nolan, Poulsen, Reader, Robertson, Rosswog, Sweeney, Walsh, White, Wien, Mr. President.

Absent: 5 - H. Fischer, Hellenthal, McCutcheon, Nerland, Sundborg.)

CHIEF CLERK: 27 yeas, 23 nays and 5 absent.

PRESIDENT EGAN: So the motion has carried and the amendment is ordered adopted. Are there other amendments?

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ALASKA CONSTITUTIONAL CONVENTION
January 2, 1956
FORTY-THIRD DAY

.....

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment. The amendment was not voted upon, is that right?

LONDBORG: It was not voted upon, I had asked that it be withdrawn.

CHIEF CLERK: This was to Section 4, is that right?

LONDBORG: I believe so. It is in the Ralph Rivers amendment. I think you will find it better on page 2, line 8 of the changed copy, although I can't legally attach it to that.

CHIEF CLERK: "After the word 'signatures' in the next to the last sentence of the Ralph Rivers amendment, delete the rest of the sentence and substitute the following: 'from each of two-thirds of the election districts of the State with signatures equalling not less than 3% of the number of voters casting ballots for governor in each such district in the preceding general election at which a governor was elected'."

PRESIDENT EGAN: What is your pleasure, Mr. Londborg?

LONDBORG: I move the adoption of the amendment.

JOHNSON: I second the motion.

PRESIDENT EGAN: The question is open for discussion and the Chief Clerk might read the proposed amendment once more.

CHIEF CLERK: You can find it on page 5 of the journal of the 42nd day, next to the last paragraph, it is the bottom of the page.

PRESIDENT EGAN: Is there discussion of the proposed amendment? Mr. Londborg.

LONDBORG: The reason for this proposed amendment is to make it a little more clear that there should be at least more than one signature in each of these two-thirds of the districts. As the proposal now reads, they are to obtain signatures in at least two-thirds of the election districts of the state. Now, as I take it, that would mean that a person wanting to start an initiative, if he would get ten per cent of the total votes cast in one city, then he could send out or go out, either way, and just get one signature in each of two-thirds remaining districts and that would make the petition valid. Probably he would get two or three to play safe, but he would only have to get one. He would get a signature in each of the two-thirds districts and I believe that when we have such an important thing as an initiative and if the legislature has failed to the great extent that initiative is necessary, then that initiative should be a vital interest over all the state and not just in one area, and I believe that that interest will be best shown if we have at least three per cent of the voters in each of those two-thirds districts signing. Now three per cent is not very high. I put that purposely low so that it would not make it hard to get the signatures in any one of those areas, but at least it should be more than one signature in two-thirds of the election districts. That is not going to make the initiative, I don't believe, any harder to work but it will at least show and prove that that proposed bill or that

proposed law is gaining interest over the whole state, not just a local affair that the ten per cent would indicate if they were taken from one city or one locality and just go out and get one signature to comply with our initiative.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I am going to support the amendment because I think it makes good sense.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: I am going to vote against the amendment because I don't think it makes good sense. The reasoning behind it sounds perfectly logical but I call attention to the fact that in this proposal that we have so far, we have at least three types of initiative which are not possible. We have put safeguards on it as far as the people are concerned so that the Territorial legislature will not be faced with a law they do not want. I think we also should remember that the initiative petition is just the beginning, that it will still be referred to the people for a vote throughout the Territory of Alaska, and I am sure by that time there will be sufficient discussion of it so it will be taken up, but I have the feeling we have gone to too large an extent in legislating this matter of initiative and referendum in the first place. We are continually getting into numbers. We are getting into things that are subject to critical glances from the people that are trying to get the job done, and I think generally that the less restrictions that we put on this thing the better off we are going to be, and I don't think the amendment will serve the purpose that the proposer thinks it will.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. Chairman, I believe I agree with Mr. Hurley's position on this. Even though the signatures originate in one area I want you to note that in Section 5 it states, "Neither the initiative nor referendum may be used as a means of making or defeating appropriations of public funds or earmarking of revenues nor for local or special legislation." Well, if there is no special local interest in the legislation, even though the signatures should come from a local area, if it is an overall general legislation, it would be my assumption that they would probably try to get as widespread number of signatures as possible to get as widespread interest as possible. I see no reason to impose some other percentage figure now. I don't see we gain a thing by it. I think it is an extra handicap and does not add to but detracts from the initiative and referendum as we now have it.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: I would like to close this short debate. In answer to the last objection, I don't believe Section 5 is a safeguard at all. It just merely says that they may not be used for means of earmarking revenues, etc., but there still may be a law that one locality might particularly want, maybe it isn't pertaining to them, but it may pertain to the whole state, but the state may not be particularly interested in it, and the initiative may spring out of a populous area and they could get the ten per cent in just an overnight campaign and get the one signature out around, and then in answer to the former objection where we should not make it hard or things of that nature, let us remember that the initiative is not enacting laws by an apportionment representation. We are enacting laws by popular vote, and we have set up a machinery in the legislature to make our laws and they are sitting representing the various areas of the country, but when it comes to a popular vote, then you will find that it is where the people are that is going to count, and I think as a safeguard, and again I say it is not a high safeguard but very low, if you get three per cent of the qualified voters in these two-thirds districts you will have a good indication of whether it is of statewide interest.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Londborg be adopted by the Convention?"

LONDBORG: Mr. President, I request a roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll on the proposed amendment.

(The Chief Clerk called the roll with the following result:

Yeas: 17 - Barr, Boswell, Cross, Hinckel, Johnson, Kilcher, Laws, Londborg, McNealy, Metcalf, Nerland, Poulsen, Reader, R. Rivers, Stewart, Sweeney, Walsh.

Nays: 31 - Barr, Coghill, Collins, Cooper, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hurley, King, Knight, Lee, McCutcheon, McLaughlin, McNees, Marston, Nordale, Riley, V. Rivers, Rosswog, Smith, Sundborg, VanderLeest, White, Wien, Mr. President.

Absent: 7 - Armstrong, Buckalew, Davis, Nolan, Peratrovich, Robertson, Taylor.)

CHIEF CLERK: 17 yeas, 31 nays and 7 absent.

PRESIDENT EGAN: The "nays" have it, and the proposed amendment has failed of adoption.

Constitutional Convention
Committee Proposal/3
December 9, 1955

REPORT OF THE COMMITTEE ON DIRECT LEGISLATION, AMENDMENT AND REVISION

Hon. William A. Egan, President, Alaska Constitutional Convention

Dear Mr. President:

Your Committee on Direct Legislation, Amendment and Revision presents for your consideration and adoption its proposed Articles on Initiative, Referendum and Recall; and Amendment and Revision. The Committee proposal, while incorporating many of the ideas contained in Convention Proposals No. 29 and 34, and in other drafts submitted to the Committee, is a Committee substitute. A section by section commentary of the subject matter has been prepared by your Committee for the use of the Delegates to the Convention.

Respectfully submitted,

E. B. Collins, Chairman

Jack Hinckel, M. R. Marston, Irwin L. Metcalf, Warren A. Taylor, W. O. Smith, Leonard King,

COMMITTEE PROPOSAL NO. 3
Introduced by Committee on Direct Legislation

INITIATIVE, REFERENDUM AND RECALL
AMENDMENT AND REVISION

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution:

ARTICLE ON DIRECT LEGISLATION

Initiative

Section 1. The people reserve the power by petition to propose laws and to enact or reject such laws at the polls.

Referendum

Section 2. The people reserve the power to require, by petition, that laws enacted by the legislature be submitted to the voters for approval or rejection.

Procedure

Section 3. The legislature shall prescribe the procedures to be followed in the exercise of the powers of initiative and referendum, subject to the specific authority reserved herein. No law shall be enacted to hamper, restrict or impair the exercise of powers reserved herein by the people.

Petitions, ballot title, election, vote required

Section 4. Prior to general circulation, an initiative petition shall be signed by ten qualified vote electors as sponsors and have the constitutionality certified by the attorney general. Certification shall be reviewable by the courts. A valid initiative or referendum petition shall be signed by qualified electors equal to eight percent of the number of votes cast for Governor in the preceding general election at which the Governor was chosen. Petitions shall be filed with the Attorney General, who shall prepare a ballot title, and the adequacy of the ballot title shall be reviewable by the courts. Initiative petitions may be filed at any time. Referendum petitions shall be filed within 90 days after adjournment of the Legislative session at which the measure was passed. Laws proposed by the initiative shall be submitted to the voters by ballot title at an election not later than 180 days after the adjournment of the legislative session following the filing of the petition, unless the legislature enacts the measure initiated during the session. The question on referendum

shall be submitted to the voters by ballot title not later than 120 days after the filing of a petition against the measure. A majority of the votes cast is necessary for the adoption of an initiated law, or the defeat of a measure referred. No law passed by the initiative may be vetoed by the Governor nor amended or repealed by the legislature for a period of three years.

