ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672
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Single Subject Rules

Single subject rules require that an initiative address only one question or issue. Such rules benefit the initiative process because they make initiatives simpler and easier to understand. There is a danger in permitting a popular vote on a measure that addresses multiple, distinct subjects. How might a voter express his support of one subject but his rejection of another in such a situation? The lack of a single subject rule also leaves the door open to proponents who might try to make an unpopular idea more palatable by pairing it with a popular idea in a single initiative. In such cases, it is impossible to determine the majority's viewpoint on an issue.

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

Single subject rules also are common in legislatures—41 states have constitutional provisions stipulating that bills may address only one subject, and several others have chamber rules for single-subject bills.

Among the groups that express support for single subject rules are:

Speaker's Commission on the California Initiative Process (2002),
Professor Joseph Zimmerman (in testimony before the task force, February 2002),
California League of Women Voters (1999),
Nebraska Petition Process Task Force (1995),
California Policy Seminar (1991), and
Los Angeles Times (1990).

Currently, the following 12 initiative states require that initiatives address no more than one subject. Wide variation exists in how these states define "single subject" and in how courts have interpreted the definitions.

Alaska	Florida	Oklahoma
Arizona	Missouri	Oregon
California	Montana	Washington
Colorado	Nebraska	Wyoming

Banning Similar Measures from the Ballot for a Specified Period of Time

Banning the same or a substantially similar measure from reappearing on the ballot for a specified period of time helps to reduce the number of measures on the ballot.

> 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.

Five states currently prohibit the same or a substantially similar measure from reappearing on the ballot for a specified period of time after it is rejected by voters. Time periods range from two years in Mississippi to five years in Wyoming. If an initiative is found to be the same or substantially similar to an initiative that appeared on the ballot within the specified time frame, state election officials deny the proponent's initiative application.

In none of these states are the terms "same" and "substantially similar" defined in statute or the constitution. The decision about whether a measure is the "same" or "substantially similar" is left to a state official, generally the state's chief election officer or, ultimately, the courts.

Table 3. States with Bans on Same/Substantially Similar Initiatives

	Language of the Ban	Time Period
Massachusetts	A measure cannot be substantially the same as any measure that has been qualified for submission or appeared on the ballot at either of the two preceding biennial state elections.	Six years (banned from next two biennial state elections)
Mississippi	If an initiative is rejected, no initiative petition proposing the same or substantially the same amendment shall be submitted to the electors.	Two years
Nebraska	The same measure, either in form or in essential substance, shall not be submitted by initiative petition more often than once in three years.	Three years
Oklahoma	Any initiative measure rejected by the people cannot be again proposed by initiative within three years by less than 25 percent of the legal voters.	Three years
Wyoming	An initiative petition may not be filed for a measure substantially the same as that defeated by an initiative election within the preceding five years.	Five years

Source: National Conference of State Legislatures, April 2002

In many states, a similar restriction is imposed on the legislature, prohibiting bills that have been defeated (or bills that are substantially the same as ones defeated) from being reintroduced—either as a bill or an amendment—during the same legislative biennium. Florida, Mississippi, Ohio and Wyoming are examples of initiative states with such rules for their legislatures.

Table 4 summarizes all initiative subject restrictions.

Table 4. Initiative Subject Restrictions

	Single Subject?	Other Subject Restrictions
Alaska	Yes	No revenue measures No appropriations No acts affecting the judiciary No local or special legislation
Arizona	Yes	None
Arkansas	No	None
California	Yes	May not include or exclude any political subdivision of the state from application or effect. May not contain alternative or cumulative provisions wherein one or more of those provisions would become law, depending upon the casting of a specified percentage of votes for or against the measure.

Table 4. Initiative Subject Restrictions (continued)		
	Single Subject?	Other Subject Restrictions
Colorado	Yes	None
Florida	Yes	May not include limitations on the power of government to raise revenue.
Idaho	No	None
Illinois	Yes	Allowed only for amendment of constitutional Article IV, relating to structural and procedural subjects concerning the legislative branch.
Maine	No	Any measure providing for an expenditure of funds in excess of those appropriated becomes inoperative 45 days after the legislature convenes.
Massachusetts	No*	No measures relating to: • Religion • The judiciary • Specific appropriations • Local or special legislation • The 18th amendment of the constitution • Anything inconsistent with the rights of individuals as enumerated in the constitution A measure cannot be substantially the same as any measure that has been qualified for the ballot or appeared on the ballot in either of two preceding general elections.
Michigan	No	The initiative power extends only to laws that the Legislature may enact.
Mississippi	No	The initiative cannot be used to amend/repeal the: • Bill of Rights • Public employees' retirement system • Right-to-work provision • Initiative process Only first five certified measures may go on ballot If a measure is rejected by voters, no identical or substantially similar measure may go on ballot for a minimum of two years. If an initiative requires a reduction in government revenue or a reallocation from currently funded programs, the initiative text must identify the program or programs whose funding must be reduced or eliminated to implement the initiative.
Missouri	Yes	No appropriations of money other than new revenues created and provided for by the initiative. Cannot be used for any purpose prohibited by the state's constitution
Montana	Yes	No appropriations No local or special laws
Nebraska	Yes	Limited to matters that can be enacted by legislation and cannot interfere with Legislature's ability to direct taxation for state and governmental subdivisions. The same measure cannot be initiated more often than once in three years.
Nevada	No	No appropriations Cannot require an expenditure of money unless a sufficient tax is provided as part of the initiative proposal.

Table 4. Initiative Subject Restrictions (continued)

	Single Subject?	Other Subject Restrictions
North Dakota	No	No emergency measures No appropriation measures for the support and maintenance of state departments and institutions
Ohio	No	May not be used to pass a law: • Authorizing any classification of property for the purpose of levying different rates of taxation thereon • Authorizing the levy of any single tax on land, land values or land sites at a higher rate or by a different rule than is applied to improvements thereon or to personal property
Oklahoma	Yes	Initiatives rejected by the voters cannot be proposed again for three years by less than 25 percent of the state's legal voters
Oregon	Yes	None
South Dakota	No	No private or special laws
Utah	No	None
Washington	Yes	None
Wyoming	Yes	Cannot be used to: • Dedicate revenues • Make or repeal appropriations • Create courts • Define the jurisdiction of courts • Prescribe court rules • Enact local or special legislation • Enact legislation prohibited by the Wyoming constitution The same measure cannot be initiated more often than once in five years.

*In interviews conducted in May 2002, election officials in Massachusetts said that although that state does not have a single subject rule, it does have a requirement that an initiative contain only subjects that are related or mutually dependent. Courts have interpreted relatedness to mean that "...one can identify a common purpose to which each subject of [the] initiative petition can reasonably be said to be germane."
Source: National Conference of State Legislatures, January 2002.

Other Ideas for Reform

Restrictions on the Dedication of Revenue

Initiative measures that mandate the expenditures of large amounts of public revenue without including a new dedicated revenue source (such as taxes or fees) can make it difficult for the legislature to continue to fund existing state services and programs. In addition, initiatives that increase or create new taxes to fund new or existing programs negatively affect the legislature's ability to impose reasonable taxes to fund necessary programs for citizens. Although the task force agreed that initiatives limiting or dedicating revenue or otherwise imposing fiscal policies can be a significant problem—perhaps even the most serious problem—in the initiative process, members were unable to agree on a specific recommendation to address the issue.

The City Club of Portland recommended in 1996 that Oregon's initiative process be changed so that initiatives that dedicate revenue or require appropriations in excess of $500,000 per year should be required to provide new revenues.

Eleven states currently have restrictions on the use of the initiative with regard to appropriations and funding mechanisms.

Table 5. Restrictions on Imposing Fiscal Policies Via the Initiative

	Restriction
Alaska	No dedication of revenues or making or repealing appropriations.
Florida	Tax or fee increases require a 2/3 vote to pass.
Maine	Expenditures in an amount in excess of available and unappropriated state funds remain inoperative until 45 days after the regular legislative session, unless the measure provides for raising new revenues adequate for its operation.
Massachusetts	May not be used to make a specific appropriation from the treasury. However, if such a law, approved by the people, is not repealed, the legislature must raise by taxation or otherwise and appropriate such money as may be necessary to carry such law into effect.
Mississippi	Sponsor must identify in the text of the initiative the amount and source of revenue required to implement the initiative. Initiatives requiring a reduction in government revenue or a reallocation from currently funded programs must identify the program(s) whose funding must be reduced or eliminated to implement the initiative.
Missouri	May not appropriate money other than new revenues created and provided for by the initiative.
Montana	May not appropriate money.
Nebraska	No measure that interferes with the Legislature's ability to direct taxation of necessary revenues for the state and its governmental subdivisions.
Nevada	No appropriations or other expenditures of money, unless such statute or amendment also imposes a sufficient tax or otherwise constitutionally provides for raising the necessary revenue.
North Dakota	No appropriations for the support and maintenance of state departments and institutions.
Wyoming	No dedication of revenues or making or repealing appropriations.

Source: National Conference of State Legislatures, April 2002

Recent Legislative Action

A total of 29 bills dealing with initiative subject matter were introduced in 14 states between 1999 and 2002. None have passed to date. Among the most common subjects were:

- Prohibiting or restricting appropriations and reductions in state revenue via an initiative (considered in Arizona, Mississippi and Washington); a bill is pending in Michigan that would prohibit using the popular referendum for acts whose primary purpose is to make appropriations or meet deficiencies in state funds.

- Strengthening and providing for interpretation of single subject rules (pending in California; also considered in Oklahoma).

- Making it more difficult to propose and pass wildlife measures (considered in Alaska, Massachusetts, Oklahoma and Washington).

- Banning a measure that is failed by voters from returning to the ballot for a specified period of time (considered in Maine and Oregon).

Other measures that address initiative subjects included a 1999 bill in Arizona that would have established a four-year sunset provision for initiatives that establish the functions or activities of a state agency; a 1999 Oregon bill that would have prohibited initiatives that result in the taking of private property; and a pending bill to enact an initiative procedure in New Jersey that would be limited to campaign finance, lobbying, government ethics and election procedures. A failed 1999 bill in Oregon would have limited initiative amendments to the constitution to the structure and powers of government and the rights of people with respect to their government, and would have prohibited initiated constitutional amendments that dedicated or appropriated revenue, repealed appropriations, or required expenditures in excess of $500,000 per year.

4. The Drafting and Certification Phase

Recommendations

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 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.

Overview

Certifying an initiative for signature collection is an involved process with many steps and deadlines. No two states have exactly the same certification requirements. Generally, however, the process includes these steps:

1) Drafting the initiative proposal;
2) Preparation of a ballot title and summary;
3) In some states, preparation of a fiscal analysis; and
4) Technical challenges to ballot titles, summaries and fiscal analyses.

Drafting the Initiative Proposal

Often, initiatives are drafted by citizens who have little or no legal background or expertise. Making the legislature's professional bill drafting staff available to proponents may help to prevent errors in drafting and ensure that a proposal's language is in the proper form and harmonizes with other constitutional or statutory language. Advice from the legislature's legal experts also may help initiative proponents recognize constitutional flaws and unintended consequences of their proposal. Correcting such problems early in the process can help proponents avoid costly court battles later in the process. In short, assistance and advice from legislative bill drafting staff may help improve the quality and consistency of initiative measures. Making public the comments and recommendations of such a review process is important because it can draw attention to issues that otherwise might escape public notice.

> 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.

Similar reforms have been proposed by the following:

California League of Women Voters (1999),
City Club of Portland, Oregon (1996), and
Nebraska Petition Reform Task Force (1995).

Presently, some states offer no assistance or advice to initiative proponents on the draft of their proposed law. The states that do offer assistance generally have one of two basic levels of review, which may be provided either prior to filing the initiative or upon filing. In some states, the review is purely technical; the proposal is reviewed to ensure it meets the legal requirements for format and style and adheres to drafting conventions. However, 11 states go further and offer some sort of drafting assistance in order to improve the quality and consistency of initiative proposals. In these states, sponsors may take a draft or even just an idea to a legislative office for assistance with the form and content of the initiative before submitting the proposal to the appropriate state official. Sponsors' acceptance of any recommendations made is optional. Table 6 contains a list of technical and content-oriented state agency review.

Table 6. State Agency Review

	Technical	Content	Who Reviews
Alaska	No	Optional	Department of Law
Arizona	Mandatory*	No	Secretary of State
Arkansas	Mandatory	No	Secretary of State
California	Optional	Optional	Legislative Counsel
Colorado	Mandatory	Mandatory	Legislative Council and Legal Services
Florida	Mandatory	No	Division of Elections
Idaho	Mandatory	Mandatory	Attorney General
Illinois	No	No	N/A
Maine	Mandatory	No	Secretary of State
Massachusetts	Mandatory	Mandatory	Attorney General
Michigan	Optional	No	Bureau of Elections
Mississippi	Mandatory	Mandatory	Revisor of Statutes
Missouri	Mandatory	No	Secretary of State and Attorney General
Montana	Mandatory	Mandatory	Legislative Services Division and Attorney General
Nebraska	Mandatory	No	Revisor of Statutes
Nevada	Mandatory	No	Secretary of State
North Dakota	Mandatory	No	Secretary of State and Attorney General
Ohio	No	No	N/A
Oklahoma	Mandatory	No	Attorney General and Secretary of State
Oregon	Optional	Optional	Legislative Counsel and State Treasurer
South Dakota	Mandatory	No	Director of Legislative Research Council
Utah	Mandatory	Mandatory	Lieutenant Governor
Washington	Optional	Optional	Assistant Code Revisor
Wyoming	Mandatory	Mandatory	Secretary of State; Legislative Service Office and executive agencies may render assistance

* In all states, the designation "Mandatory" indicates that the review process is mandatory, not that adherence to the recommendations made as a result of the review process is mandatory.
Source: National Conference of State Legislatures, April 2002

Of the 11 states that offer some sort of drafting assistance, a wide range of services is offered. In at least four states—California, Massachusetts, Montana, and Oregon—initiative sponsors may take a draft or just an idea to drafters in their state for assistance. California serves as an example of a state that offers extensive assistance to proponents during the drafting

process. There, an initiative sponsor may take an idea to the Legislative Counsel, and a staff member will draft the language of the initiative for the sponsor.

Case Study: Initiative Drafting and State Agency Review

Colorado's Review and Comment Process

In Colorado, the Legislative Council staff and Legislative Legal Services conduct a public hearing to present their review and comments on proposed initiatives. The comments are intended to help proponents clarify their proposal, but they are not required to accept any suggestions offered by legislative staff. The meeting, held in the Capitol, is open to the public and although people who may oppose a measure are welcome to attend, no testimony or comments are accepted from anyone other than the proponents. The meeting is taped and becomes public record. Proponents are required to go through this process before they can move on to the next step of setting a title.

Preparation of a Ballot Title and Summary

The ballot title and summary are arguably the most important part of an initiative in terms of voter education. Many voters never read more than the title and summary of the text of initiative proposals. Therefore, it is of critical importance that titles and summaries be concise, accurate and impartial.

> 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.

Presently, a wide range of procedures exists in states for ballot title setting. In Colorado there is a special Ballot Title Board. Initiative proponents must appear before the board, which assigns a title, before the sponsor is authorized to gather signatures. In some states, the title is written by the sponsor, subject to the approval of a state official. In other states, the ballot title is written either by the attorney general, secretary of state or lieutenant governor. Table 7 contains a detailed list of who drafts ballot titles.

Table 7. Drafting the Initiative Title

	Party Responsible for Drafting Title		Where to File Challenge
	Petition	Ballot	
Alaska	Proponent (approved by Lt. Governor)	Lt. Governor and Attorney General	Superior Court
Arizona	Proponent	Proponent (approved by Attorney General)	Superior Court
Arkansas	Proponent (approved by Attorney General)	Proponent (approved by Attorney General)	Supreme Court
California	Attorney General	Attorney General	Sacramento County District Court
Colorado	Secretary of State and Ballot Title Board	Secretary of State and Ballot Title Board	Supreme Court
Florida	Proponent (approved by Secretary of State)	Proponent (approved by Secretary of State)	Supreme Court
Idaho	Attorney General	Attorney General	Supreme Court
Illinois	Proponent (approved by Board of Elections)	Proponent (approved by Board of Elections)	Not specified in law

Table 7. Drafting the Initiative Title (continued)

	Party Responsible for Drafting Title		Where to File Challenge
	Petition	Ballot	
Maine	Secretary of State	Secretary of State	Superior Court
Massachusetts	Proponent (approved by Attorney General)	Secretary of State (approved by Attorney General)	Supreme Judicial Court
Michigan	Proponent	Director of Elections with the approval of the Board of State Canvassers	State District Court
Mississippi	Attorney General	Attorney General	Circuit Court of 1st Judicial District of Hinds County
Missouri	Secretary of State	Secretary of State	Circuit Court of Cole County, appeal to Supreme Court
Montana	Attorney General	Attorney General	District Court in Lewis and Clark County
Nebraska	Same as summary by proponent	Attorney General	District Court
Nevada	None (Full text only)	None (summary only)	N/A
North Dakota	Secretary of State and Attorney General	Secretary of State and Attorney General	Supreme Court
Ohio	Proponent (approved by Attorney General)	Proponent (approved by Attorney General)	Not specified in law
Oklahoma	No separate title; summary serves as title	Proponent (approved by Secretary of State and Attorney General)	Supreme Court
Oregon	Attorney General	Attorney General	Supreme Court
South Dakota	None required	Attorney General	Circuit Court
Utah	None required	Office of Legislative Research and General Counsel (approved by Lt. Governor)	Supreme Court
Washington	Attorney General	Attorney General	Thurston County Superior Court
Wyoming	Proponent	Secretary of State	District Court of Laramie County

Source: National Conference of State Legislatures, January 2002.