Restrictions

Section 5. Neither the initiative nor referendum may be used as a means of making or defeating appropriations of public funds or earmarking of revenues nor for local or special legislation. Emergency acts are not subject to referendum.

Recall

Section 6. Every elected public official in the State, except judicial officers, is subject to recall by the voters of the State or subdivision from which elected. Grounds for recall are malfeasance, misfeasance, nonfeasance, or conviction of a crime involving moral turpitude. The legislature shall prescribe the recall procedures.

Methods

Section 1. Revisions of or amendments to this constitution may be adopted by two succeeding legislatures, or be proposed by constitutional convention or by the legislature.

Proposals by Legislature

Section 2. Any legislature may by a two-thirds vote of each house propose amendments to the Constitution. Proposed amendments may be submitted by ballot title prepared by the Attorney General to the voters at the next general election. If a majority of the votes tallied on the question favor the adoption of the amendment, the amendment is adopted. Proposed amendments may be submitted to the next legislature not less than two years after being proposed. If the second legislature by a two-thirds vote of each house favors the adoption of the amendment, the amendment is adopted.

Constitutional Convention

Section 3. The legislature may provide for Constitutional Conventions. If any ten-year period elapses during which the legislature has not called a convention, the Governor shall certify the question, "Shall there be a Constitutional Convention?" The question shall be submitted at the first general election following the expiration of such period. If a majority of the ballots cast upon the question are in the affirmative, delegates to the convention shall be chosen at the next regular election unless the legislature provides for the election of delegates at a special election. Unless the legislature provides otherwise, the law providing for the Alaska Constitutional Convention of 1955 shall be followed insofar as possible relating to number of members, districts, convention powers, election and certification of delegates, submission and ratification of revisions and ordinances, and other applicable provisions. The appropriation provisions of the law shall be self-executing and shall constitute a first claim on the general fund of the State Treasury. The legislature may provide additional appropriations.

Commentary on the Article of Initiative, Referendum and Recall

(Sec. 1 Initiative)

The initiative is the power of the people to initiate laws themselves and provide for a referendum on such laws without action by the legislature. This section reserves the authority of the people to initiate laws by petition and vote of the people directly.

(Sec. 2 Referendum)

This section permits the people to require that laws by the legislature be referred to a vote of the people before taking effect. This power is known as the Referendum.

(Sec. 3 Procedure)

Many constitutions, in the states which make provision for the use of the initiative and referendum, contain a great degree of detail relating to the exercise of the initiative and referendum. This section permits the legislature to provide by law for some details, but provides that the legislature may not restrict the

substantive rights guaranteed in Section 4, nor to require procedures more difficult than provided in Section 4.

(Sec. 4 Petition. Ballot title; election; vote required)

This section sets forth certain substantive provisions and minimum procedures affecting the exercise of the initiative and referendum. To prevent waste of money on elections for laws that are unconstitutional, sponsors are required to submit a proposed law to the attorney general for certification of its constitutionality, subject to court review, prior to the circulation of petitions. The provision is intended to stop, at the initial stage, the circulation of petitions for laws that would, even if approved by the voters, result in expensive court action. If the legislature adopts a measure that is the subject of the initiative, the measure does not have to be submitted to the people. Additional details of procedure may be provided by the legislature subject to the limits imposed by this section. The procedure outlined has the advantage of brevity while ensuring the substantive rights to the people.

(Sec. 5 Restrictions)

The exercise of the initiative is a fundamental right of the people, but special interest groups should not be permitted to unduly hamper the operation of government. The restrictions in Section 5 will prevent the abuses and problems that have sometimes arisen in the states permitting initiative and referendum. Neither the initiative nor referendum can be used with regard to emergency legislation, appropriations, or measures earmarking taxes and other revenues, or for special or local laws that are of interest to only one group of people or people in only one portion of the state.

(Sec. 6 Recall)

The right of the people to remove elected officials is preserved. The legislature is directed to provide the methods to be used.

Commentary on the Article on Amendment and Revision

(Sec. 1 Methods)

This section outlines three methods by which the constitution may be amended or revised. (1) By action of two separate legislatures directly; by action of one legislature and referral to the people; and (3) by constitutional convention.

(Sec. 2 Proposals by Legislature)

The legislature, by a two-thirds vote, may submit a proposed amendment to a vote at a general election. Use of general election is intended to insure a substantial vote on the question. An alternate method is provided which permits the legislature, by a two-thirds vote, to submit a proposed amendment to the next legislature, but not to a succeeding session of the same legislature. If the second legislature adopts the amendment by a two-thirds vote it becomes part of the constitution without referring it to a vote of the people.

(Sec. 3 Constitutional Convention)

The legislature is empowered to call a convention, but if the legislature does not provide for a convention each ten years, the question is submitted to the people at the following general election. The legislature is authorized to prescribe the procedures and powers of a convention; but if it does not make such provisions, the law calling this convention will be followed insofar as practicable.

97BILL: Billboards (Passed 11/3/98, 160,922 to 61,401)

Election District	Number of Signatures Gathered in District	Percent of 1996 Votes	Minimum Number of Additional Signatures Needed to Reach 7 Percent (as HB31 requires)
1	31	0.5	
2	103	1.4	
3	631	7.9	
4	409	5.4	122
5	163	2.7	261
6	101	1.9	
7	1095	14.9	
8	540	8.4	
9	346	5.9	60
10	1162	15.8	
11	1030	17.3	
12	1017	16.4	
13	1570	21.9	
14	553	10.8	
15	1043	20.2	
16	587	15.9	
17	1011	16.7	
18	1640	19.9	
19	1069	17.4	
20	1032	17	
21	1002	17.5	
22	1143	15.5	
23	454	12.2	
24	1072	16.7	
25	995	14.9	
26	940	14.2	
27	1181	15.1	
28	851	11.1	
29	419	5.5	113
30	147	2.7	242
31	150	2.7	246
32	58	1.9	
33	148	2.1	
34	98	1.6	
35	297	5.2	106
36	124	2.4	
37	113	2.4	
38	126	2.6	
39	112	2.2	
40	182	5.9	33

Minimum additional Signatures needed

to reach 7% in 3/4s of Districts (as required by HB31):

1183 in 8 districts

Total signatures required statewide (10%): 24,521
 Total qualified: 24,746
 Total unqualified: 7,233
 Total potential signatures: 38,934

(Shaded numbers indicate Districts which met the 7% requirement of HB31)

97ENGL: English as Official Language (Passed 11/3/98, 153,107 to 70,085)

Election District	Number of Signatures Gathered in District	Percent of 1996 Votes	Minimum Number of Additional Signatures Needed to Reach 7 Percent (as HB31 requires)
1	24	0.4	
2	27	0.4	
3	36	0.5	
4	36	0.5	
5	25	0.4	
6	115	2.2	
7	504	6.9	9
8	855	13.2	
9	588	10.1	
10	1090	14.9	
11	1003	16.9	
12	980	15.8	
13	1013	14.2	
14	645	12.6	
15	1077	20.9	
16	1099	29.7	
17	1223	20.3	
18	1096	13.3	
19	1163	18.9	
20	1142	18.8	
21	1027	17.9	
22	995	13.5	
23	614	16.5	
24	871	13.6	
25	1006	15	
26	1033	15.6	
27	1053	13.5	
28	998	12.9	
29	407	5.4	
30	393	7.1	
31	425	7.5	
32	284	5.8	57
33	465	6.5	38
34	312	5.1	114
35	271	4.7	132
36	136	2.6	
37	124	2.6	206
38	87	1.8	
39	152	3	
40	125	4.1	90

Minimum additional Signatures needed to reach 7% in 3/4s of Districts (as required by HB31):

646 in 7 districts

Total signatures required statewide (10%): 24,521
 Total qualified: 24,525
 Total unqualified: 7,517
 Total potential signatures: 36,450

(Shaded numbers indicate Districts which met the 7% requirement of HB31)

97PSDM: Medical Marijuana (Passed 11/3/98, 131,586 to 92,701)

Election District	Number of Signatures Gathered in District	Percent of 1996 Votes	Minimum Number of Additional Signatures Needed to Reach 7 Percent (as HB31 requires)
1	34	0.5	
2	50	0.7	
3	798	10.1	
4	823	10.9	
5	100	1.7	
6	520	9.97	
7	314	4.3	199
8	385	5.9	67
9	254	4.4	152
10	957	13.1	
11	1070	17.8	
12	1046	16.8	
13	1136	15.9	
14	685	13.3	
15	1147	22.3	
16	1369	37	
17	1327	21.9	
18	1132	13.8	
19	1238	20.2	
20	1068	17.6	
21	1130	19.7	
22	972	13.2	
23	608	16.3	
24	932	14.5	
25	974	14.6	
26	895	13.5	
27	940	12	
28	1070	13.9	
29	280	3.7	252
30	174	3.1	
31	180	3.2	
32	73	1.5	
33	166	2.3	
34	108	1.8	
35	236	4.1	167
36	214	4.1	150
37	186	3.9	144
38	162	3.3	
39	161	3.2	
40	173	5.6	42

Minimum additional Signatures needed to reach 7% in 3/4s of Districts (as required by HB31):

1173 in 8 districts

Total signatures required statewide (10%): 24,521
 Total qualified: 25,090
 Total unqualified: 7,285
 Total potential signatures: 35,190

(Shaded numbers indicate Districts which met the 7% requirement of HB31)

97TERM: Term Limits Pledge (Passed 11/3/98, 109,613 to 108,731)

Election District	Number of Signatures Gathered In District	Percent of 1996 Votes	Minimum Number of Additional Signatures Needed to Reach 7 Percent (as HB31 requires)
1	28	0.4	
2	52	0.7	
3	678	8.6	
4	746	9.8	
5	91	1.5	
6	540	10.4	
7	421	5.7	92
8	508	7.9	
9	808	13.9	
10	958	13.1	
11	979	16.5	
12	935	15	
13	966	13.5	
14	745	14.5	
15	934	18.1	
16	1154	31.2	
17	1193	19.7	
18	972	11.8	
19	1105	17.9	
20	954	15.7	
21	1098	19.2	
22	985	13.4	
23	677	18.2	
24	1053	16.4	
25	1059	15.8	
26	870	13.2	
27	963	12.3	
28	1006	13.1	
29	302	3.9	230
30	193	3.5	
31	205	3.6	
32	151	3.1	
33	198	2.8	
34	153	2.5	
35	227	3.9	
36	202	3.9	176
37	180	3.8	162
38	146	2.9	
39	217	4.3	139
40	145	4.7	70

Minimum additional Signatures needed to reach 7% in 3/4s of Districts (as required by HB31):

869 in 6 districts

Total signatures required statewide (10%): 24,521
 Total qualified: 24,798
 Total unqualified: 5,976
 Total potential signatures: 33,498

(Shaded numbers indicate Districts which met the 7% requirement of HB31)

97TRAP: Snares in Trapping Wolves (Failed 11/3/98, 83,224 to 140,049)

Election District	Number of Signatures Gathered in District	Percent of 1996 Votes	Minimum Number of Additional Signatures Needed to Reach 7 Percent (as HB31 requires)
1	48	0.7	
2	475	6.5	36
3	1354	17.1	
4	1266	16.7	
5	224	3.7	200
6	144	2.8	
7	439	6	74
8	419	6.5	33
9	243	4.2	163
10	1027	14	
11	1096	18.4	
12	1027	16.5	
13	1440	20.1	
14	821	15.9	
15	1432	27.7	
16	1403	37.9	
17	1253	20.7	
18	1291	15.7	
19	1227	20	
20	1182	19.5	
21	1140	19.9	
22	1106	15	
23	641	17.2	
24	977	15.2	
25	863	12.9	
26	765	11.6	
27	692	8.8	
28	919	11.9	
29	481	6.3	51
30	253	4.6	136
31	251	4.4	145
32	121	2.5	
33	214	3	
34	180	3	
35	205	3.6	
36	124	2.4	
37	140	3	
38	113	2.3	
39	113	2.2	
40	111	3.6	104

Minimum additional Signatures needed to reach 7% in 3/4s of Districts (as required by HB31):

942 in 9 districts

Total signatures required statewide (10%): 24,521
 Total qualified: 27,224
 Total unqualified: 11,196
 Total potential signatures: 44,190

(Shaded numbers indicate Districts which met the 7% requirement of HB31)

99HEMP: Re-Legalize Hemp (Failed 11/7/00, 114,321 to 165,315)

Election District	Number of Signatures Gathered in District	Percent of 1998 Votes	Minimum Number of Additional Signatures Needed to Reach 7 Percent (as HB31 requires)
1	45	0.8	
2	56	0.95	
3	230	3.2	
4	181	2.7	
5	80	1.6	
6	331	8.2	
7	422	6.2	57
8	447	7.6	
9	281	5.4	
10	805	12.8	
11	1069	20.2	
12	900	15.5	
13	1276	20.2	
14	647	19.9	
15	1352	31.5	
16	1426	45	
17	1187	22.3	
18	1286	16.5	
19	1202	21.6	
20	1051	19.7	
21	1140	23.7	
22	1106	12	
23	641	21	
24	977	13.7	
25	863	14.7	
26	765	15.7	
27	692	18	
28	919	17.7	
29	481	3.8	
30	253	4.6	119
31	251	5.1	91
32	121	4.1	
33	214	5.2	115
34	180	4.4	
35	205	4.3	
36	124	6	46
37	140	7	
38	113	4.9	95
39	113	4.4	121
40	111	7.6	

Minimum additional Signatures needed to reach 7% in 3/4s of Districts (as required by HB31):

644 in 7 districts

Total signatures required statewide (10%): 22,716
 Total qualified: 25,200
 Total unqualified: 12,474
 Total potential signatures: 41,850

(Shaded numbers indicate Districts which met the 7% requirement of HB31)

99PTAR: Property Tax & Assessment Reform (Failed 11/7/00, 80,276 to 193,760)

Election District	Number of Signatures Gathered in District	Percent of 1998 Votes	Minimum Number of Additional Signatures Needed to Reach 7 Percent (as HB31 requires)
1	29	0.6	
2	34	0.6	
3	46	0.63	
4	47	0.7	
5	57	1.2	
6	117	2.9	
7	619	9.1	
8	590	9.97	
9	342	6.5	24
10	1304	18.8	
11	1192	22.5	
12	1102	19	
13	960	15.2	
14	691	21.2	
15	861	20.1	
16	971	30.7	
17	1427	26.8	
18	1449	18.5	
19	1365	24.5	
20	953	17.9	
21	1074	21.6	
22	1230	18.5	
23	684	25.4	
24	1162	20.5	
25	1361	22.3	
26	1376	21.5	
27	2144	27.2	
28	1587	20.4	
29	310	4.5	43
30	290	6.1	26
31	303	6.5	66
32	188	5.2	43
33	405	6.3	
34	231	5	
35	297	5.9	55
36	206	4.3	
37	192	4.7	
38	261	5.9	48
39	237	5	93
40	162	6.3	17

Minimum additional Signatures needed to reach 7% in 3/4s of Districts (as required by HB31):

415 in 9 districts

Total signatures required statewide (10%): 22,716
 Total qualified: 27,859
 Total unqualified: 9,585
 Total potential signatures: 38,430

(Shaded numbers indicate Districts which met the 7% requirement of HB31)

01PRVT: Alternative Voting Electoral System (Failed 8/27/02, 39,666 to 69,683)

Election District	Number of Signatures Gathered in District	Percent of 2000 Votes	Minimum Number of Additional Signatures Needed to Reach 7 Percent (as HB31 requires)
1	34	0.5	
2	44	0.6	
3	148	1.9	
4	135	1.8	
5	64	1	
6	85	1.4	
7	821	9.8	
8	827	10.99	
9	938	14.4	
10	1013	11.9	
11	925	14.2	
12	845	11.9	
13	796	10.7	
14	605	12	
15	787	14.96	
16	1005	24.5	
17	1125	15.8	
18	1208	12.7	
19	1088	15.1	
20	853	13.4	
21	995	16.5	
22	947	11.8	
23	522	12.4	
24	843	11.2	
25	754	9.7	
26	928	11.7	
27	1148	11.5	
28	1089	10.4	
29	349	4.2	235
30	211	3.9	172
31	255	4.8	120
32	140	2.7	
33	235	2.9	329
34	162	2.4	
35	216	3.6	206
36	181	3.4	190
37	145	2.97	198
38	109	2.3	
39	121	2.4	
40	145	4.7	73