At the time the ballot title is drafted, the title-setting entity often includes a statement of what the result of a "yes" vote means if the measure is passed and what the result of a "no" vote means if the measure is defeated. In Oregon, this statement is drafted by the attorney general and may not exceed 25 words. In Washington, the ballot title, drafted by the attorney general, consists of three parts: a statement of the subject of the petition in 10 words or less, a concise summary in 30 words or less, and a question crafted in a way that clearly defines what a "yes" and a "no" vote mean.

Two types of summaries are drafted for initiatives. The first is the summary that appears on the petition; it is usually drafted by the same person or agency that drafts the ballot title. The other summary appears in the voter information pamphlet, which is discussed further in chapter six. In all states, the summary, whether drafted by proponents, the attorney general, secretary of state, or another state agency, is a concise statement of the main points of the proposed measure. Proposed initiative summaries in all states are required to be impartial and non-argumentative. The number of words usually is limited; in Washington, it is limited to 75 words written by the attorney general, and in Florida, it also is

limited to 75 words written by the sponsor, with the approval of the secretary of state. See table 8 for a detailed description of state procedures for drafting summaries.

Table 8. Drafting the Initiative Summary

	Party Responsible for Drafting Title		Where to File Challenge
	Petition	Ballot	
Alaska	Lt. Governor and Attorney General	Proponent (approved by Lt. Governor	Superior Court
Arizona	None	Secretary of State (approved by Attorney General)	Superior Court
Arkansas	Proponent (approved by Attorney General)	Proponent (approved by Attorney General)	Supreme Court
California	Attorney General	Attorney General	Sacramento County District Court
Colorado	None	Secretary of State and Ballot Title Board	Supreme Court
Florida	Proponent (approved by Secretary of State)	Proponent (approved by Secretary of State)	Supreme Court
Idaho	Attorney General	Attorney General	Supreme Court
Illinois	Proponent (approved by Board of Elections)	Proponent (approved by Board of Elections)	Not specified in law
Maine	Revisor of Statutes, approved by Secretary of State	Revisor of Statutes (approved by Secretary of State)	Superior Court
Massachusetts	Secretary of State	Secretary of State	Supreme Judicial Court
	(approved by Attorney General)	(approved by Attorney General)	
Michigan	None	Director of Elections (approved by Board of State Canvassers	State District Court
Mississippi	Attorney General	Attorney General	Circuit Court of 1st Judicial District of Hinds County
Missouri	None	Attorney General	Circuit Court of Cole County, appeal to Supreme Court
Montana	Attorney General	Attorney General	District Court in and for the County of Lewis and Clark
Nebraska	Proponent	Attorney General	District Court
Nevada	None	Secretary of State and Attorney General	Not specified in law
North Dakota	Secretary of State (approved by Attorney General)	Secretary of State (approved by Attorney General)	Supreme Court
Ohio	Proponent (approved by Attorney General)	Proponent (approved by Attorney General)	Not specified in law
Oklahoma	Proponent (approved by Secretary of State and Attorney General)	Proponent (approved by Secretary of State and Attorney General)	Supreme Court
Oregon	Attorney General	Attorney General	Supreme Court
South Dakota	None	Attorney General	Circuit Court
Utah	None	Attorney General	Supreme Court
Washington	Attorney General	Attorney General	Thurston County Superior Court
Wyoming	None	Secretary of State	District Court of Laramie County

Source: National Conference of State Legislatures, January 2002.

Preparation of a Fiscal Analysis

Fiscal impact statements are an important component of voter education on initiative proposals. Voters often do not have the budgetary perspective necessary to make an informed decision about an initiative. Often, they enact a measure and it is left to the legislature to determine where the money will come from, which can mean redirecting funds from other programs.

> 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.

It is currently the law in 12 states that, if a proposed initiative will have a monetary effect on the state's budget, a fiscal impact statement must be drafted (see table 9). A legislative fiscal agency generally writes it, and it appears on the petition, in the voter info pamphlet, and/or on the ballot.

Table 9. Fiscal Impact Statements

	Who Prepares It	Where It Is Published
Arizona	Joint Legislative Budget Cmte. (after measure qualifies for ballot)	Voter information pamphlet
California	Dept. of Finance, Joint Legislative Budget Cmte., and Attorney General	Petition, voter information pamphlet, and ballot (included in title prepared by Attorney General)
Colorado	Director of Research of the Legislative Council	Voter information pamphlet
Mississippi	Legislative Chief Budget Officer	Petition, voter information pamphlet, and ballot (included in text)
Missouri	State Auditor and Attorney General	Petition, voter information pamphlet, and ballot (included in title)
Montana	Budget Director	Petition, ballot and voter pamphlet
Nevada	Secretary of State, in consultation with the Fiscal Analysis Division of the Legislative Counsel Bureau	Ballot, voter information pamphlet
Ohio	Tax Commissioner	Voter information pamphlet
Oregon	Secretary of State, Treasurer, Director of Dept. of Administrative Services, and Director of Dept. of Revenue	Voter information pamphlet, ballot
Utah	Office of Legislative Research	Voter information pamphlet
Washington	Office of Financial Management, in consultation with the Secretary of State, Attorney General, and any other appropriate state or local agency	Voter information pamphlet, Secretary of State Web site
Wyoming	Secretary of State and/or initiative sponsors*	A newspaper of general circulation in state and ballot

*If the final estimated fiscal impact by the Secretary of State and the final estimated fiscal impact by the committee of sponsors differ by more than twenty-five thousand dollars ($25,000.00), the Secretary of State's comments under this section and the ballot proposition (published in newspaper and ballot) shall contain an estimated range of fiscal impact reflecting both estimates.
Source: National Conference of State Legislatures, April 2002.

One may argue that, even if voters have fiscal information, it is meaningless unless the public knows how big the budget is. Simply attaching a dollar amount to a measure may not provide enough information. To make a fiscal statement meaningful, it must be considered in the context of the fiscal resources of the state. Suggestions include printing pie charts or graphs to illustrate the fiscal impact of the proposed measure in the context of

state resources. The City Club of Portland, Ore., recommended in 1996 that the Secretary of State be required to prepare a general statement in the Voters' Pamphlet that lists the estimated financial effects of each ballot measure upon the general fund and the combined effect if all were to be approved.

Case Study: Fiscal Analysis

California

If the Attorney General determines that the initiative measure requires a fiscal analysis, the Department of Finance and the Joint Legislative Budget Committee are required to prepare an analysis within 25 working days from the date they receive the final version of the proposed initiative measure. The fiscal analysis includes either the estimate of the amount of any increase or decrease in revenues or costs to state or local governments, or any opinion as to whether a substantial net change in state or local finances would result if the proposed initiative measure is adopted. The fiscal analysis is part of the measure's title prepared by the Attorney General, which appears both on petitions and on the ballot. It is also included in the voter information pamphlet.

Technical Challenges: Ballot Titles, Summaries and Fiscal Notes

If a sponsor or other qualified voter is dissatisfied with a title, summary or fiscal analysis, most states have a procedure for challenging and petitioning to change it. In some cases, however, the outcome of challenges is not decided until after the election, often after an initiative has been passed by the voters. Proponents have expended a great deal of effort—and often a great deal of money, as well—to gather signatures and qualify an initiative, and are justified in judging it unfair when a measure is stricken by the court for a technical reason after it has passed.

Although building a time period and a process for technical challenges into the certification process cannot prevent post-election challenges entirely, it can encourage such challenges at an early stage in the process.

> 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.

Similar reforms have been advocated by the following:

Wayne Pacelle, Humane Society of the United States (in testimony before the task force, February 2002),
M. Dane Waters, I&R Institute (in testimony before the task force, December 2001), and Citizens' Commission on Ballot Initiatives (California, 1994).

Nebraska's challenge process, similar to other states', serves as an example for how the process generally works. Any person dissatisfied with the title provided by the Attorney General may file a petition with the district court, asking for a different title and setting forth the reasons why the title prepared by the Attorney General is insufficient or unfair. The challenge must be filed within 10 days of the Attorney General's decision. The dis-

trict court then examines the measure, hears arguments, and certifies to the Secretary of State a ballot title for the measure in accord with the intent of the proposed initiative.

In most states, any challenges to the title or summary of a ballot measure must take place during the certification process; that is, before signature collection. However, in at least two states, ballot titles are reviewed after signature collection.

In Arkansas, the state Supreme Court hears challenges to ballot titles only after the signature-gathering phase is complete and a measure is certified for the ballot. In considering titles, the court either allows or disallows the initiative; it makes no attempt to rewrite the title. If a title is disallowed, the measure is stricken from the ballot and proponents must start over.

In Florida, petitioners gather at least 10 percent of required signatures, then submit the ballot title for approval. Proponents write their own title, which includes a 15-word caption and a 75-word explanatory statement. The Attorney General must submit the initiative to the state Supreme Court for single-subject review and to ascertain that the ballot title and summary comply with requirements for clarity and common language. The court cannot rewrite the title, and if it disallows the title, all signatures gathered to date are invalidated and proponents must start over. The court's strict application of the single-subject rule since 1994 has resulted in a steep drop in the number of initiatives that appear on the ballot in Florida. This pre-election judicial review, mandatory for all initiatives in Florida, is the only instance of a mandatory pre-election judicial review among all 24 initiative states.

The timing of title and summary challenges in Arkansas and Florida is highly controversial, and most initiative proponents regard it as unfair. Initiative proponents are forced to circulate a petition with a title that may later be ruled invalid, thus disqualifying their initiative. Proponents may have spent large sums of money in the qualification phase, and thus are resentful of last-minute court rulings that remove their otherwise qualified measure from the ballot.

Case Study: Technical Challenges

Washington, D.C.

In Washington, D.C., a time period and process for technical challenges are built into the certification process, thereby reducing instances of post-election technical challenges. The Board of Elections and Ethics drafts for each proposed initiative measure a short title (not more than 15 words), a true and impartial summary statement (not more than 100 words), and the proper legislative form of the measure. These are formally adopted by the board at a public meeting, and the initiative sponsor must be notified of the exact language within five days of adoption. Also within five days of adoption, the board must publish the exact language in the *District of Columbia Register*. Any registered voter in the district who objects to the title, summary or legislative form may seek review in the Superior Court of the District of Columbia within 10 days of the publication of the language. The court is required to expedite consideration. If no review is sought during this time period, the title, summary and legislative form are deemed to be accepted by the board.

Single-subject challenges also are encouraged during the certification process in Washington, D.C. The board may refuse to accept an initiative measure submitted if it determines that the measure is not a proper subject of the initiative. When that occurs, the person submitting the measure has 10 days after the board's refusal to apply to the Superior Court of the District of Columbia to compel the board to accept the measure.

Other Ideas for Reform

Post-Election Court Challenges

The number of initiatives challenged post-election in the courts has risen steadily in recent decades. One study of initiatives passed in four states over a 40-year period found that about half the initiatives passed during that time were challenged in court and more than half of those challenged are held unconstitutional, at least in part.

Initiative proponents look to the courts routinely when they feel the initiative process itself is in jeopardy. For example, consider the suit pending over whether petitioners can gather signatures on U.S. Postal Service property (*Initiative & Referendum Institute vs. United States Postal Service* [U.S. District Court for the District of Columbia 1:00CV01246]). The suit seeks to overturn the Postal Service's regulation prohibiting citizens from collecting signatures on initiative petitions on postal property.

Opponents of initiatives look to the courts just as often as proponents, however. When they fail to achieve their political aim at the ballot box, they frequently take the fight to the courts.

Another reason initiatives often end up in court after they are passed is that they are technically flawed. Initiatives are drafted in private, often without the benefit of expert analysis from legislative bill drafters. They are not subject to committee hearings, where testimony may be offered both in support and in opposition to them. They do not go through the process of consideration and amendment by two bodies before their final approval. In summary, initiatives are not forced through the same process of dissection and refinement that a bill must endure before it becomes law. As a result, the initiatives that the public votes on often contain errors, unintended consequences, conflicting sections, or unconstitutional provisions.

Critics of the initiative system believe that post-election court challenges are dangerous to the U.S. system of government. Challenges anger citizens, who often may assume that an initiative would not have made it to the ballot if it were not constitutional, and they force judges to make political decisions that are more appropriately made by the legislature.

Oregon provides a recent example of how judicial involvement in the initiative process can rapidly grow. An initiative was recently challenged in Oregon on the grounds that it violated the state's single subject requirement. The state's Supreme Court agreed that it did, and declared the measure unconstitutional. That case spurred other single-subject challenges, most notably a successful challenge to the state's term limits law. Term limits proponents, angered by the fact that term limits were declared unconstitutional because they violated the single-subject rule, have vowed to search Oregon's initiative history and challenge as many as they can find on single-subject grounds, which could wreak havoc on Oregon's laws and its judicial system.

Recent reform proposals addressing the proliferation of post-election court challenges have been suggested in Nebraska and Washington. House Bill 1732 from Washington's 2001 legislative session would have formed a three-member ballot measure review committee. The Secretary of State would be permitted to request an opinion as to the constitutionality of any proposed initiative measure from this committee. After reviewing a measure, the committee would issue a report, including a summary of 100 words or less, stating its opinion on the measure's constitutionality. The summary would appear in the voter information pamphlet. A proponent dissatisfied with the committee's opinion would be permitted to petition a review by the state Supreme Court. The court would consider whether the committee's report is fair and reasonable, and may either permit the publication of the summary, enjoin its publication, or rewrite it. The committee's reports could not be cited or construed in other cases as decisions on constitutionality, and the judicial review provided for in this measure would not preclude any court from subsequent consideration of the constitutionality of a measure. Rather, the review process might give early warning to initiative proponents of potential problems in their proposal. At a bare minimum, the review process would simply generate more information for voters to consider as they cast their votes. The California Policy Seminar made a similar recommendation in 1991.

The Nebraska Legislature passed a similar proposal in the 1999-2000 biennium, but it was not approved by the governor. LB 729 would have permitted the Secretary of State to reject any petition that was constitutionally suspect. That would have enabled proponents to take it to court for an expedited hearing. Under this plan, the constitutionality of many initiative measures could be determined early in the process, before initiative proponents have spent large amounts of time and money in the signature-gathering and campaigning stages of the process.

Recent Legislative Action

Nine states introduced 59 bills regarding pre-circulation requirements—which include drafting measures, ballot titles, summaries and fiscal impact statements—between 1999 and 2002. Highlights include the following:

- In Oregon, the deadlines for the Secretary of State to send ballot title comments to the Attorney General, the time period for Attorney General to revise draft ballot title, and the deadline for a person seeking review of a ballot title have been modified.

- In Utah, title naming conventions were established for ballot propositions submitted to the voters, and the standard of review in writing and judicially reviewing initiative and referendum ballot titles was clarified.

- In 2002, Washington passed SB 6571, requiring that a fiscal impact statement be drafted by the Office of Financial Management for all initiatives that appear on the ballot, legislative alternatives to initiatives on the ballot, and referenda, including those referred to the ballot by the legislature. The new law requires the Secretary of State to make the statement available online and include it in the state voters' pamphlet.

- In 2000 and 2001, Colorado passed bills that require fiscal impact statements on all initiative measures and specify the content of the statements.

- A failed 2001 bill in Arizona would have created an eight-member Citizen Ballot Measure Committee and transferred the responsibility for drafting analyses of initiative proposals from the Legislative Council to the new committee. The committee members would have been appointed by the House and Senate majority and minority leadership.

5. The Signature Gathering Phase

Overview

Signature gathering is the most fundamental part of the initiative process, and the most thoroughly populist and grassroots part. The purpose of signature requirements is to demonstrate that an initiative has a certain level of public support before it goes to the ballot.

Statement of Organization

In some states, the campaign finance disclosure requirements do not take effect until a petition is qualified for the ballot. The task force believes that the money spent earlier in the process, particularly the money and sources of money spent on gathering signatures, is of equal importance to money spent on campaigning. Citizens should have access to information about who is circulating a petition before they decide to sign it.

> **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.

Fraud in the Signature Gathering Process

Paid vs. Volunteer Petitioners

Professional signature gathering has long been a part of initiative politics. Paid signature gatherers were common in both California and Oregon in the early 1900s. Banning paid signature gatherers, an early idea, was seen as a way to stop wealthy individuals or groups from buying their way onto the ballot. Ohio, South Dakota and Washington passed bans on paid signature gatherers in 1913 and 1914. Oregon passed a ban in 1935, Colorado in 1941, and Idaho and Nebraska in 1988. Until the 1980s,

Recommendations

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.

courts upheld bans on paid signature gatherers. That changed in 1988, when the U.S. Supreme Court invalidated Colorado's ban in the *Meyer vs. Grant,* 486 U.S. 414 (1988) decision.

Five states—Maine, Mississippi, North Dakota, Washington and Wyoming—tried to ban payment per signature, but to permit payment on a salary or hourly basis. All but North Dakota's and Wyoming's have been invalidated by courts.

Today, the vast majority of petition campaigns use paid circulators, who are paid between $1 and $3 per signature. Very few campaigns attempt to qualify an initiative petition with volunteer circulators, and even fewer do so successfully. Paid drives, on the other hand, are much more successful. A campaign that has adequate funds to pay circulators has a nearly 100 percent chance of qualifying for the ballot in many states.

The increase in reliance on paid circulators has increased the cost of qualifying an initiative. In California, it now costs more than $1 million. In Oregon, costs for qualifying ballot measures for the 2000 election ranged from $65,000 to $400,000, with most spending in the neighborhood of $100,000 to $150,000. Average costs in other states generally range between $70,000 and $100,000.

Oregon has tried a new idea for regulating paid circulators. The state defines paid circulators as employees (in other states they generally are defined as independent contractors), making them eligible for unemployment benefits. Signature collection firms now must pay payroll taxes and unemployment insurance premiums and must meet minimum wage requirements.

The U.S. Supreme Court's opinions on petition circulators have made the prevention of fraud in the signature gathering process very difficult for states. Since the 1988 *Meyer vs. Grant* decision invalidated state bans on paid signature gatherers, it has become more difficult to regulate the signature gathering process. The argument that payment for signatures promotes fraud has met with mixed reactions in courts around the country. A federal judge in North Dakota agreed, and upheld North Dakota's ban on payment-per-signature (hourly or salaried payments are permissible in North Dakota). Federal judges in Maine and Washington, however, disagreed, and found no evidence of fraud among paid signature gatherers. A more worthy argument that is less often cited is that prohibiting payment for signatures protects the integrity of the initiative process by encouraging grassroots efforts that can succeed on nothing more than popular support and discourages signature gathering efforts that can succeed only with large sums of money. Nevertheless, the U.S. Supreme Court has removed the ban on paid signature gatherers from initiative reformers' agendas.

Registered Voter and Residency Requirements

In 1999, the U.S. Supreme Court struck down a Colorado law stipulating that only Colorado registered voters could circulate initiative petitions in *Victoria Buckley vs. American Constitutional Law Foundation,* 119 S. Ct. 636 (1999). Colorado argued that it should be able to limit the ability to circulate petitions to those who are also qualified to vote on them. At least 13 other states were affected by *Buckley vs. ACLF* because they had similar laws. Other states, including Mississippi, North Dakota and Oklahoma, require that circulators be residents of the state. Many of the states that previously had registered voter requirements changed their laws to require that circulators be residents, including Arizona, California, Idaho, Maine, Missouri, Utah and Wyoming. This requirement has fared bet-

ter in the courts than the registered voter requirement, with federal courts upholding Maine's and Mississippi's residency requirements.

If states cannot ban paid signature gatherers and they cannot require that signature gatherers be registered voters in the state, what can they do to ensure the integrity of the petition process and protect it from fraud? They can enact laws that specifically address and prohibit clear instances of fraud in the petition process.

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.

At least 10 states prohibit the giving or accepting of money or anything else of value to sign or not sign a petition. Those states are:

Arizona	Mississippi
California	Nebraska
Colorado	Ohio
Idaho	Washington
Maine	Wyoming

Sixteen states currently require that petition circulators witness the placing of signatures on the petition, and that they sign an oath affirming that to the best of their knowledge, each signature is valid. Such an oath can discourage the kind of fraud some states have witnessed. For example, in 1998 in Arkansas, it was discovered that a circulator had forged several hundred signatures on a petition to do away with property taxes. Other circulators turned in petitions with signatures they had not witnessed, thus invalidating those signatures. The petition eventually was stricken from the ballot after numerous instances of fraud in the petitioning process were proven.

At least 10 states currently require circulators to disclose whether they are paid or volunteer, most often on the petition form itself.

Table 10. Paid/Volunteer Status Must be Disclosed

	Where Disclosed
Alaska	On the petition
Arizona	On the petition
Colorado	On a name tag
Idaho	On the petition
Missouri	Must file a form with the Secretary of State
Nebraska	On the petition
North Dakota	Disclosed on registration form filed with the Secretary of State
Ohio	On the Circulator's Compensation Statement (part of the petition)
Oregon	On the petition
Wyoming	On the petition

Source: National Conference of State Legislatures, February 2002

Circulation Periods

In most states, petitioners have a limited period of time during which to gather the requisite signatures. The limits range from 60 days (Massachusetts) to four years (Florida). In 17 of the 24 initiative states, circulators have a year or more to gather signatures. In Arkansas, Ohio and Utah, no time limits are set for circulating petitions. Table 11 summarizes circulation periods in the initiative states.

Table 11. Circulation Periods

	Circulation Period	Submission Deadline
Alaska	1 year	Prior to the date the Legislature convenes (January)
Arizona	2 years	120 days before the election
Arkansas	Unlimited	120 days before the election
California	150 days	150 days after issuance of official summary; will be placed on the ballot in the next election that is at least 131 days after it is submitted
Colorado	6 months	3 months before the election
Florida	4 years	91 days before the general election
Idaho	18 months or until April 30 in an election year, whichever occurs earlier	May 1 in the year an election on the initiative will be held, or 18 months from the date the petitioner receives the official ballot title from the Secretary of State, whichever is earlier
Illinois	2 years	
Maine	1 year	On or before the 50th day after the convening of the Legislature in first regular session; on or before the 25th day after the date of convening of the Legislature in the second regular session
Massachusetts	60 days to submit to legislature; 42 days if legislature fails to act	14 days before the first Wednesday in December
Michigan	180 days	Constitutional: 120 days before the election Statutory: 10 days before beginning of a legislative session
Mississippi	1 year	90 days before the first day of the legislative session
Missouri	18 months	6 months prior to the date of the next regular election
Montana	1 year	By the third Friday of the fourth month preceding the election
Nebraska	2 years	4 months prior to the general election
Nevada	Constitutional: 291 days Statutory: 316 days	Constitutional: third Tuesday in June of an even-numbered year Statutory: second Tuesday in November of an even-numbered year
North Dakota	1 year	90 days before the election
Ohio	Unlimited	Constitutional: 90 days prior to the general election Statutory: 10 days prior to legislative session
Oklahoma	90 days	60 days prior to the date of the next general election
Oregon	2 years	120 days prior to the general election
South Dakota	1 year	Constitutional: 1 year before the next general election Statutory: first Tuesday in May in a general election year
Utah	Unlimited	Before June 1
Washington	Direct: 6 months Indirect: 10 months	Direct: 4 months prior to the next state general election Indirect: 10 days before the regular session of the Legislature
Wyoming	18 months	Prior to the date the Legislature convenes for a regular session

Source: National Conference of State Legislatures, May 2002.

Interestingly, longer circulation periods do not necessarily lead to an increased number of initiatives on the ballot. Some of the states with the longest circulation periods—such as Florida and Illinois—have very few measures on the ballot. Some states with the shortest circulation periods—such as California, Colorado and Washington—are among the states with the highest number of initiatives that reach the ballot. Providing more time for gathering signatures, therefore, should not lead to a flood of initiatives on the ballot.

The length of the circulation period is important to volunteer efforts, and increasing the time for gathering signatures may be beneficial. Volunteer efforts are time-consuming because they often are less well-organized and more often are subject to disruptions when volunteers fail to show up. Longer circulation periods clearly benefit volunteer petition drives.

> Recommendations 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.

Crafting an appropriate limit on circulation periods is a delicate task. If the period is too short, volunteer efforts will be disadvantaged. However, if the period is too long, there is a risk that voters may have moved between the time they signed the petition and the time it is submitted for verification, thus resulting in a higher percentage of invalid signatures.

Signature Requirements

State signature requirements for ballot access vary widely. Signature requirements usually are based on a percentage of votes cast for a particular office—most often the office of governor—in the most recent election. In a few states, the requirement is based on total votes cast, total registered voters, or total state residents.

In most states that have both a statutory and constitutional initiative process, there is a higher signature threshold to qualify a constitutional initiative. The only exceptions are Colorado, Massachusetts and Nevada. The distinction exists because it is widely believed that amending the constitution should be more difficult than amending the statutes. Some reformers, however, argue that a more effective manner of achieving this goal would be to require a higher vote to approve constitutional initiatives than statutory initiatives. This argument is supported by the fact that the higher signature threshold for constitutional initiatives is rarely a barrier to achieving ballot status, provided proponents have ample funds to pay signature gatherers. Nevertheless, it is the belief of this task force that the sanctity of state constitutions demands that constitutional amendments be held to a higher standard of popular support than statutory initiatives, including signature thresholds for ballot access.

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

Percentage requirements for signatures on statutory initiatives range from a low of 2 percent of the resident population in North Dakota (12,844 for 2002 ballot access), to a high

of 15 percent of the total number of votes cast in the preceding election in Wyoming (33,253 signatures for 2002 ballot access). However, because Wyoming is a small population state, there are other states where the actual number of signatures that must be gathered is higher. The highest actual signature requirement for 2002 ballot access is California, where 419,260 signatures are required to place a statutory initiative on the 2002 ballot (equal to 5 percent of the votes cast for governor in the last election).

Percentage requirements for signatures on constitutional amendments range from a low of 3 percent of total votes cast for governor in Massachusetts (57,100 for 2002 ballot access), to a high of 15 percent of total votes cast for governor in Arizona (152,643 for 2002 ballot access) and Oklahoma (185,145 for 2002 ballot access). Once again, however, thanks to its large population, California has the highest total actual signature requirement for 2002 ballot access at 670,816 (equal to 8 percent of the votes cast for governor in the last election).

Geographic Distribution Requirements

Many initiative states are primarily rural, with a substantial proportion of their populations centered in a few urban areas. In states that follow this population pattern but that lack a geographic distribution requirement for signatures, it is not only possible but common for initiative proponents to gather all their signatures in the state's largest city. The voters in the largest city, therefore, may decide for the state as a whole what issues make the ballot and what issues do not. Such a system gives urban voters an unfair advantage over rural voters.

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

Thirteen of the 24 initiative states currently require that signatures be gathered from around the state. Supporters of geographic distribution requirements say they are important because they force initiative proponents to demonstrate that their proposal has support statewide, not just among the citizens of the state's most populous region. Critics say geographic distribution requirements place an unfair burden on initiative proponents, since it is much more difficult to gather signatures in rural areas than it is in urban areas. They also claim that such requirements mean that fewer initiatives qualify for the ballot.

Polling data suggests that voters generally support the idea of requiring initiative proponents to gather their signatures from various parts of the state. In fact, as recently as 1998, voters in Wyoming approved of a legislative proposal to make that state's geographic distribution requirement even more restrictive. A February 1995 poll conducted by the City Club of Portland showed that Oregon voters also supported a geographic distribution requirement. The fact that they later rejected a 2000 constitutional amendment on this very issue may reflect their dissatisfaction with the stringency of that particular proposal, rather than a drop-off in support for the general idea of geographic distribution requirements.

It should be noted that Idaho's geographic distribution requirement was held unconstitutional by a U.S. District Court in December 2001. In addition to a total number of signatures equal to 6 percent of the state's registered voters at the time of the last general election, proponents had to gather signatures from 6 percent of the registered voters in 22 of the state's 44 counties. The decision currently is on appeal in the 9th U.S. Circuit of Appeals, and it is unclear at this time whether this decision, if upheld, would affect geo-

graphic distribution requirements in other states. The 9th Circuit includes Montana and Nevada, which also have geographic distribution requirements.

Tables 12 and 13 summarize the signature requirements for statutory and constitutional initiatives, including geographic distribution requirements.

Table 12. Signature Requirements—Statutory Initiatives

	Statutory Initiatives		
	Signatures	2002 Actual Requirement	Geographic Distribution
Alaska	10% of total votes cast in last general election	22,716	At least one signature by voters resident in each of at least 2/3 of 27 election districts
Arizona	10% of votes cast for governor in last election	101,762	None
Arkansas	8% of votes cast for governor in last election	56,481	Signatures from 4% of registered voters from at least 15 of 75 counties
California	5% of votes cast for governor in last election	419,260	None
Colorado	5% of votes cast for sec. state in last election	80,571	None
Florida	N/A		
Idaho	6% of qualified electors in previous election	43,685	6% of registered voters from each of 22 counties*
Illinois	N/A		
Maine	10% of votes cast for governor in last election	42,101	None
Massachusetts	3% of votes cast for governor in last election	57,100	No more than 25% of signatures may be from one county
Michigan	8% of votes cast for governor in last election	242,168	None
Mississippi	N/A		
Missouri	5% of votes cast for governor in last election	117,342	5% of votes cast for governor in last election from 6 of the 9 congressional districts
Montana	5% of qualified electors in state at large	20,510	At least 5% of voters in at least 34 of the 100 legislative districts
Nebraska	7% of registered voters at the filing deadline	75,969	5% of registered voters in 38 of the 93 counties
Nevada	10% of total votes cast in last general election	61,336	10% of total votes cast in the last general election from at least 13 of the 17 counties
North Dakota	2% of resident population of the state	12,844	None
Ohio	3% of votes cast for governor in last election	100,626	1.5% of total vote cast for governor in last election from 44 of the state's 88 counties
Oklahoma	8% of votes cast in last state election for the office receiving the highest number of votes	98,744	None
Oregon	6% of votes cast for governor in last election	66,786	None
South Dakota	5% of votes cast for governor in last election	13,010	None
Utah	Direct: 10% / Indirect: 5% of votes cast for governor in last election	Direct: 78,458 Indirect: 39,229	Direct: 10% / Indirect: 5% of votes cast in at least 20 of the counties
Washington	8% of votes cast for governor in last election	197,734	None
Wyoming	15% of total votes cast in last general election	33,253	15% of residents in at least 2/3 of the state's 23 counties

* Held unconstitutional by U.S. District Court in December 2001; pending appeal in the 9th U.S. Circuit Court of Appeals
Source: National Conference of State Legislatures, January 2002.

Table 13. Signature Requirements—Initiated Constitutional Amendments			
	Constitutional Initiatives		
	Signatures	2002 Actual Requirement	Geographic Distribution
Alaska	N/A		
Arizona	15% of votes cast for governor in last election	152,643	None
Arkansas	10% of votes cast for governor in last election	70,601	Signatures from 5% of registered voters from at least 15 of 75 counties
California	8% of votes cast for governor in last election	670,816	None
Colorado	5% of votes cast for sec. state in last election	80,571	None
Florida	8% of total votes cast statewide in last presidential election	488,722	8% in at least 12 of the state's 23 congressional districts
Idaho	N/A		
Illinois	8% of total votes cast for governor in previous election	268,693	None
Maine	N/A		
Massachusetts	3% of votes cast for governor in last election	57,100	No more than 25% of signatures may be from one county
Michigan	10% of votes cast for governor in last election	302,710	None
Mississippi	12% of votes cast for governor in last election	91,673	No more than 1/5 total signatures from one congressional district
Missouri	8% of votes cast for governor in last election	187,746	8% of votes cast for governor in last election from 6 of the 9 congressional districts
Montana	10% of qualified electors in state at large	41,020	At least 10% of voters in at least 40 of the 100 legislative districts
Nebraska	10% of registered voters at the filing deadline	108,527	5% of registered voters in 38 of the 93 counties
Nevada	10% of total votes cast in last general election	61,336	10% of total votes cast in the last general election from at least 13 of the 17 counties
North Dakota	4% of resident population of the state	25,688	None
Ohio	10% of votes cast for governor in last election	335,421	None
Oklahoma	15% of votes cast in last state election for the office receiving the highest number of votes	185,145	None
Oregon	8% of votes cast for governor in last election	89,048	None
South Dakota	10% of votes cast for governor in last election	26,019	None
Utah	N/A		
Washington	N/A		
Wyoming	N/A		

Source: National Conference of State Legislatures, January 2002.

Verifying Signatures

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

States use various methods to verify the number of valid and correct signatures gathered on a petition, and vary in whether signatures are checked at the state or county/local level. In 15 states, verification is conducted by the state's chief election official. In nine states, it is done at the county level and forwarded to the appropriate state official.

The second major area of variation is whether validation is accomplished by counting or verifying each signature or by employing a random sampling formula. Ten states verify signatures using a random sampling method. It is most common in states that use a random sample method that at least 5 percent of the signatures gathered be verified. In Montana, county officials verify all names and signatures and then randomly select signatures to be checked against voter registration records.

North Dakota and Ohio are unique. Since North Dakota does not have voter registration, sponsors must collect signatures of people who legally reside in the state. The Secretary of State is responsible for conducting a representative sampling of signatures using postcards, phone calls and other methods to verify residency. In Ohio, signatures are presumed valid unless otherwise proven. Anyone may file with the board of elections challenging the validity of any signature(s). If a sponsor does not have enough signatures after filing the petition with the Secretary of State, the sponsor is allowed 10 additional days to collect the correct number of signatures.

The timeframe for verifying signatures averages about one month. Most states allow petitioners to observe the verification process. In Arkansas and Ohio, if a petition does not have the required number of valid signatures, an additional time period (30 days in Arkansas and 10 days in Ohio) is allowed to gather the remaining signatures. Most states, however, automatically disqualify a proposed initiative if it does not have enough valid signatures.

Table 14 summarizes the various methods of verifying signatures on initiative petitions.

Table 14. Method of Signature Verification

	Method of Signature Verification
Alaska	Actual; signatures are verified by Lt. Governor until correct number is met
Arizona	Random; 5% of total number of signatures must be verified by county recorders with equal chances for any signature to be chosen
Arkansas	Actual; signatures are verified by the Secretary of State's office, which may contract with various county clerks for assistance
California	Random; Secretary of State verifies total number of signatures, county election officials then conduct random sampling; required to verify 500 signatures or 3% of signatures filed, whichever is greater
Colorado	Random; at least 5% or 4,000 signatures must be verified by Secretary of State
Florida	Actual; every signature is checked by Supervisor of Elections of each county; sponsor must pay $0.10 for each signature checked or the actual cost of checking the signatures to supervisor at the time the petition is submitted; if the sponsor is unable to pay, a statement of undue burden given under oath must be submitted; a sponsor using paid signature gatherers may not submit statement
Idaho	Actual; county clerk verifies each signature, then files petition with Secretary of State
Illinois	Random and actual; state Board of Elections conducts random sampling of signatures and then transmits list to county election officials for individual verification; sampling must include: 10% of the signatures if 5,010 or more signatures are involved; or 500 signatures if more than 500 but less than 5,010 signatures are involved; or all signatures if 500 or less signatures are involved
Maine	Actual; Secretary of State verifies every signature

Table 14. Method of Signature Verification (continued)

	Method of Signature Verification
Massachusetts	Actual; signatures must be verified by a majority (at least three) of the local registrars or election commissioners in the city or town in which the signatures were collected
Michigan	Actual; the board of state canvassers verifies the correct number of signatures and that each signer is a qualified registered voter; the qualified voter file may be used to determine the validity of petition signatures by verifying the registration of signers
Mississippi	Actual; county Circuit Clerk of each county where the petition was circulated verifies every signature, then submits the petition to the Secretary of State
Missouri	Actual or random (at discretion of Secretary of State); if random sampling is used, the method is determined by the Secretary of State and shall include examination of 5% of signatures collected
Montana	Actual and random; county official verifies that each signer is a registered voter and also randomly selects signatures to check against voter registration records
Nebraska	Actual; local election officials verify all signatures using voter registration records; Secretary of State double checks total number of valid signatures
Nevada	Actual and random; county clerks/registrars verify the total number of signatures and forward the number to the Secretary of State, who verifies the raw count and, if the total number of signatures is correct, notifies county clerks/registrars to begin verifying each signature; if there are greater than or equal to 500 signatures, clerk/registrar conducts a random sample of 500 or 5% of signatures
North Dakota	Random; since N.D. does not have voter registration, sponsor must collect signatures of residents; Secretary of State then conducts a representative sampling of signatures using post-cards, phone calls, or other methods to verify signatures
Ohio	Signatures are presumed to be valid unless proved otherwise; if more signatures are needed, sponsors are allowed 10 additional days to file signatures
Oklahoma	Actual; Secretary of State counts and verifies every signature
Oregon	Random; Election Division verifies the number of signatures and randomly selects (using a computer-generated report) samples of signatures to send to county election officials for individual verification
South Dakota	Actual; every signature is verified until the minimum number of signatures is reached
Utah	Actual; county clerks verify every signature
Washington	Actual or random (at discretion of Secretary of State); Secretary of State verifies each signature unless the number of signatures filed is substantially in excess of the minimum needed, in which case the Secretary of State may use a random sampling process to verify signatures
Wyoming	Actual; Secretary of State verifies every signature

Source: National Conference of State Legislatures, January 2002.