Minimum additional Signatures needed to reach 7% in 3/4s of Districts (as required by HB31):

1523 in 8 districts

Total signatures required statewide (10%): 22,716
 Total qualified: 22,841
 Total unqualified: 7,865
 Total potential signatures: 35,046

(Shaded numbers indicate Districts which met the 7% requirement of HB31)

01GSLN: Gasline (Passed 11/5/02, 138,353 to 84,682)

Election District	Number of Signatures Gathered in District	Percent of 2000 Votes	Minimum Number of Additional Signatures Needed to Reach 7 Percent (as HB31 requires)
1	286	4.4	
2	124	1.7	
3	395	5.1	149
4	318	4.3	
5	136	2.2	
6	188	3.2	
7	580	6.96	4
8	509	6.8	18
9	561	8.6	
10	1122	13.2	
11	1160	17.8	
12	1074	15.1	
13	1113	14.9	
14	809	16.1	
15	1089	20.7	
16	1350	32.9	
17	1309	18.3	
18	1250	13.2	
19	1295	17.9	
20	1103	17.3	
21	1363	22.6	
22	1440	17.9	
23	798	18.9	
24	1231	16.3	
25	1188	15.3	
26	902	11.4	
27	929	9.3	
28	874	8.4	
29	377	4.5	
30	269	4.9	
31	310	5.8	65
32	193	3.7	
33	361	4.5	
34	211	3.1	
35	790	13.1	
36	354	6.7	17
37	443	9.1	
38	316	6.5	22
39	593	11.96	
40	269	8.7	

Minimum additional Signatures needed to reach 7% in 3/4s of Districts (as required by HB31):

275 in 6 districts

Total signatures required statewide (10%): 28,783
 Total qualified: 28,982
 Total unqualified: 11,754
 Total potential signatures: 50,472

(Shaded numbers indicate Districts which met the 7% requirement of HB31)

01CHGE: Legislative Move (Failed 11/5/02, 153,127 to 74,650)

Election District	Number of Signatures Gathered in District	Percent of 2000 Votes	Minimum Number of Additional Signatures Needed to Reach 7 Percent (as HB31 requires)
1	27	0.4	
2	25	0.3	
3	23	0.3	
4	16	0.2	
5	25	0.4	
6	139	2.4	
7	431	5.2	153
8	503	6.7	24
9	491	7.5	
10	1293	15.3	
11	1119	17.2	
12	1156	16.3	
13	1121	15.1	
14	698	13.8	
15	985	18.7	
16	1172	28.5	
17	1318	18.5	
18	1364	14.4	
19	1333	18.5	
20	1015	15.9	
21	1263	20.9	
22	1352	16.8	
23	510	19.2	
24	1314	17.4	
25	1448	18.6	
26	1978	24.9	
27	2355	23.7	
28	2376	22.8	
29	149	1.8	
30	133	2.4	250
31	130	2.4	245
32	83	1.6	
33	149	1.9	
34	100	1.5	
35	265	4.4	157
36	148	2.8	223
37	168	3.4	175
38	134	2.8	204
39	168	3.4	179
40	151	4.9	67

Minimum additional Signatures needed to reach 7% in 3/4s of Districts (as required by HB31):

1677 in 10 districts

Total signatures required statewide (10%): 28,783
 Total qualified: 28,928
 Total unqualified: 9,807
 Total potential signatures: 47,412

(Shaded numbers indicate Districts which met the 7% requirement of HB31)

HB31/HJR5 Signature Requirements as a percentage of registered voters

Election District	Number of Registered Voters, 11/05/02	Number of Signatures needed to comply with HB31	Signatures required by HB31 as a percentage of registered voters
1	11,007	455	4.1
2	12,124	505	4.2
3	12,483	544	4.4
4	12,044	523	4.3
5	11,703	432	3.7
6	10,582	413	3.9
7	13,262	584	4.4
8	12,894	527	4.1
9	12,077	456	3.8
10	13,199	594	4.5
11	13,162	455	3.5
12	13,551	498	3.7
13	12,142	522	4.3
14	12,122	353	2.9
15	12,023	369	3.1
16	12,058	288	2.4
17	12,860	500	3.9
18	12,016	664	5.5
19	10,986	506	4.6
20	9,310	446	4.8
21	11,928	422	3.5
22	10,621	565	5.3
23	11,607	295	2.5
24	11,412	528	4.6
25	11,043	545	4.9
26	11,992	555	4.6
27	10,928	696	6.4
28	11,737	731	6.2
29	10,591	584	5.5
30	11,343	383	3.4
31	12,590	375	3
32	13,292	364	2.7
33	12,102	564	4.7
34	12,106	470	3.9
35	12,681	422	3.3
36	10,826	371	3.4
37	7,843	343	4.4
38	7,838	338	4.3
39	7,994	347	4.3
40	8,776	218	2.5

Initiative and Referendum in the 21st Century

Final Report and Recommendations
of the NCSL I&R Task Force



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

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The National Conference of State Legislatures is the bipartisan organization that serves the legislators and staffs of the states, commonwealths and territories.

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CONTENTS

List of Tables	iv
Preface and Acknowledgments	v
Executive Summary	vi
Task Force Recommendations	ix
Introduction	1
Observations and Conclusions about Representative and Direct Democracy	4
1. General Recommendations Regarding the Initiative Process	6
2. Involving the Legislature in the Initiative Process	12
3. The Subject Matter of Initiatives	15
4. The Drafting and Circulation Phase	22
5. The Signature-Gathering Phase	33
6. Voter Education	44
7. Financial Disclosure	53
8. Voting on Initiatives	57
Appendices	
A: The Initiative States	63
B: Other Initiative Reform Commissions	64
Glossary	65
References	67

List of Tables

Table 1.	States with an Indirect Initiative Process	8
Table 2.	Legislative Amendment and Repeal of Initiated Measures	11
Table 3.	States with Bars on Same/Substantially Similar Initiatives	17
Table 4.	Initiative Subject Restrictions	17
Table 5.	Restrictions on Imposing Fiscal Policies Via the Initiative	20
Table 6.	State Agency Review	23
Table 7.	Drafting the Initiative Title	24
Table 8.	Drafting the Initiative Summary	26
Table 9.	Fiscal Impact Statements	27
Table 10.	Paid/Volunteer Status Must Be Disclosed	35
Table 11.	Circulation Periods	36
Table 12.	Signature Requirements—Statutory Initiatives	39
Table 13.	Signature Requirements—Initiated Constitutional Amendments	40
Table 14.	Method of Signature Verification	41
Table 15.	Voter Information Pamphlets	46
Table 16.	Costs of Voter Information Pamphlets	49
Table 17.	Supermajority Initiative Passage Requirements	58

PREFACE AND ACKNOWLEDGMENTS

The NCSL Initiative and Referendum Task Force assumed a difficult task in addressing such a complicated and highly controversial issue. Thanks to the committed leadership of Senator DiAnna Schimek, the task force was able to quickly focus on the most important issues and eventually come to consensus on a set of recommendations. NCSL is indebted to each one of the task force members who contributed their expertise for this project.

The task force was a diverse, bipartisan group representing seven of the 24 initiative states and the District of Columbia. Its makeup was unique in that it also included industry members. The following legislators, legislative staff, and industry representatives served on the task force:

Honorable DiAnna Schimek, State Senator, Nebraska, Task Force Chair
Chris Badgley, Vice President of State Government Affairs, PhRMA, Washington, D.C.
Jerry Barnett, Ph.D., Principal, Thomas-Huntington Ltd., Missouri
Honorable Jim Costa, State Senator, California
Sharon Eubanks, Senior Attorney for Administration, Office of Legislative Legal Services, Colorado
Honorable Marilyn Jarrett, State Senator, Arizona
Patrick Kelly, Director of State Government Relations, Biotechnology Industry Organization, Washington, D.C.
Tracy Mihos, Manager of I&R and Corporate Issues, Philip Morris Companies, Washington, D.C.
Frank H. Plescia, Senior Director of U.S. State Government Affairs, Monsanto Company, Missouri
Honorable Lane Shetterly, House Speaker Pro Tem, Oregon
Michael Stewart, Senior Research Analyst, Legislative Counsel Bureau, Nevada

The task force was fortunate to gain the insight of many individuals who took the time to appear before the group and share their expertise. The task force is grateful to the following witnesses who contributed their time:

David Broder, *Washington Post*, Washington, D.C.
Lois Court, Save Our Constitution, Colorado
Neal Erickson, Office of the Secretary of State, Nebraska
Wayne Pacelle, Humane Society of the United States, Washington, D.C.
John Perez, Speaker's Commission on the California Initiative Process, California
Honorable Joe Pickens, State Representative, Florida

Larry Sokol, Speaker's Commission on the California Initiative Process, California
M. Dane Waters, Initiative and Referendum Institute, Washington, D.C.
Joseph F. Zimmerman, State University of New York-Albany, New York

Many others helped in the creation of this report, including legislative staff and election officials in initiative states who shared valuable data and took the time to review and confirm information about their states' laws and procedures. Their assistance is greatly appreciated; it contributed to the quality and accuracy of the information in this report.