Other Ideas for Reform

One suggestion for reform is to decrease the number of signatures needed for qualification. This would reduce the amount of time and money needed to both gather the signatures and to verify them. The task force does not support this reform but, rather, believes that the demonstration of a substantial degree of popular support, represented by signatures on a petition, is an important step in gaining ballot access.

Another suggested reform is to allow petitioners to turn in signatures periodically throughout the circulation phase. This would allow proponents to know how many signatures they still need to gather, and it would help to alleviate the burden of counting a large volume of signatures at one time.

Perhaps the most intriguing suggestion for reforming the signature-gathering process is the establishment of a bifurcated system for signature gathering, such that each signature gathered by a volunteer is worth more than a signature gathered by a paid circulator. Such a

plan would provide an incentive for initiative campaigns to use volunteer circulators, but would not penalize efforts that use paid circulators. An initiative reform task force in Nebraska considered such a plan in 1995, but did not carry it forward due to concerns about its constitutionality. Disagreement exists among scholars as to whether a bifurcated system would pass constitutional muster, and it will be impossible to know for sure until a state adopts it.

Recent Legislative Action

Changing signature requirements, filing deadlines, and regulations on petition circulators were among the most common topics of initiative reform legislation between 1999 and 2002.

- Six states considered changing the filing deadline for initiative petitions. Oregon placed a measure on the March 2000 ballot to change the filing deadline from four months to five months before the election, effectively shortening the circulation period by one month but providing more time for signature verification. Voters passed the measure.

- Thirteen states considered additional regulation of petition circulators. Arizona, California and Idaho established new requirements that petition circulators be state residents. Oregon passed a measure requiring that paid petitioners be identified as such.

- Three states considered bills designed to combat signature fraud.

- Thirteen states looked at changing the number of signatures required to qualify a ballot initiative. None enacted a change.

6. VOTER EDUCATION

Recommendations

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 on 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.

Overview

An important part of the initiative process is educating voters. Most states prepare voter information pamphlets and post election information on the secretary of state's Web page. In addition, proponents and opponents of initiatives put together their own education campaigns to advertise for and inform voters about initiatives that will appear on the ballot.

Manual on the Initiative Process

Providing citizens with information about how to use the initiative process and the rules and laws that apply is a valuable voter education effort. It helps citizens organize their efforts early in the process and also may help to reduce problems and disputes at later stages of the process.

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

This recommendation was also made by the Nebraska Petition Process Task Force in 1995.

Public Education and Discussion of Initiative Measures

Clearly, one of the most serious criticisms of the initiative process is that voters do not always fully understand the contents of the initiatives on which they are asked to vote. This is due partly to the increasing number of measures on the ballot, resulting in such a large volume of information that it is not reasonable to expect all voters to thoroughly study and understand all issues. Furthermore, many initiative measures are lengthy and complicated and often may be so poorly drafted as to be incomprehensible.

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

States have a responsibility to educate voters about measures on the ballot. Better educating voters will lead to improved decision making and, ultimately, to better policy making in the state. In addition to producing a voter information pamphlet (discussed in detail below), states should explore new and innovative ways of conveying information to voters. This might include posting information on the Internet, providing chat rooms for discussion and debate of initiative proposals, holding public hearings and town hall meetings, and providing debates and information on public access television. Each of these venues gives proponents and opponents an opportunity to speak and also provides an event that the media can cover. Media coverage will extend the debate and informational content of state-sponsored voter education efforts to an even broader audience.

Other individuals, commissions and task forces that have recommended public and/or legislative hearings on initiatives include:

M. Dane Waters, I&R Institute (in testimony before the task force on Dec. 8, 2001),
California League of Women Voters (1999),
Nebraska Petition Process Task Force (1995),
Citizens' Commission on Ballot Initiatives (California, 1994), and
California Commission on Campaign Financing (1992).

Case Study: Public Hearings on Initiatives

Mississippi

Mississippi holds public hearings in each congressional district for every initiative measure that is certified for the ballot. At the hearing, a representative from the Secretary of State's office summarizes the measure for the audience, and the proponents and opponents have the opportunity to speak about the initiative. Although public hearings clearly provide a useful forum for debate, discussion and voter education, their value must be weighed in contrast with their cost. In some states—such as Nebraska—that hold public hearings for initiatives, the hearings rarely draw significant participation or media coverage.

Voter Information Pamphlets

One of the most commonly used tools for voter education is the voter information pamphlet. These pamphlets provide a great deal of information about ballot issues—and sometimes about candidates, as well. Voters may peruse the pamphlet at their leisure, and may even take it with them into the voting booth. Clearly, voter information pamphlets are a worthy voter education effort.

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

Voter information pamphlets should be user-friendly. They should group related measures, and should use charts and other graphic elements to facilitate comparisons. The information provided for each ballot measure should include the ballot title, an impartial summary, fiscal analysis, arguments for and against each measure, and the text of the proposed law. Some states also include in their ballot pamphlets statements that point out conflicting measures, explaining what will happen if both are adopted. Other states' ballot pamphlets list programs or services that a measure containing an appropriation would take money away from.

Voter information pamphlets are required by statute in 14 of the initiative states. In most states, the pamphlets are printed by the state's chief election official and generally include the text of the measure, an impartial analysis or summary, a fiscal impact statement, and arguments for and against the proposed initiative. In Colorado, the Legislative Council is responsible for writing and assembling the pamphlet, which includes a detailed, impartial analysis of each proposed measure and arguments for and against. Table 15 contains detailed information about the production and contents of voter information pamphlets in the initiative states.

Table 15. Voter Information Pamphlets

	Who Prepares and Distributes	Contents of Pamphlet
Alaska	Lt. Governor	Full text Ballot title and summary from petition Neutral summary prepared by Legislative Affairs Agency Statements for and against (limited to 500 words each) *Also published in full on Lt. Governor's homepage www.gov.state.ak.us/ltgov/elections/homepage.html
Arizona	Secretary of State prepares; county boards of supervisors distribute	Title Text Arguments for and against Analysis (prepared by Legislative Council). Summary of fiscal impact statement *Also published in full on Secretary of State's homepage http://www.sosaz.com/election
Arkansas	N/A	Text of measures published online at http://sosweb.state.ar.us/elect.html
California	Secretary of State	Text Copy of specific constitutional or statutory provision that would be repealed or revised Arguments and rebuttals for and against Analysis (prepared by Legislative Analyst) Fiscal impact estimate Art work, graphics and other materials that the Secretary of State determines will make pamphlet easier to understand *Also published in full on Secretary of State's homepage http://www.ss.ca.gov/elections/elections.htm

Table 15. Voter Information Pamphlets (continued)		
	Who Prepares and Distributes	Contents of Pamphlet
Colorado	Legislative Council	Title Text Impartial analysis, including description of major provisions of proposal and comments on proposal's application and effect (Legislative Council prepares) Summary of major arguments for and against (Legislative Council prepares) Fiscal impact statement *Also published on the Legislative Council's Web page, and hyperlinked from the Secretary of State's page http://www.sos.state.co.us/pubs/elections/main.htm
Florida	Up to individual counties to prepare if they choose	Varies from county to county Information also available online at http://election.dos.state.fl.us/initiatives/initiativelist.asp
Idaho	Secretary of State	Title Text Ballot number Arguments and rebuttals for and against *Also published in full on Secretary of State's homepage http://www.idsos.state.id.us/elect/eleindex.htm
Illinois	None	N/A
Maine	Secretary of State	Title Text Summary of intent and content Explanation of significance of a "yes" or "no" vote *Text of measures published in full on Secretary of State's Web site http://www.state.me.us/sos/cec/elec/
Massachusetts	Secretary of Commonwealth	Title Text Summary prepared by Attorney General Fair and neutral one-sentence statement of the effects of a "yes" or "no" vote (prepared by Attorney General and Secretary of Commonwealth) Arguments for and against. *Also published in full at Secretary of Commonwealth's homepage www.state.ma.us/sec/ele/eleidx.htm
Michigan	N/A	Text of each proposal is published online at www.sos.state.mi.us/election/elecadmin/index.html
Mississippi	Secretary of State	Text Ballot title (Attorney General drafts) Ballot summary (Attorney General drafts) 300-word argument for and 300-word argument against Fiscal analysis (drafted by Legislature's chief budget officer) *Text of proposals are published online at www.sos.state.ms.us/elections/elections.html
Missouri	Secretary of State	Text "Plain language" explanation Fiscal impact statement (State Auditor drafts) *Also published in one newspaper in each county and online at www.sos.state.mo.us

Table 15. Voter Information Pamphlets (continued)		
	Who Prepares and Distributes	Contents of Pamphlet
Montana	Secretary of State prepares; county officials distribute	Title Text Impartial summary prepared by Secretary of State Fiscal impact estimate Proponent and opponent arguments and rebuttals *Also published online at sos.state.mt.us/css/ELB/Contents.asp
Nebraska	Secretary of State prepares; county clerks distribute	Title Text Arguments for and against (Secretary of State drafts) General Election Voter Information Pamphlet published on Secretary of State's Web site at www.sos.state.ne.us/elections/election.htm
Nevada	Secretary of State publishes; county clerks distribute	Title Text Summary Arguments for and against Fiscal impact statement *Also published online by Secretary of State at sos.state.nv.us/nvelection/
North Dakota	N/A	Text of proposals are published online at www.state.nd.us/sec/Elections/Elections.htm
Ohio	Secretary of State	Ballot title Impartial statement (prepared by Secretary of State) Explanation (prepared by Ohio Ballot Board) Arguments for and against Information also available online at www.state.oh.us/sos/
Oklahoma	House Research, Legal and Fiscal Divisions	Ballot title Background Text
Oregon	Secretary of State	Title Text Fiscal impact estimate Explanatory statement (written by committee of five citizens—two members from opponents selected by Secretary of State, two members appointed by proponent's committee, fifth member selected by other four) Arguments for and against *Also published in full on Secretary of State's homepage at www.sos.state.or.us/elections/other.info/im.htm
South Dakota	Secretary of State	Ballot title Text Explanation and effect (prepared by Attorney General) Arguments pro and con *Also published in full on Secretary of State's homepage at www.state.sd.us/sos/sos.htm
Utah	Lt. Governor	Ballot number Ballot title Final vote cast by Legislature if it is a measure submitted by the Legislature Fiscal impact estimate Impartial analysis (prepared by Office of Legislative Research and General Counsel) Arguments and rebuttals in favor of and against Text *Also published online at elections.utah.gov/

Table 15. Voter Information Pamphlets (continued)		
	Who Prepares and Distributes	Contents of Pamphlet
Washington	Secretary of State	Ballot number Official title Brief statement of law as it presently exists Brief statement explaining effect of proposed law (Attorney General prepares) Total votes for and against by House and Senate if measure has been passed by Legislature Arguments for and against Names and addresses of those writing arguments Full text of each measure *Also published in full on Secretary of State's homepage at www.secstate.wa.gov/elections/
Wyoming	N/A	Text of proposals published in full online at soswy.state.wy.us/election/election.htm
Source: National Conference of State Legislatures, May 2002.		

Costs associated with the production, printing and distribution of voter information pamphlets vary from year to year (see table 16). Much of the cost depends upon how many pages are in the pamphlet, whether there is a need to print a supplemental ballot pamphlet (sometimes the case in California), and whether the pamphlet must be available in languages other than English.

Table 16. Costs of Voter Information Pamphlets (Selected States)				
	Printing	Postage	Total Printed/Mailed	Sent to
Arizona (00)	$443,376	$190,000	1.3 million/1.1 million	Every registered voter household; county offices
California (02)*	$4.3 million	$2.7 million	12.8 million/10.9 million	See summary
Colorado (00)	$283,000	$192,000	1.6 million/1.6 million	Every registered voter household; county offices
Colorado (01)	$96,000	$209,000	1.6 million/1.6 million	Every registered voter household; county offices
Nebraska (02)	$165 to $250	$335 to $750	500/500	Each county office
Oregon (00)	$1.9 million	$870,417	1.6 million/1.6 million	Every residential household
* California amounts are per election (they have initiatives in both the primary and general election). Source: National Conference of State Legislatures, April 2002.				

Each state requires the inclusion of different material, such as title, summary, and text of measures; arguments pro and con; and candidate information. In Nebraska, for instance, the ballot pamphlet contains information only about measures—candidates are not included. In Oregon, information about both measures and candidates is included, as well as voter registration materials (which qualified the pamphlet for nonprofit postage status and saved the state $750,000 in postage). The Oregon ballot pamphlet for the November 2000 election comprised two volumes and more than 400 pages.

Postage costs are determined by state requirements for the distribution of pamphlets. The pamphlet is mailed only to county offices in Nebraska. In Colorado, it is mailed to each registered voter household. California also mails a pamphlet to each registered voter household, and to all city election officials, each member of the Legislature, the proponents of each ballot measure, public libraries, high schools, and institutions of higher learning.

In Colorado and Nebraska, the text and title of each measure also must be published in a newspaper. This is a significant expense in Nebraska, where the publication cost per measure is $75,000.

Arizona, California and Colorado are required to print voter information pamphlets in languages other than English. California currently prints in five languages in addition to English, and Colorado and Arizona in two additional languages. Translation costs in Arizona for the November 2000 election were $20,000, which included audio tapes in Navajo. In Colorado, translation costs for 2000 were $25,000. California directly mails 278,519 translated versions of the voter information guide.

Virtually every commission that has studied the initiative process has recommended improved voter information pamphlets. Some of the specific recommendations include the following:

- Analyses of initiative measures should be written for the reading level of the average citizen (California League of Women Voters, 1999).
- The ballot pamphlet should clearly indicate the effect of a "yes" vote and a "no" vote (California League of Women Voters, 1999; Citizens' Commission on Ballot Initiatives, California, 1994).
- Related initiatives should be grouped together in the ballot pamphlet, and comparison charts should be used to facilitate voter comparison of similarities and differences (Citizens' Commission on Ballot Initiatives, California, 1994).
- The state should provide the citizens with readily accessible, in-depth information regarding the various issues surrounding each proposed constitutional amendment (Florida's Citizen Initiative Process, November 1994).

Case Study: Voter Information Pamphlets

Oregon

Oregon charges a fee of $500 for the submission of arguments for or against initiative measures to be printed in the voters' pamphlet. This helps fund the printing and postage costs associated with the pamphlet. Note that it is possible to bypass the $500 fee by submitting a petition bearing the signatures of 1,000 people who are eligible to vote on the measure.

Oregon also has an innovative manner of drafting the explanatory statement that is printed in the voters' pamphlet with each measure. A committee is created, made up of the following:

- Two people appointed by the chief proponents (in the case of a legislative referendum, one person is appointed by the president of the Senate and one by the speaker of the House)
- Two opponents are appointed by the Secretary of State

- A fifth member, selected by the two proponent and two opponent members of the committee

The committee prepares a simple, impartial and understandable explanatory statement of no more than 500 words. The statement must be approved by at least three members of the committee.

The Secretary of State holds a public hearing to receive comments and suggested changes to the explanatory statement. The committee considers testimony at the hearing, and also considers written suggestions and comments, and issues a final explanatory statement no later than 90 days before the election. If the committee fails to issue a statement by the deadline, a statement drafted by the Legislative Counsel Committee is used instead. Any person who offered testimony at the public hearing may petition the Oregon Supreme Court to seek a different explanatory statement.

Voter Education on the Internet

All states except two provide online information about measures on the ballot and other initiative information. It also is becoming more common for states to list initiatives that were put on the ballot in past years and the outcome of each. Many states publish the voter information pamphlet in full online, including the title and text of each measure and arguments and rebuttals for and against the measure, an impartial summary of the measure, and a fiscal impact estimate.

The Media's Role in Voter Education

Scholarly research has shown that most people get their information about election issues from friends, family, special interest groups with which they identify, and the media. So, while voter information pamphlets printed by the state offer the most comprehensive and objective information, paid advertising and news media coverage of campaigns may have an equal or even stronger influence on voters. Others argue that the quality of the information available to voters is directly related to the integrity of the initiative process. Therefore, less comprehensive, shorter, purposefully inflammatory and potentially exaggerated media sources of election information could pose a threat to the initiative process.

Finally, some people argue that the use of media sources to educate voters unnecessarily increases the costs of running an initiative campaign. The process no longer is grassroots in nature but is, rather, a high-powered advertising campaign. Also, without disclosure requirements, it may be unclear to voters who is behind or sponsoring the advertising, leading to biased or only partially informed voter opinions.

Whatever one believes about the value and influence of paid campaign advertisements, however, the news media bears a responsibility to provide adequate and balanced coverage of initiative proposals.

Other Ideas for Reform

Some reform advocates have suggested that a list of individual and organizational endorsements included in the voter information pamphlet would be useful to voters, since they often use such cues to make their decisions about ballot measures. The Citizens' Commis-

sion on Ballot Initiatives (California, 1994) recommended this reform. Listing the position of legislators and the governor also has been suggested, for the same reason.

Recent Legislative Action

During the period of 1999 through 2002, legislatures in 11 states considered 39 bills addressing voter education on initiatives.

- Montana passed a bill that clarifies the contents of arguments prepared on ballot measures for inclusion in the voter information pamphlet.

- At the November 2002 election, Florida voters will decide if they want to add language to the state's constitution requiring the Legislature to draft a statute to require economic impact estimates on initiative constitutional amendments. Presently, Florida has no requirement for fiscal analysis of constitutional amendments.

7. Financial Disclosure

Overview

The role of money in the initiative process has grown dramatically during the past decade. Although large contributions to initiative campaigns are not new and date to the turn of the last century, they are even larger and more common today than ever before. The I&R Institute reported in 1998 that issue committees nationwide spent almost $400 million to support and oppose ballot measures. California led the way in 1998. According to the secretary of state, California committees spent just under $193 n illion to support and oppose the 12 general election ballot measures. Combined spending for 214 statewide and legislative candidates in the 1998 general election totaled just under $136 million for the general election, or about 70 percent of the spending on ballot measures.

Recommendations

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.

Even more concerning than the extraordinary amounts of money raised and spent in initiative campaigns is the fact that such large sums of money come from so few sources. Large contributions overwhelmingly dominate initiative campaigns, and small, grassroots contributions make up a small percentage of the total money spent. Of course, whether that is a problem in and of itself is debatable; nevertheless, voters deserve to know who is funding initiative campaigns. If a measure qualifies for the ballot because one or two wealthy individuals or corporations underwrote the costs, voters should be able to consider that fact as they decide how to vote on the measure.

Unlike candidate campaigns in most states, in which contributions are limited, it is not uncommon for large contributions from a small handful of contributors to fund an initiative, from the drafting and signature-gathering phases through the campaign. A series of U.S. Supreme Court rulings, *Buckley vs. Valeo*, 424 U.S. 1 (1976), *National Bank of Boston vs. Bellotti*, 435 U.S. 1 (1978), and *Citizens Against Rent Control vs. City of Berkeley*, 454 U.S. 290 (1981) have clearly established the Court's view that limiting contributions and expenditures in initiative campaigns is an impermissible violation of First Amendment rights. The rationale behind the Court's rulings is that, although it is possible that a candidate could be corrupted by large contributions, it is impossible to corrupt an issue.

In spite of the Court's reluctance to limit money in initiative campaigns, voters have consistently supported the idea. About half the states have at some time in their history attempted to limit spending in initiative campaigns, and voters have supported spending restrictions on initiative campaigns in at least two states—California and Alaska. Such limits have failed to stand up to judicial scrutiny, however.

Initiative Financial Disclosure Requirements

With contribution and expenditure limits out of the question, states are left with only one avenue of regulating money in initiative campaigns: disclosure. States have a responsibility to ensure that voters receive high-quality, transparent information about the sponsorship and financial support of initiative proponents and opponents. Such information not only minimizes abuse and manipulation of the initiative process, but also provides voters with key tools necessary for deciphering the sometimes veiled motives of initiative proponents. Voters cannot make a fully informed decision without campaign finance information about initiatives.

> 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.

The following commissions, individuals and organizations have recommended increasing disclosure requirements for initiative supporters and opponents:

Speaker's Commission on the California Initiative Process (2002),
David Broder, *Washington Post* (in testimony before the task force on Dec. 7, 2001),
California League of Women Voters (1999),
City Club of Portland, Oregon (1996),
Citizens' Commission on Ballot Initiatives (California, 1994),
Sacramento Bee (1994), and
Los Angeles Times (1990).

States use disclosure requirements in various phases of the initiative campaign. In some states, sponsors must disclose the amount of money they pay to petition circulators. In most states, initiative campaign committees are required to disclose their contributions and expenditures. They also are often required to disclose the names of contributors who give more than a threshold amount. A few states also require that initiative committees

identify out-of-state contributors, and at least 11 states require reporting by people or groups that make independent expenditures in support of or opposition to an initiative. Presently, no state requires that expenditures be reported for pre-certification activities, such as polling and drafting.

Every initiative state requires some degree of disclosure of contributions and expenditures by initiative campaigns; states vary in the degree of detail required in such reports and the frequency of reporting. In many states, the information is posted for the public on a Web site (usually the secretary of state's).

Effectiveness of Initiative Campaign Spending

Recent scholarly research suggests that high-spending campaigns often are no more successful in passing an initiative than are low-spending campaigns. Money is instrumental in changing voter opinion, however, when it is spent in opposition to a measure. Research suggests that high spending by opponents can be effective in defeating initiatives by creating a climate of confusion and uncertainty, under which most voters vote "no."

Recent Legislative Action

There has been significant legislative activity in the area of initiative campaign finance reform, as states scramble to equalize the disclosure requirements for initiative campaigns with those imposed on candidate campaigns. During the period of 1999 through 2002, legislatures in 15 states considered 34 bills addressing the issue of money in initiative campaigns. Highlights include the following.

- In 2001, Arizona passed HB 2389, requiring that committees that support or oppose ballot measures register before distributing campaign literature or running advertisements, that literature and ads disclose the political committee that funds them, and that ballot measure committees report contributions of $10,000 or more within 24 hours of receiving them.

- Montana passed HB 468 in 1999, requiring the people who employ paid signature gatherers to file financial disclosure reports. The report must include the amount they pay to each signature gatherer. Utah also passed a similar measure in 1999.

- In 2001, North Dakota passed a pair of bills that tightened financial disclosure requirements for petition sponsors and extended the requirements for last-minute contributions to initiative campaigns to include contributions from political parties to initiative campaigns.

- Oregon passed a bill in 2001 that added a new report requirement prior to the May primary, and up to two additional reports if aggregate contributions or expenditures exceed $2,000. Under prior law, proponents had to file just one report two weeks after the July deadline for turning in signatures.

- A 1999 bill passed in Arkansas requires that the use of state funds to support or oppose a ballot measure be reported to the Legislative Council if the expenditure exceeds $100.

- A bill pending in Massachusetts would test the U.S. Supreme Court's ruling that prohibited limiting contributions to initiative campaigns. HB 3862 proposes limiting to $100 contributions made for the promotion or defeat of ballot questions.

- A bill passed in 2002 in Arizona voids any signatures gathered before the proponents filed a statement of organization. It also requires that committees include their name, the serial number for the petition, and their support or opposition of a measure in their statement of organization. The bill is SB 1285.

- A failed bill in Oklahoma would have swept initiative campaigns into the existing campaign finance disclosure requirements by changing the definitions of "contribution" and "expenditure" to include any communication that clearly advocates the passage or defeat of a ballot measure.

8. VOTING ON INITIATIVES

Overview

In most states, present law permits the passage of an initiated law or constitutional amendment with a simple majority vote. Some states have implemented higher vote standards in an effort to ensure that initiatives truly have popular support before they are enacted.

Recommendations

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.

When Initiatives Can Appear on the Ballot

In a handful of states, initiatives may appear on primary or special election ballots. Alaska, California, North Dakota and Oklahoma permit initiatives on primary and special election ballots. Six states also permit initiatives on odd-year ballots: Colorado (only revenue measures), Maine, Mississippi (note, however, that Mississippi's legislative elections also are held in odd years), Ohio, Oklahoma and Washington. Voter turnout typically is significantly lower at primary, odd-year and special elections than at regular general elections. When initiatives appear on those ballots, it means a small percentage of registered voters are permitted to dictate policy for the majority. It is preferable that initiatives be voted on by as many people as possible.

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

This reform also was recommended by the California League of Women Voters in 1999, and the California Constitution Revision Commission in 1996.

Supermajority Vote Requirements for Constitutional Amendments

Most states require a simple majority vote to pass an initiative measure, whether statutory or constitutional in nature. By contrast, a supermajority vote of the legislature is necessary in almost all states to refer to the voters a measure to amend the constitution. All states except Delaware also require a vote of the people to pass a constitutional amendment. Supermajorities are intended to prevent a "tyranny of the minority," and also encourage

deliberation and compromise as proponents attempt to gather enough votes to reach a supermajority. Supermajorities in the legislature often are required for constitutional amendments because of the belief that constitutions should not be amended without careful deliberation. Many states also require a supermajority vote of the legislature to increase taxes.

In most states, however, the initiative constitutional amendment process is not subject to the same supermajority vote requirement as the legislature. Some experts question why supermajorities are required of the legislature but not of the people. They point out that the initiative process lacks checks found in the legislature that promote compromise and consensus and suggest that a supermajority vote requirement might help to prevent the passage of initiatives that are supported only by a narrow majority.

> 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.

Requiring a supermajority vote to amend the constitution also was recommended by the City Club of Portland (1996).

Wyoming's supermajority requirement was challenged in 1997 by the proponents of an initiative that received a simple majority but failed to reach the supermajority requirement (*Brady vs. Ohman,* 105 F.3d 726 (1998)). The 10th Circuit Court of Appeals rejected the challenge and wrote that Wyoming had the right to prevent "... abuse of the initiated process and make it difficult for a relatively small special-interest group to enact its views into law." The case was appealed to the U.S. Supreme Court, which upheld the Circuit Court ruling.

According to Richard Ellis in *Democratic Delusions: The Initiative Process in America*, the effect of a supermajority passage requirement would have dramatic consequences. He analyzed the passage rates of initiatives in the five most active initiative states—Arizona, California, Colorado, Oregon and Washington—between 1980 and 2000, and found that an average of 60 percent of the initiatives on the ballot would have passed under a 55 percent supermajority requirement, 45 percent under a three-fifths requirement, and only 20 percent under a two-thirds requirement (pp. 128-9).

Table 17 summarizes supermajority requirements for passing initiative measures.

Table 17. Supermajority Initiative Passage Requirements

	Passage Requirement	Applies to
Florida	Any measure imposing a tax or fee not in place in November 1994 must receive a 2/3 vote in order to pass	Constitutional amendments
Illinois	Passage by 3/5 of those voting on the measure, or a majority of those voting in the election	Constitutional amendments
Massachusetts	Majority vote, provided that the total number of votes cast on the initiative equals at least 30% of the total votes cast in the election	Statutory initiatives and constitutional amendments
Mississippi	Majority vote, provided that the total number of votes cast on the initiative equals at least 40% of the total votes cast in the election.	Constitutional amendments

Table 17. Supermajority Initiative Passage Requirements (continued)		
	Passage Requirement	Applies to
Nebraska	Majority vote, provided that the total number of votes cast on the initiative equals at least 35% of the total votes cast in the election	Statutory initiatives and constitutional amendments
Nevada	An initiative constitutional amendment must receive a majority vote in two successive general elections in order to pass	Constitutional amendments
Oregon	Any measure that includes any proposed requirement for more than a majority of votes cast by the electorate to approve any change in law or government action must be approved by at least the same percentage of voters specified in the proposed voting requirement	Statutory initiatives
Washington	Majority vote, provided that the vote cast upon the measure equals at least one-third of the total votes cast at such election	Statutory initiatives
Wyoming	Majority vote, provided that an amount in excess of 50% of those voting in the preceding general election must cast votes on an initiative or the initiative fails	Statutory initiatives
Source: National Conference of State Legislatures, January 2002		

Special Vote Requirements

In Oregon, any measure that includes any proposed requirement for more than a majority of votes cast by the electorate to approve any change in law or government action must be approved by at least the same percentage of voters specified in the proposed voting requirement. For instance, if an initiative proposes that all future tax increases must receive a 60 percent supermajority to pass, then that same initiative also must receive a 60 percent supermajority to pass. The Citizens' Commission on Ballot Initiatives (California, 1994) recommended this reform for California.

> 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.

In many states, legislatures must assemble a supermajority vote to pass certain types of statutory measures, in particular tax and fee increases. Such requirements are imposed because legislators and citizens feel that certain sections of law deserve special protection, and should not be easily or hastily changed. That assumption should extend to the initiative process as well.

> 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.

A similar reform was proposed by the California Policy Seminar in 1991.

Case Study: Passage and Ratification of Constitutional Amendments

Nevada

Nevada's passage requirement for constitutional amendments has received attention recently. Since 1962, Nevada has required that a constitutional amendment be passed by a majority of the voters in two successive general elections. This is not an uncommon requirement to be placed on legislatures—Nevada requires its own Legislature to pass a constitutional amendment in two consecutive sessions before putting it on the ballot, as does Massachusetts. Ten other states also require the legislature to pass an amendment twice before it goes to the ballot, and 33 require either a single supermajority vote or a majority vote in two legislative sessions.

The advantage of the double-vote requirement is that it allows more time for voters to learn about and consider the measure. It also gives the legislature a chance to act on an issue if a measure receives substantial support in its first election. Most amendments in Nevada that receive a majority "yes" vote in the first election also pass the second election. However, at least three measures—two tax measures and a term limits measure—that passed in the first election but failed in the second.

Conflicting Measures

It has become a common technique for initiative proponents to qualify multiple or competing measures that address the same subject. Often, the motive for this is to confuse voters, ensuring that a particular measure—or all of the competing measures—will fail. It is important that states have a standard for determining how to respond when conflicting measures are passed by voters. A state without such a standard may someday find itself in a complicated and expensive court battle to sort out conflicting measures.

> **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.

Legislatures have a variety of ways for dealing with the passage of laws that conflict with each other. It is common for a state to provide the code revisor with authority to rectify certain problems without requiring further action. Commonly, revisors may not alter the sense, meaning or effect of an act, but may renumber and rearrange sections, transfer or divide sections, change capitalization, correct manifest typographical and grammatical errors, and make other such minor changes. States also may provide a series of rules to help resolve conflicts. For instance, if amendments to the same statute are enacted without reference to one another, they often are harmonized to give effect to each, to the extent possible. If conflicting amendments or statutes are irreconcilable, the most recently enacted amendment or statute generally prevails.

Other Ideas for Reform

Sunset Provisions

Many states currently use a sunset process. In these states, some laws contain an automatic termination provision, meaning the law automatically terminates unless it is reauthorized.

It is even more common for states to subject certain agencies to termination unless they are reauthorized. No state currently requires a sunset provision for initiative measures.

It has been suggested that requiring a sunset provision on initiative measures would provide an opportunity and a formal venue for the legislature and others to publicly discuss the effects of an initiative. If an initiative had unintended consequences, they would come up during the sunset process, and the legislature might have the opportunity to show voters why the initiated law needed amendment. Arizona has considered bills that would impose a sunset provision on initiated laws, and it was recommended by the California League of Women Voters in its 1999 position statement on the initiative process.

Supermajorities

Several states require a particular type of supermajority vote for ballot measures (see Table 17). In these states, not only must a majority of votes cast on the measure be affirmative, but a certain percentage of votes cast in the election must be in favor of the measure. For instance, in Massachusetts, an initiative must receive a simple majority, and the votes in favor of the initiative must be equal to at least 30 percent of the total votes cast in the election. Such restrictions are intended to address the problem of voters who choose not to cast a vote on an initiative. In effect, such restrictions count the lack of any vote as a "no" vote. They presume that a non-vote is an indication of the voter's preference to maintain the status quo in favor of any change. Opponents of this idea say that it creates a disadvantage for measures that appear later on the ballot, and that it is unfair because the same requirement is not imposed on candidate elections.

Recent Legislative Action

Eight states have considered changing the passage requirements for initiative measures since 1999. Proposals that were considered but not enacted include the following.

- Requiring a two-thirds vote to pass an initiative that changes state revenues and for constitutional amendments (considered in Arizona, California).
- Requiring a 60 percent vote on initiatives resulting in a loss of state revenues of more than $100 million (considered in Mississippi).
- Requiring a two-thirds vote on conservation initiatives (considered in Missouri).
- Requiring that constitutional amendments be passed at two consecutive general elections before taking effect (failed on the ballot in 2000 in Nebraska).
- Requiring a three-fifths vote to pass a constitutional amendment (considered in Oregon).
- Requiring that the ballot title for an initiative that contains any supermajority voting requirement also contain a statement indicating that the measure will allow a minority of voters to veto the will of the majority in certain elections (considered in Oregon).

- Establishing a method for the Legislature to determine if an initiative measure has substantial fiscal impact; requiring measures that are determined to have a substantial fiscal impact receive a vote of 60 percent to pass (considered in Washington).

- Requiring a two-thirds vote to pass an initiative that allows, limits or prohibits the taking of wildlife (considered in Wyoming).

APPENDIX A. THE INITIATIVE STATES

	Statutory Initiative	Constitutional Initiative
Alaska	D*	None
Arizona	D	D
Arkansas	D	D
California	D	D
Colorado	D	D
Florida	None	D
Idaho	D	None
Illinois	None	D
Maine	I	None
Massachusetts	I	I
Michigan	I	D
Mississippi	None	I
Missouri	D	D
Montana	D	D
Nebraska	D	D
Nevada	I	D
North Dakota	D	D
Ohio	I	D
Oklahoma	D	D
Oregon	D	D
South Dakota	D	D
Utah	D&I	None
Washington	D&I	None
Wyoming	D*	None

D—*Direct Initiative*: proposals that qualify go directly on the ballot.

I—*Indirect Initiative*: proposals are submitted to the legislature, which has an opportunity to act on the proposed legislation. Depending on the state, the initiative question may go on the ballot if the legislature rejects it, submits a different proposal or takes no action.