A number of NCSL staff supported the task force in its work, including Jennie Drage Bowser and Kate Rooney in NCSL's Denver office. Learn Stelzer of the NCSL publications department helped edit and prepare the report for publication, and Scott Liddell of NCSL formatted the report.

EXECUTIVE SUMMARY

On December 7, 2001, the National Conference of State Legislatures assembled a task force to review the growing use of initiatives and referendums around the country and to examine their effect on representative democracy at the state level.

The Initiative and Referendum Task Force found that opportunities for abuse of the process outweigh its advantages and does not recommend that states adopt the initiative process if they currently do not have one.

The task force also developed recommendations that would enable initiative states to make their processes more representative. For states that are intent upon adopting an initiative process, the task force offers a set of guidelines to enhance the process and to avoid many of the pitfalls currently experienced by the initiative states. The task force urges such states to consider giving preference to a process that encourages citizen participation without enacting specific constitutional or statutory language—specifically, the advisory initiative or the general policy initiative.

The 34 recommendations contained in this report acknowledge that the initiative process has outgrown the existing laws that govern it. After listening to expert testimony from a wide variety of witnesses and compiling data from all 50 states, the task force concluded that the initiative has evolved from its early days as a grassroots tool to enhance representative democracy into a tool that too often is exploited by special interests. The initiative lacks critical elements of the legislative process and can have both intended and unintended effects on the ability of the representative democratic process to comprehensively develop policies and priorities.

As a result, the task force suggests that initiative states reform drafting, certification, signature-gathering and financial disclosure statutes; adhere to single subject rules; and improve practices regarding voter education. It also recommends that initiatives be allowed only on general election ballots.

It is the task force's intent that the discussion and adoption of the reforms in this report lead to a more thoughtful lawmaking process, improve interaction between initiative proponents and legislatures, and ultimately produce better public policy and reinforce representative democracy.

TASK FORCE RECOMMENDATIONS

The following 34 recommendations were adopted unanimously at the final meeting of the NCSL Initiative and Referendum Task Force in Denver, Colorado, on April 26-27, 2002.

The task force does not recommend that states that currently do not have an initiative process adopt one. The task force believes that representative democracy is more desirable than the initiative. The disadvantages of the initiative as a tool for policymaking are many, and the opportunities for abuse of the process outweigh its advantages. However, if a state is intent upon adopting an initiative process, the first four recommendations lay out the task force's view of an effectively structured process.

The remaining recommendations deal with specific elements of the initiative process and are intended as guidelines to improve existing procedures. The task force believes that the adoption of these recommendations will improve the initiative process to the benefit of both state government and voters and will result in improved public policy making via the initiative.

General Recommendations Regarding the Initiative Process

Recommendation 1.1: States that are considering adopting an initiative process should give preference to one that encourages citizen participation without enacting specific constitutional or statutory language. Specifically, states should consider:

- A. First, adopting the advisory initiative; or
- B. In the alternative, adopting the general policy initiative.

Recommendation 1.2: If states wish to adopt an initiative process and neither the advisory initiative nor the general policy initiative are adopted, they should adopt an indirect initiative process.

Recommendation 1.3: If states adopt a direct initiative process, they should adopt only a statutory initiative process, not a constitutional amendment initiative process.

Recommendation 1.4: If states adopt a constitutional amendment initiative process, they also should adopt a statutory initiative process.

Involving the Legislature in the Initiative Process

Recommendation 2.1: States that currently have a direct initiative process should consider adopting an indirect process as well, and provide incentives to encourage its use.

Recommendation 2.2: After a specified percentage of signatures has been gathered for an initiative petition, the legislature should provide for public hearings on the initiative proposal.

Recommendation 2.3: When appropriate, the legislature should place an alternative legislative referral on the ballot with an initiative that appears on the ballot.

The Subject Matter of Initiatives

Recommendation 3.1: States should encourage the sponsors of initiatives to propose them as statutory initiatives when possible, rather than as constitutional amendments.

Recommendation 3.2: States should adopt the single subject rule to enhance clarity and transparency in the initiative process.

Recommendation 3.3: If an initiative measure is rejected by voters, states should prohibit an identical or substantially similar initiative measure from appearing on the ballot for a specified period of time.

The Drafting and Certification Phase

Recommendation 4.1: States should require a review of proposed initiative language by either the legislature or a state agency. The review should include non-binding suggestions for improving the initiative's technical format and content, and should be considered public information.

Recommendation 4.2: States should require the drafting and certification of a ballot title and summary for each initiative proposal. Ballot titles must identify the principal effect of the proposed initiative and must be unbiased, clear, accurate, and written so that a "yes" vote changes current law.

Recommendation 4.3: States should require the drafting of a fiscal impact statement for each initiative proposal. The statement should appear on the petition, in the voter information pamphlet, and on the ballot.

Recommendation 4.4: States should establish a review process and an opportunity for public challenge of technical matters, including adherence to single subject rules, and ballot title, summary and fiscal note sufficiency, to be made prior to the signature-gathering phase.

The Signature Gathering Phase

Recommendation 5.1: States should require that initiative proponents file a statement of organization as a ballot measure committee prior to collecting signatures. States should void any signature that is gathered before a statement of organization is filed.

Recommendation 5.2: States should provide for safeguards against fraud during the signature gathering process. Safeguards should include:

- A. Prohibiting the giving or accepting of money or anything else of value to sign or not sign a petition.
- B. Requiring a signed oath by circulators, stating that the circulator witnessed each signature on the petition and that to the best of the circulator's knowledge, the signatures are valid.
- C. Requiring circulators to disclose whether they are paid or volunteer.

Recommendation 5.3: States should provide for an adequate but limited time period for gathering signatures. The deadline for submission should allow a reasonable time for verification of signatures before the ballot must be certified.

Recommendation 5.4: States should establish a limit on the length of time that verified signatures are valid.

Recommendation 5.5: States should require a higher number of signatures for constitutional amendments than is required for statutory initiatives.

Recommendation 5.6: To achieve geographical representation, states should require that signatures be gathered from more than one area of the state.

Recommendation 5.7: Each state should establish a uniform process for verifying that the required number of valid signatures has been gathered.

Voter Education

Recommendation 6.1: States should provide to the public a manual describing the initiative and referendum process.

Recommendation 6.2: States should encourage public education and discussion about measures on the ballot.

Recommendation 6.3: States should produce and distribute a voter information pamphlet containing information about each measure certified for the ballot.

Recommendation 6.4: In addition to a printed voter information pamphlet, states should consider alternative methods of providing information on ballot measures, such as the Internet, video and audio tapes, toll-free phone numbers, and publication in newspapers.

Financial Disclosure

Recommendation 7.1: States should require financial disclosure by any individual or organization that spends or collects money over a threshold amount for or against a ballot measure.

Recommendation 7.2: After a title has been certified for an initiative measure, states should require that proponents and opponents of the initiative measure file a statement of organization as a ballot measure committee prior to accepting contributions or making expenditures.

Recommendation 7.3: States should make the disclosure requirements for initiative campaigns consistent with the disclosure requirements for candidate campaigns.

Recommendation 7.4: States should prohibit the use of public funds or resources to support or oppose an initiative measure. This should not preclude elected public officials from making statements advocating their position on an initiative measure.

Voting on Initiatives

Recommendation 8.1: States should allow initiatives only on general election ballots.

Recommendation 8.2: States should adopt a requirement that creates a higher vote threshold for passage of a constitutional amendment initiative than for passage of a statutory initiative.

Recommendation 8.3: States should require that any initiative measure that imposes a special vote requirement for the passage of future measures must itself be adopted by the same special vote requirement.