D*—Alaska and Wyoming's initiative processes exhibit characteristics of both the direct and indirect initiative. Instead of requiring that an initiative be submitted to the legislature for action (as in the indirect process), they require only that an initiative cannot be placed on the ballot until after a legislative session has convened and adjourned. The intent is to give the legislature an opportunity to address the issue in the proposed initiative, should it choose to do so. The initiative is not formally submitted to the legislature.

Source: National Conference of State Legislatures, January 2002.

APPENDIX B. OTHER INITIATIVE REFORM COMMISSIONS

California Commission on Campaign Financing. *Democracy by Initiative: Shaping California's Fourth Branch of Government.* Los Angeles: Center for Responsive Government, 1992.

California Constitution Revision Commission. *Recommendations of the California Constitution Revision Commission to the Governor and the Legislature,* August 1996.

California League of Women Voters. Positions on the Initiative and Referendum Process. http://ca.lwv.org/lwvc/issues/gov/initref.html, 1999.

California Policy Seminar. *Improving the California Initiative Process: Options for Change,* November 1991.

Citizen's Commission on Ballot Initiatives. A. Alan Post, Chairperson. *Report and Recommendations on the Statewide Initiative Process,* January 1994.

City Club of Portland. *The Initiative and Referendum in Oregon,* February 1996.

Committee on Ethics and Elections, Florida House of Representatives. *Florida's Citizen Initiative Process,* November 1994.

League of Women Voters of Oregon Education Fund. *Oregon's Initiative System: Current Issues,* Spring 2001.

Nebraska Petition Process Task Force: Majority and Minority Reports. Senator DiAnna Schimek, Chair, May 1994.

Simmons, Charlene Wear. *California's Statewide Initiative Process.* Sacramento: California Research Bureau, California State Library, May 1997. (Contains collection of reforms proposed by California newspapers.)

The Speaker's Commission on the California Initiative Process. David Abel, Chairman. *Final Report,* 2002.

GLOSSARY

Advisory Initiative—A non-binding proposed statute and/or constitutional amendment that is initiated by citizens and placed on the ballot for a popular vote after a petition process.

Direct Initiative—A proposed statute and/or constitutional amendment initiated by citizens and placed on the ballot for a popular vote after a petition process. If passed by the voters, the statute or constitutional amendment takes effect without legislative or gubernatorial action.

General Policy Initiative—A citizen-initiated proposal for a statute and/or constitutional amendment that is general in nature, and does not contain specific constitutional or statutory language. If voters pass a general policy initiative, the legislature is required to take action to develop and implement the policy.

Indirect Initiative—A citizen-initiated proposal for a statute and/or constitutional amendment that is first submitted to the legislature, which has an opportunity to act on the proposed legislation. The initiative question may be placed on the ballot if the legislature rejects it, submits a different proposal or takes no action.

Legislative Referendum/Referral—A proposed or newly enacted law or proposed constitutional amendment placed on the ballot by the legislature for voter approval.

Popular Referendum—A process by which voters may petition to place a recent enactment of the legislature on the ballot for approval or rejection by the people.

REFERENCES

Allswang, John M. *The Initiative and Referendum in California, 1898–1998.* Palo Alto: Stanford University Press, 2000.

Boes, Mette A. *The Supermajority Vote Provision to Ratify Constitutional Initiatives: Would it Restore the Process to the People?* Master's thesis, University of Colorado-Denver, 2002.

Bowler, Shaun, Todd Donovan and Caroline J. Tolbert (eds.). *Citizens as Legislators: Direct Democracy in the United States.* Columbus: Ohio State University, 1998

Broder, David S. *Democracy Derailed: Initiative Campaigns and the Power of Money.* Harcourt Brace, 2000.

California Commission on Campaign Financing. *Democracy by Initiative: Shaping California's Fourth Branch of Government.* Los Angeles: Center for Responsive Government, 1992.

Cronin, Thomas E. *Direct Democracy: The Politics of Initiative, Referendum, and Recall.* Cambridge: Harvard University Press, 1989

Dinan, John J. *Keeping the People's Liberties: Legislators, Citizens and Judges as Guardians of Rights.* Lawrence: University Press of Kansas, 1998.

DuBois, Philip L., and Floyd Feeney. *Lawmaking by Initiative: Issues, Options and Comparisons.* New York: Agathon Press, 1998.

———. *Improving the California Initiative Process: Options for Change.* (Berkeley: The California Policy Seminar, University of California, 1992.

Ellis, Richard J. *Democratic Delusions: The Initiative Process in America.* Lawrence: University Press of Kansas, 2002.

Gerber, Elisabeth R. *Stealing the Initiative: How State Government Responds to Direct Democracy.* Upper Saddle River, N.J.: Prentice Hall, 2001.

———. *The Populist Paradox.* Princeton, N.J.: Princeton University Press, 1999.

Graham, Virginia. *A Compilation of Statewide Initiative Proposals Appearing on Ballots Through 1976.* Washington, D.C.: Library of Congress, 1978.

Halstead, T.J. *State regulation of the initiative process : background and analysis of issues in Buckley vs. American Constitutional Law Foundation, Inc., et al.* Washington, D.C.: Congressional Research Service, Library of Congress, 1999.

Haskell, John. *Direct Democracy or Representative Government? Dispelling the Populist Myth.* Boulder, Colo.: Westview Press, 2001.

Magleby, David B. *Direct Legislation: Voting on Ballot Propositions in the United States.* Baltimore: Johns Hopkins University Press, 1984.

McGuigan, Patrick B. *The Politics of Direct Democracy in the 1980s: Case Studies in Popular Decision Making.* Washington, D.C.: Free Congress Research and Education Foundation, 1985.

Oakley, Lisa and Thomas Neale. *Citizen Initiative Proposals Appearing on State Ballots, 1976-1992.* Washington, D.C.: Library of Congress, 1995.

Ranney, Austin. *The Referendum Device.* Washington, DC: American Enterprise Institute for Public Policy Research, 1981.

Rosenthal, Alan. *The Decline of Representative Democracy: Process, Participation and Power in State Legislatures.* Washington, D.C.: Congressional Quarterly Press, 1998.

Schmidt, David D. *Citizen Lawmakers: The Ballot Initiative Revolution.* Philadelphia: Temple University Press, 1989.

Schrag, Peter. *Paradise Lost: California's Experience, America's Future.* New York: The New Press, 1998.

Schultz, Jim. *The Initiative Cookbook: Recipes and Stories from California's Ballot Wars.* San Francisco: Democracy Center, 1998.

Smith, Daniel A. *Tax Crusaders and the Politics of Direct Democracy.* New York: Routledge, 1998.

Waters, M. Dane (ed.). *The Battle Over Citizen Lawmaking.* Durham: Carolina Academic Press, 2001.

Zimmerman, Joseph F. *The Initiative: Citizen Lawmaking.* Westport, Conn.: Praeger, 1999.

———. *The Recall: Tribunal of the People.* Westport, Conn.: Praeger, 1997.

———. *The Referendum: The People Decide Public Policy.* Westport, Conn.: Praeger, 2001.

Subject: testimony 3/25/03 re HB31-Rep.Wms ballot initiative
Date: Tue, 25 Mar 2003 09:09:00 -0900
From: "Richard or Mary Bishop" <rmbishop@ptialaska.net>
To: <fran_zarling@legis.state.ak.us>

Mr. Chairman and members of the Committee,

My name is Richard H. Bishop. I live on the outskirts of Fairbanks. I strongly support House Bill 31.

I am a game biologist by training. I retired from ADF&G in 1989 after over 20 years work on game research, management and department administration. Since retirement I have worked in various capacities, mostly with the Alaska Outdoor Council, on fish and wildlife resource issues, including several initiatives.

Initiatives aren't a bad tool when used to protect people's rights. Unfortunately, most initiatives are used to restrict people's rights. Even the founding fathers of this country were wary of the impact of initiative systems on minority rights.

In general, hunters, fishers and trappers are a numerical minority in Alaska. And in general, wildlife initiatives in this state and nation-wide, have promoted restriction of scientifically sound, lawful hunting, trapping and sound state wildlife management.

Rep. Williams' bill, HB31, would help defend against "the tyranny of the majority" by requiring broader representation of Alaskan minorities of all kinds, not just hunters and trappers, in order to put an initiative on the ballot.

Instead of a bad idea being sold by slick advertising to a gullible majority who have no stake in the issue, the idea would have to pass muster with those whose interests are most affected.

HB31 does not ban initiative. But 26 states now do and get along fine. HB31 really says "If you want to use this method of making law, you'd better have an idea that helps people – not hurts them...or it just won't fly."

Initiatives on wildlife issues are widely condemned by professional fish and wildlife biologists in Alaska and across the U.S. because they've proven a poor substitute for the legal framework developed over the last 100 years for managing fish and game.

With wildlife, it's easy to sell a bad idea with great--and often misleading—advertising. People mostly like wildlife, and mostly don't like to bother checking out the facts. So they react to the emotional appeal of a ballot campaign.

Alaska has an outstanding legal framework for fish and game management – consisting of the local advisory committees, the Board of Fisheries, the Board of Game and the Legislature, all working together with ADF&G professionals. The initiative process, as used by anti-hunters is an "end run" around the system.

HB31 would improve the working climate of this commendable system. It would be harder to undermine the system through initiatives that are not based on sound scientific management-- initiatives that penalize rather than promote the interests of Alaska's fishers, hunters and trappers-- through the "tyranny of the majority".

Thank you for taking my testimony.

ALASKA MINERS ASSOCIATION, INC.

3305 Arctic Blvd., #202, Anchorage, Alaska 99503 ▪ (907) 563-9229 ▪ FAX: (907) 563-9225 ▪ www.alaskaminers.org

March 13, 2003

MAR 14 2003

Honorable Bruce Weyhrauch
Chairman
House State Affairs Committee
Capitol Building
Juneau, AK 99801

RE: HB-31, Relating to Initiative and Referendum Petitions

Dear Representative Weyhrauch,

I am writing in support of House Bill 31. This bill will make minor but important changes to the requirements for placing initiatives and referendum petitions on the ballot.

In recent years groups opposing mining, hunting, trapping, etc. have used initiative petitions in several states to place items on ballots. These groups are funded in large part by private non-profit foundations. Their strategy appears to be one of finding an issue that, on the surface, has emotional appeal to the public. They then arrange funding through the foundations to fight the issue. Often times the issues being attacked have rather small unorganized constituencies and who cannot muster sufficient funding to tell the other side of the story to the public and as a result the initiative passes.

By increasing the number of voting districts where signatures must be raised, HB-31 would make it slightly more difficult for these special interest groups to bring issues to the ballot. This is especially important for Alaska where remote and rural areas often have a very limited voice in the Legislature due to their small population.

We support passage of HB-31 and urge that it be passed out of Committee at the earliest date.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Honorable Bill Williams

January 13, 2003

TO: Senator Ben Stevens
Representative Lesil McGuire

Good Morning:

We are writing to register our opposition to House Joint Resolution 5 and House Bill 31 which will place new restrictions on the citizens' right to petition the government. The citizen's right to initiative is a basic American right and should be expanded not restricted. The government should do all things possible to encourage citizen participation for it is thru citizen participation that good government is created. These bills do not improve government, they only restrict the citizen's right to redress. When and if these resolutions come before you for your consideration please consider the citizens of Alaska and vote no.

Sincerely

Michael and Michelle Citti
4641 Edinburgh Drive
Anchorage, Alaska 99502
(907) 243-2990 Home
(907) 344-0302 Office

CC: Representative Bill Williams

Friday, April 04, 2003

My name is Alvin Anders, Chair of the Alaska Libertarian Party of Juneau and also a veteran of dozens of initiatives in Alaska elections. I can be contacted at 217 Seward Street in Juneau.

I am testifying to urge the committee to reject the proposed changes to the initiative process (HJR 5).

It is already very difficult to put initiatives on the ballot. Very few businesses will allow anyone to circulate in front of their businesses, especially if the initiative is at all 'controversial'. The proposed changes to the initiative process will mean that circulators will need to not only get signatures equal to ten percent of the vote cast in the last election but will also have to get signatures equal to seven percent of the vote cast in three-fourths of the house districts. This will have the effect of requiring not one petition drive but thirty petition drives because to fail to qualify in just one of the required three-fourths districts (a total of thirty districts) will invalidate all the signatures. So even if 100 percent of the voters in 29 districts sign a petition but supporters fall one signature short in the thirtieth district then the initiative fails. And all voters are disenfranchised.

Nor is this reform even necessary. Supporters of making the initiative process more onerous claim they are proposing these changes so that all of the state is included in the initiative process. Yet they offer no evidence that this is not currently the case. I argue that in fact just the opposite is true. When an initiative is on the ballot it is widely debated statewide. When legislators pass bills, and they pass lots of them, voters rarely if ever participate in the debate on these bills. In fact legislators have even claimed that they themselves did not have time to read every bill before voting on it.

Alaska statewide ballots are not crowded. Moreover, initiative backers know they need a majority of the voters to pass the initiative so they work hard to win hearts and minds statewide. These changes will mean the death of citizen initiatives and mean that only initiatives supported by deep pocketed special interests can afford to make the ballot. This will hardly support democracy much less civic participation.

Also, initiatives increase voter turnout. They do this in two ways. First, they do this by registering new voters. On New Years Day, just eight minutes into the new millennium, I registered a voter who had not voted since 1972 and had no intention of ever again voting. He changed his mind because marijuana reform would be on the ballot. His then 21 year old daughter followed her father's example and registered for the first time in her life after having vowed never to do so.

Second, initiatives increase voter turnout by putting issues on the ballot that are 'too hot to handle' for the legislature. Tax reform, defending the Alaska Permanent Dividend, medical marijuana, tem limits, wild life issues and sign restrictions are just some of the issues that would only have been in the public debate but thanks to the initiative process.

These changes are not needed. Moreover, there is a better way to accomplish the same goal and save taxpayers money at the same time. Plus the change can be done without the need for a constitutional amendment. By changing the initiative from a petition booklet of many pages and printed at great expense to the taxpayers to a one page form that can be posted on a website and downloaded by citizens wishing to sign or circulate it, we will make the initiative easy to sign by even the voter living in the remotest parts of Alaska.

The added benefit is that the initiative backers can pay the cost of printing these petitions.

To do this change we will need to either give up the circulator affidavit on the last page of petition booklets or make it a separate form that needs to be signed and turned in. I would argue for the former reform. The circulator affidavit is no longer necessary because the US Supreme Court no longer allows petition circulation to be limited to only registered voters. Since this Supreme Court ruling, the circulator affidavits have only

served the purpose of having circulators swear that to the best of their knowledge, the person signing the petition was a registered voter. However, no one is taking our word for it. Instead the state goes to great expense to verify that the signers are indeed registered voters.

The initiative has a rich history in Alaska. It plays a very important role in self government. It fosters civic responsibly. It invigorates public debate. Instead of making the initiative process more difficult, we should be making it easier. Ideally, all bills should go before the citizens for a vote. Moreover, Alaska should also allow Alaskans to use the initiative process to amend the Alaska Constitution.

I propose that the legislature reject these proposed changes. Instead, turn this bill into the requirement necessary to put a constitutional amendment on the ballot. Add an additional safeguard by requiring the proposed constitutional amendment to pass twice or to pass with a super majority.

At the very least, the legislature should embrace democracy and the democratic process by rejecting this effort to make an already difficult initiative process far more difficult. Then the legislature should go a step further and take mercy on taxpayers by making initiatives one page, the cost of the printing of which is paid by initiative proponents instead of the taxpayers. As stated earlier this will also make the iniative process far more accessible to all Alaskans by facilitating the placing of initiatives on the internet where they can be easily downloaded.

Thanks for letting me testify.

Sincerely,

Alvin A. Anders
217 Seward Street
Juneau AK 99801
790-4367

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name committee on Ballot Initiatives bill/subject, dated 4-4-03.

Friday, April 4, 2003

Ak Legislature Valley offices.
600 East Railroad Ave.
Fax 376-6180
Wasilla, AK 99687

Dear legislators, I have been recently informed that the Judiciary committee is holding hearings about the Ballot Innlative process. This process is just fine the way it stands. Please don't make keeping our rights any harder than they are already. You guys have enough on your plate already with this new administration. I can see Lauren Lehman all over this thing. It's the good ole boy syndrome if there ever was one. This used to be an open minded state, what happened to us?

Sincerely

Michael C. Fell

Signed: _____
Testifier

_____
Representing (Optional)

PO Box 170
Address

Willow, AK 99688
Phone No.

KAREN E. BRETZ
ATTORNEY AT LAW

P.O. Box 91457
ANCHORAGE, AK 99509

TEL / FAX 907-277-5847
KBRETZ@ALASKA.NET

April 4, 2003

Re: HB 31 and HJR 5

4 pages

Members of the House Judiciary Committee:

I am an attorney and am the secretary-treasurer of Alaskans for Efficient Government, an organization which has sponsored several statewide initiatives. I have been involved in the initiative process as a proponent of ballot initiatives and counsel to litigants involved in the initiative process.

One reason proffered in support of this bill and resolution in the past is that it will ensure that there is statewide support of a proposed initiative. I am not aware of anything ever introduced to a legislative committee showing that the current initiative process is failing us in that persons living in rural areas are disenfranchised and that increasing signature requirements is the solution. In fact, the opposite is true, and HB 31 and HJR 5 will guarantee that people living off the road system will become disenfranchised from the initiative process.

The requirement that signatures be collected equal to 10% of the voters that voted in the preceding general election ensures that the proposed initiative has minimal support. If basic, fairly straightforward requirements are met, the lieutenant governor places the initiative on the ballot and all Alaska voters have the opportunity to vote on the proposition. There has been no attempt by proponents of HB 31 and HJR 5 to show that people in rural Alaska are not given the opportunity to make their voices heard when it counts – in the actual election.