Recommendation 8.4: States should ensure that statutory initiative measures require the same vote threshold for passage that is required of the legislature to enact the same type of statute.

Recommendation 8.5: States should adopt a procedure for determining which initiative measure prevails when two or more initiative measures approved by voters are in conflict.

INTRODUCTION

Initiative and referendum operated quietly in the background of state politics for much of the 20th century, but during the last decade, it has come back into vogue. More initiatives are circulated, more make it to the ballot, and more money is spent in the process than ever before. Consider the numbers: 183 statewide votes on initiatives in the 1970s, 253 in the 1980s, and 383 in the 1990s, more than double the total from the 1970s. California alone accounts for 130 of the total 819 measures during that 30-year period; Oregon can claim 107. Between them, these two states account for nearly 30 percent of all initiatives from 1970 to 1999. It is no wonder that people in California and Oregon are beginning to voice concerns about the initiative process.

Initiative advocates say the resurgence of the initiative is good for states—it means citizens are using it as a tool to implement new laws and reforms that the legislature is unable or unwilling to enact. Besides accomplishing policy change, supporters also say that initiatives increase citizen involvement with government—people are not only more aware of state policy issues, but they are also more likely to vote. For these reasons, movements have begun to establish an initiative process in some of the states that currently do not have such a process.

However, in some states where the initiative is heavily used, there is growing public frustration with initiatives, and some people are beginning to speak out against the process. Legislatures are struggling to find ways to prevent fraud in the signature-gathering process; disclose information about who pays for initiative campaigns; and add flexibility to the process to accommodate more debate, deliberation and compromise than presently exists. Equally concerning to many is the disadvantage that, unlike our legislatures' process of representative government, decisions made through the initiative process do not provide an opportunity to accommodate minority interests. Most importantly, initiatives ask voters to make simple yes-no decisions about complex issues without subjecting the issue to detailed expert analysis and without asking voters to balance competing needs with limited resources. In short, the initiative affects the ability of representative democracy to develop policies and priorities in a comprehensive and balanced manner.

The problems with the initiative process are not easy to solve for a number of reasons. The courts have made it difficult to regulate both petition circulators and initiative campaign finance, and almost any reform can be a difficult political issue because proponents of the initiative generally are hostile to legislative attempts to change the process.

The initiative is a vital and popular part of democracy in half the states (refer to appendix A for a list of initiative states), but it is clear that the initiative has outgrown the existing state laws governing it. NCSL's Initiative and Referendum Task Force set out to first gather the facts and data necessary to paint an accurate picture of how the initiative process works in each state. It identified and focused on problems in the process, then considered ways that the process might be made more open and flexible. The task force feels strongly that the changes it recommends in the initiative process would equally benefit both voters and the legislative process, and that, in the end, a reformed initiative process might produce better public policy.

The task force met three times during a five-month period. Meetings were held on:

- December 7-8, 2001, in Washington, D.C.;
- February 8-9, 2002, in Washington, D.C.; and
- April 26-27, 2002, in Denver, Colorado.

The task force took great care to ensure that it heard testimony from experts and activists on a wide array of issues and from as many points of view as possible. Presenters included both supporters and critics of the initiative process, citizens who use the initiative process, and election administrators. The experts who testified before the task force were:

David Broder, *Washington Post*, Washington, D.C.;
Lois Court, Save our Constitution, Colorado;
Neal Erickson, Office of the Secretary of State, Nebraska;
Wayne Pacelle, Humane Society of the United States, Washington, D.C.;
John Perez, Speaker's Commission on the California Initiative Process, California;
Honorable Joe Pickens, State Representative, Florida;
Larry Sokol, Speaker's Commission on the California Initiative Process, California;
M. Dane Waters, Initiative and Referendum Institute, Washington, D.C.; and
Joseph F. Zimmerman, State University of New York-Albany, New York.

In addition to the experts who testified before the task force, the task force members themselves are experts on the initiative process. The perspectives and suggestions that each member brought to the table contributed to the extensive body of knowledge the task force developed about how the initiative works around the country. Finally, the task force also relied on a wide array of written materials on the initiative process. These include reports from earlier initiative reform commissions and task forces, and the many books and academic papers that are listed in appendix B and in the reference section of this report.

The task force adopted 30 recommendations for legislatures in the initiative states that are seeking guidance on how their initiative process might be improved. Four additional recommendations are meant for states that may be thinking about adopting an initiative process. Although the task force does not recommend that non-initiative states adopt such a procedure, these four recommendations are offered for those states that have, nonetheless, made the decision to go forward.

All the recommendations were based on a set of observations and conclusions about representative and direct democracy that were adopted by the task force at its first meeting. These principles reflect the task force members' belief that it is important to carefully balance the pure democratic impulse of the initiative with the deliberative, consensus-

building practices of representative democracy. It also is the belief of task force members that the adoption of this set of recommended reforms by initiative states will lead to a more thoughtful lawmaking process, improved interaction between initiative proponents and legislatures, and ultimately, better public policy.

OBSERVATIONS AND CONCLUSIONS ABOUT REPRESENTATIVE AND DIRECT DEMOCRACY

Adopted by the NCSL I&R Task Force on April 27, 2002

We offer in the following observations regarding representative and direct democracy.

1. Representative democracy is the foundation of America's system of government.
2. Representative democracy has provided a stable and flexible system of government that has served America well for more than 200 years.
3. Direct democracy, as envisioned in the initiative and referendum system, was first instituted as a check on representative democracy. It was meant to enhance representative government, not to supercede or abolish it.
4. As intended by its founders, the initiative and referendum process was meant to give citizens a tool to break what they perceived as the hold of special interests over some state legislatures.
5. In most of the 24 states where it exists, the initiative is a popular part of the lawmaking process.
6. The initiative brings to the fore issues that may not receive legislative attention or final action and engages citizens in a debate of important public policy issues.

Based on these observations, we draw the following conclusions about direct democracy.

1. The initiative has evolved from its early days as a grassroots tool to enhance representative government. Today, it is often a tool of special interests.
2. The initiative process, as it exists today, lacks some of the critical elements of the representative system of government, including debate, deliberation, flexibility, compromise and transparency.

3. The initiative process does not involve all the checks and balances that representative government does.
4. The initiative can affect the ability of representative democracy to develop policies and priorities in a comprehensive and balanced manner.
5. As the initiative process and the way it is used have evolved over time, a review of the laws governing it is merited.

1. GENERAL RECOMMENDATIONS REGARDING THE INITIATIVE PROCESS

Recommendations

The task force does not recommend that states that currently do not have an initiative process should adopt one. However, if a state is intent upon adopting an initiative process, the following four recommendations lay out the task force's view of how an effective process might be structured.

Recommendation 1.1: States that are considering adopting an initiative process should give preference to one that encourages citizen participation without enacting specific constitutional or statutory language. Specifically, states should consider:

- A. First, adopting the advisory initiative; or
- B. In the alternative, adopting the general policy initiative.

Recommendation 1.2: If states wish to adopt an initiative process and neither the advisory initiative nor the general policy initiative are adopted, they should adopt an indirect initiative process.

Recommendation 1.3: If states adopt a direct initiative process, they should adopt only a statutory initiative process, not a constitutional amendment initiative process.

Recommendation 1.4: If states adopt a constitutional amendment initiative process, they also should adopt a statutory initiative process.

Overview

The task force does not recommend that non-initiative states adopt an initiative process. However, should a state choose to do so, the recommendations in this chapter outline what the task force considers to be an ideally structured initiative process.

The Advisory Initiative

An advisory initiative process provides citizens with a formal means of presenting to the legislature the views of the majority on a particular issue, but stops short of the actual enactment of laws. It permits public input in the decision-making process, and allows the legislature to weigh public opinion in determining the appropriate implementation. In short, the advisory initiative uses a more deliberative lawmaking process than the direct initiative. Another advantage of the advisory initiative over the binding direct initiative is that, with the direct initiative, a slim majority might enact a binding policy measure, but a close vote on an advisory initiative simply indicates a lack of consensus.

Recommendation 1.1(A): States that are considering adopting an initiative process should give preference to one that encourages citizen participation without enacting specific constitutional or statutory language. Specifically, states should first consider adopting the advisory initiative.

Several states use the advisory referendum, whereby the legislature or even the governor may place a question on the ballot, asking voters their opinion on an issue. In 2000, for example, the governor of Rhode Island placed an advisory question on the statewide ballot, asking voters if they favored co-equal branches of government. It is much rarer for states to permit citizens to initiate an advisory question.