I was involved in Proposition 2, the initiative proposing to move the meeting place of the Alaska legislature from Juneau to the Matanuska-Susitna Valley. This proposition was voted on in the 2002 general election and was soundly defeated – in districts both on and off the road system. According to the statistics on the Division of Elections website, Proposition 2 was

defeated 10 to 1in District 1, which is Representative Williams' district. It was defeated 17 to 1 in District 2, which includes Sitka, Petersburg, and Wrangell. It was defeated 2 to 1 in District 37, which is the Bristol Bay area. In fact, Proposition 2 passed only in four districts – all in the Palmer/ Wasilla area. There has been no indication that people in the rural areas did not have the opportunity to make informed choices at the ballot box based on the information that was made available to them.

I personally collected thousands of signatures for Proposition 2. I collected signatures at the Alaska State Fair in Palmer, in front of Fred Meyers and Kmart in Anchorage, at the Anchorage International Airport, and at the Fifth Avenue Mall in downtown Anchorage. These are some of the best places in the state to reach out to Alaskans because one meets voters from across the State. Anchorage is the State's economic hub and the state fair, the "big box" stores, the malls, and the airport are places where people from rural areas come for shopping, entertainment, and to take care of business.

Although I cannot tell you whether we collected signatures of seven percent of the voters in three-fourths of the house districts, as HB 31 and HJR 5 would require, I can tell you that we talked to persons and collected signatures from Angoon to Barrow to Unalaska and all in between.

HB 31 and HJR 5 will disenfranchise people living in rural Alaska from the initiative process. It is undeniable that most signatures needed to place an issue on the ballot can be collected in Anchorage and its environs by reaching out to places frequented by people from across the State. It is also undeniable that a person living in Dillingham cannot collect all the signatures that he needs to place an issue on the statewide ballot by staying in Dillingham. HB 31 and HJR 5 will require people in Bush Alaska to not only pay for plane tickets, lodging, transportation, and meals in Anchorage, but also place tickets, lodging, transportation, and meals in Juneau, Fairbanks, Barrow, Bethel, etc. in order to meet the onerous proposed requirements. Most citizens do not have the funds to do this. These additional requirements will preclude most people in rural Alaska from getting involved in the initiative process.

HB 31 and HJR 5 will require further record keeping by initiative proponents. Under former law, proponents of initiatives had additional time in which to submit additional signatures if they initially came up short. That is no longer the case. Initiative proponents now have only one shot at the

apple, so to speak, in which to ensure that they submit a sufficient number of signatures to the lieutenant governor's office. HB 31 and HJR 5 will require initiative proponents to institute another level of bookkeeping in order to ensure that they have signatures representing seven percent of the voters in three-fourths of the house districts. This will discourage many people from becoming involved with the initiative process.

Further, HB 31 and HJR 5 will encourage the propagation of more initiative litigation. As you may be aware, there is a current lawsuit against the State of Alaska concerning whether the proponents of a initiative to decriminalize marijuana submitted sufficient signatures. I am aware of four other lawsuits in the state currently pending involving initiatives, and I am personally involved in three of these. The point is that we who believe so strongly in the initiative process are willing to litigate to ensure that it is protected and available to Alaska citizens. In this time of budget shortfalls and dwindling resources, one would think the State could fund better things than initiative litigation.

Now when we have increased cause to reflect upon the individual freedoms, prosperity, and wealth that our form of government allows us to enjoy – in contrast to those regimes of Iraq and Afghanistan – the legislature should encourage more Alaskans to participate in the initiative process. Although the initiative process has never been instituted on the federal level, the United States Supreme Court has commented on it in the case of United Mine Workers of America v. Illinois State Bar Association, 389 U.S. 427 (1967):

> We start with the premise that the rights to peaceably assemble and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected, both in origin and in purpose, with other First Amendment rights of free speech and free press. "All these, though not identical, are inseparable." (Citations omitted) The First Amendment would, however, be a hollow promise if it ever left government free to destroy or erode its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such. We have therefore repeatedly held that

> laws which actually affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence, or even because the laws do in fact provide a helpful means of dealing which such an evil. (Citations omitted)

Restraining the rights of the people of the State of Alaska from the right to petition the government through the initiative process is certainly not Alaskan, and I also add, is not patriotic.

I ask that the Committee vote to not pass this bill and resolution.

Very truly yours,

Karen Bretz

Government **Position: ALASKA'S STATUTORY INITIATIVE PROCESS**

STATEMENT OF POSITION

The League of Women Voters of Alaska supports the existing initiative process and makes the following recommendations:

1. Initiatives should be voted on only at General Elections, not special or primary elections.

2. Support change that requires simplicity and clarity of the wording of initiative questions with a "yes" vote to indicate in favor of the measure and a "no" vote to indicate opposition to the measure.

3. Support disclosure on each initiative petition of the name(s) or group(s) that is paying the gatherer and how they are paid, such as by signature or by the hour.

4. Support the requirement for not less than 500 qualified voters as sponsors to the prospective petition with the Lieutenant Governor's office.

5. Support the requirement for a number of valid signatures not less than ten (10%) percent of the total number of the votes cast in the preceding general elections.

6. Support a formula for at least 50 signatures in each of two-thirds of the legislative districts in order to reflect statewide interest in a measure.

7. Support the requirement of an attorney general advisory opinion as to the constitutionality of each proposed initiative after it has qualified for the ballot, such opinion to be published in the State Election Pamphlet.

8. Support the existing limit on time for collecting signatures to one year.

9. Support the requirement for a cost analysis to be on each initiative petition.

10. Support the requirement that signature gatherers be qualified voters of Alaska.

Adopted 2001 at Post-Convention Board Meeting.

EXPORTING DEMOCRACY

NOTES REGARDING HB31 AND HJR5:

OPENING STATEMENT:

- Good Afternoon, Madam Chair and Committee Members. I am here to urge the passage of House Bill 31 and its accompanying House Joint Resolution 5.

- The right of the people to put an initiative on the ballot and to vote on it is an important part of Alaska's democracy.

WHY IT'S NEEDED:

- To make the initiative process truly democratic and representative of the entire state.

- As you can see from the statistical data in your committee packets, current law allows initiative sponsors to get an initiative on the statewide ballot with only a token number of signatures from, for example, Ketchikan, the State's fourth-largest city.

- The NCSL has taken a strong stand recommending statewide support for initiatives before they get on a ballot. Government in some other states (California, Washington) has been bogged down and hamstrung by numerous attempts to govern by initiative.

WHAT IT DOES:

- HB31/HJR5 would require petition sponsors to get signatures equalling at least Seven per cent of the number of voters in the most recent general election in at least three-quarters of house districts (i.e., 30 districts). This change supports the letter and spirit of the Constitution, and brings more Alaskans from more parts of the state into the initiative process. The proposal exports and expands democracy.

THE CONSTITUTION:

- The framers of our Constitution crafted an Article in our Constitution allowing citizens to get initiatives on the ballot, a right that does not exist in 26 other U.S. states.

- The framers of the Constitution specifically included a geographical distribution requirement in order to prevent any one area of the state from dominating the process.

HB31/HJR5 exports democracy into all areas of the state.

HB31/HJR5 changes the signature-gathering requirements to more accurately account for changes in communication and population distribution in Alaska since the Constitution was written in 1956.

OTHER STATES:

- Of the 24 states that have an initiative process, 13 have some sort of geographic distribution requirement for signatures. It is important that Alaska's initiative process be fair and represent the entire state, to avoid the kind of undue influence by interest groups and local areas that the framers of the Constitution sought to avoid.

THE PEOPLE WILL VOTE:

This bill and the accompanying resolution, if passed by the legislature, will not change Alaskan law. The decision will be made by the people of Alaska, in a vote on a Constitutional Amendment in November, 2004.

I urge passage of HB31 and HJR5, and I am available, along with my Aide, Tim Barry, to answer any questions you have.

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name committee on Ballot Initiatives bill/subject, dated 4-4-03.

Friday, April 4, 2003

Ak Legislature Valley offices,
600 East Railroad Ave.
Fax 376-6180
Wasilla, AK 99687

Dear legislators, I have been recently informed that the Judiciary committee is holding hearings about the Ballot Innlative process. This process is just fine the way it stands. Please don't make keeping our rights any harder than they are already. You guys have enough on your plate already with this new administration. I can see Lauren Lehman all over this thing. It's the good ole boy syndrome if there ever was one. This used to be an open minded state, what happened to us?

Sincerely

Michael C. Feil

Michael C. Feil

Signed: _____
Testifier

_____
Representing (Optional)

PO Box 170
Address

Willow, AK 99688
Phone No.

Alaska State Legislature

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LEXSEE 794 p.2d 108

STATE OF ALASKA, DEPARTMENT OF PUBLIC SAFETY, and TOM SCHWANTES, Petitioners, v. ROBERT BROWN, Respondent

No. 3612, Supreme Court No. S-2829

Supreme Court of Alaska

794 P.2d 108; 1990 Alas. LEXIS 78

June 22, 1990

SUBSEQUENT HISTORY:
[**1] As Corrected June 26, 1990.

PRIOR HISTORY:
Petition for Review from the Superior Court of the State of Alaska, Third Judicial District of Anchorage, Joan M. Katz, Judge. Superior Court No. 3AN-87-5394 Civil.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant, the State of Alaska, sought review of the decision of the Superior Court of the State of Alaska, Third Judicial District of Anchorage, which denied the state's motion for summary judgment on the grounds of sovereign immunity and the exclusive remedy provision of the Workers' Compensation Act, *Alaska Stat. § 23.30.055*, in a claim brought against the state by plaintiff sailor for injuries he received while employed by the state.

OVERVIEW: The sailor, employed by the state, was injured when he boarded a fishing vessel to conduct an inspection in the course of his employment. After receiving workers' compensation benefits, the sailor filed a complaint seeking damages against the state. The state filed a motion for summary judgment on the ground that the state was immune and that the exclusive remedy provision of the Workers' Compensation Act barred the claim. The motion was denied and the state appealed. On appeal, the court affirmed. The court held first that merely because the exclusive remedy defense was not a condition of the waiver of the state's sovereign immunity did not mean a repeal of the exclusive remedy defense. The court found that the defense was fully applicable to all claims against the state brought under state law. However, the defense did not apply to federal remedies, and because the sailor was pursuing a federal maritime claim, the defenses of sovereign immunity and exclusive remedy were not applicable.

OUTCOME: The court affirmed the denial of the state's motion for summary judgment in the personal injury tort action brought by the sailor.

CORE TERMS: sovereign immunity, Jones Act, maritime, admiralty, exclusive remedy provision, workers' compensation, exclusive remedy, waiver of sovereign immunity, territory, immunity, Workers' Compensation Act, compensation act, State Act, waiver of immunity, state law, waiving, Alaska Workers' Compensation Act, worker's compensation, federal maritime law, conditioned, retentions, deprive, repeal, intend, Eleventh Amendment, statutory provision, summary judgment, tort liability, tort claim, unseaworthiness

LexisNexis(TM) HEADNOTES - Core Concepts

Admiralty Law > Personal Injuries > Maritime Tort Law
Torts > Public Entity Liability > Federal Causes of Action

Workers' Compensation & SSDI > Maritime Workers' Claims > Conflicts of Laws
[HN1] Once the tort claims act was passed, there was no intention to retain sovereign immunity vis-a-vis negligence claims against the state. The workers' compensation law is construed as simply a limitation regarding all employee-employer relations. It has nothing to do with limiting the waiver of sovereign immunity. In the case of admiralty law, workers' compensation principles are superseded by federal law for all employees, state workers constituting no exception.

Admiralty Law > Personal Injuries > Jones Act
Torts > Public Entity Liability > Liability
Workers' Compensation & SSDI > Maritime Workers' Claims > Compensability > Jones Act
[HN2] The Claims Against the State Act, *Alaska Stat. § 09.50.250*, states in part: By this waiver of immunity it must be concluded that the state may be sued for negligent torts which arise under the Jones Act.

Admiralty Law > Personal Injuries > Maritime Tort Law
Torts > Public Entity Liability > Liability
Workers' Compensation & SSDI > Maritime Workers' Claims > Conflicts of Laws
[HN3] It is true that under the Alaska Workmen's Compensation Act, employers, including the state, *Alaska Stat. § 23.30.265*, are excluded from admiralty liability.However, this exclusive liability provision cannot act as a limitation on suits against the state under the federal maritime law once the state has unqualifiedly waived its immunity for negligent torts. A state cannot protect private citizens from suit for a maritime tort by limiting the exclusive federal admiralty jurisdiction as delegated by Article III, § 2, of the United States Constitution. By waiving its immunity, the state stands in the position of a private party and cannot limit its tort liability by a general provision in the workmen's compensation act. So much of *Alaska Stat. § 23.30.055* as limits the liability of employers in admiralty must be considered an invalid infringement on the federal jurisdiction.

Admiralty Law > Personal Injuries > Maritime Tort Law
Torts > Public Entity Liability > Liability
Workers' Compensation & SSDI > Maritime Workers' Claims > Conflicts of Laws
[HN4] If it is the desire of the state to limit its tort liability to the workmen's compensation act, it may do so by legislative enactment of an exception to the waiver of sovereign immunity section contained in *Alaska Stat. § 09.50.250*.

Admiralty Law > Personal Injuries > Maritime Tort Law
[HN5] *Alaska Stat. § 09.50.250* provides that a person having a tort claim against the state may bring an action against the state in the superior court. This statute waives the sovereign immunity of the state as to claims brought in superior court for torts sounding in admiralty, as well as those based on state law. Subject to certain explicit exceptions, the intent of this statute was to put the state on an equal footing with private persons or entities who are sued in tort.

Admiralty Law > Personal Injuries > Maritime Tort Law
Workers' Compensation & SSDI > Maritime Workers' Claims > Conflicts of Laws
[HN6] The Workers' Compensation Act, to which the state is subject to the same extent as private employers, provides in part that the liability of an employer under the Workers' Compensation Act is exclusive and in place of all other liability of the employer and anyone otherwise entitled to recover damages at law or in admiralty on account of the injury or death. *Alaska Stat. § 23.30.055*.

Admiralty Law > Personal Injuries > Maritime Tort Law
Workers' Compensation & SSDI > Maritime Workers' Claims > Conflicts of Laws
[HN7] An exclusive remedy provision in a state workmen's compensation law cannot be applied when it will conflict with maritime policy and undermine substantive rights afforded by federal maritime law.

Admiralty Law > Personal Injuries > Maritime Tort Law
Workers' Compensation & SSDI > Maritime Workers' Claims > Conflicts of Laws
[HN8] While states may sometimes supplement federal maritime policies, a state may not deprive a person of any substantial admiralty rights as defined in controlling acts of Congress or by interpretative decisions of the court. To hold

otherwise would undermine the uniformity of maritime law which the Federal Constitution has placed under national purview to control in its substantial as well as procedural features.

COUNSEL:

Robert L. Eastaugh, Delaney, Wiles, Hayes, Reitman & Brubaker, Inc., Anchorage, for petitioners.

Ron J. Webb, Anchorage, and Eric Dickman, David S. Teske & Associates, Seattle, Washington, for respondent.

JUDGES:

Matthews, Chief Justice, and Rabinowitz, Burke and Compton, Justices. [Moore, Justice, not participating.]

OPINIONBY:

MATTHEWS

OPINION:

[*109] OPINION

MATTHEWS, Chief Justice.

I. FACTUAL AND PROCEDURAL BACKGROUND

Robert Brown was employed by the State of Alaska as First Mate on the Alaska Department of Public Safety patrol vessel VIGILANT, a 100-foot sea-going vessel. On June 18, 1985, while the VIGILANT was on patrol in Bristol Bay, Brown was injured as he boarded a fishing vessel to inspect it for a suspected violation of state fisheries laws.

After first accepting workers' compensation benefits **[**2]** under the Alaska Workers' Compensation Act, *AS 23.30.005*-.270, Brown filed suit against the state, among others, in the superior court. Brown alleged that the state was liable to him under the Jones Act, *46 U.S.C. App. § 688*, for negligence of the master of the VIGILANT, and under the admiralty doctrines of unseaworthiness, maintenance, and cure. The state moved for summary judgment on grounds of sovereign immunity and the exclusive remedy provision of the Workers' Compensation Act, *AS 23.30.055*. The trial court denied the motion. We granted the state's petition for review.

II. DISCUSSION

The trial court summarized its reasons in an order denying the state's motion for reconsideration as follows:

After statehood, the tort claims act was passed. It expanded the waiver of sovereign immunity to cover all tort claims, specifically mentioning admiralty. No limiting language referring to the workers' compensation statute was included in the tort claims act.

It is this court's view, thus, that [HN1] once the tort claims act was passed, there was no intention to retain sovereign immunity vis-a-vis negligence claims against the state. The workers' compensation law is construed as simply a limitation **[**3]** regarding all employee-employer relations. It has nothing to do with limiting the waiver of sovereign immunity. In the case of admiralty law, workers' compensation principles are superseded by federal law for all employees, state workers constituting no exception.

The same rationale was expressed in an opinion issued by former Attorney General Hayes more than 25 years ago. 1963 Formal Op. Att'y Gen. 28. In addressing the question of whether workers employed by the state on state ferries could sue the state under the Jones Act, the opinion stated:

[T]he only question remaining is whether the State of Alaska has waived its sovereign immunity. If it has, the Jones Act is supreme; if it has not, the State cannot be sued under the Jones Act and the only remedy available to State **[*110]** employees is the State workmen's compensation act.

Id. at 11. The opinion next quoted the [HN2] Claims Against the State Act, *AS 09.50.250*, and continued:

By this waiver of immunity it must be concluded that the State may be sued for negligent torts which arise under the Jones Act. [HN3] It is true that under the Alaska Workmen's Compensation Act, employers, including the State (*AS 23.30.265*), are excluded from admiralty **[**4]** liability.