The General Policy Initiative

A general policy initiative is similar to the advisory initiative discussed above, except that it is binding upon the legislature. If the voters pass a citizen initiative of a general sort—for instance, expressing their desire that the state use tobacco settlement revenues for improving health care—it is up to the legislature to enact the specific laws required to implement that general policy. Like the advisory initiative, the general policy initiative permits direct public input to the policymaking process but uses a more deliberative approach to crafting detailed policy. The general policy initiative offers citizens the opportunity to put their policy ideas before the voters, but offers legislatures more flexibility in implementing voter-mandated policy than does the initiative process currently offered in 24 states.

Recommendation 1.1(B): States that are considering adopting an initiative process should give preference to one that encourages citizen participation without enacting specific constitutional or statutory language. Specifically, as an alternative to the advisory initiative, states should consider adopting the general policy initiative.

The Indirect Initiative

The indirect initiative is frequently offered as an improvement over the direct initiative because it allows for legislative analysis, committee hearings and floor debate. Legislative deliberation and debate on the issue itself and its effect on other existing policies may result in an improved initiative proposal because unintended consequences and errors may come to light.

Pitfalls exist in the indirect initiative process, however, which prevent it from being a panacea to the problems of the initiative. The main argument against the indirect initiative is that, where the process is currently offered, legislatures rarely take up the initiative proposal and, when they do, they almost always reject initiative proposals. Rarely do they engage in negotiation with initiative proponents and seek to craft a compromise. Most often, indirect initiatives are rejected by the legislature and end up on the ballot for a popular vote; the indirect process has done little but protract the initiative process.

In spite of its pitfalls, the indirect initiative process is more desirable than the direct initiative process because it allows for more public debate and deliberation, and it involves the legislature, with its professional research and bill drafting staff, in the process.

Recommendation 1.2: If states wish to adopt an initiative process and neither the advisory initiative nor the general policy initiative are adopted, they should adopt an indirect initiative process.

Eight states currently offer an indirect initiative process. In the indirect initiative process, a proposed initiative is referred to the legislature after proponents have gathered the required number of signatures. The legislature has the option to enact, defeat or amend the measure. Depending on the legislature's action, the proponents may continue to pursue placement on the ballot for a popular vote. In three states (Massachusetts, Ohio and Utah), proponents must gather additional signatures to place the measure on the ballot; in the others, it automatically goes to the ballot.

Table 1. States with an Indirect Initiative Process

	Constitutional Amendments	Statutory Initiatives
Maine		✓
Massachusetts	✓	✓
Michigan		✓
Mississippi	✓	
Nevada		✓
Ohio		✓
Utah*		✓
Washington*		✓

*State also has a direct initiative process; proponents may select the direct or indirect route.
 Note that the table does not represent all forms of the initiative process available in each state; only the indirect processes are represented.
 Source: National Conference of State Legislatures, January 2002.

In several states (Maine, Massachusetts, Michigan, Nevada and Washington), it is specifically provided for in law that the legislature may place an alternate proposition on the ballot with the initiative. Voters may vote for one or the other or for neither.

Alaska's and Wyoming's initiative processes are sometimes cited as indirect. However, instead of requiring that an initiative be submitted to the legislature for action, they require only that an initiative cannot be placed on the ballot until after a legislative session has convened and adjourned, thus providing the legislature with the opportunity to address the issue if it so chooses.

Two states—Utah and Washington—offer both the direct and indirect initiative process; proponents have the option of choosing either. In Utah, the initial signature requirement is lower for the indirect process. This serves as an incentive to proponents to choose the indirect route and thus incorporate the legislature into the process. Qualifying an initiative directly to the ballot requires signatures equal to 10 percent of the votes cast for governor in the last election; presenting an indirect initiative to the Legislature requires signatures equal to 5 percent of the votes cast for governor in the last election. However, if the indirect initiative is rejected by the Legislature, proponents must gather additional signatures equal to 10 percent of the votes cast for governor, creating a total signature threshold for indirect initiatives that is higher than that for direct initiatives. As a consequence, use of Utah's indirect initiative is significantly lower than use of the direct method.

California had an indirect initiative process until 1966. It was available in addition to the direct process, and proponents were permitted to choose the process they would use. The indirect option was rarely used, and voters approved its abolition in 1966.

Nevada currently has an indirect process for statutory initiatives. At one time, it also had the indirect process for initiative constitutional amendments, but it abolished this option in 1962. Voters approved a constitutional amendment referred by the Legislature that abolished the indirect process for constitutional amendments and at the same time imposed the requirement that any constitutional amendment be approved by a majority vote in two successive elections.

Adopting an indirect initiative process has been suggested as a significant reform by the following individuals and groups.

Professor Joseph Zimmerman, SUNY-Albany (in testimony before the task force in February 2002),

Speaker's Commission on the California Initiative Process (2002),

David Broder, *Washington Post* (in testimony before the task force on Dec. 7, 2001),

Dane Waters, I&R Institute (in testimony before the task force on Dec. 8, 2001),

California League of Women Voters (1999),

City Club of Portland, Oregon (1996),

Citizens' Commission on Ballot Initiatives (California, 1994),

Florida's Citizen Initiative Process Report (1994), and

California Commission on Campaign Financing (1992).

Case Studies: The Indirect Initiative

Switzerland

Switzerland's initiative process, which has long been cited as a model of a successful initiative process and heavily influenced the early development of the initiative in the United States, is an indirect process. When an initiative is submitted to the legislature in a Swiss canton, the legislature has four years to deliberate and act on the measure before it is referred to the ballot. When it does go to the ballot, the legislature often submits a statement of its position on the measure and has the option of placing a competing measure on the ballot. Most important, however, is the fact that many initiatives are withdrawn from the legislature before they reach the ballot. According to Richard Ellis in *Democratic Delusions: The Initiative Process in America*, the most common reason for this is that the legislature has promised or taken action that satisfies the proponents. Ellis writes that:

"The initiative in Switzerland is thus an integral part of the legislative process and is often used as a spur to get a majority in the legislature to heed the concerns of minority groups that have previously been thwarted in the assembly. Unlike in the United States, where the initiative process is a badly confrontational, zero-sum game, in Switzerland it is often employed to arrive at a consensus by facilitating legislative deliberation and compromise."¹

Massachusetts

The indirect initiative process used for constitutional amendments in Massachusetts is unique because a citizen-initiated constitutional amendment cannot gain ballot access without first passing the legislature. An initiated constitutional amendment must be approved in two consecutive legislative sessions before it can go on the ballot. In the first session, it may be amended by the legislature with a three-fourths vote, and must be approved by one-fourth of the legislature in a joint session in order to advance to the second legislative session. In the second session, the proposal must again be approved by one-fourth of the legislature in a joint session in order to advance to the ballot. The legislature may not amend the proposal at this point in the process, but it may place a substitute measure on the ballot together with the initiative proposal. Few initiated constitutional amendments survive this process and ultimately land on the ballot (three in the history of the state), but many initiatives that fail to pass the legislature and advance to the ballot succeed in prodding the legislature to take action on the issue.

The process for statutory initiatives in Massachusetts, although still indirect, is less rigorous than the process for constitutional initiatives. A statutory initiative must be

heard by the committee to which it is referred, and the committee must issue a report. If the legislature fails to enact the proposal, proponents may gather a small number of additional signatures to place it on the ballot. The legislature may place its own substitute proposal on the ballot together with the initiative proposal.

The advantages of the Massachusetts indirect initiative are that 1) the legislature is incorporated into the process, resulting in public consideration and debate, and 2) it gives the legislature the opportunity and an adequate period of time to respond to a proposal presented in an initiative. By making the constitutional process more difficult to use, it also directs more proposals toward the statutory initiative instead of the constitutional initiative. Its disadvantage is that it allows the legislature to block an initiative constitutional amendment from reaching the ballot, something that initiative advocates find too restrictive.

1. Richard Ellis, *Democratic Delusions: The Initiative Process in America* (Lawrence, Kan.: University Press of Kansas, 2002), 140-1.

Initiated Statutes vs. Constitutional Amendments

Constitutions are the foundations of state laws and governments. They are sacrosanct and should not be amended hastily or at the whim of a narrow segment of society. In offering an initiative constitutional amendment process, a state runs the risk of accumulating material in its constitution that is statutory in nature, since initiative proponents are left with no other tool to initiate policy.

Recommendation 1.3: If states adopt a direct initiative process, they should adopt only a statutory initiative process, not a constitutional amendment initiative process.

Offering a statutory initiative process in addition to a constitutional amendment initiative process also can help avoid this problem. Some initiative proponents will choose the statutory process if it is available to them, especially if incentives are offered to encourage the use of the statutory process over the constitutional process.

Recommendation 1.4: If states adopt a constitutional amendment initiative process, they also should adopt a statutory initiative process.

Other Ideas for Reform

Limits on the Legislature's Power to Amend and Repeal Initiated Statutes

Limiting the legislature's power to amend and/or repeal a statute enacted through the initiative may be an incentive to encourage the use of the statutory initiative over the constitutional initiative. Very often, initiative proponents elect to use the constitutional initiative in order to prevent the legislature from amending or repealing their proposal. If proponents were assured that the legislature's ability to amend and/or repeal statutory initiatives was limited, perhaps they would be more inclined to avail themselves of the statutory initiative process.

Currently, the legislature's power to amend and/or repeal a statute passed by the initiative is restricted in 10 states, and in California, it is expressly prohibited. In these states, a supermajority vote of the legislature is required to amend or repeal an initiated measure, or the legislature may be prohibited from acting on an initiated measure for a specified period of time. In the other 14 states, the legislature is free to amend or repeal an initiated measure at any time.

Table 2. Legislative Amendment and Repeal of Initiated Measures

	Restriction
Alaska	No repeal within two years; amendment by majority vote anytime
Arizona	No repeal; 3/4 vote to amend; amending legislation must "further the purpose" of the measure
Arkansas	2/3 vote of the members of each house to amend or repeal
California	No amendment or repeal of an initiative statute by the Legislature unless the initiative specifically permits it
Michigan	3/4 vote to amend or repeal
Nevada	No amendment or repeal within three years of enactment
North Dakota	2/3 vote required to amend or repeal within seven years of effective date
Oregon	2/3 vote required to amend or repeal within two years of enactment
Washington	2/3 vote required to amend or repeal within two years of enactment
Wyoming	No repeal within two years of effective date; amendment by majority vote any time

Source: National Conference of State Legislatures, January 2002.

Recent Legislative Action

In the period of 1999-2002, 17 non-initiative states saw legislation proposing the adoption of an initiative process. In Minnesota, an initiative bill passed the House twice in recent years. In fact, Minnesota voters have voted against adopting the initiative three times since 1913. However, the vote has been close, and the idea of adopting the initiative process continues to have strong support in Minnesota. In New York, Governor Pataki urged the adoption of the initiative in his 2002 state-of-the-state address. Several initiative bills currently are pending in the New York Legislature, one of which has passed the Senate.

Florida, which has had an initiative process for constitutional amendments since 1972, considered a bill in 2002 that would have provided for citizen initiatives to amend the statutes, as well. The bill would have modified the constitutional initiative process at the same time, changing the vote requirement from a simple majority to a two-thirds vote and requiring economic impact statements for all initiatives. The bill passed the House but failed to pass the Senate.

2. INVOLVING THE LEGISLATURE IN THE INITIATIVE PROCESS

Recommendations

Recommendation 2.1: States that currently have a direct initiative process should consider adopting an indirect process as well, and provide incentives to encourage its use.

Recommendation 2.2: After a specified percentage of signatures has been gathered for an initiative petition, the legislature should provide for public hearings on the initiative proposal.

Recommendation 2.3: When appropriate, the legislature should place an alternative legislative referral on the ballot with an initiative that appears on the ballot.

Overview

Further integrating the legislature into the initiative process would result in improved policymaking in the initiative states. Initiatives often tie the hands of the legislature, preventing state legislatures from developing broad, cohesive state policies. Improving the adversarial nature of the relationship between initiative advocates and state legislatures would be beneficial to legislatures and initiative proponents alike—initiative proponents would be more likely to see the legislature enact the policies they advocate, and legislatures would face fewer voter-mandated policies that restrict their flexibility and discretion in the

lawmaking process.

Furthermore, increasing legislative involvement in the initiative process enhances the debate that surrounds initiative proposals and provides more opportunity for public access and input to the initiative process.

The Indirect Initiative

As discussed in chapter one, the indirect initiative process is more desirable than the direct process. In Utah and Washington, however, which have both types of processes, the indirect variety is rarely used. If states provided incentives—such as creating a lower signature threshold and a longer circulation period for indirect measures, or requiring the legislature to hold hearings on all indirect initiatives submitted—to proponents to use the indirect process, perhaps more proponents would be drawn to the indirect process. The benefits of such incentives also might include a significant monetary savings for proponents if they are able to reach a compromise with the legislature and thus avoid a campaign, and an improved end product, thanks to the legislative hearing process. No matter how a state chooses to structure an indirect initiative process, the legislature must actively interact and negotiate in good faith with initiative proponents if the process is to be effective.

Recommendation 2.1: States that currently have a direct initiative process should consider adopting an indirect process as well, and provide incentives to encourage its use.

Public Hearings on Initiatives

Public hearings provide a forum for expert testimony, staff research and analysis, and debate by opposing sides. They also establish a public record of the proponents' intent, which could be useful to voters, to both sides in a campaign, and also in later court challenges, should they arise. Public hearings could be handled in several ways. The legislature itself could hold hearings on measures that have gathered a specified minimum percentage of the required signatures or on measures that have qualified for the ballot. As an alternative, the secretary of state could be required to hold public hearings on initiatives.

Recommendation 2.2: After a specified percentage of signatures has been gathered for an initiative petition, the legislature should provide for public hearings on the initiative proposal.

The organizations and individuals recommending public hearings for initiatives include:

Dane Waters of the I&R Institute (in testimony before the task force in December 2001), California League of Women Voters (1999), City Club of Portland, Oregon (1996), Nebraska Petition Process Task Force (1995), California Post Commission (1994), and California Commission on Campaign Financing (1992).

Case Studies: Public Hearings on Initiatives

California's Senate Bill 384, proposed in the 1999-2000 legislative session, would have triggered public hearings for any initiative that obtained 15 percent of the required signatures. After the hearing, proponents would be permitted to make non-substantive technical changes—such as correcting drafting errors or making stylistic changes—then could continue to gather the remaining required signatures.

Oregon's House Bill 3487 from the 1999 legislative session would have created a 12-member citizen initiative review committee appointed by the governor, the president of the Senate, and the speaker of the House. After holding hearings on a proposal, the committee would be required to issue a report to the public and the news media, identifying issues raised by the proposal and including a fiscal impact estimate and summaries of all public testimony received at hearings. Proponents would be permitted to make non-substantive amendments to the initiative, subject to attorney general approval, after the report was issued.

Referring Legislative Alternatives to Initiative Proposals

If the legislature feels that an initiative measure is flawed, it should exercise its right to place an alternative measure on the ballot. When the legislature's proposal is placed on the ballot together with an initiative, voters are offered more than a simple yes/no vote—they

are offered policy choices. The presence of similar but competing measures on the ballot also can prompt public debate and analysis of the proposals, resulting in more thorough attention to the perceived problem and potential solutions the measures address.

Recommendation 2.3: When appropriate, the legislature should place an alternative legislative referral on the ballot with an initiative that appears on the ballot.

Support for this reform has been expressed by Professor Joseph Zimmerman (in testimony before the task force in February 2002) and the California Post Commission (1994).

Case Studies: Legislative Alternatives to Initiatives

In at least five states (Maine, Massachusetts, Michigan, Nevada and Washington), the legislature is specifically granted the power to place alternatives to initiatives on the ballot. In most other states, the legislature is neither specifically granted nor denied that power. The Maine Legislature frequently chooses to exercise this right. In 1996, for example, Question 2A appeared on the ballot. It was a citizen initiative that sought to ban the timber harvesting practice of clearcutting in the state. The Legislature placed Question 2B on the ballot, a more moderate proposal. Voters also were offered Question 2C, which was a vote for neither 2A nor 2B. Question 2B, the Legislature's alternative to the initiative, passed.

Recent Legislative Action

California, Oregon and Utah considered bills that would permit the legislature to make certain amendments to proposed initiatives before they are placed on the ballot. Utah passed HB 143 in 1999, which allows the Legislature to make technical corrections to indirect initiatives submitted to the Legislature and to prepare a legislative review note and fiscal note for indirect initiatives. Four states considered requiring legislative review and comment on proposed initiatives.