Id. at 12. The opinion then quoted the exclusive remedy provision of *AS 23.30.055*, and stated:

However, this exclusive liability provision cannot act as a limitation on suits against the State under the Federal Maritime law once the State has unqualifiedly waived its immunity for negligent torts. . . . A state cannot protect private citizens from suit for a maritime tort by limiting the exclusive Federal admiralty jurisdiction as delegated by Article III, Section 2, of the United States Constitution. By waiving its immunity, the state stands in the position of a private party and cannot limit its tort liability by a general provision in the workmen's compensation act. So much of *AS 23.30.055* as limits the liability of employers in admiralty must be considered an invalid infringement on the Federal jurisdiction.

[HN4] If it is the desire of the State to limit its tort liability to the workmen's compensation act, it may do so by legislative enactment of an exception to the waiver of sovereign immunity section contained in *AS 09.50.250*.

Id. at 13. We agree with this reasoning. Our explanation follows.

[HN5] *Alaska Statute 09.50.250* provides that "[a] person . . . having a **[**5]** . . . tort claim against the state may bring an action against the state in the superior court." This statute waives the sovereign immunity of the state as to claims brought in superior court for torts sounding in admiralty, as well as those based on state law. *State v. Stanley, 506 P.2d 1284, 1290-1291 and n.9 (Alaska 1973).* Subject to certain explicit exceptions, the intent of this statute was to put the state on an equal footing with private persons or entities who are sued in tort. See *State v. Abbott, 498 P.2d 712, 724 (Alaska 1972).*

[HN6] The Workers' Compensation Act, to which the state is subject to the same extent as private employers, provides in part that "[t]he liability of an employer [under the Workers' Compensation Act] is exclusive and in place of all other liability of the employer . . . and anyone otherwise entitled to recover damages . . . at law or in admiralty on account of the injury or death." *AS 23.30.055*. This provision would bar any suit by Brown for damages under state law. However, the present case is brought under federal maritime law.

The exclusive remedy provision cannot deprive Brown of his federal maritime remedy. In *Barber v. New England Fish Co.,* **[**6]** *510 P.2d 806 (Alaska 1973),* a longshoreman was injured while aboard a barge owned by his employer. Although he had already collected benefits under the Alaska Workers' Compensation Act, we held that the exclusive remedy provision of the act did not preclude him from seeking a further recovery against his employer under federal maritime law for unseaworthiness. n1 Similarly, in *Thibodaux v. Atlantic Richfield Co., 580 F.2d 841, 847 (5th Cir. 1978),* cert. denied, *442 U.S. 909, 99 S. Ct. 2820, 61 L. Ed. 2d 274 (1979),* the court held that [HN7] "an exclusive remedy provision in a state workmen's compensation law cannot be applied when it will conflict with maritime policy and undermine substantive rights afforded by federal maritime law." Accord *Purnell v. Nomed Shipping B.V., 801 F.2d 152, 156 (3rd Cir. 1986).* In Thibodaux, the court reversed summary judgment in favor of Atlantic Richfield and remanded the case to allow plaintiffs to pursue their general maritime claims against the latter for wrongful death. *580 F.2d at 847-48.* The **[*111]** court noted that it had been presented with an analogous question in *Roberts v. City of Plantation, 558 F.2d 750 (5th Cir. 1977). Thibodaux, 580 F.2d at 846.* In Roberts, **[**7]** the court held that the exclusive remedy provisions of Florida's workmen's compensation act were not a defense to a *Jones Act claim. 558 F.2d at 751.*

----------Footnotes----------

n1 We noted in Barber that double recovery would not be permitted as the amounts paid under the compensation award would be subject to offset should the employee win his federal maritime case. *Id. at 813, n.39.* This observation also governs the present case.

----------End Footnotes----------

The Thibodaux court found support in the Supreme Court's decision in *Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 74 S. Ct. 202, 98 L. Ed. 143 (1953).* There, the court refused to apply a state contributory negligence defense which would have barred recovery for a general maritime cause of action. The court stated that [HN8] "[w]hile states may sometimes supplement federal maritime policies, a state may not deprive a person of any substantial admiralty rights as defined in controlling acts of Congress or by interpretative decisions of this Court." *Id. at 409-10* (footnote omitted). To hold otherwise would undermine the uniformity of maritime **[**8]** law "which the [Federal] Constitution has placed

under national purview to control in its substantial as well as procedural features.'" *Id. at 409* (quoting *Panama R.R. Co. v. Johnson, 264 U.S. 375, 386, 44 S. Ct. 391, 68 L. Ed. 748 (1924)).* These precedents compel the conclusion that the exclusive remedy provisions of the Alaska Workers' Compensation Act cannot deprive Brown of his federal Jones Act claim against the state.

The state relies on *Johansen v. United States, 343 U.S. 427, 72 S. Ct. 849, 96 L. Ed. 1051 (1952),* in support of its argument that the exclusive remedy provision of the Workers' Compensation Act applies. Johansen involved an injury to a seaman-federal employee who sued the government for damages for negligence under the Public Vessels Act of 1925, *46 U.S.C. § § 781-799.* The court held that this remedy was barred by the Federal Employees' Compensation Act of 1916, which provided a workers' compensation remedy to federal employees. *Id. at 441.* The Johansen case presented a conflict between two federal remedies. It is thus unlike the state-federal problem which is present here.

The state also relies on three state cases: *Lyons v. Texas A & M University, 545 S.W.2d 56 (Tex.Civ.App. 1977); Gross v.* **[**9]** *Washington State Ferries, 59 Wash. 2d 241, 367 P.2d 600 (1961); Maloney v. State, 3 N.Y.2d 356, 165 N.Y.S.2d 465, 144 N.E.2d 364 (N.Y. 1957).* In these cases the sovereign immunity waiver was expressly conditioned on preserving the defense in question. Lyons involved an act waiving sovereign immunity which, as an integral part of the waiver, reserved to the state "all of the privileges and immunities granted by the Workmen's Compensation Act . . . to private persons and corporations." *545 S.W.2d at 58.* In Maloney, the act waiving sovereign immunity was "careful to provide that, in waiving immunity, the exclusiveness of the compensation remedy against the State is not impaired." *144 N.E.2d at 367.* The sovereign immunity waiver in Gross was expressly conditioned by a 30-day notice of claim proviso. *367 P.2d at 605.* By contrast, the waiver of immunity contained in the Alaska Claims Against the State Act is not conditioned on preserving the defense in question here -- the exclusive remedy provision. These cases teach that the legislature could make the exclusive remedy defense applicable to federal maritime claims by referring to the defense in the sovereign immunity waiver contained in the Claims Act. However, **[**10]** the legislature has not chosen to do so.

Merely because the exclusive remedy defense is not a condition of the waiver of the sovereign immunity of the state does not mean that the Claims Against the State Act has repealed the exclusive remedy defense. The defense is fully applicable to all claims against the state brought under state law. However, the defense does not apply to federal remedies, and thus the decision of the superior court is AFFIRMED.

DISSENTBY:
COMPTON

DISSENT:

COMPTON, J., dissents. MOORE, J., not participating.

COMPTON, Justice, dissenting.

I.

Assuming the court's conclusion is correct, state employed maritime workers **[*112]** stand to recover more than state employed land-based workers who suffer the same injury in a virtually identical accident. If the court is wrong, then state employed maritime workers stand to recover less than their privately employed counterparts. Thus, under either result, inequities are inevitable. However, traditional methods of statutory analysis lead to the conclusion that sovereign immunity was retained as to Jones Act suits.

The doctrine of sovereign immunity bars Jones Act suits for damages by injured state employees in state court, absent a waiver of immunity. *Gross v. Washington State Ferries, 59 Wash. 2d 241, 367 P.2d 600,* **[**11]** *602 (1961); Maloney v. State, 3 N.Y.2d 356, 165 N.Y.S.2d 465, 144 N.E.2d 364, 365 (1957); Lyons v. Texas A & M Univ., 545 S.W.2d 56, 58 (Tex. Civ. App. 1977).* n1

----------Footnotes----------

n1 It is worth noting that the court is unable to cite a single state case affording an injured state maritime employee Jones Act relief.

----------End Footnotes----------

The Claims Against the State Act (CATSA), *AS 09.50.250*, provides that "[a] person . . . having a . . . tort claim against the state may bring an action against the state in the superior court." Jones Act claims sound in tort. See *Collins v. State, 823 F.2d 329, 332 (9th Cir. 1987)* (CATSA does not waive Alaska's immunity from Jones Act suit in federal court). The Alaska Workers Compensation Act (AWCA), on the other hand, provides that the "liability of an employer [within this act] is exclusive and in place of all other liability of the employer . . . at law or in admiralty. . . ." "Employer" as defined includes the state. *AS 23.30.265(13)*. Should this language be given its plain meaning, Brown would be entitled to the worker's **[**12]** compensation he has received and no more.

The exclusive liability provision of AWCA, beginning in 1949, provided the exclusive remedy against the territory as an employer in lieu of claims "now existing at common law or otherwise." § 43-3-10 ACLA (1949); § 43-3-38 ACLA (1949). This was followed by a broad, general enactment providing relief to persons with "any claim" against the territory. § 56-7-1 ACLA (Supp. 1957). This enactment did not explicitly purport to supersede exclusive worker's compensation liability for the state; the exclusive liability provision was retained.

Upon statehood, the exclusive liability provision of AWCA was reenacted, limiting claims "at law or in admiralty." *AS 23.30.055*. Thus, despite the existence of a general right in third persons to make "claims" against the state in superior court, the legislature seemingly reaffirmed the state's limited waiver of immunity when acting as an employer. CATSA was refined to something near its present form in 1962. *AS 09.50.250*.

Without the enactment of AWCA or CATSA, an injured territorial or state worker would have had no claim at all against the territory or state, even with the aid of the Jones Act. The territory **[**13]** or state would have been immune from suit. *Ex Parte New York No. 1, 256 U.S. 490, 500, 41 S. Ct. 588, 65 L. Ed. 1057 (1921)*; cf. *Welch v. Texas Dep't of Highways & Pub. Transp., 483 U.S. 468, 472-73, 107 S. Ct. 2941, 97 L. Ed. 2d 389 (1987)*. The original AWCA must therefore have been a limited waiver of sovereign immunity; otherwise an employee of the territory would not have been entitled to any compensation from the territory for an injury occurring while on the job. Thus, in order to prevail, Brown needs to show that the more general waiver of sovereign immunity in CATSA was somehow intended to abrogate the effect of the more limited waiver of sovereign immunity in AWCA, despite AWCA being left intact.

Despite its lengthy discussion of federal case law, none of which is relevant given that the employer here is the state, the court's rationale is really rather simple. The court seizes upon our prior cases narrowly construing retentions of sovereign immunity when the state is not an employer, e.g., *Freeman v. State, 705 P.2d 918, 920 (Alaska 1985)*, transforms them into establishing a requirement that retentions of sovereign immunity must necessarily be **[*113]** explicit, and then concludes that because sovereign immunity was not explicitly **[**14]** retained in CATSA itself, it was not retained at all. n2 This is not the issue; rather the question should be whether CATSA was intended to repeal the effect of AWCA.

----------Footnotes----------

n2 If the court is correct that retentions of sovereign immunity must be explicit, then the court's assertion that AWCA is still an effective defense against state law claims must be wrong, since CATSA does not explicitly retain sovereign immunity as to state claims. Nor could Collins be correctly decided if CATSA is as broad a waiver as the court maintains.

----------End Footnotes----------

Repeal by implication is not favored. *Peter v. State, 531 P.2d 1263, 1267 (Alaska 1975)*. A specific statutory provision ordinarily is not repealed by a later enacted, general statutory provision. *Preston v. Heckler, 734 F.2d 1359, 1368 (9th Cir. 1984); United States v. Hawkins, 228 F.2d 517, 519 (9th Cir. 1955)*. Repeal by implication is limited and only found when necessary to carry out the legislature's intent. *Warren v. Thomas, 568 P.2d 400, 403 (Alaska 1977)*.

Did the legislature, **[**15]** in enacting CATSA, intend to subject the state to Jones Act claims by its own employees, notw thstanding AWCA? Did it intend to allow its maritime workers to receive preferential treatment over its land-based workers? Had the question occurred to the legislators at the time, then arguably a clause referencing AWCA and maintaining its integrity as the sole, comprehensive remedy for injured state maritime workers could have been included.

In saying this, however, I reject any implication that the legislature is somehow prevented by "federalism" from amending CATSA to make clear that the sole remedy of its injured maritime employees is worker's compensation, and that Brown is entitled to a "double dip." The mere fact that the Jones Act exists as a federal cause of action does not mean that state sovereign immunity, properly asserted, is abrogated. See *Atascadero State Hospital v. Scanlon, 473 U.S. 234, 242, 105 S. Ct. 3142, 87 L. Ed. 2d 171 (1985).* Moreover, the Jones Act has been held not to abrogate properly asserted state sovereign immunity. *Welch v. Texas Dep't of Highways & Pub. Transp., 483 U.S. 468, 475-76, 107 S. Ct. 2941, 97 L. Ed. 2d 389 (1987).* Any Jones Act recovery by Brown must be offset by the workers' compensation benefits he **[**16]** has received. *Barber v. New England Fish Co., 510 P.2d 806, 812-13 & n.39 (Alaska 1973).*

II.

The foregoing, of course, assumes away the bothersome question of whether the Jones Act was ever intended to apply at all to states as employers. One justice of the United States Supreme Court has opined that it was not. *Welch, 483 U.S. at 496* (Scalia, J., concurring). The court in Welch left open the question. *Id. at 476.*

The rationale for Justice Scalia's concurrence appears to derive from the majority opinion in *Will v. Michigan Dep't of State Police, 491 U.S. 58, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989).* In Will, the Court held that states are not persons within the meaning of *42 U.S.C. § 1983. Will, 109 S. Ct. at 2308.* In Will, the Court, while noting that the case did not involve the Eleventh Amendment since the underlying suit was brought in state court, id., nonetheless opined that similar federalism concerns were implicated when Congress subjected a state to liability which it would not otherwise be subject to. Accordingly, the Court held that if Congress intends to pre-empt state sovereign immunity by subjecting a state to a federal remedy, it must make its intention **[**17]** to do so "unmistakably clear in the language of the statute." Id. at 1208-09. "In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." Id., quoting *United States v. Bass, 404 U.S. 336, 349, 92 S. Ct. 515, 30 L. Ed. 2d 488 (1971).*

A straightforward application of Will to the facts before us leads to the conclusion that the Jones Act simply is inapplicable to the states. The Court has already held, in **[*114]** the analogous though different context of the Eleventh Amendment, that the Jones Act is not sufficiently clear and unambiguous. *Welch, 483 U.S. at 475-76.*

Thus, either under traditional modes of statutory analysis as applied to AWCA and CATSA, or under the Will Court's method of interpreting federal statutes, Brown is limited to his workers' compensation remedy. Accordingly, I dissent.

Alaska State Legislature

Co-Chair
House Finance Committee
Subcommittee Chair
Environmental Conservation
Courts

Representative William K. Williams

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MEMORANDUM

To: Representative Lesil McGuire, Chair
House Judiciary Committee

From: Representative Bill Williams

Date: March 25th, 2003

Subject: Request for Hearing

I respectfully request that HB31/HJR5, "An Act relating to initiative and referendum petitions; and providing for an effective date", be scheduled for a hearing in the House Judiciary Committee.

Attached is the following documentation:

Sponsor Statement
HB31
HJR5
Sectional Summaries from Legislative Counsel
Fiscal Notes from Division of Elections
Article XI of the Alaska State Constitution
Excerpts from the Minutes of the Alaska Constitutional Convention
A memo written by a member of my staff that should help you negotiate these minutes
Charts with data on signatures gathered in support of initiatives in recent years
The NCSL's 2002 Report on Initiatives and Referendums
Testimony from Dick Bishop in support of HB31/HJR5
Letter from Steve Borell in support of HB31/HJR5
Letter from Michael and Michelle Citti opposing HB31/HJR5

If you have any questions or need more information, feel free to contact me or my Aide, Tim Barry. Thank you for your attention to this important matter.

Alaska State Legislature

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House Finance Committee
Subcommittee Chair
Environmental Conservation
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Sponsor Statement for HB 31/ HJR 5
Initiative and Referendum Petitions

"An Act relating to initiative and referendum petitions; and providing for an effective date"

House Bill 31 and House Joint Resolution 5 ("HB 31/ HJR 5") were introduced to encourage broad, statewide support for the idea contained within an initiative before it gets on the ballot. By including voters from all parts of Alaska in the process, the legislation promotes awareness of initiatives to people throughout the state.

The legislation supports the letter and spirit of Article XI, Section 3, of the Alaska Constitution, which requires initiative sponsors to obtain a minimum of one signature from residents of at least two-thirds of the House Districts in the State of Alaska (27 districts). HB 31/HJR 5 proposes that initiative sponsors gather signatures from residents of at least three-quarters of House Districts (30 districts). The legislation also proposes that the total number of signatures in each of those districts amount to at least seven percent of the number of people who voted in the most recent election in that district. It does not change the constitution's requirement that the total number of signatures statewide in support of an initiative or petition amount to at least ten percent of the number of people who voted in the most recent election. The legislation would put a proposed constitutional amendment on the ballot, leaving it to the people of the state to decide if these changes are warranted.

Contact: Tim Barry, Aide to Representative Bill Williams, at (907) 465-2812

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.

KLK:lmb
03-059.lmb

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MEMORANDUM February 5, 2003

SUBJECT: Initiative and Referendum Petitions (HJR 5)
(Work Order No. 23-LS0202)

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. Proposes amending Article XI, sec. 3 of the Constitution of the State of Alaska to impose more stringent signature requirements for initiative and referendum petitions. As amended, the constitution would require that a petition be signed by residents of at least three-fourths of the house districts in the state (an increase from two-thirds), and 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. Specifies that the proposed amendment be placed before the voters at the next general election.

KLK:med
03-102.med